

# Elkins City Code

## Chapter 21: Zoning

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*As to planning commission, see §§ 2-29 to 2-36 of this Code..*

**Section 21-0A Article I. General Provisions.**

*For charter provisions as to authority of common council to prohibit within the city or within one mile of its corporate limits the erection or maintenance of slaughter houses, glue factories, tanneries, etc., see Char., § 28, subsec. (28).*

*For state law as to urban and rural planning and zoning, see W. Va. Code, ch. 8, art. 24. As to authority of city to enact zoning ordinances, see W. Va. Code, § 8-24-39.*

**Section 21-1 Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section, but such definitions shall not be held to modify or affect in any way the legal interpretations of such terms or words where used in other regulations:

Accessory building. A subordinate building located in and occupying not more than thirty percent of the rear yard of the main building, whose use is incidental to that of the main building, and which does not exceed fifteen feet in height above the ground level.

Alley. A public way designated as an alley in the records and on the city map of the City of Elkins on file in the office of the city clerk.

Apartment. A household unit with kitchen facilities, except portable electrical table appliances, exclusively for the use of the persons occupying such unit.

Apartment house. A building in which there are three or more apartments.

Area. See "building area."

Block or square. See "square."

Boarding house. A dwelling other than a hotel where, for compensation, meals or lodging and meals are provided for three or more guests.

Building. A structure having a roof supported by columns or walls for the shelter, support or inclosure of persons, animals or chattels. When separated from the ground up, or from the lowest floor up, each such portion shall be deemed a separate building. The existence of communication between separate portions of a structure below the main floor shall not be construed as making such structure one building. The word "building" includes the word "structure."

Building area. The maximum horizontal projected area of a building and its accessory buildings,

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excluding open steps, terraces and cornices. (Front entrance porches which do not extend more than three feet beyond the front wall and are not greater than twenty square feet in area will not be construed as part of the "building area," and the depth of such porches will be excluded from the depth of the building for the purpose of computing the width of side yards.)

Building line. A line beyond which property owners and others have no legal or vested right to extend a building or any part thereof without special permission and approval of the board of zoning appeals; ordinarily a line of demarcation between public and private property when recorded in the office of the city clerk or the county clerk of Randolph County. For the purpose of zoning it is also applied to a building restriction line which is hereby prescribed as follows: In residential areas the building line shall hereafter be not less than twenty-five feet from the front property line. In commercial and industrial areas the building line shall be the same as the front property line, and in no case set back more than five feet from the front property line, except where the building is to be a residence.

Cellar. That portion of a building below the first floor joists, the floor of which is more than one half the clear ceiling height below the adjacent ground.

Community house. A group of not more than three single-family dwellings so designed as to give the appearance of a single building and erected simultaneously.

Depth of land. The main horizontal distance between the front property line and the rear lot line.

Depth of rear yard. The main horizontal distance between the rear line of the building and the center line of the alley where an alley exists, otherwise the rear lot line.

District. Sections of the city for which the regulations governing the height, the area and the use of buildings and premises are the same.

Dwelling. A house occupied by a person or family as a place of residence.

Enclosed court. An open, unoccupied space surrounded on all sides by walls or by walls and a party line.

Flat. A building in which there are two apartments.

Height of building. In the one hundred fifty-foot, one hundred thirty-foot and eighty-foot height districts, the vertical distance from the level of the curb opposite the middle of the front of the building to the top of any enclosure wall or to the highest point of the roof; provided, that in the eighty-foot height district, in the case of a building located on a terrace, the height above the curb level may be increased by an amount equal to the height of the terrace above the same curb level. In the forty-foot height district the vertical distance from the ground level at the middle of the front of the building to the ceiling of the top story.

Height of court. The vertical distance from the bottom of any opening in such court, necessary for light and ventilation, to the highest point of any bounding wall.

Home occupation. An occupation in connection with which there is used no sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling; in which there is kept no stock in trade or commodity sold upon the premises, no person employed other than a member of the immediate family residing on the premises, and no mechanical equipment used except such as is permissible for purely domestic or household purposes.

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Hotel. Every place where lodging is provided for ten or more transient guests. This definition shall not be interpreted to include private clubs.

Length of open court. The mean horizontal distance between the open and closed ends of the court.

Lodging or rooming house. A dwelling providing lodging for three or more roomers for compensation.

Lot. The land bounded by definite lines and occupied or to be occupied by a building and its accessory buildings, and including open spaces required by these regulations. A lot may or may not be the land so recorded on the records of the city clerk, or of the clerk of the county commission of Randolph County. The word "lot" includes the words "plot" or "parcel."

Lot, alley. A lot facing or abutting an alley but at no point facing or abutting a street.

Lot, corner or triangular. A lot fronting on two or more streets at their junction, such streets forming with each other an angle of forty-five degrees or more, is a corner lot. When the angle formed by the intersecting streets is less than forty-five degrees such lot shall be known as a triangular lot.

Lot, interior. A lot other than a corner or triangular lot.

Lot lines. The lines bounding a lot as defined herein.

Lot, through. An interior lot having frontage on two streets.

Nonconforming use. The use of a building or premises classified as a use that does not conform with the regulations of the use district in which such building or premises is located.

Percentage of lot occupancy. That portion of such area of a lot as lies within lot lines and building lines as defined herein which is occupied or may be occupied, under these regulations, as a building area.

Private garage. A garage without public repair or service facilities, of not more than eight hundred square feet and housing not more than four steam or motor-driven vehicles.

Public service garage. A garage in which steam or motor driven vehicles are equipped for operation, repaired or kept for hire or sale, not including exhibition or show rooms for model cars.

Public storage garage. A garage, other than a private garage, in which repair facilities are incidental to its primary use for storage.

Rear yard. An open space on the same lot with a building between the rear line of the building and rear line of the lot, for the full width of the lot, and unoccupied except as herein specifically authorized.

Side yard. An open unoccupied space on the same lot between the building and the side line of the lot extending through from the front of the building to the rear yard.

Square. Land so designated as a block or square on the records of the city clerk or on maps or plots in the office of the clerk of the county commission of Randolph County, or either of them. A block

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or square shall consist of an area bounded by open public thoroughfares, streets or alleys, by the Tygart River, the property line of any railway company or other property line, or the city corporation line, as the case may be.

Story. That portion of a building included between the surface of any floor and the surface of the next floor above it, or if there be no floor above it, then the space between such floor and the ceiling next above it; provided, that a cellar shall not be considered a story. A mezzanine story, covering not more than one-third of the area of a building at the mezzanine level, shall not be considered a story within the meaning of these regulations.

Structural alterations. Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, except such alterations as may be required for the safety of the building. (3-5-59, § 1; 7-19-79.)

### **Section 21-2 Chapter subject to limitations of state zoning law.**

The provisions of this chapter are subject to all limitations imposed by chapter 8, article 24 of the Code of West Virginia. (3-5-59, § 22, (2).)

### **Section 21-3 Zoning map.**

The "Official Zoning Map , " thereon certified as such by the mayor and which is now and shall remain on file in the office of the city clerk, together with such amendments thereof and notations made thereon as of the effective date of this Code, shall continue to be the official zoning map of the city, by which title it may be cited, or it may be cited simply as the "zoning map."

### **Section 21-4 Streets not shown on zoning map.**

When a street is shown on the highway plan or on plats on file in the office of the city clerk or the office of the clerk of the county commission of Randolph County, and is not indicated or shown on the zoning map as being in any height, area or use district, the designation of the adjoining square or parcel shall extend to the center line of such street. (3-5-59, § 22, (1).)

### **Section 21-5 Building permits--Required for certain purposes.**

Any person who shall build or cause to be built, altered or converted any building in the city without having first obtained a city building permit so to do shall be fined not less than ten dollars nor more than one hundred dollars. (3-5-59, § 22, (5).)

### **Section 21-6 Same--Plats to accompany applications for permit.**

All applications for building permits shall be accompanied by a plat in duplicate, drawn to scale as required on the application form, showing the actual dimensions of the recorded lot to be built upon, all buildings existing upon such lot, the size of the building to be erected and such other information as may be necessary to provide for the enforcement of these regulations. A careful record of such application and

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plats shall be kept in the office of the building inspector. (3-5-59, § 21, (1); 4-1-82.)

### **Section 21-7 Enforcement officers.**

The provisions of this chapter shall be enforced by the common council and the chief of police. (3-5-59, § 22, (3).)

### **Section 21-8 Investigation of reports of violation; building permit denied in cases of violation.**

It shall be the duty of the chief of police and building official to investigate and report any violation of these zoning regulations to the mayor and common council, and no building permit shall be granted in violation of these zoning regulations. (3-5-59, § 22, (6).)

### **Section 21-9 Penalties generally.**

Any person violating these regulations, the penalty for the violation of which is not provided for by the provisions of this chapter or chapter 8, article 24 of the Code of West Virginia shall be subject to a fine of not less than ten dollars nor more than three hundred dollars per day for each and every day such violation is permitted to continue. (3-5-59, § 22, (4).)

### **Section 21-9A Article II. Use Districts.**

#### **Section 21-10 Purpose, number and designation.**

In order to regulate the location of commerce, business, trades and industries, and the location of all buildings designed or occupied for specific uses, the city is hereby divided into use districts, of which there shall be four, known as:

- (a) Residential, restricted.
- (b) Residential, unrestricted.
- (c) Commercial.
- (d) Industrial. (3-5-59, § 2, (1).)

#### **Section 21-11 Districts are as shown on zoning map.**

The use districts shall be as shown on the official zoning map in the office of the city clerk. (3-5-59, § 2, (2).)

#### **Section 21-12 Buildings and premises to be used only for permitted purposes.**

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Except as hereinafter provided, no building shall be erected or converted, nor shall any building or premises be used, for any purpose other than that permitted in the use district in which such building or premises are located. (3-5-59, § 2, (3).)

### **Section 21-13 Limited uses for animals and poultry.**

It shall be unlawful for any person to build, construct and use any new, altered, converted or remodeled building or structure on any lot, area, tract or parcel of land within the corporate limits of the city for the housing and care of any domestic animal (other than dogs and cats or household pets) or of poultry of any kind customarily housed in barns, hog pens, poultry or chicken houses, or other outhouses or sheds. (3-5-59, § 2, (4) and (5); 7-19-79.)

### **Section 21-14 Electric fences prohibited; staking of domestic animals prohibited.**

It shall be unlawful for any person to erect, maintain or operate any electric fence for any purpose within the corporate limits of the city, or to stake any cow, bull, horse, mule, goat or other domestic animal on any lot or parcel of land within the city. (3-5-59, § 2, (6); 7-19-79.)

### **Section 21-15 Permitted uses--In residential districts.**

In the residential districts all buildings and premises, except as otherwise provided in these regulations, shall be erected for and used exclusively as:

- (a) Dwellings.
- (b) Apartment houses, flats and tenements in the B district only.
- (c) Hotels in the B district only.

Commercial uses which distinctly pertain to or are appropriate adjuncts to hotels as follows: Restaurant dining room, drug stand, including soda fountain, perfumery shop, florist shop, barbershop, beauty parlor, pressing or tailoring establishment, cigar and newsstand, and uses similar to these enumerated in the B district when approved by the board of zoning appeals.

- (d) Lodging or boardinghouses in the B district only.
- (e) Churches in the B district only.
- (f) Private clubs, fraternities and lodges in the B district only, except those the chief activity of which is a service customarily carried on as a business.
- (g) Repealed.
- (h) Transportation rights-of-way.
- (i) Farms, truck gardens, nurseries and greenhouses, in the B district only.

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(j) Accessory buildings and uses of property customarily incidental to the district, when located on the same lot and not involving the conduct of a business on the premises.

The following usual accessories of a residence located on the same lot with that residence and not involving the conduct of a business shall be allowed:

(1) Repealed.

(2) A private garage located in a fireproof compartment within, adjoining or forming an addition to a building, or both; provided, that the total garage storage facilities on any one lot shall not exceed eight hundred square feet in area.

(3) A private garage located in the rear yard with a dwelling, and not less than ten feet from any point of such dwelling nor less than twenty feet from the building line of any street upon which the lot abuts; provided, that if the lot will not permit a garage to be located in conformity with this regulation, a garage may be approved by the board of zoning appeals, as provided in article VIII of this chapter; and provided further, that the total private garage storage facilities on any one lot shall not exceed eight hundred square feet in area.

(4) A public storage garage in an apartment house, where the floor area of the garage does not exceed one-fourth of the total floor area designed for use or used by the tenants; provided, that the vehicular entrances or exits are located seventy-five feet or more back of the building line of the nearest street, or are so located that dangerous traffic or otherwise objectionable conditions, as may be determined by the board of zoning appeals in article VIII of this chapter, will not be created.

(5) Open parking spaces accommodating motor-driven passenger vehicles of the persons residing in the building on the premises, provided, that no part of such parking space shall occupy any part of the side yards and courts nor more than thirty percent of the rear yard required by these regulations; and provided further, that any such parking space between the outside walls of the building and the line of any street upon which the lot abuts shall require the approval of the board of zoning appeals.

(k) A private garage which is not appurtenant to any of the above uses and housing not more than two motor-driven vehicles, nor exceeding eight hundred square feet in area, if located fifty feet or more back of the building line of the nearest street, and abutting and opening directly upon a public alley.

(l) In the B district, a public storage garage, or the temporary parking of motor vehicles on an alley lot, so recorded on the records of the city clerk or the county clerk, when no part of such garage or the space for such parking is located within twenty-five feet of any street building line, and when vehicular entrances and exits open directly on a public alley.

(m) In the B district temporary use of premises by fairs, circuses or carnivals, upon compliance with the applicable provisions of this Code.

(n) Public or private schools, municipal recreational uses, pumping stations and fire engine houses may be erected in any district. In the case of a fire engine house located in a residential district, a public hearing shall first be held by the mayor and common council. Police stations shall be located only in commercial and industrial districts.

Note: See article VIII of this chapter for other uses which may be approved in residential district by the board of zoning appeals. (3-5-59, § 3; 7-19-79; 7-17-80.)

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### **Section 21-16 Same--In commercial districts.**

(a) All uses authorized for the commercial districts are subject to the limitations of law and municipal regulations under the provisions of the Charter of the city.

(b) In the commercial district, all buildings and premises, except as otherwise provided in these regulations, may be used for any use permitted in the residential district or for any other use except the following:

- (1) Ammonia, bleaching powder or chlorine manufacture.
- (2) Bag cleaning establishment.
- (3) Distillation of coal, wood, bones or tar.
- (4) Distillation of turpentine or varnish.
- (5) Emery cloth manufacture.
- (6) Fertilizer manufacture.
- (7) Fireworks or explosives manufacture.
- (8) Garbage incineration other than in municipal plants or incidental to the operation of hotels, restaurants, apartment houses and dwellings.
- (9) Glue, size or gelatine manufacture.
- (10) Grinding, cooking, boiling, rendering or storing of slaughterhouse refuse, animal refuse, rancid fats or refuse of dead animals.
- (11) Pyroxyline or celluloid manufacture.
- (12) Stockyards.
- (13) Sulphuric, nitric or hydrochloric acid manufacture.
- (14) Tetra-ethyl lead precipitate or liquid manufacture. (3-5-59, § 4.)

### **Section 21-17 Same--Industrial.**

In the industrial districts all buildings and all premises may be used for any purpose whatsoever not in conflict with law or municipal regulations. No building shall be erected or altered for use and no building or premises shall be used unless the application for the permit shall first be presented to and approved by the mayor and common council and board of zoning appeals. (3-5-59, § 5.)

**Section 21-17A Article III. Nonconforming Uses.**

**Section 21-18 When permitted.**

The lawful use of a building or premises, as existing and lawful at the time of the adoption of any regulations heretofore or hereafter adopted, may be continued, although such use does not conform with the provisions of such regulation; provided, that no structural alteration or conversion, except such as may be required by law, or no extension, enlargement or change in design, is made or new building is erected. The casual, temporary or illegal use of a building or premises shall not be sufficient to establish the existence of a nonconforming use. (3-5-59, § 6, (1); 7-19-79.)

**Section 21-19 Certain structural alterations in buildings require change of use.**

Where structural alterations are made in a building of a nonconforming use, such use shall be changed to a use consistent with the provisions of these regulations for the district in which such building is located; provided, that structural alterations made wholly within the outside walls of nonconforming single-family dwellings, or the enclosing of side and rear porches existing on such dwellings at the time of the adoption of this regulation, shall not be prohibited. (3-5-59, § 6, (2) and (3); 7-19-79.)

**Section 21-20 Effect of addition of side and rear open porches.**

The addition of side and rear open porches to nonconforming single-family dwellings shall not be prohibited; provided, that the permitted percentage of lot occupancy is not exceeded thereby; and provided, further, that the widths of the side yards adjacent to such porches comply with the regulations. (3-5-59, § 6, (4); 7-19-79.)

**Section 21-20.1 Change or abandonment.**

A nonconforming use may be changed to a use of the same classification, provided no structural alterations are made, or may be changed to a use of a higher classification. If a nonconforming use is changed to a use of a higher classification, it shall not thereafter be changed to a use of a lower classification.

A nonconforming use, located in a residential district, which shall remain idle, unused or vacant for a continuous period of one year, whether or not the fixtures or equipment are removed, shall be considered abandoned as a nonconforming use and thereafter such building or premises shall be used for a conforming use. (3-5-59, § 6, (1) and (3); 7-19-79.)

**Section 21-20.2 Determination of existence or abandonment.**

Whether a nonconforming use exists or whether a nonconforming use has been abandoned shall be a question of fact and shall be decided by the common council. (3-5-59, § 6, (4); 7-19-79.)

**Section 21-20A Article IV. Height Districts.**

**Section 21-21 Purpose, number and designation.**

In order to regulate the height of buildings, the city is hereby divided into height districts, of which there shall be four, known as:

- (a) Forty - Foot District.
- (b) Eighty - Foot District.
- (c) One hundred thirty - Foot District.
- (d) One hundred fifty - Foot District. (3-5-59, § 7, (1).)

**Section 21-22 Districts are as shown on zoning map; applicability.**

The height districts shall be as shown on the map designated as the official zoning map, and shall apply, respectively, to: A - restricted residential districts, B - residential unrestricted, C - commercial and D - industrial. (3-5-59, § 7, (2).)

**Section 21-23 Buildings to conform to height regulations.**

Except as herein specifically provided, no building shall be altered, converted, constructed or raised so as to exceed the height hereby established for the district wherein such building is located. (3-5-59, § 7, (3).)

**Section 21-24 Forty-foot district.**

In the district designated as the forty-foot district on the official zoning map, no building shall exceed forty feet in height. This applies to the residential, restricted district only. (3-5-59, § 8, (1).)

**Section 21-25 Eighty-foot district.**

In the district designated as the eighty-foot district on the official zoning map, no building shall exceed eighty feet in height. This applies to the residential, unrestricted district only. (3-5-59, § 9, (1).)

**Section 21-26 One hundred thirty-foot district.**

In the district designated as the one hundred thirty-foot district on the official zoning map, no building shall exceed one hundred thirty feet in height. This applies to the commercial district only. (3-5-59, § 10, (1).)

**Section 21-27 One hundred fifty-foot district.**

In the district designated as the one hundred fifty-foot district on the official zoning map, no building shall exceed one hundred fifty feet in height. This applies to the industrial district only. (3-5-59, § 11, (1).)

**Section 21-28 Exceptions.**

The foregoing requirement in the height districts shall be subject to the following exceptions and regulations:

(a) Spires, towers, domes, minarets, pinnacles, penthouses over elevator shafts, ventilation shafts, chimneys, smoke stacks and fire sprinkler tanks may be erected to a greater height than any limit prescribed in these regulations when and as they may be approved by the mayor and common council and board of zoning appeals; provided, that such structures when above such limit in height shall be fireproof, and no floor or compartment thereof shall be constructed or used for human occupancy above the top story of the building upon which such structures are placed; and provided further, that penthouses, ventilation shafts and tanks shall be set back from the exterior walls distances equal to their respective height above the adjacent roof.

(b) Public or semi-public buildings of an institutional character or monumental character may exceed the height regulations for the district in which such buildings are to be located when set back from the established building lines and all lot lines one foot for each foot of excess height.

(c) Churches may be erected to a height in excess of that authorized in the district in which located upon the approval of the mayor and common council and the board of zoning appeals.

(d) On through lots one hundred feet or less in depth, the height of buildings may be measured from the curb level of either street. On through lots more than one hundred feet deep the height regulations and basis of height measurement for the street permitting the greater height shall apply to the depth of one hundred feet only from the street.

(e) Nothing in these regulations shall prevent the erection in any height district of a building complying with the requirements of the forty-foot height district. (3-5-59, § 12.)

**Section 21-28A Article V. Area Districts.**

**Section 21-28D Division 1. Generally.**

**Section 21-29 Purpose, number and designation.**

In order to regulate the area of yards and courts and the percentage of the lot which may be occupied by buildings hereafter erected or enlarged, the city is hereby divided into area districts, of which there shall be four, known as A, B, C and D. (3-5-59, § 13, (1).)

*Editor's note.--The ordinance provisions codified in this division were adopted March 5, 1959.*

**Section 21-30 Districts are as shown on zoning map.**

The area districts shall be as shown upon the map designated as the official zoning map. (3-5-59, § 13, (2).)

**Section 21-31 Buildings to conform to area regulations.**

Except as hereinafter provided, no building shall be erected nor shall an existing building be structurally altered, enlarged or rebuilt except in conformity with these regulations. No lot area shall be so reduced or diminished in area that yards, courts and open spaces shall be smaller than prescribed by these regulations. (3-5-59, § 13, (3).)

**Section 21-31D Division 2. A Area District.**

**Section 21-32 Minimum dimensions of yards and courts.**

In the A area district the minimum dimensions of yards and courts and the maximum percentage of lot occupancy shall be the same as for a B area district; except, that hereafter no building shall be erected, and no buildings or premises altered for use or used as an apartment house, hospital, sanitarium, lodging or boarding house, public garage, flat, hotel or community house, but shall be erected or altered for use or used only as a wholly detached single-family dwelling with two side yards, church, transportation right-of-way, or school, when approved by the board of zoning appeals as provided in article VIII of this chapter. (For other uses permissible in the A area district, see section 21-15 and article VIII of this chapter.) (3-5-59, § 17.)

**Section 21-32D Division 3. B Area District.**

**Section 21-33 Minimum dimensions of yards and courts.**

In the B area district the minimum dimensions of yards and courts and the maximum percentage of lot occupancy shall be as provided in this division. (3-5-59, § 16, (1).)

**Section 21-34 Rear yard.**

There shall be a rear yard having either a depth of not less than fifteen percent of the depth of the lot, or a depth of not less than five inches for each foot of building height, whichever is greater. This yard need not exceed twenty-five feet in depth; provided, it has a depth of not less than five inches for each foot of building height. (3-5-59, § 16, (2).)

**Section 21-35 Side yard.**

A side yard shall not be less than two inches wide for each foot of building height. A side yard shall not be less than five feet wide and there shall be at least two side yards. (3-5-59, § 16, (3).)

**Section 21-36 Open court.**

An open court shall be not less than five feet wide nor less than two and one-half inches wide for each foot of height of such court. (3-5-59, § 16, (4).)

**Section 21-37 Enclosed court.**

An enclosed court shall not be less than six feet wide, nor less than three inches wide for each foot of height of such court, nor shall its area be less than twice the square of its required least dimension. (3-5-59, § 16, (5).)

**Section 21-38 Percentage of lot occupancy.**

No building, with its accessory buildings, shall occupy in excess of forty percent of an interior lot, nor in excess of fifty percent of a corner lot, nor in excess of sixty percent of a triangular lot. (3-5-59, § 16, (6).)

**Section 21-38D Division 4. C and D Area Districts.**

**Section 21-39 Minimum dimensions of yards and courts.**

For residence, in the C and D area districts, the minimum dimensions of yards and courts and the maximum percentage of lot occupancy shall be the same as for the B area district. (3-5-59, § 18, (1).)

**Section 21-40 Percentage of lot occupancy.**

For commercial and industrial buildings in the C and D area districts, the maximum percentage of lot occupancy may be one hundred percent; provided, that the Building Code and the sanitary provisions of this City Code, and the provisions of this chapter with reference to parking area, are fully complied with. (3-5-59, § 18, (2).)

**Section 21-40D Division 5. Area District Exceptions.**

**Section 21-41 Exceptions enumerated.**

The foregoing requirements in the area districts shall be subject to the following exceptions and regulations:

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(a) A building upon a through lot may waive the requirements for a rear yard when complying with the percentage of lot occupancy requirements; provided, that in computing percentage of lot occupancy one of the streets upon which the lot abuts may be assumed to be an alley; and provided further, that when such a building is located between lots requiring rear yards on either or both sides, such building on a through lot shall provide a court on the side or sides on which the adjoining lots are required to provide rear yard.

(b) Every part of a required yard or court shall be open from its lowest point to the sky unobstructed, except for the ordinary projections of skylights above the bottom of such yard or court, and except for the projections of sills, bolt courses, cornices and ornamental features not to exceed four inches; provided, that open or lattice enclosed fire escapes, the ordinary projection of chimneys and flues, and portions of a building which do not extend above the level of the first floor of the main building may be permitted if so placed as not to obstruct light and ventilation.

(c) Courts or shafts for bathrooms, toilets, hallways or stairways may be of smaller dimensions than herein specified for courts; such courts or shafts, and also yards less than five feet wide, and open and enclosed courts not conforming to the requirements of these regulations, will be considered as part of the building in computing the percentage of lot occupancy.

(d) In the residential A and B area districts the percentage of lot occupancy of interior and corner lots that are heretofore occupied by dwellings may be increased ten percent to permit the erection of one story private garages only.

(e) In case of recorded private restriction lines the whole area of privately owned property will be considered in computing the area of occupancy; also, in computing the lot occupancy the area between the building line and the building restriction line, upon which the owner pays taxes shall be counted in the area of the lot.

(f) In the B district a row of connected single-family dwellings with division walls from the ground up or from the lowest floor up may be erected and deemed a single building for the purpose of these regulations; provided, the building conforms with the following requirements:

(1) All the buildings in such group shall be erected simultaneously and shall not exceed two stories in height.

(2) There shall be two side yards, each conforming with the regulations of the B district area, but each side yard shall not be less than twenty feet in width; and the rear yard shall conform with the regulations of the B area district, but shall be not less than twenty feet in depth.

(3) The structure and its accessory buildings shall not occupy in excess of twenty-five percent of the total area.

(4) No exterior stairway, unless located within the buildings area, shall be constructed above the level of the main floor joists.

(5) A combination of single-family dwellings and apartment houses, flats or tenements in any one group is prohibited.

(6) The group shall consist of not more than twelve single-family dwellings. There shall be at least one front entrance for each four family dwellings.

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(g) Churches hereafter erected, altered or enlarged in the A restricted, and B area districts shall not be subject to the maximum lot occupancy provisions applicable to such districts; provided, that yard and court provisions required for such districts are met and complied with. (3-5-59, § 19.)

### **Section 21-41A Article VI. Vehicle Parking.**

#### **Section 21-41D Division 1. Parking Areas.**

#### **Section 21-42 "Parking or garage space" defined.**

For the purpose of this division, a "parking or garage space" shall be a level area of not less than one hundred fifty square feet, exclusive of driveways or aisles giving access thereto, accessible from streets or alleys or from private driveways or aisles leading to streets or alleys, and of such shape and condition as to be usable for the temporary parking of motor-driven vehicles.

(3-5-59, § 14, (2).)

#### **Section 21-43 Minimum parking or garage space for each building.**

In all districts there shall be provided at the time of the erection of any building hereafter designated, minimum off-street parking or garage space for motor-driven vehicles in amounts not less than hereafter specified, and such area shall thereafter be maintained and not reduced below the requirements of this division. (3-5-59, § 14, (1).)

#### **Section 21-44 Limitations on location.**

No part of the open parking or garage space required which is located on the same lot with the building it is intended to serve shall be permitted within five feet of the outside walls of such building. No open parking or garage space shall be between the outside walls of a building and the line of any street upon which the lot abuts unless approved by the board of zoning appeals. (3-5-59, § 14, (3).)

#### **Section 21-45 Limited use of parking or garage space when located on lot other than lot on which related building stands.**

When the parking or garage space for vehicles in connection with any building, as required by this division, is provided on any lot other than the same lot on which the building is located, then such space shall not be used for any other purpose or included or counted as any part of a yard or court or other open space required under these regulations for or accessory to or in connection with any other building, structure or use. (3-5-59, § 14, (4).)

#### **Section 21-46 Applicability of division to existing buildings.**

Nothing contained in this division shall be construed to prohibit the establishment of any parking

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or garage space for existing buildings; provided, the applicable provisions of the foregoing sections of this division are met and complied with. (3-5-59, § 14, (4).)

**Section 21-47 Arrangement of parking spaces within area.**

For the purpose of this section "accessible" shall mean graded and unobstructed ingress and egress at all times to and from the parking area and to each parking or garage space within such area. An aisle required for accessibility between rows of two or more parking spaces or between a row of two or more parking spaces and the perimeter of the parking area shall be not less than fourteen feet in width, but in computing the width of an aisle between a row of two or more parking spaces and the perimeter of the parking area, a private right-of-way or alley abutting such perimeter, if accessible, shall be assumed to be the whole or a part of the width of such aisle, as the case may be. (3-5-59, § 14, (6).)

**Section 21-48 Plat or map to accompany application for building permit.**

Upon application for building permit the city clerk shall require the applicant to provide any plat, profile or topographical map necessary to determine the accessibility of the parking area. (3-5-59, § 14, (7).)

**Section 21-49 Storage garages.**

The provisions of this division shall also apply to public storage garages hereafter erected in residential areas as provided in subdivision (d), subsection (10) of section 21-15 and in subdivision (3) of subsection (a) of section 21-74 and to parking garages as permitted in article VIII of this chapter. (3-5-59, § 14, (8).)

**Section 21-50 Table for determination of number of required spaces.**

Except as otherwise provided the amount of off-street parking or garage space shall be determined in accordance with the following table:

Single family dwellings:	One parking or garage space for each dwelling unit.
Flats:	One parking or garage space for each dwelling unit.
Lodging, rooming, boarding houses or hotels:	One parking or garage space for each four guest bedrooms.
Private clubs, fraternity houses or dormitories:	One parking or garage space for each four guest bedrooms.
Apartment or tenement houses in A district:	One parking or garage space for each dwelling unit.
Apartment or tenement houses in B district:	One parking or garage space for each dwelling unit.
Apartment or tenement houses in C district:	One parking or garage space for each dwelling unit.
Hospitals:	One parking or garage space for each four beds.
Sanitariums, convalescent homes, homes for aged:	One parking or garage space for each four beds.
Orphanages, eleemosynary institutions:	One parking or garage space for each four beds.
High schools, colleges and universities:	One parking or garage space for each twenty-five students.

(3-5-59, § 14, (9).)

**Section 21-51 Lot location for off-street parking facilities.**

For all buildings the off-street parking facilities required shall be located on the same lot with such building, or on a lot adjacent to such building, or on a lot separated only by an alley from the property on which the building is located, or elsewhere when permitted by the board of zoning appeals. (3-5-59, § 14, (10).)

**Section 21-52 Fractional spaces.**

Whenever the basis used requires a fractional parking or garage space the next higher number of parking or garage spaces shall be provided. (3-5-59, § 14, (11).)

**Section 21-53 Authority of board of zoning appeals to permit waivers and modifications.**

(a) The board of zoning appeals is authorized to permit a waiver or modification of the required location or conditions of off-street parking facilities required, or both, if the board finds that such action is necessary to secure an appropriate development of a specific lot which is made difficult or impracticable by reason of steep hillsides or unusual physical conditions inherent in or directly affecting the lot as follows: Topography, grades, shapes, size and dimensions of the lot.

(b) In exercising these powers the board shall find that the waiver or modification will not be inconsistent with the spirit and purpose of the regulations, with public safety, with the present character and future development of the neighborhood, and with substantial justice. (3-5-59, § 14, (12) and (13).)

**Section 21-53D Division 2. Parking of Trailers; House Trailer Camps.**

**Section 21-54 Definitions.**

For the purposes of this division, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Mobile home; house trailer. Any vehicle greater than twenty-eight feet in length or eight feet in width so designed and constructed to permit the occupancy thereof as a dwelling for one or more persons, which is both used and occupied as a dwelling, having no foundation other than wheels, jack, skirting or other temporary supports, and designed and constructed so as to be capable of being towed upon public thoroughfares by a motor truck or tractor.

Trailer park. An area of land upon which two or more house trailers or mobile homes are harbored for the purpose of human habitation, either free of charge or for revenue purposes, and shall include any building, structure, vehicle or enclosure used or intended for use as a part of the equipment and facilities of such mobile home park.

Travel trailer. Any vehicle not greater than twenty-eight feet in length or eight feet in width, so constructed as to permit its being towed upon public thoroughfares by a motor vehicle, usually an

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automobile, and designed for the temporary use by one or more persons as a shelter or sleeping place while traveling from place to place as distinguished from the permanent use made of mobile homes. (9-17-70, § 1.)

### **Section 21-55 Prohibited parking of mobile homes.**

It shall be unlawful for any person, for compensation or otherwise, to use or permit the use of a lot or any portion of a lot in any zoned restricted residence area, block or square in the city for the parking and use of any occupied or unoccupied house trailer or mobile home at any time; and it shall likewise be unlawful for any person, for compensation or otherwise, to permit the occupation and use of any portion of a lot or parcel of land in any zoned unrestricted residence area or district for the parking of a house trailer or mobile home at any time unless such area be approved pursuant to the provisions of section 21-56. (3-5-59, § 15, (1); 1-8-68; 9-17-70.)

### **Section 21-56 How house trailer camps may be established.**

House trailer camps, conforming with the "Regulations Governing the Sanitation of House Trailer Camps" as adopted by the state public health council, and other state and municipal laws and regulations, may be established in unrestricted residential (or B) districts at such locations as are approved by the planning commission after a public hearing is held in relation thereto. (3-5-59, § 15, (2).)

### **Section 21-57 Space and location requirements for parking of house trailers.**

Each car and house trailer shall be allotted a space of not less than seven hundred square feet. The minimum dimensions shall be not less than twenty feet wide and thirty-five feet long. Each space allotment shall abut or face on a driveway or an unoccupied space of not less than twenty feet in width, which space shall have an unobstructed access to a public highway, street or alley. (3-5-59, § 15, (3).)

### **Section 21-58 Building permit requirements.**

Any person who desires to place, locate or erect a house trailer or mobile home within the city and intends to use it as a residence for himself or others shall obtain from the city a building permit, which permit shall be subject to the same rules and regulations as are in effect for the obtaining of a permit to place, locate, erect or construct a conventional type residence within the limits of the city. This section shall not be construed, however, to require the owner of a travel trailer to obtain a building permit for storing or parking it unoccupied on his own premises nor shall this section require an owner allowing his property to be used for the temporary parking of a travel trailer, as above set forth, to acquire a building permit. The owner of a house trailer or mobile home shall likewise be required to obtain a building permit for any remodeling or reconstruction to a mobile home or house trailer, such permit to be acquired in the same manner as permits are acquired for the remodeling or reconstruction of a conventional type home, and the permit to be subject to the same rules and regulations. (1-8-68.)

### **Section 21-58A Article VII. Certificates of Occupancy.**

**Section 21-59 Purposes for which required; applications for and issuance of.**

Hereafter, no person shall use any building, land or premises, or part thereof, for any purpose except as a single-family dwelling until the city collector and treasurer and the building inspector shall, upon written application, have issued to such person a certificate of occupancy stating that such use complies with these regulations and that the building and premises comply with the requirements of these regulations and the building or portion of the building affected complied with the requirements of these regulations and the Building Code for such use; provided, that certificates of occupancy shall not be required for separate offices in an office building if a certificate of occupancy, as herein required, is issued for the entire building. (3-5-59, § 20, (1); 4-1-82.)

**Section 21-60 Posting of certificate.**

Certificates issued in conformity with the provisions of this article shall, except in the case of churches, be so conspicuously posted in or upon the premises to which they apply that they may readily be seen by anyone entering the premises. (3-5-59, § 20, (2).)

**Section 21-61 When certificate may be issued.**

If erection or alteration of buildings is contemplated, certificates of occupancy therefor shall not be issued until such erection or alteration has been completed in accordance with the building permit issued therefor, until all nonresident contractors' fees and taxes, if any, have been paid and until such erection or alteration has been completed to the point of availability for occupancy and use. (3-5-59, § 20, (3); 4-1-82.)

**Section 21-62 Prohibited occupation or use of premises prior to issuance of certificate.**

Any occupation and use of a building, land or premises, without a certificate of occupancy as required by these regulations shall be unlawful, and any violation thereof shall be subject to the penalties hereinafter provided. (3-5-59, § 20, (4).)

**Section 21-63 Record of certificates issued.**

A record of all certificates shall be kept on file in the office of the city collector and treasurer unless they shall have first been microfilmed, in which event the original records may then be destroyed and the microphotographs shall be kept on file in lieu thereof. (3-5-59, § 20, (5); 4-1-82.)

**Section 21-64A Article VIII. Board of Zoning Appeals.**

*For state law as to municipal boards of zoning appeals, see W. Va. Code, §§ 8-24-51 through 8-24-65.*

**Section 21-64D Division 1. Generally.**

**Section 21-65 Board continued in existence; how referred to; statutory powers and duties.**

The board of zoning appeals, as constituted immediately preceding the effective date of this Code and in conformity with the provisions of section 8-24-51 et seq. of the Code of West Virginia, is hereby continued in existence and shall continue to exercise the powers and perform the duties specified for municipal boards of zoning appeals under the provisions of chapter 8, article 24 of the Code of West Virginia. (3-5-59, § 23, pt. 1, (1).)

*Editor's note. --The board hereby continued in existence was initially created as the "board of adjustment," as provided in W. Va. Code, 1955, § 8-5-7. That statute was amended by Acts 1959, ch. 118, and again by Acts 1969, ch. 86, and the 1955 section 8-5-7 is now § 8-24-51.*

**Section 21-66 Officers.**

The board shall elect a chairman, vice chairman and a secretary annually at its first meeting held in January.

The chairman shall preside at all meetings and hearings of the board. In the absence of the chairman, the acting or vice chairman shall preside. The secretary, subject to the direction of the board and its chairman, shall conduct all correspondence of the board, send out all notices required by these regulations, shall attend all meetings of the board and all hearings, shall keep all dockets and minutes of the board's proceedings, shall compile all required records, and shall maintain the necessary files and indexes. (3-5-59, § 23, pt. 5, (6).)

**Section 21-67 Docket and minute book.**

The secretary shall keep a docket and a minute book which shall be kept posted to date.

The secretary shall enter in the docket the number of the appeals or applications, the name of the applicant, a short description by street number or otherwise of the premises, the nature of the application and the final disposition after the case has been disposed of.

All continuances, postponements, dates of sending notices and other steps taken and acts done shall be noted on the docket.

In the minute book shall be recorded the resolution relating to each case acted on, together with the vote of each member of the board. (3-5-59, § 23, pt. 5, (7).)

**Section 21-68 Publications of notice of public hearings on appeals; adjourned meetings.**

Whenever appeal is made to the board, the board shall within thirty days publish a notice of the time and place of public hearing upon such appeal, which notice shall be published at least once, not less than ten days from the date of such hearing in a daily newspaper of general circulation in the city. The board shall also give such additional notice of such hearing to interested persons and organizations as it

shall deem feasible and practicable. Such public hearings may be adjourned from time to time and, if the time and place of the adjourned meeting be publicly announced when the adjournment is had, no further notice of such adjourned meeting need be published. (3-5-59, § 23, pt. 1, (2).)

**Section 21-69 Duration of validity of orders and building permits relating to erection or alteration of buildings.**

No order of the board permitting the erection or alteration of a building shall be valid for a period longer than six months unless, within such period, the plans therefor are filed with the city clerk for the purpose of securing a building permit. Any permit approved shall be started within six months after the date of the issuance of the permit and shall proceed to completion in accordance with its terms; provided, that if the work is not started within such period, the permit shall expire. (3-5-59, § 23, pt. 1, (3).)

**Section 21-70 Duration of validity of orders permitting use of buildings or premises.**

No order of the board permitting the use of a building or premises shall be valid for a period longer than six months unless such use is established within such period; provided, that where such use permitted is dependent upon the erection or alteration of a building, the provisions of section 21-69 shall apply. (3-5-59, § 23, pt. 1, (4).)

**Section 21-71 Reports of board proceedings and records thereof.**

The board shall cause to be made a record of all of its proceedings, which record shall set forth the full reasons for its decisions and the vote of each member participating therein. Such record, immediately following the board's final decision, shall be filed in the office of the secretary of the board and be open to public inspection. (3-5-59, § 23, pt. 1, (5).)

**Section 21-72 Annual reports to planning commission, mayor and common council.**

The board shall annually, on or before the 1st day of September make a report for the fiscal year preceding, or June 30, to the planning commission and to the mayor and common council, summarizing cases considered and action taken. (3-5-59, § 23, pt. 1, (6).)

**Section 21-72D Division 2. Powers Relating to Exceptions and Special Questions.**

**Section 21-73 Powers relative to variances.**

In addition to the various powers set forth above, the board shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative officer in the enforcement of this chapter, or of any ordinance adopted pursuant hereto, and to grant variances, all in accordance with chapter 8, article 24 of the Code of West Virginia. (3-5-59, § 23, pt. 3.)

**Section 21-74 Granting of exceptions.**

(a) Upon appeals to the board, the board is hereby empowered to grant requests for the following exceptions, when, in the judgment of the board, such exceptions shall be in harmony and not in conflict with the general purpose and intent of this chapter and the zoning map and will not tend to affect adversely the use of neighboring property in accordance with the zoning regulations and zoning map:

(1) Permit, in a residential district, a college, a university, a private school or a nonprofit institution of higher learning or culture devoted exclusively to the arts and sciences, if (a) its space and equipment may not be readily convertible to business use, (b) its operation would be impaired by location on a business street, and (c) it is not likely to become objectionable in a residential district because of noise, traffic and number of students.

(2) Permit a philanthropic or eleemosynary institution in the residential district, except in an A restricted area district.

(3) Permit in a residential district a public storage garage in an apartment house when the vehicular entrances and exits are so located that dangerous traffic or otherwise objectionable conditions will not be created; provided, that the floor area of such garage does not exceed one fourth of the total floor area designed for use by the tenants.

(4) Permit, in a residential district, except as hereinafter provided, the use of an unimproved lot for the temporary parking of motor vehicles, subject to such restrictions and safeguards as may, in the opinion of the board, be necessary to protect the residential property in the vicinity, when such use is found to be reasonably necessary or convenient to the neighborhood, and not to interfere unreasonably with most appropriate use of neighboring property under the zone plan. The use of an unimproved lot in an A restricted district for the temporary parking of motor vehicles shall not be permitted.

(5) Permit, in a residential district, a temporary building for commerce and industry which is incidental to the residential development, such permit to be issued for a period of not more than one year, but such permit may be renewed by the board from time to time for not exceeding a like period.

(6) Permit, in a residential or commercial district, the construction of private garage storage facilities in excess of eight hundred square feet accessory to a dwelling, or educational, philanthropic or eleemosynary institution, on a lot containing an area of not less than one acre; provided, the facilities do not adversely affect light and air of the dwelling or institution and of neighboring property.

(7) Permit, in a residential or commercial district, the erection of a one-story, private garage not exceeding four hundred square feet in area accessory to a dwelling nonconforming because of lot over-occupancy; provided, that such garage does not adversely affect light and air of such dwelling and neighboring property, and that the total over occupancy of the lot does not exceed four hundred square feet.

(8) Permit the use of a building as an apartment house, flat, tenement, lodging, rooming, or boarding house, private club, fraternity, lodge or hotel where parking space is provided to the extent required by division 1 of article VI of this chapter on a lot other than the lot upon which the building is located or adjacent thereto or separated only by an alley from the property on which such building is located; provided, that the board shall find that such parking area is so located with respect to the building as to furnish reasonable and convenient parking facilities for the tenants, guests and occupants of such building; and provided, also, that the board shall approve such parking area under the provisions of subdivision (4) of this subsection.

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(9) Permit in the B district the erection of antenna towers for television and frequency modulating broadcasting to any height and in conjunction therewith the erection, alteration or use of buildings for transmission equipment on the same lot or elsewhere when the board finds:

a. That the proposed location and height will not affect adversely the use of neighboring property, and radio reception, in accordance with the zoning regulations and the zoning map.

b. That any part of an antenna tower is removed from all lot lines a distance of at least one-sixth of its height or its separation from other property by an intervening street.

c. That the proposed height of the tower is reasonably necessary to render satisfactory service to all parts of the city, and Randolph and adjoining counties.

d. That any transmission equipment to be housed in a residential district is technically necessary for satisfactory and reasonable economical transmission.

(b) Before granting such appeals the board shall submit the application to the planning commission for a report in writing; provided, that antenna towers to be erected to a greater height than any limit prescribed by these regulations for buildings in the city shall require approval of the mayor and common council. (3-5-59, § 23, pt. 2.)

### **Section 21-75 Powers relative to nonconforming uses.**

The board may grant permits with respect to nonconforming uses as follows:

(a) If no structural alterations are made, the board may permit a nonconforming use to be changed to another nonconforming use; provided, that the board finds that such proposed use will not more adversely affect the present character or future development of the neighborhood.

(b) If no structural alterations are made, the board may permit a nonconforming use of a part of a building to be extended throughout the building; provided, that the board finds that such extension will not adversely affect the present character or future development of the neighborhood in accordance with the zoning regulations. (3-5-59, § 23, pt. 4.)

### **Section 21-75D Division 3. Miscellaneous Provisions.**

#### **Section 21-76 Meetings; quorum.**

The board shall hold at least one meeting each month. Four members shall constitute a quorum of the board, but a lesser number may meet and adjourn. (3-5-59, § 23, pt. 5, (1).)

#### **Section 21-77 Cases before the board.**

Each appeal to the board shall be made on the appropriate forms and all information called for by such form shall be furnished by the appellant or applicant. At the time of filing such appeal, any fee

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required by the mayor and common council shall be paid to the city collector and treasurer.

Appeals, including all applications for variances or specific exceptions, unless made on an appropriate form properly filled out with all required data attached, shall not be accepted for hearing. (3-5-59, § 23, pt. 5, (2).)

### **Section 21-78 The docket and calendar.**

Each appeal, filed in proper form with the required date, shall be numbered serially, docketed, and shall be placed upon the calendar of the board by the secretary thereof.

Appeals shall be heard in the order in which they appear on the calendar; except, that an appeal or application may be advanced for hearing by order of the board for good cause shown.

The calendar of cases to be heard shall be posted in the office of the city clerk ten days before the meeting. Notice of the hearing of an appeal shall be given by mailing a notice ten days before such hearing to the appellant or applicant at the address stated in the appeal, and such other notice shall be given to such other interested property owners or persons as may be directed by the chairman or acting chairman of the board. (3-5-59, § 23, pt. 5, (3).)

### **Section 21-79 Hearings.**

The applicant or appellant may appear in his own behalf or be represented by an attorney or agent at the hearing. In the absence of any personal appearance on behalf of the appellant or applicant, the board may, in its discretion, proceed to dispose of the matter on the record before it.

At the hearing the order of procedure shall be as follows:

- (a) Appellant or applicant.
- (b) Building official, mayor, member or members of the common council or other administrative officers.
- (c) Interested property owners or other interested persons.
- (d) Appellant's rebuttal. (3-5-59, § 23, pt. 5, (4).)

### **Section 21-80 Rehearing.**

No rehearing of any decision by the board shall be had except on motion by a member of the board to reconsider, made not later than the first meeting succeeding the meeting at which the resolution was acted on and carried by not less than four affirmative votes. If a rehearing is granted, notice shall be given as in the case of an original hearing.

Any applicant whose appeal has been denied by the board may institute a new appeal not less than one year from the date upon which the board took action upon the previous appeal. (3-5-59, § 23, pt. 5, (5).)

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### **Section 21-81 Advice.**

No informal requests for advice or moot questions shall be considered by the board. (3-5-59, § 23, pt. 5, (8).)

### **Section 21-82 Fee for filing of an appeal.**

Any person, except an association created for civic purpose and not for profit, filing an appeal to the board under the provisions of chapter 8, article 24 of the Code of West Virginia, and the regulations for the height, area and use of buildings in the city as provided in this chapter, shall pay the city collector and treasurer, with such appeal, a fee of ten dollars. If such appeal is based solely upon an alleged error in any order, requirement, decision, determination or refusal made by the building official, the mayor or the city clerk, or any other official or body, and such appeal is sustained by the board, the board shall direct the refund of the fee paid. The board shall not consider any appeal filed by any person, except an association created for civic purposes and not for profit, unless the fee required has been paid. (3-5-59, § 23, pt. 6.)