

# GREENBRIER COUNTY ZONING ORDINANCE

## CHAPTER 1

### ARTICLE 101 PURPOSE AND INTRODUCTION

#### Section 101.01 Title.

This ordinance shall be known as the Zoning Ordinance of Greenbrier County, West Virginia, hereinafter referred to as this “code,” “ordinance,” or “Zoning Ordinance.”

#### Section 101.03 Authority.

The governing body of any county or municipality may, by ordinance, classify the territory under its jurisdiction into districts of such number, shape, and size as it may deem best suited to carry out the purpose of zoning.

#### Section 101.05 Purpose.

This Zoning Ordinance is consistent with the current Greenbrier County Comprehensive Plan and was developed to promote the health, safety, morals, and general welfare of the public. The zoning regulations and districts as herein described have been established for the purpose of securing adequate light, air, convenience of access, and safety from fires, flood, and other danger; that congestion in the public streets may be lessened or avoided; that the public health, safety, comfort, morals, convenience, and general public welfare may be promoted; that the future development of the County may be planned; that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and with the efficient and economical use of public funds.

Other purposes of this Zoning Ordinance include:

- a. To plan so that adequate light, air, convenience of access, and safety from fire, flood, and other danger is secured;
- b. To ensure attractiveness and convenience is promoted;
- c. To lessen congestion;
- d. To preserve historic landmarks, sites, districts, and buildings;
- e. To preserve agricultural land; and
- f. To promote the orderly development of land.

#### Section 101.07 Scope and jurisdiction.

The provisions of this Zoning Ordinance shall apply to the construction, addition, alteration, moving, repair, and use of any building, structure, parcel of land, or sign within the zoned portions of Greenbrier County, except work located primarily on a public way or road, or on public utilities and public utility structures. In fulfilling these purposes, this partial Zoning Ordinance is intended to benefit the public as a whole and not any specific person or class of persons. Although, through the implementation, administration, and enforcement of this code, benefits and detriments will be enjoyed or suffered by specific individuals, such is merely a byproduct of the overall benefit to the community. Therefore, unintentional breaches of the obligations of administration and enforcement imposed on Greenbrier County hereby shall not be enforceable in tort.

**Section 101.09 Interpretation, conflict, and severability.**

In interpretation and application of this ordinance, these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare. These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provisions of law. Where the conditions imposed by, or pursuant to, these regulations are different from those imposed by any other provision of these regulations or any other ordinance rule or regulation, statute, or other provision of law, the provisions that are more restrictive and impose the higher or greater standards shall govern. If any portion of this Zoning Ordinance is held invalid for any reason, such shall be severable from the remaining, which shall remain enforceable.

**Section 101.11 Non-exclusionary intent.**

It is not the intent of this code to exclude any persons or groups with differing economic, race, color, religion, sex, national origin, disability, or familial status from enjoyment of a residence, land ownership, or tenancy within Greenbrier County; nor is it the intent of this code to use public powers in any way to promote the separation within Greenbrier County of economic, racial, religious, or ethnic groups, except as may be an incidental result of meeting the purposes outlined in this article.

**Section 101.13 Official zoning map.**

The Zoning Ordinance of Greenbrier County shall include this code and the accompanying Official Zoning Map, which shall be considered part of this code. The Official Zoning Map shall be the map certified by the County Commission of Greenbrier County. All subsequent amendments (i.e., rezoning) of the Official Zoning Map shall be certified by the County Commission of Greenbrier County and filed with the office of the Clerk of Greenbrier County.

**Section 101.15 Enactment.**

Therefore, the County Commission of Greenbrier County hereby ordains for the purpose of accomplishing the objectives set out in the West Virginia Code, and Section 101.05 of this code, that the following be enacted as the Zoning Ordinance of Greenbrier County, West Virginia.

**Section 101.17 Effective date.**

This code shall take effect [EFFECTIVE DATE].

**CHAPTER 2 DEFINITIONS**

**ARTICLE 201 INTERPRETATION**

**Section 201.01 Interpretation of words.**

For the purpose of this Zoning Ordinance certain terms and words used herein shall be interpreted as follows:

- a. Words used in the present tense include the future tense.
- b. Words used in the singular number shall include the plural, and words used in the plural number shall include the singular.

- c. The word “person” shall include a firm, association, organization, limited liability company, limited partnership, corporation, trust, company, as well as a natural individual.
- d. The word “County” shall mean the County of Greenbrier.
- e. The word “shall” and “must” are used to indicate mandatory directives.
- f. The word “structure” shall include the word “building.”
- g. The word “Map” or “Zoning Map,” or “Official Zoning Map” shall mean the map that geographically illustrates all zoning district boundaries within Greenbrier County, West Virginia, pursuant to the requirements of Chapter 8A of the West Virginia Code.
- h. The term “governing body” shall mean the County Commission for Greenbrier County, West Virginia.
- i. The term “Planning Commission” shall mean the Planning Commission for Greenbrier County, West Virginia, pursuant to Chapter 8A of the West Virginia Code.
- j. “Districts” or “Zoning Districts” shall mean administrative tracts designating the uses to which land can legally be utilized. Boundaries of the districts are shown on the Official Zoning Map, which is a part of this code.

**ARTICLE 202 USE AND GENERAL DEFINITIONS**

**Section 202.01 Use definitions.**

- 1. Accessory Dwelling Unit. A secondary dwelling unit established in conjunction with and clearly subordinate to a single family dwelling unit.
- 2. “Adult Business” means an adult bookstore or movie theater or movie house or other adult entertainment, as defined herein.
  - i. “Adult Bookstore” means any establishment in which is offered for sale as a substantial or significant portion of its stock-in-trade videocassettes, movies, books, magazines or other periodicals, or other media which are distinguished or characterized by their emphasis on nudity or sexual conduct or on activities which, if presented in live presentation, would constitute adult entertainment.
  - ii. “Adult Entertainment” means an establishment providing, either as a sole use or in conjunction with or in addition to other uses, entertainment consisting of the use of nudity or of live dancing, posing, displaying, acting, or other live presentation or use of persons whose actions are distinguished or characterized by emphasis on use of the human body in a manner intended to or resulting in arousal of sexual excitation or sexual titillation or a prurient interest or intended to or resulting in producing lustful emotions.
  - iii. “Adult Movie Theater” or “Movie House” (including Adult Mini-theaters) means any movie theater which on a regular, continuing basis shows films rated X by the Motion Picture Coding Association of America or any movie theater which presents for public viewing on a regular, continuing basis so-called adult films constituting adult entertainment, as defined by this code.
- 3. “Agricultural Operation” except to the extent preempted by the West Virginia Code, means an enterprise that is actively engaged in the commercial production and preparation for market of crops, livestock, and livestock products and in the production, harvesting, and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities. The term includes an enterprise that implements changes in production practices and procedures or types of crops,

livestock, livestock products or commodities produced consistent with practices and procedures that are normally engaged by farmers or are consistent with technological development within the agricultural industry. Does not include farm wineries, wineries, breweries, cideries, and distilleries.

4. "Agritourism Enterprise" except to the extent preempted by the West Virginia Code, means activities conducted on and accessory to a working farm and offered to the public or to invited groups for the purpose of recreation, education, or active involvement in the farm operation. These activities must be directly related to agricultural or natural resources produced or located on the farm and specifically incidental to the primary operation of the farm. Agritourism enterprises are subject to the permitting requirements for mass gathering events.
5. "Airport" means any area of land or water designated, set aside, used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas designated, set aside, used, or intended for use, for airport buildings.
6. "Amphitheater" means an outdoor gathering space typically for entertainment which is often constructed with tiers of seats or sloping surfaces that gradually rise outward from a central open space or stage. An amphitheater may include a bandshell-type structure to provide weather protection to a stage. Amphitheaters are not subject to permitting requirements of mass gathering events or special events.
7. "Amusement and Recreation Center" means a business establishment, generally intended for use by all ages, that provides recreation or entertainment, including but not limited to swimming pools, dance halls, bowling alleys, skating rinks, billiard and pool halls, video and other coin-operated electronic games, miniature golf courses, indoor archery range, table games, trampolines, ball pits, and similar recreational diversions.
8. "Animal Hospital" or "Veterinary Office" means an establishment for temporary occupation by sick or injured animals for the purpose of medical diagnosis and treatment.
9. "Automobile Car Wash" means the use of a site for washing and cleaning of automobiles, recreational vehicles, or other light duty equipment.
10. "Bakery" means an establishment primarily engaged in the retail sale of baked goods for consumption off-site.
11. "Bank/Financial Institution" means a bank, savings and loan, credit union, or other institution that provides banking services to individuals and businesses.
12. "Bed and Breakfast Home Stay" means an owner-occupied house or portion thereof involving the rental of up to four (4) bedrooms to overnight guests. Breakfast is the only meal, if any, served and is served only to overnight guests. The owner shall reside on the premises while the bed and breakfast is occupied.
13. "Bed and Breakfast Inn" means an owner-occupied house or portion thereof involving the rental of up to ten (10) bedrooms to overnight guests. Breakfast is the only meal, if any, served and is served only to overnight guests. The owner shall reside on the premises while the bed and breakfast is occupied.
14. "Brewery" means a state-licensed establishment where intoxicating or non-intoxicating beer is manufactured or in any way prepared and may include a tasting facility as defined in this ordinance. Such establishments must comply with all applicable federal, state, and local regulations and guidelines.
15. "Brewery Pub" means a place of manufacture of nonintoxicating beer or nonintoxicating craft beer owned by a resident brewer as defined by the West Virginia Code, subject to

federal and state regulations and guidelines, a portion of which premises may be designated for retail sales for consumption on the premises of nonintoxicating beer or nonintoxicating craft beer manufactured on site.

16. “Broadcasting Studio” (radio/television) means a structure housing the operation of the over-the-air distribution of audio or video signals to a large number of recipients ("listeners" or "viewers") within the technical reach of the signals.
17. “Building Supply Provider” means an establishment that provides home, lawn, garden supplies, and tools and construction materials, such as brick, lumber, hardware, and other similar materials, which may include outdoor storage of materials.
18. “Bus and Transit Facilities” means a facility operated as a bus or rail passenger station or transfer center that may have a covered structure. Typical facilities may include station platforms, bus bays, off-street parking, private access roads, and other passenger amenities.
19. “Café/Coffee Shop” means an establishment in which beverages, primarily coffee and tea; light meals; and snacks are served, provided no food shall require preparation utilizing an open flame or fryer, and provided the establishment does not exceed one thousand (1,000) square feet in gross floor area.
20. “Campground” means a tract of land or area established, maintained or offered to persons other than the owner for the location of two or more camping units, which may include cabins, tents, domes, motor homes, travel trailers or other recreational equipment or vehicles utilized for overnight occupation.
21. “Catering Business” means the preparation and delivery of food and beverages for off-site consumption for a fee.
22. “Cemetery/Mausoleum” means land used or intended to be used for the burial of human remains and dedicated for cemetery purposes, with public access provided, including columbaria, crematories, mausoleums, and mortuaries and funeral homes when operated with and within the boundary of such cemetery.
23. “Child Day Care Facility” is divided into four classes:
  - i. “Child Day Care Facility, Class 1” means a facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association, or organization, public or private, for the care of thirteen (13) or more children for child care services in any setting, if the facility is open for more than thirty (30) days per year per child.
  - ii. “Child Day Care Facility, Class 2” means a facility which is used to provide childcare services for compensation for seven (7) to twelve (12) children, including children who are living in the household, who are under six (6) years of age. No more than four (4) of the total number of children may be under twenty-four (24) months of age. A facility may be in a provider's residence or a separate building.
  - iii. “Child Day Care Facility, Class 3” means a facility which is used to provide childcare services for compensation in a provider's residence. The provider may care for no more than six (6) children at one time including children who are living in the household, who are under six (6) years of age. No more than two (2) of the total number of children may be under twenty-four (24) months of age.
  - iv. “Child Day Care Facility, Class 4” means residential childcare services for compensation for three (3) or fewer children, including children who are living in

- the household, who are under six (6) years of age. Care is given in the provider's own home to at least one (1) child who is not related to the caregiver.
24. "Cidery" means a state-licensed establishment where intoxicating or non-intoxicating cider is manufactured or in any way prepared for commercial (not solely personal) use. These establishments are required to be licensed by the WVABC.
  25. "Clinic" means an establishment providing medical, dental, chiropractic, psychiatric, substance abuse treatment, or surgical services exclusively on an outpatient basis, including emergency treatment and diagnostic services to persons.
  26. "Continuing Care Facility" means one or more of the following types of facilities:
    - i. "Adult Assisted Living" means any facility, residence, or place of accommodation available for four (4) or more residents for the purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment and who may also require nursing care at a level that is not greater than limited and intermittent nursing care.
    - ii. "Nursing Home" means any institution, residence, or place, or any part or unit thereof, however named, which is advertised, offered, maintained, or operated by the ownership or management, whether for consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than twenty-four (24) hours, for four (4) or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation.
    - iii. "Skilled Nursing Facility" means an institution, or a distinct part of an institution, that primarily provides inpatient skilled nursing care and related services, or rehabilitation services, to injured, disabled, or sick persons.
  27. "Convenience Store" means a business establishment that offers convenience goods for sale, such as pre-packaged or limited prepared food items, tobacco, and periodicals, but not displaying merchandise or products outdoors, except where such display is required to sell the merchandise. The use does not include the sale of gasoline unless combined with the gas station use.
  28. "Correctional Facility" means a publicly or privately operated facility housing persons awaiting trial, serving a sentence after being found guilty of a criminal offense, being within the jurisdiction of a federal, state, or local probation, parole, or corrections agency or receiving treatment other than at a hospital while under the jurisdiction of such authority or agency, including but not limited to jails, prisons, juvenile detention centers, work release centers, pre-release centers, and treatment centers.
  29. "Cultural Service" means a site used for the collection, display, or preservation of objects of community or cultural interest, such as a library, museum, or similar facility.
  30. "Distillery" means an establishment where alcoholic liquor other than wine, cider or beer is manufactured or in any way prepared and as licensed under Chapter 60 of the West Virginia Code.
  31. "Distribution Facility" means any premises or part thereof, that provides logistical support for business, such as freight management, inventory control, storage, packaging, and consolidation of goods for distribution.

32. "Dog Day Care" means an organized, controlled, and monitored environment for a group of dogs to interact and play throughout the day. The purpose is to provide stimulation, exercise, and socialization for dogs and ancillary services. Overnight stays are not permitted in dog day care facilities unless the use is combined with a kennel.
33. "Drive-through Facility" means the accessory use of land, buildings, or structures, or parts thereof, to provide or dispense products or services, either wholly or in part, through an attendant or a window or automated machine, to persons remaining in motorized vehicles that are in a designated lane or parking spot. A drive-through facility may be in combination with other uses such as a laundry shop, dry cleaning shop, dry cleaner's distributing station, branch of a bank or financial institution, restaurant, retail store, automotive service station, or restaurant. Despite the above, a drive-through facility does not include a car washing establishment, automobile service station, or a gas station.
34. "Dry Cleaner" means an establishment providing dry cleaning and laundering services on the premises, and may include the mechanical cleaning of garments, clothing articles, or goods of fabric, including a linen, diaper, or uniform laundering service.
35. "Dwelling, Apartment" means a building containing four or more separate dwelling units, having common features such as parking, and may have shared corridors and stairways and having shared exit and entrance facilities.
36. "Dwelling, Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners. Yard requirements apply to structures only and not individual ownership units.
37. "Dwelling, Mixed Use" means a building containing a residence with commercial or office uses on the ground floor in the front of the building facing the primary street frontage. Residential units may be on the ground floor, provided they are behind commercial uses and cannot be accessed from any portion of the building that faces the primary street.
38. "Dwelling, Multi-family" means a freestanding building containing three (3) or more dwelling units, whether they have direct access to the outside, or access to a common building entrance.
39. "Dwelling, Single-family" means a detached, permanent structure designed for or occupied exclusively as a residence for only one family.
40. "Dwelling, Townhouse" or "Rowhouse" means a one-family dwelling unit, each on a separate parcel, with private entrance, which is part of a structure whose dwelling units are attached horizontally in a linear arrangement and having a totally exposed front and rear wall to be used for access, light, and ventilation.
41. "Dwelling, Two-family" means a freestanding building containing two (2) dwelling units, each of which has direct access to the outside.
42. "Educational Institution" means a college or university giving in person general academic instruction. Included within this term are areas or structures used for administration, housing of students and faculty, dining halls, and social or athletic activities when located on the institution's land that is not detached from where classroom facilities are maintained.
43. "Emergency Shelter" means a residential facility licensed by the State of West Virginia, which provides room and board for a temporary period, and may provide protection,

- counseling, and pre-placement screening for abused, displaced, or transient adults or children residing at the shelter.
44. “Equipment Rental/Repair” means an establishment involved in renting or repairing small tools and equipment, including janitorial equipment.
45. “Essential Utilities and Equipment” means underground or overhead electrical, gas, communications not regulated by the federal communications commission, water and sewage systems, including pole structures, towers, wires, lines, mains, drains, sewers, conduits, cables, fire alarm boxes, public telephone structures, police call boxes, traffic signals, hydrants, vehicle charging stations, regulating and measuring devices and the structures in which they are housed, and other similar equipment accessories in connection therewith.
46. “Event” shall mean a temporary organized gathering of 100 or more people that is incidental to the principal permitted use of the property, and which, if maintained on a permanent basis, would not be permitted in the district as a use. Events organized by a state or federal governmental entity are not subject to the regulations of this ordinance. The BZA may delegate authority for the issuance of conditional use permits for events, which may be issued without a hearing but, only in accordance with the table of uses and the supplemental regulations of this ordinance. Events are further defined as follows:
- i. “Special Event” means the organized assemblage of 100-250 people, which takes place for less than a total of 48 hours and not more than twelve (12) events take place on the tract of land in any twelve (12) month period.
  - ii. “Mass Gathering Event” means the organized assemblage of more than (250) persons during any 24-hour period, or the assemblage of 100-250 people for more than 48 hours.
47. “Factory-built Home” means manufactured and mobile.
- i. “Manufactured Home” means a home that meets the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U. S. C. §5401, et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and the federal manufactured home construction and safety standards and regulations promulgated by the secretary of the United States Department of Housing and Urban Development.
  - ii. “Mobile Home” means a transportable structure that is wholly, or in substantial part, made, fabricated, formed, or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-term residential use and built prior to enactment of the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U. S. C. §5401, et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and usually built to the voluntary industry standard of the American National Standards Institute (ANSI)--A119.1 standards for mobile homes.
48. “Factory-built Home Rental Community” means a parcel of land under single or common ownership upon which two (2) or more factory-built homes are located on a continual, nonrecreational basis together with any structure, equipment, road, or facility intended for use incidental to the occupancy of the factory-built homes, but does not include premises used solely for storage or display of uninhabited factory-built homes or premises occupied solely by a landowner and members of their family.



49. "Fairground" means an area of land used for fairs in accordance with local and state requirements, exhibitions, and shows, including but not limited to animal shows and judging, carnivals, circuses, concerts, food booths and stands, games, rides, rodeos, sales and auctions, storage, racetracks, agricultural related office buildings, and community meeting or recreational buildings and uses.
50. "Farm" means, except to the extent preempted by the West Virginia Code, the raising of crops or livestock, including orchards, vineyards, or nurseries, along with any buildings or structures necessary to conduct such activities.
51. "Farm/Construction Equipment and Supply Sales" means an establishment engaged in the on-premises lease, rental, or retail sale of new or used construction or farm equipment, with or without incidental service for minor repairs and maintenance.
52. "Farmer's Market" means the offering for sale of agricultural products directly to the consumer at an open-air market designated as a community activity.
53. "Flea Market" means an outdoor or enclosed commercial activity, open to the general public that offers goods for sale, trade, or barter, regardless of whether they are new, used, antique, or homemade.
54. "Food Truck" means a food preparation and/or a convenience food sales business using a commercial truck, van, or trailer to prepare and/or transport food and meals for sale from the vehicle at various temporary locations. For purposes of this ordinance, a food truck shall be allowed in the same districts as a restaurant, except when the food truck is allowed in connection with an event permit.
55. "Freight Terminal" means any premises and buildings where cargo is stored and where railroad cars or trucks load and unload cargo for shipment or distribution and which may include facilities for temporary storage of loads prior to shipment and facilities for the maintenance of transport vehicles.
56. "Funeral Home/Mortuary" means a building or part thereof used for human funeral services. Such building may contain space and facilities for (a) embalming and the performance of other services used in the preparation of human remains for burial or disposition of human remains; including cremation; (b) the performance of autopsies and other surgical procedures related to the processing of human remains; (c) the storage of caskets, funeral urns, and other related funeral supplies; (d) the storage of funeral vehicles; and (e) facilities for cremation.
57. "Garage, Commercial" means a garage conducted as a business, which includes but is not limited to the rental of storage space for more than two automobiles or for one commercial vehicle not owned by a person residing on the premises.
58. "Garage, Community" means a group of private garages, detached or under one roof, arranged in a row or around a common means of access and erected for use of residents as a common amenity accessory to a residential development.
59. "Garage, Private" means a smaller accessory structure either attached to or detached from a residential dwelling which is situated on the same property or adjoining property and used for storing personal property by the resident of the dwelling and not to be used as a business.
60. "Garden Center" means an establishment primarily engaged in selling containerized trees, shrubs, other plants, seeds, bulbs, mulches, soil conditioners, fertilizers, pesticides, garden tools, and other garden supplies to the general public and where no trees, shrubs, or plants are grown on the premises.

61. "Gas Station" means a building, place of business, land area, or other premises, or portion thereof, used or intended to be used for the retail dispensing of gasoline, oil and grease, and other vehicle fuels, and including, as an accessory use, the sale and installation of batteries, tires, lubricants, and other automobile accessories and retail items. Minor repair service may also be rendered. May also offer convenience goods for sale, such as pre-packaged or limited prepared food items, tobacco, and periodicals, except that the term does not include display of merchandise or products outdoors except where such display is required to sell the merchandise.
62. "Greenhouse, Commercial" means a building used for the growing of plants, all or part of which are sold at retail or wholesale, but does not include a medical cannabis growing facility.
63. "Greenhouse, Noncommercial" means an accessory building or structure not greater than two thousand two hundred (2,200) square feet in gross floor area constructed chiefly of glass, glasslike, or translucent material, cloth, or lath, and devoted to the protection or cultivation of flowers or other weather-sensitive plants. Permitted only in accordance with all county regulations, including set-back requirements.
64. "Group Residential Facility" means a facility which is owned, leased, or operated by a behavioral health service provider and which (1) provides residential services and supervision for individuals who are developmentally disabled or behaviorally disabled; (2) is occupied as a residence by not more than eight (8) individuals who are developmentally disabled and not more than three (3) supervisors or is occupied as a residence by not more than twelve (12) individuals who are behaviorally disabled and not more than three (3) supervisors; (3) is licensed by the Department of Health and Human Resources; and (4) complies with the State Fire Commission for residential facilities.
65. "Group Residential Home" means a building owned or leased by developmentally disabled or behaviorally disabled persons for purposes of establishing a personal residence. This includes a place for transitional group living arrangements for persons discharged from hospitals, correctional facilities, or in lieu of hospitalization, characterized by the presence of such live-in staff, emphasizing the development of skills necessary for more independent living. The facility shall be licensed and operated in accordance with all applicable laws.
66. "Health Care Medical Cannabis Organization" means a vertically integrated health system permitted under Chapter 16A of the West Virginia Code to dispense medical cannabis or grow and process medical cannabis, or both, in accordance with a research study.
67. "Health Club" means a building or portion of a building designed and equipped for sports, exercise, or other customary and usual recreational activities, operated for profit. The sale of sports nutrition products, non-alcoholic beverages, packaged health foods, exercise clothing, and sports videos and magazines is permitted as an accessory use to such facilities.
68. "Home-based Business" means an accessory use intended to be conducted by the resident to allow commercial enterprises that generate limited numbers of customer visits or merchandise deliveries to a residential dwelling. Use involves limited customer, client, or patient traffic, whether vehicular or pedestrian, pickup, delivery, or removal functions to or from the premises, not in excess of those normally associated with the use of a

dwelling. Telecommuting and remote work performed by a resident of the dwelling are not subject to the regulations of this ordinance.

69. "Hospital" means an institution designed for the diagnosis, treatment, and care of human illness or infirmity and providing health services, primarily for inpatients, and including related facilities, laboratories, outpatient departments, training facilities, and staff offices.
70. "Hotel/Motel" means a building or group of buildings in which lodging units are provided and offered to multiple overnight guests for compensation. The building may also include common areas, dining rooms, kitchens, serving rooms, ballrooms, and other facilities and services intended primarily for the accommodation of its overnight guests.
71. "Incinerator" means an enclosed device using controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials as defined by the West Virginia Code.
72. "Industrial Park" means an area of land arranged or constructed in accordance with a plan for a group of business purposes, having separate building sites designed and arranged on streets and having utility services, setbacks, side yards, and covenants or other such regulations controlling or restricting uses.
73. "Kennel" means any establishment wherein cats and dogs are kept or boarded, registered under West Virginia Code § 19-20-3. Business may be conducted in conjunction with a dog day care or veterinary clinic.
74. "Laboratory" means a facility equipped for experimental study in a science or for testing and analysis, providing opportunity for research, experimentation, observation, or practice in a field of study.
75. "Liquor Store" means an establishment operated under the authority of the West Virginia Code, Chapter 60, Article 3A, and primarily engaged in the retail sale of packaged alcoholic beverages such as ale, beer, wine, or whiskey, for off-premises consumption.
76. "Lumberyard" means an establishment where processed wood timbers and products are stored for bulk and retail sale.
77. "Manufacturing (Heavy)" means the manufacturing or compounding process of raw materials. These activities or processes would necessitate the storage of large volumes of highly flammable, toxic matter or explosive materials needed for the manufacturing process. These activities may involve outdoor operations as part of the manufacturing process.
78. "Manufacturing (Light)" means the manufacturing, compounding, processing, assembling, packaging, printing, or testing of goods or equipment, including but not limited to newspaper printing and distribution and research activities conducted entirely within an enclosed structure, with no outside storage, serviced by a modest volume of trucks or vans, and imposing a negligible impact on the surrounding environment by noise, vibration, smoke, dust, or pollutants.
79. "Medical Adult Day Care Center" means an ambulatory health care facility which provides an organized day program of therapeutic, social, and health maintenance and restorative services and whose general goal is to provide an alternative to twenty-four hour long term institutional care to elderly or disabled adults who are in need of such services by virtue of physical and mental impairment.
80. "Medical Cannabis Dispensary," means a place where medical cannabis is permitted to be dispensed in accordance with Chapter 16A of the West Virginia Code, as amended. The term does not include a health care medical cannabis organization.

81. “Medical Cannabis Growing Facility” means a place where medical cannabis is permitted to be grown, as provided for in Chapter 16A of the West Virginia Code, as amended. This term does not include a health care medical cannabis organization.
82. “Medical Cannabis Processing Facility” means a place where medical cannabis is permitted to be processed, refined, or otherwise converted into a legally permitted state, as provided for in Chapter 16A of the West Virginia Code, as amended. This term does not include a health care medical cannabis organization.
83. “Night Club” means an establishment for evening entertainment, generally open until the early morning that serves liquor and usually food and offers patrons music, comedy acts, a floor show, or dancing but is not characterized as a forum for sexually oriented material.
84. “Office Supply Establishment” means a place of business where stationery, furniture, and other supplies typically used in offices are the main items offered for sale.
85. “Parcel Delivery Facility” means an establishment engaged in the delivery, receipt, and transmittal of documents, packages, and parcels.
86. “Park” means land set aside for open space and recreational purposes, and may include a playground, that does not charge a fee for individual use.
87. “Parking Lot” means a principal use consisting of an off-street surfaced area used for parking two or more vehicles which is served by an entrance and possibly an accessway connecting the parking lot and a public or private road but does not include parking for a single-family or two-family dwelling.
88. “Pawn Shop” means any business that loans money on deposit of personal property or deals in the purchase or possession of personal property on condition of selling the same back again to the pledger or depositor, or loans or advances money on personal property by taking chattel mortgage security thereon and takes or receives such personal property.
89. “Personal Service” means a business providing services to a person, their apparel or personal effects commonly carried on or about their person, including, but not limited to, shoe repair, tailoring, watch repair, beauty shops, barber shops, tanning and nail salons, laundromats, and dry cleaning and laundry pick-up stations where customers drop-off and pick up garments or articles that are sent to another location for cleaning or laundering. Personal services do not include on-site dry cleaning or laundry facilities.
90. “Pet Shop” means an establishment where animals are bought, sold, exchanged, or offered for sale or exchange to the general public.
91. “Pharmacy” means an establishment in which prescription or nonprescription drugs or devices are compounded, dispensed, or distributed. Ancillary retail items also may be sold.
92. “Photographic Studio” means a retail establishment for the purpose of photographing subjects and processing photographs for commercial purposes, but not including photography requiring professional models.
93. “Places of Worship/Religious Institution” means a building wherein persons regularly assemble for acts of religious devotion, and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes a church, synagogue, temple, mosque, or other such place for worship and religious activities. Customary accessory uses include a wide range of religious activities, including a caretaker’s residence; fellowship halls, parish halls and similar buildings; rooms used for

meetings, religious education, and similar functions; a gymnasium; a playground; the sale of items associated with the practice of religion; and faith-based social services such as homeless shelters, group homes, and soup kitchens.

94. "Private Club" means any corporation or unincorporated association meeting the definition of private club in West Virginia Code § 60-7-2(a), and is otherwise licensed and in compliance with West Virginia Code, Chapter 60, Article 7, to sell liquor, beer, and wine.
95. "Professional Services" means any office of recognized professions, other than medical, such as lawyers, architects, engineers, real estate brokers, insurance agents, and others who are qualified to perform services of a professional nature and other offices used primarily for accounting, corresponding, research, editing, or other administrative functions, but not including banks or other financial institutions and personal services.
96. "Recreational Facility" means an enterprise operated for the pursuit of sports and recreational activities, including indoor and/or outdoor facilities for the pursuit of sports, recreation, or leisure activities, including but not limited to such establishments as country clubs, golf courses, sports clubs, golf or batting practice facilities, playing fields, tennis or racquet courts, swimming pools, and similar facilities, but not including outdoor gun sports.
97. "Research and Development" means investigative activities a business conducts to improve existing products or services or to lead to the creation of new products and procedures that do not involve the mass manufacture, fabrication, processing, sale of products; or a structure or complex of structures designed or used primarily for research development functions related to industry and similar fields of endeavor.
98. "Restaurant" means a commercial establishment with an equipped kitchen where food and beverages are prepared, served, and consumed primarily on the premises or for carry out and where food sales constitute more than sixty (60) percent of the gross sales receipts. This definition includes fast food establishments and establishments with drive-through facilities.
99. "Retail Store" means a business having as its primary function the supply of merchandise or wares to the end consumer. Such sales constitute the "primary function" of the business when such sales equal at least eighty (80) percent of the gross sales of the business. Divided into three classes of retail stores based on gross floor area:
  - i. Retail Store/Small <7,000 feet of gross floor area.
  - ii. Retail Store/Medium 7,000 to 25,000 feet of gross floor area.
  - iii. Retail Store/Large >25,000 feet of gross floor area.
100. "Roadside Vendor Stand" means a temporary roadside location offering non-food products for sale which are not produced on the immediate premise. Permanent roadside locations are prohibited.
101. "Reception/Event Facility" means a location, building, site, or structure that is utilized as a place for the purpose of accommodating a group of guests for functions such as banquets, wedding receptions, parties, meetings, conferences, or similar gatherings. No events that involve charging admission or are solely performance events are permitted under this provision.
102. "Salvage Yard" or "Junkyard" means any place maintained, operated, or used for the storing, keeping, buying, selling, or processing of junk, scrap material, or similar waste, including the dismantling, demolition, or abandonment of automobiles, other vehicles,

- machinery, or parts. Junkyard shall be synonymous with salvage yard. Two or more vehicles not in operating condition constitute a salvage yard.
103. “School, Commercial” means an educational establishment to provide for the teaching of industrial, clerical, managerial, or artistic skills. This definition applies to educational establishments that are owned and operated privately for profit.
104. “School, Preschool to 12” means an educational establishment offering educational instruction between pre-school through twelfth grade. Schools can be public or private, licensed in accordance with the West Virginia Code.
105. “Self-storage Facility” means a building or group of buildings containing separate, individual, and private storage spaces of varying sizes available for lease or rent for varying periods of time.
106. “Senior Independent Housing” means a single-family or multi-family development intended for, operated for, and designed to accommodate residents fifty-five (55) years of age or older. Senior independent housing communities are designed for seniors who are able to live independently or need assistance with daily care.
107. “Sewage Treatment Facility” means a facility designed to receive the wastewater from both residential and nonresidential sources and to remove materials that damage water quality and threaten public health and safety when discharged into receiving streams or bodies of water.
108. “Shopping Center” means a group of retail and other commercial establishments that is planned, owned, and managed as a single property.
109. “Short Term Rental” means all or a portion of a residential dwelling offered to the public for occupancy for any duration of less than a term of thirty (30) days. The BZA may delegate authority for the issuance of conditional permits to the Code Official, who may issue a permit without a hearing, but only in accordance with the table of uses and the supplemental regulations of this ordinance. Short Term Rental does not include a Campground.
110. “Slaughterhouse” means, to the extent not preempted by the West Virginia Code, all buildings, structures and related facilities used in the slaughtering of animals or poultry for human consumption.
111. “Small wireless facility” or “Wireless Telecommunications Facility, Small Cells” means a wireless facility that meets both of the following qualifications: each antenna does not exceed six (6) cubic feet; and all other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and communications services.
112. “Solar Energy System” means an energy conversion system, including appurtenances, which converts solar energy to a usable form of energy to meet all or part of the energy or heating requirements of the on-site user, or which is to be sold to a utility company to be used by others, or sold directly to other users. A Solar Energy System may be ground mounted (i.e., placed on top of the ground surface) or roof mounted (i.e., placed on or as an integral part of a building).
- i. “Small solar energy system” means solar energy systems which have a generating capacity of less than one megawatt, and which are installed primarily for the

- supply of power for on-site usage or is an accessory to residences, commercial properties, and institutions.
- ii. “Large solar energy system” means solar energy systems installed on large parcels of land for the purpose of wholesale energy generation or utility-scale systems.
113. “Solid Waste Disposal Area/Facility” means any system, facility, land, contiguous land, improvements on the land, structures, or other appurtenances or methods used for processing, recycling, or disposing of solid waste, including landfills, transfer stations, materials recovery facilities, mixed waste processing facilities, sewage sludge processing facilities, commercial composting facilities, recycling facilities, and other such facilities not herein specified, but not including land upon which sewage sludge is applied in accordance with the West Virginia Code. Such facility is situated in the county where the majority of the spatial area of such facility is located.
114. “Sports Arena” means a central stage, ring, area, or the like, used for sports and surrounded by seats for spectators, and are not subject to the permitting requirements for mass gathering events or special events.
115. “Stockyards” means, to the extent not preempted by the West Virginia Code, an enclosed yard where livestock such as cattle, pigs, horses, or sheep are kept temporarily.
116. “Stormwater and Bioretention Facilities” means a parcel of land used for stormwater management, commonly referred to as a rain garden, by promoting infiltration of stormwater to reduce its volume, improve its quality, and increase groundwater recharge. The facility is usually created with shallow depressions in impervious land which receive stormwater from nearby surfaces, commonly impervious.
117. “Studio, Dancing, Music, or Art” means a facility used for the rehearsal or performance of performing arts, such as music, dance, or theatre; teaching classes in creative arts, such as painting, drawing, sculpting, potting, or beading or otherwise creating art; or for the display or sale of art in general
118. “Tattoo Parlor/Body Piercing Studio” means an establishment whose principal business activity, either in terms of operation or as held out to the public, is the practice of one or both of the following: (1) placing of designs, letters, figures, symbols, or other marks upon or under the skin of any person, using ink or other substances that result in the permanent coloration of the skin by means of the use of needles or other instruments designed to contact or puncture the skin; (2) creation of an opening in the body of a person for the purpose of inserting jewelry or other decoration.
119. “Tavern/Drinking Establishment/Bar” means an establishment engaged in the preparation and retail sale of alcoholic beverages for consumption on the premises and which may offer food for consumption on-premises as an ancillary use.
120. “Theater” means a building or part of a building devoted to presenting motion pictures or live performances.
121. “Travel Plaza” means a public facility, located next to a large thoroughfare such as a highway, expressway, or freeway at which drivers and passengers can rest, eat, or refuel without exiting onto secondary roads.
122. “Truck Terminal” means a facility where freight is unloaded from interstate trucks or intermodal trailers and containers carried on the railroad and loaded onto local delivery trucks.

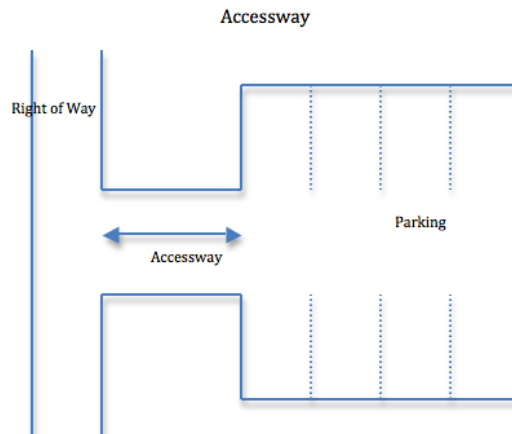
123. "Vehicle Repair/Service/Sales/Rental" means any building, structure, improvements, or land used for the repair or maintenance of automobiles, motorcycles, trucks, trailers, or similar vehicles including but not limited to body, fender, muffler, or upholstery work; oil change and lubrication; painting; tire service and sales; or installation of CB radios, car alarms, stereo equipment, or cellular telephones.
124. "Video Gaming or Lottery Establishment" means an establishment at which any form of gambling of chance is permitted or played, including "video lottery" machines licensed by the West Virginia Lottery Commission pursuant to the West Virginia Code, but excluding establishments that only sell lottery tickets.
125. "Warehouse" means a facility characterized by extensive storage of raw materials or manufactured goods, frequent heavy trucking activity, and nuisances such as dust, noise, and odors, but not involved in manufacturing or production.
126. "Water Treatment Plant" means facilities that treat water and produce potable water for public consumption.
127. "Wholesale Establishment" means the sale of commodities to retailers or jobbers, including the sale of commodities for the purpose of carrying on any trade or business even if the said trade or business is the consumer or end user of the commodity.
128. "Wind Energy System" means any electric generation facility whose main purpose is to convert and store wind energy into usable forms of energy which includes the wind turbine(s), structural supports, electrical infrastructure, and other appurtenant structures and facilities.
- i. Small Wind Energy System: means wind energy systems installed for personal use in residences, commercial properties, and institutions.
  - ii. Large Wind Energy System: means wind energy systems installed on large parcels of land for the purpose of wholesale energy production or utility-scale systems.
129. "Winery" means a state licensed Winery establishment where in any year (as defined by WVABC) more than fifty thousand gallons of wine or cider are manufactured or in any way prepared; or, where in any year (as defined by WVABC) fifty thousand gallons or less of wine, nonfortified dessert wine, cider, port, sherry, and/or Madeira wine are manufactured or in any way prepared exclusively by natural fermentation from grapes, other fruits or honey or other agricultural products containing sugar, but the facility cannot meet the requirements for locally produced (raw product) ingredients for the production as defined in the "Farm Winery" definition in this ordinance.
130. "Winery, Farm" means a state licensed Farm Winery establishment where in any year (as defined by WVABC) fifty thousand gallons or less of wine and nonfortified dessert wine are manufactured exclusively by natural fermentation from grapes, other fruits or honey or other agricultural products containing sugar and where port, cider, sherry, and Madeira wine may also be manufactured, with twenty-five (25%) percent of such raw products being produced by the owner of such farm winery on the premises of that establishment and no more than twenty-five (25%) percent of such produce originating from any source outside this state. Any port, cider, sherry, or Madeira wine manufactured by a winery or a farm winery must not exceed an alcoholic content of twenty-two (22%) percent alcohol by volume and shall be matured in wooden barrels or casks.
131. "Wireless Telecommunications Facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications



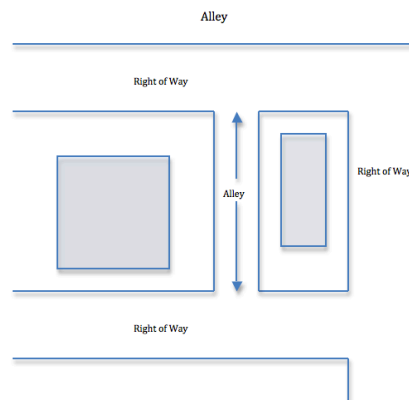


stored; and (d) the owner is a business licensed to do business in the State of West Virginia and not in the primary business of offering motor vehicles or parts thereof for sale.

3. “Accessory Structure” or “Accessory Building” means a structure or building on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure, including but not limited to a mother-in-law or care giver suite, sign, swimming pool, parking, fences, gazebo, satellite dish, doghouse, noncommercial greenhouse, shed, and private garage. To be considered as an accessory structure, the structure must be at least 50% smaller in size than the principal structure.
4. “Accessory Use” means a use on the same lot with, and of a nature customarily incidental and subordinate to, the principal use, including but not limited to home-based businesses.
5. “Accessway” means a private vehicular facility for townhomes, multi-family dwellings, and condominiums, serving more than four (4) dwelling units, and commercial developments that extends from the curb-line extended of a public or private road to the parking lot.



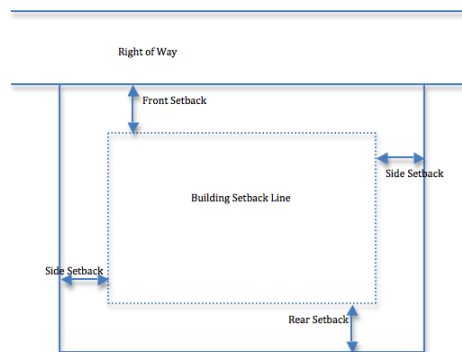
6. “Advertising” means any words, symbol, color, or design used to call attention to a commercial product, service, or activity.
7. “Alley” means a service roadway less than twenty (20) feet in width providing a secondary means of access to abutting property and not intended for general traffic circulation.



8. "Alteration" means any change or expansion in the size, configuration, exterior features, or location of a structure, or any change or expansion in the use of a structure or lot from a previously approved or legally existing size, configuration, location, or use.
9. "Alternative support structure" means man-made trees, clock towers, steeples, light poles, flag poles, power transmission towers, buildings, signs, and similar alternative design mounting structures that partially or fully camouflage or conceal the presence of antennas or towers.
10. "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.
11. "Antenna Support Structure" means any building or structure other than a tower which can be used for location of telecommunications facilities.
12. "Automobile" means a road vehicle, typically with four (4) wheels, able to carry a small number of people.
13. "Base station" means the structure or equipment at a fixed location that enables wireless telecommunications licensed or authorized by the FCC, between user equipment and a communications network.
  - i. Includes, but is not limited to, equipment associated with wireless telecommunications services, such as private, broadcast, and public safety services, as well as unlicensed wireless telecommunication services and fixed wireless telecommunication services, such as microwave backhaul.
  - ii. Includes, but is not limited to, radio transceivers, antennas affixed to the base station, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
  - iii. Includes any structure other than a tower that, at the time an eligible facilities modification application is filed with Greenbrier County, supports or houses equipment described in paragraphs (i) and (ii) above, and that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
  - iv. Does not include any structure that, at the time a completed eligible facilities modification application is filed with Greenbrier County under this Article, does not support or house equipment described in paragraphs (i) and (ii) above.
  - v. The term does not encompass a "tower" as defined in this Section, or any equipment associated with a tower.
14. "Basement" means a story having one half (0.5) or more of its clear height below grade.
15. "Board" "BZA" or "Board of Zoning Appeals" means the officially constituted body appointed to carry out duties and responsibilities in accordance with the West Virginia Code, Chapter 8A, Article 8, *et seq.*, as amended.
16. "Bollard" means a short, vertical, and permanent post, usually ornamental in nature, used to inhibit trespass by persons or vehicles, or to prevent encroachment onto private property or other defined space.

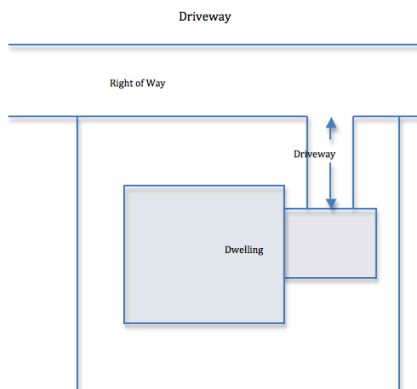
17. “Building” means any structure with enclosing walls and roofs and requiring a permanent location on the land.
  - i. “Building Frontage” means the length of the main wall of a building which physically encloses usable interior space, and which is the architecturally designed wall that contains the main entrance for use by the general public. Said frontage is measured at a height of ten (10) feet above grade.
  - ii. “Building, Height of” means the vertical distance measured from the level of approved street grade opposite the middle of the front of the building to the highest point of the coping of a flat roof; to the deck line of a mansard roof; and to the mean height level between eaves and ridge of gable, hip, or gambrel roof.
18. “Building Setback Line” means a line establishing the minimum allowable distance between the nearest part of any principal building, including decks, patios, covered porches, steps, and landings exceeding twenty-four (24) square feet, but excluding eaves, overhangs, bay windows, sills, belt courses, cornices, and ornamental features not exceeding two (2) feet in width, to the nearest edge of a street right-of-way, property line, or easement line, when measured perpendicular thereto.

Building Setback Line



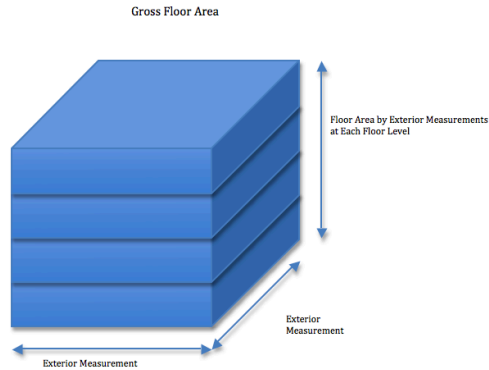
19. “Camouflage” or “conceal” or “concealment” or “stealth” means having similar design and coloration features as the surrounding environment, utility pole, or building.
20. “Centerline” means an imaginary line running parallel to street or easement right-of-way lines and equidistant from the lines on each side of the street or easement, or a line following the center of a physical feature such as a stream.
21. “Greenbrier County utility pole” means a utility pole owned or operated by Greenbrier County in a public right-of-way.
22. “Clear Sight Triangle” means the triangular area formed by intersecting street, alley, or other public right-of-way centerlines and a line interconnecting points established on each centerline, seventy-five (75) feet from the point of intersection and the plane established two and one-half (2.5) feet in elevation to a height of eight (8) feet from grade level at the intersection of the street, alley, or other public right of way centerline.
23. "Collapse Zone" means an area where a tower may collapse based on the site and design specifications and which is certified and stamped by an engineer licensed in the State of West Virginia.
24. “Collocate” or “collocation” means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.

25. "Communications facilities" means the set of equipment and network components, including wires, cables, antennas, and associated facilities, used by a communications service provider to provide communications service.
26. "Communications service" means cable service, as defined in 47 U.S.C. § 522(6), as amended; information service, as defined in 47 U.S.C. § 153(24), as amended; telecommunications service, as defined in 47 U.S.C. § 153(53), as amended; mobile service, as defined in 47 U.S.C. § 153(33), as amended; or wireless service other than mobile service.
27. "Communications service provider" means any entity that provides communications service.
28. "Comprehensive Plan" means the current comprehensive plan for the Greenbrier County.
29. "Conceal" or "Concealment" means when an antenna, small wireless facility, decorative pole, utility pole, or related equipment are designed to look like a feature other than a small wireless facility and which has similar design and coloration features as the surrounding environment.
30. "Conditional Use" means a use which because of special requirements or characteristics may be permitted in a particular zoning district only after review by the board of zoning appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in this code.
31. "County" means Greenbrier County, West Virginia.
32. "Decorative pole" means a Greenbrier County utility pole that is specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than a small wireless facility, specially designed informational or directional signage, or temporary holiday or special event attachments have been placed, or are permitted to be placed, according to nondiscriminatory municipal rules or codes.
33. "Designated Scenic Resources" means a specific location, view or corridor identified as a scenic resource in the comprehensive plan or by a local, state, or federal agency or government and consists of:
  - i. A three-dimensional area extending out from a particular viewpoint on a public right of way, within a public recreational area, or within a component of a state or national park system, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such as a downtown skyline or mountain range, resulting in a panoramic view corridor; or
  - ii. Lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public right of way, within a public recreational area or within a component of a state or national park system.
34. "Driveway" means privately owned vehicular access from a street to properties abutting the street and serving no more than four (4) dwelling units.



35. “Dwelling” means a building designed or used primarily for human habitation, including the types of dwellings as defined in Article 102, but does not include boarding houses, rooming houses, tourist homes, motels, hotels, or other structures designed for transient residence.
36. “Dwelling Unit” means any dwelling or portion thereof used or intended to be used by one family and providing complete housekeeping facilities.
37. “Eligible facilities request” means a request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station involving: collocation of new transmission equipment, removal of transmission equipment, or replacement of transmission equipment.
38. “Eligible support structure” means any tower or base station, as defined in this Section, provided that such tower or base station is in existence at the time the eligible facilities request application is filed with Greenbrier County.
39. “Equipment cabinet” means an enclosure, room, shelter, structure, or building used to encapsulate, enclose, contain or otherwise support equipment associated with a wireless telecommunication facility.
40. “Existing tower or base station” means a lawfully constructed tower or base station approved under the applicable zoning and siting process of Greenbrier County, approved under another state or local regulatory review process, or permitted to continue to operate as a nonconforming use.
41. “Existing Use” means use of land, buildings or activity permitted or lawfully in existence prior to the adoption of a zoning map or ordinance by the county or municipality. If the use is nonconforming to the local ordinance and lawfully existed prior to the adoption of the ordinance, the use may continue to exist as a nonconforming use until abandoned for a period of one year, provided that in the case of natural resources, the absence of natural resources extraction or harvesting is not abandonment of the use.
42. "FAA" means the Federal Aviation Administration, or its lawful successor.
43. “Family” means an individual or two (2) or more persons related by blood, marriage, adoption, or foster relationship, or no more than three (3) unrelated individuals and individuals related by blood, marriage, adoption, or foster relationship to any of those three (3) unrelated individuals, living together as a single, permanent, and stable nonprofit housekeeping unit and sharing common living, dining, and kitchen areas, subject to the requirements of the Building Code.

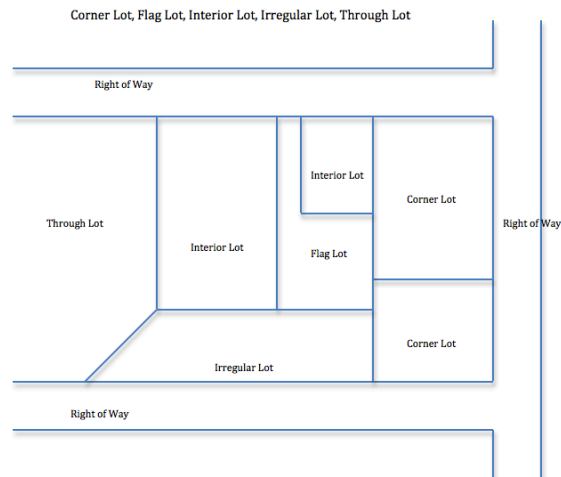
44. "Fence" means an artificially constructed barrier of wood, masonry, stone, wire, metal, or other manufactured material or combination of materials erected to enclose, screen, or separate an area.
45. "FCC" means the Federal Communications Commission of the United States.
46. "Floor Area, Gross" means the total area of a building measured by taking the outside dimensions of the building at each floor level.



47. "Floor area ratio" means the permitted gross floor area as a proportion of the total land to be developed.
48. "Front Building" means a line parallel to the front lot line, at a distance measured perpendicular therefrom as prescribed in this code for a required yard. Where there is no required yard, the lot line is the front building line.
49. "Garage Sale" means a temporary use involving the sale of personal property owned or maintained by occupants of the premises in, at, or upon any residentially zoned or residentially occupied property. Garage sales include, but are not limited to, any yard sale, multi-family sale, home sale, patio sale, trunk sale or any other sale similarly conducted on any residentially zoned or residentially occupied property, and may not occur more than 8 days per every 365 days.
50. "Height" for the purposes of wireless telecommunications facilities means the vertical distance measured from the base of the alternative support structure at grade to the highest point of the structure, including any antennas. Measurement of tower height includes antenna, base pad, and other appurtenances and is measured from the finished grade of the facility site. If the tower is located on a sloped grade, then the average between the highest and lowest grades immediately surrounding the perimeter of the tower base is used in calculating the antenna height. The highest point excludes farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.
51. "Historic District" means a geographically definable area, designated as historic on a national, state, or local register, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.
52. "Historic Landmark" means a site, building, structure, or object designated as historic on a national, state, or local register.
53. "Historic Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure whether standing, ruined, or vanished,

where the location itself possesses historic, cultural, or archaeological value regardless of the value of any existing structure and designated as historic on a national, state, or local register.

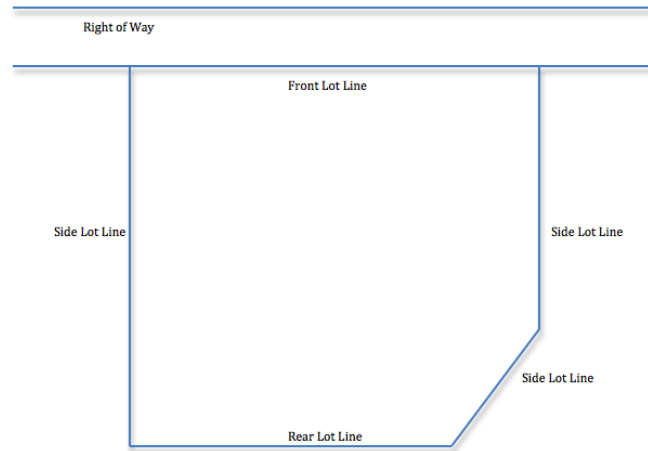
54. "Landscaping" means the bringing of the soil surface to a smooth finished grade, installing trees, shrubs, ground cover, grass, and similar vegetation to soften building lines, provide shade, and generally produce a pleasing visual effect of the premises.
55. "Loading Space" means an area or berth available for the loading or unloading of goods from commercial vehicles.
56. "Lot" means a parcel of land with boundaries established by some legal instrument, such as a recorded deed or a recorded map, and which is recognized as a separate legal entity for purposes of transfer of title, together with the customary accessories and open spaces belonging to the same.



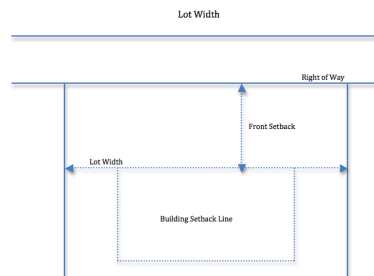
57. "Lot Line" means the property boundary line of any lot held in single or joint ownership that divides one lot from another or from a street or any other public or private space.
  - i. "Front Lot Line" means, in the case of an interior lot, a line separating the lot from the street or public right of way; and in the case of a corner lot, a line separating the narrowest street frontage of the lot from the street.
  - ii. "Rear Lot Line" means a lot line which is opposite and more distant from the front lot line, except corner lots have no rear lot line. In the case of an irregular lot, a line ten (10) feet in length within the lot and parallel to and at the maximum distance from the front lot line.
  - iii. "Side Lot Line" means any lot line other than a front or rear lot line.



Front Lot Line, Rear Lot Line, and Side Lot Line



58. "Lot, Through" or "Double Frontage" or "Reverse Frontage" means a lot other than a corner lot facing on more than one street. Through lots abutting two (2) streets may be referred to as double frontage.
59. "Lot Width" means the distance measured between side lot lines, at the required building setback line. In a case where there is only one (1) side lot line, lot width is measured between such side lot line and the opposite rear lot lines or street line.

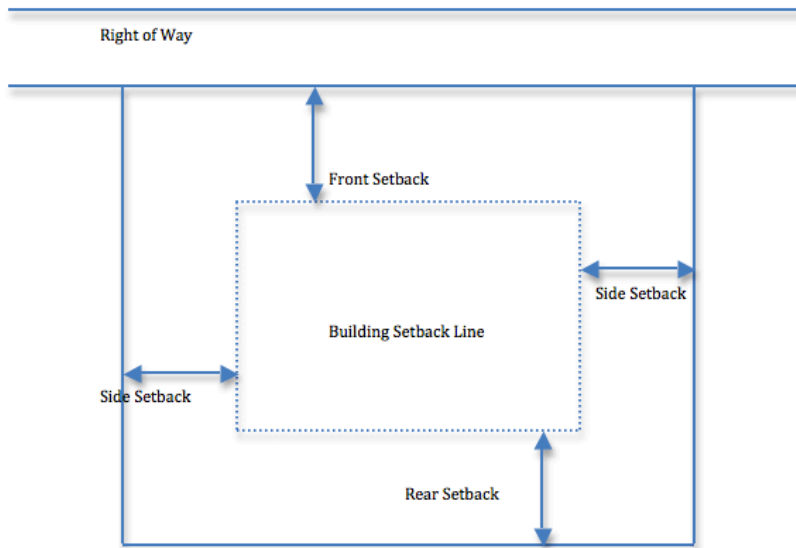


60. "Micro wireless facility" means a small wireless facility that is not larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that has an exterior antenna, if any, that is no longer than eleven (11) inches.
61. "Modification" or "Modify" means the physical change to any existing wireless telecommunications tower or base station that may or may not be related to eligible facilities request and that involves: collocation of new transmission equipment; removal of transmission equipment; replacement of transmission equipment; or any expansion of wireless telecommunication tower or base station.
62. "Nonconforming Building or Structure" means a building or structure lawfully constructed and not otherwise abandoned, existing on the effective date of this code, on the effective date of any amendment thereto, which renders such building or structure illegal within a district, or not complying in any fashion with any of the rules, requirements, and regulations of this code or any amendments thereto.

63. “Nonconforming Lot” means a lot or parcel of land that was of record and lawfully established and maintained but which, because of the enactment of this code, no longer conforms to the land use standards or use regulations of the district in which it is located.
64. “Nonconforming Sign” means any sign which was lawfully erected, maintained, and existing on the effective date of this code, on the effective date of any amendment thereto, or prior to annexation, which renders such existing sign illegal within a district, or not complying in any fashion with any of the rules, requirements, and regulations of this code or any amendments thereto, or any sign which is accessory to a nonconforming use.
65. “Nonconforming Use” means any actual and active use lawfully being made of any land, building, or structure not otherwise abandoned, existing on the effective date of this code, or on the effective date of any amendment thereto, which renders such existing use illegal within a district, or not complying in any fashion with any of the rules, requirements, and regulations of this code or any amendments thereto.
66. “Nonintoxicating Beer” means all natural cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale, and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers with no caffeine infusion or any additives masking or altering the alcohol effect, containing at least one-half of one (0.5%) percent alcohol by volume, but not more than nine and six-tenths (9.6) of alcohol by weight, or twelve (12%) percent by volume, whichever is greater.
67. “Obstruction” means any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth by this ordinance.
68. “Open Space” means any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment, or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space.
69. “Owner” means any individual, firm, association, syndicate, estate, corporation, trust, or any other legal entity having proprietary interest in the land.
70. “Owner-occupied” means a person who maintains his or her principal residence by being physically present and spending the night on the property for more than two hundred and eight (208) nights of each calendar year and who is:
  - i. The sole owner of record of the property, as reflected in a deed recorded in the Greenbrier County Clerk's Office;
  - ii. A tenant in common or joint tenant with right of survivorship, as reflected in a deed recorded in the Greenbrier County Clerk's Office; or
  - iii. An owner of at least twenty-five (25%) percent of a business entity shown as the owner of record, as reflected in a deed recorded in the Greenbrier County Clerk's office. The ownership interest shall be shown by a duly executed resolution of the business entity, or such other method as determined by the Code Official.
71. “Parking Stall” means an off-street space available for parking one (1) automobile and having an area not less than nine (9) feet by twenty (20) feet and an area exclusive of passageways, accessways, and driveways appurtenant thereto, and having a means to direct access to a street or road.

72. "Patio" means an area consisting of natural or man-made material constructed at or near grade level, intended for use as an accessory outdoor living area, and not enclosed by a permanent roof or awning.
73. "Code Official" means a person designated by the Greenbrier County Commission to administer and enforce the provisions of this ordinance.
74. "Permitted Use (Use Permitted by Right)" means any use requiring no special action by any governmental body, agency, or staff member.
75. "Porch" means a covered but unenclosed projection from the main wall of a building that may or may not use columns or other ground supports for structural purposes.
76. "Principal Building" or "Principal Structure" means a building or structure in which is conducted the principal use of the site or lot on which it is situated. In all residential districts, a dwelling is the principal building on the lot on which it is located.
77. "Principal Use" means the primary function of an individual, group of individuals, household, establishment, institution, or other entity.
78. Restricted airspace: space above a surface zone that may not contain an "airport hazard," which includes any structure or object, natural or manmade, or use of land which obstructs the airspace required for flight or aircraft in landing or taking off at an airport or is otherwise hazardous as defined in 14 CFR Part 77.
79. "Right-of-way (R-O-W)" means a strip of land occupied or intended to be occupied by a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, shade trees, or for another similar use.
80. "Runway" means a defined area of an airport prepared for landing and takeoff of aircraft along its length.
81. "Structure" means an object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formations, and overhead transmission lines.
82. "Satellite Signal Receiving Station" means devices commonly parabolic in shape, mounted at a fixed point on a structure, or on rooftops, for the purpose of capturing electronic television or internet signals transmitted via satellite communication facilities and serving the same or similar function as the common television antenna. Such devices are accessory structures.
83. "Screening" means the use of plant materials, fencing, or earthen berms to aid in the concealment of such features as parking areas and vehicles within them, and to provide privacy between two (2) or more different adjoining land uses.
84. "Setback" means the minimum distance by which any building or structure must be separated from a street right-of-way or lot line.
  - a. "Front Setback" means the shortest distance between the building setback line and the front lot line.
  - b. "Rear Setback" means the shortest distance between the building setback line and the rear lot line.
  - c. "Side Setback" means the shortest distance between the building setback line and the side lot line.

### Front Setback, Rear Setback, and Side Setback



85. “Sign” means any device (writing, letter work or numeral, pictorial presentation, illustration or decoration, emblem, device, symbol or trademark, flag, banner or pennant, or any other device, figure or character, or delineation) with the essential purpose to communicate, designed to communicate, or where context results in communication, and such communication is aimed at persons in a public right-of-way.
- i. “Animated Sign” means a sign or part of a sign that is designed to rotate, move, or appear to rotate or move. Such a sign is sometimes referred to as a “moving sign.” Animated signs include signs with moving graphic features such as scrolling text or images that appear to move; moving sign change features such as fly-in, wipe-off, fading, dissolving, traveling, or expanding displays or any other full message sign change taking longer than 0.3 seconds; and static electronic message displays displayed less than seven (7) seconds. Animated signs also include signs propelled by vehicle, watercraft, or aircraft where the primary purpose of the vehicle, watercraft, or aircraft at the time of sign display is to propel the sign.
  - ii. “Banner” means any sign of lightweight fabric or similar material that is mounted to a pole or a building by a frame at one or more edges. Flags are not banners for the purposes of this code. Banners are permitted as a temporary sign.
  - iii. “Flag” means a piece of cloth or similar material, typically oblong or rectangular, attachable by one edge to a pole or rope. This ordinance is not intended to apply to the display of a flag used as the symbol or emblem of a country or institution or as a decoration during public festivities.
  - iv. “Sign, Back-to-back” means two or more internally connected signs facing in opposite directions and separated by not more than five (5) feet.
  - v. “Sign, Changeable” means a sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged without altering the face or the surface of the sign. A sign on which the message changes more than eight (8)

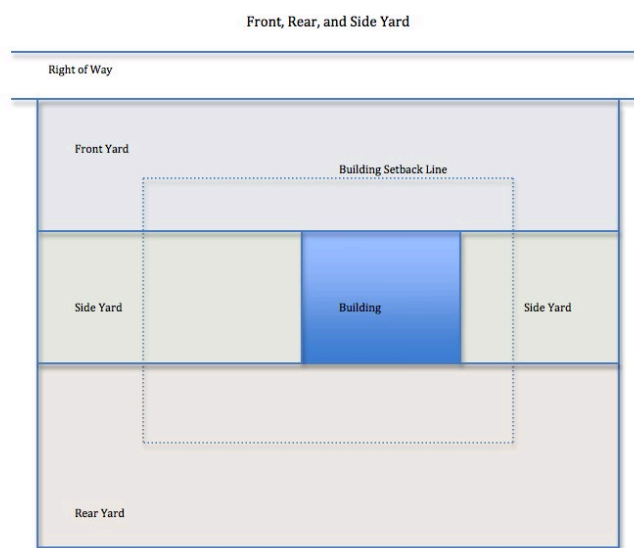
times per day shall be considered an animated sign and not a changeable sign for purposes of this ordinance.

- vi. “Sign, Electronic Message Display” means a sign that is either light emitting or light reflective and that is capable of changing the displayed message through electronic programming. Electronic message displays are divided into four (4) categories:
  - 1. “Static electronic message display” means an electronic message display that is not an animated sign.
  - 2. “Static electronic message display with transition features” means an electronic message display that remains static except for no more than a two (2) second transition feature such as fading, dissolving, or a single instance of fly-in, wipe-off, expansion, or traveling that occurs no more often than once every seven (7) seconds.
  - 3. “Electronic message display, partially animated” means an electronic message display with animated or moving text or graphics.
  - 4. “Electronic message display, fully animated” means an electronic message display with full animation features.
- vii. “Sign Face” means the portion of a sign structure bearing the message.
- viii. “Sign, Freestanding” means a sign supported by one or more uprights, poles, braces, or other support placed permanently and securely in or upon the ground surface and not attached to any building.
- ix. “Sign, Geological” means signs made of or that appear to be made of geological formations, including but not limited to standalone rocks or mountainsides, and convey a message that is etched, carved, painted, or similarly incorporated into the sign’s material.
- x. “Sign, Illuminated” means a sign that provides artificial light, directly or through any transparent or translucent material, from a source of light connected with such sign, or a sign illuminated by a light so shielded that no direct rays from it are visible from any public right-of-way or from the abutting property.
- xi. “Sign, Neon” means a sign containing exposed tubes filled with light-emitting gas.
- xii. “Sign, Off-premises” means a commercial sign not accessory to or associated with the principal use on a lot, or a sign that is the principal use of a lot.
- xiii. “Sign, Portable” means a free-standing sign not permanently anchored or secured to either a building or the ground, such as a sign that is: held down with stakes or "A" frame, "T" shaped, inverted "T" shaped, “H” shaped, or “U” shaped sign structures.
- xiv. “Sign, Projecting” means a sign which projects twelve (12) inches or greater from and is supported by the wall of a building.
- xv. “Sign, Roof” means a sign erected, constructed, and maintained wholly upon or over the roof of any building with the principal support on the roof structure.
- xvi. “Sign, Temporary” means a sign intended for a limited period of display, including banners, pennants, feather or tear drop signs, and posters.
- xvii. “Sign, Vehicle or Trailer” means any sign attached to or displayed on a vehicle, if the vehicle or trailer is used for the primary purpose of advertising a business establishment, product, service, or activity and it fails to display current license

- plates, inspection sticker, or municipal decal; if the vehicle is inoperable; if evidence of paid-to-date local taxes cannot be made available; or if the sign alters the standard design of such vehicle or trailer.
- xviii. “Sign, Wall” means a sign attached directly to or painted on a building wall with the exposed face of the sign in a plane parallel to said wall and projecting less than twelve (12) inches.
- xix. “Sign, Window” means any sign visible outside the window and attached to or within eighteen (18) inches in front of or behind the surface of a window or door.
86. “Site” means the current boundaries of the leased or owned property surrounding a tower and base station and any access or utility easements currently related to the site; and, for other eligible support structures, means that area in proximity to the structure and to other transmission equipment already deployed on the ground. This term does not apply to towers or base stations in public rights-of-way.
87. “Special Flood Hazard Area” means the area that will be inundated by the flood event having a one (1%) percent chance of being equaled or exceeded in any given year. The one (1%) percent annual chance flood is also referred to as the base flood or one hundred (100) year flood.
88. “Spectrum Act” means the “Middle Class Tax Relief and Job Creation Act of 2012” (Public Law 112-96; codified at 47 U.S.C. § 1455(a)).
89. “Stealth” means the same as “camouflage,” “conceal,” or “concealment.”
90. “Street” means a dedicated and accepted public right-of-way for vehicular and pedestrian traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, land place, or however otherwise designated.
91. “Surface Zone” means area within, as defined in Appendix [Z], the approach surface zone, conical surface zone, horizontal surface zone, primary surface zone, and transitional surface zone.
92. “Targeted market coverage area” means the area which is targeted to be served by the wireless telecommunications facility proposed in an application.
93. “Tasting Facility” means an area of a winery, brewery, or distillery where complimentary samples of a beverage are served on the premises of manufacture, in moderate quantities for tasting.
94. “Telecommunications Tower” means any structure that is designated and constructed primarily for the purpose of supporting one or more telecommunication antennas. This includes guyed towers, lattice towers, monopoles, and towers taller than fifteen (15) feet constructed on the top of another building, along with any separate building on the lot used to house any supporting electronic equipment.
95. “Tower” means any structure capable of supporting any antennas affixed to the tower and their associated facilities, licensed or authorized by the FCC, and constructed for the sole or primary purpose of supporting wireless telecommunications facilities.
96. “Trailer, Camping and Recreational Equipment” means travel trailers, pickup coaches, motorized homes and recreational vehicles and equipment as follows:
- i. “Travel Trailer” means a portable structure built on a chassis, designed to be towed and used as a temporary dwelling for travel, recreational, and vacation purposes, and permanently identified as a travel trailer by the manufacturer of the trailer.

- ii. “Pickup Coach” means a structure designed primarily to be mounted on a pickup or other truck chassis with sufficient equipment to render it suitable for use as a temporary dwelling for travel, recreational, and vacation purposes.
  - iii. “Motorized Home” means portable dwelling designed and constructed as an integral part of a self-propelled vehicle.
  - iv. “Boat” means a vessel designed to travel on water.
  - v. “Utility Trailer” means a portable structure built on a chassis, designed to be towed and used for the purposes of hauling a boat, lawnmower, farm equipment, recreational equipment, or similar equipment, measuring not more than sixteen (16) feet in length, and not used primarily for commercial purposes.
97. “Transmission equipment” means equipment that facilitates transmission for any wireless telecommunication service licensed or authorized by the FCC, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply.
  98. “Use” means any purpose for which a building, structure or a tract of land may be designed, arranged, intended, maintained, or occupied, or any activity, occupation, business, or operation performed in a building or other structure, or on a tract of land.
  99. “Utility” means a public or private distribution service to the public that is regulated by the public service commission.
  100. “Utility pole” means a pole or similar structure that is or may be used, in whole or in part, by a communication services provider or for electric distribution, lighting, traffic control, signage (if the pole is fifteen (15) feet or taller), or a similar function, or for the collocation of small wireless facilities. However, “utility pole” does not include wireless support structures or electric transmission structures.
  101. “Variance” means a deviation from the minimum standards of this code, but not permitting land uses that are otherwise prohibited in the zoning district or changing the zoning classifications of a parcel of land.
  102. “Vehicle” means any device in, upon, or by which any person or property is or may be transported or drawn upon a street, including automobiles, and excepting tractors, agricultural machinery, devices moved by human power or used upon stationary rails or tracks.
  103. “Vertically integrated health system” means a health delivery system in which the complete spectrum of care, including primary and specialty care, hospitalization and pharmaceutical care, is provided within a single organization.
  104. "Viewpoint" means a location identified either in Greenbrier County comprehensive plan or by a federal or state agency and which serves as the basis for the location and determination of a designated scenic resource.
  105. “Wireless infrastructure provider” means any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles, but that is not a wireless provider.
  106. “Wireless provider” means a wireless infrastructure provider or a wireless service provider.
  107. “Wireless services” means any services, using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile location, provided to the public using wireless facilities.

108. “Wireless service provider” means a person who provides wireless services.
109. “Wireless support structure” means a structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. “Wireless support structure” does not include a utility pole.
110. “Wireline backhaul facility” is a facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.
111. “Yard” means open space that lays between the principal building or structure and the nearest lot line. Any lot, building, or structure with characteristics that require an individual determination of yard location will be resolved at the discretion of the Code Official. Yards are further classified as front, rear, and side:
  - i. “Yard, Front” means a space extending the full width of the lot between the architectural front of the principal building or structure and the front lot line.
  - ii. “Yard, Rear” means a space extending the full width of the lot between the architectural rear of the principal building or structure and the rear lot line.
  - iii. “Yard, Side” means a space extending from the front yard to the rear yard between the principal building façade and the side lot line.



112. “Zoning” means the division of all or a portion of the county into districts or zones specifying permitted and conditional uses and development standards for real property within the districts or zones.



## CHAPTER 3 ZONING DISTRICTS AND REQUIREMENTS

### ARTICLE 301 DISTRICTS ESTABLISHED; CLASSIFICATION OF DISTRICTS

#### Section 301.01 Districts established.

For the purpose of this ordinance, Greenbrier County is hereby divided into the following zoning districts:

- a. R: Residential
- b. OC: Open Space Conservation
- c. FR: Forest Recreation
- d. C: Commercial
- e. I: Industrial
- f. AO: Airport Overlay
- g. TFO: Telecommunication Facilities Overlay
- h. PUD: Planned Unit Development

#### Section 301.03 Zoning map.

The official zoning map is included in this ordinance as Appendix B.

#### Section 301.05 Use table.

The use table is included in this ordinance as Appendix C. If a discrepancy exists between the text of this ordinance and the use table, the uses as designated in the text shall prevail.

#### Section 301.07 Classification of districts and district boundaries.

- a. Where district boundary lines are shown following creeks, streams, or river channels, it is intended that the district line follow the center of the creek, stream, or river. Boundaries indicated as approximately following town, city, or tax district limits shall be construed as following town, city, or tax district limits. Where a district line does not coincide clearly with such lines, or where a district line is not designated by dimensions, a district line shall be determined by scaling.
- b. Whenever any street, place, alley, public right-of-way, railroad right-of-way, waterway, or other similar area is vacated by proper authority, the districts adjoining each side of such street, place, alley, public way, railroad right-of-way, waterway, or similar area shall be extended automatically to the center of such vacation and all area included in the vacation shall then and thenceforth be subject to all appropriate provisions of the extended districts. In the event of a partial vacation, the adjoining district, or district nearest the portion vacated, shall be extended automatically to include all of the vacated area.
- c. The boundaries of all zoning districts are shown on the Zoning Map, which is the official zoning map for the County.
- d. Unless a use is allowed as a “use permitted by right,” “conditional use,” “nonconforming use,” “accessory use,” or “temporary use,” then such use is prohibited.
- e. Previous official action by the Planning Commission with regard to the establishment or amendment to the zoning districts may be relied upon to resolve errors or uncertainty with regard to boundaries the Zoning Map.

**Section 301.11 Uses not expressly permitted or conditional.**

It is recognized that new types or forms of land use will develop within Greenbrier County that are not anticipated by this Zoning Ordinance. In order to provide for such changes and contingencies, the classification of any new or unlisted land use may be delegated by the Planning Commission to the Code Official to determine if the use can reasonably be interpreted to fit into a similar use category described in this code.

**ARTICLE 302 R: RESIDENTIAL**

**Section 302.01 Purpose.**

It is the intent of the residential district to establish mostly low-density residential areas consisting of mostly single-family dwellings and compatible accessory uses. This district permits uses consistent with desired community aesthetics and with consideration given to the demand on emergency services based on population density, as well as the community's values and needs.

**Section 302.03 Uses permitted by right.**

The following shall be uses permitted by right in the Residential District:

1. Child Day Care Facility, Class 3
2. Child Day Care Facility, Class 4
3. Dwelling, Single-Family
4. Dwelling, Condominium (four or fewer units)
5. Dwelling, Multi-family (four or fewer units)
6. Dwelling, Two-family
7. Dwelling, Townhouse (four or fewer units)\*\*note this will require variance from setbacks
8. Essential Utilities and Equipment
9. Greenhouse, Noncommercial
10. Places of Worship/Religious Institution
11. Solar System, Small
12. Wireless Telecommunication Facility, Small Cells

**Section 302.05 Conditional uses.**

The following shall be conditional uses in the Residential District:

1. Bed and Breakfast Home Stay
2. Bed and Breakfast Inn
3. Child Care Facility, Class 2
4. Continuing Care Facility
5. Dwelling, Condominium (more than four units)
6. Dwelling, Multi-family (more than four units)
7. Dwelling, Townhome (more than four units)
8. Emergency Services

- 9. Emergency Shelter
- 10. Greenhouse, Commercial
- 11. Home-based Business
- 12. Short Term Rental
- 13. Wind Energy System, Small
- 14. Wireless Telecommunication Facility

**Section 302.07 Lot, yard, and height requirements.**

<b>Residential District Requirements</b>	
<b>Max. Building Height</b>	40 feet
<b>Min. Lot Size (square feet)</b>	Public water/sewer: 20,000 square feet Public water/no public sewer: 30,000 square feet Without public water and public sewer: 43,560 square feet
<b>Min. Lot Width</b>	60 feet
<b>Min. Front Setback</b>	35 feet
<b>Min. Side Setback</b>	15 feet
<b>Min. Rear Setback</b>	30 feet
<b>Min. Front Accessory Setback</b>	35 feet
<b>Min. Side Accessory Setback</b>	5 feet
<b>Min. Rear Accessory Setback</b>	5 feet

**ARTICLE 303 OC: OPEN SPACE CONSERVATION**

**Section 303.01 Purpose.**

It is the intent of the Open Space Conservation District to permit development designed to reflect the rural character and beauty of the area. This district shall provide for residential development while protecting the rural agricultural nature of the district and encourage development which supports open space.

**Section 303.03 Uses permitted by right.**

The following shall be uses permitted by right in the Open Space Conservation District:

- 1. Agriculture
- 2. Agritourism Enterprises
- 3. Child Care Facility, Class 4
- 4. Dwelling, Single-Family
- 5. Essential Utilities and Equipment
- 6. Factory-built Home
- 7. Farm
- 8. Garage, Private
- 9. Greenhouse, Noncommercial
- 10. Places of Worship/Religious Institution
- 11. Solar System, Small

12. Wind Energy System, Small
13. Wireless Telecommunication Facility, Small Cells

**Section 303.05 Conditional uses.**

The following shall be conditional uses in the Open Space Conservation District:

1. Animal Hospital/Veterinary Office
2. Bed and Breakfast Inn
3. Bed and Breakfast Home Stay
4. Child Care Facility, Class 3
5. Cultural Service
6. Dwelling, Two-Family
7. Emergency Services
8. Emergency Shelter
9. Events, Special
10. Events, Mass Gathering
11. Farm Winery
12. Greenhouse, Commercial
13. Group Residential Facility
14. Group Residential Home
15. Home-based Business
16. Park
17. Short Term Rental
18. Wireless Telecommunications Facility

**Section 303.07 Lot, yard, and height requirements.**

<b>Open Space District Requirements</b>	
<b>Max. Building Height</b>	40 feet
<b>Min. Lot Size</b>	2 acres
<b>Min. Lot Width</b>	60 feet
<b>Min. Front Setback</b>	35 feet
<b>Min. Side Setback</b>	15 feet
<b>Min. Rear Setback</b>	30 feet
<b>Min. Front Accessory Setback</b>	35 feet
<b>Min. Side Accessory Setback</b>	5 feet
<b>Min. Rear Accessory Setback</b>	5 feet

## **ARTICLE 304 FR: FOREST RECREATION**

### **Section 304.01 Purpose.**

It is the intent of the Forest Recreation District to understand and appreciate the natural beauty and characteristics of this district. This designation is primarily designed for areas where access is limited due to soil, slope, or otherwise.

### **Section 304.03 Uses permitted by right.**

The following shall be uses permitted by right in the Forest Recreation District:

1. Agriculture
2. Agritourism Enterprises
3. Child Care Facility, Class 3
4. Child Care Facility, Class 4
5. Dwelling, Single-Family
6. Dwelling, Two-Family
7. Essential Utilities and Equipment
8. Factory-built Home
9. Farm
10. Greenhouse, Noncommercial
11. Park
12. Places of Worship/Religious Institution
13. Solar System, Small
14. Wind Energy System, Small
15. Wireless Telecommunication Facility, Small Cells

### **Section 304.05 Conditional uses.**

The following shall be conditional uses in the Forest Recreation District:

1. Animal Hospital/Veterinary Office
2. Bed and Breakfast Inn
3. Bed and Breakfast Home Stay
4. Café/Coffee Shop
5. Cidery
6. Cultural Service
7. Dog Day Care
8. Dwelling, Condominium (four or fewer units)
9. Dwelling, Multi-Family (four or fewer units)
10. Dwelling, Town House
11. Emergency Services
12. Emergency Shelter
13. Events, Mass Gathering
14. Events, Special
15. Farm Winery
16. Greenhouse, Commercial
17. Group Residential Facility
18. Group Residential Home

19. Home-based Business
20. Recreational Facility
21. Reception/Event Facility
22. Short Term Rental
23. School, Preschool to 12
24. Senior Independent Housing
25. Winery
26. Wireless Telecommunications Facility

**Section 304.07 Lot, yard, and height requirements.**

<b>Forest Recreation District Requirements</b>	
<b>Max. Building Height</b>	40 feet
<b>Min. Lot Size</b>	Public water/sewer: 12,000 square feet Public water/no public sewer: 20,000 square feet No public water/sewer: 32,670 square feet
<b>Min. Lot Width</b>	60 feet
<b>Min. Front Setback</b>	35 feet
<b>Min. Side Setback</b>	15 feet
<b>Min. Rear Setback</b>	30 feet
<b>Min. Front Accessory Setback</b>	35 feet
<b>Min. Side Accessory Setback</b>	5 feet
<b>Min. Rear Accessory Setback</b>	5 feet

**ARTICLE 305 C: COMMERCIAL**

**Section 305.01 Purpose.**

It is the intent of the Commercial District to provide for a wide range of commercial uses, whose nature of business requires convenient automobile and truck access.

**Section 305.03 Uses permitted by right.**

The following shall be uses permitted by right in the Commercial District:

1. Amusement and Recreation Center
2. Animal Hospital/Veterinary Office
3. Automobile Car Wash
4. Automobile Repair/Service
5. Bakery
6. Bank/Financial Institution
7. Brewery Pub
8. Broadcasting Studio
9. Building Material Facility
10. Café/Coffee Shop
11. Campground

12. Catering Business
13. Cidery
14. Clinic
15. Continuing Care Facility
16. Convenience Store
17. Cultural Service
18. Distribution Facility
19. Distillery
20. Dog Day Care
21. Dry Cleaner
22. Dwelling, Condominium
23. Dwelling, Mixed Use
24. Dwelling, Apartment
25. Educational Institution
26. Emergency Services
27. Emergency Shelter
28. Equipment Rental/Repair
29. Essential Utilities and Equipment
30. Events, Mass Gathering
31. Events, Special
32. Factory-built Home
33. Factory-built Home Rental Community
34. Fairground
35. Farm/Construction Equipment and Supply Sales
36. Farmer's Market
37. Flea Market
38. Freight Terminal
39. Funeral Home/Mortuary
40. Garage, Private
41. Garage, Public
42. Garden Center
43. Gas Station
44. Greenhouse, Noncommercial
45. Greenhouse, Commercial
46. Group Residential Facility
47. Group Residential Home
48. Health Club
49. Hospital
50. Hotel/Motel
51. Kennel
52. Laundromat
53. Liquor Store
54. Lumberyard
55. Manufacturing, Light
56. Office Supply Establishment
57. Parcel Delivery Facility

58. Park
59. Parking Lot
60. Parking Structure
61. Personal Service
62. Pet Shop
63. Pharmacy
64. Photographic Studio
65. Place of Worship/Religious Institution
66. Private Club
67. Professional Services
68. Recreational Facility
69. Recycling Facility
70. Research and Development
71. Restaurant
72. Retail Store/Shop
73. Roadside Vendor Stand
74. School, Commercial
75. Self-storage Facility
76. Senior Independent Housing
77. Shopping Center
78. Short Term Rental
79. Slaughterhouse
80. Solar System, Small
81. Solar System, Large
82. Sports Arena
83. Studio, Dancing, Music, or Art
84. Tattoo Parlor/Body Piercing Studio
85. Tavern/Drinking Establishment
86. Theater
87. Theater, Drive-in
88. Travel Plaza
89. Truck Terminal
90. Vehicle Sales/Rental/Service
91. Video Lottery Establishment
92. Warehouse
93. Water Treatment Plant
94. Wholesale Establishment
95. Wind Energy System, Small
96. Winery
97. Wireless Telecommunication Facility, Small Cells
98. Wireless Telecommunication Facility

**Section 305.05 Conditional uses.**

The following shall be conditional uses in the Commercial District:

1. Adult Business
2. Airport



3. Amphitheater
4. Brewery
5. Cemetery/mausoleum
6. Child Day Care Facility, Class 1
7. Child Day Care Facility, Class 2
8. Child Day Care Facility, Class 3
9. Child Day Care Facility, Class 4
10. Dwelling, Single-Family
11. Dwelling, Town House
12. Dwelling, Two-Family
13. Incinerator
14. Commercial Park
15. Laboratory
16. Medical Cannabis Dispensary
17. Medical Cannabis Growing Facility
18. Medical Cannabis Organization, Health Care
19. Night Club
20. School, Preschool to 12
21. Wind Energy System, Large

**Section 305.07 Lot, yard, and height requirements.**

<b>Commercial Dist. Req.</b>	<b>Adjacent to C or I</b>	<b>Adjacent to OC, R, FR</b>
<b>Max. Building Height</b>	60 feet	40 feet
<b>Min. Lot Size</b>	Minimum Health Dept Regs or N/A if public W & S	Minimum Health Dept Regs or N/A for public W & S
<b>Min. Lot Width</b>	N/A	N/A
<b>Min. Front Setback</b>	35 feet	35 feet
<b>Min. Side Setback</b>	15 feet	15 feet
<b>Min. Rear Setback</b>	30 feet	30 feet
<b>Min. Front Acc Setback</b>	35 feet	35 feet
<b>Min. Side Acc Setback</b>	5 feet	5 feet
<b>Min. Rear Acc Setback</b>	5 feet	5 feet

## **ARTICLE 306 I: INDUSTRIAL**

### **Section 306.01 Purpose.**

The Industrial District is designated for the development of industry to strengthen the economic base of the county and provide job opportunities for residents.

### **Section 306.03 Uses permitted by right.**

The following shall be uses permitted by right in the Industrial District:

1. Brewery
2. Brewery Pub
3. Distribution Facility
4. Distillery
5. Equipment Rental/Repair
6. Essential Utilities and Equipment
7. Freight Terminal
8. Commercial Park
9. Manufacturing (Heavy)
10. Manufacturing (Light)
11. Parcel Delivery Facility
12. Recycling Facility
13. Research and Development
14. Salvage Yard
15. Sewage Treatment Facility
16. Solar System, Small
17. Solar System, Large
18. Solid Waste Disposal Area/Facility
19. Stockyards
20. Truck Terminal
21. Warehouse
22. Water Treatment Plant
23. Wind Energy System, Small
24. Winery
25. Wireless Telecommunication Facility, Small Cells
26. Wireless Telecommunication Facility

### **Section 306.05 Conditional uses.**

The following shall be conditional uses in the Industrial District:

1. Airport
2. Incinerator
3. Mass Gathering Event
4. Medical Cannabis Dispensary
5. Medical Cannabis Growing Facility
6. Medical Cannabis Organization, Health Care
7. Medical Cannabis Processing Facility
8. Wind Energy System, Large

**Section 306.07 Lot, yard, and height requirements.**

<b>Industrial District Requirements</b>	<b>Adjacent to C or I</b>	<b>Adjacent to R, OC, FR</b>
<b>Max. Building Height</b>	60 feet	40 feet
<b>Min. Lot Size</b>	N/A for public W & S	N/A for public W & S
<b>Min. Lot Width</b>	N/A	N/A
<b>Min. Front Setback</b>	35 feet	35 feet
<b>Min. Side Setback</b>	15 feet	15 feet
<b>Min. Rear Setback</b>	30 feet	30 feet
<b>Min. Front Acc Setback</b>	35 feet	35 feet
<b>Min. Side Acc Setback</b>	5 feet	5 feet
<b>Min. Rear Acc Setback</b>	5 feet	5 feet

**ARTICLE 307 PUD: PLANNED UNIT DEVELOPMENT**

**Section 307.01 Purpose.**

It is the intent of the PUD Planned Unit Development District to promote innovation and creativity for specifically designed and detailed planned development that is primarily residential. It is also the intent to promote the efficient use of land through well-planned development. Such projects, to the greatest extent possible, will include a mixture of different dwelling types, sizes, and lot configurations. All applications will be reviewed, approved, or denied, based on whether the application conforms with this Article.

**Section 307.03 Uses permitted by right.**

Any use permitted by right in the underlying district are permitted by right in the PUD. Additionally, the following shall be uses permitted by right:

1. Bakery
2. Bank
3. Brewery Pub
4. Child Day Care Facility, Class 1
5. Child Day Care Facility, Class 2
6. Child Day Care Facility, Class 3
7. Child Day Care Facility, Class 4
8. Convenience Store
9. Cultural Service
10. Dwelling, Condominium
11. Dwelling, Multi-Family
12. Dwelling, Single-Family
13. Dwelling, Town House
14. Dwelling, Two-Family

15. Dwelling, Apartment
16. Essential Utilities and Equipment
17. Garage, Private
18. Garage, Public
19. Greenhouse, Noncommercial
20. Laundromat
21. Medical Adult Day Care Center
22. Park
23. Parking Lot
24. Personal Service
25. Pharmacy
26. Place of Worship/Religious Institution
27. Professional Services
28. Recreational Facility
29. Restaurant
30. Retail Store/Shop
31. Reception/Event Facility
32. Senior Independent Housing
33. Short Term Rental
34. Solar System, Small
35. Special Event
36. Studio, Dancing, Music, or Art
37. Theater
38. Wind Energy System, Small
39. Wireless Telecommunications Facility, Small Cells

**Section 307.05            Qualifications for filing a PUD.**

A Planned Unit Development may be developed in any district subject to the following requirements:

1. Land subject to the PUD is at least five (5) acres in size;
2. Preserves and protects adequate open space;
3. Development has single ownership or control;
4. A minimum of twenty (20%) percent of the net developable area shall be set aside for open space;
5. Subdivision of all parcels of land shall be in conformance with the Greenbrier County Subdivision Ordinance; and
6. Rezoning of the property proposed for the PUD is required.

**Section 307.07            PUD Performance standards.**

- a. *Area regulations.* There shall no minimum lot size, lot width, or lot depth within the boundaries of a Planned Unit Development.
- b. *Development density limitations.* All PUDs shall have a nonresidential floor area ratio (FAR) maximum of 0.10 and a residential FAR minimum of 0.10. The maximum residential gross density shall be three and one-half (3.5) units per acre, with the exception of density bonuses. A density bonus accumulation of up to twenty (20%) percent over the

stated maximum density will be awarded if thirty (30) percent of permanent open space is provided.

- c. Maximum building height shall not exceed forty (40) feet for principal structures and accessory structures shall not be taller than the principal structure.
- d. A peripheral setback of fifteen (15) feet shall be maintained around the entire site. Within the PUD site, there shall be no minimum setback requirements for individual parcels.
- e. The regulations set forth in Section 301.23, Parking shall apply.
- f. Adequate public water and public sewer shall be required.
- g. *Landscaping and screening.*
  1. A minimum thirty (30) foot wide landscaped buffer shall be required where any nonresidential PUD land use abuts a residential property adjacent to the PUD.
  2. A minimum thirty (30) foot wide landscaped buffer shall be required where any multi-family structure abuts single-family structures adjacent to the PUD.
- h. *Net buildable area.*
  1. The total amount of land to be used for the calculation of the permitted density in a PUD shall be determined by using the net developable area, which shall be determined by subtracting the following from the total site area: (1) lands used or dedicated for public or private easements and road rights-of-way; (2) areas with slope of twenty (20%) percent or greater, regulated and unregulated wetlands, and flood plains, unless the applicant can prove that such areas would not limit the number of building lots or the construction of roads or other facilities in a development which does not use a PUD or cluster development option.
  2. To determine the number of allowed lots upon the subject property, the net buildable area shall be 3.5 units per acre.
  3. Portions of the net buildable area placed into a dedicated open space tract shall be credited toward the allowed lot yield calculation.
- i. *Open Space.*
  1. Permanent open space in a PUD shall be twenty (20%) percent of the net buildable area. Permanent open space should protect sensitive areas, provide for recreational opportunities, and provide open space corridors between existing or planned parks, trails or open space. Permanent open space may consist of two types: "improved open space" and "natural open space." Acreage within the 100-year floodplain, as defined by the Flood Insurance Rate Map, and steep slopes may be included as part of the common open space but shall not amount to more than twenty-five (25%) percent of the total open space requirement.
    - i. Improved open space consists of parks, playgrounds, swimming pools, ballfields, landscaped green spaces, and other areas modified by man. At least thirty (30%) percent of the total permanent open space in a PUD shall be improved open space.
    - ii. Natural open space consists of areas of natural vegetation, water bodies, and other landforms that are to be left undisturbed. Creation of a graded and surfaced walking trail through areas of natural open space is permitted.
    - iii. Neither definition of open space shall include schools, community centers, or other similar areas in public ownership.

2. Permanent open shall be conveyed to or owned by one of the following forms:
  - i. To a non-profit organization;
  - ii. To a homeowner's association or similar entity established for the purpose of benefiting the owners and tenants of the PUD or, where appropriate and approved by the Greenbrier County Planning Commission and Greenbrier County Commission, adjoining property owners, or both. All conveyances hereunder shall be structured to ensure that the grantee has the obligation and the right to affect maintenance and improvement of the common open space, and that such duty of maintenance and improvement is enforced by the owners and tenants of the PUD and, where applicable, by adjoining property owners; or
  - iii. To owners other than those specified in subsections (i) and (ii) above, and subject to restrictive covenants describing and guaranteeing the open space and its maintenance and improvement, running with the land for the benefit of residents of the PUD or adjoining property owners, or both.
3. Improvements to the common open space shall comply with the following:
  - i. Any structures located within any common open space shall be accessory to recreational use of the space and shall cover no more than five (5%) percent of all common open space.
  - ii. Common open space and recreational facilities shall not be operated as a profit-making venture.
  - iii. The required open space shall be situated generally in or through the center of the PUD site or along the streets bounding the project area, along with natural features of the site such as wooded areas and natural drainage ways, and other valuable environmental features, and shall be designed and improved so that it is accessible to and usable by all persons living in the PUD.
  - iv. Not more than fifty (25%) percent of all common open space shall be covered by water.
  - v. Level or below ground improvements, such as swimming pools, tennis courts, walking trails, etc., shall not occupy more than twenty (20%) percent of open space.

**Section 307.09 PUD Application.**

Application shall be made to the Greenbrier County Planning Commission, and shall contain at the least the following:

- a. A legal description of the property under consideration, which also shows that such property is at least five (5) acres in area;
- b. A fully dimensioned map of the land, including topographic information at a contour interval of not less than two (2) feet where land slopes do not exceed five (5%) percent or a contour interval of not less than five (5) feet where land slopes exceed five (5%) percent;

- c. A site plan showing the location of all existing and proposed principal and accessory buildings and structures, parking lots, buffer strips, plantings, streets, public ways, and curb cuts;
- d. Proposed reservations for parks, parkways, playgrounds, and other open spaces with an indication of structure of organization proposed to own and maintain the common open space;
- e. A vicinity map showing the location of the site in relation to the surrounding neighborhood;
- f. Total number of residential units proposed;
- g. Calculation of the area of land per dwelling unit;
- h. Type and total square footage of all nonresidential land uses;
- i. Setbacks and height of all existing and proposed structures;
- j. Location of all watercourses, wetlands, and the 100-year floodplain;
- k. The feasibility of proposals for the disposition of sanitary waste and storm water;
- l. The substance of covenants, grants of easement, or other restrictions proposed to be imposed upon the use of the land, buildings, and structures, including proposed easements or grants for public utilities. The covenants and restrictions applicable to the proposed PUD shall provide for the review by a homeowners or residential association of any proposed changes to non-residential uses within the PUD and all proposed changes to residential density within the PUD;
- m. The required modifications in the land use regulations otherwise applicable to the subject property;
- n. A schedule showing the proposed times within which applications for final approval of all sections of the planned residential development are intended to be filed if the development plans call for development over a period of years. This schedule must be updated annually on the anniversary of its approval until the development is completed and accepted;
- o. A written statement by the landowner setting forth the reasons why a planned residential development would be in the public interest and would be consistent with the comprehensive plan for the development of the county; and
- p. Approved preliminary subdivision plan.

**Section 307.11 PUD Review Procedure.**

- a. A Subdivision application for a PUD shall be prepared and submitted in accordance with the Greenbrier County Subdivision Ordinance.
- b. A zoning permit for a PUD shall only be issued following preliminary approval by the Planning Commission of a Subdivision application for a PUD.
- c. Rezoning of the area where a PUD is approved under the Subdivision and Ordinance and this Zoning Ordinance shall follow the processes required by West Virginia Code §8A-7-8A.

**Section 307.13 PUD Criteria for review**

When reviewing and approving a planned unit development, the following shall be considered:

- a. The PUD is generally consistent with the objectives of the county comprehensive plan;
- b. The PUD design preserves natural features of the site, such as floodplains, wooded areas, steep slopes, natural drainage ways, and other areas of sensitive or valuable environmental features;
- c. Streets, sidewalks, pedestrian ways, bicycle paths, off-street parking, and off-street loading are appropriate to the land uses and will provide for safe and efficient traffic circulation;
- d. The PUD would not pose an adverse effect to the public health, safety, and general welfare of residents;
- e. The proposed PUD would not pose an adverse effect to the value of adjacent properties and neighborhoods;
- f. The proposed PUD will not cause off-site traffic congestion;
- g. The proposed PUD will enhance the appearance, function, and economic sustainability of the county at large; and
- h. Clustering of residential units are utilized to preserve open space or recreational amenities for residents.

## **ARTICLE 308 AO: AIRPORT OVERLAY**

### **Section 308.01 Purpose.**

The purpose of this overlay district ordinance is to create an airport district overlay that considers safety issues around the Greenbrier County Airport and regulates and restricts the heights of constructed structures and objects of natural growth in a manner consistent with the Federal Aviation Administration (FAA).

### **Section 308.03 Establishment of airport zones.**

There are hereby created and established certain zones within the Airport Overlay, as depicted in in Appendix D, certain surface zones restricting the use of airspace, including:

- a. Approach Surface Zone,
- b. Conical Surface Zone,
- c. Horizontal Surface Zone,
- d. Primary Surface Zone, and
- e. Transitional Surface Zone.

### **Section 308.05 Use restrictions.**

Notwithstanding any other provisions of this Ordinance, no use shall be made of land or water within the Airport Overlay in such a manner as to create electrical interference with navigational signals or radio communications between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise endanger or interfere with the landing, takeoff, or maneuvering of aircraft utilizing the Greenbrier Valley Airport.



**Section 308.07 Height restrictions.**

- a. Except as necessary and incidental to Greenbrier Valley Airport operations, the following height restrictions shall apply:
  - 1. *Structures.* No new structure shall be constructed or established and no existing structure shall be altered, changed, rebuilt, repaired, or replaced in any surface zone so as to project into restricted airspace, nor shall any equipment used to accomplish any of the foregoing activities be allowed to project into restricted airspace, except upon analysis as part of an FAA 7460 Obstruction Evaluation and determination by FAA that the structure or equipment would not be a hazard to air navigation and would not require changes to airport or aircraft operations.
  - 2. *Trees.* No tree shall be allowed to grow or be altered, repaired, replaced, or replanted in any surface zone so as to project into restricted airspace, nor shall any equipment used to accomplish any of the foregoing activities be allowed to project into restricted airspace, except upon analysis as part of an FAA 7460 Obstruction Evaluation and determination by FAA that the tree or equipment would not be a hazard to air navigation and would not require changes to airport or aircraft operations.
- b. Where a lot is within or beneath more than one surface zone, the height restrictions of the more restrictive surface zone shall control.

**Section 308.09 Notice to FAA.**

- a. If any of the following types of construction are proposed, the landowner must file notice with the FAA and provide proof of compliance with FAA requirements as part of the zoning permit application:
  - 1. Any construction or alteration that is more than two hundred (200) feet above ground level at its site.
  - 2. Any construction or alteration that exceeds an imaginary surface extending outward and upward at a slope of one hundred (100) feet to one (1) foot for a horizontal distance of twenty thousand (20,000) feet from the nearest point of the nearest runway.
  - 3. Any highway, railroad, or other traverse way for mobile objects, of a height which, if adjusted upward seventeen (17) feet for an Interstate Highway that is part of the National System of Military and Interstate Highways where overcrossings are designed for a minimum vertical distance of seventeen (17) feet; fifteen (15) feet for any other public roadway; ten (10) feet, or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road; twenty-three (23) feet for a railroad; and for a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally exceed it; when any of the aforementioned mobile objects exceed the heights requirements of subsection (a).
- b. Notice to the FAA is not required for construction or alteration of:
  - 1. Any object that will be shielded by existing structures of a permanent and substantial nature or by natural terrain or topographic features of equal or greater height, and will be located in the congested area of a city, town, or settlement where the shielded structure will not adversely affect safety in air navigation;

2. Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device meeting FAA approved siting criteria or an appropriate military service siting criteria on military airports, the location and height of which are fixed by its functional purpose;
3. Any construction or alteration for which notice is required by any other FAA regulation; and
4. Any antenna structure of twenty (20) feet or less in height, except one that would increase the height of another antenna structure.

## **ARTICLE 309 TFO: TELECOMMUNICATION FACILITIES OVERLAY**

### **Section 309.01 Purpose.**

The purpose of the Telecommunication Facilities Overlay is to ensure that telecommunication facilities may locate within the county in a manner that best serves the local needs and concerns of county citizens.

### **Section 309.03 General provisions.**

In addition to the applicability of the supplemental provisions provided in Article 701 to telecommunications uses zoned by this ordinance, the supplemental provisions provided in Article 701 shall be applicable to all land within the jurisdiction of Greenbrier County, except municipal-zoned land, as shown within the Telecommunications Facilities Overlay on the Official Zoning Map.

## **ARTICLE 401 GENERAL REGULATIONS**

### **Section 401.01 Purpose.**

The purpose of the general regulations is to provide for special situations that must be regulated in such a manner as to promote the orderly development and to protect the public health, safety, and general welfare of the community. The following regulations have been deemed necessary to clarify and carry out the overall intent of this ordinance.

### **Section 401.03 Accessory uses, buildings, and structures.**

All accessory uses, buildings, or structures are allowed in all districts, provided each is customarily incidental and subordinate to the actual permitted principal use of the property, except those otherwise expressly enumerated by district. There must be a principal use or structure on the lot prior to the issuance of a Building Permit for an accessory use, building, or structure.

### **Section 401.05 Yard requirements.**

- a. All yards required under this code shall be open to the sky and unobstructed by any building or structure except for accessory buildings or structures in the rear yard, fences, and the following that may project into the required yards:
  1. Steps and stoops not exceeding twenty-four (24) square feet;

2. Open or lattice-enclosed fire escapes, fireproof outside stairways and balconies opening upon fire towers, and the ordinary projection of chimneys and flues into the rear or side yard not exceeding three and one-half (3.5) feet in width and placed so as not to obstruct light or ventilation; and
  3. Sills, eaves, belt courses, cornices, and ornamental features not exceeding two (2) feet in width.
- b. Where any main wall of a structure located on an irregularly shaped lot does not parallel the lot line which the wall faces, the yard or minimum distance to the lot line at every point shall be at least equal to the minimum dimension required for the yard or distance to the lot line.
  - c. For purposes of determining the required yard for townhouse developments, setbacks shall only apply from the perimeter of the main building to the perimeter of the parent parcel upon which the building is situated.

**Section 401.07 Height exceptions.**

- a. Special industrial structures such as cooling towers, elevator bulkheads, fire towers, water tanks, and water towers, which require a greater height than provided in the district, may be erected to a greater height than permitted provided that:
  1. The structure shall not occupy more than twenty-five percent (25%) of the lot area;
  2. The setback requirements of the district in which the structure is erected shall be increased by one foot for each foot of height over the maximum height permitted; and
  3. The structure is necessary to comply with state or federal statutes or regulations.
- b. The height limitations of this code shall not apply to spires, water tanks, belfries, or chimneys.

**Section 401.09 Lot lines and irregular lots.**

- a. *Corner lots.* Corner lots shall have no rear lot line.
- b. *Flag lots.* When the handle of a flag lot is less than the minimum width for a lot in the zoning district in which it is located, the handle is not to be used in delineating the minimum required lot width. The minimum lot width shall be taken from the front building setback line. The handle shall be used in computing the required minimum lot size, except that in no case shall the area of the handle constitute more than fifty (50%) percent of the entire lot.
- c. *Lot width.* In a case where there is only one side lot line, lot width shall be measured between such side lot line and the opposite rear lot lines or street line.
- d. *Irregular lots.* Front setbacks for irregular lots shall be measured from the front lot line adjacent to the street right of way with the greatest frontage in linear feet.
- e. *Pie-shaped lots.* Setbacks on pie-shaped lots shall be measured at the closest point between the building and the angled lot line.
- f. *Rear lot line (irregular).* In the case of a lot having no street frontage or a lot of an odd shape, only the one lot line farthest from any street shall be considered a rear lot line. Where there is only one lot line other than street lot lines, it shall be considered the rear lot line.

**Section 401.11 Swimming pools.**

Unless installed on a lot of ten (10) acres or more, private swimming pools are permitted accessory uses only when located in rear yards. Swimming pools and protective barriers, required by the building code or otherwise installed, must adhere to setback requirements within the zoning district where the pool is located.

**Section 301.13 Fences, landscaping, and screening.**

Subject to the following conditions, fences and walls may be erected and hedges and other plantings may be grown along the boundaries of a lot:

- a. *Clear sight triangle.* Fences, hedges, other plantings, or walls at street corners shall not interfere with any clear sight triangle. The height of such objects is restricted to two and one-half (2.5) feet within the clear sight triangle. No fence, hedge, other plantings, or walls shall otherwise impose a threat to the public safety, including by obstructing the view of motorists to oncoming traffic or pedestrians.
- b. *Fences and walls.*
  1. Fences and walls shall be durably constructed and well maintained.
  2. Fences and walls that have deteriorated shall be replaced or removed immediately.
  3. Fence and walls shall not be constructed out of fabric, junk, junk vehicles, appliances, tanks, barrels, or razor wire.
  4. The finished side of the fence shall be oriented towards the front of the lot or the direction of the adjacent property owner, unless the fence is not visible from adjoining property.
- c. *Landscaped buffer areas.*
  1. When a buffer is required, a ten (10) foot landscaped buffer area is the preferred method of buffering. However, where a buffer strip is considered to be impracticable or inappropriate, an opaque fence at least six (6) feet in height, in the rear or side yard, or four (4) feet in height in the front yard so as to restrict a clear view beyond said buffer may be substituted in whole or in part for a natural buffer at the discretion of the Code Official.
  2. Landscaped buffer areas may be required by the Board of Zoning Appeals as a condition of a conditional use permit.
  3. Landscaped buffer areas shall not be required where the lot abuts an area of existing natural vegetation that effectively screens the lot from casual observation to a height of at least six (6) feet.
  4. Landscaped buffer areas should be well maintained and consist of indigenous species or otherwise be well-suited to the area, and consideration be given as to whether the species is likely to clog storm drains, be short-lived or excessively difficult to maintain.
  5. Hedges should be kept trimmed so that their branches shall not extend into the public road, or upon the lands of an adjoining owner.
- d. *Property adjacent to dwellings and zoned or existing single-family residential property.* Landscaped buffer areas shall be provided between any parking lot or new development adjacent to single-family residential property (existing or zoned) or adjacent to any existing dwelling, and such landscaping shall be at least ten (10) feet wide and at least five (5) feet high.

**Section 401.15 Outdoor lighting.**

- a. *Purpose.* The purpose of these lighting requirements is to reduce light impacts on rural portions of the county in order to preserve access to the natural dark sky environment. These requirements also serve to avoid nuisance lighting within more developed areas of the county. All new lighting shall conform to the requirements of this section.
- b. All lighting shall be low intensity and shielded so there is no illumination of adjoining residential properties. All lighting fixtures utilizing more than one hundred (100) watts or more than sixteen hundred (1600) lumens shall be fully shielded to prevent any upwards illumination and illumination beyond forty-five (45) degrees of the source of the light when pointed directly towards the ground. All lighting fixtures utilizing less than sixteen hundred (1600) or fewer lumens or one hundred (100) or fewer watts shall be at least partially shielded to prevent any upwards illumination and illumination beyond ninety (90) degrees of the source of the light when pointed directly towards the ground.
- c. All exterior lighting shall be erected and maintained so that light is confined to the property and will not cast direct light or glare upon adjacent properties or public rights-of-ways or otherwise adversely interfere with street traffic.
- d. Bare, un-shaded bulbs are prohibited.
- e. In the Commercial and Industrial Zoning Districts, lighting is required for all off-street parking areas, off-street loading areas, and for driveways providing ingress and egress.

**Section 401.17 Clear sight triangle.**

In a clear sight triangle, the entire area shall remain clear of obstructions to sight, including but not limited to fences, hedges, other landscaping, and signs, above a plane established two and one-half (2.5) feet in elevation to a height of eight (8) feet from grade level at the intersection of any street, alley, or other public right-of-way centerline.

**Section 401.19 Parking.**

- a. *Off-street parking.*
  1. General. Off-street parking shall be provided in compliance with this section whenever any building is erected, enlarged, converted, or increased in size or capacity.
  2. Required number. The off-street parking spaces required for each use permitted by this code shall not be less than those found in Table 401.23(b), provided that any fractional parking space be computed as a whole space. Any commercial building not listed Table 301.23(b) that are built, converted, modified, or structurally altered shall provide one parking space per 200 square feet of gross floor area and one parking space for each regular, full-time employee or full-time equivalent in the building or on the premises whose primary duties are in the building or on the premises, during the largest shift.
  3. Exception. Parking requirements may be satisfied using on-street parking in front of buildings or public lots within three hundred (300) feet of primary building entrances.
  4. Combination of uses. Where there is a combination of uses on a lot, the required number of parking spaces shall be the sum of that found for each use, dividing the gross floor area proportionately between the different uses. The required parking

space for any number of separate uses may be combined in one lot, but the required space assigned to one use may not be assigned to another use at the same time, except that one half (1/2) of the parking space required for churches, theaters, or assembly halls with peak attendance at night or on a weekend may be assigned to a use that will be closed at night or on a weekend.

5. Location of lot. The parking spaces required by this code shall be provided on the same lot as the use or on another lot not more than five hundred (500) feet radially from the lot where the use is located only if the Code Official deems it impractical to provide space on the same lot with the building.

b. *Off-street parking table.*

TYPE OF USE	NUMBER OF PARKING SPACES REQUIRED (all indoor square footage in gross floor area)
Retail/Goods: Adult Business, Convenience Store, Farm/Construction Equipment and Building Supply, Garden Center, Liquor Store, Office Supply Establishment, Pawn Shop, Pet Shop, Pharmacy, Retail Store	4 spaces for the first 1,000 sf of indoor space, plus 1 space for each additional 150 sf of indoor space; 1 space per 5,000 sf of outdoor space in use
Cultural/Community: Amphitheater, Amusement and Recreation Center, Cultural Service, Health Club, Place of Worship/Religious Institution, Sports Arena, Theater	1 space per 5 seats or per persons allowed indoors at maximum capacity, whichever is greater, plus 1 space for every 2 employees
Clinic/Office/Service: Broadcasting Studio, Café/Coffee Shop, Clinic, Automobile Car Wash, Bakery, Bank/Financial Institution, Brewery Pub, Catering Business, Dog Day Care, Dry Cleaner, Equipment Rental Repair, Funeral Home/Mortuary, Gas Station, Kennel, Night Club, Personal Service, Photographic Studio, Private Club, Professional Services, Restaurant, Studio, Vehicle Repair/Service/Sales/Rental, Video Gaming or Lottery Establishment	3 spaces per 1,000 sf of indoor space, 1 space per 1,000 sf outdoor space, 1 space for every 2 employees
Accommodation: Bed and Breakfast Inn, Hotel/Motel	1 space per bed offered for accommodation; 1 space for every 2 employees
Industry/Facility: Brewery, Building Material Facility, Bus and Transit Facility, Commercial Garage, Commercial Greenhouse, Correctional Facility, Distillery, Distribution Facility, Freight Terminal, Incinerator, Lumberyard, Manufacturing (Light), Manufacturing (Heavy), Medical Cannabis (all), Laboratory, Parcel Delivery Facility, Research and Development, Self-storage Facility, Sewage	1 space per 2 employees, 1 space per vehicle used for the business, 3 spaces per 7,000 square feet of indoor space

Treatment Facility, Solid Waste Disposal Area/Facility, Warehouse, Water Treatment Plant, Wholesale Establishment, Winery	
Outdoor: Campground, Cemetery/Mausoleum, Cidery, Fairground, Farmer's Market, Flea Market, Park, Reception Event Facility, Stockyards, Winery (all).	1 space per 500 sf of indoor space, 1 space per 2 employees, 3 per acre of outdoor space for first 20 acres
Education/Care: Child Day Care Facilities, Educational Institution, School, Preschool to 12, Medical Adult Day Care Center	1 space per 5 enrolled, 1 space for every 2 employees
Medical/Care: Continuing Care Facilities, Emergency Shelter, Group Residential Facility, Group Residential Home, Hospital, Senior Independent Housing.	1 space per two beds; 1 space per 2 employees
Dwelling Unit, Home-based Business, Short Term Rental.	2 spaces

- c. *Parking stall dimension.* All parking stalls shall be ten (10) feet in width and twenty (20) feet in length.
- d. *Design of parking facilities.*
1. General driveway and accessway provisions.
    - i. Driveways and accessways should be located to minimize traffic conflicts with traffic entering the street from either the same or the opposite side of the street.
    - ii. All accessways and driveways shall be designed to conform to West Virginia Department of Transportation specifications with regard to roads.
    - iii. For residential parking, only one (1) driveway access per unit is permitted. A lot with at least one hundred (100) linear feet of frontage along a street may be permitted one (1) additional driveway access point. Regardless of frontage, a development may be restricted to a single accessway depending on usage and interior and exterior traffic patterns.
    - iv. For nonresidential parking, uses with less than six hundred (600) feet of frontage are permitted one (1) driveway access, and uses with greater than six hundred (600) feet of frontage may be permitted two (2) driveway access points, provided that such driveways are at least three hundred (300) feet apart and one is marked for egress and the other is marked for ingress.
    - v. On any lot, no wall, fence, hedge, tree, shrub, or other obstruction shall be allowed that dangerously obscures the view of approaching traffic along the street, or at any intersection, including driveways and accessways.
  2. *Driveway and accessway width.* Nonresidential parking shall provide one (1) or more accessways, the width of which shall be twelve (12) feet for one-way enter or exit or twenty-four (24) feet for two-way enter or exit.
  3. *Driveway and accessway slopes.* The maximum slope of any driveway accessway shall not exceed twenty (20) percent.

4. *Stall access.* Each required parking stall shall be individually and easily accessed. No automobile shall be required to back onto any public street or sidewalk to leave any parking stall when such stall serves more than two (2) dwelling units. All portions of a public lot or garage shall be accessible to other portions thereof without requiring the use of any public street. Except that parking requirements that may be satisfied using on-street parking in front of buildings or public lots with three hundred (300) feet of primary building entrances may use public roads for stall access.
5. *Striping.* All parking stalls shall be striped. Parking spaces shall be clearly delineated by suitable markings. Short-term visitor parking spaces shall be differentiated from long-term employee spaces by suitable markings or signage.
6. *Retail parking.* Off-street parking areas for all new retail businesses over seven thousand (7,000) square feet of gross floor area shall be designed to include bollards to prevent vehicles from driving into the business. All retail business existing before the date of this ordinance shall install bollards when replacing or substantially working on the sidewalk in front of the business's entrance.
- e. *Ingress and egress.* Adequate ingress and egress to a parking facility shall be provided by clearly defined accessways in accordance with any access management requirements of the County.
- f. *Accessible parking.* Accessible parking spaces and passenger loading zones shall be provided in accordance with all applicable federal, state, and local laws, including but not limited to the Americans with Disabilities Act (ADA), ICC A117.1 and West Virginia Code §17c-13-6, and any amendments thereto.

**Section 301.21 Off-street loading space and facilities requirements.**

In connection with any building or structure which is to be erected or substantially altered and that requires the receipt or distribution of materials or merchandise by trucks or similar vehicles, there shall be provided off-street loading berths not less than the minimum requirements specified in this Section, except that in no instance shall a use be required to substantially alter an existing principal building in order to meet the requirements of this Section:

- a. Loading space provided for the loading and unloading of delivery trucks and other vehicles and for the servicing of shops by refuse collection, fuels, and other service vehicles shall be arranged so that they may be used without:
  1. Blocking or interfering with the use of accessways, automobile parking facilities, or pedestrian ways; or
  2. Backing out into a street.
- b. All required loading space shall be located on the same lot as the use to be served and shall be constructed and sized such that no portion of the vehicle projects into any traffic lane. No loading space located outside of a residential district for vehicles of more than two (2) ton capacity shall be located less than one hundred (100) feet from any residential district. No loading space shall be located within fifty (50) feet of any property line.
- c. All off-street loading areas shall be adequately buffered with a landscaped buffer area from adjacent rights-of-way and property lines.
- d. All loading facilities shall be located within the building setback line.



USE	OFF-STREET LOADING SPACE REQUIREMENTS
Freight Terminal, Truck Terminal	1 space (12 feet wide by 60 feet long by 14 feet high) per 5,000 square feet gross floor area
Hotels, Hospitals, Retail, Service Establishments,	1 space (12 feet wide by 35 feet long by 14 feet high) per 3,000 square feet gross floor area
Markets, Warehouse, Wholesale	1 space (12 feet wide by 60 feet long by 14 feet high) per 7,500 square feet gross floor area
Industry	1 space (12 feet wide by 60 feet long by 14 feet high) per 10,000 square feet gross floor area

**Section 401.23 Drive-through business.**

Drive-through businesses shall be oriented with respect to yards, driveways, driveway entrances and exits, and buildings and enclosures to ensure safety, minimize traffic hazards or difficulties, and to safeguard adjacent properties. At a minimum, drive-through facilities must be ten (10) feet from any lot line. Entrances to drive-through facilities must be fifty (50) feet from any intersection.

**Section 401.25 Storage, general.**

- a. No lot or premises shall be used as a storage area for more than one (1) inoperable automobile, appliances, or the storage or collection of any other miscellaneous items unless expressly permitted by this ordinance or by state statute. No lot or premises shall be used as a garbage dump or a dead animal rendering plant nor may rubbish or unauthorized miscellaneous refuse be stored in the open.
- b. If allowed, any storage of scrap metal, inoperable automobiles for purposes other than repair or secondhand building materials closer than one thousand (1,000) feet to an interstate highway or three hundred (300) feet to any road shall be screened by a solid wall or fence at least ten (10) feet tall; except that if such wall or fence would not fully screen the scrap metal, inoperable automobiles, or secondhand building materials because of topography or piling, the storage shall not be closer than three hundred (300) feet to any interstate highway or road.
- c. *Flammable liquids.* The storage of alcohol, gasoline, crude oil, or any other highly flammable liquids in above ground tanks with unit capacity greater than six hundred (600) gallons shall be prohibited in all districts unless such tanks up to and including ten thousand (10,000) gallon capacity are placed not less than fifty (50) feet from all property lines and unless all such tanks of more than ten thousand (10,000) gallon capacity are placed not less than one hundred (100) feet from all property lines. All tanks having a capacity greater than six hundred (600) gallons shall be properly diked with dikes having a capacity not less than one and one-half (1.5) times the capacity of the tank or tanks surrounded.
- d. *Hazardous materials.* Any storage of hazardous material that is ancillary to a permitted use or a conditional use shall meet the following conditions:
  - 1. All storage shall comply with all state, federal, and local regulations.
  - 2. Such material shall be listed and made known to the WV Division of Environmental Protection.

**Section 401.27 Storage of trailers, camping and recreational equipment.**

Trailers and camping and recreational equipment may be parked or stored subject to the following requirements:

- a. At no time shall any trailer or camping or recreational equipment be occupied or used for living, sleeping, or housekeeping purposes while being temporarily or permanently parked or stored on a residential property, except where needed due to a declared state of emergency.
- b. Inoperable, dismantled, or unregistered recreational vehicles are not allowed to be stored outdoors in the residential district, the forest recreation district or the open space conservation district.
- c. There shall be no parking of recreational vehicles over or onto a public sidewalk.

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## ARTICLE 402 SUPPLEMENTAL REGULATIONS

### Section 402.01 Purpose.

These supplemental regulations are to provide for specific uses that require additional requirements to promote orderly development and to protect the public health, safety, and general welfare of the community. The following supplemental regulations have been deemed necessary to clarify and carry out the overall intent of this ordinance. These supplemental regulations are requirements in addition to those that are applicable to the use.

### Section 402.03 Adult Business.

- a. *Purpose.* It is the purpose of this Section to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the County. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene material.
- b. *Findings and rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the County Commission, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); and *Fantasy Ranch, Inc. v. City of Arlington*, No. 04-11337, 2006 WL 2147559 (5th Cir. 2006); *N.W. Enters. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002); *BGHA, LLC v. City of Universal City*, 210 F. Supp. 2d (W.D. Tex. 2002), *ajfd* 340 F.3d 295 (5th Cir. 2003); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Woodall v. City of El Paso*, 49 F.3d 1120 (5th Cir. 1995); *J&B Entertainment, Inc. v. City of Jackson*, 152 F.3d 362 (5th Cir. 1998); *SDJ, Inc. v. City of Houston*, 837 F.2d 1268 (5th Cir. 1988); *TK's Video, Inc. v. Denton County*, 24 F.3d 705 (5th Cir. 1994); *Heideman v. South Salt Lake City*, 342 F.3d 1182 (10th Cir. 2003); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 973 F. Supp. 1428 (M.D. Fla. 1997), *ajfd* 176 F.3d 1358 (11th Cir. 1999); *Ctr for Fair Public Policy v. Maricopa County*, 336 F.3d 1152 (9th Cir. 2003); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Reliable Consultants, Inc. v. City of Kennedale*, Case No. 4:05-CV-166-A (N.D. Tex., May 16, 2005); *Sensations, Inc. v. City of Grand Rapids*, 2006 WL 2504388 (W.D. Mich., Aug. 28, 2006); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); And based upon reports concerning secondary effects occurring in and around sexually oriented

businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Cove, California - 1991; Houston, Texas - 1983; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Minneapolis, Minnesota - 1980; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997, 2004; Greensboro, North Carolina - 2003; Kennedale, Texas - 2005; Effingham, Illinois - 2005; Amarillo, Texas - 1977; El Paso, Texas -1986; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), the County Commission finds:

1. Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
  2. Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.
  3. Each of the foregoing negative secondary effects constitutes a harm, which the County has a substantial government interest in preventing or abating. This substantial government interest in preventing or abating secondary effects, which is the County's rationale for this Ordinance, exists independent of any comparative analysis between sexually oriented and nonsexually oriented businesses. Additionally, the County's interests in regulating sexually oriented businesses extend to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the County. The County finds that the cases and documentation relied on in this Ordinance are reasonably believed to be relevant to said secondary effects.
- c. No such adult establishment shall be located less than one thousand (1,000) feet from a school zone, place of worship, library, day care center, civic building, park, historic district, dwelling, lot with residential districting, or other adult establishment as measured from front door to front door along the curb line of public streets providing access.
  - d. All doors, windows, and other apertures shall be located and covered or screened with opaque glazing to discourage and prevent visibility or viewing of the interior.
  - e. No exterior signage, building element, advertisement, display, or other promotional material shall be pornographic in nature or convey any such idea or element to specified anatomical areas, as defined in this code.
  - f. In the event that an activity or business that might fall under a use category other than adult business is combined with or includes activities that constitute an adult bookstore, adult movie theater or movie house, or adult entertainment, as defined herein, then such activity or business shall constitute an adult business and shall be governed by those provisions in this code applicable to adult business uses, in addition to those provisions that govern the combined use.

**Section 402.05           Agritourism Enterprise.**

The following regulations shall apply to an agritourism enterprise only to the extent not preempted by any provision of the West Virginia Code:

- a. *Purpose.* The purpose of these provisions is to properly promote agritourism in Greenbrier County in order to effectively enhance and preserve the agricultural and rural economy of the County in accordance with state law.
- b. Agritourism enterprises are only permitted on farms with a minimum lot size of five (5) acres. Farms must be existing and in operation.
- c. Products or services offered by an agritourism enterprise shall only be those which result from the on-site farming operation, whether grown or manufactured.
- d. No part of an agritourism operation shall be located within seventy-five (75) feet of any lot line.
- e. Sanitary facilities shall be provided in accordance with the Greenbrier County Health Department requirements.
- f. All prepared food available for sale must be prepared and served in accordance with applicable federal, state, and local regulations.
- g. Agritourism enterprises shall not be operated earlier than 10:00 a.m. nor later than 9:00 p.m. and are subject to inspection by the Code Official during operating hours or by appointment to ensure compliance with any permit conditions and with this ordinance.
- h. Parking is not permitted in the public right-of way.

**Section 402.07           Bed and Breakfast Home Stay and Bed and Breakfast Inn.**

- a. No external modifications to the structure are permitted which would be contrary to the residential character of the existing neighborhood, with the exception of fire escapes.
- b. Cooking facilities within sleeping areas are prohibited.
- c. Receptions and events are permitted to be held within the facility by overnight guests of a Bed and Breakfast Home Stay and Bed and Breakfast Inn.
- d. If a Bed and Breakfast Home Stay or Bed and Breakfast Inn has a separate facility for events and receptions then, notwithstanding subsection (c), the regulations for Reception/Event Facilities shall be followed for events and receptions held in those separate facilities, in addition to any other applicable requirements.
- e. Bed and Breakfast Home Stays and Bed and Breakfast Inns shall comply with the provisions of West Virginia Code § 29-3-16c, Safety Standards for Bed and Breakfast Establishments.

**Section 402.09 Cemetery/Mausoleum.**

- a. Brick or stone walls between one and one-half (1.5) and four (4) feet are permitted.
- b. Wood or wrought iron fences between two (2) and eight (8) feet are permitted.
- c. Setbacks from all street rights-of-way and adjacent properties to a wall or grave shall be a minimum of eight (8) feet.
- d. Access to the site must have paved accessways clearly defined and designed so as not to interfere with the character of the neighborhood.

**Section 321.11           Child Day Care.**

- a. Child care providers, whether state or privately operated, shall obtain all required licenses from the State of West Virginia and each facility shall be inspected by the Building Code Official and Fire Marshal to ensure the safety of children and employees.
- b. Child care facilities shall comply with all applicable state regulations.

**Section 402.13 Cideries, Farm Wineries and Wineries.**

To be permitted as a conditional use, Cideries and Farm Wineries shall be an accessory use to the on-site production of agricultural products used to produce wine or cider. Cideries, Farm Wineries and Wineries shall meet the following requirements:

- a. Comply with all applicable regulations of the West Virginia Alcohol Beverage Control Administration and applicable provisions of the West Virginia State Code.
- b. Have a minimum lot size of ten (10) acres.
- c. All parking is to be provided on site.
- d. No more than one (1) location on each farm or parcel for the on-premises sale and consumption of alcoholic beverages manufactured on-site including a tasting facility.
- e. Any on-site tasting facility shall be primarily operated for the marketing and sale of the agricultural products produced at the facility. Alcohol-related products shall be limited to those produced or bottled on site by the operator or for which ingredients are grown on the premises.
- f. The sale of goods or merchandise may occur on the premises but is limited to those which are produced on the premises or are customarily incidental to the operation and directly related thereto.
- g. Special events may be permitted in accordance with the requirements of this ordinance; however, daily tours of the production facilities or product tastings do not require an event permit if conducted in the ordinary course of business.
- h. Limited food service may be provided to onsite guests; however, any such food service shall comply with all health department regulations and provide service only during the hours during which an on-site tasting facility is open for operation.

**Section 402.15 Garage Sales.**

- a. No more than eight (8) garage sales, yard sales, or rummage sales are permitted within any rolling twelve (12) month period for each residence or lot of record.
- b. For the purpose of this subsection, garage sale, yard sale, and rummage sale shall be deemed to mean the same thing.
- c. Sales must be contained within the individual's property and may not encroach on or into a public right-of-way.
- d. Each garage sale shall not be permitted to last more than forty-eight (48) hours.
- e. Tents may be used during the event subject to subsection (c) above and must be removed immediately following the conclusion of each sales event.
- f. All items must be removed from the exterior of the premises at the end of the sales event.

**Section 402.17 Home-based Business.**

The business or commercial activity conducted as a home-based business must satisfy the following criteria:

- a. Customer, client, patient, or other traffic shall be restricted to the time between 8:00 a.m. to 6:00 p.m., and no more than eight (8) visits to the home-based business shall be

allowed per day, except as necessary to operate childcare facilities in accordance with the West Virginia Code. A “visit” is defined as a stop at the premises by one (1) automobile transporting one (1) or more customers, clients, patients, packages, parcels, or other business associates or items. A visit does not include the operator of the business, members of his or her family, or a business employee;

- b. Shall be compatible with the residential neighborhood and subordinate to the use of the property as a residence;
- c. May employ one (1) individual not residing in the dwelling;
- d. May not use any equipment or processes that create noise, vibration, glare, fumes, odors, or electrical or electronic interference, including interference with radio or television reception detectable in the surrounding neighborhood;
- e. May not generate any solid waste or sewage discharge, in volume or type, not normally associated with the use of a dwelling in the neighborhood;
- f. May not occupy more than twenty-five (25) percent of the gross floor area of the residence; and
- g. May not involve mortuary services There shall be no display or retail goods and no sale or distribution of alcohol or any controlled substance.

#### **Section 402.19 Dwellings.**

In addition to meeting the requirements of the State Building Code as adopted by Greenbrier County, all dwellings, whether site built or factory built, shall meet the following standards:

- a. Unless located in a factory built rental community, shall be a minimum width of twenty (20) feet at the narrowest point of the first story and a depth of at least twenty (20) feet so that the dwelling shall not be less than twenty (20) feet in any plan dimension of the first story.
- b. Shall be placed on a permanent surround site-built foundation. All single-family dwellings shall have perimeter fascia enclosure constructed of compatible masonry material that encloses the perimeter of the home. All tow bars, wheels, and axles shall be removed.
- c. Shall have a pitched roof, which surface shall be composed of wood shakes, asphalt, composition or wood shingles, clay, slate, metal, or built-up gravel materials.
- d. Shall have exterior siding material consisting of either wood, masonry, concrete, stucco, Masonite, or vertically or horizontally grooved siding or lap siding or its appearance.
- e. Use of flat or corrugated sheet metal for the exterior walls or roof covering is prohibited.
- f. Shall be connected to all appropriate utilities.
- g. Shall be located on a lot of record which shall have only one defined dwelling on the lot except that single family dwellings may have an accessory dwelling unit.

#### **Section 402.21 Mass Gathering Events.**

- a. Must occur outdoors, in temporary structures, or existing permitted structures.
- b. No overnight participants may remain on the premises unless the event is permitted to operate as a campground under this ordinance and health department rules.
- c. Shall cause no alteration to land including, but not limited to, grading, filling, or paving.
- d. A permit is required for each mass gathering event, except for events held in order to fulfill the underlying use such as in the case of an amphitheater or sports arena.
- e. Each event must conclude within seventy-two (72) hours.
- f. Each parcel shall be limited to twelve (12) permits per calendar year.

- g. Other than sanctioned sporting events, Mass events shall be held between the hours of 10:00 a.m. and 11:59 p.m.
- h. There must be adequate on-site parking areas to accommodate the number of vehicles expected. Off-site parking areas are permitted if the applicant provides written authorization from the property owner for those sites. The applicant must post signs directing people to the parking sites. There shall be no parking on any public roads.
- i. All trash must be removed from site within five (5) days.
- j. All lighting and sound shall be aligned so as to minimize impact on nearby residents and shall conform to requirements of Section 401.15, Lighting.
- k. The site shall provide potable water supply and proper sanitation facilities.
- l. All sale of alcohol shall be regulated by the West Virginia Alcohol Beverage Control Administration.
- m. Proof of liability insurance in the minimum amount of \$2,000,000 per occurrence shall be submitted with the permit application.
- n. All mass gathering events must notify the following agencies of the event and number of expected attendees: Greenbrier County Sheriff's Department, a WV licensed EMS medical provider, licensed garbage removal company, licensed towing company, county health department (approval or permit required), WV Division of Highways (approval or permit required), and County Homeland Security. Proof of notification shall be submitted with any required permit application.
- o. At least twenty (20) contiguous acres are required to host a mass gathering event.
- p. The event shall otherwise comply with all other local, state and federal laws and regulations.

**Section 402.23 Medical Cannabis Organizations.**

To the extent not preempted by any provision of the West Virginia Code, all medical cannabis organizations shall meet the following standards:

- a. No medical cannabis organization shall be located within one thousand (1000) feet of a school, day care, park, place of worship or religious institution, educational institution, or community facility.
- b. No medical cannabis organization shall be located within five hundred (500) feet of another medical cannabis organization.
- c. No medical cannabis organization shall be located within fifty (50) feet of property being used for a residential use or property within a residential zoning district.
- d. No more than two (2) medical cannabis processing facilities and no more than four (4) medical cannabis growing facilities are permitted within the zoned portion of Greenbrier County.
- e. There shall be no emission of dust, fumes, vapors, or odors into the environment from the premises of a medical cannabis organization.
- f. The only medical cannabis uses permitted under this ordinance are those expressly defined and permitted herein.
- g. Medical cannabis organizations may not be combined with other uses.
- h. Medical cannabis organizations shall possess all applicable state licenses.

**Section 402.25 Night Clubs, Tavern/Drinking Establishment/Bars, Brewery Pubs.**



- a. The total number of such establishments in concurrent operation within any contiguous zoning district where permitted shall not exceed ten (10).
- b. The gross floor area to customer ratio shall be fifty (50) square feet of gross floor area per occupant allowed.
- c. Amplified sound shall be controlled so that it is not audible from the operation of the night club, tavern or brewery pub on the inside any residential dwelling.

**Section 402.27 Reception/Event Facility.**

In addition to the standards of this ordinance applicable to the type of event, all reception/event facilities shall be subject to the following:

- a. The owner or his or her designated representative shall be present at all times during any event.
- b. All outdoor activities, temporary structures, and parking areas associated with an event facility shall be located one hundred and fifty (150) feet from any property line.
- c. All outdoor events shall end no later than 11:59 p.m.
- d. Amplified music is permitted provided that no amplified music shall be audible beyond the property line of the property on which the special event is held.
- e. Lighting may be used for the duration of the event only and may not shine or produce glare on adjacent properties.
- f. Parking shall be in compliance with Section 401.23, Parking. No parking by patrons shall be permitted on any public road. The owner shall ensure that ingress and egress during the event to the venue does not cause congestion on any public road.
- g. The owner shall provide proper sanitation facilities, including restrooms.
- h. The operation of the use shall at all times comply with all federal, state, and local laws and regulations.
- i. This use is not required to obtain a permit for each special event held.

**Section 402.28. Short Term Rental.**

If allowed, short term rentals shall be subject to the following minimum restrictions:

- a. No external modifications may be made which would be contrary to the residential character of the existing neighborhood, with the exception of fire escapes.
- b. Cooking facilities within sleeping areas are prohibited.
- c. No reception or event facility may be associated with a short term rental unless a separately allowed use.
- d. Shall comply with all applicable rules and regulations of the state fire marshal, the building code, and rules of the local health department as well as all other applicable state law requirements.
- e. The total number of sleeping accommodations may be limited by the conditional use permit issued by the BZA; Provided, however, that no short term rental shall provide more than six sleeping areas for a total of 18 overnight guests.

**Section 402.29 Special Events.**

All special events shall be subject to the following:

- a. Shall occur outdoors, in temporary structures, or existing permitted structures.
- b. No overnight participants may remain on the premises unless the event is also permitted under this ordinance to operate as a campground.

- c. Shall cause no alteration to land including, but not limited to, grading, filling, or paving.
- d. Events may only be held between the hours of 7:00 a.m. and 11:59 pm.
- e. A parking plan must be submitted as part of the permit process.
- f. EMS must be notified of all events. The holder of the event must provide the number of people projected to attend.
- q. A permit shall be required for each special event unless the event is held in order to fulfill the underlying permitted use such as in the case of an amphitheater, reception/event facility, conference center or sports arena. The applicant shall:
  - i. Provide proof of liability insurance in the minimum amount of \$1,000,000 per occurrence and which shall be submitted with the temporary permit application;
  - ii. Be limited to twelve (12) events per calendar year per parcel; and
  - iii. Certify that the event shall conclude within seventy-two (72) hours.

**Section 402.31 Self-storage Facility.**

- a. No activities other than rental of storage units and pick-up and deposit of dead storage shall be allowed on the premises.
- b. Examples of prohibited activities include but are not limited to the following:
  - 1. Auctions, commercial wholesale or retail sales or miscellaneous or garage sales;
  - 2. The servicing, repair or fabrication of motor vehicles, boats, trailers, lawn mowers, appliances, or other similar equipment;
  - 3. The operation of power tools, spray-painting equipment, table saws, lathes, compressors, welding equipment, kilns, or other similar equipment;
  - 4. The establishment of a transfer and storage business;
  - 5. Any use that is noxious or offensive because of odors, dust, noise, fumes, or vibrations.
- c. Building height shall not exceed eighteen (18) feet.
- d. Outdoor storage shall be limited to recreational vehicles, boats, and trailers. No junk vehicles shall be stored. Outdoor storage areas shall be screened with a landscaped buffer area.
- e. If a barrier is to be provided by a fence, said fence shall be a minimum of six (6) feet in height and shall be constructed of opaque materials that will prevent the passage of light and debris. Examples include brick, stone, architectural tile, masonry units, wood or similar materials, but not woven wire.
- f. Trash, radioactive or highly toxic substances, garbage, refuse, explosives, flammable materials, hazardous substances, animal carcasses or skins, or similar items are prohibited.
- g. The interior traffic aisles, required off-street parking areas, loading areas, and access ways shall be paved with a hard surface and shall be kept clear of stored items.

**Section 402.39 Video Lottery Establishment.**

Establishments that offer or provide video gaming or lottery regulated under the provisions of the Limited Video Lottery Act, West Virginia Code § 29-22B-101, *et. seq.*, shall not be located within one thousand and five hundred (1,500) feet of the perimeter of any school zone, school, child care facility, place of worship or religious institution, park, community center or facility, library, recreation center or facility, public building or

public arena, or any other similar structure, or any other structure which houses an establishment that offers or provides video gaming or lottery, measured in a straight line from the nearest point of the wall of the establishment offering video gaming or lottery to the nearest property line of said school zone, school, place of worship or religious institution, park, community center or facility, recreation center or facility, public building or public arena, or any other similar structure, or any other structure which houses an establishment that offers or provides video gaming or lottery. The total number of such establishments in concurrent operation within any contiguous zoning district where permitted shall not exceed ten (10) and are prohibited from locating in single lot districts.

**Section 402.41 Large Wind Energy Systems.**

- a. *Purpose.* The purpose of this section is to regulate the placement, construction, and modification of large wind energy systems while promoting the safe, effective, and efficient use of such systems.
- b. *Applicability.* The requirements set forth in this section shall govern the siting of wind energy systems used to generate wholesale electricity which may be connected to the utility grid or otherwise serve as a source of wholesale energy primarily for use by offsite customers.
- c. *Siting requirements.* The requirements for siting and construction of all wind energy systems regulated by this section shall include the following:
  1. Wind energy towers shall maintain a galvanized steel finish, unless FAA standards require otherwise, or if the owner is attempting to conform the tower to the surrounding environment and architecture, in which case it may be painted to reduce visual obtrusiveness. A wind energy tower may be erected, maintained, or operated on or as an attachment to a building on a lot. A drawing may be required.
  2. Wind energy systems shall not be artificially lighted unless required by the Federal Aviation Administration (FAA) or appropriate authority.
  3. No tower shall display a commercial sign.
  4. The applicant shall provide evidence that the proposed height of the wind energy system tower does not exceed the height recommended by the manufacturer or distributor of the system. The tower height shall not exceed a maximum height of seventy (70) feet. When situated on or attached to a building, the total height shall not exceed seventy (70) feet. The building itself shall otherwise conform with the applicable height requirement under this ordinance.
  5. The applicant shall provide evidence that the provider of electric utility service to the site has been informed of the applicant's intent to install an interconnected, customer-owned electricity generator, unless the applicant intends, and so states on the application, that the system will not be connected to the electricity grid. Notification will take place by having the electric utility provider sign the conditional use permit application.
  6. Wind energy systems shall adhere to noise limits such that they are not audible inside any off-site residence. These levels, however, may be exceeded during short-term events such as utility outages or severe windstorms.
  7. The minimum distance between the ground and any protruding blade utilized on a wind energy system shall be fifteen (15) feet, as measured at the lowest point of

the arc of the blades. The lowest point of the arc of the blades shall be ten (10) feet above the height of any structure within seventy-five (75) feet of the base. The supporting tower shall be enclosed with a six (6) foot tall fence, or the base of the tower shall not be climbable for a distance of ten (10) feet.

8. The applicant shall provide proof of adequate liability insurance for a wind energy system. Whether or not the applicant is participating in the net metering program, the applicant will be required to meet the insurance coverage requirements as set forth in section 4 of 150CSR33 (2011).
  9. The wind energy system generators and alternators should be constructed so as to prevent the emission of radio and television signals and shall comply with the provisions of Section 47 of the Federal Code of Regulations, Part 15 and subsequent revisions governing said emissions.
- d. *Federal and state requirements.*
1. Compliance with the Building Code. Building permit applications for wind energy systems shall be accompanied by engineer-stamped drawings of the wind turbine structure, including tower, base, and footings. An engineering analysis of the tower showing compliance with the Building Code and certified by a licensed professional engineer shall also be submitted.
  2. Compliance with FAA Regulations. Wind energy systems must comply with applicable FAA regulations.
  3. Compliance with National Electric Code. Building permit applications for wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
  4. Compliance with regulations governing energy net metering. Wind energy systems connected to the utility grid must comply with West Virginia Code §24-2F-8 and 150CSR33.
- e. *Setbacks.* The wind energy system shall be setback a distance at least equal to one hundred ten (110) percent of the height of the tower plus the blade length from all adjacent property lines and a distance equal at least to one hundred fifty (150) percent of the tower height plus blade length from any dwelling inhabited by humans on neighboring property. No portion of the wind energy system, including guy wire anchors, may be extended closer than ten (10) feet to the property line.
- f. *Removal of defective or abandoned wind energy systems.* Any wind energy system found to be unsafe by the Code Official shall be repaired by the owner to meet federal, state, and local safety standards or removed within six (6) months. Any wind energy system that is not operated for a continuous period of twelve (12) months shall be considered abandoned and the owner of the system shall remove the turbine within ninety (90) days of receipt of notice from the Code Official instructing the owner to remove the abandoned wind energy system.

## **ARTICLE 403 SIGNS**

### **Section 403.01 Purpose.**

- a. This article is to regulate signs in such a manner as to provide for the reasonable and orderly display of permitted signs. The purpose of this section is to regulate all:

1. Exterior signs in the Residential, Forest Recreation, and Open Space Conservation Districts, and
  2. Freestanding signs and signs adjoining residences in Commercial and Industrial Districts placed for exterior observance so as to protect property values and the character of the zoned area.
- b. It is the intent of the sign regulations to:
1. Accomplish the objectives of the Greenbrier County Comprehensive Plan by such actions as addressing conflicting land uses, enhancing the aesthetics and beautification of the County, and promoting economic development and growth;
  2. Provide for the size, location, construction, and manner of display of permitted signs;
  3. Permit such signs that will not, by reason of their size, location, or manner of display, endanger life or limb, confuse traffic, obstruct vision, or otherwise endanger the public health, safety, or welfare; and
  4. Prevent signs from causing an annoyance or disturbance.

**Section 403.03 Procedures and permits.**

- a. It shall be unlawful for any person to erect, alter, relocate or maintain any sign without first obtaining a permit from the Code Official except as provided in Section 323.05, Permit Exemptions. Signs not expressly allowed by this ordinance, are prohibited.
- b. The applicant shall obtain the Code Official's approval as to the conformance with this Ordinance before installing a sign. An applicant has up to six (6) months from the issuance of a sign permit to install the permitted sign, otherwise the permit is void.
- c. The application for the Code Official's approval of a sign shall be made upon forms provided by the Permit Office. All applications shall be accompanied by accurate sketches and scaled drawings showing the location of the proposed sign. The Code Official shall promptly process the permit application and approve the application, reject the application, or notify the applicant of deficiencies in the application within seven (7) to ten (10) business days after receipt. Any application that complies with all provisions of this code, the building code, and other applicable laws, shall be approved.
- d. The Code Official may inspect signs to determine compliance with the requirements of this code or for detriment to public health, safety, or welfare. Except for signs deemed legally nonconforming, signs that do not conform to this code or that are detrimental may be removed or repaired, with the cost of removal or repair charged to the owner, person having control, or person receiving benefit from such sign, with payment due within thirty (30) days of notice of charges.
- e. Signs legally existing at the adoption of this code or subsequent amendment that do not conform to this code or subsequent amendment shall be considered nonconforming structures.

**Section 403.05 Permit exemptions.**

A permit shall not be required for the following items, these signs being allowed in addition to the maximum number of square footage of signs as permitted in the other sections of this article:

- a. On-premises wall and window signs within Commercial and Industrial Zoning Districts that do not face adjoining or adjacent residence(s).

- b. Servicing, repainting, cleaning, or changing the message of an existing sign, except where such activity requires structural alteration.
- c. On any property for sale or rent, one sign with a total area of up to twelve (12) square feet and a maximum height of six (6) feet.
- d. Signs less than four (4) square feet when cut into any masonry surface or when constructed of bronze or other noncombustible material.
- e. Sign painted on or attached to a motor vehicle when such vehicle is properly licensed and operational.
- f. Flags up to sixteen (16) square feet.
- g. Signs required by law.
- h. Banners removed within thirty (30) days of placement and displayed no more than twice in a calendar year.
- i. Three (3) or fewer temporary signs totaling less than four (4) square feet each when erected for less than fourteen (14) days twice in a calendar year.
- j. Signs necessary for public safety.
- k. The changing of a message on a changeable sign.
- l. Minor signs less than two (2) square feet in sign area, except that no use shall be permitted more than eight (8) minor signs.

**Section 403.07 Measurement of sign area and sign height.**

- a. With signs that are regular polygons or circles, the area shall be calculated by the mathematical formula for that polygon or circle. With signs that are not regular polygons or circles, the sign area shall be calculated using all that area within a maximum of three abutting or overlapping rectangles that enclose the sign face.
- b. The permitted maximum size of a sign shall apply to the entire area enclosing the extreme limits of writing, representation, emblem or figure, together with any frame or other material or color forming an integral part of the display or used to differentiate a sign from the background against which it is placed.
- c. The permitted size of a sign shall apply to each sign face; however, where signs are double-faced, placed back-to-back, or in a V-type construction, only one side of the sign shall be counted when the V is at a forty-five (45) degree angle or less.
- d. If a sign is painted over a wall that had to be painted to eliminate a previous sign or similar problem, even though the color unintentionally seems to make the entire wall a part of the new sign, the entire wall shall not constitute the new sign area.
- e. Supports, uprights, or structures on which any sign is supported shall not be included in determining the sign area unless such supports, uprights, or structure are designed in such a way as to form an integral background of the display; except, however, when a sign is placed on a fence, wall, planter, or other similar structure that is designed to serve a separate purpose other than to support the sign, the entire area of such structure shall not be computed.
- f. The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the lower of (1) existing grade prior to construction or (2) the newly established grade after construction, exclusive of any fill, berm, mounding or excavating solely for the purpose of locating the sign. In cases in which the normal grade cannot reasonably be determined, sign height shall be computed on the assumption that the

elevation of the normal grade at the base of the sign is equal to the elevation of the nearest point of the crown of a public road or the grade of the land at the principal entrance to the principal structure on the zone lot, whichever is lower.

#### **Section 403.09 Prohibited signs.**

The following signs shall be prohibited in all districts, except as otherwise noted herein:

- a. Animated sign that incorporates in any manner flashing or moving lights or any other visible moving or revolving component, except as permitted as part of an electronic message display.
- b. Signs that obstruct or impair the vision of drivers or obstruct or detract from the visibility of any traffic sign or traffic control device on a public street or road, by reason of size, shape, location, color, or illumination.
- c. Signs simulating, or which are likely to be confused with, a traffic control sign or any other sign displayed by a public authority.
- d. Signs that obstruct free ingress or egress for a door, window, fire escape, or other exit way.
- e. Portable sign, except as expressly permitted on-premises temporary signs.
- f. Signs that violate any state or federal law relating to outdoor advertising.
- g. Any sign not in compliance with regulations dealing with West Virginia Department of Transportation standards and specifications.
- h. Any sign located in a right-of-way.

#### **Section 403.11 General sign restrictions.**

- a. A sign shall not inhibit vision to cause a traffic safety hazard.
- b. A sign shall comply with the height regulations for structures in the zoning district where the sign is located or the regulations in this article, whichever is lower.
- c. A freestanding sign support structure shall conform to the setback requirements for structures in the zoning district where the sign is located or the regulations in this article, whichever is lower, and no part of the sign shall be within five (5) feet of a public right-of-way.
- d. No roof sign shall project over a public right-of-way nor extend more than ten (10) feet above the roof or parapet line. The mounted height of a roof sign shall not exceed the applicable district height limit.
- e. A wall sign shall not extend further than twelve (12) inches above or from the building to which the sign is attached.
- f. A projecting sign shall not extend over more than one-half (1/2) the width of a public sidewalk nor be lower than nine (9) feet above ground level.
- g. No sign shall be permitted to be erected unless the back of such structure is shielded from public view by a building, other structure, high planting, or another sign of the same size (where permitted), or unless such back is painted a neutral color or is enclosed in a solid metal backing that is treated or painted against corrosion.
- h. All signs shall be maintained in good and safe structural condition. The painted portions of signs shall be periodically repainted and kept in good condition.
- i. The general area in the vicinity of a freestanding sign must be kept clear of weeds, debris, trash, and other refuse by the property owner.

- j. The roofs of all marquees shall be properly guttered and connected by downspouts so that the water does not drip or flow onto public property.
- k. Wall and window signs shall not cover more than thirty-three (33%) percent of any side of a building.
- l. Unless otherwise expressly stated, the front setback for principal structures shall apply, measured from the face of the sign or supporting structure, whichever is closer, to the applicable right-of-way.
- m. All signs must comply with all State and Federal regulations.
- n. Signs facing adjoining residence(s) shall be located in the least visual area to the residence.
- o. *Illumination.*
  - 1. Definitions.
    - i. “Candela” means the basic unit of measurement of light in SI (metric) units.
    - ii. “Candela per square meter (cd/m<sup>2</sup>)” means the SI (metric) unit used to describe the luminance of a light source or of an illuminated surface that reflects light. Also referred to as Nits.
    - iii. “Nit” means a photometric unit of measurement referring to luminance. One nit is equal to one cd/m<sup>2</sup>.
    - iv. “SI (International System of Units)” means the modern metric system of measurement, abbreviated SI for the French term “Le Systeme International d’Unites.”
  - 2. A sign in any district may be illuminated at night. Signs that are illuminated at night may not exceed a maximum luminance level of seven hundred and fifty (750) cd/m<sup>2</sup> or Nits, regardless of the method of illumination, at least one-half hour before Apparent Sunset, as determined by the National Oceanic and Atmospheric Administration (NOAA), US Department of Commerce, for the specific geographic location and date. All illuminated signs must comply with this maximum luminance level throughout the night, if the sign is energized, until Apparent Sunrise, as determined by the NOAA, at which time the sign may resume luminance levels appropriate for daylight conditions.
  - 3. The maximum luminance during daylight conditions, between Apparent Sunrise and one-half hour before Apparent Sunset, shall be ten thousand (10,000) cd/m<sup>2</sup> or Nits.
  - 4. All permitted and conditional use signs may be backlit, internally lighted, or indirectly lighted, subject to lighting limitations in this code. All external sign lighting shall have lighting fixtures or luminaires that are fully shielded.
  - 5. Temporary signs shall not be lighted.
- p. Electronic message displays shall be placed perpendicular to residential structures where possible and shall comply with Federal Communications Commission regulations, including the avoidance of harmful interference with radio frequencies.
- q. The owner of any commercial sign, whether conforming or nonconforming, other than a permitted off-premise sign, located on commercial property where the use or business has ceased operating shall, within sixty (60) days of the cessation of the use or business operation, remove temporary signs and all aspects of any permanent signs that refer to the use or business. Property owners may request, in writing, a waiver of such requirement if the businesses is temporarily or seasonally operational, is remodeling, or otherwise has



the good will intention of opening that business back up within one (1) year of time of cessation.

### **Section 403.13 On-premises sign regulations.**

- a. Residential, Forest Recreation, and Open Space Districts: On-Premises signs shall be permitted as follows:
  1. For residential and nonresidential uses, one non-illuminated permanent sign not exceeding five (5) square feet and setback at least five (5) feet from the front property line is permitted as accessory to residential uses. The maximum height of the sign shall be six (6) feet.
  2. For nonresidential uses, one permanent freestanding, projecting, geological, or wall sign. Such sign may be illuminated but shall not include exposed neon. Such sign shall not be closer than ten (10) feet to property line. Freestanding signs shall not be more than seventy (70) square feet in sign area nor more than ten (10) feet in sign height. All other signs within these districts shall not be more than twelve (12) square feet in sign area nor more than five (5) feet in sign height. The sign must also be located within an area of the property that is least distracting to neighbors.
  3. For residential uses, including home occupations, two (2) permanent non-illuminated wall signs not exceeding twelve (12) square feet each, affixed to the building, and not projecting more than one (1) foot beyond the building is permitted.
- b. Commercial and Industrial Districts: On-premises signs shall be permitted as follows:
  1. Freestanding signs under this subsection shall not exceed a total area of seventy (70) square feet per use or a maximum height of twenty (20) feet; all other signs shall not exceed a total area of forty-five (45) square feet or a maximum height of six (6) feet.
  2. The following signs as accessory to nonresidential uses shall be permitted and regulated as follows in regard to number and type of on-premises signs:
    - i. One freestanding sign; or
    - ii. One changeable, marquee, or projecting sign; or
    - iii. One roof sign, but no roof sign shall exceed one (1) square foot in area for each five (5) feet of building frontage; or
    - iv. One (1) portable, illuminated sign; and
    - v. One (1) neon, pennant, a-frame, banner, chalkboard, feather, geological, wicket, or window signs is permitted per one thousand (1000) square feet of lot area; or
    - vi. An awning, canopy sign or wall sign; and
    - vii. All signs must comply with minimum front setback of fifteen (15) feet.
  3. No more than one (1) flag is permitted per one thousand (1000) square feet of lot area.
  4. For residential uses, including a home occupation, two (2) permanent non-illuminated wall signs not exceeding twelve (12) square feet each, affixed to the building, and not projecting more than one (1) foot beyond the building is permitted.

- c. Planned Unit Development District (PUD): On-premises signs shall be reviewed by following, in general, the requirements set out for residential and nonresidential land uses within each district in this ordinance. A master sign plan shall be submitted during the PUD review process.

**Section 403.15 On-premises temporary signs.**

- a. A permit is required for a use to display more than three (3) temporary signs, or temporary signs totaling more than four (4) square feet each, or temporary signs displayed for more than fourteen (14) days twice in a calendar year. See Section 323.05, Permit Exemptions, for temporary signs exempted from permitting.
- b. In the Commercial and Industrial Districts, on-premises temporary signs are permitted up to five (5) per use, not exceeding six (6) square feet each, and displayed less than thirty (30) days no more than two (2) times in a calendar year.
- c. In the Residential, Forest Recreation, and Open Space Districts, only three (3) or fewer on-premises temporary signs totaling less than four (4) square feet each may be erected for less than fourteen (14) days twice in a calendar year.
- d. Campaign signs are exempt from this ordinance so long as they are removed within a reasonable time following conclusion of the election.

**Section 403.17 Off-premises sign regulations in Commercial and Industrial districts.**

- a. Off-premises signs are permitted in Commercial and Industrial Districts.
- b. The permitted maximum area for an off-premises sign shall be one hundred (100) square feet.
- c. Off-premises projecting signs are prohibited.
- d. The setbacks for and spacing of off-premises signs shall be as follows:
  - 1. A front setback of (15) fifteen feet shall apply, measured from the face of the sign or supporting structure, whichever is closer to the applicable right-of-way.
  - 2. In accordance with state law, no off-premises sign shall be located within five (500) hundred feet of any church, school, cemetery, public park, public reservation, public playground or state or national forest except markers for underground utility facilities. These five hundred feet shall be measured from the closest part of the sign to the edge of the lot on which one of said uses is located.
  - 3. No illuminated, off-premises sign shall be permitted to substantially increase glare on dwellings.
  - 4. No off-premises, freestanding or roof sign shall be permitted within fifty (50) feet of a bridge abutment.
  - 5. No off-premises, freestanding or roof sign shall be permitted within fifty (50) feet of a corner of any street intersection.
  - 6. No off-premises sign structure shall be located within two hundred (200) feet of another off-premises sign.
  - 7. Off-premises sign structures may be V-type (90-degree angle or less) to back, and each face shall not exceed a maximum area of seventy (70) square feet in size.

**Section 303.19 Off-premises Sign Regulations in Forest Recreation, Open Space Conservation and Residential districts.**

Off-premises signs are permitted in the Forest Recreation, Open Space Conservation, and Residential Districts only as temporary signs. Only three (3) or fewer off-premises temporary signs totaling less than four (4) square feet each may be erected for less than fourteen (14) days twice in a calendar year.

**Section 403.21 Fees for signs.**

No fee is charged by Greenbrier County for the placement of a sign unless the placement or construction of which requires a building permit.

**Section 403.23 Area and height restrictions.**

- a. Signs in the Commercial and Industrial Districts shall be no taller than fifteen (15) feet and shall be located only in the front yard.
- b. Signs in Open Space, Forest Recreation, and Residential Districts shall be no more than a maximum height of ten (10) feet for nonresidential uses and five (5) feet for residential uses, except for flags, and shall be located only in the front yard.
- c. Off-premises signs in all districts shall be no more than a maximum height of fifteen (15) feet and shall be located only in the front yard.

**CHAPTER 5 ADMINISTRATION, APPEALS, AND ENFORCEMENT**

**ARTICLE 501 ADMINISTRATION; ENFORCEMENT**

**Section 501.01 Purpose.**

The purpose of this chapter is to ensure that the administrative processes by which the zoning ordinance is effectuated have been clearly identified and delineated. This section shall outline the duties and powers of the Board of Zoning Appeals, the zoning determination process, the appeals process, and other enforcement related provisions.

**Section 501.03 Powers and duties of the Code Official.**

The County Commission shall appoint a Code Official, who shall have the authority to administer and enforce the Zoning Ordinance, including but not limited to the following:

- a. Keep a record of plans and applications for permits and all permits issued with notations as to special conditions. All records shall be open for public inspection.
- b. Review permit applications and notifications as necessary to determine compliance with the provisions of this ordinance. No building permit or any other permit shall be issued by the Planning & Permits Office unless it conforms to all applicable ordinances, statutes, and regulations.
- c. All questions of interpretation and enforcement shall be initially presented and determined by the Code Official. Appeal of official action of the Code Official may be made to the Board of Zoning Appeals.
- d. Upon a finding that provisions of this ordinance have been violated, the Code Official shall notify the person or party in writing responsible for the violation(s), order the action necessary to correct the violation, and if correction is not completed within the time specified in the notice of violation, commence necessary legal and/or equitable action to compel correction of the violation.

- e. Maintain official zoning maps.
- f. Provide information on planning and zoning upon request by citizens and public agencies.
- g. Submit at least annually, a written report to the County Commission on all permits issued and of notices and orders issued.
- h. Perform additional tasks and duties as may be prescribed by the County Commission, the Planning Commission or the Board of Zoning Appeals.

**Section 501.05 Building permit.**

- a. No building or structure shall be constructed, erected, expanded, enlarged, or otherwise structurally altered unless the Code Official determines that the application is in compliance with the zoning ordinance, subdivision ordinance, building code, floodplain ordinance.
- b. Applications for a building permit shall be made available at the Planning & Permits Office and subdivision provisions of the health code.
- c. All applications for building permits, temporary use permits and zoning determinations shall be made in writing by the owner or authorized agent on the forms approved for that purpose and shall be filed with the Planning & Permits Office. The application shall:
  - 1. Include a statement as to the proposed use of the structure or land;
  - 2. Be accompanied by a plan, drawn to scale, showing the dimensions of the lot to be built upon, the exact size and location of the building to be constructed upon the lot, accessory buildings to be erected, and such other information as may be deemed necessary by the Code Official in determining and providing for the enforcement of this code; and
  - 3. Include payment of the appropriate fee.
- d. If the building permit application is approved by the Code Official, then an appropriate placard issued by the County and containing the approval of the Code Official, shall be returned together with the zoning determination to the applicant. The placard shall be posted by the applicant in a conspicuous place upon the building or construction site prior to the commencement of any construction and shall remain upon the building or construction site during all construction operations.
- e. If a use or construction authorized by a building permit does not commence within one hundred and eighty (180) days of the issuance of the building permit, the permit shall expire by its own terms unless first renewed by the applicant.

**Section 501.07 Fees.**

A schedule of fees to be charged for the issuance of a building permit shall be determined by Greenbrier County Commission.

**Section 501.09 Violations and penalties.**

- a. Any person who violates any provision of this chapter is guilty of a misdemeanor, and upon conviction, shall be punished for each offense by a fine not less than \$50.00 nor more than \$500.00. Each day the violation continues shall be considered a separate offense. Work carried on in violation of the cancellation of any permit issued under this chapter shall also be deemed a violation punishable in the same manner.

- b. Any buildings erected, raised, or converted, or land or premises used in violation of any provision of this Zoning Ordinance is declared a common nuisance and the owner of the building, land, or premises shall be liable for maintaining a common nuisance.

**Section 501.11 Injunction.**

In addition to any other legal or equitable remedy, the Planning Commission, Board of Zoning Appeals or any duly authorized enforcement official may:

- a. Seek relief from the Circuit Court of Greenbrier County, West Virginia, to enjoin the owner, tenant, occupant, other persons or entity responsible from violating the provisions of this Zoning Ordinance or any rule, regulation, or requirement adopted or established hereunder;
- b. Seek an order from the Circuit Court of Greenbrier County, West Virginia, directing the owner, tenant, occupant, other persons or entity responsible to remove a structure erected in violation of the provisions of this ordinance or rule, regulation, or requirement adopted or established hereunder.
- c. Seek costs and attorney's fees from the successful prosecution of this or any other enforcement provision of this ordinance.

**ARTICLE 502 NONCONFORMITIES**

**Section 502.01 Nonconformities.**

- a. *Purpose and applicability.* The purpose of this section is to regulate and limit the continued existence of uses, structures, and lots established prior to the effective date of this Zoning Ordinance or any amendment thereto that does not conform to this code. Any nonconformity created by a change in the classification of property, or the text of this code shall be regulated by the provisions of this article.
- b. *General provisions.*
  - 1. Nonconforming lots, structures, or uses may continue to exist, be bought or sold, altered, restored, or extended only in accordance with the provisions of this code.
  - 2. Nothing in this ordinance shall prevent the strengthening or restoring to a safe condition any portion of a nonconforming structure declared unsafe by a proper authority.
  - 3. Nothing in this ordinance shall be interpreted as authorization for or approval of the continuance of the illegal use of a structure or premises in violation of zoning controls in existence at the time of the effective date of legal enactment of this code.
  - 4. Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall apply to any nonconformities existing therein.
  - 5. Nothing in this section prohibits alterations or additions to or replacement of buildings or structures owned by any farm, industry, or manufacturer, or the use of land presently owned by any farm, industry, or manufacturer but not used for agricultural, industrial, or manufacturing purposes, or the use or acquisition of additional land which may be required for the protection, continuing development, or expansion of any agricultural, industrial, or manufacturing

operation of any present or future satellite agricultural, industrial, or manufacturing use.

6. The Board of Zoning Appeals may authorize a nonconforming use to be changed to another equal or less intense nonconforming use.

c. *Nonconforming uses.*

1. If a nonconforming use has ceased for one (1) year, abandonment shall be presumed and the nonconforming use shall not resume. Any future use of the land or structures shall conform to and be in accordance with this Zoning Ordinance. Abandonment of a nonconforming use shall be presumed if one (1) or more of the following conditions exists, indicating intent on the part of the property owner to abandon the nonconforming use:
  - i. When the intent of the owner to discontinue the use is apparent;
  - ii. Utilities, such as water, gas, and electricity to the property have been disconnected;
  - iii. The property, buildings, and grounds, have fallen into disrepair as evidenced by proper code violation documentation;
  - iv. When the nonconforming use has been replaced by a conforming use;
  - v. When the nonconforming use has been changed to a use permitted or conditional use by Greenbrier County; or
  - vi. The business license issued by Greenbrier County has expired.
2. Once a nonconforming use has been changed or converted to a conforming use, it shall not thereafter be used for any nonconforming use.
3. Alterations and extensions of a nonconforming use may only be made in order to increase the nonconformity's compliance with the provisions of this code.

f. *Nonconforming buildings or structures.*

1. A lawful nonconforming structure, which is damaged the extent of fifty percent (50%) or more of its appraised value, as valuated within twelve (12) months of when the damage occurred, shall not be restored unless it is in full conformance with this code.
2. A lawful nonconforming structure which is damaged, by neither malfeasance nor wanton disregard by an interested party, to the extent of less than fifty percent (50%) of its appraised value, as valuated within twelve (12) months of when the damage occurred, may be reconstructed, provided that:
  - i. The reconstructed structure shall not exceed the height, area, or volume of the original structure;
  - ii. Off-street parking and loading facilities equivalent to those maintained at the time of such damage shall be restored; provided, however, in no case shall it be necessary to restore or maintain parking or loading facilities in excess of those required by this code for new equivalent uses; and
  - iii. Reconstruction shall be commenced within one year from the date the structure was destroyed or condemned and shall be carried on without interruption.
3. The extension of a lawful use to any portion of a nonconforming structure shall not be deemed the extension of a nonconforming use.

g. *Nonconforming lot.*

1. Except as provided in this section, a nonconforming vacant lot existing and of official record as of the effective date of this Zoning Ordinance may be developed for any of the uses permitted by these regulations in the zoning district in which it is located, provided that the use meets all applicable yard and setback requirements for the zoning district in which the lot is located.
  2. A nonconforming vacant lot shall not be developed if it could be combined with an adjoining lot owned by the same person on or after the effective date of these regulations in order to create a single lot. Where an owner owns adjoining property, construction may occur across the lot lines if that is the only way the yard requirements may be met without a variance. If said combination, however, results in the creation of a single lot that is more than one and one-half (1.5) times the minimum lot width or area required in the zoning district, then the single lot may be divided into two lots of equal width and area without being further classified as nonconforming. For the purposes of this section, "adjoining" shall be deemed to mean the sharing of one or more common lot lines and access to both lots can be provided by the same street without crossing that street.
- h. *Nonconforming accessory uses and structures.* No nonconforming accessory use or accessory structure shall continue after the principal use or structure is terminated by abandonment, damage, or destruction unless such accessory use or accessory structure thereafter is made to conform to the standards for the zoning district in which it is located. No nonconforming accessory use or structure shall become or replace any terminated principal nonconforming use or structure.
- i. *Enlargement or extension of a nonconforming use.*
- a. Nonconforming structures used for a permitted use may be enlarged, provided that the enlargement shall not create any additional nonconformity or increase the degree of the existing nonconformity of such structure.
  - b. Nonconforming structures and uses may enlarge principal structures by adding decks or porches provided structural nonconformities are not increased and that all requirements of this Code are met, including but not limited to setback and yard requirements.
  - c. Nonconforming residential uses of single-family residential structures may enlarge or extend principal residential structures provided that all requirements of this Code are met, including but not limited to setback and yard requirements, and provided that the enlargement or extension does not increase the number of dwelling units.
  - d. Nonconforming uses existing at the time this ordinance was passed, or at the time a subsequent amendment creates the nonconforming use, may extend within the building which housed the nonconforming use at the time this ordinance was passed, or at the time a subsequent amendment creates the nonconforming use.
  - e. Enlargement or extension approval shall be void if construction work does not begin within one year from the date of approval, or if work is suspended or abandoned for a period of ninety (90) days at any time after the work is commenced.
  - f. All enlargement or extension of a nonconforming use must comply with the applicable floodplain management requirements.

## **ARTICLE 503 BOARD OF ZONING APPEALS**

There is hereby created and/or continued a Board of Zoning Appeals (BZA) to hear appeals on zoning issues, and to hear conditional use and variance requests.

### **Section 503.03 BZA Membership; eligibility for membership**

- a. The BZA shall have five members appointed by the County Commission. The members of the BZA must: (1) Be residents of the County for at least three years prior to appointment; (2) Not be a member of the Greenbrier County Planning Commission; (3) Not hold any other elective or appointive office; and (4) Be residents of that part of the County that is zoned. Any existing members shall continue for their appointed terms upon the enactment of this ordinance.
- b. Terms shall be for three years, and the County Commission shall appoint a member for any vacant unexpired term.
- c. Up to three alternate Members may be appointed by the County Commission for a term of three years, which may be staggered. An alternate member shall serve on the BZA when one of the regular members is unable to serve. The alternate member shall serve until a final determination is made in the matter to which the alternate member was initially called to serve.
- d. The members and any alternate members of the BZA shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

### **Section 503.05 Meetings of the Board of Zoning Appeals.**

- a. The BZA shall meet quarterly and may meet more frequently at the written request of the chairperson or by two (2) or more members.
- b. Notice for a special meeting of the BZA must be in writing, include the date, time, and place of the special meeting, and be sent to all members at least two (2) days before the special meeting.
- c. Written notice of a special meeting of the BZA is not required if the date, time, and place of the special meeting were set in a regular meeting.
- d. The BZA must have a quorum to conduct a meeting. A majority of the members of the Board shall constitute a quorum. No action of the Board is official unless it is authorized by a majority of the members present at a regular or properly called special meeting.
- e. At its first regular meeting of each year, the BZA shall elect a chairperson and vice chairperson from its membership. The vice chairperson shall have the power and authority to act as chairperson during the absence or disability of the chairperson.

### **Section 503.07 Powers and Duties of the Board of Zoning Appeals**

The BZA shall have the following powers and duties:

- a. Hear, review and determine appeals from an order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance or rule and regulation adopted pursuant thereto;
- b. Authorize exceptions to the district rules and regulations only in the classes of cases or in particular situations, as specified in the zoning ordinance;



- c. Hear and decide conditional uses of the zoning ordinance upon which the board is required to act under the zoning ordinance;
- d. Authorize, upon appeal in specific cases, a variance to the zoning ordinance;
- e. Reverse, affirm or modify the order, requirement, decision or determination appealed from and have all the powers and authority of the official or board from which the appeal was taken;
- f. Adopt rules and regulations concerning:
  - 1. The filing of appeals, including the process and forms for the appeal;
  - 2. Applications for variances and conditional uses;
  - 3. The giving of notice; and
  - 4. The conduct of hearings necessary to carry out the board's duties under the terms of this article;
- g. Keep minutes of its proceedings;
- h. Keep an accurate and complete audio record of all the board's proceedings and official actions and keep the audio record in a safe manner, which audio record is accessible within twenty-four hours of demand, for three years;
- i. Record the vote on all actions taken;
- j. Take responsibility for the custody and preservation of all papers and documents of the BZA and keep in its offices all minutes and records which shall be public records;
- k. With consent from the governing body, hire employees necessary to carry out the duties and responsibilities of the BZA: Provided, that the governing body sets the terms of employment; and
- l. Supervise the fiscal affairs and responsibilities of the BZA.

**Section 503.09 Appeal to the Board of Zoning Appeals.**

- a. An appeal from any order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance, or rule and regulation adopted pursuant to a zoning ordinance, shall be filed with the BZA.
- b. The appeal shall:
  - 1. Specify the grounds of the appeal;
  - 2. Be filed within thirty days of the original order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance; and
  - 3. Be on a form prescribed by the BZA.
- c. Upon request of the BZA, the administrative official or board shall transmit all documents, plans and papers constituting the record of the action from which the appeal was taken.
- d. Upon the filing of an appeal, all work on the premises shall be stopped or stayed unless the code official certifies to the BZA that imminent peril to life or property would result or the parties agree otherwise.

**ARTICLE 504           CONDITIONAL USE STANDARDS**

**Section 504.01       Purpose.**

The conditional use permit procedure is intended to provide the BZA with review of requests to establish uses enumerated as an allowed conditional use in the district, but that may have the potential for negative impacts on the health, safety, and welfare of the public. The conditional use standards provided in this article are intended to avoid, minimize, or mitigate adverse impacts conditional uses may have on the health, safety, and welfare of the public.

**Section 504.03            General standards.**

- a. All applications for a conditional use permit shall demonstrate that:
  1. The use is consistent with the policies and intent of the corresponding purpose for the zoning district in which it lies and the County's comprehensive plan.
  2. The use is physically and operationally compatible with the surrounding neighborhood and surrounding existing uses.
  3. The use will be designed, constructed, operated, and maintained so that it does not cause substantial injury to adjoining property.
  4. The use will be adequately served by public facilities and services which include but are not limited to water, sewer, electricity, schools, streets, fire and police protection, storm drainage, public transit, and public parks and trails.
  5. Adequate off-street parking will be provided on the same property as the proposed conditional use as well as adequate ingress and egress to the property in compliance with the standards set forth in this ordinance.
  6. Any storage of hazardous material will comply with all state, federal, and local regulations, and all such material will be listed and made known to the nearest local fire department.
  7. The use will not endanger public health or safety or constitute a public nuisance.
  8. The use will not conduct operations in connection with the use that are offensive, dangerous, or destructive of the environment.
- b. Conditions may be imposed on a proposed conditional use to ensure that potential significant adverse impacts on surrounding existing uses will be reduced to the maximum extent feasible, including but not limited to conditions or measures addressing:
  1. The nature and location of activities on the site that generate potential adverse impacts such as noise and glare;
  2. Hours of operation and deliveries;
  3. Location of loading space and delivery zones;
  4. Light intensity and hours of illumination;
  5. Potential loitering;
  6. On-site parking configuration and facilities;
  7. On-site traffic circulation;
  8. Privacy concerns of adjacent uses; and
  9. Other concerns articulated by neighborhood residents.
- c. Conditional use permit decisions are made by the BZA. In considering the proposed conditional use, the BZA must determine whether the applicable General Standards under this section have been met. The BZA may impose additional conditions and safeguards as it deems reasonable and necessary.
- d. If the applicant fails to comply with any of the applicable requirements of this Zoning Ordinance, or violates any condition, safeguard, or requirement imposed by the BZA as a condition of the permit, the BZA shall have the authority to revoke any conditional use

permit after providing notice to the property owner and after public hearing is held in the same manner as the original approval.

- e. *Validity of approval.* The conditional use permit of the permitted shall lapse and become invalid if the conditional use has not commenced or construction in furtherance of the permitted conditional use has not begun within six (6) months, or on the basis that the use or construction has been abandoned for a period of one (1) year or more. The BZA may allow one (1) six (6) month extension if it is applied for in writing by the applicant prior to the expiration of the approval, provided that the BZA finds that the extension is warranted due to circumstances beyond the control of the applicant.
- f. No application that has been denied wholly or in part by the BZA shall be resubmitted for a period of one (1) year from the date of the last denial. The BZA may allow resubmission prior to the expiration of the one (1) year period the applicant can demonstrate a substantial change of circumstances since the previous application.

#### **Section 504.11 Request for Variance from Minimum Standards.**

A request for a deviation from the minimum standards of this Ordinance may be made to the BZA but shall not involve allowing any land uses that are otherwise not allowed in a zoning district nor shall it involve changing the zoning classifications of a parcel of land. After considering a written application, the BZA may allow a variance to the requirements of this Ordinance if it finds that the variance:

1. Will not adversely affect the public health, safety, or welfare or the rights of adjacent property owners or residents;
2. Will not establish or expand a use that is not permitted in the District;
3. Arises from special conditions or attributes which pertain to the property for which a variance is sought, and which were not created by the person seeking the variance;
4. Would eliminate an unnecessary hardship and permit a reasonable use of the land;
5. Will allow the intent of this Ordinance to be observed and substantial justice be done.

#### **Section 504.13 Requests to Change Nonconforming Use.**

The landowner upon whose lot exists a nonconforming use may petition the BZA for authorization to change the nonconforming use to another equal or less intense nonconforming use. The petition shall be made upon forms authorized for that purpose and the petitioner shall meet all of the notice requirements for a petition to amend the Zoning Ordinance.

#### **Section 504.15 Notice and Hearing Before the Board of Zoning Appeals**

Within ten days of receipt of an appeal or petition to the BZA, it shall set a time for the hearing of the appeal or petition and give notice. The hearing on the appeal or petition shall be held within forty-five days of its receipt by the BZA.

- a. At least thirty (30) days prior to the date set for a hearing, the BZA shall cause to be placed on the property that is the subject of a request for conditional use two or more placards such that the placards are visible from a public road to notify the public of the pending request, and the time and date of the hearing.

- b. At least fifteen (15) days prior to the date set for the hearing, the BZA shall publish a notice of the date, time and place of the hearing on the appeal as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and written notice shall be given to the interested parties. The publication area shall be at least the area covered in the appeal.
- c. At least fifteen (15) days prior to the date of the hearing on a conditional use petition, written notice of the conditional use request, and the time, date and place of the hearing shall be sent to all property owners and residents adjacent to the property for which the conditional use has been requested. The notice shall be in a form and content approved by the BZA.
- d. The BZA may require the party making the appeal or filing the petition to pay for the cost of public notice, placarding and any written notice required to be given to interested parties or adjacent landowners.
- e. At the hearing, any party may appear in person, by agent or by an attorney licensed to practice in this state.
- f. The written decision by the BZA shall be rendered within thirty days after the hearing and shall contain findings of fact and conclusions of law. If the board fails to render a written decision within thirty days after the hearing, then any party may pursue additional legal remedies to obtain a decision, including, but not limited to, seeking a writ of mandamus.
- g. Review of BZA Orders. A final decision of the BZA shall be subject to review by the Circuit Court of Greenbrier County, West Virginia, by a petition for a writ of *certiorari* as provided in W.Va. Code §8A-9-1, *et seq.*

## **CHAPTER 505 AMENDMENTS TO THE ZONING ORDINANCE**

### **Section 505.01 Initiation of Amendment**

The Planning Commission or the owners of fifty percent or more of the real property in the area to which the petition relates may petition to amend the zoning ordinance on forms approved by the Planning Commission. The amendment may relate to the text or map or both.

### **Section 505.03 Public Hearing by Planning Commission**

A public hearing shall be held by the Planning Commission within sixty days after a complete petition to amend the zoning ordinance has been received. Incomplete petitions shall be refiled as a new petition and additional associated costs and fees shall be paid by the applicant.

### **Section 505.05 Public Notice of Proposed Amendment**

At least thirty days prior to an election or hearing on the proposed amendment to the zoning ordinance, the Planning Commission shall:

- 1. Placard the property subject to consideration for rezoning with notice of the zoning request and the date, time and place for public hearing. At least two placards shall be visible from a public road.

2. Give written notice by certified mail to the landowner(s) whose property is directly involved in the proposed amendment to the zoning ordinance, which shall include all contiguous landowners; and
3. Publish notice of the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II legal advertisement as well as on the County website and/or Facebook page.

#### **Section 505.07 Report and Recommendation by the Planning Commission**

After review, the Planning Commission shall prepare a report as to whether the proposed zoning amendment is consistent with the current comprehensive plan, and if not, it shall further report whether there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and whether those changes have substantially altered the basic characteristics of the area such that the proposed zoning amendment would be consistent with the changed circumstances, and if so, the Planning Commission shall then make written recommendation to the County Commission for or against adoption of the proposed zoning amendment and the basis therefore.

#### **Section 505.09 Amendment by County Commission**

The County Commission may amend this ordinance with or without an election but only with the advice of the Planning Commission and upon a finding that the proposed amendment is consistent with the current comprehensive plan. If the amendment is inconsistent with the adopted comprehensive plan, then the County Commission with the advice of the Planning Commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and that those changes have substantially altered the basic characteristics of the area.

## **CHAPTER 6 WIRELESS TELECOMMUNICATIONS FACILITIES**

### **ARTICLE 601 WIRELESS TELECOMMUNICATION FACILITIES**

#### **Section 601.01 Purpose.**

This ordinance seeks to ensure the citizens of Greenbrier County have access to wireless telecommunication technology, to protect the residents of Greenbrier County from the proliferation of freestanding towers, and to provide a process and standards for the construction, maintenance, and modification of wireless telecommunication facilities through the following:

- (a) Establishing clear guidelines, standards, and time frames for the exercise of authority for wireless telecommunications facilities through Greenbrier County's zoning, planning, and design standards;
- (b) Allowing competition in telecommunications service;
- (c) Encouraging the provision of advanced telecommunications services to the largest number of businesses, institutions, and residents of Greenbrier County;
- (d) Encouraging the location, design, and construction of wireless telecommunication

facilities that will have minimal impact on the location, minimal visual impact on the scenic resources, and minimize the total number of towers and tower sites throughout Greenbrier County.

- (e) Permitting reasonable access to the public rights-of-way for telecommunications facilities on a competitively neutral basis;
- (f) Ensuring that all telecommunications carriers providing facilities or services comply with federal, state, and local regulations;
- (g) Encouraging the use of existing structures as an alternative to new wireless telecommunications facility construction, including the collocation of new and existing wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community; and
- (h) Protecting the scenic and visual character of the community.

**Section 601.03      Applicability.**

Wireless telecommunications facilities may not be constructed or modified without a zoning permit issued in accordance with the provisions of this Article. Modifications to existing wireless telecommunication facilities, as of the effective date of this Article, are required to comply with this Article.

This Section does not apply to the replacement of any component of a wireless telecommunication facility where the replacement is identical to the component being replaced or to the normal repair and maintenance of a wireless telecommunication facility that does not involve the addition, removal, or change of any of the externally discernable physical components of a wireless telecommunication facility from that which was originally permitted.

**Section 601.05 Substantial Change Criteria.**

For the purposes of determining whether a requested modification is an eligible facilities request for modification under this Section, a proposed facilities modification will substantially change the physical dimensions of an eligible support structure, and therefore not be eligible for the expedited modification process and corresponding eligible facilities application process under this Article, if the requested modification meets any of the following criteria:

- (a) For towers other than towers in the public rights-of-way, the requested increases the height of the tower by more than ten (10) percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten (10) percent or more than ten (10) feet, whichever is greater.
- (b) Changes in height shall be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height shall be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.
- (c) For towers other than towers in the public right-of-way, it involves adding an

appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet.

- (d) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or, for towers in the public right-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten (10) percent larger in height or overall volume than any other ground cabinets associated with the structure.
- (e) It entails any excavation or deployment outside the current site.
- (f) It would defeat the concealment elements of the eligible support structure.
- (g) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in this section.

#### **Section 601.07            General Requirements.**

- (a) *Lighting.* Lighting affixed to any wireless telecommunication facilities shall meet, but not exceed, the minimum lighting required by the Federal Aviation Administration (FAA). For any application where lighting is required, the applicant shall submit documentation from the FAA stating that the proposed lighting meets all applicable FAA standards and regulations.
- (b) *Structural Standards.* Wireless telecommunications facilities shall conform to the most current versions of the ANSI/ASSE A10.48 “Standard Criteria for Safety Practices with the Construction, Demolition, Modification and Maintenance of Communication Structures”; ANSI/TIA-222 Standard, “Structural Standard for Antenna Supporting Structures, Antennas and Small Wind Turbine Support Structures”; and ANSI/TIA-322 Standard, “Loading, Analysis and Design Criteria Related to the Installation, Alteration and Maintenance of Communication Structures.” Wireless telecommunication facilities shall also meet any applicable local building code standards.
- (c) *Height Restrictions.* No wireless telecommunication facility shall exceed one hundred ninety-nine (199) feet in height, unless the applicant sufficiently justifies that the height of the tower will eliminate other similar towers or that the provision of service cannot be accomplished without a tower height in excess of one hundred ninety-nine (199) feet. Any applicant proposing a wireless telecommunication facility greater than one hundred ninety-nine (199) feet in height must provide evidence that the applicant notified the FAA of the intent to build the facility and received a final determination of “no hazard” from the FAA. Wireless telecommunications facilities located atop or within an alternative support structure may extend ten (10%) percent above the height of the structure or to the maximum height permitted in the zoning district in which the structure is located, whichever is

less.

(d) *Collocation.*

- (1) An applicant for a new wireless telecommunication facility must demonstrate by substantial evidence that a bona fide need exists for the construction of a new tower and that no reasonable combination of locations, techniques, or technologies would obviate the need. The applicant for a new facility must further demonstrate that all reasonable efforts have been made to collocate wireless telecommunication facilities on existing towers or alternative support structures.
- (2) Prior to the approval of an application for a wireless telecommunications facility, the applicant shall demonstrate commitment to joint use as follows:
  - (i) The applicant shall submit evidence as part of the application demonstrating that a genuine effort has been made to solicit additional users for the proposed new wireless telecommunications facility. Evidence of this shall include, at a minimum, copies of notices sent by registered mail, return receipt requested, to all other providers of cellular and wireless telecommunications services within the same county and within adjacent counties, or a Class II legal advertisement, advising of the intent to construct a new tower, identifying the location, inviting the joint use and sharing of costs, and requesting a written response within fifteen (15) business days.
  - (ii) As part of the application, the applicant shall attest that the company will encourage the joint use of telecommunications towers within Greenbrier County, committing that there shall be no unreasonable act or omission that would have the effect of excluding, obstructing, or delaying joint use of any tower where fair and just market reasonable compensation is offered for such use.
  - (iii) Wireless telecommunications facilities, other than alternative support structures, shall be designed and built to accommodate a minimum of three (3) wireless telecommunications provider's equipment. The owner of the tower, if different than the applicant, must certify to Greenbrier County that the tower is available for use by other telecommunications service providers on a reasonable and non-discriminatory basis.

(e) *Concealment.*

- (1) All new or modified wireless telecommunication facilities must be concealed in a way that minimizes the adverse visual impact of the facilities through careful design, siting, landscaping, screening, and innovative camouflaging and stealth techniques, unless applicant shows substantial evidence that to do so is impracticable.
- (2) Concealment techniques include fake trees, parapet extensions, silos, fake chimneys, water towers, fiberglass flagpoles, and steeples.
- (3) A description must be included in the application of the possibilities for concealment that have been explored, and why the proposed option was chosen.
- (4) Visual impact analysis of the wireless telecommunication facility is required



using existing information, predictive modeling techniques, photographs, and simulations, to accurately and impartially communicate the potential visual impacts from proposed project.

- (5) If determined to be impracticable by the Zoning Officer for a tower or alternative support structure to be entirely concealed, the applicant will describe how they will utilize materials, colors, textures, screening and landscaping to blend facilities into the natural setting and surrounding buildings.
  - (6) If an antenna is installed on an alternative support structure, the antenna and supporting electrical and mechanical equipment must be a neutral color that is identical to or closely compatible with the color of the alternative support structure so as to make the antenna and related equipment as visually unobtrusive as possible.
  - (7) Any equipment shelter or cabinet must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground
- (f) Replacement or modification of any previously approved concealed tower or facility must substantially conform to previous design characteristics. *Setback.* Each tower shall have a setback of at least one hundred and ten (110%) percent the tower height measured from the tower base to the nearest property line.
- (g) *Collapse Zone.* No habitable structure may be located within the proposed collapse zone. The applicant shall demonstrate that the entire collapse zone is either under lease or owned by the applicant and that no habitable structure will be constructed in the collapse zone while the tower is standing.
- (h) *Equipment Cabinets.* No equipment cabinet for a wireless telecommunications facility shall exceed seven hundred fifty (750) square feet in area, nor twelve (12) feet in height. All equipment cabinets shall be located with the tower and shall be enclosed within a minimum of a six (6) foot security fence and a locked gate.
- (i) *Signs.* No commercial messages nor any other signs beyond that which is required, not to exceed twelve (12) square feet cumulatively, shall be placed on any tower, equipment cabinet, or security fence.
- (j) *Landscaping.*
- (1) Existing mature tree growth and natural landforms shall be preserved to the maximum extent possible. Trees existing within one hundred (100) feet of the wireless telecommunications facility shall not be removed except as required for tower construction, security fence construction, installation of ingress or egress, and the installation of utilities to the facility. To the extent that existing vegetation is the basis for a waiver of the landscaping requirement, preservation of such vegetation shall be a condition of the permit, and if such existing vegetation is removed or destroyed, the applicant shall meet the landscaping specified in Subsection 2 below within six (6) months thereafter.
  - (2) Wireless telecommunications facilities shall be landscaped within six (6) months after the tower and base station are erected with a visual buffer of plant materials that effectively screens the view of the equipment cabinet from adjacent property. The standard visual buffer shall consist of a landscaped strip of at least four (4) feet wide outside the perimeter of the security fencing

enclosing the facilities. The visual buffer shall include vegetation of at least eight (8) feet tall, planted ten (10) feet apart behind a contiguous hedge of shrubs three (3) feet deep. All plant materials shall be species native to West Virginia. In the case where the tower and base station are sited on large wooded lots, the applicant may request that the natural growth preserved around the tower site be considered a sufficient visual barrier, without the need for additional landscaping. Such a request shall accompany the application and shall include photographs of the natural growth to be preserved.

- (k) *Location of Towers or Antenna in or near Historic Sites, Historic Districts, and Designated Scenic Resources.* Applications for wireless telecommunications facilities or antennas subject to this Section shall also demonstrate that the views of, and vistas from, such structures, districts, and resources shall not be impaired or diminished by the placement of the proposed tower or antennas. In no instance shall a wireless telecommunications facility subject to the provisions of this paragraph exceed one hundred and ninety-nine (199) feet in height.
- (l) *Site Demarcation.* The site shall be physically and visually marked in the field, for immediate identification, with any combination of survey irons or flags as needed during the application process or during construction.

**Section 601.09 Approval Authority and Process.**

Applications for wireless telecommunications facilities shall follow the requirements of this section and written findings shall be made by Greenbrier County as to whether the proposed facility complies with the regulations outlined in this Section.

- (a) *Voluntary Pre-application Conference.* All persons seeking approval under this Article may meet with Greenbrier County prior to filing an application. It is recommended that the meeting occur no less than thirty (30) days prior to the anticipated filing of the application to ensure adequate consideration and adequate time to address concerns. At this meeting, Greenbrier County shall explain to the applicant the regulations as well as application forms and submissions that will be required under this Article.
- (b) *Submission Materials.* Where telecommunications facilities are a permitted use, applications shall be submitted to the Code Official, who may confer with the Planning Commission in the application process as needed. Where telecommunications facilities are a conditional use, applications shall be submitted to the Board of Zoning Appeals. No application shall be deemed complete unless it is in writing, is accompanied by the applicable fees, includes the required submittals, and is attested to by the applicant, certifying the truth and accuracy of the information provided in the application.
  - (1) All applications shall include the following, in addition to the applicable subsections below:
    - (i) The following contact information for the applicant:
      - (A) Name,
      - (B) Title,
      - (C) Mailing address,
      - (D) Phone number,

- (E) West Virginia tax number, and
  - (F) Electronic mail address (optional).
  - (ii) If a corporation, the name and address of the registered agent of applicant in West Virginia and the state of incorporation of applicant.
  - (iii) If applicant is an entity other than a corporation, such as a partnership or limited liability company, the names and business addresses of the principals.
  - (iv) If the applicant is not the owner or person in control of the structure or site, the following shall be required:
    - (A) Attestation that the owner or person in control of the structure or site has consented to the new facility, collocation, or for any modification that require a substantial change or are otherwise not considered an eligible facilities modification.
    - (B) If the structure is in a public right-of-way, the applicant must also attest to having authorization to install, maintain, and operate a wireless telecommunication facility in, under, and above the public right-of-way.
  - (v) If the applicant proposes a modification involving collocation of transmission equipment or the replacement of transmission equipment, the following shall be required: Complete copies of the underlying land use approvals for siting of the tower or base station proposed to be modified, establishing that, at the time of submittal of the application, such tower or base station constituted an eligible support structure.
- (2) Applications for eligible facilities requests, as defined herein and subject to a determination under Section 21-139, Substantial Change Criteria:
- (i) Attestation that the proposed request is subject to review under Section 6409 of the Spectrum Act as an “eligible facilities modification.”
  - (ii) If the applicant proposes a modification that will result in an increase in height of the eligible support structure, the following shall be required: Record drawings, as-built plans, or the equivalent, showing the height of the eligible support structure, (a) as originally constructed and granted approval by Greenbrier County or other applicable local zoning or similar regulatory authority, or (b) as of the most recent modification that received approval, prior to the passage of Section 6409(a) of the Spectrum Act of 2012, whichever height is greater.
  - (iii) If the applicant proposes an eligible facilities request for modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing restrictions or requirements imposed by Greenbrier County ordinances, the following shall be required: A copy of the document setting forth such pre-existing restrictions or requirements, together with a certification that the proposed facilities modification conforms to such restrictions or requirements.
  - (iv) If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is

subject to pre-existing concealment restrictions or requirements, or was constructed with concealment elements, the following shall be required: Applicant shall set forth the facts and circumstances demonstrating that the proposed modification would not defeat the existing concealment elements of the eligible support structure. If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure, applicant shall include a detailed visual simulation depicting how the eligible support structure will appear after the proposed modification is complete. The visual simulation shall depict, to scale, the eligible support structure in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.

- (v) If the applicant proposes a modification that will result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower or will protrude from the edge of a non-tower eligible support structure, the following shall be required: Record drawings and as-built plans, or the equivalent, showing, at a minimum, the edge of the eligible support structure at the location of the proposed modification.
- (vi) If the applicant proposes a modification to an eligible support structure that (a) will include any excavation, (b) would result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower, or (c) would protrude from the edge of a non-tower eligible support structure, the following shall be required: A description of the boundaries of the site and a scaled drawing based on an accurate traverse, with angular and lineal dimensions, depicting the boundaries of the site in relation to the tower or base station proposed to be modified and depicting the proposed location, elevation, and dimensions of the new or replacement transmission equipment. Greenbrier County may require a survey by a land surveyor licensed in the state of West Virginia when, in the judgment of the approval authority, a survey is reasonably necessary to verify the boundaries of the site to determine if the proposed facilities modification would result in a substantial change in the physical dimensions of the eligible support structure.
- (vii) If the applicant proposes a modification to a tower, the following shall be required: A stamped report by a state of West Virginia registered or licensed professional engineer demonstrating that the tower with the proposed modifications will comply with applicable structural, electrical, and safety codes, including by way of example, but not limited to, the most recent revision of EIA/TIA-222, published by the American National Standards Institute (as amended), allowable wind speed for the applicable zone in which the tower is located, and describing the general structural capacity of the tower with the proposed modifications, including:
  - (A) the number and type of antennas that can be accommodated;

- (B) the basis for the calculation of capacity; and
- (C) a written statement that the proposal complies with all federal guidelines regarding interference and ANSI standards as adopted by the FCC.

Greenbrier County may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the applicant's demonstration of compliance.

- (viii) If the applicant proposes a modification to a base station, the following shall also be required: A stamped report by a state of West Virginia registered or licensed professional engineer demonstrating that the base station, with the proposed modifications, will comply with applicable structural, electrical, and safety codes.
  - (ix) If the applicant proposes a modification requiring an alteration to the eligible support structure, excavation, installation of new equipment cabinets, or any other activities impacting or altering the land, existing structures, fencing, or landscaping on the site, the following shall be required: A detailed site plan and drawings, showing the true north point, drawn to an appropriate decimal scale, indicating and depicting:
    - (A) the location, elevation, and dimensions of the existing eligible support structure;
    - (B) the location, elevation, and dimensions of the existing transmission equipment;
    - (C) the location, elevation, and dimensions of the transmission equipment, if any, proposed to be collocated or that will replace existing transmission equipment;
    - (D) the location, elevation, and dimensions of any proposed new equipment cabinets and the intended use of each;
    - (E) any proposed modification to the eligible support structure;
    - (F) the location of existing structures on the site, including fencing, screening, trees, and other significant site features; and
    - (G) the location of any areas where excavation is proposed, showing the elevations, depths, and width of the proposed excavation and materials and dimensions of the equipment to be placed in the area excavated.
  - (x) Copies of any environmental documents required by any state or federal agency. These shall include the environmental assessment required by 47 C.F.R. Part 1 (Part 1—Practice and Procedure), Section 1.1307, as amended, or, in the event that an environmental assessment is not required, a statement that describes the specific factors that obviate the requirement for an environmental assessment.
- (3) Applications for new facilities, collocations, or for any modifications that require a substantial change or are otherwise not considered an eligible facilities modification, as defined by this Article, shall include the following in the application submittal:
- (i) Copies of any easements necessary to access the property and proof

- that the same has been recorded, or will be recorded, in the applicable county clerk's office.
- (ii) Certification of the wireless telecommunication facility's collocation capabilities or whether the proposal is a collocation on an existing facility and whether the applicant anticipates other lessees will be able to utilize the facility.
  - (iii) A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility attesting that the facility will comply with current FCC regulations.
  - (iv) Evidence of compliance with applicable local, state, and federal historic preservation laws and regulations, including a copy of a written request for a statement of compliance sent to the necessary local, state, and federal historic preservation authorities and said authorities' written responses.
  - (v) A map showing the location of all wireless telecommunications facilities above ground level, except antennas located on roof tops, within a three (3) air-mile radius of the proposed facility, unless this information has been previously made available to Greenbrier County.
  - (vi) A site plan is required and shall include:
    - (A) Certification by a professional engineer indicating the location, including latitude and longitude, type, and height of the proposed facility; antenna capacity; on-site and abutting off-site land uses; topography; setbacks; parking; fencing; landscaping; the collapse zone; easements or other means of access; and all applicable American National Standards Institute (ANSI) technical and structural codes.
    - (B) A topographic map identifying the location of the site for the proposed wireless telecommunications facility.
    - (C) A stormwater and erosion control plan for the access road to the site, or a written statement that there will be no changes implemented with regards to any existing roads.
    - (D) Proximity of the proposed site to flood hazard areas.
    - (E) Certification by the applicant that the proposed facility complies with all FCC standards for radio emissions.
    - (F) A boundary survey completed by a land surveyor licensed by the State of West Virginia, and which includes the access road and vicinity map.
    - (G) Photo simulations of the proposed facility taken from at least two perspectives, with emphasis placed on residential areas, public rights-of-way, public parks, designated scenic resources, and any historic site or district. The photos shall demonstrate whether the facility will be a stealth tower. Each photo must be labeled with the line of sight, elevation, and date taken.
  - (vii) The applicant shall identify and demonstrate consideration of each and every designated scenic resource or viewshed, as recognized by federal, state, or local government in which the proposed wireless

telecommunications facility is located or visible and shall provide a scenic assessment for the project area consisting of the following:

- (A) Elevation drawings of the proposed facility, showing height above ground level.
  - (B) A landscaping plan indicating the proposed placement of the facility on the site.
  - (C) Location of existing structures, trees, and other significant site features.
  - (D) A description and visual simulation of possible stealth tower design.
  - (E) A description of the lighting and type of lighting the facility will implement, including, but not limited to, the color of the lighting and whether it will be constant, flashing, or strobe.
  - (F) A narrative discussing the extent to which the proposed facility would be visible from any residential areas, height of vegetation within one hundred (100) feet of the facility at the time of application, and the distance to the proposed facility from a designated scenic resource's noted viewpoints.
- (viii) A propagation map, before and after, of how the proposed facility fits in the existing telecommunications network. The applicant must provide written evidence of a tenant for the proposed wireless telecommunications facility and the anticipated date that the facility will be occupied and used by such tenant. Such evidence may include a lease or letter of intent from the tenant. This submission requirement does not require disclosure of confidential business information. The Zoning Officer, Planning Commission, and Board of Zoning Appeals are hereby authorized to and may enter into a non-disclosure agreement with the applicant provided the non-disclosure agreement relates only to the applicant's propagation maps.
- (ix) Evidence demonstrating that an existing building, site, or structure cannot accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:
- (A) Evidence that no existing facilities, located within the targeted market coverage area, meet the applicant's engineering requirements.
  - (B) Evidence that existing facilities do not have sufficient height and cannot be increased in height at a cost not exceeding fifty (50%) percent of the cost required to construct the existing tower in present-day dollars, to meet the applicant's engineering requirements.
  - (C) Evidence that existing facilities do not have sufficient structural strength to support the applicant's proposed antenna and related equipment. Specifically:
    - (1) Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of the existing facilities,

and the existing facilities cannot be reinforced to accommodate the new equipment.

- (2) The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment with the existing facility would cause interference with the applicant's proposed antenna.
- (3) Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.

(D) Evidence that the fees, costs, or contractual provisions required by the owner of the existing facility or structure in order to share or adapt an existing facility are unreasonable, provided the existing facility was constructed prior to the effective date of the Article. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable.

(E) Evidence that the applicant has made diligent good faith efforts to negotiate collocation on an existing facility, building, or structure, and has been denied access.

- (x) A form of surety approved by Greenbrier County to pay for the costs of removing the facility to a depth of three (3) feet below ground level if it is abandoned.
- (xi) Proof of compliance with all applicable federal, state, and local regulations, including the NEPA (National Environmental Policy Act) Environmental Compliance Checklist and Section 106 of NHPA (National Historic Preservation Act).
- (xii) A statement from the applicable county's assessor indicating the modification in real property taxation, if any, including the applicable tax rate to be charged, the real property subject to the tax rate, and the person or persons responsible for the payment of the real property taxes.

(c) *Application Fee and Costs.* An application shall include a non-refundable payment in accordance with the fee schedule adopted by Greenbrier County. The application shall not be considered complete until this fee is paid.

(d) *Notice of Complete Application.*

- (1) Upon receipt of an application, the applicant shall be provided with a dated receipt of submission.
- (2) Within thirty (30) calendar days of receipt of an application, the application shall be reviewed to determine if the application meets the submission requirements. Any requests for a waiver from the submission requirements shall be reviewed prior to determining the completeness of the application.
- (3) If the application is not complete, the applicant shall be notified in writing, specifying the additional materials or information required to complete the application.
- (4) If the application is complete, the applicant shall be notified in writing of this determination and, if the application is to be reviewed by the Planning



Commission or Board of Zoning Appeals, require the applicant to provide a sufficient number of copies of the application for the Planning Commission or Board of Zoning Appeals.

- (e) *Modification of Application Prior to Approval.* In the event that after submittal of the application, or as a result of any subsequent submittals, the applicant materially modifies the proposed facilities described in the initial application, the application as modified will be considered a new application subject to commencement of a new application review period and application fee; provided that, applicant and the approval authority may, in the alternative, enter into a mutually agreeable tolling agreement allowing Greenbrier County to request additional submittals and additional time that may be reasonably necessary for review of the modified application.
- (f) *Approval of Application.* The deadlines hereunder begin to run when the application is filed and may be tolled only by mutual agreement or in cases where the application is incomplete and notice is provided to the applicant that the application is insufficient.
  - (1) *Approval of Eligible Facilities Modifications.* Within sixty (60) calendar days of the date of receipt of an eligible facilities modification application, a determination shall be made as to whether the proposed modification is an eligible facilities modification, and contemporaneously a permit issued or the application denied.
  - (2) *Approval of Applications involving (1) collocation or (2) modifications that are not eligible facilities modifications.* Within ninety (90) calendar days of the date on which Greenbrier County receives an application for collocation, as defined by this Article, or a modification that is not an eligible facilities requests, as defined by this Article, a determination shall be made on the application, and contemporaneously a permit issued or the application denied.
  - (3) *Approval of All New Towers.* Within one hundred and fifty (150) calendar days of the date on which Greenbrier County receives an application for the construction of a new wireless telecommunication facility, or any modification that is not solely for a collocation, and that does not meet the requirements for eligible facilities modification under this Article, a determination shall be made on the application, and contemporaneously a permit issued or the application denied.
- (g) *Denial of All Applications.* A denial of an application shall set forth in writing the reasons for the denial and shall be provided to the applicant contemporaneously with the denial of the application.
- (h) *Tolling Timeline for Approval Due to Incompleteness.*
  - (1) To toll the timeline due to application incompleteness, written notice shall be provided to the applicant within thirty (30) calendar days of receipt of the application, clearly and specifically delineating all missing documents or information.
  - (2) The timeline for review (when tolling ends) begins running again when the applicant makes a supplemental submission in response to the notice of incompleteness.
  - (3) Following a supplemental submission, Greenbrier County shall have ten (10)

business days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeline is tolled in the case of second or subsequent notices, and tolling ends when the applicant makes supplemental submissions. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

**Section 601.11 Changes to Approved Application.**

Any changes to an approved application must be processed pursuant to Section 21-141 and may be subject to the application fee, at the discretion of Greenbrier County.

**Section 601.13 Abandonment.**

- (a) Any wireless telecommunications facility that is not in operation for a continuous period of twelve (12) months shall be considered an abandoned facility. If negotiations are pending with a service provider to place equipment at the facility, a letter of intent shall be provided to Greenbrier County prior to the expiration of the twelve (12) months.
- (b) The owner of an abandoned facility shall be notified in writing of an order to remove the facility within no less than ninety (90) calendar days of receipt of the written notice. Failure to remove the wireless telecommunication facility within ninety (90) calendar days shall be grounds to remove the wireless telecommunications facility at the owner's expense and may use the surety to pay this expense. If two or more users occupy a single tower or alternative support structure, this provision shall not become effective until all users cease using the tower or alternative support structure.
- (c) Greenbrier County requires the posting of surety before commencement of construction of an approved wireless telecommunication facility to ensure removal after the facility is no longer being used. The owner of the facility may apply to Greenbrier County for release of the surety only when the facility and related equipment are removed by the owner to the satisfaction of the Greenbrier County.

**Section 601.15 Retention of Expert Assistance and Reimbursement by Applicant.**

- (a) Greenbrier County may hire any consultant or expert necessary to assist Greenbrier County in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any site inspections.
- (b) An applicant shall deposit with Greenbrier County funds sufficient to reimburse Greenbrier County for all reasonable costs of consultant and expert evaluation and consultation to Greenbrier County in connection with the review of any application, including services needed during the construction and modification of the site, once permitted. The initial deposit shall be submitted with the application. Greenbrier County shall maintain a separate escrow account for all such funds. The consultants and experts shall invoice Greenbrier County for services rendered. If at any time during the process, this escrow account has a balance of less than \$8,500, the applicant shall immediately, upon notification by Greenbrier County, replenish said escrow account so that it has a balance of at least \$5,000. Such additional escrow funds shall be deposited with Greenbrier County before any further action or

consideration is taken on the application. If the amount held in escrow by Greenbrier County is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant. Consultants and experts shall, upon request, provide copies of all billing to the applicant.

- (c) The total amount of the funds needed as set forth in the Subsection b of this Section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis, and inspection of any construction or modification.

**Section 601.17 Indemnification.**

- (a) Any application for wireless telecommunication facilities that is proposed for Greenbrier County property shall contain a provision with respect to indemnification. Such provision will require the applicant, to the extent permitted by law, to at all times indemnify and hold harmless Greenbrier County, its commissions, and its agents, from any and all penalties, damages, or costs, arising out of any claims that might arise from said facility, excepting however, any portion of such claims, suits, demands, causes of action, or award of damages as may be attributable to the negligent or intentional acts or omissions of Greenbrier County, or its commissions or agents.
- (b) With respect to the penalties, damages, or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by Greenbrier County. Notwithstanding the above, an indemnification provision shall not be required in those instances where Greenbrier County itself applies for and secures a permit for wireless telecommunication facilities.

**Section 601.19 Other Permits Required.**

Compliance with this Section does not exempt compliance with all other applicable federal, state, and local regulations, Sections, or requirements.

**ARTICLE 602 SMALL CELL WIRELESS TELECOMMUNICATION FACILITIES**

**Section 602.01 Purpose.**

Pursuant to the West Virginia Small Wireless Facilities Deployment Act, codified under West Virginia Code Section 31H-1-1 et seq. as amended, this Ordinance establishes nondiscriminatory policies and procedures for the deployment of small wireless facilities. This Ordinance allows for the efficient deployment of small wireless facilities while preserving the integrity, safe usage, and reasonable aesthetic qualities of Greenbrier County's rights-of-way and Greenbrier County as a whole. Greenbrier County seeks to establish uniform standards consistent with federal and state law to address the placement of small wireless facilities and associated poles to achieve the following:

- (a) Prevent interference with the use of streets, sidewalks, alleys, parkways, and other public ways and places;

- (b) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (c) Prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;
- (d) Protect against environmental damage, including damage to trees;
- (e) Preserve the character of historic districts or areas; and
- (f) Facilitate rapid deployment of small cell facilities to provide the benefits of wireless services to Greenbrier County's residents and visitors.

**Section 602.03 Requirements for Permitted Use Status; Zoning Applicability.**

- (a) A wireless provider may collocate small wireless facilities and install, maintain, modify, and replace the wireless provider's own utility poles or, with the permission of the owner, a third party's utility pole, in, along, across, upon, and under the right-of-way in any zone, or outside of the right-of-way on property not zoned exclusively for single-family residential use, as long as the following conditions are met:
  - (1) The wireless provider receives all necessary permits as required by this Ordinance;
  - (2) The wireless provider pays all necessary fees and rates as required by this Ordinance;
  - (3) The structures and facilities are installed and maintained so as not to obstruct or hinder the usual travel or public safety on the right-of-way or to obstruct the legal use of the right-of-way by Greenbrier County or other utilities;
  - (4) Each new or modified utility pole does not exceed the greater of ten (10) feet above the tallest existing utility pole in place as of March 5, 2019, within five hundred (500) feet of the new pole, or fifty (50) feet above ground level;
  - (5) New small wireless facilities may not extend more than ten (10) feet above an existing utility pole in place as of March 5, 2019; or if collocating a new utility pole, above the height permitted for a new utility pole as described in Subsection (a)(4) of this Section.
  - (6) The structures and facilities comply with the reasonable, written design guidelines created by Greenbrier County, as enumerated in Section 4 of this Ordinance;
  - (7) If replacement of decorative poles is necessary to collocate a small wireless facility, such replacement shall reasonably conform to the design aesthetics of the decorative poles being replaced;
  - (8) If located in a historic district, as defined herein, the structures and facilities follow applicable design and concealment measures to protect the nature of the historic district;
  - (9) The area has not been designated solely for underground communications and electrical lines, provided that:
    - (A) Greenbrier County required all such lines to be placed underground by a date certain that is at least three (3) months prior to submission of the permit application;
    - (B) The utility poles that Greenbrier County allows to remain shall be made available for the collocation of small wireless facilities and may be replaced by a wireless provider to accommodate the collocation of small wireless facilities;

- (C) A wireless provider may install a new utility pole in the designated area when unable to provide wireless service by collocating on a remaining structure; and
- (D) If the small wireless facilities are installed before Greenbrier County adopts requirements that communications and electric lines be placed underground, the wireless provider may:
  - (i) Maintain the small wireless facilities in place, subject to any applicable pole attachment agreement with the utility pole owner; or
  - (ii) Replace the associated utility pole within fifty (50) feet of the prior location, subject to the permission of the utility pole owner; and
- (10) The structures and facilities are compliant with any other applicable local ordinance or state or federal law.
- (b) Any wireless facility or utility pole that does not meet the above requirements is not a permitted use.

**Section 602.05 Design Guidelines.**

- (a) Unless such guidelines prevent a wireless provider from serving a location in Greenbrier County's jurisdiction, the following design guidelines shall apply to all small wireless facilities in the rights-of-way within Greenbrier County's jurisdiction:
  - (1) Small wireless facilities shall not obstruct or hinder the usual travel or public safety on the right-of-way or obstruct the legal use of such right-of-way by utilities or authorities.
  - (2) Small wireless facilities shall not obstruct the safe operation of traffic control equipment or streetlights.
  - (3) Small wireless facilities shall not interfere with driver or pedestrian sight lines or clear zones for transportation or pedestrians.
  - (4) Small wireless facilities shall comply with all applicable federal and state standards regarding pedestrian access and movement.
  - (5) Small wireless facilities shall comply with generally applicable health and safety codes.
  - (6) Small wireless facilities shall be constructed in a manner to minimize physical damage to private property.
  - (7) Small wireless facilities shall be located in alleys to the greatest extent feasible as determined by Greenbrier County.
  - (8) Small wireless facilities that are pole-mounted on decorative poles shall use concealed, camouflage, or stealth-style antennas in which all equipment is contained within the pole to which the antenna is mounted. The pole and antenna shall be painted to match the poles in the area or another color approved by Greenbrier County.
  - (9) Small wireless facilities that are building-mounted shall use concealed, camouflage, or stealth-style antennas to blend into the structure seamlessly by using one or more of the following methods and approved by Greenbrier County:
    - (A) Completely enclosed inside of a box that mimics the materials or aesthetics of the building to which the small wireless facility is mounted;
    - (B) Completely concealed inside an existing portion of a building such as the cupola or screening for mechanical equipment; or

- (C) Completely concealed behind a parapet or other barrier so as to not be visible from any point at ground level on the right-of-way; and
- (10) Small wireless facilities shall not be used to display a sign.
- (b) Unless such guidelines prevent a wireless provider from serving a location in Greenbrier County's jurisdiction, the following design guidelines shall apply to all antennas associated with small wireless facilities within Greenbrier County's jurisdiction:
- (1) An antenna shall be no more than three (3) cubic feet in volume.
  - (2) When mounted at the top of a utility pole, the antenna shall be aligned with the centerline of the utility pole and enclosed in a cylindrical shroud.
  - (3) When mounted at the top of a utility pole, a pole-top extension antenna shall be no taller than necessary for separation from other attachments.
  - (4) When mounted on or within a decorative pole, the antenna shall conform to the design aesthetics of that pole, including the design, style, and color.
  - (5) When mounted on another structure, the antenna shall not impair the function of the structure.
- (c) Unless such guidelines prevent a wireless provider from serving a location in Greenbrier County's jurisdiction, the following design guidelines shall apply to all wireless equipment associated with antennas within Greenbrier County's jurisdiction:
- (1) Where feasible, the wireless equipment shall be located inside of the utility pole on which the antenna is mounted.
  - (2) Where infeasible to locate the wireless equipment inside the utility pole, the wireless equipment shall be located in a ground-mounted cabinet and shall conform to the design aesthetics of the pole, including the design, style, and color or a design otherwise approved by Greenbrier County. The ground-mounted cabinet shall be located within the same width of space parallel to the right-of-way boundaries as the pole on which the antenna is mounted. The ground-mounted cabinet shall not exceed thirty-six (36) inches in height.
  - (3) When located in alleys or non-improved rights-of-way, wireless equipment may be mounted on a utility pole, provided the wireless equipment is not located beyond the top of the utility pole. If a wireless provider chooses to mount the equipment on a utility pole in an alley or non-improved right-of-way, the equipment shall be flush-mounted and shall provide a minimum clearance of eight (8) feet above all streets, driveways, and sidewalks.
- (d) Unless such guidelines prevent a wireless provider from serving a location in Greenbrier County's jurisdiction, all replacement utility poles within Greenbrier County's jurisdiction shall be:
- (1) Installed within three (3) feet of the location of the original pole; and
  - (2) Of a material and dimensions that matches existing adjacent poles or consistent with any published local standards for utility pole placements.
- (e) Unless such guidelines prevent a wireless provider from serving a location in Greenbrier County's jurisdiction, all new utility poles within Greenbrier County's jurisdiction shall:
- (1) Be aligned with the predominate pattern of existing poles where present, or with street trees along the same side of the right-of-way;
  - (2) Not be located directly in front of storefront windows, primary walkways, primary windows, or primary ingress/egress points to buildings;
  - (3) Be sited outside the critical root zone of existing street trees;

- (4) Not impede vehicular or pedestrian traffic;
  - (5) Not be located where sidewalks are narrow;
  - (6) Not block any emergency service providers or emergency service access, including access to fire hydrants;
  - (7) Not be located upon any street or part of a street from which utility poles have been ordered removed by Greenbrier County;
  - (8) Not be located on any street or side of a street where there is already an excess of poles; and
  - (9) Be spaced no closer than 200 feet apart.
- (f) Unless such guidelines prevent a wireless provider from serving a location in Greenbrier County's jurisdiction, all cables and wires associated with small wireless facilities within Greenbrier County's jurisdiction shall:
- (1) Be installed within the utility pole; or
  - (2) Be flush-mounted to the utility pole, and encased in cover or conduit, where internal installation is not feasible.
- (g) If an electric meter is required, the electric meter shall be mounted in close proximity to the small wireless facility and have similar design characteristics.

**Section 602.07 Permit Application Requirements.**

- (a) Every wireless provider who wishes to collocate a small wireless facility or install or replace a utility pole in or outside of the right-of-way or modify an existing small wireless facility or utility pole in or outside the right-of-way must obtain a permit from Greenbrier County under this Ordinance.
- (b) A wireless provider's permit application shall include the following:
- (1) The applicant's name, address, phone number, email address, and a list of all duly authorized agents acting on behalf of the applicant.
  - (2) A general description of the proposed small wireless facility and associated pole, if applicable.
  - (3) Construction and engineering drawings and information demonstrating compliance with state law and this Ordinance, including a structural analysis of the pole where the applicant proposes to install the small wireless facility.
  - (4) An attestation that the small wireless facilities will be operational for use by a wireless provider within one (1) year after the permit issuance date, unless Greenbrier County and the applicant agree to extend the period or delay is caused by lack of commercial power or communications transport facilities to the site.
  - (5) An attestation that the small wireless facility will comply with FCC regulations concerning (i) radiofrequency emissions from radio transmitters and (ii) unacceptable interference with the public safety spectrum and CII spectrum, including compliance with the abatement and resolution procedures for interference with the public safety spectrum and CII spectrum established by the FCC set forth in 47 C.F.R. § 22.970 through 47 C.F.R. § 22.973 and 47 C.F.R. § 90.672 through 47 C.F.R. § 90.675.
  - (6) Proof that the applicant maintains property insurance for its property's replacement cost against all risks, workers' compensation insurance as required by law, and commercial general liability insurance with respect to its activities on Greenbrier County improvements or rights-of-way of not less than one million dollars (\$1,000,000) of coverage for damages, including bodily injury and property damage.

- The commercial general liability policy shall include Greenbrier County as an additional insured party, and the wireless provider shall provide certification and documentation of such; except that if a wireless provider chooses to self-insure, the wireless provider does not have to name Greenbrier County as an additional insured party but shall provide to Greenbrier County evidence sufficient to demonstrate its financial ability to self-insure the same coverage and limits required herein with a Certificate of Insurance or similar surety.
- (7) An attestation that the applicant will provide a bond, escrow deposit, letter of credit, or other financial surety in an amount required by Greenbrier County to ensure removal of abandoned or unused wireless facilities or damage to the right-of-way or Greenbrier County property caused by the applicant or its agents, as set by Greenbrier County, prior to beginning any installation.
  - (8) The appropriate fees, as further explained in Subsection (d) of this Section.
  - (9) An attestation that the applicant will notify Greenbrier County and call the West Virginia 811 "Call Before You Dig" Hotline in order to locate all underground utilities at least seventy-two (72) hours before making any excavation.
- (c) A wireless provider that seeks to use a Greenbrier County utility pole shall provide the following additional information in its permit application:
- (1) The additional wind load that the wireless facility adds to the pole.
  - (2) A description of how the wireless provider will provide power to the small wireless facility.
  - (3) A description of how the small wireless facility would attach to the pole, including whether it would involve drilling holes into the pole or attaching bands to the pole.
  - (4) Whether there will be additional wire in the pole.
  - (5) An attestation that the small wireless facility will meet all clearance requirements if it is over the roadway.
  - (6) An attestation that the small wireless facility will not interfere with any other equipment signals on Greenbrier County utility poles.
- (d) *Fees.* A wireless provider's permit application shall be accompanied with the following fees:
- (1) Two hundred dollars (\$200) for the collocation of each small wireless facility on an existing utility pole for the first five (5) poles in the same application, followed by one hundred dollars (\$100) for each small wireless facility thereafter in the same application.
  - (2) Two hundred and fifty dollars (\$250) for the proposed installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility that is a permitted use.
  - (3) One thousand dollars (\$1,000) for the proposed installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility that is not a permitted use.
- (e) *Exemptions.* Greenbrier County shall not require an additional application, approval, or permit, or require any fees or other charges from a wireless provider authorized to occupy the right-of-way, for the following:
- (1) Routine maintenance;
  - (2) The replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller; or



- (3) The installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on existing cables that are strung between existing utility poles in compliance with applicable safety codes and the pole owner's construction standards and engineering practices.

**Section 602.09 Permit Application Processing.**

- (a) All permit applications filed pursuant to this Ordinance shall be reviewed for completeness by Greenbrier County. Greenbrier County shall notify the applicant via certified mail whether the application is complete within ten (10) days of receiving the application.
- (b) If the application is incomplete, Greenbrier County shall notify the applicant, in writing, what specific information is missing from the application. All deadlines required by this Section are tolled from the time Greenbrier County sends the written notice of incompleteness to the time Greenbrier County receives the missing information from the applicant.
- (c) A complete application for collocation of a small wireless facility shall be processed within sixty (60) days of the receipt of the complete application.
- (d) A complete application for the installation, modification, or replacement of a utility pole in the right-of-way shall be processed within ninety (90) days of the receipt of the complete application.
- (e) Within sixty (60) days of receiving a complete application for use of a Greenbrier County utility pole, Greenbrier County shall provide a good faith estimate of any make-ready work necessary to enable the pole to support the requested collocation. If the applicant accepts the good faith estimate, the make-ready work shall be completed by the applicant within sixty (60) days of acceptance. Requirements for make-ready work are as follows:
  - (1) Greenbrier County may require replacement of Greenbrier County utility pole only if it demonstrates that the collocation would make Greenbrier County utility pole structurally unsound;
  - (2) The person owning, managing, or controlling Greenbrier County utility pole may not require more make-ready work than is required to meet applicable codes or industry standards;
  - (3) Fees for make-ready work may not include costs related to preexisting or prior damage or noncompliance; and
  - (4) Fees for make-ready work, including any pole replacement, may not exceed the actual costs or the amount charged to other communications service providers for similar work and may not include any consultant fee or expense.
- (f) Processing deadlines may also be tolled by agreement of the applicant and Greenbrier County.
- (g) Greenbrier County may deny the application if the application:
  - (1) Materially interferes with the safe operation of traffic control equipment;
  - (2) Materially interferes with sight lines or clear zones for transportation or pedestrians;
  - (3) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
  - (4) Fails to comply with the reasonable and nondiscriminatory spacing requirements of general application adopted by Greenbrier County that concern the location of ground-mounted equipment and utility poles, as specified in Section 4 of this Ordinance;

- (5) Fails to comply with the reasonable and nondiscriminatory rules approved by Greenbrier County in Section 11 of this Ordinance;
  - (6) Fails to comply with the design guidelines in Section 4 of this Ordinance; or
  - (7) Fails to attest that a small wireless facility will comply with relevant FCC regulations.
- (h) If Greenbrier County denies the application, it shall document the basis for the denial, including the specific provision on which the denial was based, and send the documentation to the applicant on or before the day Greenbrier County denies the application. The applicant may cure the deficiencies identified within thirty (30) days without paying an additional application fee. If the applicant cures after thirty (30) days, the applicant shall pay an additional application fee in order for the revised application to be considered. Greenbrier County shall have thirty (30) days to approve or deny the revised application.
  - (i) The installation or collocation shall be completed within one (1) year after the permit issuance date unless Greenbrier County and the applicant agree to extend the period or a delay is caused by the lack of commercial power or communications facilities at the site.
  - (j) Upon approval of the application and posting of the reasonable bond, escrow deposit, letter of credit, or other financial surety required by Greenbrier County to ensure removal of abandoned or unused wireless facility or damage to the right-of-way or Greenbrier County property, the applicant may undertake the installation or collocation and operate and maintain the small wireless facilities and associated utility poles.
  - (k) An applicant may file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities located within Greenbrier County's jurisdiction. The denial of one (1) or more small wireless facilities in a consolidated application may not delay processing of any other small wireless facilities in the same batch.
  - (l) Permits issued under this Ordinance authorize the applicant to operate and maintain the small wireless facilities and any associated utility poles that are covered by the permit for a period of ten (10) years.

**Section 602.11 Revocation of Permit.**

Greenbrier County may revoke an applicant's permit at any time if the conditions of the permit required pursuant to Chapter 31H of the West Virginia Code are no longer being satisfied.

**Section 602.13 Rates.**

- (a) If an applicant's wireless facilities are located in a right-of-way, the applicant shall pay a rate of twenty-five dollars (\$25) per year, per small wireless facility for occupancy and use of the right-of-way.
- (b) If an applicant collocates its wireless facilities on a Greenbrier County utility pole, the applicant shall pay a rate of sixty-five dollars (\$65) per year, per Greenbrier County utility pole for the occupancy and use of Greenbrier County utility pole.

**Section 602.15 Public Right-of-Way Requirements.**

- (a) Greenbrier County may prohibit or restrict the applicant from working within a right-of-way when a road is closed, or its access is limited to the public.
- (b) The applicant shall employ due care during the installation, maintenance, or any other work in the right-of-way, and shall comply with all safety and right-of-way protection requirements of applicable laws, codes, guidelines, standards, and practices, and any

additional commonly accepted safety and public right-of-way protection standards, methods, and devices to the extent consistent with applicable laws.

- (c) Unless otherwise specified in the permit, the applicant shall erect a barrier around the perimeter of any excavation and provide appropriate traffic control devices, signs, and lights to protect, warn, and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic control plan in accordance with the Uniform Manual of Traffic Control Devices. The applicant shall maintain all barriers and other traffic control and safety devices related to an open excavation until the excavation is restored to a safe condition or as otherwise directed by Greenbrier County.
- (d) The applicant shall not interfere with any existing facilities or structures in the right-of-way, and shall locate its lines and equipment in such a manner as not to interfere with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abuts any right-of-way.
- (e) If Greenbrier County determines that a small wireless facility or utility pole violates the building code or otherwise creates a danger to the public's health, safety, and welfare, Greenbrier County shall follow the processes and procedures laid out in the West Virginia State Building Code.
- (f) Any damage to the right-of-way directly caused by an applicant's activities in the right-of-way shall be repaired in order to return the right-of-way to its functional equivalence before the damage. After the applicant receives written notice, Greenbrier County may assess a fine of one hundred dollars (\$100) per day until the repairs are completed. If the applicant fails to make the repairs required by Greenbrier County within a reasonable time after written notice, Greenbrier County may complete the repairs and charge the applicant for the reasonable, documented cost of the repairs in addition to the one hundred dollar (\$100) daily fine.

#### **Section 602.17 Additional Local Rules.**

- (a) Greenbrier County is authorized to create reasonable rules for construction and public safety in the rights-of-way, including wiring and cabling requirements, grounding requirements, and abandonment and removal provisions, to the extent any additional rules are necessary.
- (b) These rules shall be applied in a nondiscriminatory manner and shall be posted publicly on Greenbrier County's website and shall be available to the public in print at the County Clerk's office. If Greenbrier County determines that no additional rules are necessary, Greenbrier County's website shall state that no additional rules apply. Greenbrier County may change the guidelines in a prospective manner for all permit applications moving forward but shall not change requirements on any applicant who has already applied for a permit. Each new or modified small wireless facility or utility pole installed in the right-of-way shall comply with Greenbrier County current rules for construction and public safety as of the time of the permit application.

#### **Section 602.19 Indemnification.**

Any wireless provider who owns or operates small wireless facilities or utility poles in the right-of-way shall indemnify, protect, defend, and hold Greenbrier County and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims; lawsuits; judgments; costs; liens; losses; expenses; fees to include reasonable attorney fees and costs of defense; proceedings; actions; demands; causes of action; liability and suits of any kind and nature, including personal or bodily injury or death; or property damage or other harm for which

recovery of damages is sought, to the extent that it is caused by the negligence of the wireless provider who owns or operates small wireless facilities or utility poles in the right-of-way, any agent; officer; director; representative; employee; affiliate; contractor, or subcontractor of the wireless provider; or their respective officers, agents, employees, directors, or representatives.

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## Appendix D – Airport Overlay Zone Map

### Map definitions.

“Airport Elevation” means the highest point of an airport’s useable landing area measured in feet above sea level. The airport elevation of the Greenbrier Valley Airport is 2,301 feet.

“Airport Hazard” means any structure or object, natural or manmade, or use of land which obstructs the airspace required for flight or aircraft in landing or taking off at an airport. or is otherwise hazardous as defined in 14 CFR Part 77.

“Airport Hazard Area” means any area of land or water upon which an airport hazard might be established if not prevented as provided for in this ordinance.

“Approach Surface Zone” means an imaginary surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of the runway based on the planned approach. The inner edge of the approach surface is the same width as the primary surface and expands uniformly depending on the planned approach. The approach surface zone, as shown on the map included within this appendix, is derived from the approach surface.

“Conical Surface Zone” means an imaginary surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) feet horizontally to one (1) foot vertically for a horizontal distance of four thousand (4000) feet. The conical surface zone, as shown on the map included within this appendix, is based on the conical surface.

“FAA” means the Federal Aviation Administration of the United States Department of Transportation.

“Height” for the purpose of determining the height limits as shown on the map included within this appendix shall mean sea level elevation unless otherwise specified.

“Horizontal Surface Zone” means an imaginary plane one hundred and fifty (150) feet above the established airport elevation that is constructed by swinging arcs of various radii from the center of the end of the primary surface and then connecting the adjacent arc by tangent lines. The radius of each arc is based on the planned approach. The horizontal surface zone, as shown on the map included within this appendix, is derived from the horizontal surface.

“Other Than Utility Runway” means a runway that is constructed for and intended to be used by propeller driven aircraft of greater than twelve thousand and five hundred (12,500) pounds maximum gross weight and jet-powered aircraft.

“Non-precision Instrument Runway” means a runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in, non-precision instrument approach procedure has been approved or planned.

“Precision Instrument Runway” means a runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document.

“Primary Surface Zone” means an imaginary surface longitudinally centered on the runway, extending two hundred (200) feet beyond the end of paved runways or ending at each end of turf runways. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The primary surface zone, as shown on the map included within this appendix, is derived from the primary surface.

“Transitional Surface Zone” means an imaginary surface that extends outward and upward from the edge of the primary and approach surfaces to the horizontal surface at a slope of seven (7) feet horizontally to one (1) foot vertically (7:1). The transitional surface zone, as shown on the map included within this appendix, is derived from the transitional surface.

“Utility Runway” means a runway that is constructed for and intended to be used by propeller driven aircraft of twelve thousand and five hundred (12,500) pounds maximum gross weight or less.

“Visual Runway” means a runway intended solely for the operation of aircraft using visual approach procedures.

[Appendices B, C, & D to follow]