

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 May 22, 2014

**Jefferson Reality, LLC Variance Request (#CP14-01)**

Item #3 Action on the Conditional Use Permit for Middleway Market. The applicant is proposing to lift the nonconforming status from the following existing uses by granting said uses permanent legal status: convenience store, which includes incidental propane service, ABC off-premises packaged alcohol sales, video lottery/game room area & ABC on-premise alcohol service, office/storage area, counter & deli service. The applicant is also seeking to expand and/or add the following: increase the buildable area from 4,841.75 sq. ft. to 6,000 sq. ft.; to include a residential rental unit, to expand from counter & deli service to a restaurant service with alcohol sales and delivery service; and, to permit gas pumps either on-site or in conjunction with a partnership agreement with an adjacent neighbor.

APPLICANT:	Antonio Colandrea, Jefferson Reality, LLC
OWNER :	same
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	4843 Middleway Pike, Kearneysville, WV
LEGAL DESCRIPTION & ZONING DISTRICT:	District: Middleway; Map: 19A; Parcel: 14; Size: 1.70 ac Zoning Map Designation: Rural 
SURROUNDING PROPERTIES:	Zoning Map Designation: North: R                      South: R East: R                         West: R
APPROVED ACTIVITY:	Nonconforming commercial use with conditions
PRIOR CASES:	ZC99-05: (required BZA approval, 1/20/00) ZC01-02: (required BZA approval, 1/21/01) S03-06 ZC06-05: (approved 07/3/06) S11-08 <i>*Explanation of requests below</i>
VARIANCES:	12/19/96: ZV96-42 12/19/96: ZV96-43 12/16/10: ZV10-26 <i>*Explanation of requests below</i>

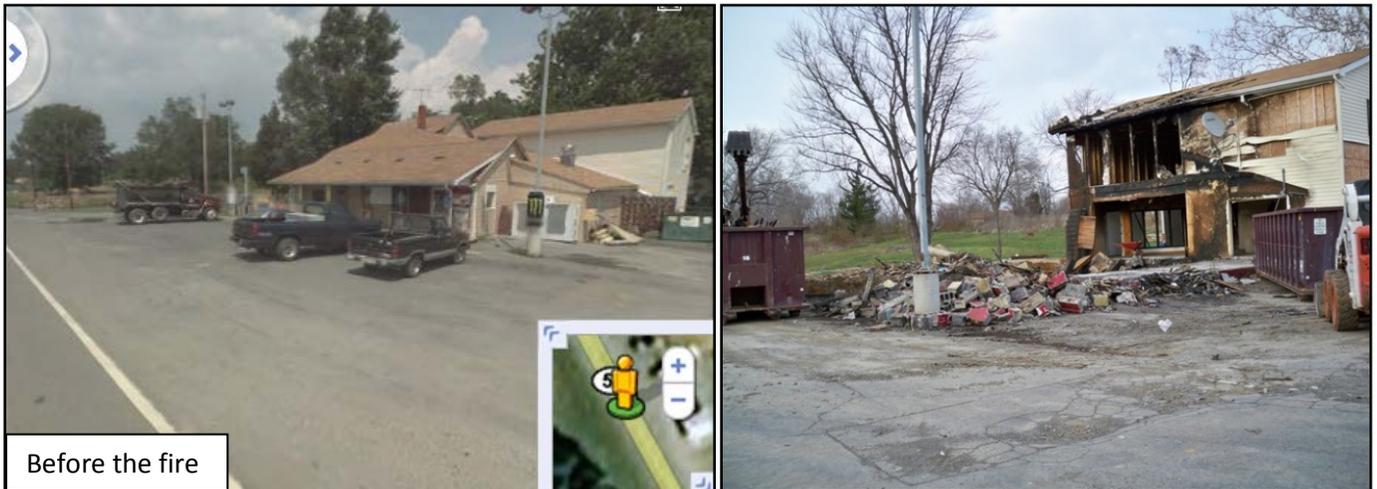
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**RELEVANT INFORMATION:**

Middleway Market, which was formerly known as Country Roads Market, was a lawfully created non-conforming use established prior to the 1988 Zoning Ordinance. In recent years, the Planning, Zoning and Engineering Department approved a site plan for a building addition (which was completed), and the Board of Zoning Appeals granted several approvals, including changes to the nonconforming use. See below for a list of variances and zoning certificates.

In May of 2010, the original Market was partially destroyed by fire. Section 4.3H of the Zoning Ordinance reads, “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.<sup>12, 17, 21, 23</sup>” On December 16, 2010 the current applicant requested the Board to re-establish the nonconforming use. The Board granted the request and imposed the same conditions that were previously in place (list of conditions noted below).



A Compatibility Assessment Meeting was held on May 2, 2014 at 10:00 a.m. in the meeting room of the Old Charles Town Library located at 200 East Washington Street in Charles Town, West Virginia. Ms. Jennifer Brockman, Acting Zoning Administrator/Director of Planning and Zoning and Ms. Jennilee Hartman Zoning Clerk attended. No public concerns were expressed (see attached report).

**1. Presentation of the Proposed Land Use**

**Description of Use**

The applicant is proposing to lift the nonconforming status from the following existing uses by granting said uses permanent legal status through the approval of the Conditional Use Permit (CUP): convenience store, which includes incidental propane service, ABC off-premises packaged alcohol sales, video lottery/game room area & ABC on-premise alcohol service, office/storage area, counter & deli service.

This request is significant because if the Board were to grant the applicant’s request for a CUP, Section 4.3H would no longer apply. If approved, should a natural or unnatural calamity befall this property in the future, the applicant has the right to rebuild, within the approved perimeters of the CUP and would not be subject to a public hearing process.

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In addition, the applicant wishes to expand and/or add the following through the CUP approval process: increase the buildable area from 4,841.75 sq. ft. to 6,000 sq. ft.; to include a residential rental unit, to expand from counter & deli service to a restaurant service with alcohol sales and delivery service; and, to permit gas pumps either on-site or in conjunction with a partnership agreement with an adjacent neighbor.



Angled Front View of Market



Entrance to Proposed Residential Unit

**Employees and Hours of Operation**

While the CUP application does not address employees and hours of operation, the previous Market was not restricted in either of these categories. In January 2000, Mr. Virts, the former owner of Country Roads Market, requested the BZA approve a change in non-conforming use to include on-site consumption of alcohol, which would also allow the sale of KENO game lottery tickets; for this request Mr. Virts submitted a petition with 90 signatures in support. Since that initial request in 2000 until present, there are no known complaints that have been filed with the Departments of Planning and Zoning.

**Parking and Access**

While the applicant had originally requested a 0' front setback to reinstate the existing parking lot after the fire, the Department of Highways required the applicant to remove the paved/gravel parking area that gave unrestricted access to Middleway Pike/Route 51 and to install two separate access points onto Middleway Pike/Route 51. The access to the property is restricted to ingress only and egress only and has the appropriate traffic markings and signage clearly posted.

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Any expansion of the use will require a review of the parking area, to ensure that adequate employee and customer parking are provided.



**Signage & Lighting**

The sign currently posted on the property for Middleway Market meets the standards of the Ordinance. There is ample lighting, which is directed downward towards the parking lot.

**2. Staff Comments**

Land Evaluation and Soils Assessment

Due to the Rural zoning designation of the subject parcel, its location on a primary road (as defined in the 2004 Comprehensive Plan), and the proposed commercial uses, Section 6.5E permitted the applicant to ‘advance directly to the Compatibility Meeting’ without processing through the LESA point process.

Section 6.5E of the Zoning Ordinance states,

*E. Any land in the Rural District that is located on a primary or secondary road, as defined in the Comprehensive Plan, shall not have to process through the LESA points process for a commercial or industrial project and shall be advanced directly to the Compatibility Assessment Meeting.<sup>17, 21</sup>*

Location

This site is adjacent to or in close proximity to the following nonresidential uses.

- Hardings Service Station (across the street)
- Images (.2 miles)
- Roy’s Glass Service (.3 miles)
- Tri-State Auction (.4 miles)

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History

- 12/19/96 The Board of Zoning Appeals approved a variance for front and side setbacks for a sign.
- 01/20/00 The Board of Zoning Appeals approved a request for a change in nonconforming use for the store to obtain a Class A on premises West Virginia ABC license, allowing the sale of KENO game tickets (ZC99-05). The Board noted that the approval was “contingent upon the area of the store designated for the sale of beer and wine being restricted to the dining/game room area as shown on the sketch . . . submitted by Mr. Virts as part of his request.”
- 01/21/01 The Board of Zoning Appeals approved a change in nonconforming use to separate the convenience store from the dining area in order to comply with a change in State regulations regarding video poker machines. The request included the proposed construction of a room to serve food in conjunction with the site’s WVABC on premises license (ZC01-02).
- 06/04/02 The Planning, Zoning and Engineering Department issued a letter to the property owner establishing a total buildable square footage amount of 4,841 square feet, based on a calculation of 35% of the existing building area, per Section 4.3 of the Zoning Ordinance.
- 03/23/04 The Planning Commission approved Site plan S03-06, for a 2,400 square foot, two story addition to the existing store. The addition was approved for retail and storage uses.
- 07/03/06 The Planning, Zoning and Engineering Department issued a Zoning Certificate permitting the operation of video lottery machines. The certificate references the restrictions imposed by the Board of Zoning Appeals on January 20, 2000 (ZC06-05).
- 05/05/10 The Country Roads Market was destroyed by fire.
- 12/16/10 The applicant received a variance to reestablish a nonconforming land use destroyed by “a natural or unnatural calamity”, per Section 4.3(i); and to allow 0’ setbacks for an existing parking area per Sections 4.16 and 5.6(d) (this variance was not utilized due to DOH requirements).

Current Conditions/Restrictions on the Property

- a. The area in which alcohol can be served is restricted to the game room
- b. Buildable area is restricted to the square footage approved by the Planning, Zoning and Engineering Dept on June 4, 2002 (4,841.75)
- c. A front setback variance applies to the existing parking area only, and does not apply to any future parking developed for the site.

These are the conditions which the applicant is currently seeking to lift through the approval of this Conditional Use Permit (CUP).

**3. Public Testimony**

There were no members of the public in attendance at the May 2, 2014 Compatibility Assessment Meeting (CAM) to offer testimony. As there were no unresolved issues, the project was scheduled for the next available BZA meeting which the applicant could attend.

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The CAM and the BZA hearing are the only requirements to process this CUP application.

Section 7.6E of the Ordinance states,

*“If all issues raised at the Compatibility Assessment Meeting were resolved at that meeting, no public hearing shall be required. At the next Board of Zoning Appeals meeting, the Board shall take action as described in Section 7.6F.”<sup>2, 17, 21, 23</sup>”*

**4. Outcome**

The meeting resulted in no unresolved issues.

Section 7.6F of the Ordinance states,

*“The Board of Zoning Appeals shall issue, issue with conditions, or deny the conditional use permit. The standards governing the issuance of the Conditional Use Permits shall be: successful LESA Point application, Board of Zoning Appeals resolution of unresolved issues; and, evidence offered by testimony and findings by the Board of Zoning Appeals that the proposed development is compatible with the neighborhood where it is proposed.”<sup>2, 17, 21, 23</sup>”*

JEFFERSON COUNTY, WEST VIRGINIA  
DEPARTMENTS OF PLANNING AND ZONING

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**COMPATIBILITY ASSESSMENT MEETING STAFF REPORT**  
MIDDLEWAY MARKET, FILE #CP14-01

Project Name: Middleway Market  
Business Developer: Antonio Colandrea, Jefferson Reality, LLC  
Telephone Number: 304-283-3120  
Property Owner: Jefferson Reality, LLC  
Property Address: 4843 Middleway Pike, Kearneysville, West Virginia 25430  
Tax Reference: District: Middleway (07); Map: 19A; Parcel: 14  
Deed Reference: Book: 1086; Page: 28 (prior to contract purchase)  
Zoning District: Rural  
Parcel Size: 1.70 acres

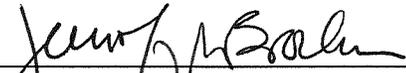
A Compatibility Assessment Meeting for the proposed Conditional Use Permit for Middleway Market was held on May 2, 2014, at 10:00 a.m., in the Old Charles Town Library meeting room located at 200 East Washington Street in Charles Town, West Virginia.

The following use was proposed by the applicant (details may be found in PC File #CP14-01):

To lift the nonconforming status from the following existing uses by granting said uses permanent legal status: Convenience store, which includes incidental propane service, ABC off-premises packaged alcohol sales, video lottery/game room area & ABC on-premise alcohol service, office/storage area, counter & deli service. The applicant is also seeking to expand and/or add the following: increase the buildable area from 4,841.75 sq. ft. to 6,000 sq. ft.; to include a residential rental unit, to expand from counter & deli service to a restaurant service with alcohol sales and delivery service; and, to permit gas pumps either on-site or in conjunction with a partnership agreement with an adjacent neighbor.

Jennifer Brockman, Acting Zoning Administrator and Director of Planning and Zoning; Antonio Colandrea, owner/developer; and, Jennilee Hartman, Zoning Clerk were in attendance.

Ms. Brockman opened the public hearing. There were no members of the public in attendance to offer testimony. Ms. Brockman closed the public hearing. As there was no public testimony or unresolved issues the Conditional Use Permit for Middleway Market will be placed on May 22, 2014 Board of Zoning Appeal's meeting for action.

  
Jennifer M. Brockman, AICP  
Acting Zoning Administrator  
Director of Planning and Zoning

May 7, 2014  
Date



Departments of Planning and Zoning Seal



ADDENDUM
JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning
116 East Washington Street, 2nd Floor, P.O. Box 338
Charles Town, WV 25414

File Name: CP14-01
Staff Initials: CLC
Fees Paid: \$350.00

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

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

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

Application for a Conditional Use Permit

Name of Project:

Middleway Market

Property Owner Information

Name: Jefferson Reality, LLC
Mailing Address: 4843 Middleway Pike
City: Kearneysville State: WV Zip Code: 25430
Phone Number: 304-283-3120 Email: tonycolandrea@comcast.net

Applicant Contact Information

Name: Antonio Colandrea
Mailing Address: 62 Orchard Drive
City: Ranson State: WV Zip Code: 25438
Phone Number: 304-283-3120 Email: tonycolandrea@comcast.net

Registered Engineer(s) or Surveyor(s) Information

Name: Lavelle & Assoc. Inc. C/O Dustin Lavelle
Mailing Address: 5732 Industry Lane
City: Frederick State: MD Zip Code: 21704
Phone Number: 301-695-9722 Email: dustin@lavellesurvey.com

Physical Property Details

Physical Address: 4843 Middleway Pike
City: Kearneysville State: WV Zip Code: 25430
Tax District: Middleway - 07 Map No: 19A Parcel No: 0014
Parcel Size: 1.70 Acres Deed Book: 1086 Page No: 28

Zoning District (please check one)

RECEIVED

APR 23 2014

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

- Rural (R-A) [checked]
Residential Growth (R-G) [ ]
Industrial Commerical (I-C) [ ]
Residential-Light Industrial-Commercial (R-L-C) [ ]
Village (V) [ ]

\*Original submitted on 04/11/14. This replaces that version. GH

**Please provide any information or known history regarding this property.**

The property used to have a fuel island and canopy but currently contains a Convenience Store as shown on the attached Sketch Plan.

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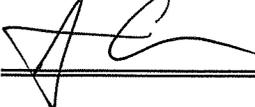
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**Original Signature is Required. The information given is correct to the best of my knowledge.**

 4/23/14

Signature of Property Owner

Date

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Property Owner

Date

**Do not write below this line**

Sketch Plan (Pursuant to Section 7.4 (B)(C))

Support Data (Pursuant to Section 7.4(D))

List of adjacent and confronting (in front of) property owners, with addresses (Section 7.4 E)

**Compatibility Assessment Meeting**

05-02-14  
Date

200 East Washington St Charles Town  
Location

**Notification**

N/A

Date of public hearing

N/A

Advertising date

0

Posting Requirements  
(Number of days prior to  
scheduled hearing)

**To Be Completed By Staff**

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**Conditional Use Permit Application**  
**Support Data**  
*(please attach additional pages if necessary)*

1. Name and address of a contact person.

*(Refer to Conditional Use Permit Application Section B)*

2. Name and address of the owner/developer.

*(Refer to Conditional Use Permit Application Section C)*

3. Type of development proposed (provide as much detail as possible).

Lifting the nonconforming status from the following existing uses by granting said uses permanent legal status: Convenience store, which includes incidental propane service, ABC off-premises packaged alcohol sales, video lottery/game room area & ABC on-premise alcohol service, office/storage area, counter & deli service. The applicant is also seeking to expand and/or add the following: increase the buildable area from 4,841.75 sq. ft. to 6,000 sq. ft.; to include a residential rental unit, to expand from counter & deli service to a restaurant service with alcohol sales and delivery service; and, to permit gas pumps either on-site or in conjunction with a partnership agreement with an adjacent neighbor.

4. Acreage of original tract and property to be developed.

*(Refer to Conditional Use Permit Application Section E)*

5. General description of surface conditions (topography).

The property consists mostly of <5% slopes on site but has a few areas that approach 10%. The area near the existing structure contains slopes around 2%.

6. Soil and drainage characteristics.

The site consists of OkC Oaklet Silty Clay Loam, 8 to 15 percent slope, very rock soils which have a Hydrologic Soil Group rating of "C". Group "C" soils have a slow infiltration rate when thoroughly wet. These consist chiefly of soils having a layer that impedes the downward movement of water or soils moderately fine texture or fine texture. These soils have a slow rate of water transmission.

7. General location and description of any existing structures.

*(See Sketch Plan)*

8. General location and description of existing easements or rights-of-way.

*(See Sketch Plan)*

9. Existing covenants and restrictions on the land.

- The area in which alcohol can be served is restricted to the game room
- Buildable area is restricted to the square footage approved by the Planning, Zoning and Engineering Dept. on June 4, 2002 (4,841.75 sq. ft.)
- A front setback variance applies to the existing parking area only, and does not apply to any future parking developed for the site.

10. Intended improvements and proposed building locations including locations of signs (in addition to narrative, please also show locations on sketch plan).

Expand and/or add the following: increase the buildable area from 4,841.75 sq. ft. to 6,000 sq. ft.; to include a residential rental unit, to expand from counter & deli service to a restaurant service with alcohol sales and delivery service; and, to permit gas pumps either on-site or in conjunction with a partnership agreement with an adjacent neighbor.

11. Intended land uses.

Convenience store, which includes incidental propane service, ABC off-premises packaged alcohol sales, video lottery/game room area & ABC on-premise alcohol service, office/storage area, counter & deli service. The applicant is also seeking to expand and/or add the following: increase the buildable area from 4,841.75 sq. ft. to 6,000 sq. ft.; to include a residential rental unit, to expand from counter & deli service to a restaurant service with alcohol sales and delivery service; and, to permit gas pumps either on-site or in conjunction with a partnership agreement with an adjacent neighbor.

12. Earth work that would alter topography.

No earth work is proposed at the current time. During the possible future expansion of the existing Retail Store from 4,445 SF to a maximum of 6,000 SF or the construction of gas pumps, minor earth work will occur. This earth work will include grading and parking lot relocation and/or expansion.

13. Tentative development schedule.

Restaurant delivery service, ABC on-premises alcohol service, & rental apartment to be implemented in the near future. Expansion of the existing convenience store, construction of the addition/gas pumps to take place in the distant future. The owner simply wishes to be allowed to expand in the future if that is a direction he, or future owners, would like to go.

14. Extent of the conversion of farm land to urban uses.

Not Applicable

15. Affected wildlife populations.

While wildlife experts have not been consulted, since the proposed development is minor no foreseeable wildlife populations should be affected. The future gas pumps would have to be designed and constructed with any applicable local, state, & federal regulations, thus ensuring safe use without any adverse impact on wildlife populations.

16. Ground water and surface water and sewer lines within 1320 feet.

The property as well as other nearby properties are currently served by private well and septic. There appears to be no surface water within 1,320 feet of the property. However, upon aerial photography investigation it appears there are small ponds around 1,700 or more feet away.

17. Distance to fire and emergency services that would serve the site.

Middleway Fire Department (110 Dark Hill Rd., Kearneysville, WV) is 3.19 miles away,  
Independent Fire Company (200 W 2nd Ave, Ranson, WV) is 7.2 miles away,  
Citizens Fire Company Inc (245 Citizens Way, Charles Town, WV) is 8.1 miles away,  
Clearbrook Fire & Rescue (1256 First Town Rd, Clear Brook, VA) is 10.9 miles away,  
Baker Heights Fire & Rescue Squad (2229 Charles Town Rd, Martinsburg, WV) is 11.1 miles away.

18. Distance to the appropriate elementary, middle, and high school.

South Jefferson Elementary School is 6.81 miles away,  
Wildwood Middle School is 10.58 miles away, and  
Jefferson High School is 10.73 miles away.

19. Traffic characteristics - type and frequency of traffic; adequacy of existing transportation routes.

The property is served by WV Primary Route 51, which has a sixty (60) foot right of way.

20. Demand for school services created by this development.

The proposed change of the on-site apartment from a private residence to a rental unit should not increase the current demand for school services, as there will still be only one apartment.

21. Proximity and relationship to historic structures or properties within two hundred (200) feet.

There are no historic structures or properties within two hundred (200) feet of this property.

22. Proximity to recreational facilities.

Evitts Run Park is 6.7 miles away, and,  
Jefferson County Memorial Park is 7.7 miles away.

23. Relationship of the project to the Comprehensive Plan.

The 2014 Comprehensive Plan is currently being reviewed and updated. The previous version is from 2004. The minor development on this site should not adversely impact the Comprehensive Plan as there is already a convenience store on site and there has previously also been gas pumps on site.