

1 **H. B. 2166**

2
3 (By Delegate Doyle)

4 [Introduced January 12, 2011; referred to the
5 Committee on Political Subdivisions then the Judiciary.]
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10 A BILL to amend and reenact §8A-1-2 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §8A-7-7 and §8A-7-
12 13 of said code, all relating to land use planning; zoning;
13 process to replace a noneuclidean zoning ordinance; and
14 providing that the term "zoning ordinance" means either
15 "euclidean zoning ordinance" or "noneuclidean zoning
16 ordinance".

17 *Be it enacted by the Legislature of West Virginia:*

18 That §8A-1-2 of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted; and that §8A-7-7 and §8A-7-13 of said
20 code be amended and reenacted, all to read as follows:

21 **ARTICLE 1. GENERAL PROVISIONS.**

22 **§8A-1-2. Definitions.**

23 As used in this chapter, the following words and terms have

1 the following meanings, unless the context clearly indicates
2 otherwise:

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

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

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

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

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

21 (d) "Conditional use" means a use which because of special
22 requirements or characteristics may be permitted in a particular
23 zoning district only after review by the board of zoning appeals

1 and upon issuance of a conditional use permit, and subject to the
2 limitations and conditions specified in the zoning ordinance.

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

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

19 (1) Local serving;

20 (2) Nonlocal or transmission through the county or
21 municipality; and

22 (3) Water and sewer systems, the activities of which are
23 regulated, in whole or in part, by one or more of the following

1 state agencies:

2 (A) Public Service Commission;

3 (B) Department of Environmental Protection; or

4 (C) The Department of Health and Human Resources.

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

11 *Provided*, That in the case of natural resources, the absence of
12 natural resources extraction or harvesting is not abandonment of
13 the use.

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

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

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

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

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

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

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

19 (o) "Improvement location permit" means a permit issued by a
20 municipality or county, in accordance with its subdivision and land
21 development ordinance, for the construction, erection,
22 installation, placement, rehabilitation or renovation of a
23 structure or development of land, and for the purpose of regulating

1 development within flood-prone areas.

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

5 (q) "Land development" means the development of one or more
6 lots, tracts or parcels of land by any means and for any purpose,
7 but does not include easements, rights-of-way or construction of
8 private roads for extraction, harvesting or transporting of natural
9 resources.

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

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

15 (t) ~~"Nontraditional zoning ordinance"~~ "Noneuclidean zoning
16 ordinance" means an ordinance that sets forth development standards
17 and approval processes for land uses within the jurisdiction, but
18 does not necessarily divide the jurisdiction into distinct zoning
19 classifications or districts requiring strict separation of
20 different uses, and does not require a zoning map amendment.

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

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

3 (w) "Planning commission" means a municipal planning
4 commission, a county planning commission, a multicounty planning
5 commission, a regional planning commission or a joint planning
6 commission.

7 (x) "Plat" means a map of the land development.

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

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

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

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

22 (cc) "Subdivision or partition" means the division of a lot,
23 tract or parcel of land into two or more lots, tracts or parcels of

1 land, or the recombination of existing lots, tracts or parcels.

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

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

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

8 (gg) "Zoning" means the division of a municipality or county
9 into districts or zones which specify permitted and conditional
10 uses and development standards for real property within the
11 districts or zones and may be either euclidean or noneuclidean
12 zoning.

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

17 **ARTICLE 7. ZONING ORDINANCE.**

18 **§8A-7-7. Election on a zoning ordinance.**

19 (a) The governing body of a municipality or a county may
20 submit a proposed euclidian zoning ordinance or noneuclidean zoning
21 ordinance, for approval or rejection at any primary election,
22 general election or special election, to the qualified voters
23 residing:

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

3 (2) In the specific area to be zoned by the proposed zoning
4 ordinance, if the proposed zoning ordinance only applies to part of
5 the governing body's jurisdiction. All registered voters of a
6 municipality may be qualified to vote on a county zoning ordinance
7 if the municipality is located entirely within that county.

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

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

18 (d) Notice for an election on a proposed zoning ordinance must
19 be published in a local newspaper of general circulation in the
20 area affected by the proposed zoning ordinance, as a Class II-0
21 legal advertisement, in accordance with the provisions of article
22 three, chapter fifty-nine of this code.

23 (e) The ballots for an election on a zoning ordinance shall

1 have the following:

2 / / For Zoning

3 / / Against Zoning

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

10 **§8A-7-13. Process to replace ~~nontraditional~~ noneuclidean zoning**
11 **ordinance.**

12 (a) A governing body that has adopted or enacted a
13 ~~nontraditional~~ noneuclidean zoning ordinance may replace the
14 ~~nontraditional~~ noneuclidean zoning ordinance with a euclidean
15 zoning ordinance. A ~~nontraditional~~ noneuclidean zoning ordinance
16 may be replaced with a euclidean zoning ordinance by:

17 (1) The governing body; or

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

22 (b) At least ten percent of the total eligible voters in the
23 affected area may petition the governing body to replace the

1 ~~nontraditional~~ noneuclidean zoning ordinance with a euclidean
2 zoning ordinance. The petition must include:

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

5 (2) The reason for the petition, including:

6 (A) Replacing the ~~nontraditional~~ noneuclidean zoning ordinance
7 with a euclidean zoning ordinance; and

8 (B) That the question of replacing the ~~nontraditional~~
9 noneuclidean zoning ordinance with a new euclidean zoning ordinance
10 be put to the voters of the affected area; and

11 (3) Signatures in ink or permanent marker.

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

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

20 Notice for an election on replacing a zoning ordinance must be
21 published in a local newspaper of general circulation in the area
22 affected by the ~~nontraditional~~ noneuclidean zoning ordinance, as a
23 Class II-0 legal advertisement, in accordance with the provisions

1 of article three, chapter fifty-nine of this code.

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

4 "Shall _____ (name of governing body) replace _____
5 (name of commonly known ~~nontraditional~~ noneuclidean zoning
6 ordinance) with a euclidean zoning ordinance?

7 _____ Yes _____ No"

8 (f) Upon a majority vote of the voters voting in favor of
9 replacing a ~~nontraditional~~ noneuclidean zoning ordinance with a
10 euclidean zoning ordinance, the governing body shall immediately
11 begin the process of adopting and enacting a euclidean zoning
12 ordinance, in accordance with the provisions of chapter eight-a of
13 this code. The governing body has a maximum of three years from
14 the date of the election to adopt a euclidean zoning ordinance.

15 (g) The governing body may amend its ~~nontraditional~~
16 noneuclidean zoning ordinance during the process of adopting and
17 enacting a euclidean zoning ordinance.

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

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

1 (j) If a governing body of a county chooses to replace a
2 ~~nontraditional~~ noneuclidean zoning ordinance with a ~~traditional~~
3 euclidean zoning ordinance without holding an election, a petition,
4 signed by at least ten percent of the eligible voters who reside in
5 the area affected by the zoning ordinance, for an election on the
6 question of adopting a ~~traditional~~ euclidean zoning ordinance may
7 be filed with the governing body of the county within ninety days
8 after the enactment of the ~~traditional~~ euclidean zoning ordinance
9 by the governing body of the county. If a petition is timely
10 filed, then the ~~traditional~~ euclidean zoning ordinance does not
11 take effect until:

12 (1) Notice of the election and the zoning ordinance is
13 published in a local newspaper of general circulation in the area
14 affected by the zoning ordinance, as a Class II-0 legal
15 advertisement, in accordance with the provisions of article three,
16 chapter fifty-nine of this code;

17 (2) An election is held; and

18 (3) A majority of the voters approve it.

NOTE: The purpose of this bill is to provide that the term "zoning ordinance" means either "euclidean zoning ordinance" or "noneuclidean zoning ordinance". It also deals with the process of a governing body replacing a noneuclidean zoning ordinance.

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