

**RULES OF PROCEDURE BEFORE THE JEFFERSON COUNTY BOARD OF
ZONING APPEALS**

WHEREAS, the Jefferson County Board of Zoning Appeals is duly authorized to hear appeals, receive applications for Variances and Conditional Uses, and to conduct hearings necessary to carry out the Board’s duties under the terms of Article 8A, WV Code, and

WHEREAS, the Board of Zoning Appeals is duly authorized to adopt Rules of Procedure concerning the filing of Appeals, and Applications, the giving of Notice and the Conduct of Hearings necessary to carry out its obligations pursuant to the Jefferson County Zoning and Development Review Ordinance and § 8A-8-9, WV Code as amended.

NOW THEREFORE, it is hereby RESOLVED, upon a Motion duly seconded, that the Board of Zoning Appeals adopts the following Rules of Procedure which shall be generally applicable to all proceedings before the Board.

1. **Definitions**

(a) “Administrative decision” means a decision issued by a member of the staff of the Department of Planning, Zoning and Engineering including but not limited to the Zoning Administrator.

(b) “Appellant” means a person, organization, association, or other group who filed a complete and timely appeal.

(c) “Applicant” means those applying for approval of land uses in compliance with the Ordinance.

(d) “Ex Parte Communication” means written or oral communications not included in the public record and made outside the public hearing before the filing of a final written decision.

(e) “Party of Record or Party” means the applicant, appellant, respondent or intervenor or any of their representatives who appear at the hearing.

(f) “Respondent” means the person or party who contends against an appeal; the party against whom the appeal is taken.

(g) “Intervenor” means a party or person who voluntarily interposes in an action or other proceedings with leave of the Board.

2. **Membership, Powers and Duties**

The membership, powers and duties of the Board are as set forth in Chapter 8A, Article 8 of the West Virginia Code.

3. **Composition.**

(a) Number: The Board shall consist of five (5) members as provided by law. If alternate members are appointed by the County Commission they must attend all meetings, but shall not be able to participate unless needed to fill a vacancy created by the absence of one of the regular members.

(b) Appointment: Members are appointed by the County Commission of Jefferson County, West Virginia (hereinafter the County Commission).

(c) Term: The term of each Member is three (3) years, or as appointed by the County Commission as provided by law.

(d) Officers: At its first regular meeting of each year, the Board shall elect a chairperson from one of its members to serve a term of one (1) year. The chairperson shall preside at meetings of the Board and may call Special Meetings of the Board in accordance with the law and these Rules. The Board shall elect a Vice-Chairperson who shall preside over meetings in the absence or disability of the Chairperson. The Board shall elect a Secretary whose duties shall be defined by the West Virginia State Code.

(e) Alternates: Alternate members shall have all powers and duties of a regular Board member when sitting on a case and shall continue to participate in the case until a final decision is reached. Alternate members shall serve by rotation based upon seniority of appointment to the Board.

4. Applications, Appeals and Notice

(a) Appeals. Any appeal of any order, requirement, decision, or determination made by an administrative official or board charged with the enforcement of the Zoning and Development Review Ordinance (hereinafter the Zoning Ordinance) or Rule or Regulation adopted pursuant to the Zoning Ordinance, shall be filed with the Board of Zoning Appeals. An original and eight (8) copies of all filings before the Board are required.

(b) An Appeal shall be filed within thirty (30) days of the entry of an Order, Requirement, Decision or Determination which is the subject of the appeal.

When filing an Appeal, the Appellant shall use an Appeal Form authorized by the Board including a statement of all issues to be raised in the Appeal and submit supporting documentation for consideration in the Appeal.

(c) Upon request of the Board of Zoning Appeals, the Administrative Official or Board whose action is being appealed shall transmit all documents, plans and papers constituting the Record of the action from which the appeal was taken.

(d) Within ten (10) days of receipt of a complete Appeal Form and payment of processing fees the Board shall set a time for the Public Hearing of the Appeal.

(e) Posting of Property Prior to Public Hearing. If the hearing involves the use of land, including requests for Exceptions, Variances and Conditional Use Permits, the property owner shall post signs on the property showing the date, time and place of the hearing before Board of Zoning Appeals. These signs shall be posted not less than thirty (30) days (20 days for Development Review System hearings) before the date of hearing. The Clerk of the Board shall determine the number of signs required, and direct their location. The Department of Planning, Zoning and Engineering shall prepare the signs. The Appellant shall pay a reasonable fee for the signs.

Compliance. The property owner is responsible for compliance with the posting notice requirements of these Rules. If any questions arise regarding compliance with the posting notice requirements, the burden is on the property owner to prove compliance. When the property owner is able to post the property as required, but encounters difficulty maintaining the posted signs due to vandalism, repeated extreme weather or other valid causes, the Board may proceed with the hearing if the Board

determines that the property owner has made a good faith effort to comply with the advertising and posting requirements. If the Board determines that the property owner has not made a good faith effort to comply with the posting notice requirements, the Board may delay the hearing.

(f) Publication of Notice of Public Hearing. At least thirty (30) days (15 days for Development Review System hearings) prior to the date set for the hearing the Board of Zoning Appeals shall publish in a local newspaper, a Notice of Public Hearing. The published notice shall include the date, time, and place of the hearing on the appeal and shall be a Class I legal advertisement in compliance with the provisions of Article 3, Chapter 59 of the West Virginia Code.

The Board of Zoning Appeals may require the appellant/applicant to pay for the cost of the advertisement.

(g) Appellants may provide supplemental documentation, but must do so not later than eighteen (18) days prior to the established date of the Public Hearing. Complete copies of the supplemental documentation must be provided to the Respondent and the Intervenor. An original and Eight (8) copies must be filed with the Board.

(h) No later than eight (8) days prior to the date of the Public Hearing, the Respondent and Intervenor must file with the Board documentation for consideration and must provide complete copies to the other parties. An original and Eight (8) copies shall be filed with the Board.

5. **Agenda**

The agenda of applications and appeals to be heard shall be maintained by the Board and shall be available for public inspection during normal business hours.

6. **Meetings**

(a) **Time and Place of Meetings:** The Board shall conduct regular meetings on the third Thursday of every month at 3:00 p.m., or at such time as the Board may designate. Special Meetings may be conducted upon the call of the Chair. Dates of meetings shall be posted on the signs on the properties, which are the subject of matters before the Board as described in § 4(e). Posting shall not be required for Special Meetings. Written notice shall be sent by mail to the Applicant and adjoining property owners according to Law.

(b) **Quorum:** A minimum of three (3) members of the Board shall be required to conduct hearings of any business of the Board. The Chairperson shall have the right to make or second Motions.

(c) **Continuance of Hearing:**

(1) **Cause.** The Board may continue, reschedule or re-open proceedings for any good cause deemed reasonable and appropriate.

(2) **Notification.** If the Board determines at a hearing that there is good cause to continue such proceedings and specifies the date, time and place, no further Notice is required. When the determination for future hearing is made following a hearing on a given matter, all parties of record shall be provided not less than (7) calendar days Notice of the date, time, place, and nature of the subsequent hearing.

(d) Order of Business: Meetings of the Board may be conducted in the following manner:

- (1) Approval of the minutes of the previous meeting(s).
- (2) Overview of the hearing procedures presented by the Chair.
- (3) Old business.
- (4) Hearing of scheduled cases.
- (5) Other matters proposed by the Board.
- (6) Adjournment.

(e) Procedure: All hearings shall be conducted in the following manner.

(1) All persons wishing to offer testimony or comments shall sign a list prior to the case being called and at the appropriate time shall be sworn in. Only testimony or comments made under oath will be considered as evidence.

(2) Introductory comments, including presentation by staff of its report of the Compatibility Assessment Meeting.

(3) Applicant, Appellant, Intervener, or their Representative shall present the Request to the Board.

(4) Testimony and argument in support of the Application or Appeal.

(5) Testimony and argument in opposition to the Application or Appeal.

(6) Public comment, either in support or opposition, to all matters before the Board other than an Appeal.

(7) Rebuttal testimony by the Applicant, Appellant, or Intervener or Agent if opposition testimony is presented.

(f) Time Limitations. Each party of record shall have thirty (30) minutes for presentation and where appropriate each party has 15 minutes for rebuttal. Groups or associations recognized by the Chair shall have fifteen (15) minutes and an individual shall have five (5) minutes. The Chair may grant extensions of the time limits unless an objection is raised by a Board Member, which objection shall be decided by a Motion, second and majority vote of the Board.

Members of the Board and the Board's attorney may direct questions to any presenter or witness at any time during the hearing.

The Chair shall preside at the hearing. The Chair shall make such Rulings as may be necessary to conduct a hearing in an efficient and orderly manner including but not limited to, the imposition of time limitations and the exclusion of irrelevant, repetitive or cumulative evidence or testimony. A member may question the Rulings made by the Chair. These questions may be decided by motion, second and majority vote of the Board.

(g) Evidence

(1) Burden of proof. The Petitioner, Applicant, Appellant, or the Proponent of a Petition or Application shall have the burden of proof by a preponderance of the evidence except in appeals of administrative decisions, where the burden of proof is upon the Appellant.

(2) Admissibility. Any relevant evidence shall be admitted if it is the type which possesses probative value commonly accepted by reasonably prudent

persons in the conduct of their affairs. The Board shall retain discretion to admit or exclude any evidence. A member of the Board may question Rulings upon the evidence. These questions shall be decided by motion, second and majority vote.

(3) Copies. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties may be given an opportunity to compare the copy with the original.

(h) Identification of Witness. All persons appearing to testify or submit evidence shall identify themselves on the sign-up sheet provided by the staff. All witnesses shall identify themselves by name, address and person or entity that they represent at the podium before speaking. Designated spokespersons for groups shall identify themselves and their groups.

(i) Standing.

(1) Development Review Systems. Any applicant, adjoining and confronting property owners and persons who would be aggrieved by the issuance of the proposed conditional use permit may address any unresolved issues.

(2) Appeal. Any person, association, corporation or other legal entity aggrieved by an award, requirement, decision or determination made by an Administrative Official, Board or Commission changed with enforcement of the Jefferson County Zoning and Development Review Ordinance may file an Appeal to this Board.

(3) The definition of “aggrieved” is set forth in § 8A-1-2(b), WV Code, and this definition is incorporated by reference herein.

(4) Standing is a jurisdictional requirement.

(j) Rights of Applicants. Each party of record shall have the rights of due process, presentation of evidence, objection, motion, argument and all other rights essential to a fair hearing. Where the Board finds that testimony will be repetitious, cumulative or irrelevant to the matters before it, then the Board through the presiding Chair may impose reasonable limitations on the number of witnesses heard and the nature and length of their testimony.

Cross-examination by a party is permitted as necessary for a full disclosure of the facts. The Board has discretion to limit cross-examination.

(k) Determination by majority vote. An affirmative vote of a majority of the members present and participating is required to grant an application or an appeal. The Board may impose conditions on a Special Exception, Variance, or Conditional Use as provided by law and the Ordinance.

(l) Decision.

(1) Appeal. The Board shall grant or deny, with or without conditions, or reverse, affirm or remand, with or without conditions or instructions, in whole or in part, or modify the Order, Requirement, Decision or Determination appealed from and make such other Order, Requirement, Decision, or Determination as ought to be made in each matter heard by the Board. Each Decision shall set forth Findings of Fact and Conclusions of Law. The Decision of the Board is final and official when signed by the Chairperson upon the majority vote of all members who have heard the case. The adoption of an official Decision with Findings of Fact and Conclusions of Law will be considered at the next regularly scheduled meeting after the hearing is concluded.

(2) Development Review System. The purpose of the meeting is to hear the staff's report of the issues. If all issues raised at the Compatibility Meeting. Any comments relative to the validity of the staff's report should be presented at this meeting. Concerns that have been addressed and agreed upon as accurate by the majority of those present at the Compatibility Assessment Meeting should not be addressed at this hearing. Speakers shall be limited to resolution of issues which could not be resolved at the Compatibility Assessment Meeting and the compatibility of the project within the neighborhood. If all issues raised at the compatibility assessment meeting with the staff were resolved at that meeting, there will be no public hearing required. At the next Board of Zoning Appeals meeting thereafter, the Board shall issue a conditional use permit conditioned upon the resolved issues and the Board may do so without a public hearing.

If the staff report contains unresolved issues raised at the compatibility assessment meeting, after a hearing thereon, the Board shall issue, issue with conditions or deny the conditional use permit based upon the standards in the Jefferson County Zoning and Land Development Ordinance.

(m) Content of Decisions. The Decision shall include a Statement of:

(1) The nature and background of the proceeding.

(2) Findings of Fact. The Findings shall be a statement of those facts that are the basis of the Conclusions and Decision of the Board. The Findings shall be based exclusively upon the testimony and evidence presented in the Record. The Findings of Fact shall consist of a concise statement of each material and contested fact found by the Board. The source of such Finding may be identified.

(3) Conclusions of Law. Whenever practical, the Conclusions of Law shall refer to specific provisions of the law and the Ordinance or both, together with reasons and precedents relied upon to support the same where applicable.

(4) The Decision shall be based upon a consideration of the entire Record and supported by reliable, probative and substantial evidence.

(n) Procedure for Reopening Hearing.

(1) At any time, prior to the filing of a Decision, the Board may re-open the proceedings upon the request of a party or upon its own Motion for the receipt of further evidence or information. All parties of Record shall be given Notice of the consideration of such evidence and granted an opportunity to review the evidence and file rebuttal arguments.

(2) If additional evidence is submitted after the hearing, it will be considered only upon a showing of significant relevance and good cause for delay in its submission. All parties of Record will be given Notice of the consideration of the evidence and they shall be granted an opportunity to review the evidence and file rebuttal arguments.

7. Appeal to Circuit Court.

A final Decision by the Board may be appealed to the Circuit Court of Jefferson County as provided in § 8A-9-1, et seq., WV Code as amended. The time for appeal shall commence on the date the Decision is signed.

8. **Conduct of Board Members.**

(a) **Speaking for the Board.** A member will not appear to speak for the Board except as authorized by a majority vote of the Board. In any public or private statement concerning Board affairs, members shall carefully indicate whether they are speaking for the Board or speaking as individuals.

(b) **Privileged Information.** Members shall refrain from any business transaction in which they have an advantage as a result of information obtained through participation as a member of the Board of Zoning Appeals.

(c) **Conduct at Meetings.** Members shall conduct themselves at Board meetings in a fair, impartial, business like and professional manner.

9. **Ex Parte Communications.**

(1) No person, nor his or her agent, employee, or representative who is interested in a particular Petition or Application which is designated for a hearing, shall communicate Ex Parte, directly or indirectly, with any member of the Board concerning the merits of that particular hearing or a related Petition or Application. This Rule shall not prohibit Ex Parte Communication concerning matters which are exclusively procedural in nature.

(2) No member of the Board shall communicate Ex Parte directly or indirectly with any person, nor his or her agent, employer or representative interested in a particular Petition or Application which is designated for a hearing before the Board, with regard to the merits of that particular hearing or a related Petition or Application.

(3) If a substantial, prohibited Ex Parte Communication is made to or

by any Board member, such communication shall be publicly disclosed and proper discretion shall be exercised by the Board member regarding whether or not the member wishes to recuse him/her for that particular hearing.

10. **Amendment.**

The Board may amend these Rules from time to time by a majority vote.

11. **Severability.**

If any part, section or portion of these Rules shall be declared invalid, unenforceable, unconstitutional or in conflict with state enabling legislation, then all other parts, sections or portions of these Rules shall remain in full force and effect.

12. **Effective Date.**

These Rules supercede all previously adopted Procedural Rules. The effective date of these Rules is the 4th day of January, 2005.

JEFFERSON COUNTY BOARD
OF ZONING APPEALS,

By: _____
Ms. Tiffany Hine, Chair

Revised: January 24, 2005
June 1, 2005