

# **CANAAN VALLEY ZONING ORDINANCE**

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Tucker County, West Virginia

Adopted by the Tucker County Commission on June 24, 1998,  
with an Effective Date of July 31, 1998.

Developed by the Canaan Valley Zoning Committee,  
with assistance by the Tucker County Planning Commission

Community Planning and Zoning Consultant

Urban Research and Development Corporation  
Bethlehem, Pennsylvania

CONTENTS

	<u>Page</u>
ARTICLE 1    APPLICABILITY AND PURPOSES .....	1
Section: 101    Applicability .....	1
102    Purposes .....	1
103    Exterior Building Materials - Advisory Guidelines .....	2
ARTICLE 2    ZONING DISTRICT .....	3
Section: 201    Establishment of Zoning District .....	3
202    Uses Permitted .....	3
ARTICLE 3    GENERAL REGULATIONS .....	9
Section: 301    Additional Requirements for Specific Uses .....	9
302    Specifically Prohibited Uses .....	9
303    Natural Features .....	10
304    Stormwater and Erosion Control .....	11
305    Emergency Access .....	12
306    Flood-Prone Areas .....	12
307    Landscaping and Buffer Yards .....	13
ARTICLE 4    BUILDING AND STRUCTURE REGULATIONS .....	14
Section: 401    Water and Sewage Services .....	14
402    Minimum Setbacks; Fences and Walls .....	14
403    Maximum Height .....	15
404    Maximum Density .....	16
405    Planned Development .....	16
406    Preserved Open Space .....	18
ARTICLE 5    SIGN REGULATIONS .....	19
Section: 501    Sign Permit Required .....	19
502    Sign Exemptions .....	19
503    Temporary Signs .....	20
504    Spacing of Signs .....	20
505    General Sign Regulations .....	20
ARTICLE 6    PRE-EXISTING USES AND PLANS .....	22
Section: 601    Purpose .....	22
602    Safeguarding of Existing Uses and Recorded Plats .....	22
603    Location of Improvements .....	23
604    Rebuilding of Pre-Existing Uses .....	23

	<u>Page</u>
ARTICLE 7    PARKING .....	24
Section: 701    Minimum Number of Parking Spaces .....	24
702    Handicapped Parking .....	24
ARTICLE 8    ADMINISTRATION .....	26
Section: 801    Zoning Inspector .....	26
802    Permit Process .....	27
803    Enforcement and Penalties .....	29
804    Board of Zoning Appeals .....	30
805    Appeals to Board and Court .....	32
ARTICLE 9    DEFINITIONS .....	35
INDEX	

## ADOPTION

WHEREAS the Tucker County Planning Commission held a series of meetings regarding the initial establishment of a Zoning Ordinance in the Canaan Valley; and a major public meeting was held regarding the proposed revised Zoning Ordinance; and

WHEREAS the Tucker County Planning Commission has received reports and recommendations from representatives of the Canaan Valley Landowners Association regarding the original establishment of and these revisions to the Canaan Valley Zoning Ordinance; and

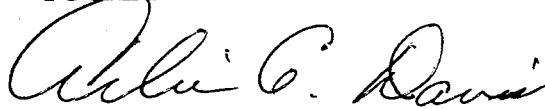
WHEREAS through such meetings and recommendations the Tucker County Planning Commission now is able to state in this Report to the Tucker County Commission that the purposes stated in Section 102 would be well served by this revised Zoning Ordinance; and

Therefore, following a public hearing, the Tucker County Commissioners hereby enact and adopt the attached Canaan Valley Zoning Ordinance. This revised Zoning Ordinance shall become effective on July 31, 1998.

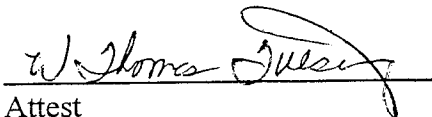
If any provision of this ordinance is invalidated by any superseding law or court of competent jurisdiction, all of the remaining provisions shall nonetheless be deemed severable and shall continue to full force and effect. The preexisting Canaan Valley Zoning Ordinance, except the Zoning Map, is hereby repealed.

Enacted this 24th day of June, 1998.

TUCKER COUNTY COMMISSION



Chairperson

  
Attest

**ARTICLE 1  
APPLICABILITY AND PURPOSES**

**101. APPLICABILITY.**

- A. This Zoning Ordinance provides zoning regulations for the lands, water, and wetlands that comprise Canaan Valley and its surrounding watershed that drains towards the Canaan Valley. This Canaan Valley Zoning Ordinance shall only apply within the area shown on the attached "Canaan Valley Zoning Map," which encompasses the geographical watershed area of Canaan Valley.
- B. This Ordinance shall not regulate:
  - 1. lands and structures owned by the Governments of the United States or the State of West Virginia;
  - 2. any lands outside of the area shown on the Canaan Valley Zoning Map; and
  - 3. areas within the official boundaries of the "Davis Power Project" provided that such lands are developed in full compliance with an active license for such project issued by the Federal Energy Regulatory Commission (formerly Federal Power Commission).
    - a. However, if such license is not approved, is revoked or is suspended, or if the Davis Power Project is abandoned or not pursued, or if any such lands are sold, transferred or conveyed to any party other than the owner of record at the time such license is issued, then this Ordinance shall fully apply to all such lands.
- C. See certain exceptions for pre-existing uses and previously recorded plats in Article 6.

**102. PURPOSES.** This Zoning Ordinance is intended to serve the following purposes:

- A. To serve the authorized purposes for zoning under State law;
- B. To promote the public health, safety, comfort, morals, convenience and general public welfare of the Canaan Valley;
- C. To recognize that the quality of the water and wetlands, together with the underlying aquifer, are precious assets and natural resources to this area that must be preserved and protected;
- D. To conserve the mountains, tundra and other surrounding lands that provide a unique upland phenomena for the benefit of present and future generations of this area of Tucker County, West Virginia;
- E. To maintain a special scenic and rustic character of the Canaan Valley to promote outdoor recreation and related tourism and residential development.

**103. EXTERIOR BUILDING MATERIALS - ADVISORY GUIDELINES.**

- A. To maintain the special scenic and rustic character of the Canaan Valley, it is very strongly encouraged that wood, stone, brick and similar exterior building materials be used, as opposed to metal. Natural earth tone colors are strongly encouraged to be used, to blend in with the natural landscape, as opposed to overly bright or garish colors.
  - 1. For example, sides of buildings are encouraged to be constructed of wood stained a natural color and roofs of cedar shakes or a material with a closely similar appearance.
  - 2. Stucco, cinderblock and concrete should be avoided as exterior building materials.
- B. In locations where it is not feasible to construct a building as described in part "A" above, then it is strongly encouraged that substantial landscaping be placed to buffer views of such building.
- C. Subdividers are strongly encouraged to place deed restrictions on lots to require conformance with standards similar to those described in part "A."

**ARTICLE 2  
ZONING DISTRICTS**

**201. ESTABLISHMENT OF ZONING DISTRICT.**

- A. The area regulated by this Ordinance is hereby declared a zoning district as shown on the Zoning Map.

**202. USES PERMITTED.**

- A. No structure shall be used, erected or expanded and no land shall be used unless it is in conformity with the regulations of this Section 202 and the other applicable regulations of this Ordinance.
- B. Unless specifically stated otherwise, any land or structure shall only be used or occupied for a use specifically listed in this Section as being permitted by right or special exception within the applicable zoning district.
- C. Similar Uses. The Board of Zoning Appeals may approve an application for a use that is not addressed by the following table if the Board determines:
1. such use is similar in character and impacts to uses that are permitted,
  2. such use will not threaten a significant hazard to the public health and safety, and
  3. such use would generally be consistent with the purposes of the applicable zoning district.
- D. The following uses shall be permitted by right, permitted by special exception or not permitted with the territory regulated by this Zoning Ordinance. For the purposes of this Section 202, the following abbreviations shall have the following meanings:
- |    |   |   |
|----|---|---|
| P  | = | Permitted by Right, with the zoning decision made by the Zoning Inspector                                       |
| SE | = | Permitted Special Exception Use, with the zoning decision made by the Board of Zoning Appeals. See Section 804. |
| N  | = | Not Permitted   |

TYPES OF USES (See definitions in Article 9)	<u>PERMITTED OR NOT PERMITTED</u>
<u>RESIDENTIAL USES</u>	
Single Family Detached Dwelling	P
Mobile Home	N
Mobile Home Park	N
Twin Dwellings, Townhouses or Apartments (Note - may be in condominium or fee-simple ownership or rental.)	P
Home Businesses - See under "Commercial Uses"	
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<u>COMMERCIAL USES</u>	
Adult Use - In recognition that such uses are not prohibited N by zoning regulations in the remainder of Tucker County, such uses are prohibited within the portion of Tucker County that is regulated by this Ordinance.	N
Auto Repair Garage, Gas Station or Car Wash	N
Auto Sales Use	N
Bed and Breakfast Inn	P
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Campground	P*
Casino Gambling	N
Commercial Recreation, other than uses listed separately in this table:	
- Primarily Indoor (such as bowling alleys, roller-rinks and closely similar uses)	P
- Primarily Outdoor (such as canoe rental, bicycle rental and closely similar uses)	P
Commercial Communications Antenna (see Section 403)	SE
Contractor's Headquarters, Temporary	P
Custom Crafts or Artisan's Studio (such as custom manu- facture or repair of recreation equipment or manufacture of custom glass, ceramic or fabric items, and related retail sales)	P
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Day Care - See under "Institutional Uses"	
Exercise Club	P
Financial Institution	P
Funeral Home	P
Golf Course or Golf Driving Range	P
Grocery Mart (not full service, small)	SE
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**See Notes at end of this table.**



**TYPES OF USES**

**PERMITTED OR NOT PERMITTED**

(See definitions in Article 9)

**COMMERCIAL USES (Cont.)**

Home Business, involving a clearly routine and customary accessory use to a dwelling, provided the use:	P
a) involves a maximum of 3 non-residents working on the site,	
b) does not involve on-site retail sales or manufacturing (other than manufacture of custom crafts or sale of agricultural products produced by the operator),	
c) does not involve any outdoor storage or display,	
d) does not involve storage of hazardous substances, beyond amounts and types typically found in a dwelling,	
e) does not generate levels of exterior noise in excess of that typically generated by a dwelling, and	
f) does not operate between 9 p.m. and 7 a.m. in a manner discernable from beyond the property.	
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Kennel, provided any area used for the keeping of animals is a minimum of 200 feet from an existing dwelling in different ownership	SE
Laundromat	P
Mobile Home Sales Use	N
Motel or Hotel	SE**
Office	P
Personal Services (includes tailoring, haircutting, drycleaning, shoe repair and closely similar uses)	P
Photocopying or Printing	P
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Racetracks for competitive racing of animals, motor vehicles, snowmobiles, motorcycles or all-terrain vehicles, but with the following being permitted by right: Temporary Human, Bicycle or Horseback Races.	N
Repairs of Household Appliances	P
Restaurant, without drive-through or drive-in service	P
Restaurant with drive-through or drive-in service	SE
Retail Store, other than uses listed separately in this table (may include a deli and a convenience store with gasoline sales)	P
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Self-Storage Development	SE**
Skiing, including Lodge and Accessory Facilities	P
Stable for Horses, or Horse-Riding Academy, with a 5 acre minimum lot area, provided any structure or outdoor feeding area is located a minimum of 200 ft. from an existing dwelling	P
Supermarket	SE

TYPES OF USES (See definitions in Article 9)	<u>PERMITTED OR NOT PERMITTED</u>
<u>COMMERCIAL USES (Cont.)</u>	
Target Range	
- Firearms Range, with a minimum setback of 200 feet from any lot	SE
- Archery, Indoor (for commercial use)	P
- Archery, Outdoor (for commercial use)	SE
Tavern or Microbrewery	P
Theater, Drive-In	N
Theater or Amphitheater, other than Drive-In	SE
Trade School or School for Martial Arts, Ceramics or Similar Hobby	P
Outdoor Schools	P
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<u>AGRICULTURAL USES</u>	
Crop Farming, Orchards, Forestry,	P
Christmas Tree Farm, Greenhouses and customary accessory raising of livestock	
Raising of Livestock as a Principal Use, provided any structure or outdoor feeding area is located a minimum of 200 feet from an existing dwelling	P
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<u>INSTITUTIONAL/PUBLIC/SEMI-PUBLIC USES</u>	
Cemetery without a crematorium	P
College or University	P
Community Center or Library	P
Crematorium	N
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Day Care Center, involving:	
- care of 10 or more persons at one time	P
- care of 4 to 9 persons at one time	P
- care of up to 3 persons at one time	P
Drug or Alcohol Treatment Center	N
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Fire, Ambulance or Law Enforcement Station	P
Government Owned and/or Operated Uses, Other than uses listed separately in this table	P
Group Home, housing up to 6 persons who need supervision because of a "disability" protected by Federal law, plus necessary paid staff-persons, within a lawful dwelling unit.	P
Hospital	SE
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**TYPES OF USES**

**PERMITTED OR NOT PERMITTED**

(See definitions in Article 9)

**INSTITUTIONAL/PUBLIC/SEMI-PUBLIC USES (Cont.)**

Membership Club (which shall not include a tavern, restaurant or other uses listed separately in this table, unless all requirements for such uses are also met):	
- Facilities for meetings by members	P
- Fishing, Hunting, Boating, Archery or Closely Similar Outdoor Recreation Facilities	P
- Other Facilities	P
Museum or Nature Center	P
Nursing Home or Personal Care Center	SE
Place of Worship (includes Church)	P
School, Primary or Secondary	P
Swimming Pool	P
U.S. Postal Service Facility	P

**MISCELLANEOUS USES**

Fuel Storage, Bulk Above-Ground (other than for on-site use)	N
Junkyard	N
Manufacturing, other than Custom Crafts and other than uses listed separately in this table	N
Mineral Extraction - See Section 301.A	
Recreation Facilities limited to use by occupants of a development and their invited guests:	
- Non-commercial and primarily outdoor	P
- Other	P
Recycling Collection Center	SE
Solid Waste Landfill, Transfer Facility or Incinerator	N
Utility Facilities (Underground Utilities encouraged)	
- Utility Lines, Poles or Substations	P
- Water or Sewage Facilities	P
- Other Facilities	SE
Warehousing as a Principal Use	N
See also the list of prohibited uses in Section 302.	

**Notes:**

- \* Campgrounds for transient motor homes and travel trailers and/or tents will not be permitted unless such campgrounds are located: 1) a minimum of 100 feet from the right-of-way of public roads, and 2) a minimum of 100 feet from adjoining property lines. This 100 feet wide area shall serve as a buffer zone and shall be free from buildings and shall be landscaped with trees and shrubs, except for portions where a substantial buffer of existing trees and shrubs will be preserved.

- \*\* Self-Storage Developments and Motels/Hotels are to be located: 1) a minimum of 100 feet from the right-of-way of public roads, and 2) a minimum of 100 feet from adjoining property lines. This 100 feet wide area shall serve as a buffer zone and shall be free from buildings and shall be landscaped with trees and shrubs, except for portions where a substantial buffer of existing trees and shrubs will be preserved.

Notes:

- P = Permitted by Right, with the zoning decision made by the Zoning Inspector  
SE = Permitted Special Exception Use, with the zoning decision made by the Board of Zoning Appeals. See Section 804.  
N = Not Permitted

**ARTICLE 3  
GENERAL RESTRICTIONS**

**301. ADDITIONAL REQUIREMENTS FOR SPECIFIC USES.**

- A. Mineral Extraction. No mining or drilling of any oil, gas or other minerals shall be permitted by any person or entity upon any lands unless the same is in full compliance with all federal, state and county laws, ordinances, and regulations controlling the same. This provision is intended to be consistent with and augment the provisions of Chapter 8, Article 24, Section 50, of the West Virginia Code as amended.
- B. Concerts. Music concerts open to the public which are held out-of-doors and for which admission fees are charged or donations are accepted shall not exceed twelve hours in total length and shall not include overnight on-site camping, unless the site was previously permitted as a campground.

**302. SPECIFICALLY PROHIBITED USES.** Any use not specifically permitted by this Ordinance is hereby prohibited. In addition, the following express prohibitions apply throughout the entire area regulated by this Ordinance:

- A. Junk. No junked motor vehicles of any kind nor abandoned appliances or furniture, nor parts thereof, nor more than three disabled vehicles, nor salvage material associated therewith, shall be kept or maintained outside of any building nor within public view for a period in excess of 90 days on any premises within one calendar year.
- B. Wastes.
  - 1. No land or building may be used to house or operate any business or other activity engaged in collection, binding, storage or sale of refuse paper products, rags or scrap metal, nor the abandonment, demolition, storage, salvage or sale of used vehicles or used machinery.
  - 2. The disposal of petroleum products of all kinds, paints, chemicals, insecticides, herbicides, hazardous materials, radioactive materials, salt water, septic sludge (unless treated and permitted in accordance with and by the West Virginia Departments of Health and Natural Resources), motor vehicles, bottles, containers or vehicles and parts hereof, into the streams, ponds, lakes, wetlands, caves and/or lands shall be expressly prohibited.
- C. Amusements. The erection, maintenance and operation of permanent amusement parks, permanent circuses and permanent carnivals shall be expressly prohibited. Nothing herein shall be construed to prohibit the operation of limited amusement activities such as miniature golf courses, conventional golf courses, tennis facilities, swimming pools, driving ranges, ski areas, waterslides, playgrounds and similar activities.

- D. Sawmills and Kilns. The construction and operation of sawmills and/or lumber kilns are expressly prohibited. This provision is intended to comport to and augment the provisions of Chapter 8, Article 24, Section 50 of the West Virginia Code as amended. This provision is not intended to prevent the use and alienation of timber.

### 303. NATURAL FEATURES.

- A. Wetlands. If the Zoning Inspector has reason to believe that an area proposed for building, development or site alteration may intrude into "wetlands" under Federal and/or State definitions, then the Zoning Inspector may at his/her option require that the applicant submit a wetland delineation prepared by a qualified professional.
1. At his/her option, the Zoning Inspector may condition the issuance of a permit under this Ordinance upon the applicant: a) submitting a wetland delineation and b) providing evidence that any required permit applications have been submitted to State and Federal agencies. However, the Zoning Inspector and the County do not guarantee that all wetlands are delineated as part of the permit process.
  2. Wetland delineations shall not be required as part of a permit under this Ordinance if the permit application does not propose any building, development or site alteration on any area suspected of being a wetland.
- B. Steep Slopes. This Section 303.B. shall apply to lot proposed to be recorded after the effective date of this Ordinance.
1. If slopes of over 25 percent are present, then the applicant shall submit a site plan that designates the *maximum* portions of the lot that will be used for construction of a principal building. In many cases, an applicant may be able to avoid the requirements of this Section 303.B. by restricting construction to portions of a lot that are not very steep.
  2. Based upon the site plan, if the lot will involve a new principal building on land areas with a natural slope over 25 percent, then a minimum lot area of 3 acres shall be required. However, if the lot will involve a new principal building on land areas with a natural slope over 35 percent, then the minimum lot area shall be increased to 5 acres.
  3. Exceptions. The following exceptions shall apply to this Section 303.B.:
    - a. **A Planned Development approved under Section 405 shall be exempt from this Section 303.B.**
    - b. A larger minimum lot area shall not apply if less than 200 square feet of the proposed building site has a slope over 25 percent.
    - c. As part of a subdivision plat, the Zoning Inspector shall allow a minimum lot area of 2 acres, provided all of the following standards are met:
      - 1) the *average* lot area for the entire plat shall be a minimum of 3 acres,
      - 2) the applicant shall prove that the lot layout will minimize disturbance of slopes over 25 percent, waterways, scenic ridgelines and wetlands,

- 3) a minimum of 20 percent of the total land area shall be permanently preserved in public, semi-public or private ownership, through one or more of the methods listed in Section 406.
  - d. A developer may be granted a special exception from the Board of Zoning Appeals to modify the steep slope provisions of Section 303 if the applicant proves to the Board that the development:
    - 1) will be constructed following adequate professional engineering of road layout and storm water to minimize negative effects of construction on steep slopes and
    - 2) will hold disturbance of slopes over 25% to a reasonable minimum.
  - e. See also Sections 304 and 307.
- C. Setbacks from Waterways. No new principal building, or portion thereof (other than unenclosed elevated decks), shall be constructed within the following:
- 1. 75 feet from the centerline of the main stem of the Blackwater River;
  - 2. 50 feet from the centerline of any other perennial (as opposed to "intermittent") waterway.
- D. Tree Protection Recommendations.
- 1. Subdividers are strongly encouraged to place appropriate deed restrictions on lots to require that the removal of mature trees be held to a minimum.
  - 2. Developers and builders are strongly encouraged to place temporary fences underneath the "drip line" of trees intended to be preserved. This temporary fencing is intended to keep vehicles and equipment from compacting the root system of trees, which will eventually kill the trees over time. In addition, any grade changes around the base of trees should be minimized to protect the trees.

#### **304. STORMWATER AND EROSION CONTROL.**

- A. If an application will eventually involve more than 20,000 square feet of new total "impervious surface" (see definition in Article 9), then the applicant shall provide a stormwater management plan prepared, signed and sealed by one of the following State licensed/registered professionals: professional engineer, surveyor or landscape architect. Such professional shall certify that such plan has been prepared to comply with the following standards:
- 1. The post-development peak rates of runoff from the site shall not exceed the pre-development peak rates of runoff, based upon a "2 year" and a "10 year" storm.
  - 2. A "100 year" storm shall be able to be safely routed and accommodated without jeopardizing the structure of any principal building on or off of the site, other than buildings that are already subject to a 100 year flood.
  - 3. Any detention basin shall be designed with an emergency spillway that is designed to pass a 100 year storm.

4. New bridges, culverts under roads, stream enclosures, drainage channels, drainage ditches and drainage pipes shall be designed to pass or convey a "10 year" storm, except crossings of a 100 year floodplain shall be designed to pass or convey a "100 year" storm.
- C. If more than 5,000 square feet of land area is disturbed, then proper measures shall be designed and used to control soil erosion. This section shall not apply to crop farming.
1. The smallest practical area of earth shall be exposed at any one time. The amount of time that earth is exposed shall be minimized, before the ground is stabilized with vegetation or other suitable material.
  2. Silt fencing or similar material shall be installed at low points of a site around areas of earth disturbance. Stakes shall be securely placed into the ground to support the fencing, and the ground should be compacted around the fence. Straw hay bales or similar methods should also be used to filter soil from stormwater runoff.
  3. Natural and man-made drainage channels shall be seeded and mulched, or covered by stone rip-rap or other suitable material to avoid significant soil erosion.
- D. The stormwater and erosion control plans shall clearly state:
1. which entity(ies) shall be responsible to complete the improvements and controls, and
  2. the required timing of installation of improvements and control measures in relation to different phases of development, to make sure that installation occurs prior to the phase causing the need for the improvements and control measures. For example, a plan might state that a stormwater detention basin must be in place prior to the construction of any buildings in Phase B.

**305. EMERGENCY ACCESS.**

- A. All new driveways serving principal buildings and all new roads and bridges shall be designed to provide adequate access by fire trucks and ambulances. Adequate access shall include: a) suitable turning radius, b) suitable weight limits, c) 15 percent maximum slope, d) 8 feet minimum width, and e) 10 feet minimum height clearance.
- B. Adequate access to each new commercial, industrial or apartment building shall be provided for fire trucks and ladders.
- C. The Zoning Inspector may request a review by one or more appropriate emergency service officials to determine compliance with this Section.

**306. FLOOD-PRONE AREAS.** All development shall comply with the Tucker County Floodplain Ordinance, as amended. (Note: Such ordinance generally controls building and other development within the area expected to be flooded during the worst flood in an average 100 year period, based upon mapping provided by the Federal government.)



**307. LANDSCAPING AND BUFFER YARDS.**

- A. A minimum of 10 percent of all lots intended for new or expanded commercial, industrial, apartment or townhouse buildings shall be preserved in trees and/or landscaped with trees and shrubs.
- B. A planting strip with a minimum width of 15 feet shall be maintained in grass or other attractive vegetation adjacent to any road. The planting strip shall only be interrupted by driveway crossings that are approximately perpendicular. Vegetation within the strip shall not obstruct safe sight distances.
- C. Any new commercial or industrial principal use or parking area for 5 or more vehicles that has a side or rear yard that is directly adjacent to a residential use on another lot shall provide a buffer yard along the residential lot. The buffer yard shall include at least 15 feet of width that is free of parking, structures, storage and paving. The buffer yard shall be planted with substantial trees and shrubs and/or preserved existing vegetation that provides a significant visual screen. New trees and shrubs shall have an initial minimum height of 3 feet.
- D. Substantial landscaping shall be provided to buffer sewage lagoons, sewage treatment plants and stormwater detention basins/ponds from views of homes and roads, except where a stormwater pond is clearly designed to resemble a natural pond.
- E. Substantial landscaping, mostly solid wood fencing or decorative masonry walls shall be used along 3 of 4 sides of any trash dumpsters as necessary to screen them from view of roads and homes on other lots.

**ARTICLE 4  
BUILDING AND STRUCTURE REGULATIONS**

**401. WATER AND SEWAGE SERVICES.**

- A. Prior to Building. Prior to the construction of a principal building, plans for adequate and lawful water supply and sewage treatment and disposal to serve the building must first have been approved in writing by the applicable Department of Health (and where also required by law, by the West Virginia Department of Natural Resources).
  - 1. A site plan shall be submitted showing the proposed location of water systems and sewage systems in relation to buildings and other improvements.
- B. New Lot. Prior to the creation of a new lot, the applicant shall provide evidence from the County Department of Health that a site has been approved for an on-lot septic system based upon a percolation test, unless written evidence is provided that another method of sewage treatment will be used that will meet State regulations.

**402. MINIMUM SETBACKS.**

- A. Setbacks from Roads. No building shall be constructed within any of the following: a) 60 feet from the centerline of West Virginia Route 32, b) 50 feet from the centerline of any other public road, c) 10 feet from the cartway of a private road.
- B. Fences and Walls.
  - 1. Only the following types of fences or walls shall be constructed within the above minimum setback from a road:
    - a. a split rail, picket or similar mostly "open" type of fence with a maximum height of 5 feet, and provided such fence is constructed of wood or materials with a similar appearance,
    - b. necessary retaining walls, and
    - c. decorative walls with a maximum height of 5 feet serving as a backing for permitted signs.
    - d. Agricultural Use are exempt from this Section 402.B.1. Other fences and walls may be exempted by granting of Special Exceptions.
  - 2. No fence or wall shall be constructed within the right-of-way of a public road, except necessary retaining walls.
- C. Setbacks from Property Lines. No building, structure or any part thereof shall be erected within 20 feet of the boundary line of an adjoining property owner unless such adjoining owners agree in writing to a reduced setback or if a lesser setback is established by deed restrictions as part of a subdivision, or unless townhouses or other attached housing is approved under this Ordinance. Such setback shall be increased to 30 feet for commercial and institutional buildings from property in different ownership, unless adjoining owners agree in writing to a reduced setback.

**403. MAXIMUM HEIGHT.** A maximum height of 35 feet shall apply to all structures, except as provided below:

**A. Height Exceptions.**

1. Projections such as towers, steeple, spires, cupolas, chimneys, water tanks, flag poles, monuments, radio, television and citizen band aerials and antennas, transmission towers, fire towers and similar structures and mechanical appurtenances not used for human occupancy shall be limited to 35 feet above ground level if not attached to a building. Any of the above attached to a building shall not project more than 12 feet above the highest point of that building, except a steeple or bell tower of a place of worship may project 25 feet above the building.
2. A commercial communications antenna or antenna operated by Tucker County, the State of West Virginia or emergency service providers for emergency communications may be approved as a special exception with a maximum total height of up to 75 feet if the applicant proves such antenna:
  - a. Needs to be such a height;
  - b. Has been designed and located to minimize negative impacts upon the scenic character of the Canaan Valley, such as by incorporating an antenna into a church bell tower and/or using a monopole design with an earth tone color;
  - c. Has sufficient setbacks to allow it to collapse on the ground without causing hazards to roads or other properties, in event of very high winds or structural failure;
  - d. Is constructed of corrosion-resistant non-combustible material; and
  - e. The owner agrees in writing to remove the antenna within 6 months after it is no longer in use.
3. A building exceeding the 35 foot height restriction will be granted a variance provided:
  - a. it does not adversely affect the current Insurance Services Organization (ISO) rating,
  - b. it does not adversely impact the aesthetics, public health, safety, comfort, morals, convenience and general public welfare of the community regulated by this Ordinance, and
  - c. it complies with subsection "B." below.

**B. Watershed Boundary.** The highest point of any building shall not exceed a height of 10 feet below the watershed boundary, or 10 feet below surrounding trees atop the watershed boundary. The watershed boundary is the topographic line that separates areas that flow into the Canaan Valley from areas that flow away from the Canaan Valley.

**404. MAXIMUM DENSITY.** A minimum lot area of 1 acre shall apply for any lot recorded after the effective date of this Ordinance, and a maximum density of one dwelling unit per acre shall apply, except as provided:

- A. within a "Planned Development" approved under Section 405, or
- B. under Section 303 for lots involving steep slopes over 25 percent.

See Section 602.B. which allows any existing lot of record to be used for a single family detached dwelling, regardless of the size of the lot.

**405. PLANNED DEVELOPMENTS.**

- A. This Section is intended to encourage developments that: a) are planned in a manner that provides compatibility between different land uses, b) provide well-coordinated roads and utilities, and c) properly relate to the natural features of the land. If a "Planned Development" is approved under this Section 405, then it is possible to obtain **increased density and great flexibility in site layout**, as described in this Section.
- B. As part of a subdivision plat, the density of a "Planned Development" may be increased as provided in Section 405.C., and no minimum lot area shall apply for each individual dwelling, provided all of the following standards are met:
  - 1. Any dwelling on a lot of less than 1 acre shall be served by a central water and central sewage system meeting State and County requirements.
  - 2. The owners shall agree to establish a long-term operation and maintenance contract for the central water and sewage systems with a qualified individual or firm, unless the systems will be operated by an incorporated Town, City or Public Service District.
  - 3. The maximum density shall be determined based upon the total lot area of the tract, minus the following: a) land within the right-of-way of existing public roads, and b) land proposed for commercial and industrial buildings and related parking. The resulting acreage shall then be multiplied by the maximum average density (see below) to determine the maximum number of dwelling units or hotel/motel rental units.
    - a. In determining the maximum density, portions of a Planned Development involving golf courses, ski trails, wetlands, steep slopes, open space and proposed roads may be included in the acreage to determine maximum density. In addition, land within hotels and motels may be included in the acreage to determine maximum density.
  - 4. The applicant shall prove that proposed layout of lots, buildings and roads will fully consider slopes over 35 percent, waterways, scenic ridgelines and wetlands, and hold their disturbance to a reasonable minimum.
  - 5. A minimum amount of land area as provided in Section 405.C. shall be in preserved open space, through one or more of the following methods:
    - a. Through setting aside land owned by the applicant through one of the methods provided in Section 406; or

- b. Through counting lands that are occupied by existing or to-be-donated publicly-owned open space, existing ski trails or an existing golf course within a 2,000 foot wide radius of the boundaries of the Planned Development as the open space. Such lands are not required to be owned by the applicant for the Planned Development.
  - (1) For example, if an applicant owns 20 acres of land, and another 50 acres of a golf course or publicly-owned recreation land are located within a 2,000 foot radius of the applicant's land, then the applicant could multiply 70 acres by the average density of 2 dwelling units per acre, to result in a maximum density of 140 dwelling units on the applicant's land. This assumes that the applicant uses the 20% open space standard.
  - (2) As a second example, if an applicant owns 300 acres, the applicant might place a conservation easement on 20 percent of the land (or 60 acres) and use it as a private commercial golf course. The golf course land could still count towards the permitted density of the remainder of the land. Therefore, the applicant could develop 600 dwelling units (300 acres multiplied by 2) or 1,500 motel/hotel units (300 acres multiplied by 5). This assumes that the applicant uses the 20% open space standard.
  - (3) The same area of land outside of a Planned Development (such as U.S. Forest Service land) may be used by more than one Planned Development to count towards their maximum average density.
  - (4) The same area of land outside of a Planned Development shall only be used by one Planned Development to count towards its minimum open space.
  - (5) Land outside of the Canaan Valley Zoning District may be used to count towards the maximum average density and/or minimum open space of a Planned Development provided:
    - (a) Such land is preserved in public ownership or deed restrictions or conservation easements will be in place to make sure that the land will continue to serve the intended purposes;
    - (b) Such land meets all other provisions of this Section; and
    - (c) Such land is immediately adjacent to the Canaan Valley Zoning District.
- 6. **The steep slope provisions of Section 303 shall not apply within an approved Planned Development.**
- 7. The applicant shall provide evidence of compliance with Sections 304 and 305. All of the plans shall be prepared to a standard scale. The road, stormwater and all other plans shall be stamped by a registered professional engineer. For a development of 10 or more acres, it is strongly encouraged that a landscape architect also be involved in the site layout, at a minimum.
- 8. The buffering requirements of Section 307 shall be met.
- 9. The tract shall include a minimum of 5 acres of land.
- 10. A Planned Development shall be offered for review by the Review Board, as established in Section 802. The Review Board may provide advice to the applicant on potential improvements to the development, and may advise the Zoning Inspector concerning compliance with this Ordinance.

- C. The following maximum average density shall apply within a Planned Development if land area equal to the following minimum percentages of the total land area of the Planned Development are set aside as open space (as provided in Section 406.B.).

Maximum Average Density Per Acre:		Minimum Land Area Preserved in Public
<u>Dwelling Units</u>	<u>Motel/Hotel Rental Units*</u>	<u>Semi-Public or Private Open Space</u>
2	5	20% **
3	6	30%
4	7	40%
5	8	50%
6	9	60%
7	10	70%
8	11	80%
9	12	90%

\* The maximum density for motel or hotel rental units provided above shall be increased to 20 units per acre, with 20 percent open space, if a use is within 1,000 feet of the centerline of West Virginia Route 32 or Courtland Road.

\*\* Absolute minimum to qualify as a Planned Development.

**406. PRESERVED OPEN SPACE.** Trail Systems are encouraged within Developments. Open space is not required to be open to access to the general public. Where preserved open space is established on land controlled by the applicant, as provided by Section 303 or 405 above, it shall be protected by one or more of the following methods:

- A. By conservation easements or deed restrictions on appropriate portions of one or more privately owned lots. Such areas may be used for horse riding areas, golf courses, ski trails, crop farming, Christmas Tree Farms, playgrounds and similar open space uses.
- B. By dedication to a Federal, State, County or Town Government or an incorporated non-profit nature conservation organization for use as public recreation land or a nature preserve, provided such agency or organization agrees in writing in advance to accept such dedication.
- C. By dedication to a property-owner association as commonly owned open space, with appropriate deed restrictions or conservation easements to ensure the preservation of the land.

**ARTICLE 5  
SIGN REGULATIONS**

**501. SIGN PERMIT REQUIRED.**

- A. To make sure there is compliance with these regulations, and to protect property owners from costly construction errors, no one may construct, erect, alter or relocate any sign without first obtaining a permit, except as specifically excluded below.
- B. A change in lettering or symbols on an existing sign by itself shall not require a new permit.
- C. The sign permit shall be issued through the office of the Zoning Inspector. Dimensional drawings of the sign, and its location relative to property lines, must accompany the permit application.
- D. Once a sign permit is issued, it shall be unlawful to change, modify, alter, relocate or deviate from the terms of the permit without obtaining a new permit in the manner provided herein.

**502. SIGN EXEMPTIONS.** The following types of signs do not need a permit and are exempt from this Article 5, except for safety regulations and the following standards:

- A. Public Signs. Signs of a noncommercial nature and in the public interest, erected by, or on the order of, a public officer in the performance of his/her public duty, such as directional signs, regulatory signs, warning signs and informational signs.
- B. Signs with a maximum sign area of 3 square feet involving the following messages and closely similar purposes: no trespassing, no hunting, no fishing, no parking, no swimming, beware of dog, garage sale, yard sale, local produce for sale, and local crafts for sale.
- C. Plates or signs on residential structures or premises giving the name or address of the occupant and plates on mailboxes, paper tubes and similar uses customarily associated with residential uses are not to exceed six square feet, but in no event shall said sign measure more than three feet in length or height.
- D. Contractors' temporary signs for buildings under construction not exceeding 12 square feet.
- E. Real estate for rent, for sale or open house signs not to exceed 12 square feet, erected on or adjacent to individual homes, townhouses, condominiums, lots, etc. However, real estate for sale, for rent or open house signs pertaining to subdivisions or developments where two or more homes, condominiums, townhouses or lots are being offered shall require a permit.

**503. TEMPORARY SIGNS.**

- A. Temporary signs or banners indicating an occasional event held within Canaan Valley shall require a permit and the payment of a fee of \$25.00, except that charitable or religious events or functions shall not require a fee.
- B. Such sign or banner may not be erected more than two weeks prior to the event and must be removed no later than three days after the event. Failure to comply with regulations or to remove such sign or banner in the allotted time shall result in the denial of the issuance of a similar permit for a period of 13 months.
- C. The Zoning Inspector shall have authority to have any sign or banner removed at the owner's expense if not in compliance with this ordinance. The Zoning Inspector may remove any unauthorized sign within the right-of-way of a public road.

**504. SPACING OF SIGNS.** Freestanding signs along a public road shall be maintained at a distance of at least 1,000 feet between signs, except that individual business establishments with road frontage of less than 1,000 feet may erect one freestanding business sign. Business franchises having a frontage on more than one street may erect an additional freestanding sign for each street frontage, provided that the total area for all freestanding signs does not exceed 200 square feet.

**505. GENERAL SIGN REGULATIONS.**

- A. No sign other than a traffic sign or highway identification signs shall be permitted in a public right-of-way along any public road or highway except as permitted herein.
- B. No sign shall be placed in such a position as to endanger traffic on a public road or highway, nor at any intersection. No privately owned or privately constructed sign which purports to direct or regulate traffic along any road which is regulated by the Division of Highways, shall be permitted. Likewise, no such sign which interferes with or purports to duplicate a lawful governmental highway sign, traffic signal or device shall be permitted.
- C. No sign, other than one identifying trails, the owners of property or residents living thereupon, or posting the property, shall be permitted to be affixed to or constructed upon any rock or tree. Likewise, no sign or writing may be drawn, written or painted upon any tree or rock.
- D. Lighting of Signs and Buildings.
  - 1. Lighting of a sign or building shall not be of such intensity and shall not be directed in a manner that:
    - a. causes a nuisance to residents or other users of adjacent buildings or lands; and/or
    - b. blinds, causes glare to, obstructs the view of, or causes a serious distraction to drivers of vehicles on public roads; and/or
    - c. lighting is shined into the eyes of motorists on a public road.



2. All outdoor light sources shall be properly diffused with a translucent or similar cover to prevent exposed lighting elements from being directly visible from roads or adjacent buildings.
  3. Reflective devices, shields and similar devices shall be used as needed around lighting sources to meet the requirements of this Section.
  4. This Section "D." shall not prohibit or restrict the lighting of ski lifts and trails.
- E. Every sign must be constructed of durable materials and must be kept in good condition and repair. Each sign shall be erected and maintained in accordance with the any applicable construction, electrical and safety codes that may be established by the federal, state or county government.
- F. No sign or billboard may be placed along or in view of any public road if the same uses for illumination (or is placed in conjunction with) any flashing or flickering light or neon light. Neon light shall not be used on the outside of a building.
- G. No sign or billboard of a permanent nature may be erected which advertises or promotes anything outside of the area regulated by this Ordinance.
- H. No sign or billboard of a permanent nature may be erected which is rental in nature, such as a sign or billboard leased or rented out to various subscribers whose advertisements may change from time to time.
- I. No political campaign signs with a sign area of over 20 square feet shall be allowed. Any political signs shall be removed within 7 days after the election that they relate to.
- J. All signs and billboards advertising businesses within the area regulated by this Ordinance shall be located on the land where the actual business is located. All signs must be rustic in appearance, constructed of wood, and aesthetically unobtrusive.
- K. All freestanding signs and billboards on a lot that are visible from a lot line shall have a maximum total sign face of 100 square feet and a maximum total height of 12 feet above the ground level.
- L. All signs attached to buildings shall not project above the roof line or wall lines at any given point.

**ARTICLE 6**  
**PRE-EXISTING USES AND PLANS**

**601. PURPOSE.** This Article 6 is intended to recognize and augment the provisions regarding existing uses in Chapter 8, Article 24, Section 50 of the West Virginia Code, as amended. The overall intent is to generally "grandfather" or "safeguard" pre-existing lawful uses, so that they may continue in operation, even though they would not meet current zoning regulations.

**602. SAFEGUARDING OF EXISTING USES AND RECORDED PLATS.**

- A. Existing Uses. Notwithstanding the regulations of this Ordinance, any use of land, building, waters or wetlands that lawfully existed prior to the adoption of this Ordinance may continue, and may be sold to other parties.
1. Exemption. To comply with State law, any agricultural use, industry or manufacturer that lawfully existed prior to the adoption of this Ordinance may be altered and may expand, notwithstanding the regulations of this Ordinance.
  2. Expansion. A use (other than an agricultural, industrial or manufacturing use) that lawfully existed prior to the adoption of this Ordinance, but which would not be permitted under this Zoning Ordinance, may expand a maximum total of 25 percent beyond the land area or building floor area, whichever is more restrictive, occupied by such use at the time the use was no longer permitted.
    - a. For example, a use that covered 1 acre could be expanded an additional 0.1 acre one time and 0.15 acre a second time, for a maximum total size of 1.25 acres. A use that occupied 10,000 square feet of floor area could add a grand total of 2,500 square feet of new floor area.
  3. Abandonment. If a use (other than an agricultural, industrial or manufacturing use) is abandoned for a period of 18 or more months, it shall lose its right to continue and to expand, and instead shall be required to comply with this Ordinance.
  4. Changes in Use. A lawful pre-existing use that would not be permitted under this Ordinance may be converted to a different use that would not be permitted under this Ordinance, provided that the applicant proves to the Zoning Inspector that the new use would be less intense in its external effects, on the whole, than the previous use.
    - a. If the Zoning Inspector has difficulty making such a determination, then the Zoning Inspector may require that the applicant apply for a decision by the Board of Zoning Appeals.
    - b. To determine whether a new use would be less intense than a previous use, the following factors shall be considered:
      - (1) amount of truck and other vehicle traffic,
      - (2) noise, dust, odor, glare,
      - (3) hazards to public health and safety,
      - (4) compatibility with the character of the surrounding area,
      - (5) appearance, such as outdoor storage and signs, and
      - (6) hours of operation.

- B. Single Family Lots. In no case shall this Ordinance prevent the use of a lot that legally exists "of record" according to official County land records for a single family detached dwelling and its customary accessory structures.
- C. Recorded Plats. If a plat was recorded in the Office of the Clerk of the County Commission of Tucker County prior to the adoption of this Ordinance, then provisions of this Ordinance shall not apply that are inconsistent with matters specified on such plat. However, any new or expanded portions of buildings shall still comply with the setback requirements of this Ordinance.
- D. Previous Permits. If a structure or use was granted a permit prior to the effective date of this revised Canaan Valley Zoning Ordinance of 1998, then such structure or use may occur consistent with matters specified on such permit. However, if the structure or use is not completed within 10 years after the issuance of such a permit, then such permit shall become null and void, and any structure or use shall comply with the Zoning Ordinance currently in effect. See Section 802.C.2. for permits issued after the effective date of this Ordinance.

**603. LOCATION OF IMPROVEMENTS.** The provisions of Section 802 that require the submission of a site plan for proposed buildings, expansions and other improvements shall apply regardless of whether a building or lot is regulated by this Ordinance, unless such improvement is already shown on a previously recorded plat.

**604. REBUILDING OF PRE-EXISTING USES.**

- A. If a lawful pre-existing use is damaged or destroyed by fire or other natural cause, such use may be reconstructed or replaced, provided there is no increase in the non-conformance with this Ordinance.
  - 1. For example, if a building was destroyed that had a 10 feet setback from a road and a 50 feet height, it could be rebuilt with a setback of 10 or more feet and a height of up to 50 feet, but could not be rebuilt with a 5 feet setback and a height of 60 feet.
  - 2. Time Limit. If such existing use is to be rebuilt, the property owner must apply for a permit to replace or reconstruct the structure within one year.
    - a. If, due to events beyond his/her control, the applicant is unable to replace or reconstruct said structure, he/she may apply annually for a renewal of the permit, which shall be issued at no additional cost, until replacement of the structure is completed.
    - b. Failure to renew the permit annually shall constitute abandonment, and the grandfather status will be terminated.

**ARTICLE 7  
PARKING**

**701. MINIMUM NUMBER OF PARKING SPACES.**

- A. Dwellings. Every dwelling shall provide sufficient parking spaces, located off of roads, to provide for reasonably expected demand. It is recommended that one parking space is provided per one bedroom for units that may be occupied by more than one family, or 2 parking spaces per dwelling for other housing.
- B. Employees. A minimum average of 1 off-street parking space shall be provided for each employee working during peak periods who does not live on-site.
- C. Size. Outdoor parking spaces shall have a minimum size of 9 by 18 feet.
- D. Surface. Parking spaces shall be constructed of stone, asphalt, concrete, paving blocks or similar material.

**702. HANDICAPPED PARKING.** To comply with the Federal Americans With Disabilities Act, the following minimum amounts of parking spaces shall be provided:

- A. Number of Spaces. Any lot including 4 or more off-road parking spaces shall include a minimum of one handicapped space. The following number of handicapped spaces shall be provided, unless a revised regulation is officially established under the Federal Americans With Disabilities Act:

TOTAL NUMBER OF PARKING SPACES ON THE LOT	REQUIRED MINIMUM NUMBER/PERCENT OF HANDICAPPED PARKING SPACES
4 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2% of required number of spaces
1,001 or more	20 plus 1% of required number of spaces over 1,000

- B. Location. Handicapped parking spaces shall be located where they would result in the shortest reasonable accessible distance to a handicapped accessible building entrance. Curb cuts shall be provided as needed to provide access from the handicapped spaces.
- C. Minimum Size. Each required handicapped parking space shall be 8 by 18 feet. In addition, each space shall be adjacent to a 5 feet wide access aisle. Such access aisle may be shared by 2 handicapped spaces by being placed between them. However, 1 out of every 8 required handicapped parking spaces shall have an adjacent access aisle of 8 feet width instead of 5 feet.
- D. Slope. Handicapped parking spaces shall be located in areas of less than 6 percent slope in any direction.
- E. Marking. All required handicapped spaces shall be well-marked by clearly visible signs or pavement markings. Blue paint is recommended.
- F. Paving. Handicapped parking spaces and adjacent areas needed to access them with a wheelchair shall be covered with a smooth surface that is accessible with a wheelchair.

**ARTICLE 8  
ADMINISTRATION**

**801. ZONING INSPECTOR.**

- A. Appointment. This Ordinance shall be administered and enforced by a Zoning Inspector who shall be appointed by the County Commission of Tucker County. The Zoning Inspector shall be a resident and freeholder of the area regulated by this Ordinance, and a person of good moral character.
- B. Authority of Zoning Inspector. The Zoning Inspector shall be authorized and empowered to do the following:
1. Permits. After acceptance and review of a written and signed application and any accompanying plans and plats, the Zoning Inspector shall issue permits under this Ordinance, if the application demonstrates that such structures and uses will comply with this Ordinance.
  2. Inspections. The Zoning Inspector may inspect completed buildings, development projects, lands, sewage systems, water systems, other improvements, businesses and other uses to determine whether or not such are in compliance with this Ordinance.
  3. Variances and Special Exceptions. The Zoning Inspector shall review and accept applications for variances to requirements of this Ordinance or for approval of uses permitted by special exception by this Ordinance, for a decision by the Board of Appeals, in accordance with Chapter 8, Article 24, Section 55 of the West Virginia Code, as amended.
  4. Fees. The Zoning Inspector shall collect fees from applicants for permits under this Ordinance. An application shall not be considered complete until all fees required by this Ordinance are paid in full.
    - a. Said fees shall be deposited in an interest bearing checking account in a bank or savings and loan association, the funds of which are guaranteed by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. Said account shall be in the name of the Canaan Valley Zoning District. The Zoning Inspector shall be bonded in the amount of at least \$10,000.00 by a bonding company qualified to do business in the State of West Virginia and approved by the Insurance Commissioner of West Virginia.
  5. Expenses and Compensation. The Zoning Inspector may draw funds upon said account for the payment of administrative costs of said Zoning Inspector including payment of such fees or salary as may be approved by the Tucker County Commission as compensation for: services rendered by the Zoning Inspector, reimbursement of actual reasonable and necessary expenses, and actual costs of clerical and office expenses incurred by the Zoning Inspector in the performance of his/her duties.
    - a. The receipts and expenditures of said office shall be audited from time to time by the Auditor of the State of West Virginia, or his/her designee. The Zoning Inspector shall be required to keep such records, journals and logs as may be required from time to time by the Tucker County Commission and the West Virginia State Auditor.

6. Records. The Zoning Inspector shall keep and preserve all applications for building permits and all requests for exceptions, special exceptions and variances from this Ordinance; to keep and preserve all building plans, development plans, plats, maps and other documents submitted to the Zoning Inspector in the course of his/her duties.
  7. Additional. The Zoning Inspector may perform such additional tasks and duties as may be prescribed by the Tucker County Commission and by any rules and regulations adopted by the Tucker County Board of Zoning Appeals from time to time.
- B. Term and Removal of Zoning Inspector. The Zoning Inspector shall be appointed and employed by the Tucker County Commission. His/her term of office shall be for a period of three years, and he/she may be reappointed. He/she may be removed during such term of office for: a) malfeasance, misfeasance or nonfeasance; or b) for willful, arbitrary and capricious action in the performance of his/her duties.

## **802. PERMIT PROCESS.**

### **A. Applications and Permits.**

1. Development Permit. It shall be unlawful for an owner, tenant, user or operator of any lands, business or structure within the area regulated by this Ordinance to permit or do the following or to officially record a subdivision plat or condominium or a new lot until such person or entity has filed with the Zoning Inspector an application for a Development Permit, and the Zoning Inspector determines the application complies with this Ordinance and issues such Permit:
  - a. To establish a new non-residential use, or expand the non-residential use of land or an existing building; or
  - b. To undertake the development of any attached housing or resort project; or
  - c. To undertake a "Planned Development" as provided in Section 405; or
  - d. To create a new lot, new subdivision or change existing lot lines (other than a simply resolution of a disputed boundary lot line).
2. Building Permit. It shall be unlawful for an owner, tenant, user or operator of any lands, business or structure within the area regulated by this Ordinance to permit or do the following until such person or entity has filed with the Zoning Inspector an application for building permit, and until the Zoning Inspector has issued a building permit certifying that the plans and intended uses of such lands, use and structures comply with this Ordinance:
  - a. To erect, expand or extend any structure, the total cost of which will exceed \$500.00; or
  - b. To move any structure.

3. Plans. Any application for a building permit shall include sufficient written plans, plats, location drawings and a description of the proposed uses to allow the Zoning Inspector to determine compliance with this Ordinance. A site plan, at a minimum, shall show the approximate location of any proposed new or expanded building, road and driveway.
    - a. Proposed Covenants. Applicants proposing a subdivision are strongly encouraged to submit a proposed set of deed restrictions/restrictive covenants that will assist in carrying out Section 103 of this Ordinance.
  4. Non-Residential Buildings or Attached Housing. As part of an application for any permit for a new non-residential principal building or new townhouses or apartments, an applicant is strongly encouraged to provide an architectural sketch of the proposed typical exterior of the building(s) and a description of the types and colors of exterior building materials.
- B. Violations. It shall be unlawful for an owner, tenant, user or operator of any lands, use or structure to accomplish or permit any action which is prohibited by any provision of this Ordinance or to fail to do any action which is required of him/her by any provision of this Ordinance unless he/she is specifically exempt under Article 6, or unless he/she has obtained a written variance in accordance with this Ordinance.
- C. Time Limits. If the Zoning Inspector determines that the plans and intended uses of such lands, use and structures comply with this Ordinance, he/she should issue the building permit within 7 business days.
1. Time Limit on Start of Work. If the work described in any building permit has not begun within 180 days from the date of issuance thereof, said permit shall expire and shall be cancelled by the Zoning Inspector; and written notice thereof shall be sent to the applicant. The Zoning Inspector may extend the time limit to a total of one year if the applicant proves good cause. See exceptions below and in Section 602.D.
  2. Time Limit on Completion. If the work described in any building permit has not been completed within 2 years of the date of issuance thereof, said permit shall expire and be cancelled by the Zoning Inspector, and written notice thereof shall be given to the applicant, together with notice that further work as described in the cancelled permit shall not proceed unless and until a new building permit has been obtained. The Zoning Inspector may extend the time limit to a total of 3 years if the applicant proves good cause. See exceptions below and in Section 602.D.
  3. Phased Developments. A development application may be approved by the Zoning Inspector or Board of Zoning Appeals with clearly established phases of construction. In such case, the Zoning Inspector or Board of Zoning Appeals may establish longer time limits for the completion of a development than are stated above.
    - a. However, each phase shall be designed to allow it to comply with this Ordinance and function independently, in case later phases are not completed.
    - b. **Applicants are strongly encouraged to submit a site plan for an entire development, as opposed to small piecemeal areas. To provide an**



**incentive, no changes to this Ordinance shall adversely affect approved aspects of a development plan that received a permit under this Ordinance for 5 years after such permit is granted.**

- D. Denial. If the Zoning Inspector determines that such plans or intended uses do not comply with this Ordinance, he/she shall deny a written application in writing, stating one or more reasons for such denial.
- E. Review Board. An advisory Review Board shall serve in an advisory capacity to the Zoning Inspector and/or Board of Zoning Appeals. **Applicants are strongly encouraged to seek an advisory review from this Review Board.** The Zoning Inspector, at his/her discretion, may refer any application to the Review Board. This Review Board may provide advice to the Zoning Inspector and the applicant concerning the intent and meaning of provisions of this Ordinance. The Review Board shall consist of a maximum of 13 members, appointed by the County Commission, who should have overlapping terms. Each member of the Review Board shall live within, work within, or own property or a business within the area regulated by this Zoning Ordinance.
- F. Fees. The application for any permit under this Ordinance, or for modification or expansion thereof, shall be filed with an application fee to be determined as follows, unless such fees are increased by future resolution by the County Commission:
1. Construction of a building for a utility or detached accessory building or farm or livestock buildings shall be charged at a rate of \$0.07 per square foot.
  2. Construction of any other buildings shall be charged at a rate of \$0.15 per square foot of total new building floor area.
  3. Remodeling shall, by itself, be exempt from payment of a fee.
  4. A change of use of a building shall require a fee of \$75.00.
  5. Signs shall be charged at a rate of \$35.00 for each sign greater than 2 square feet in sign area.
  6. For a development permit, the initial project application fee shall be \$75.00, except such fee shall be \$300.00 for a project involving 10 or more dwelling units or over 20,000 square feet of non-residential building floor area.
    - a. In addition, after a development permit is issued, construction occurring within the project shall also be charged according to the above rates at the time a building permit is issued.
- G. Recording. Proposed new lots and condominiums shall be recorded in the County Clerks Office prior to the sale of any lot or condominium unit. The Zoning Inspector shall allow an approved development to be recorded in logical phases, while still maintaining the right of the applicant to develop the entire development that was approved, within the provisions of Section 802.C.

### **803. ENFORCEMENT AND PENALTIES.**

- A. Enforcement. The Zoning Inspector shall afford any person or entity charged with a violation of this Ordinance with at least minimal due process of law in effecting abatement or removal of the violation. A written notice of violation shall be sent or delivered, which shall state the specific alleged violation(s). Such notice shall state that

there is a right to appeal to the Board of Zoning Appeals, provided that a written application is made to the Zoning Inspector within a maximum of 30 days of receipt of the notice.

1. The alleged offender shall be allowed a minimum of 5 days after a written notice of violation is delivered to remove or abate the violation. The Zoning Inspector may specify a longer period if he/she determines such is necessary. If the violation is not removed or abated within said period of time, the Zoning Inspector shall be empowered to resort to the remedies afforded under this Ordinance and State law.

**B. Violation of Ordinance.**

1. Any violation of this Ordinance shall constitute a misdemeanor in accordance with the provisions of Chapter 8, Article 24, Section 68 of the West Virginia Code, as amended. Upon conviction, a violator shall be fined not less than \$10.00 nor more than \$300.00 per violation. Each day that a violation continues shall constitute a separate offense.
2. In addition to the foregoing, any structure which is erected, raised, modified or converted in violation of any provision of this Ordinance shall constitute a common nuisance. Likewise, any land or premises used in violation of any provision of this Ordinance shall constitute a common nuisance. The owner of such structure, land or premises shall be liable for maintaining a common nuisance.

**C. Injunctive Relief.** In accordance with the provisions of Chapter 8, Article 24, Sections 54 and 67 of the West Virginia Code as amended, the Zoning Inspector, the Board of Zoning Appeals or the Tucker County Planning Commission, or their designees, may:

1. seek an injunction in the Circuit Court of Tucker County to restrain a person, legal entity or unit of government from violating provisions of this Ordinance; and/or
2. seek a mandatory injunction in such Circuit Court directing a person, legal entity or unit of government to remove a structure erected in violation of the provisions of this Ordinance.

**D. Costs.** If an injunctive action is successful, the respondent shall bear the costs of the action.

**804. BOARD OF ZONING APPEALS.**

- A. Organization.** In accordance with the provisions of Chapter 8, Article 24, Section 51 of the West Virginia Code, as amended, the existing Tucker County "Board of Zoning Appeals" is hereby continued in full effect. Such Board shall consist of five members to be appointed by the Tucker County Commission. The members of said Board shall be individuals who are freeholders of Tucker County and at least three-fifths of said members shall have been residents of the Canaan Valley Zoning District for at least ten years preceding the time of their respective appointments. A member of the Board of Appeals shall not hold elective or other appointive office in County government, such Planning Commission membership.

1. Expenses. Members shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties.
  2. Terms. The existing terms of office shall be continued. Each appointment shall be for a 3 year term. If a vacancy occurs, by resignation or otherwise, among members of the Board, the Tucker County Commission shall appoint a member for the unexpired term.
- B. Officers, Quorum, Compensation of Staff. At its first meeting of each year, the Board of Zoning Appeals shall elect a chairperson and vice chairperson from its membership. The vice chairperson shall have the authority to act as chairperson during absence or disability of the chairperson.
1. A majority of the members of the Board of Zoning Appeals shall constitute a quorum. No action of the Board shall be official, however, unless authorized by a majority of all of the members of the Board.
  2. The Board of Zoning Appeals may appoint and fix the compensation of a secretary and such employees as are necessary for the discharge of its duties, provided such is in conformity to and in compliance with a budget established by the Tucker County Commission.
- C. Offices; Appropriation for Expenses. The Tucker County Commission shall provide the Board with suitable offices for the holding meetings and preserving plans, maps, documents and accounts, and shall provide by appropriation a sum sufficient to defray the reasonable expenses of the Board.
- D. Board Regulations, Procedures, and Records. The Board of Zoning Appeals may adopt such rules and regulations concerning the filing of appeals, applications for variances and special exceptions, the giving of notice and the conduct of hearings as shall be necessary to carry out its duties under the terms of this article.
1. The Board shall keep minutes of its proceedings, keep records of all official actions and shall record the vote on all actions taken. All minutes and records shall be filed in the office of the Board and shall be public records.
- E. Board's Authority. The Board of Zoning Appeals shall have the authority to:
1. Hear and determine appeals from and review any order, requirement, decision or determination made by the Zoning Inspector,
  2. Permit and authorize permitted "special exceptions" to the regulations of this Ordinance only as specifically authorized by this Ordinance, and
  3. Authorize upon appeal in specific cases one or more variances from provisions of this Ordinance, provided that the applicant proves such variance:
    - a. will be contrary in the public interest,
    - b. is needed because of special conditions that would cause unnecessary hardship if the Ordinance would be literally enforced,
    - c. would still allow the spirit of this Ordinance to be observed and substantial justice done, and

- d. is not being requested because of a hardship that was created by actions of the applicant.

F. Special Exceptions. If a use is listed as a permitted special exception use, then the Board of Zoning Appeals shall approve the use if the applicant proves that the application will meet all specific requirements of this Ordinance, and if the Board determines that the following additional standards will be met:

1. The use will not threaten a significant hazard to public health or safety.
2. The use will include appropriate measures to properly manage stormwater runoff and erosion.
3. The use will not have significant negative impacts on the character of any existing residential area.
4. The use will involve appropriate site planning and design measures to reasonably minimize its impacts upon important natural features and scenic areas.
5. The development will meet Section 305 regarding Emergency Access.

G. Conditions. The Board of Zoning Appeals may place reasonable conditions of the approval of a variance or a special exception, as are needed to protect the public health and safety, assist in assuring compliance with Federal and State regulations, and protect the character of the surrounding area. Such conditions may include but are not limited to: limits on the hours of operation of a business, requirements for additional setbacks or requirements for additional landscaping.

H. Authority. When exercising its authority in response to a matter properly brought before the Board, the Board of Zoning Appeals may reverse, affirm or modify a determination or action of the Zoning Inspector.

I. Persons With Disabilities. After the proper submittal of a completed written application, the Board of Zoning Appeals shall have the authority to grant a special exception that modifies specific requirements of this Ordinance if the applicant proves to the satisfaction of the Board of Zoning Appeals that:

1. such modifications are necessary to provide a "reasonable accommodation" under the Americans With Disabilities Act and/or the Federal Fair Housing Act, as amended, and
2. such modifications are needed for persons who the applicant proves have "disabilities" as defined in and protected by such Federal laws.

## **805. APPEALS TO BOARD AND COURT.**

A. Appeal from Decision of Zoning Inspector. An appeal taken from any order, requirement, decision or determination made by the Zoning Inspector shall be filed in writing with the Zoning Inspector within 30 days after such action. An appeal shall follow any form that may be prescribed in writing by the Board. An appeal shall specify the grounds for the appeal, and the exact appeal that is being sought. The Zoning Inspector, upon request of the Board, shall transmit to it all documents, plans and papers constituting the record of the action from which the appeal is taken.

B. Hearing of Appeal. The Board of Zoning Appeals shall fix a reasonable time for the hearing of an appeal. Public notice shall be given in accordance with the provisions of Chapter 8, Article 24, Section 18, of the West Virginia Code as amended. Additionally, due notice shall be given the interested parties. At the hearing, any party may appear in person, by agent or by attorney at law licensed to practice in this State.

1. When an appeal has been taken and filed with the Board of Zoning Appeals, all proceedings and work on the premises in question shall be stayed unless the Zoning Inspector certifies to the Board of Zoning Appeals that by reasons of facts provided to the Zoning Inspector, a stay would cause imminent peril to life or property.
  - a. If such certification is made, proceedings or work on the premises shall not be stayed except by a restraining order which may be granted by the Circuit Court of Tucker County, upon application therefore, on notice to the Zoning Inspector and to the owners of the premises affected and on due cause shown.

C. Petition to Court. Every decision or order of the Board of Zoning Appeals shall be subject to review by certiorari. Any person or persons jointly or severally aggrieved by any decision or order of the Board may present to the Tucker County Circuit Court a petition duly verified, setting forth that such decision or order is illegal in whole or in part, and specifying the grounds of such alleged illegality. The petition must be presented to the Court within 30 days after the date of the decision or order of the Board complained of.

D. Notice of Appeal.

1. Upon filing a petition for a writ of certiorari with the Clerk of the Circuit Court, the petitioner shall cause a notice to be issued and served by the Sheriff of said county upon which the adverse party or parties, if any, as shown by the record of the appeal in the office of the Board of Zoning Appeals, and upon the chairperson or secretary of the Board of Zoning Appeals.
2. The adverse party or parties shall be any property owner whom or which the record of the Board of Zoning Appeals shows to have appeared at the hearing before the Board in opposition to the petitioner. If the record shows a written remonstrance or other document opposing the request of petitioner containing the names of more than three property owners, the petitioner shall be required to cause notice to be issued and served upon the three property owners whose names first appear upon the remonstrance or document. Notice to the other parties named in the remonstrance or document shall not be required.
3. The notice shall state that a petition for a writ of certiorari has been filed in the Circuit Court asking for a review of the decision or order of the Board of Zoning Appeals, shall designate the premises affected and shall specify the date of the decision or order complained of.
4. Service of the notice by the Sheriff on the chairperson or secretary of the Board of Zoning Appeals shall constitute notice to the Board and to the county and to the Zoning Inspector and no further summons or notice with reference to the filing of such petition shall be necessary.

E. Action of Court. Upon presentation of a petition for a writ of certiorari, the Circuit Court, or a judge thereof in vacation, shall direct the Board of Zoning Appeals to show cause within 20 days from the date of such citation why a writ of certiorari should not be issued.

1. If such Board fails to show to the satisfaction of the court or judge that writ should not issue, then the court or judge may allow a writ of certiorari directed to the Board of Zoning Appeals. The writ shall prescribe the time in which a return shall be made to the Board. This time shall not be less than 10 days from the date of issuance of the writ and may be extended by the court or judge thereof.
- F. Stay of Work. The allowance of the writ of certiorari shall not stay proceedings or work on the premises affected by the decision or order to be brought up for review.
1. The court or judge may, however, upon application and on notice to all parties to the decision or order and on due cause shown grant such relief as the circumstances of the case may require, including an order staying the proceedings or work until final determination of the case by the court or judge thereof.
  2. Such staying order may be issued by the court or judge without requiring the petitioner to enter into a written undertaking with the adverse party or parties affected thereby for the payment of damages by reason of such staying order.
- G. Return. The return to the writ of certiorari by the Board of Zoning Appeals must concisely set forth such facts and data as may be pertinent and present material to show the grounds of the decision or order appealed from. The return must be verified by the secretary of the Board.
1. The Board shall not be required to return the original papers acted upon by the Board. It shall be sufficient to return certified copies of all or such portion of the papers as may be called for by the writ.
- H. Action by Circuit Court. The court may consider and determine the sufficiency of the allegations of illegality contained in the petition without further pleadings and may make a determination and render a judgment with reference to the legality of the decision or order of the Board of Zoning Appeals on the facts set out in the petition and return to the writ of certiorari.
1. If it shall appear to the court that testimony is necessary for the proper disposition of the matter, the court or judge may take evidence to supplement the evidence and facts disclosed by the petition and return to the writ of certiorari, but no such review shall be by trial de novo.
  2. In passing upon the legality of the decision or order of the Board of Zoning Appeals, the court or judge may reverse or affirm, in whole or in part, or may modify such decision or order.
- I. Appeal from Circuit Court. An appeal may be taken to the Supreme Court of Appeals of this State from the final judgment of the court reversing, affirming or modifying the decision or order of the Board of Zoning Appeals within the same time, in the same manner and upon the same terms, conditions and limitations as appeals in other civil cases.

**ARTICLE 9  
DEFINITIONS**

The following terms shall have the following meanings:

1. Adult Use. A use with one or both of the following characteristics:
  - a. A significant portion of all of the items offered for sale or rent include books, magazines, films, videotapes and similar materials which is distinguished by an emphasis on the display or description of uncovered male or female genitals and/or human sexual activities.
  - b. Persons display uncovered male or female human genitals or female breasts in relation to some form of monetary compensation.
2. Board or Board of Zoning Appeals. Tucker County Board of Zoning Appeals.
3. Building. A structure having a roof and walls and which is intended as a work area, dwelling, storage area or animal shelter. See also "Principal Building."
4. Building, Height of. The height measured from the average finished grade ground level along the side of the building nearest the vehicular access driveway or roadway, private or public, to either the highest point of a flat roof or to the point one-half the distance between the eaves and the highest point of a pitched roof.
5. Building Permit. An improvement location permit as defined in Chapter 8, Article 24, Sections 36 and 37, of the West Virginia Code, as amended.
6. Campground. A place where tents are erected for temporary shelter and/or transient motor homes, travel trailers and recreational vehicles are parked.
7. Commercial Construction. New construction of a facility not designed for use as a residence nor designed for a utility purpose.
8. Group Home. The use of a lawful dwelling unit that involves the care and supervision who need special oversight by paid in-house staff because of a physical handicap, old age, mental retardation, or another "disability" or "handicap" protected under the Federal Fair Housing Act Amendments of 1989 and/or the Americans With Disabilities Act of 1991, as amended. This use shall not permit the housing of persons who could reasonably be considered a threat to the physical safety of others.
9. Home Business. A routine, accessory and customary non-residential use conducted within or administered from a dwelling or its accessory building, and which is primarily conducted by a resident of the dwelling. See standards in Section 202.
10. Impervious Surface. Areas covered by roofs, concrete, asphalt, compacted stone or similar man-made surfaces.

11. Maximum Average Density. The maximum permitted residential development on a tract. Such density shall be calculated based upon the total number of existing and proposed dwelling units divided by the total land area of all lots in a Planned Development. (Note: Additional areas of land outside of the Planned Development may be permitted to be included under Section 405.B, such as open space within a 2,000 feet radius.)
12. Mobile Home. A detached structure that meets the following standards:
  - a. A unit which is intended to serve as a dwelling and which is designed to be transported on roads on either attached wheels or some form of trailer.
  - b. It retains the frame upon which it was constructed and transported, and is not designed to be supported by a conventional perimeter foundation.
  - c. It arrives at the site where it is to be occupied in one or two substantial pieces complete and ready for occupancy except for the following: minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundation, connection to utilities and the like.
13. Mobile Home Park. A lot used or intended to accommodate two or more mobile homes for temporary or permanent purposes.
14. Mobile Home Sales Lot. A lot, site or parcel of land where unoccupied mobile homes are parked for inspection and sale.
15. Ordinance, This. The Canaan Valley Zoning Ordinance, as amended.
16. Planned Development. A proposed project that will meet the standards of Section 405 of this Ordinance and be approved under such section. A Planned Development may include a mix of housing types, including but not limited to: single family detached houses, twin houses, townhouses and apartments. Such housing may sold in fee-simple or condominium ownership, be rented, or involve time-shares. A Planned Development may also include motel/hotel and non-residential uses that are permitted by this Ordinance.
17. Principal Building. The building in which the primary or main use of the lot is conducted.
18. Project. Development of any land subdivision, multi-family housing, resorts, ponds and lakes.
19. Public Road. A road owned and/or maintained by the West Virginia Division of Highways.
20. Racetrack. A site upon which races are held more than twice annually and at which admission charges for observers are imposed and at which awards, money or other prizes are given to competitors.
21. Remodeling. Any remodeling, maintenance and repair of an existing structure that does not increase the square footage of the structure.
22. Resident. For the purpose of Section 804, a "Resident" shall be a person who maintains their primary legal address within the Canaan Valley Zoning District, or who otherwise resides within the Zoning District a minimum of six months of the year.



23. Residential Construction. New construction of a structure which is designed to be used or be occupied as a residence, or which is serving that purpose.
24. Signs. Any object, device, display or structure, or part thereof, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, fixtures, illumination or projected images.
25. Sign, Freestanding. A permanent sign supported by a permanent structure, other than a building, that is affixed to the earth.
26. Structure. A man-made object having a stationary location.

INDEX

	<u>Section Number</u>
Adult Uses . . . . .	202
Amusements . . . . .	302.C.
Appeals to Board and Court . . . . .	805
Board of Zoning Appeals . . . . .	804
Buffer Yards . . . . .	307
Campgrounds . . . . .	202
Concerts . . . . .	301.A.
Creeks and Rivers, Setbacks from . . . . .	303.C.
Definitions . . . . .	Article 9
Density . . . . .	404
Emergency Vehicle Access . . . . .	305
Enforcement . . . . .	803
Erosion Control . . . . .	304
Exterior Building Materials . . . . .	103
Fees . . . . .	802.E.
Fences . . . . .	402.A.
Flood-Prone Areas . . . . .	306
Group Homes . . . . .	202 & Article 9
Height . . . . .	403
Home Businesses . . . . .	202
Junk and Junk Vehicles . . . . .	302.A.
Landscaping and Buffer Yards . . . . .	307
Lighting of Signs and Buildings . . . . .	505.D.
Mineral Extraction . . . . .	202 & 301.A.
Natural Features . . . . .	303
Non-conformities . . . . .	Article 6

*Canaan Valley Zoning Ordinance*

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	<u>Section No.</u>
Parking . . . . .	Article 7
- Handicapped Parking . . . . .	702
Penalties . . . . .	803
Permits . . . . .	802
- Time Limits on . . . . .	802.C.
Planned Development . . . . .	405
Pre-Existing Uses and Plans . . . . .	Article 6
- Rebuilding of . . . . .	604
- Safeguarding of . . . . .	602
Preserved Open Space . . . . .	406
Prohibited Uses . . . . .	302
Purpose of District . . . . .	201
Purposes of Ordinance . . . . .	102
 Recording of Plats . . . . .	 802.C. & 802.F.
Review Board . . . . .	802.E.
 Sawmills . . . . .	 302.D.
Setbacks from Property Lines . . . . .	402.B.
Setbacks from Roads . . . . .	402.A.
Sewage Service . . . . .	401
Signs . . . . .	Article 5
- Billboards . . . . .	505
- Exemptions . . . . .	502
- General Provisions . . . . .	505
- Lighting of Signs . . . . .	505.D.
- Permits . . . . .	501
- Spacing of . . . . .	504
- Temporary . . . . .	503
Steep Slopes . . . . .	303.B.
Stormwater Control . . . . .	304
 Time Limits on Permits . . . . .	 802.C.
Tree Protection Guidelines . . . . .	303.D.
 Uses Permitted . . . . .	 202
 Violations . . . . .	 803
 Water Service . . . . .	 401
Waterways, Setbacks from . . . . .	303.C.
Wetlands . . . . .	303.A.
 Zoning Inspector . . . . .	 801

STATE OF WEST VIRGINIA,  
Tucker County Clerk's Office:

Be it remembered that on this 28th day of Aug., 1998  
the foregoing Zoning Ordinance, with the certificate  
thereto, was this day presented in said office and admitted to record.

10:54 A.M. Teste Gina B. Buchanan, Clerk

By W.W.

ADMITTED TO RECORD  
98 AUG 28 AM 10:54  
MAILED 26  
#3  
JUL 27 1998  
FBI - BOSTON  
RECEIVED  
COMMUNICATIONS SECTION  
JUL 27 1998