

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3215

By Delegate Riley

[Introduced February 02, 2023; Referred to the
Committee on Economic Development and Tourism]

1 A BILL to amend and reenact §8A-1-2, §8A-2-7, §8A-4-2, §8A-5-1, §8A-5-3, §8A-5-6, §8A-5-8,
2 §8A-8-4, and §8A-8-5, of the Code of West Virginia, 1931, as amended, all relating to land
3 use planning; modifying definitions; modifying the frequency of planning commission
4 meetings; clarifying contents of subdivision and land development ordinances; addressing
5 jurisdiction of planning commission; clarifying process for minor proposals; modifying
6 provisions related to approval of major proposals; providing for flexibility in qualifications
7 for county boards of zoning appeals; and modifying frequency of board of zoning appeals
8 meetings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§8A-1-2. Definitions.

1 As used in this chapter, the following words and terms have the following meanings, unless
2 the context clearly indicates otherwise:

3 (a) "Abandonment" means the relinquishment of property or a cessation of the use of the
4 property by the owner or lessee without any intention of transferring rights to the property to
5 another owner or resuming the nonconforming use of the property for a period of one year.

6 (b) "Aggrieved" or "aggrieved person" means a person who:

7 (1) Is denied by the planning commission, board of subdivision and land development
8 appeals, or the board of zoning appeals, in whole or in part, the relief sought in any application or
9 appeal; or

10 (2) Has demonstrated that he or she will suffer a peculiar injury, prejudice or inconvenience
11 beyond that which other residents of the county or municipality may suffer.

12 (c) "Comprehensive plan" means a plan for physical development, including land use,
13 adopted by a governing body, setting forth guidelines, goals and objectives for all activities that
14 affect growth and development in the governing body's jurisdiction.

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

19 (e) "Contiguous" means lots, parcels, municipal boundaries or county boundaries that are
20 next to, abutting and having a boundary, or portion thereof, that is coterminous. Streets, highways,
21 roads or other traffic or utility easements, streams, rivers, and other natural topography are not to
22 be used to determine lots, parcels, municipal boundaries or county boundaries as contiguous.

23 (f) "Essential utilities and equipment" means underground or overhead electrical, gas,
24 communications not regulated by the federal communications commission, water and sewage
25 systems, including pole structures, towers, wires, lines, mains, drains, sewers, conduits, cables,
26 fire alarm boxes, public telephone structures, police call boxes, traffic signals, hydrants, regulating
27 and measuring devices and the structures in which they are housed, and other similar equipment
28 accessories in connection therewith. Essential utility equipment is recognized in three categories:

- 29 (1) Local serving;
30 (2) Nonlocal or transmission through the county or municipality; and
31 (3) Water and sewer systems, the activities of which are regulated, in whole or in part, by
32 one or more of the following state agencies:

- 33 (A) Public service commission; or
34 (B) Department of environmental protection; or
35 (C) The Department of Health and Human Resources.

36 (g) "Existing use" means use of land, buildings or activity permitted or in existence prior to
37 the adoption of a zoning map or ordinances by the county or municipality. If the use is
38 nonconforming to local ordinance and lawfully existed prior to the adoption of the ordinance, the
39 use may continue to exist as a nonconforming use until abandoned for a period of one year:

40 *Provided*, That in the case of natural resources, the absence of natural resources extraction or
41 harvesting is not abandonment of the use.

42 (h) "Exterior architectural features" means the architectural character and general
43 composition of the exterior of a structure, including, but not limited to, the kind, color and texture of
44 the building material, and the type, design and character of all windows, doors, massing and
45 rhythm, light fixtures, signs, other appurtenant elements and natural features when they are
46 integral to the significance of the site, all of which are subject to public view from a public street,
47 way or place.

48 (i) "Factory-built homes" means modular and manufactured homes.

49 (j) "Flood-prone area" means any land area susceptible to repeated inundation by water
50 from any source.

51 (k) "Governing body" means the body that governs a municipality or county.

52 (l) "Historic district" means a geographically definable area, designated as historic on a
53 national, state or local register, possessing a significant concentration, linkage or continuity of
54 sites, buildings, structures or objects united historically or aesthetically by plan or physical
55 development.

56 (m) "Historic landmark" means a site, building, structure or object designated as historic on
57 a national, state or local register.

58 (n) "Historic site" means the location of a significant event, a prehistoric or historic
59 occupation or activity, or a building or structure whether standing, ruined or vanished, where the
60 location itself possesses historical, cultural or archaeological value regardless of the value of any
61 existing structure and designated as historic on a national, state or local register.

62 (o) "Improvement location permit" means a permit issued by a municipality or county, in
63 accordance with its subdivision and land development ordinance, for the construction, erection,
64 installation, placement, rehabilitation or renovation of a structure or development of land, and for
65 the purpose of regulating development within flood-prone areas.

66 (p) "Infill development" means to fill in vacant or underused land in existing communities
67 with new development that blends in with its surroundings.

68 (q) "Land development" means the ~~development~~ alteration or improvement of one or more
69 lots, tracts or parcels of land by any means and for any purpose, but does not include easements,
70 rights-of-way or construction of private roads for extraction, harvesting or transporting of natural
71 resources.

72 (r) "Manufactured home" means housing built in a factory according to the federal
73 manufactured home construction and safety standards effective June 15, 1976.

74 (s) "Modular home" means housing built in a factory that meets state or local building
75 codes where the homes will be sited.

76 (t) "Non-traditional zoning ordinance" means an ordinance that sets forth development
77 standards and approval processes for land uses within the jurisdiction, but does not necessarily
78 divide the jurisdiction into distinct zoning classifications or districts requiring strict separation of
79 different uses, and does not require a zoning map amendment.

80 (u) "Permitted use" means any use allowed within a zoning district, subject to the
81 restrictions applicable to that zoning district and is not a conditional use.

82 (v) "Plan" means a written description for the development of land.

83 (w) "Planning commission" means a municipal planning commission, a county planning
84 commission, a multicounty planning commission, a regional planning commission or a joint
85 planning commission.

86 (x) "Plat" means a map of the land development that becomes its official recorded
87 representation in the office of the clerk of the county commission where a majority of the land to be
88 developed lies.

89 (y) "Preferred development area" means a geographically defined area where incentives
90 may be used to encourage development, infill development or redevelopment in order to promote
91 well designed and coordinated communities.

92 (z) "Public place" means any lots, tracts or parcels of land, structures, buildings or parts
93 thereof owned or leased by a governing body or unit of government.

94 (aa) "Sprawl" means poorly planned or uncontrolled growth, usually of a low-density
95 nature, within previously rural areas, that is land consumptive, auto-dependent, designed without
96 respect to its surroundings, and some distance from existing development and infrastructure.

97 (bb) "Streets" means streets, avenues, boulevards, highways, roads, lanes, alleys and all
98 public ways.

99 (cc) "Subdivision or partition" means the division of a lot, tract or parcel of land into two or
100 more lots, tracts or parcels of land, or the recombination of existing lots, tracts, or parcels.

101 (dd) "Unit of government" means any federal, state, regional, county or municipal
102 government or governmental agency.

103 (ee) "Urban area" means all lands or lots within the jurisdiction of a municipal planning
104 commission.

105 (ff) "Utility" means a public or private distribution service to the public that is regulated by
106 the Public Service Commission.

107 (gg) "Zoning" means the division of a municipality or county into districts or zones which
108 specify permitted and conditional uses and development standards for real property within the
109 districts or zones.

110 (hh) "Zoning map" means a map that geographically illustrates all zoning district
111 boundaries within a municipality or county, as described within the zoning ordinance, and which is
112 certified as the official zoning map for the municipality or county.

ARTICLE 2. PLANNING COMMISSIONS.

§8A-2-7. Planning commission meetings.

1 (a) A When there is business to conduct, a planning commission shall meet at least
2 quarterly. In any event, a planning commission shall meet at least semiannually and may meet
3 more frequently at the request of the president or by two or more members.

4 (b) Notice for a special meeting must be in writing, include the date, time and place of the
5 special meeting, and be sent to all members at least two days before the special meeting.

6 (c) Written notice of a special meeting is not required if the date, time and place of the
7 special meeting were set in a regular meeting.

ARTICLE 4. SUBDIVISION AND LAND DEVELOPMENT ORDINACE.

§8A-4-2. Contents of subdivision and land development ordinance.

1 (a) A subdivision and land development ordinance shall include the following provisions:

2 (1) A minor subdivision or land development process, including criteria, requirements and
3 a definition of minor subdivision;

4 (2) The authority of the planning commission and its staff to approve a minor subdivision or
5 land development;

6 (3) A major subdivision or land development process, including criteria and requirements;

7 (4) The authority of the planning commission to approve a major subdivision or land
8 development;

9 (5) The standards for setback requirements, lot sizes, streets, sidewalks, walkways,
10 parking, easements, rights-of-way, drainage, utilities, infrastructure, curbs, gutters, street lights,
11 fire hydrants, storm water management and water and wastewater facilities;

12 (6) Standards for flood-prone or subsidence areas;

13 (7) A review process for subdivision or land development plans and plats by the planning
14 commission;

15 (8) An approval process for subdivision or land development plans and plats by the
16 planning commission, including the authority to approve subdivision or land development plans
17 and plats with conditions;

18 (9) A process to amend final approved subdivision or land development plans and plats;

19 (10) A requirement that before development of the land is commenced, subdivision and
20 land development plans and plats must be approved by the applicable planning commission, in
21 accordance with the comprehensive plan, if a comprehensive plan has been adopted;

22 (11) A requirement that after approval of the subdivision or land development plat by the
23 planning commission or by the planning commission staff if approval has been appropriately
24 delegated to staff, and before ~~the subdivision or development of the land~~ any construction on the
25 land is commenced, the subdivision and land development plat shall be recorded in the office of
26 the clerk of the county commission where a majority of the land to be developed lies;

27 (12) A schedule of fees to be charged which are proportioned to the cost of checking and
28 verifying proposed plats;

29 (13) The process for granting waivers from the minimum standards of the subdivision and
30 land development ordinance;

31 (14) Improvement location permit process, including a requirement that a structure or
32 development of land is prohibited without an improvement location permit;

33 (15) The acceptable methods of payment to cover the cost of the water and sewer service
34 infrastructure, which can include, but are not limited to, bonds, impact fees, escrow fees and
35 proffers;

36 (16) The process for cooperating and coordinating with other governmental agencies
37 affected by the subdivision and land development and use; and

38 (17) Penalties for violating the subdivision and land development ordinance.

39 (b) A subdivision and land development ordinance may include the following provisions:

40 (1) Establishing a board of subdivision and land development appeals with the same
41 powers, duties and appeals process as set out for the board of zoning appeals under the
42 provisions of article eight of this chapter;

43 (2) Requirements for green space, common areas, public grounds, walking and cycling
44 paths, recreational trails, parks, playgrounds and recreational areas;

45 (3) Encourage the use of renewable energy systems and energy-conserving building
46 design;

47 (4) Vested property right, including requirements;

48 (5) Exemptions of certain types of land development from the subdivision and land
49 development ordinance requirements, including, but not limited to, single-family residential
50 structures and farm structures; and

51 (6) Any other provisions consistent with the comprehensive plan the governing body
52 considers necessary.

53 (c) All requirements, for the vesting of property rights contained in an ordinance enacted
54 pursuant to this section that require the performance of any action within a certain time period for
55 any subdivision or land development plan or plat valid under West Virginia law and outstanding as
56 of January 1, 2010, shall be extended until July 1, 2012, or longer as agreed to by the municipality,
57 county commission or planning commission. The provisions of this subsection also apply to any
58 requirement that a use authorized pursuant to a special exception, special use permit, conditional
59 use permit or other agreement or zoning action be terminated or ended by a certain date or within
60 a certain number of years.

ARTICLE 5. SUBDIVISION OR LAND DEVELOPMENT PLAN AND PLAT.

§8A-5-1. Jurisdiction of planning commissions.

1 (a) A planning commission has the authority to:

2 (1) Approve a minor subdivision or land development application within its jurisdiction;

3 (2) Exempt an application for a minor subdivision or land development within its
4 jurisdiction; and

5 (3) Approve a major subdivision or land development application within its jurisdiction.

6 (b) The staff of a planning commission has the authority to approve a minor subdivision or
7 land development application within its jurisdiction, if granted such authority by the governing body
8 in the subdivision and land development ordinance.

9 (c) If a subdivision or land development plan and plat cannot be approved through the
10 minor subdivision or land development process, then an applicant must use the major subdivision
11 or land development approval process.

12 (d) If a governing body has adopted detailed standards for final plats as part of a
13 subdivision and land development ordinance, the planning commission may delegate to its staff
14 the authority to approve preliminary or provisional land development plan or subdivision plat that is
15 consistent with the adopted standards for final plats and the requirements of the adopted
16 subdivision and land development ordinance.

17 (e) The planning commission may delegate to its staff the authority to determine
18 completeness, phasing, changes, and technical review for major subdivisions or land
19 development applications, if a governing body has adopted detailed process provisions,
20 procedures, or checklists for major subdivisions or land development applications: *Provided*, That
21 a staff review does not take longer than would a planning commission review. Any applicant may
22 request, in writing to the planning commission, that such a delegated review shall revert to a
23 planning commission review, in which case the time required for review begins at the date of the
24 request.

§8A-5-3. Application for minor subdivision or land development.

1 (a) An applicant submits a copy of a land development plat and the fees to the planning
2 commission having jurisdiction over the land.

3 (b) Within seven days after the submission of the subdivision or land development plat, ~~the~~
4 ~~applicant and~~ the staff of the planning commission shall offer to meet with the applicant to discuss
5 the proposed subdivision or land development and the criteria used to classify the proposal as
6 minor: *Provided*, That if the applicant requests such a meeting, staff shall meet with the applicant
7 to discuss the proposed subdivision or land development and the criteria used to classify the
8 proposal as minor.

9 (c) The staff of the planning commission may make a site inspection of the proposed
10 subdivision or land development.

11 (d) Within ten days after the submission of the subdivision or land development plat or
12 within five days of the meeting, between the planning commission staff and the applicant,
13 whichever comes later, the staff of the planning commission shall notify the applicant in writing ~~that~~
14 whether the proposed subdivision or land development has been classified a minor subdivision or
15 land development.

PART II. MAJOR SUBDIVISION OR LAND DEVELOPMENT PROCESS.

§8A-5-6. Application for major subdivision or land development.

1 (a) An applicant for approval of a major subdivision or land development plan and plat shall
2 submit written application, a copy of the proposed land development plan and plat, and the fees to
3 the planning commission having jurisdiction over the land.

4 (b) Within ~~forty-five~~ 45 days after receipt of the application, the planning commission, or its
5 staff if the planning commission has delegated such authority, shall review the application for
6 completeness and either accept or deny it: Provided, That if the planning commission's next
7 regularly scheduled meeting that would meet public notice requirements is scheduled within 60
8 days of receipt of the application, it may review the application for completeness and either accept
9 or deny it at its next regularly scheduled meeting.

10 (c) If the application is not complete, then the planning commission may deny the
11 application and must notify the applicant in writing stating the reasons for the denial.

§8A-5-8. Approval of major subdivision or land development plans and plats.

1 (a) Upon written request of the applicant for a determination, the planning commission
2 must determine by vote at the next regular meeting or at a special meeting, whether or not the
3 application is complete based upon a finding that the application meets the requirements set forth
4 in its governing body's subdivision and land development ordinance. The planning commission
5 may delegate this review to planning commission staff.

6 (b) If a governing body's subdivision and land development ordinance does not specify
7 what may be included in a land development plan and plat, then the planning commission must
8 determine that an application is complete if the application meets the requirements set forth in
9 subsection (b), section seven of this article.

10 (c) At a meeting where the application is determined to be complete, the planning
11 commission must set a date, time and place for a public hearing and a meeting to follow the public
12 hearing to vote on the application. The public hearing must be held within 45 days: Provided, That
13 if the planning commission's next regularly scheduled meeting that would meet public notice
14 requirements is scheduled within 60 days of receipt of the application, it may hold the public
15 hearing at its next regularly scheduled meeting. ~~and the~~ The planning commission ~~must~~ shall
16 notify the applicant of the public hearing and meeting in writing unless notice is waived in writing by
17 the applicant. The planning commission must publish a public notice of the public hearing and
18 meeting in a local newspaper of general circulation in the area at least ~~twenty-one~~ 21 days prior to
19 the public hearing.

20 (d) At a meeting at the conclusion of the public hearing or a meeting held within fourteen
21 days after the public hearing, the planning commission shall vote to approve, deny or hold the
22 application.

23 (e) The application may be held for additional information necessary to make a
24 determination. An application may be held for up to forty-five days.

25 (f) The planning commission shall approve the application after the planning commission
26 determines that an application is complete and meets the requirements of the governing body's
27 subdivision and land development ordinance; or if the governing body does not have a subdivision
28 and land development ordinance or if the subdivision and land development ordinance does not
29 specify what may be included in a subdivision or land development plan and plat, that the
30 application meets the requirements set forth in subsection (b) section seven of this article.

31 (g) If the planning commission approves the application, then the planning commission
32 shall affix its seal on the subdivision or land development plan and/or plat.

33 (h) If the planning commission approves the application with conditions, then the planning
34 commission must specify those conditions.

35 (i) If the planning commission denies the application, then the planning commission shall
36 notify the applicant in writing of the reasons for the denial. The applicant may request, one time, a
37 reconsideration of the decision of the planning commission, which request for reconsideration
38 must be in writing and received by the planning commission no later than ten days after the
39 decision of the planning commission is received by the applicant.

ARTICLE 8. BOARD OF ZONING APPEALS.

§8A-8-4. County board of zoning appeals.

1 (a) A county board of zoning appeals shall have five members to be appointed by the
2 governing body of the county.

3 (b) The members of a county board of zoning appeals must be:

4 (1) Residents of the county for at least three years preceding his or her appointment;

5 (2) Cannot be a member of the county planning commission; and

6 (3) Cannot hold any other elective or appointive office in ~~the county~~ that county's
7 government: Provided, That a member of the county board of zoning appeals may also serve as a
8 member of the county board of subdivision and land development appeals.

9 (c) Where only a portion of the county is zoned, the members of the board of zoning
10 appeals for that part of the county that is zoned, must be:

11 (1) Residents of that part of the county that is zoned for at least three years preceding his or
12 her appointment;

13 (2) Cannot be a member of the county planning commission; and

14 (3) Cannot hold any other elective or appointive office in the county government: Provided,
15 That a member of the county board of zoning appeals may also serve as a member of the county
16 board of subdivision and land development appeals.

17 (d) Upon the creation of a board of zoning appeals, the members shall be appointed for the
18 following terms: One for a term of one year; two for a term of two years; and two for a term of three
19 years. The terms shall expire on January 1, of the first, second and third year, respectively,
20 following their appointment. Thereafter, members shall serve three-year terms. If a vacancy
21 occurs, the governing body of the county shall appoint a member for the unexpired term.

22 (e) The governing body of the county may appoint up to three additional members to serve
23 as alternate members of the county board of zoning appeals. The alternate members must meet
24 the same eligibility requirements as set out in subsection (b) or subsection (c) of this section, as
25 applicable. The term for an alternate member is three years. The governing body of the county
26 may appoint alternate members on a staggered term schedule.

27 (f) An alternate member shall serve on the board when one of the regular members is
28 unable to serve. The alternate member shall serve until a final determination is made in the matter
29 to which the alternate member was initially called on to serve.

30 (g) The county board of zoning appeals shall establish rules and procedures for
31 designating an alternate member. An alternate member shall have the same powers and duties of
32 a regular board member.

33 (h) The members and alternate members of a county board of zoning appeals shall serve
34 without compensation, but shall be reimbursed for all reasonable and necessary expenses
35 actually incurred in the performance of their official duties.

§8A-8-5. Board of zoning appeals meetings.

1 (a) A When there is business to conduct, a board of zoning appeals shall meet at least
2 semiannually, quarterly and may meet more frequently at the written request of the chairperson or
3 by two or more members.

4 (b) Notice for a special meeting must be in writing, include the date, time and place of the
5 special meeting, and be sent to all members at least two days before the special meeting.

6 (c) Written notice of a special meeting is not required if the date, time and place of the
7 special meeting were set in a regular meeting.

NOTE: The purpose of this bill relates to land use planning. The bill provides flexibility in timelines to allow planning commissions to promptly address applications; and addresses difficulties with finding qualified members for public boards. It modifies definitions; modifies the frequency of planning commission meetings; clarifies contents of subdivision and land development ordinances; addresses jurisdiction of planning commission; clarifies process for minor proposals; modifies provisions related to approval of major proposals; provides for flexibility in qualifications for county boards of zoning appeals; and modifies frequency of board of zoning appeals meetings.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.