



# Jefferson County West Virginia

Public Information

# JEFFERSON COUNTY PLANNING & ZONING COMMISSION

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Date: August 24, 2004

To: Jefferson County Commission

c.c. Paul J. Raco, Executive Director  
Planning Zoning and Engineering Department

From: Jefferson County Planning & Zoning Commission

**Re: Request For Comments –  
LESA/Planning Bill Amendments to Zoning and Development Review  
Ordinance**

This document outlines the Jefferson County planning & Zoning Commission's suggestions on changes needed to the existing Zoning and Development Review ordinance from a technical viewpoint.

Yours truly,

Arnold Dailey, President  
Jefferson County Planning & Zoning Commission

RH/rh

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## **Technical, Organizational, and Other Deficiencies of the Existing Ordinances**

[Summary of some suggested changes, as presented to Planning Commission in February, attached to the back of this report, for the assistance of the reader]

### **Introductory Comments**

The County Planning Commission is aware that the Chief Planner was advised by some

members of the County Commission that, since these amendments will bring the Zoning and Development Review Ordinance into conformity with the new Planning Bill, all he has to do is bring the Subdivision Ordinance into conformity with the new legislation.

The Jefferson County Planning & Zoning Commission is keenly aware that the existing Zoning and Development Review Ordinance is outdated, is deficient in a number of critical areas, and is written in such a manner that the common resident of Jefferson County cannot determine what he/she can do with their land, or what standards apply, be they setbacks, storm water, platting requirements, engineering standards, etc.

**Problem:**        **Standards and Procedures are scattered throughout all the Ordinances**  
**Objective:**     **Place all the standards in one Ordinance, and all of the Procedures in another Ordinance**

The Zoning and Development Review Ordinance as it is currently written is not a "stand-alone" document, but is so intricately interwoven with the Subdivision Ordinance that anyone wanting to know what land uses are permitted and what standards apply to their property must read both Ordinances together.

The separation of \*\*\*\*\*standards from procedures would allow people interested in knowing what they can do with their land and what standards apply can easily get the information from one Ordinance. Once they know what is permitted, and what they want to do with their land, they can then refer to the Procedures in the other Ordinance to learn what steps are required to proceed.

Problems with the organization of the existing Ordinances are detailed below:

**Example #1**

The parking standards for a non-residential use are located in Article 11 [page 75] of the Zoning and Development Review Ordinance, but the requirements for Handicapped Parking are located in Article 11, Section 11.2 d. Parking Requirements [page 75] of the Subdivision Ordinance.

**Example #2**

Section 5.5 (b) [page 36] of the Zoning and Development Review Ordinance states that, for multi-family dwellings, "Impermeable surface coverage for interior streets, parking areas, and residential structures shall not exceed fifty (50) percent of the gross land area." This is clearly a subdivision design standard, but it is not included in the Subdivision Ordinance.

**Example #3**

Section 4.10 [page 23] of the Zoning and Development Review Ordinance establishes Site Plan Requirements for townhouse and multi-family residential development. Section 5.5 of the Zoning and Development Review Ordinance establishes Design Standards for Multi-Family Dwellings, but additional Requirements For Townhomes are found in Section 8.3 [page 58 through 61], and Section 9.3 [pages 67-68] of the Subdivision Ordinance.

**Example #4**

Additional confusion arises when the reader runs into statements like the following, which is found in Section 4.10(e) [page 24] of the Zoning and Development Review Ordinance:

"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."

Not only is there no reference to the specific Section(s) in the Subdivision Ordinance, in the Zoning and Development Review Ordinance Article 4 covers some 10 pages [pages 19-28], Article 5 covers some 18 [pages 33-50], Article 10 covers 4 pages [pages 71-74], and Article 11 covers 3 pages [pages 75-77], and most of these Articles also make reference to other Sections of either the Zoning and Development Review Ordinance or the Subdivision Ordinance. That is, the reader has to carefully read 35 pages, not counting additional pages referred to in those 35 pages, to determine the standards that apply to a townhouse/multi-family project.

To illustrate the problem, from the perspective of a common lay person not familiar with planning or engineering terminology, we will use as an example someone who owns a lot in a Residential/Light Industrial/Commercial District zone and wants to know what he can do with his land.

Section 5.8 (a) [page 44] of the Zoning and Development Review Ordinance sets out the permitted uses and Section 5.8 (b) sets out the standards. The attached ***FLOW DIAGRAM*** indicates how the Zoning and Development Review Ordinance and the Subdivision Ordinance are inter-connected. For a developer or a member of the public to understand what uses are permitted, and what standards apply to his/her property, they have to read, and understand, several pages of both Ordinances.

It is the objective of the Planning Commission to make the new Zoning Ordinance "user friendly", and one way of doing that is to\*\*\*\*\* ensure that as much as possible all the standards applying to a specific use are located in one Ordinance, at one location in that Ordinance, and are written in an unambiguous way so that "interpretations" of the Ordinance provisions by staff is kept to an absolute minimum.



**Problem:**      **Some procedures are duplicated, and all are time consuming**  
**Objective:**    **Streamline the review/approval process, make the Ordinances more flexible**

The current Ordinances discourage the submission of all required development review applications affecting a specific project at the same time. That is, a project that requires a Conditional Use Permit, a Community Impact Statement, Site Plan Approval, and Variances from certain provisions of the Zoning and Development Review Ordinance are not permitted to submit all these applications at the same time (i.e. the Long John Silvers Restaurant on Router 340, which is slated to be demolished and replaced by a new facility). The Ordinances should be amended to permit the concurrent processing of multiple applications as a means of expediting the approval process.

The new Planning Bill now permits downward delegation of approval for minor applications, and the new Zoning Ordinance and the Subdivision and Land Development Ordinance should take advantage of these provisions.

**Problem:**      **Additional Deficiencies in the current Zoning and Development Review Ordinance**  
**Objective:**    **Resolve the deficiencies through a comprehensive re-writing of the Ordinance provisions**

The Ordinance standards are either out of date with modern planning practice, or non-existent. For instance, there are no standards for mini-storage or self storage facilities, no standards for traditional neighborhood developments such as Huntfield, no standards for multiple use developments (in fact\*\*\*\*\* the Ordinances almost without exception do not allow more than one principle use on a lot) no standards for cluster subdivisions, no standards for controlling light pollution, no or few provisions for the sale of development rights, land trusts, Folk Art Workshops, and there is a need to re-visit how the Ordinance handles Child Care Certified Day Care Providers, Day Care Facilities, and Day Care Centers.

With respect to affordable housing, the \*\*\*\*\*existing Ordinance is exclusionary, and needs to be made inclusionary. Any development involving the division of land is automatically, by existing Ordinance requirements, restricted to one (1) single family dwelling, which means that granny flats, servants quarters (if they include a kitchen and bathroom), etc. are excluded. \*\*\*\*\*Basement apartments are considered to be quite acceptable provided Building Code requirements are met; these units can provide affordable housing units, but are not permitted in the current Ordinance. \*\*\*\*\* Technically speaking, dwellings to accommodate farm help are not specifically permitted as a right in the list of Principal Permitted Uses [page 40-41], which is a deficiency that needs to be corrected.

There are a great number of "definitions" which need to be included in the Zoning Ordinance. For instance, the definition of "family", "abattoir", "accessory apartment", "accessory dwelling", "adaptive reuse", "adult retirement community" [or facility, or project], "aesthetic zoning", "affordable", "agricultural building", "agricultural land-prime", "agricultural or farmer's market", "agritourism", "air quality criteria", air quality standards", "aisle", "alley", "alternate living arrangement", "ambiance", "amusement and recreation services", "amusement arcade", "amusement park", "animal hospital", animal kennel", "animal shelter", "animal unit", "annexation", "apartment, garden", "apartment hotel", "apartment house", "dwelling, apartment", "dwelling, efficiency apartment", "aquaculture", "archery range", [shooting range], "architectural control", "architectural feature", "artist studio", "arts center", "auction house" [flea market], "automated teller machine(ATM)", "automatic car wash", "automobile dealership", "automobile mall", "automobile repair services-major", "automobile sales-used", "automobile service station", "automobile wrecking yard", "average annual daily traffic (AADT)", "average daily traffic (ADT)", "average finished grade", "average setback", "awning", etc.

And these are only the "A" definitions that are missing.

There is a problem with the wording of some sections of the Zoning and Development Review Ordinance. The current wording often results in "Requests for A Determination", or "Requests for An Interpretation" from the public or their representatives on what the Ordinance permits, or what standards apply. To illustrate that this is a problem common to all of the County's existing Ordinances, **APPENDIX A** illustrates the deficiency of the Subdivision Ordinance as it relates to how Mini-Storage and Self-Storage projects are processed. A properly worded Ordinance should be unambiguous as to interpretation of its standards and requirements, so Requests for a Determination are indicative of a need to make the ordinances clear and understandable.

Infill development is going to be increasingly controversial, particularly since smart growth and the control of sprawl encourage land use intensification, while adjacent landowners are particularly opposed to intensive forms of land development.\*\*\*\*\* The current Ordinances do not establish any land use planning principles to be followed with respect to land use compatibility, and there are no urban design guidelines and principles to follow. This is a major workload item in itself, and it should be addressed given the fact that the new Planning Bill now specifically gives the County more control over architectural design.\*\*\*\*\* Such new powers could be a real asset in terms of protecting both individual historical buildings and the many historical communities in the County.

There is a major deficiency in the Ordinances the way they are currently set up. It is standard practice in almost every other jurisdiction to\*\*\*\*\*include sections specifically devoted to Ordinance Interpretations and Variance/Exception applications. Ordinance Interpretations should be minimal if the Ordinance is properly drafted, but there will always be exceptions that require specific interpretations. Each interpretation and each variance application request should be recorded in a ledger section of each Ordinance, the specific section of the Ordinance should be cited, and the outcome (interpretation, variance refused, approved, approved with modifications) is stated.\*\*\*\*\* That way, all members of the public have easy access to the historical records and can compare their situation to similar applications that have come before the Planning Commission. As it now stands, in Jefferson County there is no consolidated records management for Variances, or Conditional Use Permits. Anyone wanting to search the historical records is faced with the daunting task of reading each and every individual Variance file in the Department's file room. In terms of **OPEN GOVERNMENT**, justice, and transparency of actions, this deficiency needs to be addressed in any new Zoning Ordinance.

Another deficiency is the lack of provision for temporary uses. Other jurisdictions have a simple permitting system that allows such uses as construction trailers, mobile homes as temporary residential accommodation for people building or rebuilding their own homes, tents for shelter so merchants can sell cut flowers, plants, fruits and vegetables, etc. Lumped in with temporary uses are temporary signs and their control.

The Ordinances contain contradictory requirements. For instance, Section 8.1 c. [page 35] of the Subdivision Ordinance requires Final Plats to be drawn or reproduced on opaque linen, yet Section 8.1 d 1 [page 38] permits the use of either mylar or linen, and requires a sepia reproduction of the final plat. Aside from being contradictory, opaque linen has not been used since the early 1970's, mainly because plastic mylar or chronoflex material is dimensionally much more stable than linen material (linen tends to shrink or swell according to humidity conditions, which makes them unreliable when scaling distances by mechanical means).

Another example is Section 8.2 a 6 and 8.2 a 7 [page 40]. Clause 6 says roads serving 12 or fewer dwelling units are classified as "local subdivision roads", while clause 7 says roads serving more than 10 dwelling units are termed "primary subdivision roads". The contradiction is quite evident without the need for further explanation.

There a number of technical errors in the numbering in the current Zoning and Development Review Ordinance. For instance, there are there are three (3) Section 4.3(h)'s that were added by amendments made on February 11, 1998, October 14, 1999 and January 10, 2002.

There are also three (3) Section 4.4(j)'s that were added by amendments made on February 11, 1998, October 14, 1999 and November 7, 2002.

Amendments made to Section 5.7 a on July 1, 1998 added new clause 20

(20) Wireless telecommunication facilities pursuant to Article 4B

but then on October 14, 1999 amendments were made to the same Section 5.7 a to add new clauses 20, 21 and 22

20) Horse breeding and/or boarding

21) Equestrian riding/training facility

22) Model homes/sales office (pursuant to 4.18)

Obviously we cannot have two (2) Clause 20's in the same Section.

In fact there has been some 190 individual amendments to the Zoning and Development Review Ordinance and 220 individual amendments to the Subdivision Ordinance. This has resulted in a patchwork document, with references and cross-references that lead to other references and cross-references.

## CONCLUSIONS

**There is a continuing need to bring the existing Ordinances up to date with modern standards and practices**

It is hoped that the above comments will support the need to pursue *Recommendation 3:03* of the Comprehensive Plan. Just because the proposed Zoning and Development Review Ordinance amendments are suppose to bring that Ordinance into conformity with the new Planning Bill does not mean that we should view as an urgent matter bringing all Ordinances up to modern planning standards.

It is clear that not only the public but professionals, such as lawyers, surveyors, planners, and engineers have difficulty interpreting the Ordinances.

\*\*\*\*\*The Chief Planner estimates that a minimum of 1/3 of his time each day is spent interpreting the ordinance provisions for other people, and suggests that the Executive Director and his Administrative Assistant spend at least the same amount of time interpreting the ordinances for other people. One complicated "interpretation" request can take up to 3 days of research to reach a conclusion. With the ever-increasing workload, his advice is that by re-writing the Ordinances so they are easy to understand by anyone, the County would save money by not having to hire more planners to keep up with development applications. That would free up some of the planners' time to do additional research on long term planning issues, some of which have been identified in the Comprehensive Plan.

**Existing Processes must be streamlined, and Standards must be clear and reasonable, or Annexations will continue.**

Once major concern of the Planning Commission is that if the current Ordinances remain substantially unaltered, there will be a continuing trend for developers to request annexation by incorporated municipalities. The Planning Commission is aware of at least one more major annexation that is likely to happen once the developer's other projects near final build-out. The Planning Commission advises that the current ordinances need to be streamlined and made more flexible, or the County will continue to lose additional sources of revenue, and may in the long run cease to exist.

This continuing concern was discussed on page 24 of the Comprehensive Plan. One of the solutions to this problem was incorporated into the Comprehensive Plan at page 25, as follows:

The County Commission has determined that comprehensive revision of the Ordinances is necessary. The volume and nature of changes to the documents could cause the existing documents to become cumbersome and confusing

When the package of Ordinance changes is prepared, particular attention should be paid to their structure and organization so that they are the most concise, effective development management tools that can be created. Such an effort cannot be done effectively in stages or piecemeal by ordinance. Cumbersome as such an effort may be, it should be undertaken as a single project so that all revisions can be coordinated into a well integrated set of ordinances.

***RECOMMENDATION 3.03: When considering amendments to the Ordinances and Zoning Map to incorporate decisions based on the recommendations of this Plan, the County should address the Ordinances in their entirety including:***

- a. The preparation of a comprehensive "existing land use map"; and,***
- b. A new zoning map showing at a reasonable scale the new boundaries of the cities.***

As stated previously, it is the advice of the Planning Commission that the proposed Amendments to the Zoning and Development Review Ordinance are specifically targeted at meeting ***Recommendation 3.20*** on page 68 of the Comprehensive Plan are consistent with that recommendation. However, the Planning Commission advises that the Zoning and Development Review Ordinance, as amended, should not and cannot be considered to be consistent with ***Recommendation 3.03*** on page 25 of the Comprehensive Plan.