2020

Town of Berryville

Zoning Ordinance

ZONING ORDINANCE OF THE TOWN OF BERRYVILLE, VIRGINIA

Whereas, by act of the General Assembly of Virginia as provided in Chapter 11, Article 8, Sections 15.1-496 through 15.1-498, Code of Virginia and amendments thereto, "the governing body of any county or municipality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape, and size as it may deem best suited to carry out the purposes of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the following:

(a) The uses of land, buildings, structures, and other premises for agricultural business industry, residential, floodplain, and other specific uses; (b) The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures; (c) The areas and dimensions of land, water, and air space to be occupied by buildings, structures, and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; (d) The excavation or mining of soils or other natural resources."

Therefore, be it ordained by the Town Council of Berryville, Virginia, for the purposes of promoting the health, safety, or general welfare of the public and of further accomplishing the objectives of Section 15.1-486, that the following be adopted as the Zoning Ordinance of Berryville, Virginia, dated April 3, 1956. To these ends, this Ordinance has been designed (1) to provide for adequate light, air, convenience of access, and safety from fire, flood, and other dangers; (2) to reduce or prevent congestion in the public streets; (3) to facilitate the creation of a convenient, attractive, and harmonious community; (4) to facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports, and other public requirements; (4) to protect against destruction of or encroachment upon historic areas; (6) to protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities, existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, panic, or other dangers; and (7) to encourage economic development activities that provide desirable employment and enlarge the tax base.

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ARTICLE I – DEFINITIONS

SECTION 100 - GENERAL PROVISIONS

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

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

The word "shall" is mandatory; "may" is permissive.

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" includes the word "structure;" the word "lot" includes the words "plots" and "parcel."

The word "used" shall be deemed also to include "erected," "reconstructed," "altered," "placed," or "moved." The terms "and use" and "use of land" shall be deemed also to include "building use" and "use of building."

The word "State" means the Commonwealth of Virginia.

The word "Town" means the town of Berryville, Virginia.

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

The North American Industrial Classification System (NAICS) Manual, U.S. Office of Management and Budget, 1997, shall be used to define the uses and assist in the determination of the status of proposed uses in zoning districts using the NAICS Codes for the list of Permitted Uses, Accessory Uses, Uses allowed by Special Permit, and Prohibited Uses.

SECTION 102 - SPECIFIC TERMS

access - A public or private right-of-way providing the ability to enter, approach, or pass to and from one area to another area.

5/00 **accessory building** - A building subordinate to, and located on the same lot with a main building, the use of which is clearly incidental to that of the main building or to the use of the land, and which is not attached by any part of a common wall or roof to the main building. One accessory building of 150 square feet or less may be erected on a lot without the existence of a main building on the lot.

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

2/90 **active community open space** - That open space within the boundaries of a given lot that is so designed for recreational purposes to include--but not be limited to--such uses as ball fields, tennis, shuffleboard, or multi-purpose courts, swimming pools, golf courses, play lots or playgrounds, and walking, bicycle, or bridle trails.

Administrator, The - The official charged with the administration and enforcement of the Zoning Ordinance.

alley - A public right-of-way which affords pedestrian access and a secondary means of vehicular access to the side or rear of property.

all-weather surface - Crushed rock, gravel, or similar surface shall constitute an all-weather surface.

amendment - A change in the Zoning Ordinance and/or Zoning Map granted by the Town Council after review and comment by the Town Planning Commission.

apartment house - A multi-family structure originally intended, arranged, or designed to be occupied by three (3) or more families each in an individual dwelling unit and living independently of each other. The number of families in permanent residence shall not exceed the number of dwelling units provided. Entranceways through the structure to the units may be either common or separate and each lot on which the building is located shall be held in single ownership, even though individual units may be sold in accordance with this Ordinance. Such term shall not include “row house” or “townhouse.”

architect, registered - A licensed professional architect, registered in the Commonwealth of Virginia by the Department of Professional and Occupational Registration as an “Architect.”

6/98 **assembly** - The fitting together of parts or components to form a complete unit. Where permitted in the C General Business District the assembly area, exclusive of storage, office, and shipping space, does not exceed 1,000 square feet. In the C District the

business is not characterized by heavy trucking other than by stocking and delivery of components and finished products or by any nuisance factors other than occasioned by incidental light. Noise levels will not exceed those normally associated with the C General Business District and no noxious chemicals are produced or used during the assembly process.

11/10 **assisted living facility** – a residential facility in which no more than eight individuals with mental illness, mental retardation, or developmental disabilities reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family.

3/03 **auction house** – an establishment, excluding community centers and publicly owned property, used for the sale of property, other than livestock, to bidders by an auctioneer. No outside storage of materials is permitted. Outside auction activities and display shall only occur in areas so designated on an approved site plan. Auction activities shall not begin prior to 8:00a.m. and shall not continue past 10:00p.m.

automobile graveyard - See **junkyard.**

automobile parking lot, commercial - A lot or portion thereof, other than an automobile sales lot, held out or used for the storage or parking of six or more motor vehicles for a consideration, where service or repair facilities are not permitted. Such parking lot shall not be considered an accessory use; nor shall it be used for the storage of dismantled or wrecked motor vehicles, parts thereof, or junk.

automobile sales lots - A lot arranged, designed, or used for the storage and display for sale of any new or used motor vehicle capable of independent operation or any type of travel trailer and recreation vehicle provided the travel trailer and recreation vehicle is unoccupied, and where repair work is done wholly enclosed within a building.

automobile service station - Any place of business with pumps and underground storage tanks, having as its purpose the servicing, at retail, of motor vehicles, but not including a paint or body shop, machine shop, or vulcanizing shop.

automobile wrecking yard - An area where destroyed, abandoned, and obsolete automobiles are disassembled and where parts of said disassembled automobiles are generally sold, and where the remaining automobile bodies and their components are temporarily stored until they can be removed or reduced to scrap metal.

basement - A story partly underground and having fifty percent (50%) or more of the total exterior wall area exposed. It shall not be occupied for residential purposes until the remainder of the building has been completed. A basement shall be counted as a story for the purpose of height requirements.

10/02 **bed and breakfast establishment** - A home occupation consisting of rooms maintained for the purpose of providing overnight sleeping accommodations and breakfast for paying guests, and subject to the following:

(1) A maximum of five (5) guest rooms, with a maximum occupancy of six (6) persons;
(2) No receptions, private parties, or similar events for a fee shall be permitted;
(3) Guest stays shall be limited to thirty (30) days;
(4) Applicable provisions and requirements of the Unified Statewide Building Code and the Virginia Department of Health shall be satisfied;
(5) Adequate on-site or off-site parking shall be provided so as not to interfere with or result in inconvenience to surrounding residences;
(6) All other provisions pertaining to home occupations shall be satisfied.

block - The property bound on all sides by one side of a street or a combination of street line, railroad right-of-way, unsubdivided land, river, live stream, stream bed, or any other barrier to the continuity of development.

Board, The - The Board of Zoning Appeals of the Town of Berryville, Virginia.

boarding house - A building where, for compensation, lodging and meals are provided for at least three (3) and not more than thirteen (13) persons. A boarding house is to be distinguished from a hotel. No provisions shall be made for cooking in individual rooms or suites.

building - A structure having a roof, supported by columns or by walls and intended for shelter, housing, or enclosure of any person, animal, or chattel.

Building Inspector - An official designated by the Town of Berryville, Virginia, to be responsible for certifying building inspections.

building, main - A building in which the principal use of the lot is conducted.

5/95 **canopy, service station** - A structure covering gasoline pumps and pumping areas, either detached from or attached to a building. Service station canopies shall be set back at least five (5) feet from any property line in the C Commercial District, and at least ten (10) feet from any property line in all other zoning districts.

cellar - A portion of a building having less than fifty percent (50%) of the total exterior wall area exposed. All portions of the total exterior wall area exposed shall be counted for the purpose of height requirements, but shall not be considered a story.

cemetery - A place of burial of the human dead, or remains of the human dead.

clinic - An establishment where human patients who are not lodged overnight are admitted for examination or treatment by physicians or dentists.

Commission, The - See **Planning Commission.**

convalescent home - See **nursing home.**

5/16 **convenience store** - A retail business with primary emphasis placed on providing the public a convenient location to quickly purchase from an array of consumable products including food, gasoline, and other convenience items. A convenience store may include prepared food and consumption of prepared food on site. A drive-through facility may also be included.

6/09 **country inn -** An establishment offering for compensation to the public not more than 12 guestrooms for transitory lodging or sleeping accommodations of not more than 14 days of continuous occupancy. As accessory uses to a Country Inn, meal services and/or permanent places of public assembly may be provided. The total maximum capacity of areas used for meal service and/or places of public assembly for special events shall be 500 people without additional permitting provided that areas to be used for this purpose, including food service and parking, are provided for on an approved site plan on the site on which the inn is located.

coverage, building or lot - Percentage of the total lot area which may be occupied by all buildings, or located under projections from buildings. Parking areas or patios constructed at ground level shall not be included in the calculation of coverage.

3/18 **craft beverage manufacturing** - A facility, licensed in accordance with §4.1 of the Code of Virginia, as amended, in which beer, wine, cider, mead, distilled spirits, or other similar beverages are brewed, fermented, or distilled in quantities not to exceed 10,000 barrels of beer, or 10,000 gallons of distilled spirits, wine, cider, or mead annually. Accessory uses shall include tasting rooms at which the consumption of beer or distilled spirits manufactured on-site occurs, accessory food sales occur, and beer and/or distilled spirits manufactured on-site are sold. Tasting rooms shall not exceed 49% of the gross floor area. Retail sales permitted as an accessory use in the L-1 Industrial Zoning District shall be limited to 10% of the gross floor area of the establishment. Parking shall be provided in accordance with the requirements for manufacturing as set forth in Section 305.19 and 305.17 of the Berryville Zoning Ordinance based on square footage of manufacturing and eating establishment use, respectively. Storage of materials used in the production process shall only be permitted within a completely enclosed structure. All other outdoor storage shall be identified on an approved Site Plan and be completely screened from public view.

curb cut - The point at which a driveway or private access road intersects a public right-of-way.

day care center - A day care program offered to two or more persons in a facility that is not a residence for any family. The persons receiving care may be either children ("child care") or adults ("elder care" or "adult care"). Such centers must be licensed, when required by the Commonwealth of Virginia.

density - The number of dwelling units permitted on one acre of land as specified herein.

development - The process of erecting, or causing to be erected, buildings or structures on a lot.

district - A portion of the Town of Berryville within which, on a uniform basis, only certain uses of land and buildings are permitted as set forth in this Ordinance, and within which certain lot areas and other uniform requirements are established.

5/13 **donation drop-off box -** Any container, storage unit, or unoccupied structure, used for the holding of donated items by the general public, including but not limited to clothing, toys, and books, with the collection of donated items made at a later date or time. This term shall not include recycling collection centers.

driveway - A space or area providing access specifically designated and reserved on a lot for the movement of vehicles from one lot to another or from a lot to a public street.
duplex - A two-family residential structure, with each unit having its own exterior entrance and its own kitchen and bath facilities; the residential units may be arranged one above the other, or be semi-detached.

dwelling - A building or portion thereof which is used or intended to be used exclusively for residential purposes and contains one or more dwelling units. A dwelling shall be constructed in accordance with the Clarke County Building Code.

dwelling, attached - A dwelling having any portion of each of two walls in common with adjoining dwellings.

dwelling, detached - A dwelling that is entirely freestanding on the same lot.

dwelling, multi-family - A structure originally arranged or designed to be composed of three or more dwelling units (an apartment house), with the number of families in residence not exceeding the number of dwelling units provided.

dwelling, semi-detached - One of two buildings, arranged or designed as dwellings, located on abutting walls without openings and with each building having a separate lot.

11/10 **dwelling, single-family** - A residential dwelling unit other than a mobile home, designed for and occupied by one family. This term shall include group homes, family day homes or assisted living facility (as defined in § 15.2-2291 Code of Virginia, 1950, as amended).

dwelling, temporary - A portable dwelling not necessarily attached to a permanent foundation. These units shall be used only as specified herein.

dwelling, two-family - A residential building containing not more than two dwelling units within the single building, with such units arranged one above the other or side by side, and such structure designed for occupancy by not more than two families.

09/06 **dwelling unit -** One room, or rooms connected together, constituting a separate independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities, and containing not less than 600 square feet of residential floor area. Notwithstanding any other provisions of this Ordinance, not more than one person for each 200 square feet of heated area may live in any dwelling unit. Each dwelling unit shall be constructed in accordance with the requirements of the Uniform Statewide Building Code.

Dwelling Unit Definitions:

modular unit - A factory-fabricated transportable building designed to be used by itself or to be incorporated with similar units at a building site and containing independent cooking and sleeping facilities, and containing not less than 600 square feet of residential floor area. The term is intended to apply to major assemblies, and does not include prefabricated panels, trusses, plumbing trees, and other prefabricated sub-elements incorporated into a structure. Such units shall meet the requirements of the Uniform Statewide Building Code.

sectional home - A dwelling made of two or more modular units transported to the home site, put on a foundation, and joined to make a single dwelling. This type of unit is included in the definition of "dwelling unit." Such units shall meet the requirements of the Uniform Statewide Building Code.

easement - A grant by a property owner of the use of his land by another party for a specific purpose. The initial property owner in the agreement may be compensated for the use of this property.

engineer, registered - A licensed Professional Engineer, registered in the Commonwealth of Virginia by the Department of Professional and Occupational Registration as an "Engineer."

09/06 **family** - One or more persons related by blood, adoption, or marriage living and cooking together as a single housekeeping unit, and also including foster children and domestic servants. For the purposes of this definition, persons related by blood are natural offspring, siblings, grandchildren, grandparents, parents, aunts, uncles, nieces or nephews. A family may also be a number of persons, not exceeding three, living and cooking together as a single housekeeping unit, though not related by blood, adoption or marriage. See also **group home** and **family day home.**

10/94 **family day home** - A day care program offered in the residence of the provider or the
12/10 home of any person in care for one through eight (8) persons, exclusive of the provider's own immediate family members and any persons who reside in the home, when at least one person receives care for compensation. The persons receiving care may be either children ("child care") or adults ("elder care" or "adult care"). *(continued)*

As provided in Section 15.1-486.5 of the Code of Virginia, as amended, any family day home serving one through eight (8) persons (as defined above) shall be considered to be for all zoning purposes, residential occupancy by a single family. Such a family day home shall be allowed wherever a family (See definition.) is permitted to occupy a dwelling. No additional permits or conditions may be imposed on such a use.

12/00 **fast-food restaurant** - Any place or premises used for sale, dispensing, or serving of food, refreshments, or beverages in automobiles, including those establishments where customers may serve themselves and may eat or drink the food, refreshments, or beverages in motor vehicles on the premises; a refreshment stand; a "drive-through" or primarily a "carry-out" establishment. Food may also be eaten inside.

fence - A barrier, usually made of posts and wire, boards, or masonry, intended to prevent escape or intrusion or to make a boundary. Trees, shrubbery, or other foliage does not constitute a fence under this definition.

floodplain - Sections of land, which are subject to periodic flooding and inundation as defined or approved by the Department of Housing and Urban Development.

2/07 Floodplain Definitions:

1. **Base Flood/100-Year Flood** - A flood that, on the average, is likely to occur once every one hundred (100) years (i.e., that has a one [1] percent chance of occurring each year, although the flood may occur in any year).
2. **Base Flood Elevation (BFE)** - The Federal Emergency Management Agency designated 100-year water surface elevation.
3. **basement** - Any area of the building having its floor subgrade (below ground level) on all sides.
4. **Board of Zoning Appeals** - The board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this Ordinance.
5. **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.
6. **flood fringe** - The portion of the floodplain lying on either side of the floodway.
7. **floodplain** - Any land area susceptible to being inundated by water from any source.
8. **floodway** - the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.
9. **freeboard** - the distance above a designated flood level for purposes of floodplain management.
10. **freeboard** - the distance above a designated flood level for purposes of floodplain management.
11. **historic structure –** any structure that is:
    1. listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the

Secretary of the Interior as meeting the requirements for individual listing on the National Register;

2. certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. individually listed on a state inventory of historic places in states with historic preservation program which have been approved by the Secretary of the Interior; or
4. individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either
   a. by an approved state program as determined by the Secretary of the Interior; or,
   b. directly by the Secretary of the Interior in states without approved programs.

12. **lowest floor -** The lowest floor of the lowest enclosed area (including basement).
13. **new manufactured/mobile home park or subdivision -**
A manufactured/mobile home park or subdivision, for which the construction of facilities for servicing the lots on which the 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 first floodplain ordinance adopted by the Town of Berryville.
14. **recreational vehicle** – a vehicle that is:
   (a) Built on a single chassis;
   (b) Four hundred (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 vehicle; and
   (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.
15. **special floodplain -** That area in which base flood elevations are provided but a floodway is not delineated.
16. **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 fifty (50) percent of the market value of the structure before the damage occurred.
17. **substantial improvement -** Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage" regardless of the actual repair work performed. The term does not, however, include either:
   (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and are the minimum necessary to assure safe living conditions, or

(b) Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure."

18. **variance** - A grant of relief from the terms of this article by the Board of Zoning Appeals of the Town of Berryville.

floor area - The floor area of a building is the sum of the gross horizontal areas of the floors of all buildings on the lot, such area to be measured from the interior faces of exterior walls. Floor area shall include the area of a basement when used for residential, commercial, or industrial purposes but not include a basement or portion of a basement used for storage or housing of mechanical or central heating equipment.

frontage - Lot width at the setback line.

funeral parlor, home, or mortuary - An establishment used for human funeral services, which must include facilities on the premises for embalming and may or may not include facilities for the performance of autopsies, other surgical procedures, or cremation.

4/99 **furniture and automobile upholstery businesses** - Any place of business that provides upholstery installation and repair services on furniture and/or vehicles and retail sales of related materials. All such activities must occur within a completely enclosed structure and no materials associated with the business may be stored outdoors.

garage, communal - A garage used for the storage of vehicles by the occupants of a lot on which such building is located.
garage, private - An accessory building used for the storage of vehicles by the occupants of a lot on which such building is located.

garage, public - An accessory building, portion of a principal building or principal building used only for the storage of four (4) or more vehicles by others than only those occupants of a lot on which such building is located.

garden apartment house - A multi-family dwelling, not exceeding three (3) stories in height, containing three (3) or more separate dwelling units, having either common or separate entrance ways on a lot held in a single ownership having yards in common, but which may also have joint facilities and services. The term "garden apartment house" shall not be constructed to include row house or "town house."

7/04 **Geotechnical Engineer** – a Virginia-Registered Professional Engineer (PE) engaged in the practice of Geotechnical Engineering, or a Virginia-Registered Professional Geologist (PG) who is engaged in the practice of Engineering Geology.

Governing Body - The Town Council of Berryville, Virginia.

10/94 **group home** - A residential facility as defined in Section 15.1-486.3 of the Code of Virginia, as amended. Such a group home shall be allowed wherever a family (See

definition.) is permitted to occupy a dwelling. No additional permits or conditions may be imposed on such a use.

hard surface - Concrete, "blacktop," and macadam, or a similar surface shall constitute a hard surface.

Health Official (Officer) - The Director of the Clarke County Department of Health or his designated deputy, or a representative of the Virginia Department of Health.

height of building - The vertical distance from the established grade of the center of the front of the building to the highest point of the roof surface of a flat roof, to the deck line for a mansard roof, to mean height level between the eaves and ridge for hip and gambrel roofs.

6/98 **high-tech (high technology) component systems** - Advanced or sophisticated devices, especially in the fields of electronics and computers.

4/91 **home occupation** - Any activity carried for gain by a resident conducted as an accessory use in the resident's dwelling unit.

4/91; 12/93 **home office** - A home occupation consisting only of an office and meeting the requirements of Section 315.2 shall be a permitted use within any residential dwelling.

2/90 **homeowners' association** - A community association, other than a condominium association that is organized in a residential development wherein individual owners share legal interests and obligations in the management and upkeep of common facilities and open spaces.

hotel - A building designed or occupied as the temporary abiding place for fourteen (14) or more individuals who are, for compensation, lodged, with or without meals, and in which no provision is made for cooking in individual rooms or suites.

6/97 **housing for older persons** - Such housing shall be in accord with Virginia Code Section 36-96.7, as amended, and pursuant to said Code Section, means housing 1) provided under any State or Federal program that is specifically designed and operated to assist elderly persons, as defined in the state or federal program; 2) intended for, and solely occupied by, persons sixty-two years of age or older; or 3) intended for, and solely occupied by at least one person fifty-five years of age or older per unit.

The following criteria shall be met in determining whether housing qualify as housing for older persons under Subdivision 3 of this Section:

(1) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons;

(2) That at lease eighty percent of the units are occupied by at least one person fifty-five years of age or older per unit; and

(3) The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older. In determining the criteria to be met, unoccupied units shall be considered, provided such units are reserved for occupancy by persons who meet the above criteria.

junkyard - Any land or building used for the abandonment, storage, keeping, collecting, or bailing of paper, rags, scrap metals, other scrap or discarded materials, or for the abandonment, demolition, dismantling, storage, or salvaging of automobiles or other vehicles not in running conditions, machinery, or parts thereof. The term 'junkyard' shall include the term 'automobile graveyard' as defined in Chapter 304, Acts of 1938, Code of Virginia, as any lot or place which is exposed to the weather upon which more than three (3) motor vehicles of any kind, incapable of being operated, are placed.

7/04 **karst feature** – karst topography is a landscape created by groundwater dissolving sedimentary rock such as limestone. Features are sinkholes, fissures enlarged by dissolution and caves.

laundromat - A building or part thereof where clothes or other household articles are washed or dry-cleaned in self-service machines with a capacity for washing not exceeding twenty-five (25) pounds dry weight and where such washed clothes and articles may also be dried or ironed and no delivery services provided in connection therewith.

laundry - A building, or part thereof, other than a laundromat, where clothes and other articles are washed, dried, and ironed or dry-cleaned.

lot - A parcel of land occupied or to be occupied by a building and its accessory buildings or by a use and its accessory uses together with such open spaces as required under the provisions of this Ordinance, having at least the minimum area required by this Ordinance for a lot in the zone in which such lot is situated, and having its principal frontage on a street which has been approved by the Town as acceptable into the Town street system.

lot, corner - A lot abutting on two or more streets at their intersections.

lot depth - The average of the horizontal distances between front and rear line of a lot measured perpendicular to the street line.

lot, interior - Any lot other than a corner lot.

lot of record - A lot that has been recorded in the office of the Clerk of the Circuit Court.

lot, through (double frontage) - A lot, other than a corner lot, that has a frontage on two streets.

lot width - The horizontal distance between the side lines of a lot measured along the building setback line.

manufacture and/or **manufacturing** - The processing and/or converting of raw, unfinished materials or products, or either of them, into articles or substances of different character, or for use for a different purpose.

4/00 **medical care facilities, licensed** - Skilled nursing facilities and nursing facility care, licensed by the Virginia Department of Health and providing 24-hour medical care to residents.

motel - An establishment consisting of a group of living or sleeping accommodations, each with a bathroom and closet space, located on a single zoning lot, and designed for use by transient automobile tourists; less than 50 percent of the living and sleeping accommodations are occupied or designed for occupancy by persons other than transient automobile tourists.

1/00 **music sales and services** - Any combination of uses including instrument repair, music lessons, recording studios and/or rental of musical instruments and accessories.

5/03 **net developable acre** - The area of a parcel of land excluding the following:

1. land in 100-year floodplains;
2. land within twenty-five (25) feet of the discernible edge of sinkholes;
3. land with slopes in excess of twenty-five (25) percent;
4. Fifty (50) percent of land with slopes between fifteen (15) and twenty-five (25) percent; and
5. land within existing public rights-of-way and easements, and land within private access easements serving other properties.

non-conforming activity (use) - The otherwise legal use of a building, structure, or tract of land that does not conform to the use regulations of this Ordinance for the district in which it is located either at the effective date of this Ordinance or as a result of subsequent amendments to the Ordinance.

non-conforming lot - An otherwise legally platted lot that does not conform to the minimum area or width requirements of this Ordinance for the district in which it is located either at the effective date of this Ordinance or as a result of subsequent amendments to the Ordinance.

non-conforming structure - An otherwise legal building or structure that does not conform with the lot area, yard, height, lot coverage, or other area regulations of this Ordinance, or is designed or intended for a use that does not conform to the use

regulations of this Ordinance for the district in which it is located either at the effective date of this Ordinance or as a result of subsequent amendments to the Ordinance.

nursing home (convalescent home, rest home) - A place containing beds for two (2) or more patients, established to render live-in and/or nursing care for chronic or convalescent patients and which is properly licensed by the State, but not including child care homes, or facilities for the care of drug addicts, alcoholics, or other patients requiring extensive and/or intensive care than is normally provided in a general hospital or other specialized hospitals. Such terms shall include group homes serving mentally retarded or other developmentally disabled persons.

open space, usable landscaped - That space on the same zoning lot and contiguous to the principal building or buildings, except as herein noted, which is either landscaped with shrubs, planted with grass, or developed and maintained for recreation purposes, and excludes that portion of the lot which is utilized for off-street parking purposes.

off-street parking area - Space provided for vehicular parking outside the dedicated street right-of-way.

overhang - Any projection, either roof, bay window, or similar cantilevered construction, which extends beyond the foundation of a structure. No such construction shall project into any required yard more than three (3) feet and no such projection shall have a vertical surface whose area is more than twenty-five (25) percent of the area obtained by multiplying the mean height of the structure by the length of the structure along the yard which is violated.

2/90 **overlay zones** - Districts that are delineated on the Zoning Map and for which requirements--in addition to those of an underlying district--are imposed as specified in the Zoning Ordinance.

parking space - An area of not less than required by this Ordinance for each automobile or motor vehicle, such space being exclusive of necessary drives, aisles, entrances, or exits, and being fully accessible for the storage or parking of vehicles.

5/06 **pharmaceutical center -** An establishment in which only pharmaceutical services are provided. Its purpose shall be limited to providing the public and various health professionals with information and articles intended for the use in diagnosis, cure, mitigation, treatment, or prevention of a disease state, including drugs and medical instruments or devices of the type used under the strict supervision of a physician in the treatment of a specific disease entity. No articles shall be displayed for sale, except for those articles directly related to the diagnosis, cure, mitigation, treatment, or prevention of a disease. Articles displayed for sale and product advertisements shall not be visible from outside the building.

2/90 **physiographic** - Of or relating to natural features of land to include--but not restricted to -- topography, soil-bearing capacities, geological characteristics, and solar siting.

planned research offices - An establishment or other facility for carrying on investigation, study, and education in the social sciences, including history, economics, political science, social studies, civics, and related disciplines, operated and maintained as a single entity of a minimum lot area of no less than three (3) contiguous acres containing one or more structures to accommodate the principal use and other uses incidental to the principal use.

Planning Commission - The Planning Commission of the Town of Berryville, Virginia.

5/94 **porches (decks)** - An open, unenclosed stoop, deck, or paved terrace which may project into a front or rear yard for a distance not exceeding eight (8) feet, and into a side yard for a distance not exceeding five (5) feet, but this shall not be interpreted to include porches or decks which may be enclosed by removable windows, fixed canopies, or screens. A porch or deck or any portion thereof shall not occupy more than 24 square feet of any side yard. A one-story bay window or a chimney may project not more than three (3) feet into any required yard area. A porch or deck shall not be included in the calculation of lot coverage.

6/03 **portable freestanding sign** – A sign having not more than two (2) faces and not exceeding three (3) feet in width by four (4) feet in height, which is placed on the ground as a stand-alone structure.

professional offices - A structure used by a person or persons, in offering a service which requires specialized knowledge gained by intensive academic preparation such as medicine, law, engineering, dentistry, and other like endeavors.

public utility - Any person, firm, corporation, municipal department, or board duly authorized to furnish and furnishing under federal, state, or municipal regulations to the public, electricity, gas, steam, communications, telegraph, transportation, water, or like utilities.

4/91 **quick service store** - Any retail establishment offering for sale prepackaged food products, household items, and other goods associated with the same and having a gross floor area of less than 5,000 square feet.

(6/10) **recreation, commercial indoor** – A sports or activity facility either open to the general public for a fee or for members and their guests, located in an enclosed building or structure designed to accommodate gatherings for athletic, training, recreational purposes, games, martial arts, and the like. Office, retail sales and rentals, food service and other uses commonly established in such facilities and related parking shall be permitted as ancillary uses and shall not occupy more than 5,000 square feet of gross floor area (not including storage) on any one lot and shall not exceed twenty-five (25) percent of total floor area for the site. The areas dedicated to ancillary uses must be indicated on an approved site plan.

12/00 **restaurant** - Any building other than a fast-food restaurant in which for compensation, food or beverages are dispensed for consumption on the premises, including, among other establishments, cafes, tea rooms, confectionery shops, and refreshment stands.

restoration, beginning of - The clearing of debris from an area, use, or structure which has been totally or partially damaged or destroyed.

resubdivision - A change in a plat of an approved or recorded subdivision or resubdivision if such change (a) affects any street layout shown on such plat; (b) affects any area reserved thereon for the public use; or (c) changes the size of any lot shown thereon, if any lots have been conveyed after the approval or recording of such plat (See **subdivision**.)

retail stores and shops - Buildings for display and sale of merchandise at retail or rendering of personal services, but specifically exclusive of coal, wood, oil storage, lumberyards, and contractor storage yards.

rooming house (lodging house) - A building other than a hotel where lodging is provided for three (3) or more persons for compensation pursuant to previous arrangements but not open to the public or transients.

2/90 **setback** - The minimum distance by which any structure or building must be separated from a right-of-way or property line, or from other structures or buildings.

10/00 **setback, front** - The minimum distance by which any main building must be separated from the front lot line. However, no main building need be set back more than the average setback of the adjacent main buildings on each side. The minimum setback for the respective zone shall be used in the calculation of the average if 1) the adjacent lot is vacant, or 2) the adjacent main building has not been legally constructed (i.e. has not received a variance, or is not considered non-conforming).

shopping center - Any conglomeration of commercial activities sharing a parcel of land that is held in single ownership and sharing parking facilities.

sign - Any display of any letter, words, numerals, figures, devices, emblems pictures, or any parts or combinations thereof, by any means whereby the same are made visible for the purpose of making anything known, whether such display be made on, attached to, or as part of a structure, surface, or any other thing.

sign, area of - The entire area within a circle, triangle, parallelogram, or trapezoid enclosing the extreme limits of writing, reproducing, emblem or any figure or similar character, together with any frame or other material or color forming an integral part of the display or used to differentiate the sign from the background against which it is placed, excluding the necessary supports or uprights on which such sign is placed. On double-faced signs, only one (1) display face shall be measured in computing total sign area where sign faces are parallel and are at no point more than two (2) feet from one another.

sign, business - A sign which directs attention to a business, commodity, service activity, or product sold, conducted or offered upon the premises where such sign is located.

sign, home occupation - A sign not exceeding two (2) square feet in area on each side directing attention to a product, commodity, or service available on the premises but which product, commodity, or service is clearly a secondary use of the dwelling.

sign, identification - A sign on the premises bearing the name of a subdivision, name of a group housing project, or of a school, college, park, church, or other public or quasi-public facility, or a professional or firm name plate, but bearing information pertaining only to the premises on which such sign is located.

sign, outdoor advertising - Any sign of any material and any character whatsoever, which is placed (including erection, construction, posting, painting, printing, tacking, nailing, gluing, sticking, carving, or other fastening, affixing, or making visible in any manner) for outdoor advertising purposes in any way whatsoever.

sign, temporary - A sign applying to a seasonal or other brief activity such as, but not limited to, summer camps, horse shows, auctions, or sale of land.

2/90 **site plan** - A plan which meets the requirements of site plan regulations adopted by the Town of Berryville, is drawn to scale, and indicates the layout of rights-of-way, structures, utilities, storage facilities, parking areas, access drives, landscaping, etc., in a proposed development.

Special Use Permit - A permit granted by Town Council, upon review and recommendation of the Planning Commission for a use permitted by the Council to occupy land and/or erected thereon for a specific purpose not yet permitted by right, but in accordance with standards or conditions and procedures included in this Ordinance or by the Town Council.

7/04 **spring** – any spring that is depicted on the most recent version of the Virginia Department of Mineral Resources Publication 102, Plate 2, Hydrogeologic Components of Clarke County, Virginia.

story - That portion of a building other than a cellar or mezzanine, included between the surface of any floor next above it, or if there is no floor above it, then the space between the floor and the ceiling next above it; a mezzanine shall be deemed a full story when it covers more than 33 percent of the area of the story beneath the mezzanine, or if the vertical distance from the floor next below it to the floor next above it is 24 feet or more.

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

7/04 **stream, intermittent or perennial** – any stream that is depicted as intermittent or perennial on the most recent U.S. Geological Survey 7-$^{1}/_{2}$ minute topographic quadrangle (scale 1:24,000).

street or **road** - A public thoroughfare, except an alley or driveway, which affords vehicular traffic circulation and principal means of access to abutting property.

street line - The dividing line between a street or road right-of-way and contiguous property.

structural alteration - Any change in the supporting members of a building or structure, such as bearing walls, partitions, columns, beams or girders, or any change in the width or number of exits, or any substantial change in the roof.

structure - See **building**.

structure, outdoor advertising - Any structure of any kind or character erected or maintained for outdoor advertising purposes, upon which any outdoor advertising sign may be placed, including also outdoor advertising statuary.

subdivision - The division of a tract or parcel of land into two (2) or more parts or lots for the purpose, whether immediate or future, of sale, conveyance, or building development expressly excluding development for agricultural purposes, and includes resubdivision. (See **resubdivision**.)

surveyor, professional - A licensed professional surveyor, registered in the Commonwealth of Virginia by the Department of Professional and Occupational Registration as a "Surveyor." This term shall also include land surveyors.

11/10 **temporary family health care structure** – A structure that shall be (i) for use by a caregiver in providing care for a mentally or physically impaired person and (ii) on property owned or occupied by the caregiver as his/her residence as a permitted accessory use as established in Section 323 of the Town of Berryville Zoning Ordinance.

theatre, indoor - A building designed and/or used primarily for the commercial exhibition of motion pictures to the general public or used for performance of plays, acts, or dramas by actors and/or actresses.

tourist home - At least three (3) and not more than eight (8) attached dwelling units forming a continuous structure, each unit being separated by unpierced common or party walls of masonry construction going through the roof of said unit, void of fenestration or means of ingress or egress from the basement through the roof with individual exterior entrances at grade and with not more than four abutting townhouses or dwelling units having the same front yard setback.

travel trailer - A vehicular, portable structure built on a chassis, as a temporary dwelling for travel, recreation, and vacation, having body width not exceeding eight (8) feet and being of any length provided its gross weight does not exceed 4,500 pounds or being of any weight provided its body length does not exceed twenty-nine (29) feet.

use - The purpose or activity for which land or buildings thereon are designed or arranged, or for which land or buildings are occupied or maintained, and shall include

any manner of performance of such activity with respect to the performance standards of this Ordinance.

variance - A relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of the Ordinance will work undue hardship on the property owner; a variance is authorized only for height, area, and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning division or district or adjoining divisions or districts, nor solely for the economic benefit of the person requesting such variance.

yard - An open space of a generally uniform width or depth on the same land with a building or group of buildings, which open space lies between the building or group of buildings or other specified points, and the nearest lot line and is unoccupied and unobstructed from the ground upward except as otherwise provided herein.

yard, front - A yard extending across the full width of the lot and lying between the adjacent street right-of-way line and the building setback line. On a corner lot the two yards lying between the main building and the intersecting streets shall be deemed front yards.

yard, rear - A yard extending across the full width of the lot and lying between the rear property line of the lot and a line drawn generally parallel to the rear lot line at such distance as may be specified herein for any district.

yard, side - A yard between the side lot line and a line drawn generally parallel thereto at such distance as may be specified herein for any district and extending from the setback line to the rear yard line. On a corner lot the side yard adjacent to a street shall extend the full depth of every such lot.

Zoning Administrator - See **Administrator**.

zoning map - The Official Zoning Map of the Town of Berryville, Virginia, and all amendments thereto.

zoning permit - a permit issued by the Zoning Administrator to the applicant before the applicant may proceed with any work affected by any provisions of this Ordinance, or begin any uses of land and/or structures as permitted by this Ordinance.

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ARTICLE II – DISTRICT REGULATIONS

SECTION 201 - R-1 RESIDENTIAL DISTRICT

201 STATEMENT OF INTENT

The R-1 District is composed of quiet, low-density residential areas plus undeveloped areas where similar residential construction appears likely to occur. The standards set forth for this district are designed to stabilize and protect the essential character of the areas so delineated, to promote and encourage a suitable environment for family life where there are children, and to prohibit all commercial activities. Development is, therefore, limited to relatively low concentration and permitted uses are limited to single-unit dwellings, plus selected additional uses such as schools, parks, churches, and certain public facilities that serve the residents of the district. No rooming houses are permitted.

201.1 USES PERMITTED BY RIGHT

Only one use and its accessory buildings and/or uses may be erected on any lot or parcel of land in the R-1 Residential District.

(a) Single-family dwellings.
(b) Schools and offices for Clarke County Public Schools and related non-profit organizations **(07/16)**.
(c) Churches.
(d) Parks and playgrounds.
(e) Off-street parking for permitted uses in the district as set forth in Section 305.
(f) Accessory buildings and Temporary Family Health Care Structures as defined; however, garages, carports, porches, and stoops attached to the main building shall be considered part of the main building. Accessory buildings may be located in a rear yard area, but shall not be located closer than five (5) feet from any property line or to any other structure. **(11/10)**
(g) Public utilities: poles, lines, distribution transformers, booster and relay stations, pipes, meters, and other facilities necessary for the provision and maintenance of public utilities, including water and sewage systems.
(h) Signs as set forth in Section 307.
(i) Travel trailers, which shall not be stored within the front setback area, and which shall be prohibited from occupancy. **(5/83)**
(j) Fences as set forth in Section 303.

201.2 USES PERMITTED BY SPECIAL PERMIT

(a) Home Occupations. **(4/86)**
(b) Planned Research Offices, as defined in Section 102.

201.3 AREA REGULATIONS

The minimum lot area shall be fifteen thousand (15,000) square feet.

201.4 SETBACK REGULATIONS

Structures shall be located thirty-five (35) feet or more from any street right-of-way which is fifty (50) feet or greater in width, or fifty (50) feet or more from the center of any street right-of-way less than fifty (50) feet in width. **(5/94)**

201.5 FRONTAGE REGULATIONS

The minimum lot width at the setback line shall be one hundred (100) feet. Minimum width at the street right-of-way line shall be fifty (50) feet.

201.6 YARD REGULATIONS

(a) Side - Each side yard shall be a minimum of fifteen (15) feet.

(b) Rear - Each rear yard shall be a minimum of thirty (30) feet in depth.

201.7 LOT COVERAGE

Any structure or structures shall not occupy more than thirty (30) percent of the total area of the lot.

201.8 HEIGHT REGULATIONS

(a) Buildings may be erected up to three (3) stories but shall not exceed thirty-five (35) feet in height.

(b) A public or semi-public building such as a school, church, or library may be erected to a height of sixty (60) feet from grade, provided that required front, side, and rear yards shall be increased one (1) foot for each foot in height over thirty-five (35) feet.

(c) Church spires, belfries, cupolas, municipal water towers, chimneys, flues, flagpoles, television antennae, and radio aerials are exempt. Parapet walls may be up to four (4) feet above the height of the building on which the walls rest.

(d) No accessory building that is within twenty (20) feet of any party lot line shall be more than one (1) story high. All accessory buildings shall be less than the main building in height.

201.9 SPECIAL PROVISIONS FOR CORNER LOTS

(a) Of the two sides of a corner lot fronting on streets, the shortest side shall be deemed to be the front.

(b) Each corner lot shall have a minimum width at the setback line of one hundred twenty (120) feet.

SECTION 202 - R-2 RESIDENTIAL DISTRICT

202 STATEMENT OF INTENT

The R-2 District is composed of medium density residential uses and open areas where similar development appears likely to occur. The standards for this district are designed to stabilize and protect the essential character of the area so designated, to promote and encourage, insofar as compatible with the intensity of land use, a suitable environment for family life. Development is, therefore, limited to low-to-medium density, and permitted uses are limited to single- and two-family dwellings plus selected additional uses, such as schools, parks, churches, and certain public facilities that serve the residents of the district.

202.1 USES PERMITTED BY RIGHT

Only one use and its accessory buildings and/or uses may be erected on any lot or parcel of land in the Residential R-2 District.

(a) Single-family dwellings.
(b) Two-family dwellings.
(c) Rooming houses.
(d) Tourist homes.
(e) Boarding houses.
(f) Schools.
(g) Churches.
(h) Playgrounds
(i) Home occupations.
(j) Public, semi-public, or governmental buildings.
(k) Off-street parking for permitted uses in the district as set forth in Section 305.
(l) Accessory buildings and Temporary Family Health Care Structures permitted as defined; however, garages and other accessory structures, such as carports, porches, and stoops attached to the main building shall be considered part of the main building. Accessory buildings shall not be located closer than five (5) feet from any property line or to any other structure. **(11/10)**
(m) Public utilities: poles, lines, distribution transformers, booster and relay stations, pipes, meters, and other facilities necessary for the provision and maintenance of public utilities, including water and sewage systems.
(n) Signs as set forth in Section 307.
(o) Travel trailers, which shall not be stored within the front setback area, and which shall be prohibited from occupancy.
(p) Fences as set forth in Section 303.

202.2 USES PERMITTED BY SPECIAL PERMIT

(a) Nursing, convalescent, or rest homes, pursuant to Section 311.
(b) Professional offices as set forth in Section 3l2. **(10/94)**
(c) Day care centers, barber, and beauty shops. **(5/95)**

202.3 AREA REGULATIONS

(a) The minimum lot area shall be eight thousand (8,000) square feet for all permitted uses.

(b) Each unit in a two-family structure arranged side by side shall be given four thousand (4,000) square feet of lot area.

202.4 SETBACK REGULATIONS

Structures shall be located thirty (30) feet or more from any street right-of-way fifty (50) feet or greater in width **(5/94)**, or forty-five (45) feet or more from the center of any street right-of-way less than fifty (50) feet in width. This shall be known as the "setback line." **(10/00)**

202.5 FRONTAGE REGULATIONS

The minimum lot width at the setback line shall be eighty (80) feet.

202.6 YARD REGULATIONS

(a) Side - Each side yard for structures less than three (3) stories shall be at least ten (10) feet. Each side yard for three-story buildings shall be at least fifteen (15) feet.

(b) Rear - The minimum rear yard shall be twenty-five (25) feet.

202.7 LOT COVERAGE

Any structure, or structures, shall not occupy more than thirty-five (35) percent of the total area of the lot.

202.8 HEIGHT REGULATIONS

(a) Buildings may be erected up to three (3) stories, but not exceed thirty-five (35) feet in height.

(b) A public or semi-public building such as a school, church, or library may be erected to a height of sixty (60) feet from grade, provided that required front, side, and rear yards shall be increased one (1) foot for each foot in height over thirty-five (35) feet.

(c) Church spires, belfries, cupolas, municipal water towers, chimneys, flues, flagpoles, television antennae, and radio aerials are exempt. Parapet walls may be up to four (4) feet above the height of the building on which the walls rest.

(d) Accessory buildings over one story in height shall be at least ten (10) feet from any lot line. All accessory buildings shall be less than the main building in height.

202.9 SPECIAL PROVISIONS FOR CORNER LOTS

(a) Of the two sides of a corner lot fronting on streets, the shortest shall be deemed to be the front.

(b) Each corner lot shall have a minimum width at the setback line of ninety (90) feet.

SECTION 203 - R-3 RESIDENTIAL DISTRICT

203 STATEMENT OF INTENT

The R-3 District is composed of high-density residential uses and open area where similar development appears likely to occur. The standards for this district are designed to stabilize and protect the character of the area so designated and create areas for apartment and townhouse construction, along with appropriate living environments. These areas are located close to employment, shopping, and other community facilities. Development is limited to high-density residential uses of various types, plus selected additional uses, such as schools, parks, churches, and certain public facilities.

203.1 USES PERMITTED BY RIGHT

Only one use and its accessory buildings and/or uses may be erected on any lot or parcel of land in the R-3 Residential District.

(a) Single-family dwellings.
(b) Two-family dwellings.
(c) Schools.
(d) Churches.
(e) Parks and playgrounds.
(f) Home occupations.
(g) Public, semi-public, or governmental buildings.
(h) Off-street parking for permitted uses in the district as set forth in Section 305.
(i) Accessory buildings and Temporary Family Health Care Structures permitted as defined; however, garages or other accessory structures, such as carports, porches, and stoops, attached to the main building, shall be considered part of the main building. Accessory buildings may be located in a rear yard area, but shall not be located closer than five (5) feet from any property line or to any other structure. **(11/10)**
(j) Public utilities: poles, lines, distribution transformers, booster and relay stations, pipes, meters, and other facilities necessary for the provision and maintenance of public utilities, including water and sewage systems.
(k) Signs as set forth in Section 307.
(l) Travel trailers, which shall not be stored within the front setback area and which shall be prohibited from occupancy.
(m) Fences as set forth in Section 303.
(n) Rooming houses.
(o) Boarding houses.
(p) Tourist homes.

203.2 USES PERMITTED BY SPECIAL PERMIT

(a) Nursing and/or convalescent homes as set forth in Section 311.
(b) Professional offices as set forth in Section 312.
(c) Townhouses as set forth in Section 309.
(d) Apartments as set forth in Section 310.
(e) Conversion of a structure originally intended and designed for occupancy as a single-family dwelling into a structure with two or more dwellings.

(f) Day care centers. **(10/94)**
(g) Barber and beauty shops. **(5/95)**
(h) Furniture and automobile upholstery businesses. **(4/99)**
(i) Banks and financial institutions with drive-through facilities. **(8/07)**

203.3 AREA REGULATIONS

(a) The minimum lot area shall be eight thousand (8,000) square feet for freestanding one- or two-family detached structures. Each unit in a two-family structure arranged side by side shall be given four thousand (4,000) square feet of lot area.
(b) The minimum lot area for the conversion of structures to a larger number of dwelling units shall be eight thousand (8,000) square feet for the first two dwelling units and two thousand (2,000) square feet for each additional dwelling unit above two.
(c) The minimum lot areas for townhouses and apartments are set forth in Section 309 and 310 respectively.
(d) The minimum lot area for other permitted uses shall be eight thousand (8,000) square feet or as otherwise specified herein. Accessory uses may be located on the same lot as the principal use without increased lot size.

203.4 SETBACK REGULATIONS

Structures shall be located thirty (30) feet or more from any street right-of-way fifty (50) feet or greater in width **(5/94)**, or forty-five (45) feet or more from the center of any street right-of-way less than fifty (50) feet in width.

203.5 FRONTAGE REGULATIONS

The minimum width at the setback line shall be seventy-five (75) feet.

203.6 YARD REGULATIONS

(a) Side - Each side yard shall be a minimum of ten (10) feet.
(b) Rear - The minimum rear yard shall be twenty-five (25) feet.

203.7 LOT COVERAGE

Any structure or structures shall not occupy more than 40 percent of the total area of the lot.

203.8 OPEN SPACE

Each dwelling created when a structure is converted to a larger number of units shall be provided with six hundred (600) square feet of usable open space per dwelling unit. Such space shall be exclusive of areas devoted to streets, alleys, and parking.

203.9 HEIGHT REGULATIONS

(a) Buildings may be erected up to three (3) stories, but not to exceed thirty-five (35) feet in height.
(b) A public or semi-public building such as a school, church, or library may be erected to a height of sixty (60) feet from grade provided that required front, side,

and rear yards shall be increased one (1) foot for each foot in height over thirty-five (35) feet.

(c) Church spires, belfries, cupolas, municipal water towers, chimneys, flues, flagpoles, television antennae and radio aerials are exempt. Parapet walls may be up to four (4) feet above the height of the building on which the walls rest.

(d) Accessory buildings over one story in height shall be at least ten (10) feet from any lot line. All accessory buildings shall be less than the main building in height.

203.10 SPECIAL PROVISIONS FOR CORNER LOTS

(a) Of the two sides of a corner lot fronting on streets, the shortest shall be deemed to be the front.

(b) Each corner lot shall have a minimum width at the setback line of eighty-five (85) feet.

SECTION 204 - C GENERAL COMMERCIAL DISTRICT

204 STATEMENT OF INTENT

The C General Commercial District covers that portion of the community intended for the conduct of general business to which the public requires direct and frequent access, but which is not characterized either by constant heavy trucking other than stocking and delivery of retail goods, or by any nuisance factors other than occasioned by incidental light and noise of congregation of people and passenger vehicles. This includes such uses as retail stores, banks, theaters, business offices, newspaper offices, printing presses, restaurants and taverns, garages and services stations, and multi-family dwellings.

204.1 USES PERMITTED BY RIGHT

In District C, structures to be erected or land to be used shall be for one or more of the following uses:

(a) Assembly halls.
(b) Assembly of high-tech components and /or systems (not including manufacturing). **(6/98)**
(c) Automobile and home appliance services.
(d) Automobile service stations (with major repair under cover).
(e) Automobile sales and service.
(f) Bakeries.
(g) Banks and financial institutions.
(h) Barber and beauty shops.
(i) Nursing homes.
(j) Churches.
(k) Day care centers. **(10/94)**
(l) Department stores.
(m) Drug stores.
(n) Dry cleaners.
(o) Fire and rescue squad stations.
(p) Fraternal and auxiliary organizations.
(q) Funeral homes.
(r) Furniture repair.
(s) Garages, public and commercial.
(t) Hardware stores.
(u) Hospitals, nursing homes, convalescent homes, rest homes.
(v) (Deleted, 1982.)
(w) Laundries.
(x) Libraries.
(y) Newspaper office buildings, including printing and publishing facilities incidental to such uses.
(z) Office buildings.
(aa) Personal and professional services.
(bb) Pet shops, but excluding boarding kennels.
(cc) Printing shops.
(dd) Federal, state, county, or town governmental offices or buildings.

(ee) Radio and television broadcasting stations and studios, or offices.
(ff) Restaurants.
(gg) Retail stores.
(hh) Single-family detached dwellings. **(3/98)**
(ii) Theaters, indoor.
(jj) (Deleted, 1982.)
(kk) Wearing apparel stores.
(ll) Public utilities: poles, lines, booster and relay stations, distribution transformers, pipes, meters, and other facilities necessary for the provision and maintenance of public utilities, including water and sewerage facilities.
(mm) Off-street parking for permitted uses in the district as forth in Section 305.
(nn) Signs as set forth in Section 307.
(oo) Fences as set forth in Section 303.
(pp) Accessory uses clearly incidental to the principal use of the lot.
(qq) Second story apartments as set forth in Section 310. **(02/14)**

204.2 USES PERMITTED BY SPECIAL PERMIT

(a) Shopping centers as set forth in Section 308.
(b) Townhouses as set forth in Section 309.
(c) First story storefront and basement apartments as set forth in Section 310. **(02/14)**
(d) Conversion of residential and/or commercial structures into buildings with a greater number of dwelling units.
(e) Public billiard parlors and poolrooms, bowling alleys, dance halls, health spas and clubs, and similar forms of public amusement only after a public hearing shall have been held by the Governing Body on an application submitted to the Body for such use. The Governing Body may request that the Planning Commission submit a recommendation to them concerning such use applications. In approving any such applications, the Governing Body may establish such special requirements and regulations for the protection of adjacent property, set the hours of operation, and make requirements as they may deem necessary in the public interest, before granting approval to said application.
(f) Wholesale and distributive establishments which do not create hazards for traffic or adverse impacts on the surrounding area.
(g) Boarding houses, hotels, motels, and tourist homes.
(h) Veterinary hospitals **(10/16)**

204.3 AREA REGULATIONS

No requirements for commercial uses or for one (1) dwelling unit in conjunction with a commercial use. For two-family or multi-family dwellings, except as specified in Section 204.2, area requirements shall be the same as in the R-3 District for residential units above one (1).

204.4 SETBACK REGULATIONS

No requirement, except for townhouses and apartments as stated in Sections 309 and 310 respectively.

204.5 FRONTAGE AND YARD REGULATIONS

No requirement except that, if the property is adjacent to a residential district, each minimum side yard shall be ten (10) feet and the minimum rear yard shall be twenty (20) feet. Sections 309 and 310 shall apply for townhouses and apartments respectively.

204.6 HEIGHT REGULATIONS

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

(a) A public or semi-public building such as a school, church, library, or general hospital may be erected to a height of sixty (60) feet from grade provided that required front, side, and rear yards shall be increased one (1) foot for each foot in height over thirty-five (35) feet.

(b) Church spires, belfries, cupolas, monuments, water towers, chimney flues, flagpoles, television antennae, and radio aerials are exempt. Parapet walls may be up to four (4) feet above the height of the building on which the walls rest.

(c) Accessory buildings over one (1) story in height shall be at least ten (10) feet from any lot line. All accessory buildings shall be less than the main building in height.

204.7 SITE PLAN REQUIREMENTS

All new structures, excepting accessory buildings of one hundred fifty (150) square feet or less, shall be subject to final site plan approval. Changes of use or additions to an existing structure requiring additional parking or other significant site changes applicable to a new use shall also be subject to final site plan approval. Site plans shall comply with the conditions of Section 314.

SECTION 205 - I LIMITED INDUSTRIAL DISTRICT

205 STATEMENT OF INTENT

The primary purpose of the I Limited Industrial District is to permit the location of certain industries, which do not in any way detract from the residential desirability of nearby areas, and to permit industries to locate near a labor supply. No junkyards or automobile wrecking yards shall be permitted.

205.1 USES PERMITTED BY RIGHT

In the I Limited Industrial District any structure to be erected or land to be used shall be for one or more of the following uses:

(a) Assembly of electrical appliances, electronic instruments and devices, radios, and phonographs. Also the manufacture of small parts, such as coils, condensers, transformers, and crystal holders.

(b) Automobile assembling, painting, upholstering, repairing, rebuilding, reconditioning, body and fender work, truck repairing or overhauling, tire retreading or recapping, or battery manufacture.

(c) Blacksmith shop, welding or machine shop, excluding punch presses exceeding forty- (40) ton rated capacity, and drop hammers.

(d) Laboratories, pharmaceutical and/or medical.

(e) Manufacture, compounding, processing, packaging, or treatment of such products as bakery goods, candy, cosmetics, dairy products, drugs, perfumes, pharmaceuticals, perfumed toilet soap, toiletries, and food products.

(f) Manufacture, compounding, assembling, or treatment of articles of merchandise from the following previously prepared materials: bone, cellophane, canvas, cloth, cork, feathers, felt, fiber, fur, glass, hair, horn, leather, paper, plastic, precious or semiprecious metals or stone, shell, straw, textiles, tobacco, wood, yarn, and paint. Blending of pre-manufactured, dry, non-explosive, non-chemical reacting, dry granular solid fertilizer components.

(g) Manufacture of pottery and figurines or other similar ceramic products, using only previously pulverized clay and kilns fired only by electricity or gas.

(h) Manufacture of musical instruments, toys, novelties, and rubber and metal stamps.

(i) Building material sales yards, plumbing supplies storage.

(j) Coal, wood, and fuel storage yards, lumberyards, feed and seed stores.

(k) Packing plants.

(l) Contractor's equipment storage yard or plant, or rental of equipment commonly used by contractors.

(m) Cabinet, furniture, and upholstery shops.

(n) Boat building.

(o) Stone monument works.

(p) Veterinary hospitals, kennels.

(q) Automobile service stations (with major repair under cover).

(r) Wholesale businesses, storage warehouses.

(s) Off-street parking for permitted uses in the district as set forth in Section 305.

(t) Public utility generating, booster, or relay stations, transformer sub-stations, transmission lines and towers, and other facilities for the provision and maintenance of public utilities, including railroads and facilities, and water and sewerage installations.
(u) Signs as set forth in Section 307.
(v) Fences as set forth in Section 303.
(w) Accessory uses that are incidental to the principal use.
(x) Temporary trailers as set forth in Section 205.7.

205.2 REQUIREMENTS FOR PERMITTED USES

(a) Before a building permit shall be issued or construction commenced on any permitted use in this district, or a permit issued for a new use, the plans, in sufficient detail to show the operations and processes, shall be submitted to the Zoning Administrator for study. The Administrator shall refer these plans to the Planning Commission for their recommendation. Modifications of the plans may be required. Such plans shall comply with Section 314.
(b) Permitted uses shall be conducted wholly within a completely enclosed building or within an area enclosed on all sides by a solid masonry wall, a uniformly painted solid board fence, or evergreen hedge six (6) feet in height. Public utilities and signs requiring natural air circulation, an unobstructed view, or other technical consideration necessary for proper operation may be exempt from this provision. This exception does not include storing of any materials.
(c) The Planning Commission may require landscaping within any established or required front setback area. The plans and execution must take into consideration traffic circulation. Landscaping may be permitted up to a height of three (3) feet, and to within fifty (50) feet from the corner of any intersecting streets.
(d) Sufficient area shall be provided to adequately screen permitted uses from adjacent business and residential districts. Areas for off-street parking, which shall be in accordance with the provisions set forth in Section 305, shall also be provided.
(e) The Administrator shall act on any application received within thirty (30) days after receiving the application. If formal notice in writing is given to the applicant, the time for action may be extended for a thirty (30) day period. Failure on the part of the Administrator to act on the application within the established time limit shall be deemed to constitute approval of the application.

205.3 AREA REGULATIONS

The minimum lot area shall be ten thousand (10,000) square feet.

205.4 SETBACK REGULATIONS

Buildings shall be located twenty (20) feet or more from any street right-of-way fifty (50) feet or greater in width, or forty-five (45) feet or more from the center line of any street right-of-way less than fifty (50) feet in width.

205.5 FRONTAGE AND YARD REGULATIONS

(a) Minimum lot width at the setback line shall be seventy (70) feet.

(b) The side and rear yard adjoining or adjacent to a residential district shall be thirty (30) feet. Within the industrial district, each side and rear yard shall be a minimum of fifteen (15) feet.

205.6 HEIGHT REGULATIONS

Buildings may be erected up to a height of forty-five (45) feet. Chimneys, flues, cooling towers, flagpoles, radio or communication towers or their accessory facilities not normally occupied by workmen are excluded from this limitation. Parapet walls are permitted up to four (4) feet above the limited height of the building on which the walls rest.

205.7 TEMPORARY TRAILERS

The Planning Commission may issue a permit, or permits, for the placement of temporary trailers in the I Limited Industrial District. In issuing any temporary trailer permits pursuant to this Section, the Planning Commission may establish such conditions or requirements including, but not necessarily limited to, time limitations, provision of sanitary facilities, screening or buffering from adjacent properties, and the posting of a bond or other surety payable to and accepted by the Governing Body in an amount deemed sufficient to assure removal of any such trailers upon expiration of the permit.

SECTION 206 - FLOODPLAIN CONSERVATION AREA (3/07)

206 STATEMENT OF INTENT

The intent of this Section is to provide development regulations for areas deemed undesirable for development due to inherent natural drainage conditions and topographical features. The regulations shall help to: prevent or minimize loss of life, injuries, and property damage, both public and private; prevent disruption of commerce and governmental services; prevent or minimize extraordinary and unnecessary expenditures of public funds for flood protection and relief; promote the health, safety, and general welfare of the people; and minimize the extent and violence of flooding in the Town.

206.1 APPLICABILITY

These provisions shall apply to all lands within the jurisdiction of the Town of Berryville and identified in the 100-year floodplain by the Federal Insurance Administration.

206.2 COMPLIANCE AND LIABILITY

(a) No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this Ordinance and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this Ordinance.

(b) The degree of flood protection sought by the provisions of this Ordinance is considered reasonable for regulatory purposes and is based on accepted engineering practice. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Ordinance does not imply that districts outside the Floodplain District, or that land uses permitted within such district will be free from flooding or flood damages.

(c) The grant of a zoning permit or approval of a subdivision plan in the Floodplain Conservation Area shall not constitute a representation, guarantee, or warranty of any kind by the Town, or by any official or employee thereof, of the practicability or safety of the proposed use and shall create no liability upon the Town, its officials, or employees.

(d) Records of actions associated with administering this ordinance will be kept on file and maintained in the offices of the Planning and Zoning Department.

206.3 ABROGATION AND GREATER RESTRICTIONS

This Ordinance supersedes any ordinance currently in effect in flood-prone districts. However, any underlying ordinance shall remain in full force and effect to the extent that its provisions are more restrictive than this Ordinance.

206.4 SEVERABILITY

If any Section, Sub-Section, paragraph, sentence, clause, or phrase of this Ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this Ordinance. The remaining portions shall remain in full force and effect;

and for this purpose, the provisions of this Ordinance are hereby declared to be severable. **(4/02)**

206.5 PENALTIES

In addition to all other penalties provided by law, flood insurance may be withheld from structures constructed in violation of this Ordinance. **(4/02)**

206.6 DEFINITIONS **(4/02)**

(a) **Base Flood/100-Year Flood** - A flood that, on the average, is likely to occur once every one hundred (100) years (i.e., that has a one [1] percent chance of occurring each year, although the flood may occur in any year).

(b) **Base Flood Elevation (BFE)** - The Federal Emergency Management Agency designated 100-year water surface elevation.

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

(d) **Board of Zoning Appeals** - The board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this Ordinance.

(e) **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.

(f) **flood fringe** - The portion of the floodplain lying on either side of the floodway.

(g) **floodplain** - Any land area susceptible to being inundated by water from any source.

(h) **floodway** - the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

(i) **freeboard** - the distance above a designated flood level for purposes of floodplain management.

(j) **historic structure** – any structure that is:

1. listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. individually listed on a state inventory of historic places in states with historic preservation program which have been approved by the Secretary of the Interior; or
4. individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either
   a. by an approved state program as determined by the Secretary of the Interior; or,

b. directly by the Secretary of the Interior in states without approved programs. **(03/07)**

(k) **lowest floor** - The lowest floor of the lowest enclosed area (including basement).

(l) **new manufactured/mobile home park or subdivision** -
A manufactured/mobile home park or subdivision, for which the construction of facilities for servicing the lots on which the 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 first floodplain ordinance adopted by the Town of Berryville.

(m) **recreational vehicle** - a vehicle which is:

1. Built on a single chassis;
2. Four hundred (400) square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light-duty vehicle; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

(n) **Special Floodplain** - That area in which base flood elevations are provided but a floodway is not delineated.

(o) **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 fifty (50) percent of the market value of the structure before the damage occurred.

(p) **substantial improvement** - Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage" regardless of the actual repair work performed. The term does not, however, include either:

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

(p) **variance** - A grant of relief from the terms of this Article by the Board of Zoning Appeals of the Town of Berryville.

206.7 ESTABLISHMENT OF FLOODPLAIN DISTRICT

The Floodplain District is hereby established as an overlay district, meaning that it is a district overlaid upon other districts as shown on the official Zoning Ordinance map, and as such, the provisions for the Floodplain District shall serve as a supplement to the underlying district provisions. In the event of any conflict between the provisions or requirements of the Floodplain District and those of the underlying district, the more restrictive provisions shall apply.

In the event any provision concerning the Floodplain District is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

(a) The Floodplain District shall include areas subject to inundation by waters of the 100-year flood. The Floodplain District consists of the floodway, flood fringe, and special floodplain. Within the special floodplain, base flood elevations are provided but a floodway not delineated. The basis for the delineation of the Floodplain District shall be the 100-year flood elevations or profiles contained in the *Flood Insurance Study for the Town of Berryville* prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated September 28, 2007, as amended. **(8/07)**

206.8 OFFICIAL ZONING MAP

The boundary of the Floodplain District is established as shown on the Flood Insurance Rate Map and official Zoning Map which is declared to be a part of this Ordinance and which shall be kept on file at the Town of Berryville offices.
(4/02)

206.9 DISTRICT BOUNDARY CHANGES

Initial interpretation of the boundary of the Floodplain District shall be made by the Town of Berryville Zoning Administrator. Should a dispute arise concerning the boundaries of the District, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the district boundary shall be given a reasonable opportunity to present his or her case to the Board and to submit his or her own technical evidence if so desired. Prior to any such change, approval must be obtained from the Federal Insurance Administration. **(4/02)**

206.10 DISTRICT PROVISIONS

(a) Permit Requirement

All uses, activities, and development occurring within the Floodplain District shall be undertaken only upon the issuance of a zoning permit from the Town of Berryville. Such development shall be undertaken only in strict compliance with the provisions of the Ordinance and with all other applicable codes and ordinances, such as the Town of Berryville Subdivision Regulations. Prior to the issuance of any such permit, the Town of Berryville Zoning Administrator shall require all applications to include compliance with all applicable State and Federal laws. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodway of any watercourse, drainage ditch, or any other drainage facility or system.

(b) Alteration or Relocation of Watercourse

Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc. within this jurisdiction a permit shall be obtained from the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the

Department of Conservation and Recreation (Division of Soil and Water Conservation) and the Federal Insurance Administration.

(c) Drainage Facilities

Storm drainage facilities shall be designed to convey the flow of stormwater runoff in a safe and efficient manner. The system shall ensure proper drainage along streets, and provide positive drainage away from buildings. The system shall also be designed to prevent the discharge of excess runoff into adjacent properties.

(d) Site Plans and Permit Applications

All applications for development in the Floodplain District and all building permits issued (refer to Section 206.14[a]) for the floodplain shall incorporate the following information:

1. For structures to be elevated, the elevation of the lowest floor (including basement)
2. For structures to be floodproofed (non-residential only), the elevation to which the structure will be floodproofed.
3. The elevation of the 100-year flood (Base Flood Elevation).
4. Topographic information showing existing and proposed ground elevations.

(e) Standards for Manufactured Homes and Recreational Vehicles **(3/07)**

1. All manufactured homes placed, or substantially improved, on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, in a new manufactured home park or subdivision or in a substantially improved manufactured home parks or subdivisions, must meet all the requirements for new construction, including elevation and anchoring.
2. All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that:
   a. the lowest floor of the manufactured home is elevated no lower than the base flood elevation;
   b. the manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength, of no less than 36 inches in height above grade;
   c. the manufactured home must be securely anchored to the adequately anchored foundation system to resist flotation, collapse and lateral movement;
   d. in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage," any manufactured home placed or substantially improved must meet the standards of Section 206.10(e)2.a., b., and c. above.
3. All recreational vehicles placed on sites must
   a. be on the site for fewer than 180 consecutive days;
   b. must be fully licensed with current tags and inspection Town stickers, and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has not permanently attached additions); or,

c. meet all requirements for manufactured housing, including anchoring and elevation requirements of Section 206.10(e)1. or 2.a. and c. above.
d. Recreational vehicles placed on sites in residential zoning districts must comply with Berryville Town Code Section 10-50.

206.11 BOUNDARIES OF THE FLOODPLAIN CONSERVATION AREA

(a) Generally, lands for which any of the following is normally true are subject to floodplain conservation regulations:
1. Inhabitants are likely to incur danger to safety, health, and welfare due to flooding conditions beyond the individual property owner's or tenant's control.
2. Development is likely to measurably alter existing drainage and watercourses such that neighbors upstream and downstream are affected unwittingly and unwillingly.
3. Collective unregulated actions of many individuals are likely to endanger the public health, particularly as related to water supply and drainage.

(b) All new subdivision proposals, and other proposed developments greater than fifty (50) lots or five (5) acres, whichever is the lesser, shall include base flood elevation data. **(4/02)**

206.12 PERMITTED USES

No new construction or development shall be permitted within the special floodplain portion of the Floodplain Conservation District 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 100-year flood more than one foot at any point. Within the floodway, no new construction or development shall be permitted that would cause any increase in the 100-year flood elevation. The following uses shall be permitted in the Floodplain Conservation Area provided that they are not prohibited by any other applicable ordinance:

(a) Cultivation and harvesting crops according to recognized soil conservation practices.
(b) Outdoor plant nursery or orchard according to recognized soil conservation practices.
(c) Front, side, and rear yards and required lot area in any district, provided such yards are not to be used for on-site sewage disposal systems.
(d) Normal accessory uses (excepting enclosed structures) permitted under the usual zoning in the appropriate district. Storage of materials and equipment provided that they are not buoyant, or provided that such material and equipment is firmly anchored to prevent flotation or movement, and/or can be readily removed from the area within the time available after flood warning.
(e) Accessory industrial and commercial uses, such as yard areas, and pervious parking and loading areas. **(4/02)**

206.13 USES PERMITTED BY SPECIAL PERMIT

No new construction or development shall be permitted within the special floodplain portion of the Floodplain Conservation District 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 100-year flood more than one foot at any point. Within the floodway, no new construction or development shall be permitted that would cause any increase in the 100-year flood elevation.

(a) Commercial recreational uses, whether open to the public or restricted to private membership, such as parks, camps, picnic areas, golf courses, fishing, sport or boating clubs; not to include enclosed structures, excepting toilet facilities, but permitting piers, docks, floats, or shelters usually found in developed outdoor recreational areas. Any toilet facilities provided shall be connected to public water and sewerage systems.

(b) Outlet installations for sewage treatment plants, and/or sewage pumping stations, with the approval of the Town Engineer and/or appropriate sewer authorities.

(c) Sealed public water supply wells with the approval of the Town Engineer and/or appropriate authorities.

(d) Dams, culverts, and bridges with the approval of appropriate authorities within the jurisdiction of the Commonwealth of Virginia.

(e) Sanitary or storm sewers and/or impoundment basins, with the approval of the Town Engineer and/or appropriate authorities.

(f) Impervious roads, driveways, or parking areas, provided drainage is adequately provided for. **(4/02)**

206.14 CONSTRUCTION PRACTICES

For all development within a flood-prone area, the following shall apply:

(a) All construction occurring within the Floodplain Conservation Area shall be undertaken only upon the issuance of a Clarke County building permit. Such construction shall be undertaken only in strict compliance with the provisions of this Ordinance and with all other applicable codes and ordinances, such as the Virginia Uniform Statewide Building Code, particularly the floodproofing and related provisions of the Code (Section 1313.0). Prior to the issuance of any such permit, the Clarke County Building Inspector shall require applications to include compliance with all applicable State and Federal laws.

(b) Under no circumstances shall any use, activity, and/or development reduce the capacity of the channels of floodways of any watercourse, drainage ditch, or any other drainage facility or system.

(c) All new construction and substantial improvements shall:

1. 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;
2. be constructed with materials resistant to flood damage;
3. be constructed by methods and practices that minimize flood damages; and
4. be 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.

(d) All proposed new public utilities and facilities, such as sewer, gas, electrical, and water systems, shall be located and constructed to minimize or eliminate flood damage.

(e) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters.

(f) New and replacement sanitary sewer systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters, and on-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(g) Adequate drainage shall be required to reduce exposure to flood hazards.

(h) All new construction and substantial improvements shall:

1. have the lowest floor (including basement) elevated to or above the base flood level or, for non-residential structures only, be designed so that below the base flood level of the structure, together with attendant utility and sanitary facilities, 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; and
2. have fully enclosed areas below the lowest floor designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Design for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following criteria: a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices, provided that they permit automatic entry and exit of floodwaters. **(4/02)**

206.15 RECORDING OF PERMITS

The Zoning Administrator shall maintain a separate file for all zoning permits in areas subject to these regulations. **(4/02)**

206.16 BOUNDARY DISPUTES AND APPEALS PROCEDURES

(a) Should a dispute concerning the floodplain boundaries arise, an initial determination shall be made by the Zoning Administrator.

(b) Any party aggrieved by this decision, claiming the criteria used for delineating the boundary in Section 206.1 is or has become incorrect because of changes due to natural or other causes, may appeal to the Board of Zoning Appeals.

(c) The burden of proof shall be on the appellant.

(d) If a landowner believes that his land should not be included in the Floodplain Conservation Area, he must present to the Board of Zoning Appeals appropriate testimony from a registered professional engineer or architect that his land should not be considered as part of said area. **(4/02)**

206.17 EXISTING STRUCTURES OR USES IN THE FLOODPLAIN DISTRICT

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may continue subject to the following conditions:

(a) Any modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain district to an extent or amount of less than fifty (50) percent of its market value shall be elevated and/or floodproofed to the greatest extent possible.

(b) The modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use regardless of its location in a floodplain district to an extent or amount of fifty (50) percent or more of its market value shall be undertaken only in full compliance with the provisions of the Virginia Uniform Statewide Building Code.

(c) Uses or adjuncts thereof which are, or become, nuisances shall not be permitted to continue.

(d) The modification, alteration, repair, reconstruction, or improvement to a structure and/or use within the special floodplain shall not be permitted if it would cause more than a one-foot increase in the l00-year flood elevation.

(e) The modification, alteration, repair, reconstruction, or improvement to a structure and/or use within the floodway portion of the floodplain shall not be permitted if it would cause any increase in the 100-year flood elevation. **(4/02)**

206.18 VARIANCE

In passing upon applications for variances, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other Sections of the Town of Berryville Zoning Ordinance.

(a) The following additional factors shall be considered:

1. The danger to life and property due to increased flood heights or velocities cause by encroachments. No variance shall be granted for any proposed use, development, or activity within any floodway portion of the Floodplain Conservation District that will cause any increase in the 100-year flood elevation.
2. The danger that materials may be swept onto other lands, or downstream to the injury of others.
3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
5. The importance of the services provided by the proposed facility to the community.
6. The availability of alternative locations not subject to flooding for the proposed use.
7. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
8. The relationship of the proposed use to the Town of Berryville Comprehensive Plan and floodplain management program for the area.

9. The safety of access by ordinary and emergency vehicles to the property in time of flood.
10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.
11. 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.
12. The requirements of the facility for a waterfront location. **(3/07)**

(b) The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a variance to an engineer or other qualified person or agency approved by the Town of Berryville for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

(c) Variances shall be issued only after the Board of Zoning Appeals has determined that the granting of such will not result in:

1. unacceptable or prohibited increases in flood heights;
2. additional threats to public safety;
3. extraordinary public expense;

and will not:

4. create nuisances;
5. cause fraud or victimization of the public;
6. conflict with local laws or ordinances.

(d) Variances shall be issued only after the Board of Zoning Appeals has determined that the granting of such will be the minimum required to provide relief from any exceptional hardship to the applicant.

(e) The Board of Zoning Appeals shall notify the applicant, in writing, that the issuance of a variance to construct a structure below the 100-year flood elevation:

1. increases the risk to life and property, and
2. will result in increased premium rates for flood insurance.

(f) A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances that are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

(g) No variance shall be granted for any proposed use, development, or activity within the special floodplain area that would cause more than a one- (1)-foot increase in the 100-year flood elevation. **(4/02)**

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ARTICLE III – SUPPLEMENTARY REGULATIONS

301 **SECTION 301 – WIDENING OF HIGHWAYS AND STREETS**

Whenever there shall be plans in existence, approved by either the Virginia Department of Transportation or by the Town Council for the widening of any street or highway, the Commission may recommend additional front yard setbacks for any new construction or for any structures altered or remodeled adjacent to the future planning right-of-way in order to preserve and protect the right-or-way for such proposed street or highway widening.

302 **SECTION 302 – VISUAL OBSTRUCTION**

In the case of corner lots in residential districts, there shall be no planting, fence, or obstruction to vision more than three (3) feet high, less than twenty (20) feet from the intersection of two street right-of-way lines.

303 **SECTION 303 – FENCES**

303.1 No fragile, readily flammable material such as paper, cloth, or canvas shall constitute a part of any fence, nor shall any such material be employed as an adjunct or supplement to any fence.

303.2 No fence shall be constructed within two (2) feet of any right-of-way line **(12/98)**, except on corner lots as set forth in Section 302.

303.3 Fences shall not exceed a height of six (6) feet as measured from the top-most point thereof to the ground or surface, along the center line of the fence, in a commercial or residential zone, except on corner lots as set forth in Section 302.

303.4 Fences in commercial zones shall not exceed a height of six (6) feet, as measured from the top-most point thereof to the ground or surface, along the center line of the fence, except on corner lots as set forth in Section 302. The Planning Commission may approve fences of up to ten (10) feet in height on a case-by-case basis. **(12/98)**

303.5 Fences surrounding industrial sites, public playgrounds, institutions, or schools may not exceed a height of fourteen (14) feet.

SECTION 304 – BUILDINGS TO HAVE ACCESS

304.1 Every building hereafter erected or moved shall be on a lot adjacent to a public street, and all buildings shall be so located on lots as to provide safe and convenient access for servicing, fire protection, and required off-street parking.

304.2 A driveway to and from a commercial or industrial use shall be deemed to be integral with such use and shall not be deemed to be a permitted use in any residential district.

SECTION 305 – MINIMUM OFF-STREET PARKING

305.1 **(**a) Parking spaces and access driveways

There shall be provided at the time of erection of any main building or at the time any main building is enlarged, or at the institution or enlargement of any use, minimum off-street parking space with adequate provisions for entrance and exit. All parking spaces and access driveways shall be covered with an all-weather surface, unless as otherwise herein provided and shall be graded and drained to dispose of surface water. Stormwater shall be managed in accordance with Virginia Stormwater Management Program regulations. All commercial and industrial uses shall have a hard-surfaced or tar and chipped parking area(s) and access driveway(s) or Town-approved stabilized paver system. Please refer to Section 206 Floodplain Conservation Area for additional parking area requirements. **(9/17)**

(b) Parallel parking, dimensions for spaces and aisles **(4/91)**

Direction of Parking	Stall Width	Depth of Stalls	Aisle Width
One-way aisle (parking on one side)	9 feet	22 feet	12 feet
One-way aisle (parking on both sides)	9 feet	22 feet	15 feet
Two-way aisle (parking on both sides)	9 feet	22 feet	20 feet

(c) Angled parking, dimensions for spaces and aisles (**4/91)**

Parking Angle	Stall Width	Depth of Stalls Perpendicular to Aisle	One-way Aisle	Two-way Aisle
45 degrees	9 feet	19 feet	15.5 feet	18 feet
60 degrees	9 feet	20 feet	17 feet	19 feet
90 degrees	9 feet	18 feet	23 feet	23 feet

305. 2 A driveway or parking space shall be at least three (3) feet from a property line and no parking space for multiple-family dwelling shall be less than ten (10) feet from a residential structure on the lot unless as otherwise herein provided for townhouses and apartments.

305.3 There shall be provided at the time of the erection of any principal building or structure or at the time that any principal building or structure is altered, enlarged, or increased in size, not less than the parking space in the amounts stated herein. Minimum off-street parking space required may be reduced when the capacity and use of a particular building is changed in such a manner that the new use or capacity would require less space than before the change. Should a non-conforming structure or use be enlarged or extended, or should a use or structure be non-conforming because of parking requirements, additional parking need only be based on the requirements for the enlarged or expanded portion.

305.4 The parking spaces required for one- and two-family dwellings shall be located on the same lot as the dwelling; the parking spaces required for other land uses shall be located on the same lot as the principal use or on a lot which is within three hundred (300) feet of the principal use, such distance to be measured along lines of public access to the property.

305.5 SPECIAL PROVISIONS FOR COMMERCIAL (C) ZONING DISTRICT
In the Commercial District (C), structures existing at the time of adoption of this Ordinance, which contain or may be changed at any future time to contain any non-residential use permitted in the Commercial (C) District, will not be required to have additional parking spaces above those provided when this Ordinance is adopted. This applies to the reconstruction of non-conforming commercial uses or structures. When it has been demonstrated to the satisfaction of the Planning Commission that the off-street parking requirements contained in this Section cannot be met due to the practical limitations of the site, and furthermore, that the off-site parking, as provided elsewhere in this Section, cannot be arranged to satisfy said requirements, the Planning Commission may decrease or waive the number of required off-street parking spaces for non-residential uses that are established after the date of the adoption of this Section. **(7/02)**

305.6 All new commercial construction on vacant land, or commercial uses begun where no commercial use existed at the time of adoption of this Ordinance, whether or not such property was previously zoned Commercial, shall provide the number of spaces required by other Sections of this Ordinance.

305.7 Collective provisions of off-street parking facilities for two or more structures or uses is permissible, provided that the total number of parking spaces is at least equal to the sum of the minimum number of required spaces computed separately for each use. Collective parking is subject to all previously stated parking requirements.

305.8 Off-Street Parking Space Requirements – Residential **(7/02)**

Single-Family Detached	2 for each dwelling unit
Two-Family Detached	
Manufactured Homes	
Multiple-Family, Planned Development	
Townhouses	See Section 309.8(a)
Apartments	See Section 310.9(a)

All single- and two-family dwelling units shall have parking areas and access drives with an all-weather surface. All other uses shall have a hard-surfaced parking area and access drive or Town-approved surface.

305.9 Off-Street Parking Space Requirements – Transient Lodgings **(7/02)**

Hotel and Motel	1.25 for each guest room
Bed and Breakfast	2 for the dwelling, plus one for each guest room

305.10 Off-Street Parking Space Requirements – Institutional Uses **(7/02)**

Churches or Places of Worship, Assembly Halls, Community Centers, Similar places of public assembly	2 for every 4 seats of maximum seating capacity in the main place of assembly or, without fixed seating, 1 for every four people based on Building Code design capacity
Library, Museum, Art Gallery	1 for each 400 square feet of floor area

Parking space already provided to meet off-street parking requirements for stores, office buildings, and industrial establishments lying within three hundred (300) feet of the place of public assembly, as measured along lines of public access, and which are not normally in use on Sundays or between the hours of 6:00 P.M. and midnight on other days, may be used to meet not more than seventy-five (75) percent of the off-street parking requirements of a church or other similar public assembly.

305.11 Off-Street Parking Space Requirements – Educational Uses, Day Care, or Nurseries **(7/02)**

Kindergarten, Day Care Center, Nursery, private or public	1 for each 8 students based on Building Code design capacity
Elementary, Intermediate, or Junior High, private or public	1 for each 8 students based on Building Code design capacity
High School or College, Private or public	1 for each 4 students based on Building Code design capacity

305.12 Off-Street Parking Space Requirements – Medical Uses **(7/02)**

Physician's or Dentist's Office, Clinic, and Outpatient Hospital	1 for each 200 square feet of floor area
Hospital	2 for each bed
Veterinary Hospital	1 for each 300 square feet of floor area

305.13 Off-Street Parking Space Requirements – Group, Nursing, and Convalescent Homes **(7/02)**

Group Housing	1 for each residence unit, plus 2 for employees
Convalescent, Nursing, or Rest Homes	1 for each 3 beds

305.14 Off-Street Parking Space Requirements – Rental Center and Wholesale Stores **(7/02)**

Wholesale, Inventory, Storage, not otherwise classified area devoted to enclosed storage	1 for each 1,000 square feet of floor area

305.15 For Shopping Centers, see Section 308.4(a)

305.16 Off Street Parking Space Requirements – Funeral Home, Mortuary **(7/02)**

Funeral Home, Mortuary	1 for each 4 seats in chapels or parlors with fixed seats, or 1 for each 4 people based on Building Code design capacity of assembly rooms without fixed seats

305.17 Off-Street Parking Space Requirements – Eating Establishments **(01/17)**

Restaurant, Nightclub, or similar	1 for each 100 square feet of floor area or 1 for each 4 people based on Building Code design capacity
Restaurant, Fast-food	1 per 100 square feet gross floor area, plus 1 additional for every four outside seats, plus 3 queuing spaces for drive-up window.

305.18 Off-Street Parking Space Requirements – Office Uses **(7/02)**

Business, General, and Governmental Buildings, Professional Office Buildings, not including Medical Offices	1 for each 300 square feet of floor area

305.19 Off-Street Parking Space Requirements – Industrial or Storage Establishments **(7/02)**

Industrial Uses, Laboratories Laundries, etc.	1 for each employee on the maximum working shift, plus space to accommodate all trucks and other vehicles used in connection therewith
Mini-storage (rental of storage units of less than 5,000 square feet each)	1 for each employee

305.20 Off-Street Parking Space Requirements – Business Uses **(7/02)**

Retail space for less than 10,000 square feet per parcel area	1 for each 200 square feet of floor area
Retail space of more than 10,000 square feet per parcel area	1 for each 250 square feet of floor area (unless otherwise specified)
Furniture, Hardware, Home Furnishings and other similar establishments	1 for each 400 square feet of floor area
Convenience Store	2 standing spaces for each gasoline pump plus 1 for each 150 square feet of floor area
Vehicle Repair	2 for each repair bay, plus 1 for service vehicle, plus 1 per employee

305.21 Off-Street Parking Space Requirements – Sports Activities **(7/02)**

Bowling	4 for each alley
Swimming Pools, Recreation Centers and similar establishments	1 for each 4 persons based on Building Code design capacity
Skating Rinks	1 for each 25 persons based on Building Code design capacity
Health Clubs	1 for each 250 square feet of floor area
Golf Courses	1 for each hole
Outdoor court Games (tennis, Basketball, and similar games)	1 for each two players based upon maximum capacity

305.22 Off-Street Parking Space Requirements – Service Uses **(7/02)**

Barber/Beauty Salon	2 for each chair
Commercial Kennels for Boarding or Breeding, Animal Shelters	1 for every 4 canine runs
Laundry, self-service	1 for every 2 cleaning or laundry Machines
Dry Cleaning Establishment	1 for each 200 square feet of floor area
Other	1 for each 200 square feet of floor area

305.23 Every parcel of land hereafter used as a public parking area shall have a hard surface. It shall have appropriate rails or stops and adequate screening where needed, as determined by the Zoning Administrator. Any lights used to illuminate said parking areas shall be so arranged as to reflect the light away from adjoining residential uses.

SECTION 306 – OFF-STREET LOADING REQUIREMENTS

306.1 On the same premises with every building, structure, or part thereof, erected and occupied for uses involving the receipt or distribution of vehicles, materials, or merchandise, there shall be provided and maintained on the lot adequate space for standing, turning, loading, and unloading services in order to avoid interference with public use of the streets and alleys.

306.2 Such space or spaces shall be a minimum of fifteen (15) feet wide and thirty-five (35) feet in length with a minimum clear height of fifteen (15) feet. Off-street truck loading space shall be provided at a rate of one (1) space for the first ten thousand (10,000) square feet or less of gross floor area, plus a minimum of one (1) additional space for each additional forty thousand (40,000) square feet of gross floor area or part thereof. For the purpose of this Section, gross floor area shall also include gross outdoor storage area, whether covered or uncovered.

SECTION 307 – SIGN REGULATIONS

307 To protect public safety (particularly traffic safety), and to promote economic development and tourism in an attractive, historic community in complement with other land-use objectives of the Zoning Ordinance, signs shall be permitted only in accordance with the following regulations:

307.1 NON-COMMERCIAL MESSAGES

In addition to other signs permitted under this Section, signs and similar displays are permitted which contain any lawful non-commercial message or expression of free speech that does not direct attention to a business operation or organization, or to a commodity or service for sale, and which complies with all requirements of this Ordinance.

307.2 SIGNS PERMITTED IN ALL ZONING DISTRICTS

(a) Official traffic or directional signs and other official federal, state, county, or town government signs.

(b) Temporary signs announcing a campaign, drive or event of a civic, philanthropic, educational, or religious organization on the premises, provided that the combined area of such signs shall not exceed twenty-four (24) square feet and shall be removed seven (7) days after the completion of the campaign, drive, or event.

(c) Signs offering the sale or rental or future use of the lot or premises upon which such signs are erected. The combined area of such signs shall not exceed twenty-four (24) square feet, and no more than two (2) exterior signs shall be placed on the premises.

(d) One temporary sign for a contractor and/or developer, and one sign for all combined sub-contracting, erected on the premises where the work is being performed, provided that the area of each such sign shall not exceed eighteen (18) square feet, and provided that such sign shall be removed upon completion of the work.

(e) Trespassing signs, signs indicating the private nature of a road, driveway, or premises, signs controlling fishing or hunting on the premises, provided that the area of any one sign shall not exceed four (4) square feet.

(f) Directional signs of a public or quasi-public nature, indentifying or providing directions to a public building, hospital, community center, park, playground, school, college, church, cemetery, designated historic site, service club, chamber of commerce, municipal parking lot or restroom, or other similar public or quasi-public civic, religious, charitable, educational, or cultural place or activity located in the Town of Berryville or Clarke County. No one sign for any one such use shall exceed an area of four (4) square feet for off-premises or on-premises directional signs. Permitted off-premises signs shall contain no advertising matter other than identification and directional information. Off-premises signs must comply with all applicable regulations of the Virginia Department of Transportation.

307.3 SIGNS PERMITTED IN RESIDENTIAL DISTRICTS

(a) <u>Home occupation signs</u>

Sign displaying the name, address, profession, or activity of the occupant of a dwelling unit, provided that not more than one such sign shall be erected for each permitted home occupation on the property, with the area of each such sign not to

exceed two (2) square feet. Such sign may be placed on a wall of a building facing a public right-of-way, or placed in the front yard.

(b) Identification signs for public or quasi-public uses

Identification sign or bulletin/announcement board for schools and colleges, parks, playgrounds, and community centers, churches, hospitals, cemeteries, service clubs, chambers of commerce, or other similar uses for the purpose of displaying the name of the institution and its activities or services, provided that the area of any such sign shall not exceed twenty-four (24) square feet and not more than one (1) such sign shall be displayed on each public street frontage.

(4/06) (c) Housing development and subdivision signs

Permanent signs erected for the purpose of identifying a single-family or multi-family housing development or subdivision, displayed on the premises, are prohibited. Landscaped entrances and other features indicating the entrance of a subdivision must be approved by the Town Zoning Administrator and, if applicable, the Berryville Architectural Review Board. Signs to identify an individual building or unit number within a multi-family development are permitted; no such sign shall exceed six (6) square feet.

(d) Directional signs within housing developments

Directional signs, not to exceed two (2) square feet each, erected within a housing development solely to direct persons to a model home, sample unit, or rental/sales office.

(e) Signs permitted for commercial uses permitted with Special Use Permits, excluding home occupations, in the R-3 Residential Zoning District:

1. Not more than one (1) freestanding sign on any lot. Such sign shall not exceed twenty (20) square feet in area, at its highest point shall not exceed twelve (12) feet in height from the grade, shall not project beyond the established public right-of-way, and shall not be internally illuminated.
2. Flat and projecting wall signs with a total area not to exceed one (1) square foot in area for each four (4) linear feet of building frontage for that occupancy. Each occupancy shall be permitted a minimum of six (6) square feet in total sign area. The bottom of a projecting sign shall be at least eight (8) feet, six (6) inches above the sidewalk or finished grade, and fourteen (14) feet above an alley. No occupancy shall be permitted more than twenty-five (25) square feet in total sign area. On the same street, only one (1) projecting wall sign shall be permitted for each occupancy of a building. No such wall sign shall be internally illuminated.
3. This section shall not limit the authority of the Town Council to further limit signage permitted for a commercial use in the R-3 Zoning District. Further limitations may be established by Town Council by placing conditions on a Special Use Permit or accompanying site plan. **(6/96)**

(f) Signs permitted for commercial uses permitted with Special Use Permits, excluding home occupations, in the R-2 Residential Zoning District.

1. Not more than one (1) freestanding sign on any lot. Such sign shall not exceed six (6) square feet in area, at its highest point shall not exceed eight (8) feet in height from the grade, shall not project beyond the established public right-of-way, and shall not be internally illuminated.

2. Flat and projecting wall signs with a total area not to exceed one (1) square foot in area for each four (4) linear feet of building frontage for that occupancy. Each occupancy shall be permitted a minimum of three (3) square feet and a maximum of six (6) square feet in total sign area. On the same street, only one (1) projecting wall sign shall be permitted for each occupancy of a building. No such wall sign shall be internally illuminated.
3. This Section Shall not limit the authority of the Town council to further limit signage permitted for commercial use in the R-2 Zoning District. Further limitations may be established by Town Council by placing conditions on a Special Use Permit or accompanying site plan. **(7/04)**

(g) Signs Permitted for commercial uses with an approved Special Use Permit in the Open Space Residential (OSR) Zoning District and entrances to such uses on adjacent residentially zoned districts where commercial uses are contained within the OSR District:

1. Not more than one (1) freestanding sign on any lot. Such sign shall not exceed twelve (12) feet in area, at its highest point shall not exceed twelve (12) feet in height from grade, shall not project onto the established public right-of-way and shall not be internally illuminated. The freestanding sign must be on the same lot on which the approved use is operated.
2. Directional on-premises signs providing directional information ("Parking", "Exit", "One-Way") shall be limited to three (3) square feet per sign.
3. This Section shall not limit the authority of the Town Council to further limit signage permitted for a commercial use in the OSR Zoning District. Further limitations may be established by Town Council by placing conditions on a Special Use Permit or accompanying site plan. **(6/09)**

307.4 SIGNS PERMITTED WITHIN COMMERCIAL DISTRICTS

In any commercial district, the following shall be permitted: (1) Any sign permitted in a residential zone; (2) Signs advertising only the general business conducted within the premises upon which such signs are erected or displayed, subject to the following provisions:

(a) <u>Wall signs – One-story and first floor occupancies</u>

For any one first-floor occupancy, the total area of all exterior signs displayed on one street shall not exceed one (1) square foot in area for each two (2) linear feet of building frontage for that occupancy. Each occupancy shall be permitted a minimum of twelve (12) square feet in total sign area. No occupancy shall be permitted more than one hundred (100) square feet in total sign area.

(b) <u>Wall signs – Upper floor occupancies</u>

Signs for upper floor occupancies shall be not more than fifty (50) percent of the square footage permitted on the first floor. Where an entire multi-story building is occupied by one business, the total sign area permitted by Sub-section (a) above may be increased by not more than twenty-five (25) percent.

(c) <u>Flat and projecting wall signs</u>

Signs may be affixed flat against a building wall or may project from a wall. Such signs shall not extend closer than two (2) feet from a street curb edge or, where no curb exists, the street right-of-way line. The bottom of a projecting sign shall be at

least eight (8) feet, six (6) inches above the sidewalk or finished grade, and fourteen (14) feet above an alley. On the same street or permissible area, only one (1) projecting sign shall be permitted for each occupancy of a building.

(d) Signs hung on awnings, canopies, marquees, and porticos

Signs may be placed or applied directly on, or hung from any awning, canopy, marquee, or portico, but must be at least eight (8) feet, six (6) inches above a public sidewalk or right-of-way. The area of such signs shall be included in determining the total area of wall signs displayed according to Sub-sections (a) and (b) above.

(e) Signs not on a public street – side and rear signs

Wall signs may be displayed on the side or rear of a building not fronting on a public street, provided they are to be seen primarily from a walkway, driveway, parking lot, or other area arranged for pedestrian traffic. No sign shall be displayed on the side or rear of a building so that it is primarily visible from a residential district. For such signs, the total allowable sign area shall not exceed one (1) square foot for each four (4) linear feet of the occupant's building frontage along the area where the sign is displayed; the maximum combined area for all signs on any one side or rear frontage shall be sixteen (16) square feet. This area shall not be included in the total allowable area for wall signs described in Sub-sections (a) and (b) above.

(f) Signs on windows

Signs may be painted on or displayed inside show windows, provided that not more than twenty-five (25) percent of the area of such windows shall be covered. The area of such signs shall not be included in determining the total area of wall signs displayed.

(g) Freestanding signs

Freestanding signs may be erected or displayed upon a lot only where off-street parking or drive-through service is provided. Not more than one such freestanding sign shall be permitted on any one lot. Freestanding signs shall have a highest point of not more than twenty (20) feet above the grade, shall not exceed forty (40) square feet in area, and shall not project beyond the established public right-of-way line.

(h) Shopping center identification signs

For shopping centers consisting of five (5) or more separate businesses, one (1) freestanding identification sign shall be permitted to face each adjoining public street on which the shopping center has a continuous frontage of at least one hundred fifty (150) feet. The area of such signs shall not be included in the total area of wall signs otherwise permitted in Section 307.4 for the separate businesses; however, no other freestanding signs are permitted. The total area of an identification sign for any shopping center shall not exceed eighty (80) square feet, and shall have a highest point of not more than twenty (20) feet above the grade.

(i) Advertising theater features, etc.

Signs advertising the features or acts for movie theaters or other theaters may be displayed in permanent cases or frames erected on theater buildings. There is no minimum height for any case or frame erected flat against a wall above a sidewalk, alley, or parking area. No single case or frame shall exceed twenty-four (24) square feet and the area of all such cases or frames shall not exceed forty-eight

(48) square feet. The area of these signs shall not be included in determining the total area of signs erected in Sub-sections (a) and (b) above.

(j) Directional signs

On-premises signs providing only directional information (such as "Entrance", "Exit", "One-Way", Drive-Through", etc.) shall be limited to three (3) square feet per sign.

(6/03) (k) Portable free-standing signs

In the BC, B, C and C-1 zoning districts one (1) portable freestanding sign is permitted for each business. Such sign shall not exceed three (3) feet in width, or four (4) feet in height and may be located upon the Town sidewalk, provided that four (4) feet of clearance remains for pedestrian access. In addition, placement of such signs shall comply with all applicable regulations of the Virginia Department of Transportation concerning visual obstruction. Such signs shall be located only in front of the business advertised and only during hours of operation. The area of the portable freestanding sign shall be in addition to the total square footage of signs otherwise permitted for the business. If the business wishing to display a portable freestanding sign is located in the Berryville Historic District, the business owner shall obtain a Certificate of Appropriateness from the Architectural Review Board prior to installation.

(4/06) (l) Grand opening signs shall be permitted in commercial zoning districts provided that such sign or signs shall not be displayed more than thirty (30) days. The combined area of such sign or signs shall not exceed twenty-four (24) square feet. All signs must comply with Virginia Department of Transportation and Town of Berryville regulations.

(4/06) (m) Signs advertising special sales shall be permitted in commercial zoning districts provided that such sign or signs shall not be displayed more than ten (10) days. The combined area of such sign or signs shall not exceed twenty-four (24) square feet. These signs will be permitted four (4) times per year per business. All signs must comply with Virginia Department of Transportation and Town of Berryville regulations.

(5/07) (o) Signs identifying government buildings with multiple users shall be permitted one (1) freestanding sign not to exceed eighty (80) square feet for on-premises location only. At its highest point the sign shall not exceed ten (10) feet in height from grade, shall not extend beyond the established public right-of-way and shall not be internally illuminated.

307.5 SIGNS PERMITTED WITHIN INDUSTRIAL DISTRICT

Any sign permitted in a commercial district shall be permitted in an industrial district.

Where a sign in an industrial district faces a commercial or industrial zone, the allowable area shall be one and one-half (1.5) times the allowable square footage specified in Section 307.4.

307.6 SUPPLEMENTAL SIGN REGULATIONS

(a) Illumination

Signs may be lighted with non-glaring lights, shielded floodlights, or interior lighting. No colored lights resembling traffic signals shall be permitted. Light sources shall concentrate illumination upon the sign area and prevent glare upon a street or adjacent property. External illumination shall be white light and shall not blink, flash, fluctuate, move, be intermittent, or change degrees of intensity.

(b) Non-conforming signs

Non-conforming signs, once removed, shall be replaced only with conforming signs; however, non-conforming signs may be repainted or repaired, providing such repainting or repairing does not exceed the dimensions of the existing sign.

(c) Signs to be in one plane

Signs which are not substantially in one plane are prohibited, except that signs may have reasonably projecting trim of a decorative character.

(d) Safety considerations

- No sign shall be erected or displayed so as to obstruct any door, window, fire escape, stairway, ladder, or opening intended to provide ingress and egress, necessary light, or ventilation.
- Each sign, whether flat, projecting, or freestanding, shall be affixed or supported in such a manner as to assure public safety and be in accordance with adopted building code specifications.
- All signs, except temporary signs, shall be constructed of durable material and kept in good condition and repair.
- Whenever, in the opinion of the Zoning Administrator or building inspector, any sign becomes structurally unsafe or endangers the safety of a building or lot or endangers the public safety, the Zoning Administrator or Building Inspector shall order that such sign be made safe, repaired, or removed.

(e) Area of sign to be measured

In measuring the area (in square feet) of signs permitted under these regulations, the entire face of the sign (one side) and any wall work incidental to its decoration shall be included. In the case of an open sign made up of individual raised letters and/or designs, the area shall be calculated using the smallest rectangle that can encompass all letters of a word.

(f) Roof signs

No roof signs (signs placed on a roof or wall signs extending above the lowest roof height) shall be permitted.

(g) Placement

No signs shall be permitted to be attached to trees.

(h) Moving signs

Moving signs (those which may be entirely or partially in motion while on display) are prohibited. This shall not apply to projecting signs which are suspended in such a way as to be reasonably flexible, but have no moving parts, or to clocks and temperature readings displayed on otherwise stationary signs.

(i) Removal of signs upon discontinuance of business

Any sign which no longer advertises a bona fide business or service on the premises shall be removed within thirty (30) days of discontinuance of such business or service on the premises.

307.7 BILLBOARDS

Billboards, posters, and other off-premises outdoor advertising displays not directing attention to the business or organization on the premises where the sign is located are prohibited. Government, public, and quasi-public directional signs are excepted where permitted in Section 307.2 above.

307.8 PERMIT REQUIRED

A sign permit shall be required before a sign is erected, altered, or relocated, except as provided herein.

(a) Applications

Each application for a permit shall be accompanied by plans showing the area of the sign; the size, character, and design proposed; the method of illumination, if any; the exact location proposed; the method of fastening such sign; and the name and address of the sign owner and of the sign erector.

(b) Fees

Fees for sign permits shall be as determined by Town Council.

(c) Applications

A sign permit shall become null and void if the work for which the permit was issued has not been completed within six (6) months of the date of issuance of the permit. Extensions for no more than six (6) additional months may be granted by the Zoning Administrator upon written request.

(d) Permit exceptions

A sign permit shall not be required for the following; however, such signs shall be submitted to all applicable provisions of this Ordinance:

1. Signs permitted under Section 307.2.
2. Repainting or minor structural repairs (as determined by the Zoning Administrator); neither may exceed the dimensions of the existing sign.
3. Changing the advertising copy or message on an approved painted or printed sign, on a theater marquee or similar approved sign designed for the use of replaceable copy.

SECTION 308 – SHOPPING CENTERS

308 Shopping centers shall be in single ownership or under a guaranteed unified management control. Shopping centers shall consist of harmonious selection of uses and groupings of buildings, service and parking areas, circulation and open space, and shall be subject to the provisions of the Condominium Act of the Commonwealth of Virginia, in addition to the following provisions.

308.1 PERMITTED PRINCIPAL USES:

(a) Stores for sale of goods at retail or the performance of customary personal services clearly incidental to retail sales.
(b) Business, professional, or banking offices.
(c) Restaurants, cafes, or similar places serving food and/or beverages.
(d) Parking areas for transient auto vehicles, but not for the storage of new or used motor vehicles for sale.
(e) Gasoline service stations.
(f) Drive-in establishments, except theaters.

308.2 PERMITTED ACCESSORY USES – LOCATED ON THE SAME LOT WITH THE PERMITTED PRINCIPAL USE

Only the customary accessory uses associated with a commercial district shall be permitted provided they are limited to the same lot as the principal uses.

308.3 AREA AND BULK REGULATIONS

(a) Lot size – The area for development shall be a minimum of three (3) acres.
(b) Lot coverage – thirty (30) percent maximum.
(c) Building height – two (2) stories or thirty-five (35) feet maximum.
(d) Front yard – forty (40) feet minimum. **(5/94)**
(e) Side yards – forty (40) feet minimum each side. **(5/94)**
(f) Rear yard – forty (40) feet minimum. **(5/94)**

308.4 SHOPPING CENTERS: SUPPLEMENTARY REGULATIONS

(a) <u>Off-Street Parking and Loading</u>

1. For shopping centers, there shall be provided one parking space for each two hundred (200) square feet of net floor area for the first ten thousand (10,000) square feet of floor space, plus one space for each additional two hundred fifty (250) square feet, plus additional spaces as required herein for associated offices, theaters, and eating establishments. **(4/91)**
2. Parking shall be permitted in the areas for front, side, or rear setbacks up to a point of five (5) feet from any front, side, or rear lot line of the shopping center ten (10) feet with appropriate landscaping and fencing, when adjoining residentially zoned property). All areas shall be suitably paved with permanent hard-surfaced coverings.
3. Off-street loading spaces shall be provided in accordance with Section 306.

(b) Access and Traffic Controls

All means of ingress or egress from the shopping center to any public street or highway shall be located at least two hundred (200) feet from any other intersecting street or streets and shall be designed to conduct traffic in a safe manner. The developer shall be responsible for the purchase and erection of any necessary traffic control devices and the construction of additional acceleration or deceleration lanes or service walks as may be required by the Virginia Department of Transportation or by the Town.

(c) Interior Circulation

Interior access ways shall be designed so as to prevent the blocking of vehicles entering or leaving the site. Areas provided for loading or unloading of trucks and/or other vehicles or for servicing of shops for rubbish collection or other services shall be adequate in size and shall be so arranged that they may be used without blocking or interfering with interior circulation and parking facilities.

(d) Lighting

Lighting for buildings, signs, access ways, and parking areas shall be so arranged as not to reflect toward public streets or cause annoyance to surrounding property owners or residents.

(e) Shopping Cart Storage

Establishments furnishing carts or mobile baskets shall provide definite areas on the site for the storage of said carts. Storage areas shall be clearly marked and designated for the storage of shopping carts and/or mobile baskets.

(f) Screening

1. All lot lines abutting residential districts along the side yard or rear yard shall be appropriately screened by fences, walls, or year-round planting and/or other suitable enclosures of a minimum height of four (4) feet and a maximum height of seven (7) feet.
2. If trees, evergreen hedges, or other types of year-round plants are used, a landscaped area shall be provided at least five (5) feet in width along the entire interior lot lines.

(g) Storage of Trash and Rubbish

Storage areas for trash and rubbish shall be completely screened and all organic rubbish shall be contained in containers with tightly fitting lids. No such storage area shall be permitted within any required yard space.

(h) Signs

Signs shall conform to Section 307.5 of this Ordinance.

308.5 SHOPPING CENTER DEVELOPMENT PLAN REQUIRED

(a) Prior to the issuance of a Special Permit, ten (10) copies of a development plan shall be submitted to the Zoning Administrator for review by the Administrator, Planning Commission, and Town Council. Such plan shall comply with the provisions of this Section and Section 314.

(b) The development plan shall contain the following data, together with supplementary data for a particular development, as deemed necessary by the Planning Commission or Town Council:

1. Title insurance policy or attorney's certificate showing the owner or owners of the subject property, marketable title to the subject property in such owner or owners' name, and the source of applicant's title or instrument in the chain of title for each parcel constituting the tract.
2. Total area of tract.
3. Abutting street names, width, and route numbers.
4. Owners, zoning districts, and uses of each adjoining tract.
5. Topographic map with minimum contour intervals and scale acceptable to the Administrator.
6. Development design information.
7. A concept plan illustrating the locating and functional relationship between al proposed land uses.
8. Land use plan or plans showing: the location and arrangement of all proposed land uses, including the height and number of floors of all buildings both above and below finished grade; the building setbacks and yard areas from the development boundries and adjacent streets, roads, alleys, and ways; the proposed traffic circulation pattern, including the location and width of all streets, driveways, walkways, and entrances to parking areas; all off-street parking and loading areas; all proposed open space areas, including common open space, dedicated open space, and developed recreational open space; the approximate location of existing and proposed utility systems of sanitary sewer, storm sewer, water, electric, telephone, and gas lines, along with necessary easements.
9. A plan or statement showing the location and design of all screening, and indicating the type and height of such screening.
10. Statements or plans relating to all covenants, restrictions, and conditions pertaining to the use, maintenance, and operation of common spaces, and the percentage of the tract to be used as open space.
11. A statement in tabular form of the anticipated commercial floor area.
12. When the development is to be constructed in stages or units, sequence of development schedule showing the order of construction of each principal functional element of such stages or units, the approximate completion date for each state or unit, and a cost estimate of all improvements within each stage or unit.
13. A plan or report indicating the extent, timing, and estimated cost of all off-site improvements, such as road, sewer, and drainage facilities necessary to construct the proposed development, which plan or report shall relate to the sequence of development schedule if the development is to be constructed in stages or units.
14. Where required by the Planning Commission, a traffic impact analysis showing the effect of traffic generated by the project on surrounding roads.
15. Where required by the Planning Commission, a fiscal impact analysis listing town revenue generated by the project and town expenditures resulting from the construction of the project.

SECTION 309 – TOWNHOUSES

309.1 AREA REGULATIONS

(a) Minimum lot size for town house construction: 3 acres

(b) Minimum lot area per dwelling unit: 2,500 square feet

309.2 MINIMUM WIDTH

(a) Minimum width for development: 200 feet at setback line

(b) Minimum width per townhouse unit: 20 feet

There shall be no more than eight (8) townhouses in a continuous row.

309.3 MINIMUM YARD REQUIREMENTS

(a) Front Yard: 30 feet from road right-of-way line

(b) Rear Yard: 40 feet for each townhouse dwelling

(c) Side Yard: 20 feet for each end unit; 30 feet for each corner lot at street intersection

309.4 MAXIMUM BUILDING HEIGHT

Two stories, but not to exceed 35 feet.

309.5 BUILDING COVERAGE

Structures shall not cover more than thirty (30) percent of the entire development site. Coverage on each lot may be permitted as yard requirements allow. Driveways and parking lots are not to be included in the calculation of coverage.

309.6 MANAGEMENT OF OPEN SPACE

(a) Should the units be for rental purposes, the developer or rental agent shall be responsible for maintenance and management of open space.

(b) Should the units be for sale, a non-profit association, corporation, trust, or foundation of all individuals or corporations owning residential property within the planned development shall be established to ensure the maintenance, management, and/or operation of open spaces and/or recreation parks in accordance with the Condominium Act, Code of Virginia, as amended.

(c) The developer must establish the organization prior to the sale of any lots.

(d) Membership in the organization shall be mandatory for all residential property owners, present or future, within the planned community.

309.7 SCREENING

Screening shall be provided of sufficient height and density to screen the site from adjoining residential property whether in R-1, R-2, or R-3 districts. A planting plan specifying type, size, and location of existing and proposed planting material shall be submitted with the application for the permit.

309.8 PARKING FACILITIES

(a) Off-street parking shall be provided on the premises at the rate of two (2) spaces for each townhouse unit. Each space shall be a minimum of ten (10) feet by twenty (20) feet. Parking shall not be located in any yard area but shall be located in common parking areas only.

(b) Required parking spaces shall be provided on the same lot as the group of buildings served.

(c) Entrance and exit ways to parking areas shall have a minimum width of twelve (12) feet for each lane of traffic entering or leaving the site but shall at no time exceed thirty (30) feet in width at the street line. Parking shall not be permitted in the entranceway.

(d) Parking areas shall be set back at least fifteen (15) feet from the property line of the development.

309.9 DRAINAGE

(a) A storm run-off and drainage system shall be installed by the developer in accordance with sound engineering practice so as to adequately drain the project site, to adequately dispose of all run-off and drainage away from the project site, and so as not to permit excess flow of water across streets or adjoining properties. Plans for such drainage systems shall be submitted and approved with the application for the permit.

(b) All provisions of Town ordinance and Virginia Stormwater Management Program regulations regarding storm drainage shall be complied with.

309.10 LIGHTING

Street lighting shall be provided on all public roads and shall be approved by the Town Council.

309.11 STORAGE OF TRASH AND RUBBISH

Exterior storage areas for trash and rubbish shall be well screened on three (3) sides and contain vermin-proof containers.

309.12 SITE PLAN REVIEW AND APPROVAL

Site plans drawn in accordance with Section 314 shall be reviewed by the Planning Commission and approved or rejected by the Town Council.

309.13 FRONTAGE

Each townhouse and/or townhouse parking area access road shall front on a dedicated public street meeting Virginia Department of Transportation and Town standards.

309.14 CURB AND GUTTER

Concrete curb and gutter shall be installed along both sides of all streets within the development. However, should a street act as a boundary for townhouse developments, curb and gutter need only be installed on the side of the street adjacent to the development.

309.15 SIDEWALKS

Sidewalks of a minimum of four (4) feet in width, constructed of concrete or brick, shall be installed from parking areas to the front of all townhouse structures served by such parking areas.

309.16 CUL-DE-SACS

The radius of cul-de-sacs shall be at least fifty (50) feet. No more than twenty-five (25) dwelling units shall be served by any cul-de-sac.

309.17 ACCESSORY BUILDINGS

Accessory buildings are not permitted except that on any lot there may be an enclosed storage shed not exceeding seven (7) feet in height, nor exceeding ten (10) feet in length by ten (10) feet in width.

309.18 WATER AND SEWER

All developments must be connected to a public water and public sewer system. Each unit shall have its own individual public water and sewer connection.

309.19 DESIGN VARIATION

Variation in townhouse design: The facades of dwelling units in a townhouse structure shall be varied by changed front yards of not less than two (2) feet and variation in materials and design so that not more than four (4) abutting units will have the same front yard depth and the same or essentially the same architectural treatment of facades and roof lines. Balconies and roofed porches may encroach up to five (5) feet within the setback area.

SECTION 310 – APARTMENTS

310.1 AREA REGULATIONS

The minimum lot size for apartment developments is eight thousand (8,000) square feet for an apartment structure having two (2) units, with an additional two thousand (2,000) square feet of lot area for each additional unit above two (2). There shall be no more than twelve (12) units contained in any one structure.

310.2 MINIMUM LOT WIDTH

The minimum lot width shall be one hundred (100) feet at the setback line.

310.3 MINIMUM YARD REQUIREMENTS

No structure shall be located closer than thirty (30) feet to any lot line when the structure is in an R-3 district nor closer than twenty (20) feet to any lot line when the structure is in a C district.

310.4 MAXIMUM BUILDING HEIGHT

The maximum height shall be three (3) stories, but not to exceed thirty-five (35) feet.

310.5 BUILDING COVERAGE

Structures shall not occupy more than forty (40) percent of the total tract area.

310.6 MANAGEMENT OF OPEN SPACE

(a) Should the units be for rental purposes, the developer or rental agent shall be responsible for maintenance and management of open space.

(b) Should the units be for sale, a non-profit association, corporation, trust, or foundation of all individuals or corporations owning residential property within the planned development shall be established to ensure the maintenance, management, and/or operation of open spaces and/or recreation parks in accordance with the Condominium Act, Code of Virginia, as amended.

(c) The developer must establish the organization prior to the sale of any lots. Membership in the organization shall be mandatory for all residential property owners, present or future, within the planned community.

310.7 DISTANCE BETWEEN STRUCTURES

The horizontal distance between groups of apartment structures shall be:

(a) Two (2) times the average height of the two groups of apartments for front or rear walls facing front or rear walls;

(b) One and one-half (1-1/2) times the average height of the building for front or rear walls facing side walls; and

(c) Equal to the height of the highest building for side walls facing side walls.

(d) At no point shall any building be closer to another building than the average height of both buildings.

310.8 SCREENING

Screening shall be provided of sufficient height and density to screen the site from adjoining residential properties. A planting plan specifying type, size, and location of existing and proposed planting material shall be submitted with the application for the permit.

310.9 PARKING FACILITIES

(a) Off-street parking, whether in a garage or on-lot, shall be provided on the premises at the rate of one (1) space for each apartment unit 1,000 square feet or less and two (2) spaces for each apartment unit greater than 1,000 square feet. **(02/14)**

(b) Required parking spaces shall be provided on the same lot as the building served and shall be reviewed by the Planning Commission and approved by the Town Council.

(c) All access drives shall be at least fifteen (15) feet from any building on the lot and from exterior lot lines.

(d) Parking areas shall not be designed or located so as to require or encourage cars to back into a public street in order to leave the lot.

(e) Entrance and exit ways to parking areas shall have a minimum width of twelve (12) feet for each lane of traffic entering or leaving the site but shall at no time exceed thirty (30) feet in width at the street line.

310.10 DRAINAGE

(a) A storm run-off and drainage system shall be installed by the developer in accordance with sound engineering practice so as to adequately drain the project site, to adequately dispose of all run-off and drainage away from the project site, and so as not to permit excess flow of water across streets or adjoining properties. Plans for such drainage system shall be submitted and approved with the application for the permit.

(b) All provisions of Town ordinance and Virginia Stormwater Management Program regulations regarding storm drainage shall be complied with.

310.11 LIGHTING

Street lighting shall be provided on all public roads and shall be approved by Town Council.

310.12 STORAGE OF TRASH AND RUBBISH

Exterior storage areas for trash and rubbish shall be well screened on three (3) sides and contain vermin-proof containers.

310.13 SITE PLAN REVIEW AND APPROVAL

Site Plan drawn in accordance with Section 314 shall be reviewed by the Planning Commission and approved or rejected by the Town Council.

310.14 OTHER REGULATIONS FOR ALL APARTMENT CONSTRUCTION

(a) Each apartment structure and/or apartment parking area shall have access on a dedicated public street.

(b) Concrete curb and gutter shall be installed along both sides of all streets within the development. However, should a street act as a boundary for an apartment development, curb and gutter need only be installed on the side of the street adjacent to the development.

(c) Sidewalks of a minimum of four (4) feet in width, constructed of concrete or brick, shall be installed from parking areas to all apartment structures served by such parking areas.

(d) The radius of cul-de-sacs shall be at least fifty (50) feet. No more than 25 dwelling units shall be served by any cul-de-sac.

(e) All apartments must be connected to a public water and sewer system, and each apartment shall be considered as being one public water and sewer connection. However, nothing herein shall be construed as prohibiting an apartment building from being serviced by one meter. **(10/83)**

SECTION 311 - NURSING, CONVALESCENT, AND REST HOMES

311 In addition to the requirements of the district in which the Nursing, Convalescent, or Rest Home is located, such uses shall meet the following requirements:

311.1 All state rules and regulations for the licensing of such uses.

311.2 All requirements of the State Health Department and Fire Marshall's Office regarding such uses.

311.3 Architectural barriers (such as stairs) for residents of such establishments shall be overcome to the greatest extent possible. Additional safety features, such as handrails in various areas, shall be installed.

SECTION 312 – PROFESSIONAL OFFICES

312 Professional offices are subject to the following requirements:

312.1 All activity and equipment (other than parking) must be housed in a fully enclosed building.

312.2 No noise or odor produced as a result of activity in such offices shall be discernible beyond the boundaries of the lot.

312.3 All vehicular access to the site shall be from a street that meets Town standards for streets.

312.4 No display in the building shall be visible from outside the building.

SECTION 313 – TEMPORARY TRAILERS AND TEMPORARY TRAILER PARKS

313 Zoning permits for no more than two (2) temporary trailers at any one site may be issued by the Zoning Administrator, subject to the following conditions: **(10/83)**

313.1

(a) That the location of the trailer or trailers is necessary for the housing of construction workers employed on a construction project, or for offices for the construction project.

(b) That the request is filed by the contractor, with certification that placement of the trailer or trailers is essential to the project and that all such trailers will be removed from the site upon completion of the construction.

(c) That sanitary facilities shall be provided in accordance with all applicable requirements of the State Health Department.

(d) That the period for which such permits may be granted shall concur with the anticipated period of the construction, provided that applications for renewal may be submitted if more time is required to complete the project. Such renewal applications must be filed at least thirty (30) days prior to expiration of the temporary use permit.

(e) That the Zoning Administrator may establish such additional requirements as may be deemed necessary or advisable in the interests of the public good, including a requirement for the posting of a bond to assure that the temporary trailer or trailers will be removed and the site left in satisfactory condition. Any such bond shall be payable to the Governing Body, in a form and amount acceptable to said Governing Body.

313.2 Zoning permits for three (3) or more temporary trailers may be approved by the Governing Body, subject to the conditions set forth in Section 313.1 herein, and further subject to the following additional conditions:
(10/83)

(a) That a minimum area of two thousand (2,000) square feet be provided for each space.

(b) That the Governing Body shall require the posting of a bond, in an amount and form acceptable to the Governing Body, to assure that all such temporary trailers will be removed and the site left in satisfactory condition at the completion of the construction project.

(c) That the contractor shall furnish satisfactory evidence of approval of proposed sanitation facilities by an appropriate official of the State and/or Clarke County Health Department.

(d) That application for renewal of any such temporary permit shall be filed at least sixty (60) days prior to the expiration of the permit.

SECTION 314 – SITE DEVELOPMENT PLANS (1/93)

314 INTENT

The purpose of these requirements is to promote the orderly development of certain activities in the Town and to ensure that such activities are developed in a manner harmonious with surrounding properties and in the interest of public health, safety, and welfare. The site plan shall be used to review a project's compatibility with its environment; to review the ability of proposed traffic circulation systems to provide for safe and convenient movement of vehicles and pedestrians; to review the quantity, quality, utility, and type of the project's community facilities; and to review the location and adequacy of the provision for drainage and utilities.

314.1 WHEN REQUIRED

(a) The provisions of this Section shall apply to all buildings, structures, or uses as noted in the Ordinance. Districts and uses which require a site plan include, but are not necessarily limited to, the following:

Districts	Uses
I Limited Industrial	Shopping Centers
L-1 Industrial	Townhouses
C General Commercial	Apartments
C-1 Commercial	Condominiums (in A-R District
C-2 Commercial	Industrial
M-R Multi-family Residential	Retail
B Business	Offices
BC Business Commercial	
BI Business Industrial	
ITL Institutional	

(b) A site plan shall also be submitted when a change of use of an existing structure requires additional parking or other significant external improvements.

314.2 WAIVER OF REQUIREMENTS

(a) Any requirement of this Section may be waived by the Agent where the waiver is not inconsistent with the intent of this Section, and the applicant establishes that an undue hardship would result from a strict enforcement of this Section, or that the requirement is unreasonable.

(b) The Agent may waive the requirements for site plan review for additions to buildings, structures, and uses if, in his/her opinion, such addition does not substantially affect the intent of this Section.

314.3 ADMINISTRATION

The administration and enforcement of this Ordinance shall be vested in the Berryville Town Council.

(a) Administrative Bodies

1. The Town Council hereby designates the Berryville Area Development Authority (BADA) as the Administrative Body for property within Annexation Area "B", as defined in the County/Town Agreement Defining Annexation

Rights, which is the subject of the application and for which no final Certificate of Occupancy has been granted.

2. In all other areas of Town, as well as for those plans involving property in Annexation Area "B" for which a final Certificate of Occupancy has previously been granted, the Town Council hereby designates the Berryville Planning Commission as the Administrative Body.
3. The BADA and Planning Commission are delegated the power to administer this Section within their respective jurisdictions, reviewing and approving or disapproving site plans as appropriate. The Administrative Bodies may accept comments from the Town of Berryville, the County of Clarke, and other applicable public agencies when reviewing site plans.

(b) Agent

The Planning Commission may act through the Berryville planning staff, and the BADA through the Berryville planning staff or the Clarke County planning staff (the "Agent"), to the extent the Administrative Bodies find it appropriate for the administration of this Section; provided that no agent may act for the Administrative Bodies in approving, conditionally approving, or disapproving any site plan. The Agent shall be responsible for the processing of site development plan applications, subject to the procedures provided herein.

(c) Inspection

All government officers and employees responsible for the enforcement of this Section shall have the right to enter upon any property at all reasonable times during the period of construction for the purpose of making inspections for compliance with this Section. It shall be the responsibility of the developer to notify the Agent when each stage of the development is ready for inspection for compliance with the site plan as approved by the Administrative Body. The developer shall make one (1) set of the approved site plan available at the site at all times during construction.

314.4 PROCEDURES

(a) Pre-Application Conference

All applicants shall first submit a sketch plan and request a pre-application conference with the Agent to discuss the basic site development scheme, basic ordinance requirements, and preliminary features of the proposed development as they relate to this Section.

(b) Application

1. Application for approval of a site development plan shall be made by submitting an application form, fifteen (15) copies of the site plan, and the applicable fee, to the Agent.
2. The Agent shall review the submitted materials to determine if the basic requirements of this Section have been met. If in conformance, the application shall be accepted for filing, and shall be forwarded to the Administrative Body.
3. The Agent shall forward copies of the site plan to all applicable agencies and officials for written comments and recommendations. After receiving such comments and recommendations, the Agent shall prepare a report for the Administrative Body.

4. The site plan and accompanying materials shall be available for public review in the Berryville town offices.
5. In addition to the fee set by the Town Council, the applicant shall also bear the costs of any professional services employed by the Administrative Body in reviewing the site plan.

(c) Action on Site Plan Application

1. Time Period – After receiving a complete application from the Agent, the Administrative Body shall consider the application at the next regular monthly meeting. Within one hundred (100) days of this first meeting, the Administrative Body shall act to approve, approve with conditions, or disapprove the site plan. Failure of the Administrative Body to act within this one hundred (100) – day period shall be deemed approval of the site plan unless an extension of the time period is agreed upon by the Administrative Body and the applicant.

(d) Public Notice and Hearings

Action on site plans not requiring an ordinance amendment is administrative and does not require public notice or hearings. However, the Administrative Body may provide public notice and hold public hearings on the site plan request, if it deems it desirable.

(e) Action by the Administrative Body

1. The Administrative Body shall approve the site plan if it finds that the plan meets the requirements of this Section; meets the intent of the Berryville Comprehensive Plan and/or its Berryville Area Plan component; and would promote the health, safety, and general welfare of the public.
2. The Administrative Body may condition approval of the site plan upon the applicant making certain changes or modifications to the plan, said conditions to be stated in writing by the Administrative Body.
3. The Administrative Body may disapprove a site plan, stating in writing the reasons for such disapproval.

(f) Appeals

Any applicant may appeal the decision of the Administrative Body by filing within thirty (30) days of the decision of the Administrative Body an appeal in writing to the Town Council of Berryville, Virginia.

(g) Site Plans Submitted with Special Use Permit Applications

Where a site plan is submitted with a Special Use Permit application as required in Section 503 of this Ordinance, the action of the Administrative Body shall be in the form of a recommendation to the Town Council. Town Council shall then consider the site plan in conjunction with the Special Use Permit request, as outlined in Section 503.

314.5 SPECIFICATIONS

Every site plan shall be prepared in accordance with the following specifications:

(a) The scale shall be one (1) inch equals not more than fifty (50) feet.

(b) All site plans shall be submitted on 24- by 36-inch sheets.

(c) If the site plan is on more than one sheet, match lines shall clearly indicate where the sheets join.

(d) Horizontal dimensions shall be in feet and decimals of feet to the nearest one-hundredth (1/100) of a foot.

314.6 CONTENTS

The site plan or any portion thereof involving engineering, urban planning, landscape architecture, architecture, or land surveying shall be prepared by qualified persons. Site plans shall be certified by seal and signature of an architect, engineer, or land surveyor licensed to practice by the Commonwealth of Virginia within the limits of their respective licenses. The site plan shall contain the following information, as applicable.

(a) The proposed title of the project and the name of the engineer, architect, landscape architect, or surveyor; the name of the developer; and the name and address of the property owner.

(b) A signature area for approvals by the chairman of the Administrative Body and the Agent.

(c) Signature of the property owner.

(d) North point, scale, and date.

(e) Vicinity map at a scale of one (1) inch equals not more than two thousand (2,000) feet, showing the location of the project in relation to corporate limits, town streets, and other prominent features.

(f) Existing zoning and zoning district boundaries for the property in question, and for immediately surrounding properties.

(g) The present owner and use of all properties contiguous or directly across the street.

(h) The boundaries of the property involved by bearings and distances, certified by a land surveyor licensed to practice in the Commonwealth of Virginia.

(i) All existing property lines, existing streets, buildings, watercourses, waterways, lakes, and other existing physical features on or adjoining the property. Size and height of existing buildings on the property should be shown. Features on adjoining properties need only be shown in approximate scale and proportion.

(j) Topography of the project area with contour intervals of two (2) feet or less.

(k) Location and sizes of sanitary and storm sewers, gas lines, water lines, culverts, fire hydrants, and other above-ground or underground structures in or affecting the project, including existing and proposed facilities, and easements for these facilities.

(l) The location, dimensions, name, and construction details (including typical sections) of proposed streets, alleys, driveways, and the location, type, and size of ingress and egress to the site. When proposed streets intersect with existing streets, both edges of existing pavement or curb and gutter must be indicated for a minimum of fifty (50) feet or the length of connections, whichever is greater.

(m) The location of all off-street parking, loading spaces, and walkways, indicating the types of surfacing, size and angle of stalls, width of aisles, and a schedule showing the number of parking spaces.

(n) The location, height, type, and material of all fences, walls, screen planting, and landscaping details of all buildings and grounds, and the location, height, and character of all outdoor lighting systems.

(o) The location of all proposed buildings and structures, primary and accessory; number of stories and height; proposed general use of each structure; and the number, size, and type of dwelling units, where applicable.

(p) Provision for the adequate disposition of natural and storm water indicating the location, sizes, types, and grades of ditches, catch basins, detention ponds (showing 10-year and 100-year elevations), and pipes and connections to existing drainage systems. Plans shall be in accordance with the Berryville Stormwater System Master Plan and Virginia Stormwater Management Program regulations.

(q) Provisions, plans, and schedules for the adequate control of erosion and sediment, in accordance with the Town of Berryville Erosion and Sediment Control Ordinance.

(r) Proposed finished grading by contour, supplemented where necessary by spot elevations.

(s) Floodplain studies as required by the Agent.

(t) The location, size, height, materials used, orientation, and illumination of proposed signs.

(u) The location, dimensions, and total area of proposed recreation, open space, and required amenities and improvements.

(v) The location of all wooded areas on the site; the location of all other individual trees with a diameter of eight (8) inches or more, measured one (1) foot above the ground; and an indication of which trees are to be retained and which are to be removed.

(w) A landscape plan (same scale as site plan), meeting the minimum landscape standards described below.

(x) Development sequence for phased construction, if applicable.

(y) Building restriction lines.

(z) Distance to nearest school or school site.

(aa) Elevation plans for all exterior facades of proposed structures, showing design features and indicating materials and colors to be used.

(bb) Source of title of the owner of record, including deed book and page reference of the last instrument in the chain of title.

(cc) Total site acreage of individual lots and street rights-of-way.

(dd) Location and acreage to the nearest one-tenth (0.1) acre of Critical Environmental Areas, including the following: slopes between 15 and 25 percent; slopes greater than 25 percent; rock outcroppings; sinkholes; floodplains and floodplain soils; current drainage channels; bodies of water; stormwater management facilities; utilities; and other sensitive areas defined by the Agent. The Agent may require that a geotechnical report be submitted where warranted by soil or water conditions.

(ee) Floor area ratio (FAR) and impervious surface coverage for all structures on the property.

(ff) Maximum number of employees anticipated, if industrial, commercial, or office; net density of dwelling units, if residential.

(gg) Anticipated daily and peak water demand and sewage flows for the site.

(hh) Anticipated daily vehicle trips generated by the site development; capacity of existing and proposed streets; sight distances for all intersections; proposed improvements within existing street rights-of-way; further traffic studies as required by the Agent.

(ii) A copy of all proposed homeowners' association by laws, and other covenants or maintenance documents where common ownership is anticipated.

(jj) A copy of rezoning proffers, Special Use Permit conditions, or variances granted for the property shall be submitted with the site plan.

(kk) Bond estimates for all required improvements.

(ll) Any necessary notes required by the Agent to explain the purpose of specific items on the plan.

(mm) Additional information as deemed necessary by the Administrative Body or the Agent.

314.7 IMPROVEMENTS AND MINIMUM STANDARDS

To further the intent of this Section and to protect public safety and general welfare, no site plan shall be approved until the Administrative Body is assured that improvements will be made which meet the following minimum standards:

(a) Streets and Rights-of-Way

1. Streets, driveways, access roads and rights-of-way shall be constructed and dedicated, and existing streets widened and improved as necessary, when the need for such streets and improvements is generated by the proposed development, or is indicated in the Berryville Comprehensive Plan and/or its Berryville Area Plan component.
2. All street construction standards and geometric design standards shall be in accord with the standards of the Berryville Subdivision Ordinance, the Virginia Department of Transportation, or other standards provided by the Town of Berryville. However, the Authority or the Agent may modify standards for local, collector, and minor loop streets, provided that off-street parking sufficient to accommodate required parking ratios are provided to complement the street system, and approval of the modifications is obtained from the Virginia Department of Transportation, where applicable.
3. All development must have direct access to public dedicated and State or Town-maintained roads. Sites or lots shall not have direct access to any arterial road, unless the physiography, shape, or size of the tract precludes other methods of access.
4. Where traffic generated from an entire development exceeds 2,000 vehicle trips per day, such development shall provide connectors to existing public roads at two or more locations. Where only one connection is physically achievable, the connecting portion of the entrance road must be a four-lane divided road extending not less than two hundred fifty (250) feet into the development. No internal vehicular connection shall be permitted on this entrance section.
5. Streets and rights-of-way shall permit access to adjoin properties in conformance with the Berryville Area Plan, Comprehensive Plan, and the satisfaction the Administrative Body or the Agent.
6. Travel ways designed for on-site two-way vehicular traffic circulation shall in no case have a pavement width of less than twenty (20) feet.

(b) Cul-de-Sacs

Cul-de-sacs shall be designed and constructed in accordance with the street standards of the Berryville Subdivision Ordinance, or with other standards provided by the Town of Berryville. Cul-de-sacs may not be used as parking areas.

(c) Parking

Parking bays shall be constructed to standards compatible with those of the adjoining public street, and shall be provided in a quantity according to the schedule set forth in the Berryville Zoning Ordinance. Off-street parking spaces shall be accessed via private travel ways, and not directly accessed from public rights-of-way.

(d) Sidewalks, Paths, and Walkways

Sidewalks, paths, and/or walkways shall be provided to enable the public to walk safely and conveniently from one building to another on the site, to and from adjacent sites, and to and from sidewalks in the public right-of-way. The construction material to be used must meet the approval of the Administrative Body or the Agent.

(e) Curb and Gutter

Curb and gutter (CG-6 or approved equivalent) shall be required on all new public streets. The Administrative Body may require curb and gutter on off-street parking areas, service drives, private streets, and around medians, where warranted by conditions. Upon recommendation from the Virginia Department of Transportation, the Administrative Body may waive the requirement for curb and gutter when in keeping with existing conditions on adjacent sites, and when safe travel and adequate stormwater management can be assured without curb and gutter.

(f) Utilities and Utility Easements

All utilities necessary to serve the proposed development shall be installed by the developer, and shall be installed underground in accordance with the adopted facilities plans of the Town of Berryville; provided however, that:

1. Equipment such as electric distribution transformers, switchgear, meter pedestals, and telephone pedestals, which are normally installed aboveground, may continue to be so installed;
2. Meters, connections, and similar equipment normally attached to outside walls may be so installed; and
3. Dedications of right-of-way easements shall be made for all utilities and facilities that are intended to be publicly maintained. Easements shall be clearly defined for the purposes intended. Minimum easement widths shall be as specified by the Administrative Body, the Agent, or utility company.

(g) Water and Sewer Systems

All water distribution and sewer collection systems shall be designed to accommodate normal and peak demand loads. All such systems shall be designed to meet or exceed the specifications of the Berryville Area Water and Sewerage Program. Regulations of the Virginia Department of Health and other state agencies shall also be met, as applicable.

(h) Stormwater Management

The stormwater runoff rate for a developed area shall be equal to or less than the runoff rate for the area prior to development. The policies and design criteria for meeting those goals are addressed in the Berryville Area Stormwater System Master Plan. Dedicated easements shall be provided for all facilities. As noted in the Master Plan, a pro-rata monetary contribution toward off-site drainage improvements may be substituted for on-site improvements, though only for those so designated in the Master Plan.

(i) Soil Suitability

The U.S. Department of Agriculture, Soil Conservation Service, shall be referred to for commenting on the suitability of soils for intended development, and on any special measures that are recommended for development on a certain soil classification. The applicant shall provide a generalized mapping of on-site soils and their engineering characteristics.

(j) Landscaping, Screening, Buffering

1. Where non-residentially zoned land is developed adjacent to land zoned for residential or open space uses, or where residentially zoned land is developed adjacent to a railroad or limited access highway, a landscaped buffer strip a minimum of ten (10) feet wide shall be provided along the common property line. The buffer shall include fencing and plant material. Fencing shall consist of a solid opaque wood fence or masonry wall six (6) feet in height. Plant material shall consist of deciduous trees, evergreen trees, and/or shrubs, in addition to ground cover, and shall be provided on at least one side of the fence.
2. All refuse containers shall be completely enclosed with a solid opaque wood fence or masonry wall at least six (6) feet high.
3. Mechanical equipment (including HVAC), energy conservation or collection equipment, or communications transmitting or receiving apparatus should be screened from public view.
4. Walls and fences used for screening should be composed of such traditional materials as brick, stone, or wood. Use of chain link, plastic, fiberglass, and plywood is discouraged.
5. For all uses, a landscaped buffer strip a minimum of ten (10) feet wide shall be provided along all public rights-of-way. The buffer shall include plant material consisting of deciduous trees, evergreen trees, and/or shrubs, in addition to living ground cover.
6. Where parking areas are adjacent to public rights-of-way, landscaping shall include shrubs and/or berms to screen parked automobiles.
7. New/replacement trees shall be spaced no farther apart than an average of fifty (50) feet, on center, and placed as close to the roadway as allowed in the Virginia Department of Transportation's Guidelines for Planting Along Virginia's Roadways.
8. Parking lots containing ten or more spaces shall be planted with at least one (1) deciduous tree per eight (8) spaces, meeting the following requirements:
   (a) Such required trees shall be surrounded by not less than forty (40) square feet of permeable, unpaved area.

(b) Other landscaping materials, including shrubs and groundcover, shall be included with the trees on parking islands.
(c) Each parking island shall have at least one (1) tree.
(d) Trees shall be at least ten (10) feet apart if on the same parking island.

9. Tree Specification:
   (a) Required street and parking island trees shall be major deciduous hardwood trees (maple, oak, linden, sycamore, etc.) meeting the following requirements:
      (i) Cast moderate to dense shadow; be long-lived (60+ years); be tolerant of pollution; be tolerant of direct or reflected heat; require little maintenance; be physically hardy and insect/disease resistant; be able to survive two years with no irrigation after establishment; be of native origin.
      (ii) All deciduous trees shall have a minimum trunk diameter of two-inch caliper measured at 4.5 feet from the ground when planted.
   (b) Any evergreen tree shall be a minimum of five (5) feet in height when planted.
10. The property owner shall be responsible for maintenance and replacement of such landscape material, as needed.

(k) Lighting
All outdoor lighting fixtures shall be shielded to prevent glare on adjacent properties or rights-of-way. No lighting fixtures shall exceed twenty-five (25) feet above the ground in height.

(l) Erosion and Sediment Control
An erosion and sediment control plan for the entire disturbed area of a development shall be prepared in accordance with the Berryville Erosion and Sediment Control Ordinance, and must receive the approval of the Lord Fairfax Soil & Water Conservations District Board.

(m) Miscellaneous Design Criteria
All other criteria and specifications shall be in accordance with Town standards, where provided. Where Town standards are not provided, the Administrative Body shall provide those standards or shall rule upon the standards proposed by the developer.

314.8 CONSTRUCTION AND BONDING

(a) No site improvement activities may occur unless all of the following have been met:
   1. Approval of final site plan and erosion and sediment control plan.
   2. Approval of erosion and sediment control bond, and installation of erosion and sediment control measures.
   3. Posting of construction bond.

(b) All improvements required by this Section shall be installed at the cost of the Developer, except where cost sharing or reimbursement agreements between the Town and the applicant are appropriate, the same to be recognized by formal written approval prior to site plan approval.

(c) The approval of a site plan and/or the installation of improvements shall not obligate the Town to accept the improvements for maintenance, repair, or operation. Acceptance shall be subject to Town and/or State regulations, where applicable, and dependent on the satisfactory nature of the improvements.

(d) The applicant is required to post a bond or other acceptable surety covering the construction and satisfactory completion of all required on-site and off-site improvements. Such bond shall be posted under the provisions of Berryville Area Plan Bonding Agreement.

314.9 REVISIONS

The Agent may administratively approve changes to an approved site plan which the Agent determines are minor revisions, complying with all provisions of the Section and having no additional adverse impact on public facilities or adjacent properties. Major revisions are permitted, provided that they are approved by the Administrative Body in the same manner as the original site plan.

314.10 TERMINATION AND EXTENSION

An approved site plan shall expire and become null and void if all approved development is not completed within five (5) years from the date of approval. The Administrative Body or the Agent may grant a one (1)-year extension upon written request.

314.11 BUILDING PERMITS

For all properties and uses subject to this Section, no building permit shall be issued to construct or alter any structure, or authorization granted to improve land, until a site plan has been approved.

(2/01) SECTION 315 – HOME OCCUPATIONS, HOME OFFICES

315.1 INTENT

The Town Council intends to allow Home Occupations and Home Offices in the town to foster economic activity. Through the application of this Ordinance, the Town Council intends to preserve the sanctity, tranquility, value, appearance, and ambiance of the residential neighborhoods, residential units, or residential uses in the Town and to prevent, eliminate, or discontinue home-based businesses that negatively impact residents living near, around, or next to the site of the home-based business.

315.2 ALLOWANCE OF HOME OCCUPATIONS AND HOME OFFICES

(a) Under the terms of the Section, a Home Office may be conducted by right in any dwelling unit in any residence in the Town.

(b) Home occupations are allowed in residences either by right or by Special Use Permit as permitted in a given zoning district.

(c) No such use shall be instituted or maintained unless the Zoning Administrator has first issued a zoning permit for this use.

315.3 ADMINISTRATION AND ENFORCEMENT

(a) The practitioner of the proposed Home Occupation or Home Office shall file a zoning permit application with the Zoning Administrator. The application shall include a description of the business to be conducted, the square footage of the dwelling unit and the square footage to be used for the Home Occupation or Home Office, and the names and addresses of the proposed owners.

(b) A Home Occupation or Home Office may be conducted within a dwelling unit or accessory building only so long as the business use remains incidental and secondary to the use of the dwelling unit as a place of residence. The Zoning Administrator shall determine if a Home Occupation or Home Office is not, or stops being, incidental and secondary to the use of the dwelling unit as a place of residence if and when Town officers, or residents living near, around, or next to the dwelling unit used for a Home Occupation or Home Office may hear, see, smell, or detect the existence of this use, in such a manner as alters the residential character of the zoning district in which the Home Occupation or Home Office is located. In making this determination, the Zoning Administrator shall rely on the intent Section of the respective zoning district regulations, the Intent Section of this Article, and any public affidavits filed by such residents. If the Zoning Administrator determines that due to growth or change in the Home Occupation or Home Office, the Home Occupation or Home Office is no longer consistent with this Article and other relevant provisions of this Section, the Zoning Administrator may revoke the zoning permit issued to the person conducting the Home Occupation or Home Office. The person conducting this use shall cease operation after forty-five days written notice mailed by certified mail. During this time period the business owner may apply to the Board of Zoning Appeals for a determination of the Zoning Administrator's decision.

(c) The Town Treasurer shall refuse to issue a business license to any person conducting a Home Occupation or Home Office that the Zoning Administrator certifies is in violation of this Article.

(d) No vested rights shall accrue to any person as to a Home Occupation or Home Office that begins as conforming to this Article and through growth or change becomes inconsistent with this Article and related provisions of this Section.

315.4 GENERAL RESTRICTIONS ON HOME OCCUPATIONS AND HOME OFFICES **(2/01)**

A use within a residential dwelling shall meet the following criteria in order to qualify as either a Home Occupation or Home Office:

(a) Such use shall be clearly incidental to a dwelling and if located within the dwelling, it must not occupy more than twenty-five (25) percent of the floor area of the principle structure.

(b) No Home Occupation conducted in any accessory building shall occupy more than four hundred (400) square feet, which area shall be included in the maximum square footage allowed in Section 315.4(a). If located within an accessory building, a landscaping plan must be submitted for review and approval by the Zoning Administrator. If a Special Use Permit is required, the landscaping plan will be reviewed by the Planning Commission.

(c) Such use shall be carried on by a resident or residents of the premises. No person not a resident on the premises may be employed, nor may there be sub-contracting of any work performed at the premises.

(d) No stock, commodity, equipment or process shall be used in the Home Occupation which creates noise, vibration, glare, fumes, odors, electromagnetic interference, or radio frequency interference detectable to the normal senses off the lot if the occupation is conducted in a detached single-family residence, or outside the dwelling unit if conducted in an attached residence.

(e) There shall be no exterior evidence that the building is being used for any purpose other than a dwelling.

(f) There shall be no motor vehicle regularly operated from the premises that carries advertising.

(g) All applicable licenses and permits shall be secured and other local, state, and federal requirements satisfied.

(h) A Town of Berryville business license shall be obtained in accordance with Chapter 9 of the Code of the Town of Berryville (if applicable).

(i) Home Occupation/Home Office permits shall be automatically renewed annually; however, permit shall be reviewed upon receipt of complaints.

315.5 HOME OCCUPATIONS **(12/92)**

In addition to those requirements listed in Section 315.4 above, a use within a residential dwelling shall meet the following criteria in order to qualify as a Home Occupation:

(a) There shall be no advertising sign displayed other than a nameplate not exceeding two (2) square feet in area on each face of said plate.

(b) No storage of explosive or hazardous material is permitted in quantities not normally found in a residence.
(c) Vehicular repair is specifically prohibited as a Home Occupation.

315.6 HOME OFFICE
In addition to the requirements listed in Section 315.4, a Home Office shall be a permitted use in a residential dwelling when fully meeting each of the following criteria:
(a) Customers shall not come to the premises in order to receive the service provided.
(b) There shall be no signs identifying or advertising the Home Office either attached to the dwelling or posted in the yard.
(c) There shall be no advertising of the street address.

SECIION 316 – PROVISIONS FOR CUL-DE-SAC LOTS

316 PROVISIONS FOR CUL-DE-SAC LOTS
The minimum width of any lot 15,000 square feet or greater in area that fronts on a cul-de-sac, as defined in Section IX of the Subdivision Ordinance, shall not be more than a twenty (20) percent reduction at the setback line as set forth in the appropriate zoning district regulations. **(9/98)**

SECTION 317 – KARST FEATURES (07/04)

317.1 Prior to the issuance of a Zoning Permit for principle structures or additions thereto on lots in subdivisions for which a Karst Plan has been prepared or lots of record on which karst features have been identified, a geotechnical study shall be conducted at the site of the principle structure or addition to determine the existence of karst features. If karst features are found, a remediation plan shall be prepared by a PE or PG in order to protect the health, safety, and welfare of the occupants of the structure. This remediation plan shall:
a. provide for mitigation of all karst features and sinkholes, except those identified as Critical Environmental Areas, in accordance with the Virginia Department of Transportation's Location and Design Division Instructional and Informational Memorandum 228 (IIM-LD-228) or other applicable mitigation standard as recommended by a PE or PG and approved by the Town's Engineer and the Town's Zoning Administrator, or
b. the applicant shall submit a report prepared by a PE or PG that identifies subsurface conditions within one-hundred (100) feet, or an appropriate distance as determined by the Town Zoning Administrator and Town's Engineer, of the discernable edge of any sinkhole or karst feature and establishes a minimum recommended setback for structures and a minimum recommended ground water protection buffer approved by the Town's Engineer and the Town's Zoning Administrator shall review and approve the report before issuance of said permit. (7/04)

317.2 Sinkholes or karst features that are discovered during construction shall be mitigated in accordance with the Virginia Department of Transportation's Location and Design Division Instructional and Informational Memorandum 228 (IIM-LD-228) or other applicable mitigation standard as recommended by a PE or PG and approved by the Town's Engineer and the Town Zoning Administrator. Said mitigation shall be completed prior to the issuance of a Certificate of Occupancy.

317.3 Prior to the issuance of a Certificate of Occupancy for any structure, the location of sinkholes and karst features and method of mitigation, including volume of material used, shall be identified on a plat by a Certified Land Surveyor or PE and recorded in the land records of the Clerk of the Circuit Court for the County of Clarke.

317.4 The provisions of this Section shall not apply to accessory or agricultural structures to be located on parcels zoned Open Space Residential (OSR) and where the discernable edge of a sinkhole or karst features are in excess of one-hundred (100) feet from said structure.

SECTION 318 – STREAMS AND SPRINGS (07/04)

318 Except in areas where floodplains have been established by the Federal Emergency Management Agency and identified on Flood Insurance Rate Maps (FIRM), all structures shall be set back a minimum of 25 feet from intermittent streams and set back a minimum of 100 feet from perennial streams and perennial springs. In areas where the floodplain has been identified on a FIRM, the provisions of Section 206 of this ordinance shall apply.

SECTION 319 – SIDEWALKS (09/05)

319.1 RESIDENTIAL SUBDIVISIONS

In residential subdivisions, sidewalks shall be required on both sides of all public streets within the subdivision and along the side of each public street, except Virginia Route 7 Bypass, which borders the subdivision.

319.2 OTHER

In other than residential subdivisions, sidewalks shall be required as provided in Section 314.7(d) of this Ordinance.

SECTION 320 – CURB AND GUTTER (09/05)

320.1 RESIDENTIAL SUBDIVISIONS

In residential subdivisions, curb and gutter shall be required on both sides of all public streets within the subdivision and along the side of each public street, except Virginia Route 7 Bypass, which borders the subdivision. **(1/06)**

320.2 OTHER

In other than residential subdivisions, curb and gutter shall be required as provided in Section 314.7(e) of this Ordinance.

SECTION 321 – PUBLIC TREE ORDINANCE (6/07)

321 Statement of Intent

It is recognized that trees add a great deal to property values by providing shade, erosion control, and general beauty to the Town, making the latter more appealing to visitors and pleasant for the citizenry.

It is further recognized that landscaping on public property also adds to the general beauty and appeal of the Town, thereby enhancing both tourism and the quality of life for the citizenry.

It is, therefore, the purpose of this chapter to set forth a policy which encourages the planting, nurturing, and proper maintenance of all trees on public property. Experience has shown that trees, under some circumstances, can be hazardous to public safety; hence, this chapter also provides for tree pruning or removal when conditions warrant.

321.1 Definitions

Street trees – "Street trees" are herein defined as trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or ways within the Town.

Park trees – "Park trees" are herein defined as trees, shrubs and all other woody vegetation in public parks having individual names, and all areas owned by the Town, on to which the public has free access as a park.

Native – A plant that lives or grows naturally in a particular region without direct or indicted human intervention.

Small tree – Small trees shall have a mature height of up to thirty (30) feet and have an equal spread as described in the Manual of Woody Landscape plants.

Medium tree – Medium trees shall have a mature height between thirty (30) and forty-five (45) feet with a spread of at least thirty feet as described in the Manual of Woody Landscape Plants.

Large tree – Large trees shall have a mature height of over forty-five (45) feet and have an equal spread as described in the Manual of Woody Landscape Plants.

321.2 Creation and Establishment of a Town Tree Board

There is hereby created and established a Town Tree Board for the Town of Berryville which shall consist of five members, citizens and residents of the Town of Berryville, who shall be appointed by the Town Council. **(09/18)**

321.3 Term of Office

The term of the five persons to be appointed by the mayor shall be four years except that the term of two of the members appointed to the first board shall be for only two years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of the term.

321.4 Compensation

Members of the Board shall serve without compensation.

321.5 Duties and Responsibilities

(a) Serve to enhance the public participation in the beautification of the Town through landscaped improvements by using, whenever possible, native plant species;

(b) Act as an advocate for both public and private landscaping, assisting in the coordination of both;

(c) Provide advisory oversight to the amendment and implementation of the comprehensive landscape master plan;

(d) Assist with the education of the public on matters of public landscaping through materials, public appearances and media exposure as appropriate; and

(e) Act in an advisory and advocacy role to the Town Council and Town Manager.

321.6 Operation

The Board shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall constitute a quorum to the transaction of business.

321.7 Street Tree Planting

(a) Every effort should be made to plant native tree species.

(b) The spacing of street trees will be in accordance with the three species size classes listed under Section 321.1. Spacing shall be 30 feet for small trees; 40 feet for medium trees and 50 feet for large trees, except in special plantings designed or approved by a landscape architect.

(c) No trees shall be planted closer to any curb or sidewalk than the following: small trees – 2 feet; medium trees – 3 feet; and large trees – 4 feet.

(d) No street tree shall be planted closer than 35 feet from any street corner, measured from the point of nearest intersecting curbs or curb lines.

(e) No street tree shall be closer than 10 feet from a fire hydrant.

(f) No street trees shall be planted under or within 15 feet of any overhead wire or over or within ten (10) lateral feet of any underground water line, sewer line, transmission line, or any other utility.

321.8 Public Tree Care

(a) The Town shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

(b) Before the removal of any street tree or park tree, or any part thereof, by the Town, or before the Town issues an order directing said removal, the Town shall advise the Tree Advisory Board in writing of its intention and the reasons thereof. The Tree Advisory Board shall have 30 days after receipt of such notice to make its recommendation to the Town with respect thereto, suggesting, if possible, any alternative to the proposed removal. Such alternatives are advisory only, the decision to remove hereunder being at the discretion of the Town Manager.

(c) The Town shall not remove a street tree of significant size, or permit removal by others, unless notice of the intended removal or destruction is given. The notice shall consist of a durable and legible statement of the Town's intent, affixed to and easily visible on the tree for not less than five days immediately preceding the contemplated removal or destruction; and the notice shall state the reason for the intended removal or destruction of the tree and the person or persons to whom inquiries or protests thereon may be directed.

(d) In the event of an emergency situation, such as a fallen tree or some other condition or occurrence requiring an immediate removal or destruction of a tree along one of these public ways, the Town may remove or destroy the tree without complying with the foregoing provisions of this section. "Emergency situation" shall include, but is not limited to, trees posing an immediate danger to public safety and trees causing stoppage of utility services such as water lines, sewer lines, electric or power lines or other public or private improvements; all as determined by the Director of Public Works for the Town.

(e) When a tree is removed it shall be Town policy to plant a replacement in the general area to include planting on private property, with the consent of the owner.

321.9 Review by Town Council

The Town Council shall have the right to review the conduct, acts, and decisions of the Town Tree Board. Any person may appeal from any ruling or order of the Town Tree Board to the Town Council who may hear the matter and make final decision.

321.10 Penalty

Any person violating any provision of this ordinance shall be, upon conviction or a plea of guilty, subject to a fine not to exceed $500.

322 EROSION AND SEDIMENT CONTROL ORIDINANCE (9/17)

322.1 TITLE, PURPOSE, AND AUTORITY

This ordinance shall be known as the "Erosion and Sediment Control Ordinance of the Town of Berryville". The purpose of this chapter is to prevent degradation of properties, stream channels, waters and other natural resources of the Town of Berryville by establishing requirements for the control of soil erosion, sediment deposition and non-agricultural runoff, and by establishing procedures whereby these requirements shall be administered and enforced.

This Chapter is authorized by the Code of Virginia, Title 62.1, Chapter 3.1. Article 2.4, known as the Virginia Erosion and Sediment Control Law.

322.2 DEFINITIONS

Agreement in lieu of a plan – a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

Applicant – any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

Board – The Virginia State Water Control Board.

Certified inspector – an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of project inspection, or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.

Certified plan reviewer – an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of a plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article I (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 or a professional soil scientist as defined in § 54.1-22 of the Code of Virginia.

Certified program administrator – an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.

Clearing – any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.

Department – **the Department of Environmental Quality.**

Development – means a tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

Director – means the director of the Department of Environmental Quality.

District or **Soil and Water Conservation District** – refers to the Lord Fairfax Soil and Water Conservation District.

Erosion and Sediment Control Plan or **Plan** – a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, and appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions and all information deemed necessary by the VESCP plan approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

Erosion impact area – an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes.

Excavating – any digging, scooping or other methods of removing earth materials.

Filling – any depositing or stockpiling of earth materials.

Grading – any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

Land–disturbing activity – any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

(1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
(2) Individual service connections;
(3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surface road, street or sidewalk provided such land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;
(4) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
(5) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1 of the Code of Virginia;

(6) Tilling, planting, or harvesting or agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or natural in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163;

(7) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;

(8) Agricultural engineering operations including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (Va. Code §10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;

(9) Disturbed land areas of less than 10,000 square feet in size, or less than 2,500 square feet in all areas of the jurisdiction designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations;

(10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

(11) Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, or the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this ordinance; and

(12) Emergency work to protect life, limb or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan-approving authority.

Land Disturbing Permit or approval – a permit issued by the Town of Berryville for clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any other land disturbing activity.

Natural channel design concepts – the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

Owner – the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

Peak Flow Rate – the maximum instantaneous flow from a given storm condition at a particular location.

Permit, state – an approval to conduct a land-disturbing activity issued by the Board in the form of a State stormwater individual permit or coverage issued under a State general permit.

Permittee – the person to whom the land-disturbing approval is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

Person – any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

Plan-approving authority, VESCP – the Zoning Administrator responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units or lands and for approving plans.

Program authority or VESCP Authority – the Town of Berryville which has adopted a soil erosion and sediment control program that has been approved by the Board.

Responsible Land Disturber or RLD – an individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the approved ESC plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the ESC plan or permit as a prerequisite for engaging in land disturbance.

Runoff volume – the volume of water that runs off the land development project from a prescribed storm event.

Single-family residence – a noncommercial dwelling that is occupied exclusively by one family.

State waters – all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdictions.

Town – the incorporated Town of Berryville.

Transporting – any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

Virginia Erosion and Sediment Control Program or VESCP – a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and non-agricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of this article and its associated regulations.

Water quality volume – the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

322.3 LOCAL EROSION AND SEDIMENT CONTROL PROGRAM

Pursuant to § 62.1-44.15:44 of the Code of Virginia, the Town of Berryville hereby establishes a VESCP program and adopts the regulations promulgated by the Board (for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources) and the *Virginia Erosion & Sediment Control Handbook*, third edition. In accordance with § 62.1-44.15:52 of the Code of Virginia, any plan approved prior to July 1, 2014 that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-, 2-, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

A. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements for natural and man-made channels shall be satisfied by compliance with water quantity requirements specific in § 62.1-44.15:28 of the Stormwater Management Act and 9VAC25-870-66 of the Virginia Stormwater Management Program (VSMP) regulations, unless such land-disturbing activities are in accordance with the grandfathering provisions of the Virginia Stormwater Management Program (VSMP) Regulations.
B. Pursuant to § 62.1-44.15:53 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The Erosion Control Program of the Town of Berryville shall contain a certified program administrator, a certified plan reviewer, and a certified inspector (who may be the same person).
C. The Town of Berryville hereby designates the Zoning Administrator as the plan-approving authority.

D. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the Zoning Administrator.

322.4 SUBMISSION AND APPROVAL OF PLANS; CONTENTS OF PLANS

A. Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the Zoning Administrator for the Town of Berryville an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the VESCP authority. No approval to begin land disturbing activity will be issued unless evidence of state permit coverage is obtained where it is required. Where land-disturbing activities involve lands under the jurisdiction of more than one VESCP, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Department for review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity results from the construction of a single-family residence, an "agreement in lieu of a plan" may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.

B. The standards contained within the "Virginia Erosion and Sediment Control Regulations", the Virginia Erosion and Sediment Control Handbook as amended is to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between publications, the State regulations shall take precedence.

C. The VESCP plan-approving authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of the Erosion and Sediment Control Law and the Board's regulations, and if the person responsible for carrying out the plan certifies that s/he will properly perform the measures included in the plan and will conform to the provisions of this ordinance. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of the responsible land disturber to the program authority, as provided by § 62.1-44.15:52 of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of the responsible land disturber prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.

D. When the plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify such modifications, terms, and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

E. The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.

F. The VESCP authority may require changes to an approved plan when:
   (1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
   (2) The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the plan-approving authority and the person responsible for carrying out the plans.

G. Variances: The VESCP plan approving authority may waive or modify any of the standards that are deemed to be inappropriate or too restrictive for site conditions by granting a variance. A variance may be granted under the following conditions:
   (1) At the time of plan submission, an applicant may request a variance to become part of the approved Erosion and Sediment Control Plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the plan-approving authority shall be documented in the plan.
   (2) During construction, the person responsible for implementing the approved plan may request a variance in writing from the plan-approving authority. The plan-approving authority shall respond in writing either approving or disapproving such a request. If the plan-approving authority does not approve a variance within ten (10) days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.
   (3) The VESCP authority shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.

H. In order to prevent further erosion, the Town of Berryville may require approval of a plan for any land identified in the local program as an erosion impact area.

I. When a land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

J. In accordance with the procedure set forth in § 62.1-44.15:55(E) of the Code of Virginia, any person engaging, in more than one jurisdiction, in the creation and operation of wetland mitigation or stream restoration banks, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetland mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation or stream restoration banks annually with the Board for review and approval consistent with guidelines established by the Board. Approval of general erosion and sediment control specifications does not relieve the owner or operator from compliance with any other local ordinances and regulations including requirements to submit plans and obtain permits as may be required by such ordinances and regulations.

K. State agency projects are exempt from the provisions of this ordinance except as provided in the Code of Virginia § 62.1-44.15:56.

322.5 PERMITS; FEES; SECURITY FOR PERFORMANCE

A. Agencies authorized under any other law to issue grading, building, or other permits for activities involving land disturbing activities may not issue any such permit unless the applicant submits with his/her application an approved erosion and sediment control plan, certification that the plan will be followed, and evidence of state permit coverage where it is required.

B. No person may engage in any land-disturbing activity until s/he has acquired a land-disturbing permit, unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance, and has paid the fees and posted the required bond.

C. An administrative fee of $200.00 shall be paid to the Town of Berryville at the time of submission of the erosion and sediment control plan.

D. No land-disturbing permit shall be issued until the applicant submits with his/her application an approved erosion and sediment control plan or agreement in lieu of an approved erosion and sediment control plan and certification that the plan will be followed.

E. All applicants for permits shall provide to the Town of Berryville a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the Zoning Administrator, to ensure that measures could be taken by the Town of Berryville at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of the applicant by the approved plan as a result of his land-disturbing activity.

The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action. Should it be necessary for the Town of Berryville to take such conservation action, the Town of Berryville may collect from the applicant any costs in excess of the amount of the surety held. Within sixty (60) days of adequate stabilization, as determined by the Zoning Administrator in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpected or unobligated portion thereof shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

322.6 MONITORING, REPORTS, AND INSPECTIONS

A. The responsible land disturber, as provided by § 62.1-44.15:52, shall be in charge of and responsible for carrying out the land-disturbing activity and provide for periodic inspections of the land-disturbing activity. The Town of Berryville may require the person responsible for carrying out the plan to monitor the land-disturbing activity.

The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.

B. The Zoning Administrator shall periodically inspect the land-disturbing activity in accordance with Section 9VAC25-840-60 of the Virginia Erosion and Sediment Control Regulations to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.

If the Zoning Administrator determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by mailing with confirmation of delivery to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.

The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this ordinance and shall be subject to the penalties provided by this ordinance.

C. Upon issuance of an inspection report denoting a violation of Va. Code §§ 62.1-44.15:55, -44.15:56, the Zoning Administrator may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

If land-disturbing activities have commenced without an approved plan, the Zoning Administrator may issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land disturbing activities have commenced without an approval plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.

The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the Circuit Court of the County of Clarke. The Town of Berryville shall serve such order for disturbance without an approved plan or permits upon the owner by mailing with confirmation of delivery to the address specified in the land records. Said order shall be posted on the site where the disturbance is occurring, and shall remain in effect until permits and plan approvals are secured, except in such situations where an agricultural exemption applies.

If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the Zoning Administrator may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the permit application or the land records of the Town of Berryville.

The owner may appeal the issuance of an order to the Circuit Court of the County of Clarke.

Any person violating or failing, neglecting or refusing to obey an order issued by the Zoning Administrator may be compelled in a proceeding instituted in the Circuit Court of the County of Clarke to obey same to comply therewith by injunction, mandamus or other appropriate remedy.

Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.

Nothing in this section shall prevent the Zoning Administrator from taking any other action authorized by this ordinance.

322.7 PENALTIES, INJUNCTIONS, AND OTHER LEGAL ACTIONS

A. Violators of this ordinance shall be guilty of a Class I misdemeanor.

B. Any person who violates any provision of Va. Code §§ 62.1-44.15:55. 62.1-44.15:56 shall, upon a finding of the District Court of the County of Clarke be assessed a civil penalty. The civil penalty for any one violation shall not be less than $100 nor more than $1,000, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be $1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of $10,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of $10,000. Any such civil penalties shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection A of § 62.1-44.15:63.

C. The Zoning Administrator or the owner or property which has sustained damage or which is in imminent danger of being damaged, may apply to the Circuit Court of the County of Clarke to enjoin a violation or a threatened violation of of Va. Code §§ 62.1-44.15:55, -44.15:56, without the necessity of showing that an adequate remedy at law does not exist. However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or crate the probability of causing, damage to his property.

D. In addition to any criminal penalties provided under this ordinance, any person who violates any provision of this ordinance may be liable to the Town of Berryville in a civil action for damages.

E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed $2,000 for each violation. A civil action for such violation or failure may be brought by the Town of Berryville.
Any civil penalties assessed by a court shall be paid into the treasury of the Town of Berryville except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this ordinance, or order of the VESCP authority the Town of Berryville may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection B or E.

G. The Commonwealth's Attorney shall, upon request of the Town of Berryville legal action to enforce the provisions of this ordinance.

H. Compliance with the provisions of this ordinance shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.

322.8 APPEALS AND JUDICIAL REVIEW

A. Final decisions of the Town of Berryville under this ordinance shall be subject to review by the County of Clarke Circuit Court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land disturbing activities.

SECTION 323 – Temporary Family Health Care Structures (11/10)

323.1 Provisions for Temporary Health Care Structures

(a) A Temporary Family Health Care Structure shall be (i) for the use by a caregiver in providing care for a mentally or physically impaired person and (ii) on property owned or occupied by the caregiver at his/her residence as a permitted accessory use. Such a structure shall comply with all setback requirements that apply to the primary structure primary structure and with any maximum floor area ration limitations that may apply to the primary structure. Only one family health care structure shall be allowed on a lot or parcel of land.

(b) For purposes of this section:

(1) "Caregiver" means an adult who provides care for a mentally or physically impaired person within the Commonwealth. A caregiver shall be either related by blood, marriage, or adoption to or the legally appointed guardian of the mentally or physically impaired person for whom he is caring.

(2) "Mentally or physically impaired person "means a person who is a resident of Virginia and who requires assistance with two or more activities of daily living, as defined in § 63.2-2200, as certified in writing provided by a physician licensed by the Commonwealth.

(3) Temporary family health care structure" means a transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person, that (i) is primarily assembled at a location other than its site of installation, (ii) is limited to one occupant who shall be the mentally or physically impaired person, (iii) has no more than 300 gross square feet, and (iv) complies with applicable provisions of the Industrialized Building Safety Law (§ 36-70 et seq.) and the Uniform Statewide Building Code (§ 36-97 et seq.). Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.

(c) Any person proposing to install a temporary family health care structure shall first obtain a permit from the Berryville Town Council, for which the Town of Berryville will charge a fee per the Planning and Zoning Fee Schedule, as amended. The Town of Berryville may not withhold such permit if the applicant provides sufficient proof of compliance with this section. The Town of Berryville may require that the applicant provide evidence of compliance with this section on an annual basis as long as the temporary family health care structure remains on the property. Such evidence may involve the inspection by the Berryville Zoning Administrator of the temporary family health care structure at reasonable times convenient to the caregiver, not limited to any annual compliance confirmation.

(d) Any temporary family health care structure installed pursuant to this section may be required to connect to any water, sewer, and electric utilities that are serving the primary residence on the property and shall comply with all applicable requirements of the Virginia Department of Health.

(e) No signage advertising or otherwise promoting the existence of the structure shall be permitted either on the exterior of the temporary family health care structure or elsewhere on the property.

(f) Any temporary family health care structure installed pursuant to this section shall be removed within 30 days in which the mentally or physically impaired person is no longer receiving or is no longer in need of the assistance provided for in this section.

(g) The local governing body, or the zoning administrator on its behalf, may revoke the permit granted pursuant to subsection C if the permit holder violates any provision of this section. Additionally, the local governing body may seek injunctive relief or other appropriate actions or proceedings in the circuit court of that locality to ensure compliance with this section. The zoning administrator is vested with all necessary authority on behalf of the governing body of the Town of Berryville to ensure compliance with this section.

SECTION 324 – Donation Drop-off Boxes (5/13)

324

(a) Donation drop-off boxes shall be permitted in all zoning districts provided they are located on a property that contains a church or building containing a charitable use as a permitted primary use. The donation drop-off box shall specifically benefit that church or charitable use.

(b) Donation drop-off boxes shall not be located in any provided front or corner-side yard, nor located in any required side yard setback.

(c) Donation drop-off boxes shall not obstruct pedestrian or vehicular circulation, nor be located in public rights-of-way, landscape areas, required parking spaces, fire lanes, loading zones, or any other location that may cause hazardous conditions, constitute a threat to the public safety, or crate a condition detrimental to surrounding land uses.

(d) Donation drop-off boxes shall not be located within the 100-year floodplain as identified in the current Flood Insurance Rate Map (FIRM).

(e) Donation drop-off boxes shall be clearly marked to identify the specific items and materials requested to be left for donation, the name of the operator or owner of the container, the entity responsible for maintenance of the drop-off box and removal of materials and trash from the immediate area, and a telephone number where the owner, operator or agent may be reached at any time.

(f) No more than two donation drop-off boxes shall be located on any property, and each donation drop-off box shall have a capacity of no more than six (6) cubic yards and a maximum height of seven (7) feet.

(g) Donation drop-off Boxes located within the Town of Berryville Historic District shall be reviewed by the Architectural Review Board prior to installation and shall be reviewed to the standards by which determinations are made per Section 703.6 of the Berryville Zoning Ordinance.

(h) A donation drop-off box shall be screened per Section 314.j.2. of the Berryville Zoning Ordinance, which requires that all refuse containers be completely enclosed with a solid opaque wood fence or masonry wall at least six (6) feet high.

(i) Prior to placement of a donation drop-off box on a property, an application for a zoning permit, together with a site sketch plan and any additional information as deemed necessary by the Zoning Administrator, shall be submitted to the Zoning Administrator for approval.

(j) The area around the donation drop-off box shall be maintained with no accumulation of donated items outside of the box.

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ARTICLE IV – NONCONFORMING USES

SECTION 401 - CONTINUATION

401.1 If at the time of enactment of this Ordinance, any legal activity is being pursued, or any lot or structure legally utilized in a manner or for a purpose which does not conform to the provisions of this Ordinance, such manner of use or purpose may be continued as herein provided.

401.2 If any change in title of possession, or renewal of a lease of any lot or structure occurs, the existing use may be continued.

401.3 If any non-conforming use (structure or activity) is discontinued for a period exceeding two (2) years after the enactment of this Ordinance, it shall be deemed abandoned and any subsequent use shall conform to the requirements of this Ordinance.

SECTION 402 - PERMITS

402 The construction or use of a non-conforming building or land area for which a permit was issued legally prior to the adoption of this Ordinance may proceed, provided such building is completed within thirty (30) days after the effective date of this Ordinance.

SECTION 403 - REPAIRS AND MAINTENANCE

403 Non-conforming uses and structures may be repaired and maintained, and unsafe structures may be made safe as long as the nonconformity is not increased.

SECTION 404 - CHANGES IN DISTRICT BOUNDARIES

404 Whenever the boundaries of a district are changed, any uses of land or buildings which become non-conforming as a result of such change shall become subject to the provisions of this Article.

SECTION 405 - NON-CONFORMING LOTS OF RECORD

405 In any district, structures and customary accessory buildings may be erected and/or enlarged on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and the requirements, other than those applying to area or width, or both, shall conform to the regulations for the district in which such lot is located. Variance of yard or other requirements shall be obtained only through action of the Board of Zoning Appeals as provided by law.

SECTION 406 - NON-CONFORMING USES OF LAND

406 Lawful uses of land, which at the effective date of this Ordinance or as a result of subsequent amendments thereto, become non-conforming may be continued by the present or any subsequent owner so long as it remains otherwise lawful, subject to the following provisions:

406.1 EXTENSION
No such non-conforming use shall be enlarged or increased nor extended to occupy a greater area of land than was used at the effective date of adoption of this Ordinance.

406.2 CHANGE OF USE OF LAND
Such non-conforming use, if changed to a conforming use, shall not thereafter be changed back to any non-conforming use.

406.3 CHANGE OF USE OF LAND AS A SPECIAL EXCEPTION
Such non-conforming use may as a special exception be changed to another non-conforming use, provided that in considering each specific case, the Council shall find that the proposed use is equally or more appropriate to the district than the existing non-conforming use. In permitting such change, the Council may impose conditions and safeguards deemed appropriate.

406.5 NOT MOVED
No such non-conforming use shall be moved in whole or in part to any portion of the lot or parcel no occupied by said use at the effective date of this Ordinance, or to any other lot or parcel not properly zoned to permit such use.

SECTION 407 - NON-CONFORMING STRUCTURES OR BUILDINGS

407 Structures or building which at the effective date of this Ordinance or subsequent amendments thereto become non-conforming by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the building or structure, may be continued to be used for so long as such structure or building remains otherwise lawful, subject to the following provisions:

407.1 ENLARGEMENT OF NON-CONFORMING STRUCTURE OR BUILDING
No such non-conforming structure or building may be enlarged or altered in a way that increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity. Enlargement may occur if no new non-conformity is created.

407.2 DAMAGE OR DESTRUCTION OF BUILDING
A non-conforming structure or building which is destroyed or partially destroyed by any means to an extent of fifty (50) percent or more of the market value thereof immediately prior to such damage or destruction, shall not be repaired or restored to a non-conforming status unless restoration or reconstruction of the structure is started within twelve (12) months of the date of damage or destruction and is completed within twelve (12) months

of the issuance of a building permit. No such nonconforming structures that are restored or reconstructed within the time limit set forth above shall be enlarged or altered in a way that increases its nonconformity. **(04/05)**

407.3 MOVING OF STRUCTURE OR BUILDING
No non-conforming structure or building shall be, for any reason, moved for any distance unless it shall thereafter conform to the zoning regulations for the district in which it is located after it is moved.

SECTION 408 - NON-CONFORMING USES OF STRUCTURES OR BUILDINGS

408 Lawful uses of structures or buildings which at the effective date of this Ordinance or as a result of subsequent amendments thereto become non-conforming, may be continued by the present or any subsequent owner so long as such use remained otherwise lawful, subject to the following provisions:

408.1 EXTENSION
A non-conforming use of a structure or building shall not be extended or expanded to occupy a greater area of said structure than was used for such uses at the time of adoption of this Ordinance.

408.2 CHANGE OF USE OF A STRUCTURE
Such non-conforming use, if changed to any conforming use, shall not thereafter be changed back to a non-conforming use.

408.3 CHANGE OF USE OF A STRUCTURE AS A SPECIAL EXCEPTION
Such non-conforming use of a building or structure may, as a special exception, be changed to another non-conforming use, provided that in considering each specific case, the Council shall find that the proposed use is equally or more appropriate to the district than the existing non-conforming use and that the building and/or structure is adequate for the proposed use. In permitting such change, the Council may impose conditions and safeguards deemed appropriate.

408.4 DESTRUCTION OF STRUCTURE OR BUILDING WITH A NON-CONFORMING USE
Removal or destruction of the structure or building in which a non-conforming use is located shall eliminate the use which the structure or building was used for (a non-conforming use). Destruction for the purpose of this Sub-section is defined as damage to an extent of fifty (50) percent or more of the market value of the structure or building immediately prior to such damage or destruction. A person may rebuild or restore such use if he applies for a permit within six months of destruction.

SECTION 409 - USES UNDER SPECIAL PERMIT PROVISIONS NOT NON-CONFORMING USES

409 Any use which is permitted as a Special Permit in a zoning district under the terms of this Ordinance shall not be deemed a non-conforming use in such zoning district, but shall without further action be considered a conforming use.

SECTION 410 - PERCENT DAMAGE

410 The cost of land or any factors other than the cost of the structure are excluded in the determination of fair market value for the purpose of calculating the percent of damage.

ARTICLE V – ADMINISTRATION AND ENFORCEMENT

SECTION 501 - ZONING PERMITS

501.1 No buildings or structures or uses of land shall be started, repaired, reconstructed, enlarged, or altered until after a zoning permit has been obtained from the Administrator.

501.2 Each application for a zoning permit shall be accompanied by three (3) copies of an adequately dimensioned drawing unless as otherwise specified by the Administrator. The drawing shall show the size and shape of the parcel of land on which the proposed building is to be constructed, the nature of the proposed use of the building or land, the location and arrangement of off-street parking, the location of such building or use with respect to the property line of said parcel of land and to the right-of-way of any street or highway adjoining said parcel of land, the developer's drainage plan for properly distributing surface water, and additional information as required by this Ordinance. Any other information that the Administrator may deem necessary for the consideration of the application may be required. If the proposed building or use is in conformity with the provisions of this Ordinance, a permit shall be issued to the applicant by the Administrator. One copy of the drawing shall be returned to the applicant with the permit.

501.3 FOOTING INSPECTION

(8/01) Whenever any main building or addition to an existing main building is proposed to be located within two (2) feet of the required setback or yard, the owner or developer shall provide, at the time of footing inspection, survey markers locating the required setback or yard, which have been set and certified by a land surveyor licensed under the laws of the Commonwealth of Virginia. Survey markers may be offset up to but not exceeding four (4) feet. The amount of offset shall be clearly indicated on the survey marker. The markers shall remain in place and undisturbed until the completion of the foundation wall.

501.4 EXPIRATION

(8/01) A zoning permit shall expire six (6) months after the date of issuance, if work described in any permit has not begun. If work described in any zoning permit has begun within such six-month period, such permit shall expire twelve (12) months from the date of issuance or upon expiration of any required building permit.

SECTION 502 - CERTIFICATE OF OCCUPANCY

502.1 Land may be used or occupied, and buildings that have been structurally altered or erected may be used or changed in use only after a Certificate of Occupancy has been issued by the Administrator. Such a permit shall state that the building or the proposed use, or the use of the land, complies with the provisions of this Ordinance. A similar certificate shall be issued for the purpose of maintaining, renewing, changing, or extending a non-conforming use. A Certificate of Occupancy either for the whole or a part of a building shall be applied for simultaneously with the application for a zoning permit. The permit shall be issued within ten (10) days after the erection or structural alteration of such building or part has conformed to the provisions of this Ordinance.

502.2 Prior to the issuance of a Certificate of Occupancy for a new structure, the Zoning Administrator will verify that all property corners have been set with permanent markers by a land surveyor licensed under the laws of the Commonwealth of Virginia. **(11/00)**

502.3 In addition to any other requirements for the issuance of a Certificate of Occupancy, a Certificate of Occupancy for a structure will not be issued unless (1) the structure is served by public water and sewer, (2) required curb and gutter and sidewalks are in place on the lot on which the structure is located and in place between said lot and an existing publicly maintained street, (3) a functional fire hydrant is located within three hundred (300) feet of the lot on which the structure is located, and (4) the lot on which the structure is located fronts on an existing publicly maintained street or street meeting Town requirements for a publicly maintained street. **(8/01)**

502.4 In addition to any other requirements for the issuance of a Certificate of Occupancy, after issuance of certificates of occupancy for structures on eighty percent (80%) of the lots in a section of a subdivision, a Certificate of Occupancy for a structure in the section will not be issued unless all public improvements in the section have been completed to Town requirements and all streets have been accepted for maintenance by the Virginia Department of Transportation (VDOT), or a complete application for acceptance thereof has been filed with VDOT. **(8/01)**

502.5 Upon written application, delayed installation of public improvements described in 502.3 and 502.4 may be considered by the Zoning Administrator. Approval of the application shall only be granted by the Zoning Administrator after consultation with the respective departments or agencies charged with the inspection, acceptance, and maintenance of the improvements, and only upon a further finding that the delayed installation will not be detrimental to the safety and welfare of the residents in the subdivision and the public. A written request for such delayed installation shall set forth the specific improvements sought to be delayed, the justification for the delay, and a committed date for completion of the improvements. A fifty-dollar ($50.00) fee shall be paid with the request. If the Zoning Administrator approves the application for delayed installation of public improvements, the approval shall be subject to the applicant executing an agreement to hold harmless the town for any loss or liability occasioned by the lack of the improvements delayed. **(8/01)**

SECTION 503 - SPECIAL USE PERMIT

503.1 PROVISIONS FOR SPECIAL USE PERMITS

(a) In consideration of an application filed with the Zoning Administrator, the Council may, after a public hearing, authorize the establishment of those uses that are expressly listed as Special Permit uses in a particular zoning district.

(b) In addition to all applicable conditions and requirements of this Ordinance, the Council may impose any conditions deemed appropriate in the public interest to secure compliance with the provisions of this Ordinance.

(c) Once a Special Use Permit is granted, the use shall not be enlarged, extended, increased in intensity or relocated unless authorized by the Council.

(d) Whenever a Special Use Permit is granted by the Council, the authorized activities shall be established within two (2) years of the date of approval with an extension of one (1) additional year with Council approval, or such Special Use Permit shall expire without notice. **(4/08)**

(e) Should the owner or operator of the use covered by the Special Permit fail to observe all requirements of law with respect to the maintenance and conduct of the use and all permit conditions, the Council may, after due notice to permit holder and a public hearing, revoke the Special Use Permit.

503.2 APPLICATIONS

An application for a Special Use Permit may be submitted by the property owner of record, tenant, or contractor owner.

503.3 APPLICATION REQUIREMENTS

Applications for Special Use Permits shall be accompanied by seven (7) copies of the following items:

(a) Letter of request, signed by property owner and applicant, outlining complete details of special use desired.
(b) Site development plan.
(c) Floor plan, front, side, and rear elevations of proposed new buildings.
(d) Certified house location plat.
(e) Information deemed necessary by the Zoning Administrator.
(f) Applicable filing fee.

503.4 APPLICATION PROCEDURE

(a) Application submitted to Zoning Administrator, which shall be referred to the Planning Commission for recommendation, and a public hearing shall be scheduled by the Town Council.
(b) Review by the Planning Commission (public hearing if desired) and recommendation to Town Council.
(c) Public hearing by Town Council.
(d) Town Council action (In acting upon the application, the Town Council shall consider the following, among other relevant factors):
    1. The health, safety, and welfare of the general public.
    2. Physical and visual impact on adjoining and abutting properties.
    3. Adequate utilities, drainage, parking, and other necessary facilities to serve the proposed use.
    4. Compliance with the adopted master plan.
    5. Environmental compatibility.
    6. Community sentiment.
(e) Applicant to be notified by Zoning Administrator of Town Council action.

SECTION 504 - SCHEDULE OF FEES, CHARGES, AND EXPENSES

504.1 The Town Council shall establish, by resolution, a schedule of fees, charges, and expenses and collection procedures for zoning permits, certificates of use and occupancy, special permits, variances, appeals, amendments, and other matters pertaining to this Ordinance.

504.2 The schedule of fees shall be available for inspection in the office of the Zoning Administrator and may be altered or amended by the Governing Body by resolutions. Until all application fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

(02/16) **SECTION 505 - BOARD OF ZONING APPEALS**

There shall be established a Board of Zoning Appeals (Board) that shall consider appeals, variances, and zoning map interpretations.

505.1 ORGANIZATION AND PROCEDURES

(a) Membership

The Board shall consist of five residents of the Town of Berryville, appointed by the Circuit Court of Clarke County. Members of the Board shall hold no other public office in the locality except that one may be a member of the Berryville Planning Commission.

(b) Alternate Members

The Town Council may request the Circuit Court of Clarke County to appoint not more than three alternates to the Board of Zoning Appeals, pursuant to the provisions of Virginia Code § 15.2-2308(A).

(c) Terms of Office

The terms of office for members of the Board shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The Secretary of the Board shall notify the court at least thirty (30) days in advance of the expiration of any term of office, and shall also notify the Court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until his/her successor is appointed and qualifies.

(d) Officers

With the exception of its Secretary and the alternates, the Board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The Board may elect as its Secretary either one of its members or a qualified individual who is not a member of the Board, excluding alternate members. A Secretary who is not a member of the Board shall not be entitled to vote on matters before the Board.

(e) Quorum

For the conduct of any hearing, a quorum shall be not less than a majority of all the members of the Board.

(f) Procedures

The Board may make, alter, and rescind rules and forms for its procedures, consistent with Town ordinances and general laws of the Commonwealth.

(g) Records

The Board shall keep minutes and a full record of its proceedings and other official actions, which shall be filed in the office of the Board and shall be public records.

(h) Report

The Board shall submit a report of its activities to the governing body at least once each year.

(i) Witnesses

The Chairman of the Board, or the acting Chairman in the Chairman's absence, may compel attendance of witnesses and administer oaths of witnesses.

(j) Employees

Within the limits of funds appropriated by the Town Council, the Board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services.

(k) Compensation

Members of the Board may receive such compensation as may be authorized by the Town Council.

(l) Removal

Any Board member or alternate may be removed for malfeasance, misfeasance, or nonfeasance in office, or for other just cause, by the Court that appointed the member or alternate, after a hearing held after at least fifteen (15) days notice.

(m) Meetings

The Board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the Chairman, or Vice Chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such findings shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with Virginia Code § 15.2-2312 shall be conducted at the continued meeting and no further advertisement shall be required.

(n) Hearings – Procedures

1. The non-legal staff of the Town Council may have ex parte communications with a member of the Board prior to the hearing but may not discuss the facts or law relative to the case before the Board. The applicant, landowner, or their agent or attorney may have ex parte communications with a member of the Board prior to the hearing but may not discuss the facts or law relative to the case before the Board. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussion prior to a public meeting to which staff of the governing body, the applicant, landowner, or their agent or attorney are all invited. For purposes of this section, "non-legal staff of the Town Council"

shall mean any staff who is not in the office of the attorney for the Town, or for the Town Council, or who is appointed by special law or pursuant to § 15.2-1542. Nothing in this section shall preclude the Board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or protection of confidentiality.

2. Any materials relating to the case before the Board, including a staff recommendation or report furnished to a member of the Board, shall be made available without cost to an applicant, appellant, or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event less than three business days providing such materials to a member of the Board. If the applicant, appellant, or other person aggrieved under § 15.2-2314 requests additional documents or materials to be provided by the locality other than those materials provided to the Board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the Board shall also be made available for public inspection pursuant to Subsection F of § 2.2-3707.
3. At a hearing the Board shall offer an equal amount of time to the applicant, appellant, or any other person aggrieved under § 15.2-2314, and the Town staff.

505.2 APPEAL OF DECISION OF BOARD

Any person or persons jointly or severally aggrieved by any decision of the Board, or any aggrieved taxpayer, or any officer, department, board, or bureau of the locality, may file with the Clerk of the Clarke County Circuit Court a petition specifying the grounds on which aggrieved within 30 days after the final decision of the Board.

505.3 APPEALS OF ADMINISTRATIVE DETERMINATIONS

(a) The Board shall hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of the Zoning Ordinance. The decision on such appeal shall be based on the Board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for their determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The Board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, "determination" means any order, requirement, decision, or determination made by an administrative officer. Any appeal of a determination to the Board shall be in compliance with this section, notwithstanding any other provision of law, general or special.

(b) An appeal to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the Town affected by any decision of the Zoning Administrator, or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of the Zoning Ordinance, or any modification of zoning requirements pursuant to Virginia Code § 15.2-2286.

(c) Any written notice of a zoning violation of any written order or administrative determination of the Zoning Administrator shall include a statement informing the recipient of the of the recipient's right to appeal the notice of zoning violation or the written order or administrative determination within 30 days, and that the decision shall be final and unappealable if not appealed within 30 days. The appeal period shall not commence until the statement is given. The appeal shall be taken within 30 days after the decision appealed from by filing with the Zoning Administrator, and with the Board, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record based upon which the action appealed from was taken.

(d) An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board that by reason of facts stated in the certificate a stay would in his/her opinion cause imminent peril to life or property, in which case proceedings shall not be stayed other than by a restraining order granted by the Board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

(e) The Board shall fix a reasonable time for hearing an appeal, and shall give public notice and hold a public hearing as provided by Virginia Code § 15.2-2204. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail.

(f) The Board shall make its decision within 90 days of the filing of the appeal, unless the appellant and the Board mutually agree upon an extended period.

(g) In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision, or determination appealed from.

(h) The concurring vote of a majority of the membership of the Board shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer.

505.4 VARIANCES

The Board shall hear upon appeal or original application in specific cases requests for variances, as defined in Virginia Code § 15.2-2201, from the terms of this ordinance. A variance shall not include a change in use.

(a) Any property owner, tenant (with the written consent of the property owner), government official, department, board or bureau may make application for a variance. Applications shall be made to the Zoning Administrator in accordance with rules adopted by the Board. The application and accompanying maps, plans, or other information shall be transmitted promptly to the Secretary of the Board, who shall place the matter on the docket to be acted upon by the Board.

(b) The Zoning Administrator shall also transmit a copy of the application to the Planning Commission, which may send a recommendation to the Board or appear as a party at the hearing.

(c) No variance shall be considered except after public notice and hearing as required by Virginia Code § 15.2-2204. However, when giving any required notice to the

owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first class mail rather than by registered of certified mail.

(d) Action on Variance Application

1. The burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that the application meets the standards for a variance as defined in Virginia Code § 15.2-2201 and the criteria set out in this section.
2. Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and;
   (a) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
   (b) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
   (c) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;
   (d) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
   (e) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process of modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.
   (f) The concurring vote of a majority of the membership of the Board shall be necessary to approve a variance.
   (g) In granting a variance the Board shall tailor the variance to provide the minimum variance necessary to alleviate the hardship, and the Board may impose such conditions regarding the location, character, and other features of the proposed structure or use, as it may deem necessary in the public interest. The Board may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
   (h) The Board will not consider substantially the same application within one (1) year of previous Board action.

505.5 ZONING MAP INTERPRETATIONS

The Board shall hear and decide applications for interpretations of the zoning district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by Virginia Code § 15.2-2204, the Board may interpret the map in such way as to

carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail. The Board shall not have the power to change substantially the locations of district boundaries as established by ordinance. The concerning vote of a majority of the membership of the Board shall be necessary to decide in favor of the applicant.

505.6 LIMITATIONS ON POWERS OF BOARD

The Board shall not have the power to rezone property or to base Board decisions on the merits of the purpose and intent of Town ordinances duly adopted by the Town Council.

506 MODIFICATIONS

(a) The Zoning Administrator may grant a modification from any provision contained in the Zoning Ordinance with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements if the Administrator finds in writing that:

1. the strict application of the ordinance would produce undue hardship;
2. such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
3. the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification.

(b) The Zoning Administrator may not grant a modification that is more than 10% of a regulation standards.

(c) Before the granting of a modification, the Zoning Administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice. Before the granting of a modification, the Zoning Administrator shall consult with the Chair and Vice Chair of the Board of Zoning Appeals.

(d) The Zoning Administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph. The Zoning Administrator shall provide a copy of a written decision to the Board of Zoning Appeals within five working days from making the decision.

(e) The decision of the Zoning Administrator may be appealed to the Board of Zoning Appeals as provided in Section 505.3 of this Ordinance.

SECTION 507 - VIOLATION AND PENALTY

507.1 All departments, officials, and public employees of this jurisdiction who are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Ordinance. They shall issue permits for uses, buildings, or purposes only when they are in

harmony with the provisions of this Ordinance. Any such permit, if issued in conflict with the provisions of this Ordinance, shall be null or void.

507.2 Any person, firm, or corporation, whether as principal, agent, employee, or otherwise, violating, causing, or permitting the violation of any of the provisions of this Ordinance, shall be guilty of a misdemeanor and, upon conviction thereof, may be fined up to one thousand dollars ($1,000). Such person, firm, or corporation shall be deemed to be guilty of a separate offense for each and every day during which any portion of any violation of this Ordinance is committed, continued, or permitted by such person, firm, or corporation, and shall be punishable as herein provided.

SECTION 508 - AMENDMENTS

508.1 Whenever the public necessity, convenience, general welfare, or good zoning practice require, the Town Council may by ordinance amend, supplement, or change the regulations of the Zoning Ordinance (text amendment) or the zoning district boundaries or classifications of property (rezoning/zoning map amendment). **(11/02)**

508.2 Such amendments may be initiated (i) by resolution of the Governing Body, or (ii) by motion of the Planning Commission. Any such resolution or motion shall state the above public purpose therefor. **(11/02)**

508.3 A rezoning/zoning map amendment may be initiated by petition of the owner, contract purchaser with the owner's written consent, or owner's agent therefor of the property which is the subject of the proposed rezoning/zoning map amendment. **(11/02)**

508.4 An owner of property in the Town, or citizen of the Town, may request the Town Council or the Planning commission, in writing, to initiate a text amendment. The determination of whether to initiate a text amendment shall be in the sole discretion of the Town Council or Planning Commission. The property owner or citizen shall submit with the written request any applicable fee, which shall be returned to such property owner or citizen less the expended fees if the Town Council or Planning Commission elects not to initiate the requested text amendment. **(11/02)**

508.5 Any proposed text amendment or rezoning/zoning map amendment shall be referred to the Planning Commission for its recommendation. **(11/02)**

508.6
(a) All amendments shall be advertised and written notices provided as required by Section 15.2-2204, Code of Virginia.
(b) In the case of a proposed rezoning/zoning map amendment, the public notice shall state the general usage and density range, if any, of the proposed amendment, and the general usage and density range, if any, set forth in the applicable part of the Comprehensive Plan.
(c) In the case of a proposed rezoning/zoning map amendment initiated under Section 507.3, the Town Planning Office shall be responsible for the giving of all written notices required by Section 15.2-2204. At least five (5) days prior to the first public hearing, the Town Planner shall supply an affidavit that the required written notices have been sent and a list of the persons to whom such written notice has been sent. **(11/02)**

508.7 A public hearing shall be held on a proposed amendment by the Planning Commission and by the Town Council, which public hearing may be joint. **(11/02)**

508.8 The Planning Commission shall act upon any proposed amendment referred to it within one hundred (100) days of the first meeting of the Planning Commission (i) after a resolution of the Town Council initiating the amendment, or (ii) after receipt of a complete application for a rezoning/zoning map amendment. Unless the time period is extended by resolution of the Town Council or by the request or consent in writing of the applicant for

a rezoning/zoning map amendment, or unless the proposed amendment is withdrawn by the Town Council or the applicant, failure of the Planning Commission to act within said one hundred (100)-day period shall be deemed a recommendation for approval by the Planning Commission of the proposed amendment. **(11/02)**

508.9 The Town Council shall act upon any proposed amendment within one (1) year (i) after the initiation of the proposed amendment by the Town Council or the Planning Commission or (ii) after receipt of a complete application for a rezoning/zoning map amendment, unless the applicant requests or consents to action beyond such period or withdraws the request for the proposed amendment. **(11/02)**

508.10 In the event of and upon a withdrawal of a request for an amendment, processing of the proposed amendment shall cease without further action. **(11/02)**

508.11 If a petition for a proposed rezoning/zoning map amendment initiated under Section 507.3 is denied by the Town Council, substantially the same petition may not be filed for a period of one (1) year. **(11/02)**

SECTION 509 - AMENDMENTS WITH PROFFERED CONDITIONS (1/90)

509.1 VOLUNTARY PROFFERED CONDITIONS

Pursuant to Section 15.1-491.2:1 of the Code of Virginia, the Planning Commission and/or the Town Council may consider reasonable conditions to be applied to a rezoning amendment initiated pursuant to Section 507.4 of this Ordinance provided:

(a) The conditions are voluntarily submitted by the applicant;

(b) Proposed proffered conditions are in writing and signed by all of the legal and equitable owners of the property which is the subject of the proposed amendment;

(c) The proposed conditions are in accordance with the Comprehensive Plan;

(d) The proposed conditions bear a reasonable relation to the rezoning;

(e) The proposed conditions are received by the Planning Commission and/or the Town Council prior to commencement of the public hearing of the Planning Commission and/or the Town Council at which the proposed rezoning amendment is to be considered; and

(f) The proposed conditions are in full accordance with Section 15.1-491.2:l of the Code of Virginia.

509.2 EFFECT OF CONDITIONS

Upon approval of any rezoning approved subject to proffered conditions, all conditions proffered by the applicant and accepted by the Town Council shall be deemed part of the zoning regulations affecting the district in which the parcel is classified. Such conditions shall remain in force until fully performed by the applicant or amended or released by the Town Council in accordance with Section 15.1-491.6 of the Code of Virginia.

509.3 PROFFERED CONDITION REGULATIONS

Following approval of any zoning approved subject to proffered conditions, no site plan, subdivision plan, or development plan thereafter submitted for the development of the property in question shall be approved unless in substantial conformity with all proffered conditions, and no agent or official of the Town shall have the power to permit any development or construction upon the property not in substantial conformance with such proffered conditions.

509.4 PROFFERED AMENDMENTS

Proffered conditions may be amended or released by the Town Council upon application for zoning amendment submitted in accordance with Section 507. Any such amendment shall be the subject of a public hearing in accordance with the provisions of Section 507.1.

509.5 ZONING MAP NOTATION AND CONDITIONAL ZONING INDEX

Each rezoning shall be designated on the Zoning Map by an appropriate symbol designated by the Zoning Administrator. In addition, the Zoning Administrator shall keep and maintain the conditional zoning index, which shall be available for public inspection and which shall provide ready access to the ordinance creating such conditions.

509.6 AUTHORITY OF ZONING ADMINISTRATOR; GUARANTEES OF CONDITIONS

The Zoning Administrator shall be vested with all necessary authority on behalf of the Town Council to administer and enforce conditions attached to a rezoning, including ordering in writing the remedy of any noncompliance with such conditions; the bringing of legal action to ensure compliance with such conditions, including injunction, abatement, or other appropriate action or proceeding; and requiring a guarantee, satisfactory to the Governing Body, 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 such improvements and the contractor's guarantee in like amount and so conditioned, which guarantee may be reduced or released by the Governing Body, or agent thereof, upon the submission of satisfactory evidence that construction of said improvements has been completed in whole or in part. Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits as may be appropriate.

509.7 APPLICATION PROCEDURES FOR PROFFERED CONDITION AMENDMENTS

(a) Site development plan

Every petition for a zoning amendment which proposes conditions to be applied to the rezoning shall be accompanied by five (5) copies of a site development plan prepared in accordance with the requirements of Section 314 of this Ordinance.

(b) Additional requirements

In addition to the application forms and site development plan, each application for conditional rezoning shall include:

1. A statement explaining the relationship of the development to the adopted Comprehensive Plan of the Town of Berryville.
2. A statement or presentation setting forth the maximum number of dwelling units proposed for any residential development, and the density and open space calculations when required by this Ordinance.
3. A statement certifying that the proposed development conforms to the provisions of all applicable ordinances, regulations, and adopted standards. Any waiver, exception, or variance sought by the applicant from such ordinances, regulations, and standards shall be specifically noted on the development plan.
4. A statement of those special amenities that are proposed within the development.
5. A statement of the public improvements, both on- and off-site, that are proposed for dedication and/or construction, and an estimate of the timing of providing such improvements.
6. A statement setting forth the proposed approximate development schedule.
7. Any additional information that the applicant may desire to proffer in the consideration of the application.

(c) Statement regarding conditions

All petitions, statements, plans, and other materials submitted with an application for conditional zoning shall be annotated with the following statement signed by the applicant and the owner. The signed statement shall be made prior to the public hearing before the Town Council: "I hereby proffer that the development of the

subject property of this application shall be in strict accordance with the conditions set forth in this submission." The proffered conditions shall be then set forth in full.

509.8 ADDITIONAL PROFFERED CONDITION REGULATIONS

Proffered conditions shall include written statements, development plans, and/or other materials proffered in accordance with the provisions of Section 507.5 and approved by the Town Council in conjunction with the approval of an amendment to the Zoning Map. Proffered conditions shall be subject to the additional procedures and regulations as follows:

(a) Conditions are in addition to district regulations

Such proffered conditions shall become a part of the zoning regulations applicable to the property in question, unless subsequently changed by an amendment to the Zoning Map, and such conditions shall be in addition to the specific regulations set forth in this Ordinance for the zoning district in question.

(b) Meaning of "substantial conformance"

For the purposes of this Section, "substantial conformance" shall mean that conformance which leaves a reasonable margin for adjustment due to final engineering data but conforms with the general nature of the development, the specific uses, and the general layout depicted by the plans, and other material presented by the applicant.

(c) Amendment to proffered conditions

Once conditions have been approved, and there is cause of an amendment which would not be in substantial conformance with the proffered conditions, or there is a request to proffer conditions on a parcel not currently the subject of a proffered condition, then an application shall be filed for an amendment. If the amendment concerns an approved site development plan, such application shall include the submission requirements for a site development plan set forth in Section 507.5, except the Zoning Administrator may waive any submission requirement if such requirement is not necessary for an adequate review of the generalized development plan amendment application. Such amendment shall be the subject of a public hearing in accordance with the provisions of Section 507.1

509.9 TRANSFER OF PROFFERS BETWEEN TOWN AND COUNTY

Proffered conditions on any parcel as to which proffers apply by virtue of prior zoning action by the County shall continue to apply upon annexation of the parcel and placement of the parcel in the same or similar zoning district in Town. **(12/99)**

509.10 PETITION FOR REVIEW OF DECISION

Any zoning applicant who is aggrieved by the decision of the Zoning Administrator pursuant to the provisions of Section 508 may petition the Governing Body for a review of the decision of the Zoning Administrator.

SECTION 510 - ADMINISTRATION

510.1 This Ordinance shall be enforced by the Administrator who shall be appointed by the Governing Body. The Administrator shall serve at the pleasure of that body. Compensation for such shall be fixed by resolution of the Governing Body.

510.2 Nothing contained herein shall require any change in the plans or construction of any building or structure for which a permit was granted prior to the effective date of this Ordinance and/or amendments thereto, provided such construction commences within thirty (30) days after this Ordinance amendment becomes effective and provided the building or structure is completed within a period of one (1) year after construction was started or one (1) year after the effective date of this Ordinance/amendment, whichever is sooner. If construction is discontinued for a period of six (6) months or more, further construction shall be in conformity with the provisions of this Ordinance for the district in which the operation is located. **(1/90)**

SECTION 511 - INTERPRETATION

511 Unless district boundary lines are fixed by dimensions or otherwise clearly shown or described, and where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Zoning Map, the following rules shall apply:

511.1 Where district boundaries are indicated as approximately following or being at right angles to the center lines of streets, highways, alleys, or railroad main tracks, such center lines or lines at right angles shall be construed to be such boundaries, as the case may be.

511.2 Where a district boundary is indicated to follow a river, creek, or branch or other body of water, said boundary shall be construed to follow the center line at low water or at the limits of the jurisdiction, and in event of change in the shoreline, such boundary shall be construed as moving with the actual shoreline.

511.3 If no distance, angle, curvature, description or other means is given to determine a boundary line accurately and the foregoing provisions do not apply, the same shall be determined by the use of the scale shown on said Zoning Map. In case of subsequent dispute, the matter shall be referred to the Board of Zoning Appeals, which shall determine the boundary.

SECTION 512 - SEVERABILITY

512 Should any section or provision of this Ordinance be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof other than the part so held to be unconstitutional or invalid.

SECTION 513 - CONFLICTING ORDINANCES

513 All conflicting ordinances or parts thereof which are inconsistent with the provisions of this Ordinance are hereby repealed.

SECTION 514 - EFFECTIVE DATE

514 The effective date of this Ordinance shall be from and after 12:01 A.M. October 1, 1977 and its provisions shall be in force thereafter until repealed.

ARTICLE VI – ADDITIONAL DISTRICTS (2/90)

SECTION 600 - GENERAL PROVISIONS

600.1 APPLICATION

The additional zoning districts described in Article VI shall apply to designated property within the Berryville Town Limits.

600.2 INCONSISTENCIES BETWEEN ARTICLE VI AND THE REMAINING PARTS OF THIS ORDINANCE

All other parts of the Berryville Zoning Ordinance which are inconsistent with the provisions of Article VI shall be invalid as they relate to any districts within Article VI.

(4/92) SECTION 601 - OPEN SPACE RESIDENTIAL

601.1 PURPOSE AND INTENT

The Open Space Residential (OSR) District is created to preserve and protect two sensitive areas in the Town of Berryville and within the precincts of the Berryville Area Plan: (1) existing residential properties and estates which have cultural and/or historical value, and (2) property with critical environmental features, including 100-year floodplains, sinkholes, slopes in excess of fifteen (15) percent, and rock outcrops. The maximum density of one residence per ten (10.0) net developable acres establishes this district as one with a low-density residential character. This district shall have the intent of preserving valued residences, promoting open space, and protecting existing vegetation and sensitive environmental areas within the district boundaries.

601.2 PERMITTED USES

(a) Single family detached dwellings.
(b) Accessory uses to include detached carports and garages, tool sheds, children's playhouses, swimming pools, doghouses and Temporary Family Health Care Structures as established in Section 323. **(11/10)**
(c) Municipal utilities.

601.3 SPECIAL PERMIT USES

(a) Commercial swimming pools, tennis courts, and golf courses.
(b) Home occupations as defined in Section 315. **(12/93)**
(c) Libraries, museums, and shrines.
(d) Plant nurseries, with no sale of nursery products permitted on premises.
(e) Private and public schools, parks, playgrounds, and related uses.
(f) Public utility uses (sub-stations, pump stations, storage tanks, etc.) and related easements, except for municipal utilities.
(g) Country inn. **(6/09)**

601.4 MAXIMUM DENSITY

(a) One (1.0) dwelling unit per ten (10.0) net developable acres or one-tenth (0.1) unit per net acre.
(b) A maximum floor area ratio of 0:10 shall apply to uses other than residential.

601.5 LOT SIZE REQUIREMENTS

(a)	Minimum lot area:	10 acres
(b)	Minimum lot width:	300 feet
(c)	Minimum lot depth:	300 feet

601.6 BULK REGULATIONS

(a)	Maximum building height:		35 feet
(b)	All other structures:		35 feet
(c)	Minimum yard requirements		
	(1)	Front yard:	50 feet **(7/04)**
	(2)	Side yard:	50 feet **(7/04)**
	(3)	Rear yard	50 feet **(7/04)**

601.7 ADDITIONAL REGULATIONS

(a) Refer to Article III for general regulations and other provisions which may supplement those cited herein.

(b) Refer to Section 305 for off-street parking requirements.

(c) Refer to specific Overlay Zoning Districts, where applicable.

(d) Refer to Section 317 Karst Features for additional requirements **(7/04)**

(e) The lot size, yard, and bulk requirements in effect at the time of subdivision plat approval prior to January 1, 2011 shall remain applicable to such subdivisions until July 1, 2017. The foregoing shall not be effective unless any unreleased performance bonds and agreements or other financial guarantees of completion of public improvements in or associated with the subdivision are continued in force. **(12/14)**

(4/92) SECTION 602 - DETACHED RESIDENTIAL-1 (DR-1) DISTRICT

602.1 PURPOSE AND INTENT

The Detached Residential-1 (DR-1) District is created to provide for single-family detached residences in a carefully planned pattern, compatible with the Comprehensive Plan's goals for residential development in the Town of Berryville and within the precincts of the Berryville Area Plan. A maximum density of one (1) unit per net developable acre establishes a low-density district for detached residences. This district shall be applied with the intent of preserving existing natural features and vegetation, promoting excellence in site planning and landscape design, and encouraging housing of compatible scale and architectural character.

602.2 PERMITTED USES

(a) Single-family detached dwellings.

(b) Accessory uses to include detached carports and garages, tool sheds, children's playhouses, doghouses, private swimming pools and Temporary Family Health Care Structures as established in Section 323. **(11/10)**

(c) Municipal utilities.

602.3 SPECIAL PERMIT USES

(a) Bed and breakfast lodging occupying more than 300 square feet of a residence

(b) Cemeteries

(c) Churches and shrines

(d) Fire stations **(10/94)**

(e) Home occupations as defined in Section 315

(f) Libraries and museums **(12/93)**

(g) Plant nurseries, with no sale of nursery products permitted on premises

(h) Private or public schools parks, playgrounds, and related uses

(i) Public utility uses (sub-stations, pump stations, storage tanks, etc.) and related easements, except for municipal utilities

(j) Recreational uses, such as public swimming pools, tennis courts, and golf courses

602.4 MAXIMUM DENSITY

(a) One (1) dwelling unit per net developable acre.

(b) A maximum floor area ratio of 0:15 shall apply to uses other than residential.

602.5 LOT SIZE, YARD AND BULK REQUIREMENTS FOR CONVENTIONAL LOTS

(a) Lot area: Minimum--40,000 square feet; maximum--60,000 square feet. (Refer to Section 615.2 regarding the impact of Critical Environmental Areas on lot size requirements.)

(b) Minimum lot width

(1)	Interior lot:	125 feet **(7/04)**
(2)	Corner lot:	150 feet **(7/04)**

(c) Minimum yard requirements

(1)	Front yard:	40 feet **(7/04)**
(2)	Side yard:	15 feet
(3)	Rear yard:	50 feet (residences) **(7/04)**
(4)	Accessory structure:	5 feet (rear and side setbacks)
(5)	Maximum building height:	35 feet

602.6 MINIMUM DISTRICT SIZE FOR CLUSTER SUBDIVISION

Minimum district size for cluster subdivision is four acres.

602.7 LOT SIZE, YARD AND BULK REQUIREMENTS FOR CLUSTER LOTS

(a) Minimum lot Area: 20,000 square feet, Maximum Area 45,000 square feet **(7/04)** (Please refer to Section 614 regarding the impact of critical environmental areas on lot size requirements.)

(b) Minimum lot width:

(1)	Interior lot:	100 feet
(2)	Corner lot:	120 feet

(c) Minimum lot yard requirements:

(1)	Front yard:	35 feet
(2)	Side yard:	15 feet
(3)	Rear yard:	45 feet **(7/04)**
(4)	Accessory structure:	5 feet (rear and side setback)

(d) Maximum building height: 35 feet

602.8 OPEN SPACE REQUIREMENTS FOR DETACHED RESIDENTIAL (DR-1) SUBDIVISIONS

(a) In subdivisions approved for cluster development, a minimum of 15 percent of the net site area which excludes 100-year floodplains, sinkholes, and slopes exceeding 25 percent and 50 percent of land with slopes between 15 and 25 percent shall be open space dedicated to common usage and ownership.

602.9 ADDITIONAL REGULATIONS

(a) Refer to Article III for general regulations and other provisions which may supplement those cited herein.

(b) Refer to Section 305 for off-street parking requirements.

(c) Refer to specific Overlay Zoning Districts, where applicable.

(d) Refer to Section 611 for special regulations relating to cluster subdivisions, open spaces and critical environmental areas.

(e) The lot size, yard, and bulk requirements in effect at the time of subdivision plat approval prior to January 1, 2011 shall remain applicable to such subdivisions until July 1, 2017. The foregoing shall not be effective unless any unreleased performance bonds and agreements or other financial guarantees of completion of public improvements in or associated with the subdivision are continued in force. **(12/14)**

602.10 ADDITIONAL REGULATIONS

(a) Refer to Article III for general regulations and other provisions which may supplement those cited herein.

(b) Refer to Section 305 for off-street parking requirements.

(c) Refer to specific Overlay Zoning Districts, where applicable.

(d) Refer to Section 615.2 for special regulations relating to cluster subdivisions, open spaces, and critical environmental areas.

(e) Refer to Section 317 Karst Features for additional requirements. **(7/04)**

(4/92) SECTION 603 - DETACHED RESIDENTIAL-2 (DR-2) DISTRICT

603.1 PURPOSE AND INTENT

The Detached Residential-2 (DR-2) District is created to provide for single-family detached residences in a carefully planned pattern compatible with the Comprehensive Plan's goals for residential development in the Town of Berryville and within the precincts of the Berryville Area Plan. A maximum density of two (2) units per net developable acre establishes a low-density district for detached residences. This district shall be applied with the intent of preserving existing natural features and vegetation, promoting excellence in site planning and landscape design, and encouraging housing of compatible scale and architectural character. Cluster residential development shall be encouraged and permitted, by right, so that specific environmental preservation and land use goals may be promoted.

603.2 PERMITTED USES

(a) Single-family detached dwellings, either a conventional "dispersed" layout or a clustered layout subdivision--a clustered subdivision requiring site plan approval.

(b) Accessory uses, to include detached carports and garages, tool sheds, children's playhouses, doghouses, private swimming pools and Temporary Family Health Care Structures as established in Section 323. **(11/10)**

(c) Municipal utilities.

603.3 SPECIAL PERMIT USES

(a) Bed and breakfast lodging occupying more than 300 square feet of a residence

(b) Cemeteries

(c) Churches and shrines

(d) Day care centers and nursery schools **(10/94)**

(e) Fire stations

(f) Home occupations as defined in Section 315 **(12/93)**

(g) Libraries and museums

(h) Plant nurseries with no sale of nursery products permitted on premises

(i) Private or public schools, parks, playgrounds, and related uses

(j) Public utility uses (sub-stations, pump stations, storage tanks, etc.) and related easements, except for municipal utilities

(k) Recreational uses such as public swimming pools, tennis courts, and golf courses

603.5 LOT SIZE, YARD, AND BULK REQUIREMENTS FOR CONVENTIONAL LOTS

(a) Lot area: Minimum--20,000 square feet; maximum--45,000 square feet.
Refer to Section 611 regarding the impact of critical environmental areas on lot size requirements.) **(1/93)**

(b) Minimum lot width
- (1) Interior lot: 100 feet **(7/04)**
- (2) Corner lot: 120 feet **(7/04)**

(c) Minimum yard requirements
- (1) Front yard: 30 feet **(7/04)**
- (2) Side yard: 15 feet

(3) Rear yard: 40 feet (residences) **(7/04)**
(4) Accessory structure: 5 feet (rear and side setbacks)
(d) Maximum building height: 35 feet

603.6 MINIMUM DISTRICT SIZE FOR CLUSTERING
Minimum district size for cluster subdivision: 4 acres

603.7 LOT SIZE, YARD, AND BULK REQUIREMENTS FOR CLUSTER LOTS
(a) Minimum lot area: 12,500 square feet **(7/04)**
Maximum lot area: 30,000 square feet **(7/04)**
(Refer to Section 614 regarding the impact of critical environmental areas on lot size requirements.)
(b) Minimum lot width
(1) Interior lot: 75 feet
(2) Corner lot: 90 feet
(c) Minimum yard requirements
(1) Front yard: 25 feet
(2) Side yard: 10 feet
(3) Rear yard: 35 feet (residences) **(7/04)**
(4) Accessory structure: 5 feet (rear and side setbacks)
(d) Maximum building height: 35 feet

603.8 OPEN SPACE REQUIREMENTS FOR DR-2 CLUSTER SUBDIVISIONS
(a) In subdivisions approved for cluster development, twenty (20) percent of the net site area which excludes 100-year floodplain, sinkholes, and slopes exceeding twenty-five (25) percent and fifty (50) percent of land with slopes between fifteen (15) and twenty-five (25) percent shall be open space, dedicated to common usage and ownership.

603.9 ADDITIONAL REGULATIONS
(a) Refer to Article III for general regulations and other provisions which may supplement those cited herein.
(b) Refer to Section 305 for off-street parking requirements.
(c) Refer to specific Overlay Zoning Districts where applicable.
(d) Refer to Section 614 for special regulations relating to cluster subdivisions, critical environmental areas, and open spaces.
(e) Refer to Section 317 Karst Features for additional requirements. (7/04)
(f) The lot size, yard, and bulk requirements in effect at the time of subdivision plat approval prior to January 1, 2011 shall remain applicable to such subdivisions until July 1, 2017. The foregoing shall not be effective unless any unreleased performance bonds and agreements or other financial guarantees of completion of public improvements in or associated with the subdivision are continued in force. **(12/14)**

(4/92) **SECTION 604 - DETACHED RESIDENTIAL-4 (DR-4) DISTRICT**

604.1 PURPOSE AND INTENT

The Detached Residential-4 District is created to provide for single-family detached residences at higher densities than other single-family detached districts. A maximum of four (4.0) units per net developable acre establishes a medium- to low-density district for detached residences. The application of this district shall be to undeveloped tracts lying within the Town of Berryville and within the precincts of the Berryville Plan, as well as to "infill" lots within the existing stable neighborhoods, with the intent of preserving existing natural features and vegetation, promoting excellence in site planning and landscape design, and encouraging housing of compatible scale and architectural character. Cluster residential development shall be encouraged and permitted, by right, so that specific environmental preservation and land-use goals may be promoted.

604.2 PERMITTED USES

(a) Single-family detached dwellings, either a conventional "dispersed" layout or a clustered layout subdivision--a clustered subdivision requiring site plan approval.

(b) Accessory uses, to include detached carports and garages, tool sheds, children's playhouses, doghouses, private swimming pools and Temporary Family Health Care Structures as established in Section 323. **(11/10)**

(c) Municipal utilities.

604.3 SPECIAL PERMIT USES

(a) Bed and breakfast lodging occupying more than 300 square feet of residence.

(b) Cemeteries.

(c) Churches and shrines.

(d) Community buildings, public and private.

(e) Day care centers and nursery schools. **(10/94)**

(f) Fire stations.

(g) Home occupations as defined in Section 315. **(12/93)**

(h) Libraries, museums, and historic markers.

(i) Plant nurseries with no sale of nursery products permitted on premises.

(j) Public utility uses (sub-stations, pump stations, storage tanks, etc.) and related easements, except for municipal utilities.

(k) Recreational uses such as public swimming pools, tennis courts, and golf courses.

(l) Public schools, parks, playgrounds and related uses. **(3/09)**

604.4 MAXIMUM DENSITY

(a) Four (4.0) dwelling units per net developable acre.

(b) A maximum floor area ratio of 0:15 shall apply to uses other than residential.

604.5 LOT SIZE, YARD, AND BULK REQUIREMENTS FOR CONVENTIONAL LOTS

(1/93) (a) Lot area: Minimum--10,000 square feet; maximum - 30,000 square feet **(7/04)**. (Refer to Section 614 regarding the impact of critical environmental areas on lot Size requirements.

(b) Minimum lot width
- (1) Interior lot: 75 feet
- (2) Corner lot: 90 feet

(c) Minimum yard requirements
- (1) Front yard: 20 feet for primary structures; 25 feet for garages, carports or other structures used to house vehicles **(7/04)**
- (2) Side yard: 10 feet
- (5/94) (3) Rear yard: 30 feet (residences)
- (4) Accessory structure: 5 feet (rear and side setbacks)

(d) Maximum building height: 35 feet

604.6 MINIMUM DISTRICT SIZE FOR CLUSTER SUBDIVISIONS

Minimum district size for cluster subdivision: two (2) acres.

604.7 LOT SIZE, YARD, AND BULK REQUIREMENTS FOR CLUSTERED LOTS

(a) Minimum lot area: 7,500 square feet.
Maximum lot area: 20,000 square feet **(7/04)**
(Refer to Section 614 regarding the impact of critical environmental areas on lot size requirements.)

(b) Minimum lot width
- (1) Interior lot: 60 feet
- (2) Corner lot: 75 feet

(c) Minimum yard requirements
- (1) Front yard: 15 feet for primary structures; 25 feet for garages, carports, or other structures used to house vehicles **(7/04)**
- (2) Side yard: 10 feet
- (5/94) (3) Rear yard: 25 feet (residences)
- (4) Accessory structure: 5 feet (rear and side setback)

(d) Maximum building height: 35 feet

604.8 OPEN SPACE REQUIREMENTS FOR DETACHED RESIDENTIAL SUBDIVISIONS

(a) In subdivisions approved for cluster development, twenty (20) percent of the net site area which excludes 100-year floodplain, sinkholes, and slopes exceeding twenty-five (25) percent and fifty (50) percent of land with slopes between fifteen (15) and twenty-five (25) percent shall be open space, dedicated to common usage and ownership.

(b) In cluster subdivisions, at least one-fourth (1/4) of the required open space (five {5} percent of the net site area) shall be developed and designed for recreational and active community open space.

604.9 ADDITIONAL REGULATIONS

(a) Refer to Article III for general regulations and other provisions which may supplement those cited herein.

(b) Refer to Section 305 for off-street parking requirements.

(c) Refer to specific Overlay Zoning Districts, where applicable.

(d) Refer to Section 615 for special regulations relating to cluster subdivisions, critical environmental areas, and open space.

(e) Refer to Section 317 Karst Features for additional requirements. **(7/04)**

(f) The lot size, yard, and bulk requirements in effect at the time of subdivision plat approval prior to January 1, 2011 shall remain applicable to such subdivisions until July 1, 2017. The foregoing shall not be effective unless any unreleased performance bonds and agreements or other financial guarantees of completion of public improvements in or associated with the subdivision are continued in force. **(12/14)**

SECTION 605 - ATTACHED RESIDENTIAL (AR) DISTRICT

605.1 PURPOSE AND INTENT

The Attached Residential (AR) District is created to provide for single-family attached residences at locations compatible with the Berryville Comprehensive Plan and at locations within the precincts of the Berryville Area Plan. A maximum density of six (6) units per net developable acre establishes this district as one recognizing townhouse-styled units as the dominant land use; however, single-family dwellings may also be developed in this district where appropriate. This district may be applied to undeveloped tracts and to existing townhouse development with the intent of preserving natural features and vegetation, promoting excellence in site planning and landscape design, and encouraging attached housing with compatible scale, materials and architectural character. Development in the AR District shall be sensitive to land physiography, provision of adequate public infrastructure, and development of high-quality transportation improvements while achieving optimal siting of dwellings, recreation areas, community facilities, and open space.

605.2 PERMITTED USES

(a) Townhouse dwellings. An accessory structure, less than or equal to 120 square feet in area, is permitted on a private townhouse lot.

(b) Duplex (two-family) attached dwellings and accessory structures

(8/01) (c) Single-family detached dwellings

(d) Private community facilities, recreation areas, and other common area improvements normally associated with residential developments (other than those requiring special use permits) may be permitted subject to final site plan approval.

(e) Municipal utilities

605.3 SPECIAL PERMIT USES **(8/01)**

(a) Churches

(b) Community buildings

(c) Commercial and private swimming pools and tennis courts

(10/94) (d) Day care centers

(e) Fire stations

(f) Government offices

(g) (Deleted 2010)

(h) Institutional housing and general care for indigents or orphans

(i) Libraries

(j) Nursery schools

(k) Private and public schools, parks, playgrounds, and related uses

(m) Private clubs

(n) Public utility uses (sub-stations, pump stations, storage tanks, etc.) and related easements, except for municipal utilities. (Refer to Section 615 regarding the impact of critical environmental areas on lot size requirements.)

(o) Zero-lot-line detached dwellings

605.4 MAXIMUM DENSITY
Maximum density:
Six (6) dwelling units per net developable acre.

605.5 MINIMUM DISTRICT SIZE
Minimum District Size: Three (3) acres.

605.6 LOT SIZE AND BULK REQUIREMENTS FOR TOWNHOUSE-STYLE DWELLINGS

(a) Minimum lot area
- (1) Interior lot: 2,000 square feet
- (2) Corner lot: 2,400 square feet
- (3) Condominium: Not regulated

(b) Minimum lot width
- (1) Interior lot: 20 feet
- (2) Corner lot: 35 feet
- (3) Condominiums subject to plan review and applicable performance zoning criteria.

(c) Minimum yard requirements
- (1) Front yard: 15 feet
- (2) Side yard for end unit: 15 feet
- (3) Rear yard: 30 feet
- (4) Accessory structures: 5 feet (rear and side setback)

(d) Maximum building height: 35 feet

(e) Maximum Floor Area ratio (FAR): for non-residential uses - 0.25, or as otherwise dictated by applicable performance zoning criteria.

(f) Other: Where a lot is to be divided into individual lots for the sale of single-family attached dwelling units:
- (1) Lot lines shall conform with party wall centerlines and
- (2) A privacy yard, having a minimum of two hundred (200) square feet, shall be provided on each lot. Privacy yards shall include screening, fencing, patio paving, and/or special landscaping treatment.

605.7 LOT SIZE AND BULK REGULATIONS FOR DUPLEXES

(a) Minimum lot size:
- (1) 10,000 square feet for total duplex structure
- (2) 4,500 square feet each separate unit within a duplex

(b) Minimum lot width:
- (1) 75 feet per duplex structure
- (2) 35 feet for each unit of a duplex

(c) Minimum yard requirements:
- (1) Front yard: 25 feet
- (2) Side yard: 10 feet
- (3) Rear yard: 40 feet (residences)

(d) Maximum building height: 35 feet

(e) Maximum lot coverage: 35 percent

(g) Other: Where a lot is to be subdivided into individual lots for the sale of single-family attached units, lot lines shall conform with party wall centerlines.

605.8 LOT SIZE AND BULK REQUIREMENTS FOR SINGLE-FAMILY DETACHED DWELLINGS

(a)	Minimum lot size:	7,500 square feet
(b)	Minimum lot width:	60 feet
(c)	Minimum setback:	20 feet or more from a right-of-way 50 feet or more in width; 35 feet or more from the center of any street right-of-way less than 50 feet in width. **(5/94)**
(d)	Minimum yard requirements	
	(1) Side yard:	10 feet, except for corner lots, the side yard facing the side street shall be 20 feet or more for both main and accessory buildings.
	(2) Rear yard:	40 feet
	(3) Accessory structures:	5 feet from side and rear lot lines, except as noted above in 605.8(d)(1).

605.9 OPEN SPACE REQUIREMENTS FOR TOWNHOUSE DEVELOPMENTS

(a) An open space plan and landscape design program shall be submitted with applications for townhouse-style developments.

(b) Thirty (30) percent of the net site area shall be open space dedicated to common usage and ownership.

(c) At least twenty (20) percent of the required open space (six [6] percent of the net site area) shall be designed and developed as recreational and active community open space.

(d) Refer to Section 615 regarding the impact of critical environmental areas on open space requirements.

605.10 OPEN SPACE REQUIREMENTS FOR DUPLEX DEVELOPMENTS

(a) An open space plan shall be submitted with applications for duplex-style developments in this district.

(b) Ten (10) percent of the net site area shall be open space dedicated to common usage and ownership.

605.11 ADDITIONAL REGULATIONS FOR TOWNHOUSE DEVELOPMENTS

(a) <u>Parking, parking access, and parking drives</u>

1. Two (2) off-street (private) parking spaces per dwelling unit shall be provided and shall be located not more than one hundred (100) feet from the individual dwelling unit served.
2. Private driveways and parking bays shall be no closer than twelve (12) feet to any adjoining property line.
3. Separate parking spaces shall be allocated and reserved for recreational vehicle parking and special guest parking. The number of parking spaces allocated for recreational vehicles shall be one (1) recreational vehicle

parking space per six (6) dwelling units. The number of spaces for guest parking shall be one (1) space for every two (2) dwelling units.

4. Refer to Section 305 for additional off-street parking requirements.

(b) Streets

1. Attached dwelling units shall have access to a private street with a minimum width of twenty-two (22) feet. The paved street shall be constructed according to Virginia Department of Transportation standards.
2. No attached dwelling unit may be accessed directly from a public street unless approved by a Special Use Permit. In such case, the dwelling(s) must conform to AR District setback requirements.
3. No private street shall be located within twelve (12) feet of any property line.

(c) Setback, yards, buffering, separation, and grouping of units

1. Where adjacent properties are zoned to a district other than the AR District, all AR buildings shall be set back at least forty (40) feet from the common property line(s).
2. Where an attached residential building or group of attached residential buildings are adjacent to a private drive, parking area, and/or walkway intended for the common use of the development's occupants, there shall be a minimum building setback of fifteen (15) feet from that drive, area, and/or walk.
3. Adjacent townhouse-style dwelling units with their accompanying lots shall be separated from one another by a minimum of fifteen (15) feet. This separation shall allow an unobstructed fire lane on all sides of the structure.
4. No more than eight (8) single-family attached residences (townhouses) shall be included in any one physically contiguous grouping.
5. Common property lines shall be screened and landscaped. Refer to Section 309.7 for additional landscaping and buffering requirements.

(d) Maintenance of improvements, covenants, and required improvements

1. For any development in the AR District, all common improvements (including open space, recreational facilities, private streets, walkways, parking areas, and other community facilities) shall be maintained by and be the sole responsibility of the developer-owner of the A-R development until such time as the developer-owner conveys such common area to a nonprofit (homeowners') entity consisting of at least all of the individual owners of the dwelling units in the development.
2. Deed restrictions and covenants shall be included with the conveyance to include, among other things, those assessments, charges, and costs of maintenance of such common areas shall constitute a pro-rata share lien upon the individual dwelling lots, such lien inferior only to taxes and recorded trusts. Furthermore, covenants shall specify the means by which the non-profit entity shall govern and manage itself and maintain building exteriors, landscaping, lighting, recreation areas, walkways parking areas, snow removal, and travel ways.
3. All deed restrictions, covenants, nonprofit (homeowners') entity incorporation documents, and information related to conveyance programs

shall be prepared by the developer-owner. These papers and documents shall be submitted with the plat and plans, and shall be approved by the Town's legal representative.

4. On-site lighting, signing, and mailboxes shall be provided and installed by the owner-developer of townhouse developments. These improvements shall be of compatible scale, materials, and colors.

605.12 SITE PLAN AND MASTER PLAN REQUIREMENTS

(a) Development of all townhouse projects shall require site plan approval.

(b) Development of any townhouse project that is to be built in phases shall require a master plan which is intended to serve as the master land use plan for the specific development proposal. Final engineering designs and final plats shall be in conformance with the development's master plan.

605.13 GENERAL REGULATIONS

(a) All refuse shall be contained in completely enclosed and screened facilities.

(b) Refer to Section 309.9 for drainage regulations.

(c) Refer to specific Overlay Zoning Districts, where applicable.

605.14 CONDOMINIUMS

Any condominium development under the Condominium Laws of Virginia shall be subject to the following provisions:

(a) Minimum lot size and yard and open space requirements of the district shall be met as if lot lines existed.

(b) A site plan shall be required and subject to review by the Planning Commission. The site plan shall govern the location of all structures and improvements.

(c) Setbacks, density, and other district requirements shall be met.

SECTION 606 MULTIFAMILY RESIDENTIAL (MR) DISTRICT

606.1 PURPOSE AND INTENT

The Multifamily Residential (MR) District is created to provide for multifamily residences at locations compatible with the Berryville Area Master Plan's goals for high-density residential development. A maximum density of ten (10) units per net developable acre establishes this district as one recognizing garden-styled apartment or condominium units as the dominant land use. Housing for the elderly is encouraged under this district. Townhouses are permitted in this district, subject to the AR District regulations. The application of this district shall be to undeveloped tracts lying within the Town of Berryville with the intent of preserving existing natural features and vegetation, promoting excellence in site planning and landscape design, and encouraging multifamily and attached housing with compatible scale, materials, and architectural character. Development in the MR District shall be sensitive to land physiography, provision of adequate public infrastructure, and development of quality transportation improvements while achieving optimal siting of dwellings, recreation areas, community facilities, and open space.

606.2 PERMITTED USES

(a) Multifamily attached dwellings.
(b) Townhouse dwellings. An accessory structure, less than or equal to 120 square feet in area, is permitted on a private townhouse lot.
(c) Duplex and two-family attached dwellings and accessory structures.
(d) A mix of dwelling types as set forth above.
(e) Private community facilities, recreation areas, and other common area improvements normally associated with residential developments (other than those requiring special use permits) shall be permitted, subject to a generalized development plan and final site plan approval process.

606.3 SPECIAL PERMIT USES

(a) Churches
(b) Commercial swimming pools and tennis courts
(c) Community association facilities
(d) Community buildings, public and private
(e) Day care centers
(10/94) (f) Fire stations
(g) Government offices
(h) (Deleted 2010)
(i) Institutional housing and general care for indigents and orphans
(j) Libraries
(k) Licensed nursing homes
(l) Nursery schools
(m) Private clubs
(n) Private schools and related uses
(p) Private swimming pools and tennis courts
(q) Public schools, parks, playgrounds, and related uses

(r) Public utility uses (sub-stations, pump stations, storage tanks, etc.) and related easements, except for municipal utilities
(s) Zero-lot-line dwellings
(t) In townhouse developments, private accessory structures larger than 120 square feet in area.

606.4 MAXIMUM DENSITY
(a) Multifamily dwellings: ten (10) dwelling units per net developable acre.
(b) Attached dwellings: six (6) dwelling units per net developable acre.

606.5 MINIMUM DISTRICT SIZE
Minimum district size: three (3) acres.

606.6 REGULATIONS FOR DUPLEXES
Refer to Section 605 for general regulations.

606.7 REGULATIONS FOR TOWNHOUSE DEVELOPMENTS
Refer to Section 605 for general regulations.

606.8 MULTIFAMILY DWELLINGS
(a) Minimum lot area: Dwellings must be sited with respect to physiographic, air, solar, and environmental characteristics of their lots and to their relationship to adjoining properties.
(b) Maximum building height: 40 feet
(c) Minimum yard requirements
  (l) Front yard: 25 feet
  (2) Side yard: 20 feet
  (3) Rear yard: 30 feet
(d) For nonresidential uses, the maximum floor area ratio shall be 0.25, based on net developable area, and as otherwise dictated by applicable performance zoning criteria.
(e) An open space plan and landscape design program shall be submitted with applications for any land use governed by this district.
(f) Thirty (30) percent of the gross site area shall be open space, dedicated to common usage and ownership.
(g) One-third (1/3) of the open space (ten [10] percent of the gross site area) shall be developed and designated as recreational and active community open space.

606.9 PARKING AREAS, DRIVEWAYS, AND WALKWAYS IN MULTIFAMILY DEVELOPMENTS
(a) Two off-street (private) parking spaces per dwelling unit shall be provided and located not more than one hundred (100) feet from the individual dwelling unit served.
(b) Additional parking spaces shall be provided and designated for recreational vehicle parking and special guest parking. One (1) recreational vehicle parking space per

twelve (12) dwelling units shall be required in the MR District. The number of spaces for guest parking shall be one (1) space for every two (2) dwelling units.

(c) The location, spacing, and number of private driveway entrances serving any MR development shall comply with the adopted Transportation Plan for the Berryville Area and shall be subject to final approval by the Town Council or its agent.

(d) Private driveways and parking bays shall be at least twelve (12) feet from any adjoining property line. Parking areas, driveways, and walkways intended for the common use of the development's occupants shall be placed at least fifteen (15) feet from all multifamily residential buildings.

(e) Refer to Section 305 for additional off-street parking requirements.

606.10 STREETS IN MULTIFAMILY DEVELOPMENTS

(a) Attached and multifamily dwelling units shall have access to a private street with a minimum width of twenty-two (22) feet. The paved street shall be constructed according to Virginia Department of Transportation standards.

(b) No multifamily dwelling may be accessible directly from a public street. No attached dwelling unit may be accessed directly from a public street unless approved by a special use permit. In such case, the dwelling(s) must conform to MR District setback requirements.

606.11 SETBACK, YARDS, BUFFERING, SEPARATION, AND GROUPING OF MULTIFAMILY BUILDINGS

(a) Where adjacent properties are zoned to a district other than the MR District, all MR buildings shall be set back at least forty (40) feet from the common property line(s).

(b) Where an attached residential building or group of attached residential buildings are adjacent to a private drive, parking area, and/or walkway intended for the common use of the development's occupants, there shall be a minimum building setback of fifteen (15) feet from that drive, area, and/or walk.

(c) No more than twenty-four (24) residential units shall be located within any one physical building structure. A waiver for this regulation may be given for those development proposals that are exclusively for elderly housing.

(d) Multifamily dwelling structures shall have side yards separating individual buildings by a distance not less than the height of the tallest residential structure. Rear yards separating individual buildings shall be equal to one and one-half (1-1/2) times the height of the tallest structure. The larger yard size shall govern in instances where side and rear yard definition is subject to interpretation.

(e) Common property lines shall be screened and landscaped. Refer to Section 310.8 for additional landscaping and buffering requirements.

606.12 MAINTENANCE OF IMPROVEMENTS, COVENANTS, AND REQUIRED IMPROVEMENTS

(a) For any development in the M-R District, all common improvements (including open space, recreational facilities private streets, walkways, parking areas, and other community facilities) shall be maintained by and be the sole responsibility of the developer-owner of the M-R development until such time as the developer-

owner conveys such common area to a nonprofit (homeowners') entity consisting of at least all of the individual owners of the dwelling units in the development.

(b) Deed restrictions and covenants shall be included with the conveyance to include, among other things, that assessments, charges, and costs of maintenance of such common areas shall constitute a pro rata share lien upon the individual dwelling lots, such lien inferior only to taxes and recorded trusts. Furthermore, covenants shall specify means by which the nonprofit entity shall govern and manage itself and maintain building exteriors, landscaping, lighting, recreation areas, walkways, parking areas, snow removal, and travel ways.

(c) All deed restrictions, covenants, nonprofit (homeowners') entity incorporation documents and information related to conveyance programs shall be prepared by the developer-owner. These papers and documents shall be submitted with the plat and plans, and shall be approved by the Town's legal representative.

(d) On-site lighting, signing, and mailboxes shall be provided and installed by the owner-developer of townhouse or multifamily developments. These improvements shall be of compatible scale, materials, and colors.

606.13 SITE PLAN AND MASTER PLAN REQUIREMENTS

(a) Development of any and all sections within the M-R District shall require site plan approval.

(b) Development of any project under M-R District zoning provisions shall require a master plan for the specific development proposal. Final engineering designs and final plats shall be in conformance with the development's master plan.

(c) A parking and traffic impact study shall be provided with the submission of a preliminary site plan or master plan.

606.14 GENERAL REGULATIONS

(a) No privately-owned accessory buildings shall be permitted on multifamily building lots.

(b) All refuse shall be contained in completely enclosed and screened facilities.

(c) Refer to Section 310.10 for drainage regulations.

(d) Refer to specific Overlay Zoning Districts, where applicable.

606.15 CONDOMINIUMS

Any condominium development under the Condominium Laws of Virginia shall be subject to the following provisions:

(a) Minimum lot size and yard requirements of the district shall be met as if lot lines existed.

(b) A master plan shall be required and subject to review by the Planning Commission and approved by the Town Council. The master plan shall govern the location of all site structures and improvements on final plans.

(c) Setbacks, density, and other district provisions shall be met.

(d) Condominiums are subject to site plan review and applicable performance zoning criteria.

SECTION 607 - C-1 COMMERCIAL DISTRICT

607.1 PURPOSE AND INTENT

The C-1 Commercial District is established to provide selected locations in the Town of Berryville for light commercial activities that do not adversely impact adjoining residential neighborhoods. The C-1 District is intended to accommodate local retail uses at locations compatible with the Berryville Area Master Plan.

607.2 PERMITTED USES

(12/00) (a) Assembly of high-tech components and/or systems (not including manufacturing)
(b) Restaurants, exclusive of fast-food restaurants
(c) Newspaper office buildings, including printing and publishing facilities incidental to such uses
(d) Quick-service stores with limited hours of operation (6:00 a.m. – 10 p.m.).
(e) Civic and public benefit organizations
(f) Churches and other places of worship
(g) Government and other public buildings (including libraries, post offices, police stations, fire stations, and rescue squads)
(h) Financial institutions without drive-in facilities
(i) Hospitals, nursing, convalescent, or rest homes, in accordance with Section 311
(j) Funeral homes
(k) Furniture repair
(l) Business and professional offices
(m) Personal services (including music services, barber and beauty shops, tailor shops)
(n) Printing shops
(o) Retail stores with a maximum gross floor area of 5,000 square feet for each free-standing business or for each business in a shopping center. **(07/05)**
(p) Day care centers **(10/94)**
(q) Auction House **(11/02)**

607.3 SPECIAL PERMIT USES

(12/00) (a) Broadcast studios
(b) Business services and supply establishments
(c) Car wash
(d) Commercial recreational establishments
(e) Drive-in banking facilities **(10/94)**
(f) Fast-food restaurants
(g) Hardware stores
(h) Laundromats
(i) Movie theaters
(j) Plant nurseries
(k) Public billiard parlors and pool rooms, bowling alleys, dance halls, health spas and clubs
(l) Public utilities and related easements, except municipal utilities
(m) Quick-service stores with unlimited hours of operation

(n) Residential apartments, as a secondary use to principal structure
(o) Retail stores over 5,000 square feet for each free-standing business or for each business in a shopping center, not to exceed a maximum of 15,000 square feet for each free-standing business or for each business in a shopping center. **(07/05)**
(p) Repair service establishments, without outdoor service and/or outdoor storage
(q) Service stations (without outdoor storage)
(r) Single-family detached dwellings **(9/96)**
(s) Schools, public or private
(t) Three-story buildings
(u) Veterinary hospitals
(v) Wood product manufacturing (NAICS 321) except 3211 sawmills and wood preservation **(12/11)**
(w) Craft beverage manufacturing **(02/18)**

607.4 MAXIMUM FLOOR AREA RATIO

The maximum floor area ration (FAR)—based on the net developable area of a lot—shall not exceed 0.25.

607.5 MINIMUM DISTRICT SIZE

Minimum district size:	1 acre

607.6 LOT SIZE REQUIREMENTS AND BULK REGULATIONS

(a)	Minimum lot area:	10,000 square feet
(b)	Minimum lot width:	100 feet
(c)	Maximum building height:	40 feet
(d)	Minimum yard requirements	
	(1) Front yard:	30 feet
	(2) Side yard:	10 feet
	(3) Rear yard:	30 feet

607.7 OPEN SPACE

(a) An open space plan and landscape design program shall be submitted with applications for any land use governed by this district.
(b) Fifteen percent (15%) of the site shall be landscaped open space.

607.8 PARKING AREA REGULATIONS FOR THE C-1 COMMERCIAL DISTRICT

(a) All parking areas shall be located at least ten (10) feet from any property line except that parking areas may adjoin each other across common C-1 district property lines. Parking areas must be located at least thirty (30) feet from properties in contiguous residential districts.
(b) All parking areas shall consist of off-street, on-site spaces and shall include designated spaces for the handicapped and elderly.
(c) Refer to Section 305 for additional off-street parking requirements.

607.9 LANDSCAPING, BUFFERING AND SETBACK ADJACENT TO RESIDENTIAL AREAS

(a) Where a lot is contiguous to a property located in any residential district, all buildings shall have a minimum setback of forty (40) feet from common property lines **(5/94)**.

(b) A landscaped buffer strip of fifteen (15) feet in width shall be provided, with landscape materials and placement subject to final plan approval. This buffer strip may be reduced to ten (10) feet with suitable fencing, but in such cases fence design shall be subject to final plan approval.

607.10 STORAGE OF MATERIALS AND REFUSE

(a) The outdoor area devoted to storage, loading and display of goods shall be limited to that area so designated on an approved site plan.

(b) Any establishment involved with the storage of fuel for sale, or for other purposes, shall be permitted only if the fuel is stored underground, except where otherwise permitted under provisions granted and other stipulations required by special use permit by the Town Council.

(c) All refuse shall be contained in completely enclosed facilities and shall be screened.

607.11 STREET ENTRANCES

(a) On a corner lot, no street entrance shall be located closer than sixty (60) feet to the curb line extended from the intersecting street.

(b) (DELETED 4/98)

(c) A freestanding use shall have no more than two street entrances on any single right-of-way.

607.12 GENERAL REQUIREMENTS

(a) All uses shall be subject to final site plan approval.

(b) Refer to Section 306 for off-street loading requirements.

(c) Refer to Sections 301-304 for general regulations and other provisions which may supplement those cited herein.

(d) Refer to specific Overlay Zoning Districts, where applicable.

SECTION 608 C-2 COMMERCIAL

608.1 PURPOSE AND INTENT

The C-2 Commercial District is established to provide selected locations in the Town of Berryville for small-scale convenience shopping facilities and be oriented to serve adjacent and surrounding residential areas. These convenience facilities may serve smaller-scaled neighborhood areas than those areas served by the C-1 District, and may supply necessities that require frequent purchasing with a minimum of consumer travel per shopping trip. The C-2 District is intended to accommodate existing and future neighborhood retail uses and is to allow small, predominately single-use, neighborhood retail structures which are to be located within or adjacent to existing or planned residential areas.

608.2 PERMITTED USES

(a) Financial institutions, not to exceed 3,000 square feet per building unit
(b) Personal service establishments, not to exceed 3,000 square feet per building unit
(c) Quick-service stores, not to exceed 3,000 square feet per building unit and open only between 6 a.m. and 10 p.m.
(d) Day care centers **(10/94)**

608.3 SPECIAL PERMIT USES

(a) Drive-in banks, not to exceed 3,000 square feet per building unit
(b) Government and other public buildings
(c) Public utilities and related easements, except municipal utilities
(d) Quick service stores (without automotive services), which exceed 3,000 square feet per building unit and/or are open between 10 p.m. and 6 a.m.
(e) Residential apartments as a secondary use to a principal structure

608.4 MAXIMUM FLOOR AREA RATIO

The maximum floor area ration (FAR) – based on the net developable area of a lot—shall not exceed 0.25.

608.5 MINIMUM DISTRICT SIZE

Minimum district size in the C-2 zone is not regulated.

608.6 LOT SIZE REQUIREMENTS AND BULK REGULATIONS

(a)	Minimum lot area:	15,000 square feet
(b)	Minimum lot width:	100 feet
(c)	Maximum building height:	35 feet
(d)	Minimum yard requirements	
	(1) Front yard:	30 feet
	(2) Side yard:	No requirement
	(3) Rear yard:	30 feet

608.7 OPEN SPACE

(a) An open space plan and landscape design program shall be submitted with applications for any land use governed by this district.

(b) Fifteen percent (15%) of the site shall be landscaped open space.

608.8 PARKING REGULATIONS

(a) All parking areas shall be located at least ten (10) feet from any property line except that parking areas may adjoin each other across common C-2 district property lines. Parking areas must be located at least thirty (30) feet from properties in contiguous residential districts.

(b) All parking areas shall consist of off-street, on-site spaces and shall include designated spaces for the handicapped and elderly.

(c) Refer to Section 305 for additional off-street parking requirements.

608.9 SETBACK, LANDSCAPING AND BUFFERING ADJACENT TO RESIDENTAIL AREAS

(a) Where a lot is contiguous to property located in any residential district, all buildings shall have a minimum setback of forty (40) feet from common property lines. **(5/94)**

(b) A landscaped buffer strip of fifteen (15) feet in width shall be provided, with landscape materials and placement subject to final plan approval. This buffer strip may be reduced to ten (10) feet with suitable fencing, but in such cases fence design shall be subject to final plan approval. **(5/94)**

608.10 STORAGE OF GOODS, MATERIALS, FUEL AND REFUSE

(a) The outdoor area devoted to storage, loading and display of goods shall be limited to that area so designated on an approved site plan.

(b) Any establishment involved with the storage of fuel for sale, or for other purposes, shall be permitted only if the fuel is stored underground, except where otherwise permitted under provisions granted and stipulations required by special use permit by the Town Council.

(c) All refuse shall be contained in completely enclosed facilities and shall be screened.

608.11 STREET ENTRANCES

(a) On a corner lot, no street entrance shall be located closer than sixty (60) feet to the curb line extended from the intersecting street.

(b) No street entrance shall be located closer than thirty (30) feet to a side or rear lot line, unless a common street entrance serves adjacent uses, and in no instance shall the distance between separate street entrances serving adjacent uses be less than sixty (60) feet.

(c) A freestanding use shall have no more than two (2) street entrances on any single right-of-way, and such street entrances shall have a minimum distance of sixty (60) feet between them. The maximum width of such curb cuts shall not exceed thirty (30) feet.

608.12 GENERAL REGULATIONS

(a) All uses shall be subject to final site plan approval.

(b) Refer to Section 306 for off-street loading requirements.

(c) Refer to Sections 301-304 for general regulations and other provisions which may supplement those cited herein.

(d) Refer to specific Overlay Zoning Districts, where applicable.

SECTION 609 L-1 INDUSTRIAL DISTRICT

609.1 PURPOSE AND INTENT

The L-1 Industrial District is established to provide locations within the Town of Berryville for a broad range of general light-industrial uses, recreational and event venues, infill development, and employment-related businesses operating under well-governed performance standards. The specific uses permitted within the L-1 District must be in harmony with the cultural and environmental character of the Town of Berryville. No use should be permitted that might be harmful to the adjoining land uses and the residential ambience of the community at large. Adaptive reuse is encouraged in the L-1 District. Outdoor storage and heavy industrial uses are discouraged but may be permitted by special use and environmental performance review. The L-1 District recognizes and is to be applied to existing conforming industry in the Town of Berryville as of the date of adoption of this District. Existing industrial uses shall be considered as satisfying the purpose and intent of the L-1 District, but expansion of existing industrial uses shall conform to the provisions herein. **(08/16)**

609.2 PERMITTED USES **(12/94)**

(a) Auction establishments (indoor only) **(5/95)**
(b) Business and professional offices **(7/99)**
(c) Business service, supply and delivery establishments
(d) Contractor's establishments without outdoor storage
(e) Establishments for the production, processing, assembly, manufacturing, compounding, cleaning, servicing, testing and repair of materials, goods or products which conform to applicable Federal, State and local environmental performance standards or other standards referenced by the Town as related to (a) air pollution; (b) fire and explosion hazards; (c) radiation hazards; (d) electromagnetic radiation and interference hazards; (e) liquid and solid wastes hazards; (f) noise and odor standards; and (g) vibration standards.
(f) Existing or expansion of existing industrial uses in operation as of the date of adoption of this Ordinance which conform to the previous industrial zoning district requirements.
(g) Farm supply establishments
(h) Financial institutions
(i) Indoor mini-storage facilities
(j) Light manufacturing, fabrication, testing or repair establishments without outdoor storage
(k) Light warehousing establishments, without outdoor storage
(l) Light wholesale trade establishments, without outdoor storage
(m) Printing and publishing establishments
(n) Private training and vocational schools
(o) Public utilities (sub-stations, pump stations, transmission/receiving facilities and lines for telecommunications and similar uses, storage tanks, etc.)
(p) Sheet metal shops
(q) Small animal veterinary hospitals, exclusive of boarding kennels
(r) Vehicle and machinery service, and parts sales ("service" including but not limited to internal and external repair, body work, paint, car washes, etc.)

(s) Welding shops
(t) Craft beverage manufacturing **(03/18)**

609.3 SPECIAL PERMIT USES

(a) All above permitted uses requiring outdoor storage **(10/94)**
(b) Day care centers **(12/94)**
(c) Eating establishments including microbreweries, wineries, and distilleries **(05/95, 08/16)**
(d) Heliports
(e) Laundry and dry cleaning establishments
(f) Lumber yards and building materials establishments
(g) Motor freight terminals
(h) Retail sales incidental to a manufacturing, production or related use, provided that: a) the gross floor area used for retail purposes (excluding storage) shall not occupy more than five-thousand (5,000) square feet of gross floor area on any one lot, and shall not exceed twenty-five (25) percent of the total floor area for the site; and b) the areas dedicated for retail uses must be indicated on an approved site plan. The provisions of this Section shall not apply to those permitted or special permit uses for which retail sales are a primary activity. **(12/07)**
(i) Scientific research, development, and training establishments
(j) Service stations
(k) Vehicle and machinery sales and rentals
(l) Recreation, commercial indoor **(06/10)**
(m) Retreat and conference centers **(08/16)**
(n) Residential lofts and apartments **(08/16)**
(o) Wholesale/retail food hubs **(08/16)**
(p) Commercial kitchens **(08/16)**
(q) Hotels, motels, and accommodations **(08/16)**

609.4 PROHIBITED USES

The specific uses which follow shall not be permitted in the L-1 District:

(a) Asphalt mixing plants
(b) Blast furnaces
(c) Boiler works
(d) Bulk storage of flammable materials
(e) Coal, wood or wood distillation
(f) Concrete mixing and batching products
(g) Extraction or mining of rocks and minerals
(h) Garbage incineration
(i) Junk yards
(j) Landfills
(k) Manufacture of ammonia, chlorine, fertilizer, lime, cement, fireworks, explosives, soaps, acids, pesticides, herbicides or insecticides
(l) Metal foundries and smelting
(m) Petroleum, asphalt or related product refining
(n) Rendering plants
(o) Slaughterhouses
(p) Stockyards

(q) Tanning and curing of skins

(r) Any other similar use which in the opinion of the Town Council might be injurious or noxious by reason of odor, fumes, dust, smoke, vibration, noise or other cause

609.5 MAXIMUM LOT COVERAGE

(12/91) The maximum lot coverage—including buildings, streets, parking spaces, driveways, loading areas and all other impervious surfaces—shall not be greater than seventy-five percent (75%) of the area of an L-1 lot.

609.6 MINIMUM DISTRICT SIZE

The minimum district size shall be four (4) acres.

609.7 LOT SIZE REQUIREMENTS AND BULK REGULATIONS

(a) Minimum lot area: 30,000 square feet

(b) Minimum lot width: 125 feet

(c) The maximum building height shall be forty (40) feet, except in particular instances the Town Council may, upon recommendation from the Planning Commission or its agent, modify the maximum building height.

(d) Minimum yard requirements

(1) Front yard: 50 feet

(2) Side yard: 25 feet (except where side yard abuts a public right-of-way the side yard shall be 50 feet) **(5/94)**

(3) Rear yard: 50 feet **(5/94)**

609.8 OPEN SPACE

(a) An open space plan and landscape design program shall be submitted with applications for any land use governed by this District.

(b) Twenty five percent (25%) of the site shall be landscaped open space. Landscaping may be limited to setback areas and unused portions.

609.9 PARKING, PARKING ACCESS AND DRIVEWAYS

(a) No parking space shall be located closer than fifteen (15) feet from any common property line.

(b) Where lot is contiguous to property located in any district other than the L-1, I, C-1 or C-2 District, no parking space shall be closer than 40 feet from such property line. **(5/94)**

(c) All parking requirements shall be met by off-street, on-site spaces and shall include designated spaces for the handicapped and elderly.

(d) Refer to Section 305 for additional off-street parking requirements.

609.10 SETBACK, BUFFERING AND LANDSCAPING

(a) Where an L-1 lot is contiguous to property located in a district other than an L-1, I, C-1 or C-2 District, all buildings shall have a minimum 60-foot setback from lot lines. In particular instances the Town Council may waive the 60-foot setback requirement, upon recommendation from the Planning Commission. **(5/94)**

(b) Where an L-1 lot is contiguous to property located in a district other than an L-1, I, C-1 or C-2 District, a landscaped buffer strip of 30 feet in width shall be provided,

with landscape materials and placement subject to final plan approval. Where contiguous to a C-1 or C-2 District property, the landscaped buffer strip shall be 15 feet. Approved fencing or additional buffering may be used in lieu of landscaping. **(5/94)**

609.11 STORAGE OF GOODS, MATERIALS, FUEL AND REFUSE

(a) The outdoor area devoted to storage, loading and display of goods shall be limited to that area so designated on an approved site plan.

(b) All equipment and materials shall be contained entirely within a building or screened from public rights-of-way and contiguous properties that are in land uses other than industrial in nature.

(c) Any establishment involved with the storage of fuel for sale, or for other purposes, shall be permitted only if the fuel is stored underground, except where otherwise permitted under provisions granted and stipulations required by the Town Council.

(d) All refuse shall be contained in completely enclosed facilities and shall be screened.

609.12 STREET ENTRANCES

(a) On a corner lot, no street entrance shall be located closer than 60-feet to the curb line extended from the intersecting street. This distance may be increased with respect to the types and turning radii of vehicles using the site.

(b) No street entrance shall be located closer than 30 feet to a side or rear lot line, unless a common street entrance serves adjacent uses, and in no instance shall the distance between separate street entrances serving adjacent uses be less than 60 feet. The maximum width of such street entrances shall not exceed thirty feet (30').

(c) A freestanding use shall have no more than two street entrances on any single right-of-way, and such street entrances shall have a minimum distance of 90 feet between them.

609.13 SITE PLAN REQUIREMENTS AND PERFORMANCE STANDARDS

(a) All uses shall be subject to final site plan approval.

(b) Any L-1 District land use application which is not in strict compliance with the pre-existing approved master site plan and preliminary plat for the district shall require an amendment to that master site plan and preliminary plat prior to site plan approval of the specific use.

(c) Master site plans and preliminary plats for L-1 Districts shall include provisions for:

(1) adequate public facilities;

(2) development phasing;

(3) stormwater management facilities to address the ultimate development coverage within the district;

(4) lighting and signing; and

(5) other special features and land use considerations deemed necessary to serve the industrial district.

(d) Applications for all uses subject to special use permits shall be accompanied by a report indicating the compliance with and use compatibility issues related to the Town's applicable performance standards.

609.14 ADDITIONAL REQUIREMENTS

(a) Public Streets within the L-1 District shall be constructed to industrial road standards as determined by the Town Council or its agent. Sidewalks may be required on one or both sides of the street.

(b) Common property ownership agreements and covenants for L-1 District developments shall be reviewed and approved by the Town Council or its agent.

(c) Refer to Section 306 for off-street loading requirements.

(d) Refer to Sections 301-304 for general regulations and other provisions which may supplement those cited herein.

(e) Refer to specific Overlay Zoning districts, where applicable.

(3/92) SECTION 610 BC BUSINESS COMMERCIAL

610.1 PURPOSE AND INTENT

The Business Commercial (BC) District is established to provide locations for highway commercial uses (such as retail uses dependent on automobile access, restaurants, motels), offices, and employment-related businesses within the precincts of the Berryville Area Plan. The BC District is further established to encourage innovative design of office, employment and retail-related development; and to these ends, development under this district is permitted only in accordance with a site plan.

The application of this district is intended for newly developing locations in the Berryville Area where office, retail, and similar activities are the principal use. High-quality business park and commercial site design principles are to be incorporated into the BC District uses. Highway-oriented commercial uses shall be located where they are pre-planned and creatively grouped in an efficient manner meeting the comprehensive planning objectives.

The specific uses permitted within the BC District must be in harmony with the cultural and environmental character of the Berryville Area. No use should be permitted which might be harmful to the adjoining land uses and the residential ambience of the community at large. Adequate transportation and site planning of all land uses shall have the goal of minimizing traffic conflicts with all other activities within the Berryville Area.

610.2 PERMITTED USES

(a) Antique sales (indoor only)
(b) Automobile service and repair establishments (including gas stations), with a convenience store (not occupying more than 3,000 square feet of gross floor area, excluding storage) as an accessory use, provided that all vehicle repair takes place in a fully enclosed building. **(04/16)**
(c) Automobile sales
(d) Broadcast stations, studios, and offices for radio and television
(e) Car washes
(f) Churches and other places of worship
(g) Clubs or Lodges (including civic and public benefit organizations)
(h) Day care centers
(i) Financial institutions (with or without drive-through windows)
(j) Funeral homes
(k) Government and other public buildings (including police, fire, library, museum, and postal facilities; excluding retail and service uses except as provided in Section 610.2(u).
(l) Grocery store (with at least 25,000 square feet gross floor area)
(m) Hotels and motels
(n) Laundromats
(o) Medical care facilities, licensed
(p) Offices, business or professional
(q) Plant nurseries
(r) Public utilities and related easements
(s) Recreation facilities (indoor or outdoor), parks, playgrounds, fairgrounds, etc.

(t) Restaurants with or without drive-through

(u) Retail stores and shops as an accessory use to the primary permitted use on the parcel, provided:

(1) the retail store or shop is directly related, ancillary, subordinate, and incidental to the primary permitted use;

(2) the gross floor area of the retail store or shop (excluding storage) does not exceed ten (10) percent of the gross floor area of the primary permitted use;

(3) the gross floor are of the retail store or shop (excluding storage) does not occupy more than 1,500 square feet; and

(4) the gross floor area for storage related to the retail store or shop does not exceed 500 square feet. **(8/01)**

(v) Schools, public and private

(w) Veterinary hospitals (small animals), exclusive of outdoor boarding kennels

610.3 SPECIAL PERMIT USES

(a) Conference centers

(b) Pharmaceutical centers **(5/06)**

(c) Scientific research and development establishments

(d) Theatres, indoor

610.4 MAXIMUM DENSITY

The maximum density shall not exceed a floor area ratio (FAR) of .30, based on the net developable area of the lot.

610.5 MINIMUM DISTRICT SIZE

Minimum District size is four (4) acres.

610.6 LOT REQUIREMENTS

(a) Minimum lot area: 20,000 square feet

(b) Minimum lot width: 100 feet

610.7 BUILDING HEIGHT AND SETBACK REGULATIONS

(a) Maximum building height: 40 feet

(b) Minimum yard requirements:

(1) Front yard: 40 feet

(2) Side yard: 25 feet (40 feet on street side corner lot)

(3) Rear yard: 25 feet

(4) Where a lot is contiguous to property located in any residential district, all buildings shall have a minimum setback of 40 feet from common property lines.

610.8 OPEN SPACE

(a) A landscape and buffer plan shall be submitted with any application for site plan approval.

(b) Twenty (20) percent of the gross site area shall be landscaped open space.

610.9 ADDITIONAL REGULATIONS

(a) Parking, Streets and Access

(1) All parking requirements shall be met by off-street, on-site spaces and shall include designated spaces for the handicapped.

(2) The location, spacing and number of private driveway entrances shall comply with Virginia Department of Transportation standards and shall be subject to final site plan approval.

(3) Off-street parking spaces shall be accessed via private driveways and shall not be directly accessed from public rights-of-way.

(b) Buffering and Landscaping

(1) Where a parcel in the BC District is contiguous to a residential zoning district or public right-of-way with limited access, a landscaped buffer strip fifteen (15) feet in width shall be provided.

(2) Landscape materials and their placement shall be subject to final site plan approval. With the approval of the administrative body, walls, fences or wider buffer strips may be used in lieu of landscaping.

(c) Storage of Materials and Refuse

(1) All refuse containers shall be screened by a solid wall or fence.

(2) Any establishment involved with the storage of any fuel for sale, for on-site use, or for any other purposes, shall be permitted only if the fuel is stored underground, except where otherwise permitted under provisions granted and stipulations required by the administrative body.

(3) All storage shall be conducted within the principal structure, which is to be completely enclosed.

(4) There shall be not outdoor storage and/or display of goods with the exception of plant materials associated with nurseries.

(d) Uses, Facilities and Improvements

(1) All business services (and storage) shall be conducted within the principal structure, which is to be completely enclosed.

(2) Signing, mailboxes, site lighting and architectural materials shall be provided and installed by the property's owner-developer and shall be consistent and compatible with the scale and character of the development.

(3) Private streets, street lighting, sidewalks, curbing and gutters, and parking bays shall be constructed to standards specified by the administrative authority or its agents.

(e) Site Plan

(1) A site plan, which shall govern all development, shall be submitted for approval.

(2) Site plans shall include provisions for the following:

(A) adequate public facilities;

(B) development phasing;

(C) stormwater management facilities to address the ultimate development coverage within the district;

(D) lighting and signing;

(E) building placement and lot configuration; and

(F) Other special site features and land use considerations deemed necessary to serve the district.

(G) Any site plan application which is not in strict conformance with the pre-existing approved site plan for the District shall require an amendment to that site plan and preliminary plat prior to site plan approval of the specific use.

(3) All uses shall be subject to final site plan approval.

SECTION 611 BUSINESS (B) DISTRICT

611.1 PURPOSE AND INTENT

The Business (B) District is established to provide locations for a broad range of general business activities, particularly employment-related businesses, in a business park setting in the precincts of the Berryville Area Plan. The B District is established to encourage innovative design of employment related development; to these ends, development under this district will be permitted only in accordance with a site plan. The B District is intended to provide business "incubator" locations that allow one or more small businesses to operate in one or more buildings under common ownership.

The specific uses permitted within the B District must be in harmony with the cultural and environmental character of the Town of Berryville. No use should be permitted that might be harmful to adjoining land uses or to the community at large. Adequate transportation and site planning of all land uses shall have the goal of minimizing traffic conflicts with all other activities within the Berryville Area.

611.2 PERMITTED USES

(a) Antique sales (indoor only)
(b) Auctions establishments (indoor only)
(c) Automobile service and repair establishments (including gas stations) provided that all repair of vehicles takes place in a fully enclosed building
(d) Bakeries (with retail sales as provided in Section 611.2(w) below) **(12/94)**
(e) Broadcast stations, studios, and offices for radio and television
(f) Churches and other places of worship
(g) Cleaning of carpets and rugs
(h) Clubs or lodges (including civic and public benefit organizations)
(i) Conference centers
(j) Contractors' establishments
(k) Financial institutions (with or without drive-through windows)
(l) Government and other public buildings (including police, fire, library, museum and postal facilities; excluding retail and service uses, except as provided in Section 611.2(w)
(m) Machinery sales and service
(n) Manufacturing, processing, assembly or repair activities that are not objectionable because of smoke, odor, dust or nose, or result in air or water pollution levels above any local, State or Federal regulations **(12/94)**
(o) Medical care facilities, licensed
(p) Mini-storage facilities (indoor only)
(q) Offices, business or professional
(r) Plant nurseries
(s) Printing and publishing
(t) Public utilities and related easements
(u) Recreation facilities (indoor or outdoor), parks, playgrounds, fairgrounds, etc.
(v) Restaurants with or without drive-through

(8/01) (w) Retail stores and shops as an accessory use to the primary permitted use on the parcel, provided:
- (1) the retail store or shop is directly related, ancillary, subordinate, and incidental to the primary permitted use;
- (2) the gross floor area of the retail store or shop (excluding storage) does not exceed 10% of the gross floor area of the primary permitted use;
- (3) the gross floor area of the retail store or shop (excluding storage) does not occupy more than 1,500 square feet; and
- (4) the gross floor area for storage related to the retail store or shop does not exceed 500 square feet.

(x) Schools, public and private, academic and vocational
(y) Warehousing and distribution establishments
(z) Wholesale trade and distribution establishments
(aa) Veterinary hospitals (small animals), exclusive of outdoor boarding kennels

611.3 SPECIAL PERMIT USES
- (a) Day care centers
- (b) Pharmaceutical centers **(5/06)**
- (c) Scientific research and development establishments
- (d) Lumber yards and building materials establishments

611.4 MAXIMUM DENSITY

The maximum density shall not exceed a floor area ratio (FAR) of .30 based on the net developable area of the lot.

611.5 MINIMUM DISTRICT SIZE

Minimum district size: four (4) acres

611.6 LOT REQUIREMENTS
- (a) Minimum lot area: 20,000 square feet
- (b) Minimum lot width: 100 feet

611.7 BUILDING HEIGHT AND SETBACK REGULATIONS
- (a) Maximum building height: 40 feet
- (b) Minimum yard requirements
  - (1) Front yard: 40 feet
  - (2) Side yard: 25 feet (40 feet on lot)
  - (3) Rear yard: 25 feet
  - (4) Rear yard requirements may be reduced where that rear yard abuts a railroad right-of-way.
  - (5) Where a lot is contiguous to property located in any residential district, all buildings shall have a minimum setback of forty (40) feet from common property lines.

611.8 OPEN SPACE
- (a) A landscape and buffer plan shall be submitted with any application for site plan approval.
- (b) Fifteen (15) percent of the gross site area shall be landscaped open space.

611.9 ADDITIONAL REGULATIONS

(a) Parking, Streets and Access

(1) All parking requirements shall be met by off-street, on-site spaces and shall include designated spaces for the handicapped.

(2) The location, spacing and number of private driveway entrances shall comply with Virginia Department of Transportation standards and shall be subject to final site plan approval.

(3) Off-street parking spaces shall be accessed via private driveways and shall not be directly accessed from public rights-of-way.

(4) Public streets within or immediately adjacent to the B Zoning District shall be constructed to industrial road standards if determined necessary by the administrative body. Sidewalks may be required on such street if determined necessary by the administrative body.

(b) Buffering and Landscaping

(1) Where a parcel in the B District is contiguous to a residential zoning district, or a public right-of-way of sixty (60) feet or more, a landscaped buffer strip fifteen (15) feet wide shall be provided. Such a buffer strip shall include any combination of masonry or wooden walls or fences and/or evergreen shrubs that provide an opaque visual buffer at least six (6) feet high within six (6) months of occupancy of a parcel.

(2) Where a parcel in the B District is contiguous to another non-residential zoning district, a landscaped buffer strip ten (10) feet in width shall be provided.

(3) Landscape materials and their placement shall submit to final site plan approval. With the approval of the administrative body, walls, fences, or wider buffer strips may be used in lieu of landscaping.

(4) Common property ownership agreements and covenants shall be reviewed and approved by the administrative body.

(c) Storage of Materials and Refuse

(1) All refuse containers shall be screened by a solid and opaque wall or fence.

(2) Any establishment involved with the storage of any fuel for sale, for on-site use, or for any other purposes, shall be permitted only if the fuel is stored underground, except where otherwise permitted under provisions granted and stipulations required by the administrative body.

(3) The outdoor area devoted to storage, loading and display of goods shall be limited to that area so designated on an approved site plan.

(4) Outdoor storage for any use in the B zoning district shall be completely enclosed within solid and opaque masonry, metal or wooden fences at least six (6) feet in height.

(5) No material or equipment within an outdoor storage area shall be visible from any public right-of-way or any parcel in a residential zoning district.

(d) Uses, Facilities and Improvements

(1) All business activities shall be conducted within the principal structure, which is to be completely enclosed.

(2) Signing, mailboxes, site lighting and architectural materials shall be provided and installed by the property's owner-developer and shall be consistent and compatible with the scale and character of the development.

(3) Private streets, street lighting, sidewalks, curbing and gutters, and parking bays shall be constructed to standards specified by the administrative authority or its agent.

(e) Site Plan

(1) A site plan that shall govern all development shall be submitted for approval.

(2) Site plans shall include provisions for:

(A) Adequate public facilities;

(B) development phasing;

(C) stormwater management facilities to address the ultimate development coverage within the district;

(D) lighting and signing;

(E) building placement and lot configuration; and

(F) other special site features and land use considerations deemed necessary to serve the district.

(3) Any site plan application which is not in strict conformance with the pre-existing approved site plan for the district shall require an amendment to that site plan and preliminary plat prior to site plan approval of the specific use.

(4) All uses shall be subject to final site plan approval.

SECTION 612 BI BUSINESS INDUSTRIAL (Deleted 7/99)

SECTION 612 BUSINESS PARK (BP) (Adopted 7/99)

612.1 INTENT

The Business Park (BP) District is established to provide locations within the Berryville Area for a broad range of light industrial and business uses. Such uses should be capital intensive (rather than labor intensive), having a significant investment in machinery and tools that should generate maximum revenue for local government. Such uses should promote horizontal and vertical integration of industrial and business activities, so that new businesses enhance and expand the base of existing businesses. All uses shall be in harmony with the cultural and environmental character of the Berryville Area and conform to all Federal, State, and local environmental performance standards. Transportation and site planning of all land uses shall have the goal of minimizing traffic congestion. The application of this district is intended for those locations within the Berryville Area which are planned for Light Industrial/Research uses.

The following list of Permitted Uses, Accessory Uses, Uses allowed by Special Permit, and Prohibited Uses comprehensively addresses every use defined by the North American Industrial Classification System (NAICS) Codes as contained in the NAICS Manual, U.S. Office of Management and Budget, 1997. This Manual shall be used to define the uses listed and assist in the determination of the status of proposed uses. The three-, four-, or five-digit categories listed below include all sub-categories except as noted; for example, 3121 includes 31211, 312111, but does not include 3122.

612.2 PERMITTED USES

The following uses are permitted by right unless subsequently listed as an Accessory Use, a Use allowed by Special Permit, or as a Prohibited Use.

	NAICS Code	
(a)	22112	Utilities - Electric Power Transmission, Control, & Distribution
(b)	2212	Natural Gas Distribution
(c)	2213	Water, Sewage, & Other Systems
(d)	233	Building, Developing & General Contracting
(e)	234	Heavy Construction
(f)	235	Special Trade Contractors
(g)	311	Food Manufacturing (except 3116 Animal Slaughtering & Processing and 3117 Seafood Product Preparation & Packaging)
(h)	3121	Beverage Manufacturing
(i)	314	Textile Product Mills
(j)	315	Apparel Manufacturing
(k)	316	Leather and Allied Product Manufacturing (except 3161 Leather & Hide Tanning & Finishing)
(l)	321	Wood Product Manufacturing (except 3211 Sawmills & Wood Preservation)
(m)	3222	Converted Paper Product Manufacturing
(n)	323	Printing & Related Support Activities
(o)	3261	Plastics Product Manufacturing

(p)	332	Fabricated Metal Product Manufacturing (except 3328 Coating/ Engrave/Heat Treating & Other Activity and 33292,3,4,5 Small Arms Ammunition, Other Ammunition, Small Arms, and Other Ordnance & Accessories Manufacturing)
(q)	334	Computer & Electronic Product Manufacturing
(r)	335	Electrical Equipment, Appliance, & Component Manufacturing (except 335911 Storage Battery and 335912 Primary Battery Manufacturing)
(s)	337	Furniture and Related Products Manufacturing
(t)	339	Miscellaneous Manufacturing
(u)	421	Wholesale Trade, Durable Goods (except 42152 Coal & Other Mineral & Ore Wholesale)
(v)	422	Wholesale Trade, Non-durable Goods (except 42244 Poultry & Poultry Product Wholesale, 42252 Livestock Wholesale, 4226 Chemical & Allied Products Wholesale and 4227 Petroleum & Petroleum Products Wholesale)
(w)	454	Non-store Retailers
(x)	4885	Freight Transportation Arrangement
(y)	488991	Packing & Crating
(z)	493	Warehousing & Storage
(aa)	511	Publishing Industries
(bb)	512	Motion Picture & Sound Recording Industries
(cc)	513	Broadcasting & Telecommunications
(dd)	514	Information & Data Processing Services
(ee)	5324	Commercial/Industrial Equipment Rental & Leasing
(ff)	5417	Scientific Research and Development Services
(gg)	561	Administrative & Support Services (except 5615 Travel Arrangement & Reservation Services)
(hh)	811	Repair & Maintenance

612.3 ACCESSORY USES

Uses that are customarily accessory and clearly incidental and subordinate to the permitted uses:

	NAICS Code	
(a)	6244	Child Day Care Services
(b)	7222	Limited Service Eating Places

612.4 SPECIAL PERMIT USES

	NAICS Code	
(a)	3116	Animal Slaughtering & Processing
(b)	3117	Seafood Product Preparation & Packaging
(c)	321114	Wood Preservation
(d)	3254	Pharmaceutical & Medicine Manufacturing
(e)	32591	Printing Ink Manufacturing
(f)	327991	Cut Stone & Stone Product Manufacturing
(g)	333	Machinery Manufacturing

(h)	336	Transportation Equipment Manufacturing
(i)	484	Truck Transportation
(j)	6215	Medical & Diagnostic Laboratories
(k)	81233	Linen & Uniform Supply
(l)	71394	Recreation, commercial indoor **(06/10)**
(m)	424710	Petroleum Bulk Stations and Terminals* **(9/12)**

612.5 PROHIBITED USES

Uses not listed above (either as permitted uses, accessory uses, or special permit uses) are prohibited, specifically including the following:

	NAICS Code	
(a)	11	Agriculture, Forestry, Fishing, & Hunting
(b)	21	Mining
(c)	2211	Electric Power Generation
(d)	3122	Tobacco Manufacturing
(e)	313	Textile Mills
(f)	3161	Leather & Hide Tanning & Finishing
(g)	3211	Sawmills & Wood Preservation
(h)	3221	Pulp, Paper & Paperboard Mills
(i)	324	Petroleum & Coal Products Manufacturing
(j)	325	Chemical Manufacturing
(k)	3262	Rubber Product Manufacturing
(l)	327	Nonmetallic Mineral Product Manufacturing (except 327991 Cut Stone & Stone Product Manufacturing)
(m)	331	Primary Metal Manufacturing
(n)	3328	Coating/Engraving/Heat Treating & Other Activity
(o)	33292	Small Arms Ammunition Manufacturing
(p)	33293	Ammunition (excluding Small Arms) Manufacturing
(q)	33294	Small Arms Manufacturing
(r)	33295	Other Ordnance & Accessories Manufacturing
(s)	335911	Storage Battery Manufacturing
(t)	335912	Primary Battery Manufacturing
(u)	42152	Coal & Other Mineral & Ore Wholesale
(v)	42244	Poultry & Poultry Product Wholesale
(w)	42252	Livestock Wholesale
(x)	4226	Chemical and Allied Products Wholesale
(y)	4247	Petroleum & Petroleum Products Merchant Wholesalers except 42471 Petroleum Bulk Stations and Terminals* **(9/12)**
(z)	441	Motor Vehicle & Parts Dealers
(aa)	442	Furniture & Home Furnishings Stores
(bb)	443	Electronics & Appliance Stores
(cc)	444	Building Material & Garden Equipment and Supply Dealers
(dd)	445	Food & Beverage Stores
(ee)	446	Health & Personal Care Stores
(ff)	447	Gasoline Stations
(gg)	448	Clothing & Clothing Accessories Stores
(hh)	451	Sporting Goods, Hobby, Book & Music Stores
(ii)	452	General Merchandise Stores

(jj)	453	Miscellaneous Store Retailers
(kk)	481	Air Transportation
(ll)	482	Rail Transportation
(mm)	483	Water Transportation
(nn)	485	Transit & Ground Passenger Transportation
(oo)	486	Pipeline Transportation
(pp)	487	Scenic & Sightseeing Transportation
(qq)	488	Transportation Support Activities (except 4885 Freight Transportation Arrangement and 488991 Packing & Crating)
(rr)	491	Postal Service
(ss)	492	Couriers & Messengers
(tt)	521	Monetary Authorities - Central Bank
(uu)	522	Credit Intermediation & Related Activities
(vv)	523	Security, Commodity Contracts & Like Activity
(ww)	524	Insurance Carriers & Related Activities
(xx)	525	Funds, Trusts & Other Financial Vehicles
(yy)	531	Real Estate
(zz)	5321	Automotive Equipment Rental & Leasing
(aaa)	5322	Consumer Goods Rental
(bbb)	5323	General Rental Centers
(ccc)	533	Lessors of Other Non-financial Intangible Asset
(ddd)	541	Professional, Scientific & Technical Services
(eee)	551	Management of Companies & Enterprises
(fff)	5615	Travel Arrangement & Reservation Services
(ggg)	562	Waste Management & Remediation Services
(hhh)	611	Educational Services
(iii)	621	Ambulatory Health Care Services
(jjj)	622	Hospitals
(kkk)	623	Nursing & Residential Care Facilities
(lll)	624	Social Assistance
(mmm)	711	Performing Arts, Spectator Sports & Related Industries
(nnn)	712	Museums, Historical Sites & Like Institutions
(ooo)	713	Amusement, Gambling & Recreation Industries
(ppp)	721	Accommodation
(qqq)	722	Food Services & Drinking Places
(rrr)	812	Personal & Laundry Services
(sss)	813	Religious, Grant-making, Professional, and Like Organizations
(ttt)	814	Private Households
(uuu)	921	General Government Administration
(vvv)	922	Justice, Public Order & Safety Activities
(www)	923	Administration of Human Resource Programs
(xxx)	924	Administration of Environmental Quality Programs
(yyy)	925	Administration of Housing, Urban Planning, Community Development
(zzz)	926	Administration of Economic Programs
(aaaa)	927	Space Research & Technology
(bbbb)	928	National Security & International Affairs

*Reflects 2007 NAICS Code (replaces 1997 NAICS Code 4227) **(9/12)**

612.6 MAXIMUM DENSITY

The maximum floor area ratio shall not exceed 0.35, based on net developable area of lot.

612.7 LOT SIZE REQUIREMENTS

(a) Minimum district size: Not regulated
(b) Minimum lot area: 60,000 square feet
(c) Minimum lot width: 100 feet

612.8 BULK REGULATIONS

(a) Maximum building height: 40 feet
(b) Minimum yard requirements
  (1) Front yard: 40 feet
  (2) Side yard: 25 feet
  (3) Rear yard: 25 feet
  (4) Side and rear yard requirements may be waived where that side or rear yard abuts a railroad right-of-way.
  (5) Where a lot is contiguous to property located in any zoning district whose permitted uses are not of a business, office, commercial, or industrial nature, all buildings shall have a minimum setback of sixty (60) feet from common property lines.

612.9 OPEN SPACE

(a) An open space plan and landscape design program shall be submitted with applications for any land use governed by this district.
(b) Fifteen (15) percent of the site shall be landscaped open space.

612.10 ADDITIONAL REGULATIONS

(a) Parking
  (1) All parking requirements shall be met by off-street, on-site spaces and shall include designated spaces for the handicapped.
  (2) The location, spacing, and number of private driveway entrances shall comply with Virginia Department of Transportation standards and shall be subject to final site plan approval.
  (3) Off-street parking spaces shall be accessed via private driveways and shall not be directly accessed from public rights-of-way.
  (4) Public streets within or immediately adjacent to the BP zoning district shall be constructed to industrial road standards if determined necessary by the administrative body. Sidewalks may be required on such streets if determined necessary by the administrative body.
(b) Buffering and Landscaping
  (1) Where a parcel in the BP district is contiguous to property located in any residential or institutional district, a landscaped buffer strip of twenty-five (25) feet in width shall be provided.
  (2) Where a lot is contiguous to property located in any business, office, or commercial district, a landscaped buffer strip of ten (10) feet in width shall be provided.

(3) Where a lot is contiguous to property located in any industrial district, a landscaped buffer strip of five (5) feet in width shall be provided.

(4) Landscape materials and placement subject to site plan approval in all landscaped buffer strips.

(c) Storage of Materials and Refuse

(1) All refuse containers shall be screened by a solid and opaque wall or fence.

(2) Any establishment involved with the storage of fuel for sale, or for other purposes, shall be permitted only if the fuel is stored underground, except as otherwise approved by the Town of Berryville by Special Use Permit.

(3) The outdoor area devoted to storage, loading, and display of goods shall be limited to that area so designated on an approved site plan.

(4) All equipment and materials shall be contained entirely within a building or screened from public rights-of-way and contiguous parcels, which are zoned for residential or institutional uses.

(d) Site Plans and Special Use Permits

(1) All uses shall be subject to final site plan approval.

(2) Final site plans shall include a report indicating compliance with any locally adopted performance standards and land use criteria.

(3) Applications for all uses subject to special use permits shall be accompanied by an environmental impact assessment addressing land use compatibility issues related to locally adopted performance standards.

(4) Any BP Business Park District land use application which is not in strict conformance with the pre-existing approved master site plan and preliminary plat for the district shall require an amendment to that master site plan and preliminary plat prior to site plan approval of the specific use.

(5) Site plans for development in BP Business Park District shall include provisions for (a) adequate public facilities, (b) development phasing, (c) stormwater management facilities to address the ultimate development coverage within the district, (d) lighting and signing, and (e) other special site features and land use considerations deemed necessary to serve the industrial district.

(e) Covenants

(1) Common property ownership agreements and covenants for BP Business Park District developments shall be reviewed and approved by the governing body or its agent.

SECTION 613 - INSTITUTIONAL (ITL)

613.1 PURPOSE AND INTENT

The Institutional District (ITL) is created to identify locations for municipal government properties and land uses (both Town, County, State and/or Federal), semi-public uses, residential uses serving general public purpose, and natural open space resources deemed necessary in providing areas for "passive" and "active" recreational areas within the precincts of the Berryville Area Plan. This district is established to clearly identify these lands and to distinguish them from other areas of the Berryville Area which are held appropriate for private urban land uses. Lands in this designation are primarily intended for governmental agency use and mixed-use (public/private) orientations.

The application of this district is intended for those areas within the Berryville Area which are planned for institutional uses.

613.2 PERMITTED USES

(a) Agricultural, horticultural and farming uses
(b) Cemeteries
(c) Day care centers
(d) Churches and other places of worship
(e) Clubs or Lodges (including civic and public benefit organizations)
(f) Government and other public buildings (including police, fire, library, museum, and postal facilities)
(g) Public utilities uses (sub-stations, pump stations, storage tanks, railroad sidings, etc.) and related easements
(h) Recreation facilities (indoor or outdoor), parks, playgrounds, fairgrounds, etc.
(i) Schools, public or private

613.3 SPECIAL PERMIT USES

(a) Conference centers and retreat houses
(b) Hospitals and medical care facilities
(c) Housing for low- and moderate- income households
(d) Sports arenas or stadiums as a principal use

613.4 LOT SIZE, HEIGHT AND BULK REQUIREMENTS

(a) When the lot size, height, bulk and setbacks are not explicitly addressed in the Additional Regulations section below, then non-residential uses shall comply with all the requirements of the Business Commercial BC District for conventional lots, including those for lot size, bulk, density, height and open space. Residential uses shall comply with all requirements of the Attached Residential AR District.
(b) All residential buildings shall be located not closer than one-hundred (100) feet from a railroad right-of-way.

613.5 OPEN SPACE

(a) An open space plan and landscape design program shall be submitted with applications for any land use governed by this district.

613.6 ADDITIONAL REGULATIONS

(a) General Regulations

(1) All uses shall be subject to site plan review.

(2) Applications for residential uses shall be submitted with copies of deed covenants with prospective purchasers, or conservation easements with the Town and/or County, describing land management practices to be followed by which ever party or parties are responsible for regular maintenance, mowing or gardening.

(b) Additional Standards for Child Care Centers and Nursery Schools

(1) The minimum lot area shall be of such size that one-hundred (100) square feet of usable outdoor recreation area shall be provided for each child that may use the space at any one time. Such area shall be delineated on a plat submitted at the time the application is filed.

(2) The usable outdoor recreation area shall be limited to:

(a) That area not covered by buildings or required off-street parking spaces.

(b) That area outside the limits of the required front yard

(c) Only that area which is developed for active outdoor recreation purposes.

(d) An area which occupies no more than eighty (80) percent of the combined total areas of the required rear and side yards.

(3) All such uses shall be located so as to have direct access to an existing or programmed public street of sufficient right-of-way and cross section width to accommodate pedestrian and vehicular traffic to and from the use as determined by the administrative body. To assist in making this determination, each applicant, at the time of application, shall provide an estimate of the maximum expected trip generation, the distribution of these trips by mode and time of day, and the expected service area of the facility.

(4) All such uses shall be located so as to permit the pick-up and delivery of all persons on the site.

(c) Additional Standards for Public Uses

(1) For public uses, a certified copy of the law, ordinance, resolution or other official act adopted by the governmental entity proposing the use, authorizing the establishment of the proposed use at the proposed location, shall be provided.

(2) For public uses, a statement by an official or officer of the governmental body shall be presented giving the exact reasons for selecting the particular site as the location for the proposed facility.

(3) For public uses, it shall be concluded that the proposed location of the use is necessary for the rendering of efficient governmental services to residents of properties within the Town of Berryville and the County of Clarke.

(d) Additional Standards for Public or Private Schools

(1) Two-hundred (200) square feet of usable outdoor recreation area shall be provided for each child in grades K-3 that may use the space at any one time, and

(2) Four-hundred thirty (430) square feet of usable outdoor recreation area shall be provided for each child in grades 4-12 that may use the space at any one time.

(3) Such usable outdoor recreation area shall be delineated on a plat submitted at the time the application is filed.

(4) For the purpose of these open space provisions, usable outdoor recreation shall be limited to:

a. That area not covered by buildings or required off-street parking spaces.

b. That area outside the limits of the required front yard.

c. Only that area which is developed for active outdoor recreation purposes.

d. An area which occupies no more than eighty (80) per cent of the combined total areas of the required rear and side yards.

(e) Additional Standards for Conference Centers and Retreat Houses

(1) No building shall be located closer than fifty (50) feet to any street right-of-way line.

(2) No building shall be located closer than one-hundred (100) feet to any lot line which abuts a residential district.

(f) Additional Standards for Hospitals and Medical Care Facilities

(1) All applications for medical care facilities shall be filed at the same time as the application for a State Medical Facilities Certificate of Public Need.

(2) In the governing body's granting of an approval to the applicant, in addition to the information provided by the applicant, the governing body may solicit information and comment from such providers and consumers of health planning organizations as may seem appropriate, provided that the governing body shall not be bound by any such information or comment.

(3) No such use shall be located on a lot containing less than five (5) acres.

(g) Additional Standards for Housing Low- to Moderate- Income Households

(1) Such housing shall be occupied only by households having an income not greater than eighty (80) percent of the median household income in Clarke County.

(2) Such housing may be in the form of Multifamily, Attached Single-Family, or Detached Single-Family.

(3) All requirements for such housing including uses, density, lot size, bulk, height, setbacks and open space, shall be those found in the AR Residential Zoning District with the following requirements for Multi-family development:

(a)	Maximum Density:	12 units per net developable acre
(b)	Minimum District Size:	3 acres

(c) Bulk and Open Space Regulations for Multifamily structures:

(1) Maximum building height: 35 feet

(2) Minimum yard requirements

(i) Front: 25 feet

(ii) Side: 25 feet

(iii) Rear: 45 feet

(3) Minimum building separation between multifamily structures on the same parcel: 25 feet

(4) Forty (40) percent of the site shall be open space.

(5) Such housing for the elderly (62 or older, or handicapped and 55 or older) may include general nursing facilities designed solely for the residents as an accessory use.

(6) All facilities of the development shall be solely for the use of the residents, employees and invited guests, but not for the general public.

SECTION 614 - OLDER PERSON RESIDENTIAL (OPR)

614.1 PURPOSE AND INTENT

The Older Person Residential (OPR) District is created to provide for residential, office, and service uses for people over 55 years old at locations compatible with the Comprehensive Plan's goals for residential development in the Town of Berryville and within the precincts of the Berryville Area Plan. Maximum densities are established in this district to allow the various types of uses at a scale compatible with the general character of the Town and the nature of the uses. This district may be applied to development with the intent of preserving natural features and vegetation, promoting excellence in site planning and landscape design, and encouraging development with compatible scale, materials and architectural character. Development in the OPR District shall be sensitive to land physiography, provision of adequate public infrastructure, and development of high-quality transportation improvements while achieving optimal siting of dwellings, services, recreation areas, community facilities, and open space.

614.2 PERMITTED USES

(a) Accessory structures less than one hundred fifty (150) square feet in size
(b) Community buildings and association facilities, public and private, including recreation areas and other common area improvements associated with residential developments
(c) Housing for Older Persons Residential: Single Family Detached; Single Family Attached – Duplexes, Tri-plexs, Quad plexs, Townhouses, and Multi-family Apartments (including personal service uses of less than 500 square feet) **(10/16)**
(d) Public utilities
(e) Recreation facilities (indoor or outdoor), including parks, playgrounds, golf courses, swimming pools, tennis courts, etc.

614.3 SPECIAL PERMIT USES

(a) Day care centers
(b) Government and other public buildings (including police, fire, library, museum, and postal facilities)
(c) (Deleted 2016)
(d) (Deleted 2010)
(e) Medical care facilities, licensed
(f) Places of worship
(g) Schools, public and private, including nurseries, playgrounds, and related uses

614.4 AGE REQUIREMENT

An age restriction enforcement plan shall be submitted with each subdivision or site plan application so as to ensure that all occupants of dwelling units conform to the age restrictions established for Housing for Older Persons. Such enforcement plans shall include:

(a) the covenants, management regulations, or other similar legal instruments with enforcement by the property owner, homeowners association, or other private entity;

(b) the identity of the private entity which shall be held responsible for any violation of the age restrictions for Housing for Older Persons;

(c) a provision for an annual report to the Town of Berryville as to age status of the occupants of each unit; and

(d) a provision which states that no person under nineteen (19) years of age shall reside in any unit for more than ninety (90) days in any calendar year.

614.5 MAXIMUM DENSITY

A Master Plan shall be submitted with a request for OPR zoning showing a general arrangement of uses and density for the subject property and all adjacent areas intended for OPR uses. The Master Plan shall show that the public service needs are no greater for the OPR uses than the public service needs for the uses planned for that sub-area. The number of average daily vehicle trips generated, the amount of sewage generated, the amount of water used, and demand on emergency services will be no greater with the proposed number of older person residential units and service uses than that generated by the maximum density of uses allowed by a property's land use designation. However, not more than two hundred (200) Older Person Residential units (including not more than one hundred eighty (180) multifamily units) shall be allowed in Annexation Area B as shown on approved subdivision plats or site plans. **(10/16)**

614.6 MINIMUM DISTRICT SIZE

Minimum district size:	three (3) acres

614.7 MAXIMUM BUILDING HEIGHT

Maximum building height:	forty (40) feet

614.8 REGULATIONS FOR SINGLE FAMILY DETACHED DWELLINGS

(a)	Minimum lot size:	7,500 square feet
(b)	Minimum lot width:	60 feet
(c)	Minimum yard requirements	
	(1) Front Yard:	20 feet
	(2) Side yard:	10 feet, except for corner lots, the side yard facing the side street shall be 20 feet or more for both main and accessory buildings
	(3) Rear yard:	40 feet
(d)	Accessory structures of less than 150 square feet:	5 feet from side and rear lot lines

(e) Parking Requirements The number of required off-street parking spaces shall be a total of 2 per unit.

614.9 REGULATIONS FOR TWO FAMILY DETACHED (DUPLEX) DWELLINGS

(a) Minimum lot size: 10,000 square feet for total duplex structure
4,500 square feet each separate unit within a duplex

(b) Minimum lot width: 75 feet per duplex structure
35 feet for each unit of a duplex.

(c) Minimum yard requirements
Front yard: 20 feet
Side yard: 10 feet, except for corner lots, the side yard facing the side street shall be 20 feet or more for both main and accessory buildings.
Rear yard: 40 feet

(d) Accessory structures of less than 150 square feet: 5 feet from side and rear lot lines

(e) Where a lot is to be subdivided into individual lots for the sale of single-family attached units, lot lines shall conform with party wall centerlines.

(f) Maximum lot coverage: 35 percent

(g) Open Space Requirements
1. An open space plan shall be submitted with a subdivision application.
2. At least 10% of the net site area shall be open space dedicated to common usage and ownership.
3. Refer to Section 615.2 regarding critical environmental area and open space requirements

(h) Parking Requirements
The number of required off-street parking spaces shall be a total of 2 per unit.

614.10 REQUIREMENTS FOR SINGLE FAMILY ATTACHED DWELLINGS (TRIPLEX & QUADPLEX AND TOWNHOUSES, 5 TO 8 UNITS PER STRUCTURE)

(a) Minimum lot area per dwelling
Interior lot: 2,000 square feet
Corner lot: 2,400 square feet
Condominium: Not regulated

(b) Minimum lot width
Interior lot: 20 feet
Corner lot: 35 feet
Condominiums: subject to site plan review and applicable performance zoning criteria

(c) Minimum yard requirements
Front yard: 15 feet
Side yard: 15 feet
Rear yard: 30 feet

(d) No side yard requirement shall be applied where dwellings share a party wall.

(e) Accessory structures of less than

150 square feet: 5 feet from side and rear lot lines.

(f) Where a lot is to be divided into individual lots for the sale of single family attached dwelling units:

1. Lot lines shall conform with party wall centerlines.
2. Privacy yard, having a minimum of two hundred (200) square feet, shall be provided on each lot.
3. Privacy yards shall include screening, fencing, patio paving and/or special landscaping treatment.

(g) Open Space Requirements

1. An open space plan shall be submitted with a site plan application.
2. 25% of the net site area shall be open space dedicated to common usage and ownership.
3. At least 20% of the required open space (5% of the net site area) shall be designed and developed as recreational and active community open space.
4. Refer to Section 615.2 regarding critical environmental area and open space requirements.

(h) Site Plan Requirements

1. A site plan, which shall govern all development, shall be submitted for approval per Section 6.
2. Site plans shall include provisions for:
   - A. Adequate public facilities, development phasing.
   - B. Storm water management facilities to address the ultimate development coverage within the district, lighting and signing.
   - C. Building placement and lot configuration, screening, buffering, and landscaping, and other special site features and land use considerations deemed necessary to serve the district.
   - D. Any site plan application which is not in strict conformance with a pre-existing approved master plan for the district shall require an amendment to that master plan and preliminary plat, if necessary, prior to site plan approval of the specific use.
   - E. All uses shall be subject to final site plan approval.

(i) Parking and parking access

1. The number of required off-street parking spaces shall be a total of 1.5 per unit and shall be located not more than one hundred (100) feet from the individual dwelling served.
2. Parking bays shall be no closer than twelve (12) feet to any adjoining property line.
3. Off-street parking spaces shall be accessed via private driveways and shall not be directly accessed from public rights of way.

(j) Driveways

1. Attached dwelling units shall have access to a private driveway with a minimum width of twenty-three (23) feet. The paved street shall be constructed according to Virginia Department of Transportation standards.
2. No attached dwelling unit may be accessed directly from a public street unless approved by a special use permit.

3. No private driveway shall be located within twelve (12) feet of any property line.

(k) Setback, yards, buffering, separation and grouping of units

1. Where adjacent properties are zoned to a district other than the OPR District, all single family attached dwellings shall be set back at least forty (40) feet from the common property line(s).
2. Where single family attached dwellings are adjacent to a private drive, parking area, and/or walkway intended for the common use of the development's occupants, there shall be a minimum building setback of 15 feet from that drive, area, and/or walk.
3. Adjacent groupings of single family attached dwellings with their accompanying lots shall be separated from one another by a minimum of fifteen (15) feet. This separation shall allow an unobstructed fire lane on all sides of the structure.
4. No more than four attached dwellings shall be included in any one physically contiguous grouping.

(l) Maintenance of improvements, covenants and required improvements

1. All common improvements (including open space, recreational facilities, private streets, walkways, parking areas, and other community facilities) shall be maintained by and be the sole responsibility of the property owner until such time as the owner conveys such common area to a nonprofit (homeowner's) entity consisting of at least all of the individual owners of the dwelling units in the development.
2. Deed restrictions and covenants shall be included with the conveyance to include, among other things, that assessments, charges and costs of maintenance of such common areas shall constitute a pro-rate share lien upon the individual dwelling lots, such lien inferior only to taxes and recorded trusts. Covenants shall specify the means by which the nonprofit entity shall govern and manage itself and maintain building exteriors, landscaping, lighting, recreation areas, walkways, parking areas, snow removal, and travel ways.
3. All deed restrictions, covenants, nonprofit (homeowner's) entity incorporation documents, and information related to conveyance programs shall be submitted with the plat and plans, and reviewed by the Berryville Town Attorney.

(m) General Regulations

1. All refuse shall be contained in completely enclosed and screened facilities.
2. On-site lighting, signing, and mailboxes shall be of compatible scale, materials, and colors to the primary structures.

(n) Condominiums

1. Any condominium development under the Condominium Laws of Virginia shall be subject to the following provisions:
   A. Minimum lot size and yard and open space requirements of the district shall be met as if lot lines existed.

B. A site plan shall be required and subject to review by the Berryville Area Development Authority. The site plan shall govern the location of all structures and improvements.

C. Setbacks, density and other district provisions shall be met.

614.11 REGULATIONS FOR MULTI-FAMILY AND NON-RESIDENTIAL USES:

(a) Maximum Floor Area Ratio (FAR): .60 of net developable area

(b) Minimum lot area: 20,000 square feet

(c) Minimum lot width: 100 feet

(d) Minimum yard requirements

Front yard:	25 feet
Side yard:	25 feet
Rear yard:	25 feet

(e) Where a lot is contiguous to a property located in any residential district, a public right of way with limited access or a railroad right of way, all buildings shall have minimum setback of forty (40) feet from common property lines.

(f) Open Space

1. A landscape and buffer plan shall be submitted with any application for site plan approval.
2. At least twenty-five percent (25%) of the gross site area shall be landscaped open space.
3. Refer to Section 615.2 regarding critical environmental area and open space requirements.

(g) Site Plan Requirements

1. A site plan, which shall govern all development, shall be submitted for approval per Section 6.
2. Site plans shall include provisions for:
   A. adequate public facilities, development phasing, stormwater management facilities to address the ultimate development coverage within the district, lighting and signing, building placement and lot configuration, screening, buffering, and landscaping, and other special site features and land use considerations deemed necessary to serve the district.
3. Any site plan application which is not in strict conformance with a pre-existing approved master plan for the district shall require an amendment to that master plan and preliminary plat, if necessary, prior to site plan approval of the specific use.
4. All uses shall be subject to final site plan approval.

(h) Parking Access and Private Drives

1. A minimum of one parking space per unit shall be provided and shall be located not more than one hundred (100) feet from the individual dwelling served.
2. Off-street parking spaces shall be accessed via private driveways and shall not be directly accessed from public rights of way.
3. Parking bays and private drives shall be no closer than twelve (12) feet to any adjoining property line.

(i) Buffering and Landscaping

1. Where a parcel is contiguous to a residential zoning district or public right of way with limited access, a landscaped buffer strip fifteen (15) feet in width shall be provided.
2. Landscape materials and their placement shall be subject to final site plan approval. With the approval of the administrative body, walls, fences, or wider buffer strips may be used in lieu of landscaping.

(j) Storage of Materials and Refuse

1. All refuse containers shall be screened by a solid wall or fence.
2. Any establishment involved with the storage of any fuel for sale, for on-site use, or for any other purposes, shall be permitted only if the fuel is stored underground, except where otherwise permitted under provisions granted and stipulations required by the administrative body.
3. All storage shall be conducted within the principal structure, which is to be completely enclosed.
4. There shall be no outdoor storage and/or display of goods, with the exception of retail display such as plant materials associated with nurseries.

(k) Uses, Facilities, and Improvements

1. All business services (and storage) shall be conducted within the principal structure which is to be completely enclosed.
2. Signing, mailboxes, site lighting and architectural materials shall be provided and installed by the property's owner-developer and shall be consistent and compatible with the scale and character of the development.
3. Private driveways, street lighting, sidewalks, curbing and gutters, and parking bays shall be constructed to standards specified by the administrative authority or its agent.

SECTION 615 SUPPLEMENTARY REGULATIONS FOR ARTICLE VI

615.1 COMMON AREAS AND IMPROVEMENTS IN CLUSTER DEVELOPMENTS

(a) For any cluster development, all common improvements (including open space, recreational facilities, private streets, walkways, parking areas, and other community facilities shall be maintained by and be the sole responsibility of the developer-owner of the cluster development until such time as the developer-owner conveys such common area to a nonprofit (homeowners') entity consisting of at least all of the individual owners of the dwelling units in the development.

(b) Deed restrictions and covenants shall be included with the conveyance to include, among other things, that assessments, charges and costs of maintenance of such common areas shall constitute a pro-rata share lien upon the individual dwelling lots, such lien inferior only to taxes and recorded trusts. Further covenants shall specify means in which the nonprofit entity shall govern and manage itself and maintain building exteriors, landscaping, lighting, recreation areas, walkways, parking areas, snow removal and travel ways.

(c) All deed restrictions, covenants, nonprofit (homeowners') entity incorporation documents, and information related to conveyance programs shall be prepared by the developer-owner. These documents shall be presented at the time plat and site plans are submitted and shall meet the approval of the Town's legal representative.

615.2 CRITICAL ENVIRONMENTAL AREAS

The following shall be applicable to Critical Environmental Areas:

(a) Critical Environmental Areas (CEA's) shall include one hundred-year floodplains, land within required sinkhole and karst feature setbacks and groundwater protection buffer areas as established in accordance with Section 317.1, and slopes in excess of twenty-five (25) percent. (07/04)

(b) Land designated in Section 615.2(a) as a CEA, with the exception of one-hundred year floodplains, shall not be built upon.

(c) Land designated in Section 615.2 as a CEA shall not contribute toward the maximum or minimum lot area or to open space requirements.

615.3 SLOPES BETWEEN FIFTEEN AND TWENTY FIVE PERCENT

(a) Not more than fifty (50) percent of land area with slopes between fifteen (15) and twenty-five (25) percent shall contribute toward the maximum or minimum lot area or to open space requirements.

(b) Land with slopes between fifteen (15) and twenty-five (25) percent may be built upon.

ARTICLE VII– HISTORIC DISTRICT REGULATIONS

SECTION 701 – PURPOSE; DESIGNATION; USES

701.1 PURPOSE

The purpose of this article is to promote the general welfare of the citizens of Berryville, maintain and enhance the unique architecture and overall character of the Town, and enhance educational, cultural and economic opportunities through:

(a) The designation of historic or architecturally significant structures, places, and areas of historical interest;

(b) The protection of such structures, places and areas as significant in the history of the state and town, commemorative of the events, circumstances and architectures associated with them, serving as tangible reminders of the Town's settlement and development history;

(c) Promotion of the economy, commerce and industry of the Town, specifically with regard to property values and tourist trade, through the protection of such structures, places and areas, and the development and maintenance of appropriate and architecturally compatible settings.

701.2 HISTORIC DISTRICT OR LANDMARK DESIGNATION

(a) The Town Council may adopt an ordinance setting forth any historic landmarks within the Town as established by the Virginia Department of Historic Resources, and any other structures within the Town having an important historic, architectural or cultural interest.

(b) The Town Council may also amend the existing Zoning Ordinance of the Town of Berryville and set forth in such ordinance:

i. Any historic areas in the Town as defined by Section15.1-430(b), Code of Virginia, 1950, as amended, and

ii. A delineation of one or more historic districts which:

(1) are adjacent to such landmarks and structures, or

(2) encompass such historic areas, or which

(3) encompass parcels of land contiguous to arterial streets or highways as designated pursuant to Title 33.1 of the Code of Virginia, 1950, as amended, Including Section 33.1-41.1 of that Title. Such arterial streets or highways shall be found by the Governing Body to be significant routes of tourist access either to the Town, to designated historic landmarks, structures or districts in the Tow or to any designated historic landmarks, structures or districts in Clarke County.

(c) The Zoning Administrator shall maintain an inventory of each historic district which shall indicate any historic landmarks in the district, together with all properties.

(d) A structure, group of structures, site or district may also be designated as a historic landmark or district if it:

i. has significant character, interest or value as part of the Town's development or heritage; or
ii. portrays the environment in an era of history characterized by a distinctive architectural style; or
iii. is the work of a designer whose individual work has significantly influenced the development of Berryville; or
iv. contains elements of design, detail, materials or craftsmanship which represent a significant innovation; or
v. by being part of or related to a square, park or other distinctive area, should be developed or preserved according to a plan based on a historic, cultural or architectural motif; or
vi. owing to its unique location or singular physical characteristic, represents an established and familiar visual feature of the neighborhood or Town.

(e) Any property once included shall not be removed from the provisions of this Article except by rezoning by the Town Council in accordance with provisions of the State Code.

(f) Such amendment of the Zoning Ordinance and the establishment of such districts shall be in accordance with the provisions of Article 8 (Section 15.1-486, et seq. of the Code of Virginia), and the Berryville Planning Commission, after public hearing, may recommend historic districts and/or tourism corridors for adoption. The Town Council may adopt such recommended historic districts and/or tourism corridors to be designated on the Town of Berryville Official Zoning Map.

701.3 PERMITTED USES

The historic district zones will be overlay zones. The uses permitted in the underlying zoning districts are not changed by this Ordinance. A Certificate of Appropriateness is required for actions as provided for below.

SECTION 702 – CREATION OF THE ARCHITECTURAL REVIEW BOARD

For the purpose of making effective the provisions of this Article, there is hereby created a board to be known as the Berryville Architectural Review Board (hereinafter referred to as the "Board" or "Architectural Review Board").

SECTION 703 – MEMBERSHIP, MEETINGS AND DUTIES OF THE BOARD

703.1 COMPOSITION

The Board shall consist of five (5) members who are citizens of or owners of property within the Town of Berryville, with some knowledge of and interest in historic preservation. Two (2) members shall be property owners within a local historic district in the Town of Berryville. It is strongly encouraged that one (1) member be a registered architect, and that at least two (2) members have professional training in architecture, architectural history, archaeology, American studies, history, planning or in some related field.

703.2 APPOINTMENT AND TERMS

The Board members shall be appointed by the Town Council for four-year terms of office beginning at the date of appointment; provided, that one (1) member of the Board first appointed shall be for one (1) year, one (1) shall be for two (2) years, one (1) shall be for three (3) years, and two (2) shall be appointed for four (4) years. Vacancies occurring during the term of a member shall be filled for the unexpired term only and shall be filled within sixty (60) days. Members who miss more than two (2) meetings per year may be subject to dismissal. The members of the Board shall serve as such without compensation, except for justifiable out-of-pocket expenses.

703.3 ORGANIZATION

The Board shall elect from its membership a chairman and a vice-chairman who shall be elected in January of each year. The chairman shall preside over all meetings of the Board and shall have the same right to vote and speak as other members. The vice-chairman shall, in the absence or disability of the chairman, perform the duties of the chairman. In the absence or disability of the chairman and the vice-chairman, the Board shall by majority vote of those present choose one of its members to act as chairman pro tempore. The Board shall elect a secretary (this person may or may not be a member of the Board) who shall keep a record of all resolutions, proceedings and actions of the Board.

703.4 PROCEDURE FOR MEETINGS

(a) Three members of the Board shall constitute a quorum for the performance of its duties. The Board shall adopt rules for the performance of its duties, which shall provide for the time and place for the holding of regular meetings. Regular meetings shall be convened only if there is pending business to be transacted; however, the Board shall meet at least four (4) times per year. The rules shall also provide for the calling of special meetings by the chairman or at least two (2) members of the Board.

(b) All meetings of the Board shall be open to the public. All actions by the Board must be taken at a public meeting.

(c) The Board shall keep a summary record of its resolutions, proceedings and actions. The concurring affirmative vote of a majority of the members present and voting shall be necessary for the adoption of any resolution, motion or other action of the Board. The Board in the exercise of its powers and performance of its duties shall act only by formal resolution which shall set forth the reasons for its decision. The vote of each member participating shall be recorded by the secretary.

(d) The Board members shall act in compliance with all applicable conflict of interest laws, including exempting themselves from voting on any action in which their financial interests are directly involved.

703.5 STAFF ASSISTANCE

(a) Upon request of the Board – and with the approval from the Town Manager – staff members or departments of the Town government shall furnish to the Board such information and render such service as may be required by the Board.

(b) The Board may, from time to time, seek the advice of persons knowledgeable in the fields of architecture, landscape architecture, historic preservation or other relevant professions.

703.6 DUTIES OF THE BERRYVILLE ARCHITECTURAL REVIEW BOARD

(a) The Board shall recommend to the Planning Commission which shall in turn recommend to the Town Council any changes, deletions, or additions to the boundaries of any historic districts; the creation of additional districts; determine the historic, architectural and cultural significance of the structures; and determine the appropriateness of proposed structures and signs.

(b) The Board will review all applications for a Certificate of Appropriateness for the following, using the guidelines set forth in Section 705.1 below:

i. All new construction lying within the boundaries of a historic district, which creates a new structure of over one hundred fifty (150) square feet which is visible from a public right of way.

ii. Additions to existing contributing residential and non-residential structures within the boundaries of a historic district and visible from a public right-of-way. **(11/00)**

iii. Erection of all new signs within the boundaries of a historic district.

iv. Relocation of all contributing structures of over one hundred fifty (150) square feet which are visible from a public right-of-way, and are currently within the boundaries of a historic district.

v. Demolition of all contributing structures of over one hundred fifty (150) square feet which are visible from a public right-of-way, and are within the boundaries of a historic district.

Exceptions – The following are excepted from the requirements of this Article:

vi. Construction of single-family detached residences and accessory structures in residential zoning districts of Annexation Area B.

vii. Additions or unenclosed and unroofed rear yard decks, porches, and stoops to residential structures. On corner lots, the addition is reviewable if it faces one of the streets. **(11/00)**

viii. Demolition, relocation, or erection of structures accessory to residences, where the accessory structure lies entirely behind the rear building line of the main residential building if not visible from a public right of way. **(09/15)**

ix. Erection of identification and home occupation signs for individual residences.

703.7 WAIVER OF REQUIREMENTS

The Board or the Zoning Administrator may waive any requirement of this Article, if the applicant demonstrates that strict adherence to this Article would create a substantial hardship for the applicant due to unique circumstances, or that the requirements are unreasonable given the applicant's unique circumstances. No such waiver shall be granted where the waiver would be detrimental to the intent of this Article, the Berryville Zoning Ordinance, the Berryville Comprehensive Plan and/or its Berryville Area Plan component.

SECTION 704 – ANNEXATION AREA B

704.1 BERRYVILLE DEVELOPMENT AUTHORITY TO ACT ON NEW STRUCTURES AND ACCOMPANYING NEW SIGNS IN ANNEXATION AREA "B".

For the area designated as Annexation Area "B" in the Clarke County, Town of Berryville Agreement Defining Annexation Rights dated December 29, 1988, the Berryville Area Development Authority ("BADA") is designated as the administrative body of the Town Council, granted the authority to carry out the duties of the Berryville Architectural Review Board, regarding the erection of new structures and accompanying new signs only. The BADA shall review only those proposals for property in Annexation Area B which is the subject of the application and for which no final certificate of occupancy has been granted. For such proposals located within a historic district, the BADA is authorized to exercise all related duties of the Architectural Review Board as described in this Ordinance, including issuance of a Certificate of Appropriateness. The Architectural Review Board shall serve as the administrative body in all other circumstances.

SECTION 705 CERTIFICATE OF APPROPRIATENESS

705.1 CRITERIA TO BE CONSIDERED FOR CERTIFICATE OF APPROPRIATENESS
Before a Certificate of Appropriateness is issued by the Board for structures as noted in Section 703.6.b, the Board, in addition to other pertinent factors related to the purpose of this Article, shall consider:

(a) The historical and architectural value and significance of the structure, and its relationship with the land and area of the historic district in which it is located or proposed to be located.

(b) The appropriateness of the exterior architectural features of a structure, given its site and location, and its compatibility with the exterior architectural features of other structures or places in the historic district and environs.

(c) The general exterior design, arrangement and materials used or to be used in the structure and the type of windows, exterior doors, lights, architectural details, signs, and/or parking visible from a public right-of-way, and their compatibility with the other factors to be considered by the Board under this Section.

(d) Concerning requests for demolition, the general level of expense likely to be incurred in the continued maintenance of an existing building, and the extent of any hardship likely to be caused by such expense.

(e) The Board may also adopt additional guidelines providing further criteria for review of proposed projects.

(f) In reviewing these factors, the Board shall consider whether a proposed design or demolition request would have a positive or neutral effect on the unique character of Berryville, or would harm and lessen the unique character of the Town.

705.2 APPROVALS OR DISAPPROVALS

(a) Upon evaluation of plans submitted, according to the guidelines outlined in this Article, the Board shall approve or disapprove such modifications of the plans as the Board deems necessary to execute the purpose of this Article; otherwise the Board shall reject such plans and shall not issue the Certificate of Appropriateness.

(b) The Board shall meet to consider such plans within fifteen (15) weekdays, excluding legal holidays, from the date of the submission of an application accepted as completed by the Zoning Administrator.

(c) The Board shall act to approve or disapprove such plans (with or without conditions or modifications) within sixty (60) days from the date of complete application for the Certificate of Appropriateness—unless a longer time is agreed to by or on behalf of the applicant.

SECTION 706 - ADMINISTRATIVE SUPPORT FROM PLANNING DEPARTMENT

The Planning Department will provide administrative support for the Architectural Review Board as follows:

706.1 THE MAINTENANCE OF RECORDS, DISTRICT MAPS AND INVENTORY
Maintain records of historic district zoning amendments; the zoning map showing any historic districts; an inventory list of all properties in historic districts.

706.2 APPLICATIONS FOR CERTIFICATE OF APPROPRIATENESS
Receive applications that include plans and specifications provided by the applicant showing the proposed exterior architectural features of each structure or addition to a structure which shall include, but shall not necessarily be limited to, the construction techniques to be used; the general design, arrangement, texture, and materials proposed to be used; and the type of windows, exterior doors, lights, landscaping, parking, signs and other exterior details, fixtures and appurtenances which will be visible from a public street. Plans shall show the proposed action in relation to surrounding properties and structures.

706.3 ISSUANCE OF ZONING PERMITS AND SIGN PERMITS
The Zoning Administrator shall issue zoning permits and/or sign permits for approved projects within a historic district following Board issuance of a Certificate of Appropriateness.

SECTION 707 RAZING OR DEMOLITION

707.1 Subject to the provisions of Subsection 707.2 hereof and Section 708, no contributing structure lying within a historic district shall be razed, demolished, or moved until the razing, demolition or moving thereof is approved by the Architectural Review Board which shall evidence its approval by issuing a Certificate of Appropriateness; or, on appeal, upon approval by the Town Council after consultation with the Architectural Review Board.

707.2 Following denial of a demolition application by the Architectural Review Board and denial of an appeal by Town Council, the property owner shall have the right to pursue demolition of the structure in question after offering the property for sale according to the procedure described in Section 15.2-2306 of the Code of Virginia, 1950, as amended.

SECTION 708 HAZARDOUS STRUCTURES

(11/97) Nothing in this Article shall prevent the razing or demolition of any structure which is in such an unsafe condition that it poses a threat to life or property, and protection from such condition is provided for in the BOCA Building Code and/or other applicable Town Ordinances.

Requests for demolition shall be reviewed by the following procedure:

1. For contributing structures less than three-hundred (300) square feet in size, such razing or demolition shall not commence unless the Clarke County building official certifies, in writing, that the structure is in such an unsafe condition that it poses a threat to life or property. After receiving such written report the Town Planner shall issue a waiver from the Certificate of Appropriateness requirement.
2. For contributing structures more than three-hundred (300) square feet in size, requests for razing or demolition shall be forwarded to the Architectural Review Board. The Architectural Review Board shall have the Town's engineer or other agent officially recognized by the Town of Berryville examine the structure to determine whether the structure is in such an unsafe condition that it poses a threat to life or property. If the Town's engineer determines that the structure poses such a threat, the Architectural Review Board shall issue a Certificate of Appropriateness for the demolition of the structure.

The cost of the review by the Town's engineer or agent shall be paid by the applicant.

SECTION 709 APPEALS OF BOARD DECISIONS

709.1 APPEALS TO THE TOWN COUNCIL

(a) Any person aggrieved by any decision of the Board may, within thirty (30) days after the final decision of the Board, appeal such decision to the Town Council by filing both with the Board and the Town Manager a request in writing to that effect, setting out the reasons for the appeal.

(b) The Town Council may reverse, modify or reaffirm the decision of the Board, in whole or in part. **(4/96)**

(c) The Town Council may review any decision of the Board on its own authority if such review is undertaken within fifteen (15) days of the decision of the Board. The Council may reserve, modify or reaffirm the decision of the Board.

709.2 APPEALS TO THE CIRCUIT COURT

Any person aggrieved by any decision of the Town Council may appeal such decision to the Circuit Court of Clarke County for review by filing a petition at law, provided such petition is filed within thirty (30) days of the final decision of the Town Council. The court may reverse or modify the decision of the Town Council, in whole or in part, or it may affirm the decision of the Town Council.

SECTION 710 BOUNDARIES OF THE HISTORIC DISTRICT

The boundaries of historic districts or historic landmarks are delineated upon the Town of Berryville, Virginia, Zoning Map, as overlay zones.

SECTION 711 SEVERABILITY

In case any section, paragraph or part of this historic district Article, for any reason, be declared invalid or unconstitutional by any court of last resort, every other section, paragraph or part shall continue in full force and effect.

SECTION 712 DEFINITIONS FOR ARTICLE VII REGULATIONS

712.1 Contributing: A structure, which is fifty (50) years old or older, and has not been altered so significantly (prior to being placed in a local historic district) as to lose its historic character.

712.2 Historic District: A property or area designated by the Berryville Town Council which is subject to the requirements of this Article.

712.3 Noncontributing: A structure less than fifty (50) years old, or one that is fifty (50) years old or older and which has been so altered (prior to being placed in a local historic district) that it has lost much of its historic character. Structures determined to be noncontributing may be administratively approved for demolition upon written approval by the Zoning Administrator.

712.4 Structure: A building or an addition to a building which increases the overall physical dimensions of such building; or a statue or monument visible from a public or other public place.

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