

# City of Elkins Study and Report on Zoning



**November 2021–DRAFT**

## TABLE OF CONTENTS

### Section 1: Introduction

- ♦ Legal Requirements for Study and Report on Zoning
- ♦ Enactment of a Zoning Ordinance

### Section 2: Study of the Land

- ♦ Evaluating the Existing Conditions
- ♦ Current and Proposed Districting
- ♦ Character of the Buildings and Lots
- ♦ Desirable Use of the Land

### Section 3: Report on Zoning

- ♦ Review of the Study of the Land and the 2015 Comprehensive Plan
- ♦ Summary of Proposed Zoning Ordinance

### Appendices

- ♦ Appendix A—Proposed Zoning Ordinance
- ♦ Appendix B—Proposed Zoning Map

## Section 1: Introduction

### Legal Requirements for Study and Report on Zoning

W. Va. Code § 8A-7-4 requires that the Elkins Planning Commission and City Council:

- (a) After adoption of a comprehensive plan and before enacting a zoning ordinance . . . study the land within [their] jurisdiction. The study may include:*
  - (1) Evaluating the existing conditions, the character of the buildings, the most desirable use for the land and the conservation of property values in relation to the adopted comprehensive plan; and*
  - (2) Holding public hearings and meetings with notice to receive public input.*
- (b) The planning commission must use the information from the study and the comprehensive plan and prepare a report on zoning. The report shall include the proposed zoning ordinance, with explanatory maps showing the recommended boundaries of each district, and the rules, regulations and restrictions for each district.*
- (c) No zoning ordinance may be enacted without a study and report.*

The City of Elkins City Council and the Planning Commission have studied the land within their jurisdiction and prepared a report that is based on both a study of the land and the City's comprehensive plan, recently updated in 2015. It is the intent of City Council, based on this *Study and Report on Zoning*, pursuant to W. Va. Code § 8A-7-4, to repeal the current zoning ordinance and adopt a new zoning ordinance.

### Enactment of the Zoning Ordinance

The West Virginia Legislature has provided the City of Elkins the authority to enact a zoning ordinance through W. Va. Code § 8A-7-1, which states "The governing body of the municipality . . . may regulate land uses within its jurisdiction by: (1) Adopting a comprehensive plan; (2) Working with the planning commission and the public to develop a zoning ordinance; and (3) Enacting a zoning ordinance." W. Va. Code § 8A-7-2 provides a list of requirements and optional considerations for the City of Elkins when enacting a zoning ordinance.

After completing this *Study and Report on Zoning*, the City Council must hold at least two public hearings and give public notice before enacting the proposed zoning ordinance. At least one public hearing must be held during the day, and at least one public hearing must be held during the evening. W. Va. Code § 8A-7-5. After proper notice and public hearings are held, the City Council may enact the zoning ordinance or hold an election to have the qualified voters residing in the affected area approve the zoning ordinance. After the enactment of the zoning ordinance, the City Council must file the enacted zoning ordinance in the Office of the Randolph County Clerk. W. Va. Code § 8A-7-6.



# Study and Report on Zoning

## Section 2: Study of the Land

### Evaluating the Existing Conditions

The existing conditions in Elkins have been studied, analyzed, and discussed extensively by the City Council, the Planning Commission, and interested citizens during the drafting processes for the comprehensive plan and proposed zoning ordinance. The Land Use and Sustainable Development Law Clinic at West Virginia University College of Law assisted the City of Elkins with its comprehensive plan, adopted in 2015. As part of the comprehensive plan process, the City, with the help of the Land Use Clinic, identified current conditions and the needs of the community, and established an action plan for achieving the community's goals. Several land use issues were brought to light during the comprehensive planning process. Issues included increasing recreational opportunities, addressing historical land use regulations, preserving historical resources, and beautification of the downtown.

The City of Elkins included considerable community input in the development of the 2015 Comprehensive Plan. The City held two open house public meetings to solicit input. At the first meeting, attendees were asked to identify the strengths, weaknesses, opportunities, and threats within the city and, more specifically, to identify any land use issues within the city. At the second meeting, recommendations were presented to the public in order to gain input on prioritizing the recommendations. In addition, two online surveys were conducted, both of which were also made physically available at City Hall. The City also conducted stakeholder interviews and held a youth focus group session at Elkins High School. Resulting from all of these public input efforts, notable public input related to land use and, in particular, zoning includes the following:

- Strengths & Opportunities: Historic district, historic preservation, rail trail, tourist opportunities, manufacturing, greenspace, theater, heritage center, community gardens, downtown business growth, parks
- Challenges: Blight, modernizing historic areas, refuse/recycle disposal, parks, signage requirements, excessive signage in areas, parking downtown, lack of middle-income housing, landscaping and buffering of parking lots, not enough murals, façade improvements needed
- Land Use: Focus development in Tygart Valley Mall area or at the depot/rail yard area, annex to increase population to 10,000 for grant purposes and otherwise needed in certain areas, lack of developable land within city, trail network needed, take advantage of riverfront, protecting historic buildings, avoid gambling uses, additional historically protected areas near riverfront, additional parking and greenspace, restoration of downtown, design guidelines as to color schemes, landscaping requirements for parking, limit signs near Randolph Ave., public green spaces and parks needed, add historic districts, needed signage, additional parking in certain areas
- Focus tax spending on: dilapidated buildings, recreation, parks, downtown
- Top priorities related to land use/zoning: dog park, refuse facilities, improved landscaping in sensitive areas, additional historic preservation

Based on the surveys, land use and zoning should seek to continue encouraging a small town atmosphere, preserving natural qualities, and maintaining recreational opportunities. Areas for improvement include additional recreational opportunities and better planning and zoning. Land use planning and zoning should address the need for housing, growth in general, annexation of various areas, and filling storefronts and improving downtown. Survey results overwhelmingly expressed a desire to turn the old armory into a community or recreation center.

Improved community aesthetic through landscaping was repeatedly identified as a beautification opportunity.

## **Current and Proposed Districting**

The City developed an existing land use map for inclusion in the 2015 Comprehensive Plan based on a study of land use patterns and development over the years. Later in the comprehensive plan process, the Town also developed a future land use map to reflect the desires of the community for how development should occur in the future. The plan includes mapping of transportation concerns, potential gateways, existing land use, development constraints, development areas, and future land use. All of these land use maps, reflecting a careful and recent study of the land, were frequently referred to and studied by City Council and the Planning Commission in setting new district boundaries for the proposed zoning ordinance.

Currently the City is divided into four zoning districts: Restricted Residential, Unrestricted Residential, Commercial, and Industrial.

Moving forward, the proposed zoning ordinance divides the community into more nuanced districting with nine proposed zoning districts: Agriculture (Ag), Single-family Residential (R-1), City Residential (R-2), Recreational (R), Central Business District (CBD), Commercial (B-1), Educational €, Industrial (I-1), and Telecommunications Overlay (TO).

## **Character of the Buildings and Lots**

As part of the comprehensive plan process, both the character and condition of buildings were identified and analyzed. The City of Elkins is mostly built-out and therefore has little room for new development. Any new development would most likely occur in the few remaining vacant lots or on lots where buildings are demolished. Around 12% of the housing units within Elkins are vacant, and the housing stock is considerably older, with over 30% built in 1939 or earlier. Throughout the City of Elkins are numerous historical resources, several of which are designated on the National Register of Historic Places as an individual historic property or as a neighborhood. The land within the City of Elkins includes no subsidence areas, a few areas in the floodplain along waterways, as well as a few areas with steep slopes. Elkins is urban in nature and does include rural lands used for agricultural or conservation purposes.

The City is primarily a residential community, with most of the residential property, approximately 68%, being single-family. A few pockets of multi-family uses exist as well. As compared to the county, Elkins has a proportionately larger number of renter-occupied housing—approximately 59 percent are owner occupied and 41 percent are renter occupied. Meanwhile, commercial uses are concentrated in the downtown business district, on Randolph Avenue near the railroad, and on US 250.

Being the County seat, Elkins is home to many public uses, particularly in the downtown business district, where the courthouse, county office buildings, and other public uses are located. Industrial uses are mostly located in the Elkins Industrial Park. Meanwhile, Elkins contains a number of educational and institutional uses associated with Davis & Elkins College.

Recreational uses are located throughout the city. These include a number of parks, such as

# Study and Report on Zoning

Bluegrass Park, Davis Street Park, Elkins City Park, Glendale Park, and Riverbend Park. Within these parks are ball fields, pavilions, playgrounds, and many other recreational amenities.

The City Council and Planning Commission studied the information gathered during the comprehensive plan process and incorporated the information into various zoning recommendations. The information proved helpful in instances such as setting district boundaries and establishing lot, yard, and height requirements.

## **Desirable Use for the Land**

The 2015 Comprehensive Plan identifies land use needs related to increasing recreational opportunities, addressing historical land use regulations, preserving historical resources, and the beautification of downtown.

Much of the new business development has occurred just outside of city limits. Annexation of these growth areas would allow for orderly planning of future growth in the area around the city. Preferred development areas include Randolph Avenue, the railyard, Wees Historic District, Highlands Meadows neighborhood, and North Randolph Avenue. These areas are where development, infill development, or redevelopment are encouraged in order to promote a well-designed and coordinated community. Housing for an aging population and rental housing for families is needed in the City of Elkins; and in order to meet these needs, infill development or annexation may be necessary.

In order to better protect historical resources, the comprehensive plan identifies a potential need to take a tailored approach to zoning with overlay districts. Regulations should ensure that signage in these nuanced historical areas mirrors the look and character of already present signs, and minimizes oversized signs that impact the character of the area.

In drafting the proposed zoning ordinance, the City found the existing and future land use maps especially helpful in determining the community's desired use of land. The future land use map shows where development is desired and where land uses might be encouraged moving forward. In the proposed zoning ordinance, the City compared the existing and future land use maps to develop a comprehensive list of uses that may occur in each of the proposed districts. Comparing the maps also enabled the City to district uses in a way that minimizes nonconforming uses and reflects the community's desired pattern of development. Lastly, mapping aided the City in generally districting uses and establishing lot, yard, and setback requirements.

During the comprehensive planning process, the City recognized the need to completely overhaul the City's zoning ordinance because it has not been updated in several decades. Specifically, the City's current zoning ordinance lacks landscaping and buffer requirements. The current zoning ordinance would benefit from improved regulations regarding signage, setbacks, and fencing requirements. A potential need exists for additional commercial districts and overlays to protect historical areas than is present in the current zoning ordinance. Specifically, design guidelines may be beneficial in better preserving these historical resources.

The comprehensive plan also identifies the following needs in an updated zoning ordinance: updated definitions, a comprehensive list of uses, uses delineated specifically per each

district, residential districts with more land zoned as single-family in order to protect the character of certain neighborhoods, inclusion of affordable housing and housing for persons with disabilities, two distinct commercial districts, provisions for conversion of single-family units to multi-family units, and planning for traffic management.

## Section 3: Report on Zoning

### Review of the Study of the Land and 2015 Comprehensive Plan

The Planning Commission has prepared this *Study and Report on Zoning* based on its study of the land, as explained in “Section 2: Study of the Land,” and the 2015 Comprehensive Plan. Many of the issues identified in the 2015 Comprehensive Plan relate to zoning and therefore have been considered or addressed in the proposed zoning ordinance.

2015 Comprehensive Plan’s Goal 1: “Further strengthen public safety services to meet the needs of existing and future residents and businesses.”

*Objective 3, “Provide residents and students with information regarding the effects of drug use,” Action Step 2, “Explore the possibility of the development of a drug abuse treatment center in Elkins.”*

The proposed zoning ordinance allows clinics, which are defined as an “establishment providing medical, chiropractic, psychiatric, or surgical services exclusively on an outpatient basis, including emergency treatment, and diagnostic services,” and would include drug treatment services, in three districts as permitted by right: Central Business, Commercial, and Educational. Insofar as Elkins would like to promote the availability of drug abuse treatment services, the community has ensured through its proposed zoning ordinance that such services may locate within the community where appropriate.

2015 Comprehensive Plan’s Goal 2: “Improve traffic and pedestrian circulation to provide a safer and more accessible transportation network for residents.”

*Objective 1, “Improve the walkability of the City.”*

The proposed zoning ordinance establishes clear sight triangle requirements to improve the safety of walkable areas within the city, particularly at the intersection of two roads. Clear sight triangles are areas within the corners of properties at an intersection within which landscaping and fencing must be under a certain height to ensure a traveler’s line of sight is sufficient for safe crossing.

*Objective 2, “Investigate parking options in the downtown business district.”*

The proposed zoning ordinance generally addresses parking needs with detailed parking requirements for all uses that take into account the needs of workers, visitors, and customers, as well as loading and unloading needs. The proposed ordinance also addresses landscaping requirements for parking areas.

2015 Comprehensive Plan’s Goal 3: “Provide opportunities for increased economic development.”

# Study and Report on Zoning

*Objective 1, “Identify areas for redevelopment and new development to increase the tax base,” Action Step 1, “Annex surrounding lands to increase tax base and potential development areas.”*

The proposed zoning ordinance provides for annexation through a parallel procedural plan for annexing land and simultaneously incorporating the annexed land into the zoning ordinance to allow a seamless transition.

*Objective 2, “Capitalize on visitors to the American Mountain Theater and Durbin and Greenbrier Valley Railroad,” Action Step 2, “Develop a signage plan identifying where shops, dining, and retail are located.”*

A comprehensive sign ordinance is included in the proposed ordinance draft. Although the draft does not make distinctions between signs based on subject matter, like identification or wayfinding, the draft carefully considers which types, size, number, and other objective qualities of signs are appropriate in each district within the City of Elkins. This ensures that signage achieves the look and feel desired within the city and addresses public safety concerns.

2015 Comprehensive Plan’s Goal 4: “Enhance and protect the character for the City through land use planning.”

*Objective 1, “Protect the natural and historic character of the City through zoning,” Action Step 1, “Revise the zoning ordinance to be consistent with the Comprehensive Plan and to help encourage new growth and preserve the historic character of the City.”*

Many aspects of the proposed zoning ordinance encourage new growth and preserve important qualities of the city. The proposed zoning ordinance delineates and defines land uses so that they may be carefully considered as to their placement within the community. A variety of housing is considered for residential areas, emphasizing single-family where appropriate, and permitting multi-family, including affordable housing and housing for persons with disabilities, where needed. Two commercial districts allow for smaller businesses in the downtown area and reserve areas along major roadways for larger businesses. In addition, signage and landscaping requirements preserve the desired aesthetic qualities in the community and address sign-related safety concerns. Accessory dwellings, or conversion dwellings, have been carefully considered as to their placement within the city. Although a historic overlay and design guidelines were contemplated and discussed with the public during the course of drafting the proposed zoning ordinance, provisions will be reconsidered at a later date and are not part of this ordinance update.

Lastly, a telecommunications overlay was added to the zoning ordinance to support the development of telecommunication facilities while protecting scenic viewsheds and residential development within city limits. The planning commission took into account topography and existing facilities in determining the best locations for new telecommunication facilities. Regulations in the zoning ordinance address collocation, concealment, and landscaping.

*Objective 2, “Encourage the beautification of the City to entice visitors,” Action Step 2, “Provide art throughout the downtown.”*

Art has immense potential to beautify and inspire a community. Murals, in particular, are a cost-effective means of adding art to common spaces within a community. The proposed zoning ordinance provides clear guidance on properly considering murals, as a type of signage, with design guidelines to ensure that murals are appropriate where placed within the community.



## Summary of Proposed Zoning Ordinance

The proposed zoning ordinance has been written to be consistent with the 2015 Comprehensive Plan and this *Study and Report on Zoning*. The proposed zoning ordinance is also consistent with current statutory enabling authority, state and federal case law, federal and state regulations, and commonly accepted best practices for land use and zoning.

The proposed zoning ordinance is broken down into several different articles:

- ◆ Article I: General Provisions
- ◆ Article II: Administration; Enforcement; Penalty; Amendments
- ◆ Article III: Nonconforming Uses, Structures, and Lot
- ◆ Article IV: Definitions
- ◆ Article V: Zoning Districts and Regulations
- ◆ Article VI Supplemental Regulations
- ◆ Article VII: General Regulations
- ◆ Article VIII: Sign Regulations
- ◆ Article IX: Wireless Telecommunication Facilities
- ◆ Article X: Small Cell Wireless Telecommunication Facilities

A notable aspect of the proposed zoning ordinance is the expansive list of definitions. The proposed zoning ordinance defines all uses permitted by right, conditional uses, and key zoning terminology. The thorough districting and defining of uses serve to adequately accommodate a variety of businesses within the City of Elkins. General and supplemental regulations in the proposed zoning ordinance are comprehensive and address various concerns identified while reviewing the comprehensive plan and related public input.

## Conclusion

The *Study and Report on Zoning* was completed by City Council and the Planning Commission in compliance with W. Va. Code § 8A-7-4. The intended result of this *Study and Report on Zoning* is that the City Council will consider the study and report and the proposed zoning ordinance, including any maps, and hold the required public hearings on the proposed zoning ordinance pursuant to W. Va. Code § 8A-7-5.

The City Council must complete the study of the land and report on zoning and hold the two public hearings required under W. Va. Code § 8A-7-5 before a new zoning ordinance may be adopted. The new zoning ordinance must be filed with the Office of the Clerk of Randolph County.

See Appendix A for the Proposed Zoning Ordinance

See Appendix B for the Proposed Zoning Map

**APPENDIX A:**  
**PROPOSED**  
**ZONING ORDINANCE**

## **City of Elkins Zoning Ordinance**

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

#### **Section 21-1 Title.**

This ordinance shall be known as the Zoning Ordinance of the City of Elkins, West Virginia, hereinafter referred to as "this code" or "this ordinance."

#### **Section 21-2 Authority.**

Whereas, by act of the West Virginia State Legislature, as recorded in West Virginia Code, the governing body of any county or municipality may, by ordinance, classify the territory under its jurisdiction into districts of such number, shape, and size as it may deem best suited to carry out the purpose of zoning.

#### **Section 21-3 Purpose.**

This code is consistent with the City of Elkins Comprehensive Plan and was developed to promote the health, safety, and general welfare of the public. Other purposes of this code include:

- (a) To plan so that adequate light, air, convenience of access, and safety from fire, flood, and other danger is secured;
- (b) To ensure attractiveness and convenience is promoted;
- (c) To lessen congestion;
- (d) To preserve historic landmarks, sites, districts, and buildings;
- (e) To promote the orderly development of land; and
- (f) To preserve agriculture.

#### **Section 21-4 Scope and Jurisdiction.**

The provisions of this code shall apply to the construction, addition, alteration, moving, repair, and use of any building, structure, parcel of land, or sign within the City of Elkins, except work located primarily on a public way or road, or on public utility towers and poles, and public utilities, unless specifically mentioned in this code.

In fulfilling these purposes, this code is intended to benefit the public as a whole and not any specific person or class of persons. Although, through the implementation, administration, and enforcement of this code, benefits and detriments will be enjoyed or suffered by specific individuals, such is merely a byproduct of the overall benefit to the whole community. Therefore, unintentional breaches of the obligations of administration and enforcement imposed on the City of Elkins hereby shall not be enforceable in tort.

#### **Section 21-5 Interpretation, Conflict, and Severability.**

In their interpretation and application, these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.

These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute or other provisions of law. Where the conditions imposed by, or pursuant to, these regulations are different from those imposed by any other provision of these regulations or any other ordinance rule or regulation, statute, or other provision of law, the provisions which are more restrictive and which impose the higher or greater standards shall control. If any portion of this code is held invalid for any reason, the remaining herein shall not be affected.

#### **Section 21-6 Non-exclusionary Intent.**

It is not the intent of this code to exclude any persons or groups with differing economic, race, color, religion, sex, national origin, disability, or familial status from enjoyment of a residence, land ownership, or tenancy within the City of Elkins; nor is it the intent of this code to use public powers in any way to promote the separation within Elkins of economic, racial, religious, or ethnic groups, except as may be an incidental result of meeting the purposes outlined in this article.

#### **Section 21-7 Official Zoning Map.**

The Zoning Ordinance of the City of Elkins shall include this code and the accompanying Official Zoning Map, which shall be considered part of this code. The Official Zoning Map shall be the map certified by the City Council of Elkins. All subsequent amendments (i.e., rezoning) of the Official Zoning Map shall be certified by the City

Council of Elkins and then filed with both the office of the Clerk of Randolph County and the Clerk for the City of Elkins.

**Section 21-8      Enactment.**

Therefore, the Council of the City of Elkins hereby ordains for the purpose of accomplishing the objectives set out in the West Virginia Code, and Section 21-3 of this code, that the following be enacted as the Zoning Ordinance of the City of Elkins, West Virginia.

**Section 21-9      Effective Date.**

This act shall take effect [effective date here].

**Section 21-9A    Article II. Administration; Enforcement; Penalty; Amendments.**

**Section 21-10    Purpose.**

The purpose of this article is to ensure that the processes by which the zoning ordinance is effectuated have been clearly identified and delineated. This article shall outline the duties and powers of the Board of Zoning Appeals, the zoning permit process, the appeals process, and other enforcement related provisions.

**Section 21-11    Powers and Duties of Zoning Officer.**

Council shall appoint a Zoning Officer, who shall have the authority to administer and enforce this code. Duties of the Zoning Officer include but are not limited to the following:

- (a) Keep a record of plans and applications for permits and all permits issued with notations as to special conditions. All records shall be open for public inspection.
- (b) Review permit applications and notifications as necessary to determine compliance with the provisions of this code. No permit shall be issued unless it conforms to all applicable ordinances, statutes, and regulations.
- (c) All questions of interpretation and enforcement shall be initially presented and determined by the Zoning Officer. Subsequent recourse shall be, in order, to the Board of Zoning Appeals and the courts.
- (d) Upon finding that provisions of this code have been violated, notify the person or party in writing responsible for the violation(s), order the action necessary to correct the violation, and if correction is not completed within the time specified in the notice of violation, begin legal actions necessary to compel correction of the violation.
- (e) Maintain official zoning maps.
- (f) Provide information on planning and zoning upon request by citizens and public agencies.
- (g) Submit at least annually, a written report on all permits issued and notice and orders issued.
- (h) Perform additional tasks and duties as may be prescribed by the City of Elkins City Council.

**Section 21-12    Zoning Permit.**

- (a) No building or structure shall be constructed, erected, expanded, enlarged, or otherwise structurally altered until a zoning permit has been issued by the Zoning Officer.
- (b) Applications for a zoning permit shall be made available at city hall.
- (c) All applications for zoning permits shall be made in writing by the owner or authorized agent and shall be filed with the Zoning Officer. The application shall:
  - (1) Include a statement as to the proposed use of the structure or land.
  - (2) Be accompanied by a plan, drawn to scale, showing the dimensions of the lot to be built upon, the exact size and location of the building to be constructed upon the lot, and accessory buildings to be erected, and such other information as may be deemed necessary by the Zoning Officer in determining and provided for the enforcement of this Ordinance.
- (d) If the zoning permit application is approved by the Zoning Officer, then an appropriate placard issued by the City and containing the approval of the Zoning Officer, shall be returned together with the zoning permit to the applicant, following payment of the appropriate fee as determined by City Council. The placard shall be posted by the applicant in a conspicuous place upon the building or construction site prior to the commencement of any construction and shall remain upon the building or construction site during all construction operations.
- (e) A zoning permit does not alleviate the necessity to obtain a building permit as required by the City of Elkins.



**Section 21-13 Fees.**

Fees to be charged for the issuance of a zoning permit shall be determined by a schedule maintained at city hall.

**Section 21-14 Violations and Penalties.**

- (a) Any person who violates any provision of this code is guilty of a misdemeanor and, upon conviction, shall be punished for each offense by a fine not less than \$50.00 nor more than \$500.00. Each day the violation continues shall be considered a separate offense. Work carried on in violation of the cancellation of any permit issued under this code shall also be deemed a violation punishable in the same manner.
- (b) Any buildings erected, raised or converted, or land or premises used in violation of any provision of this code is declared a common nuisance and the owner of the building, land, or premises shall be liable for maintaining a common nuisance.

**Section 21-15 Injunction.**

- (a) The Planning Commission, Board of Zoning Appeals, or any designated enforcement official may seek an injunction in the Circuit Court of Randolph County, West Virginia, to restrain the owner, tenant, occupant, other persons or persons responsible, or unit of government from violating the provision of this code or any rule, regulation, or requirement adopted or established hereunder.
- (b) The Planning Commission, Board of Zoning Appeals, or any designated enforcement official may also seek a mandatory injunction in the Circuit Court of Randolph County, West Virginia, directing the owner, tenant, occupant, other persons or persons responsible, or unit of government to remove a structure erected in violation of the provisions of this code or rule, regulation, or requirement adopted or established hereunder.
- (c) If the Planning Commission, Elkins Board of Zoning Appeals, or any designated enforcement official is successful in any suit brought under this Section, the respondent shall bear the costs of the action.

**Section 21-16 Amendments to Zoning Ordinance.** The City of Elkins Council may amend this Zoning Ordinance. Before amending this Zoning Ordinance, the City Council with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.

**Section 21-17 Powers and Duties of the Board of Zoning Appeals.**

- (a) A Board of Zoning Appeals is hereby established with membership and appointment provided in accordance with the West Virginia Code.
- (b) The board shall consist of five (5) members appointed by City Council. The members of the board shall be residents of the City of Elkins for at least three years preceding his or her appointment. Members cannot be a member of the planning commission and cannot hold any other elective or appointive office in municipal government. Upon creation of the Board of Zoning Appeals, the members shall be appointed for the following terms: one for a term of one year; two (2) for a term of two (2) years; and two (2) for a term of three (3) years. The terms shall expire on the first day of January of the first, second, and third year, respectively, following their appointment. Thereafter, members shall serve three-year terms. If a vacancy occurs, council shall appoint a member for the unexpired term. A Board member may be removed only for official misconduct or neglect of duty by action of Council upon presentation of written charges. The governing body may appoint up to three (3) additional members to serve as alternate members of the City of Elkins Board of Zoning Appeals. The alternate members must meet the same eligibility requirements as set out in subsection (a). The term for an alternate member is three (3) years. The governing body may appoint alternate members on a staggered term schedule.
- (c) An alternate member shall serve on the Board when one (1) of the regular members is unable to serve. The alternate member shall serve until a final determination is made in the matter to which the alternate member was initially called on to serve during the alternate member's term.
- (d) The City of Elkins Board of Zoning Appeals shall establish written rules and procedures for designating an alternate member. An alternate member shall have the same powers and duties of a regular board member.

- (e) The members and alternate members of the City of Elkins Board of Zoning Appeals shall serve without compensation but shall be entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their official duties.
- (f) At the first regular meeting each year, the Board of Zoning Appeals shall elect a chairperson and vice chairperson from its members. The vice chairperson shall have the power and authority to act as chairperson during the absence or disability of the chairperson.
- (g) The Board of Zoning Appeals shall meet quarterly and may meet more frequently at the written request of the chairperson or by two or more members. Notice for a special meeting must be in writing; include the date, time, and place of the special meeting; and be sent to all members at least two days before the special meeting. Written notice of a special meeting is not required if the date, time, and place of the special meeting were set in a regular meeting. The Board of Zoning Appeals must have a quorum to conduct a meeting. A majority of the members of the Board of Zoning Appeals is a quorum. No action of a board is official unless authorized by a majority of the members present at a regular or properly called special meeting.
- (h) The Board of Zoning Appeals has the following duties:
  - (1) Hear, review, and determine appeals from an order, requirement, decision, or determination made by an administrative official or board charged with the enforcement of this code or rule and regulation adopted pursuant thereto;
  - (2) Authorize exceptions to the district rules and regulations only in the classes of cases or in particular situations, as specified in this code;
  - (3) Hear and decide conditional uses of this code upon which the board is required to act;
  - (4) Authorize, upon appeal in specific cases, a variance to this code;
  - (5) Reverse, affirm, or modify the order, requirement, decision, or determination appealed from and have all the powers and authority of the official or board from which the appeal was taken;
  - (6) Adopt rules and regulations concerning:
    - i. The filing of appeals, including the process and forms for the appeal;
    - ii. Applications for variances and conditional uses;
    - iii. The giving of notice; and
    - iv. The conduct of hearings necessary to carry out the board's duties under the terms of this article;
  - (7) Keep minutes of its proceedings;
  - (8) Keep an accurate and complete audio record of all of the board's proceedings and official actions and keep the audio record in a safe manner, which audio record is accessible within twenty-four hours of demand, for three years;
  - (9) Record the vote on all actions taken;
  - (10) Take responsibility for the custody and preservation of all papers and documents of the board. All minutes and records shall be filed in the office of the board and shall be public records;
  - (11) With consent from the governing body, hire employees necessary to carry out the duties and responsibilities of the board; provided, that the governing body sets the salaries; and
  - (12) Supervise the fiscal affairs and responsibilities of the board.

#### **Section 21-18 Appeal to the Board of Zoning Appeals.**

An appeal from any order, requirement, decision or determination made by an administrative official or board charged with the enforcement of this code, or rule and regulation adopted pursuant to this code, shall be filed by an aggrieved person with the City of Elkins Board of Zoning Appeals. The appeal shall:

- (a) Specify the grounds of the appeal;
- (b) Be filed within thirty (30) days of the original order, requirement, decision, or determination made by an administrative official or board charged with the enforcement of this code; and
- (c) Be on a form prescribed by the board.
- (d) Upon request of the Board of Zoning Appeals, the administrative official or board shall transmit all documents, plans, and papers constituting the record of the action from which the appeal was taken.

#### **Section 21-19 Notice and Hearing of Appeal.**

- (a) Within ten (10) days of receipt of the appeal by the Board of Zoning Appeals, the board shall set a time for the hearing of the appeal and give notice. The hearing on the appeal must be held within forty-five (45) days of receipt of the appeal by the board.

- (b) At least fifteen (15) days prior to the date set for the hearing on the appeal, the Board of Zoning Appeals shall publish a notice of the date, time, and place of the hearing on the appeal as a Class I legal advertisement in compliance with the provisions of the West Virginia Code, and written notice shall be given to the interested parties. The publication area shall be the area covered in the appeal.
- (c) The Board of Zoning Appeals may require the party taking the appeal to pay for the cost of public notice and written notice to interested parties.
- (d) At the hearing, any party may appear in person, by agent, or by an attorney licensed to practice in this state.
- (e) Every decision by the board must be in writing and state findings of fact and conclusions of law on which the board based its decision. If the board fails to provide findings of fact and conclusions of law adequate for decision by the circuit court and as a result of the failure, the circuit court returns an appealed matter to the board and dismisses jurisdiction over an applicant's appeal without deciding the matter, whether the court returns the matter with or without restrictions, the board shall pay any additional costs for court filing fees, service of process, and reasonable attorneys' fees required to permit the person appealing the board's decision to return the matter to the circuit court for completion of the appeal.
- (f) The written decision by the board shall be rendered within thirty (30) days after the hearing.
- (g) If the board fails to render a written decision within thirty (30) days after the hearing, then any party may pursue additional legal remedies to obtain a decision, including, but not limited to, seeking a writ of mandamus.
- (h) When an appeal has been filed with the Board of Zoning Appeals, all proceedings and work on the premises in question shall be stayed, except as provided below:
  - (1) If the official or board from where the appeal was taken certifies in writing to the Board of Zoning Appeals that a stay would cause imminent peril to life or property;
  - (2) Upon further administrative proceedings, including, but not limited to, submissions to and reviews by the staff or any administrative body; or
  - (3) Upon engineering or architectural work that does not disturb the real estate beyond what is necessary to complete engineering, survey work, or other tests.
- (i) Petition for writ of certiorari. The final decision of the City of Elkins Board of Zoning Appeals shall be subject to review by the Circuit Court of Randolph County, West Virginia, by certiorari, as provided by West Virginia Code Section 8A-9-1 et seq.
- (j) Nothing in this section prevents a party from obtaining an injunction.

#### **Section 21-20 Variances.**

- (a) A variance is a deviation from the minimum standards of this code and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.
- (b) The Board of Zoning Appeals shall grant a variance to this code if it finds that the variance:
  - (1) Will not adversely affect the public health, safety, or welfare, or the rights of adjacent property owners or residents;
  - (2) Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance;
  - (3) Would eliminate an unnecessary hardship and permit a reasonable use of the land; and
  - (4) Will allow the intent of this code to be observed and substantial justice done.
- (c) The Board of Zoning Appeals shall not grant a variance to allow the establishment of a use in a zoning district when such use is prohibited by the provisions of this code.

#### **Section 21-21 Conditional Use Standards.**

- (a) The conditional use permit procedure is intended to provide the Board of Zoning Appeals with review of requests to establish uses that may be appropriate in a zoning district, but that may have the potential for negative impacts on the health, safety, and welfare of the public. The conditional use standards provided in this article are intended to avoid, minimize, or mitigate adverse impacts conditional uses may have on the health, safety, and welfare of the public.
- (b) All applications for a conditional use permit shall demonstrate that:
  - (1) The use is consistent with the policies and intent of the corresponding purpose for the zoning district in which it lies and the City's comprehensive plan.
  - (2) The use is physically and operationally compatible with the surrounding neighborhood and surrounding existing uses.

- (3) The use will be designed, constructed, operated, and maintained so that it does not cause substantial injury to adjoining property.
  - (4) The use will be adequately served by public facilities and services which include but are not limited to water, sewer, electric, schools, streets, fire and police protection, storm drainage, public transit, and public parks and trails.
  - (5) Adequate off-street parking will be provided on the same property as the proposed conditional use as well as adequate ingress and egress to the property in compliance with the standards set forth in this code.
  - (6) Any storage of hazardous material will comply with all state, federal, and local regulations, and all such material will be listed and made known to the Chief of the City of Elkins Fire Department.
  - (7) The use will not endanger public health or safety or constitute a public nuisance.
  - (8) The use will not conduct operations in connection with the use which are offensive, dangerous, or destructive of the environment.
- (c) Conditions may be imposed on a proposed conditional use to ensure that potential significant adverse impacts on surrounding uses will be reduced to the maximum extent feasible, including but not limited to conditions or measures addressing:
- (1) Location on a site of activities that generate potential adverse impacts such as noise and glare;
  - (2) Hours of operation and deliveries;
  - (3) Location of loading space and delivery zones;
  - (4) Light intensity and hours of full illumination;
  - (5) Placement of outdoor vending machines;
  - (6) Loitering;
  - (7) Litter control;
  - (8) Placement of trash receptacles;
  - (9) On-site parking configuration and facilities;
  - (10) On-site circulation; and
  - (11) Privacy concerns of adjacent uses.
- (d) Conditional use permit decisions are made by the Board of Zoning Appeals (BZA). In considering the proposed conditional use, the BZA must determine whether the applicable General Standards under this section have been met. The BZA may impose additional conditions and safeguards deemed necessary.
- (e) The breach of any condition, safeguard, or requirement shall be considered a violation of the conditional use permit approval. If the applicant fails to comply with any of the applicable requirements of this Zoning Ordinance, the BZA shall have the authority to revoke any conditional use permit after providing notice to the property owner and after public hearing is held in the same manner as the original approval.
- (f) *Validity of approval.* Any conditional use approved by the Board of Zoning Appeals under which the premises are not used, work is not started within six (6) months, or the use or work has been abandoned for a period of one (1) year, shall lapse and cease to be in effect. The BZA may permit one (1) six (6) month extension if the extension is applied for in writing by the applicant prior to the expiration of the approval, provided that the BZA finds that the extension is warranted due to circumstances beyond the control of the applicant.
- (g) No application which has been denied wholly or in part by the Board of Zoning Appeals shall be resubmitted for a period of one (1) year from the date of the last denial, unless permitted by the BZA after demonstration by the applicant of a change of circumstances from the previous application.

## **Section 21-22A Article III. Nonconforming Uses, Structures, and Lots.**

### **Section 21-23 Purpose.**

- (a) This purpose of this article is to set forth standards and regulations regarding the continued existence of uses, structures, and lots established prior to the effective date of this Zoning Ordinance (or any amendment subsequent thereto) that do not conform to this Zoning Ordinance. These standards shall apply to all nonconforming uses, structures, and lots, as defined by this code.

### **Section 21-24 General Provisions.**

- (a) Nonconforming lots, structures, or uses may continue to exist, be bought or sold, altered, restored, or extended only in accordance with the provisions of this code.



- (b) Nothing in this code shall prevent the strengthening or restoring to a safe condition any portion of a nonconforming structure declared unsafe by a proper authority.
- (c) Nothing in this zoning ordinance shall be interpreted as authorization for or approval of the continuance of the illegal use of a structure or premises in violation of zoning controls in existence at the time of the effective date of legal enactment of this code.
- (d) Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall apply to any nonconformities existing therein.
- (e) Nothing in this section prohibits alterations or additions to or replacement of buildings or structures owned by any farm, industry, or manufacturer, or the use of land presently owned by any farm, industry, or manufacturer but not used for agricultural, industrial, or manufacturing purposes, or the use or acquisition of additional land which may be required for the protection, continuing development, or expansion of any agricultural, industrial, or manufacturing operation of any present or future satellite agricultural, industrial, or manufacturing use.

#### **Section 21-25 Nonconforming Uses.**

- (a) These regulations shall apply to any use of a structure or lot in any zoning district that is a nonconforming use as defined by this code.
- (b) Where, at the effective date of adoption or amendment of this code, a lawful use of a lot or structure exists that is made no longer permissible under the terms of this code as enacted or amended, such use may be sold or otherwise transferred to other owners and may be continued as long as it remains otherwise lawful in accordance with the provisions of this code.
- (c) Normal structural repair and maintenance may be performed to allow the continuation of a nonconforming use.
- (d) No nonconforming use of a lot or nonconforming use of a structure shall be enlarged or increased or extended to occupy a greater area of the lot or structure than was occupied at the effective date of adoption or amendment of this code.
- (e) Once a nonconforming use has been changed or converted to a conforming use, it shall not thereafter be used for any nonconforming use.
- (f) When a nonconforming use is discontinued for twelve (12) months, abandonment is presumed and the nonconforming use shall not be allowed to be re-established. If the property has been abandoned, then any future use of the land, buildings, or structures shall conform and be in accordance with all applicable rules, regulations, and requirements of the particular zoning district wherein the property is located.
- (g) Abandonment of a nonconforming use shall be presumed if one (1) or more of the following conditions exists, indicating intent on the part of the property owner to abandon the nonconforming use:
  - (1) Utilities, such as water, gas, and electricity to the property have been disconnected;
  - (2) The property, buildings, and grounds, have fallen into disrepair as evidenced by proper code violation documentation;
  - (3) When it has been replaced by a conforming use;
  - (4) When it has been changed to a use permitted by conditional use by the Board of Zoning Appeals; or
  - (5) The business license issued by the City of Elkins has expired.

#### **Section 21-26 Nonconforming Structures.**

- (a) A nonconforming structure containing a use permitted in the zoning district in which it is located may continue only in accordance with the provisions of this code.
- (b) Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.
- (c) A nonconforming structure may not, under any circumstances, be enlarged or altered in a way which increases its nonconformity except as permitted under Section 21-29.
- (d) Nonconforming structures and uses may enlarge principal structures by adding decks or porches provided that nonconformities are not increased.
- (e) Any legal, pre-existing nonconforming structure damaged by fire, flood, explosion, or other disaster event may be reconstructed and used as before, so long as the structure is damaged no more than fifty (50%) percent of its appraised value exclusive of foundations, if such reconstruction is undertaken within twelve (12) months of such disaster, and if the restored structure has no greater coverage and contains no greater content (measured in cubic feet) than before such disaster. An application to the Board of Zoning Appeals for permission to undertake to re-construct the structure must be filed prior to undertaking the repairs after

the use has been destroyed or damaged, otherwise any structure shall conform to and be in accordance with all applicable rules, regulations, and requirements of the particular district as provided in this zoning ordinance.

- (f) If any building occupied by a nonconforming use is damaged more than fifty (50%) percent of its reconstruction cost exclusive of foundations, such building may not be restored for any nonconforming use.
- (g) The extension of a lawful use to any portion of a nonconforming structure shall not be deemed the extension of a nonconforming use.

#### **Section 21-29    Enlargement or Extension of a Nonconforming Use.**

- (a) Nonconforming uses existing at the time this code was passed, or at the time a subsequent amendment creates the nonconforming use, may enlarge the building which housed the nonconforming use at the time this code was passed, or at the time a subsequent amendment creates the nonconforming use, and extend within such enlargement, provided that:
  - (1) The enlargement becomes an attached part of the main structure and does not utilize additional or adjoining land area other than the original parcel.
  - (2) The enlargement meets all requirements of this code, including but not limited to setback and yard requirements.
  - (3) The enlargement is for the purpose of expanding the area housing the use which existed at the time this code was passed, or at the time a subsequent amendment creates the nonconforming use.
  - (4) The enlargement and extension does not:
    - i. Adversely affect the health, safety, and welfare of persons residing or working in the district;
    - ii. Cause a depreciation of the value of other property and uses permitted in the district;
    - iii. Significantly increase traffic congestion;
    - iv. Adversely affect the privacy of persons residing in the immediate vicinity;
    - v. Increase the hazard in the area of fire, offensive noise, smoke, dust, debris, or other objectionable influences;
    - vi. Adversely affect any recreational, institutional, or other authorized use;
    - vii. Inhibit the desirability, feasibility, or likelihood of future residential or commercial development or expansion in the immediate vicinity; or
    - viii. Occur in a residential zoned district.
  - (5) The enlargement or expansion brings all off-street parking requirements into conformity.
  - (6) The Board of Zoning Appeals may impose such other reasonable restrictions upon the proposed expansion as deemed necessary to protect the health, safety, and welfare of persons residing within the vicinity of the nonconforming use.
- (b) Enlargement or extension approval shall be void if construction work does not begin within one (1) year from the date of approval, or if work is suspended or abandoned for a period of ninety (90) days at any time after the work is commenced.
- (c) All enlargement or extension of a nonconforming use must comply with the applicable floodplain management requirements.

#### **Section 21-30A    Article IV. Definitions.**

##### **Section 21-31    Interpretation.**

For the purpose of this Zoning Ordinance certain terms and words used herein shall be interpreted as follows:

- (a) Words used in the present tense include the future tense.
- (b) Words used in the singular number shall include the plural, and words used in the plural number shall include the singular.
- (c) The word “person” shall include a firm, association, organization, limited liability company, limited partnership, corporation, trust, company, as well as a natural individual.
- (d) The word “City” shall mean the City of Elkins.
- (e) The word “shall” and “must” are used to indicate mandatory directives.
- (f) The word “structure” shall include the word “building.”

- (g) The word “Map” or “Zoning Map” or “Zoning Map, City of Elkins, West Virginia” or “Official Zoning Map” shall mean the map that geographically illustrates all zoning district boundaries within the City of Elkins, West Virginia, pursuant to the requirements of Chapter 8A of the West Virginia Code.
- (h) The term “governing body” and “city council” shall both mean the City Council for the City of Elkins, West Virginia pursuant to the Charter of the City of Elkins.
- (i) The term “Planning Commission” shall mean the Planning Commission for the City of Elkins, West Virginia, pursuant to Chapter 8A of the West Virginia Code.
- (j) “Districts” or “Zoning Districts” shall mean administrative tracts designating the uses to which land can legally be utilized. Boundaries of the districts are shown on the Official Zoning Map, which is a part of this code.

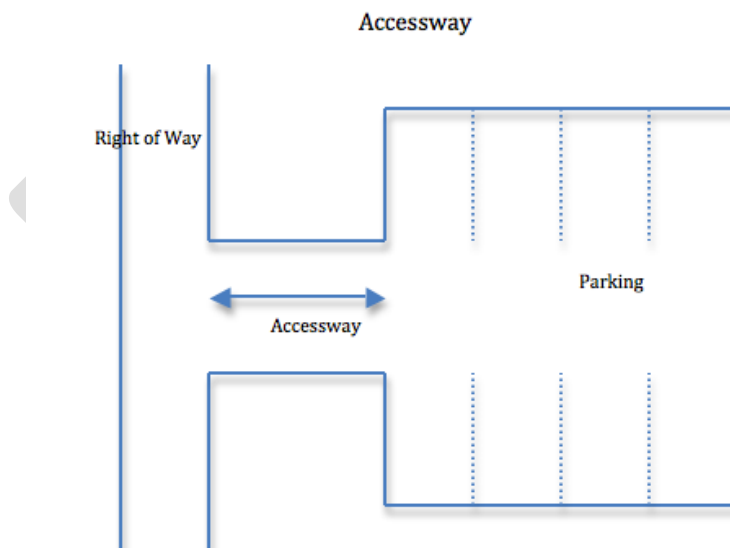
## **Section 21-32 Definitions.**

“Abandonment” means the relinquishment of property or a cessation of the use of the property by the owner or lessee without any intention of transferring rights to the property to another owner or resuming the nonconforming use of the property for a period of one (1) year. In the case of natural resources, the absence of natural resources extraction or harvesting is not abandonment.

“Accessory Structure” or “Accessory Building” means a structure or building on the same lot with or on an adjacent lot to, and of a nature customarily incidental and subordinate to, the principal use or structure, including but not limited to swimming pools, piers and other water related structures, parking, fences, gazebos, satellite dishes, doghouses and dog-related structures, noncommercial greenhouses, sheds, and private garages.

“Accessory Use” means a use on the same lot with, and of a nature customarily incidental and subordinate to, the principal use, including private garages, noncommercial greenhouses, urban agriculture, and drive-through facilities.

“Accessway” means a private vehicular facility for townhomes, multi-family dwellings, and condominiums, serving more than four (4) dwelling units, and commercial developments that extends from the curb-line extended of a public or private road to the parking lot.



“Adult Bookstore” means any commercial establishment in which is offered for sale as a substantial or significant portion of its stock-in-trade videocassettes, movies, books, magazines or other periodicals, or other media which are distinguished or characterized by their emphasis on nudity or sexual conduct or on activities which, if presented in live presentation, would constitute adult entertainment.

“Adult Business” means an adult bookstore, movie theater, or movie house or other adult entertainment, as defined herein.

“Adult Entertainment” means an establishment providing, either as a sole use or in conjunction with or in addition to other uses, entertainment consisting of the use of nudity or of live dancing, posing, displaying, acting or other live presentation or use of persons whose actions are distinguished or characterized by emphasis on use of the human body in a manner intended to or resulting in arousal of sexual excitation or sexual titillation or a prurient interest or intended to or resulting in producing lustful emotions.

“Adult Movie Theater or Movie House (including Adult Mini-Theaters)” means any movie theater which on a regular, continuing basis shows films rated X by the Motion Picture Coding Association of America or any movie theater which presents for public viewing on a regular, continuing basis so-called adult films depicting sexual conduct.

“Advertising” means any words, symbol, color, or design used to call attention to a commercial product, service, or activity.

“Agent” means a person who is authorized to act for or in place of an applicant, or someone who is a representative of the applicant.

“Aggrieved or aggrieved person” means a person who:

- (a) Is denied by the planning commission, board of subdivision and land development appeals, or the Board of Zoning Appeals, in whole or in part, the relief sought in any application or appeal; or
- (b) Has demonstrated that he or she will suffer a peculiar injury, prejudice, or inconvenience beyond that which other residents of the county or municipality may suffer.

“Agricultural building” means a structure designed to house farm implements, hay, grain, poultry, livestock or other agricultural products. For the purpose of this definition, this structure shall not contain habitable space or a place of employment where agricultural products are processed or treated or packaged; nor shall it be a place used by the public.

“Agricultural Operation” means an enterprise that is actively engaged in the commercial production and preparation for market of crops, livestock, and livestock products and in the production, harvesting, and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities. The term includes an enterprise that implements changes in production practices and procedures or types of crops, livestock, livestock products or commodities produced consistent with practices and procedures that are normally engaged by farmers or are consistent with technological development within the agricultural industry.

“Agriculture” means the keeping of livestock, poultry, bees, and similar endeavors, and the cultivation of the soil.

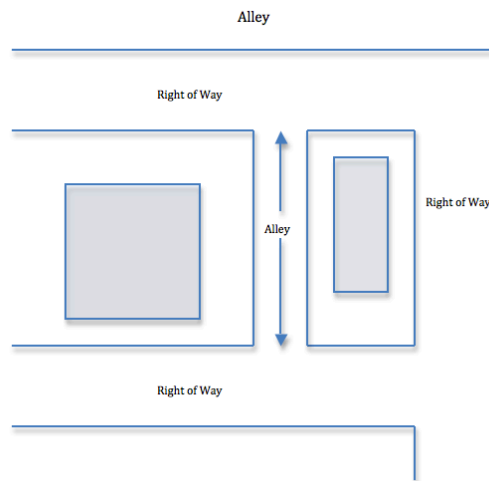
“Agritourism” means the practice of combining tourism and agriculture. It is a type of commercial enterprise that combines agricultural production or processing with tourism in order to attract visitors onto a farm or other agricultural enterprise for the purposes of entertaining or educating the visitors and generating income for the farm or agriculturally based business owner. It is accessory to an active principal agricultural operation.

“Agritourism Enterprise” means activities conducted on and accessory to an agricultural operation and offered to the public or to invited groups for the purpose of recreation, education, or active involvement in the farm operation. These activities must be directly related to agricultural or natural resources and incidental to the primary operation of the farm, and may include a brewery, cidery, mini-distillery, winery, and accompanying tasting facilities.

“Airport” means any area of land or water designated, set aside, used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas designated, set aside, used, or intended for use, for airport buildings.



“Alley” means a street or highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic.



“Alteration” means any change, addition, or modification in construction or occupancy of an existing structure.

"Alternative support structure" means man-made trees, clock towers, steeples, light poles, flag poles, power transmission towers, buildings, signs, and similar alternative design mounting structures that partially or fully camouflage or conceal the presence of antennas or towers.

“Amphitheater” means an outdoor gathering space typically for entertainment which is often constructed with tiers of seats or sloping surfaces that gradually rise outward from a central open space or stage. An amphitheater may include a bandshell-type building or structure to provide weather protection to a stage.

“Animal Hospital/Veterinary Office” means an establishment for temporary occupation by sick or injured animals for the purpose of medical diagnosis and treatment, and shall exclude the treatment or other care of humans. An animal hospital/veterinary office is not considered a “kennel” for the purpose of this code, but may be combined with the kennel land use in districts where both uses are permitted.

“Antenna” means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

“Antenna Support Structure” means any building or structure other than a tower which can be used for location of telecommunications facilities.

“Automobile” means a motorized road vehicle, typically with four (4) wheels, able to carry a small number of people.

“Automobile Car Wash” means any building, site, or premise or portions thereof, used for washing the interior or exterior of automobiles. An automobile car wash shall include self-operated facilities, but shall not include incidental one-bay washing facility in an automobile repair or service station where such facilities are incidental to the operation of said automobile repair or service station.

“Automobile Repair/Service” means any building, structure, improvements, or land used for the repair or maintenance of automobiles, motorcycles, trucks, trailers, or similar vehicles including but not limited to body, fender, muffler or upholstery work, oil change and lubrication, painting, tire service and sales, or installation of CB radios, car alarms, stereo equipment or cellular telephones.

“Bakery” means an establishment used for the preparation of baked goods primarily for retail sales but may include incidental wholesale for general distribution or consumption off-site.

“Bank/Financial Institution” means an establishment that provides services such as retail banking, collection services, loan services, and tax and investment services to individuals and businesses.

“Base station” means the structure or equipment at a fixed location that enables wireless telecommunications licensed or authorized by the FCC, between user equipment and a communications network.

- (a) Includes, but is not limited to, equipment associated with wireless telecommunications services, such as private, broadcast, and public safety services, as well as unlicensed wireless telecommunication services and fixed wireless telecommunication services, such as microwave backhaul.
- (b) Includes, but is not limited to, radio transceivers, antennas affixed to the base station, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
- (c) Includes any structure other than a tower that, at the time an eligible facilities modification application is filed with the City of Elkins, supports or houses equipment described in paragraphs (i) and (ii) above, and that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
- (d) Does not include any structure that, at the time a completed eligible facilities modification application is filed with the City of Elkins under this Article, does not support or house equipment described in paragraphs (i) and (ii) above.
- (e) The term does not encompass a “tower” as defined in this Section, or any equipment associated with a tower.

“Basement” means a space having one-half or more of its floor-to-ceiling height below the average level of the adjoining ground.

“Bed and Breakfast Inn I” means a private residence in which overnight accommodations are provided for not more than eight (8) transient paying guests in up to four (4) bedrooms at any particular time for not more than thirty-one (31) consecutive days and not more than ninety (90) days in one calendar year. The residence is owner-occupied.

“Bed and Breakfast Inn II” means a private residence in which overnight accommodations are provided for not more than ten (10) transient paying guests in up to ten (10) bedrooms at any particular time. The residence is occupied by the owner or a designee during the guests’ overnight stay and is otherwise occupied by the owner or a designee.

“Board of Zoning Appeals” means the officially constituted body appointed to carry out duties and responsibilities in accordance with the West Virginia Code, Chapter 8A, Article 8, et seq., as amended.

“Boat and Marine Sales/Service” means any building or lot used for the sale of, maintenance, servicing, repair, or painting of boats and other related watercraft.

“Boat Storage” means an enclosed, partially enclosed, or open facility utilized for the wet or dry storage of boats.

“Bollard” means a short, vertical, and permanent post, usually ornamental in nature, used to inhibit trespass by persons or vehicles, or to prevent encroachment onto private property or other defined space.

“Brewery” means a state licensed establishment where intoxicating or nonintoxicating beer is manufactured or in any way prepared and may include a tasting facility as defined in this ordinance. Facilities are subject to federal, state, and local regulations and guidelines.

“Brewery Pub” means a place of manufacture of nonintoxicating beer or nonintoxicating craft beer owned by a resident brewer, subject to federal and state regulations and guidelines, a portion of which premises are designated for retail sales of nonintoxicating beer or nonintoxicating craft beer by the resident brewer owning the brewpub.

“Broadcasting Studio (radio/television)” means any premises or station authorized by the appropriate regulating agency used for the purpose of providing broadcasting services for general reception.

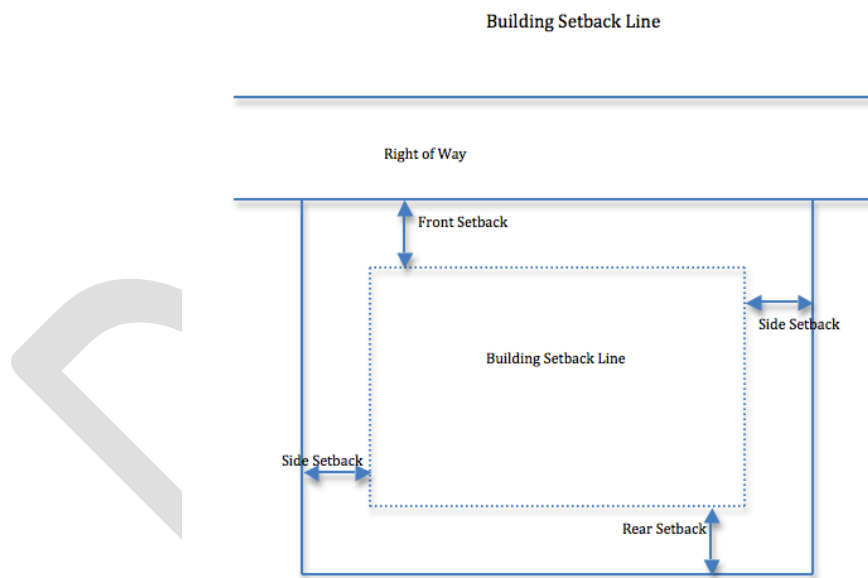
“Building” means any structure having enclosing walls and roofs and requiring a permanent location on the land.

- (a) “Principal Building” means a building in which is conducted the principal use of the site or lot on which it is situated. In all residential districts, a dwelling is the principal building on the lot on which it is located.
- (b) “Building Frontage” means the length of the main wall of a building which physically encloses usable interior space and which is the architecturally designed wall that contains the main entrance for use by the general public. Said frontage is measured at a height of ten (10) feet above grade.

“Building Height” means the vertical distance measured from the average elevation of the proposed finished grades immediately adjacent to the front lot line to the highest point of the roof for flat roofs, to the deck line for mansard roofs, to the mean height between eaves and ridge for gable, hip, and gambrel roofs. If there are two or more separate roofs on a single building, the height of such building shall be calculated from the highest roof. See Figure 1 in the Appendices.

“Building Material Facility” means an establishment that sells home, lawn, and garden supplies and tools and construction materials, such as brick, lumber, hardware, and other similar materials. Construction goods may be located in outdoor storage.

“Building Setback Line” means a line establishing the minimum allowable distance between the nearest part of any principle building, including decks, patios, covered porches, steps, and landings exceeding twenty-four (24) square feet, but excluding eaves, overhangs, bay windows, sills, belt courses, cornices, and ornamental features not exceeding two (2) feet in width, to the nearest edge of a street right-of-way, property line, or easement line, when measured perpendicular thereto.



“Bus/Transit Facilities” means a facility, including terminals, depots, and passenger waiting, loading, and unloading stations of bus and other transit companies and districts. Also, includes facilities providing any and all types of general or specialized maintenance services or storage areas for buses and other transit vehicles of a transit company or district, public or private, providing transportation services primarily for people.

“Bus/Transit Shelter” means a covered structure at a bus or other transit stop providing protection against the weather.

“Butcher Shop” means an indoor business where the slaughter of animals, dressing animal flesh, or selling animal meat, or any combination thereof, occurs for the purposes of retail sale or sale to wholesalers.

“Camouflage” or “conceal” or “concealment” or “stealth” means having similar design and coloration features as the surrounding environment, utility pole, or building.

“Campground” means a publicly or privately owned site designed, designated, maintained, intended, or used for the purpose of supplying a location for seasonal, recreational, and temporary living purposes in cabins, tents, or recreational equipment or vehicles open to the public for free or for a fee. This definition excludes “tourist” or “trailer camps.”

“Canopy” means a roof-like structure either projecting from a building façade and open on three sides, or standing alone and open on four sides, and used for the purpose of protecting pedestrians and motorists from weather-related elements.

“Catering Business” means an establishment used for the preparation and delivery of food and beverages for off-site consumption. This establishment may provide for an on-site pickup, but may not provide for on-site consumption.

“Centerline” means an imaginary line running parallel to street or easement right-of-way lines and equidistant from the lines on each side of the street or easement, or a line following the center of a physical feature such as a stream.

“Child Day Care Facility” is divided into four classes as defined in the West Virginia Code.

- (a) “Child Day Care Facility, Class 1” means a facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private for the care of thirteen or more children for child care services in any setting, if the facility is open for more than thirty (30) days per year per child.
- (b) “Child Day Care Facility, Class 2” means a facility which is used to provide nonresidential childcare services for compensation for seven to twelve children, including children who are living in the household, who are under six years of age. No more than four of the total number of children may be under twenty-four months of age. A facility may be in a provider's residence or a separate building.
- (c) “Child Day Care Facility, Class 3” means a facility which is used to provide nonresidential childcare services for compensation in a provider's residence. The provider may care for four (4) to six (6) children, at one time including children who are living in the household, who are under six years of age. No more than two of the total number of children may be under twenty-four months of age.
- (d) “Child Day Care Facility, Class 4” means residential childcare services for compensation for three (3) or fewer children, including children who are living in the household, who are under six years of age. Care is given in the provider's own home to at least one (1) child who is not related to the caregiver.

“Cidery” means a state licensed establishment where intoxicating or nonintoxicating cider is manufactured or in any way prepared for commercial (not solely personal) use. These establishments are licensed under the winery provisions by the WVABC.

“City of Elkins utility pole” means a utility pole owned or operated by the City of Elkins in a public right-of-way.

“Clear Sight Triangle” means the triangular area formed by intersecting street, alley, or other public right-of-way centerlines and a line interconnecting points established on each centerline, seventy-five (75) feet from the point of intersection and the plane established two and one-half (2.5) feet in elevation to a height of eight (8) feet from grade level at the intersection of the street, alley, or other public right of way centerline.

“Clinic” means an establishment providing medical, chiropractic, psychiatric, or surgical services exclusively on an outpatient basis, including emergency treatment, and diagnostic services.

“Collapse Zone” means an area where a tower may collapse based on the site and design specifications and which is certified and stamped by an engineer licensed in the State of West Virginia.

“Collocate” or “collocation” means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.



“Communications facilities” means the set of equipment and network components, including wires, cables, antennas, and associated facilities, used by a communications service provider to provide communications service.

“Communications service” means cable service, as defined in 47 U.S.C. § 522(6), as amended; information service, as defined in 47 U.S.C. § 153(24), as amended; telecommunications service, as defined in 47 U.S.C. § 153(53), as amended; mobile service, as defined in 47 U.S.C. § 153(33), as amended; or wireless service other than mobile service.

“Communications service provider” means any entity that provides communications service.

“Community Facility” means a nonprofit facility, whether publicly or privately owned, with the primary goal to provide a community service. Services may include information socializing, recreation and counseling, but shall exclude the provision of sleeping quarters, except for one caretaker dwelling unit to be used for security and maintenance purposes

“Comprehensive Plan” means the comprehensive plan for the City of Elkins, West Virginia.

“Conceal” or “Concealment” means when an antenna, small wireless facility, decorative pole, utility pole, or related equipment are designed to look like a feature other than a small wireless facility and which has similar design and coloration features as the surrounding environment.

“Conditional Use” means a use which because of special requirements or characteristics may be permitted in a particular zoning district only after review by the Board of Zoning Appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in this code.

“Continuing Care Facility” means one or more of the following facilities:

- (a) “Adult Assisted Living” means any facility, residence, or place of accommodation available for four (4) or more residents for the purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment and who may also require nursing care at a level that is not greater than limited and intermittent nursing care. Such facility shall comply with the provisions of the West Virginia Code.
- (b) “Nursing Home” means any institution, residence, or place, or any part or unit thereof, however named, which is advertised, offered, maintained, or operated by the ownership or management, whether for consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than twenty-four (24) hours, for four (4) or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation.
- (c) “Skilled Nursing Facility” means an institution, or a distinct part of an institution, that primarily provides inpatient skilled nursing care and related services, or rehabilitation services, to injured, disabled, or sick persons.

“Contractor” means a person who contracts to do work for an applicant, including any person sub-contracted to a person contracted to do work for an applicant.

“Convenience Store” means an establishment engaged in the retail sale, from the premises, of food, beverages, and other frequently or recurrently needed items for household use, but not including the display of merchandise or products outdoors, except where such display is required to sell the merchandise. This land use does not include a gas station, but a convenience store may be combined with a gas station or large gas station provided that the combined uses are each permitted within the district.

“Conversion” means the remodeling or alteration of a structure so as to accommodate more leasable or saleable units or a different use than what had originally been intended for the structure, provided the existing zoning permits the intended use. This includes the alteration of a non-residential structure into a dwelling unit(s) for at least one family, the alteration of existing dwellings into a commercial use, and the alteration of an existing dwelling into a mixed commercial and residential use.

“Conversion of School/Church” means the conversion (as defined by this code) of a former school or church for multi-family dwelling or commercial purposes.

“Correctional Facility” means a publicly or privately operated facility housing persons awaiting trial, serving a sentence after being found guilty of a criminal offense, being within the jurisdiction of a federal, state, or local probation, parole, or corrections agency or receiving treatment other than at a hospital while under the jurisdiction of such authority or agency, including but not limited to jails, prisons, juvenile detention centers, work release centers, pre-release centers, and treatment centers.

“Council” means City Council of the City of Elkins, West Virginia.

“County” means Randolph County, West Virginia.

“Cultural Service” means the use of a site engaging in the collection, display, or preservation of objects of community or cultural interest.

“Day” means a calendar day. When computing any period of time prescribed by any applicable provision of this Ordinance, the day of the act, event, default, or omission from which the applicable period begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, a Sunday, a legal holiday, or a designated day off, in which event the prescribed period of time runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or designated day off.

“Decorative pole” means a City of Elkins utility pole that is specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than a small wireless facility, specially designed informational or directional signage, or temporary holiday or special event attachments have been placed, or are permitted to be placed, according to nondiscriminatory municipal rules or codes.

"Designated Scenic Resources" means a specific location, view or corridor identified as a scenic resource in the comprehensive plan or by a local, state, or federal agency or government and consists of:

- (a) A three dimensional area extending out from a particular viewpoint on a public right of way, within a public recreational area, or within a component of a state or national park system, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such as a downtown skyline or mountain range, resulting in a panoramic view corridor; or
- (b) Lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public right of way, within a public recreational area or within a component of a state or national park system.

“Distillery” means an establishment where alcoholic liquor other than wine or beer is manufactured or in any way prepared.

“Distillery, Mini” means a state licensed Mini Distillery establishment where in any year (as defined by WVABC) no more than twenty thousand gallons of alcoholic liquor is manufactured with no less than twenty-five (25%) percent of raw agricultural products being produced by the owner of the mini-distillery on the premises of that establishment, and no more than twenty-five (25%) percent of raw agricultural products originating from any source outside this state.

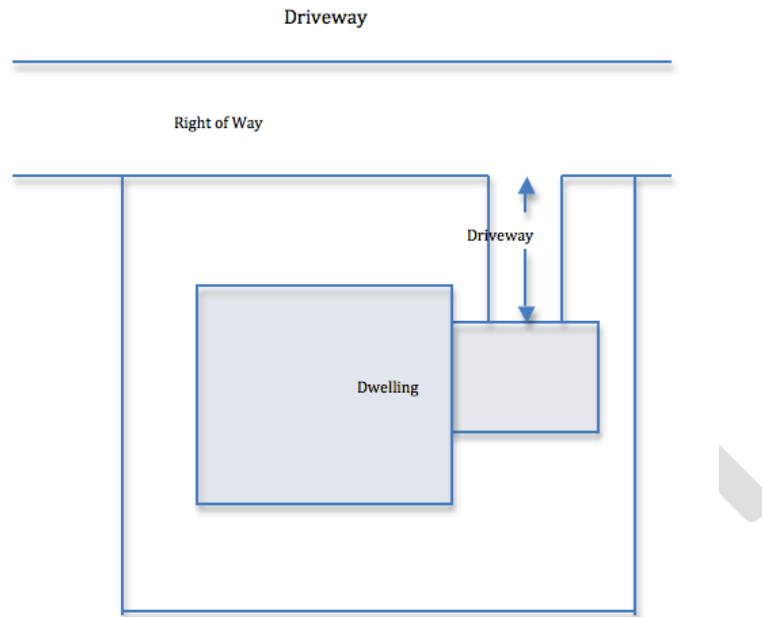
“Distribution Facility” means any premises or part thereof, which provide logistical support for business, such as freight management, inventory control, storage, packaging, and consolidation of goods for distribution.

“Dock” means a structure built over or floating upon the water and used as a mooring place for boats and other marine transport, fishing, swimming, and other recreational uses.

“Dog Day Care” means an organized, controlled, and monitored environment for a group of dogs to interact and play throughout the day. The purpose is to provide stimulation, exercise, and socialization for dogs, and ancillary services. Overnight stays are not permitted in dog day care facilities unless the use is combined with a kennel.

“Drive-through Facility” means any portion of a building or structure from which business is transacted, or is capable of being transacted, directly with customers located in an automobile during such business transactions.

“Driveway” means an impervious surface for vehicular access to a building, garage, parking facility, or other vehicular facility, lot, or parcel of land.



“Dry Cleaner” means an establishment providing dry cleaning and laundering services where dry cleaning and laundering are done on the premises. A dry cleaner may also provide ancillary services such as tailoring.

“Dwelling” means a house, apartment building, or other building designed or used primarily for human habitation. The word "dwelling" shall not include boarding houses or rooming houses, tourist homes, motels, hotels, or other structures designed for transient residence.

“Dwelling, Accessory” and “Conversion Dwelling” means a portion of a single-family dwelling converted into two (2) separate dwelling units within the principal structure or new or existing accessory structures.

“Dwelling, Conversion Apartment” means a dwelling unit created by the conversion of an existing single-family dwelling into a three (3) or four (4) family dwelling.

“Dwelling, Mixed Use” means a building containing residential uses with a subordinate amount of commercial or office uses on the ground floor facing the primary street frontage, with residential units located primarily above the first floor or located on the first floor only when behind commercial uses.

“Dwelling, Multi-family” means a freestanding building containing three (3) or more dwelling units, whether they have direct access to the outside, or access to a common building entrance. Multi-family dwellings may consist of rental apartment buildings, rental or owner-occupied townhome buildings, and rental or owner-occupied condominium buildings, provided that all such freestanding buildings contain three (3) or more dwelling units.

- (a) “Dwelling, Apartment” means a building containing several and separate dwelling units, having common corridors and stairways and having shared exit and entrance facilities.
- (b) “Dwelling, Condominium” means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners. Yard requirements apply to structures only and not individual ownership units.

- (c) “Dwelling, Townhome” means a one-family dwelling unit, with private entrance, which is part of a structure whose dwelling units are attached horizontally in a linear arrangement, and having a totally exposed front and rear wall to be used for access, light, and ventilation. For purposes of determining the required yard for townhome developments, setbacks only apply from the perimeter of the main building to the perimeter of the parent parcel upon which the building is situated. Also known as a “Rowhouse.”

“Dwelling, Single-family” means a detached building containing not more than one dwelling unit and not occupied by more than one family.

“Dwelling, Two-family” means a residential building which is the only principal structure on the lot, designed exclusively for occupancy by two (2) families living independently of each other, and containing two (2) dwelling units, each with a separate entrance directly to the outside.

“Dwelling Unit” means any dwelling or portion thereof used or intended to be used by one family and providing complete housekeeping facilities therefor.

“Educational Institution” means a college or university giving general academic instruction. Included within this term are areas or structures used for administration, housing of students and faculty, dining halls, and social or athletic activities, when located on land contiguous with land on which classroom facilities are maintained.

“Emergency Services” means an area utilized for the maintenance, fueling, storage, dispatching, or parking of vehicles or equipment providing rescue or ambulatory services.

“Emergency Shelter” means a structure or part thereof, operated on a non-profit basis to temporarily house families or individuals who are victims of disaster, who are affected through action on the part of or on behalf of the municipality other than routine redevelopment related relocation activities, or who have bona fide state or federal emergency housing needs.

“Eligible facilities request” means a request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station involving: collocation of new transmission equipment, removal of transmission equipment, or replacement of transmission equipment.

“Eligible support structure” means any tower or base station, as defined in this Section, provided that such tower or base station is in existence at the time the eligible facilities request application is filed with the City of Elkins.

“Equipment cabinet” means an enclosure, room, shelter, structure, or building used to encapsulate, enclose, contain or otherwise support equipment associated with a wireless telecommunication facility.

“Equipment Rental/Repair” means an establishment involved in renting or repairing tools and equipment, janitorial equipment, and so forth.

“Essential Utilities and Equipment” means underground or overhead electrical, gas, communications not regulated by the federal communications commission, water and sewage systems, including pole structures, towers, wires, lines, mains, drains, sewers, conduits, cables, fire alarm boxes, public telephone structures, police call boxes, traffic signals, hydrants, regulating and measuring devices and the structures in which they are housed, and other similar equipment accessories in connection therewith. Essential utility equipment is recognized in three categories: (1) local serving; (2) nonlocal or transmission through the county or municipality; and (3) water and sewer systems, the activities of which are regulated, in whole or in part, by the Public Service Commission; Department of Environmental Protection; or The Department of Health and Human Resources.

“Event” means a planned public or social occasion, including but not limited to activities such as community fairs, carnivals, parades, horse shows, horse trials, dog shows, sporting events, music or art festivals, and holiday celebrations. Excluded from the definition of events and from the regulations of this code, are the following: any event sponsored by the Armed Forces of the United States or the State of West Virginia; any event sponsored by the forces of state or local police or fire departments; any event sponsored by an agency of the state, county, or local

government; and activities that are part of the regular operations of a principal use, such as weddings at a church, annual fund raising or social events, and typical accessory events at educational, scientific, or institutional sites.

“Event, Mass Gathering” means an event, as defined herein, resulting in the assemblage of more than three hundred (300) persons on any one parcel or any special event, as defined herein, where camping or overnight lodging are offered.

“Event, Special” means an event, as defined herein, resulting in the assemblage of one hundred (100) to three hundred (300) persons; the arrival of twenty-five (25) or more vehicles at the location of the event, whether held on private property, public property, or public roads; and any events with a significant emphasis on the sale, marketing, or promotion of products or services to be consumed, utilized, or provided off the premises, except for temporary uses permitted under this code.

“Existing tower or base station” means a lawfully constructed tower or base station approved under the applicable zoning and siting process of the City of Elkins, approved under another state or local regulatory review process, or permitted to continue to operate as a nonconforming use.

“Existing Use” means use of land, buildings, or activity permitted or in existence prior to the adoption of a zoning map or ordinances by the county or municipality. If the use is nonconforming to local ordinance and lawfully existed prior to the adoption of the ordinance, the use may continue to exist as a nonconforming use until abandoned for a period of one (1) year, provided that in the case of natural resources, the absence of natural resources extraction or harvesting is not abandonment of the use.

“Extractive Industry” means heavy industry use that involves the extraction of minerals, including solids, such as coal and ores; liquids, such as crude petroleum; and gasses, such as natural gasses. The term also includes quarrying; well operation; milling, such as crushing, screening, washing, and flotation; and other preparation customarily done at the extraction site or as a part of the extractive activity.

“FAA” means the Federal Aviation Administration, or its lawful successor.

“Factory-built Home” includes mobile home and manufactured homes.

- (a) “Manufactured Home” meets the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U. S. C. §5401, *et seq.*), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and the federal manufactured home construction and safety standards and regulations promulgated by the secretary of the United States department of housing and urban development.
- (b) “Mobile Home”- a transportable structure that is wholly, or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-term residential use and built prior to enactment of the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U. S. C. §5401, *et seq.*), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and usually built to the voluntary industry standard of the American national standards institute (ANSI)-- A119.1 standards for mobile homes.

“Factory-built Home Rental Community” means a parcel of land under single or common ownership upon which two or more factory-built homes are located on a continual, nonrecreational basis together with any structure, equipment, road or facility intended for use incidental to the occupancy of the factory-built homes, but does not include premises used solely for storage or display of uninhabited factory-built homes or premises occupied solely by a landowner and members of his or her family.

“Family” means an individual, or two (2) or more persons related by blood, marriage, or adoption, or under approved foster care; or a group of not more than four (4) unrelated persons and persons related by blood, marriage, adoption, or foster relationship to any of those four unrelated persons, living together on a permanent basis as a single housekeeping unit on a nonprofit basis and sharing common living, dining, and kitchen areas, subject to the requirements of the building code.

“Fairground” means an area of land used for fairs in accordance with local and state requirements, exhibitions, and shows, including but not limited to animal shows and judging, carnivals, circuses, concerts, food booths and stands,

games, rides, rodeos, sales and auctions, storage, racetracks, agricultural related office buildings, and community meeting or recreational buildings and uses.

“Farm/Construction Equipment and Supply Sales” means an establishment engaged in the on-premises lease, rental, or retail sale of new or used construction or farm equipment, with or without incidental service for minor repairs and maintenance.

“Farmer’s Market” means offering for sale of fresh agricultural products directly to the consumer at an open-air market or temporarily at an indoor location, designated as a community activity.

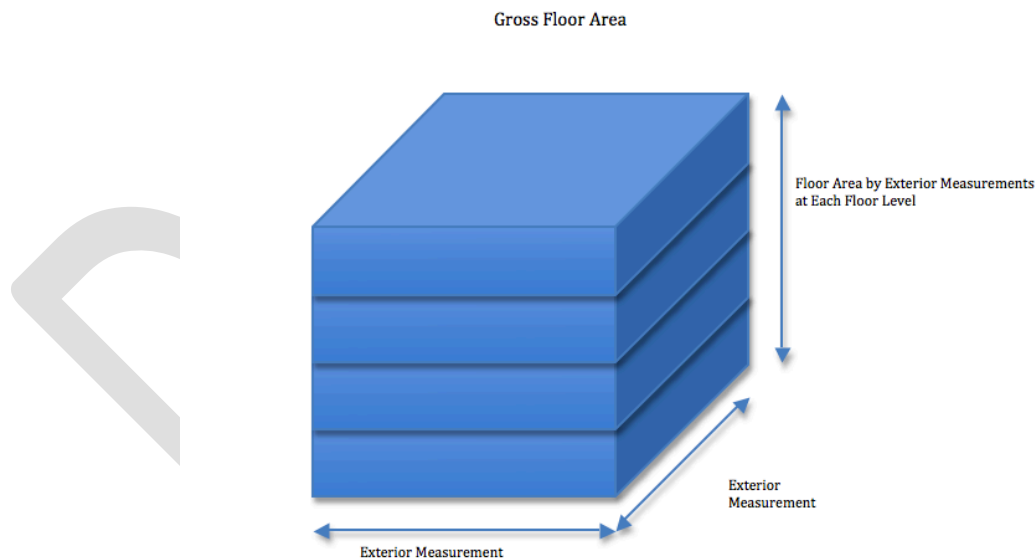
“FCC” means the Federal Communications Commission of the United States.

“Fee” means a one-time, nonrecurring charge.

“Fence” means an artificially constructed barrier of wood, masonry, stone, wire, metal, or other manufactured material or combination of materials erected to enclose, screen, or separate an area.

“Flea Market” means a place where any person or group of vendors, whether professional or non-professional, offer for sale, trade, or barter any goods regardless of whether they are new, used, antique, or homemade; and regardless of whether they are offered for sale in open air, buildings, or temporary structures. The term “flea market” also shall not include any business or occupation that has a valid business license or special use permit pertaining to the sale, trade, or barter of goods.

“Floor Area, Gross” means the total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.



“Frontage” means that side of a lot abutting on the street right-of-way or side of a building regarded as the front.

“Front Building Line” means a line parallel to the front lot line to the nearest part of any principle building, including decks, patios, covered porches, steps, and landings exceeding twenty-four (24) square feet, but excluding eaves, overhangs, bay windows, sills, belt courses, cornices, and ornamental features not exceeding two (2) feet in width.

“Freight Terminal” means any premises used by a freight company which is the origin or destination point of goods being transported for the purpose of storing, transferring, loading, and unloading such goods.

“Funeral Home/Mortuary” means a building or part thereon used exclusively for human burial services. Such building may contain space and facilities for (1) embalming and the performance of other services used in the preparation of the deal for burial, (2) the performances of autopsies and other surgical procedures, (3) the storage of caskets, funeral urns, and other related funeral supplies, and (4) cremation services.

“Garage, Public” means a building or portion thereof designed or used for the commercial parking of vehicles.

“Garage Sale” means the sale of personal property owned or maintained by occupants of the premises in, at, or upon any residentially zoned or residentially occupied property. Garage sale includes, but is not limited to, any yard sale, multi-family sale, home sale, patio sale, or any other sale similarly conducted on any residentially zoned or residentially occupied property.

“Garden Center” means land and buildings where the wholesale or retail sale of nursery stock and garden supplies take place. Such nursery stock and supplies may include any of the following: ornamental plants, flowers, shrubs and trees cultivated in a nursery; seed, fertilizer, garden pesticides and herbicides in retail quantities and packaging; garden hand tools; plant containers; garden statuary and furniture; landscape lighting; bird feeders and supplies; and seasonal ornaments and novelties such as Christmas wreaths and decorations. Such use may include the provision of landscape design and or installation services, provided that such services are ancillary to the principal use and offered to clients whose residence or place of business exists elsewhere.

“Gas Station” means buildings and premises for the supply and retail dispensing of motor fuels, and may include incidental sales of prepackaged food and drink. Accessory uses may include minor servicing and repair of automobiles, sale of lubricants, batteries, tires, motor vehicle accessories, and hand or machine washing in a single bay auto wash.

“Gas Station, Large” means a gas station as defined in this code exceeding any of the following criteria: four fuel pump islands, a total of eight fuel pumps, or a gas station combined with a convenience store.

“Governing Body” means the Council of the City of Elkins.

“Governmental Operations” includes emergency services; municipal, county, state, and federal buildings; and post offices.

“Greenhouse, Commercial” means a building used for the growing of plants, all or part of which are sold at retail or wholesale.

“Greenhouse, Noncommercial” means a structure consisting primarily of glass, clear plastic, or other light transmitting material in which temperature and humidity can be controlled for the cultivation or protection of plants or seedling, and located in the side or rear yard or on rooftops.

“Group Residential Facility” means a facility which is owned, leased, or operated by a behavioral health service provider and which: (1) provides residential services and supervision for individuals who are developmentally disabled or behaviorally disabled; (2) is occupied as a residence by not more than eight individuals who are developmentally disabled and not more than three supervisors or is occupied as a residence by not more than twelve individuals who are behaviorally disabled and not more than three supervisors; (3) is licensed by the Department of Health and Human Resources; and (4) complies with the State Fire Commission for residential facilities.

“Group Residential Home” means a building owned or leased by developmentally disabled or behaviorally disabled persons for purposes of establishing a personal residence, and complying with all applicable requirements of the state of West Virginia.

“Habitable structure” means any structure intended to be used for living, sleeping, eating, or assembly purposes, including but not limited to dwellings, churches, schools, food facilities, and commercial and industrial buildings.

“Health Club” means any establishment including, but not limited to, an athletic club, exercise center, health spa, figure salon, gymnasium, physical fitness center, or any other establishment by any other name that provides



exercise equipment and one or more of the following: steam cabinet, steam room, sauna, vapor room, vapor cabinet, toilet facilities, lavatories, showers, lockers, and dressing rooms intended for patron use, excluding facilities used by or under direct supervision and control of licensed medical personnel located in a medical facility, facilities located in athletic departments of schools, and facilities of professional athletic teams. Accessory uses within the facility may include massage therapy, aerobics and physical fitness services (Aerobic and strength training activities, group exercise classes, fitness assessment and counseling, and education seminars).

"Height" for the purposes of wireless telecommunications facilities means the vertical distance measured from the base of the alternative support structure at grade to the highest point of the structure, including any antennas. Measurement of tower height includes antenna, base pad, and other appurtenances and is measured from the finished grade of the facility site. If the tower is located on a sloped grade, then the average between the highest and lowest grades immediately surrounding the perimeter of the tower base is used in calculating the antenna height. The highest point excludes farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.

"Historic District" means a geographically definable area, designated as historic on a national, state, or local register, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.

"Historic Landmark" means a site, building, structure or object designated as historic on a national, state or local register.

"Historic Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure whether standing, ruined or vanished, where the location itself possesses historical, cultural or archaeological value regardless of the value of any existing structure and designated as historic on a national, state or local register.

"Home-based Business, Low-impact" means an accessory use intended to allow businesses that generate limited quantities of customer visitation or merchandise deliveries to operate such business from a residence.

"Home-based Business, No-impact" means an accessory use intended to allow businesses that rely solely on electronic or off-premise transactions to perform such operations from a residence. The use involves no customer client or patient traffic, whether vehicular or pedestrian, pickup, delivery, or removal functions, to or from the premises, in excess of those normally associated with residential use.

"Hospital" means an establishment for temporary occupation by the sick or injured for the purpose of medical diagnosis and treatment, including sanitarium, and shall be limited to the treatment or other care of humans.

"Hotel/Motel" means a building or group of buildings in which lodging is provided and offered for compensation. The building may also include dining rooms, kitchens, serving rooms, ballrooms, and other facilities and services intended primarily for the accommodation of its patrons.

"Incinerator" means an enclosed device using controlled combustion for the primary purpose of thermally breaking down solid waste, and that is equipped with a flue for the sole purpose of providing incineration service to the public.

"Industrial Park" means an area of land arranged or constructed in accordance with a plan for a group of industrial purposes, having separate building sites designed and arranged on streets and having utility services, setbacks, side yards, and covenants or other such regulations controlling or restricting uses.

"Junk" means any worn, cast off, or discarded article or material which is ready for destruction or which has been collected or stored for sale, resale, salvage, or conversion to some other use.

“Kennel” means any establishment wherein cats and dogs are kept or boarded. Business may be conducted in conjunction with a dog day care. Such kennel must follow the registration process set forth in the West Virginia Code.

“Laboratory” means a place where scientific studies are conducted, including testing, research, or analysis of medical, chemical, physical, biological, mechanical, or electronic nature.

“Landowner” means the legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee if authorized under the lease to exercise the right of the landowner, or other person having a proprietary interest in land.

“Landscaping” means the bringing of the soil surface to a smooth finished grade, installing sufficient trees, shrubs, ground cover, and grass to soften building lines, provide shade, and generally produce a pleasing visual effect of the premises.

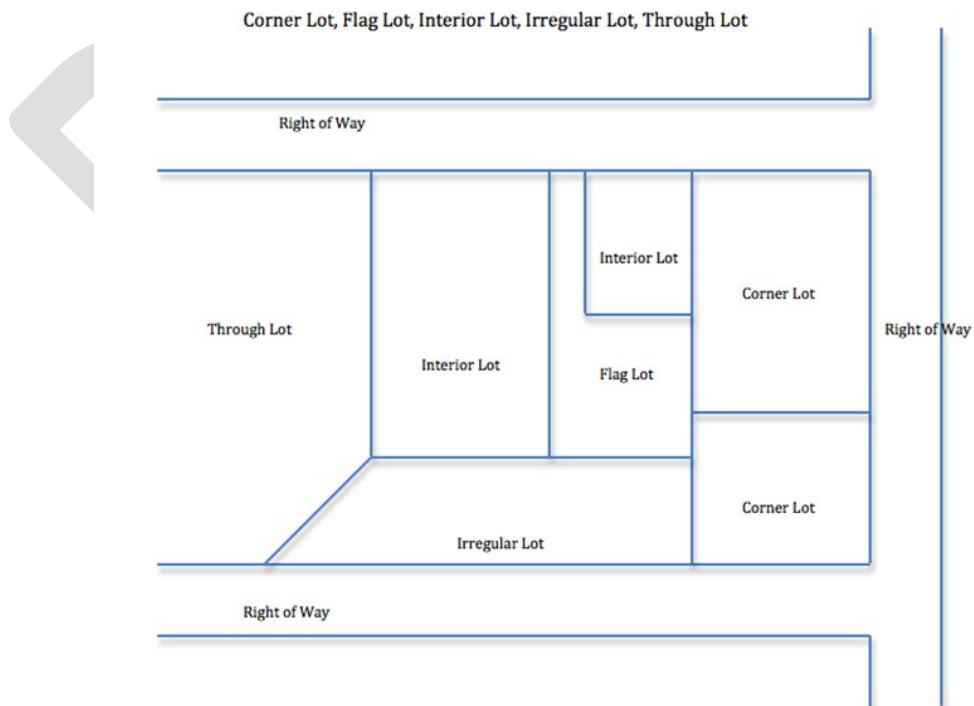
“Laundromat” means a commercial establishment where self-service washing machines and clothes dryers are available for public use on the premises to wash or dry clothing, apparel, or other fabric.

“Library” means any premises, building, or part of a building where books, films, maps and other educational materials are kept for reading, reference, and lending by the public.

“Liquor Store” means an establishment operated under the authority of the West Virginia Code, Chapter 60, Article 3A primarily engaged in the retail sale of packaged alcoholic beverages, such as ale, beer, wine, and whiskey, for off-premises consumption.

“Loading Space” means a space or berth available for the loading and unloading of goods from commercial vehicles.

“Lot” means a designated parcel, tract, or area of land established by a plat or otherwise as permitted by law and to be used, developed, or built upon as a unit.



“Lot Area” means the total area within the lot lines of a lot, excluding any public rights-of-way.

“Lot, Corner” means a lot at the junction of and abutting two or more intersecting streets, where the interior angle of intersection is less than one hundred and thirty-five (135) degrees. A lot abutting a curved street or streets shall be considered a corner lot if the tangents to the curve at the points of intersection of the lot lines with the street intersect at an interior angle of less than one hundred and thirty-five (135) degrees.

“Lot Coverage” means the total area covered, measured from the outside of the exterior walls, by all principal and accessory buildings on a lot, but not including open porches, decks, balconies, and similar features not covered by a roof.

“Lot, Flag” means a polygonal-shaped lot with the appearance of a frying pan or flag and staff in which the handle is most often used as the point of access. The handle, when less than the minimum width for a building lot in the zoning district in which it is located, is not to be used in computing the minimum required lot area.

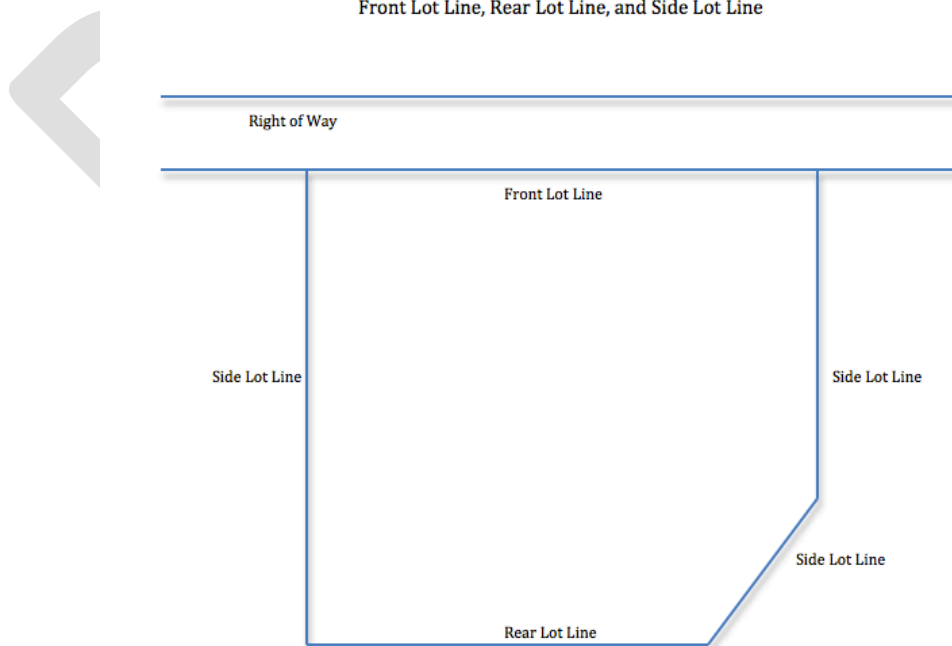
“Lot, Interior” means a lot where the side property lines do not abut a street.

“Lot, Irregular” means a lot of such shape or configuration that technically meets the area, frontage, and width-to-depth requirements of this code but has unusual elongations, angles, and curvilinear lines.

“Lot Line” means property boundary line of any lot that divides one lot from another or from a street or any other public or private space.

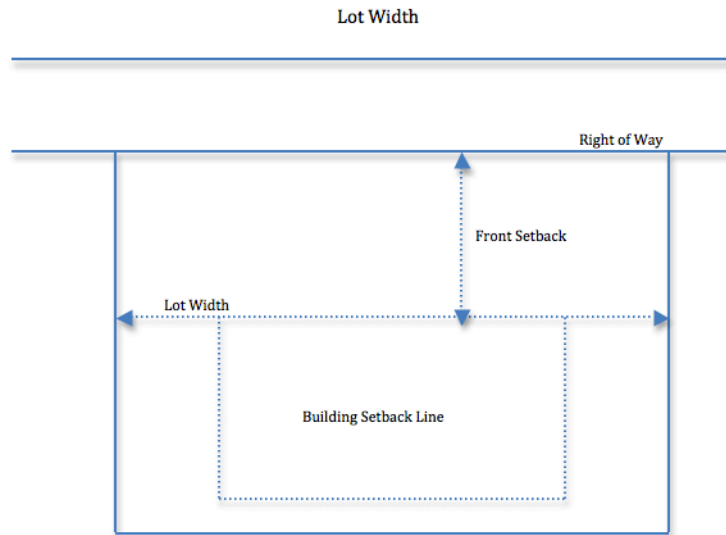
- (a) “Front Lot Line” means, in the case of an interior lot, a line separating the lot from the street or public right of way; and in the case of a corner lot, a line separating the narrowest street frontage of the lot from the street.
- (b) “Rear Lot Line” means a lot line which is opposite and more distant from the front lot line, except corner lots have no rear lot line. In the case of an irregular lot, a line ten feet in length within the lot and parallel to and at the maximum distance from the front lot line.
- (c) “Side Lot Line” means any lot line other than a front or rear lot line.

Front Lot Line, Rear Lot Line, and Side Lot Line



“Lot Measurements” means the following:

- (a) “Lot Depth” means the mean distance from the right-of-way line of the lot to its opposite rear line measured in a direction parallel to the side lot lines. Lot depth for triangular lots shall be the mean distance from the street line to the point of intersection of the side yards.
- (b) “Lot, Minimum Width” means the minimum lot width at the building setback line.
- (c) “Lot Width” means the distance measured between side lot lines, at the required building setback line. In a case where there is only one side lot line, lot width shall be measured between such side lot line and the opposite rear lot lines or street line.



“Lot, Through” means an interior lot in which the front lot line and rear lot line abut upon streets. Where a single lot under individual ownership extends from a street to a street, the widest street shall be deemed the street upon which the property fronts.

“Lumberyard” means the principal use of land and structures involving the loading and unloading, storage, and sales of lumber and millwork materials.

“Manufacturing (Heavy)” means manufacturing or compounding process of raw materials. These activities or processes would necessitate the storage of large volumes of highly flammable, toxic matter or explosive materials needed for the manufacturing process. These activities may involve outdoor operations as part of their manufacturing process.

“Manufacturing (Light)” means the manufacturing, compounding, processing, assembling, packaging or testing of goods or equipment, including research activities, conducted entirely within an enclosed structure and imposing a negligible impact on the surrounding environment by noise, vibration, smoke, dust, or pollutants.

“Medical Adult Day Care Center” means an ambulatory healthcare facility which provides an organized day program of therapeutic, social, and health maintenance and restorative services and whose general goal is to provide an alternative to twenty-four hour, long-term institutional care to elderly or disabled adults who are in need of such services by virtue of physical and mental impairment.

“Medical Cannabis Dispensary” means a place where processed medical cannabis products are permitted to be sold to qualifying consumers, as provided for in the Code of the State of West Virginia, Chapter 16A, as amended. This term does not include a health care medical cannabis organization as defined in the Code of the State of West Virginia, Chapter 16A, as amended.

“Medical Cannabis Growing Facility” means a place where medical cannabis is permitted to be grown, as provided for in the Code of the State of West Virginia, Chapter 16A, as amended. This term does not include a health care medical cannabis organization as defined in the Code of the State of West Virginia, Chapter 16A, as amended.

“Medical Cannabis Organization, Health Care” means a vertically integrated health system approved by the West Virginia Bureau for Public Health to dispense medical cannabis or grow and process medical cannabis, or both, in accordance with a research study under the Code of the State of West Virginia, Chapter 16A, as amended.

“Medical Cannabis Processing Facility” means a place where medical cannabis is permitted to be processed, refined, or otherwise converted into a legally permitted state, as provided for in the Code of the State of West Virginia, Chapter 16A, as amended. This term does not include a health care medical cannabis organization as defined in the Code of the State of West Virginia, Chapter 16A, as amended.

“Micro wireless facility” means a small wireless facility that is not larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that has an exterior antenna, if any, that is no longer than eleven (11) inches.

“Mineral” means gas, oil, coal, other gaseous and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical raw material, gemstone, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resource, or any other substance defined as a mineral by the West Virginia Code.

“Modification” or “Modify” means the physical change to any existing wireless telecommunications tower or base station that may or may not be related to eligible facilities request and that involves: collocation of new transmission equipment; removal of transmission equipment; replacement of transmission equipment; or any expansion of wireless telecommunication tower or base station.

“Night Club” means an establishment for evening entertainment, generally open until the early morning that serves liquor and usually food and offers patrons music, comedy acts, a floor show, or dancing. Adult businesses are not be considered a nightclub.

“Nonconforming Building or Structure” means a building, structure or part thereof manifestly not designed to comply with the applicable use or extent of use provisions in this code or amendments heretofore or hereafter enacted, where such building or structure lawfully existed prior to the enactment of such ordinance or amendment, or prior to the application of this code or amendments to its location by reason of annexation. Such nonconforming structures include, but are not limited to, nonconforming signs.

“Nonconforming Lot” means a lot or parcel of land that was of record and lawfully established and maintained but which, because of the enactment of this code, no longer conforms to the land-use standards or use regulations of the zone in which it is located.

“Nonconforming Sign” means a sign which was lawfully erected in compliance with applicable regulations of the City and maintained prior to the effective date of this code and which fails to conform to current standards and restrictions of this code.

“Nonconforming Use” means a use, whether of land or of structure, which does not comply with the applicable use provisions in this code or amendment heretofore or hereafter enacted, where such use was lawfully in existence prior to the enactment of such ordinance or amendment, or prior to the application of such ordinance or amendment to its location by reason of annexation.

“Nonintoxicating Beer” means all natural cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale, and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers, with no caffeine infusion or any additives masking or altering the alcohol effect containing at least one half of one percent (0.5%) alcohol by volume, but not more than nine and six-tenths (9.6) of alcohol by weight, or twelve percent (12%) by volume, whichever is greater.

“Nudity” means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft, cleavage with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernible turgid state.

“Off-premises, Freestanding Sign,” also known as a billboard, means a large outdoor sign not accessory to or associated with the principal use on a lot, or signs which are the principal use of a lot.

“Office Supply Establishment” means a place of business where stationery and other supplies typically used in offices are the main items offered for sale.

“Open Space” means any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment, or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space.

“Owner-occupied” means a person who maintains his or her principal residence by being physically present and spending the night on the property for more than two hundred and eighty (280) nights of each calendar year and who is:

- (a) The sole owner of record of the property, as reflected in a deed recorded in the County Clerk's Office;
- (b) A tenant in common, tenant by the entirety or joint tenant with right of survivorship, as reflected in a deed recorded in the County Clerk's Office; or
- (c) An owner of at least twenty-five (25%) percent of a business entity shown as the owner of record, as reflected in a deed recorded in the County Clerk's office. The ownership interest shall be shown by a duly executed resolution of the business entity, or such other method as determined by the Zoning Officer.

“Parcel Delivery Facility” means an establishment engaged in the delivery, receipt, and transmittal of documents, packages, and parcels.

“Park” means a parcel of ground along with its buildings and fixtures intended primarily for beautification and aesthetic improvement and designated as recreational land.

“Parking Lot” means an area utilized to meet the parking requirements of this code, including the parking aisles that provide access to the parking spaces, but not including any streets or driveways that provide access to the parking lot.

“Parking Structure” means a building with multiple stories of off-street parking spaces where vehicles are temporarily stored with or without a nominal fee, in association with occupational, retail, entertainment, recreational, municipal, educational or residential use(s).

“Patio” means an area consisting of natural or man-made material constructed at or near grade level, intended for use as an outdoor living area, and not enclosed by a permanent roof or awning.

“Permit” means a document issued by the governing body authorizing an applicant to undertake certain activities.

“Permitted Use” means any use allowed within a zoning district, subject to the restrictions applicable to that zoning district; not a conditional use.

“Personal Service” means a business providing services to a person, their apparel, or personal effects commonly carried on or about their person, including, but not limited to, shoe repair, tailoring, watch repair, beauty shops, barber shops, tanning and nail salons, and the like.

“Personal wireless telecommunication services” means commercial mobile services, unlicensed wireless telecommunication services, and common carrier wireless telecommunication exchange access services.

“Pet Shop” means an establishment where animals are bought, sold, exchanged, or offered for sale or exchange to the general public.

“Pharmacy” means a retail store which primarily sells prescription drugs, patient medicines, and surgical and sickroom supplies.

“Photographic Studio” means a retail establishment for the purpose of photographing subjects and processing photographs for commercial purposes, but not including photography requiring professional models.

“Place of Worship/Religious Institution” means a building wherein persons regularly assemble for acts of religious devotion and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes a church, synagogue, temple, mosque, or other such place for worship and religious activities. Customary accessory uses include a wide range of religious activities, including a caretaker’s residence; fellowship halls, parish halls and similar buildings; rooms used for meetings, religious education, and similar functions; a gymnasium; a playground; the sale of items associated with the practice of religion; and faith-based social services such as homeless shelters, group homes, and soup kitchens.

“Planning Commission” means the planning commission of the City of Elkins.

“Porch” means a covered but unenclosed projection from the main wall of a building that may or may not use columns or other ground supports for structural purposes. If a porch is uncovered, it is considered to be a deck.

“Post Office” means a building or structure used and maintained by the Postal Service of the United States of America for the purpose of collecting or distributing mail to the public.

“Principal Building or Structure” means a building or structure in which the principal use is conducted. In all residential districts, any dwelling is the principal building on the lot on which it is located.

“Principal Use” means the primary use of land, buildings, or structures, whether permitted by right or conditional, which exists independently of any other use on the property.

“Private Club” means any establishment, other than an outdoor recreation facility, operated by a private organization for recreational, educational, fraternal, or social purposes, but only open to members and their guests and not to the general public.

“Professional Services” means any office of recognized professions, other than medical, such as lawyers, architects, engineers, real estate brokers, insurance agents, and others who are qualified to perform services of a professional nature and other offices used primarily for accounting, corresponding, research, editing or other administrative functions, but not including banks or other financial institutions and personal services.

“Public recreational area” means a regionally or locally significant area, as designated by state or federal regulation, or by the City of Elkins, and which is meant to serve a recreational purpose.

“Reception Facility” means a facility within an existing structure or outdoor area for hosting receptions or similar activities, limited only to weddings, wedding receptions, birthday events, anniversary events, reunion events, and family gatherings, and not involving charging admission or gatherings primarily to view a performance.

“Recreation, Commercial Indoor” means indoor facilities for leisure-time activities, including facilities open to the public and those requiring membership; including, but not limited to, such establishments as bowling alleys, ice rinks, sportsman’s clubs, billiard and pool halls, video and other coin-operated electronic games, trampolines, ball pits, indoor skating facilities, and similar recreational diversions.

“Recreation, Commercial Outdoor” means outdoor facilities for leisure-time activities, including outdoor facilities open to the public and those requiring membership; including, but not limited to, swimming pools, miniature golf, golf practice facilities, tennis courts, riding stables, rifle range, archery range, playing fields, golf courses, docks, and similar recreational diversions.



“Recreation, Municipal” means developed or undeveloped open spaces or structures and facilities which are provided by a governmental body for public use for the purposes of play, amusement, or relaxation. Such uses may include, but not limited to, sports facilities, parks, swimming pools, assembly buildings, passive areas, gardens, docks, and related amenities.

“Recreational Vehicle” means any travel trailer or other vehicular portable structure designed to be used as a temporary occupancy for travel or recreational use. For example, any motor home, truck slide-in camper, fifth wheel trailer, tent trailer, animal trailer, trailer used for transporting recreational vehicles, any type of 3- or 4-wheeled sport racing vehicle, boat, boat trailer, raft, aircraft, dune buggy, snowmobile, jet ski, all-terrain vehicle, and vehicle dolly are included.

“Recycling Facility” means a facility that accepts recyclable material from the public by donation, redemption, or purchase and separates or recovers reusable materials that can be sold to or reused by a manufacturer as a substitute for or a supplement to, virgin raw materials. The term does not include transfer facilities, municipal waste landfills, composting facilities or resource recovery facilities.

“Research and Development” means a structure or complex of structures designed or used primarily for research and development functions related to industry and similar fields.

“Restaurant” means an establishment whose principal business is the sale of food, desserts, or beverages to the customer in a ready-to-consume state, primarily consumed off the premises; to customers who order and are served food at a counter or in an automobile in packages prepared to leave the premises, or able to be taken to a table or counter to be consumed, and may include a drive-through facility; or where food and beverages are prepared, served, and consumed primarily within the principal building. Food sales constitute more than sixty (60) percent of the gross sales receipts.

“Retail Store” means is a business having as its primary function the supply of merchandise or wares to the end consumer. Three classes of retail stores:

- (a) Retail Store/Shop <7,000 square feet of gross floor area
- (b) Retail Store/Shop 7,000 to 25,000 square feet gross floor area
- (c) Retail Store/Shop >25,000 square feet of gross floor area

“Right-of-Way” means a strip of land acquired by reservation, dedication, prescription, or condemnation and intended to be occupied by a street, trail, waterline, sanitary sewer, or other public utilities or facilities.

“Roadside Vendor Stand” means stands, trailers, truck beds or similar facilities offering agricultural products for sale which are not produced on the immediate premises.

“Salvage Yard” means any place which is maintained, operated or used for the storing, keeping, buying, selling or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard.

“Satellite Signal Receiving Station” means devices commonly parabolic in shape, mounted at a fixed point on a structure, or on rooftops, for the purpose of capturing electronic television or internet signals transmitted via satellite communication facilities and serving the same or similar function as the common television antenna. Such devices are accessory structures.

“School, Commercial” means a school establishment to provide for the teaching of industrial, clerical, managerial, or artistic skills. This definition applies to schools that are owned and operated privately for profit.

“School, PreK-12” means a public or private school offering educational instruction in grades pre-kindergarten through twelve (12), licensed by the West Virginia Department of Education.

“Screening” means the use of plant materials, fencing, or earthen berms to aid in the concealment of such features as parking areas and vehicles within them, and to provide privacy between two (2) or more different land uses that abut.

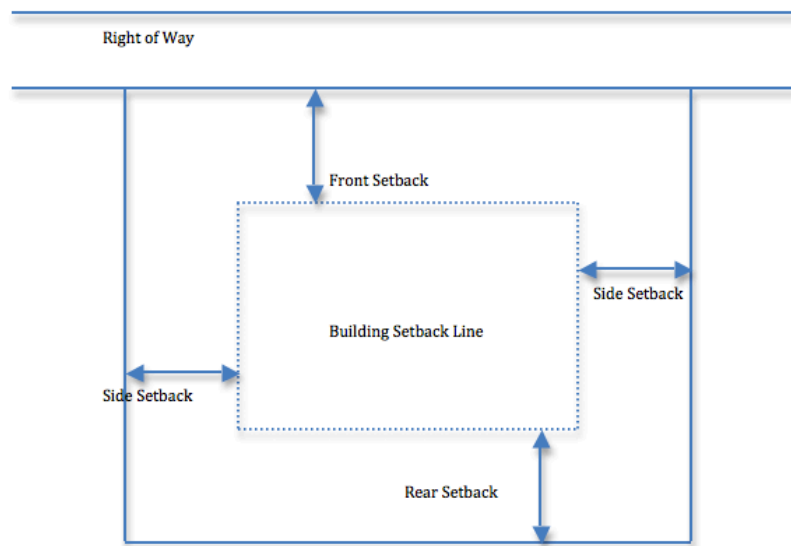
“Self-storage Facility” means a building or group of buildings containing separate, individual, and private storage spaces of varying sizes available for lease or rent for varying periods of time.

“Senior Independent Housing” means a single family or multi-family development intended, operated, and designed to accommodate residents fifty-five (55) years of age or older. Senior independent housing communities are designed for seniors who are able to live independently or need assistance with daily care. Senior independent housing can also include continuing care facilities.

“Setback” means the minimum distance by which any building or structure must be separated from a street right-of-way or lot line.

- (a) “Front Yard Setback” is measured as the shortest distance between the street front lot line and the building setback line.
- (b) “Rear Yard Setback” is measured as the shortest distance between the rear lot line and the building setback line.
- (c) “Side Yard Setback” is measured as the shortest distance between the side lot line and the building setback line.

Front Setback, Rear Setback, and Side Setback



“Sewage Treatment Facility” means a place or premises, including buildings, where sewage or other solid or liquid wastes are treated or screened before discharge.

“Shopping Center” means a commercial facility of a single lot with common parking facilities that uses or leases separate areas of space to retail or service-oriented businesses.

“Sign” means any device (writing, letter work or numeral, pictorial presentation, illustration or decoration, emblem, device, symbol or trademark, flag, banner or pennant, inflatable figures for attracting viewers, or any other device, figure or character, or delineation) with the essential purpose to communicate, designed to communicate, or where the context results in communication, and such communication is aimed at persons in a public right-of-way. Signs directed at persons within a facility and not viewable or only incidentally viewable to persons in a public right-of-way are not subject to this code.

- (a) “A-Frame Sign” means a two-faced sign with supports that are connected at the top and separated at the base with an internal angle between the two faces of no more than a forty-five (45) degree angle, forming an “A” shape not more than six (6) square feet on each side. These are also referred to as “sandwich board” signs.

- (b) “Animated Sign” means a sign or part of a sign that is designed to rotate, move, or appear to rotate or move. Such a sign is sometimes referred to as a “moving sign.” Animated signs include signs with moving graphic features such as scrolling text or images that appear to move; moving sign change features such as fly-in, wipe-off, fading, dissolving, traveling, or expanding displays or any other full message sign change taking longer than 0.3 seconds; and static electronic message displays displayed less than seven (7) seconds. Animated signs also include signs propelled by vehicle, watercraft, or aircraft where the primary purpose of the vehicle, watercraft, or aircraft at the time of sign display is to propel the sign.
- (c) “Awning Sign” means a sign placed directly on the surface of an awning.
- (d) “Banner” means a sign made of any cloth, bunting, plastic, paper, or similar non-rigid material attached to any structure, staff, pole, rope, wire, or framing of flexible material affixed to a framework or flat surface. Banners are not flags for purposes of this ordinance.
- (e) “Beacon” means any light with one or more beams directed into the atmosphere or directed at one or more points not on the same zone lot as the light source; also, any light with one or more beams that rotate or move.
- (f) “Canopy Sign” means a sign attached to a canopy, which is a roof-like structure either projecting from a building façade and open on three sides, or standing alone and open on four sides, and used for the purpose of protecting pedestrians and motorists from weather related elements.
- (g) “Chalkboard Sign” means a single-faced, framed slate, or chalkboard that can be written on with chalk or similar markers.
- (h) “Changeable Copy Sign” means a sign or part of a sign that is designed so that characters, letters, or illustrations can be manually or physically changed or rearranged without altering the face or surface of the sign.
- (i) “Electronic message display” means a sign that is either light emitting or light reflective and that is capable of changing the displayed message through electronic programming. Electronic message displays are divided into four categories:
  - (1) “Static electronic message display” means an electronic message display that remains static, with no animated features or animated transition features with each static display lasting longer than seven (7) seconds.
  - (2) “Static electronic message display with transition features” means an electronic message display that remains static except for no more than a two (2) second transition feature such as fading, dissolving or a single instance of fly-in, wipe-off, expansion, or traveling that occurs no more often than every seven (7) seconds.
  - (3) “Electronic message display, partially animated” means an electronic message display with animated or moving text or graphics.
  - (4) “Electronic message display, fully animated” means an electronic message display with full animation features.
- (j) “Feather Sign/Feather Flag/Teardrop Flag/Wind Flag” means a lightweight, portable flag made of cloth, plastic, or similar material mounted along one edge on a single, vertical, flexible pole, the physical structure of which may resemble a sail, bow, or teardrop.
- (k) “Flag” means a piece of cloth or similar material, typically oblong or square, attachable by one edge to a pole or rope and used as a symbol or decoration.
- (l) “Flashing Sign” means a sign that includes lights that flash, blink, turn on and off intermittently, or otherwise vary light intensity during the display of a message.
- (m) “Freestanding Sign” or “Ground-mounted Sign” or “Pole Sign” means any non-portable sign supported by a fence, retaining wall, or by pole, upright structural members, or braces on or in the ground and not attached to a building.
- (n) “Geological Sign” means signs made of or that appear to be made of geological formations, including but not limited to standalone rocks or mountainsides, and convey a message that is etched, carved, painted, or similarly incorporated into the sign’s material.
- (o) “Illegal sign” means any sign erected without obtaining a required permit or which otherwise does not comply with any provision of this code.
- (p) “Inflatable sign” means a sign that are filled with air to convey a commercial message or draw attention to a location.
- (q) “Marquee Sign” means a sign attached to and made a part of a canopy or any similar projections from a building, with changeable, fixed, or both types of lettering in use.

- (r) "Minor Sign" means a sign not exceeding two (2) square foot in area, not exceeding four (4) feet in height, and not illuminated.
- (s) "Monument Sign" means a sign affixed to a structure built on grade in which the sign and the structure are an integral part of one another; not a pole sign.
- (t) "Neon Sign" means a sign containing exposed tubes filled with light-emitting gas.
- (u) "Off-premises sign" are commercial signs not accessory to or associated with the principal use on a lot, or signs which are the principal use of a lot.
- (v) "On-premises sign" means commercial or noncommercial signs accessory to or associated with the principal use of a lot.
- (w) "Pennant" means a geometric shaped flag made of flexible materials, suspended from one or two corners fastened to a string, which is secured or tethered so as to allow movement and used as an attention-getting form of media.
- (x) "Person-assisted Sign" means a sign that includes an individual paid to hold, move, wear, or otherwise direct attention to a sign.
- (y) "Projecting Sign" means a sign attached to and projecting more than twelve (12) inches from the face of a wall or building, but does not project above the parapet or eave line of the building and is a minimum of eight (8) feet above any walking surface or twenty (20) feet above any driving surface. Projecting signs may not be more than twenty (20) square feet in area.
- (z) "Roof sign" means a sign erected or constructed, in whole or in part, upon or above the highest point of a building with a flat roof, or the lowest portion of a roof for any building with a pitched roof.
- (aa) "Temporary Sign" means any sign intended to be displayed for a limited period of time not to exceed thirty (30) days.
- (bb) "Vehicle or Trailer Sign, Illegal or Inoperable" means any sign attached to or displayed on a vehicle or trailer, if the vehicle or trailer is used for the primary purpose of displaying the sign or signs and the vehicle or trailer fails to display current license plates, inspection sticker, or municipal decal; if the vehicle or trailer is inoperable; if evidence of paid-to-date local taxes cannot be made available; or if the sign alters the standard design of such vehicle or trailer.
- (cc) "Wall Sign" means any sign, inscription, artwork, figure, marking, or design that is attached, painted, drawn, marked, etched, or scratched onto a wall or against a flat vertical exterior surface of a structure. Wall signs include murals.
- (dd) "Wicket Sign" means a sign with an H- or U-shaped frame that is put into the ground or placed above the ground.
- (ee) "Window Sign" means any sign visible outside the window and attached to or within eighteen (18) inches in front of or behind the surface of a window or door.

"Sign Face" means the portion of a sign structure bearing the message.

"Sign Height" means the maximum vertical distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the lower of: (1) existing grade prior to construction; or (2) the newly established grade after construction, exclusive of any filling, berming, mounding or excavating primarily for the purpose of mounting or elevating the sign.

"Sign Structure" means any structure bearing a sign face.

"Site" means the current boundaries of the leased or owned property surrounding the tower and base station and any access or utility easements currently related to the site; and, for other eligible support structures, means that area in proximity to the structure and to other transmission equipment already deployed on the ground. This term does not apply to towers or base stations in public rights-of-way.

"Small cell network" means a collection of interrelated small wireless telecommunication facilities designed to deliver personal wireless telecommunication services.

"Small wireless facility" or "Wireless Telecommunications Facility, Small Cells" means a wireless facility that meets both of the following qualifications: each antenna does not exceed six (6) cubic feet; and all other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric

meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and communications services.

“Solar Energy Facilities” means an energy conversion facility, including appurtenances, which converts radiant energy from the sun to a usable form of energy to meet all or part of the energy or heating requirements of the on-site user, or which is to be sold to a utility company to be used by others, or sold directly to other users. A Solar Energy Facility may be ground-mounted (i.e., placed on top of the ground surface) or roof-mounted (i.e., placed on or as an integral part of a building).

- (a) “Small solar energy” is a solar energy facility installed for personal use in residences, commercial properties, and institutions.
- (b) “Large solar energy facility” is a solar energy facility installed on large parcels of land for the purpose of generating revenue, or utility-scale facility installed to benefit the community or an entire institution.

“Solid Waste Disposal Areas/Facility, Private” means any facility, land, contiguous land, improvements on the land, structures, or other appurtenances or methods used for processing, recycling, or disposing of solid waste, including landfills, transfer stations, materials recovery facilities, mixed waste processing facilities, sewage sludge processing facilities, commercial composting facilities, recycling facilities, and other such facilities not herein specified, but not including land upon which sewage sludge is applied in accordance with the West Virginia Code. Such facility is situated in the city or county where the majority of the spatial area of such facility is located.

“Solid Waste Disposal Areas/Facility, Public” means any municipally owned facility, land, contiguous land, improvements on the land, structures, or other appurtenances or methods used for processing, recycling, or disposing of solid waste, including landfills, transfer stations, materials recovery facilities, mixed waste processing facilities, sewage sludge processing facilities, composting facilities, recycling facilities, and other such facilities not herein specified, but not including land upon which sewage sludge is applied in accordance with the West Virginia Code. Such facility is situated in the city or county where the majority of the spatial area of such facility is located.

“Special Flood Hazard Area” means the area that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year. The 1-percent annual chance flood is also referred to as the base flood or 100-year flood.

“Spectrum Act” means the “Middle Class Tax Relief and Job Creation Act of 2012” (Public Law 112-96; codified at 47 U.S.C. § 1455(a)).

“Sports Arena” means a central stage, ring, area, or similar structure, used for sports and surrounded by seats for spectators.

“Stealth” means the same as “camouflage,” “conceal,” or “concealment.”

“Story” means the portion of a building included between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then the space between such floor and the ceiling above it.

“Story, Half” means a story under a gabled, hipped, or gambrel roof, the wall plates of which on at least two (2) opposite exterior walls are not more than two (2) feet above the finished floor of such story.

“Street” means streets, avenues, boulevards, highways, roads, lanes, alleys, and all public ways.

“Structure” means anything constructed, erected, or situated by man that requires location on the ground or being attached to something having location on the ground; but not including vehicles, recreational vehicles, campers, tents less than thirty-six (36) square feet in gross floor area, retaining walls, fences not over eight (8) feet in height, yard and play equipment, utility lines and underground facilities.

- (a) “Principal Structure” means the structure or portion thereof housing the main use of the land.
- (b) “Temporary Structure” means any structure which is erected to be in place for not more than twelve (12) months, including but not limited to tents, air-supported structures, portable bandstands, reviewing stands,

bleachers, mobile office units, construction sheds, sales offices for lots or dwellings or other structures of a similar character.

“Studio, Dancing, Music, or Art” means a facility used for the rehearsal or performance of performing arts, such as music, dance or theatre; teaching classes in creative arts, such as painting, drawing, sculpting, potting, or beading or otherwise creating art; or for the display or sale of art in general or during special events. Food and alcoholic beverages may be served and fees charged as accessory uses during special events.

“Substantial change criteria” means the criteria set forth in Section 21-139.

“Surety” means a financial guaranty that the activities proposed in the application are made as planned. If activities are not made by the applicant, the local government can use surety funds to complete the work as planned or return the land to its original state. Includes but is not limited to performance bonds, cash in escrow, a letter of credit, and similar collateral.

“Swimming Pool” means any body of water (excluding natural bodies of water fed by rivers, streams, or brooks) or receptacle for water intended to be used for swimming and constructed, installed, or maintained in or on the ground outside any building.

“Targeted market coverage area” means the area which is targeted to be served by the wireless telecommunications facility proposed in an application.

“Tasting Facility” means an area of a winery, brewery, or distillery where complimentary samples of a beverage are served on the premises of manufacture, in moderate quantities for tasting.

“Tattoo Parlor/Body Piercing Studio” means an establishment whose principal business activity is the practice of placing designs, letters, figures, symbols, or other marks upon or under the skin of any person, using ink or other substances that result in the permanent coloration of the skin by means of the use of needles or other instruments designed to contact or puncture the skin. The establishment also includes the creation of an opening in the body of a person for the purpose of inserting jewelry or other decoration.

“Tavern/Drinking Establishment” means an establishment engaged in the preparation and retail sale of alcoholic beverages for consumption on the premises and which may offer food for consumption on premises as an accessory use.

“Telecommunications Tower” means any structure that is designated and constructed primarily for the purpose of supporting one or more telecommunication antennas. This includes guyed towers, lattice towers, monopoles, and towers taller than fifteen (15) feet constructed on the top of another building, along with any separate building on the lot used to house any supporting electronic equipment.

“Temporary Shelter” means any structure which is erected to be in place for not more than twelve (12) months, including but not limited to tents, air-supported structures, portable bandstands, reviewing stands, bleachers, mobile office units, construction sheds, sales offices for lots, or dwellings or other structures of a similar character.

“Theater” means a building or part of a building devoted to the showing of movies, musical performances, dance, or theatrical productions, usually on a paid admission basis.

“Theater, Drive-in” means an open lot or part thereof, with its appurtenant facilities devoted primarily to the showing of movies or to theatrical productions, usually on a paid admission basis, to patrons seated in motor vehicles or on outdoor seats.

“Tourist or Trailer Camp” means an area containing travel trailers, pick-up coaches, and motorized homes designed or intended to be used as temporary living facilities for one or more families.

“Tower” means any structure capable of supporting any antennas affixed to the tower and their associated facilities, licensed or authorized by the FCC, and constructed for the sole or primary purpose of supporting wireless telecommunications facilities.

“Trailer, Camping and Recreational Equipment” means tents, travel trailers, pickup coaches, motorized homes and recreational vehicles and equipment as follows:

- (a) “Travel Trailer” means a portable structure built on a chassis, designed to be towed and used as a temporary dwelling for travel, recreational, and vacation purposes, and permanently identified as a travel trailer by the manufacturer of the trailer.
- (b) “Pickup Coach” means a structure designed primarily to be mounted on a pickup or other truck chassis with sufficient equipment to render it suitable for use as a temporary dwelling for travel, recreational, and vacation purposes.
- (c) “Motorized Home” means portable dwelling designed and constructed as an integral part of a self-propelled vehicle.
- (d) “Boat” means a vessel designed to travel on water.
- (e) “Boat Trailer” means a trailer designed to haul a boat as defined above.

“Transmission equipment” means equipment that facilitates transmission for any wireless telecommunication service licensed or authorized by the FCC, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply.

“Truck Terminal” means a facility where freight is unloaded from interstate trucks or intermodal trailers and containers carried on the railroad and loaded onto local delivery trucks.

“Unit of Government” means any federal, state, regional, county, or municipal government or governmental agency.

“Urban Agriculture” means land used for beekeeping, community gardens, keeping up to six (6) hens, and other small-scale agricultural activities.

“Use” means any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied, or any activity, occupation, business, or operation carried on in a building or other structure on a tract of land.

“Utility” means a public or private distribution service to the public that is regulated by the public service commission.

“Utility pole” means a pole or similar structure that is or may be used, in whole or in part, by a communication services provider or for electric distribution, lighting, traffic control, signage (if the pole is fifteen (15) feet or taller), or a similar function, or for the collocation of small wireless facilities. However, “utility pole” does not include wireless support structures or electric transmission structures.

“Variance” means a deviation from the minimum standards of this code that does not involve permitting land uses otherwise prohibited in the zoning district or changing the zoning classifications of a parcel of land.

“Vehicle” means any device in, upon or by which any person or property is or may be transported or drawn upon a street, excepting tractors, agricultural machinery, devices moved by human power or used upon stationary rails or tracks.

“Vehicle Sales, Rental and Service” means a facility for the repair, rental, sales, or service of automobiles, trucks, buses, boats, and marine equipment, motorcycles, campers, motor homes, and recreational vehicles. This definition does not include the rental, sale, or service of heavy equipment.

“Video Gaming or Lottery Establishment” means “video lottery” machines licensed by the West Virginia Lottery Commission pursuant to the West Virginia Code, but excluding establishments that only sell lottery tickets.



“Viewpoint” means a location identified either in the City of Elkins comprehensive plan or by a federal or state agency and which serves as the basis for the location and determination of a designated scenic resource.

“Warehouse” means a structure primarily used for the storage of goods and materials.

“Water Treatment Plant” means municipally owned facilities that treat water and produce potable water for public consumption.

“Wholesale Establishment” means an establishment primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users; or to other wholesalers, or acting as agents or brokers and buying merchandise for, or selling to, such individuals or companies.

“Wind Energy Facility, Small” means any electric generation facility, whose main purpose is to convert kinetic energy from the wind into electrical power and store the power as usable forms of energy, and includes the wind turbine(s), structural supports, electrical infrastructure, and other appurtenant structures and facilities. Consists of a maximum of one (1) wind turbine, installed for personal use in residences, commercial properties, and institutions.

“Winery” means an establishment where wine is manufactured or in any way prepared.

“Wireless Telecommunications Facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: equipment associated with wireless communications; and radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; any structure, antenna, tower, base station, or other device that provides or is suitable to provide radio/television transmission, commercial mobile wireless telecommunication services, cellular phone services, specialized mobile radio communications (SMR), broadband telecommunications services, common carrier wireless telecommunication exchange phone services, and personal communications service (PCS) or pager service. Wireless facility includes small wireless facilities. “Wireless facility” does not include the structure or improvements on, under, or within which the equipment is collocated; wireline backhaul facilities; coaxial or fiber-optic cable that is between wireless support structures or utility poles; or coaxial or fiber-optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna.

The following are not wireless telecommunication facilities for purposes of this ordinance:

- (a) “Emergency wireless telecommunications facility” means wireless telecommunication facilities exclusively for emergency communications.
- (b) “Amateur (ham) Radio Stations” means any antenna of less than one hundred (100) feet in height owned and operated exclusively by an amateur radio operator licensed by the Federal Communications Commission (FCC).
- (c) “Temporary wireless telecommunications facility” means a temporary wireless telecommunications facility, either operational or in operation for a maximum period of one hundred twenty (120) calendar days per calendar year within the jurisdiction.
- (d) “Antennas as accessory uses” means an antenna that is an accessory use to a residential dwelling unit.

“Wireless infrastructure provider” means any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles, but that is not a wireless provider.

“Wireless provider” means a wireless infrastructure provider or a wireless service provider.

“Wireless services” means any services, using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile location, provided to the public using wireless facilities.

“Wireless service provider” means a person who provides wireless services.

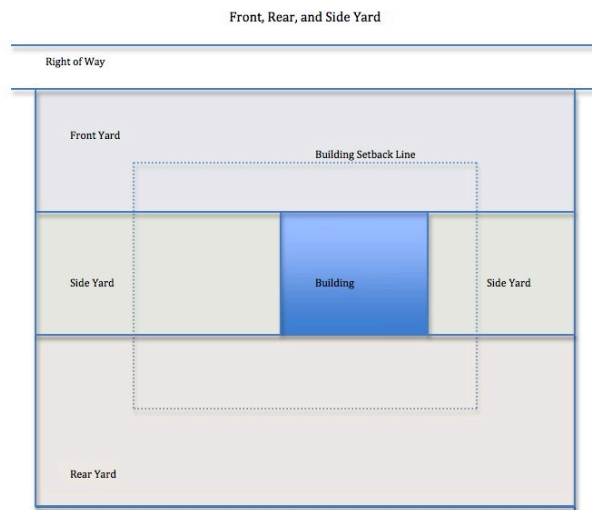
“Wireless support structure” means a structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities.

“Wireless support structure” does not include a utility pole.

“Wireline backhaul facility” is a facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.

“Yard” means an open space at grade between the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein.

- (a) “Yard, Front” means a space extending the full width of the lot between the architectural front of the principle building or structure and the front lot line.
- (b) “Yard, Rear” means a space extending the full width of the lot between the architectural rear of the principal building or structure and the rear lot line.
- (c) “Yard, Side” means a space extending from the front yard to the rear yard between the principal building façade and the side lot line.



“Zoning” means the division of a municipality or county into districts or zones which specify permitted and conditional uses and development standards for real property within the districts or zones.

“Zoning Officer” means that person appointed by the governing body and who has any other authority this code may confer upon him or her to administer this code and to issue zoning permits.

#### **Section 21-33A Article V. Zoning Districts and Regulations.**

##### **Section 21-34 Official Zoning Map and Use Table.**

The official zoning map of the City of Elkins is attached to this ordinance as **Appendix A**. The Use Table is attached to this ordinance as **Appendix B**. Where a discrepancy exists between the Use Table and the text of the ordinance, the Use Table controls.

##### **Section 21-35 Establishment of Districts.**

In order to apply the provisions of this code, the City is hereby divided into the following classes of districts for the purpose of zoning:

- (a) Single Family Residential (R-1)
- (b) City Residential (R-2)
- (c) Recreational (Rec)
- (d) Central Business District (CBD)
- (e) Commercial (B-1)
- (f) Educational (E)
- (g) Industrial (I-1)
- (h) Agriculture (Ag)
- (i) Telecommunications Overlay (TO)

#### **Section 21-36 Map and Boundaries.**

- (a) The boundaries of all zoning districts are shown on the Official Zoning Map, which is the official zoning map for the City of Elkins. The map is part of this code and is included in Appendix A.
- (b) The district boundaries on the City of Elkins Zoning Map are intended to follow property lines; centerlines of roads, water courses, or railroads; other identifiable physical features; or measured distances from property lines, centerlines, or identifiable physical features. When the zoning officer cannot determine the location of a zoning district boundary by reference to the zoning district map, the zoning officer shall refuse action; and the Board of Zoning Appeals shall interpret the location of the district boundary with reference to the scale of the map, the comprehensive plan, and the purposes set forth in all relevant provisions of this code, provided that no boundary shall be changed by the Board of Zoning Appeals. When a district boundary line divides a lot held in single or separate ownership at the effective date of this code, the permitted use on the lot is limited to those uses permitted in the zoning district in which the largest part of the lot is located, and the smaller part of the lot located in a another zoning district will be subject to the provisions where the largest portion of the lot is located.
- (c) Unless a use is allowed as a "permitted use by right," "use permitted with supplemental regulations," "conditional use," "conditional use with supplemental regulations," "nonconforming use," "temporary use" then such use is prohibited.

#### **Section 21-37 Procedures Relating to Annexed or Vacated Areas.**

- (a) *Zoning of Annexed Lands.* Zoning classification for any land annexed into the City shall be established by ordinance, pursuant to Chapter 8A, Article 7, simultaneously with the adoption of the annexation resolution required by West Virginia Code, Chapter 8, Article 6, as amended. City Council shall hear zoning recommendations from the Planning Commission for the subject area during the required hearing for annexation. Prior to any hearings, the Elkins Planning Commission shall submit its written recommendations, to be consistent with the comprehensive plan, to City Council at least thirty (30) days prior to the hearing for annexation.
  - (1) Prior to the annexation hearing and formal zoning designation of any parcel(s) of land being annexed, the City shall, at least thirty (30) days prior to the enactment of the zoning map amendment:
    - (i) Give written notice, by certified mail, to the landowner(s) whose property is directly involved in the proposed amendment; and
    - (ii) Publish a notice of the proposed amendment to the zoning ordinance map as a Class II-0 legal advertisement, pursuant to West Virginia Code Chapter 59.
  - (2) After the required thirty (30) day notice period ends and the property owners have been notified by certified mail, the City Council shall hold a public hearing regarding the zoning designation of the newly annexed land. After the hearing, City Council can, by ordinance, designate the zoning districts for the annexed land.
- (b) Whenever any street, place, alley, public right-of-way, railroad right-of-way, waterway, or other similar area is vacated by proper authority, the districts adjoining each side of such street, place, alley, public way, railroad right-of-way, waterway, or similar area shall be extended automatically to the center of such vacation and all area included in the vacation shall then and thenceforth be subject to all appropriate provisions of the extended districts. In the event of a partial vacation, the adjoining district, or district nearest the portion vacated, shall be extended automatically to include all of the vacated area.

#### **Section 21-38 Uses Not Expressly Permitted or Conditional.**

It is recognized that new types or forms of land use will develop within the City of Elkins that are not anticipated by this zoning ordinance. In order to provide for such changes and contingencies, the classification of any new or unlisted land use shall be made by the Zoning Officer to determine if the use can reasonably be interpreted to fit into a similar use category described in this code.

#### **Section 21-39 Single Family Residential (R-1) District.**

The purpose of the Single Family Residential District is to preserve availability of single-family neighborhoods by discouraging multi-family dwellings and business, commercial, and industrial uses within the district.

**Section 21-40 Permitted Uses in the Single Family Residential (R-1) District.**

(a) The following shall be uses permitted by right in the Single Family Residential District:

- (1) Bus/Transit Shelter
- (2) Child Day Care Facility, Class 4
- (3) Dock
- (4) Dwelling, Single-family
- (5) Essential Utilities and Equipment
- (6) Event, Special
- (7) Greenhouse, Noncommercial
- (8) Group Residential Facility
- (9) Group Residential Home
- (10) Home-based Business (No Impact)
- (11) Park
- (12) Solar Energy Facility, Small
- (13) Solid Waste Disposal Area/Facility, Public
- (14) Wireless Telecommunications Facility, Small Cells

**Section 21-41 Conditional Uses in the Single Family Residential (R-1) District.**

(a) The following shall be conditional uses in the Single Family Residential District:

- (1) Bed and Breakfast Inn I
- (2) Bed and Breakfast Inn II
- (3) Conversion of School/Church
- (4) Dwelling, Accessory
- (5) Home-based Business (Low Impact)
- (6) Reception Facility
- (7) Recreation, Municipal

**Section 21-42 Single Family Residential (R-1) District Lot Requirements.**

<b>Single Family Residential District Requirements</b>	
<b>Max. Building Height</b>	40 feet
<b>Min. Lot Size (Sq. Ft.)</b>	No minimum
<b>Min. Lot Width</b>	No minimum
<b>Max. Lot Coverage (as a %)</b>	Interior lot: 40 Corner lot: 50 Triangular lot: 60
<b>Min. Front Setback</b>	Average of the two adjoining properties which have pre-existing structures* 15 feet for vacant lots**
<b>Min. Side Setback</b>	5 feet
<b>Min. Rear Setback</b>	Not less than 15 percent of the depth of the lot
*Only the setbacks on the lots that abut each side of the site and are on the same street may be used. Setbacks across the street or along a different street may not be used.	
**When one adjacent lot is vacant, the average is of the setback of the adjacent non-vacant lot and the required setback for the vacant lot. When the subject lot is a corner lot, the average is of the setback of the adjacent non-vacant lot and the required setback of the subject lot.	

**Section 21-43 City Residential (R-2) District.**

The purpose of the City Residential District is to encourage a wider variety of housing and allow that housing at a higher density than in R-1. The R-2 district also allows limited low-impact commercial, community, and recreational facilities, provided that these are suitable for operation in close proximity to housing.

**Section 21-44 Permitted Uses in the City Residential (R-2) District.**

(a) The following shall be uses permitted by right in the City Residential District:

- (1) Bed and Breakfast Inn I
- (2) Bed and Breakfast Inn II

- (3) Bus/Transit Shelter
- (4) Child Day Care Facility, Class 3
- (5) Child Day Care Facility, Class 4
- (6) Dock
- (7) Dwelling, Accessory
- (8) Dwelling, Single-family
- (9) Dwelling, Two-family
- (10) Essential Utilities and Equipment
- (11) Event, Special
- (12) Factory-built Home
- (13) Factory-built Home Rental Community
- (14) Greenhouse, Noncommercial
- (15) Group Residential Facility
- (16) Group Residential Home
- (17) Home-based Business (No Impact)
- (18) Park
- (19) Solar Energy Facility, Small
- (20) Solid Waste Disposal Area/Facility, Public
- (21) Water Treatment Plant
- (22) Wireless Telecommunications Facility, Small Cells

**Section 21-45 Conditional Uses in the City Residential (R-2) District.**

(a) The following shall be conditional uses in the City Residential District:

- (1) Community Facility
- (2) Conversion of School/Church
- (3) Dwelling, Conversion Apartment
- (4) Dwelling, Multi-family
- (5) Emergency Shelter
- (6) Event, Mass Gathering
- (7) Governmental Operation
- (8) Home-based Business (Low Impact)
- (9) Parking Lot
- (10) Places of Worship/Religious Institution
- (11) Reception Facility
- (12) Recreation, Municipal
- (13) School, PreK-12
- (14) Senior Independent Housing

**Section 21-46 City Residential (R-2) District Lot Requirements.**

<b>City Residential District Requirements</b>	
<b>Max. Building Height</b>	80 feet
<b>Min. Lot Size (Sq. Ft.)</b>	No minimum
<b>Min. Lot Width</b>	No minimum
<b>Max. Lot Coverage (as a %)</b>	Interior lot: 40 Corner lot: 50 Triangular lot: 60
<b>Min. Front Setback</b>	Average of the two adjoining properties which have pre-existing structures* 15 feet for vacant lots**
<b>Min. Side Setback</b>	If structure height is 40 feet or less = 5 feet If structure height is more than 40 feet = 15 feet
<b>Min. Rear Setback</b>	Not less than 15 percent of the depth of the lot
*Only the setbacks on the lots that abut each side of the site and are on the same street may be used. Setbacks across the street or along a different street may not be used.	

**\*\*When one adjacent lot is vacant, the average is of the setback of the adjacent non-vacant lot and the required setback for the vacant lot. When the subject lot is a corner lot, the average is of the setback of the adjacent non-vacant lot and the required setback of the subject lot.**

**Section 21-47 Recreational (Rec) District.**

The purpose of the Recreational District is to provide for recreation opportunities and facilities and to protect open space to preserve the natural beauty of the City.

**Section 21-48 Permitted Uses in the Recreational (Rec) District.**

- (a) The following shall be uses permitted by right in the Recreational (Rec) District:
- (1) Amphitheater
  - (2) Bus/Transit Shelter
  - (3) Dock
  - (4) Essential Utilities and Equipment
  - (5) Event, Mass Gathering
  - (6) Event, Special
  - (7) Farmer's Market
  - (8) Greenhouse, Noncommercial
  - (9) Group Residential Facility
  - (10) Group Residential Home
  - (11) Park
  - (12) Reception Facility
  - (13) Recreation, Municipal
  - (14) Solar Energy Facility, Small
  - (15) Wireless Telecommunications Facility, Small Cells

**Section 21-49 Conditional Uses in the Recreational (Rec) District.**

- (a) The following shall be conditional uses in the Recreational (Rec) District:
- (1) Parking Lot
  - (2) Sports Arena

**Section 21-50 Recreational (Rec) District Lot Requirements.**

Recreational District Requirements	
<b>Max. Building Height</b>	No maximum
<b>Min. Lot Size (Sq. Ft.)</b>	No minimum
<b>Min. Lot Width</b>	No minimum
<b>Max. Lot Coverage (as a %)</b>	No maximum
<b>Min. Front Setback</b>	No minimum
<b>Min. Side Setback</b>	No minimum
<b>Min. Rear Setback</b>	No minimum

**Section 21-51 Central Business (CBD) District.**

The purpose of the Central Business District is to encourage a centralized area of mixed commercial and residential uses. The goal of this district is to provide convenient, pedestrian-oriented business that meet the needs of residents in this neighborhood and surrounding neighborhoods, as well as walkable dining and entertainment options that are attractive for residents and visitors alike.

**Section 21-52 Permitted uses in the Central Business (CBD) District.**

- (a) The following shall be uses permitted by right in the Central Business (CBD) District:
- (1) Amphitheater
  - (2) Animal Hospital/Veterinary Office
  - (3) Bakery
  - (4) Bank/Financial Institution
  - (5) Bed and Breakfast Inn I
  - (6) Bed and Breakfast Inn II

- (7) Brewery Pub
- (8) Bus/Transit Shelter
- (9) Butcher Shop
- (10) Catering Business
- (11) Child Day Care Facility, Class 1
- (12) Child Day Care Facility, Class 2
- (13) Child Day Care Facility, Class 3
- (14) Child Day Care Facility, Class 4
- (15) Clinic
- (16) Community Facility
- (17) Convenience Store
- (18) Cultural Service
- (19) Distillery
- (20) Dock
- (21) Dwelling, Accessory
- (22) Dwelling, Mixed Use
- (23) Dwelling, Multi-family
- (24) Dwelling, Single-family
- (25) Dwelling, Two-family
- (26) Educational Institution
- (27) Essential Utilities and Equipment
- (28) Event, Mass Gathering
- (29) Event, Special
- (30) Farmer's Market
- (31) Governmental Operations
- (32) Greenhouse, Noncommercial
- (33) Group Residential Facility
- (34) Group Residential Home
- (35) Health Club
- (36) Home-based Business (Low Impact)
- (37) Home-based Business (No Impact)
- (38) Laundromat
- (39) Medical Cannabis Dispensary
- (40) Medical Cannabis Organization, Health Care
- (41) Office Supply Establishment
- (42) Park
- (43) Personal Service
- (44) Pet Shop
- (45) Pharmacy
- (46) Photographic Studio
- (47) Places of Worship/Religious Institution
- (48) Professional Services
- (49) Reception Facility
- (50) Recreation, Commercial Indoor
- (51) Recreation, Commercial Outdoor
- (52) Recreation, Municipal
- (53) Restaurant
- (54) Retail Store/Shop <7,000
- (55) Senior Independent Housing
- (56) Solar Energy Facility, Small
- (57) Studio, Dancing, Music or Art
- (58) Tattoo Parlor/Body Piercing Studio
- (59) Tavern/Drinking Establishment
- (60) Theater
- (61) Wireless Telecommunications Facility, Small Cells



**Section 21-53 Conditional Uses in the Central Business (CBD) District.**

(a) The following shall be conditional uses in the Central Business (CBD) District:

- (1) Conversion of School/Church
- (2) Dog Day Care
- (3) Dwelling, Conversion Apartment
- (4) Emergency Shelter
- (5) Garage, Public
- (6) Hotel/Motel
- (7) Medical Adult Day Care Center
- (8) Night Club
- (9) Parking Lot
- (10) Parking Structure
- (11) Private Club
- (12) Retail Store/Shop 7,000 to 25,000
- (13) Roadside Vendor Stand
- (14) School, Commercial
- (15) Shopping Center
- (16) Sports Arena
- (17) Winery

**Section 21-54 Central Business (CBD) District Lot Requirements.**

Central Business District Requirements	
<b>Max. Building Height</b>	72 feet
<b>Min. Lot Size (Sq. Ft.)</b>	No minimum
<b>Min. Lot Width</b>	No minimum
<b>Max. Lot Coverage (as a %)</b>	For commercial and industrial buildings, 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 code with reference to parking area, are fully complied with.
<b>Front Setback</b>	15 feet maximum
<b>Min. Side Setback</b>	No minimum
<b>Min. Rear Setback</b>	No minimum
Single family and Multi-Family Dwellings in the CBD district shall follow the dimensional lot requirements for the City Residential Zoning District, except for building height. *no parking lots permitted within front yards	

**Section 21-55 Commercial (B-1) District.**

The purpose of the Commercial District is to provide space for larger scale commercial businesses that serve both the City and the traveling public.

**Section 21-56 Permitted uses in the Commercial (B-1) District.**

(a) The following shall be uses permitted by right in the Commercial (B-1) District:

- (1) Animal Hospital/Veterinary Office
- (2) Automobile Car Wash
- (3) Automobile Repair/Service
- (4) Bakery
- (5) Bank/Financial Institution
- (6) Boat and Marine Sales/Service
- (7) Brewery Pub
- (8) Broadcasting Studio (radio/television)
- (9) Building Materials Facility
- (10) Bus/Transit Facilities
- (11) Bus/Transit Shelter
- (12) Butcher Shop

- (13) Catering Business
- (14) Child Day Care Facility, Class 1
- (15) Child Day Care Facility, Class 2
- (16) Child Day Care Facility, Class 3
- (17) Child Day Care Facility, Class 4
- (18) Clinic
- (19) Community Facility
- (20) Continuing Care Facility
- (21) Convenience Store
- (22) Cultural Service
- (23) Distillery
- (24) Distribution Facility
- (25) Dock
- (26) Dog Day Care
- (27) Dry Cleaner
- (28) Dwelling, Mixed Use
- (29) Dwelling, Multi-family
- (30) Dwelling, Single-family
- (31) Dwelling, Two-family
- (32) Educational Institution
- (33) Equipment Rental/Repair
- (34) Essential Utilities and Equipment
- (35) Event, Mass Gathering
- (36) Event, Special
- (37) Farm/Construction Equipment and Supply Sales
- (38) Farmer's Market
- (39) Funeral Home/Mortuary
- (40) Garden Center
- (41) Governmental Operations
- (42) Greenhouse, Commercial
- (43) Greenhouse, Noncommercial
- (44) Group Residential Facility
- (45) Group Residential Home
- (46) Health Club
- (47) Home-based Business (Low Impact)
- (48) Home-based Business (No Impact)
- (49) Hotel/Motel
- (50) Laboratory
- (51) Laundromat
- (52) Liquor Store
- (53) Medical Adult Day Care Center
- (54) Medical Cannabis Dispensary
- (55) Medical Cannabis Organization, Health Care
- (56) Office Supply Establishment
- (57) Park
- (58) Personal Service
- (59) Pet Shop
- (60) Pharmacy
- (61) Photographic Studio
- (62) Place of Worship/Religious Institution
- (63) Private Club
- (64) Professional Services
- (65) Reception Facility
- (66) Recreation, Commercial Indoor
- (67) Recreation, Commercial Outdoor
- (68) Recreation, Municipal

- (69) Restaurant
- (70) Retail Store/Shop <7,000
- (71) Retail Store/Shop 7,000 to 25,000
- (72) School, Commercial
- (73) School, PreK-12
- (74) Senior Independent Housing
- (75) Shopping Center
- (76) Solar Energy Facility, Small
- (77) Studio, Dancing, Music or Art
- (78) Tattoo Parlor/Body Piercing Studio
- (79) Tavern/Drinking Establishment
- (80) Theater
- (81) Vehicles Sales/Rental and Service
- (82) Video Gaming or Lottery Establishment
- (83) Winery
- (84) Wireless Telecommunications Facility, Small Cells

**Section 21-57 Conditional Uses in the Commercial (B-1) District.**

(a) The following shall be conditional uses in the Commercial (B-1) District:

- (1) Conversion of School/Church
- (2) Emergency Shelter
- (3) Flea Market
- (4) Gas Station
- (5) Gas Station, Large
- (6) Hospital
- (7) Kennel
- (8) Manufacturing (Light)
- (9) Night Club
- (10) Parcel Delivery Facility
- (11) Parking Lot
- (12) Parking Structure
- (13) Recycling Facility
- (14) Retail Store/Shop >25,000
- (15) Roadside Vendor Stand
- (16) Sports Arena
- (17) Theater, Drive-in

**Section 21-58 Commercial (B-1) District Lot Requirements.**

<b>Commercial (B-1) District Requirements</b>	
<b>Max. Building Height</b>	130 feet
<b>Min. Lot Size (Sq. Ft.)</b>	No Minimum
<b>Min. Lot Width</b>	No Minimum
<b>Max. Lot Coverage (as a %)</b>	No more than 90 percent
<b>Min. Front Setback</b>	No Minimum
<b>Min. Side Setback</b>	No Minimum
<b>Min. Rear Setback</b>	No Minimum

**Section 21-59 Educational (E) District.**

The purpose of the Educational District is to provide for buildings and premises used by educational institutions. In addition to buildings and uses associated directly with instructional activities, this district also allows non-instructional uses related to or typically associated with educational institutions, such as those necessary to meet the lodging, health, safety, and entertainment needs of a student population and which may also benefit the larger community.

**Section 21-60 Permitted uses in the Educational (E) District.**

(a) The following shall be uses permitted by right in the Educational (E) District:

- (1) Amphitheater
- (2) Bed and Breakfast Inn II
- (3) Broadcasting Studio (radio/television)
- (4) Bus/Transit Shelter
- (5) Catering Business
- (6) Clinic
- (7) Cultural Service
- (8) Dock
- (9) Dwelling, Single-family
- (10) Dwelling, Two-family
- (11) Educational Institution
- (12) Equipment Rental/Repair
- (13) Essential Utilities and Equipment
- (14) Event, Mass Gathering
- (15) Event, Special
- (16) Greenhouse, Noncommercial
- (17) Group Residential Facility
- (18) Group Residential Home
- (19) Health Club
- (20) Home-based Business (Low Impact)
- (21) Home-based Business (No Impact)
- (22) Hotel/Motel
- (23) Laboratory
- (24) Park
- (25) Parking Lot
- (26) Pharmacy
- (27) Places of Worship/Religious Institution
- (28) Reception Facility
- (29) Recreation, Commercial Indoor
- (30) Recreation, Municipal
- (31) Restaurant
- (32) School, PreK to 12
- (33) Solar Energy Facility, Small
- (34) Solar Energy Facility, Large
- (35) Sports Arena
- (36) Studio, Dancing, Music, or Art
- (37) Tavern/Drinking Establishment
- (38) Temporary Shelter
- (39) Theater
- (40) Wind Energy Facility, Small
- (41) Wireless Telecommunications Facility
- (42) Wireless Telecommunications Facility, Small Cells

**Section 21-61 Conditional Uses in the Educational (E) District.**

(a) The following shall be conditional uses in the Educational (E) District:

- (1) Conversion of School/Church
- (2) Hospital
- (3) Parking Structure

**Section 21-62 Educational (E) District Lot Requirements.**

<b>Educational (E) District Requirements</b>	
<b>Max. Building Height</b>	100 feet
<b>Min. Lot Size (Sq. Ft.)</b>	No minimum
<b>Min. Lot Width</b>	No Minimum
<b>Max. Lot Coverage (as a %)</b>	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 code with reference to parking area, are fully complied with.
<b>Min. Front Setback</b>	Average of the two adjoining properties which have pre-existing structures* 15 feet for vacant lots**
<b>Min. Side Setback</b>	5 feet
<b>Min. Rear Setback</b>	Not less than 15 percent of the depth of the lot
<p>*Only the setbacks on the lots that abut each side of the site and are on the same street may be used. Setbacks across the street or along a different street may not be used.</p> <p>** When one adjacent lot is vacant, the average is of the setback of the adjacent non-vacant lot and the required setback for the vacant lot. When the subject lot is a corner lot, the average is of the setback of the adjacent non-vacant lot and the required setback of the subject lot.</p>	

**Section 21-63 Industrial (I-1) District.**

The purpose of the Industrial District is to encourage location of industrial uses in one area to more efficiently meet the infrastructure and other needs of such uses and to minimize their external effects on the rest of the City's zoning districts.

**Section 21-64 Permitted Uses in the Industrial (I-1) District.**

(a) The following shall be uses permitted by right in the Industrial (I-1) District:

- (1) Animal Hospital/Veterinary Office
- (2) Automobile Car Wash
- (3) Automobile Repair/Service
- (4) Bakery
- (5) Boat and Marine Sales/Service
- (6) Brewery Pub
- (7) Broadcasting Studio (radio/television)
- (8) Building Material Facility
- (9) Bus/Transit Facilities
- (10) Bus/Transit Shelter
- (11) Butcher Shop
- (12) Distribution Facility
- (13) Convenience Store
- (14) Distillery
- (15) Dock
- (16) Dog Day Care
- (17) Equipment Rental/Repair
- (18) Essential Utilities and Equipment
- (19) Event, Mass Gathering
- (20) Event, Special
- (21) Farm/Construction Equipment and Supply Sales
- (22) Farmer's Market
- (23) Garden Center
- (24) Gas Station
- (25) Gas Station, Large
- (26) Governmental Operations
- (27) Greenhouse, Commercial

- (28) Greenhouse, Noncommercial
- (29) Group Residential Facility
- (30) Group Residential Home
- (31) Home-based Business (No Impact)
- (32) Industrial Park
- (33) Laboratory
- (34) Manufacturing (Light)
- (35) Medical Cannabis Dispensary
- (36) Medical Cannabis Growing Facility
- (37) Medical Cannabis Processing Facility
- (38) Parcel Delivery Facility
- (39) Parking Lot
- (40) Places of Worship/Religious Institution
- (41) Photographic Studio
- (42) Reception Facility
- (43) Recreation, Municipal
- (44) Recycling Facility
- (45) Research and Development
- (46) Restaurant
- (47) Retail Store/Shop <7,000 square feet
- (48) Retail Store/Shop 7,000 square feet to 25,000 square feet
- (49) School, Commercial
- (50) Self-storage Facility
- (51) Solar Energy Facility, Small
- (52) Solar Energy Facility, Large
- (53) Solid Waste Disposal Area/Facility, Private
- (54) Solid Waste Disposal Area/Facility, Public
- (55) Tavern/Drinking Establishment
- (56) Warehouse
- (57) Wholesale Establishment
- (58) Winery
- (59) Wireless Telecommunications Facility
- (60) Wireless Telecommunications Facility, Small Cells

**Section 21-65 Conditional Uses in the Industrial (I-1) District.**

- (a) The following shall be conditional uses in the Industrial (I-1) District:
  - (1) Adult Business
  - (2) Conversion of School/Church
  - (3) Extractive Industry
  - (4) Freight Terminal
  - (5) Incinerator
  - (6) Lumberyard
  - (7) Manufacturing (Heavy)
  - (8) Parking Structure
  - (9) Retail Store/Shop >25,000 square feet
  - (10) Salvage Yard
  - (11) Truck Terminal

**Section 21-66 Industrial District Lot Requirements.**

<b>Industrial (I-1) District Requirements</b>	
<b>Max. Building Height</b>	100 feet
<b>Min. Lot Size (Sq. Ft.)</b>	No Minimum
<b>Min. Lot Width</b>	No Minimum
<b>Max. Lot Coverage (as a %)</b>	90 percent
<b>Min. Front Setback</b>	No Minimum
<b>Min. Side Setback</b>	No Minimum
<b>Min. Rear Setback</b>	No Minimum

**Section 21-67 Agriculture (Ag) District.**

The purpose of the Agricultural District is to preserve agricultural lands and uses that are presently within the municipal boundaries of the City of Elkins and to prepare for agricultural lands that may, in the future, become a part of the City.

**Section 21-68 Permitted Uses in the Agriculture (Ag) District.**

(a) The following shall be uses permitted by right in the Agriculture (Ag) District.:

- (1) Agriculture
- (2) Agritourism
- (3) Bed and Breakfast Inn I
- (4) Bed and Breakfast Inn II
- (5) Brewery Pub
- (6) Butcher Shop
- (7) Distillery
- (8) Dock
- (9) Dwelling, Single Family
- (10) Essential Utilities and Equipment
- (11) Factory-Built Home
- (12) Farmer's Market
- (13) Greenhouse, Commercial
- (14) Greenhouse, Noncommercial
- (15) Home-Based Business (Low Impact)
- (16) Home-Based Business (No Impact)
- (17) Recreation, Municipal
- (18) Roadside Vendor Stand
- (19) Solar Energy Facility, Small
- (20) Solar Energy Facility, Large
- (21) Wind Energy Facility, Small
- (22) Winery
- (23) Wireless Telecommunications Facility, Small Cells

**Section 21-69 Conditional Uses in the Agriculture (Ag) District.**

(a) The following shall be conditional uses in the Agriculture (Ag) District:

- (1) Kennel
- (2) Medical Cannabis Growing Facility
- (3) Medical Cannabis Processing Facility

**Section 21-70 Agriculture (Ag) District Lot Requirements.**

<b>Agriculture (Ag) District Requirements</b>	
<b>Max. Building Height</b>	40 feet*
<b>Min. Lot Size (Sq. Ft.)</b>	No minimum
<b>Min. Lot Width</b>	No minimum
<b>Max. Lot Coverage (as a %)</b>	No maximum
<b>Min. Front Setback</b>	35 feet
<b>Min. Side Setback</b>	15 feet
<b>Min. Rear Setback</b>	50 feet
*Height requirement excludes agricultural buildings.	

**Section 21-71A Telecommunications Overlay (TO) District.**

The purpose of the Telecommunications Overlay is to ensure that telecommunication facilities may locate within the city in a manner that best serves local needs and the concerns of citizens.

**Section 21-73 General provisions.**

In addition to the uses permitted by right or as a conditional use, as specified in the underlying districts, wireless telecommunication facilities are permitted by right within the Telecommunications Overlay District, as shown on the Official Zoning Map, and shall be subject to the supplemental provisions provided in Section 21-135A.

**Section 21-74A Article VI. Supplemental Regulations.****Section 21-75 Purpose.**

The purpose of this article is to establish standards and policies for specific uses in all districts that require particular considerations. These regulations will supplement general development standards by establishing uniform criteria for each use—whether a permitted use by right or a conditional use—and are set forth to achieve compatibility with the principal uses permitted in a zoning district. The provisions for this article shall apply in addition to any other applicable zoning regulations.

**Section 21-76 Adult Business.**

- (a) *Purpose.* It is the purpose of this Section to regulate sexually oriented businesses in order to promote the health, safety, moral and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene material.
- (b) *Findings and rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the City Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); and *Fantasy Ranch, Inc. v. City of Arlington*, No. 04-11337, 2006 WL 2147559 (5th Cir. 2006); *N.W. Enters. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002); *BGHA, LLC v. City of Universal City*, 210 F. Supp. 2d (W.D. Tex. 2002), *ajfd* 340 F.3d 295 (5th Cir. 2003); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Woodall v. City of El Paso*, 49 F.3d 1120 (5th Cir. 1995); *J&B Entertainment, Inc. v. City of Jackson*, 152 F.3d 362 (5th Cir. 1998); *SDJ, Inc. v. City of Houston*, 837 F.2d 1268 (5th Cir. 1988); *TK's Video, Inc. v. Denton County*, 24 F.3d 705 (5th Cir. 1994); *Heideman v. South Salt Lake City*, 342 F.3d 1182 (10th Cir. 2003); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 973 F. Supp. 1428 (M.D. Fla. 1997), *ajfd* 176 F.3d 1358 (11th Cir. 1999); *Ctr for Fair Public Policy v. Maricopa County*, 336 F.3d 1152 (9th Cir. 2003); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Reliable*



Consultants, Inc. v. City of Kennedale, Case No. 4:05-CV-166-A (N.D. Tex., May 16, 2005); Sensations, Inc. v. City of Grand Rapids, 2006 WL 2504388 (W.D. Mich., Aug. 28, 2006); Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005); Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003); And based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Cove, California - 1991; Houston, Texas - 1983; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Minneapolis, Minnesota - 1980; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997, 2004; Greensboro, North Carolina - 2003; Kennedale, Texas - 2005; Effingham, Illinois - 2005; Amarillo, Texas - 1977; El Paso, Texas - 1986; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), the City Council finds:

- (1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter and sexual assault and exploitation.
- (2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.
- (3) Each of the foregoing negative secondary effects constitutes a harm, which the City has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the City's rationale for this Ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the City's interests in regulating sexually oriented businesses extend to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the City. The City finds that the cases and documentation relied on in this Ordinance are reasonably believed to be relevant to said secondary effects.
- (c) No such adult establishment shall be located less than one thousand (1,000) feet from a school zone, place of worship, library, day care center, civic building, park, historic district, dwelling, lot with residential districting, or other adult establishment as measured from front door to front door along the curb line of public streets providing access.
- (d) All doors, windows, and other apertures shall be located and covered or screened with opaque glazing to discourage and prevent visibility or viewing of the interior.
- (e) No exterior signage, building element, advertisement, display, or other promotional material shall be pornographic in nature or convey any such idea or element to specified anatomical areas, as defined in this code.
- (f) In the event that an activity or business which might fall under a use category other than adult business is combined with or includes activities which constitute an adult bookstore, adult movie theater or movie house, or adult entertainment, as defined herein, then such activity or business shall constitute an adult business and shall be governed by those provisions in this code applicable to adult business uses, in addition to those provisions that govern the combined use.

#### **Section 21-77 Agritourism Enterprise.**

Agritourism enterprises are subject to the following regulations:

- (a) Minimum acreage. Agritourism enterprises are only permitted on agricultural operations with a minimum lot size of five (5) acres.
- (b) Application and approval process.
  - (1) No part of an agritourism operation shall be located within fifty (50) feet of any lot line.
  - (2) Sanitary facilities shall be provided in accordance with applicable Health Department requirements.
  - (3) All prepared food available for sale must be prepared in accordance with applicable federal, state, or local regulations.
  - (4) A parking plan must be submitted as part of the permit process.
  - (5) Permits for all agritourism enterprises shall be renewed annually.
- (c) Operations.
  - (1) Agritourism enterprises shall not be operated earlier than 7:00 a.m. or later than 11:59 p.m.

- (2) All parking is required to be on site. Parking is not permitted in the street right-of-way.
- (3) Special events are allowed in accordance with the requirements of this code.
- (4) The agritourism enterprise may, but need not, include:
  - i. Daily tours of the production facilities.
  - ii. No more than one (1) location for the on-premises sale and consumption of alcoholic beverages manufactured on site, including a tasting facility. Any tasting facility shall be primarily operated for the marketing and sale of the agricultural products produced at the facility. Alcohol related products shall be limited to those produced, distilled, or bottled by the operator or grown on the premises.
  - iii. An accessory gift shop. The sale of goods or merchandise may occur on the premises, but are limited to those goods or merchandise that are produced on the premises, or are customarily incidental to the operation and directly related thereto.

**Section 21-78 Automobile Car Wash.**

- (a) The minimum distance between any buildings, including accessory uses, and any Residential District shall be fifty (50) feet.
- (b) Exterior lighting shall be shielded so that it is deflected away from adjacent properties and from passing motorists.
- (c) A fence with a minimum height of six feet shall be provided along the interior side and rear property line, when adjacent to a dwelling, to protect the dwelling from light and noise and eliminate blowing debris, and to protect adjacent property values. The fence shall be constructed of masonry, concrete, wood or other similar materials.
- (d) All of the area to be utilized by the washing and drying operations, including all ingress and egress areas, shall be paved with concrete, asphalt or asphaltic concrete.
- (e) Where such use is located adjacent to residentially zoned property or property used for residential purposes, hours of operation shall be limited to between 6 a.m. and 10 p.m.
- (f) Two (2) off-street waiting spaces for each car washing device or stall are required, or two (2) off-street waiting spaces for an assembly line type washing establishment, and two (2) parking spaces at the end of each washing bay for drying and hand finishing vehicles.

**Section 21-79 Automobile Repair/Service.**

- (a) The only vehicles which may be stored outside in connection with the business include:
  - (1) Customer vehicles awaiting service may be stored outside for a period not to exceed two (2) weeks and a work order or some other written proof must be provided to show that the vehicle is actually awaiting service.
  - (2) Employees' personal vehicles used for travel to and from work.
  - (3) A vehicle used in connection with the auto repair operation, such as a wrecker.
- (b) Vehicles which may not be stored outside are:
  - (1) Inoperable vehicles which are not awaiting service.
  - (2) Inoperable vehicles which are being scrapped or used for replacement parts for another vehicle being repaired.
  - (3) Operable vehicles not awaiting service and not used in connection with the business.
- (c) No portion of an automotive repair or service station or any part of their appurtenances or accessory uses shall be placed within fifty (50) feet of any residential dwelling.
- (d) Public address speakers, on-site lighting, and drive-through lanes shall be designed and located such that noise, exhaust fumes, and stray light shall not unreasonably impact adjacent properties.

**Section 21-80 Bed and Breakfast Inn I and II.**

- (a) A bed and breakfast inn may or may not offer ancillary services such as providing breakfast, private parties, and evening and lunch meals to guests; holding outdoor events such as weddings, fundraising or civic events for local clubs, and special dinners or meals; and operating gift shops.
- (b) All private residences used as bed and breakfast inns shall be virtually indistinguishable from surrounding residential units.
- (c) Signs for residences used as a bed and breakfast inn are subject to the sign regulations for signs accessory to dwellings.
- (d) Cooking facilities within bedrooms are prohibited.

- (e) A private residence used as a Bed and Breakfast Inn II shall have a minimum heated gross floor area of two thousand and five hundred (2,500) square feet.
- (f) A Bed and Breakfast Inn I shall not employ individuals other than a permanent resident of the private residence. A Bed and Breakfast Inn II may employ one (1) individual other than a permanent resident of the private residence.
- (g) All bed and breakfast inns shall comply with the provisions of West Virginia Code Section 29-3-16c, Safety Standards for Bed and Breakfast Establishments.

#### **Section 21-81 Child Day Care Facility.**

- (a) All childcare providers, whether state or privately operated, shall obtain a license from the West Virginia Secretary of State and the Department of Health and Human Resources. Each facility shall also be inspected by the Zoning Officer and Fire Marshal to ensure the safety of children and employees.
- (b) A facility shall provide a minimum of thirty-five (35) square feet of usable space per child. Any rooms or areas that have not been approved for the use of children shall be inaccessible. No activity space may be created in the basement of a structure unless expressly approved by the Fire Marshal.
- (c) A secured outdoor activity area must be provided by the facility allowing a minimum of seventy-five (75) square feet of space per child. Should the minimum space not be available, a rotating outdoor activity schedule shall be established to meet the minimum requirements and ensure that each child be afforded outdoor playtime every day, weather permitting.
- (d) The outdoor activity area noted above shall be fenced with a minimum of six (6) foot high fence. All play equipment shall be located in the fenced areas in the rear or side yard. All gates shall be self-latching
- (e) Parks may be used to meet outdoor activity requirements if located immediately adjacent to the facility.
- (f) Child day care businesses operated from a residence shall be operated by a permanent resident. No changes to the exterior of residences may be made for a child day care business operated from a residence except changes necessary for safety improvements.

#### **Section 21-82 Dog Day Care.**

All Dog Day Care facilities must comply with the following criteria:

- (a) The hours of operation shall be limited daily any time between 7 a.m. and 9 p.m.
- (b) Dogs may be groomed, trained, exercised, and socialized, but not kept or boarded overnight, bred, sold, or let for hire.
- (c) There shall be no more than thirty (30) dogs on the premises at one time.
- (d) *Provide indoor and outdoor recreational areas for dogs.* Indoor recreational area shall be at least one hundred (100) square feet per dog, and outdoor recreational area shall be at least one hundred and fifty (150) square feet per dog.
- (e) *Provide sight-obscuring fencing for all on-site outdoor recreation areas.* The fence shall provide full containment for the dogs and be secured at all times. The fence structure shall be deep enough and secured to the ground to prevent escape and high enough to prevent dogs from jumping or climbing over. The fence shall comply with all fence provisions in this ordinance.
- (f) If there is a grooming facility on site, it must be physically separated from primary enclosure areas and food storage.
- (g) Feces, hair, dirt, debris, and food waste must be removed at least daily or more often if necessary to prevent accumulation and to reduce disease hazards, insects, pests and odors.

#### **Section 21-83 Drive-through Facility.**

The following parking standards shall apply to all drive-up windows and drive-through uses permitted by this ordinance:

- (a) The use shall not require an additional curb-cut in the pedestrian right-of-way;
- (b) Public address speakers, on-site lighting, and drive-through lanes shall be designed and located such that noise, exhaust fumes, and stray light shall not unreasonably impact adjacent properties.
- (c) Minimum Queue Spaces for Drive-up Windows and Drive-through:
  - (1) Bank Teller Lane: 3
  - (2) Automated Teller Machine: 2
  - (3) Restaurant Drive-Through: 4
  - (4) Car Wash Stall, Automatic: 2
  - (5) Car Wash Stall Self-service: 2

- (6) Gasoline Pump Island: 1
- (7) All Other Retail Uses: 3
- (d) Each queue space shall be a minimum of ten (10) feet wide by twenty (20) feet long in size. Each queue lane shall be clearly defined and designed so as not to conflict or interfere with other pedestrian or vehicular traffic using the site.

#### **Section 21-84 Events, Mass Gathering.**

- (a) A permit is required for each mass gathering event.
- (b) The applicant shall be the owner or co-owner of the property. An owner or a representative of the owner shall be present on the property at all times during the mass gathering event.
- (c) Mass events shall occur outdoors, in temporary structures, or existing permanent structures. New permanent structures shall not be constructed for special events.
- (d) Mass gathering events shall cause no alteration to land including, but not limited to, grading, filling, or paving.
- (e) The duration of each mass event shall not exceed three (3) consecutive days, provided activities shall only occur between the hours of 10:00 a.m. and 11:59 p.m.
- (f) Within any single calendar year, a parcel may host no more than four (4) mass events.
- (g) A parking plan shall be submitted as part of the permit process. Adequate on-site parking areas shall be provided to accommodate the number of vehicles expected. Off-site parking areas are permitted if the applicant provides written authorization from the property owner for those sites. The applicant shall post signs safely directing people to the parking sites. There shall be no parking on any public roads.
- (h) Local emergency medical services (EMS) shall be notified of all mass events. The holder of the mass event shall provide EMS with the number of people projected to attend.
- (i) All garbage shall be removed from site within five (5) days.
- (j) Trained security is required on site for all mass events.
- (k) All lighting and sound shall be aligned so as to minimize impact on nearby residents and shall conform to requirements of this code and other applicable city ordinances.
- (l) The site shall provide potable water supply and proper sanitation facilities.
- (m) The sale of alcohol is permitted. All sales of alcohol shall be regulated by the West Virginia Alcohol Beverage Control Administration.
- (n) The owner of the property shall procure a liability insurance policy. Proof of the liability insurance in the minimum amount of \$2,000,000 per occurrence and which lists the City of Elkins as co-insured on the policy shall be submitted with the permit application.
- (o) All mass gathering events shall contact the following agencies: the City of Elkins Police Department, a West Virginia licensed EMS provider, licensed garbage removal company, licensed towing company, the County Health Department (approval or permit required), West Virginia Division of Highways (approval or permit required), and County Homeland Security.

#### **Section 21-85 Events, Special.**

- (a) A permit is required for each special event.
- (b) All garbage shall be removed from site within five (5) days.
- (c) The permit applicant shall be the owner or co-owner of the property. An owner or a representative of the owner shall be present on the property at all times during the special event.
- (d) Special events shall occur outdoors, in temporary structures, or existing permanent structures. New permanent structures shall not be constructed for special events.
- (e) Special events shall cause no alteration to land including, but not limited to, grading, filling, or paving.
- (f) The duration of each special event shall not exceed three (3) consecutive days, provided activities shall occur only between the hours of 7:00 a.m. and 11:59 p.m.
- (g) A parking plan shall be submitted as part of the permit process.
- (h) The owner of the property shall procure a liability insurance policy. Proof of the liability insurance in the minimum amount of \$1,000,000 per occurrence and which lists the City of Elkins as co-insured on the policy shall be submitted with the permit application.
- (i) Local emergency medical services (EMS) shall be notified of all events. The holder of the event shall provide EMS with the number of people projected to attend.

**Section 21-86 Garage Sales.**

- (a) No more than four (4) garage sales, yard sales, or rummage sales are permitted within any twelve (12) month period for each residence.
- (b) For the purpose of this section, garage sale, yard sale, estate sale, and rummage sale shall be deemed to mean the same thing.
- (c) Sales must be contained within the individual's property and may not encroach into a public right-of-way.
- (d) Each garage sale shall not be permitted to last more than seventy-two (72) hours.
- (e) A garage sale shall not include the sale of new merchandise.
- (f) Tents may be used during the event subject to subsection (c) above and must be removed immediately following the conclusion of each event.
- (g) All items must be removed from the exterior of the premise at the end of the sales event.

**Section 21-87 Garden Center.**

- (a) Parking and loading facilities and signage shall be screened from adjoining residentially zoned properties.
- (b) Display, sale, or repair of motorized nursery or garden equipment shall not be permitted.

**Section 21-88 Greenhouse, Noncommercial.**

- (a) The greenhouse shall not be located in the front yard.
- (b) Greenhouse shall not create offensive odors or dust.

**Section 21-89 Home-based Business (No Impact).**

The business activity must satisfy the following requirements:

- (a) The home-based business shall only employ individuals residing in the dwelling.
- (b) A home-based business shall not change the residential character of the dwelling and shall not detract from the residential character of the neighborhood.
- (c) The business activity shall be compatible with the residential use of the property and surrounding residential uses.
- (d) A home-based business shall not display or sell retail goods or stockpile inventory of a substantial nature.
- (e) There shall be no outside appearance of a business use, including, but not limited to, parking or lights, except signs, as permitted in Article VIII: Sign Regulations, provided signs meet all requirements in that section.
- (f) The business activity may not use any equipment or process which creates noise, vibration, glare, fumes, odors, or electrical or electronic interference, including interference with radio or television reception, which is detectable in the neighborhood.
- (g) The business activity may not generate any solid waste or sewage discharge, in volume or type, which is not normally associated with residential use in the neighborhood.
- (h) The business activity shall be conducted only within the dwelling and may not occupy more than twenty-five (25%) percent of the gross floor area.
- (i) No traffic shall be generated by such home-based business in excess of that normally associated with residential use.
- (j) The business may not involve any illegal activity.

**Section 21-90 Home-based Business (Low Impact).**

The business or commercial activity conducted as a home-based business must satisfy the following criteria:

- (a) Customer, client, patient, or other traffic shall be restricted to 8:00 a.m. to 6:00 p.m.
- (b) No more than twelve (12) visits to the home-based business shall be allowed per day, except as necessary to operate childcare facilities in accordance with the West Virginia Code; such visits may be addressed in a conditional use permit. A "visit" is defined as a stop at the business premises by one automobile transporting one or more customers, clients, patients, packages/parcels, or other business associates. A visit does not include the operator of the business, members of his/her family, or the business employee.
- (c) The business or commercial activity shall not change the residential character of the dwelling and shall not detract from the residential character of the neighborhood.
- (d) The home-based business shall not employ individuals living outside the dwelling to physically work at the dwelling, except Bed and Breakfast Inns may employ one (1) nonresident employees to physically work at the Bed and Breakfast Inn.

- (e) The business or commercial activity may not use any equipment or processes, which create noise, vibration, glare, fumes, odors or electrical or electronic interference, including interference with radio or television reception, which is detectable in the surrounding neighborhood.
- (f) The business or commercial activity may not generate any solid waste or sewage discharge, in volume or type, which is not normally associated with the use of a dwelling in the neighborhood.
- (g) The business activity may not occupy more than twenty-five (25%) percent of the gross floor area of the residence.
- (h) The business may not involve any illegal activity.
- (i) Any outdoor display or storage of materials, goods, supplies or equipment shall be prohibited, other than the signs.
- (j) No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met by off-street parking.

**Section 21-91 Incinerator.**

- (a) The incinerator is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property.
- (b) The incinerator shall not be located within fifteen (15) feet of any building or structure and shall be positioned so that there is not direct exposure to buildings, wood fences, or piled combustible materials in the event of failure of the spark arrestor. The incinerator shall be located so that a nuisance is not created by reason of smoke, smell, or noise.
- (c) Each incinerator must be set back a minimum of five hundred (500) feet from each property line not adjacent to lands used or zoned for industrial purposes. A visual buffer must be established and maintained between the incinerator and any existing residential, commercial, or other non-industrial land use immediately adjacent.
- (d) Each incinerator must be designed so that it meets and continues to meet all applicable rules, regulations and requirements of the applicable state and federal regulatory agencies. Each incinerator must be fully permitted by each such agency prior to construction and/or continued operation.
- (e) Each incinerator must be designed with adequate on-site controls and facilities to prevent and contain fires.

**Section 21-92 Medical Cannabis Organizations.**

- (a) The following supplemental provisions apply to all medical cannabis organizations or as otherwise specified herein.
- (b) No medical cannabis dispensary shall be located within one thousand (1000) feet of the property line of a public, private or parochial school or a daycare center.
- (c) No more than five (5) medical cannabis dispensaries are permitted within the City of Elkins. No medical cannabis processing facilities and no medical cannabis growing facilities are permitted within the City of Elkins.
- (d) There shall be no emission of dust, fumes, vapors, noise, glare, vibration, or odors into the environment from the premises of a medical cannabis organization.
- (e) The only medical cannabis uses permitted under this ordinance are those expressly defined and permitted herein. Medical cannabis organizations may not be combined with other uses.
- (f) Medical cannabis organizations shall possess all applicable state licenses.

**Section 21-93 Reception Facility.**

- (a) No activities that involve charging admission or that are solely performance activities are permitted as part of this use.
- (b) The owner or his or her designated representative shall be physically present on the property at all times during receptions.
- (c) All outdoor receptions, temporary structures, and parking areas associated with a reception shall be located one hundred and fifty (150) feet to any property line.
- (d) Lighting may be used for the duration of the reception only and may not shine or produce glare on adjacent properties.
- (e) The owner(s) shall ensure that ingress and egress during the reception to the venue does not cause congestion on any public road.

- (f) The owner(s) shall be responsible for the following: (1) sanitation (municipal waste and recycling) facilities at the reception commensurate with the number of patrons attending and (2) sanitary sewer facilities at the reception commensurate with the number of patrons attending.
- (g) The operation of the use shall at all times comply with all federal, state, and local laws and regulations.

#### **Section 21-94 Salvage Yards.**

Salvage yards shall be subject to the following regulations:

- (a) The minimum lot area shall be one (1) acre.
- (b) An eight (8) foot tall fence shall be placed along the entire perimeter of the property. Fencing shall be at least ninety (90%) percent opaque.

#### **Section 21-95 Tourist or Trailer Camp.**

Tourist or trailer camps shall be located on at least one acre of land and shall provide usable plots measuring no less than twelve hundred (1,200) square feet.

#### **Section 21-96 Urban Agriculture.**

##### *(a) Definitions for this Section.*

- (1) “Beekeeping” means the keeping or propagation of honeybee hives for collection of honey or other bee products.
- (2) “Community Garden” means a neighborhood-based development with the primary purpose of providing space for members of the community to grow plants for beautification, education, recreation, community distribution, or personal use.
- (3) “Composting” means accumulating a mixture of various decaying organic substances, such as dead leaves or manure, intended to be used for fertilizing soil.
- (4) “Fowl” means any chicken, duck, goose, turkey, guinea fowl, or pigeon.
- (5) “Home Agriculture” means the gardening or production, principally for use or consumption of the property owner or resident, of plants or their products including but not limited to fruits of all kinds including grapes, nuts, and berries; vegetables; floral, ornamental, and other noncommercial greenhouse products; and bees and apiary products.
- (6) “Hydroponics” means the cultivation of plants in nutrient solution rather than soil.
- (7) “Livestock” means any hog, pig, goat, cow, horse, pony, emu, alpaca, or other hoofed animal.
- (b) *Beekeeping.* Beekeeping is permitted as an accessory use to a dwelling provided that:
  - (1) No more than three (3) hives, each with only one swarm, are allowed on lots of less than ten thousand (10,000) square feet; and
  - (2) Hives shall not be located within twenty-five (25) feet of any lot line except when situated eight (8) feet or more above the grade immediately adjacent to the grade of the lot on which the hives are located or when situated less than eight (8) feet above the adjacent existing lot grade and behind a solid fence or hedge six (6) feet high parallel to any lot line within twenty-five (25) feet of a hive and extending at least twenty (20) feet beyond the hive in both directions.
  - (3) On any lot where a hive is located, shall be posted a honeybee caution sign in or near the apiary.
- (c) *Community gardens.* The responsibility of managing, maintenance, and operations of community garden sites shall be that of the landowner or designated public or civic entity, nonprofit organization, or other community-based organization. Processing and storage of plants or plant products are prohibited on site. Garden tools and supplies may be stored within an accessory structure.
- (d) *Composting.* Composting shall take place at least twenty-five (25) feet from any principal use, other than the principal use associated with the accessory use, except that this requirement shall not apply to composting on rooftops.
- (e) *Keeping of fowl.* The keeping of fowl is permitted as an accessory use to a dwelling, provided that the number of fowl shall not exceed six (6) and subject to the following provisions:
  - (1) A dwelling shall be located on the same lot as the fowl.
  - (2) Fowl shall be kept within a building, coop, or enclosure, and within a fully enclosed and fenced rear or side yard such that fowl may not be at large within the City. The building, coop, or enclosure in which the fowl are kept must be at least five (5) feet from any dwelling, other than the dwelling associated with the accessory use. The building, coop, or enclosure shall be durably constructed and maintained in conformance with the West Virginia State Building Code.

- (3) A permit is required for keeping fowl within the City. A permit may be obtained from the City Clerk after application to the Zoning Officer and an inspection performed by the Zoning Officer.
- (f) *Incidental sales.* Any sale resulting from beekeeping, composting, home agriculture, or keeping of fowl shall constitute a home-based business and is subject to all applicable provisions of this code.
- (g) *Location.* Beekeeping, composting, and keeping of fowl shall not take place in the front yard of any lot. All urban agriculture uses are permitted in side and rear yards, as well as on rooftops.
- (h) *Prohibitions.* The following provisions apply to all districts except the Agriculture District.
  - (1) Livestock shall not be kept within the City.
  - (2) Roosters shall not be kept within the City.
  - (3) Slaughtering and processing fowl are prohibited within the City, except where such activity occurs within a butcher shop.

#### **Section 21-97 Vehicle, Boat, and Marine Sales/Rental and Service.**

Vehicle, boat, and marine repair, service, sales, and rental uses shall be subject to the following conditions:

- (a) Outdoor storage areas shall be located within the side or rear yards and screened from adjacent properties with fencing or with a landscape buffer area, except that new and used vehicles and boats currently being offered for sale, rent, or lease may be located in the front yard, subject to yard, setback, and other requirements of this code.
- (b) Activities involving excessive noise shall be conducted entirely within the confines of a building sufficiently sound-insulated to effectively confine the noise.
- (c) No vehicle, boat, or marine repair, service, sales, and rental uses shall be located less than one hundred (100) feet from a residential district.
- (d) Vehicle, boat, and marine sales uses shall have a minimum of six thousand (6,000) square feet of outdoor display area.

#### **Section 21-98 Video Lottery Establishment.**

- (a) The limited video lottery establishment shall not be located within one thousand (1,000) feet of a residential zone, church or place of worship, school, park, community or recreation facility, or other limited video lottery establishment.
  - (1) The one thousand (1,000) feet from a school, park, community or recreation facility, or residential zone shall be measured in a straight line from the nearest point of the wall of a limited video lottery establishment to the nearest property line of a school, park, community or recreation facility, or residential zone.
  - (2) The one thousand (1,000) feet from a church or place of worship shall be measured in a straight line from the nearest point of the wall of the portion of the building in which a limited video lottery is conducted to the nearest point of a wall of a building in which church worship services or related activities are conducted.
  - (3) The one thousand (1,000) feet from another limited video lottery establishment shall be measured in a straight line from the nearest point of the wall of the portion of the building in which a limited video lottery is conducted to the nearest point of a wall in which another limited video lottery may be conducted.
- (b) Organizations with a valid club license are limited to operating a maximum of ten (10) LVL machines. Licensed clubs or taverns are limited to operating a maximum of five (5) LVL machines.

#### **Section 21-99 Wind Energy Facility, Small.**

- (a) *Purpose.* The purpose of this section is to regulate the placement, construction, and modification of small wind energy facilities while promoting the safe, effective, and efficient use of such facilities.
- (b) *Applicability.* The requirements set forth in this section shall govern the siting of wind energy facilities used to generate electricity or perform work that may be connected to the utility grid pursuant to West Virginia's net metering laws, serve as an independent source of energy, or serve in a hybrid system.
- (c) *Siting requirements.* The requirements for siting and construction of all small wind energy facilities regulated by this section shall include the following:
  - (1) Small wind energy towers shall maintain a galvanized steel finish, unless FAA standards require otherwise, or if the owner is attempting to conform the tower to the surrounding environment and architecture, in which case it may be painted to reduce visual obtrusiveness. A wind energy tower



may be erected, maintained, or operated on or as an attachment to a building on a lot. A photo simulation may be required by the City.

- (2) Wind energy facilities shall not be artificially lighted unless required by the Federal Aviation Administration (FAA) or appropriate authority.
  - (3) No tower may be used to display a sign.
  - (4) The applicant shall provide evidence that the proposed height of the wind energy facilities tower does not exceed the height recommended by the manufacturer or distributor of the system. The tower height shall not exceed a maximum height of seventy (70) feet on a parcel. When situated on or attached to a building, the total height shall not exceed seventy (70) feet. The building itself shall otherwise conform to the applicable height requirement under this ordinance.
  - (5) The applicant shall provide evidence that the provider of electric utility service to the site has been informed of the applicant's intent to install an interconnected, customer-owned electricity generator, unless the applicant intends, and so states on the application, that the system will not be connected to the electricity grid. Notification will take place by having the electric utility provider sign the conditional use permit application, but such signature does not construe approval for net metering by the electric utility.
  - (6) Wind energy facilities shall adhere to noise limits as established by the City of Elkins' ordinances. These levels, however, may be exceeded during short-term events such as utility outages or severe windstorms.
  - (7) The applicant will provide information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.
  - (8) The minimum distance between the ground and any protruding blade utilized on a small wind energy facility shall be fifteen (15) feet, as measured at the lowest point of the arc of the blades. The lowest point of the arc of the blades shall be ten feet above the height of any structure within seventy-five (75) feet of the base. The supporting tower shall be enclosed with a six (6) foot tall fence or the base of the tower shall not be climbable for a distance of ten (10) feet.
  - (9) The applicant will provide proof of adequate liability insurance for a small wind energy facility. Whether or not the applicant is participating in the net metering program, the applicant will be required to meet the insurance coverage requirements as set forth in W. Va. Code R. 150-33-4 (2011).
  - (10) The small wind energy facility generators and alternators should be constructed so as to prevent the emission of radio and television signals and shall comply with the provisions of Section 47 of the Federal Code of Regulations, Part 15 and subsequent revisions governing said emissions.
- (d) *Federal and state requirements.*
- (1) Compliance with the Building Code. Building permit applications for wind energy facilities shall be accompanied by standard drawings of the wind turbine structure, including tower, base, and footings. An engineering analysis of the tower showing compliance with the Building Code and certified by a licensed professional engineer shall also be submitted.
  - (2) Compliance with FAA Regulations. Wind energy facilities must comply with applicable FAA regulations.
  - (3) Compliance with National Electric Code. Building permit applications for wind energy facilities shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
  - (4) Compliance with regulations governing energy net metering. Wind energy facilities connected to the utility grid must comply with West Virginia Code Section 24-2F-8 and West Virginia Administrative Code Title 150, Series 33.
  - (5) *Setbacks.* The wind energy facilities shall be setback a distance at least equal to one hundred and ten (110) percent of the height of the tower plus the blade length from all adjacent property lines and a distance equal at least to one hundred fifty (150) percent of the tower height plus blade length from any dwelling inhabited by humans on neighboring property. No portion of the wind energy facility, including guy wire anchors, may be extended closer than ten (10) feet to the property line.
  - (6) *Removal of defective or abandoned wind energy facilities.* Any wind energy facility found to be unsafe by the Zoning Officer shall be repaired by the owner to meet federal, state, and local safety standards or removed within six (6) months. Any wind energy facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned and the owner of the

facility shall remove the turbine within ninety (90) days of receipt of notice from the Zoning Officer instructing the owner to remove the abandoned wind energy facility.

## **Section 21-100A Article VII. General Regulations.**

### **Section 21-101 Purpose.**

Provide for special situations that must be regulated in such a manner as to promote orderly development and to protect the public health, safety, and general welfare of the community. The following supplemental regulations have been deemed necessary to clarify and carry out the overall intent of this ordinance.

### **Section 21-102 Accessory Buildings, Uses, and Structures.**

- (a) All accessory buildings, uses, and structures shall require a permit. Accessory buildings, accessory uses, and accessory structures shall be permitted in all districts, provided each is customarily incidental and subordinate to a principal use. There must be a principal structure on the lot, or an adjacent lot under the same ownership, prior to the issuance of a permit for an accessory building or structure. Accessory buildings, uses, and structures shall not be permitted in front yards.
- (b) No use that is to be carried on in an accessory building or structure shall be in violation of the permitted uses in that district.
- (c) All permanent accessory buildings, uses, and structures shall be setback from all lot lines three (3) feet.
- (d) No accessory buildings, uses, or structures shall be taller than the principal building or structure.
- (e) In no situation shall an accessory building or structure be larger than the principal structure.
- (f) Except as provided elsewhere in this code, no accessory building or structure shall be constructed and used as a dwelling. Provided, however, that one (1) residential unit for a caretaker may be permitted in conjunction with any active industrial establishment.

### **Section 21-103 Yard Requirements.**

All yards required to be provided under this code shall be open to the sky and unobstructed by any building or structure except for accessory buildings or structures in the rear yard, and fences, and the following which may project into the required yards as established in this code:

- (a) Steps and stoops not exceeding twenty-four (24) square feet;
- (b) Open or lattice-enclosed fire escapes, fireproof outside stairways and balconies opening upon fire towers, and the ordinary projection of chimneys and flues into the rear or side yard not exceeding three and one-half (3.5) feet in width and placed so as not to obstruct light or ventilation; and
- (c) Sills, eaves, belt courses, cornices, and ornamental features not exceeding two (2) feet in width.
- (d) For purposes of determining the required yard for townhouse developments, setbacks shall only apply from the perimeter of the main building to the perimeter of the parent parcel upon which the building is situated.

### **Section 21-104 Additional Principal Buildings.**

- (a) *Residential.* Individual lots or subdivided parcels ten acres or less in size shall have no building or buildings used for living purposes in addition to the principal residence. Undivided land parcels of ten (10) acres or greater in size shall be limited to one (1) residential building per ten (10) acre unit of undivided land area. This provision shall not apply to factory-built home rental communities.
- (b) *Nonresidential.* More than one principal building may be located upon the lot or tract of nonresidential properties, but only when such buildings conform to all setback requirements. Additional principal buildings may include a caretaker's residence used in conjunction with an active industrial establishment or a caretaker's residence used in conjunction with a place of worship or religious institution.

### **Section 21-105 Orientation of Principal Structures.**

All principal structures shall be required to have the front door facing the street on which the property is addressed, unless the Zoning Officer determines that the prevailing condition of the developed lots fronting the same street would warrant a different orientation, or another orientation is necessary for emergency services access.

### **Section 21-106 Swimming Pools.**

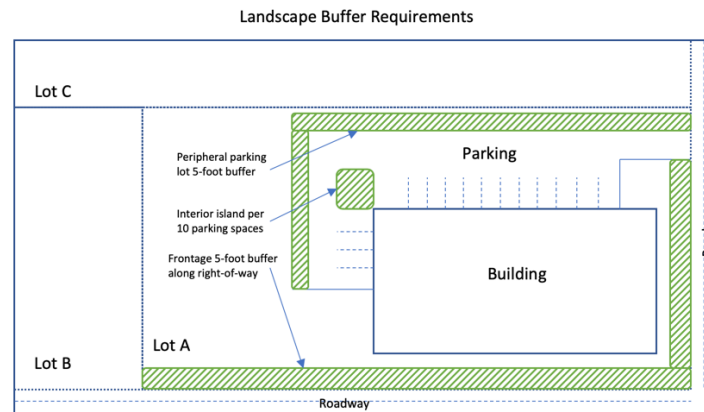
Private swimming pools are permitted accessory uses only when located in rear yards. Swimming pools and protective barriers must adhere to setback requirements within the zoning district where the pool is to be located.

### **Section 21-107 Fences, Landscaping, and Screening.**

Subject to the following conditions, fences and walls may be erected, and hedges and other plantings may be grown along the boundaries of a lot:

- (a) *Clear sight triangle.* Fences, hedges, other plantings, or walls at street corners shall not interfere with any clear sight triangle. The height of such objects is restricted to two and one-half (2.5) feet within the clear sight triangle. No fence, hedge, other plantings, or walls shall otherwise impose a threat to the public safety, including by obstructing the view of motorists to oncoming traffic or pedestrians.
- (b) *Height restrictions.* Fences, walls, hedges, and other plantings used for the purpose of screening shall not exceed forty-two (42) inches in height from the front building line extending to the front lot line, and shall not exceed six (6) feet in height extending behind the front building line of the main structure, excluding porches in the rear yard.
- (c) *Fences and walls.*
  - (1) Fences and walls shall be durably constructed and well maintained.
  - (2) Fences and walls that have deteriorated shall be replaced or removed immediately.
  - (3) Fence and walls shall not be constructed out of fabric, junk, junk vehicles, appliances, tanks, barrels, razor wire, barbed wire, or electric fencing.
  - (4) The finished side of the fence shall be oriented towards the front of the lot or the direction of the adjacent property owner, unless the fence is not visible from adjoining property.
- (d) *Landscaped buffer areas.*
  - (1) Five (5) foot landscaped buffer areas are the preferred method of buffering. However, where a buffer strip is considered to be impracticable or inappropriate, an opaque fence at least six (6) feet in height, in the rear or side yard, or four (4) feet in height in the front yard so as to restrict a clear view beyond said buffer may be substituted in whole or in part for a natural buffer, provided it is approved by the Zoning Officer.
  - (2) Landscaped buffer areas shall be continually maintained by the landowner. Any plant material that does not survive shall be replaced within six (6) months. All landscaping shall be kept free of refuse and debris.
  - (3) Landscaped buffer areas may be required by the Board of Zoning Appeals as a condition of a conditional use permit.
  - (4) Landscaped buffer areas shall not be required where the lot abuts an area of existing natural vegetation that effectively screens the lot from casual observation to a height of at least eight (8) feet.
  - (5) At least fifty (50%) percent of the screen planting specimens shall be evergreens, distributed evenly along the length of the barrier.
  - (6) All species within the screen planting shall be indigenous or otherwise well-suited to the City except that trees with large leaves which could clog storm drains and trees which are brittle, disease-prone, have low, spreading branches or shallow root systems; which drop large fruit or much sap; or which are otherwise messy shall also be avoided.
  - (7) Hedges shall be kept trimmed so that their branches shall not extend into the public road, or upon the lands of an adjoining owner, more than eighteen inches over the dividing line.
  - (8) No landscaping, tree, fence, wall or similar item shall obstruct the required clear sight triangle.
- (e) *Property adjacent to dwellings and zoned or existing single-family residential property.* Landscaped buffer areas shall be provided between any new development adjacent to single-family residential property (existing or zoned) or adjacent to any dwelling, which landscaping shall be at least five (5) feet wide and at least five (5) feet high, subject to height limitations contained within this section.
- (f) *Parking lot screening.* The following provisions apply only to new developments and additions or renovations to existing nonresidential or multi-family uses where the addition or renovation equals or exceeds one hundred and fifty (150%) percent of the gross square feet of the principal structure; provided, that compliance with this section shall be required only to the degree that the minimum parking requirement can still be met.
  - (1) One interior island shall be provided for every ten (10) spaces or more spaces. No island is required for nine (9) or fewer spaces. Each interior island shall also be not less than five feet in width and extend along the entire length of the space. The location of the interior islands should be staggered to avoid a regimented appearance. At least one (1) tree shall be provided within each interior island.
  - (2) Peripheral landscaping shall be required along the side of a parking lot, driveway, or loading area that abuts adjoining property that is not a right-of-way. A landscaping strip at least five (5) feet in width shall be located between the parking area and the abutting property lines, except where driveways or

- other openings may be required. Between property lines, at least one (1) tree for each thirty (30) linear feet shall be planted in the landscaping strip in addition to other planting materials.
- (3) The owner and their agencies shall be responsible for providing, protecting and maintaining all landscaping in healthy and growing conditions, replacing it when necessary, and keeping it free from refuse and debris.
- (g) *Frontage landscaping.* Landscaping shall be provided along all property boundaries abutting the right-of-way of any street. A landscaping strip five (5) feet in width shall be located along the right-of-way except where driveway or other openings may be required. One tree shall be planted for each thirty (30) linear feet of the landscaping strip in addition to other planting materials.
- (h) *Ground-mounted and monument signs.* All non-temporary ground-mounted or monument signs shall be installed with a minimum surround of three (3) feet of regularly maintained floral and shrubbery landscaping in every direction.



#### **Section 21-108 Clear Sight Triangle.**

In a clear sight triangle, the entire area shall remain clear of obstructions to sight, including but not limited to fences, hedges, other landscaping, and signs, above a plane established two and one-half (2.5) feet in elevation to a height of eight (8) feet from grade level at the intersection of any street, alley, or other public right-of-way centerline.

#### **Section 21-109 Lot Lines and Irregular Lots.**

- (a) *Corner lots.* Corner lots shall have no rear lot line.
- (b) *Flag Lots.* When the handle of a flag lot is less than the minimum width for a lot in the zoning district in which it is located, the handle is not to be used in delineating the minimum required lot width. The minimum lot width shall be taken from the front building line. However, the handle shall be used in computing the required minimum lot size, except that in no case shall the area of the handle constitute more than fifty (50%) percent of the entire lot. No structures, whether primary or accessory, shall be placed in the handle.
- (c) *Lot Width.* In a case where there is only one side lot line, lot width shall be measured between such side lot line and the opposite rear lot lines or street line.
- (d) *Irregular Lots.* Front setbacks for irregular lots shall be measured from the front lot line adjacent to the street right of way with the greatest frontage in linear feet.
- (e) *Pie-Shaped Lots.* Setbacks on pie-shaped lots shall be measured at the closest point between the building and the angled lot line.
- (f) *Rear lot line (Irregular).* In the case of a lot having no street frontage or a lot of an odd shape, only the one lot line farthest from any street shall be considered a rear lot line. Where there is only one lot line other than street lot lines, it shall be considered the rear lot line.

#### **Section 21-110 Height Exceptions.**

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, 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 that penthouses, ventilation shafts, and tanks shall be set back from the exterior walls distances equal to their respective height above the adjacent roof.

**Section 21-111 Storage, General.**

- (a) No lot or premise shall be used as a storage area for inoperable automobiles, appliances, or the storage or collection of any other miscellaneous items unless permitted in this code or by state statute. No lot or premise shall be used as a garbage dump or a dead animal rendering plant nor may manure, rubbish, or unauthorized miscellaneous refuse be stored in the open.
- (b) *Hazardous materials.* Any storage of hazardous material that is ancillary to a permitted use or a conditional use shall meet the following conditions:
  - (1) All storage shall comply with all state, federal, and local regulations.
  - (2) Such material shall be listed and made known to the Chief of the City of Elkins Fire Department.

**Section 21-112 Storage of Trailer, Camping, and Recreational Equipment.**

- (a) At no time shall trailers or camping and recreational equipment be occupied or used for living, sleeping, or housekeeping purposes while being temporarily or permanently parked or stored on residential property, except as provided in subsection (d).
- (b) Inoperable, dismantled, or unregistered recreational vehicles are not allowed in residential zoning districts.
- (c) There shall be no parking of recreational vehicles over or onto a public sidewalk.
- (d) Guests with trailers or camping and recreational equipment may temporarily park and occupy the trailer or camping and recreational equipment on a residential lot provided that parking is limited to one (1) week each calendar month within the city per trailer or piece of camping or recreational equipment.

**Section 21-113 Performance Standards.**

No use of land or structure in any district shall involve any element, or cause any condition that may be dangerous, injurious, or noxious to any other property or person. Furthermore, every use of land or structure in any district must observe the following performance requirements:

- (a) No activities shall be permitted that carry objectionable substances onto neighboring properties due to erosion by wind or water.
- (b) No activity shall cause electrical disturbances adversely affecting radio, television, or other communication equipment in the surrounding area.
- (c) Noise, which is determined to be objectionable because of volume or frequency, shall be muffled or otherwise controlled, except for fire sirens and related apparatuses used solely for public safety purposes, or noises otherwise permitted by the City of Elkins Noise Ordinance.
- (d) No gases or fumes toxic to persons or injurious to property shall be permitted to escape beyond the building in which they occur.
- (e) No glare shall be seen from any street or any residential area.
- (f) No intense earth-shaking vibration shall be created or maintained by any industry beyond the property on which it is located.

**Section 21-114 Lighting.**

- (a) All lighting shall be erected and maintained so that light is confined to the property and will not cast direct light or glare upon adjacent properties or public rights of ways.
- (b) All lighting shall be low intensity and shielded so there is no illumination of adjoining residential properties.
- (c) Feature lighting, such as up lighting of trees or other plant material, seasonal lighting, etc., shall be so arranged to reflect away from any residential structure. Such lighting shall not create a glare on adjacent streets or properties.
- (d) Building, parking, and all other exterior lighting shall be shielded and directed in a manner such that lighting does not reflect or cause glare onto adjacent properties or interfere with street traffic. Bare, unshaded bulbs are prohibited.
- (e) All non-essential lighting shall be turned off after business hours, leaving only the necessary lighting for security. Non-essential lighting applies includes display, aesthetic, parking, and sign lighting.
- (f) Lighting is required for all off-street parking areas and off-street loading areas and for driveways providing ingress and egress for all non-residential and multi-family developments.

## **Section 21-115 Parking.**

- (a) *Ingress and egress.*
  - (1) Adequate ingress and egress to the parking facility shall be provided by clearly defined driveways.
  - (2) In no event shall vehicles be permitted to back directly into the public street from the off-street parking area.
  - (3) An alley shall not be considered adequate as the sole access for a parcel of land.
- (b) *Driveways.*
  - (1) Driveways should be located to minimize traffic conflicts with traffic entering the street from either the same or the opposite side of the street.
  - (2) For residential uses, only one (1) driveway access per unit is permitted. A lot with at least one hundred (100) feet of frontage along a street may be permitted one (1) additional driveway access.
  - (3) Non-residential properties in any zoning district with frontages of six hundred (600) feet or less on any individual street are only permitted one (1) driveway intersection per street.
  - (4) Non-residential properties in any zoning district with frontages greater than six hundred (600) feet may be permitted a maximum of two (2) driveways per street frontage, provided that such driveways are at least three hundred (300) feet apart and that one (1) driveway is clearly marked for egress only and one (1) driveway is clearly marked for ingress only.
  - (5) Regardless of frontage, a development may be restricted to a single driveway depending on usage and interior and exterior traffic patterns.
  - (6) All access driveways shall be designed to conform to West Virginia DOT specifications with regard to roads.
- (c) On any lot, no wall, fence, hedge, tree, shrub, or other obstruction shall be allowed which dangerously obscures the view of approaching traffic along the street, or at any intersection, including driveways.
- (d) In a residential district, no more than forty (40) percent of the front yard may be used for parking, including driveways. Vehicles may not be parked or stored upon any lawn or landscaped area. All driveways and parking areas must be paved and if the application is to extend an existing driveway or parking area, like material must be used. Drive or parking shall be a durable and dustless surface with defined edges. Grass, soil, sand, gravel, or other similar materials are not durable and dustless surfaces. Recreational vehicles or trailers shall not be parked in the front yard setback for a period longer than seventy-two (72) hours.
- (e) Off-street parking spaces, with proper and safe access from a street, shall be provided on all non-residential lots, either within a structure or in the open, to serve the uses upon that lot.
- (f) *Parking requirements.*
  - (1) The following minimum number of off-street parking spaces per use shall be provided for the uses indicated below as shown in *Table 21-115(f): Minimum Parking Spaces Required*, except for uses operating within the Central Business District.
  - (2) For uses not specified in this table the number of parking spaces shall be determined by the Zoning Officer on the basis of similar requirements, number of persons employed and number of visitors. Appeals to the determination of parking spaces may be made to the Board of Zoning Appeals.
  - (3) All square footage is in gross floor area.
  - (4) For any nonconforming use which is hereafter damaged or partially destroyed, and which is lawfully reconstructed, re-established, or repaired, off-street parking and loading facilities equivalent to those maintained at the time of such damage or partial destruction shall be restored and continued in operation; provided, however, in no case shall it be necessary to restore or maintain parking or loading facilities in excess of those required by this code for equivalent new uses.

<b>Table 21-115(f): Minimum Parking Spaces Required</b>	
<i>Use</i>	<i>Minimum Number of Parking Spaces</i>
<b>Residential Uses</b>	
Single family residential	2 spaces per dwelling unit
Multi-family residential	1 per bedroom
Continuing Care Facility	1 space per 3 beds and 1 space for each employee
Senior Independent Housing	1 per bedroom unit
Bed and Breakfast Inn	1 off-street space per guest room and 1 space for each nonresident employee
<b>Educational, Institutional, Social and Fraternal Uses</b>	
Assembly (Places of Worship, theaters, auditoriums, etc)	1 space per 4 fixed seats, 1 space per 60 square feet of the main assembly where no fixed seats are used
Community Facility	1 space per 1,000 sq. ft. of GFA and 1 space per employee
Cultural Service	1 space per 300 sq. ft. of GFA
Educational Institution	2 spaces per 1,000 sq. ft. of GFA
Park	5 spaces per acre of outdoor area
School, Pre-school to 12	2 spaces per classroom, 5 per classroom in high schools
School, Commercial	6 spaces per classroom
<b>Business and Industrial</b>	
Child Day Care Facilities	Class 1 and 2: 1 space per employee and 1 additional space for every 10 children enrolled. One designated drop off/pick-up space shall be permitted Class 3 and 4: no additional parking beyond the normal residential requirements
Clinics	5 spaces for each doctor engaged at the clinic plus one parking space for each employee
Commercial (Retail, Office)	1 space for each 200 sq. ft. of GFA
Hotels, Motels, etc.	1 space per guest room and 1 space for each 3 employees. One (1) space per 3 persons to the maximum capacity of the largest banquet or meeting room.
Industrial	1 space per employee on largest shift plus 5 customer parking spaces
Restaurant (Sit Down)/Tavern or Drinking Establishment /Night Club	1 space per 100 sq. ft. of GFA plus 1 space per employee
Restaurant (Carry Out)	1 space per 2 employees
Restaurant (Fast Food)	1 space per 2.5 seats plus 1 space per 2 employees

(g) Parking Space Dimensions

- (1) For angle parking, stalls shall be a minimum of nine (9) feet in width and eighteen (18) feet in length.
- (2) For parallel parking, stalls shall be minimum of eight (8) feet in width and twenty (20) feet in length.
- (3) For compact space parking, stalls shall be not less than seven (7) feet wide and sixteen (16) feet long, reserved for the parking of only one compact automobile.
- (4) The minimum width of aisles providing access to stalls, varying with angle of the parking, shall be as follows in *Table 21-115(g): Parking Standards*.

<b>Table 21-115(g): Parking Standards</b>		
<i>Angle of Parking</i>	<i>Minimum Aisle Width (Double-Sided Parking)</i>	<i>Minimum Aisle Width (Single-Sided Parking)</i>
Parallel	12'	12'
45	12'-8"	12'-8"
60	16'	16'
75	20'	18'
90	24'	18'

- (h) The required parking area shall be measured exclusive of interior drives or maneuvering areas.

- (i) Parking spaces for use by persons with disabilities shall meet Americans with Disabilities Act of 1990 (ADA) standards.
- (j) Nonresidential parking may be allowed in front, side, and rear yards, but no closer than twenty-five (25) feet from a side or rear lot line or street right-of-way line.
- (k) All parking areas shall be designed to be accessible year-round.
- (l) Parking spaces shall be clearly delineated by suitable markings properly designed to avoid slip hazards, such as by adding sand to painted markings. Short-term visitor parking spaces shall be differentiated from long-term employee spaces by suitable markings or signage.

#### **Section 21-116 Off-street Loading Requirements.**

In connection with any building or structure which is to be erected or substantially altered and which requires the receipt or distribution of materials or merchandise by trucks or similar vehicles, there shall be provided off-street loading berths not less than the minimum requirements specified in this section, except in the Central Business District:

- (a) Areas provided for the loading and unloading of delivery trucks and other vehicles and for the servicing of shops by refuse collection, fuels, and other service vehicles shall be arranged so that they may be used without:
  - (1) Blocking or interfering with the use of accessways, automobile parking facilities, or pedestrian ways, or
  - (2) Backing out into a street.
- (b) All required loading berths shall be located on the same lot as the use to be served, and no portion of the vehicle shall project into any traffic lane. No loading berth for vehicles of more than two (2) ton capacity shall be located less than one hundred (100) feet from any residential district. No permitted or required loading berth shall be located within fifty (50) feet of any property line. No loading facilities shall be constructed between the building setback line and a street right-of-way line or within a required yard.
- (c) All off-street loading areas shall be adequately buffered with a landscaped buffer area from adjacent streets and properties and landscaped in accordance with the provisions of this code.

#### **Section 21-117 Satellite Signal Receiving Stations.**

- (a) *General requirements.*
  - (1) Satellite signal receiving stations shall be for the personal use of residents, occupants, and their guests only.
  - (2) Satellite signal receiving stations shall contain no graphic message or advertising other than to identify the name of the company that provided the satellite.
  - (3) Only one Satellite signal receiving station is permitted per lot, unless there is documentation provided to the Zoning Officer from the installer or satellite company that suggests that more than one satellite is necessary in order to receive the signals for the use and enjoyment of the property owner.
  - (4) Satellite signal receiving stations shall comply with all other provisions of this code not otherwise in conflict with this section pertaining to accessory structures for the particular zoning district in which such stations are to be installed.
  - (5) Satellite signal receiving stations shall be designed to withstand a wind force of up to seventy (70) miles per hour without the use of supporting guy wires.
- (b) *Ground-mounted stations.* Within all zoning districts, the following provisions shall apply to satellite signal receiving stations:
  - (1) Ground-mounted stations shall only be mounted in the rear yard behind the principal building or structure, shall not exceed an above grade height of fifteen (15) feet, and shall not be located closer than five (5) feet to any lot line.
  - (2) If a lot or parcel cannot receive a signal for a ground station mounted in the rear yard, the Zoning Officer may permit a ground-mounted station in the side yard or front yard, subject to the following:
    - i. Ground-mounted stations shall not exceed an above grade height of five (5) feet.
    - ii. Ground-mounted stations shall not be located closer than five feet to a side lot line or front lot line.



- iii. Ground-mounted stations shall be shielded or screened from view from the front lot line with natural vegetation or fencing to provide maximum screening or shielding without interfering with the signal.
  - iv. Ground-mounted stations shall be mounted in a concrete base in line with grade, utilizing only metal supports of galvanized construction.
- (3) Wiring between ground-mounted stations and any other structure shall be placed underground.
- (c) *Roof-mounted and side-mounted stations.* Within all zoning districts, the following shall apply to roof-mounted signal receiving stations or signal receiving stations affixed to the side of a primary or accessory structure ("side-mounted station"):
  - (1) Roof-mounted stations shall be mounted directly on the roof of a primary or accessory structure located in the rear yard and shall not be mounted on appurtenances such as chimneys, towers, or spires.
  - (2) Side-mounted stations shall be mounted directly on the side of a primary or accessory structure located in the rear yard and shall not be mounted on appurtenances such as chimneys, towers, or spires.
  - (3) Roof-mounted stations mounted on the roof of a primary or accessory structure shall not exceed a height of greater than five (5) feet above the roof on which it is mounted. The height shall be measured vertically from the point at which such station is mounted on the roof.
  - (4) No portion of a side-mounted station mounted on the side of a primary or accessory structure shall be lower than seven (7) feet from the ground on which the primary or accessory structure stands and shall not exceed a height greater than five (5) feet above the location at which the station is mounted onto the side of the primary or accessory structure.

#### **Section 21-118 Temporary Uses.**

- (a) Except as provided in subsection (b), only the following uses are permitted temporarily, for up to four consecutive weeks in one calendar year:
  - (1) Seasonal sales of such items as pumpkins, Christmas trees, firework stands, etc. in commercial districts;
  - (2) Carnival, circus, and street fairs in commercial or industrial districts; and
  - (3) Mobile amusements and lighting equipment for promotion, advertisement, and grand openings in commercial and industrial districts.
- (b) Temporary permits may be issued for up to one (1) year for nonconforming uses incident to housing and constructing projects including such structures and uses as storage of building materials and machinery, the processing of building materials, and a real estate office located on the tract being offered for sale, provided such permits are conditioned upon agreement by the owner or operator to remove the structure or structures or use upon expiration of the permit. Such permits may be renewed for no more than one (1) additional year.
- (c) A permit is required to be completed, returned to the Zoning Officer, and approved before any temporary use may commence, in addition to any other requirements of the Code of the City of Elkins, including but not limited to obtaining a business license.

#### **Section 21-120A Article VIII. Sign Regulations.**

##### **Section 21-121 Findings, Purpose, and Intent; Interpretation.**

- (a) Signs obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. The purpose of this Article is to regulate the size, color, illumination, movement, materials, location, height, and condition of all signs placed on property for exterior observation, thus ensuring the protection of property values; preservation of the character of the various neighborhoods; creation of a convenient, attractive, and harmonious community; protection against destruction of or encroachment upon historic areas; and the safety and welfare of pedestrians and wheeled traffic, while providing convenience to citizens and encouraging economic development. This Article allows adequate communication through signage while encouraging aesthetic quality in the design, location, and size of signs. These regulations do not entirely eliminate all of the harms that may be created by the installation and display of signs. Rather, they strike an appropriate balance that preserves ample channels of communication by means of signs while still reducing and mitigating the extent of the harms caused by signs.

- (b) This Article shall be interpreted in a manner consistent with the First Amendment guarantee of free speech. If any provision of this Article is found by a court of competent jurisdiction to be invalid, such finding shall not affect the validity of other provisions of this Article that can be given effect without the invalid provision.
- (c) Signs not expressly permitted under this code are prohibited.

#### **Section 21-122 Permit Required.**

- (a) *Application for permit.* Except as provided in this code, a permit is required prior to the display and erection of any sign.
  - (1) An application for a permit shall be filed with the Zoning Officer on forms furnished by the City. The applicant shall provide sufficient information to determine if the proposed sign is permitted under this code and other applicable law. An application for a temporary sign shall state the dates intended for the erection and removal of the sign. All applications shall demonstrate that the materials used for the sign are appropriate for the particular sign type; the submission of manufacturer's specifications is sufficient to demonstrate the use of appropriate materials. An application for an electronic message display shall include the manufacturer's statement that the sign has been pre-programmed, to the extent possible, to conform to the requirements of this code. Such manufacturer's statement shall include, where applicable, the pre-stacked sign settings related to text and graphic features, message change features, message change time intervals, day and night lighting requirements, and any other settings capable of limiting the electronic message display such that the sign conforms to this code.
  - (2) The Zoning Officer shall promptly process the permit application and approve the application, reject the application, or notify the applicant of deficiencies in the application within twenty (20) business days after receipt. Any application that complies with all provisions of this code, the building code, and other applicable laws shall be approved.
  - (3) If the application is rejected, the Zoning Officer shall provide a list of the reasons for the rejection in writing. An application shall be rejected for noncompliance with the terms of this code, building code, or other applicable law.
- (b) *Permit fee.* A nonrefundable fee shall accompany all permit applications. The permit fee schedule shall be set by the City. If the sign is part of a new construction or renovation project, the cost of the permit fee shall be included in the total project permit fee.
- (c) *Duration and revocation of permit.* If a sign is not installed within six (6) months following the issuance of a permit or the time period stated within the permit, or within thirty (30) days for a temporary permit, the permit shall be void. The permit for a temporary sign shall state its duration, not to exceed thirty (30) days unless otherwise provided in this code. The Zoning Officer may revoke a permit under any of the following circumstances:
  - (1) The information in the application was materially false or misleading;
  - (2) The sign as installed does not conform to the permit application; or
  - (3) The sign violates this code, building code, or other applicable law.
- (d) *Appeals.* Appeals from the denial or granting of a permit shall be made to the Board of Zoning Appeals pursuant to the process set forth in this code.

#### **Section 21-123 Permit Not Required.**

The purpose of not requiring a permit for some signage is to exempt certain signs that are frequently used, often by private citizens, and that typically have less of an impact on the public safety and aesthetic concerns of the community. Signs permitted under this section count towards the maximum sign area and maximum number of signs allowed per use. A permit is not required for:

- (a) Signs required by law.
- (b) Flags up to sixteen (16) square feet.
- (c) The changing of messages on marquees and the repair of an existing permitted sign, except that repair of a nonconforming sign must comply with this code.
- (d) Temporary signs as follows, subject to sign area and height limitations of the district in which the sign is located:
  - (1) One (1) sign, no illumination, no more than thirty-two (32) square feet in area, located on property where a building permit is active.

- (2) On any property for sale or rent, one sign with a total area of up to six (6) square feet and a maximum height of five (5) feet.
- (3) On dwellings, no more than four (4) temporary signs with a total area of no more than twelve (12) square feet.
- (4) Window signs, provided that the total area of window signs does not exceed twenty-five (25%) percent of the total area of all windows on each building façade, and such signs are removed within thirty (30) days after being erected.
- (5) Banners for not more than fifteen (15) days as accessory to dwellings.
- (e) Two (2) minor signs per use.
- (f) Pavement markings. Any sign applied directly and entirely to and flush with an asphalt, concrete, or similar paved surface.
- (g) A permanent window sign, provided that the aggregate area of all window signs on each window or door does not exceed twenty-five (25%) percent of the total area of the window or door.
- (h) A-frame signs, provided they are placed inside of business hours, do not exceed six (6) square feet per side, and are on-premises signs. A-frame signs shall not block pedestrian rights-of-way.

#### **Section 21-124 Prohibited Signs.**

The purpose of prohibiting the following signage is to address the City's substantial public safety and welfare concerns, including aesthetic concerns and protecting property values, associated with certain types of signage. In addition to signs prohibited elsewhere in this code or by applicable state or federal law, the following signs are prohibited:

- (a) *General prohibitions.*
  - (1) Signs that violate any state or federal law relating to outdoor advertising or in violation of this code.
  - (2) Signs attached to natural vegetation.
  - (3) Signs simulating, or that are likely to be confused with, a traffic control sign or any other sign displayed by a public authority.
  - (4) Vehicle or trailer signs, defined as any sign attached to or displayed on a vehicle, if the vehicle or trailer is used primarily to display a commercial message, and it fails to display current license plates, inspection sticker, or municipal decal; if the vehicle is inoperable; if evidence of paid-to-date local taxes cannot be made available; or if the sign alters the standard design of such vehicle or trailer.
  - (5) Animated signs, except where animated sign features as part of an electronic message display are expressly permitted.
  - (6) Flashing signs or other signs displaying flashing, scrolling, or intermittent lights or lights of changing degrees of intensity, except where flashing sign features as part of an electronic message display are expressly permitted.
  - (7) Signs attached to utility poles.
- (b) *Prohibitions based on materials.*
  - (1) Signs consisting of illuminated tubing or strings of lights outlining property lines or open sales areas, rooflines, doors, windows, or wall edges of any building, except for temporary decorations not to exceed three (3) months per year.
  - (2) Signs that emit smoke, flame, scent, mist, aerosol, liquid, or gas.
  - (3) Signs that emit sound.
  - (4) Neon signs, except in windows where permitted in a district.
- (c) *Prohibitions based on location.*
  - (1) Off-premises signs.
  - (2) Beacons, except where light is cast onto a building located on the same lot as the beacon.
  - (3) Signs erected on public land other than those approved by the Zoning Officer in writing, required by law without such approval, or permitted under West Virginia law. Any sign not so authorized is subject to immediate removal by the City, with the costs charged to the owner or person having control of such sign, with payment due within thirty (30) days of notice of charges. Removal of the sign under this provision does not preclude prosecution of the person responsible for the sign.
  - (4) Roof signs. Signs on the roof surface or extending above the roofline of a building or its parapet wall greater than five (5) square feet in area.
  - (5) Any sign located in the vision triangle formed by any two (2) or more intersecting streets or any street and alley.

- (6) Window signs with an aggregate area on a window or door in excess of twenty-five (25) percent of the total area of the window or door or located above the first floor unless the related use is only on the floor where the window sign is displayed.
- (7) Signs that obstruct free ingress and egress from a door, window, fire escape, or other exitway.

#### **Section 21-125 General Requirements.**

- (a) All signs must conform to federal and state law, including but not limited to the Building Code and W. Va. Code St. R. § 157-6-7, Requirements for Outdoor Advertising on the State Highway System. Where this code and federal or state law govern signage, the strictest provisions shall apply.
- (b) Signs erected by the City of Elkins for governmental purposes are not subject to this Article.
- (c) *Setback and placement.* Except as otherwise expressly permitted herein, all freestanding signs and flagpoles shall be set back from any public right-of-way at least the height of the sign or flagpole. Electronic message displays shall be placed perpendicular to residential structures where possible and shall comply with Federal Communications Commission regulations, including the avoidance of harmful interference with radio frequencies.
- (d) *Illumination.* The purpose of the following provisions regulating signage lighting is to ensure that signs are lighted in such a manner as to maintain aesthetic consistency with signs already existing in the City and to ensure the safety of drivers and pedestrians, while also ensuring that signs are adequately able to convey sign messages.
  - (1) Definitions.
    - (i) “Candela” means the basic unit of measurement of light in SI (metric) units.
    - (ii) “Candela per square meter (cd/m<sup>2</sup>)” means the SI (metric) unit used to describe the luminance of a light source or of an illuminated surface that reflects light. Also referred to as Nits.
    - (iii) “Nit” means a photometric unit of measurement referring to luminance. One nit is equal to one cd/m<sup>2</sup>.
    - (iv) “SI (International System of Units)” means the modern metric system of measurement, abbreviated SI for the French term “Le Systeme International d’Unites.”
  - (2) Signs may be backlit, internally lighted, or indirectly lighted. All external sign lighting shall have lighting fixtures or luminaires that are fully shielded.
  - (3) Temporary signs shall not be lighted.
  - (4) Signs that are illuminated at night may not exceed a maximum luminance level of seven hundred and fifty (750) cd/m<sup>2</sup> or Nits, regardless of the method of illumination, at least one-half hour before Apparent Sunset, as determined by the National Oceanic and Atmospheric Administration (NOAA), United States Department of Commerce, for the specific geographic location and date. All illuminated signs must comply with this maximum luminance level throughout the night, if the sign is energized, until Apparent Sunrise, as determined by NOAA, at which time the sign may resume luminance levels appropriate for daylight conditions.
  - (5) The maximum luminance during daylight conditions, between Apparent Sunrise and one-half hour before Apparent Sunset, shall be ten thousand (10,000) cd/m<sup>2</sup> or Nits.
- (e) *Maximum height measurements.* Wall signs and other signs with sign structures not affixed to the ground are measured from the lowest attached component of the sign to the highest attached component of the sign. The height of signs with sign structures affixed to the ground is measured as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign, subject to limitations in this Article. Normal grade is the lower of:
  - (1) Existing grade prior to construction; or
  - (2) The newly established grade after construction, exclusive of any filling, berming, mounding, or excavating primarily for the purpose of mounting or elevating the sign.
- (f) *Measurement of sign area.* Sign area is calculated under the following principles:
  - (1) With signs that are regular polygons or circles, the area can be calculated by the mathematical formula for that polygon or circle. With signs that are not regular polygons or circles, the sign area is calculated using all that area within a maximum of three abutting or overlapping rectangles that enclose the sign face.
  - (2) The permitted area of a double-faced a-frame sign shall be considered to be the area on one side only. If one face contains a larger sign area than the other, the larger face shall be used in calculating the sign area.

- (3) For projecting signs, the sign area also includes the area of the visible sides of the sign, calculated as a rectangle enclosing each entire side view.
- (4) Supports, uprights, or structures on which any sign is supported shall not be included in determining the sign area unless such supports, uprights, or structures are designed in such a way as to form an integral background of the display; except, however, when a sign is placed on a fence, wall, planter, or other similar structure that is designed to serve a separate purpose other than to support the sign, the entire area of such structure shall not be computed.
- (5) All signs displayed, whether permanent or temporary, and regardless of the type of sign are counted toward the maximum sign area allowed per use.
- (g) *Electronic message display (EMD) signs.* Static electronic message display signs and static electronic message display with transition feature signs are permitted only as monument signs. All other EMDs are prohibited.
- (h) *Number of signs.* All signs displayed on a lot, whether permanent or temporary, and regardless of the type of sign are counted towards the maximum number of signs permitted per use.
- (i) *Wall signs.*
  - (1) Wall signs larger than one hundred (100) square feet shall provide as part of permit application:
    - (i) Express permission from the operator and/or owner of the building;
    - (ii) The name and address of the person applying the wall sign; and
    - (iii) A clear drawing of the proposed wall sign including dimensions and location.
  - (2) Wall signs larger than one hundred (100) square feet are subject to the design review standard in subsection (j).
- (j) *Design review standards for signs.* Design review standards shall apply to wall signs in excess of one hundred (100) square feet. The Board of Zoning Appeals shall issue permits for signs subject to design review in accordance with Section 21-12, except that the Board of Zoning Appeals shall issue a determination within forty (40) business days. In determining whether a sign is compatible with the theme and overall character to be achieved in each zoning district, the Board of Zoning Appeals shall base its compatibility determination on the following criteria:
  - (1) The relationship of the scale and placement of the sign to the building or premises on which it is to be displayed.
  - (2) The relationship of the colors of the sign to the colors of adjacent buildings and nearby signs.
  - (3) The similarity or dissimilarity of the sign's size and shape to the size and shape of other signs in the area.
  - (4) The similarity or dissimilarity of the style of lettering or number of words on the sign to the style of lettering or number of words of nearby signs.
  - (5) The compatibility of the type of illumination, if any, with the type of illumination in the area.
  - (6) The compatibility of the materials used in the construction of the sign with the materials used in the construction of other signs in the area.
- (k) The back of any permanent sign must be shielded from public view by a building, other structure, high planting, or another sign of the same size, where permitted, unless such back is painted a neutral color or is enclosed in a solid metal backing that is treated or painted against corrosion.

#### **Section 21-126 Nonconforming Signs.**

- (a) Signs lawfully existing on the effective date of this code that do not conform to the provisions of this code, and signs that are accessory to a nonconforming use shall be deemed nonconforming signs and may remain except as qualified below.
  - (1) Temporary nonconforming signs are prohibited.
  - (2) Nonconforming signs shall not be enlarged nor shall any feature of a nonconforming sign, such as illumination or technology, be increased.
  - (3) Nonconforming signs shall not be extended, structurally reconstructed, altered in any manner, or replaced with another nonconforming sign nor increased in technological advancement, except as permitted by this Article.
  - (4) Nonconforming signs shall not be moved for any distance on the same lot or to any other lot unless such change in location will make the sign conform in all respects to the provisions of this Article.
  - (5) A nonconforming sign that is destroyed or damaged by any casualty to an extent not exceeding thirty (30) percent of the sign's area, as defined in Section 21-25(f), may be restored within thirty

- (30) days after such destruction or damage, but shall not be enlarged, nor may the sign's nonconformity be increased. If such sign is so destroyed or damaged to an extent exceeding thirty (30) percent of the sign's area, the sign shall not be reconstructed but may be replaced with a sign that is in full accordance with this code.
- (6) Nonconforming sign structures shall be removed if the use to which they are accessory has not been in operation for a period of one (1) year or more, except as provided in Section 21-127(g). Such sign structure shall be removed or made conforming by the owner or lessee of the property. If the owner or lessee fails to remove or make conforming the sign structure within thirty (30) days of notice by the Zoning Officer, the Zoning Officer may cause the sign to be made conforming or removed and the cost of such removal or modification shall be charged to the owner, person having control, or person receiving benefit from such sign, with payment due within thirty (30) days of notice of charges.
  - (7) If a nonconforming sign is altered such that the sign is conforming or is replaced by a conforming sign, such sign shall thereafter be kept in accordance with the provisions of this code.
- (b) The burden of establishing nonconforming status of signs and the physical characteristics and location of such signs shall be with the owner of the property. Upon notice from the Zoning Officer, a property owner shall submit verification that sign(s) were lawfully erected. Failure to provide such verification shall cause the sign to be deemed an illegal sign.
  - (c) Nothing in this section shall prevent keeping a nonconforming sign in good repair.

#### **Section 21-127 Maintenance and Removal.**

- (a) All signs shall be constructed and mounted in compliance with the West Virginia Uniform Statewide Building Code. All signs and components thereof shall be maintained in good repair and in a safe, neat, and clean condition.
- (b) *Safety hazard.* The Zoning Officer may cause to have removed or repaired immediately without written notice any sign that has become insecure, in danger of falling, or otherwise unsafe, and, as such, presents an immediate threat to the safety of the public. If such action is necessary to render a sign safe, the cost of such emergency removal or repair shall be charged to the owner, person having control, or person receiving benefit from such sign, with payment due within thirty (30) days of notice of charges.
- (c) *Nuisance.* Any sign that constitutes a nuisance shall be abated by the owner within thirty (30) days of notice by the Zoning Officer. At any time, the Zoning Officer may cause the nuisance to be abated with the costs charged to the owner, person having control, or person receiving benefit from such sign, with payment due within thirty (30) days of notice of charges.
- (d) *Illegal sign and disrepair.* Any sign that is illegal or in disrepair shall be made conforming, removed, or repaired within thirty (30) days of notice from the Zoning Officer. Signs of disrepair include chipped paint, missing or significantly faded letters or other aspects of the sign, cracked portions of the sign face, broken lighting, graffiti, and unlevelled portions of the sign structure or face. If an illegal sign or a sign in disrepair is not made conforming or repaired, the Zoning Officer may cause the sign to be removed or repaired and the cost of such removal or repair shall be charged to the owner, person having control, or person receiving benefit from such sign, with payment due within thirty (30) days of notice of charges.
- (e) *Expired permit.* Any sign for which a permit has expired shall be removed within five (5) days of the permit expiration. If the sign is not removed, the Zoning Officer may cause the sign to be removed and the cost of such removal shall be charged to the owner, person having control, or person receiving benefit from such sign, with payment due within thirty (30) days of notice of charges.
- (f) The owner of any commercial sign, whether conforming or nonconforming located on commercial property where the use or business has ceased operating shall, within sixty (60) days of the cessation of the use or business operation, remove temporary signs and all aspects of any permanent sign with a commercial message. Property owners may request, in writing, a waiver of such requirement, if the businesses are temporarily or seasonally operational, is remodeling, or otherwise has the good will intention of resuming the use within one (1) year of time of cessation.

#### **Section 21-128 Temporary Signs.**

Temporary signs pose distinct concerns with visual clutter, safety in erection and display, and removal when the time for display has concluded. Temporary signs also pose distinct concerns with materials quality. The following provisions and individual zoning of temporary signs per district serve to address these concerns.

- (a) Temporary signs require a permit, except as provided in this Article, and may be permitted up to thirty (30) days each calendar year. No more than four (4) temporary commercial signs may be erected per use in one calendar year.
- (b) Temporary signs shall be securely affixed to the ground or a building, or a pole designated only to a temporary sign. Temporary signs shall be durably constructed of weather resistant material.
- (c) Person-assisted signs shall not be located more than ten (10) feet from the entrance to a building or within ten (10) feet of a right-of-way.

#### **Section 21-129 Signs for Single Family Residential and City Residential Districts.**

*Purpose.* Signage in residential districts poses a heightened risk of visual blight and unsightly clutter, as residential neighborhoods typically contain markedly less signage than other districts in order to maintain the residential character of the neighborhood. At the same time, communicating from one's residence is a distinct and impactful form of speech that should be protected, and nonresidential uses should be afforded adequate signage incidental to the primary use, i.e. on-premises signs. Signs permitted in these districts are smaller, fewer in number, and limited in sign type in order to limit visual clutter and distraction, while affording ample speech.

- (a) *Signs permitted as accessory to dwellings.*
  - (1) Permitted permanent sign use as accessory to dwellings: Geological, minor, temporary, topiary, wall, and window signs. No more than four (4) permanent signs are permitted by right per dwelling.
  - (2) Permitted temporary sign use as accessory to dwellings: Banner, minor, pennant, wall, wicket, window. No more than four (4) temporary signs are permitted in one calendar year per dwelling.
  - (3) No more than four (4) flags as accessory to a dwelling, excluding any flags that are minor signs.
- (b) *Signs permitted as accessory to non-dwellings.*
  - (1) Permitted permanent sign use as accessory to non-dwellings: Freestanding, geological, minor, monument, temporary, topiary, wall, and window signs. Only one (1) of each is permitted per use per frontage, except wall signs and window signs. No more than four (4) permanent signs are permitted by right per use. No more than four (4) temporary signs are permitted in one calendar year per use.
  - (2) Permitted temporary sign use as accessory to non-dwellings: A-frame, banner, chalkboard, minor, wall, wicket, window. No more than four (4) temporary signs are permitted in one calendar year per use.
  - (3) No more than four (4) flags as accessory to a non-dwelling are permitted.
- (c) Off-premises signs are prohibited for both dwellings and non-dwellings.

*Dimension specifications chart.* All maximum sign area requirements include the sum total sign area of all signs per use, unless otherwise specified.

	Permitted as Accessory to Dwellings	Permitted as Accessory to Non-dwellings	Temporary Signs as Accessory to Dwellings and Non-dwellings	Flags
Max. Sign Area	6 sq. ft.	6 sq. ft.	6 sq. ft. displayed at one time	24 sq. ft. ea.
Max. Height	7 ft.	7 ft.	4 ft.	20 ft.

#### **Section 21-130 Signs for Recreational District.**

Signage in the Recreational District poses a heightened risk of visual blight and unsightly clutter, as recreational areas typically contain markedly less signage particularly in areas where there is vast open space. As a result, signs in the Recreational District should be smaller, fewer in number, and limited in sign type in order to limit visual clutter and preserve natural open space.

#### **Section 21-132 Signs for Central Business District.**

*Purpose.* Signage in commercial and districts is allowed to a somewhat greater extent, while maintaining proportion to the size and scope of uses typically present. However, even these more intensive uses in smaller communities are limited in signage to some degree in order to maintain small-town character and limit visual distraction by signage.

- (a) Permitted sign use as accessory to dwellings shall be the same as for Section 21-129.
- (b) *Signs permitted as accessory to non-dwellings.*

- (1) Permitted permanent sign use as accessory to non-dwellings: A-frame, awning, canopy, chalkboard, freestanding, geological, marquee, minor, monument, neon, projecting, temporary, topiary, wall, and window signs. Only one (1) of each is permitted per use per frontage, except wall signs and window signs. More than two hundred (200) square feet of frontage is required for a use to have more than one (1) pole sign. No more than six (6) permanent signs are permitted by right per use.
- (2) Permitted temporary signs as accessory to non-dwellings: A-frame, banner, chalkboard, minor, person-assisted, wall, wicket, window. No more than six (6) temporary signs are permitted in one calendar year per use.
- (3) No more than three (3) flags as accessory to a non-dwelling are permitted.
- (c) Off-premises signs are prohibited.
- (d) *Dimension specifications chart.* All maximum sign area requirements include the sum total sign area of all signs per use.

	Freestanding, Monument, and Wall Signs	All Other Signs	Temporary Signs	Flags
Max. Sign Area	1 sq. ft. per 1 ft. of lineal frontage, not to exceed 32 sq. ft.	0.5 sq. ft. per 1 ft. of lineal frontage, not to exceed 24 sq. ft.	6 sq. ft. displayed at one time	60 sq. ft. ea.
Max. Height	8 ft.	4 ft.	4 ft.	40 ft.

### Section 21-133 Signs for Agriculture, Educational, and Commercial Districts.

*Purpose.* Signage in commercial and districts is allowed to a somewhat greater extent, while maintaining proportion to the size and scope of uses typically present. However, even these more intensive uses in smaller communities are limited in signage to some degree in order to maintain small-town character and limit visual distraction by signage.

- (a) Permitted sign use as accessory to dwellings shall be the same as for Section 21-129.
- (b) *Signs permitted as accessory to non-dwellings.*
  - (1) Permitted permanent sign use as accessory to non-dwellings: A-frame, awning, canopy, chalkboard, changeable copy, static electronic message display, static electronic message display with transition feature, freestanding, geological, marquee, minor, monument, neon, projecting, temporary, topiary, wall, and window signs. Only one (1) of each is permitted per use per frontage, except wall signs and window signs. More than two hundred (200) square feet of frontage is required for a use to have more than one (1) pole sign. No more than six (6) permanent signs are permitted by right per use.
  - (2) Permitted temporary signs as accessory to non-dwellings: A-frame, banner, chalkboard, minor, person-assisted, wall, wicket, window. No more than six (6) temporary signs are permitted in one calendar year per use.
  - (3) No more than three (3) flags as accessory to a non-dwelling are permitted.
- (c) Off-premises signs are prohibited.
- (d) *Dimension specifications chart.* All maximum sign area requirements include the sum total sign area of all signs per use.

	Freestanding, Monument, and Wall Signs	EMDs	All Other Signs	Temporary Signs	Flags
Max. Sign Area	0.5 sq. ft. per 1 ft. of lineal frontage, not to exceed 64 sq. ft.	32 ft.	0.5 sq. ft. per 1 ft. of lineal frontage, not to exceed 32 sq. ft.	6 sq. ft. displayed at one time	60 sq. ft. ea.
Max. Height	8 ft.; with up to an additional 1 ft. per 5 ft. of setback, not to exceed a total sign height of 16 ft.	8 ft.	8 ft.	4 ft.	40 ft.



### Section 21-134 Signs for Industrial District.

*Purpose.* Signage in heavier commercial and industrial districts is allowed to a greater extent, in size, number, and sign type, in order to maintain proportion to the size and scope of uses typically present within these districts. However, even the most intensive use districts in smaller communities are still limited in signage to some degree in order to maintain small-town character and limit visual distraction by signage.

- (a) Permitted sign use as accessory to dwellings shall be the same as for Section 21-129.
- (b) *Signs permitted as accessory to non-dwellings.*
  - (1) Permitted permanent sign use as accessory to non-dwellings: A-frame, awning, canopy, chalkboard, changeable copy, freestanding, geological, marquee, minor, monument, neon, projecting, static electronic message display, static electronic message display with transition feature, temporary, topiary, wall, and window signs. Only one (1) of each is permitted per use per frontage, except wall signs and window signs. No more than eight (8) permanent signs are permitted by right per use.
  - (2) Permitted temporary signs as accessory to non-dwellings: A-frame, banner, chalkboard, changeable copy, feather, inflatable, minor, pennant, wall, wicket, window. No more than six (6) temporary signs are permitted in one calendar year per use.
  - (3) No more than three (3) flags as accessory to a non-dwelling are permitted.
- (c) Off-premises signs are prohibited.
- (d) *Dimension specifications chart.* All maximum sign area requirements include the sum total sign area of all signs per use.

	Freestanding, Monument, and Wall Signs	EMDS	All Other Signs	Temporary Signs	Flags
Max. Sign Area	1 sq. ft. per 1 ft. of lineal frontage, not to exceed 150 sq. ft.	32 sq. ft.	0.5 sq. ft. per 1 ft. of lineal frontage, not to exceed 75 sq. ft.	6 sq. ft. displayed at one time	60 sq. ft. ea.
Max. Height	15 ft.	8 ft.	10 ft.	4 ft.	40 ft.

### Section 21-135A Article IX. Wireless Telecommunications Facilities.

#### Section 21-136 Purpose.

This ordinance seeks to ensure the citizens of the City of Elkins have access to wireless telecommunication technology, to protect the residents of the City of Elkins from the proliferation of freestanding towers, and to provide a process and standards for the construction, maintenance, and modification of wireless telecommunication facilities through the following:

- (a) Establishing clear guidelines, standards, and time frames for the exercise of authority for wireless telecommunications facilities through the City of Elkins' zoning, planning, and design standards;
- (b) Allowing competition in telecommunications service;
- (c) Encouraging the provision of advanced telecommunications services to the largest number of businesses, institutions, and residents of the City of Elkins;
- (d) Encouraging the location, design, and construction of wireless telecommunication facilities that will have minimal impact on the location, minimal visual impact on the scenic resources, and minimize the total number of towers and tower sites throughout the City of Elkins.
- (e) Permitting reasonable access to the public rights-of-way for telecommunications facilities on a competitively neutral basis;
- (f) Ensuring that all telecommunications carriers providing facilities or services comply with federal, state, and local regulations;
- (g) Encouraging the use of existing structures as an alternative to new wireless telecommunications facility construction, including the collocation of new and existing wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community; and
- (h) Protecting the scenic and visual character of the community.

#### Section 21-138 Applicability.

Wireless telecommunications facilities may not be constructed or modified without a zoning permit issued in accordance with the provisions of this Article. Modifications to existing wireless telecommunication facilities, as of the effective date of this Article, are required to comply with this Article.

This Section does not apply to the replacement of any component of a wireless telecommunication facility where the replacement is identical to the component being replaced or to the normal repair and maintenance of a wireless telecommunication facility that does not involve the addition, removal, or change of any of the externally discernable physical components of a wireless telecommunication facility from that which was originally permitted.

#### **Section 21-139 Substantial Change Criteria.**

For the purposes of determining whether a requested modification is an eligible facilities request for modification under this Section, a proposed facilities modification will substantially change the physical dimensions of an eligible support structure, and therefore not be eligible for the expedited modification process and corresponding eligible facilities application process under this Article, if the requested modification meets any of the following criteria:

- (a) For towers other than towers in the public rights-of-way, the requested increases the height of the tower by more than ten (10) percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten (10) percent or more than ten (10) feet, whichever is greater.
- (b) Changes in height shall be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height shall be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.
- (c) For towers other than towers in the public right-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet.
- (d) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or, for towers in the public right-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten (10) percent larger in height or overall volume than any other ground cabinets associated with the structure.
- (e) It entails any excavation or deployment outside the current site.
- (f) It would defeat the concealment elements of the eligible support structure.
- (g) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in this section.

#### **Section 21-140 General Requirements.**

- (a) *Lighting.* Lighting affixed to any wireless telecommunication facilities shall meet, but not exceed, the minimum lighting required by the Federal Aviation Administration (FAA). For any application where lighting is required, the applicant shall submit documentation from the FAA stating that the proposed lighting meets all applicable FAA standards and regulations.
- (b) *Structural Standards.* Wireless telecommunications facilities shall conform to the most current versions of the ANSI/ASSE A10.48 "Standard Criteria for Safety Practices with the Construction, Demolition, Modification and Maintenance of Communication Structures"; ANSI/TIA-222 Standard, "Structural Standard for Antenna Supporting Structures, Antennas and Small Wind Turbine Support Structures"; and ANSI/TIA-322 Standard, "Loading, Analysis and Design Criteria Related to the Installation, Alteration and Maintenance of Communication Structures." Wireless telecommunication facilities shall also meet any applicable local building code standards.
- (c) *Height Restrictions.* No wireless telecommunication facility shall exceed one hundred ninety-nine (199) feet in height, unless the applicant sufficiently justifies that the height of the tower will eliminate other similar towers or that the provision of service cannot be accomplished without a tower height in

excess of one hundred ninety-nine (199) feet. Any applicant proposing a wireless telecommunication facility greater than one hundred ninety-nine (199) feet in height must provide evidence that the applicant notified the FAA of the intent to build the facility and received a final determination of “no hazard” from the FAA. Wireless telecommunications facilities located atop or within an alternative support structure may extend ten (10%) percent above the height of the structure or to the maximum height permitted in the zoning district in which the structure is located, whichever is less.

(d) *Collocation.*

- (1) An applicant for a new wireless telecommunication facility must demonstrate by substantial evidence that a bona fide need exists for the construction of a new tower and that no reasonable combination of locations, techniques, or technologies would obviate the need. The applicant for a new facility must further demonstrate that all reasonable efforts have been made to collocate wireless telecommunication facilities on existing towers or alternative support structures.
- (2) Prior to the approval of an application for a wireless telecommunications facility, the applicant shall demonstrate commitment to joint use as follows:
  - (i) The applicant shall submit evidence as part of the application demonstrating that a genuine effort has been made to solicit additional users for the proposed new wireless telecommunications facility. Evidence of this shall include, at a minimum, copies of notices sent by registered mail, return receipt requested, to all other providers of cellular and wireless telecommunications services within the same county and within adjacent counties, or a Class II legal advertisement, advising of the intent to construct a new tower, identifying the location, inviting the joint use and sharing of costs, and requesting a written response within fifteen (15) business days.
  - (ii) As part of the application, the applicant shall attest that the company will encourage the joint use of telecommunications towers within the City of Elkins, committing that there shall be no unreasonable act or omission that would have the effect of excluding, obstructing, or delaying joint use of any tower where fair and just market reasonable compensation is offered for such use.
  - (iii) Wireless telecommunications facilities, other than alternative support structures, shall be designed and built to accommodate a minimum of three (3) wireless telecommunications provider’s equipment. The owner of the tower, if different than the applicant, must certify to the City of Elkins that the tower is available for use by other telecommunications service providers on a reasonable and nondiscriminatory basis.

(e) *Concealment.*

- (1) All new or modified wireless telecommunication facilities must be concealed in a way that minimizes the adverse visual impact of the facilities through careful design, siting, landscaping, screening, and innovative camouflaging and stealth techniques, unless applicant shows substantial evidence that to do so is impracticable.
- (2) Concealment techniques include fake trees, parapet extensions, silos, fake chimneys, water towers, fiberglass flagpoles, and steeples.
- (3) A description must be included in the application of the possibilities for concealment that have been explored, and why the proposed option was chosen.
- (4) Visual impact analysis of the wireless telecommunication facility is required using existing information, predictive modeling techniques, photographs, and simulations, to accurately and impartially communicate the potential visual impacts from proposed project.
- (5) If determined to be impracticable by Zoning Officer for a tower or alternative support structure to be entirely concealed, the applicant will describe how they will utilize materials, colors, textures, screening and landscaping to blend facilities into the natural setting and surrounding buildings.
- (6) If an antenna is installed on an alternative support structure, the antenna and supporting electrical and mechanical equipment must be a neutral color that is identical to or closely compatible with the color of the alternative support structure so as to make the antenna and related equipment as visually unobtrusive as possible.
- (7) Any equipment shelter or cabinet must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground

- (f) Replacement or modification of any previously approved concealed tower or facility must substantially conform to previous design characteristics.
- (g) *Setback.* Each tower shall have a setback of at least one hundred and ten (110%) percent the tower height measured from the tower base to the nearest property line.
- (h) *Collapse Zone.* No habitable structure may be located within the proposed collapse zone. The applicant shall demonstrate that the entire collapse zone is either under lease or owned by the applicant and that no habitable structure will be constructed in the collapse zone while the tower is standing.
- (i) *Equipment Cabinets.* No equipment cabinet for a wireless telecommunications facility shall exceed seven hundred fifty (750) square feet in area, nor twelve (12) feet in height. All equipment cabinets shall be located with the tower and shall be enclosed within a minimum of a six (6) foot security fence and a locked gate.
- (j) *Signs.* No commercial messages nor any other signs beyond that which is required, not to exceed twelve (12) square feet cumulatively, shall be placed on any tower, equipment cabinet, or security fence.
- (k) *Landscaping.*
  - (1) Existing mature tree growth and natural landforms shall be preserved to the maximum extent possible. Trees existing within one hundred (100) feet of the wireless telecommunications facility shall not be removed except as required for tower construction, security fence construction, installation of ingress or egress, and the installation of utilities to the facility. To the extent that existing vegetation is the basis for a waiver of the landscaping requirement, preservation of such vegetation shall be a condition of the permit, and if such existing vegetation is removed or destroyed, the applicant shall meet the landscaping specified in Subsection 2 below within six (6) months thereafter.
  - (2) Wireless telecommunications facilities shall be landscaped within six (6) months after the tower and base station are erected with a visual buffer of plant materials that effectively screens the view of the equipment cabinet from adjacent property. The standard visual buffer shall consist of a landscaped strip of at least four (4) feet wide outside the perimeter of the security fencing enclosing the facilities. The visual buffer shall include vegetation of at least eight (8) feet tall, planted ten (10) feet apart behind a contiguous hedge of shrubs three (3) feet deep. All plant materials shall be species native to West Virginia. In the case where the tower and base station are sited on large wooded lots, the applicant may request that the natural growth preserved around the tower site be considered a sufficient visual barrier, without the need for additional landscaping. Such a request shall accompany the application and shall include photographs of the natural growth to be preserved.
- (l) *Location of Towers or Antenna in or near Historic Sites, Historic Districts, and Designated Scenic Resources.* Applications for wireless telecommunications facilities or antennas subject to this Section shall also demonstrate that the views of, and vistas from, such structures, districts, and resources shall not be impaired or diminished by the placement of the proposed tower or antennas. In no instance shall a wireless telecommunications facility subject to the provisions of this paragraph exceed one hundred and ninety-nine (199) feet in height.
- (m) *Site Demarcation.* The site shall be physically and visually marked in the field, for immediate identification, with any combination of survey irons or flags as needed during the application process or during construction.

#### **Section 21-141 Approval Authority and Process.**

Applications for wireless telecommunications facilities shall follow the requirements of this section and written findings shall be made by the City of Elkins as to whether the proposed facility complies with the regulations outlined in this Section.

- (a) *Voluntary Pre-application Conference.* All persons seeking approval under this Article may meet with the City of Elkins prior to filing an application. It is recommended that the meeting occur no less than thirty (30) days prior to the anticipated filing of the application to ensure adequate consideration and adequate time to address concerns. At this meeting, the City of Elkins shall explain to the applicant the regulations as well as application forms and submissions that will be required under this Article.
- (b) *Submission Materials.* Where telecommunications facilities are a permitted use, applications shall be submitted to the Zoning Officer, who may confer with the Planning Commission in the application

process as needed. Where telecommunications facilities are a conditional use, applications shall be submitted to the Board of Zoning Appeals. No application shall be deemed complete unless it is in writing, is accompanied by the applicable fees, includes the required submittals, and is attested to by the applicant, certifying the truth and accuracy of the information provided in the application.

(1) All applications shall include the following, in addition to the applicable subsections below:

- (i) The following contact information for the applicant:
  - (A) Name,
  - (B) Title,
  - (C) Mailing address,
  - (D) Phone number,
  - (E) West Virginia tax number, and
  - (F) Electronic mail address (optional).
- (ii) If a corporation, the name and address of the registered agent of applicant in West Virginia and the state of incorporation of applicant.
- (iii) If applicant is an entity other than a corporation, such as a partnership or limited liability company, the names and business addresses of the principals.
- (iv) If the applicant is not the owner or person in control of the structure or site, the following shall be required:
  - (A) Attestation that the owner or person in control of the structure or site has consented to the new facility, collocation, or for any modification that require a substantial change or are otherwise not considered an eligible facilities modification.
  - (B) If the structure is in a public right-of-way, the applicant must also attest to having authorization to install, maintain, and operate a wireless telecommunication facility in, under, and above the public right-of-way.
- (v) If the applicant proposes a modification involving collocation of transmission equipment or the replacement of transmission equipment, the following shall be required: Complete copies of the underlying land use approvals for siting of the tower or base station proposed to be modified, establishing that, at the time of submittal of the application, such tower or base station constituted an eligible support structure.

(2) Applications for eligible facilities requests, as defined herein and subject to a determination under Section 21-139, Substantial Change Criteria:

- (i) Attestation that the proposed request is subject to review under Section 6409 of the Spectrum Act as an “eligible facilities modification.”
- (ii) If the applicant proposes a modification that will result in an increase in height of the eligible support structure, the following shall be required: Record drawings, as-built plans, or the equivalent, showing the height of the eligible support structure, (a) as originally constructed and granted approval by the City of Elkins or other applicable local zoning or similar regulatory authority, or (b) as of the most recent modification that received approval, prior to the passage of Section 6409(a) of the Spectrum Act of 2012, whichever height is greater.
- (iii) If the applicant proposes an eligible facilities request for modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing restrictions or requirements imposed by the City of Elkins ordinances, the following shall be required: A copy of the document setting forth such pre-existing restrictions or requirements, together with a certification that the proposed facilities modification conforms to such restrictions or requirements.
- (iv) If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing concealment restrictions or requirements, or was constructed with concealment elements, the following shall be required: Applicant shall set forth the facts and circumstances demonstrating that the proposed modification would not defeat the existing concealment elements of the eligible support structure. If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure, applicant shall include a detailed visual simulation depicting how the

eligible support structure will appear after the proposed modification is complete. The visual simulation shall depict, to scale, the eligible support structure in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.

- (v) If the applicant proposes a modification that will result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower or will protrude from the edge of a non-tower eligible support structure, the following shall be required: Record drawings and as-built plans, or the equivalent, showing, at a minimum, the edge of the eligible support structure at the location of the proposed modification.
- (vi) If the applicant proposes a modification to an eligible support structure that (a) will include any excavation, (b) would result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower, or (c) would protrude from the edge of a non-tower eligible support structure, the following shall be required: A description of the boundaries of the site and a scaled drawing based on an accurate traverse, with angular and lineal dimensions, depicting the boundaries of the site in relation to the tower or base station proposed to be modified and depicting the proposed location, elevation, and dimensions of the new or replacement transmission equipment. The City of Elkins may require a survey by a land surveyor licensed in the state of West Virginia when, in the judgment of the approval authority, a survey is reasonably necessary to verify the boundaries of the site to determine if the proposed facilities modification would result in a substantial change in the physical dimensions of the eligible support structure.
- (vii) If the applicant proposes a modification to a tower, the following shall be required: A stamped report by a state of West Virginia registered or licensed professional engineer demonstrating that the tower with the proposed modifications will comply with applicable structural, electrical, and safety codes, including by way of example, but not limited to, the most recent revision of EIA/TIA-222, published by the American National Standards Institute (as amended), allowable wind speed for the applicable zone in which the tower is located, and describing the general structural capacity of the tower with the proposed modifications, including:
  - (A) the number and type of antennas that can be accommodated;
  - (B) the basis for the calculation of capacity; and
  - (C) a written statement that the proposal complies with all federal guidelines regarding interference and ANSI standards as adopted by the FCC.The City of Elkins may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the applicant's demonstration of compliance.
- (viii) If the applicant proposes a modification to a base station, the following shall also be required: A stamped report by a state of West Virginia registered or licensed professional engineer demonstrating that the base station, with the proposed modifications, will comply with applicable structural, electrical, and safety codes.
- (ix) If the applicant proposes a modification requiring an alteration to the eligible support structure, excavation, installation of new equipment cabinets, or any other activities impacting or altering the land, existing structures, fencing, or landscaping on the site, the following shall be required: A detailed site plan and drawings, showing the true north point, drawn to an appropriate decimal scale, indicating and depicting:
  - (A) the location, elevation, and dimensions of the existing eligible support structure;
  - (B) the location, elevation, and dimensions of the existing transmission equipment;
  - (C) the location, elevation, and dimensions of the transmission equipment, if any, proposed to be collocated or that will replace existing transmission equipment;
  - (D) the location, elevation, and dimensions of any proposed new equipment

- cabinets and the intended use of each;
  - (E) any proposed modification to the eligible support structure;
  - (F) the location of existing structures on the site, including fencing, screening, trees, and other significant site features; and
  - (G) the location of any areas where excavation is proposed, showing the elevations, depths, and width of the proposed excavation and materials and dimensions of the equipment to be placed in the area excavated.
- (x) Copies of any environmental documents required by any state or federal agency. These shall include the environmental assessment required by 47 C.F.R. Part 1 (Part 1—Practice and Procedure), Section 1.1307, as amended, or, in the event that an environmental assessment is not required, a statement that describes the specific factors that obviate the requirement for an environmental assessment.
- (3) Applications for new facilities, collocations, or for any modifications that require a substantial change or are otherwise not considered an eligible facilities modification, as defined by this Article, shall include the following in the application submittal:
  - (i) Copies of any easements necessary to access the property and proof that the same has been recorded, or will be recorded, in the applicable county clerk's office.
  - (ii) Certification of the wireless telecommunication facility's collocation capabilities or whether the proposal is a collocation on an existing facility and whether the applicant anticipates other lessees will be able to utilize the facility.
  - (iii) A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility attesting that the facility will comply with current FCC regulations.
  - (iv) Evidence of compliance with applicable local, state, and federal historic preservation laws and regulations, including a copy of a written request for a statement of compliance sent to the necessary local, state, and federal historic preservation authorities and said authorities' written responses.
  - (v) A map showing the location of all wireless telecommunications facilities above ground level, except antennas located on roof tops, within a three (3) air-mile radius of the proposed facility, unless this information has been previously made available to the City of Elkins.
  - (vi) A site plan is required and shall include:
    - (A) Certification by a professional engineer indicating the location, including latitude and longitude, type, and height of the proposed facility; antenna capacity; on-site and abutting off-site land uses; topography; setbacks; parking; fencing; landscaping; the collapse zone; easements or other means of access; and all applicable American National Standards Institute (ANSI) technical and structural codes.
    - (B) A topographic map identifying the location of the site for the proposed wireless telecommunications facility.
    - (C) A stormwater and erosion control plan for the access road to the site, or a written statement that there will be no changes implemented with regards to any existing roads.
    - (D) Proximity of the proposed site to flood hazard areas.
    - (E) Certification by the applicant that the proposed facility complies with all FCC standards for radio emissions.
    - (F) A boundary survey completed by a land surveyor licensed by the State of West Virginia, and which includes the access road and vicinity map.
    - (G) Photo simulations of the proposed facility taken from at least two perspectives, with emphasis placed on residential areas, public rights-of-way, public parks, designated scenic resources, and any historic site or district. The photos shall demonstrate whether the facility will be a stealth tower. Each photo must be labeled with the line of sight, elevation, and date taken.
  - (vii) The applicant shall identify and demonstrate consideration of each and every designated scenic resource or viewshed, as recognized by federal, state, or local

government in which the proposed wireless telecommunications facility is located or visible and shall provide a scenic assessment for the project area consisting of the following:

- (A) Elevation drawings of the proposed facility, showing height above ground level.
  - (B) A landscaping plan indicating the proposed placement of the facility on the site.
  - (C) Location of existing structures, trees, and other significant site features.
  - (D) A description and visual simulation of possible stealth tower design.
  - (E) A description of the lighting and type of lighting the facility will implement, including, but not limited to, the color of the lighting and whether it will be constant, flashing, or strobe.
  - (F) A narrative discussing the extent to which the proposed facility would be visible from any residential areas, height of vegetation within one hundred (100) feet of the facility at the time of application, and the distance to the proposed facility from a designated scenic resource's noted viewpoints.
- (viii) A propagation map, before and after, of how the proposed facility fits in the existing telecommunications network. The applicant must provide written evidence of a tenant for the proposed wireless telecommunications facility and the anticipated date that the facility will be occupied and used by such tenant. Such evidence may include a lease or letter of intent from the tenant. This submission requirement does not require disclosure of confidential business information. The Zoning Officer, Planning Commission, and Board of Zoning Appeals are hereby authorized to and may enter into a non-disclosure agreement with the applicant provided the non-disclosure agreement relates only to the applicant's propagation maps.
- (ix) Evidence demonstrating that an existing building, site, or structure cannot accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:
- (A) Evidence that no existing facilities, located within the targeted market coverage area, meet the applicant's engineering requirements.
  - (B) Evidence that existing facilities do not have sufficient height and cannot be increased in height at a cost not exceeding fifty (50%) percent of the cost required to construct the existing tower in present-day dollars, to meet the applicant's engineering requirements.
  - (C) Evidence that existing facilities do not have sufficient structural strength to support the applicant's proposed antenna and related equipment.  
Specifically:
    - (1) Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of the existing facilities, and the existing facilities cannot be reinforced to accommodate the new equipment.
    - (2) The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment with the existing facility would cause interference with the applicant's proposed antenna.
    - (3) Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.
  - (D) Evidence that the fees, costs, or contractual provisions required by the owner of the existing facility or structure in order to share or adapt an existing facility are unreasonable, provided the existing facility was constructed prior to the effective date of the Article. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable.
  - (E) Evidence that the applicant has made diligent good faith efforts to negotiate collocation on an existing facility, building, or structure, and has been denied access.
- (x) A form of surety approved by the City of Elkins to pay for the costs of removing the



- facility to a depth of three (3) feet below ground level if it is abandoned.
- (xi) Proof of compliance with all applicable federal, state, and local regulations, including the NEPA (National Environmental Policy Act) Environmental Compliance Checklist and Section 106 of NHPA (National Historic Preservation Act).
  - (xii) A statement from the applicable county's assessor indicating the modification in real property taxation, if any, including the applicable tax rate to be charged, the real property subject to the tax rate, and the person or persons responsible for the payment of the real property taxes.
- (c) *Application Fee and Costs.* An application shall include a non-refundable payment in accordance with the fee schedule adopted by the City of Elkins. The application shall not be considered complete until this fee is paid.
- (d) *Notice of Complete Application.*
- (1) Upon receipt of an application, the applicant shall be provided with a dated receipt of submission.
  - (2) Within thirty (30) calendar days of receipt of an application, the application shall be reviewed to determine if the application meets the submission requirements. Any requests for a waiver from the submission requirements shall be reviewed prior to determining the completeness of the application.
  - (3) If the application is not complete, the applicant shall be notified in writing, specifying the additional materials or information required to complete the application.
  - (4) If the application is complete, the applicant shall be notified in writing of this determination and, if the application is to be reviewed by the Planning Commission or Board of Zoning Appeals, require the applicant to provide a sufficient number of copies of the application for the Planning Commission or Board of Zoning Appeals.
- (e) *Modification of Application Prior to Approval.* In the event that after submittal of the application, or as a result of any subsequent submittals, the applicant materially modifies the proposed facilities described in the initial application, the application as modified will be considered a new application subject to commencement of a new application review period and application fee; provided that, applicant and the approval authority may, in the alternative, enter into a mutually agreeable tolling agreement allowing the City of Elkins to request additional submittals and additional time that may be reasonably necessary for review of the modified application.
- (f) *Approval of Application.* The shot clock period begins to run when the application is filed and may be tolled only by mutual agreement or in cases where the application is incomplete and notice is provided to the applicant that the application is insufficient.
- (1) Approval of Eligible Facilities Modifications. Within sixty (60) calendar days of the date of receipt of an eligible facilities modification application, a determination shall be made as to whether the proposed modification is an eligible facilities modification, and contemporaneously a permit issued or the application denied.
  - (2) Approval of Applications involving (1) collocation or (2) modifications that are not eligible facilities modifications. Within ninety (90) calendar days of the date on which the City of Elkins receives an application for collocation, as defined by this Article, or a modification that is not an eligible facilities requests, as defined by this Article, a determination shall be made on the application, and contemporaneously a permit issued or the application denied.
  - (3) Approval of All New Towers. Within one hundred and fifty (150) calendar days of the date on which the City of Elkins receives an application for the construction of a new wireless telecommunication facility, or any modification that is not solely for a collocation, and that does not meet the requirements for eligible facilities modification under this Article, a determination shall be made on the application, and contemporaneously a permit issued or the application denied.
- (g) *Denial of All Applications.* A denial of an application shall set forth in writing the reasons for the denial and shall be provided to the applicant contemporaneously with the denial of the application.
- (h) *Tolling Timeline for Approval Due to Incompleteness.*
- (1) To toll the timeline due to application incompleteness, written notice shall be provided to the applicant within thirty (30) calendar days of receipt of the application, clearly and specifically delineating all missing documents or information.
  - (2) The timeline for review (when tolling ends) begins running again when the applicant makes a

supplemental submission in response to the notice of incompleteness.

- (3) Following a supplemental submission, the City of Elkins shall have ten (10) business days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeline is tolled in the case of second or subsequent notices, and tolling ends when the applicant makes supplemental submissions. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

#### **Section 21-142 Changes to Approved Application.**

Any changes to an approved application must be processed pursuant to Section 21-141 and may be subject to the application fee, at the discretion of the City of Elkins.

#### **Section 21-143 Abandonment.**

- (a) Any wireless telecommunications facility that is not in operation for a continuous period of twelve (12) months shall be considered an abandoned facility. If negotiations are pending with a service provider to place equipment at the facility, a letter of intent shall be provided to the City of Elkins prior to the expiration of the twelve (12) months.
- (b) The owner of an abandoned facility shall be notified in writing of an order to remove the facility within no less than ninety (90) calendar days of receipt of the written notice. Failure to remove the wireless telecommunication facility within ninety (90) calendar days shall be grounds to remove the wireless telecommunications facility at the owner's expense and may use the surety to pay this expense. If two or more users occupy a single tower or alternative support structure, this provision shall not become effective until all users cease using the tower or alternative support structure.
- (c) The City of Elkins requires the posting of surety before commencement of construction of an approved wireless telecommunication facility to ensure removal after the facility is no longer being used. The owner of the facility may apply to the City of Elkins for release of the surety only when the facility and related equipment are removed by the owner to the satisfaction of the City of Elkins.

#### **Section 21-144 Retention of Expert Assistance and Reimbursement by Applicant.**

- (a) The City of Elkins may hire any consultant or expert necessary to assist the City of Elkins in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any site inspections.
- (b) An applicant shall deposit with the City of Elkins funds sufficient to reimburse the City of Elkins for all reasonable costs of consultant and expert evaluation and consultation to the City of Elkins in connection with the review of any application, including services needed during the construction and modification of the site, once permitted. The initial deposit shall be submitted with the application. The City of Elkins shall maintain a separate escrow account for all such funds. The consultants and experts shall invoice the City of Elkins for services rendered. If at any time during the process, this escrow account has a balance of less than \$8,500, the applicant shall immediately, upon notification by the City of Elkins, replenish said escrow account so that it has a balance of at least \$5,000. Such additional escrow funds shall be deposited with the City of Elkins before any further action or consideration is taken on the application. If the amount held in escrow by the City of Elkins is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant. Consultants and experts shall, upon request, provide copies of all billing to the applicant.
- (c) The total amount of the funds needed as set forth in the Subsection b of this Section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis, and inspection of any construction or modification.

#### **Section 21-145 Indemnification.**

- (a) Any application for wireless telecommunication facilities that is proposed for the City of Elkins property shall contain a provision with respect to indemnification. Such provision will require the applicant, to the extent permitted by law, to at all times indemnify and hold harmless the City of Elkins, its commissions, and its agents, from any and all penalties, damages, or costs, arising out of

any claims that might arise from said facility, excepting however, any portion of such claims, suits, demands, causes of action, or award of damages as may be attributable to the negligent or intentional acts or omissions of the City of Elkins, or its commissions or agents.

- (b) With respect to the penalties, damages, or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City of Elkins. Notwithstanding the above, an indemnification provision shall not be required in those instances where the City of Elkins itself applies for and secures a permit for wireless telecommunication facilities.

#### **Section 21-146 Other Permits Required.**

Compliance with this Section does not exempt compliance with all other applicable federal, state, and local regulations, Sections, or requirements.

#### **Section 21-147A Article X. Small Cell Wireless Telecommunications Facilities.**

##### **Section 21-148 Purpose.**

Pursuant to the West Virginia Small Wireless Facilities Deployment Act, codified under West Virginia Code Section 31H-1-1 et seq. as amended, this Ordinance establishes nondiscriminatory policies and procedures for the deployment of small wireless facilities. This Ordinance allows for the efficient deployment of small wireless facilities while preserving the integrity, safe usage, and reasonable aesthetic qualities of the City of Elkins' rights-of-way and the City of Elkins as a whole. The City of Elkins seeks to establish uniform standards consistent with federal and state law to address the placement of small wireless facilities and associated poles to achieve the following:

- (a) Prevent interference with the use of streets, sidewalks, alleys, parkways, and other public ways and places;
- (b) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (c) Prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;
- (d) Protect against environmental damage, including damage to trees;
- (e) Preserve the character of historic districts or areas; and
- (f) Facilitate rapid deployment of small cell facilities to provide the benefits of wireless services to the City of Elkins' residents and visitors.

##### **Section 21-150 Requirements for Permitted Use Status; Zoning Applicability.**

- (a) A wireless provider may collocate small wireless facilities and install, maintain, modify, and replace the wireless provider's own utility poles or, with the permission of the owner, a third party's utility pole, in, along, across, upon, and under the right-of-way in any zone, or outside of the right-of-way on property not zoned exclusively for single-family residential use, as long as the following conditions are met:
  - (1) The wireless provider receives all necessary permits as required by this Ordinance;
  - (2) The wireless provider pays all necessary fees and rates as required by this Ordinance;
  - (3) The structures and facilities are installed and maintained so as not to obstruct or hinder the usual travel or public safety on the right-of-way or to obstruct the legal use of the right-of-way by the City of Elkins or other utilities;
  - (4) Each new or modified utility pole does not exceed the greater of ten (10) feet above the tallest existing utility pole in place as of March 5, 2019, within five hundred (500) feet of the new pole, or fifty (50) feet above ground level;
  - (5) New small wireless facilities may not extend more than ten (10) feet above an existing utility pole in place as of March 5, 2019; or if collocating a new utility pole, above the height permitted for a new utility pole as described in Subsection (a)(4) of this Section.
  - (6) The structures and facilities comply with the reasonable, written design guidelines created by the City of Elkins, as enumerated in Section 4 of this Ordinance;
  - (7) If replacement of decorative poles is necessary to collocate a small wireless facility, such replacement shall reasonably conform to the design aesthetics of the decorative poles being replaced;
  - (8) If located in a historic district, as defined herein, the structures and facilities follow applicable design and concealment measures to protect the nature of the historic district;

- (9) The area has not been designated solely for underground communications and electrical lines, provided that:
  - (A) The City of Elkins required all such lines to be placed underground by a date certain that is at least three (3) months prior to submission of the permit application;
  - (B) The utility poles that the City of Elkins allows to remain shall be made available for the collocation of small wireless facilities and may be replaced by a wireless provider to accommodate the collocation of small wireless facilities;
  - (C) A wireless provider may install a new utility pole in the designated area when unable to provide wireless service by collocating on a remaining structure; and
  - (D) If the small wireless facilities are installed before the City of Elkins adopts requirements that communications and electric lines be placed underground, the wireless provider may:
    - (i) Maintain the small wireless facilities in place, subject to any applicable pole attachment agreement with the utility pole owner; or
    - (ii) Replace the associated utility pole within fifty (50) feet of the prior location, subject to the permission of the utility pole owner; and
- (10) The structures and facilities are compliant with any other applicable local ordinance or state or federal law.
- (b) Any wireless facility or utility pole that does not meet the above requirements is not a permitted use.

**Section 21-151 Design Guidelines.**

- (a) Unless such guidelines prevent a wireless provider from serving a location in the City of Elkins' jurisdiction, the following design guidelines shall apply to all small wireless facilities in the rights-of-way within the City of Elkins' jurisdiction:
  - (1) Small wireless facilities shall not obstruct or hinder the usual travel or public safety on the right-of-way or obstruct the legal use of such right-of-way by utilities or authorities.
  - (2) Small wireless facilities shall not obstruct the safe operation of traffic control equipment or streetlights.
  - (3) Small wireless facilities shall not interfere with driver or pedestrian sight lines or clear zones for transportation or pedestrians.
  - (4) Small wireless facilities shall comply with all applicable federal and state standards regarding pedestrian access and movement.
  - (5) Small wireless facilities shall comply with generally applicable health and safety codes.
  - (6) Small wireless facilities shall be constructed in a manner to minimize physical damage to private property.
  - (7) Small wireless facilities shall be located in alleys to the greatest extent feasible as determined by the City of Elkins.
  - (8) Small wireless facilities that are pole-mounted on decorative poles shall use concealed, camouflage, or stealth-style antennas in which all equipment is contained within the pole to which the antenna is mounted. The pole and antenna shall be painted to match the poles in the area or another color approved by the City of Elkins.
  - (9) Small wireless facilities that are building-mounted shall use concealed, camouflage, or stealth-style antennas to blend into the structure seamlessly by using one or more of the following methods and approved by the City of Elkins:
    - (A) Completely enclosed inside of a box that mimics the materials or aesthetics of the building to which the small wireless facility is mounted;
    - (B) Completely concealed inside an existing portion of a building such as the cupola or screening for mechanical equipment; or
    - (C) Completely concealed behind a parapet or other barrier so as to not be visible from any point at ground level on the right-of-way; and
  - (10) Small wireless facilities shall not be used to display a sign.
- (b) Unless such guidelines prevent a wireless provider from serving a location in the City of Elkins' jurisdiction, the following design guidelines shall apply to all antennas associated with small wireless facilities within the City of Elkins' jurisdiction:
  - (1) An antenna shall be no more than three (3) cubic feet in volume.
  - (2) When mounted at the top of a utility pole, the antenna shall be aligned with the centerline of the utility pole and enclosed in a cylindrical shroud.

- (3) When mounted at the top of a utility pole, a pole-top extension antenna shall be no taller than necessary for separation from other attachments.
  - (4) When mounted on or within a decorative pole, the antenna shall conform to the design aesthetics of that pole, including the design, style, and color.
  - (5) When mounted on another structure, the antenna shall not impair the function of the structure.
- (c) Unless such guidelines prevent a wireless provider from serving a location in the City of Elkins' jurisdiction, the following design guidelines shall apply to all wireless equipment associated with antennas within the City of Elkins' jurisdiction:
  - (1) Where feasible, the wireless equipment shall be located inside of the utility pole on which the antenna is mounted.
  - (2) Where infeasible to locate the wireless equipment inside the utility pole, the wireless equipment shall be located in a ground-mounted cabinet and shall conform to the design aesthetics of the pole, including the design, style, and color or a design otherwise approved by the City of Elkins. The ground-mounted cabinet shall be located within the same width of space parallel to the right-of-way boundaries as the pole on which the antenna is mounted. The ground-mounted cabinet shall not exceed thirty-six (36) inches in height.
  - (3) When located in alleys or non-improved rights-of-way, wireless equipment may be mounted on a utility pole, provided the wireless equipment is not located beyond the top of the utility pole. If a wireless provider chooses to mount the equipment on a utility pole in an alley or non-improved right-of-way, the equipment shall be flush-mounted and shall provide a minimum clearance of eight (8) feet above all streets, driveways, and sidewalks.
- (d) Unless such guidelines prevent a wireless provider from serving a location in the City of Elkins' jurisdiction, all replacement utility poles within the City of Elkins' jurisdiction shall be:
  - (1) Installed within three (3) feet of the location of the original pole; and
  - (2) Of a material and dimensions that matches existing adjacent poles or consistent with any published local standards for utility pole placements.
- (e) Unless such guidelines prevent a wireless provider from serving a location in the City of Elkins' jurisdiction, all new utility poles within the City of Elkins' jurisdiction shall:
  - (1) Be aligned with the predominate pattern of existing poles where present, or with street trees along the same side of the right-of-way;
  - (2) Not be located directly in front of storefront windows, primary walkways, primary windows, or primary ingress/egress points to buildings;
  - (3) Be sited outside the critical root zone of existing street trees;
  - (4) Not impede vehicular or pedestrian traffic;
  - (5) Not be located where sidewalks are narrow;
  - (6) Not block any emergency service providers or emergency service access, including access to fire hydrants;
  - (7) Not be located upon any street or part of a street from which utility poles have been ordered removed by the City of Elkins;
  - (8) Not be located on any street or side of a street where there is already an excess of poles; and
  - (9) Be spaced no closer than 200 feet apart.
- (f) Unless such guidelines prevent a wireless provider from serving a location in the City of Elkins' jurisdiction, all cables and wires associated with small wireless facilities within the City of Elkins' jurisdiction shall:
  - (1) Be installed within the utility pole; or
  - (2) Be flush-mounted to the utility pole, and encased in cover or conduit, where internal installation is not feasible.
- (g) If an electric meter is required, the electric meter shall be mounted in close proximity to the small wireless facility and have similar design characteristics.

#### **Section 21-152 Permit Application Requirements.**

- (a) Every wireless provider who wishes to collocate a small wireless facility or install or replace a utility pole in or outside of the right-of-way or modify an existing small wireless facility or utility pole in or outside the right-of-way must obtain a permit from the City of Elkins under this Ordinance.
- (b) A wireless provider's permit application shall include the following:
  - (1) The applicant's name, address, phone number, email address, and a list of all duly authorized agents acting on behalf of the applicant.

- (2) A general description of the proposed small wireless facility and associated pole, if applicable.
  - (3) Construction and engineering drawings and information demonstrating compliance with state law and this Ordinance, including a structural analysis of the pole where the applicant proposes to install the small wireless facility.
  - (4) An attestation that the small wireless facilities will be operational for use by a wireless provider within one (1) year after the permit issuance date, unless the City of Elkins and the applicant agree to extend the period or delay is caused by lack of commercial power or communications transport facilities to the site.
  - (5) An attestation that the small wireless facility will comply with FCC regulations concerning (i) radiofrequency emissions from radio transmitters and (ii) unacceptable interference with the public safety spectrum and CII spectrum, including compliance with the abatement and resolution procedures for interference with the public safety spectrum and CII spectrum established by the FCC set forth in 47 C.F.R. § 22.970 through 47 C.F.R. § 22.973 and 47 C.F.R. § 90.672 through 47 C.F.R. § 90.675.
  - (6) Proof that the applicant maintains property insurance for its property's replacement cost against all risks, workers' compensation insurance as required by law, and commercial general liability insurance with respect to its activities on the City of Elkins improvements or rights-of-way of not less than one million dollars (\$1,000,000) of coverage for damages, including bodily injury and property damage. The commercial general liability policy shall include the City of Elkins as an additional insured party, and the wireless provider shall provide certification and documentation of such; except that if a wireless provider chooses to self-insure, the wireless provider does not have to name the City of Elkins as an additional insured party, but shall provide to the City of Elkins evidence sufficient to demonstrate its financial ability to self-insure the same coverage and limits required herein.
  - (7) An attestation that the applicant will provide a bond, escrow deposit, letter of credit, or other financial surety in an amount required by the City of Elkins to ensure removal of abandoned or unused wireless facilities or damage to the right-of-way or the City of Elkins property caused by the applicant or its agents, as set by the City of Elkins, prior to beginning any installation.
  - (8) The appropriate fees, as further explained in Subsection (d) of this Section.
  - (9) An attestation that the applicant will notify the City of Elkins and call the West Virginia 811 "Call Before You Dig" Hotline in order to locate all underground utilities at least seventy-two (72) hours before making any excavation.
- (c) A wireless provider that seeks to use a City of Elkins utility pole shall provide the following additional information in its permit application:
- (1) The additional wind load that the wireless facility adds to the pole.
  - (2) A description of how the wireless provider will provide power to the small wireless facility.
  - (3) A description of how the small wireless facility would attach to the pole, including whether it would involve drilling holes into the pole or attaching bands to the pole.
  - (4) Whether there will be additional wire in the pole.
  - (5) An attestation that the small wireless facility will meet all clearance requirements if it is over the roadway.
  - (6) An attestation that the small wireless facility will not interfere with any other equipment signals on City of Elkins utility poles.
- (d) *Fees.* A wireless provider's permit application shall be accompanied with the following fees:
- (1) Two hundred dollars (\$200) for the collocation of each small wireless facility on an existing utility pole for the first five (5) poles in the same application, followed by one hundred dollars (\$100) for each small wireless facility thereafter in the same application.
  - (2) Two hundred and fifty dollars (\$250) for the proposed installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility that is a permitted use.
  - (3) One thousand dollars (\$1,000) for the proposed installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility that is not a permitted use.
- (e) *Exemptions.* The City of Elkins shall not require an additional application, approval, or permit, or require any fees or other charges from a wireless provider authorized to occupy the right-of-way, for the following:
- (1) Routine maintenance;
  - (2) The replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller; or

- (3) The installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on existing cables that are strung between existing utility poles in compliance with applicable safety codes and the pole owner's construction standards and engineering practices.

#### **Section 21-153 Permit Application Processing.**

- (a) All permit applications filed pursuant to this Ordinance shall be reviewed for completeness by the City of Elkins. The City of Elkins shall notify the applicant via certified mail whether the application is complete within ten (10) days of receiving the application.
- (b) If the application is incomplete, the City of Elkins shall notify the applicant, in writing, what specific information is missing from the application. All deadlines required by this Section are tolled from the time the City of Elkins sends the written notice of incompleteness to the time the City of Elkins receives the missing information from the applicant.
- (c) A complete application for collocation of a small wireless facility shall be processed within sixty (60) days of the receipt of the complete application.
- (d) A complete application for the installation, modification, or replacement of a utility pole in the right-of-way shall be processed within ninety (90) days of the receipt of the complete application.
- (e) Within sixty (60) days of receiving a complete application for use of a City of Elkins utility pole, the City of Elkins shall provide a good faith estimate of any make-ready work necessary to enable the pole to support the requested collocation. If the applicant accepts the good faith estimate, the make-ready work shall be completed by the applicant within sixty (60) days of acceptance. Requirements for make-ready work are as follows:
  - (1) The City of Elkins may require replacement of the City of Elkins utility pole only if it demonstrates that the collocation would make the City of Elkins utility pole structurally unsound;
  - (2) The person owning, managing, or controlling the City of Elkins utility pole may not require more make-ready work than is required to meet applicable codes or industry standards;
  - (3) Fees for make-ready work may not include costs related to preexisting or prior damage or noncompliance; and
  - (4) Fees for make-ready work, including any pole replacement, may not exceed the actual costs or the amount charged to other communications service providers for similar work and may not include any consultant fee or expense.
- (f) Processing deadlines may also be tolled by agreement of the applicant and the City of Elkins.
- (g) The City of Elkins may deny the application if the application:
  - (1) Materially interferes with the safe operation of traffic control equipment;
  - (2) Materially interferes with sight lines or clear zones for transportation or pedestrians;
  - (3) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
  - (4) Fails to comply with the reasonable and nondiscriminatory spacing requirements of general application adopted by the City of Elkins that concern the location of ground-mounted equipment and utility poles, as specified in Section 4 of this Ordinance;
  - (5) Fails to comply with the reasonable and nondiscriminatory rules approved by the City of Elkins in Section 11 of this Ordinance;
  - (6) Fails to comply with the design guidelines in Section 4 of this Ordinance; or
  - (7) Fails to attest that a small wireless facility will comply with relevant FCC regulations.
- (h) If the City of Elkins denies the application, it shall document the basis for the denial, including the specific provision on which the denial was based, and send the documentation to the applicant on or before the day the City of Elkins denies the application. The applicant may cure the deficiencies identified within thirty (30) days without paying an additional application fee. If the applicant cures after thirty (30) days, the applicant shall pay an additional application fee in order for the revised application to be considered. The City of Elkins shall have thirty (30) days to approve or deny the revised application.
- (i) The installation or collocation shall be completed within one (1) year after the permit issuance date unless the City of Elkins and the applicant agree to extend the period or a delay is caused by the lack of commercial power or communications facilities at the site.
- (j) Upon approval of the application and posting of the reasonable bond, escrow deposit, letter of credit, or other financial surety required by the City of Elkins to ensure removal of abandoned or unused wireless facility or damage to the right-of-way or City of Elkins property, the applicant may undertake the installation or collocation and operate and maintain the small wireless facilities and associated utility poles.

- (k) An applicant may file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities located within the City of Elkins' jurisdiction. The denial of one (1) or more small wireless facilities in a consolidated application may not delay processing of any other small wireless facilities in the same batch.
- (l) Permits issued under this Ordinance authorize the applicant to operate and maintain the small wireless facilities and any associated utility poles that are covered by the permit for a period of ten (10) years.

#### **Section 21-154 Revocation of Permit.**

The City of Elkins may revoke an applicant's permit at any time if the conditions of the permit required pursuant to Chapter 31H of the West Virginia Code are no longer being satisfied.

#### **Section 21-155 Rates.**

- (a) If an applicant's wireless facilities are located in a right-of-way, the applicant shall pay a rate of twenty-five dollars (\$25) per year, per small wireless facility for occupancy and use of the right-of-way.
- (b) If an applicant collocates its wireless facilities on a City of Elkins utility pole, the applicant shall pay a rate of sixty-five dollars (\$65) per year, per City of Elkins utility pole for the occupancy and use of the City of Elkins utility pole.

#### **Section 21-156 Public Right-of-Way Requirements.**

- (a) The City of Elkins may prohibit or restrict the applicant from working within a right-of-way when a road is closed, or its access is limited to the public.
- (b) The applicant shall employ due care during the installation, maintenance, or any other work in the right-of-way, and shall comply with all safety and right-of-way protection requirements of applicable laws, codes, guidelines, standards, and practices, and any additional commonly accepted safety and public right-of-way protection standards, methods, and devices to the extent consistent with applicable laws.
- (c) Unless otherwise specified in the permit, the applicant shall erect a barrier around the perimeter of any excavation and provide appropriate traffic control devices, signs, and lights to protect, warn, and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic control plan in accordance with the Uniform Manual of Traffic Control Devices. The applicant shall maintain all barriers and other traffic control and safety devices related to an open excavation until the excavation is restored to a safe condition or as otherwise directed by the City of Elkins.
- (d) The applicant shall not interfere with any existing facilities or structures in the right-of-way, and shall locate its lines and equipment in such a manner as not to interfere with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abuts any right-of-way.
- (e) If the City of Elkins determines that a small wireless facility or utility pole violates the building code or otherwise creates a danger to the public's health, safety, and welfare, the City of Elkins shall follow the processes and procedures laid out in the West Virginia State Building Code.
- (f) Any damage to the right-of-way directly caused by an applicant's activities in the right-of-way shall be repaired in order to return the right-of-way to its functional equivalence before the damage. After the applicant receives written notice, the City of Elkins may assess a fine of one hundred dollars (\$100) per day until the repairs are completed. If the applicant fails to make the repairs required by the City of Elkins within a reasonable time after written notice, the City of Elkins may complete the repairs and charge the applicant for the reasonable, documented cost of the repairs in addition to the one hundred dollar (\$100) daily fine.

#### **Section 21-157 Additional Local Rules.**

- (a) The City of Elkins is authorized to create reasonable rules for construction and public safety in the rights-of-way, including wiring and cabling requirements, grounding requirements, and abandonment and removal provisions, to the extent any additional rules are necessary.
- (b) These rules shall be applied in a nondiscriminatory manner and shall be posted publicly on the City of Elkins' website and shall be available to the public in print at the City Clerk's office. If the City of Elkins determines that no additional rules are necessary, the City of Elkins' website shall state that no additional rules apply. The City of Elkins may change the guidelines in a prospective manner for all permit applications moving forward but shall not change requirements on any applicant who has already applied for a permit. Each new or modified small wireless facility or utility pole installed in the right-of-way shall comply with the City of Elkins current rules for construction and public safety as of the time of the permit application.



**Section 121-158 Indemnification.**

Any wireless provider who owns or operates small wireless facilities or utility poles in the right-of-way shall indemnify, protect, defend, and hold the City of Elkins and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims; lawsuits; judgments; costs; liens; losses; expenses; fees to include reasonable attorney fees and costs of defense; proceedings; actions; demands; causes of action; liability and suits of any kind and nature, including personal or bodily injury or death; or property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the wireless provider who owns or operates small wireless facilities or utility poles in the right-of-way, any agent; officer; director; representative; employee; affiliate; contractor, or subcontractor of the wireless provider; or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in rights-of-way.

DRAFT

## City of Elkins Zoning Ordinance Draft Use Table

P = Permitted ("By- Right"); C = Conditional (Board of Zoning Appeals)

USES									
Uses	Agriculture	Telecommunications Overlay	Single Family Residential	City Residential	Recreational	Central Business District	Commercial	Educational	Industrial
Adult Business									C
Agriculture	P								
Agritourism	P								
Amphitheater					P	P		P	
Animal Hospital/ Veterinary Office						P	P		P
Automobile Car Wash							P		P
Automobile Repair/Service							P		P
Bakery						P	P		P
Bank/Financial Institution						P	P		
Bed and Breakfast Inn I	P		C	P		P			
Bed and Breakfast Inn II	P		C	P		P		P	
Boat and Marine Sales/Service							P		P
Brewery Pub	P					P	P		P
Broadcasting Studio (radio/television)							P	P	P
Building Material Facility							P		P
Bus/Transit Facilities							P		P
Bus/Transit Shelter			P	P	P	P	P	P	P
Butcher Shop	P					P	P		P
Catering Business						P	P	P	
Child Day Care Facility, Class 1						P	P		
Child Day Care Facility, Class 2						P	P		
Child Day Care Facility, Class 3				P		P	P		
Child Day Care Facility, Class 4			P	P		P	P		
Clinic						P	P	P	
Community Facility				C		P	P		
Continuing Care Facility							P		
Convenience Store						P	P		P

P = Permitted ("By- Right"); C = Conditional (Board of Zoning Appeals)

USES									
Uses	Agriculture	Telecommunications Overlay	Single Family Residential	City Residential	Recreational	Central Business District	Commercial	Educational	Industrial
Conversion of School/Church			C	C		C	C	C	C
Cultural Service						P	P	P	
Distillery	P					P	P		P
Distribution Facility							P		P
Dock	P		P	P	P	P	P	P	P
Dog Day Care						C	P		P
Dry Cleaner							P		
Dwelling, Accessory			C	P		P			
Dwelling, Conversion Apartment				C		C			
Dwelling, Mixed Use						P	P		
Dwelling, Multi-family				C		P	P		
Dwelling, Single-family	P		P	P		P	P	P	
Dwelling, Two-family				P		P	P	P	
Educational Institution						P	P	P	
Emergency Shelter				C		C	C		
Equipment Rental/Repair							P	P	P
Essential Utilities and Equipment	P		P	P	P	P	P	P	P
Event, Mass Gathering				C	P	P	P	P	P
Event, Special			P	P	P	P	P	P	P
Extractive Industry									C
Factory-Built Home	P			P					
Factory-Built Home Rental Community				P					
Farm/ Construction Equipment and Supply Sales							P		P
Farmer's Market	P				P	P	P		P
Flea Market							C		
Freight Terminal									C
Funeral Home/Mortuary							P		
Garage, Public						C			
Garden Center							P		P

P = Permitted ("By- Right"); C = Conditional (Board of Zoning Appeals)

USES									
Uses	Agriculture	Telecommunications Overlay	Single Family Residential	City Residential	Recreational	Central Business District	Commercial	Educational	Industrial
Gas Station							C		P
Gas Station, Large							C		P
Governmental Operations				C		P	P		P
Greenhouse, Commercial	P						P		P
Greenhouse, Noncommercial	P		P	P	P	P	P	P	P
Group Residential Facility			P	P	P	P	P	P	P
Group Residential Home			P	P	P	P	P	P	P
Health Club						P	P	P	
Home-Based Business (Low Impact)	P		C	C		P	P	P	
Home-Based Business (No Impact)	P		P	P		P	P	P	P
Hospital							C	C	
Hotel/Motel						C	P	P	
Incinerator									C
Industrial Park									P
Kennel	C						C		
Laboratory							P	P	P
Laundromat						P	P		
Liquor Store							P		
Lumberyard									C
Manufacturing (Heavy)									C
Manufacturing (Light)							C		P
Medical Adult Day Care Center						C	P		
Medical Cannabis Dispensary						P	P		P
Medical Cannabis Growing Facility	C								P
Medical Cannabis Organization, Health Care						P	P		
Medical Cannabis Processing Facility	C								P
Night Club						C	C		
Office Supply Establishment						P	P		
Parcel Delivery Facility							C		P

P = Permitted ("By- Right"); C = Conditional (Board of Zoning Appeals)

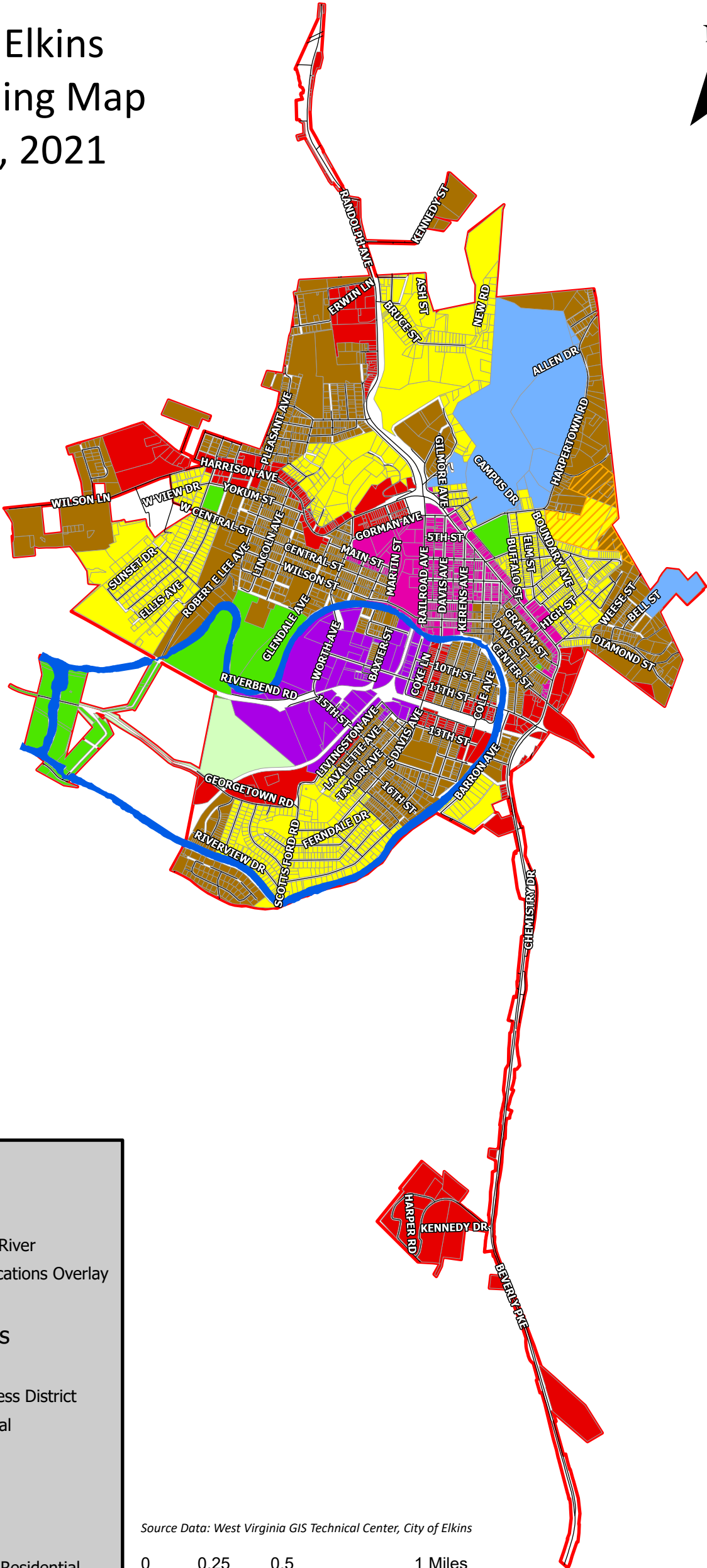
USES									
Uses	Agriculture	Telecommunications Overlay	Single Family Residential	City Residential	Recreational	Central Business District	Commercial	Educational	Industrial
Park			P	P	P	P	P	P	
Parking Lot				C	C	C	C	P	P
Parking Structure						C	C	C	C
Personal Service						P	P		
Pet Shop						P	P		
Pharmacy						P	P	P	
Photographic Studio						P	P		P
Places of Worship / Religious Institution				C		P	P	P	P
Private Club						C	P		
Professional Services						P	P		
Reception Facility			C	C	P	P	P	P	P
Recreation, Commercial Indoor						P	P	P	
Recreation, Commercial Outdoor						P	P		
Recreation, Municipal	P		C	C	P	P	P	P	P
Recycling Facility							C		P
Research and Development									P
Restaurant						P	P	P	P
Retail Store/Shop <7,000 square feet						P	P		P
Retail Store/Shop 7,000 to 25,000 square feet						C	P		P
Retail Store/Shop >25,000 square feet							C		C
Roadside Vendor Stand	P					C	C		
Salvage Yard									C
School, Commercial						C	P		P
School, PreK-12				C			P	P	
Self-storage Facility									P
Senior Independent Housing				C		P	P		
Shopping Center						C	P		
Solar Energy Facility, Small	P		P	P	P	P	P	P	P
Solar Energy Facility, Large	P							P	P

P = Permitted ("By- Right"); C = Conditional (Board of Zoning Appeals)

<b>USES</b>									
<b>Uses</b>	<i>Agriculture</i>	<i>Telecommunications Overlay</i>	<i>Single Family Residential</i>	<i>City Residential</i>	<i>Recreational</i>	<i>Central Business District</i>	<i>Commercial</i>	<i>Educational</i>	<i>Industrial</i>
Solid Waste Disposal Area/Facility, Private									P
Solid Waste Disposal Area/Facility, Public			P	P					P
Sports Arena					C	C	C	P	
Studio, Dancing, Music, or Art						P	P	P	
Tattoo Parlor/Body Piercing Studio						P	P		
Tavern/Drinking Establishment						P	P	P	P
Temporary Shelter								P	
Theater						P	P	P	
Theater, Drive-in							C		
Truck Terminal									C
Vehicles Sales/Rental and Service							P		
Video Gaming or Lottery Establishment							P		
Warehouse									P
Water Treatment Plant				P					
Wholesale Establishment									P
Wind Energy Facility, Small	P							P	
Winery	P					C	P		P
Wireless Telecommunications Facility, Small Cells	P	P	P	P	P	P	P	P	P
Wireless Telecommunications Facility		P						P	P

**APPENDIX B:**  
**PROPOSED**  
**ZONING MAP**

City of Elkins  
Draft Zoning Map  
July 16, 2021



**Legend**

City of Elkins

Tygart Valley River

Telecommunications Overlay

Roads

**Zoning Districts**

Agriculture

Central Business District

City Residential

Commercial

Educational

Industrial

Recreational

Single Family Residential

Source Data: West Virginia GIS Technical Center, City of Elkins

