WEST VIRGINIA CODE CHAPTER 8A ARTICLE 7

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§8A-7-1. Authority for zoning ordinance.

(a) The governing body of a municipality or a county may regulate land use within its jurisdiction by:

(1) Adopting a comprehensive plan;

(2) Working with the planning commission and the public to develop a zoning ordinance; and

(3) Enacting a zoning ordinance.

(b) A zoning ordinance may cover a county's entire jurisdiction or parts of its jurisdiction.

(c) A zoning ordinance shall cover a municipality's entire jurisdiction.

(d) A municipality may adopt, by reference, the zoning ordinance of the county in which it is located.

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§8A-7-2. Contents of zoning ordinance.

(a) The following must be considered when enacting a zoning ordinance:

(1) Promoting general public welfare, health, safety, comfort and morals;

(2) A plan so that adequate light, air, convenience of access and safety from fire, flood and other danger is secured;

(3) Ensuring attractiveness and convenience is promoted;

(4) Lessening congestion;

(5) Preserving historic landmarks, sites, districts and buildings;

(6) Preserving agricultural land; and

(7) Promoting the orderly development of land.

(b) A zoning ordinance may include the following:

(1) Regulating the use of land and designating or prohibiting specific land uses;

(2) Authorizing flexible planning standards to create, redevelop, reuse, protect and enhance the physical qualities of the community;

(3) Designating historic districts and regulating the uses of land and the design of buildings within the historic district;

(4) Establishing corridor overlay districts to achieve land design goals and regulating the uses of land within the corridor overlay districts;

(5) Establishing design standards and site plan approval procedures;

(6) Dividing the land of the governing body into different zone classifications regulating the use of land, establishing performance standards for various land uses when dividing is not desired or any combination of both;

(7) Authorizing overlay districts and special design districts within which specific additional development standards for each permitted, accessory and conditional use shall apply;

(8) Regulating the height, area, bulk, use and architectural features of buildings, including reasonable exterior architectural features and reasonable aesthetic standards for factory-built homes;

(9) Authorizing a process and standards for factory-built homes: Provided, That a governing body is prohibited from establishing a process and standards for regulating factory-built

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homes that is more restrictive than a process and standards for site-built homes;

(10) Preserving green spaces and requiring new green spaces, landscaping, screening and the preservation of adequate natural light;

(11) Regulating traffic flow and access, pedestrian flow and access, parking and loading;

(12) Identifying flood-prone areas subject to periodic flooding and regulating with specific control the permitted use, type of construction and height of floor levels above base flood elevation permitted in the area so as to lessen or avoid the hazards to persons and damage to property resulting from the accumulation of storm or flood waters;

(13) Designating an airport area and establishing land-use regulations within a specific distance from the boundaries of the airport;

(14) Authorizing planned unit developments to achieve more efficient use of land and setting standards and regulations for the developments; and

(15) Identifying, establishing and designating urban growth boundaries, as defined in section four-a, article six, chapter eight of this code, for municipalities.

(c) A zoning ordinance shall:

(1) Create a board of zoning appeals;

(2) Specify certification requirements for zoning district maps that are consistent with the governing body's comprehensive plan;

(3) Adopt procedures and requirements for nonconforming land uses;

(4) Adopt procedures and requirements for variances; and

(5) Adopt procedures and requirements for conditional use permits.

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§8A-7-3. Zoning -- Generally.

(a) A zoning ordinance may cover a county's entire jurisdiction or parts of its jurisdiction.

(b) The different zones created in a zoning ordinance by a governing body do not have to cover or include the same territory, and may overlap.

(c) Overlay districts and special design districts may have specific additional development standards for each permitted, accessory and conditional use.

(d) Each zone will be subject to the same rules, regulations, standards and designations throughout the zone, unless specific provisions are made by the governing body in the zoning ordinance. (e) Essential utilities and equipment are a permitted use in any zoning district.

(f) Several areas of a municipality or county may be classified in a zone even though the areas are not contiguous.

(g) The boundaries of each zone and the designated classifications must be shown on a zoning district map. The boundaries may only be changed after appropriate public hearing and zoning district map changes are adopted by the governing body.

(h) A governing body shall certify the original zoning district map. Subsequent versions of the zoning district map shall be certified and clearly identified with an effective date.

(i) All certified zoning district maps must be filed with the clerk of the applicable governing body, the applicable planning commission and the office of the clerk of the applicable county commission.

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§8A-7-4. Study and report on zoning.

(a) After adoption of a comprehensive plan and before enacting a zoning ordinance, a governing body with the applicable planning commission must study the land within its jurisdiction. The study may include:

(1) Evaluating the existing conditions, the character of the buildings, the most desirable use for the land and the conservation of property values in relation to the adopted comprehensive plan; and

(2) Holding public hearings and meetings with notice to receive public input.

(b) The planning commission must use the information from the study and the comprehensive plan and prepare a report on zoning. The report shall include the proposed zoning ordinance, with explanatory maps showing the recommended boundaries of each district, and the rules, regulations and restrictions for each district.

(c) No zoning ordinance may be enacted without a study and report.

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§8A-7-5. Enactment of zoning ordinance.

(a) After the study and the report, and before the governing body enacts the proposed zoning ordinance, the governing body shall hold at least two public hearings and give public notice. At least one public hearing shall be held during the day and at least one public hearing shall be held during the evening.

(b) The public notice shall be published in a local newspaper of general circulation in the area affected by the proposed zoning ordinance, as a Class II legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code, at least fourteen consecutive days prior to the public hearing. The public notice must contain the following:

(1) The date, time and place of the public hearings;

(2) That it is a public hearing on a proposed zoning ordinance;

(3) A brief summary of the principal provisions of the proposed zoning ordinance;

(4) A reference to the place where copies of the proposed zoning ordinance may be examined; and

(5) That written objections to the proposed zoning ordinance may be made and will be heard at the public hearings and must be filed with the clerk of the applicable governing body.

(c) Copies of the proposed zoning ordinance must be made available to the public, at least two weeks prior to the public hearings, at the office of the governing body and all public libraries in the area to be zoned.

(d) After the public hearings, if the governing body makes substantial amendments to the proposed zoning ordinance prior to voting on the zoning ordinance, the governing body shall hold another public hearing, after public notice. The public notice shall be as provided in subsections (b) and (c) of this section, and must contain a brief summary of the amendments.

(e) After the public hearings and any amendments, the governing body may enact the zoning ordinance or it may hold an election to have the qualified voters residing in the affected area approve the zoning ordinance.

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§8A-7-6. Filing the zoning ordinance.

After the enactment of a zoning ordinance by a governing body, the governing body shall file the enacted zoning ordinance in the office of the clerk of the county commission where the zoning ordinance applies.

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§8A-7-7. Election on a zoning ordinance.

(a) The governing body of a municipality or a county may submit a proposed zoning ordinance for approval or rejection at any primary election or general election, to the qualified voters residing:

(1) Within the entire jurisdiction of the governing body, if the proposed zoning ordinance is for the entire jurisdiction; or

(2) In the specific area to be zoned by the proposed zoning ordinance, if the proposed zoning ordinance only applies to part of the governing body's jurisdiction.

(b) The election laws of this state apply to any election on a proposed zoning ordinance.

(c) If a petition for an election on a zoning ordinance is filed with the clerk of a governing body within 90 days after the enactment of a zoning ordinance by a governing body without an election, then a zoning ordinance does not take effect until an election is held and a majority of the voters approves it. At least 10 percent of the total eligible voters in the area to be affected by the proposed zoning ordinance must sign, in their own handwriting, the petition for an election on a zoning ordinance.

(d) Notice for an election on a proposed zoning ordinance must be published in a local newspaper of general circulation in the area affected by the proposed zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 of this code.

(e) The ballots for an election on a zoning ordinance shall have the following:

/ / For Zoning

/ / Against Zoning

(f) The zoning ordinance is adopted if it is approved by a majority of the voters and is effective on the date the results of an election are declared. If a zoning ordinance is rejected, the zoning ordinance does not take effect. The governing body may submit the zoning ordinance to the voters again at the next primary or general election.

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§8A-7-8. Amendments to the zoning ordinance by the governing body.

(a) Before amending the zoning ordinance, the governing body with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.

(b) When a proposed amendment to the zoning ordinance involves a change in the zoning map classification of any parcel of land, or a change to the applicable zoning ordinance text regulations that changes the allowed dwelling unit density of any parcel of land, the governing body shall, at least thirty days prior to the enactment of the proposed amendment if there is not an election, or at least thirty days prior to an election on the proposed amendment to the zoning ordinance:

(1) Give written notice by certified mail to the landowner(s) whose property is directly involved in the proposed amendment to the zoning ordinance; and

(2) Publish notice of the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.

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§8A-7-8a. Requirements for adopting an amendment to the zoning ordinance.

(a) After the enactment of the zoning ordinance, the governing body of the municipality may amend the zoning ordinance in accordance with §8A-7-8 of this code, without holding an election.

(b) After the enactment of the zoning ordinance, the governing body of the county may amend the zoning ordinance in accordance with §8A-7-8 of this code, as follows:

(1) Without holding an election;

(2) Holding an election on the proposed amendment; or

(3) Holding an election on the proposed amendment pursuant to a petition.

(c) If the governing body of the county chooses to hold an election on the proposed amendment, then it must:

(1) Publish notice of the election and the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq*. of this code; and

(2) Hold an election on the question of adopting or rejecting the proposed amendment to the zoning ordinance at any primary or general election for the qualified voters residing in:

(A) The entire jurisdiction of the county, if the zoning ordinance applies to the entire county; or

(B) The specific area to which the zoning ordinance applies, if the zoning ordinance only applies to a part of the county.

(d) The governing body of a county must hold an election on an amendment to a zoning ordinance if a petition, signed by at least 10 percent of the eligible voters in the area to which the zoning ordinance applies, is filed:

(1) With the governing body of the county prior to enactment of an amendment to a zoning ordinance; or

(2) After the enactment of an amendment to a zoning ordinance without an election, if the petition for an election on the amendment to a zoning ordinance is filed with the governing body of the county within 90 days.

(e) The governing body of the county holding an election on the proposed amendment pursuant to a petition must:

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(1) Publish notice of the election and the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq*. of this code; and

(2) Hold an election on the question of adopting or rejecting the proposed amendment to the zoning ordinance at any primary or general election for the qualified voters residing in:

(A) The entire jurisdiction of the county, if the zoning ordinance applies to the entire county; or

(B) The specific area to which the zoning ordinance applies, if the zoning ordinance only applies to a part of the county.

(f) If an election is held, then the proposed amendment to the zoning ordinance does not take effect until a majority of the voters approve it.

(g) If an election is held and the proposed amendment to the zoning ordinance is rejected, then the proposed amendment does not take effect. The governing body of the county may resubmit the proposed amendment to the zoning ordinance to the voters at another election.

(i) The election laws of this state apply to any election on a proposed amendment to a zoning ordinance.

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§8A-7-9. Amendments to the zoning ordinance by petition.

(a) After the enactment of the zoning ordinance, the planning commission or the owners of fifty percent or more of the real property in the area to which the petition relates may petition to amend the zoning ordinance. The petition must be signed and be presented to the planning commission or the clerk of the governing body.

(b) Within sixty days after a petition to amend the zoning ordinance is received by the planning commission or the governing body, then the planning commission or the governing body must hold a public hearing after giving public notice. The public notice of the date, time and place of the public hearing must be published in a local newspaper of general circulation in the area affected by the proposed zoning ordinance, as a Class I legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code, at least fifteen days prior to the public hearing.

(c) If the petition to amend the zoning ordinance is from the owners of fifty percent or more of the real property in the area, then before amending the zoning ordinance, the governing body with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.

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§8A-7-10. Effect of enacted zoning ordinance.

(a) After enactment of a zoning ordinance by a municipality or county, all subsequent land development shall be done in accordance with the provisions of the zoning ordinance.

(b) All zoning ordinances, and all amendments, supplements and changes thereto, legally adopted under any prior enabling acts, and all actions taken under the authority of any such ordinances, are hereby validated and continued in effect until amended or repealed by action of the governing body of the municipality or the county taken under authority of this article. These ordinances shall have the same effect as though previously adopted as a comprehensive plan of land use or parts thereof.

(c) Land, buildings or structures in use when a zoning ordinance is enacted may continue the same use and that use may not be prohibited by the zoning ordinance so long as the use of the land, buildings or structures is maintained, and no zoning ordinance may prohibit alterations or additions to or replacement of buildings or structures owned by any farm, industry or manufacturer, or the use of land presently owned by any farm, industry or manufacturer but not used for agricultural, industrial or manufacturing purposes, or the use or acquisition of additional land which may be required for the protection, continuing development or expansion of any agricultural, industrial or manufacturing operation of any present or future satellite agricultural, industrial or manufacturing use. A zoning ordinance may provide for the enlargement or extension of a nonconforming use, or the change from one nonconforming use to another.

(d) If a use of a property that does not conform to the zoning ordinance has ceased and the property has been vacant for one-year, abandonment will be presumed unless the owner of the property can show that the property has not been abandoned: *Provided*, That neither the absence of natural resources extraction or harvesting nor the absence of any particular agricultural, industrial or manufacturing process may be construed as abandonment of the use. If the property is shown to be abandoned, then any future use of the land, buildings or structures shall conform with the provisions of the zoning ordinance regulating the use where the land, buildings or structures are located, unless the property is a duly designated historic landmark, historic site or historic district.

(e) Nothing in this chapter authorizes an ordinance, rule or regulation preventing or limiting, outside of municipalities or urban areas, the complete use (i) of natural resources by the owner; or (ii) of a tract or contiguous tracts of land of any size for a farm or agricultural operation as defined in §19-19-2 by the owner. For purposes of this article, agritourism includes, but is not limited to, the definition set forth in §19-36-2.

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§8A-7-11. Variance.

(a) A variance is a deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.

(b) The board of zoning appeals shall grant a variance to the zoning ordinance if it finds that the variance:

(1) Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;

(2) Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance;

(3) Would eliminate an unnecessary hardship and permit a reasonable use of the land; and

(4) Will allow the intent of the zoning ordinance to be observed and substantial justice done.

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§8A-7-12. Validation of prior zoning ordinance.

All zoning ordinances, all amendments, supplements and changes to the ordinance, legally adopted under prior acts, and all action taken under the authority of the ordinance, are hereby validated and the ordinance shall continue in effect until amended or repealed by action of the governing body taken under authority of this article.

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§8A-7-13. Process to replace nontraditional zoning ordinance.

(a) A governing body that has adopted or enacted a nontraditional zoning ordinance may replace the nontraditional zoning ordinance with a zoning ordinance. A nontraditional zoning ordinance may be replaced with a zoning ordinance by:

(1) The governing body; or

(2) A petition by the voters in the affected area. If the voters petition to replace the nontraditional zoning ordinance with a zoning ordinance, then the provisions of this section and this chapter shall be followed.

(b) At least 10 percent of the total eligible voters in the affected area may petition the governing body to replace the nontraditional zoning ordinance with a zoning ordinance. The petition must include:

(1) The governing body's name to which the petition is addressed;

(2) The reason for the petition, including:

(A) Replacing the nontraditional zoning ordinance with a zoning ordinance; and

(B) That the question of replacing the nontraditional zoning ordinance with a new zoning ordinance be put to the voters of the affected area; and

(3) Signatures in ink or permanent marker.

(c) Each person signing the petition must be a registered voter in the affected area and in the governing body's jurisdiction. The petition must be delivered to the clerk of the affected governing body. There are no time constraints on the petition.

(d) Upon receipt of the petition with the required number of qualifying signatures, the governing body shall place the question on the next primary or general election ballot.

Notice for an election on replacing a zoning ordinance must be published in a local newspaper of general circulation in the area affected by the nontraditional zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq*. of this code.

(e) The ballots for an election on replacing a zoning ordinance shall have the following:

"Shall _____ (name of governing body) replace _____ (name of commonly known nontraditional zoning ordinance) with a zoning ordinance?

___ Yes ___ No"

(f) Upon a majority vote of the voters voting in favor of replacing a nontraditional zoning

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ordinance with a zoning ordinance, the governing body shall immediately begin the process of adopting and enacting a zoning ordinance, in accordance with the provisions of this chapter. The governing body has a maximum of three years from the date of the election to adopt a zoning ordinance.

(g) The governing body may amend its nontraditional zoning ordinance during the process of adopting and enacting a zoning ordinance.

(h) If a majority of the voters reject replacing the nontraditional zoning ordinance with a zoning ordinance, the affected voters may not petition for a vote on the issue for at least two years from the date of the election.

(i) Nothing in this section shall prevent a governing body from amending its zoning ordinance in accordance with this chapter.

(j) If a governing body of a county chooses to replace a nontraditional zoning ordinance with a traditional zoning ordinance without holding an election, a petition, signed by at least 10 percent of the eligible voters who reside in the area affected by the zoning ordinance, for an election on the question of adopting a traditional zoning ordinance may be filed with the governing body of the county within 90 days after the enactment of the traditional zoning ordinance by the governing body of the county. If a petition is timely filed, then the traditional zoning ordinance does not take effect until:

(1) Notice of the election and the zoning ordinance is published in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq*. of this code;

(2) An election is held; and

(3) A majority of the voters approve it.

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