

The Hardy County Improvement Location Permit Ordinance

ENACTED April 26, 1992
REVISED May 27, 2007
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ARTICLE I: ENACTMENT AND SCOPE OF ORDINANCE

SECTION A: PURPOSE

To assure all structures, developments, and their locations conform to Hardy County's Comprehensive Plan, Zoning Ordinance and other land use ordinances.

SECTION B: AUTHORITY

This Improvement Location Permit Ordinance is adopted by Hardy County by powers vested through Chapter 8A-4-2 of the West Virginia State Code. In addition, West Virginia Code Chapter 11, Article 3, Section 3a requires that any person, corporation, association or other owner of real property, subject to the payment of property tax, who shall improve said real property as set forth in the said code section, shall apply for an Improvement Location Permit in writing to the County Planner within thirty (30) days prior to the commencement of the improvement of said property. Also, West Virginia Code Chapter 7, Article 1, Section 3v(c) empowers the county commission of each county to require and issue building permits for all proposed construction or other improvements located in Hardy County. And, in conjunction with this ordinance;

As stated in the Hardy County Subdivision Ordinance; Article 11, Section J;

"J. Improvement Location Permits

1. As stated in West Virginia Code 8A-4-2, any new construction or modification to existing construction on newly formed parcels of an approved minor or major subdivision, shall obtain an Improvement Location Permit, issued by the Hardy County Planning Office, before commencing the construction.
2. The process for obtaining an Improvement Location Permit shall be as prescribed in the Hardy County Zoning Ordinance, Section 3 and 4, pages 59 to 61.

3. No buildings or improvements on subdivision lots may be constructed until the final plat has been approved and the Planning Commission President's signature is on the seal."

In addition;

As stated in the Hardy County Zoning Ordinance, Article V, Section 4, Number 4, Letters A and B:

- "
- A. No Improvement Location Permit or Notification pertaining to the construction, enlargement, moving, and reconstruction of a structure or change of use shall be issued unless approval of the application has been granted by the County Planner.
 - B. The County Planner's report on an application is intended to be submitted to the applicant by the end of approximately fourteen (14) calendar days following the day on which a completed application is received."

In addition;

Whereas, by act of the West Virginia State Legislature, as recorded in the West Virginia Code in Chapter 8A, Article 7, Section 1, as amended, 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, and in each district it may regulate the following:

- (a) The use of land, buildings structure, and other premises for agricultural, business, industrial, residential, floodplain, and other specific uses.
- (b) The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, raising or removal of structure.
- (c) The area and dimensions of land, water and air space to be occupied by buildings, structures, and of courts, yards and other open spaces to be left unoccupied by uses or structures, including variations in the sizes of lots, based on whether a public or community water supply or sewer system is available and in use.

This ordinance shall have authority over all unincorporated areas of Hardy County.

SECTION C: NAME

The name of the ordinance shall be; “The Hardy County Improvement Location Permit ordinance”.

SECTION D: ADMINISTRATOR

The administrator of this ordinance shall be the County Planner. The County Planner may allocate parts of the administration of this ordinance to the Planning Office staff.

The enforcement of this ordinance is through the Hardy County Prosecuting Attorney’s Office, Hardy County Sheriff, and other state and federal agencies.

ARTICLE II: INTERPRETATIONS AND DEFINITIONS

SECTION A: INTERPRETATIONS

- A. For the purpose of this Ordinance the following interpretations shall apply:
1. Words used in the present tense include the future tense.
 2. Words used in the singular include the plural.
 3. The word "shall" or "will" is mandatory.
 4. The words "may" and "should" are advisory.
 5. The word "building" or "structure" is construed as if followed by the phrase "or part thereof".
 6. The word "Ordinance" refers to the Hardy County Improvement Location Permit Ordinance.
 7. "Hardy County” or "County" refers to Hardy County, West Virginia.
 8. "County Commission" refers to the Hardy County Commission.
 9. "County Planner" refers to the Hardy County Planner.
 10. "Planning Commission" refers to the Hardy County Planning Commission.
 11. "Board of Zoning Appeals" refers to the Hardy County Board of Zoning Appeals.

SECTION B: 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 year. (8A-1-2)

"Addition" A portion of a building added to the original structure.

"Aggrieved" or "aggrieved person" means a person who:

(1) 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

(2) 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. (8A-1-2)

"Agricultural building" A structure designed and constructed to house farm implements, hay, grain, poultry, livestock or other horticultural products. Such structure shall not include habitable or occupiable spaces, spaces in which agricultural products are processed, treated or packaged; nor shall an agricultural building be a place of occupancy by the general public.

"Carport" A roofed, open-sided storage place for a motor vehicle.

"Commercial Structure" A building with more than 50 percent of its floor space used for retail or sales activities. These types of structures include, but are not limited to a antique or variety shop, bank, bar, coffee house, convention center, forum, gas station, grocery store, hotel (motel), market, office building, pawn shop, restaurant, roadhouse, shop, retail store, shopping mall, stock exchange, supermarket, vehicle repair shop, warehouse,...etc.

"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 the Zoning Ordinance. (8A-1-2)

"Condominium" A form of property ownership in which the homeowner holds title to an individual dwelling unit, an undivided interest in common areas of a multi-unit project, and sometimes the exclusive use of certain limited common areas.

"County Planning Office" The office of the County Planner.

"Deck" A flat floored roofless area adjoining a house or building.

"District" In conjunction with the Hardy County Assessor's Office, the unincorporated areas of the county are divided into four (4) divisions;

- 1) 01 Capon
- 2) 02 Lost River
- 3) 03 Moorefield
- 4) 05 South Fork

"Driveway" A short road leading from a public or private road to a house, carport or garage.

"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 year: *Provided*, that in the case of natural resources, the absence of natural resources extraction or harvesting is not abandonment of the use. (8A-1-2)

"Exterior architectural features" means the architectural character and general composition of the exterior of a structure, including, but not limited to, the kind, color and texture of the building material, and the type, design and character of all windows, doors, massing and rhythm, light fixtures, signs, other appurtenant elements and natural features when they are integral to the significance of the site, all of which are subject to public view from a public street, way or place. (8A-1-2)

"Fee Schedule" A listing of the maximum fee which an applicant will pay for services based on the ordinance requirements.

"FEMA" (Federal Emergency Management Agency) An independent agency created in 1979 by the Federal Government to provide a single point of accountability for all federal activities related to disaster mitigation and emergency preparedness, response and recovery. FEMA administers the National Flood Insurance Program.

"Flood-prone area" means any land area susceptible to repeated inundation by water from any source.

"Garage" A building or part of a building where motor vehicles are parked or housed, usually temporarily.

"Garage Affidavit" A signatory document by which applicants declare that the new "garage" that is applied for is not to be used for commercial purposes.

"Gazebo" A roofed structure that offers an open view of the surrounding area, typically used for relaxation or entertainment.

"Governing body" means the body that governs a municipality or county (8A-1-2); regarding this ordinance, the Hardy County Commission.

"Hardship" is a cause of privation or suffering. In the case of this ordinance, an applicant who is in economic depression yet needs basic shelter (housing) by which to live.

"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. (8A-1-2)

"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. (8A-1-2)

"Improvement location permit" means a permit issued by a municipality or county, in accordance with its subdivision and land development ordinance, for the construction, erection, installation, placement, rehabilitation or renovation of a structure or development of land, and for the purpose of regulating development within flood-prone areas. (8A-1-2)

"Industrial Structures" A building directly used in manufacturing or technically productive enterprises. Industrial buildings are not generally or typically accessible to the public other than workers. Industrial buildings include buildings used directly in the production of power, the manufacture of products, the mining of raw materials, and the storage of textiles, petroleum products, wood and paper products, chemicals, plastics, and metals.

"Infill development" means to fill in vacant or underused land in existing communities with new development that blends in with its surroundings. (8A-1-2)

"Land development" means the development of one or more lots, tracts or parcels of land by any means and for any purpose, but does not include easements, rights-of-way or construction of private roads for extraction, harvesting or transporting of natural resources.

"Manufactured home" means housing built in a factory according to the federal manufactured home construction and safety standards effective the fifteenth day of June, one thousand nine hundred seventy-four (see WV Code 37-15-2).

"Manufactured Home Court" A parcel that has two or more manufactured homes upon it; as described in the Hardy County Zoning Ordinance (Article II, Definitions and Article III, Section IV) and Hardy County Mobile Home Court Ordinance.

"Modular home" means housing built in a factory that meets state or local building codes where the homes will be sited. (8A-1-2)

"Multi-Family Unit" A building which features two or more family dwellings within the same structure.

"Parking Lot" This use shall include public or private open areas other than a street or public right-of-way, used for the temporary storage (parking) of operable passenger automobiles and commercial vehicles, and available either for compensation, for free, or as an accommodation for clients, employees, visitors, guests, residents or customers.

"Permit" A written document, issued by the Planning Office, giving a one year allowance to construct a new improvement within the unincorporated areas of Hardy County.

"Permit Placard" A sign posted on a property issued by the Hardy County Planning Office which entails the holder of the placard to construct what is listed on the Improvement Location Permit. The placard will have the permit number written on it and is signed by the Planning Office staff. It must be posted in a conspicuous place until the job is completed and passed as satisfactory by the Planning Office staff.

"Picnic Shelter" A roofed, but not walled structure used for outdoor recreational activities.

"Plan" means a written description for the development of land. (8A-1-2)

"Planning Commission" means a municipal planning commission, a county planning commission, a multicounty planning commission, a regional planning commission or a joint planning commission. (8A-1-2)

"Plat" means a map of land development. (8A-1-2)

"Porch" is a covered area adjoining an entrance to a building and usually having a separate roof.

"Preferred development area" means a geographically defined area where incentives may be used to encourage development, infill development or redevelopment in order to promote well designed and coordinated communities. (8A-1-2)

"**Public place**" means any lots, tracts or parcels of land, structures, buildings or parts thereof owned or leased by a governing body or unit of government. (8A-1-2)

"**Recreational Cabin**" means a small (rustic) structure for the purpose of fishing, hunting, or other seasonal activities. The structure is not meant to be a permanent residence.

"**Residential Outbuilding**" A pre fabricated or frame built structure used for storage or home based light industry. The purpose is for private use of a single family unit.

"**Setback**" The term refers to the distance from property lines or right-of-ways and improvement must be constructed to meet zoning regulations.

"**Sketch Plan**" A drawing showing the Plan layout and location of the proposed new construction or addition on a parcel of land. A sketch plan, in regards to the Improvement Location Ordinance, includes offsets from the property lines as proscribed by the Hardy County Zoning Ordinance.

"**Sprawl**" means poorly planned or uncontrolled growth, usually of a low-density nature, within previously rural areas, that is land consumptive, auto-dependent, designed without respect to its surroundings, and some distance from existing development and infrastructure. (8A-1-2)

"**Streets**" means streets, avenues, boulevards, highways, roads, lanes, alleys and all public ways. (8A-1-2)

"**Subdivision or partition**" means the division of a lot, tract or parcel of land into two or more lots, tracts or parcels of land, or the recombination of existing lots, tracts, or parcels. (8A-1-2)

"**Swimming Pool**" A watertight basin, chamber, or tank containing an artificial body of water for swimming, diving, or recreational bathing. It can be above or below ground.

"**Tax Map**" The printed drawings of business, government, private, non-profit, and other parcels; published yearly by the Hardy County Assessor's office.

"**Tennis Court**" A tennis court is where a game of tennis is played. It is a firm rectangular surface with a low net standing across the center.

"**Townhouse**" An architectural type of construction; a row house on a small lot that has exterior limits common to other similar units; title to the unit and its lot is vested in the owner(s) with a fractional interest in common areas, if any, or, a row of houses connected by common side walls.

"**Unincorporated**" In law, a region of land is unincorporated if it is not a part of any municipality. To "incorporate" in this context means to form a municipal corporation,

i.e., a city or town. Unincorporated, in turn, implies no city and hence no city, town, village, or other municipal government.

"Unit of government" means any federal, state, regional, county or municipal government or governmental agency. (8A-1-2)

"Utility" means a public or private distribution service to the public that is regulated by the public service commission. (8A-1-2)

"Work Stop Order" means a written command issued by the County Planner to a person or persons in violation of the Hardy County Improvement Location Permit Ordinance. The Order informs the individual that they are to cease all construction on the parcel described on the Order or be faced with further penalties under West Virginia Code. This order can only be lifted by written order of the County Planner, assigned Planning Office staff, or overturned by the Board of Zoning Appeals through an *Appeal of Administrative Decision* rule.

"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. (8A-1-2)

"Zoning map" means a map that geographically illustrates all zoning district boundaries within a municipality or county, as described within the zoning ordinance, and which is certified as the official zoning map for the municipality or county. (8A-1-2)

ARTICLE III: CONDITIONS

SECTION A: GENERAL REQUIREMENTS

In order to prevent adverse effects of development on taxpayers, surrounding landowners, the environment, and to protect the general health, safety, and welfare of County residents and promote and support quality development, the following requirements shall apply to all new structures, developments and their location.

SECTION B: SEPTIC APPROVAL

As identified in West Virginia Code Chapter 16, Article 1, Section 9, no person, firm, corporation, institution or association, whether public or private, county or municipal, shall install or establish any system or method of drainage, water supply, sewage or excreta disposal, or solid waste disposal, without first obtaining a written permit to install or establish such system or method from the State Director of Health or his authorized representative.

No Improvement Location Permit shall be issued if there are any violations with the Health Department or the applicant has not received approval from said agency.

SECTION C: HIGHWAY ACCESS

Highway access permits that are issued by the State of West Virginia Division of Highways assist in maintaining safe roadways. An encroachment permit from the WV Division of Highways is required for residential developments, nonresidential developments, commercial and industrial parks and structures, multi-family developments, manufactured home parks, and lease communities. Therefore, in accordance with West Virginia Code Chapter 17, Article 4, Sections 47, 48, and 49, certain requirements must be met before access can be gained to and from a state highway from real estate.

SECTION D: WEST VIRGINIA CONTRACTOR LICENSE

In accordance with West Virginia State Code 21-11-1 through 21-11-20, “It is hereby declared to be the policy of the state of West Virginia that all persons desiring to perform contracting work in this state be duly licensed to ensure capable and skilled craftsmanship utilized in construction projects in this state, both public and private, fair bidding practices between competing contractors through uniform compliance with the laws of this state, and protection of the public from unfair, unsafe and unscrupulous bidding and construction practices.”

Therefore, all persons who are hired to perform any and all contracted employment to any and all new proposed improvements, additions, replacements, or any other construction in the unincorporated areas of Hardy County are required to possess a certified and current West Virginia Contractors License. No other states will be honored unless changed by West Virginia Code and/ or the WV Department of Labor.

Any applicants who willingly commit perjury on their application or any contractor who performs any type of contracted improvements within Hardy County without a certified and current WV Contractor License shall be handled by the Hardy County Prosecuting Attorney’s Office, Hardy County Sheriff, and other state and federal agencies.

SECTION E: SUBDIVISION REGULATION AND ZONING

Parcels of land created under the Subdivision Regulations of Hardy County shall meet with the Hardy County Zoning Ordinance regulations in regards to setback from the property lines and right-of-ways in addition to permitted and non-permitted uses. If the property owners’ restrictive covenants are more stringent than the Hardy County zoning regulations, then the covenants will take precedence.

ARTICLE F: MANUFACTURED HOME CONSTRUCTION DATE

In accordance with West Virginia Code 37-15-2, a manufactured home is defined in Article II, Section B. In accordance with the Hardy County Zoning Ordinance, Article III, Section 4, no manufactured home may, as a new construction, be placed on a parcel if it

was constructed prior to July 1976. This includes for storage, primary occupation or rental, abandonment, conversion of any type, or any other use not mentioned in this ordinance.

An applicant may request a variance from the Hardy County Zoning Ordinance or an appeal to the administrative decision of the County Planner in regards to this ordinance. Please see Article IV for Appeals to Administrative Decisions.

ARTICLE IV: PERMITTING PROCESS

SECTION A: APPLICATION PROCESS

A citizen who desires to apply for an Improvement Location Permit may obtain an application by the following methods; application mailed to the applicant, downloaded from the internet, or in person by visiting the Planning Office. The steps by which an applicant obtains a permit and placard are:

1) The applicant requests an application from the Planning Office Staff. The Application includes: Application guide, application sheet, sketch sheet, and garage affidavit.

2) The applicant shall fill out the application completely. A completed application includes:

A) The front and back of the primary application with the: Name, address, and phone number of the applicant and property owner; the location or address of construction, the property identification information; if a primary residence, secondary or seasonal home or manufactured home, then the basic house construction information is required.

B) The contractor(s) information including their West Virginia contractor license.

C) If the construction will require a septic permit (primary or secondary residence, manufactured home, hotel or motel, condominium, or apartment or any other construction) then a copy of the approved septic permit or a signature from the Hardy County Sanitarian shall be required.

D) If the entrance to the new construction adjoins a West Virginia state maintained road, then the applicant shall be required to submit the approved entrance permit from the West Virginia Department of Highways with the application.

E) The application shall be signed by the applicant (property owner) and dated. If the property owner is not present, they shall send a letter stating that the applicant is an agent of the property owner. The received letter shall be stamped

“RECEIVED” with the date by the Planning Office Staff and attached to the application.

F) The applicant shall sign the garage affidavit if they are applying for a personal, residential use or farm use garage. It shall be attached to the application by the Planning Office Staff.

G) The applicant shall fill out the “SKETCH SHEET”, using the Hardy County Zoning Ordinance as a guide per the zone the parcel is located in. They shall denote the distance from the property lines the proposed new construction is located and any other structures, driveways, roads, streams, rivers, or any other natural or man made objects are located within reasonable distance from the proposed new construction.

H) The application shall be accompanied by payment, in full, for the proposed construction. Payment shall be made to: **The Sheriff of Hardy County**. The application fee is **NONREFUNDABLE**.

3) The application shall be submitted to the Hardy County Planning Office. The County Planner has Fourteen (14) days by which to review the application for any defects before issuing any permit and placard. The following, though not a complete list, are the most common reasons for an incomplete or defective application:

A) The application has not been filled out completely.

B) There may be no septic permit or entrance permit from the WV Department of Highways.

C) The application is not signed by the applicant(s).

D) The sketch sheet has not been filled out.

E) There is not a letter of authority from the property owner regarding their agent who submitted the application.

F) The proposed construction is located within the 100 year floodplain.

G) No fee is attached to the application.

If the application is deemed incomplete by the County Planner, then the application shall be returned to the applicant, with the application fee, if included, and a letter from the Planner explaining the reason for the return of the application and suggestions for a completed application.

The Planning Office shall not hold incomplete applications on file for any reasons what so ever.

4) If the County Planner deems that the proposed construction is located within the 100 year floodplain, the Planning Office shall contact the applicant and inform them of the status of their construction. If the proposed construction fits the parameters of the Hardy County Floodplain Ordinance, than the County Planner shall inform the applicant of the status of the application and that they (the applicant) are bound to follow the Hardy County Floodplain Ordinance if they wish to continue with the application process and the new construction.

5) Once the County Planner has deemed the application complete, the Planner shall sign the application stating that the new improvement conforms to floodplain regulations and that the application is approved. In addition, the application shall be stamped “APPROVED” and a permit number shall be placed on the obverse of the application. The Planning Office shall issue a permit and placard. The permit and placard shall be mailed to the applicant or the applicant may pick up the permit and placard from the Planning Office.

The County Planner may deny the application for any reason within the bounds of West Virginia Code, Hardy County Land Use Ordinances, or any of the duties within his bounds, as he deems necessary for the protection of the applicant and the health and well being of the citizens of Hardy County. If the application is denied, the County Planner shall write the applicant a letter of denial and explain the reasons of denial and their rights of appeal under West Virginia Code.

6) The applicant, once they have received the permit and placard, shall:

A) Keep the permit on file.

B) Post the Placard in a location where it is visible to the public.

7) The Planning Office shall keep the application on record, both paper and electronically for public record. A copy of the application shall go to the Assessor’s Office.

SECTION B: THE PERMIT AND PLACARD

After receiving and approving an application, the Hardy County Planning Office issues a permit and placard to the applicant.

1) The permit shall state the applicant(s) name, address, permitted new construction, and location of construction.

2) The permit shall illustrate the one (1) year window in which the permit is active.

3) The permit number shall be listed on the permit.

- 4) The signature of a Planning Office Staff member shall be affixed to the permit.
- 6) As in Article VI, the applicant may apply for an extension yearly to their permit. This is done by writing a letter to the Planning Office and requesting an extension. Fees may apply.
- 7) In the case of a placard, the Permit number shall be affixed to the placard.
- 8) The signature of the Planning Office Staff member shall be affixed to the Placard.
- 9) In the case of a lost or damaged placard, a letter to the Planning Office shall be written requesting a new placard. A new permit and placard shall be then issued to the applicant only.

SECTION C: PERMIT TIME LIMITS AND EXTENSIONS

As stated in Section B, the time limit on a permit is one (1) year. If a recipient of an approved permit and placard requires longer than the one year window by which to complete their improvement, they shall write to the Planning Office, requesting an extension for one (1) year. The following is required in an extension letter;

- 1) The name and address of the applicant.
- 2) The Permit number.
- 3) When the permit expires.
- 4) The location of the improvement.
- 5) If a fee is required, then it is to be included with the letter of request of extension.

The Planning Office shall have seven (7) business days by which to reply to the request. A permit with the first or second extension shall be mailed to the recipient of the permit.

After the second extension, the recipient of the permit shall pay the full application fee again if a third extension is required. If a fee is required with said extension, then it shall accompany the written extension request.

SECTION D: ZONING INSPECTION

1) Once construction has commenced at an approved location, the Planning Office Staff shall inspect the new construction for compliance with the Hardy County Zoning Ordinance.

A) If the new construction complies with the Zoning Ordinance, then a letter of Zoning Compliance shall be issued by the Planning Office. The letter shall state

the name, address, permit number, and if the new construction complied with zoning.

B) If the new construction does not conform to zoning, then a “WORK STOP ORDER” shall be issued by the Planning Office and served to the person(s) in violation by the Hardy County Sheriff’s Office.

SECTION D: APPEAL PROCESS

If an applicant desires to apply for an improvement Location Permit, but due to financial hardship, geographical terrain, or the size of the parcel, cannot comply with the Zoning Ordinance as part of the application process, the Applicant may request a Variance with the Hardy County Board of Zoning Appeals. In addition, if the proposed new construction is considered a conditional use in the Zoning Ordinance, the applicant may apply for a Conditional Use Permit with the Hardy County Board of Zoning Appeals.

If the applicant believes they are aggrieved by the Planning office denial of the application, the aggrieved applicant may appeal the administrative decision with the Hardy County Board of Zoning Appeals. For details of all of the procedures, see below.

1) Article VI, Section 1, Letter H: Variance Request

Procedures for a Zoning Variance Request

- a. A request for a variance from the terms of this Ordinance shall be filed with the Board on forms prescribed by the Planning Office. The variance request shall specify the reason for the variance. The variance request, or application, shall include a list of the property owner(s) names and addresses abutting the affected area, as of record in the office of the Hardy County Assessor, including across streets and alleys. The subject property also shall be included in the affected area. The applicant must also submit the tax map and parcel numbers for the list of properties along with a stamped and addressed envelope for each of the names and addresses of property owners in the affected area. If the list includes a lot within a subdivision, the applicant must submit the name of the president of the homeowners association along with a stamped and addressed envelope for that person.
- b. The Planning Office will conduct a formal review of the request. As for the formal review process, the Planning Office will notify appropriate agencies and officials and request summaries of reviews. The Planning Office will endeavor to complete its review within fifteen (15) calendar days.
- c. The Planning Office will publish, in a local newspaper of general circulation, a legal advertisement describing the variance request. The legal advertisement will appear (30) days prior to the scheduled public hearing before the Board. The prepared

envelopes submitted by the applicant notifying the property owners abutting the affected property, including cross alleys, and the president of the homeowners association of an affected subdivision, will be mailed at the same time the legal advertisement is submitted to the newspaper for publication.

- d. The Board shall hold a duly scheduled public hearing on the appeal.
- e. The Board of Zoning Appeals shall grant a variance to the zoning ordinance if the request meets the following:
 1. It 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 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 the zoning ordinance to be observed and substantial justice done.
- f. If the Board decides to deny the variance request, the petitioner will be formally notified by mail by the Planning Office, of the right to appeal the decision to Hardy County Circuit Court within thirty (30) days.

2) Article V, Section 11, Letters C & D, Conditional Use Permit

Application for Conditional Use Permit

1. An applicant requesting a conditional use will request pre-application conference with the Planning Office.
2. The Planning Office will conduct a preliminary review of the the request. The Planning Office will endeavor to complete its review within ten (10) working days and offer comment to the applicant.
3. The applicant will then file a formal and complete application for a conditional use with the Planning Office. The application shall include a list of the property owner(s) names and addresses located within 250 feet of the affected area, as of record in the office of the Hardy County Assessor. The subject property, also, shall be included in the affected area. The applicant must also submit the tax map and parcel numbers for the list of properties along with a stamped and addressed envelope for each of the names and addresses of property owners in the affected area. If the list includes a lot within a subdivision, the applicant must submit the name of the president of the homeowners association

along with a stamped and addressed envelope for that member.

4. The Planning Office will conduct a formal review of the complete application. As for the formal review process, the Planning Office will notify appropriate agencies and request summaries of reviews. The Planning Office will endeavor to complete its review within fifteen (15) working days.
5. The Planning Office will publish a legal advertisement describing the request for a special permit use in a local newspaper of general circulation fifteen (15) days prior to the scheduled public hearing before the Board of Zoning Appeals. The prepared envelopes notifying the property owners located within 250 feet of the affected property and the president of the homeowners association of an affected subdivision and submitted by the applicant will be mailed at the same time the legal advertisement is submitted to the newspaper for publication.
6. The Board of Zoning Appeals shall hold a duly scheduled public hearing to review the complete site plan and application for the special permit use request.
7. If the Board of Zoning Appeals grants the special permit use, the applicant receives approval and is formally notified by mail by the Planning Office.
8. If the conditional use is denied by the Board of Zoning Appeals, the applicant is formally notified in writing of the denial and the right to appeal to decision to the Hardy County Circuit Court within thirty (30) days.

D. Standards for Approval

1. The Board of Zoning Appeals may approve an application for a conditional use permit, subject to such reasonable conditions and restrictions as are directly related to and incidental to the proposed conditional use permit, if it finds that the following general standards have been met:
 - a. The proposed use is compatible with the goals of the adopted comprehensive plan.
 - b. The proposed use shall be compatible with the appropriate and orderly development of the district, taking into consideration the location and size of the use, the nature and intensity of the operations involved in or conducted in connection with such

use, the size in relation to the use, the assembly of persons in connection with such use, the size in relation to the use, and the location of the site with respect to streets giving access to the site.

- c. The proposed site development shall be such that the use will not hinder nor discourage the appropriate development and use of adjacent land and buildings, taking into consideration the location, nature and height of buildings, the location, nature and height of walls and fences, and the nature and extent of landscaping on the site.
- d. Neighborhood character and surrounding property values shall be reasonably safeguarded.
- e. Operations in connection with the use shall not be offensive, dangerous, destructive of property values and basic environmental characteristics, or detrimental to the public interest of the community. They shall not be more objectionable to nearby properties by reason of fumes, noise, vibration, flashing of or glare from lights, and similar nuisance conditions than the operations of any permitted use not requiring a conditional use permit in the district.
- f. The character and appearance of the proposed use, buildings, structures, and/or outdoor signs should be in general harmony or better, with the character and appearance of the surrounding neighborhood.

3) Article VI, Section 1, Letter G

Filing Procedure for an appeal of an administrative decision

- a. An appeal taken from any order, requirement, decision or determination made by the County Planner charged with the enforcement of this Ordinance shall be filed with the Board on forms prescribed by the Planning Office. The appeal shall specify the reasons for the appeal and shall be made within thirty (30) calendar days of the original action in question unless otherwise prescribed by the Board of Zoning Appeals by general rule and regulation.
- b. The appeal, or application, shall include a list of property owner's names and addresses located within 250 feet of the affected area, as recorded in the office of the Hardy County Assessor. The subject property also shall be included in the affected area. The applicant

must also submit the tax map and parcel numbers for the list of properties along with a stamped and addressed envelope for each of the names and addresses of property owners in the affected area. If the list includes a lot within a subdivision, the applicant must submit the name of the president for the subdivision homeowners association along with a stamped and addressed envelope for that person.

- c. The Planning Office will publish a legal advertisement describing the request to appear in a local newspaper of general circulation thirty (30) calendar days prior to the scheduled public hearing before the Board. The prepared envelopes notifying the property owners located within 250 feet of the affected subdivision and submitted by the applicant will be mailed at the same time the legal advertisement is submitted to the newspaper for publication.
- d. The Board of Zoning Appeals shall hold a duly scheduled public hearing on the appeal.
- e. If the Board of Zoning Appeals decides to uphold the administrative decision, the appeal will stand as approved by the Board of Zoning Appeals. The Planning Office will then formally notify the petitioner in writing.

4) Public Hearing Fees

All fees for public hearings shall be \$100.00. Payment shall be made out to: **The Sheriff of Hardy County.**

ARTICLE IV: ENFORCEMENT, VIOLATIONS, AND PENALTIES

It shall be the duty of the office of the County Planner to administer the ordinance and to bring to the attention of the Hardy County Prosecuting Attorney any violations or lack of compliance for enforcement by the Hardy County Sheriff's Office. Any person, profit or nonprofit corporation, firm, or any other organized group who fails to comply with or violates any of these regulations shall be subject to a fine of between \$50.00 to \$500.00 per day as provided by laws of the State of West Virginia, Chapter 8A, Article 10, and Section 2 of the Code of West Virginia.

Appropriate actions and proceedings may be taken by law or in equity to prevent any violation of these regulations, to prevent unlawful construction, to recover damages, to restrain, correct, or abate a violation, to prevent illegal occupancy of a building, structure, or premises, and these remedies shall be in addition to the penalties described above.

In the case of a violation, the following shall be performed by the County Planner as described from the Hardy County Zoning Ordinance, Article 5, and Section 7:

SECTION A: PROCEDURES FOR VIOLATIONS

- A. Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and bases thereof, shall be filed with the County Planner. They shall record properly such complaint, conduct appropriate investigations, and take action thereon as provided by this Ordinance.
- B. If the County Planner finds that any of the provisions of the Ordinance are being violated, whether reported by private citizen or by any commission, board, agency, officer, or employee of the County, or by his own observation, he shall notify in writing the person responsible for such violation. Service of written notice shall be deemed complete upon sending notice by certified mail to the last known address of such person. Such notice shall include the following:
 - 1. Street address or legal description of the property involved;
 - 2. A statement indicating the nature of the violation;
 - 3. A specification of the section of this ordinance upon which the notice of violation is based;
 - 4. A description of the action required to correct the violation;
 - 5. A statement indicating the time within which compliance with this ordinance must be accomplished;
 - 6. A statement advising that upon failure to comply with the requirements of this notice, the County shall take such enforcement procedures as may be required in this ordinance.
- C. The County Planner may order discontinuance of an illegal use of land, buildings, or structure; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or may take any other action authorized by this Ordinance to ensure compliance with its provisions.
- D. In any case in which a building or structure is proposed to be constructed, reconstructed, altered, maintained or used in violation of the provisions of this Ordinance, the County may, in addition to other remedies provided by law, institute injunction, abatement, or any appropriate action or proceedings to prevent, adjoin, abate, remove or penalize by fine such unlawful construction, reconstruction, alteration maintenance or use.

SECTION B: PENALTIES FOR PRECONSTRUCTION

If an applicant had begun construction of an improvement on their parcel or have finished an improvement and desires an application from the Planning Office, they are in violation of the ordinance for not obtaining an application prior to construction. It is the responsibility of the applicant to apply for an Improvement Location Permit and obtain all of the information and permits required prior to any new construction in the unincorporated areas of Hardy County.

Failure to comply with this ordinance shall force the Planning office to turn any violation over to the Hardy County Prosecuting Attorney's Office for enforcement of the violation.

As in letter C of Section A above, the Planning Office may issue "Work Stop" orders on any persons who are not compliant with this ordinance. The goal is to bring said violators into compliance. Such issued orders may be for any length of time set by the County Planner. Violation of a "Work Stop" order shall force the Planning Office to turn the matter over to the Hardy County Prosecuting Attorney's Office, Hardy County Sheriff, and other state and federal agencies for enforcement of the violation.

ARTICLE V: OTHER HARDY COUNTY ORDINANCES

This ordinance supersedes any previous updates to the Improvement Location Permit Ordinance. It is designed to work in conjunction with all other Hardy County land use ordinances.

If the new proposed improvement is located within the 100 year flood plain according to FEMA and the improvement's construction value is worth at least fifty (50) percent of the Hardy County assessed land value or more; then the new improvement shall automatically be under the jurisdiction of the Floodplain Ordinance.

ARTICLE VI: AMENDMENT OR UPDATE OF ORDINANCE

SECTION A: ORDINANCE MAINTAINANCE

After this ordinance has been adopted by the County Commission, it may be updated or amended by the County Commission with the advice of the Planning Commission. Amendment and update procedures are the following;

- 1) When the Planning Commission has completed a final "DRAFT" by which they desire to present to the County Commission, they shall hold a public hearing, advertising in a class II public notice with the local media.
- 2) The approved "DRAFT" shall be presented to the County Commission for review. The County Commission shall review the proposed "DRAFT" and hold a public hearing, submitting

a class II notice in the local media. After the public hearing, the County Commission may either adopt the ordinance or return the ordinance with their modifications.

3) Once the first two public hearings have been held, no further public hearings are necessary.

4) Any grammatical corrections may be made to this ordinance without public hearing.

SECTION B: APPLICATION UPDATES

The County Planner may update the application and any other accompanying application material with final approval from the Planning Commission as needed. The purpose of any updates would be to streamline the application process.

ARTICLE VII: FEE SCHEDULE

SECTION A: FEE ADMINISTRATION

The Planning Office staff shall take in all Improvement Location Permit application fees. On scheduled days or at the total of \$500.00 in the Planning Office safe, all money shall be taken to the Hardy County Sheriff's office for deposit.

The Hardy County Planner has the administrative latitude by which to waive fees if there is a financial hardship on the applicant. This hardship (for permanent houses only) shall be proved to the Planner so such fees may be waived. The Planner shall indicate on the application and any computer record that such fee was waived.

Any victim of natural disasters or crime shall also be waived of Improvement Location Permit fees at the discretion of the County Planner. Government entities and nonprofit groups shall also be waived from fees; nonprofit groups need only show their status. Such waiving of fees shall be noted on the application and any computer records.

SECTION B: FEES

All fees shall be paid in full when a completed application has been submitted to the Planning Office. When the completed application and fees have been submitted, the Planning Office Staff shall give the applicant a receipt for the fees paid in full. The fees are non-refundable. All fees shall be made out to: **The Sheriff of Hardy County**.

If an improvement is under \$500.00 and under 100 square feet, then a permit is still required, but no fee shall be required.

SECTION C: FEE SCHEDULE

NEW CONSTRUCTION

<u>Agricultural Building</u> (Over 1000 Square Feet)	\$75.00
(Under 1000 Square Feet)	\$50.00
<u>Commercial Structures</u>	\$275.00
Extensions	\$50.00 per year
<u>Commercial Residential</u>	\$100.00
Extensions	\$50.00 per year
<u>Industrial Structures</u>	\$500.00
<u>Gazebo, Pavilion, Picnic Shelter</u>	\$25.00
<u>Single Family Unit</u>	\$100.00
Extensions	Two, No Fees
<u>Manufactured Home, Singlewide</u>	\$50.00
Extensions	Two, No Fees
<u>Manufactured Home, Doublewide, Modular and Sectional</u>	\$100.00
Extensions	Two, No Fees
<u>Residential Outbuildings</u>	\$25.00 from 100Sq. Ft.
Extensions	Two, No Fees
<u>Carport or Garage</u>	\$25.00
Extensions	Two, No Fees
<u>Swimming Pool (above or below ground)</u>	\$25.00
Extensions	Two, No Fees
<u>Tennis Court</u>	\$25.00
Extensions	Two, No Fees
<u>Deck or Porch</u>	\$25.00
Extensions	Two, No Fees
<u>Parking Lot, Commercial and Industrial</u>	\$50.00
Extensions	\$25.00 per year

<u>Multi Family Unit</u>	\$100.00 per unit
Extensions	\$50.00 per year
<u>Condominium or Townhouse</u>	\$100.00/Unit
Extensions	\$50.00 per year
<u>Seasonal or Secondary Home</u>	\$100.00
Extensions	\$25.00 per year
<u>Recreation Cabin</u>	\$100.00
Extensions	Two, No Fees

Additions

<u>Industrial</u>	\$250.00
<u>Commercial</u>	\$100.00
<u>Residential, Single Unit</u>	\$25.00
Extensions (per year)	Two, No Fees
<u>Vacation or Secondary Home</u>	\$25.00
<u>Agricultural</u>	\$25.00

Dated XX day of XXXXXX, 2012.

APPROVED

PRESIDENT, HARDY CO. COMMISSION

COMMISSIONER,

COMMISSIONER,