

There have been several letters and statements regarding “heavy industrial” or “adult uses” on the subject property. These uses are simply not possible under the current county zoning ordinance. The selected zoning designation and associated standards, restrictions and process eliminate any future residential, heavy industrial or significant light industrial use. Small scale commercial development in support community goals is the basic permitted use when the current ordinance is viewed as a complete document. The requested zoning classification will provide the most oversight and public participation available in current county regulation. *(Items in yellow identify restrictions and items in red are prohibited on the subject property as a result of those restrictions)*

#### Section 4.5 Agricultural Uses Permitted Generally

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

#### Section 5.6 Industrial - Commercial District<sup>23</sup>

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

##### A. Principal Permitted Uses<sup>23</sup>

1. Light Industrial Uses (restricted)
2. Heavy Industrial Uses
3. Commercial Uses
4. Day Care Center, Small
5. Day Care Center, Large
6. Home Occupation, Level 1
7. Home Occupation, Level 2
8. Cottage Industry
9. Medical/Dental/Optical Office, Small
10. Barber/Beauty Shop, Limited
11. Antique Shop
12. ATM
13. Branch Bank
14. Kennel (subject to the requirements for such use in Article 8)
15. Dry Cleaner
16. Florist
17. Restaurant, Limited
18. Restaurant, Fast Food, Limited
19. Retail Food Store, Limited

20. Veterinary Services
21. Video Rental Store
22. **Country Inn**
23. Non/Not for Profit Commercial Uses
24. Non-profit Community Centers
25. Publicly Owned Facility
26. Public Safety Facility
27. Essential Utility Equipment
28. Wireless Telecommunications Facilities pursuant to Article 4B
29. **Private or Public Shooting Ranges**
30. Cultural Facility
31. Industrial related accessory uses including residential dwellings including a mobile home on site for a caretaker or watch keeper.
32. **Adult Uses, subject to requirements set forth for such uses in Article 8.**

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

1. **Bituminous concrete mixing and recycling plants**
2. **Concrete and ceramic products manufacture, including ready mixed concrete plants**
3. **Petroleum products refining or storage (subject to the requirements for such standards in Article 8)<sup>23</sup>**
4. **Commercial sawmills**
5. **Salvage Yards (subject to the Jefferson County Salvage Yard Ordinance)**
6. **Garbage or dead animal reduction or processing**
7. **Slaughterhouses, Stockyards**
8. **Acid or heavy chemical manufacturer, processing or storage**
9. **Cement or lime manufacture**
10. **Explosive manufacture or storage**
11. **Foundries and/or casting facilities**
12. **Mineral extraction, mineral processing**
13. **Jails and Prisons (subject to requirements for this use in Article 8)<sup>23</sup>**

D. Yard Requirements as follows: (These requirements are also for an approved commercial or industrial use proposed for any other zone.)<sup>5, 23</sup>

7. Distance Requirements
  - a. Commercial shall comply with Section 4.6(b)
  - b. **Industrial shall comply with Section 4.6(a)<sup>7, 23</sup>**

#### **Section 4.6 Distance Requirements**

A. Any uses or building subject to compliance with this section **shall be located at least 200 feet from:**

1. **Any lot in a residential district;**

2. A dwelling, school, church or institution for human care not located on the same lot as the said use or buildings;<sup>1</sup>
  3. Any lot which is part of a recorded subdivision; and
  4. Any parcel, historic structure, or designated historic district which has been listed on the West Virginia or National Register of Historic Places.
- B. Adjacent uses or buildings subject to compliance with this section shall be located at least 75 feet from:<sup>7</sup>
1. Any lot in the Residential Growth District;
  2. Any lot with a dwelling, school, church, or institution for human care not located on the same lot as said use or building;
  3. Any parcel, historic structure, or designated historic district which has been listed on the West Virginia or National Register of Historic Places.<sup>23</sup>

### **Section 8.1 Adult Use Requirements<sup>16, 23</sup>**

Adult arcades, adult bookstores, adult cabarets, adult mini motion picture theaters, adult saunas, adult theaters, sexual encounter establishments, sexual paraphernalia stores, massage parlors and any sign advertising the operation thereof, shall only be permitted in the Industrial-Commercial District under the following conditions:

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

This provision does not apply to any specific existing use that legally qualifies as a nonconforming use; provided, however, that an existing nonconforming use cannot add any of the uses described in this section to their operations as existing on May 1, 2003.

### **Section 8.9 Industrial and Commercial Uses<sup>23</sup>**

- A. Industrial and commercial uses in all districts shall comply with the following standards:
  1. **Noise**

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

## 2. Odor

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

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

## 3. Smoke

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

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

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

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

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

## 4. Ambient Air Quality Standard

## 5. Vibration

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

#### 6. Glare and Heat

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

#### 7. Toxic Matter

The ambient air quality standards for the State of West Virginia shall be the guide to the release of airborne toxic materials across lot lines. Where toxic materials are not listed in the ambient air quality standards of the State, the release of such materials shall be in accordance with the fractional quantities permitted below, of those toxic materials currently listed in the threshold limit values adopted by the American Conference of Governmental Industrial Hygienists.

#### 8. Fire Hazards

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

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

#### 9. Frontage Road

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

#### 10. Landscape Buffer

A fifty (50) foot wide landscape buffer strip will be provided along all limited access highways. Said buffer shall be adjacent to the frontage road. In the case where existing roads not adjacent to controlled access highway serve as frontage road the landscape buffer may be placed against the highway right-of-way. All front setbacks (building and parking lot) are to be measured from the landscape buffer.

## Section 4.4 Prohibited Uses

A. Any existing or proposed use which is determined to be in conflict with any existing ordinance or laws of Jefferson County or law or regulation of the State of West Virginia or other governmental agency shall be prohibited even though such use may be allowed under the terms of this ordinance.

B. No land use shall be conducted that creates any injurious, noxious, or otherwise objectionable fire, explosive heat, or other hazard; noise, or vibration; smoke, dust, odor, gases, or other form of air pollution; or emit dangerous radioactivity in such a manner that if permitted would adversely affect the uses of an adjacent property or contaminate the ground water or surface waterways of the County. All land uses generating such conditions shall comply with the appropriate State and Federal Codes. Such compliance with applicable State and Federal laws shall be deemed as compliance with this Ordinance.

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

## WV Code

8A-7-11 (a) Variance.

....”shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the classifications of a parcel of land.”

8A-1-2 Definitions

(d) “conditional use”..... “means a use which because of special requirements or characteristics may be permitted in a particular zoning district only after review by the board of zoning appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in the zoning ordinance.”