John A. Cutlip

technical critique:

ZONING ORDINANCE
SHENANDOAH COUNTY

SPECIAL REPORT TO THE COMMISSIONERS

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TABLE OF CONTENTS
ZONING ORDINANCE CRITIQUE
SHENANDOAH COUNTY, VIRGINIA

TABLE OF CONTENTS
ZONING ORDINANCE CRITIQUE
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INTRODUCTION

PURPOSE OF REPORT

This document critically examines the Proposed Zoning Ordinance of Shenandoah County, Virginia, as Revised June, 1975. The examination is based on a review of the technical content, the structural organization, and the feasibility of the Proposed Ordinance as a reasonable land use control document. This firm herein presents recommendations for further research and revisions on the ordinance as well as suggestions for strengthening the relationship between comprehensive planning and zoning.

AUTHORIZATION

The firm of Rosser H. Payne and Associates has prepared this critique document under the authorization and approval of the Shenandoah County Planning Commission and Board of Supervisors (November 13, 1975).

ORGANIZATION OF REPORT

The document format is divided into topical headings, referred to therein as Critique Items. The individual Critique Items are listed below in the order in which they occur in the document:

- Critique Item 1: Introduction to Zoning Ordinance, Shenandoah County.
- Critique Item 2: Article 1; Definitions, Zoning Ordinance, Shenandoah County
- Critique Item 3: General Outline, Format of Zoning Ordinance, Districts and Regulations
- Critique Item 4: District Categories; Establishment and Organization of Proposed Zones
- Critique Item 5: Sign Regulation (Article 10)
- Critique Item 6: Nonconforming Uses (Article 11)
- Critique Item 7: General Provisions (Article 12)
- Critique Item 8: Provisions for Appeal
  Violations and Penalty
  Amendments
  Administration
  (Articles 13-16)

Critique Item 1 : Introduction to Zoning Ordinance, Shenandoah County

A. Introductory Statement Title

The statement of introduction to the ordinance is not entitled as such. In order that the lay reader not be confused as to the content of this opening statement, heading clarity may be achieved by specifying this section as either Statement of Intent and Purpose or Title and Purpose.

It is not necessary to number this section as the initial article of the ordinance. In such case the numerical designation may be replaced by the words "Title" and followed by "Statement of Intent and Purpose".

B. Material Content

1. The proposed Shenandoah County ordinance cites four subject areas which district regulations may embrace. The wording of these are compatible with that found in paragraphs (a) - (d) of the Virginia Code § 15.1-486. Added to these, the most recent (1973) replacement volume of the Code cites a paragraph (e): "Sedimentation and soil erosion from non-agricultural lands."

   This firm suggests that this wording be included in the local ordinance proposed for adoption. The purpose of erosion and sedimentation control measures should not be overlooked insofar as their relation to zoning. By setting forth this

purpose initially, an organic tie is established in the land use-zoning-site plan-erosion and sedimentation balance of controls.

2. The final paragraph of the introductory section states six parameters (a-f) which the ordinance has been designed to address. These are essentially those which are reproduced under §15.1-489 of the Virginia Code. A seventh item is now included in this section which states: "(7) to encourage economic development activities that provide desirable employment and enlarge the tax base."

Since the adopted Comprehensive Plan for the County includes similarly created wording as an industrially related goal and objective, the Planning Commission may wish to consider including item (7), §15.1-489 in the local ordinance.

Critique Item 2 : Article 1- Definitions, Zoning Ordinance, Shenandoah County

This firm's reading of the proposed ordinance revealed a common weakness inherent to most zoning documents prepared in the State: incompleteness and impreciseness of the listed definitions. The proposed Shenandoah County document contains eighty defined words in Article 1. Recent ordinances, prepared for similarly sized and populated counties, contain well over two hundred essential definitions. Urban county ordinances can contain, in some cases, twice that number.

The scope of definitions should cover (1) all uses stated within the various district regulations, (2) the districts themselves, (3) the prefix word to regulation headings relating to an individual district, (4) persons, governing bodies, or formally consolidated entities whose activities are related to the function of the ordinance, and (5) any words pertaining to tangible items and/or intangible concepts or processes which could be misconstrued and/or misinterpreted without the benefit of a reliable definition. To highlight the significance of these points, the following examples are offered:

1. Within the Conservation District, C-1 article, a list of permitted uses are specified. These include (a) conservation preserves and historical areas, (b) lodges, hunting clubs, etc., (c) general farming, agriculture, dairying, and forestry, among others. Each of these permissible uses can

be interpreted widely as to the scope and degree to which such operations may be implemented by right. A lodge cannot be differentiated from a motel, hotel, or boarding house without relating to it, by definition, certain delimiting use parameters. In a similar fashion, a conservation preserve cannot be distinguished from a recreational community or a general forestry operation from a formal logging and/or milling industry. The definition must clearly embrace the reasonable aspects of what the Commission desires to be permitted for a specific use. In areas where, without definition, a given use may be confused for another which is not necessarily desirable, then it would be proper to individually define and include the differentiating elements of each use within the derived definitions.

While it is inconceivable to assume that every use-oriented definition can be predicted for inclusion in the local ordinance, it is of paramount importance to state commonplace ones which are reasonably debatable and subject to interrogation.

2. Any new ordinance has affixed to it a "pioneering" image. General lay response will address the specific districts or "zones" from an interpretative standpoint: "What is conservation...agriculture...business...residential?" "How do they differ?" etc.

As such, it is recommended that further attention be given to defining words of this type within Article 1 and outside of the context of Statement of Intent for each district.

3. The proposed ordinance contains well structured definitions for most of the modifying words for the various district regulations. Except where stated elsewhere in this report, these specific definitions as they now exist are assumed appropriate.

4. A number of definitions should be included to adequately define persons, consolidated agencies, and governing bodies who are in contact with the zoning process and who are mentioned within the local ordinance. These include: "engineer, professional", "planner", "developer", "landscape architect", "architect, registered", "surveyor, certified land", "Board (Board of Supervisors)", "Inspector, building (state or local)", "Agent (site plan enforcement)", "V.D.H. (Virginia Department of Highways)", "S.C.S. (Soil Conservation Service)", among others.

5. "Catchall" definitions remain the most easily overlooked in ordinance preparation. These include the subjects of subordinate uses, specific use modifiers, zoned related processes and activities, land use concepts, relevant documents, administrative items, procedural specifics, and the like. Among the most important not included in the proposed ordinance are: "access", "amendment", "buffer", "building permit", "districts", "easement", "floodplain", "home owner's association", "loading space", "mobile home", "parking space", "plat", "special use permit", seven independent definitions of "street" types, "semi-public", "watershed", and "zone", among others.

should be in Zoning & Subdivision ordinance as also for Subd. ord. & Comprehensive Plan to Zoning.

Definitions in the ordinance cannot be taken lightly. Without completeness, clarity, and conciseness, a myriad of technical and legal difficulties can arise regarding the interpretation of and intent of any given ordinance section. Where words or terms are not defined, the only recourse is for the interpreter to give its plain, ordinary and usually understood meaning.

The examples included herein refer to certain words which this firm has found to be problematic in nature. Absence of definitions for these result in placing the reader in a position whereby he has to define the word in the context of its position in the ordinance. Context is the critical aspect of definition interpretation when no definitions exist. Oftentimes the "usually understood meaning" is not at all relevant when taken in the context of a legal document.

The tendency exists, therefore, in the absence of definition, for the word to be interpreted as it serves to favor the interpreter. Since ordinance effectuation is a multi-party process, the inherent dangers of this are readily apparent. A recent court decision ruling which emphasizes "wording meaning" is reproduced below. It is an excellent example of the potential pitfalls impacting a jurisdiction:

> "Statutes and ordinances must be given their plain and obvious meaning, and it must be assumed that the legislative body knew the plain and ordinary meaning of the words used. Words used in a zoning ordinance should be given their broadest meaning where there is no definition or clear intent to the contrary and ordinances should be interpreted in favor of the property owner."

When appropriate definitions are lacking in the ordinance and a substantive complaint exists, the court is the only forum for arbitration. When such situations can be averted (in this case, by further study and investigation) it, indeed, is wise to do so. A court can only speculate as to what such undefined terms mean. Having no standards for judging legislative motive (in zoning matters), courts acknowledge that they are trending on subjective grounds.

Critique Item 3 : General Outline Format of Zoning Ordinance; Districts and Regulations

The overall structure (outline) of the individual districts and their appurtenant regulations is well conceived and organized. A few suggestions are recommended for incorporation into this format which will enhance the "flow" of the document and its desired readability.

1. The "use regulations" section should be divided between (a) Permitted Uses and (b) Special Permit Uses. The proposed ordinance employs the wording "conditional use permit" as the grant of right for special uses. "Conditional Use" is inappropriate language and should be substituted with "Special Use". (A more detailed discussion of special uses is found in a subsequent section.)
2. The format should be revised as suggested below, using the Conservation District as the example:

ARTICLE 3: Conservation, C-1

3-1 STATEMENT OF INTENT

(This district.....etc.)

3-2 USE REGULATIONS

(In this district.....etc.)

3-2-1 USES PERMITTED BY RIGHT

(1) (list uses)
(2)
(3) etc.

3-2-2 SPECIAL PERMIT USES

(1) (list uses)
(2)
(3) etc.

3-3 AREA REGULATIONS

3-4 SET BACK REGULATIONS

etc.

The example outline should be followed for all of the districts to be included in the local ordinance. The suggested reorganization of the "use regulations" should assist in diminishing misinterpretations and oversights to the reader in differentiating between uses by right and those by permit.

Critique Item 4 : District Categories; Establishment and Organization of Proposed Zones

The proposed ordinance has delineated six land use districts, plus provision for a planned unit development (P.U.D.) alternative for certain districts. This firm's analysis of the individual districts examined the following questions:

A. Are the prescribed number of districts sufficient to take care of the existing and anticipated land uses in Shenandoah County?

B. Are the minimum area requirements allocated to each district appropriate in light of (a) described intent of the district, (b) uses permitted, (c) physical relationships between the various types of districts, and (d) the specific characteristics of the land proposed to be included in the district?

C. Are the uses permitted by right and permitted by use permit organized, constructed, and designed to be compatible with the given district, as defined in its Statement of Intent?

D. Are the various regulations (yard, frontage, setback, etc.) organized, constructed, and designed to be compatible with the given district as defined in its Statement of Intent and with the area regulations prescribed for that district?

E. Do the districts reflect the overall thesis of the comprehensive plan's treatment of land use categories vis-a-vis the defined Statement of Intent incorporated into the districts?

The answers to these queries are extensive and will be discussed in detail for each district. A general comment, however, should precede these findings: There is really no standard rule which can be followed for the number of district types that ought to be provided for in a given jurisdiction. Historically, the ordinances for rural areas have recognized the "big three" categories (residential, business, and industrial) without extensive treatment of and differentiation among the sub-classifications of uses that exist therein. Thus, as a jurisdiction develops, it is necessary to examine existing and proposed growth patterns and then to devise appropriate district categories and regulations to accommodate most land uses.

The ultimate decision as to the number of desired districts is left to the locality and must be based upon reasonable and defensible justifications. An ordinance can easily be cluttered with a broad set of district designations which can confuse and confound local land use decisions. On the other hand, a county with too few districts is leaving itself vulnerable to attacks that the districts are arbitrary, inconcise and incapable of adequately directing development and sound land use. If this, in fact, is the case, a jurisdiction is no better off than if it had no ordinance.

The proposed ordinance for Shenandoah lists the following districts:

- Conservation; C-1
- Agriculture; A-1
- Residential; R-1
- Business, Local; B-1
- Business, General; B-2
- Industrial; M-1

The subsequent sections examine each of the above individually in the framework of the questions outlined:

1. Conservation; C-1 (Article 3)

The relation between the Comprehensive Plan and the conservation district's Statement of Intent is closely correlated.

From the Plan: "Conservation...The areas shown on the Plan map as conservation are delineated on the basis of unfavorable topography, undesirable soils, and public forestlands. They play an important role in the preservation of Shenandoah's natural resources and should remain in their natural state to avoid abusive and hazardous development. However, the County should permit the proper development and management of these areas for recreation uses such as camping sites, lakes, ski resorts, and parks. The County should review the proposed recreational developments by following local, state and federal development control measures including Interstate Land Sales Act, State Water Pollution Control Standards, Soil Erosion and

Sedimentation Control Ordinance, and Local Subdivision and Zoning Ordinances."

From the Statement of Intent: "This district covers portions of the County which are occupied by various open uses such as forests, recreation areas, farms, lakes, or floodplains. This district is established for the specific purpose of facilitating existing and future farming operations, conservation of water and other natural resources, reducing soil erosion, protecting watersheds, and reducing hazards from flood and fire. Uses not consistent with the existing character of this district are not permitted.

A. Use Regulations

Keeping in mind that the regulations are intended to serve as the standards and criteria for the implementation of these policy statements, the "use regulation" (section 3-1) deserves some critical comment:

The initial statement reads, "In this district, structures to be erected or land to be used shall be for one of the following," and then the section proceeds to list the variety of uses, "single family dwellings, general farming, etc...." Some confusion in this wording exists because of the "one of the following" phrase. The implication is that <u>one and only one</u> of the uses is permitted on a given parcel. As an example, the reader could interpret the ordinance as meaning that a single family dwelling (3-1-1) and a kennel (3-1-4.2) are not acceptable on the same tract.

Further attention must be given to the allowable combination of uses that the County desires if this wording is to remain unchanged. Taken on its face, the regulation is both unreasonable and arbitrary. Conservation areas should not exclude the combination of land uses which normally accompany large acreage farming, dairying, or forestry operations, nor should the district regulations be written to imply that the minimum land area required for such a combination be a multiple of the minimum land area required for a single use (as the "Area Regulations, 3-2" suggest).

The principal use in a conservation district should be recognized as such. For this reason, the use regulations should be separated into two identifiable categories: (1) those uses permitted by right and allowable in combination singly or in combination with a use-by-right but requiring a special use permit. If the County desires that only conservation and agriculture-oriented land activities be deemed as the principal uses allowable within the conservation zone, then all the other uses should be clearly defined as either "accessory" or "special" within the regulations.

In judging which uses apply to which category, one must scrutinize the Statement of Intent as well as the underlying meaning of what really is meant by a "conservation district." A single family detached home is an

accessory use to a farming operation, as are outbuildings or kennels, which should not be considered antithetical to the general intent of "conservation". Conversely, planned unit developments or commercial recreational activities or sanitary landfills or general stores by right certainly do not fit within the realm of the land use philosophies presented in the Comprehensive Plan and the objectives specified in the Statement of Intent.

In this regard, the following recommendations are suggested pertaining to Use Regulations:

(a) Define all uses not included in the Definitions (Article 1).

(b) Rethink what the County wants to be included in the conservation district. This firm's opinion is that a number should be added and subtracted from the proposed list.

(c) Separate the uses as those achievable by right within the zone and those achievable by special use permit.

(d) Define and categorize all "accessory uses" that are compatible with principal uses (by right) and which should be allowed in combination with those permitted uses.

(e) Define and categorize all "temporary uses" that are compatible with principal uses in the district and which should be allowed only by special permit.

B. Area Regulations

Section 3-2 states, "The minimum lot area for a single permitted use shall be two (2) acres or more, except for approved planned unit developments."

Several problem areas arise from this statement in its present form:

(1) One interprets the ordinance to mean that any combination of permitted uses within the conservation district requires a minimum acreage equivalent to a multiple of the two acre requirement and the planned number of uses. As an example, a kennel, a single home, and a farm garden would require a minimum of six acres to be acquired. Also, two country stores, a marina, a landfill, and a golf club could be combined by right on as few as ten acres. The only exception to this appears to be for planned unit development.

The first example indicates a situation where the interpretation of the ordinance could place a considerable hardship on a small family who only raised dogs and lived off the land. The six acre minimum (in an otherwise two-acre zone) would be deemed arbitrary as well as legally indefensible by the County and its planner.

The second example describes how "tight" wording (intended to carry out the full intent of "conservation") when taken in its literal sense can have the reverse effect: In this case, any combination of non-conservation oriented uses permitted by right can be carried out within the context of the proposed zoning controls. The weakness herein lies in the absence of comprehensive and limiting definitions for these uses and the lack of a distinct "special use permit" section in the regulations.

(2) In light of the environmentally critical geographical (conservation) areas in Shenandoah County, this firm questions the appropriateness of the "two-acre minimum" requirement for this district. The land is characterized by areas of erodable soils, severe slopes, floodplain valleys of various dimensions, highly suitable and productive agricultural lands, forests, and natural resource areas.

In the meantime, a certain degree of pressure has evolved which is the normal accompaniment to industrial growth, interstate highway construction, and agricultural attrition. This growth pressure, without intelligent controls, emanates into every area within a jurisdiction. The most visible signs of this are scattered subdivisions, commercial strip and spot development along primary collector roads, and increased tax burdens to expedite services to areas previously undeveloped.

Conservation lands are the most vulnerable to this form of growth from a predominantly rural society/agrarian economy to a transitional one as yet undefined by today's planners. It must be recognized that regardless of what future growth patterns develop in the County, the conservation and agricultural lands will continue to play a vital role in socio-economic patterns.

Without venturing into an in-depth land use planning justification, this firm believes that the growth policies of the governing body should not encourage medium sized lots or residential scatteration throughout the critical environmental areas of the County. Other districts exist where these growth patterns may be directed. The conservation district should be strictly interpreted as such, with more stringent area regulations applied.

Further intensive planning investigations into topography, soils, slopes, and floodplains will likely evidence the fact that many of the County's major and minor collector roads are situated in and parallel to stream valleys susceptible to periodic flooding. However, the land areas contiguous to these roads are not always broad basin areas, but rather are situated in narrow streambeds bounded by sloping land (15-25%) rising to second terrace plateaus. Many miles of this type of topography/state road interface exist.

Two-acre zoning, if approved as a minimum in conservation areas, would permit residential "stripping" of these unique valley lands. Most of these areas have been designated in the Plan for permanent open space, but there is no way to quarantee that this phenomenon will happen (except through eminent domain and/or public land purchases at the County's expense). Zoning does not offer a direct tool for open space acquisition, but effective larger acreage requirements oftentimes combine with the natural ecological restraints of a given land area to stave off immediate development pressures.

This consultant recommends that the County take a much closer look at the stream valleys west of the existing developed areas to determine where a more stringent definition of conservation zoning should be applied. Further, it is recommended that more discussion be given the two-acre area minimum for this district. Plans and ordinances prepared by this firm have often suggested up to five-acre minimums as being reasonable. To this point in time, the five-acre conservation districts in these ordinances have been widely accepted as a viable means of implementing the intent of conservation through the zoning mechanism.

(3) Area requirements within the regulations should relate to (a) minimum lot area and (b) maximum density. In this manner, the ordinance addresses acreage requirements from the standpoint of controlling the minimum area allowable

needs to be max. density as well as area req.

for the implementation of a given use, as well as from the standpoint of controlling the permissible density of principal uses on a given site sized in excess of the minimum lot area.

The area regulation, as written, attempts to consider the "maximum density" issue. However, in doing so it treads on dangerous grounds, as discussed in the previous sections. If the area regulations are separated into these two subsections, the overall interpretive intent of the ordinance will be enhanced. Minimum area controls will be substantiated, and maximum densities will be established for the combination of principal permitted uses in a single tract.

C. Other Regulations

Comparing the relationships cited in the example below serves to highlight the minor difficulties existing in the proposed setback, frontage, and yard regulations:

(1) Assuming the two-acre minimum as gospel, a lot with a two hundred foot frontage will require at least 435.6 feet in depth to qualify under the conservation zone. A residence on this lot can be constructed as close as forty feet from the public right-of-way line. This leaves over 350 feet in remaining rear yard depth.

(2) The side yard regulations permit "main structures" (an undefined term) to be located at least 20'

from the property line, with accessory buildings no closer than 5 feet from said line. On corner lots the setback requirement is deemed to be 30 feet.

The following comments are noted:

(a) Residential development in conservation areas will occur predominantly on lots fronting minor collector routes. Not until existing road frontages are sufficiently absorbed will economics support the rationale for developers to create large lot rural area subdivisions served by developer-constructed streets and utilities.

Again, referring to the Plan's objectives and the district's Statement of Intent, the outstanding inference is that rural residential "scatter" and road frontage absorption should be encouraged to locate in more intensive zones. In this regard, the two hundred foot frontage requirement does little to promulgate this concept. Even with a two-acre minimum, a lot requiring a three hundred foot front would have approximately the same depth. The reasonableness of such a requirement has suffered only minor scrutiny in other valid conservation districts throughout the state.

(b) Similarly, 20' sideyards add little flavor to the intent of conservation land use. More restrictive regulations have specified ranges of 35' to 70'. If a 200' frontage is to be maintained, a total of forty feet of sideyard setbacks leave the home builder 160 feet of "siting" area. This can be reduced substantially. If a wider frontage (which is recommended) is adopted, the "siting" area becomes more flexible even with more stringent sideyard setbacks.

(c) Accessory buildings at the proposed 5' setback are too close under any rural area conditions. This aspect of the regulations should be reconsidered.

(d) Corner lot sideyards in conservation areas usually are found at minor collector road intersections. These intersections are always subject to periodic widening and upgrading as rural area development takes place. In many cases, sideyard setbacks (which appear reasonable at the time of residential construction) can be significantly diminished over time through normal V.D.H. road improvement operations. As such, corner lot sideyards (and minimum lot requirements) should be viewed in this light:

A stronger position should be considered regarding this regulation.

D. Mobile Homes and Parks

Individual mobile homes and mobile home parks are not included in the "use regulations". However, they are included in the article by reference to the Shenandoah County Trailer Park Ordinance. If these uses are to be permitted in the district, then it should be so specified in the "use regulations". Further, the definitions should clearly relate the relationship of a "trailer" to a "mobile home", as distinguished from a "modular" or "sectionalized" unit, in the definitions.

It should be noted that this firm has not been provided with the mobile home ordinance for review purposes.

2. Agricultural District; A-1 (Article 4)

The Statement of Intent is well worded because it recognizes industry as an integral environmental feature of the existing Shenandoah County agricultural landscape. The statement could be strengthened to "encourage future industrial development into industrially zoned areas and/or in conjunction with well designed industrial parks in areas compatible with adjacent and surrounding land uses."

A. Use Regulations

The article suffers from the same technical structure problems inherent to Article 3. Many uses are omitted, undefined, and improperly placed (permitted by right vis-a-vis special use permit). A strong review effort is recommended for this segment of the regulations, particularly in light of the many interface areas which exist between existing agricultural and industrial land uses. Agricultural areas must be protected from encroachment from certain industrial uses which are better suited for appropriately zoned and located areas. The wording in the ordinance does not grasp this matter in that it is too open ended: 4-1-8 cites as a use permit approval that "industry and retail stores and shops" are acceptable in the agricultural district. This definition must be more strictly defined to give the district the "teeth" it needs to carry through with the Statement of Intent.

B. Area Regulations

Same as comments regarding Article 3: The regulation needs to relate a maximum density provision to serve as an enforceable regulation. Also, the minimum lot area for residential uses is low for a number of reasons. 60,000 to 80,000 square feet is a realistic area range which may be considered.

C. Other Regulations

Same as comments regarding Article 3: Too permissive, except for the frontage requirement which is compatible by most rural standards.

D. Special Regulation for Industry (Section 4-8)

This section is misplaced and entirely inappropriate. The appearance of these industrially related regulations at this point in the article leads to confusion between a normal industrial district and "conditional" industrial uses maintainable under the agricultural district.

The following specific comments apply:

(1) Re: 4-8-1; (a) "conditional" is incorrect wording and "special" should be substituted, (b) "the plans" is not defined as to context, scope, and degree of land use analysis, (c) procedures for submission of "the plans" are not delineated, and (d) the basis for "modifications" should be described.

(2) Re: 4-8-2; the provision for the enclosure of permitted uses conflicts with the character of some of the uses permitted: Airports, marinas, feed lots, and railroads will find it difficult to function within these parameters. This section cites as exceptions only public utilities, signs, and storage materials. As a matter of aesthetic and environmental control, storage materials are oftentimes the most undesirable aspects of industrial operations.

(3) Re: 4-8-3; the landscaping provisions need clarification since this is the only position in the ordinance where site planning standards and criteria are mentioned. Optimally, all landscaping specifications should be incorporated into a separate site plan or site development plan ordinance. The preparation of this development plan ordinance is authorized under the zoning enabling legislation of the State Code (see Virginia Code §15.1-491-(h)). Section 4-8-3 of the proposed local ordinance should be omitted from the district regulations and replaced/ reorganized by a development plan format accompanying the zoning ordinance text.

(4) Re: 4-8-4; "screening" and "off street parking" for industrial areas needs further attention. Standards, criteria, and definitions for typical industrial problems are not addressed in this or subsequent sections of the ordinance.

(5) Re: 4-8-6; 60% building coverage in a two-acre minimum lot area district is stretching the degree of rational land use permissiveness in what otherwise would be an agricultural zone. Considering that access roads, parking lots, loading areas, and storage materials are not included (by definition) in the maximum percentage of building coverage, the gross developed land coverage could approach 100% of the lot. Such

an occurrence is inappropriate in any situation in an agricultural zone. (The proposed Statement of Intent reinforces this concept.)

3. Residential District, R-1 (Article 5)

The structure and content of the proposed residential district cannot be reviewed without mentioning two important overview considerations at the outset:

- The range of permitted uses is entirely unstructured insofar as a district which is "designed to encourage and promote a suitable environment for family life" (refer to Statement of Intent).
- The goals and objectives of well conceived residential land use (as presented in the Comprehensive Plan) cannot be achieved through the implementation of only one residential district incorporated into the proposed ordinance.

A. Use Regulations

(1) Same as Article 3 discussion.

(2) No consideration is given to schools, libraries, cemeteries, churches, or signs as special permit uses.

(3) Mobile homes and/or mobile home parks are most appropriately included within a separately designed zone and may not be desired within single family zones under normal circumstances.

(4) Home occupations should be permitted by use permit only.

(5) Temporary uses are not defined or addressed.

(6) Caretaker or guest (rental) apartment units within single family detached residences have not been mentioned. If there is evidence that residential household economies depend on such rental situations in Shenandoah County, the use should be recognized and defined.

(7) The mix of allowable residential uses is too broad.

B. Area Regulations

The regulations provide for (a) three single family residential lot area situations, (b) planned unit developments (P.U.D.), and (c) multifamily residential units having no maximum allowable density (dwelling units per acre). In other words, the residential zone permits the inclusion of practically every conceivable housing type within a single category. The inherent dangers with this should be self-evident: Garden apartments are often an incompatible use intrusion into a single family subdivision; townhouse densities sometimes have the same impact.

A better approach to residential area regulations is suggested in the outline below:

(1) Separate residential uses into three (3) districts:

(a) Low-medium density residential with an average density of two single family detached dwelling units per acre (20,000 square feet per lot minimum).

(b) Medium-moderate density residential, with an average density of 3-6 dwelling units per acre (allowing for high density detached homes and low density attached townhouses).

(c) High density residential, with an average density range 7-15 dwelling units per acre (thus, keeping new apartment construction in a distinct district from any detached residential uses).

(2) Increase the minimum square footage requirement for single family residential lots without public water and sewer. (One-acre lots are usually recommended.)

(3) The wording of Section 5-2-4 combines references to planned unit developments as well as multifamily lot requirements. These items should be treated separately.

(4) There is no mention of maximum allowable density and open space requirements for any of the residential uses.

C. Other Regulations

(1) Frontage: Regulations do not relate to treatment of multifamily units and subdivisions. The implication is that the 100' requirement is to be held for all residential uses.

(2) Yard regulations: Should be revised to consider appropriate setbacks for each category of residential use.

(3) Corner Lots: Again, the regulations conflict with multifamily uses.

(4) Height Regulations: Garden apartments and townhouses can exceed thirty feet in height without being detrimental to the health, safety, and general welfare of their inhabitants. If these uses are treated within the regulations of a separate zoning district, less problems with uniform interpretation will be encountered.

4. Business, Local; B-1 (Article 7)

A. Use Regulations

(1) Since the structure of the district encourages "convenience" commercial activities, additional compatible uses could be added to the list to make the regulations more inclusive. For example, walk-in convenience stores (such as "7-11" or "7-day Junior") have been omitted. Also, offices, small retail and gift shops, and repair shops could be included as reasonable uses by right.

Small neighborhood shopping marts or centers are an extremely valid and economical means of grouping neighborhood convenience retail stores. Without proper controls, these marts can grow into large cumbersome shopping areas. As such, the Commission may wish to recognize these mini-shopping areas as a valid use, and design into the regulations qualifying maximum floor area coverages for the combined uses.

(2) Various ancillary uses have not been included (either by right or by special permit). Those which could be given further consideration are: theaters, motels, hotels, medical facilities, funeral homes, gas stations, caretaker apartments, clubs, banks (as opposed to branch banks), etc.

(3) Special permit uses should be placed in a distinct subsection.

B. Other Regulations

Floor area requirements should be tied to the area regulations. Since the district is designed to be for transitional land uses (between and among residential/agricultural uses and/or more intensive commercial activities), building coverage should not be permitted to cover the vast percentage of a lot. Setbacks and yard regulations should be more restrictive.

Sideyards should be maintained even with contiguous business uses, unless the limited shopping center concept is employed. In this case, open space requirements should apply.

C. General Comments

The district gives the impression of being a tool to further spot zoning. Area regulations and minimum district size should be carefully reviewed. Decisions developed through comprehensive planning should indicate the most suitable locations for country corner business and residential convenience centers throughout the County. These should be recognized through zoning, allowing ample area for anticipated development as well as encouraging clustered, local business nodes rather than spot commercial growth.

5. Business, General; B-2 (Article 8)

A. Use Regulations

Same comments as under Business, Local; B-1 (Article 7).

B. Other Regulations

Area, floor area, frontage, and open space should be reviewed.

C. General Comments

The B-1 and B-2 zones are a structural replica of each other, except for the use regulations. Only in the Statement of Intent of each district is an inference given to the desired "look" of the two zones. Since it appears that the major difference in concept is that of "neighborhood/rural" commerce (B-1) versus "community/intensive" commerce (B-2), a district size should be considered for the B-2 zones.

In reality, it requires a certain population level to serve the uses described in the General Business District. Since piecemeal commercial development should not be encouraged within these geographical areas, zoning regulations can address "minimum district area" as being a valid means of stimulating future clustered commercial growth.

3rd B. List.

Highway or Interchange Commercial Zone

6. Interchange/Highway Commercial: A Needed District

Neither of the proposed residential districts are designed for heavily traveled arterial or interstate

highways where commercial services need be (1) oriented to the automobile, (2) require good access, (3) require ample area and open space, and (4) do not depend upon adjoining or nearby commercial uses for reasons of comparison shopping or pedestrian trade. For Shenandoah County, such a district is critical due to the land areas around the I-81 interchanges which are developable or redevelopable.

This firm strongly recommends that an Interchange/ Highway Commercial District be incorporated into the ordinance prior to its adoption. The regulations of such a district can be devised to accommodate uses in a manner that will minimize interference with through (intra-county) traffic movements and insure a high standard in site layout, design and landscaping.

7. Industrial District; M-1 (Article 9)

A. Statement of Intent

(1) The intent of this district seems to draw on the need to establish a zone for light to medium industrial uses. However, there is no subsequent district for heavy industrial uses. In categorizing the M-1 uses in the regulations, the need for the separation of industrial categories is evidenced. It is apparent that too many uses have been included without consideration for the relationship between them and, in general, for the meaning of the Statement of Intent.

(2) The Comprehensive Plan cites certain criteria which the County should require in developing industrial sites, particularly those around existing industries:

"• a well landscaped and pleasing site design."

"• adequate distance between industrial sites and adjoining uses."

"• direct industrial access road to and from major transportation routes."

"• adequate utilities and related services including water and sewer."

"• a desirable density of 15 to 16 workers per acre." — (a warehouse + truck terminal (should fall this in). Most good industry will require at least 60 workers per acre.

There is little substance in the proposed district which will encourage the implementation of any of the above objectives. Again, there is a need for both a light and a heavy industrial district with distinguishing regulatory characteristics. Additionally, the County should exercise their discretion to adopt a site development plan ordinance. This would enable preliminary review and provide the legislative vehicle to encourage adherence to the Plan's objectives. Without a site plan ordinance, inroads of design influence cannot be created, and construction standards and criteria cannot be promulgated.

B. Uses Permitted

It is very important to delineate between uses by right and by permit, particularly when only one industrial district is proposed. Many of the suggested uses in 9-1-5 and 9-1-6 should be permit uses in any district and possibly excluded from a light industrial zone. Other uses such as sawmills, trade schools, wood preserving operations, and block manufacturing have been omitted.

C. Other Regulations

(1) Light industrial areas should have a minimum lot size affixed.

(2) No frontage requirements are specified.

(3) No open space requirements are specified.

(4) No rear yard requirements are mentioned.

(5) There are no provisions for corner lots.

(6) There are no provisions for accessory structures.

(7) Height regulations should allow for multi-story buildings and should be related to stronger building coverage controls.

(8) There is no reference that site plans are required.

(9) There is no reference to off-street parking and loading.

(10) There are no performance standards for noise, odor, liquid and solid waste, inspections, etc.

Require the loading docks be at least ___ feet off the roadway

8. Floodplain District - An Additional Zone Requirement

The intent of a floodplain zone is to provide safety from floods, prevention of property damage and loss, and restricting and controlling development in the established floodplains of rivers, streams, and other water bodies subject to bank overflow. The Comprehensive Plan depicts many areas designated as Permanent Open Space which are those

> "of mixed alluvial soils adjacent to the North Fork of the Shenandoah River and other major streams which are occasionally flooded. For this reason they are not suited for urban developments. In the future, water impoundments could be built at sites which have potential for storage of water for flood control, recreation, and water supply."

While Permanent Open Space is an appropriate planning designation of these lands, there is no vehicle short of public land acquisition which can assure the County that this permanency will occur. Permanent Open Space, correspondingly, cannot be translated into a zoning category which will totally deprive a private landowner of his constitutional property rights. However, zoning can address the sensitive legal aspects of limiting private property use in environmentally critical areas. Floodplain zoning is the tool used for this purpose.

The Towns of Mount Jackson, Edinburg, Woodstock, and Strasburg are located in the lower reaches of the drainage divides feeding the Shenandoah River. Future

consideration need be given to a zoning mechanism which will insure that these north-south flowing stream valleys will not be encumbered by inappropriate land uses. Watershed protection (erosion and sedimentation, increased runoff and runoff velocities, industrial and human waste pollution, and increased flooding and farmland water damages) are but a few of the adverse effects that arise from improper development of floodplain lands.

Floodplain zones written by this firm have incorporated limited uses into a set of regulations which place stringent controls on open space, construction standards, and special permit uses and criteria. This approach is recommended for Shenandoah County in light of its topographic and hydrologic characteristics.

Critique Item 5 : Sign Regulations (Article 10)

A. Definitions — Sign - general definition
" - specific definitions in Sign Article

The definition section lists and defines seven sign types. A number of other sign types should be incorporated into the definitions in order to delineate between fixed and free standing signs, directional and temporary directional signs, wall signs and identification, etc. A complete list may include as many as twenty-five classifications.

Very weak

B. Excluded Signs

The list of excluded signs lends excessive permissiveness to the ordinance. 3-1, 3-5, and 3-6 may need further clarification.

C. Signs Permitted in Various Districts

(1) Further attention should be given the mix of signs permitted within the various districts.

(2) Permitted signs are not fully defined nor sizes (surface area) specified for each sign in each permitted district.

(3) No regulations given for signs in mobile home parks.

D. Setbacks

Setback requirements for placement should be a function of the surface area of the sign.

E. Height Regulations

Section 10-6 indicates that "special permission" must be given for erection of signs higher than specified. The format, criteria, and administrative process for this permission should be clarified, or simply stated that a "special use permit" is required.

take this out.

F. General Regulations

(1) Enforcement and violation provisions are not specified.

(2) Section on permits, procedures, inspection, and recordation is missing.

(3) Section on prohibited signs is not included.

(4) Specifications for structural safety and criteria for replacement of destroyed signs should be added.

(5) Enforcement procedures for temporary signs should be added to regulations.

Critique Item 6 : Nonconforming Uses (Article 11)

The nonconforming uses article is incomplete in addressing the following related areas:

A. There are no definitions that enable the reader to distinguish between nonconforming activities, nonconforming lots, and nonconforming structures.

B. A separate subsection should relate to continuation limitations on nonconforming uses.

C. Additional subsections should address:

   (1) Nonconforming occupancy permits.

   (2) Repairs and maintenance.

   (3) Changes in zone boundaries.

   (4) Expansion and enlargement.

   (5) Restoration and replacement.

Critique Item 7: General Provisions (Article 12)

A. Building Permits

1. General

The most prevalent permit concept in the state is the use of building permits instead of zoning permits. The proposed ordinance refers to zoning permits without any reference whatsoever to building permits.

In practice, the building permit is more inclusive. It conveys the County's acknowledgement that (1) a parcel is zoned, (2) health department approvals have been complied with, and (3) the owner can proceed with his plans for initiating construction on the property. Technically, a zoning permit can only verify that the first step cited above has been achieved.

This firm recommends that building permit be substituted for zoning permit and that a more inclusive definition be given the term.

2. Regulation Structure

(a) Further articulation needs to be given as to the specific actions of a landowner which require a building permit. In other words, should the permit apply only to new construction or should it apply to renovations, enlargements, alterations, etc.? Should the permit be related to dollar volume of construction?

(b) Additional criteria is required relating to the procedure for approval: Is health department approval desired? Should the Building Inspector review plans prior to issuance of permit? Should the Zoning Administrator issue the permit or should it be done by the Building Inspector?

(c) An appeals procedure (to the B.Z.A.) should be written into this section.

B. Conditional Use Permits (A Misnomer)

The "conditional use" term is one which is not employed extensively in current zoning ordinances in the State. Since the State Code recognizes "special use" as a right which the governing body may "reserve unto itself", most local ordinances carry forth this terminology in their jurisdictions. This firm strongly recommends that the Commission consider this wording change prior to the adoption of the proposed ordinance.

1. Special Use Permits: General Discussion

In the zoning of every county, it will be found that there are certain uses which are necessary in some types of districts but which may be detrimental to their neighbors if proper safeguards are not taken. A common example of this is a public utility substation which must be located in a residential district. The usual method of handling such uses is to provide that they shall be permitted in the district only when they comply with conditions that the Commission may impose for the protection of the neighborhood

check to see if Code allocates "special permit" to governing body, planning commission, or B.Z.A. — Sect. 15.1-495

and public interest. For example, it might require that the utility substation be designed to look like a residence and that it be properly landscaped to fit into its surroundings. This function of the Commission is known as the granting of special use permits or special exceptions. Comprehensive ordinances tend to specify the uses that may be so permitted, the standards to be applied by the Commission in granting them, and other instructions for the guidance of the Commission. The number of permissible special uses should be held to a minimum in the ordinance so that the device does not become a dumping ground for undesirable uses.

The Commission must exercise the power of granting special use permits in the same manner as it exercises its power of interpretation: It must follow the language of the ordinance exactly and act only after all necessary findings have been made. The granting of relief is automatic when these findings appear, rather than being subject to the Commission's discretion. The Commission has considerable latitude in the imposition of conditions, however. In general, the courts require only that these conditions be "reasonable." The Commission should exercise ingenuity in devising conditions that will have the desired effect, because in doing so it will be able to insure adequate protection to the neighborhood, consistent with the intent of the zoning ordinance.

check to see if Code allocates "quasi-municipal" to governing body, planning commission, or B.Z.A. — Sect. 15.1-495

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2. Special Permits: Ordinance Recommendation

As mentioned previously, the uses specified in the Use Regulations of the various districts should be presented in two subheadings: (1) uses by right, and (2) uses by special (re: conditional) use permit. It is important to realize that special permit uses are so titled because the given use requires special conditions that must be applied during design and construction in order to be compatible within and among the other uses permitted by right in that district. Further, these special conditions (relating to location, construction, design, topography, etc.) must be substantiated and approved prior to the issuance of a building permit and only after a hearing by the Planning Commission.

The special permit process must be carefully devised and implemented due to the fact it is easily subject to attacks on the basis of being discriminatory. One special use applicant may be required to provide greater lot size, open space, and/or setback distances than that of another applicant desiring a similar special use. Unless the Commission can answer the question "Why?" to each and every imposed special condition, any applicant feeling he has been dealt with unjustly has reasonable justification for recourse.

As such, the following comments indicate topical areas which the Commission should further research prior to the adoption of the proposed ordinance:

(a) Specification of the application procedure:

- To whom does the applicant apply?

- What is the public advertising procedure?
- What forms must be filled out?

(b) Specification and description of the types of special (conditional) use permits. These are categorized by effective time limits of permit; one year, two years, five years, indefinite period of use permission.

(c) Standards for issuance of the permits must be determined: In other words, the ordinance must list the guidelines upon which it allows the Commission to grant, grant conditionally, or deny an application for a special use permit. For example, (1) the special use should not tend to change the character of the specific geographical area in which the use is proposed, (2) the special use should not adversely affect the use of neighboring property, (3) the enhanced regulatory requirements should promote items (1) and (2) and not be unjustly applied, and (4) the ordinance should specify the individual subsections of the regulations upon which the Commission can impose reasonable, but stricter, conditions.

(d) A process of appeals from decisions of the Commission must be presented in the ordinance in order to provide the reader-applicant with knowledge of his means of recourse.

(e) Abandonment of special uses should be given attention in the ordinance text: When permit uses are not performed over a given period of time, the governing body

should be able to revoke the permit and require reapplication if and when the use is to be reactivated. In this way, the County can base a reapplication decision on updated information and changing land use patterns in a given district.

C. Minimum Off-Street Parking

The following comments apply:

1. The off-street parking section should have further definitions and standards related to multifamily dwellings, townhouses, and duplexes.
2. No mention is given to the sizes of parking areas and bays.
3. Tourist homes, hotels, and motels are not treated in the proposed ordinance.
4. A separate section needs to be written covering criteria for loading space in commercial and industrial districts.
5. Criteria for parking area overhang (sidewalks), entrances, and locations should be included.
6. Special criteria for automobile service stations can be included, if deemed necessary.

D. Site Plan Review

The treatment of site plan review, preliminary site plans, and final site plans is severely limited in scope. Procedures for review, timing of approvals, and design standards and criteria are not considered. Further, there is no requirement

that a site plan accompany the subdivision approval process of single family residential subdivisions. Since residential subdivisions will comprise the vast majority of residential construction in Shenandoah County, this aspect of site planning control should be covered.

This firm feels that the Commission should incorporate a site development plan document as an integral part of the zoning ordinance. Such a document would lend clarification and substance to the following areas:

1. General information required in sketch plans, preliminary plans, and final plans.
2. Plan preparation requirements and specific items to be shown: Format, professional certification, specific graphic requirements.
3. Developer responsibility for site improvements; design and construction procedures. This section would include construction agreements, performance bonds, site supervision, and standards for development.
4. Administration and processing requirements for the site development plans: To include administrative procedures for filing, notification, review, revisions, approvals, dedications, approval expirations, waivers, bond release, and review fees.
5. Violations and penalties, amendments, definitions, and effective date clause.

E. Planned Unit Developments

Section 12-9 develops the Statement of Intent and Purpose for the planned unit development (P.U.D.) of residential dwellings. In the ordinance emphasis is placed upon the P.U.D. (1) creating a well planned living environment, (2) encouraging variety in housing and well located community facilities, (3) protection of the natural landscape, (4) conservation of open space, and (5) stimulation of innovative land uses.

The treatment of "purpose" in the proposed ordinance is more sophisticated than that described as "residential objectives" in the Comprehensive Plan. Also, the Plan's Future Land Use Map fails to suggest either generalized or specific recommended locations for P.U.D. communities. Neither does the Plan establish any philosophical guidance for creating residential planned communities in Shenandoah County. Without an established planning rationale relating residential community development philosophy within the Plan itself, it is extremely difficult for the zoning process to give due treatment to the P.U.D. concept.

In Shenandoah, as in many other Virginia counties, planned unit developments should be designed to guide growth in precisely the manner in which the name implies--residential developments which are conceived as a "joint venture" between the governing body and the private developer. "Joint venture" implies a close cooperation in the overall concept, the desired location, the total area covered, the maximum allowable densities, the optimal mix of

land uses, and the logical phasing and development of the community. Consequently, a govening body inherits basic obligations in this process once a decision is made by a county to include P.U.D. as an integral element of the Comprehensive Plan and the Zoning Ordinance.

- Selective locational guidance is a planning-oriented obligation. Particularly in rural areas, extensive thought must be given to potential water supply sources, transportation access, community acceptance, topographic and geologic phenomenon, related soils and natural resource criteria, and marketability. It is not necessary to pinpoint land masses desired for P.U.D.s, but generalized locational criteria must be agreed upon.
- Rationale and reasonable controls is a zoning-related public sector obligation. The ordinance must be designed to specify regulations sufficient to safeguard the public health, safety, and welfare as well as providing the flexibility and encouragement to a landowner to pursue the P.U.D. concept rather than conventional zoning.

Within this framework, the following critique of the proposed P.U.D. regulations is presented for the Commission's consideration:

The P.U.D. technique employed in the proposed ordinance appears to be that of a "floating zone" tied to issuance of a special use permit. In other words, a P.U.D. district is

P.U.D. Ord. - 20 - 250 - 320.4

enacted without a specific predetermined location on the zoning map and only upon a rezoning application for this type of development. The P.U.D. is recognized as a permitted use in the conservation, agriculture and residential districts. Therefore, the specific task of site selection as a developer responsibility for the Plan neither recommends nor recognizes the value of planned unit developments in Shenandoah County.

There are both positive and negative land planning implications of the "floating" versus the "fixed" P.U.D. concept. On the positive side, a floating zone facilitates free enterprise and individual choice, which leads to more decisive thought into market considerations, land values, and flexible site selection. On the other hand, lack of public sector guidance (vis-a-vis Plan designated P.U.D. locations) sometimes preempts sound "community interest" planning and decision making by a developer. In such cases, a builder may exploit certain sectors of the economy and the land itself without giving full consideration to the aforementioned Statements of Purpose and Intent for the P.U.D. (This type of abuse most frequently occurs in recreational communities in jurisdictions where the necessary legal safeguards and controls have not been formally established and completely understood.)

The "floating zone", however, is a recommended technique within most planning and legal circles. The district is approved upon the potential developer showing the governing body that a particular application meets the standards set forth in the

ordinance (with a conceptual development plan and related design studies) accepted as binding at the time of the subject application.

The proposed P.U.D. controls for Shenandoah County have a number of shortcomings which, when corrected, will provide for effective use of this planning concept:

1. Density

The lack of ultimate density provisions is the most glaring oversight in the ordinance. Correspondingly, the fact that individual density provisions are not specified for each of the three districts leads the reader to question whether the regulations were designed with the "well planned living environment" purpose in mind. The ordinance must state maximum P.U.D. densities which are compatible to the range of permitted uses in the districts.

Briefly stated, maximum densities cannot be overlooked: A decision must be reached when designing the ordinance as to the optimal number of residential units per acre desirable in a conservation district P.U.D. Similarly, optimal densities have to be articulated for P.U.D.s in agriculture and residential zones. It is unreasonable to recommend and retain the same residential density for each of the three densities.

At this point, it is proper to recall the Statements of Purpose for each of these three districts. Each one has progressively higher allowable residential densities. The P.U.D. density for the various districts

should be in the same general range as that of conventional zoning, with "bonus" provisions being allotted for open space, landscaping, unit clustering, dedications, off-site construction, conservation of floodplains, and the like.

Section 12-9-3-3 compounds the difficulty with the ordinance as written. The section is interpreted to mean that the maximum density allowable is a function of the type of unit and nothing else. As an example, a strict reading states that a developer could build a P.U.D. with apartments (18 d.u./acre) in a conservation district (100 acres minimum) and achieve 1800 units by right. It is obvious that the results of such a development would be in total disregard for all of the five parameters discussed in the opening paragraph of this section. If such a development at these densities were to occur in Shenandoah's conservation areas as a matter of right, the P.U.D.'s "floating zone" could more appropriately be titled a "floating bomb".

As such, the section must be rewritten (1) to individually relate maximum allowable P.U.D. density to the specific district, (2) to relate open space and landscaping requirements to the density provisions in the specific districts, (3) to relate more conservative and flexible area requirements to the specific districts, (4) to relate permitted residential use mix to maximum

allowable densities within the specific districts, and (5) to give more consideration to the concept of land use intensity as a control parameter for the P.U.D. zone.

2. Criteria for Development

Development criteria (as per Section 2-9-3 and 2-9-3-1) is incomplete and imprecise in the proposed document. It suggests that economic feasibility and environmental impact studies are required for land use approval but that graphic conceptual plans, restrictive covenants, and homeowners association agreements are not. Again, without the latter elements enforcement of the article becomes impossible. The former terms are undefined and leave much to the imagination insofar as content and breadth of coverage. All of these terms need extensive definitions prior to inclusion in the ordinance.

needed at preliminary stage

3. Other Comments

(a) Section 12-9-3-4 has no legal basis for citation since zoning by law is a local legislative matter, not a regional one. Regional planning concepts and recommendations are important as a planning matter if the P.D.C. has completed soils analysis, topographic studies, floodplain analysis, and land development suitability reports for the County.

(b) Section 12-9-3-4 offers regulatory statements which are intangible in nature and unenforceable

by relation to definition. These should be rewritten with greater clarity.

(c) Section 12-9-3-6 needs to be tied to specific standards and criteria (reference: V.D.H. residency office).

(d) Section 12-9-3-7 should be related to specifications under site development plan control.

(1) Uses permitted

(2) Maximum site coverage

(3) Building architecture

(4) Usable public open space

(5) Private open space

(6) Screening and fencing

(7) Landscaping

(8) Parking

(9) View protection

(e) Section 12-9-3-8 has no basis for enforcement. It should be related to the July 1975 state requirement for all Virginia localities to have an adopted Erosion and Sedimentation Control Ordinance.

(f) Procedures and processing requirements should be specified within the P.U.D. article. These can, in part, be related to both the special use permit process as well as the subdivision and site plan approval process.

4. Summary

In its present format, the P.U.D. article should not be included in the ordinance. If the format was adopted as written, it would introduce a myriad of loopholes for all varieties of

residential land developers to exploit, but particularly those of recreational and retreat communities. As such, special attention should be given to criteria for recreational and mountain development when this section is rewritten.

The P.U.D. must be sensitive to all aspects of physical land characteristics and the applicable development controls required to establish compatibility among the P.U.D., the community, and the land itself. This sensitivity can only be reflected through a comprehensively structured zoning article, predetermining planning criteria and subsequent site plan controls for individual developments.

The critique contained herein should not discourage Shenandoah County officials from actively working to structure a P.U.D. ordinance and encouraging residential development along these lines. This firm solidly endorses the concept and recommends the adoption of ordinances at the local level to permit P.U.D. as a standard alternative to standard zoning schemes. We feel that designing residential developments by means of a flexible but unitary site plan (which integrates housing types, circulation systems, non-residential facilities and which clusters dwelling units for the preservation of open spaces and natural features) is a significant and important departure from traditional practice. However, this firm is familiar with abuses of the P.U.D. concept with the resulting product yielding no improvement over the status quo. Abuses are a result of poor implementation and guidance,

not the concept itself. In order to ensure the development of superior residential communities, a combination of events must occur. First, an established developer must align himself with site-sensitive designers and engineers. Second, the locality must have an able and willing administrative staff and givening body who will oversee the development process. Finally, these two elements (private and public) must be technically and legally integrated with a workable P.U.D. ordinance.

Critique Item 8 : Provisions for Appeal (Article 13)
Violations and Penalty (Article 14)
Amendments (Article 15)
Administration (Article 16)

With only minor exceptions, the final four articles are well structured and can be included verbatum in the final version of the recommended ordinance.

SUMMARY COMMENTS AND RECOMMENDATIONS

This document has critically examined the way in which the Zoning Ordinance has been prepared and has offered many comments on technical content, organization, definitions, and new concepts. The Topical Areas for revisions, research, and analysis presented herein affected almost every article of the ordinance.

In overview, this firm strongly recommends that the Commission not adopt the ordinance in its present format. The ordinance does not convey the strength essential to adequately guide land use in the County in the manner in which zoning is intended as a police power control.

Once a jurisdiction makes the initial decision to adopt zoning controls, it must do so with extreme caution and sensitivity to the comprehensive issues that an ordinance must address in order to be considered a valid legal document. Complexity in the concise construction of a local ordinance occurs when interrelating the legal parameters with the unique land-use oriented attributes of a given jurisdiction. Shenandoah County must not fail to realize the importance of adopting a "tailor made" set of land use controls, embodying the goals and objectives of the governing body into precisely defined and legally explicit terminology.

Without criticism of the commendable effort which has been expended by the local officials to this point in time, this firm believes Shenandoah County is extremely vulnerable with the proposed ordinance now in hand. Weaknesses in the (1) organization of districts, (2) uses permitted, (3) definitions, (4) individual

district regulations, (5) structure of the P.U.D. concept, (6) flood plan designations, and (7) administrative procedures lend overall questionable validity to the zoning document. Additionally, the shortcoming in the adopted Comprehensive Plan and the Subdivision Ordinance combined with the lack of Site Development Plan standards and procedures impede the land planning and zoning process to an even greater degree.

In conclusion, our professional opinion is that the ordinance must be thoroughly redrafted prior to further public dialogue and formal hearings. This draft should encompass all of the subjects addressed in this report while also pursuing planning-related studies relevant to the critical land use decisions required to finalize certain ordinance particulars.

Citizen input good
Technical review and quantification analysis necessary.

Proposal needs "i" dotted and "t's" crossed.