

PLANNING and ZONING ORDINANCE, FINAL, October  
25, 2009

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Codified Ordinances of Bolivar

PART THIRTEEN - Planning and Zoning

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Administration and Enforcement

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**1301.01 PURPOSE.**

- (a) For the purpose of setting forth the vision, goals and objectives of the Bolivar Comprehensive Plan which are based upon the declared preferences of the residents of Bolivar as expressed in town-wide Planning Questionnaires and comments at neighborhood meetings.
- (b) For the purpose of keeping intact the small town that its residents have so overwhelmingly expressed as a goal (see the Comprehensive Plan), and to provide for clearly defined districts within the incorporated town of Bolivar.
- (c) For the purpose of promoting public health, safety, comfort and general welfare, to secure the most appropriate use of land, to conserve and protect property and property values and to preserve the past of the town for the benefit of its future residents and the desire of its residents to continue in the quiet, peaceable and safe enjoyment of their homes and, insofar as possible, maintain the balance between business and residential areas of Bolivar that exist in the millennium year of 2000.
- (d) The Comprehensive Plan of Bolivar is incorporated in this Zoning Ordinance as if fully rewritten herein.
- (e) The Bolivar Building Ordinance establishing the process by which proposed construction, demolition, renovation, remodeling and additions to buildings, Part Seventeen - Building and Housing Code, as revised, is hereby incorporated into this Zoning Ordinance as if fully rewritten herein.

**1301.02 PLANNING COMMISSION.**

(a) The Bolivar Planning Commission (hereinafter Commission) is established in Article 131 of the Town Ordinances to review and enforce provisions for planning and zoning within the incorporated area of the Municipality of Bolivar. This article describes duties under the establishment clause of Part One, with the exception that the number of members is hereby increased.

(b) Members of the Commission shall consist of six individuals who are residents of Bolivar and at least three-fifths of such members must have been residents of the municipality for at least three years preceding the time of their appointment. No member of the Commission shall be a member of the Board of Zoning Appeals nor shall any member hold other elective office or appointive office in the municipal or county government, except for one additional Member, a Town Councilperson who serves on the Commission as the Council's representative. Members of the Commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

(c) Upon creation of the Commission, its members shall be appointed for the following terms: one for a term of one year; two for a term of two years; and, two for a term of three years. The terms shall expire on the first day of January of the first, second

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and third year, respectively, following their appointment. Thereafter, as their terms expire, each new appointment shall be for a term of three years.

(d) If a vacancy occurs, by resignation or otherwise among the members of the Commission, the Town Council shall appoint a member for the unexpired term.

(e) At its first meeting each year, the Commission shall elect a President and a Vice President from its membership. The Vice President shall have the power and authority to act as President during the absence or disability of the chair. A majority of the members of the Commission shall constitute a quorum. No action of the Commission shall be official, however, unless authorized by a majority of all members of the Commission.

(f) The Commission shall adopt such rules and regulations concerning the filing of appeals, the giving of notice and the conduct of hearings as shall be necessary to carry out its duties under the terms of this section.

(g) The Commission shall keep the minutes of its proceedings, keep records of all official actions and shall record the vote on all actions taken. All minutes and records shall be filed in the office of the Commission and shall be public records.

(h) The Commission shall record and file all bonds and contracts under its jurisdiction.

(i) The Commission shall hear and make recommendations to the Town Council regarding proposals and applications for changes in zoning designations.

(j) The Commission shall issue building, addition, structure, and demolition permits.

(k) The Commission shall hear and make recommendations to the Board of Zoning Appeals on applications for special uses, and may set conditions for those uses including, but not limited to, parking requirements.

(l) The Commission shall hear and decide applications for subdivision development.

(m) The Commission shall hear and make advisory recommendations to the Town Council on applications for annexation, conforming to Part 19 "Annexation."

(n) In consideration of rezoning applications, the Commission shall first determine if there has been material physical, social, economic or other changes in the area.

(o) In consideration of non-conforming uses, the Commission shall determine if the non-conforming use has been discontinued for a period of six months or longer.

(p) The Town Council shall provide necessary quarters, supplies and staff for the Commission through an annual budget allocation.

(q) The governing body of the municipality may establish procedures for the removal of members of the planning commission. See Planning Commission Removal Procedures Ordinance.

(r) In every aspect of its duties the Board shall be governed and act in accordance with applicable state law including WV Code 8A-2 and 3.

**1301.03 BOARD OF ZONING APPEALS.**

- (a) For the purpose of hearing and determining appeals and reviewing any order, requirement or determination made by an administrative official or board charged with the enforcement of any ordinance or rule and regulation regarding the use of land or structures within the incorporated area of the Municipality of Bolivar, a Board of Zoning Appeals (hereinafter Board) is hereby created, consisting of five members appointed by the Bolivar Town Council.
- (b) The members of the Board shall be individuals who are residents of Bolivar and at least three-fifths of such members must have been residents of the municipality for at least three years preceding the time of their appointment, no member of the Board shall be a member of the Planning Commission nor shall any member hold other elective office or appointive office in the municipal or county government. Members of the Board shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.
- (c) Upon creation of the Board, its members shall be appointed for the following terms: one for a term of one year; two for a term of two years; and, two for a term of three years. The terms shall expire on the first day of January of the first, second and third year, respectively, following their appointment. Thereafter, as their terms expire, each new appointment shall be for a term of three years.
- (d) If a vacancy occurs, by resignation or otherwise among the members of the Board, the Town Council shall appoint a member for the unexpired term.
- (e) At its first meeting each year, the Board shall elect a Chair and a Vice-President from its membership. The Vice-President shall have the power and authority to act as chair during the absence or disability of the President. A majority of the members of the Board shall constitute a quorum. No action of the Board shall be official, however, unless authorized by a majority of all members of the Board.
- (f) The Board shall adopt such rules and regulations concerning the filing of appeals, applications for variances and exceptions, the giving of notice and the conduct of hearings as shall be necessary to carry out its duties under the terms of this section and as outlined below:

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(1) Appeal to 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 board of zoning appeals.

(B) The appeal shall:

(i) Specify the grounds of the appeal;

(ii) 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

(iii) Be on a form prescribed by the board.

(C) Upon request of the board of zoning appeals, the administrative official or board shall transmit all documents, plans and papers constituting the record of the action from which the appeal was taken. WV Code 8A-8-10.

**(2) Notice and hearing of appeal.**

(A) Within ten days of receipt of the appeal by the Board of Zoning Appeals, the board shall set a time for the hearing of the appeal and give notice. The hearing on the appeal must be held within forty-five days of receipt of the appeal by the board.

(B) At least fifteen days prior to the date set for the hearing on the appeal, the Board of Zoning Appeals 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 the area covered in the appeal.

(C) The Board of Zoning Appeals may require the party taking the appeal to pay for the cost of public notice and written notice to interested parties.

(D) At the hearing, any party may appear in person, by agent or by an attorney licensed to practice in this state.

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(E) Every decision by the board must be in writing and state findings of fact and conclusions of law on which the board based its decision. If the board fails to provide findings of fact and conclusions of law adequate for decision by the circuit court and as a result of the failure, the circuit court returns an appealed matter to the board and dismisses jurisdiction over an applicant's appeal without deciding the matter, whether the court returns the matter with or without restrictions, the board shall pay any additional costs for court filing fees, service of process and reasonable attorneys' fees required to permit the person appealing the board's decision to return the matter to the circuit court for completion of the appeal.

(F) The written decision by the board shall be rendered within thirty days after the hearing. 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. WV Code 8A-8-11.

(3) Stays; exception.

(A) When an appeal has been filed with the Board of Zoning Appeals, all proceedings and work on the premises in question shall be stayed, except as provided in subsection (b) of this section.

(B) A stay may not be had:

(i) If the official or board from where the appeal was taken certifies in writing to the Board of Zoning Appeals that a stay would cause imminent peril to life or property;

(ii) Upon further administrative proceedings, including, but not limited to, submissions to and reviews by the staff or any administrative body; or

(iii) Upon engineering or architectural work that does not disturb the real estate beyond what is necessary to complete engineering, survey work or other tests.

(C) If the written certification is filed pursuant to subdivision (1), subsection (b) of this section, then proceedings or work on the premises shall not be stayed.

(D) Nothing in this section prevents a party from obtaining a restraining order. WV Code 8A-8-12.

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- (g) The Board shall keep the minutes of its proceedings, keep records of all official actions and shall record the vote on all actions taken. All minutes and records shall be filed in the office of the Board and shall be public records.
- (h) In order to determine any appeal brought before it, the Board may permit and authorize exceptions to building rules and regulations in the classes of cases or in particular situations, as specified in the Planning and Zoning, and Building and Housing Ordinances herein; shall hear and decide special exceptions to the terms of an ordinance upon which the Board is required to act under that ordinance; and shall authorize in specific cases a variance from the terms of a relevant Building Ordinance under the following circumstances in conformity to WV Code 8A-7-11, if the variance:
- (1) Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;
  - (2) 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;
  - (3) Would eliminate an unnecessary hardship and permit a reasonable use of the land; and
  - (4) Will allow the intent of the zoning ordinance to be observed and substantial justice done.
- (i) In exercising its powers and authority, the Board may reverse or affirm in whole or in part, or may modify the order, requirement, decision or determination appealed from, as in its opinion ought to be done in the premises, and to this end shall have all the powers and authority of the official or board from whom or which the appeal is taken.
- (j) An appeal may be made to the Board by an applicant for a building, demolition or other permit request that has been denied by a vote of the Commission.
- (k) In every aspect of its duties the Board shall be governed and act in accordance with applicable state law including WV Code 8A- 3.
- (l) The Town Council shall provide adequate quarters, supplies and support to the Board through an annual budget allocation.



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**1301.04 ZONING ADMINISTRATOR POWERS AND DUTIES.**

(a) The provisions of this Ordinance shall be administered by the Bolivar Planning Commission. With enactment of this Ordinance, the Planning Commission shall designate a Zoning Administrator to act on the Planning Commission's behalf.

(b) All departments, officials, and public employees of the Town of Bolivar which are vested with the duty or authority to issue permits or licenses shall issue no permit or license for any use, building or purpose if the same would be in conflict with the provisions of this Ordinance.

(c) It shall be the duty of the Zoning Administrator and he/she shall have the power to:

- (1) Receive and examine all applications for permits and requests for variances as noted in Article 1715.04 and 1715.05
- (2) Issue permits only where there is compliance with the provisions of this Ordinance as determined by a vote of the Commission.
- (3) Following a refusal of a permit, to receive applications for interpretations, special exceptions and variances and to promptly forward these applications to the Board of Zoning Appeals and the Town Council.
- (4) Conduct inspections and surveys to make recommendations to the Commission on compliance or noncompliance with the terms of this and other town ordinances.
- (5) Issue stop, cease and desist orders, in writing by certified mail or in person, and to post such an order on the property, for correction of all conditions found to be in violation of provisions of this Ordinance, including Chapter 17. The written stop work order shall be signed by a member of the Commission and the mayor. Such written orders shall be served by certified mail or in person upon persons, firms, or corporations deemed by the Zoning Administrator to be violation the terms of this ordinance. The full Commission shall receive copies of stop, cease and desist orders at the same time as the person, firms or corporations receiving such notification. A posted stop work order shall not be removed by the contractor or land owner under penalty of law. This stop work order shall be considered at the next regularly scheduled meeting of the Commission unless the Commission agrees to a Special Meeting. The Planning Commission shall adopt provisions and timetables for

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compliance with ordinances to lift stop work orders. The posted stop work order may not be removed until the Commission has determined that the problem is resolved.

(6) With the approval of the Town Council, or when directed by the Town Council, institute in the name of the Town any appropriate action or proceedings to prevent unlawful erection, construction, reconstruction, alteration, repair, demolition, conversion, maintenance, or use of any building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

(7) Record and file applications for permits with accompanying plans and documents. All applications, plans and documents shall be a public record.

(8) Maintain Land Use and the relevant Assessor's Maps showing the current zoning of all land in the Town.

(9) In cases, where site review is necessary, to conduct the review and report findings to the Commission.

(10) Revoke by order any permits or variances issued under misstatement of fact or contrary to the law or provisions of this ordinance.

(11) Upon the request of the Council or the Planning Commission, provide to said bodies, facts, records, or reports in which they may require assistance in making decisions, or support in any other way as requested.

(12) The Zoning Administrator may examine structures on properties under permit in Bolivar during daylight hours either during a scheduled or unscheduled inspection.

(13) Nothing in this article shall prevent the Zoning Administrator from also serving as a member of the Bolivar Planning Commission.

(14) The Zoning Administrator shall be remunerated for his/her time and expenses from the Commission budget as approved by the Town Council.

**1301.06 PROCESS TO APPEAL COMMISSION AND BOARD DECISIONS**

(a) An appeal of an unsuccessful building permit application may be made by the applicant to the Board of Zoning Appeals within 60 days of Commission action.

(b) An appeal of any other unsuccessful permit application may be made by the applicant to the Board of Zoning Appeals within 60 days of Commission action.

(c) An appeal of any decision regarding subdivision may be made to the Board of Zoning Appeals within 60 days of Commission action.

(d) Applications for zoning changes may be appealed to the Town Council within 60 days of Commission or Board action.

**1301.07 AMENDMENTS.**

The Town Council may, from time to time, amend, supplement or change the rules and regulations or districts established by this Ordinance. In undertaking such action, the Planning Commission and the Town Council shall act in conformity with applicable state law including WV Code 8A. Upon enactment of zoning ordinances or amendments

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thereto, the Town Council shall file the ordinance or amendment with the county clerk in accordance with WV Code 8A-7-6.

**1301.08 SEVERABILITY.**

The sections of the Bolivar Planning and Zoning Ordinance are severable, and if any of its provisions are held unconstitutional by any court of competent jurisdiction the decision of such court shall not impair or effect any other provision of the Code.

**1301.99 PENALTY.**

(a) Each violation of any provision of this Planning and Zoning Code shall be a misdemeanor and any person, persons, firm, partnership or corporation found guilty thereof shall be fined not more than three hundred dollars (\$300.00) per day per violation and any court cost, including attorneys' fees, or costs to the Town to bring the case before municipal court or other judicial venues.

(b) Each day in which any property, building or structure is found to be in violation of this Code shall constitute a separate offense.

(c) Any buildings erected, razed or converted, or land or premises used in violation of any provision of any ordinance or rule and regulation adopted under the authority of this chapter shall be a common nuisance and the owner of the building, land or premises shall be liable for maintaining a common nuisance.

**DEFINITIONS**

**1302.01 General definitions.**

**1302.02 Specific definitions.**

**1302.01 GENERAL DEFINITIONS.**

For the purpose of this ordinance, the following phrases, words, and their derivations shall have the meanings respectively ascribed to them herein.

- (a) Words used in the present tense include the future.
- (b) All words in the singular include the plural and all words in plural include the singular.
- (c) The word "shall" is mandatory.
- (d) The word "may" is permissive.
- (e) The words "used for" shall include "arranged for", "designed for", "intended for", "maintained for", "constructed for", or "occupied for".
- (f) The word "person" shall mean natural person, joint venture, joint stock company, partnership, association, club, firm, company, corporation, business trust, or the manager, agent, servant, officer, or employee of any of them.
- (g) The word "land" shall include water surface and land under water.
- (h) The word "lot" shall include plot or parcel.
- (i) Terms which describe different kinds of open space which are now in the vernacular of planners and are understood by courts of law.
- (j) Vacant lands for purposes of this are those lands which were vacant, or contained uninhabitable buildings or out buildings at the time of the adoption of the 2000

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Ordinances, according to the Map and Parcel Book of the Jefferson County Assessor in the year 2000.

(k) Paper streets are those streets or alleys designated and identified in green and white stripes on the Bolivar Land Use Map. Public byways are former paper streets which are closed to through traffic and which are not paved unless with paving stones or gravel. See example which accompanies the Land Use Map of the Comprehensive Plan.

(l) Community corridors are former paper streets which on and after the passage of this ordinance are green places for residents to use as recreation areas or walkways. See illustration which accompanies the Land Use Map of the Comprehensive Plan.

(m) Open spaces, include present playgrounds and parks and other areas for recreation and use of the residents of Bolivar as designated on the Land Use Map of the Comprehensive Plan or as may be defined in future acquisitions of lands for these purposes.

## **1302.02 SPECIFIC DEFINITIONS.**

Accessory Use or Structure: A use customarily incidental and subordinate to the principal use or building or an approved special exception use of a building or an approved special exception use or building and located on the same lot as the principal use or building. Examples include a detached garage, shed, swimming pool, and satellite dish. Detached garages shall not contain more than three (3) vehicles or exceed six hundred (600) square feet, however all accessory uses or structures shall meet the setback requirements in the Building Ordinance. An accessory use includes all pre-built, ready for assembly or fabricated structures whether or not they require a permanent foundation.

Accessory Use Structure – Temporary Storage Structure A temporary storage unit is a structure in excess of 100 square feet that cannot be moved without a truck or vehicle trailer and that is not suitable for habitation, nor meets definitions for mobile homes, outbuildings or recreational trailers. Temporary storage units are prefabricated structures transportable by car trailer or truck for the purpose of storing household items and fixtures during a renovation or for packing items to be moved by a resident in transit from one domicile to another. A Temporary Storage Structure must meet setbacks in Article 1715 of this ordinance and may be quartered on residential or business property for no more than 45 days. An application may be made to the Commission for a longer period of use.

Administrative, Business and Executive Offices: An establishment primarily engaged in management and general administrative functions such as executive, personnel, finance, and sales activities performed centrally for other establishments of the same company.

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Animal Hospital: A place where animals or pets are given medical or surgical treatment and the boarding of animals is limited to short-term care incidental to the hospital use.

Area, Land: Land area refers to land area exclusive of streets and other public space.

Attic: An area directly above a structure not designed for occupancy. The height of the attic shall not exceed the height of the building.

Automatic Car Wash: A structure containing facilities for washing automobiles using a chain conveyor or other method of moving the cars along, and automatic or semiautomatic application of cleaner, brushes, rinse water and heat for drying.

Automobile Service Station: A building, lot, or both, where gasoline, oil, grease, batteries, tires, and automobile accessories may be supplied and dispensed at retail, and where automobile servicing and minor repairs are provided. Uses at a service station do not include major mechanical and body work, storage of automobiles not in operating condition, or other work involving noise, glare, fumes, smoke, or other characteristics to an extent greater than normally found in such stations. A service station is not a repair and service garage nor a body shop.

Automobile Parking Lot or Garage, Commercial: A lot or building or portion thereof, other than an automobile sales lot used for the storage or parking of six or more motor vehicles for a consideration, where service or repair facilities are not permitted. Such parking lot or garage shall not be considered an accessory, nor shall it be used for the storage of dismantled or wrecked motor vehicles, parts thereof or junk.

Automobile Sales Lot: A lot arranged, designed, or used for the storage and display for sale of any motor vehicle, eligible for an inspection sticker, or any type of trailer provided the trailer is unoccupied and where no repair work is done except minor incidental repair of automobiles or trailers displayed and sold on the premises. An automobile sales lot shall not be used for storage of dismantled or wrecked motor vehicles.

Bed and Breakfast: Any owner-occupied residential dwelling in which rooms are rented to paying guests on an overnight basis. Rental bedrooms are limited to four. Such facility is not a home occupation.

Board: This refers to the Bolivar Board of Zoning Appeals.

Boarding or Rooming House: A residence in which, for compensation, lodging or meals, or both, are furnished to not more than twelve (12) guests. A boarding or rooming house shall not be deemed a home occupation.

Buildable Area: The portion of a lot remaining within statutory setbacks.

Building: Any structure which is permanently affixed to land and has one or more floors and a roof. For regulatory purposes, this term shall not include mobile homes, tents, or other "portable" housing which may be attached to a foundation, but this exception shall

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not exclude factory construction buildings which are transported to a site and erected on a permanent foundation lot setbacks herein.

Building, Height of: Buildings are limited to no more than 35 feet in height measured from where the building meets the highest grade level on a slope to the highest point of the structure.

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

Business and Commercial: Any use or structure which provides goods or services for either a profit or a non-profit basis. Commercial structures with over 3,500 usable square feet require a finding by the Zoning Administrator that the use is in keeping with the character of the community.

Cemetery: A place used for the permanent interment of dead human bodies or the cremated remains thereof. It may be either a burial park for earth interments, a mausoleum for vault or crypt interments, a columbarium for cinerary interments, or a combination of one or more thereof.

## Child Day Care:

- (a) Commercial Child Day Care Center/Nursery School/K-3: A public or private establishment enrolling more than six (6) children on the premises at one time where tuition, fees, or other forms of compensation for the care and/or education of the children is charged, and which is licensed or approved to operate as a center.
- (b) Home Child Day Care/Nursery School: A private home enrolling six (6) or less children where tuition, fees, or other forms of compensation for this care of children is charged, and which is licensed or approved to operate by state and local government.

Church: A building or structure, or groups of buildings or structures, which by design and construction are primarily intended for the conducting of organized religious services and accessory uses associated therewith.

Clearing: Grading and/or disturbance of earth, which may or may not include the felling of trees in an area that is less than ten percent (10%) of the total area of the lot is not covered by permit ordinances and regulations. Clearing or excavating of an area greater than 10% of the lot does require a permit. Considerations shall include drainage and silt fencing as needed, length of time before downed trees or other debris must be removed, and safety. See 1725 Subdivisions for definitions and requirements; note that clearing requirements are not limited to subdivision projects.

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Clinic: An establishment where patients are admitted for examination and treatment by one or more physicians, dentists, psychologists, social workers, or veterinarians and where patients are not usually lodged overnight.

Commission: The Bolivar Planning Commission.

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

Conditional Use: A use which because of special requirements or characteristics may be permitted in a particular zoning district 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 the zoning ordinance.

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

Council: Bolivar Town Council

## Dwelling:

- (a) Single family detached: A building containing only a dwelling unit surrounded by yard or other open area on the same lot and not occupied by more than one family.
- (b) Duplex (two family): A building located on one lot containing not more than two dwelling units, arranged one above the other, or side by side, and not occupied by more than two families.
- (c) Multi-family: A building containing three or more dwelling units.
- (d) Townhouse: One of a series of three or more attached dwelling units separated from one another by continuous vertical party walls without openings from basement floor to roof.
- (e) Dwelling Unit: One or more rooms in a residential building or in a mixed use building, which are arranged, designed, used or intended for use by one person, or persons living together and maintaining a single or common household, and which include lawful cooking space and lawful sanitary facilities reserved for the occupants thereof.

District: A portion of territory within which certain uniform regulations and requirements of various combinations thereof apply under provisions of this Ordinance.



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Essential Utility Equipment: This term comprises underground or overhead electrical, gas, communications, water or sewerage systems, including poles, towers or pole structures, wires, lines, mains, drains, pumping stations, sewers, conduits, cables, fire alarm boxes, traffic signals, hydrants, regulating and measuring devices, and the structures in which they are housed, and other similar equipment and accessories in connection therewith. It does not include buildings, yards, stations used for storage, repair or processing of equipment or material, and does not include buildings, yards, stations, or substations for transforming, boosting or switching purposes, where such facilities are constructed on the ground.

Family: One (1) or more individuals related by blood, marriage or adoption, or not more than five (5) individuals who are not so related, living in a single dwelling unit on a regular residential basis.

Final Inspection, Built-to-Plan: The Building Inspector will determine that the project is ready for use or occupancy, that it has met all aspects of the requirements of the permit, that fire and other safety concerns from state, county and town regulations have been met, and that any construction debris or drainage issues created by the project have been resolved.

Fine Art Gallery: A structure, or part thereof, devoted to the exhibition of visual works of fine art. Fine art galleries generally include accessory services, such as sale or purchase of displayed works, custom framing or encasement of art works and services related to art appraisal, display, preservation or restoration.

Flood Plain, One-hundred (100) Year: That area which would be inundated by storm water runoff equivalent to that which would occur with a rainfall of one hundred (100) year frequency after total development of the watershed.

Flood-prone Area: Any land area susceptible to repeated inundation by water from any source.

Frontage: The length of the front lot line of a zoning lot abutting a public street, road, or highway, or rural right-of way.

Funeral Home: A building used for the preparation of the deceased for burial and the display of the deceased and ceremonies connected therewith before burial or cremation.

Garage:

- (a) Garage Residential: An accessory building, portion of a main building, or building attached thereto, used for the keeping of motor vehicles or other storage or utility uses. Attached or detached garages shall not contain a total of more than three (3) vehicles or exceed six hundred (600) square feet.

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- (b) Garage, Service: A garage, other than a residential garage, where motor vehicles, trailers, or other types of equipment are stored, equipped for operation, repaired, or kept for remuneration, hire or sale.

Ground Cover: Paving, asphalt or other permanent cover which affects the permeable qualities of a natural surface.

Group Home: A facility that:

- (a) provides residential services and supervision for individuals who are disabled or aged.
- (b) 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 by not more than twelve (12) individuals who are behaviorally disabled and not more than three (3) supervisors, or is occupied by not more than twelve (12) individuals who are aged and not more than three (3) supervisors.

Hazardous Materials and Waste Materials defined and governed by WV Code 22-18-3. Proper transportation and storage shall conform to state law.

Health Department: The West Virginia State Department of Health.

Height: See building, height.

Home Association: An incorporated, nonprofit organization operating under recorded land agreements through which: a.) each lot and/or home owner in a planned unit or described land area is automatically a member and b.) each lot is automatically subject to a charge for a proportionate share of the expenses for the Home Association's activities, such as common property maintenance. See 1725 "Subdivision," and applicable state law.

Home Occupation: Any use of a dwelling conducted solely by a member or members of the family residing therein, which, is incidental or subordinate to the main use of the building for dwelling purposes; which shall occupy not more than twenty-five percent (25%) of the floor space of one floor of the dwelling; which does not generate additional non-residential vehicular parking or vehicular traffic to a greater extent than would normally result from residential occupancy; in connection with which no inventory or stock in trade is kept for regular sale to persons coming to the premises without appointment; and with no other evidence being visible, audible or abnormally odoriferous from the outside of the dwelling to indicate it is being used for anything other than a residential purpose, other than a sign not exceeding three (3) square feet.

Hospital, Class A: A hospital which does not primarily treat communicable diseases, insane or feeble minded patients, epileptics, drug addicts, or alcoholic patients, and is not a penal farm or correctional institution.

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Hospital, Class B: A hospital which does primarily treat the types of cases noted in Class A above, and which may be a penal or correctional institution.

Junk Yard: Any area where waste, discarded or salvaged materials are bought, sold, exchanged, baled, parked, stored, disassembled, or handled, including auto wrecking yards, house wrecking yards, used lumber yards, and places or yards for storage of salvaged house wrecking and structural steel materials and equipment, but not including areas where such uses are conducted entirely within establishments for the sale, purchase, or storage of used furniture and household equipment, used in operable condition, salvaged machinery and the processing of used, discarded, or salvaged materials as part of manufacturing operations.

Kenel: Any building or structure and/or land used, designed, or arranged for housing, boarding, breeding, or care of more than three adult dogs or cats kept or bred for hunting, sale, exhibition, or domestic use or other domestic animals for profit, but not including those animals raised for agricultural purposes.

Land Use Map: Bolivar Land Use Map which accompanies the Comprehensive Plan of 2000. Copies available at Town Office, Bolivar Planning Commission Office, and online at <http://www.bolivarwv.org/>.

Lot: A lot is described as a piece or parcel of land occupied or intended to be occupied by a principal building and its accessory buildings and uses, including all open spaces required by this Ordinance.

A lot is defined, for purposes of this Ordinance, as one which is described on the Jefferson County, West Virginia Tax Assessor's Map for the year 2000 or an approved subdivision thereafter, and/or recorded in the office of the Jefferson County Clerk of Court, as of the date of this Ordinance, a copy of which is in the Bolivar Planning Commission office as well as on a computer database. The definition of a lot may not be changed without requesting a variance, unless the lot is large enough to be subdivided.

Lot, buildable lot: A buildable lot is one which is described or defined by the requirements of the Bolivar Building Code and in Section 1303.04.

- (a) Lot Corner: A lot abutting on two or more streets at their intersection where the interior angle of the inter does not exceed one-hundred thirty-five (135) degrees.
- (b) Lot, Front of: The side or sides of an interior or through lot which abuts a street; in a corner lot, the choice of the lot frontage shall be optional.

(c) Lot Measurements:

Depth is the average horizontal distance between the front lot line and the rear lot line.

Width shall mean the horizontal distance between the side lot lines measured at the mid-point of the side lot lines.

Lot line adjustment: Boundary adjustment requests shall come before the Commission.

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Lot of Record: A lot which is in existence at the passage of the 2000 Ordinance and recorded in the office of the Clerk of Circuit Court of Jefferson County and described on the Map and Parcel Book of the Jefferson County Assessor in the year 2000, or approved subdivision thereafter.

Manufactured Home: Housing built in a factory according to the federal manufactured home construction and safety standards effective the fifteenth day of June, one thousand nine hundred seventy-six.

Map: The Jefferson County Tax Assessor Map for the year 2000. See also Land Use Map.

Mini-warehouses: A single story structure containing separate cubicles, none of which are larger than four-hundred (400) square feet, that are rented to the public for storage purposes.

Modular Unit: A factory-fabricated transportable building unit designed to be used by itself or to be incorporated with similar units at a building site into modular structure for residential, commercial, educational, or industrial uses. These must be affixed to a permanent foundation. Piers are not permitted. For purposes of this Ordinance, Mobile Homes and Travel Trailers are not considered "modular units." See also, "Sectional (Double Wide) Dwelling." A modular home means housing built in a factory that meets state or local building codes where the homes will be sited.

Nonconforming Use: A use of a building or of land lawfully existing at the time this Ordinance becomes effective and which does not conform with the use regulations of the zoning district in which it is located. A Nonconforming use, aka "grandfather clause," is a use that is not a permitted use within the zoning district in which the land or building lies. Nonconforming use status expires if the use of the building or land is discontinued for a period of six continuous months.

Nursing or Retirement Home: This item includes rest homes, nursing homes, convalescent homes for children and homes providing chronic and convalescent care.

Open Space: Land provided and deemed necessary and desirable for present and future residents and citizens of the area including natural woods, areas of unusual natural scenic beauty, local play lots. See also 1735 "Growth and Preservation" Ordinance for definitions of public byways, community corridors and open space definitions.

Park: A tract of land, designated and used by the public for active and passive recreation.

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

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Pool: A permanent facility for swimming that is either above ground or below ground. Both are considered outbuildings for purposes of this ordinance. Above ground pools are considered decks for purposes of inspections.

Private Clubs or Lodges: An incorporated or unincorporated association for civic, social, cultural, religious, literary, recreational, or like activities, operated for the benefit of its members and not open to the general public.

Private Recreational Facilities: A facility such as a swimming pool, tennis court, beach, boat dock, or basketball court which is an accessory use located on a single-family or two-family residential zoning lot, the use of which is restricted to the occupants of the principal use and guests for whom no admission or membership fees are charged.

Professional Office: The office of a member of a recognized profession, such as law, real estate, engineering, planning, insurance, and medicine, that is maintained for the conduct of that profession.

Public Recreational Facilities: A recreation facility operated by a government agency and open to the general public.

Public-Owned Land: Existing lots, tracts, or parcels of land owned by local, State and/or Federal agencies.

Recycling Facility: A facility through which significant portions of solid waste are recovered for reuse including but not limited to fuel for energy recovery, materials, such as glass, metal, (or items of similar nature) for new product manufacturing or organic material.

Research and Development Facility: A building or buildings, for which an overall plan has been approved by the Planning and Zoning Commission, designed with open space and compatible with the adjacent community, to be used for the inquiry and investigation of sources and limited to the basic and applied research phase of the inquiry; not including however, any manufacturing, industrial operations or pilot plant involving machines or operations normally associated with production or assembly lines or the production of goods in quantity above that needed for product testing and evaluation.

Restaurant: An establishment where food and drink is prepared, served and consumed primarily within the principal building.

Restaurant, Carry-Out: An establishment which by design of physical facilities or by service or packaging procedures permits or encourages the purchase of prepared ready-to-eat foods intended primarily to be consumed off the premises, and where the consumption of food in motor vehicles on the premises is not permitted or not encouraged.

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Restaurant, Drive-In: Any place or premises used for the sale, dispensing, or serving of food or beverages to patrons in automobiles, including those establishments where patrons, in addition to be accommodated in their automobiles, may also be accommodated within the premises.

Restaurant, Drive-Through Any place or premises used for the sale, dispensing or serving of food or beverages to patrons in automobiles who place orders and pick them up in their vehicles.

Restaurant, Fast Food: An establishment whose principle business is the sale of prepared or rapidly prepared food directly to the customer in the ready-to-consume state for consumption either within the restaurant building or off premises.

Salvage: Old or scrap copper, brass, rope, rags, batteries, paper, rubber, trash, waste, junked, dismantled or wrecked machinery, machines or motor vehicles, or any parts of junked, dismantled or wrecked machinery, machines or motor vehicles, iron, steel, and other ferrous or non-ferrous materials.

Salvage Yard: Any place which is maintained, operated or used for the storing, keeping, buying, selling or processing of salvage, or for the operation of maintenance of a motor vehicle graveyard. Any collection of three or more automobile hulks, or combination of ferrous or nonferrous materials together with one or more automobile hulks, or a collection of any salvage contained in the area more than one-quarter acre in size, shall be considered a salvage yard.

Sanatorium or Sanitarium: An institution for the treatment and care of the chronically ill or for patients requiring long-term therapy, rest and recuperation.

Sectional ("Double-wide") Dwelling: A single family detached dwelling unit manufactured in two or more sections, designed for permanent occupancy, and transported to a building site in sections which are fastened together and mounted on a permanent foundation ready for occupancy except for minor and incidental unpacking and assembly operations. For purposes of this Ordinance, "Sectional dwelling" includes double-wides that meet this definition, but mobile homes and travel trailers are not considered to be "Sectional dwellings".

Setback: The required minimum horizontal distance between the building line, as defined herein and the related front, side or rear property line.

Setback, Vertical: The line of a structure that must meet setbacks as it rises vertically from the lot upon which it is built or placed. Decks, platforms, stairs and roof lines must meet set back requirements under town ordinances.

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Signs: A name, identification, description, display, illustration or device which is affixed or represented directly upon a building, structure or land and which directs attention to a product, place, activity, person, institution, or business. On and after the enactment of this Ordinance, signs in Business and Commercial [B & B1] districts shall be no larger than twenty four (24) square feet in size; signs in residential [R] districts shall be no larger than three (3) square feet in size. Both residential and commercial signs shall be professionally rendered, with a limit of one sign per building. No neon, flashing or backlit signs are permitted in the Town of Bolivar. See Bolivar Ordinance 711.03.

(a) Sign, Business: Shall mean a sign which directs attention to a business or profession or to a commodity, service, or entertainment sold or offered upon the premises where the sign is located.

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

(c) Sign, Outdoor Advertising: Shall mean a sign structure which directs attention to a business, commodity, service or entertainment not necessarily conducted, sold, or offered upon the premises where such sign is located. These types of signs are not permitted in the Town of Bolivar.

Special Use: A grant of a specific use that would not be appropriate generally or without restriction within a zone; and shall be based upon a finding that the use conforms to the Comprehensive Plan and is compatible with the existing neighborhood. Special use permission expires when the use is discontinued for six months.

Street: A public or dedicated way thirty (30) feet or more in width, and approved private right-of-way or easement, or a proposed right-of-way shown on official maps maintained by the Commission, the town, the county and the State.

Street; Highway; Road: Any street existing or which may be approved by the Town Council. The word "street" shall also mean "road", "highway", "boulevard", "avenue", "lane", "court", alley, and all public ways.

Street Line: A line defining the edge of a street right-of-way and separating the street from abutting property or lots (same as lot line).

Structure: Anything constructed, the use of which requires fixed location on the ground or attached to something having such location, but not including fences, power, gas, water, sewage or communications lines or poles, towers or pole structures, sidewalks, driveways or curbs.

Temporary Use: Any use which has been authorized under the provision of this Ordinance which is not unlimited as to the time in which such use shall legally continue.

Theater: A building or part of a building devoted to showing motion pictures, or for dramatic, musical, or live performances.

Town: The Town of Bolivar, West Virginia.

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Tourist Home: An establishment in a private dwelling that supplies temporary accommodations to overnight guests for a fee. See Bed and Breakfast and Article 1303.02(a)(B).

Truck Terminal and/or Truck Service Center: A building or buildings, for which an overall plan has been approved, for the purpose of truck docking, maintenance and repair, fueling and parking areas for equipment and employee automobiles and other activities generally related to such operations. The approved plan to the building or buildings may include driver support services such as, but not limited to, a restaurant and motel-type rooms and complementary services such as, but not limited to barber shops, laundries, stationery and card stores.

Use: Any purpose for which a building or structure or a tract of land may be designed, arranged, intended, maintained, or occupied, or any activity, occupation, business, or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.

Variance:

(a) A variance is a deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.

(b) The board of zoning appeals shall grant a variance to the zoning 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) 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;

(3) Would eliminate an unnecessary hardship and permit a reasonable use of the land; and

(4) Will allow the intent of the zoning ordinance to be observed and substantial justice done.

Yard: An open space unoccupied and unobstructed by any structure or portion of a structure from 30 inches above the general ground level of the graded lot upward; provided, however, that fences and walls may be permitted in any yard. This definition does not exclude built-in swimming pools from the requirements of this Ordinance.



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***Yard Measurements:***

- (a) **Front Yard:** Depth of front yards shall be measured at right angles to a straight line joining the foremost points of the side lot lines. The foremost points of the side lot lines, in the case of rounded property corners at street inters, shall be assumed to be the point at which the side and front lot lines would have met without such rounding. With a panhandle lot, the front of the lot may be designated at the option of the owner.
- (b) **Rear Yard:** Depth of rear yards shall be measured at right angles to a straight line joining the rearmost points of the side lot lines. The forward rear yard line of a required rear yard shall be parallel to the straight line so established.
- (c) **Side Yard:** Width of side yards shall be measured at right angles to a straight line joining the ends of front and rear lot lines on the same side of the lot. The inner side yard line of a required side yard shall be parallel to the straight line so established.

**Yard, rear yard defined:** A yard extending across the rear of the lot between inner side yard lines. In the case of through lot and reversed frontage corner lots, there will be no rear yard. In the case of corner lots with normal frontage, the rear yard shall extend from the inner side yard line of the side yard adjacent to the interior lot to the rear line of the half-depth front yard.

**Zoning Ordinance or this Ordinance:** The Bolivar Zoning Ordinance enacted July 7, 2000, as amended in 2009.

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**ARTICLE 1303**  
**Districts Established; Regulation; Lots**

**1303.01 Districts.**

**1303.02 Classification of uses.**

**1303.03 Non-conforming uses**

**1303.04 General lot requirements**

**1303.05 Lots in different zones**

**1303.01 DISTRICTS.**

For the purpose of carrying out the provisions of this Zoning Ordinance the incorporated area of the Town of Bolivar is hereby divided into the following districts which can be located on the Land Use Map to the Comprehensive Plan, a copy of which is on file in the Town Office and the office of the Bolivar Planning Commission, and the Jefferson, County, WV, Tax Assessor's Map for the year 2000.

- (a) Business and Commercial. Such districts shall be designated as "B" Districts and shall consist of:
- (B1) Washington Street from Elm Street to Boundary Street, both sides, and Panama Street, both sides, shall be a combination of business and residential in which all buildings, not solely residential, shall be two story buildings with the lower area available at the pedestrian level for business and commerce and the upper level reserved for business, commerce, office space or residential or residential rental.
  - (B2) Polk Street, South side, from Washington Street to Taylor Street, shall be commercial only.
- (b) Residential. All of the remainder of the incorporated area of Bolivar is hereby declared to be included in the Residential District of Bolivar and designated as "R" District. These districts are variously identified by the color yellow on the aforesaid Land Use Map to the Comprehensive Plan.
- (1) R1 is designated as residential only and identified as the color yellow.
  - (2) R2 is designated as residential duplex and identified in yellow with a letter D.
  - (3) R3 is designated as residential multifamily and townhouses and identified in yellow with a divided line (/).
  - (4) R4 is designated as church or religious affiliated and identified in yellow with a cross (+).
  - (5) R5 is designated as mixed use and identified with a blue dot. A mixed use is classified as follows:
    - A. Property held or built for rental use where the whole house is rented. No sub-tenants are permitted;
    - B. The number of rentals are limited by the building ordinance requirements for number of dwellings per acre, square feet for each occupant and parking space. As nearly as possible the Bolivar Planning Commission will require that the square footage per occupant, density, parking and other requirements of the Building Ordinance are met, including,

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- but not limited to, play areas, topography, traffic and community corridors.
- C. No activities which would be considered nuisances under the Bolivar nuisance laws or offensive to the neighbors are permitted.
- (6) Nothing in this section shall prevent a homeowner from temporarily renting his/her house due to exigent circumstances.

**1303.02 CLASSIFICATION OF USES.**

For purposes of this Zoning Ordinance, a lot shall be defined as a parcel of land which has been designated as described in the Jefferson County Tax Assessor's Map and Parcel Book and Maps, of current date and Plat Maps and Deed Books to be found in the records of the Jefferson County Clerk of Court. See also the Comprehensive Plan for Land Use Maps. The uses of land, buildings and premises for the purpose of this Zoning Ordinance shall be regulated as follows:

- (a) "R" Residential District. The following uses and no others shall be deemed class "R".

(1) Permitted uses.

- A. Not more than one structure comprising one single family dwelling unit shall be permitted per presently constituted lot, or per half acre, plus three (3) permitted accessory structures thereto but excluding tents, cabins and trailers or mobile homes, except that one trailer or mobile home may be temporarily used as a residence on a lot while a dwelling is being constructed, within the term of the construction permit. This does not apply to motor homes or camping trailers exclusively used for the vacation or weekend pleasure of the resident or temporary tents used by children or temporary canopies for lawn parties.
- B. Bed and Breakfasts and Tourist Homes maintained by any person in his/her dwelling used by her/him as his/her private residence and accepting guests for not more than four guest rooms at any one time; and providing such use does not involve any outward evidence of such use other than one sign three square feet in size which otherwise complies with the definition of signs, which see below.

Any office or customary home occupation providing a service can be maintained by any person in a dwelling used by him/her as her/his private residence providing such use does not involve any extension or modification of the dwelling and providing such use does not involve any outward evidence of such use other than one sign three square feet in size which otherwise complies with the definition of signs as set forth in Section 1302.02 of this Ordinance.

Home occupation or home office is limited to two employees, no durable or combustible goods for sale, and shall occupy not more than twenty-five percent (25%) of

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one floor of the dwelling, one parking space for each occupant and employee shall be required.

- C. Nothing in the establishment of Zone "R" uses shall prohibit the rental of properties for accepted "R" uses.

- (2) Permitted Conditional Uses. Permitted conditional uses when authorized as a special exception by the Board of Appeals and under such conditions as it may determine will not be detrimental to other uses in the "R" District

- A. Churches, schools, public library, museum, community center, township hall, publicly owned park or community corridor or playground;  
B. Hospital, medical facilities sanitarium or rest home for other than insane or mental cases.

The above uses or non-conforming use, as the case may be, shall be permitted only providing that such use or non-conforming use is not noxious, dangerous or offensive by reason of emission of dust, odor, chemicals, smoke, gas, noise, heat, fumes, flames or vibration or otherwise constitutes a nuisance to the occupants of nearby premises.

- (b) "B" District: Business and Commercial. The following uses and no others shall be deemed Class "B" uses permitted in all "B" Districts:

- (1) B1 Permitted Uses.

- A. Any "R" District permitted use;  
B. Retail store or shop, funeral home, beauty shop, mercantile establishment, bank, studio, restaurant, real estate sales office or other professional service office;  
C. Rooming house, lunchroom, living quarters over business establishments.

- (2) B1 Permitted Conditional Use. Permitted conditional uses when authorized as a special exception by the Board of Appeals and under such conditions as it may determine will not be detrimental to other uses in the "B" District or to uses in adjoining lots in an "R" District:

- A. Any "R" District permitted conditional use;  
B. Apartment house, hotel, motel, office building, lodge hall, social or recreational building.

- (3) B2 Permitted Use.

- A. Apartment house, hotel, motel, office building, lodge hall, social or recreational building;  
B. Veterinary hospital, social or recreational building.

- (4) B2 Permitted Conditional Use. Permitted conditional uses when authorized as a special exception by the Board of Appeals and under such conditions as it may determine will not be detrimental to other uses in the "B" District or to uses in adjoining lots in an "R" District:

Parking garage, automobile repair shop, gas station, salvage yard.

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**1303.03 NON-CONFORMING USES.**

(a) A non-conforming use existing as of the date of enactment of this ordinance and so indicated on the Land Use Map created as part of the Comprehensive Plan may be continued except that if it is discontinued for six months or more, it shall then be deemed abandoned and any further use must be in conformity with the uses permitted in such district.

(b) Any building or structure existing as a non-conforming use as of the date of enactment of this Ordinance and so indicated on the Land Use Map to the Comprehensive Plan which is destroyed by fire or the elements, may be reconstructed and restored providing the same is done within one year from the date of such destruction. The building or structure may not be altered or enlarged so as to extend such nonconforming use more than ten percent (10%) in area.

(c) The use of land or building or structure which does not conform to this Article shall not be changed to another non-conforming use.

(d) Present non-conforming uses are identified on the Land Use Map to the Comprehensive Plan with black dots.

**1303.04 GENERAL LOT REQUIREMENTS**

(a) Every building shall be located on an individual lot defined as no less than one half acre, or a lot in existence on the Jefferson County Tax Assessor's Map for the year 2000.

(b) Lots are considered buildable if setbacks of 15 feet front and back, and 10 feet on each side can be met. Buildings must be a minimum of 800 square feet.

(c) Lots in excess of one acre may be subdivided as provided in Article 1725 of this ordinance.

(d) Lots must be served or have the ability to be served, by the local water and sewer authority, or have the ability to become served, attested in writing by that authority.

(e) Outbuildings are limited to three permanent structures of 100 square feet or greater per lot. Structures under 100 square feet do not need a building permit, but are counted toward the lot limit of three outbuildings.

(f) Buildings and structures may be built on visible existing foundations, regardless of setback requirements, provided that the foundation was in existence prior to enactment of this ordinance.