



**Jefferson County**  
**Board of Zoning Appeals**  
**Thursday, February 25, 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. Election of Officers.
2. Approval of the minutes from the December 10, 2015 and January 28, 2016 meetings.
3. Swearing in of members of the public intending to provide testimony.
4. Postponed from the January 28, 2016 meeting. 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: IC; 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 and 01/28/16meetings. (*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.
  - c) Variance request from Section 8.2 to reduce the distance requirement for barns from the 75' to 47'. Applicant: Jessica Howard. Owner: Joann Conte. File: ZV16-01.



Draft Minutes  
Jefferson County Zoning Board of Appeals

1 Meeting Date: December 10, 2015  
2 Meeting Location: Charles Town Library Conference Room  
3 200 East Washington Street, West Virginia  
4  
5 Board members present: Tyler Quynn, Chair; Jeffrey Bannon, Vice Chair; Christy Huddle,  
6 Ted Schiltz, Craig Foster, Alternate, and Jeff Bresee, Alternate  
7 Board members absent: Matt Knott (with notification)  
8 Staff members present: Jennifer M. Brockman, Acting Zoning Administrator/Director of  
9 Planning and Zoning; Lydia Lehman, Assistant Prosecuting Attorney;  
10 Jennilee Hartman, Zoning Clerk

11  
12 All requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.  
13

14 As the Senior Alternate Board Member, Mr. Bresee filled Mr. Knott's vacancy.  
15

16 Ms. Huddle moved to begin the meeting at 2:00 p.m. Mr. Quynn called for a vote, which carried  
17 unanimously.  
18

19 Mr. Quynn explained how the meeting would be conducted to the public.  
20

21 1. Approval of the minutes from the November 12, 2015 meeting.  
22

23 Ms. Huddle moved to approve the minutes with the following corrections:  
24

- 25 a. Page 2, line 38, revise sentence to read as follows, Ms. Huddle ~~seconded the motion to~~  
26 ~~add an amendment~~. Ms. Huddle seconded the motion and asked to add an amendment.
- 27 b. Page 2, line 39, correct ~~Ms.~~ to Mr. Bannon.

28  
29 Mr. Quynn called for a vote, which carried four (4) in support and one (1) abstention (Mr. Bresee  
30 did not attend the meeting).  
31

32 2. Swearing in of members of the public intending to provide testimony.  
33

34 Ms. Hartman swore in members of the public who indicated they would be providing testimony.  
35

36 3. An Appeal of the Acting Zoning Administrator's determination to enforce a 2013 Memorandum,  
37 which restricted shipping containers from being used as residential accessory structures.  
38 Appellant: Brian Billey. Location: Lot 1, William Parker Minor Subdivision, 46 Hinton Ridge Rd,  
39 Middleway. District: 07; Map: 27; Parcel: 4.1; Size: 2.38 ac; Zone: R; File: AP15-03.  
40

41 Mr. Brian Billey, Appellant, was present to address the Board. Mr. Quynn read from a portion of  
42 §8A-8-9, "Powers and Duties of the Board of Zoning Appeals." Ms. Brockman presented her staff  
43 report to the Board that outlined the origination of the 2013 Memorandum (Memo), which had been  
44 draft by the former Zoning Administrator, Steve Barney. Ms. Brockman stated that the Memo  
45 provided clarification between the Departments of Planning, Zoning and Engineering regarding his  
46 determination that shipping containers, conex boxes, etc. were not considered accessory structures  
47 defined in Section 2.2 in the Zoning Ordinance, when requested for as residential properties.  
48 Ms. Brockman explained the purpose of the determination, citing Section 1.1G, which states,  
49 "Encourage an improved appearance of Jefferson County with relationship to the use and

1 development of land and structures.” and the circumstance under which a container could be used  
2 as a storage unit (see Memo). Ms. Huddle asked if the shipping containers could be modified to  
3 give the appearance of a typical storage structure. Ms. Brockman stated she would take that option  
4 into consideration; however, she did not want to change Mr. Barney’s previous interpretation as she  
5 was acting as the interim Zoning Administrator and preferred to keep any past interpretations in  
6 effect to maintain consistency until a permanent Zoning Administrator was on staff.

7  
8 Mr. Billey addressed the Board stating that he had researched the Zoning Ordinance on the  
9 County’s website prior to purchasing the shipping containers and found no regulations restricting  
10 shipping containers. Mr. Billey said he was unaware of the restriction until he received a violation  
11 notice from the County. Mr. Billey argued that if shipping containers were not permitted then this  
12 restriction should have been clearly addressed in the Zoning Ordinance, rather than a Memo stating  
13 they were not allowed. Mr. Billey further contended that the location of his property is in a rural  
14 setting and that it is not unusual for people to use shipping containers as storage units. Mr. Billey  
15 added that shipping containers are frequently converted for a variety of uses. Mr. Bresee had  
16 questions concerning the dimensions of the shipping containers. The Board had questions  
17 concerning the issuance dates of the building permits for the shipping containers.

18  
19 Mr. Quynn opened the public hearing. There was no public comment. Mr. Quynn closed the  
20 public hearing.

- 21  
22 4. Variance from Section 9.7 and Appendix A to reduce the front setback on S. Church St. from  
23 20’ to 7’ for a 12’x15’ breezeway, a 25’ x 28’ attached garage with a 5’ x 25’ attached porch.  
24 Owner: Elena Mestre and Eric Hyman. Location: 110 Fairmont Ave. Shepherdstown.  
25 District: 09; Map: 8B; Parcel: 48; Size: .25 ac; Zone: RG; File: ZV15-29.

26  
27 Ms. Sara Lambert, architect, was present to address the Board. Ms. Brockman presented her  
28 staff report to the Board stating that the garage structure proposed on the property would be  
29 accessed from a rear alley. Ms. Brockman addressed questions concerning the nonconformity  
30 of the existing structure and the surrounding lots. Ms. Huddle expressed an interest in having  
31 the Zoning Ordinance amended to include reduced setbacks for historic structures and/or  
32 historic districts. Ms. Lambert explained the nature of the request, disclosing the structure  
33 would contain a bedroom and bathroom on the second floor. Mr. Quynn opened the public  
34 hearing. There was no public comment. Mr. Quynn closed the public hearing.

35  
36 Ms. Huddle moved to approve the variance from Section 9.7 and Appendix A to reduce the  
37 front setback on S. Church St. from 20’ to 7’ for a 12’ x 15’ connecting building to a 25’ x 28’  
38 garage and with a 5’ x 25’ attached porch for the above reference parcel. Mr. Quynn called for  
39 a vote, which carried unanimously.

40  
41 Mr. Bresee moved to go into deliberative session at 2:52 p.m. Ms. Huddle moved to go back into  
42 public session at 3:20 p.m.

- 1 3. An Appeal of the Acting Zoning Administrator's determination to enforce a 2013 Memorandum,  
2 which restricted shipping containers from being used as residential accessory structures.  
3 Appellant: Brian Billey.

4  
5 Mr. Bresee moved to affirm the Acting Zoning Administrator's determination to restrict  
6 shipping containers from being used as residential accessory structures. Additionally, the  
7 Board suggests the Appellant to file for a variance from the relevant section of the Zoning  
8 Ordinance within 60 days from the date of this determination, during which time the existing  
9 shipping containers may remain on the property. Mr. Quynn called for a vote, which carried  
10 unanimously. Ms. Huddle advised the Staff that the 2013 Memorandum be amended to  
11 include a provision that if a shipping container were modified to have the appearance of a  
12 residential storage structure, then the shipping container would be permitted.

- 13  
14 5. Director's Report.  
15 a) Monthly Zoning Certificate Activity Report

16  
17 Ms. Brockman updated the Board on the following pending text amendments

- 18 1) Campgrounds: PC discussion & action or proposed revisions scheduled for 12/8/15  
19 2) Major/Minor Subdivision & Site Plan Process: CC action scheduled for 12/3/15  
20 3) Mass Events (#ZTA 14-02): PC public hearing scheduled for 12/8/15  
21 4) Article 12 (ZO)- awaiting final language from legal for 12/8/15 PC meeting  
22 5) Pending amendments: Historic Resource Demolition and Adaptive Reuse, LESA/  
23 Conditional Use and Cluster Subdivision Provision Modifications, Parking  
24 Standards, Landscape Standards, Signage

25 Ms. Brockman explained the purpose of the staff reports. The Board requested that  
26 staff continue providing the reports.

- 27  
28 6. Legal Update. None.  
29 a) William Neufeld Pending Litigation CA #14-C-394  
30 b) Shenandoah Air Conditioning & Heating Inc. Pending Litigation CA #15-P-73  
31 c) Whistling Farms Bed & Breakfast Litigation CA # 15-C-209 (possible executive session)

- 32  
33 7) Discussion with possible deliberative session and signing of draft findings/decisions. None.

34  
35 Mr. Knott moved to adjourn the meeting at 3:35 p.m. Mr. Quynn called for a vote, which carried  
36 unanimously.



Draft Minutes  
Jefferson County Zoning Board of Appeals

1 Meeting Date: January 28, 2016  
2 Meeting Location: Charles Town Library Conference Room  
3 200 East Washington Street, West Virginia  
4  
5 Board members present: Tyler Quynn, Chair; Jeffrey Bannon, Vice Chair; Ted Schiltz,  
6 Craig Foster, Alternate, and Jeff Bresee, Alternate  
7 Board members absent: Matt Knott and Christy Huddle (with notification)  
8 Staff members present: Jennifer M. Brockman, Acting Zoning Administrator/Director of  
9 Planning and Zoning; David Simon, County Planner; Jennilee Hartman,  
10 Zoning Clerk

11  
12 All requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.  
13

14 Mr. Bresee and Mr. Foster filled Mr. Knott and Ms. Huddle's vacancy.  
15

16 At 2:00 p.m. Mr. Quynn explained how the meeting would be conducted to the public.  
17

18 Ms. Hartman swore in members of the public who indicated they would be providing testimony  
19

20 Mr. Bannon moved to begin the meeting at 2:04 p.m. Mr. Quynn called for a vote, which carried  
21 unanimously.  
22

23 1. Approval of the minutes from the December 10, 2015 meeting.  
24

25 The minutes were not available for the Board to approve. The Board will take action on the  
26 minutes at the February 25, 2016 meeting.  
27

28 2. Swearing in of members of the public intending to provide testimony.  
29

30 Ms. Hartman swore in members of the public who indicated they would be providing testimony at  
31 the beginning of the meeting.  
32

33 3. Variance request from Section 8.2 to reduce the distance requirement for barns from the  
34 75' to 47'. Applicant: Jessica Howard. Owner: Joann Conte. Location: 148 David Court,  
35 Kearneysville. District: 07; Map: 8; Parcel: 2; Size: 3 ac; Zone: R; File: ZV16-01.  
36

37 Ms. Howard was present to address the Board. Mr. Simon gave a brief synopsis of the request.  
38 Ms. Howard explained the purpose of the request, noting that the property was encumbered by  
39 a septic field, a septic reserve area and a storm water management area. Ms. Howard explained  
40 that the stormwater management area would need to be relocated should the variance be  
41 approved, and that she was working with a surveyor and the County's Engineering Department  
42 to process a minor plat change. Mr. Quynn opened the public hearing.  
43

44 Mr. William Snelson, neighbor, addressed the Board stating he was concerned about the  
45 relocation of the stormwater management area and the potential for fecal runoff from the  
46 proposed barn. Mr. Quynn noted that a barn is a permitted agricultural use and that the  
47 potential runoff from housing animals would occur regardless of the location of the barn.

1 Discussion ensued regarding the dimensions of the property and the location of the stormwater  
2 management area.

3  
4 David and Roberta Miller, neighbors, spoke in opposition to the request stating the structure  
5 would not be in conformance with the subdivision's covenants. Mr. Quynn stated the Board  
6 did not have the authority to enforce covenants. Ms. Miller also wished to note for the record  
7 her objection to a statement made in the variance application, which claimed that the  
8 covenants did not apply to the lot in question. Ms. Miller argued that the covenants did apply  
9 to Lot 8 and stated that she did not want an application to be on file without some sort of  
10 opposition to the statement.

11  
12 Ms. Howard and Patrick Schneble, realtor, rebutted by stating an attorney had researched  
13 the deed and covenant and believed Lot 8 to be exempt from the covenants. Mr. Schneble  
14 explained that the current topography of the property made the location of the stormwater  
15 management area impractical and that they would be relocating it to an area that is lower  
16 than its present location. Ms. Howard addressed the Board's questions regarding the  
17 potential for siting the barn in an alternative location. Mr. Schneble stated that the portion  
18 of the structure that would be nearest to the property line would not house animals and  
19 would be in conformance with the required setbacks for accessory structures and noted that  
20 the attached stables located towards the rear of the structure may likely meet the 75'  
21 distance requirement. Mr. Schneble confirmed that before any construction takes place the  
22 relocation of the stormwater management area will have to be approved by the County.

- 23  
24 4. Variance request from Section 4.11A.2, 4.11E and Appendix B to remove the side and rear  
25 landscape/screening buffer for a private commercial warehouse/garage. Owner: Daniel  
26 McGinn. Location: Burr Business Park, Lot 11, Northeast corner of Clendening Dr. & James  
27 Burr Blvd., Kearneysville, WV. District: 02; Map: 1; Parcel: 111; Size: 1.75 ac; Zone: IC;  
28 File: ZV16-02.

29  
30 The applicant was not available to present the request. Mr. Foster moved to postpone the  
31 request until the February 25, 2016 meeting. Mr. Quynn called for a vote, which carried  
32 unanimously.

33  
34 Mr. Bannon moved to go into deliberative session at 2:37 p.m.. Mr. Schiltz moved to go back into  
35 public session at 2:54 p.m..

- 36  
37 3. Variance request from Section 8.2 to reduce the distance requirement for barns from the  
38 75' to 47'. Applicant: Jessica Howard. Owner: Joann Conte.

39  
40 Mr. Foster moved to approve the aforementioned variance with the condition that the storm-  
41 water management area be relocated. Mr. Bannon offered an amendment to include the  
42 condition that the approval of the variance is contingent upon the property being purchased  
43 by the Howards (the applicant). Mr. Quynn called for a vote on the amendment, which  
44 carried unanimously. Mr. Quynn called for a vote on the original motion, including the  
45 amendment, which carried unanimously.

46

- 1 4. Variance request from Section 4.11A.2, 4.11E and Appendix B to remove the side and rear  
2 landscape/screening buffer for a private commercial warehouse/garage. Owner: Daniel McGinn.  
3  
4 Mr. Simon stated he spoke with the Consultant and as they were unable to attend the  
5 meeting, requested that the Item be postponed until the next regularly scheduled meeting.  
6 The Board agreed to postponed the Item until the February 25, 2016 meeting.  
7  
8 5. Director's Report.  
9 a) Monthly Zoning Certificate Activity Report  
10  
11 Ms. Brockman provided the Board with an update on pending text amendments:  
12 1) Campgrounds: CC held public hearing 01/21/16  
13 2) Major/Minor Subdivision & Site Plan Process: Approved by CC 12/17/15,  
14 effective 1/1/16  
15 3) Mass Events (#ZTA 14-02): PC recommended to the CC as revised at their  
16 1/12/16 mtg; 2/4/16 CC mtg  
17 4) Article 12 (ZO): PC recommended to the CC at their 1/12/16 mtg; 2/4/16 CC mtg  
18 5) Pending amendments: LESA/Conditional Use and Cluster Subdivision Provision  
19 Modifications – top priority for 2016, Historic Resource Demolition and Adaptive  
20 Reuse, Parking Standards, Landscape Standards, Signage  
21  
22 6. Legal Update. None.  
23 a) William Neufeld Pending Litigation CA #14-C-394  
24 b) Shenandoah Air Conditioning & Heating Inc. Pending Litigation CA #15-P-73  
25 c) Whistling Farms Bed & Breakfast Litigation CA # 15-C-209 (possible executive session)  
26  
27 7) Discussion with possible deliberative session and signing of draft findings/decisions. None.  
28 Meeting Date: September 24, 2015 and October 22, 2015 (*see agenda for full item description*)  
29  
30 Mr. Schiltz moved to adjourn the meeting at 3:05 p.m. Mr. Quynn called for a vote, which carried  
31 unanimously.







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

**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

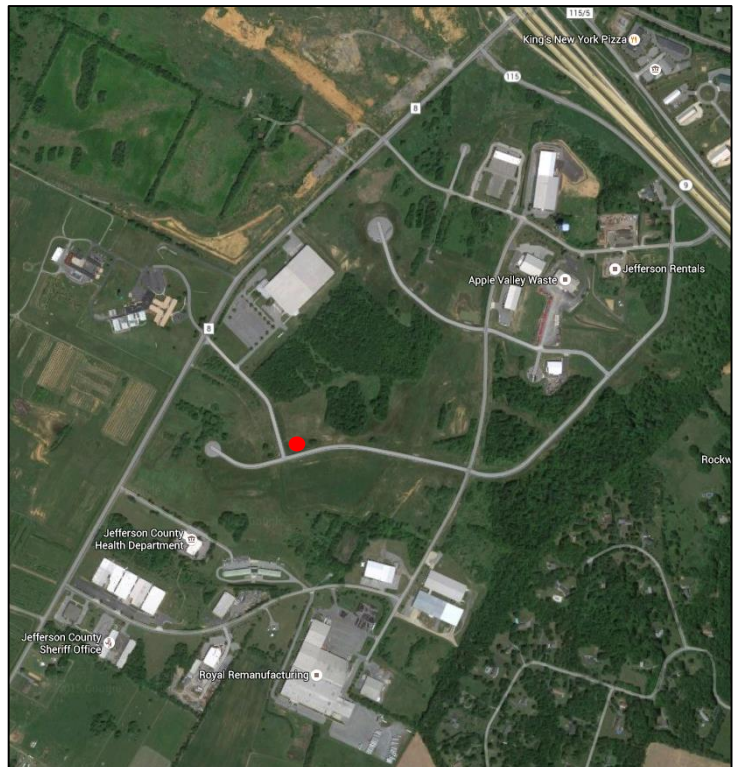
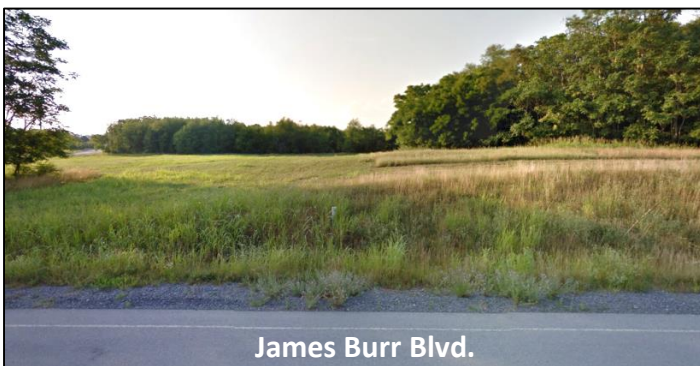
The subject parcel is located within the Burr Business Park, at the corner of Clendening Dr. and James Burr Blvd, which is close proximity to WV Route 9. The location’s proximity to Route 9 is a feature of the Business Park meant to attract businesses that need convenient access to local and regional 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.

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

**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  
January 28, 2016

**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  
 January 28, 2016

**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.<sup>27</sup>

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

**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.<sup>7, 23, 27, 28</sup>  
 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:<sup>27, 28</sup>
  - 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.<sup>7, 23, and 26</sup>
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 TABLE<sup>27</sup>**

Zoning District	Development Type <sup>®</sup>	Min Lot Area (MLA)	Min Lot Width	Max Building Height*	Imper-vious Surface Limit	Building Setbacks			Parking/Drive Aisle Setbacks <sup>†</sup>			Distance if Sec. 4.6 applies	Buffers (Sec. 4.11) (Screened / Unscreened)						
						Front	Side	Rear	Front	Side	Rear		a Residential district, or any lot with a residence, school, church, or institution of human care	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	Front, Side, Rear	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) [ ]

RECEIVED

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.

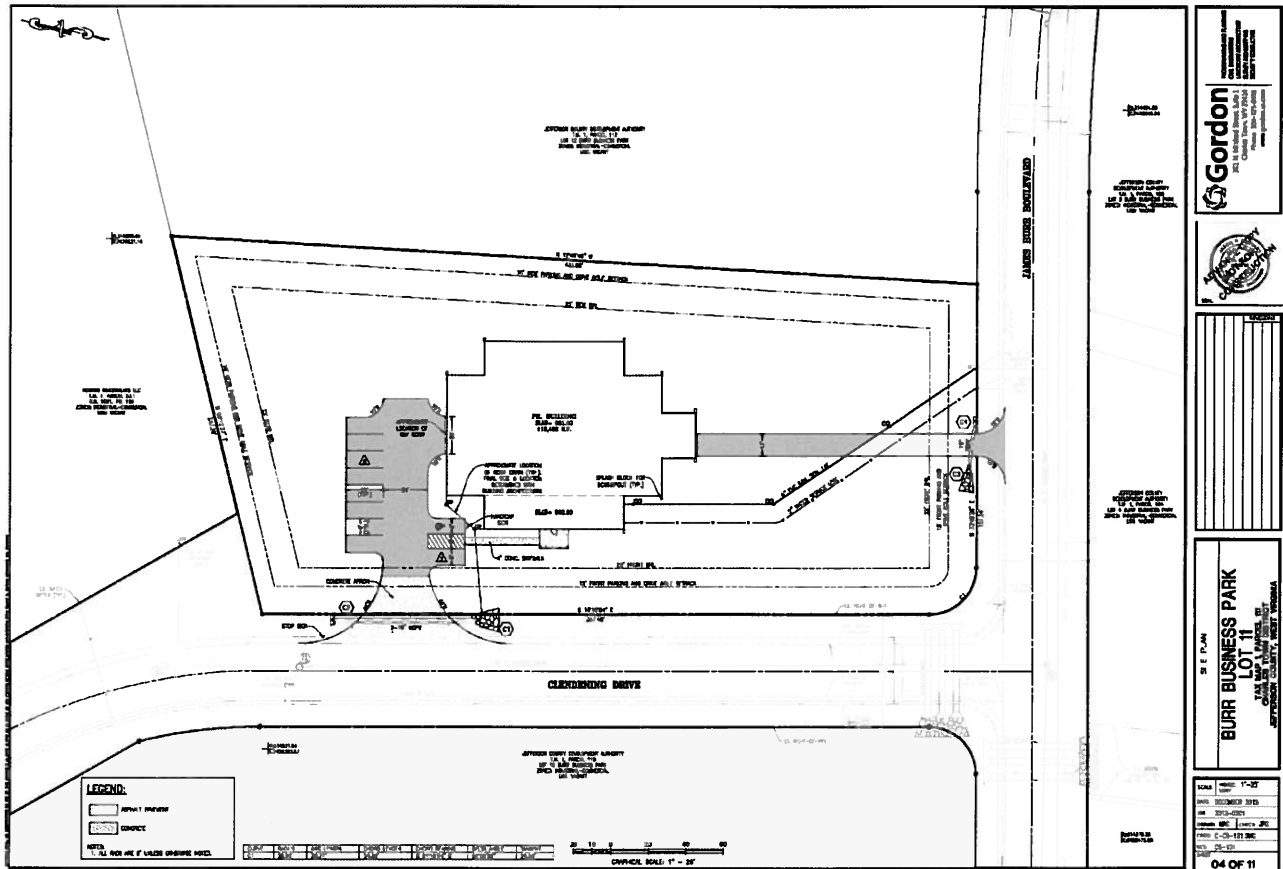


**How will granting this variance eliminate an unnecessary hardship and permit a reasonable use of the land?**

- 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.









# Jefferson County, West Virginia

## Departments of Planning and Zoning

116 East Washington Street, 2<sup>nd</sup> Floor

Charles Town, WV 25414

Email: [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org)

Phone: (304) 728-3228

Email: [zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org)

Fax: (304) 728-8126

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## Director's Report Board of Zoning Appeals Meeting February 25, 2016

### 1) Pending Zoning Ordinance and Subdivision Regulation Amendments

#### a) Campgrounds:

- i. County Commission action scheduled for 2/18/16

#### b) Article 12 Zoning Ordinance:

- i. County Commission Public Hearing scheduled for 2/18/16

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

- i. County Commission Public Hearing tentatively set for 3/17/16 7 pm

#### d) Pending amendments:

- i. LESA/Conditional Use and Cluster Subdivision Provision Modifications
  - Staff draft to PC for workshop discussion at regular 3/8/16 PC meeting
- ii. Historic Resource Demolition and Adaptive Reuse
  - Staff anticipates a meeting with the HLC to discuss their efforts on the draft ordinance in Spring 2016
- iii. Parking Standards
- iv. Landscape Standards
- v. Signage

### 2) Upcoming BZA meeting

- a) Next Regular Meeting: **March 24, 2016**

# JEFFERSON COUNTY, WEST VIRGINIA

## Department of Zoning

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

Email: [zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org)

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

### MEMORANDUM

TO: Board of Zoning Appeals Members

CC: Engineering & Building Permits Departments

FROM: Acting Zoning Administrator, Jennifer M. Brockman

DATE: February 25, 2016

SUBJECT: February Monthly Report of Department Activities

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### ISSUED ZONING CERTIFICATES

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#ZC16-02 LESLIE G. CROMER – OWNER

*Issuance Date:* February 03, 2016  
*Proposed Use:* Convert Office Trailer to Farm Caretaker residential unit.  
*Physical Location:* 4937 Shepherdstown Pike; Shenandoah Junction, WV 25442  
*Zone:* Rural

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#ZC16-01 DAVID BARRY WADDELL – OWNER

*Issuance Date:* February 08, 2016  
*Proposed Use:* Update Zoning Certificate #ZC11-29 / Issued: December 13, 2011. Classic Automobile Storage and Dealership to include future expansion of storage with additional structure.  
*Physical Location:* 118 Amanda Court; Harpers Ferry, West Virginia 25425  
*Zone:* Residential-Light Industrial-Commercial

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### PENDING ZONING CERTIFICATES

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#ZC15-51 EUGENE AND SARAH ABELOW – OWNER/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

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