

**DRAFT**



**AIRPORT HEIGHT, SOUND AND RUNWAY  
PROTECTION ZONING ORDINANCE**

**BERKELEY COUNTY  
WEST VIRGINIA**

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**ARTICLE I: GENERAL PROVISIONS**

**A. Introduction and Title**

1. REENACTMENT AND AMENDMENT OF BERKELEY COUNTY'S ORDINANCE ~~REGULATION~~ ~~REGULATING~~ AND RESTRICTING THE HEIGHT OF STRUCTURES AND OBJECTS OF NATURAL GROWTH, AND OTHERWISE REGULATING THE USE OF PROPERTY, IN THE VICINITY OF THE EASTERN WEST VIRGINIA REGIONAL AIRPORT BY CREATING THE APPROPRIATE ZONED PROTECTION AREAS AND ESTABLISHING THE BOUNDARIES THEREOF, PROVIDING FOR CHANGES IN THE RESTRICTIONS AND BOUNDARIES OF SUCH ZONES; DEFINING CERTAIN TERMS USED HEREIN; REFERRING TO THE EASTERN WEST VIRGINIA REGIONAL AIRPORT AIRSPACE OVERLAY PLAN MAPS, WHICH ARE INCORPORATED IN AND MADE A PART OF THIS ORDINANCE AS FIGURES 1-4; PROVIDING FOR ENFORCEMENT; ESTABLISHING A BOARD OF APPEALS; AND IMPOSING PENALTIES.
2. ~~The revised title of this ordinance becomes the Berkeley County, West Virginia, Airport Height, Sound and Runway Protection Zoning Ordinance.~~

IT IS HEREBY ORDAINED BY THE COUNCIL OF BERKELEY COUNTY, WEST VIRGINIA, AS FOLLOWS:

**B. Authority**

This Ordinance is re-adopted and amended pursuant to the authority conferred by Chapter 8A, Article 7 of the Code of West Virginia.

**C. Intent**

1. It is ~~hereby~~ found that an obstruction has the potential for endangering the lives and property of users of the Eastern West Virginia Regional Airport; and that an obstruction may reduce the size of areas available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the Eastern West Virginia Regional Airport and the public investment therein.
2. The Berkeley County Council (herein after referred to as "Council") finds that the Federal Aviation Administration (FAA) requires the Eastern West Virginia Regional Airport Authority to work with local planning authorities to prevent obstructions and incompatible land uses that:
  - a. Could cause sufficient conflict that endangers the airport;
  - b. Could cause the airport to be closed; or
  - c. Require substantial remedial investment to purchase conflicting developed property.
3. Council, also, finds that the Eastern West Virginia Regional Airport is obligated to comply with grant assurance "#21 Compatible Land Use" when receiving any FAA Airport Improvement Program grants

critical to the financing of capital improvements and the maintenance of the existing facility:

*"#21: Compatible Land Use: The Airport Sponsor will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft."*

*"In addition, the airport sponsor will not cause or permit any changes in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended."*

4. Council, likewise, finds that the regulations incorporated within this ordinance are important to ensuring the safety of the surrounding community and to protect the airport's ability to grow and meet future aviation needs in a growing market.
5. Council further finds that noise levels contemplated for future aircraft have the potential of endangering the health, safety, peace and comfort of occupants of land adjacent to the Eastern West Virginia Regional Airport, in areas specifically designated on the Eastern West Virginia Regional Airport Airspace Plan Maps hereinafter referenced.

#### D. Regulations Not Retroactive

1. The regulations prescribed in this Ordinance shall not be construed to require the removal, lowering, or other change or alteration of any structure not conforming to the regulations at the effective date of this Ordinance, or otherwise interfere with the continuance of a nonconforming existing use.
2. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Ordinance, and is actively proceeding to completion.

#### E. Conflicting Regulations

Where there exists a conflict between any of the regulations or limitations prescribed in this Ordinance and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, and the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

F. Severability

If any of the provisions of this Ordinance or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable.

G. Applicability

1. Accordingly, Council hereby declares as public policy:
  - a. That the creation or establishment of an obstruction has the potential of being a public nuisance and may injure the region served by the Eastern West Virginia Regional Airport;
  - b. That it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of obstructions that are hazardous to air navigation be prevented; and
  - c. That the prevention of these obstructions should be accomplished, to the extent legally possible;
  - d. That the building of residential and other noise sensitive uses within the 65 decibel and above noise level areas designated on the Airport Noise Zoning Map (Figure 2) incorporated herein shall be considered a public nuisance, potentially harmful to occupants thereof and to the continued effective use of the airport property these regulations are intended to protect; and
  - e. That the building of new structures is required to comply with the Airport Noise Zoning Map and the Department of Defense Tables as outlined in Section 004.
2. It is further declared that the prevention, creation or establishment of hazards to air navigation, the elimination, removal, alteration or mitigation of hazards to air navigation, or marking and lighting of obstructions are public purposes for which a political subdivision may raise and expend public funds and acquire land or interests in land.

H. Effective Date

The 2004 Ordinance to Limit Height of Objects and to Regulate Placement of Certain Structures within Specific Areas of Noise Level Around Eastern West Virginia Regional Airport is hereby repealed.

The effective date of this reenactment and amendment shall be upon the adoption of the same by the Berkeley County Council.

Re-adopted as amended this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Douglas E. Copenhaver, Jr., President

\_\_\_\_\_  
Dan Dulyea, Vice President

\_\_\_\_\_  
Elaine C. Mauck, Councilperson

\_\_\_\_\_  
James P. Whitacre, Councilperson

\_\_\_\_\_  
James R. Barnhart, Councilperson

ATTEST: \_\_\_\_\_  
                  John W. Small, Jr., Clerk

DATE: \_\_\_\_\_

RECORDED DATE: \_\_\_\_\_

**ARTICLE II: DEFINITIONS**

As used in this Ordinance, unless the context otherwise requires:

AIRPORT-

Eastern West Virginia Regional Airport.

AIRPORT ELEVATION-

557 feet above mean sea level.

APPROACH SURFACE -

A surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach height zone limitation. The perimeter of the approach surface coincides with the perimeter of the approach zone.

APPROACH HEIGHT ZONE - NONPRECISION INSTRUMENT: LARGER THAN UTILITY WITH A VISIBILITY MINIMUM AS LOW AS ¾ MILE-

Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.

APPROACH HEIGHT ZONE - NONPRECISION INSTRUMENT: LARGER THAN UTILITY WITH A VISIBILITY MINIMUM GREATER THAN ¾ MILE -

Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.

APPROACH SURFACE ZONE - NONPRECISION INSTRUMENT: LARGER THAN UTILITY WITH A VISIBILITY MINIMUM AS LOW AS ¾ MILE-

The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 16,000 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

APPROACH SURFACE ZONE - NONPRECISION INSTRUMENT: LARGER THAN UTILITY WITH A VISIBILITY MINIMUM GREATER THAN ¾ MILE -

The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 3,500 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

APPROACH HEIGHT ZONE - NONPRECISION (UTILITY RUNWAY)-

Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

APPROACH SURFACE ZONE - NONPRECISION (UTILITY RUNWAY)-

The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 2,000 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

APPROACH HEIGHT ZONE - PRECISION INSTRUMENT RUNWAY -

Slopes fifty (50) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline; thence slopes upward, forty (40) feet horizontally for each foot vertically to an additional horizontal distance of 40,000 feet along the extended runway centerline.

APPROACH SURFACE ZONE - PRECISION INSTRUMENT RUNWAY -

The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

APPROACH SURFACE ZONE, VISUAL (LARGER THAN UTILITY AIRCRAFT)-

The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 1,500 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

APPROACH HEIGHT ZONE, VISUAL (LARGER THAN UTILITY AIRCRAFT)-

Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

APPROACH HEIGHT ZONE, VISUAL (UTILITY AIRCRAFT)-

Slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.



APPROACH SURFACE ZONE, VISUAL (UTILITY AIRCRAFT)-

The inner edge of this approach zone coincides with the width of the primary surface and is 250 feet wide. The approach zone expands outward uniformly to a width of 1,250 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

BOARD OF APPEALS-

A board consisting of five (5) members appointed by the Berkeley County Council ~~as provided in~~ pursuant to Chapter 8A, Article 8, Section 004 of the West Virginia Code.

CONDITIONAL USE-

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.

CONICAL HEIGHT ZONE-

Is established as the area that slopes twenty (20) feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.

CONICAL SURFACE-

A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

CONICAL SURFACE ZONE-

The conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward therefrom a horizontal distance of 4,000 feet.

DNL-

Day-Night Average Sound Level

HAZARD TO AIR NAVIGATION-

An obstruction determined to have an adverse effect on the safe and efficient utilization of the navigable airspace.

HEIGHT-

For the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the Airport Airspace Plan Map zoning map (Figure 1), the data shall be mean sea level elevation unless otherwise specified.

HORIZONTAL HEIGHT ZONE-

Is established at 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of 5,000 feet from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs.

HORIZONTAL SURFACE-

A horizontal plane 150 feet above the established airport elevation, the perimeter of which coincides with the perimeter of the horizontal zone.

HORIZONTAL SURFACE ZONE-

The horizontal zone is established by swinging arcs of 5,000 feet radii for all runways designated utility or visual and 10,000 feet for all others from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal zone does not include the approach and transitional zones.

LARGER THAN UTILITY RUNWAY-

A runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet powered aircraft.

LOCALIZER PERFORMANCE WITH VERTICAL GUIDANCE (LPV)-

A substitute for a precision approach, LPV offers the highest precision GPS (WAAS enabled) aviation instrument approach procedures currently available without specialized aircrew training requirements. Landing minima are usually similar to those of a Cat I instrument landing system (ILS) that is, a decision height of 200 feet (61 meters) and visibility of 800 meters.

MAINTAINED -

Any nonconforming existing use of land that has not ceased or been abandoned for more than 12 months.

NLR-

Noise level reduction in a measure of decibels (dB)

NOISE LEVEL AREAS-

Areas along the extended linear and departure paths associated with the airport runways in which the level of noise currently created and expected to be created by future aircraft operations exceeds safe decibel levels. Specifically, average day/night noise levels of 65 decibels and above. Per Federal Aviation Administration guidelines, 65 DNL is the threshold at which noise sensitive land uses (residential, schools, places of worship, libraries, hospitals, etc.) are considered incompatible with aircraft noise. (Figure 2)

NONCONFORMING EXISTING USE-

Any pre-existing structure, object of natural growth, or use of land which is in existence as of the effective date of this ordinance and is inconsistent with the provisions of this Ordinance or any amendment thereto.

NONPRECISION INSTRUMENT RUNWAY-

A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight in non-precision instrument approach procedure has been approved or planned.

OBSTRUCTION-

Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Section 003 of this Ordinance.

PERSON-

An individual, firm, partnership, public or private corporation, company, association, joint stock association or government entity; includes a trustee, a receiver, an assignee, or a similar representative of any of them.

PRECISION INSTRUMENT RUNWAY-

A runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other official airport planning document.

PRIMARY HEIGHT ZONE-

Is established as the area that includes the longitudinal center of the runway, extends 200 feet beyond each end of that runway and the elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.

PRIMARY SURFACE-

A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway. For military runways or when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface is set forth in Section 002 of this Ordinance. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. (Example illustration is shown on Figure 5.)

PRIMARY SURFACE ZONE-

The primary surface zone is established as the area that includes the longitudinal center of the runway and extends 200 feet beyond each end of that runway. The width of the primary surface zone is set forth in Section 002 of this Ordinance.

RUNWAY-

A defined area on an airport prepared for landing and takeoff of aircraft along its length.

RUNWAY, LARGER THAN UTILITY-

See Larger Than Utility Runway

RUNWAY, NONPRECISION INSTRUMENT-

See Nonprecision Instrument Runway

RUNWAY, PRECISION INSTRUMENT-

See Precision Instrument Runway

RUNWAY, UTILITY-

See Utility Runway

RUNWAY, VISUAL-

See Visual Runway

RUNWAY PROTECTION ZONE (RPZ)-

An area trapezoidal in shape centered about the extended runway centerline and underlying a portion of the approach closest to the airport and subject to limited uses (Figures 1-4).

STRUCTURE-

An object, including a mobile object, constructed or installed by man, including, but not limited to, buildings, towers, cranes, smokestacks, earth formation, and overhead transmission lines.

TRANSITIONAL HEIGHT ZONE-

Slope seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation which is 557 feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and the same elevation as the approach surface, and extending to where they intersect the conical surface. Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping seven (7) feet outward for

each foot upward beginning at the sides of and the same elevation as the approach surface, and extending a horizontal distance of 5,000 feet measured at 90 degree angles to the extended runway center line.

TRANSITIONAL SURFACE-

This surface extends outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. The transitional surface for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at 70 degree angles to the extended runway centerline.

TRANSITIONAL SURFACE ZONE-

The transitional zone is the areas beneath the transitional surface.

TREE-

Any woody perennial plant.

UTILITY RUNWAY-

A runway that is constructed for and intended to be used by propeller driven aircraft with a maximum gross weight of 12,500 pounds or less.

VARIANCE-

A deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.

VISUAL RUNWAY-

A runway intended solely for the operation of aircraft using visual approach procedures.

**ARTICLE III: ESTABLISHMENT OF ZONES**

**A. Airport Zones**

1. In order to carry out the provisions of this Ordinance, there are hereby created and established certain zones which include all of the land lying beneath the, approach surfaces, transitional surfaces, horizontal surfaces, conical surfaces, decibel contours and runway protection zones as they apply to the Eastern West Virginia Regional Airport.
2. Such zones are shown on the Airport Airspace Plan Maps, Figures 1-4, which are attached to this Ordinance and made a part hereof.
3. An area located in more than one of the following zones is considered to be only in the zone with the more restrictive height and/or use limitation(s).
4. There are three main types of airport zones being regulated in this Ordinance. These zones are:
  - a. Height Zones
    - i. Height zones are delineated as primary surfaces, approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces.
  - b. Sound Zones
    - i. Sound zones are delineated as noise contour lines with corresponding decibel sound levels.
  - c. Runway Protection Zones.
    - i. Runway protection zones are located at each end of the runway(s).
5. Requirements for each of these zones are outlined in the following sections.

**B. Airport Height Zone Limitations**

1. Except as otherwise provided in this Ordinance, no structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any zone created by this Ordinance to a height in excess of the applicable height herein established for such zone.
2. Such applicable height limitations are hereby established for each of the zones in question.
3. These zones are defined in the corresponding "Height Zone" descriptions in Section 001: Definitions of this Ordinance.

**C. Airport Sound Zone Limitations**

1. Except as otherwise provided in this Ordinance, no structure or object shall be erected, altered, or maintained, in any decibel zone created by this Ordinance, unless it meets the requirements established for the corresponding sound/decibel zone.

2. Such applicable sound/decibel limitations are hereby established for each of the sound/decibel zones as outlined in Tables 1-7 of this Ordinance.
3. These tables outline permitted uses as defined within the Department of Defense instruction Number 4165.57, Appendix 3 to Enclosure 3 Table 2 and as amended.

D. Runway Protection Zone Limitations

1. Runway Protection Zones are designated to enhance the safety of aircraft operations and the safety and protection of people and property on the ground should accidents or incidents such as runway excursions, overruns, overshoots or undershoots occur.
2. Due to a higher statistical likelihood of such events to occur, the Federal Aviation Administration recommends that RPZ areas be clear of structures and people.
3. The RPZ for Runway 08/26 is trapezoidal in Shape and illustrated on Figures 1-4.
4. In the Runway Protection Zones (RPZ), the following uses **are** permitted within the limits of the RPZ:
  - a. Agricultural activity
  - b. Irrigation channels, provided wildlife attractant conditions are not formed therefrom
  - c. Airport service roads
  - d. Underground facilities
  - e. Unstaffed NAVIDs and associated facilities
  - f. Conditional uses as specified here in Section 006, entitled Conditional Uses
  - g. Multiple storage units or facilities, so long as they do not create an obstruction to air navigation
5. Incompatible land uses involving concentrations of people typify places of public gathering or assembly and can include but are not limited to: residences, churches, schools, parks, sports facilities, hospitals, office buildings, gas stations, commercial buildings, retail shopping centers, etc.

~~ARTICLE IV: USE REGULATIONS WITHIN ZONES SECTION 006: USE RESTRICTIONS/ZONING DISTRICTS~~

A. Uses and Aircraft Interference

1. Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this Ordinance in such a manner as to:
  - a. Create electrical interference with navigational signals or radio communication between the airport and aircraft,
  - b. Make it difficult for pilots to distinguish between airport lights and others,

- c. Result in glare in the eyes of the pilots using the airport,
- d. Impair visibility in the vicinity of the airport,
- e. Create wildlife attractions or bird strike hazards, or
- f. Otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

B. Nonconforming Existing Uses Maintained or Destroyed

- 1. Within the Height Zones: Pursuant to Section 8A-7-10 of the West Virginia Code, any nonconforming existing use of land within the Height Zone shall be permitted so long as it is maintained or destroyed with intention of rebuilding.
- 2. Within the Sound/Decibel Zones: Pursuant to Section 8A-7-10 of the West Virginia Code, any nonconforming existing use of land within the Sound/Decibel Zone shall be permitted, so long as it is maintained or destroyed with intention of rebuilding.
- 3. Within the Runway Protection Zones: Pursuant to Section 8A-7-10 of the West Virginia Code, any nonconforming existing use of land within the Runway Protection Zone shall be permitted so long as it is maintained or destroyed with intention of rebuilding.
- 4. A nonconforming use may not be substituted for any other nonconforming use without the Planning Commission review and approval.

C. Nonconforming Existing Uses Abandoned ~~or Destroyed within the Height Zones:~~

- 1. Within the Height Zones: If any nonconforming existing use of land shall cease, be abandoned for more than 12 months, ~~or be destroyed for any reason whatsoever~~, the said nonconforming existing use shall be permitted to continue through repair or rebuilding the existing use so long as:
  - a. the FAA determines no hazard to air navigation.
- 2. Within the Sound/Decibel Zones: If any nonconforming existing use of land shall cease, be abandoned for more than 12 months, ~~or be destroyed for any reason whatsoever~~, the said nonconforming existing use shall be permitted to continue through repair or rebuilding the existing use so long as:
  - a. the FAA determines no hazard to air navigation
  - b. sound proofing precautions are taken, as stated in Table 9, 1B, 1C and 1D.
- ~~3.~~ Within the Runway Protection Zones: If any nonconforming existing use of land shall cease, be abandoned for more than 12 months, ~~or be destroyed for any reason whatsoever~~, the said nonconforming existing use shall be required to comply with the Runway Protection Zone



~~Limitations, previously specified in this Ordinance. reviewed by the Planning Director. Prior to review, the applicant shall provide a Notice of Construction or alteration from the FAA and documentation from the Airport Director indicating whether the rebuilding would result in a hazard to air navigation. If, through this review, the structure and/or use is deemed compatible, it may be permitted to continue through repair or rebuilding the existing use, so long as the FAA determines no hazard to air navigation and sound proofing precautions are taken, as stated in Table 9, 1B, 1C and 1D.~~

D. Conditional Uses

1. A conditional use is permitted under this Ordinance if the following conditions are met:
  - a. The conditions set forth in Section 010 titled Permits are met;
  - b. The conditions set forth in Section 006 titled Use Restrictions/Zoning Districts are met;
  - c. The conditional use does not exceed the height limitations set forth in this ordinance; and
  - d. Any other reasonable restrictions or limitations that the Board of Zoning Appeals may specify as a reason or limitation on the conditional use permit granted under this Section.

E. Variances

1. Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property not in accordance with the regulations prescribed in this Ordinance, may apply to the Board of Appeals for a variance from such regulations.
2. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace.
3. The board of zoning appeals shall grant a variance to the zoning ordinance if it finds that the variance:
  - a. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;
  - b. Will not create a hazard to air navigation
  - c. Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance;
  - d. Would eliminate an unnecessary hardship and permit a reasonable use of the land; and
  - e. Will allow the intent of the zoning ordinance to be observed and substantial justice done.

4. Additionally, no application for variance to the requirements of this Ordinance may be considered by the Board of Appeals unless a copy of the application has been furnished to the Airport Director for advice as to the aeronautical effects of the variance. If the Airport Director does not respond to the application within 21 days after receipt, the Board of Appeals may act on its own to grant or deny said application.
5. Nothing contained in any of the foregoing variances shall be construed as permitting or intending to permit any construction, or alteration of any structure, or growth of any tree in excess of any of the height zone restrictions established by this Ordinance.
6. Obstruction Marking and Lighting-
  - a. In granting any permit or variance, the Planning Commission/staff may require such conditions as will, in its judgment, ~~that~~ substantially secure the objectives of the standards or requirements so waived, including to require the owner of the structure or tree in question to install, operate, and maintain, at the owner's expense such marking and lights as may be necessary. If deemed proper by the Board of Appeals, this condition may be modified to require the owner to permit the Eastern West Virginia Regional Airport Authority, at its own expense, to install, operate, and maintain the necessary markings and lights.

**ARTICLE V: ADMINISTRATION AND ENFORCEMENT**

**A. Permitting Requirements**

1. The owner of any proposed alteration, construction, subdivision and/or land development within this Ordinance shall comply with the provisions of this ordinance and 14 CFR Part 77 Subpart B (and as amended) by filing a Notice of Construction or Alteration (FAA Form 7460-1, as amended or replaced) with the FAA.
  - a. Construction and/or alteration includes:
    - i. Erection of a new structure; and/or
    - ii. Addition to or increase in the height of an existing structure; and/or,
    - iii. Establishment, erection and/or maintenance of any use, structure, or object (natural or manmade).
2. FAA Form 7460-1 is required to be submitted with the application within the following zones:
  - a. All freestanding structures greater in height than existing structures on the parcel within the 34:1 and 50:1 approach surfaces;
  - b. Horizontal zone for all free standing structures greater than 150 feet in height;
  - c. Conical zone for all structures 150 feet in height or greater;

- d. All sound/decibel zones as required.
3. Prior to the issuance of any building permit, advancement of a subdivisions or land development plan or plat, the applicant shall submit:
  - a. an Airport Building and Zoning permit application to the Planning Commission, or its designee, demonstrating compliance with the federal requirement for notification of the proposed construction or alteration,
  - b. a valid aeronautical evaluation, if applicable, and
  - c. a copy of the FAA's determinations to said notification, if applicable.
4. If the FAA returns a determination of No Hazard to Air Navigation, the planning staff shall review for compliance with this ordinance. If staff:
  - a. Confirms compliance with this Ordinance, the application, building permit, subdivision or land development plan and/or plat shall be considered in compliance with the intent of this ordinance and shall be approved.
  - b. Confirms non-compliance with this Ordinance, the application, building permit, subdivision or land development plan and/or plat shall be considered non-compliant with this Ordinance and shall be denied.
  - c. If the FAA returns a determination of a Hazard to Air Navigation, the application, building permit, subdivision or land development plan and/or plat shall be denied.

#### B. Site Plans and Plat Requirements

1. In addition to all of the requirements outlined in the Permitting Requirements section, the owner or developer of any parcel of land located within the Ordinance shall be required to provide the following for all subdivisions or land development plans or plats:
  - a. Name and seal of West Virginia licensed professional registered surveyor or West Virginia registered professional engineer.
  - b. A map showing the location of the proposed development with respect to the airport zones described herein.
  - c. All sellers of real property situate in Berkeley County, including owners of such property and real estate agents assisting in the sale of such property, which property is located so as to be affected by the provisions of this Ordinance, are hereby required to disclose, in writing, to potential purchasers of such property the applicable restrictions on the use of such property and the noise mitigation requirements which apply pursuant to this Ordinance.
  - d. The following shall be placed on all plans and plats submitted for review by the Planning Commission, or its designee:

- i. Mandatory Disclosure- *"The property shown on this plan/plat is located in an area subject to the provisions of the Berkeley County Airport Height, Sound and Runway Protection Zoning Ordinance."*
2. The subdivision of land within the zones described herein shall not result in lots entirely within the runway protection zones, unless the parcel is being acquired by the Eastern West Virginia Regional Airport Authority.

#### C. Enforcement

1. It shall be the duty of the Planning Staff or other designee of the Planning Commission to administer and enforce the regulations prescribed herein.
2. Applications for permits and variances shall be made to the Planning Commission or its designee and shall be promptly considered and granted or denied.
3. Application for action by the Board of Appeals shall be forthwith transmitted by the Planning Commission staff.

#### D. Penalties

1. Each violation of this Ordinance or of any regulation, order, or ruling promulgated hereunder shall constitute a misdemeanor and be punishable by a fine of not less than \$500.00 or more than \$1,000.00; and each day a violation continues to exist shall constitute a separate offense.

### **ARTICLE VI: BOARD OF APPEALS**

#### **A. Powers and Duties**

2. The existing Board of Appeals shall have and exercise the following powers:
  - a. To expeditiously hear and decide appeals from any order, requirement, decision, or determination made by the Planning Commission or its designee in the enforcement of this Ordinance;
  - b. To expeditiously hear and decide special exceptions to the terms of this Ordinance upon which such Board of Appeals under such regulations may be required to pass; and
  - c. To expeditiously hear and decide specific variances.
3. The Board of Appeals may, in conformity with the provisions of this Ordinance, reverse or affirm, in whole or in part, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as may be appropriate under the circumstances and forthwith notify the

appellant of its decision in writing including the reasons therefore.

B. General Organization

1. The Board of Appeals consists of five (5) members appointed by the Berkeley County Council and each shall serve for a term of three (3) years until a successor is duly appointed and qualified. Of the members first appointed, one (1) shall be appointed for a term of one (1) year, one (1) for a term of two (2) years, and one (1) for a term of three (3) years.
2. The Board of Appeals shall make written findings of facts and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts in reversing, affirming, or modifying any order, requirement, decision, or determination which comes before it under the provisions of this Ordinance.
3. The concurring vote of a majority of the members of the Board of Appeals shall be sufficient to reverse any order, requirement, decision, or determination of the Planning Commission or its designee; or decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance; or to effect variation to this Ordinance.

C. Appeals Procedure

- D. Any person aggrieved by any decision of the Planning Commission or its designee, made in the administration of this Ordinance, may appeal to the Board of Appeals.
  - a. All appeals hereunder must be taken within 30 days of the date of the decision appealed from and as provided by the rules of the Board of Appeals, by filing with the Planning Commission or its designee a notice of appeal specifying the grounds thereof.
    - i. The Planning Commission or its designee shall forthwith transmit all the papers constituting the record upon which the action appealed from was taken, to the Board of Appeals, which shall set a date for the hearing of the appeal within then (10) days of receipt.
    - ii. Such hearing shall be held within 45 days of receipt by the Board.
- E. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Planning Commission or its designee certifies to the Board of Appeals, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would in the opinion of the Planning Commission or its designee cause imminent peril to life or property.

1. In such case, proceedings shall not be stayed except by restraining order of the Berkeley County Circuit Court on notice to the Planning Commission.

**F. Publication of Notice Procedure**

1. The Planning Commission or its designee shall publish as a Class 1 legal advertisement pursuant to West Virginia Code Section 59-3 at the expense of the applicant, a notice of the public hearing.
  - a. This notice shall be published in a paper of general circulation in the city or county, not less than fifteen (15) days prior to the date set for the hearing.
  - b. The notice shall include the application number and the date, time and place of the hearing, summary of the variance or appeal, and the location of the property, its area, and name of the owner.

**E. Judicial Review**

Any person aggrieved by any decision of the Board of Appeals may appeal to the Circuit Court as provided in West Virginia Code Section 8A-9-1, et seq.

**ARTICLE VII: TABLES AND FIGURES**

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<b>TABLE 1: Key to Tables 2-8</b>	
Y (Yes)	Land use and related structures compatible without restrictions
N (No)	Land use and related structures are not compatible and should be prohibited
Y (X)	Yes with restrictions. The land and related structures generally are compatible. However, see note (s) indicated by number in parenthesis.
N (X)	No with exceptions. The land use and related structures are generally incompatible. However, see note(s) indicated by number in parenthesis.
25, 30 or 35	The numbers refer to noise level reduction (NLR) levels. NLR (outdoor to indoor) is achieved through the incorporation of noise attenuation into the design and construction of a structure. Land use and related structures are generally compatible; however, measures to achieve NLR of 25, 30, or 35 must be incorporated into design and construction of structures. However, measures to achieve an overall noise reduction do not necessarily solve noise difficulties outside the structure and additional evaluation is warranted. Also, see notes indicated by superscripts where they appear with one of these numbers.
DNL	Day-Night Average Sound Level

Land Use	Yearly day-night average sound level in decibels (DNL)				
	65-69	70-74	75-79	80-84	Over 85
<b>Residential</b>					
Household Units	N(1)	N(1)	N	N	N
Single Units; detached	N(1)	N(1)	N	N	N
Single Units; semi-detached	N(1)	N(1)	N	N	N
Single Units; attached row	N(1)	N(1)	N	N	N
Two units; side-by-side	N(1)	N(1)	N	N	N
Two units; one above the other	N(1)	N(1)	N	N	N
Apartments; walk-up	N(1)	N(1)	N	N	N
Apartments; elevator	N(1)	N(1)	N	N	N
Group Quarters	N(1)	N(1)	N	N	N
Residential Hotels	N(1)	N(1)	N	N	N
Mobile Home Parks or Courts	N	N	N	N	N
Transient Lodging	N(1)	N(1)	N(1)	N	N
Other Residential	N(1)	N(1)	N	N	N

Land Use	Yearly day-night average sound level in decibels (DNL)				
	65-69	70-74	75-79	80-84	Over 85
<b>Cultural, entertainment and recreational</b>					
Cultural activities (& churches)	25	30	N	N	N
Nature exhibits	Y(1)	N	N	N	N
Public assembly	Y	N	N	N	N
Auditoriums, concert halls	25	30	N	N	N
Outdoor music shells, amphitheaters	N	N	N	N	N
Outdoor sports arenas, spectator sports	Y(7)	Y(7)	N	N	N
Amusements	Y	Y	N	N	N
Recreational activities (including golf courses, riding stables, water recreation)	Y	25	30	N	N
Resorts and group camps	Y	25	N	N	N
Parks	Y	25	N	N	N
Other cultural, entertainment and recreation	Y	25	N	N	N



<b>Table 4: Manufacturing Land Uses in Sound Zones</b>					
Land Use	Yearly day-night average sound level in decibels (DNL)				
<b>Manufacturing</b>	65-69	70-74	75-79	80-84	Over 85
Food and kindred products	Y	Y(2)	Y(3)	Y(4)	N
Textile mill products	Y	Y(2)	Y(3)	Y(4)	N
Apparel & other finished products; products made from fabrics, leather, and similar materials	Y	Y(2)	Y(3)	Y(4)	N
Lumber and wood products (except furniture)	Y	Y(2)	Y(3)	Y(4)	N
Furniture and Fixtures	Y	Y(2)	Y(3)	Y(4)	N
Paper and allied products	Y	Y(2)	Y(3)	Y(4)	N
Printing, publishing and allied industries	Y	Y(2)	Y(3)	Y(4)	N
Chemicals and allied products	Y	Y(2)	Y(3)	Y(4)	N
Petroleum refining and related industries	Y	Y(2)	Y(3)	Y(4)	N
Rubber and miscellaneous plastic products	Y	Y(2)	Y(3)	Y(4)	N
Stone, clay and glass products	Y	Y(2)	Y(3)	Y(4)	N
Primary metal products	Y	Y(2)	Y(3)	Y(4)	N
Fabricated metal products	Y	Y(2)	Y(3)	Y(4)	N
Professional scientific and controlling instruments; photographic and optical goods; watches and clocks	Y	Y(2)	Y(3)	Y(4)	N
Miscellaneous manufacturing	Y	Y(2)	Y(3)	Y(4)	N

Land Use	Yearly day-night average sound level in decibels (DNL)				
	Trade	65-69	70-74	75-79	80-84
Wholesale trade	Y	Y(2)	Y(3)	Y(4)	N
Retail trade-building materials, hardware, farm equipment	Y	25	30	Y(4)	N
Retail trade-including shopping centers, discount clubs, home improvement stores, electronic superstores, etc.	Y	25	30	N	N
Retail trade-food	Y	25	30	N	N
Retail trade-automotive, marine craft, aircraft and accessories	Y	25	30	N	N
Retail trade-apparel and accessories	Y	25	30	N	N
Retail trade-furniture, home furnishing and equipment	Y	25	30	N	N
Retail trade-eating and drinking establishments	Y	25	30	N	N
Other retail trade	Y	25	30	N	N

Land Use	Yearly day-night average sound level in decibels (DNL)				
	Transportation, Communication & Utilities	65-69	70-74	75-79	80-84
Railroad, rapid rail transit, and street railway	Y	Y(2)	Y(3)	Y(4)	N
Motor vehicle	Y	Y(2)	Y(3)	Y(4)	N
Aircraft	Y	Y(2)	Y(3)	Y(4)	N
Marine Craft	Y	Y(2)	Y(3)	Y(4)	N
Highway and street right-of-way	Y	Y	Y	Y	N
Automobile parking	Y	Y	Y	Y	N
Communication	Y	25 (5)	30 (5)	N	N
Utilities	Y	Y(2)	Y(3)	Y(4)	N
Other transportation, communication & utilities	Y	25 (5)	30 (5)	N	N

Land Use	Yearly day-night average sound level in decibels (DNL)				
	65-69	70-74	75-79	80-84	Over 85
<b>Services</b>					
Finance, insurance, and real estate	Y	25	30	N	N
Personal services	Y	25	30	N	N
Cemeteries	Y	Y(2)	Y(3)	Y(4,11)	Y(6,11)
Business services	Y	25	30	N	N
Warehousing and storage	Y	Y(2)	Y(3)	Y(4)	N
Repair services	Y	Y(2)	Y(3)	Y(4)	N
Professional services	Y	25	30	N	N
Hospitals, other medical facilities	25	30	N	N	N
Nursing homes	N(1)	N(1)	N	N	N
Contract construction services	Y	25	30	N	N
Government services	Y(1)	25	30	N	N
Educational services	25	30	N	N	N
Child care services, child development centers and nurseries	25	30	N	N	N
Miscellaneous	Y	25	30	N	N
Religious activities	Y	25	30	N	N

Land Use	Yearly day-night average sound level in decibels (DNL)				
	65-69	70-74	75-79	80-84	Over 85
<b>Resource production and extraction</b>					
Agriculture (except livestock)	Y(8)	Y(9)	Y(10)	N	N
Livestock farming	Y(8)	Y(9)	N	N	N
Animal breeding	Y(8)	Y(9)	N	N	N
Agriculture related activities	Y(8)	Y(9)	Y(10)	Y(10,11)	Y(10,11)
Forestry activities	Y(8)	Y(9)	Y(10)	Y(10,11)	Y(10,11)
Fishing activities	Y	Y	Y	Y	Y
Mining activities	Y	Y	Y	Y	Y
Other resource production or extraction	Y	Y	Y	Y	Y

<b>Table 9: Notes to Tables 2-8</b>	
1	A) Although local conditions regarding the need for housing may require residential use in these zones, residential use is discouraged in DNL 65-69 and strongly discouraged in DNL 70-74. The absence of viable alternative development options should be determined and an evaluation should be conducted locally prior to local approvals indicating that a demonstrated community need for the residential use would not be met if development were prohibited in these zones. Existing residential development is considered as pre-existing, incompatible land uses.
1	B) Where the community determines that these uses must be allowed, measures to achieve outdoor to indoor NLR of at least 25 decibels (dB) in DNL 65-69 and 30dB in DNL 70-74 should be incorporated into building codes and be considered in individual approvals; for transient housing, an NLR of at least 35dB should be incorporated in DNL 75-79.
1	C) Normal permanent construction can be expected to provide an NLR of 20 dB, thus the reduction requirements are often stated as 5, 10, or 15dB over standard construction and normally assume mechanical ventilation, upgraded sound transmission class ratings in windows and doors, and closed windows year round. Additional consideration should be given to modifying NLR levels based on peak noise levels or vibrations.
1	D) NLR criteria will not eliminate outdoor noise problems. However, building location, site planning, design, and use of berms and barriers can help mitigate outdoor noise exposure particularly from ground level sources. Measures that reduce noise at a site should be used wherever practical in preference to measures that only protect interior spaces.
2	Measures to achieve NLR of 25 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
3	Measures to achieve NLR of 30 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
4	Measures to achieve NLR of 35 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas, or where the normal noise level is low.
5	If project or proposed development is noise sensitive, use indicated NLR; if not, land use is compatible without NLR.
6	Buildings are not permitted.
7	Land use is compatible provided special sound reinforcement systems are installed.
8	Residential buildings require an NLR of 25dB.
9	Residential buildings require an NLR of 30dB.
10	Residential buildings are not permitted.
11	Land use that involves outdoor activities is not recommended, but if the community allows such activities, hearing protection devices should be worn when noise sources are present. Long-term exposure (multiple hours per day over many years) to high noise levels can cause hearing loss in some unprotected individuals.