ARTICLE VIII

CONDITIONAL USES

Section 800. PURPOSE. The conditional uses described in Section 802 below and in Article V would not be appropriate without restriction throughout the zoning districts but could be acceptable if controlled as to number, area, location or relation to the neighborhood. Such uses may be permitted in a zoning district as conditional uses if the provisions of this and all other Articles of this Ordinance have been met.

Section 801. PROCEDURE FOR OBTAINING A CONDITIONAL USE PERMIT.

801.01 A written application for a conditional use permit shall be submitted to the Zoning Administrator.

801.02 After submission of an application, the Zoning Administrator shall arrange a conference with the applicant and the Board of Adjustment. The Zoning Administrator shall also send the Planning Board an agenda for the meeting. At the conference the applicant shall submit a sketch development plan and a brief description of the proposed development strategy. The applicant shall also submit proposed design specifications for proposed commercial buildings. The conference is designed to inform the applicant of the local government's regulations and policies concerning development alternatives and to inform the local government of the applicant's intentions, enough to be able to give him some informal, nonbinding feedback on the acceptability of his plan. The greater the level of common understanding between the applicant and the local government that can be achieved at the conference stage, the smoother the remaining steps of the review and approval process will be. At the conference a date for a public hearing shall be determined.

801.03 **NOTICE OF HEARING.** The Board of Adjustment shall give public notice of the hearing in a newspaper having general circulation in West Jefferson published at least five (5) days prior to the date of the hearing. The Board shall mail notices of the hearing to the affected parties, to members of the Planning Board, and to such other persons as the Zoning Administrator shall direct at least seven (7) days prior to the hearing. Such notice shall state the location of the building or lot, the general nature of the applicant's request, and the time and place of the hearing.

801.04 At least ten (8) days prior to the date set for the hearing, the applicant shall submit three (3) copies of the final development plan to the Zoning Administrator. The development plan shall contain a map or maps drawn to scale, with the date of preparation, and shall contain, where applicable, the following information:

(1) Existing site conditions, including contours, water courses, identified flood hazard areas, any unique natural or manmade features.

(2) Boundary lines of the proposed development, proposed lot lines and plot designs.

(3) Proposed location and use of all existing and proposed structures.

(4) Location and size of all areas to be conveyed, dedicated or reserved as common open space, parks, recreational areas, school sites and similar public and semi-public uses.

(5) The existing and proposed street system, including location and number of off-street parking spaces, service areas, loading areas, major points of access to public rights-of-way, notations of proposed ownership of the street system (public or private).

(6) Approximate location of proposed utility systems, including documentation approving the proposed water and sewer systems from the appropriate local and state agencies. Documentation of an approved Sedimentation and Erosion Control Plan shall also be submitted where required.

(7) Location and/or notation of existing and proposed easements and rights-of-way.

(8) The proposed treatment of the perimeter of the development including materials and/or techniques such as screens, fences and walls.

(9) Information on adjacent land areas, including land use, zoning classifications, public facilities, and any unique natural features.

(10) Where applicable, the following written documentation shall be submitted:

(a) A legal description of the total site proposed for development, including a statement of present and proposed ownership.

(b) The zoning district or districts in which the project is located.

(c) A development schedule indicating approximate beginning and completion dates of the development, including any proposed stages.

(d) A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the development.

(e) Quantitative data for the following: proposed total number and type of residential dwelling units; parcel size; gross residential densities; and total amount of open space.

(f) Plan for maintenance of common areas, recreation areas, open spaces, streets and utilities.

(11) Any additional information required by the Board of Adjustment in order to evaluate the impact of the proposed development. The Zoning Administrator or the Board of Adjustment may waive a particular requirement if in its opinion the inclusion is not essential to a proper decision of the project.

801.05 **CONDUCT OF HEARING.** Any party may appear in person or by agent or by attorney at the hearing. The order of business for hearing shall be as follows: (a) The Chairman, or such person as he shall direct, shall give a preliminary statement of the case; (b) the applicant shall present the argument in support of his application; (c) persons opposed to granting the application shall present the argument against the application; (d) both sides will be permitted to present rebuttals to opposing testimony; (e) the Chairman shall summarize the evidence which has been presented, giving the parties opportunity to make objections and corrections. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of only such evidence as would be admissible in a court of law. The Board may view the premises before arriving at a decision. All witnesses before the Board shall be placed under oath and the opposing party may cross-examine them.

RE-HEARINGS. An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence, or conditions in the case. The application for rehearing shall be denied by the Board if from the record it finds that there has been no substantial change in facts, evidence or conditions. If the Board finds that there has been a change, it shall thereupon treat the request in the same manner as any other application.

801.06 **REQUIRED FINDINGS OF FACT.** Prior to the approval of a Conditional Use Permit, the Board of Adjustment must make the following Findings of Fact:

(1) that the use for which the conditional use permit is sought will NOT adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use;

(2) that the proposed use will NOT be detrimental to the public welfare in the neighborhood; AND

(3) that the proposed use will NOT be injurious to property values in the neighborhood.

801.061. ADDITIONAL FINDINGS OF FACT. Prior to the approval of a conditional use permit is issued, the Board shall make Findings of Fact that satisfactory arrangements have been made for the following, where applicable.

(a) Satisfactory ingress and egress to property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control.

(b) Provision of off-street parking and loading areas where required, with particular attention to the items in (1) above, and the economic, noise, glare and odor effects of the conditional use on adjoining properties in the area.

(c) Adequate and proper utilities with reference to locations, availability and compatibility.

(d) Buffering, with reference to type, location and dimensions.

(e) Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district.

(f) Playgrounds, open spaces, yards, landscaping, access ways, pedestrian ways, with reference to location, size and suitability.

(g) Buildings and structures, with reference to location, size and use.

(h) Hours of operation, with particular reference to protecting and maintaining the character of the neighborhood.

801.062. In addition, the Board shall make Findings of Fact certifying compliance with the specific rules pertaining to the individual conditional use described in **Section 802** below.

801.063. In granting such a permit, the Board of Adjustment may designate such conditions in connection therewith as will, in its opinion, assure that the proposed use will conform to the requirements and spirit of this Ordinance.

801.064. If at any time after a conditional use permit has been issued the Board of Adjustment finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a conditional use permit, the permit shall be terminated and the operation of such use discontinued. If a conditional use permit is terminated for any reason, it may be reinstated only after a public hearing is held.

801.07 DECISIONS.

(1) **Time.** A decision by the Board shall be made within sixty (60) days from the time of hearing.

(2) **Form.** Written notice of the decision in a case shall be given by certified or registered mail to the applicant by the secretary as soon as practicable after the case is decided. Also, written notice shall be given to owners of the subject property, if not the applicant, and to other persons who have made written request for such notice.

The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board and signed by the secretary and the Chairman upon approval of the minutes by the Board. Such record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made by the Board. The record shall state what conditions, if any, are imposed by the Board in connection with the granting of the conditional use permit.

(3) **Expiration of Permits.** Unless otherwise specified, any order or decision of the Board granting a conditional use permit shall expire if a building permit or certificate of occupancy for such use is not obtained by the applicant within six (6) months from the date of the decision.

(4) **Voting.** The concurring vote of four-fifths of the members of the Board shall be necessary to grant a conditional use permit.

(5) **Public Record of Decisions.** The decisions of the Board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

801.08 The Zoning Administrator shall make periodic inspections during construction as well as a final inspection after construction is complete to determine whether the conditions imposed and agreements made in the issuance of the permit have been met as well as whether all other requirements of this Ordinance have been met.

801.09 Minor changes in the location, siting or character of buildings and structures may be authorized by the Zoning Administrator, if required by engineering or other circumstances not foreseen at the time the final development program was approved; provided, however, no change authorized by the Zoning Administrator under this section may increase the size of any building or structure by more than ten (10%) percent, nor change the location of any building or structure by more than ten (10) feet in any direction, nor make any changes beyond the minimum or maximum requirements set forth in this Ordinance. All other changes, including changes in the site plan and in the development schedule, must be submitted to the Board of Adjustment. In no case shall the following changes be made without resubmission of the development plan according to the procedures in this section:

(1) A change in the use or character of the development.

(2) An increase in overall density.

(3) An increase in intensity of use.

(4) Alteration of the traffic circulation system.

(5) A reduction in approved open space.

(6) A reduction of off-street parking and loading space.

801.10 If no development has occurred within one year after the issuance of a conditional use permit, the permit shall become null and void without written extension from the Board of Adjustment, and the procedures for application and review as outlined in this section shall be required for any development on subject property.

Section 802. Conditional Use Standards.

The following standards are applied to specific conditional uses. Before issuing a conditional use permit, the Board of Adjustment shall find that all standards for specific uses listed in this Section as well as all standards listed in Section 801 have been met.

802.01 Private Recreation Facilities (Profit).

(1) Off-street parking shall be sufficient to meet the requirements of this Ordinance.

(2) The Board of Adjustment may require buffering consisting of evergreen trees or shrubs located along the side and rear lot lines, but shall not extend beyond the established setback line along any street. Such buffer strip shall not be less than four (4) feet in width and shall be composed of trees or shrubs of a type which, at maturity, shall be not less than six (6) feet in height. This planting requirement may be modified by the Board of Adjustment where adequate buffering exists in the form of vegetation and/or terrain.

(3) The proposed hours of operation shall not be detrimental to the surrounding property due to noise, flashing lights, traffic, etc.

(4) All developments shall be compatible with surrounding residential uses; therefore, no signs with flashing lights shall be allowed. All non-flashing illuminated signs shall be so placed so as not to cast light on adjoining residential uses.

(5) Trash facilities must be approved by the Public Works Director.

802.02 Radio and TV Towers, Satellite Dishes, Private Water and Sewer Plants, Private Water Storage Tanks, Church Spires.

(1) All such structures shall adhere to the setback requirements of this Ordinance and the location shall be approved by the Board of Adjustment.

(2) All such structures located on the ground shall be screened by native evergreen shrubs at least six (6) feet in height and spaced no more than three (3) feet apart.

(3) The size of satellite dishes in residential districts shall be limited to eight (8) feet in diameter.

(4) Satellite dishes may be located on a roof where ground location is infeasible. Such installations shall not be located on a roof side facing a street.

(5) Satellite dishes shall be the black mesh type.

(6) The permit issued by the Board of Adjustment for satellite dish installation takes into effect elements specifically related to the dish, such as width, color, materials and location. For this reason, any time a new dish is to be installed, a new permit must be obtained.

802.03 Multi-Family Dwellings.

(1) Off-street parking shall be sufficient to meet the requirements of this Ordinance.

(2) Building height and setbacks shall meet the minimum requirements of this Ordinance.

(3) The development shall meet the density requirements of this Ordinance.

(4) Conveyance and maintenance of open space, recreational areas and communally owned facilities shall be in accordance with the Unit Ownership Act (Chapter 47-A of the North Carolina General Statutes) and/or any other appropriate mechanisms acceptable to the Board of Adjustment.

802.04 Restaurants.

(1) Off-street parking shall be sufficient to meet the requirements of this Ordinance.

(2) The Board of Adjustment may require a buffer strip.

(3) The area fronting on the street shall be landscaped with trees, grass, shrubs and flowers in keeping with the general scheme of The Town.

802.05 Laundry and Dry Cleaning Services.

(1) Off-street parking shall be sufficient to meet the requirements of this Ordinance.

(2) The Board of Adjustment may require a buffer strip.

802.06 Mechanical Car Wash.

(1) Included in the required development plan shall be a layout of the proposed ingress and egress and traffic circulation plan. Adequate areas shall be provided so that all patrons will be able to pull their vehicles off the street while waiting to utilize the available services.

(2) The Board of Adjustment may require a buffer strip.

802.07 Planned Unit Developments.

802.071 Purpose. The purpose of this section is to encourage and provide for flexibility and innovation in the design and location of structures and land development, to provide for mixtures of housing types and land use, to provide for the most efficient use of land resources, and to provide an opportunity to develop land areas in a manner different from the standard arrangement of one principal building on one lot. Residential densities are calculated on a project basis, thus allowing the clustering of buildings in order to create useful open spaces and preserve natural site features. It is further intended that a planned unit development will be in harmony with the character of the district in which it is located.

802.072 Planned Unit Development Defined. Any development where more than one principal building or use is proposed to be constructed on a single lot, or any building with a gross floor area of 25,000 square feet or more, shall be deemed a planned unit development (PUD). Residential units within a PUD may include single family detached or attached units, townhouse developments, garden apartments, patio homes, condominiums, and other type residential units excluding mobile homes and mobile home parks.

802.073 Land Development Standards. The following land development standards shall apply for all planned unit developments. PUDs may be located in the _____ district as conditional uses, subject to a finding by the Board of Adjustment that certain conditions be met:

(1) **Ownership Control.** The land in a PUD shall be under single ownership or management by the applicant before final approval and/or construction, or proper assurances (legal title or execution of a binding sales agreement) shall be provided that the development can be successfully completed by the applicant.

(2) **Density Requirements.** There are no density requirements for non-residential uses as long as the proposed project does not violate the intent of the district in which it is located. The proposed residential density of the PUD (dwelling units per acre as shown in Article IX) shall conform to that permitted in the district in which the development is located. If the PUD lies in more than one district, the number of allowable dwelling units must be separately calculated for each portion of the PUD that is in a separate district, and must then be combined to determine the number of dwelling units allowable in the entire planned unit development.

(3) **Frontage Requirements.** PUDs shall have access to a highway or road suitable for the scale and density of development being proposed.

(4) **Land Uses.** A mixture of land uses shall be allowed in any PUD. However, within residential districts, non-residential uses shall not constitute the primary use in the PUD, and non-residential uses shall be carefully designed to complement the residential uses within the PUD. All PUDs must be compatible with and not violate the intent of the zoning district.

(5) **Minimum Requirements.**

(a) The normal minimum lot size, setbacks and frontage requirements are hereby waived for the PUD, provided that the spirit and intent of this Section is complied with in the total development plan, as determined by the Board of Adjustment. The Board of Adjustment shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this Section.

(b) **Height Limitations:** No building or structure shall exceed the height limitations of the district in which it is located.

(c) **Required Distance Between Buildings:** The minimum distance between buildings shall be twenty (20) feet or as otherwise specified by the Board of Adjustment to ensure adequate air, light, privacy, and space for emergency vehicles.

(d) Every dwelling unit shall have access to a public or private street, walkway or other area dedicated to common use, and there shall be provision for adequate vehicular circulation to all development properties in order to ensure acceptable levels of access for emergency vehicles. All roads within a Planned Unit Development shall meet the minimum construction standards for subdivision roads of the North Carolina Department of Transportation, Division of Highways' "Subdivision Roads Minimum Construction Standards" dated April, 1983 (as amended) with only the following exception: A reduced right-of-way of forty feet will be permitted if a reduced width is essentially unavoidable due to topographic reasons and is approved by the Town Manager and/or Director of Public Works.

(e) All Planned Unit Developments must have access to a public road that meets the minimum construction standards for Subdivision Roads of the Division of Highways of the North Carolina Department of Transportation with the exception that in lieu of paving, the developer may use a minimum of eight (8) inches of State approved Aggregate Base Course (ABC). In addition, all such access roads to planned unit developments must be approved by the Director of Public Works to insure the accessibility by emergency or municipal vehicles over such access roads to the Planned Unit Development.

(6) **Privacy.** Each development shall provide reasonable visual and acoustical privacy for all dwelling units. Fences, insulation, walks, barriers, and landscaping shall be used, as appropriate, for the protection and aesthetic enhancement of property and the privacy of its occupants, screening of objectionable views or uses, and reduction of noise. Multilevel buildings shall be located within a PUD in such a way as to dissipate any adverse impact on adjoining low-rise buildings and shall not invade the privacy of the occupants of such low-rise buildings.

(7) **Perimeter Requirements.**

(a) Structures located on the perimeter of the development must be set back from property lines and rights-of-way of abutting streets in accordance with the provisions of the zoning ordinance controlling the district within which the property is situated.

(b) Structures other than single-family detached units located on the perimeter of the development may require screening in a manner which is approved by the Board of Adjustment.

(8) Plans and accompanying documentation to ensure that the water and sewer systems proposed for the PUD have been approved by the appropriate local and state agencies shall be submitted as part of the application.

(9) Preliminary plans shall include parking provisions for all proposed uses within the PUD in accordance with this Ordinance. When more than one use is located in the PUD, the minimum required parking shall be the sum of the required parking for each use within the development.

(10) Any pedestrian and bicycle path circulation system and its related walkways shall be designed to minimize conflicts between vehicle and pedestrian traffic.

(11) Layout of parking areas, service areas, entrances, exits, yards, courts and landscaping, and control of signs, lighting, noise or other potentially adverse influences shall be such as to protect the character within the zoning district and desirable character in any adjoining district.

(12) Conveyance and maintenance of open space, recreational areas and communally owned facilities shall be in accordance with the Unit Ownership Act (Chapter 47-A of the North Carolina General Statutes) and/or any other appropriate mechanisms acceptable to the Board of Adjustment.

(13) The development plan, and particularly the location of any buildings, roads, or parking areas, must be designed in such a way as to avoid the unnecessary cutting of any trees measuring more than six (6) inches in diameter at ground level within the development.

802.10 Hotels and Motels.

(1) The area around the hotel or motel shall be landscaped with trees, grass, shrubs and flowers in keeping with the general scheme of the Town.

(2) The Board of Adjustment may require a buffer strip.

802.11 Banks and Other Financial Institutions.

(1) Off-street parking shall be sufficient to meet the requirements of this Ordinance.

(2) The area fronting the street shall be landscaped with trees, grass, shrubs and flowers in keeping with the general scheme of the Town.

802.12 Hospitals, Health Clinics and Doctors' Offices.

(1) Off-street parking shall be sufficient to meet the requirements of this Ordinance.

(2) The area fronting the street shall be landscaped with trees, grass, shrubs and flowers in keeping with the general scheme of the Town.

802.13 Fraternal Clubs and Lodges.

(1) Off-street parking shall be sufficient to meet the requirements of this Ordinance.

(2) The area fronting the street shall be landscaped with trees, grass, shrubs and flowers in keeping with the general scheme of the Town.

802.14 Motor Vehicle Service Stations.

(1) Off-street parking shall be sufficient to meet the requirements of this Ordinance.

(2) The area fronting the street shall be landscaped with trees, grass, shrubs and flowers in keeping with the general scheme of the Town.

802.15 Mixed Uses (buildings used for both residential and commercial purposes).

(1) Off-street parking shall be sufficient to meet the requirements of this Ordinance.

(2) The area fronting the street shall be landscaped with trees, grass, shrubs and flowers in keeping with the general scheme of the Town.