



Jefferson County
Board of Zoning Appeals
Thursday, January 28, 2016, 2:00 p.m.

Members
Tyler Quynn, Chair
Jeffrey Bannon, Vice Chair
Christy Huddle
Matt Knott
Ted Schiltz
Jeff Bresee, Alternate
Craig Foster, Alternate

The Jefferson County Board of Zoning Appeals will meet in the Charles Town Library Conference Room located at 200 East Washington Street, at the side entrance on Samuel Street, in Charles Town, West Virginia.

Unless otherwise noted, all requests are pursuant to the Zoning & Land Development Ordinance.

1. Approval of the minutes from the December 10, 2015 meeting.
2. Swearing in of members of the public intending to provide testimony.
3. Variance request from Section 8.2 to reduce the distance requirement for barns from the 75' to 47'.
Applicant: Jessica Howard. Owner: Joann Conte. Location: 148 David Court, Kearneysville.
District: 07; Map: 8; Parcel: 2; Size: 3 ac; Zone: R; File: ZV16-01.
4. Variance request from Section 4.11A.2, 4.11E and Appendix B to remove the side and rear landscape/screening buffer for a private commercial warehouse/garage. Owner: Daniel McGinn. Location: Burr Business Park, Lot 11, Northeast corner of Clendening Dr. & James Burr Blvd., Kearneysville, WV.
District: 02; Map: 1; Parcel: 111; Size: 1.75 ac; Zone: R; File: ZV16-02.
5. Director's Report.
 - a) Monthly Zoning Certificate Activity Report
6. Legal Update.
 - a) William Neufeld Pending Litigation CA #14-C-394
 - b) Shenandoah Air Conditioning & Heating Inc. Pending Litigation CA #15-P-73
 - c) Whistling Farms Bed & Breakfast Litigation CA # 15-C-209 (possible executive session)
7. Discussion with possible deliberative session and signing of draft findings/decisions.

Meeting Date: 12/10/15 meetings. (*see agenda for full item description*)

 - a) An Appeal of the Acting Zoning Administrator's determination to enforce a 2013 Memorandum, which restricted shipping containers from being used as residential accessory structures.
Appellant: Brian Billey. File: AP15-03.
 - b) Variance from Section 9.7 and Appendix A to reduce the front setback on S. Church St. from 20' to 7' for a 12'x15' breezeway, a 25' x 28' attached garage with a 5' x 25' attached porch.
Owner: Elena Mestre and Eric Hyman. File: ZV15-29.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
January 28, 2016

Howard Variance Request (#ZV16-01)

RELEVANT INFORMATION:

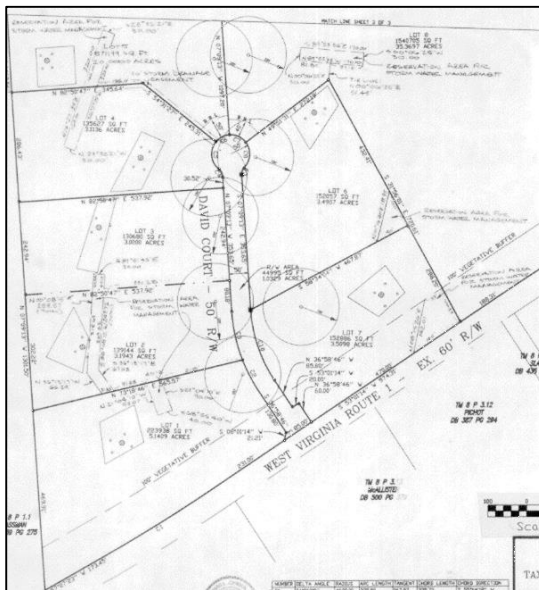
1. Overview of Request

The variance request from Section 8.2 is to reduce the side setback from 75' to 47' to allow for the construction of a barn in a location on the subject parcel that the applicant deems suitable.

2. Previous Case History

The Sunset Ridge Subdivision consists of eight (8) single family lots. The subdivision was recorded on November 9, 2000 in the County Courthouse. A lot line adjustment was approved by the Department on June 11, 2013, which reduced the size of Lot 8-Residue, the subject parcel, from 47.39 to 3.0 acres.

Original Subdivision



Lot Line Adjustment



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.*

Staff Report
Jefferson County Board of Zoning Appeals Meeting
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Howard Variance Request (#ZV16-01)

4. Staff Evaluation of Request

a. Purpose of ordinance requirements

The purpose of the distance requirement found in Section 8.2 *Barns and Feeding Pens*, set at seventy-five (75) feet from a residential district, a lot with a residential use, a church, a school, or an institution for human care, is to reduce the impact that an agricultural land use involving livestock might have on an adjacent property; to allow for reasonable distance between agricultural activities and residential land uses; and to maintain adequate separation between structures for fire prevention purposes.

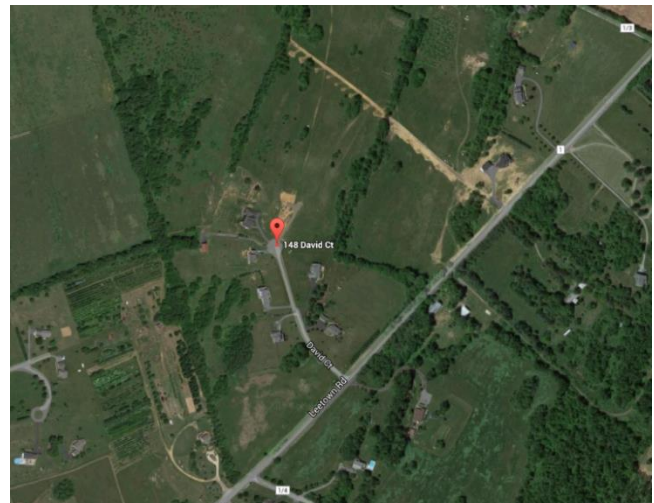
b. Unique characteristics of property

The applicant's property is located in western Jefferson County on a residential cul-de-sac, off of the Leetown Road, just north of the unincorporated community of Leetown. The property is located in a rural area with a number of large rural residential lots in the vicinity. The shape of the parcel is irregular, with the area that fronts on David Court's cul-de-sac being narrow, but the property's area spreads and expands widely towards the rear property line. The property line on the right side of the parcel makes an abrupt directional shift in a manner similar to an acute angle towards an existing tree line. The upper right property line further diagonally bisects the aforementioned tree line until it ends at the shared property boundary with its vacant abutting parcel to the right. The subject parcel is the Residue of this major subdivision. The proposed location of the barn is further limited by the location of the septic drain field and the fact that the property contains a stormwater area for Sunset Ridge Subdivision.



c. Character of area

The residential character of this small subdivision is in contrast to the high levels of agricultural activity that occur in the general vicinity towards the rear of the property. This property is located off of Leetown Road/Route 480, in the Middleway Tax District. The Zoning classification for this area is Rural. The lots in Sunset Ridge Subdivision are all over 3 acres in size. This creates a natural unscreened buffer between the applicant's parcel and the surrounding parcels, including the adjacent property closest to the proposed barn location.



Staff Report
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Howard Variance Request (#ZV16-01)

d. Impact on adjacent properties

The applicant is looking for a property on which they can live and a barn to allow greater access in caring for their horses and to have the structure provide enough space to house their animals, as well as provide ample space for storage of feed and other supplies. As depicted on the applicant's sketch, the proposed location of the barn 47' from the adjoining lot necessitates a variance from the required 75' setback along the eastern property line only. The barn meets required setbacks in all other directions. Because of the limited nature of the proposed activities that would be occurring and the distance (roughly 350') from the proposed location of the barn in relation to the closest residential neighbor's home (who has given their approval to the applicant of the barn's location), the impact on adjacent property does not seem to cause any undue burden on the neighbors or significantly impair their neighbor's peaceful enjoyment.

e. Feasibility of complying with the ordinance by other means

The feasibility of compliance with the ordinance by other means is limited by the spatial layout of the property, the accompanying property lines, and the infrastructure that services the house on the property. The parcel has a large septic reserve area in the Northwest corner and due to its size and location, as well as stormwater area and the location of the house in relation to the rear property line; there are limited choices for locating the barn. Additionally, the property's dog-leg along the eastern property line creates obstacles to completely utilize the property as the way the applicant sees fit. The irregular shape of the parcel impacts the options for a barn construction site as depicted in the graphics in this staff report.

5. Conditions of Approval

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

- a) If approved, this variance only allows for the reduction in setback distance for barns from 75' to 47' to accommodate the construction of one barn on the subject parcel.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 8.2 Barns and Feeding Pens²³

Barns and feeding pens must be set back a minimum of 75' from a residential district, a lot with a residential use, a church, a school, or an institution for human care.



JEFFERSON COUNTY, WEST VIRGINIA

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

File Number: ZV16-01
Staff Initials: JH
Fees Paid (\$100 or \$150): 100.00

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

Zoning Variance Request

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

Property Owner Information

Name: Joann Conte
Mailing Address: 148 David Court, Kearneysville, WV 25430
Phone Number: 704-929-3364 Email:

Applicant Contact Information

Name: Jessica Howard
Mailing Address: 541 Hillcrest Drive, Kearneysville, WV 25430
Phone Number: 301-606-6030 Email: sunranger@yahoo.com

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

Name:
Mailing Address:
Phone Number: Email:

Physical Property Details

Physical Address: 148 David Court
City: Kearneysville State: WV Zip Code: 25430
Tax District: 07 - Middleway District Map No: 8 Parcel No: 2
Parcel Size: 3 acres Deed Book: 1125 Page No: 425

Zoning District (please check one)

Residential Growth (RG) Industrial Commercial (IC) Rural (R) Residential-Light Industrial-Commercial (R-LI-C) Village (V) Neighborhood Commercial (NC) General Commercial (GC)

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DEC 24 2015

JEFFERSON COUNTY PLANNING, ZONING AND ENGINEERING

Place Received Date Stamp Here

Highway Commercial (HC) Light Industrial (LI) Major Industrial (MI) Planned Neighborhood Development (PND) Office/Commercial Mixed-Use (OC)

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

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

Reference the section of the Zoning Ordinance pertaining to this request: 8.2 Barns

Briefly describe the nature of the variance request:

Variance request for a setback distance reduction from 75' to 47' to allow for the construction of a barn, primarily used to house horses and to provide storage space for equipment and materials needed to care for the animals and maintain property.

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

Front Setback Side Setback Rear Setback Reduction From 75' to 47'

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:

148 David Court does not carry any covenants or restrictions and is zoned rural. Proposed construction and use is NOT whatsoever commercial in nature and poses no health risk or violation of rights to any adjacent property owners. Use is consistent with local land use.

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 selected building location is the only suitable location giving consideration to all other existing property features: septic, septic reserve, underground utilities, well, house, storm water management reserve, slope and all other setback requirements.

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

Given the shape of the property and all setback requirements, the selected location is the most feasible, logical and accessible location for an additional structure. Existing drive way can be used without creating further impact.

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

Zoned rural, the type of building and purpose is congruent with said property, adjacent properties and land use.

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

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

Joann Conte 12-22-15
Signature of Property Owner Date

Jessica L Howard 12-22-15
Signature of Property Owner Date

Notification Requirements (to be completed by staff)

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

01/28/16
Date of Public Hearing

01/13/16
Advertising Date

01/13/16
Placard Posting Date

December 23, 2015

To: Zoning Board of Appeals – Jefferson County, WV

From: Mark & Jessica Howard, "buyers" of 148 David Court, Kearneysville, WV

Jessica Howard
12/23/15

Subject: Variance Request

This variance request is being submitted by applicants Mark and Jessica Howard, "buyers" of 148 David Court, Kearneysville, WV. Current property owners and "sellers," Joann and Salvatore Conte are in full support of said variance request and have signed the necessary documents attached. The variance request is for a side setback distance reduction from 75' to 47'-50' to allow for the construction of a barn/storage building (agricultural use).

Mr. and Mrs. Howard made an offer on said property on December 3, 2015 which was officially accepted. Both parties have agreed to a sales contract noting a formal real estate transaction sometime within the next two months. In order to prepare for closing and an ultimate move, the Howard's need to plan for this construction with minimal delay in their transition, but submitting in advance the necessary paperwork to the county Zoning and Planning Department.

Please note ... no action whatsoever will be taken in the event this real estate transaction falls through. The Contes' are not and will not be held responsible for any associated costs. A check made out to the Jefferson County Commission for the sum of \$100 has been submitted with the attached paperwork by the Howards prior to the December 31, 2015 deadline for consideration at the January 28, 2016 Zoning Board of Appeals Meeting.

If there are any questions as to the purpose or intent of this memo, or any missing information, please call Mr. or Mrs. Howard at 301.606.6030 (cell).

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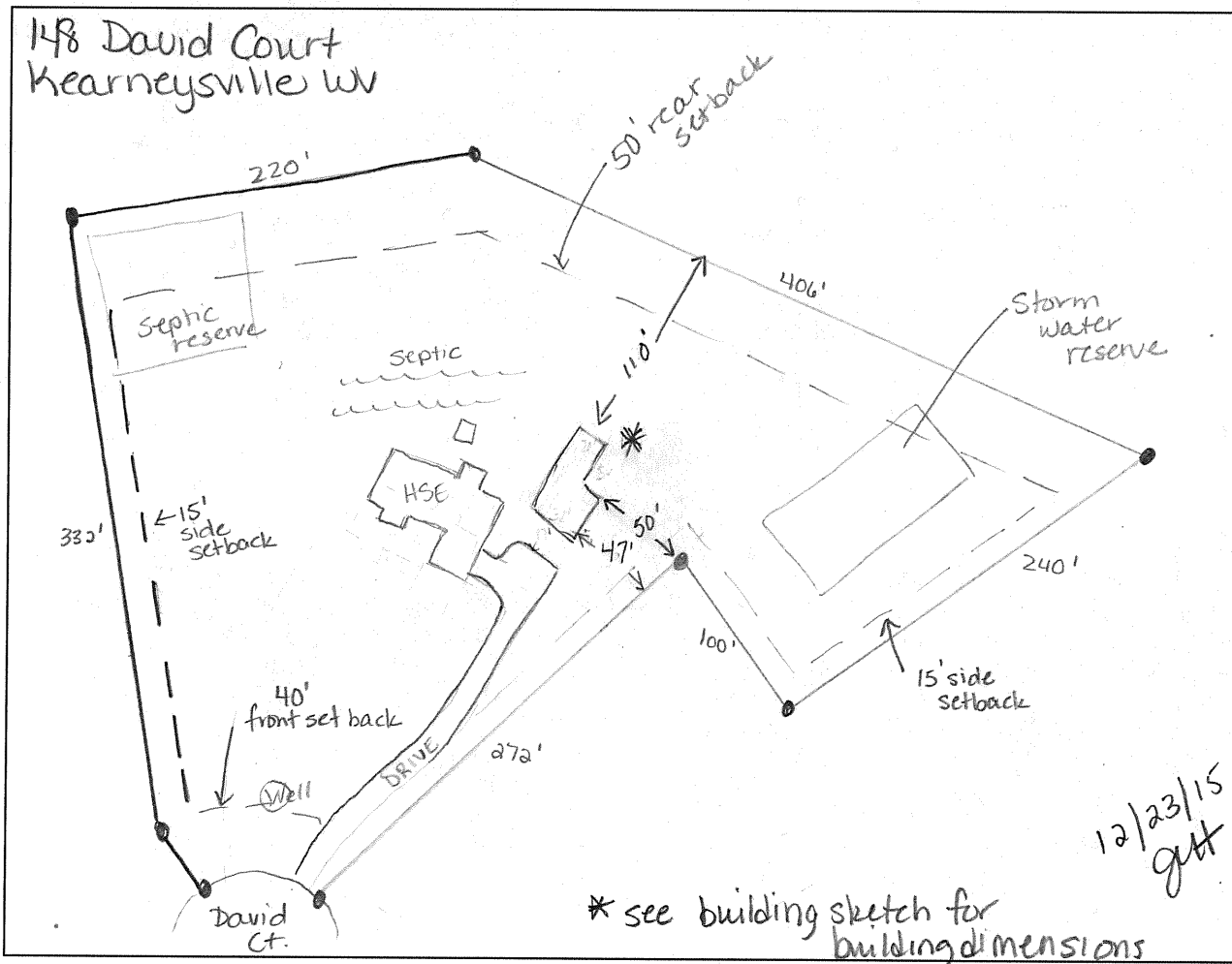
JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

PROPERTY SKETCH SHEET

Sketch the shape and location of the lot and show the following:

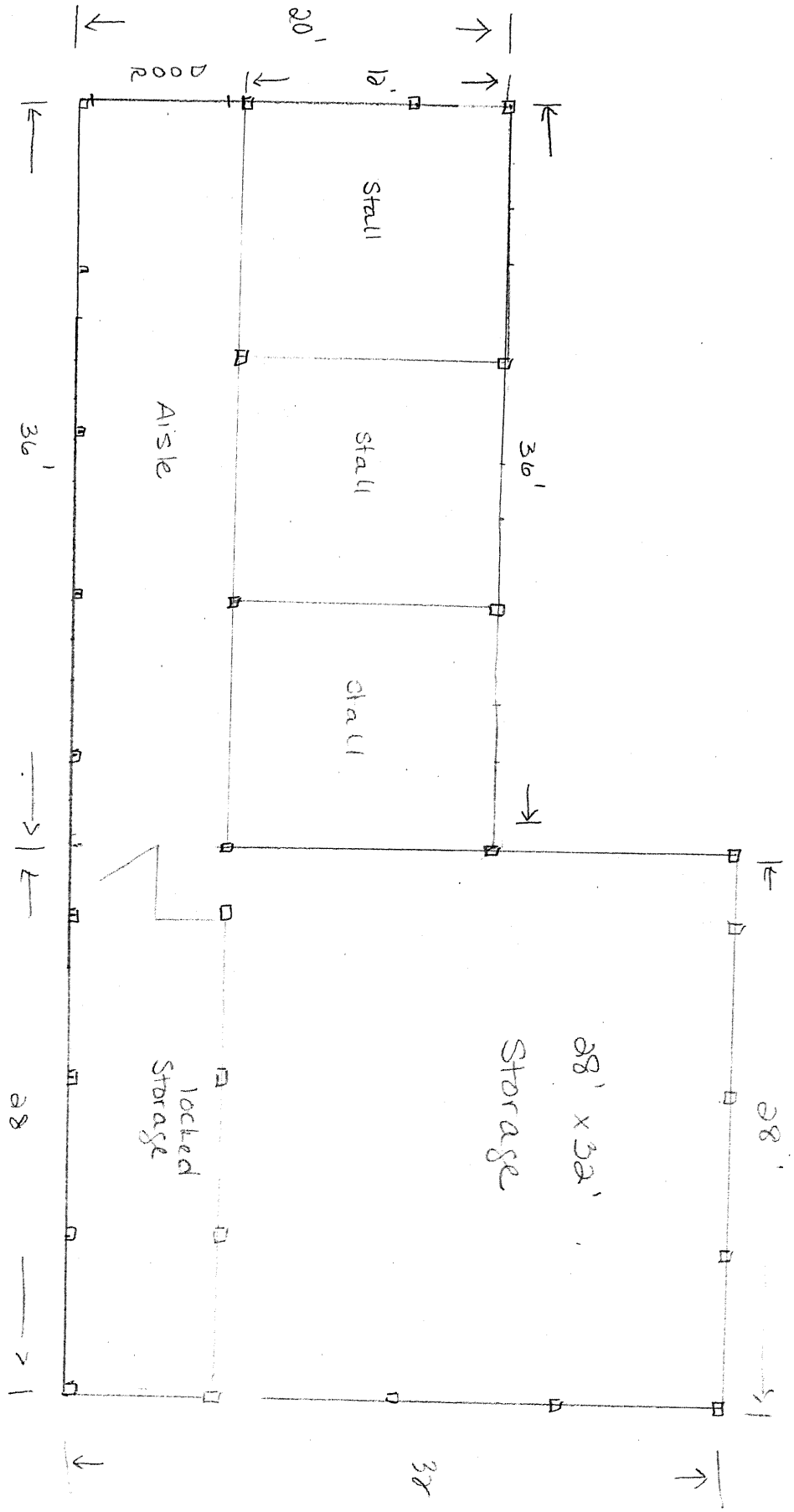
1. All existing roads with names and/or route numbers.
2. All rights-of-way and/or easements.
3. Septic reserve areas.
4. Location of the intended construction or land use; and show the building setback lines and the distances from the property line to the setback lines; and the distance from the property line to the structure.
5. Show the size and height of the structure.
6. Show all existing buildings/structures on the parcel/property.
7. On Renovation's and Addition; Please indicate number of bedrooms and if adding a kitchen

Note: The sketch may be on a separate sheet; however, it shall be signed and dated by the applicant.



Property Owner/Applicant's Signature _____ Date: ____/____/____

Barn / Storage



Variance Request – 148 David Court, Kearneysville, WV

1/2016
[Year]

ZV16-01



148 David Court, Kearneysville, WV - Streetview



Back property line view



Distance from neighboring house





Looking at rear of property

Taken from rear property line



Staff Report
Jefferson County Board of Zoning Appeals Meeting
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Daniel McGinn Variance Request (#ZV16-02)

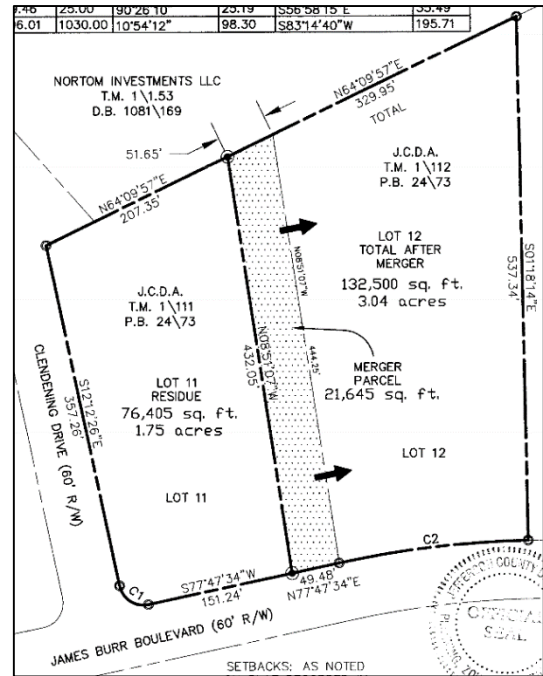
RELEVANT INFORMATION:

1. Overview of Request

Variance is requested from Sections 4.11.A.2, 4.11.E, and Appendix B – Nonresidential Site Development Standards to remove the side and rear landscaping requirements while processing a Site Plan for Lot 11 in the Burr Business Park.

2. Previous Case History

The subject property is located in the Burr Industrial Park (PC File #04-38), which was recorded in the County Courthouse on December 18, 2007. This section of the industrial park (Lots 1 – 44) received a variance from the Planning Commission from installing road curbs, gutters, and sidewalks. A lot line adjustment for this parcel was approved by the Department on November 5, 2015, which reduced the lot size from 2.25 acres to 1.75 acres.



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. Landscape buffers contribute by reducing the impact that a land use might cause to an adjacent property by serving as a barrier to visibility, airborne particles, glare or noise. Ordinances may differentiate between buffers which are screened or unscreened, based on the types of uses involved.

In the Zoning Ordinance, the largest buffers relate to industrial uses. Historically, buffers between nonresidential and residential uses could either be screened or unscreened, but this provision was removed from the Ordinance as a part of amendments approved in 2014.

Staff Report
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Daniel McGinn Variance Request (#ZV16-02)

In this case, where a commercial development abuts another commercial development, Section 4.11A.2 applies, which 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 and outside storage.

Section 4.11E states that 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, airborne particles, glare or noise” and that the required vegetative screening has to comply with the County’s standard details for various buffer distances.

Additionally, an amendment to the Zoning Ordinance was processed in 2014 to reduce the requirements related to landscaping between commercial uses. The new Section 4.11E.1 states, “any development where a 10 foot side and/or rear yard vegetative landscaping buffer is required adjacent to proposed commercial uses and where no outdoor storage is being proposed or provided, the following standards shall be met...” (see below). Because this applicant indicates that there is no proposed outdoor storage, this provision of reduced landscaping could be utilized; however, they are requesting a full waiver of this requirement.

While there have been numerous requests to be relieved of this development requirement over the years and the BZA has reviewed each on a case-by-case basis for consideration of approval as required by the Ordinance and state law.

b. Unique characteristics of property

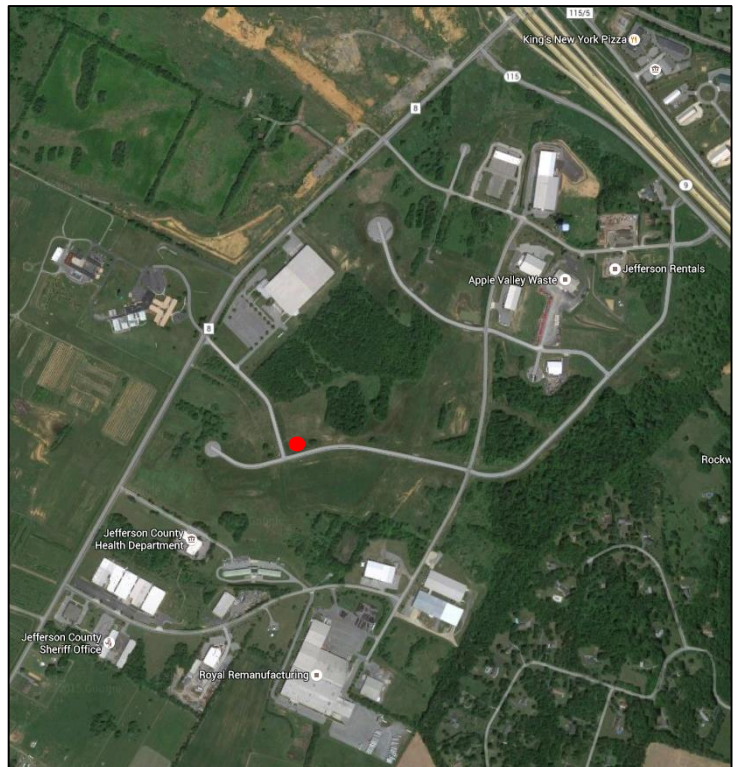
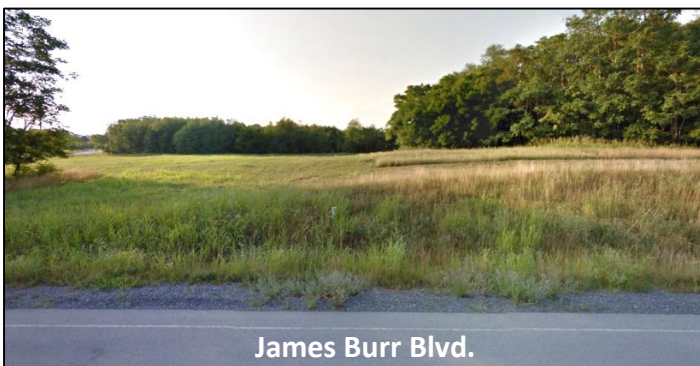
The subject parcel is located within the Burr Business Park, at the corner of Clendening Dr. and James Burr Blvd, which is close proximity to WV Route 9. The location’s proximity to Route 9 is a feature of the Business Park meant to attract businesses that need convenient access to local and regional transportation networks. The Burr Business Park is a master planned non-residential subdivision owned and developed by the Jefferson County Development Authority, with the intent of establishing a business park suitable for shovel-ready development parcels for Light Industrial and Commercial activities, as a means to incite and promote economic development in Jefferson County. All roads and stormwater facilities have been constructed during the initial phases of site development of the business park. The property fronts on Clendening Dr., which provides it with direct access to WV Route 8/Wiltshire Road. Because the subject Lot is a corner parcel, it has visibility from both Clendening Dr. and James Burr Blvd.

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Daniel McGinn Variance Request (#ZV16-02)

c. Character of area

The applicant wishes to construct a private warehouse/garage in the Burr Business Park. The business park was developed by the Jefferson County Development Authority with the intent of establishing shovel-ready sites for Industrial and Commercial activities meant to spur job creation and economic growth in Jefferson County. The Business Park has several lots that have been already been developed, but there are many that are vacant. Currently, there are vacant unimproved commercial lots to the north and to the east of Lot 11. There is some natural vegetation towards the rear of Lot 11, but there have been no comments from the applicant as to whether this vegetation will be removed or impacted by the proposed development. Adjacent lots have similar areas of natural vegetation but it is not anticipated that this vegetation would remain once development occurs. Throughout the Park, as lots develop, the required street trees and screened buffering have been planted along the affected property lines (examples below).



Staff Report
Jefferson County Board of Zoning Appeals Meeting
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Daniel McGinn Variance Request (#ZV16-02)

d. Impact on adjacent properties

Landscaping along the property lines of Lot 11 would serve to define the property as a separate lot and provide a buffer between future uses. As Lot 11 fronts on Clendening Drive and James Burr Boulevard, the applicant will be required to meet front yard setbacks and the street planting requirements in Section 4.11H, “Deciduous street trees for shade and aesthetics, planted at the following average spacing 1 tree per 50’ where the street frontage is up to 200’; or, the greater of 4 trees or 1 tree per 100’ where the street frontage exceeds 200’.” The applicant is not requesting to waive this requirement. Those who seek to development parcels in the Burr Business Park have an understanding that they are developing land in an Industrial and Commercial area, and in doing so accept that there would be the potential for increased noise, odors, and lights depending on the adjoining parcel’s activities. Some level of impact on adjacent properties is possible, but through the implementation of buffers and other screening methods, this potential impact can be mitigated.

It is worth noting that the Subdivision Regulations also require the applicant to provide internal landscaping that is equal to 5% of the overall square footage of the proposed parking area. This is in addition to the required boundary line landscaping. Should the Board choose to grant a reduction of the side and rear landscaping, it may be beneficial to require a portion of the landscaping which will not be provided to be integrated into the site design, where feasible.



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 without outdoor storage may utilize the provisions for landscaping between commercial uses adopted in 2014 (Sec. 4.11E.1 below) which greatly reduces the number of trees and shrubs required.

Alternatively, the Ordinance allows the use of an opaque fence the full length of the lot line to serve as a barrier to visibility, airborne particles, glare or noise as an acceptable alternative to a landscaped buffer between commercial lots. Staff has stated that such an opaque fence shall be made of durable materials (such as brick, masonry, or board-on-board wood fence), and be 6 feet in height.

5. Conditions of Approval

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

- a) The variance applies only to this proposed site plan for Lot 11 within the Burr Business Park.
- b) If outdoor storage is proposed on this site, additional processing through the Department of Planning and Zoning will be required.

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
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Daniel McGinn Variance Request (#ZV16-02)

Conditions continued...

- c) The variance could vary only a portion of the requirement such as one or more of the following:
 - Reducing one portion of the required landscaping; or
 - specifying a different type of planting;
- d) Should the Board choose to grant a reduction of the side and rear landscaping, it may be beneficial to require a portion of the landscaping which will not be provided to be integrated into the site design, where feasible, such as adding to the required 5% parking area landscaping.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 4.11A.2

Buffer yard requirements are as shown in Appendix B of this Ordinance, and are summarized in this section.²⁷

2. All commercial development adjacent to all other uses must maintain ten(10) foot side and rear yard landscape buffers.⁵

Section 4.11E

E. 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, airborne 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 six (6) feet in height.^{7, 23, 27, 28}

However, any development where a 10 foot side and/or rear yard vegetative landscaping buffer is required adjacent to proposed commercial uses and where no outdoor storage is being proposed or provided, the following standards shall be met:^{27, 28}

- a. One (1) deciduous or evergreen tree 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 fifty (50) linear feet; at least every other tree shall be an evergreen;
- b. One (1) ornamental tree with a height of four (4) feet or more when planted, likely to reach a height of six (6) feet or more at maturity, planted every fifty (50) linear feet; and
- c. Three (3) shrubs per each twenty five (25) feet along the property line, round upward.
- d. These requirements shall be required on both sides of a property line for adjoining properties.
- e. A 10 foot landscape area on the property unless shared parking is proposed. In the event shared parking is proposed, the required property line planting would be in addition to other plantings.^{7, 23, and 26}
2. It will be the responsibility of the landowner to replace any trees that die and shall be so noted on the site plan.
3. Screen planting shall be a minimum of ten (10) feet wide but shall be placed so that it is no closer than four (4) feet at maturity from a property line or from any street.
4. No structure, fence, planting, or other obstruction shall be permitted which would interfere with traffic visibility.

Appendix B

APPENDIX B: NON RESIDENTIAL SITE DEVELOPMENT STANDARDS TABLE²⁷

Zoning District	Development Type ⁸	Min Lot Area (MLA)	Min Lot Width	Max Building Height ⁹	Imper-vious Surface Limit	Building Setbacks			Parking/Drive Aisle Setbacks ¹⁰			Distance if Sec. 4.6 applies	Buffers (Sec. 4.11) (Screened / Unscreened)								
						Front	Side	Rear	Front	Side	Rear		Front, Side, Rear	Commercial Use			Industrial Use				
														Front	Side	Rear	Front	Side	Rear		
Industrial - Commercial**	Commercial sites 1.5 acres and smaller	N/A	N/A	75	80%	25			15 4 4			75	Front, Side, Rear Narrow Buffer Detail No. M-54			N/A	10(S)	10(S)	N/A	10(S)	10(S)



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, P.O. Box 338

Charles Town, WV 25414

File Number: ZV16-02

Staff Initials: RG

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

zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Variance Request

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

Property Owner Information

Name: Daniel M. McGinn
Mailing Address: 2111 Wilson Boulevard, Suite 200; Arlington, VA 22201
Phone Number: 703-312-0140 Email: kubicconstr@aol.com

Applicant Contact Information

Name: Daniel M. McGinn
Mailing Address: 2111 Wilson Boulevard, Suite 200; Arlington, VA 22201
Phone Number: 703-312-0140 Email: kubicconstr@aol.com

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

Name: Gordon c/o Jason Gerhart
Mailing Address: 301 North Mildred Street; Charles Town, WV 25414
Phone Number: 304-725-8456 Email: jgerhart@gordon.us.com

Physical Property Details

Physical Address: Burr Business Park, Lot #11
City: Kearneysville State: WV Zip Code: 25430
Tax District: Charles Town (2) Map No: 1 Parcel No: 111 (Lot 11)
Parcel Size: 1.75 Acres Deed Book: 1165 Page No: 600

Zoning District (please check one)

Residential Growth (RG) [] Industrial Commercial (IC) [x] Rural (R) [] Residential-Light Industrial-Commercial (R-LI-C) [] Village (V) [] Neighborhood Commercial (NC) [] General Commercial (GC) []

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DEC 30 2015

JEFFERSON COUNTY PLANNING, ZONING & ENGINEERING

Place Received Date Stamp Here

Highway Commercial (HC) [] Light Industrial (LI) [] Major Industrial (MI) [] Planned Neighborhood Development (PND) [] Office/Commercial Mixed-Use (OC) []

Lot 11 Property
Burr Business Park
Variance Request Addendum
December 30, 2015

Briefly describe the nature of your variance request:

The requested variance is to remove the screening requirements associated with the side and rear buffers for a commercial development. The proposed use for the property is for a private warehouse / garage.

- Applicable/Related Sections of the Zoning and Land Development Ordinance
 - Section 4.11.A.2.
 - All commercial development adjacent to all other uses must maintain ten (10) foot side and rear yard landscape buffers.
 - Appendix B: Non Residential Site Development Standards Table
 - 10 foot side and rear screened buffer (references Section 4.11).
 - Section 4.11.E.
 - 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.



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

- The health, safety and welfare of the public will not be impacted by the absence of a rear and side buffer for the property.
 - All distance requirements will be maintained.
 - The Burr Business Park is a private subdivision and any tenants or patrons anticipate development similar or more intense than the development proposed on Lot 11.
 - There are no operations associated with the proposed facility which will create any noxious or dangerous situations for the adjacent property owner.
- The rights of the current or future adjacent property owner will be preserved. The adjacent property is owned by the Jefferson County Development Authority (JCDA) and is currently vacant land that is zoned for a similar or more intense use.
 - The property is located in the Burr Business Park which is designated for commercial / industrial uses. Companies often locate in this Park to be surrounded by similar uses and anticipate that future development will be of a complimentary use.
 - The JCDA reviews and approves all development proposed within Burr Business Park and therefore the current owners will be informed of the adjacent uses.
 - Any future property owners would be aware of the property's condition prior to purchase. If desired, these future owners will have the right to plant additional privacy screening or not purchase any impacted property.



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 a variance?

- The property is located in a business park which is intended for commercial and industrial development. Business parks are different from other areas within Jefferson County in that it is a planned development under the control of the JCDA. The JCDA monitors and approves proposed development within the Park. Areas outside of the County's Business Parks often

require buffers to protect less intense zoning districts / uses from more intense and incompatible uses.

- The previous version / interpretation of the Zoning Ordinance under which the Burr Business Park was created did not require rear or side screened landscape buffers. The elimination of the screening requirements will allow the subject property to develop in a pattern consistent with the regulations under which the Park was envisioned and to that of existing patterns already developed within the Park.

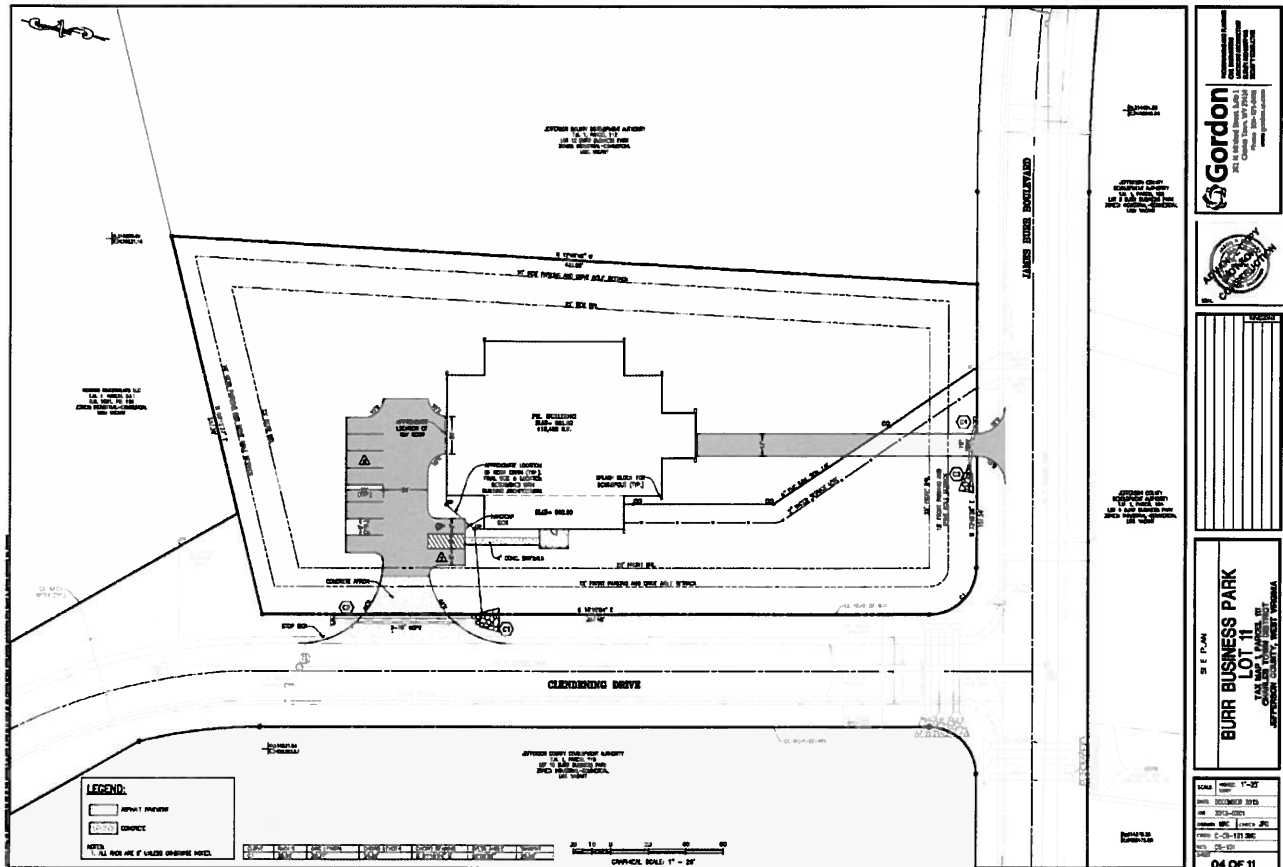


How will granting this variance eliminate an unnecessary hardship and permit a reasonable use of the land?

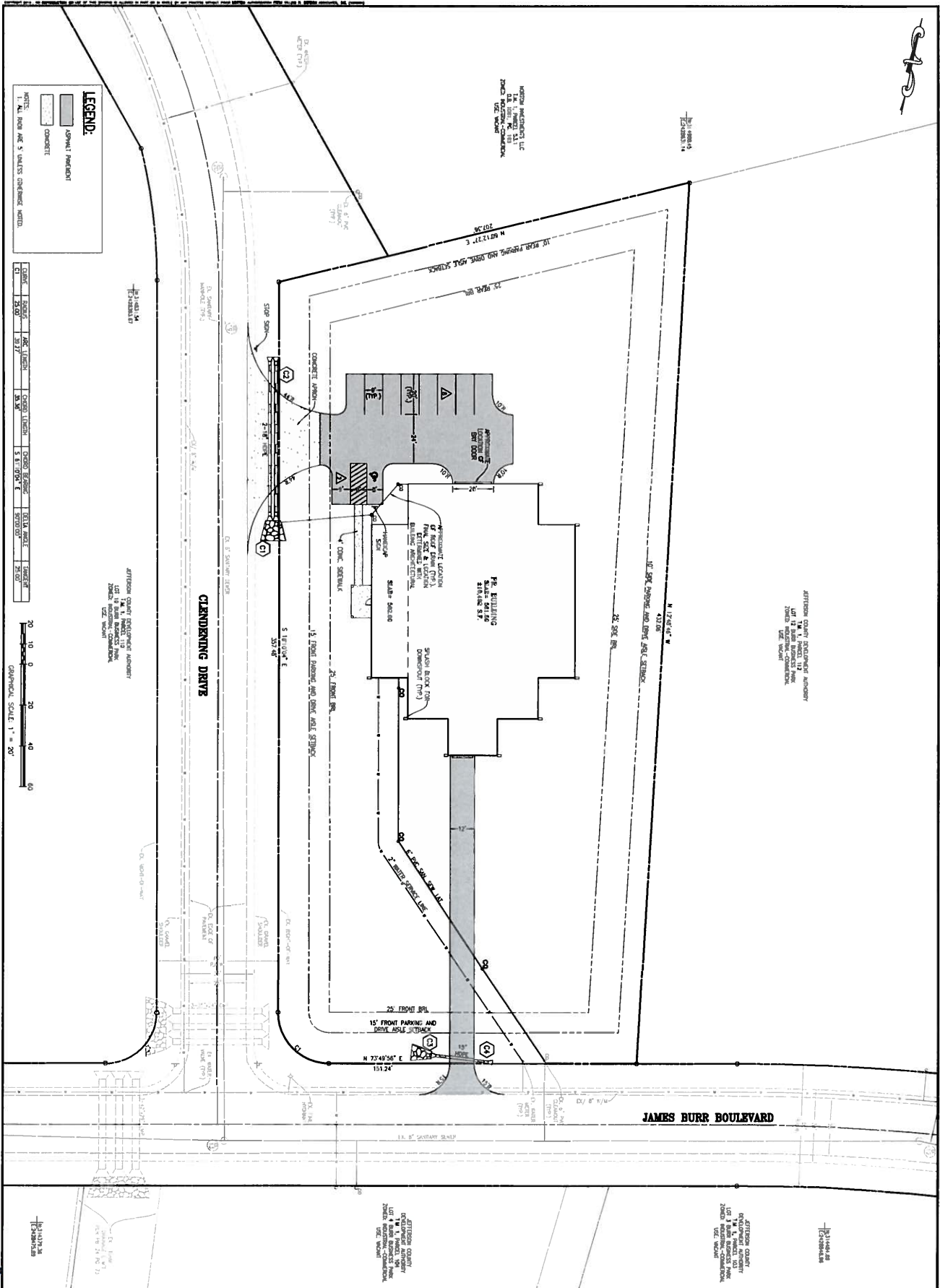
- The intended use of land within the Burr Business Park is for commercial and industrial uses. It is reasonable to assume that any future use of the adjacent lot will be similar or of greater intensity than what is proposed. While the intent of buffers within the ordinance is to protect property owners from uses which are not compatible, the Park represents a location which attempts to encourage commercial / industrial uses and represents a reasonable use of the land.
- The previous version / interpretation of the Zoning Ordinance under which the Burr Business Park was created did not require rear or side yard buffers. The elimination of the screening requirements will allow the subject property to develop in a pattern consistent with the regulations under which the Park was envisioned and to that of existing patterns already developed within the Park.
- Requiring that Lot 11 be subject to different regulations as other lots within the approved Burr Business Park subdivision is unnecessary and holds the Lot 11 property owner to more stringent requirements than that afforded other property owners within the Park.

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

- Buffers are provided to protect certain uses from a more intense land use. The entire Burr Business Park is intended for commercial and industrial development. The need to protect complimentary uses from one another in this setting is an unintended consequence of the Zoning Ordinance regulations.
- The proposed development is designed to allow for a buffer to be constructed if it becomes necessary at a future time. This will allow for the intent of the Zoning Ordinance to be observed under future unforeseen circumstances.
- The adjacent property and subject property will be similar uses and the addition of a landscaping buffer does not provide any added benefit to these property owners within the Burr Park. The removal of the buffer requirement will recognize that properties within the Burr Park are of similar use and a landscaping buffer does not provide any added benefit or promote any objective of the Zoning Ordinance to protect property rights / values through use buffers. Any future occupant of any adjacent properties may choose to implement a buffer for increased privacy and will be aware of their potential to do so prior to purchasing any parcel within the Park.



#ZV16-02



LEGEND:
 [Symbol] ASPHALT DRIVE
 [Symbol] CONCRETE DRIVE
 [Symbol] 1. ALL ROAD AND 5. UNLESS OTHERWISE NOTED.

CONCRETE DRIVE	ASPHALT DRIVE	CONCRETE DRIVE	ASPHALT DRIVE	CONCRETE DRIVE	ASPHALT DRIVE
3.00'	3.00'	3.00'	3.00'	3.00'	3.00'
3.00'	3.00'	3.00'	3.00'	3.00'	3.00'
3.00'	3.00'	3.00'	3.00'	3.00'	3.00'
3.00'	3.00'	3.00'	3.00'	3.00'	3.00'

JEFFERSON COUNTY DISTRICT COURT
 DISTRICT CLERK'S OFFICE
 101 N. 11th Street, Suite 101
 CHARLES TOWN, WEST VIRGINIA 25414
 TEL: 304.725.8456
 FAX: 304.725.8457
 WWW.JEFFERSONCOUNTYGOVT.GOV

SCALE: 1" = 20'

DATE: 12/30/15
 DRAWN BY: JAC
 CHECK BY: JAC
 SCALE: 1" = 20'

SITE PLAN
BURR BUSINESS PARK
LOT 11
 TAX MAP 1, PARCEL 111
 CHARLES TOWN DISTRICT
 JEFFERSON COUNTY, WEST VIRGINIA

NO.	REVISION	DATE

Gordon
 PROGRAMMING AND PLANNING
 CIVIL ENGINEERING
 LANDSCAPE ARCHITECTURE
 SURVEY AND MAPPING
 SECURITY CONSULTING

301 N. Mildred Street, Suite 1
 Charles Town, WV 25414
 Phone: 304.725.8456
 www.gordon.us.com

Handwritten signature and date:
 JAC
 12/30/15



Jefferson County, West Virginia

Departments of Planning and Zoning

116 East Washington Street, 2nd Floor

Charles Town, WV 25414

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Email: zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Director's Report Board of Zoning Appeals Meeting January 28, 2016

1) Pending Zoning Ordinance and Subdivision Regulation Amendments

a) Campgrounds:

- i. CC scheduled Public Hearing Thursday, January 21, 2016 7 pm

b) Major and Minor Subdivision and Site Plan Process:

- i. Approved by County Commission 12/17/15, effective 1/1/16

c) Mass Events Ordinance (#ZTA 14-02):

- i. Recommended to the CC by the PC as revised at their 1/12/16 PC meeting (tentatively on the 2/4/16 CC meeting)

d) Article 12 Zoning Ordinance

- i. Recommended to the CC by the PC at their 1/12/16 PC meeting (tentatively on the 2/4/16 CC meeting)

e) Pending amendments:

- i. LESA/Conditional Use and Cluster Subdivision Provision Modifications – top priority for 2016
- ii. Historic Resource Demolition and Adaptive Reuse
- iii. Parking Standards
- iv. Landscape Standards
- v. Signage

2) Upcoming BZA meeting

a) Next Regular Meeting: **February 25, 2016**

JEFFERSON COUNTY, WEST VIRGINIA
Department of Zoning

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

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

Email: zoning@jeffersoncountywv.org

MEMORANDUM

TO: Board of Zoning Appeals Members

CC: Engineering & Building Permits Departments

FROM: Acting Zoning Administrator, Jennifer M. Brockman

DATE: January 22, 2016

SUBJECT: January Monthly Report of Department Activities

ISSUED ZONING CERTIFICATES

#ZC15-57 DR. BENJAMIN F. BYERS II, DVM & DR. MICHELLE BYERS, DVM - OWNERS

Issuance Date: January 04, 2016
Proposed Use: State licensed spay/neuter Clinic for dogs and cats, to be located in existing stone accessory structure on residential site.
Physical Location: 1517 Billmyer Road; Shepherdstown, West Virginia 25443
Zone: Rural

#ZC15-56 JAMES AND GINA HELMS – OWNERS
JAMES HELMS - APPLICANT

Issuance Date: January 20, 2016
Proposed Use: Home Occupation, Level I. Operation of an internet based business from home that deals in the on-line sale of tactical gear. Develop a website to allow customers to make purchases that distributors will fulfill through drop shipment to the customer. Low volume customer visits to residence (1-5 per month) for short durations (approximately 10 minutes). No manufacturing, storage of inventory, or retail sales on premises.
Physical Location: 317 Stratus Drive; Kearneysville, West Virginia 25430
Zone: Rural

PENDING ZONING CERTIFICATES

#ZC15-51 EUGENE AND SARAH ABELOW – OWNERS
EUGENE ABELOW - APPLICANT

Issuance Date: TBD

Proposed Use: Increase number of residential rental units by three – from current
10 units to proposed 13 units.

Physical Location: 1585 Gardners Lane; Shepherdstown, West Virginia 25443

Zone: Rural
