ABSTRACT

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ABSTRACT:	This ordinance contains minimum standards and procedures for the orderly development of land and its use in the City of Winchester and is designed as a tool or implementation for the adopted Comprehensive Policy Plan for the City.

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ARTICLE 1

DEFINITIONS

SECTION 1-1. GENERAL USAGE.

For the purpose of this ordinance, certain words and terms are herein defined as follows:

1-1-1 Words used in the present tense include the future tense; words used in the singular number include the plural number; and words in the plural number include the singular number, unless the obvious construction of the wording indicates otherwise.

1-1-2 The word "shall" is mandatory; "may" is permissive.

1-1-3 Unless otherwise specified, all distances shall be measured horizontally and at right angles to the line in relation to which the distance is specified.

1-1-4 The word "building" includes the word "structure"; the word "lot" includes the words "plots" and "parcel."

1-1-5 The word "used" shall be deemed also to include "erected," "reconstructed," altered," "placed," or "moved."

1-1-6 The terms "land use" and "use of land" shall be deemed also to include "building use" and "use of building."

1-1-7 The word "State" means the Commonwealth of Virginia.

1-1-8 The word "City" means the City of Winchester, Virginia.

1-1-9 The word "person" includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual.

SECTION 1-2. DEFINITIONS.

1-2-1 ACCESSORY USE: A subordinate use customarily incidental to and located upon the same lot occupied by the main use or building. (3/11/08, Case TA-07-08, Ord. No. 2008-13)

1-2-1.1 ACCESSORY STRUCTURE: A structure that is detached from a principal structure on the same lot, customarily incidental and subordinate to the principal structure or use. Accessory structures are not permitted to be used for residential occupancy or habitation as a secondary dwelling unit, except that a subordinate dwelling unit located within an accessory structure may be occupied by members of a family as defined in subparagraph (1) of the definition of “family.” Accessory structures most commonly include detached garages and garden utility sheds, but may also include detached decks, detached gazebos, greenhouses, hoophouses, cold-frame structures, and swimming pools. (3/11/08, Case

TA-07-08, Ord. No. 2008-13; 10/12/10, Case TA-10-418, Ord. No. 2010-51; 6/14/11, Case TA-11-06, Ord. No. 2011-14)

1-2-2 ADMINISTRATOR, THE: The official charged with the enforcement of this zoning ordinance. He may be any appointed or elected official who is designated to the position by the City Manager. (9/11/12, Case TA-12-227, Ord. No. 2012-27)

1-2-3 ADULT BOOKSTORE: Any premises or part thereof from which juveniles are excluded in accordance with Article 6, Section 18.2-390 and 391 of the Code of Virginia (1950), as amended, and in which the sale of books, magazines, newspapers, movie films, video tapes, devices, slides, or other photographic or written reproductions is conducted as a principal use of the premises; or an adjunct to some other business activity, but which constitutes the primary or a major attraction to the premises. (10/12/82, Case 82-10, Ord. No. 020-82)

1-2-3.1 ADULT CARE RESIDENCE: *See Assisted Living Facility* and *Group Home*. (10/9/07 Case TA-07-02, Ord. No. 2007-41; 9/14/10, Case TA-10-333, Ord. No. 2010-38)

1-2-4 ADULT MINI-MOTION PICTURE THEATER: An enclosed building with a capacity for less than fifty (50) persons primarily used for exhibiting motion pictures, shows, or other presentations and which excludes juveniles in accordance with Article 6, Section 18.2-390 and 391 of the Code of Virginia (1950), as amended. (10/12/82, Case 82-10, Ord. No. 020-82)

1-2-5 ADULT MOTION PICTURE THEATER: An enclosed building with a capacity of fifty (50) or more persons primarily used for exhibiting motions pictures, shows, or other presentations and which excludes juveniles in accordance with Article 6, Section 18.2-390 and 391 of the Code of Virginia (1950), as amended. (10/12/82, Case 82-10, Ord. No. 020-82)

1-2-5.1 ALCOHOL TREATMENT CENTERS: *See Group Home*. (10/9/07 Case TA-07-02, Ord. No. 2007-41)

1-2-6 ALLEY: A right-of-way which provides secondary service access for vehicles to the side or rear of abutting property.

1-2-7 ALTERATIONS, STRUCTURAL: Any change, removal, replacement, reinforcement, or addition of beams, ceiling and floor joists, reinforced concrete floor slabs (except those on fill), load bearing partitions, columns, exterior walls, stairways, roofs, corridors, or other structural materials used in a building that supports the said beams, ceiling and floor joists, load bearing partitions, columns, exterior walls, stairways, roofs, or structural materials used in the building or structure.

1-2-7.1 AMPHITHEATER: A stand-alone outdoor entertainment venue with a stage area for performances which may include lighting, amplification, and accessory structures including open-air pavilions, restroom buildings, and concession operations. (7/10/12, Case TA-12-187, Ord. No. 2012-20)

1-2-8 ARENA: A building over thirty (30,000) gross square feet in size used to provide entertainment, cultural, or educational events for which a charge may be imposed in the form of an entrance fee. For purposes of this Ordinance, structures primarily designed as and functioning as theaters or places of worship shall not be defined as Arenas. (7/10/12, Case TA-12-187, Ord. No. 2012-20)

1-2-8.1 ANIMAL SHELTER: A place used to house and/or euthanize stray, homeless, abandoned, or unwanted animals that is owned, operated, or maintained by a public body or an established humane society or society for the prevention of cruelty to animals or other non-profit entity devoted to the welfare, protection, and humane treatment of animals. (12/12/00, Case TA-00-06, Ord. No. 025-2000).

1-2-9 ASSEMBLY PLANT: A structure used for the fitting together of parts or components to form a complete unit.

1-2-9.1 ASSISTED LIVING FACILITY: As defined within §63.2-100, Code of Virginia (as amended), a residential facility for which the Department of Social Services of the Commonwealth is the licensing authority, with one or more resident counselors or other staff persons. (9/14/10, Case TA-10-333, Ord. No. 2010-38)

1-2-10 Repealed. (2/11/97, Case TA-96-09, Ord. No. 005-97)

1-2-11 BASEMENT: A story having part, but not more than one-half (1/2) of its height below highest grade. A basement shall be counted as a story for the purpose of height regulations.

1-2-11.1 BED & BREAKFAST HOMESTAY: An owner-occupied dwelling unit which provides one to three guest rooms and breakfast for guests of those rooms only. No food preparation or cooking shall occur in the guest rooms. (12/13/94, Case TA-94-09, Ord. No. 028-94)

1-2-11.2 BED & BREAKFAST INN: A building designed or occupied as the more or less temporary abiding place with four (4) to twenty (20) guest rooms for individuals who are, for compensation, lodged and served breakfast, and in which provision is not generally made for cooking in the individual room or suite. (12/13/94, Case TA-94-09, Ord. No. 028-94)

1-2-12 BOARDING HOUSE: A rooming house or other similar structure, excluding a hotel or bed & breakfast inn or bed & breakfast homestay, designed or intended to be used for transient residential occupancy on a room rental basis, where for compensation and by prearrangement for definite periods of time, lodging, or lodging and meals are provided by the owner or operator, who shall reside on the premises, for at least three (3) or more persons, but not exceeding nine (9) persons. (2/27/07, Case TA-06-06, Ord. No. 2007-04)

1-2-12.1 BREWERY: The land and buildings containing an industrial use which brews and produces ales, beers (as defined within §4.1-100, Code of Virginia, as amended), and/or similar beverages on site for sale and distribution. A brewery may not be established or operated in any residential dwelling unit. (6/12/07, Case TA-07-01, Ord. No. 2007-19)

1-2-13 BUILDING: A structure having one (1) or more stories and roof, designed primarily for the shelter, support, or closure of persons, animals, or property of any kind.

1-2-14 BUILDING INSPECTOR: An appointed official of the City of Winchester who is responsible for certifying building inspections.

1-2-15 BUILDING, MAIN: A building in which is conducted the principal use of the lot on which it is situated. In any residential zone, any dwelling shall be deemed to be a main building on the lot on which the same is located if the lot is used primarily for residential purposes.

1-2-16 BULK STORAGE: A structure and/or structures designed for and used as storage facilities for oil, fuel oil, gas, grain, etc., usually stored in large quantities.

1-2-16.1 BUS TERMINALS: Land and buildings used as a relay station for the boarding of people and cargo on buses and for the transfer of people and cargo from one bus to another. The terminal may include a storage area for buses and provisions for light maintenance of buses associated with the terminal provided that all service and repair, except fueling, shall be within a building enclosed on all sides. Light maintenance may include washing, greasing, and oil changes but shall not include removal, installation or overhaul of major components including but not limited to engines and transmissions. (6/14/94, Case TA-94-06, Ord. No. 019-94)

1-2-17 CARPORT: Any space outside a building and contiguous thereto, wholly or partly covered by a roof, and used for the shelter of motor vehicles. An unenclosed carport is a carport with no side enclosure that is more than eighteen (18) inches in height, exclusive of screens (other than the side of the building to which the carport is contiguous).

1-2-18 CELLAR: The portion of a building partly underground, which has one-half (1/2) or more of its clear height below the average grade of the adjoining ground.

1-2-19 CIRCUIT COURT: The Circuit Court for Frederick County and the City of Winchester, Virginia.

1-2-20 CITY: Winchester, Virginia.

1-2-21 CLUB, PRIVATE: Those associations and organizations of a fraternal or social character not operated or maintained for profit, but the terms shall not include night clubs or other institutions operated as a business.

1-2-22 COMMERCIAL: Any wholesale, retail, or service business activity established to carry on trade for a profit.

1-2-23 COMMISSION, THE: The Planning Commission of the City of Winchester, Virginia.

1-2-23.1 COMPREHENSIVE MEDICAL REHABILITATION SERVICES SPECIALTY HOSPITAL: A hospital or unit for the purpose of restoring to their fullest capability or gainful employment those individuals who are physically handicapped by injury or illness, except that drug and alcohol rehabilitation are not permitted. (6/12/90, Case TA-89-11, Ord. No. 018-90)

1-2-23.2 COMMERCIAL RECORDS CENTER: A commercial facility which provides information storage, filing, inventory management, retrieval, delivery and similar services. Information may be handled in the form of paper, microfilm, microfiche, computer based or other media. (4/12/94, Case TA-94-03, Ord. No 011-94)

1-2-24 COMMON OPEN SPACE: All open space within the boundaries of a planned development designed and set aside for use by all residents of the planned development or by residents of a designated portion of the planned development and not dedicated as public lands.

1-2-24.1 COMMUNITY CENTER, PRIVATE: A facility for noncommercial, nonresidential use by organizations, institutions and individuals providing social, cultural, recreational and human resource programs and activities. (12/14/99, Case TA-99-06, Ord. No. 033-99)

1-2-25 COMPREHENSIVE PLAN: The Comprehensive Plan for Winchester, Virginia, as adopted and as amended.

1-2-26 CONDOMINIUM: Ownership of single units in a multiple unit structure with common elements.

1-2-27 COURT: An open, unoccupied space, other than a yard, with a building or group of buildings which is bounded on two (2) or more sides by such building or buildings and every part of which is clear and unobstructed from its lowest point to the sky.

1-2-27.1 CREMATORY: A facility containing a furnace for cremation of dead human or animal remains. Such facility may also provide related goods and services for memorialization. (6/8/10, Case TA-10-111, Ord. No. 2010-19)

1-2-28 DAIRY: A commercial establishment for the manufacture, processing, and/or sale of dairy products.

1-2-28.1 Repealed. (10/22/13, Case TA-13-146, Ord. No. 2013-28)

1-2-28.2 DECK: The term “deck” shall include any attached projection from a main wall of a building that has railings and may or may not have access to the ground, but does not include walls and a roof. (11/12/02, Case TA-02-08, Ord. No. 028-2002)

1-2-29 DISTRICT: A portion of the territory of the City of Winchester in which certain uniform regulations and requirements or various combinations thereof apply under the provisions of the adopted Zoning Ordinance.

1-2-29.1 DONATION DROP-OFF BOX: Any container, storage unit or unoccupied structure, used for the holding of charitable or donated items by the general public, including, but not limited to, clothing, toys, books, and newspapers, with the collections of donated items made at a later date or time. This term shall not include recycling collection centers. (1/8/13, Case TA-12-473, Ord. No. 2012-36)

1-2-29.2 DRUG TREATMENT CENTERS: *See Group Home*. (10/9/07, Case TA-07-02, Ord. No. 2007-41)

1-2-30 DWELLING: Any structure which is designed for use for residential purposes, except hotels, bed & breakfast inns, boarding houses, lodging houses, tourist cabins, motels, and campers. (1/9/01, Case TA-00-09, Ord. No. 002-2001)

1-2-31 DWELLING UNIT: One (1) or more rooms in dwelling designed for living or sleeping purposes, and having only one (1) kitchen. Notwithstanding any other provisions of this Ordinance, not more than 12 people may live in or occupy any dwelling unit. (2/11/97, Case TA-96-09, Ord. No. 005-97)

1-2-32 DWELLING, MULTIPLE FAMILY: A structure arranged or designed to be occupied by three (3) or more families, the structure having three (3) or more dwelling units.

1-2-33 DWELLING, TWO FAMILY: A structure arranged or designed to be occupied by two (2) families, the structure having only two (2) dwelling units.

1-2-33.1 DWELLING, ACCESSORY TWO FAMILY: A Two Family Dwelling wherein one of the two dwelling units is owner-occupied and one of the two dwelling units is designed to be accessory or subordinate to the other dwelling unit. The accessory dwelling unit shall not contain more than two bedrooms, shall not exceed more than forty percent (40%) of the total dwelling floor area, and shall not have an external building entrance facing toward the same public street frontage as the other dwelling unit unless established as a conversion of an existing single-family dwelling at least twenty (20) years old where more than one such entrance already exists. (1/12/10, Case TA-09-323, Ord. No. 2009-39)

1-2-34 DWELLING, SINGLE FAMILY: A structure arranged or designed to be occupied by one (1) family, the structure having only one (1) dwelling unit.

1-2-34.1 EMPLOYEE, DOMESTIC: A person hired by a household to perform general household services such as nanny, baby-sitting, cooking, cleaning, laundering, gardening, yard and maintenance work, care-giving and other duties commonly associated with the meaning of domestic servant. (6/14/11, Case TA-11-06, Ord. No. 2011-14)

1-2-35 EQUIPMENT PENTHOUSE: A structure on the roof of a building containing necessary mechanical equipment, elevator equipment, and/or stairways.

1-2-35.1 EXTENDED STAY LODGING: One (1) or more buildings containing individual sleeping rooms, designed for and used primarily by business travelers for more than thirty (30) consecutive days, with garage or parking space conveniently located to each unit. Cooking facilities are provided for each unit. Units are not intended to be primary residences. (8/12/03, Case TA-03-01, Ord. No. 031-2003)

1-2-36 FAMILY: Any of the following groups conforming to the limitations outlined in Section 18-4, Occupancy of Dwelling Units, living and cooking together as a single housekeeping unit.

1. One or more persons related by blood, marriage, legal guardianship or adoption, including foster children, as verified by official public records such as motor vehicle operator's licenses, birth certificate or marriage certificates; or by affidavits. The Zoning Administrator may require an affidavit in this regard and may reject any such evidence not in the form of an affidavit; or

2. Not more than four unrelated persons or a combination of related and unrelated persons; or

3. Two unrelated adults and any children related to either one or both adults by blood, marriage, legal guardianship or adoption, including foster children; or

4. Not more than eight (8) unrelated persons who are:

   a. Residents of a group home as defined within §15.2-2291, Code of Virginia (as amended), occupying a single family dwelling unit or other residential facility for which the Department of Mental Health, Mental Retardation, and Substance Abuse services of the Commonwealth is the licensing authority; or

   b. "Handicapped" as defined within the Federal Fair Housing Act, 42 USC 3602(h), and/or "Disabled" as defined within the Americans with Disabilities Act of 1990, 42 USC 12101, et seq. These definitions do not include current illegal use of or addiction to a "controlled substance" as defined in the Controlled Substances Act, 21 USC 802(6) or §54.1-3401, Code of Virginia (as amended). (10/9/07 Case TA-07-02, Ord. No. 2007-41)

   c. Residents of an assisted living facility as defined within §15.2-2291, Code of Virginia (as amended), occupying a single family dwelling unit or other residential facility for which the Department of Social Services of the Commonwealth is the licensing authority. (9/14/10, Case TA-10-333, Ord. No. 2010-38)

Subject to the limitations in Section 18-4, the following shall not be included in the number of persons who might comprise a family: up to two (overall) persons who may be domestic employees (or one domestic employee and one minor child of the domestic employee), live-in companions to the elderly or disabled, or "au-pair" employees (except for families described under subparagraph (2), definition of "family"). Any one claiming a domestic employee, live-in companion to the elderly or disabled, or "au-pair" employee status for an occupant or for one's self must first verify to the zoning administrator the

existence of a bona fide employment relationship by a copy of a record, such as an employment contract, a federal i-9 form, a tax return, or an affidavit. (6/14/11, Case TA-11-06, Ord. No. 2011-14)

1-2-37 FAMILY CARE HOME: *See Group Home*. (10/9/07 Case TA-07-02, Ord. No. 2007-41)

1-2-37.1 FAMILY DAY HOME: means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. (9/14/10, Case TA-10-337, Ord. No. 2010-40)

1-2-38 FLOOD PLAIN: Continuous sections of land, adjacent to bodies of water, which are subject to periodic flooding and inundation.

1-2-39 FLOOR AREA: The sum of the gross horizontal areas of the several floors of the building or buildings on a lot, measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings.

1-2-40 DELETED. (8/13/02, Case TA-02-06, Ord. No. 021-2002)

1-2-41 GARAGE, PRIVATE: Accessory building designed or used for the storage of private automobiles owned and used by the occupants of the building to which it is accessory.

1-2-42 GARAGE, PARKING: A building or portion thereof, other than a private garage, designed or used for storing of motor vehicles.

1-2-42.1 GARDEN, COMMUNITY: means an area of land managed and maintained by a group of individuals to grow and harvest food crops and/or non-food, ornamental crops, such as flowers, for personal or group use, consumption or donation. 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. (10/12/10, Case TA-10-418, Ord. No. 2010-51)

1-2-42.2 GARDEN, MARKET: means an area of land managed and maintained by an individual or group of individuals to grow and harvest food crops and/or non-food, ornamental crops, such as flowers, to be sold for profit. (10/12/10, Case TA-10-418, Ord. No. 2010-51)

1-2-43 GOLF COURSE: Any golf course, publicly or privately owned, on which the game of golf is played, including accessory uses and buildings customary thereto, but excluding golf driving ranges as defined herein.

1-2-44 GOLF DRIVING RANGE: A limited area on which golf players do not walk, but onto which they drive golf balls from a central driving tee.

1-2-45 GOVERNING BODY: The Common Council of the City of Winchester.

1-2-46 GROUP HOME: As defined within §15.2-2291, Code of Virginia (as amended), a residential facility for which the Department of Mental Health, Mental Retardation, and Substance Abuse services of the Commonwealth is the licensing authority; and, in which no more than eight (8) mentally ill, mentally retarded or developmentally disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. Mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined within §54.1-3401, Code of Virginia (as amended). (10/9/07 Case TA-07-02, Ord. No. 2007-41)

1-2-46.1 HALFWAY HOUSE: A residential facility for persons on release from more restrictive custodial confinement where supervision, rehabilitation and counseling are provided to mainstream residents back into society thus enabling them to live independently. (2/11/97, Case TA-96-09, Ord. No. 005-97)

1-2-47 HEALTH OFFICIAL: The legally designated health authority of the Department of Health, Commonwealth of Virginia, for the City of Winchester or his authorized representative.

1-2-48 HEIGHT: The vertical distance measured from the adjoining curb grade to the highest point of the roof surface, if a flat roof; to the deckline of a mansard; and to the mean height level between eaves and ridge for a gable, hip, or gambrel roof. Where buildings are set back from the street line, the height of the building shall be measured from the average elevation of the finished grade along the front of the building.

1-2-48.1 HOOKAH ESTABLISHMENT: Means any establishment, facility, or location whose business operation, whether as its primary use or as an ancillary use, is devoted to the on-premises smoking of tobacco or other legal, non-hallucinogenic, non-psychoactive or psychotropic substances through one or more pipes (commonly known as a hookah, waterpipe, shisha or narghile) designed with a tube passing through an urn of water that cools the smoke as it is drawn through it, including but not limited to establishments known variously as hookah bars, hookah lounges, or hookah cafes. (2/8/11, Case TA-10-639, Ord. No. 2010-73)

1-2-49 HOSPITAL, GENERAL: An institution rendering medical, surgical, obstetrical, or convalescent care, including nursing homes, homes for the aged, and sanatoriums, but in all cases excluding institutions primarily for mental or feebleminded patients, epileptics, alcoholics, or drug addicts. (Certain nursing homes and homes for the aged may be "home occupation" if they comply with the definitions herein.)

1-2-50 HOSPITAL, SPECIAL CARE: An institution rendering care primarily for mental or feebleminded patients, epileptics, alcoholics, or drug addicts.

1-2-51 HOTEL: A building designed and occupied as the temporary abiding place for fourteen (14) or more individuals who are, for compensation, lodged, for a maximum of thirty (30) consecutive days, with or without meals, and in which provision is not generally made for cooking in the individual rooms or suites. No more than 10 % of the total number of units may be occupied by individuals that exceed the 30 consecutive day maximum occupancy

limit up to a maximum of nine (9) consecutive months. (8/12/03, Case TA-03-01, Ord. No. 031-2003)

1-2-51.1 HOUSING FOR THE ELDERLY AND PHYSICALLY HANDICAPPED: Housing in which occupants must be sixty-two (62) years of age or older; or, if physically handicapped, must be fifty-five (55) years of age or older and able to live independently. (3/14/89, Case TA-88-08, Ord. No. 008-89)

1-2-52 INSTITUTIONS OF HIGHER EDUCATION: Any institutions accredited by the State Department of Education and/or authorized by the State Council of Higher Education to award degrees; and including all uses customarily associated with an institution of higher education such as dormitories, classroom buildings, athletic fields, libraries, etc.

1-2-52.1 INOPERABLE MOTOR VEHICLE: Any motor vehicle, trailer or semi-trailer as defined in §46.2-100 of the Code of Virginia (as amended), which is not in operating condition, or any vehicle which has been partially or totally disassembled by the removal of tires and wheels, the engine or other essential parts required for operation of the vehicle for a period of sixty (60) days or longer or on which there are displayed neither valid license plates, nor a valid inspection decal. (2/12/08, Case TA-07-07, Ord. No. 2008-10)

1-2-53 KENNEL: A place prepared to house, board, breed, handle, or otherwise keep or care for dogs and cats for sale or in return for compensation.

1-2-54 LIMITED INDUSTRY: Includes warehousing and light manufacturing uses which produce some noise, traffic congestion, or danger, but which are of such limited scale or character that they present no serious hazard to neighboring properties from fire, smoke, noise, or odors. Examples are lumberyards, warehouses, research laboratories, auto repair shops, bakeries, bottling plants, electronic plants, storage of farm implements, contractors' storage yards, steel or metal fabrication.

1-2-55 LODGE, PRIVATE: Those associations and organizations of a fraternal or social character not operated or maintained for profit, but the terms shall not include night clubs or other institutions operated as a business.

1-2-56 LOT: A parcel of land occupied or to be occupied by one or more buildings and accessory structures, either shown on a plat of record or considered as a unit of property and described by metes and bounds separate from a platted right of way. (8/13/02, Case TA-02-06, Ord. No. 021-2002)

1-2-57 LOT, CORNER: A lot abutting on two (2) or more streets at their intersection. For corner lots with only two (2) sides abutting a street, the corner side line, shall be deemed to be the longer of the two (2) sides fronting on streets. (8/13/02, Case TA-02-06, Ord. No. 021-2002)

1-2-57.1 LOT, MULTI-CORNER: A corner lot with at least three street frontages. Where there are three uninterrupted street frontages, the lot line connecting the two street corners shall define front and corner side lot lines. If this line is shorter than both of the lot lines it intersects, then it shall be defined as a front lot line and the other two shall be defined as corner side lot lines. If it is longer than either of the other two lot lines, than is shall be defined as a corner side lot line and the other two shall be defined as front lot lines. For Multi-Corner Lots having other than three uninterrupted street frontages, the Administrator shall determine the designation of front and corner side lot lines based upon the orientation of these lines on adjacent lots. Limited access highways as defined by the Virginia Department of Transportation shall not be considered streets for the purposes of determining if a lot has multiple frontages. (8/13/02, Case TA-02-06, Ord. No. 021-2002; 9/13/05, Case TA-05-04, Ord. No. 027-2005)

1-2-58 LOT, DEPTH OF: The average horizontal distance between the front and rear lot lines.

1-2-59 LOT, MULTI FRONTAGE INTERIOR: An interior lot having frontage on two (2) or more streets, each defining a front yard. Limited access highways as defined by the Virginia Department of Transportation shall not be considered streets for the purpose of determining if a lot has multiple frontages. (7/8/97, Case TA-97-04, Ord. No. 015-97; 8/13/02, Case TA-02-06, Ord. No. 021-2002)

1-2-60 LOT, INTERIOR: Any lot other than a corner lot.

1-2-61 LOT, WIDTH OF: The horizontal distance between side lot lines at the setback line.

1-2-62 LOT OF RECORD: A lot, a plat, or description of which has been recorded in the Clerk's office of the Circuit Court.

1-2-63 MANUFACTURE AND/OR MANUFACTURING: The processing and/or converting of raw, unfinished materials or products, or both of them, into articles or substances of different character or for use for a different purpose.

1-2-64 MARQUEE: A roof-like structure or awning projecting over an entrance, as to a theater.

1-2-65 MINI-WAREHOUSE/MINI-STORAGE: A building or group of buildings that contain varying sizes of individual, compartmentalized, and controlled stalls or lockers for the storage of a customer's goods or wares. (5/16/78; 9/10/91, Case TA-91-02, Ord. No. 037-91)

1-2-66 MOBILE HOME LOT: Any area or tract of land used by or designed to accommodate one (1) mobile home.

1-2-67 MOTEL: One (1) or more buildings containing individual sleeping rooms, designed for and used temporarily by tourists or transients for a maximum of thirty (30) consecutive days, with garage or parking space conveniently located to each unit. Cooking facilities may be provided for each unit. No more than 10 % of the total number of units may be occupied by individuals that exceed the 30 consecutive day maximum occupancy limit up to a maximum of nine (9) consecutive months. (8/12/03, Case TA-03-01, Ord. No. 031-2003)

1-2-67.1 MUSEUM OR ART GALLERY: An organized and permanent nonprofit institution, open to the public, which is essentially educational or aesthetic in purpose, with professional staff, and which is devoted to the procurement, care, study, and display of objects of lasting interest or value. (05/12/98, TA-98-01, Ord. No. 013-98)

1-2-68 NEIGHBORHOOD CONVENIENCE ESTABLISHMENT: An establishment with a floor area of four thousand (4,000) square feet or less, which offers general services or merchandise for sale or rent to the people of the area for their day-to-day needs. (12/9/80, Ord. No. 022-80; 1/8/04, Case TA-04-02, Ord. No. 023-2004)

1-2-68.1 Repealed. (10/22/13, Case TA-13-146, Ord. No. 2013-28)

1-2-69 NONCONFORMING ACTIVITY: The otherwise legal use of a building or structure or of a tract of land that does not conform to the use regulations of this ordinance for the districts in which it is located.

1-2-70 NONCONFORMING LOT: An otherwise legally platted lot that does not conform to the minimum area or width requirements of the ordinance for the district in which it is located.

1-2-71 NONCONFORMING STRUCTURE: An otherwise legal building or structure that does not conform to the lot area, yard, height, lot, coverage, or other area regulations of this ordinance, or is designed or intended for a use that does not conform to the use regulations of this ordinance for the district in which it is located.

1-2-72 NURSING HOME: A place devoted primarily to the maintenance and operation of facilities for the treatment and care of any person suffering from illnesses, diseases, deformities, or injuries, nor requiring extensive and/or intensive care that is normally provided in a general hospital or other specialized hospital.

1-2-73 PARKING LOT: An open, unoccupied space used or required for use for parking of automobiles or other private vehicles exclusively and in which no gas or automobile accessories are sold or no other business is conducted.

1-2-73.1 PATIO: An unenclosed platform, no less than three (3) feet in width, having a height up to eighteen (18) inches measured from the lowest point of grade at the platform perimeter to the floor of the platform. A patio may not have attached railings, planters, trellises, attached seats or other features that extent skyward greater than twelve (12) inches above the platform. Patios may be freestanding or attached to a dwelling and are intended for use as an outdoor living area. (11/12/02, Case TA-02-08, Ord. No. 028-2002)

1-2-73.2 PET DAYCARE CENTER: An establishment that provides daily care, supervision, and grooming of up to fifty (50) animals at any one time; and, which does not provide for overnight accommodation of animals, as would otherwise be associated with a *kennel* or *animal shelter*. (8/12/08, Case TA-08-04, Ord. No. 2008-33)

1-2-74 PHARMACEUTICAL CENTERS: An establishment in which only pharmaceutical services are provided. Its purpose shall be limited to providing the public and various health professionals with information and articles intended for the use in diagnosis, cure, mitigation, treatment, or prevention of a disease state, including drugs and medical instruments or devices of the type used under the strict supervision of a physician in the treatment of a specific disease entity. No articles shall be displayed for sale, except for those articles directly related to the diagnosis, cure, mitigation, treatment, or prevention of a disease. Articles displayed for sale and product advertisements shall not be visible from outside the building. (8/9/77; 8/16/02, Case TA-02-05, Ord. No. 014-2002)

1-2-75 PORCH: The term "porch" shall include any porch, veranda, gallery, terrace, or similar projection from a main wall of a building and covered by a roof other than a carport as defined in this article. An "unenclosed porch" is a porch with no side enclosure (other than the side of the building to which the porch is attached) that is more than eighteen (18) inches in height, exclusive of screens.

1-2-75.1 PRESERVED CIVIL WAR BATTLEFIELD SITE: A site, identified as a civil war battlefield site by the National Park Service, Virginia Department of Historic Resources, or comparable agency, owned by an organized and permanent non-profit entity or public agency, and on which may be located offices, museums, visitor centers, and/or other improvements related to the interpretation of the site and the accommodation of visitors to the site. Such site may also be used for open space, wildlife habitat, and agricultural purposes to include equestrian boarding facilities, but to exclude confined animal feeding operations as defined in Section 62.1-44.17.1, Code of Virginia. (8/16/02, Case TA-01-08, Ord. No. 047-2001)

1-2-76 PROFESSIONAL OFFICE: The office, studio, or professional room of a doctor, architect, artist, musician, lawyer, or similar professional person, except in any funeral home, or any establishment where goods are offered for sale.

1-2-76.1 PSYCHIATRIC SPECIALTY HOSPITAL: A hospital or unit under the direction of a psychiatrist engaging in the diagnosis and treatment of persons suffering from mental illness. Mental illness is defined as any moderate to severe disturbance of emotion, behavior or thinking. (6/12/90, Case TA-89-11, Ord. No. 018-90)

1-2-76.2 PROTECTED POPULATION RESIDENCE : *See Group Home*. (10/9/07, Case TA-07-02, Ord. No. 2007-41)

1-2-77 RECREATIONAL VEHICLE: Any towed or motorized mobile unit designed, used or intended to be used for recreational purposes, including temporary human occupancy or recreational use. This definition includes travel trailers, pickup campers, motorized trailers, jet skis, snowmobiles, all terrain vehicles, motorized dwellings, tent trailers, boats, boat trailers, houseboats, and the like, and cases or boxes used for the transportation of such recreational equipment, whether occupied by such equipment or not. (5/13/08, Case TA-07-06, Ord. No. 2008-24)

1-2-78 REQUIRED OPEN SPACE: Any space required in any front, side, or rear yard.

1-2-79 RESTAURANT: Any place of business wherein foods or beverages are provided for consumption as the primary use. The term restaurant includes, without limitation; lunchrooms, cafeterias, coffee shops, cafes, taverns, delicatessens, dinner theaters, pubs, soda fountains, and dining accommodations of public or private clubs. This definition excludes: bakeries; bed-and-breakfast facilities; grocery and convenience retail stores; catering businesses (where food is prepared for consumption at another site); snack bars and refreshment stands at public recreation facilities; concession stands at athletic activities, or any facility exempt from state licensure requirements pursuant to Code of Virginia §35.1-25. Entertainment and music for restaurant patrons for which no cover charge is required and is clearly incidental and accessory to the restaurant's primary function as defined herein is permitted. (10/22/13, Case TA-13-146, Ord. No. 2013-28)

1-2-79.1 ESTABLISHMENT, ENTERTAINMENT: A venue where entertainment, during any one hour or more, becomes the principal use during that time for the business' operations, or such entertainment occurs after 11:00 p.m., with or without dancing, and typically involving a cover or other charge for admission and event advertising. These venues shall not include theaters, bowling alleys, stadiums, arenas, or other separately defined uses. (10/22/13, Case TA-13-146, Ord. No. 2013-28)

1-2-80 REST HOME, CONVALESCENT HOME: Any place containing beds for two (2) or more patients, established to render domiciliary care for chronic or convalescent patients, but not including child care homes or facilities for the cure of feebleminded, mental, epileptic, alcoholic patients, or drug addict.

1-2-81 RETAIL STORES AND BUSINESSES: Buildings for display and sale of merchandise at retail, but specifically exclusive of coal, wood, and lumber yards.

1-2-82 ROOMING HOUSE: See *Boarding House*. (2/27/07, Case TA-06-06, Ord. No. 2007-04)

1-2-83 SAWMILL: A sawmill located on public or private property for the processing of timber.

1-2-84 SCRAP YARD: Any land or building used for the abandonment, storage, keeping, collection, or bailing of paper, rags, scrap metals, other scrap, or discarded materials, or for the abandonment, demolition, dismantling, storage, or salvaging of automobiles, or other vehicles not in running condition, or parts thereof.

1-2-85 SERVICE STATION: An area of land, including structures thereof, or any building or part thereof that is used solely for the retail sale and direct delivery of fuel, lubricating oil, and minor accessories for such vehicles and the sale of cigarettes, candy, soft drinks, and other related items for the convenience of the motoring public, which establishment may or may not include facilities for lubricating, washing, minor repairs, or otherwise servicing motor vehicles, but not including auto body work, welding, painting, or major repair work. (10/11/83, Case 83-06, Ord. No. 034-83)

1-2-86 SETBACK: The minimum distance by which any main building or structure must be separated from the front lot line; except that no main building need be set back more than the average setback of the adjacent main buildings on each side. This shall be known as the "setback line." If, on one side, there is no main building on the same lot or adjacent lot, the required setback shall be averaged with the setback of the adjacent main building on the other side. If either adjacent main building is not in compliance with the applicable setback requirements, and has not received a special exception therefor, or is not a nonconforming main building by reason of inadequacy of setback, the average setback exception shall not apply. (3/8/94, Case TA-93-08, Ord. No. 004-94)

1-2-86.1 COMMERCIAL CENTER: A grouping of commercial enterprises offering a range of retail goods, services and offices with an aggregate of ten thousand square feet or more gross floor area which has two or more of the following characteristics: (a) is designed as a single commercial group, whether or not located on the same lot; (b) is under one common ownership or management, or has one common arrangement for the maintenance of the grounds; (c) is connected by party walls, partitions, covered canopies, or other structural members to form one continuous structure; (d) shares a common parking area; (e) otherwise presents the appearance of one continuous commercial area. (3/08/94, Case TA-93-09, Ord. No. 005-94; 11/12/96, Case TA-95-09, Ord. No. 030-96)

1-2-86.2 SHORT-TERM LOAN ESTABLISHMENT: a business engaged in providing short-term loans of money of an original term of less than 31 days, with or without security given by the borrower or with or without a co-maker, guarantor, endorser or surety, to members of the general public as an element of its operation and which is not a bank or a savings and loan association. Short-term loan establishments shall include businesses offering what is, or is marketed as, payday loans, signature loans, title (to vehicles, boats or other personal property, but not real estate) loans, cash advances, check-cashing loans, small loans and other similar loans; but, does not include pawnshops. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

1-2-86.3 STADIUM: A structure designed for sporting events, outdoor recreation, concerts, exhibitions, and/or convocations which includes fixed seating for more than three hundred (300) spectators. For purposes of this Ordinance, such facilities which include fixed seating for up to three hundred (300) spectators shall not be defined as Stadiums. (7/10/12, Case TA-12-187, Ord. No. 2012-20)

1-2-87 STORY: That portion of a building, other than the cellar, included between the surface of any floor and the surface of the floor next above it. If there be no floor above it, the space between the floor and the ceiling next above it.

1-2-88 STORY, HALF: A space under a sloping roof, which has the line of intersection of roof decking and wall face not more than three (3) feet above the top floor level, and in which space not more than two-thirds (2/3) of the floor area is finished for use.

1-2-89 STREET, ROAD: A public thoroughfare.

1-2-90 STREET LINE: The dividing line between a street or road right-of-way and the contiguous lot. (8/13/02, Case 02-06, Ord. No. 021-2002)

1-2-91 STRUCTURE: Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, except utility poles.

1-2-91.1 TOTAL PROJECT AREA: All land within the exterior boundaries of the tract on which a multifamily or townhouse development is located, including private lots, off-street parking areas, and common open space. It shall not include private streets, provided in lieu of public streets, streets to be dedicated to the public, and land in any 100-year flood plain. Land having a slope in excess of twenty percent (20%) shall count fifty percent (50%) toward the Total Project Area. (9/12/89, Case TA-89-01, Ord. No. 022-89)

1-2-92 TOWNHOUSE: A single family dwelling unit being one (1) of a group of not less than two (2) nor more than eight (8) units, with such units attached to the adjacent dwelling or dwellings by party walls with lots, utilities, and other improvements being designed to permit individual and separate ownership of such lots and dwelling units. (1/10/89 Case TA-88-13 Ord. No. 001-89)

1-2-93 TOURIST HOME: See *Boarding House*. (2/27/07, Case TA-06-06, Ord. No. 2007-04)

1-2-93.1 TRANSIENT: Any person who, for any period of not more than thirty (30) consecutive days, either at his own expense or at the expense of another, obtains lodging or the use of any space in any motel or boarding house as hereinabove defined, for which lodging or use of space, a charge is made. (2/27/07, Case TA-06-06, Ord. No. 2007-04)

1-2-94 TRAVEL TRAILER: A vehicular, portable structure designed in accordance with U.S.A. Standards for Travel Trailers (A119-2) currently in use or as may be amended by the U.S.A. Committee on Mobile Homes and Travel Trailers. Its primary function shall be the provisions of temporary dwelling or sleeping quarters during travel, recreation, or vacation uses; its design and type shall be clearly identified by manufacturer by visible identification seal or plate of permanent nature as a travel trailer; and its specification for transporting over the streets and highways of Winchester shall be in accordance with the Code of Virginia for Motor Vehicles (1950, as amended) with a maximum width of eight (8) feet and a maximum length of thirty-five (35) feet.

1-2-94.1 UNIT, SINGLE HOUSEKEEPING: Two or more persons, whether or not related by blood, marriage, or legal adoption, residing together in a dwelling unit, who:

a. share a common lease, or rental agreement that also provides for a period of tenancy common to all occupants; and
b. exercise a common right to use and enjoy the entire dwelling unit, despite informal arrangements among occupants to designate certain areas as individualized sleeping spaces; and

c. remit a single periodic rent payment to the owner or owner's agent. Additionally, the sharing of household living arrangements, including but not limited to, utility payments, groceries and common sanitary, living and cooking supplies and or facilities shall also be used in the determination by the Zoning Administrator that a dwelling unit is being used and occupied as a "single housekeeping unit." (10/9/07 Case TA-07-02, Ord. No. 2007-41)

1-2-94.2 WELLNESS & FITNESS CENTER: A facility which consists of physical fitness and therapy, wellness services, and related educational and/or informational programs, and sports medicine as the primary components of healthcare services provided. (1/11/11, Case TA-10-473, Ord. No. 2010-63)

1-2-95 YARD: An open space on a lot other than a court unoccupied and unobstructed from the ground upward by structures except as otherwise provided herein.

1-2-95.1 YARD, CORNER SIDE: A yard between the corner side line (as defined for Corner Lots) and the closest point or plane of the main building (excluding steps) and extending from the front yard to the rear lot line. For multi-corner lots with two front yards, the corner side yard shall extend between the two front yards. (8/13/02, Case TA-02-06, Ord. No. 021-2002)

1-2-96 YARD, FRONT: A yard between the closest plane or point of the building (excluding steps) and the front lot line, and extending across the full width of the lot, parallel or concentric to the street line. (8/13/02, Case TA-02-06, Ord. No. 021-2002)

1-2-97 YARD, REAR: A yard, opposite of a front yard, between the closest point or plane of the main building (excluding steps) and the rear line of the lot and extending the full width of the lot, parallel or concentric to the rear property line except on corner lots where the rear yard shall extend to the corner side yard. (8/13/02, Case TA-02-06, Ord. No. 021-2002)

1-2-97.1 YARD SALE: A home occupation use of the premises of a residential dwelling for general sales open to the public, with the purpose of disposing of personal, family, or household goods or articles. The term yard sale includes but is not limited to, activities known as yard sales, garage sales, carport sales, porch sales, backyard sales, and moving sales.

The term yard sales shall not mean or include the following:

a. A sale of personal property pursuant to the order of a court of competent jurisdiction.

b. A sale of personal property by a public official in his official capacity.

c. Any sale or advertisement for sale of an item or items of personal property which are specifically named or described in the advertisement and which separate items do not exceed five in number.

d. A sale by auction of the property of the owner or resident of the property on which the sale is held.

1-2-98 YARD, SIDE: A yard between the front and rear yard. (8/13/02, Case TA-02-06, Ord. No. 021-2002)

1-2-99 YOUTH ACTIVITY CENTER: A property devoted to providing services and facilities for youth and students up to 20 years of age. Such facilities and services may include, but are not necessarily limited to, recreational facilities such as pool, billiard, and/or ping pong tables and video arcades; gymnasiums and exercise rooms; food services; dance floors; auditoriums for occasional movies and live performances; meeting rooms and offices for organizations providing services to youth; nonresidential substance abuse treatment and education programs; and nonresidential care, education and rehabilitation programs for handicapped and disabled persons. (11/12/91, Case TA-91-03, Ord. No. 046-91; 8/16/02, Case TA-01-07, Ord. No. 036-2001)

ARTICLE 2

DISTRICTS

SECTION 2-1. DISTRICTS.

For the purpose of this ordinance in regulating use of land, water and buildings, and height, bulk, population density and open space, the City of Winchester is hereby divided into the following districts, which are shown upon a map made a part of this ordinance, and designated as the "Official Zoning Map": (6/12/90, Case TA-89-11, Ord. No. 018-90; 7/10/90, Case TA-90-04, Ord. No. 026-90; 9/9/97, Case TA-97-07, Ord. No. 021-97; 5/9/00, Case TA-00-01, Ord. No. 013-2000; 4/12/05, Case TA-05-01, Ord. No. 011-2005)

LR	Low Density Residential District
MR	Medium Density Residential District
HR	High Density Residential District
HR-1	Limited High Density Residential District
RO-1	Residential Office District
RB-1	Residential Business District
B-1	Central Business District
B-2	Highway Commercial District
CM-1	Commercial Industrial District
M-1	Limited Industrial District
M-2	Intensive Industrial District
PUD	Planned Unit Development District
PC	Planned Commercial District
HS	Health Services District
MC	Medical Center District
HW	Historic Winchester District
HE-1	Higher Education District
EIP	Education, Institution and Public Use District
FP	Flood Plain District
CE	Corridor Enhancement District

SECTION 2-2. ANNEXED TERRITORY.

All territory which may hereafter be annexed to the City of Winchester, Virginia, shall be considered as being in the LR, Low Density Residential District unless otherwise changed by ordinance.

SECTION 2-3. OFFICIAL ZONING MAP.

The "Official Zoning Map" and all the notations, references and other information shown thereon are a part of this Ordinance, and have the same force and effect as if the "Official Zoning Map" and all the notations were all fully set forth or described herein. The "Official Zoning Map" adopted April 14, 1976, and subsequently amended, is attested by the Clerk of the Common Council, is on file in the Department of Planning and Zoning, and is attached hereto and made a part of this Ordinance. (10/11/83, Case 83-07, Ord. No. 034-83)

ARTICLE 3

LOW DENSITY RESIDENTIAL DISTRICT - LR

STATEMENT OF INTENT

This district is intended as a single family residential area with low population density. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage a suitable environment for family life where there are children. To these ends, development is limited to a relatively low concentration and permitted uses are limited basically to providing homes for the residents plus certain additional uses, such as schools, parks, churches, and certain public facilities that serve the residents of the district.

SECTION 3-1. USE REGULATIONS.

Structure to be erected or land to be used shall be for one (1) of the following uses. Only one (1) main building and its accessory buildings may be erected on any lot or parcel of land in this district.

3-1-1 Single family detached dwellings.

3-1-2 Public parks, community gardens, playgrounds, and play fields. (10/12/10, Case TA-10-418, Ord. No. 2010-51)

3-1-3 Public schools, elementary, middle, and high; and private schools having the same curricula that is ordinarily given in public schools.

3-1-4 Churches and other places of worship, but not including rescue missions or temporary revival tents.

3-1-5 Fire and rescue squad stations and Police substations. (6/10/97, Case TA-97-01, Ord. No. 013-97)

3-1-6 Public utilities, such as poles, lines, distribution transformers, meters, water and sewer lines, booster or relay stations, transformer substations, transmission lines and towers.

3-1-7 Home occupations in accord with Section 18-19 of this Ordinance.

3-1-8 Accessory uses, as defined.

3-1-9 Off street parking and loading areas for permitted and conditional uses in accordance with Section 18-6 of this Ordinance. (02/14/89 Case TA-88-17 Ord. No. 006-89)

3-1-10 Signs in accordance with Section 18-8 of this Ordinance.

3-1-11 Group Home and assisted living facility in which no more than eight (8) persons reside as residential occupancy by a single family. (10/9/07 Case TA-07-02, Ord. No. 2007-41; 9/14/10, Case TA-10-333, Ord. No. 2010-38)

3-1-11.1 Repealed. (10/9/07 Case TA-07-02, Ord. No. 2007-41)

SECTION 3-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

3-2-1 Repealed. (9/14/10, Case TA-10-337, Ord. No. 2010-40)

3-2-2 Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems in accordance with Section 18-2-1.2 of this Ordinance. (2/13/96, Case TA-95-07, Ord. No. 002-96)

3-2-3 Museums and art galleries operated in conjunction with buildings designated by the City Council as Historic Landmarks, subject to the following provisions: (2/11/97, Case TA-96-07, Ord. No. 004-97)

a. All uses shall be within existing buildings or within proposed buildings which are not visible from the public street(s). New construction shall not exceed twenty-five (25) percent of the total building area existing on the parcel at the time of adoption of this Ordinance. (2/11/97, Case TA-96-07, Ord. No. 004-97)

b. New buildings shall not each exceed four thousand (4,000) square feet in area. No new buildings shall be situated within seventy-five (75) feet of any side or rear lot line. (2/11/97, Case TA-96-07, Ord. No. 004-97)

3-2-4 Repealed. (2/12/08, Case TA-07-09, Ord. No. 2008-11)

3-2-5 Market gardens, including the sale of food and/or non-food crops produced on the site. (10/12/10, Case TA-10-418, Ord. No. 2010-51)

3-2-6 Accessory structure, used and occupied as a subordinate dwelling unit by a domestic employee, as defined; and, provided that such conditional use is recorded on the corresponding chain of title for the subject property in the office of the Winchester Circuit Court Clerk. Any such conditional use permit shall expire immediately upon change of ownership or change of occupancy of the main structure, so as to prevent undue density and overcrowding of land, which could adversely impact public health, safety, and welfare. (6/14/11, Case TA-11-06, Ord. No. 2011-14)

3-2-7 Home occupations in accordance with Section 18-19-2.6. (1/14/14, Case TA-13-493, Ord. No. 2013-41)

LOW DENSITY RESIDENTIAL DISTRICT - LR

SECTION 3-3. AREA REGULATIONS.

The minimum lot area for permitted uses in this district shall be as follows:

3-3-1 Single family detached dwellings - 12,000 square feet. (2/14/89 Case TA-88-17 Ord. No. 006-89)

3-3-2 Other permitted uses - 24,000 square feet. (2/14/89 Case TA-88-17 Ord. No. 006-89)

SECTION 3-4. LOT WIDTH REGULATIONS.

The minimum lot width for uses in this district shall be as follows:

3-4-1 Single family detached dwellings - 75 feet. (2/14/89 Case TA-88-17 Ord. No. 006-89)

3-4-2 Other permitted uses and conditional uses - 150 feet. (2/14/89 Case TA-88-17 Ord. No. 006-89)

SECTION 3-5. SETBACK REGULATIONS.

3-5-1 Main buildings: Thirty-five (35) feet. (3/8/94, Case TA-93-08, Ord. No. 004-94)

SECTION 3-6. YARD REGULATIONS.

3-6-1 Side setbacks for uses in this district shall be as follows:

3-6-1.1 Single family detached dwellings - 10 feet except per Section 3-8 of this Ordinance.

3-6-1.2 Main structure for other permitted and conditional uses - 15 feet except as per Section 3-8 of this Ordinance.

3-6-2 Rear setbacks for all uses in this district - 25 feet.

SECTION 3-7. HEIGHT REGULATIONS.

Buildings may be erected up to thirty-five (35) feet from grade except that:

3-7-1 A public or semipublic building such as a school or church may be erected up to forty-five (45) feet provided that each side yard is fifteen (15) feet plus one (1) foot for each additional foot of building height over thirty-five (35) feet;

3-7-2 Church spires, belfries, cupolas, chimneys, flues, flag poles, television antennas, and radio aerials are exempt.

SECTION 3-8. **CORNER SIDE YARD REGULATIONS.** (8/13/02, Case TA-02-06, Ord. N. 021-2002; 9/13/05, Case TA-05-04, Ord. No. 027-2005)

3-8-1 For single family dwellings: twenty-five (25) feet or more. (9/11/01, Case TA-01-03, Ord. No. 028-2001)

3-8-2 For all other uses: thirty (30) feet or more. (9/11/01, Case TA-01-03, Ord. No. 028-2001)

ARTICLE 4

MEDIUM DENSITY RESIDENTIAL DISTRICT - MR

STATEMENT OF INTENT

This district is intended as a single family residential area with medium population density. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage a suitable environment for family life where there are children. To these ends, development is limited to a relatively low concentration and permitted uses are limited basically to providing homes for the residents plus certain additional uses, such as schools, parks, churches, and certain public facilities that serve the residents of the district.

SECTION 4-1. USE REGULATIONS.

Structures to be erected or land to be used shall be for one (1) of the following uses. Only one (1) main building and its accessory buildings may be erected on any lot or parcel of land in this district.

4-1-1 Single family detached dwellings.

4-1-2 Public parks, community gardens, playgrounds, and play fields. (10/12/10, Case TA-10-418, Ord. No. 2010-51)

4-1-3 Public schools, elementary, middle, and high, and private schools having the same curricula that is ordinarily given in public schools.

4-1-4 Churches and other places of worship, but not including rescue missions or temporary revival tents.

4-1-5 Existing cemeteries and the expansion of such cemeteries when the expansion abuts an existing cemetery.

4-1-6 Fire and rescue squad stations and Police substations. (6/10/97, Case TA-97-01, Ord. No. 013-97)

4-1-7 Public utilities, such as poles, lines, distribution transformers, meters, water and sewer lines, booster or relay stations, transformer substations, transmission lines and towers.

4-1-8 Home occupations in accord with Section 18-19 of this Ordinance.

4-1-9 Accessory uses, as defined.

4-1-10 Off-street parking and loading areas for permitted and conditional uses in accordance with Section 18-6 of this Ordinance. (2/14/89 Case TA-88-17, Ord. No. 006-89)

4-1-11 Signs in accordance with Section 18-8 of this Ordinance.

4-1-12 Group Home and assisted living facility in which no more than eight (8) persons reside as residential occupancy by a single family. (10/9/07, Case TA-07-02, Ord. No. 2007-41; 9/14/10, Case TA-10-333, Ord. No. 2010-38).

4-1-13 Cottage housing development, as per the design standards found in Article 13.1 of this Ordinance. (8/9/11, Case TA-11-125, Ord. No. 2011-36)

SECTION 4-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

4-2-1 Museums operated in conjunction with buildings designated by City Council as Historic Landmarks.

4-2-2 Repealed. (9/14/10, Case TA-10-337, Ord. No. 2010-40)

4-2-3 Boarding facilities accessory to and operated in conjunction with private schools. (2/14/89, Case TA-88-14, Ord. No. 002-89)

4-2-3.1 Structures shall maintain compatibility with that of the neighborhood in which they are situated. The building foot print shall be not less than 1200 square feet nor greater than 2,500 square feet. The maximum allowable total square footage shall be 4000 square feet per structure. The structures shall not exceed two (2) levels. (2/14/89, Case TA-88-14, Ord. No. 002-89)

4-2-3.2 Occupancy density shall not exceed that of acceptable density for the residential district. (2/14/89, Case TA-88-14, Ord. No. 002-89)

4-2-3.3 Any active play area or parking area for more than 3 vehicles which is closer than 25 foot to an adjacent residential lot, without an intervening street, shall be screened in accordance with the Ordinance. (2/14/89, Case TA-88-14, Ord. No. 002-89)

4-2-3.4 Green space around boarding structures shall be consistent with the requirements of the district. (2/14/89, Case TA-88-14, Ord. No. 002-89)

4-2-3.5 A minimum of 2 parking spaces shall be provided for each structure. (2/14/89, Case TA-88-14, Ord. No. 002-89)

4-2-4 Surface parking lots, existing at the time of enactment of this provision, which are used to support uses within the Health Services District. (7/10/90, Case TA-90-02, Ord. No. 023-90)

4-2-5 Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems in accordance with Section 18-2-1.2 of this Ordinance. (2/13/96, Case TA-95-07, Ord. No. 002-96)

4-2-6 Repealed. (2/12/08, Case TA-07-09, Ord. No. 2008-11)

4-2-7 Neighborhood Convenience Establishment (6/8/04, Case TA-04-02, Ord. No. 23-2004)

4-2-8 Market gardens, including the sale of food and/or non-food crops produced on the site. (10/12/10, Case TA-10-418, Ord. No. 2010-51)

4-2-9 Accessory structure, used and occupied as a subordinate dwelling unit by a domestic employee, as defined; and, provided that such conditional use is recorded on the corresponding chain of title for the subject property in the office of the Winchester Circuit Court Clerk. Any such conditional use permit shall expire immediately upon change of ownership or change of occupancy of the main structure, so as to prevent undue density and overcrowding of land, which could adversely impact public health, safety, and welfare. (6/14/11, Case TA-11-06, Ord. No. 2011-14)

4-2-10 Cottage housing development, alternative design proposal inconsistent with the design standards found in Article 13.1 of this Ordinance. (8/9/11, Case TA-11-125, Ord. No. 2011-36)

4-2-11 Home occupations in accordance with Section 18-19-2.6. (1/14/14, Case TA-13-493, Ord. No. 2013-41)

SECTION 4-3. AREA REGULATIONS.

The minimum lot area for uses in this district shall be as follows:

4-3-1 Single family detached dwellings - 8,000 square feet

4-3-2 Other permitted uses and conditional uses - 20,000 square feet.

SECTION 4-4. LOT WIDTH REQUIREMENTS.

The minimum lot width for uses in this district shall be as follows:

4-4-1 Single family detached dwellings - 60 feet.

4-4-2 Other permitted and conditional uses - 120 feet.

SECTION 4-5. SETBACK REGULATIONS.

4-5-1 Main buildings: Thirty (30) feet. (3/8/94, Case TA-93-08, Ord. No. 004-94)

SECTION 4-6. YARD REGULATIONS.

4-6-1 Side setbacks for uses in this district shall be as follows:

4-6-1.1 Single family detached dwellings - 6 feet except as per Section 4-8 of this Ordinance.

4-6-1.2 Other permitted and conditional uses - 15 feet except as per Section 4-8 of this Ordinance.

4-6-2 Rear setbacks for all uses in this district - 25 feet.

SECTION 4-7. HEIGHT REGULATIONS.

As per Section 3-7 of this Ordinance.

SECTION 4-8. CORNER SIDE YARD REGULATIONS. (9/13/05, Case TA-05-04, Ord. No. 027-2005)

4-8-1 For single family dwellings: twenty (20) feet or more. (9/11/01, Case TA-01-03, Ord. No. 028-2001)

4-8-2 For all other uses: twenty-five (25) feet or more.

ARTICLE 5

HIGH DENSITY RESIDENTIAL DISTRICT - HR

STATEMENT OF INTENT

This district is intended as a residential area with medium to high population density. The regulations for this district are designed to stabilize and protect the essential characteristics of the district; to promote and encourage, insofar as is compatible with the intensity of land use, a suitable environment for family life composed of an adult population with some children. Uses such as schools, parks, churches, and certain public facilities that serve the residents of the district area also permitted. Certain additional uses may be allowed, as long as the character of the district is not altered by levels of traffic, vehicular parking, lighting, noise, and visual displays which are not compatible with residential development.

SECTION 5-1. USE REGULATIONS.

Structures to be erected and land to be used shall be for the following uses:

5-1-1 Single family detached dwellings.

5-1-2 Two family detached dwellings.

5-1-3 Townhouses.

5-1-4 Multifamily dwellings, subject to the following:

5-1-4.1 A maximum of eight units per building, unless otherwise adjusted per Section 5-3-2 of this Ordinance. A minimum of 15 feet separation shall be provided between structures except that a minimum of 50 feet shall be provided between the longer sides of adjacent on-site structures. (9/12/89, Case TA-89-01, Ord. No. 022-89; 3/11/09, Case TA-08-12, Ord. No. 2009-10)

5-1-5 Deleted. (2/14/89, Case TA-88-17, Ord. No. 006-89)

5-1-6 Public parks, community gardens, playgrounds, and play fields. (10/12/10, Case TA-10-418, Ord. No. 2010-51)

5-1-7 Public schools, elementary, middle, and high; and private schools having the same curricula that is ordinarily given in public schools.

5-1-8 Libraries

5-1-9 Churches and other places of worship, but not including rescue missions or temporary revival tents.

5-1-10 Fire and rescue squad stations and Police substations. (6/10/97, Case TA-97-01, Ord. No. 013-97)

5-1-11 Public utilities, such as poles, lines, distribution transformers, meters, water and sewer lines, booster or relay stations, transformer substations, transmission lines and towers.

5-1-12 Existing cemeteries and the expansion of such cemeteries when the expansion abuts an existing cemetery.

5-1-13 Home occupations in accord with Section 18-19 of this Ordinance.

5-1-14 Accessory uses, as defined.

5-1-15 Off-street parking and loading areas for permitted and conditional uses in accordance with Section 18-6 of this Ordinance. (2/14/89, Case TA-88-17, Ord. No. 006-89)

5-1-16 Signs in accordance with Section 18-8 of this ordinance.

5-1-17 Group Home and assisted living facility in which no more than eight (8) persons reside as residential occupancy by a single family. (10/9/07, Case TA-07-02, Ord. No. 2007-41; 9/14/10, Case TA-10-333, Ord. No. 2010-38)

5-1-18 Cottage housing development, as per the design standards found in Article 13.1 of this Ordinance. (8/9/11, Case TA-11-125, Ord. No. 2011-36)

SECTION 5-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

5-2-1 Laundromats, excluding dry cleaning. (2/14/89, Case TA-88-17, Ord. No. 006-89)

5-2-2 Museums and art galleries.

5-2-3 Day nursery or day care center.

5-2-4 Nursing homes and rest homes.

5-2-5 Tourist homes.

5-2-6 Institutions of a religious, educational, eleemosynary, or philanthropic nature, but not penal or mental institutions.

5-2-7 Bed & Breakfast Homestay within structures at least fifty (50) years old at the time of adoption of this ordinance (2/11/97, Case TA-96-09, Ord. No. 005-97; 1/9/01, Case TA-00-09, Ord. No. 002-2001)

5-2-8 Halfway houses. (2/11/97, Case TA-96-09, Ord. No. 005-97)

5-2-9 Repealed. (2/11/97, Case TA-96-09, Ord. No. 005-97)

5-2-10 Repealed. (9/14/10, Case TA-10-337, Ord. No. 2010-40)

5-2-11 Rooming houses and boarding houses as defined. (2/14/89, Case TA-88-17, Ord. No. 006-89)

5-2-12 Boarding facilities accessory to and operated in conjunction with private schools. (2/14/89, Case TA-88-14, Ord. No. 002-89)

5-2-13 Funeral Homes, not exceeding a total of 1,500 square feet of floor area in rooms for services. Crematoria shall not be allowed. (6/14/94, Case TA-94-05, Ord. No. 018-94)

5-2-14 Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems in accordance with Section 18-2-1.2 of this Ordinance. (2/13/96, Case TA-95-07, Ord. No. 002-96)

5-2-15 Repealed. (2/12/08, Case TA-07-09, Ord. No. 2008-11)

5-2-16 Neighborhood Convenience Establishment (6/8/04, Case TA-04-02, Ord. No. 23-2004)

5-2-17 Accessory structure, used and occupied as a subordinate dwelling unit by a domestic employee, as defined; and, provided that such conditional use is recorded on the corresponding chain of title for the subject property in the office of the Winchester Circuit Court Clerk. Any such conditional use permit shall expire immediately upon change of ownership or change of occupancy of the main structure, so as to prevent undue density and overcrowding of land, which could adversely impact public health, safety, and welfare. (6/14/11, Case TA-11-06, Ord. No. 2011-14)

5-2-18 Cottage housing development, alternative design proposal inconsistent with the design standards found in Article 13.1 of this Ordinance. (8/9/11, Case TA-11-125, Ord. No. 2011-36)

5-2-19 Home occupations in accordance with Section 18-19-2.6. (1/14/14, Case TA-13-493, Ord. No. 2013-41)

SECTION 5-3. AREA REGULATIONS.

The minimum lot area for permitted uses in this district shall be as follows:

5-3-1 Single family detached dwellings or two family dwelling units - 3,000 square feet per unit.

5-3-2 Multifamily dwellings - density shall not exceed one (1) dwelling unit for each 3300 square feet of the Total Project Area, except where dwelling units are certified by the standards outlined in the United States Green Building Council LEED® for Homes

program; and, with each dwelling unit having no more than two (2) bedrooms, the following Density Adjustment shall be applied: (9/12/89, Case TA-89-01, Ord. No. 022-89; 3/11/09, Case No. TA-08-12, Ord. No. 2009-10)

Level of Certification	Bonus Factor
Certified	.05
Silver	.10
Gold	.15
Platinum	.20

5-3-3 Townhouse dwellings - density shall not exceed one (1) dwelling unit for each 3300 square feet of the Total Project Area. However, there shall be no minimum lot area required for an individual townhouse lot. (9/12/89, Case TA-89-01, Ord. No. 022-89)

5-3-4 Deleted. (4/10/90, Case TA-89-14, Ord. No. 012-90)

5-3-5 Other permitted and conditional uses - 10,000 square feet.

SECTION 5-4. LOT WIDTH REGULATIONS.

5-4-1 The minimum lot width for uses in this district shall be as follows:

5-4-2 Single family detached dwellings - 50 feet.

5-4-3 Two family dwelling units - 25 feet per unit.

5-4-4 Townhouse dwelling units - the average width of lots encumbered by any single townhouse structure shall be at least 22 feet. No lot or townhouse unit shall be less than 20 feet in width as measured at the building setback line for lot width or as measured between the common wall and the outside of the outside wall most nearly perpendicular to the setback line for townhouse structures. The property line shall be in the middle of the common wall. Attached dwellings shall be separated by a wall meeting fire protection requirements as set forth in the Virginia Uniform Statewide Building Code, as amended. (9/12/89, Case TA-89-01, Ord. No. 022-89)

5-4-5 All other permitted and conditional uses - 70 feet.

SECTION 5-5. SETBACK REGULATIONS.

5-5-1 For single family detached dwellings, two unit townhouses and two-family dwellings: Twenty-five (25) feet or more. (3/8/94, Case TA-93-08, Ord. No. 004-94; 8/16/02, Case TA-02-03, Ord. No. 011-2002)

5-5-2 Townhouses with more than two units attached or multifamily dwellings: Thirty-five (35) feet or more. (3/8/94, Case TA-93-08, Ord. No. 004-94; 8/16/02, Case TA-02-03, Ord. No. 011-2002)

5-5-3 All other uses: thirty (30) feet or more. (9/11/01, Case TA-01-03, Ord. No. 028-2001)

SECTION 5-6. YARD REGULATIONS.

5-6-1 Side setback for uses in this district shall be as follows:

5-6-1.1 Single family detached dwellings - 6 feet except as per Section 5-8 of this Ordinance. (9/12/89, Case TA-89-01, Ord. No. 022-89)

5-6-1.2 Two-family dwellings - 10 feet except as per Section 5-8 of this Ordinance. (9/12/89, Case TA-89-01, Ord. No. 022-89)

5-6-1.3 Townhouse dwellings - 10 feet or more except as per Section 5-8 of this Ordinance and except along common property lines of units within the same townhouse dwelling in which case the common side yard equals zero (0) feet. Townhouse dwellings abutting a LR or MR Residential District shall have a minimum side yard of fifteen (15) feet. (9/12/89, Case TA-89-01, Ord. No. 022-89; 9/11/01, Case TA-01-03, Ord. No. 028-2001)

5-6-1.4 Multifamily Structures - 25 feet except when abutting a LR or MR residential district in which case the abutting side yard shall be 50 feet.

5-6-1.5 Other permitted and conditional uses - 25 feet. (9/12/89, Case TA-89-01, Ord. No. 022-89)

5-6-2 Rear setbacks for uses in this district shall be as follows:

5-6-2.1 Each main structure - 25 feet except as follows.

a. When a townhouse abuts a LR or MR Residential District in which case there shall be a rear yard of fifty (50) feet. (9/12/89, Case TA-89-01, Ord. No. 022-89)

b. When a multifamily structure abuts a LR or MR residential district in which case there shall be a rear yard of seventy-five (75) feet. (9/12/89, Case TA-89-01, Ord. No. 022-89)

SECTION 5-7. HEIGHT REGULATIONS.

As per Section 3-7 of this Ordinance.

SECTION 5-8. CORNER SIDE YARD REGULATIONS. (9/13/05, Case TA-05-04, Ord. No. 027-2005)

5-8-1 For single family dwellings: fifteen (15) feet or more.

5-8-2 For two family and townhouse dwellings: twenty (20) feet or more.

5-8-3 For multifamily dwellings and all other uses: twenty-five (25) feet or more. (9/11/01, Case TA-01-03, Ord. No. 028-2001)

SECTION 5-9. ACCESS.

5-9-1 Each townhouse lot shall front on a dedicated public street or the governing body may accept a twenty-four (24) foot minimum pavement width private street. If the access is to be provided by means of a private street, the following minimum standards of development shall be observed: (3/14/89, Case TA-88-18, Ord. No. 009-89)

5-9-1.1 Surfacing shall be to City street standards

5-9-1.2 A sidewalk four (4) feet in width on at least one side of the street, constructed of concrete, brick, or stone, or some other material of reasonable durability and safeness shall be provided.

5-9-1.3 The external radius of all cul-de-sacs shall be at least forty (40) feet with a paved travel lane at least fifteen (15) feet wide.

SECTION 5-10. MANAGEMENT OF COMMON OPEN SPACE AND PRIVATE STREETS.

All common open spaces and private streets, required or permitted in this Article shall be preserved for their intended purpose as expressed in the Final Site Plan.

5-10-1 There shall be an establishment of a nonprofit association, corporation, trust, or foundation of all individuals or corporations owning residential property within the development to ensure the maintenance of common open space, and private streets.

5-10-2 When the development is to administer common open space and private streets through a nonprofit association, corporation, trust, or foundation, said organization shall conform to the following requirements:

5-10-2.1 The developer must establish the organization prior to the sale of any lots.

5-10-2.2 Membership in the organization shall be mandatory for all residential property owners, present or future, within the development and said organization shall not discriminate in its members or shareholders.

5-10-2.3 The organization shall manage all common open space, private streets, and recreational and cultural facilities; shall provide for the maintenance, administration and operation of said land and improvements and any other common land within the development.

5-10-3 Failure to maintain common open space and private streets.

5-10-3.1 In the event that the organization established to own and maintain common open space and private streets or any successor organization, shall at any time after establishment of the development fail to maintain the common open space and private streets in reasonable order and condition in accordance with the site plan, the City Council may serve written notice upon such organization or upon the residents of the development setting forth the manner in which the organization has failed to maintain the common open space and private streets in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be remedied within thirty (30) days thereof, and shall state the date and place of a hearing thereon which shall be held within fourteen (14) days of the notice. At such hearing the City Council may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be remedied. If the deficiencies set forth in the original notice or in the modifications thereof shall not be remedied within said thirty (30) days or any extension thereof, the City, in order to preserve the taxable values of the properties within the development and to prevent the common open space and private streets from becoming a public nuisance, may enter upon said common open space and private streets and maintain the same for a period of one (1) year. Said entry and maintenance shall not vest in the public any rights to use the common open space and private streets except when the same are voluntarily dedicated to the public by the owners. Before the expiration of the said year, the City shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common open space and private streets, call a public hearing upon notice to such organization, or to the residents of the development, to be held by the City Council, at which hearing such organization or the residents of the development shall show cause why such maintenance by the City shall not at the election of the City Council continue for a succeeding year. If the City Council shall determine that said organization is ready and able to maintain said common open space and private streets in a reasonable condition, the City council shall cease to maintain said common open space and private streets at the end of said year. If the City Council shall determine that said organization is not ready or able to maintain the common open space and private streets in a good, clean and safe condition the City Council may, in its discretion, continue to maintain said space, subject to a similar hearing and determination in the next succeeding year and in each year thereafter.

5-10-3.2 The cost of such maintenance by the City shall be assessed ratably against the properties within the development that have a right of enjoyment of the common open space and private streets and shall become a tax lien on said properties. The City at the time of entering upon said common open space and private streets for the purpose of maintenance, shall file a notice of such lien in the office of the Clerk of the Circuit Court upon the properties affected by such lien with the development.

5-10-3.3 Subsection 5-10-3.1 and 5-10-3.2 shall be included in the deed of dedication.

ARTICLE 5.1

LIMITED HIGH DENSITY RESIDENTIAL DISTRICT - HR-1

STATEMENT OF INTENT

This district is intended as a residential area with medium to high population density. The regulations for this district are designed to stabilize and protect the traditional single-family characteristics of the district; to promote and encourage, insofar as is compatible with the intensity of land use, a suitable environment for family life composed of an adult population with some children. Uses such as schools, parks, churches, and certain public facilities that serve the residents of the district area also permitted. Certain additional uses may be allowed, as long as the character of the district is not altered by levels of traffic, vehicular parking, lighting, noise, and visual displays which are not compatible with residential development.

SECTION 5.1-1. USE REGULATIONS.

Structures to be erected and land to be used shall be for one of the following uses:

5.1-1-1 Single family detached dwellings.

5.1-1-2 Public parks, community gardens, playgrounds, and play fields. (10/12/10, Case TA-10-418, Ord. No. 2010-51)

5.1-1-3 Public schools, elementary, middle, and high; and private schools having the same curricula that is ordinarily given in public schools.

5.1-1-4 Libraries.

5.1-1-5 Churches and other places of worship, but not including rescue missions or temporary revival tents.

5.1-1-6 Fire and rescue squad stations and Police substations. (6/10/97, Case TA-97-01, Ord. No. 013-97)

5.1-1-7 Public utilities, such as poles, lines, distribution transformers, meters, water and sewer lines, booster or relay stations, transformer substations, transmission lines and towers.

5.1-1-8 Existing cemeteries and the expansion of such cemeteries with the expansion abuts an existing cemetery.

5.1-1-9 Home occupations in accord with Section 18-19 of this Ordinance.

5.1-1-10 Accessory uses, as defined.

5.1-1-11 Off-street parking and loading areas for permitted and conditional uses in accordance with Section 18-6 of this Ordinance.

5.1-1-12 Signs in accordance with Section 18-8 of this ordinance.

5.1-1-13 Group Home and assisted living facility in which no more than eight (8) persons reside as residential occupancy by a single family. (10/9/07 Case TA-07-02, Ord. No. 2007-41; 9/14/10, Case TA-10-333, Ord. No. 2010-38)

5.1-1-14 Cottage housing development, as per the design standards found in Article 13.1 of this Ordinance. (8/9/11, Case TA-11-125, Ord. No. 2011-36)

SECTION 5.1-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

5.1-2-1 Two family dwellings.

5.1-2-2 Townhouses. A maximum of two dwelling units are allowed per structure.

5.1-2-3 Day nursery or day care center.

5.1-2-4 Repealed. (2/11/97, Case TA-96-09, Ord. No. 005-97)

5.1-2-5 Repealed. (9/14/10, Case TA-10-337, Ord. No. 2010-40)

5.1-2-6 Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems in accordance with Section 18-2-1.2 of this Ordinance.

5.1-2-7 Repealed. (2/12/08, Case TA-07-09, Ord. No. 2008-11)

5.1-2-8 Neighborhood Convenience Establishment (6/8/04, Case TA-04-02, Ord. No. 23-2004)

5.1-2-9 Museums and art galleries on properties located within either a local or national historic district. (3/11/09, Case TA-08-15, Ord. No. 2009-08)

5.1-2-10 Accessory structure, used and occupied as a subordinate dwelling unit by a domestic employee, as defined; and, provided that such conditional use is recorded on the corresponding chain of title for the subject property in the office of the Winchester Circuit Court Clerk. Any such conditional use permit shall expire immediately upon change of ownership or change of occupancy of the main structure, so as to prevent undue density and overcrowding of land, which could adversely impact public health, safety, and welfare. (6/14/11, Case TA-11-06, Ord. No. 2011-14)

5.1-2-11 Cottage housing development, alternative design proposal inconsistent with the design standards found in Article 13.1 of this Ordinance. (8/9/11, Case TA-11-125, Ord. No. 2011-36)

5.1-2-12 Home occupations in accordance with Section 18-19-2.6. (1/14/14, Case TA-13-493, Ord. No. 2013-41)

SECTION 5.1-3. AREA REGULATIONS.

The minimum lot area for permitted uses in this district shall be as follows (1/12/10, Case TA-09-323, Ord. No. 2009-39):

5.1-3-1 Single family detached dwellings- 3,000 square feet per unit.

5.1-3-2 Accessory Two family dwellings- 2,100 square feet per dwelling unit.

5.1-3-3 Townhouse dwellings and Two family dwellings other than Accessory two family dwellings- 2,800 square feet per unit.

5.1-3-4 Other permitted and conditional uses - 7,000 square feet.

SECTION 5.1-4. LOT WIDTH REGULATIONS.

The minimum lot width for uses in this district shall be as follows (1/12/10, Case TA-09-323, Ord. No. 2009-39):

5.1-4-1 Single family detached dwellings - 30 feet.

5.1-4-2 Two family dwelling units - 30 feet per unit for structures where the two units are side-by-side or 20 feet per unit where one unit is situated behind or above the other unit, except for the minimal amount of ground level entry floor area needed for an upper level unit.

5.1-4-3 Townhouse dwelling units - 30 feet per unit.

5.1-4-4 All other permitted and conditional uses - 70 feet.

SECTION 5.1-5. SETBACK REGULATIONS.

The minimum Setback for uses in this district shall be as follows:

5.1-5-1 Single family, two-family and townhouses dwellings: 20 feet.

5.1-5-2 Other Uses: 30 feet

SECTION 5.1-6. YARD REGULATIONS.

5.1-6-1 The minimum Side Yards for uses in this district shall be as follows (1/12/10, Case TA-09-323, Ord. No. 2009-39):

5.1-6-1.1 Single family detached dwellings and Accessory Two Family Dwellings - 4 feet except as per Section 5.1-8 of this Ordinance.

5.1-6-1.2 Two-family dwellings - 6 feet except as per Section 5.1-8 of this Ordinance. Two family dwellings abutting a LR or MR Residential District shall have a minimum side yard of 10 feet.

5.1-6-1.3 Townhouse dwellings - 6 feet except as per Section 5.1-8 of this Ordinance and except along common property lines of units within the same townhouse dwelling in which case the common side yard equals zero (0) feet. Townhouse dwellings abutting a LR or MR Residential District shall have a minimum side yard of 10 feet.

5.1-6-1.4 Other uses - 25 feet.

5.1-6-2 Rear setbacks for uses in this district shall be as follows:

5.1-6-2.1 Each main structure - 25 feet except as follows.

a. When a structure other than a single-family detached dwelling abuts a LR or MR Residential District in which case there shall be a rear yard of fifty (50) feet.

SECTION 5.1-7. HEIGHT REGULATIONS.

As per Section 3-7 of this Ordinance.

SECTION 5.1-8. CORNER SIDE YARD REGULATIONS. (9/13/05, Case TA-05-04, Ord. No. 027-2005)

5.1-8-1 For single family dwellings, two family dwellings, and townhouse dwellings: fifteen (15) feet or more.

5.1-8-2 For all other uses: twenty-five (25) feet or more.

SECTION 5.1-9. ACCESS.

5.1-9-1 Each townhouse lot shall front on a dedicated public street.

SECTION 5.1-10. MANAGEMENT OF COMMON OPEN SPACE.

Per Section 5-10 of this Ordinance.

SECTION 5.1-11 RECORDATION OF OWNER OCCUPANCY REQUIREMENT FOR ACCESSORY TWO FAMILY DWELLINGS (1/12/10, Case TA-09-323, Ord. No. 2009-39):

Accessory Two family dwellings wherein one dwelling unit is required to be owner occupied shall only be approved after a deed restriction stipulating the owner-occupancy requirement is recorded in the Land Records for the City of Winchester, Virginia.

(Editor's note: Article 5.1 established 8/14/96, Case TA-96-02, Ord. No. 017-96)

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ARTICLE 6

RESIDENTIAL OFFICE DISTRICT - RO-1

STATEMENT OF INTENT

This district is intended for areas undergoing transition from residential to other uses and for application along major streets. The regulations for this district are designed to preserve the residential character of these areas and to guide transition by permitting limited additional uses in appropriate existing or new structures.

SECTION 6-1. USE REGULATIONS.

Structures to be erected or land to be used shall be for the following uses. Only one (1) single family dwelling use and its accessory buildings may be erected on any lot or parcel of land in this district. (12/12/95, Case TA-95-06, Ord. No. 056-95)

6-1-1 Single family detached dwellings.

6-1-2 Churches and other places of worship, but not including rescue missions or temporary revival tents.

6-1-3 Professional offices, as defined.

6-1-4 Pharmaceutical centers, as defined. (8/9/77)

6-1-5 Real estate, insurance, stock brokers, corporate, and consultants offices not involving the sale or handling of merchandise on the premises. (12/11/79, Ord. No. 032-79)

6-1-6 Funeral Homes, and crematories when accessory to a funeral home. (6/8/10, Case TA-10-111, Ord. No. 2010-19)

6-1-7 Fire and rescue squad stations.

6-1-8 Public utilities, such as poles, lines, distribution transformers, meters, water and sewer lines, booster or relay stations, transformer substations, transmission lines and towers.

6-1-9 Home occupations, in accord with Section 18-19 of this Ordinance. (10/11/83, Case 83-06, Ord. No. 034-83)

6-1-10 Accessory uses, as defined.

6-1-11 Off-street parking and loading areas for permitted and conditional uses in accordance with Section 18-6 of this Ordinance provided that no parking other than that serving single-family residences occurs between the plane created by the front and corner side yard of the main building(s) and the street line(s) except per Section 6-2-4 of this Ordinance. Said plane shall extend the full length of the lot frontages. (11/16/00, Case TA-00-05, Ord. No. 022-2000)

6-1-12 Signs in accordance with Section 18-8 of this Ordinance.

6-1-13 Public parks, community gardens, playgrounds, and play fields. (12/12/95, Case TA-95-06, Ord. No. 056-95; 10/12/10, Case TA-10-418, Ord. No. 2010-51)

6-1-14 Public schools, elementary, middle, and high; and private schools having the same curricula that is ordinarily given in public schools. (12/12/95, Case TA-95-06, Ord. No. 056-95)

6-1-15 Group Home and assisted living facility in which no more than eight (8) persons reside as residential occupancy by a single family. (10/9/07 Case TA-07-02, Ord. No. 2007-41; 9/14/10, Case TA-10-333, Ord. No. 2010-38)

SECTION 6-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

6-2-1 Bed & Breakfast Homestays and Bed & Breakfast Inns within structures at least fifty (50) years old at the time of adoption of this ordinance. (2/11/97, Case TA-96-09, Ord. No. 005-97; 1/9/01, Case TA-00-09, Ord. No. 002-2001)

6-2-2 Repealed. (9/14/10, Case TA-10-337, Ord. No. 2010-40)

6-2-3 Banks and financial institutions, not including short-term loan establishment, as defined in Article 1. (11/18/86, Ord. No. 018-86; 4/13/10, Case TA-10-21, Ord. No. 2010-06))

6-2-4 Parking for permitted and conditional uses otherwise prohibited under Section 6-1-11 of this Ordinance.

6-2-5 Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems in accordance with Section 18-2-1.2 of this Ordinance. (2/13/96, Case TA-95-07, Ord. No. 002-96)

6-2-6 Repealed. (2/12/08, Case TA-07-09, Ord. No. 2008-11)

6-2-7 Crematories. (6/8/10, Case TA-10-111, Ord. No. 2010-19)

6-2-8 Restaurants, excluding those with drive-through facilities. (8/10/10, Case TA-10-306, Ord. No. 2010-29)

6-2-9 Accessory structure, used and occupied as a subordinate dwelling unit by a domestic employee, as defined; and, provided that such conditional use is recorded on the corresponding chain of title for the subject property in the office of the Winchester Circuit Court Clerk. Any such conditional use permit shall expire immediately upon change of ownership or change of occupancy of the main structure, so as to prevent undue density and overcrowding of land, which could adversely impact public health, safety, and welfare. (6/14/11, Case TA-11-06, Ord. No. 2011-14)

6-2-10 Home occupations in accordance with Section 18-19-2.6. (1/14/14, Case TA-13-493, Ord. No. 2013-41)

SECTION 6-3. AREA REGULATIONS.

The minimum lot area for permitted uses shall be as follows:

6-3-1 Single family detached dwellings - 10,000 square feet.

6-3-2 Professional offices and funeral homes - 20,000 square feet.

6-3-3 Other permitted and conditional uses - 20,000 square feet except that the minimum lot area for Bed & Breakfast Inns shall be increased by 2,000 square feet for each guest room beyond the first four (4) rooms. (1/9/01, Case TA-00-09, Ord. No. 002-2001)

SECTION 6-4. LOT WIDTH REGULATIONS.

The minimum lot width for all permitted and conditional uses in this district shall be one hundred (100) feet.

SECTION 6-5. SETBACK REGULATIONS.

6-5-1 Main buildings: Thirty-five (35) feet. (3/8/94, Case TA-93-08, Ord. No. 004-94)

SECTION 6-6. YARD REGULATIONS.

6-6-1 Side. The minimum width of each side yard for a main structure shall be ten (10) feet except when new nonresidential use abuts a residential district, there shall be a side yard of twenty-five (25) feet and except as per Section 6-8 of this Ordinance. (11/14/00, Case TA-00-05, Ord. No. 022-2000)

6-6-2 Rear. Each main structure shall have a rear yard of twenty five (25) feet except when new nonresidential use abuts a residential district in which case there shall be a minimum rear yard of fifty (50) feet. (11/14/00, Case TA-00-05, Ord. No. 022-2000)

SECTION 6-7. HEIGHT REGULATIONS.

As per Section 3-7 of this Ordinance.

SECTION 6-8. CORNER SIDE YARD REGULATIONS. (9/13/05, Case TA-05-04, Ord. No. 027-2005)

As per Section 3-8 of this Ordinance.

ARTICLE 7

RESIDENTIAL BUSINESS DISTRICT - RB-1

STATEMENT OF INTENT

This district is intended to promote and preserve the urban mixed use residential neighborhood character of the area by permitting a mix of small businesses, services, and a variety of residential dwelling types. It is intended to encourage an interesting urban environment serving as a transition between the central business district and residential areas. An overriding objective of the district is to preserve historic and architectural scale of development which affords the district its special character.

SECTION 7-1. USE REGULATIONS.

Structures to be erected and land to be used shall be for the following uses:

7-1-1 Single-family detached dwellings.

7-1-2 Two-family dwellings.

7-1-3 Townhouses, in accordance with Section 9-9 of this Ordinance.

7-1-4 Multi-family dwellings.

7-1-5 Home occupations, as defined in this Ordinance.

7-1-6 Accessory uses, as defined in this Ordinance.

7-1-7 Branch Banks and financial institutions, not including short-term loan establishment, as defined in Article 1. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

7-1-8 Churches and places of worship, but not including rescue missions or temporary revival tents.

7-1-9 Convenience service establishments such as, but not limited to, barber shops, beauty parlors, tailors, automatic self-service laundries.

7-1-10 Offices, businesses and professional (except medical offices) not exceeding 2,000 gross square feet per floor up to total 6,000 gross square feet in a single structure.

7-1-11 Public utilities such as poles, lines, distribution transformers, pipes, meters, water and sewer lines, booster or relay stations, and transmission lines.

7-1-12 Repair services or businesses, including repair of bicycles, guns, radios, television sets, electrical appliances, locks, refrigerators, and other home appliances, shoes, toys, typewriters, watches and clocks, provided that no equipment over five (5) horsepower shall be used and that floor area for such use shall not exceed 2,500 gross square feet.

7-1-13 Restaurants not exceeding 2,000 gross square feet of gross floor area.

7-1-14 Retail stores and shops not exceeding 2,500 gross square feet of floor area.

7-1-15 Fire and rescue squad stations.

7-1-16 Libraries.

7-1-17 Public schools, elementary, middle, and high; and private schools having the same curricula that is ordinarily given in public schools.

7-1-18 Public parks, community gardens, playgrounds and play fields. (10/12/10, Case TA-10-418, Ord. No. 2010-51)

7-1-19 Outdoor storage of materials and supplies and display of merchandise for sale or rent incidental to the conduct of any permitted uses on the lot as provided for in Section 18-20 of this Ordinance. (10/17/95, Case TA-95-04, Ord. No. 053-95)

7-1-20 Off-street parking and loading areas for permitted and conditional uses in accordance with Section 18-6 of this Ordinance, but not including more than 20 off-street parking spaces.

7-1-21 Signs in accordance with Section 18-8 of this Ordinance.

7-1-22 Commercial Records Center, as defined, provided that, when situated within the HW District, such uses shall be contained entirely within structures existing at the time of the adoption of this Ordinance. (4/12/94, Case TA-94-03, Ord. No 011-94; 10/17/95, Case TA-95-05, Ord. No. 052-95)

7-1-23 Group Home and assisted living facility in which no more than eight (8) persons reside as residential occupancy by a single family. (10/9/07 Case TA-07-02, Ord. No. 2007-41; 9/14/10, Case TA-10-333, Ord. No. 2010-38)

7-1-24 Physical fitness or martial arts establishments not exceeding 2,500 gross square feet of floor area. (10/14/97, Case TA-97-09, Ord. No. 027-97)

7-1-25 Cottage housing development, as per the design standards found in Article 13.1 of this Ordinance. (8/9/11, Case TA-11-125, Ord. No. 2011-36)

RESIDENTIAL BUSINESS DISTRICT - RB-1

SECTION 7-2. USES REQUIRING A CONDITIONAL USE PERMIT.

In addition to the provisions contained in Article 18-2 of this Ordinance, the intent of the RB-1 District to create a harmonious mixture of uses while preserving the residential character and preserving valuable buildings shall be considered when considering a Conditional Use Permit request. In particular, the following shall be considered:

- Alteration or removal of structures which have been judged worthy of preservation by the Board of Architectural Review.
- The location of the structure and its scale with respect to other adjacent or nearby structures.
- The number of people to be employed.
- The means employed to promote harmony between structures or uses of different kinds, including architectural treatment, location of parking areas and open space, screening and landscaping.

7-2-1 Repealed (2/11/97, Case TA-96-09, Ord. No. 005-97)

7-2-2 Government Offices.

7-2-3 Halfway Houses. (2/11/97, Case TA-96-09, Ord. No. 005-97)

7-2-4 Museums and public art galleries.

7-2-5 Philanthropic and charitable institutions.

7-2-6 Day nurseries or day care centers.

7-2-7 Medical and dentists' offices and clinics.

7-2-8 Nursing homes and rest homes.

7-2-9 Offices, business and professional exceeding 2,000 gross square feet per floor and/or a total of 6,000 gross square feet of floor area.

7-2-10 Off-street parking containing more than 20 spaces.

7-2-11 Private clubs and lodges.

7-2-12 Retail stores and shops with gross floor area greater than 2,500 gross square feet.

7-2-13 Tourist homes.

7-2-14 Repealed (2/11/97, Case TA-96-09, Ord. No. 005-97)

7-2-15 Repealed (2/11/97, Case TA-96-09, Ord. No. 005-97)

7-2-16 Mini-warehouses/mini-storage, as defined, provided that, when situated within the HW District, such uses shall be contained entirely within structures existing at the time of adoption of this Ordinance, subject to the following provisions. (9/10/91, Case TA-91-02, Ord. No. 037-91; 10/17/95, Case TA-95-05, Ord. No. 052-95)

a. Repealed. (10/17/95, Case TA-95-04, Ord. No. 053-95)

b. No business activities other than rental of storage units and office for management of the facility shall be conducted on the premises or within the building. Specifically, no activities such as miscellaneous or garage sales shall be conducted on the premises. The servicing or repair of motor vehicles, boats, trailers, lawn mowers, or other similar equipment shall not be conducted on the premises. The operation of a mini-warehouse/mini-storage shall in no way be deemed to include a transfer and storage business where the use of vehicles is part of such business.

c. When a mini-warehouse/mini-storage use is proposed adjacent to or within 100 feet of a lot in a residential district without an intervening street screening per Section 19-5-6.4d of this Ordinance shall be erected between the mini-warehouse/mini-storage and the residential lot. However, the screening shall not be required to extend into the front yard required on the lot on which it is located. (10/17/95, Case TA-95-05, Ord. No. 052-95)

d. Access to individual storage units shall be from an internal entrance except for already existing entrances. No new exterior entrances which directly access an individual storage unit shall be installed.

e. The maximum total storage area in a mini-warehouse/mini-storage building shall be seven thousand, five hundred (7,500) square feet.

7-2-17 Bed & Breakfast Homestays and Bed & Breakfast Inns within structures at least fifty (50) years old at the time of adoption of this ordinance (12/13/94, Case TA-94-09, Ord. No. 028-94; 1/9/01, Case TA-00-09, Ord. No. 002-2001)

7-2-18 Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems in accordance with Section 18-2-1.2 of this Ordinance. (2/13/96, Case TA-95-07, Ord. No. 002-96)

7-2-19 Physical fitness or martial arts establishments greater than 2,500 gross square feet of floor area. (10/14/97, Case TA-97-09, Ord. No. 027-97)

7-2-20 Private Community Centers, as defined, provided that such uses shall be contained entirely within structures existing at the time of adoption of this ordinance. (12/14/99, Case TA-99-06, Ord. No. 033-99)

7-2-21 Repealed. (2/12/08, Case TA-07-09, Ord. No. 2008-11)

7-2-22 Accessory structure, used and occupied as a subordinate dwelling unit by a domestic employee, as defined; and, provided that such conditional use is recorded on the corresponding chain of title for the subject property in the office of the Winchester Circuit Court Clerk. Any such conditional use permit shall expire immediately upon change of ownership or change of occupancy of the main structure, so as to prevent undue density and overcrowding of land, which could adversely impact public health, safety, and welfare. (6/14/11, Case TA-11-06, Ord. No. 2011-14)

7-2-23 Cottage housing development, alternative design proposal inconsistent with the design standards found in Article 13.1 of this Ordinance. (8/9/11, Case TA-11-125, Ord. No. 2011-36)

7-2-24 Home occupations in accordance with Section 18-19-2.6. (1/14/14, Case TA-13-493, Ord. No. 2013-41)

SECTION 7-3. AREA REGULATIONS.

7-3-1 The minimum Lot Area for uses in this district shall be as follows: (5/14/96, Case TA-96-01, Ord. No. 012-96)

7-3-1.1 Dwelling Units -- except as adjusted per Section 9-4-1.1b of this Ordinance for historic preservation impacts, or Section 9-4-1.1c for LEED® for Homes certification, if applicable: one (1) unit for each one thousand five hundred (1,500) square feet of Lot Area for the first two (2) units; one (1) unit for each two thousand (2,000) square feet for the third through sixth units; and one (1) unit for each two thousand five hundred (2,500) square feet for any additional units. (5/14/96, Case TA-96-01, Ord. No. 012-96; 3/11/09, TA-08-12, Ord. No. 2009-10)

7-3-1.2 Residential and lodging accommodations listed under Section 7-2 of this Ordinance -- one (1) bed per four hundred (400) square feet of lot area. (5/14/96, Case TA-96-01, Ord. No. 012-96; 1/9/01, Case TA-00-09, Ord. No. 002-2001)

7-3-1.3 Other uses -- None. (5/14/96, Case TA-96-01, Ord. No. 012-96)

7-3-2 The minimum average Floor Area per dwelling unit in each building used for this purpose shall be four hundred and fifty (450) square feet; and no dwelling unit shall have less than four hundred 400 square feet of floor area.

SECTION 7-4. LOT WIDTH REGULATIONS.

7-4-1 20 foot minimum.

SECTION 7-5. SETBACK REGULATIONS.

7-5-1 None, except where a use is located partly in a residential district, in which case the setback regulations for said residential district shall prevail.

SECTION 7-6. YARD REGULATIONS.

7-6-1 Side. None, except when a use other than single-family detached dwelling abuts a residential district, in which case there shall be a minimum side yard of five (5) feet.

7-6-2 Rear. 15, except when a use other than single-family detached dwelling abuts a residential district, there shall be a minimum rear yard of twenty five (25) feet.

SECTION 7-7. HEIGHT REGULATIONS.

7-7-1 Buildings may be erected up to thirty-five (35) feet from grade, except that:

7-7-2 Church spires, belfries, cupolas, chimneys, flues, flag poles, television antennas, radio aerials, and equipment penthouses are exempt.

SECTION 7-8. RESERVED.

SECTION 7-9. SPECIAL PROVISIONS FOR TOWNHOUSES.

As per Section 9-9 of this Ordinance.

ARTICLE 8

HIGHWAY COMMERCIAL DISTRICT - B-2

STATEMENT OF INTENT

This district is intended to provide sufficient space in appropriate locations for a wide variety of commercial and miscellaneous service activities, generally serving a wide area and located particularly along certain existing major thoroughfares where a general mixture of commercial and service activity now exists, but which uses are not characterized by extensive warehousing, frequent heavy trucking activity, open storage of materials or the nuisance factors of dust, odor, and noise associated with manufacturing. This includes such uses as retail stores, banks, business offices, drive-in restaurants, and automobile sales and service facilities.

SECTION 8-1. USE REGULATIONS.

Structures to be erected and land to be used shall be for the following uses:

8-1-1 Repealed. (9/12/89, Case TA-89-01, Ord. No. 022-89)

8-1-2 Repealed. (9/12/89, Case TA-89-01, Ord. No. 022-89)

8-1-3 Repealed. (9/12/89, Case TA-89-01, Ord. No. 022-89)

8-1-4 Repealed. (9/12/89, Case TA-89-01, Ord. No. 022-89)

8-1-5 Repealed. (9/12/89, Case TA-89-01, Ord. No. 022-89)

8-1-6 Home occupations in accord with Section 18-19 of this Ordinance. (10/11/83, Case TA-83-06, Ord. No. 034-83)

8-1-7 Accessory uses, as defined.

8-1-8 Automobile and truck sales and service establishments and rental agencies, provided that vehicle lifts and pits and all service and repair of motor vehicles shall be within a building enclosed on all sides. (10/11/83, Case TA-83-06, Ord. No. 034-83)

8-1-9 Banks and financial institutions, not including short-term loan establishment, as defined in Article 1. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

8-1-10 Bowling alleys.

8-1-11 Building supplies and service with storage under cover.

8-1-12 Car washes.

8-1-13 Churches.

8-1-14 Contractors' establishments, offices and display rooms. (10/17/95, Case TA-95-04, Ord. No. 053-95)

8-1-15 Convenience and service establishments such as, but not limited to, barber shops, beauty parlors, tailors, automatic self-service laundries.

8-1-16 Day nursery or day care center.

8-1-17 Fire stations and rescue squad stations.

8-1-18 Funeral homes, and crematories when accessory to a funeral home. (6/8/10, Case TA-10-111, Ord. No. 2010-19)

8-1-19 Government offices.

8-1-20 Bed & Breakfast Inns, Bed & Breakfast Homestays, Hotels and motels. (12/13/94, Case TA-94-09, Ord. No. 028-94)

8-1-21 Institutions of higher education.

8-1-22 Laundry, cleaning, and dyeing works in which no combustible solvent is used.

8-1-23 Library.

8-1-24 Machinery sales and service.

8-1-25 Museums and art galleries.

8-1-26 Newspaper office buildings, including printing and publishing facilities incidental to such use.

8-1-27 Office, business and professional.

8-1-28 Parking garages and parking lots.

8-1-29 Pet shops.

8-1-30 Philanthropic and charitable institutions.

8-1-31 Plant nurseries and greenhouses.

8-1-32 Processing or manufacturing establishments that are not objectionable because of smoke, odor, dust, or noise, but only when such processing or manufacturing is incidental to a retail business conducted on the premises and where not more than ten (10) persons are employed on the premises in the processing or manufacturing activities.

8-1-33 Public utilities, such as poles, lines, distribution transformers, pipes, meters, water and sewer lines, booster or relay stations, transformer substations, transmission lines and towers.

8-1-34 Radio and television broadcasting stations, studios, or offices.

8-1-35 Repair services or businesses, including repair of bicycles, guns, radios, television sets, electrical appliances, locks, and other home appliances, shoes, toys, typewriters, watches, and clocks.

8-1-36 Restaurants.

8-1-37 Retail stores.

8-1-38 Schools.

8-1-39 Service stations, provided that all repair of vehicles take place in a fully enclosed building. (10/11/83, Case TA-83-06, Ord. No. 034-83)

8-1-40 Special care hospitals.

8-1-41 Outdoor storage of materials and supplies and display of merchandise for sale or rent incidental to the conduct of any permitted uses on the lot as provided for in Section 18-20 of this Ordinance. (10/17/95, Case TA-95-04, Ord. No 053-95)

8-1-42 Theaters, motion picture theaters, and assembly halls.

8-1-43 Veterinary hospitals.

8-1-44 Wholesale businesses where loading areas are completely screened from public street view.

8-1-45 Off-Street Parking Areas as defined in Section 18-6 of this Ordinance for permitted and conditional uses in the B-2 District and access drives for permitted and conditional uses in the B-1, CM-1, M-1, M-2, MC and HE-1 Districts in accordance with Section 18-6 of this Ordinance. (8/12/97, TA-97-06, Ord. No. 019-97; 3/8/05, TA-04-08, Ord. No. 007-2005)

8-1-46 Signs in accordance with Section 18-8 of this Ordinance.

8-1-47 Commercial Records Center. (4/12/94, Case TA-94-03, Ord. No 011-94)

8-1-48 Print Shops. (10/08/96, Case TA-96-05, Ord. No. 025-96)

8-1-49 Physical fitness or martial arts establishments. (10/14/97, Case TA-97-09, Ord. No. 027-97)

8-1-50 Assembling establishments not involved in any on site manufacturing that are not objectionable because of smoke, odor, dust, or noise with not more than ten (10) persons employed. (1/14/03, Case TA-02-10, Ord. No. 003-2003)

8-1-51 Bakery. (1/14/03, Case TA-02-10, Ord. No. 003-2003)

8-1-52 Entertainment Establishments, located at least 200 feet from a residentially zoned property, as measured from the structure containing the establishment or the off-street parking area to the residential zone property line. (10/22/13, Case TA-13-146, Ord. No. 2013-28)

SECTION 8-2. USES REQUIRING A CONDITIONAL USE PERMIT

8-2-1 Mini-warehouses/mini-storage, as defined, subject to the following provisions. (5-16-78) (Revised section adopted 9-10-91, Case TA-91-02, Ord. No. 037-91)

a. Repealed. (10/17/95, Case TA-95-04, Ord. No. 053-95)

b. No business activities other than rental of storage units and office use shall be conducted on the premises or within the building. Specifically, no activities such as miscellaneous or garage sales shall be conducted on the premises. The servicing or repair of motor vehicles, boats, trailers, lawn mowers, or other similar equipment shall not be conducted on the premises. The operation of a mini-warehouse/mini-storage shall in no way be deemed to include a transfer and storage business where the use of vehicles is part of such business.

c. When a mini-warehouse/mini-storage is built adjacent to or within 100 feet of a lot in a residential district without an intervening street, a solid wall or fence at least six (6) feet in height, with its finished side facing the residential lot, shall be erected between the mini-warehouse/mini- storage and the residential lot. However, the wall or fence shall not be
required to extend into the front yard required on the lot on which it is located.

d. No entrances to individual compartments shall front on any public street.

e. The maximum height of the storage section of a mini-warehouse/mini-storage building shall be twenty-five (25) feet.

f. The maximum total storage area in a mini-warehouse/ mini-storage building shall be seven thousand, five hundred (7,500) square feet.

8-2-2 Adult bookstores, adult motion picture theaters, and adult mini-motion picture theaters, provided that no two such uses shall be permitted within one thousand (1,000) feet of each other; and that no such uses shall be permitted within five hundred (500) feet of any residentially zoned district or the nearest property line of any church, school, library, or playground. No such uses shall be open for business later than 11:00 p.m. or earlier than 9:00 a.m. (10/12/82, Case TA-82-10, Ord. No.

8-2-3 Miniature golf courses and golf driving ranges.

8-2-4 Entertainment Establishments, located less than 200 feet from a residentially zoned property, as measured from the structure containing the establishment or the off-street parking area to the residential zone property line, and such establishments where the entertainment will be conducted outdoors. (10/22/13, Case TA-13-146, Ord. No. 2013-28)

8-2-5 Nursing and rest homes, and assisted living facilities. (1/12/84, Case TA-83-07, Ord. No. 001-84; 9/14/10, Case TA-10-333, Ord. No. 2010-38))

8-2-6 Pool and billiard rooms.

8-2-7 Private clubs and lodges.

8-2-8 Roller Rinks.

8-2-9 Tourist homes.

8-2-10 Kennels, provided no such use is situated within 500 feet of any residential district and limited to a maximum of 25 animals at any one time.

8-2-10.1 Pet Daycare Center, provided no such use is situated within 500 feet of any residential district and no animals are kept outdoors between the hours of 7:00p.m. and 7:00 a.m. (8/12/08, Case TA-08-04, 2008-33)

8-2-11 Single family detached dwellings. (9/12/89, Case TA-89-01, Ord. No. 022-89)

8-2-12 Repealed. (3/14/95, Case TA-94-14, Ord. No. 013-95)

8-2-13 Repealed. (3/14/95, Case TA-94-14, Ord. No. 013-95)

8-2-14 Repealed. (3/14/95, Case TA-94-14, Ord. No. 013-95)

8-2-14.1 Repealed. (3/14/95, Case TA-94-14, Ord. No. 013-95)

8-2-15 Repealed. (3/14/95, Case TA-94-14, Ord. No. 013-95)

8-2-16 Bus terminals. (6/14/94, Case TA-94-06, Ord. No. 019-94)

8-2-17 Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems in accordance with Section 18-2-1.2 of this Ordinance. (2/13/96, Case TA-95-07, Ord. No. 002-96)

8-2-18 Group Home and assisted living facility in which no more than eight (8) persons reside as residential occupancy by a single family. (10/9/07, Case TA-07-02, Ord. No. 2007-41; 9/14/10, Case TA-10-333, Ord. No. 2010-38)

8-2-19 Extended stay lodging. (8/12/03, Case TA-03-01, Ord. No. 031-2003)

8-2-20 Multifamily and Condominium dwellings, subject to the following: (9/13/05, Case TA-05-02, Ord. No. 025-2005; 2/10/09, Case TA-08-13, Ord. No. 2009-05)

The intent of this provision is to encourage quality mixed use development, particularly in areas served by public transportation. In this case, permitted B-2 commercial uses shall be limited to the following: Banks and financial uses, convenience and services establishments, laundromats, dry cleaners where dry cleaning is done off premises, repair services or businesses excluding auto or truck repair, art galleries, retail stores, general and medical offices, physical fitness and martial arts establishments, bakeries, and restaurants, excluding nightclub use.

a. A maximum of eight dwelling units per building, however, any two buildings may be connected by a common elevator;

b. No dwellings shall have more than two (2) bedrooms nor be situated on the ground level;

c. Building entrances and off-street parking areas serving dwelling units should be oriented to the side or rear of the property;

d. Density shall not exceed one (1) dwelling unit for each 3500 square feet of the Total Project Area, except where dwelling units are certified by the standards outlined in the United States Green Building Council LEED® for Homes program; and, with each dwelling unit having no more than two (2) bedrooms, the following Density Adjustment shall be applied: (3/11/09, Case No.TA-08-12, Ord. No. 2009-10)

Level of Certification	Bonus Factor
Certified	.05
Silver	.10
Gold	.15
Platinum	.20

e. The absolute minimum floor area per dwelling unit in each building used for this purpose shall be as follows: seven hundred (700) square feet for efficiency & one (1) bedroom units; and nine hundred (900) square feet for two (2) or more bedrooms.

8-2-21 Motor vehicle painting, upholstering, and body and fender work in a facility replacing an existing legally nonconforming facility, provided that all service and repair of motor vehicles shall be within a building enclosed on all sides. No entrances to individual service bays shall be oriented to any public street, nor be oriented toward a residential district. Damaged motor vehicles awaiting repair shall be contained within a completely enclosed building or within an area enclosed on all sides by screening meeting the requirements of Section 19-5-6.4d of this Ordinance. (8/14/07, Case TA-07-04, Ord. No. 2007-27)

8-2-22 Short-term loan establishment, provided that no such use is located within 500 feet of any other short-term loan establishment or residentially-zoned property. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

8-2-23 Crematories. (6/8/10, Case TA-10-111, Ord. No. 2010-19)

8-2-24 Hookah establishment, as defined, provided that no such use shall be located within 500 feet of a similar use, public/private school, playground, or public park. (2/8/11, Case TA-10-639, Ord. No. 2010-73)

8-2-25 Accessory structure, used and occupied as a subordinate dwelling unit by a domestic employee, as defined; and, provided that such conditional use is recorded on the corresponding chain of title for the subject property in the office of the Winchester Circuit Court Clerk. Any such conditional use permit shall expire immediately upon change of ownership or change of occupancy of the main structure, so as to prevent undue density and overcrowding of land, which could adversely impact public health, safety, and welfare. (6/14/11, Case TA-11-06, Ord. No. 2011-14)

8-2-26 Arenas, Amphitheaters, and Stadiums provided that no such structure is situated within 300 feet of any MR or LR residential district. (7/10/12, Case TA-12-187, Ord. No. 2012-20)

8-2-27 Home occupations in accordance with Section 18-19-2.6. (1/14/14, Case TA-13-493, Ord. No. 2013-41)

SECTION 8-3. AREA REGULATIONS.

The minimum lot area for uses shall be as follows: (9/12/89, Case TA-89-01, Ord. No. 022-89)

8-3-1 Single family detached dwellings - 10,000 square feet per unit.

8-3-2 Repealed. (3/14/95, Case TA-94-14, Ord. No. 013-95)

8-3-3 Repealed. (3/14/95, Case TA-94-14, Ord. No. 013-95)

8-3-4 Repealed. (3/14/95, Case TA-94-14, Ord. No. 013-95)

8-3-5 Other permitted and conditional uses - For each building containing or intended to contain one (1) or more permitted or conditional uses, there shall be a minimum lot area of ten thousand (10,000) square feet. (5-16-78)

SECTION 8-4. LOT WIDTH REGULATIONS.

The minimum lot width for all permitted uses and uses requiring a conditional use permit shall be one hundred (100) feet, except that for townhouses, the minimum lot width may be reduced down to twenty-four (24) feet per unit. The property line shall be the middle of the common wall of townhouse units. (8/9/88, Case TA-88-03, Ord. No. 028-88)

SECTION 8-5. SETBACK REGULATIONS.

8-5-1 Main buildings: Thirty-five (35) feet. (3/8/94, Case TA-93-08, Ord. No. 004-94)

8-5-2 For canopies covering gasoline or other petroleum pumps or dispensers which are oriented at an angle between forty-five (45) and ninety (90) degrees to the adjacent right-of-way line, there shall be a twenty (20) foot setback required from any street or highway, or from any street or highway right-of-way. Where the above angle is less than forty-five degrees, there shall be a ten (10) foot setback. No setback shall be required for canopies to be installed above existing islands or replacement islands provided the replacement islands come no closer to the street right-of-way than the closest existing island to the right-of-way and provided dispensing of petroleum does not cease for more than six consecutive months anytime subsequent to adoption of this amendment. (1/9/90, Case TA-89-06, Ord. No. 90-01)

SECTION 8-6. YARD REGULATIONS.

8-6-1 Side.

a. The minimum width for each side yard for single family detached dwellings and two-family dwellings shall be ten (10) feet, except as per Section 8-8 of this Ordinance. (9/12/89, Case TA-89-01, Ord. No. 022-89)

b. The minimum width of each side yard for townhouse dwellings shall be 10 feet except as per Section 8-8 of this Ordinance, except along common property lines of units within the same townhouse dwelling in which case the common side yard equals zero (0) feet and except that townhouse dwellings abutting a LR or MR Residential District in which case a 25-foot minimum side yard is required. (9/12/89, Case TA-89-01, Ord. No. 022-89)

c. The minimum width of each side yard for a multifamily structure shall be fifteen (15) feet except as per Section 8-8 of this Ordinance and except when abutting

a LR or MR Residential District in which case a 50-foot minimum side yard is required. (9/12/89, Case TA-89-01, Ord. No. 022-89)

d. The minimum width of each side yard for a main structure for other permitted or conditional uses shall be ten (10) feet, except that when such use abuts a residential district, there shall be a side yard of twenty-five (25) feet and except as per Section 8-8 of this Ordinance. No side yard shall be required when a building adjoins a railroad right-of-way or as permitted by Section 8-10 of this Ordinance. (9/12/89, Case TA-89-01, Ord. No. 022-89; 2/23/10, Case TA-09-359, Ord. No. 2009-42)

8-6-2 Rear. Each main structure shall have a rear yard of at least twenty-five (25) feet except when such use abuts a residential district in which case there shall be a minimum rear yard of fifty (50) feet and except as follows. No rear yard shall be required when a building adjoins a railroad right-of-way and the proposed building or structure functionally requires immediate proximity to the railroad right-of-way or siding as determined by the administrator. No rear yard shall be required within commercial centers as permitted by Section 8-10 of this Ordinance. (9/12/89, Case TA-89-01, Ord. No. 022-89; 9/11/01, TA-01-03, Ord. No. 028-2001; 2/23/10, Case TA-09-359, Ord. No. 2009-42)

8-6-2.1 When a multifamily structure abuts a LR or MR residential district in which case there shall be a rear yard minimum of seventy-five (75) feet. (9/12/89, Case TA-89-01, Ord. No. 022-89)

SECTION 8-7. HEIGHT REGULATIONS.

8-7-1 Buildings may be erected up to thirty-five (35) feet from grade except that:

a. A building may be erected up to fifty-five (55) feet provided that the required side and rear yards are increased by one (1) foot for each foot of building height over thirty-five (35) feet.

b. Church spires, belfries, cupolas, chimneys, flues, flag poles, television antennas, radio aerials, and equipment penthouses are exempt.

SECTION 8-8. CORNER SIDE YARD REGULATIONS. (9/13/05, Case TA-05-04, Ord. No. 027-2005)

8-8-1 For all uses: thirty-five (35) feet or more

SECTION 8-9. **SPECIAL PROVISIONS FOR TOWNHOUSES.** (8/9/88, Case TA-88-03, Ord. No. 028-88)

8-9-1 Attached dwellings shall be separated by a wall meeting fire protection requirements as set forth in the Virginia Uniform Statewide Building Code, as amended.

8-9-2 Each townhouse shall front on a dedicated public street or a twenty (20) foot minimum pavement width private street. If access is to be provided by means of a private street, the following minimum standards of development shall be observed:

8-9-2.1 Surfacing shall be to City street standards.

8-9-2.2 A sidewalk four (4) feet in width on at least one side of the street, constructed of concrete or brick, shall be provided.

8-9-2.3 The paved radius of all cul-de-sacs shall be at least forty (40) feet.

8-9-3 Management of common open space and private streets. As per Section 5-10 of this Ordinance.

SECTION 8-10. **SPECIAL PROVISIONS FOR COMMERCIAL CENTERS.** (2/23/10, Case TA-09-359, Ord. No. 2009-42)

8-10-1 No side or rear yard shall be required along the common shared property line of buildings within the same commercial center provided the following conditions are met:

8-10-1.1 Cross easements are created to permit vehicular and pedestrian access to and from any proposed lot(s). Easements shall also be provided for utilities necessary to service any proposed lot(s) within the commercial center.

8-10-1.2 The cross easements shall contain provisions for the maintenance of common open space, private streets and parking areas within the commercial center.

8-10-1.3 All buildings within a commercial center shall meet or exceed the required yard regulations for the perimeter boundary of the commercial center.

ARTICLE 9

CENTRAL BUSINESS DISTRICT - B-1

STATEMENT OF INTENT

This district is intended for the conduct of business to which the public requires direct and frequent access, but which is not characterized either by constant heavy trucking other than stocking and delivery of light retail goods, or by any other nuisance factors other than occasioned by incidental light and noise of congregation of people and passenger vehicles. This includes such uses as retail stores, banks, theaters, business offices, newspaper offices, and restaurants.

SECTION 9-1. USE REGULATIONS.

Structures and land to be used shall be for the following uses, except that the ground floor, excluding a cellar, as defined shall not be converted from a single-family detached dwelling or nonresidential use to multifamily use or conversion of ground floor nonresidential use to residential use unless approved per Section 9-2-16 of this Ordinance. (5/14/96, Case TA-96-01, Ord. No. 012-96; 6/8/04, Case TA-04-03, Ord. No. 23-2004; 9/14/04, Case TA-04-05, Ord. No. 39-2004)

9-1-1 Single family detached dwellings.

9-1-2 Two family detached dwellings.

9-1-3 Townhouses, in accordance with Section 9-9.

9-1-4 Multifamily dwellings with units having two (2) or fewer bedrooms not exceeding eighty five (85) dwelling units in any one structure, nor on any one lot. A copy of the proposed floor plans and a Covenants and Restrictions document shall be provided with the application for any multifamily project. The document shall include provisions addressing: a) dwelling unit occupancy limits (including whether there is a restriction on the minimum age of occupants and/or the number of children permitted); b) trash storage/collection; and, c) maintenance of common areas (including a budget for said maintenance). (8/12/08, Case TA-08-05, Ord. No. 2008-34)

9-1-5 Home occupations in accord with Section 18-19 of this Ordinance. (10/11/83, Case 83-06, Ord. No. 034-83)

9-1-6 Accessory uses, as defined.

9-1-7 Banks and financial institutions, not including short-term loan establishment, as defined in Article 1. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

9-1-8 Churches.

9-1-9 Contractors' establishments, offices and display rooms. (10/17/95, Case TA-95-04, Ord. No. 053-95)

9-1-10 Convenience service establishments such as, but not limited to, barber shops, beauty parlors, tailors, automatic self-service laundries.

9-1-11 Day nursery or day care centers.

9-1-12 Fire and rescue squad stations.

9-1-13 Funeral homes, excluding crematories. (6/8/10, Case TA-10-111, Ord. No. 2010-19)

9-1-14 Government offices.

9-1-15 Bed & Breakfast Inns, Bed & Breakfast Homestays, Hotels and motels. (12/13/94, Case TA-94-09, Ord. No. 028-94; 1/9/01, Case TA-00-09, Ord. No. 002-2001)

9-1-16 Institutions of higher education.

9-1-17 Laundry or dry cleaning establishment.

9-1-18 Library.

9-1-19 Museums and public arts galleries.

9-1-20 Newspaper office building, including printing and publishing facilities incidental to such use.

9-1-21 Offices, business and professional.

9-1-22 Parking garages and parking lots.

9-1-23 Pet shops, but excluding kennels on the premises.

9-1-24 Philanthropic and charitable institutions.

9-1-25 Post office.

9-1-26 Printing shops.

9-1-27 Processing or manufacturing establishments that are not objectionable because of smoke, odor, dust, or noise, but only when such processing or manufacturing is incidental to a retail business conducted on the premises and where not more than ten (10) persons are employed on the premises in the processing or manufacturing activities.

9-1-28 Public utilities, such as poles, lines, distribution transformers, pipes, meters, water and sewer lines, booster or relay stations, transformer substations, transmission lines and towers.

9-1-29 Radio or television broadcasting stations, studios, or offices.

9-1-30 Repair services or businesses, including repair of bicycles, guns, radios, television sets, electrical appliances, locks, refrigerators and other home appliances, shoes, toys, typewriters, watches and clocks, provided that no equipment over five (5) horsepower shall be used.

9-1-31 Restaurants.

9-1-32 Retail stores.

9-1-33 Schools, private and public.

9-1-34 Outdoor storage of materials and supplies and display of merchandise for sale or rent incidental to the conduct of any permitted uses on the lot as provided for in Section 18-20 of this Ordinance. (10/17/95, Case TA-95-04, Ord. No. 053-95)

9-1-35 Theaters, motion picture theaters, and assembly halls, but excluding drive-in theaters.

9-1-36 Wholesale businesses where loading areas are completely screened from street view.

9-1-37 Off-Street Parking Areas as defined in Section 18-6 of this Ordinance for permitted and conditional uses in the B-1 District and access drives for permitted and conditional uses in the B-2, CM-1, M-1, M-2, MC and HE-1 Districts in accordance with Section 18-6 of this Ordinance. (8/12/97, Case TA-97-06, Ord. No. 019-97; 3/8/05, Case TA-04-08, Ord. No. 007-2005)

9-1-38 Signs in accordance with Section 18-8 of this Ordinance.

9-1-39 Commercial Records Center, as defined, provided that, when situated within the HW District, such uses shall be contained entirely within structures existing at the time of the adoption of this Ordinance. (4/12/94, Case TA-94-03, Ord. No 011-94; 10/17/95, Case TA-95-05, Ord. No. 052-95)

9-1-40 Group Home and assisted living facility in which no more than eight (8) persons reside as residential occupancy by a single family. (10/9/07 Case TA-07-02, Ord. No. 2007-41; 9/14/10, Case TA-10-333, Ord. No. 2010-38)

9-1-41 Physical fitness or martial arts establishments. (10/14/97, Case TA-97-09, Ord. No. 027-97)

9-1-42 Assembling establishments not involved in any on site manufacturing that are not objectionable because of smoke, odor, dust, or noise with not more than ten (10) persons employed. (1/14/03, Case TA-02-10, Ord. No. 003-2003)

9-1-43 Bakery (1/14/03, Case TA-02-10, Ord. No. 003-2003)

9-1-44 Cottage housing development, as per the design standards found in Article 13.1 of this Ordinance. (8/9/11, Case TA-11-125, Ord. No. 2011-36)

9-1-45 Entertainment Establishments, located at least 200 feet from a residentially zoned property, as measured from the structure containing the establishment or the off-street parking area to the residential zone property line. (10/22/13, Case TA-13-146, Ord. No. 2013-28)

SECTION 9-2. USES REQUIRING A CONDITIONAL USE PERMIT.

9-2-1 Youth activity centers and similar facilities for adults. (8/16/02, Case TA-01-07, Ord. No. 036-2001)

9-2-2 Special care hospitals.

9-2-3 Halfway houses. (2/11/97, Case TA-96-09, Ord. No. 005-97)

9-2-4 Repealed. (2/11/97, Case TA-96-09, Ord. No. 005-97)

9-2-5 Adult bookstores, adult motion picture theaters, and adult mini-motion pictures theaters, provided that no two such uses shall be permitted within one thousand (1,000) feet of each other; and that no such uses shall be permitted within five hundred (500) feet of any residentially zoned district or playground. No such uses shall be open for business later than 11:00 p.m. or earlier than 9:00 a.m. (10/12/82, Case 82-10, Ord. No. 020-82)

9-2-6 Automobile and truck sales and service establishments and rental agencies, provided that vehicle lifts and pits and all service and repair of motor vehicles shall be within a building enclosed on all sides.

9-2-7 Bowling alleys.

9-2-8 Entertainment Establishments, located less than 200 feet from a residentially zoned property, as measured from the structure containing the establishment or the off-street parking area to the residential zone property line, and such establishments where the entertainment will be conducted outdoors. (10/22/13, Case TA-13-146, Ord. No. 2013-28)

9-2-9 Nursing and rest homes, and assisted living facilities. (9/14/10, Case TA-10-333, Ord. No. 2010-38)

9-2-10 Pool and billiard rooms, and video arcades.

9-2-11 Private clubs and lodges.

9-2-12 Service stations, provided that all repair of vehicles take place in a fully enclosed building.

9-2-13 Tourist homes.

9-2-14 Mini-warehouses/mini-storage, as defined, provided that, when situated within the HW District, such uses shall be contained entirely within structures existing at the time of adoption of this Ordinance, subject to the following provisions. (9/10/91, Case TA-91-02, Ord. No. 037-91; 10-17-95, Case TA-95-05, Ord. No. 052-95)

a. Repealed. (10/17/95, Case TA-95-04, Ord. No. 053-95)

b. No business activities other than rental of storage units and office for management of the facility shall be conducted on the premises or within the building. Specifically, no activities such as miscellaneous or garage sales shall be conducted on the premises. The servicing or repair of motor vehicles, boats, trailers, lawn mowers, or other similar equipment shall not be conducted on the premises. The operation of a mini-warehouse/mini-storage shall in no way be deemed to include a transfer and storage business where the use of vehicles is part of such business.

c. When a mini-warehouse/mini-storage use is proposed adjacent to or within 100 feet of a lot in a residential district without an intervening street screening per Section 19-5-6.4d of this Ordinance shall be erected between the mini-warehouse/mini-storage and the residential lot. However, the screening shall not be required to extend into the front yard required on the lot on which it is located. (10/17/95, Case TA-95-05, Ord. No. 052-95)

d. Access to individual storage units shall be from an internal entrance except for already existing entrances. No new exterior entrances which directly access an individual storage unit shall be installed.

e. The maximum total storage area in a mini-warehouse/ mini-storage building shall be seven thousand, five hundred (7,500) square feet.

9-2-15 Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems in accordance with Section 18-2-1.2 of this Ordinance. (2/13/96, Case TA-95-07, Ord. No. 002-96)

9-2-16 Conversion of ground floor single-family detached dwelling or nonresidential use to multifamily use or conversion of ground floor nonresidential use to residential use otherwise prohibited per Section 9-1 of this Ordinance subject to the following: (6/8/04, Case TA-04-03, Ord. No. 24-2004)

a. City Council finds multifamily use to be as suitable as or preferable to other permitted uses on the ground floor, and

b. No units are situated facing a major commercial street as determined by the Planning Director.

9-2-17 Computer and computer peripheral assembly, provided that off-street loading is provided per Section 18-6-7 notwithstanding the exception under Section 18-6-6 of this Ordinance. (01/11/00, Case TA-99-08, Ord. No. 001-2000)

9-2-18 Repealed. (2/12/08, Case TA-07-09, Ord. No. 2008-11)

9-2-19 Extended stay lodging. (8/12/03, Case TA-03-01, Ord. No. 031-2003)

9-2-20 Multifamily dwellings, as hereinafter defined (2/8/11, Case TA-10-613, Ord. No. 2010-72):

a. Multifamily dwellings including units having more than two bedrooms, not exceeding eighty five (85) dwelling units in any one structure, nor on any one lot. A copy of the Covenants and Restrictions document shall be provided with the application for any multifamily project. The document shall include provisions addressing: a) dwelling unit occupancy limits (including whether there is a restriction on the minimum age of occupants and/or the number of children permitted); b) trash storage/collection; and, c) maintenance of common areas (including a budget for said maintenance). No more than twenty percent (20%) of the total units shall contain more than two bedrooms, except that no property shall be precluded from having one (1) unit with more than two bedrooms. Strict compliance with all applicable codes shall be required. Violation of any of the following may result in revocation of a Conditional Use Permit: (9/14/04, Case TA-04-05, Ord. No. 039-2004; 8/12/08, Case TA-08-05, Ord. No. 2008-34)

1) Conviction of a violation of §18-4, pertaining to occupancy of dwelling units.
2) Any violation of §§ 6-87 -- 6-131, of the City Code, pertaining to the Identification and Inspection of Rental Dwelling Units.
3) Designation of the property as a nuisance, in accordance with §§ 16-19 -- 16-22, of the City Code.
4) Excessive violations of the Uniform Statewide Building Code, Virginia Maintenance Code, and/or the Zoning Ordinance.

or;

b. Conversion, reconstruction, or rehabilitation of an existing structure in the Primary and Secondary Downtown Assessment Districts as defined in Section 25-1,

Winchester City Code, as amended, to mixed-use, multifamily dwellings which do not otherwise conform to the minimum floor area regulations identified in Section 9-3-1 of this article; provided that the occupancy requirements of Sections 18-4-2, 18-4-3, 18-4-4, and 18-4-5 are adhered to. (2/8/11, Case TA-10-613, Ord. No. 2010-72)

9-2-21 Short-term loan establishment, provided that no such use is located within 500 feet of any other short-term loan establishment or residentially-zoned property. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

9-2-22 Hookah establishment, as defined, provided that no such use shall be located within 500 feet of a similar use, public/private school, playground, or public park. (2/8/11, Case TA-10-639, Ord. No. 2010-73)

9-2-23 Accessory structure, used and occupied as a subordinate dwelling unit by a domestic employee, as defined; and, provided that such conditional use is recorded on the corresponding chain of title for the subject property in the office of the Winchester Circuit Court Clerk. Any such conditional use permit shall expire immediately upon change of ownership or change of occupancy of the main structure, so as to prevent undue density and overcrowding of land, which could adversely impact public health, safety, and welfare. (6/14/11, Case TA-11-06, Ord. No. 2011-14)

9-2-24 Cottage housing development, alternative design proposal inconsistent with the design standards found in Article 13.1 of this Ordinance. (8/9/11, Case TA-11-125, Ord. No. 2011-36)

9-2-25 Arenas, Amphitheaters, and Stadiums provided that no such structure is situated within 200 feet of any MR or LR residential district. (7/10/12, Case TA-12-187, Ord. No. 2012-20)

9-2-26 Home occupations in accordance with Section 18-19-2.6. (1/14/14, Case TA-13-493, Ord. No. 2013-41)

SECTION 9-3. FLOOR AREA REGULATIONS.

9-3-1 The absolute and average minimum floor area per dwelling unit in each building used for this purpose shall be as follows:

Unit Type	Minimum Sq. Ft.			
	Absolute		Average	
	Age Restricted	General Population	Age Restricted	General Population
Efficiency & 1 Bedroom	400	575	525	700
2 or more Bedrooms	525	725	650	900

SECTION 9-4. LOT DENSITY REGULATIONS.

9-4-1 The density for uses in this district shall be as follows:
(9/14/04, Case TA-04-05, Ord. No. 039-2004)

Repealed. (9/14/04, Case TA-04-05, Ord. No. 039-2004; 8/12/08, Case TA-08-05, Ord. No. 2008-34)

Dwelling units --- except as adjusted per Subsection 9-4-1.1a through f of this Ordinance, if applicable: one (1) unit for each one thousand (1,000) square feet of Lot Area. (9/14/04, Case TA-04-05, Ord. No. 039-2004; 8-12-08, Case TA-08-05, Ord. No. 2008-34)

9-4-1.1 DENSITY ADJUSTMENT FOR MULTIFAMILY PROJECTS. In computing the density adjustments in Sections 9-4-1.1a through f below, the Base Density shall be computed before applying the adjustments. Simple rounding shall be used in eliminating fractions. (9/14/04, Case TA-04-05, Ord. No. 039-2004)

An Adjusted Base Density shall be computed by multiplying the Base Density by the Bonus Factor applicable to each bonus provision below. The product represents the number of dwelling units (Density Adjustment) that may be added to the Base Density when determining the maximum number of units permitted. (9/14/04, Case TA-04-05, Ord. No. 039-2004)

a. DENSITY ADJUSTMENT BASED UPON ECONOMIC IMPACT.
The B-1 district benefits from a vibrant and economically stable mix of retail, office, and residential uses. In order to achieve this, the following Density Adjustment shall be applied: (9/14/04, Case TA-04-05, Ord. No. 039-2004)

% of total floor area in nonresidential use	Bonus Factor
25%	.25
50%	.50
75%	.75

b. DENSITY ADJUSTMENT BASED UPON HISTORIC PRESERVATION IMPACT. Only properties situated in the Historic Winchester (HW) overlay District or a National Historic District shall be subject to this Section. Where the development consists of structures (excluding accessory structures) at least fifty (50) years old which are already, or as a part of the development plan are proposed to be, preserved in accordance with historic preservation guidelines established by the U.S. Department of the Interior, ("historically preserved") the following Density Adjustments shall be applied:
(9/14/04, Case TA-04-05, Ord. No. 039-2004; 8/12/08, Case TA-08-05, Ord. No. 2008-34)

% of existing floor area preserved	Bonus Factor
60%	.30
70%	.35
80%	.40
90%	.45
100%	.50

c. DENSITY ADJUSTMENT BASED UPON LEED® FOR HOMES CERTIFICATION. Where dwelling units are certified by the standards outlined in the United States Green Building Council LEED® for Homes program; and, with each dwelling unit having no more than two (2) bedrooms, the following Density Adjustments shall be applied: (8/12/08, Case TA-08-05, Ord. No. 2008-34; 3/11/09, Case TA-08-12, Ord. No. 2009-10)

Level of Certification	Bonus Factor
Certified	.20
Silver	.30
Gold	.40
Platinum	.50

d. DENSITY ADJUSTMENT BASED UPON RESIDENTIAL AMENITIES. Where at least 5% of the resulting residential floor area is committed to common amenities, as determined by the Planning Director, a Bonus Factor of .20 shall be applied. Tenant storage space shall not constitute greater than 40% of the required 5% necessary to take advantage of the amenity bonus. (8/12/08, Case TA-08-05, Ord. No. 2008-34)

e. DENSITY ADJUSTMENT BASED UPON ACCESSIBILTY. Where at least 70% of the upper story dwelling units are accessible by passenger elevator, a Bonus Factor of .20 shall be applied. (8/12/08, Case TA-08-05, Ord. No. 2008-34)

f. DENSITY ADJUSTMENT BASED UPON PROPERTY LOCATION. Where dwelling units are located within the special taxation as per Section 25-1 of Winchester City Code, the following Density Adjustment shall be applied:

Taxation District	Bonus Factor
Secondary Downtown District	.10
Primary Downtown District	.20

9-4-2 Other Residential and lodging Accommodations listed under Sections 9-1 and 9-2 of this Ordinance one (1) bed per three hundred seventy five (375) square feet of lot area. (5/14/96, Case TA-96-01, Ord. No. 012-96; 1-9-01, Case TA-00-09, Ord. No. 002-2001)

9-4-3 Other uses - None. (5/14/96, Case TA-96-01, Ord. No. 012-96)

SECTION 9-5. LOT WIDTH REGULATIONS.

9-5-1 None.

SECTION 9-6. SETBACK REGULATIONS.

9-6-1 None, except where a permitted use is located partly in a residential district, when the setback regulations for said residential district shall prevail.

9-6-2 For canopies covering gasoline or other petroleum pumps or dispensers, there shall be a ten (10) foot setback required from any street or highway, or from any street or highway right-of way. No setback shall be required for canopies to be installed above existing islands or replacement islands provided the replacement islands come no closer to the street right-of-way than the closest existing island to the right-of-way and provided dispensing of petroleum does not cease for more than six consecutive months anytime subsequent to adoption of this amendment. (1/9/90, Case TA-89-06, Ord. No. 90-01)

SECTION 9-7. YARD REGULATIONS.

9-7-1 Side. None, except when a use is abutting a residential district, and then there shall be a minimum side yard of five (5) feet.

9-7-2 Rear. None, except that when a use is abutting a residential district, there shall be a minimum rear yard of twenty (20) feet.

SECTION 9-8. HEIGHT REGULATIONS.

9-8-1 Buildings may be erected up to seventy-five (75) feet from grade, except that:

9-8-2 Church spires, belfries, cupolas, chimneys, flues, flag poles, television antennas, radio aerials, and equipment penthouses are exempt.

SECTION 9-9. SPECIAL PROVISIONS FOR TOWNHOUSES IN THE B-1 DISTRICT.

9-9-1 Attached dwellings shall be separated by a noncombustible party wall to the roof line, with a fire resistance of not less than two (2) hour's duration.

9-9-2 Each townhouse shall front on a dedicated public street.

9-9-3 MANAGEMENT OF COMMON OPEN SPACE. All common open spaces shall be preserved for their intended purpose as expressed in the Final Site Plan.

9-9-3.1 There shall be an establishment of a nonprofit association, corporation, trust, or foundation of all individuals or corporations owning residential property within the townhouse development to insure the maintenance of common space.

9-9-3.2 When the development is to administer common open space through a nonprofit association, corporation, trust, or foundation, said organization shall conform to the following requirements:

9-9-3.3 The developer must establish the organization prior to the sale of any lots.

9-9-3.4 Membership in the organization shall be mandatory for all residential property owners, present or future, within the townhouse development and said organization shall not discriminate in its members or shareholders.

9-9-3.5 The organization shall manage all common open space and recreational and cultural facilities; shall provide for the maintenance, administration and operation of said land and improvements and any other common land within the townhouse development.

9-9-3.6 Failure to maintain common open space.

a. In the event that the organization established to own and maintain common open space, or any successor organization, shall at any time after establishment of the townhouse development fail to maintain the common open space in reasonable order and condition in accordance with the site plan, the City Council may serve written notice upon such organization or upon the residents of the townhouse development setting forth the manner in which the organization has failed to maintain the common open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be remedied within thirty (30) days thereof, and shall state the date and place of a hearing thereon which shall be held within fourteen (14) days of the notice. At such hearing the City Council may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be remedied. If the deficiencies set forth in the original notice or in the modifications thereof shall not be remedied within said thirty (30) days or any extension thereof, the City, in order to preserve the taxable values of the properties within the townhouse development and to prevent the common open space from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one (1) year. Said entry and maintenance shall not vest in the public any rights to use the common open space except when the same are voluntarily dedicated to the public by the owners. Before the expiration of the said year, the City shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing upon notice to such organization, or to the residents of the townhouse development, to be held by the City Council, at which hearing such organization or the residents of the townhouse development shall show cause why such maintenance by the City shall not at the election of the City Council continue for a succeeding year. If the City Council shall determine that said organization is ready and able to maintain said common open space in a

reasonable condition, the City Council shall cease to maintain said common open space at the end of said year. If the City Council shall determine that said organization is not ready or able to maintain the common open space in a good, clean and safe condition the City Council may, in its discretion, continue to maintain said space, subject to a similar hearing and determination in the next succeeding year and in each year thereafter.

b. The cost of such maintenance by the City shall be assessed ratably against the properties within the townhouse development that have a right of enjoyment of the common open space and shall become a tax lien on said properties. The City at the time of entering upon said common open space for the purpose of maintenance shall file a notice of such lien in the office of the Clerk of the Circuit Court upon the properties affected by such lien within the townhouse development.

c. Subsection 9-9-3.6a and 9-9-3.6b shall be included in the deed of dedication.

ARTICLE 10

COMMERCIAL INDUSTRIAL DISTRICT - CM-1

STATEMENT OF INTENT

The intent of this district is to allow a mixture of commercial and light industrial uses in those areas of the City that currently contain a mixture of such uses. Industrial uses allowed are those that are relatively free from offense. In order to avoid future conflicts between industry and residence, new residential uses are prohibited.

SECTION 10-1. USE REGULATIONS.

Structures to be erected or land to be used shall be for the following uses. Permitted industrial uses shall be conducted wholly within a completely enclosed building or within an area enclosed on all sides by a solid wall or fence six (6) feet in height. Public utilities and signs requiring natural air circulation, unobstructed view, or other technical consideration necessary for proper operation may be exempt from this provision.

10-1-1 Accessory uses, as defined.

10-1-2 Automobile and truck sales and service establishments and rental agencies, provided that vehicle lifts and pits and all service and repair of motor vehicles shall be within a building enclosed on all sides. (10/11/83, Case 83-06, Ord. No. 034-83)

10-1-3 Banks and financial institutions, not including short-term loan establishment, as defined in Article 1. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

10-1-4 Bowling alleys.

10-1-5 Building supplies and service with storage under cover.

10-1-6 Car washes.

10-1-7 Churches.

10-1-8 Contractors' establishments, offices and display rooms. (10/17/95, Case TA-95-04, Ord. No. 053-95)

10-1-9 Convenience and service establishments such as, but not limited to, barber shops, beauty parlors, tailors, automatic self-service laundries.

10-1-10 Fire stations and rescue squad stations.

10-1-11 Funeral homes, and crematories when accessory to a funeral home. (6/8/10, Case TA-10-111, Ord. No. 2010-19)

10-1-12 Government offices.

10-1-13 Industrial uses. (1/14/03, Case TA-02-10, Ord. No. 003-2003; 6/12/07, Case TA-07-01, Ord. No. 2007-19)

a. Distributing plants, parcel delivery, ice and cold storage plant, and food commissary, bakery or catering establishment, and brewery.

b. Carpenter or cabinet shop.

c. Contractors' equipment storage yards or plants, or rental equipment commonly used by contractors.

d. Laundry, cleaning, and dyeing works, and carpet and rug cleaning.

e. Machinery sales and service.

f. Machine shop, metal fabrication shop, or welding shop, excluding punch press and drop hammers exceeding forty (40) ton rated capacity.

g. Monumental stone works.

h. Plant nurseries or greenhouses.

i. Public utility service yard.

j. Retail lumberyard, including only incidental mill work.

k. Upholstery shop.

10-1-14 Institutions of higher education.

10-1-15 Library.

10-1-16 Museums and art galleries.

10-1-17 Newspaper office buildings, including printing and publishing facilities incidental to such use.

10-1-18 Office, business and professional.

10-1-19 Parking garages and parking lots.

10-1-20 Pet shops.

10-1-21 Philanthropic and charitable institutions.

10-1-22 Printing shops.

10-1-23 Public utilities, such as poles, lines, distribution transformers, pipes, meters, water and sewer lines, booster or relay stations, transformer substations, transmission lines and towers.

10-1-24 Radio and television broadcasting stations, studios, or offices.

10-1-25 Repair services or businesses, including repair of bicycles, guns, radios, television sets, electrical appliances, locks and other home appliances, shoes, toys, typewriters, watches, and clocks.

10-1-26 Restaurants.

10-1-27 Retail stores.

10-1-28 Schools.

10-1-29 Service stations, provided that all repairs of vehicles take place in a fully enclosed building. (10/11/83, Case TA-83-06, Ord. No. 034-83)

10-1-30 Special care hospitals.

10-1-31 Outdoor storage of materials and supplies and display of merchandise for sale or rent incidental to the conduct of any permitted uses on the lot as provided for in Section 18-20 of this Ordinance. (10/17/95, Case TA-95-04, Ord. No. 053-95)

10-1-32 Theaters, motion picture theaters, and assembly halls.

10-1-33 Veterinary hospitals.

10-1-34 Kennels as per Section 8-2-10 of this Ordinance.

10-1-35 Wholesale businesses, storage buildings, and warehousing.

10-1-36 Off-Street Parking Areas as defined in Section 18-6 of this Ordinance for permitted and conditional uses in the CM-1 District and access drives for permitted and conditional uses in the B-2, B-1, M-1, M-2, MC and HE-1 Districts in accordance with Section 18-6 of this Ordinance. (8/12/97, TA-97-06, Ord. No. 019-97; 3/8/05, TA-04-08, Ord. No. 007-2005)

10-1-37 Signs in accordance with Section 18-8 of this Ordinance.

10-1-38 Mini-warehouses/mini-storage, as defined, subject to the following provisions. (9/10/91, Case TA-91-02, Ord. No. 037-91)

a. Repealed. (10/17/95, Case TA-95-04, Ord. No. 053-95)

b. No business activities other than rental of storage units and office for management of the facility shall be conducted on the premises or within the building. Specifically, no activities such as miscellaneous or garage sales shall be conducted on the premises. The servicing or repair of motor vehicles, boats, trailers, lawn mowers, or other similar equipment shall not be conducted on the premises. The operation of a mini-warehouse/mini-storage shall in no way be deemed to include a transfer and storage business where the use of vehicles is part of such business.

c. No entrances to individual compartments shall front on public streets

10-1-39 Commercial Records Center (4/12/94, Case TA-94-03, Ord. No 011-94)

10-1-40 Pet Daycare Center, as per Section 8-2-10.1 of this Ordinance. (8/12/08, Case TA-08-04, Ord. No. 2008-33)

10-1-41 Physical fitness or martial arts establishments. (10/14/97, Case TA-97-09, Ord. No. 027-97)

10-1-42 Assembling establishments not involved in any on site manufacturing that are not objectionable because of smoke, odor, dust, or noise with not more than ten (10) persons employed. (1/14/03, Case TA-02-10, Ord. No. 003-2003)

10-1-43 Entertainment Establishments, located at least 200 feet from a residentially zoned property, as measured from the structure containing the establishment or the off-street parking area to the residential zone property line. (10/22/13, Case TA-13-146, Ord. No. 2013-28)

SECTION 10-2. USES REQUIRING A CONDITIONAL USE PERMIT.

10-2-1 Day nurseries or day care centers.

10-2-2 Laboratories: pharmaceutical, medical, experimental, photo, or motion picture film, or testing.

10-2-3 Entertainment Establishments, located less than 200 feet from a residentially zoned property, as measured from the structure containing the establishment or the off-street parking area to the residential zone property line, and such establishments where the entertainment will be conducted outdoors. (10/22/13, Case TA-13-146, Ord. No. 2013-28)

10-2-4 Private clubs and lodges.

10-2-5 Roller Rinks.

10-2-6 Bed & Breakfast Inns, Hotels and motels. (12/13/94, Case TA-94-09, Ord. No. 028-94)

10-2-7 Bus Terminals (6/14/94, Case TA-94-06, Ord. No. 019-94)

10-2-8 Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems in accordance with Section 18-2-1.2 of this Ordinance. (2/13/96, Case TA-95-07, Ord. No. 002-96)

10-2-9 Motor vehicle painting, upholstering, and body and fender work provided that all service and repair of motor vehicles shall be within a building enclosed on all sides. Damaged motor vehicles awaiting repair shall be contained within a completely enclosed building or within an area enclosed on all sides by screening meeting the requirements of Section 19-5-6.4d of this Ordinance. (8/13/96, Case TA-96-04, Ord. No. 018-96)

10-2-10 Repealed. (2/12/08, Case TA-07-09, Ord. No. 2008-11)

10-2-11 Animal Shelters, provided no such use is situated within 500 feet of any residential district. (12/12/00, Case TA-00-06, Ord. No. 025-2000)

10-2-12 Extended stay lodging. (8/12/03, Case TA-03-01, Ord. No. 031-2003)

10-2-13 Short-term loan establishment, provided that no such use is located within 500 feet of any other short-term loan establishment or residentially-zoned property. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

10-2-14 Crematories. (6/8/10, Case TA-10-111, Ord. No. 2010-19)

10-2-15 Hookah establishment, as defined, provided that no such use shall be located within 500 feet of a similar use, public/private school, playground, or public park. (2/8/11, Case TA-10-639, Ord. No. 2010-73)

10-2-16 Arenas, Amphitheaters, and Stadiums provided that no such structure is situated within 300 feet of any MR or LR residential district. (7/10/12, Case TA-12-187, Ord. No. 2012-20)

SECTION 10-3. AREA REGULATIONS.

The minimum lot area shall be as follows:

10-3-1 Permitted and conditional uses - 20,000 square feet per building.

SECTION 10-4. LOT WIDTH REGULATIONS.

The minimum lot width shall be as follows:

10-4-1 Permitted and conditional uses - 125 feet.

SECTION 10-5. SETBACK REGULATIONS.

10-5-1 Main buildings: Thirty-five (35) feet. (3/8/94, Case TA-93-08, Ord. No. 004-94)

10-5-2 For canopies covering gasoline or other petroleum pumps or dispensers which are oriented at an angle between forty-five (45) and ninety (90) degrees to the adjacent right-of-way line, there shall be a twenty (20) foot setback required from any street or highway, or from any street or highway right-of-way. Where the above angle is less than forty-five degrees, there shall be a ten (10) foot setback. No setback shall be required for canopies to be installed above existing islands or replacement islands provided the replacement islands come no closer to the street right-of-way than the closest existing island to the right-of-way and provided dispensing of petroleum does not cease for more than six consecutive months anytime subsequent to adoption of this amendment. (1/9/90, Case TA-89-06, Ord. No. 90-01)

SECTION 10-6. YARD REGULATIONS.

10-6-1 Side. The minimum width of each side yard for a main structure shall be ten (10) feet, except that when such use abuts a residential district, there shall be a side yard of twenty-five (25) feet and except as per Section 10-8 of this Ordinance. No side yard shall be required when a building adjoins a railroad right-of-way or siding.

10-6-2 Rear. Each main structure shall have a rear yard of at least twenty-five (25) feet except as follows:

10-6-2.1 When a rear yard abuts a lot in a residential district the minimum rear yard shall be fifty (50) feet.

10-6-2.2 No rear yard shall be required when a building adjoins a railroad right-of-way or siding and the proposed building or structure functionally requires immediate proximity to the railroad right-of-way or siding as determined by the administrator. (9/11/01, TA-01-03, Ord. No. 028-2001)

SECTION 10-7. HEIGHT REGULATIONS.

As per Section 8-7 of this Ordinance.

SECTION 10-8. **CORNER SIDE YARD REGULATIONS.** (9/13/05, Case TA-05-04, Ord. No. 027-2005)

As per Section 8-8 of this Ordinance.

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ARTICLE 11

LIMITED INDUSTRIAL DISTRICT - M-1

STATEMENT OF INTENT

The intent of this district is to provide sufficient space in appropriate locations for certain types of industrial uses, relatively free from offense, in modern landscaped buildings to make available more attractive locations for these uses, and to provide opportunities for employment closer to places of residence with corresponding reduction of travel time from home and work. Typical development in this district would be that which is commonly known as an "industrial park." In order to preserve the land for industry and to avoid future conflicts between industry and residence, future residential and commercial uses are prohibited.

SECTION 11-1. USE REGULATIONS.

Structures to be erected or land to be used shall be for the following uses:

11-1-1 The manufacture, compounding, processing, packing, or treatment of such products as bakery goods, candy, cosmetics, dairy products, drugs, perfumes, pharmaceuticals and high-purity chemicals, perfumed toilet soap, toiletries, and food products; except fish and meat products, sauerkraut, and the refining of fats and oils.

11-1-2 The manufacture, compounding, assembling, or treatment of articles or merchandise from the following materials which have been prepared beforehand: bone, cellophane, canvas, cloth, cork, feathers, felt, fiber, fur, glass, hair, horn, leather, paper, plastics, precious or semiprecious metals or stones, shell, textiles, tobacco, wood, yarn, and paint not employing a boiling process.

11-1-3 The manufacture of pottery and figurines or other similar ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.

11-1-4 The manufacture and maintenance of electric and neon signs; billboards; commercial advertising structures; light sheet metal products, including heating and ventilating ducts and equipment; cornices; eaves; and the like.

11-1-5 The manufacture of musical instruments, toys, novelties, and rubber and metal stamps.

11-1-6 Assembly of electrical appliances, electronic instruments and devices, radios, television sets, and phonographs; electroplating and the manufacture of small parts and components such as coils, condensers, transformers, crystal holders, and the like.

11-1-7 Automobile assembling, painting, upholstering, rebuilding, reconditioning, body and fender work, truck repairing or overhauling, tire re-treading or re-capping, battery manufacture, transportation equipment maintenance, repair and assembly facilities, and the like. (4/13/93, Case TA-93-04, Ord. No. 019-93)

11-1-8 Distribution plants, parcel delivery, ice and cold storage plant, and food commissary or catering establishment, and brewery. (6/12/07, Case TA-07-01, Ord. No. 2007-19)

11-1-9 Carpenter or cabinet shop.

11-1-10 Contractors' equipment storage yards or plants, or rental equipment commonly used by contractors.

11-1-11 Feed and fuel yard.

11-1-12 Fire stations and rescue squad stations.

11-1-13 Foundry casting lightweight, non-ferrous metal not causing noxious fumes, noise, or odors.

11-1-14 Laboratories: pharmaceutical, medical, experimental, photo, or motion picture film, or testing.

11-1-15 Laundry, cleaning, and dyeing works, and carpet and rug cleaning.

11-1-16 Machinery sales and service.

11-1-17 Machine shop, metal fabrication shop, or welding shop, excluding punch press and drop hammers exceeding forty (40) ton rated capacity.

11-1-18 Monumental stone works.

11-1-18.1 Offices: Business, professional and governmental (5/15/84, Case 84-03, Ord. No. 009-84)

11-1-19 Public utilities, such as poles, lines, distribution transformers, pipes, meters, water and sewer lines, and public utility generating, booster, or relay stations, transformer substations, transmission lines, or towers.

11-1-20 Public utility service yard.

11-1-21 Repair services or businesses.

11-1-21.1 Restaurants. (3/8/77)

11-1-22 Retail lumberyard, including only incidental mill work.

11-1-23 Transmitting and receiving facilities for radio, television, or television cable stations.

11-1-24 Upholstery shop.

11-1-25 Veterinary offices or hospitals and kennels as per Section 8-2-10 of this Ordinance. (12/12/00, Case TA-00-06, Ord. No. 025-2000)

11-1-26 Wholesale business, storage buildings, and warehousing.

11-1-27 Accessory uses, as defined.

11-1-28 Off-Street Parking Areas as defined in Section 18-6 of this Ordinance for permitted and conditional uses in the M-1 District and access drives for permitted and conditional uses in the B-2, B-1, CM-1, M-2, MC and HE-1 Districts in accordance with Section 18-6 of this Ordinance. (8/12/97, Case TA-97-06, Ord. No. 019-97; 3/8/05, TA-04-08, Ord. No. 007-2005)

11-1-29 Signs in accordance with Section 18-8 of this Ordinance.

11-1-30 Mini-warehouses/mini-storage, as defined, subject to the following provisions. (9/10/91, Case TA-91-02, Ord. No. 037-91)

a. Repealed. (10-17-95, Case TA-95-04, Ord. No. 053-95)

b. No business activities other than rental of storage units and office for management of the facility shall be conducted on the premises or within the building. Specifically, no activities such as miscellaneous or garage sales shall be conducted on the premises. The servicing or repair of motor vehicles, boats, trailers, lawn mowers, or other similar equipment shall not be conducted on the premises. The operation of a mini-warehouse/ mini-storage shall in no way be deemed to include a transfer and storage business where the use of vehicles is part of such business.

c. No entrances to individual compartments shall front on any public street.

11-1-31 Commercial Records Center. (4/12/94, Case TA-94-03, Ord. No 011-94)

SECTION 11-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

11-2-1 Gymnastic studios. (8/12/86, Ord. No. 011-86)

11-2-2 Youth activity center. (11/12/91, Case TA-91-03, Ord. No. 046-91; 8/16/02, Case TA-01-07, Ord. No. 036-2001)

11-2-3 Bus Terminals. (6/14/94, Case TA-94-06, Ord. No. 019-94)

11-2-4 Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems in accordance with Section 18-2-1.2 of this Ordinance. (2/13/96, Case TA-95-07, Ord. No. 002-96)

11-2-5 Animal Shelters, provided no such use is situated within 500 feet of any residential district. (12/12/00, Case TA-00-06, Ord. No. 025-2000)

11-2-6 Arenas, Amphitheaters, and Stadiums provided that no such structure is situated within 300 feet of any MR or LR residential district. (7/10/12, Case TA-12-187, Ord. No. 2012-20)

SECTION 11-3. REQUIREMENTS FOR PERMITTED INDUSTRIAL USES.

11-3-1 Before a building permit shall be issued or construction commenced on any permitted use in this district or a permit issued for a new use, all requirements of Article 19, Site Plan Requirements, shall be met. (10/11/83, Case TA-83-06, Ord. No. 034-83)

11-3-2 Permitted uses shall be conducted wholly within a completely enclosed building or within an area enclosed on all sides by screening meeting the requirements of Section 19-5-6.4d. Public utilities and signs requiring natural air circulation, unobstructed view, or other technical consideration necessary for proper operation may be exempt from this provision. This exception does not include storing of any materials. (10/17/95, Case TA-95-04, Ord. No. 053-95)

SECTION 11-4. AREA REGULATIONS.

None, except where a permitted use in this district utilizes an individual sewerage or industrial waste system. In such case the local official charged with inspecting and approving such system shall approve the area needed.

SECTION 11-5. LOT WIDTH REGULATIONS.

None.

SECTION 11-6. SETBACK REGULATIONS.

Main buildings: Fifty (50) feet. (3/8/94, Case TA-93-08, Ord. No. 004-94)

SECTION 11-7. YARD REGULATIONS.

11-7-1 Side. The minimum width of each side yard for a main structure shall be fifteen (15) feet, except that when such use abuts a residential district, there shall be a side yard of fifty (50) feet. No side yard shall be required when a building adjoins a railroad right-of-way or siding. (10/11/83, Case TA-83-06, Ord. No. 034-83)

11-7-2 Rear. Each main structure shall have a rear yard of at least twenty-five (25) feet, except that when a use is abutting a residential district, there shall be a rear yard of fifty (50) feet. No rear yard shall be required when a building adjoins a railroad right-of-way or siding and the proposed building or structure functionally requires immediate proximity to the railroad right-of-way or siding as determined by the Administrator. (10/11/83, Case TA-83-06, Ord. No. 034-83; 9/11/01, Case TA-01-03, Ord. No. 028-2001)

SECTION 11-8. HEIGHT REGULATIONS.

Buildings or structures may be erected up to seventy-five (75) feet from grade except that: Structures required to ensure adequate water pressure for the fire protection needs of a property, the water service needs of the general public, or any air quality control ordinances may be erected up to two hundred (200) feet above grade if they are set back from side or rear property lines a distance at least equal to their height, and are set back from any residentially zoned property a distance at least three times their height. (12/8/87, Case TA-87-03, Ord. No. 042-87)

SECTION 11-9. CORNER SIDE YARD REGULATIONS. (9/13/05, Case TA-05-04, Ord. No. 027-2005)

11-9-1 For all uses: fifty (50) feet or more.

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ARTICLE 12

INTENSIVE INDUSTRIAL DISTRICT - M-2

STATEMENT OF INTENT

The primary purpose of this district is to establish an area where the principal use of land is for intensive industrial operations, which may create some nuisance, and which are not properly associated with, nor particularly compatible with, residential, institutional, and commercial service establishments. The specific intent of this district is to: (a) encourage the construction of and the continued use of land for intensive industrial purposes; (b) prohibit residential and commercial use of the land and to prohibit any other use which would substantially interfere with the development, continuation, or expansion of industrial uses in the district; (c) to encourage the discontinuance of existing uses that would not be permitted as new uses under the provisions of this ordinance.

SECTION 12-1. USE REGULATIONS.

Structures to be erected or land to be used shall be for the following uses:

12-1-1 The manufacture, compounding, processing, packing, or treatment of such products as bakery goods, candy, cosmetics, dairy products, drugs, perfumes, pharmaceuticals and high-purity chemicals, perfumed toilet soap, toiletries, and food products, except refining of fats and oils.

12-1-2 The manufacture, compounding, assembling, or treatment of articles or merchandise from the following materials which have been prepared beforehand: bone, cellophane, canvas, cloth, cork, feathers, felt, fiber, fur, glass, hair, horn, leather, paper, plastics, precious or semiprecious metals or stones, shell, textiles, tobacco, wood, yarns, and paint not employing a boiling process.

12-1-3 The manufacture of pottery and figurines or other similarly ceramic products using only previously pulverized clay and kilns fired only by electricity or gas.

12-1-4 The manufacture and maintenance of electric and neon signs, billboards, commercial advertising structures, light sheet metal products, including heating and ventilating ducts and equipment, cornices, eaves, and the like.

12-1-5 The manufacture of musical instruments, toys, novelties, and rubber and metal stamps.

12-1-6 Assembly of electrical appliances, electronic instruments, and devices, radios, television sets, and phonographs; electroplating and the manufacture of small parts and components such as coils, condensers, transformers, crystal holders, and the like.

12-1-7 Automobile assembling, painting, upholstering, rebuilding, reconditioning, body and fender work, truck repairing or overhauling, tire re-treading or re-capping, battery manufacture, transportation equipment maintenance, repair and assembly facilities, and the like. (4/13/93, Case TA-93-04, Ord. No. 019-93)

12-1-8 Bulk storage.

12-1-9 Carpenter or cabinet shop.

12-1-10 Compounding, processing, and other operations involved in the manufacture, packaging, and distribution of asbestos friction materials, other friction materials and miscellaneous friction products.

12-1-11 Concrete manufacturing.

12-1-12 Contractors' equipment storage yards or plants, or rental equipment commonly used by contractors.

12-1-13 Distribution plants, parcel delivery, ice and cold storage plant, and food commissary or catering establishment, and brewery. (6/12/07, Case TA-07-01, Ord. No. 2007-19)

12-1-14 Feed and fuel yard.

12-1-15 Fire stations and rescue squad stations.

12-1-16 Foundry casting lightweight, non-ferrous metal not causing noxious fumes, noise, or odors.

12-1-17 Laboratories: pharmaceutical, medical, experimental, photo, or motion picture film, or testing.

12-1-18 Laundry, cleaning, and dyeing works and carpet and rug cleaning.

12-1-19 Machinery sales and service.

12-1-20 Machine shop, metal fabrication shop, or welding shop, excluding punch press and drop hammers exceeding forty (40) ton rated capacity.

12-1-21 Meat, poultry, and fish processing.

12-1-22 Monumental stone works.

12-1-22.1 Offices: Business, professional and governmental. (5/15/84, Case TA-84-03, Ord. No. 009-84)

12-1-23 Oil, rubber, or leather goods manufacture.

12-1-24 Public utilities, such as poles, lines, distribution transformers, pipes, meters, water and sewer lines, booster or relay stations, transformer substations, transmission lines or towers.

12-1-25 Public utility service yard.

12-1-26 Repair services or businesses.

12-1-27 Retail lumberyard, including only incidental mill work.

12-1-28 Sand and gravel operation.

12-1-29 Sawmills and planing mills.

12-1-30 Storage or bailing of scrap, iron, bottles, rags, or junk.

12-1-31 Transmitting and receiving facilities, for radio, television, or television cable stations.

12-1-32 Truck terminals.

12-1-33 Upholstery shop.

12-1-34 Veterinary offices or hospitals and boarding kennels.

12-1-35 Wholesale business, storage buildings, and warehousing.

12-1-36 Wood preserving operations.

12-1-37 Accessory uses, as defined.

12-1-38 Off-Street Parking Areas as defined in Section 18-6 of this Ordinance for permitted and conditional uses in the M-2 District and access drives for permitted and conditional uses in the B-2, B-1, CM-1, M-1, MC and HE-1 Districts in accordance with Section 18-6 of this Ordinance. (8/12/97, TA-97-06, Ord. No. 019-97, 3/8/05, TA-04-08, Ord. No. 007-2005)

12-1-39 Signs in accordance with Section 18-8 of this Ordinance.

12-1-40 Mini-warehouses/mini-storage, as defined, subject to the following provisions. (9/10/91, TA-91-02, Ord. No. 037-91)

a. Repealed. (10/17/95, Case TA-95-04, Ord. No. 053-95)

b. No business activities other than rental of storage units and office for management of the facility shall be conducted on the premises or within the building. Specifically, no activities such as miscellaneous or garage sales shall be conducted on the premises. The servicing or repair of motor vehicles, boats, trailers, lawn mowers, or other similar equipment shall not be conducted on the

premises. The operation of a mini-warehouse/mini-storage shall in no way be deemed to include a transfer and storage business where the use of vehicles is part of such business.

c. No entrances to individual compartments shall front on any public street.

12-1-41 Commercial Records Center. (4/12/94, Case TA-94-03, Ord. No 011-94)

SECTION 12-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

12-2-1 Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems in accordance with Section 18-2-1.2 of this Ordinance. (2/13/96, Case TA-95-07, Ord. No. 002-96)

SECTION 12-3. REQUIREMENTS FOR PERMITTED INDUSTRIAL USES.

12-3-1 Before a building permit shall be issued or construction commenced on any permitted industrial use in this district or a permit issued for a new industrial use, all requirements of Article 19, Site Plan Requirements, shall be met.

12-3-2 Permitted industrial uses shall be conducted wholly within a completely enclosed building or within an area enclosed on all sides by screening meeting the requirements of Section 19-5-6.4d. Public utilities and signs requiring natural air circulation, unobstructed view, or other technical consideration necessary for property operation may be exempt from this provision. (10/17/95, Case TA-95-04, Ord. No. 053-95)

SECTION 12-4. AREA REGULATIONS.

None, except where a permitted use in this district utilizes an individual sewerage or industrial waste system. In such case, the local official charged with inspecting and approving such system shall approve the area needed.

SECTION 12-5. LOT WIDTH REGULATIONS.

None.

SECTION 12-6. SETBACK REGULATIONS.

Main buildings: Fifty (50) feet.

SECTION 12-7. YARD REGULATIONS.

12-7-1 Side. The minimum width of each side yard for a main structure shall be fifteen (15) feet, except that when such use abuts a residential district, there shall be a side yard of fifty (50) feet. No side yard shall be required when a building adjoins a railroad right-of-way or siding.

12-7-2 Rear. Each main structure shall have a rear yard of at least twenty-five (25) feet, except that when a use is abutting a residential district, there shall be a rear yard of fifty (50) feet. No rear yard shall be required when a building adjoins a railroad right-of-way or siding and the proposed building or structure functionally requires immediate proximity to the railroad right-of-way or siding as determined by the Administrator. (9/11/01, TA-01-03, Ord. No. 028-2001)

SECTION 12-8. HEIGHT REGULATIONS.

Buildings or structures may be erected up to seventy-five (75) feet from grade except that: Structures required to ensure adequate water pressure for the fire protection needs of a property, the water service needs of the general public, or any air quality control ordinances may be erected up to two hundred (200) feet above grade if they are set back from side or rear property lines a distance at least equal to their height, and are set back from any residentially zoned property a distance at least three times their height.

SECTION 12-9. CORNER SIDE YARD REGULATIONS. (9/13/05, Case TA-05-04, Ord. No. 027-2005)

As per Section 11-9 of this Ordinance.

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ARTICLE 13

PLANNED DEVELOPMENT

SECTION 13-1. PLANNED UNIT DEVELOPMENT DISTRICT - PUD

13-1-1 STATEMENT OF INTENT. This district is intended to permit development in accordance with a master plan therefor of cluster-type communities under one (1) ownership or control. Within such communities, the location of all improvements shall be controlled in such a manner as to permit a variety of housing accommodations in an orderly relationship to one another, with the greatest amount of open area and the least disturbance to natural features. A planned unit development may include neighborhood commercial facilities. (5/10/11, Case TA-11-66, Ord. No. 2011-10)

13-1-2 WHERE PERMITTED. PUD Districts shall be permitted in Districts LR, MR, HR, HR-1 and B-2. (5/14/91, Case TA-91-01, Ord. No. 020-91; 9/9/97, Case TA-97-07, Ord. No. 021-97)

13-1-3 USE REGULATIONS. Structures to be erected or land to be used shall be for the following uses:

13-1-3.1 Single family detached dwellings.

13-1-3.2 Two family detached dwellings.

13-1-3.3 Multifamily dwellings.

13-1-3.4 Townhouses.

13-1-3.5 Churches.

13-1-3.6 Schools.

13-1-3.7 Day nurseries or day care centers.

13-1-3.8 Library.

13-1-3.9 Neighborhood commercial uses. Not more than fifty-five percent (55%) of the gross area of the PUD product shall be devoted to commercial uses. (5/10/11, Case TA-11-66, Ord. No. 2011-10)

13-1-3.9.1 Nursing homes, Adult Care Residences, Assisted Living Facilities, and Rest Homes. All residents must be sixty-two (62) years of age or older. (7/8/97, Case TA-97-05, Ord. No. 016-97; 9/14/10, Case TA-10-333, Ord. No. 2010-38)

13-1-3.10 Recreational uses, including club houses, golf courses, pools, tennis courts, and similar recreational improvements and facilities.

13-1-3.11 Accessory uses, as defined.

13-1-3.12 Public utilities, such as poles, lines, distribution transformers, meters, water and sewer lines.

13-1-3.13 Off-street parking in accordance with Section 18-6 of this Ordinance.

13-1-3.14 Signs in accordance with Section 18-8 of this Ordinance.

13-1-3.15 Home occupations in accordance with Section 18-19 of this Ordinance. (10/11/83, Case TA-83-06, Ord. No. 034-83)

13-1-3.16 Group Home and assisted living facility in which no more than eight (8) persons reside as residential occupancy by a single family. (10/9/07 Case TA-07-02, Ord. No. 2007-41; 9/14/10, Case TA-10-333, Ord. No. 2010-38)

13-1-3.17 USES PERMITTED WITH A CONDITIONAL USE PERMIT.

a. Home occupations in accordance with Section 18-9-2.6. (1/14/14, Case TA-13-493, Ord. No. 2013-41)

13-1-4 AREA REGULATIONS.

13-1-4.1 The minimum permitted size for any PUD District shall be five (5) contiguous acres. Additional land area may be added to an existing PUD if it is adjacent (except for public roads) thereto and forms a logical addition to the existing PUD and is under the same ownership or control. In cases where the applicant can show that strict adherence to the five acre minimum would produce unnecessary hardship and preclude development which is more compatible with the adopted Comprehensive Plan than that permitted without PUD zoning the Commission may recommend and the Council approve a waiver of the five acre minimum. (3/10/92, Case TA-91-06, Ord. No. 003-92)

13-1-4.2 The procedure for an addition shall be the same as if an original application were filed.

13-1-5 DENSITY. The density for a Planned Unit Development may be approved for up to eighteen (18) dwelling units per gross acre, except as provided for in Section 13-1-5.1 below. In determining the density to be allowed, the following shall be considered: anticipated population density; amount and type of open space provided; impact of the proposed density on surrounding residential areas; and the adequacy of the public streets providing access to the proposed development. (3/11/09, Case TA-08-12, Ord. No. 2009-10; 5/10/11, Case TA-11-66, Ord. No. 2011-10)

13-1-5.1 DENSITY ADJUSTMENT BASED UPON LEED® FOR HOMES CERTIFICATION. Where dwelling units are certified by the standards outlined in the United States Green Building Council LEED® for Homes program; and, with each dwelling unit having no more than two (2) bedrooms, the following Density Adjustment shall be applied: (3/11/09, Case TA-08-12, Ord. No. 2009-10)

Level of Certification	Bonus Factor
Certified	.20
Silver	.30
Gold	.40
Platinum	.50

13-1-6 REQUIRED COMMON OPEN SPACE. (5/9/95, Case TA-95-01, Ord. No. 022-95)

13-1-6.1 A quantity of common open space shall be required within a Planned Unit Development. The exact amount of common open space required will be determined by the density of the proposed development, types of dwelling units, the topography of the site and the natural features of the site. For any use other than Single Family Dwelling, which requires the approval of a site plan, the provisions of Section 19-5-6 shall control and shall be complied with. (4/11/78; 5/5/95, Case TA-95-01, Ord. No. 022-95)

For Single Family Dwelling-type PUD developments not exceeding the Conventional Development Density, no less than fifteen (15) percent of the gross acreage shall be common open space. Conventional Development Density is defined as a figure representing the achievable density of development within the underlying district where no PUD approval is requested. For purposes of this Ordinance, the following figures shall be used:

Underlying District	Conventional Development Density
LR	2.8 dwelling units per acre
MR	4.2 dwelling units per acre
HR and B-2	7.8 dwelling units per acre

For Single-Family Dwelling-type PUD developments exceeding the Conventional Development Density, the minimum required Common Open Space shall be calculated by dividing the Proposed Density by the Conventional Development Density above and then multiplying that ratio by the fifteen (15) percent common open space figure. (5/9/95, Case TA-95-01, Ord. No. 022-95)

13-1-6.2 A portion of the required common open space shall be required to be developed recreation space, which shall be improved by the developer. This developed recreation space shall be designated to meet the needs of the residents of the proposed development. Provisions of separate adult and tot lot recreation areas is encouraged. The parks and recreation section of the Winchester Comprehensive Plan shall be used in evaluating the amount of developed recreation space proposed. (5/9/95, Case TA-95-01 Ord. No. 022-95)

13-1-6.3 Common open space shall be defined for the purpose of this Section as the total area of land, water, or land and water within the boundaries of a Planned Unit Development designated and intended for use and enjoyment as open areas, and not improved with a building, structure, street, road, or parking area, except for recreational structures and parking for recreational use. Said common open space shall not include yards less than thirty (30) feet wide between buildings and yards less than fifty (50) feet wide located between buildings and non-recreational parking spaces. Common Open space includes developed recreation space, and shall be accessible and available to all occupants of dwelling units for whose use the space is intended. (5/9/95, Case TA-95-01, Ord. No. 022-95)

13-1-6.4 Developed recreation space shall be defined for the purpose of this Article as that portion of the common open space within the boundaries of a Planned Unit Development that is improved for recreational purposes. Such improvements may include, but shall not be limited to, community gardens, pedestrian ways and bicycle paths, play lots and playgrounds, tennis courts and swimming and boating areas. (4/11/78; 10/12/10, Case TA-10-418, Ord. No. 2010-51)

13-1-6.5 All open space, including developed open space, shall be specifically included in the development schedule and be constructed and fully improved by the developer at an equivalent or greater rate than the construction of residential structures.

13-1-7 MANAGEMENT OF OPEN SPACE. As per Section 5-10 of this Ordinance. (2/14/89, Case TA-88-17, Ord. No. 006-89)

13-1-8 FAILURE TO MAINTAIN COMMON OPEN SPACE. As per appropriate portions of Section 5-10-3 of this Ordinance. (2/14/89, Case TA-88-17, Ord. No. 006-89)

13-1-9 MAXIMUM HEIGHT OF BUILDINGS.

13-1-9.1 The maximum height of any building or structure in a PUD District shall be fifty-five (55) feet, subject to the provisions of this Article, and subject to approval by the Governing Body.

13-1-9.2 Church spires, belfries, cupolas, chimneys, flues, flag poles, television antennas, radio aerials, and elevator and stair penthouses are exempt.

13-1-10 STREETS, LOTS, AND BLOCKS.

13-1-10.1 Variations from the regulations in the Land Subdivision Ordinance pertaining to streets, lots, and blocks, may be approved when it can be shown that:

a. Safe and convenient access will be provided to dwelling units, open space, community facilities, and other nonresidential areas in the development; (4/11/78)

b. Adequate access and circulation for emergency and service vehicles will be provided; and (4/11/78)

c. Principal vehicular access points will be designed to permit smooth traffic flow and minimum hazards to vehicular, bicycle, and pedestrian traffic. (4/11/78)

13-1-10.2 Private streets may be permitted in a PUD development, provided that their construction standards are approved by the City Engineer; adequate provisions are made for their maintenance of the private streets; and the standards outlined in Section 13-1-10.1a through 13-1-10.1c are met. (4/11/78; 2/14/89, Case TA-88-17, Ord. No. 006-89)

13-1-10.3 Failure to maintain private streets. As per appropriate portions of Section 5-10-3 of this Ordinance. (2/14/89, Case TA-88-17, Ord. No. 006-89)

13-1-11 UTILITIES.

Within the PUD development, all utilities, including telephone, television cable, and electrical systems, shall be installed underground. Appurtenances to these systems which require aboveground installations must be effectively screened and thereby may be exempted form this requirement.

SECTION 13-2. PLANNED COMMERCIAL DISTRICT - PC

13-2-1 STATEMENT OF INTENT. The intent of the PC District shall be to permit the development of neighborhood and community commercial development in areas appropriate for commercial land use. It is intended for commercial development to be planned with carefully organized buildings, service areas, parking areas, and landscaped open space; to reduce marginal traffic friction below that which would result from strip commercial development along highways; and to protect property values in surrounding neighborhoods. (3/8/05, Case TA-04-08, Ord. No. 007-2005)

13-2-2 WHERE PERMITTED. PC District shall be permitted only in areas appropriate for commercial land use.

13-2-3 USE REGULATIONS. Structures, not exceeding eight thousand (8,000) gross square feet of floor area, nor containing drive-thru facilities other than one ATM for banks and financial institutions, or land to be used shall be for one or more of the following uses:

13-2-3.1 Accessory uses, as defined.

13-2-3.2 Banks and financial institutions, not including short-term loan establishment, as defined in Article 1. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

13-2-3.3 Convenience and service establishments such as, but not limited to, barber shops, beauty parlors, and tailors

13-2-3.4 Libraries, places of worship, schools.

13-2-3.5 Day nurseries and day care centers.

13-2-3.6 Offices, business and professional

13-2-3.7 Pet shops, but excluding boarding kennels on the premises.

13-2-3.8 Public utilities, such as underground lines, distribution transformers, pipes, meters, water and sewer lines, booster or relay stations.

13-2-3.9 Repair services or businesses with equipment not exceeding five (5) horsepower.

13-2-3.10 Restaurants

13-2-3.11 Retail stores, except Adult Book stores and shops

13-2-3.12 Off-Street Parking Areas as defined in Section 18-6 of this Ordinance for permitted and conditional uses in the PC District.

13-2-3.13 Signs in accordance with Section 18-8 of this ordinance.

13-2-3.14 Bakeries

13-2-3.15 Physical fitness or martial arts establishments.

13-2-3.16 Entertainment Establishments, located at least 200 feet from a residentially zoned property, as measured from the structure containing the establishment or the off-street parking area to the residential zone property line. (10/22/13, Case TA-13-146, Ord. No. 2013-28)

13-2-4 USES PERMITTED WITH A CONDITIONAL USE PERMIT.

13-2-4.1 All uses outlined in sections 13-2-3.1 to 13-2-3.15 of this Ordinance exceeding eight thousand (8,000) gross square feet of floor area, or containing drive-thru facilities other than one ATM for banks and financial institutions.

13-2-4.2 Residential Uses, conditioned on the following:

a. Residential uses shall be secondary to primary PC use;

b. Residential uses shall occupy only the upper floors of a structure within the PC District;

c. Residential uses shall not exceed the square footage of the primary use within any given structure.

d. Minimum landscaped open space shall be provided for residential uses in the PC District as per the PUD District.

e. Vehicle access and entryways to residential units shall be independent of those serving primary uses in the PC District.

f. The Governing Body, upon Staff and the Commission recommendation, shall determine that residential uses within the PC district are in the best public interest and that said uses establish an improved organization of land uses within the district beyond that which would otherwise be achieved without the residential uses.

g. Other relevant data pertaining to residential development as per Section 13-4 of this Ordinance.

h. The Governing Body, upon recommendation by Staff and the Commission, may elect to reject any application for a conditional use permit for residential uses within the PC district, when findings indicate that the said use is not in the public interest.

i. Residential uses shall only be located on portions of PC sites abutting residential zones.

13-2-4.3 Transmitting and receiving facilities, excluding new towers, for cellular communications systems and similar communications systems in accordance with Section 18-2-1.2 of this Ordinance.

13-2-4.4 Protected Population Residences in accordance with section 3-1-11.

13-2-4.5 Entertainment Establishments, located less than 200 feet from a residentially zoned property, as measured from the structure containing the establishment or the off-street parking area to the residential zone property line, and such establishments where the entertainment will be conducted outdoors. (10/22/13, Case TA-13-146, Ord. No. 2013-28)

13-2-4.6 Commercial Records Center

13-2-4.7 Fire and Rescue Squad Stations

13-2-4.8 Museums/Art Galleries

13-2-4.9 Radio and television broadcasting stations, studios, or offices.

13-2-4.10 Theaters, motion picture theaters, and assembly halls.

13-2-4.11 Wholesale businesses.

13-2-5 AREA REGULATIONS.

13-2-5.1 The minimum permitted size for any PC District shall be two (2) contiguous acres. Additional land may be added to an existing PC District if it is adjacent (except for public roads) thereto, and forms a logical addition to the existing PC District and is under the same ownership or control. In cases where the applicant can show that strict adherence to the two-acre minimum would produce unnecessary hardship and preclude development which is more compatible with the adopted Comprehensive Plan than that permitted without PC zoning the Commission may recommend and the Governing Body approve a waiver of the two-acre minimum. (3/10/92, Case TA-91-06, Ord. No. 003-92; 3/8/05, Case TA-04-08, Ord. No. 007-2005)

13-2-5.2 The procedure for an addition shall be the same as if an original application were filed.

13-2-6 MINIMUM LANDSCAPED AREA. The minimum landscaped open space in any PC District shall not be less than .25 times the gross acreage of the lot. Such landscaped open space shall not be generally open to vehicles, and shall be used, in part, to buffer and shield any adjoining residential districts from adverse effects of commercial operations.

13-2-7 MAXIMUM HEIGHT OF BUILDINGS.

13-2-7.1 The maximum height of any building or structure in a PC District shall be thirty-five 35 feet.

13-2-7.2 Chimneys, flues, flag poles, television antennas, radio aerials, and equipment penthouses are exempt.

13-2-8 REQUIREMENTS WHEN A PC DISTRICT ADJOINS OTHER ZONING DISTRICTS. When a PC District adjoins another zoning district, the front, side, or rear yard setbacks only on the perimeter of the PC District shall conform to the abutting zoning districts as provided in this ordinance.

13-2-9 DESIGN STANDARDS.

13-2-9.1 The shape of the district shall be suitable for the type of development proposed and shall facilitate safe and convenient ingress and egress as well as vehicular and pedestrian circulation within the district.

13-2-9.2 Landscaping or other devices shall be used to screen surrounding residential districts from undesirable views into the PC District and to screen the PC Districts from undesirable external exposures. In particular, all service and loading areas shall be screened from view from first floor windows in adjacent residential districts.

13-2-9.3 Principal vehicular access for the general public shall be only from major arterials or minor arterials. Vehicular access from minor streets through residential neighborhoods shall generally be avoided, and where permitted, shall be so located, designed, and controlled so as to be primarily for convenience of residents or adjoining residential areas and not for general public access. Pedestrian access shall be provided at suitable locations within the district, and shall as a general rule be separated from vehicular access points in order to reduce congestion, marginal friction, and hazards.

13-2-9.4 At principal vehicular access points, service drives, turnout lanes, and merging lanes may be required, with length and width as appropriate to the anticipated flow of traffic and exits and along service drives, turnouts, or merging lanes. Whether required or provided voluntarily, such service drives, or turnout and merging lanes may be included as part of the required yard adjacent to the collector street, minor arterial, or major arterial except that no such service drive or land, and no vehicular entrance or exits, shall run through any part of any required landscaped area.

SECTION 13-3. RESERVED.

SECTION 13-4. APPLICATION.

13-4-1 Planned development districts shall be established by amendment to the official zoning map, in accordance with the provisions of Article 22. The application for rezoning to a PUD or PC District shall be accompanied by ten (10) copies of a development plan.

13-4-2 The development plan shall contain the following data, together with supplementary data for a particular development, as reasonably deemed necessary by the Director of Planning or his agent:

13-4-2.1 Development site information:

a. Vicinity map at a scale of not less than one (1) inch = 2000'.

b. Boundary survey including area of the tract related to true meridian or USC & GS State grid north.

c. Deleted. (10/11/83, Case TA-83-06, Ord. No. 034-83)

d. Total area of the tract.

e. Abutting street names, width, and route numbers.

f. Owners, zoning districts, and uses of each adjoining tract.

g. Topographic map with minimum contour intervals and scale acceptable to the administrator.

13-4-2.2 Development design information:

a. A concept plan, illustrating the location and functional relationship between all proposed land uses.

b. Land use plan or plans showing the location and arrangement of all proposed land uses, including the height and number of floors of all buildings (other than one family and two family dwellings) both above and below finished grade; the building setbacks from the development boundaries and adjacent streets, roads, alleys, and ways; the proposed traffic circulation pattern including the location and width of all streets, driveways, and loading areas; all proposed open space areas including common open space, dedicated open space, and developed recreational open space; the approximate location of existing and proposed utility systems of sanitary sewer, storm sewer, water, electric, telephone, and gas lines.

c. A plan or statement showing the location and design of all screening, and indicating the type and height of such screening.

d. A plan or statement detailing the exact number of improved developed recreational open space, and all covenants, restrictions, and conditions pertaining to the use, maintenance, and operation of common spaces, and the percentage of the tract to be used as open space.

e. For a PUD District, a statement in tabular form of the anticipated residential density and the total number of dwelling units, the percentage of the tract which is to be occupied by structures, and the total floor area (commercial) of all commercial uses.

f. For a PC District, a statement in tabular form of the anticipated commercial floor area.

g. Deleted. (10/11/83, Case TA-83-06, Ord. No. 034-83)

h. When the development is to be constructed in stages or units, a sequence of development schedule showing the order of construction of each principal functional element of such stages or units, the approximate completion date for each stage or unit. (10/11/83, Case TA-83-06, Ord. No. 034-83)

i. A Plan or report indicating the extent and timing of all off-site improvements, such as road, sewer, and drainage facilities, necessary to construct the proposed development, which plan or report shall relate to the sequence of

development schedule if the development is to be constructed in stages or units. (10/11/83, Case TA-83-06, Ord. No. 034-83)

j. A statement showing the relationship of the planned development to the Comprehensive Plan of the City.

k. Where required by the Commission, a traffic impact analysis, showing the effect of traffic generated by the project on surrounding roads.

l. Where required by the Commission, a fiscal impact analysis, listing City revenue generated by the project and City expenditures resulting from the construction of the project.

13-4-3 REZONING TO PLANNED DEVELOPMENT DISTRICT. (11/14/89, Case TA-89-07, Ord. No. 030-89)

13-4-3.1 All terms, conditions, safeguards, and stipulations made at the time of the rezoning to Planned Development status, including the approval of the Development Plan, with or without specified modifications by the governing body, shall be binding upon the applicant or any successors in interest. Deviations from approved plans or failure to comply with any requirements, conditions, or safeguards shall constitute a violation of these zoning regulations.

13-4-4 SITE PLANS. (11/14/89, Case TA-89-07, Ord. No. 030-89)

13-4-4.1 Approval of the development plan and the application for rezoning shall constitute authority for the applicant to prepare site plans in accordance with Article 19 of this Ordinance, and in conformity with the approved development plan.

13-4-4.2 The site plans shall be for the entire project, unless the project is approved in stages, in which case the site plans for the first stage shall be approved before site plans for any subsequent stages may be submitted.

13-4-4.3 The site plan for a particular development stage, other than the first, shall not be approved until construction has been initiated on the immediately preceding stage or unit.

13-4-4.4 Minor deviations from the development plan shall be permitted in the site plan when the Director of Planning determines that such are necessary or desirable due to requirements of topography, drainage, structural safety, vehicular or pedestrian circulation, or good planning; and such deviations will not materially alter the character of the approved development plan, including the proposed development sequence. In no case shall such deviations increase the residential density of a planned development, increase the floor area of a PC development by more than five (5) percent or ten thousand (10,000) square feet, whichever is less, or increase the amount of traffic likely to be generated by more than two (2) percent.

13-4-4.5 The first site plan shall be submitted within one (1) year after the date of approval of the development plan. If a site plan is not submitted within said period, approval of the development plan, and consequent authority to submit a site plan, shall terminate any development by the applicant in accordance with the PUD and PC regulations, and shall require a resubmission of a development plan in accordance with the procedures set forth in Section 4-5 of this Article. Within thirty (30) days prior to the expiration of said one (1) year period, the applicant may apply to the Governing Body for an extension of time within which to submit a site plan in conformity with the approved development plan. The Governing Body may grant such extension, upon good cause shown by the applicant, but such extension shall not under any circumstances exceed an additional one (1) year period; and no more than two (2) such extensions may be granted. If such application is denied, approval of the development plan, and consequent authority to submit a site plan, shall terminate at the end of said one (1) year period. Upon termination of authority to develop as herein provided, the Governing Body may initiate a reclassification of the subject property to an appropriate zoning district other than PUD or PC.

13-4-4.6 A subdivision plat, in recordable form, shall be submitted with each site plan if necessary.

13-4-4.7 No building permit shall be issued for any building or structure not indicated on the approved site plan.

13-4-5 REVISION OR REAPPROVAL OF DEVELOPMENT PLAN. (11/14/89, Case TA-89-07, Ord. No. 030-89)

13-4-5.1 If an applicant wishes to make changes to an approved development plan greater than those permitted by Section 13-4-4.4, or if the development plan has expired pursuant to the provisions of Section 13-4-4.5, he may submit a new development plan for revision or re-approval. The development plan for the affected portions shall be reviewed pursuant to the Conditional Use Permit provisions of Section 18-2, as applicable. However, the development plan shall not be required to include the items required by Section 18-2-3.3. The plan shall provide all information required by Section 13-4-2.

The public notice shall include a statement that the request is for approval of a revision to or re-approval of the development plan for a Planned Development District.

13-4-5.2 No development plan may be revised or re-approved under this section which varies from the originally approved development plan by increasing density by more that 5% or 50 units, whichever is less, creating a reduction in the open space provided in excess of 5%, or creating an increase in the traffic generated by the development in excess of 5%. If the applicant wishes to make any changes greater than those allowed by this Section, the application shall be treated as a new rezoning application, pursuant to the provisions of this Article.

13-4-5.3 Each application for revision or re-approval of a Development Plan shall be accompanied by a fee as per Section 23-8 to defray the cost of processing said application, which amount shall be paid to the City Treasurer. (3/13/90, Case TA-89-12, Ord. No. 008-90; 3/14/06, Case TA-05-07, Ord. No. 09-2006).

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ARTICLE 13.1

COTTAGE HOUSING DEVELOPMENT DESIGN STANDARDS

SECTION 13.1-1. PURPOSE AND INTENT.

The general purpose of the cottage housing development design standards are as follows:

A. A cottage housing development is an alternative type of detached housing providing small residences that replicate the size, proportionality and character of craftsman-style homes built in the 1910's to 1930's, for households of typically one to two individuals. Cottage housing is provided as part of the city's overall housing strategy which intends to encourage affordability, innovation and variety in housing design and site development while ensuring compatibility with existing neighborhoods, and to promote a variety of housing choices to meet the needs of a population diverse in age, income, household composition and individual needs.

B. The cottage housing development design standards contained in this article are intended to create a small community of cottages oriented around open space that is pedestrian-oriented and minimizes the visibility of off-street parking. These design standards are intended to ensure that cottage housing developments include pedestrian amenities and take advantage of existing natural features on the site including topography and vegetation. The cottage housing development design standards are intended to maintain traditional cottage amenities and proportions and ensure that cottage housing developments contribute to the overall community character. Alternative designs that meet the objectives of the design standards may be reviewed through the conditional use permit process to accomplish the objectives of this article.

C. Cottage housing may allow higher residential density than is normally allowed in the underlying zoning district. This increased density is possible through the use of smaller than average dwelling unit sizes, clustered parking, and site design standards.

D. All cottage housing developments are subject to current city stormwater standards and shall incorporate stormwater low impact development techniques whenever possible.

SECTION 13.1-2. APPLICABILITY, APPLICATION PROCESS, AND DESIGN REVIEW.

Applicability of this article, application procedure and the process for design review are pursuant to Article 18, General Provisions, and Article 19, Site Plan Requirements.

SECTION 13.1-3. DENSITY, NUMBER OF COTTAGE HOUSING UNITS AND MINIMUM LOT AREA.

A. In cottage housing developments the permitted densities shall be as follows:

Table 13.1-3.

Zoning District	Maximum Cottage Density	Minimum Number of Cottages per Cottage Housing Development	Maximum number of Cottages per Cottage Housing Development	Minimum Lot Size (accommodates 4 cottages)
Central Business (B-1) and Residential Business (RB-1)	1 cottage dwelling per 2,000 sf	4	8	8,000 sf
High Density Residential (HR)	1 cottage dwelling per 2,000 sf	4	10	8,000 sf
Limited High Density Residential (HR-1)	1 cottage dwelling per 2,800 sf	4	10	11,200 sf
Medium Density Residential (MR)	1 cottage dwelling per 2,800 sf	4	12	11,200 sf

B. Projects that exceed the above maximums must be processed as planned unit developments per Article 13 of the Winchester Zoning Ordinance.

SECTION 13.1-4. EXISTING NONCONFORMING STRUCTURES AND ACCESSORY TWO-FAMILY DWELLING UNITS.

A. On a lot to be used for a cottage housing development, an existing detached single-family dwelling, which may be nonconforming with respect to the standards of this article, shall be permitted to remain, but the extent of the nonconformity may not be increased. Such nonconforming dwelling units shall be included in the maximum permitted cottage density.

1. Nonconforming dwelling units may be modified to be more consistent with this article. For example, roof pitches may be increased consistent with Section 13.1-5, but the building ground floor or total floor area may not be increased greater than permitted by Section 13.1-11.

B. New accessory two-family dwelling units are not permitted in cottage housing developments. All residential units in a cottage housing development count towards the maximum permitted density. An existing accessory two-family dwelling may be counted as a cottage unit if the property is developed subject to the provisions of this article.

SECTION 13.1-5. BUILDING HEIGHT.

A. Objective. Structures in cottage housing developments shall be designed to be single-story or single-story plus a loft. Because the base density is higher and building separation less than on typical residential lots, it is important to maintain a feeling of adequate light and open space by providing more restrictive maximum roof heights and roof proportion standards.

1. The maximum roof pitch for a cottage housing structure shall be 12/12, and the minimum roof pitch shall be 8/12.

2. Maximum floor to floor height for lofts shall not exceed 10’-0”.

SECTION 13.1-6. VARIATIONS IN BUILDING DESIGN.

A. Objective. Cottage housing development structures shall provide variety and visual interest by using a combination of building elements, features and treatments in cottages as well as garages. Structures must include building articulation, change in materials or textures, windows, or other architectural features. A minimum of at least one side articulation or roof break shall occur for street-facing facades or common open spaces or walkways to the common open spaces. No blank walls are allowed.

1. Exterior trim elements consistent with traditional cottage design and small home craftsmanship reminiscent of craftsman-style houses of 1910’s to 1930’s shall be incorporated into the building design and overall character.

2. Roofs in cottage housing developments shall have eaves to recognize traditional cottage design traits to efficiently shed rain, and provide rain protection for exterior walls. Eaves of at least 12 inches shall be provided on all cottage structures on all four sides of each building.

3. Changes in materials in a vertical wall shall occur at an internal corner or a logical transition such as aligning with a window edge or chimney.
4. Transition in materials on a wall surface, such as shingle or lap siding, shall be required to have a material separation, such as a trim band board.

5. Exterior wall material may consist of wood, cement fiber board, stucco, standard sized brick and stone. Simulated stone, wood, stone or brick may be used to detail homes.

6. Trim may be wood, cement fiberboard, stucco, or stone materials. Trim is required around all doors and windows and must be used on all elevations. Window and door trim with a minimum width of three and one-half inches shall be provided on all cottage housing development structures.

7. Departures from these standards shall be reviewed through the alternative design review process. Alternative designs shall demonstrate a coherent cottage housing design based upon traditional design principles including weather protection.

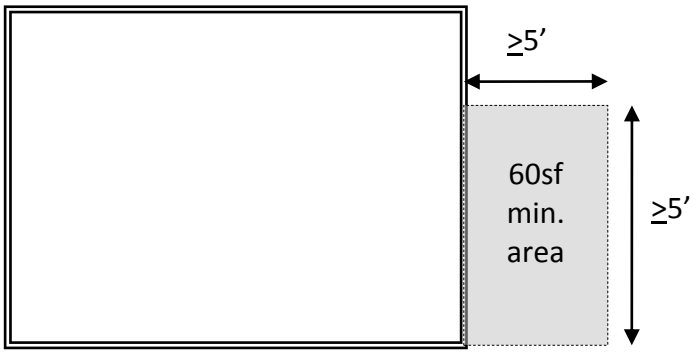
SECTION 13.1-7. COVERED MAIN ENTRY PORCHES.

A. Objective. All residences in cottage housing developments shall be provided with a covered main entry porch to create a private outdoor space protected from the weather and provide a transition from the interior private residential space to the semi-private outdoor space. Covered porches shall be usable both in design and dimension.

1. Cottage homes shall have a covered main entry porch with a floor area measuring at least 60 square feet in size.

2. The floor of the covered main entry porch shall have minimum dimensions of not less than five feet in any direction (length or width).

Diagram 13.1-7.



SECTION 13.1-8. STREET-FACING FACADES.

A. Objective. The street-facing facades of cottages in a cottage housing development will contribute to the neighborhood by including attractive design details such as windows, changes in materials, and views of front doors or porches. The main entries of some cottages will be visible from the adjacent streets to provide a visual pedestrian connection with the surrounding neighborhood.

1. All cottages shall have street-facing facades that avoid blank walls or appear to "turn their backs" to the street. All cottages shall include one or more of the following on street-facing facades:

   a. Changes in exterior siding material and paint color;

   b. Windows which may include bay windows; and/or

   c. Building modulation with a depth measuring at least one foot.

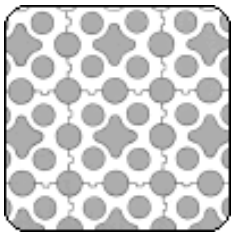
2. At least one cottage shall have its front main entry door and/or front porches visible from each street frontage.

SECTION 13.1-9. LOT COVERAGE AREA.

A. Objective. Cottage housing developments shall not exceed underlying lot coverage standards for the respective zoning district to maintain residential neighborhood character and the balance of built structures to open spaces.

1. Notwithstanding the provisions of Section 13.1-13, Common Open Space, the maximum lot coverage permitted for all structures in cottage housing developments shall not exceed the requirements for the underlying zoning district contained in Article 19, Section 19-5-6.1.

2. The use of paver stones, pervious pavement, grasscrete®, or other types of low impact stormwater development techniques are encouraged for walkways and parking areas.



Example of grasscrete pavers in plan view

Table 13.1-9.

Zoning District	Minimum Landscape Requirement
Residentially-zoned Parcels within HW District	30%
Residentially-zoned Parcels NOT within HW District	45%

SECTION 13.1-10. COTTAGE FLOOR AREA.

A. Objective. Structures in cottage housing developments shall be designed to be single story or single story plus a loft. Residences in cottage housing developments are primarily intended for one- and two-person households and their occasional guests. Maintaining the maximum square footage of residences in cottage housing developments is necessary to prevent overbuilding of the site and to not exceed available off-street parking.

1. The maximum ground floor gross area for an individual principal structure in a cottage housing development shall not exceed 864 square feet.

2. Lofts can be no more than 50 percent of the net floor area of the main level.

SECTION 13.1-11. YARDS – BUILDING SETBACKS FROM EXTERIOR LOT LINES.

A. Objective. Exterior lot line building setbacks in cottage housing developments are based upon the allowed density of cottage housing as well as the small size of the structures. Flexible setbacks are allowed per the discretion of the Building Official and Planning Director to obtain improved site design and to avoid impacting existing physical features on the site such as trees.

Table 13.1-11.

	Front	Corner-Side	Side	Rear
Building Setback	10’	10’	5’	10’*

*-The minimum rear yard shall be 10 feet, unless abutting an alley, in which case, the minimum setback shall be 5 feet.

SECTION 13.1-12. COTTAGE HOUSING DEVELOPMENT BUILDING SEPARATION.

A. Objective. Structures within cottage housing developments shall observe minimum setbacks from other cottage housing development structures to avoid overcrowding the site and to maintain a sense of privacy within the cottages themselves.

1. All buildings within a cottage housing development shall maintain a minimum separation of 12 feet from cottages within a cottage housing development measured from the nearest point of the exterior walls. Accessory buildings shall comply with building code requirements for separation from non-cottage structures.

SECTION 13.1-13. COMMON OPEN SPACE.

A. Objective. Open space that is commonly owned by all members of a cottage housing development is an important feature of any site design. It is intended that the open space be adequately sized and centrally located with individual cottage entrances oriented towards the open space.

1. Common Open Space. A minimum of 400 square feet per cottage unit of common open space is required. Parking areas, yard setbacks, spaces between buildings of 12 feet or less in width, private open space, and driveways do not qualify as common open space.

2. Proximity to Common Open Space.

a. At least 50 percent of the cottage units shall abut a common open space. All of the cottage units shall be within 60 feet walking distance measured from the nearest entrance of the cottage along the shortest safe walking route to the nearest point of the common open space. The common open space shall have cottages abutting at least two sides.

b. For the purposes of cottage housing, “common open space” shall be the central space that may be used by all occupants of the cottage housing development.

SECTION 13.1-14. PRIVATE OPEN SPACE.

A. Objective. Each residential unit in a cottage housing development shall be provided an area of private open space. The private open space shall separate the main entrance to the cottage from the common open space to create a sense of privacy and shall be oriented to take advantage of solar orientation and other natural features to create a small but pleasant private yard area. The private open space may be separated from the common open space with a small hedge, picket fence, or other similar visual separation to create a sense of separate ownership.

1. Each cottage unit shall be provided with a minimum of 200 square feet of usable private open space separated from the common open space by a hedge or fence not to exceed 36 inches in height.

2. No dimension of the private open space shall be less than 8 feet.

SECTION 13.1-15. TREE CONSERVATION.

A. Objective. Cottage housing developments shall be designed to incorporate existing trees to the extent possible. New trees shall be located to create amenities in the common open space, private open space, provide shade where appropriate, to create separation between buildings when desired, and to screen and soften the perimeter of parking areas and street facing sides of cottage housing developments.

1. Preservation of existing trees, and/or new trees, shall be provided consistent with the standards for landscaping and tree preservation as identified within Sections 19-5-6 and 19-5-7 of this Ordinance. Native trees and other vegetation shall be preserved to the extent possible and the overall site design shall take advantage of the location of existing trees as well as natural openings or clearings on forested sites.

SECTION 13.1-16. STORMWATER LOW IMPACT DEVELOPMENT TECHNIQUES.

A. Objective. Cottage housing developments shall be designed to take advantage of open space and landscaped features to utilize stormwater low impact development techniques including natural filtration and on-site infiltration of stormwater.

1. Low impact development techniques for stormwater management shall be used wherever possible. Such techniques may include the use of pervious pavers in parking areas and for walkways, directing roof drains and parking lot runoff to landscape beds, green or living roofs, and the use of rain barrels.

2. Cottages should be located so as to maximize natural stormwater functions. Cottages shall be clustered and parking areas shall be located to preserve as much contiguous, permanently undeveloped open space and native vegetation as possible.

SECTION 13.1-17. OFF-STREET PARKING.

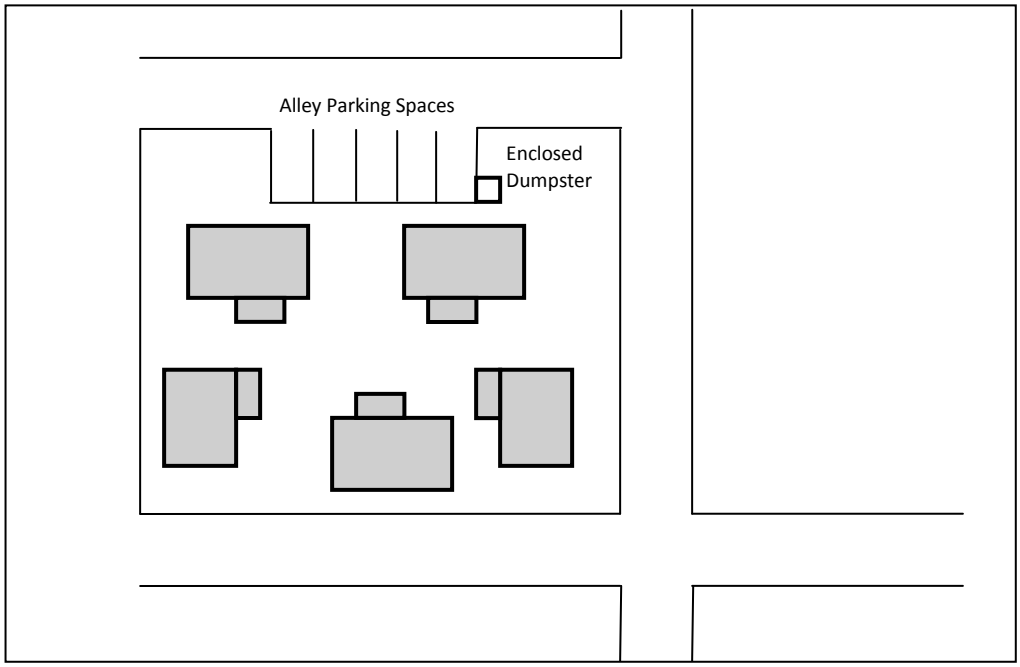
A. Objective. Off-street parking space requirements for cottage housing developments shall be consistent with Section 18-6-5 of this Ordinance. Off-street parking shall be located and designed to be less visible from frontage streets than the cottages themselves. Off-street parking shall be designed to maintain a pedestrian character for the overall cottage housing development. Clustering parking to the side or rear of a cottage project will most often best accomplish these goals. However, on a site-specific basis, design solutions other than clustering may be found to meet this objective through the alternative design process. Parking areas shall be attractively landscaped to screen parking from adjacent properties and public rights-of-way and shall meet applicable parking lot landscape standards, as provided for within this article and Article 19 of this Ordinance.

1. Off-Street Parking Location. Parking shall be located on the cottage housing development property. Off-street parking lots shall be located to the side or rear of the cottage housing development (see illustrations below). Parking lots shall not be located between the cottage housing development and the primary street frontage.

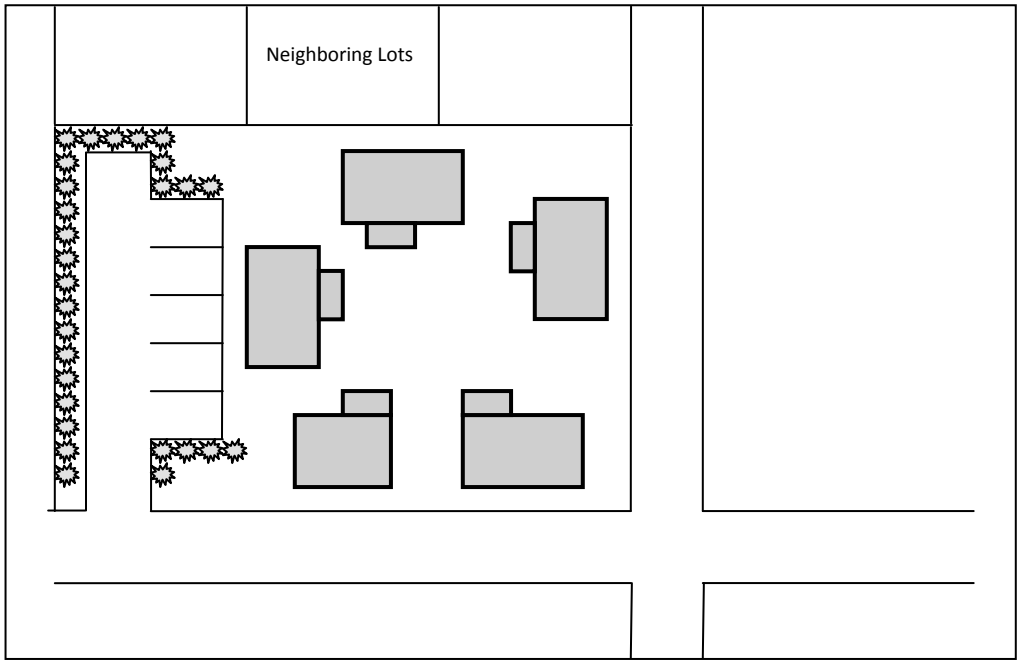
a. Off-Street Parking Screening. Off-street parking may be located in or under a non-cottage parking structure (such as a single or multi-auto carport or garage), but such structures shall not be attached to individual cottages. Uncovered parking is also permitted; provided, that off-street parking shall be screened from direct street view from one or more street facades by garage doors, or by a fence and landscaping.

b. Preferred locations for parking, in descending order of preference, are as follows:

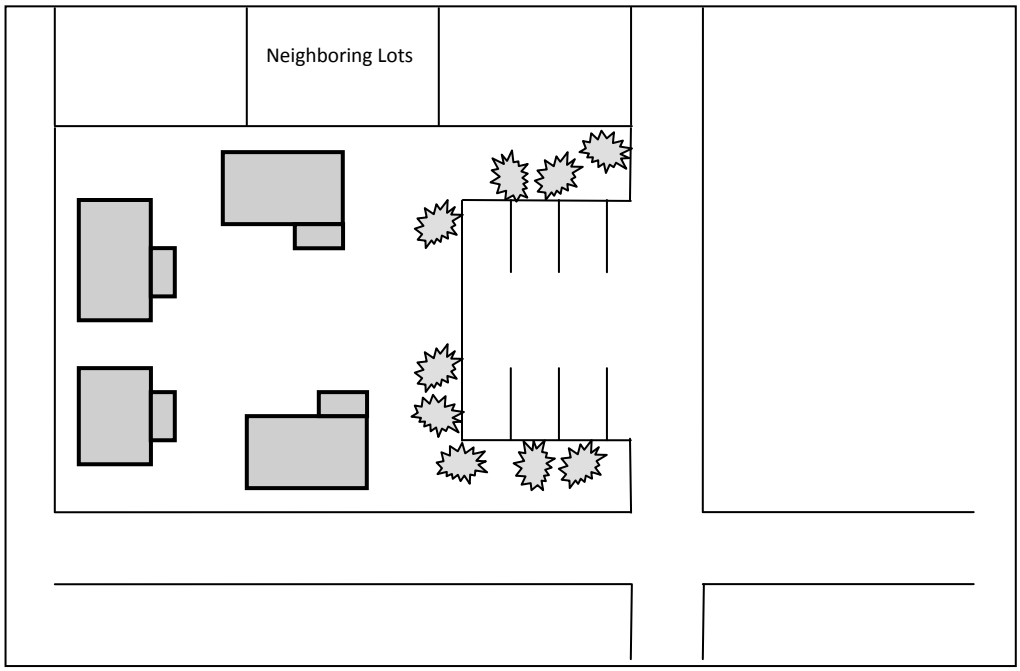
i. To the rear of cottage housing units accessed by an alley.



ii. To the side of cottage housing units accessed by a private driveway.



iii. Parking on the side (non-primary street) screened from the side street by either garage doors, landscaping, and/or fencing.



c. Parking Lot Landscaping. Parking lot landscaping shall comply with the requirements of Section 19-5-6 of this Ordinance.

SECTION 13.1-18. FIRE-LANE ACCESS AND TURNAROUND PROVISIONS.

A. Objective. Cottage housing developments shall be designed so as to allow for the safe and unobstructed access to individual dwellings by emergency responders (i.e., fire, rescue, police), for the purposes of protecting life, property and overall public safety.

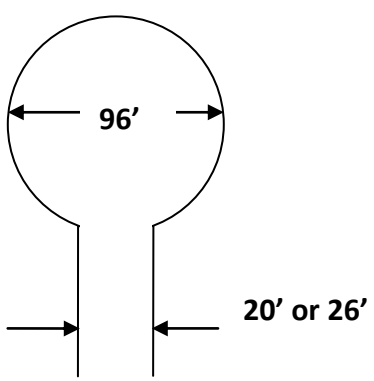
1. Fire apparatus access roads shall be in accordance with Chapter 10, Fire Prevention, of the Winchester City Code, and the Virginia Statewide Fire Prevention Code, as amended.

2. Dead-end fire apparatus access roads in excess of 150 feet shall be provided with width and turnaround provisions in accordance with the Table and Diagrams below:

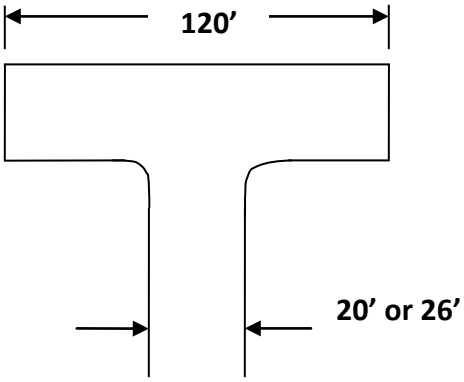
Table 13.1-18.

Length (feet)	Width (feet)	Turnarounds Required
0-150	20	None required
151-500	20	120-foot Hammerhead, 60 foot "Y" or 96-foot-diameter cul-de-sac in accordance with the diagrams below.
501-750	26	120-foot Hammerhead, 60 foot "Y" or 96-foot-diameter cul-de-sac in accordance with the diagrams below.
Over 750	Special approval required	

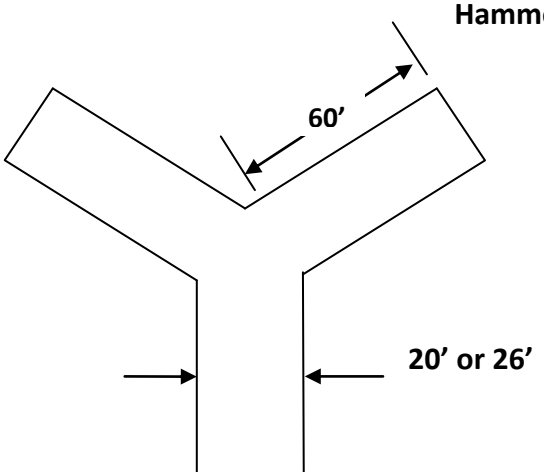
Diagrams 13.1-18.



96' Diameter Cul-de-sac



120' Hammerhead



60' "Y" Alternative to Hammerhead

SECTION 13.1-19. EXTERIOR LIGHTING AND HEATING/COOLING EQUIPMENT NOISE.

A. Objective. Cottage housing developments should be designed to minimize light and noise impacts both within the development and to adjacent properties.

1. Where provided, exterior lighting shall be mounted as low as possible, pointed downward, and the light source shall be shielded from direct observation from above, adjacent properties, and public rights-of-way. Lighting "spillover" to adjacent properties shall be avoided.

2. Heating and cooling equipment for cottage housing developments shall be designed and appropriately screened to cause little or no visual and/or noise impacts within the development and to adjacent properties.

SECTION 13.1-20. REQUIRED SEPARATION OF COTTAGE HOUSING DEVELOPMENTS.

A. Objective. Cottage housing developments in single-family zoning districts shall be separated from each other by a minimum distance to promote housing-type diversity, to reduce potential cumulative impacts of cottage housing development, and to help protect neighborhood character.

1. Each cottage housing development shall be separated from any other cottage housing development by a distance of at least 1,000 feet or one block, whichever is greater.

SECTION 13.1-21. OWNERSHIP AND RESIDENTIAL USE OF COTTAGES.

A. All cottage housing developments shall be developed as residential condominiums, pursuant to the provisions found in Chapter 4.2, Title 55, of the Code of Virginia (1950), et seq., known commonly as the "Condominium Act." Appropriate documentation of formal legal ownership of the development shall be recorded with the Commonwealth of Virginia, the Winchester Circuit Court Clerk, and the Tax Assessor's Office with the City of Winchester.

1. Cottages are for residential use only and may not be operated as transient accommodations.

SECTION 13.1-22. ALTERNATIVE SITE DESIGN.

It is possible that an alternative design may fulfill the intent of this article, while not complying with the provisions herein. Requests for alternative designs shall be processed as a Conditional Use Permit, pursuant to Section 18-2 of this Ordinance and Article 19, Site Plan Requirements.

(Editor's note: Article 13.1 established 8/9/11, Case TA-11-125, Ord. No. 2011-36)

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ARTICLE 14

HISTORIC WINCHESTER DISTRICT - HW

STATEMENT OF INTENT

This district is intended to focus attention on the architectural excellence and historic importance of certain buildings, structures, places, and areas of the City; to promote their preservation, protection, and maintenance; and to ensure the development and maintenance of appropriate settings and environment for such buildings, structures, places, and areas. Such buildings, structures, places and areas warrant special controls and incentives because they promote the general welfare by generating business; creating job opportunities; attracting visitors, researchers and new residents; encouraging study and interest in architecture, design and American history; educating citizens in American culture and heritage; and making the City a more attractive and desirable place in which to live.

SECTION 14-1. HISTORIC WINCHESTER DISTRICT.

A special zoning overlay district, the Historic Winchester District, (HW) is established. The boundaries of this district are delineated upon the City of Winchester, Virginia, Zoning Map.

SECTION 14-2. DEFINITIONS.

For clarification and better understanding of this Article, the following definitions are offered:

14-2-1 For the purpose of this Article, "Exterior Architectural Appearance" shall include architectural character; general arrangement of the exterior of a structure; general composition, including the kind, color, and texture of the building material; and type and character of all windows, doors, light fixtures, signs, and appurtenant elements, subject to public view from a public street, public way, or other public places.

14-2-2 For the purpose of this article, "structure" shall include walls, fences, signs, light fixtures, steps, or appurtenant elements thereof.

SECTION 14-3. CERTIFICATE OF APPROPRIATENESS, GENERALLY.

14-3-1 Except as provided for in Section 14-5 of this Article, no building or structure within the Historic Winchester District shall be erected, reconstructed, structurally altered, restored, or demolished, unless and until a complete application for a Certificate of Appropriateness shall have been submitted and subsequently approved by the Board of Architectural Review. (9/14/10, Case TA-10-247, Ord. No. 2010-36)

14-3-2 No building or structure which existed in an area of the City that has since been designated within the Historic Winchester District seventy-five (75) years ago or prior

thereto shall be demolished or removed in whole or in part, except for additions to the building which are less than seventy-five years (75) old, unless and until a complete application for a Certificate of Appropriateness shall have been submitted and subsequently approved by the Board of Architectural Review. No such application shall be considered by the review board until a public hearing has been held per Section 23-7-1 of this Ordinance. Every such application shall be accompanied by a filing fee as per Section 23-8 of this Ordinance. (9/14/10, Case TA-10-247, Ord. No. 2010-36)

14-3-3 Evidence of such required approval shall be a Certificate of Appropriateness issued by either the Zoning Administrator as specified in Section 14-5 or the Board of Architectural Review. (9/14/10, Case TA-10-247, Ord. No. 2010-36)

14-3-4 Application for a Certificate of Appropriateness required by Sections 14-3-1 and 14-3-2 shall be made to the Zoning Administrator.

14-3-5 The provisions of this article shall not apply to any building or structure which is owned by the City of Winchester or the County of Frederick in the block bounded by Cameron Street, Rouss Avenue, The Loudoun Street Mall and Boscawen Street. (8/30/94, Case TA-94-07, Ord. No. 023-94)

SECTION 14-4. BOARD OF ARCHITECTURAL REVIEW.

14-4-1 A Board of Architectural Review is hereby established and shall be known as the Board of Architectural Review, hereafter referred to as the review board. The review board shall consist of seven (7) voting members who shall be appointed by City Council. One (1) should be a registered architect or design professional, one should be a licensed real estate agent, one or more should own property or reside in the Historic District, and one or more may be from backgrounds in architectural history, history, planning, real estate, or archaeology. All members should possess knowledge of and demonstrate interest in preservation of the historic character of Winchester. These members shall serve a term of four (4) years each except that the original appointments shall be made as follows: one (1) member shall be appointed for a one (1) year term; two (2) members shall be appointed for two (2) year terms; two (2) members shall be appointed for three (3) year terms; and two (2) members shall be appointed to four (4) year terms. No member shall serve more than two (2) consecutive terms. Any vacancy on the Board shall be filled within sixty (60) days after that vacancy has occurred. (9/14/10, Case TA-10-247, Ord. No. 2010-36)

14-4-2 With the exception of its secretary, the review board shall elect from its own membership a chairman and vice-chairman, who shall serve annual terms as such and may succeed themselves. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. (2/14/84, Case TA-83-08, Ord. No. 003-84)

14-4-3 The chairman shall conduct the meetings of the review board. The secretary shall keep the minutes of the meetings and a permanent record of all resolutions, motions, transactions, and determinations. All members of the review board shall be entitled to vote, and the decisions of the review board shall be determined by a majority vote. A quorum of one-half the active voting members is required before the review board may take any official action. The review board shall meet twice monthly or within twenty (20) days after notification by the Zoning Administrator of an application for a Certificate of Appropriateness or permit requiring action by the review board. The meetings of the review board shall be open to the public, and a full and impartial hearing which allows any interested person or group to speak, shall be granted. The review board shall vote and announce its decision on any matter properly before it, not later than sixty (60) days after the conclusion of the hearing on the matter unless the time is extended with the written consent of the applicant. The review board shall not reconsider any decision made by it, except in cases where an applicant appears within ninety (90) days with his application amended as provided. The review board shall not hear the subject matter of any application which has been denied for a period of one (1) year, except in cases where an applicant appears within ninety (90) days with his application amended as hereinafter provided.

14-4-4 In case of disapproval of the erection, reconstruction, alteration, restoration, or demolition of a building or structure, the review board shall briefly state its reasons in writing, and it may make recommendations to the applicant with respect to the appropriateness of design, arrangement, texture, material, color, location, and the like of a building or structure involved. In case of disapproval accompanied by recommendations, the applicant may again be heard before the review board, if, within ninety (90) days, he comes before the review board with his application so amended that it will comply with all the recommendations of the review board.

14-4-5 In case of disapproval of the demolition of a building which existed in the Historic District seventy-five (75) years ago or prior thereto, the review board shall state its reasons in writing in some detail.

14-4-6 The review board, when requested by the applications for a building permit in the Historic District, shall advise as to the changes and alterations necessary to bring the proposed building or structure in harmony with the general design of the buildings or structures located in the surrounding area.

14-4-7 In matters governing the procedure for meetings not covered by this article, the review board may establish its own rules; provided they are not contrary to the spirit of this Article.

SECTION 14-5. ADMINISTRATIVE REVIEW. (9/14/10, Case TA-10-247, Ord. No. 2010-36)

14-5-1 Notwithstanding any contrary provision of this article, the Zoning Administrator may review, and may approve or deny, applications for Certificates of Appropriateness, in the following situations:

14-5-1.1 Exterior alterations which are shown, through adequate documentation, to have been approved for tax credit under either the federal rehabilitation tax credit program or the similar Virginia state tax credit program, as further defined in Section 14-14-3 of this Article;

14-5-1.2 The repainting of an existing building or structure in a different color, provided that the color(s) selected are based upon an approved historic color palette designated within the Historic District Design Guidelines by the Board of Architectural Review;

14-5-1.3 The addition or deletion of awnings, canopies, storm windows, storm doors, gutters, and similar appurtenances;

14-5-1.4 The addition, alteration or removal of any sign(s) where such sign(s) are the sole subject of the application, or where all other improvements comprising part of the application are subject to administrative review under this section; and

14-5-1.5 Structural changes to a building or structure which do not require issuance of a building permit under the Uniform Statewide Building Code except for the following, which must be reviewed by the BAR: replacement of roof coverings and installation or replacement of siding on any buildings or structures, and replacement of windows and doors on any buildings or structures. (4/9/13, Case TA-13-35, Ord. No. 2013-08)

14-5-1.6 Furniture, fixtures, planters, umbrellas, fencing, and any other elements of outdoor dining areas that comply with the *Old Town Winchester Outdoor Dining Guidelines* as adopted by the Old Town Development Board. (4/9/13, Case TA-13-35, Ord. No. 2013-08)

14-5-1.7 Vending apparatuses permitted for outside vendors permitted in accordance with Section 18-7-5.

14-5-2 In reviewing an application for a Certificate of Appropriateness, the Zoning Administrator shall apply the same Historic Winchester District Design Guidelines that the BAR must use in its review process.

14-5-3 Failure of the Zoning Administrator to approve or disapprove an application within ten (10) working days from the date the complete application was submitted shall immediately cause the application to be placed on the agenda for the next regularly scheduled meeting of the Board of Architectural Review.

14-5-4 Upon approval of an application by the Zoning Administrator, the Administrator shall issue the approved certificate. If the application is denied, the Administrator shall mail or hand-deliver written notice of this decision to the applicant, which notice shall set forth the specific reasons for the denial, with reference to specific ordinances, laws or regulations. The Administrator shall inform the BAR of his administrative decisions at the next regularly scheduled meeting following the date of such decisions.

14-5-6 Following a decision of the Administrator upon an application, the applicant, or any other aggrieved party, shall have ten (10) working days from the date of the decision to appeal that decision to the BAR.

14-5-7 In considering an appeal of a decision of the Administrator, the BAR shall review the application as if the application had come before it in the first instance. In an appeal the BAR may consider any information or opinions relevant to the application, including, but not limited to, those provided by the Director.

SECTION 14-6. CRITERIA FOR GRANTING A CERTIFICATE OF APPROPRIATENESS.

14-6-1 The Board of Architectural Review shall not approve a Certificate of Appropriateness unless the applicant's proposals are architecturally compatible with the character of the Historic District. The Board shall base its decision on whether the proposed action conforms to the criteria set forth by the Secretary of Interior's Standards for Rehabilitation. The review board also shall consider:

14-6-1.1 The historical or architectural value and significance of the building or structure and its relationship to or congruity with the historic value of the land, place, and area in the district upon which it is proposed to be located, constructed, reconstructed, altered, or restored.

14-6-1.2 The appropriateness of the exterior architectural features of such building or structure to such land, place, or area and its relationship to or congruity with the exterior architectural features of other land, places, areas, buildings, or structures in the district and environs.

14-6-2 Before a Certificate of Appropriateness is issued for the demolition of a building or structure which existed in the Historic District seventy-five (75) years ago or prior thereto, the review board shall consider among other things:

14-6-2.1 Is the building of such architectural or historic interest that its removal or disturbance would be to the detriment of the public interest?

14-6-2.2 Is the building of such interest or significance that it could be made into a national, state, or local historic shrine?

14-6-2.3 Is the building of such old and unusual or uncommon design, texture, and/or material that it could not be reproduced or be reproduced only with great difficulty and/or expense?

14-6-2.4 Would retention of the building help preserve the historic character of the district?

14-6-2.5 Would retention of the building help preserve a historic interest in a place or an area of the City?

14-6-2.6 Would retention of the building promote the general welfare by maintaining the increasing real estate values; generating business; creating new positions; attracting tourists, students, writers, historians, artists, and artisans; attracting new residents; encouraging study and interest in American history; stimulating interest and study in architecture and design; educating citizens in American culture and heritage; and making the City a more attractive and desirable place in which to live?

14-6-3 The review board shall not consider detailed designs, interior arrangements, or features of a building or structure which are not subject to public view from a public street, public way, or other public place, except when necessary to do so for the purpose of preventing circumstances which will be incongruous to the preservation and protection of the historic aspects, settings, and environment of the district.

SECTION 14-7. ISSUANCE OF CERTIFICATE OF APPROPRIATENESS.

Immediately upon approval by the review board of any erection, reconstruction, alteration, restoration, or demolition, a Certificate of Appropriateness, signed by the secretary of the board and bearing the date of issuance, but subject to the provisions of Section 14-8, shall be made available to the applicant.

SECTION 14-8. EXPIRATION OF CERTIFICATE OF APPROPRIATENESS.

Any Certificate of Appropriateness issued pursuant to Section 14-3-1 and 14-3-2 of this Article shall expire of its own limitations twelve (12) months from the date of issuance if the work authorized by said certificate has not commenced; and further, if any such work is suspended or abandoned for a period of twelve (12) months after being commenced. Any period or periods of time during which the right to use any such certificate is stayed pursuant to this Article shall be excluded from the computation of the twelve (12) month period.

SECTION 14-9. APPEALS.

14-9-1 APPEALS FROM BOARD OF ARCHITECTURAL REVIEW TO CITY COUNCIL.

14-9-1.1 Whenever the Board of Architectural Review shall, in a final decision, disapprove an application for a Certificate of Appropriateness as prescribed by Section 14-3, the applicant for such certificate shall have the right to appeal to and be heard before the City Council; provided, that he files with the Clerk of the Council, on or before thirty (30) days after the decision of the board, a notice in writing of his intention to appeal. Upon receipt of such notice, the Clerk of the Council shall schedule a public hearing before the City Council at a time not more than sixty (60) days after the receipt by the Clerk of such notice. No such appeal shall be considered by City Council until a public hearing has been held per Section 23-7-1 of this Ordinance. Every such application shall be accompanied by a filing fee as per Section 23-8 of this Ordinance. (12/11/79, Ord. No. 030-79)

14-9-1.2 Whenever the Board shall, in a final decision, approve an application for a Certificate of Appropriateness as prescribed by Section 14-3, opponents to the granting of such certificate or of such permit shall have the right to appeal to and be heard before the City Council; or before thirty (30) days after the decision of the Board, a petition in writing signed by at least twenty-five (25) persons owning real estate within the Historic Winchester District, indicating the intention to appeal. Upon receipt of such notice, the Clerk of the Council shall schedule a public hearing before the City Council at a time not more than sixty (60) days after receipt by the Clerk of such notice. No such appeal shall be considered by City Council until a public hearing has been held per Section 23-7-1 of this Ordinance. Every such application shall be accompanied by a filing fee as per Section 23-8 of this Ordinance. (12/11/79, Ord. No. 030-79)

14-9-1.3 On any such appeal, the final decision of the Board of Architectural Review appealed from shall be stayed pending the outcome of the appeal before the Council, except that the filing of such petition shall not stay the decision of the Board if such decision denies the right to raze or demolish a building which existed in the Historic Winchester District seventy-five (75) years of age or prior thereto. The Council shall consult with the Board of Architectural Review, before rendering any decision. The same standards shall be applied by the Council as are established for the Board of Architectural Review. The Council may affirm, reverse or modify the decision of the Board, in whole or in part. The decision of the Council, subject to the provisions of Section 14-9-2, shall be final. No Certificate of Appropriateness shall be issued for thirty (30) days following the decision of the Council, so that any appeals may be filed. (12/11/79, Ord. No. 030-79)

14-9-2 APPEALS FROM CITY COUNCIL TO COURT.

14-9-2.1 Any applicant or any of the petitioners aforesaid aggrieved by a final decision of the City Council, or any opponents to the final decision of the City Council, shall have the right to appeal such decision to the Circuit Court for a review; provided, such appeal is filed within a period of thirty (30) days after the rendering of the final decision by the City Council, and that, in the case of opponents to the final decision of City Council, there is filed with the appeal a petition in writing signed by at least twenty-five persons owning real estate within the Historic Winchester District. Such appeal shall be taken by filing a petition at law, setting forth the alleged illegality of the action of the governing body. The filing of said petition shall stay the decision of the Council pending the outcome of the appeal to Circuit Court, except that the filing of such petition shall NOT stay the decision of the Council if such decision denies the right to raze or demolish a building which existed in the Historic Winchester District seventy-five (75) years ago or prior thereto. (12/11/79, Ord. No. 030-79)

SECTION 14-10. ADDITIONAL OR CONCURRENT RIGHT TO DEMOLISH BUILDINGS IN THE HISTORIC WINCHESTER DISTRICT.

In addition to the right of appeal herein above set forth, the owner of a building or structure, the demolition of which is subject to the provisions of this Article, shall, as a matter of right, be entitled to demolish such building or structure provide that the owner follows the procedures required by Section 15.2-2306 of the Code of Virginia (1950), as amended.

SECTION 14-11. BONA FIDE OFFER TO SELL.

14-11-1 Notice. Before making a bona fide offer to sell, provided for in Section 14-10, an owner shall first file a statement with the Zoning Administrator. The statement shall identify the property, state the offering price, the date the offer of sale is to begin, and the name of the real estate agent, if any. No time period set forth in the schedule contained in Section 14-10 shall begin to run until the statement has been filed. Within five (5) days of receipt of a statement, copies of the statement shall be delivered to the members of the City Council, members of the Planning Commission, and the City Manager.

14-11-2 Question as to price. The fact that an offer to sell a building or structure and the land pertaining thereto is at a price reasonably related to fair market value may be questioned; provided, there is filed with the Zoning Administrator, on or before fifteen (15) days after the offer for sale has begun, a petition in writing signed by at least twenty-five (25) persons owning real estate within the Historic Winchester District. Upon receipt of such a petition, three (3) disinterested real estate appraisers, familiar with property values in the Historic Winchester District, shall be appointed: one (1) by the review board, one (1) by the property owner, and one (1) by the review board and the property owner. The cost of the appraisals shall be divided equally between the property owner and the City. Said appraisers shall forthwith make an appraisal of the building or structure and the land pertaining thereto in question and forthwith file a written report with the Zoning Administrator whether or not in their opinion the offer to sell the building or structure and the land pertaining thereto is at a price reasonably related to its fair market value. In the event the opinion is to the effect that the offer to sell the building or structure and the land pertaining thereto is not at a price reasonably related to its fair market value, the offer to sell shall be void and of no force and effect; and the owner, if he wishes to take advantage of the additional or concurrent right provided for in Section 14-10, must file the notice provided for in Subsection 14-11-1 above and proceed with Section 14-10. Notwithstanding an adverse opinion by the appraisers, if an owner has entered into a binding bona fide contract as provided for in Section 14-10 prior to the date the appraisers have filed their report with the Zoning Administrator, the price shall be deemed reasonably related to fair market value.

SECTION 14-12. YARD VARIANCES.

Due to peculiar conditions of design and construction in historic neighborhoods where buildings and structures are often built close to the lot lines, it is in the public interest to retain a neighborhood's historic appearance by granting variances to normal yard requirements. Where it is deemed that such a variance will not adversely affect neighboring properties, the board of review may recommend to the Board of Zoning Appeals that such variance to standard yard requirements be made.

SECTION 14-13. PERMITTED USES.

Nothing in this Article shall be construed to prevent any use of any land, building, or structure in the district permitted by the regulations prescribed in this ordinance for the district in which such land, building, or structure is otherwise located.

SECTION 14-14. EXCLUSIONS.

14-14-1 Nothing in this Article shall be construed to prevent the ordinary maintenance or repair of any exterior elements of any building or structure described in this Article so long as there is no change in the form or materials.

14-14-2 Nothing in this Article shall prevent the construction, reconstruction, alteration, restoration or demolition, without approval of the review board, of any building or structure which is in such unsafe condition that the building or structure would endanger life or property as determined in accordance with the provisions of the Uniform Statewide Building Code.

14-14-3 Nothing in this Article shall prevent the construction, reconstruction, alteration, restoration or demolition, without approval of the review board, of any building or structure which has otherwise received approval through separate application for Historic Preservation Certification to the Virginia Department of Historic Resources or the United States Department of the Interior. Exclusion is limited to those specific changes as identified and approved in such application, a copy of which shall be provided to the Administrator. (1/13/09, Case TA-08-08, Ord. No. 2009-02)

SECTION 14-15 DEFINING HISTORIC BUILDINGS AND AREAS AND CRITERIA FOR DESIGNATION OF HISTORIC DISTRICTS.

It shall be the continuing duty of the review board to investigate and delineate buildings, structures, places, and areas in the City having historic interest or value which should be preserved and protected in the execution and attainment of the purposes and objectives declared in this Article, and to report thereon from time to time to the City Council for consideration as to whether they or any of them shall be set apart for preservation and protection under the provisions of this Article.

14-15-1 In addition to the provisions of Article 22 of this Ordinance, The Board of Architectural Review may initiate, by adoption of a resolution, an amendment to the Ordinance to rezone property to the Historic Winchester District (HW). Prior to acting on a resolution, the Board of Architectural Review shall hold a public hearing. Such public hearing shall be advertised in a newspaper in the city once a week for two consecutive weeks.

14-15-2 One or more Historic Districts may be designated provided that such districts conform to the definition of Historic Areas set forth in Section 15.2-2201 of the Code of Virginia (1950), as amended, and that any such Districts meets one or more of the following criteria.

a. It is associated with a particular person, event, activity, or institution of local, state or national historical significance.

b. It contains buildings whose exterior design or features exemplify the distinctive design characteristics of one or more historic periods, styles, materials or construction methods, or exemplify the work of an acknowledged master or masters.

c. It contains qualities and/or artifacts which significantly contribute to present-day knowledge and understanding of lifestyles, activities, events or experiences of a previous era.

d. Its unique location or physical characteristics represents an established and familiar pattern or unique visual feature of the City.

SECTION 14-16. HISTORIC MARKERS AND CRITERIA FOR AWARD OF HISTORIC MARKERS.

The review board shall design an appropriate marker, bearing the seal of the City and the words "Historic Building" and shall invite each owner of a building of historical significance to display the marker thereon. Buildings receiving such awards should have architectural and/or historic interest to justify consideration. The exterior of the building should not have been substantially altered or reconstructed so as to no longer constitute an early building.

14-16-2 The Board will consider all requests for plaques using the following standards:

a. Classification standards of building: Architectural significance, date of construction, architectural style, method of construction.

b. Current building inventory characteristics: Appropriateness of restoration, grounds, contribution to streetscape.

c. Existing condition of building: present condition, appropriateness of past alterations.

d. Historic/Architectural presence in the community: present condition, appropriateness of past alterations.

14-16-3 Application Procedure. Application for a Historic Building Plaque must be made to the Zoning Administrator. Plaques will be awarded annually during National Preservation Week in May. A fee as per Section 23-8 will be charged for each plaque awarded.

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ARTICLE 14.1

FLOODPLAIN DISTRICTS - FP

STATEMENT OF INTENT

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

A. Regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies.

B. Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding.

C. Requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or floodproofed against flooding and flood damage.

D. Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

14.1-1 APPLICABILITY

These provisions shall apply to all lands within the jurisdiction of the City and identified as being in the 100-year floodplain by the Federal Insurance Administration.

14.1-2 COMPLIANCE AND LIABILITY

A. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this ordinance and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this ordinance.

B. The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that districts outside the floodplain district, or that land uses permitted within such district will be free from flooding or flood damages.

C. This ordinance shall not create liability on the part of the City or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

D. Records of actions associated with administering this ordinance shall be kept on file and maintained by the Program Administrator. (9/1/2009, Case TA-09-204, Ord. No. 2009-24)

14.1-3 PENALTY FOR VIOLATIONS

Any person who fails to comply with any of the requirements or provisions of this article or directions of the Program Administrator or any authorized employee of the City of Winchester shall be subject to the penalties therefore.

In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this article. The imposition of a fine or penalty for any violation of, or noncompliance with, this article shall not excuse the violation or noncompliance or permit it to continue; and all such persons shall be required to correct or remedy such violations or noncompliances within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by the City of Winchester to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this article.
(9/1/2009, Case TA-09-204, Ord. No. 2009-24)

14.1-4 SEVERABILITY

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this ordinance are hereby declared to be severable.
(9/1/2009, Case TA-09-204, Ord. No. 2009-24)

14.1-5 ABROGATION AND GREATER RESTRICTIONS

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

14.1-6 DEFINITIONS

14.1-6-1 Base Flood/One-Hundred Year Flood - A flood that, on the average, is likely to occur once every 100 years (i.e., that has a one (1) percent chance of occurring each year, although the flood may occur in any year). (9/1/2009, Case TA-09-204, Ord. No. 2009-24)

14.1-6-2 Base Flood Elevation (BFE) - The Federal Insurance Administration designated 100 year water surface elevation.

14.1-6-3 Basement – (For purposes of this Article…) Any area of the building having its floor sub-grade (below ground level) on all sides.

14.1-6-4 Development - Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

14.1-6-5 Elevated building - A non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, or columns (posts and piers).

14.1-6-6 Encroachment - The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

14.1-6-7 Existing manufactured home park or subdivision - a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

14.1-6-8 Expansion to an existing manufactured home park or subdivision - the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

14.1-6-9 Flood Insurance Rate Map (FIRM) - an official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community

14.1-6-10 Flood or flooding -

1. A general or temporary condition of partial or complete inundation of normally dry land areas from

    a. the overflow of inland or tidal waters; or,

    b. the unusual and rapid accumulation or runoff of surface waters from any source.

2. The collapse or subsistence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph 1 (a) of this definition.

3. Mudflows which are proximately caused by flooding as defined in paragraph (a)(2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

14.1-6-11 Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

14.1-6-12 Freeboard - A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed.

14.1-6-13 Historic structure - Any structure that is

1. listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing 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 a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,

4. individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either

   a. by an approved state program as determined by the Secretary of the Interior; or,

   b. directly by the Secretary of the Interior in states without approved programs.

14.1-6-14 Lowest Floor - The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR §60.3.

14.1-6-15 Manufactured home - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed one a site for greater than 180 consecutive days.

14.1-6-16 Manufactured home park or subdivision - a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

14.1-6-17 New construction - For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial Flood Insurance Rate Map on or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which *start of construction* commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

14.1-6-18 Recreational vehicle - A vehicle which is

1. built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. designed to be self-propelled or permanently towable by a light duty truck; and,
4. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

14.1-6-19 Special flood hazard area - The land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in Section 14.1-6 of this ordinance.

14.1-6-20 Start of construction - The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement 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 on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of the 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.

14.1-6-21 Structure - for flood plain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. ``Structure'' for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

14.1-6-22 Substantial Damage - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

14.1-6-23 Substantial Improvement - Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage" regardless of the actual repair work performed. The term does not, however, include either: (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) any alteration of a "historic structure", provided that the alteration will not preclude the structures continued designation as a "historic structure".

14.1-6-24 Violation - the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Sec. 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

14.1-6-25 Watercourse - A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

14.1-7 DESCRIPTION OF DISTRICTS

14.1-7-1 Basis of Districts

The various floodplain districts shall include special flood hazard areas. The basis for the delineation of these districts shall be the Flood Insurance Study (FIS) and the Flood Insurance Rate Maps for the City of Winchester prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated September 2, 2009, as amended. (9/1/2009, Case TA-09-204, Ord. No. 2009-24)

1. The Floodway District is delineated, for purposes of this ordinance, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one hundred (100)-year flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this District are specifically defined in Table 2 of the above-referenced Flood Insurance Study and shown on the accompanying Flood Insurance Rate Map.

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

3. The Special Floodplain District shall be those areas identified as an AE Zone on the maps accompanying the Flood Insurance Study for which one hundred (100)-year flood elevations have been provided.

14.1-7-2 Overlay Concept

1. The Floodplain Districts described above shall be overlays to the existing underlying districts as shown on the Official Zoning Map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.

2. Any conflict between the provisions or requirements of the Floodplain Districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.

3. In the event any provision concerning a Floodplain District is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

14.1-8 OFFICIAL ZONING MAP

The boundaries of the Floodplain Districts are established as shown on the Flood Insurance Rate Map which is declared to be a part of this ordinance and which shall be kept on file at the City.

14.1-9 DISTRICT BOUNDARY CHANGES

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

14.1-10 SUBMITTING TECHNICAL DATA

A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data. (9/1/2009, Case TA-09-204, Ord. No. 2009-24)

14.1-11 INTERPRETATION OF DISTRICT BOUNDARIES

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

14.1-12 GENERAL PROVISIONS

14.1-12-1 Permit Requirement

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

14.1-12-2 Alteration or Relocation of Watercourse

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

14.1-12-3 General Standards

In all special flood hazard areas the following provisions shall apply: (9/1/2009, Case TA-09-204, Ord. No. 2009-24)

a) New construction and substantial improvements shall be according to the VA USBC, and anchored to prevent flotation, collapse or lateral movement of the structure.

b) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.

c) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

d) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

e) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

f) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

g) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

h) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

i) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance shall meet the requirements of "new construction" as contained in this ordinance.

j) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not furthered, extended, or replaced.

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

l) The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

14.1-12-4 Drainage Facilities

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

14.1-12-5 Site Plans and Permit Applications

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

1. For structures to be elevated, the elevation of the lowest floor (including basement).

2. For structures to be floodproofed (non-residential only), the elevation to which the structure will be floodproofed.

3. The elevation of the one hundred (100)-year flood.

4. Topographic information showing existing and proposed ground elevations.

14.1-12-6 Specific Standards

In all special flood hazard areas where base flood elevations have been provided in the Flood Insurance Study or generated according Article 4, section 4.4 (A), the following provisions shall apply: (9/1/2009, Case TA-09-204, Ord. No. 2009-24)

a) Residential Construction

New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated no lower than 1 foot above the base flood elevation.

b) Non-Residential Construction

New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured home) shall have the lowest floor, including basement, elevated to no lower than 1 foot above the base flood elevation. Buildings located in all A1-30, AE, and AH zones may be flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied.

c) Elevated Buildings

Enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

1. not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator).

2. be constructed entirely of flood resistant materials below the regulatory flood protection elevation;

3. include, in Zones AE and A, measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:

    a. Provide a minimum of two openings on different sides of each enclosed area subject to flooding.

    b. The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding.

    c. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.

    d. The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade.

    e. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.

    f. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

14.1-12-7 Manufactured Homes and Recreational Vehicles

1. All manufactured homes placed, or substantially improved, on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, in a new manufactured home park or subdivision or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial

damage as the result of a flood, must meet all the requirements for new construction.

2. All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision in which a manufactured home has **not** incurred substantial damage as the result of a flood shall be elevated so that either

   a. the lowest floor of the manufactured home is elevated no lower than 3 feet above the base flood elevation; or

   b. the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade

   c. and be securely anchored to the adequately anchored foundation system to resist flotation, collapse and lateral movement.

3. All recreational vehicles placed on sites must either

   a. be on the site for fewer than 180 consecutive days;

   b. be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions); or,

   c. meet all the requirements for manufactured homes.

14.1-13 FLOODWAY DISTRICT

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

14.1-13-1 Permitted Uses in the Floodway District

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

1. Agricultural uses, such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.

2. Public and private recreational uses and activities, such as parks, day camps, picnic grounds, golf courses, boat launching and swimming areas, horseback riding and hiking trails, wildlife and nature preserves, game farms, fish hatcheries, trap and skeet game ranges, and hunting and fishing areas.

3. Accessory residential uses, such as yard areas, gardens, play areas, and pervious loading areas.

4. Accessory industrial and commercial uses such as yard areas, pervious parking and loading areas, airport landing strips, etc.

14.1-14 SPECIAL FLOODPLAIN DISTRICT

The following provisions shall apply within the Special Floodplain District: (9/1/2009, Case TA-09-204, Ord. No. 2009-24)

Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zones A and AE on the Flood Rate Insurance Map, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the City of Winchester.

Development activities in Zones A and AE on the Frederick County Flood Insurance Rate Map which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the applicant first applies – with the City of Winchester's endorsement – for a conditional Flood Insurance Rate Map revision, and receives the approval of the Federal Emergency Management Agency.

14.1-14-1 Standards for Approximated Floodplain

The following provisions shall apply with the Approximate Floodplain District:

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

correctly reflect currently-accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Program Administrator.

2. When such base flood elevation data is utilized, the lowest floor shall be 1 foot above the base flood elevation. During the permitting process, the Program Administrator shall obtain:

   a) the elevation of the lowest floor (including the basement) of all new and substantially improved structures; and,

   b) if the structure has been flood-proofed in accordance with the requirements of this article, the elevation to which the structure has been flood-proofed.

14.1-14-2 Standards for Subdivision Proposals

1. All subdivision proposals shall be consistent with the need to minimize flood damage;

2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;

3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards, and

4. Base flood elevation data shall be provided for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed fifty lots or five acres, whichever is the lesser.

14.1-15 VARIANCES: FACTORS TO BE CONSIDERED

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

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

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

C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.

E. The importance of the services provided by the proposed facility to the community.

F. The requirements of the facility for a waterfront location.

G. The availability of alternative locations not subject to flooding for the proposed use.

H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

I. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.

J. The safety of access by ordinary and emergency vehicles to the property in time of flood.

K. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.

L. The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

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

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

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

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

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

14.1-16 EXISTING STRUCTURES IN FLOODPLAIN DISTRICTS

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

A. Existing structures in the Floodway District shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed expansion would not result in any increase in the one hundred (100)-year flood elevation.

B. Any modifications, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain area to an extent or amount of less than fifty (50) percent of its market value, elevation and/or floodproofing should be considered to the greatest extent possible.

C. The modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its locations in a floodplain area, to an extent or amount of fifty (50) percent or more of its market value shall be undertaken only in full compliance with the provisions of this ordinance and the Virginia Uniform Statewide Building Code.

D. Existing structures in the Special Flood Plain District shall not be expanded or enlarged unless it has been demonstrated through hydraulic and hydraulic analyses preformed in accordance with standard engineering practices that the proposed expansion or enlargement would not result in an increase of more than one foot in the one hundred (100) year flood elevation.

14.1-17 FLOODING

Land subject to flooding and land deemed to be topographically unsuitable shall not be platted for residential occupancy, nor for such other uses as may increase danger of health, life or property, or aggravate erosion or flood hazard. Such land within the subdivision shall be set aside on the plat for such uses as shall not be endangered by periodic or occasional inundation or shall not produce conditions contrary to public welfare. All subdivisions within the City of Winchester shall conform with the recommendation of the applicable Storm Drainage Report. Any new subdivision or development shall be subject to the requirements of Article 14.1 FLOODPLAIN DISTRICTS, FP, of the Official Zoning Ordinance.

(Editor's note: Article 14.1 established 10/13/99, Case TA-99-05, Ord. No. 030-99; Comprehensive Revision 9/1/09, Case TA-09-204, Ord. No. 2009-24)

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ARTICLE 14.2

CORRIDOR ENHANCEMENT DISTRICT – CE

STATEMENT OF INTENT

This overlay district is intended to protect and promote the aesthetic character and functionality of major tourist access corridors leading into the designated local and national Historic Winchester (HW) District. Such entryways warrant special attention and controls because they promote the general welfare of the community by attracting visitors and generating business through heritage tourism-based economic development. Enhancement will occur through regulation and guidance of site development including, but not limited to: sidewalks, off-street parking, signage, landscaping, mechanical unit placement, lighting, as well as building materials and architectural features such as roof pitch, broken wall planes, façade enhancements, and porches, thereby enhancing the overall appearance of the corridor, while improving access along the corridor through increased walkability and interconnectivity.

14.2-1 APPLICABILITY

14.2-1.1a The provisions of this Article are established in accordance with Virginia Code §15.2-2306 to establish Corridor Overlay: (i) along arterial streets or highways found by the Governing Body to be significant routes of tourist access to the City; (ii) to historic landmarks as established by the Virginia Landmarks Commission together with any other buildings or structures within the City having an important historic, architectural or cultural interest and any historic areas within the City as defined by Virginia Code §15.2-2201 or (iii) to designated historic landmarks, buildings, structures or districts in any contiguous locality.

14.2-1.1b The provisions of this Article are also established in accordance with Virginia Code §15.2-2200, 15.2-2283 and 15.2-2284, to protect the health, safety, and general welfare of the public by the prevention or reduction of traffic congestion and distracting visual clutter which may result in danger on the public and private streets, and to provide for a convenient, attractive, and harmonious community.

14.2-1.2 The provisions of this Article shall apply to all lands within the boundaries of the Corridor Enhancement (CE) overlay district(s) as delineated upon the City of Winchester, Virginia, Zoning Map. The boundary of the CE District shall be depicted as a surveyed line on any site plan or subdivision plat proposed for property located within this district. Where the property is split by this line, these provisions shall apply only to the portion within the district.

14.2-2 DEFINITIONS

14.2-2.1 PRIMARY ROOF: The dominant roof visible from surrounding grade of vehicular and pedestrian paths as determined by the review board or its agent. Primary roofs may consist of compound roofs or false roofs that disguise flat or slightly pitched roofs.

Single-story porch roofs which do not extend to the top of the building shall not be defined as primary roofs.

14.2-2.2 RATIO OF TRANSPARENT TO OPAQUE TREATMENT: A figure derived from the quotient of transparent to opaque façade surface area or vice versa. Transparent area shall include: windows, including surrounding trim and shutters; glass block, lattice, and louvered elements; perforated brick bond patterns; and doors that include some transparent area. Computation of façade surface area, as expressed in elevation view, shall be measured from the adjoining grade to the eave of the adjoining roof. Single-story porch/canopy roofs shall not count as adjoining roofs where there is vertical wall area visible above the porch/canopy roof. Deviations in the interpretation of this ratio to support increased transparent area designation may be considered for porches and/or arcades at least eight feet (8') in depth.

14.2-3 **GENERAL PROVISIONS**

14.2-3.1 Any use, activity, lot, or structure subject to the provisions of the Corridor Enhancement (CE) District which does not conform to the provisions of the CE district shall be subject to Article 17, nonconformities, of this Ordinance.

14.2-3.2 No certificate of appropriateness shall be required for the following activities:

14.2-3.2a Interior alterations to a building or structure having no effect on the use or exterior appearance of the building, structure, or grounds.

14.2-3.2b General repair and maintenance of the exterior of a structure where no substantial change in design, color, or material is proposed as determined by the Planning Director.

14.2-3.2c Accessory residential buildings where no site development plan is required for the work subject to the building permit.

14.2-3.3 The City of Winchester shall not adopt or impose any specific architectural style in the administration of this section.

14.2-3.4 The Commission shall be the Review Board in the administration of the Corridor Enhancement District. The Commission, at its discretion, may authorize the Planning Department to review and approve minor alterations. Staff shall report all approvals in a report to the Commission each month.

14.2-4 **CERTIFICATE OF APPROPRIATENESS**

14.2-4.1 <u>GENERALLY</u>

14.2-4.1a Application for a Certificate of Appropriateness required by Sections 14.2-4-1b, in accordance with Sections 14.2-4-2, shall be made to the Planning Department.

14.2-4.1b No building or structure within any Corridor Enhancement District shall be constructed, altered, or demolished, until a Certificate of Appropriateness is issued by the Planning Department.

14.2-4.2 CRITERIA

14.2-4.2a Architect's or artist's rendering of all proposed structures depicting the front, side and rear elevations including architectural treatment of all structural exteriors, including building materials and colors to be utilized.

14.2-4.2b Rendering of the landscape treatment in perspective view depicting parking areas visible from public road. If appropriate, this rendering may be combined with the one in subparagraph 'a' above.

14.2-4.2c The location and design of all proposed exterior site lighting within the proposed development.

14.2-4.2d Photographs or drawings of neighboring uses and architectural styles.

14-2-4.3 ACTION BY THE REVIEW BOARD

14-2-4.3a If the Commission finds that the request is consistent with the standards and guidelines applicable to the specific CE District, then the Commission shall approve the request. If the Commission instead finds that such plans are not in conformance with the standards nor generally consistent with the guidelines of Section 14.2, it shall deny approval of the plans or shall approve the plans with reasonable conditions which implement the intent of the district.

14-2-4.3b If a decision of denial is made, the applicant shall be provided, in writing, any and all reason(s) of denial.

14.2-4.4 ISSUANCE

Immediately upon approval by the Review Board of any new construction, alteration, or demolition, a Certificate of Appropriateness, shall be issued by the Planning Director bearing the date of issuance.

14.2-4.5 EXPIRATION

Any Certificate of Appropriateness issued pursuant to Section 14.2-4-1b of this Ordinance shall expire of its own limitations two (2) years from the date of issuance if the work authorized by said certificate has not commenced; and further, if any such work is suspended or abandoned for a period of two (2) years after being commenced. Any period or periods of time during which the right to use any such certificate is stayed pursuant to this Article shall be excluded from the computation of the two (2) year period.

14.2-4.6 APPEALS

14.2-4.6a The Governing Body reserves unto itself the right to review all decisions of the Commission made in the administration of Section 14.2 which, in its discretion, it shall deem necessary to the proper administration hereof. Any person aggrieved by any decision of the Commission in the administration of this section may demand a review of the application by the Governing Body. Such demand shall be made by filing a request therefor in writing with the clerk of the Governing Body within ten (10) calendar days of the date of such decision. The Governing Body may affirm, reverse or modify, in whole or in part, the decision of the Commission. In considering an appeal, the Governing Body shall give due consideration to the recommendations of the Commission together with such other evidence as it deems necessary for a proper review of the application.

14.2-4.6b Any person or persons jointly or severally aggrieved by any decision of the Governing Body may appeal such decision to the Circuit Court of the City for review by filing a petition at law, setting forth the alleged illegality of the action of the Governing Body, provided such petition is filed within thirty (30) days after the final decision is rendered by the Governing Body. The filing of said petition shall stay the decision of the Governing Body pending the outcome of the appeal to the Court.

14.2-5 RESERVED

14.2-6 AMHERST STREET, CEDAR CREEK GRADE, AND PLEASANT VALLEY RD/CORK STREET CORRIDORS

14.2-6.1 Building Orientation

14.2-6.1a At least one structure on the site shall be no more than eighty-five feet (85’) from public right-of-way, except as per Section 14.2-6.10a of this Ordinance.

14.2-6.1b No structure, other than an accessory structure, shall have a footprint less than 1,200 square feet.

14.2-6.1c No structure shall have a foot print exceeding 8,000 square feet for the Amherst Street Corridor nor 10,000 square feet for the Cedar Creek Grade Corridor, except as per Section 14.2-6.10b of this Ordinance. Structures along the Pleasant Valley Road/Cork Street Corridor should not exceed 20,000 square feet.

14.2-6.1d At least one main entrance of the structure shall be oriented toward a public street frontage.

14.2-6.1e No structure shall exceed thirty-five feet (35’) in height.

14.2-6.2 Site Access

14.2-6.2a Provisions shall be made for connectivity of sidewalks to adjacent parcels, and inter-parcel access from existing/proposed off-street parking areas to parking areas on adjacent parcels, where appropriate.

14.2-6.2b Bike racks and/or improvements supporting mass-transit are encouraged to promote multi-modal transportation.

14.2-6.3 Parking and Drive-Thru

14.2-6.3a No more than sixty feet (60') of off-street parking shall be located between a structure and the street.

14.2-6.3b Off-street parking should be located in non corner side or rear yards.

14.2-6.3c Off-street parking located in a front or corner side yards shall be a minimum of fifteen feet (15') from public right of way.

14.2-6.3d Drive-thru(s) shall not be oriented toward a front or corner side yard, except as per Section 14.2-6.10c of this Ordinance.

14.2-6.3e No more than two (2) drive-thru stations shall be provided, except as per Section 14.2-6.10d of this Ordinance.

14.2-6.4 Main Structure

14.2-6.4a Primary roofs, as defined, shall have a minimum pitch of 6:12, except as per Section 14.2-6.10e of this Ordinance, and should include features such as: gables, soffits, dormers, and/or cupolas. Long monotonous primary roof planes of more than thirty feet (30') in length along the front and corner side elevation, and forty-eight feet (48') in length for non-corner side and rear elevations shall be avoided. Said roof planes shall be broken by a minimum of one other roof plane. The intervening roof plane(s) shall be at a different angle and or pitch to the longer roof plane. Deviations from these standards may be considered for dormers and/or other roof features that are in proportion to the structure and satisfy the intent of this requirement.

14.2-6.4b Enhancements to the structure including porches, canopies, and awning, which soften the structure's impact to the street, are encouraged. Awnings should be of a cloth material.

14.2-6.4c Long monotonous facades of more than twenty-four feet (24') in length along the front and corner side elevation, and thirty-six feet (36') in length for non-corner side and rear elevations shall be avoided. The wall plane shall be broken by off-sets of at least six inches (6") of vertical recess or reveal.

14.2-6.4d Façade enhancements such as cornices, pilasters, band or sill courses, lintels, arches, foundation accents, quoins, etc. are encouraged to avoid long monotonous building planes.

14.2-6.4e To avoid excessive spans of solid walls or glass elevations, the Ratio Of Transparent To Opaque Treatment, as defined, for front and corner side elevations shall be between 1:1 and 1:2 or vice versa. The Ratio of Transparent to Opaque Treatment for non-corner side elevations shall be between 1:1 and 1:3 or vice versa, except as per Section 14.2-6.10f of this Ordinance. This shall be interpreted to facilitate the distribution of transparent and opaque wall area across the surface of the building exterior. False windows and fake shuttered openings may be accepted on a limited basis.

14.2-6.4f No portion of a building constructed of barren and unfinished concrete masonry unit (cinder block) or corrugated material or sheet metal shall be visible from any adjoining property or public right-of-way. This shall not be interpreted to preclude the use of architectural or split face block as a building material.

14.2-6.4g Reflective surfaces are generally not considered acceptable exterior material, other than window glass.

14.2-6.4h No more than three (3) colors, excluding roof color, should be used per building. Semitransparent stains are recommended for application on natural wood finishes. All color schemes shall be submitted for review and approval. Schemes shall demonstrate compatibility with building architecture and surrounding development. (5/9/06, Case TA-06-02, Ord. No. 20-2006)

14.2-6.4i Mechanical equipment shall be placed in the rear yard or rear roof elevation.

14.2-6.4j In addition to the provision for undergrounding of utilities in Section 18-22-1 of this Ordinance, any change of use which increases the parking requirement shall incorporate placement of distribution lines for electrical, telephone, cable television and any other services requiring wires or cables underground. The Administrator may waive, after petition by the property owner, this requirement for residential work when the administrator determines that such waiver is warranted because there are few if any utility poles on the project side of the street and a waiver will prevent the installation of additional utility poles. Such petition shall be made in the form prescribed by the Administrator and accompanied by the fee as per Article 23 of this Ordinance.

14.2-6.5 <u>Accessory Structures</u>

14.2-6.5a Accessory structure(s) shall be of style, color, and materials consistent with the main structure(s).

14.2-6.5b Utilities and support equipment shall be placed in the rear yard.

14.2-6.5c Dish antennas and cellular panels shall not be visible from a public or private street.

14.2-6.6 <u>Signs</u>

14.2-6.6a Roof mounted, portable, and temporary signs, as well as banners and pennants are prohibited, with the exception that one sign provided in Section 18-8-12.2 may be installed per property in accordance with the provisions of that Section. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

14.2-6.6b The message portion of signs should have no more than three (3) colors. Signs that indicate the direction of an emergency medical facility shall have no more than four (4) colors. (9/9/08, Case TA-08-06, Ord. No. 2008-39)

14.2-6.6c Signs shall not be internally illuminated, unless such signs indicate the direction of an emergency medical facility, medical center, or related healthcare/administrative facility within a medical center. (9/9/08, Case TA-08-06, Ord. No. 2008-39)

14.2-6.6d Freestanding signs shall be of a ground-mounted monument type and shall be of style, color, and materials consistent with the main structure(s). Signs shall not be greater than six feet (6') in height in the Amherst Street and Pleasant Valley Road/Cork Street Corridors, nor ten feet (10') in height in the Cedar Creek Grade Corridor, unless such signs indicate the direction of an emergency medical facility, medical center or related healthcare/administrative facility within a medical center. Signs in the Amherst Street Corridor indicating the direction of an emergency medical facility, medical center or related healthcare/administrative facility within a medical center shall not be greater than twenty feet (20') in height. (9/9/08, Case TA-08-06, Ord. No. 2008-39)

14.2-6.7 Lighting

14.2-6.7a Site lighting should be from concealed sources (i.e., the luminaire or bulb itself is not visible), shall be of a clear white or amber light that does not distort colors, and shall not spill over onto adjoining properties, buffers, highways, nor impair the vision of motor vehicle operators.

14.2-6.7b Lighting fixtures or devices should be of a downcast directional or cut-off type capable of shielding the light source from direct view and providing well-defined lighting patterns. Exceptions may be permitted for lower voltage accent lighting such as traditional coach lights.

14.2-6.7c Free-standing parking lot lighting fixtures and supports shall be of ornamental design and not exceed twenty feet (20') in height.

14.2-6.7d Building lighting should not be high voltage wall-pack lighting, and should either be recessed under roof overhangs or generated from low voltage decorative level light fixtures.

14.2-6.8 Fences and Walls

14.2-6.8a Chain link fence shall not be located in the front and corner side yard.

14.2-6.8b Chain link fence shall not be visible from the street.

14.2-6.8c Existing limestone freestanding or retaining walls shall be preserved.

14.2-6.8d New freestanding or retaining walls shall be made of stone or brick.

14.2-6.9 Other

14.2-6.9a Outdoor display of merchandise shall not be visible from a public or private street.

14.2-6.9b Creative design and locating of telecommunication equipment is encouraged, however towers shall not be of lattice construction.

14.2-6.10 Conditional Uses

Deviation from the standards contained in Sections 14.2-6.1a, 14.2-6.1c, 14.2-6.3d, 14.2-6.3e, 14.2-6.4a, and/or 14.2-6.4e, may be appropriate to consider based on a site's location and/or creative design that otherwise fulfills the intent of the Corridor Enhancement (CE) District.

14.2-6.10a Structure more than eighty-five feet (85') from public right-of-way.

14.2-6.10b Structure with a foot print exceeding 8,000 square feet for the Amherst Street Corridor or 10,000 square feet for the Cedar Creek Grade Corridor.

14.2-6.10c Drive-thru stations oriented toward a front or corner side yard.

14.2-6.10d More than two (2) drive-thru stations.

14.2-6.10e Primary roof pitch less than 6:12.

14.2-6.10f Excessive spans of solid walls or glass elevations, exceeding the ratio of 1:2 for front and corner side elevations or 1:3 for non corner side elevation. Elevation(s) completely deficient in transparent wall area should include at least some false doors, windows, or treatments that imply the presence of doors or windows.

14.2-7 BERRYVILLE AVENUE AND VALLEY AVENUE CORRIDORS

14.2-7.1 Building Orientation

14.2-7.1a At least one structure on the site shall be no more than eighty-five feet (85') from public right-of-way, except as per Section 14.2-7.10a of this Ordinance.

14.2-7.1b No structure, other than an accessory structure, shall have a footprint less than 1,000 square feet.

14.2-7.1c No structure should have a foot print exceeding 50,000 square feet.

14.2-7.1d At least one main entrance of the structure shall be oriented toward a public street frontage.

14.2-7.2 Site Access

14.2-7.2a Provisions shall be made for connectivity of sidewalks to adjacent parcels, and inter-parcel access from existing/proposed off-street parking areas to parking areas on adjacent parcels, where appropriate.

14.2-7.2b Bike racks and/or improvements supporting mass-transit are encouraged to promote multi-modal transportation.

14.2-7.3 Parking and Drive-Thru

14.2-7.3a No more than sixty feet (60') of off-street parking should be located between a structure and the street.

14.2-7.3b Off-street parking should be located in non corner side or rear yards.

14.2-7.3c Off-street parking located in a front or corner side yards should be a minimum of fifteen feet (15') from public right of way.

14.2-7.3d Drive-thru(s) should not be oriented toward a front or corner side yard. Projects that fully comply with this guideline shall qualify for one (1) unit of Development Incentive as outlined in Section 14.2-12. (8/14/07, Case TA-07-03, Ord. No. 2007-28)

14.2-7.3e No more than four (4) drive-thru stations should be provided.

14.2-7.4 Main Structure

14.2-7.4a Primary roofs, as defined, should have a minimum pitch of 6:12, and should include features such as: gables, soffits, dormers, and/or cupolas. Long monotonous primary roof planes of more than forty six feet (46') in length along the front and corner side elevation, and sixty six feet (66') in length for non-corner side and rear elevations should be avoided. Said roof planes should be broken by a minimum of one other roof plane. The intervening roof plane(s) should be at a different angle and or pitch to the longer roof plane. Projects that fully comply with all of the above guidelines shall qualify for one (1) unit of Development Incentive as outlined in Section 14.2-12. (8/14/07, Case TA-07-03, Ord. No. 2007-28)

14.2-7.4b Enhancements to the structure including porches, canopies, and awning, which soften the structure's impact to the street, are encouraged. Awnings should be of a cloth material.

14.2-7.4c Long monotonous facades of more than forty feet (40') in length along the front and corner side elevation, and sixty feet (60') in length for non-corner side and rear elevations shall be avoided. The wall plane shall be broken by off-sets of at least six inches (6") of vertical recess or reveal.

14.2-7.4d Façade enhancements such as cornices, pilasters, band or sill courses, lintels, arches, foundation accents, quoins, etc. are encouraged to avoid long monotonous building planes.

14.2-7.4e To avoid excessive spans of solid walls or glass elevations, the Ratio Of Transparent to Opaque Treatment, as defined, for front and corner side elevations should be between 1:1 and 1:3 or vice versa. The ratio of transparent to opaque treatment for non-corner side elevations should be between 1:1 and 1:5 or vice versa. This shall be interpreted to facilitate the distribution of transparent and opaque wall area across the surface of the building exterior. False windows and fake shuttered openings may be accepted on a limited basis. Projects that fully comply with all of the above guidelines shall qualify for one (1) unit of Development Incentive as outlined in Section 14.2-12. (8/14/07, Case TA-07-03, Ord. No. 2007-28)

14.2-7.4f No portion of a building, except the rear elevation, shall be constructed of barren and unfinished concrete masonry unit (cinder block) or corrugated material or sheet metal. This shall not be interpreted to preclude the use of architectural or split face block as a building material.

14.2-7.4g Reflective surfaces are generally not considered acceptable exterior material, other than window glass.

14.2-7.4h No more than three (3) colors, excluding roof color, should be used per building. Semitransparent stains are recommended for application on natural wood finishes. All color schemes shall be submitted for review and approval. Schemes shall demonstrate compatibility with building architecture and surrounding development. (5/9/06, Case TA-06-02, Ord. No. 20-2006)

14.2-7.4i Mechanical equipment shall be placed in the non-corner side or rear yard or rear roof elevation. Exceptions may be administratively approved for equipment in front or corner side yards when fully screened from street view. (8/14/07, Case TA-07-03, Ord. No. 2007-28)

14.2-7.4j In addition to the provision for undergrounding of utilities in Section 18-22-1 of this Ordinance, any change of use which increases the parking requirement shall incorporate placement of distribution lines for electrical, telephone, cable television and any other services requiring wires or cables underground. The Administrator may waive, after petition by the property owner, this requirement for residential work when the administrator determines that such waiver is warranted because there are few if any utility poles on the project side of the street and a waiver will prevent the installation of additional utility poles. Such petition shall be made in the form prescribed by the Administrator and accompanied by the fee as per Article 23 of this Ordinance.

14.2-7.5 <u>Accessory Structures</u>

14.2-7.5a Accessory structure(s) should be of style, color, and materials consistent with the main structure(s).

14.2-7.5b Utilities and support equipment shall be placed in the rear yard.

14.2-7.5c Dish antennas and cellular panels shall not be visible from a public or private street.

14.2-7.6 <u>Signs</u>

14.2-7.6a Roof mounted signs, banners, and pennants are prohibited, portable and temporary signs should not be used, with the exception that one sign provided in Section 18-8-12.2 may be installed per property in accordance with the provisions of that Section. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

14.2-7.6b The message portion of signs should have no more than three (3) colors.

14.2-7.6c Signs should not be internally illuminated.

14.2-7.6d Internally illuminated signs shall have a dark background with light letters.

14.2-7.6e Freestanding signs should be of a ground-mounted monument type and should be of style, color, and materials consistent with the main structure(s). Signs shall not be greater than twenty feet (20') in height.

14.2-7.7 <u>Lighting</u>

14.2-7.7a Site lighting should be from concealed sources (i.e., the luminaire or bulb itself is not visible), shall be of a clear white or amber light that does not distort colors, and shall not spill over onto adjoining properties, buffers, highways, nor impair the vision of motor vehicle operators.

14.2-7.7b Lighting fixtures or devices should be of a downcast directional or cut-off type capable of shielding the light source from direct view and providing well-defined lighting patterns. Exceptions may be permitted for lower voltage accent lighting such as traditional coach lights.

14.2-7.7c Free-standing parking lot lighting fixtures and supports should be of ornamental design and shall not exceed thirty feet (30') in height.

14.2-7.7d Building lighting should not be high voltage wall-pack lighting, and should either be recessed under roof overhangs or generated from low voltage decorative level light fixtures.

14.2-7.8 Fences and Walls

14.2-7.8a Chain link fence shall not be located in the front and corner side yard.

14.2-7.8b Chain link fence should not be visible from the street.

14.2-7.8c Existing limestone freestanding or retaining walls should be preserved. Projects that fully comply with the above guideline shall qualify for one (1) unit of Development Incentive as outlined in Section 14.2-12. (8/14/07, Case TA-07-03, Ord. No. 2007-28)

14.2-7.8d New freestanding or retaining walls shall be made of stone or brick.

14.2-7.9 Other

14.2-7.9a Outdoor display of merchandise should not be visible from a public or private street.

14.2-7.9b Creative design and locating of telecommunication equipment is encouraged, however towers should not be of lattice construction.

14.2-7.10 Conditional Uses

Deviation from the standards contained in Sections 14.2-7.1a may be appropriate to consider based on a site's location and/or creative design that otherwise fulfills the intent of the Corridor Enhancement (CE) District. (8/14/07, Case TA-07-03, Ord. No. 2007-28)

14.2-7.10a Structure more than eighty five feet (85') from public right-of-way.

14.2-7.10b Repealed. (8/14/07, Case TA-07-03, Ord. No. 2007-28)

14.2-7.10c Repealed. (8/14/07, Case TA-07-03, Ord. No. 2007-28)

14.2-7.10d Repealed. (8/14/07, Case TA-07-03, Ord. No. 2007-28)

14.2-8 FAIRMONT AVENUE, MILLWOOD AVENUE, AND NORTH LOUDOUN STREET CORRIDORS

14.2-8.1 Building Orientation

14.2-8.1a At least one structure on the site shall be no more than fifty feet (50') from public right-of-way, except as per Section 14.2-8.10a of this Ordinance.

14.2-8.1b No structure, other than an accessory structure, shall have a footprint less than 1,000 square feet.

14.2-8.1c No structure should have a foot print exceeding 20,000 square feet.

14.2-8.1d At least one main entrance of the structure shall be oriented toward a public street frontage.

14.2-8.2 Site Access

14.2-8.2a Provisions shall be made for connectivity of sidewalks to adjacent parcels, and inter-parcel access from existing/proposed off-street parking areas to parking areas on adjacent parcels, where appropriate.

14.2-8.2b Bike racks and/or improvements supporting mass-transit are encouraged to promote multi-modal transportation.

14.2-8.3 Parking and Drive-Thru

14.2-8.3a No more than sixty feet (60') of off-street parking should be located between a structure and the street.

14.2-8.3b Off-street parking should be located in non corner side or rear yards.

14.2-8.3c Off-street parking located in a front or corner side yards should be a minimum of fifteen feet (15') from public right of way.

14.2-8.3d Drive-thru(s) shall not be oriented toward a front or corner side yard, except as per Section 14.2-8.10b of this Ordinance.

14.2-8.3e No more than three (3) drive-thru stations should be provided.

14.2-8.4 Main Structure

14.2-8.4a Primary roofs, as defined, should have a minimum pitch of 6:12, and should include features such as: gables, soffits, dormers, and/or cupolas.

14.2-8.4b Enhancements to the structure including porches, canopies, and awning, which soften the structure's impact to the street, are encouraged. Awnings should be of a cloth material.

14.2-8.4c Long monotonous facades of more than forty feet (40') in length along the front and corner side elevation, and sixty feet (60') in length for non-corner side and rear elevations shall be avoided. The wall plane shall be broken by off-sets of at least six inches (6") of vertical recess or reveal.

14.2-8.4d Facade enhancements such as cornices, pilasters, band or sill courses, lintels, arches, foundation accents, quoins, etc. are encouraged to avoid long monotonous building planes.

14.2-8.4e To avoid excessive spans of solid walls or glass elevations, the Ratio Of Transparent To Opaque treatment for front and corner side elevations shall be between 1:1 and 1:2 or vice versa, except as per Section 14.2-8.10c of this Ordinance. The ratio of transparent to opaque treatment for non-corner side elevations should be between 1:1 and 1:4 or vice versa. This shall be interpreted to facilitate the distribution of transparent and opaque wall area across the surface of the building exterior. False windows and fake shuttered openings may be accepted on a limited basis.

14.2-8.4f No portion of a building, except the rear elevation, shall be constructed of barren and unfinished concrete masonry unit (cinder block) or corrugated material or sheet metal. This shall not be interpreted to preclude the use of architectural or split face block as a building material.

14.2-8.4g Reflective surfaces are generally not considered acceptable exterior material, other than window glass.

14.2-8.4h No more than three (3) colors, excluding roof color, should be used per building. Semitransparent stains are recommended for application on natural wood finishes. All color schemes shall be submitted for review and approval. Schemes shall demonstrate compatibility with building architecture and surrounding development. (5/9/06, Case TA-06-02, Ord. No. 20-2006)

14.2-8.4i Mechanical equipment shall be placed in the rear yard or rear roof elevation.

14.2-8.4j In addition to the provision for undergrounding of utilities in Section 18-22-1 of this Ordinance, any change of use which increases the parking requirement shall incorporate placement of distribution lines for electrical, telephone, cable television and any other services requiring wires or cables underground. The Administrator may waive, after petition by the property owner, this requirement for residential work when the administrator determines that such waiver is warranted because there are few if any utility poles on the project side of the street and a waiver will prevent the installation of additional utility poles. Such petition shall be made in the form prescribed by the Administrator and accompanied by the fee as per Article 23 of this Ordinance.

14.2-8.5 <u>Accessory Structures</u>

14.2-8.5a Accessory structure(s) should be of style, color, and materials consistent with the main structure(s).

14.2-8.5b Utilities and support equipment shall be placed in the rear yard.

14.2-8.5c Dish antennas and cellular panels shall not be visible from a public or private street.

14.2-8.6 <u>Signs</u>

14.2-8.6a Roof mounted signs, banners, and pennants are prohibited, portable and temporary signs should not be used, with the exception that one sign provided in Section 18-8-12.2 may be installed per property in accordance with the provisions of that Section. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

14.2-8.6b The message portion of signs should have no more than three (3) colors.

14.2-8.6c Signs should not be internally illuminated.

14.2-8.6d Internally illuminated signs shall have a dark background with light letters.

14.2-8.6e Freestanding signs should be of a ground-mounted monument type and should be of style, color, and materials consistent with the main structure(s). Signs shall not be greater than fifteen feet (15') in height.

14.2-8.7 <u>Lighting</u>

14.2-8.7a Site lighting should be from concealed sources (i.e., the luminaire or bulb itself is not visible), shall be of a clear white or amber light that does not distort colors, and shall not spill over onto adjoining properties, buffers, highways, nor impair the vision of motor vehicle operators.

14.2-8.7b Lighting fixtures or devices should be of a downcast directional or cut-off type capable of shielding the light source from direct view and providing well-defined lighting patterns. Exceptions may be permitted for lower voltage accent lighting such as traditional coach lights.

14.2-8.7c Free-standing parking lot lighting fixtures and supports should be of ornamental design and shall not exceed twenty four feet (24') in height.

14.2-8.7d Building lighting should not be high voltage wall-pack lighting, and should either be recessed under roof overhangs or generated from low voltage decorative level light fixtures.

14.2-8.8 Fences and Walls

14.2-8.8a Chain link fence shall not be located in the front and corner side yard.

14.2-8.8b Chain link fence should not be visible from the street.

14.2-8.8c Existing limestone freestanding or retaining walls shall be preserved.

14.2-8.8d New freestanding or retaining walls shall be made of stone or brick.

14.2-8.9 Other

14.2-8.9a Outdoor display of merchandise should not be visible from a public or private street.

14.2-8.9b Creative design and locating of telecommunication equipment is encouraged, however towers should not be of lattice construction.

14.2-8.10 Conditional Uses

Deviation from the standards contained in Sections 14.2-8.1a, 14.2-8.3d, and/or 14.2-8.4e may be appropriate to consider based on a site's location and/or creative design that otherwise fulfills the intent of the Corridor Enhancement District.

14.2-8.10a Structure more than fifty feet (50') from public right-of-way.

14.2-8.10b Drive-thru stations oriented toward a front or corner side yard.

14.2-8.10c Excessive spans of solid walls or glass elevations, exceeding the ratio of 1:2 for front and corner side elevations. Elevation(s) completely deficient in transparent wall area should include at least some false doors, windows, or treatments that imply the presence of doors or windows.

14.2-9 NATIONAL AVENUE CORRIDOR

14.2-9.1 Building Orientation

14.2-9.1a At least one structure on the site shall be no more than thirty feet (30') from public right-of-way, except as per Section 14.2-9.10a of this Ordinance.

14.2-9.1b No structure, other than an accessory structure, shall have a footprint less than 600 square feet.

14.2-9.1c No structure should have a foot print exceeding 2,500 square feet.

14.2-9.1d At least one main entrance of the structure shall be oriented toward a public street frontage.

14.2-9.2 Site Access

14.2-9.2a Provisions shall be made for connectivity of sidewalks to adjacent parcels, and inter-parcel access from existing/proposed off-street parking areas to parking areas on adjacent parcels, where appropriate.

14.2-9.2b Bike racks and/or improvements supporting mass-transit are encouraged to promote multi-modal transportation.

14.2-9.3 Parking and Drive-Thru

14.2-9.3a No more than sixty feet (60') of off-street parking should be located between a structure and the street.

14.2-9.3b Off-street parking should be located in non corner side or rear yards.

14.2-9.3c Off-street parking located in a front or corner side yards should be a minimum of fifteen feet (15') from public right of way.

14.2-9.3d Drive-thru(s) shall not be oriented toward a front or corner side yard, except as per Section 14.2-9.10b of this Ordinance.

14.2-9.3e No more than two (2) drive-thru stations should be provided.

14.2-9.4 Main Structure

14.2-9.4a Primary roofs, as defined, should have a minimum pitch of 6:12, and should include features such as: gables, soffits, dormers, and/or cupolas.

14.2-9.4b Enhancements to the structure including porches, canopies, and awning, which soften the structure's impact to the street, are encouraged. Awnings should be of a cloth material.

14.2-9.4c Long monotonous facades of more than twenty-four feet (24') in length along the front and corner side elevation, and thirty-six feet (36') in length for non-corner side and rear elevations shall be avoided. The wall plane shall be broken by off-sets of at least six inches (6") of vertical recess or reveal.

14.2-9.4d Façade enhancements such as cornices, pilasters, band or sill courses, lintels, arches, foundation accents, quoins, etc. are encouraged to avoid long monotonous building planes.

14.2-9.4e To avoid excessive spans of solid walls or glass elevations, the Ratio Of Transparent To Opaque treatment for front and corner side elevations shall be between 1:1 and 1:2 or vice versa, except as per Section 14.2-9.10c of this Ordinance. The ratio of transparent to opaque treatment for non-corner side elevations should be between 1:1 and 1:4 or vice versa. This shall be interpreted to facilitate the distribution of transparent and opaque wall area across the surface of the building exterior. False windows and fake shuttered openings may be accepted on a limited basis.

14.2-9.4f No portion of a building, except the rear elevation, shall be constructed of barren and unfinished concrete masonry unit (cinder block) or corrugated material or sheet metal. This shall not be interpreted to preclude the use of architectural or split face block as a building material.

14.2-9.4g Reflective surfaces are generally not considered acceptable exterior material, other than window glass.

14.2-9.4h No more than three (3) colors, excluding roof color, should be used per building. Semitransparent stains are recommended for application on natural wood finishes. All color schemes shall be submitted for review and approval. Schemes shall demonstrate compatibility with building architecture and surrounding development. (5/9/06, Case TA-06-02, Ord. No. 20-2006)

14.2-9.4i Mechanical equipment shall be placed in the rear yard or rear roof elevation.

14.2-9.4j In addition to the provision for undergrounding of utilities in Section 18-22-1 of this Ordinance, any change of use which increases the parking requirement shall incorporate placement of distribution lines for electrical, telephone, cable television and any other services requiring wires or cables underground. The Administrator may waive, after petition by the property owner, this requirement for residential work when the administrator determines that such waiver is warranted because there are few if any utility poles on the project side of the street and a waiver will prevent the installation of additional utility poles. Such petition shall be made in the form prescribed by the Administrator and accompanied by the fee as per Article 23 of this Ordinance.

14.2-9.5 <u>Accessory Structures</u>

14.2-9.5a Accessory structure(s) should be of style, color, and materials consistent with the main structure(s).

14.2-9.5b Utilities and support equipment shall be placed in the rear yard.

14.2-9.5c Dish antennas and cellular panels shall not be visible from a public or private street.

14.2-9.6 <u>Signs</u>

14.2-9.6a Roof mounted signs, banners, and pennants are prohibited, portable and temporary signs should not be used, with the exception that one sign provided in Section 18-8-12.2 may be installed per property in accordance with the provisions of that Section. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

14.2-9.6b The message portion of signs should have no more than three (3) colors.

14.2-9.6c Signs should not be internally illuminated.

14.2-9.6d Internally illuminated signs shall have a dark background with light letters.

14.2-9.6e Freestanding signs should be of a ground-mounted monument type and should be of style, color, and materials consistent with the main structure(s). Signs shall not be greater than six feet (6') in height.

14.2-9.7 Lighting

14.2-9.7a Site lighting should be from concealed sources (i.e., the luminaire or bulb itself is not visible), shall be of a clear white or amber light that does not distort colors, and shall not spill over onto adjoining properties, buffers, highways, nor impair the vision of motor vehicle operators.

14.2-9.7b Lighting fixtures or devices should be of a downcast directional or cut-off type capable of shielding the light source from direct view and providing well-defined lighting patterns. Exceptions may be permitted for lower voltage accent lighting such as traditional coach lights.

14.2-9.7c Free-standing parking lot lighting fixtures and supports should be of ornamental design and shall not exceed sixteen feet (16') in height.

14.2-9.7d Building lighting should not be high voltage wall-pack lighting, and should either be recessed under roof overhangs or generated from low voltage decorative level light fixtures.

14.2-9.8 Fences and Walls

14.2-9.8a Chain link fence shall not be located in the front and corner side yard.

14.2-9.8b Chain link fence should not be visible from the street.

14.2-9.8c Existing limestone freestanding or retaining walls shall be preserved.

14.2-9.8d New freestanding or retaining walls shall be made of stone or brick.

14.2-9.9 Other

14.2-9.9a Outdoor display of merchandise should not be visible from a public or private street.

14.2-9.9b Creative design and locating of telecommunication equipment is encouraged, however towers should not be of lattice construction.

14.2-9.10 Conditional Uses

Deviation from the standards contained in Sections 14.2-9.1a, 14.2-9.3d, and/or 14.2-9.4e may be appropriate to consider based on a site's location and/or creative design that otherwise fulfills the intent of the Corridor Enhancement District.

14.2-9.10a Structure more than thirty feet (30') from public right-of-way.

14.2-9.10b Drive-thru stations oriented toward a front or corner side yard.

14.2-9.10c Excessive spans of solid walls or glass elevations, exceeding the ratio of 1:2 for front and corner side elevations. Elevation(s) completely deficient in transparent wall area should include at least some false doors, windows, or treatments that imply the presence of doors or windows.

14.2-10 RESERVED

14.2-11 RESERVED

14.2-12 CE DEVELOPMENT INCENTIVES (8/14/07, Case TA-07-03, Ord. No. 2007-28)

14.2-12.1 For new projects in which the developer chooses to incorporate certain Corridor Enhancement design guidelines, Development Incentives (D.I.) are offered in return. Where applicable, the D.I. are enumerated within the preceding sections of this Ordinance. Incentives are offered in D.I. units and may be applied to the following incentive areas:

14.2-12.2 Reduction of Required Parking – For each unit of Development Incentive, a three percent (3%) reduction of the total amount of required off-street parking shall be provided.

14.2-12.3 Residential Density – For mixed use projects that include at least thirty five percent (35%) of the total floor area in commercial use, each unit of Development Incentive shall provide a three percent (3%) increase in residential dwelling density.

(Editor's note: Article 14.2 established 4/12/05, Case TA-05-01, Ord. No. 011-2005)

ARTICLE 15

HEALTH SERVICES DISTRICT - HS

STATEMENT OF INTENT

This district establishes regulations intended to encourage the innovative, adaptive reuse of the former Stewart Street hospital site with lower intensity uses and development impact on adjacent zoning districts than existed prior to the relocation of the general hospital. The district is intended to accommodate closely related health services uses and other uses in support of the Medical Center District and to provide for an improved, convenient and efficient health care support and delivery system for the City.

SECTION 15-1. USE REGULATIONS.

All structures to be erected and land to be used shall be for one or more of the following uses.

15-1-1 The following uses shall be located within the principal health services structure. A principal structure is defined as a structure on a lot in which the main use is conducted. The principal health services structure is defined as a principal structure existing in the district at the time of adoption of this district, any addition to an existing structure, which addition shall be subject to development standards for new construction in effect at the time of addition, or a new structure with 50,000 square feet or more of floor area.

a. Housing: Dormitories for medical and dental interns, nurses, and allied health personnel.

b. Nursing homes and rest homes, and assisted living facilities. (9/14/10, Case TA-10-333, Ord. No. 2010-38)

c. Housing for the elderly and handicapped, provided that the building area devoted to such uses shall not exceed 25% of the gross floor area.

d. Health care support services and offices, general medical offices, dental offices and services, pharmaceutical centers, optical offices and clinics, medical reference laboratories, medical research facilities, and outpatient treatment centers.

e. Diagnostic laboratories serving the medical or dental profession.

f. Specialty hospitals limited to pediatrics, obstetrics, comprehensive medical rehabilitation services, hospices and psychiatric. The total building area devoted to such uses shall not exceed 25 percent of the gross floor area.

g. Durable medical equipment facilities; intended for retail and wholesale purposes, repair and servicing, and storage of medical, dental, optical and surgical supplies (inclusive of home oxygen services); provided that there shall be no outdoor sale or display. The total building area devoted to display space shall not exceed 4,000 gross square feet.

h. Adult day care.

i. Day care facilities or day care nurseries.

j. Institutions of higher education, including colleges and universities.

k. Educational facilities for the training of interns, nurses and allied health personnel.

l. Personal service and retail establishments serving the HS District provided that the cumulative total building area devoted to such uses does not exceed 3000 gross square feet.

m. Automatic bank teller machines

n. Restaurants for on-premises consumption only by persons or families of persons using the other services and facilities of the HS District provided that the cumulative total building area devoted to such uses does not exceed 3,000 gross square feet.

o. Conference facilities.

p. Indoor recreational facilities.

q. Sports medicine clinics.

r. Offices for not-for-profit agencies provided that the cumulative total building area devoted to such uses does not exceed 10,000 square feet.

s. Accessory uses as defined, to include hospital laundry, medical service, warehousing, maintenance and materials management for medical center use.

15-1-2 Single family detached dwelling and Group Home. (10/9/07, Case TA-07-02, Ord. No. 2007-41)

15-1-3 Surface parking pads for mobile medical treatment equipment, including portable Magnetic Resonance Imaging units, provided that the equipment on such pads shall be screened from adjacent properties and public street view.

15-1-4 Transit stops.

15-1-5 Public libraries.

15-1-6 Fire and rescue squad stations.

15-1-7 Public parks, community gardens, and playgrounds. (10/12/10, Case TA-10-418, Ord. No. 2010-51)

15-1-8 Churches and places of religious worship, but not including rescue missions or temporary revival tents.

15-1-9 Public schools, elementary, middle, and high, and private schools having the same curricula that is ordinarily given in public schools.

15-1-10 Off-street surface parking and loading for uses in accordance with Section 18-6 of this Ordinance or otherwise established by a master traffic and parking plan designed for the specific and coordinated parking and traffic management requirements of the HS District.

15-1-11 Signs in accordance with Section 18-8 of this Ordinance.

15-1-12 Public utilities, such as distribution transformers, pipes, meters, water and sewer lines, booster or relay stations, and transformer substations as well as private on-site utility systems, such as heating and cooling plants, emergency generators and related electro-mechanical systems, when screened from public street view, except that incinerator facilities are not permitted.

SECTION 15-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

15-2-1 Parking garages

15-2-2 Waivers from area, height, density, bulk, width, and landscaping regulations if such waivers are consistent with the intent of the HS District to reduce development impacts on adjacent zoning districts and if it can be clearly demonstrated that:

a. Safe and more convenient access will be provided to HS District structures, open space, community facilities, and other areas of the development; and

b. Improved parking distribution, as well as improved access and circulation for emergency and service vehicles will be provided; and

c. Principal access points will be designed to permit smooth traffic flow and minimum hazards to vehicular, bicycle, and pedestrian traffic; and

d. Improved architectural and landscape design, both functional and aesthetic, will be achieved.

e. The waiver is not deemed to have a negative impact on the neighborhood.

15-2-3 Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems in accordance with Section 18-2-1.2 of this Ordinance. (2/13/96, Case TA-95-07, Ord. No. 002-96)

SECTION 15-3. AREA REGULATIONS.

15-3-1 The maximum floor area ratio (FAR) shall be 1.6, except that the maximum square footage shall not exceed 250,000 square feet.

15-3-2 The floor area ratio shall be determined by dividing the gross floor area of all buildings on the lot(s) by the area of the lot(s) which is under common ownership within the HS District.

15-3-3 The gross floor area of any HS District building is equal to the sum of the total horizontal areas of the several floors of the buildings on a lot or lots, measured from the exterior faces of the exterior walls. The term "gross floor area" shall include basements, elevator shafts and stairwells at each story, as well as floor spaces uses for mechanical equipment, penthouses, attic spaces and balconies.

15-3-4 Floor area ratio entitlements for a given lot may be assigned (either in whole or in part) to other lots within the HS District, provided that such lots are under common ownership and that there shall be an acknowledgement by the owner(s) at time of plan approval that such assignment proportionately reduces the residual development rights of the former lot. Such assignment shall be duly acknowledged and recorded in the Circuit Court Clerk's office.

15-3-5 The minimum lot area for a single family dwelling shall be 8,000 square feet

15-3-6 The minimum average floor area per unit for housing for the elderly and handicapped shall be six hundred (600) square feet; and no unit shall have less than five hundred (500) square feet of gross floor area. <

SECTION 15-4. LOT WIDTH REGULATIONS.

15-4-1 The minimum lot width for all uses shall be eighty (80) feet, except that the minimum lot width for single family dwellings shall be fifty (50) feet.

SECTION 15-5. SETBACK REGULATIONS.

15-5-1 Main buildings Twenty-five (25) feet. (3/8/94, Case TA-93-08, Ord. No. 004-94)

SECTION 15-6. YARD REGULATIONS.

15-6-1 Side. 10 feet, except when abutting a residential or residential-office district in which case there shall be a minimum side yard of 20 feet. The side yard for a single family dwelling shall be six (6) feet.

15-6-2 Rear. 20 feet, except when abutting a residential or residential-office district in which case there shall be a minimum rear yard of 25 feet.

SECTION 15-7. HEIGHT REGULATIONS.

15-7-1 Buildings may be erected up to thirty-five (35) feet from grade except that principal health services buildings existing at the time of adoption of this Ordinance may be allowed above 35 feet.

15-7-2 Church spires, belfries, cupolas, chimneys, flues, flag poles, television and radio antennas, and equipment penthouses are exempt from these height requirements.

SECTION 15-8. CORNER SIDE YARD REGULATIONS. (9/13/05, Case TA-05-04, Ord. No. 027-2005)

15-8-1 For all uses: twenty (20) feet or more.

SECTION 15-9. LANDSCAPE REQUIREMENTS.

15-9-1 A minimum of 25% of the total area shall be landscaped open space.

SECTION 15-10. ADDITIONAL REGULATIONS.

15-10-1 Loading docks, maintenance facilities, and vehicular service access points shall be fully screened, landscaped and/or fenced to limit views to the general public, and shall be sited to minimize their impact on land uses adjacent to the HS District.

15-10-2 In addition to the provisions of Article 19 of this Ordinance, applications for site plan approval shall be accompanied by the following:

a. Graphic exhibits depicting a survey of the subject property, existing grades and natural property features, man-made improvements and boundary lines.

b. A concept plan depicting the generalized location and arrangement of all known and proposed land uses, including building elevations of structures to be located within the HS District.

c. A traffic and parking plan, based on a traffic impact study for planned uses, depicting the proposed traffic circulation system including the location and width of all streets, driveways and loading areas, parking requirements and space assignments.

d. An open space/landscaping plan exhibit depicting the location, conceptual arrangement, and schedule for installation of proposed open space areas including landscaped open spaces and provisions for screening and buffering of adjacent land uses.

e. A utility plan depicting the approximate location of proposed and existing utility systems.

ARTICLE 15.1

MEDICAL CENTER DISTRICT - MC

STATEMENT OF INTENT

This district is intended to permit the development, location and growth of a general hospital to serve as a nucleus of a master planned medical center complex, and to permit the location around the general hospital of closely related medical uses, such as medical offices, diagnostic laboratories, pharmaceutical centers, special patient care units, and housing units and other uses in support of the Medical Center. In order to provide for an improved, convenient and efficient master planned health care and delivery system for the community, this district shall be developed in general accord with the planning principles of the Planned Development guidelines outlined herein.

SECTION 15.1-1. USE REGULATIONS.

All structures to be erected or land to be used shall be for one or more of the following uses:

15.1-1-1 Educational facilities for the training of interns, nurses and allied health personnel.

15.1-1-2 Day nursery and day care centers.

15.1-1-3 Diagnostic laboratories serving the medical or dental profession.

15.1-1-4 Housing: including - dormitories for medical and dental interns, nurses, and allied health personnel.

15.1-1-5 Fire and rescue squad stations.

15.1-1-6 Helipad and Heliport for medical helicopters to serve main hospital structure.

15.1-1-7 Bus stops and transit facilities.

15.1-1-8 General hospitals and specialty hospitals, including but not limited to pediatrics, obstetrics, comprehensive medical rehabilitation, hospices, psychiatric, and other specialty hospitals serving the medical profession.

15.1-1-9 Emergency and critical care facilities.

15.1-1-10 Institutions of higher education, including colleges and universities.

15.1-1-11 Medical research facilities.

15.1-1-12 Medical and dental offices and clinics.

15.1-1-13 Nursing homes and rest homes, and assisted living facilities. (9/14/10, Case TA-10-333, Ord. No. 2010-38)

15.1-1-14 Churches and places of religious worship.

15.1-1-15 Pharmaceutical centers.

15.1-1-16 Parking garages.

15.1-1-17 Personal service and retail establishments (inclusive of banks and branch banks) serving the District when located either within the main hospital structure or in a physically contiguous structure to the main hospital.

15.1-1-18 Office for not-for-profit agencies.

15.1-1-19 Ambulance service and maintenance facilities, provided that such shall be sited no closer than one hundred feet from any R-district.

15.1-1-20 Outpatient treatment centers including day surgery centers.

15.1-1-21 Light manufacturing facilities, with no outdoor storage or display, devoted to fabrication, production, assembly and distribution of hospital-related medical and dental equipment and devices.

15.1-1-22 Durable medical equipment facilities and services; intended for the retail and wholesale and distribution, repair and servicing, and storage of medical, dental, optical and surgical supplies (inclusive of home oxygen services); provided that there shall be no outdoor storage or display.

15.1-1-23 Public utilities, such as distribution transformers, pipes, meters, water and sewer lines, booster or relay stations, transformer substations, and pump stations (appurtenances to these systems must be effectively screened).

15.1-1-24 On-site, freestanding utility system substations (such as heating and cooling plants, pump stations, and related electro-mechanical systems), provided that such shall be sited no closer than one hundred feet from any R-district.

15.1-1-25 Accessory uses as defined, to include automatic bank teller machines, hospital laundry, hospital service buildings, warehousing, maintenance and materials management buildings for medical center use.

15.1-1-26 Off-Street Parking Areas as defined in Section 18-6 of this Ordinance for permitted and conditional uses in the MC District and access drives for permitted and conditional uses in the B-2, B-1, CM-1, M-1, M-2, and HE-1 Districts in accordance with Section 18-6 of this Ordinance. (8/12/97, TA-97-06, Ord. No. 019-97; 3/8/05, TA-04-08, Ord. No. 007-2005)

15.1-1-27 Signs in accordance with Section 18-8 of this Ordinance.

15.1-1-28 Restaurants serving primarily (but not limited to) persons or families of persons using the services and facilities of the District.

15.1-1-29 Conference facilities.

15.1-1-30 Recreational facilities (indoor and outdoor), excluding those otherwise permitted and authorized for temporary events, intended for the primary semi-private use of doctors, hospital staff, in- and out-patients to the District and families and guests, provided that such facilities are in keeping with the stated objectives of the District. (1/11/11, Case TA-10-473, Ord. No. 2010-63)

15.1-1-31 Wellness & Fitness Center, as defined. (1/11/11, Case TA-10-473, Ord. No. 2010-63)

15.1-1-32 Housing for the elderly and handicapped and Adult Care Residences. (7/8/97, Case TA-97-05, Ord. No. 016-97)

15.1-1-33 Halfway houses and drug or alcohol treatment centers.

15.1-1-34 Professional offices.

15.1-1-35 Lodging facilities, such as hotels and motels, with or without related dining facilities serving primarily but not limited to persons or families of persons using the services and facilities of the District.

15.1-1-36 Group Home. (10/9/07, Case TA-07-02, Ord. No. 2007-41)

SECTION 15.1-2. USES PERMITTED BY CONDITIONAL USE PERMIT.

15.1-2-1 Helipad and heliport for medical helicopters to serve structures within the District other than the main hospital structure (see "Additional Regulations").

15.1-2-2 Personal service and retail establishments (including banks and branch banks; but not including short-term loan establishments, as defined in Article 1) serving the District when located within freestanding structures not physically connected to the main hospital structure. (4/3/10, Case TA-10-21, Ord. No. 2010-06)

15.1-2-3 Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems in accordance with Section 18-2-1.2 of this Ordinance. (2/13/96, Case TA-95-07, Ord. No. 002-96)

SECTION 15.1-3. AREA REGULATIONS.

15.1-3-1 The minimum lot area (area prescribed to total building project boundary and/or development phase) for each building containing or intended to contain one or more permitted or conditional use shall be twenty thousand (20,000) square feet, except that:

a. the minimum lot area for each building containing or intended to be used for housing for the elderly and handicapped shall be thirty-three hundred (3300) square feet total project area per dwelling unit.

b. the minimum lot area for each building containing or intended to be used for homes for adults, dormitories, nursing homes, halfway houses and/or alcohol and drug rehabilitation shall be one thousand (1000) square feet total project area per bed.

c. the area requirements for other types of residential uses to be located within the District shall be determined by the area regulations for that particular unit type as prescribed in the HR District in the adopted City Ordinance. (See "Additional Regulations").

SECTION 15.1-4. LOT WIDTH REGULATIONS.

15.1-4-1 The minimum lot width for all permitted or conditional uses in this district shall be one hundred (100) feet. In cases where structures are to be developed and maintained in condominium ownership or with common party walls, there shall be no lot width requirements; provided that where a condominium structure is developed in such a fashion as to contain side yards without building improvements, the property shall be developed as if the minimum lot width was in effect.

SECTION 15.1-5. SETBACK REGULATION.

15.1-5-1 Structures shall be located at least:

a. thirty-five (35) feet from any public street or highway right-of-way, or

b. forty-five (45) feet from any private street (measured to the outside edge of pavement) which functions in lieu of a public street as a major traffic collector for the District.

SECTION 15.1-6. YARD REGULATIONS.

15.1-6-1 Side. The minimum width of each side yard for a main structure shall be twenty-five (25) feet, except that when such use abuts a R-district, there shall be a minimum side yard of fifty (50) feet, provided that the side yard abutting the R-district shall not be less than the horizontal distance derived from the ratio of one foot in horizontal distance for every one foot in building height of structure.

15.1-6-2 Rear. Each main structure shall have a rear yard of at least twenty five (25) feet, except that when such use abuts a R-district, there shall be a minimum rear yard of thirty-five (35) feet provided that the rear yard abutting the R-district shall not be less than the horizontal distance derived for the ratio of one foot in horizontal distance for every one foot in building height of structure.

15.1-6-3 Where buildings are developed and maintained under condominium ownership or where buildings are developed with linked connections and/or common party walls there shall be no side and rear yard requirements; provided that where side and rear yards are to be incorporated into the development plan for a condominium structure, the minimum dimension of those yards shall be governed as if subdivision lot lines and yard requirements existed.

15.1-6-4 Where individual structures are not physically connected by common party walls, linking structures, or other architectural unit, then such structures shall be located no closer to each other than a horizontal distance derived from the ratio of one foot in horizontal distance for every one foot in building height of the taller structure.

SECTION 15.1-7. HEIGHT REGULATIONS.

15.1-7-1 Buildings may be erected up to thirty-five (35) feet from grade, except that:

15.1-7-2 Buildings, other than residential or lodging structures, may be erected up to ninety (90) feet, provided that the setback, side, and rear yard requirements, where applicable, shall be increased one (1) foot for each additional foot of building height over thirty-five (35) feet.

15.1-7-3 Residential or lodging structures may be erected up to a maximum of seventy (70) feet, provided that the setback, side, and rear yard requirements, where applicable, shall be increased one (1) foot for each additional foot of building height over thirty-five (35) feet.

15.1-7-4 Church spires, belfries, cupolas, chimneys, flues, flag poles, television antennas, radio aerials, and equipment penthouses are exempt from these height requirements.

SECTION 15.1-8. CORNER SIDE YARD REGULATIONS. (9/13/05, Case TA-05-04, Ord. No. 027-2005)

15.1-8-1 For all uses facing on a public street: thirty-five (35) feet or more.

15.1-8-2 For all uses facing on a private street used as a collector in the District: forty (40) feet or more.

SECTION 15.1-9. MINIMUM LANDSCAPED AREA.

15.1-9-1 The minimum landscaped open space in any District shall not be less than 0.20 times the gross acreage of the district; provided that where existing City landscaping requirements for residential development are more extensive, these provisions shall apply to residential projects within the District. Such landscaped open space shall not be open to vehicles, and shall be used to buffer adjoining R-districts from the impacts of the operation of District land uses.

15.1-9-2 All open space and landscaping improvements shall be specifically included in the development schedule for each District land use and shall be constructed and fully improved by the developer at an equivalent or greater rate for each site development activity than the total open space requirement for the entire District.

SECTION 15.1-10. ADDITIONAL REGULATIONS.

15.1-10-1a Heliports and helipads are to be designed, sited and constructed in accordance with all applicable FAA regulations and development criteria and shall otherwise be located within the District so as to minimize impacts on adjacent land uses. Approach patterns shall be designated and shall ensure minimal impact on adjoining properties.

15.1-10-1b Heliports and helipads shall not be located closer than 200 feet to any R-District. This distance may be increased at the discretion of the Commission if it is shown that helicopter approach patterns and/or frequency of use would adversely impact the R-District(s).

15.1-10-2 Variations from the regulations in the Land Subdivision Ordinance pertaining to streets, lots, and blocks may be granted by the Commission when it can be clearly demonstrated that:

a. Safe and convenient access will be provided to District structures, open space, community facilities, and other areas of the development;

b. Adequate access and circulation for emergency and service vehicles will be provided; and

c. Principal access points will be designed to permit smooth traffic flow and minimum hazards to vehicular, bicycle, and pedestrian traffic.

15.1-10-3 Private streets may be permitted in the District provided that their design and construction standards are approved by the City Engineer and that adequate provisions are made for their maintenance.

15.1-10-4 Maintenance and vehicular service buildings shall be fully screened, landscaped and/or fenced to limit views to the general public.

SECTION 15.1-11. APPLICATION.

15.1-11-1 Rezoning applications to the District shall be established as a Planned Development district by amendment to the official zoning map of the City, provided that any established or approved land uses within an existing District prior to the date of the adoption of this revision shall be exempt from these regulations.

15.1-11-2 The requirements for District application shall, insofar as applicable, be in accord with Section 13-4 of this Ordinance governing Planned Development district applications; provided that the application of Section 13-4-2.2b pertaining to Development Plan requirements shall be limited, as follows:

a. A graphic exhibit depicting property boundaries, topography, prime developable areas, environmentally sensitive areas and other unique physiographic characteristics of the land to be included in the District as well as the functional relationship between these areas.

b. A master plan depicting the generalized location, heights, density, coverage and arrangement of all known and proposed land uses to be located within the District, provided that where specific future land uses within the District have not been determined there shall be no requirement to establish specific building locations, building uses and building heights.

c. A phasing plan of development.

d. A transportation and parking master plan study depicting the proposed traffic circulation system, the location and width of all proposed and known streets and driveways, requirements for parking spaces and loading areas, with said study to be based on a traffic and parking impact analysis for the uses governed by the District.

e. A master plan exhibit depicting the location and conceptual arrangement of proposed and existing open space areas, including landscaped open spaces and provisions for screening and buffering of adjacent land uses.

f. A utility master plan depicting the approximate location of proposed and existing utility systems for sanitary sewer, storm sewer, water, and stormwater management.

15.1-11-3 Revisions, minor amendments and re-approvals to the Development Plan shall be in accord with Section 13-4-5 of the City Zoning Ordinance.

SECTION 15.1-12. WAIVERS.

15.1-12.1 Uses requiring waiver of height regulations may be granted at time of site plan or development plan application in such instances where the Planning Commission deems such waiver would be in furtherance of the site planning objectives and overall intent of the District.

15.1-12.2 Uses requiring waiver of width and setback regulations may be granted at time of site plan or development plan application in such instances where the Planning Commission deems such waiver would be in furtherance of the site planning objectives and overall intent of the District.

15.1-12.3 Uses requiring waiver of area and yard regulations may be granted at time of site plan or development plan application in such instances where the Planning Commission deems such waiver would be in furtherance of the site planning objectives and overall intent of the District.

15.1-12.4 Uses requiring waiver of parking and loading regulations may be granted at time of site plan or development plan application in such instances where the Planning Commission deems such waiver would be compatible with the Development Plan (as per Sections 15.1-11-2(d) and (e) of this district) as well as the overall intent of the District to provide for efficient parking and vehicular distribution.

(Editor's note: Article 15.1 established 4/12/83, Case 83-01, Ord. Book 8, Page 467)

ARTICLE 16

HIGHER EDUCATION DISTRICT - HE-1

STATEMENT OF INTENT

This district is intended to permit the location and growth of institutions of higher education in areas appropriate for such use.

SECTION 16-1. USE REGULATIONS.

Structures to be erected and land to be used shall be for the following uses:

16-1-1 Institutions of higher education.

16-1-2 Public utilities, such as poles, lines, distribution transformers, meters, water and sewer lines, booster or relay stations.

16-1-3 Accessory uses, as defined.

16-1-4 Off-Street Parking Areas as defined in Section 18-6 of this Ordinance for permitted and conditional uses in the HE-1 District and access drives for permitted and conditional uses in the B-2, B-1, CM-1, M-1, M-2, and MC Districts in accordance with Section 18-6 of this Ordinance. (8/12/97, Case TA-97-06, Ord. No. 019-97; 3/8/05, Case TA-04-08, Ord. No. 007-2005)

16-1-5 Signs in accordance with Section 18-8 of this Ordinance.

SECTION 16-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

16-2-1 Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems in accordance with Section 18-2-1.2 of this Ordinance. (2/13/96, Case TA-95-07, Ord. No. 002-96)

SECTION 16-3. AREA REGULATIONS.

The minimum lot area for permitted uses shall be as follows:

16-3-1 Institutions of higher education--For each main building containing or intended to contain a use associated with an institution of higher education, there shall be a minimum lot area of ten thousand (10,000) square feet.

SECTION 16-4. LOT WIDTH REGULATIONS.

16-4-1 The minimum lot width for all permitted uses shall be one hundred (100) feet.

SECTION 16-5. SETBACK REGULATIONS.

16-5-1 Main buildings: Thirty-five (35) feet.

SECTION 16-6. YARD REGULATIONS.

16-5-1 Side. The minimum width of each side yard for permitted uses shall be ten (10) feet.

16-6-2 Rear. Each main structure shall have a rear yard of at least twenty-five (25) feet.

SECTION 16-7. HEIGHT REGULATIONS.

16-7-1 Buildings may be erected up to thirty-five (35) feet from grade except that:

16-7-2 A building may be erected up to seventy-five (75) feet provided that the required side and rear yards are increased by one (1) foot for each foot of building height measured from the outside edge of the portion of the structure which is over thirty-five (35) feet. (6/13/95, Case TA-95-02, Ord. No. 027-95)

16-7-3 Church spires, belfries, cupolas, chimneys, flues, flag poles, television antennas, radio aerials, and equipment penthouses are exempt.

SECTION 16-8. CORNER SIDE YARD REGULATIONS. (9/13/05, Case TA-05-04, Ord. No. 027-2005)

As per Section 8-8 of this Ordinance.

ARTICLE 16.1

EDUCATION, INSTITUTION AND PUBLIC USE DISTRICT - EIP

STATEMENT OF INTENT

This district is intended to permit the location and growth of public and private educational, institutional, public and semi-public uses in areas appropriate for such uses. The district is intended to encourage the retention or adaptive reuse of larger public and institutional uses on sites identified for such uses in the adopted Comprehensive Plan.

SECTION 16.1-1 USE REGULATIONS.

Structures to be erected and land to be used shall be for the following uses:

16.1-1-1 Institutions of higher education.

16.1-1-2 Public schools, elementary, middle and high; and private schools having similar curricula to that ordinarily given in public schools. Boarding facilities accessory to and operated in conjunction with private schools are permitted.

16.1-1-3 Churches and Places of Worship, but not including rescue missions or temporary revival tents.

16.1-1-4 Fire, Rescue and Police Stations

16.1-1-5 Government uses consisting of one or more of the following: offices, warehousing, storage, distribution and facility maintenance operations. All uses shall be conducted wholly within a completely enclosed building or within an area enclosed on all sides by a solid wall, opaque fence and/or evergreen hedge equal in height to the material being stored, providing however, that no wall or fence shall be required to be higher than ten (10) feet. (6/13/00, Case TA-00-02, Ord. No. 014-2000)

16.1-1-6 Existing cemeteries and the expansion of such cemeteries when the expansion abuts the existing cemetery.

16.1-1-7 Public parks, community gardens, playgrounds and playfields. (10/12/10, Case TA-10-418, Ord. No. 2010-51)

16.1-1-8 Public Libraries

16.1-1-9 Public utilities, such as poles, lines, distribution transformers, meters, water and sewer lines, booster or relay stations.

16.1-1-10 Accessory uses, as defined.

16.1-1-11 Off-street parking and loading areas for permitted uses in accordance with Section 18-6 of this Ordinance.

16.1-1-12 Signs in accordance with Section 18-8 of this Ordinance.

SECTION 16.1-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

16.1-2-1 Transmitting and receiving facilities and towers for cellular communications systems and similar communications systems in accordance with Section 18-2-1.2 of this Ordinance.

16.1-2-2 Museums and Art Galleries. (5/12/98, Case TA-98-01, Ord. No. 013-98)

16.1-2-3 Day Nursery and Day Care Center.

16.1-2-4 Offices for non-profit and not-for-profit organizations.

16.1-2-5 Single-family dwelling and Group Home. (10/9/07, Case TA-07-02, Ord. No. 2007-41)

16.1-2-6 Repealed. (2/12/08, Case TA-07-09, Ord. No. 2008-11)

16.1-2-7 Preserved Civil War Battlefield Site. (8/16/02, Case TA-01-08, Ord. No. 047-2001)

16.1-2-8 Market gardens, including the sale of food and/or non-food crops produced on the site. (10/12/10, Case TA-10-418, Ord. No. 2010-51)

16.1-2-9 Accessory structure, used and occupied as a subordinate dwelling unit by a domestic employee, as defined; and, provided that such conditional use is recorded on the corresponding chain of title for the subject property in the office of the Winchester Circuit Court Clerk. Any such conditional use permit shall expire immediately upon change of ownership or change of occupancy of the main structure, so as to prevent undue density and overcrowding of land, which could adversely impact public health, safety, and welfare. (6/14/11, Case TA-11-06, Ord. No. 2011-14)

SECTION 16.1-3. AREA REGULATIONS.

The minimum lot area for permitted uses shall be as follows:

16.1-3-1 Institutions of higher education--For each main building containing or intended to contain a use associated with an institution of higher education, there shall be a minimum lot area of ten thousand (10,000) square feet.

16.1-3-2 Other permitted and conditional uses- The minimum area requirement shall be determined by the area requirement for that use in the most predominant adjacent zone as determined by the Administrator. If the use is not allowed in the adjacent zone, then the requirement shall be that of the use requiring the greatest area in the adjacent zone.

SECTION 16.1-4. LOT WIDTH REGULATIONS.

16.1-4-1 The minimum lot width for all uses shall be one hundred (100) feet.

SECTION 16.1-5. SETBACK REGULATIONS.

16.1-5-1 Main buildings: Thirty-five (35) feet.

SECTION 16.1-6. YARD REGULATIONS.

16.1-5-1 Side. Each main building shall have a side yard of at least ten (10) feet.

16.1-6-2 Rear. Each main building shall have a rear yard of at least twenty-five (25) feet.

SECTION 16.1-7. HEIGHT REGULATIONS.

16.1-7-1 Buildings may be erected up to thirty-five (35) feet from grade except that:

16.1-7-2 Church spires, belfries, cupolas, chimneys, flues, flag poles, television antennas, radio aerials, and equipment penthouses are exempt.

SECTION 16.1-8. CORNER SIDE YARD REGULATIONS. (9/13/05, Case TA-05-04, Ord. No. 027-2005)

As per Section 8-8 of this Ordinance.

(Editor's note: Article 16.1 established 9/9/97, Case TA-97-07, Ord. No. 021-97)

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ARTICLE 17

NONCONFORMING USES

SECTION 17-1. CONTINUATION.

Where at the time of passage of this Ordinance or any amendments thereto lawful use of land and/or structures exist which would not be permitted by this Ordinance, the use may be continued so long as it remains otherwise lawful, provided:

17-1-1 No such nonconforming use and/or structure shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance unless said enlargement does not result in an increase in nonconformity or results in a change to a use permitted in the district;

17-1-2 No such nonconforming use and/or structure shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use and/or structure at the effective date of adoption or amendment of this Ordinance unless said move results in decreasing the degree of nonconformity or results in conformity with the requirements for the district;

17-1-3 No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land. No additional uses of a nature which would be prohibited generally in the district involved shall be permitted.

17-1-4 Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land, outside such building;

17-1-5 When any nonconforming use is superseded by a permitted use, the use shall thereafter conform to the regulations for the district, and no nonconforming use shall thereafter be resumed;

17-1-6 If any such nonconforming use of land and/or structure ceases for any reason for a period of more than two (2) years (except when government action impedes access to the premises) any subsequent use of land and/or structure shall conform to the regulations specified by this Ordinance for the district in which such land is located.

17-1-7 If any change in title of possession, or renewal of a lease of any such lot or structure occurs, the existing use may continue.

17-1-8 Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing

development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act. (9/14/10, Case TA-10-332, Ord. No. 2010-37)

17-1-8.1 For the purpose of this section and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project: (i) the City Council has accepted proffers or proffered conditions which specify use related to a zoning amendment; (ii) the City Council has approved an application for a rezoning for a specific use or density; (iii) the City Council or Board of Zoning Appeals has granted a special exception or conditional use permit; (iv)the Board of Zoning Appeals has approved a variance; (v) the City Council or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; (vi) the City Council or its designated agent has approved a final subdivision plat, site plan of development for the landowner's property; or (vii) the Administrator or other administrative officer has issued a written order, requirement, decision or determination regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to appeal and no longer subject to change, modification or reversal under subsection C of §15.2-2311 of the Code of Virginia, as amended. (9/14/10, Case TA-10-332, Ord. No. 2010-37)

SECTION 17-2. PERMITS.

17-2-1 All nonconforming uses shall be issued a Certificate of Occupancy within twelve (12) months from the adoption of this Ordinance.

17-2-2 The construction or use of a nonconforming building or land area for which a building permit was issued legally prior to the adoption of this Ordinance may proceed, provided such building is completed within one (1) year, or such use of land established within thirty (30) days after the effective date of this Ordinance. However, the time period may be extended by the Governing Body, upon recommendation by the Planning Commission.

SECTION 17-3. REPAIRS AND MAINTENANCE.

17-3-1 On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done for any period of twelve (12) consecutive months on ordinary repairs or on repair or replacement of non-bearing walls, fixture wiring, or plumbing, to an extent not exceeding ten (10) percent of the current replacement cost of the nonconforming structures or nonconforming portion of the structure as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased.

17-3-2 If a nonconforming structure or portion of a structure thereof containing a nonconforming use, becomes physically unsafe or declared by any duly authorized official to be unsafe or unlawful be reason of physical condition, it shall not thereafter be restored, repaired, rebuilt, or used except in conformity with the regulations of the district in which it is located.

17-3-3 Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of a building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

SECTION 17-4. CHANGES IN DISTRICT BOUNDARIES.

17-4-1 Whenever the boundaries of a district are changed, any uses of land or buildings which become nonconforming as a result of such change shall become subject to the provisions of this Article.

SECTION 17-5. RESTORATION OR REPLACEMENT.

17-5-1 If a nonconforming structure or a conforming structure devoted to a nonconforming activity is destroyed or damaged in any manner, to the extent that the cost of restoration to its condition before the occurrence shall not exceed fifty (50) percent of the cost of reconstructing the entire structure, it may be repaired or restored, provided any such repair or restoration is started within six (6) months and completed within twelve (12) months from the date of partial destruction.

17-5-2 If the cost of restoration to its condition before the occurrence shall exceed fifty (50) percent of the cost of reconstructing the entire structure, it may be repaired or restored only upon the issuance of a special use permit by the Administrator with the approval of the Board of Zoning Appeals.

17-5-3 In approving such permit the Board shall consider the stated purpose for establishing the zoning district in which the structure is located, the uses in the area immediately surrounding the structure in question, particularly the other nonconforming uses, and the hardship which would result from a denial of the special use permit. The permit shall include conditions as to the time within which the repair or restoration must be started and completed and may contain any other conditions regarding the repair and restoration which in the opinion of the Board shall be necessary to carry out the intent of this section and the Ordinance.

17-5-4 The cost of land or any factors other than the cost of the structure are excluded in the determination of the cost of restoration for the purpose of calculating the percent of damage. (10/11/83, Case TA-83-06, Ord. No. 034-83)

17-5-5 Where nonconforming status applies to a use and/or structure, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this subsection is defined as the cost of reconstructing the entire structure to its condition before the occurrence. (10/11/83, Case TA-83-06, Ord. No. 034-83)

SECTION 17-6. NONCONFORMING LOTS OF RECORD.

17-6-1 Where a lot of record at the time of the effective date of this Ordinance has less area or width than herein required in the district in which it is located, said lot may nevertheless be used for a single-family detached dwelling if that use is permitted in the district in which it is located. Provided, however, that side yards of not less than ten percent (10%) of the required lot width, with a minimum width of five (5) feet, are provided; and that the setback and rear yard requirements shall be as required by the zoning district in which the lot is located. If the lot is a corner lot, a side yard facing on the side street of not less than twenty percent (20%) of the required lot width, with a minimum of ten (10) feet shall be provided. (11/15/78; 12/12/95, Case TA-95-06, Ord. No. 057-95)

17-6-2 In any district, existing single-family detached dwellings may be enlarged on any nonconforming lot of record, provided, however, that side yards of not less than ten percent (10%) of the lot width, with a minimum width of five (5) feet, are provided, and that the setback and rear yard requirements shall be as required by the zoning district in which the lot is located. If the lot is a corner lot, a side yard facing on the side street of not less than twenty percent (20 %) of the required lot width, with a minimum of ten (10 feet shall be provided. (11/15/78; 12/12/95, Case TA-95-06, Ord. No. 057-95)

17-6-3 In any district, existing permitted structures other than single-family detached dwellings may be enlarged on any nonconforming lot of record, provided that the setback and yard requirements are met. (11/15/78)

17-6-4 In any district, permitted structures, other than single-family detached dwellings, may be erected on a nonconforming lot of record, provided that a variance of lot width, setback, and/or yard requirements is obtained through action of the Board of Zoning Appeals. (11/15/78)

17-6-5 Where a lot of record at the time of the effective date of this Ordinance has less area or width than herein required in the district in which it is located, said lot may nevertheless be used for a community garden, if that use is permitted in the district in which said lot is located. (10/12/10, Case TA-10-418, Ord. No. 2010-51)

SECTION 17-7. HIGHWAY REALIGNMENT OR CONDEMNATION.

Any lot, which by reason of realignment of a federal or state highway or by reason of condemnation proceedings, has been reduced in size to an area less than that required by law, shall be considered a nonconforming lot of record subject to the provisions set forth in this section; and any lawful use or structure existing at the time of such highway realignment or condemnation proceedings which would thereafter no longer be permitted under the terms of this Ordinance shall be considered a nonconforming use of structure as that term is used in this Ordinance.

SECTION 17-8. ENLARGEMENT OF NONCONFORMING STRUCTURES.

17-8-1 In any district, existing permitted residential structures that do not meet setback, side, and rear yard requirements may be enlarged in line with the existing building, provided that the existing nonconforming setback, side, and rear yards are not reduced.

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ARTICLE 18

GENERAL PROVISIONS

SECTION 18-1. CERTIFICATE OF OCCUPANCY.

18-1-1.1 If a proposed use is in conformity with the provisions of this Ordinance, a Certificate of Occupancy shall be issued by the Zoning Administrator. Pending the issuance of this certificate, a temporary Certificate of Occupancy may be issued. Such temporary certificate shall not be construed as in any way altering the respective rights, duties, or obligations of the owner or the City relating to the use or occupancy of the land or building or any other matter covered by this Ordinance. Application for a Certificate of Occupancy shall be made to the Zoning Administrator. A Certificate of Occupancy issued under this section does not indicate compliance with any City codes or Ordinance other than the Zoning Ordinance. (10/11/83, Case 83-06, Ord. No. 034-83)

18-1-1.2 Written application for a Certificate of Occupancy for the use of vacant land or for a change in the use of land or a building, for a change of a nonconforming use, for the enlargement of a use for the continuation of a use as provided in Section one (1) of this Article, shall be made to the Zoning Administrator. If the proposed use is in conformity with the provisions of this Ordinance, and of all other applicable laws and ordinances, as certified to the Zoning Administrator by the officers, bodies, or agencies responsible for the administration thereof, the Certificate of Occupancy shall be issued within five (5) working days after the application for the same has been made.

18-1-1.3 Prior to the initiation of an application for a Certificate of Occupancy or for any other action as outlined in §15.2-2286(B), Code of Virginia, 1950, et seq., the applicant shall produce satisfactory evidence that any delinquent real estate taxes owed to the City of Winchester which have been properly assessed against the subject property have been paid. (9/8/09, Case TA-09-87, Ord. No. 2009-25)

18-1-2 WHEN REQUIRED.

18-1-2.1 A Certificate of Occupancy shall be obtained from the Zoning Administrator for any of the following:

a. Occupancy and use of a building hereafter erected.

b. Change in the use of an existing building.

c. Occupancy and use of vacant land, except for any agricultural use.

d. Change in the use of land, except for any agricultural use.

e. Any change in the use of a nonconforming use.

f. Enlargement of any use with respect to the unit of measurement specified in this chapter as the basis for determining the amount of required automobile parking space, whether the same is specified in terms of floor area, dwelling units, seats, or any other element of size of the use.

18-1-2.2 No such occupancy, use, or change or enlargement of use shall take place until a Certificate of Occupancy therefore has been issued by the Zoning Administrator.

18-1-3 NOT TO PERMIT VIOLATIONS OF LAW. No Certificate of Occupancy shall be deemed to validate any violation of any provision of any law or ordinance.

18-1-4 EFFECT. A Certificate of Occupancy shall be deemed to authorize, and is required for, both initial and continued occupancy and use of the building or land to which it applies and shall continue in effect so long as such building and the use thereof or of such land is in full conformity with the provisions of this Ordinance and any requirements made pursuant thereto. A Certificate of Occupancy for a Business or Home Occupation may be denied, suspended, or revoked by the Zoning Administrator where an applicant fails to produce satisfactory evidence that all delinquent business, personal property, meals, transient occupancy and admissions taxes owed by the business to the City have been paid, or it is otherwise determined that such taxes have not been paid. On the serving of notice of any violation of any of such provisions or requirements with respect to any building, or the use thereof or of land, the Certificate of Occupancy for such use shall thereupon become null and void and a new certificate shall be required for any further use of such building or land. (9/8/09, Case TA-09-87, Ord. No. 2009-25)

18-1-5 FOR BUILDINGS OR LAND WHEN REGULATIONS CHANGE. On written request by the owner, the Zoning Administrator shall issue a Certificate of Occupancy for any use of a building or of land existing at the time of the adoption of this Ordinance or at the time of the adoption of any amendments of this Ordinance changing the regulations applying to such building or land, certifying, after inspection and investigation, the extent and kind of such use and whether the same conforms to the provisions of this chapter for the district in which it is situated or is a nonconforming use. The Zoning Administrator may require such proof as may be necessary to enable him to make a determination in the matter, and the furnishings of such proof shall be a condition of his acting on the request.

SECTION 18-2. CONDITIONAL USE PERMIT.
(10/11/83, Case 83-06, Ord. No. 034-83)

18-2-1 CONDITIONAL USE PERMIT.

18-2-1.1 Conditional use permits may be granted by the City Council for any of the uses for which a permit is required by the provisions of this Ordinance. In granting any such use permit, the City Council may impose any such conditions in connection therewith as will assure that it will conform with the requirements contained herein and will continue to do so, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. A conditional use permit shall not be issued unless the City Council shall find that:

a. The proposal as submitted or as modified will not affect adversely the health, safety, or welfare of persons residing or working in the neighborhood of the proposed use; and will not be detrimental to public welfare or injurious to the property or improvements in the neighborhood. Among matters to be considered in this connection are traffic congestion, noise, lights, dust, odor, fumes, and vibration, with due regard for timing of operation, screening, and other matters which might be regulated to mitigate adverse impact.

b. The proposal as submitted or modified will conform to the Comprehensive Plan, or to specific elements of such plan, and the official policies adopted in relation thereto, including the purposes and the expressed intent of this Ordinance.

18-2-1.2 Proposals for transmitting and receiving facilities and towers for cellular communications systems and similar communications systems shall demonstrate the following: (2/14/96, Case TA-95-07, Ord. No. 002-96; 8/13/13, Case TA-13-198, Ord. No. 2013-21)

- All possible means for sharing space on existing towers or on existing buildings or other structures have been exhausted and no alternative other than constructing a new tower exists, and if a new tower is proposed, the applicant has executed a Letter of Intent to share space on their tower and negotiate in good faith with other interested parties.;

- The height of any tower is no more than the minimum to accomplish required coverage and any new tower is separated from property lines in a residential district by not less than the height of the tower. In no case shall any tower exceed 75 feet in height in a LR, MR, HR, HR-1, RO-1, RB-1 or HS Districts, nor 100 feet in the B-1, B-2, CM-1, PC, MC or HE-1 Districts, nor 200 feet in the M-1 or M-2 Districts;

- The tower construction is of a design which minimizes the visual impact and the tower and other facilities have been camouflaged and/or screened from adjacent properties and rights of way to the maximum extent practicable. To this end, the proposal must provide for retention of existing stands of trees and the installation

of screening where existing trees do not mitigate the visual impact of the facility. Such screening must, at a minimum, meet the requirements of Section 19-5-6.4d of this Ordinance. The Planning Commission may recommend and the City Council may require additional trees and screening when the minimum provisions do not mitigate adverse visual impacts of the facility;

– The electromagnetic fields do not exceed the radio frequency emission standards established by the American National Standards Institute or standard issued by the Federal Government subsequent to the adoption of this Ordinance.

18-2-3 PROCEDURES.

18-2-3.1 The procedures governing the application for and the granting of conditional use permit where required by this Ordinance shall be as follows: (10/11/83, Case 83-06, Ord. No. 034-83)

18-2-3.2 The applicant, who shall be a record owner, or contract owner with written approval of the owner, of the land involved (if a contract owner, copy of said contract shall be filed with and made a part of application), shall make application for the use permit to the Administrator on the form provided for that purpose, giving all information required by such form, including such other information which the Administrator may deem necessary for an intelligent consideration of the project for which a permit is desired. The application shall be accompanied by the fee as per Section 23-8, evidence of delinquent tax payment per Section 23-9, and disclosure of real party interest per Section 23-10 of this Ordinance and ten (10) copies of the following: (10/13/92, Case TA-92-02, Ord. No. 016-92; 8/16/02, Case TA-02-04, Ord. No. 014-2002)

18-2-3.3 A site plan in accordance with Article 19 of this Ordinance.

18-2-3.4 The front, side, and rear elevations and floor plans of the proposed buildings.

18-2-3.5 Public Notice and Hearing. The Administrator shall submit the conditional use permit application and copies of the site plan to the Commission, which shall make a recommendation to City Council which shall approve, approve with conditions, or deny the application. No such use permits shall be considered by the Commission or the Council except after notice and hearing as per Section 23-7-1 of this Ordinance. Written notice shall be provided per Section 23-7-2 of this Ordinance for both the Commission and City Council hearings. (2/9/88, Case TA-87-14, Ord. No. 009-88; 10/13/92, Case TA-92-02, Ord. No. 016-92)

18-2-3.6 Notification Signs. For the hearing by both the Commission and City Council, the applicant shall place notification signage as per Section 23-7-3 of this Ordinance. (2/9/88, Case TA-87-14, Ord. No. 009-88; 10/13/92, Case TA-92-02, Ord. No. 016-92)

18-2-3.7 Upon the granting of a use permit, one (1) copy of the site plan, upon which has been indicated the changes or restrictions, if any, required by the City Council or the Board of Zoning Appeals, shall be returned to the applicant, who may thereafter conduct the operations for which permits has been granted only in such manner and for such a time as the permit and the certified drawing shall specify. A use permit shall be valid for only the specific use it covers in the specific location designated.

18-2-3.8 EXPIRATION
Notwithstanding any specific provision of any condition imposed by City Council in conjunction with the granting of a Conditional Use Permit which may conflict with this general provision, a Conditional Use Permit shall expire immediately upon any of the following occurrences: a) the use does not commence within one year of approval; b) the use ceases for more than one year; or, c) the use changes to another use allowed in the district. In cases where government action impedes reasonable operation of the use, these provisions shall not include the duration of such restrictions. Where permits are granted for portions of a site and/or structure, the expiration shall apply to just that portion of the site and/or structure. (10/13/92, Case TA-92-02, Ord. No. 016-92; 6/13/00, Case TA-00-03, Ord. No. 015-2000; 2/10/09, Case TA-08-10, Ord. No. 2009-06)

18-2-3.9 REVOCATION BY CITY COUNCIL
If the applicant or successor fails to comply with any conditions imposed by City Council per Section 18-2-1.1, City Council may, in accordance with §15.2-2286, Code of Virginia, et seq., either amend or revoke the Conditional Use Permit upon notification from the Administrator of such failure to comply. No such amendment or revocation shall be considered by City Council until a public hearing has been held per Section 23-7-1 of this Ordinance. (2/10/09, Case TA-08-10, Ord. No. 2009-06)

SECTION 18-3. USES NOT PROVIDED FOR.

18-3-1 Uses not specifically permitted in any district established under this Ordinance shall not be allowed. Persons desiring inclusion in this Ordinance of a use not specifically permitted shall apply for an amendment to the text of the Ordinance, following the provisions of Article 22, AMENDMENTS. (10/11/83, Case 83-06, Ord. No. 034-83)

SECTION 18-4. OCCUPANCY OF DWELLING UNITS.

18-4-1 Intent: The purpose of this Section is to promote the health, safety and general welfare of the public within the residential section of the City of Winchester by providing occupancy standards set forth in this section. Notwithstanding any other provision of this Ordinance, occupancy of dwelling units shall be limited to the maximum number of occupants allowed by this Section, to protect against threats to neighborhood quality that can accompany overcrowding of land, or undue density of population in relation to existing or available community facilities caused by excessive occupancy. (1/10/06, Case TA-05-05, Ord. No. 001-2006)

18-4-2 Dwelling Unit Occupancy. (10/9/07, Case TA-07-02, Ord. No. 2007-41)

The maximum number of adult occupants permitted in a dwelling unit is based upon the size of the entire dwelling unit. The following table outlines these limits for dwelling units, other than those identified as multifamily or condominium dwellings.

Livable Floor Area** of Dwelling Unit (in square feet)	Maximum Number of Adult Occupants*
1 to 1,200	4 adult occupants
1,201 to 1,750	5 adult occupants
1,751 to 2,400	6 adult occupants
2,401 to 3,150	7 adult occupants
3,151 to 4,000	8 adult occupants
4,001 to 4,500	9 adult occupants
4,501 to 5,000	10 adult occupants

**Adult occupant* means any individual 18 years of age or older, living or sleeping in a building for more than thirty days in a given year and/or who uses the dwelling as their legal address.

***Livable Floor Area* means any section of the dwelling unit that provides adequate light, heat and electrical service and is not already designated as a closet or bathroom.

In a condominium or Multifamily units, the number of adults allowed is calculated by taking the square footage of the dwelling unit and dividing by 200. The result gives the number of adults who may live in that dwelling unit according to this standard. Occupancy shall also conform to the limits prescribed in Sections 18-4-4 and 18-4-6 of this Ordinance.

18-4-3 Occupancy Standards for Bedrooms. (1/10/06, Case TA-05-05, Ord. No. 001-2006)

One occupant per bedroom requires at least 70 square feet of bedroom floor area. Two or more occupants requires at least 50 square feet of bedroom floor area per person. The table below specifies the maximum number of occupants per room that would be allowed in a specified dwelling unit based on the floor area of each designated bedroom.

Required Bedroom Area

Minimum Bedroom Size (square feet)	Maximum Number of Occupants per Room*
70	1
100	2
150	3
200	4

**Number of occupants* includes adults and children.

18-4-4 Requirements for Bedroom Classification. (1/10/06, Case TA-05-05, Ord. No. 001-2006)

a) Two means of exit must be available from a bedroom, with one being a door or window leading directly to the exterior.

b) A window exit must have a width of at least 20 inches, a height of at least 24 inches, and a clear opening at least 5.7 square feet in area. A window sill may be a maximum of 44 inches.

c) An exit must not lead through another sleeping area or a bathroom.

d) Sleeping rooms built after 1996 must have an electrically-powered smoke detector, interconnected with smoke detectors in other sleeping rooms.

18-4-5 Living Space Requirement. (1/10/06, Case TA-05-05, Ord. No. 001-2006)

When determining the maximum occupancy load for a dwelling unit, the table below mandates the minimum required areas that can accommodate the occupant's living space. This minimum square footage must be in addition to the required Occupancy Standards for Bedrooms set out in Section 18-4-4 of this Ordinance.

Required Livable Space	Minimum Area in Square Feet		
	1-2 occupants	3-5 occupants	6 or more occupants
Living Room	No requirements	120	150
Dining Room	No requirements	80	100
Kitchen	50	50	60

**Number of occupants* includes adults and children.

18-4-6 An owner of a dwelling unit that occupies or allows the occupancy of a dwelling unit by a number of occupants in excess of the maximum occupancy prescribed shall forthwith lower the occupancy to a level consistent with the limits of this Ordinance. An occupant of a dwelling unit occupied by a number of occupants in excess of the maximum occupancy here prescribed shall forthwith lower the occupancy to a level consistent with the limits of this Ordinance. (1/10/06, Case TA-05-05, Ord. No. 001-2006)

18-4-7 The Administrator or one of his/her agents is authorized to investigate incidents of possible excessive occupancy in the City. In exercising the powers granted by this section, the Administrator or the designated agent may inspect buildings according to the procedures set out in Code of Virginia, §15.2-1745 & §27-98.2 (as amended) Upon the Administrator's conclusion that there exists excessive occupancy of a dwelling unit, the Administrator, on behalf of the City, may seek an injunction to limit, lower or control the number of occupants in the dwelling unit. (1/10/06, Case TA-05-05, Ord. No. 001-2006)

18-4-8 When determining if excessive occupancy exists in a dwelling, the Administrator or one of his/her agents shall conduct an investigation and keep the findings on file for a period of no less than five years. The investigation will collect information about indicators of excessive occupancy including, but not limited to: number of vehicles stored and registered at the dwelling, water usage, amount of trash, number of complaints from surrounding property owners, and number of people seen entering and exiting the dwelling at various times during the day. (1/10/06, Case TA-05-05, Ord. No. 001-2006)

SECTION 18-4.1 USE OF DWELLING UNITS

18-4.1-1 In any district in which residential uses are allowed or legally exist, a Dwelling Unit, as defined in Section 1-2-31 of this Ordinance must be used for occupancy by a Family as defined in Section 1-2-36, of this Ordinance for residential purposes as its principal use. Any use for residential occupancy by any other entity or person(s) shall constitute a violation of this Ordinance. (10/9/07, Case TA-07-02, Ord. No. 2007-41)

18-4.1-2 Transient use of a Dwelling Unit, other than a group home or assisted living facility, as defined in Section 1-2 of the Ordinance, is not permitted in any district, without either a Conditional Use Permit or a Certificate of Occupancy for a Nonconforming Use. (9/14/10, Case TA-10-333, Ord. No. 2010-38)

18-4.1-3 Prima Facie evidence that a Dwelling Unit is being used for transient purposes or for a non-permitted boardinghouse, as defined in Section 1-2-12 of this Ordinance, shall include the existence of any one or more of the following characteristics: separate rental agreements for different occupants: exterior locking mechanisms on interior doors of rooms for occupants: separate entrances from the exterior of the building for individual occupants; and normally common areas of dwelling unit, such as the living room, family room or dining room, being used as sleeping areas or not being available on an equal or common basis to all occupants.

SECTION 18-5. USE AND STORAGE OF RECREATIONAL EQUIPMENT.

18-5-1 No major recreational vehicles shall be used for living, sleeping, or other occupancy when parked or stored on a residential lot, or in any other location not approved for such use. (5/13/08, Case TA 07-06, Ord. No. 2008-24)

18-5-2 Recreational vehicles owned, leased, or otherwise kept by owners and/or occupants of the property may be parked on private property used and occupied for residential purposes in accordance with the following requirements:

a. For Single-Family Detached and Two-Family Dwellings, recreational vehicles exceeding an average height of 80” above surrounding grade shall be parked on an improved surface behind the front and corner-side setback

lines of the main building and shall not exceed two recreational vehicles per dwelling. Recreational vehicles that do not exceed an average height of 80" above surrounding grade may be parked in a required front or corner-side yard, in accordance with the provisions of Section 18-6-3.3.

b. For Townhouse developments and Multiple-Family Dwellings, recreational vehicles shall be parked on an improved surface behind the front and corner-side yard setback lines and within a clearly designated area noted on the site plan as approved by the Director of Planning. The maximum number of recreational vehicles per dwelling unit shall be equivalent to no more than one (1) such vehicle per five (5) dwelling units. When there are less than (5) dwelling units, the total number of recreational vehicles permitted on the property shall not exceed one (1).

c. Recreational vehicles that are openly stored on the property shall conform to the regulations found within Section 18-6-10, regarding storage of inoperable vehicles.

18-5-3 Recreational equipment consisting of tents, shelters, lean-to's, or similar accessory structures shall not be used for permanent or transient occupancy on any residential property, or in any other location not approved for such use.

SECTION 18-6. MINIMUM OFF-STREET PARKING.

The purpose of these regulations is to set forth off-street parking, display, standing, and loading requirements for permitted uses, in accordance with the intensity of such uses; and, to provide adequate parking for the traveling public in order to reduce traffic hazards and conflicts between motor vehicles and alternate methods of transportation; to allow flexibility in addressing vehicle parking, loading, and access issues; to present a variety of strategies to solve parking issues; to encourage walking and alternate modes of transportation; and to maintain and enhance a transportation system that is consistent with environmental goals and clean air. (10/13/09, Case TA-09-89, Ord. No. 2009-27)

18-6-1.1 Every use or structure instituted, constructed, erected, enlarged, or structurally altered after the effective date of this Ordinance shall provide off-street parking areas in accordance with the provisions of this article, except as otherwise provided for in this Article, or for change of use within an existing nonresidential structure as specifically stated below (10/13/09, Case TA-09-89, Ord. No. 2009-27):

a. Where off-street parking area as defined in Sections 18-6-2.3, 18-6-3.4 and 18-6-3.5 is included; and, where there is no enlargement of the existing structure, no additional parking is required.

b. Where off-street parking area as defined in Sections 18-6-2.3, 18-6-3.4 and 18-6-3.5 does not exist; and, where there is no enlargement of the existing structure, a minimum of 80% of the total required off-street parking for the use(s) shall be provided.

c. In all cases, when the change of use generates an off-street parking area requirement for no more than 5 vehicles and where there exists on-street parking, no additional parking is required.

18-6-1.2 Such off-street parking areas shall be maintained and continued as long as the use is continued. (1/12/93, Case TA-92-03, Ord. No. 001-93; 10/13/09, Case TA-09-89, Ord. No. 2009-27)

18-6-1.3 No owner or operator of any structure or use affected by this Article shall discontinue, change, or dispense with the required off-street parking areas without establishing alternative facilities which meet the requirements of this Article. (1/12/93, Case TA-92-03, Ord. No. 001-93; 10/13/09, Case TA-09-89, Ord. No. 2009-27)

18-6-1.4 No person, firm, or corporation shall utilize such structure or use without providing the off-street parking areas to meet the requirements of and be in compliance with this Article. (1/12/93, Case TA-92-03, Ord. No. 001-93)

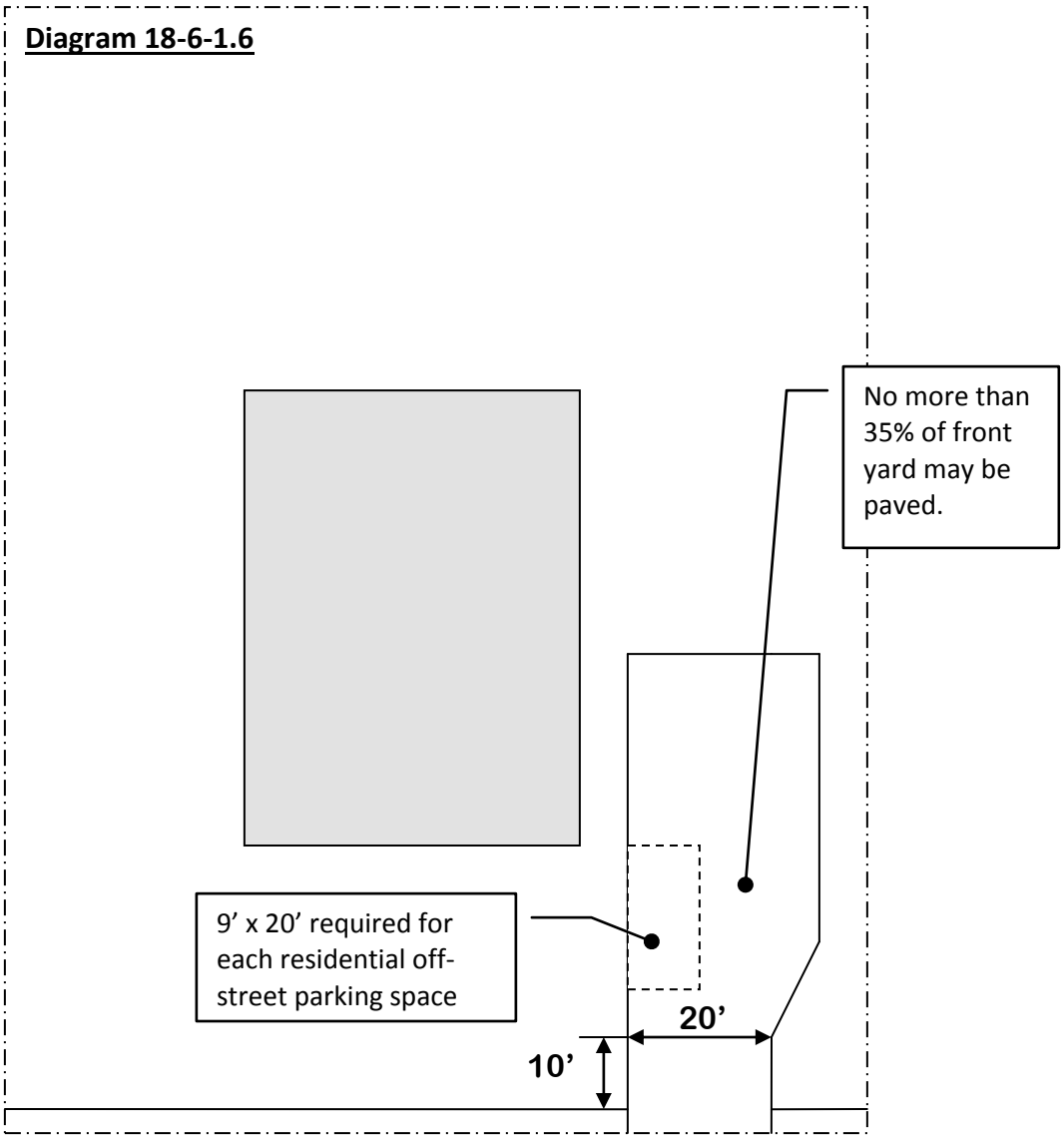
18-6-1.5 When a permitted use is nonconforming as to the quantity of required off-street parking areas, and said use is enlarged with respect to the unit of measurement specified in this Section as the basis for determining the amount of parking, loading and standing spaces, additional off-street parking areas shall be required only on the basis of the enlargement of the permitted use, except in the following circumstances (10/13/09, Case TA-09-89, Ord. No. 2009-27):

a. Where the enlargement is less than 25% of the structure's gross floor area, but not more than 1,000 square feet, no additional parking is required.

b. The Director of Planning may grant a reduction or waiver of this requirement in the B-1, RB-1, PC, and PUD Districts upon a determination that: (i) space limitations do not permit the provision of additional parking, (ii) there is on-street parking available, and/or (iii) the provision

of additional parking would necessitate the demolition of an existing structure, in whole or in part.

18-6-1.6 Off-street parking for residential uses of single-family detached dwellings shall be exempt from all provisions of this Article except for Section 18-6-3.5 and 18-6-5. Required off-street parking spaces for single-family detached dwellings shall be at least 9 feet wide and 20 feet deep and except that driveways in front yards of single family lots shall not exceed twenty (20) feet in width for the first ten (10) feet adjacent to the front lot line and shall not encumber more than thirty five percent (35%) of the front yard, except that any single family lot may, at a minimum, provide a nine (9) foot wide by twenty (20) foot long off-street parking area in the front yard unless otherwise restricted by a PUD or conditional zoning. (1/12/93, Case TA-92-03, Ord. No. 001-93; 1/14/03, Case TA-02-09, Ord. No. 002-2003; 10/13/09, Case TA-09-89, Ord. No. 2009-27) ***See diagram 18-6-1.6.***

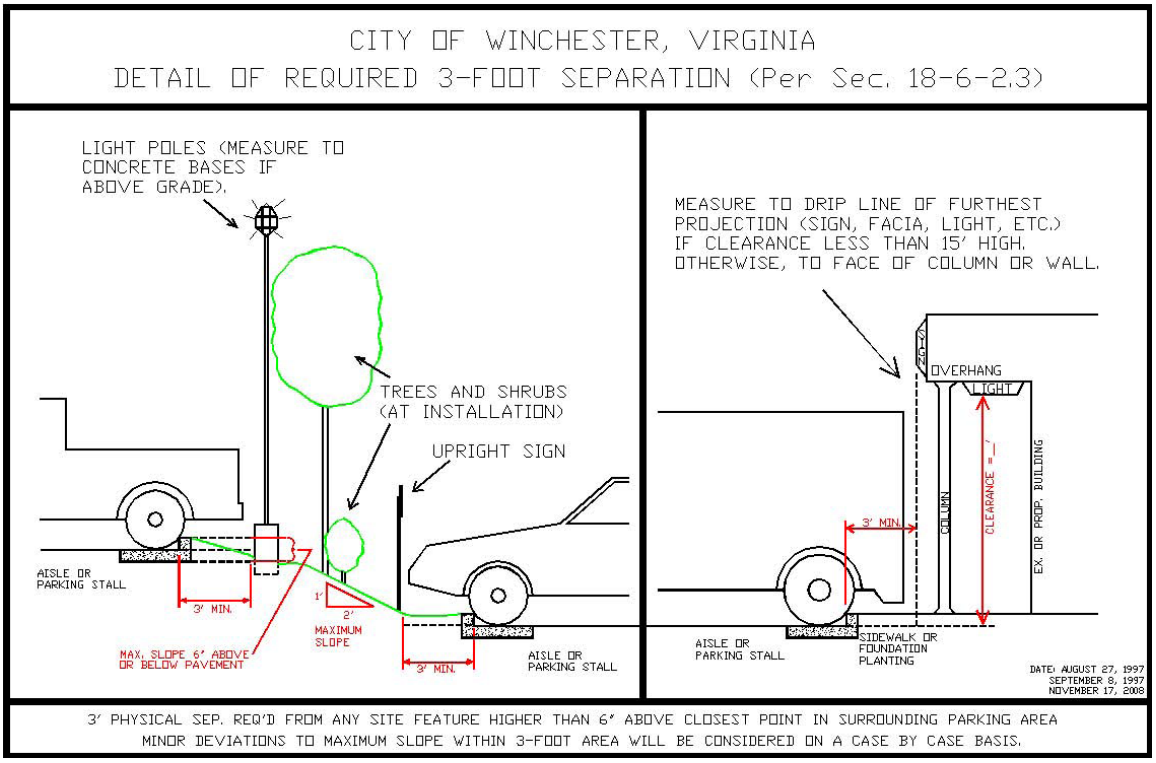


18-6-2. DEFINITIONS.

18-6-2.1 Building Capacity. The seating capacity of a structure or the number of employees shall be the maximum which can be accommodated on the premises.

18-6-2.2 Loading Space. A space or a portion of any area designated, required, or by its nature used as an area for the temporary parking of motor vehicles while transferring, loading, or unloading goods, merchandise, products, or while performing services. Such space shall be a minimum of ten (10) feet in width, twenty-five (25) feet in length, and fifteen (15) feet in height.

18-6-2.3 <u>Off-Street Parking Area</u>. An area of land other than within a public right-of-way required or provided to accommodate parking spaces, standing spaces, vehicular display or storage spaces, loading spaces, and necessary access drives, aisles and islands which are wholly segregated from any other portion of the site by continuous curbing except for ingress or egress connections, loading bays, areas where a sidewalk provides a sufficient raised edge, or places providing required handicap access. A separation of at least three (3) feet from any site feature more than six (6) inches above or below the elevation of the closest point in the parking area shall be provided. The Director of Planning may permit a reduction of up to 2 feet in the paved length of required spaces, where such spaces are adjacent to a planting island or other physical separation, excluding a sidewalk, that permits the overhanging of vehicles parked in such spaces. Parking areas may be surface lots or within structures. Curbing and separation standards herein may be waived by the Director of Planning when it can be demonstrated that the waiver(s) will not encourage undesirable nor unsafe vehicle encroachment. Portions of structures allocated to parking shall not be subject to the provisions of Section 18-6-4. (9/13/88, Case TA-88-05, Ord. No. 035-88; 1/12/93, Case TA-92-03, Ord. No. 001-93; 8/8/95, Case TA-95-03, Ord. No. 032-95; 10/13/09, Case TA-09-89, Ord. No. 2009-27)



18-6-2.4 Parking Space. A portion of an off-street parking area used for the temporary storage of a passenger vehicle. Except as elsewhere noted, in order to be credited as a required space, the following minimum standards must be met: (1/12/93, Case TA-92-03, Ord. No. 001-93; 10/13/09, Case TA-09-89, Ord. No. 2009-27)

ANGLE	STALL WIDTH	TOTAL MODULE AISLE PLUS SPACES ON ONE SIDE	TOTAL MODULE AISLE PLUS SPACES ON BOTH SIDES
90	9 ft.	42 ft.	60 ft.
75	9 ft.	40 ft.	59 ft.
60	9 ft.	36 ft.	54 ft.
45	8.5 ft.	30 ft.	48 ft.
0	22 ft.	21 ft.	32 ft.

Note: Aisles are two-way for 90 degree angled parking, and one-way for all other angles. Perpendicular (90 degree) parking is encouraged. Where a parking space fronts upon another parking space and is not separated by means of curbed landscaped median of four feet or more in width, said space shall be increased by two feet in depth to allow for vehicle overhang. In parking areas containing more than 10 parking spaces, the Director of Planning may allow up to 30% of the required off-street parking spaces to be designed for compact cars. All compact spaces shall be clearly marked as such. The required minimum width for compact spaces is 8 feet. (9/13/88, Case TA-88-05, Ord. No. 035-88; 10/13/09, Case TA-09-89, Ord. No. 2009-27)

18-6-2.5 Repealed. (01/12/93)

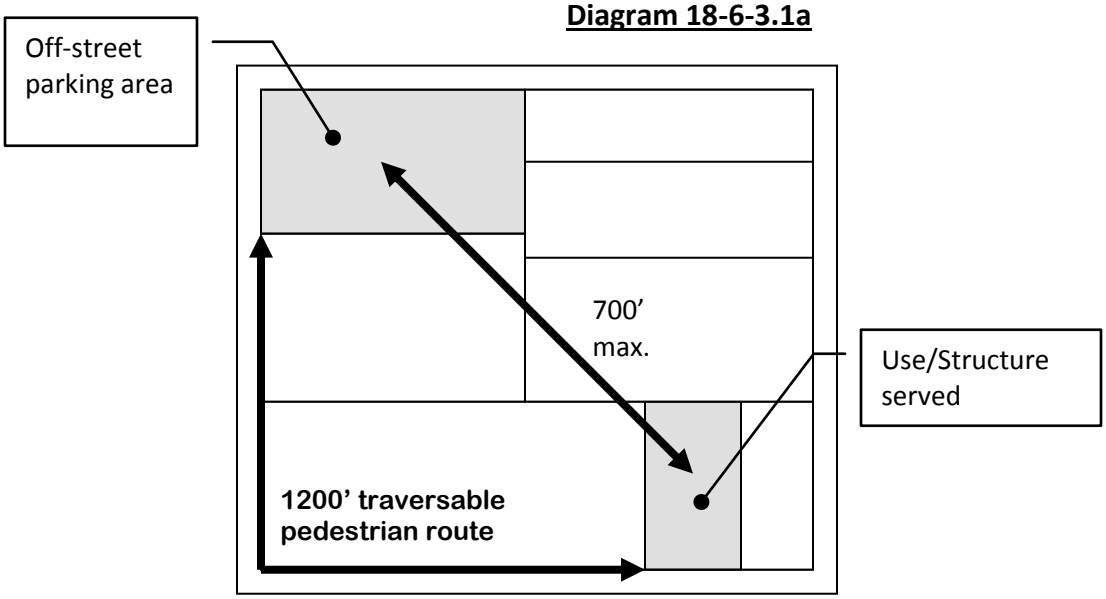
18-6-2.6 Standing Space. A space by its nature used as an area for the temporary stopping of a motor vehicle, while under the control of its driver, for the purpose of embarking or discharging passengers, baggage, or merchandise, or for the purpose of utilizing special motor vehicle-oriented services. Such space shall be a minimum of 8.5 feet in width and 18 feet in length. (1/12/93, Case TA-92-03, Ord. No. 001-93; 10/13/09, Case TA-09-89, Ord. No. 2009-27)

18-6-3. GENERAL PROVISIONS.

18-6-3.1 Location of Off-Street Parking Areas. The off-street parking areas required by this Article shall be located on the same lot or parcel of land that they are intended to serve, except as follows: (1/12/93, Case TA-92-03, Ord. No. 001-93; 10/13/09, Case TA-09-89, Ord. No. 2009-27)

a. Off-site spaces shall be within 700 feet of the use or structure served. For the purpose of this requirement, distance from parking spaces to the use or structure served shall be measured in a straight line from the nearest parking space to the use served. However, no space shall be more than 1,200 feet away from the use or structure served as measured along a traversable pedestrian route. ***See diagram 18-6-3.1a.***

Diagram 18-6-3.1a



b. Off-site parking spaces may be located in a different zoning district than the use or structure served, if permitted by right or by conditional use permit in such zoning district.

c. An off-site location must either: (i) be located on land in the same ownership as that of the use or structure served, or in the case of cooperative provision of parking space as described in Section 18-6-3.7, in the ownership of at least one of the participants in such provisions, or (ii) be subject to arrangements (such as long-term lease, recorded easement, etc., providing the required parking arrangements for a period of at least 25 years) as will assure the availability of such space for the duration of the use or structure to be served.

d. No changes shall be made to any off-site parking lot that would reduce the parking available for a use or structure served by such lot, unless alternate parking arrangements are made to provide an equivalent number of spaces and such alternate arrangements are approved by the Director of Planning.

e. All required handicapped parking spaces must be located on-site. This requirement may be waived by the Director of Planning, upon a determination that space limitations do not permit the provision of the required handicapped spaces on-site, or the owner of the use or structure to be served by such spaces demonstrates that the proposed use can be adequately served by existing designated on-street handicapped space(s) within 75 feet of such use or structure.

f. All required loading spaces for a use or structure must be located on-site.

18-6-3.2 Off-Street Parking Area Buffer**.** No off-street parking area required or provided shall be situated within ten (10) feet of any front or corner side property line nor within five (5) feet of any side or rear property line except as follows:

a. In the Central Business District (B-1) and Residential Business (RB-1) zones, where off-street parking areas shall not be situated within four (4) feet of front and corner side property lines nor three (3) feet of side and rear property lines;

b. Along common property lines over which combined or shared off-street parking areas have been approved as per Section 18-6-3.1 of this Ordinance, where no buffer is required, and;

c. Along side or rear property lines abutting a residential zoning district where the abutting property is vacant or residentially used, in which case a fifteen (15) foot wide buffer area shall be provided. (1/12/93, Case TA-92-03, Ord. No. 001-93; 5/8/01, Case TA-01-01, Ord. No. 017-2001)

18-6-3.3 Private streets and common drives shall not encroach into required yards for Townhouse developments. (01/14/02, Case TA-02-09, Ord. No. 002-2002)

18-6-3.4 Delineating Parking Spaces. Whenever five (5) or more parking spaces are provided, such spaces shall be delineated by painted lines, curb stops, signs, or other acceptable means that will ensure the availability of the required number of parking spaces. (10/11/83, Case 83-06, Ord. No. 034-83)

18-6-3.5 Surfacing of Off-Street Parking Areas. Except as noted below, off-street parking areas shall be surfaced with a minimum of two (2) inches of compacted bituminous concrete on a suitable base except that the Director of Planning may waive this requirement where another material is found to be more appropriate. Construction shall be to City specifications. (9/13/88, Case TA-88-05, Ord. No. 035-88; 12/11/90, Case TA-90-06, Ord. No. 043-90; 1/12/93, Case TA-92-03, Ord. No. 001-93; 5/13/08, Case TA-07-06, Ord. No. 2008-24; 10/13/09, Case TA-09-89, Ord. No. 2009-27)

a. Alternative surface improvement materials that are pervious and can aid in storm water management and run-off reduction are encouraged, in particular for off-street parking areas located within a Floodplain (FP) overlay District and for individual parking spaces outside of main vehicular travelways.

18-6-3.5.1 Residential Off-Street Parking Area Requirements. In addition to those provisions outlined in Section 18-6-3.5, the following shall apply to off-street parking areas within residential properties (10/13/09, Case TA-09-89, Ord. No. 2009-27):

a. No person shall park any motor vehicle, trailer, or semi-trailer in the front, corner-side, side, or rear yard of any lot, improved with a single-family dwelling, zoned for residential use, except on an improved surface. (5/13/08, Case TA-07-06, Ord. No. 2008-24)

b. For properties containing the residential use and occupancy of a single-family detached dwelling, parking area and access driveway surfaces shall be designed and improved using accepted engineering practices for usability and longevity with asphalt, concrete, unit pavers or similar material approved by the City Engineer and shall be designed so as not to create or increase adverse effects on adjoining properties as a result of surface drainage. (5/13/08, Case TA-07-06, Ord. No. 2008-24)

c. Parking areas and access driveways located within a required front or corner-side yard on residential lots improved with a single-family dwelling shall not consist of gravel. Gravel may be used as an alternate improved surface material for parking areas within the side or rear yard of any lot improved with a single-family dwelling, zoned for residential use. (5/13/08, Case TA-07-06, Ord. No. 2008-24)

18-6-3.6 Access and Site Planning Requirements. Ingress and egress to the property, and traffic lanes, parking spaces and loading and service areas on the premises shall form a convenient and well-organized system appropriate to the uses in the building. No off-street parking area shall be designed to permit backing out directly onto a public street. Entrances and exits shall be so arranged so as to minimize conflicts with traffic on public streets and to reduce traffic noises on portions of the lot where there might be adverse effects on residential uses on the property or on any uses on adjacent property. Inter-parcel connectors providing vehicular connections between adjacent parcels are encouraged. Where applicable, driveways shall be aligned with existing and proposed median crossings and driveways on the opposite street side. (10/12/93, Case TA-93-05, Ord. No. 034-94)

A. Minimum driveway spacing standards shall apply to development on lots in the B-2, CM-1, M-1, M-2, and RO-1 Districts in order to provide safe and convenient access and efficient travel on City streets. Standards for minimum spacing between adjacent driveways as well as between driveways and street intersections shall be as follows:

Category II and III Streets (per Subdivision Ordinance Section 2-2-32 and 2-2-33);

Posted Speed Limit	**Minimum Required Spacing**
Less than 35 mph	125 feet
35 mph or more	175 feet

For all Category I Streets (per Subdivision Ordinance Section 2-2-31) minimum required spacing shall be 60 feet.

Distances shall be measured from the tangents to the curb returns of the driveways and/or intersecting street. Divided driveways (one-way in/out) shall be considered one driveway.

B. Exceptions to the above minimum driveway spacing standards may be allowed by the Commission upon recommendation of the Director of Public Works or his/her designee when based upon horizontal or vertical characteristics of the adjoining street. Exceptions may also be allowed by the Commission for existing lots where existing frontage does not provide adequate spacing to adjacent driveways or intersections. Such exceptions shall be considered in the following manner:

1. If frontage exists along more than one street and at least one frontage meets the spacing standards for that category of street, then no exceptions shall be considered for the other deficient street frontage(s).

2. If no frontages provide adequate distance to meet the above driveway spacing standards then the applicant must first demonstrate that shared access from an adjacent lot with an existing driveway cannot be secured. A written request for shared access (at the existing driveway or at a mutually agreeable replacement location) must be sent by registered or certified mail to the immediately adjacent property owner(s). A separate driveway to the subject lot will be considered upon written rejection of shared access from the adjacent property owner(s) or the expiration of a thirty (30) day response period. If a separate driveway is allowed on the subject lot, the owner shall grant a vehicular access easement to allow for a future inter-parcel connector to at least one adjacent lot.

3. If a lot has more than one frontage and no frontage provides adequate spacing for a driveway and if all adjacent property owners refuse shared access from their property per the procedures set forth in the preceding subsection, then one access shall be allowed along the lowest category street with the lowest speed limit or as specifically recommended otherwise by the Commission.

C. Driveways, parking, loading, and service areas shall be so located, designed, constructed, maintained, and operated as to minimize the impact or adverse visual effects and noise on other portions of the property and on surrounding property, particularly residential property and where necessary, fences, walls, and/or vegetative screening shall be provided and maintained to further these purposes. Loading docks, service bays, and overhead doors shall not be oriented so as to be visible from a public street. The Administrator may waive this requirement after consultation with the Commission upon a showing that such orientation cannot be reasonably achieved in which case screening shall be provided to buffer street view according to Section 19-5-6.4b of this Ordinance. (1/12/93, Case TA-92-03, Ord. No. 001-93)

18-6-3.7 COOPERATIVE PARKING ARRANGEMENTS (10/13/09, Case TA-09-89, Ord. No. 2009-27)

a. With the approval of the Director of Planning, required off-street parking may be provided cooperatively for two or more uses of the same or different types, provided that arrangements are made (a long-term lease, recorded easement, etc.) such as will assure the availability of such space for the duration of the use to be served, and provided further that, unless reduced by the Director as set forth below, the number of spaces provided shall not be less than the sum of the individual requirements.

b. Cooperative parking arrangements shall provide off-street parking spaces as per the provisions of Section 18-6-3.1a.

c. Once approved by the Director, any subsequent change to a cooperative parking arrangement that affects the availability and convenience of the shared space shall constitute grounds for revocation of the occupancy certificates for the uses served.

18-6-4 CALCULATING NUMBER OF OFF-STREET PARKING.

18-6-4.1 In calculating the number of such parking spaces, the following rules shall govern:

a. Floor area shall mean the gross floor area of the specific use.

b. When the units of measurements determining the number of required parking spaces result in the requirements of a fractional space, any fraction up to and including one-half (1/2) shall be disregarded, and fractions over one-half (1/2) shall require one (1) additional parking space.

c. The parking space requirement for a use not specifically mentioned herein shall be the same as required for a use of similar nature.

d. In the case of mixed uses, the parking spaces required shall equal the sum of the requirements of the various uses computed separately, except as otherwise provided in this Article. (5/9/00, Case TA-99-07, Ord. No. 012-2000)

e. Off-street parking facilities supplied to meet the needs of one use shall not be considered as meeting the off-street parking needs of any other use, except that time-shared parking arrangements may be allowed for uses within buildings existing at the time of adoption of this Ordinance. All time-shared parking shall be in accordance with the following chart and provisions:

The minimum number of off-street parking spaces required under a time-shared arrangement shall be calculated by multiplying the number of spaces normally required for each land use per Section 18-6-5 of this Ordinance by the appropriate percentages corresponding to the land use and time of use figures below. All land uses on the site(s) considered for time-shared parking must be included in the calculation. The number of parking spaces required shall be determined by totaling the resulting numbers in each column. The column total that generates the highest number of spaces then becomes the minimum parking requirements.

	Weekday		Weekend	
	Daytime	Evening	Daytime	Evening
Land use	6am-6pm	6pm-6am	6am-6pm	6pm-6am
Office	100%	10%	10%	5%
Retail/Service (over 10hr)	80%	60%	100%	50%
Retail/Service (not over 10hr)	70%	30%	100%	30%
Transient Lodging	60%	100%	75%	100%
Restaurant	60%	90%	80%	100%
Auditorium, assembly hall, community center, theater, indoor recreation facility, dance hall, arena, amphitheater, stadium (without week-day daytime programs)	10%	80%	85%	100%
Same as above (with week-day daytime programs)	40%	80%	85%	100%
places of worship without weekday daytime programs	10%	40%	100%	60%
Art Gallery	30%	50%	100%	80%
Residential	50%	100%	80%	90%
All other uses	100%	100%	100%	100%

Time-shared off-street parking may be provided off-site per Section 18-6-3.1 of this Ordinance. However, if any portion of the shared parking is provided off-site, the written agreement thereto assuring the retention for such purposes shall be recorded in the land records in addition to being filed with the Zoning Administrator.

Reserved parking spaces, spaces requiring special security access or on-site payment of fees by the user shall not be shared. Any change of use on the site(s) employing a time-shared parking arrangement shall require documentation to be submitted with the certificate of occupancy to ensure that the quantity of shared parking is sufficient per the above table. (2/12/08, Case TA-07-09, Ord. No. 2008-11; 10/13/09, Case TA-09-89, Ord. No. 2009-27; 7/10/12, Case TA-12-187, Ord. No. 2012-20)

18-6-5. AMOUNT OF OFF-STREET PARKING REQUIRED.

18-6-5.1 The off-street parking required by this Article shall be provided and maintained on the basis of the following requirements specified in the following tables, except as otherwise provided in this Article: (9/12/89, Case TA-89-01, Ord. No. 022-89; 4/10/90, Case TA-89-14, Ord. No. 012-90; 7/8/97, Case TA-97-05, Ord. No. 016-97; 10/13/09, Case TA-09-89, Ord. No. 2009-27; 6/8/10, Case TA-10-111, Ord. No. 2010-19; 7/10/12, Case TA-12-187, Ord. No. 2012-20)

Table 18-6-5.1

Use	Size or Type	Required Number of Spaces
Residential Uses		
Single-family (attached or detached) and two-family dwelling		1 per dwelling unit
Townhouse dwelling	1-2 bedrooms	1 per dwelling unit
	3 or more bedrooms	2 per dwelling unit
Multifamily dwelling	Efficiency; 1-2 bedroom unit	1 per dwelling unit
	3 or more bedroom unit	2 per dwelling unit
Boardinghouse, Bed and Breakfast Inn, and Bed and Breakfast Homestay		0.5 per bedroom
Dormitory, fraternity or sorority		1 for each 2 beds
Group Home	1-8 bedrooms	2 per facility, plus 1 for each non-resident employee
Family Day Home	1-5 children	1 for each non-resident employee, plus parking required for the dwelling
Adult Care	Nursing Homes	1 for each 4 beds; plus 1 for each employee, based on largest shift
	Assisted Living Facility	1 for each 3 beds; plus 1 for each employee, based on largest shift

Use	Size or Type	Required Number of Spaces
Non-Residential Uses: Educational, Institutional, and Public		
Assembly-theater, auditorium, arena, stadium, amphitheater, place of worship, etc.	No fixed seats	1 for each 150 sq. ft. of assembly space
	Fixed seats	1 for each 5 seats
Clinic – Medical, Dental, or Veterinary		1 for each examination room, plus one for each employee, based on largest shift
Club, private		1 for each 4 persons allowed at maximum occupancy
Daycare facility		1 for each 1.5 employees
Funeral homes and crematories		1 for each 5 persons, based on maximum occupancy of assembly space; plus 1 for each employee, based on largest shift; plus 1 for each company vehicle stored on-site
Hospital		1 for each five beds; plus 1 per emergency or out-patient exam table; plus 0.6 for each employee (including staff doctors), based on largest shift
Museum, art gallery, library or similar use		1 for each 400 sq. ft. of GFA
School	Preschool, playschool, nursery school, and kindergarten	1 for each classroom
	Elementary and Middle	1 for each classroom
	High school	1 for each employee, based on largest shift, plus 1 per 5 students
	College and university, art institute, and vocational or technical training center	1 for each 2 students

Use	Size or Type	Required Number of Spaces
Non-Residential Uses: Recreational		
Amusement center	Indoor arcade	1 for each 4 persons, based on maximum occupancy
	Outdoor facility	1 for each 1,000 sq. ft. of amusement attraction area
Bowling alley		2 per alley
Golf course	Miniature	1 per hole
	Other	2 per hole
Indoor recreation facility (i.e., health/sport club, tennis club, swimming club, yoga studio, dance studio)		1 per each 4 persons, based on maximum occupancy
Outdoor recreation facility	Court, ball field	1 for each 2 players based upon maximum capacity
	Park, playground	1 per 600 sq. ft. of improved active recreational area, plus 1 for every 3 acres of passive recreation area
Non-Residential Uses: Office		
General office		1 for each 300 sq. ft. of GFA (excluding storage space)
Medical office (not clinic)	1-3 practitioners in same office	3 per examination or treatment room, plus 1 per employee on largest shift, including doctor
	4 or more practitioners in same office	7 per practitioner, or 1 for each 200 sq. ft. of GFA, whichever is greater
Financial institution		1 for each 300 sq. ft. of GFA

Use	Size or Type	Required Number of Spaces
Non-Residential Uses: Commercial Retail		
Antique shop		1 for each 600 sq. ft. of GFA
Bakery	0-3 tables	1 for each 350 sq. ft. of GFA
	4 or more tables	1 for each 250 sq. ft. of GFA
Communications equipment sales (i.e., mobile/wireless telephones, satellite television dishes, computers)		1 for each 300 sq. ft. of GFA
Convenience store		1 for each 200 sq. ft. of GFA (excluding storage space)
Fuel sales, service station	No convenience store; no servicing of vehicles	1 space for each employee
	Convenience store; no servicing of vehicles	1 for each 400 sq. ft. of GFA
Furniture sales		1 for each 1,000 sq. ft. of GFA (including storage space)
General retail sales (not otherwise classified)		1 for every 300 sq. ft. of GFA (excluding storage space)
Grocery store and pharmacy		1 for each 250 sq. ft. of GFA (excluding storage space)
Hardware, Paint, Home improvement center		1 for each 1,000 sq. ft. of GFA, plus 1 per 2 employees, based on largest shift (minimum 2 spaces)
Non-Residential Uses: Motor Vehicle Uses		
Motor vehicle, sales of	With service facilities	1 for each 300 sq. ft. of GFA; plus 1 per service bay
	Without service facilities	1 for each 300 sq. ft. of GFA
Motor vehicle, parts and equipment sales	Without service facilities	1 for every 300 sq. ft. of GFA
Motor vehicle service		1 per service bay

Use	Size or Type	Required Number of Spaces
Non-Residential Uses: Consumer Services		
General standard (not otherwise classified)		1 for each 300 sq. ft. of GFA of the use
Personal service (barber, beauty salon, nail salon, etc)		1.5 per chair or station
Laundry, self-service		1 for every 4 cleaning or laundry machines
Car wash		1.5 per bay; plus 1 per employee, based on largest shift
Hotel and motel		1 per guest room; plus 1 employee space for each 10 guest rooms
Restaurant	Generally	1 for each 100 sq. ft. of public floor area
	Drive-in (without seats)	1 for each 60 sq. ft. of GFA
Non-Residential Uses: Industrial Uses		
Generally		1 for each 400 sq. ft. of office space; plus 1 for each 2 employees; plus 1 for each company vehicle stored on-site
Storage or warehouse		1 for each 2,500 sq. ft. of GFA
Additional Requirements		
Outdoor sales, display or service area for any use	In combination with all other requirements	1 for each 500 sq. ft. of area devoted to such use
Outdoor storage	In combination with all other requirements	1 for each 2,000 sq. ft. of area devoted to such use

18-6-5.2 Parking of Trucks and Buses in Residential Districts.

18-6-5.2a Trucks or buses of over one-half (1/2) ton shall not be parked in any required front yard in a residential district, except for purposes of making pickup or deliveries.

18-6-6 SPECIAL EXCEPTIONS FROM OFF-STREET PARKING AND LOADING REQUIREMENTS. (9/14/82, Case 82-04, Ord. No. 016-82; 8/22/06, Case TA-06-04, Ord. No. 030-2006; 10/13/09, Case TA-09-89, Ord. No. 2009-27)

18-6-6.1 The following shall be exempt from the provision of off-street parking and loading spaces required by this Article (10/13/09, Case TA-09-89, Ord. No. 2009-27):

a. Uses located within the boundaries of Parking District 'A' as depicted in Diagram 18-6-6.

b. Buildings, containing nonresidential uses, which are located three hundred (300) feet from a municipal parking lot of adequate capacity as determined by the Zoning Administrator

c. A Neighborhood Convenience Establishment or market garden, as defined, for which a conditional use permit has been granted, except that off-street parking and loading may be required as a condition of the permit. (10/12/10, Case TA-10-418, Ord. No. 2010-51)

18-6-6.2 The following shall be granted a 50% reduction of off-street parking and loading spaces required by this Article (10/13/09, Case TA-09-89, Ord. No. 2009-27):

a. Uses located within the boundaries of Parking District 'B' as depicted in Diagram 18-6-6.

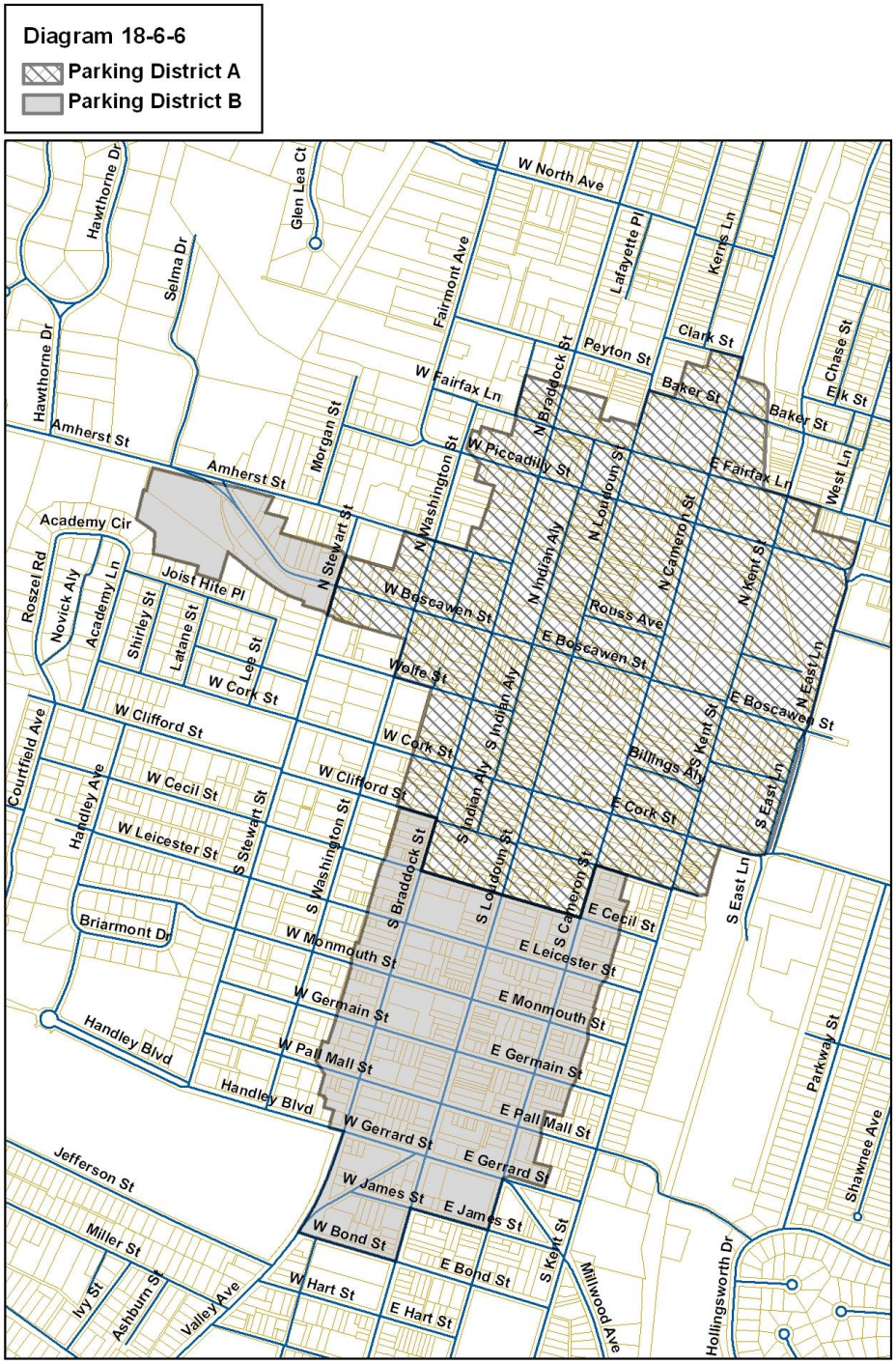


Diagram 18-6-6
Parking District A
Parking District B
W North Ave
Glen Lea Ct
Hawthorne Dr
Selma Dr
Fairmont Ave
Lafayette Pl
Kerns Ln
Clark St
Peyton St
Chase St
Elk St
Baker St
W Fairfax Ln
N Braddock St
Amherst St
Morgan St
W Piccadilly St
N Washington St
N Loudoun St
E Fairfax Ln
West Ln
Academy Cir
N Stewart St
N Indian Aly
N Cameron St
N Kent St
Roszel Rd
Novick Aly
Academy Ln
Joist Hite Pl
Shirley St
Latane St
Lee St
W Boscawen St
Rouss Ave
E Boscawen St
N East Ln
W Cork St
Wolfe St
W Clifford St
S Indian Aly
S Kent St
Billings Aly
Courtfield Ave
W Cecil St
Handley Ave
W Leicester St
S Stewart St
S Washington St
S Braddock St
S Loudoun St
S Cameron St
E Cork St
S East Ln
E Cecil St
Briarmont Dr
W Monmouth St
E Leicester St
W Germain St
E Monmouth St
Handley Blvd
W Pall Mall St
E Germain St
E Pall Mall St
W Gerrard St
E Gerrard St
Parkway St
Shawnee Ave
Jefferson St
W James St
E James St
W Bond St
E Bond St
Miller St
W Hart St
E Hart St
Ivy St
Ashburn St
Valley Ave
Millwood Ave
Hollingsworth Dr

18-6-6.3 Certain reductions in the number of required off-street parking spaces for particular use shall be allowed, under the following circumstances (10/13/09, Case TA-09-89, Ord. No. 2009-27):

a. Where a use is located within 300 feet of a transit stop on an existing City transit route, the number of parking spaces required for such use shall be reduced by (i) 20% for uses located within a Corridor Enhancement (CE) District as defined in Article 14.2 of this Ordinance; or (ii) 10% for uses not located within a CE District. Where a use is located between 301 and 600 feet of a transit stop on an existing City transit route, a similar reduction of spaces shall be granted, in an amount equal to one-half of the percentage(s) specified in clauses (i) and (ii), above.

b. Where bicycle lockers are provided on-site, the number of required off-street parking spaces shall be reduced by: (i) 10% for every (5) lockers, for uses located within the Central Business (B-1) and Residential Business (RB-1) Zoning District(s); or (ii) 5% for every five (5) lockers for uses located within any other zoning districts.

c. When the proposed construction, alteration, renovation, or re-construction of a building is designated with LEED® certification, the following percentages of reduction shall be allowed:

Level of Certification	Percentage of Reduction
Certified	15%
Silver	20%
Gold	25%
Platinum	30%

d. The total number of required parking spaces may not be reduced as a result of any bonus(es) listed in paragraphs (a) through (c), above, by more than (i) 35% for uses located within the B-1 or RB-1 Zoning Districts; or (ii) 20% for uses located elsewhere, however this shall not be construed to limit the reduction for Gold or Platinum LEED® certification as provided for in paragraph (c) above.

18-6-7 AMOUNT OF OFF-STREET LOADING REQUIRED.

18-6-7.1 There shall be provided on the premises used for the following purposes in any district at the time any building or structure is constructed, reconstructed, enlarged, extended, or structurally altered, spaces for off-street loading, except as otherwise provided in this Article in accordance with the following schedule:

a. For each retail store, storage, warehouse, wholesale establishment, industrial plant, factory, freight terminal, market, restaurant, mortuary, laundry, dry cleaning establishment, or similar use which has an aggregate floor area of:

1. Over ten thousand (10,000) square feet but not over twenty-five thousand (25,000) square feet--one (1) space.

2. Over twenty-five thousand (25,000) square feet but not over sixty thousand (60,000) square feet--two (2) spaces.

3. Over sixty thousand (60,000) square feet but not over one hundred twenty thousand (120,000) square feet--three (3) spaces.

4. Over one hundred twenty thousand (120,000) square feet but not over two hundred thousand (200,00) square feet--four (4) spaces.

5. Over two hundred thousand (200,000) square feet but not over two hundred ninety thousand (290,000) square feet--five (5) spaces.

6. For each additional ninety thousand (90,000) square feet or major faction thereof--one (1) space.

b. For each apartment building having over fifty (50) dwelling units - one (1) space.

c. For each auditorium, museum, assembly hall, community center, hotel, office building, sports arena, stadium, gymnasium, hospital, sanitarium, or similar use which has an aggregate gross floor area of:

1. Over ten thousand (10,000) square feet but not over forty thousand (40,000) square feet--one (1) space.

2. Over forty thousand (40,000) square feet but not over one hundred thousand (100,000) square feet--two (2) spaces. (4/12/83, Case 83-01, Ord. No. 012-83)

3. For each additional ninety thousand (90,000) square feet over one hundred thousand (100,000) square feet or major fraction thereof--one (1) space. (4/12/83, Case 83-01, Ord. No. 012-83)

d. For any use not specifically mentioned in this section, the requirements for off-street loading, for a use which is so mentioned and to which the unmentioned use is similar, shall apply.

1. Off-street loading facilities supplied to meet the needs of one (1) use shall not be considered as meeting the off-street loading needs of any other use.

2. No area of a facility supplied to meet the required off-street parking facilities for use shall be utilized for or deemed to meet the requirements of this Article for off-street loading facilities.

18-6-8 AMOUNT OF STANDING SPACE REQUIRED. (1/12/93, Case TA-92-03, Ord. No. 001-93)

18-6-8.1 The off-street standing spaces required by this Article may be stacked in one or more clearly delineated lanes which do not impede circulation on the site and shall be provided and maintained on the basis of the following requirements specified in the following table, except as otherwise provided in this Article:

USE TYPE	REQUIRED SPACES
Bank, Financial Institution	4 per first window or drive-up ATM plus 2 per each additional window or drive-up ATM
Car Wash-Self Serve	3 per bay
Car Wash-Automatic	8 per bay
Day Care, Nursery School	1 for each 8 children
Filling Station	1 space situated on each side of every dispenser island beginning at the end of the island and extending away from the island parallel to it
Restaurant, Deli, Bakery	5 per pick-up window with at least 3 located before each order station
Service Establishment (NEC) (e.g. dry clean, photo, ticket office, courier)	2 per window or station

18-6-9 DEFERRAL OF REQUIRED PARKING FOR CERTAIN USES

For general office, storage uses, furniture stores and home improvement establishments, construction of up to one-third of the number of required off-street parking spaces may be deferred on the condition that all required parking shall be fully designed and depicted on the approved site plan in compliance with all applicable standards. The applicant shall, each October, measure the average utilization of existing parking spaces for two consecutive Saturdays at noon and report the same to the Administrator within two weeks. The Administrator may measure utilization over a similar period at any time, however. If utilization exceeds 85% then the applicant shall make arrangements to construct a quantity of additional parking within a timeframe established by the Administrator. (07/13/99, Case TA-99-01, Ord. No. 017-99; 10/13/09, Case TA-09-89, Ord. No. 2009-27)

18-6-9.1 SPECIAL PARKING PROVISIONS FOR REGIONAL MALLS

For regional shopping malls of at least 500,000 square feet, the off-street parking requirements shall be calculated using the gross leasable area (GLA) of the mall. Regional shopping malls that, at the time of occupancy, are situated on public transit routes and provide bicycle and/or pedestrian facilities, thus reducing demand for parking of personal automobiles, shall be allowed to provide a reduced minimum amount of off-street parking at a rate of one parking space for every 300 square feet of GLA. (11/14/06, Case TA-06-05, Ord. No. 033-2006; 10/13/09, Case TA-09-89, Ord. No. 2009-27)

18-6-9.2 WAIVERS. (10/13/09, Case TA-09-89, Ord. No. 2009-27)

The Administrator may waive off-street parking requirements for a single-family detached dwelling proposed on an existing lot of record, upon a determination that (i) the dwelling is not located on a corner lot, (ii) the lot on which the dwelling is located has no access to a public or private alley, and (iii) the lot has fewer than 30 feet of street frontage.

18-6-10 INOPERABLE MOTOR VEHICLE STORAGE. (5/9/06, Case TA-06-03, Ord. No. 21-2006)

18-6-10.1 No person shall keep, except within a fully enclosed building or structure or otherwise shielded or screened from view, on any property zoned for residential or commercial purposes, any inoperable motor vehicle, as defined in Section 1-2-52.1 of this Ordinance. "*Shielded or screened from view*" means not visible by someone standing at ground level from outside the property on which the subject vehicle is located. (2/12/08, Case TA-07-07, Ord. No. 2008-10)

18-6-10.2 The provisions of this Section shall not apply to a licensed business which on June 26, 1970 was regularly engaged in business as an automobile dealer, salvage dealer, or scrap processor. The exception for such licensed business shall only apply to such property on which the said property was operated on June 26, 1970, and on which said business has continued to operate without interruption.

18-6-10.3 REMOVAL AND DISPOSAL OF INOPERABLE MOTOR VEHICLES; (2/12/08, Case TA-07-07, Ord. No. 2008-10)

(a) The owners of property zoned for residential or commercial purposes not otherwise exempt in Section 18-6-10.2 shall remove therefrom any such inoperable motor vehicles that are not kept within a fully enclosed building or structure within fifteen (15) days of Notice of Violation. Notice given pursuant to this Section shall be sent by the Administrator, or his or her designee, using registered or certified mail, return receipt requested, to the owner of the premises on which such inoperable vehicle is located. The notice shall explain the violation, provide a description of the vehicle, and shall set forth the consequences of failing to comply. (2/12/08, Case TA-07-07, Ord. No. 2008-10)

(b) The City of Winchester, through its agents or employees, may remove any such inoperable vehicle, whenever the owner of the premises, after reasonable notice, has failed to do so. In the event the City so removes any such inoperable motor vehicle after having given such reasonable notice, the City may dispose of such inoperable vehicle after giving thirty (30) days additional notice to the owner of the vehicle. (2/12/08, Case TA-07-07, Ord. No. 2008-10)

18-6-10.4 COST OF REMOVAL AND DISPOSAL OF INOPERABLE MOTOR VEHICLES; (2/12/08, Case TA-07-07, Ord. No. 2008-10)

(a) The cost associated with removal and disposal of such inoperable motor vehicle shall be chargeable to the owner of the vehicle or premises, and maybe collected by the City of Winchester as taxes and levies are collected.

(b) Every cost authorized by this Section with which the owner of the premises shall have been assessed shall constitute a lien against the property from which the vehicle was removed, the lien to continue until actual payment of such cost shall have been paid to the City.

SECTION 18-7 SPECIAL REGULATIONS PERTAINING TO THE PRIMARY AND SECONDARY DOWNTOWN ASSESSMENT DISTRICTS. (4/9/13, Case TA-13-35, Ord. No. 2013-08)

18-7-1 **USE OF SIDEWALKS**. The sidewalks in the Primary and Secondary Downtown Assessment Districts, as defined in Section 25-1 of the Winchester City Code, may be used by proprietors, owners, or tenants of businesses abutting the sidewalks, or outside vendors, subject to the provisions within this Section.

The permitted use of such sidewalks pursuant to this Section shall be considered a license and privilege that is authorized at the discretion of the City and shall not in any way be deemed to constitute a transfer of any property rights whatsoever from the City. The City reserves the right to reject or rescind any permit authorized in accordance with the provisions of this Article.

GENERAL PROVISIONS

18-7-1.1 Permit Required. Any person or business using the sidewalks in the Primary and Secondary Downtown Assessment Districts must first obtain a permit from the Administrator. The Administrator may consult with the Downtown Manager, Old Town Development Board, Board of Architectural Review, the Commissioner of the Revenue, Health Department, or any other such agencies deemed necessary prior to approving or denying the issuance of such permit, and may impose conditions upon the applicant which are deemed necessary to protect the Mall surface, sidewalks, street furniture, and appurtenances.

18-7-1.2 Insurance/Damages. The applicant for any such permit shall provide a Certificate of Insurance, which shall be currently maintained throughout the term of the permit, indicating that the City is an additional insured on a policy of liability insurance issued to the applicant by an insurance company licensed to do business in Virginia with a single limit of not less than $1,000,000.

Property Damages: Any person or entity that has been issued a permit pursuant to this Article (hereinafter "Permittee") shall immediately notify the City of Winchester Facility Maintenance Director and Risk Manager of all damage to property for which a permit has been issued pursuant to this Article, including but not limited to: damages to utilities, finished surfaces, and trees.

Deliveries and Storage: It shall be the responsibility of the Permittee to make all arrangements for delivery, unloading, receiving and storing of materials to be placed inside the lessor's building. No shipments, goods, or products shall be stored in the areas for which a permit has been issued pursuant to this Article. The City of Winchester will not assume any responsibility.

Notification and Handling of an Insurance Claim: The Permittee shall be responsible for ensuring that all matters concerning insurance claims by third parties arising as a result of the acts and omissions of the lessor's operations or his subcontractors, are handled in a professional manner. To this end, the City expects the lessor to act responsibly with regard to prompt payment of valid insurance claims and upon notice of a claim, the lessor shall immediately notify the City's Risk Manager, investigate and document the claim, and make a liability determination within ten (10) business days. Pending subrogation between the lessor and/or sub-contractor and/or any insurance carrier will not be cause for delay in payment of a valid claim. Default of this provision may result in default this agreement and jeopardize the lessor's future lease with the City of Winchester.

18-7-1.3 Indemnification and Hold Harmless Agreement. The applicant for such permit shall provide a signed indemnification and hold harmless agreement, on a form approved by the City Attorney, in which the applicant agrees to indemnify and hold the City, its officers, agents, and employees, harmless from any claims for damages to person or property growing out of any activity with the applicant's activities conducted in connection with the permit herein described or caused by the operation or location of the activity on the City's property.

18-7-1.4 Fee. A fee per Section 23-8-18 is required upon issuance of any such permit.

18-7-1.5 Duration. Any such permit issued shall be non-transferable and, shall be valid from January 1 through December 31 of each year, or for any part thereof except as otherwise revoked, rescinded or limited by the provisions of this Article. The application fee will remain the same regardless of the date received, and the fee will not be refunded or prorated based on the date of the application. Upon expiration or revocation of any such permit, the applicant must apply for a new permit to continue using the sidewalk.

18-7-1.6 Certificate of Appropriateness. All furniture, signs and other elements to be used on the sidewalks must receive a Certificate of Appropriateness per Article 14. For items subject to Administrative Review per Section 14-5, the permit application shall concurrently serve as application for the Certificate of Appropriateness.

18-7-1.7 Area Available for Use.

a. Width. For businesses abutting the sidewalk, use of the sidewalk shall not exceed the width of the individual store front.
b. Depth.
    1) Primary Downtown Assessment District. No sidewalk area extending more than fifteen (15) from the abutting storefront toward the center line of Mall shall be used. However, in all cases, no use of area within a designated fire lane shall be permitted.
    2) Secondary Downtown Assessment District. No sidewalk area closer than five (5) feet to the curb shall be used. However, in all cases, a minimum clear path of travel of three (3) feet must be provided.
c. Outside Vendors. Availability of space to be determined in consultation with the Downtown Manager and in consideration of, but not limited to, the following factors: proximity to existing storefronts or doors; proximity to businesses trading in similar goods/services; ability to provide safe and convenient passage for passersby; and scheduled events.

18-7-1.8 Revocation of Permits. The Administrator may immediately revoke any permit specified in this Section if it is determined at the discretion of the Zoning Administrator that the conditions therein have not been met by the applicant. A permit may also be immediately revoked or suspended if it is determined at the discretion of the Administrator that the continued use of the space poses a threat to public health, safety, or welfare, or if such use is determined to be inconsistent with the best interests of the City of Winchester.

The Administrator may immediately revoke any permit specified in this Section if it is determined that the permit holder is not maintaining compliance with all applicable laws and regulations related to the use of the permitted space or if the permit holder fails to promptly respond to lawful requests by the Administrator related to the use of the permitted space.

The use of the space described under this Chapter may also be temporarily suspended for Special Events. The City will make reasonable efforts to notify permit holders in advance so that all privately owned items including but not limited to tables, chairs, and barricades may be removed by the permit holder prior to such Special Events. Upon a permit holder's failure to timely remove the items, such items may be removed in accordance with 18-7-2.2(b).

18-7-2 **OUTDOOR DINING AREA**. As used herein, "outdoor dining area" shall mean any group of tables, chairs, benches, and suitable devices maintained for the purpose of sale and/or consumption of food, refreshments, and beverages of all kinds as an extension of a restaurant licensed under the Regulations of the Virginia Department of Health. Applicants for outdoor dining areas are encouraged to review the *Old Town Winchester Outdoor Dining Guidelines* as adopted by the Old Town Development Board.

18-7-2.1 In addition to the requirements in Section 18-7-1, applicants for an outdoor dining area must also submit:

a. Health License. Evidence showing that the applicant has obtained a license to operate as a restaurant from the Virginia Department of Health. Such license shall be currently maintained throughout the term of the permit.
b. ABC License. If alcoholic beverages are to be sold by the applicant, evidence that the applicant has a valid license for same issued by the Virginia Alcoholic Beverage Control Board, and that it specifically meets that Board's requirements for "outside terraces or patio dining area". Such license shall be currently maintained throughout the term of the permit.
c. Site Sketch. A scaled plan indicating the location of the proposed dining area, the layout of tables, chairs, enclosure, etc. and all existing obstructions (fire hydrants, tree wells, planters, lamp posts, and public egress) in the area.
d. Details. Details clearly indicating the materials, color, and construction of the enclosure, furniture, and all elements. Such details must include the methods in which the enclosure shall be supported. No enclosure or other elements shall be fastened to the sidewalk or adjoining buildings.

18-7-2.2 As a condition of obtaining and keeping a permit for an outdoor dining area, the applicant is deemed to have agreed to the following terms and conditions:

a. All outdoor dining areas will be of such design so as to be easily removed for special events, snow removal, emergency access, or other circumstances which require that the sidewalks be cleared of all such dining areas, as determined by City Council or by the Chief of Police. A directive from the Chief of Police or the City Council to clear the area of all furniture, fixtures, decorations, etc., connected with the café operation shall be promptly complied with by the restaurant without question and without unnecessary delay, and the area shall remain cleared of such material until directed otherwise by City Council or the Chief of Police.
b. Upon failure of the permit holder to remove such items upon reasonable Notice, the City is authorized to remove the items and require the permit holder to reimburse the City for the expense of such removal.

c. The entire area delineated for the outdoor dining area must be maintained in a neat and orderly fashion, whether or not the area is actually in use. When in use, the area shall be periodically cleaned throughout the business day, and, especially, at the end of each business day. All food shall be provided by waiter or waitress service, unless self-service operations are approved as a part of the permit. Extensions or enlargements of the area delineated beyond those described in the restaurant's application are expressly prohibited.
d. All furniture, fixtures, enclosures, and all elements shall be periodically maintained so that they retain full function as well as present a neat, attractive appearance.
e. The outdoor dining area shall operate only when the restaurant to which a permit has been issued is allowed to operate. In addition, the restaurant shall be responsible to see to it that patrons violate no laws of the Commonwealth or Ordinances of the City, to expressly include the City's Noise Ordinance. A business holding a permit shall have the right to limit access and occupancy to only bona fide paying customers, and shall have the same right to deny access or service in the outdoor dining area as it enjoys in its own premises, provided, however, that no person shall be denied access or service purely on the basis of race, religion, national origin, sex, age or physical disability.

18-7-3 **PORTABLE SIGN**. Portable signs shall not exceed six (6) square feet in area. Applicants for portable signs are encouraged to review the *Winchester Historic District Design Guidelines* as published by the Board of Architectural Review.

18-7-3.1 In addition to the requirements in Section 18-7-1, applicants for portable signs must also submit:

a. Site Sketch. A scaled plan indicating the location of the proposed sign and all existing obstructions (fire hydrants, tree wells, planters, lamp posts, and public egress) in the area. Such sign generally shall not impede pedestrian traffic. In all cases, a minimum clear path of travel of three (3) feet must be provided.
b. Details. Details clearly indicating the dimensions, materials, color, construction, etc. of the sign. Such details must include the method in which the sign shall be supported. No portable sign shall be fastened to the sidewalk or adjoining buildings.

18-7-4 **DISPLAY OF MERCHANDISE**. Businesses abutting sidewalks may apply to use such areas for the display of merchandise for the purpose of attracting customers into such businesses, and not expressly for the sale of such items on display. Such displays shall incorporate, or be representative of, merchandise that is regularly sold as part of the business.

18-7-4.1 In addition to the requirements in Section 18-7-1, applicants for display of merchandise must also submit:

a. Site Sketch. A scaled plan indicating the location of the proposed display and all existing obstructions (fire hydrants, tree wells, planters, lamp posts, and public

egress) in the area. Such display generally shall not impede pedestrian traffic. In all cases, a minimum clear path of travel of three (3) feet must be provided.

b. Details. Details clearly indicating the materials, color, construction, etc. of any racks, tables, or other elements which shall be used to display merchandise. Such details must include the methods in which the display elements shall be supported. No elements shall be fastened to the sidewalk or adjoining buildings.

c. Schedule for display. A description of the days, hours, and frequency of outdoor display.

18-7-5 **OUTSIDE VENDORS**. Vendors without an adjoining storefront and operating from carts or other portable vending apparatuses may apply for a permit to use sidewalk area in the Primary and Secondary Downtown Assessment Districts. As there are limited areas for such vendors to locate without conflicting with existing storefronts, all such vendors shall schedule a pre-application meeting with the Administrator to discuss the pending application. No such permit shall be issued unless it is determined that the design of the vending apparatus and its proposed use is compatible with the design and character of the District and shall be issued only for the vending of food and beverages, flowers, arts and crafts, handicrafts, and similar products and services.

18-7-5.1 In addition to the requirements in Section 18-7-1, applicants for permits as outside vendors must also submit:

a. Health License. For food and beverage vendors, evidence showing that the applicant has obtained a license to operate as such from the Virginia Department of Health. Such license shall be currently maintained throughout the term of the permit.

b. Site Sketch. A scaled plan indicating the location of the proposed vending apparatus and all existing obstructions (fire hydrants, tree wells, planters, lamp posts, and public egress) in the area. Such apparatus generally shall not impede pedestrian traffic. In all cases, a minimum clear path of travel of three (3) feet must be provided.

c. Details. Details clearly indicating the materials, color, construction, etc. of the vending apparatus and any other elements which shall be used. Such details must include the methods in which the apparatus shall be supported. No apparatus or elements shall be fastened to the sidewalk or adjoining buildings.

d. Schedule for vending. A detailed description of the specific dates and hours of vending proposed. Outside vendor fees will be determined based on the proposed schedule and shall not be refunded due to non-use of approved dates for any reason.

18-7-5.2 As a condition of obtaining and keeping a permit as an outside vendor, the applicant is deemed to have agreed to the following terms and conditions:

a. The entire area delineated for the vending must be maintained in a neat and orderly fashion. When in use, the area shall be periodically cleaned throughout the business day, and, especially, at the end of each business day. Extensions or

enlargements of the area delineated beyond those described in the application are expressly prohibited.

b. The vending apparatus and all elements shall be periodically maintained so that they retain full function as well as present a neat, attractive appearance.

c. The vendor may be moved from time to time or use prohibited at the discretion of the Administrator or Downtown Manager due to scheduled promotions or other special events being held in the District.

18-7-6 **SPECIAL EVENTS**. Special Events in the Primary and Secondary Downtown Assessment Districts shall be governed by the provisions of Chapter 14, Article IX of Winchester City Code.

SECTION 18-8. SIGNS.

18-8-1 INTENT. The intent of this Article is to establish limitations on signs in order to ensure that they are appropriate to the land, building, or use to which they are appurtenant and are adequate, but not excessive, for their intended purpose. Any widespread display of outdoor advertising is considered inappropriate to the character and sound development of the City, and it is intended by this Article that the streets and highways in the City shall not be made available for such display. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-2 PERMIT REQUIRED. A sign permit shall be required before a sign is erected, altered, or relocated, except as otherwise provided herein.

18-8-2.1 Applications. Each application for such permit shall be accompanied by plans showing the area of the sign; the size, character, and design proposed; the method of illumination, method of fastening such sign; the name and address of the sign owner and of the sign erector. Fees for sign permits shall be in accordance with the schedule of fees for building permits as adopted by the City Council. A sign permit shall become null and void if the work for which the permit was issued has not been completed with a period of six (6) months after the date of issuance of the permit.

18-8-2.2 Permit Exceptions. A permit shall not be required for the following; but such signs shall be subject to any and all applicable provisions of this Ordinance:

a. Any permanent sign four (4) square feet or less in area. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

b. Repainting without changing wording, composition, or color, or minor nonstructural repairs.

c. Changing the wording of a sign that was erected in accordance with the provisions of this Article. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

d. Temporary signs and signs painted on or hung behind windows as permitted in all districts under Section 18-8-12, except as provided in this Ordinance. (10/09/01, Case No. TA-01-05; 12/10/13, Case TA-13-138, Ord. No. 2013-14)

e. Signs indicating the location of a community garden or market garden, provided that such signs shall not exceed four (4) square feet in area and shall not exceed six (6) feet in height. Such signs may include information, identification, and sponsorship reference. (10/12/10, Case TA-10-418, Ord. No. 2010-51)

18-8-2.3 Unless otherwise provided for within this Ordinance, all signs, temporary or permanent, shall be set back from the front property line by a minimum of five (5) feet, except within the B-1 and RB-1 districts. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-2.4 The requirements of this section shall not apply to any permanent or temporary signs issued or installed by the state, local government, any political subdivision thereof, or the employees or agents of such entities. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-3 SIGNS PERMITTED IN THE RB-1 DISTRICT. (7/10/90, Case TA-90-04, Ord. No. 026-90)

18-8-3.1 Building mounted signs limited to one (1) sign for each building on the premises, with sign area limited to a maximum of ten (10) square feet per sign. (7/10/90, Case TA-90-04, Ord. No. 026-90)

18-8-3.2 Directory signs, restricted to two (2) signs for each building on the premises with sign area limited to a maximum of two (2) square feet per sign. (7/10/90, Case TA-90-04, Ord. No. 026-90)

18-8-3.3 Freestanding signs limited to one (1) sign for each building on the premises, not exceeding twenty (20) square feet in area, and not extending higher than fifteen (15) feet. (7/10/90, Case TA-90-04, Ord. No. 026-90)

18-8-3.4 Projecting signs not exceeding one (1) sign for each building on the premises with sign area limited to a maximum of six (6) square feet per sign. No such sign shall extend more than six (6) feet from the plane of the building to which it is attached not closer than two (2) feet from the nearest curb line. (7/10/90, Case TA-90-04, Ord. No. 026-90)

18-8-4 SIGNS PERMITTED IN THE LR, MR, HR, HR-1, AND PUD DISTRICTS. (9/9/97, TA-97-07, Ord. No. 021-97; 3/8/05, TA-04-08, Ord. No. 007-2005)

18-8-4.1 One (1) sign not exceeding two (2) square feet in area for each dwelling unit. Such sign shall indicate only the name of the occupant and/or its location.

18-8-4.2 One (1) or more signs, not exceeding in the aggregate ten (10) square feet for the purpose of identifying a townhouse or multifamily dwelling building. (10/11/88, Case TA-88-07, Ord. No. 039-88)

18-8-4.3 Signs for permitted commercial uses in the HR and PUD Districts shall be governed by the regulations for the PC District. (3/8/05, TA-04-08, Ord. No. 007-2005)

18-8-4.4 One (1) or more signs for publicly owned playing fields which are fully enclosed by permanent structures or fences, including signs bearing a message not appurtenant to the use of the facility. Such signs shall be erected in a manner to create a uniform appearance from the exterior of the playing field, shall be oriented for primary viewing by persons within the playing field where they are erected and messages shall be displayed on the playing field side only. Such signs shall be erected only upon approval by the body exercising management of the facility and shall not be erected until commencement of the sport season for which they are intended and shall be removed immediately following completion of such sport season. (2/9/93, Case TA-92-04, Ord. No. 004-93; 4/12/94, Case TA-94-04, Ord. No. 012-94)

18-8-5 SIGNS PERMITTED IN THE B-1 AND PC DISTRICTS.

18-8-5.1 Building Mounted Signs in the B-1 District. Signage shall be allowed on a basis of one (1) square foot of building mounted sign area (which includes projecting sign area) for each linear foot of building frontage, but not exceeding fifty (50) square feet in area for buildings located closer than one hundred (100) feet from a street line, and not exceeding one hundred (100) square feet in area for buildings set back one hundred (100) feet or more from a street line. Where frontage is on more than one street, each frontage shall be considered a separate frontage. (10/11/88, Case TA-88-07, Ord. No. 039-88; 3/8/05, TA-04-08, Ord. No. 007-2005)

a. Projecting Signs. Projecting signs and signs attached to the bottom of a marquee or roof overhang shall not project more than six (6) feet from the building front nor closer than two (2) feet from the nearest curb line. Projecting signs shall not exceed six (6) square feet in area. (10/11/88, Case TA-88-07, Ord. No. 039-88)

18-8-5.2 Freestanding Signs in the B-1 District.

a. Freestanding signs shall not exceed twenty (20) square feet in area, and shall not extend higher than twenty (20) feet except as per Section 18-8-5.2b for commercial centers. No more than one (1) freestanding sign shall be permitted for each building. (10/11/88, Case TA-88-07, Ord. No. 039-88; 3/8/05, TA-04-08, Ord. No. 007-2005)

b. For commercial centers, no more than one (1) freestanding sign shall be permitted, limited in area to fifty (50) square feet, and shall not extend higher than twenty (20) feet. Such sign shall indicate only the name of the commercial center and/or a business use or a combination of business use within the center. No other freestanding signs shall be permitted. No freestanding sign shall project beyond the property line. (3/8/05, TA-04-08, Ord. No. 007-2005)

18-8-5.3 Building Mounted Signs in the PC District. Signage shall be allowed on a basis of one (1) square foot of building mounted sign area (which includes projecting sign area) for each linear foot of building frontage, but not exceeding fifty (50) square feet. Where frontage is on more than one
street, each frontage shall be considered a separate frontage. Signage shall not be internally illuminated.

a. Projecting Signs. Projecting signs and signs attached to the bottom of a marquee or roof overhang shall not project more than six (6) feet from the building front. Projecting signs shall not exceed six (6) square feet in area. No sign shall project closer than two (2) feet to the property line.

18-8-5.4 Freestanding Signs in the PC District.

a. Freestanding signs shall not exceed twenty-five (25) square feet in area, and shall not extend higher than eight (8) feet except per Section 18-8-5.4b for commercial centers. No more than one (1) freestanding sign shall be permitted for each building. No freestanding sign shall project closer than two (2) feet to the property line. Signage shall not be internally illuminated.

b. For commercial centers, no more than one (1) freestanding sign shall be permitted, limited in area to fifty (50) square feet, and shall not extend higher than eight (8) feet. Such sign shall indicate only the name of the commercial center and/or a business use or a combination of business use within the center. No other freestanding signs shall be permitted. No freestanding sign shall project closer than two (2) feet to the property line. Signage shall not be internally illuminated.

18-8-6 SIGNS PERMITTED IN THE B-2, CM-1, M-1, AND M-2 DISTRICTS.

18-8-6.1 Building Mounted Signs. Signage shall be allowed on the basis of one and one-half (1 1/2) square feet of building mounted sign area for each linear foot of building frontage, but not exceeding two hundred (200) square feet in area. Where frontage is on more than one (1) street, each frontage shall be considered a separate frontage. (10/11/88, Case TA-88-07, Ord. No. 039-88)

18-8-6.2 Freestanding Signs. Freestanding signs permitted under this section shall be situated at least one hundred (100) feet apart from each other within the limits of the development. (11/12/96, Case TA-95-09, Ord. No. 030-96)

a. Freestanding signage shall not exceed seventy-five (75) square feet, and shall not extend higher than twenty-five (25) feet. No more than one (1) freestanding signs shall be permitted for each main building on the premises, except as per Section 18-8-6.2b through 8-8-6.4 of this Ordinance. (10/11/88, Case TA-88-07, Ord. No. 039-88; 11/12/96, Case TA-95-09, Ord. No. 030-96)

b. For commercial centers and buildings housing more than three (3) tenants, freestanding signage shall be permitted on the following basis. (12/8/87, Case TA-87-08, Ord. No. 043-87; 11/12/96, Case TA-95-09, Ord. No. 030-96)

1. One sign for every one thousand, two hundred (1200) linear feet of public street frontage. The first such sign shall not exceed one hundred fifty (150) square feet in area nor thirty (30) feet in height, and any additional such signs shall not each exceed seventy-five (75) square feet in area nor twenty-five (25) feet in height; OR,

2. One sign for each public street frontage. The first such sign shall not each exceed seventy five (75) square feet in area nor twenty-five (25) feet in height, and any additional such signs shall not each exceed fifty (50) square feet in area nor twenty (20) feet in height; OR,

3. One sign for each Main Building within the limits of the development. Such sign(s) shall not each exceed twenty- five (25) square feet in area nor six (6) feet in height. For Commercial Centers with at least five hundred (500) linear feet of public street frontage, one sign not exceeding fifty (50) square feet in area nor twenty-five (25) feet in height shall be permitted in addition to the low rise signage.

c. For regional shopping centers with a floor area of more than five hundred thousand (500,000) square feet, one freestanding sign shall be permitted for each entrance into the shopping center from a public street. Such signs shall indicate only the name of the shopping center and/or business uses within the center. One sign may be two hundred (200) square feet in area, and shall not extend higher than thirty (30) feet. All other freestanding signs shall be limited in area to seventy-five (75) square feet, and shall not extend higher than twenty-five (25) feet. No other freestanding signs shall be permitted, except that an individual enterprise with a direct access to a highway defined as a thoroughfare street in the
Comprehensive Plan shall be permitted one (1) freestanding sign not to exceed seventy-five (75) square feet in area, and limited in height to twenty-five (25) feet. In addition, when a regional
shopping center as defined above is adjacent to the Interstate Route 81 right-of-way, one (1) sign not exceeding three hundred (300) square feet in area, not extending higher than seventy-five (75) feet, and not projecting beyond the property line, shall be allowed.

18-8-6.3 No sign shall project closer than five (5) feet to the property line. (11/12/96, Case TA-95-09, Ord. No. 030-96)

18-8-6.4 For commercial uses located not more than one thousand (1000) feet from the center line of the Interstate Route 81 right-of-way where it intersects with the center line of the right-of-way of any highway that provides entrances and exits to the Interstate

Highway, one (1) permitted freestanding sign in Section 18-8-6.2a may be replaced with one (1) high rise sign, not exceeding two hundred (200) square feet in area and not extending higher than seventy-five (75) feet.

18-8-6.5 For commercial centers with at least 800 linear feet of frontage on the right-of-way of Interstate 81 that are in the CM-1 District, except regional shopping centers as provided for in Section 18-8-6.2c, one (1) permitted freestanding sign in Section 18-8-6.2b may be replaced with one (1) freestanding sign not exceeding 200 square feet in area nor 40 feet height. Such sign shall be no further than 100 feet from the Interstate right-of-way line; shall be no closer than 300 feet to a freestanding sign on an adjacent commercial center; and shall be at least 1,000 feet from residentially zoned land. (04/14/98, TA-97-12, Ord. No. 008-98)

18-8-7 SIGNS PERMITTED IN THE RO-1 DISTRICT.

18-8-7.1 Freestanding Signage, limited to one (1) for each building on the premises, and limited to a maximum sign area of twenty-five (25) square feet. Such signs shall not extend higher than six (6) feet, except on properties which are also designated within the Historic Winchester (HW) District in which case signs shall not extend higher than twelve (12) feet. No sign shall be internally illuminated. (5/8/90, Case TA-90-01, Ord. No. 016-90; 7/12/11, Case TA-11-222, Ord. No. 2011-20)

18-8-7.2 Building Mounted Signs, limited to one (1) for each building on the premises, with sign area limited to a maximum of ten (10) square feet.

18-8-7.3 Directory Signs, restricted to two (2) signs for any building. Such signs shall not exceed two (2) square feet per person or office listed on the sign.

18-8-8 SIGNS PERMITTED IN HS DISTRICT. (6/12/90, Case TA-89-11, Ord. No. 018-90)

18-8-8.1 Signs for residential uses are regulated by Section 18-8-4.

18-8-8.2 Wall or projecting signs identifying specific entrances to a principal health services building. Such signs shall not exceed ten (10) square feet in area each.

18-8-9 SIGNS PERMITTED IN THE MC DISTRICT

18-8-9.1 <u>Building Mounted Medical Center Signs</u>. Signage shall be allowed on the basis of square footage determined from calculating either Effective Building Frontage or Actual Building Frontage. Effective Building Frontage shall mean a lineal measurement of the effective length of the affected building based on the viewable frontage where a building mounted sign will be seen. Actual Building Frontage shall mean a lineal measurement of the actual physical length of the building wall/face on which the building mounted sign is to be mounted. See diagram (Diag. 18-8-9.1a.1 & Diag. 18-8-9.1a.2) below for clarification. Each shall be used in creating a base maximum area

allowable for building mounted signs as follows: (8/9/11, Case TA-11-303, Ord. No. 2011-35)

a. For building mounted signs bearing district branding in the form of logo and/or title, the allowable area shall be determined by modifying the effective building frontage by a factor of 1.5. Such signs may not be wall mounted below a height of 65'-0" above grade, and may not exceed one thousand (1000) square feet in area. *No more than one (1) such sign shall be allowed per Effective Frontage.*

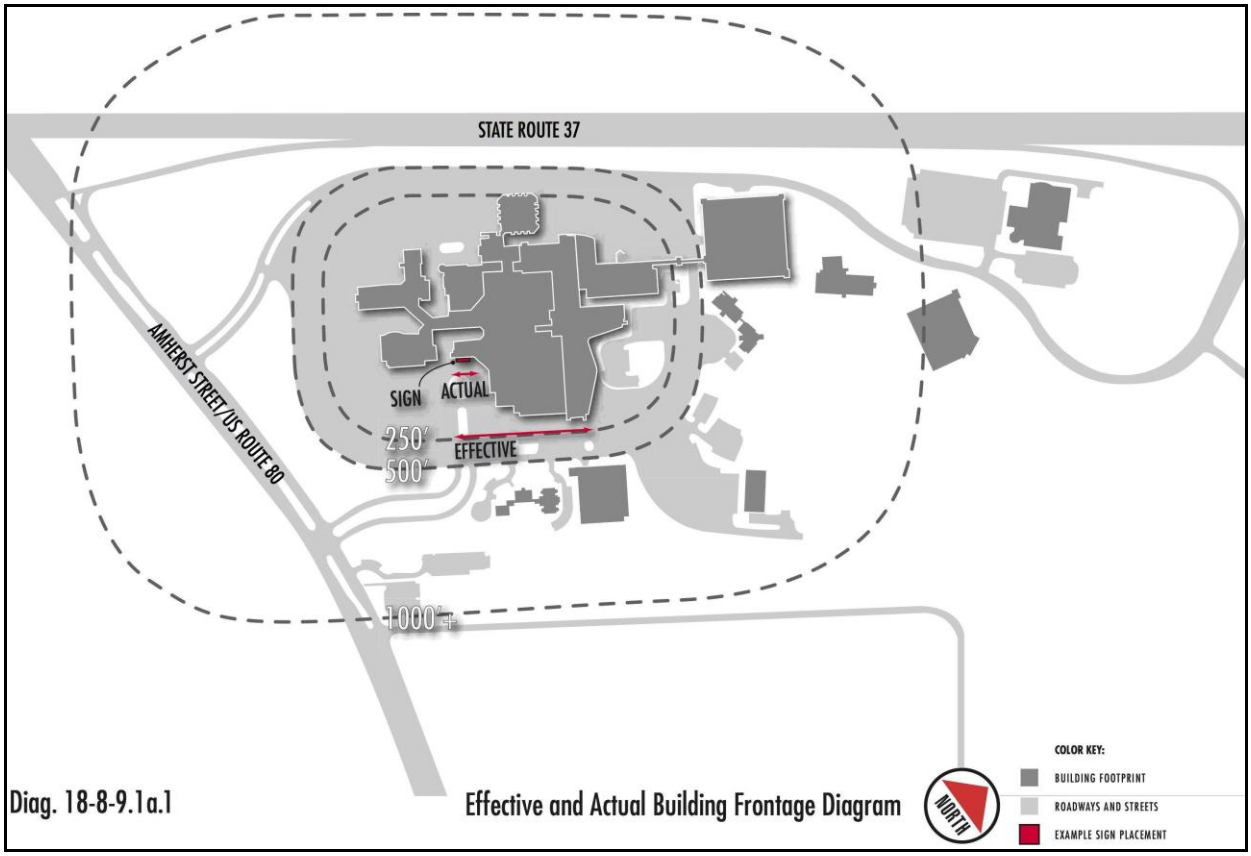
b. For building mounted signs higher than two stories, the allowable area shall be determined by the effective building frontage as a direct relation to square footage. Such signs may not be wall mounted below a height of 30'-0" and no higher than 65'-0" above grade, and may not exceed five hundred (500) square feet in area. *No more than one (1) such sign shall be allowed per Effective Frontage in addition to that listed above.*

c. For building mounted signs two stories or less in height, the allowable area shall be determined by the actual building frontage as a direct relation to square footage. Such signs may not be wall mounted higher than 30'-0" above grade, and may not exceed two hundred (200) square feet in area. *No more than one (1) such sign shall be allowed per Actual Frontage in addition to that listed above.*

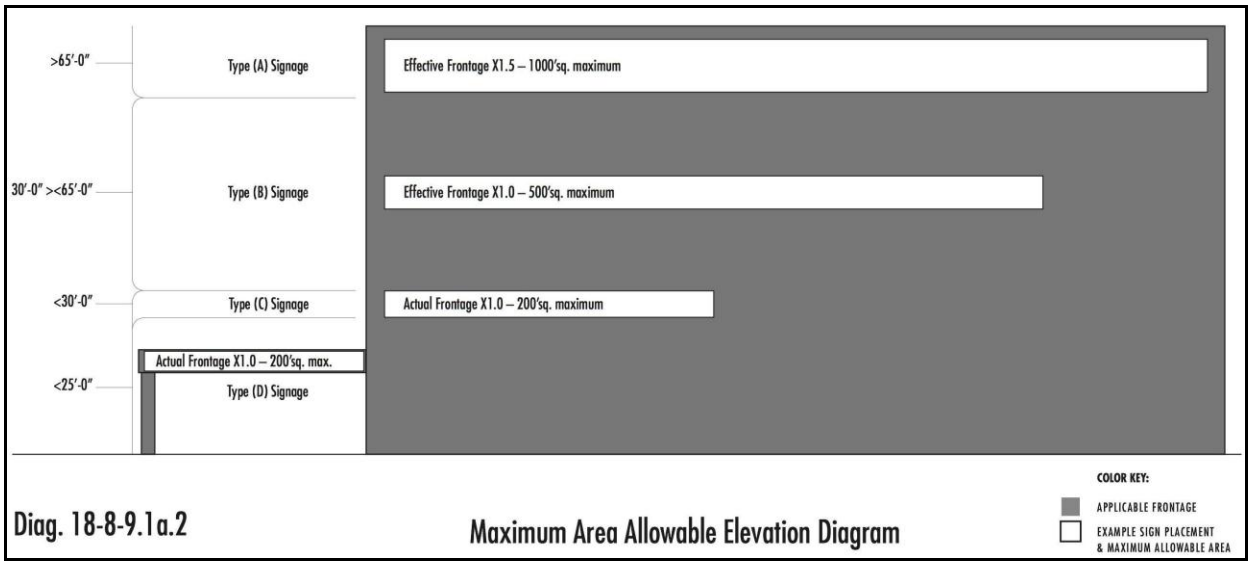
d. For canopy mounted signs, the allowable area shall be determined by the actual frontage of the canopy from the side which the sign will be viewed as a direct relation to square footage. Such signs may not be mounted higher than 25'-0" above grade, and may not exceed one hundred (100) square feet in area. *No more than one (1) such sign shall be allowed per Actual Frontage in addition to that listed above.*

Table 18-8-9.1a.

	HEIGHT	FRONTAGE/FACTOR	MAX SQ. FT.	IDEAL VIEW DIST.
Building mounted identification w/brand	**>65-0"**	**Effective x1.5**	**1000' sq.**	**~1000'**
Building mounted identification (>2 story)	**30'-0" >< 65'0"**	**Effective x1.0**	**500' sq.**	**~500'**
Building mounted identification (<2 story)	**<30'-0"**	**Actual x1.0**	**200' sq.**	**~500'**
Canopy mounted identification	**<25'-0"**	**Canopy Actual x1.0**	**100' sq.**	**~250'**



Diag. 18-8-9.1a.1 Effective and Actual Building Frontage Diagram



Diag. 18-8-9.1a.2 Maximum Area Allowable Elevation Diagram

18-8-9.2 Freestanding Signs.

a. Freestanding signs, unless otherwise specified, shall not exceed seventy two (72) square feet in area, and shall not extend higher than twenty (20) feet. No more than one (1) freestanding sign shall be permitted for each building. Additional signs not exceeding seventy two (72) square feet in area and twenty (20) feet in height shall be permitted when such signs provide directional assistance for multiple destinations. No free standing sign shall project beyond the property line. (9/9/08, Case TA-08-06, Ord. No. 2008-39)

b. No more than one (1) freestanding sign shall be permitted for a general hospital, limited in area to fifty (50) square feet, and shall not extend higher than twenty-five (25) feet. No freestanding sign shall project beyond the property line.

c. For the purpose of identifying a medical center in which a general hospital is located one (1) freestanding sign shall be limited for each entrance to the medical center from a public street or right of way. The freestanding signs shall be limited in area to one hundred sixty (160) square feet and shall not extend higher than twenty-five (25) feet. Such sign shall indicate only the name of the medical center and/or a general hospital within the center and/or the location of an emergency medical facility. No freestanding sign shall project beyond the property line. (8/11/87, Case TA 87-04 Ord. No. 025-87; 9/9/08, Case TA-08-06 Ord. No. 2008-39)

18-8-9.3 Repealed. (1/9/97, Case TA-97-11, Ord. No. 034-097)

18-8-9.3a Repealed. (1/9/97, Case TA-97-11, Ord. No. 034-097)

18-8-9.4 Navigational Signs.

a. Navigational signs for the purpose of identifying a heliport shall be exempt from regulation.

18-8-10 SIGNS PERMITTED IN THE HE-1 AND EIP DISTRICTS. (9/9/97, TA-97-07, Ord. No. 021-97)

18-8-10.1 Signs identifying an educational, institutional, or public/semi-public facility, limited to one (1) sign per entrance to said facility. Such signs shall not exceed fifty (50) square feet in area each. (9/9/97, TA-97-07, Ord. No. 021-97)

18-8-10.2 Repealed. (1/9/97, Case TA-97-11, Ord. No. 034-097)

18-8-10.3 Wall Mounted Directory Signs. Such signs shall not exceed two (2) square feet in area per person or office listed on the sign.

18-8-11 SIGNS PERMITTED IN THE HW DISTRICT. No sign shall be erected or altered in the Historic Winchester (HW) District until a Certificate of Appropriateness has been issued by Zoning Administrator or the Board of Architectural Review, unless otherwise provided in this Ordinance. These signs are subject to the provision of Article 14 and design guidelines as may be adopted by the Board of Architectural Review. Signage shall not be internally illuminated. Roof mounted signs, banners, and pennants are prohibited, with the exception that one sign provided in Section 18-8-12.2 may be installed per property in accordance with the provisions of that Section. (9/11/01, Case TA-01-02, Ord. No. 029-2001; 3/8/05, TA-04-08, Ord. No. 007-2005; 12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-11.1 SIGNS PERMITTED IN THE CE DISTRICTS. No sign shall be erected or altered in one of the Corridor Enhancement (CE) Districts until a Certificate of Appropriateness has been issued by the Planning Department, unless otherwise provided in this Ordinance, and which Certificate of Appropriateness shall be issued upon conformity with all the provisions and design criteria of Article 14.2 of this Ordinance. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-12 SIGNS PERMITTED IN ALL DISTRICTS. The following signs shall be permitted in all districts. The area of any sign shall not be included in computing the aggregate sign areas specified for individual districts. (9/11/01, Case TA-01-02, Ord. No. 029-2001; 12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-12.1 Temporary signs, which shall be non-illuminated and limited to the following types:

18-8-12.2 The following temporary signs may be installed by-right without fee or Certificate of Appropriateness, provided the sign is installed in accordance with the size, location, and duration standards outlined in this section. No setback from property lines shall be required for any signs permitted in this section (12/10/13, Case TA-13-138, Ord. No. 2013-14):

a. Construction Signs. One sign per individual or firm involved with construction is permitted, and each sign shall not exceed four (4) square feet in area for a single family residential project and sixteen (16) square feet for any other project, and shall be removed immediately following the completion of the project.

b. Real Estate Signs, advertising the sale, rental, or lease of the premises, or part of the premises on which the signs are displayed. Signs shall not exceed eight (8) square feet in area on residential properties or sixteen (16) square feet for non-residential properties and shall be removed immediately after sale, lease or rental. One sign per street frontage is permitted. On properties two (2) acres or larger, residential signs may be up to twelve (12) square feet and non-residential signs may be up to a maximum of thirty-two (32) square feet.

c. Political Campaign Signs, announcing the candidates seeking public political office and other data pertinent thereto. These signs shall be confined within private property, erected only with the consent of the owner of the private property, and removed within fourteen (14) days after the event for which they were made.

d. Street Banners, advertising a public entertainment or event, if specifically approved by the City Council and only for locations designated by the City Council, during and for fourteen (14) days before and after the event for which they were made.

e. Signs advertising only the name, time and place of any bona fide fair, carnival, festival, bazaar, horse show, or similar event, when conducted by a public agency or for the benefit of any civic, fraternal, religious, or charitable cause: provided that all such signs shall be removed within five (5) days after the last day of the event to which they pertain. Such signs may be installed in the public right-of-way only upon approval by the City Manager or his designee.

f. Signs advertising storage of materials and supplies or display of merchandise for sale or rent shall be permitted but shall not be visible from off-site, except for one temporary sign up to twelve (12) square feet may be used as part of an outdoor vendor or outdoor display of merchandise permit as provided for in Section 18-7 of this Ordinance.

g. Signs advertising an on-site yard sale. One such sign may be placed upon the property for which the yard sale is taking place and may be up to a maximum of eight (8) square feet. Such signs may be placed on site three (3) days before the sale, and must be removed upon completion of the sale.

h. Non-commercial Signs. One such sign may be placed upon a property. If a residential property contains more than one unit, one sign per residential unit is permitted. Such signs shall not exceed twelve (12) square feet, have a height of not greater than four (4) feet, and must be freestanding and not affixed to a wall, fence, structure, vehicle, or landscaping.

i. Open Business Sign. One such flag sign not to exceed fifteen (15) square feet may be affixed to the building that bears the word “OPEN” or other words depicting the nature of the business. Should the flag contain any corporate logo or text, the sign will not meet this definition. Such signs may only be on display during the operational hours of the business.

j. Development Banner. Banners identifying the name or simple announcement of a commercial center, medical campus, university campus or similar development, provided that such signs do not exceed ten (10) square feet and are securely affixed to a building or pole on private property, at least fifty (50) feet shall be provided between any two such signs.

k. Incidental Price and Advertising Signs, any temporary advertising sign less than two (2) square feet in area. One such sign may be affixed to the product being advertised. For service establishments, a maximum of one sign may be affixed to a gasoline or petroleum fuel pump.

Table 18-8-12.2

Type	Maximum Size	Maximum Height	Maximum Number
Construction Signs	See Section 18-8-12.2a	None	1 per individual/firm
Real Estate Signs	See Section 18-8-12.2b	None	1 per street frontage
Political Campaign Signs	None	None	None
Street Banners	None	None	None
Civic/Fraternal/Charitable Event Sign	None	None	None
Signs Advertising Storage/Display of Merchandise	None	None	None
Yard Sale	8 SF	None	None
Non-commercial Signs	12 SF	4 feet	1 per residential unit
Open Business Sign	15 SF	None	1 per business
Development Banner	10 SF	None	None
Incidental Price or Advertising Sign	2 SF	None	None

18-8-12.3 The following commercial temporary signs shall be permitted in the in the RB-1, RO-1, B-1, B-2, M-1, M-2, CM-1, and PC districts. The number of permitted signs shall be directly proportional to the amount of public street frontage for that property. If a property has multiple public street frontages, each frontage shall be included in the sign calculation. Unless otherwise provided, one (1) temporary sign may be installed per fifty (50) linear feet of public street frontage, with a maximum of four (4) temporary signs per property. Each permitted temporary sign may be up to a maximum of sixteen (16) square feet in size and four (4) feet in height unless affixed to the face of a building. For properties that do not meet the fifty (50) linear foot requirement for a temporary sign, one temporary sign meeting the aforementioned requirements shall be permitted. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

a. Temporary advertising signs on display no more than thirty (30) days per quarter.

b. Temporary Business Identification Signs during review and approval of a permanent building-mounted or freestanding sign. Such signs must be affixed to the face of a building or an existing freestanding sign structure and be on display no longer than forty-five (45) days and are limited to one sign per business.

c. Portable price or advertising signs. Such signs shall be permitted to be on display a maximum of thirty (30) days per quarter, except for signs permitted in the Primary and Secondary Downtown Assessment Districts permitted under Section 18-7.

d. Temporary sales signs, as defined in Section 18-8-18.19 provided that no more than two (2) such signs are on display, and having a height of no more than four (4) feet. Such signs shall be on display for no longer than the approved temporary event.

e. Regional Tourism Signs. Two signs may be placed on properties containing a regional tourism destination for the purpose of making public announcements, advertising special exhibits, events, or similar advertisements. Such signs shall be exempt from the requirements of Article 14.2, and each sign may be on display no longer than thirty (30) days and no larger than twenty-five (25) square feet. For the purposes of this section a regional tourism destination shall mean a property larger than three (3) acres that routinely provides information and/or exhibits for tourists and the general public.

Table 18-8-12.3

Type	Maximum Size	Maximum Height	Maximum Number
Temporary Advertising Signs	16 SF	4 feet	See Section 18-8-12.3
Temporary Business Identification Signs	16 SF	Must be affixed to a building	1 per business
Portable Price or Advertising Signs	16 SF	4 feet	See Section 18-8-12.3
Temporary Sales Signs	16 SF	4 feet	2 per approved temporary sale event
Regional Tourism Signs	25 SF	4 feet	2

18-8-12.4 Permanent Signs.

a. Directional Signs, as defined, provided each sign does not exceed ten (10) square feet in area nor four (4) feet in height. No more than two (2) signs shall be permitted within one hundred (100) feet of each other within the limits of the development except signs required by a public authority for recognized traffic management needs. For commercial centers greater than fifty thousand square feet in floor area and Higher Education (HE-1) District uses, additional directional freestanding signs not exceeding thirty (30) square feet in area and six (6) feet in height shall be permitted within off-street parking areas when such signs provide directional assistance for multiple destinations. For Medical Center (MC) District uses, additional directional freestanding signs not exceeding seventy two (72) square feet in area and ten (10) feet in height shall be permitted within off-street parking areas when such signs provide directional assistance for multiple destinations

A sign permit shall be required**.** Such additional signs shall be limited to a single unifying logo representative of the development and text on a solid color background and shall be oriented so as to limit primary viewing to persons already on site and not to persons traveling on public and/or private streets provided in lieu of public streets. (1/9/97, Case TA-97-11, Ord. No. 034-097; 6/9/98, TA-98-02, Ord. No 016-98; 9/9/08 Case TA-08-06, Ord. No. 2008-39; 12/10/13, Case TA-13-138, Ord. No. 2013-14)

b. Wall or freestanding signs, not exceeding a total of fifty (50) square feet in area nor eight (8) feet in height and not internally illuminated, for the identification of a subdivision or Planned Development or one freestanding sign not exceeding fifty (50) square feet in area nor eight (8) feet in height and not internally illuminated for the identification of an apartment complex containing at least 50 apartment units and covering at least three (3) acres of ground, if located at an entrance to said subdivision, Planned Development or apartment complex. If a said apartment complex fronts upon more than one public street, then one additional freestanding identification sign not exceeding twenty-five (25) square feet in area shall be allowed at a separate entrance. (3/11/97, Case TA-96-08, Ord. No. 007-97; 9/11/01, Case No. TA-01-02, Ord. No. 029-2001)

c. Names of buildings, dates of erection, monumental citations, commemorative tablets, and the like when carved into stone, concrete, or similar material or made of bronze, aluminum, or other permanent type construction and made an integral part of the structure.

d. Institutional signs setting forth the name or any simple announcement for any public, charitable, educational, or religious institute, located entirely within the premises of that institution. Freestanding signs shall not exceed twenty-five (25) square feet in area.

e. Signs painted on or hung behind windows.

f. Menu boards shall be permitted in the B-1, B-2, CM-1, M-1, and PC districts for drive-through establishments provided such signs shall be designed and oriented so as to limit primary viewing to persons using drive through facilities and menus shall be displayed only on the drive through standing space side. (3/8/94, Case TA-93-09, Ord. No. 005-94)

g. Community Signs, after a finding that such signs are consistent with the provisions of Sections 18-2-1.1a and b of this Ordinance. The intent of this section is to permit a limited number of signs at the entryways to the community where multiple noncommercial messages are presented in a planned, orderly manner. Such signs shall not exceed 15 feet in height nor 150 square feet in sign area. No signs permitted under this section shall be more than 1,500 feet from the nearest exit ramp and no two signs shall be within 500 feet of each other. A sign permit shall be required. (10/8/96, Case TA-96-06, Ord. No. 026-96)

18-8-13 SIGNS PROHIBITED IN ALL DISTRICTS. The following types of signs are prohibited in all districts:

18-8-13.1 Any sign that obscures a sign display by a public authority for the purpose of giving traffic instructions or directions or other public information.

18-8-13.2 Any sign within the triangular area at the street corner of a corner lot described in Section 18-12 of this Ordinance.

18-8-13.3 Any sign that consists of strings of light bulbs or illumination devices such as LEDs. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-13.4 Any sign or device , whether or not such device has written message content, of which all or any part is in motion by any means, including fluttering, rotating, or other moving signs set in motion by movement of the atmosphere, including but not limited to pennants, propellers, discs, and similar devices. This shall not apply to the hand of a clock or a weather vane, flags of a national, state or local government, or signs in Section 18-8-12.2i. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-13.5 Any sign, except official notices and advertisements, which is nailed, tacked, posted, or in any other manner attached to any utility pole or structure for supporting wire, cable, or pipe, or to any tree on any street or sidewalk or to public property of any description.

18-8-13.6 Outdoor advertising signs.

18-8-13.7 Moored balloons, inflatable signs, or other floating signs that are tethered to the ground. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-13.8 Any sign with a minimum clearance of less than eight (8) feet above a walkway or sidewalk or less than fifteen (15) feet above a driveway or alley. (7/10/90, Case TA-90-04, Ord. No. 026-90)

18-8-14 ILLUMINATION.

18-8-14.1 The light from any illuminated sign shall not cause direct glare into or upon any building or property owner other than the building or property to which the sign may be related.

18-8-14.2 No sign shall display flashing or intermittent lights, or other lights of changing degrees of intensity, brightness or color, except a sign indicating time or temperature, with changes alternating on not less than five (5) second cycle when such time or temperature sign does not constitute a public hazard, in the judgment of the Zoning Administrator.

18-8-14.3 Neither the direct nor reflected light from primary light sources shall create a traffic hazard to operators of motor vehicles on public thoroughfares.

18-8-14.4 Signs for developments in the Highway Commercial, B-2 District that include multifamily units, per Section 8-2-20, shall not utilize any internal illumination. External illumination, if any, shall be provided in a down-cast manner or shielded to prevent direct lighting of windows in multifamily units. (9/13/05, Case TA-05-02, Ord. No. 025-2005)

18-8-14.5 Electronic Message Board Signs shall not change message with a greater frequency than once every sixty (60) seconds in order to prevent traffic hazards to operators of motor vehicles on public thoroughfares, with exception of time or temperature changes per Section 18-8-14.2. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-15 NONCONFORMING SIGNS.

18-8-15.1 Signs, other than outdoor advertising signs, which do not conform to the regulations and restriction prescribed for the zoning district in which they are situated, but which were erected in accordance with all applicable regulations in effect at the time of their erection may remain erected only so long as the then existing use which they advertise remains.

18-8-15.2 No nonconforming sign shall be altered except in conformity with the provisions of this Article.

18-8-15.3 Permanent nonconforming freestanding signage, other than outdoor advertising signs, may be altered if said alteration reduces the total permanent nonconforming freestanding sign area by at least fifteen (15) percent. In cases involving commercial centers or sites with more than one permanent nonconforming freestanding sign, the reduction in area may be achieved either by: a) reducing the square footage of the

individual altered sign by at least fifteen (15) percent: or, b) reducing the aggregate square footage of all permanent nonconforming freestanding signage by at least fifteen (15) percent.

18-8-15.4 If a nonconforming sign is damaged to an extent greater than fifty (50) percent of the cost of reconstructing the sign to its condition before the occurrence, it shall not be rebuilt.(10/9/01, Case No. TA-01-05, Ord. No. 034-2001)

18-8-16 ABANDONED SIGNS. A sign shall be removed by the owner or lessee of the premises upon which the sign is located when the business which it advertises is no longer on the premises. If the owner or lessee fails to remove it, the Zoning Administrator shall give the owner thirty (30) days' notice in writing to remove said sign.

18-8-17 DILAPIDATED SIGNS. All signs shall be maintained in good working condition so as to present a neat and orderly appearance. The Zoning Administrator may cause to be removed any sign which shows gross neglect or which becomes dilapidated.

18-8-18 DEFINITIONS.

18-8-18.1 Area of Sign. The entire area within a circle, triangle, parallelogram, or trapezoids including the extreme limits of writing, reproduction, emblem, or any figure of similar character, together with any frame or other material or color forming an integral part of the display or used to differentiate the sign from the background against which it is placed, excluding the necessary supports or uprights on which such sign is placed. On double-faced signs, only one (1) display face shall be measured in computing total sign area where sign faces are parallel and are at no point more than two (2) feet from one another.

18-8-18.2 Maintenance. The replacing or repairing of a part or portion of a sign made unusable by ordinary wear, tear, or damage beyond the control of the owner or the reprinting of existing copy without changing the wording.

18-8-18.3 Outdoor Advertising Sign. A freestanding or building mounted sign bearing a message which is not appurtenant to the use of the property where the sign is located, and which does not identify the place of business where the sign is located as the purveyor of merchandise or services upon the sign, except signs permitted off-premises for Commercial Centers, as defined and except for directional signs per Section 18-8-18.11. Such signs may also be referred to as billboards or poster panels. (1/9/97, Case TA-97-11, Ord. No. 034-097)

18-8-18.4 Projecting Signs. A sign attached to and perpendicular to the building wall.

18-8-18.5 Sign. Any structure, display device, or representation which is designed or used to advertise or call attention to any thing, person, business, activity, or place and painted, printed, constructed, and displayed in any manner whatsoever out of doors for recognized advertising purposes. However, this shall not include any official court or

public notices nor the flag, emblem, or insignia of a government, school, or religious group when displayed for official purposes.

18-8-18.6 Temporary Sign. A banner, poster, or advertising display constructed of cloth, plastic sheet, cardboard, wallboard, or other like materials, intended to be displayed for a limited period of time, and not permanently attached to a building, the ground, or other structure. Only temporary signs provided in Section 18-8-12.2 may be constructed utilizing wood materials and may be securely affixed to the ground to prevent being set in motion by the atmosphere. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-18.7 Wall Sign. A sign affixed directly to or painted on or otherwise inscribed on an exterior wall or parapet and confined within the limits thereof of any building and which projects from that surface less than twelve (12) inches at all points.

18-8-18.8 Roof Line. Either the edge of the roof or the top of the parapet, whichever forms the top line of the building silhouette. Where a building has several roof levels, this roof or parapet shall be the one belonging to that portion of the building on which the sign is located. (3/8/94, Case TA-93-09, Ord. No. 005-94)

18-8-18.9 Roof Sign. A sign erected on the roof of a building. Roof signs shall not project above the roof line. (3/8/94, Case TA-93-09, Ord. No. 005-94)

18-8-18.10 Community Sign. A sign identifying the community and/or recognized historic and/or cultural resources therein provided such signs are situated within or visible from major tourism corridors directly connecting from limited access highways. Signs may include uniformly sized and shaped emblems, logos, insignias or simple nameplates of any civic, fraternal, charitable or religious organization based in the community. (10/8/96, Case TA-96-06, Ord. No. 026-96)

18-8-18.11 Directional Sign. A wall or freestanding sign in or primarily oriented toward a parking lot to identify entrances, exits, and divisions of the lot into sections, and to control vehicular and pedestrian traffic in the lot. In cases where a property owner agrees to close an existing driveway connecting directly to a street to permit shared access per Section 18-6-3.6 of this Ordinance or where an off-premises entrance from the public street in lieu of a direct connection is recommended by a public authority, one (1) off-premises directional sign bearing the name or simple logo of the commercial activity shall be permitted at the connection to the street. (1/9/97, Case TA-97-11, Ord. No. 034-097)

18-8-18.12 Inflatable Sign. A sign capable of being expanded by air or other gas and used on a temporary or permanent basis to advertise a product or event. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-18.13 Monument Sign. A freestanding sign permanently installed on the property. The base of a monument sign is as wide as or wider than the main sign face. A monument sign is built on-grade in such a manner that the sign and the structure are an integral part of one another. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-18.14 Electronic message board sign. A sign displaying characters or images that move or change, caused by any method other than physically removing and replacing the sign or its components. This includes a display that incorporates technology to allow the sign face to change the image, such as any display that incorporates LED lights manipulated through digital input, "digital ink" or any other method or technology that allows the sign face to present a series of images or displays. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-18.15 Construction Sign. A sign depicting the name or logo of a contractor, engineer, architect, or other individual or business that is involved with a construction, renovation, or demolition project. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-18.16 Real Estate Sign. A sign advertising the sale, lease, or rent of the property upon which the sign is located. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-18.17 Portable Price or Advertising Sign. A sign that is not permanently affixed to the ground, building or a structure, designed to be on display for a limited period of time. Such signs include sandwich board signs, moveable chalkboard signs, and other signs of a similar nature. These signs shall not include any signs provided under Section 18-8-12.2. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-18.18 Yard Sale Sign. A sign advertising a yard sale, garage sale, estate auction, or similar private sale of personal property and located upon the property where such sale is occurring. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-18.19 Temporary Sales Sign. A temporary sign advertising a temporary sales event as permitted by the Administrator, such as Christmas trees, fireworks, or similar sales event placed upon the property where such event is occurring. Such signs shall not include portable signs permitted in the Primary or Secondary Assessment districts, nor events sponsored by the Old Town Development Board or City of Winchester. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-8-18.20 Non-commercial Sign. A sign utilized for a non-commercial purpose. Such signs shall not include real estate, construction, or yard sale signs. (12/10/13, Case TA-13-138, Ord. No. 2013-14)

SECTION 18-9. SPECIAL REGULATIONS REGARDING YARDS

18-9-1 YARDS AND OPEN SPACE. No yard or other space provided about any building for the purpose of complying with the provisions of this Ordinance shall be considered as providing a yard or other open space for any other building, and no yard or other open space on one (1) lot shall be considered as providing a yard or open space on any other lot.

18-9-2 YARD ENCROACHMENTS. Every part of every required yard shall be open and unobstructed from the ground to the sky except as hereinafter provided or as otherwise permitted in this Ordinance:

18-9-2.1 Unenclosed porches, decks, or terraces not over three (3) feet above the ground except for railings and roof structures, may extend five (5) feet into a required front yard or corner side yard, ten (10) feet into a required rear yard, and three (3) feet into a required non-corner side yard, provided that any such structure having a roof shall not extend into any required yard area to a greater distance than one-half (1/2) the required yard depth or width. (8/16/02, Case TA-02-02, Ord. No. 010-2002)

18-9-2.2 An open, unenclosed paved terrace may project into the required front yard for a distance not exceeding ten (10) feet.

18-9-2.3 Chimneys, fireplaces, or pilasters may not project over two (2) feet into a required yard.

18-9-2.4 Handicap accessibility ramps and steps and staircases without roofs may extend into required yards as follows: Any portions with not more than nine (9) feet of reveal between any step or point on a ramp and the closest point of grade surrounding it may extend four (4) feet into a required front, corner side or rear yard; Any portions with not more than five (5) feet of reveal between any step or point on a ramp and the closest point of grade surrounding it may extend eight (8) feet into a required front, corner side or rear yard and five (5) feet into a required non-corner side yard provided they do not extend into any required yard to a greater distance than one-half (1/2) the required yard depth or width. Any portions with less than two (2) feet of reveal between any point on the steps or point on a ramp and the closest point of grade surrounding it may extend into any required yard. (8/16/02, Case TA-02-02, Ord. No. 010-2002; 1/13/04, Case TA-03-04, Ord. No.002-2004)

18-9-2.5 An unenclosed carport, attached to a dwelling, may extend into any required side yard a distance of not more than five (5) feet but not nearer to any side lot line than a distance of five (5) feet.

18-9-2.6 Trash and recycling enclosures may extend into any required rear and side yard but not nearer to any rear or side lot line than a distance of three (3) feet, except for enclosures serving nonresidential uses when adjacent to a residentially zoned lot, in which case a minimum of fifteen (15) feet of separation shall be provided. (1/9/01, Case TA-00-10, Ord. No. 003-2001)

18-9-2.7 Utility boxes, transformers and similar structures which do not create noise, odor, glare, vibration, light, dust or excessive heat and which are less than six (6) feet in height, may be installed in any required rear or side yard. (1/9/01, Case TA-00-10, Ord. No. 003-2001; 8/16/02, Case TA-02-02, Ord. No. 009-2002)

18-9-2.8 Fences and non-retaining walls up to eight (8) feet in height above surrounding grade, may be installed in any required rear or non-corner side yard. Fences up to four (4) feet in height above surrounding grade which are at least twenty-five (25) percent open (e.g. picket, chain link, rail, etc.) and non-retaining walls up to three (3) feet in height above surrounding grade may be installed in any required front or corner side yard except as per Section 18-12 of this Ordinance. On double-frontage residential lots, fences up to six (6) feet in height above surrounding grade may be installed in the one required front yard that is situated between a public street and the rear elevation of the main building on the lot provided that they are set back from the public right of way at least three (3) feet plus one (1) additional foot of setback for every one (1) additiona1 foot of height above four (4) feet. (8/16/02, Case TA-02-01, Ord. No. 009-2002)

18-9-2.9 Retaining walls up to eight (8) feet in height above surrounding grade may be installed in any required rear or non-corner side yard, provided that any retaining wall over three (3) feet in height shall include a railing, fence or hedge at least thirty-six (36) inches high along the top to protect persons from injury due to falling. Retaining walls up to three (3) feet in height above surrounding grade may be installed in any required front or corner side yard except as per Section 18-12 of this Ordinance. (8/16/02, Case TA-02-01, Ord. No. 009-2002)

18-9-2.10 No person shall erect or maintain a fence, wall or other barrier wholly or partially enclosing any lot or premises within the city on a property that is zoned LR, MR, HR, or HR-1, where such fence, wall or barrier is made of, or includes, barbed ends, barbed wire or razor wire, or any similar materials, unless such fence is specifically approved for a use permitted through the Conditional Use Permit process. (10/12/10, Case TA-10-386, Ord. No. 2010-50)

SECTION 18-10. ACCESSORY USES AND STRUCTURES.

18-10-1 In all districts, accessory buildings or structures shall not be located in a front or side yard, unless specifically provided for elsewhere by the provisions of this Ordinance. (5/8/90, Case TA-90-01, Ord. No. 016-90)

18-10-2 Accessory structures shall not exceed twelve (12) feet in height on any property located in a residential district outside of the delineated boundaries of the Winchester Historic Overlay District. Notwithstanding any other provisions within this Ordinance, accessory structures which meet the side and rear yard requirements for the district shall not exceed the height of the existing main building or the height limit for the residential district in which the structures are located, whichever is less. (3/11/08, Case TA-07-08, Ord. No. 2008-13)

18-10-2.1 Exceptions to the permitted building height of accessory structures located within the required side and/or rear yard areas shall only apply to residential properties improved with single-family detached dwelling units which were constructed in 1930 or prior thereto, and are located within the Winchester Historic Overlay District, as defined in Section 14-1 of this Ordinance. In these cases, appropriate building heights for accessory structures shall be determines by the Board of Architectural Review through the Certificate of Appropriateness process outlined in this Ordinance. The Zoning Administrator may allow heights of accessory structures to extend to maximum height of eighteen (18) feet when the following findings can be made in writing:

a. The additional height is necessary to allow architectural integrity and harmony between the accessory structure and the principle structure, as determined by the Board of Architectural Review; and,

b. An Accessory Structure height of eighteen (18) feet will not result in adverse conditions to adjoining properties nor will it prove injurious to public health or safety; and,

c. All other requirements of the Zoning Ordinance and the Uniform Statewide Building Code have and will be met. (3/11/08, Case TA-07-08, Ord. No. 2008-13)

18-10-3 Fences and walls (both retaining and non-retaining) up to five (5) feet in height above surrounding grade may be permitted in non-required front and corner side yards except as per Section 18-12 of this Ordinance and provided that any retaining wall over three (3) feet in height shall include a railing, fence or hedge at least thirty-six (36) inches high along the top to protect persons from injury due to falling. (8/16/02, Case TA-02-01, Ord. No. 009-2002)

18-10-4 No setback from side or rear lot lines shall be required. (10/11/83, Case 83-06, Ord. No. 034-83)

18-10-5 Steps and staircases shall be permitted in any non-required yard. (8/16/02, Case TA-02-02, Ord. No. 009-2002)

18-10-6 Accessory buildings permitted in rear yards of residential districts shall not occupy a combined total area of more than thirty (30) percent of said yard. (5/8/90 Case TA-90-01, Ord. No. 016-90)

18-10-7 Except as provided for in Section 18-10-8, no accessory building shall be constructed upon a lot until the construction of a main building has actually commenced; and no accessory building shall be used unless the main building on a lot is completed and used, except that in the LR, MR, and HR districts one accessory building may be located on a parcel on which no main building exists if such parcel is immediately adjacent to a parcel on which a single family dwelling is located and both parcels are under common ownership. Such accessory building shall be for a use accessory to the main building and shall be located in the rear yard. The rear yard for the parcel without a main

building is defined as being equal to the rear yard for the immediately adjacent commonly owned parcel on which a main building is located. In no case may the accessory building encroach into the front setback or corner side yard for the parcel on which the accessory building is located. (5/8/90, Case TA-90-01, Ord. No. 016-90; 10/12/10, Case TA-10-418, Ord. No. 2010-51)

18-10-8 The following accessory uses and structures shall be permitted on a lot that has been approved for use as a community garden or market garden:
(10/12/10, Case TA-10-418, Ord. No. 2010-51)

18-10-8.1 Hoophouses, cold-frames, and similar planting preparation houses, temporarily used to extend the growing season;

18-10-8.2 Benches, bike racks, raised/accessible planting beds, compost bins, picnic tables, seasonal farm stands, fences, garden art, rain barrel systems, and children's play areas;

18-10-8.3 Buildings, limited to tool sheds, greenhouses, shade pavilions, barns, rest-room facilities with composting toilets, and planting preparation houses; provided that the combined area of all buildings shall not exceed fifteen percent (15%) of the garden site lot area.

a. Buildings associated with community gardens and market gardens shall be set back from side and rear property lines of any property located in a residentially-zoned district a minimum distance of five (5) feet; and,

b. Buildings shall not be located within a required front or corner-side yard.

18-10-9 Donation Drop-off Boxes (1/8/13, Case TA-12-473, Ord. No. 2012-36)

a. Donation drop-off boxes shall be permitted in all zoning districts provide they are located on a property that contains a place of worship or building containing a charitable use as a permitted primary use.

b. Donation drop-off boxes shall not be located in any provided front or corner-side yard, nor located in any required side yard.

c. Donation drop-off boxes shall not obstruct pedestrian or vehicular circulation, nor be located in public rights-of-way, landscape areas, required parking spaces, fire lanes, loading zones, or any other location that may cause hazardous conditions, constitute a threat to the public safety, or create a condition detrimental to surrounding land uses.

d. Donation drop-off boxes shall be clearly marked to identify the specific items and materials requested to be left for donation, the name of the operator or owner of the container, the entity responsible for maintenance of the drop-off box and removal of materials and trash from the immediate area, and a telephone number where the owner, operator or agent may be reached at any time.

e. No more than two donation drop-off boxes shall be located on any property, and each donation drop-off box shall a capacity of no larger than six (6) cubic yards and a maximum height of seven (7) feet.

f. Landscape screening on conformance with Section 19-5-6.4 shall be installed if the donation drop-off box is located within fifteen (15) feet of a residentially used property.

g. Prior to placement of a donation drop-off box on a property, a zoning permit and site sketch shall be submitted to and approved by the Zoning Administrator to ensure compliance with all provisions of this section.

h. Sections (a.) and (f.) shall not be applicable to properly maintained donation drop-off boxes installed by a local charitable or religious place of worship, placed on other properties with permission.

SECTION 18-11. DELETED. (10/11/83, Case 83-06, Ord. No. 034-83)

SECTION 18-12. VISUAL OBSTRUCTION.

18-12-1 On a corner lot in any district other than the Central Business District, B-1, no obstructions between two and one-half (2 1/2) feet and eight (8) feet above the street grade level shall be maintained in the area bounded by the curb line, or edge of pavement where there are no curbs adjacent to such corner lots, and a line joining points along said lines twenty-five (25) feet from the point of intersection. This section shall not apply to light poles, utility poles, or sign poles. (6/12/90, Case TA-89-11, Ord. No. 018-90; 8/16/02, Case TA-02-01, Ord. No. 009-2002)

SECTION 18-13. DRAINAGE. (8/13/85, Case 85-02, Ord. No. 011-85)

18-13-1 No building shall be erected on any land and no change shall be made in the existing contours of any land, including any change in the course, width, or elevation of any natural or other drainage channel, in any manner that will obstruct, interfere with, or substantially change the drainage from such land to the detriment of neighboring lands. Factors to be considered in determining substantial change shall include the recommendations of the Winchester Storm Drainage Study and adopted storm drainage standards of the Virginia Department of Transportation. In his administration of this requirement, the Zoning Administrator shall refer any application submitted to him to the Public Services Director for a determination in the matter.

18-13-2 Development within a drainage shed involving a change of land use is normally associated with an increase in impervious area resulting in a greater quantity as well as a more rapid and frequent concentration of stormwater runoff. The construction of storm drainage improvements is required along waterways as development progresses in order to alleviate flood damage and arrest deterioration of existing drainageways. The extent and character of such improvements shall be designed to provide for the adequate correction of deficiencies. Improvements shall extend downstream to a point where damages to existing properties from additional runoff will be minimized. The purpose and intent is to require a subdivider or developer of land to construct needed storm drainage facilities or to pay his pro rata share of the cost of providing reasonable and necessary drainage facilities located outside the property limits of the land owned or controlled by the subdivider or developer but necessitated or required, at least in part, by the construction or improvement of his subdivision or development.

18-13-3 Where the developer requests that he may be permitted to contribute his share of the cost toward the correction of off-site storm drainage deficiencies in lieu of constructing the required improvements, the City may accept such contribution towards their correction or the City may require that the developer construct the improvement required to make such corrections.

18-13-4 Where a developer is permitted to either construct or provide the funds for the construction of more than his pro rata share of the downstream off-site drainage improvements so that he may proceed with the improvement of his land without damaging the properties of others, the City will endeavor to collect, on a pro rata basis, any funds expended beyond his proportionate share from other properties within the drainage shed served by such drainage improvements when such properties are developed within a period of ten years from the date that the drainage improvements are financed or constructed. These funds shall be returned to the initial developer or his assigns only if collected by the City from the subsequent developers. The initial developer has right of action to recover from a subsequent developer his pro rata cost for his use of the facilities installed by the initial developer.

18-13-5 CALCULATION OF PRO RATA COST.

18-13-5.1 When directed to do so by the City Manager, the Public Services Director or his designee shall study and compute the total estimated cost of ultimate drainage facilities required to serve a drainage shed when and if such drainage shed is fully developed in accordance with the adopted Comprehensive Plan and Zoning Ordinance for the City. The computation of estimated costs shall include any engineering studies for the drainage. The total estimated cost of storm drainage construction, and easement and flood plain easement acquisition costs where necessary, shall also be included. When this total cost is computed, it shall be updated every six months by applying the Engineering New-Record cost index factor to the construction costs. The above study with its attendant cost figures shall constitute the general drainage improvement program for the affected drainage shed.

18-13-5.2 When a general drainage improvement program has been established, a pro rata share of the total cost of the program shall be determined as follows:

1. The estimated increased volume of storm water runoff for the drainage shed, when fully developed in accordance with the adopted Comprehensive Plan and Ordinance, shall be computed.

2. The increased volume of storm water runoff caused by a subdivision or other development shall be computed.

3. The ratio of the volume of storm water runoff caused by a subdivision or other development to the estimated total volume of storm water runoff for the drainage shed, expressed as a percentage shall be applied to the total cost of the drainage improvement program for the drainage shed. The resultant figure shall be the pro rata share for the subdivision or development.

18-13-6 PAYMENT OF PRO RATA SHARE. The payment of the pro rata share shall be due prior to the approval of the plans for a subdivision. Where a subdivision has been previously approved or where the subdivision of land does not occur, the payment of the pro rata share shall be prior to the issuance of any building permits.

SECTION 18-14. ERECTION OF BUILDINGS.

Every building hereafter erected shall be located on a lot as herein defined, said lot having its principal frontage on a public street of record, except as otherwise permitted in this Ordinance for townhouses and planned development.

SECTION 18-15. OBSTRUCTION OF PUBLIC RIGHT-OF-WAY.

Unless explicitly permitted elsewhere in this Ordinance, no building, structure, sign, merchandise, or other obstruction shall be located or conducted on any public right-of-way. (4/9/13, Case TA-13-35, Ord. No. 2013-08)

SECTION 18-16. NUISANCES.

Nothing shall be allowable on the premises in any district, provided for in this Ordinance, that shall be in any way offensive or noxious by reason of the emission of odors, fumes, dust, smoke, light, vibration, or noise. Nor shall anything by constructed or maintained that would in any way constitute an eyesore or nuisance to adjacent property owners or residents or to the community.

SECTION 18-17 MOBILE HOME, MOBILE OFFICE, MOBILE SALES UNIT, AND MOBILE STORAGE UNIT TEMPORARY PERMITS (hereinafter known collectively as mobile units)
(1/13/98, Case TA-97-10, Ord. No. 001-98)

18-17-1 No mobile units shall be located within the corporate limits of the City unless specifically permitted by this Ordinance. However, Section 18-17 shall not apply to mobile homes or mobile offices temporarily used at construction sites by contractors or subcontractors for non-dwelling purposes. (1/13/98, TA-97-10, Ord. No. 001-98)

18-17-2 The Administrator may, upon application by a property owner or lessee, grant a temporary permit to locate a mobile unit to be used for non-dwelling purposes. For purposes of this Section the term mobile storage unit shall include licensed or unlicensed tractor trailer trailers that are used for storage and remain on site for more than five (5) days as well as containers trucked to and unloaded at the site. A temporary permit shall not be issued until the Administrator determines that the location of the mobile unit meets the setback and yard requirements for a permanent structure in the applicable zoning district and that there is adequate parking, fire protection, pedestrian access, sight obstruction and separation from off-street parking areas. Mobile storage units shall occupy an area no larger than ten percent (10%) of the gross floor area of the primary use served by the unit or 400 square feet whichever is greater. A waiver of the off-street parking area paving requirements of this Ordinance may be granted by the Administrator when it can be shown that another material is more appropriate and adjoining streets or properties will not be adversely affected. In reaching such determinations, the Administrator may seek advice from appropriate City departments. The maximum time for the initial temporary permit for mobile units other than mobile storage units is one (1) year from the date of initial occupancy. The maximum time for the temporary permit mobile storage units is 120 days from the effective date of the permit. There shall be a minimum of 11 months between the issuance of one mobile storage unit permit and issuance of a new mobile storage unit permit associated with the same user. (1/13/98, Case TA-97-10, Ord. No. 001-98)

18-17-3 The Administrator may, upon application by an event's sponsors, issue an event permit, for bona fide festivals, fairs, carnivals, bazaars or similar events, to cover all mobile facilities authorized by the event's sponsor to participate in the event. The maximum time for such a permit is limited to the duration of the event.

18-17-4 When deemed appropriate by the Administrator or when requested by the applicant, initial applications may be referred to the Commission for review and the City Council for approval.

18-17-5 Requests for renewal of an initial permit shall be referred to the Commission for review and to City Council for approval. An application shall be considered a renewal application if the application is received within 60 days of the expiration of a temporary or event permit for the same location. The maximum duration for each permit renewal is one year from the expiration of the last permit.

18-17-6 City Council, when acting on an initial or renewal application, may exercise discretion and waive or modify applicable standards when the applicant has shown just cause and when such a waiver or modification is appropriate for a temporary use.

18-17-7 The applicant for initial permit or renewal of a permit shall submit to the Administrator a letter outlining the request, a sketch site plan drawn to scale which addresses the factors outlined above and the fee as per Section 23-8 of this Ordinance.

SECTION 18-18. PROJECTION OF STRUCTURES BEYOND PROPERTY LINES.

18-18-1 No marquee, permanent awnings, pent roofs, porches, or similar structures that will be permanently attached to a City sidewalk or will be less than eight (8) feet above a City sidewalk, shall be erected, altered, or remodeled to extend closer to the curb line than any other adjacent existing building, porch, or other structure, but in no case closer than five (5) feet in from the curb line. (7/11/78)

18-18-2 Marquees, permanent awnings, pent roofs, or similar structures shall not project closer than five (5) feet in from the curb line, and shall not be less than eight (8) feet above a City sidewalk. (7/11/78)

18-18-3 Marquees, permanent awnings, pent roofs, or similar structures attached to buildings fronting on the Loudoun Street Mall shall not project more than four (4) feet from the front property line, and shall not be less than eight (8) feet above the City sidewalk. (7/11/78)

SECTION 18-19. HOME OCCUPATIONS. (10/11/83, Case 83-06, Ord. No. 034-83)

18-19-1 Home occupations are permitted in any dwelling unit.

18-19-2 A home occupation is an accessory use of a dwelling unit for gainful employment involving the manufacture, provision, or sale of goods and/or service, including the sale of food and/or non-food crops produced on the site; and conducted in a dwelling unit except as allowed in an accessory structure per the Conditional Use Permitting provisions identified in Section 18-19-2.6. Home Occupations shall only be engaged in by a person or persons residing in the dwelling unit, provided that: (10/12/10, Case TA-10-418, Ord. No. 2010-51; 1/14/14, Case TA-13-493, Ord. No. 2013-41)

18-19-2.1 It is clearly incidental and subordinate to the dwelling unit's use for residential purposes by its occupants;

18-19-2.2 With the exception of an accessory garden use and as provided in Section 18-19-2.6, it is conducted in the main building and does not result in alteration of the appearance of the dwelling unit or the lot on which it is located. There shall be no interruption, congestion or change to the character of the neighborhood in terms of traffic or

vehicular parking resulting from the operation of the home occupation. (10/12/10, Case TA-10-418, Ord. No. 2010-51; 1/14/14, Case TA-13-493, Ord. No. 2013-41);

18-19-2.3 With the exception of displaying food and/or non-food crops produced on the site, it is not identified by any sign or by a display of merchandise visible from the exterior of the building (10/12/10, Case TA-10-418, Ord. No. 2010-51);

18-19-2.4 It does not involve the storage of goods and materials in excess of fifty (50) square feet of floor area. This storage may be either in the main building or an accessory building, but it shall not be permitted outdoors;

18-19-2.5 No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference beyond what normally occurs in the applicable zoning district.

18-19-2.6 A conditional use permit shall be required for any home occupation that proposes to involve the use of an accessory structure as part of a home occupation. In addition to the provisions of this Section, home occupations must conform to the entirety of Section 18-19. In no case shall the floor area used in the accessory structure exceed fifty (50) percent of the gross floor areas of the residential dwelling unit. A conditional use permit application for home occupations under this Section shall include the following (1/14/14, Case TA-13-493, Ord. No. 2013-41):

a. Property survey or sketch drawn to scale detailing the setbacks of the accessory structure and distances to each of the property lines as well as the distances to structures within 50 feet on immediately adjacent properties.

b. A scaled interior layout sketch illustrating the proposed home occupation in the accessory structure.

c. A letter outlining the scope and nature of the occupation, involving operating hours, days of the week, and similar details, as well as an explanation of conformance with Section 18-2-1.1 of this Ordinance.

18-19-3 The operation of a family day home for not more than five (5) children shall be considered as residential occupancy by a single family; and, therefore does not require a Certificate of Home Occupation. Family day homes serving six through twelve children, exclusive of the provider’s own children and any children who reside in the home, shall obtain a Certificate of Home Occupation and shall be licensed by the Virginia Department of Social Services. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. A family day home where the children in care are all grandchildren of the provider shall not be required to be licensed or obligated to obtain a Certificate of Home Occupation. (9/14/10, Case TA-10-337, Ord. No. 2010-40)

18-19-4 Permitted home occupations shall not in any event include (1/14/14, Case TA-13-493, Ord. No. 2013-41):

- Bookstores or motion picture theaters
- Animal hospitals and kennels
- Bed and breakfast homestays and boarding houses
- Massage therapy (other than strictly a home office used for record keeping)
- Motor vehicle sales, repair, equipment installation, and similar activities
- Pet Daycare, training or grooming exceeding care of more than one (1) pet at a time, excluding those of the tenant of the dwelling unit
- Private Clubs or Lodges
- Restaurants
- Tourist Homes
- Vehicle towing, demolishing, or salvaging

18-19-5 A yard sale shall be considered a permitted home occupation, subject to the following:

18-19-5.1 No more than two yards sales may be conducted at any street address within a 12 month period. For the purposes of this section, each dwelling unit in a multifamily dwelling shall be considered a separate street address. If there is no space to hold the sale at the sale holder's address, the yard sale may be held at a property within 300 feet. Such a yard sale counts as a yard sale at the property where the sale is actually held. (3/8/94, Case TA-94-01, Ord. No. 006-94)

18-19-5.2 Each yard sale may be held a maximum of two consecutive days, and only during the hours of 8:00 a.m. to 6:00 p.m. (3/8/94, Case TA-94-01, Ord. No. 006-94; 12/10/13, Case TA-13-138, Ord. No. 2013-14)

18-19-5.3 A Certificate of Occupancy shall not be required. (3/8/94, Case TA-94-01, Ord. No. 006-94)

18-19-5.4 Without the limitation on the authority and responsibility of the Zoning Administrator, or the Board of Zoning Appeals, the Police Department of the City shall have the responsibility and authority to inspect any yard sale to determine compliance with the terms of this Article, and shall have authority to enforce the provisions of this Article, including the authority to file charges under Section 21-2 of this Ordinance against any person operating a yard sale in violation hereof. (10/14/86, Ord. No. 016-86)

SECTION 18-20. STORAGE OF MATERIALS AND SUPPLIES AND DISPLAY OF MERCHANDISE FOR SALE OR RENT. (10/17/95, Case TA-95-04, Ord. No. 053-95)

18-20-1 The Commission or Administrator, as provided for in the following Sections, may, upon application by a property owner or lessee, grant a permit for outdoor storage of materials and supplies or for outdoor display of merchandise for sale or rent, hereinafter known as storage or display. A permit shall not be issued until the Commission or Administrator determines the storage or display meets the

requirements of this Ordinance, the City Code or Public Utilities Standards for each of the following areas: screening or buffering, off-street parking, landscaped area, stormwater management, fire protection, vehicle and pedestrian access, signage, sight obstruction, and separation from off-street parking areas. Display of merchandise for sale or rent located adjacent to standing and loading spaces, including petroleum dispensers, need not comply with the off-street parking separation requirements. In reaching such determinations, the Commission or Administrator may seek advice from appropriate City departments. No permit is required for display of merchandise for sale or rent if the area covered by such display does not exceed two (2) percent of the floor area of the permanent building on the lot, but not to exceed 200 square feet, if the height does not exceed six (6) feet and if the location meets the setback and yard requirements for a permanent building on the lot. (10/17/95, Case TA-95-04, Ord. No. 053-95)

18-20-2 Permanent storage or display is allowed as provided for in the following table. There must be a permitted or conditional use on the property. The storage or display must be incidental to the conduct of such use. A site plan prepared in accordance with Article 19 of this Ordinance shall be submitted for Commission approval. (10/17/95, Case TA-95-04, Ord. No. 053-95)

18-20-3 Seasonal storage or display allowed as provided for in the following table. A site sketch addressing the elements in Section 18-20-1 of this Ordinance accompanied by the fee as per Section 23-8-14 of this Ordinance shall be submitted to the Administrator for approval. Two seasonal permits per lot per 12 month period are allowed. Each permit shall be for no longer than 3 months. (10/17/95, Case TA-95-04, Ord. No. 053-95)

18-20-4 Temporary storage or display is allowed as provided for in the following table. Temporary storage or display is limited to two periods per lot per year. Each period shall be no longer than 14 days. No permit is required. (10/17/95, Case TA-95-04, Ord. No. 053-95)

18-20-5 Storage or display is allowed as shown in the following table if required screening and/or landscaping is provided. No storage or display shall be situated within ten (10) feet of any front or corner side property line nor within five (5) feet of any side or rear property line except in the Central Business District (B-1) and Residential Business (RB-1) zones, where storage or display shall not be situated within four (4) feet of front and corner side property lines nor three (3) feet of side and rear property lines. The requirement for landscaping or screening may be waived by the Commission or Administrator where the waiver is not adverse to the purpose of this Section and the applicant establishes that in his specific case an undue hardship would result from a strict enforcement of this Section, or that the requirement is unreasonable. The following uses shall be exempt from the screening requirements of Table Items A and D of this Section: sales, leases, or rentals of motor vehicles as defined in Section 46.2-100 of the Code of Virginia, as amended; nursery plant stock for nurseries, and agricultural and construction equipment sales or rentals.

Any other person who demonstrates to the Administrator or Commission on appeal that the items requested to be stored or displayed outside are similar in nature to the categories of items exempt from street screening shall also be exempt from the street-screening provisions of this Section. (10/17/95, Case TA-95-04, Ord. No. 053-95; 3/8/05, TA-04-08, Ord. No. 007-2005)

District	Permanent	Seasonal	Temporary
RB-1	N/A	ABCE	F
B-1	BCDE	ABCE	F
B-2	BCDE	ABCE	F
CM-1	BCDE	ABCE	F
M-1	BCDE	ABCE	F
M-2	BCDE	ABC	F
PC	N/A	ABCE	F

N/A Not allowed.

A Raised landscaping meeting Section 19-5-6.4b of this Ordinance to adjacent streets.

B Opaque screening meeting Section 19-5-6.4d of this Ordinance to adjacent residential uses.

C Opaque screening meeting Section 19-5-6.4d of this Ordinance to adjacent residential zones.

D Opaque screening meeting Section 19-5-6.4d of this Ordinance to adjacent streets

E Opaque screening meeting Section 19-5-6.4d of this Ordinance to adjacent property in a less intense zoning district.

F No additional screening or landscaping requirements

SECTION 18-21. LOT AREA CALCULATION.

18-21-1 For purposes of calculating required lot area, Total Project Area, and landscaping, buffer, and recreational area, narrow portions of lots which are less than one-third (1/3) of the required lot width shall be excluded from the calculations. (12/13/88, Case TA-88-10, Ord No. 052-88)

SECTION 18-22. UNDERGROUND INSTALLATION OF WIRE AND CABLE UTILITIES. (9/12/89, Case TA-89-03, Ord. No. 024-89)

18-22-1 For any new projects, or for any remodeling or renovation of an existing project which requires an increase in service capacity, distribution lines for electrical, telephone, cable television and any other services requiring wires or cables shall be installed underground. The Administrator may waive, after petition by the property owner, this requirement for residential work when the administrator determines that such waiver is warranted because there are few if any utility poles on the project side of the street and a waiver will prevent the installation of additional utility poles. Such petition shall

be made in the form prescribed by the Administrator and accompanied by the fee as per Article 23 of this Ordinance. (9/12/89, Case TA-89-03, Ord. No. 024-89; 12-13-94, TA-94-11, Ord. No. 002-95)

SECTION 18-23. RE-ADVERTISEMENT FEES.

18-23-1 In the event any public hearing required by this ordinance is delayed at the request of an applicant, the applicant shall pay a re-advertisement fee as per Section 23-8 prior to the deadline for applications for the desired public hearing date. (4/10/90, Case TA-90-13, Ord. No. 011-90; 3/14/06, Case TA-05-07, Ord. No. 09-2006)

SECTION 18-24. ENTERTAINMENT ESTABLISHMENTS. (10/22/13, Case TA-13-146, Ord. No. 2013-28)

All entertainment establishments must meet the following minimum standards. Failure to maintain compliance shall result in the operation being declared in violation of the Zoning Ordinance. If an establishment desires to deviate from any of these standards, a conditional use permit shall be required.

18-24-1 General Standards.

18-24-1.1 All exterior doors and windows must remain closed during operating hours.

18-24-1.2 No more than three criminal police calls, as determined by the Chief of Police, may be attributable to the establishment within a thirty day continuous period, after which private security shall be required in a manner approved by the Chief of Police.

18-24-1.3 Hours of operation on Sundays through Thursdays shall not occur outside of 8:00 a.m. to 11:00 p.m. and Fridays and Saturdays shall not occur outside of 8:00 a.m. until 2:00 a.m. the following day.

18-24-1.4 The business shall comply with applicable noise and maximum sound level regulations per Chapter 17 of Winchester City Code, as amended.

ARTICLE 19

SITE PLAN REQUIREMENTS

STATEMENT OF INTENT

The purpose of these requirements is to promote the orderly development of certain activities in the City and to ensure that such activities are developed in a manner harmonious with surrounding properties and in the interest of the general public welfare. More specifically, the site plan shall be used to review the project's compatibility with its environment; to review the ability of the project's traffic circulation system to provide for the convenient and safe internal and external movement of vehicles and pedestrians; to review the quantity, quality, utility, and type of the project's required community facilities; and to review the location and adequacy of the project's provision for drainage and utilities.

SECTION 19-1. WHEN REQUIRED.

19-1-1 The provisions of this Article shall apply to all buildings, structures, or non-agricultural land uses and land disturbance activities except single family dwellings not situated within a Planned District. (2/9/88, Case TA-87-11, Ord. No. 006-88; 12/12/00, Case TA-00-08, Ord. No. 026-2000)

19-1-2 Where a change of use or expansion of the same use of land or structures generates additional parking requirement or requires conformity with other requirements herein, or where non-agricultural land disturbance exceeding two thousand five hundred (2,500) square feet of area is proposed, a site plan shall be submitted for review and approval to ensure the use can be accomplished in accordance with the standards and intent of this Ordinance except for those activities for which the standards or plan requirement may be waived as provided by Section 19-2 of this Ordinance. (12/12/00, Case TA-00-08, Ord. No. 026-2000)

SECTION 19-2. WAIVER OF REQUIREMENTS.

19-2-1 Any requirement of this Article may be waived by the Director of Planning where the waiver is not adverse to the purpose of this Article and the applicant establishes that in his specific case an undue hardship would result from a strict enforcement of this Article, or that the requirement is unreasonable.

19-2-2 The Director of Planning may waive the requirements for site plan review for additions to buildings, structures, uses if, in his opinion, such addition does not substantially affect the purpose and intent of this Article.

SECTION 19-3. SITE PLAN SPECIFICATIONS.

Every site plan shall be prepared in accordance with the following specifications:

19-3-1 The scale shall not be less than fifty (50) feet to one (1) inch.

19-3-2 All site plans shall be submitted on twenty-four inch (24") by thirty-six inch (36") sheets.

19-3-3 If the site plan is prepared on more than (1) sheet, match lines shall clearly indicate where the several sheets join.

19-3-4 Horizontal dimensions shall be in feet and decimals of feet to the closest one hundredth (1/100) of a foot.

SECTION 19-4. SITE PLAN CONTENTS.

The site plan, or any portion thereof, involving engineering, urban planning, landscape architecture, architecture or land surveying shall be prepared by qualified persons. Final site plans shall be certified by an architect, engineer, or land surveyor licensed to practice by the Commonwealth of Virginia within the limits of their respective licenses. The site plan shall provide the following:

19-4-1 The proposed title of the project and the name of the engineer, architect, landscape architect, surveyor, and/or developer; the name of the developer; and a signature panel for the Director of Planning's approval.

19-4-2 The northpoint, scale, date, and vicinity map.

19-4-3 Existing zoning and zoning district boundaries on the property in question and on immediately surrounding properties.

19-4-4 The present use of all contiguous or abutting property.

19-4-5 The boundaries of the property involved by bearings and distances, certified by a land surveyor licensed to practice in the Commonwealth of Virginia.

19-4-6 All existing property lines, existing streets, buildings, watercourses, waterways, or lakes and other existing physical features in or adjoining the project. Those physical features such as watercourses, waterways, or lakes on adjoining properties need only be shown in approximate scale and proportion.

19-4-7 Topography of the project area with contour intervals of two (2) feet or less.

19-4-8 The location and sizes of sanitary and storm sewers, gas lines, water mains, culverts, and other underground structures in or effecting the project, including existing and proposed facilities and easements for these facilities.

SITE PLAN REQUIREMENTS

19-4-9 The location, dimensions, and character of construction of proposed streets, alleys, driveways, and the location, type, and size of ingress and egress to the site.

19-4-10 When proposed streets intersect with or adjoining existing streets, both edges of existing pavement surface of curb and gutter must be indicated for minimum of fifty (50) feet or the length or connections, whichever is the greater distance.

19-4-11 The location of all off-street parking and parking bays, loading spaces, and walkways, indicating types of surfacing, size, and angle of stalls, width of aisles, and a specific schedule showing the number of parking spaces.

19-4-12 The location, size and type of all trees in public rights-of-way and immediately adjacent to the project boundaries or which may be affected by the proposed project and the location of all trees on the site with a caliper of six (6) inches or greater. The site plan shall show heavily wooded areas and trees to be removed which shall be designated by symbols coincident with the areas of the trees; and an indication of which trees are to be retained and which are to be removed. (7/10/90, Case TA-90-03, Ord. No. 024-90; 12/12/00, Case TA-00-08, Ord. No. 026-2000)

19-4-13 The location, height, type and material of all fences, walls, screen planting, and landscaping details of all buildings and grounds, and the location, height, and character of all outdoor lighting systems.

19-4-14 The location and street addresses of all proposed buildings and structures, accessory and main; number of stories and height; proposed general use for each building; and the number, size, and type of dwelling units where applicable. (7/10/90, Case TA-90-03, Ord. No. 024-90)

19-4-15 The location of designated solid waste receptacle(s) with unobstructed access allowing for convenient pick up. The plan shall include a detail illustrating the size and construction of a required concrete pad and necessary enclosures. The receptacle site shall be enclosed by screening including, but not limited to decay resistant wood or masonry screening walls equal to or greater in height than the receptacle(s) being screened. Landscaping around the perimeter shall also be provided. If visible from any public or private street or alley, said enclosure shall include opaque gates offering complete screening at all times except during disposal or collection of trash. (8/9/88, Case TA-88-02, Ord. No. 027-88)

19-4-16 Provisions and schedule for the adequate disposition of natural and storm water in accordance with design criteria and construction standards of the City of Winchester indicating location, size, types, and grades of ditches, catch basins, and pipes and connection to existing drainage system.

19-4-17 Provisions and schedule for the adequate control or erosion and sedimentation, in accordance with City of Winchester Erosion and Sedimentation Control Ordinance.

19-4-18 Proposed finished grading by contour supplemented where necessary by spot elevations.

19-4-19 Flood plain limit studies as required by the Director of Planning.

19-4-20 The location, character, size, height, and orientation of proposed signs.

19-4-21 The location and dimensions of proposed recreation, open space, and required amenities and improvements, including details of disposition.

19-4-22 Any necessary notes required by the Director of Planning to explain the purpose of specific items on the plan.

19-4-23 Provisions for wastewater disposition and pretreatment, if required, in accordance with standards of the City of Winchester. (7/10/90, Case TA-90-03, Ord. No. 024-90)

SECTION 19-5. IMPROVEMENTS AND STANDARDS.

The following improvements and minimum standards, as applicable, shall be required and provided for in a site development plan. The site plan shall also comply with requirements contained in the Land Subdivision Ordinance. (12/11/91, Case TA-90-06, Ord. No. 043-90)

19-5-1 All street and highway construction standards and geometric design standards shall be in accordance with those specified in the Land Subdivision Ordinance of the City of Winchester except that the City Engineer may modify street geometric design standards for local collector and minor loop streets provided that off-street parking bays sufficient to accommodate the required parking ratio are provided to complement the street system and approval for modification is obtained from the Virginia Department of Transportation, where applicable.

19-5-2 The pavement of vehicular travel lanes, driveways, or alleys designed to permit vehicular travel on the site and to and from adjacent property and parking areas shall be not less than twenty (20) feet in width for two (2) way traffic and ten (10) feet for one (1) way traffic.

19-5-3 Cul-de-sacs shall be designed and constructed in accordance with the street standards specified in the Land Subdivision Ordinance of the City of Winchester, and may not be construed or employed as a parking bay.

19-5-4 Minimum utility width shall be twenty (20) feet unless specifically reduced as specified by the Director of Planning. Where multiple structures or pipes are installed, the edge of the easement shall be five (5) feet clear of the outside pipes. Where easements do not follow the established lot line, the nearest edge of any easement shall be a minimum of five (5) feet from any building.

19-5-5 Sidewalks and pedestrian walkways shall be designed to enable patrons and tenants to walk safely and conveniently from one (1) building to another within the site and adjacent sites.

19-5-6 LANDSCAPING.

19-5-6.1 Landscaping that enhances the appearance of the City from its streets; buffers between properties in different zoning districts; and recreational facilities for residents shall be provided. At least fifteen percent (15%) of the land in a site plan for nonresidential uses, at least thirty percent (30%) of the land in a site plan for residential uses in the HW Historic District, at least thirty-five percent (35%) of the land in a site plan for multifamily developments in the Highway Commercial , B-2 District per Section 8-2-20, and at least forty-five percent (45%) of the land in a site plan for residential uses not situated within the HW District shall not be covered by buildings (excluding buildings used for or associated with recreational purposes), solid waste enclosures, sidewalks (excluding paths primarily associated with recreational purposes), or off-street parking areas, and shall be used for landscaping, buffering, and/or recreational purposes. These standards are designed to ensure that the private sector makes a reasonable visual contribution to the quality and character of the City. For multifamily dwellings and townhouses outside the HW Historic District, green areas less than thirty (30) feet in width between adjacent buildings and green areas less than ten (10) feet in width between buildings and off-street parking areas shall not be included in the calculation of the required forty-five percent (45%) computations. (9/12/89, Case TA-89-01, Ord. No. 022-89; 8/8/95, Case TA-95-03, Ord. No. 032-95; 5/14/96, Case TA-96-01, Ord. No. 012-96; 9/13/05, Case TA-05-02, Ord. No. 025-2005; 2/10/09, Case TA-08-13, Ord. No. 2009-05)

19-5-6.2 If a proposed site plan shows an existing development whose building area is expanding by less than twenty-five percent (25%) and application of the landscape/buffering area percentages established above would unreasonably preclude such expansion then the Planning Commission may accept lower landscape/buffering areas percentages.

19-5-6.3 The Board of Architectural Review shall consider site plans within the Historic Winchester District and recommend to the Planning Commission the appropriate percentage of the site devoted to landscaping, buffering, and/or recreational facilities. The Board shall ensure that the maximum amount of such facilities are provided that would be consistent with the development pattern in the Historic District. In lieu of some or all of the thirty (30%) on-site landscaping and/or recreational facilities in the Historic District, the applicant may offer improvements to public open spaces including the Old Town Pedestrian Mall, Timbrook Park, or other spaces identified by either the Old Town Development Board or the City Parks And Recreational Master Plan as appropriate toward enhancing the appearance of Old Town and/or adjacent historic neighborhoods.
(9/14/05, Case TA-04-06, Ord. No. 040-2004)

19-5-6.4 The following design criteria are the minimum standards to be used to evaluate the landscaping, buffering, and/or recreational areas of a site plan. These minimum criteria shall be closely followed; however, the Planning Director may allow variation where reasonable application of the criteria is not possible due to circumstances beyond the control of the property owner. Such circumstances would include, but not be limited to, the presence of overhead power lines or underground utilities that may affect plant type and location.

a. A landscaped area at least ten (10) feet wide adjacent to all existing public rights-of-way and private streets provided in lieu of public street frontage shall be provided except that the Commission may allow landscaped areas in the B-1 district to be reduced to four (4) foot in width where a width greater than four (4) foot is deemed less appropriate. For properties fronting along rights of way narrower than the minimum right-of-way width associated with the appropriate Category of Street per Section 5-26 of the Land Subdivision Ordinance or prepared highway widening plan, the ten (10) foot width shall be measured from the right-of-way line(s) called for in the Subdivision Ordinance or widening plan instead of the existing one(s). At least one tree for each thirty-five (35) feet of public right of way or private street frontage shall be provided within this landscaped area. (12l13l88, Case TA-88-12, Ord. No. 055-88; 8/8/95, Case TA-95-03, Ord. No. 032-95)

b. Where buildings are separated from the public right of way by more than fifty (50) feet of off-street parking area, raised landscaping (shrubs, berms, decorative walls, etc.) with a minimum height of thirty-six (36) inches shall be provided in the landscaped area adjacent to the public right of way. However, this raised landscaping shall be no closer than twenty-five (25) feet from a curb opening and shall not create a visual obstruction at an intersection (see Section 18-12-1). (8/8/95, Case TA-95-03, Ord. No. 032-95)

c. At least one tree for each two thousand (2000) square feet of off-street parking area shall be provided within the parking area. Curbed landscaped islands at least nine (9) feet in width shall be provided at the ends of all rows of parking spaces. Curbed landscaped medians of at least ten (10) feet in width shall be provided separating every sixth row of parking. Trees closer than twenty (20) feet to any building or public right of way shall not be counted. If located within an interior island, a curbed unpaved area of at least one hundred fifty (150) square feet shall be provided at the base of each tree. (12/13/88, Case TA-88-12, Ord. No. 055-88; 8-8-95, Case TA-95-03, Ord. No. 032-95)

d. Landscaping, meeting the specifications listed below shall be provided along the entire length of external property lines adjacent to property in a less intensive zoning district or where an off-street parking area for a nonresidential use is closer than fifty (50) feet to a lot in a residential district without an intervening street. This is intended to minimize the impact of adverse visual effects and noise on the residential property. It is the intent of this provision that such landscaping shall provide opaque screening of the property being developed.

The applicant, however, shall only be required to provide screening meeting the specifications listed below at the time of installation. (12/13/88, Case TA-88-12, Ord. No. 055-88; 8/8/95, Case TA-95-03, Ord. No. 032-95; 6/9/09, Case TA-09-01, Ord. No. 2009-15)

1. Single row of evergreen trees, from the arborvitae species, and preferably from the current Evergreen Screening Suggestion list prepared by the Tree Commission. The trees will be planted in a single row no more than four (4) feet apart and not less than five (5) feet high at the time of planting; or,

2. Double row of evergreen trees, preferably from the current Evergreen Screening Suggestion list prepared by the Tree Commission, the trees in each row planted not more than ten (10) feet apart, and the trees to be staggered in the two rows. The trees shall be not less than five (5) feet high at the time of planting; or,

3. Six (6) foot high fence; solid decay resistant wood or otherwise constructed to be permanently opaque with the finished side facing out.

4. The screening required by this section may be waived or modified by the Commission or Planning Director in the following situations:

   i. If the adjacent property is being used for or, if vacant at the time of application, is zoned to allow a use similar to that proposed by the site plan applicant.

   ii. If the subject property abuts a railway along the interface with the less intensive zoning district.

   iii. If the applicant provided alternative screening which will provide opaque screening not less than six (6) feet high at the time of installation.

e. Trees shall be provided along property lines between parcels in different zoning districts when the proposed structure will be taller than the maximum height allowed in the adjacent zoning district. At least one tree for each thirty-five (35) feet of property line and within ten (10) feet of the line shall be provided within an area of at least one hundred fifty (150) square feet at the base of each tree. (8/8/95, Case TA-95-03, Ord. No. 032-95)

f. All portions of the landscaped area (excluding recreation, detention, and drainage areas) shall be landscaped with living ground cover (excluding rock or bark), shrubs, and/or trees so that no ground is exposed.

g. Multifamily residential site plans shall devote twenty percent (20%) of the required landscaping, buffering, and recreation area to active recreational facilities (such as playground equipment, swimming pools, ball courts, community buildings with open common areas, etc.). The installation and maintenance of such facilities shall be outlined in the landscape plan to assure perpetual maintenance and use of the facilities. (12/13/88 Case TA-88-09, Ord. No. 051-89)

h. A landscape plan shall be provided that clearly and specifically identifies all landscape, buffering, and/or recreational areas as well as the type and size of all plant material. Large deciduous shade trees (preferably from the current Recommend Tree List as adopted by the Tree Commission) that are compatible with urban environments shall be used adjacent to public rights of way, within surface parking areas, and along property lines (when screening tall structures). Trees listed as prohibited from planting within the public rights of way by the Tree Commission shall not be accepted as compatible. Applicants should discuss specific species with the staff and the City Tree Commission. When planted, these trees shall have a minimum of two (2) inch caliper, six (6) inches above grade and shall be no closer than twenty (20) feet to each other. (8/8/95, Case TA-95-03, Ord. No. 032-95

i. Foundation planting shall be provided where off street parking area is situated between the building(s) and the street(s). A planting strip or planter at least three (3) feet wide with living upright vegetation (e.g. shrubs) shall be provided between the off street parking area(s) and the plane of the building(s) parallel to the street(s) (8/8/95, Case TA-95-03, Ord. No. 032-95)

j. Owners of properties shall maintain required landscaping in good condition and shall make reasonable provisions to protect landscaped areas from damage caused by vehicles, pedestrians, shopping carts, etc. Maintaining landscaping in good condition shall include allowing large shade trees to grow according to the natural height, width and habit of the particular species and shall specifically preclude the topping of required large shade trees. Topping is defined as the drastic cutting back of tree branches and reduction of the shade canopy to stubs or lateral branches that are not large enough to assume a terminal role. Dead or dying vegetation shall be replaced per direction of the Administrator. Replacement shrubs shall be of a size consistent with that which could normally be expected based upon the specific species and the length of time elapsed since initial installation of said required landscaping elements. Replacement trees shall be 1/2" caliper larger for each year since initial installation of said required trees, except that no owner shall be required to replace any tree with another tree larger than five (5) inches in caliper. (8/8/95, Case TA-95-03, Ord. No. 032-95; 8/8/00, Case TA-00-04, Ord. No. 018-2000)

SITE PLAN REQUIREMENTS

19-5-7 In order to preserve the character and natural environment and to provide visual and noise buffering, the Administrator may refuse to approve any site plan which proposes unnecessary destruction of trees and other natural features. The Director of Planning shall require assurance that the developer has made reasonable effort in light of the proposed development to preserve, replenish, and protect trees of six (6) inch caliper or larger, ornamental trees of any size; trees within required setbacks or along boundaries unless necessary to remove for access, grading, circulation, utilities, or drainage; streams in their natural condition. (12/12/00, Case TA-00-08, Ord. No. 026-2000)

19-5-8 Outdoor lighting sufficient to provide site security and enhance personal safety shall be provided in all developments requiring a site plan. Lighting shall be so arranged and hooded as to confine all direct light rays entirely within the boundary lines of the site. (9/9/97, TA-97-08, Ord. No. 022-97)

19-5-8.1 An illumination schematic depicting foot candles shall be provided with all site plans. Uniformity of illumination over off-street parking areas shall not exceed a ratio of 4:1 wherein the most intensely illuminated areas shall not be more than four times as bright as the least intensively illuminated areas. Vertical readings shall be measured at five feet above ground or pavement level. Horizontal readings shall be measured at ground or pavement level. The following average vertical and horizontal foot candle (fc) illumination standards shall be met and maintained for each of the uses below:

USE TYPE	VERTICAL fc	HORIZONTAL fc
Residential (other than non-PUD single-family detached)	1 fc	1fc
Office, Retail, Industrial, Lodging, Cultural, Recreation, Entertainment, Institutional, Service (except as specified below)	3fc	3fc
Convenience Stores, Night Clubs, Parking Garages	6fc	3fc
Drive-thru/ATM areas	6fc	6fc

(8/11/99, Case TA-99-02, Ord. No. 021-99)

SECTION 19-6. PROCEDURES.

19-6-1 Authority for Review and Approval. Site plans may be approved administratively by the Director of Planning, after a pre-application conference, pursuant to Section 19-6-2, and after notice to the Chairman of the Planning Commission. The applicant, Director of Planning, or Chairman of the Commission may require that the site plan be reviewed by the Planning Commission. (2/9/88, Case TA-87-12, Ord. No. 007-88)

19-6-2 Pre-application Conference. All applicants for site plan review shall first submit a preliminary plan and request a pre-application review conference with the Director of Planning and representatives of the appropriate City departments. The purpose of the conference shall be to discuss the site
plan, off-street parking, signs, and other City ordinance requirements, utilities, and drainage, preliminary features of the proposed development as they relate to this Article. (2/9/88, Case TA-87-12, Ord. No. 007-88)

19-6-3 Review and Approval of Final Site Plan.

a. Following the pre-application conference, the applicant shall submit three (3) copies of the final site plan to the Director of Planning with a completed Site Plan Application and the fee as per Section 23-8 of this Ordinance. The Director shall have up to thirty (30) days to circulate the plan to the appropriate City departments, boards, and/or commissions for written comments, and to notify the applicant of the action taken which may be approval, approval subject to conditions, disapproval, or referral of the site plan to the Commission. Within ninety (90) days of the filing of a final site plan that has been referred to the Commission, the Commission shall have the applicant notified of its action which may be approval, approval subject to conditions, disapproval. In the case of disapproval by the Commission, the applicant shall be notified of the corrections or modifications which are necessary to permit approval by the Director or Commission. The site plan shall be considered approved unless the Commission acts within sixty (60) days from the date of submission of the final site plan. (10/13/92, Case TA-92-02, Ord. No. 016-92)

b. Repealed. (10/13/92, Case TA-92-02, Ord. No. 016-92)

19-6-3.2 Public Notice and Hearing. No site plan which is referred to the Commission shall be acted upon by the Commission until a public hearing has been held per Section 23-7-1 of this Ordinance. (2/9/88, Case TA-87-12, Ord. No. 007-88; 10/13/92, Case TA-92-02, Ord. No. 016-92)

19-6-3.2b Notification Signs. For the hearing by the Commission, the applicant shall place notification signage as per Section 23-7-3 of this Ordinance.(10/13/92, Case TA-92-02, Ord. No. 016-92)

19-6-3.3 For those plans which are referred to the Commission, twelve (12) additional copies of the site plan shall be submitted at least four (4) days prior to the next Commission worksession.

a. Repealed. (10/13/92, Case TA-92-02, Ord. No. 016-92)

b. An applicant may appeal the decision of the Planning Commission within ten (10) days in writing to the Circuit Court.

SECTION 19-7. SITE PLAN TERMINATION OR EXTENSION.

19-7-1 An approved site plan shall expire and become null and void if no building permit has been obtained for the site in twelve (12) months after the final approval.

19-7-2 The Director of Planning or the Planning Commission may grant an extension of one (1) year.

19-7-3 Thereafter, one (1) year extensions may be granted annually by the Director of Planning.

SECTION 19-8. REVISIONS TO APPROVED SITE PLAN.

If it becomes necessary for an approved site plan to be revised, the Director of Planning shall at the applicant's request either administratively approve the minor revision to the site plan upon finding that it complies with all applicable regulations; or, if the change is major, require that a new site plan be drawn and submitted for review and action in accordance with this Article. Every application for a minor site plan revision shall be accompanied by a filing fee as per Section 23-8 of this Ordinance. (4/10/90, Case TA-90-13, Ord. No. 011-90; 10/13/92, Case TA-92-02, Ord. No. 016-92)

SECTION 19-9. SITE PLAN PREREQUISITE TO REQUEST OF BUILDING PERMITS.

No building permit shall be requested or issued to construct, erect, or alter any building or structure or any permit authorization granted to improve or develop land subject to the provision of this Article, unless a site development plan has been submitted and approved, or waived by the Director of Planning pursuant to Section 19-2 of this Ordinance. (12/13/88, Case TA-88-11, Ord. No. 053-88)

SECTION 19-10. COMPLIANCE WITH APPROVED SITE PLAN.

19-10-1 Inspections shall be made during the installation of off-site and on-site improvements by the Director of Planning, the Building Inspector, and the Utilities Superintendent in their areas of responsibility to ensure compliance with the approved site plan.

19-10-2 The owner or developer shall provide adequate supervision at the site during installation of improvements required by the site development plan and shall make one (1) set of approved plans available at the site at all times that work is being performed.

19-10-3 Whenever any proposed setback or yard is less than the required setback or side or rear yard plus two (2) feet, the owner or developer shall provide, at the time of footing inspection, survey markers, showing the required setback or yard, which have been set and certified by a land surveyor licensed under the laws of the Commonwealth of Virginia. Survey markers may be offset up to but not exceeding four (4) feet. The amount of offset shall be clearly indicated on the survey marker. The markers shall

remain in place and undisturbed until completion of the foundation wall. (4/10/90 Case TA-90-13 Ord. No. 011-90)

SECTION 19-11. SITE IMPROVEMENTS TO BE COMPLETED OR BONDED PRIOR TO ISSUANCE OF CERTIFICATE OF OCCUPANCY. (2/14/89, Case TA-88-16, Ord. No. 003-89)

19-11-1 Prior to submitting a request for a Certificate of Occupancy, the owner or developer shall have completed or bonded all of the improvements included on the approved site plan or approved site plan revision. No Certificate of Occupancy shall be issued for developments where a suitable base is not provided for emergency access or vehicular parking.

19-11-2 The Planning Director may accept surety in an amount equal to one and one half times the installed costs of the improvements outstanding. The surety shall be drawn in a manner acceptable to the City Attorney and shall provide for completion of all work within a specified period of time. Failure to complete the improvement within the specified time or any mutually agreeable extension up to one year each shall constitute default and Certificate of Occupancy shall become void. The owner or developer waives any rights to contest the utilization of the posted surety by the City or its designee(s) to cause completion of the improvements. The owner or developer also shall grant access to the property to allow completion of the improvements.

19-11-3 Surety shall only be accepted in lieu of completion of improvements where such work cannot be completed due to inclement weather, delays directly caused by public construction projects, or factors beyond the control of the developer.

ARTICLE 20

BOARD OF ZONING APPEALS

SECTION 20-1. COMPOSITION, APPOINTMENT, AND ORGANIZATION.

20-1-1 There shall be created a Board of Zoning Appeals, which shall consist of five (5) residents of the City, appointed by the Circuit Court of the City. Their terms of office shall be five (5) years each except that original appointments shall be made for such terms that the term of one (1) member shall expire each year. The Secretary of the Board shall notify the Court at least thirty (30) days in advance of the expiration of any terms of office, and shall notify the Court promptly if any vacancies occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be re-appointed to succeed themselves. Members of the Board shall hold no other public office in the City except that one (1) may be a member of the Planning Commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies.

20-1-2 With the exception of its secretary, the Board shall elect from its own membership its officers, who serve annual terms as such and may succeed themselves. The Board may elect as its secretary either one of its members or a qualified individual who is not a member of the Board. A secretary who is not a member of the Board shall not be entitled to vote on matters before the Board. For the conduct of any hearing, a quorum shall be not less than a majority of all the members of the Board. Except for matters governed by §15.2-2312 of the Code of Virginia, as amended, no action of the board shall be valid unless authorized by a majority vote of those present and voting. The Board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the county or municipality and general laws of the Commonwealth. The Board shall keep a full public record of its proceedings and shall submit a report of its activities to the City Council at least once each year. (10/11/83, Case 83-06, Ord. No. 034-83; 7/15/09, Case TA-09-66, Ord. No. 2009-18; 9/14/10, Case TA-10-334, Ord. No. 2010-39)

20-1-3 Within the limits of funds appropriated by the City Council, the Board may employ or contract for secretaries, clerks, legal consultants, and other technical and clerical services. Members of the Board may receive such compensation as may be authorized by the City Council. Any Board member may be removed for malfeasance, misfeasance, or nonfeasance in office, or for other just cause, by the court which appointed him, after hearing is held after at least fifteen (15) days' notice.

20-1-4 ALTERNATE MEMBERS.

At the request of the Common Council of the City of Winchester, the Circuit Court of the City may appoint not more than three (3) alternates to the Board of Zoning Appeals. The qualifications, terms and compensation of alternate members shall be the same as

those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty-four hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains. (7/15/09, Case TA-09-66, Ord. No. 2009-18)

SECTION 20-2. POWERS OF THE BOARD OF ZONING APPEALS.

20-2-1 The Board of Zoning Appeals shall have the following powers and duties:

20-2-2 To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this Article or of any ordinance pursuant thereto.

20-2-3 To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest when, owning to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the Ordinance shall be observed and substantial justice done, as follows:

20-2-3.1 When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of the Ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the Ordinance. (7/15/09, Case TA-09-66, Ord. No. 2009-18)

20-2-3.2 No such variance shall be authorized by the Board unless it finds:

a. That the strict application of this Ordinance would produce a clearly demonstrable hardship. (9/13/05, Case TA-05-03, Ord. No. 026-2005)

b. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.

c. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

20-2-3.3 Repealed. (10/13/92, Case TA-92-02, Ord. No. 016-92)

20-2-3.4 No variance shall be authorized unless the Board finds that the condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Ordinance.

20-2-3.5 In authorizing a variance the Board may impose such conditions regarding the location, character, and other features of the proposed structure for use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

20-2-4 To hear and decide appeals from the decision of the Zoning Administrator. (10/13/92, Case TA-92-02, Ord. No. 016-92)

20-2-5 Repealed. (9/13/05, Case TA-05-03-05, Ord. No. 026-2005)

20-2-6 To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owner of the property affected by any such question, the Board shall interpret the map in the particular section or district in question. The Board shall not have the power to change substantially the locations of district boundaries as established by the Ordinance. (3/15/88, Case TA-87-17, Ord. No. 014-88; 10/13/92, Case TA-92-02, Ord. No. 016-92)

SECTION 20-3. PROCEDURES.

20-3-1 An application or appeal to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the locality affected by any decision of the Administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this Ordinance, or any modification of zoning requirements pursuant to §15.2-2286 of the Code of Virginia, as amended. Notwithstanding any charter provision to the contrary, any written notice of a zoning violation or a written order of the Administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with §15.2-2311 of the Code of Virginia, as amended, and that the decision shall be final and unappealable if not appealed within 30 days. The zoning violation or written order shall include the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal. The appeal period shall not commence until the statement is given. A written notice of a zoning violation or a written order of the Administrator that includes such statement sent by registered or certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed sufficient notice to the property owner and shall satisfy the notice requirements of this section. The application or appeal shall be taken within thirty (30) days after the decision appealed from by filing with the Administrator, and with the Board, a notice of appeal specifying the grounds thereof.

The Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed was taken. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Administrator certifies to the Board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the Board or by a court of record, on application and on notice to the Administrator and for good cause shown. (10/13/92, Case TA-92-02, Ord. No. 016-92; 9/14/10, Case TA-10-334, Ord. No. 2010-39)

20-3-2 All applications or appeals to the Board shall be made to the Administrator on a form provided for such purpose, and shall be accompanied by a filing fee as per Section 23-8, evidence of delinquent tax payment per Section 23-9, and disclosure of real party interest per Section 23-10 of this Ordinance. The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs. Except as provided for below, the time period for appeal shall be no less than thirty (30) days from the date of receipt of the Notice of Violation sent by the Administrator, pursuant to § 15.2-2311 and § 15.2-2286, Code of Virginia, et seq.: (3/13/90, Case TA-89-12, Ord. No. 008-90; 10/13/92, Case TA-92-02, Ord. No. 016-92; 8/16/02, Case TA-02-04, Ord. No. 014-2002; 3/11/09, Case TA-08-14, Ord. No. 2009-09; 9/14/10, Case TA-10-334, Ord. No. 2010-39)

a. An appeal period of ten (10) days shall be provided for violations of this Ordinance pertaining to maximum occupancy of residential dwellings.

20-3-3 PUBLIC NOTICE AND HEARING.

No such applications or appeals shall be considered by the Board except after notice and hearing as per Section 23-7-1 of this Ordinance. Written notice shall be provided per Section 23-7-2 of this Ordinance. For the hearing by the Board, the applicant shall place notification signage as per Section 23-7-3 of this Ordinance. The Board shall fix a reasonable time for the hearing of an application or appeal, and decide the same within sixty (60) days of receipt of application or appeal made in compliance with this Ordinance. In exercising its powers, the Board may reserve or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from. The concurring vote of three (3) members shall be necessary to reserve any other requirement, decision, or determination of any administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the Ordinance or to effect any variance from the Ordinance. The Board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the Board and shall be public records. The chairman of the Board, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. (3/15/88, Case TA-87-17, Ord. No. 014-88; 10/13/92, Case TA-92-02, Ord. No. 016-92)

20-3-4 Where a building permit has been issued and the construction of the building for which such permit is subsequently sought to be prevented, restrained, corrected, or abated as a violation of the Zoning Ordinance, by suit filed within fifteen (15) days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the Administrator to the Board of Zoning Appeals.

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ARTICLE 21

VIOLATION AND PENALTY

21-1 All departments, officials, and public employees of this jurisdiction which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Ordinance. They shall issue permits for uses, buildings, or purposes only when they are in harmony with the provisions of this Ordinance. Any such permit, if issued in conflict with the provisions of this Ordinance, shall be null and void.

21-2 Any person, firm, or corporation, whether as principal, agency, employed or otherwise, violating, causing, or permitting the violation of any of the provisions of this Ordinance, except those outlined in section 21-3 of this Ordinance, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than ten dollars ($10) nor more than one thousand dollars ($1000) for each violation. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the Ordinance, within the time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than ten dollars ($10) nor more than one thousand dollars ($1000), and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10 day period punishable by a fine of not less than one hundred dollars ($100) nor more than one thousand five hundred dollars ($1500). (6/9/87, Case No. TA-87-01, Ord. No. 014-87; 1/10/06, Case TA-05-05, Ord. No. 002-2006; 6/12/07 Case TA-07-01, Ord. No. 2007-19)

21-2-1 Any conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall be punishable by a fine of up to two thousand dollars ($2000). Failure to abate the violation within the specified time period shall be punishable by a fine of up to five thousand dollars ($5000), and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine up to seven thousand five hundred dollars ($7500). A conviction resulting from a violation of provisions regulating the number of unrelated persons in single- family residential dwellings shall not be punishable by a jail term. (6/12/07, Case TA-07-01, Ord No. 2007-19; 8/12/08, Case TA-08-02, Ord. No. 2008-31)

21-2-2 The appeal period for violations of this Ordinance pertaining to the following uses shall be ten (10) days, pursuant to §15.2-2286 (12/10/13, Case TA-13-138, Ord. No. 2013-14):

a. Any violation of Sections 18-8-12.1 through 18-8-12.3, pertaining to temporary signs.
b. Any violation of Sections 18-9-5 through 18-9-5.4, pertaining to yard sales.
c. Any violation of Section 18-12, pertaining to visual obstructions.
d. Any violation of Section 18-17, pertaining to mobile storage units and temporary events.

21-3 Civil Penalties (1/10/06, Case TA-05-05, Ord. No. 002-2006; 6/12/07, Case TA-07-01, Ord. No. 2007-19)

Any person, firm, or corporation, whether as principal, agent, employed or otherwise, who violates any provision of this chapter, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or structure or uses any building, structure or land in violation of this Ordinance or any site plan or other detailed statement or plan submitted by one of the above-described persons and approved under the provisions of this Ordinance, shall be subject to the following:

A. Any violation of the following provisions of this Ordinance shall be subject to a civil penalty of two hundred dollars ($200.00) for the first violation, and a civil penalty of five hundred dollars ($500.00) for each subsequent violation arising from the same set of operative facts. Any person, firm, or corporation, whether as principal, agent, employed or otherwise who receives more than three civil penalties of the same nature but with different operative facts, the violation may be criminally prosecuted under Section 21-2 of this Ordinance.

1) Each use of a lot, including the use of any structure thereon, not authorized either as a matter of right or by special use permit by these zoning regulations applicable to the district in which the lot is located, in violation of, as applicable, Sections and Subsections 3-1, 3-2, 4-1, 4-2, 5-1, 5-2, 5.1-1, 5.1-2, 6-1, 6-2, 7-1, 7-2, 8-1, 8-2, 9-1, 9-2, 10-1, 10-2, 11-1, 11-2, 12-1, 12-2, 13-1, 13-2, 14-1, 14-2, 15-1, 15-2, 15.1-1, 15.1-2, 16-1, 16-2, 16.1-1, 16.1-2.

2) The operation of a business without a valid certificate of occupancy, in violation of Sections 18-1-1.1, 18-1-1.2, 18-1-2.1, or 18-1-2.2.

3) Repealed. (6/12/07, Case TA-07-01, Ord. No. 2007-19)

4) Any violation of sections which regulates off-street parking., specifically Subsections 18-6-1.1, 18-6-1.2, 18-6-1.3, 18-6-1.4, or 18-6-1.5.

5) The operation of a business and special regulations pertaining to the Primary and Secondary Downtown Assessment Districts, in violation of Section 18-7, specifically Subsections 18-7-1, 18-7- 1.1, or 18-7-1.6. (4/9/13, Case TA-13-35, Ord. No. 2013-08)

6) Any violation of Section 18-8, which regulates permanent and temporary signs, except as provided in section 18-8-13.5 or 18-15 of this ordinance.

7) The construction, erection or location of an accessory building or structure in a residential or commercial district in violation of Section 18-9 or 18-10 of this Ordinance.

8) Any violation of Section 18-16 which pertains to nuisances.

9) Any violation of Section 18-17 pertaining to mobile homes, mobile offices, mobile sales units, and mobile storage units.

10) Any violation of Section 18-19 pertaining to the regulations and guidelines for home occupations.

11) Any violation of Section 18-20 pertaining to the regulation and guidelines for outdoor storage of materials and display of merchandise for rent.

12) Any violation of Article 19, which pertains to site plans and development standards.

13) Any violation of Article 14, which pertains to the Historic Winchester (HW) District.

14) Any violation of Section 18-6-10.1 pertaining to inoperable motor vehicles. (2/12/08, Case TA-07-07, Ord. No. 2008-10)

B. Each day during which a violation is found to exist shall be a separate offense. However, the same scheduled violation arising from the same operative set of facts may be charged not more than once in a ten (10) day period, and the total civil penalties from a series of such violations arising from the same set of operative facts shall not exceed five thousand dollars ($5,000)

C. Any person summoned for a scheduled violation may elect to pay the civil penalty by making an appearance in person or in writing by mail to the Treasurer of the City of Winchester received prior to the date fixed for trial in court. A person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. A signature to an admission of liability shall have the same force and effect as a judgment of court. However, such an admission shall not be deemed a criminal conviction for any purpose. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, then violation shall be tried in the General District Court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose. However, no payment of any civil penalty shall constitute a legal non-conforming use and will be subject to injunctive relief by the City as long as it stays in existence.

Accordingly, no civil penalty for any violation on this section shall be paid by the owner/lessee unless said violation ceases to exist. If the violation remains uncorrected at the time of the admission of liability or finding of liability, the court may order the violator to abate or remedy the violation in order to comply with this Ordinance. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within a period of time as determined by the court, but not later than six months of the date of admission of liability or finding of liability. Each day during which the violation continues after the court-ordered abatement shall constitute a separate offense. In addition, the Court may order any additional penalties deemed just and lawful under the circumstances for failure to comply with its Order of abatement. (8/12/08, Case TA-08-02, Ord. No. 2008-31)

D. The designation of a particular violation in Section 21-3(A) shall be in lieu of any criminal penalty and, except for any violation resulting in injury to persons, such a designation shall preclude the prosecution of the particular violation as a criminal misdemeanor, provided, however that when such civil penalties total five thousand dollars ($5,000) or more, the violation may be prosecuted as a criminal misdemeanor, and shall not preclude any other remedy available under this Chapter.

E. The designation of a particular violation in section 21-3 (A) shall not be construed to allow the imposition of civil penalties: (i) for activities related to land development within the meaning of Virginia Code § 10.1-603.2; or (ii) for violation of any provision of this Zoning Ordinance relating to the posting of signs on public property or public rights-of-way.

F. Any reference herein to a section of this chapter shall include all subsections and paragraphs of that section.

ARTICLE 22

AMENDMENTS

SECTION 22-1. INITIATION.

22-1-1 Whenever public necessity, convenience, general welfare, or good zoning practice requires, City Council may amend, supplement or change this Ordinance, including the schedule of district regulations and the official zoning map. Any such amendment may be initiated by resolution by City Council, by motion of the Commission, or by the petition of any owner of property within the City addressed to the Commission. (11/13/79, Ord. No. 024-79; 10/13/92, Case TA-92-02, Ord. No. 016-92)

22-1-2 A petition for an amendment may be withdrawn at any time, but if the Planning Commission has commenced its hearings on the petition, or if the petition has been denied by City Council, substantially the same petition shall not be reconsidered within twelve (12) months of withdrawal or denial. This provision shall not be held to impair the right of either the Planning Commission or the City Council to propose any amendment to this Ordinance on their own motion at any time. (11/13/79, Ord. No. 024-79)

22-1-3 CONDITIONAL ZONING GENERALLY. The following regulations shall apply to conditional zoning: (2/13/90, Case TA-89-10, Ord. No. 004-90)

a. PROFFER OF CONDITIONS

1. Applicants for changes in zone boundaries, as part of their application, may voluntarily proffer in writing prior to a public hearing before the City Council, reasonable conditions which shall be in addition to those regulations provided in this Ordinance and applicable to the particular zoning district sought in said application; provided that:

(a) the rezoning itself gives rise to the need for the conditions;

(b) such conditions have a reasonable relation to the rezoning; and

(c) all such conditions are in conformity with the comprehensive plan.

2. No proffer shall be accepted by the City Council unless a Capital Improvement Program has been adopted pursuant to applicable laws. In the event proffered conditions include the dedication of real property or payment of cash, such property shall not transfer and such payment of cash shall not be made until the facilities for such property is dedicated or cash is tendered are included in the Capital

Improvement Program, provided that nothing herein shall prevent the City Council from accepting proffered conditions which are not normally included in such Capital Improvement Program. If proffered conditions include dedication of real property or the payment of cash, the proffered conditions shall provide for the disposition of such property or cash payment in the event the property or cash payment is not used for the purpose for which proffered.

b. AMENDMENTS OF CONDITIONS. Once proffered and accepted as part of an amendment to the Zoning Ordinance, such conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by such conditions; however, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised Zoning Ordinance. Furthermore, there shall be no amendment or variation of conditions created pursuant to the provisions of this section until after a public hearing before the City Council which shall be advertised pursuant to Section 22-3 of this Ordinance.

22-1-4 PROCEDURES. Every petition shall be accompanied by a completed application provided for such purpose and a filing fee as per Section 23-8, evidence of delinquent tax payment per Section 23-9, and disclosure of real party interest per Section 23-10 of this Ordinance. (2/13/90, Case TA-89-10, Ord. No. 004-90; 3/13/90, Case TA-89-12, Ord. No. 009-90; 6/12/90, Case TA-89-11, Ord. No. 018-90; 7/10/90, Case TA-90-04, Ord. No. 026-90; 10/13/92, Case TA-92-02, Ord. No. 016-92; 8/16/02, Case TA-02-04, Ord. No. 014-2002)

22-1-4.1 PUBLIC NOTICE AND HEARING. No amendment of the regulations or the zoning map shall be considered by the Commission or the Council except after notice and hearing as per Section 23-7-1 of this Ordinance. For amendments to the zoning classification of land, written notice shall be provided per Section 23-7-2.1 and 23-7-2.2 of this Ordinance for both the Commission and City Council hearings. (10/13/92, Case TA-92-02, Ord. No. 016-92)

22-1-4.2 NOTIFICATION SIGNS. For any amendment of the official zoning map which affects less than either twenty-five (25) acres or twenty-five (25) land owners, the applicant shall place notification signage as per Section 23-7-3 of this Ordinance. (2/9/88, Case TA-87-13, Ord. No. 008-88; 2/13/90, TA-89-19, Ord. No. 004-90; 10/13/92, Case TA-92-02, Ord. No. 016-92)

SECTION 22-2. REFERRAL TO AND ACTION BY PLANNING COMMISSION.

22-2-1 All applications to amend or reenact the Zoning Ordinance, or to amend the Zoning Map, which have been determined by the Winchester Planning Department to be complete shall be considered to be referred to the Planning Commission by City Council. No amendment or reenactment shall be acted upon unless the proposal has been reviewed by the Commission. The Commission shall hold at least one (1) public

hearing on such proposed amendment or reenactment after required notice. For any amendment of the Zoning Map, the public notice shall include the statement of the general usage and density range of the proposed amendment and the general usage and density range of the applicable part of the Comprehensive Plan. Following the hearing, the Commission may include changes in the original proposal resulting from the hearing, and shall transmit such recommendations, together with any explanatory matter, to the City Council. Failure of the Commission to report within one hundred (100) days after the first meeting of the Commission after the completed amendment application has been referred to the Commission shall be deemed approval, unless such proposed amendment or reenactment has been withdrawn by the applicant prior to the expiration of the time period. (11/13/79, Ord. No. 024-19; 2/9/88, Case TA-87-13, Ord. No. 008-88; 12/11/90, Case TA-90-06, Ord. No. 043-90; 10/13/92, Case TA-92-02, Ord. No. 016-92; 12/10/13, Case TA-13-488, Ord. No. 2013-37)

22-2-2 In recommending the adoption of any rezoning of property, the Commission shall state by motion or resolution the public purposes therefor. (11/13/79, Ord. No. 024-79; 10/13/92, Case TA-92-02, Ord. No. 016-92)

SECTION 22-3. ACTION BY CITY COUNCIL.

Before acting upon the proposed amendment, the City Council shall hold at least one (1) public hearing. For any amendment of the Zoning Map, the public notice shall include the statement of the general usage and density range of the proposed amendment and the general usage and density range of the applicable part of the Comprehensive Plan. After such hearing the City Council may make appropriate changes or corrections in the proposed amendment; provided that no land may be zoned to a more intensive use classification than was contained in the public notice without an additional public notice as per Section 23-7-1 and written notice as per Section 23-7-2 of this Ordinance. When approving any rezoning of property, City Council shall state by motion or resolution the public purposes therefor. (11/13/79, Ord. No. 024-79; 2/9/88, Case TA-87-13, Ord. No. 008-88; 12/11/91, Case TA-90-06, Ord. No. 043-90; 10/13/92, Case TA-92-02, Ord. No. 016-92)

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ARTICLE 23

ADMINISTRATION AND INTERPRETATION

SECTION 23 -1. ENFORCEMENT.

23-1-1 ENFORCEMENT. The provisions of this Ordinance shall be administered and enforced by an officer to be known as the Zoning Administrator. The Zoning Administrator shall have all necessary authority on behalf of the Governing Body to administer and enforce the provisions of this Ordinance, including the ordering in writing of the remedying of any condition found in violation of this Ordinance, and the bringing of legal action to ensure compliance with the Ordinance, including injunction, abatement, or other appropriate action or proceeding. (9/11/12, Case TA-12-227, Ord. No. 2012-27)

23-1-2 ASSISTANCE AND COOPERATION. The Zoning Administrator may request and shall receive, so far as may be necessary in the discharge of his duties, the assistance and cooperation of the Chief of Police in enforcing orders, of the City Attorney in prosecuting violations, and of other City officials.

SECTION 23-2. INTERPRETATION.

23-2-1 Unless district boundary lines are fixed by dimensions or otherwise clearly shown or described, and where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following rules shall apply:

23-2-2 Where district boundaries are indicated as approximately following or being at right angles to the center lines of streets, highways, alleys, or railroad main tracks, such center lines or lines at right angles to such center lines shall be construed to be such boundaries, as the case may be.

23-2-3 Where a boundary is indicated to follow a river, creek, or branch or other body of water, said boundary shall be construed to follow the center line at low water or at the limits of the jurisdiction; and in the event of change in the shoreline, such boundary shall be construed as moving with the actual shoreline.

23-2-4 If no distance, angle, curvature, description, or other means is given to determine a boundary lines accurately and the foregoing provisions do not apply, the same shall be determined by the use of the scale shown on said zoning map. In case of subsequent dispute, the matter shall be referred to the Board of Zoning Appeals which shall determine the boundary.

SECTION 23-3. ADMINISTRATIVE APPROVAL OF MODIFICATION OF DEVELOPMENT STANDARDS.

Upon application by the property owner, the Administrator may grant a modification to reduce the following development standards to the extent listed for each of the standards: (9/13/05, Case TA-05-03, Ord. No. 026-2005)

a. Reduction of Setback, yard lot area or lot width requirements: A maximum of ten percent of the requirement. However, this section shall not be used to modify the standards listed in section 18-9-2.

b. Enlargement of permitted sign area. No such enlargement shall be granted in excess of ten (10) percent of the maximum permitted area.

c. Repair or reconstruction of a nonconforming structure or a conforming structure devoted to a nonconforming use that is destroyed or damaged in any manner to the extent that the cost of reconstructing the structure shall exceed fifty (50) percent of the cost of reconstructing the entire structure.

d. Reduction of the requirements for off-street parking. No such reduction shall be granted in excess of ten (10) percent of the requirement. (4/11/06, Case TA-06-01, Ord. No. 16-2006)

e. Reduction of the separation of off-street parking areas from side or rear property lines or from site features more than six (6) inches above or below grade. No such reduction shall be granted in excess of ten (10) percent of the requirement.

f. Repair and maintenance of any nonconforming structure or portion of a structure containing a nonconforming use. No such repair or maintenance shall be granted to an extent in excess of twenty-five (25) percent of the current replacement cost of the nonconforming structure or nonconforming portion of the structure as the case may be.

23-3-1 No such modification shall be authorized by the Administrator unless he/she finds: (9/13/05, Case TA-05-03, Ord. No. 026-2005)

a. That the strict application of this Ordinance would produce a clearly demonstrable hardship.

b. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.

c. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

23-3-2 Prior to the granting of an administrative approval of development standards, the applicant shall submit an application and an affidavit to the Administrator setting forth the reasons and the need for the modification. Once the application has been accepted,

the Administrator shall give, or require the applicant to give, all adjoining property owners and Board of Zoning Appeals members written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice. If any member of the Board of Zoning Appeals requests to fore go this section, the subject application shall be heard by the Board of Zoning Appeals pursuant to Article 20 of the this Ordinance. The Administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph. The decision of the Administrator shall constitute a decision within the purview of § 15.2-2311, and may be appealed to the Board of Zoning Appeals as provided by that section. Decisions of the Board of Zoning Appeals may be appealed to the Circuit Court as provided by § 15.2-2314. (9/13/05, Case TA-05-03, Ord. No. 026-2005)

SECTION 23-4. EFFECTIVE DATE.

The effective date of this Ordinance shall be from and after its passage and legal application, and its provision shall be in force thereafter until repealed.

SECTION 23-5. SEVERABILITY.

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

SECTION 23-6. CONFLICTING ORDINANCES.

All conflicting ordinances or parts thereof which are inconsistent with the provisions of this Ordinance are hereby repealed. This Zoning Ordinance of Winchester, Virginia, shall be effected at and after 12:01 a.m. April 14, 1976.

SECTION 23-7. ADVERTISEMENT OF PLANS, ORDINANCES; NOTICE TO ADJACENT PROPERTY OWNERS; NOTIFICATION SIGNS. (10/13/92, Case TA-92-02, Ord. No. 016-92)

23-7-1 Whenever a public hearing is required for any action outlined in this Ordinance, such public hearing shall be advertised as required by Section 15.2-2204 of the Code of Virginia (1950), as amended. The advertisement shall include a descriptive summary of the proposed action.

23-7-2 Whenever written notice to owners of affected or adjacent parcels is required for any action outlined in this Ordinance, such written notice shall be mailed by the applicant via first class mail at least ten days prior to the hearing to the owners of all properties within 300 feet of the property affected, except as provided below.

23-7-2.1 Whenever a proposed amendment of the zoning ordinance involves a change in the zoning classification of twenty-five (25) or fewer parcels of land, written notice via registered or certified mail shall be mailed by the applicant at least ten days prior to hearing to all the owners of each parcel involved and to the owners of all abutting property and property immediately across the street or road from the property affected. Further, notice shall be mailed by the applicant via first class mail at least ten days prior to the hearing to the owners of all other properties within 300 feet of the property affected. If the hearing is continued, notice shall be remailed at the applicant's expense.

23-7-2.2 Whenever a proposed amendment of the Zoning Map involves a change in the zoning classification more than twenty-five (25) but less than 500 parcels of land, written notice via first class mail shall be given by the applicant at least five days prior to hearing to all the owners of each parcel involved and to the owners of all abutting property and property immediately across the street or road from the property affected. Further, notice shall be mailed by the applicant via first class mail at least ten days prior to the hearing to the owners of all other properties within 300 feet of the property affected.

23-7-2.3 In the case of a condominium, the written notice may be mailed to the unit owners' association in lieu of each individual unit owner. If any portion of the affected property is a planned unit development, then written notice shall be sent to such incorporated property owners association within the planned unit development that has members owning property located within two thousand (2000) feet of the affected property. Such notice shall be given whether the properties are located within or without the City. Reliance by the applicant upon records of the City Assessor's office to ascertain the names of persons entitled to notice shall be deemed sufficient. The applicant shall be required to supply the names and certify that the notice has been sent to those to whom notice has been required. The certification and a listing of the persons to whom the notice has been sent shall be supplied by the applicant to the Administrator at least five (5) days prior to the first hearing.

23-7-3 Whenever notification signage is required to be placed on the property for any action outlined in this Ordinance, such signage shall be placed so as to be visible from each existing developed street upon which the property fronts. The applicant shall submit a $50.00 refundable deposit per sign and be responsible for the placement of such signs at least two weeks prior to the public hearing. Additional signs shall be placed by the applicant if the frontage exceeds 1,000 feet or if the property fronts on more than one street. The applicant shall return the sign(s) within ten (10) business days after the close of the public hearing. If the sign is not returned within ten (10) business days, the deposit shall be forfeited. (3/14/06, Case TA-05-07, Ord. No. 09-2006)

SECTION 23-8. **FEES.** (10/13/99, Case TA-99-04, Ord. No. 029-99; 10/9/02, Case TA-02-07, Ord. No. 024-2002; 8/13/13, Case TA-13-198, Ord. No. 2013-21)

23-8-1	Conditional Use (when applied for at same time as site plan) (10/8/02, Case TA-02-07, Ord. No. 024-2002)	$200
	Conditional Use (when applied for separate from site plan) (10/8/02, Case TA-02-07, Ord. No. 024-2002)	$500
	Conditional Use – Telecommunications Facility/Tower (New, Modification, or Collocation) (8/13/13, Case TA-13-198, Ord. No. 2013-21)	$1500
23-8-2	Site Plans (8/16/02, Case TA-01-09, Ord. No. 002-2002; 10/8/02, Case TA-02-07, Ord. No. 024-2002; 3/14/06, Case TA-05-07, Ord. No. 09-2006)	$1200 + $25/provided parking and / or display space
23-8-3	Minor Site Plan Revision (10/8/02, Case TA-02-07, Ord. No. 024-2002; 3/14/06, Case TA-05-07, Ord. No. 09-2006)	$300 + $25/provided parking and /or display space
23-8-4	BZA Applications (8/16/02, Case TA-01-09, Ord. No. 002-2002; 10/8/02, Case TA-02-07, Ord. No. 024-2002; 3/14/06, Case TA-05-07, Ord. No. 09-2006; 9/14/10, Case TA-10-334, Ord. No. 2010-39)	$500/1st Code Section $100/each Additional Code Section
23-8-4.1	BZA Appeals (9/14/10, Case TA-10-334, Ord. No. 2010-39)	$200
23-8-5	Rezoning (8/16/02, Case TA-01-09, Ord. No. 002-2002 10/8/02, Case TA-02-07, Ord. No. 024-2002; 3/14/06, Case TA-05-07, Ord. No. 09-2006)	$1000+$200/acre or fraction thereof

23-8-5.1 through 23-8-5.3 Repealed. (10/13/99, Case TA-99-04, Ord. No. 029-99)

23-8-5.4	Zoning Text Amendment (10/8/02, Case TA-02-07, Ord. No. 024-2002)	$600
23-8-5.5	Conditional Zoning Proffer Amendment (10/13/99, Case TA-99-04, Ord. No. 029-99) (10/8/02, Case TA-02-07, Ord. No. 024-2002)	$500

23-8-6	Planned Development Re-approval/Revision (10/8/02, Case TA-02-07, Ord. No. 024-2002)	$500
23-8-7	Re-advertisement Fee (10/8/02, Case TA-02-07, Ord. No. 024-2002; 3/14/06, Case TA-05-07, Ord. No. 09-2006; 8/13/13, Case TA-13-198, Ord. No. 2013-21)	$100
23-8-8	BAR Demolition per Section 14-3-2 (4/13/93, Case TA-93-03, Ord. No. 014-93; 10/8/02, Case TA-02-07, Ord. No. 024-2002; 9/14/10, Case TA-10-247, Ord. No. 2010-36)	$300
23-8-9	Appeal to City Council of BAR decision (4/13/93, Case TA-93-03, Ord. No. 014-93; 10/8/02, Case TA-02-07, Ord. No. 024-2002; 3/14/06, Case TA-05-07, Ord. No. 09-2006)	$75
23-8-10	Temporary permit Mobile home, office, or sales unit Mobile storage units (4/13/93, Case TA-93-03, Ord. No. 014-93; 10/8/02, Case TA-02-07, Ord. No. 024-2002; 3/14/06, Case TA-05-07, Ord. No. 09-2006)	 $100/unit $200/unit
23-8-11	Event permit (4/13/93, Case TA-93-03, Ord. No. 014-93; 10/8/02, Case TA-02-07, Ord. No. 024-2002; 3-14-06, Case TA-05-07, Ord. No. 09-2006)	$100
23-8-12	Portable sign or sign when no building permit is required (12/13/94, Case TA-94-10, Ord. No. 029-94) (10/8/02, Case TA-02-07, Ord. No. 024-2002)	$40
23-8-13	Waiver of Underground Utilities (12/13/94, Case TA-94-11, Ord. No. 002-95; 10/8/02, Case TA-02-07, Ord. No. 024-2002; 3/14/06, Case TA-05-07, Ord. No. 09-2006)	$100
23-8-14	Seasonal storage/display permit (10/17/95, Case TA-95-04, Ord. No. 053-95; 10/8/02, Case TA-02-07, Ord. No. 024-2002; 3/14/06, Case TA-05-07, Ord. No. 09-2006)	$250

23-8-15	Right of Way Vacation (10/13/99, Case TA-99-04, Ord. No. 029-99)	$100
23-8-16	Zoning Determination Letter (3/14/06, Case TA-05-07, Ord. No. 09-2006)	$100
23-8-17	Zoning Confirmation Letter (3/14/06, Case TA-05-07, Ord. No. 09-2006)	$500
23-8-18	Use of sidewalk in Primary/Secondary Assessment Districts per Section 18-7 (annual fees, unless otherwise specified)	
	Dining Area – up to 500sf	$85
	Dining Area – 501 to 650sf	$160
	Dining Area – 651sf and greater	$210
	Portable sign	$10
	Display of Merchandise	$25
	Outside vendor (4/9/13, Case TA-13-35, Ord. No. 2013-08)	$25/day

SECTION 23-9 PAYMENT OF DELINQUENT TAXES

Prior to the initiation of an application for a special exception, special use permit, variance, rezoning or other land use permit, or prior to the issuance of final approval, the applicant shall produce satisfactory evidence that any delinquent real estate taxes owed to the city which have been properly assessed against the subject property have been paid. (8/16/02, Case TA-02-04, Ord. No. 014-2002)

23-10 DISCLOSURE OF REAL PARTIES IN INTEREST

All applications to the Planning Commission, City Council, or Board of Zoning Appeals for special exception, special use permits, conditional use permits, rezoning, amendments to the Zoning Ordinance or variances shall be accompanied by a complete disclosure of the equitable ownership of the real estate to be affected including, in the case of corporate ownership, the names of stockholders, officers and directors, and in any case the names and addresses of all of the real parties of interest. However, the requirement of listing names of stockholders, officers, and directors shall not apply to a corporation whose stock is traded on a national or local stock exchange and having more than 500 shareholders. (8/16/02, Case TA-02-04, Ord. No. 014-2002)

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