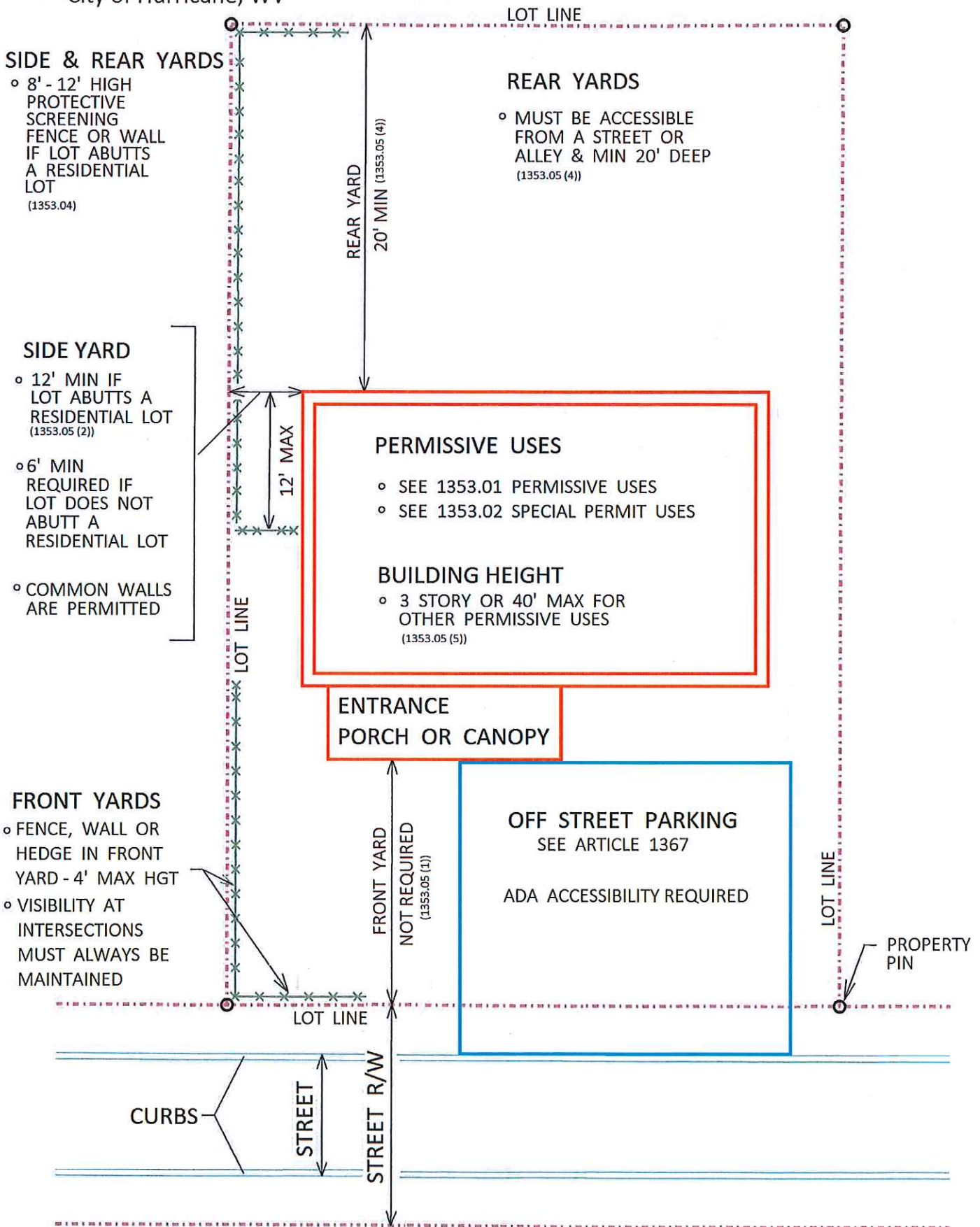


B-3 BUSINESS and HIGHWAY USE DISTRICT

PLANNING AND ZONING CODE - PART 13 - SEE ATTACHED ORDINANCE

City of Hurricane, WV



B-3 BUSINESS and HIGHWAY USE DISTRICT

USES, SIGNS, ACCESSORY BUILDINGS, DIMENSIONAL STANDARDS, OFF-STREET PARKING EXCERPTS FROM CITY OF HURRICANE, WV ORDINANCES – HURRICANE BUILDING DEPT.

Sec. 1353.01. - Permissive uses.

The following buildings and uses are permitted in the B-3 Business and Highway Use Districts:

- (1) All uses permitted in B-2 Central Business Districts (see Section 1351.01).
- (2) Gasoline service stations.
- (3) Auto sales and service garages.
- (4) Motels and hotels.
- (5) Animal hospitals.
- (6) Multifamily dwellings containing four or more units provided regulations set forth in Article 1341 are met.
(Code 1991, § 1353.01; Ord. of 10-3-1977)

Sec. 1353.02. - Special permit uses.

- (a) *Service establishments, retail and wholesale businesses.* Other service establishments or retail or wholesale businesses which would not violate the intent of this Zoning Ordinance shall be permitted as special permit uses in the B-3 Business and Highway Use Districts.
- (b) *Broadcasting towers and equipment.* Broadcasting towers and equipment, if located on a tract of land which is sufficient in size to have a lineal dimension from the base of a tower to all property lines equal to or greater than the height of the tower, shall be permitted as special permit uses in the B-3 Business and Highway Use Districts.
- (c) *Intent.* It is the intent of special permit uses to provide for certain uses which shall be permitted only if adequate conditions exist or can be imposed that will make such uses compatible with the purposes of this Article. The special permit procedure shall provide for some measure of individualized judgment and the imposing of conditions on certain uses in order to make them compatible with permitted principal uses in the applicable zoning district. It is further intended that the special permit process shall provide a method whereby it can be determined whether or not a use would cause any damage, hazard, nuisance or other detriment to persons or property in the vicinity.
- (d) The following uses shall be permitted only as regulated by this section of the Zoning Districts and Regulations Ordinance:
 - (1) Bar or nightclub. Final approval by City Council required.
 - (2) Liquor store. Final approval by City Council required.
 - (3) Restaurant serving alcoholic beverages intended for on-premises consumption. If less than 60 percent of gross income is derived from the sale of prepared food, final approval by City Council is required.
 - (4) Establishment at which any form of gambling or game of chance WV Lottery Commission "scratch-off" tickets, are permitted or played subject to final approval by City Council.
 - (5) Adult book store, adult videotape store, adult motion picture theater or adult entertainment establishment, as the same are defined in this Ordinance. Final approval of City Council required.
- (e) *Procedures.*
 - (1) The City Planning Commission, or City Council where specifically provided in this Ordinance, may be special permit authorize any of the uses which are permitted by special permit within this Ordinance. Such uses shall be subject to all other regulations set forth in this Ordinance, unless the special permit specifically exempts said use from any one or more regulations. In addition, the Commission or Council where applicable, may attach reasonable restrictions to any special permit use as it deems necessary to comply with the purpose of this Ordinance. Existing special permit uses shall not be enlarged, extended or relocated without first receiving approval of a new special permit.
 - (2) Before the issuance of a special permit, the Commission, and Council where specifically provided in this article, shall make a decision regarding the effects of such proposed use upon the character of the neighborhood, public utilities, traffic conditions, fire protection, and other matters pertaining to the public health, safety and general welfare. Furthermore, the Commission, and Council where applicable, shall:
 - a. Make a finding concerning the proposed uses' conformance with applicable zoning and planning ordinances and regulations,
 - b. Shall prescribe other restrictions or conditions where deemed necessary to safeguard the public health, safety or general welfare.
 - (3) Three copies of the plot plan of the lot and proposed buildings or uses, drawn to an accurate scale and showing all pertinent information, shall accompany the three copies of the application for a special permit. Filing requirement, including filing fees, deadlines, and public hearing procedures, shall be as set forth in Articles 16 of this Ordinance.
- (f) *Requirements.* The following uses shall be subject to the restrictions and conditions set forth below, in addition to compliance with applicable zoning and planning ordinances and regulations:
 - (1) Adult book store, adult videotape store, adult motion picture theater, adult entertainment establishment, and establishment where consumption of beer or alcoholic beverages (other than a restaurant which derives at least 60 percent of its gross income from the sale of prepared food) or gambling (with the exception of WV Lottery Commission "scratch-off" tickets) are permitted on the premises.
 - (2) Such uses shall not be located within 3,000 feet of each other.

The Planning Commission may waive this spacing provision for an adult book store, adult videotape store, adult motion picture theater, adult entertainment establishment, and establishment where consumption of beer or alcoholic beverages or gambling are permitted on the premises if the following findings are made:

 - a. That the proposed uses will not be contrary to the public interest, or adversely affect the value, use or enjoyment of nearby properties, and that the spirit and intent of this Ordinance will be observed.
 - b. That the proposed use will not enlarge or encourage the development of a "red light" or "skid row" area.

c. That the establishment of an additional regulated use in the area will not be contrary to any program of neighborhood conservation not will it interfere with any program or urban renewal.

d. That all applicable regulations of this Ordinance will be observed.

- (3) It shall be unlawful to hereafter establish any adult book store, adult videotape store, adult motion picture theater, adult entertainment establishment, and establishment where consumption of beer or alcoholic beverages (other than a restaurant which derives at least 60 percent of its gross income from the sale of prepared food) or gambling (with the exception of WV Lottery Commission "scratch-off" tickets) are permitted on the premises in a residential district, a business and residential district or a public school district. It shall be unlawful to hereafter establish any adult book store, adult videotape store, adult motion picture theater, adult entertainment establishment, and establishment where consumption of beer or alcoholic beverages or gambling are permitted on the premises in a central business district or manufacturing district if the proposed location is within 3,000 feet of a residence district, business and residential district, a public school or a public school district.
- (4) No adult book store, adult videotape store, adult motion picture theater, adult entertainment establishment, and establishment where consumption of beer or alcoholic beverages (other than a restaurant which derives at least 60 percent of its gross income from the sale of prepared food) or gambling (with the exception of WV Lottery Commission "scratch-off" tickets) are permitted on the premises shall be located within 3,000 feet of a school, park, library or place of worship.
- (5) Advertisement, displays, or other promotional materials depicting, describing or relating to "specified sexual activities" (as defined in this Ordinance) or "specified anatomical areas" (as defined in this Ordinance) shall not be visible from a public sidewalk or public road.
- (6) If the special permit use relates to any adult video store, adult motion picture theater, or adult entertaining establishment, all doors, windows and other apertures shall be located, covered or screened in such a manner as to prevent viewing the interior of the of the establishment from a public sidewalk or public street.
- (7) In the event that an adult book store, adult videotape store adult motion picture theater, adult entertainment establishment, and establishment where consumption of beer or alcoholic beverages (other than a restaurant which derives at least 60 percent of its gross income from the sale of prepared food) or gambling (with the exception of WV Lottery Commission "scratch-off" tickets) are permitted on the premises is replaced by another type of land use, the adult book store, adult videotape store, adult motion picture theater, adult entertainment establishment, and establishment where consumption of beer or alcoholic beverages or gambling are permitted on the premises shall be required to obtain a new special permit before it can be re-established.

(g) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them herein, except where the context clearly indicates a different meaning:

Adult amusement or entertainment means amusement or entertainment which is distinguished or characterized by an emphasis on acts or material depicting, describing, or relating to specific sexual activities or specified anatomical areas, including, but not limited to, topless or bottomless dancers, exotic dancers, strippers, male or female impersonators, or similar entertainment.

Adult bookstore/adult novelty store/adult video store means an establishment which utilizes ten percent or more of its gross public floor area for the purpose of retail sale, and/or rental, and/or display by image-producing devices, of sexually-oriented material for any consideration; or ten percent or more of the stock-in-trade consists of sexually-oriented materials.

Adult cabaret means a building or portion of a building regularly featuring dancing or other live entertainment if the dancing or entertainment that constitutes the primary live entertainment is distinguished or characterized by an emphasis on the exhibiting of specific sexual activities or specified anatomical areas for observation by patrons therein; or a nightclub, bar, restaurant, or similar commercial establishment that regularly features persons who appear in a state of nudity or semi-nudity; or which exhibit films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specific sexual activities or specified anatomical areas.

Adult mini motion picture theater means an enclosed building with a capacity of less than 50 persons used for presenting material distinguished or characterized by an emphasis on depicting or describing specific sexual activities or specified anatomical areas.

Adult motel means a hotel, motel, or similar establishment that:

- (1) Offers accommodations to the public for any form of consideration and provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specific sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way that advertised the availability of this adult type of photographic reproductions; or
- (2) Offers a sleeping room for rent for a period of time that is less than ten hours; or
- (3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours.

Adult motion picture arcade means any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically, or mechanically controlled, still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specific sexual activities or specified anatomical areas.

Adult motion picture theater means an enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on depicting or describing specific sexual activities or specified anatomical areas.

Adult theater means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who expose specified anatomical areas, or live performances that are characterized by the exposure of specified anatomical areas or by specific sexual activities.

Specific sexual activities means activities which include:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts, normal or perverted, actual or simulated, including sexual excitement, penetration with a finger or male organ into any orifice in another person, oral copulation, masturbation, intercourse, sodomy, or bestiality; or
- (3) Excretory functions, male ejaculation, or the aftermath of male ejaculation as part of or in connection with any of the activities set forth in subsections (1) and (2) above.

Specified anatomical areas means exhibition, display or depiction of:

- (1) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- (2) Less than completely and opaquely-covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

(Code 1991, § 1353.02; Ord. of 10-3-1977; Ord. No. 2004-05, 3-1-2004; Ord. of 12-3-2007; Ord. of 1-3-2011(2))

Sec. 1353.03. - Permitted accessory uses.

The following accessory buildings and uses shall be permitted in the B-3 Business and Highway Use Districts:

- (1) Accessory parking areas;
- (2) Other accessory uses customarily incidental to a permitted principal use including signs.

(Code 1991, § 1353.03; Ord. of 10-3-1977)

Sec. 1353.04. - Protective screening.

Those sides and rear of a lot which abut a residential district in the B-3 Business and Highway Use Districts shall be provided with a fence or wall or hedge with a height of eight to 12 feet constructed and maintained so as to prevent the passage of persons and to screen the property from view.

(Code 1991, § 1353.04; Ord. of 10-3-1977)

Sec. 1353.05. - Dimensional standards.

The following dimensional standards shall apply in the B-3 Business and Highway Use Districts:

- (1) ~~The following dimensional standards shall apply in the B-3 Business and Highway Use Districts:~~
- (2) Side yards of at least 12 feet in width are required for businesses abutting residential districts;
- (3) Side yards are not required for other business property in B-3 Districts and common walls shall be permitted;
- (4) Rear yards which are accessible from a street or alley are required and shall be not less than 20 feet deep;
- (5) Building height shall be a maximum of three stories or 40 feet.
- (6) Elevator cab shall be of such size to accommodate a cot that is 24 inches by 84 inches in the horizontal open position and the accompanying personnel.

(Code 1991, § 1353.05; Ord. of 10-3-1977; Ord. of 12-5-2011)

Sec. 1353.06. - Off-street parking and loading requirements.

Off-street parking and loading requirements in the B-3 Business and Highway Use Districts shall be scheduled according to Article 1367.

(Code 1991, § 1353.06; Ord. of 10-3-1977)