

**JEFFERSON COUNTY, WEST VIRGINIA**  
**Departments of Planning & Zoning**  
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MEMORANDUM

**TO:** JEFFERSON COUNTY PLANNING COMMISSION  
**FROM:** JENNIFER BROCKMAN, DIRECTOR OF PLANNING  
**DATE:** APRIL 8, 2011  
**SUBJECT:** APRIL 12, 2011 PLANNING COMMISSION MEETING

Please find attached the following documents for consideration at the April 12, 2011 Planning Commission meeting.

**Documents provided:**

- **April 12, 2011 agenda and map.**

1. Election of President, and if necessary, Other Officers
2. Approval of minutes for the March 8, 2011 meeting.  
Approval of minutes for the March 22, 2011 special meeting.

**Documents provided:**

- **March 8, 2011 Planning Commission meeting minutes**
- **March 22, 2011 Planning Commission special meeting minutes**

3. Citizen Communications.
4. Request for postponement.
5. Request by Bettye K. Mason for a waiver from Subdivision Regulations Section 20.201 A.2, Section 21.103 D and Appendix B, Section 2.2 H to allow access for a proposed lot with an existing residence on an existing 20 foot access easement. This property is located on the north side of Summit Point Road at the intersection with Hardesty Road and is designated as Tax District: Kabletown, Map: 16, Parcel: 3.

**Documents provided:**

- **Staff Recommended Motion**
- **Staff Report History**
- **Engineering Staff Report**
- **Bettye K. Mason waiver application**

6. Public Hearing for Draft Policy Neutral Zoning Ordinance Amendments.

**Documents Provided:**

- **Memo regarding Draft Policy Neutral Zoning Ordinance Amendments**
- **Policy Neutral Zoning Ordinance Amendments**

7. Discussion regarding Planning Commission Bylaws.

**Documents provided:**

- **Planning Commission Bylaws**

8. Reports from Legal Counsel and legal advice to PC.

**Documents provided:**

- **Court Decision regarding Henry v. JCPC**

9. Director's Report.

- Quarterly Report
- Mandatory Planning Commissioner training set for April 26, 2011.

**Documents provided:**

- **Director's agenda**
- **Activity Reports**
- **Quarterly Report**
- **Email and Flyer regarding Regional Planning Conference**
- **County Commission minutes requiring New Planning Commission Member Training**

10. County Commission Liaison Report.

11. Planning Commission Exchange.

- Report from the Health Department Meeting Liaison.
- Report from the Public Service District Meeting Liaison.
- Report from the Jefferson County Development Authority Meeting Liaison.
- Report from the Water Advisory Committee Meeting Liaison.

12. President's Report.

13. Actionable Correspondence.

14. Non-Actionable Correspondence.

**Documents provided:**

- **PPC Memos**
- **Paul Taylor resume**
- **Ed Burns resume**

If you have any questions or any items are missing; please contact the office at (304) 728-3228 from 9:00 a.m. to 5:00 p.m. Thank you.

AGENDA  
JEFFERSON COUNTY PLANNING COMMISSION  
April 12, 2011

**Planning Commission meetings are located in the Old Charles Town Library meeting room at 200 East Washington Street, at the side entrance on Samuel Street at 7:00 PM**

1. Election of President, and if necessary, Other Officers
2. Approval of minutes for the March 8, 2011 meeting.  
Approval of minutes for the March 22, 2011 special meeting.
3. Citizen Communications.
4. Request for postponement.
5. Request by Bettye K. Mason for a waiver from Subdivision Regulations Section 20.201 A.2, Section 21.103 D and Appendix B, Section 2.2 H to allow access for a proposed lot with an existing residence on an existing 20 foot access easement. This property is located on the north side of Summit Point Road at the intersection with Hardesty Road and is designated as Tax District: Kabletown, Map: 16, Parcel: 3.
6. Public Hearing for Draft Policy Neutral Zoning Ordinance Amendments.
7. Discussion regarding Planning Commission Bylaws.
8. Reports from Legal Counsel and legal advice to PC.
9. Director's Report.
  - Mandatory Planning Commissioner training set for April 26, 2011.
  - Quarterly Report
10. County Commission Liaison Report.
11. Planning Commission Exchange.
  - Report from the Health Department Meeting Liaison.
  - Report from the Public Service District Meeting Liaison.
  - Report from the Jefferson County Development Authority Meeting Liaison.
  - Report from the Water Advisory Committee Meeting Liaison.
12. President's Report.
13. Actionable Correspondence.
14. Non-Actionable Correspondence.

The Planning Commission welcomes written comments at any time. Our office is open Monday through Friday, 9:00 a.m. to 5:00 p.m., and is located at 116 East Washington Street, P.O. Box 338, Charles Town, WV 25414. Our phone number is (304) 728-3228; our fax number is (304) 728-8126; our email address is [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org) and our website is [www.jeffersoncountywv.org](http://www.jeffersoncountywv.org).

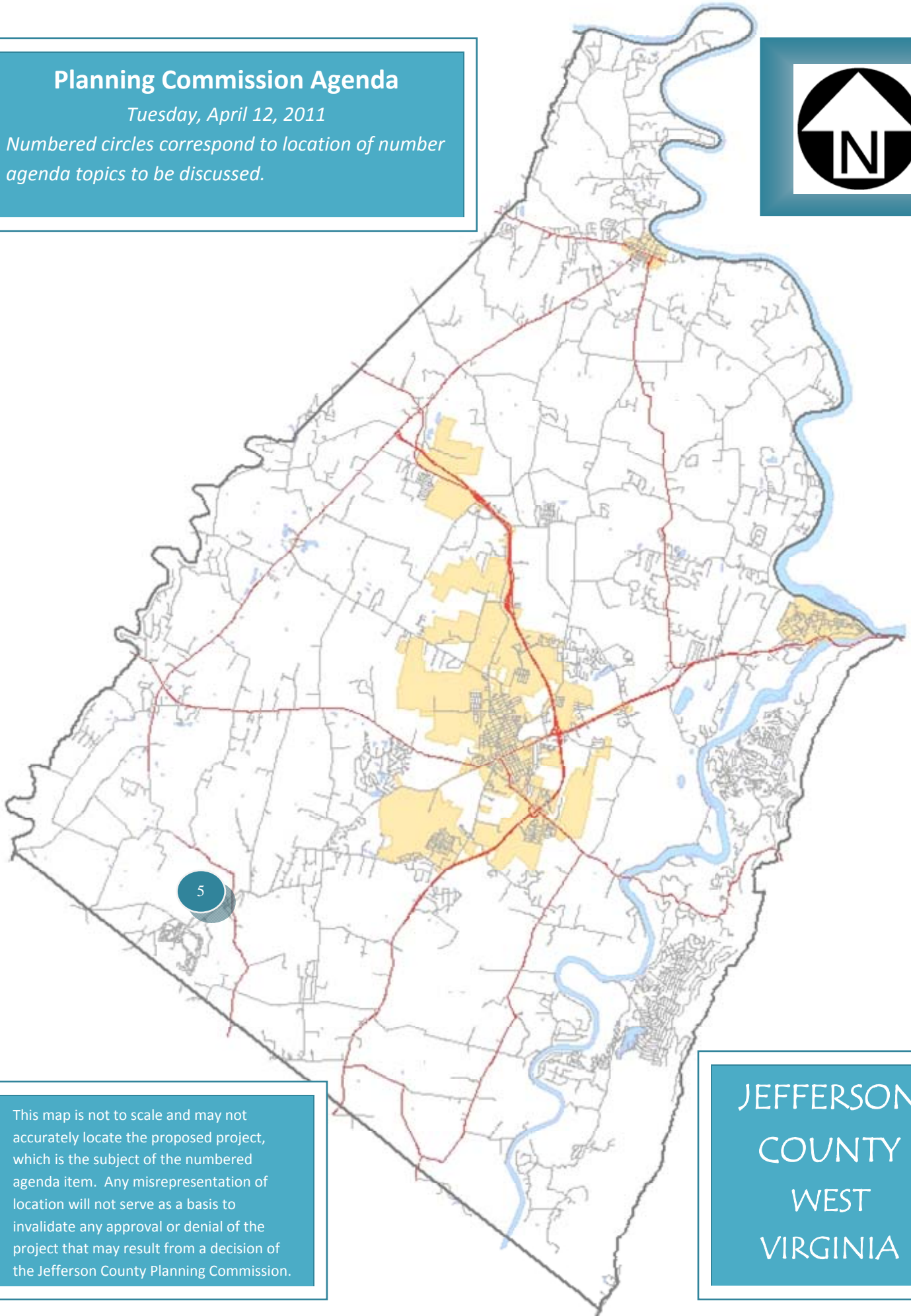
AGENDA  
JEFFERSON COUNTY PLANNING COMMISSION  
MARCH 8, 2011  
PAGE 2 OF 2

Minutes and video recordings of past meetings, Subdivision Regulations, Zoning Ordinance, and the Comprehensive Plan can be found on the website. The office has a file on each project as well as aerial photos of the county. Minutes and audio recordings of older meetings not on the website are available for review in the office.

# Planning Commission Agenda

Tuesday, April 12, 2011

Numbered circles correspond to location of number agenda topics to be discussed.



This map is not to scale and may not accurately locate the proposed project, which is the subject of the numbered agenda item. Any misrepresentation of location will not serve as a basis to invalidate any approval or denial of the project that may result from a decision of the Jefferson County Planning Commission.

JEFFERSON  
COUNTY  
WEST  
VIRGINIA

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
MARCH 8, 2011

The Jefferson County Planning Commission met on Tuesday, March 8, 2011, with the following Commission members present: Daniel Hayes, Vice-President; Morgan Etters, Secretary; Gene Taylor, Kelly Baty, Eric Smith and Arnold Dailey. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Steve Barney, Zoning Administrator; Jonathon Saunders, County Engineer; Stephen Groh, Assistant Prosecuting Attorney; and Amy Puetz, Planning Clerk.

Mr. Walt Pellish was present via telephone.

John Maxey and Tom Trumble were absent with notification.

Mr. Hayes called the meeting to order at 7:05 PM.

1. **Approval of minutes for the February 8, 2011 meeting.**

Mr. Hayes recommended an amendment on page 4, first line to change to spelling of *Principle* to *Principal*. Mr. Taylor moved to approve the minutes with the suggested change. Mr. Dailey seconded the motion which carried unanimously.

2. **Citizens Communication:** None.

3. **Request for postponement:** None.

4. **Concept Plan Review for Paynes Ford Station (PC File #10-12). This property is located at the intersection of Paynes Ford Road and Bowers Road. This project consists of a residential subdivision to include a total of 36 residential lots, a reside parcel, open space parcel, stormwater management parcel, right-of-way dedications and internal roadways on 141.6 acres located in Tax District: Middleway; Tax Map: 6; Tax Parcel: 8.**

Mr. Rivard explained the Concept Plan process. Mr. Mark Dyck, with William H. Gordon, Associates, described the project for the Planning Commission. He reviewed, in detail, the conditions that were placed on the project by the Board of Zoning Appeals in 2008 upon issuance of the Conditional Use Permit. Mr. Baty inquired as to whether Mr. Dyck's role as the President of the Economic Development Authority posed a conflict of interest. Mr. Hayes confirmed that Mr. Dyck had fully disclosed his positions. Ms. Brockman explained that this was a residential development and not an economic development.

Mr. Rivard reviewed what process the project had already completed and what processes were to occur next. He read from his staff report stating that staff finds the application complete.

Mr. Hayes opened the public workshop. (Please see attachment for detailed comments.)

Mr. Scott Chapman, area resident, asked if the Voluntary Remediation program was for the entire property or if it limited to the part of the parcel being developed. Mr. Dyck clarified that the remediation would be for only the part of the property being developed.

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
MARCH 8, 2011  
PAGE 2 of 7

Mr. George Nichols, area resident, raised concerns of arsenic, DDT, and lead levels that may be emitted when soil is disrupted.

Ms. Jennifer Syron, resident of Chapel View, asked several questions covering topics of cable installation, percussion drilling, Karst, school bus schedules and bus stops, bus shelters, development entrances and exits, safety hazards of Duffy's Cavern, Emergency Responders, details of future Homeowner's Association and its covenants, and stormwater management.

Ms. Barbara Fuller, also a resident of Chapel View, questioned whether Paynes Ford Station would be paying Orchard Knolls for the opportunity to hook up to the sewer and water lines in Chapel View, what amount would be paid, and when the payment would occur. She also commented that there was a crowding of homes on one side of the property and asked if an appeal would be filed to eventually build more homes on the residue. She raised concern that the elevation of Paynes Ford Station was higher than that of Chapel View and requested that stormwater management issues be addressed to prevent Chapel View properties from being flooded.

Mr. Mark Eddy, neighboring property owner, stated that he was under the impression that conditions placed on the Conditional Use Permit would have increased the lot sizes to greater than 3 acres each. He asked if the residue would be developed in the future to include more houses. He also suggested that neighboring properties be more thoroughly notified for future projects.

Mr. Taylor moved to close the public workshop. Mr. Dailey seconded the motion which carried unanimously.

Mr. Eric Smith entered the room at 8:05 PM.

Mr. Dyck responded in general to several of the comments. He stated that lead and arsenic levels are tightly bound to the soil and that the Department of Environmental Protection would be involved in monitoring levels. He commented that, in regards to the development of the remaining residue, there were no remaining development rights. However, if the regulations were to change or the County would rezone the property, the parcel would hold the same rights to develop as any other residue in Jefferson County. In regards to the size of the lots, Mr. Dyck commented that the development plans had been reviewed with county staff and legal counsel and that the lot size depicted on the Concept Plan was a requirement for the community to be a water and sewer development. He confirmed that the site is Karst and that there was a cavern on the property that was on the Berkeley County side of the development. He stated that there was concern that if it were fenced for safety then children could climb to get in but then be unable to get out. Mr. Dyck agreed that bus shelters were a good idea but felt that it should be a requirement for all developments and written into the Subdivision Regulations. Concerning stormwater management, he stated that no more rate of water can flow off the site after development as before development and that the stormwater management pond would have a liner so that there would be no infiltration.

Mr. Hayes suggested that the Planning Commission give direction at a special-called meeting on March 26, 2011. He requested that the public comment be consolidated in a report which should include a staff recommendation. Mr. Dyck asked that the report be submitted to the applicant so that the applicant could respond at the next meeting.

Mr. Smith moved to take no action at this meeting, have staff summarize the given public comment, and to reconvene at a special-called meeting on March 26, 2011. Mr. Taylor seconded the motion which carried unanimously.

**5. Request by Thomas J. Kiefer for a waiver from Subdivision Ordinance Appendix B:**

- **Section 2.2 (Street and Road Requirements) to be allowed to use the existing at grade driveway;**
- **Section 2.3 (Access to Public Roads) to allow an asphalt entrance apron instead of concrete;**
- **Section 2.5 (Internal Driveway) and Section 9.4 (Minimum Driveway Width and Maximum Driveway Slope Requirements) to increase the maximum allowed slope from 8% to 15% and to waive the width requirement to prevent disturbing the existing vegetation;**
- **And Section 4.3 (Stormwater Management) to waive the requirement to provide stormwater management for all areas of the site that are to be disturbed.**

**This property is located at 16357 Charles Town Road and is designated as Tax District: 2, Map: 19, Parcel: 17.6.**

Mr. Rivard noted that Planning Staff would only address the waiver requesting relief from the width of the access road. He read from his staff report recommending approval of the waiver from Section 2.2 with a condition that the access width be 22 feet from Route 9 to the top of the incline and from the bend in the access to the parking area on the property. Mr. Rivard then differed to Engineering. Mr. Saunders read from his staff report and recommended approval of the waiver from Section 2.3 if the applicant meets or exceeds the standard specified in R-05B of the Jefferson County Standard Details. He recommended denial of the waivers requested for Sections 2.2, 2.4, 4.3, and 9.4 stating that of the four requirements for granting a waiver, three of the requirements were not met.

Mr. Rivard reminded the Planning Commissioners of written comments regarding this item that were submitted to the Planning and Zoning office earlier that day by Gene Armstrong on behalf of Thomas W. Weller, adjoining property owner. These comments sited several concerns that Mr. Weller had regarding the proposed use on the property and requested for the Planning Commission to visit the site before granting any variances.

Mr. Thomas J. Kiefer and Ms. Linda Losey, owners of the property, gave a visual presentation to the Planning Commission describing the mini-farm distillery being proposed for that site and the layout of the property. Ms. Losey described the waiver requests and the reasons they believed those waivers were needed.

Mr. Hayes opened the public hearing. Mr. Gene Armstrong, representing adjoining property owner, Mr. Thomas Weller, stated that the property had been timbered and raised concern that there were three streams on the property that may be affected by development. He stated

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
MARCH 8, 2011  
PAGE 4 of 7

that Mr. Weller may again raise cattle on his property in the future and would like the streams protected. He also stated that the posted notice was not on the correct parcel. Mr. Armstrong stated that Mr. Weller has rights to use the access easement and to cross a neighboring property to gain access to another parcel he owns behind the applicants parcel and was concerned if there would be enough space for his tractor and for traffic to pass on the access easement.

Mr. Nick Frobouck, previous owner of the applicant's property, clarified that the only running water on the property was what was under the entryway. He stated that he had the road built and that there was 12" of shale on the access. He raised concern that there had never been cattle there since he could remember and that the issues being raised by Mr. Armstrong for Mr. Weller may be personal. Mr. Armstrong commented that was false.

Mr. Dailey moved to close the public hearing. Mr. Taylor seconded the motion which carried unanimously.

There was discussion regarding the current width versus the required width of the access road.

Mr. Smith moved to grant the waiver of Section 2.2 to allow use of the existing at-grade driveway with the exceptions that it be widened to 24 feet from Route 9 (from the edge of the apron) to 10 to 15 feet beyond the adjoining driveway and that the road depth is certified by an engineer to be acceptable and if not acceptable then to add stone to existing shale or to replace the shale if necessary because it is in conformance with the four criteria as written in Division 24.300 of the Subdivision Regulations. Mr. Taylor seconded the motion. Mr. Hayes offered a friendly amendment to widen the road to 18 feet at the corner point, or bend, of the easement to the parking area. Mr. Taylor and Mr. Smith accepted the friendly amendment. Mr. Dailey asked if any increase in parking would require a site plan and raised concern that granting the variance may cause problems in the future if the site were to have expanding improvements. Mr. Hayes called to question. The motion carried 5 for and 1 opposed (Mr. Dailey).

Mr. Smith moved to grant the waiver of Section 2.3, Access to Public Roads, to allow an asphalt entrance apron instead of concrete because this waiver is in conformance with the four criteria as written in Division 24.300 of the Subdivision Regulations. Mr. Dailey seconded the motion which carried unanimously.

Mr. Smith moved to grant the waiver of Section 2.5, Internal Driveway, and Section 9.4, Minimum Driveway Width and Maximum Driveway Slope Requirements, to increase the maximum allowed slope from 8% to 15% and to waive the width requirement to prevent disturbing the existing vegetation because this waiver meets the four criteria. Ms. Etters seconded the motion which carried unanimously.

Mr. Smith moved to grant the waiver of Section 4.3, Stormwater Management, to waive the requirement to provide stormwater management for all areas of the site that are to be disturbed because it meets the four criteria for such a waiver. Mr. Taylor seconded the

motion. Mr. Dailey asked for clarification from Mr. Saunders as to why the Engineering Department was against this waiver. Mr. Saunders explained that the Subdivision Regulations state that curb and gutter are not required if the site uses Low Impact Development (LID) techniques and that the LID techniques should be required if this motion is granted. The motion resulted in indecision. (Mr. Taylor, Mr. Hayes, and Mr. Smith were for the motion. Mr. Dailey, Mr. Baty, and Ms. Etters were opposed to the motion.) There was discussion clarifying that since the motion did not pass, the Subdivision Regulations would be required to be followed, however, LID techniques outlined in the Subdivision Regulations could be used.

**6. Public Hearing for Proposed Text Amendment for Section 20.203 and Definition of Major Site Plan and Minor Site Plan of the Jefferson County Subdivision Regulations.** Mr. Rivard reviewed the proposed text amendment. Mr. Hayes opened the public hearing.

Ms. Barbara Scott, owner of Summit Point Raceway, voiced support of the text amendment and stated that it should move forward as quickly as possible.

Mr. Mark Dyck, President of the Jefferson County Development Authority, stated that this amendment was critical to economic development in the county. He commented that the county could lose businesses due to the length the process would take if the text were to stay the way it is currently written.

Mr. Jason Gerhardt, of William H. Gordon Associates, gave examples of projects the company is currently working on and the problems they have face with the current wording of the text. He voiced support of the amendment.

Mr. Pete Kubic, Kubic Construction, also voiced support of the amendment to prevent the length of the process as it is now. He commented that there needs to be a “fast-track” approval process for businesses.

Mr. Dailey moved to close the public hearing. Mr. Taylor seconded the motion which carried unanimously.

Ms. Brockman made a correction to both of the Major Site Plan and Site Plan, Major definitions within the memo. She stated that “B” and “C” of those definitions should be combined with the word “except” connecting them.

Ms. Etters moved to forward the amendments to County Commission with the correction made by staff. Mr. Dailey seconded the motion which carried unanimously.

**7. Discussion and vote regarding Draft Policy Neutral Zoning Ordinance Amendments and the possible scheduling of a public hearing.**

Mr. Barney reviewed the amendments and changes that had been made to the document. He explained what next steps could be to the Planning Commission. Mr. Hayes stated that it would be appropriate to continue this discussion at a work session to be held at the March 22, 2011 Special Meeting.

**8. Report on the US 340 Corridor East Gateway Plan – Overview of Planning Process and the 03/26/2011 Kick-off Meeting.**

Ms. Brockman gave a short presentation on the plan for the March 26, 2011 Kick-off Meeting and stated that staff had sent over 1,800 letters of invitation to the meeting.

**9. Discussion regarding Planning Commission Bylaws.**

Ms. Brockman explained that the Planning Commission Bylaws as written did not include an attendance policy. She stated that most bylaws contain that information and that it should be discussed with the new Planning Commissioners that were to be appointed on March 31, 2011.

**10. Reports from Legal Counsel and legal advice to PC.**

- **Discussion and vote on Finding of Fact and Conclusions of Law for the denial of a requested time extension for Far Away Farms.**

Mr. Groh explained to the Planning Commission that a quorum of the Planning Commission of the members that were present at the December 14, 2010 meeting are required to be able to vote on the Findings of Fact for Far Away Farms. This item was postponed to the March 22, 2011 Special Meeting.

**11. Director's Report.**

- **Activity Reports.** The activity reports were provided in the agenda packets.
- **Update on Blue Ridge Mountain Communities Watershed Final Citizen's Committee meeting (held 2/26/11) and potential next steps.**  
Ms. Brockman reported that the work with the Citizen's Committee had been completed and that staff had encouraged them to continue on with a citizens' effort. She stated that staff would provide as much support as possible.
- **Report on Home Occupation/Cottage Industry Roundtable Discussion (held 3/1/11)**  
Ms. Brockman described the Roundtable Discussion and reported that substantial public comment had been received. She confirmed that all critical staff would meet to discuss the comments.
- **Update on Annual Report Subcommittee**  
Ms. Brockman stated that, since the Annual Report Subcommittee had dissolved, she would leave it up to the Commissioners to reinstate the subcommittee if they felt necessary. Mr. Hayes commented that he would leave that up to the discretion of Mr. Trumble.
- **Budget/Work Plan Submission**  
Ms. Brockman reported that the Budget/Work Plan had been submitted to the County Commission on February 14, 2011.
- **Staff involvement in the Regional Planning Conference to be held in Cumberland, MD, May 5-6, 2011**  
Ms. Brockman informed the Planning Commission of the conference and stated that she would relay information as it became available.
- **Recent CC agenda items.** None reported.
- **Upcoming CC agenda items**

Ms. Brockman stated that she would be informing the County Commission on the Urban Tree Canopy updates and the kick-off of the US 340 Study on Thursday, March 10, 2011. She reported that the Wireless Telecommunication amendments, the Urban Growth Boundaries, and the department fees would be discussed at the March 17, 2011 County Commission meeting and she would also take the referral for the Subdivision Regulations that were discussed earlier to that County Commission meeting.

12. **County Commission Liaison Report.** Mr. Pellish complimented Mr. Hayes on his role as acting Chairman for the meeting and he thanked all in attendance for their hard work.

13. **Planning Commission Exchange.**

- **Report from the Health Department Meeting Liaison.** None.
- **Report from the Public Service District Meeting Liaison.** A report provided by Mr. Hayes via e-mail was included in the packet.
- **Report from the Jefferson County Development Authority Meeting Liaison.** None.
- **Report from the Water Advisory Committee Meeting Liaison.** None.

14. **President's Report.** None.

15. **Actionable Correspondence.** None.

16. **Non-Actionable Correspondence.** Ms. Brockman presented a letter from Mr. Maxey stating that he did not intend to reapply to the Planning Commission.

Mr. Taylor moved to adjourn the meeting at 11:01 PM. Mr. Smith seconded the motion which carried unanimously. A detailed transcript of the meeting may be found on our website. These minutes were prepared by Amy Puetz, Planning Clerk.

MINUTES  
JEFFERSON COUNTY PLANNING COMMISSION  
SPECIAL MEETING  
MARCH 22, 2011

The Jefferson County Planning Commission met on Tuesday, March 22, 2011, with the following Commission members present: Thomas Trumble, President; Daniel Hayes, Vice-President; Morgan Eppers, Secretary; Gene Taylor, John Maxey, Kelly Baty, Eric Smith and Arnold Dailey. Staff members present included Jennifer Brockman, Director of Planning and Zoning; Seth Rivard, Planner; Steve Barney, Zoning Administrator; Jonathon Saunders, County Engineer; Stephen Groh, Assistant Prosecuting Attorney; and Julie Quodala, Office Manager.

Mr. Walt Pellish was absent with notification.

Mr. Trumble called the meeting to order at 7:05 PM.

- 1. Planning Commission direction given in response to the Concept Plan Review for Paynes Ford Station (PC File #10-12). This property is located at the intersection of Paynes Ford Road and Bowers Road. This project consists of a residential subdivision that includes 36 residential lots, a residue parcel, open space parcel, storm water management parcel, right-of-way dedications and internal roadways on 141.6 acres located in Tax District: Middleway; Tax Map: 6; Tax Parcel: 8.**

Mr. Trumble asked legal counsel if this item was to be discussed by the Planning Commission only or if the public would be allowed to speak and if so, would it be all of the public or just the public in part. Mr. Groh responded that, from his recollection of the last meeting, it was to be a discussion between the Planning Commission and that if the public were to be allowed to speak, it should be all of the public not just part of the public. Mr. Trumble then asked how this item was noticed to the public. Ms. Brockman confirmed that the notice stated that the public workshop had been closed and no public comment would be taken. Mr. Trumble stated that his intent was to have only Planning Commission discussion. Mr. Mark Dyck, the applicant representative, stated that it was his understanding at the March 8<sup>th</sup> meeting, that staff would compile the public comment and that he would be given a chance to respond to those comments. Ms. Brockman attested that a copy of the comments report was sent to the applicant for review, as requested by the Planning Commission at the March 8<sup>th</sup> meeting. Mr. Trumble raised concern that the notice had stated no public comment would be received and that allowing the applicant to speak may violate the Open Meetings Act by not allowing opposition to speak. Mr. Groh confirmed that the most appropriate action would be for discussion to occur between just the Planning Commission. Ms. Brockman suggested permitting the applicant to waive the 14 day requirement to allow proper notice to reopen the public hearing if the applicant would like to respond. Mr. Dyck stated that there would be nothing new for the public to comment on and reiterated that there was open discussion in which he was allowed to speak after the close of the public work session at the March 8<sup>th</sup> meeting. Additionally Mr. Dyck stated that he was under the assumption that open discussion would continue at this meeting. He confirmed that the developer would follow the Subdivision Regulations and would not voluntarily place any more conditions on the property than outlined in the regulations.

Mr. Rivard briefly explained the comments table that was compiled by staff and provided to the Planning Commission in their agenda packets. He suggested that any comment marked as “not in the purview of the Planning Commission” or “already included in the Subdivision Regulations” be eliminated from discussion. Mr. Trumble confirmed that only comments marked as “should be discussed by the Planning Commission” would be discussed.

The first comment discussed was: *Is the Voluntary Remediation Program for the entire property or is it limited to the development in the North?* This question was asked by Scott Chapman at the March 8, 2011 public workshop. There was discussion regarding whether a Voluntary Remediation Plan had been enacted. Mr. Trumble remembered that a plan of that nature had been submitted when this project was originally presented to the Board of Zoning Appeals. Mr. Hayes suggested making the plan a part of the preliminary plat submission. Mr. Hayes moved to request the applicant to provide the Voluntary Remediation Plan to include the limits of the remediation. Mr. Smith seconded the motion. Mr. Maxey offered a friendly amendment to request information demonstrating adherence to a time frame for the plan. Mr. Trumble offered a friendly amendment that instead of a Voluntary Remediation Plan, to request a Remediation Plan that includes a schedule of specific tasks, which the Planning Commission will ensure are adequate. Mr. Hayes stated that the currently prepared plan would be adequate for preliminary plat submission and should be left as a Voluntary Remediation Plan. Ms. Brockman raised concern that if there was any content in the Voluntary Remediation Plan report that would be submitted with the preliminary plat which could possibly affect the approval of the project, the Planning Commission should request to review that report before preliminary plat submission in order for the applicant to amend the project as needed. She also stated that the applicant would need to follow state regulations. Mr. Hayes clarified his motion to require that the applicant submit the Voluntary Remediation Plan with the preliminary plat to define the extent of remediation. Mr. Trumble called to question. The motion carried 7 for and 1 opposed (Mr. Dailey).

The second comment discussed was: *Will the Developer be working with Comcast to preinstall cable facilities as outlined in the Jefferson County Cable Franchise Agreement?* This question was asked by Jennifer Syron at the March 8, 2011 public workshop. Mr. Hayes moved to not make any recommendations to the applicant due to Appendix B, Section 3.2 of the Jefferson County Subdivision Regulations which require all utility transmission lines to be placed underground. Mr. Smith seconded the motion which carried unanimously.

The third comment discussed was: *If Karst is discovered on a particular site will the potential home buyers be notified?* This question was asked by Jennifer Syron at the March 8, 2011 public workshop. Mr. Hayes moved that the Planning Commission not apply direction to the applicant on this issue. There was discussion regarding sinkholes. It was determined that sinkholes have requirements within the Subdivision Regulations. Mr. Dailey seconded the motion which carried unanimously.

The fourth comment discussed was: *If Karst is found, what efforts will be made by the developer or the builder during construction to minimize potential damage to the houses?* This question was asked by Jennifer Syron at the March 8, 2011 public workshop. Mr. Maxey moved that the applicant be directed to follow Subdivision and Land Development

Regulations with regards to sinkholes. Mr. Baty seconded the motion which carried 6 for and 2 opposed (Mr. Dailey and Mr. Hayes).

The fifth comment discussed was: *Will there be separate entrances/exits to the development in each county?* This question was asked by Jennifer Syron at the March 8, 2011 public workshop. Mr. Hayes moved to give no direction to the applicant regarding entrances because the applicant had provided a Concept Plan showing the entrance in Jefferson County and an approved plat in Berkeley County that had an entrance already constructed. Ms. Eppers seconded the motion which carried unanimously.

Mr. Maxey moved to combine two of the comments. Mr. Taylor seconded the motion which carried unanimously. The last two comments discussed were: 1) *Will the residue be purified of chemicals and then an appeal be filed to build more homes on that residue?* This question was asked by Barbara Fuller at the March 8<sup>th</sup> public workshop. 2) *Neighbors were under the impression that the lot sizes would also be increased to greater than 3 acres so that houses would not be bunched in one area. Since that is not the case, will the residue be developed in the future to include more houses?* This question was asked by Mark Eddy at the March 8<sup>th</sup> public workshop. Ms. Brockman clarified that the Supreme Court decision of *Jefferson Orchard, Inc. v. Jefferson County Board of Zoning Appeals Civil Action No. 06-C-388* stated that the property was to have a maximum density of 37 homes. She stated that staff suggested having a note on the plat that states only one additional home may be built on the residue for a total of 37 homes. Mr. Maxey moved to require the applicant to place a note on the plat that would follow through to the final plat specifically requiring that no further development be done on the residue parcel and stating that such development would violate the Conditional Use Permit (CUP) for the original subdivision. Mr. Baty seconded the motion. Mr. Groh suggested adding language to that note to state that no lot in the subdivision could be further subdivided subject to CUP #Z02-02. Mr. Maxey agreed and accepted Mr. Groh's suggestion as a friendly amendment to his motion. Mr. Hayes asked for clarification as to whether the note would limit the applicant's rights in the future, if the zoning requirements were to change or if the CUP were lifted. Mr. Groh confirmed that the note would only enforce the Supreme Court decision and restrictions already in place with the CUP and that if the hypothetical need for the CUP were eliminated in the future, the note would not supersede the new regulations. Mr. Hayes offered a friendly amendment that the CUP number and the Supreme Court Case number be included in the note on the plat. Mr. Maxey restated his motion to request that the Planning Commission Attorney draft the plat note which staff will require limiting the density as per the CUP and the Supreme Court case. Mr. Baty seconded the motion which carried unanimously.

Mr. Hayes moved to approve the Concept Plan with the discussed direction. Mr. Baty seconded the motion which carried 7 for and 1 abstention (Mr. Maxey abstained stating that he did review the meeting, but did not feel comfortable voting on the approval of the Paynes Ford Station Concept Plan because he had been unable to have dialogue the applicant during the public workshop held at the previous Planning Commission meeting).

**2. Discussion and vote on Finding of Fact and Conclusions of Law for the denial of a requested time extension for Far Away Farms.**

Ms. Brockman reviewed the events of the December 14, 2010 Planning Commission meeting, which the Planning Commission denied a requested time extension for Far Away Farms. Mr. Groh presented the Findings of Fact and Conclusions of Law for the decision made regarding Far Away Farms. Mr. Maxey moved to approve the Findings of Fact and Conclusions of Law as written. Mr. Baty seconded the motion which carried 6 for and 2 abstentions (Mr. Dailey and Ms. Etters).

**3. Presentation of Draft Policy Neutral Zoning Ordinance Amendments in preparation for a public hearing on April 12, 2011.**

Ms. Brockman stated that the goal for the meeting was to review the amendments and to vote to allow this version to be posted for public review. Mr. Barney reviewed the amendments for the Planning Commission.

Mr. Trumble asked if there would be a “searchable” version of the document available to the public. Mr. Barney confirmed importance of having searchable documents on our website and assured the Planning Commission that attempts were being made to make all of the Planning Department’s documents searchable.

With regards to Article 5.7(A)(30-33), which were taken from Article 2.2 Definitions, Mr. Trumble raised concern that these terms should be left with the definition of agricultural use. Ms. Brockman had suggested referencing Section 5.7 in the related definition. Mr. Maxey agreed with this suggestion. Mr. Trumble stated that he still felt these terms should be included in the definitions section of the Zoning Ordinance.

Ms. Brockman explained that the soil names and values in Section 6.3 would be corrected.

Mr. Trumble suggested that the word “perceived” in Section 5.8, first line, be removed.

Mr. Hayes moved to approve the amendments for public release with the changes suggested and to schedule a public hearing for April 12, 2011. Mr. Maxey seconded the motion which carried unanimously.

Mr. Hayes reported that he had received an e-mail from Linda Losey thanking Mr. Rivard, Mr. Barney and Mr. Saunders for their hard work. He also expressed gratitude to Mr. Maxey for his service on the Planning Commission.

Mr. Trumble announced that he would not be reapplying for a Planning Commission position and that this would be his last meeting.

Mr. Trumble adjourned the meeting at 8:40 PM. A detailed transcript of the meeting may be found on our website. This meeting was recorded by Julie Quodala, Office Manager. These minutes were prepared by Amy Puetz, Planning Clerk.

**A Motion regarding  
Waivers for Bettye K. Mason  
April 12, 2011**

**Please Note** – Any motion made by the Planning Commission regarding the Bettye Mason waiver requests shall reference the 4 criteria for a waiver, which is listed below, findings of fact and any conditions.

1. The design of the project will provide public benefit in the form of reduction in County maintenance cost, greater open space, parkland consistent with the County parks plan, or benefits of a similar nature.
2. The waiver, if granted, will not adversely affect the public health, safety or welfare or the rights of adjacent property owners or residents.
3. The waiver, if granted, will be in keeping with the intent and purpose of this Ordinance.
4. The waiver, if granted, will result in a project of better quality and/or character.

**Now therefore be it moved**, that the Jefferson County Planning Commission recommends \_\_\_\_\_ of the request for...

Recommended \_\_\_\_\_ this \_\_\_ day of \_\_\_\_\_, 2011  
By vote of the Jefferson County Planning Commission  
By a vote of \_ Yes \_ No

\_\_\_\_\_  
Planning Commission President



## Engineer's Report

### Planning Commission Meeting

April 12, 2011 original

### Betty Mason Waivers

The applicant is requesting a waiver from the 2008 Jefferson County Subdivision Ordinance as follows:

- A. Section 20.201.A.2 Minor Subdivision
- B. Section 21.103.D Lots,
- C. Appendix B, Section 2.2.H Streets,

To be able to approve these variances, the applicant needs to prove all of the following:

1. The design of the project will provide public benefit in the form of reduction in county maintenance costs, greater open space, parkland consistent with county parks plan or benefits of a similar nature.
2. The waiver will not adversely affect the public health, safety or welfare or the rights of adjacent property owners or residents.
3. The waiver will be in keeping with the intent and purpose of this ordinance.
4. The waiver will result in a project of better quality and/or character.

#### Section 20.201.A.2 Minor Subdivision

The applicant is requesting a waiver from Section 20.201.A.2 of the Minor Subdivision requirements of the 2008 Jefferson County Subdivision Ordinance. In this section, a minor subdivision is required to have one 50 foot access easement for all lots unless the lot has 200 feet of road frontage to a public road with a 50 right-of-way. In this situation, the lot in question does not have any frontage to the main road. The lot could utilize a 20 foot access easement that exists on site. To meet the standards of the regulations, the applicant will need to increase this easement by 30 feet. The applicant does own the parcel 3.1 where the easement would be placed. After placing 30' easement to the existing 20' easement, it would leave about 48' between the easement and the home located on parcel 3.1. The applicant is requesting that the required 50 foot access easement be reduced to 20 feet as it currently exists.

A 20 foot access easement is very difficult to accommodate two drive lanes, shoulders, ditch lines and utilities if needed.

As for the four criteria to approve a waiver:

1. the applicant has not demonstrated how keeping the 20 foot easement benefits the public,
2. it does affect public safety in the manner that traffic is constricted to a 20' easement,

3. it does not keep the intent of the ordinance because 1, 2, and 4 are not satisfied,
4. reducing the access easement does not result in a better project

Because the applicant owns parcel 3.1, the applicant can meet the requirements of the regulation. Therefore, the engineering department recommends denial of this waiver. However, if the planning commission is inclined to grant this waiver, the minimum recommended width would be 40 feet as it was in the 1978 Jefferson County Subdivision Regulation.

#### Section 21.103.D Lots

The applicant is requesting a waiver from Section 21.103.D of the Lots requirements of the 2008 Jefferson County Subdivision Ordinance. According to this section, minor subdivisions are exempt from this section.

The engineering department recommends that the applicant clarified as to the intent of this request. It is unclear how the proposed minor subdivision applies. At this time, we recommend denial of this waiver.

#### Appendix B, Section 2.2.H Streets

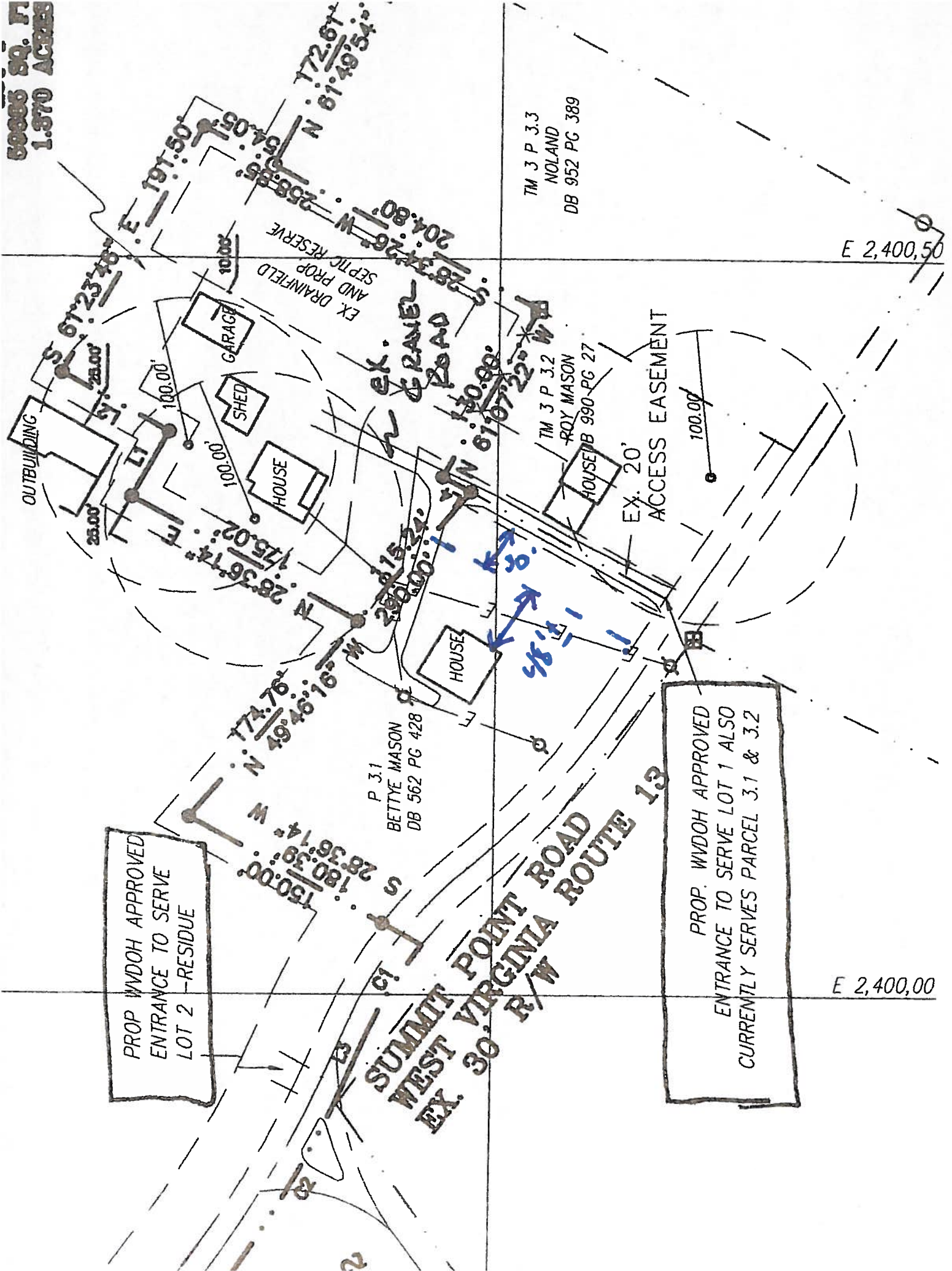
The applicant is requesting a waiver from Appendix B, Section 2.2.H Streets requirements of the 2008 Jefferson County Subdivision Ordinance. To my knowledge, this section only applies to Major Subdivision. Minor subdivision can have multiple entrances if they meet the requirement stated in the minor subdivision section.

The engineering department recommends that the applicant clarified as to the intent of this request. It is unclear how the proposed minor subdivision applies. At this time, we recommend denial of this waiver.





60000 SQ. FT.  
1.370 ACRES



PROP WVDH APPROVED  
ENTRANCE TO SERVE  
LOT 2 - RESIDUE

PROP. WVDH APPROVED  
ENTRANCE TO SERVE LOT 1 ALSO  
CURRENTLY SERVES PARCEL 3.1 & 3.2

SUMMIT POINT ROAD  
WEST VIRGINIA ROUTE 13  
EX. 30. R/W

P 3.1  
BETTYE MASON  
DB 562 PG 428

TM 3 P 3.2  
ROY MASON  
HOUSE B 990 PG 27

TM 3 P 3.3  
NOLAND  
DB 952 PG 389

E 2,400,00

E 2,400,50

PC11-02

Jefferson County Planning Commission  
116 East Washington Street  
Charles Town, WV 25414

RECEIVED

MAR 22 2011

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

**WAIVER REQUEST FORM**

I/We request a waiver from the provisions of the Jefferson County Subdivision Regulations.

Property Owner (s): BETTYE K. MASON

Address: 1851 SUMMIT POINT ROAD

SUMMIT POINT, WV. 25446

Phone Number: 304-725-6321

Location of Property: NORTH SIDE OF SUMMIT POINT ROAD BEFORE RAILROAD

CROSSING @ INTERSECTION WITH HARDESTY ROAD

Lot Size: 16.1 ACRE (TOTAL)

Deed Book Reference: Deed Book #: WILL BOOK 3 Page #: 744

Tax Map Reference: District: KABLETOWN Map: 16 Parcel: 3

Zoning District: RURAL

Section of Ordinance: 20.201, A, 2 & 21.103, D & APPENDIX B, SECTION 2.2, H

Briefly describe (in your own words) by specific reference to a sketch (in accordance with the following paragraph) the nature of your waiver request.

WE ARE CREATING A PARENT TO CHILD LOT FOR AN  
EXISTING RESIDENCE (LOT 1 ON SKETCH). THE CURRENT  
PARCELS 3.1 & 3.2 GO TO THE CENTERLINE OF THE  
20' EASEMENT. PARCEL 3.1 WAS CREATED IN 1969 AND PARCEL  
3.2 WAS CREATED IN 1978 PRIOR TO THE SUBDIVISION ORDINANCE.  
WE ARE REQUESTING TO SERVE THE NEWLY CREATED LOT FOR THE  
EXISTING RESIDENCE ON THE EXISTING 20' EASEMENT. THE RESIDUE  
WILL BE SERVED BY A NEW ENTRANCE NEAR HARDESTY ROAD PENDING  
WVDOH APPROVAL. ALL RESIDENCES ALREADY EXIST AND ARE ALL USING  
THE 20' ACCESS EASEMENT AND IT IS ALL FAMILY.

Sketch on a separate 8 1/2" x 11" sheet of paper the shape and location of the lot. Show the location of the intended construction or land use indicating building setbacks, size and height. Identify existing buildings, structures or land uses on the property. Sign and date the sketch. Please provide a vicinity map of the area.

Please note waivers to the Subdivision Regulations must comply with Division 24.300 of the Subdivision Regulations. To justify your waiver request, please address the following items:

1. The design of the project will provide public benefit in the form of reduction in County maintenance costs, greater open space, parkland consistent with the County parks plan or benefits of a similar nature.

THE PROJECT OFFERS NO PUBLIC BENEFIT AND A PRIVATE ROAD REQUIRES NO COUNTY AND/OR STATE MAINTENANCE MAINTENANCE.

2. The waiver, if granted, will not adversely affect the public health, safety or welfare or the rights of adjacent property owners or residents.

NO, THE ROAD EXISTS AS IS, AND WILL HAVE NO IMPACT ON THE PUBLIC OR NEIGHBORING PROPERTIES

3. The waiver, if granted, will be in keeping with the intent and purpose of this Ordinance.

YES, NOTHING IS GOING TO CHANGE AND IF WE ARE ALLOWED TO SERVE THE BACK LOT WITH THE EXISTING 20' BASEMENT IT WILL NOT ENCUMBER PARCEL 3.1 BY ADDING 30' TO THE BASEMENT

4. The waiver, if granted, will result in a project of better quality and/or character.

YES, IT WILL MAINTAIN THE QUALITY OF THE FAMILY SUBDIVISION

Bettye Mason  
Signature of Property Owner

\_\_\_\_\_  
Signature of Property Owner

**For Official Use Only**

Amount of Fees Paid: \_\_\_\_\_

Date of Meeting/Public Hearing: \_\_\_\_\_

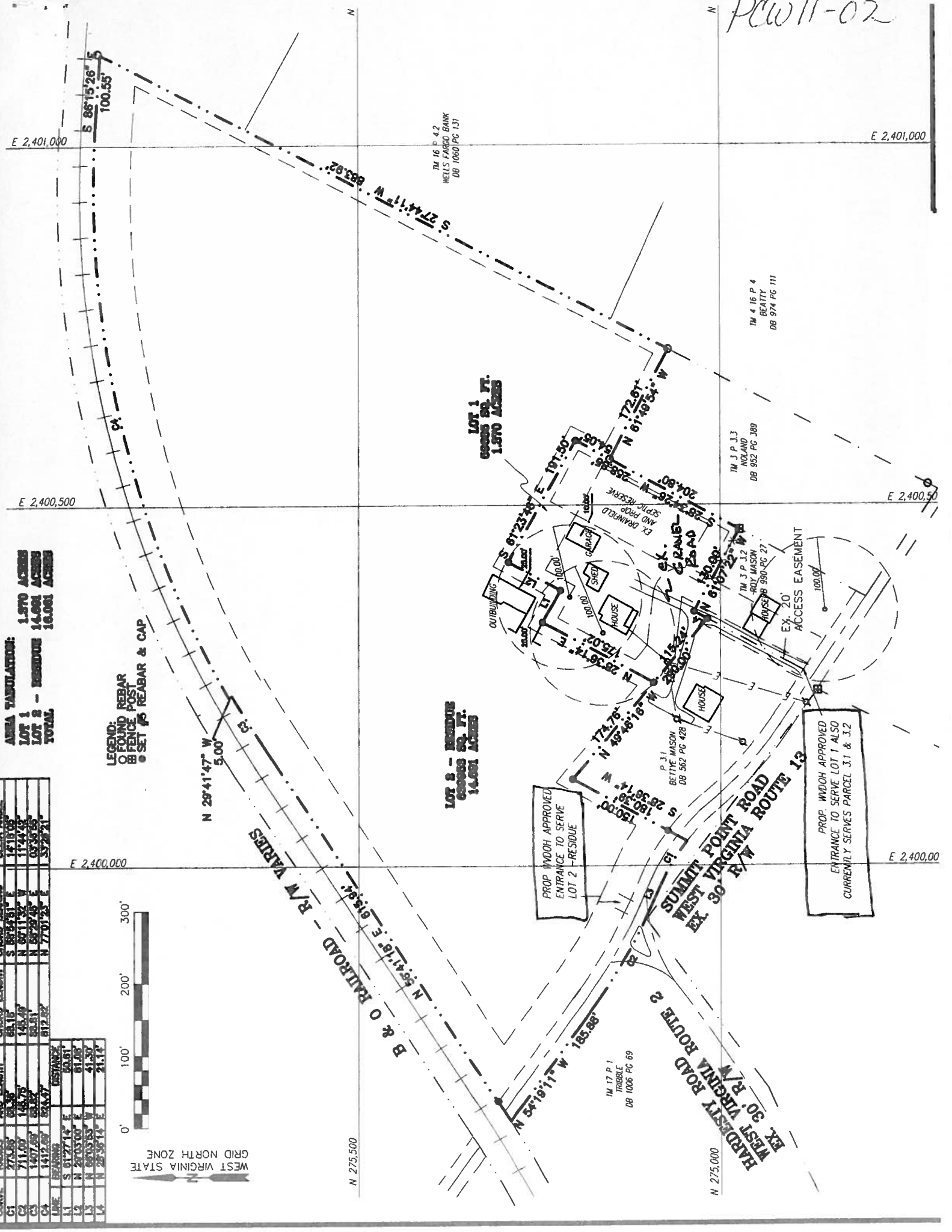
Official/Administrative Body: \_\_\_\_\_

Property to be posted by: \_\_\_\_\_

Adjoiner letters to be mailed by: \_\_\_\_\_

Official Signature and Seal: \_\_\_\_\_

PCW11-02



**AREA TABULATION:**  
 LOT 1 - 1.970 ACRES  
 LOT 2 - RESIDUE 14.661 ACRES  
 TOTAL 16.631 ACRES

**LEGEND:**  
 O FOUND REBAR  
 BB FENCE POST  
 ● SET #5 REBAR & CAP

CURVE	PC	PI	PT	CHORD	LENGTH	CHORD BEARING	DELTA ANGLE
G1	273.50	68.30	68.10	S 85°24'51" E	142.10		
G2	711.00	148.70	148.49	N 80°11'20" W	1174.43		
G3	147.65	68.30	68.10	N 85°29'45" E	153.30		
G4	147.65	68.30	68.10	N 27°01'25" E	157.26		

LINE	BEARING	DISTANCE
L1	S 61°27'14" E	50.61
L2	N 20°03'00" E	61.05
L3	N 60°03'53" W	41.30
L4	N 28°30'14" E	21.14



WEST VIRGINIA STATE  
 GRID NORTH ZONE

PROP. W/DOH APPROVED  
 ENTRANCE TO SERVE LOT 1 ALSO  
 CURRENTLY SERVES PARCEL 3.1 & 3.2

PROP. W/DOH APPROVED  
 ENTRANCE TO SERVE  
 LOT 2 - RESIDUE

HARDSHIP ROAD  
 EX 30' R/W  
 WEST VIRGINIA ROUTE 2  
 EX 30' R/W  
 WEST VIRGINIA ROUTE 13  
 EX 20' ACCESS EASEMENT

LOT 2 - RESIDUE  
 14.661 ACRES

LOT 1  
 1.970 ACRES

E 2,401,000

E 2,400,500

E 2,400,000

E 2,400,00

E 2,401,000

E 2,400,500

E 2,400,000

E 2,400,00

N 28°41'47" W  
 5.00'

N 28°41'47" W  
 5.00'

E 2,400,500

E 2,401,000

N 275,500

N 275,000

S 27°41'17" W  
 883.82'

TM 16 P 4 2  
 WELLS FARGO BANK  
 DB 1060 PC 131

TM 4.16 P 4  
 BEATY  
 DB 974 PC 111

TM 3 P 3.3  
 NOLAND  
 DB 952 PC 389

P 3.1  
 BETHE MASON  
 DB 562 PC 428

TM 17 P 1  
 TROBBLE  
 DB 1006 PC 69

LOT 1  
 1.970 ACRES

LOT 2 - RESIDUE  
 14.661 ACRES

PROP. W/DOH APPROVED  
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 LOT 2 - RESIDUE

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LOT 1  
 1.970 ACRES

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HARDSHIP ROAD  
 EX 30' R/W  
 WEST VIRGINIA ROUTE 2  
 EX 30' R/W  
 WEST VIRGINIA ROUTE 13  
 EX 20' ACCESS EASEMENT

**JEFFERSON COUNTY, WEST VIRGINIA**  
**Department of Planning & Zoning**  
116 East Washington Street, 2<sup>nd</sup> Floor  
P.O. Box 338  
Charles Town, West Virginia 25414

Email: [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org)  
[zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org)

Phone: (304) 728-3228  
Fax: (304) 728-8126

---

**MEMO**

**TO:** Planning Commission Members  
**FROM:** Steve Barney, Zoning Administrator  
**DATE:** April 5, 2011  
**RE:** Draft Policy-Neutral Zoning Ordinance Amendments

---

**Overview**

The Planning and Zoning Departments are proposing a number of minor changes to the Jefferson County Zoning and Land Development Ordinance. The purpose of the changes is to update the Ordinance for consistency with current regulations, enhance the clarity of the text and improve the organization of the document. The Planning Commission will conduct a public hearing for the proposed amendments at its regularly scheduled April 12, 2011 meeting.

**Proposed Changes**

Changes proposed are intended to be “policy-neutral” in nature. As such, no significant changes are proposed for zoning or density entitlements, development requirements, or review processes.

The types of changes proposed include:

- Correction of typographical errors  
*Includes spelling, grammar, and similar errors.*
- Organizational changes  
*Includes the relocation of certain sections within the Ordinance, such as sections related to the Board of Zoning Appeals and detailed use standards.*
- Elimination of redundant or obsolete text  
*Includes amendments to site plan standards that are redundant with the adopted Subdivision and Land Development Regulations.*
- Amendment of omissions  
*Includes the addition of sections that describe the roles of the Planning Commission and the County Commission, the process for a variance application, preschools as a permitted use and definitions for terms that are currently undefined.*
- Inclusion of adopted policy  
*Includes adopted policies, such as process for minor zoning map changes.*

- Correction of references to the adopted Subdivision and Land Development Regulations  
*Includes revised citations that refer to the current regulations.*
- Amendments for consistency with the West Virginia state code  
*Includes addition of text for consistency with Senate Bill 595 regarding vesting periods for approved plans.*

Please refer to the full text of the draft amendments for details of all the proposed changes.

### **Next Steps**

Following the April 12, 2011 Planning Commission Public Hearing, the Planning Commission will vote to recommend the draft amendments to the County Commission for review and adoption. The Planning Commission may also direct staff to make specific amendments in response to public comments received.

For more information, please contact me at [zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org).

# Jefferson County Zoning and Land Development Ordinance

Jefferson County,  
West Virginia

## *Draft “Policy Neutral Amendments”*

Prepared By  
The Jefferson County  
Planning Commission

Adopted July 7, 1988 AS AMENDED.

Includes Previously Invalidated April 8, 2005 Amendments

On September 24, 2009, the Supreme Court reversed and remanded the amendments to the Circuit Court. The Circuit Court re-instated the amendments on December 3, 2009.

Blue text = Additions

~~Red text~~ = Deletions

## Office Consolidation

This document contains additions and amendments approved by the Jefferson County Commission on the following dates. For accuracy, specific reference should be made to these documents.

May 4, 1989  
August 31, 1989  
September 14, 1989  
October 12, 1989  
November 30, 1989  
September 13, 1990  
October 4, 1990  
July 15, 1993  
May 18, 1996  
January 1, 1997  
June 12, 1997  
February 11, 1998  
July 1, 1998  
August 13, 1998  
December 10, 1998  
December 10, 1998  
October 14, 1999  
January 10, 2002  
August 8, 2002  
November 7, 2002  
May 1, 2003

April 8, 2005 at 5:00 p.m., Invalidated and removed by Court Order February 26, 2008

October 3, 2005  
September, 1, 2006  
September 28, 2006

November 1, 2008, ordinance enacted to amend the ordinance adopted July 7, 1988, with all previous amendments, to replace non-traditional zoning with traditional zoning

January 8, 2009 Stay of November 1, 2008 Amended Ordinance

(Stay due to Petition to place Ordinance on a future ballot for Referendum)

Return to Ordinance which was effective prior to November 1, 2008

Previously invalidated April 8, 2005 amendments reinstated by Court Order on December 3, 2009

March 10, 2011

TABLE OF CONTENTS, ZONING AND LAND DEVELOPMENT REVIEW ORDINANCE

ARTICLE 1: PURPOSE, JURISDICTION, APPLICATION, INTERPRETATION AND SEVERABILITY..... 6

    Section 1.0 Effective Date..... 6

    Section 1.1 Purpose..... 6

    Section 1.2 Jurisdiction..... 7

    Section 1.3 Application and Interpretation..... 7

    Section 1.4 Severability..... 7

    Section 1.5 Use of Technical Information..... 7

ARTICLE 2: DEFINITIONS..... 9

    Section 2.1 Definitions..... 9

    Section 2.2 Terms Defined..... 9

ARTICLE 3: ADMINISTRATION AND ENFORCEMENT..... 41

    Section 3.1 Administration..... 41

    Section 3.2 Zoning Administrator..... 41

    Section 3.3 Enforcement..... 43

    Section 3.4 Boards and Commissions..... 44

ARTICLE 4: GENERAL PROVISIONS..... 49

    Section 4.1 Ordinance Deemed Minimum Regulations: Uniformity..... 49

    Section 4.2 Compliance with Ordinance..... 49

    Section 4.3 Nonconforming Uses..... 49

    Section 4.4 Prohibited Uses..... 51

    Section 4.5 Agricultural Uses Permitted Generally..... 53

    Section 4.6 Distance Requirements..... 53

    Section 4.7 Essential Utility Equipment..... 54

    Section 4.8 Buildable Lot..... 54

    Section 4.9 Traffic Visibility Across Corner Lots..... 54

    Section 4.10 Site Plan Requirements..... 55

    Section 4.11 Landscaping, Screening and Buffer Yard Requirements..... 56

    Section 4.12 Design Standards for Multi-Family Developments..... 58

    Section 4.13 Development Adjacent to the Potomac and Shenandoah Rivers..... 59

ARTICLE 4A HOME OCCUPATIONS AND COTTAGE INDUSTRIES..... 60

    Section 4A.1 Home Occupation, Level 1..... 60

    Section 4A.2 Home Occupation, Level 2..... 60

    Section 4A.3 Cottage Industry..... 61

    Section 4A.4 Private Covenants Running with the Land..... 62

ARTICLE 4B WIRELESS TELECOMMUNICATION FACILITIES..... 63

    Section 4B.1 Purpose and Legislative Intent..... 63

    Section 4B.2 Classification of Wireless Telecommunication Facilities and Development Review Process..... 64

    Section 4B.3 Exempt Facilities Allowed by Right..... 64

    Section 4B.4 Concealed Wireless Telecommunication Facilities..... 65

    Section 4B.5 Co-located Wireless Telecommunication Facilities..... 66

Section 4B.6	Temporary Wireless Telecommunication Facilities.....	67
Section 4B.7	Wireless Telecommunication Towers .....	68
Section 4B.8	Maintenance & Removal Bonds.....	75
Section 4B.9	Abandonment & Removal.....	75
<b>ARTICLE 5: DISTRICT ESTABLISHMENT; ZONING MAPS; DISTRICT BOUNDARIES:</b>		
<b>DISTRICT REGULATIONS.....</b>		<b>76</b>
Section 5.1	Establishment of Districts.....	76
Section 5.2	Boundaries of Districts .....	76
Section 5.3	District Maps .....	76
Section 5.4	Residential-Growth District.....	77
Section 5.5	Reserved .....	79
Section 5.6	Industrial - Commercial District.....	80
Section 5.7	Rural District .....	84
Section 5.8	Residential/Light Industrial/Commercial District.....	91
Section 5.9	Reserved .....	97
Section 5.10	Village District .....	97
<b>ARTICLE 6: DEVELOPMENT REVIEW SYSTEM.....</b>		<b>100</b>
Section 6.1	Development Review System (DRS).....	100
Section 6.2	Issuance of a Conditional Use Permit.....	100
Section 6.3	The Soils Assessment.....	100
Section 6.4	Amenities Assessment.....	105
Section 6.5	Computation of Soils/Amenities Assessment.....	109
<b>ARTICLE 7. PROCEDURAL REQUIREMENTS FOR REVIEW.....</b>		<b>110</b>
Section 7.1	Purpose .....	110
Section 7.2	Zoning District Principal Permitted Uses.....	110
Section 7.3	General Development Review System Requirements.....	110
Section 7.4	Filing the Application.....	110
Section 7.5	Planning and Zoning Staff Evaluation of the Development Review System.....	112
Section 7.6	Compatibility Assessment Meeting.....	113
Section 7.7	Public Hearings for Development Review System .....	115
<b>ARTICLE 8. SUPPLEMENTAL USE REGULATIONS .....</b>		<b>118</b>
Section 8.1	Adult Use Requirements.....	118
Section 8.2	Barns and Feeding Pens.....	118
Section 8.3	Bed and Breakfast.....	119
Section 8.4	Kennels .....	119
Section 8.5	Farm Brewery or Winery.....	119
Section 8.6	Farm Market .....	119
Section 8.7	Jails and Prisons .....	119
Section 8.8	Hunting, Shooting and Fishing Clubs .....	120
Section 8.9	Industrial and Commercial Uses.....	121
Section 8.10	Model Homes/Sales Offices .....	125
Section 8.11	Petroleum products refining or storage .....	125
Section 8.12	West Virginia Legal Fireworks .....	125
Section 8.13	Dormitory .....	125
<b>ARTICLE 9. EXCEPTIONS .....</b>		<b>127</b>
Section 9.1	General.....	127

<a href="#">Section 9.2</a>	<a href="#">Building Height Limitations</a>	<a href="#">127</a>
<a href="#">Section 9.3</a>	<a href="#">Lot Area Modification</a>	<a href="#">127</a>
<a href="#">Section 9.4</a>	<a href="#">Setback Modifications</a>	<a href="#">128</a>
<a href="#">Section 9.5</a>	<a href="#">Projections Into Yards</a>	<a href="#">128</a>
<a href="#">Section 9.6</a>	<a href="#">Accessory Structures</a>	<a href="#">128</a>
<a href="#">Section 9.7</a>	<a href="#">Other Exceptions</a>	<a href="#">129</a>
<a href="#">Section 9.8</a>	<a href="#">Seasonal Uses</a>	<a href="#">130</a>
<a href="#">ARTICLE 10.</a>	<a href="#">PROVISIONS FOR SIGNS</a>	<a href="#">131</a>
<a href="#">Section 10.1</a>	<a href="#">Purpose of Sign Provisions</a>	<a href="#">131</a>
<a href="#">Section 10.2</a>	<a href="#">General Provisions</a>	<a href="#">131</a>
<a href="#">Section 10.3</a>	<a href="#">Permitted Signs Without Zoning Permit</a>	<a href="#">132</a>
<a href="#">Section 10.4</a>	<a href="#">Signs Requiring a Zoning Permit</a>	<a href="#">132</a>
<a href="#">Section 10.5</a>	<a href="#">Special Exception Uses (Requiring Board of Zoning Appeals After Public Hearing)</a>	<a href="#">134</a>
<a href="#">Section 10.6</a>	<a href="#">Zoning Certificate</a>	<a href="#">134</a>
<a href="#">ARTICLE 11.</a>	<a href="#">OFF-STREET PARKING STANDARDS</a>	<a href="#">135</a>
<a href="#">Section 11.1</a>	<a href="#">Non-Residential Parking Standards</a>	<a href="#">135</a>
<a href="#">Section 11.3</a>	<a href="#">Residential Parking Standards</a>	<a href="#">137</a>
<a href="#">ARTICLE 12.</a>	<a href="#">MAP AND TEXT AMENDMENTS</a>	<a href="#">138</a>
<a href="#">Section 12.1</a>	<a href="#">Purpose</a>	<a href="#">138</a>
<a href="#">Section 12.2</a>	<a href="#">Procedure for Amendment by Governing Body</a>	<a href="#">138</a>
<a href="#">Section 12.3</a>	<a href="#">Procedure for Amendment by Petition</a>	<a href="#">138</a>
<a href="#">APPENDIX A:</a>	<a href="#">RESIDENTIAL SITE DEVELOPMENT STANDARDS TABLE</a>	<a href="#">139</a>
<a href="#">APPENDIX B:</a>	<a href="#">NON-RESIDENTIAL SITE DEVELOPMENT STANDARDS TABLE</a>	<a href="#">140</a>
<a href="#">APPENDIX C:</a>	<a href="#">PRINCIPAL PERMITTED USES TABLE</a>	<a href="#">141</a>

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|

**ARTICLE 1: PURPOSE, JURISDICTION, APPLICATION, INTERPRETATION AND SEVERABILITY**

**Section 1.0 Effective Date**

This Ordinance shall become effective ninety (90) days after the date on which the County Commission acts to adopt it.

**Section 1.1 Purpose**

The purpose of this Ordinance is to:

- A. Protect and encourage the health, safety, and general welfare of the present and future population of Jefferson County.
- B. Help guide the future growth and development of Jefferson County in accordance with the adopted Comprehensive Plan.
- C. Encourage growth and development in areas where sewer, water, schools, and other public facilities are or will soon be available in order to provide services in the most cost effective manner.
- D. Insure that growth and development are both economically and environmentally sound.
- E. Encourage the maintenance of an agricultural base in the County at a level sufficient to insure the continued viability of farming.
- F. Encourage and support commercial, industrial, and agricultural activities while maintaining land use, order and compatibility.
- G. Encourage an improved appearance of Jefferson County with relationship to the use and development of land and structures.
- H. Encourage the conservation of natural resources.
- I. Provide a guide for public action in the orderly and efficient provision of public facilities and services.
- J. Provide a guide for private enterprise in developing and building a strong economic community.
- K. Encourage Historic Preservation.

## Section 1.2 Jurisdiction

These regulations shall apply to all properties within Jefferson County, West Virginia; but shall not include the incorporated areas.

## Section 1.3 Application and Interpretation

- A. The terms of this Ordinance shall be applied to promote the intent in Section 1.1 and the Comprehensive Plan.
- B. Where this Ordinance imposes a greater restriction than is imposed or required by other provisions of law, or by other rules, regulations or ordinance, or by private restrictions, covenants or declarations, the provisions of this Ordinance shall control, except where stated specifically herein.
- C. Where a provision of this Ordinance is in conflict with another provision of this Ordinance the stricter regulation shall apply.
- D. If a proposed use is not one in the list of those permitted in each zoning district, it shall be prohibited as though it was included in the list of prohibitions. However, the use may be approved if the Development Review System demonstrates that the use is compatible and appropriate with the neighborhood and the use can be approved by the Board of Zoning Appeals as a conditional use.<sup>1</sup> [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE AUGUST 31, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- E. Amendments to this Ordinance shall not adversely affect specific decisions made by the ~~Zoning~~ Board of Zoning Appeals or conditions on a Conditional Use Permit dated prior to the adoption of such amendment. Determination of adverse affect shall be made by the Zoning Administrator. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 18, 1996. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

## Section 1.4 Severability

Should any article, section, subsection or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the ~~Zoning Ordinance~~ Zoning and Land Development Ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.

## Section 1.5 Use of Technical Information

Should any technical study, authorized by the Jefferson County Commission, become available after the adoption of this Ordinance, the County Commission shall authorize the Planning ~~and Zoning~~ Commission to ~~scrutinize~~ review such study to determine the extent that this Ordinance



**ARTICLE 2: DEFINITIONS**

**Section 2.1 Definitions**

For the purpose of these regulations, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future, the singular number includes the plural and the plural is the singular. The word “shall” is mandatory and the word “may” is permissive. The words “used for” shall include “arranged for”, “designed for”, “intended for”, “maintained for”, “constructed for”, or “occupied for”. The word “person” shall mean natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust or the manager, lease, agent, servant, officer or employee of any of them. The word “land” shall include water surface and land under water.

**Section 2.2 Terms Defined**

Abandonment or Abandoned	The relinquishment of property or cessation of the use of the property by the owner or lessee without any intention of transferring rights to the property to another owner or resuming the nonconforming use of the property for a period of one year. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
Accessory Equipment	Any equipment serving or being used in conjunction with a Wireless Telecommunications Facility. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Accessory Use	A structure or use which is customarily incidental and subordinate to the principal building or use which is located on the same lot as the principal building. Accessory structures include garages, tool sheds, storage buildings, swimming pools or other similar structures. An accessory structure having any part of a wall in common with a dwelling is considered part of the main building and must meet those setbacks.
Addition, Major	A major addition shall include those additions which will directly affect the function of the site or those

	<p>areas surrounding the site. Any substantial change of use classification, alteration of on-site parking requirements, potential adverse impacts of off-site storm water drainage, increased demand for public water and sewerage or additions which will cause the rerouting of traffic circulation shall be considered “major additions”.</p>
<p>Adjacent/Confronting Affected Property Owner</p>	<p>The owner of property adjacent to or confronting a proposed development (including the properties across any road, right of way or easement) which will be impacted either positively or negatively by that proposed development. Names and addresses of affected property owners will be taken from current tax records in the Jefferson County Court House. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]</p>
<p>Adult Use</p>	<p>Uses that are commonly associated with adults only, including but not limited to: bars, lounges, dance clubs, stripping establishments, adult book stores, clubs, adult arcades, adult cabarets, adult motion picture theaters, massage parlors, sexual encounter establishments or other similar businesses. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]</p>
<p>Adult Arcade</p>	<p>An establishment where, for any form of consideration, one or more motion picture projectors, slide projectors, or similar machines for viewing by five or fewer persons each are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002]</p>
<p>Adult Bookstore</p>	<p>An establishment that has as a substantial portion of its stock-in-trade and offers for sale, for any form of consideration, any one or more of the following (1) books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations that are characterized by emphasis upon the depiction or description of specified sexual activities or specified</p>

	anatomical areas; or (2) instruments, devices, or paraphernalia that are designed for use in connection with specifies sexual activities. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002]
Adult Cabaret	A nightclub, bar, restaurant, facility, or similar establishment that regularly features live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities, or films, motion pictures, video cassettes, slides or other photographic reproductions of material that is characterized by any emphasis upon the depiction of specified sexual activities or specifies anatomical areas. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002]
Adult Mini Motion Picture Theatre	An enclosed building with a capacity for fewer than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as herein defined, for observation by patrons therein. The phrase "used for" in this definition shall mean a regular and substantial course of conduct and not a one-time presentation of such material. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002]
Adult Sauna	A sauna which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, using steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas as defined herein. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002]
Adult Theater	A theater, concert hall, auditorium, or similar establishment characterized by activities featuring the exposure of specified anatomical areas or by specified sexual activities. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE

	NOVEMBER 7, 2002]
Affordable Housing	Housing units where the occupant is paying no more than 30 percent of Jefferson County median gross income for housing costs, including taxed and utilities. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
Aggrieved or Aggrieved Person	A person who is denied by the planning commission or the board of zoning appeals, in whole or in part, the relief sought in any application or appeals, or has demonstrated that he or she will suffer a peculiar injury, prejudice or inconvenience beyond that which other residents of the county or municipality may suffer. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
Agricultural Use	<p>The use of land for a bona-fide farming operation. This includes:</p> <ol style="list-style-type: none"> <li>1. Commercial Agricultural Enterprise;</li> <li>2. Agriculture, Ranching;</li> <li>3. Aquaculture;</li> <li>4. Apiculture;</li> <li>5. Horticulture;</li> <li>6. Viticulture;</li> <li>7. Fish, meat, poultry and game birds processing, provided that fifty percent (50%) of the meat processed must be raised on the site farm of the processing-<del>F</del>facility for minimum periods of three (3) months for beef and pork and two (2) <u>months</u> for lamb and poultry;</li> <li>8. Animal Husbandry; including, but not limited to, the care and raising of livestock, equine, and fur-bearing animals;</li> <li>9. Poultry husbandry and the production of poultry, game birds and poultry products;</li> <li>10. Dairy production and processing of dairy products;</li> <li>11. <u>Equestrian uses;</u> <del>Horse Breeding, boarding, riding and training facility;</del></li> <li>12. The production of field crops including but not limited to tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental</li> </ol>

Comment [SB1]: Missing word.

Comment [SB2]: Equestrian is defined in Sec 2.2.

	<p>trees, flowers, sod, mushrooms, timber, pasturage, Christmas trees, maple sap, woody biomass, compost;</p> <p>13. Pick your own farm products;</p> <p>14. Agricultural tourism;</p> <p><u>15. Farm vacation enterprise</u>  <del>and farm-related experience provided that there are not more than 5 lodging units;</del></p> <p><del>+5.16. Farm brewery and winery provided that all structures associated with the operation do not exceed 10,000 square feet</del> <u>subject to the requirements for such a use in Article 8;</u></p> <p><del>+6.17. Rental of garden plots;</del></p> <p><del>+7.18. Community supported agriculture;</del></p> <p><u>19. The warehousing; processing, value added, drying, storage, distribution and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, husbandry or production;</u></p> <p><del>+8.20. Forestry;</del></p> <p><del>Rental of existing farm building, for commercial storage (structure must have existed for 5 years);</del></p> <p>[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]</p>
Alternative Structure	<p>For antenna-mounting purposes, a structure which is not primarily constructed for the purpose of holding antennas but on which one or more antennas may be mounted. The term Alternative Structure includes, but is not limited to, buildings, silos, water tanks, pole signs, lighting standards, steeples and electric distribution, electric transmission or other utility poles. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]</p>
Amenities	<p>Utilities, roadways, and public services which make a particular site more attractive for development. Section 6.4 governs the assessment of amenities as it relates to the Development Review System.</p>
Antenna	<p>Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, Personal Communications Services (PCS) and microwave communications. Such structures and</p>

**Comment [SB3]:** Farm vacation standards moved to definition of this land use.

**Comment [SB4]:** Brewery/Winery standards moved to Article 8.

**Comment [SB5]:** Forestry added from Rural district uses.

**Comment [SB6]:** Rental of farm building moved to Rural District principal permitted uses.

	devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omni-directional antennas, such as whip antennas. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Antenna Array	Two or more antennas that operate as components of a complete antenna suite for a single Wireless Telecommunication Facility. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Antenna, Concealed	An antenna that is designed and/or erected on or in a building or alternative structure in such a way that it blends in with the existing façade and/or is located in such a way that it is not readily visible or discernible to the average individual at the adjacent street level. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Appalachian Trail Overlay District	For purposes of the Wireless Telecommunication Facilities Ordinance, the area within one mile of the centerline of the Appalachian Trail. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Applicant	Any person <del>commencing seeking</del> to develop land, <del>initiate a land use, obtain approval pursuant to under</del> the Development Review System Ordinance, <del>or of</del> any person requesting an appeal <del>from or variance</del> to this Ordinance.
Area, Land	Land area refers to new land area, exclusive of streets and other public space.
<u>Barber/beauty shop, limited</u>	<u>A barber or beauty shop limited to no more than two chairs.</u>
<u>Bed and Breakfast</u>	<u>A single-family dwelling where lodging is offered for compensation, having no more than seven (7) bedrooms for this purpose, and meeting the requirements for such a use in Article 8 of this ordinance.</u>
Billboard	A structure on which is portrayed information which directs attention to a business commodity, service or entertainment not necessarily related to the other uses permitted on the premises upon which the structure is located. (See Sign, Outdoor Advertising)

**Comment [SB7]:** Revised use name and new definition (currently not defined), currently named "2-chair barber/beauty shop."

**Comment [SB8]:** Use currently not defined.

Blue Ridge Line	The common surveyed boundary between Jefferson County, West Virginia and Loudoun County, Virginia. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE AUGUST 13, 1998]
Board	The Jefferson County Board of <a href="#">Zoning Appeals</a> . [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
Broadcast Tower	A structure situated on a lot that is intended for transmitting television or AM/FM radio signals. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Buffer	An area on a property defined by a distance from the property line or other specifically designed line such as flood plain, wetland limit or stream bank. Said area is intended to absorb, lessen or neutralize the impacts of one land use from another. The nature of the buffer will depend on the impact(s) being neutralized. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]
Building	Any structure which is permanently affixed to the land and has one or more floors and a roof. The term building shall include manufactured homes.
Building, Height of	The vertical distance measured from the level of approved street grade opposite the middle of the front of the building to the highest point of the coping of a flat roof; to the deck line of a mansard roof; and to the mean height level between eaves and ridge of a gable, hip or gambrel roof.
Building Line	The line established by law beyond which a building shall not extend as determined by front, side and rear yards, herein.
<a href="#">Caretaker Residence</a>	<a href="#">An accessory residential structure for the use of a caretaker or security guard.</a>
Cell on Wheels "COW"	A portable self-contained cell site that can be moved to a location and set up to provide personal wireless

**Comment [SB9]:** Currently an accessory use to an industrial use, not defined.

	services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Change of Use	Any use which is different than the previous use of a building or land or any change in the <a href="#">North American Industry Classification System (NAICS) Standard Industrial Code</a> code in utilizing the Development Review System.
<a href="#">Church</a>	<a href="#">A building or site wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes synagogue, temple, mosque, or other such place for worship and religious activities.</a>
Clustering	Grouping structures in closely related groups at higher densities than normally permitted in certain areas in order to preserve other areas as parks, recreational areas or sensitive natural areas. Overall density of the total parcel remains within acceptable limits. See <a href="#">Chart (5.5.b) Section 5.7</a> for minimum area per dwelling unit and minimum lot area. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]
Co-location	For purposes of regulating commercial wireless telecommunication facilities, co-location means the placement of additional antennas or antenna arrays on an existing or approved telecommunication tower or support structure (or alternative structure), or otherwise sharing a common location by two or more FCC licensed providers of personal wireless services. Co-location includes antennas, combiners, transmitters, receivers and related electronic equipment, cabling, wiring, equipment enclosures and other components or improvements associated with a wireless telecommunication facility. [AMENDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Commercial	Any wholesale, retail or service business activity

**Comment [SB10]:** NAICS is the industry classification system now in use. It was released in 1997.

**Comment [SB11]:** Currently not defined.

**Comment [SB12]:** Reference corrected.

	established to carry on trade whether or not for profit. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989]
Commercial Agricultural Enterprise	Farm operations which will: A. Contribute in a substantial way to the area's existing agricultural economy; and B. Help maintain agricultural processors and established farm markets. When determining whether a farm is a part of a commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
Commercial Wireless Service Provider	Persons or entities who operate radio systems requiring an FCC license and who employ those facilities to provide point-to-point microwave links for wireline communication services (or connectivity between adjacent antenna sites), fixed wireless (including microwave), or mobile wireless communication services to third parties for compensation. Commercial Wireless Service Providers include, but are not limited to Cellular, Personal Communication Services (PCS), Specialized Mobile Radio (SMR), Enhanced Specialized Mobile Radio (ESMR), paging, Competitive Local Exchange Carriers (CLEC) utilizing point-to-point microwave, and other point-to-point microwave links for wireline communication services. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Commission	The Jefferson County Planning <del>and Zoning</del> Commission. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
Comprehensive Plan	A composite of mapped and written text, the purpose of which is to guide the systematic physical development of the County and is adopted by the County Commission.

Conditional Use	A use which because of special requirements or characteristics may be permitted in a particular zoning district only after review by the <del>h</del> Board of <del>z</del> Zoning <del>a</del> Appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in the <del>zoning ordinance</del> Zoning and Land Development Ordinance. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
Conditional Use Permit	A permit issued upon completion of the Development Review System which allows for the proper integration of compatible uses into the community.
Condominium	A common interest community in which portions of the real estate are designated for separate fee simple ownership of cubic air interior spaces and the remainder of the real estate is designated for common ownership solely by the owners of those portions. Said common interest community may be residential, commercial or industrial depending on other provisions of this Ordinance. All such projects are subject to the West Virginia Uniform Common Interest Ownership Act. In the event that a specific requirement within the Uniform Common Interest Ownership Act is inconsistent with a commercial or industrial project, that specific requirement shall not apply. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]
Contiguous	Lots, parcels, municipal boundaries or county boundaries that are next to, abutting and having a boundary, or portion thereof, that is coterminous. Streets, highways, roads or other traffic or utility easements, streams, rivers, and other natural topography are not to be used to determine lots, parcels, municipal boundaries or county boundaries as contiguous. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
Cottage Industry	An occupation at a residential premises anywhere except the Residential Growth District and existing

	residential subdivisions; with a limited number of employees, accessory structures and with specific setbacks. See Article 4A for standards. [AMENDED BY ACT OF THE COUNTY COMMISSION EFFECTIVE MAY 18, 1996]
<u>Country Inn</u>	<u>A private residence at least 50 years old that offers sleeping accommodations to lodgers in 30 or fewer rooms for rent. For the purpose of this definition, a lodger means a person who rents a room in a country inn establishment for fewer than 30 consecutive days. The land use may include a restaurant open to the general public as well as to guests.</u>
<u>Cultural Facility</u>	<u>A library, museum, or similar public or quasi-public use displaying, preserving, and exhibiting objects of community and cultural interest.</u>
<u>Day Care Center, Small</u>	<u>A facility: (1) in a dwelling unit; (2) licensed by the state, if applicable; (3) providing care for five or fewer children or adults who (except for family members) do not reside in the facility, are present primarily during daytime hours, and do not regularly stay overnight. Family members who receive care in the facility are not included in the total; and (4) which may include some instruction.</u>
<u>Day Care Center, Large</u>	<u>A facility: (1) licensed by the state, if applicable; (2) providing care for six or more children or adults who do not reside in the facility, are present primarily during daytime hours, and do not regularly stay overnight; and (3) which may include some instruction.</u>
Department	The Jefferson County Planning and Zoning Department. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Development	The subdivision of land; construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure, installation of a sign; and any mining, landfill or land disturbance, such as grading, paving and excavation.
Development Review System	A numerical rating system designed to assess a particular site's development potential based on soils and amenity criteria cited within this ordinance.

**Comment [SB13]:** Use currently not defined.

**Comment [SB14]:** Revised use name and new definition (currently not defined), replaces "Library, museum or similar institution of a noncommercial nature"

**Comment [SB15]:** Revised use name and new definition (currently not defined); replaces "Child or Elderly Care Facilities"

**Comment [SB16]:** Revised use name and new definition (currently not defined); replaces "Child Care Centers."

Discernible	Capable of being distinguished with the eye or mind from its surroundings as a telecommunications tower. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Dormitory	A building used for sleeping accommodations where such building is used accessory to a permitted use of land. <del>A dormitory shall be located on the same property or campus as the use it is intended to serve. A dormitory shall not offer accommodations to the general public or to persons who are visiting the property or campus primarily for the purpose of being a spectator at a sporting event or other gathering held at the facility. A dormitory may include one common kitchen or dining facility and common gathering rooms for social purposes for use only by its temporary occupants.</del> [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JANUARY 10, 2002]
Dwelling Unit	One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, <del>occupied by no more than one family,</del> and containing <del>no more than one independent cooking food preparation area together with and facilities for sleeping and bathing facilities.</del> [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]
Dwelling, Detached	A building containing only dwelling units surrounded by yards or other open area on the same zoning lot.
<u>Dwelling, Duplex</u>	<u>A combination of no more than two single-family dwelling units, with each individual dwelling unit located on its own legal lot, and sharing a common lot line and a common vertical wall.</u>
Dwelling, Multi-Family	A building containing three or more dwelling units, <del>which may including rental or condominium residential units.</del>
Dwelling, Single <u>Family</u>	A <u>detached</u> building containing not more than one dwelling unit and not occupied by more than one family.
Dwelling, Townhouse	One of a series of three or more attached dwelling

**Comment [SB17]:** Regulatory text moved to Article 8.

**Comment [SB18]:** These changes clarify that only one family (as defined in the Zoning Ordinance) may occupy a dwelling unit, and that multiple kitchens are not permitted in the same dwelling unit.

**Comment [SB19]:** "Duplex" is a permitted land use in the Zoning Ordinance but is not defined.

**Comment [SB20]:** Clarifies that "multi-family" may including rental and/or ownership units.

**Comment [SB21]:** Revised use name, replaces various names. Clarifies that a single-family dwelling is a detached dwelling.

	units separated from one another by continuous vertical party walls without openings from basement floor to roof.
Dwelling, Two-Family	A building located on one zoning lot containing not more than two dwelling units, arranged one above the other or side by side, and not occupied by more than two families.
Easement	A lawfully acquired right or privilege to use a parcel of land or a portion thereof for a specified purpose. An easement is retained by a person other than the owner of the land parcel.
Electric Distribution Poles	Metal, wooden or concrete towers and poles used to suspend wires transporting electricity between substations at the terminus of transmission lines and individual customer premises. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Electric Transmission Towers	Metal, wooden or concrete towers and poles used to suspend wires transmitting electricity between generating plants and substations supplying electricity to distribution and feeder lines. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Engineer	A person registered by the State of West Virginia through the Board of Registration of Professional Engineers.
<a href="#">Equestrian Uses</a>	<a href="#">Use of a site for horse riding, training, breeding, stables, or boarding.</a>
Equipment Enclosure	Facilities, equipment enclosure means a building, cabinet or shelter used to house transmitters, receivers and other electronic equipment and accessories. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Essential Utilities Or Equipment	Underground or overhead electrical, gas, communications not regulated by the federal communications commission, water and sewage systems, including pole structures, towers, wires, lines, mains, drains, sewers, conduits, cable, fire alarm boxes, traffic signals, hydrants, regulating and

**Comment [SB22]:** New use name; combines several related use names.

	<p>measuring devices and the structures in which they are housed, and other similar equipment accessories in connection therewith. Essential utility equipment is recognized in three categories:</p> <ul style="list-style-type: none"> <li>A. Local serving;</li> <li>B. Nonlocal or transmission through county or municipality; and</li> <li>C. Water and sewer systems, the activities of which are regulate, in whole or in part, by one or more of the following state agencies: <ul style="list-style-type: none"> <li>1. Public Service Commission;</li> <li>2. Department of Environmental protection; or</li> <li>3. Department of Health and Human Resources.</li> </ul> </li> </ul> <p>[AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 18, 1996 AND FEBRUARY 11, 1998. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]</p>
Expanded Use	The further development of a developed site.
FAA	Federal Aviation Administration. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
<u>Family</u>	<p><u>Any of the following cases constitutes a family:</u></p> <ul style="list-style-type: none"> <li><u>(a) An individual; or</u></li> <li><u>(b) two (2) or more persons related by blood, marriage or adoption, or under approved foster care;</u></li> <li><u>or</u></li> <li><u>(c) a group of not more than six (6) unrelated persons living together and sharing living areas in a dwelling unit; or</u></li> <li><u>(d) a group of persons occupying a dwelling unit meeting the definition of a Residential Care Home.</u></li> </ul>
<u>Farm Market</u>	<u>Market for the sale of farm products, and products incidental to farm products.</u>
<u>Farm Vacation Enterprise</u>	<u>A farm adapted for use as a rural vacation area, which may include picnicking and sporting areas, fishing waters, camping, scenery, nature recreation areas, and similar uses. The site may contain up to 5 lodging units.</u>

**Comment [SB23]:** "Family" currently not defined.

**Comment [SB24]:** Use currently undefined.

**Comment [SB25]:** Use currently undefined. Limit of 5 lodging units is a requirement of existing ordinance.

FCC	Federal Communications Commission. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Flood-prone Area	Areas subject to the one hundred (100) year flood as determined by the Flood Insurance Study prepared by the Federal Insurance Administration for Jefferson County, dated April 15, 1980, as may be amended.
Flood-prone Soils	Any area designated as flood-prone soils in the Soil Survey of Jefferson County, West Virginia prepared by the Department of Agriculture, Soil Conservation Service.
Frontage, Street	All property on the side of a street between two intersecting streets (crossing or ending), or if the street is a dead-end, then all property abutting on one side between an intersecting street and the dead-end of the street.
Functionally Equivalent Services	FCC licensed providers of Commercial Mobile Radio Services (CMRS) classified as Cellular, Personal Communication Services (PCS), Paging, Specialized Mobile Radio (SMR) and Enhanced Specialized Mobile Radio (ESMR). [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Glare	The effect produced by brightness sufficient to cause annoyance, discomfort, or lessen visual performance and visibility.
Governmental User	Federal, state or local governments, or agencies or instrumentalities thereof, volunteer fire departments or rescue squads which operate radio systems (including microwave) requiring an FCC license, and which employ those facilities exclusively for intra-governmental or inter-governmental public service, public safety or administrative purposes. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Group Residential Facility	<u>All facility which is owned, leased or operated by a behavioral health service provider and which: (1) Provides residential services and supervision for individuals who are developmentally disabled or</u>

**Comment [SB26]:** Use definition updated for consistency with definition in West Virginia Code.

	<p>behaviorally disabled; (2) is occupied as a residence by not more than eight individuals who are developmentally disabled and not more than three supervisors or is occupied as a residence by not more than twelve individuals who are behaviorally disabled and not more than three supervisors; (3) is licensed by the Department of Health and Human Resources; and (4) complies with the State Fire Commission for residential facilities. <del>A dwelling owned or leased by a governmental or non-profit organization and used to house a group of persons not necessarily related by blood. The parent agency or institution has the administrative, supervisory and service responsibility for the group home.</del> Per Chapter 17 of the West Virginia Code, as amended, a Group Residential Home shall be a permitted residential use of property for the purposes of zoning and shall be a permitted use in all zones or districts.</p>
<p><u>Group Residential Home</u></p>	<p><u>A building owned or leased by developmentally disabled or behaviorally disabled persons for purposes of establishing a personal residence, and complying with all applicable requirements of the state of West Virginia. Per Chapter 17 of the West Virginia Code, as amended, a Group Residential Home shall be a permitted residential use of property for the purposes of zoning and shall be a permitted use in all zones or districts.</u></p>
<p>Harpers Ferry Overlay District</p>	<p>For purposes of regulating Wireless Telecommunication Facilities, an area bounded on the north by a line running west from the Potomac River shore to and along Engle Switch Road to its intersection with Route 230; thence south along Route 230 to its intersection with the CSX Railroad Valley Line; thence south along said railroad to Milepost 4 on the railroad at its intersection with Millville Road; thence east from that point to and across the Shenandoah River to a point 1000 feet distant on the eastern shore of the said Shenandoah River; then following a line 1000 feet inland from that opposite shore of the Shenandoah River to its confluence with the Potomac River; then along a line 1000 feet inland from the Potomac river shore running east to the Virginia state line; thence north to the Potomac River shore; thence west along the shore</p>

**Comment [SB27]:** Use currently not included in Zoning Ordinance; added for consistency with West Virginia Code, which states that it shall be a permitted residential use in all zones or districts.

	of the Potomac River to the point of origin. This district excludes the area within the jurisdictional boundaries of the town of Harpers Ferry and the town of Bolivar. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Historic Resource	A site, structure, area, or district possessing historic importance as defined by the U.S. Department of Interior, West Virginia State Historic Preservation Office, Jefferson County Historic Landmarks Commission, or other governmental agency. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Historic Site/ Property	Any lot, parcel, historic structure, or designated area which has been listed on the West Virginia or the National Register of Historic Places.
Home Occupation, Level 1	An occupation conducted in a residential premise in any district, but only by family members, wholly within the dwelling unit, with no visible evidence of its conduct. See Article 4A for standards. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 18, 1996]
Home Occupation, Level 2	An occupation conducted in a residential premise in any district, but not in subdivisions established since 1979, and with some nonresident employees, but wholly within the dwelling unit and with no visible evidence of its conduct except a small sign. See article 4A for standards. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 18, 1996]
<a href="#">Hunting, Shooting, Archery and Fishing Clubs, public or private</a>	<a href="#">Land owned by an organized group of persons formed as a club that is used for hunting, fishing, shooting, archery and similar types of passive recreation.</a>
Impervious Surface	Any structure, material, or surface which reduces and prevents absorption of storm water into the earth.
Improvements	Modifications to land which increase its value or utility. Improvements include, but are not limited to, buildings and structures, road grading, road surfacing, landscaping, curbs, gutters, storm sewers and drains, sidewalks, street signs, modifications to

Comment [SB28]: Use currently undefined.

	watercourses, water supply facilities, sewage disposal facilities, and park and recreation equipment.
Institutional Use	A non-profit, <del>not for profit</del> , public or quasi-public use, such as a religious facility, library, public or private school, hospital, or government owned, operated, or supported facility or land use for public purpose. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
<a href="#">Kennel</a>	<a href="#">The boarding, breeding, raising, grooming, or training of more than six dogs, cats, or other household pets of any age not owned by the owner or occupant of the premises, and/or for commercial gain.</a>
Land Surveyor	A person registered by the State of West Virginia through the Board of Examiners of Land Surveyors.
Lattice Tower	A support structure constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Light Industrial	Any industry that does not use a significant amount of water except for domestic purposes. Industrial uses that do not create noise, odors, smoke and objectionable nuisances or hazards. <del>All other perceived light industrial uses shall be referred to the Jefferson County Development Authority for a recommendation. The final decision shall still be made by the Planning and Zoning Commission.</del> Any uses listed in Section 5.6(b) (as amended) are not considered light industrial. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989]
Lot	A tract of land area meeting local development standards which is intended for building development whether immediate or future.
Lot Area	The total horizontal area included within the rear, side and front lot or proposed street lines of the lot.
<a href="#">Lot, Corner</a>	<a href="#">A lot abutting on two intersecting streets. Both sides</a>

Comment [SB29]: Use currently undefined.

Comment [SB30]: Moved to Section 5.8.

	<p><u>abutting the streets forming the corner shall be considered front lot lines unless otherwise specified in this Ordinance, with the exception of corner lots that front on a private or public road on one edge and an access easement serving 5 lots or fewer on one edge – for such lots, a front yard setback for the principal structure applies to the edge of the lot that fronts on a private or public road and a side yard setback for a principal structure applies to the edge of the lot that fronts on the access easement. A corner lot must have at least one rear lot line.</u></p>
Lot Line, Front	<p>The side or sides of an interior or through lot which <del>abut</del> <del>about</del> a street; <del>in a corner lot both sides abutting the streets forming the corner shall be considered front lots.</del> Front lot lines shall be measured from the Road Improvement Easement where one exists. <u>For a property with a rear yard adjacent to a right-of-way designated as an alley, a rear yard setback shall apply.</u> [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]</p>
Lot Line, Side	<p>Any lot line other than a front lot line or rear lot line. <del>In a corner lot there must be at least one rear lot line.</del> [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]</p>
Lot of Record	<p>A written or graphic description of a lot that is on record in the office of the Clerk of the County Commission of Jefferson County at the adoption of this Ordinance.</p>
<u>Manufactured Housing</u>	<p><u>A factory-built, single-family structure, which is manufactured or constructed under authority of 42 U.S.C. Sec. 5403, Federal Manufactured Home Construction and Safety Standards, and is to be used as a place for human habitation, but which is not constructed with a permanent hitch or other device allowing it to be moved other than for the purpose of moving to a permanent site and which does not have permanently attached to its body or frame any wheels or axles. For the purpose of this title, a manufactured home shall be considered the same as any site-built, single-family detached dwelling.</u></p>
Massage Parlor	<p>An establishment where, for any form of</p>

**Comment [SB31]:** New term and definition. Combines existing text in "Lot Line, Front" and "Lot Line, Side". The "exception" text is consistent with adopted Department policy.

**Comment [SB32]:** Moved to definition of Lot, Corner.

**Comment [SB33]:** Alley clarification reflects adopted policy.

**Comment [SB34]:** Moved to definition of Lot, Corner.

**Comment [SB35]:** Term and definition added to distinguish Manufactured Housing from a Mobile Home.

	consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, certified massage therapist, or similar professional person licensed by the State. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa, or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service. [AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993]
<a href="#">Medical/dental/optical office, small</a>	<a href="#">A medical, dental, or optical office limited to two practitioners.</a>
Mobile Home	A detached structure with the following characteristics: It is designed for long-term occupancy and containing sleeping accommodations, a flush toilet, a tub or shower bath, and kitchen facilities with plumbing and electrical connections provided for attachment to outside systems, and it is designed for transportation after fabrication on streets or highways on its own wheels, or on flatbeds or other trailers, or detachable wheels, and it arrives at the site where it is to be occupied complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities and the like. <a href="#">A mobile home is distinct from a manufactured home.</a>
Mobile Home Park	A lot, site, or parcel of land used or intended to accommodate two (2) or more mobile homes for residential purposes with adequate public or community water and sewerage service meeting Health Department standards. A mobile home park does not include mobile home sales lots, which unoccupied mobile homes are parked for inspection and sale. This term includes all buildings, structures, vehicles, accessories and appurtenances used or intended as equipment in such a park.
<a href="#">Model Home / Sales Office</a>	<a href="#">A dwelling unit temporarily used for display</a>

**Comment [SB36]:** Revised use name and new definition (currently not defined), replaces "1 or 2 doctor medical/dental/optical office."

**Comment [SB37]:** Sentence added to distinguish a Mobile Home from Manufactured Housing.

	<p><a href="#">purposes as an example of dwelling units available for sale in a residential development approved by Jefferson County. Model homes may include sales offices for dwellings within the development.</a></p>
Modular Unit	A factory-fabricated transportable building unit designed to be used by itself or to be incorporated with similar units at a building site into a modular structure for residential, commercial, educational, or industrial uses.
Monopole	A support structure constructed of a self-supporting hollow metal tube securely anchored to a foundation. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Motor Vehicle	Any self-propelled vehicle designed primarily for transportation of persons or goods along public streets or other public ways. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
Multi-Residential Use	A deeded lot or parcel on which two or more dwelling units is located.
Natural Undisturbed Condition	This exists where the terrain has not been altered in form by human activities such as cutting, filling, blasting or leveling and where natural vegetation exists. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]
Natural Vegetation	This occurs when a property is allowed to revert to a wild condition with native plants. No cutting, trimming or cultivation takes place in areas of natural vegetation. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]
Neighborhood	An area generally confined to a one-mile radius from the perimeter of a proposed development. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

Comment [SB38]: New definition. Term used in ordinance but currently not defined.

Nonconforming Use	A use of a building or of land lawfully existing at the time this Ordinance becomes effective and which does not conform with the use regulations of the district in which it is located. Any new lines of division within a subdivision of a parcel that is a nonconforming use shall meet the regulations of this Ordinance.
<u>North American Industry Classification System (NAICS)</u>	<u>A system to classify business establishments according to type of economic activity.</u>
Non-residential	A commercial, industrial, or institutional use. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
Nursing or Retirement Homes	This term includes rest homes, nursing homes, convalescent homes for children and homes providing chronic and convalescent care.
Open Space	Land within a proposed development site excluding areas devoted to buildings, structures, roadways and parking.
PCS	Personal Communication Services. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Plat	A scaled, graphic drawing of a land subdivision project prepared according to the provisions of <a href="#">the Subdivision and Land Development Regulations</a> and this Ordinance. A plat depicts the design and layout of a project as well as the location of existing and proposed property boundaries and easements. A plat also includes all terms, conditions and performance requirements established prior to the approval of a subdivision.
Preliminary Plat	A professionally prepared drawing of a proposed subdivision which is not a record plat but which contains detailed information concerning the proposed development, <a href="#">and is prepared according to the provisions of the Subdivision and Land Development Regulations and this Ordinance.</a>
<u>Preschool</u>	<u>Use of a site for the provision of pre-elementary educational services on a scheduled basis to children</u>

**Comment [SB39]:** NAICS is the industry classification system now in use. It was released in 1997, replacing SIC.

**Comment [SB40]:** Added for consistency with final plat definition.

**Comment [SB41]:** New use name and definition.

	<a href="#">through kindergarten. A preschool is registered with and approved for operation by the West Virginia Department of Education.</a>
Primary Public Safety Provider	An FCC licensed governmental user that uses wireless telecommunication facilities to provide primary communications for law enforcement, fire, ambulance or related emergency services. Primary Public Service Provider does not include Commercial Wireless Service Providers, or Competitive Local Exchange Carriers (CLEC), who provide telecommunication services on a commercial basis to Primary Public Service Providers, or who deliver emergency calls or messages from its customers to a Public Safety Answering Point (PSAP). [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Principal <del>Permitted</del> Use	The primary or predominant use of any site.
<a href="#">Principal Permitted Use</a>	<a href="#">Any use which is or may be lawfully established in a particular district, approved by the Departments of Planning and Zoning without requirement of Development Review System review or approval by a board or commission, provided the use conforms with all applicable requirements of this ordinance.</a>
Private Business User	Persons or entities which operate radio facilities (including microwave) requiring an FCC license solely for intra-company communications and who do not employ those facilities to offer fixed or mobile wireless communication services, or point-to-point microwave links for commercial wireline communication services, to third parties for compensation. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Prohibited Use	A use that is not permitted.
<a href="#">Publicly Owned Facility</a>	<a href="#">Use of a site for government operations or activities, and not otherwise defined as a public safety facility; school, elementary or secondary; school, university or college; school, vocational or professional; hospital; <del>or</del> cultural facility; or essential utility equipment.</a>
<a href="#">Public Safety Facility</a>	<a href="#">Facilities that provide health and safety services to</a>

Comment [SB42]: Revised name more accurately reflects definition.

Comment [SB43]: New definition.

Comment [SB44]: Use currently not defined

	<a href="#">the general public including, but not limited to fire stations, police stations, and emergency medicine or ambulance stations or facilities.</a>
Public Highway	Any highway or road in Jefferson County which is part of the Federal or West Virginia public highway system and which is so identified by and numbered on the most recent General Highway Map published by the West Virginia Department of Highways.
Research and Development	Research, development and testing laboratories that do not involve the mass manufacture, fabrication, processing or sale of products. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JANUARY 10, 2002]
Residential	Any detached or attached structure that is used for permanent living quarters and has kitchen facilities. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989]
<a href="#">Residential Care Home</a>	<a href="#">The use of a site for the provision of a family-based facility in a single-family dwelling unit providing 24 hour care in a protected living arrangement with not more than two supervisory personnel and not more than six residents who are suffering from mobility, orthopedic, visual, speech, or hearing impairments, Alzheimer's disease, pre-senile dementia, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, autism, emotional illness, or similar conditions.</a>
<a href="#">Restaurant, fast food, limited</a>	<a href="#">Take out pizza/sandwich shops not exceeding 600 square feet.</a>
<a href="#">Restaurant, Limited</a>	<a href="#">A food service establishment not exceeding 2000 square feet and where the primary mode of food distribution is by server.</a>
<a href="#">Retail Food Store, Limited</a>	<a href="#">A retail food store not exceeding 1500 square feet of retail floor space.</a>
Right-of-way	A right which grants passage across or through a property. A right-of-way is also the (usually dimensioned) path along which the right of passage is granted).
Road	A prepared surface within a right-of-way which is intended for vehicular use. Road does not include

**Comment [SB45]:** Revised use name and new definition (currently not defined), replaces various use names such as "Fire stations, ambulance and rescue squads, publicly supported".

**Comment [SB46]:** New use and definition. This definition is intended to replace the existing definition for "Group Residential Facility."

**Comment [SB47]:** Revised use name and new definition (currently not definition), replaces "Take out pizza/sandwich shops not exceeding 600 square feet."

**Comment [SB48]:** Revised use name and new definition (currently not definition), replaces "Restaurant not exceeding 2000 square feet (primary mode of food distribution is by waiter or waitress."

**Comment [SB49]:** Revised use name and new definition (currently not definition), replaces "Take out pizza/sandwich shops not exceeding 600 square feet."

**Comment [SB50]:** Revised use name and new definition (currently not definition), replaces "Retail food stores not exceeding 1500 square feet of retail floor space."

	shoulders.
<a href="#">School, Elementary or Secondary</a>	<a href="#">A public or private school meeting all requirements of the compulsory education laws of the state and providing instruction to students in kindergarten through grade twelve. Secondary schools consist of middle schools and high schools, generally grades six through twelve.</a>
<a href="#">School, University or College</a>	<a href="#">An educational institution that offers specialized instruction in any of several fields of study and/or in a number of professions or occupations and is authorized to confer various degrees such as the bachelor's degree. Education uses may include a variety of uses such as classroom buildings, administrative offices, sports facilities, student housing, research facilities and other related uses operated by the governing board of the institution within the campus or on adjoining lots.</a>
<a href="#">Seasonal Use</a>	A use that is carried on for not more than a single three day consecutive period in each of the four solar seasons. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]
<a href="#">Sensitive Natural Area</a>	An area of wetlands, stream or river banks and forest which exists as a habitat supporting rare or endangered species or which has been dedicated perpetually to environmental preservation by easement, covenant or other legal instrument or which is otherwise protected for environmental purposes by State or Federal statute. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]
<a href="#">Setback Line</a>	That line that is the required minimum distance from the street right-of-way line or any other lot line that establishes the area within which the principal structure must be erected or placed. <a href="#">For attached dwelling unit types (duplex, multi-family, townhouse, two-family, and similar residential uses) no setback between attached dwelling units is required.</a>
<a href="#">Sexual Paraphernalia Store</a>	Any retail store specializing in the sale of paraphernalia, devices, or equipment distinguished or characterized by an emphasis on depicting or describing specific sexual activities or used in

Comment [SB51]: Currently undefined.

Comment [SB52]: Currently undefined.

Comment [SB53]: In accordance with existing Zoning Ordinance, section 5.4.

	connection with specified sexual activities. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002]
Shopping Center	A commercial facility on a single lot with common parking facilities that uses or leases separate areas of space to retail or service oriented businesses. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]
Shrub, Evergreen	A low growing, usually several stemmed, woody plant which has foliage that remains green and functional through more than one growing season.
Sign	Any object, device display or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination or projected images.
Sign, Animated	A sign with action or motion, flashing lights, or color change requiring electrical energy, electronic, or manufactured sources of supply, but not including wind actuated elements such as flags, banners, or pennants.
Sign, Business	A sign which directs attention to a business or profession or to a commodity, service, or entertainment sold or offered upon the premises where the sign is located.
Sign, Freestanding	A sign supported by a permanent structure, other than a building, that is affixed to the earth and placed on the same parcel of land on which the business or service advertised by the sign is located.
Sign, Outdoor Advertising	A sign structure which directs attention to a business, commodity, service, or entertainment not necessarily conducted, sold, or offered upon the premises where such sign is located. This term shall include billboards.
Sign, Vehicle	<u>A sign or advertising device which is painted, mounted, affixed or otherwise attached to a vehicle or trailer, which is used for the purpose of providing advertisements of products and services or directing people to a business or service or other activity on or</u>

Comment [SB54]: Text moved from "Vehicle sign" definition.

	<u>off the premises or public right-of-way where such vehicle sign is located. This does not include identification signs on vehicles which are moved regularly and used in the normal, day-to-day operation of the business.</u>
Soil Value	A relative numeric value assigned to soil groups based on the group's potential for agricultural production.
Species, Rare or Endangered	Any species listed with the West Virginia Department of Natural Resources Heritage Program Species List or by the U.S. Department of the Interior, Department of Fish and Wildlife Management.
Specified Anatomical Area	As used herein specified anatomical areas means and includes any of the following: A. Less than completely and opaquely covered human genitals, public region, buttocks, anus, or female breasts below a point immediately above the top of the areolae; or B. Human male genitals in a discernibly turgid state, even if completely or opaquely covered. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002]
Specified Sexual Activities	As herein, specific sexual activities means and includes any of the following: A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; C. Masturbation, actual or simulated; or D. Excretory functions, when such activities are a part of or in connection with any of the activities set forth in the following definitions: Adult Use; Adult Arcade; Adult Bookstore; Adult Cabaret; Adult Mini Motion Picture; Adult Sauna; Adult Theater; Massage Parlor; Sexual Encounter Establishment; and, Sexual Paraphernalia Store [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002]
<del>Standard Industrial Classification</del>	<del>A multi-digit code utilized by the federal Executive Office of Management and Budget to classify establishments by type of activity in which they are</del>

	<del>engaged-</del>
Staff	Personnel employed in the Departments of Planning, Zoning, and Engineering. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
Standard Details	<del>These are m</del> Minimum acceptable details approved by the County Engineer for use in preliminary plats, site plans, and related improvement plans. Said approval does not relieve the subdivider, the design consultant, or the builder of the responsibility for structural adequacy and sound construction. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]
Street	<del>(Same See as</del> Road)
Support Structure	A structure designed to support Wireless Telecommunication Facilities including, but not limited to, monopoles, lattice towers, utility poles and other freestanding self-supporting structures. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Telecommunication	The technology which enables information to be exchanged through the transmission of voice, video, or data signals by means electrical or electromagnetic systems. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE FEBRUARY 11, 1998]
Tower Base	The foundation, usually concrete, on which a telecommunication tower is situated. For measurement calculations, the tower base is the actual or geometric center of the tower. For structures lacking a foundation the tower base is the ground elevation of the structure. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Tower Height	The vertical distance measured from the tower base to the highest point on a telecommunication tower, including any antennas or other equipment affixed thereto, but excluding any lightning protection rods extending above the tower and attached equipment. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Tower Site	The land area (including any associated easement areas) that contains, or will contain, any proposed

**Comment [SB55]:** NAICS is the industry classification system now in use. It was released in 1997, replacing SIC. As such, SIC definition can be deleted.

	telecommunication tower, related equipment enclosures and other improvements; together with any tower fall zone. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
<u>Urban Growth Boundary</u>	<u>A site-specific line, delineated on the Jefferson County Zoning Map or a written description in the Jefferson County Zoning and Land Development Ordinance identifying an area around and outside the corporate limits of a municipality within which there is a sufficient supply of developable land within the boundary for at least a prospective twenty-year period of municipal growth based on demographic forecasts and the time reasonably required to effectively provide municipal services to the identified area.</u>
Use	An activity that constitutes a legal employment of a land parcel or lot exclusive of ancillary parking and drives. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]
Utility Poles	Metal, wooden or concrete poles used to suspend wires or cables for electric, telephone or television cable services. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Variance	A variance is a deviation from the minimum standards of the <del>zoning ordinance</del> <u>Zoning and Land Development Ordinance</u> -and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classification of a parcel of land. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
Vehicle	A means of carrying or transporting something. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
<del>Vehicle Signs</del>	<del>A sign or advertising device which is painted, mounted, affixed or otherwise attached to a vehicle or trailer, which is used for the purpose of providing advertisements of products and services or directing people to a business or service or other activity on or off the premises or public right of way where such vehicle sign is located. This does not include identification signs on vehicles which are moved regularly and used in the normal, day-to-day</del>

**Comment [SB56]:** New term, added for consistency with HB2845, West Virginia Code Chapter 8, Article 6.

	<del>operation of the business.</del> <del>[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]</del>
Vehicular Miles	Distance by motor vehicle between two points utilizing public highways. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
Visible	Capable of being seen by the unaided eye in the daylight. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
<u>Vocational and/or Training Facility for Adults</u>	<u>A specialized or accredited instructional establishment that provides on-site training or education in business, commercial, and/or trade skills. The land use is conducted in a campus setting, and may include classroom buildings, dormitories, cafeterias, gymnasiums (whose use is limited to the students, participants and instructors at said school or training facility), and administrative buildings. Incidental instructional services in conjunction with another primary use shall not be considered a Vocational and/or Training Facility for Adults. This use does not include School, University or College. In the Rural District, the use must be conducted in a campus setting.</u>
Wetland/or	An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that, under normal circumstances, does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. The substrata is predominantly hydric soil. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990] /or In the Rural District, the use must be conducted in a campus setting.
Wireless Telecommunication Antenna	The physical device through which electromagnetic, wireless telecommunications signals authorized by the Federal Communications Commission are transmitted or received. Antennas used by amateur radio operators are excluded from this definition. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE FEBRUARY 11, 1998]

Comment [SB57]: Text moved to "Sign, Vehicle."

Comment [SB58]: Text moved to "Sign, Vehicle."

Comment [SB59]: Use currently undefined; current name "specialized or accredited educational and training facilities for adults"

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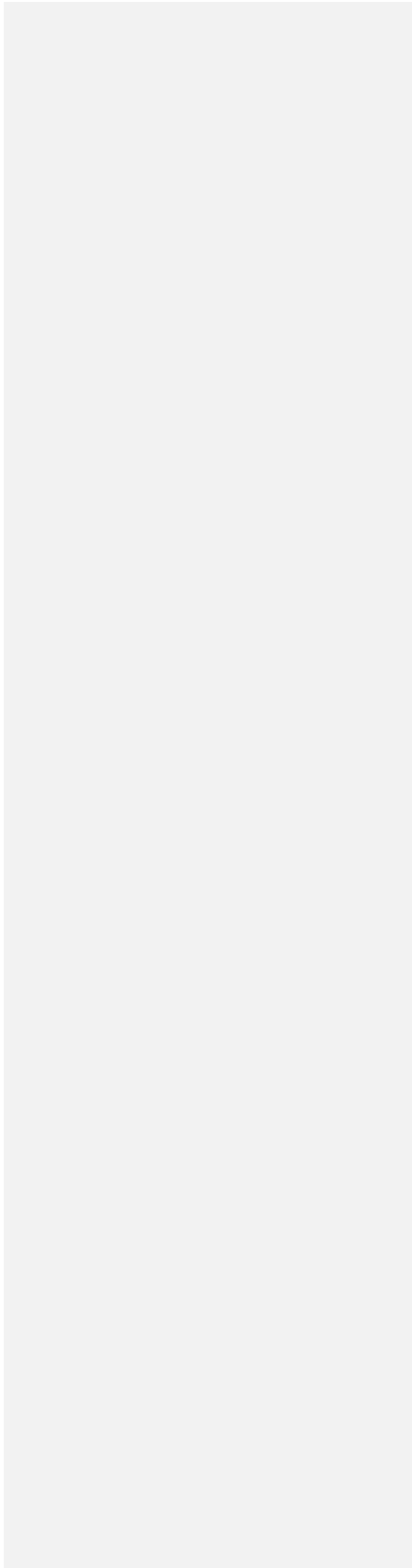
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Wireless Telecommunication Equipment Shelter	The structure in which the electronic receiving and relay equipment for a wireless telecommunications facility is housed. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE FEBRUARY 11, 1998]
Wireless Telecommunication Facility	A facility consisting of the equipment and structures involved in transmitting or receiving telecommunications or radio signals to or from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Wireless Telecommunication Facility, Co-Located	See Co-location. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Wireless Telecommunication Facility, Concealed	A wireless telecommunication facility with all antennas camouflaged to match or complement the color and architectural treatment of the surface of an existing structure upon which they are mounted; or which have all facility components concealed behind a façade or parapet wall, or inside a radome on a monopole that does not exceed the diameter of the monopole, or interlaced within or atop an electric distribution tower. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Wireless Telecommunication Facility, Temporary	A vehicle-mounted or portable wireless telecommunication facility including portable towers, antennas, equipment enclosures, generators and associated electronics, cabling, wiring and hardware. Such a facility may include, but is not limited to, "cell on wheels" mobile equipment. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
Wireless Telecommunications Tower	A structure intended to support equipment used to transmit and/or receive telecommunications signals including monopoles, guyed and lattice construction steel structures. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE FEBRUARY 11, 1998]

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Wireless Telecommunication Tower, Speculative	A Wireless Telecommunications Tower developed without binding commitments from one or more FCC licensees to utilize the tower within six (6) months of issuance of a certificate of occupancy for the Tower. [ADDED BY ACT OF THE COUNTY COMMISSION ON MARCH 10, 2011]
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## ARTICLE 3: ADMINISTRATION AND ENFORCEMENT

### Section 3.1 Administration

- A. The provisions of this Ordinance will be governed by the County Commission or the Zoning Administrator and Staff in accordance with §8A-1-1 et seq of the West Virginia State Code, as amended. With enactment of the Ordinance, the County Commission shall designate a Zoning Administrator for the day to day administration of the ordinance. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- B. An appeal to this Ordinance, however, may be made to the Jefferson County Board of Zoning Appeals subject to the provisions of §8A-1-1 et seq of the West Virginia Code, as amended. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- C. The Jefferson County Board of Zoning Appeals shall evaluate all Development Review applications and approve or deny issuance of a conditional use permit. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE AUGUST 31, 1989. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- D. All departments, officials, and public employees of Jefferson County which are vested with the duty or authority to issue permits or licenses shall issue no permit or license for any use, building, or purpose if the same would be in conflict with the provisions of this Ordinance.

### Section 3.2 Zoning Administrator

- A. The Zoning Administrator shall administer and enforce the ~~Zoning Ordinance~~[Zoning and Land Development Ordinance](#). This includes but is not limited to the following:
  - 1. Make determinations that all applications required by the Ordinance are complete and that all fees are paid.
  - 2. Interpret the provisions of the Ordinance as required by law.
  - 3. Issue Zoning Certificates as permitted by the Ordinance.
  - 4. Calculate the LESA point scores and determine the adequacy of the Support Data for all applications for a Conditional Use Permit.
  - 5. Issue all permits and Certificates as permitted by the Ordinance.
  - 6. Prepare and submit reports as required by the Ordinance or the Board of Zoning Appeals or Planning Commission.
  - 7. Conduct meetings and conferences pursuant to the ~~Zoning Ordinance~~[Zoning and Land Development Ordinance](#). [PREVIOUSLY INVALIDATED APRIL 8, 2005]

AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

- B. Any decision or action by the Zoning Administrator based on Section 3.2(a) above ~~are~~ is subject to appeal to the Board of Zoning Appeals. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- C. It shall be unlawful to develop, construct, alter, or reconstruct any structure or to change the use of any structure or property without first obtaining a zoning certificate from the ~~Z~~oning ~~a~~Administrator. This provision may not apply to the general maintenance or repair or any addition deemed not a major addition as defined in Section 2.2 of this Ordinance. ~~Please call the Department of Planning, Zoning and Engineering for more information.~~ [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- D. Each application for a zoning certificate shall be accompanied by a copy of an approved site plan, if applicable, or by a legible drawing either drawn to scale or accurately indicating dimensions which show property boundaries and existing and proposed structures and other proposed changes or land development. The plans shall be retained in the office of the ~~Departments of Planning and Zoning and Engineering.~~ [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- E. Use of any property, developmental arrangement, or construction on any property other than that authorized in the zoning certificate is a violation of this Ordinance. All provisions of this Ordinance and amendments shall be maintained perpetually.
- F. The Zoning Administrator shall approve or disapprove issuance of a zoning certificate within sixty (60) days of the initial filing date providing the application is complete and fees are paid when filed and the request is in compliance of the provisions of this Ordinance. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- G. A zoning certificate and/or conditional use permit shall become void eighteen (18) months after the date of issuance if the construction or use for which the permit was issued has not commenced. A one-time extension of this time frame may be granted by the Board of Zoning Appeals after evaluation of the hardship involved with noncompliance of this regulation. The length of time extended shall be at the discretion of the Board of Zoning Appeals and shall not exceed eighteen (18) months. Pursuant to Chapter 8A of the West Virginia Code as amended, a Zoning Certificate or Conditional Use Permit associated with a subdivision or land development plan - whether recorded or not yet recorded, valid under West Virginia law and outstanding as of January 1, 2010 - shall remain valid until July 1, 2012, provided that the land development plan or plat received at least preliminary approval by the Planning Commission or County Commission by March 1, 2010. [PREVIOUSLY

Comment [SB60]: Unnecessary.

Comment [SB61]: Added for consistency with SB 595, West Virginia Code §8A-5-12.

INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

- H. A filing fee, in accordance with the County fee structure, shall be charged for all zoning certification.

### Section 3.3 Enforcement

- A. The Zoning Administrator or Staff shall promptly investigate any written complaint alleging a violation of this Ordinance and determine if a violation has occurred. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- B. As provided in §8A-1-1 et seq of the West Virginia Code, as amended, any person who violates any provision of this Ordinance shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than fifty (\$50.00) or more than five hundred dollars (\$500.00) per day. Each day during which any violation of this Ordinance continues shall constitute a separate offense. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- C. When it appears to the Board of Zoning Appeals or the Zoning Administrator or Staff that a violation of this Ordinance has occurred, the County shall notify the responsible person by means of a written Violation Notice. The Violation Notice shall specify the nature of the violation and shall request that the violation be terminated within 15 days from the date appearing on the Notice. Failure to terminate the violation within the requested time shall be cause for the Board of Zoning Appeals or the Zoning Administrator or Staff pursuant to §8A-10-1, 2 and 3 [of the West Virginia Code, as amended](#), to: [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
  - 1. Seek an injunction in the Circuit Court of Jefferson County to restrain the responsible person from continuing the violation cited or seek an injunction requiring the removal of structures or land uses from the property involved, or
  - 2. Issue a warrant for the arrest of the person responsible for the violation and seek a conviction in the Circuit Court of Jefferson County.

Comment [SB62]: Clarifies source of 8A sections.

**Section 3.4 Boards and Commissions**

**A. Board of Zoning Appeals**

1. The Board of Zoning Appeals will consist of five members to be appointed by the County Commission. Their terms of office, succession, removal, filing of vacancies, and their powers and duties shall be provided in ~~Chapter 8, Article 24~~ Chapter 8A of the West Virginia Code, as amended.
2. Meetings of the Board of Zoning Appeals shall be ~~held at such time that the Board determines appropriate~~ conducted according to the Rules of Procedure adopted by the Board of Zoning Appeals. In the event of a conflict between this ordinance and the Rules of Procedure, the Rules of Procedure shall prevail.  
~~The Board of Zoning Appeals shall Hear and decide appeals regarding the Planning Commission's issuance or denial of a Conditional Use Permit. [AMENDED BY ACT OF THE COUNTY COMMISSION ON AUGUST 31, 1989]~~
3. The Board of Zoning Appeals shall ~~H~~hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official in regard to the enforcement of this Ordinance or of any ordinance adopted thereto.
  - a. Filing an appeal
    1. An appeal to the Board may be taken by any person, board, associate, corporation or official allegedly aggrieved by any administrative decision based or claimed to be based, in whole or in part, upon the provisions of this Ordinance. The property owner of the subject appeal shall sign the application or an affidavit allowing an agent for the property owner to file the application which shall be submitted.
    2. Such appeal shall be filed with the Board within thirty (30) days from the decision appealed.  
~~Appeal applications shall be made on the forms designated by the Planning Commission and shall be accompanied by three (3) copies of the application and an accurate drawing of the property showing distance of all structures from property lines and any pertinent data deemed necessary for the request. Submittal of the application shall be made to the Planning and Zoning Office. All zoning fees, in accordance with the approved County fee structure, shall be paid upon application.~~  
~~No application shall be accepted in the Planning and Zoning Office unless it contains all pertinent information and is accompanied by the required fees.~~
  - b. Processing Procedures Notification
    - ~~Appeal applications filed in the proper form shall be numbered serially, docketed, and placed upon the calendar of the Board of Appeals.~~

**Comment [SB63]:** General note: Updates to this section are for clarity and organization. Text in this section is consolidated from multiple parts of the Zoning Ordinance, including 3.1(c), 7.6, 7.8, and Article 8.

**Comment [SB64]:** Originally 7.8a

**Comment [SB65]:** Originally 7.8b(5)

**Comment [SB66]:** No longer accurate; Planning Commission does not issue Conditional Use Permits.

**Comment [SB67]:** Originally 7.8b(2)

**Comment [SB68]:** Originally 8.1 a through e

**Comment [SB69]:** Submittal requirements no longer accurate.

**Comment [SB70]:** Unnecessary – administrative.

**Comment [SB71]:** Unnecessary – administrative.

**Comment [SB72]:** Originally 8.2 a through e

**Comment [SB73]:** Unnecessary – administrative.

~~The Board shall hold a hearing within forty five days (45) from the date the appeal is received in the Department of Planning and Zoning. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON SEPTEMBER 13, 1990 AND MAY 18, 1996] [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

Comment [SB74]: Moved to 3.4A.3.c.1

1. Notice of ~~the~~ public hearing for an appeal shall be advertised ~~in two issues of~~ a newspaper having general circulation in the County at least 15 days before the hearing. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON SEPTEMBER 13, 1990] [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

Comment [SB75]: Originally 8.2c

Comment [SB76]: One issue is consistent with WV Code Section 59-3-1 and Board of Zoning Appeals rules of procedure.

2. ~~Property upon which the application is concerned~~ The subject property shall be posted conspicuously by a zoning notice no less than twenty-eight (28) inches by twenty-two (22) inches, in size, at least 15 days before the hearing. The sign will be prepared by the Departments of Planning and Zoning but posting the sign is the responsibility of the applicant. The Board, in its discretion, may otherwise visit the specific property prior to or after the hearing.

Comment [SB77]: Originally 8.2e

Comment [SB78]: Previously proposed deletion ("The Board, in its discretion...") restored.

#### c. Public Hearing

Comment [SB79]: Originally 8.3 a & b

1. The Board shall hold a hearing within forty-five (45) days ~~from of~~ the date the appeal is received in the Departments of Planning and Zoning. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON SEPTEMBER 13, 1990 AND MAY 18, 1996] [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]. ~~The Board following action in Section 8.2, shall hold such hearing.~~ At the hearing, any party may appear and be heard in person or by agent or attorney.

Comment [SB80]: Originally 8.2b.

Comment [SB81]: Redundant with first sentence; originally 8.3a.

Comment [SB82]: Originally 8.3a.

2. The Board shall render its determination on the application no more than thirty (30) days following the public hearing by registered mail. ~~Any party aggrieved by a decision of the Board may appeal to the circuit court of Jefferson County within thirty (30) days of the Board's decision. The Court may affirm, reverse, vacate, or modify the decision subject to the appeal.~~

Comment [SB83]: Moved to 3.4A.7; originally 8.3b.

#### d. Continuance of Hearing

Comment [SB84]: Originally 8.4

1. The Board may continue a hearing at another time and/or date once such hearing has been started; however, the Board shall announce

the date and hour of continuance of such hearing while in session. Any hearing continued shall be held within thirty (30) days from the initial hearing.

4. The Board of Zoning Appeals shall ~~Authorize~~ consider requests for variances from the terms of the Ordinance.

a. The board shall approve a variance request -if the Board finds that a variance:

- (1) Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;
- (2) Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance;
- (3) Would eliminate an unnecessary hardship and permit a reasonable use of the land; and
- (4) Will allow the intent of the ~~zoning ordinance~~ Zoning and Land Development Ordinance to be observed and substantial justice done. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

b. The owner or authorized representative of the owner of the property which is the subject of a variance request shall complete and sign forms provided for this purpose by the Board, and shall pay the associated fees. The variance request shall be filed with the Board at offices of the Departments of Planning and Zoning.

c. Notification for a variance must be conducted according to the requirements of Section 3.4A(3)(b).

d. A public hearing must be conducted according to the requirements of Section 3.4A(3)(c) and such hearing may be continued according to the requirements of Section 3.4A(3)(d).

5. The Board of Zoning Appeals shall ~~approve or deny~~ have the authority over the issuance or denial of a conditional use permit. The Board of Zoning Appeals review process for a conditional use permit application is established in Article 7 of this ordinance. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE AUGUST 31, 1989 AND]

6. In exercising its power and authority, the Board of Zoning Appeals may reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination appealed from, and make such order, requirement, decision or determination as ~~ought to be made~~ the Board deems appropriate. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

7. Any party may appeal any decision of the Board of Zoning Appeals to the Circuit Court of Jefferson County within thirty (30) days of the Board's decision, pursuant to

Comment [SB85]: Originally 7.8b3

Comment [SB86]: Reworded for clarity and organization.

Comment [SB87]: The current Zoning Ordinance does not specify the process for a variance application.

Comment [SB88]: Originally 3.1c and 7.6F.

Comment [SB89]: Originally 7.8b.4

Comment [SB90]: Moved from Section 8.3b and section 7.6h (edited)

Chapter 8A of the West Virginia Code, as amended. [AMENDED BY ACT OF THE COUNTY COMMISSION ON AUGUST 31, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

8. Nothing in this Section shall be construed as permitting the Board of Zoning Appeals to exercise any power or refrain from the performance of ~~exercise any power or refrain from the performance of~~ any duty not authorized or directed by the provisions of ~~Chapter 8, Article 24~~ Chapter 8A of the West Virginia Code, as amended, which provisions of the Code are hereby incorporated herein by reference. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**Comment [SB91]:** Text repeats.

**Comment [SB92]:** Originally 7.8b.6

#### B. Planning Commission

**Comment [SB93]:** New section. The Zoning Ordinance does not currently have a section outlining the powers and duties of the Planning Commission.

1. Membership, terms of office, jurisdiction, and rules of procedure are established in the Bylaws of the Jefferson County Planning Commission and Chapter 8A of the West Virginia Code, as amended.

2. The powers and duties of the Jefferson County Planning Commission include but are not limited to the following:

a) Review applications for major site plans, major subdivisions, and waivers from minimum standards, pursuant to the Subdivision and Land Development Regulations;

**Comment [SB94]:** Source: §8A-5-1; Subdivision and Land Development Regulations, Section 24.300

b) Review requests for amendments to the County zoning map and Zoning and Land Development Ordinance;

**Comment [SB95]:** Source: §8A-7-8

e) Research and recommend to the County Commission improvements to the Zoning and Land Development Ordinance and the Subdivision and Land Development Regulations;

d) Make recommendations to the County Commission concerning planning and zoning issues;

**Comment [SB96]:** Source: §8A-2-11

e) Make an annual report to the County Commission concerning the operation of the Planning Commission and the status of planning within its jurisdiction;

**Comment [SB97]:** Source: §8A-2-11

~~a) f) Prepare and amend the Jefferson County Comprehensive Plan and recommend to the County Commission for adoption or amendment.~~

**Comment [SB98]:** Source: §8A-3-3; §8A-3-11

#### C. County Commission

**Comment [SB99]:** New section. The Zoning Ordinance currently does not have a section outlining the powers of the County Commission.

1. General. The County Commission shall have all powers conferred upon it by the Constitution, the laws of the State of West Virginia, and the County Charter. With respect to development approval and amendments to this Ordinance and the County's Comprehensive Plan, the powers that the County Commission retains and shall exercise include but are not limited to the powers set out in this Section.

2. Approvals. Following a public hearing and the submittal of recommendations by the Planning and Zoning Department and the Planning Commission, the County

Commission may take action on the proposed adoption of, or amendments to, the following, including text, maps, and other elements:

a. Comprehensive Plan;

**Comment [SB100]:** Source: §8A-7-1; §8A-3-11

b. Zoning and Land Development Ordinance;

**Comment [SB101]:** Source: §8A-7-1; §8A-7-8a

c. Subdivision and Land Development Regulations;

**Comment [SB102]:** Source: §8A-4-1; §8A-4-5

d. The Jefferson County Zoning Map;

**Comment [SB103]:** Source: §8A-7-3

e. An Urban Growth Boundary in accordance with Chapter 8 of the West Virginia Code as amended:

**Comment [SB104]:** Source for all of section f: §8-6-4a

i. A boundary shall be established by the County Commission in agreement with each individual municipality regarding that municipality's boundary.

ii. If the County Commission and municipality cannot agree upon the location or size of the boundary, either party may file for declaratory judgment relief in the circuit court which shall submit the dispute to mediation or arbitration prior to final resolution by the circuit court.

iii. Once the county has adopted an urban growth boundary by its designation on an adopted county zoning map, the gross area inside the boundary may not be reduced without written consent of the municipality.

iv. The county commission shall review each urban growth boundary at a period not to exceed ten years or upon request of the individual municipality.

3. Hiring. The County Commission shall hire staff of the Departments of Planning and Zoning .

4. Appointments. The County Commission shall appoint the members of the Planning Commission and the Board of Zoning Appeals.

**Comment [SB105]:** Reformatted.

**Comment [SB106]:** Source: §8A-2-4

**Comment [SB107]:** Source: §8A-8-4

5. Fees. The County Commission shall adopt a fee schedule for processing applications pursuant to this Ordinance. The fee schedule may be amended from time to time as determined appropriate by the County Commission.

**Comment [SB108]:** Source: §8A-4-2

## ARTICLE 4: GENERAL PROVISIONS

### Section 4.1 Ordinance Deemed Minimum Regulations; Uniformity

The regulations set forth by this ordinance within each zoning district shall be minimum regulations and shall apply uniformly to each kind of structure or land except as hereinafter provided.

~~There will be listed in~~For each zoning district, a limited number of principal permitted uses are listed, as well as ~~and several~~ uses prohibited ~~uses~~ for all districts as listed in Section 4.4. ~~Principal permitted uses are those which are not required to demonstrate their appropriateness within a district and would not be subject to approval by the Development Review System. All other uses, except prohibited uses, will be permitted after demonstrating that such use is compatible with surrounding parcels and will comply with the regulations of this ordinance. Demonstration of compatibility will depend on the numerical value a parcel receives after evaluation by the Development Review System which assesses the productivity of soils and the amenities for development on a particular site and the results of the Compatibility Assessment Meeting. A site will~~may receive a conditional use permit upon completion of the Conditional Use Permit process as described in this ordinance, including a ~~demonstration~~ng that the land use in a specific location will comply with the standards of the Development Review System, ~~and~~ any other applicable requirements of this ordinance.

**Comment [SB109]:** Redundant; "Principal permitted use" is defined in Sec 2.2, definitions.

**Comment [SB110]:** Redundant text. The DRS section of the ordinance (Articles 6 and 7) adequately explains details such as soil values; this does not need to be repeated here.

### Section 4.2 Compliance with Ordinance

Except as hereinafter specified, no land, building, or premises shall hereafter be used, and no building or part thereof or other structure shall be located, erected, reconstructed, extended, enlarged, converted or altered except in conformity with the regulations herein specified for the district in which it is located and the Development Review System. This provision shall not apply to general maintenance or repair or any addition deemed not a major addition as defined in Section 2.2 of this Ordinance.

### Section 4.3 Nonconforming Uses

Any building, structure or premises lawfully existing at the time of the adoption of this ordinance, or lawfully existing at the time that this ordinance is subsequently amended, may continue to be used even though such building, structure, or premises does not conform to use, setbacks or dimensional regulations of the zoning district in which it is located or the regulations of the Development Review System; subject, however to the following provisions: [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]

~~A.~~ Nonconforming uses may be upgraded, or repaired, or ~~or make~~ alterations made to ~~their~~ the use's facilities.

~~B.A.~~ However, expansion of any nonconforming use shall be limited to the lot that existed at the time of adoption of this Ordinance. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]

Repair includes the following: replacement of same size (+/-35%) porches, awnings, decks roofs, overhangs, patios, or any other similar construction as approved by the Zoning Administrator. Additional acreage shall not be added to enlarge any nonconforming use unless approved via ~~that use completes~~ the Development Review System.

~~E.B.~~ Whenever a nonconforming use has been abandoned for a period of twelve (12) months, such use shall not be reestablished and any future use shall be in conformance with the provisions of this Ordinance. [AMENDED TWICE TIMES BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990 AND JULY 15, 1993. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

~~D.C.~~ A nonconforming use may not be substituted for any other nonconforming use without the Board of Zoning Appeals review and public hearing, provided, however, to the following: upon notice to the Zoning Administrator with an application for and approval of a Zoning Certificate a nonconforming retail, service, or wholesale operation may be substituted with another retail, service or wholesale operation without such public hearing; provided again, however, the intended use does not include an adult use. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

~~E.D.~~ Effective October 14, 1999, whenever a nonconforming use expands over 35% of the existing square footage of its operation said use shall meet all the applicable requirements of this Ordinance unless otherwise allowed by the Board of Zoning Appeals. Any nonconforming use that expanded between October 5, 1988 and October 14, 1999 may expand under this provision as if they have never utilized this provision in the past. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993 AND OCTOBER 14, 1999. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

1. When a nonconforming use can be computed by units such as apartment units, motel/hotel units, mobile home parks, and similar uses, the 35% expansion shall be limited to 35% of the number of existing units. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 18, 1996]

~~F.E.~~ A nonconforming shopping center (including spaces that were not leased in the existing building at the time of the adoption of this ordinance) may substitute uses according to Section 4.3(c). [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]

~~G.F.~~ Section 4.3 is subject to ~~Chapter 8A, Article 8, Chapter 24, Subsection 50~~ of the West Virginia Code, as Amended. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

G. This Section (4.3) does not apply to industrial uses that existed at the adoption of the ordinance. Such industries may expand provided that they meet the site plan standards of this ordinance, in addition to those of the Jefferson County Subdivision and Land Development Regulations. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 18, 1996]

**Comment [SB111]:** Clarifies that site plan standards of both ordinances must be met.

H. A nonconforming use destroyed by a natural or unnatural calamity cannot be rebuilt without approval of the ~~Zoning~~ Board of Zoning Appeals upon application by the owner and pursuant to the variance and appeal procedures outlined in Article ~~83~~. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

I. The nonconforming use automobile racing facility located on property specifically described as Tax Map 17, Parcels 2, 2.1 and 5 in the Kabletown District is permitted to expand as herein described:

1. The commercial/competitive racing circuit as measured on January 10, 2002, 5,344 linear feet may add an additional 8,870 feet of commercial/competitive raceway surface, in accordance with (and not in addition to) the provisions of Section 4.3 of this Ordinance. The surface shall conform to a required 200 foot setback from all property lines.
2. May add dormitory lodging with food service facilities that do not contain internally lit signs.
3. May add automobile related research and development facilities.
4. May add other automobile related facilities only for vehicles that are used on-site, including, but not limited to warehousing, parts, supplies and service. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JANUARY 10, 2002]

#### **Section 4.4** ~~Section 4.4~~ **Prohibited Uses**

- A. Any existing or proposed use which is determined to be in conflict with any existing ordinance or laws of Jefferson County or law or regulation of the State of West Virginia or other governmental agency shall be prohibited even though such use may be allowed under the terms of this ordinance.
- B. No land use shall be conducted that creates any injurious, noxious, or otherwise objectionable fire, explosive heat, or other hazard; noise, or vibration; smoke, dust, odor,

gases, or other form of air pollution; or emit dangerous radioactivity in such a manner that if permitted would adversely affect the uses of an adjacent property or contaminate the ground water or surface waterways of the County. All land uses generating such conditions shall comply with the appropriate State and Federal Codes. Such compliance with applicable State and Federal laws shall be deemed as compliance with this Ordinance.

- C. Any development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.
- D. No materials or waste should be stored on a property in a form that could be transported to adjacent property by wind or water or other natural causes or forces.
- E. All methods of industrial waste or sewage treatment and disposal shall be in accordance with County, State and Federal Codes.
- F. Jails, prisons and/or penal institutions shall be prohibited in all zones except the industrial/commercial zone. The Development Review System does not supercede this prohibition. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]
- G. No gambling or casino type games of chance (video or mechanical) that provides any type of payoff or remuneration shall be permitted anywhere in Jefferson County unless expressly and explicitly permitted and authorized by the West Virginia Code as amended. Provided, however, that such use shall only be permitted in the Heavy Industrial/Commercial Zone and shall be processed through the Development Review System (Article 6 and 7). [AMENDED BY ACT OF THE COUNTY COMMISSION ON OCTOBER 4, 1990]  

This prohibition does not apply to betting on horses or pari-mutuel betting on horses. Furthermore, this prohibition does not apply to such uses that existed at the time of the adoption of this ordinance. The Development Review System shall not supersede this prohibition in the Residential Growth Zone, the Rural Agricultural Zone, the Village Zone or the Residential/Light Industrial/Commercial Zone.
- H. For parcels located east of the Shenandoah River or which are in a natural, undisturbed condition within 1000 feet of the Potomac and Shenandoah Rivers and Opequon Creek, no use shall be permitted without adherence to the requirements for retention of land in a natural, undisturbed area as spelled out in Section ~~4.22.504~~ of the ~~Subdivision Ordinance~~ Jefferson County Subdivision and Land Development Regulations. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]
- I. No sales of fireworks are permitted outside the commercial zones, and are subject to the requirements of for such use in Article 8. [AMENDED BY ACT OF THE COUNTY COMMISSION , EFFECTIVE MAY 18, 1996]

Comment [SB112]: Name of zoning district corrected.

Comment [SB113]: Staff's interpretation is that the ordinance's omission of the Village district was not intentional.

Comment [SB114]: Reference to Subdivision and Land Development Regulations updated.

~~K.~~J. Vehicle signs left parked or standing on a public right-of-way, public property or private property. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

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K. Adult arcades, adult bookstores, adult cabarets, adult mini motion picture theaters, adult saunas, adult theaters, sexual encounter establishments, sexual paraphernalia stores, massage parlors and any sign advertising the operation thereof, shall not be permitted in the Rural, Village, Residential Growth and Residential-Growth, Light Industrial-Commercial Districts.

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Comment [SB115]: Zoning district name corrected.

No conditional use permit shall be approved for any of these uses. This provision does not apply to any specific existing use that legally qualifies as a nonconforming use. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE NOVEMBER 7, 2002 AND MAY 1, 2003]

L. [Salvage yards unless established in accordance with the Jefferson County Salvage Yard Ordinance.](#)

Comment [SB116]: Zoning Ordinance needs linkage with the Salvage Yard Ordinance so that users will know that additional regulations exist.

M. [Heavy industrial uses listed in Section 5.6\(B\) of this Ordinance are permitted only in the Industrial - Commercial District and require approval via the Development Review System.](#)

Comment [SB117]: This prohibition is implicit in 5.6(B) but needs to be made explicit.

#### Section 4.5 ~~Section 4.5~~ — Agricultural Uses Permitted Generally

Except for compliance with distance requirements for a building set forth in Section 4.6, nothing in this ordinance shall prohibit the use of land for agricultural purposes or the construction or use of building or structures incidental to the ~~sue~~ use for agricultural purposes.

#### Section 4.6 ~~Section 4.6~~ — Distance Requirements

- A. Any uses or building subject to compliance with this section shall be located at least 200 feet from:
1. Any lot in a residential district;
  2. A dwelling, school, church or institution for human care not located on the same lot as the said use or buildings [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 4, 1989]
  3. Any lot which is part of a recorded subdivision, and
  4. Any parcel, ~~or~~ historic structure, or designated historic district which has been listed on the West Virginia or National Register of Historic Places.
- B. Adjacent uses or buildings subject to compliance with this section shall be located at least 75 feet from: [AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993]

1. Any lot in the Residential Growth District;
2. Any lot with a dwelling, school, church, or institution for human care not located on the same lot as said use or building;
3. Any parcel, ~~or~~ historic structure, or designated historic ~~structure~~ district which has been listed on the ~~at~~ West Virginia or National Register of Historic Places.

**Comment [SB118]:** Currently, sentence repeats "structure" twice. Staff's interpretation is that this was intended to parallel 4.6(A) which uses the word "district."

**Section 4.7** ~~Section 4.7~~—**Essential Utility Equipment**

Essential utility equipment, as defined in Section 2.2, shall be permitted in any district, as authorized and regulated by law and ordinances of Jefferson County, it being the intention hereof to exempt such essential utility equipment from the application of this ordinance. Wireless telecommunication towers, however, shall conform to the requirements of Article 4B.

[AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993 AND ON MARCH 10, 2011]

**Section 4.8** ~~Section 4.8~~—**Buildable Lot**

Any lot which was a buildable lot under the terms or regulations in effect at the time of the adoption of this ordinance and which was established or recorded at that time shall be deemed a buildable lot for the erection of a single-family dwelling, subject to the provisions of the appropriate district regulations of this ordinance.

**Section 4.9** ~~Section 4.9~~—**Traffic Visibility Across Corner Lots**

On any corner in all districts, there shall be no obstruction to traffic visibility within thirty-five (35) feet of the intersection of the two (2) street property lines of the corner lot. [Site plan and subdivision applications must comply with the Intersection Design requirements of the Subdivision and Land Development Regulations.](#)

**Comment [SB119]:** Added to clarify location of standards.

**Section 4.10 ~~Section 4.10~~ Site Plan Requirements**

~~A.~~ A site plan shall be submitted for ~~review by the Planning and Zoning Commission for~~ all new commercial, townhouse and multi-family residential, industrial, and institutional ~~land uses~~ development in any district and for all major additions or expansions of existing uses as defined in Article 2, in accordance with the requirements of the Subdivision and Land Development Regulations and this Ordinance.

**Comment [SB120]:** Subdivision and Land Development Regulations define which site plans are reviewed by the Planning Commission.

**Comment [SB121]:** Clarifies which requirements are to be followed.

~~A.~~ ~~Site Plans shall be prepared by a registered professional engineer, or registered land surveyor licensed to practice in the State of West Virginia. If the proposed use is not listed as a principal permitted use within the zoning district where it is located, the developer must have his proposal evaluated by the Development Review System before Site Plan submittal.~~

**Comment [SB122]:** Redundant with Subdivision and Land Development Regulations.

~~Upon approval of a conditional use permit the applicant may proceed with Ssite Pplan submittal.~~

**Comment [SB123]:** Redundant. The DRS section of the Zoning Ordinance adequately describes the process.

~~In those cases where a Site Plan is required and the developer has received a conditional use permit, a minimum of six (6) copies of the site plan shall be submitted to the Jefferson County Planning Office.~~

**Comment [SB124]:** No longer accurate; Subdivision and Land Development Regulations govern submittal requirements.

B. Site Pplan submittal is not required for single-family or two-family dwelling units unless planned as part of a multi-unit or mixed use development plan.

C. The Ssite Pplan format and informational requirements that must be followed are referenced in the Jefferson County Subdivision and Land Development Regulations Ordinance, and ~~Articles 4,5, 10 and 11 of this Ordinance.~~

~~C.~~

~~Additional Site Plan format requirements shall be the same as those for the Preliminary Subdivision Plat referenced in Article 8 of the Jefferson County Subdivision Ordinance.~~

**Comment [SB125]:** No longer accurate. Format requirements addressed in 4.10D above.

~~D.~~ The Planning and Zoning Commission shall review and approve or disapprove a completed application within sixty (60) days of the acceptance of the Site Plan in the Planning Office. ~~The Planning Commission shall review and approve or disapprove a completed application within sixty (60) days of the acceptance of the Site Plan in the Department of Planning, Zoning, and Engineering. The Planning Commission has the authority by variance to reduce any site plan standards as justified under Article 17 of the Subdivision Ordinance.~~ has the authority by variance to ~~reduce~~ waive any site plan standards ~~as justified under Article 17 of the Subdivision Ordinance~~ in accordance with the Subdivision and Land Development Regulations. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 1, 1998. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**Comment [SB126]:** No longer accurate.

~~E.~~ D.

**Section 4.11 ~~Section 4.11~~—Landscaping, Screening and Buffer Yard Requirements**

- A. All commercial development adjacent to any Residential district, or any lot with a residence, school, church, or institution of human care shall have a fifty (50) foot or greater unscreened green space buffer or a fifteen (15) foot screened green space buffer along common property lines. The screening may be either vegetative or opaque fencing and may be placed anywhere within the buffer. No structures, materials, or vehicular parking shall be permitted within the side and rear yard buffers. All commercial development adjacent to all other uses must maintain ten (10) foot side and rear yard landscape buffers. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]
- B. All industrial development adjacent to any Residential district, or a residence, school, church, or institution for human care shall have a buffer yard of no less than two hundred (200) feet. No structures, stored materials, or vehicular parking shall be permitted within the buffer yard. All industrial development shall have front yard buffers of no less than one-half (½) the front yard building setback. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990 AND JULY 15, 1993]

Table 4.11 - 1 Setbacks, Buffers and Distance Requirements for Non-Residential Uses

**Comment [SB127]:** Table moved from 4.16, renamed as "table", and table simplified.

ADJACENT USE \ PROPOSED USE	BUILDING SETBACKS		PARKING & ACCESS DRIVE SETBACKS		BUFFERS UNSCREENED/SCREENED				DISTANCE REQUIREMENTS					
	Any Use Except Industrial	Industrial Use	Any Use Except Industrial	Industrial	Residential Zone	Lot with a Residential Use	Church/School/Institution for Human Care	Commercial	Industrial	Residential Zone	Lot with a Residential Use	Church/School/Institution for Human Care	Commercial	Industrial
FRONT	Comm'l Lot <=1.5 ac.	25	25	15	15	50/15		N/A	N/A	75		N/A	75	
	Comm'l Lot > 1.5 ac.	25	25	15	15	50/15		N/A	N/A	75		N/A	75	
	Industrial	50	25	25	25	200		25	N/A	200		N/A	200	
	Church	25	25	15	15	50/15		N/A	N/A	N/A		N/A	N/A	
	Multi-family	25	25	15	15	N/A	N/A/15	N/A	N/A	N/A		N/A	N/A	
SIDE	Comm'l Lot <=1.5	25	25	4	4	50/15		10	10	75		N/A	75	
	Comm'l Lot > 1.5 ac.	50	25	10	10	50/15		10	10	75		N/A	75	
	Industrial	50	25	25	20	200		20	20	200		N/A	200	
	Church	50	50	10	10	50/15		10	10	N/A		N/A	N/A	
	Multi-family	12	12	12	12	N/A	N/A/12	N/A	N/A	N/A		N/A	N/A	
REAR	Comm'l Lot <=1.5	25	25	4	4	50/15		10	10	75		N/A	75	
	Comm'l Lot > 1.5 ac.	50	25	10	10	50/15		10	10	75		N/A	75	
	Industrial	50	25	25	20	200		20	20	200		N/A	200	
	Church	50	50	10	10	50/15		10	10	N/A		N/A	N/A	
	Multi-family	30	30	15	15	N/A	N/A/15	N/A	N/A	N/A		N/A	N/A	

*Note: When Table 4.11-1 is in conflict with another section of the Zoning & Development Review Ordinance, this table shall prevail. See Article 8 of the Zoning and Land Development Ordinance for building setbacks for certain land uses.*

**Comment [SB128]:** The first sentence of this note is already in the current ordinance; the only change is replacement of "section" with "table." Second sentence is to alert readers that other uses (e.g. Barn/Feeding Pen, Jails, etc) have specific setbacks.

- C. In all buffer yards, the exterior width beyond the vegetative screen shall be planted with grass, seed, sod, or ground cover.
- D. All buffer yards shall include a fence or a dense screen planting of trees, shrubs, or other plant materials or both, to the full length of the lot line to serve as a barrier to visibility, air borne particles, glare or noise. Such screen planting shall meet the following requirements.
  1. Vegetative screening shall comply with Standard Details M52, M53 or M54, or other applicable Standard Details, depending on the buffer width. At the time of the planting the vegetation shall be at ~~least~~ least four (4) feet in height. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]
  2. It will be the responsibility of the landowner to replace any trees that die and shall be so noted on the site plan.
  3. Screen planting shall be a minimum of ten (10) feet wide but shall be placed so that it is no closer than four (4) feet at maturity from a property line or from any street.
  4. No structure, fence, planting, or other obstruction shall be permitted which would interfere with traffic visibility.
- E. In any Commercial, Industrial, Institutional, or Residential development, all dumpsters shall be screened from any residences or from view of a ~~the~~ public highway's ~~view~~.
- F. All buffer yards shall be maintained by the property owner.
- G. All development adjacent to a Sensitive Natural Area shall have a buffer of natural vegetation. Environmental standards contained in Section ~~5.88.9(bA)~~, ~~2-1~~ through ~~87~~, will apply. The buffer shall meet the current Federal standard except as required in Table 4.11 -2 below:

Table 4.11 - 2 ~~Wetland~~ ~~Size in~~ ~~A~~ ~~Acres~~

Greater Than	Less Than	Buffer width in feet
0.05	0.10	30
0.10	0.16	35
0.15	0.21	40
0.20	0.26	50
0.25	0.31	55
0.30	0.36	60
0.35	0.41	65
0.40	0.46	70

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0.45	0.51	75
0.50	0.66	80
0.65	0.81	85
0.80	0.96	90
0.95	1.21	95
1.20	--	100

[AMENDED TWICE BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990 AND MAY 18, 1996]

H. All required landscape plans shall contain the following elements:[AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993]

1. Deciduous street trees for shade and aesthetics, planted at the following average spacing:
  - a) Site with street frontage of up to 200 feet: 1 tree per 50 feet
  - ~~a)b) Site with street frontage exceeding 200 feet: The greater of 4 trees or 1 tree per 100 feet.~~
2. Evergreen buffer planting, as required, for full screening.
3. Parking lot and internal drive plantings (mix of evergreen and deciduous) for partial screening and limited shade.
4. Structure plants for aesthetics and limited shade.
5. Schedule of plants including common name, scientific name, minimum size (height, caliper, etc.) quantity and specific limitation notes.

**Comment [SB129]:** Street trees are currently required, but the Zoning Ordinance does not specify at what spacing. This is creating problems for staff and applicants both.

~~Section 4.12~~ Section 4.12 – Design Standards for Multi-Family Developments

**Comment [SB130]:** This section moved from Section 5.5.

A. Common open space shall be oriented to the interior of the development and shall consist of land suitable for passive and active recreational use. No more than 50 percent of land dedicated to recreational use shall be within the 100 year Floodplain.

B. ~~Impermeable~~Impervious surface coverage for interior streets, parking areas, and residential structures shall not exceed fifty (50) percent of the gross land area.

~~(c) Asphalt or concrete walkways of a minimum width of four (4) feet shall provide access from bus waiting areas, recreational land, tot lots and parking areas.~~

**Comment [SB131]:** This requirement is covered by the Americans With Disabilities Act; and hence can be deleted.

~~(d) All on site utilities and dumpsters shall be effectively screened.~~

**Comment [SB132]:** Dumpster screening is covered in Sub Regs Sec 9.12(F), p. 181.

A.C. Tot lot or play areas shall be centrally located in areas convenient to residential buildings and at least twenty-five (25) feet from any street right-of-way. ~~Outdoor Lighting~~

**Comment [SB133]:** Lighting covered in Sec 2.6, Appendix B of Sub Regs.

~~A. The location and height of all exterior lighting shall be shown on the Site Plan and will be reviewed by the Zoning Administrator to assure that lighting and glare does not adversely affect adjacent properties.~~

~~**Section 4.13—Development in or Adjacent to the 100 Year Flood Plain**~~

~~**Section 4.12—**~~

~~A. The 100-year Flood plain shall clearly be delineated on the site plan by the registered engineer or licensed land surveyor.~~

~~B. All land within the 100-year Flood plain will be subject to the Jefferson County Flood Plain Management Ordinance.~~

~~**Section 4.13 Section 4.14—Development Adjacent to the Potomac and Shenandoah Rivers**~~

~~A. Any development, other than residential development, that takes place after the adoption of this Ordinance must maintain a five hundred (500) foot buffer strip from the existing banks of the Potomac and Shenandoah Rivers and is subject to Section 4.13.~~

~~**Section 4.15 Location of Jails and Prisons**~~

~~Due to the special conditions surrounding a jail, prison, or penal institution, all such projects shall only be allowed in the Industrial Commercial Zone and shall be subject to the Development Review System as outlined in Article 6 of this Ordinance. Furthermore, these projects shall comply with Article 5, Section 5.6(L), and Article 6 of the Jefferson County Zoning and Development Review Ordinance.~~

~~{AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990}~~

~~**Section 4.17—West Virginia Legal Fireworks**~~

~~Sales of fireworks are only permitted in the commercial zones provided all other restrictions such as subdivision and site plan regulations and setbacks are met.~~

~~{AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996}~~

~~**Section 4.18—Model Homes/Sales Offices**~~

~~Model homes with a staffed sales office for sales exclusively within the residential subdivision that they are located are permitted provided that they are contained on the first lot on either or both side of any road/right of way that enter the subdivision; provided also that they are so designated on the preliminary and final plats during the subdivision process.~~

~~Model homes with a staffed sales office in any other location within the subdivision needs to be approved or denied by the Zoning Board of Appeals after a 15-day public hearing.~~

~~Model homes without staffed sales offices are permitted internally within the subdivision.~~

~~{AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999}~~

**Comment [SB134]:** Floodplain addressed in Sec. 1, Appendix A of Sub Regs.

**Comment [SB135]:** Floodplain covered in Subdivision and Land Development Regulations; hence, this reference is unnecessary.

**Comment [SB136]:** Jails and Prisons – moved to Article 8

**Comment [SB137]:** Fireworks and Model Homes – Moved to Article 8

**ARTICLE 4A HOME OCCUPATIONS AND COTTAGE INDUSTRIES**

[AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]

**Section 4A.1 Home Occupation, Level 1**

An occupation conducted in a dwelling unit for gain provided that:

- A. No person other than members of the family residing on the premises shall be engaged in such occupation. Said members must be full time residents of the premises.
- B. The use shall be conducted wholly within the dwelling unit and shall not exceed 25% of the floor area of the dwelling unit.
- C. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation.
- D. There shall be no sales, other than items handcrafted on the premises, in connection with such home occupation.
- E. Traffic generated by such home occupation must not exceed two (2) business related vehicle visits per day nor more than ten (10) visits per week at the premises. Any need for parking generated by the conduct of such home occupation shall be met off street and other than in a required front yard.
- F. It is clearly incidental and subordinate to the use of the dwelling unit as a residence.
- G. No equipment or process shall be used in such a home occupation which creates offensive manifestations by sight, sound or smell detectable to the normal senses, or electrical interference or vibrations perceptible, outside the dwelling unit.
- H. No business which includes the storage of weapons such as firearms (other than the residents hunting, protection and leisure weapons) shall be permitted. Home occupations do not include; boarding or rooming homes or bed and breakfast establishments or adult uses. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

**Section 4A.2 Home Occupation, Level 2**

An occupation conducted in a dwelling unit for gain, provided that:

- A. The occupation must be conducted by a full-time resident of the property. Up to two (2) nonresident employees also may be permitted to work on the premises.

- B. The use shall be conducted wholly within the dwelling unit and shall not exceed one third (1/3) of floor area of the dwelling unit.
- C. The use shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding one (1) square foot in area, non-illuminated.
- D. There shall be no sales, other than items crafted on the premises, in connection with such home occupation.
- E. No more than three (3) business-related vehicle visits per day nor more than fifteen (15) visits per week at the premises, including delivery vehicles, but excluding employee commuting, shall be permitted. Any need for parking generated by the conducted use of such home business shall be met off street and other than in a required front yard.
- F. It is clearly incidental and subordinate to the use of the dwelling unit as a residence.
- G. No equipment or process shall be used in such a home business which creates offensive manifestations by sight, sound or smell detectable to the normal senses, or electrical interference or vibrations perceptible, outside the dwelling unit.
- H. No business which includes the storage of weapons such as firearms (other than the residents hunting, protection and leisure weapons) shall be permitted. Home businesses do not include; boarding or rooming homes or bed and breakfast establishments or adult uses. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
- I. Is not permitted in existing subdivisions established since 1979.

#### **Section 4A.3 Cottage Industry**

An occupation conducted at a residential premises for gain, provided that:

- A. The occupation must be owned and operated by a full-time resident of the property. Up to four (4) nonresident employees may be permitted to work on the premises.
- B. The use shall be conducted at least in part within the dwelling unit. Said use area shall not exceed one third (1/3) of floor area of the dwelling unit. In addition all cottage industry. Two subordinate structures shall be permitted not exceeding two stories and shall not have a footprint greater than 1000 square feet.
- C. There shall be no change in the outside appearance of the residential structure. One sign, not exceeding four (4) square feet in area, non-illuminated may be permitted.
- D. Sales on the premises shall be permitted with the limitation that no less than seventy-five (75) percent of the items for sale shall be products produced on the premises and that

items not produced on premises shall be items similar or related to the items produced on the premises.

- E. No more than twelve (12) business-related vehicle visits per day nor more than sixty (60) visits per week at the premises, including delivery vehicles, but excluding employee commuting, shall be permitted. Any need for parking generated by the conduct of such cottage industry shall be met off street and other than within the required front yard setback.
- F. No evidence in the appearance of the property or other visible manifestation of the conduct of cottage industry activity shall be visible from the public way, other than a non-illuminated sign.
- G. No equipment or process shall be used in such a cottage industry establishment which creates offensive manifestations by sight, sound or smell detectable to the normal senses at any property line, or which creates electrical interference or vibrations perceptible, at any lot line.
- H. No business which includes the storage of weapons such as firearms (other than the residents' hunting, protection and leisure weapons) shall be permitted. Home businesses do not include; boarding or rooming homes, or bed and breakfast establishments, or adult uses. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
- I. Site plans pursuant to [Section 20.203 of the Jefferson County Subdivision and Land Development Regulations](#) ~~Article 4 of the Improvement Location Permit Ordinance~~ are required for new structures or structures that are to be converted to be ~~sued~~ used as a part of the Cottage Industry; unless otherwise permitted by the Planning Commission.
- J. Setbacks shall be 25 feet all round the structure.
- K. Permitted anywhere except the Residential Growth District and existing residential subdivisions.

Comment [SB138]: Reference to updated regulations.

#### Section 4A.4 Private Covenants Running with the Land

Although not regulated by the County, it is recommended that prior to the operation of a Home Occupation and/or Cottage Industry applicants research restrictive covenants for their land or seek the advice of a surveyor, engineer or attorney. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**ARTICLE 4B WIRELESS TELECOMMUNICATION FACILITIES**

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 1, 1998]  
[RESCINDED AND REPLACED BY ACT OF THE COUNTY COMMISSION ON MARCH 10,  
2011]

**Section 4B.1 Purpose and Legislative Intent**

The purpose of Article 4B, Wireless Telecommunication Facilities, is to balance the needs of residents of and visitors to Jefferson County for reliable access to wireless telecommunication networks and services with the community's desire to preserve the County's rural, historic and agricultural character and the quality of its residential neighborhoods.

To accomplish these objectives and to ensure that the placement, construction or modification of wireless telecommunication facilities complies with the provisions of the Telecommunications Act of 1996 and other Federal laws, and is consistent with Jefferson County's land use policies and Comprehensive Plan, this Article is intended to regulate the construction, placement and operation of wireless telecommunication facilities within Jefferson County. When any provision of this article is in conflict with any provision of the Jefferson County Zoning Ordinance or the Jefferson County Subdivision and Land Development Regulations, the stricter regulation shall apply.

This Article establishes parameters for the siting of Wireless Telecommunication Facilities. It is Jefferson County's intent to:

- A. Ensure access to reliable and robust wireless communications services throughout Jefferson County consistent with the aforementioned objectives;
- B. Encourage the use of existing structures such as buildings, water towers, silos, church steeples, monopoles, lattice towers, utility poles, electric distribution and transmission structures and other existing structures for the co-location of Wireless Telecommunication Facilities;
- C. Encourage the location of new Wireless Telecommunication towers in non-residential areas, with taller towers limited to the Industrial-Commercial zoning district;
- D. Minimize the number of new Wireless Telecommunication Towers that would otherwise need to be constructed by providing incentives for the use of existing structures;
- E. Encourage the location of new Wireless Telecommunication Towers, to the greatest extent possible, in areas where the adverse impact on the community will be minimal; and by encouraging the use of camouflage or concealment to create structures such as silos, faux trees and flagpoles that mimic elements that typically are found on Jefferson County's agricultural landscape and that appear in scale and context with their surroundings.

- F. Minimize or mitigate the potential adverse visual effects associated with the construction of Wireless Telecommunication Towers through the implementation of reasonable design, landscaping and construction practices;
- G. Ensure public health, safety, welfare, and convenience; and
- H. Conform to Federal and State laws that allow certain antennas to be exempt from local regulations.

**Section 4B.2 Classification of Wireless Telecommunication Facilities and Development Review Process**

For purposes of administering this Article, Wireless Telecommunication Facilities (hereafter “Facilities” or “Facility”) shall be classified as follows:

1. Exempt Facilities as specified in Section 4B.3
2. Concealed Wireless Telecommunication Facilities
3. Co-located Wireless Telecommunication Facilities
4. Temporary Wireless Telecommunication Facilities
5. Wireless Telecommunication Towers

Exempt Facilities are allowed by right. Prior to the issuance of a Zoning Certificate, all other types of new Wireless Telecommunications Facilities listed above require approval of a Minor Site Plan as described in the Jefferson County Subdivision and Land Development Regulations and also meeting the submittal and design requirements of this Article. Additionally, Wireless Telecommunication Towers shall require submittal of a Concept Plan and a public hearing to allow for an analysis of demonstration of need, neighborhood compatibility, impact on cultural and historic resources, and visual mitigation.

Within ten (10) days of receiving a Concept Plan application for a Facility the Department shall notify the applicant in writing (1) that the application is sufficient or (2) the particular information needed as required by the provisions of this Article and the Jefferson County Subdivision and Land Development Regulations, to constitute a sufficient application. Once the additional information is received and the application is found to be sufficient, the Department shall notify the applicant of that finding.

**Section 4B.3 Exempt Facilities Allowed by Right**

This section covers antennas other than those associated with commercial wireless telecommunication facilities, such as facilities associated with governmental users, television and radio broadcast facilities, and private business users requiring an antenna support structure of twelve feet or less. Antennas allowed by right subject to special requirements of this section include:

- A. Amateur radio facilities mounted on supporting structures less than 100 feet in height provided however, that commercial wireless providers and private business users may not co-locate antennas on an amateur radio tower irrespective of its height.
- B. Residential antennas for receiving television or AM or FM radio broadcast signals.
- C. Residential or business customer premise antennas for receiving microwave, satellite or broadcast television signals, provided such antennas are less than one meter (39.4 inches) in diameter and are mounted on a support structure less than twelve (12) feet in height.

#### **Section 4B.4 Concealed Wireless Telecommunication Facilities**

Concealed Facilities are permitted in all zoning districts. The Department may issue a Zoning Certificate for a Concealed Facility consistent with the following terms and conditions:

- A. Concealed Facilities are permitted on buildings and alternative structures (other than telecommunication towers).
- B. For purposes of this section antennas mounted on electric transmission towers shall qualify as Concealed Facilities provided that antennas associated with such facilities do not extend more than twenty (20) feet above the top of the supporting structure. Equipment enclosures associated with such facilities may be mounted on the structure, placed underground or on the ground. If placed on the ground, equipment enclosures shall be placed on a concrete pad, metal skid or platform, or other foundation and screened so as to make them unobtrusive.
- C. For purposes of this section antennas mounted on an electric distribution pole, utility or street lighting pole or traffic light pole shall qualify as a Concealed Facility provided antennas associated with such facilities shall not extend more than twenty (20) feet above the top of the existing support structure.
- D. Utility poles may be extended up to twenty (20) feet in height to accommodate antennas for a Concealed Facility.
- E. For any utility pole height increases in the Harpers Ferry Overlay District, the Department shall refer the application to the Jefferson County Historic Landmarks Commission for review and comment before issuing a Zoning Certificate.
- F. Applications for such utility pole height extensions in the Appalachian Trail Overlay District shall be referred by the Department to the Appalachian Trail Conservancy and the National Park Service for review and comment prior to issuance of a Zoning Certificate.
- G. Antennas associated with Concealed Facilities, if flush-mounted on the side of a building or alternative structure, shall be camouflaged to match or complement the color and architectural texture of the surface.
- H. Antennas associated with a Concealed Facility shall not be co-located on a tower or other support structure developed as an Exempt Facility pursuant to this Article for the use of an amateur radio operator.
- I. Equipment enclosures associated with Concealed Facilities may be placed inside a building or, if placed on a rooftop, all equipment enclosures shall be mounted behind a parapet wall or façade which is camouflaged to match or complement the color and architectural treatment of the building. If antennas are placed on a structure other than a

building, equipment enclosures associated with the facility may be mounted on the structure or placed underground or at ground level on a concrete pad, metal skid or platform, or other foundation. If placed at ground level, such equipment enclosures shall be screened so as to make them unobtrusive.

- J. All cabling and wiring connecting antennas, equipment enclosures, and other components of Concealed Facilities shall be colored or concealed in a manner that renders them unobtrusive.
- K. Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages or for testing and maintenance purposes. Testing and maintenance of a generator shall only take place on weekdays between 8:00 a.m. and 7:00 p.m.
- L. Equipment associated with a Concealed Facility not located in a public right-of-way must meet the setback requirements for the zoning district in which it is located.

#### **Section 4B.5 Co-located Wireless Telecommunication Facilities**

Co-located Wireless Telecommunications Facilities are permitted within all zoning districts. Co-location includes the placement of additional antennas or antenna arrays on an existing or approved telecommunication tower or support structure (or alternative structure or Concealed Telecommunication Support Structure), or otherwise sharing a common location by two or more FCC licensed providers of personal wireless services. The Department may issue a Zoning Certificate for a Co-located Facility consistent with the following terms and conditions:

- A. Antennas associated with a Co-located Facility shall not be co-located on a support structure developed as an Exempt Facility pursuant to this Article for the use of an amateur radio operator.
- B. Co-located Facilities shall meet the following design standards:
  - 1. Antennas associated with a Co-Located Facility located on a monopole shall, where practical, be mounted so as to present the smallest possible silhouette, profile or cross-section. Preferred antenna mounting scenarios are, in order of descending preference:
    - a. Antennas within a cylindrical radome matching the diameter of a monopole;
    - b. Antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the tower.
    - c. Antennas mounted as an array arranged around a platform extending from the monopole.
  - 2. All equipment enclosures and other improvements accessory to a co-located Facility shall be architecturally designed to blend in with the surrounding environment and shall be maintained in good appearance and repair. No equipment enclosure may exceed twelve (12) feet in height.
  - 3. Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages or for testing and

maintenance purposes. Testing and maintenance of a generator shall only take place on weekdays between the hours of 8:00 a.m. and 7:00 p.m.

4. Equipment enclosures and other improvements shall be enclosed within a security fence consisting of chain link fencing at least eight (8) feet in height. The Department may require as a condition of approval that the fencing be screened by a landscaped buffer of at least 10 feet in width planted along the entire exterior perimeter of the fence. Such a buffer must contain at least one row of native vegetation and form a continuous screen at least 6 feet in height. All buffer yards shall be maintained by the property owner. It will be the responsibility of the property owner to maintain the buffer yard and to replace any trees or shrubs that die. The landscaping requirements of this section do not apply to an application for co-location on a site with an approved site plan. The Department may waive or modify the fencing requirement upon a determination that doing so will enhance the overall appearance of the facility without any compromise in safety or security.
5. Signage at any ground-based portion of a Co-located Facility site shall conform to FCC and FAA standards. No commercial signage is permitted.
6. Before an application for a Co-located Facility can be processed, a copy of the applicant's FCC license must accompany its application. If FCC licenses for the applicant have been provided to the Jefferson County Department of Planning & Zoning in conjunction with previous wireless facility applications, the applicant may certify that such licenses remain in full force and effect.

#### **Section 4B.6 Temporary Wireless Telecommunication Facilities**

Temporary Facilities are permitted in all zoning districts. The Department may issue a Zoning Certificate for a Temporary Facility consistent with the following terms and conditions:

- A. Temporary Facilities, including but not limited to Cell on Wheels (COW), may be placed at or near the location of an existing, proposed or approved Facilities for periods up to seventy-two (72) hours for equipment or signal propagation testing purposes or, where an existing facility is temporarily unavailable due to scheduled or unscheduled maintenance, without any requirement for a permit. Where scheduled or unscheduled maintenance will extend beyond seventy-two (72) hours, the wireless provider must obtain a Zoning Certificate. The Department may issue such a certificate for up to thirty (30) days upon a showing of good cause by the applicant. Such certificate may be extended for an additional thirty (30) day period if the applicant can demonstrate that extenuating circumstances necessitate an extension.
- B. In the event of a natural disaster, catastrophic event or public emergency that either renders an existing Facility unusable, or creates an urgent need for supplemental capacity to manage the emergency, temporary facilities may be placed in any area as necessary to provide coverage or capacity for longer periods upon the authority of the Director of the Office of Homeland Security and Emergency Management, with notification to the Director of the Planning and Zoning Department.

- C. Permits may be issued by the Department for up to one week for temporary facilities needed in conjunction with scheduled special events at specific locales that are likely to generate a need for additional capacity at the event which is expected to exceed existing installed capacity.
- D. Fees for permits for Temporary Facilities shall be in accordance with the Department of Planning and Zoning schedule of fees and charges.

#### **Section 4B.7 Wireless Telecommunication Towers**

Wireless Telecommunication Towers (hereafter “Tower” or “Towers”) are permitted in all zoning districts subject to the provisions of this section. The provisions of this section apply to an application for a new Tower, as well as for a major modification to an existing Facility or Support Structure that results in a substantial change to the facility or structure, including but not limited to a height extension of more than twenty (20) feet or ten percent (10%) of the current height of a facility or structure, whichever is greater, and/or replacement of the structure.

This section is not applicable to co-location of a new antenna array on an existing structure.

##### **A. Site Plan Required**

A minor site plan shall be required for all new Towers, as well as for Major Modifications to an existing Facility or Support Structure resulting in a substantial change to the Facility or Structure. In addition to the site plan review requirements of the Subdivision and Land Development Regulations, the site plan shall include all elements of a Concept Plan as established in Subsection B, and shall address conditions established by the Planning Commission in its review of the Concept Plan.

##### **B. Concept Plan Submittal and Public Hearing Required**

In addition to the requirements for a minor site plan, a proposed Tower shall require the submittal of a Concept Plan, subject to the following requirements:

1. Required elements for a Wireless Telecommunications Tower Concept Plan shall be the same as for a site plan as established in the Subdivision and Land Development Regulations, Appendix A, Sec. 1.3A, with the exception of Subsections 1.3A.20-22, 24-29, 31-35.
2. The following additional elements must be submitted:
  - a. Outside dimensions, use, and setbacks of all existing and proposed buildings, structures, towers, antennas, utility lines, driveways, and parking areas
  - b. Height of the proposed tower measured from ground level at the center of the proposed structure, and height comparison to any nearby buildings or trees, or other applicable structures and natural landforms part of the site’s background and foreground landscape
  - c. Elevations and Cross-Section: Display topography with all proposed facilities including tower, equipment shelter and existing buildings

- d. Number, size and location of proposed and existing antennas; number of co-locations possible
  - e. Method of camouflage (if any)
  - f. Locations of known historic structures
  - g. A description of the anticipated construction and installation schedule
  - h. Documentation verifying compliance with applicable Federal Communications Commission (FCC) standards and requirements to provide the proposed services
  - i. Narrative addressing the design criteria of this section
  - j. Dates, address list, and notice for Balloon Test
  - k. Balloon Test exhibits as required in subsection G of this section
  - l. Propagation maps as required in subsection F of this section
  - m. Any other relevant information
  - n. Additional application requirements of subsection H of this section.
3. Submittal and review of a Concept Plan shall follow the review process and timeline established in Sections Sec. 24.119 – 24.122 of the Subdivision and Land Development Regulations, with the following exceptions:
- a. The application shall be exempt from 24.120A, Agency Reviews, and 24.120D, WVDOH, except as otherwise provided in this subsection.
  - b. Following the Department’s determination of the sufficiency of a Concept Plan application,
    - i. the Department shall notify the Jefferson County Historic Landmarks Commission of an application filing.
    - ii. the Applicant shall provide a copy of the completed Concept Plan application to the Appalachian Trail Conservancy and the National Park Service, if required by the Cultural and Historic Resources Review standards of this section.
  - c. The Concept Plan shall be reviewed at a public hearing conducted at a scheduled Planning Commission meeting. The scope of this public hearing shall include a demonstration of need as required under this article, neighborhood compatibility, impact on cultural and historic resources, visual mitigation, the submittal and design criteria of this article, and the compatibility of the facility proposal with the Comprehensive Plan, as well as any relevant information presented by any person that addresses the purpose and intent of this Article. The Planning Commission shall review the proposed Tower for compliance with the standards in this article and, if applicable, provide conditions relevant to the scope of the public hearing and/or unique characteristics of the proposed development site, to be addressed in the Department’s approval of the site plan.
  - d. Before the Department may approve a site plan for a Tower, the Planning Commission must find, by a majority vote, that the Concept Plan application complies with this article, and that the application is consistent with the Comprehensive Plan.

C. Retention of Consultants

The Department may elect to retain outside consultants or professional services to review a Concept Plan or site plan application for a Tower and to make recommendations on relevant issues including, but not limited to, verification of the applicant's compliance with the provisions of this article, analysis of alternatives, conditions of approval, and compliance with State and Federal rules and regulations at the applicant's expense. Fees charged to the applicant shall not exceed the actual cost of services rendered.

#### D. Applicant's Burden of Proof

The applicant for a site plan for any Tower bears the burden of demonstrating by substantial evidence in a written record that a *bona fide* need exists for the proposed structure at its proposed height and location-as required in subsection F, "Demonstration of Need, and that it has met all submittal and design criteria in this Article.

#### E. Proof of Eligibility

Speculative Towers are prohibited. Before an application for a Tower can be processed, a copy of the applicant's FCC license must accompany its application. If the applicant is not an FCC licensee, the applicant must demonstrate that it has binding commitments from one or more FCC licensees to utilize the tower within six (6) months of issuance of a certificate of occupancy for the Tower. Such demonstration shall include submittal of an affidavit by the FCC licensee(s), and a copy of each wireless provider's FCC license. If such FCC licenses have been provided to the Department in conjunction with previous tower applications, the applicant may certify that such licenses remain in full force and effect.

#### F. Demonstration of Need

As part of its application submission for a Concept Plan and for a site plan the applicant shall be required to submit propagation maps demonstrating a technical need for its proposed Tower and justifying the height of its antennas on the structure. One propagation map shall depict existing coverage without the proposed site and another depicting coverage with the proposed site. Such maps shall identify all adjacent sites whether existing, approved or proposed, and each map shall be accompanied by an engineer's affidavit attesting to the parameters or variables used to create the map.

Such propagation studies shall be submitted in both hard copy and in electronic format to facilitate information sharing, inclusion on the county's web site and to otherwise maximize public awareness.

#### G. Balloon Test

1. An applicant shall conduct a balloon or crane test to simulate the maximum height of the proposed Tower. Following the test, the applicant shall submit color photo simulations showing the proposed structure as it would appear viewed from the closest residential property or properties and from adjacent roadways. Photographs

should be taken from appropriate locations on abutting properties, along each publicly used road from which the balloon is visible, and from up to five significant structures or locations identified by the Department. A map shall be supplied identifying the location of each photo. Before and after photo exhibits will be presented.

2. Notice of the dates and times of such tests shall be mailed to all property owners within a one-quarter mile (1320 feet radius) from the proposed location, in addition to the Historic Landmarks Commission at least ten (10) days prior to such tests. The applicant shall utilize address and owner information on file at the Jefferson County Assessor's Office. Such notices shall designate a primary date and an alternate date in case of inclement weather. Notices shall state that there is an application to the Planning Commission for a Wireless Telecommunication Tower on the property and provide the file number. The Department shall review and approve the sufficiency of the notice and the list of addresses prior to mailing. An affidavit of mailing accompanied by a list of recipients and addresses shall be included in the application file.
3. Such notice shall also be published in the legal advertisements section of a newspaper of general circulation in Jefferson County at least ten (10) days prior to such tests. Such notices shall designate a primary date and an alternate date in case of inclement weather. The newspaper's affidavit of publication shall be submitted as part of the application file.
4. In the event the applicant seeks to increase the height of the proposed Tower, or move its location more than one hundred (100) feet laterally, from that stated in its original notices, additional notice shall be required to be given consistent with the above requirements.

#### H. Preferred Structures and Locations Policy

1. Co-location Encouraged. Prior to the approval of the construction of a new Tower, it is the policy of Jefferson County to encourage co-location of wireless facilities in the following locations:
  - a. Co-location of antennas on existing electric transmission towers.
  - b. Co-location and the use of existing or approved towers, buildings or alternative structures such as buildings, water towers, silos, church steeples, and utility poles more than fifty (50) feet in height within a one-quarter mile radius of a proposed Tower, where appropriate.
1. Preferred Support Structures. In light of Jefferson County's agricultural, and increasingly residential character, it is the policy of Jefferson County that for Facilities located outside the Industrial-Commercial zoning district, support structures for antennas are desired in the following descending order of preference:
  - a. Silos
  - b. Other Alternative Structures
  - c. Monopoles
  - d. Lattice Towers

2. Preferred Locations. For new Towers , it is the policy of Jefferson County to encourage use of the following facilities or locations, in descending order of priority:
- a. The Industrial - Commercial District
  - b. Non-residential areas screened by existing vegetation and located outside of the Industrial - Commercial District
3. Application Requirements. In furtherance of the Preferred Structures and Locations Policy in this Article, the following provisions shall apply to an application for a site plan for a Tower:
- a. The application must demonstrate that the proposed Tower is designed structurally, electrically, mechanically and in all other respects to accommodate additional wireless users unless the applicant demonstrates that structure height, topography, or other factors render this requirement unfeasible. An application must include an affidavit from the tower owner affirming that, subject to exceptions for structure height, topography, or other factors which make co-location unfeasible, the tower is available for co-location.
  - b. A site plan for a Tower shall not be approved if an electric transmission tower with capacity of 230 kV or less is located above, or within twenty-five (25) feet below, the ground elevation of, and within a one quarter mile radius laterally, of a proposed Tower, unless the applicant can demonstrate that:
    - (1) Sufficient easements or other interests in real property cannot be obtained to accommodate the Facility on the electric transmission tower;
    - (2) The electric utility owning the electric transmission tower is unwilling to allow its use for wireless facilities;
    - (3) Reasonable terms, rates, or conditions cannot be negotiated with the electric utility;
    - (4) The location of the tower will not allow the applicant to meet coverage or capacity requirements; or
    - (5) Other unforeseen reasons make it infeasible to locate the planned telecommunications equipment upon existing or approved towers.
  - c. Where suitable electric transmission towers are not available for co-location of antennas, a site plan for a Tower located outside the Industrial-Commercial zoning district shall not be approved unless the applicant demonstrates that the equipment planned for the proposed Tower cannot be accommodated on existing or approved towers, buildings, silos or other alternative structures more than fifty (50) feet in height within a one-quarter mile radius of the proposed Tower due to one or more of the following reasons:
    - (1) The planned equipment would exceed the structural capacity of the existing or approved tower, building or alternative structures, as documented by a qualified and licensed professional engineer, and the existing or approved tower, building or structure cannot be

- reinforced modified or replaced to accommodate planned or functionally equivalent equipment at a reasonable cost;
- (2) Existing and approved towers, buildings or other structures within the search radius, or combinations thereof, cannot accommodate the planned equipment at a height necessary to function reasonably, as documented by a qualified and licensed professional engineer;
  - (3) Reasonable terms, rates, or conditions cannot be negotiated with the owner of the structure and/or property;
  - (4) The location of the structure will not allow the applicant to meet coverage or capacity requirements; or
  - (5) Other unforeseen reasons make it infeasible to locate the planned telecommunications equipment upon existing or approved towers, buildings or alternative structures.

d. Antennas associated with an application for a Facility may not be co-located on a tower or other support structure developed as an Exempt Facility pursuant to this Article for the use of an amateur radio operator.

#### I. Cultural and Historic Resources Review

1. In addition to the notification requirements of this Section, an application for a Tower shall comply with the following:
  - a. An application for a proposed tower within the Harpers Ferry Overlay District shall be provided, by the applicant, to the National Park Service for review and comment, and the applicant will provide the Department an affidavit certifying delivery.
  - b. An application for a proposed tower located within one mile of the Appalachian Trail shall be provided, by the applicant, to the Appalachian Trail Conservancy and the National Park Service for review and comment, and the applicant will provide the Department an affidavit certifying delivery.

#### J. Design Criteria

Wireless Telecommunication Towers shall comply with the following design criteria:

##### 1. Antenna Mounting Preferences

Antennas associated with a Tower shall, where practical, be mounted so as to present the smallest possible silhouette, profile or cross-section. Preferred antenna mounting scenarios are, in order of descending preference:

- a. Antennas within a cylindrical radome matching the diameter of a monopole.
- b. Antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the tower.

- c. Antennas mounted as an array arranged around a platform extending from the monopole.

## 2. Height Restrictions

- a. Towers in the Industrial-Commercial zoning district shall not exceed 199 feet. Towers in all other zoning districts shall not exceed 100 feet. If a silo is used for a support structure for antennas, the height of the silo shall not exceed 120 feet.
- b. Antennas may extend up to twenty (20) feet above the height of existing electric transmission towers if such height extensions are preferable to placement of a new Tower.

## 3. Fall Zone

- a. With the exception of silos, Towers shall be set back from all property lines a distance equal to 110% of tower height measured from the base of the structure to its highest point. Additional easements may be acquired on adjacent properties to meet the fall zone requirement.
- b. No residential dwellings may be located in the fall zone on either the primary parcel or in any easement area on adjacent parcels.

## 4. Signage

Signage at any ground-based portion of a Facility site shall conform to FCC and FAA standards. No commercial signage is permitted.

## 5. Lighting & Marking

Towers shall not be lighted or marked unless required by the FCC or by the FAA.

## 6. Electrical Supply

Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages or for testing and maintenance purposes. Testing and maintenance of a generator shall only take place on weekdays between the hours of 8:00 a.m. and 7:00 p.m.

## 7. Fencing

Towers, equipment enclosures and other improvements shall be enclosed within a security fence consisting of chain link fencing at least eight (8) feet in height. The Planning Commission may require as a condition of approval that the fencing be screened by a

landscaped buffer of at least 10 feet in width planted along the entire exterior perimeter of the fence. Such a buffer must contain at least one row of native vegetation and form a continuous screen at least 6 feet in height at planting. All buffer yards shall be maintained by the property owner. It will be the responsibility of the property owner to maintain the buffer yard and to replace any trees or shrubs that die.

The Planning Commission may waive or modify the fencing requirement upon a determination that doing so will enhance the overall appearance of the facility without any compromise in safety or security.

8. Tower Color

Towers shall have a flat gray or galvanized finish unless the Planning Commission determines that another color scheme would be a preferable alternative to address visual mitigation and such scheme is consistent with FCC and FAA standards for antenna structure marking.

**Section 4B.8 Maintenance & Removal Bonds**

Prior to issuance of a Zoning Certificate, each applicant for a Facility shall be required to execute a standard Maintenance / Removal agreement binding the applicant and its successors and assigns to properly maintain the exterior appearance of, and to ultimately remove such facilities, upon abandonment or cessation of operations. The applicant shall be required to post a bond for this purpose in accordance with the Department of Planning & Zoning schedule of fees and charges. The applicant shall be required to continue such bond or other security until such time as the facility has been removed and all other requirements of the Maintenance/Removal agreement have been satisfied. Private business users operating a single Facility at their principal place of business and Governmental Users are exempt from this bond requirement.

**Section 4B.9 Abandonment & Removal**

- A. Any Facility or Support Structure that is not operated for a period of twelve (12) consecutive months may be referred to the Property Safety Enforcement Agency Board for a determination of the structural soundness of the Facility or Structure.
- B. If a structure is determined to be unsound, it will be considered abandoned.
- C. The owner or operator of any Facility or Support Structure shall remove the Facility pursuant to the requirements of the Jefferson County Property Safety Ordinance.

**ARTICLE 5: DISTRICT ESTABLISHMENT; ZONING MAPS; DISTRICT BOUNDARIES; DISTRICT REGULATIONS**

**Section 5.1 Establishment of Districts**

For the purpose of this Ordinance, all land within the County, exclusive of the incorporated towns, is hereby designated as one of the following zoning districts:

- R-G Residential/Growth District
- I-C Industrial/Commercial District
- R-A Rural/Agricultural District
- R-L-C Residential/Light Industrial/Commercial District

V Village District

**Comment [SB139]:** Village District is an existing zoning district but is currently absent from this list.

[AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 4, 1989]

**Section 5.2 Boundaries of Districts**

Unless otherwise indicated on the zoning district maps, the boundary lines of the districts shall follow lot lines, centerlines of streets, alleys, corporate limit lines, or centerlines of waterways as existing at the time of the adoption of this Ordinance.

**Section 5.3 District Maps**

The districts shall be of the size and shape shown on the Jefferson County Zoning Maps and shall hereby be made a part of this ordinance. A copy of the said maps shall be signed by the County Commissioners upon the adoption of these regulations and recorded within the Courthouse.

The Jefferson County zoning layer is parcel-based, maintained in a Geographic Information System (GIS), and shall be the basis for the County's official zoning map. Within 30 days of final County Commission action on a zoning map amendment, GIS/Addressing staff will update the digital zoning layer and make the new data available online.

**Comment [SB140]:** This policy was adopted by the County Commission.

On an annual basis, in December, and within 30 days of final County Commission action on a zoning map amendment, a new zoning map will be printed which includes the most up to date base layer data, all approved zoning designations since the last printed map, and an effective date, certified by the President of the County Commission, filed with the County Clerk's office, and a copy provided to the Planning Commission. This annual map update shall not require a public hearing and such certification shall occur administratively.

## Section 5.4 Residential-Growth District

The Residential-Growth District is intended to provide for a variety of residential uses and densities which can be supported by central or public water and sewer and adequate roadways and services. This district encourages commercial growth provided that such growth is deemed to be appropriate and compatible by the Development Review System.

The following regulations govern development within the Residential-Growth District.

### A. Principal Permitted Uses

1. Dwelling, Single-Single Ffamily detached dwelling units
2. Dwelling, Duplexes
- ~~3. Dwelling, Two Family~~
- ~~4. Dwelling, Townhouses~~
- ~~5. Dwelling, Multi-Ffamily dwelling units~~
6. Mobile Home Parks (Subject to the Jefferson County Subdivision and Land Development Regulations Section 10.1; Jefferson County Subdivision Ordinance)
7. ~~Private or public eElementary, middle or Ssecondary schools, hospitals~~
8. Hospital
- ~~9. and Vocational and/or Training Facility for Adults educational facilities for adults~~ [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
- ~~7.10. Churches and other places of worship~~
11. Day Care Center, Small
12. Day Care Center, Large
- ~~8.13. Essential Utility Equipment Child care centers~~
- 9.14. Public utility Safety buildings Facility
- ~~10.15. Publicly Owned Facility buildings and public service establishments like fire, ambulance and rescue services~~
- ~~11.16. Accessory Uses~~
17. Group Residential Facility
18. Home Occupation, Level 1
- ~~12.19. Home Businesses Occupation, Level 2 as specified in Articles 2 and 4A~~ [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]
- ~~13.20. Nursing or Retirement Homes~~
21. Model Homes/Sales Office (pursuant to Section 4.18) [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
22. Preschool
- ~~14.23. Wireless telecommunication facilities pursuant to Article 4B.~~

**Comment [SB141]:** Staff interprets the intent of the ordinance to allow two-family uses in districts where multi-family, townhouse, or duplex uses are also permitted.

**Comment [SB142]:** Use added.

**Comment [SB143]:** Currently permitted per Article 4B but not listed.

### B. Minimum Lot Area, Height, and Yard Requirements

1. Minimum Lot Area, Height, and Yard Requirements are as shown in Table 5.4 – 1 below. The following minimum lot area requirements for residential dwelling units is are based on the availability of central or public water and sewer facilities and West Virginia Board of Health regulations.

**Comment [SB144]:** Unnecessary.

1.2. When computing the dwelling unit yield for a parcel of land, use the total area of parcel minus (1) lands contained in a wetland and (2) hillside lands to be retained in a natural, undisturbed condition as provided for in [Article 14 of the Subdivision Ordinance](#) [the Jefferson County Subdivision and Land Development Regulations](#).

[AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

**Section 5.4b Table 5.4 - 1 Residential Growth District - Height and Yard Requirements**

[AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990 AND SEPTEMBER 1, 2006]

	Development Type	Minimum Lot Area (MLA) Area per Dwelling Unit (ADU)	Required Yards (ft)				Maximum Building Height (ft)*
			Required Yards Front	Side	Street Side	Rear	
1.	Single Family detached Dwelling	6,000 sq. ft. MLA**	25	12	15	20	40
	Public/Central water and sewer	10,000 sq. ft. ADU	"	"	"	"	"
	Public/Central water or sewer	20,000 sq. ft. MLA	"	"	"	"	"
	No Public/Central water or sewer	40,000. Sq. ft. MLA	"	"	"	"	"
2.	Duplex Dwelling unit		25	15	15	20	40
	Public/Central water and sewer	3,200 sq. ft. MLA	"	"	"	"	"
	Public/Central water and sewer	7,500 sq. ft. ADU	"	"	"	(exterior only)	"
	Public/Central water or sewer	10,000 sq. ft. ADU	"	"	"	"	"
3.	Townhouse Dwelling		25	12	15	20	40
	Public/Central water and sewer	1,400 sq. ft. MLA	"	"	"	"	"
		3,500 sq. ft. ADU	"	"	"	(exterior only)	"
			"	"	"	"	"
			"	"	"	"	"
4.	Multi-Family Dwelling	20,000 sq. ft. MLA	25	12	15	30	40 ft.
	Public/Central water and sewer	2,000 sq. ft. ADU	"	"	"	(exterior only)	"
5.	Condominium	20,000 sq. ft. area for the parcel containing the condominium	25 ft. front				40 ft.
		2,000 sq. ft. minimum area per condominium unit	12 ft. side			(exterior only)	
			30 ft. rear				

**Comment [SB145]:** While the Subdivision and Land Development Regulations specify a street side setback for townhomes (15'), the Zoning Ordinance is silent on street side setbacks. As such, two front setbacks must be applied currently to all uses but townhomes. For consistency, Staff recommends applying a 15' street side setback to all residential uses in this district.

**Comment [SB146]:** See above note.

**Comment [SB147]:** "Exterior only" established in definition of setback.

**Comment [SB148]:** Indicator for ADU or MLA is currently missing. Staff's interpretation is that ADU is applicable here.

**Comment [SB149]:** See above note re: street side setbacks.

**Comment [SB150]:** "Condominium" proposed for deletion because this land use is included in the definition of multi-family, and the standards (MLA, ADU, setbacks, etc) are identical to those for multi-family.

\* Subject to Section 9.2

NOTE: ALL detached accessory structures under 144 square feet in size - 6' setback.

\*\* The balance square footage between the ADU and the MLA shall not include land set aside in a Sensitive Natural Area, Buffer to a Sensitive Natural Area, land qualifying as Hillside development or a 100 Year Flood Plain.  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]

C. Commercial Services in Residential Developments

1. Commercial services may be included in a residential development providing the commercial uses are intended to serve the residential community proposed and shall relate well to residential areas in terms of pedestrian and vehicular circulation.
2. The gross area for commercial uses shall not exceed 5 acres or 10 percent of the gross tract area, whichever is less.
3. Commercial uses shall not be built or established prior to the residential development ~~except that they may be~~ unless built in phases consistent with phasing of the residential construction.
4. These uses shall be located within the interior of the project. ~~1.5 and shall be located within the interior of the project and~~ Commercial uses shall be subject to the ~~Neighborhood~~ Compatibility ~~Assessment Meeting~~ ~~Hearing~~ process as outlined in Article 7 of this Ordinance. Any proposed commercial use that is served from a road that is located on the perimeter of the project or on a State Road shall be subject to the entire Development Review Process. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

Comment [SB151]: Single paragraph broken into sections for legibility.

Comment [SB152]: Text repeats.

Comment [SB153]: Name corrected for consistency.

D. ~~Access to~~ Standards for Commercial or Light Industrial Uses

1. Commercial or Light Industrial uses are subject to the following access requirements:
  - a. ~~(1)~~ Such uses will not use adjacent residential roads for through traffic; and
  - b. ~~(2)~~ Will connect to principal and major arterial highways as directly as feasible considering access restrictions. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]
2. Commercial and Light Industrial uses are subject to the requirements of Section 5.6D and the requirements for such standards in Article 8.

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Comment [SB154]: This requirement is stated in Section 5.6D, but is difficult to find and should be stated within 5.4 as well.

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Comment [SB155]: Design Standards for Multi-Family Dwellings - Moved to Article 4.

Comment [SB156]: Marked as "Reserved" in order to preserve numbering of Article 5.

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Section 5.5 ~~Reserved~~ Design Standards for Multi-Family Dwellings

- A. ~~Common open space shall be oriented to the interior of the development and shall consist of land suitable for passive and active recreational use. No more than 50 percent of land dedicated to recreational use shall be within the 100 year Flood plain.~~
- B. ~~Impermeable surface coverage for interior streets, parking areas, and residential structures shall not exceed fifty (50) percent of the gross land area.~~
- C. ~~Asphalt or concrete walkways of a minimum width of four (4) feet shall provide access from bus waiting areas, recreational land, tot lots and parking areas.~~

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~~D. All on-site utilities and dumpsters shall be effectively screened.~~

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~~E. Tot lot or play areas shall be centrally located in areas convenient to residential buildings and at least twenty-five (25) feet from any street right-of-way.~~

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## Section 5.6 Industrial - Commercial District

The purpose of this district is to provide locations for manufacturing, processing, and commercial uses which may require extensive transportation and central or public water and sewer services. It is not the purpose of this district to encourage the use of land within the district for retail services; however, it is anticipated that there may be areas or locations where retail services can be reasonably and logically considered due to their relationship with other uses existing within the district, as well as their relationship with the district boundary line or the configuration of the property and the relative scale of the project.

### A. Principal Permitted Uses

- ~~1. Uses of a Light or heavily Industrial Uses~~
- ~~2. Heavy Industrial Uses~~
- ~~3. Commercial Uses~~
- ~~4. Day Care Center, Small~~
- ~~5. Day Care Center, Large~~
- ~~6. Home Occupation, Level 1~~
- ~~7. Home Occupation, Level 2~~
- ~~8. Cottage Industry~~
- ~~9. Medical/Dental/Optical Office, Small~~
- ~~10. Barber/Beauty Shop, Limited~~
- ~~11. Antique Shop~~
- ~~12. ATM~~
- ~~13. Branch Bank~~
- ~~14. Kennel (subject to the requirements for such use in Article 8)~~
- ~~15. Dry Cleaner~~
- ~~16. Florist~~
- ~~17. Restaurant, Limited~~
- ~~18. Restaurant, Fast Food, Limited~~
- ~~19. Retail Food Store, Limited~~
- ~~20. Veterinary Services~~
- ~~21. Video Rental Store~~
- ~~22. Country Inn~~
- ~~23. Non/Not for Profit Commercial Uses~~
- ~~24. Non-profit Community Centers~~
- ~~25. Publicly Owned Facility~~
- ~~26. Public Safety Facility~~
- ~~27. Essential Utility Equipment~~
- ~~28. Wireless telecommunications facilities pursuant to Article 4B.~~

**Comment [SB157]:** Several commercial uses listed in this section are currently listed only in the Village District but should be included here for consistency, because all commercial uses are permitted in the district.

**Comment [SB158]:** ATM and Bank are distinct land uses.

29. Private or Public Shooting Ranges

~~2.30.~~ Cultural Facility

~~3.31.~~ Industrial related accessory uses including residential dwellings including a mobile home on site for a caretaker or watch keeper.

~~4.32. Adult uses~~ ~~Adult arcades, adult bookstores, adult cabarets, adult mini motion picture theaters, adult saunas, adult theaters, sexual encounter establishments, sexual paraphernalia stores, massage parlors and any sign advertising the operation thereof,~~ subject to ~~distance~~ requirements set forth for such uses in Section 5.6h Article 8. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 1, 2003]

**Comment [SB159]:** The Board of Zoning Appeals has determined that a shooting range is a permitted use in this district.

**Comment [SB160]:** Updated section reference.

B. The following uses shall be evaluated by the Development Review System and shall not be located less than 1000 feet from any Residential property line or property listed on the National and State Historic Register/Survey.

1. Bituminous concrete mixing and recycling plants
2. Concrete and ceramic products manufacture, including ready mixed concrete plants
3. Petroleum products refining or storage (subject to the requirements for such standards in Article 8) ~~above ground in tanks; provided, that all state and federal laws, as well as National Fire Underwriters Codes, are adhered~~
4. Commercial sawmills
5. Salvage Yards, subject to the Jefferson County Salvage Yard Ordinance
6. Garbage or dead animal reduction or processing
7. Slaughterhouses, Stockyards
8. Acid or heavy chemical manufacturer, processing or storage
9. Cement or lime manufacture
10. Explosive manufacture or storage
11. Foundries and/or casting facilities
12. Mineral extraction, mineral processing

~~12.13.~~ Jails and Prisons (subject to requirements for this use in Article 8)

**Comment [SB161]:** The Zoning Ordinance currently states that Jails/Prisons are allowed in this zone, but the land use is not mentioned in Section 5.6.

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C. Height Regulations

No structure shall exceed seventy-five (75) feet in height except as provided in Section 9.2.

D. Yard Requirements as follows: (These ~~yard~~ requirements are also for an approved commercial or industrial use proposed for any other zone.) [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

**Comment [SB162]:** Applicable requirements below are not solely yard requirements.

1. Front yard building setback
 

Commercial sites	25 feet
Industrial sites	50 feet
2. Side yard building setback
 

Commercial sites greater than 1.5 acres	50 feet
-----------------------------------------	---------

- Commercial sites 1.5 acres and smaller      25 feet
- Industrial sites      50 feet
- 3. Rear yard building setback
  - Commercial sites greater than 1.5 acres      50 feet
  - Commercial sites 1.5 acres and smaller      25 feet
  - Industrial sites      50 feet
- 4. Parking, Driveway and Internal Access Drive Front Setbacks
  - Commercial sites greater than 1.5 acres      15 feet
  - Commercial sites 1.5 acres and smaller      15 feet
  - Industrial sites      25 feet
- 5. Parking, Driveway and Internal Access Drive Side and Rear Setbacks
  - Commercial sites greater than 1.5 acres      10 feet
  - Commercial sites 1.5 acres and smaller      4 feet
  - Industrial sites\*      25 feet

\* Driveways and Internal Access Drives Only. Parking must abide by buffer requirements.

- 6. Compliance with Sections 4.11 and ~~5-88.9(A)(1-9)-b-2-10~~ [AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993]
- 7. Distance Requirements
  - a. Commercial shall comply with Section 4.6(b)
  - b. Industrial shall comply with Section 4.6(a) [AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993]

E. Lot Area

A minimum lot size of three acres shall be required for any industrial use unless the site is located in an approved Industrial Park.

~~Site Plan Requirements~~

~~All uses must be in compliance with Article 11 of the adopted Subdivision Ordinance and Articles 4, 5, 10 and 22 of this Ordinance.~~

**Comment [SB163]:** "Site Plan Requirements" redundant with Sec. 4.10.

F. Commercial and Industrial Design Standards

1. Commercial Design Standards

- a. Landscaping, screening, buffer yards, and setbacks for commercial development are subject to Section 4.11.

- a. —
- b. ~~Impermeable~~Impervious site coverage (parking areas, building areas and other paved surfaces) shall not be greater than 80% of the gross area of the site.
- c. Adequate provision shall be made for storage and collection of refuse. Refuse containers are subject to Section 4.11e.
- d. Permeable areas of the site shall be planted with ground cover, shrubs and trees.
- e. ~~All off street parking areas which are paved with an impermeable surface and which have an area of 10,000 square feet and greater shall have a minimum of five (5) percent of the total impervious area of the parking lot.~~
- f. Lighting shall be provided for all parking areas which will receive night use. Such lighting shall be directed to the parking area and be shielded to prevent adverse glare on adjacent public highways, streets and properties.

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Comment [SB164]: This requirement is covered by the Subdivision and Land Development Regulations, Appendix B, Section 9.12

## 2. Industrial Design Standards

- a. ~~Impermeable~~Impervious site coverage (parking areas, building areas and other paved surfaces) shall not be greater than 90% of the gross area of the site.
- b. Adequate provision shall be made for storage and collection of refuse, subject to Section 4.11e.
- c. Permeable areas of the site shall be planted with ground cover, shrubs or trees if subject to Section 4.6.

Comment [SB165]: Adult Use Requirements and Design Standards for Jails relocated to Article 8

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### ~~H. Design Standards For Jails, Prisons and/or Penal Institutions [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]~~

- 1. ~~All jails shall have direct access to a primary road as defined by the Jefferson County Comprehensive Plan.~~

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- a. ~~Such road shall have a level of service no worse than Level C.~~

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- 2. ~~No residential subdivisions, schools, churches or institution for human care shall be within 2000' of the subject property. However, this does not prevent such use from locating within 2000' of a jail, prison or penal institution.~~

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### ~~3. SETBACKS~~

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- a. ~~Front — 1,000 Feet~~
- b. ~~Sides — 1,500 Feet~~
- c. ~~Rear — 1,500 Feet~~

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### ~~I. Adult Use Requirements [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 1, 2003]~~

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~~Adult arcades, adult bookstores, adult cabarets, adult mini motion picture theaters, adult saunas, adult theaters, sexual encounter establishments, sexual paraphernalia stores,~~

~~massage parlors and any sign advertising the operation thereof, shall only be permitted in the Industrial Commercial District under the following conditions:~~

- ~~1. All elements of the use, including parking areas, shall be located at least 1,500 feet from any Rural, Residential Growth, Village or Residential Growth Light Industrial Commercial Zoning District not separated from the subject property by a public road or railroad right-of-way.~~
- ~~2. A proposed adult arcade, adult bookstore, adult cabarets, adult mini motion picture theaters, adult saunas, adult theaters, sexual encounter establishments, sexual paraphernalia stores, massage parlors or any sign advertising the operation thereof, shall not be permitted within 2,500 feet of a lot with an existing adult use or a lot with a sign advertising an adult use.~~
- ~~3. All elements of any use described in Article 5, Section 5.6(h), including parking areas, shall be located at least 1,500 feet from any lot, regardless of its zoning classification, that contains a dwelling unit, a school, a church or house of worship or an institution for human care, regardless it is separated by a public road or railroad right-of-way.~~

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~~This provision does not apply to any specific existing use that legally qualifies as a nonconforming use; provided, however, that an existing nonconforming use cannot add any of the uses described in Article 5, Section 5.6(h) to their operations as existing at the time of the adoption of this section. ||~~

Comment [SB166]: Moved to Article 8, Adult Uses section.

## Section 5.7 Rural District

The purpose of this district is to provide a location for low density single family residential development in conjunction with providing continued farming activities. This district is generally not intended to be served with public water or sewer facilities, although in situations where the Development Review System is utilized, it may be. A primary function of the low density residential development permitted within this section is to preserve the rural character of the County and the agricultural community. All lots subdivided in the Rural District are subject to Section 5.7d ~~Maximum number of lots allowed~~. ~~The Development Review System does allow for higher density by issuance of a Conditional use permit is issued.~~ [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]

Comment [SB167]: Unnecessary text.

### A. Principal Permitted Uses

- ~~1.~~
- ~~2. 1. Agricultural use as defined in Article 2; provided any building or feeding pens in which farm animals are kept shall comply with distance requirements specified in Section 4.6 and the requirements for barns and feeding pens specified in Article 8. Also, any buildings used to store manure shall comply with distance requirements specified in Section 4.6(a).~~ [AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993]
2. Church

Comment [SB168]: Moved to Section 5.7B

- ~~3. Elementary or Secondary Schooles and private or public elementary, middle or secondary schools~~
- ~~3.4. Vocational and/or Training Facility for Adults and specialized or acerredited educational and training facilities for adults in a campus setting, including classroom buildings, dormitories, cafeterias, gymnasiums (whose use is limited to the students, participants and instructors at said school or training facility), and administrative buildings. [AMENDED BY ACT OF THE COUNTY COMMISSION EFFECTIVE, OCTOBER 14, 1999 AND SEPTEMBER 28, 2006]~~
- ~~5. Dwelling, SsSingle Ffamily~~
- ~~6. dwelling, including mMobile hHomes (subject to the Jefferson County Subdivision and Land Development Regulations) provided that they are utilized as single family dwelling units on the minimum lot size specified in Section 5.15.~~
- ~~7. Dwelling, Two-Family provided one unit is owner occupied~~
- ~~4.8. Cottage Industry~~
- ~~9. Home Businesses Occupation, Level 1 as specified in Articles 2 and 4A. [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]~~
- ~~5.10. Home Occupation, Level 2~~
- ~~6. Private riding stables~~
- ~~7.11. Day Care Center, Small Child or elderly care facilities with six (6) or less individuals in single family detached dwellings only; not counting the operator's children or parents. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999 AND OCTOBER 3, 2005]~~
- ~~8.12. Public Safety Facility Fire stations, ambulance and rescue squads, publicly supported.~~
- ~~9. Fish, game or poultry hatchery~~
- ~~10. Forestry~~
- ~~11.13. Cultural Facility Library, museum, or similar institution of a noncommercial nature~~
- ~~12.14. Farm Market Markets for the sale of farm products, and products incidental to farm products; provided that floor area does not exceed 1,500 square feet, a front yard setback of fifty feet (50) from the street right-of-way be maintained, and off street parking be provided. (subject to the requirements for such a use in Article 8) [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]~~
- ~~13.15. Horticultural nurseries and commercial greenhouses~~
- ~~14.16. Hospital~~
- ~~15.17. Public Essential uUtility Equipmenties uses, specified in Section 4.7 incident to any principal permitted uses~~
- ~~18. Accessory buildings and uses customarily incident to any principal permitted uses~~

~~a. Accessory Uses for Hunting, Shooting and Fishing Clubs~~

- ~~i. Private restaurant that seats no more than 80 patrons that are members and guests of members.~~

**Comment [SB169]:** Section does not exist. Minimum lot size reference unnecessary.

**Comment [SB170]:** Recommend deletion of two-family occupancy restriction. Owner occupancy provision is unique to the Rural district and is difficult to enforce.

**Comment [SB171]:** Currently permitted per Section 4A.3 but not listed in 5.7.

**Comment [SB172]:** "Private riding stables" deleted – redundant with "Equestrian uses."

**Comment [SB173]:** Changes to Home Occupation terms to match Article 4A.

**Comment [SB174]:** Amended use name; use restrictions moved to definition and to Article 8.

**Comment [SB175]:** Redundancies eliminated

**Comment [SB176]:** Use name shortened; detailed standards moved to Article 8.

**Comment [SB177]:** Hunting, Shooting, Fishing Club accessory regs moved to Article 8

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- ii. ~~Conference and banquet facilities to serve no more than 250 people in which a member rents the facility. Events which are accessory uses other than hunting, shooting, archery and fishing, cannot exceed more than 16 per year.~~
  - iii. ~~Private lodge facilities of up to 50 units that serve members and guests.~~
- ~~[AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 28, 2006]~~

19. Group Residential Facility

~~16.20.~~

Bed and Breakfast (subject to the requirements for such a use in Article 8) ~~(no more than 7 bedrooms) 4 receptions per year with no more than 1 tent per reception. (subject to the requirements for such a use in Article 8)~~ [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993 AND OCTOBER 3, 2005]

Comment [SB178]: Detailed use standards for B&B moved to Article 8.

16. Publicly ~~O~~Wowned ~~f~~Facilities [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]

~~17. Two family dwellings provided one unit is owner occupied [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]~~

~~17.21.~~ Wireless telecommunications facilities pursuant to Article 4B [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 1, 1998]

~~18. Horse breeding and/or boarding [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]~~

~~19. Equestrian riding/training facility [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]~~

Comment [SB179]: Redundancies eliminated. "Equestrian uses" is listed in the definition of "Agricultural Use."

~~18.22.~~ Model ~~H~~Homes/~~S~~Sales ~~O~~Office (subject to the requirements for such a use in Article 8) ~~(pursuant to 4.18)~~ [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

~~19.23.~~ Non-profit Community Centers [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 3, 2005]

~~20.24.~~ Landscaping business outside of Planning Commission approved subdivisions [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 3, 2005]

~~21.25.~~ Veterinary services outside of Planning Commission approved subdivisions [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 3, 2005]

~~26.~~ Feed and/or ~~F~~Farm ~~S~~Supply ~~C~~Center ~~and/or~~

~~22.27.~~ ~~A~~Agricultural ~~R~~Repair ~~C~~Center [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 3, 2005]

~~23.28.~~ Dog-Kennels ~~all portions of the use must be buffered pursuant to Article 4 and setback at least 500 feet from any property that contains a residence. Kennels cannot be located within a Planning Commission approved residential subdivision. ((subject to the requirements for such a use in Article 8)~~ AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 3, 2005]

Comment [SB180]: Kennel standards moved to Article 8

~~24.29.~~ Hunting, Shooting, Archery and Fishing Clubs (subject to the requirements for such a use in Article 8), ~~public or private as defined by American Planning~~

~~Association Definitions including shooting ranges.~~ [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 28, 2006]

**Comment [SB181]:** Defined in definitions, Sec. 2.2.

30. Agricultural Tourism

31. Farm Vacation Enterprise

32. Farm Brewery or Winery

33. Rental of Existing Farm Building, for commercial storage (structure must have existed for 5 years)

**Comment [SB182]:** Agricultural Tourism, Farm Vacation Enterprise, Farm Brewery or Winery, Rental of Existing Farm Building were moved from definition of agricultural use, Section 2.2.

34. Preschool

**Comment [SB183]:** Preschool: Land use added.

B. Minimum Lot Area, Lot Width and Yard Requirements

1. Minimum lot sizes, lot width, and yard requirements ~~are as follows~~ for principal permitted uses are shown in Table 5.7-1.

**Comment [SB184]:** Numbering added to this section.

2. For any residential use that complies with the Development Review System, the setbacks and lot size shall be as outlined in Article 5.4 ~~(b)~~. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

**Comment [SB185]:** Missing word.

~~1.~~

Table 5.7-1 – Lot Area, Width, and Yard Requirements for Principal Permitted Uses in the Rural District

<u>Land Use</u>	<u>Lot Area</u>	<u>Lot Width</u>	<u>Front Yard Depth</u>	<u>Side Yard Depth</u>	<u>Rear Yard Depth</u>
Dwellings	40,000 sq. ft.	100	40	15	50
Churches	2 acres	200	50	50	50
Schools, Grades K-4	10 acres +	500	100	100	100
Schools, Grades 5-8	20 acres +	500	100	100	100
Schools, Grades 9-12	30 acres +	500	100	100	100
Hospitals	10 acres	500	100	100	100
Other permitted uses	40,000 sq. ft.	100	40	50	50

**Comment [SB186]:** Amended to resolve conflict with table in Section 4.16

~~2.3.~~ Plus Lot area for schools (K-12) as shown in Table 5.7-1 shall be increased by one (1) additional acre for every 100 pupils. Minimum lot size for Vocational Schools shall be based on State of West Virginia Code. If a sewer ~~age~~ treatment plant and retention ponds are required, acreage shall be increased accordingly. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989]

**Comment [SB187]:** Reworded for clarity.

4. Commercial and Light Industrial uses are subject to the requirements of Section 5.6D and the requirements for such standards in Article 8.

**Comment [SB188]:** This requirement is stated in Section 5.6D, but is difficult to find and should be stated within 5.7 as well.

5. Any building or feeding pens in which farm animals are kept shall comply with distance requirements specified in Section 4.6 and the requirements for barns and feeding pens specified in Article 8. Also, any buildings used to store manure shall comply with distance requirements specified in Section 4.6(a).

**Comment [SB189]:** Moved from 5.7A and edited.

C. Height Regulations

No structure shall exceed thirty five (35) feet in height as provided in Section 9.2.

D. Maximum Number of Lots Allowed

All parcels of land that were on record as of October 5, 1988 are entitled to subdivide for single family detached residences based on Subsections 5.7(d)1, 5.7(d)2 or 5.7(d)3 below. A property owner may use a combination of these subsections, provided that the number of lots are prorated by density. [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]

1. A property owner may create one (1) lot for every fifteen (15) acres with a minimum lot size of three (3) acres.
  - a. Acreage shall be computed using existing acreage at the time application is submitted. Total acreage does not include acreage which was subdivided off of present parent parcel between October 5, 1988 and time of application.
  - b. A property owner may transfer rights to adjacent parcels which are owned by the same entity.

[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

2. Clustering

a. Purpose and Intent

- i. To encourage the conservation of farmland in the Rural Zoning District by planning the residential development allowed in the zone to provide for the best obtainable siting, access and location of lots on a tract.
- ii. To provide for a well planned development while minimizing the use of prime agricultural land.

b. Requirements

- i. ~~A property owner may subdivide o~~One (1) lot ~~may be subdivided~~ for every ten (10) acres ~~he/she owns.~~ [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

- (a) Acreage shall be computed using existing acreage at the time application is submitted. Total acreage does not include acreage which was subdivided off of present parent parcel between October 5, 1988 and time of application.

Comment [SB190]: Wording simplified.

ii. Minimum lot size shall be 40,000 square feet for lots that will be served by individual wells and septic systems; 20,000 square feet for lots that will be served by a central water OR central sewerage system; and 10,000 square feet for lots that will be served by both a central water AND central sewerage system. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

(a) Setbacks shall be 25' front, 12' sides and 20' rear.

(b) All clusters of three (3) or more lots shall be served by an internal road ~~pursuant to Article 8 of the Subdivision Ordinance.~~

**Comment [SB191]:** While staff recommends that this standard be maintained, the requirement is no longer in the Subdivision and Land Development Regulations.

(c) Clusters of three (3) or more lots shall not be along an existing public road.

(d) A property owner may transfer rights to adjacent parcels which are owned by the same entity. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

(e) Maximum lot size shall be 3 acres. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

iii. Procedures

(a) Concept Plan. For the subdivision of tracts eligible for cluster lots, a ~~concept plan must be submitted shall be submitted to the Department of Planning, Zoning, and Engineering showing all standard and potential cluster rights to determine the feasibility of subdivision rights for the original tract(s) of land. The plan shall be prepared in accordance with a "sample" cluster plan and show the following:~~ pursuant to the requirements of the Jefferson County Subdivision and Land Development Regulations. All cluster developments must be processed as a major subdivision. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**Comment [SB192]:** Requirement to process as a major subdivision will ensure that all cluster developments (even those of 5 lots or fewer) will have a Concept Plan. This is consistent with the intent of Section 5.7.

~~The lot layout (scale no smaller than one (1) inch equals one hundred (100) feet) including the building restriction lines and appropriate dimensions  
Street layout~~

~~Vicinity map (scale no smaller than one (1) inch equals two thousand (2000) feet) showing the tracts(s) and total acreage including within the plan.~~

**Comment [SB193]:** The new Subdivision Regulations establish the Concept Plan standards and review process. A cluster subdivision would be required to follow these requirements. As such, the Zoning Ordinance standards and process for a cluster Concept Plan are redundant with new Subdivision Regulations. This is confusing and burdensome for applicants. Hence, the Concept Plan standards and process in the Zoning Ordinance should be deleted.

~~Topography with minimum ten foot contours (USGS Topo, interpretation is permitted for concept plan)~~

~~Development rights table indicating acreages and development rights, both standard and cluster, for each tract and the total.~~

~~Soils data for the cluster area and the remaining farmland.~~

~~The Department of Planning, Zoning, and Engineering Staff will review the cluster plan, prepare a report and submit it to the Planning Commission within thirty (30) days of original submittal. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

(b) The Staff will have final approval over the location layout of the proposed clustering of lots. The Staff shall consider the following when reviewing concept plans:

- (1) Soils: The cluster plan should minimize the use of the higher quality soils (class I, II and III as designated in the soils classification study) and maximize the use of steeper sloped areas, areas of poorer soils and areas which are otherwise less productive for agricultural uses.
- (2) Surrounding land use and zoning: The cluster plan shall consider the existing land uses and zoning in the vicinity. Generally, new lots which are adjacent to existing development or residential zoning are preferred to creating an isolated cluster of new houses.

~~(e) Concept plan approval shall become null and void at the end of one year from the date of approval unless a Community Impact Statement is submitted.~~

~~(c)~~ (c) If the concept plan is approved by the Planning Commission, the ~~developer~~ applicant may then proceed with platting of the clustered development in accordance with the Jefferson County Subdivision and Land Development Regulations ~~subdivision regulations~~ and the approved concept plan. The plat shall bear a statement indicating “The land lies within an approved rural cluster development and no further subdivision of the remaining land is permitted unless the property is placed in another zone or further subdivision is allowed by ordinance or regulation”.

~~iv.i.~~ Not in addition to subsections 5.7(d)1 and 5.7(d)2 above, any property that was a lot of record as of October 5, 1988 may create 3 total lots (including the residue) during any five year period. Applications which exceed this number during any five year period shall be processed utilizing the Development Review System. Subdivisions involving transfers of land between parent and child shall not be subject to this section. All lots that qualify under this section must meet subdivision requirements. Only the residue or parent parcel may qualify under this provision once the original subdivision takes place.

**Comment [SB194]:** Validity dates for subdivisions are established by the Subdivision Regulations, per Chapter 8A of the West Virginia Code.

Parent to child or child to parent lots are not entitled to further subdivide except as another parent to child or child to parent transfer.

v.ii. Once the maximum number of lots are created under 5.7(d), the property cannot be further subdivided unless the Ordinance is amended to allow such.

~~E. Standards for Hunting, Shooting and Fishing Clubs [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 28, 2006]~~

- ~~1. 75 foot setback for all structures and parking.~~
- ~~2. 150 yard setback for all shooting facilities.~~
- ~~3. Height~~

- ~~a. As is for conversion or reconstruction that does not exceed 135 percent of the original footprint of existing structures~~
- ~~b. 35 feet for new structures~~

~~4. Landscaping requirements to meet standard found in this Ordinance with the following exception:~~

- ~~a. Perimeter landscaping shall be as approved by staff in order to preserve existing vegetation.~~

~~5. Minimum of 150 acres under common ownership.~~

~~F. Special Exceptions for Hunting, Shooting and Fishing Clubs [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 28, 2006]~~

- ~~1. Limits exceeding requirements outlined above can be increased with Board of Zoning Appeal's approval provided that the Board of Zoning Appeals find that the increase is compatible with the neighborhood after taking into consideration neighborhood character, traffic, and buffering. Such decision shall be rendered after a public hearing as outlined in the Board of Zoning Appeal's Rules and Procedures.~~

**Section 5.8 Residential/Light Industrial/Commercial District**

[AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 4, 1989]

The purpose of this district is to guide ~~the~~ high intensity growth into the ~~perceived~~ designated growth area. Light industrial uses are defined in Section 2.2. [All other perceived light industrial uses shall be referred to the Jefferson County Development Authority for a recommendation on whether a use is a light industrial or heavy industrial use. The final decision on use classification shall still be made by the Zoning Administrator. Planning Commission.]

A. Principal Permitted Uses

Comment [SB195]: Hunting, Shooting, Fishing -- moved to Article 8

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Comment [SB196]: Section moved from Section 2.2 and has been edited: words "on use classification" added..

1. ~~Uses of Light Industrial Uses~~
  2. ~~Commercial Uses~~
  3. Medical/Dental/Optical Office, Small
  4. Barber/Beauty Shop, Limited
  5. Antique Shop
  6. ~~ATM or~~
  7. Branch Bank
  8. ~~Dog~~ Kennel (subject to the requirements for such use in Article 8)
  9. Dry Cleaner
  10. Florist
  11. Restaurant, Limited
  12. Restaurant, Fast Food, Limited
  13. Veterinary Services
  14. Video Rental Store
  - ~~2. Country Inn~~
  15. Dwelling, Single Family detached dwelling units
  - ~~3. 16. Dwelling, Two Family~~
  4. 17. Dwelling, Duplexes
  5. 18. Dwelling, Townhouses
  6. 19. Dwelling, Multi-Family dwelling units
  20. Mobile Home Parks
  21. Home Occupation, Level 1
  22. Home Occupation, Level 2
  - ~~7. 23. Cottage Industry~~
  24. ~~Private or public elementary, middle or secondary schools, colleges, hospitals~~
  25. Hospital
  - ~~8. 26. and Vocational and/or Training Facility for Adults educational facilities for adults~~
- [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
27. ~~Churches and other places of worship~~
  28. Cultural Facility
  9. 29. Day Care Center, Small
  10. 30. Day Care Center, Large Child care centers
  11. 31. Public Essential Utility Equipment buildings
  32. Publicly Owned Facility buildings and public service buildings
  - ~~12. 33. Public Safety Facility~~
  13. 34. Accessory Uses
  14. 35. Group Residential Facility
  15. 36. Nursing or Retirement Home
  37. Model Home/Sales Office (subject to requirements for this use in Article 8 pursuant to Section 4.18) [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
  16. 38. Non-Profit Community Center
  39. Non/Not for Profit Commercial Uses [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
  40. Preschool

Comment [SB197]: ATM and Bank are distinct land uses.

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Comment [SB198]: New use.

~~17.41. Wireless telecommunications facilities pursuant to Article 4B.~~

B. Standards

1. Industrial uses permitted in this district shall be of types that require daily water use of no more than 0.25 gallons per gross square feet of floor space.

~~2. Light industrial and commercial uses are subject to the standards for such uses in Article 8 of this ordinance.~~

~~2. Light Industrial uses in the Residential/Light Industrial/Commercial District are subject to the standards for such uses in Article 8 of this ordinance.~~

~~1. Water Use Limits~~

~~Industrial Uses permitted in this district shall be of types that require daily water use of no more than 0.25 gallons per gross square feet of floor space.~~

~~2. Noise~~

~~All noise shall be muffled so as not to be objectionable due to intermitting, beat frequency, or shrillness. Noise levels shall not exceed the following sound levels dB(A). The sound pressure level shall be measured at the property line with a sound level meter.~~

<del>Sound Measured In</del>	<del>DAY</del>	<del>NIGHT</del>
	<del>7 AM – 6 PM</del>	<del>6 PM – 7 AM</del>
<del>Adjoining Agricultural or Residential Growth District</del>	<del>60 dB(A)</del>	<del>50 dB(A)</del>
<del>Residential Uses in R.L.C. District</del>	<del>65 dB(A)</del>	<del>55 dB(A)</del>
<del>Commercial Uses</del>	<del>70 dB(A)</del>	<del>60 dB(A)</del>
<del>Light Industrial Uses adjacent to noise source</del>	<del>85 dB(A)</del>	<del>80 dB(A)</del>

~~The following sources of noise are exempt:~~

- ~~a. Transportation vehicles not under the control of the industrial use.~~
- ~~b. Occasionally used safety signals, warning devices and emergency pressure relief valves.~~
- ~~e. Temporary construction activity between 7:00 a.m. and 7:00 p.m.~~

~~3. Odor~~

~~No operation shall result in the creation of odors of such intensity and character as to be detrimental to the health and welfare or the public or which interferes with the comfort of the public. Odor thresholds shall be in accordance with ASTM d139-57 “Standard Method for Measurement of Odor in Atmospheres (Dilution Method)” or its equivalent.~~

Comment [SB199]: Standards moved to Article 8.

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~~Odorous material released from any operation or activity shall not exceed the odor threshold concentration beyond the state line, measured either at ground level or habitable elevation.~~

#### ~~4. Smoke~~

~~No smoke, dust, fumes, or particulate matter shall be perceptible at any lot line. Further, the regulations and standards governing the control of air pollution shall be the same as those adopted by the State of West Virginia.~~

~~For the purpose of grading the density or equivalent capacity of smoke, the Ringelman Chart as published by the United States Bureau of Mines shall be used.~~

~~The emission of smoke darker than Ringelmann No. 1 from any chimney, stack, vent, opening, or combustion process is prohibited.~~

~~The total emission rate of dust and particulate matter from all vents, stacks, chimneys, flues or other opening or any process, operation, or activity except solid waste incinerators within the boundaries of any lot, will not exceed the levels set forth below.~~

~~Particulate matter emission from materials or products subject to becoming wind born will be kept to a minimum by paving, sodding, oiling, wetting, covering or other means, such as to render the surface wind resistant. Such sources include vacant lots, unpaved roads, yards and storage piles or bulk material such as coal, sand, cinders, slag, sulfur, etc.~~

#### ~~5. Ambient Air Quality Standard~~

##### ~~Particulate Matter~~

##### ~~Suspended~~

~~Annual Arithmetic Mean ug/m ————— 65  
24 hour Maximum b, ug/m ————— 140~~

##### ~~Settleable~~

~~Annual Arithmetic Average, mg/cm<sup>3</sup>/month — 0.35  
Monthly Maximum ————— 0.7~~

#### ~~6. Vibration~~

~~No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at any point beyond the lot line nor shall any vibration produced exceed 0.002g peak measured at or beyond the lot line using either seismic or electronic vibration measuring equipment.~~

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### 7. Glare and Heat

No direct or sky reflected glare, whether from floodlights or from high temperature processes, such as combustion or welding or otherwise, so as to be visible at the lot line, shall be permitted. There shall be no emission or transmission of heat or heated air so as to be discernable at the lot line.

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### 8. Toxic Matter

The ambient air quality standards for the State of West Virginia shall be the guide to the release of airborne toxic materials across lot lines. Where toxic materials are not listed in the ambient air quality standards of the State, the release of such materials shall be in accordance with the fractional quantities permitted below, of those toxic materials currently listed in the threshold limit values adopted by the American Conference of Governmental Industrial Hygienists. Unless otherwise stated, the measurement of toxic matter shall be at ground level or habitable elevation, and shall be the average of any twenty four (24) hours sampling period.

The release of airborne toxic matter will not exceed one thirteenth of the threshold limit value across lot lines.

Such materials shall include but are not limited to: all primary explosives such as lead azide, lead styphnate, fulminates and tetracene; all high explosives such as TNT, RDX, HMX, PETN, and picric acid; propellants and components thereof, such as dry derivatives; pyrotechnics and fireworks such as acetylates, tetrazoles, and ozonides; unstable oxidizing agents such as perchloric acid, perchlorates, and hydrogen peroxide in concentration greater than thirty five (35) per cent; and nuclear fuels, fissionable materials and products, and reactor elements such as Uranium 235 and Plutonium 239.

The storage, utilization or manufacture of materials or products which decompose by detonation is prohibited.

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### 9. Fire Hazards

The storage, utilization or manufacture of solid materials which are active to intense burning shall be conducted within spaces having fire resistive construction of no less than two (2) hours and protected with an automatic fire extinguishing system.

The total capacity of flammable liquids and gasses shall not exceed those quantities permitted in the following Table for each of the industrial districts:

<u>CAPACITY</u>	<u>STORAGE</u>
Liquids	60,000 gallons
Gasses	
—Above ground	150,000 SCF

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~~Below ground 300,000 SCF~~

~~SCF—Standard Cubic Feet at sixty (60) degrees Fahrenheit and 29.92 inches Mercury. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989]~~

~~The following setback requirements will apply to the location of any container which holds flammable liquids or gasses:~~

~~Container Setback from Lot Lines~~

Water Capacity per Container (Gallons)	Containers		Between Above Ground Containers (ft.)
	Underground (Feet)	Above Ground Containers (Feet)	
0 to 2,000	25	25	3
2,000 to 30,000	50	50	5
30,000 to 60,000	50	75	
In excess of 60,000	75	100	¼ the sum of diameters of adjacent containers

~~10. Frontage Road~~

~~Easements or fee simple dedications will be provided along all limited access highways at the site plan or subdivision phases. Said easement/dedication shall not exceed 60 feet in width. The width may vary but must be adequate for extension, continuation or establishment of a minimum 20' wide paved frontage road.~~

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~~11. Landscape Buffer~~

~~A fifty (50) foot wide landscape buffer strip will be provided along all limited access highways. Said buffer shall be adjacent to the frontage road. In the case where existing roads not adjacent to controlled access highway serve as frontage road the landscape buffer may be placed against the highway right of way.~~

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~~All front set backs (building and parking lot) are to be measured from the landscape buffer. (See sketch)~~

ROW LIMITS OF  
CONTROLLED ACCESS  
HIGHWAY



~~\* Maximum 60' easement or dedication for frontage road~~

~~\*\* 50' landscaped buffer strip~~

~~\*\*\* Setbacks~~

~~This provision shall also apply to any ramps or access roads connecting to a controlled access highway within 1/2 mile of a controlled access highway.  
[AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]~~

### C. OTHER REGULATIONS

1. All sections of this ordinance applying to the residential growth district with the exception of Section 5.4(a) will apply to residential uses in this District.
2. All commercial uses must conform with the commercial design standards and yard requirements cited in Sections 5.6(d) 1-6 and 4.6(b). All industrial uses must conform with the Industrial Design Standards and yard requirements cited in Sections 5.6(d) 1-6 and 4.6(a). ~~Either use must be in compliance with site plan the requirements for such use in Article 8. In addition, it a site plan, if required, must be demonstrated a Community Impact Statement, or Site Plan Phase that traffic patterns created by Commercial or Light Industrial uses (1) will not use adjacent residential roads for through traffic and (2) will connect to principal and major arterial highways as directly as feasible considering access restrictions. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990 AND JULY 15, 1993]~~
3. Restaurants where the primary mode of food distribution is by pick-up counter or drive in window and convenience stores (food stores not in excess of 10,000 square feet gross floor area) shall be subject to the ~~Neighborhood~~ Compatibility Assessment Meeting ~~Pp~~ process pursuant to Article 7, Section 7.6 inclusive.
4. Proposed uses in this zone do not have to comply with the distance requirements in Sections 4.6 (a-b) if part of a master planned community. This provision shall only apply to the internal use of land under the same ownership. [AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993]

Comment [SB200]: Numbering added.

Comment [SB201]: Redundant with other sections of the Zoning Ordinance. Also, Community Impact Statements no longer part of review process; replaced by Concept Plan.

Comment [SB202]: Not all changes of use require a site plan.

Comment [SB203]: Name corrected for consistency.

Comment [SB204]: Redundant with Sec. 4.10.

Comment [SB205]: Marked as "Reserved" in order to preserve numbering of Article 5.

### Section 5.9 ~~Site Plans Reserved~~

~~Site Plans are required for all uses, subject to Section 4.10.  
[AMENDED BY ACT OF THE COUNTY COMMISSION ON AUGUST 31, 1989]~~

### Section 5.10 Village District

[AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]

The purpose of this district is to allow recognized villages the ability to provide low level services within their boundaries.

A. Principal permitted uses

1. ~~Dwelling, Single Family dwellings~~
2. ~~Dwelling, Duplexes~~
3. ~~Dwelling, Two Family dwellings~~
4. ~~Home Occupations, Level 1~~
5. ~~Home Occupation, Level 2~~
- 4-6. ~~Cottage Industry~~
7. ~~Public Safety Facility Fire stations, ambulance and rescue squads publicly supported~~  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
- 5-8. ~~Essential Utility Equipment~~
9. ~~1 or 2 doctor in Medical/dental/eOptical eOffice, Small~~ [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
- 6-10. ~~Group Residential Facility~~
11. ~~Cultural Facility Library, museum or similar institution of a noncommercial nature~~  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
- 7-12. ~~Wireless telecommunications facilities pursuant to Article 4B.~~

**Comment [SB206]:** Cottage Industry moved to "permitted" list (from Conditional list) to be consistent with Article 4A.3, which states that the land use is permitted in all districts except Residential Growth.

**Comment [SB207]:** By state law, permitted in all districts where residential uses are permitted.

B. Conditional Uses

The following uses may be approved after being evaluated by the Development Review System (Article ~~7, Sections 7.3 through 7.8 inclusive~~). The LESA point system would not apply.

**Comment [SB208]:** All of Article 7 applies.

~~Cottage Industries~~

1. ~~2-chair Bbarber/bBeauty sShop, Limited~~
2. ~~Dry eCleaners~~
3. ~~Video fRental sStores~~
4. ~~Retail fFood sStores not exceeding 1500 square feet of retail floor space, Limited~~
5. ~~Churches/Houses of Worship~~
6. ~~Day Ceare eCenters, Large~~
7. ~~Country Inn~~
8. ~~Bed and Breakfast (subject to the requirements for such a use in Article 8)~~
9. ~~Restaurant not exceeding 2000 square feet (primary mode of food distribution is by waiter or waitress, Limited)~~
10. ~~ATM~~ ~~or~~
- 10-11. ~~Bbranch bBank~~
- 11-12. ~~Antique Sshop~~
- 12-13. ~~Florist~~

**Comment [SB209]:** Cottage Industry moved to "permitted" list (from Conditional list) to be consistent with Article 4A.3, which states that the land use is permitted in all districts except Residential Growth.

**Comment [SB210]:** ATM and Bank are distinct land uses.

~~13.~~ 14. Restaurant, Fast Food, Limited Take-out pizza/sandwich shops not exceeding 600 square feet [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

C. Setbacks

~~C.~~

1. Residential

a. Section 9.7, Residential Growth standards

2. Commercial

a. 25' front, 10' side and 40' rear

b. Setbacks may be reduced as a result of ~~the a~~ Compatibility Assessment Meeting based on other structures existing in the neighborhood.

3. Existing Structures

~~3.~~

a. As exists not less than 6' on sides and rear.

b. Commercial uses shall not cause any odor, dust, smoke, vibration, noise, or electromagnetic interference, which can be detected at or beyond the property line.

c. Proposed uses in a recognized historic district shall obtain approval from the Historic Landmarks Commission and/or other appropriate state or federal agency prior to processing.

~~d. All new commercial structures shall comply with the site plan requirements.~~

~~e.d.~~ There will be no outdoor storage of equipment, materials or other stock.

~~f.e.~~ Parking ~~shall be discussed at the~~ requirements may be modified as a result of a compatibility meeting.

D. Other Requirements

1. With the exception of setback requirements specified in this section, Commercial and Light Industrial uses are subject to the requirements of Section 5.6D and the requirements for such standards in Article 8.

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Comment [SB211]: Ordinance currently does not specify which standards of 9.7 to follow.

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Comment [SB212]: At the County level, "appropriate agency" assumed to be the Historic Landmarks Commission.

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Comment [SB213]: Covered by Sec. 4.10.

Comment [SB214]: Assumed that ability to modify parking requirements is the intent of this sentence.

Comment [SB215]: This requirement is stated in Section 5.6D, but is difficult to find and should be stated within 5.4 as well.

**ARTICLE 6: DEVELOPMENT REVIEW SYSTEM**

**Section 6.1 Development Review System (DRS)**

The purpose of the Development Review System (also referred to as DRS) is to assess a particular site's development potential based on criteria which determine the agricultural longevity of the parcel in combination with the presence of and compatibility with public services adjacent to and in close proximity to the site. The DRS is a numerical rating system designed to function within the framework of the traditional zoning districts referenced in this ordinance. All commercial uses and those uses which are not permitted in zoning districts shall be governed by the procedures set forth in Article 7 and all sections that reference requirements to obtain a conditional use permit. It shall be unlawful to commence construction of any commercial uses or uses which are not permitted uses in a zoning district without obtaining conditional use permit approval.

**Section 6.2 Issuance of a Conditional Use Permit**

Application for a conditional use permit shall be made before construction of any uses not listed as permitted uses within the appropriate zoning district. Upon receipt of an application, the site will be evaluated by the Departments of Planning and Zoning Staff using the Development Review System. The two major components of the System, the Soils Assessment and the Amenities Assessment, consist of criterion which each possess a numerical value that is weighted relative to its importance as an indicator of a parcel's agricultural significance or its development potential. The total numerical value of the combined criteria is 100 points: the Soil Assessment contributes 25 points and the Amenities Assessment contributes 75 points. The highest total numerical value of the combined criteria indicates that a parcel is more suitable for agriculture, whereas, the lowest numerical value indicates that development is more appropriate for the site. A score of 60 points or less advances the application to the Compatibility Assessment as provided in Section 7.6.

[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**Section 6.3 The Soils Assessment**

The Soils Assessment evaluates a particular parcel for development based on the soil types it possesses. The following soils types will be combined into soil groups.

Soils Type Data

<u>Map Symbol</u>	<u>Soil Series</u>	<u>Agriculture Value Group</u>
Ad	Alluvial	9
Am	Alluvial	5
As	Ashton	1

**Comment [SB216]:** Updated list of soil types and agricultural values, per USDA NRCS. Previous list was from 1973 and no longer matches USDA classifications.

BaB	Benevola	2
BeC3	Benevola	5
BeC	Benevola	6

<u>Map Symbol</u>	<u>Soil Series</u>	<u>Agriculture Value Group</u>
BeD	Benevola	7
BkB	Berks	4
BIB	Berks	6
BIC	Berks-Weikert	8
BID	Berks-Weikert	9
BnB	Blairton	6
BrB	Braddock	3
BrC	Braddock	4
BrC3	Braddock	7
Brd	Braddock	7
BrD3	Braddock	8
BrE	Braddock	8
CdB	Chilhowie	6
CdC	Chilhowie	8
CeC3	Chilhowie	9
ChC	Chilhowie & Opequon	8
CIC3	Chilhowie & Opequon	10
CID3	Chilhowie & Opequon	10
CmD	Clifton	8
DeC	Dekalb	6
DeD	Dekalb	8
DeE	Dekalb	9
DeF	Dekalb	10
DgB	Duffield	2
DgC	Duffield	4
DgC3	Duffield	5
DgD3	Duffield	9
EdD	Edgemont	10
EdF	Edgemont	10
FbB	Frankstown	3
FbC	Frankstown	4
FbC3	Frankstown	5
FbD	Frankstown	5
FbD3	Frankstown	9
FbE3	Frankstown	10
FeC	Frankstown	6

FeD	Frankstown	7
FeD3	Frankstown	10
HbB	Hagerstown	2
HbC	Hagerstown	4
HeC	Hagerstown	10
HeC3	Hagerstown	5

<u>Map Symbol</u>	<u>Soil Series</u>	<u>Agriculture Value Group</u>
HfB	Hagerstown & Frederiek	3
HfC	Hagerstown & Frederiek	4
HgB	Hagerstown & Frederiek	6
HgC	Hagerstown & Frederiek	6
HgD	Hagerstown & Frederiek	8
HhC3	Hagerstown & Frederiek	5
HIC3	Hagerstown & Frederiek	9
HID3	Hagerstown & Frederiek	10
Hn	Huntington	2
Ho	Huntington	4
LaC	Laidig	5
LaD	Laidig	7
LbC	Laidig	9
LbD	Laidig	9
Lf	Landes	2
Ln	Lindside	3
Lo	Lindside	3
Ma	Marl	10
Me	Melvin	6
MhB	Monongahela	3
Qu	Quarries	10
SrF	Steep	10
WeC3	Weikert	9
WeD3	Weikert	10
WeF	Weikert	10

Table 6.3 - 1 Soil Types and Agricultural Value Groups

Map Symbol	Soil Series	Agricultural Value Group	Map Symbol	Soil Series	Agricultural Value Group
AmB	Airmont, stony	5	OeB	Oaklet, v. rocky	3
AxC	Airmont, v. rocky	7	OeC	Oaklet, v. rocky	4
BaC	Bagtown, v. rocky	6	OkC	Oaklet, v. rocky	4
BaD	Bagtown, v. stony	6	OrB	Oaklet-Rock outcrop	6
BgE	Bagtown, x. stony	8	OrC	Oaklet-Rock outcrop	6
BnF	Bagtown, rubbly	9	PmB	Poplimento	2
BoF	Bagtown	9	PmC	Poplimento	4
Bp	Bigpool	2	PpB	Poplimento, v. rocky	3
CaB	Carbo, v. rocky	4	PpC	Poplimento, v. rocky	4
CaC	Carbo, v. rocky	5	PpD	Poplimento, v. rocky	5
CbC	Carbo-Rock outcrop	6	PrC	Poplimento-Rock outcrop	6
CbD	Carbo-Rock outcrop	6	Qm	Quarry	10
CdD	Cardova	6	ReF	Rock outcrop-Opequon	9
CmB	Clearbrook	6	RpC	Ryder-Poplimento	4
CrB	Clearbrook-Berks	6	RrC	Ryder-Poplimento, v. rocky	4
Cs	Combs	2	RrD	Ryder-Poplimento, v. rocky	5
DsB	Downsville	3	Sp	Speedwell	1
DsC	Downsville	4	SrF	Stumptown-Rock outcrop	9
DsD	Downsville	5	SvF	Sylvatus	9
DsE	Downsville	7	SyF	Sylvatus-Rock outcrop	9
DyB	Duffield-Ryder	2	ThC	Thurmont	4
DyC	Duffield-Ryder	4	ThD	Thurmont	5
DyD	Duffield-Ryder	5	Tm	Toms	3
DyE	Duffield-Ryder	7	TxC	Trego, x. stony	7
EgB	Edgemont	3	TxD	Trego, x. stony	7
EgC	Edgemont	4	Ua	Udortheints	10
EgD	Edgemont	5	Ub	Urban land	10
Fa	Fairplay	4	Uu	Urban land - Udortheints	10
Fk	Funkstown	1	UwC	Urban land-Hagerstown	10
HbB	Hagerstown	2	VeB	Vertrees	2
HbC	Hagerstown	4	VeC	Vertrees	4
HcC	Hagerstown	4	VrB	Vertrees, v. rocky	3
HeB	Hagerstown, v. rocky	3	VrC	Vertrees, v. rocky	4
HeC	Hagerstown, v. rocky	4	VsC	Vertrees, v. rocky	4
HgE	Hagerstown-Opequon-RO	8	VtB	Vertrees-Rock outcrop	6
HrB	Hagerstown-Rock outcrop	6	VtC	Vertrees-Rock outcrop	6
HrC	Hagerstown-Rock outcrop	6	VtD	Vertrees-Rock outcrop	6
Hy	Holly	6	W	Water	10
La	Lappans	1	WbC	Weikert-Berks	6
Ln	Lindsay	3	WbD	Weikert-Berks	6
MhA	Monongahela	3	WkF	Weikert-Berks	9
MoB	Monongahela	3	WnC	Weverton, v. stony	7
MxC	Myersville-Catoctin, stx	7	WoE	Weverton-Rock outcrop, stv	8
MxD	Myersville-Catoctin, stx	7	WrB	Wharton-Clearbrook	4
OaB	Oaklet	3	WrC	Wharton-Glearbrook	4
OaC	Oaklet	4	WtB	Whiteford	3
			WtC	Whiteford	4

The points for the soils assessment are computed as follows: [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

- A. Determine the area of each soil type on the property according to the map symbols.
- B. Multiply the soil type areas times the Relative Value for the soil type taken from the List of Soil Groups and Relative Values.
- C. Sum the products of the multiplication of Area times Relative Value to obtain a total for the property.
- D. Divide the total of the multiplication products by the Total Area of the property to obtain the Weighted Relative Value.
- E. Multiply the Weighted Relative Value times the 25 Soil Assessment Points. Then divide the product by 100 to obtain the allowable number of Soil Assessment Points.

Soil groups take into account a rating of best and worst individual soil types. The following 10 soil groups have been developed from the Jefferson County Soil Survey and have been assigned relative values based on their agricultural productivity (see note). [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

Table 6.3 – 2: List of Soil Groups and Relative Values ~~LIST OF SOIL GROUPS AND RELATIVE VALUES~~

<u>Agricultural Group</u>	<u>Land Capability Unit</u>	<u>Relative Value</u>
1	I	100
2	II	9487
3	II	8778
4	II and III	8176
5	III and IV	6865
6	III and IV	6153
7	IV and VI	590
8	IV and VI	310
9	VI	40
10	VII, VIII and other	0

**Comment [SB217]:** Land Capability Unit data is not used for LESA point calculation or other purpose related to the Zoning Ordinance; as such, it should be removed for clarity.

**Comment [SB218]:** Relative Values updated per USDA-NRCS.

The soil groups and their corresponding values will be incorporated into a work sheet to be used to evaluate the potential agricultural value of each site.

If 50% to 65% of the total soils are rated severe for home construction or street construction, by the Jefferson County Soil Survey, add 5 points to the Land Evaluation value of the work sheet.

If over 65%, add 10 points to the Land Evaluation value of the work sheet.

The soils assessment shall not exceed 25 points.

NOTE: The development of soil groups have been determined [by the USDA Natural Resources Conservation Service](#) using corn as the indicator crop. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

#### **Section 6.4 Amenities Assessment**

The amenities assessment of the Development Review System provides indicators of a site's agricultural viability or its development potential. The following criterion are weighted with a high numerical value assigned if the site is more agriculturally viable and a low numerical value assigned if development would be more appropriate for the parcel. The procedure for the compatibility assessment is contained in Article 7.

For nonresidential projects, there is no impact on Proximity to Schools or Parks and Recreation. Therefore, these points have been added to Size of Site, Highway Problem Areas, and Roadway Adequacy as shown.

##### **A. Size of Site:**

This criterion reflects the importance of preserving large blocks of land as a primary goal of agricultural preservation; therefore, acreage shall be contiguous. For nonresidential projects, the points on the right will be applied.

	Residential Projects	Nonresidential Projects
0 to 40 acres	0 points	0 points
40 to 80 acres	3 points	5 points
Over 80 acres	6 points	10 points

[AMENDED BY ACT OF THE COUNTY COMMISSION ON NOVEMBER 30, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

##### **B. Adjacent development**

This criterion assesses percentage of adjacent land that which is developed or under development. Development and development pressure includes: a subdivision of more than 5 lots, lots of less than 5 acres and all commercial or industrial uses. This measurement shall be by a computation of linear feet around the boundary of the property in question. Agricultural related industry or uses shall be considered "no development pressure." Adjacent property includes land separated by roads, rights-of-way, railroads, and other easements. After the percentage of land under development pressure is calculated the remaining percentage of adjacent property may be considered as property where there is no development pressure. The points shall be assessed as follows:

For the property not under development pressure or not developed:

Percent	Points
0 to 40 percent	0 points
40 to 65 percent	5 points
65 to 100 percent	10 points

[AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993.  
PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY  
COURT ORDER ON DECEMBER 3, 2009]

C. Distance to Growth Corridor

The distance to the growth corridor relates to the distance of the subject parcel to the boundaries of the Residential-Growth District or the Residential-Light Industrial-Commercial District adopted within this ordinance. Measuring shall be by the closest linear distance from the property to the closest point of either of the aforementioned growth districts.

Distance	Points
Less than .25 mile	0 points
.25 mile to .75 mile	6 points
Over .75 mile	12 points

[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY  
COURT ORDER ON DECEMBER 3, 2009]

D. Comprehensive Plan Compatibility

This criterion shall determine whether site development is supportive of or has a negative impact on the following elements of the Comprehensive Plan: Highway Problem Areas, Compatibility of site development with designated parks or proposed parks and recreational areas and percentage of proposed affordable housing. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

Comment [SB219]: Missing word.

Highway Problem Areas

Residential Project		Nonresidential Project
0 problem areas	0 points	0
1 problem area	3 points	6
2 problem areas	6 points	12

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Highway Problem Area Points will be assessed as follows:

~~If one could get to~~ If the site is accessible to the closest 'in-county' incorporated area (using the most direct vehicular route) and an 'out-of-county' market area (Frederick, MD; Winchester, VA; Inwood, WV; Martinsburg, WV) (using the most direct vehicular route) without traveling through a Highway Problem Area as shown on the Comprehensive Plan Highway Problem Area Map the project would score a 0 for this criterion.

Comment [SB220]: Clarifying text.

If the site is accessible to either ~~If one could get to~~ one or the other without traveling through a Highway Problem Area the project would score a 3 for this criterion.

If ~~one would travel through~~ a Highway Problem Area intersects the most direct vehicular route to the closest in-county incorporated area and ~~to~~ the closest out-of-county market area, the project would score a 6 for this criterion.

#### Affordable Housing

25% affordable housing is proposed	0
10% affordable housing is proposed	3
No affordable housing is proposed	6

[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

#### Park/Recreational

Proposing a 5 acre park or 10% of gross acreage (whichever is greater) with amenities and land dedicated to and accepted by Jefferson County Parks and Recreation Commission	0 points
Located within 2 miles from an area marked on the Comprehensive Plan Parks and Recreation map	3 points
Located farther than 2 miles from an area marked on the Comprehensive Plan Parks and Recreation map	6 points

Distances for Parks and Recreation will be measured by vehicular miles from a subdivision entrance by the most direct route to the closest park or recreation area as shown on the Comprehensive Plan map of Parks and Recreation Areas.

For nonresidential projects, parks and recreation points will be reassigned to Highway Problem Areas: 0, 6, and 12. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

#### E. Proximity to Schools

Less than 2 miles	0 points	For Nonresidential projects points are reassigned to Roadway Adequacy and Size of Site.
2 to 4 miles	4 points	
Over 4 miles	8 points	

The purpose of assessing the proximity of schools to new development is to avoid excessive busing of students. Distances for schools will be measured by vehicular miles from a subdivision entrance by the most direct route to the entrance of the appropriate school.

For nonresidential projects the proximity to schools points will be reassigned to roadway adequacy: 0, 10, and 16 and size of site: 0, 5, and 10.  
 [AMENDED BY ACT OF THE COUNTY COMMISSION ON NOVEMBER 30, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

F. Roadway Adequacy

Residential Projects		Nonresidential Projects
Primary or Four Lane Road	0 points	0 points
Secondary	6 points	10 points
Local Service	12 points	16 points

Point values for this criterion are assigned based on the designation of the Comprehensive Plan Highway Classification map. Section 6.5(d) evaluates the operational proximity of the site to designated highway problem areas.  
 [AMENDED BY ACT OF THE COUNTY COMMISSION ON NOVEMBER 30, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

G. Emergency Service Availability

The purpose of this criterion is to assess the distance of potential site development to emergency services: fire department (4.5 points) and ambulance service (4.5 points).

Distance to Emergency Services

Distance to Fire	Points	Distance to Ambulance	Points
Less than 2 miles	0 points	Less than 2 miles	0 points
2 to 5 miles	2.5 points	2 to 5 miles	2.5 points
Over 5 miles	4.5 points	Over 5 miles	4.5 points

Distances for Fire and Ambulance will be measured by vehicular miles from a subdivision entrance by the most direct route to the closest entrance of the appropriate fire or ambulance station.  
 [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

## Section 6.5 Computation of Soils/Amenities Assessment

- A. At the completion of evaluation of a site with the Soils and Amenities Assessment Criteria, there should be a total number of points awarded to each Assessment. Since the Soils Assessment utilized was based on a 100 points relative point value in itself, a minor conversion must be made to the total relative value. The Development Review System allots a maximum of 25 points to the Soils Assessment therefore the conversion to be made is expressed as follows:  $100 \times .25 = 25$  pts. (For example, if a parcel receives the maximum point value of 100 points, in actuality only 25 points will be awarded for the Soils Component of the Development Review System.)
- B. The Amenities Assessment has a 75 point maximum point value.
- C. The combined maximum total for both Assessments is 100 points. The most agriculturally significant parcel would rate 100; the most developable parcel would rate 0. A total of 60 points or less advances the application to the Compatibility Assessment Meeting. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- D. The Soils Assessment of a proposed development is not applied when the development proposal is located within the Residential/Growth District or the Industrial/Commercial District.
- E. Any land in the Rural District that is located on a primary or secondary road, as defined in the Comprehensive Plan, shall not have to process through the LESA points process for a commercial or industrial project and shall be advanced directly to the Compatibility Assessment Meeting. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

## ARTICLE 7. PROCEDURAL REQUIREMENTS FOR REVIEW

### Section 7.1 Purpose

The Procedural Requirements section of the Ordinance details the procedures to review development utilizing the zoning district regulations and/or the Development Review System. All plans and development approved shall comply with the standards contained in this Article. ~~Uses that are permitted within a Zoning district may be submitted with an application for a Site Plan subject to Section 4.10.~~

Comment [SB221]: Redundant with Section 4.10.

### Section 7.2 Zoning District Principal Permitted Uses

All uses listed as ~~permitted~~ principal permitted uses within a zoning district shall be developed subject to ~~adopted Subdivision and Site Plan regulations~~ the Jefferson County Subdivision and Land Development Regulations.

Comment [SB222]: Word "permitted" repeated.

Comment [SB223]: Correct name of regulations.

### Section 7.3 General Development Review System Requirements

~~A.~~ If a ~~developer's proposal~~ proposed use is not listed as a principal permitted use in a zoning district, the applicant must submit a Development Review System application ~~for his project~~ subject to the requirements of Section 7.4.

B. Filing an application with the Planning and Zoning Staff is the first of several stages within the Development Review System. Those stages are listed below.

1. Filing the application
2. Departments of Planning and Zoning Staff Evaluation of the Development Review System
3. Compatibility Assessment Meeting
4. Public hearings
5. ~~Planning and Zoning Commission~~ Board of Zoning Appeals's decision on the issuance or denial of the Conditional Use Permit [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE AUGUST 31, 1989]

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### Section 7.4 Filing the Application

A. The owner or the owner's agent proposing to develop land that is not a principal permitted use in the district where it is located shall consult with the Departments of Planning ~~and~~ Zoning, and Engineering. Fifteen (15) copies of a sketch plan detailing the project shall be submitted with an application and fifteen (15) copies of the support data that will enable the project to be evaluated by the Development Review System, at least ten (10) days prior to the scheduling of a Compatibility Assessment Meeting. ~~This~~ Compatibility Assessment Mmeeting will occur within thirty (30) days from the date that the ~~Compatibility Assessment M~~ meeting wais scheduled by the staff. ~~This time frame~~

~~allows the Staff ten (10) days to review the application for completeness and collect the application fee before the Compatibility Assessment Meeting is scheduled and provides time for the adjacent and confronting property owners to review the application and receive any technical advice they would like to secure before the meeting.~~ Copies of the

Comment [SB224]: Redundant text.

application, sketch plan, and development review data shall be available for public review in the Planning Office at such time as the proposed development is advertised in the newspaper. [AMENDED THREE TIMES BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON MAY 4, 1989, AUGUST 31, 1989 AND JULY 15, 1993. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

- B. The sketch plan shall include the entire original parcel as it appeared on the date this ordinance took effect. The property proposed for development shall be drawn to a reasonable scale (eg. 1" = 50', 1" = 100', or 1" = 200'). The sketch plan shall show, in simple form, the proposed layout of lots, parking areas, recreational areas, streets, building areas, and other features in relation to each other and to the tract boundaries. Contour lines, as shown on the appropriate U.S.G.S. Topographic Quadrangle Map or other data source approved by the Departments of Planning, Zoning, and Engineering, should be superimposed on the sketch plan. The source of all contour lines shall be noted on the plan. Natural features such as woods, watercourses, prominent rock out-croppings, sinkholes and quarries shall be delineated.
- C. The sketch plan should be accompanied by a tract location map; a soils report indicating the soil types on the parcel and a map delineating the boundaries of each soil type; and the necessary support data, to evaluate the site by the Development Review System, listed below.
- D. Support Data
1. Name and address of owner/developer.
  2. Name and address of contact person.
  3. Type of development proposed.
  4. Acreage of original tract and property to be developed.
  5. General description of surface conditions (topography).
  6. Soil and drainage characteristics.
  7. General location and description of existing structure.
  8. General location and description of existing easements or rights-of-way.
  9. Existing covenants and restrictions on the land.
  10. Intended improvements and proposed building locations including locations of signs.
  11. Intended land uses.
  12. Earth work that would alter topography.
  13. Tentative development schedule.
  14. Extent of the conversion of farm land to urban uses.
  15. ~~E~~Affected wildlife populations.
  16. Ground water and surface water and sewer lines within 1320 feet.
  17. Distance to fire and emergency services that would serve the site.

Comment [SB225]: Consistent with approved policy established by the GIS/Addressing Office, the Planning and Zoning Departments, and the Engineering Department.

- 18. Distance to the appropriate elementary, middle, and high school.
  - 19. Traffic characteristics - type and frequency of traffic; adequacy of existing transportation routes.
  - 20. Demand for school services created by this development.
  - 21. Proximity and relationship to historic structures or properties within two hundred (200) feet.
  - 22. Proximity to recreational facilities.
  - 23. Relationship of the project to the Comprehensive Plan.
- E. The developer shall submit a list of all property owners, and their addresses, adjacent to and confronting the property which is to be developed.
- F. Payment of fees - Within one week of the submittal of a Development Review System application, all ~~zoning required~~ fees must be paid.
- G. The Zoning Administrator shall determine if the sketch plan and support data are adequate. ~~Once the Zoning Administrator places the advertisement in the paper, any interested party has thirty days to appeal the inadequacies of the sketch plan and/or support data to the Zoning Board of Appeals.~~ [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**Comment [SB226]:** Any determination of the Zoning Administrator is appealable to the BZA per Section 3.2A; the CUP sketch plan does not need to be called out specifically.

**Section 7.5 Planning and Zoning Staff Evaluation of the Development Review System**

- A. The staff will evaluate all applications for the proposed land use in conjunction with Article 6 ~~of this Ordinance~~ and all other applicable sections of the ~~Zoning Ordinance~~ Zoning and Land Development Ordinance and other pertinent ordinances governing development in the County.
- B. ~~After staff review and the collection of fees, the s~~ Staff will notify the adjacent and confronting property owners of the date, time, and place of the Compatibility Assessment Meeting by registered mail. Notification requirements of Section 3.4A(3)(b) shall apply. ~~and the applicant will post the property with a sign prepared by the staff which states the requested proposal and the date, time and place of the Compatibility Assessment Meeting. The property shall be posted conspicuously by a zoning notice no less than twenty eight (28) inches by twenty two (22) inches in size at least twenty (20) days before the hearing. The project shall also be advertised in a newspaper with local circulation at least 10 days in advance.~~ [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 4, 1989]
- C. ~~The developer shall be notified of the particulars of the meeting. Failure of the developer to be in attendance to present his proposal will result in an invalid application and no refund of fees. If the application becomes invalid as a result of this section, a new application must be submitted, subject to Section 7.4, to begin the process.~~

**Comment [SB227]:** Redundant.

**Comment [SB228]:** Redundant with text above.

**Comment [SB229]:** Requirements of Appeals process section 3.4A(3)(b) are nearly identical (size of sign, etc). The only difference is the number of days in advance notification takes place. Staff recommends consistency with timelines in Appeals process.

**Comment [SB230]:** This requirement does not apply to any other type of review process, and should be omitted.

- D. A ~~North American Industrial Classification System~~ Standard industrial Classification (SIC/NAICS) code will be assigned to the proposed project. Once the classification is agreed upon, the ~~SIC/NAICS~~ code shall be binding. Any change of use shall ~~be required to file submittal of a new~~ application in accordance with Article 7.

Comment [SB231]: NAICS is the industry classification system now in use. It was released in 1997.

## Section 7.6 Compatibility Assessment Meeting

- A. The Compatibility Assessment Meeting allows the adjacent and confronting property owners and all other interested parties the opportunity to hear the ~~developer's~~ Applicant's presentation and proposal. ~~In his~~ The presentation, ~~he~~ will address the compatibility of ~~his~~ the project to the existing areas adjacent to the site. Following the ~~developers~~ Applicant's presentation, ~~those who are in attendance~~ and may ask questions or provide comments. Any discussion shall be limited to the proposal's compatibility as presented rather than whether the site should be developed by any other use. At the end of the discussion, the staff shall summarize the positions presented by those in attendance ~~to determine if his account of the issues is accurate~~. If the majority of those in attendance are in agreement that the staff record is accurate, the meeting will end ~~and the staff will prepare a report for the next Board of Zoning Appeals meeting~~. If there is need for clarification of a particular issue ~~or issues~~ the staff will allow additional time for clarification before ending the meeting.
- B. During the Compatibility Assessment Meeting, those who participate should address, but are not limited to, the following criteria to determine compatibility of the proposed project:
1. Adopted Federal, State and local regulations;
  2. Similarity of proposed development type (residential, commercial, industrial, agricultural, etc.) to existing development types;
  3. In a residential project, similarity of the density of the proposed development to existing density in the neighborhood;
  4. Adequacy of roads and highways to accommodate traffic to be generated by the development, with particular attention to dangerous intersections designated by the State Roads Commission or the State Police;
  5. Present and future transportation patterns in the area;
  6. Consistency with land use plans and regulations of incorporated municipalities immediately adjacent to the proposed development;
  7. Any variance which is known to be required at the time of submittal;
  8. The relationship of the proposed change to the adopted Comprehensive Plan; and
  9. All items submitted with the application. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- C. ~~The Department of Planning, Zoning, and Engineering~~ Staff shall monitor and record the meeting. A time limit, as referred to in Section 7.7c may be imposed if there are a large number of ~~persons to speakers at a particular meeting~~. ~~The~~ Staff may comment on the proposed development's conformance to applicable State, Federal and Local codes ~~but~~

Comment [SB232]: Redundant.

Comment [SB233]: Redundant.

Comment [SB234]: Department names unnecessary.

Comment [SB235]: Redundant.

~~shall primarily monitor and record pertinent issues and concerns.~~ [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

D. ~~If not all issues raised at the Compatibility Assessment Meeting were resolved at that meeting, a public hearing of the Board of Zoning Appeals will be required. The~~ Staff shall prepare ~~its a~~ report ~~of summarizing~~ the developer's proposal, the agreed upon conditions, and any other pertinent data and will advertise for ~~a the~~ public hearing ~~of the Board of Zoning Appeals~~. A public hearing in conformance with ~~Section 7.7~~ this article will be conducted ~~on the application~~ no ~~less fewer~~ than 30 days but no more than 60 days from the date of the Compatibility Assessment Meeting. At the public hearing, the Board shall take action as described in Section 7.6F. ~~The Staff report to be presented at the Public Hearing will be available to the general public fourteen (14) days prior to the advertised hearing.~~ [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON MAY 4, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

Comment [SB236]: Added to clarify process.

Comment [SB237]: The timing of the availability of BZA staff reports should be consistent for all types of BZA cases.

Comment [SB238]: 7.6(e) moved to 7.7A.

E. If all issues raised at the Compatibility Assessment Meeting ~~with the staff~~ were resolved at that meeting, no public hearing shall be required. At the next Board of Zoning Appeals meeting ~~thereafter~~, the Board shall take action as described in Section 7.6F. ~~of Zoning Appeals shall issue, issue with conditions or deny the conditional use permit. The standards governing the issuance of the Conditional Use Permits shall be: successful LESA Point application, Board of Zoning Appeal's resolution of unresolved issues; and, evidence offered by testimony and findings by the Board of Zoning Appeals that the proposed development is compatible with the neighborhood where it is proposed.~~ [AMENDED BY ACT OF THE COUNTY COMMISSION ON AUGUST 31, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

Comment [SB239]: Text proposed for deletion is repeated verbatim in 7.6F.

~~A. The public hearing will be conducted by the Board of Zoning Appeals. The purpose of the meeting is to hear the staff's report of the issues and concerns raised at the Compatibility Meeting. Any comments relative to the validity of the staff's report should be presented at this meeting. Concerns that have been addressed and agreed upon as accurate by the majority of those present at the Compatibility Assessment Meeting should not be addressed at this hearing. The hearing will be subject to Section 7.7c; however, speakers shall be limited to resolution of issues which could not be resolved at the Compatibility Assessment Meeting and the compatibility of the project within the neighborhood. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON MAY 4, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

Comment [SB240]: Moved to Section 7.7.

~~B.~~

F. The Board of Zoning Appeals shall issue, issue with conditions, or deny the conditional use permit. ~~[The Board of Zoning Appeals shall have the authority over the issuance or denial of all development review applications.]~~ The standards governing the issuance of the Conditional Use Permits shall be: successful LESA Point application, Board of

Comment [SB241]: Moved to 3.4A(5), and edited.

Zoning Appeal's resolution of unresolved issues; and, evidence offered by testimony and findings by the Board of Zoning Appeals that the proposed development is compatible with the neighborhood where it is proposed. [AMENDED BY ACT OF THE COUNTY COMMISSION ON AUGUST 31, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

- G. A Conditional Use Permit shall be valid for the time period identified in Sec. 3.2G of this ordinance.
- H. ~~Any persons may appeal any decision of the Board of Zoning Appeals to the Circuit Court of Jefferson County subject to §8A-1-1 et seq., of the West Virginia Code, as amended. [AMENDED BY ACT OF THE COUNTY COMMISSION ON AUGUST 31, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

Comment [SB242]: Moved to Sec. 3.4.

### Section 7.7- Public Hearings for Development Review System

~~(Unless Otherwise Superseded by the Board of Zoning Appeal's Rules of Procedure)~~

Comment [SB243]: Moved to A below.

- A. Unless otherwise superseded by the Board of Zoning Appeals Rules of Procedure, a public hearing for a Development Review System application shall be conducted in accordance with this section.
- B. The public hearing will be conducted by the Board of Zoning Appeals. The purpose of the meeting is to hear the staff's report of the issues and concerns raised at the Compatibility Meeting. Any comments relative to the validity of the staff's report should be presented at this meeting. Concerns that have been addressed and agreed upon as accurate by the majority of those present at the Compatibility Assessment Meeting should not be addressed at this hearing. Speakers shall be limited to resolution of issues which could not be resolved at the Compatibility Assessment Meeting and the compatibility of the project within the neighborhood. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON MAY 4, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

Comment [SB244]: Added for clarity.

Comment [SB245]: Formerly 7.6 (e). Moved in order to consolidate into one section all

~~The Board of Zoning Appeals Chairman or his appointed designee will preside over the public hearing. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

Comment [SB246]: Unnecessary; BZA rules of procedure cover this.

- A.C. All public hearings shall have time limits allotted to those who speak, as follows: the ~~developer or his agent, or~~ applicant ~~or agent~~ shall have 30 minutes for ~~his a~~ preservation presentation, each group who speaks may have 15 minutes, each individual who speaks is allotted 5 minutes, the ~~developer or his agent, or~~ applicant ~~or agent~~ are is allowed 15 minutes for rebuttal. The time limit provision within this section may be modified by the ~~Planning and Zoning Commission or~~ Board of Zoning Appeals<sup>2</sup> ~~Chairman~~ Chairperson in the event that there are a large number of persons to speak at a particular hearing. The ~~Commission or~~ Board shall announce any change to this section at the beginning of the hearing. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

Comment [SB247]: "applicant" is sufficiently broad to include "developer"

- ~~E~~. Notification requirements of Section 3.4A(3)(b) apply.

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Comment [SB248]: Requirements of Appeals process section 3.4A(3)(b) are identical (size of sign, posting instructions, etc).

~~All public hearings shall be advertised in a newspaper having general circulation in the County at least 15 days prior to such hearing. (Conditional use permits are subject to Section 7.5b and Section 7.6d.) [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

**Comment [SB249]:** Deleted requirements are identical to notification requirements for other types of BZA applications; as such, it is more appropriate to reference the other requirements than to repeat them.

~~D. The property subject to the hearing shall be posted at least 15 days before the date of the hearing. (Conditional use permits are subject to Section 7.5b.) [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

**Comment [SB250]:** Deleted requirements are identical to notification requirements for other types of BZA applications; as such, it is more appropriate to reference the other requirements than to repeat them.

E. The Board of Zoning Appeals shall ~~make-render~~ a decision no more than 60 days after the public hearing. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

~~Section 7.8 Board of Zoning Appeals Approval of Conditional Use Permit~~

**Comment [SB251]:** BZA section moved to new 3.4.

DRAFT

A. ~~The Board of Appeals will consist of five members to be appointed by the County Commission. Their terms of office, succession, removal, filing of vacancies, and their powers and duties shall be provided in Chapter 8, Article 24 of the West Virginia Code, as amended.~~

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B. ~~The Board of Zoning Appeals shall:~~

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1. ~~Hear and decide appeals regarding the Planning and Zoning Commission's issuance or denial of a Conditional Use Permit. [AMENDED BY ACT OF THE COUNTY COMMISSION ON AUGUST 31, 1989]~~

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2. ~~Hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official in regard to the enforcement of this Ordinance or of any ordinance adopted thereto.~~

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3. ~~Authorize such variances from the terms of the Ordinance if the Board finds that variance:~~

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a. ~~Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;~~

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b. ~~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;~~

c. ~~Would eliminate an unnecessary hardship and permit a reasonable use of the land; and~~

d. ~~Will allow the intent of the zoning ordinance to be observed and substantial justice done. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

4. ~~In exercising its power and authority, the Board of Appeals may reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination appealed from, and make such order, requirement, decisions or determination as ought to be made.~~

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5. ~~Meetings of the Board of Appeals shall be held at such time that the Board determines appropriate.~~

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6. ~~Provided, however, nothing in this Section shall be construed as permitting the Board of Appeals to exercise any power or refrain from the performance of exercise any power or refrain from the performance of any duty not authorized or directed by the provisions of Chapter 8, Article 24, Section 55 of the West Virginia Code of 1931, as amended, which provision of the Code is hereby incorporated herein by reference.~~

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**ARTICLE 8. SUPPLEMENTAL USE REGULATIONS ~~APPEAL PROCESS UNLESS SUPERCEDED BY THE BOARD OF ZONING APPEALS RULES OF PROCEDURE~~**

Comment [SB252]: "Appeals Process" Moved to 3.4

**Section 8.1 Adult Use Requirements**

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 1, 2003]

Comment [SB253]: Moved from Section 5.6(i)

Adult arcades, adult bookstores, adult cabarets, adult mini motion picture theaters, adult saunas, adult theaters, sexual encounter establishments, sexual paraphernalia stores, massage parlors and any sign advertising the operation thereof, shall only be permitted in the Industrial-Commercial District under the following conditions:

- A. All elements of the use, including parking areas, shall be located at least 1,500 feet from any Rural, Residential-Growth, Village or Residential Growth-Light Industrial-Commercial Zoning District not separated from the subject property by a public road or railroad right-of-way.
- B. A proposed adult arcade, adult bookstore, adult cabarets, adult mini motion picture theaters, adult saunas, adult theaters, sexual encounter establishments, sexual paraphernalia stores, massage parlors or any sign advertising the operation thereof, shall not be permitted within 2,500 feet of a lot with an existing adult use or a lot with a sign advertising an adult use.
- C. All elements of any use described in ~~Article 5, Section 5.6(h)~~ this section, including parking areas, shall be located at least 1,500 feet from any lot, regardless of its zoning classification, that contains a dwelling unit, a school, a church or house of worship or an institution for human care, regardless it is separated by a public road or railroad right-of-way.

This provision does not apply to any specific existing use that legally qualifies as a nonconforming use; provided, however, that an existing nonconforming use cannot add any of the uses described in this section to their operations as existing on May 1, 2003.

Comment [SB254]: Adoption date of section clarified.

**Section 8.2 Barns and Feeding Pens**

Barns and feeding pens must be set back a minimum of 75' from a residential ~~zone~~ district, a lot with a residential use, a church, a school, or an institution for human care.

**Section 8.3 Bed and Breakfast**

A bed and breakfast may contain up to 7 bedrooms, and may conduct up to 4 receptions per year, with 1 tent per reception. Breakfast is the only meal served, and is served only to overnight tenants and their guests. An owner or designated caretaker must reside on the premises while the bed and breakfast is occupied. Up to 2 bedrooms may be located in an accessory dwelling unit, provided that the total number of bedrooms associated with the land use does not exceed 7.

**Comment [SB255]:** The ordinance currently does not specify that breakfast is the only meal served; that an owner or caretaker must reside on the premises, or whether an accessory dwelling unit may be used. These standards are common to other communities' zoning ordinances.

**Section 8.4 Dog-Kennels**

All portions of a Dog-Kennel land use must be buffered pursuant to Article 4 and set back at least 500 feet from any property that contains a residence. Kennels cannot be located within a Planning Commission approved residential subdivision.

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 3, 2005]

==

**Section 8.5 Farm Brewery or Winery**

All structures associated with the operation of a farm brewery or winery may not exceed 10,000 square feet.

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**Section 8.6 Farm Market**

The floor area of a farm market may not exceed 1,500 square feet, a front yard setback of fifty feet (50) from the street right-of-way must be maintained, and off street parking must be provided.

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**Section 8.7 Jails and Prisons**

Due to the special conditions surrounding a jail, prison, or penal institution, all such projects shall only be allowed in the Industrial-Commercial Zone and shall be subject to the Development Review System as outlined in Article 6 of this Ordinance. ~~Furthermore, these projects shall comply with Article 5, Section 5.6(L), and Article 6 of the Jefferson County Zoning and Development Review Ordinance.~~

**Comment [SB256]:** Moved from Section 4.15  
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[AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

Design Standards for Jails, Prisons and/or Penal Institutions are as follows: [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

**Comment [SB257]:** Section 5.6(L) does not exist; 2<sup>nd</sup> reference to Article 6 is redundant.

**Comment [SB258]:** Moved from Section 5.6(h)

- A. All jails shall have direct access to a primary road as defined by the Jefferson County Comprehensive Plan. Such road shall have a level of service no worse than Level C.
- B. No residential subdivisions, schools, churches or institution for human care shall be within 2000' of the subject property. However, this does not prevent such use from locating within 2000' of a jail, prison or penal institution.

C. SETBACKS

- 1. Front 1,000 Feet
- 2. Sides 1,500 Feet
- 3. Rear 1,500 Feet

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**Section 8.8 Hunting, Shooting and Fishing Clubs**

A. Hunting, Shooting and Fishing Clubs may include the following accessory uses:

Comment [SB259]: Moved from 5.7(a)15

- 1. Private restaurant that seats no more than 80 patrons that are members and guests of members.
- 2. Conference and banquet facilities to serve no more than 250 people in which a member rents the facility. Events which are accessory uses other than hunting, shooting, archery and fishing, cannot exceed more than 16 per year.
- 3. Private lodge facilities of up to 50 units that serve members and guests. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 28, 2006]
- 4. Shooting ranges for use of members and guests of members.

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B. Standards for Hunting, Shooting and Fishing Clubs [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 28, 2006]

Comment [SB260]: Moved from 5.7(e)

- 1. 75 foot setback for all structures and parking.
- 2. 150 yard setback for all shooting facilities.
- 3. Height
  - a. As is for conversion or reconstruction that does not exceed 135 percent of the original footprint of existing structures
  - b. 35 feet for new structures
- 4. Landscaping requirements ~~to meet standard found in~~ of this Ordinance apply, with the following exception:
  - a. Perimeter landscaping shall be as approved by staff in order to preserve existing vegetation.
- 5. Minimum of 150 acres under common ownership.

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C. Special Exceptions for Hunting, Shooting and Fishing Clubs [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 28, 2006]

Comment [SB261]: Moved from 5.7(f)

- 1. Limits exceeding requirements outlined above can be increased with Board of Zoning Appeals approval provided that the Board of Zoning Appeals find that the increase is

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compatible with the neighborhood after taking into consideration neighborhood character, traffic, and buffering. Such decision shall be rendered after a public hearing as outlined in the Board of Zoning Appeals Rules and of Procedures.

## Section 8.9 Industrial and Commercial Uses

### A. Industrial and commercial uses in all districts shall comply with the following standards:

#### 1. Noise

All noise shall be muffled so as not to be objectionable due to intermitting, beat frequency, or shrillness. Noise levels shall not exceed the following sound levels dB(A). The sound-pressure level shall be measured at the property line with a sound level meter.

<u>Sound Measured In</u>	<u>DAY</u>	<u>NIGHT</u>
	<u>7 AM - 6 PM</u>	<u>6 PM - 7 AM</u>
<u>Adjoining Agricultural or Residential Growth District</u>	<u>60 dB(A)</u>	<u>50 dB(A)</u>
<u>Residential Uses in R.L.C. District</u>	<u>65 dB(A)</u>	<u>55 dB(A)</u>
<u>Commercial Uses</u>	<u>70 dB(A)</u>	<u>60 dB(A)</u>
<u>Light Industrial Uses adjacent to noise source</u>	<u>85 dB(A)</u>	<u>80 dB(A)</u>

The following sources of noise are exempt:

- a. Transportation vehicles not under the control of the industrial use.
- b. Occasionally used safety signals, warning devices and emergency pressure relief valves.
- c. Temporary construction activity between 7:00 a.m. and 7:00 p.m.

#### 2. Odor

No operation shall result in the creation of odors of such intensity and character as to be detrimental to the health and welfare or the public or which interferes with the comfort of the public. Odor thresholds shall be in accordance with ASTM d139-57 "Standard Method for Measurement of Odor in Atmospheres (Dilution Method)" or its equivalent.

Odorous material released from any operation or activity shall not exceed the odor threshold concentration beyond the state line, measured either at ground level or habitable elevation.

#### 3. Smoke

No smoke, dust, fumes, or particulate matter shall be perceptible at any lot line. Further, the regulations and standards governing the control of air pollution shall be the same as those adopted by the State of West Virginia.

**Comment [SB262]:** Inclusion of commercial more reflects applicability of section, as currently established by Zoning Ordinance..

For the purpose of grading the density or equivalent capacity of smoke, the Ringelman Chart as published by the United States Bureau of Mines shall be used.

The emission of smoke darker than Ringelmann No. 1 from any chimney, stack, vent, opening, or combustion process is prohibited.

The total emission rate of dust and particulate matter from all vents, stacks, chimneys, flues or other opening or any process, operation, or activity except solid waste incinerators within the boundaries of any lot, will not exceed the levels set forth below.

Particulate matter emission from materials or products subject to becoming wind borne will be kept to a minimum by paving, sodding, oiling, wetting, covering or other means, such as to render the surface wind resistant. Such sources include vacant lots, unpaved roads, yards and storage piles or bulk material such as coal, sand, cinders, slag, sulfur, etc.:-

#### 4. Ambient Air Quality Standard

##### Particulate Matter

###### Suspended

<u>Annual Arithmetic Mean ug/m</u>	<u>65</u>
<u>24-hour Maximum b, ug/m</u>	<u>140</u>

###### Settleable

<u>Annual Arithmetic Average, mg/cm/ /month</u>	<u>0.35</u>
<u>Monthly Maximum</u>	<u>0.7</u>

#### 5. Vibration

No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at any point beyond the lot line nor shall any vibration produced exceed 0.002g peak measured at or beyond the lot line using either seismic or electronic vibration-measuring equipment.

#### 6. Glare and Heat

No direct or sky-reflected glare, whether from floodlights or from high temperature processes, such as combustion or welding or otherwise, so as to be visible at the lot line, shall be permitted. There shall be no emission or transmission of heat or heated air so as to be discernable at the lot line.

#### 7. Toxic Matter

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The ambient air quality standards for the State of West Virginia shall be the guide to the release of airborne toxic materials across lot lines. Where toxic materials are not listed in the ambient air quality standards of the State, the release of such materials shall be in accordance with the fractional quantities permitted below, of those toxic materials currently listed in the threshold limit values adopted by the American Conference of Governmental Industrial Hygienists. Unless otherwise stated, the measurement of toxic matter shall be at ground level or habitable elevation, and shall be the average of any twenty-four (24) hours sampling period.

The release of airborne toxic matter will not exceed one-thirteenth of the threshold limit value across lot lines.

Such materials shall include but are not limited to: all primary explosives such as lead azide, lead styphnate, fulminates and tetracene; all high explosives such as TNT, RDX, HMX, PETN, and picric acid; propellants and components thereof, such as dry derivatives; pyrotechnics and fireworks such as acetylates, tetrazoles, and ozonides; unstable oxidizing agents such as perchloric acid, per-chlorates, and hydrogen peroxide in concentration greater than thirty-five (35) per cent; and nuclear fuels, fissionable materials and products, and reactor elements such as Uranium 235 and Plutonium 239.

The storage, utilization or manufacture of materials or products which decompose by detonation is prohibited.

#### 8. Fire Hazards

The storage, utilization or manufacture of solid materials which are active to intense burning shall be conducted within spaces having fire resistive construction of no less than two (2) hours and protected with an automatic fire extinguishing system.

The total capacity of flammable liquids and gasses shall not exceed those quantities permitted in the following Table for each of the industrial districts:

<u>CAPACITY</u>	<u>STORAGE</u>
<u>Liquids</u>	<u>60,000 gallons</u>
<u>Gasses</u>	
<u>- Above ground</u>	<u>150,000 SCF</u>
<u>- Below ground</u>	<u>300,000 SCF</u>

SCF - Standard Cubic Feet at sixty (60) degrees Fahrenheit and 29.92 inches Mercury. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989]

The following setback requirements will apply to the location of any container which holds flammable liquids or gasses:

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Container Setback from Lot Lines

<u>Water Capacity per Container (Gallons)</u>	<u>Containers</u>		<u>Between Above Ground Containers (ft.)</u>
	<u>Underground (Feet)</u>	<u>Above Ground Containers (Feet)</u>	
<u>0 to 2,000</u>	<u>25</u>	<u>25</u>	<u>3</u>
<u>2,000 to 30,000</u>	<u>50</u>	<u>50</u>	<u>5</u>
<u>30,000 to 60,000</u>	<u>50</u>	<u>75</u>	
<u>In excess of 60,000</u>	<u>75</u>	<u>100</u>	<u>¼ the sum of diameters of adjacent containers</u>

9. Frontage Road

Easements or fee simple dedications will be provided along all limited access highways at the site plan or subdivision phases. Said easement/dedication shall not exceed 60 feet in width. The width may vary but must be adequate for extension, continuation or establishment of a minimum 20' wide paved frontage road.

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10. Landscape Buffer

A fifty (50) foot wide landscape buffer strip will be provided along all limited access highways. Said buffer shall be adjacent to the frontage road. In the case where existing roads not adjacent to controlled access highway serve as frontage road the landscape buffer may be placed against the highway right-of-way.

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All front setbacks (building and parking lot) are to be measured from the landscape buffer. (See diagram sketch)

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ROW LIMITS OF  
CONTROLLED ACCESS  
HIGHWAY



- \* Maximum 60' easement or dedication for frontage road
- \*\* 50' landscaped buffer strip
- \*\*\* Setbacks

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This provision shall also apply to any ramps or access roads connecting to a controlled access highway within ½ mile of a controlled access highway. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

### Section 8.10 Model Homes/Sales Offices

Model homes with a staffed sales office for sales exclusively within the residential subdivision ~~that~~ in which they are located are permitted provided that they are contained on the first lot on either or both sides of any road/right-of-way that enters the subdivision; provided also that they are so designated on the preliminary and final plats during the subdivision process.

Model homes with a staffed sales office in any other location within the subdivision must be approved or denied by the ~~Zoning~~ Board of Zoning Appeals after a ~~15 day~~ public hearing advertised for 15 days. ~~[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

Model homes without staffed sales offices are permitted internally within the subdivision. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

### Section 8.11 Petroleum products refining or storage

Petroleum refining or storage (above ground in tanks) requires adherence to all state and federal laws, as well as National Fire Underwriters Codes.

### Section 8.12 West Virginia Legal Fireworks

Sales of fireworks are only permitted in the commercial zones provided all other restrictions such as setbacks and the requirements of the Jefferson County Subdivision and Land Development Regulations are met. [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]

### Section 8.13 Dormitory

A dormitory shall be located on the same property or campus as the use it is intended to serve. A dormitory shall not offer accommodations to the general public or to persons who are visiting the property or campus primarily for the purpose of being a spectator at a sporting event or other gathering held at the facility. A dormitory may include one common kitchen or dining facility and common gathering rooms for social purposes for use only by its temporary occupants.

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Comment [SB263]: Moved from section 4.18.

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Comment [SB264]: Clarifies intent of notice period.

Comment [SB265]: From section 5.6b

Comment [SB266]: From section 4.17

Comment [SB267]: Text moved from Sec. 2.2.

~~Section 8.1—Filing an Appeal~~

Comment [SB268]: Section moved to 3.4

~~A. An appeal to the Board may be taken by any person, board, associate, corporation or official allegedly aggrieved by any administrative decision based or claimed to be based, in whole or in part, upon the provisions of this Ordinance. The property owner of the subject appeal shall sign the application or an affidavit allowing an agent for the property owner to file the application which shall be submitted.~~

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~~B. Such appeal shall be filed with the Board within thirty (30) days from the decision appealed.~~

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~~C. Appeal applications shall be made on the forms designated by the Planning and Zoning Commission and shall be accompanied by three (3) copies of the copies of the application and an accurate drawing of the property showing distance of all structures from property lines and any pertinent data deemed necessary for the request. Submittal of the application shall be made to the Planning and Zoning Office.~~

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~~D. All zoning fees, in accordance with the approved County fee structure, shall be paid upon application.~~

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~~E. No application shall be accepted in the Planning and Zoning Office unless it contains all pertinent information and is accompanied by the required fees.~~

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~~Section 8.2—Processing Procedures~~

~~A. Appeal applications filed in the proper form shall be numbered serially, docketed, and and placed upon the calendar of the Board of Appeals.~~

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~~B. The Board shall hold a hearing within forty five days (45) from the date the appeal is received in the Department of planning, Zoning, and Engineering Office. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON SEPTEMBER 13, 1990 AND MAY 18, 1996] [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

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~~C. Notice of the hearing shall be advertised in two issues of a newspaper having general circulation in the County at least 15 days before the hearing. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON SEPTEMBER 13, 1990] [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]~~

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~~D. Property upon which the application is concerned shall be posted conspicuously by a conspicuously by a zoning notice no less than twenty eight (28) inches by twenty two twenty two (22) inches, in size, at least 15 days before the hearing. The sign will be sign will be prepared by the Planning Office but is the responsibility of the applicant for the posting of the property. The Board, in its discretion, may otherwise visit the specific property prior to or after the hearing.~~

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**Section 8.3 — Public Hearing**

~~A. The Board following action in Section 8.2, shall hold such hearing. At the hearing, any party may appear and be heard in person or by agent or attorney.~~

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~~B. The Board shall render its determination on the application no more than thirty (30) days following the public hearing by registered mail. Any party aggrieved by a decision of the Board may appeal to the circuit court of Jefferson County within thirty (30) days of the Board's decision. The Court may affirm, reverse, vacate, or modify the decision subject to the appeal.~~

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**Section 8.4 — Continuance of Hearing**

~~The Board may continue a hearing at another time and/or date once such hearing has been started; however, the Board shall announce the date and hour of continuance of such hearing while in session. Any hearing continued shall be held within thirty (30) days from the initial hearing.~~

**ARTICLE 9. EXCEPTIONS**

**Section 9.1 General**

The regulations specified in this ordinance shall be subject to the following exceptions, modifications and interpretations.

**Section 9.2 Building Height Limitations**

Building height limitations shall not apply for public utilities, agricultural uses, communication poles and towers, chimneys, steeples, water tanks, electric generating plants, electric transforming or switching equipment, flagpoles, fire or observation towers, monuments, or to tanks, ventilating fans, air conditioning equipment or similar equipment required to operate and maintain the building, hospitals, schools, colleges and public buildings. Commercial wireless communications facilities shall comply with Article 4B. [AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993, JULY 1, 1998 AND MARCH 10, 2011]

**Section 9.3 Lot Area Modification**

In any district where a single-family dwelling is permitted, a dwelling may be erected on any lot or parcel of record, despite the fact that the lot or parcel does not meet the minimum area requirements of this ordinance, provided:

- A. The lot or parcel was lawfully created in compliance with the applicable subdivision regulations [in effect](#) at the time the lot was created; and
- B. Health Department regulations can be met.

## Section 9.4 Setback Modifications

- A. Where the average setback line of at least two (2) existing buildings on lots which are on the same side of the street or road within two hundred (200) feet of the lot in question is less than the minimum setback prescribed by this ordinance, the minimum setback line shall be the average setback line of all buildings within two hundred (200) feet of the proposed building. However, in no case shall the setback line be less than thirty-five (35) feet from the centerline of any abutting road or street.
- B. A structure may be located on a common side or rear lot line of contiguous property owned by the same entity. Provided, however, that the structure shall only be a single family dwelling or an accessory structure. Also provided, however, that the ~~Land Use Ordinances of Jefferson County shall view the~~ contiguous lots shall be treated as one lot for all purposes by the Zoning and Land Development Ordinance and the Subdivision and Land Development Regulations. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]
- C. Subdivision signs, school bus shelters and/or mailboxes do not have to comply with setback restrictions provided they are shown and approved on the preliminary or final plat in the subdivision process. In subdivisions approved prior to this amendment, subdivision signs school bus shelters and/or mailboxes can be built as shown on the plat or be replaced in the same general location. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

Comment [SB269]: Reworded for clarity.

## Section 9.5 Projections Into Yards

[AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]

- A. Projections such as bay windows, chimneys, entrances, uncovered porches, balconies, and eaves may extend into any required yard not more than four (4) feet; ~~provided any required yard not more than four (4) feet;~~ provided that such projections are not over ten (10) feet in lengthwidth. All roof overhangs may extend into any required yard not more than two (2) feet; provided that the primary structure is located entirely within the appropriate setback.
- B. Fences and walls over six (6) feet in height shall meet building lines and yard requirements. ~~An Improvement Location~~ building permit is required before construction. Fences and walls six (6) feet and under in height shall be exempt from building lines and yard requirements unless obstructions to vision at an intersection as referenced in Section 4.9.

Comment [SB270]: Text appears to have been inadvertently repeated.

Comment [SB271]: Clarifies intent of section as interpreted by the Board of Zoning Appeals and staff.

Comment [SB272]: Updated term.

## Section 9.6 Accessory Structures

Accessory structures, defined by Section 2.2, shall be permitted in all districts where single-family and two-family dwelling units are permitted. The provisions for accessory structures are as follows.

- A. The minimum distance to a lot line in any District from a single-story utility or storage shed, not exceeding one hundred fifty (150) square feet, shall be five (5) feet.
- B. In any District wherein single-family and two-family dwellings are permitted, the minimum distance from any accessory structure, not attached to the principal permitted use, to the side or rear lot line shall be not less than the longest horizontal dimension of the accessory structure or the minimum distance specified for that District, whichever is the lesser of the two.
- C. No accessory building shall be erected within the required front yard.

**Section 9.7 Other Exceptions**

[AMENDED BY ACT OF THE COUNTY COMMISSION ON OCTOBER 12 1989]

For all lots that were approved with setbacks by the Planning ~~(and Zoning)~~ Commission as part of the subdivision process prior to September 1, 1989, the setbacks and sizes shall be as established as a part of that process.

Comment [SB273]: Name corrected.

Setbacks are as follows in subdivisions ~~that did not have them~~ for which no setback was stipulated previously by the Jefferson County Planning ~~(and Zoning)~~ Commission as a part of the subdivision process:

Residential Growth District

Single family residences --

Over 40,000 square feet --	25' front, 12' side and 12' rear
30,000 sq. ft. to 40,000 sq. ft.--	20' front, 10' side and 12' rear
Under 30,000 square feet --	20' front, 8' side and 12' rear

Rural Agricultural and Industrial Commercial

Single family residences --

Over 2 acres --	40' front, 15' side and 50' rear
40,000 sq. ft. to 2 acres --	25' front, 12' side and 12' rear
30,000 sq. ft. to <del>50,000</del> 39,999 sq. ft. --	20' front, 10' side and 12' rear
under 30,000 sq. ft. --	20' front, 8'side and 12' rear

Comment [SB274]: Currently, ordinance has square footage "overlap".

For all lots under 40,000 square feet side and rear setbacks for residential accessory structures shall be 6'.

**Section 9.8 Exceptions, as follows: Seasonal Uses**

[AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON JULY 15, 1993 AND SEPTEMBER 13, 1990]

Seasonal uses must be approved by the Board of Zoning Appeals pursuant to a public hearing. ~~However, such public hearing need only be advertised for 15 days. Newspaper notification requirements of Section 3.4A(3)(b) apply. Seasonal Uses and Bed and Breakfast establishments (in the Rural Zone) must be approved by the Board of Zoning Appeals pursuant to a public hearing. However, such public hearing need only be advertised for fifteen (15) days. Requests for these exceptions must include all items in Section 12.2 (d).~~ Seasonal uses cannot be approved for longer than one year at a time. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**Comment [SB275]:** New text clarifies notification requirements.

**Comment [SB276]:** Recommend deletion. Bed and breakfast is listed as a principal permitted use in 5.7; as such, it should not require Board of Zoning Appeals approval.

DRAFT

**ARTICLE 10. PROVISIONS FOR SIGNS**

**Section 10.1 Purpose of Sign Provisions**

The purpose of this section is to regulate all exterior signs and interior signs placed for exterior observance so as to protect property values and the character of the County. Any sign placed on land or on a building for the purposes of identification or for advertising a use conducted therein or thereon shall be deemed to be accessory and incidental to such land, building or use.

It is intended that the placement of a particular sign will be appropriate to the land, building, or use to which they are appurtenant and be adequate, but not excessive, for the intended purpose of identification or advertisement. It is also intended that in areas proposed for new development, that signs placed will be harmonious in color, form and proportions to its surroundings.

**Section 10.2 General Provisions**

- A. No sign shall be erected, hung, or placed in any district except as provided in this Ordinance. No sign erected before the enactment of this Ordinance shall be structurally altered or moved except in accordance with this Ordinance.
- B. No zoning permit shall be required for the repainting or repairing of a sign.
- C. No signs, other than subdivision signs approved by the Planning and Zoning Commission, shall be located in the right-of-way of any road or on any slope or drainage easement for such road. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE AUGUST 31, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- D. No sign shall be permitted which is an imitation of or which resembles an official traffic control device, railroad sign or signal, or which hides from view or interferes with the effectiveness of an official traffic control device or any railroad sign, signal, or traffic sight lines. Illuminated signs shall be so constructed as to avoid glare or reflection of any portion of an adjacent highway or residential building.
- E. No sign which implies the need or requirement of stopping or the existence of danger shall be displayed.
- F. No sign shall be placed on rocks, trees, or on poles maintained by public utilities.
- G. No sign shall be permitted which becomes unsafe or endangers the safety of the building, premises, or persons and unless maintained in a good general condition.
- H. No sign shall be permitted which contains statements, words or pictures of an obscene, indecent, or immoral character.
- I. No animated signs, as defined by Section 2.2 are allowed.

### **Section 10.3 Permitted Signs Without Zoning Permit**

- A. Signs posted upon property relating to private parking or warning the public against trespassing or against dangers of animals.
- B. Municipal, County, State and Federal signs, including necessary traffic signs.
- C. Historical markers, monuments, or signs erected by a public authority.
- D. Plates on residential structures or premises giving the name or address of the occupant, mailboxes, papertubes, and similar uses customarily associated with residential uses.
- E. A sign indicating the name and/or premises or accessory use of a home for a home occupation or professional purpose, not exceeding one square foot in area.
- F. A sign not exceeding twenty-five (25) square feet on a farm, advertising farm products primarily grown on the premises.
- G. Directional or informational signs of a public or quasi-public nature, such as those containing the meeting date of a community or civic club, or the advertising of a public event.
- H. A temporary real estate sign designating the zoning classification of the parcel, not exceeding twenty (20) square feet and being located on the subject property for sale or lease
- I. Building contractors', subdivision and/or professional person' temporary signs on buildings or land under construction but not to exceed one hundred (100) square feet.
- J. Election signs, provided that unsuccessful candidate shall remove signs within 15 days after a primary or special election. All signs shall be removed within 15 days after the general election. Signs shall not interfere with traffic visibility.
- K. All temporary signs shall be removed thirty (30) days after the event, unless otherwise specified in Article 10.

### **Section 10.4 Signs Requiring a Zoning Permit**

- A. Business and outdoor advertising signs in all zoning districts shall require a Zoning Certificate before placement on any property or building. [AMENDED BY ACT OF THE COUNTY COMMISSION ON AUGUST 31, 1989]
- B. Any exterior sign or signs pertaining to the use conducted on the premises, and which is either integral with or attached to the principal building, shall have a sum total area of no more than two square feet for each foot in length of the frontage of the building. No sign shall be attached to the side of the building that faces an adjoining residence. All signs

placed on a property whose use is governed by the Development Review System is subject to Section 10.4 (e).

- C. Individual business or industrial establishments may erect a freestanding business sign, provided the lot frontage is at least forty (40) feet. The freestanding sign shall be located in such a manner that no part of the supporting structure is less than twenty-five (25) feet from the street right-of-way, and that no part of the sign is closer than five (5) feet to the right-of-way. The total area for any sign or signs on one supporting structure shall not exceed 300 square feet and the total height of the sign structure shall not exceed thirty-five (35) feet. Businesses or industries having a frontage on more than one street may have an additional freestanding sign for each street frontage, provided that the total area for all freestanding signs does not exceed 600 square feet. Where the lot adjoins a residence and a freestanding sign is on the side of the business lot adjoining the residential lot, the sign shall not face the adjoining residence. Signs governed by the Development Review System are subject to Section 10.4 (e). Structures which have more than one use shall be required to use a pylon sign. One is permitted on each street frontage. [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]
- D. All outdoor advertising signs shall be spaced in such a manner that in an Industrial District there shall be a minimum of three hundred (300) feet between signs, and in the Rural ~~Agricultural~~ District, where permitted, such signs shall be located in such a manner that there shall be one thousand (1,000) feet between signs. This shall be subject to Section 10.4 (e).
- E. All signs accessory to land use that must be evaluated by the Development Review System (DRS) shall be proposed within the DRS application and assessed at the Compatibility Assessment Meeting. Such signs shall be maintained at least one thousand (1,000) feet between signs. Consideration of the placement of such signs with less than one thousand (1,000) foot intervals shall be determined by the Commercial or Residential Uses adjacent to the subject site. Commercial uses adjacent to the subject site may allow spacing intervals of three hundred (300) feet. The ~~Planning and Zoning Commission~~ Planning Commission shall make this determination if the location cannot be agreed upon at the Compatibility Assessment Meeting. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE AUGUST 31, 1989. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- F. No outdoor advertising sign shall be placed closer than three hundred (300) feet to an intersection on a dual or proposed dual highway or within one hundred feet of any other intersection; provided, however, that such signs may be affixed to or located adjacent to a building at such intersections in such a manner as not to materially cause any greater obstruction of vision than caused by the building itself. No business sign shall be so located to obstruct the vision of traffic using entrance ways, driveways, or any public road intersection.

G. All outdoor advertising, excluding billboards subject to Section 10.4 (h), shall comply with front yard setback provisions in the districts in which they are permitted.

H. Billboards

1. No billboard shall be closer to any public highway right-of-way than three (300) feet.
2. Placement of a billboard must be in a location that is within eight hundred (800) feet of an existing business.
3. There shall be a minimum of one thousand (1000) feet between billboards.
4. A billboard shall be no closer than five hundred (500) feet from a church, school, or cemetery.

**Section 10.5 Special Exception Uses (Requiring Board of Zoning Appeals After Public Hearing)**

Outdoor advertising signs including billboards may be approved by the Board of Zoning Appeals if it conforms to existing State law and does not have a negative effect on the neighborhood or intent of this Ordinance.

[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**Section 10.6 Zoning Certificate**

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON AUGUST 31, 1989]

All Zoning Certificate applications for signs may be approved by the Departments of Planning ~~and~~ Zoning, ~~and Engineering Staff~~ if in conformance with the regulations.

[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**ARTICLE 11. OFF-STREET PARKING STANDARDS**

**Section 11.1 Non-Residential Parking Standards**

A. To decrease congestion ~~in the streets,~~ permanent off-street automobile parking space and truck loading space shall be provided for all new structures and uses, and for existing structures or uses; that are increased in size by 20 percent or more after adoption of these regulations.

Comment [SB277]: Unnecessary.

Spaces shall be required per use and are as follows: [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]

Ambulance Facility	2 spaces per ambulance
Auto Sales and Service	1 space per 300 square feet of gross floor space.
Auto Service Station	2 spaces per service bay plus 1 space per employee
Banks, Financial Institution	1 space per 200 square feet of floor space plus 5 <del>reservoir</del> <u>queuing</u> spaces for each drive-up teller
Bowling Lanes	5 spaces per bowling lane
Churches	1 space for each 5 persons for which seating is provided in the sanctuary
Commercial Retail Sales (Less than 2,000 square foot floor space)	1 space per 150 square feet retail floor space
Commercial Retail (Low customer turn over, large indoor display, e.g. carpet, furniture or appliance sales)	1 space per 500 square feet retail floor space
Community Center, <u>Cultural Facility</u> , <del>Library,</del> <del>Museum</del>	1 space per 400 square feet floor space
Private Club, Lodge	1 space for each 2 persons for which seating or lodging is provided
Educational (Schools)	1 space per employee; ample student and visitor parking

Comment [SB278]: "Queuing spaces" is the standard zoning ordinance term for waiting areas in drive-through facilities.

Fire Stations	10 spaces minimum
Hospitals	1.5 <u>spaces</u> for each bed plus <del>one</del> <u>1 space</u> for every employee
Hotel, Resort	1 space per guest room plus 1 space per 5 employees
Manufacturing Plant	1 space per employee on maximum working shift
Medical or Dental Offices/Clinics	5 spaces per 1000 square feet of gross floor space
Mortuary or Funeral Parlor	1 <u>space</u> per 150 square feet of floor area devoted to viewing and <del>one</del> <u>1 space</u> per vehicle used in activity PLUS <del>one</del> <u>1 space</u> per each two employees; <u>with a minimum of, but</u> 20 spaces <del>minimum</del>
Motels, Tourist Homes	1 space per guest room or suite
Nursing Homes	1 space per 400 square feet floor space
Office Building	1 space per 300 square feet floor space
Professional Building (Other than Medical)	2 spaces per 300 square feet floor space
Recreational Establishment (Other than theaters, swimming pools and bowling lanes)	1 space per 80 square feet of floor <u>space</u> and/or as determined by extent of outdoor use
Restaurants, Taverns, Lounges, Nightclubs	1 space per 50 square feet customer floor space
Shopping Center (Retail greater than 2,000 square feet of floor space-)	5.5 spaces per 1,000 square feet floor <u>space</u>
Swimming Pool	1 space for every 7 persons <u>s</u> permitted at any one time
Theaters, Auditoriums, Stadiums	1 space per every 2 seats
Transportation Terminals	1 space per main shift employee

Warehouses or Wholesale Establishments 1 space per main shift employee plus 2 spaces per wholesale establishment

B. Parking requirements for uses not listed in 11.1(a) may be either approved or established by the Departments of Planning and Zoning and Engineering Staff on a case-by-case basis. Justification for said requirements must be documented. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON MAY 18, 1996] [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

~~Section 11.2 Internal Circulation, Entrance and Parking Requirements~~

~~All site plans for non-residential development are subject to the provisions and regulations for internal circulation, entrance requirements, and parking space and lane requirements referenced in Article 11 of the Jefferson County Subdivision Ordinance.~~

Comment [SB279]: Redundant with Section 4.10, which states that the site plan requirements of the Subdivision and Land Development Regulations must be followed.

Section 11.3 Residential Parking Standards

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE AUGUST 31, 1989]

To decrease congestion ~~in the streets~~, permanent off-street automobile parking space and truck loading space shall be provided for all new structures and uses, and for existing structures or uses ~~that are~~, increased in size by 20 percent or more after adoption of these regulations.

Comment [SB280]: Unnecessary.

Spaces shall be required per residential uses as follows:

Type of Residences

Single family detached  
Single family attached (duplex ~~or two-family~~)  
Single family attached (townhouses)  
Multi-family ~~apartments~~

Parking Requirements

Driveway only  
Driveway only  
~~See Section 8.3(c)7 of Subdivision Ordinance~~ See the Jefferson County Subdivision and Land Development Regulations, Appendix B, Division 5.0  
~~See Section 9.3 of Subdivision Ordinance~~ See the Jefferson County Subdivision and Land Development Regulations, Appendix B, Division 6.0

**ARTICLE 12. MAP AND TEXT AMENDMENTS**

Comment [SB281]: Separate amendments for this article currently under review.

**Section 12.1 Purpose**

- A. These regulations, restrictions, provisions, and the boundaries of districts provided herein may from time to time be amended, modified, or repealed by the County Commission. Any person, individual, board, commission or bureau of the County may petition the County Commission for such change.
- B. The County Commission shall refer any amendment or alteration of this Ordinance to the ~~Planning and Zoning Commission~~ Planning Commission for analysis, study, report, and recommendations. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

**Section 12.2 Procedure for Amendment by Governing Body**

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989]

- A. After the enactment of the zoning ordinance, the governing body of the County may amend the zoning ordinance without holding an election. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- B. Before amending the zoning ordinance, the governing body with the advice of the Planning Ceommission, must find that the amendment is consistent with the adopted comprehensive plan. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

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**Section 12.3 Procedure for Amendment by Petition**

- A. The procedure for amendment shall be as dictated in §8A-1-1 et seq of the West Virginia State Code, as amended. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- B. Petitions to the County Commission for an amendment must contain the following information:

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1. Substantiation for the request
2. Tax District, Map and Parcel number
3. Deed Book reference
4. Plat or sketch pursuant to Section 7.4 (b)
5. Tract size
6. Discussion on:

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a. Comprehensive Plan compatibility of the proposed change.

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b. Any change of transportation characteristics and neighborhood from when the original ordinance was adopted. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

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**APPENDIX A: RESIDENTIAL SITE DEVELOPMENT STANDARDS TABLE**

This table is for reference purposes only. In the event of a conflict with the text of the Zoning and Land Development Ordinance, the Ordinance shall prevail.

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Zoning District	Land use	Land Use Subtype	Minimum Lot Area (MLA) in square feet***	Area per Dwelling Unit (ADU) in square feet	Lot Width (feet)	Maximum Building Height (feet)*	Setbacks (feet)			
							Front	Side	Street Side	Rear
Residential Growth	Single family detached dwelling	Public/Central water and sewer	6,000	10,000	N/A	40	25	12	15	20
		Public/Central water or sewer	20,000	N/A	N/A	"	"	"	"	"
		No Public/Central water or sewer	40,000	N/A	N/A	"	"	"	"	"
	Duplex dwelling unit	Public/Central water and sewer	3,200	7,500	N/A	40	25	15**	15	20
		Public/Central water or sewer	N/A	10,000	N/A	"	"	"	"	"
	Townhouse	Public/Central water and sewer	1,400	3,500	N/A	40	25	12**	15	20
	Multi-family dwelling	Public/Central water and sewer	20,000	2,000	N/A	40	25	12**	15	30
	Single-family dwelling with setbacks not previously stipulated by Planning Commission	Over 40,000 square feet --	N/A	N/A	N/A	40	25	12	‡	12
		30,000 sq. ft. to 40,000 sq. ft.--	N/A	N/A	N/A	40	20	10	‡	12
		Under 30,000 square feet --	N/A	N/A	N/A	40	20	8	‡	12
Rural	Dwellings		40,000	N/A	100	35	40	15	‡	50
	Single-family dwelling with setbacks not previous stipulated by Planning Commission	Over 2 acres --	N/A	N/A	N/A	35	40	15	‡	50
		40,000 sq. ft. to 2 acres --	N/A	N/A	N/A	35	25	12	‡	12
		30,000 sq. ft. to 39,999 sq. ft. --	N/A	N/A	N/A	35	20	10	‡	12
		under 30,000 sq. ft. --	N/A	N/A	N/A	35	20	8	‡	12
	Cluster Subdivision	<i>See Residential Growth</i>								
	Residential use that complies with the Development Review System	<i>See Residential Growth</i>								
Village	Residential uses	<i>See Residential Growth</i>								
Residential / Light Industrial / Commercial	Residential uses	<i>See Residential Growth</i>								
Industrial-Commercial	Residential uses	<i>See Residential Growth</i>								

\* Maximum height subject to Section 9.2

\*\*Exterior side only

\*\*\* The balance square footage between the ADU and the MLA shall not include land set aside in a Sensitive Natural Area, Buffer to a Sensitive Natural Area, land qualifying as Hillside development or a 100 Year Flood Plain.  
 ‡See setback requirements noted in Sec. 2.2, definition of "Lot, Corner."

All detached accessory structures under 144 square feet in size - 6' setback. (Res Growth District)

For all lots approved prior to Sept. 1, 1989, lots under 40,000 square feet side and rear setbacks for residential accessory structures shall be 6'.

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**APPENDIX B: NON-RESIDENTIAL SITE DEVELOPMENT STANDARDS TABLE**

This table is for reference purposes only. In the event of a conflict with the text of the Zoning and Land Development Ordinance, the Ordinance shall prevail.

Zoning District	Development Type	Minimum Lot Area (MLA)	Minimum Lot Width	Maximum Building Height*	Impervious Surface Limit	Setbacks		
						Front	Side	Rear
Industrial - Commercial**	Commercial sites 1.5 acres and smaller	N/A	N/A	75	80%		25'	
	Commercial sites greater than 1.5 acres	N/A	N/A	75	80%	25'	50' (or 25' if adjacent to industrial use)	
	Industrial	3 acres***	N/A	75	90%	50' (or 25' if adjacent to industrial use)		
Residential / Light Industrial / Commercial	Commercial or Industrial	See Industrial-Commercial District						
Rural	Churches	2 acres	200	35	N/A	25	50	50
	Schools, Grades K-4****	10 acres +	500	35	N/A		100	
	Schools, Grades 5-8****	20 acres +	500	35	N/A		100	
	Schools, Grades 9-12****	30 acres +	500	35	N/A		100	
	Hospitals	10 acres	500	35	N/A		100	
	Other Rural principal permitted uses	40,000 sq. ft.	100	35	N/A	40	50	50
	Commercial or Industrial**	See Industrial-Commercial District						
Village District	Commercial <sup>†</sup>	N/A	N/A		N/A	25	10	40
	Industrial**	See Industrial-Commercial District						
Residential Growth	Commercial or Industrial**	See Industrial-Commercial District						

\*These yard requirements are also for an approved commercial or industrial use proposed for any other zone. [Source: Section 5.

\*\*If land use(s) approved via Neighborhood Compatibility Meeting process or Development Review System process in accordance with the Zoning and Development Review Ordinance.

\*\*\*MLA for Industrial uses does not apply if the site is located in an approved Industrial Park [source: Section 5.6(e)]

\*\*\*\*For schools in Rural district: Plus one (1) additional acre for every 100 pupils. Minimum lot size for Vocational Schools shall be based on State of West Virginia Code. If a sewer treatment plant and retention ponds are required, acreage shall be increased accordingly. [Source: 5.7(b)]

<sup>†</sup>Village Commercial setbacks may be reduced as a result of a Compatibility Assessment Meeting based on other structures existing in the neighborhood [Source: 5.10c]

<sup>‡</sup>Setback may be reduced if adjacent to industrial use.

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**APPENDIX C: PRINCIPAL PERMITTED USES TABLE**

This table is for reference purposes only. In the event of a conflict with the text of the Zoning and Land Development Ordinance, the Ordinance shall prevail.

Land Use	R	RG	R-LI-C	I-C	V	General Standards	Additional Standards
<b>Residential Uses</b>							
Dwelling, Single Family	P	P	P	NP	P		
Dwelling, Two Family	P	P	P	NP	P		
Dwelling, Duplex	NP	P	P	NP	P		
Dwelling, Townhouse	NP	P	P	NP	NP		
Dwelling, Multi-Family	NP	P	P	NP	NP		
Day Care Center, Small	P	P	NP	P	NP		
Mobile Home	P	NP	NP	NP	NP		
Mobile Home Park	NP	P	P	NP	NP		
Model Homes/Sales Office	P	P	P	NP	NP	Sec. 8.10	
<b>Home Uses</b>							
Cottage Industry	P	NP	P	P	PC	4A.3	
Home Occupation, Level 1	P	P	P	P	P	4A.1	
Home Occupation, Level 2	P	P	P	P	P	4A.2	
<b>Institutional Uses</b>							
Church	P	P	P	NP	PC		
Day Care Center, Large	NP	P	P	P	PC		
Hospital	P	P	P	NP	NP		
Group Residential Facility	P	P	P	NP	P		
Group Residential Home	P	P	P	NP	P		
Residential Care Home	P	P	P	NP	P		
Nursing or Retirement Home	NP	P	P	NP	NP		
Cultural Facility	P	NP	P	P	P		
Elementary or Secondary School	P	P	P	NP	NP		
Preschool	P	P	P	NP	NP		
Vocational and Training Facility for Adults	P	P	P	NP	NP		
Public Safety Facility	P	P	P	P	P		
Publicly Owned Facility	P	P	P	P	NP		
Essential Utility Equipment	P	P	P	P	P	4.7	
<b>Industrial</b>							
Salvage Yards	NP	NP	NP	PC	NP		
Slaughterhouses, Stockyards	NP	NP	NP	PC	NP		
Heavy Industrial Uses	NP	NP	NP	P	NP		Sec. 8.9
Light Industrial Uses	NP	**	P	P	NP		Sec. 8.9
Shooting Range	NP	NP	NP	P	NP		

Principal Permitted Uses Table (continued)

Land Use	R	RG	R-LI-C	I-C	V	General Standards	Additional Standards
<b>Industrial Manufacturing &amp; Processing</b>							
Acid or heavy chemical manufacturer, processing or storage	NP	NP	NP	PC	NP		
Bituminous concrete mixing and recycling plants	NP	NP	NP	PC	NP		
Cement or Lime Manufacture	NP	NP	NP	PC	NP		
Commercial Sawmills	NP	NP	NP	PC	NP		
Concrete and ceramic products manufacture, including ready mixed concrete plants	NP	NP	NP	PC	NP		
Explosive manufacture or storage	NP	NP	NP	PC	NP		
Foundries and/or casting facilities	NP	NP	NP	PC	NP		
Garbage or dead animal reduction or processing	NP	NP	NP	PC	NP		
Jails and Prisons	NP	NP	NP	PC	NP		Sec. 8.7
Mineral extraction, mineral processing	NP	NP	NP	PC	NP		
Petroleum products refining or storage	NP	NP	NP	PC	NP		Sec. 8.11
<b>Adult Uses</b>							
Adult Uses	NP	NP	NP	P	NP		Sec. 8.1
<b>Recreational Uses</b>							
Hunting, Shooting, Archery and Fishing Clubs, public or private	P	NP	NP	NP	NP		Sec. 8.8
<b>Commercial Uses</b>							
Antique Shop	NP	NP	P	P	PC		
ATM	NP	NP	P	P	PC		
Branch Bank	NP	NP	P	P	PC		
Barber/Beauty Shop, Limited	NP	NP	P	P	PC		
Bed and Breakfast	P	NP	NP	NP	PC		Sec. 8.3
Commercial Uses	*	**	P	P	*		Sec. 8.9
Country Inn	NP	NP	P	P	PC		
Kennel	P	NP	P	P	NP		Sec. 8.4
Dry Cleaners	NP	NP	P	P	PC		
Florist	NP	NP	P	P	PC		
Medical/Dental/Optical Office, Small	NP	NP	P	P	P		
Non/Not for Profit Commercial Uses	NP	NP	P	P	NP		
Non-Profit Community Centers	P	NP	P	P	NP		
Restaurant, Fast Food, Limited	NP	NP	P	P	PC		
Restaurant, Limited	NP	NP	P	P	PC		
Retail Food Store, Limited	NP	NP	P	P	PC		
Veterinary Services	P	NP	P	P	NP		Sec. 8.x
Video Rental Stores	NP	NP	P	P	PC		
Wireless telecommunications facilities	P	PC	PC	P	PC	4B	

Principal Permitted Uses Table (continued)

Land Use	R	RG	R-LI-C	I-C	V	General Standards	Additional Standards
<b>Agricultural Uses</b>							
Agricultural Repair Center	P	NP	P	P	NP		
Agricultural Tourism	P	NP	P	P	NP		
Agricultural Uses as defined in Article 2	P	P	P	P	P		
Farm Brewery or Winery	P	NP	P	P	NP		Sec. 8.5
Farm Market	P	NP	P	P	NP		Sec. 8.6
Farm Vacation Enterprise	P	NP	P	P	NP		
Feed and/or Farm Supply Center	P	NP	P	P	NP		
Horticultural Nurseries and Commercial Greenhouses	P	NP	P	P	NP		
Landscaping Business	P	NP	P	P	NP		
Rental of Existing Farm Building for Commercial Storage (structure must have existed for 5 years)	P	NP	P	P	NP		
<b>Accessory Uses</b>							
Accessory Uses	P	P	P	P	P		

P = Permitted use

NP = Not permitted use

PC = Use permitted conditionally subject to requirements of district

\* = Limited permitted uses

\*\* = Accessory use to a planned residential community

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JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

**BYLAWS OF THE JEFFERSON COUNTY PLANNING COMMISSION**

**Article I - General**

Section 1.1 – References

As used throughout these Bylaws, “Planning Commission” shall refer to the Jefferson County Planning Commission, and “County Commission” shall refer to the County Commission of Jefferson County, both of Jefferson County, West Virginia. The term “item” as used herein shall refer to any matter before the Planning Commission for consideration or discussion, and shall be construed broadly.

Section 1.2 – Authority

These bylaws and its provisions are authorized by W.Va. Code § 8A-2-11, which empowers the Planning Commission, among other things, to “(2) Prescribe rules and regulations pertaining to administration, investigations and hearings[,]” provided that the same are adopted by the County Commission.

Section 1.3 – Severability

The invalidation of any provision or section of these Bylaws shall not invalidate any other provision or section of these Bylaws.

Section 1.4 – Amendments

These Bylaws may be amended at any regular meeting of the Planning Commission by a majority vote of the Planning Commission, and shall take effect upon adoption by the County Commission or at a date certain thereafter.

**Article II - Organization**

Section 2.1 – Membership

The Planning Commission, by ordinance previously adopted by the County Commission, shall be comprised of nine (9) members appointed by the County Commission pursuant to W.Va. Code § 8A-2-4.

Section 2.2 – Term of office

Upon appointment to the Planning Commission, a member shall serve a term of three years pursuant to W.Va. Code § 8A-2-4(g).

Section 2.3 – Powers and Duties

In addition to the powers and duties provided in these Bylaws, the Planning Commission shall have such other powers and duties as provided by law, including but not limited to W.Va. Code § 8A-2-11.

#### Section 2.4 – Committees

The Planning Commission may establish one or more committees to which, pursuant to W.Va. Code § 8A-2-11(15), it may delegate limited powers. Committees shall consist of no less than three (3) members nor more than five (5) members of the Planning Commission. Appointments to committees shall be made by a majority vote of the Planning Commission.

### *Article III - Officers*

#### Section 3.1– Elections

At its first regular meeting each January, the Planning Commission shall elect a President, Vice President, and Secretary.

#### Section 3.2 – President

The President shall preside at all public hearings and meetings held by the Planning Commission. The President may call special meetings of the Planning Commission as necessary, and is empowered to certify by signature or otherwise any official and valid action of the Planning Commission. The President shall also perform such duties and functions as may from time to time be required by the Planning Commission.

#### Section 3.3 – Vice President

During any absence of the President, the Vice President shall assume the duties and functions of President. The Vice President shall also perform such duties and functions as may from time to time be required by the Planning Commission.

#### Section 3.4 – Secretary

The Secretary shall perform such duties and functions as may from time to time be required by the Planning Commission.

#### Section 3.5 – Absence of President and Vice President

In the absence of both the President and Vice President, any present member may call to order a regular or special meeting of the Planning Commission, which shall thereupon immediately empower one or more of its present members to fulfill the duties and functions of President and/or Vice President during said absence.

#### Section 3.6 – Replacing Officers

In the event of the death, resignation, or removal of an officer of the Planning Commission, the Planning Commission shall thereupon elect one of its members to complete the unexpired term. A three-fifths majority of the total membership of the Planning Commission may, at any regular meeting, remove the President and/or the Vice President from office, provided that a new election to fill the remaining term(s) of office is immediately held.

#### Article IV - Meetings

##### Section 4.1 – Regular Meetings

The Planning Commission shall hold regular meetings on the second and fourth Tuesdays of each month at 7:00 p.m. in the ground floor meeting room of the Old Charles Town Library, at 200 East Washington Street, Charles Town, West Virginia. Prior notice shall be provided in the event that any regular meeting is held at a different location. A regular meeting may be postponed or cancelled for appropriate reasons, and in such case prior notice of said postponement or cancellation shall be provided if possible.

##### Section 4.2 – Special Meetings

A special meeting may be called by the President or by two or more members of the Planning Commission to be held on a different day and/or a different time than regular meetings. Pursuant to W.Va. Code § 8A-2-7, notice for all special meetings shall be in writing, include the date, time and place of the special meeting, and be sent to all members at least two days before the special meeting. A special meeting may be postponed or cancelled for appropriate reasons, and in such case prior notice of said postponement or cancellation shall be provided if possible.

##### Section 4.3 – Recording of Meetings

All meetings of the Planning Commission shall be recorded, and such recordings shall be maintained and made available, upon request and in accordance with the procedures of the Planning Commission and/or its staff, to the public.

##### Section 4.4 – Agendas

An agenda shall be made available prior to the start of all regular and special meetings. Items shall be listed on the agenda in such a manner as to sufficiently identify the substance of the item and allow for a vote on the item by the Planning Commission if necessary. The Planning Commission may deviate from an agenda's order if necessary.

##### Section 4.5 – Quorum

In order to conduct a regular or special meeting, a quorum of the members must be present. A majority of the members of the Planning Commission shall constitute a quorum. No action of the Planning Commission shall be official or valid unless authorized by a majority of members present at a regular or special meeting.

#### Section 4.6 – Procedures for Conducting Meetings

In the absence of state law or of other procedures of the Planning Commission, Roberts Rules of Order, current edition, shall be the parliamentary authority of Planning Commission meetings.

#### Section 4.7 – Open Governmental Proceedings

All meetings and actions of the Planning Commission shall comply with the requirements of West Virginia's open meetings laws, codified at W.Va. Code § 6-9A-1, et seq.

### *Article V – Consideration of Items*

#### Section 5.1 – Voting

A member must be physically present at a meeting to vote on any item considered at said meeting. Voting via telephone or proxy is not permitted. Abstention shall not be permitted by a member who is otherwise entitled to vote on an item.

#### Section 5.2 – Recusal

A member may recuse himself/herself in relation to an item for the reasons set forth herein, in which case such member shall not participate in discussion, consideration or vote on said item. Valid reasons for recusal include (1) having a personal interest in an item, (2) having a contractual, employment, or other relationship with a party involved with an item, (3) being unable to impartially consider an item, or (4) having been absent from part or all of the discussion or consideration of an item. A member recusing himself or herself shall thereupon state the reason for such recusal and leave the meeting, remaining absent for the duration of consideration and/or discussion of the item.

#### Section 5.3 – Ex Parte Communications

For purposes of these Bylaws, ex parte communications consist of communications regarding the substance of an item that is or will be before the Planning Commission for consideration and/or discussion, when such communications are between one or more members of the Planning Commission and one or more individuals involved with the item. No member of the Planning Commission shall voluntarily and knowingly engage in ex parte communications without the authority of the Planning Commission. In the event that a member of the Planning Commission has engaged in or receives any ex parte communication, said member shall bring the same to the attention of the Planning Commission. Communications with third parties regarding procedural aspects of items do not constitute ex parte communications in the context of these Bylaws.

#### Section 5.4 – Ex-Officio Member Voting

A member who is also a member of the County Commission is a full voting member of the Planning Commission. However, any such ex-officio member may elect not to vote as a member of the Planning Commission on items which will subsequently require action or consideration by the County Commission.

An ex-officio member may remain at the meeting and participate in discussion on an item on which they elected not to vote under this Section.

PUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

AUBREY E. HENRY; DEBORAH V.  
HENRY,

*Plaintiffs-Appellants,*

v.

JEFFERSON COUNTY COMMISSION;  
JEFFERSON COUNTY PLANNING AND  
ZONING COMMISSION;  
SHEPHERDSTOWN MEN'S CLUB  
FOUNDATION, INCORPORATED; LEDGE  
LOWE HOMEOWNER'S ASSOCIATION;  
WILLIAM E. LEWANDOWSKI; JOYCE  
ANN LEWANDOWSKI; RICHARD  
SUPER; DAN MARKEN; JOHN SIMS;  
THOMAS KANE; JOHN DOES I-V,

*Defendants-Appellees.*

No. 09-1546

AUBREY E. HENRY; DEBORAH V.  
HENRY,

*Plaintiffs-Appellants,*

v.

JEFFERSON COUNTY COMMISSION;  
JEFFERSON COUNTY PLANNING AND  
ZONING COMMISSION;  
SHEPHERDSTOWN MEN'S CLUB  
FOUNDATION, INCORPORATED; LEDGE  
LOWE HOMEOWNER'S ASSOCIATION;  
WILLIAM E. LEWANDOWSKI; JOYCE  
ANN LEWANDOWSKI; RICHARD  
SUPER; DAN MARKEN; JOHN SIMS;  
THOMAS KANE; JOHN DOES I-V,

*Defendants-Appellees.*

No. 09-2021

Appeals from the United States District Court  
for the Northern District of West Virginia, at Martinsburg.  
John Preston Bailey, Chief District Judge.  
(3:06-cv-00033-JPB)

Argued: December 8, 2010

Decided: March 3, 2011

Before WILKINSON and NIEMEYER, Circuit Judges,  
and Patrick Michael DUFFY, Senior United States District  
Judge for the District of South Carolina,  
sitting by designation.

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Affirmed by published opinion. Judge Wilkinson wrote the  
opinion, in which Judge Niemeyer and Senior Judge Duffy  
joined.

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HENRY V. JEFFERSON COUNTY COMMISSION

3

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**COUNSEL**

**ARGUED:** Linda M. Gutsell, Martinsburg, West Virginia; David Hart Nelson, Charlottesville, Virginia, for Appellants. James Robert Russell, SHUMAN, MCCUSKEY & SLICER, PLLC, Morgantown, West Virginia; Braun A. Hamstead, HAMSTEAD & ASSOCIATES, LC, Martinsburg, West Virginia, for Appellees. **ON BRIEF:** Tamara J. DeFazio, SHUMAN, MCCUSKEY & SLICER, PLLC, Morgantown, West Virginia, for Appellees Jefferson County Commission, Jefferson County Planning and Zoning Commission, William E. Lewandowski, Dan Marken, John Sims, and Thomas Kane.

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**OPINION**

WILKINSON, Circuit Judge:

We are asked once again to intervene in a decades-old land-use dispute between Aubrey Henry and the sundry local government bodies and neighboring residents who played a part in turning back his development plans. Henry chiefly alleges that the defendants took his property by granting him a less intensive conditional use permit than the one to which he claims he was entitled. Because he had no such entitlement and because his numerous other claims are without merit, we affirm the district court's grant of summary judgment to defendants.

I.

We begin by begging the reader's indulgence as we summarize the frequently litigated facts underlying Henry's claims and the byzantine procedural history accompanying them. Henry owned or had an interest in four adjoining parcels of land totaling 13.69 acres in Jefferson County, West Virginia. He resided in a single-family home on Parcel A, his

mother resided in a similar home on Parcel B until her death in 2004, and Parcel D was unimproved.

Although a 1988 zoning ordinance designated all of the land as rural-agricultural, *see generally* Jefferson County, W. Va., Zoning and Development Review Ordinance § 5.7 (1988), Henry for years had been operating a restaurant on Parcel C. In February 1993 the restaurant burned down. Allegedly acting on the erroneous advice of the zoning administrator, Henry applied in January 1994 for a Conditional Use Permit ("CUP") to build 76 townhouses on some of the property rather than attempting to rebuild the restaurant.

Under the ordinance's Development Review System, proposals are first subjected to a Land Evaluation Site Assessment ("LESA"). Henry's proposal received a score of 39.04. Any score under 60 passes, and proposals with scores closer to 0 are viewed more favorably than those whose scores approach 60. Members of the community expressed concerns about the project at a Compatibility Assessment Meeting, and the Jefferson County Planning and Zoning Commission (the "Planning Commission") denied the CUP application. The Board of Zoning Appeals ("BZA") upheld the denial, but the West Virginia Supreme Court of Appeals reversed and remanded on the grounds that the BZA failed to set forth sufficient factual findings. *See Henry v. Jefferson Cnty. Planning Comm'n*, 496 S.E.2d 239, 242 (W. Va. 1997). On remand the BZA again denied the 1994 CUP application, and the Circuit Court of Jefferson County affirmed.

While his claims were pending before the West Virginia Supreme Court of Appeals, Henry also filed his first federal lawsuit, which the parties call *Henry I*. After the resolution of his state supreme court case, we affirmed the district court's grant of summary judgment on Henry's procedural due process challenge to the zoning ordinance but reversed the district court's decision to abstain from hearing Henry's other

claims. See *Henry v. Jefferson Cnty. Planning Comm'n*, No. 99-2122, 2000 WL 742188 (4th Cir. June 9, 2000) (appeal of *Henry I*). Once the case wended its way back to us after remand, we affirmed the grant of summary judgment on his substantive due process claim but held that his takings claim was not ripe because he had not attempted to secure compensation in state court. See *Henry v. Jefferson Cnty. Planning Comm'n*, 34 F. App'x 92 (4th Cir. 2002) (appeal of post-remand *Henry I* consolidated with another suit Henry had filed, *Henry II*).

In January 2001 Henry applied for another CUP for a 76-unit townhouse development. He received another 39.04 LESA score, and although members of the public again expressed their concerns at the Compatibility Assessment Meeting, the Planning Commission voted unanimously to grant Henry's request, although limiting the number of units to 51 (including Henry's residence). However, several neighboring landowners, including the Shepherdstown Men's Club, William and Joyce Lewandowski, and Miriam Wilson, appealed the Planning Commission's decision. Ultimately, the Circuit Court of Jefferson County reversed because the Planning Commission failed to enter sufficient factual findings. Shortly thereafter Henry filed another federal suit, *Henry III*. In October 2003 he applied for a variance to rebuild the restaurant, which the BZA denied because allowing the request would have permitted Henry to circumvent the CUP process and because Henry's right to rebuild had expired. Henry did not appeal.

There was some delay in dealing with Henry's 2001 CUP application after the state court remanded it. In October 2004 Henry's counsel appeared before the Planning Commission to request a hearing on the application. At the meeting William Lewandowski, by that time a member of the Planning Commission and a defendant in *Henry III*, spoke strongly against Henry's ongoing litigation and declared that he would not recuse himself from considering Henry's CUP.

The Planning Commission soon decided to consider anew the unresolved issues in Henry's 2001 CUP application, and at a December 2004 public hearing Henry's counsel, the Planning Commission, and some of the project's opponents discussed them. By this time Lewandowski had recused himself from considering Henry's application. At the meeting Henry agreed to resolve the remaining issues, though not necessarily in the manner requested by the Planning Commission, and he agreed again to reduce the development from 76 to 51 units. Nonetheless, at a January 2005 meeting the Planning Commission granted Henry a CUP that allowed for only one unit per 40,000 square feet, for a total of 14 units. Although the Circuit Court of Jefferson County reversed the CUP's condition that Henry appeal the decision to the BZA, it affirmed the remainder of the CUP. By January 2006 Henry had sold the property to investors led by Peter Corum.

But the litigation, which by now resembled a chronicle of the Tudor dynasty, did not stop. In March 2007 — two years after the district court had dismissed *Henry III's* takings claim as unripe — Henry finally sought compensation in state court, suing the Planning Commission for taking his property in violation of the West Virginia Constitution. The Circuit Court of Jefferson County held that statutory immunity barred Henry's claims. It also refused to allow him to add a mandamus action for compensation, reasoning with the Planning Commission that Henry's specific reservation of his federal claims and pursuit of those claims in another pending federal action — *Henry IV*, filed in March 2006 — rendered any amendment to the complaint futile. Henry did not appeal. In November 2006 the BZA granted Peter Corum, Henry's successor in title, a CUP for a mixed commercial-residential development on the property.

Henry's amended complaint in *Henry IV* alleged that the Jefferson County Commission and the Planning Commission took his property without just compensation by "preclud[ing]" him from rebuilding his restaurant and denying him a mean-

HENRY V. JEFFERSON COUNTY COMMISSION

7

ingful CUP. Among other claims, he also alleged that various county entities and officials, as well as private opponents, violated his substantive and procedural due process rights.

The district court granted summary judgment against Henry on every claim, and he unsuccessfully moved to vacate the judgment after *Caperton v. A.T. Massey Coal Co., Inc.*, 129 S. Ct. 2252 (2009). He now appeals both of these decisions.

II.

A.

The hurdles to Henry's claims, both procedural and substantive, are so numerous that the district court was plainly right in dismissing them. On the procedural front, there is considerable question whether Henry's takings claims should even be in federal court. *See San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323 (2005) (applying ordinary preclusion principles to takings plaintiffs); *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985) (takings plaintiffs must first pursue compensation in state court).

Be that as it may, the substantive obstacles to Henry's contentions are even more forbidding. Henry claims that the Planning Commission took his property by granting him a 14-unit CUP rather than the 51-unit CUP to which he claims he was entitled. We start by discussing whether Henry was entitled to the larger CUP under West Virginia law; "[t]he analysis in a takings case necessarily begins with determining whether the government's action actually interfered with the landowner's antecedent bundle of rights." *Sunrise Corp. of Myrtle Beach v. City of Myrtle Beach*, 420 F.3d 322, 330 (4th Cir. 2005). Henry argues that the terms of the Jefferson County ordinance itself and *Far Away Farm, LLC v. Jefferson County BZA*, 664 S.E.2d 137 (W. Va. 2008), a decision interpreting that ordinance, illustrate his entitlement to the CUP.

This is incorrect. Henry argues his proposal fell under certain heightened density provisions that entitled him to a CUP of over a hundred units. It is true that § 5.7 of the Jefferson County zoning ordinance allows for densities higher than those ordinarily available if a developer secures a CUP, and § 5.7(b) does state that satisfying the Development Review System triggers the heightened density limits of Article 5.4(b). But it is simple bootstrapping to say that Henry was entitled to a larger CUP because those who secure a CUP can have heightened densities. As we have already noted in *Henry II*, "Henry [was] not entitled as a matter of right to a permit for his [earlier] high-density townhouse project" because "the issuance of [such a] permit is within the discretion of the [Planning Commission]" under the ordinance. *Henry v. Jefferson Cnty. Planning Comm'n*, 34 F. App'x at 97. And Henry himself appears to have backtracked from his claimed entitlement, stating that he "applied for a CUP to build more units than he was allowed as of right." Reply Br. of Appellants at 20.

Henry also argues that under *Far Away Farm*, once he agreed in principle to resolve all issues, the Planning Commission was obligated to issue the CUP. We disagree. In *Far Away Farm*, the West Virginia Supreme Court of Appeals held that a developer who presents uncontradicted expert evidence rebutting anecdotal concerns about a project is entitled to a CUP under the ordinance. See *Far Away Farm*, 664 S.E.2d at 144–45. But *Far Away Farm* cannot mean that the ordinance grants an entitlement wherever a developer claims to have resolved outstanding issues. In *Jefferson Orchards, Inc. v. Jefferson County BZA*, 693 S.E.2d 781, 788 (W. Va. 2010), the Supreme Court of Appeals affirmed the denial of a CUP where there was conflicting evidence regarding the average density near a project, noting that "density is a fair consideration" under the ordinance.

Read together, these cases illustrate that when a developer's uncontradicted expert evidence resolves outstanding

issues, the Planning Commission lacks discretion to deny the CUP. In the absence of such circumstances, however, the Commission may properly consider density in using its discretion to resolve murkier requests. *Jefferson Orchards*, not *Far Away Farm*, controls here. Henry presented no expert testimony on density, and the Planning Commission explicitly cited density in granting only a 14-unit CUP. It had discretion to do so, and as a result Henry was not entitled to a 51-unit CUP. He thus cannot claim that the Planning Commission took his property simply by granting a smaller CUP.

B.

Henry also alleges that the grant of the smaller CUP took his property under ordinary regulatory takings doctrine. To begin with, we are reluctant to push the notion that the denial of a permit in which one has no property interest can somehow amount to an unconstitutional taking. Moreover, it is obvious that the grant of the smaller CUP did not unacceptably interfere with Henry's existing property interests under the regulatory takings framework.

It has long been recognized that property regulations that go too far take a landowner's property. *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). Where a regulation causes a physical invasion of an owner's land or deprives the land of all economic value, the landowner must be compensated. *See Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538 (2005).

The Planning Commission's action on Henry's CUP request never subjected his property to physical invasion, nor did it eliminate the property's value. Even were we to assume the 14-unit CUP was not economically feasible, the various parcels retained permitted uses that obviously possessed economic value. Single-family homes still stood on two of the parcels, a use to which landowners in the rural zone are expressly entitled under § 5.7(a) and whose economic value the Supreme Court explicitly indicated will defeat a claim to

total worthlessness. See *Palazzolo v. Rhode Island*, 533 U.S. 606, 632 (2001). Henry himself asserts that more such single residence lots could have been created on the other parcels as well. Henry's case thus does not fall into the small band of regulations destroying all economic value. See *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1006–07, 1027–28 (1992) (regulation prohibiting the erection of any permanent habitable structures constituted a taking).

Outside of these narrow categories, we assess regulatory takings claims under *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), looking to the regulation's economic harm, its interference with parties' "investment-backed expectations," and "the character of the governmental action." *Lingle*, 544 U.S. at 538–39 (quoting *Penn Central*, 438 U.S. at 124) (internal quotation marks omitted). The *Penn Central* factors create an all-things-considered standard "designed to allow 'careful examination and weighing of all the relevant circumstances,'" *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 322 (quoting *Palazzolo*, 533 U.S. at 636 (O'Connor, J., concurring)), but Henry's takings claim does not measure up under any one of them.

Neither the zoning regulations nor the CUP permitting decisions visited economic harm approaching constitutional magnitude. For one thing, property zoned rural-agricultural under the ordinance retained a number of valuable, expressly permitted uses; for example, Henry could have built more single-family homes, a home business, a small child or elderly care facility, a farmer's market, or a commercial greenhouse. See Jefferson County, W. Va., Zoning and Development Review Ordinance §§ 5.7(a)(3), (4), (6), (11), & (12). For another, he and his family achieved considerable gain from the sale of the land; he sold the restaurant and unimproved parcels to Corum and his group of investors for \$500,000, his home and its parcel for another \$500,000, and his sisters sold his mother's parcel to Corum's group for \$300,000.

Henry has not pointed to anything that would reliably allow a court to assess the diminution in value occasioned by the so-called regulatory taking. Indeed, on appeal Henry did not even bother to point to evidence regarding the land's value until his reply brief. But even taking highly speculative projections in the light most favorable to Henry, there is no constitutionally troubling action. His complaint prayed for \$1,500,000 in compensatory damages, and he stated the estimated value of the unimproved parcels with a right to develop the townhouses at just under \$2 million, *see* Reply Br. of Appellants at 16. Courts have often found no regulatory taking when presented with diminutions of this scale. *See, e.g., Tenn. Scrap Recyclers Ass'n, LLC v. Bredesen*, 556 F.3d 442, 456 & n.6 (6th Cir. 2009) (noting that the Supreme Court has upheld diminutions in value of 75% and 92.5%); *Iowa Coal Mining Co., Inc. v. Monroe County*, 257 F.3d 846, 853 (8th Cir. 2001) (noting the acceptability of diminutions in value of 75%).

Even if we thought diminution in value cut in Henry's favor, the other *Penn Central* factors make clear that Henry suffered no compensable taking. Again, all of his investment-backed expectations claims are predicated on his having an entitlement. He does not. "[W]e can see absolutely no warrant for the proposition that where the government . . . merely refuses to enhance the value of real property[ ] a compensable taking has occurred." *Front Royal*, 135 F.3d at 285-86. We likewise see no warrant for requiring the Planning Commission to exercise its discretion so as to most profit Henry. And as the defendants' uncontradicted evidence indicates, Henry received significant return on his and his family's investments in the property when he sold the land to Peter Corum's investment group in 2006.

The character of the Planning Commission's action here is also inconsistent with Henry's claim to have suffered a taking. Regulatory takings doctrine seeks to "identify regulatory actions that are functionally equivalent to the classic taking in

which government directly appropriates private property or ousts the owner from his domain." *Lingle*, 544 U.S. at 539. The Planning Commission's decision, based as it was on density and other traditional zoning concerns, did nothing like this. The Planning Commission was legitimately concerned about the project's density compared to that of nearby parcels, its potential impact on a stream, and its possible harms to an adjacent park. In response to these concerns, the Planning Commission simply "adjust[ed] the benefits and burdens of economic life to promote the common good" in a way that incidentally impacted Henry's ability to maximize the profit from the development of his land. *Penn Central*, 438 U.S. at 124. Granting Henry only a 14-unit CUP did not remotely take his property, and the district court properly granted summary judgment against him on this claim.

C.

Henry also contends that the defendants took his property by denying him permission to rebuild his restaurant. We can easily dispose of this claim. Henry applied for permission to rebuild the restaurant in 2003, ten years after it burned down. Henry justifies his delay by contending that Paul Raco, the zoning administrator, wrongly told him he could not rebuild the restaurant as of right. But even assuming (despite some of Henry's own statements) that Henry did not rebuild because Raco wrongly so instructed him, Henry still cannot succeed. He asks us in effect to recognize an extraordinarily broad proposition: that a zoning administrator's erroneous instruction, given during a conversation with an experienced developer, excuses the developer's failure to seek formal review of his request through established procedures, all the while preserving the developer's claims against subsequent regulatory changes and allowing him to later circumvent the CUP process.

Our own prior rulings also reject Henry's position. We noted that "Jefferson County ha[d] not prohibited [Henry]

from rebuilding" his restaurant before his 2003 application, demonstrating that Raco's alleged instruction cannot be treated as having the force of law and cannot excuse Henry's failure to use the proper zoning mechanisms and review procedures before it was too late. *Henry v. Jefferson Cnty. Planning Comm'n*, 34 F. App'x at 98. This position makes sense, as adopting Henry's view would undercut *Williamson County's* administrative finality requirement, undermine the processes that form the backbone of local land-use decision-making, and hold planning commissions liable indefinitely for the unreviewable, unofficial statements of zoning officials. This we decline to do.

### III.

Henry also claims that the CUP process violated his substantive and procedural due process rights.

#### A.

In the zoning context, substantive due process plaintiffs face significant hurdles. They must first prove that the state deprived them of a property interest and that its "action [fell] so far beyond the outer limits of legitimate governmental action that *no process* could cure the deficiency." *Sylvia Dev. Corp. v. Calvert County*, 48 F.3d 810, 827 (4th Cir. 1995). They must also overcome our oft-repeated "extreme[ ] reluctant[ce] to upset the delicate political balance at play in local land-use disputes." *Shooting Point, L.L.C. v. Cumming*, 368 F.3d 379, 385 (4th Cir. 2004) (quoting *Sylvia Dev. Corp.*, 48 F.3d at 829 (quoting *Gardner v. Baltimore Mayor & City Council*, 969 F.2d 63, 68 (4th Cir. 1992))) (internal quotation marks omitted).

Henry fails on both fronts. As we have already noted, he was not entitled to the 51-unit CUP, and any right he had to rebuild the restaurant expired well before he applied for a chance to rebuild. Moreover, the Planning Commission's

decision to grant only the smaller CUP was based on such typical zoning concerns as the low density nature of the surrounding property. "[I]ssues such as the concern over further growth . . . , the consequences of increased residential density, and the preservation of [a] community's aesthetic character" are, appropriately, "at the heart of countless local zoning disputes." *Sylvia Dev. Corp.*, 48 F.3d at 829. Once again we decline the invitation to turn federal courts into clearing-houses for alleged constitutional violations that in fact are only the routine and routinely contentious disagreements arising out of local permitting decisions.

B.

Henry also asserts that the defendants violated his procedural due process rights during the CUP review process. The irony here is delicious. After years and years of litigation, we are met with claims that Henry has been denied procedural due process and that a host of defendants have conspired to deny him access to the courts. He claims, to take one example, that William Lewandowski — one of the challengers to Henry's 2001 CUP, a defendant in *Henry III*, and ultimately a member of the Planning Commission—spoke strongly against Henry at the October 2004 meeting. He called Henry's suit an attempt to deter public participation, stated that he would not recuse himself, and argued that the Planning Commission should not let developers like Henry "shake this Commission" through such tactics. No one disputes, however, that Lewandowski ultimately did recuse himself and did not participate in the December 2004 hearing or the January 2005 vote. Henry would have us hold that mere knowledge of a recused commissioner's opposition suffices to taint the entire zoning process. Not surprisingly, Henry refers us to no court that has done so.

*Caperton v. A.T. Massey Coal Co., Inc.*, 129 S. Ct. 2252 (2009), on which Henry relies, has no applicability here. Lewandowski's statements bear no resemblance to the singu-

lar facts of *Caperton*, where a state supreme court justice cast the deciding vote in favor of a party who had recently spent millions of dollars to help the justice win his seat. *Id.* at 2264–65. Those statements simply cannot rebut the "presumption of honesty and integrity" that attaches to the Planning Commission members who actually voted on Henry's request. *Withrow v. Larkin*, 421 U.S. 35, 47 (1975). Indeed, considered in the proper light, much of what Henry complains about is far more reflective of political opposition to his proposal than of any legal infirmity in the local zoning process.

#### IV.

Henry also lodged many other claims stemming from the grant of the smaller permit. We have reviewed these claims and have found no reason to upset the district court's grant of summary judgment on them. The district court acted properly to bring this litigation to an end. It is far from the only litigation that makes one wish Dickens were alive to write the sequel to *Bleak House*, but it assuredly would have provided the acclaimed novelist a raft of rich material. The case involves at bottom nothing more than a would-be developer's failure to get all he wanted in a local land-use dispute. Henry had no right to maximally develop his property, and the Planning Commission rejected his requests to do so largely to preserve something of the traditionally more rural character of the community.

It simply cannot be that takings arise in such circumstances. Local land-use decisions are about the accommodation of competing interests, attempts to create mutually acceptable solutions from the complicated mix of developers' quests to construct additional units, neighbors' search for repose, and communities' goals of stable, sustainable growth. Henry disagrees with the Planning Commission's balancing of these interests in his case, but not getting everything one wants from the permit process does not a taking make.

Holding that federal takings claims arise in circumstances such as these would operate to extinguish the Tocquevillian remnants of our democracy, to hamstring local land-use policymakers in the discharge of their duties, and to endanger the character and quality of the communities they serve. It would upset the proper balance between judicial and representative decisionmaking. And it would displace state primacy in land-use policy with a constitutional common law of zoning. This we will not do. The judgment of the district court is affirmed.

*AFFIRMED*

**JEFFERSON COUNTY, WEST VIRGINIA**  
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**Director's Report**  
**April 12, 2011**  
**Planning Commission Meeting**

- 1) Activity Report (attached)
- 2) Brief Report on US 340 3/26/11 Kick-Off Meeting
- 3) 3<sup>rd</sup> quarterly Report (draft attached)
- 4) Reminder: Regional Planning Conference, Cumberland, MD, May 5-6, 2011 (attached Flyer)
- 5) Upcoming CC agenda items:
  - a) Follow up on Public Hearing input into Proposed Urban Growth Boundaries for Harper's Ferry and Bolivar (4/14/11)
  - b) Public Hearing on Subdivision Regulation Amendments regarding Minor Site Plan Process in Major Non-Residential Subdivisions (4/14/11)
  - c) Follow Up on Planning Commission Recommended Land Development Fee Schedule (4/14/11)
  - d) Authorization to utilize Planning Department Professional Services funds as a part of the local match to the HEPMPO scope of work for the US 340 East Transportation Project
- 6) Upcoming PC meetings:
  - a) April 26, 2011  
Special 2 hour PC Meeting in April to meet training requirements established by CC including old and new members. We have not yet finalized this but have the following tentative schedule planned:

Jennie Brockman	Introduction
Jonathan Saunders/ Roger Goodwin	Overview of role of engineering in review of subdivision and site plans and discussion of Model Stormwater Regs/Chesapeake Bay
Stephen Groh or P.A. Office Rep	Presentation on motions and Findings of Fact; discussion of Ex Parte contact; ethics overview
Dale Manuel (tentative)	Overview of Roberts Rules of Order and correct meeting procedures

Jennie Brockman	Overview of Comp Plan and upcoming update
Seth Rivard	Overview of Sub Regs and pending amendments
Steve Barney	Overview of Zoning Ordinance, explanation of LESA/CUP process vs traditional zoning and pending amendment
PC President	Overview of PC bylaws

b) May 10, 2011

- Draft Zoning Ordinance Amendments re: Home Occupation/Cottage Industry
- Draft Amendments to the Sub Regs re: submittal and review time frames

## Christine Chalmers

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To: PLANNING COMMISSION  
Subject: RE: WEEKLY CALENDAR

### MONDAY, MARCH 07, 2011

10:30 am JENNIE, SETH & JULIE – 340 CORRIDOR STUDY MEETING / P&Z CONF. ROOM  
2:00 pm JENNIE & STEVE – MEETING WITH PAUL RACO & JOHN LOWE /  
RE: LOWE PRODUCTS

### TUESDAY, MARCH 08, 2011

9:00 am – 11:00 am JENNIE, STEVE, SETH, JONATHAN & MIKE – HAWTHORN SITE VISIT  
1:30 pm JENNIE, SETH & JULIE – TELEPHONE CONFERENCE WITH “DEP” IN TODD’S OFFICE  
RE: INTERNSHIP HYDRO STUDY  
4:00 pm JENNIE, STEVE & SETH – TELEPHONE CONFERENCE WITH WAYNE SMITH /  
RE: 340 CORRIDOR LAND OWNER  
7:00 pm PLANNING COMMISSION MEETING

INTERN DOUGLAS GRIFFITH – WORK / 9:00 am – 4:00 pm

### WEDNESDAY, MARCH 09, 2011

10:30 am JENNIE – MEETING WITH JIM KELSCH / RE: PSD  
11:00 am STEVE, SETH & JONATHAN – M/S PLAN PPC / RE: ROBERT & AMY LEONARD  
1:00 am – 2:00 pm JENNIE, SETH & AMY – WEEKLY PLANNING MEETING  
2:00 pm – 3:30 pm JENNIE & STEVE – WEEKLY ZONING MEETING.

### THURSDAY, MARCH 10, 2011

9:00 am - COUNTY COMMISSION MEETING  
1:00 pm – 2:30 pm JENNIE – MANAGEMENT COURSE WEBINAR

INTERN DOUGLAS GRIFFITH – WORK / 1:00 pm – 4:00 pm

### FRIDAY, MARCH 11, 2011

BOARD OF ZONING APPEALS “PACKET” DAY

NOON JENNIE – LUNCH MEETING WITH ROGER

**Christine Chalmers**

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To: PLANNING COMMISSION  
Subject: RE: WEEKLY CALENDAR

**MONDAY, MARCH 14, 2011**

10:00 am – 10:30 am JENNIE - TELEPHONE CONFERENCE / 340 MPO SCOPE OF WORK  
12:15 pm JENNIE, STEVE & SETH – PLANNERS POLYPHONY @ STONE SOUP BRISTO  
2:00 pm – 3:30 pm JENNIE, STEVE & JULIE – 340 RESOURCE / FACILITIES MEETING

**TUESDAY, MARCH 15, 2011**

10:00 am – 11:00 am STAFF MEETING  
1:30 pm – 3:00 pm JENNIE & STEVE – WEEKLY ZONING MEETING.  
3:00 pm – 4:00 pm JENNIE, STEVE, SETH & JULIE – WEBINAR AT TODD’S OFFICE  
4:00 pm – 5:00 pm JENNIE AND SETH – WEEKLY PLANNING MEETING

**INTERN DOUGLAS GRIFFITH – WORK / 9:00 am – 4:00**

**WEDNESDAY, MARCH 16, 2011**

10:00 am JULIE – SOFTWARE DEMO AT TODD’S OFFICE  
10:00 am STEVE, SETH & JONATHAN – SITE PLAN PPC / RE: NELSON JACKSON  
11:00 am JENNIE, STEVE, SETH & JONATHAN, – GENERAL INFO MEETING WITH ZAC LETTE  
RE: HITE ROAD PARK  
2:00 pm STEVE, SETH & JONATHAN – M/S PPC / RE: ANGELA BELL  
3:00 pm STEVE, SETH & JONATHAN – SITE PLAN PPC / RE: WAYNE & RENEE MOORE

**THURSDAY, MARCH 17, 2011**

9:00 am - COUNTY COMMISSION MEETING  
1:00 pm – 2:30 pm JENNIE – MANAGEMENT COURSE WEBINAR  
3:00 pm JENNIE, STEVE AND JENNILEE – BOARD OF ZONING APPEALS MEETING

**INTERN DOUGLAS GRIFFITH – WORK / 1:00 pm – 4:00 pm**

**FRIDAY, MARCH 18, 2011**

PLANNING COMMISSION “PACKET” DAY

## Christine Chalmers

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To: PLANNING COMMISSION  
Subject: RE: WEEKLY CALENDAR

### MONDAY, MARCH 21, 2011

### TUESDAY, MARCH 22, 2011

10:00 am STEVE – MEETING WITH HAROLD BERNADZIKOWSKI /  
RE: VERIZON TELECOMMUNICATION TOWERS  
1:00 pm – 2:00 pm STAFF MEETING  
2:00 pm – 3:00 pm JENNIE, SETH & AMY – WEEKLY PLANNING MEETING  
3:00 pm – 4:30 pm JENNIE, STEVE & JENNILEE – WEEKLY ZONING MEETING  
7:00 pm JENNIE, STEVE, SETH & JULIE – PLANNING COMMISSION MEETING

INTERN DOUGLAS GRIFFITH – WORK / 9:00 am – 4:00

### WEDNESDAY, MARCH 23, 2011

10:00 am JENNIE – US 340 KICK-OFF MEETING WITH SUE LAWTON  
10:00 am STEVE, SETH & JONATHAN – M/S PPC WITH ED JOHNSON  
RE: ETHELENE DIGREGORIO ED JOHNSON  
11:00 am STEVE, SETH & JONATHAN, – M/S PPC WITH ED JOHNSON  
RE: TIMOTHY SMITH  
1:00 pm STEVE, SETH & JONATHAN – M/S PPC WITH PETER KUBIC / RE: FARGO  
1:30 pm JENNIE – BUDGET MEETING  
2:00 pm STEVE, SETH & JONATHAN – M/S PPC WITH ROGER HARRIS /  
RE: ROY & JANET FRY  
3:00 pm STEVE, SETH & JONATHAN – SITE PLAN PPC /  
RE: SCOTT BEARUP & MICHELLE BLACK

### THURSDAY, MARCH 24, 2011

9:00 am - COUNTY COMMISSION MEETING  
1:00 pm – 2:30 pm JENNIE – MANAGEMENT COURSE WEBINAR  
2:00 pm SETH – MEETING WITH PAUL RACO / RE: #94-15 CHANGE

INTERN DOUGLAS GRIFFITH – WORK / 1:00 pm – 4:00 pm

### FRIDAY, MARCH 25, 2011

9:00 am – 1:30 pm JENNIE, STEVE, SETH & JULIE – MEETING WITH PATRICK KIRBY / RE: 340  
2:00 pm JENNIE, STEVE & SETH – MEETING WITH TIM BELL

### SATURDAY, MARCH 26, 2011

9:30 am – 12:30 pm JENNIE, SETH, JULIE – 340 CORRIDOR MEETING @ SHIPLEY ELEMENTARY

## **Christine Chalmers**

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**To:** PLANNING COMMISSION  
**Subject:** RE: WEEKLY CALENDAR

### **MONDAY, MARCH 28, 2011**

### **TUESDAY, MARCH 29, 2011**

10:00 am JENNIE – MEETING WITH LYN WIDMYER  
10:30 am STAFF MEETING  
2:00 pm JENNIE, STEVE, SETH, ROGER, BECKY, JONATHAN /  
RE: HOME BUSINESS TEXT AMENDMENT MEETING

**INTERN DOUGLAS GRIFFITH – WORK / 9:00 am – 4:00**

### **WEDNESDAY, MARCH 30, 2011**

8:30 am – NOON CHRISTINE / COUNTY SPONSORED FIRST AID CLASS IN LIBRARY  
9:30 am – 11:00 am JENNIE & STEVE - WEEKLY ZONING MEETING  
11:00 am – NOON JENNIE & SETH – WEEKLY PLANNING MEETING  
1:00 pm STEVE – MEETING WITH HAROLD BERNADZIKOWSKI /  
RE: CELL TOWER ORDINANCE  
2:00 pm MIDDLEWAY FIRE DEPARTMENT PPC #2

### **THURSDAY, MARCH 31, 2011**

9:00 am - COUNTY COMMISSION MEETING  
1:00 pm – 2:30 pm JENNIE – MANAGEMENT COURSE WEBINAR

**INTERN DOUGLAS GRIFFITH – WORK / 1:00 pm – 4:00 pm**

### **FRIDAY, APRIL 01, 2011**

10:00 am JENNIE – PC INTERVIEWS  
11:00 am STEVE BARNEY – MEETING WITH CYNTHIA RIDER / RE: ART. 10 – SIGNS

## **Christine Chalmers**

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**To:** PLANNING COMMISSION  
**Subject:** RE: WEEKLY CALENDAR

### **MONDAY, APRIL 04, 2011**

11:00 am JENNIE, STEVE, SETH & AMY – WORKING LUNCH  
2:00 pm JENNIE - EPTA MEETING / RE: ROUTE 340

### **TUESDAY, APRIL 05, 2011**

9:30 am – 10:30 am JENNIE & SETH – WEEKLY PLANNING MEETING  
10:30 am - NOON JENNIE & STEVE – WEEKLY ZONING MEETING  
1:30 pm JENNIE, STEVE, SETH AND AMY – MEETING WITH STEPHEN GROH  
3:00 pm STEVE & MASON – SITE VISIT / RE: ASHBURY UNITED METHODIST CHURCH

### **INTERN DOUGLAS GRIFFITH – WORK / 9:00 am – 4:00**

### **WEDNESDAY, APRIL 06, 2011**

8:00 am – 9:30 am JENNIE – MONTHLY DEPARTMENT HEAD MEETING WITH TIM BOYDE  
10:00 am STEVE, SETH & JONATHAN - SITE PLAN PPC / RICHARD BUDAJ  
RE: CHRISTIAN COMMUNITY FELLOWSHIP  
1:30 pm – 3:30 pm JENNIE – TELEPHONE CONFERENCE / RE: PHASE II LOCAL STAKEHOLDERS OUTREACH  
2:00 pm – 4:00 pm JENNIE – JC PARTNERSHIP MEETING  
3:00 pm STEVE, SETH & JONATHAN – SITE PLAN PPC / RE: SOKEL  
4:00 pm – 6:00 pm JENNIE – BALANCING NATURE COMM. MEETING WITH ALANA HARTMAN /  
RE: LOCATION: RUBY TUESDAYS

### **THURSDAY, APRIL 07, 2011**

9:00 am - COUNTY COMMISSION MEETING  
10:00 am – 11:00 am STAFF MEETING

### **INTERN DOUGLAS GRIFFITH – WORK / 1:00 pm – 4:00 pm**

### **FRIDAY, APRIL 08, 2011**

JENNIE – OFF / RE: NATIONAL CONFERENCE IN BOSTON

**Third Quarterly Report on FY 2011 Work Plan County Commission**

PRIORITY	PROJECTS	TIME FRAMES from FY 10-11 Work Plan	Status or Number Completed (July 10 -- Sept. 10) <i>revised</i>	Status or Number Completed (Oct. 10 -- Dec. 10) <i>revised</i>	Status or Number Completed (Jan. 11 -- March 11)	Outstanding Tasks	REQUIRED RESOURCES/STAFF	REQUIRED HEARINGS	ANTICIPATED RESULTS
	<b>Day to Day Customer Service</b>	on-going							
	Walk in Customers - general information, zoning requests, process questions		75	158	143				
	Information Request Forms		38	11	32				
	Zoning Certificates Issued		5	7	10				
	Call-in customers - general info, zoning, questions		537	472	571				
	E-mail to general planning/zoning mailboxes (note: individuals receive over 100 per month each)		105	71	785 (includes all received)				
	<b>Day to Day Development Review Responsibilities:</b>	on-going							
	Minor Site Plans		1	4	4				
	Merger Deeds, Lot Line Adjustments		12	5	1				
	Major Site Plans		3	0	1				
	Minor Subdivision Plats		new submittals -3; recorded - 5	new submittals -1; recorded - 1	new submittals -1; recorded - 1				
	Major Subdivision Plats (Concept, Preliminary, Final)		new submittals - 2	1	1				
	Conditional Use Permits/Neighborhood Compatibility Meetings		2	0	1				
	Zoning Variances (requirements, dimensional variances, CUP Time extensions)		7	7	3				
	Subdivision Waivers including requests related to time frames or requirements		3	5	2				
	Pre-proposal Conferences		17	10	25				
	Follow up meetings with applicants		14						
	<b>Staff to Planning Commission meetings, including staff reports and presentations</b>	on-going	6 regular PC meetings; 4 special called meetings; 4 special CC meetings related to PC items; 4 staff reports related to land development applications	5 regular PC meetings; 1 special called meeting; 1 Joint PC/CC meeting related to PC items; 7 staff reports related to land development applications	4 Regular Meetings; 1 Special Called Meeting; 1 Workshop; 1 Special CC Meetings related to PC items; 3 staff reports related to land development applications				
	<b>Staff to Board of Zoning Appeals meetings, including staff reports and presentations</b>	on-going	3 BZA meetings; 17 staff reports for land development applications	2 BZA meetings; 8 staff reports for land development applications	2 BZA meetings; 3 staff reports for land development applications				
	<b>Participation in County Commission, WAC, JCDA, Health Department, Joint Utility Meeting, HEPMPO TAC, Region 9 Stormwater Committee</b>	on-going	JB - 128 meetings attended; SR 72 meetings attended; SB - 58 meetings attended	JB - 99 meetings attended; SR - 41 meetings attended; SB - 40 meetings attended	JB - 99 meetings attended; SR-95 meetings attended; SB- 89 meetings attended				
Special Project	<b>Blue Ridge Mountain Study</b>	(Project Initiated - Nov 09) July 10 - Mar 11	3 meetings	Joint PC/ CC meeting	Final Invoice and Closed out grant paperwork by 3/31/11; two follow up meetings with Citizen's Committee re: next steps	Citizen's Committee forming its own 501C3 or watershed organization; minimal staff support required	SR, JQ, JB		
Special Project	<b>Revise, rewrite, update Subdivision Regulations</b>	(Project Initiated - Nov 09) July 10 - April 10	1st round of "policy neutral" Sub Reg amendments recommended for approval by PC 4/10 was approved by CC 8/19/10	Comments received re: additional amendments needed to Sub Regs during previous PHs organized and prioritized	Sub Reg Amendments drafted to allow minor site plans within major non-residential subdivisions; PC PH held 3/8/11; recommended to CC for approval; CC PH scheduled for 4/14/11	CC PH 4/14/11 re: minor site plans; Additional site plan amendments to PC 4/12/11; Additional amendments to be considered grouped into topical categories for consideration as a series of upcoming amendments -- anticipated to continue through 2011	SR, AP, JQ, JB	Hearings Required by PC and CC at various stages of	Adoption of Amendments
Special Project	<b>Proposed amendments to Zoning Ordinance</b>	To be initiated Summer 2010	"policy neutral" amendments initiated 7/10, but put on hold due to Wireless (Art 4B) amendments being initiated; PC reviewed and edited proposed Wireless amendments throughout 1st quarter; stakeholder mtg 8/31/10	Wireless Amendment actions: PC PH 10/12/10; PC vote to recommend to CC 10/26/10; CC presentation 0/28/10; "Policy Neutral" Amendments, which were put on hold due to wireless ordinance efforts, were drafted for PC review and input prior to making available to the public	Stakeholder Meeting to consider amendments to Article 4A, Home Occupations and Cottage Industries held 3/1/11; Wireless ordinance amendments approved by CC 3/10/11; final draft policy neutral amendments reviewed by PC 3/22/11 -- PC PH scheduled for 4/12/11	PC Policy neutral PH 4/12/11 to be recommended to CC; Draft amendments to Article 4A anticipated for 5/10/11 PC meeting; Overall amendments anticipated to continue through 2011	SB, JH, SR, JQ, JB	Hearings Required by PC and CC at various stages of	Adoption of Amendments

**Third Quarterly Report on FY 2011 Work Plan County Commission**

PRIORITY	PROJECTS	TIME FRAMES from FY 10-11 Work Plan	Status or Number Completed (July 10 -- Sept. 10) <i>revised</i>	Status or Number Completed (Oct. 10 -- Dec. 10) <i>revised</i>	Status or Number Completed (Jan. 11 -- March 11)	Outstanding Tasks	REQUIRED RESOURCES/STAFF	REQUIRED HEARINGS	ANTICIPATED RESULTS
Special Project	<b>Zoning Map Update</b>	To be initiated Summer 2010	Staff has completed research and worked with GIS Dept. to complete a good draft; efforts related to UGBs and Federal Land Rezoning to be included	Final version referred to CC -- December 2010	2010 Zoning Map approved by CC 1/14/11 and recorded by County Clerk	Task Completed			
Special Project	<b>Urban Growth Boundary - follow up with municipalities; proposed changes to zoning ordinance text and map; public hearings</b>	Summer 2010 - Summer 2011	Ranson and Charles Town have adopted the UGBs as agreed upon by the County; Harpers Ferry, Bolivar, and Shepherdstown are in discussion with staff to determine best course of action	Staff participated in meetings with Harpers Ferry and Shepherdstown to discuss the concept of the UGB and benefits of adopting a UGB; referred to CC for consideration of a UGB for HF and Bolivar	CC held PH re: Bolivar and Harpers Ferry UGBs 2/17/11 - decision to be made at a CC meeting 4/11	CC vote on Bolivar and Harpers Ferry UGBs 4/14/11; Shepherdstown UGB under discussion at Town level	JB	Possible future hearing for a proposed UGB for Shepherdstown	Approved UGBs reflected on County Zoning Map
	<b>Staff Training -- new skills, planning and zoning related functions</b>	on-going	SR - APA Conf. (4/10); JQ -- 3 day Grant Writing course (7/10), NCTC; SR & SB - Eastern Panhandle GIS Users Group (8/10); JB -- 5 day Green Infrastructure Conf. (9/10), NCTC; SB -- 2 day KARST Conf. (9/10), NCTC; JQ - Smart Code webinars (8/10 & 9/10); JB, SB, SR - 1 day Smart Code On-Site Workshop	SR -- Ranson Smart Code Webinars (10/10 & 11/10)		National APA conference 4/9 - 4/12/11 (JB); Balancing Nature and Commerce Course 4/18 - 4/20/11 (Team Course - JB member); Multi-state Regional Conference, Cumberland MD 5/6-5/7/11 (JB, SR, SB)			
Special Project	<b>Proposed amendment to Land Development Fees</b>	(Project Initiated - July 09)	July 2010 CC held Roundtable Discussion; Staff worked to address comments and concerns -- on 10/7/10 CC meeting agenda	CC considered cost recovery fees at 10/7/10 meeting and referred the fees back to the PC for reconsideration; PC directed staff to revise to reflect a 20% increase over current fees utilizing the new format; reflect the current ordinances; Staff worked to revise the fees for PC consideration in early 2011	PC reviewed 20% increase 1/25/11 and requested 10% increase instead; PC considered 10% increase 2/8/11 and forwarded these to CC for approval	Revised fees recommended to CC for approval -- possible 4/14/11 presentation to set PH	JQ, SR, JB	Public Hearing required for approval	Revised fees including fees for site plan review
Special Project	<b>340 Corridor Gateway Enhancement Study</b>	Spring 2011 - Summer 2012	In late June, 2010 staff attended a meeting re: a Nat'l Governor's Assoc. project that includes the 340 Corridor and a meeting with the WV DOH re: their 340 Corridor project; in late September, staff met with Comm. Widmyer to discuss potential work program for project	Initial meeting Technical Advisory Committee (TAC) was held for the purpose of defining study area boundary, determining what data exists, and developing an existing conditions report and related maps; multiple maps have been drafted and are under review; multiple related meetings with interested parties were held	Follow up TAC and organizational meetings held; US 340 Kick-off Meeting held 3/24/11 -- 130 people in attendance with 15 volunteer staff; on-going coordination with MPO staff to draft consultant scope of work	3/24 meeting summary and follow up; draft goals and objectives for 6/16/11 meeting; monthly TAC/Citizen Committee meetings in April and May; on-going discussion with DOH re: requirements for an enforceable Access Mgt. Plan	JB, SR, JQ, GIS Dept.	Public Hearing will be required when plan is drafted	Adoption of Small Area Plan as an amendment to the Comprehensive Plan; recommended amendments to the Zoning Ordinance and Subdivision Regulations; possible development of an Access Management Plan
Special Project	<b>2014 Comprehensive Plan</b>	Fall 2011 - Fall 2013; adoption 2014	No activity		contacted Shepherd University for recommendations regarding potential summer intern to initiate data analysis	hire summer intern to initiate data analysis			

**Third Quarterly Report on FY 2011 Work Plan County Commission**

PRIORITY	PROJECTS	TIME FRAMES from FY 10-11 Work Plan	Status or Number Completed (July 10 -- Sept. 10) <i>revised</i>	Status or Number Completed (Oct. 10 -- Dec. 10) <i>revised</i>	Status or Number Completed (Jan. 11 -- March 11)	Outstanding Tasks	REQUIRED RESOURCES/STAFF	REQUIRED HEARINGS	ANTICIPATED RESULTS
<b>NEW PROJECTS NOT INCLUDED IN FY 2011 WORK PLAN</b>									
Special Project	Urban Tree Canopy Grant and Planting Event	October 2010 - May 2011	Grant has been approved; MOU is being reviewed prior to signing	Intern hired; work effort underway - two-fold emphasis: development and adoption of Urban Tree Canopy goals by 5 cities and County; tree planting effort on public land	Urban Tree Canopy Plan Meeting held 1/25/11; Attended mtgs in Harpers Ferry (2/14/11) and Ranson (2/15/11 ); Tree Planting Meeting held 2/3/11; tree plantings scheduled, coordinated and prepared for; tree planting JHS 3/28/11	Urban Tree Canopy Plan Goals Meeting scheduled for 4/28/11; Mtgs in May for S'Town, C'Town, Bolivar; Tree Plantings scheduled, coordinated and prepared for Shipley, Page Jackson, Driswood, North Jefferson, Shepherd University, Ranson and C'Town parks in April and May	JB, city planners, Doug Griffith (intern), SR, JQ	CC approval of UTC Plan and Goals may require a hearing	
Special Project	JCOHOA Study Follow Up	September 2010 -- ?	Initial contacts have been made with WVU to determine interest and costs	no additional work planned	no additional work planned				
Special Project	Region 9 Model Stormwater Regulations	May 2010 - February 2011	Monthly Meetings and Review/Input into draft ordinance	Monthly Meetings and Review/Input into draft ordinance	Final meeting held 2/23/11; Final draft Model Stormwater Regulations available for consideration by various jurisdictions for incorporation into local regs	County staff should review Model Regs to consider best process for incorporating these locally (tentatively Fall 2011)	JB	Public Hearing may be required by both PC and CC	Stormwater regulations that reflect Chesapeake Bay standards

## Amy Puetz

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**From:** Jennifer Brockman [jbrockman@jeffersoncountywv.org]  
**Sent:** Thursday, April 07, 2011 3:13 PM  
**To:** 'Amy Puetz'  
**Cc:** 'Julia Quodala'  
**Subject:** FW: You are Invited - Joint APA Conference May 5th & 6th  
**Attachments:** Cumb MD Conf.pdf

Can you include this e-mail in the packets and the first 2 pages of the attachment re: the Regional Planning Conference?

Thanks

Jennie

Jennie Brockman  
Director, Planning and Zoning  
(304) 728-3228

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**From:** Julia Quodala [mailto:jquodala@jeffersoncountywv.org]  
**Sent:** Wednesday, March 23, 2011 4:35 PM  
**To:** 'Julia Quodala'; jsoule@planning.org; landlaw@verizon.net; johnabutterworth@gmail.com; lori.brannon@cityofcharleston.org; dan.vriendt@cityofcharleston.org; ssalisbury@charlestonareaalliance.org; mark.snuffer@cityofcharleston.org; markfelton@wvregion3.org; lcox@mbakercorp.com; tschoolcraft@mbakercorp.com; wstafford@wilbursmith.com; j1env@aol.com; john.r.mcgarrity@wv.gov; cyoung@te-associates.com; bmccabe@wv-commercial.com; sslushplan@aol.com; libby.ballard@cityofcharleston.org; mpennington@berkeleycountycomm.org; smorton@berkeleycountycomm.org; tsmith@cityofmartinsburg.org; gregkennedy@comcast.net; Mary\_Shaw@urscorp.com; tahallwv@gmail.com; seaari@yahoo.com; katie@charlestownwv.us; jm\_brock@msn.com; pdmills@aol.com; skleckner@cityofransonwv.net; Robert.Pennington@wv.gov; thankins@marshall.edu; jrbaldwin3@gmail.com; mcartelle@suddenlinkmail.com; annaziegler@gmail.com; jerryeberry@gmail.com; newriverpaddler@gmail.com; dmilburn@arh.org; tconnelly@wheelingwv.gov; hvizdos@ovrfa.org; rmyeager@parkersburg-wv.com; jen@rcdawv.org; dave.clark@meer.net; kathrynfarrell@hotmail.com; chet\_parsons@urscorp.com; baustin\_28412@yahoo.com; cfletcher@cityofmorgantown.org; david.bartlett@mail.wvu.edu; lmardis@cityofmorgantown.org; hugh.kierig@mail.wvu.edu; slkwvu@aol.com; info@morgantown.org; kwyrosdick@fairmontwv.gov; rwood@ma.rr.com; rwalton@marioncountywv.com; planning@fairmontwv.gov; hdyplusc@court.state.wv.us; alafail@clemson.edu; ljorgenson@planning.org; rknack@planning.org; bklein@planning.org; jbrown@bhjmpc.org; ltaylor@bhjmpc.org; mmoore@bhjmpc.org; bzimnox@bhjmpc.org; jresap@bhjmpc.org; sprice@bhjmpc.org; mikepap@bhjmpc.org; dsnelting@bhjmpc.org; belomar@belomar.org; mcraig@ntelos.net; dayoung@ntelos.net; ssalameh@ntelos.net; dslusher@ntelos.net; Drice@ntelos.net; jsigmon@ntelos.net; adamsc@ntelos.net; pwhite@boonecountywv.net; townofclay@frontiernet.net; TownofHandley@aol.com; townofpoca@pocatownhall.comcastbiz.net; samayor@suddenlinkmail.com; sarecorder@suddenlinkmail.com; saclerk@charterbn.com; TownofSylvester@Citynet.net; mcraig@ntelos.net; ric@wvregion3.org; R4wds@verizon.net; jim.mylott@movrc.org; regionvi@regionvi.com; rwagner@regionvii.com; mail@regioneight.org; ccrabtree@region9wv.org; akelley@region9wv.com; mball@region9wv.com; bkidwell@region9wv.com; randy.durst@movrc.org; tracy.higgins@movrc.org; vince.post@movrc.org; fred.rader@movrc.org; baustin@moncpc.org; dulanyoil@comcast.net; statler4bord@hotmail.com; moncom@aol.com; rgordon@hepmpo.net; Clifford E. Taylor; Daniel Hayes; 'Eric Smith'; John Maxey; Morgan L. Etters; Thomas Trumble; 'Walt Pellish'; William Kelly Baty  
**Cc:** jbrockman@jeffersoncountywv.org; 'Seth Rivard'; 'Steve Barney'; cfletcher@cityofmorgantown.org  
**Subject:** You are Invited - Joint APA Conference May 5th & 6th

We have been asked to help spread the word. The APA Chapters of Maryland, Pennsylvania and West Virginia are jointly hosting a Spring Conference on May 5<sup>th</sup> and 6<sup>th</sup> in Cumberland, MD. The Spring Regional Conference is timed to coincide with the celebration of the 200th anniversary of the beginning of the construction of the National Road in Cumberland, Maryland. Join planners from the three states linked by this first national infrastructure project as they share ideas, explore best practices and discuss lessons learned breaking new ground to create partnerships for building sustainable communities. The two day conference offers participants the opportunity to earn up to 10 CM credits, including ethics and law.

Please be sure to view the attachment above containing the Preliminary Program and special photos of Cumberland, MD. Also, please feel free to forward this message to any person who may be interested in attending.

To register for this conference, please go to:

<http://events.constantcontact.com/register/event?llr=avw45wcab&oeidk=a07e3l3iz18eff5c3d8>

*Julie Quodala*

Office Manager  
Departments of Planning and Zoning  
Jefferson County Commission  
(304) 724-6291

*This message was sent on behalf of Jennifer Brockman, Director of the Jefferson County Departments of Planning and Zoning. Our office has agreed to provide notice to potential attendees of this event and WV APA members. As such, American Planning Association database information (i.e. e-mail addresses) is confidential and may be used only for internal Chapter and Division purposes, such as newsletter mailings, electronic newsletters, and other mailed or e-mailed communications from the Chapter or Division. Please do not sell, send, trade or give away APA digital member information. Thank you in advance for complying with APA Policy.*



**Preliminary Program  
2011 Regional Conference  
May 5 – 6  
Cumberland, Maryland**

**THURSDAY, MAY 5**

8:00 am Registration Opens – Meet the Exhibitors

8:00 – 10:00 am Breakfast

**Morning Session**

9:45 – 10:00 am Welcome and Opening Remarks – Mayor Brian K. Grim

RLUIPA: What You Don't Know About the Federal Civil Rights Law on Land Use Could Hurt

10:00 – 11:30 You

*Speaker: Amanda Stakem Conn, Esq. – Maryland Department of Planning*

11:30 – Noon Meet the Exhibitors

**Luncheon Keynote Speaker**

12:00 – 1:30 pm What's Up With Downtown?

*Speaker: Kennedy Lawson Smith – Community Land Use and Economics, LLC*

**Afternoon Sessions I**

Historic Preservation Panel Discussion: **Topic to be announced**

*Speakers: to be announced*

The Impacts of Vanpooling in Pennsylvania and Future Opportunities

*Speakers: Sabina Deitrickh, Chris Briem*

1:45 – 3:00 pm

Neighborhoods for All Ages – An Initiative for Senior Supportive Neighborhoods

*Speakers: Rachel Edds, AICP; Beth Harber, Banghwa Lee Casado, PhD, MSW and Amy Cohen-Callow PhD*

Developing Sustainability Through Compatible Economic Development

*Speakers: Ronald K. Bednar, AICP and Carol Devolve*

3:00 – 3:30 pm Refreshment Break – Meet the Exhibitors

**Afternoon Sessions II**

A New Era of Protecting the Appalachian National Scenic Trail – Pennsylvania's Act 24

*Speaker: Robert Kerns,*

3:30 – 4:45 pm

Building Partnerships: The Nuts and Bolts of Maryland Sustainable Communities Act 2010

*Speaker: Matthew J. Power*

Frederick Maryland's US 40: Reinventing the Commercial Strip

*Speakers: Nick Colonna, AICP, and Joe Adkins, AICP*

**Thursday - Tours and Events**

?:00

Tour of the "Queen City": An hour long guided tour of Cumberland's historic town centre

Start and end – Lobby of Holiday Inn - **Free**

9:15 – 10:00 pm

"Star-Gazers Tour of the Spring Heavens" Night sky tour along the Great Allegheny Passage

Trail - **Free**

**Dinner on the Town:** Join in on the fun! Experience the shopping, dining, arts and entertainment in the heart of Cumberland's charming downtown district.

March 18, 2011



**Preliminary Program  
2011 Regional Conference  
May 5 – 6  
Cumberland, Maryland**

**FRIDAY, MAY 6**

7:00 am Registration Opens – Meet the Exhibitors

7:00 – 9:00 am Breakfast

**Morning Session I**

8:45 – 10:15 am Environmental Law: Issues in Shale Gas Development and Emerging Alternative Energy Sectors  
*Speakers: John W. Ubinger, Jr. and John J. Walliser with the Pennsylvania Environmental Council (PEC)*

Watershed-Based Planning Approach to Sustainability of Our Regional Water Resources  
*Speaker: Pamela C. Dodds, PhD*

9:15 – 10:15 am ESDs and TMDLs vs. TODs and TNDs  
*Speakers: David Ager AICP, Stuart Sirota, AICP; Michael Wagner*

**Joining Forces: Creating Community Advocacy for Brownfields Development**  
*Speaker: Sean C. Carrigan, AICP*

10:15 – 10:30 am Refreshment Break – Meet the Exhibitors

**Morning Session II**

Challenges of Alternative Energy Sources  
*Speakers: David Ager, Rebecca Rush, Dave Umling, AICP and Larry Thomas*

10:30 – 11:45 am Going Green in the Laurel Highlands: Collaborative, Strategic and Sustainable Planning in Ohio  
*Speakers: James A. Segedy, PhD, FAICP and Lisa Hollingsworth-Segedy AICP*

Higher Ground: Best Practice Language for Floodplain Management Ordinances  
*Speakers: Mari Radford CFM, Nicole Lick FEMA Region III, Kevin Wagner CFM*

Local Government Partnering with Downtown Investors in a Down Economy  
*Speakers: Kathleen A. Maher*

Luncheon Planning Ethics Session

12:00 – 1:30 pm *Anna Breinich – President of the American Institute of Certified Planners*

**Friday - Tours and Events**

2:00 – 3:30 pm C&O Canal Tour: “Cumberland Canal Terminus: Transportation Crossroad and Boat Building Center”  
Guide museum and walking tour of the historic canal basin with stops at the Footer Dye Works, the replica canal boat and the Potomac River overlook.  
Starting location: Canal Place **Free**

March 18, 2011

In Mr. Polk's absence Mr. Boyde addressed a proposed Energy Policy to be used in County buildings. Mr. Polk is proposing to establish a set range of comfort levels based on heating and air conditioning. He proposes eventually eliminating space heaters completely from the buildings. Discussion followed and the Commissioners suggested that Mr. Boyde meet with the Department Heads for suggestions.

**(10) Training for Persons Appointed to the Planning Commission:**

Ms. Noland voiced her agreement with the training and suggested that prior to the first meeting the appointees should attend an APA Webinar, with continuing education once a year thereafter. She recommended that the County should provide funds necessary for this training.

Discussion followed with all Commissioners in agreement as to the necessity for the training. Ms. Morgan suggested that the Planning Commission should look into web-based training also.

Ms. Noland made a motion that the training be required to occur "within 90 days of taking office." It was requested that the Planning Commission be asked to review the policy that each person appointed to the Planning Commission be required to attend training within 90 days of their appointment by the APA or some qualified organization recommended by the APA. Each year thereafter the appointee shall attend continuing education which shall be paid for by Jefferson County. Ms. Widmyer seconded the motion and it was unanimously passed subject to Planning review.

**(11) Approval of Contract Agreement – Victims of Crime Act Grant Award:**

Mr. Manuel made a motion that the contract Agreement for Victims of Crime Act Grant Award be approved. Mr. Surkamp seconded the motion and it was unanimously approved.

**(12) Request for Use of County Meeting Room:**

A request was made by the Old Charles Town Library and the Jefferson County Museum to utilize the County Commission meeting room from 2 to 5 p.m. on October 8 and from 9:00 a.m. to 5:00 p.m. on October 9, 2010

Ms. Morgan made a motion to approve the reservation. Mr. Manuel seconded the motion and it was unanimously approved.

**(13) Community Participation Grant Program – Camp Frame 4-H Association:**

Request for approval of a Grant Contract and Resolution with regard to the Community Participation Grant Program – Camp Frame 4-H association in the amount of \$5,000.00.

**Jefferson County, West Virginia**  
**Department of Planning & Zoning**  
116 East Washington Street; 2<sup>nd</sup> Floor  
P.O. Box 338  
Charles Town, West Virginia 25414

Email:planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228  
Fax: (304) 728-8126

October 4, 2010

**PRE-PROPOSAL CONFERENCE MEMORANDUM**

MEETING DATE: Wednesday, September 22, 2010 @ 11:30 am

COMPANY NAME: Jefferson Asphalt Production Company, Inc.  
Contact Name: Joe Hebda, Jefferson Asphalt  
Mailing Address: P.O. Box 370; Charles Town, West Virginia 25414  
Phone Number: (304) 725-2539

Property Owner: Same

Physical Address: 9390 Middleway Pike; Charles Town, West Virginia 25414

PROPOSED PROJECT: NON-RESIDENTIAL MAJOR SITE DEVELOPMENT

PRINCIPAL PERMITTED USE:

DISTRICT: Charles Town / MAP NUMBER: 13 / PARCEL NUMBER: 7  
ZONING DISTRICT: RURAL  
TOTAL PARCEL SIZE: 34.27 Acres

**MEETING DESCRIPTION:**

- The meeting attendees included Zoning Administrator, Steve Barney; County Planner, Seth Rivard; County Engineer, Jonathan Saunders; County Compliance Officer, Mason Carter, County Inspector, Mike Monaghan; Joe Hebda, Jefferson Asphalt; Dan Dulyea, Dulyea Construction; Consultant Dirk Stansbury, P.E.; Mike and John Thomas, of Jefferson Asphalt.
- Overview: The proposed project consists of an expansion to the property with the addition of two new buildings to be used for a new office and also a maintenance building/shop.
- Anticipated Time-Frame and Deadlines.
- FEES: Upon submission, all applicable Site Plan and Building Permit fees, as required by the Engineering Department.  
Payment(s): **None Received**
- **ADDITIONAL RELEVANT INFORMATION TO BE CONSIDERED:**

The subject property includes area within the 100-year floodplain. However, no additional floodplain-related requirements will apply if the proposed buildings are set back 25' from the floodplain, as shown on the most recent FEMA maps. The site plan must delineate the location of the floodplain.

A site plan for an addition on the property was approved in 2002 (case #S02-14). Because the land use is not a permitted principal use in the Rural District, it is a nonconforming use; however, Section 4.3 (g) notes that the nonconforming use restrictions of the Zoning Ordinance do not apply to industrial uses that existed at the time of adoption of the ordinance. Such industries may expand provided that they meet site plan standards. The Applicant may want to consider a future zoning change or Conditional Use Permit to address the nonconforming status of the use.

The proposed development may not require additional Stormwater Management (SWM), because the proposed structures are to be built on areas of existing gravel. Per the Applicant, the prior site plan addressed SWM using an infiltration trench.

One building permit for each building must be submitted, with full architectural. Permits may be submitted with the site plan for simultaneous review (permits released only after bonding).

COMMENTS:

Per the Applicant, accessible parking is already in place, and the WVDOH built a new entrance to the property as a result of the 2002 site plan.

FINDING:

Per Section 4.10 of the Zoning Ordinance, the ILP Ordinance, and current Subdivision Regulations, the proposed plan concept will require Full Site Plan submission, and may comply with the processing conditions for a Major Site Development.

EFFECT OF FINDING:

The processing of a Site Plan is required. Building Permits must also be obtained, prior to the start of construction, and appropriate approvals from all Local, State and Federal Agencies, are necessary for the issuance of a Zoning Certificate. Contact the Jefferson County Addressing Department for additional processing information.

Sincerely,

Steve Barney  
Zoning Administrator

**Jefferson County, West Virginia**  
**Department of Planning & Zoning**  
116 East Washington Street; 2<sup>nd</sup> Floor  
P.O. Box 338  
Charles Town, West Virginia 25414

Email: [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org)

Phone: (304) 728-3228  
Fax: (304) 728-8126

January 20, 2011

**PRE-PROPOSAL CONFERENCE MEMORANDUM**

MEETING DATE: Wednesday, January 12, 2011 @ 10:00 a.m.

CONTACT NAME: Ed Johnson  
Company Name: Ed Johnson & Associates, Inc.  
Mailing Address: 674 Acorn Circle; Harpers Ferry, West Virginia 25425  
Phone Number: (304) 279-9924

Property Owner: Bettye K. Mason

Physical Address: 18 Summit Point Road; Summit Point, West Virginia 25446

PROPOSED PROJECT: RESIDENTIAL MINOR SUBDIVISION / Parent-to-Child Transfer

ZONING DISTRICT: TAX DISTRICT: KABLETOWN - 06 / MAP: 16 / PARCEL: 3  
RURAL

INDIVIDUAL PARCELS:  
TOTAL PARCEL SIZE: 16.84 Acres

**MEETING DESCRIPTION:**

- Need to declare density as required in the Rural District.
- WVDOH entrance permit
- Health Department must approve septic and well, including a perk test on the Residue Lot.
- The meeting attendees included Zoning Administrator, Steve Barney; County Planner, Seth Rivard; County Engineer, Jonathan Saunders, Jessica Gormont and Wendy Shaffer with GIS/Addressing Department; and Consultant, Ed Johnson.
- Overview: The proposed project consists of creating a one-acre parcel around the shop and house, using the existing gravel drive to serve the new lot, for conveyance to Mrs. Mason's daughter in a Parent-to-Child transfer. Said transfer includes a five-year restriction on the sale of the new lot.
- Tentative site capacity calculations. A density note must be placed on the Plat. Future subdivision rights for this property are one additional lot and a Residue.
- Potential environmental constraints and mitigation measures as required by Zoning Ordinance, Art. 4.
- Anticipated Time-Frame and Deadlines.
- Additional relevant information to be considered: Outsale Lot (Parcel 3.1) was created in June 1976 (DB 407, PG 580); Outsale Lot (Parcel 3.2) was created in March 1976 (DB 437, PG 366). Parent-to-Child Lot (Parcel 3.3) was created in July 2001 (DB 952, PG 384).
- 50' Access Easement required per Section 20.201 of Jefferson County Subdivision and Land Development Regulations. Easement can be created by Deed and recordation information shown on Plat.
- 15' Side Yard Setback off of Access Easement as allowed in the new Corner Lot Policy.

- Show Wetland & a 50' Setback.
- Three structures on an Access Easement requires a road name provided by the GIS/Addressing Office.
- Allow access to Residue without a Waiver. Dedicate Right-of-Way to 50', per Section 20.201(A)2.
- Application Fee: **Currently under review and may be subject to change.**
- Payment(s): **None Received**

**COMMENTS:**

Having 200' of frontage entitles the use of a second entrance if 50' right-of-way width or dedication equals 50' to the State Highway.

**FINDING:**

The Minor Subdivision concept plan appears to satisfy the Subdivision and Land Development Regulation requirements.

**EFFECT OF FINDING:**

The Applicant may proceed with the engineering of the proposed Minor Subdivision. Upon receipt of the required material, the Department of Planning and Zoning will process said Minor Subdivision within the time line requisites stated in the Subdivision Regulations.

Sincerely,

Seth Rivard  
County Planner

SR / clc  
cc: Engineering and Building Permit Department

**Jefferson County, West Virginia**  
**Department of Planning & Zoning**  
116 East Washington Street; 2<sup>nd</sup> Floor  
P.O. Box 338  
Charles Town, West Virginia 25414

Email: [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org)

Phone: (304) 728-3228  
Fax: (304) 728-8126

February 16, 2011

**PRE-PROPOSAL CONFERENCE MEMORANDUM**

MEETING DATE: Wednesday, February 9, 2011 @ 10:00 a.m.

CONTACT NAME: Ed Johnson  
Company Name: Ed Johnson & Associates, Inc.  
Mailing Address: 674 Acorn Circle; Harpers Ferry, West Virginia 25425  
Phone Number: (304) 279-9924

Property Owner: Paul H. and Myrtle F. Liskey Estate c/o David Liskey

Physical Address: 1909 South Childs Road; Keaneyville, West Virginia 25430

PROPOSED PROJECT: RESIDENTIAL MINOR SUBDIVISION

ZONING DISTRICT: TAX DISTRICT: MIDDLEWAY - 07 / MAP: 21 / PARCEL: 2  
RURAL

TOTAL PARCEL SIZE: 253.39 Acres

**MEETING DESCRIPTION:**

- Need to declare density as required in the Rural District.
- The meeting attendees included County Planner, Seth Rivard; County Engineer, Jonathan Saunders; and Ed Johnson.
- Overview: In an effort to satisfy a pending Court Order by Judge Steptoe, the proposed project consists of subdividing the Liskey Estate between two siblings, David Liskey and brother, James Liskey, who will receive 100 acres.
- Tentative site capacity calculations.
- Potential environmental constraints and mitigation measures as required by Zoning Ordinance, Art. 4.
- Anticipated Time-Frame and Deadlines.
- Additional relevant information to be considered: Property has never been subdivided - Parcel 2.1 was created by Civil Action in November, 1986.
- Because division is Court Ordered, can be processed as a Deed with Plat as an exhibit.
- Note setbacks as required in the Rural District.
- Add note that no setback violation is created by said division of land.
- Discussed "Subdivision Definition and Exemption"
- Add "Definition of Subdivision" from Division 26.200 to Deed, as follows:  
Subdivision.  
A. The division or re-division of a lot, tract, or parcel of land, by any means, including by means of a plan or a description by metes and bounds, into two or more lots, tracts, parcels, or other divisions of land, for the purpose, whether immediate or future, of

lease, of the transfer of ownership, or of building development, exempting, however, the division of land for agricultural purposes into parcels of more than ten acres not involving any new streets or easements of access, divisions of property by testamentary or intestate provision, or divisions of property upon court order; or

B. The division or allocation of land for the opening, widening, or extension of any street or streets, or the division or allocation of land as open spaces for common use by owners, occupants, or leaseholders, or as easements for the extension and maintenance of public sewer, water supply, storm drainage, or other public facilities.

- Application Fee: **Currently under review and may be subject to change.**
- Payment(s): **None Received**

**FINDING:**

As a Court Order, matter is exempt from Subdivision and Land Development Regulation requirements.

**EFFECT OF FINDING:**

The Applicant may proceed with a Deed and Plat as an exhibit. Upon receipt of the required material, the Department of Planning and Zoning will stamp the Deed and Plat for recording by the County Clerk.

Sincerely,

Seth Rivard  
County Planner

SR / clc  
cc: Engineering and Building Permit Department

Ed Johnson & Associates, Inc.  
674 Acorn Circle  
Harpers Ferry, West Virginia 25425

**Jefferson County, West Virginia**  
**Department of Planning & Zoning**  
116 East Washington Street; 2<sup>nd</sup> Floor  
P.O. Box 338  
Charles Town, West Virginia 25414

Email: [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org)

Phone: (304) 728-3228  
Fax: (304) 728-8126

February 23, 2011

**PRE-PROPOSAL CONFERENCE MEMORANDUM**

MEETING DATE: Wednesday, February 16, 2011 @ 3:00 pm

CONTACT NAME: MIKE SHEPP           mshepp@appalachiansurveyspllc.com  
Company Name: APPALACHIAN SURVEYS, PLLC  
Address: P.O. BOX 342; CHARLES TOWN, WEST VIRGINIA 25414-0342  
Phone Number: (304) 724-5008

Property Owner: RIVER RIDERS, INC. / MATT KNOTT

Physical Address: 408 ALSTADTS HILL ROAD; HARPERS FERRY, WV 25425

PROPOSED PROJECT: NON-RESIDENTIAL MAJOR SITE DEVELOPMENT

DISTRICT: HARPERS FERRY – 04 /MAP: 9-2 /PARCEL(S): 63, 63.1,  
62, 69 & 70

ZONING DISTRICT: RESIDENTIAL-LIGHT INDUSTRIAL-COMMERCIAL

TOTAL PARCEL SIZE: 0.756 Acres; 3.0 Acres; 1.9 Acres; 0.935 Acres; 2.56 Acres (respectively)

**MEETING DESCRIPTION:**

- The meeting attendees included Zoning Administrator, Steve Barney; County Planner, Seth Rivard; County Engineer, Jonathan Saunders; County Compliance Officer, Mason Carter; County Inspector, Mike Monaghan; GIS Specialist, Jessica Gormont and Administrative Assistant, Wendy Shaffer, with GIS/Addressing Department; Consultants, Mike Shepp and Lisa McCauley with Appalachian Surveys, PLLC; Consultant, Paul Raco, P. J. Raco Consultants, LLC and Owner, Matt Knott.
- Overview: The proposed project consists of expanding the existing Business into recently acquired, adjacent properties.
- Expansion and/or construction of multiple building beyond 5,000 sq. ft.
- Existing houses and garages are proposed to stay.
- Future expansion possibilities are shown beyond the current proposed expansion.
- This will process a Major Site Plan and a Full Site Plan.
- Consideration of sidewalks along Alstadts Hill Road, required per Subdivision Regulations, Appendix B, Sec. 9.6j, Section 22.208 and other Sections.
- Requested gravel parking lot
  - As part of a Major Site Plan process, will need to state at Concept Plan that gravel is proposed.
  - Reviewed Low Impact Development (LID) design as part of permitting gravel parking areas.
- ROW or access easement is owned by River Riders.

- Lot consolidation will be required as individual lots will impact future structures and would trigger a need for a shared parking agreement across lot lines, even though all of site and use is owned by one entity.
- Additional road way dedication may be required as part of site plan.
- New sign proposed at a new entrance along Alstadts Hill Rd.
- Center drive aisle proposed to be paved.
- The processing of a Minor Site Plan for the center drive and gravel parking area only, located at the southern portion of the property, was also discussed. Possible restrictions may include a 5,000 sq. ft. size limitation on new structures or prohibiting the construction of new buildings altogether.

This would require:

- A minor process of a Full Site Plan showing the proposed improvements and relocated entrances.
- A waiver to allow gravel parking.
- Merging the lots to keep improvements on site and no shared parking agreement across lot lines.
- GIS/Addressing Office mentioned the need for address of new structures.
- Updating or receiving new WVDOH access permits based on improvements.
- Potential environmental constraints and mitigation measures as required by Zoning Ordinance.
- Anticipated Time-Frame and Deadlines.
- Additional relevant information to consider: River Riders, Inc. is a longstanding Business that has previously processed Site Plans under former Jefferson County Regulations.
- FEES: Upon submission, all applicable Site Plan and Building Permit fees, as required by the Engineering Department.
- Payment(s): **None Received**

**FINDING:**

Per Section 4.10 of the Zoning Ordinance and current Subdivision Regulations, the proposed plan concept will require a Full Site Plan submission, and may comply with the processing conditions for Major Site Plan. It may be feasible to build some preliminary improvements via a Minor Site Plan.

**EFFECT OF FINDING:**

The processing of a Site Plan is required. Building Permits must also be obtained, prior to the start of construction, and appropriate approvals from all Local, State and Federal Agencies, are necessary for the issuance of a Zoning Certificate. Contact the Jefferson County Addressing Department for additional processing information.

Sincerely,

Seth Rivard  
County Planner

SR/clc  
cc: Engineering and Building Permit Department

Mike Shepp; Appalachian Surveys, PLLC  
P.O. Box 342; Charles Town, WV 25414

Paul Raco; P. J. Raco Consultants, LLC  
P.O. Box 35; Charles Town, WV 25414

**Jefferson County, West Virginia**  
**Department of Planning & Zoning**  
116 East Washington Street; 2<sup>nd</sup> Floor  
P.O. Box 338  
Charles Town, West Virginia 25414

Email:planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228  
Fax: (304) 728-8126

March 1, 2011

**PRE-PROPOSAL CONFERENCE MEMORANDUM**

MEETING DATE: Wednesday, February 16, 2011 @ 2:00 p.m.

OWNER / CONTACT: Myrna Firestone and Russell Firestone, III  
Mailing Address: 3101 Dumbarton Avenue, NW; Washington, DC 20007  
Phone Number: (202) 338-2215 / (202) 812-0340 / mjfires@verizon.net

Physical Address: 329 Clubhouse Drive; Harpers Ferry, West Virginia 25425

PROPOSED PROJECT: NON-RESIDENTIAL MINOR SITE DEVELOPMENT

DISTRICT: Kabletown – 06 / TAX MAP: 6E / PARCEL: 102

ZONING DISTRICT: RURAL

TOTAL PARCEL SIZE: 1 Acre (Section 1C #30, #31 and #32)

**MEETING DESCRIPTION:**

- The meeting attendees included Zoning Administrator, Steve Barney; County Planner, Seth Rivard; County Engineer, Jonathan Saunders; County Inspector, Mike Monaghan; County Compliance Officer, Mason Carter; and Owner Myra Firestone and Joan O'Dell.
- Overview: The proposed project consists of the establishment/operation of a six-bedroom Bed & Breakfast to include receptions, etc.
- Proposed Bed & Breakfast to be situated on Lot #32. Vacant Lots #30 & #31 also owned by Applicant.
- Breakfast only meal provided. Limited to four (4) Receptions annually.
- Owner or Caretaker must remain onsite and accessible to guests during the entirety of their stay.
- Potential environmental constraints and mitigation measures as required by Zoning Ordinance.
- Anticipated Time-Frame and Deadlines.
- All structures must meet Building Code, IBC 2009. Building Permit submittal requires full architectural drawings.
- Approval of a Bed & Breakfast is required from the Board of Zoning Appeals, per Section 9.8 of the Zoning Ordinance.
- Must obtain Department of Health Septic Permit for Bed & Breakfast.
- Necessitates parking area which will require 9" gravel to meet Zoning Ordinance & Subdivision Regulation standards. Must also meet ADA Parking Standards and have accessible route from parking area to the building. Documentation confirming that the required parking exists must be provided before a "No Site Plan" consideration is applicable.
- Alternate offsite parking will require approval from the Departments of Planning, Zoning and Engineering.
- Applicant to provide Site Plan illustrating proposed parking.
- FEES: Upon submission, all applicable Site Plan and Building Permit fees, as required by the Engineering Department.
- Payment(s): **None Received**

FINDING:

Per Section 4.10 of the Zoning Ordinance, the ILP Ordinance, and current Subdivision Regulations, the proposed Plan Concept will require a Limited Site Plan submission, and may comply with the processing conditions for Minor Site Development.

EFFECT OF FINDING:

The processing of a Site Plan is required. Building Permits must also be obtained, prior to the start of construction, and appropriate approvals from all Local, State and Federal Agencies, are necessary for the issuance of a Zoning Certificate. Contact the Jefferson County Addressing Department for additional processing information.

Sincerely,

Seth Rivard  
County Planner

SR/clc  
cc: Engineering and Building Permit Department

**Jefferson County, West Virginia**  
**Department of Planning & Zoning**  
116 East Washington Street; 2<sup>nd</sup> Floor  
P.O. Box 338  
Charles Town, West Virginia 25414

Email: [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org)

Phone: (304) 728-3228  
Fax: (304) 728-8126

FEBRUARY 24, 2011

**PRE-PROPOSAL CONFERENCE MEMORANDUM**

MEETING DATE: Wednesday, February 16, 2011 at 1:00 pm

CONTACT NAME: Matthew W. Grove, AIA, Consultant      Matthew@GDAaia.com  
Grove & Dall'Olio Architects PLLC      (304) 267-2120

ADDRESS: 218 West King Street; Martinsburg, WV 25401

PROPERTY OWNER: Harry F. Byrd III  
COMPANY NAME: Hawthorn Associates, LLC  
ADDRESS: P.O. Box 472; Berryville, Virginia 22611  
PHONE NUMBER: 540-955-1384

PHYSICAL ADDRESS: 9 Hawthorn Avenue; Summit Point, West Virginia 25446

PROPOSED PROJECT: NON-RESIDENTIAL MINOR SITE DEVELOPMENT

ZONING DISTRICT: DISTRICT: KABLETOWN - 06 / MAP: 16 / PARCEL: 13  
RURAL

TOTAL PARCEL SIZE: 230.70 Acres

**MEETING DESCRIPTION:**

- The meeting attendees included Zoning Administrator, Steve Barney; County Planner, Seth Rivard; County Engineer, Jonathan Saunders; County Inspector, Mike Monaghan; Consultant, Matthew Grove; and Owner, Harry F. Byrd III.
- Overview: The proposed project consists of converting the Hawthorn residential property into a Bed & Breakfast and to host events, to include Weddings, Reunions and Anniversary gatherings.
- Additional relevant information to consider includes: The Hawthorn property was approved for use as a Bed and Breakfast by the Board of Zoning Appeals on 10/6/04. This approval continues to be valid.
- Potential environmental constraints and mitigation measures as required by Zoning Ordinance.
- Anticipated Time-Frame and Deadlines.
- FEES: Upon submission, all applicable Site Plan and Building Permit fees, as required by the Engineering Department.
- Payments(s): **None Received**

**COMMENTS:**

- The Planning and Zoning Department must approve a Zoning Certificate application before the land use may commence.

- The property owners have the option to seek a Board of Zoning Appeals variance to conduct additional receptions per year (i.e. more than 4) and/or to increase the number of bedrooms above the 7 currently permitted. Both variance requests may be submitted on the same application. The submittal deadline for the next Board of Zoning Appeals meeting is Friday, March 11, for the Thursday, April 21, 2011 meeting.
- Per the Engineering Department, for occupancy as a Bed & Breakfast, the building must be built to a commercial standard (R1 requirements of 2009 International Building Code). Any changes in the adopted code between the time when the building plans were originally approved and the time when said adopted code went into effect must be addressed.
- The parking requirement for the Bed and Breakfast use (aside from any requirements for receptions) is one (1) space per bedroom, consistent with the land use, "Motel, Tourist Home." At least one van-accessible parking space is required, meeting ADA standards. Applicant to provide documentation confirming ample parking exists to process as "no Site Plan".
- Rural Site Plan Standards, Section 20.203(D), of the Subdivision and Land Development Regulations may be used for any parking improvements required for receptions. Low-Impact Development (LID) techniques may be utilized to satisfy stormwater management requirements.
- A 22' access driveway is required if two-way access is provided. The Applicant has the option of seeking a Planning Commission waiver for this standard, in addition to the construction requirements for the parking surface.
- The Health Department must approve septic and water for the proposed land use.
- A WVDOH entrance permit is required.

**FINDING:**

Per Section 4.10 of the Zoning Ordinance, and current Subdivision Regulations, the proposed plan concept may require a Site Plan submission, and may comply with the processing conditions for Minor Site Development.

**EFFECT OF FINDING:**

The processing of a Site Plan, per Section 20.203A through D, is necessary if additional parking is required. Building Permits must also be obtained, prior to the start of construction, and appropriate approvals from all Local, State and Federal Agencies, are necessary for the issuance of a Zoning Certificate. Contact the Jefferson County Addressing Department for additional processing information.

Sincerely,

Steve Barney  
Zoning Administrator

SB/clc  
cc: Engineering and Building Permit Department

Matthew Grove; Grove & Dall'Olio Architects, PLLC  
218 West King Street; Martinsburg, West Virginia 25401

# Law Offices of Paul G. Taylor, PLLC

Paul G. Taylor  
Licensed in DC, VA, WV  
e-mail: taylorpaulg@aol.com

134 West Burke Street  
Martinsburg, West Virginia 25401  
Phone: (304) 263-7900  
Fax: (304) 263-5545

Matthew L. Harvey  
Licensed in WV  
e-mail: matt\_harv@yahoo.com

January 26, 2011

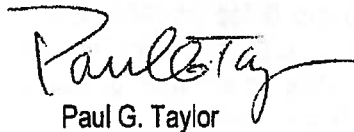
Tim Boyde, County Administrator  
Jefferson County Commission  
P.O. Box 250  
Charles Town, WV 25414

Tim:

Please share my enclosed resume with the County Commission in connection with their considerations for positions on the Jefferson County Planning Commission.

Please do not hesitate to contact me with any questions or comments.

Truly Yours,



Paul G. Taylor

Enclosure (as stated)

**RECEIVED**

JAN 28 2011

Jefferson County Commission

## PAUL G. TAYLOR

### Office:

134 West Burke Street  
Martinsburg, WV 25401  
Telephone: (304) 263-7900  
Facsimile: (304) 263-5545

### Home:

789 Willowdale Drive  
Shepherdstown, WV 25443  
Cell: (304) 279-4781  
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### EDUCATION

University of Richmond, The T.C. Williams School of Law. J.D., May 1991.  
George Mason University. B.A., May 1987. Major: Sociology.

### PROFESSIONAL EXPERIENCE

#### **Law Offices of Paul G. Taylor, PLLC, Martinsburg, West Virginia.**

Principal. General practice with an emphasis on civil litigation, criminal defense and domestic relations. Responsibilities also include office management and client development.

January 1999 - present.

#### **Henry, Taylor & Janelle, Martinsburg, West Virginia.**

Partner. Engaged in civil litigation. Substantial participation in criminal defense.

Responsibilities also included management of a significant number of criminal and civil case files; active participation in all phases of litigation; office management; and client development.

May 1994 - December 1998.

#### **Wallace, Harris, Sims & Henry, Martinsburg, West Virginia.**

Partner. Engaged in civil defense litigation with emphasis on insurance defense.

Substantial participation in criminal defense.

September 1991 - May 1994.

### BAR ADMISSIONS

District of Columbia, 2002.

Virginia, 1993.

West Virginia, 1991.

### PUBLISHED CASES

State v. Lopez, 476 S.E.2d 227 (WV 1996)

Bowers, et al. v. Wurzburg, et al., 501 S.E.2d 479 (WV 1998)

Bowers, et al. v. Wurzburg, et al., 519 S.E.2d 148 (WV 1999)

Bowers, et al. v. Wurzburg, et al., 528 S.E.2d 475 (WV 1999)

Feliciano v. 7-Eleven, Inc., 559 S.E.2d 713 (WV 2001)

Duke v. Richards, 600 S.E.2d 182 (WV 2004)

State v. Fiske, 607 S.E.2d 471 (WV 2004)

State v. Spade, 695 S.E.2d 879 (WV 2010)

## **PROFESSIONAL AFFILIATIONS**

Million Dollar Advocates Forum  
National Association of Criminal Defense Lawyers  
American Bar Association  
American Trial Lawyers Association  
WV Trial Lawyers Association;  
Approved Attorney, First American Title Insurance Company  
Title Insurance Agent, Stewart Title Guaranty Company  
Special Fiduciary Commissioner, Berkeley County, WV  
Counsel, Berkeley County Deputy Sheriffs' Civil Service Commission

## **SPECIAL ACCOMPLISHMENTS**

Henry, et al. v. Maytag, et al. Lead plaintiffs' counsel in landmark plant closing litigation resulting in a \$16.5 million dollar settlement in August 1995.

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February 23, 2011

Jefferson County Commission  
Po Box 250  
124 East Washington St.  
Charles Town, WV 25414

RECEIVED

FEB 25 2011

JEFFERSON COUNTY COMMISSION

Dear Commissioners,

The purpose of this letter is to again volunteer to become a member of the Jefferson County Planning Commission. As all of you know I am an active member of the Jefferson County Community and as such aware of many of the issues facing the county and the needs of our county. This request will be my third since 2007.

In order to dispel any preconceived notion that I oppose zoning, let me state for the record this county needs good logical zoning that will secure the quality of life we all strive for and to ensure we make decisions based on their merits not political concerns. We need to stream line our process as much as possible and focus on having a business friendly attitude that will foster the type of employers that bring good stable employment to our county.

Being retired I have the necessary time available to devote to the Planning Commission's needs.

Sincerely yours,



Ed Burns