



Agenda

Jefferson County Planning Commission

Tuesday, October 12, 2021 at 7:00 PM

All Citizens that desire to speak must sign-in prior to the Agenda Item being addressed. This meeting will NOT be a live broadcast on our website. Instead, it will be accessible through a live ZOOM Meeting only.

If you wish to make a public comment for one of the agenda items, please type your name, address, and agenda item # in the chat function at the start of the meeting.

****Please use the following information to join the ZOOM Meeting****

Join Zoom Meeting

Virtually via ZOOM (video or phone conference options available).

<https://us02web.zoom.us/j/85281382423>

Dial by location: 301-715-8592 / Meeting ID: 852 8138 2423

Find your local number: <https://us02web.zoom.us/u/kbTrmvHiix>

1. Approval of Meeting Minutes: September 14, 2021, September 28, 2021, and October 5, 2021
 2. Request for postponement.
 3. **Public Hearing:** Request for a Final Plat Amendment for Lot 21 of the Sheridan Subdivision, Phase II to allow an in-ground pool and fence to be located within a platted drainage easement (see Note #15 on Final Plat / PC File 05-26). Property Owner: Kara and Matthew Durrschmidt; Property Location: Sheridan Subdivision, Lot 21, 441 Chickamauga Dr., Harpers Ferry, WV. Parcel ID: 04009D00210000; Size: 0.83 ac; Zoning District: Residential Growth; File: 21-19-Q.
 4. **Public Workshop:** Concept Plan for Colonial Hills Subdivision, Phase 3B (Major Residential Subdivision), which will consist of 20 townhome units with associated parking spaces. Owner/Applicant: KE Colonial Hills, LLC; Property Location: Colonial Hills Subdivision, Lots C1 and C2, vacant parcels; eastern side of Potomac Farms Drive approximately 0.25 miles north of the intersection of Rte. 480 and Potomac Farms Dr. Shepherdstown, WV; Parcel ID: 09000800100000; Size: 2.54 ac; Zoning District: Residential Growth; File: 21-26-SD.
 5. **Public Hearing:** Waiver request from Section 20.203B.1 of the Subdivision Regulations, which requires a Site Plan for any building and/or parking lot greater than 1,200 square feet. The applicant is requesting to waive the requirement of a site plan for a 1,500 square foot building, plus a 960 square foot of parking lot. Owner/Applicant: Chris Livingston, Dead Rock Contractor Services; Property Location: Vacant parcels located off Shipley School Road / located between Shipley School and Meadows Farm Nursery, Harpers Ferry, WV. Parcel IDs: 04000900230000 and 04000900270000; Combined Size: .86 ac; Zoning District: General Commercial; File: 21-19-PCW.
 6. **Public Hearing:** Proposed text amendment to the Jefferson County Zoning and Land Development Ordinance to create provisions to allow Short Term Rentals to process as a Principal Permitted Use in any zoning district that allows a single family dwelling including the following zoning districts: Planned Neighborhood Development (PND), Rural (R), Residential Growth (RG), Residential-Light Industrial-Commercial (RLIC), and Village (V). The draft text amendment includes revisions to Article 2, Section 2.2 Definitions; Article 8 Supplemental Use Regulations (creation of Section 8.16 Short Term Rentals); and Appendix C Principal Permitted and Conditional Uses Table. PC File #ZTA21-01.
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There is no public comment for the following items.

7. **Discussion and Possible Action:** Review and recommendation of proposed text amendment to the *Jefferson County Envision Jefferson 2035 Comprehensive Plan* to clarify and/or state that solar facilities are principal permitted uses in the rural and residential zoning districts in preparation for the 12/7/21 Public Hearing .
 8. **Discussion and Approval:** Planning and Zoning Quarterly Report for FY 2021-2022 1st Quarter
 9. **Reports from Legal Counsel**
 - a. Discuss and review Jefferson County Circuit Court Civil Action No. 2021-C-109.
 - b. Review of Zoning Text Amendment File #ZTA19-03 related to solar energy facilities, including review of Jefferson County Circuit Court Civil Action No. 2021-C-33.
 10. **Planner's Memo**
 11. **President's Report**
 12. **Actionable Correspondence**
 13. **Non-Actionable Correspondence**
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Meeting Minutes
Jefferson County Planning Commission
September 14, 2021

The Jefferson County Planning Commission met on September 14, 2021 at 7:00 pm with the following Planning Commission members present in person: Mike Shepp, President; Donnie Fisher, Vice President; Wade Louthan, Secretary; Shane Roper, Jack Hefestay, and Steve Stolipher. The following members were present via ZOOM: Ron Thomas and Matt Knott (late arrival 7:03 pm). J. Ware was absent without notice.

Staff members present included Jennifer Brockman, County Planner; Jonathan Saunders, County Engineer (ZOOM); Nathan Cochran, County Attorney; Alexandra Beaulieu, Zoning Administrator; and, Jennilee Hartman, Zoning Clerk.

By order of the President, the Planning Commission meeting was held in person for Commissioners and applicants and virtually via ZOOM for the public. ZOOM meeting information was made available on the agenda and packet, which were posted to the County website.

Mr. Shepp called the meeting to order at 7:00 pm.

1. Approval of the following meeting minutes:
 - August 10, 2021: Mr. Shepp called for a vote on the minutes as presented, which carried unanimously.
 - August 31, 2021: Mr. Shepp called for a vote on the minutes as presented, which carried unanimously.
 - May 11, 2021 (as revised): Mr. Shepp called for a motion on the minutes as revised. Mr. Hefestay moved to approve the minutes as revised. Mr. Stolipher seconded the motion, which carried unanimously.
2. Request for postponement. None.
3. **Public Hearing:** Postponed from 08/10/21 meeting. Request to lift the single family restriction from Lot 1 of the John Orndorff Minor Subdivision (PC File 94-11: Note #3), to allow for the construction of a 3 bedroom/2 bath house with 1 bedroom/1 bath in-law suite. Owner: Nicole Picciotto. Property Location: John Orndorff Minor Subdivision, Lot 1 (Elmwood Farm), vacant parcel on Peaceful Breeze Ln, Shepherdstown, WV. Tax District: Shepherdstown (09); Tax Map: 12; Parcel: 8; Size: 12.99 ac; Zoning District: Rural; File: 21-12-Q.

Ms. Brockman provided an overview of her staff report to the Commission. Ms. Nicole Picciotto, property owner, briefly explained the nature of the request.

Mr. Shepp opened the public hearing. There were no members of the public signed up to speak. Mr. Shepp closed the public hearing.

Mr. Hefestay moved to approve the request for a final plat amendment. Mr. Fisher seconded the motion, which carried unanimously.
4. **Public Workshop:** Concept Plan for Rexroat Agriculture Special Event Facility (weddings and group gatherings); Farm vacation Enterprises (lodging for guests); Pick your own crop, Bed and Breakfast (possible future expansion). Owner: Russel and Cyndi Rexroat; Property Location: 191 Myerstown Rd., Charles Town, WV. Tax District: Kabletown (06); Tax Map: 10; Parcel: 3.2; Size: 15.78 acres; Zoning District: Rural; File: 21-6-SP.

Ms. Brockman provided an overview of her staff report to the Commission noting that the proposal was consistent with the goals of the comprehensive plan. Ms. Cyndi Rexroat, property owner, explained the nature of the request. Addressing the written comments from concerned neighbors, Ms. Rexroat stated that all of the proposed parking would be located towards the rear of the subject parcel. Ms. Rexroat also noted that it was her intent to eventually construct a building, which will help mitigate the noise concerns.

Mr. Shepp opened the public hearing. There were no members of the public signed up to speak. Mr. Shepp closed the public hearing.

Mr. Hefestay moved to accept the concept plan as presented. Mr. Roper seconded the motion, which carried unanimously.

5. **Public Workshop:** Concept Plan for Shepherd View Apartment Complex (Minor Site Plan). The proposal consists of 40 2-bedroom apartments in five (5) buildings with associated open space and infrastructure. Owner: AAL, LLC; Property Location: 8285 Martinsburg Pk, Shepherdstown, WV. Tax District: Shepherdstown (09); Tax Map: 08; Parcels: 17.2 & 17.3; Size: 3.77 acres (2.21 & 1.56 acres); Zoning District: Residential Growth (eastern half) and Residential-Light Industrial-Commercial (western half); File: 21-9-SP.

Ms. Brockman provided an overview of her staff report to the Commission noting that the subject property had previously recorded a final plat for the development of 25 townhomes. Ms. Brockman explained that the applicant would need to process a boundary line adjustment plat that vacated the existing townhome development plat for Seneca Crossing North in order to allow for the development of the apartments on a single parcel.

Mr. Paul Raco, consultant, was present to address the Commission. Mr. Raco noted that Mr. Eric Lewis, project applicant; and, Mr. Joe Knechtel, project engineer with Potesta, were available to answer any Commissioner questions. Mr. Raco explained the nature of the project. Mr. Raco argued that the impact of the proposed apartment complex was only slightly greater than that of the previously approved townhome development. Mr. Raco noted that Seneca Crossing North had the potential to offer approximately 75 bedrooms verses the current apartment proposal consisting of 80 bedrooms.

Mr. Shepp opened the public hearing. Mr. David Pugh, Shepherdstown resident, explained that he was generally opposed to the project and requested that the applicant retain the existing tree line along the front of the property, that the design of the apartment buildings be in keeping with Shepherdstown architecture, and that some form of access be provided between the apartments and the adjoining university property. Mr. Shepp closed the public hearing.

Mr. Raco spoke in rebuttal noting that the project's applicants have retained a local architect to ensure the project design is in keeping with the local architecture. Mr. Raco also noted that while the apartments are not necessarily marketed towards university students that they are in discussions with Shepherd University regarding a proposed pedestrian access. Mr. Lewis noted that Christian Asam, owner of the Bavarian, is also a partner in the project. Mr. Lewis emphasized that their goal was to design a project that would be an asset to the Shepherdstown area. Mr. Raco also confirmed that he was aware of the City of Shepherdstown's interest in stormwater management.

Mr. Fisher moved to accept the concept plan as presented. Mr. Hefestay seconded the motion, which carried unanimously.

6. **Public Hearing:** Waiver from Section 21.401D to allow a 24 ft. pool to be 8 ft. into a platted access easement. Owner: Kimberly and Paul Taulton. Property Location: 355 Patriots Way, Harpers Ferry, WV; Tax District: Kabletown (06); Tax Map: 26; Parcel: 1.3; Parcel Size: 3.03 acres; Zoning District: Rural; File: 21-14-PCW.

Ms. Brockman provided an overview of her staff report to the Commission noting that while two other lots had the right to use the subject access easement, that it appears the easement has not historically been used. Kimberly and Paul Taulton, owners, briefly explained the nature of the request. The applicants noted that their neighbors did not object to the request.

Mr. Shepp opened the public hearing. There were no members of the public signed up to speak. Mr. Shepp closed the public hearing.

Mr. Louthan moved to approve the waiver request as presented. Mr. Roper seconded the motion, which carried unanimously.

7. **Public Hearing:** Waiver from Section 20.201 to allow the subject parcels to process as Minor Subdivision after the applicant processes a transfer of development rights under Section 5.7D.1.b from Parcel 8 to Parcel 12.9. Owner: BML LLC; Property Location: 1963 Kearneysville Pike, Shepherdstown, WV; Tax District: Shepherdstown (09); Tax Map: 15; Parcel 8 (88.205 acres per PB26/PG250) and Parcel 12.9 (3.478 acres per PB26/PG209); Zoning District: Rural; File: 21-15-PCW.

Ms. Brockman provided a detailed overview of her staff report to the Commission. Ms. Brockman explained the development rights of each parcel and noted that transferring development rights from one adjoining parcel to another had historically been utilized to conserve open space while ensuring adequate infrastructure for the proposed subdivision. Ms. Brockman informed the Commission that the end-result of granting the request would allow the applicant to process two minor subdivisions with two entrances as opposed to a single subdivision that would necessitate, at minimum, a County grade gravel road and supporting stormwater management. Ms. Brockman expressed concern that the proposed access easements would be inefficient for the intended development of the site.

Mr. Brant Lowe with BML, LLC; property owner, explained the nature of the request to the Commission. Mr. Lowe argued that the proposed development of the two subject parcels did not increase the overall development rights in the area. Mr. Lowe added that the entrances would require the approval of the West Virginia Division of Highways. Mr. Lowe addressed questions from the Commission.

Mr. Shepp opened the public hearing. There were no members of the public signed up to speak. Mr. Shepp closed the public hearing.

Mr. Stolipher moved to approve the waiver request as presented. Mr. Louthan seconded the motion, which carried unanimously.

8. **Public Hearing:** Waiver from Appendix B, Section 10.5 to allow an approved fitness center to utilize an existing gravel storage lot for approximately 20 additional parking spaces as opposed to a paved surface.. Owner: JD Land Holdings Inc. Applicant: True Performance Fitness LLC; Property Location: 362 W. Burr Blvd. Kearneysville, WV; Tax District: Charles Town (02); Tax Map: 1; Parcel: 74; Size: 3.65 acres; Zoning District: Industrial-Commercial; File: 21-16-PCW.

Ms. Brockman provided an overview of her staff report to the Commission. Mr. Paul Holtzberger, with True Performance Fitness, applicant, explained the nature of the request noting that there is generally a faster turn-over in customer parking for this particular type of land use. Mr. Holzberger argued that all of the required parking spaces would not be utilized at any given time.

Mr. Shepp opened the public hearing. There were no members of the public signed up to speak. Mr. Shepp closed the public hearing.

Mr. Hefestay moved to approve the waiver request. Mr. Fisher seconded the motion, which carried unanimously.

9. **Public Hearing:** Waiver from Section 24.113.B.10 to waive the Preliminary Plat requirement for an Archaeological Study for the Hunter Hills Subdivision. Owner: Ernest Hunter, et.al. Applicant: Joshbeen Grewal, ILA Properties; Property Location: 4469 Charles Town Road, Kearneysville, WV; Tax District: Middleway (07); Tax Map: 1; Parcel: 2; Size: ~107 acres; Zoning District: Residential-Light Industrial-Commercial; File: 21-17-PCW.

Mr. Stolipher recused himself from this item and vacated the meeting room.

Ms. Brockman provided an overview of her staff report to the Commission noting that the Commission had typically approved this type of a request as the Subdivision Regulations did not adequately define the type of information required in the Archaeological Study. Mr. Paul Raco, consultant, briefly explained the nature of the request. Mr. Raco argued that due to the ambiguity of the Subdivision Regulations, the applicant would not be able to provide the necessary information. Mr. Raco noted for the record that during the concept plan public workshop, that the applicant had proffered to walk the property and should any relevant findings be discovered during construction that they would be provided to the appropriate agency. Mr. Raco added that since the subject parcel had been an active farm, that any relevant archaeological discoveries would most likely have been unearthed at that time.

Mr. Shepp opened the public hearing. Ms. Anastasia Tabb, Shepherdstown resident, spoke in opposition to the request. Ms. Tabb argued that a lack of clarity within the Regulations was not a substantial reason to waive the requirement of an Archaeological Study. Ms. Tabb added that staff had the discretion to request the type of information they deemed necessary for such a study. Mr. Shepp closed the public hearing.

Mr. Raco spoke in rebuttal noting that an applicant had to the right to a clear process. Mr. Raco explained that vague text, such as the Archaeological Study requirement, leaves room for a differing interpretation between staff and proposed projects. Mr. Raco noted that this type of discretion is ultimately unfair to applicant.

Mr. Fisher moved to approve the waiver as presented. Mr. Thomas seconded the motion, which carried six (6) in support, one (1) recusal (Mr. Stolipher), and one (1) abstention (Mr. Hefestay).

Mr. Stolipher returned to the meeting room.

10. **Public Hearing:** Waiver from Section 24.113.B.10 to waive the Preliminary Plat requirement for an Archaeological Study for the Milton's Landing Subdivision. Owner/Applicant: Lutman Land Development; Property Location: 8554 Summit Point Road, Charles Town, WV; Tax District: Charles Town (02); Tax Map: 11; Parcel: 30 and 30.2; Size: 67.6+- acres; Zoning District: Residential Growth; File: 21-18-PCW.

Ms. Brockman provided an overview of her staff report to the Commission reiterating that the Commission had typically approved this type of a request as the Subdivision Regulations did not adequately define the type of information required in the Archaeological Study. Mr. Paul Raco, consultant, briefly explained the nature of the request. Mr. Raco argued that due to the ambiguity of the Subdivision Regulations, the applicant would not be able to provide the necessary information. Mr. Raco explained that vague text, such as the Archaeological Study requirement, leaves room for a differing interpretation between staff and proposed projects. Mr. Raco noted that this type of discretion is ultimately unfair to applicant. Mr. Raco added that since the subject parcel had been an active farm, that any relevant archaeological discoveries would most likely have been unearthed at that time.

Mr. Shepp opened the public hearing. There were no members of the public signed up to speak. Mr. Shepp closed the public hearing.

Mr. Fisher moved to approve the waiver as presented. Mr. Stolipher seconded the motion, which carried unanimously.

11. **Review and Discuss:** First draft of proposed zoning text amendment to create provisions to allow short term rentals to process in Jefferson County (PC File #ZTA21-01). The proposed text amendment to the Zoning and Land Development Ordinance includes revisions to Article 2, Section 2.2 “Definitions”; Article 8, Supplemental Use Requirements (proposed Section 8.16 Short Term Rentals); and Appendix C, Principal Permitted and Conditional Uses Table.

Ms. Beaulieu provided an overview of the proposed text amendment. After a brief discussion of its purpose and some minor edits suggested by staff, Mr. Stolipher moved to schedule a public hearing for October 12, 2021. Mr. Hefestay seconded the motion, which carried unanimously.

Mr. Stolipher and Mr. Roper recused themselves from the following Item (12) and vacated the meeting room.

Mr. Cochran suggested the Commission go into an executive session to receive counsel for Agenda Items 12 and 13. Mr. Shepp moved to go into executive session to receive legal counsel on potential and pending litigation at 8:38 pm. Mr. Hefestay seconded the motion, which carried unanimously.

Mr. Hefestay moved to come out of executive session at 9:20 pm, which carried unanimously.

12. Review and Discuss the County Commission’s directive from 09/02/21 regarding an amendment to the Comprehensive Plan to identify and secure the role of solar facilities throughout the rural and residential zoning districts in Jefferson County, including consideration of an amendment to the Jefferson County Comprehensive Plan in accordance with WV Code 8A-3-11, 8A-3-6, and related statutes to clarify and/or state that solar facilities are principal permitted uses in the rural and residential zoning districts.

- a. Discussion and Possible Action to establish a schedule for the amendment process.

In order to meet the processing timeframe outlines in WV State Code, Mr. Hefestay moved to call the following special meetings:

- September 28, 2021: a workshop to receive public input for writing the draft amendment.
- October 5, 2021: for Staff to review and discuss the proposed amendment with the Planning Commission.
- November 16, 2021: a Public Hearing on the proposed draft amendment.

Mr. Shepp offered an amendment to the motion to include providing staff direction to draft the amendment at the September 28, 2021 meeting. Mr. Hefestay accepted the amendment.

Mr. Fisher seconded the motion, which carried unanimously.

Mr. Shepp noted he would be unable to attend at the October 5, 2021 meeting due to a scheduling conflict.

13. Reports from Legal Counsel

- a. Discuss and review Jefferson County Circuit Court Civil Action No. 2021-C-109. Due to a legal technicality in processing, Mr. Cochran informed the Commission that his office had filed motion to dismiss. The case is still pending.
- b. Review of Zoning Text Amendment File #ZTA19-03 related to solar energy facilities, including review of Jefferson County Circuit Court Civil Action No. 2021-C-33. Mr. Cochran informed the Commission that his office had filed motion to appeal. The case is still pending.

No additional action was taken.

14. Planner's Report

Ms. Brockman noted that the next regularly scheduled meeting would be October 12, 2021.

15. President's Report. None.

16. Actionable Correspondence. None.

17. Non-Actionable Correspondence.

- a. Ruthlee Holler Email – Short Term Rentals. Ms. Hollar's email was included in the packet.

Mr. Hefestay moved to adjourn the meeting at 9:40 pm. Mr. Louthan seconded the motion, which carried unanimously.

These minutes were prepared by Jennilee Hartman, Zoning Clerk.

Meeting Minutes
Jefferson County Planning Commission
September 28, 2021

The Jefferson County Planning Commission met on September 28, 2021 at 7:00 p.m. with the following Commission members present via ZOOM: Mike Shepp, President; Donnie Fisher, Vice President; Wade Louthan*, Secretary; Jack Hefestay, Ron Thomas, and Matt Knott.

The following Commission members were absent without notice: J Ware, Shane Roper, and Steve Stolipher, County Commission Liaison.

**Mr. Louthan joined the meeting at 7:07 PM, after the meeting had been called to order and was not present during the roll call.*

Staff members present included Jennifer Brockman, County Planner; Alexandra Beaulieu, Zoning Administrator; Nathan Cochran, County Attorney; and Will Rohrbaugh, County's legal representative.

By order of the President, the Special Called Planning Commission meeting was held virtually via ZOOM. Virtual meeting access information was made available on the agenda, which was posted to the County website.

Mr. Shepp called the meeting to order at 7:01. Mr. Shepp reviewed meeting protocol. Ms. Brockman conducted a roll call.

Mr. Cochran noted that both the Planning Commission and the County Commission had previously found that the previous solar text amendment as drafted (*ZTA19-03*) was consistent with the Comprehensive Plan and to the extent that it was inconsistent, if any, that there had been changes of an economic, social, or other nature within the meaning of WV Code 8A-7-8 and met the requirements of WV Code 8A-7-8. Mr. Cochran noted that the previous findings from both the Planning Commission and the County Commission had not changed. Mr. Cochran stated that the JCC determined to request that the PC consider an amendment to the Comp Plan since there seems to be some confusion to the public regarding compatibility with the Comp Plan. Mr. Cochran referred to the letter from the County Commission, which provided direction to the Planning Commission, and was the purpose for the meeting.

1. ***Envision Jefferson 2035 Comprehensive Plan*** (approved 1/14/15)

- a. Overview of "Economic Development, Employment and Infrastructure Element" with particular focus on the Alternative Energy subsection under Infrastructure.

Ms. Brockman provided an overview of the purpose behind the meeting and the timeframe of the amendment process. Ms. Brockman reviewed excerpts from the *Envision Jefferson 2035 Comprehensive Plan (2035 Plan)*, noting that the Plan had been in effect for about six years.

2. **Round Table/Public Workshop**

Mr. Shepp stated that the County Commission had instructed the Planning Commission to consider revising the Comprehensive Plan to permit solar farms in the rural and the residential growth districts. He stated that the purpose of the meeting was to receive public input about this requested amendment to the *2035 Plan*. Mr. Shepp opened up the meeting to receive public input. Ms. Beaulieu read the names of individuals who had signed up to speak in the order they were listed.

1. Mr. Doug Rockwell, Charles Town, WV. Mr. Rockwell referred to WV Code 8A-3-1 and 8A-3-2 regarding the Comprehensive Plan amendment process. Mr. Rockwell stated he objected to the format of the meeting notice and the limitation to three minutes for public comment. Mr. Rockwell provided an overview of various sections of the *2035 Plan*, emphasizing the Plan's various goals and objectives regarding protection of the County's rural character and viewsheds. Mr. Rockwell suggested a combination of processes to include permitted uses and conditional

use permits, similar to special event facilities.

[Mr. Rockwell had also submitted a copy of the PAS Memo-2019-09-10 “Planning for Utility Scale Solar Energy Facilities” which was included in the 9/28/21 PC packet.]

2. Chris Sternhagen, Minneapolis, Minnesota, Director for Development with EDF Renewables and acting as the Principal Developer for the proposed Wild Hill Solar Facility sited in Jefferson County. Mr. Sternhagen offered various points to consider solar energy facilities as compatible with agricultural uses and also to be considered a variant of traditional agricultural land uses. Mr. Sternhagen stated that solar facilities help preserve productive soil for future agricultural use. He also noted that solar farms do not require the installation of new utility infrastructure or roads typical to traditional commercial development. Mr. Sternhagen provided an overview of the siting process for solar facilities and noted two limiting factors: 1) Access to available transmission capacity; and 2) Topology and access to land suitable for installation and operation of a solar farm. Mr. Sternhagen concluded with a request to the Planning Commission to consider an amendment that would allow solar facilities as a principal permitted use.
3. Julie Philabaum, Charles Town, WV. Ms. Philabaum stated that she was speaking as a concerned citizen and not as a representative of any group or organization she had been appointed or elected to. Mrs. Philabaum stated that the proposal to allow solar as a permitted use was not consistent with the *2035 Plan*. She stated that the text amendment as drafted would allow more than 80% of the County to be used for solar facilities without significant safeguards. Ms. Philabaum referred to various goals in the *2035 Plan* which include protecting the rural character of the County and implementation of the urban tree canopy plan. Ms. Philabaum concluded by recommending that solar facilities require a Conditional Use Permit and that there be a limitation to the percentage of land that could be used for solar in the County.
4. Anastasya Tabb, Shepherdstown, WV. Ms. Tabb stated that the agenda description was not as direct as it could have been. She stated that she was not opposed to renewable energy but argued that the amendment should be drafted in a way that is compatible with the community.
5. Christine Marshall, Shepherdstown, WV. Ms. Marshall urged the Planning Commission to conduct a study of the impact of utility scale solar on the County, including environmental and economic impact. She stated that following a thorough study, then the County could propose changes to the concept [sic] plan. Ms. Marshall stated that the County should also study the best siting locations for utility scale solar and consider financial incentive for siting on brownfields and landfills.

[Ms. Marshall also submitted an e-mail and copy of the PAS Memo-2019-09-10 “Planning for Utility Scale Solar Energy Facilities” which was included in the 9/28/21 PC packet.]

Ms. Beaulieu confirmed that there were no other members of the public signed up to speak. Mr. Shepp closed public comment.

3. Next Steps

Planning Commission Work Session: October 5, 2021 to finalize proposed language

Planning Commission Public Hearing (tentative): November 16, 2021

4. **Review and Discuss:** Planning Commission discussion and direction to staff regarding proposed Comprehensive Plan text amendment

Mr. Shepp moved to instruct staff to prepare a draft revision of the *Envision Jefferson 2035 Comprehensive Plan* to permit large scale solar facilities in the rural and residential growth districts. Mr. Hefestay seconded the motion, which carried unanimously. Mr. Shepp requested to have the draft by the October 5, 2021 meeting for review and consideration.

Mr. Cochran requested confirmation that the public could continue to submit written comments and information for the Planning Commission's consideration. Mr. Shepp stated that would be acceptable through the public hearing.

Mr. Hefestay motioned to adjourn at 7:27 p.m. Mr. Fisher seconded the motion, which carried unanimously.

These minutes were prepared by Alexandra Beaulieu, Zoning Administrator.

Meeting Minutes
Jefferson County Planning Commission
October 5, 2021

The Jefferson County Planning Commission met on October 5, 2021 at 7:00 p.m. with the following Commission members present via ZOOM: Donnie Fisher, Vice President; Wade Louthan, Secretary; J Ware, Jack Hefestay, Ron Thomas, and Matt Knott.

The following Commission members were absent with notice: Mike Shepp, President; Steve Stolipher, County Commission Liaison; and Shane Roper.

Staff members present included Jennifer Brockman, County Planner; Alexandra Beaulieu, Zoning Administrator; Nathan Cochran, County Attorney; and Will Rohrbaugh, County's legal representative.

By order of the Vice President, the Special Called Planning Commission meeting was held virtually via ZOOM. Virtual meeting access information was made available on the agenda, which was posted to the County website.

Ms. Brockman conducted a roll call.

Ms. Brockman provided an overview of Staff's proposed edits. Ms. Brockman noted that the packet included a summary of public comments provided during the workshop held on September 28, 2021. Ms. Brockman reviewed the draft revisions as submitted by Todd and Susan Hough.

The Planning Commission discussed both the Staff's recommended draft and the draft submitted by the Hough's and provided feedback to staff on how to incorporate the recommendations into a single draft for consideration at a Public Hearing.

Mr. Cochran requested that the Planning Commission discuss when to hold their public hearing.

Mr. Cochran suggested that the Public Hearing be scheduled for December 7, 2021 in order to allow sufficient time for the Planning Commission to review their final edits prior to the hearing and still meet the legal notice requirements.

Mr. Fisher made a motion to schedule a public hearing for December 7, 2021. Mr. Thomas seconded the motion, which carried unanimously.

Mr. Knott made a motion to direct Staff to incorporate the changes as discussed. Mr. Hefestay seconded the motion, which carried unanimously.

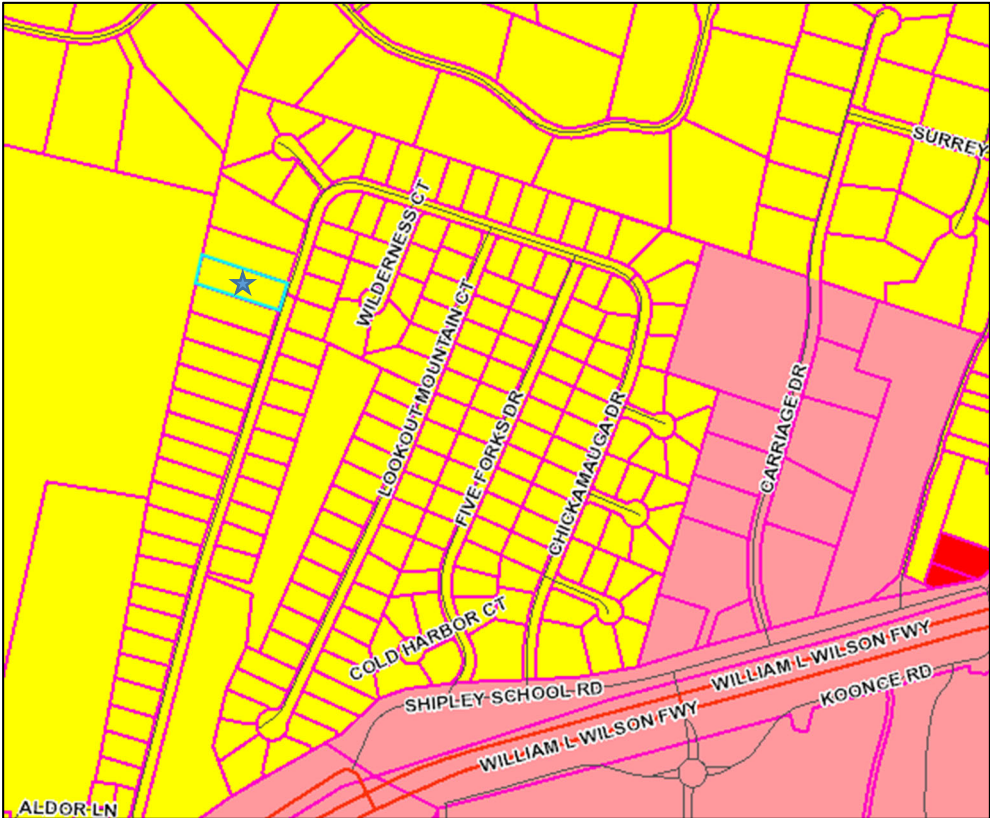
Mr. Knott motioned to adjourn the meeting at 7:59 p.m. Mr. Hefestay seconded the motion, which carried unanimously.

These minutes were prepared by Alexandra Beaulieu, Zoning Administrator.

Staff Report
 Jefferson County Planning Commission Meeting
 October 12, 2021

Durrschmidt Final Plat Amendment (File #: 21-19-Q)

Item # 3: Public Hearing: Request by property owners Kara and Matthew Durrschmidt for a Final Plat Amendment to allow an in-ground pool and fence to be located within a 10' platted utility/drainage easement for Lot 21 of Sheridan Subdivision, Phase II.

Applicant/ Owner	Kara and Matthew Durrschmidt
Property Location & Information	<p style="text-align: center;">Sheridan Subdivision, Lot 21, 441 Chickamauga Dr., Harpers Ferry, WV Parcel ID: 04009D00210000; Size: 0.83 ac; Zoning District: Residential Growth</p> 
Surrounding Properties:	<p style="text-align: center;">Zoning Districts: North, South, East, West: Residential Growth</p>
Proposed Activity	A 16' x 32' in ground pool with surrounding concrete (total area: 22' x 44') and a 6' fence.
History:	<p>Sheridan Subdivision (File 00-33), Phase I, approved 9/23/03 (PB20/PG39): Lots 1, 26, 38-78, 94, 109, 132, 159 & Residues A-F Sheridan Subdivision (File 05-26) (subject parcel), Phase II, 08/31/06, (PB23/PG40): Lots 2-25, 27-37, 79-93, 95-108, 110-131, 133-158, 160-178 Minor Plat Change (SWM #2): Plat Book 25, Page 248, entry sign Minor Plat Change (Lots 12-23): Plat Book 25, Page 539 (subject parcel) Minor Plat Change (Lots 1-4): Plat Book 25, Page 571</p>

Staff Report
 Jefferson County Planning Commission Meeting
 October 12, 2021

Durrschmidt Final Plat Amendment (File #: 21-19-Q)

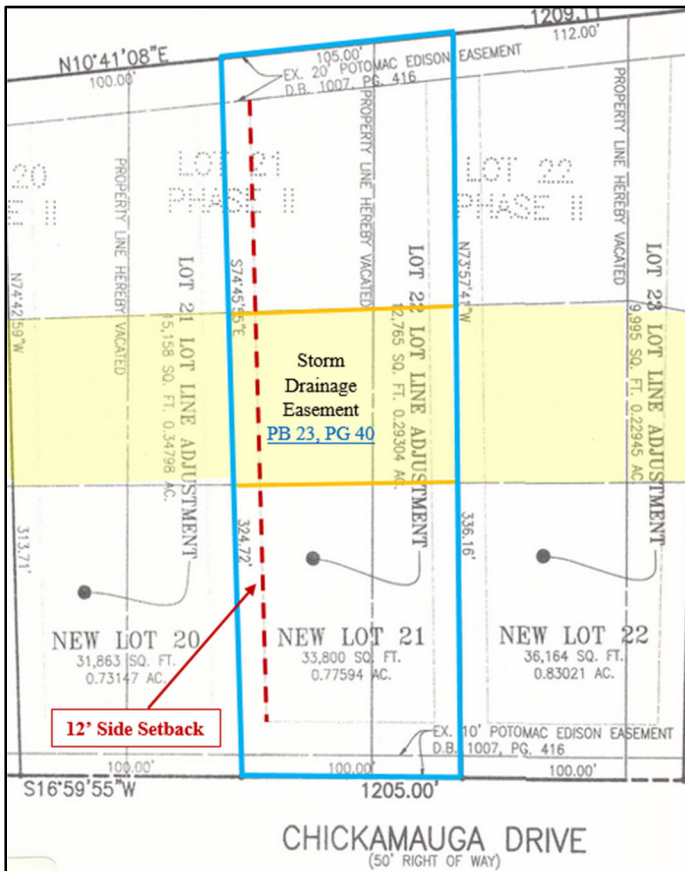
Waivers/ Variances	PC granted the following variances (Phase I): 10/09/01: to allow lot dimensions to exceed 3:1. 09/24/02: 6-month extension from CIS approval. BZA granted the following variances (subject parcel): 09/23/21: reduce side setback from 12' to 6' for pool (21-29-ZV).
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Summary of the Request:

The applicant is seeking approval of a Final Plat Amendment to allow a 16'x32' in-ground pool with surrounding concrete (total area: 22'x44') and a 6' tall fence within a 10' drainage/utility easement. Final Plat Note #15 on the Sheridan Subdivision Phase II Final Plat states that "each lot in Phase II shall have a 10' wide drainage and utility easement along all lot lines".

The subject parcel is designated as Lot 21 in the Sheridan Subdivision, Phase II (PC File #05-26), which was recorded on August 31, 2006 in [Plat Book 23 at Page 40](#). On February 26, 2016, a minor plat change to adjust the interior property lines of lots 12-23 was recorded in [Plat Book 25 at Page 539](#).

There is an approximate 75' wide storm drainage easement (width varies) that runs horizontally through the center of the subject parcel. Pursuant to Note #15 of the final plat, each lot in the subdivision is subject to a 10' wide drainage and utility easement along all lot lines. The platted drainage and utility easements, along with the natural topography of the lot, significantly reduce the buildable area for Lot 21.



Staff Report
Jefferson County Planning Commission Meeting
October 12, 2021

Durrschmidt Final Plat Amendment (File #: 21-19-Q)

On September 23, 2021, the Board of Zoning Appeals granted a side setback reduction from 12' to 6' for the proposed construction with the condition that the applicant obtain approval from the Planning Commission.

Plat Amendment Requirements

Section 24.202A of the Jefferson County Subdivision and Land Development Regulations, "Amendment, Modification, and the Vacating of Subdivision Plats", states that the Planning Commission (or staff, in the case of a minor subdivision plat) may approve an amendment to a subdivision plat in the same manner as the plat was originally approved, provided:

1. All of the property that is affected by the amendment is under the ownership of the applicant;
2. The amendment will not affect the ownership or right of convenient access of persons owning other parts of the subdivision; and
3. The amendment complies with all of the standards of these Regulations, including verification of compliance with the Zoning Ordinance.

Because all plats were approved by action of the Planning Commission under the 1979 Subdivision Ordinance, this amendment was required to be placed on the Planning Commission agenda for a Public Hearing and Planning Commission action. The required 30-day public notice has been advertised in the Spirit of Jefferson newspaper.

While the 1979 Subdivision Regulations do not contain the restrictive language about permanent encroachments, structures, fences or landscaping being prohibited within any easement area, easements are reserved for specific purposes and staff determined that a structure in one of these required easements requires a Final Plat Amendment. Based on the size of the structure, it is expected that impact on adjoining properties would be minimal. The applicant has been advised that they shall assume all liability should construction within the drainage easement negatively impact themselves or their neighbors.

Recommendation

Staff recommends approval of the requested Final Plat Amendment to allow the proposed construction within the drainage easement, if a professional engineer determines that there is no adverse effect.

Such approval should also be conditioned on the homeowner acknowledging that they fully understand that if there is any negative effect on the drainage in that area, the project is undertaken at the homeowner's risk and the homeowner will need to work with the HOA and impacted properties to resolve the issue.



Jefferson County, West Virginia
 Department of Engineering, Planning and Zoning
Office of Planning and Zoning
 116 E. Washington Street, 2nd Floor, P.O. Box 716
 Charles Town, West Virginia 25414

File #: 21-19-0
 Date Rec'd: 09-03-21
 Mtg Date: 10-12-21

Email: planningdepartment@jeffersoncountywv.org
zoning@jeffersoncountywv.org

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

Final Plat Amendment Application

A request to amend, modify and/or vacate an approved plat must comply with Section 24.202 of the Jefferson County 2008 Subdivision Regulations, as amended.

Property Owner Information

Owner Name: MATTHEW DURRSCHMIDT + KARA DURRSCHMIDT
 Business Name: _____
 Mailing Address: 441 CHICKAMAUGA DR. HARPERS FERRY, WV 25425
 Phone Number: 410-845-1667 Email: msd7371@hotmail.com

Applicant Information

Applicant Name: _____ Same as owner:
 Business Name: _____
 Mailing Address: _____
 Phone Number: _____ Email: _____

Consultant Information

Consultant Name: BRIAN STONER
 Business Name: 1406 OAK RIDGE PL. HAGERSTOWN, MD 21740
 Mailing Address: FLOOR POOLS
 Phone Number: 301-791-3400 Email: bstoner@floorpools.com

Physical Property Details

Physical Address: 441 CHICKAMAUGA DR. HARPERS FERRY, WV 25425
 Parcel ID: 04009500210000 Parcel Size: .83 ac.
 Zoning District: RG Deed Book: 1179 gH Page No: 631 gH

Plat Information

Plat Title: Sheridan, PH II Note No: 15
 Recordation Date: 08-31-06 Plat Book: 23 Page No: 40

Describe the nature of your proposed amendment.

ALTHOUGH THE PROPOSED POOL STRUCTURE DOES NOT CROSS THE 10' DRAINAGE EASEMENT ON THE SIDE OF THE PROPERTY, THE SURFACE CONCRETE BORDERING THE STRUCTURE WOULD NEED TO CROSS OVER THE EASEMENT. THE CONCRETE DOES NOT AFFECT THE DRAINAGE AND WE REQUEST AN AMENDMENT/EXCEPTION TO REDUCE THE 10' EASEMENT TO 6'.

Sketch the shape and location of the lot. Show the location of the proposed construction/land use. Include building setbacks, size, and height. Identify existing easements, roads, buildings/structures, or land uses on the property. Note: septic or well relocations require a survey plat and approval by the Health Department.

Included Not applicable (include a vicinity map if a sketch is not applicable)

By signing this application, I give permission to the Planning and Zoning Staff to conduct a site visit for the purpose of taking photos for the Planning Commission staff report. The information given is correct to the best of my knowledge.

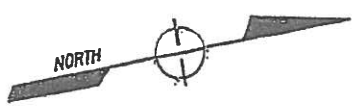
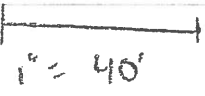
[Signature] 9-3-2021
 Property Owner/Applicant Signature Date

[Signature] 9-3-21
 Property Owner/Applicant Signature Date

McInt

KARA DURRSCHMADT
MATTHEW DURRSCHMADT
441 CHICKAMAUGA DR.
HARRIS FERRY, WV
25425

SCALE



S10°41'08"W
100.00'

S10°41'08"W
105.00'

S10°41'08"W
112.00'

EX. 20' POTOMAC EDISON EASEMENT
D.B. 1007, PG. 416

EX. 20' POTOMAC EDI
D.B. 1007, PG. 416

Lot 20

Lot 21

Lot 22

12' SIDE SETBACK

20' REAR SETBACK

12' SIDE SETBACK

12' SIDE SETBACK

N7°44'59"W

S7°44'55"E

N7°57'41"W

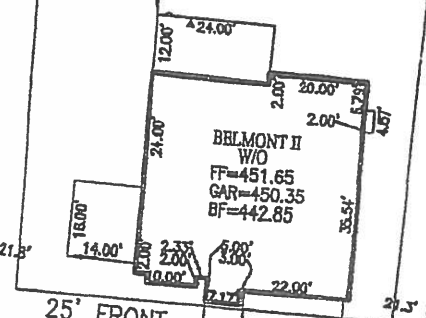
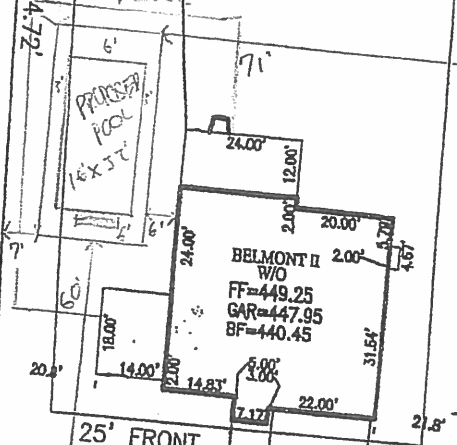
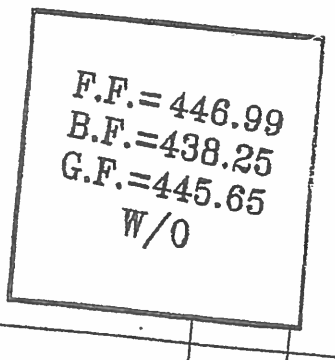
313.71'

324.72'

336.16'

EX. STORM
DRAINAGE
EASEMENT P.B.
23, PG. 40

EX. STORM
DRAINAGE
EASEMENT P.B.
23, PG. 40



25' FRONT SETBACK

25' FRONT SETBACK

N16°59'55"E
100.00'

N16°59'55"E

N16°59'55"E
100.00'

EX. SAN.
LATERAL

CHICKAMAUGA

107

108

EX. STORM
DRAINAGE
EASEMENT P.B.
23, PG. 40

F.F. = 446.99
B.F. = 438.25
G.F. = 445.65
W/O

324.72'

FENCE

PROPOSED
POOL
16' x 32'

BELMONT II
W/O
FF = 449.25
GAR = 447.95
BF = 440.45

336.16'

25' FRONT
SETBACK

25' FR
SETBAK

N16°59'55"E

N16°59'5

100.00'
EX. SAN.
LATERAL

100.00

CHICKAMATTA

DRAINAGE EASEMENT

CLOSE UP DETAIL

8-26-2021 *M. O'Neil*

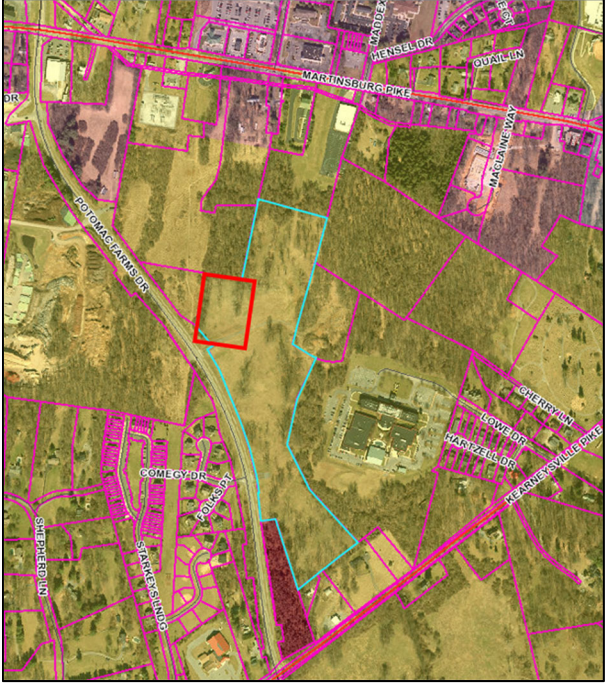
Staff Report

Jefferson County Planning Commission

October 12, 2021

Colonial Hills Subdivision, Phase 3B - Major Subdivision (21-26-SD)

Item #4: Public Workshop: A Concept Plan for the Colonial Hills Subdivision, Phase 3B (Major Subdivision) consisting of 20 townhome units with associated parking spaces.

Applicant/Owner	KE Colonial Hills, LLC
Consultant	Ryan Perks, Gordon
Property Location & Information	<p style="text-align: center;">Colonial Hills Subdivision, Lots C1 and C2 (vacant parcels). Eastern side of Potomac Farms Drive approximately 0.45 miles from the intersection of WV 480 and Potomac Farms Dr. Shepherdstown, WV. Parcel ID: 09000800100000; Size: 2.54 ac; Zoned: Residential Growth</p> 
Adjacent Zoning Districts	North, East, South, West: Residential Growth
Proposed Activity	Major Subdivision: 20 townhome units with associated parking spaces
Concept Plan Status:	08/23/21: CP Submitted 08/31/21: Sufficiency Letter 09/10/21: Deemed Complete
Previous Approvals:	<p><u>Colonial Hills Subdivision, Phase 1 (File #00-03)</u> 20 Duplex Lots & 15 Single Family Lots recorded 5/20/03 in PB 20/PG 4 *Minor Plat Change PB 25/PG 442</p> <p><u>Colonial Hills Subdivision, Phase 2 (File #04-33)</u> 60 Townhouse Lots recorded 4/8/05 in PB 21/PG 86</p> <p><u>Colonial Hills Subdivision, Phase 3 (File #05-38)</u> 35 Single Family Lots, 108 apartments, and 2 commercial lots recorded 12/8/06 in PB 23/PG 79</p> <p><u>Colonial Hills Subdivision, Phase 3A (File #08-22) - Expired</u> <u>Colonial Hills Subdivision, Phase 3A (File #17-06)</u> *Final Plat Approved – Recordation Pending</p>

Staff Report

Jefferson County Planning Commission

October 12, 2021

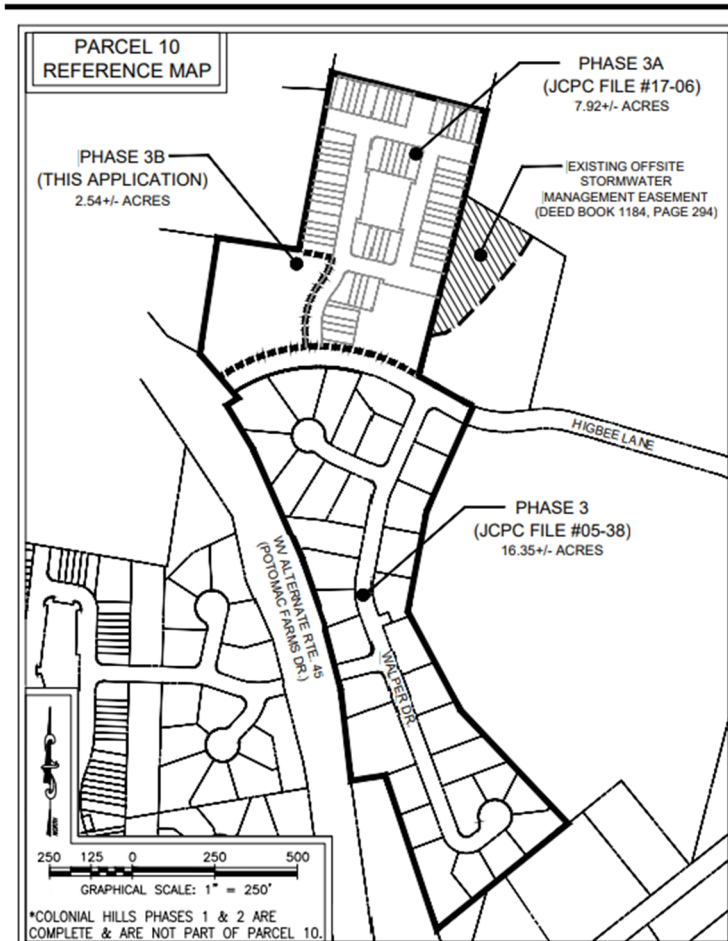
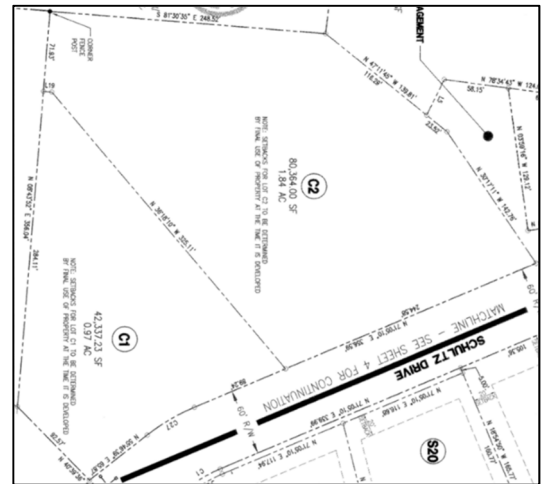
Colonial Hills Subdivision, Phase 3B - Major Subdivision (21-26-SD)

Introduction and Summary of Request

The applicant is proposing the development of a Major Residential Subdivision consisting of 20 townhome units with associated parking spaces. The overall density for this development is 16.6 dwelling units per acre based on residential lot area of 1.21 acres (of the 2.54 gross acreage). The “high density” residential land use category defined by the *2035 Envision Jefferson Comprehensive Plan* states that this category allows for “7 units or more per acre and depicts land occupied by a condominium, townhome, apartment development, residential care and/or assisted living facilities. This type of land use would be required to be served by a public water and sewer system.” The development is proposed to be served by the Corporation of Shepherdstown’s water and sanitary sewer utilities. The townhouse lots will require a site plan as well as the Preliminary and Final Plats.

Existing Site Conditions

The subject property consists of Lots C1 and C2 that were previously subdivided as part of Colonial Hills, Phase 3 (PB23/PG79B). At the time, the two lots were intended for future commercial development. In order to move forward with the proposed townhome subdivision, the applicant will have to merge/consolidate Lots C1 and C2 into a single parcel prior to or in conjunction with the townhome subdivision plat.



Access

The development proposes to use the previously approved access to Potomac Farms Drive (WV Rte. 45). This access was originally named Schultz Drive, but is now named Higbee Lane. Currently, Higbee Lane does not connect through to Lowe Drive to the east, although staff strongly recommends this connection. This connection is not a condition related to this development, it needs to be considered in the future. The Subdivision Regulations also require future connections to vacant land and should be considered for the 2+/- acre parcel to the west which does not have access to Potomac Farms Drive.

There will be a secondary access to Potomac Farms Drive from this area through Colonial Hills Phase 3, via Walper Drive and Peace Summit Way.

WV DOH approval for the use of these previously approved access points will be required for approval of this plat.

Staff Report
 Jefferson County Planning Commission
 October 12, 2021
 Colonial Hills Subdivision, Phase 3B - Major Subdivision (21-26-SD)

The access requirements of the Subdivision Regulations are as follows:

Sec. 21.102B. “Connections to Stub Streets. Where a stub street has been provided or the right-of-way is provided on an adjoining parcel or subdivision, the developer shall connect. The only exception to this shall be where commercial, industrial or other non-residential use takes access through a residential subdivision or development to a local street.”

Sec. 21.102D. “Future Connections”: Where the adjoining land is vacant, the subdivision shall provide stub streets to the property line. Connections shall be made to all properties that are not vacant or have stub streets in place. The access shall be to properties on all sides. . . .”

Open Space

Section 21.105 of the Subdivision Regulations requires a subdivision of this density to provide 15% of the land to be dedicated to open space/parkland in the Residential Growth (RG) Zoning District. For this development, the 15% open space/parkland requirement equals approximately 0.39 acres. The Regulations also state that no more than 60% of this acreage may be passive open space/recreation.

The applicant has indicated that they will be providing approximately 0.5 acres of active parkland and 0.21 acres of passive open space. Details related to the active and passive areas of passive recreation/open space will be required on the Preliminary Plat/Site Plan and Final Plat. All stormwater management areas are located off-site within Colonial Hills Phase 3A and the Shepherdstown Library site to the west. The open space areas are shown on of the Concept Plan.

Waivers/Variations

At this time, no waivers/variances are proposed for this proposed subdivision.

Subdivision Category

The subdivision associated with this Concept Plan is governed by the Subdivision Regulations. Section 20.202 of the Subdivision Regulations states that any subdivision of land that requires the development of streets (public or private) or easements of access to the lots, or common area and/or includes the creation of more than five residential lots or more than two non-residential lots and/or requires the development of new off-tract infrastructure or the extension of existing off-tract infrastructure is classified as a Major Subdivision. Colonial Hills Subdivision is processing as a Major Subdivision.

Major Subdivisions require the processing of a Concept Plan (Sections 24.110 - 24.112), which requires a Public Workshop; a Preliminary Plat (Sections 24.113 – 24.115), which requires a Public Hearing; posting of a surety/bond for all improvements (Division 24.500); and a Final Plat (Section 24.116 – 24.188), which is administratively reviewed and approved. The townhouse area will also require processing a Site Plan.

Staff Determination of Application Sufficiency and Concept Plan Completeness Review

In accordance with the current Subdivision Regulations, the Major Subdivision Concept Plan process incorporates a sufficiency and completeness review in a single step. Upon second submission and review of the applicant’s Concept Plan, Staff found the submitted plan “complete” (i.e. meeting all submission requirements of Section 24.110 of the Jefferson County Subdivision and Land Use Regulations). These requirements, as well as the current review status for each requirement for the proposed application, are provided below:

	Description	Status
1. General Location	A map or aerial photograph showing an area of 500 feet around the property. Zoning boundaries shall be located on this document.	Provided
2. Concept Plan	In accordance with the content and formatting guidelines provided in Appendix A, <i>Plan & Plat Standards</i> .	Provided

Staff Report
 Jefferson County Planning Commission
 October 12, 2021
 Colonial Hills Subdivision, Phase 3B - Major Subdivision (21-26-SD)

3. Zoning Information	<ul style="list-style-type: none"> a) Zoning District in which the proposed subdivision is situated. b) Density calculations. c) Site resource map 	Provided
4. Proposal Description	A written description of the proposal with general identification of the number of dwelling units or floor area proposed, commentary, zoning, and development option selected if the development is residential.	Provided on Concept Plan
5. Traffic Impact Data	<ul style="list-style-type: none"> a) Average Daily Trip (ADT) figures for the adjoining or accessible State road. b) Trip generation figures c) Nearest key intersection that will serve the proposed project as classified by the current Comprehensive Plan. d) "Highway Problem Areas" according to the current Comprehensive Plan that falls within a one-mile radius of the project. 	<p style="text-align: center;">On Concept Plan: <u>WV DOT ADT Counts</u> Potomac Farms Drive: 400' South of WV45: 4,275 ADT 650' north of WV480: 3,987 ADT <u>Trip Generation:</u> Peak Hour: 12 trips Average Daily Trips: 140</p>
Traffic Study	A traffic study may be required only at the request and direction of the West Virginia Division of Highways. Any required traffic study or a letter from the West Virginia Division of Highways outlining the proposed improvements shall be received with the first submission of the Site Plan.	WV DOH has not provided feedback regarding whether a Traffic Impact Study is required.
6. Agency Reviews	The applicant shall distribute the concept plan to all reviewing agencies found in Section 23.203 and 23.204 no later than 7 days after the review.	Letters to required agencies provided. No responses have been received (below).
D. Department	<p>The Department review shall include the following:</p> <ol style="list-style-type: none"> 1. Whether the density, use, and plan meet the requirements of the Zoning Ordinance and any other zoning issues that can be identified at the Concept Plan submission and any zoning issues the developer shall address in a Site Plan submittal. 2. Staff opinion as to whether the plan meets the Site Plan criteria of these Regulations. The Department shall review the Concept Plan for modifications that would improve the plan. 	Staff determined that the proposed Concept Plan meets the requirements of the Zoning Ordinance and the Subdivision Regulations as a Major Subdivision.
E./F. WVDOH	The WVDOH approval is necessary prior to preliminary plat approval. The County defers to the WVDOH requirements and approval. The WVDOH shall determine whether a traffic impact study will be required during the preliminary plat stage.	A Traffic Impact Study is required by the WV DOH.
G. Public Service	The review shall indicate whether there are existing water and sewer systems in place that can handle the development. If not, the review shall indicate the type or extent of a system that shall be proposed by the developer to best meet the County's needs in that area of the County.	The applicant has indicated that the Shepherdstown Water and Sewer Utilities will serve the property with both water and sanitary sewer services (no comments received).

Staff Report
 Jefferson County Planning Commission
 October 12, 2021
 Colonial Hills Subdivision, Phase 3B - Major Subdivision (21-26-SD)

H. Recommended Conditions	All reviews shall contain recommended conditions for moving forward to a site plan or reasons why the plan should be denied.	See below
I. Approval	Unless there are reviews indicating that the development cannot conform to the Zoning Ordinance, be serviced by public services, or provide its own utilities, or other factors that make the development impossible, Planning staff shall accept or deny the concept plan as complete.	Planning Staff accepts the Concept Plan as complete.
J. Effect	Upon accepting the application as complete, Planning staff shall place it on the next possible Planning Commission agenda as a public workshop. Staff shall advertise the public workshop in a local newspaper and the applicant shall post notice on the property in accordance with the Subdivision Regulations.	The Concept Plan was scheduled for a Public Workshop consistent with this requirement.

Concept Plan Review

1. External Agency Reviews (attached)

The following agencies were notified:

- Jefferson County Sheriff’s Department
- Shepherdstown Fire Company
- Jefferson County Health Department
- West Virginia Department of Health, Office of Environmental Health Services
- West Virginia Department of Environmental Protection
- Jefferson County Parks and Recreation Department
- Jefferson County Historical Landmarks Commission
- Jefferson County Office of Engineering
- Jefferson County GIS/Addressing Office
- Jefferson County Emergency Services Agency
- Jefferson County Board of Education

As of this date, no agency review comments have been received. If comments are received, they will be provided to the Planning Commission for their consideration.

2. Staff Recommendation related to Concept Plan

The Subdivision Regulations state that unless there are reviews indicating that the development cannot conform to the Zoning Ordinance, be serviced by public services, or provide its own utilities, or other factors that make the development impossible, Planning staff is required to accept or deny the Concept Plan as complete. Upon accepting the application as complete, Planning staff is required to place it on the next possible Planning Commission agenda as a public workshop.

The Office of Planning and Zoning Staff finds the Concept Plan for the proposed Major Subdivision, Colonial Hills Phase 3B, to be “complete” based on the information provided related to the criteria above; however, the following standards will need to be addressed prior to approval of the Subdivision:

- a. WV DOH review and approval of the required entrance permit will be required in conjunction with the Subdivision’s Preliminary Plat.
- b. Shepherdstown Water and Sewer Department approval of both water and sanitary sewer connections will be required in conjunction with the Preliminary Plat.

Based on the Subdivision Regulations, noted above, this project will process as a Major Subdivision and the next step is to process a Preliminary Plat that meets all of the requirements and standards of the Subdivision Regulations as well as a Site Plan for the townhouse portion.

Staff Report

Jefferson County Planning Commission

October 12, 2021

Colonial Hills Subdivision, Phase 3B - Major Subdivision (21-26-SD)

3. Planning Commission Direction

The Concept Plan Public Workshop allows for the Planning Commission and the general public to comment on the proposed plan before complete engineering design and cost are incurred. The Subdivision and Land Development Regulations outline the procedure:

1. The applicant makes a short presentation.
2. Staff explains outside agency comments and whether the plan can meet the standards of the Zoning Ordinance.
3. Public comment is solicited.

Following the applicant's presentation, staff's explanation, and the solicitation of public comment, the Planning Commission shall provide direction to the applicant as required under Concept Plan Direction outlined in the Subdivision Regulations. The Planning Commission has the option of providing this direction at the same meeting during which the Concept Plan public workshop takes place, or at a subsequent meeting that occurs within 14 days of the meeting at which the Concept Plan public workshop is closed.

Section 24.112 of the Subdivision and Land Development Regulations outlines the direction to be provided to the applicant during a Major Subdivision review:

“The Planning Commission shall direct the preparation of a Preliminary Plat subject to conditions to be addressed in the Preliminary Plat application. The purpose of this review is to guide the developer so that when the Preliminary Plat application is formally reviewed by the staff, there should not be a whole range of issues being raised for the first time. The developer shall cite conditions and demonstrate that they have been met or otherwise addressed.”

It should be noted that the direction provided to the applicant in the Major Subdivision Concept Plan Public Workshop shall be applicable for a period of two years, with the provision that any amendments to the Subdivision and Land Development Regulations or the Zoning and Land Development Ordinance in the second year shall be applicable.



Jefferson County, West Virginia
 Department of Engineering, Planning and Zoning
Office of Planning and Zoning
 116 E. Washington Street, 2nd Floor, P.O. Box 716
 Charles Town, West Virginia 25414

File #: 21-26-SD
 Fees Paid: n/a
 Staff Int.: jth

Rec'd 08-23-2021

Email: planningdepartment@jeffersoncountywv.org
zoning@jeffersoncountywv.org

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

Subdivision or Site Development Application

Application Type Concept Plan Final Plat (major/minor)
 Preliminary Plat Site Plan

Project Name: Colonial Hills Phase 3B
 Description: 20 townhomes on 2.54+/- acres. Development will be served by public water & sewer.

Primary Contact Phone Number (must be a direct line number) 304-725-8456

Property Owner Information

Owner Name: Rick Fink
 Business Name: KE Colonial, LLC (Formerly Mark-Colonial Hills, LLC)
 Mailing Address: 6259 Reynolds Mill Road; Seven Valleys, PA 17360
 Phone Number: 717-741-8445 Email: rfink@rkinsley.com

Applicant Information Same as Owner:

Applicant Name: _____
 Business Name: _____
 Mailing Address: _____
 Phone Number: _____ Email: _____

Registered WV Engineer or Surveyor or Consultant Information

Contact Name: Ryan Perks
 Business Name: GORDON
 Mailing Address: 148 S. Queen St, Suite 201; Martinsburg, WV 25401
 Phone Number: 304-725-8456 Email: rperks@gordon.us.com

Physical Property Details Vacant Lot:

Physical Address: Adjacent to Potomac Farms Rd., 0.45 miles north of the Rte. 480/Potomac Farms Rd. xing.
 Tax District: Shepherdstown (9) Map No: 8 Parcel No: 10 (Partial)
 Parcel Size: 2.54 acres +/- Deed Book: 989 Page No: 175
 Zoning District: Residential Growth (located on Lot C1 at PB25 PG 605 & Lot C2 at PB 25 PG 674)

Additional Parcels (if any)

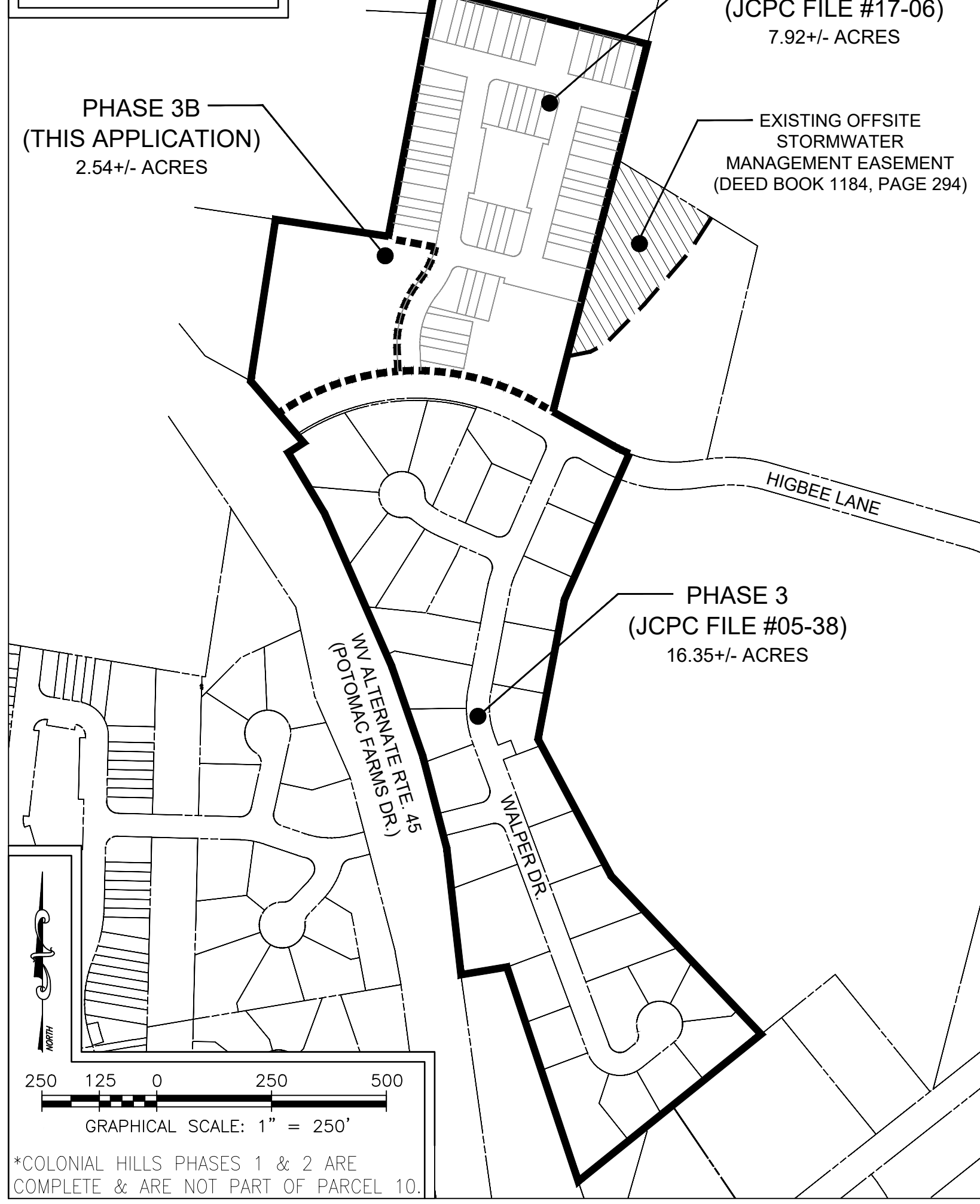
Physical Property Details Vacant Lot:

Physical Address: _____
 Tax District: _____ Map No: _____ Parcel No: _____
 Parcel Size: _____ Deed Book: _____ Page No: _____
 Zoning District: _____

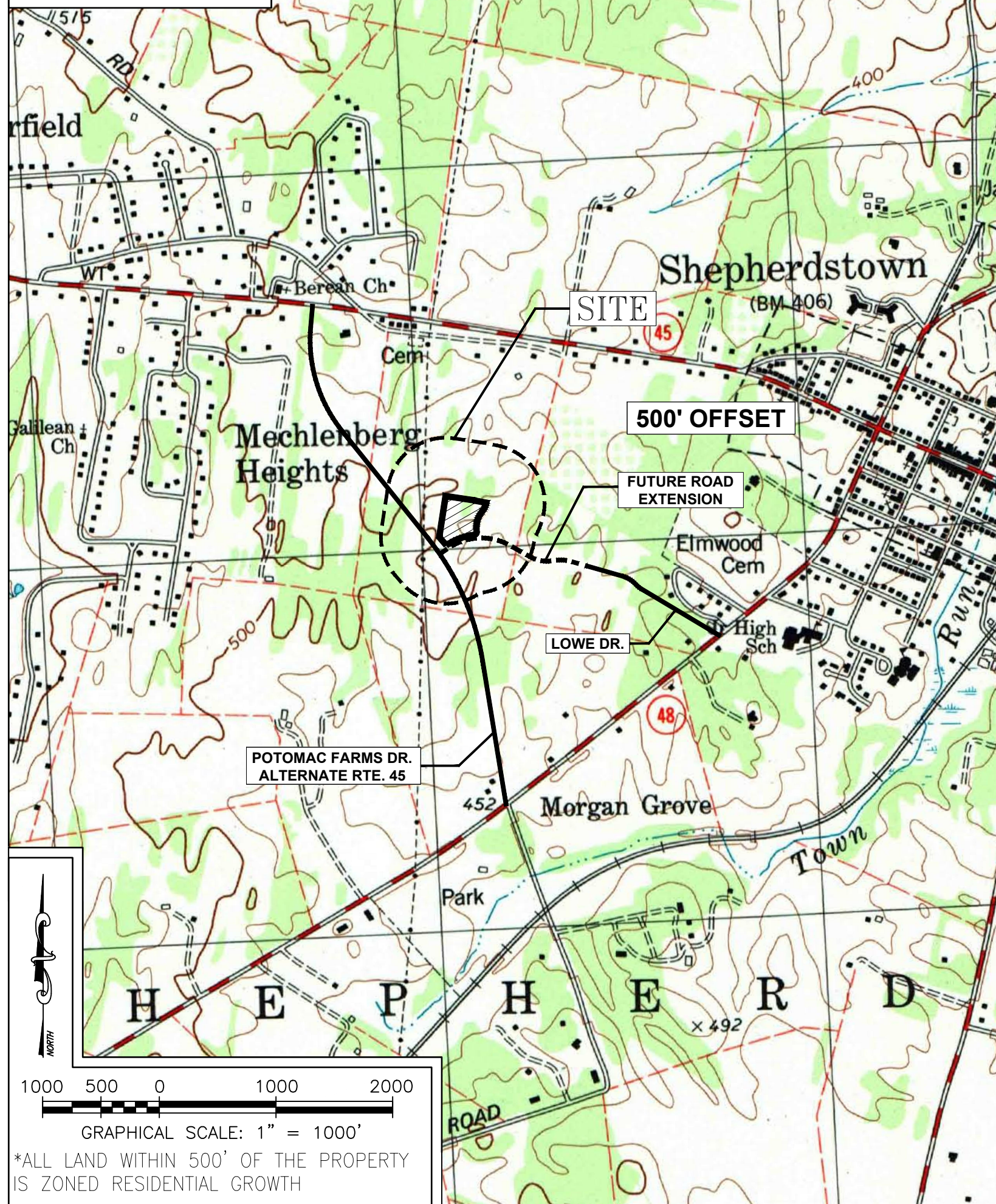
Physical Property Details Vacant Lot:

Physical Address: _____
 Tax District: _____ Map No: _____ Parcel No: _____
 Parcel Size: _____ Deed Book: _____ Page No: _____
 Zoning District: _____

**PARCEL 10
REFERENCE MAP**



**GENERAL
LOCATION MAP**



**OWNER / DEVELOPER
KE COLONIAL, LLC
6259 REYNOLDS MILL ROAD
SEVEN VALLEYS, PA 17360**

CONCEPT PLAN SUBMISSION & COMPLETENESS REVIEW NOTES:

B.1. THE PROPOSED PROJECT WILL CONFORM WITH ALL THE TOWNHOUSE REQUIREMENTS OF THE ZONING AND SUBDIVISION REGULATIONS.

B.2. SEE GENERAL LOCATION MAP THIS SHEET. ALL LAND WITHIN 500' OF THE SUBJECT PROPERTY ARE ZONED RESIDENTIAL GROWTH.

B.3. - A CONCEPT PLAN ON 24x36 WHITE PAPER CAN BE FOUND ON THIS SHEET.
- SEE THIS SHEET FOR THE LAYOUT OF LOTS AND ROADS.
- BUILDING AREAS WILL BE CONFINED TO EACH SINGLE FAMILY DETACHED LOT WITHIN BUILDING SETBACK LINES
- ACTUAL BUILDING FOOTPRINTS WILL VARY WITH INDIVIDUAL HOME DESIGN.

B.4. ZONING INFORMATION:
a. THE SUBJECT PROPERTY IS LOCATED IN THE RESIDENTIAL GROWTH ZONING DISTRICT.
b. DENSITY CALCULATIONS: 16.6 NET DWELLING UNITS PER ACRE (20 UNITS / 1.21 ACRES = 16.6 DUA)
b.1. REQUIRED
b.1.1. AREAS PER DWELLING UNIT: 3,500x20=70,000 SQ. FT.
b.2. PROVIDED
b.2.1. AREAS PER DWELLING UNIT: 110,642/20=5,532 SQ. FT.
c. SEE THIS SHEET FOR THE PROPERTY'S "SITE RESOURCES".
c.1. TOPOGRAPHIC INFORMATION PROVIDED PURSUANT TO PREVIOUS AIR SURVEY INFORMATION. CONTOURS SHOWN AT 2' INTERVALS.
c.2. WOODED AREAS ARE INCLUDED ON THIS SHEET. THERE ARE NO KNOWN WATERCOURSES, HILLSIDES, PROMINENT ROCK OUTCROPPINGS, SINK HOLES OR QUARRIES LOCATED IN THE AREA OF DEVELOPMENT. IT IS POSSIBLE THAT SOME OF THESE FEATURES MAY EXIST AND ARE CONCEALED BY EXISTING VEGETATION OR ARE OUTSIDE THE AREA PROPOSED FOR DEVELOPMENT. ALL STATE, FEDERAL AND LOCAL REGULATIONS WILL BE OBSERVED IF ANY UNKNOWN SITE RESOURCES ARE DISCOVERED DURING CONSTRUCTION.
c.3. NO DEVELOPMENT WILL OCCUR WITHIN 1,000' OF THE SHENANDOAH OR POTOMAC RIVERS AND THEREFORE IS NOT SUBJECT TO THE HILLSIDE REGULATIONS FOUND UNDER SECTION 22.504 OF THE JEFFERSON COUNTY SUBDIVISION AND LAND DEVELOPMENT REGULATIONS.
c.4. FEMA MAP 54037C0040E DOES NOT IDENTIFY ANY FLOODPLAINS ON THE SUBJECT PROPERTY.

B.4. PROPOSAL DESCRIPTION: THE SUBJECT PROPERTY IS ZONED RESIDENTIAL GROWTH. THIS CONCEPT PLAN SERVES AS A REVISION TO THE PREVIOUSLY APPROVED COMMUNITY IMPACT STATEMENT (CIS) WHICH CALLED FOR A COMMERCIAL USE AND DAYCARE ON THE PARCEL. THE REQUESTED CONCEPT PLAN INCLUDES 20 TOWNHOUSE UNITS, OPEN SPACE, AND THE CONSTRUCTION OF ASSOCIATED UTILITIES. THE STORMWATER MANAGEMENT AREA WILL BE LOCATED ON AN ADJACENT PROPERTY THROUGH AN EXISTING EASEMENT GRANTED BY SHEPHERDSTOWN PUBLIC LIBRARY (TAX MAP 08, PARCEL 11, DEED BOOK 1184, PAGE 294). THE PROPOSED STORMWATER MANAGEMENT AREA WILL BE DESIGNED TO ACCOMMODATE PHASES 3A, 3B (THIS APPLICATION), 3 AND THE PROPERTY ON WHICH THE EASEMENT IS LOCATED. STORMWATER QUALITY WILL BE ADDRESSED USING BEST MANAGEMENT PRACTICES AND STORMWATER QUANTITY WILL BE STORED IN THE OFF SITE POND. A MAIL BOX CLUSTER AND BUS PULL OFF AREA WILL BE PROVIDED IN PHASE 3A.

B.5. TRAFFIC IMPACT DATA
a. THE WVDOT TRAFFIC COUNTS WEBSITE PROVIDES INFORMATION FOR TWO POINTS ON POTOMAC FARM ROAD.
- 400' SOUTH OF MARTINSBURG PIKE INTERSECTION: 4,275 AVERAGE DAILY TRIPS
- 650' NORTH OF KEARNEYSVILLE PIKE INTERSECTION: 3,987 AVERAGE DAILY TRIPS
b. TRIP GENERATION FOR TOWNHOMES BASED ON SECTION 24.110(B)5.b. OF THE SUBDIVISION AND LAND DEVELOPMENT REGULATIONS ARE AS FOLLOWS:
- PEAK HOUR TRIPS: 20 (TOWNHOMES) x 0.60 = 12
- AVERAGE DAILY TRIPS: 20 (TOWNHOMES) x 7.0 = 140
c. THE NEAREST KEY INTERSECTION AS DEFINED IN THE CONCEPT PLAN CHECKLIST IS THE ROUTE 45 (MARTINSBURG PK./ALTERNATE ROUTE 45 (POTOMAC FARMS DR.) INTERSECTION. THERE IS ONE (1) "HIGHWAY PROBLEM AREA", AS DEFINED BY THE ENVISION JEFFERSON 2035 COMPREHENSIVE PLAN, WITHIN ONE (1) MILE RADIUS OF THE PROPERTY. IT IS IDENTIFIED AS WY ROUTE 45, LOCATED AT THE INTERSECTION WITH WV 480, WV 45 AND WV 530 (IN SHEPHERDSTOWN). THE PROBLEM IS IDENTIFIED AS "ROAD WIDTH THROUGH HISTORIC AREA LIMITS TURN MOVEMENTS".

B.1. AGENCY REVIEWS: LETTERS WILL BE SENT TO THE REQUIRED REVIEW AGENCIES UPON RECEIVING SUFFICIENCY DETERMINATION FROM JEFFERSON COUNTY FOR THE CONCEPT PLAN.
B.2. A LIST OF ALL ADJOINING PROPERTIES AND OWNERS ADDRESS'S ARE INCLUDED AS PART OF THIS SUBMISSION IN A SEPARATE DOCUMENT. PROPERTY OWNERS INFORMATION IS PROVIDED PURSUANT TO JEFFERSON COUNTY ASSESSOR'S RECORDS ON 7/22/2021.

LAND AREAS	AREA (AC)
Residential Lot Area	1.21
Internal Road Right-of-Way (Includes Parking)	0.62
Stormwater Management (NA - Off-Site)	0.00
Active Open Space	0.50
Passive Open Space	0.21
Total	2.54

PARKLAND		
Density - DUA		
Dwellings	Residential Lot Area	Dwelling Units Per Acre
20	1.21	16.6

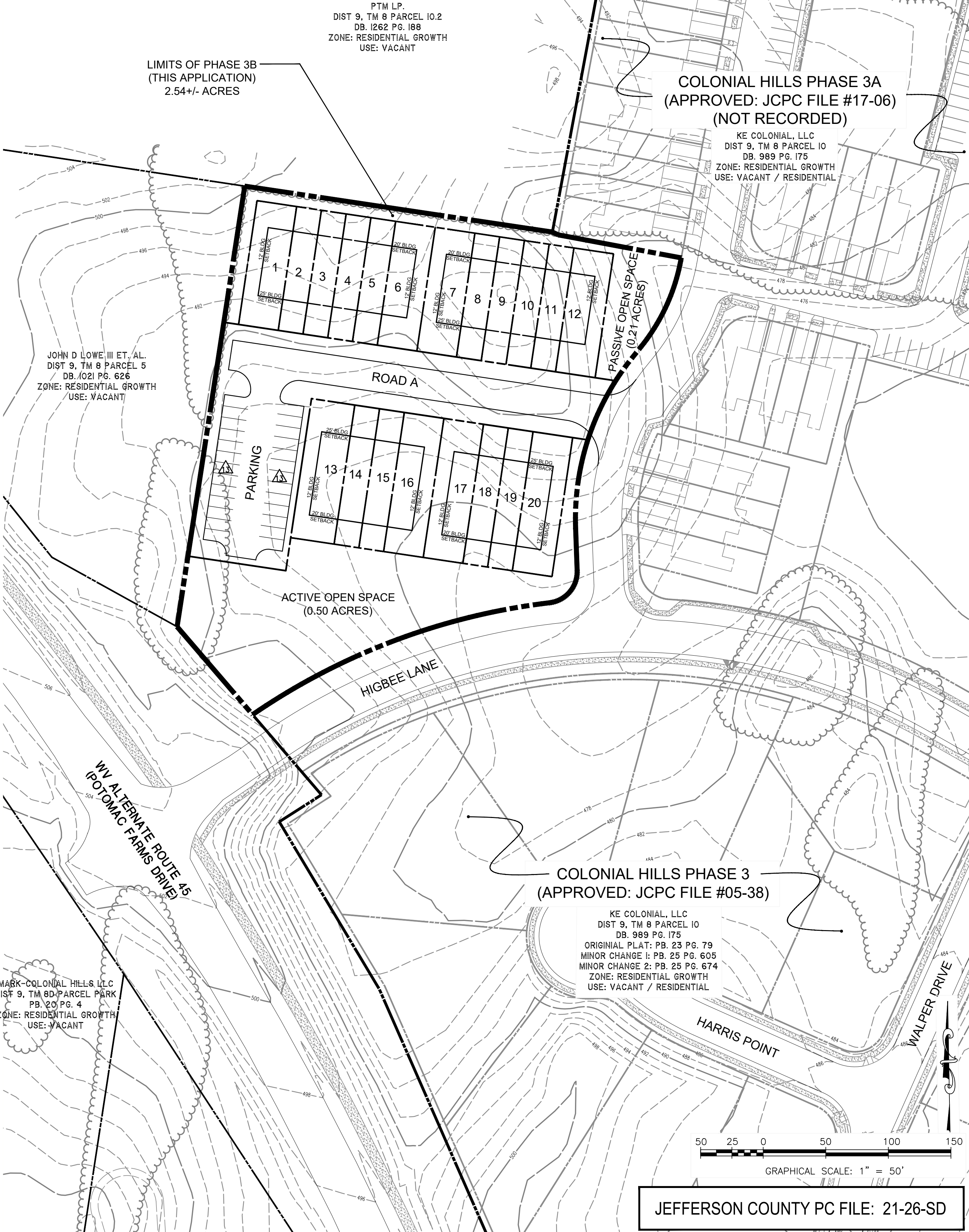
Parkland Requirements		
	% of Site	Land Area (AC)
Required	15%	0.39 (2.54 x 0.15 = 0.39)
Provided (Active)	20%	0.5

PARKING REQUIREMENTS		
Required		
2 Space Per Unit	20 x 2 =	40
0.25 Per Bedroom	3 x 20 x 0.25 =	15
Total Required		55
Provided		
50% of Garage Spaces	20 x 0.5 =	10
All Driveway Spaces	20 x 1 =	20
Off-Lot Spaces		26
Total Provided		56

SETBACKS	
Front	25'
Side	12'
Street Side	15'
Rear	20'

LEGEND

- PHASE 3B PROPERTY LINE
- ADJACENT PROPERTY LINE
- MINOR CONTOUR LINE (5')
- MAJOR CONTOUR LINE (25')
- VEGETATION LINE



Gordon
PROGRAMMING AND PLANNING
CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE
SURVEY AND MAPPING
SECURITY CONSULTING
148 S. Queen Street, Suite 201
Martinsburg, WV 25401
Phone: 304-725-6456
www.gordon.us.com

SEAL:

REVISIONS

NO.	DESCRIPTION

CONCEPTUAL PLAN
COLONIAL HILLS PHASE 3B
CONCEPT PLAN
DISTRICT 9, MAP 8, PARCEL 10, DB. 989 PG. 175
JEFFERSON COUNTY, WEST VIRGINIA

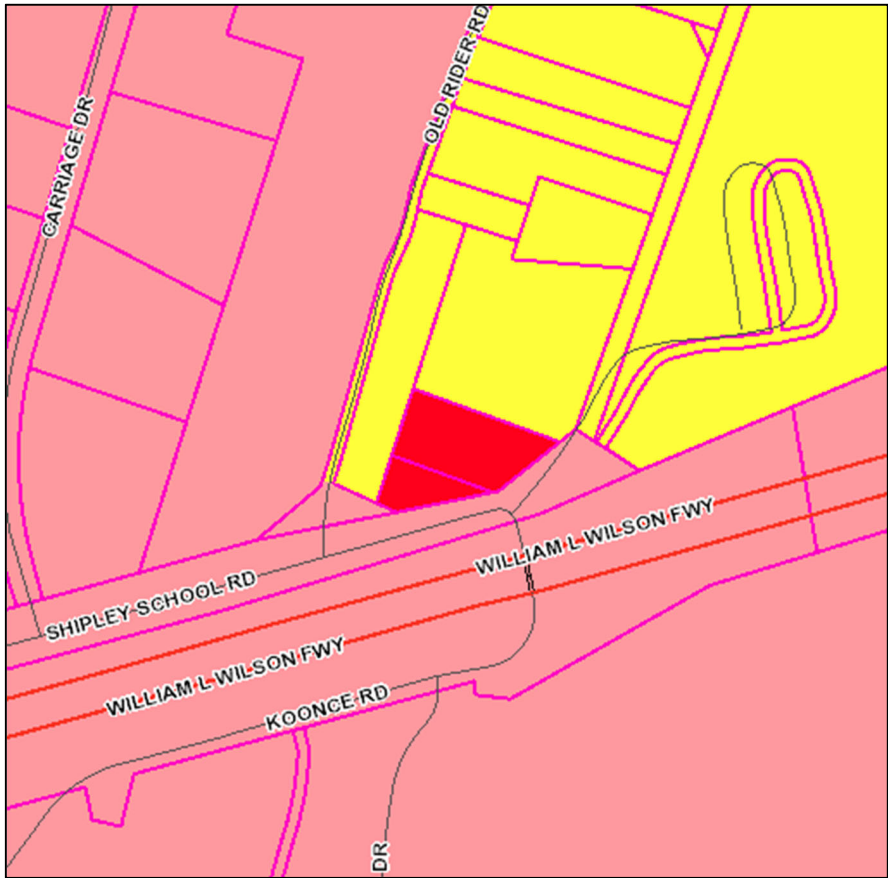
SCALE: HORIZ: AS NOTED
VERT: NA
DATE: 08-12-2021
JOB: 2436-0202
DRAWN: CHECK:
CADD: 2436_CONCEPT.DWG
NCS:
SHEET:
01 OF 01

JEFFERSON COUNTY PC FILE: 21-26-SD

Staff Report
 Jefferson County Planning Commission Meeting
 October 12, 2021

Dead Rock Contractor Service Waiver Request (File #: 21-19-PCW)

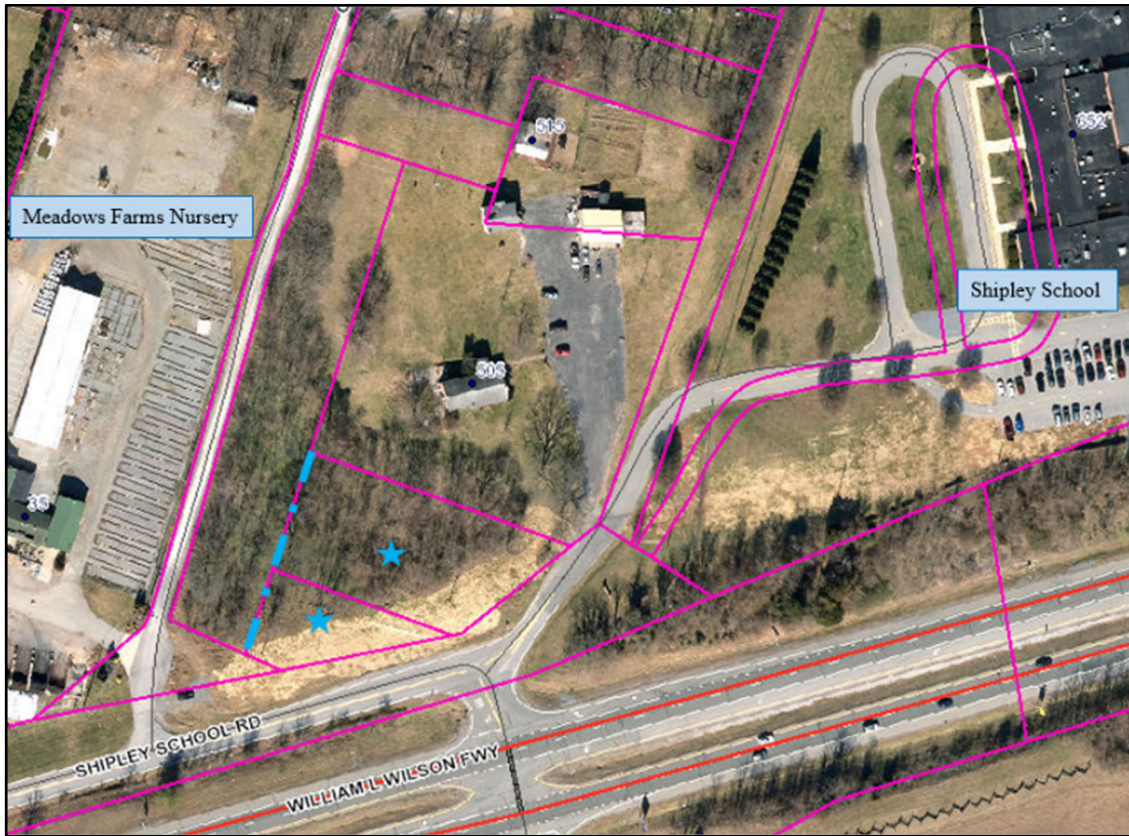
Item # 5: Public Hearing: Waiver from Section 20.203B.1 of the Subdivision Regulations, which requires a Site Plan for any addition or the new structure (building and/or parking lot) greater than 1,200 square feet. The applicant is requesting to waive the requirement of a site plan for a 1,500 square foot building, plus a 960 square foot of parking lot.

Owner/Applicant:	Dead Rock Contractor Services, LLC / Chris Livingston
Consultant:	N/A
Parcel Information and Zoning District:	<p style="text-align: center;">Vacant parcels located off Shipley School Road / located between Shipley School and Meadows Farm Nursery, Harpers Ferry, WV Parcel ID: 04000900230000 and 04000900270000; Combined Size: .86 ac; Zoning District: General Commercial</p> 
Surrounding Properties:	<p style="text-align: center;">Zoning Map Designation: North, East, West : Residential Growth South: Residential-Light Industrial-Commercial</p>
Approvals:	02/09/21: CC approved Zoning Map Amendment (20-2-Z).
Waivers/Variances:	<p>09/23/21: BZA approved reduction of the distance requirement from 75' to 25' (21-30-ZV) 09/23/21: BZA approved utilizing the existing vegetation in lieu of a planted buffer (21-31-ZV)</p>

Dead Rock Contractor Service Waiver Request (File #: 21-19-PCW)

Summary of the Request

The applicant is proposing to construct a 1,500 square foot office/storage building with a 960 square foot gravel parking area to operate as a Contractor’s Office with Outdoor Storage. The applicant has stated that the gravel parking area is for employees only, as permitted by the Subdivision Regulations, because the nature of their business does not include foot traffic from the general public. A gravel lot is also proposed for the outdoor storage of equipment which does not trigger the need for a Site Plan as long as the driveway and storage area does not disturb over 5,000 square feet.



Background

On February 9, 2021, the County Commission approved the rezoning of this property from Residential Growth to General Commercial. During a follow up meeting with Staff on August 25, 2021, the applicant was advised that due to the size of the proposed building and parking area that a site plan would be required.

On September 23, 2021, the Board of Zoning Appeals took action on the following zoning variances:

- Request 1: Variance request from Section 4.6 and Appendix B to reduce the distance requirement from 75’ to 25’ for a proposed 1,500 sq. ft. office/storage building (proposed Contractor’s Office with Outdoor Storage) (21-30-ZV).

The Board approved this request with the condition that the applicants were bound by their testimony.

Staff Report
Jefferson County Planning Commission Meeting
October 12, 2021

Dead Rock Contractor Service Waiver Request (File #: 21-19-PCW)

Request 2: Variance request from Section 4.11 and Appendix B to allow use of existing vegetation in lieu of a planted landscape buffer for a proposed Contractor's Office with Outdoor Storage. The land use includes construction of a 1,500 sq. ft. office/storage building, associated parking, and gravel equipment storage area

The Board approved this request with the condition that the applicant shall maintain a 15' wide vegetative buffer along the side and rear property lines and that the applicants be bound by their testimony.

Subdivision Requirements and Discussion

Section 20.203 "Minor Site Development" of the Subdivision Regulations (excerpt below), requires all projects to process a site plan if the proposal exceeds 1,200 square feet of either an addition or a new structure (which includes parking lots). Based on this Section, the proposed structure that is referenced in this application is classified as a Minor Site Development without a Concept Plan (because it is less than 5,000 square feet of proposed structure) and a Limited Site Plan (because it is more than 1,200 but less than 3,000 square feet of proposed structure). The required limited site plan would be processed administratively and requires a professional engineer.

This waiver is requesting to be classified as a "No Site Plan" rather than a "Limited Site Plan". The applicant is proposing a 1,500 square foot structure along with a 960 square foot gravel parking area for employees, totaling 2,460 square feet of proposed structure; therefore, the proposal exceeds the 1,200 square foot criteria by 1,260 square feet.

Should the Planning Commission grant the waiver, the applicant will still need to process a boundary line adjustment to consolidate the two lots into a single parcel. The applicant will also be required to obtain a building permit, a Zoning Certificate, WV Division of Highways approval for a new entrance, and approval from the necessary utility providers prior to construction.

Staff Recommendation

Site Plans are engineered documents that depict the site improvements required by the Subdivision Regulations, including, but not limited to, stormwater management, landscaping, parking and drive aisle layout, bonding and signage. It is generally preferred that Site Developments in commercial zoning districts, such as this one, meet the Site Plan requirements of the Subdivision Regulations, particularly addressing stormwater management requirements. It should be noted that even if no Site Plan is required, the applicant will have to provide approval from the WV DOH (access) and the Health Dept. or appropriate water and sewer utility provider before a building permit can be issued.

In this case, most of the site will be occupied by a gravel lot for the outdoor storage of the contractor equipment, employee parking, and a new structure of approximately 1,500 square feet. The applicant has received a Zoning Variance to allow the use of some of the existing vegetation in lieu of the planted landscape buffer, which would generally be shown on the Site Plan. If a Site Plan is required, the applicant will also have to provide a sidewalk along the frontage of the property, unless a separate waiver is requested and approved. The applicant has indicated a willingness to restrict their structure to 1,200 square feet if that would allow them to qualify for a "no site plan", but the inclusion of the required parking area in this calculation makes this standard impossible to meet without the waiver being requested.

Dead Rock Contractor Service Waiver Request (File #: 21-19-PCW)

Please keep in mind that, in 2018, the “No Site Plan” criteria were increased as follows:

1. The proposed footprint of a structure was increased from 250 square feet to 1,200 square feet.
2. Existing parking requirement remained the same.
3. Disturbance was previously limited to 3,000 square feet and increased to 5,000 square feet.

The applicant is proposing to exceed the 1,200 square foot requirement by 1,260 square feet totaling 2,460 square feet. Since the requirement was increased from 250 square feet to the 1,200 square feet and the applicant is doubling the current requirement, staff recommends denial of this waiver.

Sections of Subdivision Regulations under Consideration:

Section 20.203 Minor Site Development

Minor Site Developments are those proposals that do not require the development of new off-tract infrastructure or the extension of existing off-tract infrastructure.

B. Site Plan Classifications

All Minor Site Developments shall be processed utilizing one of the following Site Plan Classifications. Unless explicitly stated within this Section, all requirements of these Regulations apply to each of the classifications below, including the requirements of Appendix A and Appendix B. Minor Site Development may require Stormwater Management Plans and stormwater management activities per the Jefferson County Stormwater Management Ordinance.

1. No Site Plan or Stormwater Management Plan. No site plan is required for additions to existing structures or structures ancillary to existing uses on a property, when:
 - a. The footprint of the addition or the new structure is less than 1,200 square feet; and
 - b. No additional parking is required per Zoning Ordinance standards; and
 - c. The disturbed area is no more than 5,000 square feet.

Note: Once the total of any additions or new structures processed under this provision since October 5, 1988 exceeds 1,200 square feet, it shall process as a Limited Site Plan or a Full Site Plan, as appropriate.

Waiver Requirements

The applicant provides a response to the requirements found in “Division 24.300 Waivers” of the Subdivision Regulations, which is attached to the application. Waivers from the minimum standards in these Regulations may be granted by the Planning Commission only when the Planning Commission finds that granting a waiver will be consistent with all of the following criteria:

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

Process and procedural waivers shall be reviewed and found consistent with the above criteria prior to approval.



Jefferson County, West Virginia
 Department of Engineering, Planning and Zoning
Office of Planning and Zoning
 116 E. Washington Street, 2nd Floor
 P.O. Box 716
 Charles Town, West Virginia 25414

File #: 2119-PCW
 Mtg Date: 10/12/21
 Date Rec'd: 09/17/21
 Fees Paid: 100
 Staff Int: gt
 List of Adjoiners: X no

Email: planningdepartment@jeffersoncountywv.org
zoning@jeffersoncountywv.org

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

Planning Commission Waiver Request

Waivers must comply with Division 24.300 of the 2008 Subdivision Regulations, as amended.

Property Owner Information

Owner Name: DEAD ROCK CONTRACTOR SERVICES - CHRIS LIVINGSTON
 Business Name: DEAD ROCK CONTRACTOR SERVICES
 Mailing Address: 15 BURBERRY LN CHARLES TOWN, WV 25414
 Phone Number: 540-450-7555 Email: DEADROCKCS@GMAIL.COM

Applicant Contact Information

Applicant Name: _____ Same as owner:
 Business Name: _____
 Mailing Address: _____
 Phone Number: _____ Email: _____

Consultant Information

Name: _____
 Business Name: _____
 Mailing Address: _____
 Phone Number: _____ Email: _____

Physical Property Details

Physical Address: 0 SHIPLEY SCHOOL RD. HARPER'S FERRY, WV 25425 Vacant Lot:
 Tax District: 04 Map No: 9 Parcel No: 23827
 Parcel Size: .86 ACRES Deed Book: 1029 Page No: 643
 Zoning District: GENERAL COMMERCIAL

On a separate sheet of paper sketch the shape and location of the lot. Show the location of the intended construction or land use and indicate building setbacks, size, and height. Identify existing easements, roads, buildings, structures, or land uses on the property. Sign and date the sketch.

Included Not applicable (include a vicinity map if a sketch is not applicable)

What Section of the Subdivision Regulations and year of the Regulations are you requesting to Waive?

SECTION 20.203B(A) SITE PLAN SHALL BE SUBMITTED
~~SECTION 4.10 OF ZONING ORDINANCE~~ gt

Briefly Describe the Nature of Your Waiver Request:

WE ARE REQUESTING A WAIVER FOR THE REQUIRED SITE PLAN. TO INCREASE THE MAXIMUM BUILDING FOOTPRINT TO A 1500 SQFT BUILDING PLUS 960 SQFT OF PARKING.

Explain how the design of the project will provide public benefit in the form of reduction in County maintenance costs, greater open space, parkland consistent with the County Parks Plan or benefits of a similar nature.

N/A

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

IT WILL NOT AFFECT THE ADJACENT PROPERTY.

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

THE SQUARE FOOTAGE OF THE BUILDING REQUIRES MINIMAL LAND DISTURBANCE AS REQUIRED BY THE NO SITE PLAN REQUIRED RULE.

Explain how the waiver, if granted, will result in a project of better quality and/or character.

WE WILL BE ABLE TO BUILD A MORE EFFICIENT AND BETTER QUALITY BUILDING AND DISTURBS LESS LAND.

By signing this application, I give permission to the Planning and Zoning Staff to conduct a site visit for the purpose of taking photos for the Planning Commission staff report. The information given is correct to the best of my knowledge.

Property Owner/Applicant Signature: Chris Livingston 9/17/2021; Property Owner/Applicant Signature: [Signature] 9/17/2021

Notification Requirements

The subject parcel shall be posted with a minimum of one 28" x 22" placard at least 14 days prior to the public hearing. The placard(s) will be prepared by the Staff and posted by the applicant. Adjacent property owner name and address information shall be provided by the applicant so that notification letters can be mailed by Staff least 14 days prior to the public hearing.

10-12-21 Public Hearing Date

09-28-21 Date Placard Posted

09-28-21 Date Adjoiners Mailed

Planning Commission Determination

Approved []

Denied []

Date: ___ / ___ / ___

DISTRICT (04)
 MAP 9/PARCELS 23 & 27

Parcel 28 D SHIPLEY SCHOOL
 HARPER'S FERRY WV
 25425

Wood & Iris H. Wood
 Map 9 Parcel 249, Parcel 2
 Harper's Ferry District (04) Map 9 Pa.

IRF
 5 rebar
 1 mfp
 to corner
 (106)

IRF
 5 rebar
 bent
 (104)

IPF
 3/4" base
 chain link
 fence post
 (116)

HCMF
 (115)

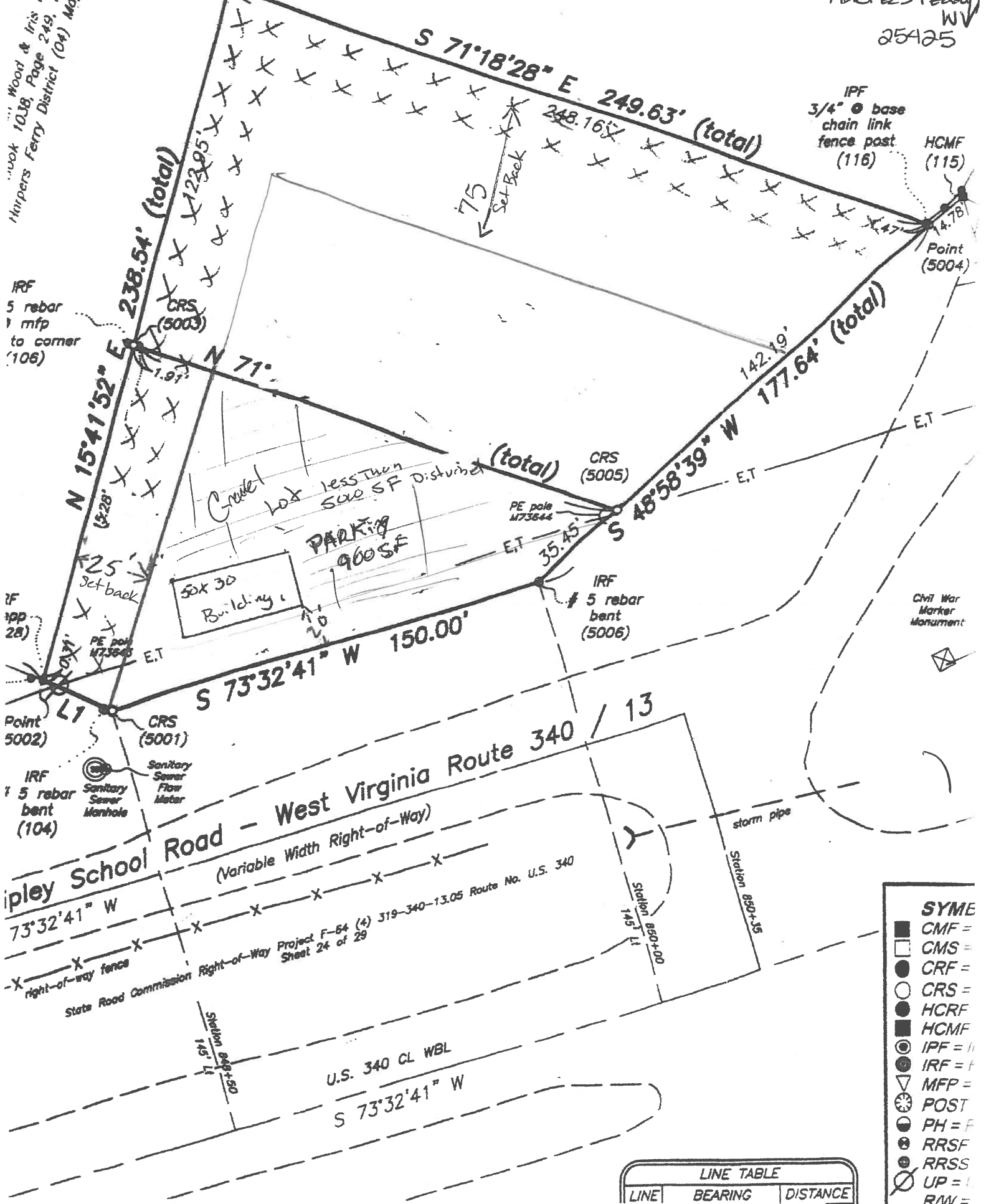
Point
 (5004)

Point
 5002

IRF
 5 rebar
 bent
 (104)

Sanitary
 Sewer
 Flow
 Meter

Civil War
 Marker
 Monument



N 15°41'52" E 238.54' (total)
 N 71° 123.95'
 S 71°18'28" E 249.63' (total)
 248.16'
 75' Set Back

CRS (5003)
 1.91'
 N 71°
 142.19'
 S 48°58'39" W 177.64' (total)
 CRF (5005)
 PE pole 473644
 35.45'
 IRF 5 rebar bent (5006)
 S 73°32'41" W 150.00'

Point L1
 CRF (5001)
 Sanitary Sewer Manhole
 West Virginia Route 340 / 13
 (Variable Width Right-of-Way)
 73°32'41" W
 State Road Commission Right-of-Way Project F-64 (4) 319-340-13.05 Route No. U.S. 340 Sheet 24 of 29
 Station 890+00
 145' LI
 Station 890+30
 145' LI

LINE TABLE		
LINE	BEARING	DISTANCE

- SYME
- CMF =
- CMS =
- CRF =
- CRS =
- HCRF
- HCMF
- IPF =
- IRF =
- MFP =
- POST
- PH =
- RRSF
- RRSS
- UP =
- R/W =



JEFFERSON COUNTY, WEST VIRGINIA

Office of Planning and Zoning

116 East Washington Street, 2nd Floor

P.O. Box 716

Charles Town, WV25414

www.jeffersoncountywv.org

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

MEMO

TO: Planning Commission

FROM: Alexandra Beaulieu, Zoning Administrator

DATE: October 5, 2021

RE: ZTA21-01, Short Term Rentals – 10-12-21 PC Public Hearing

On September 14, 2021 the Planning Commission reviewed the first draft of Zoning Ordinance Text Amendment File #ZTA21-01, which proposed incorporating minimum standards to allow short term rentals to process as a principal permitted use in any zoning district which allows a single family dwelling.

The Planning Commission expressed concerns related to a limitation on the number of occupants permitted in a short term rental and voted to eliminate reference to an occupancy limit from the proposed definition for a short term rental in Article 2. The Planning Commission also discussed the importance of ensuring that a state business license is obtained prior to operating a short term rental to ensure that appropriate taxes are collected by the state.

Several questions were raised during the September 14 meeting regarding the memo from the Health Department which stated that if a residence was not a primary dwelling, it would be subject to their lodging permit requirements. Following the meeting, Staff requested that the Health Department provide additional information to clarify when a permit would be required. A memo providing an overview of that process is attached.

Proposed Text

The purpose of the proposed text amendment is to create provisions to allow a property owner to rent out an entire house in a residentially zoned area (e.g. Rural, Residential Growth, and/or Village zoning districts) more frequently than on a weekly basis. These types of home sharing / vacation rental options are often perceived as being non-residential in nature, due to the absence of a permanent/long term resident or host on premises.

***Note:** As part of the proposed amendment, Staff is recommending that Appendix C be revised to reflect that Bed and Breakfast operations be listed as a Principal Permitted Use in the Residential-Light Industrial-Commercial zoning district (currently listed as Not Permitted).

Overview of Current Ordinance in Effect

Presently, the Ordinance defines Dwelling Unit as follows, “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, occupied by no more than one family**, and containing no more than one independent food preparation area together with facilities for sleeping and bathing.”

Based on this definition, a house or a room/rooms could be rented on a week-to-week basis and would still comply with the definition of dwelling unit.

In addition to the definition of Dwelling Unit listed above, the Ordinance includes provisions to allow Bed and Breakfast operations to be established in a single family dwelling unit by right in the Rural and Village zoning districts, **provided the property owner or a designated caretaker reside on premises while the bed and breakfast is occupied.** A Conditional Use Permit is required for Bed and Breakfast operations in the Residential Growth zoning district. A Bed and Breakfast is not permitted in the Residential-Light Industrial-Commercial (mixed use) zoning district.

Many short term rentals do not meet the definition of dwelling or Bed and Breakfast because property owners often prefer the option to rent the dwelling more frequently than on a weekly basis and do not typically reside on premises or have a designated caretaker residing on premises.

Additional Information

The Health Department provided a copy of a memo that was drafted by the Office of Environmental Health Services on February 3, 2017, which includes a summary of their permitting requirements for lodging facilities (attached). Based on the memo, if the residence/facility is not the primary residence of the owner, then it is subject to Health Department approval as a lodging facility.

Other factors to consider during this amendment process include:

- Parking – is there sufficient off-street parking to ensure all visitors park on the rental property?
- Traffic concerns should be addressed by the Division of Highways or, if within a major subdivision, the Homeowners' Association (note: the County does not own or have jurisdiction over any roads).
- Noise is regulated by the County's noise ordinance and enforced by the Sheriff's Department.

Comprehensive Plan

The Comprehensive Plan includes several recommendations related to supporting the rural economy and the tourism industry. Members of the Planning Commission previously acknowledged that short term rentals may contribute to a successful tourism industry in the County.

Short Term Rentals may not be specifically addressed in the Envision Jefferson 2035 Comprehensive Plan; however, Section 2.C of the Comprehensive Plan is the Tourism Component and includes several recommendations to support the tourism industry. Recommendation 9 states, "Support and promote rural and recreational tourism to help achieve the County's economic goals."

Short term rentals can contribute to a successful tourism industry and support the local economy by offering rental options in some of the more quaint, rural areas of the county.

Attachments:

- Excerpts from Envision Jefferson 2035 Comprehensive Plan RE: Tourism
- ZTA21-01, Short Term Rental Provisions DRAFT – reflecting changes from 09/14/21.
- ZTA21-01, Short Term Rental Provisions DRAFT (subject to public hearing)
- Email from Gillian Beach, Jefferson County Health Department. Includes the following attachments:
 - Excerpts from the Health Department's General Sanitation Rule
 - 02-03-2017, Office of Environmental Health Services Memo RE lodging facilities.
- American Planning Association PAS QuickNotes No. 56 – Regulating Short-Term Rentals
- Public Comments submitted through 10/05/2021.

2.C. Tourism

Jefferson County is the gateway to West Virginia from surrounding states and hosts the most visitors in the state of West Virginia. Direct spending related to tourism in Jefferson County approached \$1 billion in 2012, the highest in the state, with Kanawha County the next closest at \$650 million. Jefferson County's proximity to the Washington, D.C. and Baltimore, MD Metropolitan Areas and to the Eastern Seaboard offers a large market to target visitors interested in the many activities and attractions to be found here. Local tourism and recreational opportunities draw in visitors of all ages, unlike other communities whose tourism options might be appealing to only one demographic.

Cultural, Rural, Horse Racing, and Gaming Tourism

Jefferson County has a wide range of activities for visitors, including recreational, heritage and cultural tourism, local and regionally known restaurants, farmers' markets, flea markets, motor sports, horse racing, gambling, music, theater, festivals, and arts events. The County's inventory of significant historical and architectural sites, historical towns and villages, outdoor recreational activities, natural landscapes, and outdoor amenities offer visitors a variety of meaningful and high quality experiences.

The success of the County's tourism industry depends on the preservation and enhancement of the County's rural character, specifically its natural greenspaces and cultural amenities. Many of the attractions that draw tourists to the County are located in areas where the combination of historic and geographic resources enhances the sense of place and provides an authentic rural experience. Among the attractions are the historic communities with their restaurants, specialty shops, festivals, farm markets or direct to consumers on-site farm sales; wayside stands; outdoor recreational activities, and special events such as farm and ghost tours. Market expansion in the County's tourism industry would boost these grassroots ventures.

Numerous artisans and performers call the County home. This is particularly true in the Shepherdstown area where Shepherd University has facilities and established programs, such as the internationally acclaimed American Contemporary Theatre Festival, now in its 26th year, and in Harpers Ferry with the annual Don Redman Jazz Heritage concert now in its 11th year. Local venues for both performing and visual arts include three theaters and over 40 cultural non-profits that collaborate to sponsor a variety of festivals, fairs, and events where artisans and performers can showcase their talents and wares. The performances, festivals, fairs, and historic and farm tours boost revenue in the County and support a variety of local retail establishments.

In 2012, the three counties in the Eastern Panhandle drew over \$601 million in gambling revenue, representing nearly 54% of all casino and slot revenue in West Virginia. Nearly all of this revenue can be attributed to the Hollywood Casino at Charles Town Races, which provides thoroughbred horse racing and gaming opportunities in the form of table games and slots. In terms of its financial impact, the

Casino is the largest tourism attraction in the County. While there has been robust growth at this facility up to 2012, the recent opening and expansion of gaming facilities located closer to the Washington, D.C. and Baltimore, MD areas has led to a reduction in gaming revenue locally. Nevertheless, the Hollywood Casino at Charles Town Races continues to be an important stakeholder in the community. Thoroughbred horse racing, including the WV Breeders' Classics, has been a critical part of the County's history and continues to be vital to the County's future. Additionally, plans have been announced to develop a 2,500 seat performance venue as a part of the Casino facility. There is also interest in the County for an outdoor entertainment venue or performance center, which could host such things as the National Symphony Orchestra and other music or theatre events.

Heritage Tourism

Jefferson County has played a role in many of the milestones of our Country's history dating back to the era when nomadic Native American tribes hunted and lived in the Eastern Panhandle and proceeding to the founding of our nation. The family of George Washington established 12 estates in the County, eight of which remain, and 75 members of the Washington family are buried in Charles Town cemeteries. In addition, several generals from the Revolutionary War resided here.

Harpers Ferry was established during the Presidency of George Washington as one of only two U.S. Federal armories. The Lewis and Clark expedition, funded under President Thomas Jefferson and which precipitated the westward expansion, was outfitted at the Harpers Ferry Armory. Later, prior to the Civil War, John Brown in 1859 attacked Harpers Ferry with hopes of securing a major munitions stockpile that would lead to a spontaneous uprising by slaves. He was unsuccessful. Brown and several of his associates were captured, tried, and convicted at the Jefferson County Courthouse in Charles Town and hanged a few blocks away on what is now South Samuel Street.

Harpers Ferry and the rest of Jefferson County were critical during the Civil War as they served as a main rail corridor between the eastern and western theatres of the War. The strategic value of the site led to the area changing hands between Union and Confederate forces many times during the war. Over 12,000 Union troops garrisoned at Harpers Ferry surrendered while under attack from Confederate forces led by General Stonewall Jackson. This was the largest surrender of troops on American soil. Without that surrender, the bloodiest battle of the Civil War, Antietam, may have never occurred. The battlefield at Shepherdstown has recently been studied by the National Park Service and was determined to have played an important role in the end stages of the battle of Antietam. In addition Jefferson County served as a staging area during the Shenandoah Valley campaign, which included battlefield sites at Summit Point and Middleway.

Harpers Ferry played a significant role in the African American community after the Civil War, with the establishment of what eventually became Storer College in 1865 as

one of the first public institutions of education for former slaves. Harpers Ferry was also the site of the second meeting of the Niagara Movement in 1906, which eventually led to the founding of the NAACP. Today, the town of Harpers Ferry is surrounded by the Harpers Ferry National Historical Park, a 3.7 square mile area with numerous rehabilitated and rebuilt structures dating from the Civil War era.

Charles Town played a role after the turn of the 20th century when the treason trials for coal miners affiliated with the United Mine Workers' West Virginia Coal Mine Wars were held at the same courthouse where John Brown's treason trial was held about 70 years earlier. The acquittal of the mine workers in 1922 was the culmination of two decades of strikes, gunfights, assassinations, and violence over working conditions that occurred in the southern coal fields of West Virginia.

Jefferson County is also a part of a larger historical and cultural landscape known as The Journey Through Hallowed Ground National Heritage Area, a 180-mile long, 75-mile wide area stretching from Gettysburg, PA to Monticello in Charlottesville, VA.

Recreational Tourism

The County is home to a variety of outdoor recreational opportunities for visitors, such as fishing, hunting, hiking, bicycling, auto racing, a wide range of river activities, and other outdoor adventure activities.

Jefferson County is adjacent to the conjunction of two national trails. The first trail is the Appalachian National Scenic Trail, a 2,160-mile long footpath extending from Maine to Georgia, with Harpers Ferry at the midpoint. Additionally, the Chesapeake and Ohio (C&O) Canal National Historical Park, a linear bicycle and walking trail extending from Washington, D.C. to Cumberland, MD is accessible from Jefferson County near Harpers Ferry and Shepherdstown.

Outdoor recreation complements the County's natural, cultural, and built environments. It is anticipated that recreational tourism opportunities in Jefferson County will continue to expand in the coming years. This is particularly true in areas near the Potomac and Shenandoah Rivers, where the numerous outfitters and private outdoor recreation providers in the region are expanding their offerings to visitors and residents. The type and scale of new recreational development should be appropriate to the rural nature of Jefferson County.

The following recommendations support the expansion and enhancement of a variety of tourism activities in Jefferson County.

Tourism Recommendations (Goal 9)	
1.	Create a unique “brand” for the County for all promotional and marketing materials.
	a. Increase awareness of public and private recreational opportunities that are available to visitors and residents of Jefferson County.
	b. Coordinate with the Jefferson County Convention and Visitors Bureau (CVB) to maintain and promote a community calendar.
2.	Develop a robust arts and culture program in Jefferson County by identifying and utilizing a range of public and private funding sources.
3.	Create additional opportunities for arts, cultural, and heritage tourism programs and facilities in Jefferson County.
4.	Establish plans and funding strategies for a county cultural arts center that will incorporate a variety of facilities including studios, galleries, multiple performance spaces, educational and training facilities, and gathering areas.
5.	Use historic and agricultural structures to support tourism for traditional and non-traditional functions that promote preservation of cultural landscapes.
6.	Create a public art program that would encourage the installation of locally produced art in publicly owned facilities and sites.
7.	Coordinate with various local and regional heritage tourism entities to create a trail that connects historic and battlefield sites located in the County and neighboring counties and states.
	a. Collaborate with the Journey Through Hallowed Ground or the Canal Towns Partnership’s efforts.
8.	Coordinate with riverside property owners and river tourism service providers to identify and implement methods that would enhance recreation options along the County’s waterways, including public river access.
	a. When considering additional river recreation activities, rural landowners’ property rights and the quality of life of the individuals and families living along the waterways should be factored into proposed development plans.
	b. Encourage all river recreation activities to occur in a manner which supports the Chesapeake Bay Initiative.
9.	Support and promote rural and recreational tourism to help achieve the County’s economic goals.
10.	Use multi-media technologies to promote tourism, including tourist businesses and the tourism efforts of the incorporated Towns.
11.	Continue to support the Jefferson County Fair and encourage the continued upgrading of fair facilities.

Article 2 – Definitions

Short Term Rental – a dwelling unit intended to provide overnight accommodations to guests for periods of less than seven (7) consecutive days. ~~Occupancy shall be limited to not more than two (2) guests/occupants per bedroom.~~

Article 8 – Section 8.16 – Short Term Rentals

A Short Term Rental is permitted anywhere a single family dwelling is permitted. A short term rental shall have no more effect on adjacent properties than a typical residential use. All parking shall be off-street.

A short term rental shall not operate as a special event facility (unless approval through the special event facility provisions is granted) including large gatherings such as family reunions, birthday parties, weddings, business meetings, or other similar gatherings ~~which may include additional guests who are not included in the overnight stay.~~

All short term rentals shall obtain a Zoning Certificate to reflect compliance with the standards established herein. A sketch depicting that sufficient off-street parking exists for the maximum number of occupants shall be included. One sign not exceeding four (4) square feet in area, may be permitted and shall be included as part of the zoning certificate application. Additionally, as part of the Zoning Certificate application, a copy of the state business license, and documentation reflecting approval from the Health Department shall be submitted; ~~(if such approval is required) by said agency.~~

Jefferson County shall not enforce or become involved in the enforcement of deed restrictions, covenants, easements, or any other private agreement. It is the responsibility of the property owner to research any private covenants or restrictions relating to the subject property which may be enforced by the parties to the restriction.

Short Term Rental⁴¹

A dwelling unit intended to provide overnight accommodations to guests for periods of less than seven (7) consecutive days.

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, Billboard³⁶

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.

Sign, Attached Business³⁶

A sign attached to a building/structure 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, Electronic³⁶

A sign utilizing lights that change to form a static message or graphic wherein the sequence of messages and rate of change is electronically programmed.

Sign, Freestanding Business³⁶

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 commodity, service, or entertainment advertised by the sign is located.

Sign, Inflatable³⁶

Any display capable of being expanded by air or other gas and used on a temporary or permanent basis to advertise a product or event.

Sign, Off Premises³⁶

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.

Sign, Pylon³⁶

A sign which advertises more than one land use on the premises where the sign is located.

Sign, Vehicle

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.

- B. An “Accessory Agricultural Dwelling Unit” for agricultural purposes is defined as a dwelling unit that is incidental and subordinate to the principal dwelling unit, which is located on the same lot as the principal building and meets all of the following criteria:³²
- (a) is secondary in size to the principal dwelling unit, limited in size to a maximum of 1,700 heated square feet, gross floor area;³²
 - (b) is located on a property for which the primary use is an agricultural use as defined by this ordinance;
 - (c) is located on a property of at least ten acres in area;
 - (d) is limited to use by a person (and family) who performs agricultural work on the property or acts as a caretaker for the property; and
 - (e) is approved by the Health Department.³²

One of each type of Accessory Dwelling Unit as defined in this section may be permitted administratively for each property meeting the criteria of Section 8.15 on the effective date of this Amendment. Additional units may be permitted by Special Exception in accordance with Section 6.5.^{32, 35}

RVs are prohibited as Accessory Dwelling Units.³²

Section 8.16 ~~Reserved~~³² Short Term Rentals⁴¹

A short term rental is permitted anywhere a single family dwelling is permitted. A short term rental shall have no more effect on adjacent properties than a typical residential use. All parking shall be off-street.

A short term rental shall not operate as a special event facility (unless approval through the special event facility provisions is granted) including large gatherings such as family reunions, birthday parties, weddings, business meetings, or other similar gatherings.

All short term rentals shall obtain a Zoning Certificate to reflect compliance with the standards established herein. A sketch depicting that sufficient off-street parking exists for the maximum number of occupants shall be included. One sign, not exceeding four (4) square feet in area, may be permitted and shall be included as part of the zoning certificate application. Additionally, as part of the Zoning Certificate application, a copy of the state business license and documentation reflecting approval from the Health Department shall be submitted (if such approval is required).

Jefferson County shall not enforce or become involved in the enforcement of deed restrictions, covenants, easements, or any other private agreement. It is the responsibility of the property owner to research any private covenants or restrictions relating to the subject property which may be enforced by the parties to the restriction.

Section 8.17 Campgrounds³¹

Campground facilities provide tourism related accommodations for visitors of Jefferson County. The level of amenities at these facilities can vary greatly in relation to the type of camping facility proposed. Campground facilities may include both commercial and non-profit operations. Campgrounds are identified as Principal Permitted Uses in Appendix C in the General Commercial (GC), Residential-Light Industrial-Commercial (RLIC), Industrial-Commercial (IC), and Rural (R) zoning districts.

- A. The following uses are identified as permitted uses within a campground:

Land Use	NC	GC	HC	LI	MI	PND ¹	OC	R	RG	RLIC	IC	V	Additional Standards
Commercial Uses continued													Sec. 8.9
Bar	P	P	P	P	NP	P	P	NP	NP	P	P	CU	
Barber/Beauty Shop, Limited	P	P	P	P	NP	P	P	CU	CU	P	P	P	
Bed and Breakfast	P	NP	NP	NP	NP	NP	NP	P	CU	NP	NP	P	Sec. 8.3
Brewpub	P	P	P	P	NP	P	P	CU	CU	P	P	CU	Sec. 8.5
Business Equipment Sales and Service	CU	P	P	P	CU	P	P	CU	CU	P	P	CU	
Building Maintenance Services	CU	P	P	P	P	P	P	CU	CU	P	P	CU	
Building Materials and Supplies	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Campground ³¹	CU	P	NP	NP	NP	P	NP	P	CU	P	P	CU	Sec. 8.17
Car Wash	NP	P	P	P	CU	P	P	CU	CU	P	P	CU	
Commercial Blood Plasma Center	NP	P	P	P	NP	CU	CU	CU	CU	CU	P	CU	
Commercial Uses	NP	NP	NP	NP	NP	NP	NP	NP	**	P	P	CU	Sec. 8.9
Contractor with No Outdoor Storage	P	P	P	P	P	P	P	CU	CU	P	P	CU	
Contractor with Outdoor Storage	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Convenience Store, Limited	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Convenience Store	CU	P	P	P	CU	P	NP	CU	CU	CU	P	CU	Sec. 5.8C (RLIC only)
Country Inn	P	P	P	P	NP	P	P	CU	CU	P	P	P	
Crematorium, Pet ³⁷	NP	P	NP	P	NP	NP	NP	P	NP	P	P	CU	Sec. 8.19
Custom Manufacturing	P	P	P	P	P	P	P	CU	CU	P	P	CU	
Dry cleaning and Laundry Services	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Dry cleaning and Laundry Facility	NP	P	P	P	P	P	P	CU	CU	P	P	CU	
Equipment Rental, Sales, or Service	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Exterminating Services	NP	P	P	P	P	P	P	CU	CU	P	P	CU	
Florist	P	P	P	P	CU	P	P	CU	CU	P	P	P	
Food Preparation	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Hotel/Motel	NP	P	P	P	NP	P	P	CU	CU	P	P	CU	
Gambling Facilities	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	CU	Sec. 4.4G
Gas Station, Limited	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Gas Station	NP	P	P	P	CU	P	P	CU	CU	P	P	CU	
Gas Station, Large	NP	CU	P	P	CU	CU	CU	CU	CU	P	P	CU	
Golf Course	NP	P	P	P	NP	P	P	CU	CU	P	P	CU	
Grocery Store	P	P	P	P	CU	P	NP	CU	CU	P	P	CU	
Horse Racing Facility	NP	NP	NP	P	NP	NP	NP	CU	CU	P	P	CU	
Kennel	NP	P	P	P	CU	P	P	P	CU	P	P	CU	Sec. 8.4
Medical/Dental/Optical Office, Small	P	P	P	P	CU	P	P	CU	CU	P	P	P	
Medical/Dental/Optical Office	NP	P	P	P	CU	P	P	CU	CU	P	P	CU	
Mobile Home, Boat and Trailer Sales	NP	P	P	P	CU	P	NP	CU	CU	CU	P	CU	
Movie Theater	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Nightclub	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Non Profit Commercial Uses	P	P	P	P	NP	P	P	CU	CU	P	P	CU	
Non-Profit Community Centers	P	P	P	P	CU	P	CU	P	CU	P	P	CU	
Parking, Commercial Offsite Accessory	NP	P	P	P	P	P	P	CU	CU	P	P	CU	
Pawn Shop Services	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Personal Services	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Professional Office, Small	P	P	P	P	CU	P	P	CU	CU	P	P	P	
Professional Office	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Restaurant, Fast Food, Limited	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Restaurant, Fast Food	CU	P	P	P	CU	P	P	CU	CU	CU	P	CU	
Restaurant, Fast Food, Drive-Through ⁴⁰	NP	P	P	P	CU	CU	P	CU	CU	P	P	CU	

Land Use	NC	GC	HC	LI	MI	PND ¹	OC	R	RG	RLIC	IC	V	Additional Standards
Commercial Uses continued													Sec. 8.9
Restaurant	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Retail Sales Limited	P	P	P	P	NP	P	P	CU	CU	P	P	CU	
Retail Sales and Services, General	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Retail Store, Large	NP	CU	P	CU	NP	CU	NP	CU	CU	CU	CU	CU	
Shipping and Mailing Services	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
<u>Short Term Rental⁴¹</u>	<u>CU</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>P</u>	<u>NP</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>NP</u>	<u>P</u>	<u>Sec. 8.16</u>
Special Event Facility	P	P	P	P	NP	P	P	CU	CU	P	P	CU	Sec. 8.14
Storage, Commercial	NP	P	P	P	CU	P	NP	CU	CU	P	P	CU	
Veterinary Services	P	P	P	P	CU	P	P	P	CU	P	P	CU	
Wireless Telecommunications Facilities	P	P	P	P	P	P	P	P	P	P	P	P	Art. 4B
Agricultural Uses*													
Agricultural Uses, as defined in Article 2	P	P	P	P	P	P	P	P	P	P	P	P	
Agricultural Repair Center	NP	P	P	P	P	P	P	P	CU	P	P	NP	
Agricultural Tourism	P	P	P	P	P	P	P	P	P	P	P	P	
Crematorium, Livestock ³⁷	CU	CU	CU	CU	CU	CU	CU	P	CU	CU	CU	CU	Sec. 8.19
Farm Brewery	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.5
Farm Winery or Distillery	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.5
Farm Market	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.6
Farm Vacation Enterprise	P	P	P	P	P	P	P	P	P	P	P	P	
Farmer's Market	P	P	P	NP	NP	P	NP	P	CU	P	NP	CU	Sec. 8.6
Feed and/or Farm Supply Center	CU	P	P	P	P	P	P	P	CU	P	P	NP	
Horticultural Nurseries and Commercial Greenhouses	P	P	P	P	P	P	P	P	CU	P	P	NP	
Landscaping Business	P	P	P	P	P	P	P	P	CU	P	P	NP	
Rental of Existing Farm Building for Commercial Storage Structure must have existed for 5 years	NP	P	P	P	P	P	P	P	CU	P	P	NP	
Special Event Facility, Agricultural	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.14
Accessory Uses													
Accessory Uses	P	P	P	P	P	P	P	P	P	P	P	P	

- NC Neighborhood Commercial
- GC General Commercial
- HC Highway Commercial
- LI Light Industrial
- MI Major Industrial
- PND Planned Neighborhood Development
- OC Office / Commercial Mixed-Use
- R Rural
- RG Residential Growth District
- RLIC Residential-Light Industrial-Commercial District
- IC Industrial-Commercial District
- V Village District

- P Permitted Uses
- NP Not Permitted Uses
- CU Conditional Uses (subject to requirements of district and/or other requirements of this Ordinance)
- ** Accessory Use to a planned residential community, if permitted pursuant to Section 5.4 and processed as a CU
- ¹ The Planning Commission may amend the permitted uses for a development in the PND District per Article 5.
- ² Approval process is per the Salvage Yard Ordinance.

Alexandra Beaulieu

From: Beach, Gillian R
Sent: Wednesday, October 6, 2021 11:17 AM
To: Alexandra Beaulieu
Subject: Fwd: Air B&Bs
Attachments: H-25 Guidelines for Permitting and Inspecting Accommodations Made Through Lodging Reservation Web Sites.pdf; Memorandum on application of General Sanitation rule to rentals in homes - Final (002).pdf; General Sanitation Rule.doc

Also,

Here is a copy of the General Sanitation Rule if you would like to include this. For the purposes of our discussion about short-term rentals, we would only be concerned about the definitions for a hotel, motel, bed & breakfast, and lodging facility.

Sincerely,

[Gillian Beach, R.S.](#)

Environmental Health Manager
Jefferson County Health Department
1948 Wiltshire Rd. Suite 1
Kearneysville, WV 25430
(304) 728-8416 ext 3033

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----- Forwarded message -----

From: Beach, Gillian R
Date: Wed, Oct 6, 2021 at 11:08 AM
Subject: Fwd: Air B&Bs
To: Alexandra Beaulieu

Alex,

I am forwarding this email from Judy Vallandingham, the Director of Office of Environmental Health Services for the State. The legal interpretation is that if someone is providing lodging for a fee in a home that they do not reside in, then it meets the definition of a lodging establishment in our General Sanitation regulations. These short-term rentals or air bed and breakfasts would specifically meet the definition of a motel which I have copied below.

2.15. Motel - Every building constructed, designed, maintained, offered or used to furnish lodging to automobile transient guests or the traveling public. The term motel includes auto courts, motor courts, auto lodges, motor lodges, tourist cabins, tourist cottages and tourist courts.

Short term rentals are not required to obtain a permit if it is the residence of the owner and they do not also serve breakfast. Any residence that provides lodging and breakfast would fall under the definition of a Bed & Breakfast in our General Sanitation regulations. I have copied the definition below.

2.2. Bed and Breakfast Inn – An establishment providing lodging facilities in the form of sleeping accommodations and, at a minimum, a breakfast for a fee.

This is the information I will be presenting at tomorrow's meeting. Please let me know what time I should log on to the meeting.

Thank you,

[Gillian Beach, R.S.](#)
Environmental Health Manager
Jefferson County Health Department
1948 Wiltshire Rd. Suite 1
Kearneysville, WV 25430
(304) 728-8416 ext 3033

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----- Forwarded message -----

From: **Beach, Gillian R**
Date: Fri, Aug 27, 2021 at 1:48 PM
Subject: Fwd: Air B&Bs
To: Pierce, Jennifer E, Stephenson, Mikala S,
Alexandra N Demastes, Richardson, Patti J
Phillipson, Danielle R

FYI

[Gillian Beach, R.S.](#)
Acting Administrator, Environmental Health Manager
Jefferson County Health Department
1948 Wiltshire Rd. Suite 1
Kearneysville, WV 25430

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strictly prohibited. If you have received this Email in error, please advise the sender by reply Email and then delete it and any attachment(s) from your system immediately.
(304) 728-8416 ext 3033

----- Forwarded message -----

From: **Vallandingham, Judy E**
Date: Fri, Aug 6, 2021 at 11:38 AM
Subject: Re: Air B&Bs
To: Beach, Gillian R
Cc: Stacy E King

Gillian,

The only time a LHD would not permit a property that is rented through a service like AirB&B is if the property is the primary residence of the owner. I have attached the Environmental Health Procedure and the legal opinion. Let me know if you have any questions.

Respectfully,

Judy

Judith Vallandingham R.S.

Director

WV BPH/OEHS/Public Health Sanitation Division

TITLE 64

LEGISLATIVE RULE
BUREAU FOR PUBLIC HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 18
GENERAL SANITATION

'64-18-1. General.

1.1. Scope. B This rule establishes the minimum public health sanitation requirements governing all institutions and schools, care facilities, lodging facilities, recreational facilities, and public restrooms.

1.2. Authority. -- W. Va. Code 16-1-4.

1.3. Filing Date. -- July 12, 2013.

1.4. Effective Date. -- August 12, 2013.

1.5. Applicability. -- This rule applies to every person who in any manner establishes, conducts, controls, manages, maintains, or operates a facility included under the scope of this rule.

1.6. Enforcement. -- This rule is enforced by the commissioner of the bureau for public health.

'64-18-2. Definitions.

2.1. Approved - A procedure of operation, installation or construction which is in accordance with the standards, specifications, and instructions established by the bureau for public health.

2.2. Bed and Breakfast Inn – An establishment providing lodging facilities in the form of sleeping accommodations and, at a minimum, a breakfast for a fee.

2.3. Campground - A tract of land established, maintained, and offered to the public for payment for the location or placement of two or more camping units.

2.4. Camping Unit - Any tent, camping vehicle, cabin, or similar vehicle or structure designed or intended to be used for camping purposes.

2.4.a. A “camping unit” means and includes, but is not limited to, tents, tent campers, fold down campers, pop up campers, travel trailers, camping vans, motor homes, pick up coach campers, or any other unit built or mounted on a vehicle or chassis and capable of being self-propelled or towed.

2.4.b. A “camping unit” shall not include any unit kept by its owner on land occupied by the owner in connection with his or her dwelling, or any unoccupied camping unit kept and stored at a location that has been reserved for storage within a campground.

2.5. Campsite - Any plot of land within a campground used or intended to be used for the location or placement of a camping unit.

2.6. Care Facilities – Include, but are not limited to, public or private halfway houses, adult day care facilities, residential care facilities (such as juvenile group homes and work release centers), and non-disaster shelters (such as homeless shelters and family violence protection shelters). The term does not include health care facilities licensed by the Office of Health Facilities Licensure and Certification in the Office of the Inspector General.

2.7. Commissioner – The commissioner of the bureau for public health or his or her lawful designee.

2.8. Construct - To install, establish, extend, alter or modify.

2.9. Health Officer - The commissioner of the bureau for public health who is also the State Health Officer or the executive officer of the local board of health or his or her lawful representative.

2.10. Hotel - Every building where food and lodging are furnished to guests and payment is required.

2.11. Institution - A public or private facility established by an organization or corporation for the purpose of providing higher education, care, training, rehabilitation or other similar services or functions. An “institution” includes public or private correctional facilities, colleges and universities, and primary and secondary educational facilities (pre-K through grade twelve).

2.12. Labor Camp - A labor camp includes any lumber, mining, agricultural, construction, or other industrial camp where ten or more persons are employed and housed in temporary quarters, such as cars, motor homes, camper vehicles, wagons, tents, cabins, buildings, or other similar enclosures.

2.13. Lodging Facilities – Include, but are not limited to, hotels, motels, labor camps and Bed and Breakfast Inns.

2.14. Mass Gathering - Any group of two hundred fifty (250) or more persons assembled together for a meeting, festival, social gathering, concert or other similar purpose. The term shall not include assembly in any permanent buildings or permanent structures designed, equipped and intended for use by large numbers of people. For the purposes of this subsection, Aequipped@ means supplied with adequate sanitary facilities for the intended use.


2.15. Motel - Every building constructed, designed, maintained, offered or used to furnish lodging to automobile transient guests or the traveling public. The term motel includes auto courts, motor courts, auto lodges, motor lodges, tourist cabins, tourist cottages and tourist courts.

2.16. Nuisance - An annoyance or anything which causes injury, inconvenience, damage, or which essentially interferes with the enjoyment of life or property, and includes, but is not limited to, inadequate or unsanitary sewage, water or plumbing facilities or other unsanitary conditions.

2.17. Occupant - A person utilizing a specific facility governed by this rule.

2.18. Operator - A person who has been granted a written permit, in accordance with this rule, to operate a facility governed by this rule.

2.19. Organized Camp - Any area, place, parcel or tract of land on which facilities are established or maintained to provide an outdoor group living experience for children or adults, or where one or more

	West Virginia Department of Health and Human Resources				
	MANUAL OF ENVIRONMENTAL HEALTH PROCEDURES				
Section	Housing and Institutions	Date	February 3, 2017	Procedure #	H-25
Subject	Guidelines for Permitting and Inspecting Accommodations Made Through Lodging Reservation Web Sites			Page	1 of 1

Attached hereto is a copy of an [Interoffice Memorandum](#) sent to Walt Ivey, Director, OEHS, from Brian J. Skinner, General Counsel. The Memorandum addresses the question of whether persons who list or rent short-term lodging in residential properties with the cost of such accommodation set by the property owner, to others using lodging reservation web sites (*i.e.* Airbnb, Inc.) are subject to the permit and inspection requirements of WV 64CSR18 (General Sanitation).

Legal Counsel's opinion is, "the language of the General Sanitation rule is circumscribed and cannot be read to include in the definition of a "lodging facility" persons who are providing accommodations, *in their home*, to others for a fee."

Also, "... as currently promulgated, the General Sanitation rule cannot be read to include in the definition of a "bed and breakfast inn" persons who are providing accommodations to others in their home for a fee, unless the host not only provides sleeping accommodations, but also a breakfast. However persons renting a house or apartment *that is not their residence* may be subject to the provisions of the General Sanitation rule, but only if the house or residence meets one of the definitions included in the general definition of a "lodging facility."


Questions concerning this memorandum should be directed to Walt Ivey, Director, Office of Environmental Health Services, 350 Capitol Street, Room 313 Charleston, WV 25301-1798, telephone: (304) 558-2981.

References

History

Attachments November 9, 2016 Interoffice Memorandum sent from Brian J. Skinner, General Counsel to Walt Ivey, Director, Office of Environmental Health Services

INTEROFFICE MEMORANDUM

TO: WALT IVEY, DIRECTOR, OEHS
FROM: BRIAN J. SKINNER, GENERAL COUNSEL 
SUBJECT: AUTHORITY OF THE REGULATE PERSONS WHO RENT
ACCOMADATIONS IN THEIR OWN HOMES.
DATE: NOVEMBER 9, 2016
CC: RAHUL GUPTA, COMMISSIONER & STATE HEALTH OFFICER
BARB TAYLOR, DEPUTY COMMISSIONER

It has recently come to the attention of Public Health Sanitation Division (PHS) of the Office of Environmental Health Services that accommodations for nightly rentals are being advertised on the website Airbnb.com. Airbnb, Inc. operates an online community marketplace for people to list, discover, and book accommodations worldwide online or from a mobile phone. Some of the rentals advertised are entire houses or apartments, others are rentals of a single room in a private residence.

A question has arisen about whether persons renting accommodations in their homes are subject to the provisions of *W.Va. Code R. 64-18-1 et seq.* (General Sanitation). The PHS staff is of the opinion that these rentals do meet the definition(s) and these rentals should be required to comply with the rule and obtain an operational permit from the local health department.

The PHS has requested a legal opinion on whether persons renting accommodations utilizing Airbnb.com are subject to the provisions of the General Sanitation rule, including rentals of a sleeping room in a private residence.

QUESTION PRESENTED

Whether persons who rent accommodations in their own homes to others using Airbnb, Inc. are subject to the permit and inspection requirements of *W.Va. Code R. §§ 64-18-1 et seq.* (General Sanitation)?

SHORT ANSWER

No, despite the Secretary's broad the authority to regulate "[t]he sanitary condition of [] all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption . . .", and "[t]he health and sanitary conditions of establishments commonly referred to as bed and breakfast inns", (*W.Va. Code* § 16-1-4 (b)) as currently promulgated, the General

Sanitation rule cannot be read to include in the definition of a “lodging facility”, persons who are providing accommodations to others in their home for a fee.

FACTS

Airbnb, Inc. operates an online community marketplace for people to list, discover, and book accommodations worldwide online or from a mobile phone. The Airbnb website, application and services can be used to facilitate the listing and booking of accommodations. Airbnb makes available an online platform with related technology for guests and hosts to meet online and arrange for bookings of accommodations directly with each other. Airbnb is not an owner or operator of properties, nor is it a provider of properties, and Airbnb does not own, sell, resell, furnish, provide, rent, re-rent, manage and/or control properties. Airbnb’s responsibilities are generally limited to facilitating the availability of properties, including, but not limited to, hotel rooms, motel rooms, other lodgings or accommodations.

The Airbnb terms of service inform hosts that they should:

understand how the laws work in their respective cities. some cities have laws that restrict their ability to host paying guests for short periods. these laws are often part of a city’s zoning or administrative codes. in many cities, hosts must register, get a permit, or obtain a license before listing a property or accepting guests. certain types of short-term bookings may be prohibited altogether. local governments vary greatly in how they enforce these laws. penalties may include fines or other enforcement. hosts should review local laws before listing a space on Airbnb.

Airbnb assumes no responsibility for a host’s compliance with any agreements with or duties to third parties, applicable laws, rules and regulations. By agreeing to the Airbnb terms and conditions, hosts are indicating that they understand and agree that they are solely responsible for compliance with any and all laws, rules, regulations, and tax obligations that may apply to their use of the website, application, services and collective content.

State Law

W. Va. Code § 16-1-4 (b) authorizes the Cabinet Secretary to regulate “[t]he sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, *all other places open to the general public and inviting public patronage* or public assembly, or *tendering to the public any item for human consumption . . .*” (emphasis added), and “[t]he health and sanitary conditions of establishments commonly referred to as bed and breakfast inns. Bed and breakfast inn is defined as an establishment providing sleeping accommodations and,

at a minimum, a breakfast for a fee.¹ *W.Va. Code* § 16-1-6(m) empowers the Commissioner to “inspect and enforce rules to control the sanitary conditions of and license . . . all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption . . .”

The Secretary’s legislative rule-making authority provides the authority for *W.Va. Code R.* §§ 64-18-1 *et seq.* (General Sanitation). The rule establishes the minimum public health sanitation requirements governing all institutions and schools, care facilities, lodging facilities, recreational facilities, and public restrooms and is applicable to every person who in any manner establishes, conducts, controls, manages, maintains, or operates a facility included under the scope of [the] rule. *W.Va. Code R.* §§ 64-18-1.1 & 5. The rule is applicable to lodging facilities, which include, but are not limited to, bed and breakfast inns², hotel³, labor camps⁴, and motels⁵. *W.Va. Code R.* § 64-18- 2.13.

General Sanitation Rule

Whenever a facility governed under the scope of this rule⁶ is constructed or extensively remodeled, and whenever an existing structure is converted to use as one of the facilities governed by the rule, the owner or operator must submit plans and specifications for the construction, remodeling, or conversion to the health officer⁷ for review and

¹ The secretary may not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer rooms to install a restaurant-style or commercial food service facility. The secretary may not require an owner of a bed and breakfast providing sleeping accommodations of more than six rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

² Defined as an establishment providing lodging facilities in the form of sleeping accommodations and, at a minimum, a breakfast for a fee. *W.Va. Code R.* § 64-18-2.2.

³ Defined as every building where food and lodging are furnished to guests and payment is required. *W.Va. Code R.* § 64-18-2.10

⁴ Defined as any lumber, mining, agricultural, construction, or other industrial camp where ten or more persons are employed and housed in temporary quarters, such as cars, motor homes, camper vehicles, wagons, tents cabins, buildings, or other similar enclosures. *W.Va. Code R.* § 64-18-2.12.

⁵ Defined as every building constructed, designed, maintained, offered or used to furnish lodging to automobile transient guests or the traveling public. The term motel includes auto courts, motor courts, auto lodges, motor lodges, tourist cabins, tourist cottages and tourist courts. *W.Va. Code R.* § 64-18-2.15

⁶ Colleges and universities, and public restrooms, unless the public restroom is included as part of a facility governed under this rule, are exempt from the plan review and permitting provisions of the rule.

⁷ Health Officer is defined by the rule as either the Commissioner or a local health officer. *See W.Va. Code R.* § 64-18-2.9

approval at least forty-five (45) days before construction, remodeling, or conversion is begun. *W.Va. Code R. § 64-18-3.1.a.*

Anyone operating a facility governed by the rule must possess a valid permit issued by the health officer. *W.Va. Code R. § 64-18-3.2.a.* Application for a permit to operate a facility must be submitted at least 15 days before the actual or proposed operation of the facility. *W.Va. Code R. § 64-18-3.2.c.* Prior to the approval of an application for a permit, the health officer must inspect the proposed facility to determine compliance with the rule. *W.Va. Code R. § 64-18-3.2.d.*

The health officer must inspect a facility governed by the rule at least once a year.⁸ *W.Va. Code R. §§ 64-18-4.1.* The health officer must make additional inspections as necessary to determine satisfactory compliance with the provisions of this rule or any orders, notices, instructions or specifications issued pursuant to this rule. *W.Va. Code R. § 64-18-4.2.*

Whenever the health officer makes an inspection of a facility and discovers that any of the provisions of this rule have been violated, he or she shall notify the operator of the violations by means of an inspection report form or other written notice. § 3.3.a. Whenever the health officer finds that any facility governed by this rule constitutes an imminent hazard to public health, he or she may, without notice or hearing, issue a written order to the operator or person in charge citing the existence of the condition and requiring action to be taken to remedy the condition, including the suspension of the permit to operate. *W.Va. Code R. §§ 64-18-3.3.b.* Any person to whom the order is directed shall comply with the order immediately, but upon written petition to the health officer will be afforded an administrative hearing. *W.Va. Code R. § 64-18-3.3.b.1.*

DISCUSSION

It is well-established that the Cabinet Secretary has the authority to regulate, and the Commissioner to enforce, regulation regarding the sanitary condition of “places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption . . .”, including bed and breakfast inns. *W.Va. Code § 16-1-4(b)* & *W.Va. Code § 16-1-6(m)*.

As noted above, a bed and breakfast inn is defined as an establishment providing sleeping accommodations and, *at a minimum, a breakfast for a fee.* See *W.Va. Code § 16-1-4(b)(7)*. This definition is problematic in the present case, since it requires that hosts who

⁸ Colleges and universities and public restrooms which are not part of a facility governed by this rule may be inspected on a complaint basis only. Schools shall be inspected at least once every two years. *W.Va. Code R. §§ 64-18-4.1.a* & *b.*

provide accommodations must also provide breakfast. Accommodations booked via Airbnb.com, do not require a host to provide breakfast.

However, given the breadth of the Secretary’s regulatory authority over “all places open to the general public and inviting public patronage”, it may be unnecessary to determine whether the bed and breakfast definition is applicable. Persons advertising sleeping accommodations in their home on an online public marketplace, may be included within the Secretary and Commissioner’s regulatory authority, since advertising accommodations on the Airbnb website or application is evidence of (1) an invitation for the public patronage, and (2) an intention to make a room(s) available to the general public. *See W.Va. Code* § 16-1-4(b).

Consequently, it appears that the Secretary’s statutory authority may be broad enough to include the regulation of persons who provide sleeping accommodations in their homes. However, the next question that must be considered is whether the provisions of *W.Va. Code R.* §§ 64-18-1 *et seq.* can be read to include such accommodations?

As discussed above, the General Sanitation rule applies to lodging facilities. Lodging facilities, include, but are not limited to, bed and breakfast inns, hotels, labor camps, and motels. *W.Va. Code R.* § 64-18-2.13. A person offering accommodations in their own home for a fee, does not fit neatly into any of the categories contained in the definition of “lodging facilities.” First, in each case, the primary purpose of the lodging facility is to provide sleeping accommodations. Bed and breakfast inns, hotels, labor camps and motels are business establishments, the primary purpose of which, is to provide sleeping accommodations, and in some cases food. This cannot be said of all accommodations advertised on Airbnb, many of which are persons offering accommodations in their own homes. This is not to say that all accommodations advertised on Airbnb are in private homes, however those that meet the General Sanitation rule’s definition of a lodging facility, are clearly subject to the requirements contained in the rule.

Thus, the question then becomes, whether the “include, but are not limited to” clause contained in the definition of a “lodging facility” can be used to include persons who host others in their private residence for a fee? In deciding the meaning of a statutory provision⁹, courts will “look first to the statute’s language. If the text, given its plain meaning, answers the interpretive question, the language must prevail and further inquiry is foreclosed.” *Appalachian Power Co. v. State Tax Dep’t*, 195 W.Va. 573, 587, 466 S.E.2d

⁹ A rule “proposed by an agency and approved by the Legislature is a ‘legislative rule’ as defined by the State Administrative Procedures Act, *W. Va. Code*, 29A-1-2(d), and such a legislative rule has the force and effect of law.” *Syl. Pt. 5, Smith v. West Virginia Human Rights Comm’n*, 216 W.Va. 2, 602 S.E.2d 445 (2004).

424, 438 (1995). *See also Syl. pt. 2, Crockett v. Andrews*, 153 W.Va. 714, 172 S.E.2d 384 (1970) (“[w]here the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation.”); *Syl. pt. 2, State v. Epperly*, 135 W.Va. 877, 65 S.E.2d 488 (1951) (“[a] statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect.”).

In West Virginia “[a] statute is open to construction only where the language used requires interpretation because of ambiguity which renders it susceptible of two or more constructions or of such doubtful or obscure meaning that reasonable minds might be uncertain or disagree as to its meaning.” *Sizemore v. State Farm Gen. Ins. Co.*, 202 W.Va. 591, 596, 505 S.E.2d 654, 659 (1998) (*internal quotations and citation omitted*).

With regard to the use of the phrase “include, but not limited to” the West Virginia Supreme Court of Appeals has recognized that “[t]he term ‘includ[es]’ in a statute is to be dealt with as a word of enlargement and this is especially so where ... such word is followed by ‘but not limited to’ the illustrations given.” *State Human Rights Comm’n v. Pauley*, 158 W.Va. 495, 501, 212 S.E.2d 77, 80 (1975) (citations omitted). However, the Court has also recognized that “[i]n the interpretation of statutory provisions the familiar *maxim expressio unius est exclusio alterius*, the express mention of one thing implies the exclusion of another, applies.” *Syllabus Point 3, Manchin v. Dunfee*, 174 W.Va. 532, 327 S.E.2d 710 (1984). *See also, State ex rel. Riffle v. Ranson*, 195 W.Va. 121, 128, 464 S.E.2d 763, 770 (1995) (“*Expressio unius est exclusio alterius* (express mention of one thing implies exclusion of all others) is a well-accepted canon of statutory construction.”) (*citing Brockway Glass Co. Inc., Glassware Div. v. Caryl*, 183 W.Va. 122, 394 S.E.2d 524 (1990); *Dotts v. Taressa J.A.*, 182 W.Va. 586, 591, 390 S.E.2d 568, 573 (1990)). The *expressio unius maxim* is premised upon an assumption that certain omissions from a statute by the Legislature are intentional. As the Court explained in *Riffle*, “[i]f the Legislature explicitly limits application of a doctrine or rule to one specific factual situation and omits to apply the doctrine to any other situation, courts should assume the omission was intentional; courts should infer the Legislature intended the limited rule would not apply to any other situation.” 195 W.Va. at 128, 464 S.E.2d at 770.

Here, as indicated above, the list of establishments contained in the definition of “lodging facility” are those in which the primary function of the establishment is to provide sleeping accommodations. Certainly, that may not be said of a person who is renting a room in their home or renting an entire house or apartment that serves as a residence. Secondly, the Legislature specifically defined a “bed and breakfast inn” as an establishment providing lodging facilities in the form of sleeping accommodations and, *at a minimum*, a breakfast for a fee. *W. Va. Code* § 16-1-4(b)(7). By making it necessary that an establishment provide breakfast as prerequisite to it meeting the definition, it appears that the Legislature intended to limit the application of the Secretary’s regulatory authority to a specific factual situation. Consequently, if a host does not provide breakfast as a part of the

accommodations subject to a fee, than the host is not a bed and breakfast inn subject to the provisions of the General Sanitation rule.

Consequently, as currently promulgated, the General Sanitation rule cannot be read to include in the definition of a “bed and breakfast inn” persons who are providing accommodations to others in their home for a fee, unless the host not only provides sleeping accommodations, but also breakfast. However, persons renting a house or apartment that is not their residence may be subject to the provisions of the General Sanitation rule, but only if the house or residence meets one of the definitions included in the general definition of a “lodging facility.”

CONCLUSION

Airbnb, Inc. has become a virtual marketplace for people to list, discover, and book accommodations worldwide online or from a mobile phone. However, many rentals advertised are single rooms in a private residence. The recent upsurge of accommodations for nightly rentals being advertised on the website Airbnb.com, has led to the question of whether the Bureau’s General Sanitation rule applies to persons who rent rooms in their private residence.

While the Cabinet Secretary given broad the authority to regulate “[t]he sanitary condition of [] all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption . . .”, and “[t]he health and sanitary conditions of establishments commonly referred to as bed and breakfast inns”, (*W.Va. Code* § 16-1-4 (b)), the language of the General Sanitation rule is circumscribed and cannot be read to include in the definition of a “lodging facility” persons who are providing accommodations, in their home, to others for a fee.

Consequently, the Bureau may consider requesting that that Secretary consider proposing to the Legislature for promulgation, amendments to the General Sanitation legislative to expand its scope to include rule persons who rent sleeping accommodation in their homes.

QUICKNOTES

Regulating Short-Term Rentals

The concept of renting rooms or homes on a short-term basis is not new. Many cities have boarding houses that rent rooms by the week or month, just as many small towns and rural areas host bed and breakfasts. And in some tourist hotspots, dedicated vacation rentals are common. However, new online services that facilitate short-term rentals have led to a rapid proliferation of home sharing as an alternative to more traditional visitor lodging arrangements in communities across the country. In many places, this trend has sparked debates about whether or not new regulatory or enforcement mechanisms are necessary to mitigate potential effects on host communities. While different localities are likely to draw varying conclusions about the necessity of new standards or procedures, the following sections provide some context and recommendations for local policy.

Background

In many communities, home sharing is one facet of a larger trend commonly referred to as the “sharing economy.” This phrase often encompasses a wide range of transactions mediated by websites or mobile technology related to sharing property or services. Because home sharing has the potential to change the character of established residential areas, many communities are taking a closer look at how best to accommodate the demand for new types of lodging without undermining goals related to housing, land use, or transportation.

There are three basic varieties of short-term rentals: (1) hosted sharing, where the primary occupants of a residence remain on-site with guests; (2) unhosted sharing, where the primary occupants of a residence vacate the unit while it is rented to short-term guests; and (3) dedicated vacation rentals, where there are no primary occupants. Home sharing and vacation rental services can provide residents and landlords an easy way to make some extra income and, in some cases, offering residences exclusively as short-term rentals can be far more lucrative than traditional leases. Meanwhile, the properties marketed through home sharing and vacation rental sites often appeal to travelers looking for a more authentic local experience or affordable alternatives to downtown hotels and motels.

For communities with a mature short-term rental market, new regulations or enforcement mechanisms may seem unnecessary. Many of these cities and counties either already have standards and procedures addressing short-term rentals on the books or have decided, based on experience, that such provisions are unnecessary. Similarly, communities with an abundance of affordable rental housing and relatively inelastic demand for conventional short-term lodging space may not feel the need to add new standards or procedures to their codes. This is because home sharing is unlikely to create housing shortages or provide direct competition for hotels and motels. However, in places with a surge in home sharing combined with a shortage of affordable rental housing or unmet demand for rooms in hotels or motels, new standards and procedures may be appropriate.

Clarify Use Definitions

Many localities explicitly prohibit the rental of rooms or dwelling units for periods shorter than one month, unless owners comply with all applicable local regulations for boarding houses, hotels, motels, or bed and breakfasts. Meanwhile, many other cities and counties explicitly permit the short-term rental of dwelling units, subject to specific operational or location restrictions. However, few localities address short-term rentals in instances where a unit is occupied as a primary residence for the majority of the year. Often this means hosted or unhosted home sharing is either explicitly or implicitly prohibited. Given the prevalence of home sharing, it may make sense to consider adding new definitions for different types of sharing situations, such as hosted or unhosted accessory home sharing and vacation rentals as a primary use.



In some communities with especially high demand for short-term rentals, landlords may be tempted to take units out of the long-term rental market.



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Identify Appropriate Locations

Some cities and counties with mature short-term rental markets permit full-time sharing in zoning districts that include a mix of primary residences and vacation rentals. Others restrict vacation rentals to tourist-oriented districts. One potential risk of permitting home sharing in residential districts is that it may incentivize landlords to take rental properties off the market, creating a shortage of affordable rental housing. Another potential risk is that frequent unhosted sharing and vacation rentals may lead to increased complaints related to noise, traffic, or parking. In areas with high concentrations of home-sharing or vacation rentals, there is also a chance that the fundamental character may change from residential to quasi-commercial.

Consider New Zoning or Licensing Standards

While some cities and counties have elected to explicitly prohibit home sharing altogether, several others have made recent code amendments to accommodate short-term rentals in residential districts, subject to specific zoning or licensing standards intended to mitigate community impacts. These standards address topics such as registration and record keeping, advertising, fees or taxes, annual limits on the total number of short-term rental nights, spatial concentration, inspections, and insurance coverage.

For example, San Francisco prohibits dedicated vacation rentals and requires residents or landlords to register all hosted and unhosted short-term rental units. It limits unhosted rentals to 90 days per year and requires registrants to pay hotel taxes and carry liability insurance for claims up to \$500,000 (§41A.5.g).

Meanwhile, Portland, Oregon, recently added new standards for accessory short-term rentals to address hosted and unhosted home sharing. For units where no more than two bedrooms are offered as short-term rentals, residents or landlords must obtain an administrative permit and limit unhosted sharing to a maximum of 95 days per year. Accessory short-term rentals offering more than two bedrooms are subject to a conditional use approval process. In both cases, no more than 25 percent of units in multifamily buildings can be used as short-term rentals (§33.207).

In Aspen, Colorado, short-term vacation rentals are permitted by right in most residential districts, provided owners obtain a business license and a vacation rental permit, designate a local property manager, notify any affected home owners association, and pay sales and lodging taxes (§26.575.220).

Evaluate Enforcement Alternatives

Without data from home-sharing and vacation rental services, communities may be dependent on complaint-driven enforcement of regulations for short-term rentals. Instead, cities and counties may find it beneficial to establish a proactive enforcement system to ensure that registered properties are complying with applicable standards. This may involve routine monitoring of listings on home-sharing service websites. In communities with short-term rental regulations, violators are typically subject to fines or the revocation of registrations or permits.

Summary

Home-sharing and vacation rental services are growing trends that show no sign of slowing down. While some communities may ultimately decide that short-term rentals do not have a place in established residential districts, there may be no effective enforcement mechanism for a blanket prohibition. Practically speaking, the key is making regulations that are clear, easily enforced, and do not make residents or landlords out to be scofflaws unnecessarily.

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FURTHER READING

1. Published by the American Planning Association

Hutchinson, Nate. 2002. "Short-Term Vacation Rentals: Residential or Commercial Use?" *Zoning News*, March.

2. Other Resources

City Policies for Short-Term Rentals. 2015. Oakland, California: Sustainable Economies Law Center. Available at theselc.org/str_discussion.

Garvin, Elizabeth. 2015. "RMLUI Corner: Thinking About Regulating the Sharing Economy." *Western Planner*, February. Available at <http://tinyurl.com/q4x3zfq>.

National Association of Realtors. 2015. "Field Guide to Short-Term Rental Restrictions." Available at <http://tinyurl.com/pxcdwvc>.

Public Comments Received for 10-12-221 Public Hearing on ZTA21-01

1. Annette Gavin Bates, CEO Jefferson County CVB – 09-14-2021
2. Richard Deal, 09-15-2021

Planning Department

From: Annette Gavin Bates <annette.gavin@jccvb.com>
Sent: Tuesday, September 14, 2021 5:18 PM
To: Planning Department
Subject: Short term rental ordinance

Follow Up Flag: Follow up
Flag Status: Completed

Good afternoon,

I am writing in reference to the ordinance regarding short term rentals. The JCCVB supported the legislation that passed last session requiring the marketplace facilitator to charge, collect and remit all appropriate taxes including sales tax and local taxes. As we expressed many times, this bill was not only a funding issue but also a fairness issue. Therefore, it is our position that all short term rentals must charge, collect and remit any applicable sales and local taxes.

Sent from my iPhone

Annette Gavin Bates
CEO, Jefferson County CVB
Cell 304-279-3637
[37 Washington Court](#)
[Harpers Ferry, WV 25425](#)
Annette.gavin@jccvb.com
www.discoveritallwv.com

Planning Department

From: Richard Deal
Sent: Wednesday, September 15, 2021 10:22 AM
To: Planning Department
Subject: Re: proposed Short term rental comments

Follow Up Flag: Follow up
Flag Status: Completed

Yes previous message should be included and this can be as well.

It is my understanding that IF the STR is the residence of the owner or staff and that they provide any food then it is an Actual Bed & Breakfast which requires health and safety inspections and certificates, and would have to be zoned and licensed as a Bed & breakfast. However airbnbs generally do not provide prepared food. There are a few Bed&breakfasts lodgings that cross by also listing on AirBnB just like there are hotels that list on AirBnB but these would be licensed and registered as Bed & breakfasts and/or hotels. An AirBnB can be one of 4 things :

A hotel or Bed & breakfasts

A entire place or vacation rental (entire place)

A private room (rent just a room in a home)

A shared room (rent just a bed in a home).

[Types of places to stay - Airbnb Help Center](#)



VRBO, TripAdvisor, and Booking.com only have the first two options.

The Shared room is rather uncommon in rural areas as well, and I don't know of any in the county or even region.

So for this since Hotels and Bed&Breakfasts are already covered by other zoning and licensing we are effectively only talking about the middle two options (vacation homes, and private rooms).

An entire vacation home does not have any provided prepared food (owners may provided prepackaged store bought snacks in a welcome basket but this is not the same as owner prepared unpackaged food, and is usually things like snack bars and/or bottled water). Thus there should not be any Health and safety requirements for vacation homes. Room rentals should be the same way and hosts should be required to not provide prepared food or to get a bed&breakfast license if they do want to provide prepared food.

As for Tax. The state passed a law requiring all online marketplaces (as defined AirBnB, VRBO, Tripadvisor, and Booking.com all meet this definition) to collect and remit directly (without host interaction or participation, state and local sales & use tax. All of the main players above do currently collect and remit the sales tax.

There was a bill passed more recently that would also require them to collect and remit occupancy tax, however the governor vetoed this bill due to some wording problems in the bill having to do with logistics. This is being worked on at the state level and will come around again soon with corrected language. In the mean time state law does require the HOST to collect and remit occupancy tax which most of the hosts do at this time. I have worked with many to help them configure airbnb, VRBO etc, to collect the occupancy tax to to fill out the rather simple county form monthly. It is simple and does not require a business license:

<http://www.jeffersoncountywv.org/>

Here is an article about the WV state law requiring online market places like AirBnB VRBO, etc to collect and remit sales tax: https://wvohoa.org/wp-content/uploads/2019/06/2019-0614_WilliamsonDailyNews.pdf

http://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=2813&year=2019&sessiontype=rs

Again hosts or owners are still required by law to handle the occupancy tax in the county

As for the health and safety rules, I am not sure they are reading this correctly.

For a room rental where no breakfast is served it seems that no health and safety inspection is required:

Also, "... as currently promulgated, the General Sanitation rule cannot be read to include in the definition of a "bed and breakfast inn" persons who are providing accommodations to others in their home for a fee, unless the host not only provides sleeping accommodations, but also a breakfast.

This indicates that it "cannot" unless they are providing breakfast.

As for entire place it also seems there is no health and safety unless:

persons renting a house or apartment that is not their residence may be subject to the provisions of the General Sanitation rule, but only if the house or residence meets one of the definitions included in the general definition of a "lodging facility."

so only if it meets one of the definitions of a "lodging Facility", which an entire house does not seem to meet (Boarding house, hotel, Bed&Breakfast, etc).

On Wednesday, September 15, 2021, 09:15:16 AM EDT, Planning Department <planningdepartment@jeffersoncountywv.org> wrote:

Good morning,

Thank you for this information. Would you like your email included in the PC packet next month? I think the information is helpful in clarifying some of the discussion that occurred last night.

The individual who spoke last night was Planning Commission member Matt Knott. He also stated that when he contacted the Health Department back in 2010 (I think he said 2010) they did not require a permit. I was under the impression a permit was not required, but when I contacted the Health Department they told me that the Office of Environmental Health Services (OEHS) has to get legal interpretations of their regulations to determine whether Airbnb and other similar short term rentals met the definition of a lodging facility. I was told that the interpretation was that if the residence/facility was not the primary residence of the owner, then the rental was subject to Health Department regulations because it meets the definition of lodging facility. They provided the memo that was in the agenda packet (see pages 13 & 14 of my memo [attached]).

I followed up with the Health Department this morning to request additional information since you and Commissioner Knott were not the first to state that the Health Department did not have any approval process for STRs. Perhaps the distinction is specific to whether or not the lodging facility/STR provides food services. I will let you know what I find out from the Health Department and will also include any additional information received from them in the next meeting agenda packet.

As you probably heard, the Planning Commission scheduled a Public Hearing for their next regular meeting, which is October 12, 2021. Note: the Public Hearing will be to receive input on their revised draft and not the first draft that was in their packet last night.

Thank you again for your feedback.

Sincerely,

Alex

Alexandra Beaulieu

Zoning Administrator

From: Richard Deal <ButchDeal@yahoo.com>
Sent: Tuesday, September 14, 2021 8:59 PM
To: Richard Deal <butchdeal@yahoo.com>; Planning Department <PlanningDepartment@jeffersoncountywv.org>
Subject: RE: proposed Short term rental comments

I would like to correct some things that were miss statements by a person on the call from another state. He stated that VRBO does not collect and remit sales tax. By state law ALL online marketing systems (including VRBO) must collect and remit sales tax to the state. My listings are on VRBO and VRBO definitely does (as well as AirBnB, and Booking.com, and all other services) collect and remit state sales tax.

Further there is no need for a business license for STRs for the state, or for county occupancy tax. County occupancy tax is done with a county form and monthly checks to the county treasurer / sheriff. The state is also working on an amendment to require online marketers to collect and remit occupancy tax in a similar fashion to the sales tax law.

I was not able to hear the suggestion on the health department certificate, but when I checked it was not required for a whole house rental that does not offer food services.

Thank you

Richard

The following correspondence was submitted prior to the Planning Commission scheduling a Public Hearing. These were submitted on or before the 09/14/21 meeting and are being included for the Planning Commission's information.

1. Richard Deal, 09-12-2021
2. Amy Bowman, 09-13-21
3. Rockhaven Bed and Breakfast, 09-13-21
4. Bryan Gray, 09-13-21
5. Carrie Gauthier, 09-13-21
6. Cathy Gray, Potomac Adventure, 09-13-21
7. Thomas Knott, 09-13-21
8. Thomas Knott, 09-14-21
9. Eddie Love, 09-14-21
10. Amy Bowman, 09-14-21

Planning Department

From: Richard Deal <butchdeal@yahoo.com>
Sent: Sunday, September 12, 2021 4:04 PM
To: Richard Deal; Planning Department; Zoning
Subject: Re: proposed Short term rental comments

Follow Up Flag: Follow up
Flag Status: Completed

Also I would like to comment about the letter included in the document complaining about AirBnBs. In particularly this comment:

"not truly bringing in money to the county by saying tourism. They don't employ staff they don't bring money to restaurant and shops"

This is patently false. ALL the AirBnBs pay directly to the county tourism tax via the occupancy tax. But further the guests do regularly and often quite extensively shop and eat at local shops. I can send send numerous examples of comments by guests but I will send just the most recent review by a guest as example (I highlighted some mentions of local shops) :

The house is beautiful. The decorations are cute and comfortable. Host provides all the amenities we needed to have a comfortable stay, and a generous amount of information about the area. The kitchen is stocked with everything you need to cook. Pots, pans, utensils, BBQ brushes and tongs, etc. Wifi is satellite, so be prepared for that. It's a great place to unplug. The house is right across the road from the river, with easy access to it. The fire pit is great, with chairs and a table right there. We had a wonderful time sitting in our tube on the river. Shepherdstown is right down the road, and we were able to easily access the grocery store and some great coffee and local food/spirits. Here are my recommendations: **Lost Dog Coffee**: amazing espresso from a fun and eccentric store front. They also have great off the wall drinks and blended coffee shakes. We went twice and everything we had was great. **The Green Pineapple**: good Korean food right in town. The line was long, but the food (we got bowls since the ramen menu was being redone) was great. Fairly simple and tasty. About 15-20 min away is a new-ish distillery called **Devil's Due**. We drove over there on a whim and the owners were great. We got a tasting and had a great time. They have awesome flavored moonshine in addition to their whiskey and vodka. All in all, a comfortable stay with great access to surrounding attractions.

and here is another:

Sent from my iPad

On Sep 12, 2021, at 2:17 PM, Richard Deal <butchdeal@yahoo.com> wrote:

I operate several STRs in the county. One in a historic home which like many historic homes does not have hallways with access to rooms through other rooms. Thus the house has two livingrooms, the one upstairs has a pull out couch with queen bed.

The Recommendations for STRs suggests only two guests per bedroom, in My case this living room with pull out bed should count for two additional guests. Further many families with small children and infants stay with the small child staying in a portable crib, the two guests per bedroom would also prevent this. We also have a tiny house with no bedroom at all (an efficiency style) this should be allowed with two guests in the queen bed in the main (efficiency style) room. There is a tree house and other similar homes as well and other homes with bedrooms with two bunk beds, thus sleeping 4 per

bedroom. Though there should be limitations for occupancy, 2 people per bedroom seems overly restrictive.

Another part of the suggestion is limiting to a hard rule of NO additional guests at the STR. Many guests like to meet a local couple, have a dinner for local parents/family, or just enjoy the property with others. There needs to be a distinction between a large party, and a few people over. In my listings, I generally allow the guest to allow over (for day only visits, not over night) an equal number or less to the number that are booked. Thus if 3 people are booked, then they can have an additional 3 or less people over during the day to visit. One example of a situation is a bride books before the wedding, and she wants some maids to come over to help her prepare for the wedding, this would be acceptable but not a large bridal party with drinking dancers, etc.

As for off street parking, there are areas with only street parking now for Long Term. Shouldn't this be the same as long term parking. if the owner has secured street parking permits for the guests, this should cover the parking issue. Also what is sufficient parking? I have seen 4 or more guests come in a single car, as well as 4 come in 4 separate cars (rare but happens), so how do you define sufficient parking?

All short term rentals shall obtain a Zoning Certificate to reflect compliance with the standards established herein.

Another concern is the zoning certificate, how is this to be administered? what is to be inspected? The STRs are the same as residences and thus should have no more inspection than a residence, which is currently only part of permits for alterations. Is this per property or per listing, or per house?

Additionally, as part of the Zoning Certificate application, documentation reflecting approval from the Health Department shall be submitted, if such approval is required by said agency.

I don't think the health department has any approval for a rental, much less a short term rental. Few areas in the US do.

There should be only a health department certificate only if the host is providing prepared food to the guests, like a Bed & Breakfast would. There is not a health department inspection for a residence on a long term lease.

The definition of Short Term Rental seems to only cover an entire building, but there are room Share, as well as Shared room, and entire homes as part of the STR industry. Here is a definition from AirBnB of the different types of STRs: <https://www.airbnb.com/help/article/5/types-of-places-to-stay>

How does this cover yurts, tree houses, tiny house, etc?

Richard Deal

304-283-4927

Planning Department

From: Amy Bowman <amywrites@yahoo.com>
Sent: Monday, September 13, 2021 11:50 AM
To: Zoning; Planning Department
Subject: Comments on the Proposed Text Changes re: Short-Term Rentals

Planning Commissioners:

Thank you for your efforts to clarify short-term rentals (STR) in Jefferson County. I own two STRs, one in the county on Knott Road in Shepherdstown and one in Corporate Shepherdstown.

I am concerned that the proposed text amendment will turn STR owners into second-class property owners. These suggested ordinances will restrict our most basic property rights:

1. The proposed text limits the number of occupants based on the number of bedrooms, regardless of square footage or intent. This will negatively impact our use and enjoyment of our property relative to our neighbors, who are allowed practically unrestricted occupancy. You see this on Knott Road where large families are stuffed into tiny cottages and unrelated college revelers have set up a group house not dissimilar to Delta Tau Chi fraternity in "Animal House."
2. STR occupants will not be allowed to park on the street. Given that STR owners pay significantly higher tax rates than residents, I do not believe that the county can enjoin our guests from street parking. This does not impact our STRs, incidentally. I am speaking of the principle in a broad manner.
3. Restricting our guests from having friends visit, holding a birthday party or business meeting violates our freedom of assembly. For instance, the proposal states, "gatherings such as family reunions, birthday parties, weddings, business meetings, or other similar gatherings which may include additional guests who are not included in the overnight stay": This is an unenforceable measure, and this pernicious and vague language will be used as a cudgel by those who seek to drive us out of business.

I hope that the Commission will consider the positive monetary contributions STR have made to our community and choose to uphold our property rights and not relegate us to second-class citizenship.

Thank you,

Amy Bowman
Resident of Shepherdstown

Planning Department

From: Rockhaven B&B <info@rockhavenbnb.com>
Sent: Monday, September 13, 2021 10:48 AM
To: Planning Department
Subject: Proposed text amendment language for Short-Term Rentals

Follow Up Flag: Follow up
Flag Status: Completed

TO: Jefferson County Planning Commission

Thank you very much for considering clarification and amendments to the County regulations for short-term rentals. We appreciate the work you are doing to keep our county a great place to live, work, and visit.

We live within the Corporation of Harpers Ferry and have hosted B&B and short-term rental units on our own property for 4 years now. We also own a cabin on Knott Road (up the road *outside* either the Happy Hollow or McShane's Landing sections along the river). We do everything we can to make sure our guests are responsible, and we have never been made aware of any problem with guests staying in our cabin. We have always provided information to guests about private property boundaries in the neighborhood. We expect our guests to be respectful of our neighbors, and to our knowledge, they have been.

I also serve as the new B&B representative on the Jefferson County Convention & Visitors Bureau Board of Directors, which has worked with the state to promote fairness in tax collection for short-term rental stays. As a result, the WV Legislature has ensured that there is a level playing field across the industry.

My husband Christian and I have the following concerns about the new proposed short-term rental language for your consideration. These concerns stem from the strident limitations on guests that make our county short-term rentals a much less amenable place to stay. I think a better compromise can be made that respects surrounding residents yet does not present an inhospitable situation for potential visitors that is inconsistent with their needs.

1. The proposed language is confusing as to how exactly a bedroom is defined in non-traditional vacation accommodations – such as a cabin with a loft, a large open-concept-style room layout, or a unique accommodation style, like a school bus, for example. Visitors are looking for unique stay experiences, which is why they are often choosing short-term rentals over hotels/motels. The county language needs to avoid treating vacation rentals like traditional homes or hotels.

Our cabin, for example, which does not have a full kitchen and has NEVER been a permanent dwelling, is a 730-square foot unit with an open-concept main floor and a loft with low ceiling. A queen bed is set up on the main floor with two twin beds in the loft. We allow a maximum of four adults to stay, but usually it's children staying in the loft. Would a set-up like this be considered to have two "bedrooms"?

Also, we have occasionally hosted a family with 3 small children, who easily fit in this space with their two parents. The 2-person per bedroom regulation will be extremely limiting in other short-term rentals, as well, where bunk beds may be set up for 2-4 young children. **We request that you change the language to limit bedroom occupancy to "two adults" or "two guests 15 years (?) and older" rather than set an absolute "two guest/occupants per bedroom" limit. We also request a broader definition of "bedroom" that takes into account non-traditional settings.**

2. The language of the amendment seems to assume that the only people booking short-term rentals are vacationers whose prime goal is to party. We have never found that to be the case with our guests. Our guests

have included couples celebrating a quiet 50th anniversary, couples with small children, grandparents in the area to visit family, employees who want to work remotely in isolation, and clergy persons on a meditation retreat. A stay limit of *less than 7* consecutive days is not consistent with the common 1-week vacation length, nor does it allow for remote workers to stay for longer periods, nor will it allow workers in the area temporarily for needed medical or emergency services. There are many reasons people might need lodging in a comfortable home for more than 6 days, and this limit is out of sync with the current trends in travel for both work and leisure. Few people prefer to stay in a hotel for a multi-week stay – yet few accommodations allow a temporary stay of 30 days or less, other than hotels and vacation rentals. *Longer stays would also reduce the amount of guest turnover that worries some residents in neighborhoods surrounding short-term rentals.* **We request that guest stays be limited to “no more than 30 days.”**

3. We understand prohibiting parties and large events in short-term rentals without additional permitting, but the language prohibiting any daytime guests at all in a short-term rental is ambiguous to the point of being untenable. Again, there are many innocent circumstances where a small number of guests coming in for less than a day would harm no one – such as a bride needing a hairdresser and a couple of bridesmaids to help her prepare on the morning of her wedding – or grandparents having their grandchildren over for dinner. We require our guests to request our permission before having anyone else on our property, but most of the time the circumstances are reasonable, and we say yes. **We request that this language about additional guests who not staying overnight be clarified so that some number maximum of daytime visitors is clearly allowed.**
4. **We request that the County provides guidance to the Health Department that recognizes the capital limitations of owners of a single short-term rental unit.** We have no objection to safety inspections in general, but small businesses that host one or two short-term rentals, for example, do not have the same financial resources as hotels/motels, and requirements for safety modifications should take this factor into account in the permitting process.

Each of these items concern us, not only because they are unfriendly to visitors and inconsistent with the experiences they want to have, but they could be constraining enough to make the short-term rental business unprofitable for small business owners. If too many guests choose another location to visit because of limitations here, then short-term rentals lose the ability to earn revenue. We already pay higher property taxes to the county, as well as commercial insurance rates, etc. The county has a low inventory of accommodations, which I know from my work with the JCCVB board. If we are not left with enough net income to maintain the properties and support our financial needs, then LOCAL short-term rental owners have little incentive to stay in business. Either way, the county is left with fewer lodging accommodations – especially the type in high demand by today’s visitors – to serve the desired tourism industry.

All the best to you as your sort out the competing concerns surrounding this matter.

Lynn Pechuekonis
Rockhaven B&B/Harpers Ferry Glamping
900 Fillmore St.
Harpers Ferry, WV 25425

Planning Department

From: Bryan Gray <4bryangray@gmail.com>
Sent: Monday, September 13, 2021 5:17 PM
To: Planning Department
Subject: Draft of proposed short-term rental zoning amendment

To the members of the Jefferson County Planning Commission:

RE: First draft of proposed zoning text amendment to create provisions to allow short term rentals

I own vacation rental property in Jefferson County and I support much of the 1st draft proposed zoning amendment. The proposal contains common-sense regulations that will put to rest much of the confusion regarding the rights of all property owners in the county.

However, I believe the following two elements of the draft proposal are unnecessary as they are already addressed by current ordinances. They also place limitations on a limited subset of homeowners creating a distinction that is sure to have legal repercussions.

1. **Proposed regulation:** Occupancy limited to two persons per bedroom.
 - o Occupancy regulations based on septic and well capacity are already in place and provide the adequate protections against over-crowded residential dwellings. These regulations apply to EVERY homeowner.
2. **Proposed regulation:** No additional guests who are not included in the overnight stay.
 - o If the goal is to prevent excessive noise and public disturbance, and the homeowner or guests (paying or not) are disturbing the peace or being a public nuisance, there are ordinances already in place to remedy the situation.

It is possible to achieve the same results without diminishing the rights of only one group of homeowners. All homeowners should be held to the same standard in maintaining a community's quality of life and there are laws already in place designed to achieve that goal.

These two parts of the proposal are also unenforceable unless they are applied to EVERY homeowner equally since no one can reasonably know whether the people in my home are family and friends or paying guests. It's simply impossible to say that I'm allowed to invite as many guests as I'd like to my home as long as they're NOT paying, but enforce an arbitrary limit if my guests ARE paying.

A recommendation

There is one important rule—not included in the draft—that I believe would be an effective measure to minimize potential problems with short-term rental properties. The rule would require that the homeowner or designated manager be available at all times and able to respond to a disturbance in no less than 30 minutes.

Respectfully,
Bryan Gray

Planning Department

From: Carrie Gauthier <carriegauthier7@gmail.com>
Sent: Monday, September 13, 2021 6:10 PM
To: Planning Department
Subject: Support for Short Term Rentals

To Whom It May Concern:

I believe that the regulations currently in place regarding short term rentals are sufficient. We currently do not have enough places for visitors to stay in this county. Please remember that these rentals also provide housing for traveling nurses, border patrol, construction workers, and those seeking to move to Jefferson County. I would like to see evidence that there have been negative effects on the quality of life for neighbors. I hate to see us legislate without the need. It seems intrusive to legislate how many guests can sleep in one room or if a short term rental guest can invite a visitor. Short term rentals seem to be easy to monitor because of the process of online review of the premises. Unsafe or unwelcoming homes do not generate return guests. Please don't go down a slippery slope of overregulation that cannot be enforced. I am sure that occasionally guests show exuberance at being in such a beautiful area, but most of us do this all the time. West Virginia is wild and wonderful and should be shared!

--

Carrie Ellen Gauthier
REALTOR
304-582-2443

Planning Department

From: Info@potomacadventure.com
Sent: Monday, September 13, 2021 1:58 PM
To: Planning Department
Subject: Short Term Rentals

We would like to express our support for responsible and reasonable ordinances for Short Term Rentals.

The proposed changes to the ordinances currently in place are helpful in defining the regulations currently governing Short Term Rentals in Jefferson County.

We are in agreement with all except the occupancy restrictions which do not take into consideration young families with children. We feel re-wording this to state the number of “adults”, allowed and realizing that some platforms do not have the ability to separate adults from children.

We also are not in agreement with a “no guest” rule as our properties are sometimes used for a family dinner or a place for a bride to dress before going to a wedding venue. We do not allow weddings or large parties.

Parking and noise have never been an issue at our rentals. We reside about 15 minutes away from all our properties and utilize exterior cameras to assure compliance with our rules and regulations.

We have never had a documented issue at any of our properties. We do not appreciate the hostility from the “Happy Hollow” community and want something done to stop this immediately. Our guests have stated that THEY feel unsafe from the aggressive behavior from some of the residents and from the signs in yards.

We have rights and have been excellent neighbors.

Sincerely
Cathy Gray
Potomac Adventure

Planning Department

From: Tom Knott <user801828@aol.com>
Sent: Monday, September 13, 2021 4:22 PM
To: Planning Department
Subject: Re: Auto Housing STR

Dear Commissioners:

The revelation that Ruthlee Holler is providing short-term-rental space with her automobile along the shack-infested strip previously known as Unhappy Hollow is disturbing.

As Mrs. Holler writes in an email, dated August 9, 2021: "I have had someone sleeping in my car in my driveway."

I do not know the amount Mrs. Holler charges for her repurposed auto STR. Or if she pays taxes on the stays. Or if she provides guests with pillows and blankets.

But I do know it is difficult to compete against a repurposed auto, while we are charging upwards to \$200-plus a night in a three-bedroom home.

Mrs. Holler makes another excellent point: There are "no fire departments within three miles and no fire hydrants" along the shack-infested strip.

The puke-green shack next to our property appears to be abandoned and in a fitful state of decline.

If you're thinking what I'm thinking, and I'm thinking you are, the puke-green shack probably could use a visit from a building inspector, if only to allay fears that it is a fire waiting to happen.

As Mrs. Holler notes, with no easy way to douse a quick-moving fire, perhaps the county should send a building inspector to the area to do a thorough once-over of all the properties along the shack-infested strip previously known as Unhappy Hollow.

Just to be safe.

Just to save lives.

If we can save one life, then all the rules, regulations, codes, ordinances and white-glove inspections will have been worth it.

Sincerely,
Thomas Knott
202-445-7740

Planning Department

From: Tom Knott <user801828@aol.com>
Sent: Tuesday, September 14, 2021 3:12 PM
To: Planning Department
Cc: Zoning
Subject: Re: Funny-looking fellow

Dear Commissioners:

The following is intended to be put into the public record, as part of the discord emanating from the short-term-rental dust-up: Matt Knott owns the boat launch that snakes between Unhappy Hollow and McShane's Landing to the Potomac River.

There are no ifs, ands or the funny-looking fellow about it.

Mr. Knott is the sole owner of the boat launch, despite claims to the contrary by the funny-looking fellow who maintains a 24-hour vigil by the entryway.

The funny-looking fellow issues proclamations, decrees and all manner of admonishments to those who venture near the boat launch, starting with the guests of the short-term rentals.

Guests find this unsettling, naive as they are, unaware that the funny-looking fellow celebrates Halloween 365 days a year.

A question before the commissioners, and specifically Mr. Knott: Is the funny-looking fellow in your employ, the lonely sentry in costume, empowered to preserve the sanctity of life at the boat launch?

Or is he merely a powerless funny-looking fellow in a get-up, fright wig every which way, trying to find his way in an uncertain world, playing pretend?

Sincerely,

Thomas Knott

Planning Department

To: Eddie Love
Subject: RE: ZTA21-01, Short Term Rentals – 09-14-21 PC Meeting

From: Eddie Love <eddie@mountainmamahomes.com>
Sent: Tuesday, September 14, 2021 9:23 AM
To: Planning Department <PlanningDepartment@jeffersoncountywv.org>
Subject: Re: ZTA21-01, Short Term Rentals – 09-14-21 PC Meeting

Thank you. I understand there is no public comment as part of tonight's meeting, but thought it best to offer my thoughts sooner rather than later. I'm hoping my letter might make it into the supplementary material for the public hearing (whenever that is scheduled).

Is it possible to attend in person or is the meeting strictly over Zoom?

Eddie Love
Mountain Mama Vacation Homes
833-MTN-MAMA (833-686-6262)
www.mountainmamahomes.com



On Tue, Sep 14, 2021 at 9:09 AM Planning Department <PlanningDepartment@jeffersoncountywv.org> wrote:

Good morning,

This email is to confirm that our Office is in receipt of your submission. Please be advised, the purpose of tonight's meeting is for the Planning Commission to review and discuss the first draft of the proposed text amendment. If you would like to listen to the discussion tonight, please refer to the information at the top of the meeting agenda to access the URL and/or phone number to join the virtual ZOOM meeting.

The Planning Commission will hold a Public Hearing at a future date [TBD], during which the public will be encouraged to provide public input on the proposed text.

Sincerely,

Alexandra Beaulieu
Zoning Administrator

From: Eddie Love <eddie@mountainmamahomes.com>
Sent: Monday, September 13, 2021 10:26 PM
To: Planning Department <PlanningDepartment@jeffersoncountywv.org>
Cc: Zoning <Zoning@jeffersoncountywv.org>
Subject: Re: ZTA21-01, Short Term Rentals – 09-14-21 PC Meeting

Please see the attached letter. Thank you in advance for your consideration!

Eddie Love

Mountain Mama Vacation Homes

833-MTN-MAMA (833-686-6262)

www.mountainmamahomes.com





September 13, 2021

To: Jefferson County Departments of Planning and Zoning

From: Eddie Love, Mountain Mama Vacation Homes

Re: ZTA21-01, Short Term Rentals – 09-14-21 PC Meeting

To Whom It May Concern,

I'm writing with what I hope will be helpful feedback as the County considers regulation for short-term rentals ("STR"). I am a professional manager of vacation rentals in the Harpers Ferry area, with several rentals in Jefferson County. We both own rentals ourselves and manage them on behalf of other homeowners.

First off, I want to say thank you for proposing new ordinances to address STRs! This will bring much-needed clarity to an essential part of the tourism industry in Jefferson County. Fair regulation will help STR managers/owners and citizens of the County work together to make Jefferson County a wonderful place both to live and to visit. We have a great opportunity here to create fair regulation, and I appreciate that the County is considering all stakeholders and perspectives. The ordinances just proposed by the County are quite sensible and will help mitigate the worst problems posed by unregulated STRs. It is in the spirit of cooperation with County officials and the broader community that I offer a few suggestions below, based on my years of experience managing vacation rentals and conversations with other STR owners and neighbors of STRs.

STRs come with certain risks that should be carefully mitigated, and fair regulation is one way of doing so. Many people have heard horror stories from other parts of the county where unscrupulous homeowners set up "party houses" that are unsafe for guests and a nuisance for neighbors. No reasonable person wants that in Jefferson County. Even well-intentioned owners/managers, however, may have complaints from their neighbors from time to time, especially around the issues of noise, trash, and parking. While building our management company we have been very careful to ensure that our neighbors' quality of life is not negatively impacted by the STRs we manage. In fact, every time a neighbor has a reasonable concern about a property generally or a guest group in particular, we make it a policy to side with our neighbor and address his or her concern, even if that means a less-than-perfect experience for a guest.

How We Protect Our Communities from Bad Guests

There are many means by which our company ensures we have the right guests staying in our properties: guests who will care for the home and treat our neighbors and our communities with respect.

First, we have effective policies in place that are clearly communicated through our listings (see Appendix A for sample language from our property listings). Every guest who reserves our property must be at least 25 years old, and the guest who reserves the property must stay on site themselves (for example, a parent could not reserve the property for a college-aged child unless the parent is also staying at the property).

We also limit the number of guests at the property to the number of guests stated on the reservation, which can never be higher than the maximum we establish for the property. We regularly receive requests from potential guests asking to have a small gathering of people at the property during the day which would exceed the number of people on the reservation; in every case, we apologize that we cannot allow that and refer them to a larger property, if possible.

We also provide in our listings information about the County's noise ordinance and we explain our no-tolerance policy for violations of the noise ordinance. The way we explain our expectations has the salutary effect of scaring off would-be partiers because they know we will catch any violations and their stay will be ended early and without refund. All the "house rules" above (and more) are agreed to in a contract that the guest e-signs upon booking.

Second, we rigorously screen guests during the booking process. There are a number of signs that indicate a guest may not be respectful of neighbors or the property. For example, a group of eight unrelated 25-30 year old friends pose a greater risk than two families of four (also eight people total) vacationing together. With the former, we follow up explicitly making clear our house rules and expectations and either the guest confirms they understand the rules and intend to follow them or the reservation is cancelled.

Third, we use technology on-site to quickly identify potential problems so we can take action swiftly. All our properties have cameras near the front door that point toward the front doorstep and/or the driveway. This allows us to remotely monitor the number of guests using the property and the number of cars in the driveway. If it ever appears that the number of guests exceeds what is on the reservation, we contact the guest and seek resolution. If the number of guests exceeds the *maximum* we have set for the property then we quickly move toward terminating the stay.

We also use noise monitoring devices at all our properties. The devices do not record audio, thus respecting the privacy of guests, and instead just monitor decibel levels. If noise levels exceed the threshold we have set then guests receive a text message letting them know that the noise levels are too high and that they need to quiet down. If noise does not come down to

an appropriate level within five to ten minutes we call the guests on the phone. If the guest does not answer or does not reduce noise levels then we go to the property to notify the guest in person and, if necessary, send them home early for violating house rules. Because we are painfully clear about our expectations of guests, and because they know they will be caught if they break the rules about noise, in practice it is virtually never necessary to escalate beyond a simple text message reminder about noise.

STRs Are a Critical Part of the Tourism Industry in Jefferson County

While the popularity of vacation rentals has surged in the recent years, especially during the COVID-19 pandemic, Jefferson County has a long history as a destination for city dwellers to get some fresh air and recharge. The surge in STR popularity is being driven by demand from guests. More and more people are being exposed to vacation rentals and finding that they are superior in many instances to hotels or B&Bs. The chance to have a full-sized kitchen to cook meals, a large dining table to gather around, beautiful spaces and views to enjoy without leaving your accommodation, and increased privacy are the features that attract people to vacation rentals over other lodging options. They are often the best places to disconnect from phones and computers and reconnect with each other.

Given all they have to offer and the fact that they are often more affordable than hotels (on a per person basis), it's easy to see the appeal of vacation rentals. Their popularity will only continue to grow. Vacation rentals appeal especially to families, and that is especially important since Jefferson County has so much to offer family travelers. Families visit the County to play in our rivers, hike our trails, visit our farms and battlefields, and more. These families overwhelmingly prefer vacation rentals, and since that's the case we must be careful not to inadvertently turn away family travelers by the way we regulate STRs (see more below).

The point has been made repeatedly so I won't belabor it, but the guests who stay at STRs spend their money here. We actively encourage our guests to support our local small businesses over chain restaurants and stores, and I know they take our advice because they tell us about their experiences and thank us for our recommendations. We refer guests looking for outdoor adventure to River Riders. We stock our rentals with coffee beans from Black Dog, Sibling, and Joan + Joe, and we leave welcome gifts of Mountaineer Popcorn. We create local jobs for the cleaners and contractors who service our STRs. In these and so many other ways we actively work to keep as much money in our local economy as we can.

There Are Good Ideas in the Proposed Ordinances

A zoning certificate is another reasonable expectation for owners of short-term rentals. In fact, I think the proposed registration requirements do not go far enough (I elaborate below). The process described for applying for a zoning certificate seems reasonable, assuming that all homeowners who meet the described requirements are approved for a certificate and there

are no caps being proposed on the number of short-term rentals in the County. The process for obtaining Health Department approval is not well described, though. That leaves me to wonder what the Health Department would require and just how onerous the requirements and the process for obtaining approval would be. The County should wait to codify ordinances until the Health Department process has been described and carefully considered by all stakeholders. As for parking, there is an argument to be made that since owners of short-term rentals (like owners of long-term rentals) pay twice as much in property taxes as do owner occupants, then their guests ought to have as much of a right to street parking as any other property owner. That said, the provision of off-street parking is not unreasonable, and most vacation rental owners would be happy to go “above and beyond” by providing off-street parking for their guests.

Language Governing Special Events and Maximum Guest Counts Should be Clarified

Requiring properties that host events to apply as a special event facility is a good idea. Hosting large groups and/or events poses unique challenges that don't apply to most vacation rentals. Forbidding extra guests from joining during the day when that would put the total guest count over the property's maximum guest count is also a good idea. As I explained above, that is our policy and it does help to prevent gatherings that are too large for a given space. When, for example, a group of 18 has a gathering at a house that sleeps just 8 the gathering is practically forced outdoors (since the indoors are too small for a group that size), and this increases the risk that the group could be a nuisance to neighbors.

As written, though, the ordinance language forbidding guest counts from exceeding the maximum for a property is too vague and subject to misinterpretation. For example, the proposed language could be misconstrued to forbid the celebration of a “birthday party” for 8 guests (complete with cake and ice cream) at a rental that sleeps 8 or more guests. The following language might be clearer:

A short-term rental shall not operate as a special event facility unless approval through the special event facility provisions is granted. Each short-term rental shall have an advertised maximum guest count, and at no point during a guest's stay may the total number of guests exceed the maximum number of guests advertised for the rental. Every person on premises at the rental at any given time is counted as a guest for purposes of the guest count, regardless of whether that individual stays overnight at the rental.

Proposed Occupancy Limits Should Be Reconsidered

The main aspect of the proposed ordinance that should be reconsidered is the limiting of occupancy to two guests per bedroom. The proposed occupancy limit begs the question, what problem is the County trying to solve with that ordinance? If the problem is one of noise, then an occupancy limit does not directly address the issue. There are better ways to address noise directly, some of which were explained above in our own business practices (policies, guest screening, technology, etc.).

The concern I have is that a per-bedroom limit does not adequately capture the capacity of a home to sleep guests comfortably and safely. On the one hand, I have seen three-bedroom homes that comfortably and safely sleep just six guests. On the other hand, I have seen homes that might technically have just two bedrooms but can comfortably and safely sleep eight or more guests. Everything comes down to the home's layout and how efficiently space is used.

The proposed limit of two guests per bedroom is particularly problematic for homes that have cathedral ceilings with large lofts, since the lofts might not technically be considered a bedroom, though they might sleep four people or more. This may sound like a far-fetched problem, or one that applies only to a small subset of homes, but this kind of layout is used disproportionately in vacation homes and will be found more commonly amongst vacation homes than primary residences.

Another disadvantage of an occupancy limit based on bedroom count is that it does not differentiate between adults and children. In our experience, families, including nuclear families, extended families, and groups of families, are more respectful of their vacation rentals and the neighbors around them than are groups of young adults without children. This is one reason why Mountain Mama has positioned itself to cater to families above all else, even when we could potentially charge higher prices and make more money by having looser policies and guest screening, and catering to groups of young adults. A group of eight young adults is much more likely to be a nuisance to neighbors than a group consisting of two families of five (four adults and six children). Even though the latter group is larger by two guests, it's easy to see how they might fit into the home just as easily as the former group, while being much less of a nuisance risk to neighbors.

If an occupancy limit is deemed absolutely necessary, there are better measures of a home's sleeping capacity than bedroom count. The best metric would be bed count, whereby a standard is established for the number of people who can sleep in a bed (e.g. one person in a twin bed, two people in a queen bed) and the maximum occupancy for the property is then established by the number of beds in the house. For example, a three-bedroom house with two queen beds and four twin beds would be allowed to sleep eight guests at most. This would allow owners/managers some flexibility in establishing the layouts of their homes, but would prevent rogue hosts from providing nothing but sleeping bags or cots for their guests so as to cram as many people as possible into a space. This standard would not be any more difficult to

enforce than a standard based on bedroom count since information regarding bed counts and sizes are publicly available in online STR listings, as is the maximum occupancy.

Finally, I still need to research more to confirm this, but I don't believe the neighboring counties of Washington (MD), Clarke (VA), Warren (VA), or Berkeley (WV) have occupancy limits for their short-term rentals. If that is true, STR occupancy limits in Jefferson County threaten to put vacation rental owners at a disadvantage to neighboring counties, driving tourists who might have otherwise chosen Jefferson County for their getaway to look toward our neighbors instead. That seems like an unnecessary price to pay if occupancy limits do not directly address neighbors' concerns.

Public Register of Short-Term Rentals with Local Points of Contact

As I indicated above, a zoning certificate is a good start, but it does not go quite far enough—what the County needs is a short-term rental registry. This would be a publicly available list of the active STRs in the County that lists the address of the property and contact info (phone number, email address, mailing address) for a designated point of contact. This would ensure that if any neighbors of an STR have a complaint to raise about the property in general or a particular group of guests they are easily able to reach whomever is able to resolve their problem. This would facilitate neighbors solving problems with each other directly, rather than unnecessarily pulling in other parties.

Another important aspect is that every STR should have a designated local point of contact. There are different ways of measuring how “local” the point of contact must be, but one test might be that the contact is able to be on-site within 30 minutes any time an emergency or guest nuisance complaint should arise. It's critical that locals be involved in managing STRs within the County. Not only is a local able to arrive on-site quickly whenever necessary, locals are more invested in the community because they live here themselves. Requiring local participation in every short-term rental lessens the risk of faraway corporations or faceless investors owning vacation rentals in the County but remaining unreachable when their cooperation is needed most.

Conclusion

I explained above some of the different ways in which we work to stimulate our local economy and help our local businesses to prosper. We do this all because we love Jefferson County and the people and businesses that also call it home. One of Mountain Mama's four core values is to “Love What's Local,” and it's this love for our mutual home that makes us delight in sharing it with our guests. I live in Harpers Ferry with my wife and two young children, and while we didn't grow up in this area, we love it all the more for having consciously chosen to make it our home.

Thank you again for working to bring clarity to short-term rental regulation in the County and doing your best to ensure STRs only add to the quality of life here. I hope you will consider my suggestions and you are welcome to include this letter in any future Planning Commission packets. I am available at any time to discuss these ordinances and I look forward to the opportunity to provide public comment when the time comes.

Sincerely,

Eddie Love
Mountain Mama Vacation Homes

Appendix A – Representative Language From Property Listings

We are committed to Rent Responsibly standards. This means we follow best-in-class guidelines to ensure you have a peaceful, safe and memorable stay with us. We care a lot about maintaining good relationships with our community, so we appreciate you following these "house rules" during your stay.

AGE 25 OR OLDER TO BOOK: The guest booking the property must be 25 years of age or older. We reserve the right to request a photo or scan of a government-issued photo ID. The guest who books must stay at the property--you may not book for others if you do not intend to stay at the property.

QUIET HOURS START AT 10 PM: Our property's quiet hours of 10 pm to 6 am are required by county ordinance and enforced by local police. If the police respond to a noise complaint, every individual on the property may face a misdemeanor criminal charge and be subject to a fine by the county of \$300. Failure to abide by the county noise ordinance will result in the immediate termination of the stay without refund. We use NoiseAware, smart home devices that measure volume levels throughout the property, like a smoke detector but for noise. NoiseAware is 100% privacy compliant and allows us to respond to noise nuisances before the police are called.

Past noise complaints have always come from groups of 20-somethings. If you are booking for a group of people in their twenties and you think your group may want to play loud music at any time then do not book this property or cancel your reservation if you have already booked. Find another place for your trip so you do not have your trip terminated early and without refund.

NO MUSIC OUTDOORS: This is a quiet, family-friendly lake community, not a place to party. Residents and guests alike come here to relax amid the peace and quiet of the lake. Because of this, and because sound carries so easily across the lake, we do not allow guests to play any music outdoors. Other reasonable noise, from children playing outside, for example, is no problem.

Planning Department

From: Amy Bowman <amywrites@yahoo.com>
Sent: Tuesday, September 14, 2021 10:24 AM
To: Planning Department; Zoning
Subject: New STR Ordinances = Second-Class Property

Planning Commissioners:

I am writing to ask the Commissioners to consider the constitutional impact of the short-term rental (STR) ordinances that have been proposed and if these ordinances create a second-class of property owners in Jefferson County.

The right to rent property is a fundamental privilege of private-property ownership. Do STR hosts not deserve equal protection under the law? These proposed ordinances unlawfully creates two separate distinctions between three similarly situated classes--STR hosts, long-term rental landlords, and freeholders.

Most of the new ordinances under consideration focus on the operational aspects of renting. These types of operational restrictions are only proposed for STR under the assumption that STR is more disruptive than long-term rental. (Ask Martinsburg's lawmakers about that theory.)

However, I have not seen evidence that STRs are more disruptive to neighborhoods in Jefferson County. If the argument for restricting STRs is that they are a threat to public safety, I would like to know if there has been an increase in illegal activity in neighborhoods with STRs. Have there been citations issued for noise, trash and parking violations?

Have the number of occupants at a STR adversely impacted public health? I would argue that the proposed ordinances are not rationally related to the protection of public health, safety, or welfare are is unduly burdensome when considering the county's interests. The maximum cap on unrelated adults is arbitrary and unreasonable.

Those who wish to restrict our private property rights told a Spirit of Jefferson reporter that they do not like "strangers" or those people who "do not understand our traditions." Does their xenophobia give them the right to strip us of our constitutional right to rent our property, to gather freely, and our right to economic liberty?

As governing body, do you feel that these regulatory "takings" are in the spirit of our state and federal constitution? Or even our state motto: "Mountaineers are always free."

These proposals also will restrict our guests' freedom to assemble on private property with the permission of the owner. The Texas Supreme Court v. Austin recently found freedom to assemble is "just as strong, if not stronger, when exercised on private property with the permission of the owner, thereby creating a nexus with property and privacy rights." The Texas court held that the city's goal of limiting party houses and reducing possible strain on neighborhoods did not qualify as compelling interests in a constitutional sense. Further, the law banned nearly all types of assemblies on private property "without regard to the peacefulness of or reasons for the assembly." The court suggested that the city's regulatory goals could be achieved by less intrusive means, including the enforcement of existing nuisance ordinances.

Are West Virginians less free than the citizens of Texas? I would hope not.

Sincerely,

Amy Bowman
Shepherdstown, WV



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MEMO

TO: Planning Commission
FROM: Jennifer Brockman, County Planner
DATE: October 12, 2021
RE: Cover Memo for revised draft *Envision Jefferson 2035 Comprehensive Plan Amendment* prepared by staff based on 10-5-21 PC input

At the conclusion of the October 5, 2021 Planning Commission (PC) Work Session, the PC made a motion to instruct staff to incorporate the comments provided by the Planning Commission into a revised draft amendment to the *Envision Jefferson 2035 Comprehensive Plan (2035 Plan)* to permit large scale solar facilities in the rural and residential growth districts, which carried unanimously.

Attached is this revised draft amendment, with the relevant sections of the *2035 Plan* excerpted for context. The previously proposed staff revisions are those areas that are highlighted in yellow with red text. The new language added since the 10-5-21 meeting is just shown in red. Generally this new language is based on the input from the Hough's modified based on PC comments and input. There have also been some edits to the previous staff recommendations but those are not separately highlighted.

The purpose of this agenda item on the 10-12-21 PC meeting is to allow a full review of the proposed language by the PC to determine if any further revisions are required before the 12-7-21 Public Hearing is advertised. The goal is to finalize the draft amendment language in preparation for the required Public Hearing.

The Planning Commission has scheduled a Public Hearing for December 7, 2021, which needs to be advertised on November 3, 2021.

GOALS AND OBJECTIVES

A key element of any land use planning document is the development of a statement of realistic Goals and Objectives which lay the groundwork for the recommendations and implementation strategies of the vision. As the planning process progressed, the Steering Committee grouped goals and recommendations into the following five broad elements which provide the framework for the Plan.

Land Use and Growth Management (includes Housing & Intergovernmental Coordination)
Economic Development, Employment, and Infrastructure (includes Transportation & Tourism)
Cultural, Historic, and Natural Resources, and Recreation
Education and Libraries
Finance and Public Safety (includes Impact Fees)

The Goals and Objectives of the *Envision Jefferson 2035 Comprehensive Plan* can be found in Appendix D. The Goals and Objectives were developed after the existing conditions (data and trends analysis) and issues analysis were completed and were agreed upon by the County Commission to provide direction to the Steering Committee as they continued the public input process for the purpose of developing the Recommendations of this Plan. As the Recommendations were developed, occasionally a strategy identified in the Goals and Objectives may have been determined by the County Commission to require a modification and the Recommendations may appear in conflict with the Goals and Objectives. If such conflict exists, the Recommendations are the final product of the Plan and are to be relied upon to provide guidance to the Planning Commission and County Commission in their land use and development decision making process. As such, the Goals and Objectives are a resource that reflects the evolution of the thought processes throughout the development of this Plan, but the Recommendations specify the end goal.

The five elements incorporate the components that are required and/or recommended by WV Code 8A. The components are:

Required: Land Use, Housing, Transportation, Infrastructure, Public Services, Rural, Recreation, Economic Development, Community Design, Preferred Development Areas, Renewal and/or Redevelopment, Financing, and Historic Preservation.

Recommended: History, Environmental, Tourism, Conservation, Safety, and Natural Resource(s).

A comprehensive planning document generally covers a twenty year planning horizon and is intended to reach beyond current physical, political, and institutional

constraints. The process of developing goals begins with an examination of existing conditions related to each of the categories listed above and the analysis of issues and opportunities throughout the County. The most important sources for the draft Goals and Objectives were public input from four public meetings conducted in 2013, results of an online survey available countywide, and discussion and submitted comments from the Steering Committee. For additional information related to the Existing Conditions and Public Involvement and Outreach, see Appendices B and C.

The previous four Comprehensive Plans for Jefferson County were policy based planning efforts. The *Envision Jefferson 2035 Comprehensive Plan* includes the creation of recommendations and related maps, including land use maps, which are the fundamental elements and are based on future needs and projected actions. The Future Land Use Guide will need to be viewed in conjunction with the recommendations found in the Plan when reviewing a variety of land use decisions. Foldout versions of all the maps are found in Appendix F.

One of the key concepts that a Comprehensive Plan addresses through its Future Land Use Map or Guide is the location of new development within the County. As the cost of maintaining and providing services and utilities increases, there is a need to target infrastructure and community service investments in these areas that will support new growth. The Future Land Development Map (as shown on page 15) provides a broad overview of these concepts. In Jefferson County, there are four broad types of land use activity which are identified and discussed in this Plan:

- Urban Growth Boundaries (UGBs), Charles Town and Ranson, which are locations within Jefferson County where urban scale development is anticipated over the planning horizon of Envision Jefferson 2035. Shepherdstown's adopted Growth Management Boundary (GMB) is not anticipated to have urban scale development if it remains in the unincorporated area. Therefore, the use of the term UGB throughout this document refers to the Charles Town and Ranson UGBs only.
- Six identified Preferred Growth Areas (PGAs) which are also locations within Jefferson County where urban scale development is to be targeted over the planning horizon of this Plan and a seventh PGA identified for Residential Areas identified for low and medium density residential detached housing.
- Rural/Agricultural Areas, where the Plan recommends that non-urban scale development occur and where the rural/agricultural economy is to be enhanced and promoted.
- Eight Village communities that can host increased growth, planned commercial services, and infrastructure development.

A larger version of the Future Land Development Map is available in Appendix F – Maps.

Jefferson County's percentage of arable agricultural land is 54.7%, more than any other county in West Virginia. That affords the County a rich mix of urban, suburban, and agricultural environments. With that consideration in mind, the Plan strengthens proposals related to its historic farming community's economic growth. It recommends potential amendments to the Zoning Ordinance and Subdivision Regulations, which will support a more robust, profitable agricultural and artisan economy through a diversity of uses. This Plan proposes a higher density cluster provision rather than allowing rural residential developments via the Land Evaluation Site Assessment (LESA) system / Conditional Use Permit (CUP) process; ~~and~~ to allow the use of the a more traditional CUP process in the Rural District for non-residential uses which are compatible in scale and intensity with the rural environment and that pose no threat to public health, safety, and welfare; and to allow more flexibility in multiple uses on agricultural properties to allow diversification of their businesses.

What are Goals, Objectives, and Recommendations?

Goals are general guidelines that broadly describe what the community wishes to achieve over the period of the Comprehensive Plan. Goals are generally bigger in scope than objectives.

Objectives are the types of actions or activities that are recommended in order to attain the goals.

Recommendations are implementation strategies that are specific steps that would be undertaken to achieve the goals and objectives. They can involve regulatory processes or actions that provide a means for the goals and objectives to be achieved.

Goals and Objectives are what a community wishes to achieve. Recommendations are implementation strategies of how a community looks to achieve them.

Rural/Agricultural Areas

Rural/Agricultural properties outside the UGBs and PGAs are allowed to develop using the “by right” standard of one lot per 15 acres and a cluster development of one lot per ten acres. Over the past number of years, the Zoning Ordinance has been amended to allow many additional uses in the Rural District to promote more rural agricultural uses and value added operations. The 2008 Subdivision and Land Development Regulations have been amended to reduce the site improvement standards for rural business. This Plan proposes that a holistic review of Rural zoned properties should occur that would allow for greater scope and variety of agriculture related activities and rural recreation, including the development of small or large scale solar energy facilities in the Rural areas of the County. It should be noted that regardless of location, whether in an UGB, GMB, or PGA, all Rural zoned properties shall be permitted to undertake the activities noted above. Additionally, this Plan proposes that the Zoning Ordinance be reviewed and amended to consider a higher density for rural/agricultural lots utilizing the cluster provision instead of allowing rural residential developments via the Condition Use Permit process.

***Land Evaluation Site Assessment (LESA)
also known as the
Conditional Use Permit (CUP) process
outside the UBG or PGA***

Currently, any land use not listed as a Principal Permitted Use in the Zoning Ordinance may be proposed on any property utilizing the LESA/CUP process. This Plan recommends eliminating the LESA system and modifying the CUP process for use exclusively for non-residential development projects in the Rural Zoning District.

It is expected that urban level residential and non-residential development (and redevelopment efforts) will focus in the UGBs and identified PGAs in the next two decades. In addition, it is anticipated that the bulk of new investment by public entities will take place in these areas over the 20-year timeframe of this Plan.

Retention of Existing Zoning Map Classifications

As part of the Envision Jefferson 2035 process, there are no zoning map amendments (rezoning requests) or reductions in existing zoning rights proposed by the County. The existing zoning on any property in the County will not be affected by this process. This Plan, including the Future Land Use Guide, does not propose to reduce the rights of any property owner. The Plan and the Future Land Use Guide propose to retain vested property rights which are reflected by the Future Land Use designations. The Future Land Use Guide includes a depiction of the Growth Area Boundary that was included on the Study Area Map of the *2004 Comprehensive Plan*.

Urban Level Development Recommendations (Goal 1)	
1.	Recognize the existing vested rights, development entitlements, and permitted density levels on properties in Jefferson County.
	a. No property’s zoning status will be changed as part of this Plan.
2.	Recognize that the County Commission has the authority to make land use decisions including Zoning Map Amendments based upon the finding of consistency with the Future Land Use Guide and the recommendations of this Plan; the County Commission may determine that petitions or decisions for zoning map amendments are consistent with the Comprehensive Plan if any of the following conditions are met after the entire Plan is taken into consideration:
	a. Economic Well-Being of the County; or
	b. Error or Under Scrutinized Property on the Future Land Use Guide; or
	c. Change in Neighborhood; or
	d. Any Other Circumstance that the Governing Body determines should have been considered when drafting the Future Land Use Guide; and/or
	e. Environmental impacts are considered.
3.	Identify opportunities for small area plans and involve key stakeholders.
4.	In coordination with the Jefferson County Development Authority, utility providers, and other agencies, extend natural gas services and alternative energy sources into Jefferson County and encourage the extension of these services into new subdivisions to provide access to alternatives for heating and cooking uses.
5.	Create urban level land uses within the municipalities, UGBs, PGAs, or Villages through rezoning that is consistent with the Plan recommendations.
	a. Direct new urban level residential developments to locate in preferred areas within the municipalities, UGBs, PGAs, or Villages where water and sewer services are available.
	b. Reduce application fees for urban level development located within the areas desired for urban future growth.
	c. Establish a greater variety of zoning district options (in commercial, residential, and mixed-use zoning categories) that adhere to predictability of land use options and outcomes based on the Plan recommendations.
	d. Consider the utilization of alternatives to use-separated (Euclidean) zoning within the UGB and PGA, such as the SmartCode adopted by the City of Ranson or performance based zoning to achieve the desired land used goals.
	e. Update the County’s zoning regulations in a way that balances flexibility of use for property owners and developers while preserving the quality of life for residents.

	<p>f. Streamline development review and permitting policies by establishing a two tiered system that would allow greater power for staff review for projects of a certain size or smaller scale, etc.</p>
6.	<p>Require new urban level development to provide opportunities for multi-modal accessibility and to occur in a manner that enables connectivity to existing street and infrastructure networks or for future connectivity as development is extended to municipalities, UGBs, PGAs, or Villages.</p>
	<p>a. Create and implement the results of small area studies that would address the potential provision of infrastructure, accessibility, place making, and community facilities.</p>
	<p>b. Require viable integration of multi-modal accessibility to facilities as part of new development plans.</p>
	<p>c. In coordination with the West Virginia Division of Highways, identify key corridors where publicly owned roadways might be beneficial to the overall development of the County.</p>
	<p>d. Coordinate with existing property owners/HOA's to extend existing roadway corridors when possible to connect into adjoining neighborhoods or new development. At a minimum, this may include pedestrian, non-motorized vehicle, and/or emergency access ways.</p>
7.	<p>Encourage the location of new infrastructure (water, sewer, <u>electrical, broadband, and other</u> utilities) within municipalities, UGBs, PGAs, or Villages.</p>
	<p>a. Direct new development to be contained in municipalities, UGBs, PGAs, Villages, and areas zoned for Residential Growth (RG), where public water and sewer will be available.</p>
	<p>b. In designating where public utilities are to be delivered, enable public utility providers the ability to right size the infrastructure needed as development occurs, while considering the ability of current and future customer base to assume the debt for the infrastructure.</p>
	<p>c. Encourage that new investment by public entities be focused toward the municipal areas, including the UGBs and the PGAs.</p>
	<p><u>d. Enable to location of alternative energy facilities such as solar, wind and hydropower facilities within the Rural and Residential Growth Zoning Districts throughout the county where most of the existing electrical transmission infrastructure is located.</u></p>
8.	<p>Encourage the location of new community public facilities (such as schools, libraries, parks) within Municipalities, UGBs, PGAs, or Villages.</p>
	<p>a. Encourage the clustering of development so that the developer retains their density while dedicating community facilities.</p>
	<p>b. Locate and integrate new neighborhoods so that existing community centers, schools, parks, or libraries serve the needs of the new</p>

	development.
	c. Whenever possible, construct community facilities in areas served by public water and/or sewer.
9.	Develop incentives for the protection of historic, cultural and/or natural resources during site development.
	a. Allow the applicant the ability to achieve permitted density and/or intensity on a site while allowing for the protection of the desired resource.
	b. Allow opportunities for development to take place at a higher density/intensity than might be otherwise be possible to offset the cost associated with protection of these resources.
10.	Encourage the adaptive reuse of existing buildings and previously used sites within Jefferson County in context with their surroundings, paying particular attention to brownfield and greyfield sites.
	a. Identify specific sites and structures where adaptive reuse could occur that will assist with the redevelopment of brownfields and greyfield areas where the existing building(s) can be rehabilitated. (using sites from <i>Ranson Renewed</i> as an example)
	b. Identify and obtain funding mechanisms to remediate sites and encourage the utilization of these areas.
	c. Collaborate with the development community and interested environmental associations that can assist the County in amending its development provisions to encourage universal design, energy efficiency, and enhanced on- or off-site storm water retention.
11.	Reduce stormwater runoff, nutrients, sediment, and waste materials that reach the Potomac and Shenandoah Rivers, as well as other water bodies through development oversight provisions.
	a. Amend the parking requirements to support walkable and/or transit oriented communities per the land development standards based on site design and site amenities.
	b. Allow developers the option to provide fewer than the minimum required parking spaces if it can be determined that sufficient mitigation measures are in place.
12.	Development on US 340 South should limit any land uses of a higher intensity than current zoning allows to the area between the existing US 340 right-of-way and the proposed preferred alignment right-of-way.
	a. The area to the east of the preferred alignment is to remain zoned Rural, except the intersection of Myerstown Road and the proposed preferred alignment.
	b. Once a Record of Decision is published by the West Virginia Division of Highways, within 18 months, the Departments of Planning and Zoning

	should begin an updated land use plan for this area to reflect the commitment on the part of the state to construct the new four lane road.
	c. Require that confirmation from public service providers be submitted, as a part of the application, stating that public water and sewer infrastructure can be provided to the proposed property to be rezoned (including cost), before any zoning map amendments occur in this area.
13.	Develop design criteria and access management standards for the WV 45 corridor west of the Shepherdstown Preferred Growth Area and within the Shepherdstown Growth Management Boundary to the Jefferson/Berkeley County line.
	a. Ensure that any new development or redevelopment along this corridor occur in a manner that recognizes and enhances the gateway aspect of this corridor.
	b. Require that an additional setback from the road right-of-way be set aside to allow for a roadway widening improvement easement, a pedestrian easement to include a hard surface trail, a landscaping strip wide enough to support large canopy trees, and the subsequent start of the development. This commitment of land shall not affect the overall permitted density and may require adjustments elsewhere in the development plan. This easement area shall be required whether or not the land is conveyed to a public agency.
	c. Require that developments be configured to eliminate lots having individual access onto WV 45. Lots shall use common access easements or rights-of-way to gain access to the state right-of-way.
14.	Require all commercial/industrial zoning map amendment requests to utilize new zoning categories adopted on June 1, 2014 (or later) and discourage the use of the existing Residential-Light Industrial-Commercial (R-LI-C) District as a zoning category for zoning map amendment requests.
	a. Encourage any development in a zone that permits mixed use to be developed according to the Mixed Residential/Commercial or Mixed Office/Commercial ratios found in the land use category recommended by this Plan, unless otherwise provided in the Zoning Ordinance.
15.	Develop new non-rural residential zoning categories in line with the residential land use categories recommended by this Plan and require that all non-rural residential zoning map amendment requests utilize the new categories, after the creation of such new residential zoning districts.
16.	Collaborate with state legislators to amend WV Code 8A to allow conditions to be imposed meeting specified requirements on proposed zoning map amendments.
	a. Encourage the state legislature to include adaptive reuse of historic structures in State Building Code.

1.B. Rural Land Use Planning

Between 1974 and 2007, nearly 14,000 acres of land were removed from agricultural production in the County. Approximately 78% of these acres were lands with prime soils or soils of statewide importance. It is important that viable existing farmlands are protected. By encouraging cluster residential development, a large portion of the property will be maintained for farming activities, which would allow Jefferson County's agricultural and rural character to be maintained. Additionally, developing provisions which allow for a greater scope and variety of agriculture related activities, including the development of small or large scale solar energy facilities, with land restoration and panel removal requirements, in the Rural areas of the County would also allow the County's agricultural and rural character to be maintained. Existing farmers who want to stay on their farms, but who cannot rely on traditional farming activities to do so, have expressed an interest in leasing portions of their land for solar energy facilities rather than selling the land for permanent conversion from agriculture. By requiring that solar energy production facilities be removed after their productive lives, the land is preserved for future agricultural uses.

Below is a soils map of Jefferson County and a larger version can be found in Appendix F – Maps.

With Jefferson County's close proximity to the Washington, D.C. and Baltimore, MD Metropolitan Areas, the possibility of rejuvenated local agricultural activity exists. Niche farming has expanded for both foods and materials used in the creation of goods. As value added agricultural and rural land use activities increase, they enable the retention of the agricultural and rural environment. These value added activities assist in providing farmers with additional revenue sources to maintain the farms. The growing movement toward more localized food sources has resulted in the creation of community farmers' markets, the revitalization of local farm markets, and the expansion and awareness of community supported agriculture (CSA) programs. Similarly local restaurants and schools are increasingly utilizing local grown food in their facilities.

Rural Land Use

One of the highest priorities of the Envision Jefferson 2035 Steering Committee and the public was the desire to preserve the rural landscapes, heritage, and lifestyle that attracted many residents to Jefferson County. Comments were received that indicated Jefferson County needs to balance the demands of growth with the protection of agricultural lands. Efforts of the agricultural and artisan communities can create desirable places for tourism to thrive. In these communities, visitors can visit working farms, shop at an artisan studio, and eat at restaurants that are either located on farms or that serve food derived from local enterprises.

The form and types of development that takes place in the rural environment should be respectful of the rural culture and historic nature of the community. Many of the residential and commercial structures built in Jefferson County are similar in design and scale to types of buildings constructed in other areas of the U.S. without consideration of local architectural style.

A variety of tools and means exist to assist in the protection of lands with prime or statewide importance, soils and active farm sites. These tools range from policy, such as purchase of development rights, to land development standards that allow for flexibility of agriculture based uses and activities on the farm.

Since zoning was adopted in Jefferson County, large residential developments and non-agricultural commercial developments were permitted in the Rural District through the Land Evaluation Site Assessment (LESA) system/Conditional Use Permit (CUP) process. As a result, rural land has been converted to non-agricultural uses. For this reason, this Plan recommends that the cluster provision of the Zoning Ordinance be the preferred method of residential development in the rural zoning district. The cluster provisions should be reviewed and amended to consider a higher density for rural/agricultural lots utilizing the cluster provision. This Plan further recommends amending the Zoning Ordinance to eliminate the LESA point system and to develop procedures that would allow the use of a more traditional CUP process in the Rural District for non-residential uses. This CUP process should require a public hearing before the Board of Zoning Appeals to determine if the use is compatible in scale and

intensity with the rural environment and poses no threat to public health, safety, and welfare. Additionally, this Plan recommends that the “by right” provisions in the Rural zoning district be retained allowing one lot per 15 acres, as well as the provisions allowing the transfer of land between parent and child and the minor subdivision process² for lots of record as of October 5, 1988.

There are two types of non-residential CUPs proposed by this Plan in the Rural District which may require different types of review. One type consists of fairly intensive uses that could occur on a farm, but may not be appropriate to be a by-right use in the Rural District. The second type is for uses not on a farm or uses that are not agricultural in nature. This second type of rural CUP should only be proposed on a small portion of a rural property to help preserve farmland and open space and continue agricultural operations. This requires amending the Zoning Ordinance to eliminate the LESA system and could require modifying the CUP process.

Although members of Jefferson County’s agricultural community are active in numerous civic and community organizations, a number of farm operators stated that issues related to agriculture in Jefferson County are not understood well by the community, County staff, and community leaders. By engaging the farm community to provide greater input into the planning process, it is hoped that the needs of farm operators will be more effectively addressed by both staff and the political leadership of Jefferson County. It is anticipated that residents and staff would be in a position to learn more about the role of agriculture and the impacts of farming activities in Jefferson County. Therefore, the ability to farm in Jefferson County would be better understood. To this end, this Plan recommends that alternative energy facilities, including solar, wind, and hydropower energy production, should be authorized as a Principal Permitted Use in the Rural and Residential Districts, including provisions that require the energy companies to return the land to a condition capable of being used for agriculture after the solar panels or wind facilities are removed. Additional information about the rural economy can be found in the Agricultural and Rural Economy section of the Economic Development, Employment and Infrastructure Element.

Other appropriate uses in the Rural District are value added agricultural operations and artisan activities, as described below.

Value Added Agriculture

Farm operators and artisans who participated in the Envision Jefferson 2035 process, expressed concerns regarding regulatory requirements on existing and potential activities that could take place on farms. Some of the areas of concerns related to state and/or federal regulations to mitigate the impact of agricultural, mining, or

² Jefferson County Zoning and Land Development Ordinance, Section 5.7(D) states that any property that was a lot of record as of October 5, 1988 may create two lots and a residue every five years through the Minor Subdivision Process (page 72 of the current Zoning Ordinance, effective 06-01-14).

residential subdivisions coexist within the County’s rural agricultural areas. Home sites in these subdivisions typically have larger lot sizes than in subdivisions in the existing Residential Growth (RG) Zoning District or subdivisions served by water and sewer, but are of a smaller scale than the farms that surround them. Homes in the large lot developments and rural residential subdivisions are typically served by private well and septic systems, with a limited probability that public services will be extended to these properties in the future. The preservation of the quality of life and rural lifestyle for existing and future residents is of great importance for property owners in these communities.

The following recommendations address the needs of the agricultural community, artisan community and the rural environment.

Rural Land Use Planning Recommendations (Goal 2)	
1.	Recognize the rights and viability of existing rural residential neighborhoods.
	a. Balance artisan, home occupation, and cottage industry rights with the maintenance of the character of rural neighborhoods by considering the size and scope of all activities within designated rural neighborhoods.
2.	Allow and promote a greater range of agricultural and/or artisan uses within the rural areas on existing farmlands to incentivize the expansion of the rural economy within Jefferson County.
	a. Collaborate with key stakeholders in the agricultural community to update the County’s zoning and land use recommendations to broaden the range of permitted complementary and accessory on-farm uses.
	b. Identify types of farm activities that may be successful based on the soils on individual properties and the proximity of Jefferson County to relevant markets.
3.	Revise existing Jefferson County land use requirements and site plan standards to reduce regulatory barriers related to agricultural and/or artisan operations.
	a. Revise local regulations to balance production and marketing of artisan or agricultural products on-site, considering the individual use, size, and scale of the operation as appropriate to the property site.
	b. Waive or modify the roads, parking, and stormwater regulations on farms for on-site production and marketing enterprises, to the extent possible.
4.	Protect the viability of agricultural lands and wildlife corridors by encouraging the utilization of cluster subdivisions as the preferred form of residential development within rural areas.
	a. Allow residential development outside of the Urban Growth Boundaries or Preferred Growth Areas to develop only as rural cluster subdivisions, in accordance with existing land use rights.
	b. Amend the Zoning Ordinance to eliminate the Land Evaluation Site Assessment (LESA) system and to modify the Conditional Use Permit (CUP) process in the Rural Zoning District, which would be used for compatible non-residential development only.

	<p>c. Amend the Zoning Ordinance density provisions related to Cluster Developments to utilize a higher density such as one unit per five acres, with provisions for a maximum lot size and a mandatory retention of a set percentage of the original tract in agricultural uses, open space, and/or forest/woods, instead of allowing for rural residential development to occur using the LESA/CUP system.</p>
	<p>d. Amend the Subdivision Regulations to permit a Cluster Development of any size to process as a minor subdivision, provided that the subdivision standards shall apply.</p>
	<p>e. Encourage the creation of subdivisions that incorporate working farmland or community gardens in Development Supported Agriculture programs.</p>
	<p>f. Consider amending the provision in the Jefferson County Zoning and Land Development Ordinance related to the transfer of land between parent and child to include other family members, such as sibling to sibling.</p>
	<p>g. <u>Amend the Zoning and Land Development Ordinances to allow small and large scale wholesale or commercial solar energy development as a Principal Permitted Use in the Rural and Residential Districts and provide for the removal of facilities after they have exhausted their useful lives, so that the land may be returned to agricultural use.</u></p>
5.	<p>Encourage a variety of mechanisms to protect existing farmlands, key farm buildings, and scenic corridors within Jefferson County.</p>
	<p>a. Identify funding sources for farmland protection which could come from local, state and federal sources in addition to fundraising opportunities.</p>
6.	<p>Involve members of the agricultural community in planning and land use decisions related to rural lands within Jefferson County.</p>
	<p>a. Establish collaborative and interactive mechanisms for the Planning and Zoning staff and economic development officials to coordinate with the agriculture community that will enable the farming community’s input in the planning and zoning process.</p>
7.	<p>Explore policies in concert with the Public Service District (PSD) and municipalities regarding rural water and sewer infrastructure.</p>
	<p>a. Explore legislative options that would allow equitable distribution of cost sharing with entire development community along with rate paying base (i.e. Capital Improvement Fees).</p>

2. Economic Development, Employment, and Infrastructure Element

Economic growth and development is closely tied to the availability of natural resources, technological innovation, infrastructure, utilities, energy production and human capital as well as its geographic proximity to major population centers, adequate roads, and infrastructure. Jefferson County is ideally situated to have a vital economy. The general health of an economy can be determined by examining two components: stability and balance. Stability is an indication of the ability of a local economy to withstand the fluctuations in the regional and national economy. Balance refers to the level of diversification of a local economy. The more diversified the local economic and employment base, the more difficult it is to disrupt the local economy. Any economy that is overly reliant on a single employer or employment sector is more highly impacted by economic shifts.

The major sectors of Jefferson County's economy include traditional economic development activity, including education and high tech training; agriculture and the rural economy; and recreational, historic and heritage tourism. This section of the Plan discusses each of these sectors in detail and provides recommendations for them. Additionally, because of the critical nexus of economic development with the adequacy and extent of the infrastructure and transportation system networks, these components are included in this element as well.

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2.A. Economic Development and Employment

According to the Jefferson County Development Authority, Jefferson County's strategic Mid-Atlantic location close to Washington, D.C. and Baltimore, MD Metropolitan Areas coupled with ready access to major transportation routes makes the County ideally situated for business, manufacturing, and industry. Jefferson County is located in one of the fastest growing areas in the United States. The County is a major economic driver in a state that boasts the nation's fourth lowest cost of doing business, low utility rates, and a highly skilled and hard-working workforce. While facilitating relocations and start-up businesses, the Jefferson County Development Authority supports and promotes existing businesses.

While there has been a significant amount of commercial development in Jefferson County since the 2004 Comprehensive Plan, it has slowed considerably in recent years. During this same time period, residential growth occurred at a more rapid rate, particularly in the early 2000's. Additionally, Jefferson County's economic

These improvements will enhance the ability of Jefferson County to compete on an economic development basis with other communities in the region.

Target Industries

Jefferson County will encourage a diversity of business types to locate within its borders. As part of these efforts, the Jefferson County Development Authority (JCDA) has identified several industries and other sectors of employment towards which incentives and programming should be targeted (in no particular order):

Jefferson County Development Authority Identified Industry Sectors	
Agriculture Development	Manufacturing
Government	Small Business
Information Technology	Tourism

Each of these target industries are currently located in Jefferson County and will benefit from retention, expansion, and attraction to strengthen each cluster. Building on these assets will give the County a strong identification of its core business strengths. While not identified by the JCDA, there are several large non-profit organizations which are a significant part of Jefferson County’s economy. This provides additional economic and employment opportunities. In addition, more regional employers are looking to acquire renewably generated electricity to meet the demands of shareholders and expected future regulatory requirements. Starting around 2020, this demand has created interest in sourcing alternative energy production such as solar energy production facilities in Jefferson and surrounding counties. These facilities will place little stress on existing infrastructure and will add substantially to the tax base.

Additionally, small businesses, which can range from restaurants and artisan cottage industries to small technology and service firms, are an integral part of the local economy and have opportunities to grow stronger.

Federal Government

One of Jefferson County’s target industries is correlated with the presence of state and federal government facilities. Since the federal government has found success with their existing local facilities, the potential for additional federal employment opportunities to locate here is greatly enhanced. The following Table lists federal facilities, many of which have had a long term presence in the County.

Federal Facilities in Jefferson County
U.S. Coast Guard Administrative Support Facility
U.S. Customs and Border Protection Advanced Training Facility
Department of State Diplomatic Security Training Center
U.S. Fish and Wildlife, National Conservation Training Center
Harpers Ferry National Historical Park

for commercial, office, and/or industrial uses that may serve to bolster Jefferson County's employment base while balancing the environmental and quality of life concerns that may arise from larger scale businesses.

Focusing Economic Development in Municipalities, Urban Growth Boundaries, and Preferred Growth Areas

Envision Jefferson 2035 expects urban level commercial, office, and industrial activity to be located in the municipalities, within the Urban Growth Boundary and Preferred Growth Areas, where the infrastructure is expected to be available to support these uses. Within the unincorporated area, the County's industrial park and properties zoned industrial are also important to the economic growth and vitality of the County. The exception to this general philosophy is to allow alternative energy facilities, such as solar energy development, as a Principal Permitted Use in the County's Rural and Residential Districts as well.

In recent years, public, and private reinvestment in the urban core of the five municipalities has occurred and is continuing to grow, as the following examples illustrate:

- The Town of Ranson received numerous grants that focus on the Brownfield Commerce Corridor that is shared with Charles Town, and includes the redevelopment of vacant industrial buildings, street and streetscape improvements, and the expansion of a key transportation corridor through Ranson.
- Shepherdstown and Bolivar/Harpers Ferry have vital core commercial areas that support the local and tourist population in the County and serve as gateways into the County from neighboring states.
- Shepherdstown and Bolivar/Harpers Ferry are a part of the Canal Towns Partnership, comprised of several communities along the C&O Canal, which is an economic development initiative with the goal of cooperatively marketing and making improvements to attract visitors to the canal's gateway communities.
- The American Public University System made substantial investment in Charles Town and Ranson, including the redevelopment of existing structures and construction of administrative buildings and parking facilities.
- Hollywood Casino at Charles Town Races has been a strong component of economic activity in the County and continues to respond to a changing market by advancing alternative entertainment and horse racing options.

These examples of collaboration between local government entities and private entities bolster local economic development opportunities and this collaboration should continue.

The County's downtown areas are concentrations of local and regional government agencies, small offices, and a limited number of small shops, restaurants, and services which serve to attract visitors and residents to the downtown areas. The

Economic Development and Employment Recommendations (Goals 6 & 7)	
1.	Expand and strengthen the existing marketing and branding of Jefferson County’s qualities, facilities, and resources to potential businesses, residents, and visitors.
2.	Collaborate with HEPMPO and other transportation agencies to identify ways to improve transportation (commuter, air, rail, and bus services) connectivity and roadways between Jefferson County and nearby states.
	a. Establish a working relationship with Washington Metropolitan Council of Governments and Loudoun County’s Transportation and Safety Commission to address highway transportation problem areas identified in both counties.
3.	Work with key stakeholders to effectively streamline Jefferson County’s permitting and development review processes in a manner that balances the protection of the public health, safety, and welfare of the community with economic development priorities.
4.	Encourage the Jefferson County Development Authority (JCDA) to identify incentives for the specified target industries on an annual or semi-annual basis.
5.	Create a business friendly environment in Jefferson County.
	a. Streamline the State licensing of various business enterprises by providing regional or satellite offices in Jefferson County.
	b. Coordinate with local and state economic development agencies to identify potential funding sources for economic development efforts.
	c. Identify opportunities for public/private partnerships (or other creative forms of collaboration) between local and state government entities and private sector investment that would result in the creation or expansion of employment opportunities and infrastructure in Jefferson County.
	d. Develop a land bank program that would enable potential economic development projects such as a large federal facility or other regionally significant employment facility.
6.	Develop methods to promote local business growth which include providing research, support, and marketing resources that would assist business start-ups in Jefferson County.
	a. Plan with stakeholders’ co-work facilities or business incubators that provide space for start-up companies along with a small network of entrepreneurs to collaborate.
	b. Expand awareness of entrepreneurs’ forums, employer open houses, and job fairs taking place in Jefferson County and the Eastern Panhandle.
	c. Encourage local municipalities and residents of the County’s villages to research and create Business Improvement Districts (BID) to implement improvements and provide services to businesses located in the district.
7.	Encourage local employers and the JCDA to improve online and offline outreach to potential employees, including County residents and individuals outside the region.

8.	Coordinate with local businesses and the JCDA to identify and utilize methods to market Jefferson County’s products within the Mid-Atlantic region, the nation, and the world.
9.	Collaborate with various state and federal agencies to attract departments or agencies that would benefit from Jefferson County’s workforce and location.
	a. Encourage state and federal agencies to consider the location of new facilities in Jefferson County within the growth areas identified in this Plan.
	b. Encourage state and federal agencies planning to build new facilities in Jefferson County to adhere to local land use regulations as part of the site design process.
	c. Encourage the utilization of existing structures or the utilization of greyfield or brownfield sites for the development of new state and federal facilities.
	d. Coordinate with state and federal facilities locating in Jefferson County so that the following land use considerations are addressed and mitigated:
	i. Existing and potential impacts caused by land uses adjacent to proposed state and federal facilities are known in advance of first construction.
	ii. Existing and potential impacts of new or repurposed facility use on adjacent lands provide adequate buffers and setbacks to surrounding uses.
10.	Implement strong and vibrant relationships between Jefferson County businesses and business related organizations and all educational resources in the County, Eastern Panhandle, West Virginia, and the Mid-Atlantic region that will promote graduating students with job opportunities in Jefferson County.
	a. Expand partnerships with all local and regional institutes of higher education that focus on programs which would further educational opportunities in the core economic sectors identified by the JCDA.
	b. Maintain and expand relationships with local businesses and local/regional education institutions to increase availability of co-op and mentoring programs between students and businesses in Jefferson County and the Eastern Panhandle.
	c. Collaborate with key business and economic stakeholders to identify and create programs that would encourage the retention of highly skilled young graduates from the County’s institutions of higher learning.
	d. Coordinate with key business stakeholders to improve employer outreach and collaboration with regional and state university/college career centers to promote Jefferson County employment and internship opportunities to students on all academic levels.
	e. Coordinate with appropriate agencies to publicize available scholarship programs for students interested in the target industries to strengthen workforce development in Jefferson County.
11	Collaborate with Shepherd University, American Public University System (APUS), and other higher education entities to identify opportunities for Jefferson County based research programs that would combine classroom learning with virtual resources.

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Recognize that modern and innovative energy sources including solar, wind and hydropwer energy facilities provide for clean economic development in the County and are vital to the emerging local, State and National trend/need for clean electrical energy.

2.B. Agricultural and Rural Economy

One of the more significant issues expressed by County residents involved in the Envision Jefferson 2035 process was maintaining the rural economy and small town lifestyle of Jefferson County. It is important that this discussion not be framed by the concept of preservation but of creating opportunities for farms to be economically viable. This would include identifying ways to protect and enhance the farms and open spaces that provide the rural character along with the agribusinesses that have been the historical heart of the Jefferson County economy. One goal of this Plan is to maintain productive farmland soils and the rural character and economy of the County by reducing the conversion of farmland to non-agricultural based uses. Alternatively, providing other opportunities for farmers to use their land for a interim use, and then return it to farming in the future, would help maintain the County's rural economy. One option noted in this Plan maintains that allowing solar facilities to be located within the Rural zoning district is a way to preserve farms for a generation and then return the land to agricultural uses. This protects large acreage from permanent residential development, while allowing other portions of the properties to continue to farm

There must be a viable rural economy to maintain the rural landscape. The rural economy is much more than traditional farming. It includes innovative agriculture, horticulture, forestry, commercial and non-commercial equine industry, other forms of animal husbandry, tourism, rural based public and commercial recreation, ancillary rural business, ~~and~~ compatible rural institutional uses, and other profitable uses such as alternative energy production (solar, wind, hydropower). Many of these sectors are growing and collectively contribute significantly to Jefferson County's economy and provide several thousand jobs. The County's citizens benefit from the proximity of rural based activities and services and the rural enterprises benefit from nearby markets for goods and services. With this potential, the rural areas of Jefferson County should be seen as ripe for investment and reinvestment.

A key aspect of the County's rural economy is recognizing the changes in the regional and national marketplace that might affect agricultural activities at the local level. In some instances, farm operators have adapted to these changes by diversifying into additional farm based activities, changing the types of farming activities taking place on a site, or seeking to include direct sales and on-site marketing, and value added processing of crops or products. The ability of a farm operator to diversify or change their operations to meet the needs of the marketplace is an important consideration in providing a framework for the continuation and enhancement of farm and agricultural activities in Jefferson County. Consideration of an amendment to the Zoning and Land Development Ordinance to permit alternative energy production facilities to be located on large tracts of land in the Rural and Residential zoning districts should be considered as an option that may in the long run protect farms from other development.

The enhancement of the rural economy is a central focus of the rural strategy of this Plan and requires the support of the County Commission, Planning Commission and the Jefferson County Development Authority and other organizations which support the agricultural economy. A broad-based rural economy can be a net-revenue generator for the County because tax revenues generally exceed expenditures for rural properties. The County recognizes its fiscal responsibility to protect the land resource for the rural economy, to provide fundamental protection for rural businesses, to ensure prudent fiscal management of limited public resources, and to provide needed protection of the public health and safety.

Rural Economic Activities

The agricultural community in Jefferson County recommended the following priorities to strengthen the rural economy:

Agricultural Community Priorities
Diversify farm operations through the sale and marketing of value added products (such as the processing and marketing of products on-site);
Allow farm operators to work with nearby farm operators to market and sell each other’s goods on each individual farm;
Allow a wider range of service activities to take place on agricultural properties.

The rural areas of Jefferson County include not only farms and residences, but also a variety of small artisan studios and other cottage industries. While the preservation of agriculture is essential to the protection of rural areas, it is also important to provide for the ability of appropriately scaled businesses to succeed. When permitting additional uses in the rural area, it is important that the size and scale of both the property and the business be correlated. The intensity of the activity permitted should directly relate to the size of the rural property which would enable larger rural properties to undertake more activities. By correlating scale and intensity of uses to the rural property size, it is anticipated that off-site impacts would be mitigated for the surrounding landowners. Some uses may require performance standards which should be incorporated into the local land use regulations.

By enabling farm operators to have more options and encouraging the creation of cottage industries that reflect the rural aesthetic, the viability of operating rural based businesses in the County’s rural areas will be enhanced in the coming decades. While Jefferson County has modified its Zoning and Land Development Ordinance to allow for a greater variety of uses, additional steps might be needed to improve opportunities for farm operators to continue or expand their businesses, and for artisans and other individuals to operate small businesses that complement these activities. A streamlined process for uses with minimal impacts to surrounding neighbors should be developed.

As discussed above (see Land Use and Growth Management: Rural/Agricultural Components), significant new opportunities exist for farms located near existing electrical infrastructure to lease their land for the production of solar power. These opportunities will provide those farmers, some of whom have indicated they cannot maintain their farms without additional sources of revenue, to access new income sources and to maintain the rest of their farms in agricultural uses. By permitting the provision of alternative energy facilities as a Principal Permitted Use in the Rural and Residential zones, while requiring these facilities to provide reclamation and facility removal standards, the impacts to the rural landscape will be minimized, while allowing farming and other agricultural uses to return once the land is reclaimed.

The land use component of this Plan recognizes an example of a non-residential Conditional Use Permit (CUP) in the Rural area referred to as an Agricultural Based Economic Empowerment Area, defined as a commercial agricultural hub that is not located on a farm, but is located in a rural area and focuses on intensively supporting agricultural activity through the value added processing, holistic health and marketing of local goods. Other appropriate uses in the Rural district (some of which may require a CUP) include, but are not limited to, artisan activities; home based businesses; agricultural equipment sales, rental, and repair services; veterinary services; farm co-ops; product storage and seed supply; agri-tourism, bed-and-breakfast enterprises; farm markets, wayside stands, and similar types of uses, provided that these uses are designed in a manner compatible with the rural character of the area.

There are many creative people that live and work in Jefferson County, using their talents to create poetry, pottery, paintings, plays, performances, photographs, novels, fabric art, sculpture, carvings, installations, music and dance, and the fine art and culture of all forms. The County is home to numerous cultural and historical organizations as well as artist studios, galleries, museums, and theaters which host a number of activities and events throughout the year. These activities and organizations add to the cultural value in the County and provide economic resources for the artisan. This Plan supports the artisan community and its needs for developing a robust economic and cultural community.

While most of these types of Cottage Industries and Home Occupations are permitted by right in the Rural District, some more intense uses may require a CUP. This Plan recommends that the use of the CUP in the Rural District be limited to non-residential uses not permitted in the Rural District which are compatible in scale and intensity with the rural environment and that pose no threat to public health, safety, and welfare. Some non-agricultural/non-residential related rural CUPs should only be proposed on a small portion of a rural property to help preserve farmland and open space, and continue agricultural operations. This requires eliminating the Land Evaluation Site Assessment (LESA) system and modifying the CUP process. For additional discussion, see Rural Land Use Planning Section (page 34).

Agricultural Service Facilities

An issue expressed by members of Jefferson County's agricultural community during the planning of this document was the lack of agricultural service facilities located in Jefferson County. Farm operators currently travel to Winchester, Hagerstown, or Frederick to purchase farm machinery or to get their machinery repaired. Farmers raising livestock also need to travel out of state to sell or purchase animals at auctions. There are few large animal veterinarians in Jefferson County that can assist with maintaining the health of animals or be available in case of emergency. There are no meat processing facilities in the County and nearby out of state facilities are limited to mass production which excludes small farmers from receiving this service. The lack of service facilities could have a negative impact on the maintenance or expansion of agricultural activities in Jefferson County in the coming years.

Distribution and Marketing of the County's Agricultural Products

In recent years, there has been a change in the way farm products are marketed and sold in Jefferson County. In the past, a large number of farm products cultivated on Jefferson County farms were commodities, with little differentiation between the products of individual farm operators. Currently this is changing due to the increasing reliance of the local farm community on farmers' markets and direct sales to local and regional restaurants. There are several farmers' markets operating in Jefferson County on a weekly basis, during the growing season, at temporary sites. A permanent year-round farmers' market could provide opportunities for a winter market in a place that could also be used for the sales of arts and crafts, root crops, or value added products. Incorporating a farmers' market into a regional agricultural center complex could serve as another means of selling the County's farm products and could include dining and/or commercial kitchen facilities.

While the farmers' markets have helped individual farm operators differentiate between their products, there is still a limited local or regional identity when it comes to agriculture in the Eastern Panhandle. In some cases, individual farms have addressed this concern through the creation of an identity for the farm and/or for the product being produced. It would be beneficial to the Jefferson County rural economy if a more unified effort occurred through a shared marketing mechanism, regional branding, or the creation of common distribution and marketing facilities.

An increasing movement toward smaller farming operations of less than 40 acres in size in the County should not be discounted, even though a number of farms in Jefferson County are located on large tracts of land. According to the 2012 U.S. Agricultural Census, over half of all farms in Jefferson County provide a limited income to farm operators; however, there are opportunities for expansion of smaller farming operations. The majority of the farms in Jefferson County have the opportunity to provide a viable range of income generating agricultural activities to an individual farm operator.

Enhance Farmland Protection Activities

In 2000, Jefferson County formed a Farmland Preservation Program that is funded by a portion of the transfer tax collected when a house or land is sold. To date, this program has purchased the development rights of 3,900 acres. As mentioned in the Land Use element, the funding that is available to support the County's farmland protection program is much less than the demand from farm operators to participate in it. Since the County's farmland protection program is funded by a portion of the transfer tax, the viability of the program is subject to a widely fluctuating real estate marketplace. In times when there is a great deal of real estate activity, revenue generated for the program is strong, enhancing the ability to purchase development rights and protect farmlands. Conversely, in times when the real estate market is slow, the amount of money available for protection efforts is limited. Therefore, it is important to establish reliable funding sources to support farmland protection

activities. One option to protect farmland is to coordinate with the American Battlefield Protection program to make the most efficient use of funding resources.

To reduce the conversion of farmland, the Plan recommends that clustering should be the preferred method of any rural residential development. This would allow land owners to group lots in a traditional rural community pattern, while retaining a majority of the land for agricultural and rural economic uses. Even when the development of a residential cluster results in the loss of some farm land, the goal of the regulations related to cluster developments is to retain as much farmland as possible by adjusting the number and size of the lots in the cluster and requiring the balance of the farm (the residue) to be retained as a permanent agricultural use. Cluster developments on a property should minimize the use of high quality soils and maximize the use of less

productive agricultural land. In order to retain the maximum amount of land in farm use and rural economic activity, the open space requirement for residential cluster development shall be met by the residue which will retain no development rights.

Transportation in the Rural Environment

The County's rural road network originally evolved serving the needs of the farming community and is not intended to serve the needs associated with the higher traffic volumes and speeds required for large residential subdivisions. At certain seasons of the year conflict can be created between residential traffic and large pieces of slow moving farm equipment. The LESA/CUP system has not effectively protected the rural road network from this type of development pressure. As such, this Plan recommends utilizing cluster developments as the preferred form of residential development within the rural areas. Limiting suburban development in the rural area helps protect agricultural land use activities.

Most of the roads in the County's rural area are paved, but tend to have narrow widths, excessive horizontal and vertical curvatures, bridge and drainage problems, and poor intersection alignments. These conditions contribute to the safety concerns associated with increasing motor vehicle traffic on the rural roads. The increased residential densities that have occurred in the rural area in the past are producing additional traffic volume and requiring more maintenance of the rural road network of predominantly narrow, two-lane paved roads with existing design issues.

Utilities in the Rural Environment

The availability of electricity is an important resource to support all residential, commercial and agricultural operations in Jefferson County. The federal government is working to encourage states to develop policies that encourage an increase in the amount of power generated by alternative renewable energy sources such as solar, wind and hydropower. The location of transmission lines and substations in Jefferson County are a local resource which could provide opportunities for future renewable energy resources to connect to the power grid in an efficient manner.

Utility scale alternative renewable energy systems are large-scale installations that provide clean energy to a regional energy provider. One example is utility scale solar facilities which are commonly mounted on the ground and span across fields of land to generate electricity to assist in meeting renewable energy and sustainable energy production goals. Proximity to transmission lines and substations, elevation/slope, flood zones, wetlands, and soils all affect a site's buildability for any large scale alternative renewable energy facility.

Solar facilities are compatible with rural lands and agricultural uses as they have minimal negative off-site impacts. A primary impact of utility-scale solar facilities is the removal of rural and agricultural land from active use; however, this use can preserve the land for future agricultural use, and applicants typically state that the land will be restored to its previous condition. Generally, large scale solar facility system owners choose to lease instead of purchasing property, allowing local farmers to retain ownership of the land. Some farmers also retain portions of their land for on-going agricultural uses compatible with the solar facilities. Solar energy systems have a typical lifespan of 25-30 years; so the system owner would be paying the lease for decades, ensuring an economic contribution to the property owner for the duration of the system's life and allowing to property to revert to agricultural uses in the future if the landowner desires.

Solar energy facilities which are required to be removed upon expiration of their usable lives can provide farmers with the income necessary to retain their farms while having minimal impact on the rural aesthetic or the permanent conversion of land to non-agricultural use. Permitting these facilities as Principal Permitted Uses will also generate construction jobs and tax revenues while placing almost no strain on existing infrastructure and will thereby promote the economic well-being of the County and the Rural and Residential Districts. Additionally, the land will be reclaimed for the ability to farm the land or provide for other permitted agricultural uses in the future.

Agriculture Tourism

The rural areas of the County contribute to the local tourism economy in a variety of ways. Not least of these is the maintenance of attractive viewsheds to enhance the experience of visitors to battlefields, historic sites and villages. Tourism is addressed later in this Element on page 81.

The following recommendations provide action steps to foster and expand the diverse rural economy through a variety of policy, regulatory, incentive-based, and programmatic approaches that will protect the rural land, structures, and character necessary to advance the rural economy.

Agricultural and Rural Economy Recommendations (Goal 8)	
1.	Support West Virginia’s and Jefferson County’s “Right to Farm” policies which protect the rights of existing and future farms and farmers by developing zoning standards, other legislation, and educational programs designed to reduce potential conflicts arising from the proximity of agriculture to residential development (State Code § 19-19; Section 4.5 of the County’s Zoning Ordinance).
	<ul style="list-style-type: none"> a. Identify and utilize a wider variety of funding sources that could serve to expand the County’s farmland protection program. b. Create an educational pamphlet informing developers, realtors, and potential homeowners of the offsite impacts of living adjacent to farming activities.
2.	Enact Zoning Ordinance provisions to reduce the intensity of residential development in the Rural zone, other than by clustering, thereby protecting and increasing the investment potential and attractiveness of the agricultural lands for families, entrepreneurs, and businesses.
	<ul style="list-style-type: none"> a. Decrease the problems of rural traffic volume and the need for additional costly public infrastructure services in rural areas while conserving areas of the Rural zone for agricultural uses and the rural economy through support for rural cluster development vs large subdivisions of new home growth.
3.	Support the rural economy by amending the Subdivision Regulations to establish rural business site plan standards to include:
	<ul style="list-style-type: none"> a. performance criteria, including compatible size, scale, use, intensity, traffic capacity limits, employee limits, site design standards (i.e. buffering, siting), and standards that protect public health, safety, and welfare; and b. the adaptive reuse of existing historic and agricultural structures.
4.	Collaborate with the County’s agricultural community to assess the current land use regulations and determine what opportunities for agriculture might currently exist and what additional opportunities might be able to succeed in Jefferson County.
5.	Amend the Zoning and Land Development Ordinance to permit additional non-residential rurally compatible uses.
	<ul style="list-style-type: none"> a. Incorporate into the zoning provisions innovative agricultural uses including the creation of standards which permit flexibility in the sale of farm products and related auxiliary products. b. Amend local land use regulations to permit non-agriculturally related commercial uses by the Conditional Use Permit (CUP) process in the Rural zone if the use is agriculturally and rurally compatible in scale and intensity, poses no threat to public health, safety, and welfare, and if the use helps to preserve farmland and open space and continue agricultural operations.

	<p><u>c. Amend the local land use regulations to permit utilities which generate electricity by alternative renewable energy sources (such as solar, wind and hydropower) to be permitted as a principal permitted use throughout the County; provided also that developers or owners provide security guarabteeing the removal of the renewable energy facilities at the expiration of their usable life so that land may be returned to farming or other agricultural uses.</u></p>
	<p><u>e-d.</u> Require that new non-rural commercial uses that are not compatible with the dominant agricultural land use pattern locate only in the Urban Growth Boundaries (UGBs) and Preferred Growth Areas (PGAs) as identified by the future land use recommendations of this Plan.</p>
6.	<p>Coordinate with local businesses and the Jefferson County Development Authority (JCDA) to brand and market Jefferson County farms and products by identifying and linking potential partnerships and matching suppliers with potential local and regional markets.</p>
	<p>a. Conduct market research on high-value agricultural products, ancillary farm businesses, and other rural economic uses such as farm agri-tourism, retreats, and country inns;</p>
	<p>b. Develop and expand, in conjunction with the Jefferson County Convention and Visitors Bureau, brand identification of Jefferson County farm products;</p>
	<p>c. Provide more alternatives to promote rural tourism and rural land uses.</p>
7.	<p>Work with Jefferson County’s agricultural community to effectively distribute local agricultural products and encourage the growth of the market for local products.</p>
	<p>a. Facilitate the establishment of year round marketing outlets to support the farm community, such as farmers’ markets or a product distribution center;</p>
	<p>b. Encourage the expansion of off-site farmers’ markets to provide marketplaces for farmers and artisans to sell their goods within a variety of Jefferson County commercial venues;</p>
	<p>c. Promote products to Jefferson County based businesses.</p>
8.	<p>Coordinate with key agricultural and rural stakeholders to identify ways to expand marketing and value added production activities for farmers and artisans on their properties in rural areas of Jefferson County.</p>
	<p>a. Amend existing regulations in order to identify and facilitate ways to allow the sale of items grown, processed, crafted, or manufactured in Jefferson County on farms other than the farm where the product originated.</p>
	<p>b. Develop a streamlined process for such uses when there are minimal impacts to surrounding neighbors.</p>
	<p>c. Expand and improve high speed Information Technology (IT) connections in rural areas of Jefferson County with local internet or advanced technologies providers to enable residents to run businesses from home or to telecommute.</p>

9.	Collaborate with the local artisan community and Jefferson Arts Council to review and amend the local land use regulations to promote and enhance the viability and livelihood of artisans in the rural areas of Jefferson County.
	a. Encourage local non-profit organizations and local and regional economic development agencies to create a regular forum where all County artisans, businesses, and members of the non-profit and arts communities can meet to network and collaborate.
	b. Work to improve connections between County businesses and artisans that may have products and services that can be sold in local stores or other businesses.
	c. Ensure that training and educational opportunities are available that would enable the success of such businesses.
	d. Establish and support an endowment for arts funding for rural crafted arts.
10.	Strengthen the Agricultural Committee of the JCDA by creating a public/private Rural Economic Development Council comprised of rural industry sector leaders. This organization will:
	a. link governmental, non-governmental, and regional organizations;
	b. link state and federal farm assistance programs to local farmers;
	c. receive and make grants;
	d. act as an advocacy group for rural issues; and
	e. promote activities that nurture the rural economy.
11.	Create a county or regional agricultural industrial park that could include sites for service providers such as farm equipment repair facilities, tractor and implement sales, meat processing facilities, and veterinarian services; as well as:
	a. A local or regional food hub that could be tied into Community Supported Agriculture (CSA) packaging and distribution, a regional food bank, and to serve as a marketing site for farms and farmers;
	b. A neighborhood based CSA or Development Supported Agriculture;
	c. A permanent, year-round farmers' market site;
	d. Sites for Industrial Agriculture such as Vertical Farming, Hydroponic Greenhouses, and Aquaponic Farming;
	e. Agriculture based training, research, and continuing education facilities created in conjunction with institutes of higher learning and research;
	f. Commercial aquaculture activities;
	g. A livestock auction facility;
	h. A Community Cold Storage/Meat Locker Facility that would allow county residents to rent space to purchase and store sides of meat; and/or
	i. Alternative Energy Production facilities, ranging from ethanol refining to algae production for biofuels.
12.	Promote and expand the commercial and recreational equine industry as a fundamental component of the rural economy by amending County ordinances to reflect the current practices and needs of the industry.

13	Collaborate with the County’s culinary, artisan, and farm communities and JCDA to study the feasibility of establishing a Culinary Center that would provide exposure to and for marketing the goods that are produced in Jefferson County and the Eastern Panhandle.
	<ul style="list-style-type: none"> a. Collaborate with the West Virginia Extension Service, West Virginia Department of Agriculture, and local stakeholders to establish a regional commercial kitchen and packing facility in the Eastern Panhandle that could be used by farm operators in the manufacture of value added products.
14.	Expand vocational programs, either through the existing Future Farmers of America program in the County’s high schools or through programs that combine classroom exercise with a co-op program exposing students to a variety of agricultural formats and opportunities.
	<ul style="list-style-type: none"> a. Advocate for Jefferson County Schools to partner with Berkeley and Morgan County schools to create a regional Agriculture Magnet School whose curriculum would be focused on agriculture and agribusiness fields.
	<ul style="list-style-type: none"> b. Encourage the Board of Education to provide equal vocational education programs in all middle schools and high schools throughout the County.
15.	Coordinate with Jefferson County Schools to encourage the following agricultural activities:
	<ul style="list-style-type: none"> a. Preserve and expand the Future Farmers of America programs that are in place at the County’s middle and high schools.
	<ul style="list-style-type: none"> b. Coordinate with local artisans to improve accessibility and awareness of arts education and programming.
	<ul style="list-style-type: none"> c. In conjunction with local gardening organizations and Jefferson County Agricultural Development Office, expand school garden programs that could serve as a source of fresh foods for cafeterias.
	<ul style="list-style-type: none"> d. Encourage schools to use local agricultural products in cafeterias through partnerships with local farmers and CSA programs.
16.	Encourage the West Virginia University Extension Office to consider the creation of Mentoring/Training Programs similar to FarmLink programs that are in place in other states such as Maryland and Virginia.
17.	Support the County’s rural economic strategy by working with the State Legislature to review the State Code and consider the following amendments:
	<ul style="list-style-type: none"> a. Tax credits on farm-related capital improvements;
	<ul style="list-style-type: none"> b. Tax abatement or deferral when a farmer makes an investment in high-value crops that do not turn a profit for several years (orchards, Christmas trees, vineyards, etc.);
	<ul style="list-style-type: none"> c. Assessment of farm worker housing on farms below residential market value;
	<ul style="list-style-type: none"> d. Additional reduction in the real estate tax rate on rurally zoned property that is under permanent conservation easement.

may not meet current standards, to be upgraded or maintained. Recently, the County adopted a new stand-alone Stormwater Management Ordinance that includes additional standards related to water quality and includes provisions for low impact design stormwater provisions such as rain gardens, bio-swales, permeable pavers, and permeable asphalt. These new standards help to minimize the impact of sediment and certain identified nutrients as required by the Chesapeake Bay Program.

In addition to land development activities, the following point and non-point source activities impact the water quality in waterways due to stormwater run-off:

Point and non-point source pollution
Over-fertilization and the use of chemicals to maintain lawns by homeowners
Use of salt and chemicals on roads in winter weather by the State Division of Highways
The fertilizers used to grow crops
Industrial emissions
Waste products (rubber, gasoline, and various other fluids) associated with auto use
Animal husbandry activities

The effect of stormwater run-off on the local waterways, particularly the Shenandoah and Potomac Rivers, has a significant impact on our local and regional recreational and heritage tourism, as well as drinking water quality. There are a number of watershed protection groups in the County that are actively seeking to improve the quality of the surface and groundwater within particular watersheds. These groups have made efforts to clean-up the waters and restore aquatic life to Jefferson County waterways. Such efforts have included, river clean ups, water monitoring, septic tank pumping and repair reimbursement programs, fencing of livestock to keep them out of streams, tree plantings, and outreach to residents and businesses to educate them about how to combat pollution. These efforts will ensure that high quality of water in Jefferson County continues.

Alternative Energy

It is widely recognized that many of the resources that we rely on to heat, cool, and light homes, power electronics, provide transportation fuel, and other daily needs are finite. Consequently, there has been an increasing need to assess the viability of alternative and renewable energy sources that may assist in maintaining the quality of life of Jefferson County’s residents and businesses. In 2009, West Virginia adopted an Alternative and Renewable Energy Portfolio Standard that requires investor-owned electric utilities (such as Potomac Edison) with more than 30,000 residential customers to supply 25% of retail sales from eligible alternative and renewable energy resources by 2025. This standard was subsequently repealed by the state legislature in 2015; however many private utility providers and other large companies have set their own renewable energy or clean energy goals and are pursuing these alternatives without state or federal mandates.

Alternative and renewable energy sources are available, ranging from hydro (water), solar, and wind power to the use of various biofuels (algae, biomass, wood pulp, and other waste products), and plant crops (corn and switchgrass) that might be used to complement or replace existing power sources. Another alternative energy source that may be applicable for the heating and cooling of buildings is the use of geothermal systems (drawing up groundwater and circulating it through pipes embedded in a building's walls).

There are efforts underway at the local and state level to encourage the conservation of energy and the utilization of alternative energy sources. The most notable of these are the projects that have been incorporated into the expansion of the American Public University System (APUS) in Charles Town and Ranson. These projects include the use of solar collectors that also serve as cover for parked cars, the installation of several electric car charging stations, and the utilization of building improvements and materials that limit the use of energy needed for heating, cooling, and lighting. The improvements undertaken by APUS can serve as a role model to new development in Jefferson County and to the redevelopment of existing structures and sites.

Several large-scale alternative and renewable energy projects have taken place in the County. Concern has been expressed that legislation prohibiting Cooperatives or Communities to create a solar panel system that would feed multiple houses is impacting the expansion and viability of implementing other solar projects in the County. As the cost of improvements decreases and the efficiency of various renewable energy materials improves, the reliance on current energy sources will be reduced as more families and businesses adopt these improvements.

Emergent local, regional and national trends indicate that large scale alternative and renewable energy projects, such as solar, wind, and hydropower energy facilities, have become essential and will continue to be needed to provide clean energy throughout the region and into the power grid. In recent years, Jefferson County has been identified as an area that could accommodate these renewable energy facilities due to its proximity to the grid network, the gentler topography than many areas of West Virginia, and large open areas throughout the County. Opportunities to develop these alternative energy resources should be pursued in the County.

Natural Gas Services

Jefferson County regional economic development officials and businesses identified the need for natural gas services to homes and businesses. At present the only area of the County served by natural gas lines is the former Kodak/3M plant in Middleway; however, the potential exists for the expansion of service capacity in the Eastern Panhandle and the extension of natural gas lines from the Berkeley/Jefferson County line along WV Route 9 to various parts of the County. The extension of natural gas into Jefferson County would aid County economic development efforts while providing an alternative to electricity for residential and commercial purposes.

Infrastructure and Technology Recommendations (Goals 10 & 11)

1.	Require key stakeholders to coordinate planning and investment for both local and countywide infrastructure improvements.
	a. Require members of the development community and utility and service providers to collaborate regularly to plan for future infrastructure needs, while considering the impact on the individual consumer rates.
	b. Provide and encourage mechanisms to have consolidated water and sewer providers in the County.
2.	Bring natural gas into Jefferson County to grow the economy and increase the quality of life for the residents.
	a. Identify partners and funding sources for the expansion of natural gas services.
	b. Ensure that one or more compressed or liquid natural gas fueling stations is built to serve Jefferson County residents, businesses, and visitors.
	c. In coordination with Hagerstown Eastern Panhandle Metropolitan Planning Organization (HEPMPO), Jefferson County Schools, and Eastern Panhandle Transit Authority (EPTA), advocate for the wider utilization of natural gas as a fuel source for school buses and for EPTA.
3.	Create opportunities for the County’s water and sewer providers to share resources and better coordinate their systems and administration.
	a. Amend Subdivision and Land Development Regulations to require privately owned public water and sewer utilities to meet the local PSD standards, which would allow a local PSD to assume maintenance, and possible ownership in the future, with fewer upgrades and expenses.
	b. Provide opportunities for applicable homeowners associations and/or developers to enter into maintenance agreements for privately owned public water and/or sewer utilities with the applicable public utility providers in which the public utility providers will maintain new facilities.
	c. Coordinate with the County’s utility providers to identify methods that would limit the expansion of water and sewer trunk lines to areas within the Urban Growth Boundary and/or Preferred Growth Areas.
	d. Encourage the PSDs to promote cooperation with the local development community to work toward cost sharing on infrastructure projects.
4.	Collaborate with Village residents, businesses and utility providers to identify ways to provide water and sewer utilities within Village and village expansion areas.
5.	Enact and enforce requirements for maintenance and inspection of individual, on-site septic systems on a regular basis.
	a. Initiate a dynamic education and informational program for County residents concerning well and septic maintenance and use practices.
	b. Pursue an amendment to the state code to allow residents who are required to connect to an extended water or sewer network to continue to utilize existing individual well and septic systems for the lifetime of the home system if there are no public health issues.

	<p>c. Collaborate with local public utility providers to identify and provide incentives that would encourage property owners to transition from well and septic to a centralized system where and when needed to address public health issues.</p>
	<p>d. Find funding mechanisms to defray the costs of providing public utilities in areas where the provision of these utilities is necessary based on declining public health or environmental concerns.</p>
6.	<p>Coordinate with Region 9 and the County’s public service providers to identify and seek additional funding sources that would aid in the construction of needed capital facilities and for the upgrading of existing facilities to meet newer federal standards.</p>
	<p>a. Continue to monitor and participate in planning efforts related to the implementation of the Chesapeake Bay Watershed Improvement Plan.</p>
	<p>b. Assess and evaluate the County’s stormwater planning documents as best management practices in the field evolve.</p>
7.	<p>Identify ways that utility services can be regularly upgraded to meet the highest level of service and technology through coordination with local water, sewer, electric, gas, and telecommunications utility and service providers.</p>
	<p>a. Require all local electric, cable, and other utility providers to bury existing and new lines (serving new development) as a part of the regular maintenance and upgrading of their facilities.</p>
8.	<p>Encourage public and private entities to utilize alternative and renewable energy sources for a variety of energy needs.</p>
	<p>a. Enable the construction of renewable energy generation and production facilities by residents, and businesses, and commercial alternative renewable energy providers.</p>
	<p>b. Encourage County businesses and service stations to provide electric vehicle recharging stations within Jefferson County as soon as possible and use distinctive signage to guide residents and visitors to the charging stations.</p>
	<p>c. Develop regulations to enable cooperatives or communities to create a solar panel system that would feed multiple houses in the County.</p>
9.	<p>Collaborate with local economic development agencies and Information Technology (IT) providers to ensure that the current and future needs of small businesses within Jefferson County are met.</p>
	<p>a. Ensure that all areas of Jefferson County are served by high speed wireline and/or wireless services and other advanced technologies.</p>
	<p>b. Encourage private sector investment to improve wireless internet service availability in Jefferson County and the Eastern Panhandle.</p>
	<p>c. Ensure that, as next-generation wireless and cellular services are implemented, Jefferson County collaborates with providers, including any necessary regulatory changes, to ensure that providers are able to provide these services at the same time as other communities in the Washington, D.C. and Baltimore, MD Metropolitan Areas.</p>

<p>10.</p>	<p>Partner with IT providers, the Shepherd University Research Corporation (SURC), and the existing federal and state agencies located in Jefferson County to establish the feasibility and creation of an open access telecommunications network that could serve as a trunk line for regional services across the Eastern Panhandle.</p>
	<p>a. Market the availability of the established trunk line services across the Eastern Panhandle to potential businesses and organizations that are heavily reliant on a bandwidth intensive service and researching Jefferson County as a possible relocation site.</p>
<p>11.</p>	<p>Explore the creation of a reimbursement funding mechanism that would allow for pump stations and water mains that serve one subdivision to be oversized or expanded upon to serve nearby future development within the designated growth areas, not solely dependent on revenue from rate payers but also the development community.</p>
<p>12.</p>	<p>Explore policies in concert with the State legislature, Public Service District (PSD), and the municipalities to study and amend regulations related to water and sewer infrastructure development, including legislative options that would allow equitable distribution of cost sharing with entire development community along with rate paying base (i.e. Capital Improvement Fees).</p>



Jefferson County, West Virginia

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1st Quarterly Report for Planning and Zoning FY 2022 (July 1, 2021 – September 30, 2021)

Attached is an electronically generated report of all applications submitted and reviewed within the 1st Quarter of FY2022. This data is being provided as a part of the 1st Quarterly Report from the Planning Commission and Offices of Planning and Zoning to the County Commission. The items below reflect actions of the Planning Commission and Board of Zoning Appeals in this same time period and related meetings attended by Planning and Zoning staff.

PLANNING COMMISSION ITEMS

Planning Commission Meetings:

5 Meetings

Subdivision Regulations Text Amendments

On-going Major updates and revisions on hold

Zoning Ordinance Text Amendments

1

#ZTA21-01: First draft of proposed zoning text amendment to create provisions to allow short term rentals to process in Jefferson County, including revisions to Article 2, Section 2.2 “Definitions”; Article 8, Supplemental Use Requirements (proposed Section 8.16 Short Term Rentals); and Appendix C, Principal Permitted and Conditional Uses Table.
Reviewed at 9/14/21 PC Meeting; scheduled for Public Hearing 10/12/21

Envision Jefferson 2035 Comprehensive Plan Text Amendments

1

09/02/21: County Commission’s request to the Planning Commission to draft an amendment to the *Envision Jefferson 2035 Comprehensive Plan* to identify and secure the role of solar facilities throughout the rural and residential zoning districts in Jefferson County.
Discussed at 9/14/21 PC Meeting; Public Workshop/Round Table special called meeting 9/28/21

Zoning Map Amendments/Rezoning

None this Quarter

Concept Plan Public Workshops

2

#21-21-SD A Concept Plan for Hunter Hills Subdivision (Major Residential Subdivision). The proposal consists of 642 lots [471 Single Family Detached and 171 Townhomes (SFA)] and associated infrastructure. Owner/Applicant: Ernest Hunter, et. al.; Developer: Joshbeen Grewal, ILA Properties, Inc. Property Location: 4469 Charles Town Rd,

Kearneysville, WV; Tax District: Middleway (07); Tax Map: 1; Parcel: 2; Total Project Size: +/- 107 Ac.; Zoning District: Residential-Light Industrial-Commercial.
Public Workshop 7/31/21; PC accepted the Concept Plan as presented with the condition that the project will not be required to connect to the WVU Property to the east, the property zoned Industrial-Commercial zone, or to the Hospice property, and can move forward to a preliminary plat.

#21-22-SD A Concept Plan for Milton’s Landing Subdivision (Major Residential Subdivision). The proposal consists of 51 Single Family Detached lots to be served by on-lot well and septic systems. Owner/Applicant/Developer: David Lutman, Lutman Land Development. Property Location: South of Summit Point Rd, 0.3 miles west of Summit Point Rd/ Washington St intersection; Tax District: Charles Town (02); Map: 11; Parcels: 30 & 30.2; Parcel Size: +/- 67.6 Ac.; Zoning District: Residential Growth.
Public Workshop 7/31/21; PC accepted the Concept Plan as submitted with the condition that an additional 10 foot sidewalk easement along Summit Point Road.

#21-9-SP A Concept Plan for Shepherd View Apartment Complex (Minor Site Plan). The proposal consists of 40 2-bedroom apartments in five (5) buildings with associated open space and infrastructure. Owner: AAL, LLC; Property Location: 8285 Martinsburg Pk, Shepherdstown, WV. Tax District: Shepherdstown (09); Tax Map: 08; Parcels: 17.2 & 17.3; Size: 3.77 acres (2.21 & 1.56 acres); Zoning District: Residential Growth (eastern half) and Residential-Light Industrial-Commercial (western half).
Public Workshop 9/14/21; PC accepted the Concept Plan as submitted.

BOARD OF ZONING APPEALS (BZA) ITEMS

Board of Zoning Appeals Meetings: **4 meetings**
Zoning Appeal of Administrative Decision **none this quarter**

PLANNING & ZONING STAFF ITEMS

Pre-Proposal Conference (PPC) Meetings: 14 Total (8 Subdivision & 6 Site Plan)
Information Request Forms (IRFs) -- general inquiries from the public: 48 Total
Zoning and Land Development Fees Collected: \$ 30,787.05

Regional Transportation Planning Meetings (all remote)	
Eastern Panhandle Transit Authority (EPTA) Board Meetings	7/19/21; 8/16/21; 9/20/21
Hagerstown Eastern Panhandle Metropolitan Planning Organization (HEPMPO) Technical Advisory Committee (TAC) Meetings	8/18/21
Hagerstown Eastern Panhandle Metropolitan Planning Organization (HEPMPO) Long Range Transportation Plan	7/27/21; 9/20/21
WV Ethics Commission Ethics & Open Meetings Act training	8/11/21

Local and Regional Planning Meetings (all remote)	
WV APA Chapter Executive Committee Meetings (ZOOM);	7/27/21; 8/10/21; 8/24/21; 9/28/21
WV APA Strategic Planning Effort	9/22/21
APA Chapter Presidents Council	7/14/21

**Planning and Zoning FY 2022 1st Quarterly Report
07/01/2021 - 09/30/2021 (Generated 10/6/2021)**

Type	Project Number	Creation Date	Owner Name	Location	Status	Description
Merger or Boundary Line Adjustment	21-22-M	7/7/2021	BML, LLC - Brant Lowe	1963 KEARNEYSVILLE PIKE, SHEPHERDSTOWN	Closed	See Project File 21-24-SD for all reviews and approvals.
	21-23-M	7/13/2021	Epic at Burr Park LLC - Andre Fontaine	W BURR BLVD, KEARNEYSVILLE, WV	Open	Consolidate lots
	21-24-M	7/30/2021	MARK-COLONIAL HILLS LLC	Branson Circle Shepherdstown, WV	Open	BLA between lots S60 and S61 of Colonial Hills, Phase 1,
	21-25-M	8/20/2021	Jefferson Utilities Inc. Lee Synder - Stephanie Reel	18 SHORT DR, HARPERS FERRY, WV	Open	Adjust internal Boundary Lines of lots 4 - 9
	21-26-M	8/27/2021	Jefferson Utilities - Stephanie Reel	Wagon Trail Road, Harpers Ferry, WV	Open	Boundary Line Adjustment for Lots 1-4 Section VI BLA
	21-27-M	8/30/2021	Jefferson Utilities - Stephanie Reel	Burkett Road, Harpers Ferry, WV	Open	Internal boundary line adjustment
					Category Total:	6
Miscellaneous Fees	21-13-Q	7/2/2021	HUTCHISON LOYD C II & PAMELA H	346 PAULAS CIR, KEARNEYSVILLE, WV 25430	Closed	Lot 30 MPC (Septic)
	21-14-Q	7/8/2021	Chaz Shultz Real Estate Team - Chaz Shultz	ANGUSE VIEW WAY, Middleway, WV 25430	Closed	Angus View SD Lot 2 MPC (septic)
					Category Total:	2
Planning Commission Variance (1979 ZO)	21-19-Q	9/3/2021	MATTHEW S & KARA L DURRSCHMIDT	441 CHICKAMAUGA DR, HARPERS FERRY, WV	Open	To allow an inground pool and fence to be located within a platted drainage easement (see Note #15) for Lot 21 of Sheridan Subdivision, Phase II (PC File 05-26).
	21-22-Q	9/28/2021	REYNES JULIA E	384 POTOMAC RIDGE LN, SHEPHERDSTOWN, WV	Withdrawn	Request for a Final Plat Amendment for Lot 7 of the Potomac Ridge Subdivision (PC File 05-13: Note #9), to allow for the conversion of an existing 24' x 32' garage into a second dwelling unit (in-law suite).
					Category Total:	2
Planning Commission Waiver	21-13-PCW	7/9/2021	LUTMAN LAND DEVELOPMENT, LLC - DAVE LUTMAN	7029 FLOWING SPRINGS RD, SHENANDOAH JUNCTION, WV	Open	Waiver from Section 20.201.A.2 to allow a sixth lot to access an existing access easement (Fennec Fox Lane).
	21-14-PCW	8/23/2021	N/A	355 PATRIOTS WAY, HARPERS FERRY, WV	Open	Waiver to allow pool to remain in the easement.
	21-15-PCW	8/24/2021	BML LLC - Brant Lowe	1963 KEARNEYSVILLE PIKE, SHEPHERDSTOWN	Open	Transfer development rights to adjacent parcels (owned by same owner)
	21-16-PCW	8/24/2021	JD LAND HOLDINGS INC - Randie Lawson	362 W BURR BLVD, KEARNEYSVILLE, WV 25430	Open	Change in Tenant: Commercial Use (Fitness Center) Hours of Operation: Weekdays (5:30 am to 9:30 pm), Weekends (7:00 am to 7:00 pm); 12 employees; 45 existing parking spaces
	21-17-PCW	8/24/2021	Ernest Hunter, et. al. - Ernest Hunter	4469 Charles Town Road, Kearneysville, WV 25430	Open	Waiver from Section
	21-18-PCW	8/24/2021	Lutman Land Development - David Lutman	0.3 miles west of Summit Pt Rd & Washington Street, Charles Town, WV 25414	Open	51 single family detached (including 1 existing home)
	21-19-PCW	9/17/2021	Dead Rock Contractor Services, LLC - Chris Livingston	Vacant Parcel, Charles Town, WV 25414	Open	Variance from Section 4.11 and Appendix B to allow existing vegetation in lieu of the required planted landscape buffer for a proposed
					Category Total:	7
Site Plan	21-7-SP	7/20/2021	JEFFERSON COUNTY DEV AUTHORITY - Dennis Jarvis	395 STEELEY WAY, KEARNEYSVILLE	Open	Commercial addition to the existing facility.
	21-8-SP	7/28/2021	340 RAINBOW LLC	3511 BERRYVILLE PIKE, CHARLES TOWN	Open	179' Monopole Telecommunications Tower (AT&T)
	21-9-SP	7/29/2021	AAL LLC	8285 MARTINSBURG PIKE, SHEPHERDSTOWN	Open	40 2-bedroom apartments with associated parking and signage.
	21-10-SP	8/23/2021	JEFFERSON COUNTY DEV AUTHORITY	STEELEY WAY, KEARNEYSVILLE	Open	Contractor with Outdoor Storage: Office building and workshop.
	21-11-SP	8/24/2021	JEFFERSON COUNTY DEV AUTHORITY	JAMES BURR BLVD, Kearneysville	Open	Contacting Storage Yard
	21-12-SP	9/7/2021	LOWE HOSPITALITY GROUP LLC - TRIPP LOWE	70 MADDEX SQUARE DR, SHEPHERDSTOWN	Open	Conversion of existing Quality Inn Hotel to 20 apartments; pharmacy; and medical cannabis dispensary. The dispensary and pharmacy will have separate drive through
					Category Total:	6

Subdivision	21-16-Q	7/12/2021	LUTMAN PROPERTIES LLC	16 JOELENES WAY, SHENANDOAH JUNCTION	Closed	Minor Plat Change to Lot 2 to create two mailbox/trash pick up easements.
	21-23-SD	7/2/2021	Robert Tabb	Round Oak Lane	Open	MSD to create Lot 3C and Lot 3 Residue
	21-24-SD	7/7/2021	BML, LLC - Brant Lowe	Kearneysville Pike, Shepherdstown	Open	Lot A1 A2 A3
	21-25-SD	7/9/2021	PETTI VINCE - VINCE PETTI	400 MISSION RD N, HARPERS FERRY	Open	Minor Subdivision Creating Lot 1, Lot 2, and Lot 3 (Residue)
	21-15-Q	7/12/2021	BEALLAIR HOMES LLC - Todd Abe	Beallair Manor Dr., Charles Town	Open	Redline Revision to the approved Preliminary Plat for Phase 3.
	21-26-SD	8/23/2021	KE COLONIAL, LLC - RICK FINK	Higbee Lane, SHEPHERDSTOWN	Open	20 townhome units on 2.54 acres.
	21-27-SD	8/24/2021	HOFFMAN MARGARET J - Margaret Hoffman	622 ANN LEWIS RD, CHARLES TOWN	Open	Two-lot family transfer MSD.
	21-28-SD	8/31/2021	ALBRITE C W JR & PATRICIA H	2842 WARM SPRINGS RD, SHENANDOAH JUNCTION	Open	4 lot minor subdivision
	21-29-SD	9/7/2021	WILLIS GARY W & GLORIA E - Gloria Willis	599 N CHILDS RD, KEARNEYSVILLE	Open	Gloria Willis Family Transfer
	21-30-SD	9/13/2021	GILLMORE PRESTON & JULIE EVANS	774 BUNKHOUSE RD, KEARNEYSVILLE	Open	Lots 1-3 (residue)
				Category Total:	10	
Zoning Certificate	21-32-ZC	7/13/2021	NORTOM INVESTMENTS LLC	69 CLENDENING DR, KEARNEYSVILLE	Closed	Change in Tenant: Existing Norm Thompson Building (Dalb Corp) Land Use Designation: Warehousing
	21-33-ZC	7/13/2021	NORTOM INVESTMENTS LLC	69 CLENDENING DR, KEARNEYSVILLE	Closed	Change in Tenant: Norm Thompson Fulfillment Center (West Virginia Medicine)
	21-34-ZC	7/13/2021	NORTOM INVESTMENTS LLC	69 CLENDENING DR, KEARNEYSVILLE	Closed	Change in Tenant: Norm Thom (Rockwool)
	21-35-ZC	7/30/2021	2021 McGarry Blvd. LLC - Brian Fulton	53 MCGARRY BLVD, KEARNEYSVILLE	Closed	Existing warehouse in Burr Park.
	21-36-ZC	8/3/2021	LOWE HOSPITALITY GROUP LLC - TRIPP LOWE	70 MADDEX SQUARE DR, SHEPHERDSTOWN	Closed	Conversion of existing Quality Inn Hotel to 20 apartments; pharmacy; and medical cannabis dispensary. The dispensary and pharmacy will have separate drive through lanes
	21-37-ZC	8/12/2021	NORTOM INVESTMENTS LLC	69 CLENDENING DR, KEARNEYSVILLE	Closed	Change in Tenant: Existing Norm Thompson Building (Continuous Journey, LLC) Land Use Designation: Medical Office / Leased Space: 3,200 SF
	21-38-ZC	8/12/2021	ASHBAUGH PAUL L & DONNA K	121 ASHLAND WOODS DR, HARPERS FERRY	Closed	Install antennas on an existing telecommunications tower; install equipment cabinet and 100 amp electrical service
	21-39-ZC	8/17/2021	B33 Jefferson Crossing II, LLC	188 FLOWING SPRINGS RD, CHARLES TOWN	Closed	Change in Tenant: Retail Sales - Spirit of Halloween. Lease from 7/11/21 - 11/15/21
	21-40-ZC	8/31/2021	KITA LLC	59 RULAND RD STE J, KEARNEYSVILLE	Closed	55
	21-41-ZC	9/3/2021	Rankin Physical Therapy	7330 MARTINSBURG PIKE, SHEPHERDSTOWN	Closed	Change in nonconforming use: Physical Therapy Building square footage = 2,200 square feet
	21-42-ZC	9/16/2021	WALKER SARAH E ET AL	67 GRANNY SMITH LN, KEARNEYSVILLE	Closed	Replace three antennas on an existing 198' telecommunications tower.
	21-44-ZC	9/24/2021	MARTIN JOSEPH P & CHRISTIE T	3735 SUMMIT POINT RD, CHARLES TOWN	Closed	Accessory Dwelling Unit: In-Law Suite
	21-43-ZC	9/24/2021	ROY'S GLASS SERVICE INC	4563 MIDDLEWAY PIKE, KEARNEYSVILLE	Open	Change in nonconforming use from Roy's Glass to Automobile Sales and Service
				Category Total:	13	
	21-27-ZV	8/2/2021	CLINE MARTIN E & JACQUELINE M	558 EASTLAND DR, CHARLES TOWN	Closed	Variance request from Section 5.4B of the 08/13/98 Zoning Ordinance (as amended) to reduce the side setback from 12' to 7' 4" for a 12' x 16' accessory structure.
	21-28-ZV	8/4/2021	JEFFERSON COUNTY DEV AUTHORITY - Dennis Jarvis	395 STEELEY WAY, KEARNEYSVILLE	Open	Variance from Appendix B to reduce the front setback from 25' to 21' for a proposed expansion to the existing TeMa facility.
	21-29-ZV	8/27/2021	MATTHEW S & KARA L DURRSCHMIDT	441 CHICKAMAUGA DR, HARPERS FERRY	Open	Variance from Section 5.7B of the Zoning Ordinance, as amended 00/00/00, to reduce the side setback from 12' to 6' for a 22' x 44' inground pool with surrounding concrete.
	21-30-ZV	8/27/2021	Dead Rock Contractor Services, LLC - Chris Livingston	Shiple School Rd, Charles Town	Open	Variance from Section 4.6B and Appendix B to reduce the distance requirement from 75' to 25' along the western property line for a proposed

Zoning Variance	21-31-ZV	8/27/2021	Dead Rock Contractor Services, LLC - Chris Livingston	ShIPLEY School Rd, Charles Town	Open	Variance from Section 4.11 and Appendix B to allow existing vegetation in lieu of the required planted landscape buffer for a proposed
	21-32-ZV	8/30/2021	Kirk and Charlene Lattner	19 MOSSY OAK CT, SHEPHERDSTOWN	Open	Variance from Section 5.4B to reduce the rear setback from 20' to 15' for a portion of a 25' x 16' deck.
	21-33-ZV	9/1/2021	ASHBAUGH PAUL L & DONNA K - Paul Ashbaugh	121 ASHLAND WOODS DR, HARPERS FERRY	Open	Variance request from the following: Section 5.6D to reduce the perimeter setbacks from 25' to 1' for an existing 7' tall fence (proposed parcel 35); and, Appendix B to reduce the side setback from 50' to 15' for an existing 75' tall cell tower (proposed parcel 36). The purpose of the request is to allow for a boundary line adjustment between parcels 35 and 36.
	21-34-ZV	9/21/2021	ARVIN JOHN W & MARY P	1631 BOWERS RD, KEARNEYSVILLE	Open	Variance from Section 9.6A to reduce the side setback from 5' to 3' for a 12' x 12' accessory structure.
	21-35-ZV	9/21/2021	ARVIN JOHN W & MARY P	1631 BOWERS RD, KEARNEYSVILLE	Open	Variance from Section 9.6A to reduce the side setback from 5' to 3' for a 8' x 10' accessory structure.
						Category Total:
					Grand Total:	55



Jefferson County, West Virginia

Department of Engineering, Planning, and Zoning

Office of Planning and Zoning

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Planner's Memorandum Planning Commission Meeting October 12, 2021

1) Status of Engineering, Planning and Zoning County Offices during COVID-19 Virus Pandemic

In accordance with Direction from the Office of the Governor, the Department of Engineering, Planning and Zoning Mason Building is open to the public. Masks must be worn at all times, unless you are fully vaccinated, and social distancing will be observed.

BUILDING PERMITS & INSPECTIONS 304-725-2998 permits@jeffersoncountywv.org

IMPACT FEES 304-728-3331 - mmason@jeffersoncountywv.org

ENGINEERING 304-728-3257 - engineering@jeffersoncountywv.org

PLANNING & ZONING 304-728-3228 - planningdepartment@jeffersoncountywv.org,
zoning@jeffersoncountywv.org

GIS & ADDRESSING 304-724-6759 - gis@jeffersoncountywv.org

2) Upcoming PC meetings

a) Next Regular meeting: **November 9, 2021**

b) Special Meeting: **December 7, 2021**

Public Hearing on proposed *Envision Jefferson 2035 Comprehensive Plan* text amendment related to solar energy facilities in the rural and residential areas of Jefferson County