

Jefferson County

Board of

Zoning Appeals

Thursday,
September 19, 2013

JEFFERSON COUNTY, WEST VIRGINIA

Department of Zoning

116 East Washington Street, 2nd Floor

P.O. Box 338

Charles Town, West Virginia 25414

Phone: 304-728-3228

Email: zoning@jeffersoncountywv.org

Fax: 304-728-8126

MEMORANDUM

TO: Jefferson County Board of Zoning Appeals Members

FROM: Jennilee Hartman, Zoning Clerk

DATE: September 13, 2013

SUBJECT: September 19, 2013 Board of Zoning Appeals Meeting

Please find enclosed a copy of the Agenda for the upcoming Board of Zoning Appeals meeting to be held on Thursday, September 19, 2013. Also for your review, you will find corresponding information regarding said Meeting. When applicable, I will include copies submitted to this office that pertain to items of new business. If you have any questions, or will not be able to attend the upcoming meeting, please do not hesitate to contact me.

JEFFERSON COUNTY, WEST VIRGINIA

Department of Zoning

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MEMORANDUM

TO: Board of Zoning Appeals Members

CC: Engineering & Building Permits Departments

FROM: Acting Zoning Administrator, Jennifer M. Brockman

DATE: September 13, 2013

SUBJECT: September Monthly Report of Department Activities

ISSUED ZONING CERTIFICATES

#ZC13-30 WV 340, LLC – OWNER /
APPLICANT - TED ROSER w/ “SPIRIT OF HALLOWEEN”

Issuance Date: September 03, 2013

Proposed Use: Operation of Seasonal Halloween Retail Shop from late August - mid-November 2013 for the sale of Halloween costumes and décor, to be located in currently unoccupied, existing retail shop.

Physical Location: 186 Flowing Springs Road; Charles Town, West Virginia 25414
“Jefferson Crossing” / Martins Shopping Center Complex

Zone: Residential-Light Industrial-Commercial

#ZC13-29 DAN P. ALLER – OWNER /
MICHAEL SHEPHERD – APPLICANT

Issuance Date: September 09, 2013

Proposed Use: Mobile Food Unit, situated on two spaces in parking lot of Indoor Flea Market. Operation of Food Unit will correspond with Flea Market business hours. Said unit will be relocated offsite during after-hour period.

Physical Location: 197 Halltown Road; Harpers Ferry, West Virginia

Zone: Residential-Light Industrial-Commercial

ISSUED ZONING CERTIFICATES

#ZC13-31 JOHN OREM – OWNER /
ERIC J. BURNELL – APPLICANT

Issuance Date: September 09, 2013
Proposed Use: State Farm Insurance Agency
Physical Location: 7330 Martinsburg Pike; Shepherdstown, West Virginia
Zone: Residential-Growth

#ZC13-32 SBA COMMUNICATIONS CORPORATION – OWNER /
K-CO ENTERPRISES, INC. / CONTACT: KELLIE – APPLICANT

Issuance Date: September 09, 2013
Proposed Use: Tower Telecommunications. Replace existing steel members with new ones and existing foundation. All work to be completed per plans and related code.
Physical Location: 3343 Shepherdstown Pike; Shepherdstown, West Virginia
Zone: Rural

#ZC13-33 PHIL McDONALD; McLUCKY, LLC – OWNER /
GREG McNABB; ARTOMATIC @ JEFFERSON - APPLICANT

Issuance Date: September 09, 2013
Proposed Use: Art and Cultural Event to be held at the former Rock & Tile Store weekends (also on Thurs. 10/03/13 and Thurs. 10/31/13) during the month of October, 2013. The exhibit will showcase the artwork of 40-50 artists and include live entertainment.
Physical Location: 154 Wolfcraft Way; Harpers Ferry, West Virginia
Zone: Residential-Light Industrial-Commercial

PENDING ZONING CERTIFICATES

#ZC13-34 CAROLINE R. LITWACK – OWNER /
BELINDA LEWIS - APPLICANT

Issuance Date: TBD
Proposed Use: Thrift Shop.
Physical Location: 154 Wolfcraft Way; Harpers Ferry, West Virginia
Zone: Industrial-Commercial



Jefferson County
Board of Zoning Appeals Agenda
Thursday, September 19, 2013, 3:00 p.m.

Members
Jeff Bresee, Chair
Christy Huddle, Vice Chair
Edwin Kelly
Tyler Quynn

The Jefferson County Board of Zoning Appeals will meet in the **Jefferson County Maintenance Department Conference Room, located at 128 Industrial Boulevard, in Kearneysville, West Virginia.** Unless otherwise noted, all requests are pursuant to the Zoning & Land Development Ordinance.

1. Approval of the minutes from the July 18, 2013 and August 15, 2013 meeting.
2. Swearing in of members of the public intending to provide testimony.
3. Continued from the July 18 and August 15, 2013 meetings. The variance request by applicant, John Fridley, was from Section 9.6(C) & 9.7 for a reduction of the front setback distance from 20' to 5' to construct a 20' x 22' detached garage. At the August 15, 2013 meeting, the applicant indicated that the required setback from the DOH ROW was actually 12"; therefore, the applicant was advised to amend their application or reapply for a new variance. The applicant has not resubmitted and Board action is required on this outstanding request. Owner: William C. Palmer, Sr. Location: Shannondale, (Section 1L), 1623 Lakeside Drive, Harpers Ferry, WV. District: Kabletown (06); Map: 6C; Parcel: 292; Zoned: Rural; Size: 25,000 sq. ft.; File: #ZV13-19.
4. Variance request by applicant, ARC-FD JV, LLC., c/o Arcland Property Co., from Sections 4.11A and 4.11D and Table 4.11-1 to reduce the required landscaping buffer from 10' to 0' for the proposed 40,000 square foot U.S. Coast Guard office building within the Burr Business Park. Owner: Jefferson County Development Authority. Applicant Representative: Kristen Stolipher, Gordon. Location: Burr Industrial Park, Lot 8, James Burr Boulevard, Kearneysville, West Virginia. District: Charles Town (02); Map: 1; Parcel: 108; Zoned: Industrial-Commercial; Size: 5.624 acres; File: #ZV13-25.
5. Appeal of an Administrative Decision made by Jennifer Brockman, Acting Zoning Administrator, of the interpretation of Section 5.7D(3) regarding *Maximum Number of Lots Allowed* in the Rural zoning district. Appellants: Katherine B. Dunn & Sara V. Lowery, c/o Stanley Dunn. Appellant's Representative: J. Michael Cassell, Esq., Cassell & Prinz, PLLC. Location: 1371 Myerstown Road, Charles Town, West Virginia. District: Middleway (07); Map: 17; Parcel: 4; Zoned: Rural; Size: 7.485 acres; File: #AP13-01.
6. Variance request by applicant, Matt Bernazzoli, from Section 4.3.H to allow a current 25'7" x 8'2" shed to remain located on an existing concrete slab where an original shed was formerly situated. Property Owner: Bakerton Bible Church. Location: 662 Carter Avenue; Harpers Ferry, West Virginia. District: Harpers Ferry (04); Map: 3; Parcel: 57; Size: 1.44 acres; Zoned: Village; File: #ZV13-26.
7. Variance request by applicant, Diane De Laet for Verizon Wireless, from Section 4B.7.J.2 to allow an increase of height from 120' to 130' tall stealth silo design for its wireless telecommunications facility, which is required to meet its network objective. Property Owner: George Randolph Welsh, Jr. Location: 231 Trough Road; Shepherdstown, West Virginia. District: Shepherdstown (09); Map: 17; Parcel: 11; Size: 123.6 acres; Zone: Rural; File: #ZV13-27.
8. Variance request by applicants, Gilbert and Catherine Smallwood, from Section 9.7 for a reduction of the side setback distance from 6' to 2' to allow for the construction of a 12' x 21' garage. Location: 932 Jefferson Avenue, Charles Town, West Virginia. District: Charles Town (02); Map: 10A; Parcel: 64; Size: 0.25 acres; Zone: Residential-Growth; File: #ZV13-28.

Jefferson County
Board of Zoning Appeals
Thursday, September 19, 2013, 3:00 p.m.

9. Variance request by applicant, George Armstrong, from Section 5.7.B.1 for a reduction of the rear setback distance from 50' to 28' to allow a recently constructed garage to remain located where an original building was formerly situated. Location: 129 Marrs Lane, Kearneysville, West Virginia. District: Middleway (07); Map: 5; Parcel: 12.5; Size: 3.0337; Zone: Rural; File: #ZV13-29.

10. Appeal of the Administrative Decision to issue Zoning Certificate #ZC13-23 for a Home Occupation Level 2 that allows a home-based asphalt repair business. The business includes a 16' trailer with seal coating and lawn equipment, to be enclosed in an outbuilding/garage, pending Building Permit approval. Appellants: R.K. and Marianne Hedrick; Wayne and Gloria Chastain; Scott and Alice Dillow; Mike and Pam Hinkle; and Chris and Christy Swisher. Property Owners: Robert and Donna Edwards. Location: Elk Run Subdivision, Lot 7, 235 Elk Branch Drive, Shenandoah Junction, West Virginia. District: Shepherdstown (09); Map: 22; Parcel: 30; Size: 1.93 acres; Zoned: Rural; File: #AP13-02.

11. Director's Report.

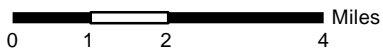
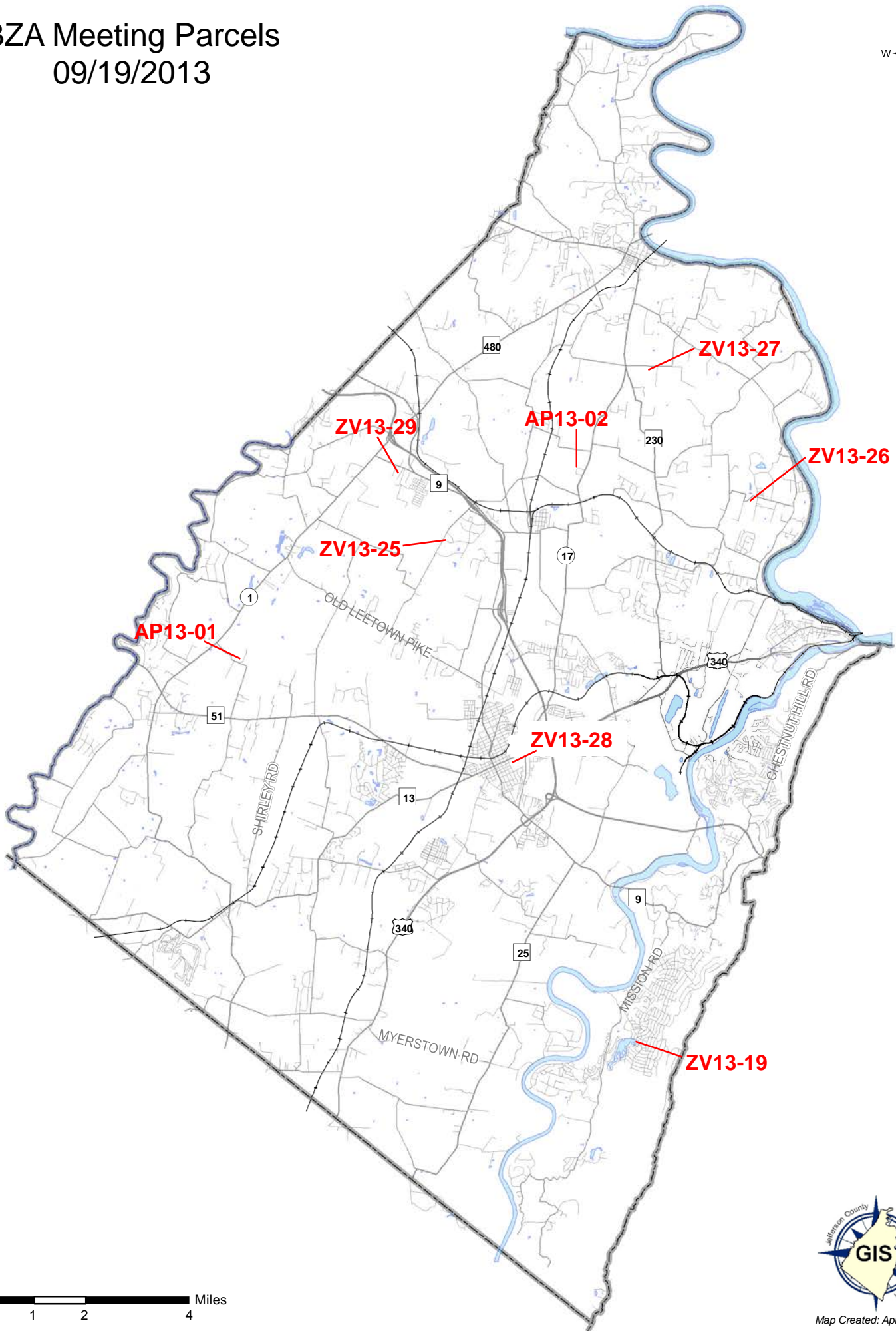
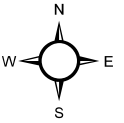
12. Legal Update.

13. Signing of written decisions from prior Board of Zoning Appeals meetings.

14. Correspondence.

BZA Meeting Parcels

09/19/2013



Jefferson County Board of Zoning Appeals Consideration of a Variance

Article 3, Section 3.4 of the Jefferson County Zoning and Land Development Ordinance amended by the County Commission on July 7, 2011, states the following:

Section 3.4 Boards and Commissions²³

A. Board of Zoning Appeals

4. The Board of Zoning Appeals shall consider requests for variances from the terms of the Ordinance.²³
 - a. The Board shall approve a variance request if the Board finds that a variance:
 - i. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;
 - ii. 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;
 - iii. Would eliminate an unnecessary hardship and permit a reasonable use of the land; and
 - iv. Will allow the intent of the Zoning and Land Development Ordinance to be observed and substantial justice done.^{17, 21}
 - b. The owner or authorized representative of the owner of the property which is the subject of a variance request shall complete and sign forms provided for this purpose by the Board, and shall pay the associated fees. The variance request shall be filed with the Board at offices of the Departments of Planning and Zoning.
 - c. Notification for a variance must be conducted according to the requirements of Section 3.4A(3)(b).
 - d. A public hearing must be conducted according to the requirements of Section 3.4A(3)(c) and such hearing may be continued according to the requirements of Section 3.4A(3)(d).

Draft Minutes
Jefferson County Board of Zoning Appeals
Thursday, July 18, 2013

The Jefferson County Board of Zoning Appeals met on Thursday, July 18, 2013. The meeting was held in the Charles Town Library Conference Room, located at 200 East Washington Street, in the City of Charles Town, West Virginia. Unless otherwise noted, all requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.

Board members Jeff Bresee, Chairman; Tyler Quynn, Ed Kelly and Jeffrey Bannon were present. Staff members present were: Jennifer Brockman, Director of Planning and Zoning/Acting Zoning Administrator and Jennilee Hartman, Zoning Clerk.

Christy Huddle, Vice Chair; was absent with notification.

Mr. Quynn motioned to commence the meeting. Mr. Kelly seconded the motion, which carried unanimously. Mr. Bresee called the meeting to order at 3:00 p.m.

1. Approval of the minutes from the May 16, 2013 meeting.

Mr. Kelly motioned to approve the minutes Mr. Quynn seconded the motion, which carried unanimously.

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

Ms. Hartman swore in the individuals who indicated they would be giving testimony.

Mr. Bresee explained to the public how the meeting would be conducted.

3. Request by owners/applicants, Peter S. Corum and J. Edward Slonaker, pursuant to Section 3.2.G for an 18-month extension of the Morgan's Grove Market Conditional Use Permit which was issued on June 28, 2012 and will expire on December 28, 2013. The applicant is requesting an extension until August 28, 2015. Property location: 3988 Kearneysville Pike, Shepherdstown, WV. District: Shepherdstown (09); Map: 13; Parcels: 26.1, 26.2, 26.3 and 26.4; Zoned: Rural; File #CP12-01.

Mr. Fred Blackmer presented the request to the Board by providing them a brief overview of the project with dates related to meetings, submittals, and various approvals. Mr. Kelly asked for clarification on the requested extension date listed in the Agenda. Mr. Blackmer stated he did not list a requested date in his application. Mr. Quynn asked where they were in the process. Mr. Blackmer stated that they were still waiting for a letter from the Department of Highways with a permit number on letterhead prior to receiving Site Plan approval; then recordation of easements; and bonding. Mr. Bannon questioned why the applicant needed the full 18-months when it appeared that their project was almost complete. Mr. Bannon stated that the Ordinance gave them the authority to grant up to 18-months, but that he did not see the need to postpone building for almost 2 years. Mr. Blackmer stated they did not have approved construction documents and that the request for the full 18-months was to accommodate any unforeseen occurrences that may happen within that timeframe. Ms. Brockman stated that in order for a Conditional Use Permit to be valid, the use must commence within 18 months and that depending on the type of use, the term 'commencement' may take place at a different time during processing. For this project, commencement occurs with the issuance of a building permit and it is possible that this step may take a few months depending on architect schedules, etc. Ms. Brockman stated she believed the applicant had a legitimate concern regarding the potential for the deadline to expire if they did not seek the full 18-months as provided in the Ordinance. Ms. Brockman stated the accurate date for the requested extension is June 28, 2015. Mr. Quynn asked why the early

grading permit was not considered commencement. Ms. Brockman stated the County does not have early grading permits and that they received it as a waiver and that a condition of approval is that it did not commence construction. Mr. Blackmer stated another reason they were requesting 18-months is to prevent changes in interpretations if there is a change in staff.

Mr. Bresee called for public comment. There was no public comment.

Ms. Brockman stated that the applicant has obtained the necessary water, sewer, and highway entrance permits and that the site plan is almost ready to be signed. Ms. Brockman informed the Board that the applicant has been actively processing their site plan.

4. Variance request by property owner, Michael Shveda, from Sections 5.4-1 for a reduction of the rear setback distance from 20' to 15' to allow for a lower deck (constructed 7" off the ground) to extend 5' into setback. Property location: Colonial Hills Subdivision; 326 Starkey's Landing; Shepherdstown, WV. District: Shepherdstown (09); Map: 8E; Parcel: 48; Zoned: Residential-Growth; Size: 2,000 sq. ft.; File: #ZV13-18.

Mr. Mike Shveda represented the request stating that he was requesting the deck be extended for the purposes of a rear egress and additional outdoor living area. Mr. Shevda explained that the upper portion of the deck would be smaller than existing decks in the neighborhood; however, the proposed lower deck would encroach into the setback. This deck would be constructed below existing fence lines.

Mr. Bresee called for public comment. There was no public comment.

Ms. Brockman noted that should the proposed zoning text amendments be adopted by the County Commission, text has been added that would allow requests, such as Mr. Shveda's, to be processed administratively.

5. Variance request by applicant, John Fridley, from Sections 9.6(C) & 9.7 for a reduction of the front setback distance from 20' to 5' to allow for the construction of a 20' x 22' detached garage. Property Owner: William C. Palmer, Sr. Property location: Shannondale, (Section 1L), 1623 Lakeside Drive, Harpers Ferry, WV. District: Kabletown (06); Map: 6C; Parcel: 292; Zoned: Rural; Size: 25,000 sq. ft.; File: #ZV13-19.

Mr. John Fridley, contractor for Mr. Palmer, represented the request. Mr. Fridley explained that due to the close proximity of a well cap, the garage could not be built closer to the home. Mr. Fridley stated the selected location was intended to afford the property owner enough distance to prevent them from inadvertently driving over the well cap. Other factors affecting the selected location included slope issues, nearby streambed, wooded yard, and acreage limitations (25,000 sq ft). Mr. Kelly read from the Staff Report paragraph (e) Feasibility to comply...and asked Mr. Fridley if he would be able to build the suggested smaller garage in order to reduce the setback request from 5' to 13'. Mr. Fridley stated he could build the smaller garage; however, the added depth, as suggested, would place the structure closer to the creek which would create complications and increase the cost of the project. Mr. Breese asked the applicant if he had reviewed the comments, submitted by those in opposition, regarding the measurement of the right of way. As Mr. Fridley had not, he was provided a copy. Discussion ensued regarding the possibility of continuing the item until the Board had clarification on the right of way issue.

Mr. Bresee called for public comment. Joan O'Dell, resident of area, stated she was also representing Dan Alexander who is a neighbor of the applicant. Ms. O'Dell presented a copy of the email from Zane Paitsel, Right of Way (ROW) Manager for the WV Department of Highways, in which he states that a right of way is measured from the centerline of the road (see file #ZV13-19 for copy). Ms. O'Dell expressed concern regarding the fact that Lakeside Drive is heavily traveled by vehicles and pedestrians because it is the only road around lake. Ms. O'Dell further explained that the road is 17' wide where the applicant plans on building the garage and that a damaged culvert leaks water across road onto applicant's property. Ms. O'Dell stated that an interested party is attempting to have the DOH make road improvements and that is why preserving the ROW is important.

6. Variance request by property owners, Darrell B. and Melica D. Propst, from Section 9.7 for a reduction of the side setback distance from 12' to 4' to allow for the placement of a 14' x 40' portable shed at the end of a driveway to avoid the removal/destruction of a large tree. Property location: Hidden River Farm, Wide Horizon Section, Part Four 1788 Wide Horizon Boulevard; Kearneysville, West Virginia. District: Middleway (07); Map: 13; Parcel: 142; Zoned: Rural; Size: 1.514 acres; File: #ZV13-20.

Mr. Darrell Propst presented his request to the Board, describing the nature of the request, stating that it was explained to him by his contractor that should he put the shed in his originally planned location, it would damage and possibly kill a large tree on his property. By moving the shed to a safer distance to protect the tree, it will be encroaching on the side setback. Mr. Propst stated that he spoke with his neighbor and that they were in support of the request. Mr. Quynn asked the questions including what type of tree was at risk, would Mr. Propst be willing to shorten the length of the shed, and would Mr. Propst be agreeable to a condition that requires the removal of the shed should a new adjacent property owner have an issue with the shed in the future? Mr. Propst responded to Mr. Quynn's questions by stating he believed the tree to be a Locust; he would be agreeable to a smaller shed if it were necessary; however, Ms. Brockman pointed out the side setback was in question and that reducing the length of the shed in this situation may not be beneficial; and Mr. Propst stated he would remove the shed if it became an issue for anyone since it was not going to be placed on a permanent foundation. Mr. Brannon requested confirmation that the property was not visible due to the dense tree line along the property line. Ms. Brockman confirmed that when Staff performed an onsite inspection, the adjacent property was hardly visible through the foliage.

Mr. Bresee called for public comment. There was no public comment.

Ms. Brockman also informed the BZA members that the property had a fairly significant slope that could not be adequately represented in the pictures in the staff report. This slope would prevent the applicant from placing the shed in alternative locations on the property. Mr. Quynn asked Ms. Brockman what the intent of the side setback was; to which she responded.

Mr. Quynn motioned to go into deliberative session at 3:56 p.m. Mr. Kelly seconded the motion, which carried unanimously.

Mr. Quynn motioned to come out of deliberative session at 4:14 p.m. Mr. Kelly seconded the motion, which carried unanimously.

Board of Zoning Appeals Rulings

3. Request by owners/applicants, Peter S. Corum and J. Edward Slonaker, pursuant to Section 3.2.G for an eighteen-month extension of the Morgan's Grove Market Conditional Use Permit which was issued on June 28, 2012 and will expire on December 28, 2013.

Mr. Kelly motioned to approve the above referenced request for a period of 18-months from December 28, 2013 until June 28, 2015. Mr. Quynn seconded the motion, which carried unanimously.

4. Variance request by property owner, Michael Shveda, from Section 5.4-1 for a reduction of the rear setback distance from 20' to 15' to allow for a lower deck (constructed 7" off the ground) to extend 5' into setback.

Mr. Quynn motioned to approve the above referenced request. Mr. Kelly seconded the motion, which carried unanimously.

5. Variance request by applicant, John Fridley, from Sections 9.6(C) & 9.7 for a reduction of the front setback distance from 20' to 5' to allow for the construction of a 20' x 22' detached garage.

Mr. Kelly motioned to continue the above referenced request, stating that the public hearing is to remain open and that the basis for the continuation is to allow the applicant the opportunity to contact the West Virginia Department of Highways to get specific information concerning the setback and how it is measured from the roadway; to keep in contact with Staff regarding their findings, and to stake out the property once they have accurately measured the necessary setback. Mr. Quynn seconded the motion, which carried unanimously.

6. Variance request by property owners, Darrell B. and Melica D. Propst, from Section 9.7 for a reduction of the side setback distance from 12' to 4' to allow for the placement of a 14' x 40' portable shed at the end of a driveway to avoid the removal/destruction of a large tree.

Mr. Quynn motioned to approve the above referenced request based on the following conditions:

- a. The variance is limited to a shed of the dimensions described in the application and is not to exceed the height as represented on the request.
- b. The variance is limited to a prefabricated or custom built shed constructed of materials that are typically found in residential neighborhoods. This would exclude the use of a shipping/sea container.

Mr. Bannon seconded the motion, which carried unanimously.

7. Director's Report.

Ms. Brockman updated the Board on the following items (see packet for details):

- Fourth Quarterly Report & Annual Report FY 2013
 - Projects Undertaken in 4th Quarter (New)
 - Projects Completed (for entire FY '13)
 - Proposed Projects/Underway (during the 4th Quarter)
 - Items Requiring Commission Attention

- Envision Jefferson 2035 (2014 Comprehensive Plan) Update on upcoming meetings
 - Steering Committee
 - Public Input Meeting – Members Encouraged to Attend
 - Booth at County Fair -- volunteers needed
 - Next Steps – Goals & Objectives
- Hiring Freeze due to funding complications – Zoning Administrator candidates on hold.

8. Legal Update. None.

9. Signing of written decisions from prior Board of Zoning Appeals meetings. None.

10. Correspondence. None.

Mr. Quynn motioned to adjourn the meeting at 4:31 p.m. Mr. Kelly seconded the motion, which carried unanimously.

An audio transcript of this meeting can be found at the Department of Zoning and on the Department's website at www.jeffersoncountywv.org. These minutes were prepared by Jennilee Hartman, Zoning Clerk.

Draft Minutes
Jefferson County Board of Zoning Appeals
Thursday, August 15, 2013

The Jefferson County Board of Zoning Appeals met on Thursday, August 15, 2013. The meeting was held in the 2nd Floor Conference Room, located at 116 East Washington Street, in the City of Charles Town, West Virginia. Unless otherwise noted, all requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.

Board members Jeff Bresee, Chairman; Christy Huddle, Vice Chair; and Jeffrey Bannon were present. Staff members present were: Jennie Brockman, Director of Planning and Zoning/Acting Zoning Administrator; Stephen Groh, Assistant Prosecuting Attorney; and Alexandra Beaulieu, Planning Clerk.

Edwin Kelly was absent with notice and Tyler Quynn was absent without notice.

Ms. Huddle motioned to commence the meeting. Mr. Bannon seconded the motion. Mr. Bresee called the meeting to order at 3:03 PM.

1. Approval of the minutes from the July 18, 2013 meeting.

Ms. Hartman, in her absence, provided a memo to the Board of Zoning Appeals which stated that due to staffing conflicts, the minutes would not be available.

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

Ms. Beaulieu swore in the individuals who indicated they would be giving testimony.

Mr. Bresee explained to the public how the meeting would be conducted.

3. Continued from the July 18, 2013 meeting. Variance request by applicant, John Fridley, from Sections 9.6(C) & 9.7 for a reduction of the front setback distance from 20' to 5' to construct a 20' x 22' detached garage. Owner: William C. Palmer, Sr. Location: Shannondale (Section 1L), 1623 Lakeside Drive, Harpers Ferry, WV. District: Kabletown (06); Map: 22; Parcel: 6.2; Zoned: Rural; Size: 1 acre; File: #ZV13-21.

Ms. Brockman provided a report on the research conducted by staff confirming that the Department of Highways measured the 30' Right of Way off Lakeside Drive 15' feet from each side of the center line. Ms. Brockman also reported that the Health Department confirmed the location of the septic reserve area on the Shore Lane side of the house; therefore, the proposed location of the garage could not be changed to that side of the house.

Mr. John Fridley presented the request to the Board stating that he adjusted the size of the garage to 20' x 20'. Mr. Fridley stated that as requested at the previous meeting, he re-staked the garage with the new dimensions and stated that the adjusted front setback distance measured 12" from the ROW and 10' from the well cap.

Mr. Bresee called for public comment. Ms. Joan O'Dell, a Shannondale resident, expressed concern regarding the fact that Lakeside Drive is heavily traveled by vehicles and pedestrians. Ms. O'Dell reiterated the fact that the road is 17' wide where the applicant plans to build the garage. Ms. O'Dell stated she had additional comments but wanted confirmation as to whether the Board would require Mr. Fridley to re-advertise the property with the adjusted setback information. Mr. Jack Hahn, a Shannondale resident, spoke in opposition to the request and stated that he was concerned for safety with regard to the fact that Lakeside Drive is heavily traveled by vehicles and pedestrians.

The board members discussed the need to re-advertise the variance request with the requested setback variance changed from 5' to 12". It was also noted that the applicant had presented new dimensions of 20' x 20' as opposed to the original 20' x 22'. Mr. Groh advised that the site would need to be re-advertised to inform adjacent property owners of the new size of the garage and adjusted setback distances.

Ms. Brockman informed the applicant that he could modify his current application and submit by August 30 to be placed on the September 19, 2013 meeting. Ms. Brockman stated that the applicant would not need to submit an additional application fee.

Ms. Huddle motioned to continue review of this request upon receipt of the modified request. Mr. Bannon seconded the motion, which carried unanimously.

The meeting relocated to the downstairs conference room to accommodate a request by a member of the public unable to access the stairs.

4. Variance request by applicant, Jason Shelton, from Section 5.7(B) for a reduction of the rear setback distance from 50' to 8' for an approximate 16' x 32' existing building, which the applicant renovated and expanded prior to the issuance of a building permit. Location: 651 Ann Lewis Road, Charles Town, WV. District: Kabletown (06); Map: 22; Parcel 6.; Zoned: Rural; Size: 1 acre; File: #ZV13-21.

Mr. Jason Shelton presented his request stating that the existing 16' x 32' structure replaced a previous structure that was there when he moved to the property in 1996. Mr. Shelton stated that the existing structure was built almost 12 years ago in 2001.

Ms. Brockman stated that the structure was reported as a setback violation. Ms. Brockman stated that staff visited the site to verify setbacks of existing structures and in the process confirmed that the structures were in violation of setback regulations as well as for having not applied for a building permit. Ms. Brockman added that a number of the structures housed animals and required a 75' rear setback. Ms. Brockman stated that staff was uncertain of the exact location of the property line.

Mr. Shelton stated that all of the structures housing animals, as well as the animals they contained, had been removed. Mr. Shelton stated that the structure was approximately 9' – 10' from the property line.

Ms. Susan Rissler Sheely, adjoining property owner, spoke in opposition to the request. Ms. Sheely stated that recent construction on Mr. Shelton's property spurred her calling the building permits office. Ms. Sheely stated she was concerned for the number of animal cages and a small structure that appeared to be on her property. Ms. Sheely stated that in 2008, a building permit application was submitted along with a sketch detailing the existing house, showing where the proposed addition would be located, and an existing 12' x 30' structure. Ms. Sheely pointed out that the sketch shows the 12' x 30' structure has a 13' setback and noted that there is no record of a building permit being issued for the 12' x 30' structure. Ms. Sheely noted that the current request is for a structure that is 16' x 32', which encroaches further on her property. Ms. Sheely expressed concern for the number of animals being housed on Mr. Shelton's property, including what she surmised to be fighting roosters. Ms. Sheely stated that a trench had been dug along the property line but did not have any downspouts or pipes to carry water out. Ms. Sheely stated that she believed the survey pins had been moved and that she hired Ed Johnson to re-survey her lot.

Mr. Shelton stated that the original structure was 13' x 32' and the existing structure is 16' x 32'. Mr. Shelton stated he was unaware that since the structure was mobile (no foundation) that it required a building permit. Mr. Shelton stated that he dug a trench one (1) foot wide with black perforated pipe to drain water from Sheely's property that had been flooding his storage sheds.

Mr. Robert Sheely, adjoining property owner, spoke in opposition to the variance request. Mr. Jeffrey McDonough, adjoining property owner, spoke in opposition to the variance request.

Members of the BZA stated that a number of Mr. and Ms. Sheely's concerns could not be addressed by the BZA and advised contacting the county's Compliance Officer.

Board members relocated to the second floor conference room for the remainder of the meeting.

5. Variance request by applicant, John Orem, from Section 4.3(B) to re-establish a nonconforming commercial use. Applicant representative: Christopher Luttrell, Esq. with Luttrell & Prezioso PLLC. Location: 7330 Martinsburg Pike, Shepherdstown, WV. District: Shepherdstown (09); Map: 7B; Parcel: 95; Zoned: Residential-Growth; Size: .36 acres; File: #ZV13-22.

Mr. Christopher Luttrell, lawyer for Mr. John Orem, represented the request. Mr. Luttrell stated that historically the building had been utilized for commercial business. Mr. Luttrell stated the previous lessee was a church and that they defaulted on the note at which point Mr. Orem began marketing the building as commercial. Mr. Luttrell stated that an insurance agency is currently interested in leasing the building. Mr. Luttrell stated that Mr. Orem may apply to have the property rezoned to allow for commercial business.

Mr. Bannon stated that the building should continue as a nonconforming commercial use but that he did not think a variance request was the appropriate avenue. Mr. Bannon recommended a Conditional Use Permit (CUP) or a Zoning Map Amendment. Ms. Brockman stated that it would be a difficult argument for the applicant to make in order to have the property rezoned from Residential Growth given the number of residential homes surrounding the building. Ms. Brockman advised that a CUP would be more appropriate so as to restrict the types of commercial use permitted.

6. Variance request by applicant, Kevin R. Blundon, from Section 5.4(B) for a reduction of the rear setback distance from 20' to 16' to construct a 20' x 12' deck and corresponding stone patio situated underneath. Location: Windmill Crossing Subdivision, 6 Monte Carlo Way, Charles Town, WV. District: Charles Town (02); Tax Map: 9C; Parcel: 67; Zoned: Residential-Light Industrial-Commercial; Size: 3,350 square feet; File: #ZV13-23.

Mr. Kevin R. Blundon presented his request to the Board stating that he was requesting a reduction of the rear setback to allow construction of a deck and noted that his property backed up to a utility easement where the Windmill Crossing entrance monument is located. Mr. Blundon stated that a majority of his neighbors have received variances for similar projects.

Mr. Bresee called for public comment. There was no public comment.

7. Variance request by applicant, David Poyser with D & D, L.C., from Section 5.6(D) 1 & 2 for a reduction of the front and side setback distances from 25' to 15' for the placement of a 12' x 13' temporary storage shed.

Applicant representative: Craig Jenkins. Location: Dairy Queen, 45 Maddex Square Drive, Shepherdstown, WV. District: Shepherdstown (09); Tax Map: 8C; Parcel: 67; Zoned: Residential-Light Industrial-Commercial; Size 0.63 acres; File: #ZV13-24.

Mr. Craig Jenkins, applicant representative, presented his request stating the storage shed would be a temporary structure (no footers).

Mr. David Poyser, applicant, stated that the application reflected an incorrect size for the shed. Mr. Poyser stated the correct size of the shed would be 12' x 16' and would not change the current request for a reduction of front and side setback distances.

Ms. Huddle motioned to go into deliberative session at 4:50 PM. Mr. Bannon seconded the motion, which carried unanimously.

Ms. Huddle motioned to come out of deliberative session at 5:05 PM. Mr. Bannon seconded the motion, which carried unanimously.

Board of Zoning Appeals Rulings

4. Variance request by applicant, Jason Shelton, from Section 5.7(B) for a reduction of the rear setback distance from 50' to 8' for an approximate 16' x 32' existing building, which the applicant renovated and expanded prior to the issuance of a building permit.

Mr. Bannon motioned to deny the variance request by Jason Shelton, from Section 5.7(B) for a reduction of the rear setback distance from 50' to 8' for an approximate 16' x 32' existing building on the basis of the testimony given by adjacent property owners. Ms. Huddle seconded the motion, which carried unanimously.

5. Variance request by applicant, John Orem, from Section 4.3(B) to re-establish a nonconforming commercial use.

Ms. Huddle motioned that a variance request was not necessary for the applicant to continue as a non-conforming use because the intent to continue as a non-conforming commercial use was maintained, as specified by the applicant's statement. The Board requested that the applicant submit supporting documentation to department staff for administrative approval to allow continuation of a non-conforming commercial use. Mr. Bannon seconded the motion, which carried unanimously.

6. Variance request by applicant, Kevin R. Blundon, from Section 5.4(B) for a reduction of the rear setback distance from 20' to 16' to construct a 20' x 12' deck and corresponding stone patio situated underneath.

Ms. Huddle motioned to approve the above referenced request. Mr. Bannon seconded the motion, which carried unanimously.

7. Variance request by applicant, David Poyser with D & D, L.C., from Section 5.6(D) 1 & 2 for a reduction of the front and side setback distances from 25' to 15' for the placement of a 12' x 16' temporary storage shed.

Mr. Bannon motioned to approve the above referenced request. Ms. Huddle seconded the motion, which carried unanimously.

8. Director's Report. None.
9. Legal Update. None.
10. Signing of written decisions from prior Board of Zoning Appeals meetings. None.
11. Correspondence. None.

Ms. Huddle motioned to adjourn the meeting at 5:35 PM. Mr. Bannon seconded the motion, which carried unanimously.

An audio transcript of this meeting can be found at the Department of Zoning and on the Department's website at www.jeffersoncountywv.org. These minutes were prepared by Alexandra Beaulieu, Planning Clerk.



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, 2nd Floor, P.O. Box 338

Charles Town, WV 25414

File Number: ZV13-19

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

Staff Initials: JS

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

Email planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Email zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Variance Request

Variances to 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

Property Owner Name: William C. Palmer Sr.
 Mailing Address: 5 Short St. FL 2
 City: Brocklyn Park State: MD Zip Code: 21225
 Phone Number: 410-768-9096 Email: _____

Applicant or Contact Information

Applicant / Contact Name: John Fridley
 Mailing Address: P.O. Box 1261
 City: Harper Ferry State: WV Zip Code: 25425
 Phone Number: 304-671-3175 Email: popspart2@yahoo.com

Applicant Representatives

Company/Organization Name: _____
 Attorney(s), Engineer(s), or Surveyor(s) Name: _____
 Mailing Address: _____
 City: _____ State: _____ Zip Code: _____
 Phone Number: _____ Email: _____

Physical Property Details

Physical Property Address: 1623 Lakeside Dr. Sec. 1L # 48.49 Shannondale
 Tax District: Kabletown Map No: 6C Parcel No: 292
 Parcel Size: 25,000 sq. ft. Deed Book: 551 ^{06/25/13} Deed Bk. Pg. No: 558 ^{06/25/13}

| | | | | | |
|------------------|-------------|--------------------------|-----------------------------|---|-------------|
| Zoning District: | Rural (R-A) | Residential Growth (R-G) | Industrial Commercial (I-C) | Residential-Light Industrial-Commercial (R-L-C) | Village (V) |
|------------------|-------------|--------------------------|-----------------------------|---|-------------|

RECEIVED

JUN 21 2013

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

On a separate sheet of paper, provide a sketch showing the shape and location of the lot indicating all roads, rights of ways, 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 Ordinance pertaining to this request (Required:): Section 9.6 C/9.7

Please briefly describe the nature of the variance request: Requesting to allow the front setback of a detached garage to be within 5' of the road instead of 20'
20' x 22' ✓

If this request is for a setback variance, please complete the section below:

Front Setback Side Setback Rear Setback Reduction From 20' to 5'

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. Doesn't obstruct traffic flow on the road. Closest neighbor on that side is on the other side of the road, causing no issues with them. Closest road intersection is approx. 100' from the structure.

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? This is the only logical location on the property for a garage. Without the variance, the garage is not possible. Due to the existing well cap and drainage swales, I cannot move the garage closer to the house or farther back.

How will granting this variance eliminate an unnecessary hardship and permit a reasonable use of the land? The homeowners have to park outside now, which is inconvenient in the winter. That area is already where the car is parked sometimes.

How will granting this variance allow the intent of the Zoning Ordinance to be observed and substantial justice to be done? The homeowners will finally be able to protect the car from the elements as well as gain some storage space for other items.

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

William C. Palmer, Sr.
Print Name of Property Owner 1 Date

Print Name of Property Owner 2 Date

William C. Palmer, Sr.
Signature of Property Owner 1 Date

Signature of Property Owner 2 Date

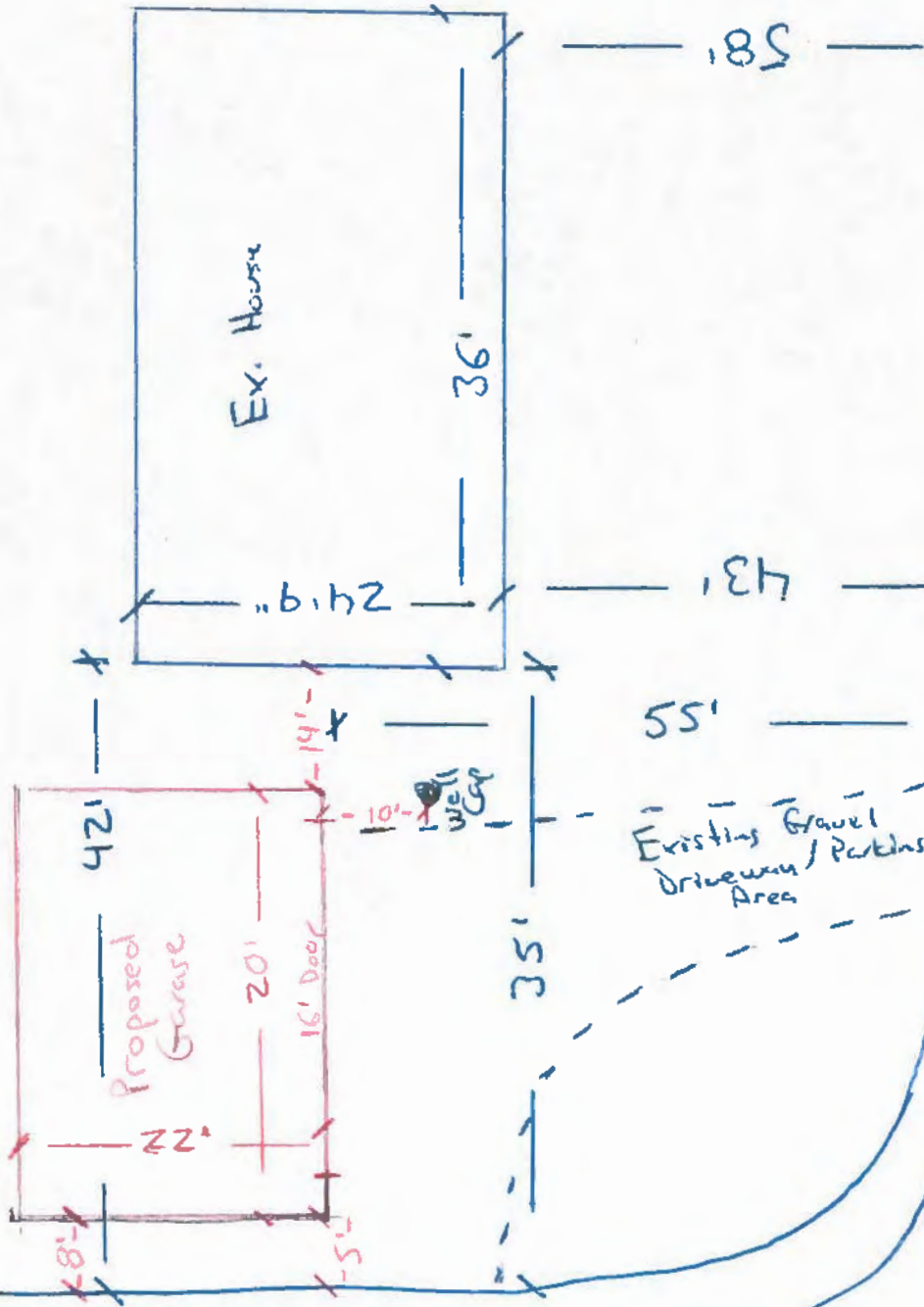
Notification Requirements (to be completed by staff)

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 twenty-eight (28) inches by twenty-two (22) inches in size, at least 15 days before the hearing (pursuant to Zoning and Land Development Ordinance Section 3.4A(3)(b)).

July 18, 2013
Date of Public Hearing

July 3, 2013
Advertising Date

July 3, 2013
Placard Posting Date



Shore Lane

Lakeside Dr.

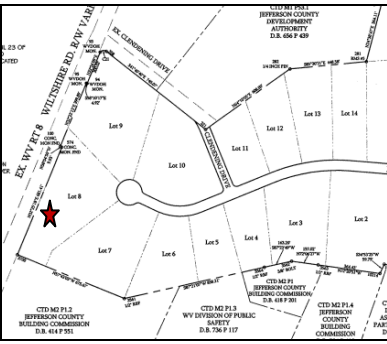

John A. [Signature]
GZV13

ZV13-19

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 September 19, 2013

U.S. Coast Guard Request (#ZV13-25)

Item # 4 Variance request by applicant ARC-FD JV, LLC. c/o Arcland Property Co., from Sections 4.11A and 4.11D and Table 4.11-1 to reduce the required landscaping buffer from 10' to 0' for the proposed U.S. Coast Guard office building within the Burr Business Park.

| | |
|-------------------------|--|
| APPLICANT: | ARC-FD, JV, LLC. c/o Arcland Property Co |
| OWNER : | Jefferson County Development Authority |
| DEVELOPER: | U.S. Coast Guard |
| SURVEYOR/ENGINEER: | Kristen Stolipher, Gordon |
| PROPERTY LOCATION: | Burr Industrial Park (Lot #8) James Burr Boulevard, Kearneysville, West Virginia |
| LEGAL DESCRIPTION: | Charles Town (02); Map: 1; Parcel: 108  |
| ZONING DISTRICT: | Zoning Map Designation: Industrial-Commercial (IC)  |
| SURROUNDING PROPERTIES: | Zoning Map Designation: North: R South: IC East: IC West: R |
| LOT AREA: | 5.624 acres |
| SUBDIVISION | 11/27/07: PC approved Final Plat (PC File #04-38) |
| VARIANCE(S): | 07/23/13: PC approved waiver from Appx B. Sec. 2.5N to allow for a reduction in parking stall depth from 20' – 18' PCW13-04; Appx B. Sec. 2.3.B.1 to allow for a second entrance off of Wiltshire Rd PCW13-05; and, Sec. 20.102.B to allow commencement of early grading and foundation work, prior to the approval of the site plan PCW13-06. |
| PROPOSED ACTIVITY: | Construction of a 40,000 sq. ft. office building. |

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

U.S. Coast Guard Request (#ZV13-25)

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a variance from Sections 4.11A and 4.11D and Table 4.11-1 to reduce the required landscaping buffer from 10' to 0' for the proposed 40,000 square foot U.S. Coast Guard office building within the Burr Business Park.

2. Previous Case History

The subject property is located in an approved industrial park which was approved and recorded with the County Clerk's office on December 18, 2007. This section of the industrial park received a variance from the Planning Commission from installing road curbs, guttering, and sidewalks.

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

Landscape buffers are typically included as a land development requirement in local Zoning Ordinances or Subdivision Regulations to absorb, lessen or neutralize the impacts of one land use from another, reducing the impact that a land use might cause to an adjacent property by serving as a barrier to visibility, air borne particles, glare or noise. Ordinances may differentiate between buffers which are screened or buffers which are unscreened based on the types of uses involved.

In the Jefferson County Zoning and Land Development Ordinance, the largest buffers relate to industrial uses. Additionally, buffers between non-residential and residential uses can either be screened or unscreened, but the unscreened buffer is much larger. For commercial development, such as this one, Section 4.11A states, "All commercial development adjacent to all other uses must maintain ten (10) foot side and rear yard landscape buffers". These buffers lessen the mutual impacts between two adjacent commercial uses, including the visual impact of parking.

Section 4.11D further clarifies that the required vegetative screening has to comply with the County's standard details (attached). These regulations have been in effect since at least 1990 when these details were prepared and appear to have been required in most, if not all, commercial developments in Jefferson County. As noted in the attached table, there have been numerous requests to be relieved of this requirement over the years. The BZA has reviewed each on a case by case basis for consideration of approval. Staff also reviewed a variety of Site

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U.S. Coast Guard Request (#ZV13-25)

Plan files to confirm the application of this requirement and found that the standard was applied in the following developments:

- Burr Industrial Park – Lot 43B – File Number S04-09 (Location of the PSD Offices and other tenants)
- Burr Industrial Park – Lot 35 – File Number S06-01 (Location of Schwan’s Home Service, Inc.)
- Burr Industrial Park – Lot 44, Buildings A and B – File Number S06-06 (Location of Kings Pizza and other structures)
- Burr Industrial Park – Lot 44 – File Number S04-15 (Location of the DMV)
- Burr Business Park – Lot 22 – File Number S08-04 (Avalanche Service)
- Jefferson Crossing II – Lot 1A – File Number S08-01 (IHOP)
- Jefferson Crossing II – Lot 8 – File Number S06-11 (Business Office along Flowing Spgs Rd.)
- Jefferson Crossing II – Lot 4 – File Number S05-11 (Martins Expansion)
- Jefferson Crossing II – Lot 5 – File Number S05-08 (Applebee’s)

While the applicability of screened landscaping between individual lots within a multi-lot nonresidential development may appear unnecessary, this requirement serves to protect future lot owners from potential incompatible uses, reduces the heat island effect of adjoining impervious areas, provides shade, filters runoff, mitigates noise and adds aesthetic value to the development as a whole.

b. Unique characteristics of property

This lot exists within the Burr Business Park, a master planned non-residential subdivision owned by the Jefferson County Development Authority. All roads and regional stormwater facilities have been constructed. This lot sits at the western end of a cul-de-sac and fronts on Wiltshire Road. The lot lines of this lot that abut Wiltshire Road and James Burr Boulevard must meet front yard setbacks and the street planting requirements of Section 4.11 (H): Deciduous street trees for shade and aesthetics, planted at the following average spacing 1 tree per 50 feet where the street frontage is up to 200 feet and the greater of 4 trees or 1 tree per 100 feet where the street frontage exceeds 200 feet. The applicant is not requesting to waive this requirement.

While this property is required to access from James Burr Boulevard, the Planning Commission has also approved a waiver to allow a second access to Wiltshire Road.

c. Character of area

This is the first lot to develop along this portion of James Burr Boulevard. There is some natural vegetation currently on the site that is being removed for the proposed office building. Adjacent lots have similar areas of natural vegetation but it is not anticipated that this vegetation would remain once development occurs. There is a row of large pine trees along the entry driveway to the County Health Department and Development Authority Building, which forms the southern boundary for this property.

Throughout the Business and Industrial Park, as lots develop, the required street trees and screened buffering has been planted along the affected property lines.

See photos on pages 6 and 7 of this report for examples of existing planting within the Burr Business Park and Bardane Industrial Park.

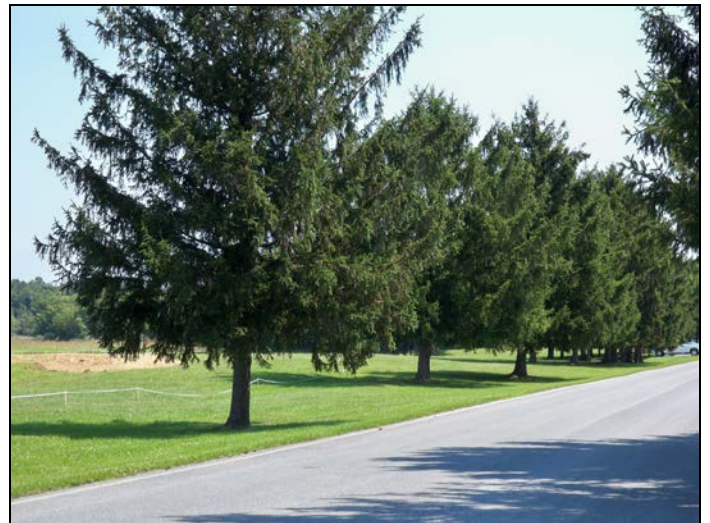
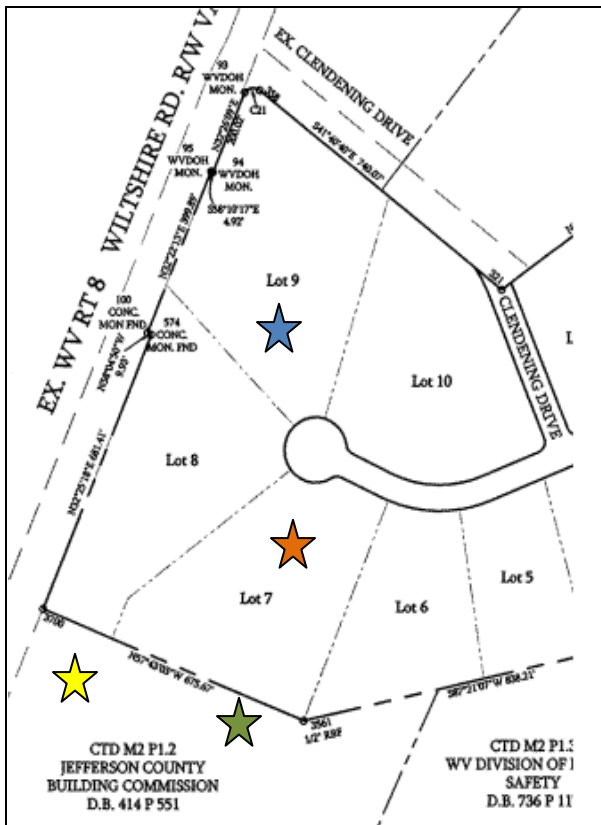
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U.S. Coast Guard Request (#ZV13-25)

d. Impact on adjacent properties

As can be seen in the photos of the future Coast Guard site found below, this lot has a lot of visibility from both roads and the adjacent driveway. If the side and rear yard landscaping is reduced to 0', there will be no buffering between the adjacent sites when they develop in the future. The lot is located at the end of a cul-de-sac which means that the primary entrance from James Burr Boulevard will be narrow and particularly close to the entrances to the adjoining lots on either side of it. Landscaping along the side property lines in this area would serve to define the property as a separate lot and provide a buffer between the future uses.

The photos on pages 4 and 5 reference the stars on the reference map below to provide a perspective on this specific site.



**Adjacent Parcel: Yellow Star & Green Star
Along Driveway Entrance to the Health
Department/Development Authority Building**

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U.S. Coast Guard Request (#ZV13-25)



Eastern Property line and Adjacent Parcel: Orange Star



Adjacent Parcel: Partial Orange Star & Green Star



Adjacent Parcel: Blue Star (northern Property line)



View of Site from end of cul-de-sac



Front View from Wiltshire with Proposed Second Entrance



Front View of Property from Cul-de-sac

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U.S. Coast Guard Request (#ZV13-25)

e. Feasibility of complying with the ordinance by other means

The 10 foot screened landscaping along the side and rear lots lines between commercial lots is a requirement of the Ordinance and can be met in one of two ways:

Detail M-54 Option F (attached):

- ❖ One row of evergreen shrubs with a height of two feet or more when planted, likely to reach a height of six feet or more at maturity, planted every five linear feet; and,
- ❖ One row of medium evergreen trees with a height of six feet or more when planted, likely to reach a height of twenty feet or more at maturity, planted every ten feet

OR

Detail M-54 Option G (attached):

- ❖ One row of medium evergreen trees with a height of six feet or more when planted, likely to reach a height of twenty feet or more at maturity, planted every ten linear feet; and,
- ❖ A solid board fence, masonry or brick wall with a height of six feet.

These are the two options for complying with this requirement.

5. Conditions of Approval

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

- a. The variance applies only to the proposed U.S. Coast Guard office building within the Burr Business Park.
- b. The variance could vary only a portion of the requirement such as one or more of the following:
 - not requiring the evergreen shrubs;
 - specifying a different type of planting; or
 - spacing the evergreen trees wider than every ten feet.

Examples of plantings within the Industrial Park



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U.S. Coast Guard Request (#ZV13-25)

Examples of plantings within the Industrial Park Continued



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U.S. Coast Guard Request (#ZV13-25)

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 4.11 Landscaping, Screening and Buffer Yard Requirements

- A. All commercial development adjacent to any Residential district, or any lot with a residence, school, church, or institution of human care shall have a fifty (50) foot or greater unscreened green space buffer or a fifteen (15) foot screened green space buffer along common property lines. The screening may be either vegetative or opaque fencing and may be placed anywhere within the buffer. No structures, materials, or vehicular parking shall be permitted within the side and rear yard buffers. All commercial development adjacent to all other uses must maintain ten (10) foot side and rear yard landscape buffers.⁵
- D. All buffer yards shall include a fence or a dense screen planting of trees, shrubs, or other plant materials or both, to the full length of the lot line to serve as a barrier to visibility, air borne particles, glare or noise. Such screen planting shall meet the following requirements.
1. Vegetative screening shall comply with Standard Details M52, M53 or M54, or other applicable Standard Details, depending on the buffer width. At the time of the planting the vegetation shall be at least four (4) feet in height.^{7, 23}
 2. It will be the responsibility of the landowner to replace any trees that die and shall be so noted on the site plan.

| | | ADJACENT USE | | BUFFERS | | |
|--------------|----------------------|------------------|------------------------|--|------------|------------|
| | | | | UNSCREENED/SCREENED | | |
| PROPOSED USE | | Residential Zone | Lot with a Residential | Church/School/Institution for Human Care | Commercial | Industrial |
| | | FRONT | Barn/Feeding Pen | N/A | N/A | N/A |
| | Comm'l Lot <=1.5 ac. | 50/15 | 50/15 | 50/15 | N/A | N/A |
| | Comm'l Lot > 1.5 ac. | 50/15 | 50/15 | 50/15 | N/A | N/A |
| | Industrial | 200 | 200 | 200 | 25 | N/A |
| | Church | 50/15 | 50/15 | 50/15 | N/A | N/A |
| | Multi-family | N/A | N/A/15 | N/A/15 | N/A | N/A |
| SIDE | Barn/Feeding Pen | N/A | N/A | N/A | N/A | N/A |
| | Comm'l Lot <=1.5 | 50/15 | 50/15 | 50/15 | 10 | 10 |
| | Comm'l Lot > 1.5 ac. | 50/15 | 50/15 | 50/15 | 10 | 10 |
| | Industrial | 200 | 200 | 200 | 20 | 20 |
| | Church | 50/15 | 50/15 | 50/15 | 10 | 10 |
| | Multi-family | N/A | N/A/12 | N/A/12 | N/A | N/A |
| REAR | Barn/Feeding Pen | N/A | N/A | N/A | N/A | N/A |
| | Comm'l Lot <=1.5 | 50/15 | 50/15 | 50/15 | 10 | 10 |
| | Comm'l Lot > 1.5 ac. | 50/15 | 50/15 | 50/15 | 10 | 10 |
| | Industrial | 200 | 200 | 200 | 20 | 20 |
| | Church | 50/15 | 50/15 | 50/15 | 10 | 10 |
| | Multi-family | N/A | N/A/15 | N/A/15 | N/A | N/A |

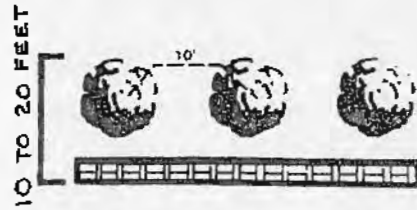
TOP VIEW OF PLANTINGS



FRONT VIEW OF ULTIMATE GROWTH

OPTION F

TOP VIEW OF PLANTINGS



FRONT VIEW OF ULTIMATE GROWTH

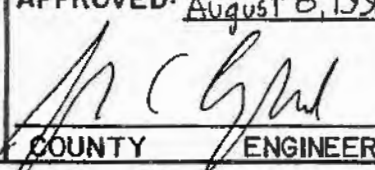
OPTION G

OPTION F

Planting Description - one row of evergreen shrubs with a height of two (2) feet or more when planted, likely to reach a height of six (6) feet or more at maturity, planted every five (5) linear feet; one row of medium evergreen trees with a height of six (6) feet or more when planted, likely to reach a height of twenty (20) feet or more at maturity, planted every ten (10) linear feet.

OPTION G

Planting Description - one row of medium evergreen trees with a height of six (6) feet or more when planted, likely to reach a height of twenty (20) feet or more at maturity, planted every ten (10) linear feet; and a solid board fence, masonry or brick wall with a height of six (6) feet.

| | | | | |
|---------------------------------------|---|-------------------------------------|------------|------------|
| JEFFERSON COUNTY, WEST VIRGINIA | APPROVED: August 8, 1990 | screen planting narrow buffer | REVISIONS: | DETAIL No. |
| |  | | | M -54 |
| | COUNTY ENGINEER | | | |

Previous BZA Actions related to Requests to Waive Landscaping Requirements

| DATE | PROJECT | REQUEST | ACTION |
|-------------|--|---|--|
| 03/21/13 | Mission Tabernacle Church | Waive landscape buffer | Approved |
| 03/21/13 | Burr SK, LLC (Lot 18 Burr Industrial Park) | Reduction of required landscape buffer between two commercial uses | Approved along internal lot lines for new lots being created. |
| 02/21/13 | Bavarian Inn | Eliminate the 10' screened buffer requirements for a commercial use adjacent to a commercial use (Adjacent use is the Bavarian Inn Main Facility) | Approved 10' screened buffer for a commercial use adjacent to a commercial use |
| 01/17/13 | Bank of Charles Town (340 Business Center) | Reduction of 10' landscape buffer between commercial use to 0' | Approved reduction of landscape buffer between commercial uses to 0' provided that it applies only to S05-09, access easements are platted and the variance is limited to the new internal lot lines being created. |
| 01/17/13 | Twin Oaks Subdivision LLC | Reduce a 10' landscape buffer along the side and rear lot lines from 10'to 0' | Approved reduction of landscape buffer along rear and side yards to 0' provided that it applies only to CP12-01; access easements are recorded and shown on S12-06; no buildings shall cross property lines and the variance is limited to the internal lot lines only |
| 01/19/12 | Federal Group, Inc (Clarion Hotel) | Request to utilize the existing tree line as the required landscape buffer | Approved |
| 04/15/10 | Bakerton Fire Department | Removal of the required 15' Landscape Side Buffer | Approved with the condition that the 15' Landscape Side Buffer be replaced by a 30' Unscreened Buffer, to ensure that the space remains open and unimproved and requesting that greenery and flowers are also planted. |
| 10/20/05 | RAI Properties, Inc. – Lot 43B of Burr Industrial Park | A variance from the screening and buffering requirements for a proposed flex building. | Denied |

| | | | |
|----------|---|--|--|
| 10/20/05 | RAI Properties – Lot 44 of Burr Industrial Park | A variance from the left lot line screening and buffering for the proposed DMV Building. | Denied |
| | | A variance from the rear lot line screening and buffering for the proposed DMV Building. | Denied |
| | | A variance from the right lot line screening and buffering for the proposed DMV Building. | Approved |
| 10/20/05 | Universal Forest Products Eastern Division | A variance from the screening and buffering requirements for a proposed expansion/addition. | Approved based on the significant size which is beyond the area of the construction. |
| 11/18/04 | KIMCO Realty Corp/Permelynn of Winchester, Inc. | A variance from the 10' landscape buffer requirements for a proposed LJS/A&W | Approved |
| 12/19/96 | Marcus Enterprises | A variance from the unscreened/screened buffer requirements for a proposed water storage tank. | Approved, noting that with the existing larger trees it would be ineffective to plant new trees. |



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, 2nd Floor, P.O. Box 338

Charles Town, WV 25414

File Number: # ZV.13-25

Staff Initials: JJC

Fees Paid (\$100 or \$150): \$ 100.00

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

Email planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Email zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Variance Request

Variances to 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

Property Owner Name: Jefferson County Development Authority

Mailing Address: P.O. Box 237

City: Charles Town State: WV Zip Code: 25414

Phone Number: 304-728-3255 Email: _____

Applicant or contact information

Applicant / Contact Name: ARC-FD JV, LLC. c/o Arland Property Co.

Mailing Address: 1054 31st Street, NW Suite 340

City: Washington State: DC Zip Code: 20007

Phone Number: 202-441-6156 Email: _____

Applicant representatives

Company/Organization Name: Gordon

Attorney(s), Engineer(s), or Surveyor(s) Name: Kristen Stolipher

Mailing Address: 301 North Mildred Street

City: Charles Town State: WV Zip Code: 25414

Phone Number: 304-725-8456 Email: kstolipher@gordon.us.com

Physical property details

Physical Property Address: _____

City: _____ State: _____ Zip Code: _____

Tax District: Charles Town Map No: 1 Parcel No: 108

Parcel Size: 5.05 Deed Book: _____ Page No: _____

| Zoning District: | Rural (R-A) | Residential Growth (R-G) | Industrial Commerical (I-C) | Residential-Light Industrial-Commercial (R-L-C) | Village (V) |
|------------------|--------------------------|--------------------------|-------------------------------------|---|--------------------------|
| | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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 JEFFERSON COUNTY
 PLANNING, ZONING AND ENGINEERING

On a separate sheet of paper, provide a sketch showing the shape and location of the lot indicating all roads, rights of ways, 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 Ordinance pertaining to this request: 4.11A, Table 4.11-1 and 4.11D

Please briefly describe the nature of the variance request

This variance request is from the landscaping buffer section of the ordinance which requires extensive landscape buffering for the proposed U.S. Coast Guard office building within the Burr Business Park.

If this request is for a setback variance, please complete the section below

Front Setback Side Setback Rear Setback Reduction From 10' to 0'

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.

The permitted uses within the Business Park are all regulated by the covenants/restrictions. The ultimate uses will all be very similar therefore the requirement for landscaping between similar uses within a business park seems very unnecessary. Since all uses will be similar, the removal of the buffer will not affect others.

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?

Enforcement of this ordinance will result in a hardship not only on the owner of the property but all other future owners within the business park and the Development Authority itself. The landscaping that would be required on this property and the overall business park will be significant with regard to labor, cost and maintenance.

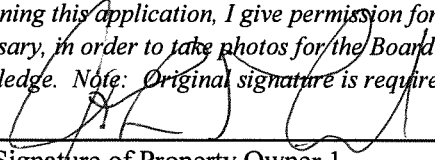
How will granting this variance eliminate an unnecessary hardship and permit a reasonable use of the land?

It is the Applicants position that this is not a self imposed hardship, but an new interpretation of the ordinance language that does not coincide with the overall intent of the ordinance nor is the interpretation consistent with other projects throughout the County. The Applicant had no way of knowing that this interpretation.

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

The development of this lot will include landscaping in the parking lots and along James Burr Boulevard and Wiltshire Road in accordance with the ordinance requirements. The development of this site will be completed similar to all other lots within the Business Park.

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

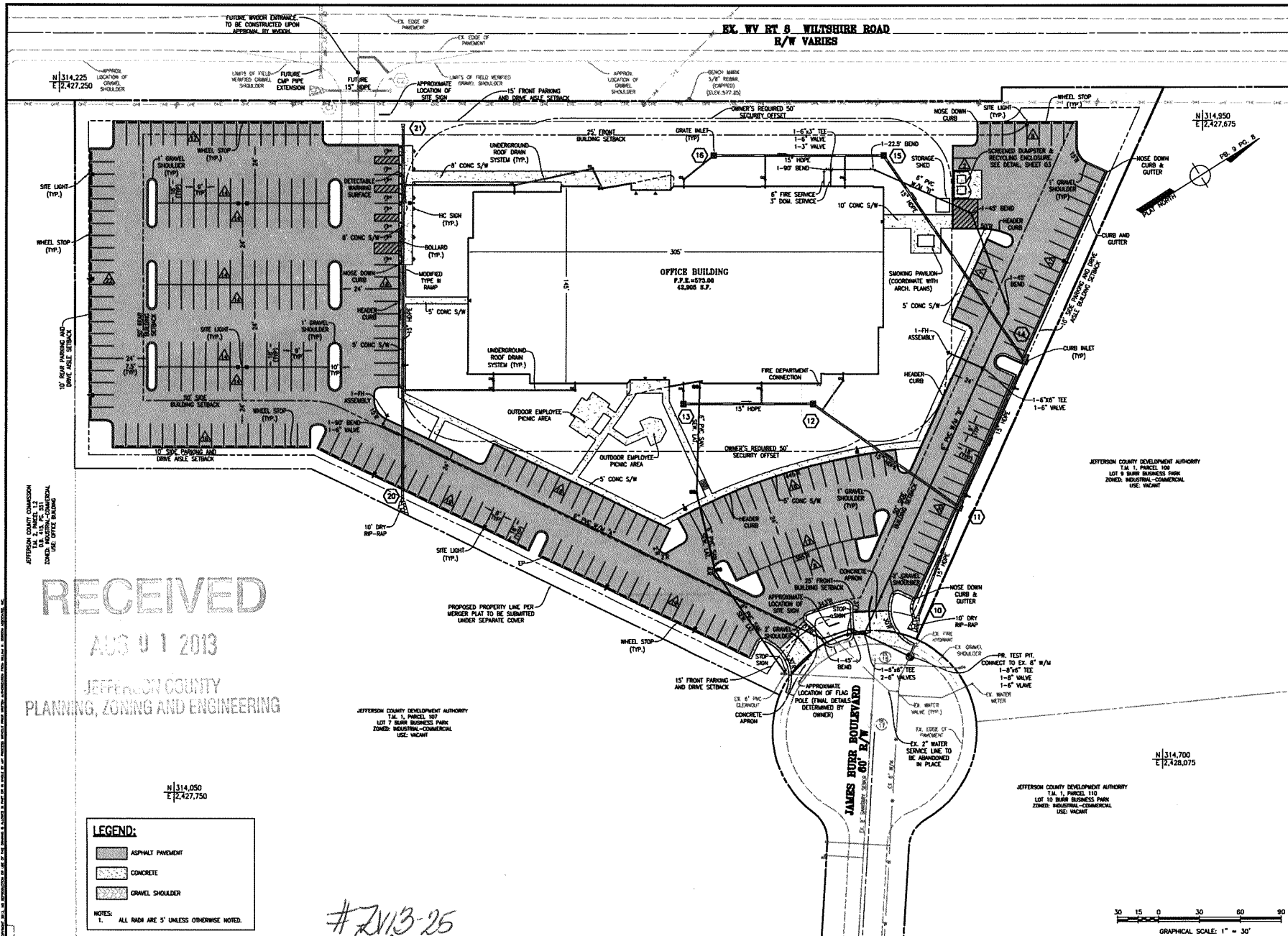

Signature of Property Owner 1 8/11/13 Date

Signature of Property Owner 2 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 twenty-eight (28) inches by twenty-two (22) inches in size, at least 15 days before the hearing (pursuant to Zoning and Land Development Ordinance Section 3.4A(3)(b)).

THURSDAY SEPTEMBER 19, 2013 (3:00 P.M.) Date of Public Hearing (WED) SEPTEMBER 4, 2013 Advertising Date (WED) SEPTEMBER 4, 2013 Placard Posting Date



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JEFFERSON COUNTY
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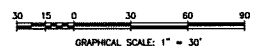
LEGEND:

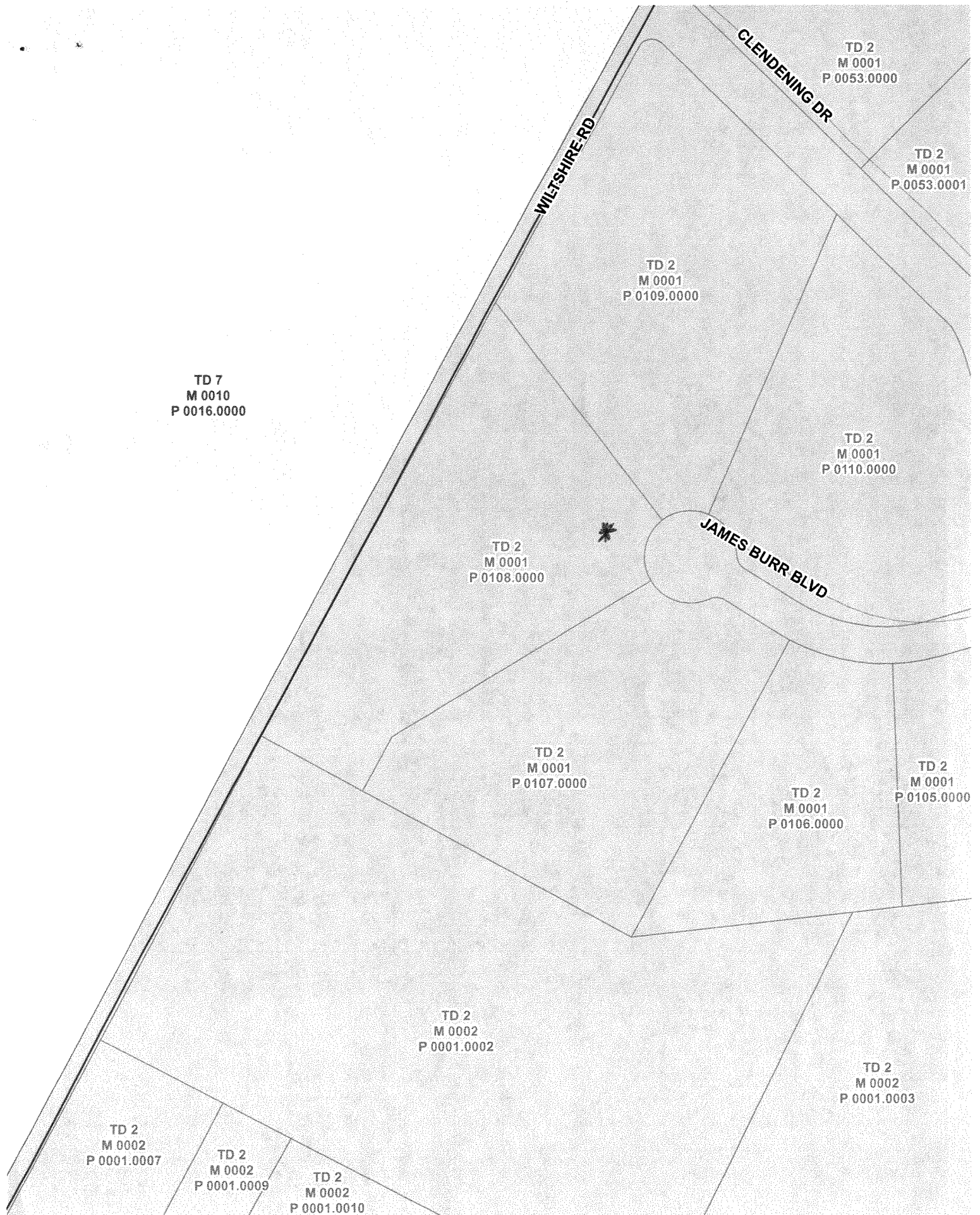
| | |
|--|------------------|
| | ASPHALT PAVEMENT |
| | CONCRETE |
| | GRAVEL SHOULDER |

NOTES:
1. ALL RADII ARE 5' UNLESS OTHERWISE NOTED.

#2013-25
Vicki Stoliphe 8/1/13

| | |
|--|-----------------|
| REVISIONS | |
| DATE | APPROVAL |
| DESIGN | JPG |
| DRAWN | MAC |
| CHECKED | KMS |
| | |
| ENGINEERS - SURVEYORS - LAND PLANNERS - LANDSCAPE ARCHITECTS SITE SECURITY CONSULTING - GIS William H. Gordon Associates, Inc. 301 North 34th Street, Suite 200 Norfolk, VA 23514 (804) 721-5458 • FAX (804) 722-8117 http://www.whgpa.com | |
| DATE | JULY 2013 |
| SCALE | HORIZ: 1" = 30' |
| VERT: | |
| SEAL | |
| | |
| U.S. COAST GUARD OFFICE BUILDING 10000 W. PARCEL 100 LOT 10 BARR BUSINESS PARK ZONED INDUSTRIAL-COMMERCIAL USE VACANT CHANGING TO INDUSTRIAL ZONING JEFFERSON COUNTY, WEST VIRGINIA | |
| SITE PLAN | |
| JOB | 513-04 |
| CADD | 3032-0101 |
| SHEET | C-CS-101.DWG |
| | CS-101 |
| | 08 OF 22 |




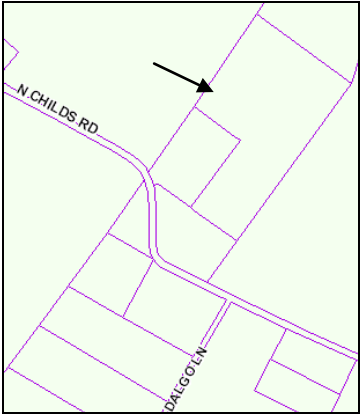


#ZV 13-25

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Stanley Dunn Request (#AP13-01)

Item # 4 Appeal by Appellants Katherine B. Dunn & Sara V. Lowery (c/o Stanley Dunn) of erroneous decision by Acting Zoning Administrator, Jennifer Brockman, pertaining to Section 5.7D(3) of the Jefferson County Zoning Ordinance. Appellant's Representative: J. Michael Cassell, Esq., Cassell & Prinz, PLLC.

| | |
|-------------------------|---|
| APPLICANT: | J. Michael Cassell, Esq., Cassell & Prinz, PLLC |
| OWNER : | Katherine B. Dunn & Sara V. Lowery |
| DEVELOPER: | Stanley Dunn |
| SURVEYOR/ENGINEER: | Kristen Stolipher, William H. Gordon, Associates |
| PROPERTY LOCATION: | 1371 Myerstown Road; Charles Town, West Virginia |
| LEGAL DESCRIPTION: | <p style="text-align: center;">Middleway (07); Map: 17; Parcel: 4</p>  |
| ZONING DISTRICT: | <p style="text-align: center;">Zoning Map Designation: Rural (R)</p>  |
| SURROUNDING PROPERTIES: | <p>Zoning Map Designation:</p> <p>North: R South: R</p> <p>East: R West: R</p> |
| LOT AREA: | 7.485 acres |
| SUBDIVISION: | 08/08/95: PC approved Final Plat 09/08/95: Recorded in County Clerk's office |
| VARIANCE(S): | None |
| APPROVED ACTIVITY: | Residential |

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Stanley Dunn Request (#AP13-01)

RELEVANT INFORMATION:

1. Overview of Appeal

The appellant disagrees with a decision of the Acting Zoning Administrator regarding whether there are remaining rights to divide his property based on Section 5.7D of the Jefferson County Zoning and Land Development Ordinance.

2. Case History

On July 3, 2013, Jennifer Brockman, Acting Zoning Administrator, answered a question posed by appellant, Stanley Dunn, about whether additional subdivision rights existed on his residue parcel of 7.485 acres identified as Parcel 4, Map 17 in the Middleway District (07).

Analysis of the lot indicated that this lot was approximately 12.304 acres in 1988 and is located in the Rural District. Section 5.7D of the Jefferson County Zoning and Land Development Ordinance provides three possible subdivision methods for properties in the Rural Zoning District and notes that a combination of methods may be used, provided that the number of lots are prorated by density. The three methods are as follows:

1. Standard subdivision, with a maximum density of one lot per 15 acres
2. Cluster subdivision, with a maximum density of one lot per 10 acres
3. Not in addition to the provisions above, for a property that was a lot of record as of October 5, 1988, 2 lots and a residue lot (3 lots total) may be created during a five-year period.

The property in question did not meet the minimum size requirements to subdivide using the standard requirement or the cluster provision. However, it is the understanding of the current Acting Zoning Administrator that, upon adoption of the Zoning Ordinance in 1988, it was believed that all lots of record as of October 5, 1988 had the right to divide into 2 lots and a residue if the new lots could meet required minimum lot sizes. Therefore, in 1995, the property was subdivided using option 3 above to provide for the 2 lots and a residue that were created at that time. As such this property has no further development rights.

3. Staff Response to Appeal

a. Source and purpose of ordinance requirements

Section 5.7 of the Jefferson County Zoning and Land Development Ordinance details the permitted uses and subdivision rights of all properties in the Rural Zoning District. The full text of Section 5.7 is found at the end of this report. Section 5.7(D) explains the "Maximum Number of Lots Allowed" and the various methods to accomplish the divisions.

As explained above, there are two primary ways of determining the development rights of land in the Rural Zoning District, both upholding the primary function of the low density residential development permitted within Section 5.7, which is to preserve the rural character of the County and the agricultural community. The standard subdivision has a maximum density of one lot per 15 acres, based on the acreage in 1988. Alternatively, a cluster subdivision has the intent of preserving larger areas of prime farmland by clustering lots between 40,000 square feet and 3 acres in size and permanently preserving the remaining farmland. Development utilizing the cluster provision is based on a maximum density of one lot per 10 acres (It should

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Stanley Dunn Request (#AP13-01)

be noted that these provisions were reversed in earlier versions of the Zoning Ordinance and that the Ordinance revisions were upheld by action of the WV Supreme Court in December 2009).

There is an additional provision that related to a provision in the 1979 Subdivision Ordinance, allowing a property that was considered a lot of record as of October 5, 1988 to create 2 lots and a residue lot (3 lots total) during a five-year period. The current staff believes that once zoning was adopted and the other density provisions were in effect, this provision was intended to be utilized for properties that were less than 20 acres and, therefore, did not qualify for the other provisions of Section 5.7(D). This provision also related to the original definition of a Minor Subdivision in the 1979 Subdivision Ordinance which processes differently than a Major Subdivision. The 1979 Subdivision Ordinance has been superseded by the 2008 Subdivision Regulations and is no longer valid.

b. Staff Interpretation of Ordinance Requirements

The provision in question by the appellant relates to Subsection 5.7(D)(3), which reads as follows:

“Not in addition to subsections 5.7(d)1 and 5.7(d)2 above, any property that was a lot of record as of October 5, 1988 may create 3 total lots (including the residue) during any five year period. Applications which exceed this number during any five year period shall be processed utilizing the Development Review System. Subdivisions involving transfers of land between parent and child shall not be subject to this section. All lots that qualify under this section must meet subdivision requirements. Only the residue or parent parcel may qualify under this provision once the original subdivision takes place. Parent to child or child to parent lots are not entitled to further subdivide except as another parent to child or child to parent transfer.”

Since mid-2009, when the current staff has been in place, the key portion of this section appeared to be the phrase “Not in addition to subsections 5.7(d)1 and 5.7(d)2 above . . .”. This phrase needs to be looked at in the context of the entire Section, in particular, the introduction and Subsection 5.7(D)(4). The introduction to Section 5.7(D) Maximum Number of Lots Allowed, reads as follows (emphasis added):

“All parcels of land that were on record as of October 5, 1988 are entitled to subdivide for single family detached residences based on Subsections 5.7(d)1, 5.7(d)2 or 5.7(d)3 below. A property owner may use a combination of these subsections, provided that the number of lots are prorated by density.”

Subsection 5.7(D)(4) reads as follows (emphasis added):

“4. Once the maximum number of lots are created under 5.7(d), the property cannot be further subdivided unless the Ordinance is amended to allow such.”

When you combine the phrase “Not in addition to subsections 5.7(d)1 and 5.7(d)2 above . . .” with the concept in the introduction that while various methods can be used, there is a maximum number of lots that would need to be prorated and with the concept from

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Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Stanley Dunn Request (#AP13-01)

Subsection 5.7(D)(4) that there is a maximum number of lots capable of being created under Section 5.7(D), it is clear that the intent of the Rural zone was to allow limited, low density residential development while protecting and preserving the rural character and agricultural economy of Jefferson County.

For this reason, since July 2009, staff has consistently interpreted this provision as allowing a lot that existed in 1988 which was less than 20 acres (and therefore did not qualify for other division provisions) to divide one time with 2 lots and a residue OR to allow a property that has more than 3 rights to use this provision to process as a Minor Subdivision rather than a Major Subdivision. In order to protect the agricultural integrity of the Rural Zone, there needs to be a maximum number of divisions that can occur while retaining the balance of the land in agricultural use. The introduction and provisions that relate to 1 unit per 15 acres or 1 unit per 10 acres, provide the calculation for the maximum number of divisions that can occur on a property in Jefferson County. The use of the language “not in addition to subsections 5.7(d)1 and 5.7(d)2 above” in Subsection 5.7(D)(3) is clearly intended to limit the number of lots that can be divided on any property in the Rural Zone based on the densities provided.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 3.4 Boards and Commissions

A. Board of Zoning Appeals

3. The Board of Zoning Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official in regard to the enforcement of this Ordinance or of any ordinance adopted thereto.
 - a. Filing an Appeal
 - i. An appeal to the Board may be taken by any person, board, associate, corporation or official allegedly aggrieved by any administrative decision based or claimed to be based, in whole or in part, upon the provisions of this Ordinance. The property owner of the subject appeal shall sign the application or an affidavit allowing an agent for the property owner to file the application which shall be submitted.
 - ii. Such appeal shall be filed with the Board within thirty (30) days from the decision appealed.
 - c. Notification
 - i. 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.
 - ii. The subject property shall be posted conspicuously by a zoning notice no less than twenty-eight (28) inches by twenty-two (22) inches in size, at least 15 days before the hearing. The sign will be prepared by the Departments of Planning and Zoning but posting the sign is the responsibility of the applicant. The Board, in its discretion, may otherwise visit the specific property prior to or after the hearing.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Stanley Dunn Request (#AP13-01)

- d. Public Hearing
 - i. The Board shall hold a hearing within forty-five (45) days of the date the appeal is received in the Departments of Planning and Zoning. At the hearing, any party may appear and be heard in person or by agent or attorney.
 - ii. The Board shall render its determination on the application no more than thirty (30) days following the public hearing by registered mail.
 - e. Continuance of Hearing
 - i. The Board may continue a hearing at another time and/or date once such hearing has been started; however, the Board shall announce the date and hour of continuance of such hearing while in session. Any hearing continued shall be held within thirty (30) days from the initial hearing.
6. In exercising its power and authority, the Board of Zoning Appeals may reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination appealed from, and make such order, requirement, decision or determination as the Board deems appropriate.^{17, 21}

Section 5.7 Rural District²³ (emphasis added)

The purpose of this district is to provide a location for low density single family residential development in conjunction with providing continued farming activities. This district is generally not intended to be served with public water or sewer facilities, although in situations where the Development Review System is utilized, it may be. A primary function of the low density residential development permitted within this section is to preserve the rural character of the County and the agricultural community. All lots subdivided in the Rural District are subject to Section 5.7d. The Development Review System does allow for higher density by issuance of a Conditional Use Permit.^{8, 23}

D. Maximum Number of Lots Allowed

All parcels of land that were on record as of October 5, 1988 are entitled to subdivide for single family detached residences based on Subsections 5.7(d)1, 5.7(d)2 or 5.7(d)3 below. A property owner may use a combination of these subsections, provided that the number of lots are prorated by density.⁸

- 1. A property owner may create one (1) lot for every fifteen (15) acres with a minimum lot size of three (3) acres.^{17, 21}
 - a. Acreage shall be computed using existing acreage at the time application is submitted. Total acreage does not include acreage which was subdivided off of present parent parcel between October 5, 1988 and time of application.
 - b. A property owner may transfer rights to adjacent parcels which are owned by the same entity.^{17, 21}
- 2. Clustering
 - a. Purpose and Intent

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Stanley Dunn Request (#AP13-01)

- i. To encourage the conservation of farmland in the Rural Zoning District by planning the residential development allowed in the zone to provide for the best obtainable siting, access and location of lots on a tract.
 - ii. To provide for a well planned development while minimizing the use of prime agricultural land.
- b. Requirements
- i. One (1) lot may be subdivided for every ten (10) acres.^{17, 21, 23}
 - (a) Acreage shall be computed using existing acreage at the time application is submitted. Total acreage does not include acreage which was subdivided off of present parent parcel between October 5, 1988 and time of application.
 - ii. Minimum lot size shall be 40,000 square feet for lots that will be served by individual wells and septic systems; 20,000 square feet for lots that will be served by a central water OR central sewerage system; and 10,000 square feet for lots that will be served by both a central water AND central sewerage system.^{17, 21}
 - (a) Setbacks shall be 25' front, 12' sides and 20' rear.
 - (b) All clusters of three (3) or more lots shall be served by an internal road.²³
 - (c) Clusters of three (3) or more lots shall not be along an existing public road.
 - (d) A property owner may transfer rights to adjacent parcels which are owned by the same entity.^{17, 21}
 - (e) Maximum lot size shall be 3 acres.^{17, 21}
 - iii. Procedures²³
 - (a) Concept Plan. For the subdivision of tracts eligible for cluster lots, a concept plan must be submitted pursuant to the requirements of the Jefferson County Subdivision and Land Development Regulations. All cluster developments must be processed as a Major Subdivision.^{17, 21, 23}
 - (b) The Staff will have final approval over the location layout of the proposed clustering of lots. The Staff shall consider the following when reviewing concept plans:
 - (1) Soils: The cluster plan should minimize the use of the higher quality soils (class I, II and III as designated in the soils classification study) and maximize the use of steeper sloped areas, areas of poorer soils and areas which are otherwise less productive for agricultural uses.
 - (2) Surrounding land use and zoning: The cluster plan shall consider the existing land uses and zoning in the vicinity. Generally, new lots which are adjacent to existing development or residential zoning are preferred to creating an isolated cluster of new houses.
 - (c) If the concept plan is approved by the Planning Commission, the applicant may then proceed with platting of the clustered development in accordance with the Jefferson County Subdivision and Land Development Regulations and the approved concept plan. The plat shall bear a statement indicating "The land lies within an approved rural cluster development and no further subdivision of the remaining land is

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Stanley Dunn Request (#AP13-01)

permitted unless the property is placed in another zone or further subdivision is allowed by ordinance or regulation".²³

3. **Not in addition to subsections 5.7(d)1 and 5.7(d)2 above**, any property that was a lot of record as of October 5, 1988 may create 3 total lots (including the residue) during any five year period. Applications which exceed this number during any five year period shall be processed utilizing the Development Review System. Subdivisions involving transfers of land between parent and child shall not be subject to this section. All lots that qualify under this section must meet subdivision requirements. Only the residue or parent parcel may qualify under this provision once the original subdivision takes place. Parent to child or child to parent lots are not entitled to further subdivide except as another parent to child or child to parent transfer.
4. **Once the maximum number of lots are created under 5.7(d), the property cannot be further subdivided unless the Ordinance is amended to allow such.**



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, 2nd Floor, P.O. Box 338

Charles Town, WV 25414

Appeal Number: AP13-01

Staff Initials: CJC

Fees Paid (\$100): \$ 100.00

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

Email planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Email zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Appeal Form - Board of Zoning Appeals

Pursuant to Section 3.4 of the Jefferson County Zoning and Land Development Ordinance, the Board of Zoning Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official in regard to the enforcement of this Ordinance or any ordinance adopted thereto. The property owner of the subject appeal shall sign the application or an affidavit allowing an agent for the property owner to file the application which shall be submitted. Such appeal shall be filed with the Board within thirty (30) days from the decision appealed.

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JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Name and/or File Number of Project

Name of Project: Proposed Dunn Subdivision

File Number: _____

Decision Being Appealed

Memorandum Decision dated July 3, 2013 (copy attached). Erroneous decision pertaining to Section 5.7 D (3) Zoning Ordinance

Appellant Information

Appellant Name: Katherine B. Dunn and Sara V. Lowery

Mailing Address: C/O Stanley Dunn 1371 Myerstown Rd.

City: Charles Town State: WV Zip Code: 25414

Phone Number: 304-725-8308 Email: _____

Appellant Representative(s) Information

Company / Organization Name: Cassell & Prinz, PLLC

Attorney(s), Engineer(s), or Surveyor(s) Name: J. Michael Cassell

Mailing Address: 120 N. George St. Suite 200

City: Charles Town State: WV Zip Code: 25414

Phone Number: 304728-2012 Email: jcassell@cassellprinz.com

Appellee or Respondent Information

Appellee / Respondent Name: Jennifer Brockman

Mailing Address: 116 E. Washington St. P.O. Box 338

City: Charles Town State: WV Zip Code: 25414

Phone Number: 304/728-3288 Email: _____

Only if applicable to your request, provide a sketch showing the shape and location of the lot indicating all roads, rights of ways, 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 and submit with this form.

Appellee or Respondent Physical Property Details

Physical Address: N. side of Rt.1/5 (N. Childs Rd.), approx 1/4 m East of Rt. 1 (Leetown Rd.)
City: Kearneysville State: WV Zip Code: 25430
Tax District: Middleway Map No: 17 Parcel No: 4
Parcel Size: 7.485 Acres Deed Book: WB-S Page No: 424

Zoning District: Rural (R-A) Residential Growth (R-G) Industrial Commerical (I-C) Residential-Light Industrial-Commercial (R-L-C) Village (V)

Type of Appeal

Administrative Decision LESA Point Score Other

If "Other", please describe: _____

Please explain reasons/justifications for appeal and desired action by Board, in numerical order. Use a separate sheet of paper if necessary.

(SEE ATTACHED)

Original signature is required. The information given is correct to the best of my knowledge.

[Signature] 8/1/13
Signature of Appellant Date
Counsel for Appellants

Lara V. Lowery Aug 2, 2013
Katherine A. Dunn Aug 2, 2013
Signature of Appellant 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 twenty-eight (28) inches by twenty-two (22) inches in size, at least 15 days before the hearing (pursuant to Zoning and Land Development Ordinance Section 3.4A(3)(b)).

THURSDAY, SEPTEMBER 19, 2013
Date of Public Hearing

WEDNESDAY, SEPTEMBER 4, 2013
Advertising Date

WEDNESDAY, SEPTEMBER 4, 2013
Placard Posting Date

Proposed Dunn Subdivision Appeal
Type of Appeal: Administrative Decision

1. The pertinent portion of the Zoning Ordinance is:

5.7 D

“All parcels of land that were on record as of October 5, 1988 are entitled to subdivide for single family detached residences based on Subsections 5.7(d)1, 5.7(d)2 or 5.7(d)3 below. A property owner may use a combination of these subsections, provided that the number of lots are prorated by density.”

2. In 1995 the parcel in question was subdivided into 2 lots with a residue. This subdivision was approved pursuant to 5.7 D (3) exclusively. The subdivision approval relied on no other section of the Zoning Ordinance.

3. 5.7 D (3) states as follows:

“Not in addition to subsections 5.7(d)1 and 5.7(d)2 above, any property that was a lot of record as of October 5, 1988 may create 3 total lots (including the residue) during any five year period. Applications which exceed this number during any five year period shall be processed utilizing the Development Review System. Subdivisions involving transfers of land between parent and child shall not be subject to this section. All lots that qualify under this section must meet subdivision requirements. Only the residue or parent parcel may qualify under this provision once the original subdivision takes place. Parent to child or child to parent lots are not entitled to further subdivide except as another parent to child or child to parent transfer.”

More than 5 years have passed since the first subdivision was approved. Under the plain meaning of the language in 5.7 D (3), the appellants are entitled to subdivide the residue of that subdivision into 2 more lots with a residue.

4. Section 5.7 D allows the appellant to select a method for subdivision. The first sentence of the quoted portion of the Ordinance above provides that:

“All parcels of land that were on record as of October 5, 1988 are entitled to subdivide for single family detached residences based on Subsections 5.7(d)1, 5.7(d)2 OR 5.7(d)3 below.” (Emphasis added)

5. Since the approval of the first subdivision exclusively relied on 5.7 D(3), there is no reason to refer to either 5.7D(1) or (2). The appellant never relied on either 5.7D (1) or (2) or both of these sections.

6. The final sentence in the introductory paragraph of 5.7 D is as follows:

“A property owner **MAY** use a **COMBINATION** of these subsections, (5.7D(1), 5.7D(2) and 5.7D(3)), provided that the number of lots are prorated by density.”
(Parenthesis and emphasis added)

The appellants selected 5.7D(3) and did not rely on any other section. Therefore the proviso related to the proration of lots by density does not apply to this subdivision proposal.

The plain meaning of the first sentence in 5.7D(3) means that: If the subdivider selects 5.7(3) (as in this case) then the conditions or limitations of the other two subsections do not apply.

7. Therefore the Memorandum Decision dated July 3, 2013, on appeal is in error. The appellants respectfully request that the Board of Zoning Appeals vacate the Decision dated July 3, 2013 and adopt the position set forth in this appeal.



Jefferson County, West Virginia

Departments of Planning & Zoning

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

Email: planningdepartment@jeffersoncountywv.org
zoning@jeffersoncountywv.org

Phone: (304) 728-3228
Fax: (304) 728-8126

MEMORANDUM

TO: Stanley Dunn
FROM: Jennifer M. Brockman, AICP, Director and Acting Zoning Administrator *JMB*
DATE: July 3, 2013
RE: Subdivision Request

You recently requested information regarding the ability to subdivide a property identified as Parcel 4, Map 17 of the Middleway District which currently consists of 7.485 acres. This lot was approximately 12.304 acres in 1988. This property is in the Rural District.

Section 5.7D provides three possible subdivision methods, and notes that a combination of methods may be used, "provided that the number of lots are prorated by density." The three methods are as follows:

1. Standard subdivision, with a maximum density of one lot per 15 acres
2. Cluster subdivision, with a maximum density of one lot per 10 acres
3. Not in addition to the provisions above, for a property that was a lot of record as of October 5, 1988, 2 lots and a residue lot (3 lots total) may be created during a five-year period.

The property in question did not meet the minimum size requirements to subdivide using the 1 lot per 15 acres requirement or the cluster provision. However, in 1995, the property was subdivided using option 3 above to provide for the 2 lots and a residue that were created at that time. As such this property has no further development rights. The size of the lot does not allow for further division as it cannot meet the 1 to 15 ratio or the 1 to 10 ratio.

The only option for additional subdivision rights is to apply for a Conditional Use Permit or a Rezoning.

Here Fee 30 Days

AP13-01

**BEFORE THE JEFFERSON COUNTY
BOARD OF ZONING APPEALS**

APPEAL FILED BY:

KATHERINE B. DUNN

And

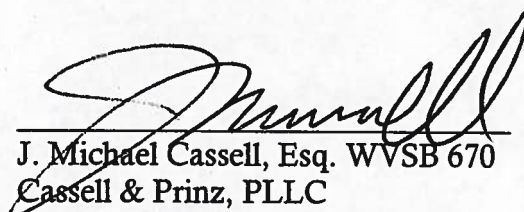
No. AP 13-01

SARA V. LOWREY

SUPPLEMENTAL DOCUMENTS

COMES NOW Katherine B. Dunn and Sara V. Lowery to file Supplemental Documents (containing 6 pages) for the record in this matter.

**KATHERINE B. DUNN
AND SARA V LOWERY
By Counsel**



J. Michael Cassell, Esq. WVSB 670
Cassell & Prinz, PLLC
120 N. George Street, Suite 200
Charles Town, West Virginia 25414
304-728-2012/telephone
304-728-2881/facsimile

RECEIVED

AUG 30 2013

**JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING**

* Submitted by applicant; mailed in 09/19/13 BZA Packet-*gt*

Appeal filed by Katherine B. Dunn and Sara V. Lowery No. AP 13-01

Re: Proposed Dunn Subdivision

August 29, 2013

Subdivisions that Have Utilized Article 5, Section 5.7D 3 to Develop More Than Two Lots

1. A. File 01-30 Sandra Armstrong Approved 10/2001 Starting Acreage 20 Acres
Lots A, B and C Residue
- B. File 08-09 Jerry Armstrong Approved 05/2008
Lots C, E and F (Lot D also created as Parent to Child)
2. A. File 93-23 Daniel Duncan Approved 07/1993 Starting Acreage 12 Acres
Lots A, B and C Residue
- B. File 98-30 Daniel Duncan Approved 01/1999
Lots C-1, C-2 and C-3 Residue
3. A. File 96-19 Daniel Duncan Approved 08/1996 Starting Acreage 9.5 Acres
Lots D, E and F Residue
- B. File 06-20 Daniel Duncan Approved 07/2006
Lots F-1, F-2 and F-3 Residue
4. A. File 90-14 Burch Subdivision Approved 06/1990 Starting Acreage 24.5 Acres
Lots 7-A, 7-B and 7-C Residue
- B. File 05-11 Fieldstone Sub Approved 01/2006
Lots 8, 9 and 10 Residue
5. A. File 92-08 Nancy Grams Approved 04/1992 Starting Acreage 17.4 Acres
Lots 3A, 3B and 3C Residue
- B. File 98-27 Nancy Lou Grams Approved 01/1999
Lots A, B and C
6. A. File 99-21 Nuannit Vasuvat Approved 10/1999 Starting Acreage 6.3 Acres
Lots 1, 2 and 3 Residue
- B. File 08-11 Nuannit Vasuvat Approved 05/2008
Lots 3, 4 and 5

- | | | | | |
|-----|----|--|------------------|-----------------------------|
| 7. | A. | File 01-35 Charles Adams Lots 1, 2 and 3 Residue | Approved 12/2001 | Starting Acreage 31.7 Acres |
| | B. | File 08-10 Michael Pindell Lots 1, 2 and 3 Residue | Approved 05/2008 | |
| 8. | A. | File 91-7 Hebie Clipp Lots 2B, 2C and 2A Residue | Approved 04/1991 | Starting Acreage 17.4 Acres |
| | B. | File 01-34 Hebie Armstrong Lots 2D, 2E and 2A Residue | Approved 12/2001 | |
| 9. | A. | File 01-27 McMahon Lots 1, 2 and 3 Residue | Approved 08/2001 | Starting Acreage 7.2 Acres |
| | B. | File 09-02 Linda McMahon Lots 3, 4 and 5 Residue | Approved 05/2009 | |
| 10. | A. | File 00-15 Douglas Stevens Lots 1, 2 and 3 Residue | Approved 07/2000 | Starting Acreage 24 Acres |
| | B. | File 09-03 Linda McMahon Lots 9, 10 and 11 Residue | Approved 05/2009 | |
| 11. | A. | File 02-39 Robert Fodor, et. al. Lots 1,2 and 3 Residue | Approved 2/2003 | Starting Acreage 36.2 Acres |
| | B. | File 08-24 Daniel Hunter Lots 3 Residue, 4 and 5 | Approved 11/2008 | |



Jefferson County Planning Commission

Charles Town, West Virginia 25414

104 E. Washington Street
P.O. Box 338

TEL: (304) 725-9761

August 25, 1994

Mr. and Mrs. David Rowland
Old Friends Farm
Route 1, Box 776
Shepherdstown, West Virginia 25443

Dear Mr. and Mrs. Rowland:

This letter is in response to your letter concerning the conversion of a barn into a dwelling unit. Since you already have several dwelling units on your property, you would have to subdivide your property pursuant to Articles 6, 7 and 8 of the Subdivision Ordinance.

However, since the subdivision process limits each lot to a single family dwelling the Commission could also require separate parcels of land for each of the existing dwelling units. Also, be advised that your property is zoned Rural/Agricultural. As such you would be limited to no more than 2 lots and a residue every five years.

If you have any questions, please give the office a call.

Sincerely,

Paul J. Raco
Director of Planning & Zoning

PJR:rfb

Christine Chalmers

From: Zoning Dept [zoning@jeffersoncountywv.org]
Sent: Wednesday, April 29, 2009 9:56 AM
To: potbelly@frontiernet.net
Subject: You Planning & Zoning information request
Attachments: Submission Form - old excel.xls

Ms. Washington,

Thank you for contacting our office in regards to cutting off the front two acres of your parcel (P22.4, M13, Shepherdstown District). After a quick review of the Denton Minor Subdivision File #03-22, it appears as though your parcel holds the residue designation, which entitles you to subdivide. I have attached to this email the form you will need to fill out to schedule a pre-proposal conference with our staff. When you provide the form, please also include a sketch plat that shows the location and dimensions of the 2 acre parcel you'd like to cut off. As well, if there were any buildings added to the land since 2003, those will need to be shown including the distances from other structures or property lines.

If you have any problems opening the attachment or have additional questions, please don't hesitate to stop in or call the number listed below.

Thank you,

Jennifer Snyder
Acting Zoning Administrator
Planning & Zoning Departments
Jefferson County, West Virginia
(304) 728-3228

Re: 657 Cattail Run Rd. - subdivision



Show Header

Print Hide Envelope

From: Zoning Dept Add to Address Book
To: lisette@turner@realtor.com
Date: Monday, March 16, 2009 10:33:34 AM
Subject: Re: 657 Cattail Run Rd. - subdivision

Ms. Turner. I recieved the faxed copy of your plat, and forwarded it to the Zoning Administrator, Jennifer Snyder - Thank you. With regard to your question, Jefferson County is divided into five (5) separate Tax Districts: Charles Town (#02); Harpers Ferry (#04); Kabletown (#06); Middletown (#07) and Shepherdstown (#09). When confirming locations of properties, knowing the District is imperative for research purposes, as there are duplicate Map and Parcel numbers in each District. On the Zoning Map that is currently in use, these Districts are clearly identified and would also be reflected on the the annual Tax bill forwarded to the Owners of the Property (identified by the number shown). As I was somewhat familiar with the property in question, I verified the location, advised Jennifer of the District, and delivered her a copy of the property, as indicated on the Tax Map. Unless otherwise contacted, Ms. Snyder is in receipt of the necessary information required in making an appropriate determination of your request. Accordingly, she will contact you with a decision, upon completion of her research into the matter.

Your continued cooperation is very much appreciated.

Christine Chalmers, Zoning Secretary

-----Original Message-----

From: <lisette@turner@realtor.com>
Sent 3/13/2009 1:59:21 PM
To: "Zoning Dept" <zoning@jeffersoncountywv.org>
Subject: Re: 657 Cattail Run Rd. - subdivision

Thanks so muc. I am faxing you the platt. What do you mean by tax district. I pulled up public records. Sometimes, they don't seem very accurate. It is 9e to a left on Cattail Ru Rd. it is about 1/2 mile down the road on the left. Thanks. Lisette

--- zoning@jeffersoncountywv.org wrote:

From: "Zoning Dept" <zoning@jeffersoncountywv.org>
To: <lisette@turner@realtor.com>, <newvalagnt@aol.com>
Cc:
Subject: Re: 657 Cattail Run Rd. - subdivision
Date: Fri, 13 Mar 2009 14:01:04 GMT

Thank you for contacting our office regarding this parcel's subdivision potential. In general, a parcel zoned as Rural cannot subdivide unless it is the residue of a previous subdivision or was on record as of Oct. 1988. I cannot provide you with specific information about this parcel without more information from you. The survey scan that you sent earlier was corrupt and could not be opened. The information provided below is lacking the tax district. Feel free to email me this information again, or fax it to (304) 728-8126.

Sincerely,
Jennifer Snyder
Acting Zoning Administrator
Planning & Zoning Departments
Jefferson County, West Virginia
(304) 728-3228

-----Original Message-----

From: <lisette@turner@realtor.com>
Sent 3/10/2009 11:36:49 AM

Christine Chalmers

From: Zoning Dept [zoning@jeffersoncountywv.org]
Sent: Thursday, July 09, 2009 11:25 AM
To: Jenny Hunter
Subject: Re: [Fwd: [Fwd: Attention Jennifer Snyder - Zoning/Division question]]

Ms. Hunter,

I apologize for the delay in a response to you. Our office is in disarray. We've just recently hired a Director, have no permanent Planner and I am filling an Acting Zoning Administrator position. The clerical staff has had a voluminous amount of questions that have come into our office in light of the Zoning Ordinance/Subdivision Regulations transition. I have emails and phone calls from residents that date back older than your request and our office is working hard to give every one of them the time and attention they need. I would suggest if you have a specific deadline to meet that you call Christine Chalmers, Zoning Clerk, and schedule a "PPC" meeting, filling out the appropriate Subdivision & Site Plan Submission Form and dropping it off prior to the scheduled meeting. Otherwise, I beg your patience with our office.

To answer some of your basic questions:

"I know that the county has reverted back to the old zoning and our parcel is zone Rural. But it is my understanding that the Rural zone doesn't exist under the new subdivision ordinances - so I am wondering what rules you are able to use as the guidelines for development potential ."

^ The County has reverted back to the old Zoning and old Zoning districts, of which Rural is one currently in effect. Thus, the ordinance that governed your ability to develop before, still governs. For example, if you did 2 lots and a residue every five years in 2008, you would not be permitted to subdivide again until 2013.

"If you are going by the old rules, would we still be able to cut a child to parent lot?"

^ No. The parent-to-child provision was governed by the subdivision regulations. New Subdivision Regulations were adopted in October 2008, effective November 2008, and that provision was not included.

"If going under the new rules, would we be able to cut up to the 5 lots in a minor subdivision?"

^ No. Density is determined by the Zoning Ordinance. The provisions for your parcel would be found in Sec. 5.7. You can review this section on the website . You will want to view the Ordinance that was placed into effect in January 2009.

"On a non-personal note, I am also a certified appraiser - and might be taking an assignment that would require a subdivision analysis be completed. Am I to tell the client that he has to meet with your office about the development before we know what is legally permissible with the county?"

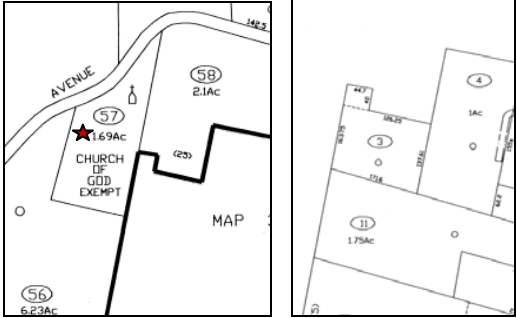
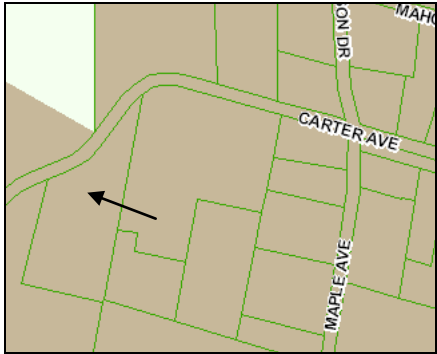
^ It would be wise for someone to discuss such material with our office, whether it is you or your client. However, as you've realized we are unable to quickly answer subdivision potential questions at this point in time. Thus, I would suggest you come in as early as possible before you need a decision and be up front with any real looming deadlines.

I hope this information is what you were looking for.

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 September 19, 2013

Matt Bernazzoli Request (#ZV13-26)

Item # 6 Variance Request by Applicant, Matt Bernazzoli, from Section 4.3.H to allow a current 25'7" x 8'2" shed to remain located on an existing concrete slab where an original shed was formerly situated.
 Property Owner: Bakerton Bible Church.

| | |
|-------------------------|---|
| APPLICANT: | Matt Bernazzoli |
| OWNER : | Bakerton Bible Church |
| DEVELOPER: | Stanley Dunn |
| SURVEYOR/ENGINEER: | N/A |
| PROPERTY LOCATION: | 662 Carter Avenue; Harpers Ferry, West Virginia |
| LEGAL DESCRIPTION: | <p style="text-align: center;">Harpers Ferry (04); Map: 3; Parcel: 57</p>  |
| ZONING DISTRICT: | <p style="text-align: center;">Zoning Map Designation: Village (V)</p>  |
| SURROUNDING PROPERTIES: | <p>Zoning Map Designation:</p> <p><i>North: V & R South: V</i></p> <p><i>East: V West: V</i></p> |
| LOT AREA: | |
| PRIOR CASES: | None |
| VARIANCE(S): | None |
| APPROVED ACTIVITY: | Church (nonconforming site) |

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Matt Bernazzoli Request (#ZV13-26)

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a variance in accordance with Section 4.3.H to allow an 8'2" x 25'7" shed that was built on an existing concrete slab where a previous shed had existed for approximately 50 years. The shed is located on Parcel 57, owned by the Bakerton Bible Church, approximately 3 feet from the side property line; however, it was built by Matt Bernazzoli, the neighboring property owner, for his own personal use under a verbal agreement with the church.

2. Previous Case History

A church is a conditional use in the village zoning district; however, the LESA point system would not apply should an applicant propose this use. The subject parcel is nonconforming due to the fact that the church was built prior to the adoption of subdivision, site plan and zoning standards. There are no other known variances or certificates issued to this property.

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

Section 4.3 H includes the provisions for replacing a nonconforming use, "A nonconforming use destroyed by a natural or unnatural calamity cannot be rebuilt without approval of the Board of Zoning Appeals upon application by the owner and pursuant to the variance and appeal procedures outlined in Article 3". This variance is being processed in accordance with these provisions.

The purpose of nonconforming use provisions is to allow reasonable use of a property which contains a land use, feature, or building which was established legally prior to the current regulations but does not comply with current regulations, while also establishing limits for the continuation or expansion of the nonconformity.

Section 5.10, *Village District*, establishes the setback requirements for residential and commercial properties in the Village district as well as existing structures. The ordinance states that the side setback for commercial structures is 10 feet and for existing structures is, "As exists not less than 6' on sides and rear." This section implies that the intent of the ordinance is to allow a certain degree of flexibility regarding setbacks in the Village District.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Matt Bernazzoli Request (#ZV13-26)

The purpose of side yard setback requirements is to reduce the impact that a land use might cause to 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.

b. Unique characteristics of property

The subject parcel abuts a residential property that shares its access drive. There is apparently a long standing “gentleman’s agreement” allowing the occupant of the residential structure to utilize the existing shed located on the church property near the neighbor’s property line. This shed, which is the subject of this variance, had fallen into disrepair and the home owner rebuilt it on the existing slab without obtaining the required permission.



c. Character of area

The property is located in the village of Bakerton and is also zoned Village, which is characterized by smaller lots and an existing development pattern. Many of the lots in this area have homes or accessory structures that are constructed in close proximity to adjoining property lines. The majority of the lots within a ½ mile radius of the subject parcel are between 8,000 square feet – 1 acre; well and septic sites may be a determining factor in the location of said structures.

d. Impact on adjacent properties

While the shed is on the church property, the church has an agreement with Mr. Bernazzoli, Parcel 3, in which he will be utilizing the shed. The shed will be for residential storage. The applicant and Mr. Bernazzoli have been advised that an easement is a viable option to alleviate any potential conflicts in the future. Per Section 24.102 of the *Subdivision and Land Use Regulations* the Department is required to review all easements prior to recordation. Should the applicant and Mr. Bernazzoli wish to pursue a legal easement they will need to contact the Department to determine what the necessary steps would be at that point in time.



Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Matt Bernazzoli Request (#ZV13-26)

e. Feasibility of complying with the ordinance by other means

According to the County's GIS mapping software the subject parcel is approximately 1.44 acres. The applicant and Mr. Bernazzoli have a joint access and the church is situated towards the rear of the parcel decreasing the applicant's ability to erect a structure behind the church. The subject parcel is approximately 200 feet wide. The side setback requirements for commercial (non-residential) structures is 10 feet and the side setback for structures that existed when the ordinance was adopted is 6 feet. While there is adequate side yard on the church property to accommodate a shed meeting these setbacks, the use of the existing concrete slab puts the structure 3 feet from the side property line.

5. Conditions of Approval

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

- a. This variance is only applicable to the present structure at its current size.
- b. Should the shed become damaged or in need of repair the applicant must contact the Department of Zoning to determine if another variance is necessary.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 4.3 Nonconforming Uses

Any building, structure or premises lawfully existing at the time of the adoption of this ordinance, or lawfully existing at the time that this ordinance is subsequently amended, may continue to be used even though such building, structure, or premises does not conform to use, setbacks or dimensional regulations of the zoning district in which it is located or the regulations of the Development Review System; subject, however to the following provisions:⁷

- H. A nonconforming use destroyed by a natural or unnatural calamity cannot be rebuilt without approval of the Board of Zoning Appeals upon application by the owner and pursuant to the variance and appeal procedures outlined in Article 3.^{12, 17, 21, 23}



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, 2nd Floor, P.O. Box 338

Charles Town, WV 25414

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

File Number: # ZV13-26

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

Staff Initials: CKC

Email planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Email zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Variance Request

Variances to 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

Property Owner Name: Bakerton Bible Church

Mailing Address: 662 Carter Ave

City: Harpers Ferry State: WV Zip Code: 25425

Phone Number: 304-876-6391 Email: _____

Applicant or Contact Information

Applicant / Contact Name: Matt Bernazzoli

Mailing Address: 664 Carter Ave

City: Harpers Ferry State: WV Zip Code: 25425

Phone Number: 304-671-1481 Email: Mbernazzoli@hotmail.com

Applicant Representatives

Company/Organization Name: _____

Attorney(s), Engineer(s), or Surveyor(s) Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Email: _____

Physical Property Details

Physical Property Address: 662 Carte Ave. Map 3 Parcel 57

Tax District: 4 Map No: 3A Parcel No: 57

Parcel Size: 1.44 aprx. Deed Book: 360 Deed Bk. Pg. No: 71
8/23/13

| Zoning District: | Rural (R-A) | Residential Growth (R-G) | Industrial Commerical (I-C) | Residential-Light Industrial-Commercial (R-L-C) | Village (V) |
|------------------|-----------------------|--------------------------|-----------------------------|---|----------------------------------|
| | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

On a separate sheet of paper, provide a sketch showing the shape and location of the lot indicating all roads, rights of ways, 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 Ordinance pertaining to this request: ~~24.505~~ 4.3.H 8/22/13

Please briefly describe the nature of the variance request:

There is a shed built on the corner of the property that was constructed over 50 years ago by the previous owner of the neighboring property. The neighbor rebuilt the shed on the existing concrete slab, we need the variance so he can get a building permit to satisfy the county so he can continue to use the structure for residential use.

If this request is for a setback variance, please complete the section below:

Front Setback Side Setback Rear Setback Reduction From ___ to 3' 8/22/13

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.

The building that was rebuilt was a safety hazard, it was in bad disrepair and had a very rusty roof. It is now a new, well built clean building, using the exact footprint of the old building on the original concrete slab.

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?

The storage shed had been on the property for over 50 years, there was a gentlemen's agreement made years ago that allowed it to be built. Now that the property has changed hands it needs to be recorded by the county.

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

It will allow the property to be in compliance with the county, and allow the neighbor to continue to use the shed for its intended purpose.

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

By allowing our neighbor to finish and use the shed, which only improved the properties by eliminating a dangerous eyesore.

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

Aita Jamison 6/9/13
Signature of Property Owner 1 Date

Signature of Property Owner 2 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 twenty-eight (28) inches by twenty-two (22) inches in size, at least 15 days before the hearing (pursuant to Zoning and Land Development Ordinance Section 3.4A(3)(b)).

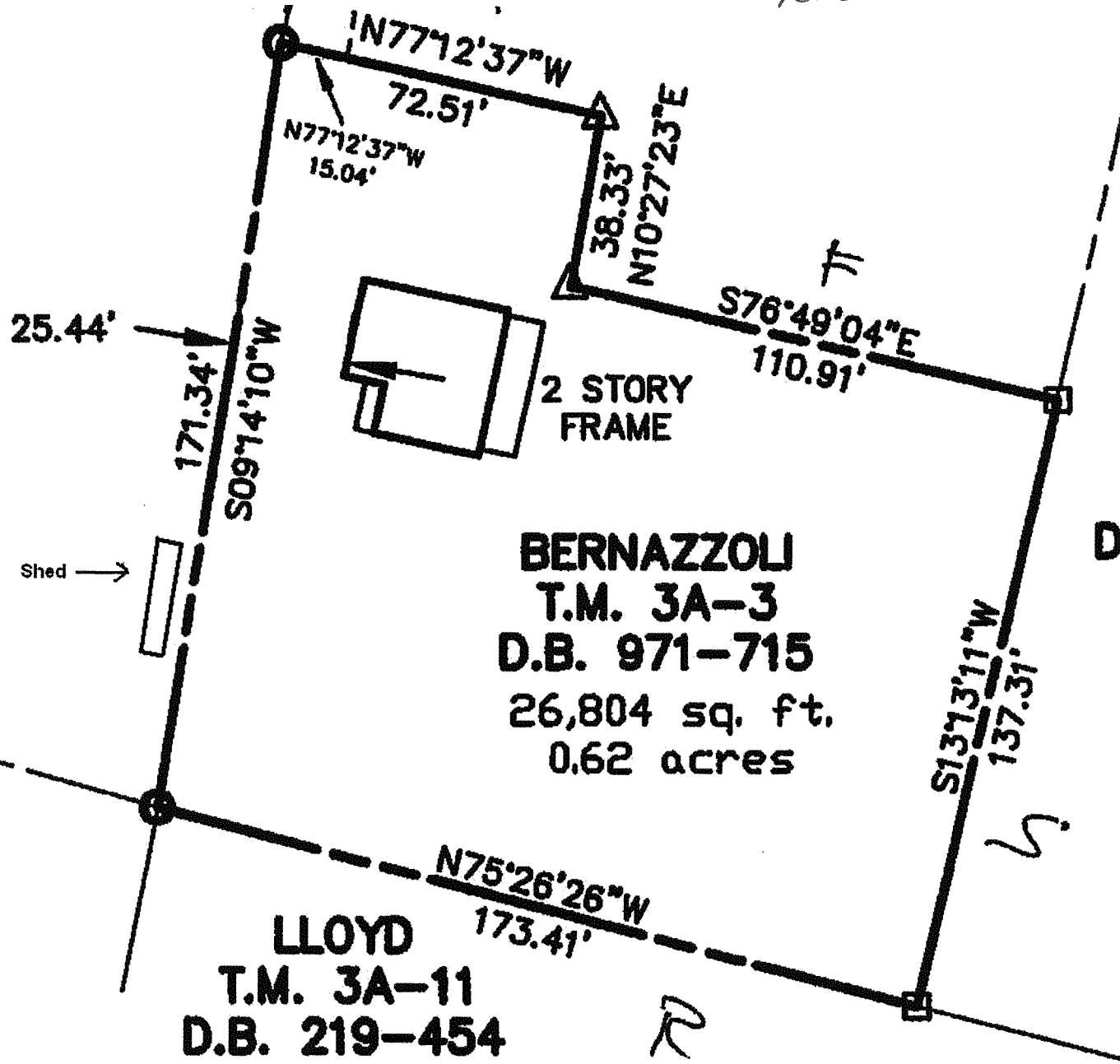
THURSDAY SEPTEMBER 19, 2013
Date of Public Hearing

WEDNESDAY, SEPT. 4, 2013
Advertising Date

WEDNESDAY, SEPT. 4, 2013
Placard Posting Date

ZV13-26

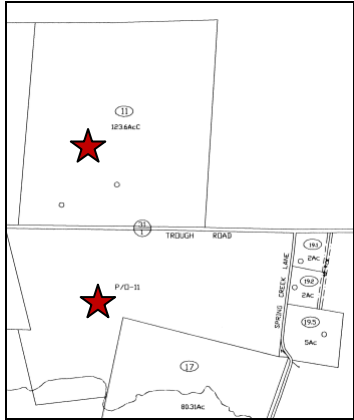
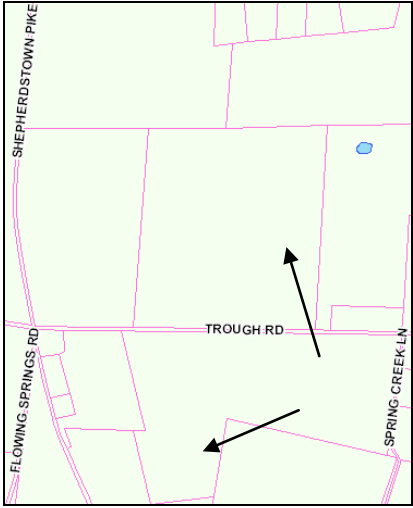
CHURCH OF GOD
T.M. 3A-57
D.B. 360-71



Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 September 19, 2013

Verizon Wireless Request (#ZV13-27)

Item # 7 Variance request by Applicant, Diane De Laet for Verizon Wireless, from Article 4B.7.J.2 to allow an increase of height from 120' to 130' tall stealth silo design for its wireless telecommunications facility, which is required to meet its network objective.

| | |
|-------------------------|--|
| APPLICANT: | Diane De Laet for Verizon Wireless |
| OWNER : | George Randolph Welsh, Jr. |
| DEVELOPER: | N/A |
| SURVEYOR/ENGINEER: | TAI Engineering |
| PROPERTY LOCATION: | 231 Trough Road; Shepherdstown, West Virginia |
| LEGAL DESCRIPTION: | <p style="text-align: center;">Shepherdstown (09); Map: 17; Parcel: 11</p>  |
| ZONING DISTRICT: | <p style="text-align: center;">Zoning Map Designation: Rural (R)</p>  |
| SURROUNDING PROPERTIES: | <p>Zoning Map Designation:</p> <p><i>North:</i> R <i>South:</i> R</p> <p><i>East:</i> R <i>West:</i> R</p> |
| LOT AREA: | 123.6 acres |
| PRIOR CASES: | None |
| VARIANCE(S): | None |
| APPROVED ACTIVITY: | Vacant; Single family home located on northern section of the parcel across the street |

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Verizon Wireless Request (#ZV13-27)

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a variance from Article 4B.7.J.2 to allow an increase in height from 120' to 130' for a stealth silo design for its wireless telecommunications facility, which is required to meet its network objective.

2. Previous Case History

This property has no known variances, waivers or zoning certificates issued to it.

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 intent of this section is to maintain the rural character of the area while accommodating for wireless facilities. The Ordinance encourages new facilities to be located in the Industrial-Commercial zone by allowing them to reach a height of 199' in these zones. While new towers are restricted to 100' in all other zones, the Ordinance provides an applicant the ability to increase the height of a new facility an additional 20' if they use a silo as the supporting structure.

b. Unique characteristics of property

The Ordinance has a Preferred Structures and Locations Policy which reads,

“Co-location (*is*) Encouraged. Prior to the approval of the construction of a new Tower, it is the policy of Jefferson County to encourage co-location of wireless facilities in the following locations...Co-location and the use of existing or approved towers, buildings or alternative structures such as buildings, water towers, silos, church steeples, and utility poles more than fifty (50) feet in height within a one-quarter mile radius of a proposed Tower, where appropriate.”

While not directly stated in the applicant's request, this particular location on the site may be necessary due to this provision.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Verizon Wireless Request (#ZV13-27)

c. Character of area

The surrounding area is primarily agricultural therefore the applicant's proposal of a silo design would be appropriate for this location.



d. Impact on adjacent properties

The location of the silo is 63.26 feet from the adjacent property line. Section 4.7.J.3(a) *Fall Zone* states, “With the exception of silos, Towers shall be set back from all property lines a distance equal to 110% of tower height measured from the base of the structure to its highest point. Additional easements may be acquired on adjacent properties to meet the fall zone requirement.” As the proposed structure is a silo, it is exempt from the Fall Zone design criteria. Note that the silo is in compliance with the required 50’ commercial side setback requirement.

The proposed location is adjacent to a line of trees which the applicant states are between 30 – 50 feet in height. While this will not prevent the adjacent property owner from viewing the silo it may assist in screening the 8’ tall fenced 50’ x 75’ compound.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Verizon Wireless Request (#ZV13-27)



Approximate Location of Silo

e. Feasibility of complying with the ordinance by other means

The height of the proposed silo is 130' whereas the Ordinance requires 120'. As the parcel's elevation rises towards the front of the property the applicant could situate the silo in that direction, thereby taking advantage of the natural terrain. This would also reduce the length of the graveled road required to access the silo. This would be less ground disturbance and a cost savings to the applicant.

5. Conditions of Approval

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

- a. Permitting this variance for the proposed stealth silo in the proposed location only.
- b. Co-location of other service providers is required.

NOTE: All require Site Plan criteria shall be reviewed and approved by the Planning Commission in a separate hearing process.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Verizon Wireless Request (#ZV13-27)

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 4B.7 Wireless Telecommunication Towers

Wireless Telecommunication Towers (hereafter “Tower” or “Towers”) are permitted in all zoning districts subject to the provisions of this section. The provisions of this section apply to an application for a new Tower, as well as for a major modification to an existing Facility or Support Structure that results in a substantial change to the facility or structure, including but not limited to a height extension of more than twenty (20) feet or ten percent (10%) of the current height of a facility or structure, whichever is greater, and/or replacement of the structure.

This section is not applicable to co-location of a new antenna array on an existing structure.

J. Design Criteria

Wireless Telecommunication Towers shall comply with the following design criteria:

2. Height Restrictions

- a. Towers in the Industrial-Commercial zoning district shall not exceed 199 feet. Towers in all other zoning districts shall not exceed 100 feet. If a silo is used for a support structure for antennas, the height of the silo shall not exceed 120 feet.



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, 2nd Floor, P.O. Box 338

Charles Town, WV 25414

File Number: ZV13 27

Staff Initials: CLC

Fees Paid (\$100 or \$150): \$ 100.00

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

Email planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Email zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Variance Request

Variations to 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

Property Owner Name: George Randolph Welsh, Jr.

Mailing Address: P.O. Box 1565

City: Shepherdstown State: WV Zip Code: 25443

Phone Number: _____ Email: _____

Applicant or contact information

Applicant / Contact Name: Diane De Laet for Verizon Wireless

Mailing Address: 9000 Junction Drive

City: Annapolis Junction State: MD Zip Code: 20701

Phone Number: 240.527.1986 Email: ddelaet@sceeng.com

Applicant representatives

Company/Organization Name: TAI Engineering

Attorney(s), Engineer(s), or Surveyor(s) Name: Tom Barr

Mailing Address: 11155 Dolfield Blvd., #210

City: Owings Mills State: MD Zip Code: 21117

Phone Number: 410.356.3108 Email: tbarr@taiengineering.com

Physical property details

Physical Property Address: 231 Trough Rd.

City: Shepherdstown State: WV Zip Code: 25443

Tax District: Shepherdstown Map No: 17 Parcel No: 11

Parcel Size: 123.6 Acres Deed Book: 609 Page No: 477

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PLANNING, ZONING AND ENGINEERING

| Zoning District: | Rural (R-A) | Residential Growth (R-G) | Industrial Commerical (I-C) | Residential-Light Industrial-Commercial (R-L-C) | Village (V) |
|------------------|-------------------------------------|--------------------------|-----------------------------|---|--------------------------|
| | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

On a separate sheet of paper, provide a sketch showing the shape and location of the lot indicating all roads, rights of ways, 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 *NA SH 8/22/13*

Reference the section of Ordinance pertaining to this request: Article 4B. 7. J. 2

Please briefly describe the nature of the variance request

Verizon Wireless proposes a stealth silo design for its wireless telecommunications facility. A 130' tall Silo will be required to meet its network objective. Variance is required to increase allowed height from 100' to 130'. *120' SH 8/22/13*

If this request is for a setback variance, please complete the section below

Front Setback Side Setback Rear Setback Reduction From _____ to _____

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.

The proposed facility has been designed to accordance with County, State and Federal regulations to ensure the health, safety, welfare and rights of adjacent property owners or residents. Additionally, the stealth silo design will mitigate any potential negative visual impact.

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?

The *120' SH 8/22/13* 100' maximum height limitation in this district will not permit the proposed telecommunications facility to perform effectively. The variance is requested due to the need for additional height required for the telecommunications facility to provide sufficient coverage to the area.

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

The granting of this variance will eliminate hardship by creating an opportunity to provide needed service to the surrounding area. If the requested variance is not approved, reasonable coverage will not be achieved from this location. There are no existing structures within a .25 mile radius of the site.

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

The granting of the requested variance will help to ensure access to reliable and robust wireless communications services throughout Jefferson County. The proposed location includes a 123.6 acre parcel that is large enough to accommodate the required setback/fall zone distances and includes natural screening of mature trees.

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

Bernadette Welch 8/15/13
Signature of Property Owner 1 Date

Signature of Property Owner 2 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 twenty-eight (28) inches by twenty-two (22) inches in size, at least 15 days before the hearing (pursuant to Zoning and Land Development Ordinance Section 3.4A(3)(b)).

SEPTEMBER 19, 2013
Date of Public Hearing

WEDNESDAY, SEPT 4, 2013
Advertising Date

WEDNESDAY, SEPT 4, 2013
Placard Posting Date

ZV13-27



January 5, 2012

Verizon Wireless
9000 Junction Drive
Annapolis Junction, MD 20701
301-512-2415
Luke.Neiswander@verizonwireless.com

Jefferson County Department of Planning and Zoning
Attn: Steve Barney
116 East Washington Street, 2nd Floor
Charles Town, WV 25414

RE: Verizon Wireless
Karen Cell Site
Trough Road
Shenandoah Junction, WV, 25442

To Whom It May Concern:

Verizon Wireless operates a Personal Communication Service authorized by the Federal Communications Commission (FCC) to provide state of the art digital wireless communications in many parts of the nation, including Washington DC. Verizon Wireless' operations and network are licensed and regulated by the FCC.

The antennas, as proposed and designed for the above noted site, are in compliance with all applicable FCC requirements. In addition, the proposed site meets all applicable ANSI/IEEE C95.1-1992 exposure levels, as adopted by the FCC requirements.

Verizon Wireless is committed to compliance with all government regulations and standards. Please contact Verizon Wireless if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Luke Neiswander".

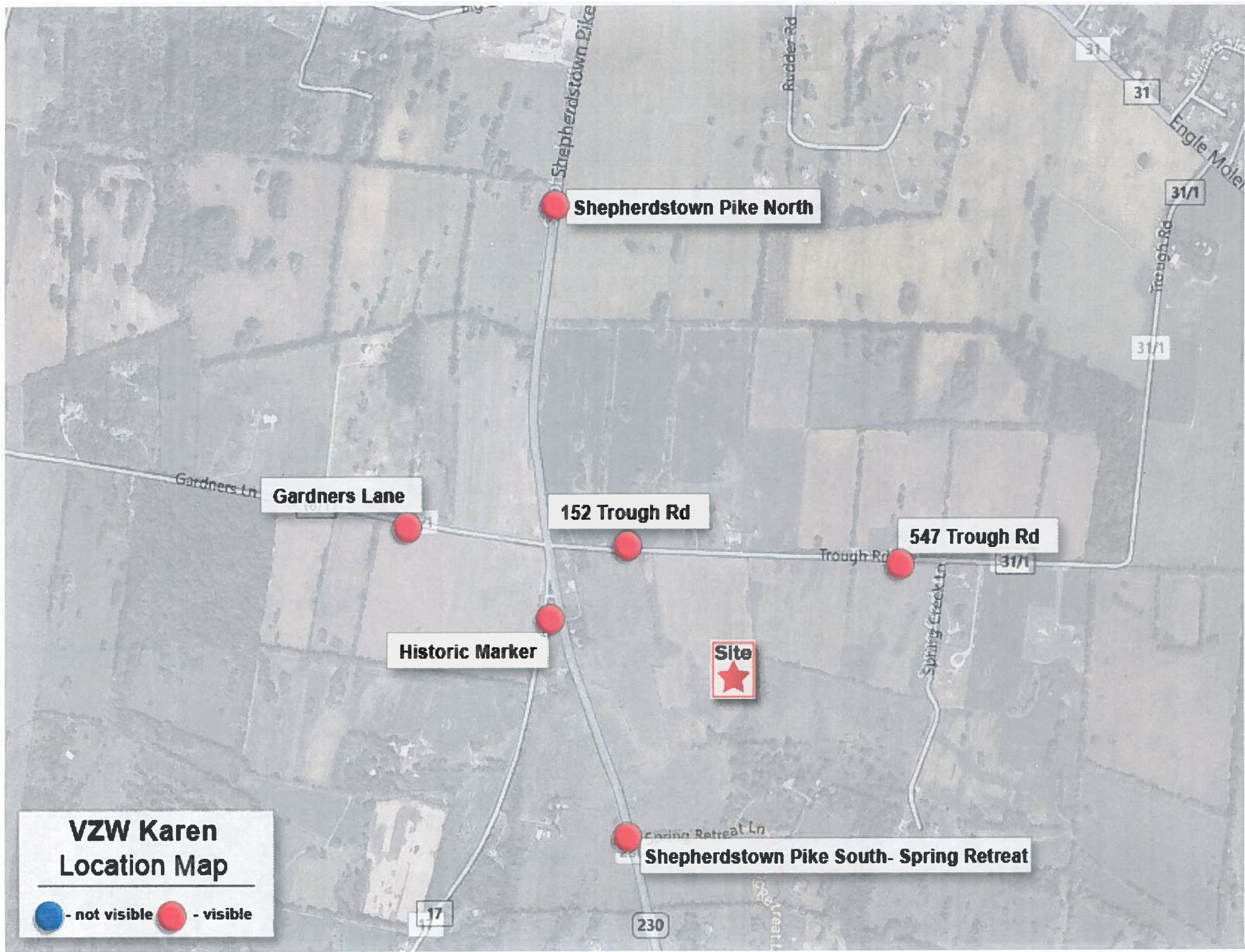
Luke Neiswander
RF Design Engineer, Verizon Wireless

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AUG 29 2013

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

* Letter + Picture submitted; mailed in 09/19/13 BZA packet. - ght



Shepherdstown Pike North

Gardners Lane

152 Trough Rd

547 Trough Rd

Historic Marker

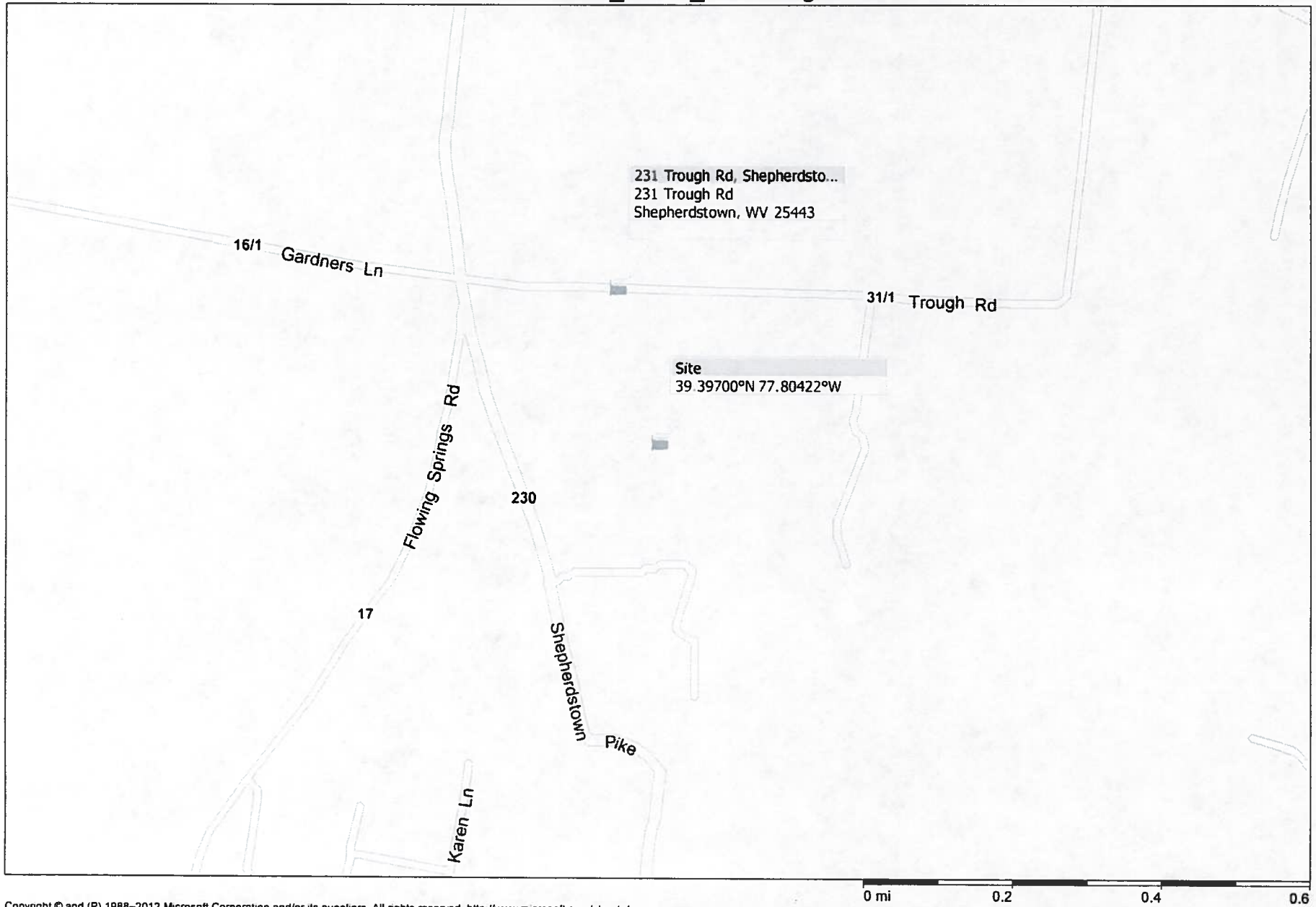
Site
★

Shepherdstown Pike South- Spring Retreat

**VZW Karen
Location Map**

● - not visible ● - visible

Verizon Wireless_Karen_231 Trough Road

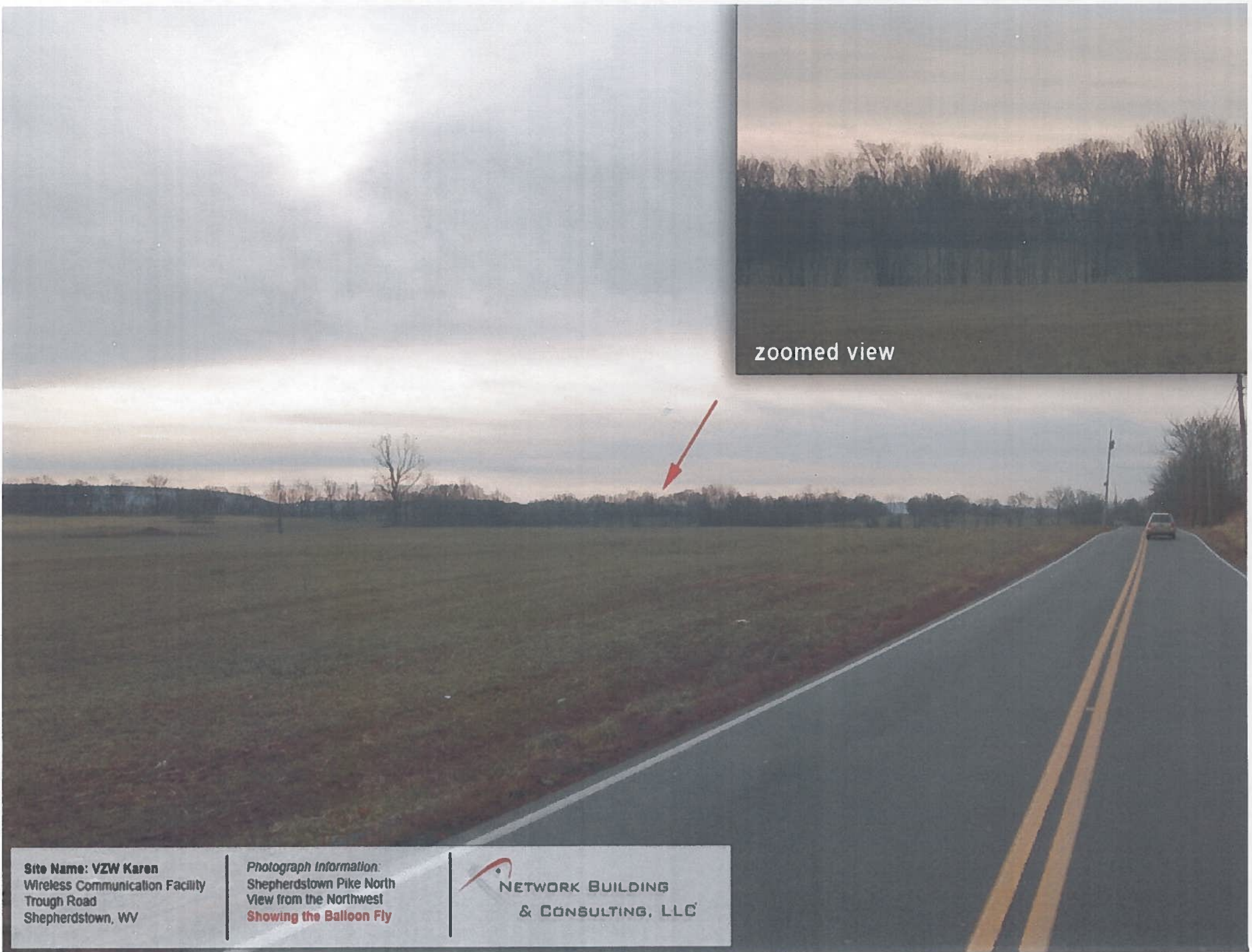




Site Name: VZW Karen
Wireless Communication Facility
Trough Road
Shepherdstown, WV

Photograph Information:
Shepherdstown Pike South -
Spring Retreat
View from the Southwest
Showing the Balloon Fly


 **NETWORK BUILDING
& CONSULTING, LLC**



zoomed view

Site Name: VZW Karen
Wireless Communication Facility
Trough Road
Shepherdstown, WV

Photograph Information:
Shepherdstown Pike North
View from the Northwest
Showing the Balloon Fly

 **NETWORK BUILDING
& CONSULTING, LLC**








zoomed view



Site Name: VZW Karen
Wireless Communication Facility
Trough Road
Shepherdstown, WV


Photograph Information:
Historic Marker
View from the West
Showing the Balloon Fly

 **NETWORK BUILDING
& CONSULTING, LLC**



Site Name: VZW Karen
Wireless Communication Facility
Trough Road
Shepherdstown, WV

Photograph Information:
547 Trough Rd
View from the Northeast
Showing the Balloon Fly



**NETWORK BUILDING
& CONSULTING, LLC**



Site Name: VZW Karen
Wireless Communication Facility
Trough Road
Shepherdstown, WV

Photograph Information:
164 Gardners Lane
View from the Northwest
Showing the Balloon Fly



**NETWORK BUILDING
& CONSULTING, LLC**



Site Name: VZW Karen
Wireless Communication Facility
Trough Road
Shepherdstown, WV


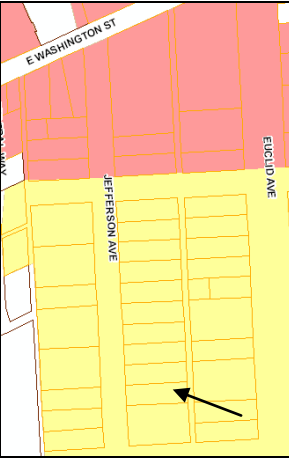
Photograph Information:
152 Trough Rd
View from the Northwest
Showing the Balloon Fly

**NETWORK BUILDING
& CONSULTING, LLC**

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 September 19, 2013

Gilbert and Catherine Smallwood Request (#ZV13-28)

Item # 8 Variance Request by Applicants, Gilbert and Catherine Smallwood, from Section 9.7 for a reduction of the side setback from 6' to 2' to allow for the construction of a 12' x 21' garage.

| | |
|-------------------------|---|
| APPLICANT: | Gilbert and Catherine Smallwood |
| OWNER : | N/A |
| DEVELOPER: | N/A |
| SURVEYOR/ENGINEER: | N/A |
| PROPERTY LOCATION: | 932 Jefferson Avenue; Charles Town, West Virginia |
| LEGAL DESCRIPTION: | <p style="text-align: center;">Charles Town (02); Map: 10A; Parcel: 64</p>  |
| ZONING DISTRICT: | <p style="text-align: center;">Zoning Map Designation: Residential-Growth (RG)</p>  |
| SURROUNDING PROPERTIES: | <p>Zoning Map Designation: <i>North: RG South: RG</i> <i>East: RG West: RG</i></p> |
| LOT AREA: | 0.25 acres |
| PRIOR CASES: | None |
| VARIANCE(S): | None |
| APPROVED ACTIVITY: | Residential: Single family |

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Gilbert and Catherine Smallwood Request (#ZV13-28)

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a variance from Section 9.7 for a reduction of the side setback distance from 6' to 2' to allow for the construction of a 12' x 21' detached garage.

2. Previous Case History

The subject property is located on Lot 22 of Block 5, as depicted on the Charles Town and Washington City Improvement Company plat which was recorded prior to the adoption of subdivision and zoning regulations.

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 purpose of side and rear yard setback requirements is to reduce the impact that a land use might cause to 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.

Shorter setbacks are typically permitted for small accessory structures, because their reduced size equates to less of a visual impact on neighboring properties.

The requested 2' setback would not appear to hinder the applicant's ability to maintain the side yard as the proposed location will be adjacent to the existing privacy fence that the applicant erected.

b. Unique characteristics of property

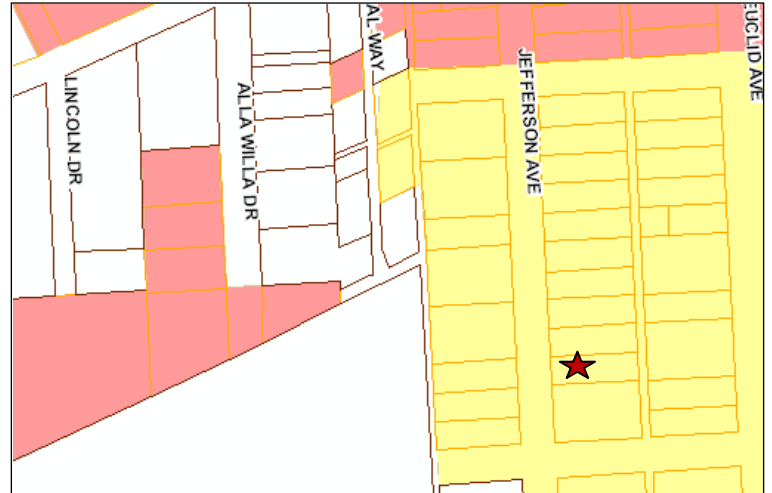
The subject property is located in an established subdivision that predates both the zoning and subdivision ordinances and is therefore considered nonconforming. The lot is 50 wide and is 150 in depth which could make building on this property challenging. A driveway runs the full length of the northern edge of the property from Jefferson Avenue to a grass alley in the rear.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Gilbert and Catherine Smallwood Request (#ZV13-28)

c. Character of area

This city block is comprised of many small lots which contain primarily single family homes; however, there are also multifamily dwellings (apartments) and limited commercial uses. The City of Charles Town's jurisdiction begins ½ a city block to the west.



d. Impact on adjacent properties

The applicant erected a 6' tall white privacy fence within 2' of the north and south property lines. This fence may assist in screening a portion of the garage from either neighbor. The neighbor located to the south of the subject parcel, where the garage is proposed, has submitted a letter of support. The neighbor to the north has an accessory structure behind their home. This structure appears to meet the required side setback. Toward the rear of the parcel is a 15' grass alley that the applicant appears to use to access Second Street.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Gilbert and Catherine Smallwood Request (#ZV13-28)



e. Feasibility of complying with the ordinance by other means

The width of the proposed garage (12' x 21') is a typical one-car garage design and therefore a reduction in the size of the garage would not be likely. An alternative location for the garage that would meet the required setbacks could be left rear corner of the lot (RV location). This would allow the applicant to drive up their driveway, into the garage and out, depending on how they situate the garage, which would alleviate one of the hardships listed in the applicant's request. This location would also preserve more of the rear yard as the applicant would have to gravel or pave the 17' from the existing driveway to the proposed garage location. Conversely, the applicant would have to find an alternate location for the RV. It also appears that the applicant uses the grass alley located in the rear of the property and this alternative location may be challenging to enter from that entryway. Finally, this alternative location is further away from the house than the proposed location. Depending on its placement the garage could be placed as far as 30 feet from the home whereas the applicant's location is approximately 10'.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Gilbert and Catherine Smallwood Request (#ZV13-28)



Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Gilbert and Catherine Smallwood Request (#ZV13-28)

5. Conditions of Approval

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

- a. The variance is only applicable to the southern lot line and is exclusively for the purpose of a 12' x 21' (or smaller) detached garage.

SECTION OF ORDINANCE TO BE CONSIDERED:

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

Residential Growth District²³

Single family residences --

| | | | | |
|------------------------------------|------------|----------|-----|----------|
| Over 40,000 square feet -- | 25' front, | 12' side | and | 12' rear |
| 30,000 sq. ft. to 40,000 sq. ft.-- | 20' front, | 10' side | and | 12' rear |
| Under 30,000 square feet -- | 20' front, | 8' side | and | 12' rear |

For all lots under 40,000 square feet side and rear setbacks for residential accessory structures shall be 6'.



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, 2nd Floor, P.O. Box 338

Charles Town, WV 25414

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

File Number: # ZV13-28

Fees Paid (\$100 or \$150): \$ 100.00

Staff Initials: AB

Email planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Email zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Variance Request

Variances to 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

Property Owner Name: Gilbert Pistr and Catherine Smallwood

Mailing Address: P.O. Box 157

City: Ranson State: WV Zip Code: 25438

Phone Number: 304-728-3958 Email: _____

Applicant or Contact Information

Applicant / Contact Name: Gilbert Pistr and Catherine Smallwood

Mailing Address: P.O. Box 157

City: Ranson State: WV Zip Code: 25438

Phone Number: 304-728-3958 Email: _____

Applicant Representatives

Company/Organization Name: _____

Attorney(s), Engineer(s), or Surveyor(s) Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Email: _____

Physical Property Details

Physical Property Address: 932 Jefferson Ave

Tax District: 02-Charles Town Map No: 10A Parcel No: 0064 0000 0000

Parcel Size: 0.25 Deed Book: 875 Deed Bk. Pg. No: 564

| | | | | | |
|------------------|-----------------------|----------------------------------|-----------------------------|---|-----------------------|
| Zoning District: | Rural (R-A) | Residential Growth (R-G) | Industrial Commercial (I-C) | Residential-Light Industrial-Commercial (R-L-C) | Village (V) |
| | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

On a separate sheet of paper, provide a sketch showing the shape and location of the lot indicating all roads, rights of ways, 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 code SECTION 9.7

Reference the section of Ordinance pertaining to this request (Required:) Article 5, Section 5.4(B) Tables 4-T

Please briefly describe the nature of the variance request: I need the GARAGE close to the fence so I will have room to turn into it from the driveway. Variance = side setback reduction to 2' from fence. WITHOUT THE SETBACK REDUCTION THERE WILL ONLY BE 7' FROM DRIVEWAY TO GARAGE ENTRANCE.

If this request is for a setback variance, please complete the section below:

Front Setback Side Setback Rear Setback Reduction From 8' code to 2'

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.

THE PROPERTY OWNERS THAT WOULD BE MOST AFFECTED BY A SETBACK REDUCTION LIVE TO OUR RIGHT. WE ALREADY HAVE A 6' PRIVACY FENCE ON THAT SIDE SO THERE WOULD BE VERY LITTLE VIEW OBSTRUCTED BY ADDING A GARAGE IN THAT AREA.

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?

BECAUSE THE PROPERTY IS VERY NARROW, THERE IS NO OTHER PLACE TO PUT GARAGE THAT WOULD BE CLOSE TO HOUSE SO THAT WE CAN USE IT WITHOUT A HARSHIP.

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

IF THE GARAGE IS PLACED ELSEWHERE IT WILL BE TOO DIFFICULT TO MOVE THE CAR AROUND FROM THE DRIVEWAY AND NOT PERMIT A REASONABLE USE OF THE PROPERTY.

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

GRANTING THIS VARIANCE WILL ALLOW THE INTENT OF THE ZONING ORDINANCE TO BE OBSERVED AND SUBSTANTIAL JUSTICE TO BE DONE BECAUSE WE CAN USE OUR PROPERTY TO THE FULLEST EXTENT WITHOUT CREATING AN ISSUE FOR OUR NEIGHBORS ENJOYMENT OF THEIR PROPERTIES

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

Gilbert P. Smallwood Sr 8/15/13
Print Name of Property Owner 1 Date

Catherine Smallwood 8-15-2013
Print Name of Property Owner 2 Date

Gilbert P. Smallwood Sr 8/15/13
Signature of Property Owner 1 Date

Catherine Smallwood 8-15-2013
Signature of Property Owner 2 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 twenty-eight (28) inches by twenty-two (22) inches in size, at least 15 days before the hearing (pursuant to Zoning and Land Development Ordinance Section 3.4A(3)(b)).

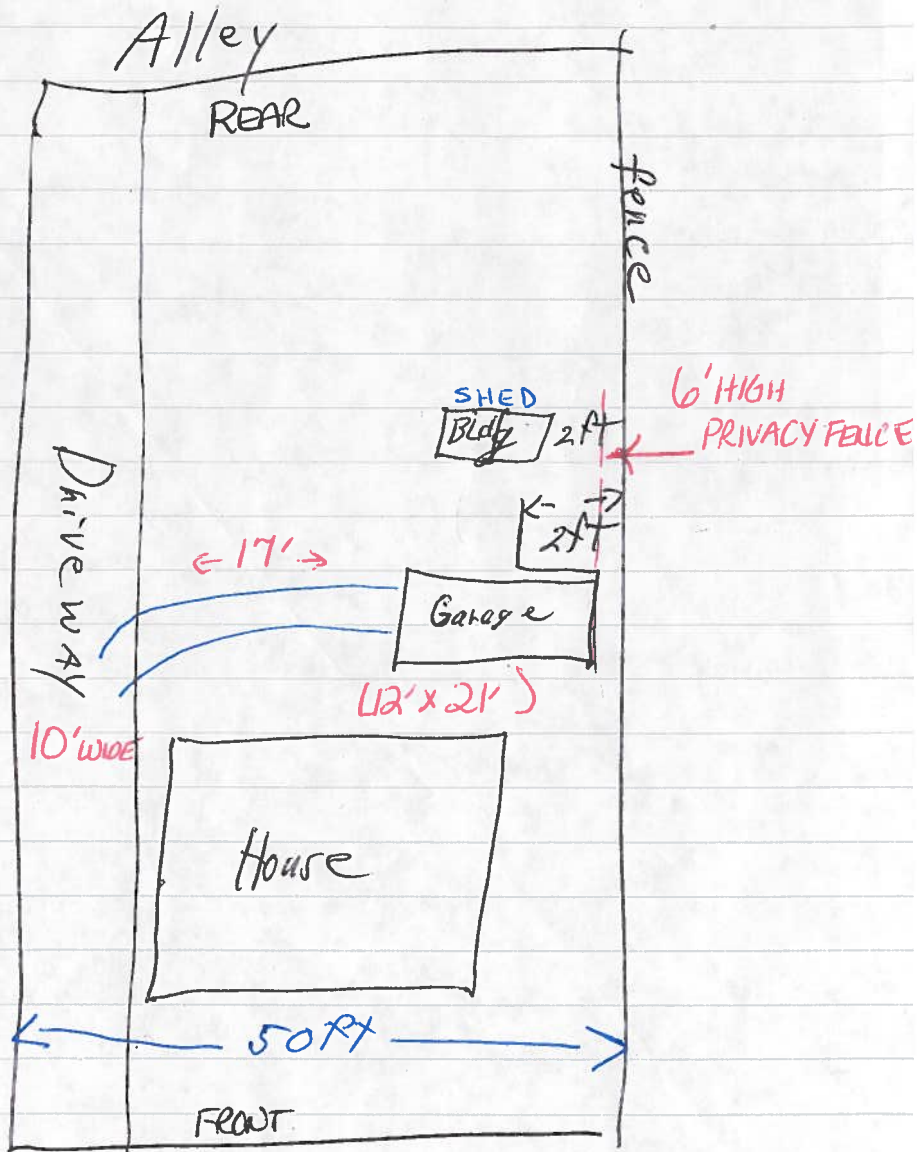
Thursday Sept. 19, 2013
Date of Public Hearing

Wednesday Sept. 4, 2013
Advertising Date

Monday, Sept. 4, 2013
Placard Posting Date

Gilbert P. Smallwood, Sr.
Gilbert P. Smallwood, Sr.

ZV13-28



932 Jefferson Ave

RECEIVED

AUG 15 2013

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

920 Jefferson Ave.
Charles Town

8-20-2013

If Gilbert Smallwood puts up a garage
it will not obstruct my view and be
any problem for me.

304-724-0074
Amanda Bowers

RECEIVED

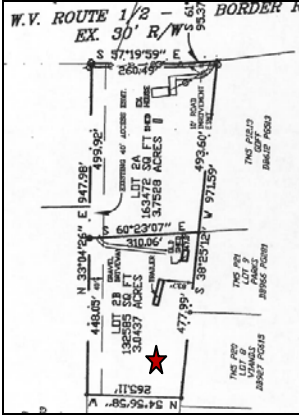
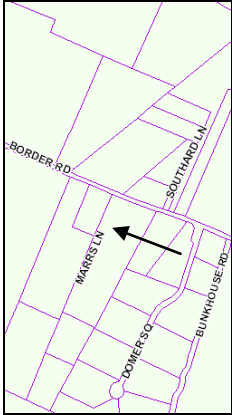
AUG 20 2013

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 September 19, 2013

George Armstrong Request (#ZV13-29)

Item # 9 Variance request by applicant, George Armstrong, from Section 5.7.B.1 for a reduction of the rear setback distance from 50' to 28' to allow a recently constructed garage to remain located where an original building was formerly situated.

| | |
|-------------------------|---|
| APPLICANT: | George Armstrong |
| OWNER : | Same |
| DEVELOPER: | N/A |
| SURVEYOR/ENGINEER: | N/A |
| PROPERTY LOCATION: | 129 Marrs Lane, Kearneysville, West Virginia |
| LEGAL DESCRIPTION: | Middleway (07); Map: 5; Parcel: 12.5;  |
| ZONING DISTRICT: | Zoning Map Designation: Rural (R)  |
| SURROUNDING PROPERTIES: | Zoning Map Designation: <i>North: R South: R</i> <i>East: R West: R</i> |
| LOT AREA: | 3.0337 acres |
| SUBDIVISION: | 02/13/01: PC approved the final plat 02/20/01: Final Plat was recorded in County Clerk's office 12/19/06: Parent to child deed approved; Recorded: 02/07/13 |
| VARIANCE(S): | None |
| APPROVED ACTIVITY: | Residential: Single-Family |

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

George Armstrong Request (#ZV13-29)

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a variance from Section 5.7.B.1 for a reduction of the rear setback distance from 50' to 28' to allow a recently constructed garage to remain located at the same location where an original building was formerly situated.

2. Previous Case History

This parcel is part of the Alice L. Armstrong, Lot 1 & 2-Residue Minor Subdivision. The subdivision was approved by the Planning Commission on February 13, 2001. Lot 1 was further subdivided via the parent to child exemption process on March 29, 2001, thus creating Lot 1A and Lot 1B.

The Armstrong parcel (Lot 2) also processed a parent to child lot on December 19, 2006 in order to rectify a pending violation; however, the deed did not get recorded at that time. The deed was recorded on February 7, 2013 which created Lot 2A and Lot 2B. The creation of this parcel has changed the setbacks for Lot 2B, the subject parcel, due to the relationship to the road.

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 purpose of side and rear yard setback requirements is to reduce the impact that a land use might cause to 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.

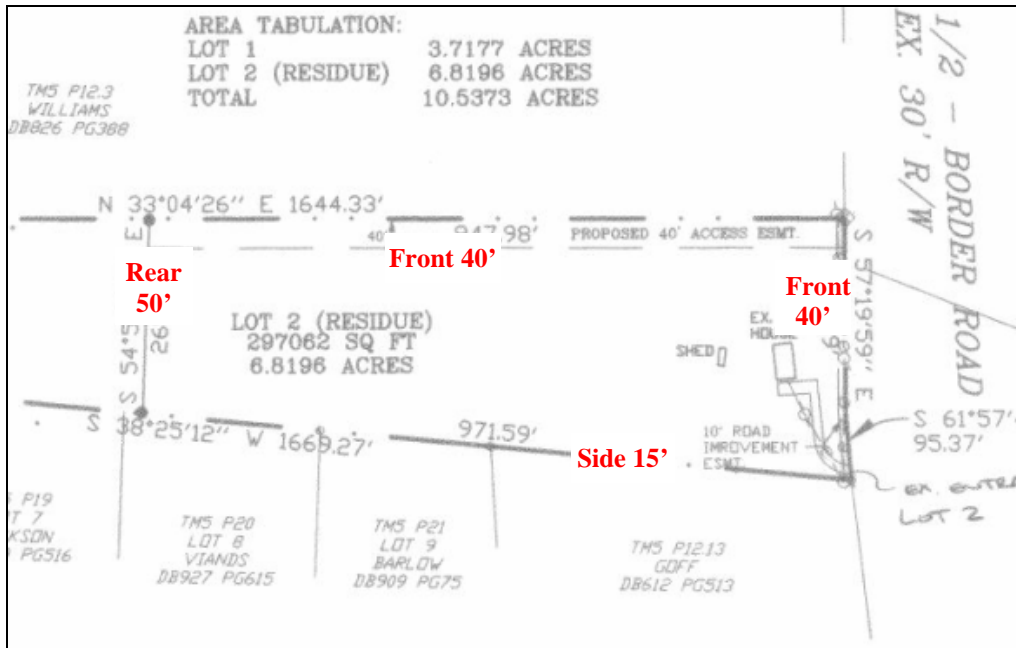
b. Unique characteristics of property

In 2001, when Lot 2-Residue was created, a Front Setback would apply to any road, right of way, reserve or easement that a property abutted. If the parcel was a Corner Lot the applicant was allowed to choose a side or rear. This would become a permanent decision.

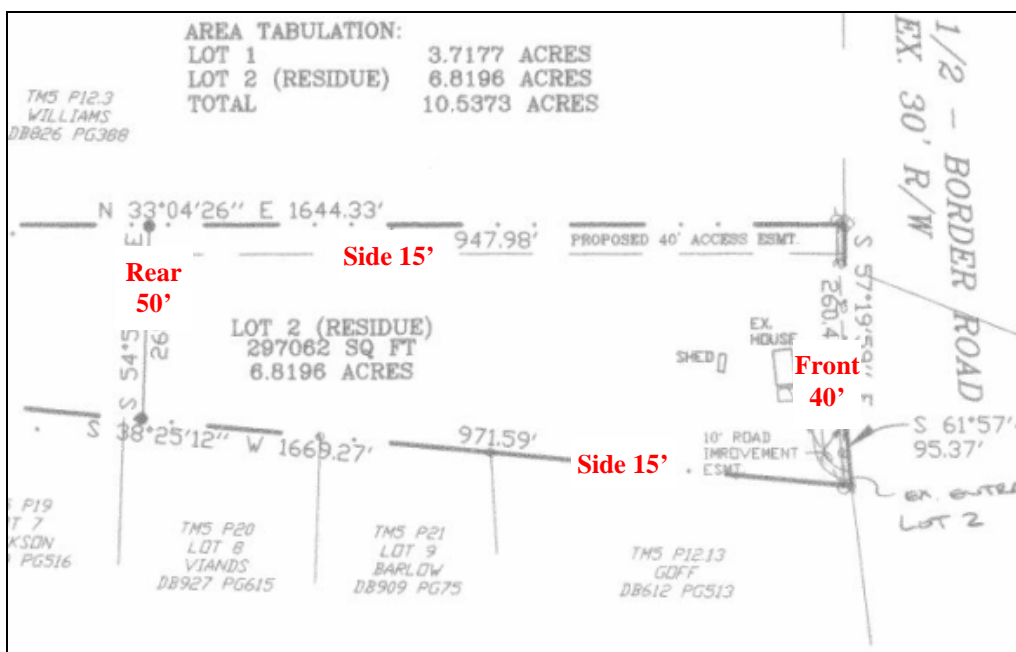
Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 September 19, 2013

George Armstrong Request (#ZV13-29)

Mr. Armstrong states in his application that there was an existing structure in this location. It is therefore, likely that the applicant would have chosen the property line in question as their side setback (as depicted below) making the structure in compliance.



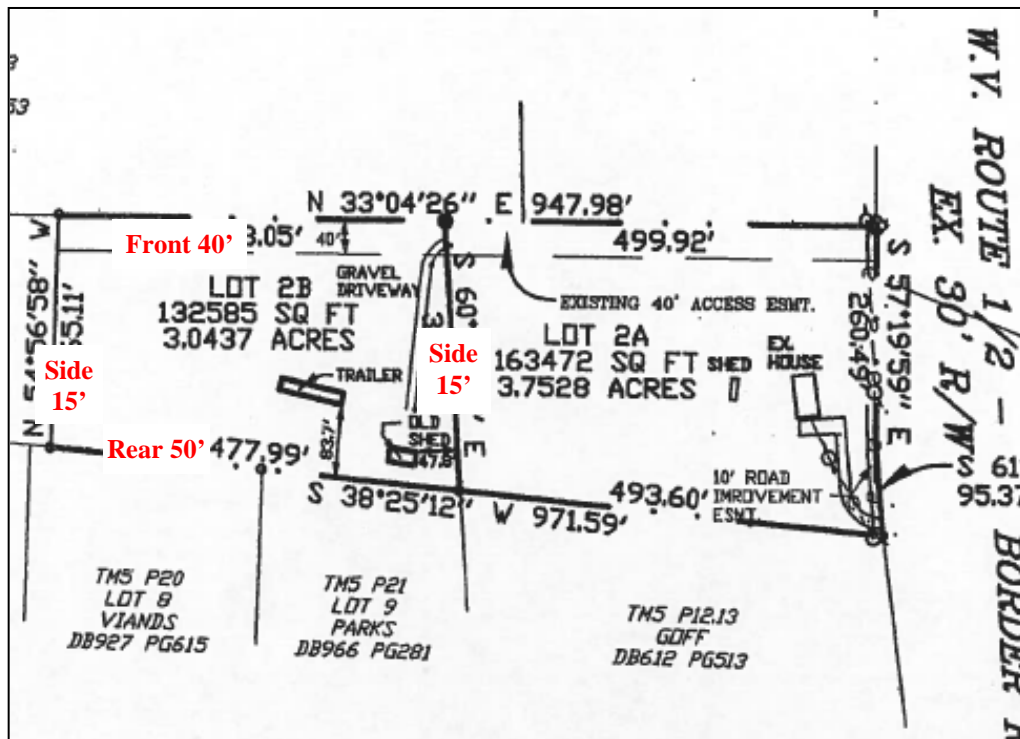
A Zoning Ordinance text amendment approved on July 7, 2011, to the definition of Corner Lot changed the setbacks for Lot 2. This legally made the property line in question a side setback.



Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

George Armstrong Request (#ZV13-29)

Due to the recent recordation of the Parent to Child subdivision, the required setbacks have been modified. While the lot is still restricted to 40' front, 15' side and 50' rear; the designated locations are different. All new structures must meet the current setback requirements. Below are the applicable setbacks.



Note: Had the applicant received a building permit for the garage prior to the recordation of the parent to child deed, the 15' setback would have been applied and a variance would not have been necessary. On advice of past legal counsel, any structures along a lot line that remains constant during the processing of a subdivision or boundary line adjustment, regardless of setback modification, shall be considered a legal nonconforming structure.

c. Character of area

Leetown Rd is .46 miles northwest of the subject parcel. New Route 9 is another .46 miles respectively. To the southeast is the entrance to Old Route 9 (.38 mi), the Brass Ring Pub (.45 mi), Fox Glen Subdivision (.52 mi) and the 7-11 Gas Station (.54 mi). The access to the Alice Armstrong Minor Subdivision (Marrs Lane) is approximately 110' east of the main entrance to the Kearneysville Church of God while the church's secondary entrance is located immediately across from Marrs Lane.

d. Impact on adjacent properties

The garage is located along an existing tree line which is rather dense and significantly taller than the structure and which would appear to provide an adequate buffer for the adjacent property owner. The structure appears to have a heating source. To minimize the potential impact on an adjacent property owner the Board may want to consider a condition which restricts the use of this structure for accessory residential purposes only.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
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George Armstrong Request (#ZV13-29)



Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

George Armstrong Request (#ZV13-29)

- e. Feasibility of complying with the ordinance by other means

The garage is already under construction. In order to comply with the zoning ordinance the applicant would have to dismantle the garage and move it to an alternative location.

5. Conditions of Approval

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

- a. This variance is only applicable to the present structure at its current size.
- b. The use of the garage is restricted to accessory residential uses only.
- c. Should the garage become damaged or in need of repair the applicant must contact the Department of Zoning to determine if another variance is necessary.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 4.3 Nonconforming Uses

Any building, structure or premises lawfully existing at the time of the adoption of this ordinance, or lawfully existing at the time that this ordinance is subsequently amended, may continue to be used even though such building, structure, or premises does not conform to use, setbacks or dimensional regulations of the zoning district in which it is located or the regulations of the Development Review System; subject, however to the following provisions:⁷

- H. A nonconforming use destroyed by a natural or unnatural calamity cannot be rebuilt without approval of the Board of Zoning Appeals upon application by the owner and pursuant to the variance and appeal procedures outlined in Article 3.^{12, 17, 21, 23}



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, 2nd Floor, P.O. Box 338
Charles Town, WV 25414

File Number: ZV13-29
Fees Paid (\$100 or \$150): \$ 150.00
Staff Initials: DL

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

Email planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Email zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Variance Request

Variances to 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

Property Owner Name: George Armstrong
Mailing Address: 129 marris lane
City: Kearneysville State: WV Zip Code: 25430
Phone Number: 304-270-0107 Email: _____

Applicant or Contact Information

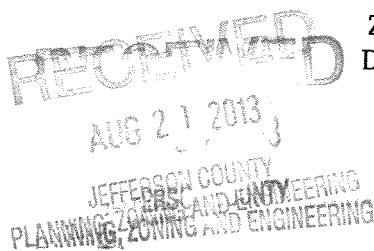
Applicant / Contact Name: Same
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Phone Number: _____ Email: _____

Applicant Representatives

Company/Organization Name: None
Attorney(s), Engineer(s), or Surveyor(s) Name: _____
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Phone Number: _____ Email: _____

Physical Property Details

Physical Property Address: 129 marris lane Kearneysville WV 25430
Tax District: middle way Map No: 5 Parcel No: 12.5
Parcel Size: 3.0337 Deed Book: 1119 Deed Bk. Pg. No: 697



| Zoning District: | Rural (R-A) | Residential Growth (R-G) | Industrial Commercial (I-C) | Residential-Light Industrial-Commercial (R-L-C) | Village (V) |
|------------------|-------------|--------------------------|-----------------------------|---|-------------|
| | ● | ○ | ○ | ○ | ○ |

On a separate sheet of paper, provide a sketch showing the shape and location of the lot indicating all roads, rights of ways, 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 Ordinance pertaining to this request (Required:) 5.7.B.1 - CH 8/22/13

Please briefly describe the nature of the variance request:

I TOOK A BUILDING DOWN THAT MY FATHER BUILT IN 1984 AND REPLACED IT WITH THE NEW BUILDING, THE BUILDING IS BUILT TO CODE

If this request is for a setback variance, please complete the section below:

Front Setback Side Setback Rear Setback Reduction From 50' to 28'

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.

THE NEAREST NEIGHBOR IS A 1/4 MILE FARM BUILDING AND THERE HAS BEEN A BUILDING THERE FOR 29 YEARS

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?

WE DID NOT REALIZE WE NEEDED PERMIT TO REPLACE A STRUCTURE THAT WAS ON MY PROPERTY FOR A LONG

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

BY GRANTING WE WILL NOT HAVE TO MOVE BUILDING WHICH WOULD BE A GREAT EXPENSE AND THE BUILDING WAS BUILT ACCORDING TO CODE

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

THE BACK OF BUILDING IS 28' OFF OF REAR PROPERTY LINE THIS IS MORE THAN ENOUGH ON SMALLER PARCELS I AM IF BACK WERE OLD BUILDING WAS DID NOT KNOW SET BACK

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

George Armstrong 8-20-13
Print Name of Property Owner 1 Date

Print Name of Property Owner 2 Date

[Signature] 8-20-13
Signature of Property Owner 1 Date

Signature of Property Owner 2 Date

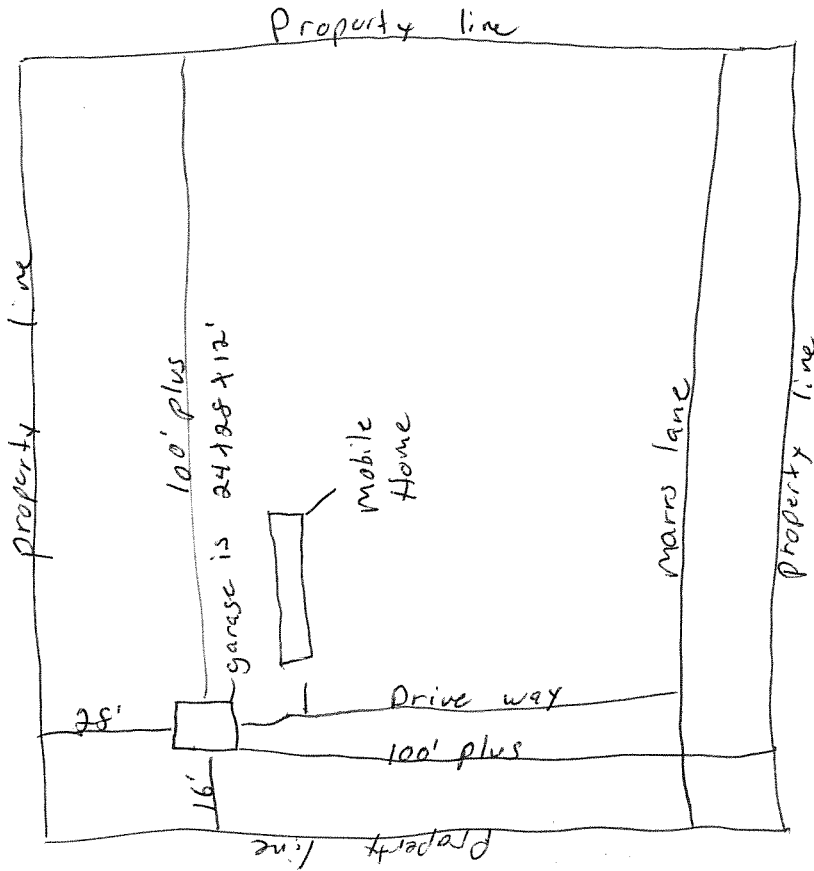
Notification Requirements (to be completed by staff)

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 twenty-eight (28) inches by twenty-two (22) inches in size, at least 15 days before the hearing (pursuant to Zoning and Land Development Ordinance Section 3.4A(3)(b)).

09/19/13
Date of Public Hearing

09/04/13
Advertising Date

09/04/13
Placard Posting Date



Greg [Signature]


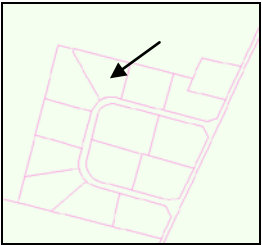
8-20-13

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 JEFFERSON COUNTY
 PLANNING, ZONING AND ENGINEERING

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 September 19, 2013

Hedrick/Chastain/Dillow/Hinkle/Swisher Request (#AP13-02)

Item # 10 Appeal of the Administrative Decision to issue Zoning Certificate #ZC13-23 for a Home Occupation Level 2 that allows a home-based asphalt repair business. The business includes a 16' trailer with seal coating and lawn equipment, to be enclosed in an outbuilding/garage, pending Building Permit approval.

| | |
|-------------------------|---|
| APPLICANT: | R.K. and Marianne Hedrick; Wayne and Gloria Chastain; Scott and Alice Dillow; Mike and Pam Hinkle; and Chris and Christy Swisher |
| OWNER : | Robert and Donna Edwards |
| DEVELOPER: | N/A |
| SURVEYOR/ENGINEER: | N/A |
| PROPERTY LOCATION: | Elk Branch Subdivision, Lot 7 235 Elk Branch Drive, Shenandoah Junction, West Virginia |
| LEGAL DESCRIPTION: | Shepherdstown (09); Map: 22; Parcel: 30  |
| ZONING DISTRICT: | Zoning Map Designation: Rural (R)  |
| SURROUNDING PROPERTIES: | Zoning Map Designation: <i>North: R South: R</i> <i>East: R West: R</i> |
| LOT AREA: | 1.93 acres |
| SUBDIVISION: | 02/14/89: PC approves Final Plat 03/30/92: Final Plat recorded with County Clerk's office |
| VARIANCE(S): | 09/27/88: PC approves variance from Section 8.2.c.5 from stormwater management requirements. 01/14/92: PC approves 12-month extension for construction agreement 02/23/93: PC approves extension until 06/30/93 to complete improvements necessary for the subdivision. |
| APPROVED ACTIVITY: | Residential |

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Hedrick/Chastain/Dillow/Hinkle/Swisher Request (#AP13-02)

RELEVANT INFORMATION:

Disclaimer:

The Zoning Certificate was issued by Steve Barney, County Zoning Administrator, on June 18, 2013. While the Appellants have the right under Section 3.4 to appeal any decision made by the Zoning Administrator, it should be noted that any response to the Appellants case is based on the current Acting Zoning Administrator's interpretation of the Zoning Ordinance and may not be the actual interpretation used at the time of issuance of #ZC13-23.

1. Overview of Request:

The Appellants listed above have submitted an appeal of the Administrative Decision in issuance of Zoning Certificate #ZC13-23, issued on June 18, 2013. The Zoning Certificate is for a Home Occupation Level 2, located at the residence of Robert and Donna Edwards, Applicants of #ZC13-23.

The zoning certificate was issued for the following:

Proposed Use, "a home-based asphalt repair business, including a 16' trailer with Seal Coating and Lawn Equipment, to be parked on property. Said trailer to be enclosed in an outbuilding, pending Building Permit approval."

The zoning certificate included the following:

Restrictions/Conditions: "All applicable requirements of Article 4A apply. The garage/outbuilding shall be used only for parking/storage and shall not be used for any other aspect of the home business, unless the owner applies for approval as a Cottage Industry. Any future change in use or expansion will require processing through the Jefferson County Departments of Planning, Zoning and Engineering to update this Certificate, and insure compliance with all applicable County Regulations."



Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Hedrick/Chastain/Dillow/Hinkle/Swisher Request (#AP13-02)

2. Authority:

Section 3.2 Zoning Administrator

- A. The Zoning Administrator shall administer and enforce the Zoning and Land Development Ordinance. This includes but is not limited to the following:²³
1. Make determinations that all applications required by the Ordinance are complete and that all fees are paid.
 2. Interpret the provisions of the Ordinance as required by law.
 3. Issue Zoning Certificates as permitted by the Ordinance.
 4. Calculate the LESA point scores and determine the adequacy of the Support Data for all applications for a Conditional Use Permit.
 5. Issue all permits and Certificates as permitted by the Ordinance.
 6. Prepare and submit reports as required by the Ordinance or the Board of Zoning Appeals or Planning Commission.
 7. Conduct meetings and conferences pursuant to the Zoning and Land Development Ordinance.^{17, 21, 23}

3. Ordinance Requirements:

Section 3.2 Zoning Administrator

- D. Each application for a zoning certificate shall be accompanied by a copy of an approved site plan, if applicable, or by a legible drawing either drawn to scale or accurately indicating dimensions which show property boundaries and existing and proposed structures and other proposed changes or land development. The plans shall be retained in the office of the Departments of Planning and Zoning.^{17, 21, 23}

Note: the applicant did not submit a sketch plan. This may have been because his proposed use was within the home; did not include employees, which would have necessitated an off street parking plan; and, he would be required to submit a sketch when processing a building permit application for the garage.

- E. Use of any property, developmental arrangement, or construction on any property other than that authorized in the zoning certificate is a violation of this Ordinance. All provisions of this Ordinance and amendments shall be maintained perpetually.
- F. The Zoning Administrator shall approve or disapprove issuance of a zoning certificate within sixty (60) days of the initial filing date providing the application is complete and fees are paid when filed and the request is in compliance of the provisions of this Ordinance.^{17, 21}

Section 4A.1 Home Occupation and Cottage Industry, General Standards

- A. A Zoning Certificate is required for a Cottage Industry or Home Occupation pursuant to Section 3.2 of this Ordinance.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Hedrick/Chastain/Dillow/Hinkle/Swisher Request (#AP13-02)

4. Documentation:

The remaining standards in Section 4A regarding Home Occupations and Cottage Industries have been made into handouts for the public. They are Home Occupation Level 1 Supplemental Requirements, Home Occupation Level 2 Supplemental Requirements and Cottage Industry Supplemental Requirements. An applicant is to complete the Zoning Certificate Application along with the Supplement Requirements handout that best represents their endeavor.

Mr. Edwards choose to fill out both the Level 1 and Level 2 handouts. The file does not indicate why Mr. Barney chose to issue the Certificate for a Level 2. Mr. Hedrick, et al, has submitted an appeal based on Mr. Edwards submittal of both handouts; however, since the Administrative Decision was to issue the Certificate for the Level 2 this is the only item the office can address.

For simplicity of reading, the following matrix lists the Ordinance Requirement, Mr. Edward's Response, Mr. Hedrick's Complaint and Staff's Rebuttal.

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 September 19, 2013

Hedrick/Chastain/Dillow/Hinkle/Swisher Request (#AP13-02)

Home Occupation Level 2 Supplemental Zoning Certificate Requirements

The requirements for the land use "Home Occupation Level 2" are established in Article 4A of the Jefferson County Zoning and Land Development Ordinance. As part of an application for a Zoning Certificate, the Applicant certifies that the proposed Home Occupation Level 2 will meet the following requirements:

| Ordinance Requirement | Response by Applicant | Complaint by Appellant | Staff's Rebuttal* |
|---|--|---|---|
| (a) The occupation must be conducted by a full-time resident of the property. Up to two (2) nonresident employees also may be permitted to work on the premises | I have no employees. | Although he is not in violation of this part, you should be aware that he does have an employee, and, we believe, did so when he filled out his application. | At the time of application Staff was informed that there would be no employees onsite; however, the zoning ordinance permits up to (2) full time nonresident employees. Had the applicant's request included employees, off street parking would need to be addressed; yet, the zoning certificate would likely still have been issued. |
| (b) The use shall be conducted wholly within the dwelling unit and shall not exceed one third (1/3) of floor area of the dwelling unit | I only take phone calls at home and bookkeeping. | As explained (<i>Level 1</i>) above, he conducts some operations in his yard, not in the "dwelling unit". <i>Above Text:</i> Part of his operation includes testing his equipment, cleaning his tank, etc. All of this is performed outside of the "dwelling unit" in his yard. | The applicant was told that no activity related to his sealing or landscaping business was to occur on his property other than his own yard work. If such activity is occurring, this should first be dealt with as a violation of the Zoning Certificate rather than revoking the Certificate. |
| (c) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding two (2) square feet in area, non-illuminated. | No signs will be posted. | See (<i>Level 1</i>) (c) above. In addition, his two trucks had, at one time, advertising on both doors, detailing the company name, and contact information. Although he now obscures that, he still has motto information that proclaims; "We don't dilute" on the deck section of the trucks sides. <i>Above Text:</i> In addition to the comments in (<i>Level 2</i>) (b) above, he parks two business trucks and the equipment trailer in his yard. There have been no visible efforts to build a structure to house that equipment. | The ZC requires that the trailer housing the sealing and landscaping equipment be enclosed in an outbuilding, pending building permit approval. The applicant has not yet applied for the building permit. Building permits are good for 6 months. No discussion of the business trucks occurs on the ZC because the zoning ordinance does not address this. The BZA could put a time limit for the construction of the building. |
| (f) It is clearly incidental and subordinate to the use of the dwelling unit as a residence. | It is our home and plan to keep it that way. | Not sure what he was trying to get across with this answer. | The primary use of the property is residential. The Home Occupation Level 2 is incidental to the residential use. |

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 September 19, 2013

Hedrick/Chastain/Dillow/Hinkle/Swisher Request (#AP13-02)

| | | | | |
|-----|---|--|---|--|
| (g) | No equipment or process shall be used in such a home business which creates offensive manifestations by sight, sound or smell detectable to the normal senses, or electrical interference or vibrations perceptible, outside the dwelling unit. No outdoor storage of any kind, visible from a property line or a public or private right-of-way or vehicular access easement, is permitted | All equipment is covered and soon to be garaged - no smells, no elec. interference, etc. Equipment is on trailer. | See (Level 1) (g) above. <i>Above Text:</i> From the pictures we've submitted, it's clear that his equipment is visible. He merely covers it with a tarp. In addition, he can be heard testing his equipment from time to time, and has been heard and seen, for hours, using a grinder on his large orange tank. And let's not forget the seal coating spill that started all of this. | The ZC requires all equipment associated with the business and the trailers to be stored in an outbuilding; however, no time frame was provided. See photos below regarding visibility from adjacent property line and from the private right of way (subdivision road). |
| (q) | The subject property shall be posted with a zoning notice as required by the Zoning Ordinance, at least 15 days prior to the approval of a Zoning Certificate for a Cottage Industry. The sign will be prepared by the Departments of Planning and Zoning but posting the sign is the responsibility of the applicant. | Applicant marked the, "I have read and I understand this requirement." box as provided under this provision. | Although we're aware of the issues with Steve Barney's departure, it seems clear that Mr. Edwards, by checking the box in this section, was fully aware that he needed to post a Zoning Notice. He spoke to the Chastains about it, too. Knowing this, he should have contacted the Zoning Office to secure the sign. It's obvious he didn't. | This was an error on the part of the Dept of Zoning. HOL1 do not require posting; yet, HOL2 does. It is not clear why the posting did not occur; however, the prime reason for the posting is to allow neighbors to become aware of the proposal & to have an opportunity to appeal the ZA's decision if a ZC is issued. As a result of this oversight, the Acting ZA allowed the appeal period to be extended to 30 days after the ZC was released to the public by means of posting to the County website. |
| (j) | Deed restrictions or HOA covenants (which are not enforced by Jefferson County) may prohibit the proposed land use. Applicants are advised to review deed restrictions and HOA covenants. | Applicant marked the, "I understand that it is an applicant's responsibility to verify whether deed restrictions or HOA covenants prohibit the proposed land use." box as provided under this provision. | See (j) in Level I above. Although Mr. Edwards checked the box indicating that he notified the HOA of his business intentions, no one was ever informed of his intent. He is in violation of the Elk Branch HOA covenants. He is fully aware of this. The Elk Branch HOA plans to deal with this once the ZC situation is resolved. | This is not an issue for the BZA or the Dept of Zoning. |

- *Acronyms
 ZC = Zoning Certificate
 ZA = Zoning Administrator
 HOA = Homeowner's Association
 HOL1 = Home Occupation Level 1
 HOL2 = Home Occupation Level 2

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Hedrick/Chastain/Dillow/Hinkle/Swisher Request (#AP13-02)



Hedrick/Edwards Property Line



One break in the tree line from shared property line



View from break in tree line; picture taken on applicant's property



Front View of Property

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 19, 2013

Hedrick/Chastain/Dillow/Hinkle/Swisher Request (#AP13-02)

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 3.4 Boards and Commissions

A. Board of Zoning Appeals

3. The Board of Zoning Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official in regard to the enforcement of this Ordinance or of any ordinance adopted thereto.
 - a. Filing an Appeal
 - i. An appeal to the Board may be taken by any person, board, associate, corporation or official allegedly aggrieved by any administrative decision based or claimed to be based, in whole or in part, upon the provisions of this Ordinance. The property owner of the subject appeal shall sign the application or an affidavit allowing an agent for the property owner to file the application which shall be submitted.
 - ii. Such appeal shall be filed with the Board within thirty (30) days from the decision appealed.
 - a. Notification
 - i. 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.
 - ii. The subject property shall be posted conspicuously by a zoning notice no less than twenty-eight (28) inches by twenty-two (22) inches in size, at least 15 days before the hearing. The sign will be prepared by the Departments of Planning and Zoning but posting the sign is the responsibility of the applicant. The Board, in its discretion, may otherwise visit the specific property prior to or after the hearing.
 - b. Public Hearing
 - i. The Board shall hold a hearing within forty-five (45) days of the date the appeal is received in the Departments of Planning and Zoning. At the hearing, any party may appear and be heard in person or by agent or attorney.
 - ii. The Board shall render its determination on the application no more than thirty (30) days following the public hearing by registered mail.
 - c. Continuance of Hearing
 - i. The Board may continue a hearing at another time and/or date once such hearing has been started; however, the Board shall announce the date and hour of continuance of such hearing while in session. Any hearing continued shall be held within thirty (30) days from the initial hearing.
6. In exercising its power and authority, the Board of Zoning Appeals may reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination appealed from, and make such order, requirement, decision or determination as the Board deems appropriate.^{17, 21}

AP13-02

APPEAL FORM
JEFFERSON COUNTY BOARD OF ZONING APPEALS

Type of Appeal (please specify): ADMINISTRATIVE DECISION LESA POINT SCORE
OTHER _____

Name of Project: EDWARDS ZONING REQUEST

Project File Number: ZC 13-23

Appeal Number: AP13-02

Date Received: 08/19/13 By: CC Fees Paid: 100.00 Date: 08/19/13

Hearing / Meeting Date: 09/19/13

Advertising Dates: 09/04/13

Posting Requirements: 15 Number of Days Prior to Scheduled Hearing / Meeting

Name of Appellant(s): R.K and MARIANNE HEDRICK (OTHERS ATTACHED)

Address: 235 ELK BRANCH DRIVE
SHENANDOAH JUNCTION, WV 25442

Telephone: 304-876-8141 Cell: _____

If there is more than one Appellant please provide the names, addresses and telephone numbers of each Appellant on a separate sheet of paper.

Name of Property Owner(s): ROBERT and DONNA EDWARDS

Address: 235 ELK BRANCH DRIVE
SHENANDOAH JUNCTION WV 25442

Telephone: 304-886-7514 Cell: _____

Name of Developer(s): JAMES LEMEN

Address: _____
SUMMIT POINT, WV

Telephone: 304-723-2487 Cell: _____

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AUG 19 2013

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Property Description: District SHEPHERDSTOWN Tax Map# 22 Parcel 0030-0000-0000
Deed Book# 900 Page# 192

Physical Location of Property: LOT 7 ELK BIRCH SUBDIVISION

Please complete the following if appealing LESA: N/A

If you are appealing check Yes or if you are not appealing check No. Also complete the Score assessed by Zoning Administrator and the Score claimed by Appellant, regardless if you have checked Yes or No.

| | YES | NO | Score assessed by Zoning Administrator | Score claimed by Appellant |
|---|-------|-------|---|-------------------------------|
| 1. Size of Site | _____ | _____ | _____ | _____ |
| 2. Adjacent Development | _____ | _____ | _____ | _____ |
| 3. Distance to Growth Corridor | _____ | _____ | _____ | _____ |
| 4. Comprehensive Plan Compatibility | _____ | _____ | _____ | _____ |
| 5. Proximity to Schools | _____ | _____ | _____ | _____ |
| 6. Public Water Availability | _____ | _____ | _____ | _____ |
| 7. Public Sewer Availability | _____ | _____ | _____ | _____ |
| 8. Roadway Adequacy | _____ | _____ | _____ | _____ |
| 9. Emergency Service Availability | _____ | _____ | _____ | _____ |

For items checked No above please explain by separate attachment(s) reasons/justifications for appeal and desired action by Board. Be sure to keep your reasons/justifications in numerical order.

Please note: If the two scores in each column above are different please provide a separate sheet for each differentiation with the reasons justifying the differences. Also, when applicable, provide the justification for each difference by citing the Comprehensive Plan of Jefferson County.

Support Data: N/A

If you are appealing check Yes, and if you are not appealing check No. For any of the support data that has been checked Yes, provide a separate sheet for each differentiation with the reasons justifying the differences. Be sure to keep your reasons of justification in numerical order. Also, when applicable, provide the justification for each difference.

| | YES | NO |
|--|-------|-------|
| 1. Name and address of owner/developer. | _____ | _____ |
| 2. Name and address of contact person. | _____ | _____ |
| 3. Type of development proposed. | _____ | _____ |
| 4. Acreage of original tract and property to be developed. | _____ | _____ |
| 5. General description of surface conditions (topography). | _____ | _____ |
| 6. Soil and drainage characteristics. | _____ | _____ |
| 7. General location and description of existing structure. | _____ | _____ |
| 8. General location and description of existing easements or rights-of-way. | _____ | _____ |
| 9. Existing covenants and restrictions on the land. | _____ | _____ |
| 10. Intended improvements and proposed building locations including locations of signs. | _____ | _____ |
| 11. Intended land uses. | _____ | _____ |
| 12. Earthwork that would alter topography. | _____ | _____ |
| 13. Tentative development schedule. | _____ | _____ |
| 14. Extent of the conversion of farmland to urban uses. | _____ | _____ |
| 15. Effected wildlife populations. | _____ | _____ |
| 16. Ground water and surface water and sewer lines within 1320 feet. | _____ | _____ |
| 17. Distance to fire and emergency services that would serve the site. | _____ | _____ |
| 18. Distance to the appropriate elementary, middle, and high school. | _____ | _____ |
| 19. Traffic characteristics – type and frequency of traffic; adequacy of existing transportation routes. | _____ | _____ |
| 20. Demand for school services created by this development. | _____ | _____ |
| 21. Proximity and relationship to historic structure or properties within two hundred (200) feet. | _____ | _____ |
| 22. Proximity to recreational facilities. | _____ | _____ |
| 23. Relationship of the project to the Comprehensive Plan. | _____ | _____ |

Any and all information should be provided in accordance with the Rules of Procedure of the Jefferson County Board of Zoning Appeals.

Please provide description / grounds for the appeal sought:

INAPPROPRIATE ZONING (SEE ATTACHED SUPPORTING NARRATIVES)

D

8/19/13

FOR OFFICIAL USE ONLY

Fees Paid: _____ Date Application / Fees Received: _____

Date of meeting / Public Hearing: _____

Official Administrative Body: Jefferson County Board of Zoning Appeals

Posting Requirements: _____ Number of Days Prior to Scheduled Hearing

Advertising Dates: _____

Official Action of Board: _____

Official Signature and Seal: _____

To: Interested Parties in Jefferson County, WV Planning and Zoning Department
Re: Zoning Certificate ZC13-23

To say that many of us in the Elk Branch subdivision were shocked at learning of Mr. Edwards zoning certificate procurement might be an understatement; appalled probably fits our reaction better.

When most of us bought into this development, we saw it as strictly residential, in fact, our covenants spelled out exactly what we could expect of our neighbors. What Mr. Edwards has begun is contrary, not only to those covenants, but Jefferson County Ordinance, as well.

None of us bought in to a light industrial area, where we are subject to spills of driveway seal coating material ten yards uphill of one well, hours of metal tank repair using a grinder, hours of tank movement, scattered sounds of equipment being readied/tested for use, or the sight of a large orange tank, complete with seal coating spills, being towed through the community. We're not exaggerating when we say that many of us would have turned tail and looked for a home elsewhere.

A local real estate agent, Jackie Lewis of Greentree Realty, has informed us that the type of activity in which Mr. Edwards is engaged, will lower property values. Surely, none of his neighbors bought in to that scenario.

Mr. James Lemen, previous owner of the property on which all of our homes stand, made it the first priority in his legally-binding covenants, that "No...enterprises for profit of any kind or the equipment for such purposes be maintained on any lot." That's what we all bought in to, along with the laws of Jefferson County.

We're also very puzzled as to how Mr. Edwards was able to secure his certificate while totally ignoring Jefferson County Ordinance process. How do you procure a certificate four days after filing the request? How did that happen? How was he able to completely ignore one of the most important aspects of the application process and not post a sign allowing his many objecting neighbors to air their complaints? How did that happen?

While we're not trying to circumvent Zoning and Planning procedures, surely this is a case where such steps should be taken to expedite this situation and immediately rectify what, clearly, was a mistake.

We ask that you revoke Zoning Certificate ZC13-23 and take whatever steps necessary to ensure that Elk Branch subdivision stays true to both Jefferson County law and the spirit of the truly and solely residential community that we all bought in to.

R. K. Hedrick

Additional Appellants to Zoning Certificate ZC13-23

Wayne and Gloria Chastain
274 Elk Branch Drive
Shenandoah Junction, WV 25442

Scott and Alice Dillow
285 Elk Branch Drive
Shenandoah Junction, WV 25442

Mike and Pam Hinkle
78 Elk Branch Drive
Shenandoah Junction, WV 25442

Chris and Christy Swisher
22 Elk Branch Drive
Shenandoah Junction, WV 25442

Discrepancies in Zoning Certificate Application filed by Robert T. Edwards 6/14/13

Level I

- (a) "light equipment" is very subjective. He currently uses equipment which includes two pickup trucks, a 16' trailer loaded with various equipment used to clean driveways, a large orange tank used for seal coating material, and two large plastic tanks, which, although they may not currently be in use, one now resides on one of the trucks and another is sitting in his yard.
- (b) Part of his operation includes testing his equipment, cleaning his tank, etc. All of this is performed outside of the "dwelling unit" in his yard.
- (c) In addition to the comments in (b) above, he parks two business trucks and the equipment trailer in his yard. There have been no visible efforts to build a structure to house that equipment.
- (f) His answer is somewhat obtuse.
- (g) From the pictures we've submitted, it's clear that his equipment is visible. He merely covers it with a tarp. In addition, he can be heard testing his equipment from time-to-time, and has been heard and seen, for hours, using a grinder on his large orange tank. And let's not forget the seal coating spill that started all of this.
- (j) Although Mr. Edwards checked the box indicating that he notified the HOA of his business intentions, no one was ever informed of his intent. He is in violation of the Elk Branch HOA covenants. He is fully aware of this. The Elk Branch HOA plans to deal with this once the Zoning Certificate situation is resolved.

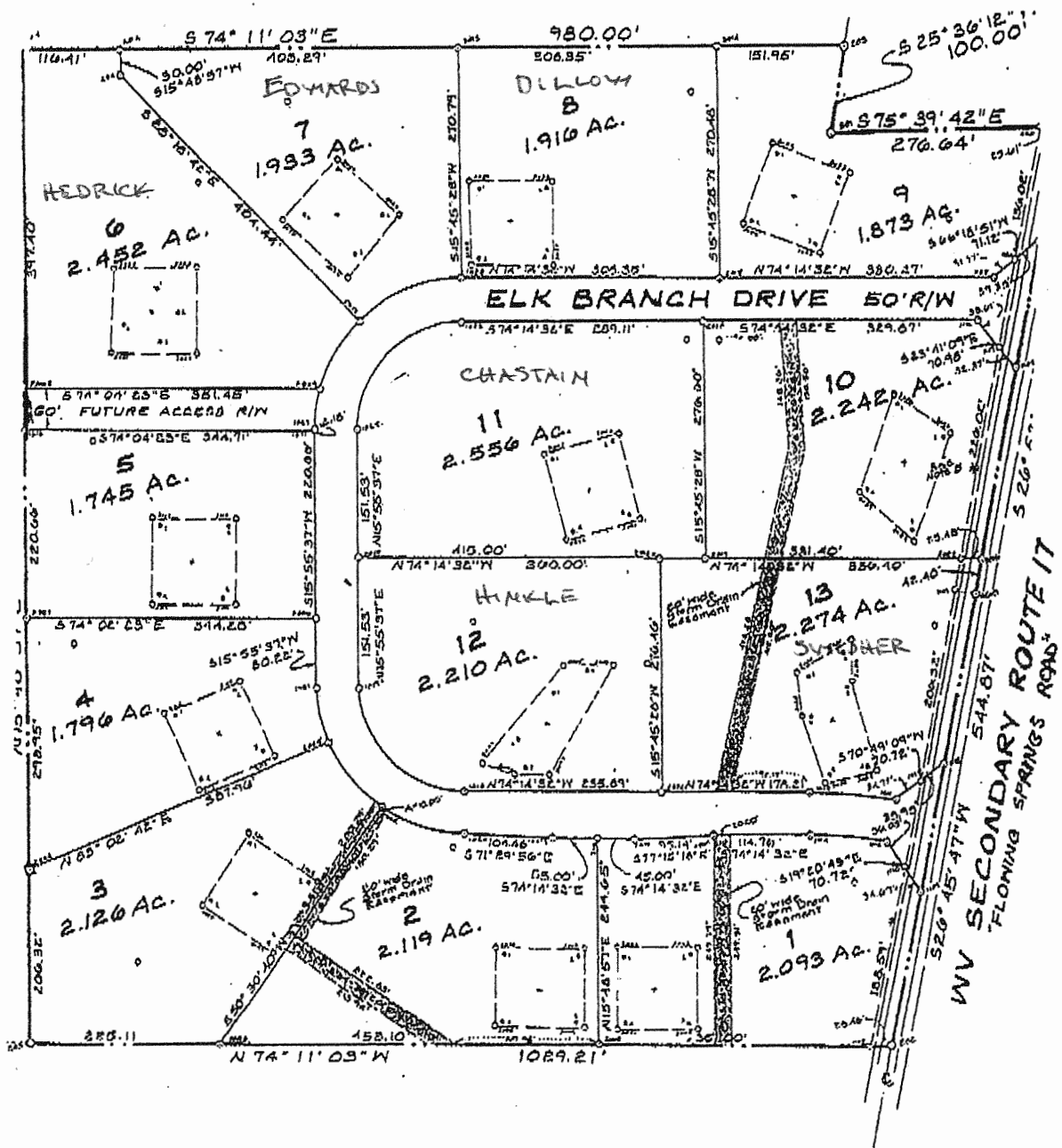
Level II

- (a) Although he is not in violation of this part, you should be aware that he does have an employee, and, we believe, did so when he filled out his application.
- (b) As explained above, he conducts some operations in his yard, not in the “dwelling unit”.
- (c) See (c) above.
In addition, his two trucks had, at one time, advertising on both doors, detailing the company name, and contact information. Although he now obscures that, he still has motto information that proclaims; “We don’t dilute” on the deck section of the trucks sides.
- (f) Not sure what he was trying to get across with this answer.
- (g) See (g) above.
- (q) Although we’re aware of the issues with Steve Barney’s departure, it seems clear that Mr. Edwards, by checking the box in this section, was fully aware that he needed to post a Zoning Notice. He spoke to the Chastain’s about it, too.

Knowing this, he should have contacted the Zoning Office to secure the sign. It’s obvious he didn’t.
- (j) See (j) in Level I above.



ELK BRANCH



ELK BRANCH

Covenants and Restrictions

1-Lots shall be used for single family residential dwellings. No business, apartment houses or enterprises for profit of any kind or the equipment for such purposes shall be maintained on any lot.

2-No lot shall at any time be subdivided.

3-No building of a temporary nature, trailer, mobile home, unlicensed vehicles, or tents, except children's tents, shall be permitted to be placed on any lot, and no camping shall be permitted. Modular homes with a roof pitch of less than 4/12 shall not be permitted, and all toilet facilities shall meet with current State and County regulations.

4-No structure may be placed nearer than 75 feet from any front or 50 feet from any side or 25 feet from any rear boundary line, except on lot 9 where no structure may be placed nearer than 75 feet from the center line of Elk Branch Drive. No more than one out-building and one garage shall be permitted per lot, and the garage roof design shall conform to that of the house and all structures including residences, placed on any lot shall each conform in general architecture to structures of same or similar purpose in this subdivision.

5-Each residence of single-story design shall contain not less than 1800 square feet. Each residence of more than a single-story shall contain not less than 2200 square feet. Porches, patios, carports, and garages; basements or any story partially underground shall not be considered in computing area for the purpose of this restriction.

6-Fence shall be permitted within this subdivision provided that the lot owners fence be along their back property lines, along their side property lines and not to exceed past front structure lines of residential dwelling.

7-No signs, billboards, or advertising devices of any kind, except those used in any subsequent sale of the property shall be placed or otherwise installed on any lot or building within the subdivision, except that the Developer may use signs to promote the sale of improved or unimproved lots within the subdivision.

8-Domesticated house pets shall be allowed within the Subdivision provided such pets are contained within a fenced in area or secured by a leash, chain or rope. No animals shall be allowed to roam freely within the subdivision. No livestock, including but not limited to, horses, ponies, cattle, hogs, chickens, or fowl or any kind shall be permitted on the premises.

9-Within each lot all utilities shall be installed underground at the expense of the owner of that lot.

10-Culvert pipes and/or permanent depressed gutters installed to standard engineering practices may be necessary so as not to impede the flow of storm water drainage and, if necessary, shall be installed at the lot owners expense. Also, all such entrances shall be installed prior to the construction of a dwelling on said lot. Further, temporary entrances of any kind are prohibited.

11-It shall not be a violation of these restrictions for the owner of two adjacent lots to erect a dwelling or outbuildings closer to the common boundary line between said lots than the set back restrictions allow, but if this is done said two lots there-after, except for road maintenance fees, shall for all purposes be deemed one lot and shall not be used for more than one residence.

12-All lots shall be kept in a clean neat and mowed condition before, during and after the completion of all structures. The owner thereof shall cause that portion of such lot not improved by said structures other than appurtenance or driveway to be seeded and suitably planted with grass, trees and shrubbery. Each owner shall keep all lots owned by him, and all improvements therein and thereon, in good order and repair, including, but not limited to, the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements on said lots.

13-No motorbikes, trail bikes, ATVs (All Terrain Vehicles), motor scooters or the like, nor any snowmobile shall be driven or ridden anywhere within the Subdivision, except for embarking or disembarking.

14-No structure, addition, or exterior modification of an existing structure, shall be commenced on any lot until the exact plans and specifications of the same are approved in writing by James E. Lemen, or his assigns.



* Submitted by R.K. Hedrick on 08/15/13 during meeting w/ Staff.
Request to be included in AP13-02; mailed in 09/19/13 B2A packets.
- 2 pages - gjt

AP13-02



Zoning

From: Zoning <zoning@jeffersoncountywv.org>
Sent: Tuesday, August 13, 2013 7:13 PM
To: 'wbbiz@frontier.com'
Cc: 'zoning@jeffersoncountywv.org'
Subject: RE: Update request

Thank you, Mr. Hendrick.

In an effort to address your concerns as quickly as possible, you have been scheduled to meet with Jennie Brockman on Friday, August 16th at 2:30 p.m. Unless otherwise instructed, we will see you then.

Good Evening to you Sir.

Christine

From: wbbiz@frontier.com [mailto:wbbiz@frontier.com]
Sent: Tuesday, August 13, 2013 6:09 PM
To: Zoning
Subject: Re: Update request

That's pretty short notice for me to round up neighbors who work, but regardless, I will be there with whomever I can recruit.

I think I can get my point across without anyone else, because that's how this started. It was only when Mr. Edwards told some neighbors how I was "victimizing" him that they started asking me what was going on.

Feel free to call me at 304-876-8141.

Thanks for your help. RK

From: Zoning <zoning@jeffersoncountywv.org>
To: wbbiz@frontier.com
Cc: zoning@jeffersoncountywv.org
Sent: Tuesday, August 13, 2013 4:59 PM
Subject: RE: Update request

Thank you, Mr. Hedrick, for your timely response. Although members of the public are always welcome to schedule appointments with Staff from Planning & Zoning, please remember that this will be an informal meeting with Director, Jennie Brockman, not a Public Hearing, and must therefore adhere to size restrictions due to available conference room space. Additionally, time restraints must also be observed as the weekly calendar is already near capacity. Accordingly, Mrs. Brockman's intent was to afford approximately ½ hour to meet with you regarding this matter, and asks that the number of attendees be limited to a total of six (yourself and five neighbors). Currently, the only calendar opening remaining this week is on Friday, August 16th at 2:30 p.m. As I will be out of the office tomorrow, I respectfully ask that you provide a telephone number so that I can contact you upon my return on Thursday, to confirm if this time-frame is convenient for all of the anticipated attendees.

Much appreciated.

Christine

From: wbbiz@frontier.com [<mailto:wbbiz@frontier.com>]
Sent: Tuesday, August 13, 2013 1:17 PM
To: Zoning
Subject: Re: Update request

Thanks for your response.

Am I free to bring other neighbors with me who share my concerns?

From: Zoning <zoning@jeffersoncountywv.org>
To: wbbiz@frontier.com
Cc: zoning@jeffersoncountywv.org
Sent: Tuesday, August 13, 2013 11:45 AM
Subject: FW: Update request

Good Morning, Mr. Hedrick.

Thank you for your patience with regard to this matter. After speaking with Director, Jennie Brockman (during our Staff Meeting yesterday), it was concluded that an appointment should be scheduled for the purpose of addressing your concerns personally. Accordingly, please contact our office as soon as possible, so that I may assist in arranging a meeting time that is convenient with you.

Your timely response is very much appreciated: (304) 728-3228.

Christine Chalmers
Office Assistant

Jefferson County Departments of Planning & Zoning
116 East Washington Street, Suite 200
P.O. Box 338
Charles Town, West Virginia 25414

From: Zoning [<mailto:zoning@jeffersoncountywv.org>]
Sent: Monday, August 12, 2013 9:18 AM
To: mcarter@jeffersoncountywv.org
Cc: zoning@jeffersoncountywv.org
Subject: FW: Update request

Good morning Mr. Hedrick,

Jennilee is out of the office this week. I am copying Mason Carter on this reply so he may see your email below. I will make sure Jennilee receives your message when she returns next Monday.

In the meantime, I will make sure your and your neighbors' concerns are brought to the attention of our department staff.

Sincerely,

Alexandra Beaulieu, Planning Clerk
Jefferson County Department of Planning & Zoning
116 East Washington Street, 2nd Floor
P.O. Box 338
Charles Town, West Virginia 25414
Phone: 304-728-3228
Fax: 304-728-8126

From: wbbiz@frontier.com [<mailto:wbbiz@frontier.com>]
Sent: Monday, August 12, 2013 9:07 AM
To: Zoning
Subject: Re: Update request

Ms. Hartman;

I know from reading the local newspapers that you have bigger fish to fry than this complaint, but it's important to the stability of our neighborhood. Some of my neighbors are very upset that Mr. Edwards illegally obtained his zoning request, and it's all I can do to keep them focused on going through the county process to, hopefully, get his certificate revoked.

So, after waiting almost two weeks, I'm again asking you to update me as to your investigation into Mr. Edwards certificate.

R. K. Hedrcik

From: Zoning <zoning@jeffersoncountywv.org>
To: wbbiz@frontier.com
Cc: 'Engineering Department' <engineering@jeffersoncountywv.org>; 'Jennifer Brockman' <jbrockman@jeffersoncountywv.org>; 'Mason Carter' <mcarter@jeffersoncountywv.org>
Sent: Wednesday, July 31, 2013 2:49 PM
Subject: RE: Update request

Good afternoon,

My name is Jennilee Hartman and I am the Zoning Clerk for Jefferson County. As you may be aware, Steve Barney is no longer with the County, however, I would like to address your concerns to see if we can resolve this matter. Regarding the example given in your email, please note that Article 4A, Section 4A.4.G *Home Occupation, Level 2*, states, "For a Home Occupation located in an existing residential subdivision established after July 17, 1979, the minimum lot size is 20,000 square feet." Mr. Edwards was able to meet this standard as his property exceeds this lot size.

I understand you believe there are other standards Mr. Edwards land use may not be in conformance with. Please feel free to send your concerns to our Department and I will be happy to address them. You may also call me at 304-728-3228.

Sincerely,

Jennilee Hartman
Zoning Clerk

From: Mason Carter [<mailto:mcarter@jeffersoncountywv.org>]
Sent: Wednesday, July 31, 2013 8:55 AM
To: wbbiz@frontier.com
Cc: 'Engineering Department'; 'Jennifer Brockman'; 'Jennilee Hartman'
Subject: RE: Update request

You will need to contact the Jefferson County Zoning Department and ask for Jenny Brockman, Planning Director. Their phone number is 304-728-3228. I do not have the authority to revoke zoning certificates.

Thanks,

D. Mason Carter, CFM
Ordinance Compliance Officer
P.O Box 716
Charles Town, WV 25414
304-728-3257

From: wbbiz@frontier.com [<mailto:wbbiz@frontier.com>]
Sent: Tuesday, July 30, 2013 4:52 PM
To: Mason Carter
Subject: Re: Update request

I appreciate you saving me a trip. to Charles Town.

Mason, I'm trying not to get angry about what's going on here, but I'm wondering if Mr Barney has even read the Ordinance. I see many examples of Mr. Edwards business that are clear violations of the ordinance. The simplest example is from Section 4A Home Occupation, Level II, Part I., which clearly states:

"Is not permitted in existing subdivisions established since 1979 ."

This subdivision began after 1990.

There are other clear examples from the ordinance that have been disregarded in issuing this certificate. I imagine that Mr. Edwards misrepresented a few things, too.

I'm going to ask that this certificate be revoked immediately

From: Mason Carter <mcarter@jeffersoncountywv.org>
To: wbbiz@frontier.com
Sent: Tuesday, July 30, 2013 3:46 PM
Subject: RE: Update request

Attached is a copy of Mr. Edwards Zoning Certificate.

Thanks,

D. Mason Carter

From: wbbiz@frontier.com [<mailto:wbbiz@frontier.com>]
Sent: Tuesday, July 30, 2013 1:06 PM
To: Mason Carter
Subject: Re: Update request

Where can I find a copy of that certificate and what procedures did Mr. Edwards have to comply with in order to obtain it? Also, if you can supply me with the deadline for the building of that "structure", I would appreciate it.

From: Mason Carter <mcarter@jeffersoncountywv.org>
To: wbbiz@frontier.com
Cc: 'Engineering Department' <engineering@jeffersoncountywv.org>; 'Jennifer Brockman' <jbrockman@jeffersoncountywv.org>; 'Jennilee Hartman' <jhartman@jeffersoncountywv.org>
Sent: Tuesday, July 30, 2013 9:45 AM
Subject: RE: Update request

Mr. Edwards received a Zoning Certificate (ZC13-23) from the Jefferson County Zoning Administrator to operate the business. There are conditions that he must comply with. A 16' trailer with Seal Coasting Equipment must be parked in a garage/outbuilding once the structure is completed.

If you have any questions, please call me.

Thanks,

D. Mason Carter, CFM
Ordinance Compliance Officer
P.O Box 716
Charles Town, WV 25414
304-728-3227

From: wbbiz@frontier.com [<mailto:wbbiz@frontier.com>]
Sent: Sunday, July 21, 2013 4:09 PM
To: mcarter@jeffersoncountywv.org
Subject: Update request

Hi Mason;
I was curious as to any updates you might have concerning my neighbor's continuing business situation at 235 Elk Branch Drive. RK



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 September 10, 2013 Board of Zoning Appeals Meeting

1) Envision Jefferson 2035 Update

- a) County Fair input
- b) Next steps:
 - Third Series of Public Meetings – Land Use Map – “what and how”:
 - Monday, October 21, 2013: South Jefferson Elementary
 - Wednesday, October 23, 2013: Shepherdstown Middle School
 - Stakeholders Sessions – Friday, October 25, 2013 (four 1½ hour sessions)
 - Future Land Use Map and Recommendations

2) Recent CC Actions relevant to Planning:

- a) Request by the Planning Commission that the County Commission Reconsider their Motion of 10/25/13 Regarding the Proposed Zoning Ordinance Text Amendment Related to New Commercial and Industrial Zoning Categories (09/05/13; CC voted to schedule a CC workshop to review changes since last Public Hearing and schedule a new Public Hearing – date tbd)
- b) Minor Amendments to the Jefferson County Zoning and Land Development Ordinance Sections 2.2, 4.10, 4A.5, 5.7, 5.8, 8.5, 8.14(new), 8.15 (new), 9.5, 10.5, 11.1, 12.2 and Appendix C (Agricultural Use and Other Amendments) (09/05/13; Voted to schedule Public Hearing – date tbd)

3) Upcoming CC Actions relevant to Planning:

- a) Public Hearings related to items above – dates to be determined.

