

ARTICLE 4: COMMERCIAL DISTRICT (CM-1)

Statement of Intent

Generally, this district covers that part of the community intended for the conduct of general business to which the public requires direct and frequent access, but which is not characterized by constant heavy trucking other than stocking and delivery of retail goods, or by nuisance factors other than occasioned by incidental light and noise of congregation of people and passenger vehicles, which are less disruptive than those uses provided for in Industrial, (I-1).

4-1 Uses Permitted by Right ¹⁶⁵

Within the Commercial District (CM-1), the following uses are permitted by right. An asterisk (*) indicates additional, modified, or more stringent standards are listed in Article 1, Definitions, Use and Design Standards.

- Accessory uses as they pertain to items covered in Statement of Intent
- Agricultural Products Sales * ¹⁶⁶
- Autos and Home Appliance Services
- Banks
- Barber and Beauty Shops
- Bed and Breakfast * ¹⁶⁷
- Boarding House
- Bowling Alley
- Condominium, Business¹⁶⁸
- Daycare Center * ¹⁶⁹
- Dwelling, Business Accessory Use
- Feed and Seed Stores
- Fire Departments
- Food Sales
- Funeral Home
- Gasoline filling stations and/or the servicing and repairing of motor vehicles when in an enclosed structure.
- Golf Driving Ranges
- Hardware Stores
- Hotel
- Laboratories; Pharmaceutical and/or Medical¹⁷⁰
- Marina, Commercial ¹⁷¹

¹⁶⁵ Section 4-1 revised 08/24/1992& 03/024/1997

¹⁶⁶ Use added 07/25/2005

¹⁶⁷ Use added 06/28/2004

¹⁶⁸ Use added 06/26/2000

¹⁶⁹ Use added 05/23/2005

¹⁷⁰ Use added 12/17/2007

¹⁷¹ Use added 07/22/2002

- Maintenance of public utilities, including railroads (except railroad yards) and water and sewerage installations
- Miniature Golf Courses
- Motel
- Office and Personal and Professional Services
- Off-street Parking as required by this ordinance
- Professional Office Buildings
- Public garages, for storage and/or repair of motor vehicles when in an enclosed space
- Public and Semi-public uses, such as:
 - Churches
 - Church Adjunctive Cemeteries
 - Libraries
 - Museums
 - Schools
 - Hospitals
 - Post Offices
- Public utilities generating booster or relay stations, transformer substations, transmission line and towers, pipes, meters, and other facilities for the provisions and maintenance of public utilities, railroads and facilities; water and sewerage installations, and CATV¹⁷²
- Rescue Squad Facilities
- Restaurants
- Retail Drug Stores
- Sale of new and/or Used Vehicles¹⁷³
- Sales, Rental and Servicing of Construction and Agricultural Equipment ¹⁷⁴
- Schools of Special Instruction
- State Water Control Board Permitted Sewage Facilities¹⁷⁵
- Storage tanks, above ground, less than 10,000 gallons of gas or liquid storage or 8,593 gallons of dry storage¹⁷⁶
- Theaters
- Veterinarian Hospitals
- Waterfront Business Activities:
 - Wholesale and retail marine activities such as:
 - Activities primarily conducted on or about waterfront
 - All such uses shall be contiguous to a waterfront
 - Boat Docks
 - Boat Houses
 - Piers
 - Yacht Clubs and Servicing Facilities
- Wearing Apparel Shops

¹⁷² Section 4-1 Public Utilities Edited for Consistency Administratively 01/05/1996

¹⁷³ Use add as a Use By-Right 05/23/2005

¹⁷⁴ Use added 12/19/2005

¹⁷⁵ Use added 07/28/2008 as a use allowed by right.

¹⁷⁶ Use added 09/25/2006

- Wholesale and Processing Activities

4-2 RESERVED ¹⁷⁷

4-3 Uses Permitted by Special Use Permit (SUP) Only ¹⁷⁸

Within the Commercial District (CM-1), the following uses are permitted by Special Use Permit only:

- Adult Entertainment (see Article 4-9 for criteria) ¹⁷⁹
- Adult Movie Theatre (see Article 4-9 for criteria) ¹⁸⁰
- Adult Retail Establishment (see Article 4-9 for criteria) ¹⁸¹
- Automobile Graveyards
- Borrow Pit
- Commercial Amusement Parks
- Commercial Assembly Halls
- Dance Halls and similar forms of public amusement.
- Dock Facilities, Commercial/Non-Residential (see Article 8-4, Commercial/Non-Residential Docks Regulated) ¹⁸²
- Dwelling, Commercial Apartment
- Flea Markets
- Fraternal Lodges and Community Buildings
- Hospitals, Special Care
- Manufacturing, Light ¹⁸³
- Manufacturing, Temporary ¹⁸⁴
- Parks and Recreational Facilities
- Public Billiard Parlors and Pool Rooms
- Public Safety and/or Government Communications Towers, 250 ft. or less ¹⁸⁵
- Racetracks (Motor Vehicle or Animal)
- Sale of New and/or Used Manufactured Homes, with used manufactured homes not suitable for immediate occupancy to be stored in a fully enclosed area. ¹⁸⁶
- Setback Variance
- Storage tanks, above ground, greater than 10,000 gallons of gas or liquid storage or 8,593 gallons of dry storage¹⁸⁷
- Taxi Cab Service¹⁸⁸

¹⁷⁷ All CUP's converted to SUP's 07/22/2002

¹⁷⁸ Section 4-3 revised 08/24/1992 & 03/024/1997; All CUP's converted to SUP's 07/22/2002.

¹⁷⁹ Use added 01/23/2006

¹⁸⁰ Use added 01/23/2006

¹⁸¹ Use added 01/23/2006

¹⁸² Use added 08/25/2003

¹⁸³ Use added 03/24/1997

¹⁸⁴ Use added 08/23/2004

¹⁸⁵ Use added 03/24/2003; amended 8/25/2003 increasing height from 199 ft. to 250 ft., revised 04/27/2009 moved the word Towers from first word to before 250 ft. or less.

¹⁸⁶ Use Changed from By Right to SUP 03/24/1997

¹⁸⁷ Use added 09/25/2006 (also deleted "Private tanks or Pump Stations (above ground)")

- Windmills ¹⁸⁹

4-4 Height Regulations

- 4-4.1 Buildings may be erected up to thirty-five (35) feet in height from grade.
- 4-4.2 A building may be erected to a height of sixty (60) feet from grade provided that required front, side and rear yards shall be increased one (1) foot in height over thirty-five (35) feet.
- 4-4.3 Church spires, belfries, cupolas, monuments, water towers, chimneys, flues, flagpoles, elevator towers, television antennae, and radio aerials are exempt. Parapet walls may be up to four (4) feet above the height of the building on which the walls rest.
- 4-4.4 No accessory building which is within ten (10) feet of any party line shall be more than one (1) story high. ¹⁹⁰

4-5 Setback Requirements¹⁹¹

Buildings in this zone shall be a minimum of twenty (20) feet from the right-of-way of any street or highway on which the lot fronts. The setback may be reduced to fifteen (15) feet if a sidewalk is provided.

4-6 Yard Regulations

- 4-6.1 The minimum side and rear yards adjoining a boundary of a residential, agricultural or conservation district shall be ten (10) feet.
- 4-6.2 Accessory uses, including parking areas, shall be located ten (10) feet or more from side and rear lot lines adjoining a boundary of a residential, agricultural or conservation district.

4-7 Frontage Regulations

Each lot shall have a minimum street frontage of sixty (60) feet. ¹⁹²

4-8 Area Regulations.¹⁹³

For commercial lots, the minimum lot area shall be ten thousand (10,000) square feet.

¹⁸⁸ Use added 10/23/2000

¹⁸⁹ Use added 06/28/2004

¹⁹⁰ Removed requirement that all accessory buildings shall be less than the main building in height. 07/22/2002

¹⁹¹ Section 4-5 Revised 08/24/1992; Revised 06/01/1998; Revised 04/25/2005 to reduce setback from 50 ft. to 20 ft. and eliminate allowance for Special Use Permit for setback reduction.

¹⁹² Section 4-7 revised 06/26/2006 to delete minimum width requirements at setback line.

¹⁹³ Section 4-8 revised 08/26/1991

4-9 Special Use Permit (SUP) Criteria for Adult Businesses ¹⁹⁴

4-9.1 Preamble to Adult Business Ordinance

WHEREAS, adult businesses as defined in this ordinance require special supervision from the public safety agencies of the County in order to protect and preserve the health, safety, morals and welfare of the patrons of such businesses as well as the citizens of the County; and

WHEREAS, adult businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, the concern over the sexually transmitted diseases is a legitimate health concern of the County which demands reasonable regulation of adult businesses in order to protect the health and well-being of the citizens; and

WHEREAS, there is a convincing documented evidence that their secondary effects have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, it is recognized that adult businesses, due to their nature and secondary effects, have serious objectionable operational characteristics thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the Board of Supervisors desires to minimize and control these adverse secondary effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life, preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content-neutral ordinance which addresses the secondary effects of adult businesses; and

WHEREAS, based on evidence concerning the adverse secondary effects of adult uses on the community presented in the public hearing and in reports made available to the Board, and on findings incorporated in the case of *City of Renton v. Playtime Theatres, Inc.* 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, 120 S.Ct. 1382 (2000); and *Steakhouse, Inc. v. City of Raleigh*, 166 F.3d 634 (4th Cir. 1999), *cert. denied*, 70 U.S.L.W. 3460 (2002), and on studies in other communities including Phoenix, Arizona; Tucson, Arizona; St. Paul, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Austin Texas; and also on findings from the *Report of the Attorney General's Working Group on the Regulation of Sexually*

¹⁹⁴ Section 4-9 added 01/23/2006

Oriented Businesses (June 6, 1989, State of Minnesota), the Board of Supervisors finds:

- 4-9.1.1 Adult businesses lend themselves to ancillary unlawful and unhealthy activities. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
 - 4-9.1.2 Certain employees of adult oriented businesses defined in this ordinance engage in a higher incidence of certain types of illicit sexual behavior than employees of other establishments.
 - 4-9.1.3 Illicit sexual acts occur at adult businesses.
 - 4-9.1.4 Offering or providing such space encourages such activities, which creates unhealthy conditions.
 - 4-9.1.5 Persons frequent adult theaters and other adult businesses for the purpose of engaging in sex within the premises of such adult businesses.
 - 4-9.1.6 At least 50 communicable diseases may be spread by activities occurring in adult businesses, including syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigella infections.
 - 4-9.1.7 Since 1981 and to the present, there have been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States.
 - 4-9.1.8 The Surgeon General of the United States in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother of a newborn.
 - 4-9.1.9 According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
 - 4-9.1.10 Sanitary conditions in some adult businesses are unhealthy, in part, because the activities conducted there are unhealthy, and in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.
 - 4-9.1.11 Adult businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values.
 - 4-9.1.12 The findings noted in paragraphs number 1 through 11 raise substantial governmental concerns.
 - 4-9.1.13 The general health, safety and welfare of the citizens of the County will be promoted by the enactment of this ordinance.
- 4-9.2 In reviewing an application for these uses, the Planning Commission and Board of Supervisors, may consider the health, safety and general welfare of the public in accordance with (Section 4-9.1) the Preamble to this Ordinance and Section 15.2-2283 of State Code. To this end, the Planning Commission and Board of Supervisors may consider the following factors as well as other appropriate land use considerations:

PULASKI COUNTY ZONING ORDINANCE

- 4-9.2.1 The nature of the surrounding area and the extent to which the proposed use might significantly impair its present or future development;
- 4-9.2.2 The proximity of dwellings, churches, schools, parks, public buildings or public gathering places, hotels or motels or other commercial establishments;
- 4-9.2.3 The probable effect of the proposed use on the peace and enjoyment of people in their homes;
- 4-9.2.4 The limitations of fire and rescue equipment and the means of access for fire and police protection;
- 4-9.2.5 The effect of the use on the general transportation system and its ability to handle the additional use;
- 4-9.2.6 The preservation of cultural and historical landmarks and trees;
- 4-9.2.7 The probable effect of noise, vibrations and glare upon the uses of surrounding properties;
- 4-9.2.8 The contribution, if any, such proposed use would make toward the deterioration of the area and nearby environs; and
- 4-9.2.9 The probable effect that alcohol sales and/or consumption at or in proximity to the adult use would have in heightening the risk of violations of local laws, and any negative secondary effects on surrounding properties and the neighborhood.