

**ARTICLE 1309**  
**Districts Established; Use Regulations**

<b>1309.01</b>	<b>Districts.</b>	<b>1309.05</b>	<b>R-3 Residence District.</b>
<b>1309.02</b>	<b>Procedure relating to annexed areas.</b>	<b>1309.06</b>	<b>Business District.</b>
<b>1309.03</b>	<b>R-1 A and C Residence Districts.</b>	<b>1309.07</b>	<b>B-1 Business District.</b>
<b>1309.03(a)</b>	<b>R-1 B Residence District.</b>	<b>1309.08</b>	<b>Industry District.</b>
<b>1309.04</b>	<b>R-2 Residence District.</b>	<b>1309.09</b>	<b>Rezoned Areas.</b>
		<b>1309.10</b>	<b>Special uses.</b>
		<b>1309.11</b>	<b>Floodplain.</b>

**CROSS REFERENCES**

Zoning districts generally - see W.Va. Code 8-24-40

Permitted use for group residential facility - see

W.Va. Code 8-24-50(b)

Nonconforming uses - see P. & Z. Art. 1341

**1309.01 DISTRICTS.**

The Town established is hereby divided into one or more of the following Use Districts, which shall be known as:

**USE DISTRICTS:**

R-1 A Resident

R-1 B Resident

R-1 C Resident

R-2 Resident

R-3 Resident

Business

B-1 Business

Industry

“Hundred Year Flood Plain” (Shall comply with all Federal laws and provisions.)

“Land and/or Mud Slide”

(Passed 8-10-99)

**1309.02 PROCEDURE RELATING TO ANNEXED AREAS.**

Territory, which may hereafter be annexed to the Town, shall immediately be included on the R-1 A Residence District, unless or until the Planning Commission designates otherwise within the provisions of the West Virginia Code.

(Passed 2-14-78)

**1309.03 R-1 A and C RESIDENCE DISTRICTS.**(a) Principal Permitted Uses.

- (1) Dwellings, single family.
- (2) Public and non-profit private schools.
- (3) Churches and similar places of worship, parish houses and convents.
- (4) Public parks and playgrounds.
- (5) Any form of agriculture or horticulture except the keeping of livestock, poultry, or bees.

(b) Permitted Accessory Uses.

- (1) Private garage.
- (2) Other customary accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as business. Any accessory building or use shall be located on the same parcel as the principal building.

(c) Permitted Special Uses. (See Section 1309.09)

- (1) Appropriate public uses.
- (2) Planned residential development group. (See Article 1321)
- (3) Public utility installations.
- (4) Trailer or mobile home parks (See Article 1325)

(d) Lot Area, Frontage and Yard Requirements.

Use	Lot Area	Lot	Front Yard	Side Yard	Rear Yard
	(sq. ft.)	Width	Depth	Width	Depth
Dwelling R-1 A	7200	60	20	5	15
Dwelling R-1 C	3600	30	20	4	10
Mobile Home Trailer	14400	120	20	8	10
Schools	20000	100	20	10	20
Churches	20000	100	20	10	20

R-A Minimum Lot Size 60 x 120 ft.

R-C Minimum Lot Size 30 x 120 ft.

Minimum Ground Floor Main Building Size in sq. ft. for R-1 shall not be less than 860 sq. ft. No part of any building shall set within five feet of any public right of way, except public utility connections.

\* Subject to Health Department regulations and determination that may call for greater areas to meet sanitary requirements.  
(Passed 10-14-08; Orig. passed 2-14-78)

**1309.03(a) R-1 B RESIDENCE DISTRICT.**

(a) Principal Permitted Uses.

- (1) Dwellings, single family.
- (2) Public and non-profit private schools.
- (3) Churches and similar places of worship, parish houses and convents.
- (4) Public parks and playgrounds.
- (5) Any form of agriculture or horticulture except the keeping of livestock, poultry, or bees.
- (6) Funeral homes.
- (7) Beauty shops.
- (8) Other businesses with the approval of Town Council.

(b) Permitted Accessory Uses.

Any accessory use permitted in the R-1 A or C District.

(c) Permitted Special Uses. (See Section 1309.09)

Any special use permitted in the R-1 A or C District.

(d) Lot Area, Frontage and Yard Requirements.

Use	<u>Lot Area</u>	<u>Lot</u>	<u>Front Yard</u>	<u>Side Yard</u>	<u>Rear Yard</u>
	(sq. ft.)	Width (ft.)	Depth (ft.)	Width (ft.)	Depth (ft.)
Dwelling R-1 B	6000	50	20	5	15

R-B Minimum Lot Size 50 x 120 ft.

Minimum Ground Floor Main Building Size in sq. ft. for R-1 shall not be less than 860 sq. ft.

No part of any building shall set within five feet of any public right of way, except public utility connections.

\* Subject to Health Department regulations and determination that may call for greater areas to meet sanitary requirements.  
(Passed 10-14-08)

**1309.04 R-2 RESIDENCE DISTRICT.**

- (a) Principal Permitted Uses.
- (1) Dwellings, two-family.
  - (2) Public and non-profit private schools.
  - (3) Churches and similar places of worship, parish houses and convents.
  - (4) Public parks and playgrounds.
  - (5) Any form of agriculture or horticulture except the keeping of livestock, poultry or bees.
- (b) Permitted Accessory Uses.
- (1) Private garage.
  - (2) Any use permitted in the R-1 A, B, or C District.
  - (3) Offices of a physician, lawyer, clergyman, or similar profession and/or beauty shop provided that the office is contained in the principal building.
- (c) Permitted Special Uses. (See Section 1309.10)
- (1) Appropriate public uses.
  - (2) Planned residential development group. (See Article 1321)
  - (3) Public utility installations.
- (d) Lot Area, Frontage and Yard Requirements.

	<u>Lot Area</u> (sq. ft.)	<u>Lot Width</u> (ft.)	<u>Front Yard Depth</u> (ft.)	<u>Side Yard Min.</u> (ft.)	<u>Rear Yard Depth</u> (ft.)
Dwellings	5,000	50	20	5**	5**
Others (Same as R-1A or C District)					

\* Subject to Health Department regulations and determination, which may call for greater areas to meet sanitary requirements.

\*\* Minimum Ground Floor Main Building Size in sq. ft. for R-2 shall not be less than 672 sq. ft.

\*\*\* No part of any building shall set within five feet of any public right of way excluding public utility connections.

- (e) Off-Street Parking Spaces.
- (1) Dwelling: (Two)
  - (2) School: See Article 1317
  - (3) Church: See Article 1317
  - (4) Business: One off-street parking space for each 200 sq. ft. of space that is used for business.

(Passed 10-14-08; Orig. passed 2-14-78)

**1309.05 R-3 RESIDENCE DISTRICT.**

- (a) Principal Permitted Uses
- (1) Any use permitted in the R-2 District.
  - (2) Dwellings, Multi-family.
- (b) Permitted Accessory Uses
- (1) Any use permitted in the R-2 District.

(c) Permitted Special Uses (See Section 1309.09)

- (1) Any use permitted in the R-2 District.
- (2) Related residential uses.

(d) Lot Area, Frontage and Yard Requirements

Use	<u>Lot Area*</u> (sq. ft.)	<u>Lot Width</u> (ft.)	<u>Front Yard Depth</u> (ft.)	<u>Side Yard Width</u> (ft.)	<u>Rear Yard Depth</u> (ft.)
Dwellings	6000	50	20	5	5
Others	(Same as R-2 District)				

(e) Off-Street Parking Spaces (See Article 1317)

- \* Subject to Health Department regulations and determination, which may call for greater areas to meet sanitary requirements.  
(Passed 2-14-78)

**1309.06 BUSINESS DISTRICT.**(a) Principal Permitted Uses.

- (1) Bakery with sale of bakery products on the premises.
- (2) Barber shop, beauty shop, massage or similar personal service shop.
- (3) Catering shop.
- (4) Dressmaking, tailoring, shoe repairing, repairing of household appliances and bicycles and other uses of a similar character, provided that not more than five persons shall be employed on the premises during a single shift.
- (5) Drug stores of less than six thousand square feet of floor area.
- (6) Laundromats and shops for the delivery or picking up of laundry and dry cleaning.
- (7) Medical and dental offices or clinics, and other professional and business offices.
- (8) Parking lot or garage.
- (9) Restaurant, tavern or coffee shop, provided that the serving of food or beverage to patrons waiting in parked automobiles shall not be permitted.
- (10) Retail stores of less than 6,000 square feet in floor area.
- (11) Public utility structures such as electric substations, telephone exchanges and outdoor public telephone booths.
- (12) Tourist homes.
- (13) Offices, branch banks or lending institutions.
- (14) Membership associations, corporations or clubs.
- (15) Photographic studios.
- (16) Pet shop, animal hospital or veterinarian.
- (17) Automobile, boat, farm implement or trailer display, repair or servicing and sales room, new or used.
- (18) Business, dancing or music schools.
- (19) Hotel, motel or motor court.

- (20) Testing laboratory.
  - (21) Printing or engraving.
  - (22) Hardware or building material sales.
  - (23) Amusement and recreation service such as theater, ballroom, or bowling alley.
  - (24) Business service shop such as blueprinting, accounting, duplicating, or employment agency.
  - (25) Taverns, restaurants and coffee shops, including drive-in type.
  - (26) Laundromat.
  - (27) Filling station.
  - (28) Any special use permitted in the B-1 District.
  - (29) When not employing more than five persons on the premises in a single shift, not including persons whose principal duties are off the premises, and provided all materials are stored and all shop work is done within a building:
    - A. Dyeing and cleaning establishment or laundry.
    - B. Painting, plumbing, carpentry or tinsmithing shop.
    - C. Radio or television repair shop.
    - D. Dressmaking, millinery or tailoring establishment.
    - E. Upholstering shop, not involving furniture manufacturing.
    - F. Any other general service or repair establishment of similar character.
  - (30) R-3 District uses, but not including single or two-family dwellings, and mobile home development plots.
- (b) Permitted Accessory Uses.
- (1) Signs pertaining to goods, products or services sold or offered on the premises, as permitted elsewhere in this Zoning Ordinance. Signs shall be attached to a vertical surface of the building or extend not more than thirty inches from it.
  - (2) Other customary uses and structures which are clearly incidental to the principal use.
- (c) Permitted Special Uses. (See Section 1309.10)
- (1) Any use permitted in the R-3 District.
  - (2) Joint-occupancy uses.
  - (3) Planned commercial development group. (See Article 1321)
  - (4) Gambling establishments. Subject to review and approval by Zoning Board of Appeals pursuant to Section 1309.10(b)12.  
(Passed 9-27-05)

(d) Lot Area, Frontage and Yard Requirements.

<u>Lot Area</u>	<u>Lot</u>	<u>Front Yard</u>	<u>Side Yard</u>	<u>Rear Yard</u>
(sq. ft.)	<u>Width</u>	<u>Depth</u>	<u>Width</u>	<u>Depth</u>
(ft.)	(ft.)	(ft.)	(ft.)	(ft.)
3000-5000	30-50	None	None	5
(Passed 8-10-99)				

(e) Off-Street Parking Spaces. (See Article 1317)**1309.07 B-1 Business District.**

District B1 shall be comprised of the following:

**B1 Business District Limited**(a) Principal Permitted Uses:

- (1) Barber shop, beauty shop
- (2) Catering shop
- (3) Dressmaking, tailoring, shoe repair
- (4) Medical and dental office
- (5) Parking lot or parking garage
- (6) Tourist home
- (7) Office, bank, law office, insurance office
- (8) Photographic studio
- (9) Business service such as blueprinting, accounting, duplicating, employment agency
- (10) Pet shop, animal hospital or veterinarian
- (11) Dancing or music school

(b) Permitted Accessory Uses.

- (1) Signs pertaining to goods, products or services sold or offered on the premises, as permitted elsewhere in this Zoning Ordinance. Signs shall be attached to a vertical surface of the building or extend not more than thirty inches from it.
- (2) Other customary uses and structures which are clearly incidental to the principal use.

(c) Permitted Special Uses. (see section 1309.10)

- (1) Any use permitted in the R-3 District.
- (2) Joint-occupancy uses.
- (3) Planned commercial development group. (See Article 1321)

(d) Lot area, Frontage and Yard Requirements.

<u>Lot Area</u>	<u>Lot</u>	<u>Front Yard</u>	<u>Side Yard</u>	<u>Rear Yard</u>
(sq. ft.)	<u>Width</u>	<u>Depth</u>	<u>Width</u>	<u>Depth</u>
(ft.)	(ft.)	(ft.)	(ft.)	(ft.)
3000-5000	30-50	None	None	5
(Passed 9-28-04)				

**1309.08 I-1 Industry District.****(a) Principal Permitted Uses.**

- (1) Testing or research laboratories.
- (2) Offices.
- (3) Public utility services and structure.
- (4) Manufacturing, assembly or packaging.
- (5) Wholesale business, storage and warehousing.
- (6) Woodworking, furniture repair and custom upholstery, metalworking, electrical sales and contracting, plumbing sales and contracting.
- (7) Wholesale bakery, dairy, bottling plant, and large-scale laundering, cleaning and dyeing establishments.
- (8) Manufacturing of awnings, Venetian blinds and shades.
- (9) Truck terminal.
- (10) Business service shop such as blueprinting, accounting duplicating, or employment agency.
- (11) Commercial parking lot or garage.
- (12) Automotive, farm implement or trailer repair or servicing, including collision service, bodywork and overall painting.
- (13) Carpentry, painting, plumbing or tinsmithing shop.
- (14) Printing or engraving.
- (15) The manufacture, assembly, packing or treatment of articles or merchandise from previously prepared materials.
- (16) Distribution plants, parcel delivery and service industries.
- (17) Lumber and building materials sales and storage yards.
- (18) Contractors equipment, sales and service.
- (19) Tool, die and pattern making, and other machine shop operations.
- (20) Boat building.
- (21) Railroad yards or terminal facilities.
- (22) Other uses similar to those enumerated above.
- (23) Retail uses pursuant to B-1 District.

**(b) Permitted Accessory Uses.**

- (1) Accessory uses and buildings customarily appurtenant to a principal permitted use such as incidental storage facilities.
- (2) Residence of a watchman, custodian or caretaker employed on the premises.

**(c) Permitted Special Uses. (See Section 1309.10) (The following special use is permitted, subject to review by the Board of Zoning Appeals.)**

- (1) Bulk storage of fluids.
- (2) Automobile salvage and wrecking operations, outdoor storage and junk yards, provided that such operations is conducted not less than 200 feet from any Residence or Business District, and provided that all operations are conducted behind a solid wall or fence not less than eight feet high and maintained in good repair.



- (3) Any other use deemed by the Board as compatible with existing uses, including additions and such uses, under appropriate conditions and safeguards, as are deemed appropriate to the Board and not likely to adversely affect adjoining or adjacent uses.
- (4) Planned industrial development group. (See Article 1321)

(d) Lot Area, Frontage, and Yard Requirements.

<u>Lot Area</u> (sq. ft.)	<u>Lot Width</u> (ft.)	<u>Front Yard Depth</u> (ft.)	<u>Side Yard Width</u> (ft.)	<u>Rear Yard Depth</u> (ft.)
10,000	100	10	10	20
Other uses (as established elsewhere)				

(e) Off-Street Parking Spaces. (See Article 1317)

(f) Required Conditions. Any use or activity which is not wholly within a completely enclosed building shall not be less than 100 feet from any abutting Residence District, shall be screened by a solid wall or fence at least eight feet in height and maintained in good repair.

Passed (2-14-78)

### 1309.09 REZONED AREAS.

The following areas were rezoned effective 9-28-04:

- (a) Romano Street to Edison Street rezoned as R1B
- (b) Beeghley Street to Franklin Street rezoned as B1  
(Passed 9-28-04)

### 1309.10 SPECIAL USES.

Uses listed as "Special Uses" shall require individual consideration in each case because of their unique characteristics. Such "Special Uses" may be permitted only upon review and authorization by the Board of Zoning Appeals, subject to certain conditions and safeguards.

(a) General Principals and Standards for Special Uses.

- (1) The use should be one specifically enumerated as a special use in the District within which such particular site is located.
- (2) For every special use, the Board shall make a specific finding, supported by evidence produced at a public hearing, in a manner provided by law, that such use will not be prejudicial to the character of the area.
- (3) For every such special use, the Board shall determine that there are appropriate provisions for access facilities adequate for the estimated traffic from public streets and sidewalks so as to insure public safety and to avoid traffic congestion.
- (4) For every such special use, the Board shall determine that there are fully adequate parking areas and off-street loading spaces, in conformity with the parking requirements of this and other related ordinances.

- (5) For specified special use, the Board shall require suitable planting or screening in accordance with the requirements of the Zoning Ordinance.
  - (6) Specified uses for which special permits may be issued shall be deemed to be permitted uses, subject to the meeting of the special conditions contained in this section. Any special use lawfully established as provided for herein shall be deemed a conforming use as of the time of its establishment.
  - (7) The use will be of such location, size and character that, generally, it will be in harmony with the appropriate and orderly development of the District in which the use is situated and will not be detrimental to the orderly development of adjacent properties, not inconsistent with the officially adopted Comprehensive Plan.
- (b) Specific Regulations Governing Special Uses. Each special use shall be considered an individual case, and such use shall conform to the standards of the Zoning Ordinance.
- (1) Community buildings, social halls, lodges, fraternal organizations and similar uses.
    - A. In R-District where permitted, all buildings shall be a minimum of twenty feet from any property line.
    - B. In R-Districts where permitted, there may be included retail sales for guests, only.
    - C. All applications for such uses in R-Districts shall demonstrate that the proposed use will serve primarily the residents of the surrounding neighborhood and that such use cannot satisfactorily be located elsewhere.
    - D. In R-Districts, where permitted, such uses shall not be located on lots of less than 12,000 square feet with a minimum frontage of 100 feet.
  - (2) Conversions. All conversions shall have at least one off-street parking space per dwelling unit, and each unit shall have adequate light, air, heating and plumbing facilities and shall have at least 3,000 square feet of lot area and 600 square feet of floor area for each dwelling unit, but no converted building shall have more than a total of four dwelling units.
  - (3) Retail Uses in Industrial Zones. Such uses shall be permitted only where the applicant can prove to the Board that such use is necessary to serve primarily industrial uses in the vicinity.
  - (4) Related Residential Uses. Nursing and convalescent homes, rooming houses and nurseries for the day care of young children shall comply with the following:
    - A. Any such use shall have sufficient off-street parking to serve the anticipated number of users and employees, and traffic congestion on local residential streets.
    - B. All such buildings shall conform to the minimum lot size, minimum yards and maximum height regulations otherwise specified.

- (5) Appropriate public uses. Any public use permitted by the Board as special use shall appropriate to the character of the District in which it is proposed and to the area, which it will serve. Such appropriate public uses shall have adequate access and shall provide off-street parking and loading.
- (6) Hospitals. Minimum lot size shall be one acre; no structure shall be nearer than twenty-five feet to any street or other property line; the building(s) shall not occupy over fifty percent (50%) of the lot area.
- (7) Public Utilities. Proof must be furnished that the proposed location is necessary for the efficiency of the service to be provided; that the design of any buildings or structures are in keeping with the character of the District in which it is to be located, and will in no way adversely affect the safe and comfortable enjoyment of property rights; that adequate and attractive fences and other safety devices will be provided, and that sufficient landscaping, including shrubs, trees and lawns, will be provided and maintained.
- (8) Tourist Homes. At least one off-street parking space shall be provided for each rentable bedroom.
- (9) Joint Occupancy. Entrance to the residential areas shall be off the street on which the building fronts; no dwelling unit shall contain less than 500 square feet of floor space and shall be a complete housekeeping unit.
- (10) Filling Station. Minimum lot size shall be 10,000 sq. feet; such station shall not be located within fifty feet of a residence, school, church or other institutional buildings; all pumps must be at least fifteen feet from any street, and no driveways shall be within thirty feet of any street intersection. No disabled or wrecked vehicles shall be parked or stored outside of a building or structure for more than seven days.
- (11) Automobile salvage and wrecking operations, outdoor storage and junk yards. May not be located nearer than 200 feet to any Residence or Business District; must be enclosed by a solid fence at least eight feet in height; must be kept in good order and repair at all times, and one appropriate sign will be permitted in identifying the type of business.  
(Passed 2-14-78)
- (12) Gaming Establishments.
- A. Such establishments shall not be located within 750 feet of each other.
  - B. No gambling establishment shall be permitted within 1000 feet of any church, place of worship, library, school, community center, child day care center or publicly owned property designated as a playground, park or otherwise under the control and supervision of the Town of Nutter Fort.
  - C. A gambling establishment may be situated without adhering to restrictions (A) and/or (B) above only when such an establishment has previously existed at the proposed location within the last 30 days. The existing gambling establishment locations in the Town of Nutter Fort are as follows:
 

409 Buckhannon Pike	1512 Buckhannon Pike
424 Buckhannon Pike	1635 Buckhannon Pike
1422 Buckhannon Pike	
- (Passed 2-7-06)

**1309.11 FLOODPLAIN.**

## (a) General Provisions.

- (1) The intent of this ordinance is to:
  - A. Promote the general health, welfare, and safety of the community.
  - B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
  - C. Minimize danger to public health and safety by protecting water supply, sanitary sewage disposal, and natural drainage.
  - D. Reduce financial burdens imposed on the community, its governmental units and its residents, by preventing the unwise design and construction of development in areas subject to flooding.
- (2) Abrogation and greater restrictions. This ordinance supersedes any ordinances currently in effect in flood prone areas. However, any ordinance shall remain in full force and effect to the extent that it's provisions are more restrictive.
- (3) Applicability. It shall be unlawful for any person, partnership, business, or corporation to undertake or cause to be undertaken, any development or the new construction, substantial improvement, the placement or relocation of any structure (including manufactured homes) with the Floodplain Area, unless a permit has been obtained from the Permit Officer prior to any development. In addition, where land is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a site plan must be submitted to, and approved by, the Permit Officer prior to any development. Provisions of all other codes, ordinances, and regulations shall be applicable insofar as they are consistent with the provisions of this ordinance and the community's need to minimize the hazards and damage resulting from flooding.

## (b) Definitions.

**Base Flood.** The flood which has been selected to serve as the basis upon which the flood plain management provisions of this and other ordinances have been prepared; for purposes of this ordinance, the one hundred (100) year fold.

**Basement.** Any area of the building having its floor sub-grade (below ground level) on all sides.

**Development.** Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

**Flood.** A general and temporary inundation of normally dry land areas.

**Flood Plain.**

- (1) A relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation;
- (2) An area subject to the unusual and rapid accumulation or runoff of surface waters from any source.

**Floodway.** The channel of a river or other watercourse and the adjacent land area that must be reserved to discharge the base flood without increasing the water surface elevation of that flood more than one foot at any point.

Flood proofing. Any combination of structural and non-structural additions, changes or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

Lowest Floor. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured home. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured home park or subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New construction. Structures for which the Start of Construction as herein defined commenced on or after the effective date of this ordinance.

One Hundred (100) Year Flood. A flood that has one chance in one hundred or a one percent chance of being equaled or exceeded in any given year.

Person. Any individual or group of individuals, corporation, partnership, association or other entity, including state and local governments and agencies.

Principally above ground. Where at least 51 percent of the actual cash value of a structure, less land value, is above ground.

Start of construction. The first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Structure. A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial Improvement. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- (1) before the improvement or repair is started or
- (2) if the structure has been damaged, and is being restored, before the damage occurred.

For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimension of the structures. The term does not, however, include either:

- (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications, which are solely necessary to assure safe living conditions or
- (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

- (c) Establishment of the flood plain area.
- (1) Identification. The identified floodplain area shall be those areas of the Town of Nutter Fort, which are subject to the one hundred (100) year flood, as shown on the Flood Boundary and Floodway Map (FBFM) and/or Flood Insurance Rate Map (FIRM), which accompanies the Flood Insurance Study (FIS) prepared for the Town of Nutter Fort the Federal Emergency Management Agency (FEMA) dated March 1980 or the most recent revision thereof.
  - (2) Description of floodplain areas. The identified floodplain area shall consist of the following two specific areas:
    - A. The Floodway areas shall be those areas identified as such in the FIS and as shown on the FBFM.
    - B. The Floodway Fringe area shall be those areas for which specific, one hundred (100) year flood elevations have been provided in the FIS but which lie beyond the floodway area. These areas are shown on the FBFM.
  - (3) Changes in designation of area. The delineation of the identified flood plain area may be revised by the Town where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers a River Basin Commission or other qualified agency or individual document the necessity for such changes. However, prior to any such change, approval must be obtained from Federal Insurance Administration (FIA).
  - (4) Boundary disputes. Should a dispute concerning any district boundary arise; an initial determination shall be made by the Permit Officer and any party aggrieved by this decision may appeal to the Mayor. The burden of proof shall be on the appellant.
- (d) Utilization of the floodplain area.
- (1) In the floodplain area any development and/or use of land may be permitted provided that all such uses, activities, and/or development shall be undertaken in strict compliance with the flood proofing and related provisions contained herein and in all other applicable codes, ordinances and regulations.
  - (2) Within any floodway area, no development shall be permitted that would cause any increase in the 100 year flood elevation.
  - (3) Whenever a developer intends to alter or relocate a watercourse within the Floodplain Area, the developer shall notify in writing by certified mail all adjacent communities and the State Coordinating Office of all such intended activities prior to any alteration or relocation of the watercourse, and shall submit copies of such notification to the Federal Insurance Administrator. The developer shall also assure the Town in writing, that the flood carrying capacity within the altered or relocated portion of the watercourse in question will be maintained.

- (e) Criteria for building and site plan approval.
- (1) General. Building permits are required in order to determine whether all new construction or substantial improvements are:
- (A) designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
  - (B) constructed with materials and utility equipment resistant to flood damage.
  - (C) constructed by methods and practices that minimize flood damage.
  - (D) constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during conditions of flooding.
- (2) Basic format. The basic format of the Building Permit shall include the following:
- (A) Name and address of applicant.
  - (B) Name and address of owner of land on which proposed construction is to occur.
  - (C) Name and address of contractor.
  - (D) Site location.
  - (E) Brief description of proposed work and estimated cost.
  - (F) A plan of the site showing the exact size and location of the proposed construction as well as any existing buildings or structures.
- (3) Elevation and flood proofing information. Depending on the type of structure involved, the following information shall also be included in the application for work within the Flood Plain Area:
- (A) For structures to be elevated to the Base Flood Elevation:
    - 1. A plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.
    - 2. A determination of elevations of the existing ground, proposed finished ground and lowest floor, certified by a Registered Professional Engineer, Surveyor or Architect.
    - 3. Plans showing the method of elevating the proposed structure, includes details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc. When required by the permit Office, these plans shall be prepared by a Registered Professional Engineer or Architect.
    - 4. Plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to the Base Flood Elevation at the building site.
  - (B) For structures to be flood proofed to the Base Flood Elevation (nonresidential structures only):

1. Plans showing details of all flood proofing measures, prepared by a Registered Profession Engineer or Architect, and showing the size of the proposed structure and its relation to the lot where it is to be constructed.
  2. A determination of elevations of existing ground, proposed finished ground, lowest floor, and flood proofing limits; certified by a Registered Professional Engineer, Surveyor, or Architect.
  3. A certificate prepared by the registered Professional Engineer or Architect who prepared the plans in 1. above, that the structure in question, together with attendant utility and sanitary facilities is designed so that:
    - a. below the Base Flood Elevation the structure is water-tight with walls substantially impermeable to the passage of water.
    - b. the structure will withstand the hydrostatic, hydro-dynamic, buoyant, impact and other forces resulting from the flood depths, velocities, pressures and other factors associated with the Base Flood.
- (4) Site plan criteria. The owner or developer of any proposed subdivision, manufactured home park or subdivision or other development shall submit a site plan to the Permit Officer which includes the following information:
- (A) Name of engineer, surveyor, or other qualified person responsible for providing the information required in this section.
  - (B) A map showing the location of the proposed subdivision and/or development with respect to the municipality flood plain areas, proposed lots and sites, fills, or erosion protective facilities and areas subject to special deed restriction. In addition, it is required that all subdivision proposals and other proposed developments greater than 50 lots or five (5) acres, whichever is the lesser, shall include base flood elevation data.
  - (C) Where the subdivision and/or development lie part or completely in the flood plain areas, the plan map shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours at intervals of two (2) or five (5) feet depending on the slope of the land and identify accurately the boundaries of the flood plain areas.
- (f) Specific requirements.
- (1) Design and construction standards. In order to prevent excessive damage to buildings, structures and related utilities and facilities, the following restrictions shall apply to all development, subdivision proposals, manufactured home parks, new construction and to construction of substantial improvements to existing structures occurring in the Flood Plain Area.



- A. Basements and lowest floors.
1. All new construction and substantial improvements of residential structures must have the lowest floor (including basement) elevated to or above the Base Flood Elevation. All new construction and substantial improvements of non-residential structures must have the lowest floor (including basement) elevated to or above the base Flood Elevation; or together with attendant utility and sanitary facilities, be designed so that below the Base Flood Elevation the structure is flood proofed in accordance with Section 1309.11(e). Elevation and Flood proofing Information.
  2. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
    - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
    - b. The bottom of all openings shall be no higher than one foot above grade.
    - c. Openings may be equipped with screens, louvers, valves or other coverings or devices if they permit the automatic entry and exit of floodwaters.
  3. Manufactured homes shall be elevated on a permanent foundation so that the lowest floor of the manufactured home will be at or above the Base Flood Elevation.
- B. Fill. If fill is used to raise the finished surface of the lowest floor to the Base Flood Elevation:
1. Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally fifteen (15) feet beyond the building line from all points. For non-residential structures, fill shall be placed to provide access acceptable for intended use. At-grade access, with fill extending laterally fifteen (15) feet beyond the building line, shall be provided to a minimum of twenty-five (25) percent of the perimeter of a non-residential structure.
  2. Fill shall consist of soil or rock materials only. Sanitary landfills shall not be permitted.
  3. Fill materials shall be compacted to provide the necessary stability and resistance to erosion, scouring, or settling.

4. Fill slopes shall be no steeper than one (1) vertical on two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Permit Officer.
  5. Fill shall be used only to the extent to which it does not adversely affect adjacent properties.
- C. Placement of buildings. All buildings and structures shall be constructed and placed on the lot so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum obstruction effect upon the flow and height of flood water.
- D. Anchoring.
1. All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, and lateral movement, thus reducing the threat to life and property and decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourse.
  2. All air ducts, large pipes and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation.
  3. All manufactured homes shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include but are not limited to the over-the-top and frame ties to ground anchors such as the following:
    - a. Over-the-top ties shall be provided at each of the four corners of the manufactured home, with two additional ties per side for manufactured homes less than 50 feet long.
    - b. Frame ties shall be provided at each corner of the home with five additional ties per side at intermediate points, with manufactured homes less than 50 feet long requiring four additional ties per side.
    - c. All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.
    - d. Any additions to a manufactured home shall be similarly anchored.

This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- E. Storage. No materials that are buoyant, flammable, explosive, or in times of flooding could be injurious to human, animal or plant life shall be stored below Base Flood Elevation.
- F. Utility and facility requirements.
1. All new or replacement water systems whether public or private, shall be designed to minimize or eliminate infiltration of flood waters into the systems.

2. All new or replacement sanitary disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the system into flood waters.
  3. All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.
  4. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- G. Drainage. Adequate drainage shall be provided to reduce exposure to flood hazard.
- (g) Administration.
- (1) Building permits and site plan approvals required. It shall be unlawful for any person, partnership, business or corporation to undertake or cause to be undertaken, any development or the new construction, substantial improvement, the placement or relocation of any structure (including manufactured homes: with the Flood Plain Area, unless a permit has been obtained from the Permit Officer. In addition, where land is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a site plan must be submitted to, and approved by, the Permit Officer prior to any development.
  - (2) Approval of permits and plans. All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of the State and all other applicable codes and ordinances.

The Permit Officer shall require copies of all necessary permits from those governmental agencies from which approval is required by Federal or State Law. A record of all information supplied to the Permit Officer shall be kept on file by the Town of Nutter Fort.
  - (3) Application procedures. Application for building permit and site plan approvals shall be made, in writing, to the Permit Officer, and shall include all information stipulated under(e) (Criteria for building and site plan approval) of this ordinance.
  - (4) Changes. After the issuance of a building permit or site plan approval by the Permit Officer, no changes of any kind shall be made to the application, permit or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the Permit Officer.
  - (5) Placards. In addition to the building permit, the Permit Officer shall issue a placard, which shall be displayed on the premises during the time construction is in progress. This placard shall show the number of the building permit, the date of issuance and be signed by the Permit Officer.

- (6) Start of Construction. Work on the proposed construction shall begin within three (3) months after the date of issuance of the building permit or the permit shall expire unless a time extension is granted, in writing, by the Permit Officer. (Passed 7-27-04)
- (7) Inspection and revocation. During the construction period, the Permit Officer or other authorized officer may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable laws and ordinances. In the event that the Permit Officer discovers that the work does not comply with the permit application or any applicable laws and ordinances or that there has been a false statement or misrepresentation by any applicant, the Permit Officer shall revoke the building permit and report such fact to the Town of Nutter Fort for whatever action it considers necessary.
- (8) Fees. Application for a building permit shall be accompanied by a fee, payable to the Town of Nutter Fort, Based upon the estimated cost of the proposed construction as determined by the Permit Officer at the following rates:

<u>Estimated Cost</u>	<u>Fee:</u>
\$0 – 99.99	\$8.00
\$100 – 999.99	\$9.00
\$1000 – 500,000	1% of Estimated Cost
\$500,000 +	\$5,000

(Passed 3-14-06)

- (h) Appeals and penalties.
  - (1) Appeals. Whenever any person is aggrieved by a decision of the permit Officer with respect to the provision of this Ordinance, it is the right of that person to appeal to the Mayor of Nutter Fort, which shall be known as the Appeals Authority. Such appeal must be filed, in writing, within thirty (30) days after the determination by the Permit Officer. Upon receipt of such appeal, the Appeals Authority shall set a time and place not less than ten (10) nor more than thirty (30) days for the purpose of hearing the appeal. Notice of the time and place of the hearing shall be given to all parties at which time may appear and be heard. The determination by the Appeals Authority shall be final in all cases.
  - (2) Appeal review Criteria. All appeals contesting only the permit fee established by the Permit Officer may be handled at the discretion of the Appeals Authority. All decisions on appeals to all other provisions of this ordinance shall adhere to the following criteria:
    - A. Affirmative decisions shall only be issued by the Appeals Authority upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the appeal would result in exceptional hardship to the applicant, and (iii) a determination that the granting of an appeal will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinance.

- B. An affirmative decision shall be issued only upon determination that it is the minimum necessary, considering the flood hazard, to afford relief.
  - C. The Appeals Authority shall notify the applicant in writing over the signature of a community official that (i) the issuance of a decision to allow construction of a structure below the Base Flood Elevation may result in increased premium rates for flood insurance, (ii) such construction below the Base Flood Elevation increases risk to life and property. Such notifications shall be maintained with a record of all decisions as required in paragraph D. of this section; and
  - D. The Appeals Authority shall (i) maintain a record of all decisions including justification for their issuance, and (ii) report such decisions issued in its biennial report submitted to the Federal Insurance Administration.
  - E. No variance shall be granted for any construction, development, use or activity within any floodway area that would cause any increase in the one hundred (100) year flood elevation.
- (3) Penalties. Any person who fails to comply with any or all of the requirements or provisions of this ordinance or direction of the Permit Officer or any other authorized employee of the community shall be guilty of an offense and, upon conviction, shall pay a fine to the Town of Nutter Fort of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) plus cost of prosecution. In default of such payment such person shall be imprisoned in county prison for a period not to exceed 10 days. Each day during which any violation of this ordinance continues shall constitute a separate offense. In addition to the above penalties all other actions are hereby reserved including an action in equity for the proper enforcement of this ordinance. The imposition of a fine or penalty for any violation of, or non-compliance with, this ordinance shall not excuse the violation or non-compliance with this ordinance or permit it to continue; and all such persons shall be required to correct or remedy such violations or non-compliances within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in non-compliance with this ordinance may be declared by the Town of Nutter Fort to be a public nuisance and abatable as such.
- (i) Severability and municipal liability.
- (1) Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance which shall remain in full force and effect, and for this purpose the provisions of this ordinance are hereby declared to be severable.
  - (2) Municipal liability. The granting of a permit or approval of a subdivision or development plan in an identified flood-prone area, shall not constitute a representation, guarantee or warranty of any kind by the Town of Nutter Fort or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the Town of Nutter Fort. (Passed 7-12-88)