

ARTICLE VII

ZONING

Section 1. Purpose and Title

1.1 Purpose

This Article is adopted for the purpose of assisting in guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the Town, the coordination and adjustment of said development with public and private development of other parts of Montgomery County and the protection and promotion of the health, safety, morals, comfort, and other aspects of the general welfare of present and future inhabitants of the Town. In order to accomplish these ends it is further the purpose to provide adequate light, air, and access; to prevent the overcrowding of land; to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to facilitate the adequate provision of transportation, water, sewerage, parks, and other public services; to protect property against blight and depreciation; to secure economy in governmental expenditures, to promote desirable living conditions and the stability of neighborhoods; and in general to encourage the most appropriate use of land, buildings, and other structures throughout the Town. These general purposes include the more specific purposes set forth elsewhere in the Ordinances.

1.2 Title

This Article may be cited as the Washington Grove Zoning Ordinance.

Section 2. Establishment of Controls, Zones, and Zoning Map

2.1 Controls

2.11 Controls as to Use

2.111 In each zone any tract of land and any building or other structure may be used for any purpose permitted for the zone as set forth in Sections 7.2, 8.2, 8.2B, and 10.21 of this Article in which such building, structure, or tract of land is located, and for no other purpose except as specified in Section 5. Any use which is not specifically indicated as being permitted in a zone is prohibited. Each proposed use for construction, alteration or addition to any building must conform to all regulations for the zone, and to all other applicable regulations of this Article and other applicable laws.

2.112 Every building hereafter erected shall be located on a lot as defined in Section 4.2.

2.113 Not more than one (1) detached residence shall be located on any one lot; nor shall a detached residence be located on the same lot with any other principal building.

2.12 Controls as to Height

No building or structure shall be erected, moved or structurally altered to exceed in height the limit designated for the zone as set forth in Section 9

of this Article in which such building or structure is located, except as otherwise provided in Section 3.31.

2.13 Controls as to Area

2.131 No building or structure shall be erected, moved or structurally altered, nor shall any open space be encroached upon or reduced in any manner, except in conformity with the regulations designated herein for the zone as set forth in Section 9 of this Article in which such building or open space is located.

2.132 No yard or other open space allocated to any building for the purpose of complying with the provisions of this Article shall, by virtue of subdivision of land, change of ownership, or for any other reason, be considered as a yard or open space for any other building; and no yard or other open space on one lot shall be considered as a yard or open space for a building on any other lot.

2.133 No lot shall be divided into two or more lots or portions of lots in such manner as to cause any building to be in violation of any of the regulations of the zone in which it is located. Whenever a lot containing one or more buildings is subdivided or re-subdivided, the portion on which the building or buildings stand shall be recorded as one or more lots of sufficient size and dimensions to satisfy the requirements of the zone in which the land is located.

2.134 All yards and courts required by this Article shall be open and unobstructed to the sky, except as otherwise provided in Section 3.32.

2.2 Zones

For the purposes of this Article, the following zoning districts, or zones, are established. Each zone is identified by a symbol, for use on the zoning maps, and by a descriptive title. The symbols, the titles, and the sequence in which the zones are arranged in this list or elsewhere in the Article are not intended to establish or imply any rank or succession among the zones nor any superiority or precedence of any zone over any other.

2.21 Forest and Recreational Zoning FR Zone

2.22 Residential Zones RR-1 Residential, One Family, Detached RR-2 Residential, One Family, Detached RR-3 Residential, One Family, Detached RR-4 Residential, One Family, Detached

2.23 Commercial C-L Zone (Local Commercial)

2.3 Zoning Map

2.31 Adoption and Incorporation

The location and boundaries of zones established by this Article are shown on a Plat recorded among the Land Records of Montgomery County, Maryland, entitled "Corporate Limits and Zoning Map of the Town of Washington Grove,

Maryland", signed by the Mayor of the Town, which plat and or map is hereby adopted by reference and declared to be a part of this Article.

2.32 Information Copies

Information copies of the Zoning Map should be made available for inspection and reference by the public.

2.33 Amendments

Whenever changes are made in zone boundaries or other matter portrayed on the Zoning Map, in accordance with the provisions of Section 13, they should be promptly indicated on each of the information copies.

2.34 Official Status

Regardless of the indications appearing on the information copy or any other copy or purported copy of the Zoning Map which may be made from time to time, the final authority as to the current status of any land is the set of maps referred to in Section 2.31 together with any subsequent amendments applicable to such land.

Section 3. General Provisions

3.1 Interpretation of Provisions

3.11 Minimum Requirements

In interpreting and applying this Article, the requirements contained herein are declared to be the minimum requirements for the promotion of the purposes set forth in Section 1 and elsewhere in the Article.

3.12 Overlapping Regulations

Whenever in any area, any provision of this Article imposes a lower height limitation, less percentage of lot occupancy, wider, larger, or deeper yards, or other more strict limitations than those provided by state, county, municipal, or other local regulations, the provisions of this Article shall prevail over such other regulations within the said area.

3.13 Lots of Record

Lots which appear on record plats duly recorded prior to July 1, 1964, but have an area or width below the minimum requirements of this Article may be used for the construction of one-family detached dwellings provided they are in a residential zone, and are in compliance with all other applicable requirements of the Article; except that where land of sufficient area or width is in common ownership on July 1, 1964, or at any subsequent time, no construction shall take place on any parcel or tract of land of less area or width than otherwise specified in the Article.

3.14 Established Setbacks

3.141 Renovation of Existing Main Building

To enlarge, structurally alter, move, or replace an existing main building in any residential zone, the minimum setback requirements from a lot line adjacent to publicly-owned land is established by the lesser of:

(a) the shortest perpendicular measurement from the lot line to the existing main building, or

(b) the average setback distance using the measurements of the shortest perpendicular line from the lot line to the existing main building to be enlarged, structurally altered or moved and all other main buildings within 200 feet of the proposed construction, if:

1. the main buildings are in the same zone, and
2. the main buildings are on the same side of the publicly-owned land as the construction.

3.142 New Main Buildings

For a new main building, the average setback distance using the measurements of the shortest perpendicular line from the lot line to all existing main buildings within 200 feet of the proposed construction, if:

(a) the main buildings are in the same zone, and

(b) the main buildings are on the same side of the publicly-owned land as the new construction.

3.143 Applicability

Section 3.14 applies to new and existing main buildings, but does not apply to accessory buildings. In no event, however, may a new building be constructed on a corner lot within 25 feet of a lot line adjacent to a street or avenue.

The provisions of Section 3.14 prevail over those of Section 9.

3.2 Extension of Zoning to New Areas

3.21 Abandonment or Sale of Public Real Property

If all or any portion of any public street, right-of-way, easement or other public land shall ever come into private ownership or be used for any purpose other than a public purpose, the said land together with any buildings or structures upon it shall thereafter be considered as classified in the zone immediately adjacent thereto.

3.3 Special Rules

3.31 Height Controls

3.311 Structures Excluded

The building height limits set forth in this Article do not apply to church spires, belfries, cupolas, chimneys, or flag poles; nor do they apply to water tanks, air conditioning equipment or other roof structures provided that such structures:

(a) occupy not more than 10 percent of the roof area of any building,

(b) are covered with exterior materials having an appearance similar to or harmonious with the remainder of the building, and

(c) are not used for residential purposes.

3.312 Antennas and Towers

A radio or television antenna or tower, or any other structure used as a radio or television antennae, must be no taller than the shortest perpendicular measurement from the base of the structure to the nearest lot line.

3.32 Extensions and Projections into Required Yards

3.321 Cornices, ornamental courses, sills and similar features may extend not more than 1 foot into any required yard.

3.322 Balconies, unenclosed stairs and fire escapes may extend not more than 5 feet into a required front or rear yard.

3.323 Patios, decks, uncovered porches and steps more than 3 feet above grade, may extend into a required front or rear yard not more than 9 feet, and into a required side yard, not more than 3 feet.

3.324 Awnings, overhanging roofs, and roofs over steps, porches, or similar features may extend into any required yard not more than 3 feet.

3.325 Bay windows, vestibules, chimneys, or similar vertical features, not more than 10 feet wide, may extend not more than 3 feet into a required front or rear yard. Covered porches more than 10 feet wide are considered part of the main building and may not extend into a required yard.

3.326 An open, covered carport may extend to the side lot line, provided that:

- (a) the adjacent area of the adjoining lot is occupied by a similar structure;
- (b) both structures are built at the same time; and
- (c) the structure does not extend into the required front or rear yard.

3.327 Patios, decks, uncovered porches, and steps, not more than 3 feet above grade, are exempt from the setback and lot coverage provisions of this Article if the structure is a distance of at least two times the height above grade from the lot line. If the structure, however, abuts an opaque fence from grade to at least 3 feet in height above the surface of the structure, the structure may extend to the lot line.

3.328 Fences

(a) Fences and masonry walls not above 4 feet in height may be erected on a lot line. A fence and masonry wall not exceeding 6 feet in height, however, may be erected on any lot line separating privately owned land.

(b) No wall, fence, shrubbery or other obstruction to vision over 3 feet in height above the curb level may be constructed, planted, or maintained within 25 feet of the intersection of two street lines, measured from the center of the two (2) intersecting streets.

(c) A swimming pool requires a five (5) foot fence (this does not supersede Section 3.328(a)).

(d) A fence may be up to six (6) feet in height if it meets the accessory building set back requirements.

(e) A fence may be up to ten feet in height if it meets accessory building set back requirements and is an open-mesh deer fence if it is a minimum 25 feet from the front lot line and 7 feet from the rear lot line and 10 feet from the side lot line.

(f) An open-mesh protective barrier closely enclosing a tree is not subject to setback requirements.

(g) An open-mesh protective barrier seasonally erected no earlier than March 1st and taken down no later than November 30th that closely encloses and covers a garden plot, or other landscaping feature, with no side facing a lot line longer than one-third the length of the lot line, is not subject to setback requirements.

3.329 Open Porches

Open porches may extend up to 10 feet beyond the required front setback line. Up to 15% of a 7,500 square foot or smaller lot located in the RR-1 Zone may be occupied by an open porch and not be counted as building coverage; however, the total lot coverage percentage may not exceed 40% as set forth in Section 9.

3.33 Applicability

This Article does not apply to publicly-owned or leased land used for a public purpose or benefit.

3.4 Satellite Antennas

No satellite antennae, as hereinafter defined, is to be erected, constructed, maintained or operated except in conformance with the following regulations:

(a) A satellite antenna is defined for the purpose of these regulations as any device used or designed for receiving electromagnetic signals from one or more orbitally based satellites and is external to or is attached to the exterior of any building.

(b) Such satellite antennas are to be located only in the rear yard of any lot or upon a building on said lot. If a usable satellite signal cannot be obtained in a rear yard due to obstruction of the antenna's reception window, then the antenna may be located in any side yard of the property. All installations must be located so as to prevent obstruction of the antenna's reception window from potential permitted development on adjoining property.

(c) A satellite antenna must not be located within any yard setback area or cross the vertical plane of the property line.

(d) Not more than one satellite antenna is allowed on any lot less than one acre in size.

(e) No satellite antenna may:

1. exceed four meters in diameter;

2. exceed height restrictions as specified in Section 3.312 of this Article.

(f) All satellite antennas must be located and designed so as to minimize visual impact on surrounding properties and from public avenues and streets. All satellite antenna installations must employ (to the extent possible) materials and colors that blend with the surroundings. All satellite antenna installations, including wires, supporting structures and accessory equipment must be screened by architectural or landscape treatments so as to provide maximum opacity from the ground level, yet not interfere with signal reception.

(g) All satellite antennas and the construction and erection thereof must conform to applicable building and electrical code regulations and requirements. A building permit is required for the location, relocation, erection, and installation of any satellite antenna.

(h) Satellite antennas must meet all manufacturers' specifications, be of noncombustible and corrosion-resistant material, and be erected in a secure, wind-resistant manner. Every satellite antenna must be adequately grounded for protection against a direct strike of lightning.

3.5 Where Utilities are Lacking

In any case where public or other central water and sewerage facilities are not available the minimum lot area required for construction of a dwelling or commercial building shall be as determined by the Planning Commission, which shall ask the advice of the County Health Officer in arriving at its decision; but in no case less than 20,000 square feet.

3.6 Maximum Enclosed Area in Residential Zones

(a) For dwellings on a lot containing 5,000 square feet or less, the maximum enclosed area shall be: 500 square feet, plus 0.40 times the total lot area.

(b) For dwellings on a lot containing 7,500 square feet or less, the maximum enclosed area shall be: 500 square feet, plus 0.40 times the portion of the lot area less than 5,000 square feet,
plus 0.20 times the portion of the lot area between 5,000 square feet and 7,500 square feet.

(c) For dwellings on a lot containing 11,250 square feet or less, the maximum enclosed area shall be: 500 square feet, plus 0.40 times the portion of the lot area less than 5,000,
plus 0.20 times the portion of the lot area between 5,000 square feet and 7,500 square feet,
plus 0.10 times the portion of the lot area between 7,500 square feet and 11, 250 square feet.

(d) For dwellings on a lot containing more than 11,250square feet, the maximum enclosed area shall be: 500 square feet, plus 0.40 times the portion of the lot area less than 5,000 square feet,
plus 0.20 times the portion of the lot area between 5,000 square feet and 7,500 square feet,
plus 0.10 times the portion of the lot area between 7,500 square feet and 11,250 square feet,

plus 0.05 times the portion of the lot area exceeding 11,250 square feet.

Section 4. Rules for Interpretation

4.1 Interpretation of Zone Boundaries

4.11 Lot or Street Lines

Where zone boundaries are so indicated that they approximately follow lot lines, street or alley lines, or proposed street or alley lines, and are not more than 5 feet distant therefrom, they shall be construed as following such lines unless otherwise indicated by dimension figures on the Zoning Map.

4.12 Extensions of Lines

Boundaries indicated as approximately parallel to, or extensions of, lot or street lines shall be so construed unless otherwise indicated by dimension figures.

4.13 Scale of Map

Distances not specifically indicated on the original Zoning Map shall be determined by the scale of the map.

4.14 Reclassification by Amendment

In any case where the zone boundaries have been changed by an amendment to this Article, the correct location of such boundaries is determined by reference to the appropriate ordinance of the Town Council.

4.2 Definitions

For the purposes of this Article, the following terms mean:

Accessory Building -- A building subordinate to and located on the same lot or contiguous lots under the same ownership with a main building, the use of which is incidental to that of the main building. Through reconstruction/renovation, an existing accessory building may be incorporated into and become part of the main building only if: 1) the former accessory building becomes attached to the main building with an above-ground common wall(s), a common roof, and enclosed living space; and 2) said above-ground common wall(s) and common roof thereby enable the said enclosed living space to be temperature-controlled for year-round human habitation; and 3) the resulting reconstructed/renovated former accessory building meets all minimum standards for front, side, and rear setbacks for a main building in the appropriate zone.

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

Avenue -- A public right-of-way not for use by motor vehicles.

Basement -- That portion of a building below the first floor joists having at least one-half of its clear ceiling height above the mean level of the adjacent ground.

Billboard -- A structure or device similar in appearance to a sign, but directing attention to a business, commodity, or other activity offered or conducted principally elsewhere than at the location of the billboard.

Building or Structure -- A shelter or construct including a house, shed, deck, or fence. The terms building and structure are interchangeable in this Article.

Building Coverage -- The percentage of the net lot area that is covered by buildings, including accessory buildings and enclosed or roofed porches, and terraces.

Building Height -- The height of a building shall be measured from an elevation determined by averaging the elevation of the ground at all the corners and/or other principal points in the perimeter wall of the building.

Bulk -- A term referring to the volume and dimensions of a building or structure and its special relationship to other buildings and structures and to the lot on which it is located and its boundaries and open areas.

Charitable, Religious or Educational Institution: A corporation, organization or other legal entity devoted exclusively to charitable, religious or educational purposes, which has received, and continues to maintain, a determination from the United States Internal Revenue Service as a non-profit and tax-exempt organization in accordance with Section 501.(c)(3) of the Internal Revenue Code as now existing or any future amendments thereto.

Commercial Vehicle - A vehicle that is designed for commercial use, and

- 1.) has a gross vehicle weight of over 9,900 pounds; or,
- 2.) has a dump capacity; or,
- 3.) has a cube or box back; or,
- 4.) is a bus with the capacity to seat over 15 people.

Commission -- The Town of Washington Grove Planning Commission.

Dormer -- Roof projection set into a sloping roof, not to exceed 10 ft. in width when located on the upper most floor of a 2 ½ story main building or a 1 story accessory building.

Dwelling -- Building or portion thereof arranged or designed to provide living facilities for one or more households.

Dwelling Unit -- A building or portion thereof arranged or designed for occupancy by not more than one household and including cooking facilities.

Enclosed Area - Generally, for residential property, the enclosed area of the dwelling above ground level. The calculation excludes the area of the basement (if any) even if it is finished. For purposes of this definition, dwelling is intended to be synonymous with main building and primary residence. Enclosed area is as shown on tax records of the Maryland Department of Assessments and Taxation; however to resolve questions of the accuracy of the enclosed area as shown on said tax records, the Commission may require updated information to calculate enclosed area.

Fence - A man-made barrier intended to prevent escape or intrusion or to mark a boundary.

Front - Front is defined as the legal address of the house as shown on current tax records.

Front Yard -- Front yard is the portion of a lot defined as the premise address of the house as shown on current tax records. In a case of ambiguity, the Commission may designate the front yard of a lot based on historic precedent and compatibility with surrounding properties.

Green Area -- An area of land associated with and located on the same tract of land as a major building or group of buildings in relation to which it serves to provide light and air, or scenic, recreational or similar purposes. Such space must in general be available for entry and use by the occupants of the building or buildings involved, but may include a limited proportion of space so located and treated as to enhance the amenity of the development by providing landscaping features, screening for the benefit of the occupants or those in the neighboring areas, or a general appearance of openness. Green area may include, but is not be limited to, (1) lawns, decorative plantings, and wooded areas, (2) landscaped areas covering structures provided that they are not more than 12 feet above ground level, (3) sidewalks and walkways, (4) active and passive recreational areas and (5) water surfaces that comprise not more than 10 percent of the total green area. It does not include parking lots or other vehicular surfaces, nor accessory buildings other than swimming pools.

Household -- A group of persons living together, consisting of either (1) a single individual, (2) a group of persons all of whom are related by blood, marriage, or adoption, or (3) if the group does not fall into category (1) or (2) above, the group may not consist of more than five persons.

Lot -- For the purpose of this Article a lot is a developed or undeveloped parcel of land, having frontage on a public right-of-way and consisting of lots of record or portions thereof, or parcels described by metes and bounds, singly or in combination, in one ownership.

Lot Area -- The total horizontal area enclosed within the boundary lines of the lot, excluding all land which lies within any public right-of-way.

Lot, Corner -- A lot bounded by adjacent streets between whose right-of-way lines, or extensions thereof, there is an interior angle of not more than 135 degrees.

Lot Frontage -- Any boundary line of a lot which is adjacent to the right-of-way of a street or avenue.

Lot Line -- Any boundary line of a lot as herein defined.

Lot of Record -- The land designated as a separate and distinct parcel of land on a legally recorded subdivision plat filed among the land records of Montgomery County.

Medical Practitioner -- A licensed physician, surgeon, dentist, osteopath, or chiropractor.

Mayor -- The Mayor of the Town of Washington Grove, Maryland.

Non-Complying Building -- Any lawfully constructed building which does not comply with the area, bulk, yard, density, or off-street parking regulations

of the zone in which it is located, either upon the adoption of this Article or because of a subsequent amendment thereto.

Non-Conforming Use -- Any lawful use of a building or land which is neither a permitted use nor a use permissible as a Special Exception in the zone in which it is located either upon the adoption of this Article or because of a subsequent amendment thereto.

Open Porch -- An open porch may or may not include a roof; or/and, except for support structures, the area above the railing height, required by Montgomery County, shall be open to the air, excluding up to 15 inches of decorative trim; and at least 50% of the area below the railing must be open to the air; and the porch shall not be enclosed by material of any type, including lattice work or screening.

Outlot -- A parcel of land, shown on a record plat, which is not a legal building lot under the regulations of the zone in which it is located because of insufficient area or dimensions.

Primary Residence - The building on a residential lot that represents the basis for a majority of the taxable living space described in the official tax records of that property.

Rear Yard -- Rear yard is the portion of a lot which is opposite from the front yard. In a case of ambiguity, the Commission may designate the rear yard of a lot based on historic precedent and compatibility with surrounding properties.

Required Yard -- That portion of a yard which because of required setbacks or lot coverage limitation cannot be occupied by a building or structure.

Sign -- The term sign in this Article is limited to accessory structures, devices, and the like, used for the purpose of directing attention to a business commodity, service, profession or other principal use or activity conducted, sold, offered, or rendered on the same lot or contiguous lots under the same ownership upon which the sign is located. A sign may be painted on or affixed to a building or be a free standing structure. It does not include similar structures or devices located within a building unless they are illuminated and visible through a show window. The term does not include billboards or building addresses.

Story -- That portion of a building included between the surface of any floor and the surface of the floor next above it or, if there be no floor above it the space between such floor and the ceiling next above it. A basement shall not be counted as a story.

Story, half -- A story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are **not** more than two (2) feet above the floor of such story.

Street -- A public right-of-way for the use of motor vehicles including Alleys, Roads and Lanes.

Swimming Pool, Private -- A swimming pool located on the same lot with, and operated as an accessory to, a dwelling for the sole use of the occupants of the dwelling and their guests and not for profit nor in connection with any business.

Temporary Use - Lasting for a limited time, not to exceed 90 days.

Town -- The Town of Washington Grove, Maryland.

Town Council -- The Town Council of Washington Grove, Maryland.

Transient Rentals -- Rent or lease of rooms or other living space for consideration for less than 30 days or one calendar month. Persons renting on a transient basis shall not be considered as members of a household. Occupancy in connection with purchase of a residence shall not be considered transient.

Yard -- An open space, unoccupied and unobstructed, adjoining a lot line and lying between it and the building or buildings on the same lot.

Zone -- Any of the zoning districts or zoning categories established by this Article.

Section 5. Non-Conforming Uses and Non-Complying Buildings

5.1 Purpose

This Section provides for the regulation of uses and buildings which are already legally in existence in a residential zone at the time of the adoption or amendment of this Article but which do not comply with its requirements. Its purpose is to enact regulations intended to prevent an increase in the degree of non-conformity or non-compliance, to prepare for the eventual elimination of certain of these uses, and at the same time to avoid undue hardship to any person by reason of the enforcement of these regulations. Nothing herein contained shall be construed as legalizing or sanctioning the establishment or construction of any use or building in violation of the Article.

5.2 Non-Conforming Uses

A non-conforming use in a residential zone may be continued, subject to the provisions of this Section.

5.21 Change of Use

Any non-conforming use of a building or land must not be changed to another non-conforming use.

5.22 Expansion Within a Building

Any non-conforming use must not be expanded within a building, except that it may be extended into any part of the building that was manifestly arranged or designed for such use prior to the time the use became non-conforming.

5.23 Enlargement of Building

Any building being used for a non-conforming use must not be enlarged, expanded, structurally altered, or moved except for a use permitted in the zone in which it is located.

5.24 Non-Conforming Use of Land

Any non-conforming use of a building must not be extended into any additional land outside the building. Any non-conforming use of vacant land must not be expanded in any manner.

5.25 Discontinuation

5.251 Where a non-conforming use of a building has been discontinued for an uninterrupted period of 6 months or more, no non-conforming use is permitted in the same building nor on any part of the land on which it is located. In the case of transfer of property ownership or occupancy, a non-conforming use of a building or lot may not be transferred or continued.

5.252 Where a non-conforming use of land which has upon it no building other than a building which,

- (a) is incidental to the main use, and
- (b) has a floor area of not more than 500 square feet and an assessed valuation of not more than \$2,000.00, and
- (c) the non-conforming use has been discontinued for an uninterrupted period of 30 days or more, no non-conforming use shall thereafter be permitted on the same land.

5.26 Reconstruction

Where a building occupied by a non-conforming use has been destroyed by any means to such an extent that its value, based on the cost of reconstruction, has been reduced to less than 50 percent of its value immediately prior to destruction, it shall not be reconstructed except for a permitted use, and no non-conforming use shall thereafter be permitted in the same building nor on the same land.

5.27 Repairs and Maintenance

In any building being used for a non-conforming use, normal maintenance and repair work may be done, including the replacement of non-load bearing walls, wiring, or plumbing.

5.3 Non-Complying Buildings

The use of a non-complying building in a residential zone may be continued, subject to the following provisions:

5.31 Enlargement of Alterations

A non-complying building may be reconstructed, enlarged, remodeled, repaired, and otherwise altered, provided there is no increase in the degree of non-compliance.

5.32 Definition of Degree of Non-Compliance

No increase in the degree of non-compliance means that:

- (a) no additional area of required front, back or side yard is encroached upon beyond that already encroached upon; and

(b) no additional enclosed area is added for a dwelling which already exceeds the maximum enclosed area.

Section 6. Accessories to Principal Use or Building

6.1 General

Certain buildings and uses are permitted or required as accessories to a principal use. These are buildings and uses which are either:

(a) Clearly incidental to, and customarily found in conjunction with, a permitted principal use; or

(b) necessary in order to protect adjacent uses and the general public from adverse effects which would otherwise result.

6.2 Accessory Off-Street Parking and Loading

6.21 General

6.211 Applicability

The provisions of this section apply to the C-L Zone and all new construction. This section does not apply to reconstruction of non-complying buildings under Section 5 to the extent that there is insufficient space to meet the requirements of this section.

6.212 Purpose

The purpose of this subsection is to require off-street parking space and off-street loading space sufficient to serve the parking needs of the building and its occupants, clients, employees or other persons associated with the building, in order

(a) to reduce the use of the public streets for such purposes and thus to aid in the relief of traffic congestion in the streets,

(b) to foster the convenience and amenity of the various sections or neighborhoods of the Town, and

(c) to protect the character of residential areas.

6.213 Other Uses Permitted and Prohibited

The off-street parking facilities required by this Section are for the use of accommodating the passenger vehicles of residents, occupants, guests, patrons, employees or other persons associated with the use to which they are accessory. The loading spaces required are for the use of delivering and removing merchandise or other material. These areas shall not be used for the sale, display or storage of merchandise, the performance of commercial services, including services to vehicles nor for any other purpose, except those permitted herein. The required off-street parking areas must not be used for loading purposes.

6.214 Permanent Requirements

All required off-street parking and loading areas together with the driveways giving access thereto are deemed to be required space in connection with the uses to which they are accessory and must not be encroached upon nor reduced in any manner, except that the Mayor may permit such reduction in cases where he finds that either;

(a) an equal number of spaces have been provided elsewhere in accordance with the standards set up in this Section; or

(b) there has been an equivalent reduction in the number of spaces required, due to a reduction in the size or a change in the nature of the use to which the spaces are accessory.

6.22 Off-Street Parking

6.221 Plan and Design Standards

All off-street parking lots, in the C-L Zone whether required or not, must be built and maintained in accordance with the regulations set forth in this Section.

(a) Surfacing. All parking areas must be paved in accordance with the paving standards of the Town.

(b) Separation from Streets and Walks

1. All parking spaces and driveways must be guarded by curbs or other protective devices so arranged and installed that parked cars cannot project into streets, walkways, or sidewalks.

2. In the commercial zone, curbing constructed of Portland cement concrete, and having a vertical face of not less than 8 inches high, must be constructed and maintained (i) between any public street and any parking lot used by the general public, except at designated vehicular entrances and exits, and (ii) in front of any fence separating any parking lot used by the public from adjacent residential property, at a distance of not less than 5 feet from such fence.

(c) Drainage. All parking lots must be so drained as to prevent damage to other properties or public streets.

(d) Dimensions. Each parking space must have a minimum length and width of 18 feet and 9 feet respectively. Aisles between rows of spaces must have a minimum width as indicated in the following table:

<u>Angle of Parking</u>	<u>Width of Aisle</u>
90 degrees	24 feet
60 degrees	17 feet
45 degrees	12 feet
30 degrees	12 feet
Parallel	10 feet

Interior driveways in areas where there is no parking must be at least 10 feet wide for one-way traffic or 20 feet for two-way traffic.

(e) Marking and Lighting. Each parking space must be clearly marked by lines or other indication on the pavement, and signs or arrows must indicate the directions of traffic movement. Adequate lighting must be provided if the parking facilities are to be used at night, but the lighting must be so

arranged as not to reflect or cause glare on any land used for residential purposes.

(f) Connection to Public Street. Every parking lot must be connected to a public street by means of a driveway constructed in compliance with the minimum standards required by the Town. Such a driveway must have a width of at least 12 feet for one-way traffic, exclusive of curb return. No such entrance to a public street may be located less than 50 feet from the intersection of two curb lines or extensions thereof, except that in cases where topographic conditions or the size or shape of the lot make it impossible to maintain a distance of 50 feet the Mayor may permit this distance to be reduced, but in no case to less than 25 feet. In addition, no exit or entrance to a parking lot containing more than 10 parking spaces may be located within 300 feet of an entrance to a public or parochial school, a public park or playground, or a hospital, except in the case of a lot which has no access to any street frontage that would satisfy this requirement.

(g) Landscaping. In any parking lot containing more than 25 parking spaces, at least 10 percent of the total area of the lot must be devoted to plantings of trees or shrubs to provide internal landscaping, in addition to landscaped areas at the periphery of the lot.

(h) Screening. Where an off-street parking facility containing more than 10 spaces is located less than 50 feet from any land in any residential zone, it must be screened from such land by a continuous opaque fence, wall, or evergreen hedge at least 6 feet in height and so located as to provide a maximum of visual screening.

(i) Signs. No parking facility may have any sign in or upon it nor upon any fence or wall surrounding it except as otherwise permitted in this Section.

(j) Sidewalk. In the commercial zone, a continuous sidewalk constructed of cement, concrete or asphalt must be constructed and maintained between all parking lots used by the public and the entrances of all business establishments.

6.222 Calculation of Required Number of Spaces

6.2221 Fractional Number of Spaces. When the number of spaces calculated in accordance with these regulations results in a number containing a fraction, the number is to be rounded off to the nearest whole number.

6.2222 Joint Facilities. The off-street parking requirements for two or more uses may be satisfied by providing a common facility containing the sum of the number of spaces required for each of the uses, subject to the requirements of Section 6.2223.

6.2223 Off-Site Facilities. For all uses except residences, the required accessory parking facilities may be provided on a lot other than that on which the principal use is located, provided that all such facilities are within 500 feet of the nearest boundary of the lot on which the use is located.

6.2224 Schedule of Minimum Requirements. The minimum numbers of off-

street parking spaces per unit of measurement for each type of use are as listed in the following schedule. Other uses operated in association with the uses listed must be provided for in addition.

<u>Type of Use</u>	<u># of Spaces</u>	<u>Unit of Measurement</u>
Residential	2	Dwelling unit
Place of religious worship	1	Five seats
Retail sales	1	100 sq. feet devoted to the use
Storage accessory to retail sales	1	300 sq. feet devoted to the use
Medical practitioner's Office	1	200 sq. feet devoted to the use
Office or similar uses	1	500 sq. feet devoted to the use

6.23 Off-Street Loading

6.231 Plan and Design Standards

All off-street loading spaces, whether required or not, must be built and maintained in accordance with the regulations set forth in this Section.

(a) Surfacing. All loading areas must be paved in accordance with the paving standards of the Town.

(b) Dimensions. Each loading berth must have the following minimum dimensions in feet, exclusive of driveways, entrances and exits.

	<u>Length</u>	<u>Width</u>	<u>Height</u>
Retail stores	33	12	14
Offices and institutions	33	12	12
Wholesale and storage uses	45	12	14

(c) Screening. Where an off-street loading facility is located on a lot adjacent to any land in any residential zone, it must be screened from such land by a continuous opaque fence, wall, or evergreen hedge at least 6 feet in height and so located as to provide a maximum of visual screening.

(d) Location. In the commercial zone, the loading or transfer of freight, merchandise, trash or garbage must not be conducted on a side facing a Town residential zone. Provided, however, that upon an affirmative showing that compliance with this section would impose unreasonable commercial hardship on a business in the zone, the Board of Zoning Appeals may grant a special exception to the strict application of this section, upon such conditions as it deems necessary to assure that the residential character of the Town is adequately protected.

6.232 Schedule of Minimum Requirements

The minimum numbers of off-street loading spaces for each type of use are as listed in the following schedule.

<u>Type of Use</u>	<u>Number of Spaces</u>	<u>Floor Area in Square Feet</u>
Retail sales and services	None 1	Up to 5,000 Over 5,000
Office building, including banks	None 1	Up to 10,000 Over 10,000

6.3 Accessory Signs; Billboards

6.31 Purpose

It is the purpose of this Section to regulate the location, size and other characteristics of signs in the Town so as to aid in the accomplishment of the following ends:

(a) To permit the identification of home occupations, parking lots, and community facilities in residential areas, and

(b) To permit the advertising of professions and businesses located in commercial areas;

while at the same time having due regard to:

(a) The preservation of residential areas against any deleterious effects of signs within or near them;

(b) The protection of highway traffic from congestion and danger such as might be caused by the confusion or distraction of motorists by signs;

(c) The prevention of any undesirable effects upon public parks or parkways which might result from the proximity of signs; and

(d) The protection of local retail business areas from types of signs which are not appropriate in such areas.

6.32 General

6.321 Where Permitted

(a) Signs are permitted in each zone subject to the conditions set forth in this Section 6.3. All signs must be located on private property.

(b) Billboards are not permitted except as permitted under 6.323(c).

6.322 Permit Required. No sign may be erected, affixed, painted, hung or otherwise displayed, altered or repaired unless a permit has been applied for, together with payment of the applicable fee as set forth in ARTICLE XVI of the Code of Ordinances, and issued by the Mayor and a certificate of compliance has been issued by the Town council, except as provided in section 6.323.

6.323 Signs and Billboards Not Requiring Permits. No permit is required for the following types of signs, where permitted:

(a) Any sign not exceeding two square feet in area.

(b) On any lot, one temporary sign not exceeding six square feet in area, announcing that the building or lot, or both, are for sale or rent.

(c) Any temporary billboard, not exceeding two square feet in area, associated with a political campaign. These billboards must be removed within one week after the election.

6.33 Signs in Residential Zones

6.331 Types Permitted. In all residential zones, only the following types of signs are permitted:

(a) For any residential building, one or more signs with a total area of not more than two square feet, indicating the name of the occupant, the occupation of a person carrying on a permitted home occupation, and similar customary information, are permitted for each dwelling unit.

(b) For any place of religious worship, one or more signs with a total area of not more than 12 square feet are permitted, in addition to a temporary bulletin board of not more than 16 square feet.

(c) For any permitted off-street parking area, a sign with an area of not more than two square feet is permitted at each entrance, exit, or combined entrance and exit.

6.332 Height. No part of any sign in a residential zone may be more than 7 feet above the ground level.

6.333 Illumination. No sign located in a residential zone may be illuminated with more than 25 candlepower per square foot of surface. The illumination must consist of white light and must not produce glare in any residential zone or street.

6.334 Flashing or Moving Signs. No sign which moves, or which includes flashing, moving, or changing lights, is permitted in any residential zone.

6.34 Signs in Commercial Zones

6.341 Signs Near Residential Zones. No sign which is located within 250 feet of any land in a residential zone may be larger (in square feet) than its nearest distance (in linear feet) from the residential zone.

6.342 Types Permitted. In the C-L Zone only the following types of signs are permitted:

(a) Commercial Signs. Signs directing attention to a business commodity, service, profession, or other commercial use are designated as "commercial signs" for purposes of this section. On any lot, the total area of commercial signs must not exceed one-half square foot for each lineal foot of the street frontage of the lot, or six-tenths of one percent of the lot area, whichever is smaller.

(b) Noncommercial Signs. A "noncommercial sign" must not contain any statements, words, or pictures that are of a commercial nature advertising or identifying a commercial use, product, or service. A noncommercial sign must not exceed 4 square feet in area.

6.343 Placement, Height. Any commercial sign in the C-L Zone must be painted on or affixed to the building containing the business or use advertised by the sign. No commercial sign may project above the roof or wall line (whichever is higher) of the building on which it is erected. Any noncommercial sign in the C-L Zone must not exceed a height of 8 feet.

6.344 Types Prohibited.

(a) Flashing or Moving Signs. No sign which moves, or which includes flashing, moving, or changing lights is permitted.

(b) Signs on Vehicles. No vehicle advertising a business facility located in the C-L Zone may be parked in the C-L Zone for more than 60% of the time the facility is open for business in any one week. This prohibition does not apply during the hours the facility is closed for business.

Section 7. Residential Zones, One-Family

7.1 Purpose

In keeping with the general purposes of this Article as stated in Section 1.1 it is more specifically the purpose of this Section:

(a) To provide for the establishment and maintenance of residential areas of low to moderately low density, so as to make available the types of living environment to meet the housing needs and preferences of those present and future residents of the Town who find it desirable or expedient to live in one-family residences.

(b) To protect the residential areas of the Town as far as possible, against hazards, noise, odors, heavy street traffic, and other objectionable influences.

(c) To protect the non-commercial areas of Town as far as possible from activities that use the advantages of the Town itself such as its facilities, character, natural beauty, and historic background, for individual financial gain.

(d) To provide for the appropriate location within the residential areas of public and private facilities for education, health, and other community needs which serve the nearby residents and do not create objectionable or undesirable influences.

7.2 Use Regulations

No building, structure or land may be used and no building or structure may be erected, structurally altered, enlarged or maintained, except for one or more of the following uses:

- (a) One-family detached dwelling unit.
- (b) Buildings and uses normally accessory to permitted use.
- (c) Signs, in accordance with Section 6.33.
- (d) Home occupations, subject to the following:

1. Home occupations must not involve retail sales outlet from the premises more than twice per year. All retail sales events must not exceed 2 days per event.
 2. Home occupations must not involve manufacturing or mechanical operations which produce noise or other emissions hazardous or annoying to neighboring residents.
 3. Home occupations must not involve more than three business or employee vehicular arrivals per hour to the premises, or more than ten business or employee vehicular arrivals per day. Vehicular arrivals must occur between the hours of 9:00 a.m. and 8:00 p.m.
 4. All home occupations must occur within a building.
 5. On any one day, no more than two persons may be engaged or employed in such occupation on the premises who are not residents of the dwelling. The Mayor may approve a third non-resident employee; the third non-resident employee, however, may not be employed more than 40 hours in any calendar year.
 6. The resident must be the owner and operator of the home occupation.
 7. Home occupations do not include transient rentals.
- (e) Parking or storing of not more than four vehicles. Parking in a yard fronting an avenue is not permitted.
 - (f) Private swimming pool as defined in Section 4.
 - (g) Parking or storing of commercial vehicles that are visible from adjoining properties is not permitted except when actively involved in rendering a service.
 - (h) Charitable, Religious or Educational Institutions as a special exception approved by the Board of Zoning Appeals in accordance with Section 11.
 - (i) Private swimming pool as defined as defined in Section 4.

Section 8. Commercial Zone

8.1 Purpose

8.11 General Purposes

In keeping with general purposes of this Article as stated in Section 1.1, it is the purpose of this Section:

(a) That in accordance with prior action of the Town, the presently designated commercial area, i.e. Lots 1 and 2 and the unnumbered lot south of Lot 1 in Block 1 be given a zoning classification of local commercial C-L.

(b) To assist in protecting both nearby residences and local retail development against fire, noxious matter, noise, glare and other objectionable influences;

(c) To lessen traffic congestion in the streets, especially in residential areas; and

(d) In general to promote the most desirable use of land in accordance with the purposes of this Article, so as to increase the stability of the commercial area while protecting the character and established pattern of desirable development in each area, thus conserving the aggregate value of the land and buildings and enhancing the economic base of the Town.

8.12 Purposes of Specific Commercial Zone

The function and characteristic of the commercial zone is intended to be as stated in the following Sections.

8.2 Use Regulations

No building, structure or land may be used and no building or structure may be erected, structurally altered, enlarged or maintained, except for one or more of the following uses:

- (a) Post office.
- (b) Professional, business, or government offices.
- (c) Retail sale of antiques (excluding refinishing).
- (d) Barber and beauty shops.
- (e) Dry cleaning and laundry pick up stations; no dry cleaning operations permitted on-site; laundry operations limited to one water-based clothes washing machine and one clothes drying machine; clothes pressing permitted; no self-service operations.
- (f) Shoe repair shops.
- (g) Tailoring.

8.2A Amortization of Unlawful Uses

(a) Any uses lawfully in existence in the C-L (Local Commercial) Zone prior to the adoption of this Article and which have become unlawful pursuant to Section 8.2 above, must be terminated by July 1, 1985, and the same, during the interim, declared to be nonconforming uses to the extent they are now in existence.

(b) A retail meat market is permitted until discontinued under Section 5.251.

- (1) A retail meat market is the on-premise delivery to consumers of meat including poultry and seafood. A retail meat market does not include:
 - A. slaughtering or wholesale operations;
 - B. on-premise delivery, including delivery through a vending machine, of foods or beverages prepared for

immediate consumption;

C. advertisement for on-premise delivery of foods or beverages prepared for immediate consumption;

D. on-premise delivery of grocery items including:
i) fresh or frozen vegetable products,
ii) bakery items,
iii) dairy products,
iv) eggs, and
v) non-perishable merchandise items.

E. on-premise consumption of any food or beverage.

(2) Catering is permitted in conjunction with a retail meat market. Catering is the sale of prepared foods and beverages for delivery off-premises by employees of the caterer for consumption off the premises. The off-premise delivery by employees of the caterer must not involve more than six vehicular arrivals per hour to the C-L Zone.

8.2B Special Exceptions

The following uses may be allowed as special exceptions in the Commercial Zone upon application to the Board of Zoning Appeals who may grant such special exception upon such conditions, restrictions, or limitations as the Board of Zoning Appeals may deem appropriate to preserve, improve, or protect the general residential character of the Town of Washington Grove and after a finding that the other requirements of this Section 8.2B and of the Code of Ordinances of the Town of Washington Grove have been met:

(a) Research and development incidental to professional and business office uses, provided that the applicant shows by clear and convincing evidence that said uses will not present a risk to public health or safety.

(b) Specialty retail stores which are defined as retail sales of merchandise (but not food or drink for human consumption) of one class category of merchandise provided that the applicant shows by clear and convincing evidence that said use will not significantly burden the Town of Washington Grove with increased noise, litter, or pedestrian or vehicular traffic.

8.21 Exclusion

None of the above uses include:

(a) The sale of alcoholic beverages for consumption on the premises, or

(b) The sale of alcoholic beverages for consumption off the premises.

8.22 Nuisances

Any such use which is found to be a public nuisance by reason of emission of dust, gas, smoke, odor, noise, vibration, or other disturbance, is expressly prohibited in the C-L zone.

8.23A Closing of Parking Lots

In the commercial zone, between the hours of 9:30 p.m. and 6:00 a.m., all parking lots used by the public must be closed to vehicular traffic by securing the entrances and exits thereof with a chain or other similar device.

8.23B Trespass

During the period a parking lot is required to be closed pursuant to Section 8.23A, it is an unlawful trespass for any person, other than the owner, proprietor, employee, landlord or agent of any business located within the zone, to enter upon such parking lot. The owner(s) of such property must post and maintain at least three signs in conspicuous places advising the public of this Ordinance and warning that violators will be prosecuted.

8.24A Regulation of Trash Receptacles

In the commercial zone, receptacles for the collection of trash (including dumpsters) must be located in a manner so as not to obstruct vehicular traffic or parking by the public. Such receptacles must not be permitted to be overfilled with trash, garbage or other refuse. Dumpsters must be kept securely locked at all times other than when being loaded or unloaded.

8.24B Trash Receptacles to be Screened

Receptacles capable of holding by volume more than 30 gallons must be screened completely from public view with an opaque fence whose height exceeds the height of such receptacle.

8.25 Litter Collection Required

In the commercial zone, the owner of any property must collect all litter, trash, garbage and other loose refuse on the property at least three times daily, at regularly spaced intervals of time, one such time being at the close of all businesses to the public. The owner is responsible for removing all refuse from the property.

8.26 Side Lot Restrictions

In the commercial zone, access by pedestrians between any parking lot containing space for more than 15 vehicles and the side of any building must be permanently and securely blocked by the construction of a chain-link fence, or other fence that does not obstruct view, not less than 6 feet high, unless the entire side of the commercial building is clearly visible from all angles at a distance of at least 50 feet.

8.27 Building Repair

In the commercial zone, a building or structure, or any part thereof, must not be maintained in a state of disrepair such that it provides a place of concealment for persons, or that broken glass, metal or other dangerous objects protrudes from such building structure or part thereof within the reach of any person.

8.3 Limitation on Commercial Zoning

The C-L (Local Commercial) Zone may not be expanded nor new commercial zones established without a two-thirds vote of the qualified voters, as of record, authorizing such expansion.

Section 9. Schedule of Standards

Subject to the provisions of Section 3.14, the minimum standards for lot sizes and building area, set backs, and height are listed as follows:

9.1 Standard Method of Development in All Zones

	RR-1	RR-2	RR-3	RR-4	C-L
	Zone	Zone	Zone	Zone	Zone
MINIMUM LOT SIZE					
Area - Square feet	11,250	7,500	20,000	18,000	8,750
Width - at building line	75	50	100	85	50
Width - at street line	75	25	75	15	50
MAXIMUM GROUND COVERED BY BUILDINGS					
All buildings (as % of lot)	25	40	25	25	70
Accessory buildings (as % of rear yard)	25	30	25	25	None
MINIMUM SET BACK REQUIREMENTS (See Section 3.14)					
Main Building					
Front	25	25	30	30	None
Side Sum of two sides	25	25	30	30	20
Each side	10	10	15	15	None
If side adjacent to street	15	15	15	15	25
Rear	15	10	30	30	25
Accessory Building					
Front	50	60	50	50	None
Side	10	4	10	10	None
If side adjacent to street	15	10	15	15	25
Rear	7	5	7	7	25
MAXIMUM HEIGHT					
Main Building					
Stories	2.5	2	2.5	2.5	2
Feet	30	30	30	30	40
Accessory Building					
Stories	1	1	1	1	1
Feet	20	20	20	20	20

9.2 RR-4 Cluster Zone

Upon written application by the property owner for property in the RR-4 Cluster Zone, the property owner may request review and approval of the Planning Commission of development plans including architectural drawings, designs, and elevation drawings along with the proposed Plat of Subdivision. The Planning Commission, may, after its review of the application, approve the development plans and the Plat of Subdivision if the Planning Commission determines that the individual and the aggregate lots depicted on the Plat of Subdivision meet the Standard for RR-4 Cluster Zone set forth in subsection 9.21 of this Article VII; and that the submitted development plans meet the requirements of Article IV of this Cod of Ordinances and, also, satisfy Criteria for Cluster Method of Development as set forth in subsection 9.22 of this Article VII.

9.21 Standards for RR-4 Cluster Zone

(a) Total Density. The maximum number of dwelling units permitted shall not exceed the maximum number of dwelling units that would be allowed under the Standard Method of Development for RR-4.

(b) Minimum Lot Area. The minimum lot area of any single lot shall be at least 60% of the minimum lot area that would be required under the Standard Method of Development for RR-4.

(c) Minimum Lot Width. For any lot whose area meets or exceeds the lot area required under the Standard Method of Development for RR-4, those standards regarding minimum lot width shall apply. For all other lots, the minimum lot width at the building line and at the street line, respectively, shall be at least 60% of the minimum width that would be required under the Standard Method of Development for RR-4.

(d) Maximum Ground Covered by Buildings. For any lot that meets or exceeds the lot area required under the Standard Method of Development for RR-4, those standards regarding coverage by buildings shall apply. The Planning Commission may approve greater lot coverage for all other lots, subject to the restraints of the minimum set back requirements.

(e) Minimum Set Back Requirements. All buildings on any lot shall meet the minimum set back requirements as set forth under the Standard Method of Development for RR-4.

(f) Maximum Height. All buildings on any lot shall comply with the maximum height restrictions as set forth under the Standard Method of Development for RR-4.

9.22 Criteria for Cluster Method of Development

(a) Each application for development of property in a cluster zone shall not be approved by the Planning Commission unless the proposed development conforms completely to the approved Plat of Subdivision for the area applied for.

(b) An application for development of property in a cluster zone shall be approved by the Planning Commission only if the Planning Commission finds that the proposed development would meet the following criteria:

1. the proposed development would provide for safe and adequate access, and provision is made for appropriate road improvements and other public improvements such as paths and drainage
2. the proposed development would have appropriate spatial distances and alignments to adjacent properties, streets, and the neighborhood
3. the proposed development makes adequate provision for appropriate buffers
4. pursuant to the proposal, appropriate provisions would be made for areas to be dedicated for parks and recreation, tot lots, open space, tree cover, and scenic vistas
5. the proposal makes adequate provision for environmental impacts of the proposed development including wildlife path interruption, stream degradation, and the impacts of traffic, and
6. the proposal meets the criteria of Section 4 of Article XII of this Code of Ordinances.

Section 10. Forest and Recreational Zone (FR)

10.1 General Purpose

To preserve open space and recreational areas.

10.2 Use Regulations

10.21 Permitted Uses:

Arboretum, Forest Reserve, Publicly owned and operated buildings and uses, including community buildings and parks, playgrounds and other recreational areas.

Section 11. Board of Zoning Appeals

11.1 Identification

The Board of Zoning Appeals for the Town of Washington Grove is established as required by the laws of Maryland and is referred to in this Article as the Board.

11.2 Powers and Duties

The Board is authorized:

(a) upon appeals, to grant variances from strict application of certain regulations, as set forth in Section 12.3;

(b) to hear and decide upon appeals, taken by any aggrieved person, board, association, corporation or official, where it is alleged that there is an error in the grant or refusal of a building permit; but the Board is not authorized to reverse or modify any action which conforms to the provisions of this Article and which, therefore, was not erroneous;

(c) to interpret certain lines on the Zoning Map in accordance with the requirements of Section 4;

(d) to hear and decide requests for Special Exceptions;
and

(e) to adopt rules of procedure with the consent of the Town Council.

11.3 Procedure

11.31 Public Hearing

Before making its decision on any matter within its powers, the Board must hold a public hearing thereon.

11.311 Notice of Hearing. At least 30 days notice of a public hearing must be given in writing to the applicant or appellant, the Commission, the Mayor, the Town Council, and the owner of all land contiguous to the land with which the hearing is concerned or directly across any street from it. The Board may also give notice to such other interested persons, organizations, or agencies as it sees fit. The Board may also advertise the hearing in the same manner as prescribed in Section 13.32. Upon receipt of any application for a special exception or variance which will involve any change to a structure or site visible from any public way, the Board of Zoning Appeals promptly shall forward a complete copy of the same to the Historic Preservation Commission for review and comment.

11.312 Conduct of Hearing. Any person may submit oral or written testimony at the hearing. The applicant, the Town Council, Commission and any party required to be notified by Section 11.311 may be represented by counsel and cross-examine witnesses. The rules of evidence do not apply. A report of the entire hearing must be made. The report together with all exhibits and written statements submitted at the hearing, must be incorporated in the application file and considered part of the record. The Board may leave the public record open or reopen the public record for a specific time to receive additional written comments.

11.313 Continuation of Adjourned Hearing. When a hearing is adjourned and the time and place of the continued hearing are announced at the time of adjournment no further notice need be given; otherwise notice of the continued hearing must be given in the same manner as in the case of the original hearing.

11.314 Minutes. The Board must keep minutes of its proceedings, meetings and hearings.

11.315 Resolutions. All actions of the Board must be taken by resolution, including the grounds and findings, forming the basis thereof, and a record of the members' votes, all of which must be incorporated in the minutes.

11.316 Attendance of Witnesses. The Board is authorized to require the attendance of witnesses at hearings or meetings and to administer oaths.

11.317 Application Fee. Any administrative appeal, request for variance, or petition for special exception filed shall be accompanied by payment of the applicable filing fee as set forth in ARTICLE XVI of the Code of Ordinances.

11.32 Decision by Board

Following the closing of the record of a public hearing the Board must render a decision either by

(a) approving or denying the application or appeal, or

(b) dismissing the application or appeal if the Board finds that it fails to conform to any of the procedural requirements of this Article.

11.321 Time Limit. If a decision has not been rendered

(a) 60 days after the closing of the record of the public hearing in the case of an application for Special Exception, or

(b) 30 days after the closing of the record of the public hearing in the case of a variance or appeal;

then it must be assumed that the application or appeal has been disapproved, except that the Board, by resolution, may extend the time limit by 30 days.

11.322 Based on Record. The Board must make its decision solely upon the basis of its findings as to whether each of the specific requirements of the appropriate Sections of this Article has been satisfied by the evidence in the record.

11.323 Burden on Applicant. In the interpretation of the evidence the Board must consider the burden of proof to be upon the applicant, including the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board.

11.324 Special Exceptions.

(a) Stand for Evaluation.

(1) A special exception must not be granted without the findings required by this Article VII. In making these findings the Board of Appeals shall consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

(2) A special exception may be granted when the Board finds from a preponderance of the evidence of record that the proposed use:

(A) Is a permissible special exception in the zone.

(B) The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself,

(C) Will be consistent with the general plan for the physical development of the Town of Washington Grove including the applicable master plan. Any decision to grant or deny a special exception must be consistent with any recommendation in the applicable master plan regarding the appropriateness of a special exception at a particular location. If the Planning Commission in a report on a special exception concluded that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

(D) Will be in harmony with the general character of the neighborhood considering population density, design, scale, and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

(E) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties of the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

(F) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

(G) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master plan do not alter the nature of an area.

(H) Will not adversely affect the health, safety, security, morals, or general welfare of residents, visitors, or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

(I) Will be served by adequate public services and facilities, including police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities. With regard to findings relating to public roads, the Board shall further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.

(3) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

(4) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

(5) The Board may condition approval of a special exception with any requirements necessary to protect nearby properties and the general neighborhood. These conditions may include limiting hours of operation, days of operation, number of employees and students and the times of their arrival and exit, exterior lighting, number and nature of vehicle trips, exterior appearance, vehicular parking and traffic circulation, signage, and buffering of outdoor sports or recreational areas.

- (c) Shall, in connection with any Special Exception use which may reasonably cause more than twenty (20) vehicular arrivals per day for three (3) or more days in any single week, require that the Special Exception property have not less than thirty (30) feet of road frontage on a public street with a width of pavement not less than 27 feet within the Town boundaries. Ingress and egress to the Special Exception property in connection with the Special Exception use shall be exclusively via said access, and shall be improved with an entrance and driveway of sufficient width and design to safely accommodate two way traffic and emergency vehicle access.

11.33 Opinion

The decision of the Board must be stated in a written opinion setting forth the evidence upon which it is based. The opinion becomes a part of the file, and copies must be made available to all persons who were notified of the hearing and to all who submitted oral or written testimony.

11.4 Appeal from Decisions of Board

An administrative appeal from any decision of the Board may be taken by any aggrieved person or by the Town to any court of competent jurisdiction under the B Rules, Maryland Rules of Procedure.

Section 12. Variances

12.1 Purpose; General Authority

This Article establishes the maximum limits of development allowed within the Town. There is a presumption that these limitations are appropriate and fitting. However, there may be exceptional cases where the limitations of this Article regarding area, bulk, set-backs, and height should not be strictly enforced. Accordingly, the Board of Zoning Appeals may in strict compliance with the provisions of Subsection 12.2 grant a variance from these limitations.

12.2 Granting a Variance

(a) The Board may grant a variance if the Board finds on the basis of preponderance of evidence in the record that each of the following conditions exists:

- (1) The Town has denied the applicant a building permit for the building for which a variance is sought (if the building requires a building permit).
- (2) The variance requests relief from the requirements of this Article that govern:
 - a. the area of a lot;
 - b. the dimensions of a lot;
 - c. the height of a building;
 - d. the percentage of lot coverage; or
 - e. the location of a building on a lot.
- (3) The applicant is the owner of the lot.
- (4) Granting a variance is not contrary to the public interest.
- (5) Requiring the applicant to comply with the requirements in subparagraph (2) would result in practical difficulty to the applicant. Practical difficulty means that the strict application of this Article would prevent the applicant from using the lot for a permitted purpose or would render conformity with the requirements in subparagraph (2) unnecessarily burdensome. Reasonable uses are those uses

specified in Sections 7.2(a) and (b) (for a residential lot) and those uses specified in Section 8.2 (for a commercial lot).

- (6) The condition which forms the basis for granting the variance arises exclusively from the dimensions, shape, topography, or other extraordinary characteristics of the lot.
- (7) The condition which forms the basis for granting the variance is peculiar to the lot in question and is not common to other lots in the vicinity.

(b) The Board must not permit a use of land that is not permitted in the zone in which the lot is located.

(c) The following conditions taken singly or in combination are not a basis for granting a variance:

- (1) a violation of law;
- (2) the existence of a non-conforming use or building;
- (3) the granting of a variance on another lot;
- (4) a condition that results from an action of the applicant.

(d) In granting a variance, the Board may only permit the least departure from the limitations of this Article that will give relief to the applicant.

(e) The Board may attach conditions to the grant of a variance that it considers to be necessary to accomplish the least departure from this Article.

12.3 Procedure

12.31 Application

An application for a variance must be made to the Board which sets forth the regulation under which the building permit was denied, the manner in which the lot is exceptional or peculiar, and the manner in which the applicant wishes the regulation to be varied.

12.32 Public Hearing

On each application for a variance, a public hearing must be held and a written opinion made public, as prescribed in Section 11.3.

12.4 Validity

No order granting a variance is valid for a period of more than 6 months from the date of issue, unless an application for a building permit incorporating the variance has been approved and construction begun within that period.

Section 13. Amendment of this Article

Amendments of this Article must be initiated by application and may be of any of the following kinds:

(a) A local map amendment, involving the reclassification of a single lot or portion thereof, a group of lots, or a tract all to the same zone.

(b) Sectional map amendment, involving the entire Town or a section of the Town, portions of which may be reclassified to various zones.

(c) A text amendment, involving one or more changes in the text of this Article.

13.1 Limitations Upon Amendments

13.11 Zone as Applied For. No application for a local or sectional map amendment may be approved for a zone other than one applied for in the application.

13.12 Area. No application for a local or sectional map amendment may be approved for a greater area than indicated in the application nor for any land not included therein. An application may be approved for only a portion of the area applied for if such action is supported by the evidence of record, and in such a case the portion reclassified must be accurately delimited in the resolution of approval.

13.13 Conditional Approval. The Town Council may impose additional restrictions, conditions or limitations upon the grant of any application for a local amendment to the Zoning Map pursuant to the authority granted by State law, including, but not limited to, such additional restrictions, conditions, or limitations as may be deemed appropriate to preserve, improve, or protect the general character and design of the lands and improvements being rezoned, or of the surrounding or adjacent lands and improvements, and may retain or reserve the power and authority to approve or disapprove the design of buildings, construction, landscaping or other improvements, alterations, and changes made or to be made on the subject land or lands to insure conformity with the intent and purpose of the Master Plan and Zoning Ordinance.

13.131 Same - Procedures.

(a) Conditions Proposed with Application. In the event the application for the local amendment sets forth the proposed conditions and restrictions as authorized hereby, the posting required by Section 13.311 hereof shall include notice that the zoning re-classification sought is "Conditional"; the advertisement required by Section 13.32 hereof shall include a fair summary of the conditions or restrictions imposed, as determined by the Planning Commission; and the public hearing required by Section 13.4 hereof shall include consideration of the proposed conditions.

(b) Conditions Proposed Subsequent to Application.

1. Adoption of Resolution Proposing Conditions. If the decision of the Town Council is to grant a local amendment application with conditions not previously set forth in the application nor for which notice has been given and a hearing held as required by Sections 13.3 and 13.4 hereof, it shall adopt a resolution proposing the restrictions, conditions or limitations upon which such application is to be granted.

2. Hearing on Proposed Conditions. The Town Council shall thereafter hold a public hearing on such proposed conditions, notice of which shall be given as in the case of an original local map amendment application and in writing by first class mail to any person who has registered an appearance in writing prior to the adoption of such resolution.

(c) Adoption of Ordinance Granting with Conditions. Following such public hearing on the proposed conditions, the Town Council may adopt an ordinance granting the application with the additional restrictions, conditions or limitations contained in the resolution under Subsection (b) hereof or as contained in the application in accordance with Subsection (a) hereof, or such modification thereof as is not substantially different therefrom. Upon the adoption of such ordinance, the letter and number of the classification of such property on the zoning map shall be followed by the letter "C" to designate the zoning classification as conditional, and the number of the ordinance imposing the conditions shall be placed in parenthesis on the zoning map in order to afford interested parties the opportunity to refer to the same.

13.132 Same - Violation of Conditions.

(a) Notice of Violation. If the Mayor or the Mayor's designee believes that a violation has occurred with respect to any additional restriction, condition or limitation imposed upon the grant of any local map amendment application, the Mayor or the Mayor's designee shall notify the owner of the property which was the subject of the application of the violation believed to exist, and provide the owner with sixty (60) days within which to abate such violation. If such abatement is not completed within the sixty (60) days, the Mayor, Council or designee may take possible actions under Section 14 of this Article, in addition to the procedures outlined below.

(b) Denial of Violation or Failure to Abate. Upon the receipt of a written denial of the existence of a violation from the owner, or sixty (60) days after giving of such notice, whichever shall first occur, the Mayor or the Mayor's designee, if they believe that such violation continues to exist, shall provide notice thereof to the Town Clerk. The Town Clerk shall thereupon set such notice for a hearing by the Town Council at a specified date, time and place, and notify the owner thereof and the owners of all real property immediately adjacent to such property at least fifteen (15) days prior to the date of such hearing.

(c) Hearing on Violation. The Town Council shall hold a hearing on such notice of violation.

(d) Action on Notice of Violation. If the Town Council shall find that a violation exists, it may adopt an ordinance revoking the grant of the original application for a local map amendment with conditions, and any building or structure on or use of the property which was the subject of such application shall not be entitled to the benefit of the most recent zoning designation.

(e) Other Procedures Available. Any violation of an additional restriction, condition or limitation imposed upon the grant of any application for a local map amendment with conditions shall be a violation of this ordinance and subject to the penalties and procedures contained in Section 14. hereof.

13.2 Application

13.21 Acceptance of Application. Applications for amendment must be made to the Planning Commission. No application may be accepted if:

- (a) Any of the requirements of this Section have not been complied with.
- (b) All or any part of the land for which reclassification is requested by a local map amendment is restricted because of a previous application.
- (c) All or any part of the land for which reclassification is requested is the subject of a previous application which has not yet been finally acted upon by the Town Council.
- (d) The required fee as stipulated in Section 13.24 has not been paid.

13.22 Alternative Zones. An application for a local map amendment may propose a single requested zoning classification or may also specify an alternative zone.

13.23 Time of Filing. Applications may be accepted only during the months of February and August, except that applications made by the Town Council or the Commission must be accepted at any time.

13.24 Filing Fee. Every application for a local map amendment or text amendment, unless filed by the Town Council or the Planning Commission, must be accompanied by a filing fee as set forth in ARTICLE XVI of the Code of Ordinances. No such fee may be refunded except that, if an application is permitted to be withdrawn prior to the time it is ordered advertised for hearing, four-fifths of the fee must be refunded.

13.241 Referral to Historic Preservation Commission. Upon receipt of any application for an amendment pursuant to this Section 13, the Planning Commission promptly shall forward a complete copy of the same to the Historic Preservation Commission for review and comment.

13.25 Limitation on Reapplication

(a) After One Previous Application. Whenever an application for a local map amendment has been acted upon by the Town Council, no new application for a local map amendment involving the same land or any part thereof may be accepted by the Commission until at least 18 months after such action, except as provided in paragraph (c).

(b) After Two or More Previous Applications. Where a piece of land has twice been the subject of applications for local map amendments which were acted upon by the Town Council, no new application for a local map amendment involving all or any part of the land that was the subject of both previous applications may be accepted by the Commission until at least three years after the action upon the latest of the previous applications, except as provided in paragraph (c).

(c) Exception to Limitations. When permitting a local map amendment application to be withdrawn, the Town Council may specify that the withdrawal is without prejudice to the right to re-apply, in which case the time limitations set forth in paragraphs (a) and (b) do not apply. Applications by the Town Council and the Commission are not subject to the time limitations.

13.26 Application for Local Map Amendment

13.261 Application Form. The application must be submitted in triplicate and must contain:

(a) a statement of ownership, including the name and address of each record owner of the property for which an amendment is sought;

(b) a description of the land by metes and bounds, bearings and distances, or by lot and block designations;

(c) the present and requested zoning classifications of the property; and

(d) the signature of the person submitting the application.

13.262 Identification Plat. The application must be accompanied by four copies of an identification plat prepared by a civil engineer, surveyor or other competent person, indicating by metes and bounds, bearings and distances, or by lot, block and subdivision, the land for which the amendment is sought, and its area, and showing the adjoining properties and streets, north point and scale, and any other pertinent information. The land for which an amendment is sought must be outlined in red.

13.263 Vicinity Map. The application must also be accompanied by four copies of a vicinity map indicating the zoning classification of all land within 1000 feet of the land proposed to be reclassified.

13.264 Master Plan. If the land proposed to be reclassified lies within the area covered by a Master Plan, a copy of such plan must be submitted with the application.

13.265 Conditions. If the application proposes reclassification with conditions pursuant to Section 13.13 hereof, the application shall be accompanied by a narrative description of all such conditions proposed. In addition to, but not in lieu of, the required narrative description, an applicant may submit such other plans or documents as may be desired to more fully present any such proposed conditions for consideration by the Planning Commission and Town Council.

13.27 Application for Sectional Map Amendment. An application for a sectional map amendment must include maps clearly identifying the area involved and indicating the boundaries of all lots or parcels proposed to be reclassified and the existing and proposed zone of each lot or parcel. Such an application may be filed only by the Town Council, or the Commission.

13.28 Application for Text Amendment. An application for the amendment of the text of this Article must set forth the new text proposed to be added and the existing text to be deleted.

13.3 Notice

13.31 Signs

13.311 Posting of Signs. Within 15 days after notice of acceptance of an application for a local map amendment, the applicant must erect, on the land proposed to be reclassified, a sign furnished by the applicant and acceptable to the Commission indicating the change proposed and the date and place of the public hearing. The sign must be erected by the applicant within 10 feet of whatever boundary line of such land abuts a street and must be so placed as to be clearly visible from the street with the bottom of the sign not less than two and one-half feet above ground. If more than one street abuts the property, then a sign must be erected in the same manner as above for each abutting street. If no street abuts thereon, then the sign must be so placed as to be most readily seen by the public.

13.312 Maintenance and Removal. Any sign erected in compliance with Section 13.311 must be maintained at all times by the applicant until a decision on the application has been made public by the Town Council, and must then be removed by the applicant within 10 days thereafter. It is unlawful for any person, except the applicant or the Commission or an authorized agent of either, to remove or tamper with any sign during the period it is required to be maintained under this Section.

13.32 Advertisement. Within 30 days following the end of the calendar month in which an application for a local map amendment, sectional map amendment, or text amendment is accepted by the Commission, the Town Council must designate a date on which it will hold a public hearing and must notify the applicant and the Commission. Notice of the time and place of the public hearing, together with a summary of the proposed amendment, must be published in at least one newspaper of general circulation in the jurisdiction once each week for two successive weeks. The first notice must be published at least 14 days prior to the date of the hearing.

13.33 Public Examination. During the 14-day period immediately preceding the hearing, the application and identification plat must be available for public examination.

13.4 Public Hearing

13.41 Conduct of Hearing. Any person has the right to submit oral or written testimony at the hearing and must be accorded all appropriate due

process rights. A report of the entire hearing shall be made. The report together with all exhibits and written statements submitted at the hearing must be incorporated in the application file and considered a part of the record. The Town Council may leave the public record open or reopen the public record for a specified period of time to receive additional written comments.

13.42 Continuation of Adjourned Hearing. When a hearing is adjourned and the time and place of the continued hearing are announced at the time of adjournment no further notice need be given; otherwise notice of the continued hearing must be given in the same manner as in the case of the original hearing.

13.5 Decision

13.51 Form of Decision. An application for a text or local map amendment must be either:

(a) approved or denied on the merits and in conformance with Maryland law;

(b) dismissed, if the Town Council finds that any of the procedural requirements of this Section have not been complied with or that the application is frivolous or filed for purposes of harassment;

(c) permitted to be withdrawn by the applicant; or

(d) approved with such modification and upon such conditions as the Town Council may deem appropriate.

An application for a sectional map amendment must be approved, with such modifications as the Town Council may deem appropriate, or denied.

13.52 Time Limit. A decision should be rendered not later than 60 days after the close of the record of the public hearing, unless this time limit is extended by a resolution of the Town Council.

13.53 Based on Record. The Town Council must make its decision solely upon the basis of the evidence of record.

13.54 Burden on Applicant. In the interpretation of the evidence, the Town Council must consider the burden of proof to be upon the applicant, including the burden of going forward with the evidence.

13.6 Opinion

The decision of the Town Council must be stated in a written opinion adopted by the Town Council in open session by a majority of those voting on roll call by yeas and nays. The opinion must set forth the conclusions of the Town Council and the reasons therefor. Copies of the opinion must be placed in the application file and mailed to the applicant.

13.7 Effective Date

No amendments to this Article or zoning maps may become effective until 10 days after any required public hearing. In the case of a map amendment, the information copies of the zoning map should be changed promptly after issuance of the opinion.

Section 14. Violations and Remedies

14.1 Complaints of Violations

Complaints concerning alleged violations of this Article, or of any decision made thereunder may be made by any person, group, association, or public agency or official. Such complaints must be in writing, stating fully the nature of the alleged violation, and must be directed to the Mayor. The Mayor must investigate all such complaints. If the Mayor finds that any provisions of this Article may have been violated, the Mayor may notify the person responsible in writing of the violation and order the action necessary to correct it. The Mayor must also record the complaint and all subsequent action related thereto.

14.2 Remedies

Upon verification of a violation the Mayor may proceed as follows:

(a) In the case of a building or structure under construction or alteration, the Mayor may order the work stopped and may have the building posted with a Stop Work Notice. The builder must be given notice in writing of the order, and no work may proceed except to correct the violation and to continue in compliance with this Article. If, at the expiration of 10 days, the violation has not been corrected, the Mayor may cancel the building permit and institute proceedings against the violator as provided for in Article IX. Penalties - Enforcement - Severability.

(b) In the case of a use violation, the Mayor may serve the occupant with an order to cease the violation. If, after the expiration of 10 days the violation has not ceased, the Mayor may institute proceedings against the violator as provided for in Article IX. Penalties - Enforcement - Severability.

The Mayor, the Town Council, or any person, group, association, or public agency may, in addition, institute injunction, mandamus, or other appropriate action to cause the violation to cease or to be corrected.