



Jefferson County
Board of Zoning Appeals
Thursday, April 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 February 25 and March 24, 2016 meetings.
2. Swearing in of members of the public intending to provide testimony.
3. Variance from Sections 4.11A.2, 4.11E and Appendix B to eliminate the landscaping, parking, drive aisle and building setback requirements for the interior lot line between Lots 2 & 3; and, to reduce the landscape buffer along the side of Lot 3 and the rear of Lots 2 and 3. Owner: Decker Holding, LLC. Applicant: Kubic Enterprises. Location: Lots 2 and 3, Burr Business Park, James Burr Blvd. District: 02; Map: 1; Parcels: 102 & 103; Total Size: 9.15 ac; Zone: IC; File: ZV16-07.
4. Variance from Section 5.7B to reduce the rear setback from 50' to 35' for the construction of 40' x 60' garage. Owner : Christopher & Victoria Dudash. Location: 444 Cattail Run Rd., Charles Town. District: 02; Map: 19; Parcel: 17.10; Size: 3 ac; Zone: R; File: ZV16-08.
5. Variance from Section 5.4B to reduce the rear setback from 20' to 10' to construct a deck. Owner : Yin Xu. Applicant: Brick Street Construction. Location: Beallair Subdivision, 33 Lousia Beall Ln., Charles Town. District: 04; Map: 10A; Parcel: 2; Size: .217 ac; Zone: RG; File: ZV16-09.
6. Director's Report.
 - a) Monthly Zoning Certificate Activity Report
7. Legal Update. Possible executive session on the follow pending lawsuits:
 - a) Whistling Farms Bed & Breakfast Litigation CA # 15-C-209
 - b) William Neufeld Pending Litigation CA #14-C-394
 - c) Shenandoah Air Conditioning & Heating Inc. Pending Litigation CA #15-P-73
8. Discussion with possible deliberative session and signing of draft findings/decisions.

Meeting Date: 12/10/15, 01/28/16 and 02/25/16 meetings. (*see agenda for full item description*)

 - a) Postponed from the 01/28/16 meeting. Variance request from Sec. 4.11A.2, 4.11E and App. B to remove the side and rear landscape/screening buffer for a private, commercial warehouse/garage. Owner: Daniel McGinn.

Minutes
Jefferson County Zoning Board of Appeals

1 Meeting Date: February 25, 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; Matt Knott, Ted Schiltz
6 Christy Huddle, Craig Foster, Alternate, and Jeff Bresee, Alternate

7 Board members absent: None

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

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

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

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

16 1. Election of Officers.

17 Mr. Quynn opened the floor for discussion and/or motion to fill the position of Chair.

18 Mr. Bannon moved to elect Mr. Quynn as Chair. Mr. Schiltz seconded the motion.

19 Mr. Quynn called for a vote, which carried unanimously.

20 Mr. Quynn opened the floor for discussion and/or motion to fill the position of Vice Chair.

21 Mr. Quynn moved to elect Mr. Bannon as Vice Chair. Ms. Huddle seconded the motion.

22 Mr. Quynn called for a vote, which carried unanimously.

23 2. Approval of the minutes from the December 10, 2015 and January 28, 2016 meetings.

24 The following corrections were requested to the December 10, 2015 minutes:

25 a) Line 47, remove the word *as*.

26 b) Page 3, line 10, replace *advised* with *suggested*.

27 c) Line 47, remove the word *as*.

28 d) Page 3, line 35, replace ~~Mr. Knott~~ to *Ms. Huddle*.

29 Ms. Huddle moved to approve the December 10, 2015 minutes as amended. Mr. Quynn called
30 for a vote, which carried four (4) in support and one (1) abstention (Mr. Knott was absent from
31 this meeting).

32 Mr. Bannon moved to approve the January 28, 2016 minutes without corrections. Mr. Quynn
33 called for a vote, which carried three (3) for and 2 abstentions (Ms. Huddle and Mr. Knott
34 were not present at the January 28, 2016 meeting).

35 3. Swearing in of members of the public intending to provide testimony.

36 Ms. Hartman swore in members of the public who indicated they would be providing testimony
37 at the beginning of the meeting.

38

Minutes

Jefferson County Zoning Board of Appeals

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- 1 4. Postponed from the January 28, 2016 meeting. Variance from Section 4.11A.2, 4.11E, and
2 Appendix B to remove the side and rear landscape/screening buffer for a private, commercial
3 warehouse/garage. Owner: Daniel McGinn. Location: Burr Business Park, Lot 11, NE corner
4 of Clendening Dr. & James Burr Blvd., Kearneysville, WV. District: 02; Map: 1; Parcel: 111;
5 Size: 1.75 ac; Zone: IC; File: ZV16-02.
- 6 Mr. Jason Gerhart, consultant with Gordon, LLC, was present to address the Board.
7 Ms. Brockman presented her staff report to the Board. The Board asked Ms. Brockman
8 questions regarding the application. Mr. Gerhart briefly explained the nature of the request.
9 Mr. Quynn called for public comment. There were no members of the public to offer comment.
10 Mr. Quynn closed the public hearing.
- 11 Mr. Bannon moved to go into deliberative session at 2:37 p.m.. Mr. Quynn called for a vote, which
12 carried unanimously.
- 13 Ms. Huddle moved to go back into public session at 3:00 p.m. Mr. Quynn called for a vote, which
14 carried unanimously.
- 15 4. Postponed from the January 28, 2016 meeting. Variance from Section 4.11A.2, 4.11E and
16 Appendix B to remove the side and rear landscape/screening buffer for a private commercial
17 warehouse/garage. Owner: Daniel McGinn.
- 18 Mr. Bannon moved approve the variance request with the condition that the variance applies only
19 to the approved site plan for Lot 11 and that the applicant retain the existing vegetation along the
20 rear lot line. Mr. Quynn called for a vote, which carried unanimously.
- 21 5. Director's Report.
- 22 a) Monthly Zoning Certificate Activity Report. Ms. Brockman provided the Board with
23 an update on pending text amendments:
- 24 1) Campgrounds: CC action scheduled for 02/18/16.
25 2) Zoning Ordinance, Article 12: CC Public Hearing scheduled for 02/18/16.
26 3) Mass Events (#ZTA14-02): CC Public Hearing tentatively set for 03/17/16 7:00 pm.
27 4) Draft LESA/CUP & Cluster Subdivision Amendments scheduled for 03/8/16
28 PC workshop discussion.
29 5) Historic Resource Demolition and Adaptive Reuse: Anticipated meeting in
30 Spring 2016 with HLC to discuss draft text amendments.
31 6) Future Amendments: Parking Standards, Landscape Standards, Signage.
- 32 6. Legal Update. None.
- 33 a) William Neufeld Pending Litigation CA #14-C-394
34 b) Shenandoah Air Conditioning & Heating Inc. Pending Litigation CA #15-P-73
35 c) Whistling Farms Bed & Breakfast Litigation CA # 15-C-209 (possible executive session)
- 36 7) Discussion with possible deliberative session and signing of draft findings/decisions. None.
- 37 Mr. Schiltz moved to adjourn the meeting at 3:05 p.m. Mr. Quynn called for a vote, which carried
38 unanimously.

Minutes
Jefferson County Zoning Board of Appeals

1 Meeting Date: March 24, 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, Matt Knott
6 and Christy Huddle, Craig Foster, Alternate and Jeff Bresee, Alternate.
7

8 Staff members present: Jennifer M. Brockman, Acting Zoning Administrator/Director of Planning and
9 Zoning; Lydia Lehman, Assistant Prosecuting Attorney; Rhonda Greenholtz,
10 Planning Clerk.
11

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

13 Mr. Quynn explained to how the meeting will be conducted to the public. Ms. Lydia Lehman
14 requested that agenda Items 5 and 6 be heard before Items 3 and 4 as she needs to excuse herself
15 from the meeting at 3:00 PM. Ms. Greenholtz swore in members of the public who indicated they
16 would be providing testimony

17 1. Approval of the minutes from the February 24, 2016 meeting.

18 The minutes were not available for the Board to approve. The Board will take action on the
19 minutes at the April 28, 2016 meeting.

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

21 Ms. Greenholtz swore in members of the public who indicated they would be providing
22 testimony at the beginning of the meeting.

23 Mr. Quynn noted the representative and or applicant for Items 5 and 6 was not in attendance.

24 Mr. Quynn requested the representative be contacted.

25 Ms. Huddle motioned to commence the meeting at 2:04 PM. Mr. Quynn called for a vote, which
26 carried unanimously.

27 Mr. Quynn called for a 5 minute recess at 2:05 PM while Ms. Greenholtz contacted the consultant.

28 Ms. Huddle made a motion to call the meeting into session at 2:08 PM. Mr. Quynn called for a vote,
29 which carried unanimously.

30 As the consultant was not present, the agenda order was heard in the original order.

31 Items 3 and 4 were addressed simultaneously.

32 3. Variance request by United Methodist Church from Section 10.4C to reduce the required setback
33 of 25' to 0' to allow for the replacement of the existing freestanding sign. File: ZV16-03.

34 4. Variance request by United Methodist Church from the following:

35 a) Section 4.10A to waive the requirement of a site plan for the installation of a 1000 square
36 foot gravel parking lot. File: ZV16-04

37 b) Appendix B to reduce the front parking setback from 15' to 0'. File: ZV16-04

38 Owner: United Methodist Church Trustees. Location: 289 Potomac Ave. Shenandoah Junction.
39 District: 02; Map: 1A; Parcel: 62; Size: .21 ac; Zone: V.

40 Mr. Schiltz recused himself from this Item citing that he is a member of this church. Alternate
41 Mr. Craig Foster filled Mr. Schiltz's vacancy for this agenda item.

1 Ms. Faye Thompson, President of the Trustees for Williams United Methodist Church addressed
2 the Board.

3 Ms. Brockman presented the staff report for ZV16-03 stating that the existing sign is a non-
4 conforming use. Ms. Brockman explained that the existing sign sits parallel to the Church
5 and the proposed sign will be perpendicular to the Church. Ms. Brockman noted during the
6 preparation of the staff report for ZV16-03, staff discovered that the grass area located in
7 front of the church had been converted to a gravel parking lot without processing through
8 the Department thus prompting the second variance request (ZV16-04).

9 Ms. Brockman explained that the gravel parking area overlaps into the West Virginia
10 Department of Highway's right-of-way (ROW) and that staff had advised the applicant to
11 contact the WVDOH regarding this issue. Ms. Brockman noted that as the graveled area
12 extends to the furthest projection of the front and side property lines; thus necessitating a
13 reduction of the required parking setbacks to 0'.

14 Staff's suggested conditions of approval for the requests are as follows:

15 a) The sign setback variance applies only to this particular free standing sign utilizing the
16 same base as the existing nonconforming sign. (ZV16-03)

17 b) The variance of a site plan waiver or parking area setbacks apply only as already
18 constructed. If any future expansion is proposed to the parking area a Site Plan must
19 be processed through the Departments of Planning and Zoning. (ZV16-04)

20 Ms. Thompson explained the need for the new sign was due to the age of the current sign and
21 that the existing sign is 4'11" tall and the mount is 2' ½" wide. Ms. Thompson explained the
22 sign would utilize the existing foundation and possibly extend six feet from its current location.

23 Mr. Ronnie Henderson and Ms. Thompson presented pictures of the old sign and the proposed
24 sign to the Board Members using an iPad and stated they would submit the pictures to the
25 Zoning Department.

26 The Board expressed concern regarding the orientation of the proposed sign potentially
27 creating sight distance issues for oncoming traffic. Ms. Brockman explained that while the
28 WVDOH ROW was nearly adjacent to the sign, the actual road surface was at least 13 feet
29 from the base of the sign. Mr. Knott questioned if the sign is placed perpendicular from the
30 Church would it be in the WVDOH ROW. Mr. Henderson stated that the base of the sign would
31 be approximately 18" from the existing brick base. Ms. Brockman explained that if the variance
32 was granted the new orientation of the sign should remain outside of the ROW. Ms. Huddle
33 stated that the WVDOH would address any encroachment issues should the need arise.

34 Ms. Greenholtz swore in members of the public who indicated they would be providing testimony at
35 the meeting but who were not present at the initial swearing in.

36 Ms. Brockman suggested hearing both Items 5 and 6 simultaneously as the requests were related to
37 the overall concept proposed by the applicant. Note: the file numbers for these items were
38 inadvertently switched on the agenda.

39 5. Variance from Section 4.11A.1 and Appendix B to reduce the side and rear setback from
40 50' to 25'; and, to eliminate the required residential landscape buffer to allow for the
41 construction of a proposed 37,500 square foot self-storage facility. Owner: CTSS, LLC.

- 1 Location: 257 Keyes Ferry Rd., Charles Town, District: 02; Map: 9; Parcel: 8.3; Size: 3.2 ac;
2 Zone: RLIC; File: ZV16-06. (Correct File Number ZV16-05)
- 3 6. Variance from Appendix B to reduce the rear setback from 50' to 25' for the existing bowling
4 alley to accommodate a proposed lot line adjustment. Owner: LSCG Fund LLC. Applicant:
5 CTSS, LLC. Location: Portion of 107 Keyes Ferry Rd., Charles Town, District: 02; Map: 9;
6 Parcel: 8.1; Size: 4.59 ac; Zone: RLIC; File: ZV16-05. (Correct File Number ZV16-06)
- 7 Ms. Kristen Stolipher with Gordon represented the applicant. Mr. John Reisenweber, Director
8 of the Jefferson County Development Authority (JCDA) was also present to speak in support of
9 the following variance requests.
- 10 Mr. Schiltz resumed his position as Board member.
- 11 Ms. Brockman presented the staff reports for ZV16-05 and ZV16-06 to the Board explaining
12 both the current and proposed uses for the adjacent properties. Ms. Brockman noted that as the
13 parcel to the east of the proposed construction is restricted to a single family residential dwelling
14 unit and therefore the larger setback of 50' and a medium landscape buffer detail would be
15 required. Ms. Brockman also explained that the same adjacent parcel contains a 55' wide storm
16 drainage easement located along the entire rear property line (shown on page 5 of the staff
17 report). Ms. Brockman stated that the variances were required due to the size of the building and
18 the proposed division of the lot.
- 19 Ms. Stolipher stated that if the use was a commercial use adjacent to an industrial use, reducing
20 the setback from 50' to 25' would be acceptable. Ms. Stolipher noted that due to the steep
21 topography towards the rear of the proposed addition it would be difficult to plant any
22 landscaping. Ms. Stolipher added that the area within the stormwater management facility
23 contains dense vegetation.
- 24 Mr. Quynn opened for public comment. Mr. Risenweber expressed support of the requests
25 on behalf of the JCDA. Mr. Quynn closed the public hearing.
- 26 The Board determined that a deliberative session was unnecessary.
- 27 3. Variance request by United Methodist Church from Section 10.4C to reduce the required setback
28 of 25' to 0' to allow for the replacement of the existing freestanding sign. File: ZV16-03.
- 29 4. Variance request by United Methodist Church from the following:
- 30 a) Section 4.10A to waive the requirement of a site plan for the installation of a 1000 square
31 foot gravel parking lot. File: ZV16-04
- 32 b) Appendix B to reduce the front parking setback from 15' to 0'. File: ZV16-04
- 33 Mr. Foster moved to approve the request for Item 3 (ZV16-03) to reduce the required 25'
34 setback to 0' for the proposed sign. Ms. Huddle moved to make an amendment to the motion
35 that the sign setback apply only to the requested free standing sign utilizing the same base as
36 the existing nonconforming sign. Mr. Quynn called for a vote on the amendment, which
37 carried unanimously. Mr. Foster reiterated his original motion and included the approved
38 amendment. Mr. Quynn called for a vote on the, which carried unanimously.
- 39 Ms. Huddle moved to approve Item 4 (ZV16-04) to reduce the front parking setback from 15'
40 to 0'; the side parking from 4' to 0'; and a waiver of the Site Plan with the condition that the

- 1 setback variance applies only to the gravel parking area as constructed; and, any expansion of
2 the parking area will require an application for a Site Plan. Mr. Quynn called for a vote, which
3 carried unanimously.
- 4 5. Variance from Section 4.11A.1 and Appendix B to reduce the side and rear setback from
5 50' to 25'; and, to eliminate the required residential landscape buffer to allow for the
6 construction of a proposed 37,500 square foot self-storage facility. Owner: CTSS, LLC.
7 Location: 257 Keyes Ferry Rd., Charles Town, District: 02; Map: 9; Parcel: 8.3; Size: 3.2 ac;
8 Zone: RLIC; File: ZV16-06. (Correct File Number ZV16-05)
- 9 Mr. Knott moved to approve the variance request to reduce the side and rear setbacks from
10 50' to 25' and to eliminate the required residential landscape buffer to allow for the construction
11 of a 37,500 sq. ft. self-storage facility conditioned upon preserving the existing vegetation and
12 the required 10' setback along the southern property line when possible. Ms. Huddle seconded
13 the motion. Mr. Quynn called for a vote, which carried unanimously.
- 14 6. Variance from Appendix B to reduce the rear setback from 50' to 25' for the existing bowling
15 alley to accommodate a proposed lot line adjustment. Owner: LSCG Fund LLC. Applicant:
16 CTSS, LLC. Location: Portion of 107 Keyes Ferry Rd., Charles Town, District: 02; Map: 9;
17 Parcel: 8.1; Size: 4.59 ac; Zone: RLIC; File: ZV16-05. (Correct File Number ZV16-06)
- 18 Mr. Quynn made a motion to reduce the rear set back from 50' to 25' for the existing bowling
19 alley to accommodate a proposed lot line adjustment. Ms. Huddle moved to amend the
20 motion that the approval be contingent upon the approval of the proposed lot line adjustment.
21 Mr. Quynn called for a vote on the amendment, which carried unanimously. Mr. Quynn
22 called for a vote on the amended motion, which carried unanimously.
- 23 7. Legal Update. Due to Ms. Lehman's necessary early departure the Board allowed her to address
24 this Item prior to the Director's Report. Ms. Lehman noted there were no updates to present.
- 25 a) Whistling Farms Bed & Breakfast Litigation CA # 15-C-209 (possible executive session).
26 None.
- 27 6. Director's Report. Ms. Brockman provided the Board with an update on the following:
- 28 a) County Commission budget discussion.
29 b) LESA/Conditional Use and Cluster Subdivision Provision Modifications.
30 c) Status updates on additional pending Zoning Ordinance and Subdivision Regulation
31 Amendments.
32 d) The next regular BZA meeting is scheduled for April 28, 2016.
- 33 Mr. Schiltz noted that he would not be in attendance at the April 28, 2016 meeting.
- 34 7. Legal Update. None.
- 35 a) Whistling Farms Bed & Breakfast Litigation CA # 15-C-209 (possible executive session)
- 36 8. Discussion with possible deliberative session and signing of draft findings/decisions. Meeting
37 Date: 12/10/15, 01/28/16 and 02/25/16 meetings. (*see agenda for full item description*)

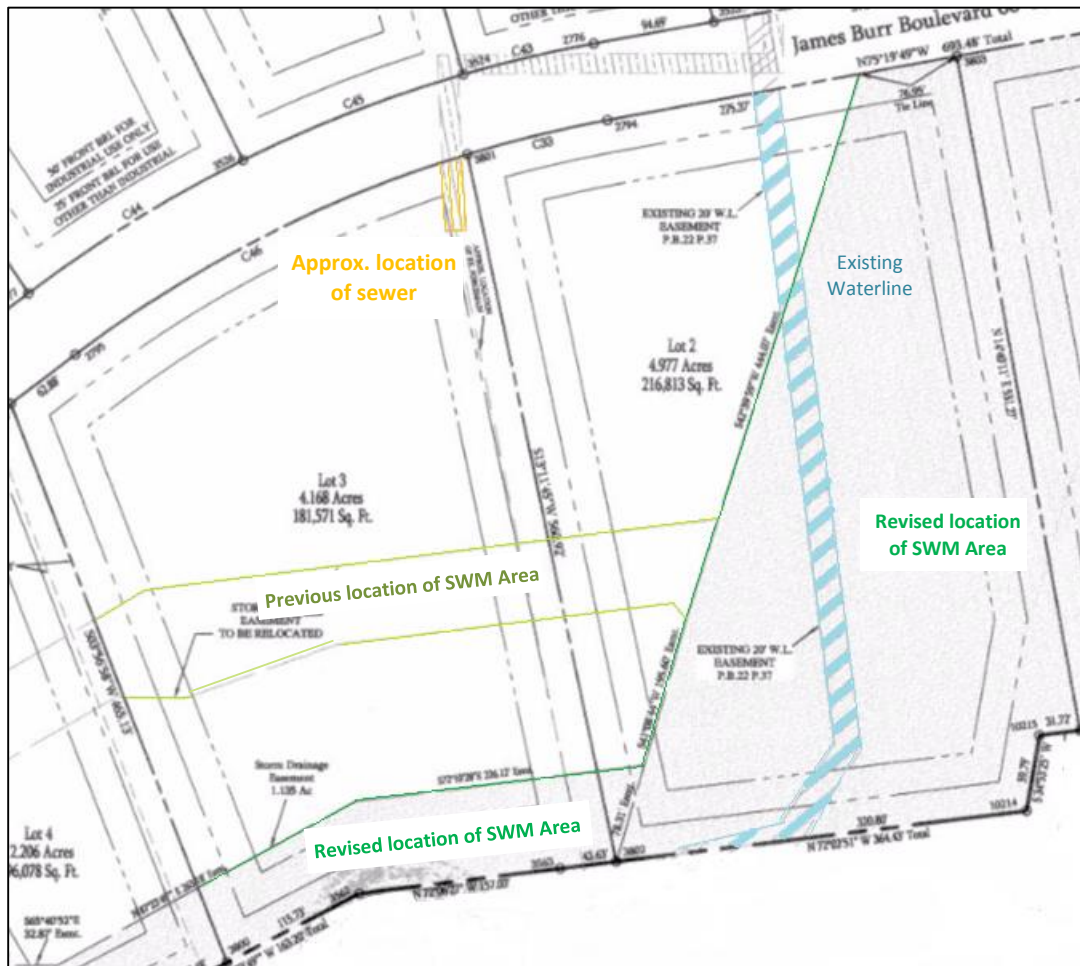
- 1 a) An Appeal of the Acting Zoning Administrator's determination to enforce a 2013 Memo,
2 which restricted shipping containers from being used as residential accessory structures.
3 Appellant: Brian Billey. File: AP15-03.
- 4 b) Variance from Sec. 9.7 and App. A to reduce the front setback on S. Church St. from
5 20' to 7' for a 12' x 15' breezeway, a 25' x 28' attached garage with a 5' x 25' attached
6 porch. Owner: Elena Mestre and Eric Hyman. File: ZV15-29.
- 7 c) Variance request from Sec. 8.2 to reduce the distance requirement for barns from the
8 75' to 47'. Applicant: Jessica Howard. Owner: Joann Conte. File: ZV16-01.
- 9 d) Postponed from the 01/28/16 meeting. Variance request from Sec. 4.11A.2, 4.11E and
10 App. B to remove the side and rear landscape/screening buffer for a private, commercial
11 warehouse/garage. Owner: Daniel McGinn.
- 12 Mr. Risenweber had questions regarding the status of the McGinn request. Ms.
13 Brockman stated the request had been approved and while the February 25, 2016
14 minutes had not yet been approved that Mr. McGinn could commence with his
15 project. Ms. Brockman that she would work to ensure that the minutes would be
16 completed on time in the future. Mr. Risenweber continued to speak with the Board
17 regarding Mr. McGinn's business ventures in the County.
- 18 Mr. Quynn instructed Staff to stop recording at 3:05 p.m.

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

Apple Valley Waste Variance Request (#ZV16-07)

2. Previous Case History

The subject property is located in the Burr Business 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 minor plat change to revise the location of the stormwater management area was recorded on May 6, 2008. On April 12, 2016 the Planning Commission approved a waiver to allow for shallow rooted bushes and plantings within the utility easements and fences that straddle the utility lines. This concept was also approved by the Jefferson County Public Sewer District (JCPSD) and Jefferson Utilities.



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.*

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Apple Valley Waste Variance Request (#ZV16-07)

4. Staff Evaluation of Request

a. Summary of Request and Purpose of Ordinance Requirements

Apple Valley Waste is presently located on Lot 21 & Lot 26 (Phase 1, Burr Industrial Park and Burr Business Park respectively) and is currently processing a site plan to relocate to Lots 2 and 3 of Burr Business Park. The proposed development includes an office/garage building with public and customer parking area on Lot 3 and a large gravel parking area/outdoor storage for the waste management trucks and dumpster storage crossing Lots 2 and 3. A chain link fence and limited landscaping is proposed around the gravel parking/outdoor storage area. Lot 2 is encumbered by a large stormwater management easement and is bisected by a 20' waterline easement. There is also a 15' wide sanitary sewer easement along the Lot 2 and 3 property line.

There are two sets of variance requests included in this application and each should be considered separately.

- i. The applicant intends to relocate their existing business onto two lots without benefit of merging the two properties. When adjoining properties are developed in this manner, it is necessary to vary all landscaping, parking, drive aisle and building setback requirements for what will become an interior lot line in order for the proposed development to be unified across the property line. Therefore, a variance from Sections 4.11A.2 and 4.11E and Appendix B, which includes the landscaping, parking, drive aisle and building setback requirements, is the first variance that is being requested.

Appendix B establishes minimum landscaping requirements and setbacks for buildings, parking areas, and drive aisles associated with commercial developments in the Industrial-Commercial Zoning District. Section 4.11 establishes landscape buffers between commercial uses. The purpose of this requirement is to provide for a separation of different uses, their parking areas and drive aisles so that they do not have a negative effect of the adjoining structures or land uses. Typically, even in a business or industrial park, each lot is generally developed independently of each other. In this case, because the applicant desires to retain the two lots as separate properties with a unified development crossing the property lines, these requirements would interfere with the proposed site plan configuration.

In similar cases, in 2013 and 2014, the Board approved variances to waive all or some of the building, parking and drive aisle setbacks, and landscape buffers for internal lot lines for the Twin Oaks Subdivision (#ZV12-35); for 340 Business Park (#ZV12-34); for Burr Industrial Park, Lot 71 (#ZV13-10); for Burr Industrial Park, Phase I: Lots 40 & 41 (#ZV13-37); and for Burr Park, LLC, Lot 34 (#ZV13-38). (NOTE: Prior approvals by the Board do not necessarily indicate precedent because of the unique circumstances of each case.)

- ii. The second variance being requested is a variance from Appendix B, to reduce the landscape buffer along the side of Lot 2 and the rear of Lots 2 and 3.

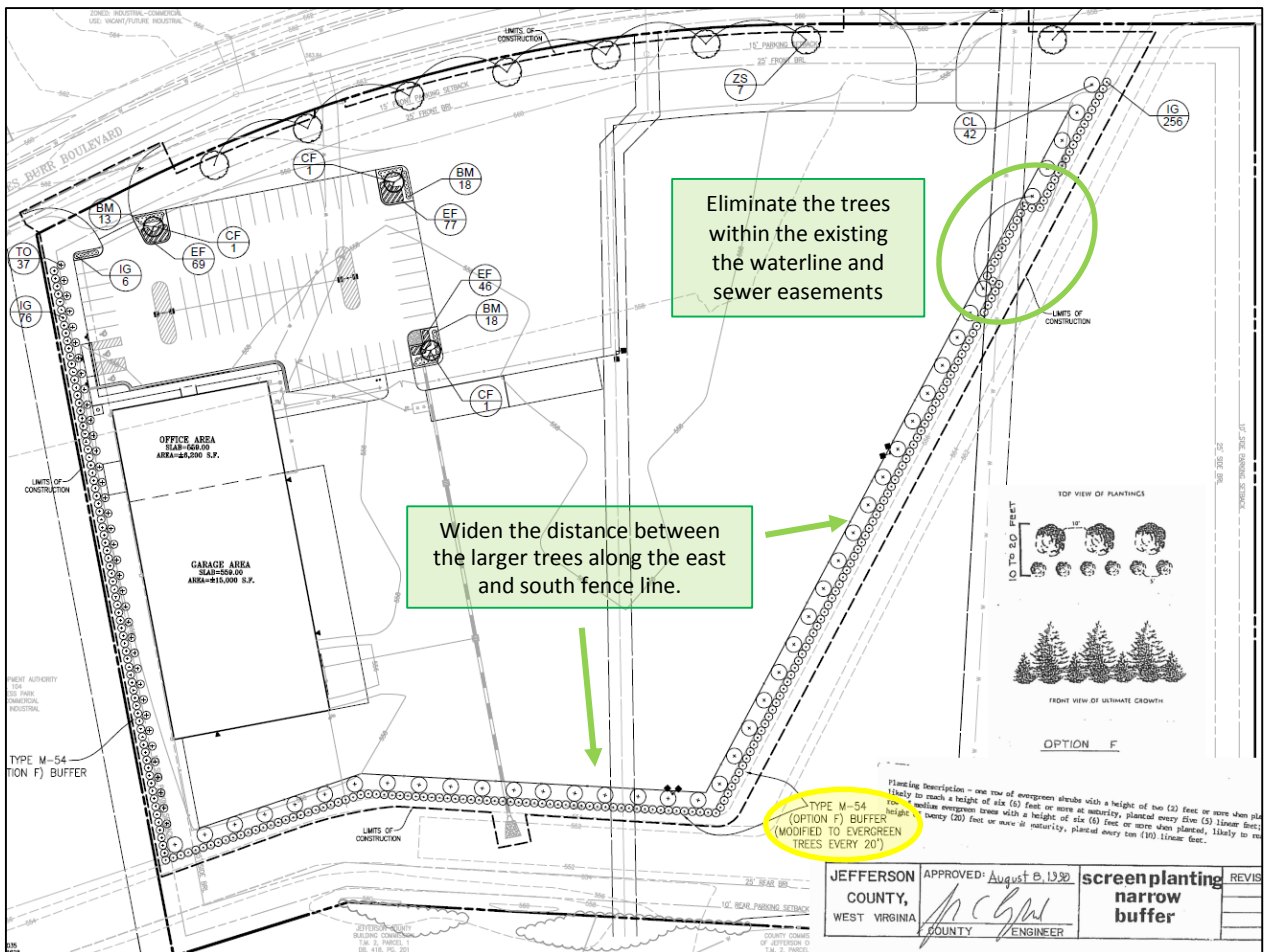
Appendix B and Section 4.11 of the Zoning Ordinance requires a 10' landscape buffer between commercial developments. Within this buffer, either an opaque fence or a dense screen of plantings per the County's standards details is required. There is a provision to reduce the amount of planting required where no outdoor storage is being proposed. In this case, the large gravel lot will be used to house all the waste collection trucks as well as large dumpsters that are used to trash collection. Therefore, this property would be required to comply with one of the standard details.

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Apple Valley Waste Variance Request (#ZV16-07)

The purpose of landscape buffer requirements is typically 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. Lots 2 and 3, where Apple Valley Waste intends to relocate, are impacted by a large stormwater management easement partially located on Lot 2 and continuing to the rear of the property, where no construction will be permitted. This stormwater management easement serves as a barrier to off-site impacts because of its size.

The applicant is proposing a chain link fence around the boundary of the gravel outdoor storage/parking area and the garage structure. They are then proposing to use the Type M-54, Option F, standard detail but are requesting that they be permitted to vary this detail along the rear and east side only (where the gravel storage/parking area is located) to plant evergreens every 20' instead of every 10'. Where the fence and landscape buffer cross the water and sanitary sewer easements, they are requesting to only install shallow rooted bushes so as to prevent interference with the existing utility lines. The proposed row of evergreen shrubs planted every 5' will be in compliance with the Zoning Ordinance. Additionally, the full standard will be met along the western property line which abuts a future building site.



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Apple Valley Waste Variance Request (#ZV16-07)

b. Unique characteristics of property

The subject parcels (Lots 2 and 3) are located within the Burr Business Park, on James Burr Blvd. just east of McGarry Blvd. Properties on either side of these lots and across James Burr Blvd. are currently vacant. Lot 2 is bisected by a large stormwater management easement along its eastern side. The property to the rear is owned by the Jefferson County Commission and contains a stormwater pond and a PSD pump station. No further development will occur on these properties.



c. Character of area

The Burr Business Park is a master planned nonresidential subdivision owned and developed by the Jefferson County Development Authority, with the intent of establishing a business park suitable for Light Industrial and Commercial development activities for the purpose of promoting 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 Business Park has several lots that are developed, but there are many that are vacant. As noted above, the lots adjoining Lots 2 and 3 are either vacant or impacted by the stormwater management facilities and easements.

d. Impact on adjacent properties

The impact of these requests on the adjoining properties will be minimal as they are currently not developed. The proposed landscaping along the western property line, which could develop in the future, meets the standards of the Ordinance and no variance is requested in this location.

The stormwater facilities on Lot 2 and the property to the rear acts as a further buffer to supplement the modified landscaping proposed by the applicants.

e. Feasibility of complying with the ordinance by other means

Alternatively, the Zoning 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. Such opaque fence is required to 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 conditions of approval include:

- a) The variance applies only to this proposed site plan for Lots 2 and 3 within the Burr Business Park.

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 April 28, 2016

Apple Valley Waste Variance Request (#ZV16-07)

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.

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

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.

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:

- 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.
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 [®]	Min Lot Area (MLA)	Min Lot Width	Max Building Height*	Imper-vious Surface Limit	Building Setbacks			Parking/Drive Aisle Setbacks [†]			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)

Planning Department

From: Kristen Stolipher <kstolipher@gordon.us.com>
Sent: Thursday, March 31, 2016 12:20 PM
To: Planning Department
Subject: FW: Apple Valley Waste - Burr Business Park File # 16-02

From: sglascock@juewater.net [mailto:sglascock@juewater.net]
Sent: Wednesday, March 16, 2016 2:37 PM
To: Kristen Stolipher <kstolipher@gordon.us.com>; 'Susanne Lawton' <gm@jcpsd.com>; 'Planning Department' <PlanningDepartment@jeffersoncountywv.org>; support@juewater.net
Cc: 'Jennifer Brockman' <jbrockman@jeffersoncountywv.org>; 'Peter Kubic' <kubicenterprises@gmail.com>; 'Travis Markley' <Engineering@jcpsd.com>; 'Ashley Stottlemeyer' <admasst@jcpsd.com>
Subject: RE: Apple Valley Waste - Burr Business Park File # 16-02

Kristen,

Shallow rooted shrubs along easement and over waterline only.

Fence posts cannot be placed on top of the waterline. Posts need to split the difference of waterline (as site feasible). Site inspection will be required for fence install and verification of waterline location.

Let me know if you have any questions.

Thank you,

Stephanie L. Glascock
General Manager
Jefferson Utilities, Inc.
270 Industrial Boulevard
Kearneysville, WV 25430
304-728-2077 ext. 207
301-302-9702 (c)
304-728-8494 (f)
www.juiwater.net

CONFIDENTIALITY NOTICE:

This e-mail message, including all attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. If you are not the intended recipient, you may NOT use, disclose, copy or disseminate this information. Please contact the sender by reply e-mail immediately and destroy all copies of the original message including all attachments. Your cooperation is greatly appreciated.

From: Kristen Stolipher [<mailto:kstolipher@gordon.us.com>]
Sent: Wednesday, March 16, 2016 2:27 PM
To: Susanne Lawton <gm@jcpsd.com>; Planning Department <PlanningDepartment@jeffersoncountywv.org>; support@juewater.net
Cc: Jennifer Brockman (jbrockman@jeffersoncountywv.org) <jbrockman@jeffersoncountywv.org>; Peter Kubic

<kubicenterprises@gmail.com>; Travis Markley <Engineering@jcpsd.com>; Ashley Stottlemeyer <admasst@jcpsd.com>

Subject: RE: Apple Valley Waste - Burr Business Park File # 16-02

Thanks. We have not shown any trees within the easements, only shrubs. We will definitely take a look at the fencing locations to make sure there are no encroachments there.

Kristen

From: Susanne Lawton [<mailto:gm@jcpsd.com>]

Sent: Wednesday, March 16, 2016 2:15 PM

To: Planning Department <PlanningDepartment@jeffersoncountywv.org>; support@juewater.net

Cc: Kristen Stolipher <kstolipher@gordon.us.com>; Jennifer Brockman (jbrockman@jeffersoncountywv.org)

<jbrockman@jeffersoncountywv.org>; Peter Kubic <kubicenterprises@gmail.com>; Travis Markley

<Engineering@jcpsd.com>; Ashley Stottlemeyer <admasst@jcpsd.com>

Subject: RE: Apple Valley Waste - Burr Business Park File # 16-02

Rhonda:

Shallow rooted bushes and plantings are acceptable in the easements, no trees please. We are working with the developer about fence posts in the easements and hope to have resolve on that by Friday.

Thanks for your concern, Sue

From: Planning Department [<mailto:PlanningDepartment@jeffersoncountywv.org>]

Sent: Monday, March 14, 2016 10:33 AM

To: Susanne Lawton <gm@jcpsd.com>; support@juewater.net

Cc: Kristen M. Stolipher (kstolipher@gordon.us.com) <kstolipher@gordon.us.com>; Jennifer Brockman

(jbrockman@jeffersoncountywv.org) <jbrockman@jeffersoncountywv.org>; Peter Kubic

<kubicenterprises@gmail.com>; Travis Markley <Engineering@jcpsd.com>; Ashley Stottlemeyer <admasst@jcpsd.com>

Subject: RE: Apple Valley Waste - Burr Business Park File # 16-02

Thanks!!

From: Susanne Lawton [<mailto:gm@jcpsd.com>]

Sent: Monday, March 14, 2016 10:28 AM

To: Planning Department; support@juewater.net

Cc: Kristen M. Stolipher (kstolipher@gordon.us.com); Jennifer Brockman (jbrockman@jeffersoncountywv.org); Peter

Kubic; Travis Markley; Ashley Stottlemeyer

Subject: RE: Apple Valley Waste - Burr Business Park File # 16-02

Hello Rhonda:

We have contacted Pete Kubic and will be working on finding an answer for you.

Thanks, Sue

From: Planning Department [<mailto:PlanningDepartment@jeffersoncountywv.org>]

Sent: Friday, March 11, 2016 4:44 PM

To: Susanne Lawton <gm@jcpsd.com>; support@juewater.net

Cc: Planning Department <PlanningDepartment@jeffersoncountywv.org>; Kristen M. Stolipher

(kstolipher@gordon.us.com) <kstolipher@gordon.us.com>; Jennifer Brockman (jbrockman@jeffersoncountywv.org)

<jbrockman@jeffersoncountywv.org>

Subject: Apple Valley Waste - Burr Business Park File # 16-02

Good afternoon,

We are in the process of reviewing the above Site Plan. I have attached a copy of the Landscape Plan for visual purposes. Our question has to do with the landscaping over the utility easements. Our Ordinance requires landscaping around the perimeter of the site for screening purposes. Jefferson County Subdivision and Land Development Regulations Section 21.402 D No permanent encroachments , structures, fences or landscaping shall be allowed to be located within an easement area.

You will see on the plan that shrubs only are proposed to be located within the water and sewer easements. A fence is also proposed to be installed that would cross these easements.

Our question is would this be allowed by your departments?

Please feel free to contact this office with any questions or additional information you may require.

Rhonda Greenholtz
Planning Clerk
Jefferson County Planning & Zoning
116 E. Washington Street
P.O. Box 338
Charles Town, WV 25414



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, P.O. Box 338

Charles Town, WV 25414

File Number: #ZV16-07

Staff Initials: CLC

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

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

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

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: DECKER HOLDINGS, LLC
Mailing Address: 88 ALCOVE ROAD COEYMANS HOLLOW, NEW YORK 12406
Phone Number: 304 886 9408 Email:

Applicant Contact Information

Name: KUBIC ENTERPRISES
Mailing Address: 241 EDMOND ROAD
Phone Number: 304 886 9408 Email: KUBICENTERPRISES@gmail.com

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

Name: GORDON SUITE 1
Mailing Address: 301 NORTH MILDRED STREET CHARLES TOWN, WV 25414
Phone Number: 304-725-8456 Email: KSTOLIPHER@GORDON.US.COM

Physical Property Details

Physical Address:
City: CHARLES TOWN State: WV Zip Code: 25430
Tax District: CHARLES TOWN DISTRICT Map No: 1 Parcel No: 1023603
Parcel Size: 9.15 Deed Book: 1170 Page No: 217

Zoning District (please check one)

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

Place Received Date Stamp Here

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

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

Reference the section of the Zoning Ordinance pertaining to this request: SECTION 4.11.A.2, Appendix B and 4.11.E

Briefly describe the nature of the variance request:
SEE ADDENDUM.

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

Front Setback Side Setback Rear Setback Reduction From _____ to _____

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

SEE ADDENDUM.

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?

SEE ADDENDUM.

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

SEE ADDENDUM.

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

SEE ADDENDUM.

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.

John Decker 3-30-16
Signature of Property Owner Date

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)).

Date of Public Hearing

Advertising Date

Placard Posting Date

Lots 2 & 3 Burr Business Park

Variance Request Addendum

April 11, 2016

RECEIVED

APR 18 2016

JEFFERSON COUNTY PLANNING,
ZONING & ENGINEERING

Briefly describe the nature of your variance request:

The requested variance is for the following items:

- 1) To reduce the screening requirements for trees by half on only the east side and rear buffers for a commercial development.
 - 2) Relief from using the landscaping planting details in portions of the lots which are in water or sewer easements.
 - a. As justification for not placing trees within the various easements on the property, we have attached comments from the JCPSD and Jefferson Utilities relating to allowable improvements within their easements.
 - 3) Variance from side yard setbacks and landscaping items along interior property line between Lots 2 & 3.
- 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:

- **Reduction of East side and Rear Buffer**
 - The health, safety and welfare of the public will not be impacted by the absence of a rear buffer for the property as all distance requirements will be maintained and all activities adjacent to the rear property line will be contained within a fence adjacent to the entire rear property line.
 - The east side and rear property lines are bordered entirely by a stormwater easement with a minimum width of 35'. As no improvements can be made within that easement there is a significant buffer between this property and the adjacent property to the rear and sides.
 - The rights of the current or future adjacent property owner will be preserved. The adjacent properties are owned by the Jefferson County Development Authority (JCDA) and are currently vacant.

*Replaces previously submitted Addendum (03/30/16). JH

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

- **Reduction of East side and Rear Buffer**
 - If granted, this variance will eliminate an unnecessary hardship on the owner for installation of a full landscaping buffer adjacent to a stormwater management facility while permitting a reasonable use of the land which is for vehicle storage for the facility.
 - The existing stormwater management easement on the property varies from approximately 35' width to 120' in width which provides an adequate separation between this use and any future adjacent property uses.
 - 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 with this property. 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 encourages similar commercial / industrial uses.
- **Relief from using the landscaping details within easements**
 - Granting this variance will eliminate an unnecessary hardship for the owner to meet two conflicting sections of the Ordinance. The granting of the variance will permit a reasonable use of the land by allowing for shrubs to be installed which meet the intent of the buffer requirements while also allowing for public utilities to service the development.
- **Variance from setbacks and landscaping along interior property lines**
 - Granting of this variance will eliminate an unnecessary hardship of having to process a merger plat for this development while to owner would like to maintain the two separate lots.

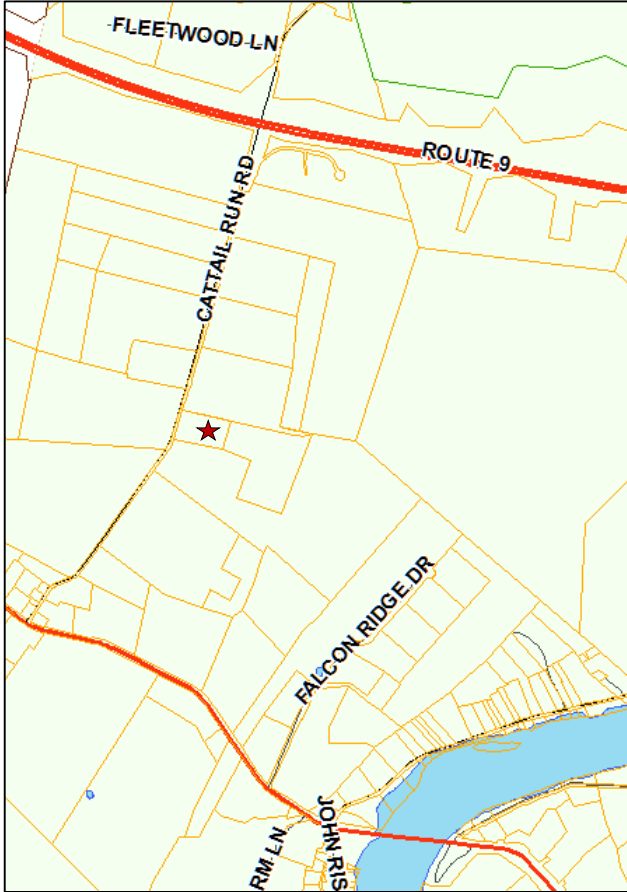
How will granting this variance allow the intent of the Zoning Ordinance to be observed and substantial justice be done?

- **Reduction of East side and Rear Buffer**
 - The granting of this variance will allow the intent of the ordinance to be observed since there is a significant buffer that will be provided in the stormwater management facility.
 - 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.
- **Relief from using the landscaping details within easements**
 - Granting this request will allow the intent of the Zoning Ordinance to be observed since the Zoning and Subdivision Ordinances are to go hand in hand and there will be shrubs installed which meets the ordinance requirements while also allowing the public utilities to remain located through the site.
- **Variance from setbacks and landscaping along interior property lines**
 - Granting this request will allow the intent of the Zoning Ordinance to be observed since all setbacks and buffers will be maintained around the perimeter of the lots in accordance with the Ordinance requirements and this variance request.

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

Dudash Variance Request (#ZV16-08)

Item #4 Variance from Section 5.7B to reduce the rear setback from 50' to 35' for the construction of 40' x 60' garage.

APPLICANT:	Christopher & Victoria Dudash
OWNER:	Same
DEVELOPER:	N/A
CONSULTANT:	N/A
PROPERTY LOCATION:	444 Cattail Run Rd., Charles Town
LEGAL DESCRIPTION & ZONING DISTRICT:	<p style="text-align: center;">District: 02; Map: 19; Parcel: 17.10; Size: 3 ac; Zone: R</p> 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> R <i>South:</i> R <i>East:</i> R <i>West:</i> R
PRIOR CASES:	01/25/05: PC approved Thomas Weller Minor Subdivision (#04-41)
VARIANCE(S):	N/A
APPROVED ACTIVITY:	Single family dwelling unit

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

Dudash Variance Request (#ZV16-08)

RELEVANT INFORMATION:

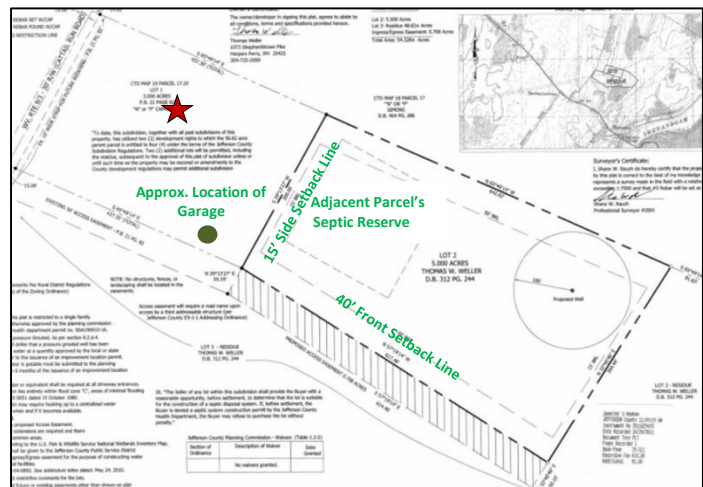
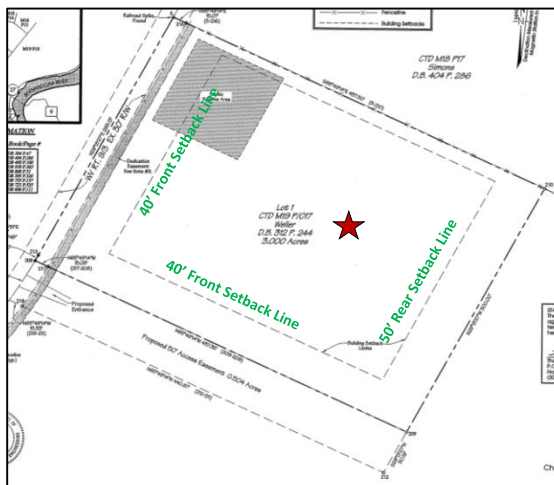
1. Overview of Request

The applicant is requesting to reduce the rear building setback from 50' to 35' to allow for the construction of a 40' x 60' garage.

2. Previous Case History

On January 25, 2005 the Planning Commission approved the Thomas Weller Minor Subdivision, Lots 1 and 2-Residue, which was subsequently recorded in the Courthouse on March 18, 2005 in Plat Book 21, at Page 82.

A second minor subdivision was approved by staff and recorded by Mr. Weller on October 20, 2011, which was subsequently recorded in the Courthouse in Plat Book 25 at Page 311. The lot that was created by this subdivision (Lot 2) has a platted septic reserve area adjacent to the property line impacted by the requested variance.



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 property 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. Purpose of ordinance requirements

The purpose of the side and rear yard setback requirements is to reduce the impact that a land use might have on an adjacent property, to allow adequate space between a structure and a

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

Dudash Variance Request (#ZV16-08)

property line so that maintenance of the structure is feasible, to maintain adequate separation between structures for fire prevention purposes, and to allow room for utility easements. The 50' rear setback in the Rural zoning district also serves to retain the rural character of the lots that are developing within the subdivisions that have been created in the County.

b. Unique characteristics of property

The property is heavily wooded and the applicant would like to minimize cutting additional trees and would prefer to leave the driveway where it is currently installed. The neighboring property to the east is vacant. This property has a 20,000 square foot septic reserve area along the property line nearest the proposed garage.



c. Character of area/ Impact on adjacent properties

The property is located in a fairly rural area and is surrounded by large lot rural residential development and/or larger agricultural operations. Any residential construction on the neighboring property would be set quite a distance from this property line because of a large septic reserve area along the property line nearest the proposed garage.

e. Feasibility of complying with the ordinance by other means

The development of the garage in a location that meets the required rear yard setback would require the removal of trees in the front yard of the recently constructed home and relocation of the driveway.

5. **Conditions of Approval**

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

- a) The variance applies only to the construction of the garage as presented to the BZA.

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

Dudash Variance Request (#ZV16-08)

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 5.7 Rural District

(b) Minimum Lot Area, Lot Width and Yard Requirements

Minimum lot sizes, lot width, and yard requirements are as follows for principal permitted uses. For any residential use that complies with the Development Review System, the setbacks and lot shall be as outlined in Article 5.4(b).

[AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

	<u>Lot Area</u>	<u>Lot Width</u>	<u>Front Yard Depth</u>	<u>Side Yard Depth</u>	<u>Rear Yard Depth</u>
Dwellings	40,000 sq. ft.	100	40	15	50
Churches	2 acres	200	50	50	50
Schools, Grades K-4	10 acres +	500	100	100	100
Schools, Grades 5-8	20 acres +	500	100	100	100
Schools, Grades 9-12	30 acres +	500	100	100	100
Hospitals	10 acres	500	100	100	100
Other permitted uses	40,000 sq. ft.	100	40	50	50

Plus one (1) additional acre for every 100 pupils. Minimum lot size for Vocational Schools shall be based on State of West Virginia Code. If a sewer treatment plant and retention ponds are required, acreage shall be increased accordingly.

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989]



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

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

File Number: #ZY16-08
Staff Initials: CLK
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: Christopher or Victoria Dudash
Mailing Address: 444 Cattail Run Rd. Charles Town, WV 25414
Phone Number: (304) 279-1577 Email: Dudashrain@aol.com

Applicant Contact Information

Name: Christopher Dudash
Mailing Address: 444 Cattail Run Rd. Charles Town, WV 25414
Phone Number: (304) 279-1577 Email: Dudashrain@aol.com

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

Name:
Mailing Address:
Phone Number: Email:

Physical Property Details

Physical Address: 444 Cattail Run Rd.
City: Charles Town State: WV Zip Code: 25414
Tax District: CHARLESTOWN (02) Map No: 19 Parcel No: 17.10
Parcel Size: 3 acres Deed Book: 1131 Page No: 324

Zoning District (please check one) (WILLOWDALE-WELER)

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

RECEIVED

APR 01 2016

JEFFERSON COUNTY PLANNING, ZONING & ENGINEERING

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: 5.7B

Briefly describe the nature of the variance request:

Wanting to construct a 40x60 Garage.

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

Front Setback Side Setback Rear Setback Reduction From 50' to 35'

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:

I am only affecting the footprint on my property. The structure will only be 15' from the property behind mine has septic field planned to go there

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?

None. Septic drain field is in front of house & property is wooded

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

Keeps me from moving the driveway. And would save me from taking down trees in the front yard to move the drive.

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

Structure is still 35' away from a now vacant lot. Vacant lot directly behind the property is slated to have septic field behind the building. I will be applying for permit.

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.

[Signature]
Signature of Property Owner

3/31/16
Date

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)).

04/28/16
Date of Public Hearing

04/13/16
Advertising Date

04/13/16
Placard Posting Date

Vacant Lot
Armstrong

RECEIVED

APR 04 2016

JEFFERSON COUNTY PLANNING,
ZONING & ENGINEERING

Revised
JH

300'

50'

25'

Proposed
Garage 16' TALL 40'
40'

Existing
Parking Area

Distance
85' to 90'

Driveway

House

Septic tank

Prism
Field

Trees

437.3'

437.30'

40'

293.13

50' Acc.
R.O.

9/3 Catherl Ave Rd

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

Yin Xu Variance Request (#ZV16-09)

Item #5 Variance from Section 5.4B to reduce the rear setback from 20' to 10' to construct a deck.

APPLICANT:	Tim Martin, Brick Street Construction
OWNER:	Yin Xu
DEVELOPER:	Same as Applicant
CONSULTANT:	Same as Applicant
PROPERTY LOCATION:	Lot 2 , Beallair Subdivision, 33 Louisa Beall Ln., Charles Town
LEGAL DESCRIPTION & ZONING DISTRICT:	<p style="text-align: center;">District: 04; Map: 10A; Parcel: 2; Size: .217 ac; Zone: RG</p>
SURROUNDING PROPERTIES:	<p>Zoning Map Designation:</p> <p>North: RG South: RG</p> <p>East: RG West: RG</p>
SUBDIVISION HISTORY: Planning Commission Approvals	<p>09/14/04: PC approved Final Plat for Beallair Phase I (#02-36)</p> <p>10/24/06: PC approved Final Plat for Beallair Phase II (#05-41)</p> <p>02/26/08: PC approved Community Impact Statement for Beallair West (#07-30)</p> <p>10/27/09: PC approves Final Plat (#08-21)</p>
SUBDIVISION VARIANCE(S):	<p>03/25/03: PC approved the following variances:</p> <ul style="list-style-type: none"> • Reduce finished road width from 20' to 15' for one-way rear access drives w/ no shoulders; • No curb & gutter in alleys; or, the one-way rear access drives; • Allow an inverted crown for drainage in one-way rear access drives; • Allow two (2) side-by-side, on-site parking spaces; • Reduce ROW width from 50' to 44' in the main road passing through the TND villa areas; and, • Reduce one-way rear access drives from 50' to 20' to serve the garages. <p>03/23/04: PC approved the following variances:</p> <ul style="list-style-type: none"> • Min. finished road width from 24' to 15' for rear access drives; • No curbs included with the rear access drives; • No sidewalks on the one-war rear access drives;

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

Yin Xu Variance Request (#ZV16-09)

	<ul style="list-style-type: none"> • A reduction from 3' to 2.5' for the back of the curb from the edge of the pavement; • No buffer screening between common areas & adjoining single family lots. <p>09/12/06: PC approved a variance to extend the 24-month provision for a period of 12 months to 09/12/07.</p> <p>08/26/08: PC approved a variance to extend the 24-month provision for a period of 12 months to 08/26/09.</p>
APPROVED ACTIVITY:	Single family dwellings

RELEVANT INFORMATION:

1. Overview of Request

The applicant is requesting to reduce the rear building setback from 20' to 10' to allow for the construction of a rear deck.

2. Previous Case History

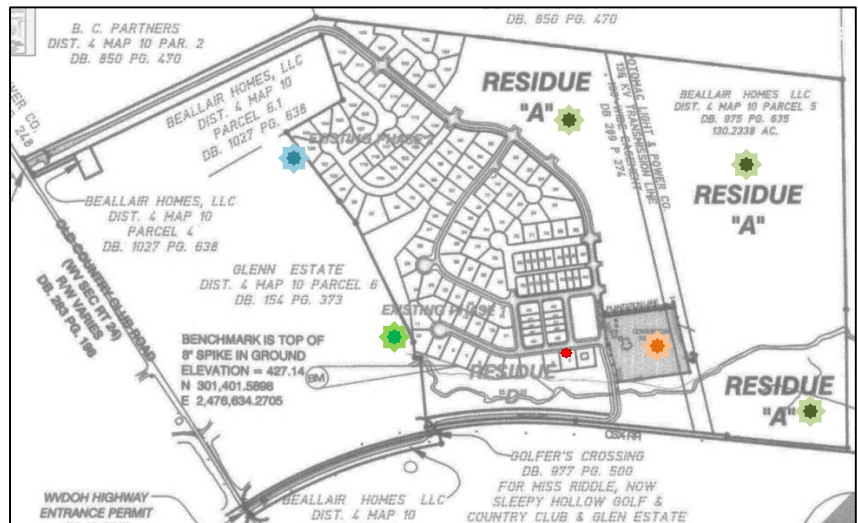
An overview of the Beallair Case History is as follows:

- Beallair Phase I, Lots 1-49 & Residue Parcels A, B, C, D & E. Recorded: 12/8/04 (Plat Bk: 21; Pg: 54)
- Beallair Phase II, Lots 50-133, Residue Parcel A. Recorded: 01/16/07 (Plat Bk: 23; Pg: 91)
 - A minor plat change to revise and update drainage areas, Recorded: 06/19/14 (Plat Bk: 24; Pg: 46)
- Final Plat of Commercial Parcel 1, Plantation Ln & Parcel A. Recorded: 01/25/10 (Plat Bk: 25; Pg: 457)

The remaining lots to be platted from Beallair Subdivision and the Beallair West Subdivision are currently vested under the County Commission's subdivision extension policy, which extends the vesting until July 1 2017. At such time the developer of both sections of Beallair will be required to plat a portion of each section in order to keep the files valid.

Beallair Subdivision

- ★ Phase I
- ★ Phase II
- ★ Commercial Parcel
- ★ Subject Parcel
- ★ Beallair West
(vested/pending)



Staff Report
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Yin Xu Variance Request (#ZV16-09)

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.*

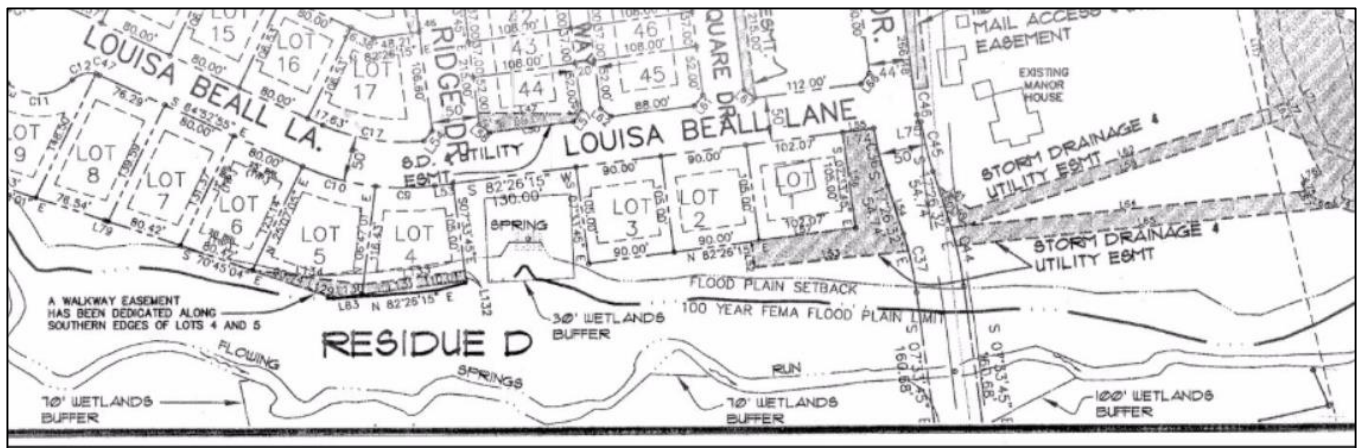
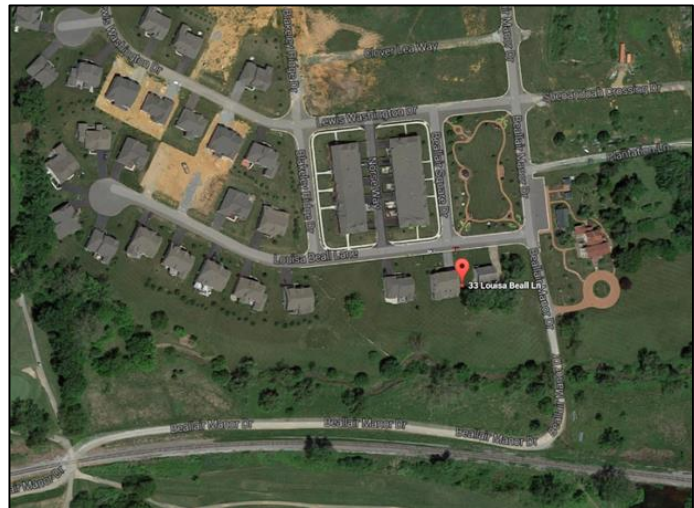
4. Staff Evaluation of Request

a. Purpose of ordinance requirements

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

b. Unique characteristics of property

The property in question was the model home for this portion of the Beallair development and was built to completely fill the building envelop. The rear of the house, including a shallow existing deck sits on the rear setback building line. The property backs to a large floodplain that is a part of the residue for Beallair and no further development can go into this area. An access road and railroad tracks are on the opposite side of the floodplain.



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 Jefferson County Board of Zoning Appeals Meeting
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Yin Xu Variance Request (#ZV16-09)

c. Character of area/Impact on adjacent properties

This property and the surrounding area is zoned Residential Growth. This home is on the edge of a larger development that is partially completed known as Beallair. Beallair consists of fairly small lots containing single family detached homes and attached townhouse units. The historic Beallair Mansion serves as a community Clubhouse and an additional historic home is located next door to the property requesting this variance.

The homes along the south side of Louisa Beall Lane all back on to the large floodplain paralleled by an access road and railroad, so no properties to the rear will be impacted by the requested variance.



e. Feasibility of complying with the ordinance by other means

Due to the placement of the home on the property by the original builder, a deck large enough to be useful cannot be located on this property unless a variance is granted.

5. Conditions of Approval

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

- a) The rear setback variance from 20' to 10' shall be for the proposed deck only.

SECTION OF ORDINANCE TO BE CONSIDERED:

SECTION 5.4b Residential Growth District - Height And Yard Requirements

[AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPT. 13, 1990 AND SEPT. 1, 2006]

Development Type	Minimum Lot Area (MLA) Area per Dwelling Unit (ADU)	Required Yards	Maximum Building
Single family detached dwelling	6,000 sq. ft. MLA**	25 ft. front	40 ft.
Public/Central water and sewer	10,000 sq. ft. ADU	12 ft. side	
Public/Central water or sewer	20,000 sq. ft. MLA	20 ft. rear	
No Public/Central water or sewer	40,000. Sq. ft. MLA		



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, P.O. Box 338

Charles Town, WV 25414

File Number: #ZV16-09

Staff Initials: etc

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

Variences 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: Yin Xu
Mailing Address: 33 Louisa Beall Lane Charles Town, WV 25414
Phone Number:
Email: Xindesign 55 @ hotmail.com

Applicant Contact Information

Name: Brick Street Construction LLC Tim Martin
Mailing Address: 36 Bakerton Rd-Suite 10 Harpers Ferry WV 25425
Phone Number: 304-725-2243
Email: jacque.brickstreet@gmail.com

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

Name:
Mailing Address:
Phone Number:
Email:

Physical Property Details

Physical Address: 33 Louisa Beall Lane (YEAR BUILT 2007)
City: Charles Town State: WV Zip Code: 25414
Tax District: HARPERS FERRY (04) Map No: 010A Parcel No: 000 2
Parcel Size: 0.2169 (LT #2 BEALLAR) Deed Book: 1161 Page No: 478

Zoning District (please check one)

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

RECEIVED APR 01 2015 JEFFERSON COUNTY PLANNING, ZONING & ENGINEERING Place Received Date Stamp Here

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

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

Reference the section of the Zoning Ordinance pertaining to this request: 5.4B - JH. 4/8/16

Briefly describe the nature of the variance request:

Rear setback reduction - House is setting on rear setback line leaving very minimal space for deck.

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

Front Setback Side Setback Rear Setback Reduction From 20.33 to 10.33

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

The new deck will be 10 ft off of rear property line. A fence will be installed around perimeter of back yard on the property line w/ landscape area between deck + fence.

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 house is set on building set back line. The current owner did not build the house.

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

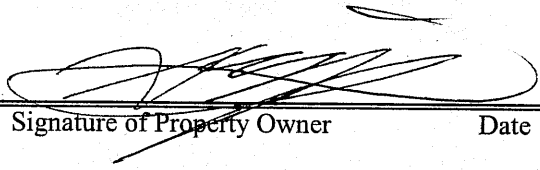
It will give home owner opportunity to build a deck that is of usable size.

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

Deck will be 10 ft off of property line and yard will be fenced in. The impact is minimal because it backs up to large community residue parcel.

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.

X  3/29/2016
Signature of Property Owner Date

Signature of Property Owner Date

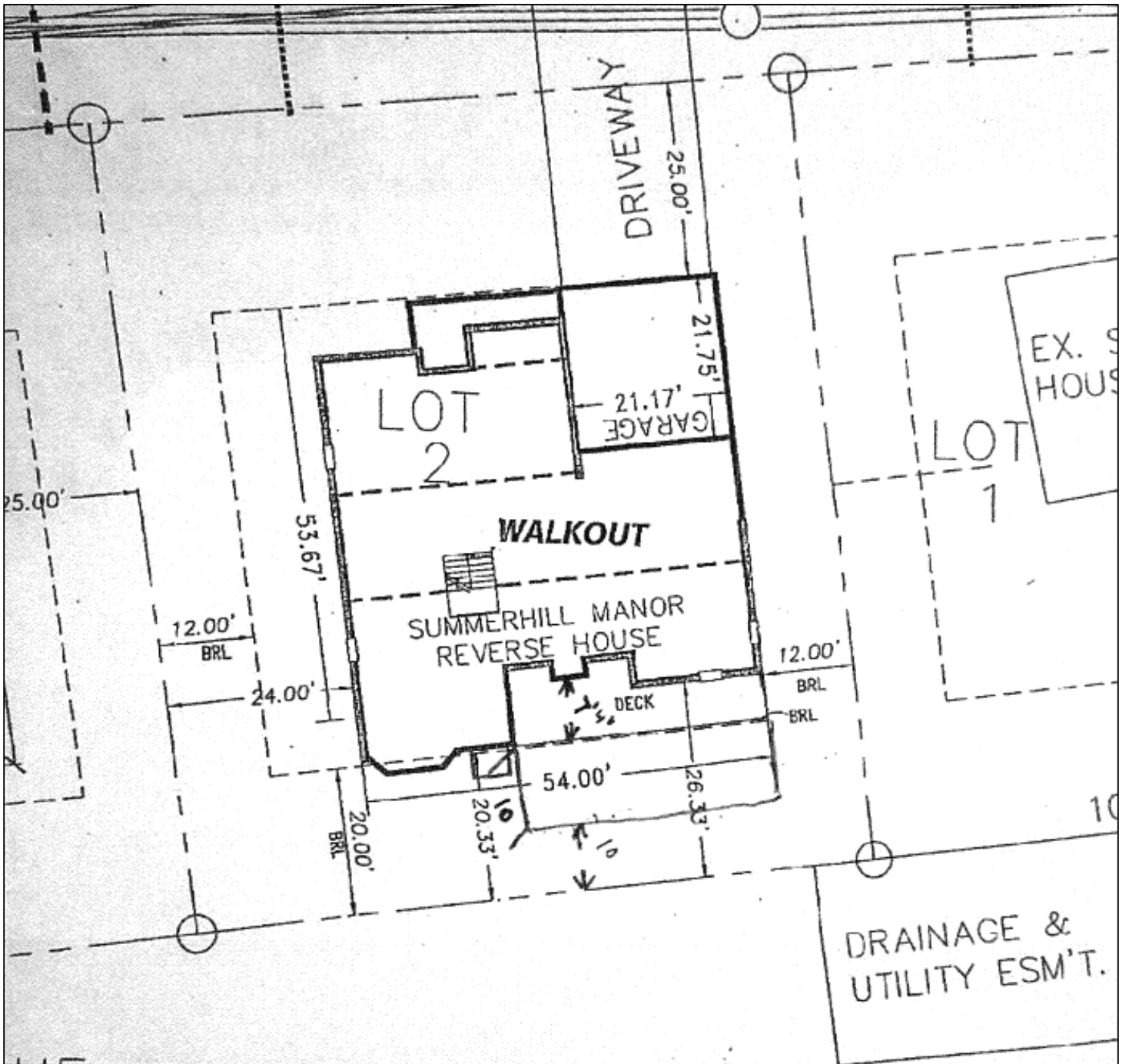
Notification Requirements (to be completed by staff)

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

THURSDAY, APRIL 28, 2016 @ 2:00 PM
Date of Public Hearing

WEDNESDAY, APRIL 13, 2016
Advertising Date

WEDNESDAY, APRIL 13, 2016
Placard Posting Date



BEALLAIR - LOT 2

RECEIVED
01 2016

Summerhill
Scale 1" = 20'



* Y . X .

CHARLES TOWN MAGISTERIAL DISTRICT NO. 4
JEFFERSON COUNTY, WV #ZV16-09

12-6-06



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 April 28, 2016

1) LESA/Conditional Use and Cluster Subdivision Provision Modifications

Public Hearing Scheduled for May 17, 2016

Possible BZA comments and input (to be distributed for discussion at the meeting)

2) Additional Pending Zoning Ordinance and Subdivision Regulation Amendments

a) Campgrounds:

- i. County Commission work session scheduled for May 5, 2016 1:30 pm

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

- i. County Commission Public Hearing postponed until Summer 2016

d) Pending amendments:

- i. Historic Resource Demolition and Adaptive Reuse
 - HLC Board initiating draft text amendment – in collaboration with staff
- ii. Parking Standards
- iii. Landscape Standards
- iv. Signage

2) Upcoming BZA meeting

- a) Next Regular Meeting: **May 26, 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

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

MEMORANDUM

TO: Board of Zoning Appeals Members
CC: Engineering & Building Permits Departments
FROM: Acting Zoning Administrator, Jennifer M. Brockman
DATE: April 22, 2016
SUBJECT: April Monthly Report of Department Activities

ISSUED ZONING CERTIFICATES

#ZC16-09 KENNETH L. WILT – OWNER
T-MOBILE, NORTHEAST LLC - APPLICANT

Issuance Date: March 25, 2016

Proposed Use: Property contains existing 190' self-support tower. T-Mobile Northeast, LLC to remove one (1) existing equipment Cabinet and three (3) existing antennas, at 170', and install two (2) proposed equipment cabinets and three (3) proposed antennas to an existing wireless telecommunications facility. Additionally, install one (1) microwave dish; one (1) ODU; one (1) LMR-400 cable; install Emerson Cub within the existing lease area and one (1) new IDU in new Emerson Cube.

Physical Location: 543 Mission Road, North; Harpers Ferry, West Virginia 25425
Zone: Rural

#ZC16-10 AMERICAN TOWERS LLC – OWNER
AT&T MOBILITY / CONTACT: JOSE PUGEDA - APPLICANT

Issuance Date: April 07, 2016

Proposed Use: Property contains existing 360' self-support telecommunications tower. AT&T Mobility to remove three (3) existing antennas (1 per sector) and replace with three (3) new Hexport antennas (1 per sector); will also install three (3) new remote radio head units (1 per sector).

Physical Location: 17340 Poppy Road; Bluemont, Virginia 20135
Zone: Rural

ISSUED ZONING CERTIFICATES

#ZC16-12 GEORGE W. RUSHIZKY - OWNER
US CELLULAR / CONTACT: BRIAN CRAWFORD – APPLICANT

Issuance Date: April 13, 2016
Proposed Use: Property contains existing 200.0'(±) self-support
telecommunications tower. US Cellular to modify previously
approved drawings to reinforce existing gusset plates and replace
diagonal brace bolts at 60'-66.7' elevation, based on Jan. 14, 2016
Structural Modification Analysis Report.
Physical Location: 8428 Shepherdstown Pike; Shepherdstown, West Virginia 25443
Zone: Rural

PENDING ZONING CERTIFICATES

#ZC16-13 JEFFERSON UTILITIES, INC. - OWNER
AT&T MOBILITY / CONTACT: JOSE PUGEDA – APPLICANT

Issuance Date: TBD
Proposed Use: Property contains existing 125.0 Self-Support Telecommunications
Tower. AT&T Mobility to remove three (3) existing antennas and
replace with three (3) new antennas; additionally will install three
(3) new remote head units.
Physical Location: 426 Oak Lee Drive; Ranson, West Virginia 25438 (Water Tower)
Zone: Rural

#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

WITHDRAWN ZONING CERTIFICATES

#ZC16-11 CHRISTOPHER DUDASH – OWNER / APPLICANT

Issuance Date: **Withdrawn by Applicant / April 08, 2016**
Proposed Use: Cottage Industry. Office area (20' x 30') to be located within a
detached 40' x 60' structure.
Physical Location: 444 Cattail Run Road; Charles Town, West Virginia 25414
Zone: Rural
