

# Jefferson County Zoning and Land Development Ordinance

Jefferson County,  
West Virginia

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.



## 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



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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 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.  
[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 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]

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 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 such study to determine the extent that this Ordinance may need to be amended. Such studies may include, but, are not limited to, information on recreation, groundwater, hazardous wastes, and historic structures.

Changes that arise from this provision may include additions and/or deletions of sections in this Ordinance which would further encourage the proper management and preservation of our Natural and Cultural Resources. All such recommended changes are subject to Section 12.1.

## 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 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 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”.
Adjacent/ Confronting Affected Property Owner	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]
Adult Uses	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]

- Adult Arcade 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]
- Adult Bookstore 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 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 Theater 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 The use of land for a bona-fide farming operation. This includes:

1. Commercial Agricultural Enterprise;
2. Agriculture, Ranching;
3. Aquaculture;
4. Apiculture;
5. Horticulture;
6. Viticulture;
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 Facility for minimum periods of three (3) months for beef and pork and two (2) for lamb and poultry;
8. Animal Husbandry; including, but not limited to, the care and raising of livestock, equine, and fur-bearing animals;
9. Poultry husbandry and the production of poultry, game birds and poultry products;
10. Dairy production and processing of dairy products;
11. Horse Breeding, boarding, riding and training facility;
12. The production of field crops including but not limited to tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, mushrooms, timber, pasturage, Christmas trees, maple sap, woody biomass, compost;
13. Pick your own farm products;
14. Agricultural tourism;
15. Farm vacation and farm related experience provided that there are not more than 5 lodging units;
16. Farm brewery and winery provided that all structures associated with the operation do not exceed 10,000 square feet;
17. Rental of garden plots;
18. Community supported agriculture;
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;
20. Rental of existing farm building, for commercial storage (structure must have

existed for 5 years).  
[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED  
BY COURT ORDER ON DECEMBER 3, 2009]

Amenities	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.
Applicant	Any person commencing to develop land under the Development Review System Ordinance or any person requesting an appeal to this Ordinance.
Area, Land	Land area refers to new land area, exclusive of streets and other public space.
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)
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 Appeals.
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.
Change of Use	Any use which is different than the previous use of a building or land or any change in the Standard Industrial Code in utilizing the Development Review System.
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 Chart (5.5.b) for minimum area per dwelling unit and minimum lot area.

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

Collocation	The use of a wireless telecommunications facility by more than one wireless telecommunications provider. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 1, 1998]
Commercial	Any wholesale, retail or service business activity 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]
Commission	The Jefferson County Planning and Zoning Commission.
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 board of zoning appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in the zoning 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 allow 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]
- 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.
- Dormitory A building used for sleeping accommodations where such building is used accessory to a permitted use of land. 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 it's temporary occupants.  
[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, and containing independent cooking and sleeping facilities.  
[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.
- Dwelling, A building containing three or more dwelling units.

Multi-Family Dwelling, Single	A 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 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.
Engineer	A person registered by the State of West Virginia through the Board of Registration of Professional Engineers.
Essential Utilities Or Equipment	<p>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 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> <ol style="list-style-type: none"> <li>1. Local serving;</li> <li>2. Nonlocal or transmission through county or municipality; and</li> <li>3. Water and sewer systems, the activities of which are regulate, in whole or in part, by one or more of the following state agencies: <ol style="list-style-type: none"> <li>a. Public Service Commission;</li> <li>b. Department of Environmental protection; or</li> <li>c. Department of Health and Human Resources.</li> </ol> </li> </ol> <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.
Flood-prone Area	Areas subject to the one hundred (100) year flood as determined by the Flood Insurance Study prepared by the Federal 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

Glare	<p>an intersecting street and the dead-end of the street.</p> <p>The effect produced by brightness sufficient to cause annoyance, discomfort, or lessen visual performance and visibility.</p>
Group Residential Facility	<p>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.</p>
Historic Site/ Property	<p>Any lot, parcel, historic structure, or designated area which has been listed on the West Virginia or the National Register of Historic Places.</p>
Home Occupation, Level 1	<p>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.</p> <p>[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 18, 1996]</p>
Home Occupation, Level 2	<p>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.</p> <p>[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 18, 1996]</p>
Impervious Surface	<p>Any structure, material, or surface which reduces and prevents absorption of storm water into the earth.</p>
Improvements	<p>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 watercourses, water supply facilities, sewage disposal facilities, and park and recreation equipment.</p>
Institutional Use	<p>A non profit, not for profit, 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.</p> <p>[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]</p>
Land Surveyor	<p>A person registered by the State of West Virginia through the Board of Examiners of Land Surveyors.</p>
Lattice Tower	<p>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.</p> <p>[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE FEBRUARY 11, 1998]</p>

Light Industrial	<p>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. 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. Any uses listed in Section 5.6(b) (as amended) are not considered light industrial).</p> <p>[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989]</p>
Lot	<p>A tract of land area meeting local development standards which is intended for building development whether immediate or future.</p>
Lot Area	<p>The total horizontal area included within the rear, side and front lot or proposed street lines of the lot.</p>
Lot Line, Front	<p>The side or sides of an interior or through lot which abut a street; in a corner lot both sides abutting the streets forming the corner shall be considered front lots. Front lot lines shall be measured from the Road Improvement Easement where one exists.</p> <p>[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. In a corner lot there must be at least one rear lot line.</p> <p>[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>
Massage Parlor	<p>An establishment where, for any form of 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.</p> <p>[AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993]</p>
Mobile Home	<p>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</p>

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.

- 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.
- 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 single, self-supporting hollow metal tube securely anchored to a foundation.  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE FEBRUARY 11, 1998]
- 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]
- 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.
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.
Plat	A scaled, graphic drawing of a land subdivision project prepared according to the provisions of 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.
Principal Permitted Use	The primary or predominant use of any site.
Prohibited Use	A use that is not permitted.
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]
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 shoulders.
Seasonal Use	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]

Sensitive Natural Area	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]
Setback Line	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.
Sexual Paraphernalia Store	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 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 Soil Value	(see Vehicle Signs) 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. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]
Specified Anatomical Area	As used herein specified anatomical areas means and includes any of the following: (1) 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 (2) 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: (1) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; (2) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; (3) masturbation, actual or simulated; or (4) 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]
Standard Industrial Classification	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 engaged.
Staff	Personnel employed in the Department of Planning, Zoning, and Engineering. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
Standard Details	These are 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	(Same as Road)

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]
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]
Variance	A variance is a deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning 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]
Vehicle Signs	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 operation of the business. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
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]
Wetland	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]
Wireless Telecommunications 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]

Wireless

Telecommunications 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

Telecommunications Facility A facility consisting of the equipment and structures involved in receiving telecommunications or radio signals 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.

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE  
FEBRUARY 11, 1998]

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]



## ARTICLE 3: ADMINISTRATION AND ENFORCEMENT

### Section 3.1 Administration and Enforcement

- (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 State 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 AND]  
[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. This includes but is not limited to the following:
    - (1) Make determination 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.
- [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 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 zoning administrator. This provision may 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 Department of Planning, 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.  
[PREVIOUSLY 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 State 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 Appeal 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 to:

- (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.

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



## 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 each zoning district a limited number of principal permitted uses and several prohibited uses for all districts 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 receive a conditional use permit upon demonstrating that the land use in a specific location will comply with the standards of the Development Review System, and this ordinance.

### 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 upgrade, repair or make alterations to their facilities. However, expansion of any nonconforming use shall be limited to the lot that exists 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 that use completes the Development Review System.

- (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]

- (c) A nonconforming use may not be substituted for any other nonconforming use without the Board of 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]
- (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 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]
  - (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]
- (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]
- (f) Section 4.3 is subject to §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]
- (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 site plan standards.  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 18, 1996]
- (h) Nonconforming commercial wireless telecommunications antenna, commercial wireless telecommunications equipment shelter(s), commercial wireless telecommunications facility(s) and commercial wireless telecommunications tower(s) cannot expand under this provision while Article 1, Section 1.6 is in effect.  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE FEBRUARY 11, 1998]

- (i) A nonconforming use destroyed by a natural or unnatural calamity cannot be rebuilt without approval of the Zoning Board of Appeals upon application by the owner and pursuant to the variance and appeal procedures outlined in Article 8.  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
- (j) 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, particularly 25,344 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 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, 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 14.2 of the Subdivision Ordinance. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990]
- (i) No sales of fireworks are permitted outside the commercial zones. [AMENDED BY ACT OF THE COUNTY COMMISSION , EFFECTIVE MAY 18, 1996]
- (j) Commercial wireless telecommunications antenna, commercial wireless telecommunications equipment shelter, commercial wireless telecommunications facility and commercial wireless telecommunications tower while Article 1, Section 1.6 is in effect. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE FEBRUARY 11, 1998]
- (k) 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]
- (l) 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.

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]

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 for agricultural purposes.

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 which has been listed on that West Virginia or National Register of Historic Places.

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. Communication towers, however, shall conform to the setback requirements and be surrounded by a fence.  
[AMENDED BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993]

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 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.

#### Section 4.10 Site Plan Requirements

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 in any district and for all major additions or expansions of existing uses as defined in Article 2.

- (a) Site Plans shall be prepared by a registered professional engineer, or registered land surveyor licensed to practice in the State of West Virginia.
- (b) 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. Upon approval of a conditional use permit the applicant may proceed with Site Plan submittal.
- (c) 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 Department of Planning, Zoning, and Engineering.  
[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- (d) Site Plan 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.
- (e) The Site Plan format and informational requirements that must be followed are referenced in the Jefferson County Subdivision Ordinance, and Articles 4,5, 10 and 11 of this Ordinance.
- (f) 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.
- (g) 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.  
[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]

#### 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]
- (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 depending on the buffer width. At the time of the planting the vegetation shall be at 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 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 5.8(b), 2 through 8, will apply. The buffer shall meet the current Federal standard except as required below:

Wetland Size in acres

<u>Greater Than</u>	<u>Less Than</u>	<u>Buffer width in feet</u>
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
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.
  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.
- (i) All wireless telecommunications antennas, towers, and facilities shall have a buffer yard pursuant to Article 4, Section 4.11(d)1-4.  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 1, 1998]

Section 4.12 Outdoor Lighting

- (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

- (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 4.14 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]

**ION 4.16**

When this section is in conflict with another section of the Zoning & Development Review Ordinance, this section sha

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

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]



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 be 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 (6) 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 Article 4 of the Improvement Location Permit Ordinance are required for new structures or structures that are to be converted to be 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.

#### 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 TELECOMMUNICATIONS FACILITIES  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 1, 1998]

Section 4B.1 Site Plans

All general site plan standards are required to be met pursuant to the Subdivision and Zoning Ordinance particularly Section 11.3 of the Subdivision Ordinance. When other provisions of any County Ordinance is in conflict with said Section 11.3, the provisions in Section 11.3 shall be controlling.

Section 4B.2 Fence

An 8 foot fence is required for each site. All wireless telecommunications towers, wireless telecommunications structures and wireless telecommunications facilities shall be enclosed in such fence.

Section 4B.3 Setbacks

These setbacks shall apply in all zones. Setbacks may be modified as part of the Conditional Use Permit process when such process is required. These setbacks are for new towers only. Setbacks required in 4B.3(a) can be accommodated on adjacent land by easement provided such land is used for agricultural purposes and provided all other standards are met.

- (a) Any wireless telecommunications tower shall be located at least the length of the height of such tower plus an additional 10 percent to any external property line.
- (b) All portions of wireless telecommunications towers, wireless telecommunications structures and wireless telecommunications facilities (excluding the required fence and guy wires) shall be a minimum of 75 feet from the external property line.
- (c) Any setback required under 4B.3 can be accommodated by easement on adjacent properties.

Section 4B.4 Location

Wireless telecommunications antennas, towers, structures and facilities are permitted by right under certain circumstances and by Conditional Use Permit under other circumstances. In any event all other provisions of this Article shall apply.

- (a) In the Industrial/Commercial District wireless telecommunications antennas, wireless telecommunications equipment shelters, wireless telecommunications facilities and wireless telecommunications towers are permitted by right under the following conditions.
  - (1) The applicant must provide a West Virginia licensed engineer's certificate of structural integrity and safety of the proposed facility and the existing structure with the site plan.
  - (2) For new structures/towers applicant must prove that the support structure/tower is structurally designed to accept the collocation of at least two (2) companies. A site

- plan is necessary.
- (b) In the Rural District wireless telecommunications antennas, wireless telecommunications equipment shelters, wireless telecommunications facilities and wireless telecommunications towers are permitted by right under the following conditions.
    - (1) The applicant must provide a West Virginia licensed engineer's certificate of structural integrity and safety of the proposed facility and the existing structure with the site plan.
    - (2) New structures/towers can be utilized under the following conditions:
      - (a) Applicant must prove that the support structure/tower is structurally designed to accept the collocation of at least (2) two companies.
      - (b) The visual impact of a tower shall be mitigated to blend with the natural and built environment of the surrounding area. Such mitigation measures shall be approved by the Planning Commission and shall address: architecture, color, landscaping, lighting, materials, siting, topography, and visual screening.
      - (c) An approved site plan is necessary.
  - (c) In the Residential-Growth, Residential/Light Industrial/Commercial, and Village Districts wireless telecommunications antennas, wireless telecommunications equipment shelters and wireless telecommunications facilities are permitted only on or in existing structures and provided they process successfully through the Development Review System (DRS) as outlined in Article 6 and 7. The applicant does not have to process through the LESA Point portion of the process.
    - (1) In addition to the support data required in Article 7 the developer shall also address the visual impact of a tower and any associated facilities as it relates to the natural and built environment of the surrounding area. This includes (but is not limited to) architecture, color, landscaping, lighting, materials, siting, topography, visual screening, and height.
    - (2) Standard site plan processing is required if a Conditional Use Permit is issued.
    - (3) Height of antenna and support structure cannot be higher than thirty (30) feet above existing structures.

#### Section 4B.5 Other Provisions

- (a) The owner of the property shall dismantle the tower and all associated structures if not functioning antenna is attached to the towers for eighteen (18) consecutive months and restore the site as nearly as possible to pre-existing site conditions.
- (b) The applicant shall submit documentary evidence of compliance with all Federal Aviation Administration and Federal Communications Commission requirements.

- (c) Any portions of wireless telecommunications towers, structures and facilities that are below the treeline and located within 300 feet of the Appalachian Trail shall be camouflaged to minimize the visual impact of such from the Trail. The Planning Commission shall have final authority over the level of such camouflaging.
- (d) All towers shall be painted a non-contrasting gray or similar color minimizing its visibility unless otherwise required or requested by the Federal Communications Commission, Federal Aviation Administration, Jefferson County Planning Commission or the Conditional Use Permit.
- (e) No advertising is permitted anywhere on the wireless telecommunications antennas, wireless telecommunications equipment shelters, wireless telecommunications facilities or wireless telecommunications towers.
- (f) The utilization of an existing structure does not require the creation of a separate lot.
- (g) Upon notification to the Planning Commission Office, operational temporary test towers/antennas may be erected for a period not exceeding 72 hours per parcel.
- (h) Wireless telecommunication towers, excepting antennas, based within 250 vertical feet of the Blue Ridge Line shall not rise above the average tree canopy within a 100 foot radius of the proposed site.

The 250 vertical feet shall be measured by drawing a perpendicular line from the site to the Blue Ridge Line.

[AMENDED BY ACT OF THE COUNTY COMMISSION ON AUGUST 13, 1998]

#### Section 4B.6 Vertical Height

The vertical height of any wireless telecommunication facility shall not exceed 199 feet measured on the basis provided by relevant Federal Aviation Administration and/or Federal Communications regulations.



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  
[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.

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) Single family detached dwelling units
- (2) Duplexes
- (3) Townhouses
- (4) Multi-family dwelling units
- (5) Mobile Home Parks (Subject to Section 10.1; Jefferson County Subdivision Ordinance)
- (6) Private or public elementary, middle or secondary schools, hospitals and educational

facilities for adults

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

- (7) Churches and other places of worship
- (8) Child care centers
- (9) Public utility buildings
- (10) Public buildings and public service establishments like fire, ambulance and rescue services
- (11) Accessory Uses
- (12) Group Residential Facility
- (13) Home Businesses as specified in Articles 2 and 4A  
[AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]
- (14) Nursing or retirement homes
- (15) Model homes/Sales office (pursuant to Section 4.18)  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

(b) Minimum Lot Area, Height, and Yard Requirements

The following minimum lot area requirements for residential dwelling units is based on the availability of central or public water and sewer facilities and West Virginia Board of Health regulations.

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.

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

Section 5.4b Residential Growth District - Height And Yard Requirements

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

<u>Development Type</u>	<u>Minimum Lot Area (MLA) Area per Dwelling Unit (ADU)</u>	<u>Required Yards</u>	<u>Maximum Building Height*</u>
1. Single family detached dwelling	6,000 sq. ft. MLA**		
Public/Central water and sewer	10,000 sq. ft. ADU	25 ft. front	40 ft.
Public/Central water or sewer	20,000 sq. ft. MLA	12 ft. side	
No Public/Central water or sewer	40,000. Sq. ft. MLA	20 ft. rear	
2. Duplex dwelling unit			
Public/Central water and sewer	3,200 sq. ft. MLA	25 ft. front	40 ft.
Public/Central water and sewer	7,500 sq. ft. ADU	15 ft. side (exterior only)	
Public/Central water or sewer	10,000 sq. ft.	20 ft. rear	
3. Townhouse			
Public/Central water and sewer	1,400 sq. ft. MLA	25 ft. front	40 ft.
	3,500 sq. ft. ADU	12 ft. side (exterior only)	
		20 ft. rear	

4. Multi-family dwelling Public/Central water and sewer	20,000 sq. ft. MLA 2,000 sq. ft. ADU	25 ft. front 12 ft. side (exterior only) 30 ft. rear	40 ft.
5. Condominium	20,000 sq. ft. area for the parcel containing the condominium 2,000 sq. ft. minimum area per condominium unit	25 ft. front 12 ft. side (exterior only) 30 ft. rear	40 ft.

\* 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

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. The gross area for commercial uses shall not exceed 5 acres or 10 percent of the gross tract area, whichever is less. Commercial uses shall not be built or established prior to the residential development except that they may be built in phases consistent with phasing of the residential construction. These uses shall be located within the interior of the project and shall be subject to the Neighborhood Compatibility 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]

(d) Access to Commercial or Light Industrial Uses

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

Section 5.5 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.
- (d) All on-site utilities and dumpsters shall be effectively screened.
- (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.

#### 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 use
  2. Commercial uses
  3. Industrial related accessory uses including residential dwellings including a mobile home on site for a caretaker or watch keeper.
  4. 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 in Section 5.6h.  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 1, 2003]
- (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 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

(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]

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 5.8.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.

(f) 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.

(g) 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.
- b. Impermeable 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.

2. Industrial Design Standards

- a. Impermeable 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.

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

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.
3. SETBACKS
  - a. Front - 1,000 Feet
  - b. Sides - 1,500 Feet
  - c. Rear - 1,500 Feet

(i) Adult Use Requirements

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 1, 2003]

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.

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.

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

a Conditional use permit is issued. [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]

(a) Principal Permitted Uses

1. Agriculture 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. 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. Churches and private or public elementary, middle or secondary schools and specialized or accredited 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]
3. Single family dwelling, including mobile homes provided that they are utilized as single family dwelling units on the minimum lot size specified in Section 5.15.
4. Home Businesses as specified in Articles 2 and 4A.  
[AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]
5. Private riding stables
6. 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]
7. Fire stations, ambulance and rescue squads, publicly supported.
8. Fish, game or poultry hatchery
9. Forestry
10. Library, museum, or similar institution of a noncommercial nature
11. 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  
[AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]
12. Horticultural nurseries and commercial greenhouses
13. Hospital

14. Public utilities uses, specified in Section 4.7 incident to any principal permitted uses
15. Accessory buildings and uses customarily incident to any principal permitted uses
  - (a) Accessory Uses for Hunting, Shooting and Fishing Clubs
    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]
16. Group Residential Facility
17. Bed and Breakfasts (no more than 7 bedrooms) 4 receptions per year with no more than 1 tent per reception.  
[AMENDED TWICE BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993 AND OCTOBER 3, 2005]
18. Publicly owned facilities  
[AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]
19. Two family dwellings provided one unit is owner occupied  
[AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]
20. Wireless telecommunications facilities pursuant to Article 4B  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 1, 1998]
21. Horse breeding and/or boarding  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
22. Equestrian riding/training facility  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
23. Model homes/sales office (pursuant to 4.18)  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
24. Non-profit Community Centers

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 3, 2005]

- 25. Landscaping business outside of Planning Commission approved subdivisions  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 3, 2005]
- 26. Veterinary services outside of Planning Commission approved subdivisions  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 3, 2005]
- 27. Feed and/or farm supply center and/or agricultural repair center  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 3, 2005]
- 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.  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 3, 2005]
- 29. Hunting, Shooting, Archery and Fishing Clubs, public or private as defined by American Planning Association Definitions including shooting ranges.  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 28, 2006]

(b) Minimum Lot Area, Lot Width and Yard Requirements

Minimum lot sizes, lot width, and yard requirements are as follows for principal permitted uses. For any residential use that complies with the Development Review System, the setbacks and lot shall be as outlined in Article 5.4(b).  
[AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

	<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

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.

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

(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) 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
    1. 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.
    2. To provide for a well planned development while minimizing the use of prime agricultural land.
  - b. Requirements
    1. A property owner may subdivide one (1) lot 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.
    2. 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]

3. Setbacks shall be 25' front, 12' sides and 20' rear.
4. All clusters of three (3) or more lots shall be served by an internal road pursuant to Article 8 of the Subdivision Ordinance.
5. Clusters of three (3) or more lots shall not be along an existing public road.
6. 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]
7. Maximum lot size shall be 3 acres.  
[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

c. Procedures

1. Concept Plan. For the subdivision of tracts eligible for cluster lots, a concept plan 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:
  - a. The lot layout (scale no smaller than one (1) inch equals one hundred (100) feet) including the building restriction lines and appropriate dimensions
  - b. Street layout
  - c. 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
  - d. Topography with minimum ten-foot contours (USGS Topo, interpretation is permitted for concept plan)
  - e. Development rights table indicating acreages and development rights, both standard and cluster, for each tract

and the total

- f. Soils data for the cluster area and the remaining farmland.
- d. 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]
- e. 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.
- f. 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.
- g. If the concept plan is approved by the Planning Commission, the developer may then proceed with platting of the clustered development in accordance with the 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”.
3. 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. 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.
4. 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 growth area.

(a) Principal Permitted Uses

1. Uses of light industrial
2. Commercial uses
3. Single family detached dwelling units
4. Duplexes
5. Townhouses
6. Multi-family dwelling units
7. Mobile home parks
8. Private or public elementary, middle or secondary schools, colleges, hospitals and educational facilities for adults

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE

- OCTOBER 14, 1999]
9. Churches and other places of worship
  10. Child care centers
  11. Public utility buildings
  12. Public buildings and public service buildings
  13. Accessory Uses
  14. Group Residential Facility
  15. Nursing or retirement home
  16. Model home/sales office (pursuant to Section 4.18)  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
  17. Non/not for profit commercial uses  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

(b) Standards

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.

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

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.
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.

Odororous 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..

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/ /month	0.35
Monthly Maximum	0.7

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

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>
Liquids	60,000 gallons
Gasses - Above ground	150,000 SCF
- 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 (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	1/4 the sum of diameters of adjacent containers

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.

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.

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]

11. OTHER REGULATIONS

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.

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 requirements. In addition, it 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]

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 Process pursuant to Article 7, Section 7.6 inclusive.

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]

Section 5.9 Site Plans

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. Single family dwellings
2. Duplexes
3. Two family dwellings
4. Home Occupations
5. Fire stations, ambulance and rescue squads publicly supported

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

6. 1 or 2 doctor medical/dental/optical office  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]
7. Library, museum or similar institution of a noncommercial nature  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

a. Conditional Uses

1. 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.

- a. Cottage Industries
- b. 2-chair barber/beauty shop
- c. Dry cleaners
- d. Video rental stores
- e. Retail food stores not exceeding 1500 square feet of retail floor space
- f. Churches/Houses of Worship
- g. Day care centers
- h. Country Inn
- i. Bed and Breakfast
- j. Restaurant not exceeding 2000 square feet (primary mode of food distribution is by waiter or waitress)
- k. ATM or branch bank
- l. Antique shop
- m. Florist
- n. Take out pizza/sandwich shops not exceeding 600 square feet

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

c. Setbacks

1. Residential
  - a. Section 9.7
2. Commercial
  - a. 25' front, 10' side and 40' rear
  - b. Setbacks may be reduced as a result of the compatibility meeting based on other structures existing in the neighborhood.
3. Existing Structures

- a. As exists not less than 6' on sides and rear.
- d. Commercial uses shall not cause any odor, dust, smoke, vibration, noise, or electromagnetic interference, which can be detected at or beyond the property line.
- e. Proposed uses in a recognized historic district shall obtain approval from the appropriate agency prior to processing.
- f. All new commercial structures shall comply with the site plan requirements.
- g. There will be no outdoor storage of equipment, materials or other stock.
- i. Parking shall be discussed at the compatibility meeting.



## 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 sites 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 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 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
BaB	Benevola	2
BcC3	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
DcC	Dekalb	6
DcD	Dekalb	8
DcE	Dekalb	9
DcF	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
FcC	Frankstown	6
FcD	Frankstown	7
FcD3	Frankstown	10
HbB	Hagerstown	2
HbC	Hagerstown	4
HcC	Hagerstown	10
HeC3	Hagerstown	5

<u>Map Symbol</u>	<u>Soil Series</u>	<u>Agriculture Value Group</u>
HfB	Hagerstown & Frederick	3
HfC	Hagerstown & Frederick	4
HgB	Hagerstown & Frederick	6
HgC	Hagerstown & Frederick	6
HgD	Hagerstown & Frederick	8

HhC3	Hagerstown & Frederick	5
HIC3	Hagerstown & Frederick	9
HID3	Hagerstown & Frederick	10
Hn	Huntington	2
Ho	Huntington	1
LaC	Laidig	5
LaD	Laidig	7
LbC	Laidig	9
LbD	Laidig	9
Lf	Landes	2
Ln	Lindsay	3
Lo	Lindsay	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

The points for the soils assessment are computed as follows:

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

1. Determine the area of each soil type on the property according to the map symbols.
2. Multiply the soil type areas times the Relative Value for the soil type taken from the List of Soil Groups and Relative Values.
3. Sum the products of the multiplication of Area times Relative Value to obtain a total for the property.
4. Divide the total of the multiplication products by the Total Area of the property to obtain the Weighted Relative Value.
5. 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]

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	94
3	II	87
4	II and III	81
5	III and IV	68
6	III and IV	61

7	IV and VI	50
8	IV and VI	31
9	VI	4
10	VII, VIII and other	0

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 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.

	<u>CRITERION</u>	<u>CRITERION WEIGHT</u>
(a)	Size of site	6 (12) pts.
(b)	Adjacent development	10 pts.
(c)	Distance to Growth Corridor	6 pts.
(d)	Comprehensive Plan Compatibility	8 pts.
(e)	Proximity to Schools	12 (0) pts.
(f)	Public Water Availability	11 pts.
(g)	Public Sewer Availability	11 pts.
(h)	Roadway Adequacy	6 (12) pts.
(i)	Emergency Service Availability	5 pts.

(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

0 to 40 acres -----0 points  
40 to 80 acres-----3 points  
Over 80 acres-----6 points

Nonresidential Projects

0 points  
5 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:

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.

<u>DISTANCE</u>	<u>POINTS</u>
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 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]

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

Highway Problem Area Points will be assessed as follows:

If one could get 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.

If one could get to one or the other without traveling through a Highway Problem Area the project would score a 3.

If one would travel through a Highway Problem Area to the closest in county incorporated area and to the closest out of county market area, the project would score a 6.

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

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

<u>Residential Projects</u>	<u>Nonresidential Projects</u>
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).

<u>DISTANCE TO FIRE DEPARTMENT</u>	<u>POINTS</u>
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Less than 2 miles	0 points
2 to 5 miles	2.5 points
Over 5 miles	4.5 points

DISTANCE TO AMBULANCE SERVICE                      POINTS

Less than 2 miles	0 points
2 to 5 miles	2.5 points
Over 5 miles	4.5 points

Distances for Fire and Ambulance will be measure 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.

### Section 7.2 Zoning District Principal Permitted Uses

- (a) All uses listed as permitted principal permitted uses within a zoning district shall be developed subject to adopted Subdivision and Site Plan regulations.

### Section 7.3 General Development Review System Requirements

- (a) If a developer's proposal is not listed as a principal permitted use in a zoning district, he 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) Planning and Zoning Staff Evaluation of the Development Review System
- (3) Compatibility Assessment Meeting
- (4) Public hearings
- (5) Planning and Zoning Commission's decision on the issuance or denial of the Conditional Use Permit

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE AUGUST 31, 1989]

### 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 Department of Planning, 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. The Compatibility Assessment Meeting will occur within thirty (30) days from the date that the Compatibility Assessment Meeting was 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 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, 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 outcroppings, 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) Effected 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.
  - (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 structure 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 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]

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 and other pertinent ordinances governing development in the County.
- (b) After staff review and the collection of fees, the staff will notify the adjacent and confronting property owners of the date, time, and place of the Compatibility Assessment Meeting by registered mail 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.
- (d) A Standard industrial Classification (SIC) will be assigned to the proposed project. Once the classification is agreed upon, the SIC code shall be binding. Any change of use shall be required to file an application in accordance with Article 7.

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 presentation and proposal. In his presentation, he will address the compatibility of his project to the existing areas adjacent to the site. Following the developers presentation, those who are in attendance may ask questions. 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 speak at a particular meeting. The Staff may comment on the proposed development's conformance to applicable State, Federal and Local codes but shall primarily monitor and record pertinent issues and concerns.

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

(d) The Staff shall prepare its report of the developer's proposal, the agreed upon conditions, and any other pertinent data and will advertise for a public hearing of the Board of Zoning Appeals. A public hearing in conformance with Section 7.7 will be conducted on the application no less than 30 days but no more than 60 days from the date of the Compatibility Assessment Meeting. 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]

(e) 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]

- (f) If all issues raised at the Compatibility Assessment Meeting with the staff were resolved at that meeting, there will be no public hearing required. At the Board of Zoning Appeals meeting thereafter, the Board 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]

- (g) 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 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]

- (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]

**Section 7.7 Public Hearings for Development Review System (Unless Otherwise Superseded by the Board of Zoning Appeal's Rules of Procedure)**

- (a) 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]

- (b) All public hearings shall have time limits allotted to those who speak, as follows: the developer or his agent, or applicant shall have 30 minutes for his preservation, each group who speaks may have 15 minutes, each individual who speaks is allotted 5 minutes, the developer or his agent, or applicant are allowed 15 minutes for rebuttal. The time limit

provision within this section may be modified by the Planning and Zoning Commission or Board of Appeals' Chairman 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]

- (c) 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]

- (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]

- (e) The Board of Appeals shall make 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

- (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.

- (b) The Board of Zoning Appeals shall:

- (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]

- (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.

- (3) Authorize such variances from the terms of the Ordinance if the Board finds that variance:

- a. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;
    - 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.
- (5) Meetings of the Board of Appeals shall be held at such time that the Board determines appropriate.
- (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.



ARTICLE 8. APPEAL PROCESS UNLESS SUPERCEDED BY THE BOARD OF ZONING  
APPEALS RULES OF PROCEDURE

Section 8.1 Filing an Appeal

- (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.
- (b) Such appeal shall be filed with the Board within thirty (30) days from the decision appealed.
- (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 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.
- (d) All zoning fees, in accordance with the approved County fee structure, shall be paid upon application.
- (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.

Section 8.2 Processing Procedures

- (a) Appeal applications filed in the proper form shall be numbered serially, docketed, and placed upon the calendar of the Board of Appeals.
- (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]
- (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]
- (e) Property upon which the application is concerned 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 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.

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.
- (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 fo 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.

Section 8.4 Continuance of Hearing

- (a) 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 Section 4B.7(a).

[AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993 AND JULY 1, 1998]

### 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 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 as one lot for all purposes.

[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 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]

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 length. 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 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.

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:

Setbacks are as follows in subdivisions that did not have them 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 50, 000 sq. ft. --	20' front,	10' side	and	12' rear
under 30,000 sq. ft. --	20' front,	8'side	and	12' rear

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:

[AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON JULY 15, 1993 AND SEPTEMBER 13, 1990]

Seasonal use 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. 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]



## 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]
- (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 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]
- (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) (1) No billboard shall be closer to any public highway right-of-way than three hundred (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 Department of Planning, 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 offstreet automobile parking space and truck loading space shall be provided for all new structures and uses, and for existing structures or uses, increased in size by 20 percent or more after adoption of these regulations.

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 reservoir 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) 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, Library, Museum	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.
Fire Stations	10 spaces minimum

Hospitals	1.5 for each bed plus one 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 per 150 square feet of floor area devoted to viewing and one per vehicle used in activity PLUS one per each two employees, but 20 spaces minimum.
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 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
Swimming Pool	1 space for every 7 person 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 Department of Planning, 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

- (a) 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.

Section 11.3 Residential Parking Standards

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE AUGUST 31, 1989]

- (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, increased in size by 20 percent or more after adoption of these regulations.

Spaces shall be required per residential uses as follows:

<u>Type of Residences</u>	<u>Parking Requirements</u>
Single family detached	Driveway only
Single family attached (duplex)	Driveway only
Single family attached (townhouses)	See Section 8.3 (c) 7.of Subdivision Ordinance
Multi-family apartments	See Section 9.3 of Subdivision Ordinance



## ARTICLE 12. MAP AND TEXT AMENDMENTS

### 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 for analysis, study, report, and recommendations.

### 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 commission, 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]

### 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:
  - 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:
  - a. Comprehensive Plan compatibility of the proposed change.
  - 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]