



Jefferson County
Board of Zoning Appeals
Thursday, April 23, 2015, 2:00 p.m.

Members
Tyler Quynn, Chair
Jeffrey Bannon, Vice Chair
Christy Huddle
Matt Knott
Ted Schiltz

The Jefferson County Board of Zoning Appeals will meet in the Charles Town Library Conference Room located at 200 East Washington Street, at the side entrance on Samuel Street, in Charles Town, West Virginia. Unless otherwise noted, all requests are pursuant to the Zoning & Land Development Ordinance.

1. Approval of the minutes from the March 26, 2015 meeting.
2. Swearing in of members of the public intending to provide testimony.
3. Variance request from Sections 9.6C and 9.7 to reduce the front setback from 20' to 17'6" for an unlawfully constructed 16' x 30' building. Owner: Matthew and Jennifer Welder. Location: Glen Haven Subdivision, 815 Mason Dr., Harpers Ferry WV. District: Harpers Ferry 04; Map: 3D; Parcel: 40; Zone: R; Size: .40 ac; File: ZV15-08.
4. Director's Report.
 - a) Monthly Activity Report
5. Legal Update.
 - a) All Good Music Festival Pending Litigation CA #14-C-390
 - b) William Neufeld Pending Litigation CA #14-C-394
6. Discussion with possible deliberative session and signing of draft findings/decisions.

Meeting Date: March 26, 2015

 - a) Variance request by Peter Corum, applicant, from Section 3.2G for an eighteen (18) month extension for the Morgan's Grove Market Conditional Use Permit #CP12-01, which expires on June 28, 2015. The CUP was approved for an agricultural-based market. Intended uses are to consist of, but are not limited to, a Food Hub, General Merchandise (retail), Professional/Business Offices, Community Amenities, and other associated uses. Owner: Twin Oaks S/D, LLC. Location: 3988 Kearneysville Pk, Shepherdstown, WV. District: Shepherdstown 09; Map: 13; Parcels: 26.1, 26.2, 26.3, 26.4; Zone: R; Size: 13.68 (combined total); File: ZV15-02.
 - b) Request for a change in nonconforming use by Carl Webster & Connie Kitts, applicants, per Section 4.3C to allow for the reconfiguration of an approved Outdoor Flea Market (#ZC13-34). Owner: Gilbert Mobley. Location: 6468 Charles Town Rd, Kearneysville, WV. District: Middleway 07; Map: 4; Parcel: 8; Zone: R; Size: 5 ac; File: ZV15-04.
 - c) An appeal of an Administrative Decision by Kenneth Barton, Jr. and Kelsey Swaim, attorneys with Steptoe & Johnson PLLC, regarding the interpretation of 'Signs, Animated' in Section 2.2 pertaining to the Shenandoah Air Conditioning & Heating, Inc Animated Sign Conditional Use Permit #CP15-01. Owner: James Young, Sr. Location: 351 Edmond Rd, Kearneysville, WV. District: Charles Town 02; Map: 1; Parcel: 79; Zone: IC; Size: 1.768 ac; File: AP15-01.

Draft Minutes
Jefferson County Zoning Board of Appeals

1 Meeting Date: March 26, 2015
2 Meeting Location: Conference Room, Old Charles Town Library
3 200 East Washington Street, Charles Town, West Virginia
4
5 Board members present: Jeffrey Bannon, Vice Chair; Christy Huddle, and Ted Schiltz
6 Board members absent: Tyler Quynn, Chair and Matt Knott
7 Staff members present: Jennifer Brockman, Acting Zoning Administrator/Director of
8 Planning and Zoning; Steve Groh, Assistant Prosecuting Attorney;
9 Lydia Lehman, Assistant Prosecuting Attorney; Nathan Cochran,
10 Assistant Prosecuting Attorney; Jennilee Hartman, Zoning Clerk
11

12 All requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.

13

14 Ms. Huddle moved to start the meeting at 2:00 p.m. Mr. Bannon called for a vote, which carried
15 unanimously.

16

17 1) Approval of the minutes from the February 26, 2015 meeting.

18 Ms. Huddle made a motion to approve the minutes as written. Mr. Bannon called for a vote,
19 which carried unanimously.

20

21 2) Swearing in of members of the public intending to provide testimony.

22 Ms. Hartman swore in members of the public who indicated they would be providing testimony.

23

24 3) Variance request by Peter Corum, applicant, from Section 3.2G for an eighteen (18) month
25 extension for the Morgan's Grove Market Conditional Use Permit #CP12-01, which expires
26 on June 28, 2015. The CUP was approved for an agricultural-based market. Intended uses are
27 to consist of, but are not limited to, a Food Hub, General Merchandise (retail), Professional/
28 Business Offices, Community Amenities, and other associated uses. Owner: Twin Oaks S/D,
29 LLC. Location: 3988 Kearneysville Pk, Shepherdstown, WV. District: Shepherdstown 09;
30 Map: 13; Parcels: 26.1, 26.2, 26.3, 26.4; Zone: R; Size: 13.68 (combined total); File: ZV15-02.

31

32 Mr. Cochran recused himself from participating in this item as he had previously represented
33 the applicant specifically on this project. Mr. Cochran left the meeting room.

34

35 Ms. Brockman presented her staff report to the Board. Ms. Brockman stated the expiration date
36 of the Morgan's Grove Market Conditional Use Permit (CUP) was June 28, 2015 and that the
37 applicant's request, if approved, would extend the expiration date until December 28, 2016.

38

39 Mr. Fred Blackmer, representative for Morgan's Grove Market (MGM), explained the nature of
40 the request to the Board. Mr. Blackmer highlighted the agricultural uses that have been in
41 operation on the property since the approval of the CUP in an attempt to keep the property viable
42 and explained that the current uses are consistent with the CUP's overall concept. Mr. Blackmer
43 explained that the project could not commence due to the condition imposed on the CUP, which
44 requires the project to hook up to water and sewer. Mr. Blacker further explained that there are
45 no water and sewer lines within a quarter mile of the site. Mr. Blackmer informed the Board that
46 negotiations with a private property owner for an easement to said lines had been underway;

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1 however, the ownership of the property had changed and the negotiations ceased. Mr. Blackmer
2 conceded that should the Board grant the request for an 18-month extension and the project not
3 be underway by the end of the requested timeframe that MGM would not request another
4 extension but would rather be requesting to amend the conditions of the CUP or its business
5 model. Mr. Blackmer addressed questions from the Board.
6

7 Mr. Bannon called for public comment. Mr. Joe Spurgas, neighboring property owner, stated he
8 was not in objection to the request; however, had questions regarding the current site conditions
9 and approvals. Ms. Brockman explained the property had an approved grading permit, which
10 did not vest the CUP; an approved zoning certificate to continue the farmer's market, which had
11 operated seasonally since 2011; and, an approved zoning certificate to continue operating the
12 current school for the following school year. Mr. Bannon closed the public hearing.
13

14 Mr. Cochran returned to the meeting room.
15

- 16 4) Application withdrawn; deemed unnecessary. Variance request from Section 5.4B to reduce
17 the rear setback from 20' to 10' for a deck with stairs. Owner: Thomas Marshall. Location:
18 Colonial Hills, 75 Swearingen Way, Shepherdstown, WV. District: Shepherdstown 09; Map: 8E;
19 Parcel: 18; Zone: RG; File: ZV15-03.
20

21 No action was taken on this item.
22

- 23 5) Request for a change in nonconforming use by Carl Webster & Connie Kitts, applicants, per
24 Section 4.3C to allow for the reconfiguration of an approved Outdoor Flea Market (#ZC13-34).
25 Owner: Gilbert Mobley. Location: 6468 Charles Town Rd, Kearneysville, WV. District:
26 Middleway 07; Map: 4; Parcel: 8; Zone: R; Size: 5 ac; File: ZV15-04.
27

28 Ms. Brockman presented her staff report to the Board, explaining the nonconforming land use
29 would remain the same. Ms. Brockman stated the request was to reconfigure the previously
30 approved outdoor flea market layout.
31

32 Mr. Webster briefly described the nature of his request to the Board stating that the purpose in
33 relocating the tables was to create a more attractive store front. Mr. Webster agreed to the
34 conditions listed in the staff report after Ms. Brockman read them into the record.
35

36 Mr. Bannon called for public comment. Mr. Bradley Bear, friend of the applicant, spoke in
37 support of the request stating that Mr. Webster had already substantially cleaned up the property.
38 Tammy Turner, neighboring property owner, spoke in opposition to the request. Ms. Turner
39 stated that she called various offices 22 times to file a complaint against the previous tenants that
40 operated the flea market. Ms. Turner explained that the property was a continual eyesore and
41 had attracted rats. Ms. Turner claimed that there was no action taken as a result of the numerous
42 complaints she had attempted to file with the County.
43

44 Mr. Webster agreed that the previous tenants had left the property in disrepair and that there
45 was a substantial amount of garbage on the property when he first leased the property; however,
46 since that time he has clean up the property. Mr. Webster reiterated that the purpose of the
47 request is to have the outdoor portion of the business located behind the existing store to reduce

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1 the visibility of the business from the neighbors. Mr. Webster stated that only parking would be
2 permitted in the front of the property. Further, Mr. Webster stated that only crafts and antiques
3 would be sold inside the building and that it would not be used as an indoor flea market.
4

5 6) Variance request by Josh Allen, consultant with Cross Development LLC, from the following
6 requirements:

7 a) Section 11A to reduce the required parking from 40 to 30 spaces for a 9,100 sq. ft.
8 dollar store (ZV15-06).

9 b) Section 10.4E to allow a proposed freestanding sign, approved under the Development
10 Review System, to be located less than the required 1000' from the existing signs along
11 Middleway Pike (ZV15-07).

12 Owner: Wilbur A. Alger & Middle of the Way Real Estate. Location: Corner of Middleway Pk
13 (Rt 51) & Leetown Rd, (Rt 1) Kearneysville, WV. District: Middleway 07; Map: 19; Parcels:
14 16.6, 16.7; Zone: R; Size: 1.69 ac.
15

16 Ms. Brockman presented her staff report to the Board. Ms. Brockman stated that staff's
17 concern regarding request #ZV15-06 is that if a different land use were to occupy the building,
18 the requested number of parking spaces may be insufficient. Mr. Josh Allen, representative for
19 Dollar General, provided documentation from a study conducted by Dollar General supporting
20 the request. Mr. Allen further reasoned that the request would reduce the impervious area and
21 stormwater runoff. (ZV15-06) Regarding the signage, Mr. Allen explained that a business sign
22 helps increase visibility for the store from a distance, alerting drivers to the store and its
23 entrance in advance. Further, street signage allows for drivers to reduce their speed earlier,
24 thus reducing traffic safety concerns. (ZV15-07)
25

26 Mr. Bannon called for public comment; hearing none, Mr. Bannon closed the public hearing.
27

28 7) An appeal of an Administrative Decision by Kenneth Barton, Jr. and Kelsey Swaim, attorneys
29 with Steptoe & Johnson PLLC, regarding the interpretation of 'Signs, Animated' in Section 2.2
30 pertaining to the Shenandoah Air Conditioning & Heating, Inc Animated Sign Conditional Use
31 Permit #CP15-01. Owner: James Young, Sr. Location: 351 Edmond Rd, Kearneysville, WV.
32 District: Charles Town 02; Map: 1; Parcel: 79; Zone: IC; Size: 1.768 ac; File: AP15-01.
33

34 Ms. Brockman provided a detailed account from her staff report to the Board. Ms. Brockman
35 explained that animated signs had been previously approved by the Board through the variance
36 request process; however, a change in West Virginia State law and a subsequent zoning ordinance
37 text amendment, revised the definition of Variance. In 2012, due to the revised definition,
38 Ms. Brockman determined that an animated sign would have to process as a conditional use
39 permit (CUP), as it was commonly understood that the CUP process allowed for greater latitude
40 for land uses not permitted in the zoning ordinance. Ms. Brockman stated that it wasn't until the
41 first CUP application for an animated sign was submitted to the office in January 2015 that it was
42 discovered that Section 4.1 states, "All other uses, except prohibited uses, may receive a
43 conditional use permit upon completion of the Conditional Use Permit process..." [emphasis
44 added] Ms. Brockman explained that she had determined that Section 10.2I, which reads, "No
45 animated signs, as defined by Section 2.2 are allowed." was intended to prohibit animated signs.
46 Therefore, prohibited uses, such as animated signs, could not utilize the CUP process.

1 Mr. Kenneth Barton, Jr. and Ms. Kelsey Swaim, attorneys with Steptoe & Johnson PLLC,
2 represented the applicant. Mr. Barton introduced Mr. Bill Hynosky with W.J. Strickler Signs
3 and stated he would be questioning Mr. Hynosky as an expert in the sign business. Mr. Barton
4 provided the Board a handout depicting images of the proposed signage. Mr. Barton asked
5 Mr. Hynosky to give a description of what an animated sign was by industry standards.
6 Mr. Hynosky described an animated sign in addition to other business signs commonly sold by
7 his company. Mr. Hynosky also described how each of the signs functioned. For clarification
8 Mr. Hynosky explained that the sign chosen by the applicant would be a set of motionless
9 images that would be displayed on the screen for a set period of time and then would change to
10 the next panel. The process was likened to a slideshow presentation. Mr. Hynosky stated there
11 would be color displayed in the images and panels would display the business name and
12 advertisement information for the products sold. Mr. Hynosky declared there would be no
13 flashing lights, fading imagery or movement within the panel. Mr. Hynosky explained that the
14 color displayed in one panel, which then changes to a different color in another is considered
15 ‘static’ by industry standards and not ‘color changing’, as seen in a moving panel.

16
17 Mr. Cochran asked Mr. Hynosky to confirm if the sign would, in fact, be displaying color that
18 requiring electrical energy. Mr. Hynosky confirmed the sign would display color and would do
19 so with electricity.

20
21 In an effort to establish that the requested sign was a Business Sign, Mr. Barton questioned
22 Jim Young, property owner and owner of Shenandoah Air Conditioning & Heating, Inc.
23 Mr. Young confirmed the purpose of the sign was to direct people to his business, to advertise
24 products and services that he would be selling and that both of these matters would be done on
25 his property.

26
27 Ms. Huddle moved to go into deliberative session at 3:43 p.m. Mr. Schiltz seconded the motion
28 which carried unanimously.

29
30 Ms. Huddle moved to come back into regular session at 4:08 p.m. Mr. Schiltz seconded the motion
31 which carried unanimously.

32
33 **Board of Zoning Appeals Rulings**

34
35 3) Variance request by Peter Corum, applicant, from Section 3.2G for an eighteen (18) month
36 extension for the Morgan’s Grove Market Conditional Use Permit #CP12-01, which expires on
37 June 28, 2015.

38
39 Ms. Huddle moved to approve the above referenced request. Mr. Bannon called for a vote,
40 which carried unanimously.

41
42 4) Request for a change in nonconforming use by Carl Webster & Connie Kitts, applicants, per
43 Section 4.3C to allow for the reconfiguration of an approved Outdoor Flea Market (#ZC13-34).

1 Mr. Schiltz moved to approve the above referenced request with the following conditions:

- 2 a) The owner of the property must seek a Zoning Certificate for each change in
3 nonconforming use or change in tenant to ensure that the nonconformity of the
4 subject parcel and structure is not abandoned.
- 5 b) The approved uses are limited to the area depicted in the sketch plan or the previously
6 established area occupied by the former nonconforming use.
- 7 c) No access is permitted to occur other than that permitted by the West Virginia
8 Department of Highways. Any additional entrances approved by the WV DOH,
9 other than the currently permitted access off Old Charles Town Road, shall require an
10 updated Zoning Certificate.
- 11 d) The existing substandard mobile homes shall be removed within 90 days of approval
12 of this change in nonconforming use.
- 13 e) All setbacks for commercial uses shall be met.
- 14 f) Outside display is permitted while the flea market is open; however no other outdoor
15 storage is permitted.
- 16 g) If the primary use of the property becomes a principle permitted use, the
17 nonconforming use shall cease to exist.
- 18 h) Applicant is bound by their application and testimony presented to the Board.

19
20 Mr. Bannon called for a vote, which carried unanimously.

- 21
22 5) Application withdrawn; deemed unnecessary. Variance request from Section 5.4B to reduce the
23 rear setback from 20' to 10' for a deck with stairs.

24
25 No action was taken on this item.

- 26
27 6) Variance request by Josh Allen, consultant with Cross Development LLC, from the following
28 requirements:

- 29
30 a) Section 11A to reduce the required parking from 40 to 30 spaces for a 9,100 sq. ft.
31 dollar store (ZV15-06).

32 Ms. Huddle moved to approve the above referenced request. Mr. Bannon called for a vote,
33 which carried unanimously.

- 34
35 b) Section 10.4E to allow a proposed freestanding sign, approved under the Development
36 Review System, to be located less than the required 1000' from the existing signs
37 along Middleway Pike (ZV15-07).

38
39 Ms. Huddle moved to approve the above referenced request. Mr. Bannon called for a vote,
40 which carried unanimously.

- 1 7) An appeal of an Administrative Decision by Kenneth Barton, Jr. and Kelsey Swaim,
2 attorneys with Steptoe & Johnson PLLC, regarding the interpretation of ‘Sign, Animated’
3 in Section 2.2 pertaining to the Shenandoah Air Conditioning & Heating, Inc Animated
4 Sign Conditional Use Permit #CP15-01.

5
6 Ms. Huddle moved to deny the appeal regarding the interpretation of ‘Sign, Animated’ in
7 Section 2.2 pertaining to the Shenandoah Air Conditioning & Heating, Inc Animated Sign
8 Conditional Use Permit on the basis that the zoning ordinance defines ‘Sign, Animated’ as
9 “a sign with ... color change requiring electrical energy, electronic, or manufactured
10 sources of supply...”, and that the applicant stated the panels would change color; thus
11 meeting the Ordinance’s definition of an animated sign. Mr. Bannon added that to anyone
12 observing the sign it would be perceived as motion and flashing of light as the panels
13 change, which would meet three of the four noted elements within the definition of ‘Sign,
14 Animated’. Mr. Bannon called for a vote, which carried unanimously.

- 15
16 8) Director’s Report.

17 a) Monthly Activity Report. No action taken.

18 Ms. Brockman informed the Board that a zoning administrator candidate had been selected and
19 that an agenda request form had been forwarded to the County Commission for final approval.
20 Ms. Brockman reiterated that signage, lighting and parking continue to be at the forefront of
21 staff’s desired zoning text amendments. Ms. Brockman explained that the Planning
22 Commission had appointed Citizen Committees to draft amendments to the Subdivision
23 Regulations and Zoning Ordinance to address campgrounds and Major Subdivision processes
24 to the Board and updated them on the status of the Impact Fees. Ms. Brockman told the Board
25 that the County Commission recently approved a rezoning request to one of the newly adopted
26 zoning districts, although the property was less than an acre in size. Ms. Brockman addressed
27 other items from the Director’s Report with the Board.

- 28
29 9) Legal Update.

30 a) All Good Music Festival Pending Litigation. Mr. Cochran recused himself from this item
31 as he had previously had a client who was in opposition to the case. Ms. Lehman provided
32 an update to the Board informing them that a Respondent’s Brief had been filed with the
33 Circuit Court on March 25, 2015. Ms. Lehman stated she would have more information for
34 the Board at the next meeting.

35 Mr. Cochran returned to the meeting.

36 b) William Neufeld Pending Litigation. Mr. Cochran and Ms. Lehman informed the Board
37 that the Legal Department had recently received an Order Staying Proceeding and Granting
38 in Part and Denying In Part Respondents’ Motion to Dismiss. Mr. Cochran and Ms.
39 Lehman informed the Board that a briefing schedule had not been established at this time
40 and that they would update the Board at the next meeting.

- 41
42 10) Signing of written decisions from prior Board of Zoning Appeals meetings. None.

43
44 Ms. Huddle moved to adjourn the meeting at 4:34 p.m. Mr. Bannon called for a vote, which
45 carried unanimously.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
April 23, 2015

Matthew and Jennifer Welder Variance Request (#ZV15-08)

RELEVANT INFORMATION:

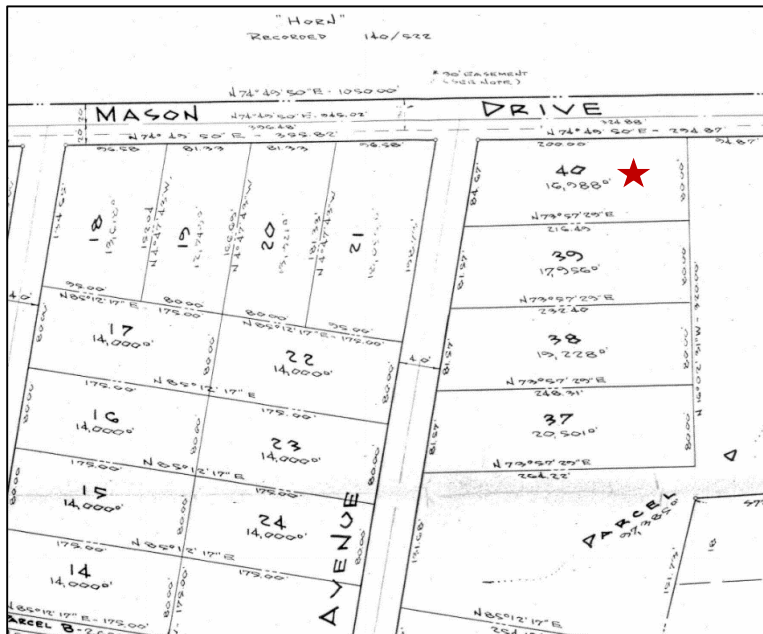
1. Overview of Request

Variance request from Sections 9.6C and 9.7 to reduce the front setback along Mason Drive from 20' to 17'6" for a 16' x 30' structure (16' x 20' building and 10' x 16' carport) constructed without obtaining a building permit. The house fronts on Connie Drive but has driveway access and is addressed from Mason Drive. The variance is required before the applicant can apply for a building permit for a structure at this location.

2. Previous Case History

The final plat for the Glen Haven Subdivision, Section 4, was recorded August 5, 1971, which predates the adoption of the 1979 Subdivision Ordinance and the 1988 Zoning and Land Development Review Ordinance.

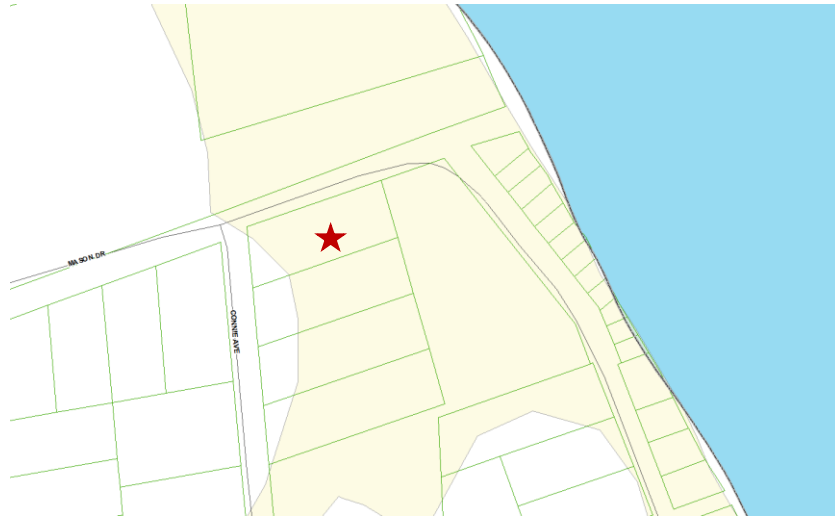
The applicant owns Lots 39 and 40 (Parcels 44 and 45) within the subdivision and has the two yards, totaling 0.80 acres, fenced as if it is a single lot. Lot 40 (Parcel 45) is the property on which the 16' x 30' structure is located. The applicant constructed the structure without applying for a building permit, but believed that the side setback of 8' would apply rather than the front setback of 20'. Generally, any side of a property that abuts a street right-of-way requires a front yard setback.



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The lots are both located within the 100 floodplain of the Potomac River. Once the violation was discovered, the applicant complied with the request of the County's Floodplain Manager and submitted a certification from a structural engineer verifying that the construction of the 16' x 30' structure meets the requirements of FEMA.



3. Applicant's Justification of Request

In the attached application submitted for the variance request the applicant provided a response to the following four criteria for a variance:

- a) *Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents.*
- b) *Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance.*
- c) *Would eliminate an unnecessary hardship and permit a reasonable use of the land.*
- d) *Will allow the intent of the Zoning and Land Development Ordinance to be observed and substantial justice done.*

4. Staff Evaluation of Request

a. Source and purpose of ordinance requirements

The recordation of the Glen Haven Subdivision predates the establishment of the zoning ordinance; therefore, the applicant must comply with Section 9.7 of the Zoning Ordinance which regulates setbacks for properties created prior to 1988. Due to the property's location, size, zoning district and history, the setbacks would be 20' Front, 8' Side and 12' Rear.

The purpose of side and rear yard setback requirements is to reduce the impact that a land use might have on an adjacent property; to allow adequate space between a structure and a property line so that maintenance of the structure is feasible; to maintain adequate separation between structures for fire prevention purposes; and to allow room for utility easements.

A key purpose of front yard setback requirements is to ensure that any future right-of-way expansion or future utility placement will not be obstructed by structures built too close to a

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Matthew and Jennifer Welder Variance Request (#ZV15-08)

road, as well as to ensure that sight visibility is not impaired for drivers along the right-of-way. Right-of-way expansion is not an applicable concern in this subdivision because the development abuts the Potomac River and has limited opportunity for expansion. As can be seen in the photographs, the sight visibility at the intersection with Connie Drive is not impacted by the construction of the structure due to the alignment of the streets and homes.



b. Unique characteristics of property

The subject property is located in an established subdivision that predates both the Zoning Ordinance and Subdivision Regulations. A lot of this size and in this zoning district would not be permitted under the current Ordinance and is therefore considered a nonconforming lot. The lot is a corner lot, fronting on Connie Drive, with the side of the house along Mason Drive from which the lot has vehicular access and structure addressing. The Zoning Ordinance defines a “front lot line” as “the side or sides of an interior or through lot which abut a street,” which means that this lot would have to meet the front yard setback for all structures along both Mason and Connie Drives. Due to the fairly low density of this development and the open vistas created by the Potomac River valley, clear sight distance exists where Connie Drive accessed Mason Drive.

The 16’ x 30’ structure that is the subject of this variance was constructed without benefit of a building permit in a manner that does not meet the front yard setback required along all street rights-of-way. The applicant indicated that they believed that they would be required to meet the side yard setback in this location and because they did not apply for a building permit, staff was not able to provide this input.

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Matthew and Jennifer Welder Variance Request (#ZV15-08)



c. Character of area

Glen Haven Subdivision consists of single family homes on relatively small rural lots near the Potomac River. The applicant owns two abutting lots which are fenced as if a single family lot. All structures are located on Parcel 45 (Lot 40). The property located between these lots and the right turn made by Mason Drive near the Potomac River is owned by the Glen Haven HOA.



d. Impact on adjacent properties.

The property in question has neighboring single family homes along and on both sides of Connie Drive sitting on relatively small rural lots. Mason Drive continues from its intersection with

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Connie Drive toward, and paralleling, the Potomac River providing access to additional single family residential structures, HOA property and providing access to the River. The constructed structure in question is located along Mason Drive in a manner that does not impact the sight distance for cars turning from Connie Drive onto Mason Drive or for those travelling along Mason Drive. The impact on the adjacent properties is minimal.



e. Feasibility of complying with the ordinance by other means

As the structure has already been constructed and engineered to meet FEMA standards, without this variance, the structure would have to be picked up and moved. If new construction was proposed, it would be possible to meet the required setbacks without a variance.

5. Conditions of Approval

Should the Board choose to approve this request conditionally, possible conditions of approval include:

- a) This variance shall be limited to the reduction of the front setback from 20' to 17'6" for the 30' x 16' garage and carport structure described in the application.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 9.6 Accessory Structures

Accessory structures, defined by Section 2.2, shall be permitted in all districts where single-family and two-family dwelling units are permitted. The provisions for accessory structures are as follows.

- C. No accessory building shall be erected within the required front yard.

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Matthew and Jennifer Welder Variance Request (#ZV15-08)

Section 9.7 Other Exceptions³

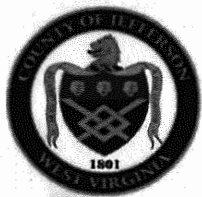
For all lots that were approved with setbacks by the Planning Commission as part of the subdivision process prior to September 1, 1989, the setbacks and sizes shall be as established as a part of that process.

Setbacks are as follows in subdivisions for which no setback was stipulated previously by the Jefferson County Planning Commission as a part of the subdivision process:²³

Rural Agricultural and Industrial Commercial

Single family residences --

30,000 sq. ft. to 39,999 sq. ft. --	20' front,	10' side	and	12' rear
under 30,000 sq. ft. --	20' front,	8' side	and	12' rear



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, P.O. Box 338

Charles Town, WV 25414

File Number: # ZV/15-08

Staff Initials: CJC

Fees Paid (\$100 or \$150): \$150.00

www.jeffersoncountywv.org/government/departments/planning-and-zoning-department.html

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Variance Request

Variances from the Zoning and Land Development Ordinance must comply with Article 8A-7-11 of the WV State Code. A variance is a deviation from the minimum standards of the ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district, nor shall it involve changing the zoning classification of a parcel of land.

Property Owner Information

Name: Matthew and Jennifer Welder
Mailing Address: 815 Mason Drive Harpers Ferry WV 25425
Phone Number: 706-421-2475 Email: matthew.d.welder.mil@mail.mil

Applicant Contact Information

Name: Same As Above
Mailing Address:
Phone Number: Email:

Applicant Registered Engineer(s), Surveyor(s), or Consultant(s)

Name: A.F McCormick Structural Engineering
Mailing Address: Engler Hotel, Sheperdstown WV 25443
Phone Number: 304-876-1661 Email:

Physical Property Details

Physical Address: 815 Mason Drive
City: Harpers Ferry State: WV Zip Code: 25425
Tax District: 4 Map No: 3D Parcel No: 454 LOT 39340
Parcel Size: LOT 40 .4 acres lot 39 .42 acs Deed Book: 1125 Page No: 705

Zoning District (please check one)

Grid of zoning districts with checkboxes: Residential Growth (RG), Industrial Commercial (IC), Rural (R), Residential-Light Industrial-Commercial (R-LI-C), Village (V), Neighborhood Commercial (NC), General Commercial (GC), Highway Commercial (HC), Light Industrial (LI), Major Industrial (MI), Planned Neighborhood Development (PND), Office/Commercial Mixed-Use (OC). Rural (R) is checked.

RECEIVED

MAR 09 2015

JEFFERSON COUNTY PLANNING, ZONING & ENGINEERING

Place Received Date Stamp Here

On a separate sheet of paper, provide a sketch showing the shape and location of the lot indicating all roads, rights of way, and easements. Show the location of the intended construction or land use indicating building setbacks (i.e. the distance of the structure from all property lines), size, and height. Identify all existing buildings, structures, or land uses on the property. The sketch should show the full extent of the property. Sign and date the sketch.

Is there a Code Enforcement action pending in relation to this property? Yes No

Reference the section of the Zoning Ordinance pertaining to this request: _____

Briefly describe the nature of the variance request:

I constructed a 16x20 building - 17'6" off of my side property line. It was my understanding that an 8' offset was the code. Once constructed, anchored and secured, I was informed that a 20' offset from Mason Drive was required. I immediately informed Mason Carter that I was only 17'6" off of Mason Drive and he recommended that I submit for a variance for approval.

If this request is for a setback variance, please check one of the following:

Front Setback Side Setback Rear Setback Reduction From 20' to 17'6"

Please explain why granting the variance will NOT adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents:

This is a storage building that is set back 17'6" from Mason Drive, currently my home and most all other homes and building are closer to Mason drive than my storage building. This does not pose any risk to the neighborhood

In what way does this request arise from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance?

I had spoken to the building permit section and was under the knowledge that buildings needed to be set back 8' from the property line. At 17'6", i believed that this was clearly within code. However, after construction, i received information that a 20' setback is the code which was created after my home was built. I was unaware of this code, nor can I find it on the website.

How will granting this variance eliminate an unnecessary hardship and permit a reasonable use of the land?

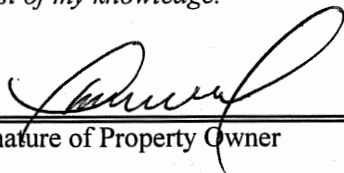
I have already spent \$12,000 and another \$1200 after the county asked for a structural engineering approval. I have placed substantial support in this building and moving it 2'6" would be a considerably expense and ensue financial hardship on my family. This is a beautiful building and an improvement to the community.

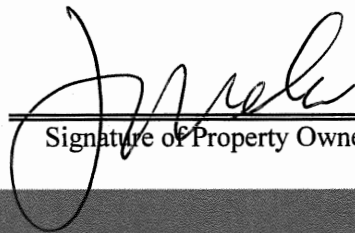
How will granting this variance allow the intent of the Zoning Ordinance to be observed and substantial justice to be done?

This will allow my family to use and enjoy our property without additional financial hardships. This building is also further away from the road than most of the structures in the sub division. As an active Duty Army Officer, I hold high integrity and will comply with the Commission's final decision. I appreciate your consideration.

Original signature is required. If additional signatures are necessary, please attach a separate piece of paper.

By signing this application, I give permission for the Departments of Planning and Zoning staff to walk onto the subject property, if necessary, in order to take photos for the Board of Zoning Appeals staff reports. The information given is correct to the best of my knowledge.

 08 MAR 2015
Signature of Property Owner Date

 03/08/15
Signature of Property Owner Date

Notification Requirements (to be completed by staff)

Notice of a public hearing for an appeal shall be advertised in a newspaper having general circulation in the County at least 15 days before the hearing. The subject property shall be posted conspicuously by a zoning notice no less than 28" x 22" in size, at least 15 days before the hearing (pursuant to the Zoning and Land Development Ordinance Section 3.4A(3)(b)).

THURSDAY, APRIL 23, 2015 @ 2:00PM
Date of Public Hearing

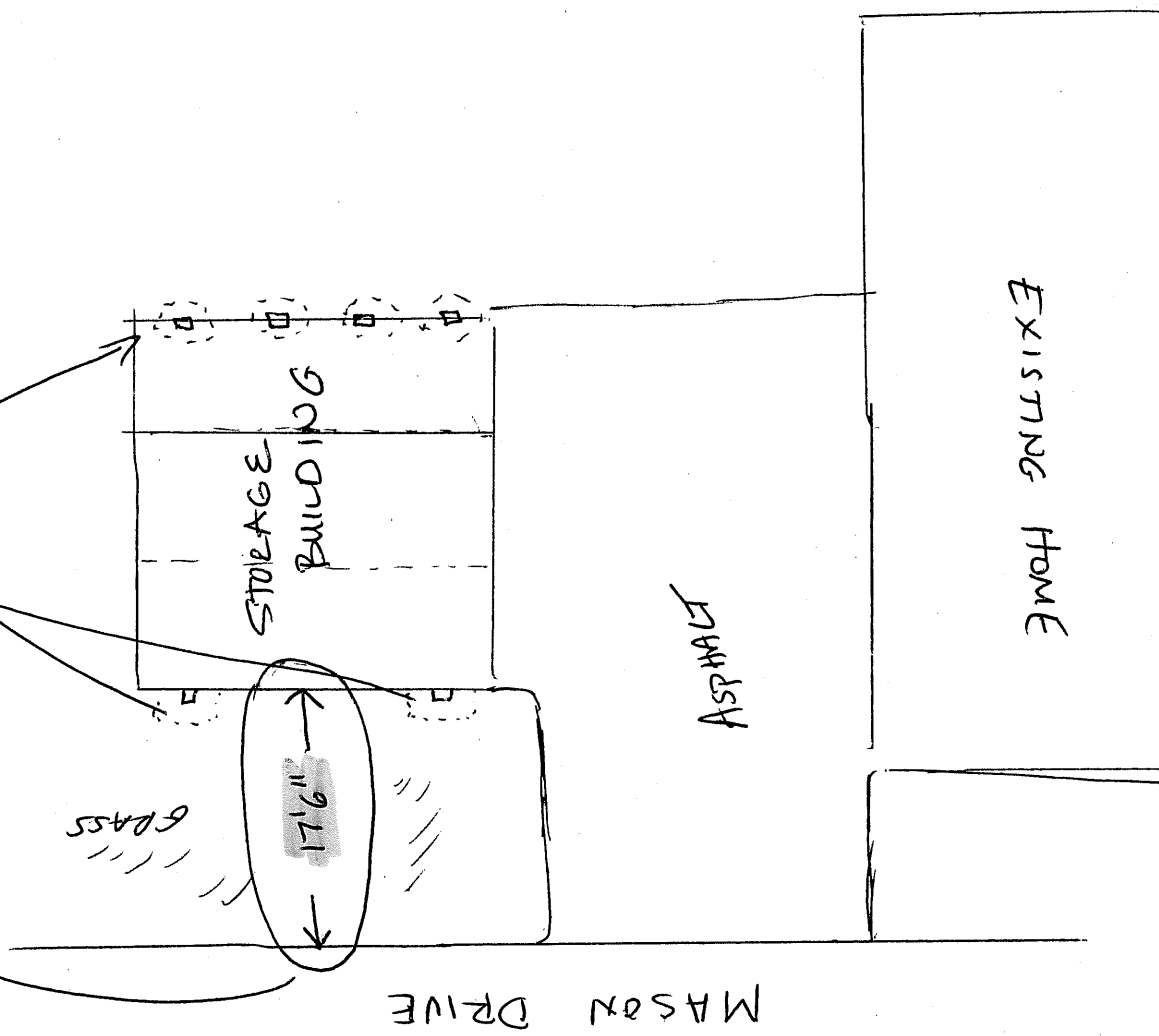
WEDNESDAY, APRIL 8, 2015
Advertising Date

WEDNESDAY, APRIL 8, 2015
Placard Posting Date

#ZV15-08

EMPTY LOT THAT
I OWN

THIS IS REQUEST
FOR VARIANCE
PER ENGINEER
ANCHORS
4x4x18" x 18" x 24" CONCRETE PILES



FIELD 1

#ZY15-08



#2115-08





Jefferson County, West Virginia

Departments of Planning and Zoning

116 East Washington Street, 2nd Floor

Charles Town, WV 25414

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Email: zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Director's Report Board of Zoning Meeting April 23, 2015

1) Status of Zoning Administrator/Planner Search

On April 2, 2015, County Commission approved the hiring of A. David Simon as the County Zoning Administrator with a start date of May 4, 2015.

2) Recent/Upcoming CC Actions relevant to Planning:

a) County Commission Public Hearing on the landowner-initiated petition to amend the County Zoning Map for a 404.69 +/- acre property owned by Standard Land Company, LLC located on the east side of Millville Road (Route 27), ½ mile south of the intersection with Route 340 in Harpers Ferry from Rural and Residential Growth to Residential-Light Industrial-Commercial (*Approved 4/2/15*)

b) Three public hearings on Planning Commission initiated text amendments to the Subdivision and Land Development Regulations (*Approved 4/16/15*)

i. Recommendation to amend the definition of “days” from business days to calendar days in Section 26.200 of the Jefferson County Subdivision and Land Development Regulations for the purpose of setting a public hearing to be held by the County Commission (STA15-01).

ii. Recommendation to amend Section 20.104, “Exceptions”, of the Jefferson County Subdivision and Land Development Regulations, subsection “C”, to “exempt” public utilities and private utility firms processing easements from these Regulations for the purpose of setting a public hearing to be held by the County Commission (STA15-02).

iii. Recommendation to amend Section 24.300, “Waivers”, of the Jefferson County Subdivision and Land Development Regulations to change the last sentence of the introductory paragraph stating “No process or procedural waivers shall be granted” to “Process and procedural waivers shall be reviewed and found consistent with the above criteria prior to approval” for the purpose of setting a public hearing to be held by the County Commission (STA15-03)

- c) The Corporation of Bolivar has requested the establishment of an Urban Growth Boundary under the provision of WV State Code 8-6-4a. Legal staff has recommended that the Planning Commission hold a Public Hearing to make a recommendation regarding adding this Boundary line to the County Zoning Map to the County Commission (*Public Hearing date: May 12, 2015 7:00 pm*)
 - d) Anticipated joint meeting of the Planning Commission and County Commission tentatively recommended for June 2015 to establish priority work elements based on the *Envision Jefferson 2035 Comprehensive Plan* -- BZA interest in participation?
 - e) County Commission discussion/action on proposed Zoning Ordinance text amendment regarding Mass Events (#ZTA 14-02) (*County Commission workshop TBD in 2015*)
- 3) Upcoming BZA meetings
- a) Next Regular Meeting: **May 28, 2015**

JEFFERSON COUNTY, WEST VIRGINIA

Department of Zoning

116 East Washington Street
P.O. Box 338
Charles Town, West Virginia 25414

Email: zoning@jeffersoncountywv.org

Phone: (304) 728-3228

Fax: (304) 728-8126

MEMORANDUM

TO: Board of Zoning Appeals Members

CC: Engineering & Building Permits Departments

FROM: Acting Zoning Administrator, Jennifer M. Brockman

DATE: April 17, 2015

SUBJECT: April Monthly Report of Department Activities

ISSUED ZONING CERTIFICATES

#ZC15-09 THE JOHN W. DARNELL TRUST c/o SANDRA FEIZOLLAHI - OWNER
HARDY CELLULAR TELEPHONE COMPANY - APPLICANT

Issuance Date: March 23, 2015

Proposed Use: Property contains existing self-support Telecommunications Tower. Hardy Cellular Telephone Company to add three (3) "LTE-5" antennas for, US Cellular, at 185'; six (6) coax cables (1 5/8") and three (3) RRU's on the existing water tower. No height increase to tower / no ground disturbance.

Physical Location: 3343 Shepherdstown Pike; Shenandoah Junction, WV 25442

Zone: Rural

#ZC15-10 SUNNYSIDE LIMITED PARTNERSHIP / OWNER
T-MOBILE – APPLICANT / CONTACT: JESSICA BINGHAM

Issuance Date: March 24, 2015

Proposed Use: Wireless Telecommunications Facility Co-location. Property contains an existing 199.0' self-support telecommunications tower. T-Mobile to install three (3) new antennas; one (1) 6201 ode cabinet; a PTS 8003 battery support cabinet and six (6) new coax cables. Additionally, one (1) existing 2102 cabinet will be removed and one (1) existing antenna & TMA will be re-located within the existing fenced compound area. No concrete will be poured. No work will be done outside of the existing lease area on the tower and on the ground.

Physical Location: 844 Wheatland Road; Charles Town, West Virginia 25414

Zone: Industrial-Commercial

ISSUED ZONING CERTIFICATES

#ZC15-13 DOUGLAS & LEANNE COBB – OWNERS/APPLICANTS

Issuance Date: April 07, 2015
Proposed Use: Cottage Industry. Office area to be located within attached Residential unit to be used for the operation of PanelWrights business and SIP School. Has two (2) employees. No onsite sales.
Physical Location: 806 French Road; Shenandoah Junction, West Virginia 25442
Zone: Rural

#ZC15-01 GEORGE W. & MARY L. RUSHIZKY – OWNERS
SHENANDOAH PERSONAL COMMUNICATIONS (SHENTEL) – APPLICANT
CONTACT: JUSTIN D. BLANSET

Issuance Date: April 07, 2015
Proposed Use: Wireless Telecommunications Facility Co-location. Property contains existing 200.0' self-support telecommunications tower. Shenandoah Personal Communications (Shentel) to remove two (2) existing antenna at 167' elevation; install three (3) new antennas at 155' elevation; identify the location for three additional future antenna at 155' elevation; and install new RRH (remote radio head) equipment on the structure and install an equipment cabinet to replace BTS.
Physical Location: 8422 Shepherdstown Pike; Shepherdstown, West Virginia 25443
Zone: Rural

#ZC15-14 KEVIN C. DROST & DINA CIRIELLO – OWNERS/APPLICANTS

Issuance Date: April 07, 2015
Proposed Use: Outdoor storage and sale of sheds/garages/wooden structures to be purchased and relocated to private properties. Said proposed use is in addition to approved #ZC14-41 (09/18/14).
Physical Location: 154 Wolfcraft Way; Charles Town, WV 25414
Zone: Residential-Light Industrial-Commercial

#ZC15-15 KEVIN C. DROST & DINA CIRIELLO – OWNERS/APPLICANTS

Issuance Date: April 07, 2015
Proposed Use: Open-air Flea Market, to include up to fifty (50) sales tables/booths, as depicted on Sketch Plan, and no more than two (2) approved mobile food vendors. Open annually: April – November. Proposed use is in addition to approved #ZC14-41 (9/18/14) and #ZC15-14 (pending).
Physical Location: 154 Wolfcraft Way; Charles Town, West Virginia 25414
Zone: Residential-Light Industrial-Commercial

PENDING ZONING CERTIFICATES

#ZC14-49 WESLEY SMOOT – OWNER / APPLICANT

Issuance Date: TBD
Proposed Use: Office area for designing and storage of material for projects; storage and retail sales of nursery products (mulch, gravel, plants, etc.).
Physical Location: 164 Tel Farm Lane; Kearneysville, West Virginia 25430
Zone: Rural

#ZC15-07 CHARLES J. BROWN - OWNER
SHERYL GRAY - APPLICANT

Issuance Date: TBD
Proposed Use: Change in Tenant. Current owner turning over operation of existing business to daughter. Said business, established in 1988, consists of general retail sale of clothing, groceries, sporting goods, tobacco/tobacco products, smoking accessories, guns/ammunition and beer.
Physical Location: 15949 Charles Town Road; Charles Town, West Virginia 25414
Zone: Rural

#ZC15-12 LSCG FUN II – LANES A DELAWARE LIMITED LIABILITY COMPANY/OWNER
KIMBERLY GILLIAM – APPLICANT

Issuance Date: TBD
Proposed Use: Sports Bar & Grill to contain twenty (20) tables; two (2) full-service Bars (dine-in or carry-out); two (2) jukeboxes; two (2) pool tables; two (2) dart boards and five (5) slot machines. Special Events to include Live Bands with local Artists. Property fka "Legends Lounge", "Tap", "Shenandoah Lanes" - currently operating as a Restaurant.
Physical Location: 107 Keys Ferry Road; Charles Town, West Virginia 25414
Zone: Residential-Light Industrial-Commercial

#ZC15-16 JOSE F. OSORIO – OWNERS/APPLICANT

Issuance Date: TBD
Proposed Use: Rodeo/ Calf Roping/ Bull Wrestling Event with approved parking for up to 100 spectator vehicles (not including horse trailers/work vehicles). Permitted as "Agricultural Tourism". Monthly event to be hosted from May to November (annually).
Physical Location: 1196 Van Cleavesville Road; Kearneysville, West Virginia 25430
Zone: Rural