

TITLE 9
SHEPHERDSTOWN PLANNING AND ZONING
(WITH ALL AMENDMENTS AS OF December 2011)

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CHAPTER 1 Planning Commission

Section 9-101 Authority

This chapter is enacted pursuant to Chapter 8A Article 24, of the West Virginia Code, 1931, as amended.

Section 9-102 Purpose and objectives

The purpose and objective of this chapter is to create a Planning Commission to serve in an advisory capacity to the governing body of the Town of Shepherdstown so as to improve the present health, safety, convenience and welfare of the citizens of the municipality and to plan for the future development of the municipality, recognizing the needs of business, industry, agriculture and residential interests, and to ensure that the growth of the municipality is commensurate with the promotion of the efficient and economical use of public funds, and, recognizing that the Town of Shepherdstown has been designated an Historic Landmark Community, to preserve the historic character of the Town.

Section 9-103 Creation of a commission

(1) There is hereby created and established a Planning Commission of and for the Town of Shepherdstown, West Virginia

(2) The Planning Commission, which shall be entitled the Shepherdstown Planning Commission, hereinafter referred to as the Commission, shall have nine members, appointed from time to time by the governing body of the Corporation of Shepherdstown.

Section 9-104 Members, terms of office, vacancies (amended October 10, 2006)

Members of the Commission shall be freeholders and residents of the Town of Shepherdstown, who shall be qualified by knowledge and experience in matters pertaining to the development of the municipality, who shall include representatives of business, industry and labor. At least three-fifths of all appointed and non-elected members must have been residents of the municipality for at least five years prior to appointment.

One member of the Commission shall be the Mayor of the municipality or his designee and one member shall be a member of the Town Council, the terms of these two members to be co-extensive with the terms of office to which they have been elected.

The remaining members of the Commission first selected shall serve respectively for terms of one year, two years and three years, divided equally, or as nearly equally as possible between these terms. Members, thereafter, shall be selected for terms of three years each.

Vacancies shall be filled for the unexpired terms only in the same manner as original selections are made.

Section 9-105 Compensation

Members of the Commission shall serve without compensation.

Section 9-106 Advisory Members

A designated representative of the Jefferson County Planning Commission shall be an advisory member of the Shepherdstown Planning Commission. The Shepherdstown Planning Commission shall designate one of its members as a representative to be an advisory member of the Jefferson County Planning Commission. All such advisory members shall have all the privileges of membership except the right to vote

Section 9-107 Powers, authorities and duties

The Commission shall have the power, authority and duty to:

- (1) Exercise general supervision of and make rules and regulations for the administration of the affairs of the Commission;
- (2) Prescribe uniform rules and regulations pertaining to its investigations and hearings;
- (3) Supervise the fiscal affairs and responsibilities of the Commission;
- (4) Prescribe the qualifications of, appoint, remove and fix the compensation of, the employees of the Commission, such compensation to be in conformity to and in compliance with the salaries and compensation therefore fixed by the governing body of the Town of Shepherdstown;
- (5) Delegate to any such employees authority to perform ministerial acts in all cases except where final action of the Commission is necessary;
- (6) Keep an accurate and complete record of all departmental proceedings, and record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the Commission;
- (7) Make recommendations and an annual report to the governing body of the Town of Shepherdstown concerning the operation of the Commission and the status of matters within its jurisdiction;
- (8) Prepare, publish and distribute reports, ordinances and other material relating to the activities authorized under Chapter 8A -2-1 of the West Virginia code, 1934, as amended;
- (9) Adopt a seal, and certify all official acts;

(10) Invoke any legal, equitable or special remedy for the enforcement of the provisions of this chapter or any ordinance, rule and regulation or any action taken thereunder;

(11) Prepare and submit an annual budget in the same manner as other departments of the Town of Shepherdstown and the Commission shall be limited in all expenditures to the provisions made therefore by the governing body of Shepherdstown;

(12) If deemed advisable, establish an advisory committee or committees; and

(13) Delegate to a committee composed of one or more members of the Commission the power to hold any public hearings or conferences required or permitted under this chapter to be held by the Commission. If the hearing or conference is held by a committee, a written record of the substance of the hearing or conference shall be made and preserved with the records of the Commission for not less than five years. The committee shall have authority only to conduct the hearing and report to the Commission.

The Commission shall have such other powers, authorities and duties as are set forth in Chapter 8A-2-1 of the West Virginia Code, 1931, as amended, which are not specifically enumerated above.

Section 9-108 Meetings

The Commission shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July and October.

Special meetings of the Commission shall be called by the President or by at least two members upon written request to the secretary. Whether called by the President or by two or more members, the secretary shall send to all of the members, at least two days in advance of a special meeting, a written notice fixing the date, time and place of the meeting, but written notice for a special meeting is not required if the date, time and place of the special meeting have been fixed in a regular meeting, or if all of the members are present at the special meeting.

Section 9-109 Quorum (Amended December 12, 2006)

A planning commission must have a quorum to conduct a meeting. A majority of the members of a planning commission is a quorum. No action of a planning commission is official unless authorized by a majority of the members present at a regular or properly called special meeting.

Section 9-110 Election of officers

At its first regular meeting in each year, the Commission shall elect from its members a President and Vice-President. The Vice-President shall have the power and authority to act as President of the Commission during the absence or disability of the President.

Chapter 2 Zoning: Legislative Intent and General Regulations

Section 9-201 Purpose

The purposes of the following chapters in this title are as follows:

Implement the Comprehensive Plan with particular attention to:

- (a) Protection of the health, safety and general welfare of the present and future citizens of the Town.
- (b) Promotion of the economic stability and growth of the community.
- (c) Preservation of the historic landscape and structures.
- (d) Provision for appropriate, efficient and compatible land use.

Section 9-202 Jurisdiction

The following chapters in this title will govern all lands within the corporate limits of Shepherdstown.

Section 9-203 Establishment of districts (amended Jan. 90/Oct. 07)

(a) For the purposes of this title the following zoning districts are hereby established, and are delineated on the official zoning map.

- (1) Historic DistrictHD
- (2) Conservation Open SpaceCOS
- (3) Park-ResidentialPR
- (4) Residential OneR-1
- (5) Residential Two.....R-2
- (6) Residential CommercialRC
- (7) CommercialC
- (8) Planned Unit Development.....PUD

(b) Properties owned and held by governmental entities, except Shepherd College, or by eleemosynary or philanthropic organizations are designated as Public Use on the official zoning map.

Section 9-204 Boundaries of districts

Unless otherwise indicated on the zoning district map, the boundary lines of the districts follow lot lines, center lines of streets, alleys, or such center lines extended, center lines of creeks or the corporate limit line as existing at the time of adoption of this title or measured line.

Section 9-205 Application of regulations (amended January 9, 1990)

No buildings or land shall hereafter be used and no building or part thereof shall be erected, moved or altered unless for a use expressly permitted by and in conformity with the regulations for the district in which it is located.

(a) Zoning of annexed areas. All territory which may be annexed to the town shall from time of annexation be considered as being in the R-1 District until changed by ordinance, unless the resolution of annexation by the Town Council provides for other district classification or classifications. If land is to be annexed and classified other than (a) R-1 or (b) a district classification of some property abutting, contiguous or adjacent thereto, the town council shall:

- (1) Refer the matter to the Commission for recommendation and report, and if the Commission makes no report within ten (10) days from the date the council refers it to the Commission, it shall be considered to have made a report approving the proposed annexation and district classification, and
- (2) Hold a public hearing in relation thereto, giving at least ten (10) days notice of the time and place of such hearing in a newspaper published or having general circulation in the area.

(b) Location of zoning line in vacated street. Whenever the town council vacates a street or alley, adjacent districts shall extend to the center line of the vacation.

(c) Redesignation of Public Use properties. Whenever a property which has been designated as Public Use on the official zoning map shall cease to be devoted to such use, the property shall, from date of cessation of such use, as determined by the Council, be considered as being in the same zoning district as that in which the predominant number of abutting properties are classified. (Amended January 10, 1990)

(d) Required open area not to be infringed upon. Yards, parking space or lot area required for only one building may not be used for another main building nor may the size of a lot be reduced below the requirements of this title.

Section 9-206 Continuance of non-conforming uses

Any lawful use of land or structures existing at the time of the adoption of this title, or subsequent amendment of this title may be continued with the following limitations:

(a) Discontinuance of a non-conforming use. Any non-conforming use which has been discontinued for a period of two (2) years or longer shall not be re-established. Vacating of premises or building, or non-operative status shall be evidence of discontinued use.

(b) Substitutions. If no structural alterations are made, a non-conforming use of a building may be changed to another non-conforming use of the same or a more restricted classification if approved by the Board of Appeals. Whenever a non-conforming use has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use.

(c) Extensions. When authorized by the Board of Appeals, the extension of a building devoted to a non-conforming use upon a lot occupied by such building or on a lot adjoining may be made, provided, however, that the floor area of such extension or addition shall not exceed, in all, fifty (50%) per cent of the floor area of the existing building or buildings devoted to a non-conforming use, as such building or buildings existed at the time of the adoption of this title, and provided that existing set-back requirements are met. Such extension shall not include additional dwelling units. The extension of a non-conforming use throughout those parts of a building which were manifestly designed or arranged for such use prior to the effective date of this title may also be authorized by the Board of Appeals.

(d) Conditions and requirements by the Board of Appeals. In authorizing substitutions or extensions, the Board may require the installation, operation and maintenance in or in connection with the substitution or extension of such devices and methods of operations as may, in its opinion, be reasonably required to prevent damage to adjacent properties and neighborhoods and prevent conditions which may become obnoxious or offensive. In authorizing a substitution or extension, subject to compliance with certain conditions, the Board may require a written agreement, guarantee or bond (as it may deem necessary to insure the conditions stipulated by the Board are being and will be complied with). Any such written agreement may be required by the Board to be recorded among the land records of the county at the expense of the applicant.

Section 9-207 Off-street parking requirements

Parking space or spaces surfaced with asphalt, concrete or other stabilized material such as crusher-run and three (3) inches of stone shall be provided on any lot on which any of the following uses are hereafter established. Each space shall have access to a street or alley. For purposes of computing, each space will be not less than nine (9) feet wide nor twenty (20) feet long.

I Minimum requirements for specific uses:

- (a) For dwellings, one (1) space on the lot for each living unit in the building. For lodging houses, one (1) space on the lot for each lodging unit in the dwelling.
- (b) For churches erected on new sites, one parking space on the lot for each ten (10) seats in the main auditorium, but existing churches and additions to or enlargements of churches existing at the time of passage of this title shall be exempt from this requirement.

- (c) For places of public assembly, including auditoriums and theatres, one space for each seven (7) seats provided .
- (d) For all schools, except high schools, two (2) spaces for each classroom; for high schools ten (10) spaces for each classroom.
- (e) For institutions, clubs, lodges and other public and semi-public buildings, five (5) spaces for each one thousand (1,000) square feet of floor area.
- (f) For commercial and residential uses located on the same lot in the Residential Commercial District, one space for each dwelling unit and one space for each two hundred (200) square feet of commercial floor area, with a minimum of two (2) spaces required.
- (g) For commercial uses, except as specified in Section 9-207 I (f), one (1) space for each three hundred (300) square feet of floor area and one (1) space for each two (2) employees.

II. General rules and exceptions:

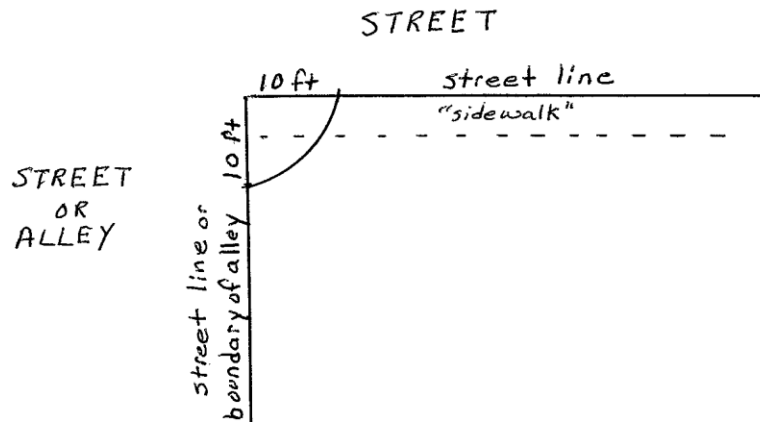
- (a) In the RC and C Districts, parking space may be provided on a separate lot if within three hundred (300) feet of the building served, and two (2) or more owners may join together in the provision of this parking space.
- (b) No parking space may be located in a front yard. This does not prohibit parking in a driveway.
- (c) Parking spaces may be provided in side and rear yards in the Commercial District but are limited to rear yards in Residential Districts.
- (d) Parking space for any use specifically permitted in an R District may be provided on a lot adjoining that use.
- (e) Existing buildings not complying with off-street parking requirements may be remodeled, repaired or structurally altered, but any enlargement must provide the required parking spaces for said enlargement.

Section 9-208 Private detached garage or accessory building

A private garage or other accessory building located in the rear yard may not be nearer than three (3) feet to any side lot line, nor nearer than twelve (12) feet to an alley line, except that a common or joint garage may be erected on adjoining lots. On corner lots, said garage or other accessory building shall not be nearer to the side street line than the main building.

Section 9-209 Obstructions to vision at intersections prohibited
(amended January 9, 2007)

On any corner lot in all districts, there shall be no obstruction to traffic visibility within the area extending in an arc with a radius of ten (10) feet from the intersection of the two (2) street lines adjacent to the corner lot or the intersection of the Street line and the boundary of the alley, which are both adjacent to the corner lot.



Section 9-210 Signs

- I. **Signs, general.** Signs shall not be painted on the exterior wall of any structure.

The following signs are permitted in any district according to the provisions of this title:

- (a) A personal service sign for professional office or to a home occupation; unlighted or directly lighted, not to exceed two (2) square feet in size.
- (b) A temporary real estate sign, not exceeding four (4) square feet in size, advertising sale or lease of the premises on which such sign is displayed.
- (c) A sign identifying a non-profit organization and giving direction thereto, containing no commercial advertising, not exceeding ten (10) square feet in size.

- (d) A temporary sign noting an event of general interest such as a locally sponsored carnival, such signs to be removed within ten (10) days after the event. The date of the event must be noted upon the sign.
- (e) One bulletin board on church, school, college property, not over thirty (30) square feet in area.
- (f) Signs—directional, informational, or warning in character, involving no advertising—and each not exceeding six (6) square feet in area.

II. Signs, business (amended on April 14, 1998)

Business signs are permitted subject to approval of the planning commission if located within its jurisdiction. This section applies to any and all signs displayed on or in front of the building, or immediately inside windows of business establishments, when such signs are visible from the street which are intended to identify or call attention to a business, service or industry conducted on the premises upon or within which the sign is located. The following conditions are applicable:

- (a) Signs may extend over a building line or public right-of-way no closer than three (3) feet to the curbing. Signs shall be placed at a minimum height of seven (7) feet above the ground or sidewalk measured from the bottom of the sign, unless it is attached flat against a building or does not project more than six (6) inches over the building line or public right-of-way.
- (b) All signs on or in front of a building, or immediately inside windows, which are visible from the street shall be immobile, non-flashing, and in no way resemble traffic signals or other warning devices. If lighted, the signs shall be lighted, either indirectly or from within, by use of either incandescent or fluorescent lighting only, except that signs indicating “open” that do not exceed a total of 144 square inches may be illuminated by neon. Lighted signs not complying with this ordinance must be phased out of use within five (5) years of the effective date of this amendment.
- (c) The total area for all signs on an individual commercial or industrial premise shall not exceed twenty-five (25) square feet.
- (d) An identification sign for a shopping center or industrial park or other integrated group of commercial buildings shall not exceed one hundred (100) square feet in area, and shall be subject to setback requirements for the district in which it is located.

- (e) All free-standing signs shall be so located and shall be so placed as to allow ample visual sight lines for driveways, streets and alleys. Free-standing signs may be used only by commercial establishments with no more than one (1) sign per fifty (50) feet of frontage permitted.
- (f) In no case shall any sign attached to a building project above a roof line.
- (g) In no case shall a free-standing sign exceed fifteen (15) feet in height above average grade of the site.

Any sign displayed which no longer advertises a *bona fide* business conducted upon the premises as specified above shall, upon notification by the Town Council to the owner of the property, be taken down by the owner within ten (10) days of such notification. Failure to so comply on the part of the owner, occupant, agent or person having the beneficial use of any building or premises upon which sign may be found shall cause the town, through its attorney, to seek compliance.

III. Signs, Specific

Approval of the display of a sign shall be granted by the Planning Commission only when such signs and the plans thereof so far as they relate to the appearance, color, size, position, method of attachment, texture of materials and design, conform to the historic period and distinctive character of the building or structure, and/or do not impair the value to the community of those buildings having historic and/or architectural worth specifically as follows:

- (a) Sign colors shall be compatible with color schemes used on the particular building or structure upon which the sign is affixed.
- (b) No sign shall be placed upon a balcony, gallery, canopy, shed or roof, or placed in any manner whatsoever so as to disfigure or conceal any architectural features or details of any building.
- (c) All signs shall be maintained in good condition and appearance. The town may cause to be removed any sign which shows gross neglect or becomes dilapidated or where the area immediately around such sign is not well maintained after due notice has been given.

Section 9-211 Lot frontage

All lots in the residential and residential commercial zones shall have the minimum required lot width fronting on designated streets but not alleys.

Section 9-212 Prohibited uses (amended April 12, 1994)

(a) Definitions

For purposes of this Section, the term “mobile home” shall have the meaning ascribed to it in West Virginia Code 37-15-2(h), and shall also include any “manufactured home” as defined in subsection (g) thereof.

For purposes of this Section, the term “mobile home park” is defined as a tract of land under single ownership which has been planned and improved by the placement of at least six (6) or more mobile homes thereon and which is intended for the express purpose of providing a satisfying living environment for mobile home residents on a long-term occupancy basis.

(b) The following are prohibited in all Districts: billboards, private or public rifle shooting ranges, junkyards—including those for storage and sale of scrap materials—and mobile homes.

Such prohibition does not apply to those mobile homes situate within the corporate limits on or before passage of this Section, April 12, 1994.

A permit granting exemption from the mobile home prohibition will be issued by the Town Council to property owners applying for same and having a mobile home or a mobile home park situate upon their property as of the aforesaid date.

In the event a mobile home is removed from the property for which a permit has been issued and is not replaced by another mobile home of equal or better quality within two (2) years from the date of removal, the use of that space for a mobile home shall be considered abandoned and the permit for that mobile home will be revoked and will not be reinstated. In the event title to the real estate upon which a mobile home is located is transferred to another party, the Town Council will reissue a permit to the new owner upon application therefor.

All mobile homes not prohibited by this Section shall require permitting pursuant to this Section and the responsibility for application for the same shall be that of the property owner. Mobile homes without permits shall be subject to the prohibitions contained in this section.

The property owner may use the entire tract of real estate upon which the mobile home park is/are located for operation of the said mobile home park, provided that said park shall not be extended beyond the confines of the tract as the same is configured as of the aforesaid date.

The permit issued to the owner of any mobile home park will specify the number of mobile homes situate upon the property as of the above date, which is the maximum number of homes which may be included in the park. In the event a mobile home is removed from the designated mobile home park and is not replaced by another mobile home of equal or better

quality within two (2) years, the number of authorized mobile home spaces permitted will be reduced by one.

In the event title to the real estate upon which the mobile home park is situate is transferred to another party, the Town Council will reissue a permit to the new owner specifying the number of mobile home spaces that were allowed to be located on the property as of the date of the property transfer.

Section 9-213 Satellite stations and dish antennas; prohibition; penalties (added by amendment June 11, 1985, further amended March 10, 1998)

The following provisions are hereby specifically adopted in order to safeguard, preserve and protect the historic character and value of the Town, its culture and heritage, as a Historic Landmark Community:

(a) “Satellite station” and “dish antenna” means any special apparatus, dish antenna, receiver, transmitter and/or power supply, which is designed to transmit or receive television signals for man-made satellites traveling in orbits of the earth.

(b) Within the corporation boundaries of the Town, it is unlawful for any natural person, firm, co-partnership, association or corporation to erect or cause to be erected a satellite station and/or dish antenna in excess of one meter in diameter. In areas within the corporation boundaries of the town that are also included within an area designated as a certified Historic district it is unlawful for any natural person, firm, co-partnership, association or corporation to erect or cause to be erected a satellite station and/or dish antenna in excess of one half meter in diameter. Any satellite station and/or dish antenna erected in accordance with this ordinance must be located out of public view from the front of the property.

(c) Any natural person, firm, co-partnership, association or corporation who violates this ordinance shall be guilty of a misdemeanor and shall be punished by imposition of a fine for not less than Twenty-Five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00) for each separate offense, and each day in which such person, firm, co-partnership, association or corporation is in violation of this ordinance shall constitute a separate offense and may be proceeded against by separate prosecution.

Section 9-214: Regulation of short-term rental properties (added December 2011)

For the purposes of these Ordinances, short-term rental housing shall be a business similar to other transient lodging businesses mentioned in these ordinances, such as bed & breakfast establishments, boarding houses, hotels, motels, rooming houses, and tourist homes. Short-term rental properties shall not be deemed home occupations.

All ordinances and regulations of the Corporation of Shepherdstown, including but not limited to the Corporation of Shepherdstown Parking Regulations and Section 8-209 of Chapter 2, Title 8,

providing for regulations and license taxes, entitled “Hotels, motels., boardinghouses, etc., where lodging furnished”, shall apply to businesses operating as short-term rental properties.

Section 9-215 Erosion control and stream protection (pursuant to WV State Code §7-1-3u) (added December 2011)

All construction projects requiring disturbance of the earth of more than 400 square feet within the **Corporation of Shepherdstown** must implement measures designed to preclude erosion of soil from the site both during and after the construction. These measures must be detailed in the **Building Permit Application** and address the following factors:

1. the proximity of the site to streams (as defined in WV §7-1-3u), wetlands, and other ecologically sensitive areas
2. the trees and other vegetation to be displaced by the construction phase of the project and how this displacement will be remediated (see Corporation of Shepherdstown Ordinances 11-505 and 9-1413)
3. the extent and duration of the earth disturbance
4. the topography of the site
5. the control and limitation of storm water runoff
6. any unusual construction site characteristics including the presence of fill and/or hazardous material, springs, or subsidences (sink holes)

Construction entrances must be provided for projects requiring the movement of heavy equipment onto and off of the project site. Additionally, pollutants associated with construction must be contained and disposed properly. These include-

1. concrete wash from tools and trucks
2. sanitary waste and pathogens from porta-potties
3. debris from discarded building materials
4. oil and grease from equipment and vehicles
5. paint, chemicals and solvents
6. litter

For projects within 75 feet of streams, a **Stream Protection Setback** equal to twice the average width of the watercourse channel measuring from the top of one bank to the top of the opposite bank or 50 feet, whichever is less, shall be maintained from the top of the banks of all watercourses. To reduce erosion, natural vegetation shall be maintained in this area. Where natural vegetation does not exist along the watercourse and conditions for replanting are suitable, high priority shall be given to planting vegetation in the setback area to stabilize banks and enhance aquatic resources. [NOTE: For the purposes of this ordinance, the “top of the bank” is considered to be synonymous with “bankfull level” and is delineated by the elevation point of incipient flooding that is indicated by deposits of sand or silt at the active scour mark, break in stream bank slope, perennial vegetation limit, rock discoloration, and root hair exposure.]

Projects causing disturbance of the earth of one acre or more must adhere to storm water drainage practices in accordance with guidance issued by the Jefferson County, West Virginia Planning and Zoning Department and be permitted as required by the West Virginia Department of Environmental Protection.

CHAPTER 3 HD (Historic District)

Section 9-301 Declaration of public purpose

The preservation of structures of historic and architectural value together with the appurtenances and environmental landscape is a public purpose of Shepherdstown. The purpose of this chapter is: (1) to safeguard the heritage of the town by preserving the district therein which reflects elements of its cultural, social, economic, political, or architectural history; (2) to stabilize and improve property values in such a district; (3) to foster civic beauty; (4) to strengthen the local economy; and (5) to promote the use and preservation of the Historic District for the education, welfare and pleasure of the residents of the municipal corporation.

Section 9-302 Historic District defined

The Historic District includes all areas within the town boundaries as shown on the official zoning map of Shepherdstown. Said district may be amended as prescribed in Chapter 11.

Section 9-303 Historic Landmarks Commission Members, Terms of Office, Vacancies (amended May 8, 2007)

A Shepherdstown Historic Landmarks Commission is established in accordance with Article 26A, of Chapter 8A of the West Virginia Code, and shall consist of five (5) members nominated by Council and appointed by the Mayor, the majority of whom shall be residents of the Corporation of Shepherdstown. Elected officials can serve only in the capacity of ex-officio. The membership first selected shall serve one, two and three year terms divided as equally as possible. Members, thereafter, shall be selected for terms of three years each. Vacancies shall be filled for the unexpired terms only in the same manner as original selections are made. Members shall serve without compensation.

Section 9-304 Power and duties of Historic Landmarks Commission

The powers and duties of the Shepherdstown Historic Landmarks Commission shall be those specified in Article 26-A, Section 8-26-A-5 of the West Virginia State Code.

Section 9-305 Restrictions on use of designated historic landmarks

Restrictions on the use of historic landmarks designated by the Shepherdstown Historic Landmarks Commission shall be by agreement between said commission and owners of registered historic landmark properties, in accordance with Article 26-A, Section 8-26A-4 of the West Virginia State Code.

Section 9-306 Meeting (Added December 12, 2006)

The Commission shall fix the time for holding regular meetings, but shall meet at least once a month.

Section 9-307 Quorum (Added December 12, 2006)

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 the members of the Commission present at a regular or properly called special meeting.

Section 9-308 Election of Officers (Added December 12, 2006)

At its first regular meeting in each year, the Commission shall elect from its members a President and Vice-President. The Vice-President shall have the power and authority to act as President of the Commission during the absence or disability of the President.

Section 9-309 Review of Planning Commission Applications (added December 2011)

- (a) The Historic Landmarks Commission shall review and consider all applications required pursuant to Section 9-902 of this ordinance. The Historic Landmarks Commission shall supply a recommendation to the Planning Commission as to whether the alterations proposed in the application are in compliance with the Shepherdstown West Virginia Historic District Design Guidelines as approved by the Shepherdstown Town Council in March of 2010. The recommendations of the Historic Landmarks Commission are non-binding on the Planning Commission.
- (b) In making its recommendations, the Historic Landmarks Commission shall consider the following:
 - (1) The Shepherdstown West Virginia Historic District Design Guidelines as approved by the Shepherdstown Town Council in March of 2010; and
 - (2) The documentation for the Shepherdstown Historic District, including the survey and inventory; and
 - (3) Historic research and other documentation submitted with the application, including records of architectural investigation, Preservation Plans and any Historic Structures Reports.
- (c) In making its recommendations, the Historic Landmarks Commission may consider the following:
 - (1) The United States Secretary of the Interior's Standards, the United States National Park Service Preservation Briefs, and other preservation standards and documents; or
 - (2) Reports and testimony from persons with expertise in preservation.

- (d) The Historic Landmarks Commission may meet with an applicant or potential applicant during its regular meeting or during any special meeting to discuss an application or potential application and its adherence to the Shepherdstown West Virginia Historic District Design Guidelines as approved by the Shepherdstown Town Council in March of 2010.

CHAPTER 4 - COS (Conservation Open Space) District

Section 9-401 Declaration of public purpose

The Conservation Open Space District is intended to provide permanent open space for its natural beauty and recreational value. It is also intended to preserve natural resources, prevent erosion, pollution, silting, and safeguard the health, safety and welfare of persons and property by limiting development on excessive slopes, on flood plains, on poorly drained lands, or on other areas where protection against natural dangers to life and property, or the lack of such protection, would prove costly to members of the community.

Section 9-402 Uses permitted in the COS District

- (a) Farms, tree and plant nurseries.
- (b) Parks, playgrounds, golf courses, public and private recreational uses, and cemeteries.
- (c) Game, wildlife, and nature study preserves and reservations.
- (d) Flood control, water treatment facilities, sewage treatment plants, other utilities and municipal public works.

Section 9-403 Uses permitted by special exception

Those uses considered by the Board of Appeals to be the same character as those listed in Section 9-402 above.

Section 9-404 Required lot area, lot width, and yards in Conservation Open Space District.

- (a) Minimum area: Not specified.
- (b) Front, rear and side yard setback minimums shall be equal to the structure height.
- (c) For a structure higher than twenty-five (25) feet, the yard requirement shall be as follows:

All yards: Between the foundation and the nearest lot line, a distance of 2.5 times the height of the structure shall be maintained.

Section 9-405 Accessory uses

- (a) General signs. Section 9-210-I, “Signs, general.”

CHAPTER 5 (PR) Park-Residential, R-1, R-2 Districts

Section 9-501 Declaration of public purpose

(a) The Park-Residential District is to support the existing pattern of single family dwellings on large lots and to provide protection for and transition to the Conservation Open Space District.

(b) The R-1 (low density) District is intended to preserve and encourage the development of single family residential neighborhoods free from land usage which might adversely affect such development.

(c) The R-2 (medium density) District is intended to provide an attractive, pleasant living environment at a sufficient density to maintain a high standard of physical maintenance and the optimum utilization of land appropriate for residential use.

Section 9-502 Uses permitted in the PR (Park Residential) District

- (a) Uses (a) through (d) permitted in the COS District
- (b) A single family residence per existing lot as presently recorded with no construction on a slope greater than twelve (12) percent, or below the base flood level as determined by H.U.D.

Section 9-503 Uses permitted in the R-1 (low density) District (amended on January 9, 1990)

- (a) Any use permitted in the PR District.
- (b) Single family, duplex dwellings, and/or single family dwellings of no less than one thousand five hundred (1,500) square feet with one (1) apartment of no less than one

thousand (1,000) square feet, which apartment shall contain not more than three (3) additional persons not members of the family residing in the dwelling unit.

(c) Townhouses, each having its own lot and housing no more than one family.

(d) Accessory uses and buildings.

Section 9-504 Uses permitted in the R-2 (medium density) District (amended on January 9, 1990)

(a) Any use permitted in the R-1 District.

(b) Two-family dwellings, or leasing of rooms to not more than five (5) persons not members of the family residing in the dwelling unit.

(c) Multi-family dwellings.

(d) Condominiums. (Added February 12, 2008)

Section 9-505 Special exceptions (require Board of Appeals approval) in Residential district (amended January 9, 1990)

(a) PR—Subdivision of lots two (2) acres or more into lots no less than one (1) acre

(b) R-1—Two-family dwellings with one (1) off-street parking space per dwelling unit.

(c) R-2—Boarding and lodging homes not primarily for transients, and Bed-and-Breakfast establishments, provided off-street parking of one (1) space per rental unit is provided and provided yard requirements shall conform to those of a multi-family structure.

(d) R-2—Nursery school or child care center, provided it contains an adequately sized play area, fully fenced and enclosed, and the main structure is no closer than twenty (20) feet from any adjacent district line or lot line.

(e) R-2—Rest and nursing homes, provided one (1) off-street parking space is provided for each attendant or worker, for each three (3) patients to be cared for therein, and provided yard requirements shall conform to those of a multi-family structure.

(f) R-2—Laundry facilities located with multi-family dwelling, for use by residents of the apartments or apartment complex and not as a commercial enterprise.

(g) R-1 and R-2—The office of a resident physician, dentist, architect, engineer, attorney, similar professional person located in that person's home, provided:

- (1) That there is no exterior evidence, other than a permitted sign, to indicate that the building is being used for any purpose other than that of a dwelling.
 - (2) That the structure does not contain windows designed for display purposes.
 - (3) Sufficient off-street parking is provided with three (3) spaces being considered minimal.
 - (4) The total area devoted to the office does not exceed 30% of the square footage of the dwelling unit.
- (h) R-1 and R-2—Home occupations.

Section 9-506 Building height regulations in residential districts.

No single, two-family or town-house dwelling shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet. No multi-family dwelling shall exceed three (3) stories or forty-five (45) feet in height.

Section 9-507 Off-street parking and loading

In the residential districts there shall be provided adequate off-street parking and loading in accordance with the schedules in Chapter 2.

Section 9-508 Required lot area, lot width, and yards * in residential districts (Amended February 13, 2007)

Min. Lot Area Per Family Unit (square feet)	Min. Lot Width (feet)	One Front Yard Depth (feet)	Side Yard (feet)	One Rear Yard (feet)	Green Space
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PR District.....	22,000	100.....	*	2-20.....	***	*****
R-1 District Single-family dwelling.....	11,000	60.....	*	**	***	*****
Duplex dwellings.....	11,000	30 per unit	*	2-12 end units only.....	***	*****
Town- houses.....	5,000	25 per unit .....	*	.....	2-12 end units only.....	***	*****
R-2 District Single-family dwelling.....	11,000	60.....	*	.....	** .....	***	*****
Duplex dwellings.....	5,500	30.....	*	.....	2-10 end units only.....	***	*****
Two-family dwellings.....	5,500	30.....	*	.....	** .....	***	*****
Town- houses.....	3,000	25 per unit .....	*	.....	2-10 end units only.....	***	*****
Multi-family dwelling.....	2,000	100.....	25	12.....	30	***	*****
Schools and churches .....			*	.....	10.....	30	*****

*Front yard No closer than established building line on adjacent lots. If no buildings exist then no closer than a building within two hundred (200) feet on the same side of the street.

**Side yard One side yard of at least twelve (12) feet unless the lot is accessible from the rear via a public alley. If such access exists then the side yard may be a minimum of eight (8) feet.

***Rear yard Not less than 40 feet.

**** Green Space Footprint of house (primary structure) and any accessory buildings cannot exceed 50% of lot area.

CHAPTER 6 - RC (Residential Commercial) District

Section 9-601 Declaration of public purpose

The purpose of the Residential Commercial Zone is to reinforce the economic base of the town by preserving the central business uses unique to Shepherdstown. Secondly, the Residential Commercial Zone is intended to complement the Historic District to more effectively preserve the historic environmental setting of the town.

Section 9-602 Uses permitted in the Residential Commercial District

The following uses shall be permitted if not more than three thousand (3,000) square feet of floor area:

- (a) Any use permitted in the R-2 District.
- (b) Transient lodgings.
- (c) Retail outlets: furniture, department, clothing dry goods, shoe and variety stores, hardware, electrical appliance, paint and wallpaper stores.
- (d) Specialty shops: gift shops, jewelry stores, magazine, book and stationery outlets, florist shops, camera and photography shops and studios, sporting goods and antique shops.
- (e) Food, Drug and Beverage: grocery, fruit and/or vegetable stores, delicatessens, drug stores, bakeries, restaurants, taverns, and the like.
- (f) Service and recreation: laundromats, dry cleaning and laundry pick-up stations, barber and beauty shops, dressmaking and millinery shops, shoe repair and tailor shops, commercial recreation, repair shops for appliances and small articles, furnace, heating and plumbing shops.
- (g) Business and professional offices: medical, dental, clinics, law offices, banks, finance, and utility company offices, insurance and real estate offices.
- (h) Public service buildings: libraries, museums, and community centers.
- (i) Accessory uses or buildings not used for dwelling.
- (j) Business and advertising signs, real estate and public building signs or bulletin boards when attached to a building pertaining to the use of the property on which the sign is located, provided that they meet the requirements of Section 9-210

Section 9-603 Special exception (require Board of Appeals approval) in Residential Commercial District

Any commercial venture requiring more than three thousand (3,000) square feet.

Section 9-604 Lot requirements in the Residential Commercial District

The following are minimum requirements only:

- (a) Lot width must be at least twenty-five (25) feet for newly created lots.
- (b) Front building along German Street must be set back no further from the right-of-way of German Street than the structure on the adjoining property that is closest to the right-of-way, unless authorized by the Board of Appeals. Front yards along Church, King and Princess streets shall be set back a minimum of twenty (20) feet.
- (c) Rear yards shall be equal to fifty percent (50%) of the lot depth.
- (d) At least one side yard shall be provided at a minimum of five (5) feet.
- (e) Single-family use which may include two (2) commercial uses, five thousand (5,000) square feet.
- (f) Two-family use which may include two (2) commercial uses, five thousand (5,000) square feet.
- (g) Townhouse use which may include one (1) commercial use per unit, three thousand (3,000) square feet per unit.
- (h) Multi-family use which may include one (1) commercial use per unit, two thousand five hundred (2,500) square feet per unit.
- (i) Commercial use without residential use, five thousand (5,000) square feet.

Section 9-605 Building height regulations in Residential Commercial District

No structure in the district shall exceed two (2) stories or thirty (30) feet in height.

CHAPTER 7 C (Commercial) District

Section 9-701 Declaration of public purpose

The Commercial District is intended to further assure the economic base of the town by providing a heavy commercial service center for the town. It is intended that stores and other facilities be grouped in a convenient manner with particular attention being paid to adequate circulation of pedestrians and vehicles, accessibility from both the central community and the area, off-street parking and loading, and protection of adjoining areas of other use.

Section 9-702 Uses permitted in the Commercial District

The following uses shall be permitted:

- (a) Any use permitted in the RC District.
- (b) Newspaper printing and publishing facilities and print shop.
- (c) Indoor storage and transfer.
- (d) Automobile filling stations, automobile repair and sales.
- (e) Lumber yards.
- (f) Feed, grain and farmers' supplies
- (g) Dry cleaners.
- (h) Other commercial ventures, except that none shall be permitted that interfere with neighboring properties in terms of fire hazards, smoke emission, glare, noise, odor, dust, vehicle movement, liquid and solid waste, visibility, vibration, heat, electrical static, or radioactivity.

Section 9-703 Required lot area, lot width and yard in the Commercial District

Min. Lot Area (sq. ft.)	Min Lot Width (feet)	One Front Yard (Depth- feet)	Each Side Yard (feet)	One Rear Yard (feet)
12,000	100	15 or equal to	1/3 the height of	20

the average	the
depth of	structure
setback of	but no
existing	closer
buildings on	than
adjacent lots	10 feet

Section 9-704 Building height regulation in the Commercial District

No building in the C District shall exceed sixty (60) feet in height

Section 9-705 Off-street parking and loading

There shall be provided in the C District adequate off-street parking and loading in accordance with the schedule in CHAPTER 2.

CHAPTER 7A PLANNED UNIT DEVELOPMENT (PUD) (added by amendment Oct. 2007)

Section 9-7A01 Purpose

The purpose of the planned unit development is to encourage flexibility in the development of land in order to promote its most appropriate use; to improve the design, character and quality of new developments; to encourage a harmonious and appropriate mixture of uses; to facilitate the adequate and economic provision of streets, utilities and city services; to preserve critical natural environmental and scenic features of the site; to encourage and provide a mechanism for arranging improvements and sites so as to preserve desirable features; and to mitigate the problems which may be presented by specific site conditions. It is anticipated that Planned Unit Developments will offer one or more of the following advantages:

- A. Serve to implement the goals, objectives, and strategies of The Shepherdstown Comprehensive Plan specific to the district or neighborhood in which the PUD is to be located;
- B. Apply the design principles of new urbanism, neo-traditionalism, and other emerging smart growth principles, urban development patterns and best management practices, using Shepherdstown as a physical model;
- C. Promote development patterns that maximize compatibility of differing adjacent land uses to avoid the necessity of extensive buffering;
- D. Enhance the appearance of neighborhoods by conserving areas of special natural beauty, steep slopes, ecological importance, flood prone areas, and natural green spaces where appropriate, while understanding that land

within urban areas is best suited for urban densities and development patterns;

- E. Encourage good urban design and mitigate congestion on streets;
- F. Promote architecture that is compatible with the Shepherdstown community vernacular, and/or the surroundings;
- G. Promote design principles that allow differing types of land uses to coexist while preserving property values and minimizing potential negative consequences;
- H. Promote appropriate urban densities that will help make alternative forms of transportation economically and socially feasible; and
- I. Promote and protect the environmental integrity of the site and its surroundings by providing suitable design responses to the specific environmental constraints of the site and surrounding area.

Section 9-7A02 Definitions

A Planned Unit Development is an area under single ownership or control to be developed in conformance with an approved development plan, consisting of 1) a map showing the development area and all proposed improvements to the development area, 2) a text which sets forth the uses and the development standards to be met, and 3) exhibits setting forth any aspects of the development land not fully described in the map and text. The map exhibits and text constitute the use and development regulations for the Planned Unit Development site in lieu of the regulations for the underlying district.

Section 9-7A03 Requirements for Planned Unit Development

- A. The area designated in the Planned Unit Development map must be a tract of land at least two (2) acres in size and under single ownership or control. Single control of property under multiple ownership may be accomplished through the use of enforceable covenants and commitments which run concurrent with the Planned Unit Development.
- B. The Outline Plan shall indicate the land use, development standards, and other applicable specifications of the Planning and Zoning Ordinance which shall govern the Planned Unit Development. If the Outline Plan is silent on a particular land use development standard or other specification of the Planning and Zoning Ordinance, the standard of the underlying district or the applicable regulations shall apply.
- C. The Planned Unit Development map shall show the location of all improvements. The location of Planned Unit Developments shall be

designated on the Official Zoning Map and adopted pursuant to rules and regulations governing amendments of the Planning and Zoning Ordinance.

D. The Planned Unit Development must comply with all required improvements, construction standards, design standards, and all other engineering standards adopted and enforced by the Corporation of Shepherdstown, and any other pertinent regulations, except where specifically varied through the provisions of this Chapter.

E. Designation and Conveyance or Ownership of Permanent Open Space.

1. Definition. Permanent open space shall be categorized as one of two types:

(a) Improved Open Space is defined as parks, playgrounds, swimming pools, ball fields, plazas, landscaped green spaces, and other areas that are created or modified by man.

(b) At least 30 percent of the total permanent open space in any given Planned Unit Development shall be of the Improved Open Space type.

(c) Natural Open Space is defined as areas of natural vegetation, water bodies, or other landforms that are to be left undisturbed. Creation of a graded and surfaced walking trail through areas of Natural Open Space shall constitute disturbance of the area in the amount of the length of the walking trail multiplied by its width. Neither definition of open space shall include schools, community centers or other similar areas in public ownership.

2. Designation. Within all Planned Unit Developments, a minimum of 10 percent of the proposed Planned Unit Development area shall be designated as permanent open space. No plan for a single- or multi-family residential Planned Unit Development shall be approved unless such plan provides for permanent landscaped or natural open space.

3. Proximity. In the case of mixed-use Planned Unit Developments, permanent open space shall be allocated to the property in proportion to the uses assigned to the Planned Unit Development and shall be located in reasonable proximity to those uses. Provided, however, the permanent open space need not be located in proximity to the use in the case of preservation of existing features.

4. Proportion. If the Outline Plan provides for the Planned Unit Development to be constructed in stages, open space must be provided for each stage of the Planned Unit Development in proportion to that stage.
 5. Conveyance. Permanent open space shall be conveyed in or owned by one of the following forms:
 - (a) To a municipal or public corporation; or
 - (b) To a nonprofit corporation or entity established for the purpose of benefiting the owners and tenants of the Planned Unit Development or, where appropriate and where approved by the Planning Commission and the Town Council, adjoining property owners, or both. All conveyances hereunder shall be structured to insure 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 Planned Unit Development and, where applicable, by adjoining property owners; or
 - (c) To owners other than those specified in Subsections (a) and (b) 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 Planned Unit Development or adjoining property owners, or both; or
 6. Uses permitted in a Planned Unit Development may be any use that is found in the Planning and Zoning Ordinance in any district, subject to the approval of the Planning Commission and Town Council.
- F. For purposes of determining overall project size, two or more parcels of land owned by the applicant that are wholly or partially separated by a public street or other right of way may be considered contiguous and thus may be counted in fulfilling the two-acre requirement, provided that the use and development of the property is incorporated into, and is an integral part of the project plans; and provided that there is no other property not owned by the applicant separating the parcels in question. Where there is uncertainty in determining a parcel's qualification to be included in the PUD, the Planning Commission shall resolve the issue and make a determination as to the project boundaries, after considering the advice of the Planning and Zoning Director and the request by the applicant.

Section 9-7A04 Procedure for Approval of Planned Unit Development

- A. Introduction. Applications shall be accompanied by all plans and documents required by Sections 9-7A02 and 9-7A03. A three-step application process shall be used. The steps in the process are:
 - 1. Pre-application Conference;
 - 2. Outline Plan Approval; and
 - 3. Development Plan Approval.
- B. Pre-application Conference. Prior to filing a formal application for approval of a Planned Unit Development, the applicant shall schedule a pre-application conference with the Planning and Zoning Director. The purposes of the pre-application conference shall be to:
 - 1. Allow the applicant to present a general concept and to discuss characteristics of the development concept in relation to adopted municipal plans and policies.
 - 2. Allow the Planning and Zoning Director to inform the applicant of pertinent policies, standards and procedures for the Planned Unit Development.
 - 3. The pre-application conference is intended only for the above purposes; neither the developer nor the jurisdiction is bound by any decision made during a pre-application conference.
- C. Procedure for Outline Plan Approval. Based upon the pre-application conference, the applicant shall develop and submit an Outline Plan for the proposed Planned Unit Development.
 - 1. The Outline Plan and application for the Planned Unit Development shall be submitted to the Planning and Zoning Director who, after certifying the application package to be complete, shall initiate a review of the proposed development.
 - 2. The application and the results of the review shall then be forwarded to the Planning Commission for its consideration, public hearing and recommendations, together with the Planning Department's report and such other documents as may be pertinent to the Planned Unit Development.
 - 3. The Planning Commission shall hold a public hearing. A notice of time and place of such public hearing shall be published in a paper of general circulation in the area at least once, at least thirty

(30) days prior to the date set for the hearing. Such notice shall contain the address or location of the property for which the Planned Unit Development is being sought

4. Where there are environmentally sensitive features on the site or the Development Plan is expected to be complex, or there are other important, planning implications involved, the Planning Commission may reserve the right to review the Development Plan. And, where the Planning Commission recommends denial of an Outline Plan and the Town Council approves the plan, the Planning Commission shall review the Development Plan.

5. Upon completion of its review, the Planning Commission shall forward the application to the Town Council with 1) a favorable recommendation, or 2) an unfavorable recommendation.
6. The Town Council shall vote on the proposal within 90 days after the Planning Commission acts on the proposal. The Town Council may adopt or reject the proposal.

D. Effect of Approval of Outline Plan:

1. When an Outline Plan for a Planned Unit Development has been approved by the Town Council, the Plan shall become effective and its location shall be shown on the Zoning Map. The Zoning Map shall be amended to designate the site as a Planned Unit Development (PUD).
2. Upon such amendment of the Zoning Map, the use and development of the site shall be governed by the Planned Unit Development Outline Plan, subject to approval of a Development Plan.
3. No permit of any kind shall be issued until the Development Plan has been approved.
4. Development Plan:
 - (a) Purpose of Development Plan. The purpose of the Development Plan is to designate the controls for development of the Planned Unit Development. The Development Plan shall show the exact location of each building and improvement to be constructed and a

designation of the specific internal use or range of uses for each building.

- (b) Time Limit for Approval of Development Plan. The Development Plan shall be submitted to the Planning Department not more than eighteen (18) months following Town Council approval of the Outline Plan.

The Outline and Development Plans may be submitted as a single plan if all requirements of Section 9-7A02 are satisfied. The Development Plan may be submitted and approved in stages, with each stage representing a portion of the Outline Plan, at the discretion of the Planning Commission. The time limit for submitting each stage for approval may be set forth in the Outline Plan, in which case that schedule shall control the timing of development, rather than the time period contained in this paragraph. The Planning Commission may extend the time for application for approval of the Development Plan for good cause, consistent with the purposes of the Planning and Zoning Ordinance.

- (c) Expiration of Time Limit. Periodically, the Planning and Zoning Director shall report to the Planning Commission on Planned Unit Developments with time limits that have expired. The original applicants or current developers of the Planned Unit Development shall be notified by the Planning and Zoning Director. The Planning Commission shall determine whether to consider extending the time or to initiate action to amend the Zoning Map so as to rescind the Planned Unit Development designation.
- (d) Relationship of Development and Outline Plan. The Development Plan shall conform to the Outline Plan as approved.
- (e) Procedure for Approval of a Development Plan: The applicant must have the Development Plan approved prior to issuance of any building permit.
 - (1) Development Plan Submission. The Development Plan and supporting data shall be filed with the planning staff.
 - (2) Review. The Planning and Zoning Director shall review the Development Plan to include site plan

review, in accordance with the requirements of the Planning and Zoning Ordinance.

- (3) Staff Approval. It shall generally be the responsibility of staff to review Development Plans unless the Planning Commission reviews the Development Plans, or where no Development Plan is required.
- (4) Planning Commission Review. If the Planning Commission has retained Development Plan approval authority, the Planning Commission shall hold a public hearing in accordance with §9-7A04 C 3. The Commission may 1) approve, 2) deny or 3) approve with modifications.
- (f) Expiration of Development Plan. The Development Plan shall expire 2 years after approval, unless grading and/or building permits have been obtained and are still current and valid on that date. This rule shall also apply to each stage of a Development Plan approved in stages. The applicant may request, in writing, an extension of time, and the approving authority may extend the time limit where deemed appropriate. Such extension may be considered at the time of Development Plan approval.
- (g) Effect of Approval of Development Plan. No permit of any kind shall be issued for any purpose within a Planned Unit Development except in accordance with the approved Development Plan, and after acceptance by the Corporation of Shepherdstown of all required guarantees for improvement.

Section 9-7A05 Specific Content of Plans

Planned Unit Development plans and supporting data shall include all documentation listed in this Section of Chapter 7A of Title 9 unless certain documentation is deemed superfluous by the Planning and Zoning Director due to the specific circumstances of the particular request.

A. Pre-application Conference Requirements

- 1. A written letter of intent from the applicant describing the applicant's intention for developing the site.
- 2. A scaled drawing of the site, in simple sketch form, showing the proposed location and extent of the land uses, major streets, and

the approximate location of any existing easements, natural features, and topographic or geologic constraints.

B. Outline Plan Requirements

1. A drawing of the proposed Planned Unit Development shall be prepared at scale not less than 1" = 50', or as considered appropriate by the Planning and Zoning Director, and shall show in concept major circulation; generalized location and dimensions of building structures and parking areas; open space areas, recreation facilities, and other details to indicate the character of the proposed development. The submission shall include:
 - a. A site location map.
 - b. Map data such as north point, scale and date of preparation.
 - c. The name of the proposed development, with the words "Outline Plan" in the title block.
 - d. Boundary lines and acreage of each land use component.
 - e. Existing easements, including location, width and purpose.
 - f. Existing land use on abutting and adjacent properties.
 - g. Other conditions on adjoining land: topography (at 2-foot contour intervals) including any embankments or retaining walls; use and location of major buildings, railroads, power lines, towers and other influences; name of any adjoining subdivision plat.
 - h. Existing streets on and adjacent to the tract, including street name, right-of-way width, walks, curbs, gutters, culverts and drainageways.
 - i. Proposed public improvements: streets and other major improvements planned by the public for future construction on or adjacent to the tract.
 - j. Existing utilities on the tract.
 - k. Any land on the tract within FIRM Zone "A"; the 100-year floodplain, or floodway.
 - l. Other conditions on the tract, including water courses, wetlands, sinkholes, wooded areas, isolated trees six (6) inches or more in diameter, existing structures and other significant features.
 - m. Existing vegetation to be preserved and the locations, nature, and purpose of proposed landscaping.
2. Miscellaneous. The Planning and Zoning Director shall inform the applicant of any additional documents or data requirements after the Pre-application Conference. The developer must submit 14 copies of any page of any portion of the plan that exceeds 11 inches by 17 inches in size. If fewer copies than required are

submitted, the Planning and Zoning Director shall deem the application to be incomplete and shall not schedule hearing dates until the situation is resolved.

3. Written Statement of Character of the Planned Unit Development. An explanation of the character of the Planned Unit Development and the reasons why it has been planned to take advantage of the flexibility of these regulations. The written statement shall include:
 - a. Objectives. A specific explanation of how the proposed Planned Unit Development meets the objectives of all adopted land use policies which affect the land in question.
 - b. Ownership. A statement of present and proposed ownership of all land within the project including the beneficial owners of a land trust.
 - c. Scheduling. Timing of proposed development indicating:
 - i. Stages in which the project will be built, including the area, density, use, public facilities, and open space to be developed with each stage. Each stage shall be described and mapped; and
 - ii. Projected dates for beginning and completion of each stage of land development.
 - d. Proposed Uses.
 - i. Residential Uses: gross area, architectural concepts (narrative, sketch, or representative photo), number of units, bedroom breakdown, and proposed occupancy limits for each residential component.
 - ii. Nonresidential Uses: specific nonresidential uses, including gross floor areas (GFA), architectural concepts (narrative, sketch, or representative photo), and building heights.
 - e. Facilities Plan. Preliminary concepts and feasibility reports for:
 - i. Streets, roadways and bikeways
 - ii. Sidewalks and pedestrian pathways
 - iii. Water supply system

- iv. Sanitary sewers
- v. Stormwater management
- vi. Public utilities
- vii. Streetscaping, furniture and lighting
- f. Traffic Analysis. If requested by the Planning and Zoning Director or the Planning Commission, a study of the traffic impact caused by the proposed Planned Unit Development and/or any measures proposed to mitigate that impact.

C. Development Plan Requirements.

The application for Development Plan approval shall include, but not be limited to, the following documents:

1. Such additional information as may have been required by the Outline Plan approval.
2. An accurate map exhibit of the entire phase for which Development Plan approval is being requested, showing the following:
 - a. Precise location of all buildings to be constructed, and a designation of the specific use or range of uses for each building. Single-family residential development on individual lots need not show precise locations of buildings on each lot, but plans shall show building setback lines and other design constraints.
 - b. Design and precise location of all streets, drives, and parking areas, including construction details, centerline elevations, pavement type, curbs, gutters, and culverts details.
 - c. Location of all public utility lines and easements.
 - d. A final detailed landscape plan. Tabulation on *each* separate subdivided use area, including land area, number of buildings, number of dwelling units per acre, type of unit, bedroom breakdown, and limits on occupancy.

e. A detailed Open Space Plan showing the location and acreage of Improved Open Space, Natural Open Space and total Permanent Open Space; how it is owned and maintained; and all proposed improvements.

3. If lands to be subdivided are included in the Planned Unit Development, a subdivision plat meeting the requirements of a preliminary plat, as modified by the Outline Plan approval, is required where platting is to be proposed concurrent with the Development Plan review and approval process.

4. Projected construction schedule.

5. Agreements and covenants which govern the use, maintenance, and continued protection of the Planned Unit Development and its common spaces, shared facilities, and private roads.

6. Guarantee of Performance for Completion of Improvements. A bond or other guarantee acceptable to the Corporation of Shepherdstown shall be provided for all proposed public improvements and shall be executed at time of permit application or platting, whichever comes first. Improvements that must be guaranteed include facilities that shall become public, and may include other facilities or improvements as may be specified in the Outline or Development Plan approval. If the project is to be built in phases, the guarantee shall be posted prior to the commencement of work on each phase. The guarantee shall specify the time for completion of improvements, and shall be in an amount of one hundred twenty-five percent (125%) of the estimated cost of the improvements, as determined by the project contractor or engineer.

Section 9-7A06 Review Considerations

In consideration of a Planned Unit Development Outline Plan, the Planning and Zoning Director in his/her report to the Planning Commission, the Planning Commission in their recommendation to Town Council, and the Town Council in its decision, shall consider as many of the following as may be relevant to the specific proposal:

- A. The extent to which the Planned Unit Development meets the purposes of the Planning and Zoning Ordinance, the Comprehensive Plan, and any other adopted planning objectives of the Corporation of Shepherdstown.
- B. The extent to which the proposed plan meets the requirements, standards, and stated purpose of the Planned Unit Development regulations.
- C. The extent to which the proposed plan departs from the zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to, the density, dimension, bulk, use, required improvements, and construction and design standards and the reasons, which such departures are or are not deemed to be in the public interest.
- D. The proposal will not be injurious to the public health, safety, and general welfare.
- E. The physical design of the Planned Unit Development and the extent to which it makes adequate provision for public services, provides adequate control over vehicular traffic and promotes alternative forms of transportation, provides for and protects designated permanent open space, and furthers the amenities of urban ambience, light and air, recreation and visual enjoyment.
- F. The relationship and compatibility of the proposed plan to the adjacent properties and neighborhood, and whether the proposed plan would substantially interfere with the use or diminish the value of adjacent properties and neighborhoods.
- G. The desirability of the proposed plan to the Corporation of Shepherdstown's physical development, tax base and economic well-being. At the discretion of the Planning Commission and Town Council, special consideration in the form of increased development flexibility may be given to projects that are intended to rehabilitate or replace dilapidated areas, brownfields, or other areas of general visual or economic blight. Such special consideration shall not be granted to projects intended for construction on lands that consist of 60 percent or more previously undeveloped lands.
- H. The proposal will not cause undue traffic congestion, and can be adequately served by existing or programmed public facilities and services.
- I. The proposal preserves significant ecological, natural, historical, and architectural resources to the extent possible.
- J. The proposal will enhance the appearance, image, function, and economic sustainability of the community at large.

- K. Projects which are designed to a more human scale, support multi-modal transportation options, preserve useful open space, provide significant amenities to residents, and incorporate architectural detailing, massing and scale that is consistent with Shepherdstown's historical community norms shall have a significant advantage in the review process over those that merely seek to maximize inappropriate forms of density, circumvent customary development standards, or promote a pattern of development that can be generally recognized as "urban sprawl," as defined in the definitions contained in Chapter 13 of Title 9 of the Town Code.

Section 9-7A07 Changes in the Approved Planned Unit Development

- A. Changes Requiring Outline Plan Approval. Changes which alter the concept or intent of the Planned Unit Development including but not limited to:
 - 1. Significant changes in density;
 - 2. Significant changes in the proportion or allocation of land uses;
 - 3. Change in the list of approved uses;
 - 4. Changes in the locations of uses;
 - 5. Changes in functional uses of open space, where such change constitutes an intensification of use of the open space; and/or
 - 6. Changes in the final governing agreements where such changes conflict with the approved Outline Plan.
- B. Changes Requiring Development Plan Approval. These changes shall include the following:
 - 1. Changes in lot arrangement, or addition of buildable lots that change approved density of the development;
 - 2. Changes in site design requirements, such as location of required landscaping, signage, building height, architectural character, cube and/or footprint, or other such requirements of the Planning and Zoning Ordinance;
 - 3. Changes to the internal street system or off-street parking areas;
 - 4. Changes in drainage management structures;
 - 5. Changes in the Open Space Plan;

6. Changes in access to the development site, where such change amounts to an intensification in the traffic patterns of roadways of classification higher than local; and/or
7. All other changes not expressly addressed under Section 9-7A07A shall require new Development Plan approval.

CHAPTER 8 EXCEPTIONS AND MODIFICATIONS

Section 9-801 Lot of record

When a lot which is an official lot of record at the time of adoption of this title does not comply with the area, yard or other requirements of this title, an application may be submitted to the Board of Appeals for a variance from the terms of this title in accordance with the procedure outlined in CHAPTER 10. Such a lot may be used as a building site, provided, however, that the yard and other requirements of the district are complied with as closely as possible in the opinion of the Board of Appeals.

Section 9-802 Exceptions to yard requirements (Amended December 2011 by deleting 9-802 (d) Allowable projections of fences into yards)

(a) Allowable projections of structures into yards and other exceptions to yard requirements. Architectural features of buildings such as window sills, cornices, roof overhangs, unenclosed porches, roof terraces, open fire escapes, fireproof outside stairways, chimneys, and flues may not project into the required yard more than six (6) feet but not within six (6) feet of any side lot line.

(b) Side yards not required for second story residential uses in non-residential structures. Side yards shall not be required for residential dwellings erected above commercial structures.

(c) Allowable projections of business structures into yards. (amended November 14, 2006) Awnings, canopies, marquees as attached to and part of a building may project into the front yard in the Residential/Commercial and Commercial Districts only.

(d) Architectural or mechanical appurtenances may exceed height limitation. Chimneys, church steeples, monuments, tanks, water towers, spires, radio and television towers, or other similar architectural and mechanical appurtenances are exempt from height limitations.

(e) Storage buildings need not comply with story limitations. Storage buildings are exempt from the story limitations but not from maximum height limitations.

Section 9-803: Fences and Screening (Added December 2011)

I Rationale

The purpose of this section is to regulate fencing in such a manner to accomplish these goals:

- a) Allow for the provision of security for both private and public safety; for example, a fence can keep pets within property and keep an open line of visual clearance for vehicles across street corners.
- b) Recognize that property owners have a right to determine the boundaries of their properties and achieve a measure of privacy in their yards.
- c) Protect the openness and greenness of the Town and afford views into historic properties for everyone passing on a public way. Recognize that private yards, grass, gardens, and trees are an essential part of our historic context and character of the Town and fences should not detract from this context.
- d) The regulations guide construction of fences to preserve the distinctive character and integrity of the Historic District and surrounding properties. Fence design should be compatible with the house scale and design.

II. Permit Requirements related to Fences and Screening

- a) Application for fence or screening fence permit requires the following documentation: Drawing that depicts the exact location of fences or screen enclosures, gates, setbacks, alleys and/or streets; photographs and/or sketches that depict heights and accurately represent the proposed final product along with a description of materials and measurements of all members including spacing between members of type of fence proposed.
- b) This ordinance does not apply to barriers consisting solely of vegetation.

III. Fencing General Requirements

- a) Proportions. The height of the fence and the size of the various members (rails, posts, pickets, finials, caps, braces, gates, and panels) and the spacing between pickets, rails, and posts shall be appropriate to the style of fence chosen.
- b) Materials. Fences should be built of materials that comply with the requirements of Section 9-902-IV.
- c) Gates shall generally be of the same style as the fence to which they are attached, unless otherwise documented historically.
- d) Traditional plantings such as hedges and shrubs are acceptable alternatives for fences.
- e) In situations where there is a grade change between adjacent residential properties, whether demarcated with a retaining wall or slope, the height of the fence may be restricted. For a grade difference of 30 inches or greater a fence on the property at the higher elevation should not exceed 4 feet in height.

IV. Screening General Requirements

- a) The planning commission shall consider screening permits for the following two purposes:
 - 1. To minimize the impact of adverse visual effects on your own or on an adjacent property; or
 - 2. To establish a modest privacy area in rear or side yard that is unusually exposed to adjacent properties and not remedied by allowable fencing. The intent of this purpose is to allow the minimal linear amount of screening necessary.
- b) Screening is allowed in a side or rear yard.
- c) Screening may be accomplished by fencing or barrier consisting of vegetation, or a combination of both.
- d) No screening fence will be greater than 6-feet in height.

V. Barriers to Swimming Pools

- a) Swimming pools or spas, in-ground or above-ground may require a barrier fence. It is the applicant's obligation to submit documentation of the safety requirements to the planning commission as part of the application for a permit.

VI. Drawings and Charts

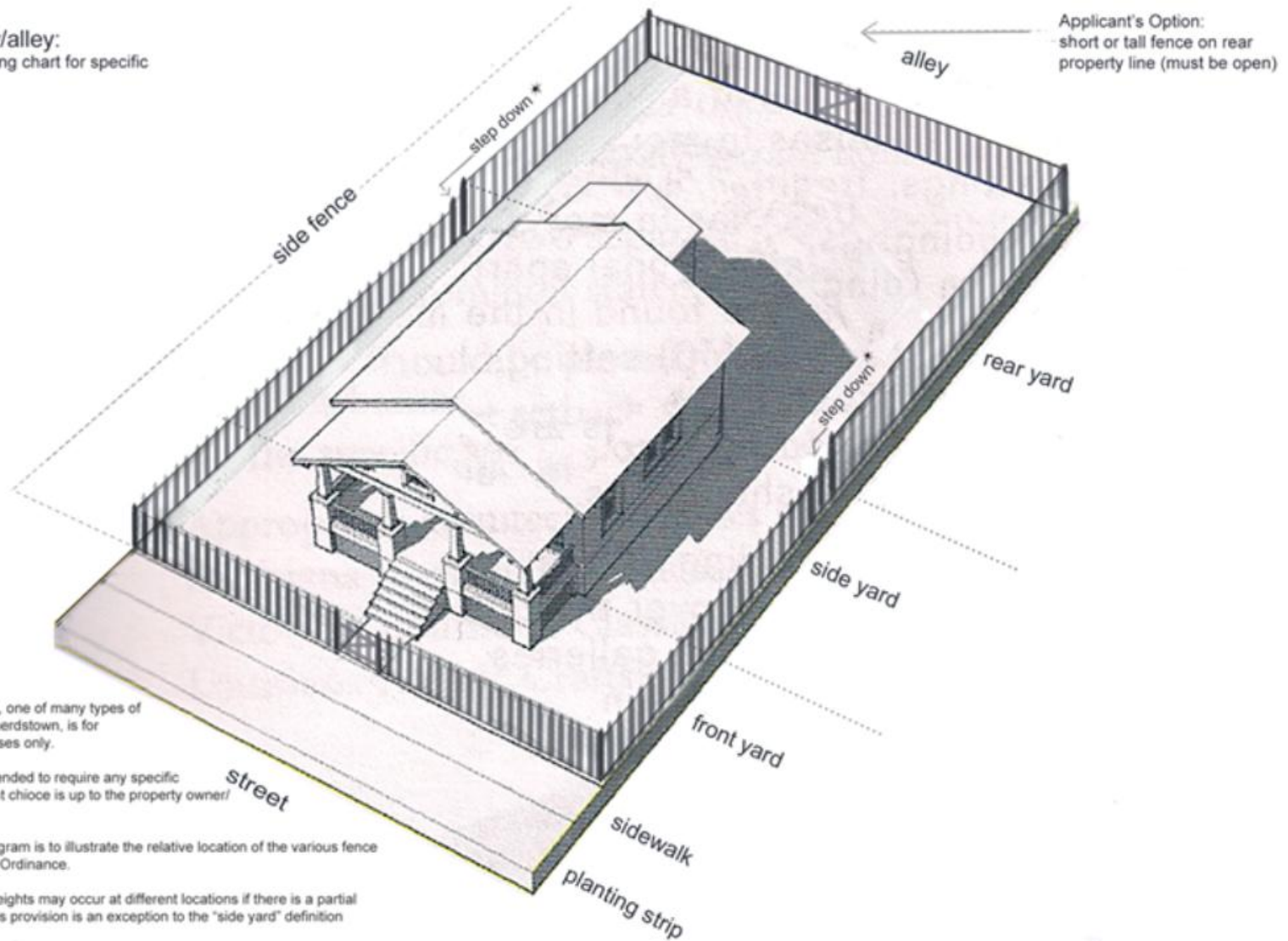
Specific lot configurations have specific allowable fencing arrangements. The drawings and charts on the following pages VI-a to VI-d show four typical types of lots in Town with their permitted arrangements. For lot arrangements that do not match these typical lot arrangements the planning commission will make a decision on the closest arrangement based on location of adjacent streets and alleys.

VI-(a) Chart LOT CONFIGURATION: **Typical Interior Lot with Alley**

Location with regard to building and lot lines	Height Limit	Open or Closed	Materials and Notes
Front (at lot line adjacent to Street)	4'	Open (see definitions section)	Preferred materials are: painted wood, stone, decorative wire, iron/cast metal, or brick. Fence design, hardware, gate design and color must be compatible with design and history of building.
Rear (lot line adjacent to alley or right-of-way)	6'	Open	Same as Front; including unpainted pressure treated wood.
Screening in side or rear yard	6'	Open or Closed	Same as Rear. No screening is allowed in the front yard.
Side fence at front yard For situations with no front yard, see diagram for Interior lot with no alley	4'	Open	Same as Front
Side fence at Side yard	4'	Open	Same as Front
Side fence at Rear yard	6'	Open or Closed	Same as Rear

VI-(a) Diagram

Interior lot w/alley:
see corresponding chart for specific
requirements



The house type shown, one of many types of houses found in Shepherdstown, is for representational purposes only.

This diagram is not intended to require any specific amount of fencing. That choice is up to the property owner/tenant/applicant.

The purpose of the diagram is to illustrate the relative location of the various fence heights allowed by the Ordinance.

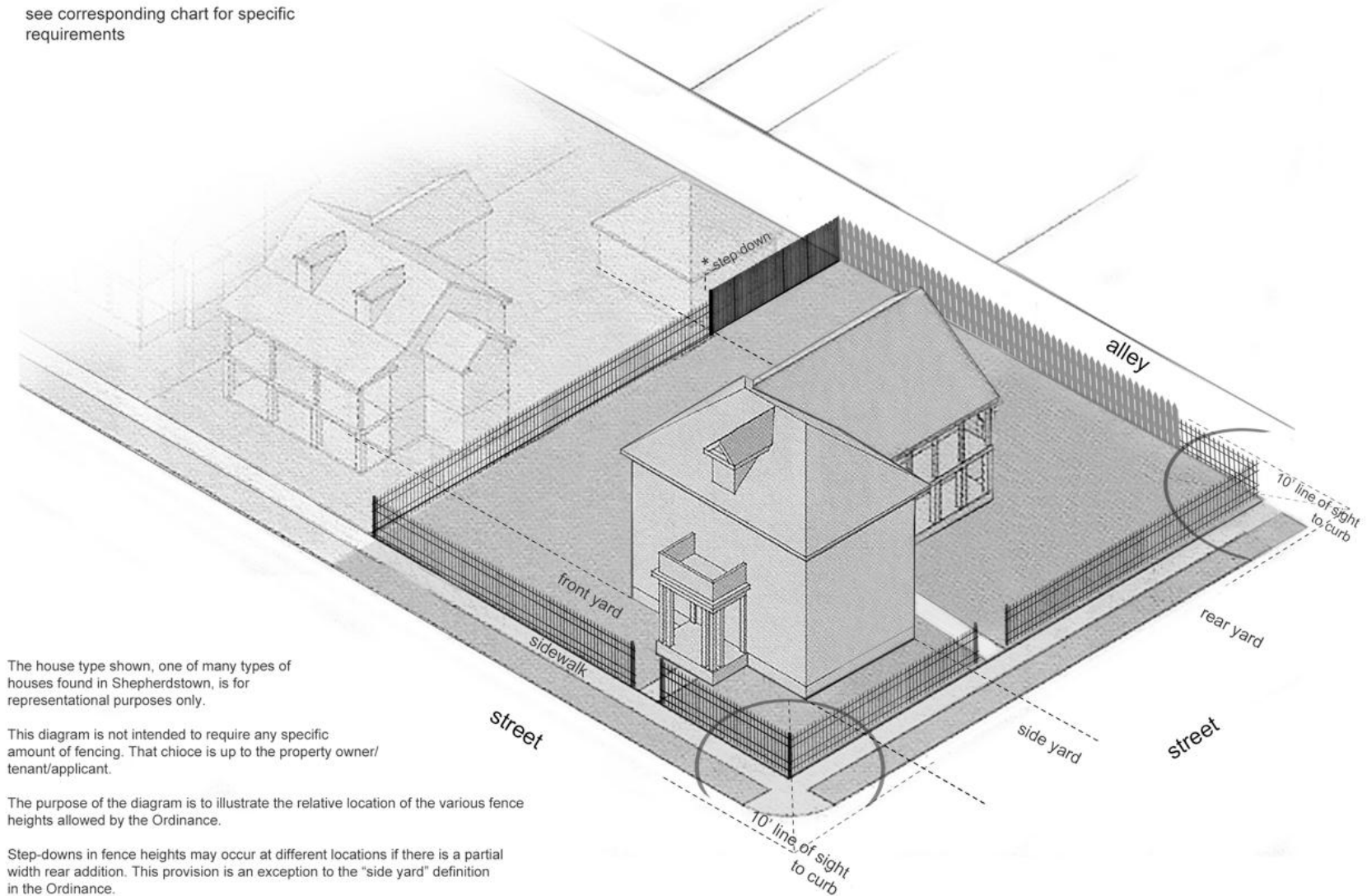
Step-downs in fence heights may occur at different locations if there is a partial width rear addition. This provision is an exception to the "side yard" definition in the Ordinance.

VI-(b)-Chart LOT CONFIGURATION: **Corner Lot with 2 Streets and an Alley**

Location with regard to building and lot lines	Height Limit	Open or Closed	Materials and Notes
Front at lot line adjacent to 1 st Street	4'	Open	Preferred materials are: painted wood, stone, decorative wire, iron/cast metal, or brick. Fence design, hardware, gate design and color must be compatible with design and history of building.
Rear (lot line adjacent to alley or right-of-way)	6'	Open	Keep line of site open at corners per Section 9-209 <i>Obstructions to vision at intersections prohibited (amended January 9, 2007)</i>
Screening in side or rear yard	6'	Open or closed	A limited amount of screening with a 0' setback is acceptable in the alley. No more than 25% of the rear fence can be closed for screening purposes (i.e. a garbage corral).
Side adjacent to 2 nd Street or right of way	4'	Open	Both streets are treated equally for corner lots in terms of fence requirements. Keep line of site open at corners per Section 9-209 <i>Obstructions to vision at intersections prohibited (amended January 9, 2007)</i>
<i>Side adjacent to another lot</i>			
Side fence at front yard	4'	Open	
Side fence at Side yard	4'	Open	
Side fence at Rear yard	6'	Open or Closed	

VI-(b) –
Diagram

Corner Lot With Alley:
see corresponding chart for specific requirements



VI-(c) – Chart

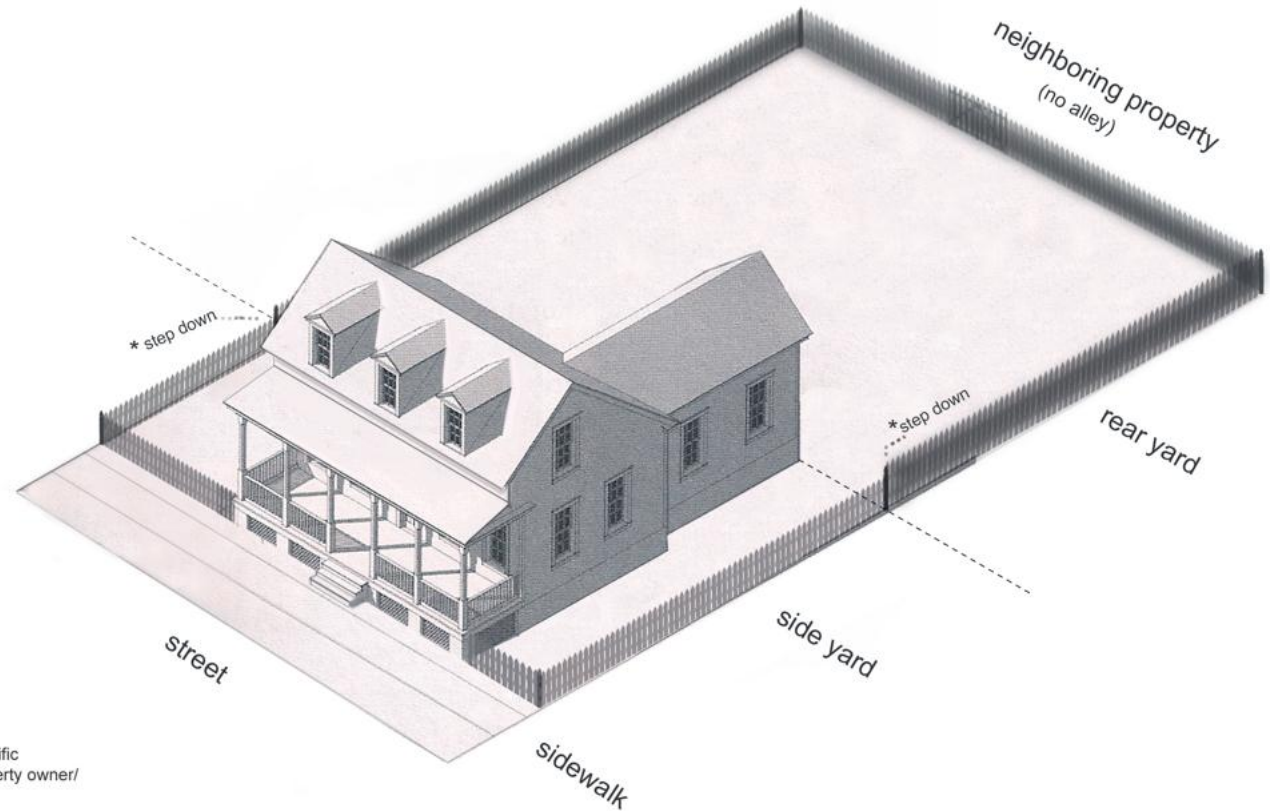
LOT CONFIGURATION: **Typical Interior Lot with No Alley**

Location with regard to building and lot lines	Height Limit	Open or Closed	Material and Notes
Front (at lot line adjacent to Street)	4'	Open	Preferred materials are: painted wood, stone, decorative wire, iron/cast metal, or brick. Fence design, hardware, gate design and color must be compatible with design and history of building.
Rear (lot line adjacent to another lot line)	6'	Open or Closed	All above including unpainted pressure treated wood.
Screening in side or rear yard	6'	Open or Closed	Same as Rear.
Side fence at front yard*	4'	Open	Same as Front.
Side fence at Side yard	4'	Open	Same as Front.
Side fence at Rear yard	6'	Open or Closed	Same as Rear.

* Not shown on the corresponding diagram. The diagram shows a situation with no front yard. For situations with a front yard, see the diagram for Interior Lot with Alley for requirements related to front yard. All other requirements from this chart remain in effect.

VI-(c) – Diagram

Interior Lot, No Alley:
see corresponding chart for specific
requirements



The house type shown, one of many types of houses found in Shepherdstown, is for representational purposes only.

This diagram is not intended to require any specific amount of fencing. That choice is up to the property owner/tenant/applicant.

The purpose of the diagram is to illustrate the relative location of the various fence heights allowed by the Ordinance.

Step-downs in fence heights may occur at different locations if there is a partial width rear addition. This provision is an exception to the "side yard" definition in the Ordinance.

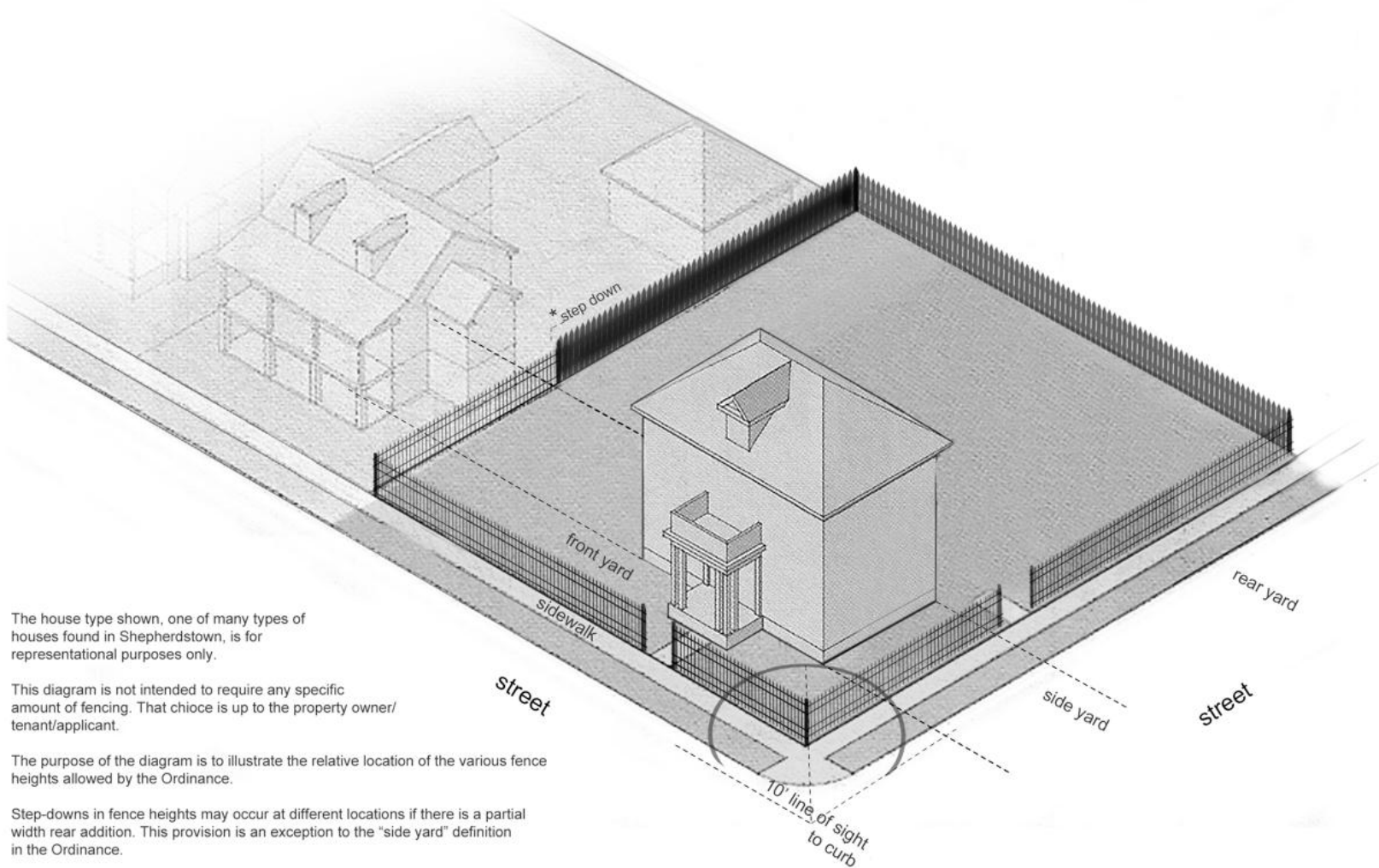
VI-(d) – Chart

LOT CONFIGURATION: **Corner Lot with 2 Streets and No Alley**

Location with regard to building and lot lines	Height Limit	Open or Closed	Material and Notes
Front adjacent to 1 st Street	4'	Open	Preferred materials are: painted wood, stone, decorative wire, iron/cast metal, or brick. Fence design, hardware, gate design and color must be compatible with design and history of building.
Rear (lot line adjacent to another lot)	6'	Open or closed	All above including unpainted pressure treated wood.
Screening in side or rear yard	6'	Open	Same as Rear.
Side adjacent to 2 nd Street or right of way	4'	Open	Keep line of site open at corners per Section 9-209 <i>Obstructions to vision at intersections prohibited (amended January 9, 2007)</i>
<i>Side adjacent to another lot</i>			
Side fence at front yard	4'	Open	Same as Front.
Side fence at Side yard	4'	Open	Same as Front.
Side fence at Rear yard	6'	Open or Closed	Same as Rear.

VI-(d) – Diagram

Corner Lot, No Alley:
see corresponding chart for specific
requirements



CHAPTER 9 - ENFORCEMENT AND PENALTIES

Section 9-901 Zoning Officer (Amended June 13, 1995)

A position of zoning officer is hereby established. It shall be a zoning officer's duty to administer and cause the enforcement of the provisions of this title. Zoning Officers shall be appointed by the Mayor and Council by majority vote. Zoning officers shall serve at the pleasure of the Mayor and Council and shall receive such compensation as determined by the Town Council. Up to three zoning officers may be appointed by the Mayor and Council.

Section 9-902 Building permit

I. Required

- (a) Before any construction, alteration¹, reconstruction, moving, or demolition of any structure is made within the town which would affect the exterior appearance of the structure, the applicant proposing to make the construction or change shall file with the Commission an application for permission to build, alter, reconstruct, move, demolish or make the addition.
- (b) Before any installation, erection, construction or moving of any utility equipment, including, but not limited to, any overhead electric transmission line, on metal or wooden poles or towers or pole structures, cross country telephone trunk line including microwave, transmission pipe line, natural gas line, trunk sewer line or sub-station and pump station, portable and stationary stand-by generators, fuel and oil tanks, air conditioning compressors, liquid propane gas tanks and security alarms, is made within the town, the applicant proposing to make the installation, erection, construction or move shall file with the Commission an application for permission. (amended April 10, 2001)
- (c) Every application shall be referred to and considered by the Planning Commission and accepted or rejected by it; Provided, that: a duly appointed zoning officer may consider and approve, on behalf of the Planning Commission, applications filed which are for Category I projects as the same are defined in Section 9-902 XIV herein, entitled "Building permit fee schedule." No permit for any such change may

¹ Includes painting if color scheme is to be changed.

be granted until the Commission or appropriate zoning officer has acted thereon as hereinafter provided. Applications not approved by the Zoning Officer will automatically be referred to and considered by the Planning Commission and accepted or rejected by it. (amended February 13, 2007)

II. Ordinary maintenance, not required

Nothing in this chapter shall be taken or construed to prevent work and repairs on any structure, coming under the heading of ordinary maintenance.

III. Application

Upon determination by the Planning Commission that a permit is required, application for such permit shall be made in writing and in duplicate by the owner of the premises or his authorized agent. When the Planning Commission so requires, each application shall be accompanied by a plan or drawing showing the following:

(a) The location and dimensions of the lot or parcel of land on which the construction, repair, enlargement, or alteration of said building will be or is situate, or on which the installation, erection, construction or moving of any utility equipment will be or is situate. (amended April 10, 2001)

(b) A drawing or diagram of said lot or parcel of land showing the location thereon and dimensions of said building which is to be constructed, repaired, enlarged or altered, or showing the location thereon and dimensions of the utility equipment to be installed, erected, constructed or moved in relation to any buildings and structures located on said lot or parcel. (amended April 10, 2001)

(c) A plan or drawing of the construction, enlargement, alteration, and/or repair, which is to be performed, displaying the type of materials to be used and contractor(s) estimates of cost based on current market cost for all labor and materials. No labor cost estimate is required when the labor is performed by the individual property owner.

(d) Architectural plans, site plans, landscaping plans, proposed signs and appropriate detail as to character, proposed exterior lighting arrangements, elevations of all portions of structures with important relationships to public view and indications as to construction materials, design of doors and windows, ornamentation, colors and the like, photographs or perspective drawings indicating visual relationships to adjoining structures and spaces, and such other exhibits and reports as are necessary for its determinations.

(e) A plan of all existing structures on the lot, their relation to each other, to any new construction and to bordering streets, with a statement of the use or intended use of all buildings and land.

(f) If it should appear from the application and other documents submitted that the proposed building or improvement site is in a location that has a flood hazard, the proposed new construction or substantial improvement (including prefabricated homes) must be designed or modified and anchored to prevent flotation, collapse, or lateral movement of the structure, use construction materials and utility equipment that are resistant to flood damage, and use construction methods and practices that will minimize flood damage.

IV. Architectural standards **(amended December 2011)**

The following provisions are hereby specifically adopted in accordance with Article 12, Part IV, Section 8-12-13 and 8-12-14 (amended April 10, 2001) of the West Virginia State Code:

- (a) Prior to reviewing all plans required to be submitted by this Section 9-902, the Commission shall secure the recommendation of the Historic Landmarks Commission as per § 9-309 (a) on all applications.
- (b) In reviewing all plans required to be submitted by this Section 9-902, the Commission shall give consideration to:
 - (1) The recommendations of the Historic Landmarks Commission provided pursuant to subsection (a) above;
 - (2) The historic or architectural value and significance of the structure and its relationship to the historic value of the surrounding area;
 - (3) The relationship of the exterior architectural features of the structure to the remainder of the structure and to the surrounding area;
 - (4) The general compatibility of exterior design, arrangement, texture and materials proposed to be used; and
 - (5) To any other factors including aesthetic factors which the Commission deems to be pertinent. (amended April 10, 2001)
- (c) After examination of material submitted, the Commission shall determine whether the proposal is in fact appropriate to the character and appearance of the Town as related to the dominant architectural styles which include Colonial, Pre-Civil War, Victorian, and Pre-World War I periods. New structures should be stylistically compatible with adjacent structures of one of these periods.
- (d) The Commission shall consider only exterior features of a structure and shall not consider any interior arrangements. Also, the Commission shall not disapprove an application except with respect to the several factors specified in sub-section 9-902 IV (a) above.
- (e) Contemporary commercial equipment necessary to the operation of any permitted use in the commercial zone shall be exempt if proven that architectural compliance is not technically, or economically, feasible. This exemption does not apply to signs.

VI. Certificate of approval, modification or rejection of application and plans.

The Planning Commission shall file with the mayor a certificate of its approval, modification or rejection of all applications and plans submitted to it for review. Work shall not be commenced on any such project until such a certificate of approval has been filed and no building permit for such change or construction may be issued until such certificate of approval is filed. The applicant shall not commence the proposed work or change until and unless he or it has received such a certificate of approval from the Commission. The failure of the Commission to act upon the application within forty-five (45) days from the date the application was filed, shall be deemed to constitute automatic approval of the proposed changes unless an extension of this forty-five (45) days is agreed upon mutually by the applicant and the Commission, or the application has been withdrawn.

VII. Modification of original proposals

The Commission may permit modification of original proposals if such modifications are formally acknowledged, clearly indicated and recorded. Any action by applicants following issuance of a permit shall be in accord with the application and material approved. The Commission shall not issue a permit if it finds that the action proposed would, in consideration of aforementioned criteria, adversely affect the primary character of the district or the setting of structures and premises of substantial public interest. Where permission is denied, the Commission shall record its reasons for denial.

VIII. Commission meetings to be public; right to appear and be heard; records

All meetings of the Planning Commission shall be open to the public. Any interested person or his representative is entitled to appear and be heard by the Commission before it reaches a decision on any matter. It shall keep an open record of its resolutions, proceedings and actions which shall be kept available for public inspection during reasonable business hours.

IX. Appeal

(a) Any person or persons or applicant aggrieved by a decision of a zoning officer has a right of appeal therefrom to the Planning Commission, and, thereafter, if necessary, to the Board of Appeals.

(b) Any person or persons or applicant aggrieved by a decision of the Planning Commission has a right of appeal therefrom to the Board of Appeals.

X. Severability

The provisions of this chapter are severable, and if any of its provisions are held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

XI. Planning Commission not to waive ordinance requirements

Issuance of a permit for construction or excavation not conforming to requirements of this title shall not be construed as waiving any provisions of this title.

XII. Building permit may be outdated (amended January 11, 2000)

1. A building permit shall become void one (1) year from date of issuance, except if the permit is appealed, in which case the permit shall be automatically extended for the length of time during which the appeal is pending. Such automatic extension shall not apply to permits which are held to require revision at the conclusion of the appeal.
2. Extensions of permits may be requested during the period starting 60 days prior to the void date and ending 30 days after the void date. Extensions will not be granted if a request for extension is not received by 30 days after the void date.
3. **Extensions may be requested as follows:**
 - A. **If a previous extension has not been granted, and the project is more than 25% complete as determined by the Zoning Officer, an extension of one year will be granted automatically by the Planning Commission.**
 - B. **If a previous extension has not been granted and if the project is less than 25% complete as determined by the zoning Officer; OR if previous extension has been granted, the Planning Commission will review the project and make a determination as to whether an extension should be granted. If there has been any change from the originally approved project, the application will be treated as a new application and not as an extension.**
 - C. **If a project remains unfinished upon expiration of a permit and represents a public nuisance or hazard to health and safety, the Planning Commission can direct remedial action at the property owner's expense to remove the nuisance or hazard to health and safety.**

XIII. Validity of previously issued permits

Permits issued prior to six (6) months before the adoption date of this title for projects on which substantial work has not commenced, will be null and void upon the date of adoption. For permits issued within the six (6) months prior to adoption of this title, at least

10% of the total cost of the project must be completed within sixty (60) days of the adoption of this title and the entire project shall be completed within twelve (12) months from the date of issuance of said permit.

XIV. Building permit fee schedule (Amended on June 12, 2007)

In order to defray the expense of administering this title, a fee is adopted in the following categories:

Category I: Minor projects such as painting, awnings, porch railings, window boxes, air conditioner units, satellite dishes, propane tanks, window replacement, signs or other minor changes \$ 20.00

Category II: Accessory buildings, sidewalks, decks, fence, driveways, garages, storage buildings or carports \$ 35.00

Category III: Single family dwellings major changes excluding additions, non-profit tax exempt organizations \$100.00
plus \$1.00 per \$1,000.00 value over \$50,000.00

Category IV: Additions, commercial-industrial, multi-family residences \$250.00
plus \$1.00 per \$1,000.00 value over \$50,000.00

Category V: Demolition and permit extensions \$ 25.00

The Planning Commission shall categorize any request not specifically listed in the above categories.

Fee shall be paid to the Town Treasurer/Clerk and must accompany the application. If work begins without the required permit, double the cost of said permit would be charged.

Section 9-903 Occupancy permit (Amended April 12, 2005)

Required – An occupancy permit shall be required before any building may be occupied or used, wholly or partially, or changed in use from residential to commercial or commercial to residential. Applications for such permits shall be made, in duplicate, by the owner of the premises or his authorized agent, to the Planning Commission. Such permits shall be granted or refused within sixty (60) days from the date of application.

Section 9-904 Subdivision (Repealed and replaced with Chapter 14 Subdivision and Development Regulations February 14, 2006)

Required - Any individual, firm, association, partnership, corporation, joint-venture, or other business entities, who subdivide any lot or parcel of real estate situate within the corporate limits, before selling, leasing or assigning any lots therefrom, shall submit to the Planning Commission a copy of a plat of the proposed subdivision for approval. Approval will be given, once it has been established that:

- (a) All such plans and designs of the subdivision are consistent with the need to minimize flood damage.
- (b) All public utilities and facilities therein, such as sewer, gas, electrical and water systems, are located, elevated, and constructed to minimize or eliminate flood damage.
- (c) Adequate drainage is provided therein so as to reduce exposure to flood hazards.
- (d) Compliance with the chapters of this title pertaining to the zoning district in which the lot or parcel to be subdivided is situated, is assured.

Section 9-904A Adjustment of Boundary Lines; Consolidation of Lots Required (amended June 8, 1999)

Any individual, firm, association, partnership, corporation, joint-venture, or other business entity, who seeks the adjustment of boundary lines or the consolidation or merger of lots or portions of lots shall submit to the Planning Commission a copy of a plat of the proposed adjustment of boundary lines or the consolidation or merger of lots or portions of lots for approval. Approval will be given once it has been established that compliance with the chapters of this Title pertaining to the zoning district in which the boundary line adjustment or the lots or portions of lots to be merged are situated, is assured. The adjustment of boundary lines and/or consolidation of lots shall not be utilized to effect changes in development, density or other matters elsewhere regulated in this Title.

Section 9-905 Remedies and penalties (amended October 10, 2006)

I. The owner or agent of a building or premises in or upon which a violation of any provision of this title has been committed or shall exist, or the lessee or tenant of an entire building or entire premises in or upon which violation has been committed or shall exist, or the agent, architect, building contractor or any other person who commits, takes part or assists in any violation or who maintains any building or premises in or upon which such violation shall exist, shall be guilty of a misdemeanor and shall be punished by a fine not less than fifty (50) nor more than five hundred (500) dollars. Each and every day that such violation continues may constitute a separate offense.

II. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, maintained or demolished or any building, structure or land is used in violation of this title, the appropriate authorities of The Corporation of Shepherdstown, in addition to other remedies, may institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, demolition or use, or to correct or abate such violation, or to prevent the occupancy of said building or land.

CHAPTER 10 BOARD OF APPEALS

Section 9-1001 Creation, appointment, removal and compensation

As provided in Chapter 8A-8-1 of the West Virginia State Code, a Board of Appeals is hereby created. It shall consist of five (5) members, all of whom shall be taxpayers and residents of the town. The terms of office of the members of the Board shall be three (3) years. Members of the Board shall be appointed by the town council and shall be removable for cause, upon written charges, and after public hearing. Vacancies shall be filled by appointment for the unexpired term only. Members of the Board shall serve without compensation.

The initial appointments to the Board of Appeals shall be for terms of one (1) year for one member, two (2) years for two members and three (3) years for two members. Thereafter, reappointment shall be for three (3) years.

The terms of the Board shall not expire simultaneously.

Section 9-1002 Alternate member

The council shall also appoint one (1) alternate member for the Board of Appeals to sit on the Board in the absence of any member of the Board, and when the alternate is absent, the town council may designate a temporary alternate.

Any member absent from three (3) consecutive meetings without sufficient cause shall be replaced by the council.

Section 9-1003 Rules, meetings, oaths, witnesses, records

As provided in Chapter 8A-8-3 of the West Virginia State Code, the Board of Appeals shall adopt rules in accordance with the provisions of this chapter. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall make a transcript of all proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, which shall be immediately filed in the office of the Board and shall be a public record.

Section 9-1004 Chairman and other officers

The members of the Board shall elect a chairman and such officers in addition as they determine. Such officers shall serve one (1) year and until their successors have been selected and qualified.

Section 9-1005 Bond (Amended on May 11, 2004)

In order to defray the costs, a fee of \$100.00 shall be paid by each applicant or person aggrieved or affected by any decision of the Planning Commission who files a notice of appeal of the Board of Appeals, which includes, but is not limited to, special exceptions including flood plain, variances including flood plain, and continuations of non-conforming use. Such fee will go in the general revenue fund and will not be refunded.

Section 9-1006 Appeals to the Board of Appeals (Amended 09-09-03)

As provided in Chapter 8A-8-10 of the West Virginia Code, appeals to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of Shepherdstown affected by any order, requirement, decision or determination of the Planning Commission.

An appeal may be taken only by filing a notice of appeal with the Town Clerk within 45 days of the date appearing on the written order, requirement, decision, notice of decision, or determination. An appellant's failure to take any step other than the timely filing

of a notice of appeal does not affect the validity of the appeal, but is ground only for the Board of Zoning Appeals to act as it considers appropriate, including, but not limited to, requesting additional information or dismissing the appeal.

The notice of appeal must: (1) provide the names, addresses, and telephone numbers of each party taking the appeal, (2) have attached to it a copy of the order, requirement, decision, notice of decision, or determination being appealed, and (3) contain a statement of the grounds for the appeal. The appealing party shall submit the notice of appeal on the application form obtained from the Town Clerk, attaching additional pages as necessary to complete the application.

Upon filing a notice of appeal, the appellant must pay the Town Clerk all required fees. The Town Clerk shall forward the completed notice of appeal and all attachments to the Planning Commission and the Board of Appeals. Upon receiving the notice of appeal, the Planning Commission shall forthwith transmit to the Board all papers constitute the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the Planning Commission certifies to the Board of Appeals after notice of appeal shall have been filed, that by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of by a Court of Record with notice to the Planning Commission.

Once a completed notice of appeal has been filed and all applicable fees have been paid, the Board of Appeals shall fix a reasonable time, not to exceed forty-five (45) days, for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person, or be represented by agent or attorney.

Section 9-1007 General powers of Board of Appeals

The Board shall have the following powers:

(a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Planning Commission in the enforcement of this title or of the provisions of The West Virginia Code.

(b) To hear and decide special exceptions to the terms of this title upon which such Board is required to pass hereunder.

(c) To authorize upon appeal in specific cases a variance from the terms of this title.

(d) In exercising the above-mentioned powers such Board may, in conformity with the provisions of said West Virginia Code and this title, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Planning Commission from whom the appeal is taken.

Section 9-1008 Variances

(a) Where by reason of the exceptional narrowness, shallowness or unusual shape of a specific piece of property when zoning was adopted in Shepherdstown or by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, the literal enforcement of the requirements of this ordinance would involve practical difficulty or would cause unnecessary hardship to carry out the spirit and purpose of this ordinance, the Board shall have power, upon appeal in specific cases, to authorize a variance from the terms of this ordinance so as to relieve such hardship, and so that the spirit and purpose of this title shall be observed and justice done. In authorizing a variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest. In authorizing a variance, with attached conditions, the Board may require such guarantee as it may deem necessary that the conditions attached are being and will be complied with.

(b) No such variance in the provisions or requirements of this ordinance shall be authorized by the Board unless it finds, beyond reasonable doubt, that all the following facts and conditions exist:

(1) That there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or classes of uses in the same zoning district.

(2) That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and in the same vicinity.

(3) That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this title or the public interest.

(4) That the condition or situation of the specific piece of property or the intended use of such property, for which variance is sought, is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation.

Section 9-1009 Limitations, guides, and standards

Where, in this title, certain powers are conferred upon the Board it shall study the specific property involved and the neighborhood, cause the property to be posted in a conspicuous place, hold a public hearing, consider all testimony and data submitted, and hear any person for or against the issuance of the zoning certificate. However, the application shall not be approved where the Board finds the proposal would adversely affect the public health, safety, security, morals or general welfare or would result in dangerous traffic conditions or would jeopardize the lives or property of people living in the neighborhood. In deciding such matters, the Board shall give consideration, among other things, to the following:

- (a) Decisions of the Circuit Court and the Court of Appeals.
- (b) The orderly growth of the neighborhood and community.
- (c) The most appropriate use of land and structure.
- (d) Facilities for sewers, water, trash and garbage collection and disposal and the ability of the town or County to supply such services.
- (e) Availability of fire fighting equipment.
- (f) The effect of such use upon the peace of people in their homes.
- (g) The number of people residing, working or studying in the immediate area.
- (h) The type and kind of structures in the vicinity where people are apt to gather in large numbers such as schools, churches, theatres, hospitals and the like.
- (i) Traffic conditions, including facilities for pedestrians, such as sidewalks and safety zones and parking facilities available and the access of cars off highways.
- (j) The preservation of cultural and historic landmarks.
- (k) The conservation of property values.
- (l) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the uses of surrounding properties.
- (m) The contribution, if any, such proposed use, building or addition would make toward the deterioration of areas and neighborhoods.
- (n) The recommendation of the Planning Commission when such matters are located within the Historic District.

Section 9-1010 Public hearings and permits issued by the Board

(amended January 11, 2000)

The Board shall make no recommendation except in a specific case and after public hearing conducted by the Board. A notice of time and place of such public hearing shall be published in a paper of general circulation in the area at least once, at least thirty (30) days prior to the date set for the hearing. Such notice shall contain the address or location of the property for which the variance or other ruling by the Board is sought, as well as a brief description of the nature of the appeal, and specifications of the proposed variance.

(a) Construction permitted by Board to be undertaken within one (1) year.

No order of the Board permitting the construction, alteration, reconstruction, moving or demolition of any structure shall be valid for a period longer than one (1) year unless a building permit for such construction, alteration, reconstruction, moving or demolition of any structure is started and proceeds to completion in accordance with the terms of such permit or extensions thereof obtained in accordance with Section 9-902 XII.

(b) Use of a building permitted by Board to be established within one (1) year.

No order of the Board permitting a use of a building or premises shall be valid for a period longer than one (1) year, unless such use is established within such period; provided, however, that where such use permitted is dependent upon the construction, alteration, reconstruction, moving or demolition of any structure, such order shall continue in force and effect if a building permit for said construction, alteration, reconstruction, moving or demolition of any structure is obtained within such period and the construction, alteration, reconstruction, moving or demolition of any structure is started and proceeds to completion in accordance with the terms of such permit or extensions thereof obtained in accordance with Section 9-902 XII.

Section 9-1011 Temporary permits

A special permit may be authorized by the Board of Appeals, after a public hearing, for a building or use which may be necessary for the proper development of the community. Such permit shall be for a specified length of time not to exceed one (1) year and subject to agreement by the recipient to remove such building or use at the expiration of such permit or to allow the municipal authorities to remove it without cost to the town.

CHAPTER 11 AMENDMENT

Section 9-1101 Amendment

The town council may from time to time, on its own motion or on petition, amend, supplement, change, modify, or repeal by ordinance the boundaries of districts, regulations or restrictions herein established.

(a) Procedure - As provided in Chapter 8A-7-9 of the West Virginia State Code, no regulation, restriction, boundary or amendment thereto shall become effective until after at least one (1) public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen (15) days notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in said town.

As provided in Chapter 8A-7-3 of the West Virginia State Code, where the purpose and effect of a proposed amendment is to change the zoning classification, the town council shall make findings of fact in each specific case including, but not limited to, the following matters: population change, availability of public facilities, present and future transportation patterns, compatibility with existing and proposed development for the area, the recommendation of the Planning Commission, and the relationship of such proposed amendment to the town's plan; and may grant the amendment based upon a finding that there was a substantial change in the character of the neighborhood where the property is located or that there was a mistake in the existing zoning classification. A complete record of the hearing and the votes of all members of the council shall be kept.

An application for reclassification shall not be accepted for filing by the council if the application is for the reclassification of the whole or any part of land the reclassification of which has been denied by the council on the merits within twelve (12) months from the date of the council's decision.

Section 9-1102 Approval of Planning Commission

No amendment shall be considered or acted upon by the town council unless it is first submitted to and approved by the Planning Commission (except, however, failure of the Planning Commission to report within ninety (90) days shall be deemed approval), or disapproved by said Planning Commission.

A majority vote of the entire town council shall be required to take action different from that recommended by the Planning Commission.

Section 9-1103 Fee (Amended on November 10, 1992)

A filing fee of five hundred (500) dollars shall be charged for processing an application for a change in zoning.

CHAPTER 12 FLOOD PLAIN (Amendment added December 8, 2009)

ARTICLE I - GENERAL PROVISIONS

Section 1.1 Authority

- A. The provisions of this ordinance have been prepared with the intention of meeting the requirements of THE NATIONAL FLOOD INSURANCE ACT OF 1968 (42 U.S.C. 4001 et seq.) AMENDED BY THE CONGRESS OF THE UNITED STATES THROUGH THE 15TH.OF FEBRUARY, 1975 (PUBLIC LAW 91-152),
- B. Authority to adopt, administer and enforce this Ordinance is vested in the community pursuant to WEST VIRGINIA STATE CODES 8-12-14, 7-1-3v, 7-1-3n and 7-1-3kk and WEST VIRGINIA STATE CODE 8A-4-2, 8A-5-7, 8A-7-2

Section 1.2 Intent

The intent of this ordinance is to:

- A. Promote the general health, welfare, and safety of the community.
- B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- C. Minimize danger to public health and safety by protecting water supply and sanitary sewage disposal in cooperation with the County Sanitarian, and to protect natural drainage.
- D. Assure the County Assessor obtains information concerning improvement of real property as required by WV State Code 11-3-3A.
- E. Assure County E-911 addresses are obtained to maintain the currency of established emergency response dispatch systems.
- F. Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing the unwise design and construction of development in areas subject to flooding.

Section 1.3 Abrogation and Greater Restrictions

This ordinance supersedes any ordinance currently in effect in flood prone areas. Any ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive.

Section 1.4 Applicability

It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any development, new construction, substantial

improvement, repair of substantial damage, or the placement or relocation of any structure (including manufactured homes) within the Corporation of Shepherdstown Flood Plain Area, unless a permit application has been completed and a permit or certificate of compliance has been obtained from the Floodplain Administrator. In addition, where land partially or fully in the floodplain is to be developed, subdivided, used for a manufactured home park or subdivision or otherwise developed, a site plan with elevation data must be submitted to, and approved by, the Floodplain Administrator prior to any development.

Provision of all other codes, ordinances, and regulations shall be applicable insofar as they are consistent with the provisions of this ordinance and the community's need to minimize the hazards and damage resulting from flooding.

Section 1.5 Matters not provided for specifically

Where conditions are encountered that are not specifically provided for herein, the floodplain administrator shall determine the applicability of the provisions of this ordinance in accordance with its intent, and shall require the applicant to take appropriate measures pursuant to such determination.

ARTICLE II - INTERPRETATIONS AND DEFINITIONS

Section 2.1 Interpretations

A. For the purpose of this ordinance, the following interpretations shall apply:

1. Words used in the present tense include the future tense
2. The singular includes the plural.
3. The plural includes the singular.
4. The Term "shall" or "will" is always mandatory.
5. The word "building" or "structure" shall be construed as if followed by the phrase "or part thereof".
6. The word "Ordinance" shall refer to the Floodplain Ordinance.

Section 2.2 Definitions

General

Unless specifically defined below, words and phrases used in this ordinance shall be interpreted so as to give this ordinance its most reasonable application. For the purpose of this ordinance, the following definitions shall apply:

Section 9-7A08 Appurtenant Structure

A structure on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. This does not include a gas or liquid storage tank.

Base Flood

The flood, which has been selected to serve as the basis upon which the floodplain management provisions of this and other ordinances have been prepared; for purposes of this ordinance, the one-hundred (100) year flood.

Base Flood Elevation: The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. For the purposes of this ordinance, the one hundred (100) year flood or 1 percent annual chance flood.

Basement

Any area of the building having its floor sub grade (below ground level) on all sides.

Section 9-7A09 Certificate of Compliance

A certification that the entire development, including the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this ordinance.

Section 9-7A010 Contractor - WV State Code 21-11-3(c)

A person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is one thousand dollars or more. Contractor includes a construction manager who performs management and counseling services on a construction project for a professional fee.

Contractor does not include:

(1) One who merely furnishes materials or supplies without fabricating or consuming them in the construction project.

(2) A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;

(3) A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work

(4) A pest control operator licensed under the provisions of section seven, article sixteen-a, chapter nineteen of this code to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding one thousand dollars on property treated for insect pests; or

(5) A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in this section and who employs full time a registered architect licensed to practice in this state or a registered professional engineer licensed to practice in this state. Contractor also does not include employees of such corporation, partnership or sole proprietorship.

Development

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Flood

A general and temporary inundation of normally dry land areas.

Flood Insurance Rate Map (FIRM): The official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study: The official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information, and water surface elevations.

Floodplain

- (1) A relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation;
- (2) An area subject to the unusual and rapid accumulation or runoff of surface waters from any source.

Section 9-7A011 Floodplain Administrator

The Zoning Officer for the Corporation of Shepherdstown shall be the Floodplain Administrator. The Floodplain Administrator also may be identified as the Floodplain Manager.

a. Floodway

The channel of a river or other watercourse and the adjacent land area that must be reserved to discharge the base flood without increasing the water surface elevation of that flood more than one foot at any point.

Flood proofing

Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Section 9-7A012 Freeboard

A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for unknown factors that may contribute uncertainty to flood heights of any given flood and floodway condition, such as wave action, blockage at stream crossings, and increased runoff from urbanization of the watershed.

Highest Adjacent Grade

The highest natural elevation of the ground surface prior to construction next to the proposed foundation of a structure.

Historic Structure

Any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (i) By an approved state program as determined by the Secretary of the Interior; or,
 - (ii) Directly by the Secretary of Interior in states without approved programs.

Licensed Manufactured Home Dealer

A business licensed to sell Manufactured Homes in the state of WV as set forth in the WV state code.

Licensed Manufacturing Home Installer

A contractor licensed to install Manufactured Homes in WV as set forth in the WV State Code.

Section 9-7A013 Licensed Professional Surveyor

Any person licensed by the WV state board of examiners of land surveyors to engage in the practice of land surveying as defined in WV state code.

Lowest Floor

The lowest floor of the lowest enclosed area (including basement). An unfinished enclosure constructed with flood resistant materials as defined in the FEMA Technical Bulletin 2-93

(FIA-TB-2) and usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; Provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured Home

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

New Construction

Structures for which the Start of Construction as herein defined commenced on or after March 18, 1980, and including any subsequent improvements to such structures.

One-Hundred (100) Year Flood

A flood that has one chance in one-hundred or a one percent chance of being equaled or exceeded in any given year.

Person

Any individual or group of individuals, corporation, partnership, association or other entity, including State and local governments and agencies.

(a) Practice of Engineering

Any service or creative work, as described in WV state code Article 13, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems; planning the use of land and water; teaching of advanced engineering subjects, engineering surveys and studies; and the review of construction for the purpose of assuring compliance with drawings and specifications any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any

engineering services. Engineering surveys include all survey activities required to support the sound conception, planning, design, construction, maintenance and operation of engineered projects.

Any person who practices any branch of the profession of engineering or who, by verbal claim, sign, advertisement, letterhead, card or in any other way represents himself or herself to be a registered professional engineer, or by using another title implies that he or she is a registered professional engineer or that he or she is registered under WV state code, article 13 or who holds himself or herself out as able to perform, or who performs any engineering service or work or any other service designated by the practitioner which is recognized as engineering, is considered to practice or offer to practice engineering within the meaning and intent of WV state code article 13.

Principally Above Ground

Where at least 51 percent of the actual cash value of a structure, less land value, is above ground.

Recreational Vehicle

A vehicle which is:

- (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Section 9-7A014 Registered professional engineer

- (1) A person who has been duly registered or licensed as a registered professional engineer by the West Virginia state board of registration for professional engineers as required under WV state code article 13 et seq.

Section 9-7A015 Remedy a Violation

To bring a structure or other development into compliance with the requirements of this ordinance, or, if full compliance is not possible, to reduce the adverse impacts of the non-compliance to the greatest extent feasible.

Section 9-7A016 Reasonably Safe from Flooding

Means that during the base flood, water will not damage structures and any subsurface waters related to the base flood will not damage existing or proposed structures.

Special Flood Hazard Area: The land in the floodplain subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency in Flood Insurance Studies and on Flood Insurance Rate Maps as Zones A, AE, AO, A1-30, and A99. The term includes areas shown on other flood hazard maps that are specifically listed or otherwise described in this ordinance.

Start of Construction *(The definition for start of construction is to be used only when calculating the starting time for expiration of a permit.)*

The date the permit was issued, including permits for substantial improvement or repair of substantial damage, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Although a permit must be obtained prior to beginning, permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

State Coordinating Office

The West Virginia Division of Homeland Security and Emergency Management

Stream

As defined in WV State Code 7-1-3U, any watercourse, whether natural or man-made, distinguishable by banks and a bed, regardless of their size, through which water flows continually or intermittently, regardless of its volume.

Structure

A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial Damage

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means cumulative flood-related damages sustained by a structure on two separate occasions during a 10 year period for which the cost of repairs at the time of each flood event equals or exceeds 25 percent of the market value of the structure before the damage occurred. See “Substantial Improvement.”

Substantial Improvement

Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the Start of Construction of the improvement.

This term includes structures, which have incurred “substantial damage”, as defined herein regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure to correct existing violation of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all ordinance requirements that do not preclude the structure’s continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

For the purpose of this definition improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences whether or not that alteration affects the external dimensions of the structure.

Section 9-7A017 Top of Bank

The lines depicted on the FIRM maps delineating each side of a stream indicate the top of bank. In the field a professional familiar with fluvial geomorphology should document the top of bank. When a professional is not employed the top of the bank will be considered to be the top of the first significant slope landward of the water's edge when it is followed by at least 50 feet of relatively flat land.

Section 9-7A018

Section 9-7A019 Violation

The failure of any structure or development to be fully compliant with all requirements of this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided.

ARTICLE III - ESTABLISHMENT OF THE FLOODPLAIN AREA

Section 3.1 Identification

- A. The identified floodplain area shall be those areas of the Corporation of Shepherdstown which are subject to the one hundred (100) year flood, as shown on the Flood Insurance Rate Map (FIRM) and described in the Flood Insurance Study (FIS) prepared for the Corporation of Shepherdstown by the Federal Emergency Management Agency (FEMA) dated December 18, 2009, or the most recent revision thereof.
- B. The identified floodplain area shall also be those areas of the Corporation of Shepherdstown which have been identified as flood hazard areas by the Corporation of Shepherdstown by use of historic or other technical data and shown on the Corporation of Shepherdstown "Local Flood Hazards Map". These areas shall be designated as appropriate with the level of technical data described below and shall be managed accordingly.

Section 3.2 Descriptions of Floodplain Areas

The identified floodplain shall consist of the following four specific areas:

- A. The Floodway area (F1) shall be those areas identified as such in the FIS and as shown on the floodway map or FIRM.
- B. The Floodway Fringe area (F2) shall be those areas for which specific one hundred (100) year flood elevations have been provided in the FIS but which lie beyond the floodway area.

- C. The AO area shall be those areas for which a depth number has been provided but no Base Flood Elevation.
- D. The Approximated area The Approximated area (F4) shall be those areas identified as an A Zone on the FIRM or floodway map included in the FIS prepared by FEMA and for which no one hundred (100) year flood elevations have been provided. For these areas, elevation and floodway information from other Federal, State, or other acceptable source shall be used when available. Where other acceptable information is not available the Floodplain Administrator shall require the applicant to determine the elevation with hydrologic and hydraulic engineering or other techniques. When hydrologic and hydraulic analyses are required, they shall only be undertaken by a registered professional engineer who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the floodplain administrator.

Section 3.3 Changes in Designation of Area

- A. The delineation of the identified floodplain area may be revised by the Corporation of Shepherdstown where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, a River Basin Commission or other qualified agency or individual document the necessity for such changes. However, prior to any such change, approval must be obtained from the Federal Insurance Administration (FIA).
- B. The Corporation of Shepherdstown may identify and regulate new flood hazard or ponding areas. These areas may be delineated using locally derived technical information such as flood of record, historic high water marks and/or topographic data.
- C. A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable but, not later than six months after the date such information becomes available, the community shall notify the NFIP Administrator of the changes by submitting technical or scientific data.

Section 3.4 Elevations Prevail

- A. If the lowest natural grade adjacent to proposed development within an identified flood hazard area is at or above the Base Flood Elevation specified in the Flood Insurance Study, the structure shall not be required to conform to the flood

prevention design and construction standards or flood-related development codes in Article VI. Topographic data certified by a registered professional engineer or licensed professional surveyor shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator. The applicant is advised to apply for a Letter of Map Amendment (LOMA) from FEMA to have the Special Flood Hazard Area designation removed from the parcel or structure.

- B. If the lowest natural grade adjacent to proposed development is below the Base Flood Elevation specified in the Flood Insurance Study, the site shall be considered to be within the floodplain area and the proposed structure shall be required to conform to all appropriate provisions of this ordinance.

Section 3.5 Boundary Disputes

Should a dispute concerning any district boundary arise, an initial determination shall be made by the Floodplain Administrator and any party aggrieved by this decision may appeal to the Corporation of Shepherdstown. The burden of proof shall be on the appellant/applicant.

ARTICLE IV - UTILIZATION OF THE FLOODPLAIN AREA

Section 4.1 Floodway (F1)

- A. Within any floodway area (F1), no encroachments, including fill, new construction, substantial improvements, repair of substantial damage, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in the Base Flood Elevation.
- B. Because floodways present increased risk to human life and property due to their relatively faster and deeper flowing waters the Floodway shall be preserved to the greatest extent possible.
 - 1. New development shall not be permitted in the floodway where reasonable alternatives exist elsewhere. In addition to the requirements below the applicant shall demonstrate that there are no reasonable alternatives other than the floodway encroachment before a permit is issued.
 - 2. When the floodway is the only reasonable alternative the applicant shall demonstrate that the floodway encroachment is the minimum necessary to accomplish the project.

3. All permitted uses, activities, and development shall be undertaken in strict compliance with the flood proofing and related provisions contained herein, and in all other applicable codes, ordinances and regulations.

Section 4.2 Floodway Fringe (F2) and Approximated Floodplain (F4)

- A. In the Floodway Fringe (F2) and Approximated Floodplain (F4), any development and/or use of land shall be permitted provided that all such uses, activities and/or development shall be undertaken in strict compliance with the flood-proofing and related provisions contained herein and in all other applicable codes, ordinances and regulations.
 1. In the Approximated Floodplain (F4) the Floodplain Manager shall review, or shall cause to be reviewed, all proposed development not covered by sub-section B below to determine 1. The amount being invested and 2. The specific flood risk at the building site and assign a “minimal, moderate or significant” risk level. This information shall then be used together with the Corporation of Shepherdstown Approximate A zone administrative procedures to determine the level of technical data required to establish a height above which the development will be “reasonably safe from flooding”.
- B. All subdivision proposals and other proposed new developments which are proposed to take place either fully or partially within the Approximated Floodplain area (F4) and which are greater than ten (10) lots or two (2) acres, whichever is the lesser, shall include base flood elevation data.
 1. This data may be available from an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resource Conservation Service or state and local water resource department.
 2. If the required data is not available from other sources the applicant shall develop the technical data using detailed methodologies comparable to those contained in a Flood Insurance Study. This data shall be prepared and certified by a registered professional engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts.

Section 4.3 AO area

In AO Zones, new and substantially improved residential structures must have their lowest floor (including basement) elevated 2 feet above the highest adjacent grade. Non-residential structures must **also** elevate 2 feet above the highest adjacent grade or dry flood-proof **to at least** 3 foot above the highest adjacent grade. **All structures in AO zones are required to have adequate drainage paths around them on slopes, to guide floodwaters around and away from the structure.**

Section 4.4 Alteration or relocation of a stream

- A. Whenever a developer intends to alter or relocate a stream within the Floodplain Area the developer shall notify in writing, by certified mail, the Corporation of Shepherdstown Floodplain Administrator, The State Coordinating Office, and any adjacent communities of all such intended activities prior to the alteration or relocation of the stream. Copies of all required notifications must be submitted to the Federal Insurance Administration. In addition prior to issuing the local permit the Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval. Contact information for State and Federal permitting authorities as well as addresses for required notification of appropriate County, State & Federal government agencies are contained in the Corporation of Shepherdstown Stream Alteration administrative procedures.
- B. The developer shall also assure the Corporation of Shepherdstown in writing that the carrying capacity within the altered or relocated portion of the stream will be maintained. The Floodplain Administrator may require the applicant to demonstrate that the altered or relocated portion of stream will provide equal or greater conveyance than the original stream segment. If hydrologic and hydraulic analyses are required, they shall only be undertaken by professional engineers, who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the floodplain administrator.
- C. Alteration of a stream includes placement of culverts, bridges or other stream crossings. The floodplain administrator may require the use of certain “best practice” techniques in the construction of bridges, culverts or stream crossings to prevent damage, loss of stream crossings and localized flooding caused by blockage. These techniques may include, but are not limited to, wing walls, trash grates or requiring openings to be of sufficient size to pass debris and/or anticipated future increases in flood heights.
- D. All new and replacement bridges, culverts and other stream crossings shall adhere to the relevant anchoring requirements contained in this ordinance.
- E. The developer is required to provide the community a legal agreement detailing all scheduled inspections and maintenance to be performed on altered or relocated watercourses including culverts, bridges and other stream crossings. It shall be the

responsibility of the applicant to transfer this agreement to the new owner when the land associated with the watercourse alteration is transferred. A copy of all new agreements shall be provided to the floodplain administrator. Failure to transfer the agreement and provide a signed copy to the floodplain administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.

- F. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the floodplain administrator, and must pay any fees or other costs assessed by FEMA for this purpose.

ARTICLE V - CRITERIA FOR BUILDING AND SITE PLAN APPROVAL

Section 5.1 General

Permits are required in order to determine whether all new construction or substantial improvements are:

- A. Located in an identified Floodplain, Floodway or other flood hazard area.
- B. Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- C. Constructed with material and utility equipment resistant to flood damage as outlined in FEMA Technical Bulletin 2-93 (FIA-TB-2) or the most recent revision thereof.
- D. Constructed by methods and practices that minimize flood damage.
- E. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Section 5.2 Basic Format

The basic format of the permit shall include the following:

- A. Name and address of applicant.
- B. Name and address of owner of land on which proposed development is to occur.

- C. Names, addresses, and valid WV license numbers of all contractors working at the building site, or affidavits stating that work is being performed by individuals exempt from contractor licensing as set forth in Title 28, Series 2, section 3.9 (b) of the West Virginia Code of state regulations or the most recent revision thereof.
- D. Names, addresses, and evidence of expertise of any consultants.
- E. A description of site location sufficient to locate the project including tax map and parcel number.
- F. A standard site plan showing size and location of the proposed development as well as any existing buildings or structures. The site plan shall also show all adjacent roads and watercourses with direction of flow, the lowest adjacent grade to the proposed foundation and/or toe of fill, the Base Flood Elevation and the location of the floodway boundary when applicable.
- G. An acknowledgement that the applicant agrees to pay any and all fees associated with the permitting process as set forth in Section 7.9 hereof.
- H. An acknowledgement that the applicant agrees to allow authorized representatives of floodplain management programs access to the development to inspect for compliance.
- I. The contract required by WV Code of State Regulations, Title 28, Series 4, and all addendums to the contract(s) shall be presented to the floodplain administrator for review within five (5) business days of contract signing. The community does not require and will not keep copies of the contracts or addendums. Failure to present contract or addendums for review shall void the permit. If a licensed contractor is not involved, or the work is of an aggregate value of less than ten thousand dollars including materials and labor, a brief written description of proposed work and the estimated value will suffice.

Section 5.3 Elevation and Flood Proofing Information

All applicants are encouraged to exceed the minimum elevation requirements contained herein. Flood insurance rates can be lowered significantly by increasing the elevation of the lowest floor above the freeboard height required by this ordinance.

Depending on the type of structure involved, the following information shall also be included in the application for work within the Floodplain Area:

- A. For structures to be elevated two feet above the Base Flood Elevation:

1. A plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.
 2. A determination of elevations of the Base Flood, existing ground, proposed finished ground and lowest floor, certified by a registered professional engineer or licensed professional surveyor.
 3. Plans showing the method of elevating the proposed structure including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc. When required by the Floodplain Administrator, a Registered Professional Engineer or Architect shall prepare these plans.
 4. Plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to two feet above the Base Flood Elevation at the building site.
 5. During the course of construction, as soon as the basic elements of the lowest floor are in place and before further vertical construction, it is highly recommended that the applicant check for error by obtaining elevation data completed by a registered professional engineer or licensed professional surveyor certifying the height of the lowest floor. If a mistake in elevation has been made this is the best time to correct the error.
 6. A Nonconversion Agreement shall be signed by the applicant whenever the community determines that the area below the first floor could be converted to a non-conforming use (generally areas below base flood elevation with ceilings higher than 5 feet). This agreement shall state:
 - (i) The area below Base Flood Elevation shall not be converted for use other than for parking, building access or for allowable storage as detailed in this ordinance.
 - (ii) The applicant agrees to notify prospective buyers of the existence of the non-conversion agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature, a copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.
- B. For structures to be flood proofed to two feet above the Base Flood Elevation (nonresidential structures only):

All applicants are encouraged to exceed the minimum flood proofing requirements contained herein. Flood insurance rates can be lowered significantly by increasing the level of flood proofing above the height required by this ordinance. In order to obtain an “elevation credited” flood insurance rate on dry flood proofed buildings, flood proofing must extend at least one foot above the Base Flood Elevation.

1. Plans showing details of all flood proofing measures, prepared by a registered professional engineer, showing the size of the proposed structure and its relation to the lot where it is to be constructed.
 2. A determination of elevations of the Base Flood, existing ground, proposed finished ground, lowest floor, and flood proofing limits; certified by a registered professional engineer or licensed professional surveyor.
 3. A Flood proofing Certificate, FEMA 81-65, as revised by FEMA, shall be prepared by the registered professional engineer who prepared the plans in (1) above, stating the structure in question, together with attendant utility and sanitary facilities is designed so that:
 - (i) The structure is water tight with walls substantially impermeable to the passage of water from the lowest structural element to two feet above the Base Flood Elevation.
 - (ii) The structure will withstand the hydrostatic, hydrodynamic, buoyant, impact, and other forces resulting from the flood depths, velocities, pressures, and other factors associated with the Base Flood.
- C. For structures constructed of flood resistant materials – used solely for parking of vehicles, or storage, (Appurtenant Structures only)
1. A site plan prepared by a licensed professional surveyor or others of demonstrated qualifications showing elevation of existing ground, proposed finished ground and lowest floor. The plan shall also show details of proposed flood resistant materials usage and the size of the proposed structure and its relation to the lot where it is to be constructed. The location of the floodway boundary shall be represented on the plan when a floodway is present on the site.
 2. An elevation report or certificate, based on finished construction, must be prepared by a licensed professional surveyor or others of demonstrated qualifications. This certificate or report must confirm that the structure in question, together with attendant utilities is designed so that:

- (i) Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2) are used in the construction of the structure from the lowest structural element to two feet above the Base Flood Elevation and that all utilities are located at least two feet above the Base Flood Elevation.
- (ii) Hydrostatic flood forces on exterior walls are equalized by allowing for automatic entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a Registered Professional Engineer or Architect or meet or exceed the following minimum criteria:
 - a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b) The bottom of all openings shall be no higher than one foot above grade.
 - c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

3. In addition, the applicant shall sign a Non-conversion Agreement and notify prospective buyers of the existence of the agreement. It shall be the responsibility of the applicant to transfer the Non-conversion Agreement to any new owner at closing via notarized signature. A signed copy of the transferred Non-conversion agreement shall be provided to the floodplain administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.

Section 5.4 Site Plan Criteria

The owner or developer of any proposed development, including Subdivisions and Manufactured Home Parks (subject also to the restrictions established in Section 9-212), shall submit a preliminary site plan to the Floodplain Administrator that includes the following information:

- A. Name of registered professional engineer, licensed professional surveyor or other qualified person responsible for providing the information required in this section.
- B. A map showing the location of the proposed subdivision and/or development with respect to the town's floodplain areas, proposed lot sites, and fills. In addition, it is required that all subdivision proposals and other proposed new developments

which are proposed to take place either fully or partially within the approximated floodplain (F4) and which are greater than ten (10) lots or two (2) acres, whichever is the lesser, shall include base flood elevation data and shall delineate a floodway. If FEMA has completed a Flood Insurance Study (FIS), that data must be used to substantiate the base flood. Otherwise, the developer may submit data provided by an authoritative source, such as U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, state and local water resource departments, or technical data developed using detailed methodologies comparable to those contained in a Flood Insurance Study. This data shall be prepared and certified by a registered professional engineer, who shall certify that the technical methods used correctly reflect currently accepted technical concepts.

- C. Where the subdivision and/or development lies partially or completely in the floodplain areas, the plan map shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours at intervals of two (2) or five (5) feet depending upon the slope of the land and identify accurately the boundaries of the floodplain areas.
- D. Where the subdivision lies partially in the floodplain area and all proposed development will take place on natural grade a significant vertical distance above the floodplain area, development of detailed Base Flood Elevation data may not be necessary. In these cases the site plan for the proposed development must show contours at intervals of two (2) or five (5) feet and clearly delineate the area to be developed and the location of the floodplain areas as depicted on the FEMA map. A registered professional engineer, licensed professional surveyor or others of demonstrated qualifications must certify the site plan.

Section 5.5 Restrictions to Subdivision of land in floodplain areas.

Subdivision of land in the floodplain area must result in lots that include a buildable portion outside of the identified flood hazard area and be served by streets within the proposed subdivision having surfaces not lower than one (1) foot below the elevation of the line defining the floodplain limits. All new structures must be sited on the portion of the subdivided lot that is located outside of the identified flood hazard area.

ARTICLE VI - SPECIFIC REQUIREMENTS

Section 6.1 Design and Construction Standards

In order to prevent excessive damage to buildings, structures, and related utilities and facilities, the following restrictions apply to all development, subdivision proposals, manufactured home parks, new construction and to construction of substantial

improvements, and the repair of substantial damage, to existing structures occurring in the Floodplain Area.

A. Basements and Lowest Floors

1. Residential Structures — All new construction, relocation, substantial improvements, including repair of substantial damage, of residential structures must have the lowest floor, including basement, ductwork and utilities, elevated to two (2) feet above the Base Flood Elevation.
2. Non-residential Structures — All new construction, relocation, substantial improvements, including repair of substantial damage, of nonresidential structures must have the lowest floor, including basement, ductwork and utilities, elevated to two feet above the Base Flood Elevation; or, together with attendant utility and sanitary facilities, be designed so that the structure is water tight with walls substantially impermeable to the passage of water from the lowest structural element to two (2) feet above the Base Flood Elevation.
3. Openings — For all new construction, relocation, substantial improvements, and repair of substantial damage, those fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a Registered Professional Engineer or meet or exceed the following minimum criteria:
 - a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b) The bottom of all openings shall be no higher than one foot above grade.
 - c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

B. Manufactured Home Placement

Manufactured Homes shall not be sited within identified flood hazard areas.

C. Appurtenant Structures

1. Except as provided in subsection 2 below, appurtenant structures shall be located out of the floodplain area or elevated to two (2) feet above the Base Flood Elevation.

2. Where appurtenant structures not connected to the principal structure are to be located on sites below the Base Flood Elevation, the following flood damage reduction provisions apply:
 - a. Structures shall be no more than 600 square feet in size and valued at less than \$10,000.00.
 - b. Floors shall be at or above grade on at least one side.
 - c. Structures shall be located, oriented and constructed to minimize flood damage.
 - d. Structures shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - e. Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2) shall be used in the construction of the structure from the lowest structural element to two (2) feet above the Base Flood Elevation.
 - f. Machinery, electric devices or appliances, and all utilities shall be located at least two (2) feet above the Base Flood Elevation.
 - g. The venting requirements contained in Section 6.1 (A) are applicable and shall be strictly adhered to.
3. A Nonconversion Agreement shall be signed by the applicant stating that the use of the appurtenant structure or detached or attached garage shall not be changed from the use permitted, acknowledging that the structure may be subject to greater flood risk and that higher flood insurance premiums may be possible, and that a change in use may require full compliance with this ordinance. The applicant agrees to notify prospective buyers of the existence of this agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature, a copy of all new agreements shall be provided to the floodplain administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.

D. Recreational Vehicle Placement

1. Recreational vehicles to be placed within any floodplain area shall either:

- a. Be on site for fewer than 180 consecutive days or,
- b. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect utilities and security devices, and has no permanently attached additions or,
- c. Be installed in accordance with the Manufactured Home Placement requirements and all other flood reduction requirements contained in this ordinance.

E. Fill

The Corporation of Shepherdstown officially recognizes the beneficial functions the floodplain serves in storage and transportation of water during floods. Placement of fill in the floodplain area is discouraged and should be minimized. In the floodway, no fill shall be permitted unless it meets the requirements of Section 4.1 of this ordinance. All fill placed in the floodplain area shall meet or exceed the following standards:

1. Fill shall be used only to the extent to which it does not adversely affect adjacent properties. The Corporation of Shepherdstown_ may require the applicant to demonstrate through engineering reports that proposed fill would not adversely affect adjacent properties. When required, hydrologic and hydraulic analyses shall be undertaken only by professional engineers who shall certify that the technical methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed and sealed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Corporation of Shepherdstown. During permit review the community shall consider the following issues that have the potential to cause adverse impact to adjacent properties:
 - a. Unacceptable increases in flood heights.
 - b. Blocking drainage from adjacent property.
 - c. Deflection of floodwaters onto adjacent existing structures.
 - d. Increases to stream velocity initiating or exacerbating erosion problems.
 - e. Other unique site conditions may be considered when determining whether fill will cause adverse impact to adjacent property including, but not limited to, subsidence areas, karst topography, stream blockages, and steep topography adjacent to the channel.
2. Fill shall be used only to the extent to which it does not adversely affect the capacity of channels or floodways of any tributary to the main stream, drainage ditch, or any other drainage facility or system.

3. Filled site must be contoured to drain properly (avoid ponding)
4. Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally fifteen (15) feet beyond the building line from all points before the start of sloping required in following subsection. For nonresidential structures, fill shall be placed to provide access acceptable for intended use. At grade access, with fill extending laterally fifteen (15) feet beyond the building line shall be provided to a minimum of twenty-five (25) percent of the perimeter of a nonresidential structure.
5. Fill shall consist of soil or rock material only. Sanitary landfills shall not be permitted; no trash or woody debris shall be buried on site.
6. Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring or settling. Fill compaction standards must be appropriate to proposed post fill use, particular attention is necessary when fill is being used to elevate a structure.
7. Fill slopes shall be no steeper than one (1) vertical on two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Floodplain Administrator.
8. Fill site and fill must be protected from erosion.
 - a. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of five (5) feet per second or less must be protected from erosion by covering them with grass, vines, weeds, or similar vegetative undergrowth.
 - b. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of greater than five (5) feet per second must be protected from erosion by armoring them with stone or rock slope protection.
9. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and must pay any fees or other costs assessed by FEMA for this purpose.

F. Placement of Structures

1. All buildings and structures shall be constructed and placed on the lot so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum obstruction effect upon the flow and height of floodwater.
 - i. Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow and,
 - ii. So far as practicable, structures shall be placed approximately on the same flood-flow lines as those of adjoining structures.

G. Anchoring

1. All buildings and structures including stream crossings shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, and lateral movement, thus reducing the threat to life and property and decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourse.
2. All air ducts, large pipes, and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation.

H. Flood Protection Setback

1. A Flood Protection Setback equal to twice the width of the watercourse channel measuring from the top of one bank to the top of the opposite bank or 50 feet, whichever is less, shall be maintained from the top of the banks of all watercourses. To reduce erosion, natural vegetation shall be maintained in this area. Where natural vegetation does not exist along the watercourse and conditions for replanting are suitable, high priority shall be given to planting vegetation in the setback area to stabilize banks and enhance aquatic resources.
2. Necessary public works and temporary construction may be exempted from this subsection.
3. The Floodplain Administrator may consider an appeal to the Flood Protection Setback requirement if the applicant demonstrates that it is impossible to allow any development without encroachment into the Flood Protection Setback area. The appeal conditions shall be the minimum necessary and shall be made only after due consideration is given to varying other sitting standards, such as side, front and back lot line setbacks.

I. Storage

1. No materials that are buoyant, flammable, explosive, or in times of flooding could be injurious to human, animal or plant life, shall be stored below Base Flood Elevation.
2. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or readily removable from the area within the time available after flood warning.
3. Due to the potential of masking the natural elevation and making it more difficult to enforce this ordinance, material that resembles “fill” material shall not be considered “storage” material for purposes of this subsection.

J. Utility and Facility Requirements

- A. All new or replacement water systems whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
- B. All new or replacement sanitary disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- C. All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.
- D. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

K. Drainage

Adequate drainage shall be provided to reduce exposure to flood hazard.

Section 9-7A020 L. Backflow Preventers

Back flow prevention valves should be used for all enclosed structures with sewage or drainage facilities located in the floodplain.

ARTICLE VII - ADMINISTRATION

Designation of Floodplain Administrator

The Zoning Officer of the Corporation of Shepherdstown is hereby appointed as floodplain administrator to administer and implement this local law by granting or denying floodplain development permits in accordance with its provisions.

Section 7.1 Development Permits and Site Plan Approvals Required

It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any development or the new construction, substantial improvement, repair of substantial damage, the placement or relocation of any structure (including manufactured homes) within Corporation of Shepherdstown, unless a permit application and standard site plan has been completed, and a permit has been obtained from the Floodplain Administrator. In addition, where land that is either partially or fully in the regulatory floodplain is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a detailed site plan must be submitted to, and approved by, the Floodplain Administrator prior to any development.

Section 7.2 Approval of Permits and Plans

1. The Floodplain Administrator shall review, or shall cause to be reviewed; all permit applications and plans in order to determine whether proposed building sites are reasonably safe from flooding.
2. All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of the state and all other applicable codes and ordinances.
3. The Floodplain Administrator shall not issue a permit to any person who does not possess a valid WV and Corporation of Shepherdstown contractor's license when a contractor's license is required by W V State Code §21-11-10.
4. The Floodplain Administrator, before issuance of the permit, shall require the applicant to furnish satisfactory proof that such person is duly licensed as a contractor under the provisions of West Virginia State Code. If the applicant is not licensed a written affidavit that such person is not subject to licensure as a contractor or subcontractor as defined in §21-11-3 shall be provided to the Floodplain Administrator and placed in the permit file.
5. The Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval.
6. The Floodplain Administrator shall provide a copy of all permits to the County Assessor as required by West Virginia State Code 11-3-3A.
7. The Floodplain Administrator shall provide a copy of all permits for new structures to the County E-911 addressing coordinator.
8. The County E-911 addressing coordinator shall provide a copy of all requests for addresses for new structures to the County Floodplain Administrator.

9. The Corporation of Shepherdstown shall provide sufficient space to allow the Floodplain Administrator to keep on file in perpetuity, in a location safe from natural hazards, all information collected during the course of the administration of this ordinance.

Section 7.3 Application Procedures

Application for a permit and/or site plan approvals shall be made, in writing, on the forms supplied by the Corporation of Shepherdstown, and shall include all information stipulated under Article V of this ordinance.

Section 7.4 Changes

After the issuance of a permit or site plan approval by the Floodplain Administrator, no changes of any kind shall be made to the application, permit, or any of the plans, specification or other documents submitted with the application without the written consent or approval of the Floodplain Administrator.

Section 7.5 Permit Placards

- A. The Floodplain Administrator shall issue a permit placard, which shall be prominently displayed on the premises during the time construction is in progress. This placard shall show the number of the permit, the date of its issuance and be signed by the Floodplain Administrator.
- B. In areas of flood hazard it shall be unlawful to inspect and approve or install a temporary electrical utility connection to any building or premises, or both, or part thereof hereafter created, erected or rebuilt until a placard has been issued by the Local Floodplain Administrator indicating that the development has applied for a permit and agreed to the requirements of this local law or, in the case of development occurring outside of the identified flood hazard area, a Certificate of Compliance has been issued.

Section 7.6 Start of Construction

Work on the proposed development shall begin within 180 days after the date of issuance of the permit or the permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator. All work on the proposed development must be completed within 12 months of permit issuance, at which time the permit shall expire, unless a time extension is granted in writing by the Floodplain Administrator.

Section 7.7 Stop Work Orders, Inspections and Revocations

- A. Stop-Work Orders

1. The Floodplain Administrator shall issue, or cause to be issued, a “Stop Work Order Notice” for any development found ongoing without having obtained a permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 8.3 of this local law.
2. The Floodplain Administrator shall issue, or cause to be issued, a “Stop Work Order Notice” for any development found non-compliant with the provisions of this law and/or the conditions of the permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 8.3 of this local law.

B. Inspections and Revocations

- A. During the construction period, the Floodplain Administrator or other authorized official may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable laws and ordinances.
- B. If the Floodplain Administrator discovers that the work does not comply with the permit application or any applicable laws and ordinances or that there has been false statement or misrepresentation by any applicant, the Floodplain Administrator shall issue a “Stop Work Order Notice” revoke the permit and request a temporary injunction.
- C. The Floodplain Administrator or other authorized official may inspect any development covered by this or previous ordinance to determine whether any portion of the development has been altered to be in non-compliance with the requirements of this ordinance.

Section 7.9 Fees

- A. Application for a building permit shall be accompanied by a fee, payable to the Corporation of Shepherdstown in accordance with the fee schedule established in Section 9-902 XIV.
- B. In addition, the applicant shall be responsible for reimbursing the Corporation of Shepherdstown for any additional costs for services necessary for review and/or inspection of proposed development. Services include, but are not limited to, professional engineering and surveying. The Floodplain Administrator may require a deposit towards these additional costs. Additional costs may include reimbursement for contracted services.

- C. Whenever any work for which a permit is required by this ordinance is started or proceeded with prior to obtaining a permit the fees above specified shall be doubled. Payment of the doubled fee shall not relieve any person from complying fully with the requirements of this ordinance in the execution of the work or from other penalties prescribed herein.

ARTICLE VIII - APPEALS AND PENALTIES

Section 8.1 Appeals

Whenever any person is aggrieved by a decision of the Floodplain Administrator with respect to the provision of this ordinance, it is the right of that person to appeal to the Town Council of the Corporation of Shepherdstown, which shall be known as the Appeals Board. Such appeal must be filed with the Corporation of Shepherdstown in writing, within thirty (30) days after notification of the decision. Upon receipt of such appeal, the Appeals Board shall set a time and place not less than ten (10) nor more than sixty (60) days for the purpose of hearing the appeal. Notice of the time and place of the hearing shall be given to all parties at which time they may appear and be heard. The determination by the Appeals Board shall be final in all cases.

Section 8.2 Appeal Review Criteria

- A. All appeals contesting only the permit fee, the cumulative substantial damage requirement, the flood protection setback requirement, or the freeboard requirements, may be handled at the discretion of the Appeals Board.
- B. All decisions on appeals to all other provisions of this ordinance shall adhere to the following criteria:
 - 1. Affirmative decisions shall only be issued by the Appeals Board upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the appeal would result in exceptional hardship to the applicant, and (iii) a determination that the granting of an appeal will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinance.
 - 2. An affirmative decision shall be issued only upon determination that it is the minimum necessary, considering the flood hazard, to afford relief. Financial hardship, as a sole criterion, shall not be considered sufficient justification to grant an appeal.
 - 3. An affirmative decision shall be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a

historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

4. The Appeals Board shall notify the applicant in writing over the signature of a community official that (i) the issuance of a decision to allow construction of a structure below the Base Flood Elevation will result in increased premium rates for flood insurance, (ii) such construction below the Base Flood Elevation increases risk to life and property. Such notifications shall be maintained with a record of all decisions as required in paragraph (4) of this section; and
5. The Appeals Board shall (i) maintain a record of all decisions including justification for their issuance, and (ii) report such decisions issued in its biannual report to the Federal Insurance Administration.
6. An affirmative decision shall not be granted for any construction, development, use or activity within any floodway area that would cause any increase in the Base Flood Elevation.

Section 8.3 Penalties

Any person who fails to comply with any or all of the requirements or provisions of this ordinance or direction of the Floodplain Administrator or any other authorized employee of the community shall be unlawful and shall be referred to the municipal attorney (municipals) OR Prosecuting Attorney (Counties) who shall expeditiously prosecute all such violators. A violator shall, upon conviction, pay a fine to the Corporation of Shepherdstown of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) plus cost of prosecution. In default of such payment such person shall be imprisoned for a period not to exceed ten (10) days. Each day during which any violation of this ordinance continues shall constitute a separate offense. In addition to the above penalties, all other actions are hereby reserved including an action in equity for the proper enforcement of this ordinance. The imposition of a fine or penalty for any violation of, or non-compliance with, this ordinance shall not excuse the violation or non-compliance with the ordinance or permit it to continue; and all such persons shall be required to correct or remedy such violations or non-compliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in non-compliance with this ordinance may be declared by the Corporation of Shepherdstown to be a public nuisance and abatable as such.

ARTICLE IX – GOVERNMENT ACTIONS

Section 9.1 – Municipal Annexation

- A. The County floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements for

participation in the National Flood Insurance Program.

- B. Municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards.
- C. All plats or maps of annexation shall show the floodplain boundaries, Base Flood Elevation and location of the floodway where determined.
- D. In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22 (a) (9) (v) all NFIP participating communities must notify the Federal Insurance Administration in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. In order that all Flood Insurance Rate Maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority must be included with the notification.
- E. NFIP participating communities must notify the State Coordinating Office in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. A copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority must be included with the notification.

Section 9.2 Permits for Government Entities.

Unless specifically exempted by law, all public utilities and Municipal, County, State and Federal entities are required to comply with this ordinance and obtain all necessary permits. Any entity claiming to be exempt from the requirements of this ordinance must provide a written statement setting forth the rationale for exemption. In addition the entity claiming exemption shall provide copies of all relevant legal documentation demonstrating the exemption.

ARTICLE X - SEVERABILITY AND MUNICIPAL LIABILITY

Section 10.1 Severability

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

Section 10.2 Liability

The granting of a permit or approval of a subdivision or development plan in an identified flood-prone area, shall not constitute a representation, guarantee, or warranty of any kind by the Corporation of Shepherdstown, or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the Corporation of Shepherdstown. All applicants proposing development in or near a flood hazard area are urged to locate development as far away from, and as high above, all flooding sources as possible.

ARTICLE XI - ENACTMENT

Passed on FIRST READING this the 17th day of November, 2009.

Passed on SECOND AND FINAL READING this 8th day of December, 2009.

Purpose

Chapter 12 establishes a flood plain area and requires all persons, partnerships, businesses, and corporations to obtain a permit for development and the construction, substantial improvement or relocation of any building or structure; providing for certain minimum standards for construction within the flood plain area and setting forth special procedures for submission and approval of plans; and establishing penalties for any person who fails to comply with the requirements or provision of this ordinance.

9-1201 - GENERAL PROVISIONS

Section 1.1 Intent

The intent of this Chapter is to:

- A. Promote the general health, welfare, and safety of the community.
- B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- C. Minimize danger to public health and safety by protecting water supply, sanitary sewage disposal, and natural drainage.
- D. Reduce financial burdens imposed on the community, its governmental units and its residents, by preventing the unwise design and construction of development in areas subject to flooding.

Section 1.2 Abrogation and Greater Restrictions

This Chapter supersedes any ordinances currently in effect in flood prone areas. However, any ordinance shall remain in full force and effect to the extent that its provisions are more restrictive.

Section 1.3 Applicability

It shall be unlawful for any person, partnership, business, or corporation to undertake, or cause to be undertaken, any development or the new construction, substantial improvement, the placement or relocation of any structure (including manufactured homes or mobile homes) within the Flood Plain Area, unless a permit has been obtained from the building permit officer. In addition, where land is to be subdivided, utilized for a manufactured home park or subdivision, a mobile home park or subdivision, or otherwise developed, a site plan must be submitted to, and approved by the building permit officer prior to any development.

Provisions of all other codes, ordinances, and regulations shall be applicable insofar as they are consistent with the provisions of this Chapter and the community's need to minimize the hazards and damage resulting from flooding.

9-1202 DEFINITIONS

Base Flood

The flood which has been selected to serve as the basis upon which the flood plain management provisions of this and other ordinances have been prepared. For the purpose of this ordinance, the one hundred (100) year flood.

Basement

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

Development

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Existing Manufactured Home Park or Subdivision

A manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of this Chapter.

Existing Mobile Home Park or Subdivision

A parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) have been provided, and is completed before the effective date of this Chapter.

Expansion To An Existing Manufactured Home Park or Subdivision

The preparation of additional sites by the construction of facilities for servicing the lot on which the manufactured homes are to be affixed, including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

Expansion To An Existing Mobile Home Park or Subdivision

The preparation of additional sites by the construction of facilities for servicing the lot on which the mobile homes are to be affixed, including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

Flood

A general and temporary inundation of normally dry land areas.

Flood Plain

(1) A relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation; (2) An area subject to the unusual and rapid accumulation or runoff of surface waters from any source.

Flood Way

The channel of a river or other watercourse and the adjacent land area that must be reserved to discharge the base Flood without increasing the water surface elevation of that flood more than one foot at any point.

Flood Proofing

Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

Historic Structure

Any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminary determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

[1] By an approved state program as determined by the Secretary of the Interior; or,

[2] Directly by the Secretary of the Interior in states without approved programs.

Lowest Floor

The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; Provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Chapter.

Manufactured Home

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

Manufactured Home Park or Subdivision

A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mobile Home

A structure, transportable in one or more sections, which is eight body feet or more in width and is thirty-two feet or more in length, and which is built on a permanent chassis; and is designed to be used with or without permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical system contained therein.

Mobile Home Park or Subdivision

A parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale.

New Construction

Structures for which the Start of Construction as herein defined commenced on or after the effective date of this Chapter and includes any subsequent improvements to such structures. New construction means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For flood plain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a Flood Plain Management regulation adopted by a community (12-15-1980), and includes any subsequent improvements to such structures.

New Manufactured Home Park or Subdivision

A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of this Chapter.

New Mobile Home Park or Subdivision

A mobile home park or subdivision for which the construction of facilities for servicing the lots on which the mobile homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of this Chapter.

One Hundred (100) Year Flood

A flood that has one chance in one-hundred or a one percent chance of being equaled or exceeded in any given year.

Person

Any individual or group of individuals, corporation, partnership, association or other entity, including State and local governments and agencies.

Principally Above Ground

Where at least 51 percent of the actual cash value of a structure, less land value, is above ground.

Recreational Vehicle

A vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Start of Construction

For other than new construction or substantial improvements under the Coastal Barrier Resources Act, Pub Law 97-348, includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure (other than a mobile home) on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building whether or not that alteration affects the external dimensions of the building. For mobile homes not within a mobile home park or mobile home subdivision, "start of construction" means the affixing of the mobile home to its permanent site. For mobile homes within mobile home parks or mobile home subdivisions "start of construction" is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed (including at a minimum the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is completed.

Structure

A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home or a mobile home.

Substantial Damage

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement

Any repair, reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the Start of Construction of the improvement. This term includes structures which have incurred "substantial damage" as defined herein, regardless of the actual repair work performed. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement officials and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

9-1203 - ESTABLISHMENT OF THE FLOOD PLAIN AREA

Section 3.1 - Identification

The identified flood plain areas shall be those areas of the Corporation of Shepherdstown, which are subject to the one hundred (100) year flood, as shown on the Flood Insurance Rate Map (FIRM) and described in the Flood Insurance Study (FIS) prepared for the Corporation of Shepherdstown by the Federal Emergency Management Agency (FEMA) dated March 18, 1980, or the most recent revision thereof.

Section 3.2 - Description of Flood plain Areas

The identified flood plain area shall consist of the following two specific areas:

- (a) The A1-30 (Flood fringe) Area shall be those areas identified as an A1-30 Zone on the FIRM included in the FIS prepared by FEMA and for which one hundred (100) year flood elevations have been provided in the FIS.

- (b) The AO areas shall be those areas identified as an A0 area on the Corporation of Shepherdstown's FIRM where depths are between one (1) and three (3) feet.

Section 3.3 - Changes in Designation of Area

The delineation of the identified flood plain area may be revised by the Shepherdstown Town Council, where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, a River Basin Commission or other qualified agency or individual document the necessity for such changes. However, prior to any such change, approval must be obtained from the Federal Insurance Administration (FIA).

Section 3.4 - Boundary Disputes

Should a dispute concerning any district boundary arise, an initial determination shall be made by the Planning Commission and any party aggrieved by this decision may appeal to the Town Council. The burden of proof shall be on the Appellant.

9-1204 - UTILIZATION OF THE FLOOD PLAIN AREA

1. In the Flood Plain Area any development and/or use of land may be permitted provided that all such uses, activities, and/or development shall be undertaken in strict compliance with the floodproofing and related provisions contained herein and in all other applicable codes, ordinances and regulations. For any mobile home park or subdivision within A1-30 area or AO Area, the owner or operator of the mobile home park or subdivision shall file with the Disaster Preparedness authorities of Jefferson County and the Corporation of Shepherdstown an evacuation plan which indicates alternate vehicular access routes.
2. Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in the Base Flood Elevation.
3. Within any A1-30 Area, no new construction or development shall be allowed unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the one hundred (100) year flood more than one (1) foot at any point. This requirement can be satisfied by utilization of the floodway area where determined.

4. Whenever a developer intends to alter or relocate a watercourse within the Flood Plain area, the developer shall notify in writing by certified mail all adjacent communities and the state coordinating office of all such intended activities prior to any alteration or relocation of the watercourse, and shall submit copies of such notification to the Federal Insurance Administrator. The developer shall also assure the Corporation of Shepherdstown, in writing, that the flood-carrying capacity within the altered or relocated portion of the watercourse in question will be maintained.

9-1205 - CRITERIA FOR BUILDING AND SITE PLAN APPROVAL.

Section 5.1 - General

Building permits are required in order to determine whether all new construction or substantial improvements are:

- (1) Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- (2) Constructed with materials and utility equipment resistant to flood damage.
- (3) Constructed by methods and practices that minimize flood damage.
- (4) Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Section 5.2 - Basic Format

The basic format of the Building permit shall include the following: (See also 9-902)

- (1) Name and address of applicant.
- (2) Name and address of owner of land on which proposed construction is to occur.
- (3) Name and address of Contractor.
- (4) Site location.
- (5) Brief description of proposed work and estimated cost.
- (6) A plan of the site showing the exact size and location of the proposed construction as well as any existing buildings or structures.

Section 5.3 - Elevation and Floodproofing Information

Depending on the type of structure involved, the following information shall also be included in the application for work within the Flood Plain Area:

A. For structures to be elevated to the Base Flood Elevation:

- (1) A plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.
- (2) A determination of elevations of the existing ground, proposed finished ground and lowest floor, certified by a Registered Professional Engineer, Surveyor or Architect.
- (3) Plans showing the method of elevating the proposed structure, including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc. When required by the building permit officer, these plans shall be prepared by a Registered Professional Engineer or Architect.
- (4) Plans showing methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to the Base Flood Elevation at the building site.

B. For structures to be flood proofed to the Base Flood Elevation (nonresidential structures only):

- (1) Plans showing details of all flood proofing measures, prepared by a Registered Professional Engineer or Architect, and showing the size of the proposed structure and its relation to the lot where it is to be constructed.
- (2) A determination of elevations of existing ground, proposed finished ground, lowest floor, and flood proofing limits, certified by a Registered Professional Engineer, Surveyor, or Architect.
- (3) A certificate prepared by the Registered Professional Engineer or Architect who prepared the plans in (1) above, that the structure in question, together with attendant utility and sanitary facilities is designed so that:
 - a. Below the Base Flood Elevation the structure is water-tight with walls substantially impermeable to the passage of water.
 - b. The structure will withstand the hydrostatic, hydrodynamic, buoyant, impact, and other forces resulting from the flood depths, velocities, pressures, and other factors associated with the Base Flood.

Section 5.4 - Site Plan Criteria

The owner or developer of any proposed subdivision, manufactured home park or subdivision (subject also to the restrictions established in Section 9-212), mobile home park or subdivision (subject also to the restrictions established in Section 9-212), or other development shall submit a site plan to the building permit officer that includes the following information:

(1) Name of engineer, surveyor, or other qualified person responsible for providing the information required in this section.

(2) A map showing the location of the proposed subdivision and/or development with respect to the municipality's flood plain areas, proposed lots and sites, fills, flood or erosion protective facilities, and areas subject to special deed restriction. In addition, it is required that all subdivision proposals and other proposed new developments greater than 50 lots or five (5) acres, whichever is the lesser, shall include base flood elevation data.

(3) Where the subdivision and/or development lies partially or completely in the flood plain areas, the plan map shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours at intervals of two (2) or five (5) feet depending upon the slope of the land, and identify accurately the boundaries of the flood plain areas. For all new mobile home parks, or expansions to existing mobile home parks, and for existing mobile home parks where the repair, reconstruction, or improvement of the streets, utilities and pads equal or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced, the following requirements shall be met for construction within the A1-30 Area or the A0 Area.

(a) Stands or lots shall be elevated on compacted fill or on pilings so that the lowest floor of each mobile home will be at the elevation required by Section 5.1 (E).

(b) Adequate surface drainage and access for a mobile-home hauler shall be provided.

(c) When mobile homes are to be elevated on pilings, lots shall be large enough to permit steps, piles shall be placed in stable soil no more than ten (10) feet apart, and reinforcement shall be provided for pilings more than six (6) feet above ground level.

9-1206 - SPECIFIC REQUIREMENTS

Section 6.1 Design and Construction Standards

In order to prevent excessive damage to buildings, structures, and related utilities and facilities, the following restrictions apply to all development, subdivision proposals, manufactured home parks, mobile home parks, new construction and to construction of substantial improvements to existing structures occurring in the Flood Plain Area.

A. Basements and Lowest Floors

(1) Within any AO area on the Corporation of Shepherdstown's FIRM, all new construction and substantial improvements of residential structures must have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM.

(2) Within any AO area on Corporation of Shepherdstown's FIRM, all new construction and substantial improvements of non-residential structures (a) must have the lowest floor (including basement) elevated at least as high as the depth number specified in feet on the FIRM, or (b) together with attendant utility and sanitary facilities be completely Flood proofed to that level, so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(3) All new construction and substantial improvements of residential structures must have the lowest floor (including basement) elevated to or above the Base Flood Elevation.

(4) All new construction and substantial improvements of non-residential structures must have the lowest floor (including basement) elevated to or above the Base Flood Elevation; or, together with attendant utility and sanitary facilities, be designed so that below the Base Flood Elevation the structure is flood-proofed in accordance with Section 5.3B.

(5) For all new construction and substantial improvements, those fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- b. The bottom of all openings shall be no higher than one foot above grade.
- c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry.

B. Manufactured Home Placement

(1) Manufactured homes to be placed or substantially improved within flood plain area on sites (a) outside of a manufactured home park or subdivision; (b) in a new

manufactured home park or subdivision; (c) in an expansion or; (d) in an existing manufactured home park or subdivision in which a manufactured home has incurred “substantial damage, ”as defined herein, as the result of a flood shall:

- A. Be elevated on a permanent foundation so that the lowest of the manufactured home is elevated to or above the Base Flood Elevation and,
- B. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(2) Manufactured homes to be placed or substantially improved within any flood plain area in an existing manufactured home park or subdivision and not subject to the provisions of the paragraph above shall be elevated so that either:

- A. The lowest floor of the manufactured home is at or above the Base Flood Elevation, or
- B. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequate foundation system to resist flotation, collapse and lateral movement.

C. Recreational Vehicle Placement

(1) Recreational Vehicles to be placed within any flood plain area shall either: (a) Be on the site for fewer than 180 consecutive days and (b) Be fully licensed and ready for highway use or meet the provisions of Section 6.1 B.1 of this Chapter. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect utilities and security devices, and has no permanently attached additions.

D. Fill

If fill is used to raise the finished surface of the lowest floor to the Base Flood Elevation:

(1) Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally fifteen (15) feet beyond the building line from all points. For non-residential structures, fill shall be placed to provide access acceptable for intended use. At-grade access, with fill extending laterally fifteen (15) feet beyond the building line, shall be provided to a minimum of twenty-five (25) percent of the perimeter of a non-residential structure.

(2) Fill shall consist of soil or rock materials only. Sanitary land fills shall not be permitted.

(3) Fill materials shall be compacted to provide the necessary stability and resistance to erosion, scouring, or settling.

(4) Fill slopes shall be no steeper than one (1) vertical on two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Building permit officer.

(5) Fill shall be used only to the extent to which it does not adversely affect adjacent properties.

E. Placement of Buildings

(1) All buildings and structures shall be constructed and placed on the lot so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum obstruction effect upon the flow and height of flood water.

F. Anchoring

(1) All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, and lateral movement, thus reducing the threat to life and property and decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourse.

(2) All air ducts, large pipes and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation.

(3) All manufactured homes and mobile homes shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include but are not limited to the over-the-top and frame ties to ground anchors such as the following:

- a. Over-the-top ties shall be provided at each of the four corners of the manufactured home, or mobile home, with two additional ties per side for manufactured homes or mobile homes less than 50 feet long.
- b. Frame ties shall be provided at each corner of the home with five additional ties per side at intermediate points, with manufactured homes or mobile homes less than 50 feet long requiring four additional ties per side.
- c. All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.
- d. Any additions to a manufactured home or to a mobile home shall be similarly anchored.

This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

G. Storage

No materials that are buoyant, flammable, explosive, or in times of flooding could be injurious to human, animal or plant life, shall be stored below Base Flood Elevation.

H. Utility and Facility Requirements

(1) All new or replacement water systems, whether public or private, shall be designed to minimize or eliminate infiltration of flood waters into the systems.

(2) All new or replacement sanitary disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into floodwaters.

(3) All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.

(4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

I. Drainage

Adequate drainage shall be provided to reduce exposure to flood hazard.

9-1207 - ADMINISTRATION

Section 7.1 Building permits and Site Plan Approvals Required

It shall be unlawful for any person, partnership, business, or corporation to undertake or cause to be undertaken any development or the new construction, substantial improvement, the placement or relocation of any structure (including manufactured homes or mobile homes) within the Flood Plain Area, unless a permit has been obtained from the building permit officer. In addition, where land is to be subdivided, utilized for a manufactured home park, mobile home park or subdivision or otherwise developed, a site plan must be submitted to, and approved by, the Building permit officer prior to any development.

Section 7.2 Approval of Permits and Plans

All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of the State and all other applicable codes and ordinances.

The building permit officer shall require copies of all necessary permits from those governmental agencies from which approval is required by Federal and State Law.

A record of all information supplied to the building permit officer shall be kept on file by the Corporation of Shepherdstown.

Section 7.3 Application Procedures

Application for building permit and site plan approvals shall be made in writing, to the building permit officer and shall include all information stipulated under Article V of this Chapter.

Section 7.4 Changes

After the issuance of a building permit or site plan approval by the building permit officer, no changes of any kind shall be made to the application, permit, or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the building permit officer.

Section 7.5 Placards

In addition to the building permit, the building permit officer shall issue a placard which shall be displayed on the premises during the time construction is in progress. This placard shall show the number of the building permit, the date of its issuance and be signed by the building permit officer.

Section 7.6 Start of Construction

Work on the proposed construction shall begin within six (6) months after the date of issuance of the building permit or the permit shall expire unless a time extension is granted, in writing, by the building permit officer.

Section 7.7 Inspection and Revocation

During the construction period, the building permit officer or other authorized official may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable laws and ordinances. In the event the building permit officer discovers that the work does not comply with the permit application or any applicable laws and ordinances or that there has been a false statement or misrepresentation by any applicant, the building permit officer shall revoke the building permit and report such fact to the Shepherdstown Town Council for whatever action it considers necessary.

Section 7.8 Fees

Application for a building permit shall be accompanied by a fee, payable to the Corporation of Shepherdstown in accordance with the fee schedule established in Section 9-902 XIV.

9-1208 - APPEALS AND PENALTIES

Section 8.1 Appeals

Whenever any person is aggrieved by a decision of the building permit officer with respect to the provision of this Chapter, it is the right of that person to appeal to the Town Council of the Corporation of Shepherdstown which shall be known as the Appeals Authority. Such appeal must be filed, in writing, within thirty (30) days after the determination by the building permit officer. Upon receipt of such appeal, the Appeals Authority shall set a time and place not less than ten (10) nor more than thirty (30) days for the purpose of hearing the appeal. Notice of the time and place of the hearing shall be given to all parties at which time they may appear and be heard. The determination by the Appeals Authority shall be final in all cases.

Section 8.2 Appeal Review Criteria

All appeals contesting only the permit fee established by the building permit officer may be handled at the discretion of the Appeals Authority. All decisions on appeals to all other provisions of this Chapter shall adhere to the following criteria:

(1) Affirmation decisions shall only be issued by the Appeals Authority upon (a) a showing of good and sufficient cause, (b) a determination that failure to grant the appeal would result in exceptional hardship to the applicant, and (c) a determination that the granting of an appeal will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinance.

(2) An affirmative decision shall be issued only upon determination that it is the minimum necessary, considering the flood hazard, to afford relief.

(3) An affirmative decision may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(4) The Appeals Authority shall notify the applicant in writing over the signature of a community official that (a) the issuance of a decision to allow construction of a structure below the Base Flood Elevation will result in increased premium rates for flood insurance and, (b) such construction below the Base Flood Elevation increases risks to life and property. Such notifications shall be maintained with a record of all decisions as required in paragraph (5) of this section, and

(5) The Appeals Authority shall (a) maintain a record of all decisions including justification for their issuance, and (b) report such decisions issued in its biennial report submitted to the Federal Insurance Administration, and

(6) An affirmative decision shall not be granted for any construction, development, use or activity within any floodway area that would cause any increase in the Base Flood Elevation.

Section 8.3 Penalties

Any person who fails to comply with any or all of the requirements or provisions of this Chapter or direction of the building permit officer or any other authorized employee of the Corporation of Shepherdstown, shall be guilty of an offense and, upon conviction, shall pay a fine to the Corporation of Shepherdstown of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) plus costs of prosecution. In default of such payment such person shall be imprisoned in the County Jail for a period not to exceed ten (10) days. Each day during which any violation of this Chapter continues shall constitute a separate offense. In addition to the above penalties all other actions are hereby reserved including an action in equity for the proper enforcement of this Chapter. The imposition of a fine or penalty for any violation of, or non-compliance with, this Chapter shall not excuse the violation or non-compliance with this Chapter or permit it to continue; and all such persons shall be required to correct or remedy such violations or non-compliances within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in non-compliance with this Chapter may be declared by the Corporation of Shepherdstown to be a public nuisance and abatable as such.

ARTICLE IX - SEVERABILITY AND MUNICIPAL LIABILITY

Section 9.1 - Severability

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

Section 9.2 - Municipal Liability

The granting of a permit or approval of a subdivision or development plan in an identified flood-prone area, shall not constitute a representation, guarantee, or warranty of any kind by the Corporation of Shepherdstown or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the Corporation of Shepherdstown.

CHAPTER 13 DEFINITIONS(Amended as noted)

For the purpose of this title certain terms or words used herein shall be interpreted as follows:

Words used in the present tense include the future. All words in the singular include the plural and all words in the plural include the singular. The word “shall” is mandatory and not directory. The word “used” shall be deemed to include “designed, intended, or arranged to be used.”

Accessory use or building - A use or separate unattached building customarily incidental and subordinate to the principle use or building and located on the same lot with such principal use or building.

Agriculture - The use of land for agricultural purposes, including farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, fish culture, animal and poultry husbandry; provided that the above uses shall not include the business of garbage feeding of hogs, fur farms or the raising of animals for use in medical or other tests or experiments.

Alley - A right-of-way which provides secondary service access for vehicles to the side or rear of abutting properties.

Amend or amendment - Any repeal, modification, or addition to a regulation; any new regulation; any change in the number, shape, boundary, or area of a zone; or any repeal or abolition of any map, part thereof, or addition thereto.

Animal boarding place - Any building or buildings and/or land used, designed, or arranged, for the boarding, breeding, or care of dogs, cats, pets, fowl, or other domestic animals for profit, but not to include those animals raised for agricultural purposes.

Apartment - Dwelling unit clearly delineated from adjacent dwelling units as evidenced by the existence of separate entrance, separate plumbing, and separate kitchen. See dwelling unit. **(Added by amendment January 9, 1990)**

Automobile filling station - Any area of land, including buildings and other structures thereon that are used to dispense motor vehicle fuels, oils, and accessories at retail, where repair service is incidental, and no storage or parking space is offered for rent.

Automobile parking space - A permanently surfaced area of not less than one hundred eighty (180) square feet, either within a structure or in the open, exclusive of driveways or access drives, for the parking of a motor vehicle.

Automobile repair and service - Building, lot, or both in or upon which the business of general motor vehicle repair and service is conducted, but excluding junk and/or auto wrecking business.

Automobile sales lot - A lot arranged, designed, or used for the storage and display for sale of any motor vehicle 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.

Basement - That portion of a building below the first floor joists at least half of whose clear ceiling height is above the main level of the adjacent ground.

Bed-and-Breakfast Establishment - A residence occupied by the owner in which rooms are let for transients and in which no meal other than breakfast is served for payment.

Includes inns in which no long-term lease for rooms is executed by the guest and in which no meals are served for payment. **(Added by amendment on January 9, 1990)**

Billboard - (See "Sign") A structure on which is portrayed information which directs attention to a business commodity, service or entertainment not necessarily related to the other uses permitted on the premises upon which the structure is located.

Block - That property abutting one (1) side of a street and lying between the two (2) nearest intersecting or intercepting streets or the nearest intersecting or intercepting street and railroad right-of-way, unsubdivided acreage, river or live stream or between any of the foregoing divided acreage, river or live stream or between any of the foregoing and any other barrier to the continuity of development.

Board - The Shepherdstown Board of Appeals.

Boardinghouse - A dwelling in which, for compensation, an owner furnishes lodging or meals, or both, to not more than nine (9) guests who may be transients, tourists, or longer-term residents. Short-term rental housing, whether the owner is in residence or not, shall be considered a boardinghouse by this Ordinance. A boardinghouse shall not be deemed a home occupation. **(revised December 2011)**

Building - A structure having one (1) or more stories and a roof, designed primarily for the permanent shelter, support or enclosure of persons, animals or property of any kind.

Building, height of - 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 roof surface of a flat roof; to the deckline of a mansard floor; and to the mean height level between eaves and ridge of a gable, hip or gambrel roof.

Building permit - A written statement issued by the Planning Commission authorizing buildings, structures or uses consistent with the terms of this title and for the purpose of carrying out and enforcing its provisions.

Building setback line - A line beyond which the foundation wall and/or any enclosed porch, vestibule or other enclosed portion of a building shall not project as determined by the yard requirements.

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 cemetery interments, or a combination of one (1) or more thereof.

Child care home - A day nursery, child boarding home, day camp, summer camp, foster home, or other place for the reception, board or care for compensation of a child or children under sixteen (16) years of age.

Closed Fence - A fence which blocks the view and creates a mostly solid appearance. Examples of closed styles include solid board fences and stockade fences. (added December 2011)

Club, private - An incorporated or unincorporated association for civic, social, cultural, religious, literary, fraternal, political, recreational, or like activities, operated for the benefit of its members and not open to the general public; excluding those requiring Alcohol Beverage Control Commission Licensing.

Commission - The Shepherdstown Planning Commission.

Comprehensive Plan - A comprehensive plan or any portion of the General Plan which may consist of maps, data, and other descriptive matter, as a guide for the physical development of the town or any portion thereof, including any amendments, extensions or additions thereto adopted by the Commission, indicating the general locations for major roads, parks, or other public open spaces, public building sites, routes for public utilities, zoning districts or other similar information. The Comprehensive Plan of the Corporation of Shepherdstown shall be the Shepherdstown Comprehensive Plan, “The Drenning Plan”, as approved by the Town Council, on August 14, 2001, all of which is incorporated herein by reference, including any amendments, extensions or additions thereto adopted by Town Council. **(Amended January 9, 2007)**

Condominium – A multiple-family dwelling where each unit is individually owned and the common elements, such as hallways, recreational facilities, and the land upon which the building is located are jointly owned (usually as “tenants in common”) by all the unit owners in the building as regulated by the “Unit Property Act,” set forth in Chapter 36A of the West Virginia Code, as amended. (Added February 12, 2008)

Corner - The space between intersecting streets, the intersection of a street and an alley, the intersection of a driveway and an alley or the intersection of a street and a driveway. (added December 2011)

Council - The Town Council of Shepherdstown.

County - Jefferson County, West Virginia.

Curb level - The mean level of curb in front of a lot as established or determined to be established by the town authorities.

Dwelling - A building or portion thereof arranged or designed to provide living facilities for one (1) or more families, but not including a tent, cabin, mobile home, bus or a room in a motel or hotel.

Dwelling, detached - A building designed to provide living facilities for one (1) family entirely separated from any other building or structure by space on all sides.

Dwelling, duplex - A building arranged or designed to provide living facilities for two (2) families. Individual units are separated by a vertical wall and each unit is located on its own lot.

Dwelling, multiple-family - A building containing three (3) or more dwelling units (townhouses, row houses, apartments, garden apartments) on a parcel of land in single ownership.

Dwelling, one-family - A building containing not more than one (1) dwelling unit.

Dwelling, two family - A building located on a parcel in single ownership containing not more than two (2) dwelling units, arranged one (1) above the other or side by side.

Dwelling unit - A building or portion thereof arranged or designed for occupancy by not more than one (1) family for living purposes and having cooking facilities.

Educational institution, private - Every private school or educational or training institution however designated, which offers a program of college, professional, preparatory, high school, junior high school, elementary, kindergarten or nursery school instruction, or any combination thereof, or any other program of trade, technical, or artistic instruction, but such term does not include any educational institution of the County Board of Education. No private educational institution shall be deemed a home occupation.

Eleemosynary or philanthropic institution - A private, nonprofit organization which is not organized or operated for the purpose of carrying on a trade or business, no part of the net earnings of which inures to the benefit of any member of said organization or individual, and which either (a) provides volunteer aid to the sick and wounded of armies in time of war and national relief in case of great national calamities, or (b) provides all or any of the following: religious, social, physical, recreational, and benevolent services.

Essential services - The erection, construction, alteration or maintenance, by public utilities or by municipal or other parties, of underground or overhead electrical, gas, communication, steam, water, or sewer transmission, distribution, collection, supply or disposal lines, including poles, cross-arms, guy wires, towers, repeaters, boosters, switches, transformers, regulators, pumps, mains, drains, sewers, pipes, conduits, wires, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar accessories and equipment used in connection with and constituting integral parts of such lines and reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for protection of public health, safety or general welfare, but not including buildings, yards, stations or substations for transforming, boosting, switching or pumping purposes when such facilities are constructed on the ground.

Family - One or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage, no such family may contain more than three (3) persons, but further provided that domestic servants employed on the premises may be housed on the premises without being counted as a family or families. **(Amended January 9, 1990)**

Farm - A parcel of land not less than five (5) acres in size used for agriculture as defined hereinabove.

Fence - An enclosed barrier or screen of any nature (excluding vegetation), material, or combination of materials. Fences include retaining walls, berms, rock walls, brick knee walls and similar barriers. (added December 2011)

Floor area of building, total - The total number of square feet of floor area in a building, excluding cellars, uncovered steps, and uncovered porches; but including the total floor area of accessory buildings on the same lot. All horizontal measurements shall be made between interior faces of walls.

Front Fence - Portion of fence parallel to the front lot line. (added December 2011)

Frontage - The length of the front property line of the lot, lots, or tract of land abutting a public street, road, or highway, or rural right-of-way.

Gate - A gate that is opened for use to gain access through a fence barrier.(added December 2011)

Height of a structure or building - The vertical measurement of a structure or building from the curb level to the highest point in the roof line.

Home occupation - An occupation conducted entirely within a dwelling or accessory structure by a member or members of the immediate family residing therein (a) in connection with which there is used no display except one (1) sign affixed to the building not exceeding a total area of two (2) square feet, nor projecting more than one (1) foot beyond the building, and not illuminated, that will indicate from the exterior that the building is being utilized in whole or in part for purposes other than that of a dwelling; (b) in connection with which no more than two (2) persons are employed in the conduct of the Home Occupation. Boarding and rooming houses, tourist homes, beauty parlors, barber shops, private educational institutions, antique shops, and restaurants shall not be deemed home occupations; (c) provided equipment used does not emit uncomfortable or harmful amounts of noise, vibration, heat, glare, smoke, odor or other obnoxious elements; (d) and provided no product is sold on the premises, unless it is produced on the premises; (e) a minimum of two off-street parking spaces shall be provided.

Hospital, sanitarium, sanatorium - Any institution receiving in-patients and rendering medical, surgical and/or obstetrical care. This shall include general hospitals and institutions in which service is limited to special fields such as cardiac, eye, ear, nose and throat, pediatric, orthopedic, skin and cancer, mental, tuberculosis, chronic disease and obstetrics. The term "hospital" shall also include sanitariums and sanatoriums, including those wherein feeble minded and mental patients, epileptics, alcoholics, senile psychotics or drug addicts are treated or cared for.

Hotel - Any building containing ten (10) or more guest rooms where, for compensation, lodging, meals, or both are provided for ten (10) or more guests, excluding a fraternity or sorority house, school or college dormitory, tourist home, motel or apartment hotel as defined herein.

Junk yard - Any land or building used for the abandonment, storage, keeping, collecting, or bailing of paper, rags, scrap metal, other scrap or discarded materials.

Lodging Home - See rooming house. **(Added by amendment on January 9, 1990)**

Lot - A parcel of land occupied or to be occupied by a building and its accessory buildings, together with such open spaces as required.

Lot area, net - The total horizontal area included within the rear, side and front lot or proposed street lines of the lot excluding any streets or highways, whether dedicated or not dedicated to public use.

Lot, corner - A lot abutting on two (2) or more streets at their intersection, where the interior angle of the intersection does not exceed one hundred thirty-five (135) degrees.

Lot, depth of - The average distance between the front lot lines and the rear lot lines.

Lot, front of - The side or sides of an interior or through lot which abut a street; in a corner lot, either side that abuts a street.

Lot line, front - The street line running along the front of the lot separating it from the street. In a through lot, both lines abutting the street shall be deemed to be "front lot lines."

Lot line, rear - The lot line or lines generally opposite or parallel to the front lot line, except in a through lot. If the rear lot line is less than ten (10) feet long or the lot comes to a point at the rear, said rear lot line is assumed to be a line not less than ten (10) feet long, lying wholly within the lot, parallel to the front lot line, or in the case of a curved front lot line, parallel to the chord of the arc of said front lot line.

Lot line, side - Any lot line other than a front lot line or a rear lot line.

Lot, outlot - A parcel of land which is shown on a record plat but which is not to be occupied by a building or otherwise considered as a buildable lot within the meaning of this title. No building permit shall be issued on any land so designated.

Lot, through - An interior lot, fronting on two (2) parallel or approximately parallel streets.

Lot width, minimum - The least permissible width of a lot, measured horizontally along the front lot line.

Medical or dental clinic - Any building or group of buildings occupied by medical practitioners and related services for the purpose of providing health services to people on an out-patient basis.

Mobile homes - Any vehicle or similar portable structure having no foundation other than wheels, jacks or skirting and so designed or constructed as to permit occupancy for dwelling or sleeping purposes.

Motel - Any group of dwelling units combined or separate, used for the purpose of housing transient guests, each unit of which is provided with its own toilet, washroom and off-street parking facilities.

Non-conforming use - A use of a building or of land lawfully existing at the time this and/or previous ordinances or amendments thereto became effective and which does not conform with the use regulations of the zone in which it is located.

Nursing home - Includes rest homes, convalescent homes and homes for the aged and shall mean a place devoted primarily to the maintenance and operation of facilities for the treatment and care of any persons suffering from illnesses, diseases, deformities or injuries, but not requiring extensive and/or intensive care that is normally provided in a general hospital or other specialized hospital, but who do require care in excess of room and board and who need medical, nursing, convalescent, or chronic care.

Open Fence - A fence configuration such as rail fences, woven wire fences, wrought iron, and picket fences which enables a partial view through openings in the fence. In the case of picket fences, an open fence is one which the space between pickets is at least 1 and 1/2-inches wide. An alternating board fence can be considered open only if there is a 1 and 1/2 -inch gap between the boards when viewed straight on. **(amended December 2011)**

Picket - A single vertical member of wooden fences that can be no wider than 6" (six inches) and spaced no closer together than 1 1/2 inches apart. **(added December 2011)**

Privacy Fence - A closed fence that is 6-feet high. A privacy screen may be considered under the screening ordinance. **(added December 2011)**

Professional office - Rooms and/or buildings used for the office purposes by a member of any recognized profession, including doctors, dentists, lawyers, accountants, engineers, veterinarians, *etc.*, but not including medical or dental clinics or veterinary clinics.

Rear Fence - Portion of fence parallel to rear lot line. **(added December 2011)**

Rooming house - A dwelling in which for compensation, lodging is furnished to three (3) or more, but not exceeding nine (9) guests. A rooming house shall not be deemed a home occupation.

Screening - Any constructed or planted enclosure in a yard for the purpose of keeping something out of view from outside the property or for the purpose of maintaining privacy in the side or rear yards. Screens may be made of closed fence, partially closed fence, vegetation, or a combination of materials. For example, a property owner may elect to screen a garbage corral in a back alley with a combination of shrubs and a closed fence. Another example of a screen is a partially-closed fence between a patio at the rear of the house and a neighbor's yard. **(added December 2011)**

Short-term rental housing - A dwelling unit offered to a succession of renters, tourists, or transients by lease for periods of time less than four (4) months. Short-term rental housing includes, but is not limited to, day-to-day, week-to-week, and month-to-month leases. Month-to-month extensions to leases longer than four (4) months shall not be considered short-term rental housing. Short-term rental housing shall be considered a boardinghouse under these Ordinances. **(added December 2011)**

Side Fence - the portion of fence perpendicular to the front and rear fence lines. The side fence can travel along the side of the house, side of the rear yard and side of the front yard. **(added December 2011)**

Sign - Any structure, part thereof, or device attached thereto or represented thereon or any material or thing, illuminated or otherwise, which displays or includes any numeral, letter, word, model, banner, emblem, insignia, device, trademark or other representation used as, or in the nature of, an announcement, advertisement, direction, or designation of any person, firm, group, organization, place, commodity, product, service, business, profession, enterprise, or industry which is located upon any land, or any building, in or upon a window, or indoors in such a manner as to attract attention from outside the building.

Sign, billboard - See "Billboard".

Sign, Business - A sign which directs attention to a business, commodity, service or other activity conducted upon the premises upon which the sign is located.

Sign, directional or information - A sign describing the location of a community or institution of public or quasi-public nature or the opening of an event of public interest, but not including signs pertaining to real estate.

Sign, personal service - Name plates or signs designating home occupations, accessory uses, such as doctor's office, or similar use, or advertising exclusively the sale of farm products produced on the premises.

Sign, real estate - A sign advertising for sale, lease, rental, or development of any particular premises or directing attention to the opening and location of a new subdivision, neighborhood or community.

Sprawl - type of urban or suburban growth pattern characterized by one or more of the following: development occurring relatively far from the urban center and from normal urban services; development that is highly dependent on the personal automobile as the dominant form of transportation; development that takes the form of substantial monocultures of residential or commercial uses with little or no mixing of differing types or intensities of such uses; development that relies on national or regional standardized architectural norms (e.g. "franchise architecture") that have little or no relationship to specific community norms; commercial development that takes the form of strip shopping centers, regional malls, "big-box" power retailing centers, office parks, and the like; and residential development that takes the form of either low-density, single-family subdivisions or high density multi-family complexes, with little or no compatibility between or mixing of housing types. **(added October 9, 2007)**

Step Down – The transition between a high and low fence which should be in keeping with the design of the running fences. **(added December 2011)**

Story - That portion of a building included between the surface of any floor and the surface of the floor next above it or, if there be no floor above it, the space between such floor and the ceiling next above it. A basement whose ceiling is five (5) or more feet above the outside ground level on two (2) or more sides shall be considered a story.

Story, half - That part of a building, under a gable, hip, or gambrel roof where the wall plates of at least two (2) opposite exterior walls extend not more than two (2) feet above the top floor of said building.

Street - A public or dedicated way, or a public proposed right-of-way (not including alley), widening, or extension of an existing street or public way shown on any plan approved by the Commission.

Structural alteration - Any change in the structural members of a building, such as walls, columns, posts, beams or girders.

Structure –

a. Anything constructed, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground or

b. An assembly of materials forming construction for occupancy or use including but not limited to the following: buildings, garages, out buildings, decks, storage sheds, radio & TV broadcasting towers, broadcast receiving antennas or dishes, platforms, animal shelters, porches, pavilions, gazebos, fences, tanks, bins, walls, signs, utility poles or towers, pipelines, and driveways. **(Amended June 10, 2008.)**

Sub-division - The partition or division of a lot or parcel of land into two or more lots, plots, parcels, or other divisions of land for the purpose of sale, lease or transfer of ownership or building development.

Swimming pool, commercial - A swimming pool and/or wading pool, including buildings necessary or incidental thereto, open to the general public and operated for profit.

Tourist home - A dwelling in which, for compensation, an owner-occupant provides lodging to not more than twelve (12) transient guests. A tourist home shall not be deemed a home occupation. Breakfast is the only meal allowed to be served. **(Amended on January 9, 1990)**

Townhouse - One of a group of three (3) or more attached dwelling units divided from each other by party walls and each having separate front and rear or front and side entrances from the outside.

Use - The principal purpose for which a lot or the main building thereon is designed, arranged, or intended and for which it may be used, occupied, or maintained.

Use, accessory - A use of a building, lot, or portion thereof, which is customarily incidental and subordinate to the principal use of the main building or lot.

Use, special exception - A use which may be permitted in a district through the granting by the Board of Appeals of a special exception, upon a finding by the Board that it meets specified conditions.

Yard - Open space on the same lot with a building or group of buildings, lying between the building or outer building of a group and the nearest lot or street line, and unoccupied and unobstructed from the ground upward, except as provided in this title.

Yard, front - Open space extending across the full width of lot between the front lot line or the proposed front street line and nearest line of the building or any enclosed portion thereof.

Yard, rear - Open space extending across the full width of lot between the rear line of the lot and the nearest line of the building, porch or projection thereof.

Yard, side - Open space between the side lot line and the nearest line of the foundation of the building, porch or projection thereof, extending from the front yard to the rear yard, or, in the absence of either such yards, to the front lot line and/or rear lot line.

Zone - An area within which certain uses of land and buildings are permitted and certain others required; lot areas, building height limits and other requirements are established; all of the foregoing being identical for the zone in which they apply.

Zoning officer - An officer of the town appointed by the Mayor and Council by majority vote, who administers the zoning regulations.

Zoning map - The zoning map of the Town of Shepherdstown together with all amendments thereto subsequently adopted.

CHAPTER 14 SUBDIVISION AND DEVELOPMENT ORDINANCE

Authority. This Chapter 14 derives its authority from the powers afforded under West Virginia Planning Enabling Legislation, found in Chapter 8A, Article 4 of the West Virginia Code.

Purpose.

The purpose of this Chapter 14 is to establish subdivision and development standards for the incorporated town of Shepherdstown, West Virginia. These subdivision regulations are intended to reflect the guidance and vision set forth for the future of Shepherdstown's growth and development in the Town's Comprehensive Plan.

The purposes for the adoption of this ordinance are as follows:

- To ensure that any growth and development which takes place within the corporate boundaries of Shepherdstown is carried out in an orderly manner, and to ensure that any lands to be incorporated into the corporate bounds of Shepherdstown shall observe the same rules and regulations regarding the Town's orderly growth and development.
- To ensure that the Town's potable water supplies and wastewater management facilities are adequately protected from the potential adverse impacts of growth and development.
- To ensure that the Town has adequate public facilities to accommodate all existing and proposed development.
- To ensure that the Town's inventory of historically significant properties are adequately protected.
- To ensure that all areas which have been classified by the Federal Emergency Management Agency as "flood hazard areas" and which are located within the corporate limits of Shepherdstown shall be protected from any potential negative impacts of development. All development which takes place within any designated flood hazard area shall comply with the Town's floodplain management ordinance.
- To ensure that the State and local road system which services Shepherdstown and the surrounding area remains safe for vehicular and pedestrian traffic.
- To ensure that each individual or entity which proposes to annex, subdivide, improve or otherwise develop property within the corporate limits of Shepherdstown shall be responsible for bearing the costs associated

with said development. These associated costs may include, but are not limited to the following:

Extension of public water and sewer lines, as well as any upgrades, improvements or expansion to existing public infrastructure necessitated by specific development activities.

Any improvements or upgrades to the existing road system, as required or recommended by the State Division of Transportation, Department of Highways and the Town Planning Commission.

Provision of all other public services, including schools, recreational facilities, police and emergency services, public libraries, etc.

In addition to the aforementioned costs associated with new development and redevelopment of existing property, an additional purpose of these subdivision regulations shall be to establish a “voluntary proffer system”. This system shall set guidelines for developers wishing to participate in this voluntary system, in accord with West Virginia State law.

To ensure that Shepherdstown continues to grow and prosper as a community of significant historic importance both to the State of West Virginia as well as to the United States of America.

Title. The official title of this Ordinance shall be “The Subdivision and Development Ordinance for the Corporation of Shepherdstown, West Virginia”.

Grant of Power. The Shepherdstown Planning Commission is hereby identified as the local government agency authorized to enforce the provisions contained in the Shepherdstown Subdivision and Development Ordinance.

Effective Date. This ordinance is effective as of February 14, 2006, the date upon which the Town Council of Shepherdstown officially adopted this ordinance into law, consistent with the provisions found in Chapter 8A, Article 4 of the West Virginia Code.

Definitions.

For purposes of this Chapter, certain words and terms are defined herein as follows:

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

The word “shall” is mandatory, and not directory.

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

The word “building” shall include the word “structure”;

The word “lot” shall include the words “plot” and “parcel”.

The word “used” shall also include “erected”, “reconstructed”, “altered”, “placed” or “moved”.

The Terms “land use” and “use of land” shall also include “building use” and “use of a building”.

The word “State” shall mean the State of West Virginia, unless otherwise indicated.

The word “County” means Jefferson County, West Virginia.

The term “Planning Commission” shall mean the Shepherdstown Planning Commission.

The word “person” includes a firm, association, organization, partnership, trust, company, or corporation, as well as an individual.

The word “adjacent” means “nearby”, and not necessarily “contiguous”, unless the obvious construction of the wording indicates otherwise.

The masculine shall include the feminine and the neuter.

Unless the construction clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction “and”, “or”, “either/or”, the conjunction shall be interpreted as follows:

“and” indicates that all of the connected items, conditions, provisions, or events shall apply;

“or” indicates that the connected items, conditions, provisions, or events shall apply singly or in any combination; and

“either/or” indicates that the connected items, conditions, provisions, or events shall apply singly but not in combination.

The phrase “used for” includes “arranged for”, “designed for”, “intended for” “maintained for” or “occupied for”.

The word “includes” or “including” or the phrase “such as” shall not limit a term to the specified examples, but is intended to extend its meaning to all other instances or circumstances of like, kind or character.

A “building” or “structure” shall include any part thereof.

The term “comprehensive plan” shall mean the Comprehensive Plan of the Corporation of Shepherdstown, West Virginia.

The term “subdivision and development regulations” shall mean the Subdivision and Development Ordinance for the Corporation of Shepherdstown, West Virginia.

For purposes of this Chapter, the following words and phrases shall have the meanings described in this subsection. If not defined herein, or within other sections of this Chapter, terms used shall have the meanings provided in American Planning Association’s (APA) document on planning definitions. If a term is not defined by the standard APA glossary, then the term shall have the meaning provided in any standard dictionary, or as determined by the Planning Commission. All determinations of word or phrase meanings and interpretations by the Planning Commission shall be added to this subsection via a text amendment.

Abandonment – The voluntary evacuation of a use for a continuous period of at least six months duration, either by completely vacating the property or property use.

Access – The way or means by which pedestrians or vehicles enter or leave a Property

Accessory Building -A building that

is subordinate to and serves a principal building or a principal use;

is located on the same lot as the principal building or use served except as otherwise expressly authorized by provisions of this ordinance;

is customarily incidental to the principal building or use; and

does not include any portion of a principal building devoted or intended to be devoted to an accessory use.

Adequate Public Facilities Study (APFS) — A study that describes existing essential public facilities (including schools, roads, wastewater and water systems) likely to be impacted by a proposed development; the impact the proposed development will have upon such essential public facilities, and whether the public facilities will continue to provide

adequate service to the residents of the Corporation of Shepherdstown after the proposed development (and each phase thereof) is completed.

Agriculture – The use of land for a bona fide commercial farming operation. This includes activities such as dairying, horticulture, floriculture, animal and poultry husbandry, the growing of fruit, vegetables, grains, hay, or any of the products derived from any of the foregoing, tobacco, honey, and any or all horticultural and nursery stock.

Alley – A right-of-way which is intended to provide secondary access to the subject property for service and other vehicles. Alleys are located adjacent to the side or rear property line. While an alley is part of an interconnected street system, it is not intended to accommodate through traffic.

Amendment – Any repeal, modification, or addition to a regulation; any new regulation; any change in the numbers, shape, boundary, or area of a zoning district within the corporate limits of Shepherdstown; or any repeal or addition to any map or part thereof.

Apartment – A dwelling unit located in a building containing three or more dwelling units that the occupants rent or lease from the owner of the dwelling unit. Identifying characteristics of an apartment, as distinguished from other types of dwelling units include a separate entrance, separate plumbing, separate cooking facilities, and a separate living area.

Assisted living facility – A group residence, where three or more members from different families reside together, for purposes of receiving assistance with basic life needs such as lodging, health care, meals, personal care and supervision. Other services may include transportation, recreation, and financial assistance or advice.

Block – An area of land bounded by roads which provide access to the residential and commercial uses contained therein. A block is identified as the property abutting one side of a street and lying between the two intersecting or intercepting streets or railroad right-of-ways, unsubdivided acreage, river or stream, or any other barrier to the continuity of development.

Bond - A written instrument with a clause binding a subdivider or developer to pay a certain penalty (or a portion thereof) to the Town Council; conditioned, however, with a statement that the payment of the penalty or portion thereof may be avoided upon satisfactory construction and completion of improvements required within a subdivision or other

approved development activity. A bond is secured by a surety, by cash in escrow, or by other means satisfactory to the Town Council.

Building – A structure with a roof built and maintained for the support, shelter, or enclosure of persons, motor vehicles, animals, or personal or real property.

Building, height of - 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 a gable, hip, or gambrel roof.

Building setback line (or building restriction line) – A line extending the full width or length of a building lot, which establishes the nearest point that a principal building may be erected from any front, side or rear lot line

Commercial subdivision - The division of land into two or more parcels for the purpose of non-residential development. Such a subdivision shall have common access to a public right of way and shall be developed in accord with all of the provisions contained in this and any other applicable ordinances.

Conforming use – Any land use which complies with the regulations contained in this ordinance.

Corner lot –A lot which abuts two or more streets or roads at their intersection.

Cul-de-sac – A local road having only one outlet for vehicular traffic, with a turn at the opposite end.

Dedication - The deliberate setting aside and appropriation of land by its owner for any general or public uses, reserving to himself only those rights which are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted.

Double Frontage Lot – A lot whose front and rear yards abut public or private roads or streets.

Drainage Facility - Any ditch, gutter, pipe, culvert, storm water management facility, storm sewer or other structure designed, intended, or constructed for the purpose of diverting diffused waters from or carrying surface waters off streets, public rights-of-way, parks, lots, recreational areas, or any part of any major subdivision or commercial development.

Drainage Plan - A plan showing all present and existing diffused surface and subsurface drainage conditions as described by grades, contours and topography with proposed methods and facilities to collect, control and convey said drainage.

Driveway - A minor vehicular right-of-way providing access between a street and parking area or garage within a lot or property.

Dwelling – A building, or portion thereof, occupied, in whole or in part, as a home, residence, or sleeping place for one or more individuals or families, either permanently or temporarily, but excluding hotels or motels.

Dwelling, accessory apartment - A secondary dwelling unit established in conjunction with a primary dwelling unit, whether a part of the same structure or detached from the primary dwelling unit.

Dwelling, second story, traditional use- A dwelling unit which is located on the second or third story of a building whose first or ground floor space has traditionally been occupied as commercial space.

Dwelling, multi-family- A building designed or used for occupancy by three or more families, all living independently of each other, and having separate housekeeping facilities for each family unit.

Dwelling, single family – A building designed or used exclusively for the occupancy of one family and having housekeeping facilities for one family only.

Dwelling, townhouse - One of a series of three or more attached dwelling units separated from one another by continuous vertical party walls without openings from basement floor to roof.

Easement – A lawfully acquired right or privilege to use a parcel of land or a portion thereof for a specified purpose. An easement is retained by a person other than the owner of the parcel of land.

Environmental Assessment – A comprehensive report which describes:

The natural features and characteristics of a proposed development site;

The changes that will occur as a result of the proposed development activity on the site;

The anticipated environmental impacts and consequences of the proposed development; and

Mitigation measures to be taken to minimize undesirable impacts to the environment.

An environmental assessment shall be required for all new development projects proposals subject to review and approval by the Shepherdstown Planning Commission.

Erosion - The wearing away of surface materials by the action of natural elements.

Excavating- Large-scale grading accomplished usually with heavy machinery.

Flood plain - That area which would be inundated by storm water run-off equivalent to that which would occur from a rainfall of one hundred year (100) frequency as determined by a flood insurance rate map or by engineering practices.

Family – One or more persons occupying a single dwelling unit and functioning as a single housekeeping unit. A family may consist of no more than three individuals who are not related by blood or marriage, except that domestic servants employed on the premises may be housed on the premises without being counted as a family or family member.

Impervious surface – Any hard surfaced, man-made area that does not readily absorb or retain water, including but not limited to building roofs, parking and driveway areas, sidewalks or other paved areas.

Impervious surface ratio – A number derived by dividing the total of all impervious surfaces by the gross area of the site.

Lot – An area with fixed boundaries, used or intended to be used by one building and its accessory building(s), and not divided by any road. (For specific information regarding lot sizes, see Sections 9-508, 9-604 and 9-703 of the Shepherdstown Code)

Lot frontage - That part of a lot abutting on a street or roadway.

Lot line - The property line bounding a lot.

Lot line, front – A lot line separating said lot from the road.

Lot line, rear - The lot line which is most distant from and is, or is most nearly, parallel to the front lot line. Where there are two or more front lot lines, only the lot line most distant there from, and running nearly parallel to, shall be a rear lot line.

Lot line, side – Any lot line which is not a front lot line or rear lot line.

Lot of record – A lot which is part of a legal subdivision recorded in the office of the Clerk of the County Commission of Jefferson County, or a lot or parcel described by metes and bounds, the description of which has been so recorded and legally subdivided.

Lot of record, pre-existing nonconforming – A lot consisting entirely of a tract of land that:

Has less than the prescribed minimum lot size, width, or depth, or any combination thereof,

Is shown by a recorded plat to or deed to have been owned separately and individually when creation of a lot of such size, width or depth or any combination thereof, at such location would not have been prohibited by any applicable regulations; and

Has remained in separate and individual ownership from adjoining tracts of land continuously during the entire time that creation of such a lot has been prohibited by any applicable regulations.

Lot width – The distance between the side lot lines at the front yard building restriction line.

Major Subdivision - The division of a lot, tract, or parcel of land or part thereof into three (3) or more lots, tracts, or parcels of land for the purpose of lease, sale, transfer of ownership, or development simultaneously or at separate times, whether immediate or future, in such a manner which may or may not require provision for a new street or relocated street to provide access to one or more of the lots created by the subdivision/development activity.

Minor Subdivision - The division or re-division of a single lot, tract, or parcel of land into a maximum of two (2) lots, tracts, or parcels of land for the purpose of lease, sale, transfer of ownership, or development simultaneously or at separate times, whether immediate or future, providing the proposed lots, tracts, or parcels of land thereby created have the required frontage on an improved public street or streets, and providing further that there is not created by the subdivision any new street or streets, the need for required improvements, easement of access or the need therefore.

Mixed use – The development of a tract of land, building or structure with a variety of integrated commercial, residential and other land uses.

NPDES Permit - The National Pollutant Discharge Elimination System Permit, part of the Federal Clean Water Act, 33 U.S.C. ' 1251, et seq. and West Virginia Code Chapter 22, Articles 11 and 12. This permit is normally administered by the state environmental agency, in this case, the West Virginia Division of Environmental Protection and is required when land disturbance from grading, excavating or construction exceeds the acreage specified under state law. In order to comply with federal and state regulations, a Certification of Compliance must be attached to the NPDES application by the developer. This Certification of Compliance must document compliance with all of Shepherdstown's zoning and subdivision regulations. The Certificate of Compliance is issued by the West Virginia Department of Environmental Protection and is based upon certification by the Corporation of Shepherdstown that the subject development proposal has met all standards, regulations and requirements set for in the Town's planning, zoning, historic district, land use, or any other applicable ordinances.

Non-conforming use – A use of a building or land lawfully existing at the time this subdivision and development ordinance, and any previous ordinances or amendments thereto, became effective, but which does not conform to the current land use regulations and does not comply with the current regulations of the zoning district in which it is located.

Open or green space – Any parcel or area of land or water essentially unimproved and set aside, dedicated, or reserved for public or private use or enjoyment or for the use and enjoyment of owners, occupants, and their guests of land adjoining or neighboring such open spaces. Such open space may include active recreation facilities, such as swimming pools, play equipment for young people, ball fields, court games, picnic tables and other picnic facilities such as gazeboes, shelters, and bar-b-que pits and bar-b-que grills. Open or green space shall not include lawns associated with single-family homes, median strips, or green strips between streets and sidewalks. To qualify as open space/green space, the subject acreage must be accessible to the public or residents of the development site, and must be usable for outdoor recreational purposes.

Parking area – An off-street area devoted to vehicular parking containing one or more parking spaces and including on-site roadways, aisles, stalls, islands, and other maneuvering areas. For the purposes of this definition, the term “off-street” shall mean off of or adjacent to a recognized, public right of way.

Plat - The map, drawing, or chart on which the developer's plan or layout of a subdivision or commercial development is shown, indicating the

location and boundaries of individual properties and which is submitted to the Planning Commission for approval.

Plat, Final Subdivision - The final map, drawing, or chart, and supplementary information, based upon the approved Preliminary Plat, in which the developer's plan of land subdivision is submitted to the Shepherdstown Planning Commission for approval and which, if approved, shall be recorded in the Shepherdstown Town Hall and the Office of the Clerk of the County Commission of Jefferson County. in accordance with Chapter 39, Article 1, Section 13, Code of West Virginia, 1931, as amended.

Plat, Preliminary Subdivision - The preliminary map, drawing, or chart and supplementary information and materials, on which the layout and design of a proposed subdivision is shown and which is submitted to the Planning Commission for consideration and approval.

Plat, Subdivision Sketch - An informal map, drawing, or chart indicating existing features of a parcel or tract of land and its surroundings and the general layout of the proposed subdivision. A sketch plat is submitted for purposes of initial consideration by the Shepherdstown Planning Commission of the primary development concept, and does not represent any binding or final approval by the Shepherdstown Planning Commission.

Site Concept Plan - A graphic depiction of the plans for the creation of a commercial, retail or otherwise non-single family residential development, which is ultimately intended for review and approval by the Shepherdstown Planning Commission. A site concept plan shall be required for any proposed retail, townhouse, apartment, multi-family, recreational, manufacturing or industrial development. Required information for a site concept plan submittal shall include the same informational requirements as indicated for a final site plan, less and excepting site engineering information, storm water management calculations, and detailed data regarding the provision of potable water and wastewater management.

Site Plan, Final - A graphic depiction of the plans for the creation of a commercial, retail or otherwise non-single family residential development, which is ultimately intended for review and approval by the Shepherdstown Planning Commission. A final site plan shall be required for any proposed commercial retail, townhouse, apartment, multi-family, recreational, manufacturing or industrial development. Required information for a final site plan submittal shall include all basic site data, including engineering information, storm water management calculations, and detailed data regarding the provision of

potable water and wastewater management. A final site plan is the “final” plan for any non-single family residential development. Following final approval by the Planning Commission, the applicant or developer may proceed with making application to the Corporation of Shepherdstown for building permits and any other certifications or permits which may be required by other public agencies.

Setback – The required minimum horizontal distance between the building line and the related front, side or rear property line. (For specific information regarding setbacks, see Sections 9-508, 9-604, and 9-703 of the Shepherdstown Code.)

Sewage Facility - Any sewer, sewage system, sewage treatment works or part thereof, designed, intended, or constructed for the collection, treatment, or disposal of liquid waste from public or private wastewater management systems.

Staff - For purposes of this ordinance, "staff" shall refer to any agent, person or entity engaged or employed by the Shepherdstown Planning Commission or Town Council for purposes of providing technical advice or other services related to any planning matter under consideration the Corporation of Shepherdstown. The term "staff" shall include any individual, agent or entity employed by the Corporation of Shepherdstown, on either a part time, full time, project specific or consulting basis.

Story – That portion of a building included between the surface of any floor and the surface of the floor next above it or, if there is no floor above it, the space between such floor and the ceiling next above it. A basement whose ceiling is five feet or more above the outside ground level on two or more sides shall be considered a story.

Structure - Anything constructed, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground, but not including fences, sidewalks, driveways and curbs.

Subdivide - To divide a tract, lot or parcel of land into lots before developing or improving the subject property.

Townhouse – One of a group of three or more attached dwelling units divided from each other by party walls, with each unit having a separate front and rear or front and side entrances from the outside.

Variance - A deviation or adjustment of the provisions of the Shepherdstown Subdivision and Development Regulations by majority vote of the

Board of Appeals. Variances shall apply not only to the explicit provision of the Subdivision Regulations, such as lot size, dimensions, areas, setbacks and technical requirements such as roadway design, drainage, storm water management, grading and parking facilities; but also to plans, guidelines and recommendations from regulatory and advisory agencies. Developers must submit a complete explanation for the variance request in writing to the Board of Appeals. All variance requests must be advertised and a public hearing held prior to consideration by the Board of Appeals. For a variance to be approved, the Board of Appeals must find that the request meets the criteria set forth in Title Nine.

Land Subdivision.

In order to effect timely, orderly and equitable processing of all applications, the procedures set forth in this Chapter shall be observed by all subdividers, developers, and the Shepherdstown Planning Commission and Town Council. The following regulations shall apply:

The presentation of a Sketch Plat, Preliminary Plat and Final Plat (for residential or commercial subdivision activity) OR concept site plan and final site plan (for non-residential / commercial development) shall each be considered a separate submission to the Planning Commission.

- (7) For all residential and commercial subdivision activity, a “sketch plat” shall be required as part of the pre-application development submittal.

For major commercial and residential subdivision activity, a “preliminary plat” is required at the next review phase, and the preliminary plat shall include all relevant site engineering information, such as plans for provision of potable water, wastewater treatment, vehicular and pedestrian access, etc.

For commercial or otherwise non-single family residential development, a concept site plan and final site plan shall be required. At the pre-application submittal phase of the development review process, the applicant shall be required to submit a concept site plan. This graphic representation of the proposal for site development shall include information on the number of commercial lots to be created; the land uses proposed for each lot created; the amount and location of all parking amenities; all associated recreational facilities, and other relevant site information. The final site plan shall include the information indicated above, plus proposed method and design for delivery of all public utilities. See definitions for concept site plan and

final site plan, above, and checklists for concept site plan and final site plan, which are included as addendums to this document.

The subdivision and site plan review and approval processes do not apply to renovations to existing buildings, property use changes (for existing buildings), or the development of one single-family dwelling on an existing legal lot of record. These types of development activities typically require the issuance of building permits, certificates of zoning compliance, and use and occupancy permits, and are governed by the provisions contained in Title Nine, the Town's Planning and Zoning Ordinance.

Sketch Plat and Concept Site Plan Review.

The preparation and submission of a sketch plat and written supplementary information is required for all major and minor subdivisions.

The preparation and submission of a concept site plan is required for all commercial or non single-family residential development proposals.

Purpose.

The submission of a sketch plat or concept site plan and other written supplementary information will assure the subdivider or developer:

that the Planning Commission has the proper visual concept of this proposed project;

that there is no misinterpretation or misunderstanding as to the specific and general information regarding the proposed project and the site;

that the proposed project can be given a more accurate evaluation; and

that both parties have the mutual protection of an accurate record of the proposal.

Procedure.

The developer shall prepare a sketch plat or concept site plan and written supplementary information for review by the Planning Commission or Planning Commission Staff. Upon submission of the sketch plat or site plan, a Pre-Application Conference shall be held and the following shall apply:

Pre-Application Conference

The purpose of the conference shall be to inform the applicant of what is expected, the approval process and what agency approvals will be required.

The pre-application conference shall be completed within fifteen (15) days of the request for the conference.

A letter shall be provided to the applicant within fifteen (15) days of the conference, with a copy going into the project file confirming the meeting and noting any comments made by staff regarding the development proposal.

The conference shall be held prior to presentation to the Planning Commission. Information obtained at the conference shall be included in the staff report to the Planning Commission.

Preliminary Plat/Final Site Plan Review and Approval.

(amended Oct 07)

The preparation and submission of a preliminary plat or final site plan, together with improvement plans and other supplementary materials are required for major subdivisions and all commercial developments.

Purpose

The purpose of the preliminary subdivision plat or final site plan is to provide the Planning Staff and the Planning Commission with precise, detailed information on all aspects of a proposed major subdivision or commercial development. The preliminary plat or final site plan shall include complete details of site engineering, storm water management, provision of public utilities, vehicular and pedestrian transportation management, open space and recreational amenities, site density, architecture, landscaping, voluntary proffers, etc. For precise informational requirements, please see the checklists for concept site plan, final site plan, sketch plat, preliminary plat and final plat which are included as addendums to this document.

Procedure, Major Subdivision and Site Plan

NOTE: The procedure for review and approval of commercial development proposals shall be the same as for major subdivisions, with the exception that the submittal of a “Final Site Plan” signals the final step in the development review process. For major subdivisions, the submittal of a preliminary subdivision plat, followed by submittal of a final subdivision plat is required.

Based on the information provided by the applicant and the comments offered by staff at the pre-application conference, the applicant shall prepare a preliminary plat or final site plan, together with improvement plans and other supplementary material.

The applicant shall submit to the Planning Commission a written application for review and approval of the preliminary plat on forms provided by the Planning Commission, and accompanied by the required fees. The applicant shall also provide a completed development review checklist with each submittal.

3. Based on the type, size, and location of the proposed project, surrounding developments (existing or proposed), and the requirements of other State and local agencies, the Planning Commission shall require that the application be accompanied by a sufficient number of copies of the Preliminary Pat or Final Site Plan, the improvement plans and any supplementary material, for

distribution and review by the following boards, commissions, and agencies, as applicable:

West Virginia Bureau of Health, Environmental Engineering Division
West Virginia Department of Transportation, Division of Highways
Shepherdstown Public Sewer and Water Authority
Shepherdstown Town Council
Shepherdstown Historic Districts Landmarks Commission
West Virginia Public Service Commission
Shepherdstown Tree Commission

Upon receipt of the written application along with the required number of copies of the Preliminary Plat, or Final Site Plan, improvement plans and supplementary materials, the Planning Commission Staff shall distribute the plans to all review agencies, for their comment and consideration. Each agency shall have 30 days to review the project. At the time of the preliminary plat or site plan submittal, Planning Staff shall set a date for a meeting with the applicant and representatives of each review agency to go over agency comments within 45 days from the date of submittal. The applicant shall then proceed with any recommended changes to the plan. Once the requisite changes have been made, the applicant shall contact the Town Clerk to arrange a re-submittal meeting. The modified plans shall then be re-distributed to the review agencies, for additional comment. If the review agencies recommend additional changes to the proposed preliminary plat, the applicant shall be advised, in writing, of the same, and the review process shall be repeated until such time as all identified deficiencies have been corrected.

At a meeting where the application and plans are determined to be complete, or once all review agencies indicate their approval of the revised plans, the Town Clerk shall set a date for a public hearing before the Planning Commission, and shall advertise the public hearing. As per Chapter 8A, Article 5 Section 8 of the West Virginia Code, the advertisement shall appear in the local newspaper of general circulation no less than 21 days before the public hearing. The advertisement shall set forth a date, time and place for a public hearing and shall provide a brief description of the proposed development. The applicant shall be notified in writing of the date, time and place of the public hearing. The applicant shall provide the Planning Commission with the names and addresses of all persons owning property adjacent to the subject property, and the Planning Commission shall provide each adjacent property owner with notification, via certified mail, of the proposed development activity.

The applicant shall post the property with a sign which states the requested proposal and the date, time and place of the public hearing. The property shall be posted conspicuously by a notice not less than twenty-two (22) by twenty-eight (28) inches in size that is durable and readable at least thirty (30) calendar days before the public hearing. Sign boards will be furnished by the Corporation of Shepherdstown.

Following the public hearing, the Planning Commission shall proceed with consideration of the preliminary plat. The Planning Commission shall consider the comments and opinions expressed at the public hearing

but shall be responsible for reaching its own conclusions on the merits of the proposed major subdivision. or commercial development.

In determining whether approval should be given to the preliminary plat or final site plan, the Planning Commission shall be guided by the design and other standards set forth in these subdivision and development regulations. Particular attention shall be given to the arrangement, location and width of streets and their relation to the area's topography; water supply; sewage and solid waste disposal; drainage; erosion and sediment control; lot sizes and arrangements; the future development of adjoining lands not yet subdivided; and the goals, policies, and recommendations set forth in the Comprehensive Plan for the Corporation of Shepherdstown.

At a meeting at the conclusion of the public hearing or a meeting held within fourteen (14) days after the public hearing, the Planning Commission shall approve or disapprove the preliminary plat or site plan. The application and plans may be held up to forty-five (45) days for additional information necessary to make a determination. If approved, the Planning Commission shall state the conditions of such approval, if any.

The Planning Commission shall approve the application and preliminary plat or site plan after the Planning Commission determines that an application and preliminary plat or site plan is complete and meets the requirements of the Subdivision and Development Ordinance.

The action of the Planning Commission shall be noted on two copies of the preliminary plat or site plan, and any conditions of approval shall be attached to the approved document. One copy shall be returned to the applicant and the other shall be retained by the Planning Commission at the Shepherdstown Town Hall.

If the Planning Commission denies the application and preliminary plat or site plan, then the Planning Commission shall notify the applicant in writing of the reasons for the denial. The applicant may request, one time, a reconsideration of the decision of the Planning Commission, which request for reconsideration must be in writing and received by the Planning Commission no later than ten (10) days after the decision of the Planning Commission is received by the applicant.

Effect of Preliminary Plat Approval

Approval of a preliminary plat shall not constitute approval of the final plat. Rather, it shall be deemed an expression of approval of the preliminary plat as a guide to the preparation of the final plat. Upon fulfillment of

the requirements of these regulations, as well as any conditions imposed by the Planning Commission at the time of preliminary plat approval, the final plat shall be submitted for the approval of the Planning Commission.

Approval of a preliminary plat by the Planning Commission shall have the following effect for a two (2) year period from the date of said preliminary plat approval:

The terms and conditions, including but not limited to street layout, lot size, and improvements on which such preliminary approval was granted will not be changed;

The applicant may submit on or before the expiration date of such preliminary plat approval, the whole or any part of said subdivision for final approval in accordance with the provisions of this ordinance, provided that if the applicant elects to submit a part of said subdivision for final approval, the applicant shall first make written request to the Planning Commission for such approval indicating specifically which part or parts for which final approval is requested.

The applicant may apply for and the Planning Commission may grant an extension on such preliminary approval for a period of two (2) years under the same terms and conditions as the preliminary approval originally granted. If no substantial work has started within four (4) years, at the discretion of the Planning Commission, the developer must meet the terms of the Subdivision and Development Regulations existing at the time of the requested extension.

Effect of Final Site Plan Approval

Final Site Plan approval by the Planning Commission shall have the same effect as a final subdivision plat approval, and shall allow the developer to apply for building permits and any other certificates required prior to the initiation of site construction activities.

The conditions set forth in the preceding Section 2, A,B and C above shall also apply to Final Site Plans.

Bonding

Preliminary plat or Final Site Plan approval shall not entitle a developer to make any improvements to the site unless a bond is posted. The amount of the bond must be sufficient to cover the cost of all proposed improvements, plus 15%. The amount of the bond shall be increased by 5% every year that it

remains in effect, to account for inflation. In accordance with West Virginia State law, the bond shall be issued to the credit of the Corporation of Shepherdstown, and shall be administered by the Shepherdstown Town Clerk. Should the applicant elect to post the required bond and to proceed with site improvements prior to final plat approval, he shall do so at his own risk. Any modifications in the field to the approved preliminary plat must be approved by all review agencies, Planning Staff, and the Planning Commission, or the applicant will be liable for the cost of all additional improvements necessary to bring the site into compliance with the approved preliminary plat.

Requirements for Development Bonds.

If a bond is used as an acceptable method of security for infrastructure construction, then it shall meet the following requirements:

Be in an amount to cover the infrastructure construction, as determined by the Town Council;

Be payable to the Town Council;

Have adequate surety and be satisfactory to the Town Council;

Specify the time for the completion of the infrastructure construction; and

Specify the date and/or condition for when the bond will be released.

The money from the bond shall only be used by the Town Council to which the bond is payable, for the completion of the infrastructure construction, when the infrastructure construction is not completed as approved at the issuance of the bond.

To apply for a bond, the developer shall provide information on construction costs on forms provided by the Town Clerk. The bond application shall be reviewed and approved by the designated engineering agent for the Corporation of Shepherdstown.

Site Improvements

Prior to the commencement of any site improvements, the developer shall apply for and obtain a grading permit from the Corporation of Shepherdstown. The grading permit application shall be made on forms provided by the Planning Commission, and is subject to review and approval by the Town's designated engineering agent. Once the grading permit is issued, the developer shall make arrangements with the Town Clerk for regular site inspections. These inspections shall take place at designated key points in the construction process.

Final Plat Review and Approval.

The preparation and submission of a final plat or site plan, together with supporting documents and data, is required for major subdivisions, minor subdivisions and commercial developments.

Purpose.

The purpose of the final plat is to require formal approval by the Shepherdstown Planning Commission before the plat is recorded in the Shepherdstown Town Office and the Office of the Clerk of the County Commission of Jefferson County.

Major Subdivisions and Site Plans

General Procedure.

The final plat or site plan shall conform substantially to the preliminary plat as approved by the Planning Commission and shall incorporate all conditions, modifications and revisions specified by the Planning Commission in its approval of the preliminary plat or site plan. Otherwise, the plat or site plan shall be considered as a revised preliminary plat or site plan, which must be re-approved by the Planning Commission and any participating review agencies, boards or commissions.

The Planning Commission may permit submission of a final plat in sections of not less than four (4) lots each covering a portion of the entire proposed subdivision as shown on the approved preliminary plat or site plan.

The final plat and supporting documents shall comply with the provisions of this Ordinance.

The final plat shall be submitted to the Planning Commission within twenty-four (24) months after approval of the preliminary plat. Submission of one section every two (2) years shall be required to keep the preliminary plat active. Otherwise, such approval shall become null and void unless an extension of time is applied for by the developer and granted by the Planning Commission.

Subdivider Procedure

The application for final plat approval shall be on forms provided by the Planning Commission, accompanied by the required fees.

The application shall be accompanied by as many copies as are required, based upon the number of agencies involved in the review of the development proposal.

The application, plats, and supporting documents shall be filed with the Planning Commission at least fifteen (15) working days in advance of the meeting at which the application is to be considered.

On approval of the final plat by the Planning Commission, seven copies and two mylars shall be submitted to the Planning Commission for approval signature. The developer shall file the signed plat in the Shepherdstown Town Hall as well as the Office of the Clerk of the County Commission of Jefferson County, within ninety (90) days of such approval or mutually agreed upon extension of time but no more than 180 days from the date of approval. In the event that the final plat is not so filed within the appropriate time, the application shall be considered withdrawn and any previous approval or modification shall be considered lapsed.

Planning Commission Procedure

The Planning Commission shall review the final plat or site plan within forty-five (45) days of the meeting at which the final plat or site plan is first considered. The Planning Commission shall approve, modify and approve, or disapprove such plat or site plan.

If the developer did not post a development bond subsequent to preliminary plat approval, then the bond shall be posted at this time. The bond must be sufficient to cover the cost of all proposed improvements, plus 15%. The amount of the bond shall be increased by 5% every year that it remains in effect, to account for inflation. In accordance with West Virginia State law, the bond shall be issued to the credit of the Corporation of Shepherdstown, and shall be administered by the Shepherdstown Town Clerk.

If the Planning Commission approves the final plat or site plan, it shall affix its seal upon the plat or site plan. The plat or site plan shall be signed and dated by an officer of the Planning Commission. If the Planning Commission disapproves the plat or site plan, it shall set forth the reasons for its denial in its own records and provide the applicant with a copy of the same.

Minor Subdivision

The purpose of this section is to provide a simplified procedure by which applications for minor subdivisions, as defined in these subdivision and development regulations, may be submitted for review and approval.

General Procedure

Based on information submitted by the applicant and comments issued by staff in response to the submittal, the developer shall prepare a final plat.

In the event that the proposed subdivision shall involve a change in the location of streets, the need for any new street or streets, the need for an access easement, or the need for required improvements, such as sanitary or storm sewers, water mains, or culverts, then the provisions of this section shall not be applicable, and the proposed development activity shall be subject to the same review procedure as a major subdivision, including public notice, property posting, and holding of a public hearing.

Subdivider Procedure

The application for final plat review and approval shall be on forms provided by the Planning Commission, accompanied by the required fees.

The application shall be accompanied by a minimum of three originals of the final plat and supporting documents from the following agencies, as appropriate:

West Virginia Bureau of Health, Environmental Engineering Division,
West Virginia Department of Transportation, Division of Highways,
Shepherdstown Public Sewer and Water Authority,
West Virginia Department of Environmental Protection.

The application, plat, and supporting documents shall be filed with the Planning Commission staff.

Upon approval of the final plat by the Planning Commission staff, the applicant shall file such plat in the Office of the Clerk of the County Commission of Jefferson County and the Clerk of the Town of Shepherdstown, in accordance with the appropriate provisions of the law within ninety (90) days of such approval.

In the event that the final plat is not filed within the appropriate time, the application shall be considered withdrawn and any previous approval or modifications shall be considered lapsed and no longer applicable.

Planning Commission Procedure

Within seven days after the submission of the subdivision or land development plat, the applicant and the staff of the planning commission shall meet to discuss the proposed subdivision or land development and the criteria used to classify the proposal as minor.

The staff of the planning commission may make a site inspection of the proposed subdivision or land development.

Within ten days after the submission of the subdivision or land development plat, the staff of the Planning Commission shall notify the applicant in writing that the proposed subdivision or land development has been classified a minor subdivision or land development.

Within ten days after a plat has been classified a minor subdivision or land development, then the Planning Commission shall approve or deny the plat.

If the Planning Commission approves the plat, then the Planning Commission shall affix its seal on the plat. The plat shall be signed and dated by an officer of the Planning Commission.

If the Planning Commission approves the plat with conditions, then the Planning Commission must state the conditions.

If the Planning Commission denies the plat, then the Planning Commission shall notify the applicant in writing of the reasons for the denial.

Effect of Final Plat Approval

Approval of the final plat shall entitle the applicant to record said plat in the Office of the Clerk of Jefferson County and the Shepherdstown Town Hall. Said plat shall be recorded within ninety (90) days of final approval, or mutually agreed upon extension of time but no more than 180 days from the date of approval, or the final plat approval shall be null and void.

General Information, Major Subdivisions and Site Plans

The following information shall be included in any application for major subdivision or site plan approval and shown upon the final subdivision plat or site plan:

Street and alley lines, lot lines, building lines, reservations, easements and areas to be dedicated to public use.

Sufficient data to determine readily the location, bearing, and length of every street line, lot line, block line, and boundary line, as well as sufficient data to reproduce the same on the ground.

The length of radii, arcs, tangents, and chords with chord bearings, and central angles of street curves referenced to a curve table.

Name and right-of-way width of each street or other right-of-way.

Location, dimensions, and purpose of all easements.

All dedications and reservations and purpose of same. For streets which are to be dedicated to the Corporation of Shepherdstown, the applicant shall provide deeds of dedication to be reviewed and approved by the Town's legal counsel. For streets and other amenities which are to be owned and maintained by residents of the proposed development, the applicant shall provide homeowners' association documents, which shall establish the homeowners' association and specify the terms and arrangements for future ownership and maintenance of said amenities and improvements. The homeowners' association document shall be subject to review and approval by the Town's legal counsel.

All minimum building setback lines.

Lots numbered in numerical order. If a subdivision contains more than one block, blocks shall be lettered in alphabetical order. In case there is a resubdivision of lots in any block, such resubdivided lots shall be numbered numerically beginning with the number following the highest lot number in the block.

Location and description of monuments. Metal monuments three-quarters of an inch in diameter and twenty-four inches in length shall be located at all street intersections, intersections of streets and alleys with plat boundary lines, and at all points on street, alley, and boundary lines where there is a change in direction or curvature. Permanent stone or concrete monuments shown shall be placed wherever required. Such permanent monuments of stone or concrete shall be at least thirty-six inches in length and six inches square, or six inches in diameter, with a suitable center point. All monuments, metal, stone or

concrete, shall be set in the ground flush to the finished grade before the final plat is approved.

Names of adjoining subdivisions and names of owners of adjoining unsubdivided property.

Reference to adjoining subdivisions by liber and folio number.

Name of subdivision, which shall be subject to approval by the Shepherdstown Planning Commission.

North point, scale and date.

Certificate by surveyor or engineer certifying to accuracy of the plat.

Statement by owner dedicating streets, rights-of-way, and other areas to public use.

Other Required Basic Plan Information:

Landscaping plan and reserved buffer areas

Fencing

Exterior lighting (location and height)

Off-street parking

Pedestrian walkways and sidewalks

Provisions for solid waste collection

Open space and recreational facilities

Communication antennas (TV, radio, etc.)

Signs (location, height, size and design)

Proposed land uses, showing building locations

Location of material storage

Location of special facilities for refuse collection, mail delivery, etc.

Computational information and supporting documents for the following:

Gross dwelling unit density (U/A)

Parking space ratio per dwelling unit

Open space ratio per dwelling unit

Projected daily sewage effluent

Projected marketing method (unit lot sales, unit lot rentals,
condominium sales, apartment rentals)

Tentative projected building schedule by year

Developer responsibilities (landscaping, recreational facilities
homeowners' association, articles of incorporation, by-
laws, covenants, deed of conservation, easements, etc.)

Site coverage (Impervious area/Gross site area)

Freight and delivery requirements

Projected emission levels (industrial only)

Method of solid waste storage and disposal

Site user method of transportation (automobile, public, etc.)

Maintenance responsibility (access roads)

Design Standards for Major Subdivisions. (amended Oct. 07)

The following design standards shall apply to all major subdivisions and commercial developments either within the corporate limits of Shepherdstown or proposed for annexation into the incorporated area of the Town.

General Design Objective

In keeping with established and desirable development patterns for the Corporation of Shepherdstown, all new subdivisions shall be human scale, walkable communities with medium to high residential densities and may include a mixed use component. The mixed use component shall consist of commercial or service establishments which shall be convenient and useful to the residents of the development. The following terms, phrases and requirements shall apply to the general design objective:

- A “Walkable Community” is a community which features a 5 minute walk from the core or center to the edge, or a ¼ mile maximum distance.
- A “Mixed Use Component” shall be devoted to the development of non-residential land uses. These uses shall include retail establishments (such as convenience stores, coffee shops, ice cream parlors, neighborhood restaurants, etc.); service establishments (such as dry cleaners, movie rental shops, drug and sundry stores and day care centers); professional service providers (such as doctor’s and dentist’s offices, tax preparers, attorneys, etc.).

The open or green space requirement, which shall include 25% of the total site acreage, may be developed as either landscaped area or recreational area, such as parks, playgrounds, athletic fields, swimming pools, picnic areas, walking trails, indoor or outdoor exercise centers or health clubs.

The commercial land uses which are included in the mixed use component shall provide goods and services which are useful to community residents, and which will serve to reduce the number of vehicular trips per day which residents will need to make in order to meet their basic needs.

Street Design Objectives

Street designs for new communities shall be characterized by a high degree of interconnectivity, and shall feature opportunities for use by vehicles, pedestrians and bicyclists. Non-vehicular traffic shall be afforded every practical accommodation that does not adversely affect safety considerations. The overall function, comfort and safety of a

multi-purpose or “shared” street shall be given priority over its vehicular efficiency alone. Streets shall be designed to minimize through traffic, and shall be only as wide as needed to accommodate the usual vehicular mix for that street while providing adequate access for moving vans, garbage trucks, fire engines and school buses. The overall intent is to encourage walking and biking, enhance transit service opportunities, and improve traffic safety through promoting low speed and cautious driving while fully accommodating the needs of pedestrians and bicyclists. All new streets created shall connect with Shepherdstown’s existing street system.

Applicable Standards

All streets shall be designed to have a desired upper limit of actual vehicle speeds of approximately 25 miles per hour (mph).

All streets shall be of “curb and gutter” design, with sub-surface storm water collection systems.

The following minimum standards for street types and widths shall apply, and pavement widths shall be from curb face to curb face.

Alley Street Section

Purpose: Although part of the interconnected street system, alleys provide access to property but are not intended to accommodate through traffic. Alleys may be used to accommodate utility lines and garbage trucks. The required right-of-way width will vary as per the proposed functions of the alley.

Required Features:

20 foot right-of-way suggested

12 foot pavement width required.

Open section road design permitted; however, additional pavement width at intersections may be required to facilitate turns by garbage trucks, delivery vehicles, and other larger service vehicles.

No sidewalks required.

Maximum design speed – 20 mph

Neighborhood Street Section

Purpose: To accommodate residential vehicular, pedestrian and bicycle traffic within new residential developments within, or proposed for annexation to, the Corporation of Shepherdstown.

Required Features:

40 foot right-of-way required.

18 foot pavement width required.

Curb and gutter street design required.

Five foot wide sidewalk section on each side of the street required.

Six foot planting strip between edge of curb and s 5' sidewalk section required.

Design speed-25 mph maximum.

On-street parking permitted, providing adequate pavement width.

Avenue Section, with Median

Purpose: To provide a functional vehicular, pedestrian and bicycle connection between the new subdivision development and the existing Town road system. This road section is intended for relatively short road sections, from two to six blocks in length.

Required Features:

Required street width is 26 feet for paved sections on both sides of the median, which will accommodate on-street parking. If no on street parking is provided, the minimum street width is 18 feet.

Minimum required median width is 12 feet.

Travel lanes – 12 feet each required.

Six foot planting strip between edge of curb and sidewalk required.

Five foot sidewalk section required.

Required right-of way-width is 86 feet (with on street parking) and 70 feet if no on-street parking is provided.

Maximum speed limit: 30 mph

Other street sections may be proposed, and will be considered by the Town's designated engineering agent and the Planning Commission on a case-by-case basis. However, all proposed street sections must meet the minimum criteria outlined in the "Street Design Objectives" section of this ordinance.

General Construction Standards for New Streets

NOTE: Unless the standards indicated here below are not more restrictive, all proposed streets, sidewalks, and associated improvements must comply with the standards found in the State of West Virginia, Department of Transportation / Division of Highways manual entitled Design Directives for Pavement, Street Sections. Definitions for technical terms included in this section may be found in this manual.

All subdivision roads shall be constructed of asphalt. No gravel streets or alleys shall be permitted. Asphalt roads shall be placed on subgrade

that has been compacted to 98% of maximum density per AASHTO T99C. Asphalt shall be applied to the prepared gravel surface following the application of a liquid asphalt prime coat. Asphalt shall consist of a plant mixed bituminous material rolled smooth to the depth specified in the State of West Virginia-Department of Transportation's Design Directives for Pavement, Street Sections. The asphalt surface shall be smooth, seamless and of uniform texture. Asphalt material shall comply with the minimum specifications required for public roads by the West Virginia Department of Highways. Concrete roads may be substituted for asphalt roads, providing that they equal or exceed asphalt roads in longevity and performance, as determined by the Town's engineering agent.

Aggregate base must be compacted to 95% of maximum density per AASHTO 99C. Pavement sections shall be designed based upon a CBR test or other test approved by the West Virginia Department of Highways yielding soil bearing data. All pavement section designs shall be scaled by a registered professional engineer.

Subdivision roads shall be constructed with a minimum fillet curve radius of 20 feet at intersections, except that road entrances to subdivisions shall have a minimum curve radius of twenty-five feet where they join public roads. If one or more of the streets in a proposed major subdivision terminates in a cul-de-sac, the diameter of the paved section of a circular turn-around section of the street shall be a minimum of 100 feet, to accommodate school busses and other service vehicles.

The minimum criteria for installation of improvements to existing public roads shall be as follows:

Traffic signals or signage for safety purposes may be required when warranted in accordance with Part IV of the West Virginia State Manual on Uniform Traffic Control Devices. If a signal is needed, installation costs shall be paid by the developer. Continuing power and maintenance costs shall be assumed by the Department of Highways.

Curbs, Gutters and Sidewalks: Road curbs, gutters and sidewalks shall be required for all roads in all major subdivisions, and for all roads associated with non-residential development. Road curbs shall be constructed of grade A (3,000 lb) concrete to a height of no less than 6 inches above the finished road surface. The base of the curbs shall be a minimum of 7-3/8 inches measured in cross section. Curb sides may be sloped inward to join a rounded edge having a radius of 1-1/2

inches or more. Alternative designs may be approved by the Town's engineering agent.

Drainage gutters shall be provided at the curb and road surface interface. Gutters shall be designed to carry peak water flows expected from a 10-year frequency storm occurring over the entire contributing watershed. All storm drain inlets shall have bicycle safe grates.

Sidewalks shall be constructed of Portland Cement concrete with a minimum depth of four inches. Sidewalks shall be five feet wide and placed upon a suitable base approved by the Town's engineering agent.

Sidewalks shall be adjacent to and serve each lot in a major subdivision. For non-residential development, sidewalks shall serve each building within the development site, and shall connect to existing sidewalks or pedestrian walkways and parking areas.

Site Inspections of Construction Activities

Following final approval of a Subdivision or Site Plan, the applicant may secure required building permits to initiate site grading and construction activities. At least 15 days prior to the start of construction, the developer or his agent will meet with the Town's engineering agent, for purposes of establishing a schedule for construction inspections. Inspections shall be scheduled to occur at key points in the construction process. All costs associated with the inspection process shall be paid by the developer. Inspection costs shall be set for in the Town's development review fee schedule, which is included as an addendum to this document. Scheduled construction activities may only proceed following field inspection and approval by the Town's Inspector. A developer may be held liable for the cost of correcting any work performed without benefit of an inspection, and may also incur civil and criminal penalties.

Other Required Considerations for Subdivision Design

General Observations

Designers must recognize the implications of shared street space and interconnected street network. The more frequent (and numerous) users of subdivision developments are motorists, bicyclists and pedestrians. Use by oversized vehicles, such as delivery trucks, moving vans, school buses and fire trucks, is generally infrequent, particularly

on residential streets and lanes. A street should be no wider than the minimum width needed to accommodate the usual vehicular mix desired for that street. On a properly designed new subdivision street the occasional oversized vehicle may cross the centerline of a street when making a right turn. A properly designed street network should provide at least two routes of access to any property within the subdivision. A high level of accessibility is offered to emergency vehicles by an interconnected street network. The framework of main streets and avenues should provide appropriate service area routing for school buses and transit vehicles. Designers should coordinate with and involve all appropriate parties to ensure that oversized and emergency vehicles are accommodated while facilitating the needs of the most frequent users.

Stopping Sight Distances

Minimum stopping distances should conform to the design speed for the particular street and the stopping distances required for wet pavement conditions, as follows:

20 mph - 125 feet

25 mph - 150 feet

30 mph – 200 feet

These sight distances should be provided by both vertical and horizontal alignment. Where grades vary from level conditions, stopping sight distances can be decreased for uphill grades and must be increased for downhill grades.

Additional Street Design Criteria

K values for vertical curve design should be consistent with design speed. Maximum centerline grades should also be consistent with design standards.

Centerline Radii – The criteria for minimum centerline radius for design speeds of 25 mph and less are:

20 mph 90 feet

25 mph 175 feet

Curb Radii – For design speeds of 20 mph the criteria for curb radius is 15 feet. Some intersections may require curb radius of up to 25 feet.

With larger curb radii sidewalks may be set back 6 to 10 feet from curbs and on-street parking may be restricted 30 feet back from the intersection on each street.

Intersection sight triangles – The minimum sight triangle for stop conditions at street intersections shall be 70 feet along the major road right-of-way and 10 feet along the minor road right of way. The intersection sight triangle shall be a permanent right-of-way. This may be reduced for lower design speeds on lanes and streets.

Alleys - Where alleys are to be unpaved, a minimum paved apron of at least 50 feet from edge of pavement shall be required at the tie in with any paved facility.

Sidewalks – Minimum width for a sidewalk is 5 feet. Sidewalks which directly abut curbing shall be a minimum of 6 feet. Sidewalks may need up to an additional two feet of width if they directly abut fences, walls and buildings. Within commercial areas and places with high pedestrian volumes, sidewalks should be sized and surfaced appropriately for anticipated pedestrian traffic volumes and to meet or exceed ADA guidelines. Sidewalks are required on both sides of each street, unless and except other topographic or design considerations preclude inclusion of sidewalks on both sides of each street.

Bicyclists – On lower volume streets, bicyclists should be considered a normal part of the vehicle mix on the street. On higher volume streets bicyclists should be accommodated with 6 feet wide lanes, but separate routes for less experienced bicyclists may be considered as well. Routing bicyclists within and through new subdivision developments may include signage and striping, including changing the color of the entire bike lane, as appropriate.

On-street Parking – “Informal parking” refers to parking that is allowed along lanes and residential streets, but is not designated or marked as parking areas. On-street parking along major streets should be signed, marked or otherwise clearly designated.

Utilities – All utility installations within rights-of-way shall be consistent with Shepherdstown’s current utility policies. For residential subdivision streets, underground utilities may cross under or run longitudinally under the pavement, provided future utility stub-outs are installed prior to paving. For all other streets and highways, underground utilities may cross under but may not run longitudinally under the pavement, except in unusual situations approved by the Public Works Department of the Corporation of Shepherdstown. For installations outside of rights-of-way, utilities may be located in alleyways. If utilities are not to be placed in alleyways the developer should consider providing a 5 foot (minimum) utility easement behind the sidewalk

Lighting – As a general rule, more and shorter lights are preferred to fewer, taller, high-intensity lights. The scale of lighting fixtures and the illumination provided must be appropriate for both pedestrian and vehicular movements.

Street Patterns - All or most streets within the proposed network must be part of a dense, interconnected pattern. New subdivision streets should connect with adjacent, existing streets. The degree of interconnectivity should be assessed by its ability to permit multiple routes, to diffuse traffic and to shorten walking distances.

Block Length - All or most low speed, low volume streets should have short block lengths of between 250 and 500 feet. Exceptions may be needed due to topography, environmental protection, preservation of cultural resources, and similar considerations.

Rights-of Way - Within a new residential subdivision, the right-of-way is an important design element of the public space or “streetscape.” The right-of-way width should be the minimum needed to accommodate the street, median, planting strips, sidewalks, utilities, and maintenance considerations. The right-of-way width should be appropriate for adjacent land uses and building types. Planting strips between curb and sidewalk shall be used to provide sufficient space for street trees. Use of alleys and other alternate access or easements for utilities and maintenance vehicles should be taken into account when determining sizes of rights-of-way.

Relationship of Buildings to the Street – All primary residential structures should be oriented toward the street. As per traditional development patterns, front yard setbacks should be

between eight feet and twelve feet. Parking lots and garages should not be permitted to face the street, and all off street parking areas should be required to be located on the side of or behind buildings.

Curb Cuts - Curb cuts should be minimized to reduce effects on on-street parking, conflicts with pedestrians and cyclists, and interruptions of traffic flow.

Storm water Management and Street Design – All new streets shall be properly crowned and graded, and shall be designed to provide effective storm water management.

Fire Hydrants - For all major subdivisions and multi-family developments, one fire hydrant shall be provided for every 500 linear feet of street frontage. The developer shall include a plan for the location of fire hydrants as part of the preliminary plat or final site plan submittal. The plan shall be reviewed by the Town's volunteer fire department, and shall also be reviewed and approved by the State Fire Marshall.

Landscaping Requirements

A detailed landscaping plan is required for all major subdivisions and site plans. The minimum elements to be included in all landscaping plans are as follows:

25% of the total area of each development site shall be reserved as green space/open space.

Planting strips, located between the curb and sidewalk parallel with the street, shall be provided on all new streets. Each planting strip shall be 6 feet or more in width. Care should be used to ensure that larger planting strips do not push pedestrian crossing areas back from intersections by requiring a larger curb radius.

Street trees are required on all new streets and interior parking lots, and shall be planted in accordance with the Tree Commission Ordinance in Section 11-505 of the Town Code. The trees shall be planted along the centerline of the planting strip, within 3 feet of the back of curb. To maintain sight lines, trees and other plant materials greater than two feet in height are restricted from corners for distances of 25 feet on all sides.

All trees shall have a diameter of at least 1.5 inches at breast height (dbh).

The developer shall make every reasonable effort to preserve existing trees on the development site. Protective guards shall be placed at a suitable radius around any tree over 4 inches diameter at breast height near building construction or demolition according to Section 11-505(i)(3)(xi) of the Town Code. Any trees with a diameter of 3.5 inches at breast height (or greater which must be removed in order to accommodate site development activities shall be mitigated at a rate of 3:1 (i.e., for each tree that is cut down, the developer will plant three trees on site).

Each landscaping plan shall include a mixture of deciduous and evergreen trees, shrubbery, grasses or other suitable groundcover, and other suitable perennial plants and flowers, shall comply with the requirements of the Tree Commission Ordinance in Section 11-505 of the Town Code, and shall be submitted to the Shepherdstown Tree Commission for approval. The developer shall guarantee the viability of all plant materials for a period of two years, and shall replace any plantings which do not survive the initial twenty-four month period. For replacement plantings, the developer shall agree to replace those plantings which do not survive twenty-four months with new plantings. The process shall continue until plantings are healthy, established and have survived for twenty-four months.

Alternative Green Space Requirements: “Fee In Lieu Of”

In the event that the proposed development site is limited with regards to available acreage, the Corporation of Shepherdstown may opt to satisfy green space or open space requirements via a “fee in lieu of” arrangement. In such cases, the Corporation of Shepherdstown shall negotiate with the developer to determine the specifics of said arrangement, with the following goals and objectives to apply:

The developer shall be required to provide the Corporation of Shepherdstown with funding adequate to allow the Town to develop parkland, green space, or recreational facilities which would otherwise satisfy the needs of the residents of the proposed residential development, based upon the anticipated population of the proposed residential development.

The satisfaction of the green space/open space requirement shall not be construed as a “voluntary proffer”. Rather, the provision of green space/open space shall be considered as a regular development requirement of the Corporation of Shepherdstown.

The standards indicated above shall apply to all major subdivisions and site plans. The developer’s “fee in lieu of” obligation shall be not less than

25% of the current post-development market value of the total acreage of the development site. Current market value shall be based upon the findings of a qualified real estate appraiser. In no case shall a development site be permitted to be developed with less than 10% open/green space.

Storm water Management

All major subdivisions and commercial developments proposals shall include a plan for the effective on-site management of storm water. The plan shall adhere to the principles, methods, and practices set forth in the *2000 Maryland Storm water Design Manual Volumes I & II*. The manual may be modified by written policy by the Town of Shepherdstown based upon engineering principles and the application of the Manual to the Town of Shepherdstown.

Public Utilities

All new major subdivisions and site plans shall be required to connect with the Corporation of Shepherdstown's existing potable water and wastewater systems. All public utility connections, including water, sewer, telephone, cable, electricity and gas shall be located underground.

Adequate Public Facilities.

Purpose.

The Corporation of Shepherdstown finds that the health, safety and general public welfare of the residents of Shepherdstown will be promoted by establishing public facilities regulations for all new development and redevelopment projects. The purpose and intent of these regulations is to ensure that adequate public facilities either exist or will be provided for all existing and proposed development in the Corporation of Shepherdstown. Most importantly, any costs associated with expansion of existing public facilities in order to meet the needs of new residential or non-residential development shall be borne by the "new development" itself. The Corporation of Shepherdstown shall not approve any development proposal which results in any additional financial burden being placed upon the residents of Shepherdstown or would otherwise diminish the quality of the public service or services currently being provided.

Adequate Public Facilities Study

All applicants for new development projects within the Corporation of Shepherdstown or subject to annexation into the corporate limits of

Shepherdstown shall submit an Adequate Public Facilities Study (APFS) for review by a committee comprised of the Shepherdstown Town Council, the Shepherdstown Public Works Director, and such other persons as the Mayor shall appoint. This committee shall be identified as the “Facilities Review Committee” (FRC).

The APFS shall describe existing essential public facilities likely to be impacted by the proposed development; the impact the proposed development will have upon such essential public facilities, and whether the public facilities will continue to provide adequate service to the residents of the Corporation of Shepherdstown after the proposed development (and each phase thereof) is completed.

The essential public services which shall be evaluated by the APFS shall include the following:

Schools. An APFS shall include the following regarding schools:

Schools to be attended by the projected students based upon school districts, as established by the Jefferson County Board of Education.

For each school district affected by the project, existing enrollments and enrollments projected to be generated by the subject development proposal, as well as all other proposed developments in the school district.

All other enrollments projected by the Jefferson County Board of Education for each affected school district. If the development proposal includes a phasing plan, then the school impact analysis should include data specific to each phase of the development proposal.

The APFS may propose improvements which will achieve adequacy of service.

Roads. An APFS regarding roads shall include the following:

A traffic impact study of public rights-of-way owned and maintained by the State, Town or County that will be impacted by the proposed development. Prior to the applicant initiating a traffic impact study, the applicant shall initiate a formal discussion with district personnel from the West Virginia Department of Transportation, Division of Highways, for purposes of determining the appropriate parameters for the traffic study.

The traffic impact study shall, at a minimum, provide information regarding the following:

roadway improvements or conditions,

pavement,

drainage,

traffic control devices,

bridges and culverts, and

existing service levels at all impacted intersections and projected service levels.

In assessing projected service levels, the APFS shall include traffic to be generated by other development projects pending or reasonably anticipated. The APFS may propose improvements which will achieve adequacy of service.

Wastewater systems. An APFS regarding wastewater systems shall be based upon data obtained from the Director of Public Works for the Corporation of Shepherdstown, and shall address the following issues:

Current overall capacity of the Town's sewage treatment facility.

Treatment capacity which is currently being used by the Town.

Net available sewage treatment capacity.

Gallons per day of sewage treatment which will be required by the proposed development.

Available sewage treatment capacity which would remain available to the Town following approval of the development proposal and dedication of the requisite sewage treatment capacity.

The APFS may propose improvements which will achieve adequacy of service.

Water systems. An APFS regarding potable water systems shall be based upon data obtained from the Director of Public Works for the Corporation of Shepherdstown, and shall address the following issues:

Current overall capacity of the Town's potable water treatment and distribution facilities.

Treatment capacity which is currently being used by the Town.

Net available potable water supply.

Gallons per day of potable water which will be required by the proposed development.

Available potable water supply which would remain available to the Town following approval of the development

proposal and dedication of the requisite potable water supply.

The APFS may propose improvements which will achieve adequacy of service.

Procedure and Requirements of Facilities Review Committee

Submission to the Facilities Review Committee (FRC). The FRC shall within 15 days determine whether the APFS is complete. If the APFS is complete, the FRC shall forward the APFS to the Department of Public Works and Board of Education and other agencies deemed appropriate by the FRC for review and comment.

Procedures for determination of adequacy of public facilities.

The comments and recommendations of agencies to which the APFS has been referred shall be considered by the FRC. If the FRC determines that each essential public facility will be adequate to serve the proposed development at current levels of service, then the FRC shall notify the applicant in writing within 45 days of submission of a completed application. The development application shall then be reviewed and considered for approval by the FRC.

If the FRC determines that any essential public facility will not be adequate to serve the proposed development at current standards and levels of service, the FRC shall notify the applicant in writing within 45 days of submission of a completed application that one or more essential public facilities are inadequate to serve the proposed development. The applicant may then submit a mitigation plan that proposes means to maintain or generate adequate essential public facilities concurrently with the development of the project.

Mitigation plan.

The FRC shall consider a mitigation plan submitted by an applicant. The FRC may recommend final approval of a mitigation plan to the Town Council if the FRC finds that the plan will assure that adequate levels of essential public facilities exist or will be made available to serve the proposed development concurrently with the

development of the project. The development application shall be reviewed and considered for approval only after a mitigation plan has been recommended by the FRC for final approval.

A mitigation plan may include one or more of the following:

Dedication of property to the Town.

Front funding for the requisite infrastructure improvements required to raise the level of service of the affected public service to an acceptable level.

Fees in lieu of for necessary public facilities improvements.

Participation in private/public partnerships.

Developer agreements.

Off-site improvements.

Other mechanisms as may be determined by the FRC.

The mitigation plan shall include the type(s) of mitigation and the methods and schedules, including project phasing as well as phasing for the implementation of the mitigation plan.

Following approval by the FRC and subsequent final approval by the Town Council, the mitigation plan shall be reduced to a binding adequate public facilities agreement between the applicant and the Corporation of Shepherdstown that shall run with and bind the applicant's property. The agreement shall be approved for form and content by the Town's legal counsel.

If the FRC has determined that one or more essential public facilities are inadequate and an applicant fails to provide a mitigation plan to assure adequate levels of essential public facilities, the FRC shall reject the development application. The decision of the FRC shall be in writing to the applicant.

The Town Council may require a performance guarantee (bond, letter of credit, etc.) when appropriate to insure compliance with an approved mitigation plan.

Threshold requirements.

Public schools. Public schools in the service area of the proposed development shall be considered adequate if:

The existing and projected school population, together with the school population projected to be generated from the proposed development, is 120% or less of the state-rated capacity per school affected or the Board of Education determines that exceeding capacity will not be detrimental to the curriculum or quality of education; or

The County is scheduled to initiate construction of additional schools or school improvements which would ensure that adequate public educational facilities will be available to service the proposed development within two years of the project's final approval; or

The applicant agrees to undertake school construction or improvements necessary to ensure adequate public educational facilities; or

The applicant agrees to contribute to the financing of specific improvements to ensure adequate public educational facilities.

Public roads. Roads affected by the proposed development shall be considered adequate if:

The projected level of service after build out of the project for affected intersections and road sections will be a "C" or better. If the current level of service is below a "C", then the development proposal shall not be approved unless the applicant agrees to make improvements to the affected intersection or road section which will bring the affected area to an acceptable level of service, which is a "C" or better.

The applicant can demonstrate that the State DOT-DOH is scheduled to initiate construction of improvements required to bring affected intersections or road sections to an acceptable level of service. In such cases, project construction may not be initiated until such time as the requisite road improvements have been initiated.

Wastewater systems. The proposed development shall be served by the Corporation of Shepherdstown's public wastewater management system. In the event that there is not adequate capacity to accommodate the wastewater needs of a proposed development, then the applicant may agree to provide funding for the requisite expansion of the Town's public sewage treatment facilities. The terms of such an agreement and the level of funding required shall be at the discretion of the Town Council and the Director of Public Works.

Water systems. All development proposals shall be served by the Corporation of Shepherdstown's potable water system. In the event that there is not adequate capacity to accommodate the potable water needs of a proposed development, then the applicant may agree to provide funding for the requisite expansion of the Town's public potable water facilities. The terms of such an agreement and the level of funding required shall be at the discretion of the Town Council and the Director of Public Works.

Appeals.

Any decision of the FRC finding that public facilities will not be adequate to serve proposed development may be appealed within 30 days from the date of the decision to the Shepherdstown Board of Appeals. The Board of Appeals shall affirm the decision of the FRC unless the Board finds the decision of the FRC to be arbitrary, capricious or illegal.

Fees for Public Services

The Director of Public Works, in consultation with the Town's Director of Finance and the Town Council, shall cause to be developed a schedule of fees for all new development which will require use of the Town's public services.

For residential development, the fee schedule shall provide a per-dwelling unit analysis of the costs to the Corporation of Shepherdstown and/or Jefferson County associated with providing each of the following services:

Public sewer

Public water

Public schools

Police

Emergency services (fire, rescue and ambulance)

Recreation (including parks and other public recreational facilities, as well as recreational programming)

Public libraries

Town administration

For non-residential development, public service fees shall be determined on a project by project basis. Each individual fee assessment shall be based upon the level of public services which the development will require.

Fees shall be assessed at levels which will ensure that all costs associated with providing public services to new development shall be paid by the project applicant, and shall not be “passed on” to current Town residents.

Traffic Study

A traffic study, which details anticipated impacts to the local road system from development, shall be required for all residential projects which propose twenty or more dwelling units, and for all non-residential development proposals. It should be noted that if the traffic study indicates that the proposed development will in any way degrade the existing level of service of the affected road section, the Department of Highways may or may not mandate that the developer make the indicated road improvements. However, the Corporation of Shepherdstown is committed to preserving the quality of its local transportation systems, and accordingly, will not approve any development application which does not adequately address all issues associated with maintaining current, acceptable levels of service.

The procedure for submittal, review and approval of traffic studies shall be as follows:

Prior to preliminary subdivision plat or site plan submittal, the applicant shall submit a traffic study to the Shepherdstown Planning Commission. Prior to submission, the applicant shall have consulted with the West Virginia Department of Transportation, Division of Highways, to determine the appropriate parameters of said study.

The Shepherdstown Planning Commission shall forward the applicant's traffic study to the WVDOTDOH for their comments.

The WVDOTDOH shall forward their comments on the proposed development to the Shepherdstown Planning Commission and the applicant.

The Shepherdstown Planning Commission shall review the comments issued by the WVDOTDOH, and shall issue guidance to the applicant based upon WVDOTDOH's recommendations and requirements.

The applicant shall be required to incorporate into their development plans any recommendations issued by the WVDOTDOH and the Shepherdstown Planning Commission.

Environmental Impact Statement

The applicant shall submit an environmental impact statement, which details any existing environmental deficiencies of the subject development site and if necessary, proposes appropriate steps to mitigate any said deficiencies. The environmental impact statement shall comply with the standards and requirements set forth in the Federal Environmental Protection Agency's guidelines for "Phase One Environmental Studies". The statement shall be submitted to the Shepherdstown Planning Commission at the time of preliminary plat or site plan submittal.

Financial Impact Report

At the time of preliminary plat or site plan submittal, the applicant shall provide a financial impact report, which details the anticipated fiscal impacts of the proposed development on the Corporation of Shepherdstown. The report shall include information on the short and long term impacts of the proposed development on the tax bases of both the Corporation of Shepherdstown and Jefferson County. The report shall also include a detailed cost-benefit analysis, which identifies all public costs associated with the development proposal, as well as any and all financial benefits which the

Town and County will realize if the development occurs. If the report findings indicate that the proposed development activity would in any way compromise the Town's financial well-being, then the report should also include recommendations for financial mitigation. The fiscal impact report shall be reviewed by the Town Council and the Planning Commission. The Shepherdstown Planning Commission shall not approve any development application which does not demonstrate a neutral or positive economic benefit to the Corporation of Shepherdstown.

Building Permits

All new construction and building renovation activities within the corporate limits of Shepherdstown shall require the issuance of a building permit. As per West Virginia State Law, all building permits issued shall be in compliance with the State Building Code, as adopted by the Corporation of Shepherdstown on _____, effective date _____. (For procedures governing building permits, see Section 9-902 of the Shepherdstown Code.)

Historic Preservation

All new development and re-development projects proposed for lands within the corporate limits of Shepherdstown are subject to review by the Historic Districts Landmarks Commission, if such a board exists. The standards for development approval may be found in Title 9, the planning and zoning ordinance for the Corporation of Shepherdstown.

The criteria used by the HDLC for evaluating development proposals shall include the following:

The architecture of all proposed structures must be of a size and scale which is stylistically compatible with existing Town architecture and streetscapes.

Building materials used in the construction of the facades of new structures should be of good quality (i.e., brick, masonite, stone, wood planking, etc.).

For primary structures, the following building materials/building types are prohibited:

All metal clad, pre-fabricated buildings.

Buildings clad with aluminum siding

Concrete block buildings, unless the concrete is given architectural treatment or otherwise sided with an acceptable building material.

Mobile homes and/or single wide manufactured housing.

“Big Box” type commercial or retail structures.

The Planning Commission shall have authority to regulate the appearance of the facades of all new buildings or existing buildings proposed for re-development or exterior renovation within the Corporate limits of Shepherdstown.

Proffers

The owner or authorized representative of a property for which subdivision or site plan approval is being requested may volunteer to accept certain conditions including, but not limited to, constructing certain capital improvements either on or off site. All proffer proposals should be consistent with the Corporation of Shepherdstown’s list of preferred capital improvements. The applicant may also volunteer to provide “cash in lieu” of constructing improvements in accord with the provisions of this Section.

For purposes of this section, a "voluntary proffer" is a written offer by a landowner to the Corporation of Shepherdstown whereby the landowner offers to satisfy certain reasonable conditions as a requirement of the final plat approval for a development project. A voluntary proffer made to the Corporation of Shepherdstown shall be in lieu of payment of any municipal impact fee. Provided, that no proffer may be accepted by the municipality in lieu of an impact fee that would otherwise go to schools without the approval of the county board of education.

The developer shall demonstrate that the proposed annexation, subdivision or site plan creates the need for or is somehow related to the proposed proffer.

For purposes of this section, a condition contained in a voluntary proffer is considered reasonable if:

The development project results in the need for the conditions;

The conditions have a reasonable relation to the development project; and

All conditions are in conformity with the comprehensive plan adopted pursuant to this Title 9.

The proffer must be offered to the Town Council for their consideration and approval prior to the public hearing before the Planning Commission for approval of the associated development proposal.

No proffer may be accepted by the Town Council unless it has approved a list detailing any proposed capital improvements from all areas within the jurisdiction of the Town Council to which the proffer is made, which list contains descriptions of any proposed capital improvements, cost estimates, projected time frames for constructing the improvements and proposed or anticipated funding sources: Provided, That the approval of the list does not limit the from accepting proffers relating to items not contained on the list, however, if accepted by the Corporation of Shepherdstown, the proffer will be added to the Town's Capital Improvements Program..

The proffer, once accepted by the Town, is considered binding on both parties and cannot be changed unless agreed upon by both parties after the Town Council has issued its statement of approval of the proffer proposal.

If a voluntary proffer includes the dedication of real property or the payment of cash, the proffer shall provide for the alternate disposition of the property or cash payment in the event the property or cash payment is not to be used for the purpose for which it was proffered.

Notwithstanding any provision of this ordinance to the contrary, the Corporation of Shepherdstown may transfer the portion of the proceeds of a voluntary proffer intended by the terms of the proffer to be used by the board of education of Jefferson County upon the condition that the portion so transferred may only be used by the board for capital improvements.

The developer and/or property owner has the right to rely in good faith upon the terms of the proffer once the arrangements are accepted. Once the proffer is accepted there will be no attempt by the Corporation of Shepherdstown to materially restrict, reduce, or otherwise modify the permitted uses or density of a proposed development unless a change in circumstances occurs which stands to substantially affect the public health, safety or welfare.

The following are examples of acceptable and non-acceptable proffers:

Not Acceptable:

On-site infrastructure without which the property could not be developed (i.e., waterlines, sewer lines, storm water management control measures, etc.).

Other site improvements as are required by the Shepherdstown Subdivision and Development Regulations or provisions contained in Title 9.

Improvements which are only marginally in excess of what the Town would otherwise require (i.e., a 30 foot paved section when the town requires a 28 foot section, etc.).

Acceptable:

Park land or open space requirement which exceeds the minimum Town requirement by at least 25%.

Donation of a school site which is acceptable to the Jefferson County School Board, as well as the Corporation of Shepherdstown.

Donation of land or facilities for use by agencies which provide emergency services to the Corporation of Shepherdstown, including fire suppression services, ambulance services, etc.

Annexation

Pursuant to West Virginia Code § 8-6-4 the Corporation of Shepherdstown may choose to annex adjacent lands into the corporate limits without holding an election. In addition to the requirements set forth in § 8-6-4, a petition for annexation without an election shall include the following information:

Reasons for the annexation request, including any development plans, proposals for the subject property, and requested zoning.

A metes and bounds description and a survey (prepared by a duly registered West Virginia land surveyor) of the property subject to annexation.

A statement of projected impacts to the Corporation of Shepherdstown which would result from the proposed annexation and all associated development activities, including:

All public utilities services which would be required by the associated development activity (potable water, wastewater allocation, improvements to vehicular and pedestrian transportation systems, etc.).

Any and all voluntary proffers associated with the proposed development activity.

Financial impacts to the Corporation of Shepherdstown resulting from any proposed associated development activity.

A traffic study, conducted by a certified traffic engineering firm, which details the projected impacts on traffic from the proposed development activity.

The information presented by the developer shall be evaluated by Planning Staff, and a report on the annexation/development proposal shall be presented to the Town Council for consideration, pursuant to § 8-6-4 of the West Virginia Code, as amended.

Enforcement and guarantees.

The Planning Commission is vested with all the necessary authority to administer and enforce conditions attached to the final plat approved for a development project, including, but not limited to, the authority to:

Order, in writing, the remedy for any noncompliance with the conditions;

Bring legal action to ensure compliance with the conditions, including injunction, abatement, or other appropriate action or proceeding; and

Require a guarantee satisfactory to the Planning Commission in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the Planning Commission upon the submission of satisfactory evidence that construction of the improvements has been completed in whole or in part.

Failure to meet all conditions attached to the final plat approved for a development project shall constitute cause to deny the issuance of any of the required use, occupancy or improvement location permits, as may be appropriate.

Appeal Process.

An appeal may be made by an aggrieved person from any decision or ruling of the Planning Commission to:

The circuit court, pursuant to the provisions of article nine [§§ 8A-9-1 et seq.] of Chapter 8A of the West Virginia Code, as amended; or

The Shepherdstown Board of Appeals.

Within thirty days after the date of the denial, the petition, specifying the grounds of the appeal in writing, must be filed with:

The Circuit Court of Jefferson County; or

The Shepherdstown Board of Appeals.

ADDENDUMS TO THE SUBDIVISION REGULATIONS

The following checklists are included as addendums to the subdivision regulations. They define the informational requirements for each step in the subdivision and site plan review process.

Corporation of Shepherdstown Development Review Checklist for Sketch Plat Submittal (Major and Minor Subdivision Proposals)

Date Submitted _____

Name of Project _____

Name of Property
Owner _____

Address of Property
Owner _____

Phone Number _____

If applicant is a corporation or entity,
please provide the following information
for the primary contact person

Firm
Name _____

Contact
Name _____

Phone Number _____

Address _____

Address and Location of Subject Property:

Site Acreage: _____

Tax Map # _____

Parcel # _____

Engineer or Surveyor Information

Name of Firm _____

Address of
Firm _____

Agent's Name and
Position _____

Please provide a description of the proposed development activity: _____

This application form should be accompanied by a subdivision sketch plat which includes the following information. Applicant shall verify here below that the requisite site information has been included.

_____ North Arrow

_____ Scale

_____ Name and location of all adjacent property owners

_____ Tax Map Number for subject property and all adjacent property owners)

_____ Deed book and page number for the subject property and adjacent properties

_____ Name and address of the surveyor or engineer who prepared the subdivision plat

_____ Total site acreage

_____ Approximate size and location of all proposed storm water management facilities

_____ Approximate acreage of site area in streets, sidewalks or other impervious areas

_____ Vicinity Map (at a scale of 600'-1" or greater)

_____ Number of commercial or residential building lots proposed

_____ Average lot size

_____ Location of flood plain and amount of site acreage within the floodplain (if applicable)

_____ Proposed method for delivery of public utilities, including potable water, wastewater, electricity and telephone services

**Corporation of Shepherdstown
Development Review Checklist for
Preliminary Plat Submittal
(Major Subdivision Proposals)**

Date Submitted_____

Name of Project_____

Name of Property
Owner_____

Address of Property
Owner_____

Phone Number_____

If applicant is a corporation or entity,
please provide the following information
for the primary contact person

Firm
Name _____

Contact
Name _____

Phone Number _____

Address _____

Address and Location of Subject Property:

Site Acreage: _____

Tax Map # _____

Parcel # _____

Please provide a description of the proposed development
activity: _____

Engineer or Surveyor Information

Name of Firm _____

Address of
Firm _____

Agent's Name and
Position _____

This application form should be accompanied by a preliminary plat which includes the following information. Applicant shall verify here below that the requisite site information has been included on the preliminary plat or is contained in supplementary documentation.

_____ North Arrow

_____ Scale

_____ Ownership, location and boundary lines of all adjacent property owners.

_____ Tax Map Number for subject property and all adjacent property owners.

_____ Name, address and phone number of property owner.

_____ Name, address and telephone number of developer (if different from property owner).

_____ Name, address and phone number of project engineer.

_____ Name, address and phone number of site surveyor.

_____ Deed book and page number for the subject property and adjacent properties.

_____ Proposed front, rear and side setbacks for each proposed building lot.

_____ Location of all concrete monuments (two monuments are required for each block).

_____ Location of all existing and proposed gas lines, electric and telephone poles or underground cables, fire hydrants, wells and septic systems. Post-development disposition of all existing wells and septic systems shall be indicated on the preliminary plat.

_____ Total site acreage.

_____ Size and location of all proposed storm water management facilities, as well as complete storm water calculations.

_____ Acreage of site area in streets, sidewalks or other impervious areas.

_____ Acreage of site area in lawns, open space or other pervious areas.

_____ Vicinity Map (at a scale of 600'-1" or greater).

_____ Number of commercial or residential building lots proposed.

- _____ Dimensions of each proposed building lot.
- _____ Average lot size.
- _____ Proposed driveway location for each proposed building lot.
- _____ All plat boundary lines, with the length of courses to hundredths of a foot and bearings to seconds.
- _____ Street and alley lines; their names, bearings, angles of intersections and widths, including widths along the line of any obliquely intersecting street.
- _____ The data for all curves in detail at the curve or in a curve data table containing the following: radius, delta, arc, tangent, chord and chord bearing.
- _____ Location of flood plain and amount of site acreage within the floodplain (if applicable). Indicate the limits of and classification for any designated flood hazard area.
- _____ Proposed location of all electric and telephone lines, streetlights, building lights or pole lights.
- _____ Bearings and distances to the nearest established street bounds, established survey lines or other official monument.
- _____ Location and dimensions for all existing and proposed roadway, utility, and other easements. Signed and executed easement documents must accompany the preliminary plat submittal.
- _____ Location and dimensions of all existing natural features, including water courses, tree groves, rock outcrops, outstanding topographic features, designated scenic areas, all wetlands (with 25 - foot buffer), steep slopes (with a grade of 25% or greater) and soil types.
- _____ Site topography, at 2-foot contour intervals.
- _____ Location and width of all existing streets within 100' of the development site .
- _____ Information on all proposed streets, including location, width, proposed street names, and street classification.
- _____ A complete set of construction drawings which include specifications for street and sidewalk design, the site's storm water management system, public water and sewer systems, and any other proposed site improvements. The constructions drawings shall include a schedule for sequence of construction activities, which shall be reviewed and approved by the Town's engineering agent.
- _____ Site sediment and erosion control (grading) plan

- _____ All man-made features on the site, including any buildings, houses, sheds, barns, fences, roads or driveways, swimming pools etc, and indicate their post-development disposition.
- _____ Location and description of all site amenities, including community open space, recreational areas, community centers or clubhouses, walking or jogging paths, fencing, site entrance features and signage.
- _____ A completed and approved Adequate Public Facilities Study. As a requirement of Preliminary Plat submittal, the study shall have been reviewed and approved by the Town's Facilities Review Committee. The Preliminary Plat shall reflect any plan changes or mitigation efforts required by the Facilities Review Committee.
- _____ If the site is to be developed in phases, then a phasing plan shall be included. This plan shall indicate which sections of the site are to be developed in each phase, and shall include a timetable for site development.
- _____ Title block, which shall include the project name, table of plan revisions, date, scale, tax map and parcel numbers and engineers and surveyor's seals and signatures.
- _____ Architectural renderings and elevation drawings of all proposed buildings shall accompany the submittal. These drawings shall be reviewed for compliance by the Planning Commission and the Historic Districts Landmarks Commission, if empanelled.

**Corporation of Shepherdstown
Development Review Checklist for
Final Plat Submittal
(Major and Minor Subdivision Proposals)**

Date Submitted _____

Name of Project _____

Name of Property
Owner _____

Address of Property
Owner _____

Phone Number _____

_____ Major subdivision _____ Minor subdivision (check one)

If applicant is a corporation or entity,
please provide the following information
for the primary contact person

Firm
Name _____

Contact
Name _____

Phone Number _____

Address _____

Address and Location of Subject Property:

Site Acreage: _____

Tax Map # _____

Parcel # _____

Please provide a description of the proposed development
activity: _____

Engineer or Surveyor Information

Name of Firm _____

Address of
Firm _____

Agent's Name and
Position _____

This application form should be accompanied by a final plat which includes the following
information. Applicant shall verify here below that the requisite site information has been included
on the final plat or is contained in supplementary documentation.

NOTE: For minor subdivisions, only the information which is marked with an asterisk * shall be
required.

- * ____ North Arrow
- * ____ Scale
- * ____ Ownership, location and boundary lines of all adjacent property owners.
- * ____ Tax Map Number for subject property and all adjacent property owners.
- * ____ Name, address and phone number of property owner.
- * ____ Name, address and telephone number of developer (if different from property owner).
- ____ Name, address and phone number of project engineer.
- * ____ Name, address and phone number of site surveyor.
- * ____ Deed book and page number for the subject property and adjacent properties.
- * ____ Proposed front, rear and side setbacks for each proposed building lot.
- * ____ Location of all concrete monuments (two monuments are required for each block).
- * ____ Total site acreage.
- ____ Location of all proposed storm water management facilities.
- * ____ Vicinity Map (at a scale of 600'-1" or greater).
- * ____ Number of commercial or residential building lots proposed.
- * ____ Dimensions of each proposed building lot.
- * ____ Proposed driveway location for each proposed building lot.
- * ____ All plat boundary lines, with the length of courses to hundredths of a foot and bearings to seconds.
- * ____ Street and alley lines; their names, bearings, angles of intersections and widths, including widths along the line of any obliquely intersecting street.
- * ____ The data for all curves in detail at the curve or in a curve data table containing the following: radius, delta, arc, tangent, chord and chord bearing.
- * ____ Location of flood plain and amount of site acreage within the floodplain (if applicable). Indicate the limits of and classification for any designated flood hazard area.

- _____ Proposed location of all electric and telephone lines, streetlights, building lights or pole lights.
- * _____ Bearings and distances to the nearest established street bounds, established survey lines or other official monument.
- * _____ Location and dimensions for all existing and proposed roadway, utility, and other easements. Signed and executed easement documents must accompany the final plat submittal, and the limitations of the easement shall be clearly stated on the final plat. .
- * _____ Location and width of all existing streets within 100' of the development site .
- _____ Information on all proposed streets, including location, width, proposed street names, and street classification.
- _____ A complete set of construction drawings which include specifications for street and sidewalk design, the site's storm water management system, public water and sewer systems, and any other proposed site improvements. The constructions drawings shall include a schedule for sequence of construction activities, which shall be reviewed and approved by the Town's engineering agent.
- _____ Site sediment and erosion control (grading) plan
- * _____ All man-made features on the site, including any buildings, houses, sheds, barns, fences, roads or driveways, swimming pools etc, and indicate their post-development disposition (minor subdivisions only).
- * _____ Title block, which shall include the project name, table of plan revisions, date, scale, tax map and parcel numbers and engineers and surveyor's seals and signatures.
- _____ Homeowners Association documents, which shall include protective subdivision covenants and provide for the maintenance of unseeded public spaces and facilities. These covenants are subject to review and approval by the Town's legal advisors, and shall be recorded in the office of the Clerk of Jefferson County, along with the final subdivision plat. A copy of the same shall also be maintained at the Shepherdstown Town Hall.
- _____ Architectural renderings and elevation drawings of all proposed buildings shall accompany the submittal. These drawings shall be reviewed for compliance by the Planning Commission and the Historic Districts Landmarks Commission, if empanelled.

**Corporation of Shepherdstown
Development Review Checklist for
Site Concept Plan Submittal**

Date Submitted_____

Name of Project_____

Name of Property
Owner_____

Address of Property
Owner_____

Phone Number_____

If applicant is a corporation or entity,
please provide the following information
for the primary contact person

Firm
Name _____

Contact
Name _____

Phone Number _____

Address _____

Address and Location of Subject Property:

Site Acreage: _____

Tax Map # _____

Parcel # _____

Please provide a description of the proposed development
activity: _____

Engineer or Surveyor Information

Name of Firm _____

Address of
Firm _____

Agent's Name and
Position _____

This application form should be accompanied by a subdivision sketch plat which includes the
following information. Applicant shall verify here below that the requisite site information has been
included.

- _____ North Arrow
- _____ Scale
- _____ Name and location of all adjacent property owners
- _____ Tax Map Number for subject property and all adjacent property owners)
- _____ Deed book and page number for the subject property and adjacent properties
- _____ Name and address of the surveyor or engineer who prepared the subdivision plat
- _____ Total site acreage
- _____ Approximate size and location of all proposed storm water management facilities
- _____ Approximate acreage of site area in streets, sidewalks or other impervious areas
- _____ Vicinity Map (at a scale of 600'-1" or greater)
- _____ Number of commercial buildings proposed, and their location on the development site.
- _____ Location of flood plain and amount of site acreage within the floodplain (if applicable)
- _____ Proposed method for delivery of public utilities, including potable water, wastewater, electricity and telephone services
- _____ Proposed property use. If the use is multi-family, indicate the type of housing (townhouse, apartment, condominium, as well as the number of units proposed and the average size (lot and dwelling unit).
- _____ For non-residential uses, indicate the specific use proposed. And the days and hours of operation.
- _____ Approximate number of parking spaces which will be required and the proposed location for parking spaces and areas.

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**Corporation of Shepherdstown
Development Review Checklist for
Final Site Plan**

Date Submitted _____

Name of Project _____

Name of Property
Owner _____

Address of Property
Owner _____

Phone Number _____

If applicant is a corporation or entity,
please provide the following information
for the primary contact person

Firm
Name _____

Contact
Name _____

Phone Number _____

Address _____

Address and Location of Subject Property:

Site Acreage: _____

Tax Map # _____

Parcel # _____

Please provide a description of the proposed development
activity: _____

This application form and checklist shall be accompanied by a final site plan which includes the following information. Applicant shall verify here below that the requisite site information has been included on the final site plan or is contained in supplementary documentation.

Engineer or Surveyor Information

Name of Firm _____

Address of
Firm _____

Agent's Name and
Position _____

_____ North Arrow

_____ Scale

_____ Ownership, location and boundary lines of all adjacent property owners.

_____ Tax Map Number for subject property and all adjacent property owners.

_____ Name, address and phone number of property owner.

_____ Name, address and telephone number of developer (if different from property owner).

_____ Name, address and phone number of project engineer.

_____ Name, address and phone number of site surveyor.

_____ Deed book and page number for the subject property and adjacent properties.

_____ Proposed front, rear and side setbacks for each proposed building.

_____ Location of all concrete monuments (two monuments are required for each block).

_____ Location of all existing and proposed gas lines, electric and telephone poles or underground cables, fire hydrants, wells and septic systems. Post-development disposition of all existing wells and septic systems shall be indicated on the preliminary plat.

_____ Total site acreage.

_____ Size and location of all proposed storm water management facilities, as well as complete storm water calculations.

_____ Acreage of site area in buildings, streets, sidewalks or other impervious areas, also expressed as a percent.

_____ Acreage of site area in lawns, open space or other pervious areas, also expressed as a percent.

_____ Vicinity Map (at a scale of 600'-1" or greater).

_____ Narrative description of the intended property use, including hours of operation, if commercial use or uses are planned.

_____ Dimensions and location of each proposed building.

_____ If multi-family uses are intended, indicate unit type (townhouse, apartment, condominium, etc.; the total number of units; size of each unit (lot and building). Building locations and setbacks shall be shown on the plan

- _____ Parking information, including property use classification, number of spaces required and provided, and number of handicapped spaces required and provided.
- _____ Location of all parking spaces/areas shall be shown on the site plan.
- _____ All plan boundary lines, with the length of courses to hundredths of a foot and bearings to seconds.
- _____ Street and alley lines; their names, bearings, angles of intersections and widths, including widths along the line of any obliquely intersecting street.
- _____ The data for all curves in detail at the curve or in a curve data table containing the following: radius, delta, arc, tangent, chord and chord bearing.
- _____ Location of flood plain and amount of site acreage within the floodplain (if applicable). Indicate the limits of and classification for any designated flood hazard area.
- _____ Proposed location of all electric and telephone lines, streetlights, building lights or pole lights.
- _____ Bearings and distances to the nearest established street bounds, established survey lines or other official monument.
- _____ Location and dimensions for all existing and proposed roadway, utility, and other easements. Signed and executed easement documents must accompany the final site plan submittal.
- _____ Location and dimensions of all existing natural features, including water courses, tree groves, rock outcrops, outstanding topographic features, designated scenic areas, all wetlands (with 25-foot buffer), steep slopes (with a grade of 25% or greater) and soil types.
- _____ Site topography, at 2-foot contour intervals.
- _____ Location and width of all existing streets within 100' of the development site .
- _____ Information on all proposed streets, including location, width, proposed street names, and street classification.
- _____ A complete set of construction drawings which include specifications for street and sidewalk design, the site's storm water management system, public water and sewer systems, and any other proposed site improvements. The constructions drawings shall include a schedule for sequence of construction activities, which shall be reviewed and approved by the Town's engineering agent.
- _____ Site sediment and erosion control (grading) plan.
- _____ All man-made features on the site, including any buildings, houses, sheds, barns, fences,

roads or driveways, swimming pools etc, and indicate their post-development disposition.

- _____ Location and description of all site amenities, including community open space, recreational areas, community centers or clubhouses, walking or jogging paths, fencing, site entrance features and signage.
- _____ Site landscaping plan.
- _____ Method of solid waste disposal, including location and method of screening for all dumpsters.
- _____ A completed and approved Adequate Public Facilities Study. As a requirement of Final Site Plan submittal, the study shall have been reviewed and approved by the Town's Facilities Review Committee. The Preliminary Plat shall reflect any plan changes or mitigation efforts required by the Facilities Review Committee.
- _____ If the site is to be developed in phases, then a phasing plan shall be included. This plan shall indicate which sections of the site are to be developed in each phase, and shall include a timetable for site development.
- _____ Title block, which shall include the project name, table of plan revisions, date, scale, tax map and parcel numbers and engineers and surveyor's seals and signatures.
- _____ Certificates of approval from all reviewing public agencies, including but not limited to the West Virginia Department of Transportations, Division of Highways; West Virginia Bureau of Health, Environment Engineering Division; West Virginia Department of Environmental Protection; the Shepherdstown Public Sewer and Water Authority and the Shepherdstown Planning Commission.
- _____ Architectural renderings and elevation drawings of all proposed buildings shall accompany the submittal. These drawings shall be reviewed for compliance by the Planning Commission and the Historic Districts Landmarks Commission, if empanelled.

Adopted by Town Council as Addendum to Subdivision Ordinance on April 11, 2006

Corporation of Shepherdstown, West Virginia Development Review Fee Schedule

Minor Subdivision, Sketch Plat Review.....	\$250.00 plus \$50.00 per proposed lot
Major Subdivision, Sketch Plat Review.....	\$1000.00 plus \$100.00 per proposed lot
Major Subdivision, Preliminary Plat Review.....	\$2500.00 plus \$250.00 per proposed lot
Major Subdivision, Final Plat Review.....	\$1000.00 plus \$100.00 per proposed lot
Concept Site Plan Review.....	for non-residential development proposals: \$2500.00/flat rate
	for multi-family development proposals: \$1000.00 plus \$100.00 per proposed dwelling unit
Final Site Plan Review.....	for non-residential development proposals: \$2500.00 plus \$250.00 per every 250 square feet of proposed floor area
	for multi-family development proposals: \$2500.00 plus \$250.00 per proposed dwelling unit

CHAPTER 15 BLASTING ORDINANCE

(AS ADOPTED AND ENACTED NOVEMBER 10, 2009)

Section 9-1501 Authority

A. This ordinance is enacted pursuant to the authority given the Town in West Virginia Code §8A-1-1 and shall be administered and enforced by the Mayor, Town Council and the Planning Commission.

B. The requirements of this ordinance are in addition to any other ordinances, regulations and statutes, and where different standards are contained elsewhere, the more restrictive standards shall apply.

C. This ordinance in no way replaces or negates or relieves any person from compliance with provisions pertaining to explosives contained in the West Virginia Code, as they may be amended, regarding rules for the manufacture, transportation, storage and use of explosive materials. This ordinance is supplemental to state and federal statutes and regulations, and the Corporation of Shepherdstown relies on firms or persons conducting blasting activities to be in compliance with said statutes and regulations.

Section 9-1502 Purpose

In consideration that most of the Town is included in a National Historic Register Historic District; that setting, transport, storage and use, including detonation, of explosive material (hereinafter referred to as blasting activities) are inherently dangerous; and that blasting activities may involve risks of psychological, physical, economic or nuisance damage to persons, property, geologic and hydro-geological resources, wildlife resources and the environment in the Corporation of Shepherdstown, it is the purpose of this ordinance to secure and promote the public health, safety and welfare of the inhabitants of Shepherdstown by controlling and regulating blasting activities in the Town and to declare that firms or individuals who engage in such activities must assume responsibility for them under the doctrine of "strict liability."

Section 9-1503 Exclusions

This ordinance does not apply to:

- A. The Armed Forces of the United States or the State Militia;
- B. Explosives in forms prescribed by the official United States Pharmacopoeia;
- C. Possession, transportation and use of small arms and small arms ammunition, including smokeless or black powder, when possessed for noncommercial purposes in quantities of five pounds or less;

D. The sale or use of fireworks; or

E. The use of explosives or blasting agents by the Shepherdstown Fire Department acting in their official capacities.

Section 9-1504 Definitions

Applicant: The person, company or corporation responsible and accountable for managing and conducting blasting operations.

Blaster: A State licensed individual who is in charge of and responsible for the loading and firing of a blast or who is in immediate personal charge and supervision of one or more other persons engaged in such activity.

Blaster Certificate: Pursuant to WV Code §22-3-1 et seq., and the rules promulgated under that article pertaining to certification requirements

Building permit: Refer to Title 9, Section 9-902.

Blasting activities: Setting, transport, storage and use, including detonation, of explosive material.

Blasting plan: Refer to Title 15, Section 9-1505 B(4).

Explosive: Any chemical compound mixture or device, the primary or common purpose of which is to function by explosion.

Strict Liability: Liability to others for personal injury and property damage without regard to fault or negligence arising from inherently dangerous activities, such as blasting activities that are regulated by this ordinance.

Structure: See Chapter 13 Definitions.

Section 9-1505 Blasting Permit Requirement

A. No person may manufacture, store, transport, use or detonate explosives within the historic district of the Corporation of Shepherdstown. No such blasting activities outside the historic district shall be conducted without first obtaining a permit in accordance with this ordinance. No permit shall be required for transit through Shepherdstown from and to other towns.

B. The burden rests upon the applicant to establish his/her qualifications for a permit at time of application. The application shall identify the Blaster who will be deemed competent and familiar with explosives if holding a Blaster Certificate to use, transport and store explosives issued by the State of West Virginia, pursuant to WV Code §22-3-1 et seq., and the rules promulgated under that article pertaining to certification requirements. Proof of blaster

certification and any additional licensure shall be kept on file at the blasting area during blasting operations and shall be made available upon request.

The following information shall be submitted in the application:

- (1) Name, address, phone number of person or firm seeking the permit.
- (2) Names of Blaster(s), and a photocopy of each Blaster's current West Virginia Blaster Certificate.
- (3) Name of the insurer, policy number and agent providing insurance coverage as required by this ordinance.
- (4) Copy of the proposed Blasting Plan, which shall explain how applicant will comply with relevant sections of the West Virginia Code and the Town Code, describe the proposed pre-blast and post-blast surveys, and demonstrate to the satisfaction of the Planning Commission that the applicant is capable of correcting any damage caused and that risk of damage is acceptable.

The Planning Commission reserves the right to require additional information and to retain an independent reviewer at applicant's expense to assist in making this determination. The Blasting Plan shall be submitted to the Planning Commission for approval prior to initiation of any blasting activities.

- C. A true copy of the permit issued by the Corporation of Shepherdstown shall be conspicuously posted at the job site.
- D. The application shall be accompanied by a fee of \$500.00.
- E. Permits shall be valid for six (6) months from the date of issuance.

Section 9-1506 Bond and Proof of Insurance

The applicant shall submit with the application a certificate of insurance issued by an insurance carrier authorized to conduct business in the State of West Virginia showing that comprehensive liability insurance is in full force and effect for the blasting operations to be carried out by applicant in the Corporation of Shepherdstown, for all personal injury and property damage arising out of blasting operations including completed operations, contractual liability, explosion, underground and collapse, in an amount not less than Two Million dollars (\$2,000,000) per occurrence, combined single limit. Said certificate shall indicate the effective dates of the liability coverage, the name and address of the agent or broker through whom the insurance coverage was issued and who is responsible for attesting to the existence of the insurance coverage. Said certificate shall provide for ten (10) days' advance written notice to the Corporation of Shepherdstown in the event the insurance policy is canceled, terminated or modified and receipt of such notice of termination shall be grounds to revoke a permit for blasting.

Section 9-1507 Indemnification

The applicant shall indemnify and hold harmless the Corporation of Shepherdstown and its agents and employees from and against all claims, damages, losses and expenses, including attorneys' fees and court costs, arising out of or resulting from the performance of blasting operations, provided each claim, damage, loss or expense is attributed to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the blast itself), including the loss of use as a result, caused in whole or in part by any act or omission of the applicant, anyone directly or indirectly employed by them, or anyone for whose acts applicant may be liable.

Section 9-1508 Procedure

The Planning Commission shall act upon the application within a reasonable period not to exceed ninety (90) calendar days from receipt of a complete application. The applicant must be notified in writing by first class US Mail within fourteen (14) business days of the date the Planning Commission makes a decision.

Section 9-1509 Strict Liability

Acceptance of a blasting permit from the Corporation of Shepherdstown signifies that the applicant agrees to be bound by the doctrine of strict liability with regard to personal injury and property damage arising from blasting activities conducted by the applicant in the Corporation of Shepherdstown.

Section 9-1510 Pre-blast Notification and Inspections

A. The applicant must provide written notification at least thirty (30) days prior to the commencement of blasting operations to all owners of property located within the corporate limits, the Corporation of Shepherdstown, the Shepherdstown Police Department, the Shepherdstown Fire Department and local utilities, via first class U. S. Mail or hand delivery. The written notification shall include, at minimum, the name of the applicant, the name of the blaster, the location of the property upon which the blasting shall occur and the blasting schedule.

B. At least thirty (30) days prior to the commencement of blasting operations, a public notice shall be published in a local newspaper of general circulation, which notice shall include, at minimum, the name of the applicant, the name of the blaster, the location of the property upon which the blasting shall occur and the blasting schedule.

C. Pre-blast and post-blast inspections shall be conducted in accordance with the Blasting Plan approved by the Planning Commission.

Section 9-1511 Blasting Operations Recordkeeping and Monitoring

A. A record of blasting operations shall be provided to the Planning Commission and retained by the applicant for three (3) years. This record shall contain, at a minimum:

- 1-1.1.1 Copy of approved blasting permit,
- 1-1.1.2 Name(s) of all individuals and companies conducting blasting,
- 1-1.1.3 Site map to include all adjacent and nearby structures relative to blasting location and consistent with the Blasting Plan,
- 1-1.1.4 Date and time of blast, general weather conditions, including estimated wind direction and wind speed,
- 1-1.1.5 Type of materials blasted and description of general operating conditions,
- 1-1.1.6 Type and size of explosive charge and description of blasting pattern and other equipment used,
- 1-1.1.7 Results of all inspections and monitoring, and
- 1-1.1.8 Description and reasons for unscheduled blasts, misfires or any other violation of the submitted Blasting Plan.

B. The applicant shall notify the Shepherdstown Fire Department and the Shepherdstown Police Department, using a non-emergency telephone number, a minimum of twenty-four (24) hours prior to each blast.

Section 9-1512 Restrictions

Hours of detonation shall be limited to daylight hours, but shall occur no earlier than 8:00 a.m. and no later than 6:00 p.m., Monday through Thursday inclusive. Blasting operations are prohibited during federal and state observed holidays.

Section 9-1513 Conflict

Whenever the requirements of any provisions of this ordinance are in conflict with the provisions of any other lawfully adopted statute, ordinance or regulation, the most restrictive requirements will apply, unless a lawfully adopted West Virginia or federal statute mandates less restrictive requirements.

Section 9-1514 Severability

The provisions of this ordinance are severable and it is the intention to confer the whole or any part of the powers herein provided for. If any provision of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, that portion will be deemed a separate provision and will not affect any remaining provision of the ordinance. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such unconstitutional provision was not included.

Section 9-1515 Penalties

Blasting without a permit and/or blasting in violation of any of the provisions or conditions of this Chapter 15 shall be a misdemeanor punishable by a fine not less than Five Hundred dollars (\$500.00) nor in excess of One Thousand dollars (\$1,000.00). Each day of violation shall constitute a separate offense. In addition to the above penalties all other actions are hereby reserved including an action in equity for the proper enforcement of this Chapter. The imposition of a fine or penalty for any violation of or non-compliance with this Chapter shall not excuse the violation or non-compliance with this Chapter or permit it to continue; and all such persons shall be required to correct or remedy such violations or non-compliances within a reasonable time.

Section 9-1516 Enforcement, Revocation and Emergency Cessation of Blasting

A. The zoning officer or the Mayor shall have the authority to inspect the premises and to revoke the blasting permit, causing the immediate and complete cessation of any blasting activities, whenever

(1) any of the requirements of this ordinance or the rules and regulations promulgated thereto or orders of the Planning Commission have not been complied with; or

(2) the public safety or welfare call for the immediate cessation of the blasting activities.

Such cessation of the blasting activities shall continue until corrective steps have been started by the applicant to the satisfaction of the zoning officer or the Mayor. Any applicant who feels they have been aggrieved by the decision of the zoning officer or the Mayor has the right of appeal to the Planning Commission, setting forth reasons why the blasting activities should not be halted.

B. Whenever (1) any of the requirements of this ordinance or the rules and regulations promulgated thereto, or orders of the Planning Commission have not been complied with, or (2) the public safety or welfare call for the immediate cessation of the blasting activities, the appropriate authorities of the Corporation of Shepherdstown, in addition to other remedies, may institute injunction, mandamus, or other appropriate action or proceeding to prevent such violation and to halt such blasting activities.

Section 9-1517 Appeal

A. Any person or persons or applicant aggrieved by a decision of a zoning officer or other designee of the Planning Commission has a right of appeal therefrom to the Planning Commission, and, thereafter, if necessary, to the Board of Appeals.

B. Any person or persons or applicant aggrieved by a decision of the Planning Commission has a right of appeal therefrom to the Board of Appeals.

Section 9-1518 Notice

All notices to be provided to the Corporation of Shepherdstown pursuant to the provisions of this Chapter 15 shall be accomplished by any one (1) of the following methods:

1. Hand delivery to the Town Hall; or
2. U. S. Mail, postage prepaid, to Post Office Box 248, Shepherdstown,
West Virginia; or
3. Facsimile transmission to Town Hall; or
4. Overnight or express delivery, shipping prepaid, to the Town Hall.