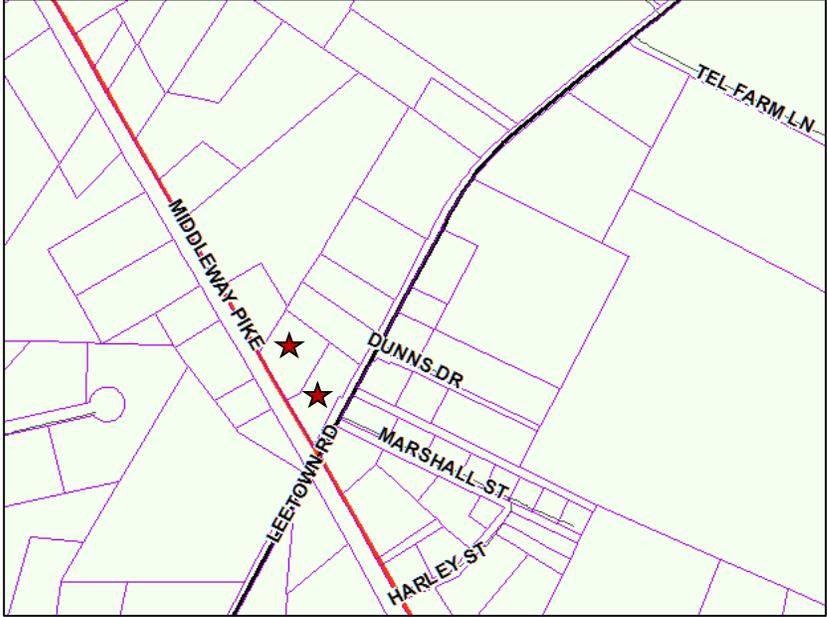


Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 January 22, 2015

**Dollar General Conditional Use Permit (#CP14-02)**

Item #5 Discussion and action on the Dollar General Conditional Use Permit Application (CP14-02). The applicant is proposing a 9,100 square foot retail store, to include public restrooms, merchandise storage, storefront and pole signage and an asphalt parking lot that will accommodate the required 40 parking spaces, plus drive aisles. This item is not a public hearing.

APPLICANT:	Josh Allen, Cross Development, LLC
OWNER :	Wilbur A. Alger Jr. Middle of the Way Real Estate, LTD
DEVELOPER:	Kelly Sellars, K.B. Sellars Engineering
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	The corner of Leetown Road (Route 1) and Middleway Pike (Route 51), Kearneysville, WV
LEGAL DESCRIPTION & ZONING DISTRICT:	District: Middleway; Map: 19A; Parcels: 16.6 & 16.7; Size: 2 ac; Zoning Map Designation: Rural 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North: R                      South: R</i> <i>East: R                         West: R</i>
APPROVED ACTIVITY:	Residential/Agricultural
PRIOR CASES: PC File 77-06	10/11/77: PC approved final plat for Middleway Village <i>*See below for restrictions/conditions of approval.</i>
VARIANCES:	N/A

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**Dollar General Conditional Use Permit (#CP14-02)**

**RELEVANT INFORMATION:**

The proposal consists of a 9,100 square foot retail store, to include public restrooms, merchandise storage, storefront and pole signage and an asphalt parking lot that will accommodate the required 40 parking spaces, plus drive aisles. As the proposal spans two parcels (16.6 and 16.7), the Applicant will be required to merge said parcels.

A Compatibility Assessment Meeting was held on January 9, 2015 at 2:00 p.m. in the meeting room of the Old Charles Town Library located at 200 E. Washington St. in Charles Town, WV. Ms. Brockman, Acting Zoning Administrator/Director of Planning and Zoning and Ms. Hartman, Zoning Clerk, attended. Members of the public expressed concerns regarding the proposal all of which are considered “resolved” (see attached report).

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

**Description of Use**

The applicant’s proposal consists of a 9,100 square foot retail store, to include public restrooms, merchandise storage, storefront and pole signage and an asphalt parking lot that will accommodate the required 40 parking spaces, plus drive aisles. A 10,000 square foot septic reserve is proposed to the northwest of the building site. The septic reserve area and well location must be approved by the Health Department prior to site plan approval.

**Employees and Hours of Operation**

While the CUP application does not address employees and hours of operation, the Applicant stated at the Compatibility Assessment Meeting that the store would employ approximately five (5) people, averaging 3 people per shift. The Applicant further stated that the typical hours of operation for a Dollar General were Monday through Sunday, 8:00 a.m. to 9:00 p.m.

**Parking and Access**

The parking summary provided on the sketch plan states that of the 9,100 square foot gross floor area, 7,310 square feet would be reserved for the retail operations and the remaining 1,790 square feet would be for storage/warehousing. Article 11 of the Zoning Ordinance requires 5.5 spaces/1000 square feet for a Shopping Center with retail floor space exceeding 2,000 square feet. The 7,310 square feet was utilized for the parking calculation. The proposal includes 38 paved regular parking spaces and 2 paved handicap parking spaces to meet the required 40 parking space.

The access to the property is proposed to be one ingress and egress from Middleway Pike (Route 51). The parking and drive aisle setbacks will be delineated on the required site plan. Appropriate traffic markings and signage will be clearly posted on site following construction. The Applicant stated at the CAM that the WV Department of Highways would not be requiring a turn lane or the installation of traffic lights at the intersection of Middleway Pike (Route 51) and Leetown Road (Route 1). Staff offered at the CAM to follow up with DOH regarding possible existing culvert and traffic safety issues. A highway entrance permit must be approved by the WV Department of Highways prior to site plan approval.

It should be noted that the Jefferson County Subdivision and Land Development Regulations require that non-residential developments shall have sidewalks. Appendix B, Section 9.6 further provides that, on a case by case basis, the Planning and Zoning Staff may allow a 10 foot easement(s) in-lieu of installation of a sidewalk, upon application for an administrative waiver from the applicant.

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**Water and Sewer**

The proposed development will be served by a private well and on-site septic system. The size and separation requirements for these systems result in the need for a lot approximately 2 acres in size. At the Compatibility Assessment Meeting, a neighbor indicated that the well serving the Images Nightclub was near the western property line that this development is proposed to occur on. Staff research on-line and in the field has indicated that the well may, in fact, be on the site that Dollar General is proposing to develop. The actual location will require a survey to determine. One of the issues that the well location creates is its proximity to the proposed septic system for the proposed Dollar General. Septic systems require a 100 foot separation from any well. Research into this issue may result in a significant redesign of the site, which may impact conditions placed on the CUP, if approved. It should also be noted that there is significant rock on the surface of the Dollar General site that may require blasting for development to occur on the site.



**Signage & Lighting**

The sketch plan depicts a proposed sign to be located at the intersection of Middleway Pike (Route 51) and Leetown Road (Route 1). The Applicant further indicated that the building would include signage with colors consistent with the retail store brand.

Section 10.4E of the Zoning Ordinance states,

*“All signs accessory to land use that must be evaluated by the Development Review System (DRS) shall be proposed within the DRS application and assessed at the Compatibility Assessment Meeting. Such signs shall be maintained at least one thousand (1,000) feet between signs. Consideration of the placement of such signs with less than one thousand (1,000) foot intervals shall be determined by the Commercial or Residential Uses adjacent to the subject site. Commercial uses adjacent to the subject site may allow spacing intervals of three hundred (300) feet. The Planning Commission shall make this determination if the location cannot be agreed upon at the Compatibility Assessment Meeting.”<sup>2, 17, 21, 23</sup>*

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The proposed sign must be at least 300' from the Images Nightclub and 1000' from the Middleway Market sign. The proposed location of the 15' pole sign does not appear to meet either of the required spacing intervals for DRS associated signs; therefore, a variance will be required.



Approximate  
location of  
existing signage

Imagery ©2015 Google Map data ©2015 Google

## 2. Staff Comments

### Land Evaluation and Soils Assessment (LESA)

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

Section 6.5E of the Zoning Ordinance states,

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

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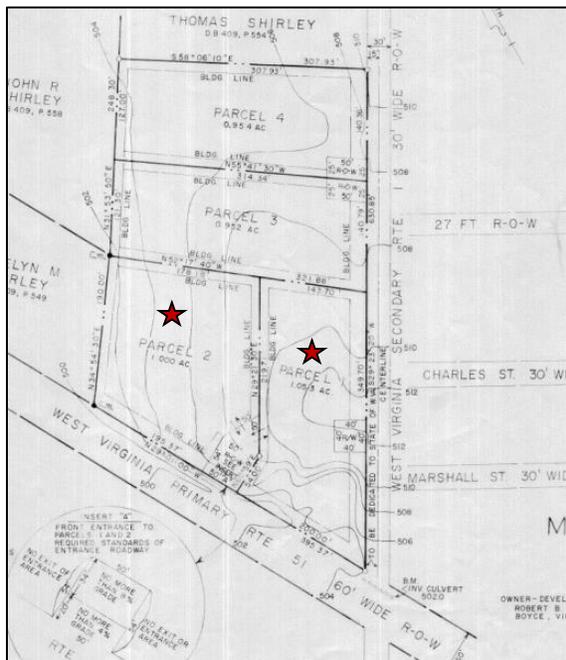
Location

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

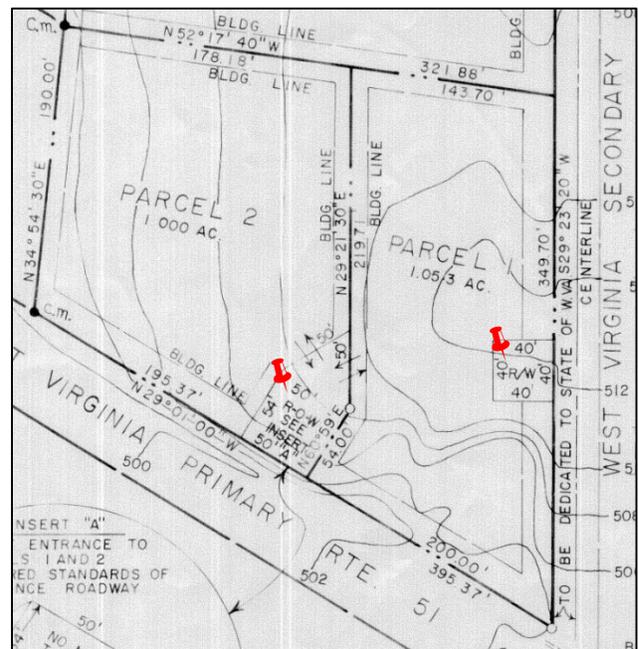
- Hardings Service Station (diagonally across the street)
- Images (immediately adjacent)
- Middleway Market (less than 0.1 miles)
- Roy’s Glass Service (.2 miles)
- Tri-State Auction (.3 miles)
- Liskey Trucking (.3 miles)

History

10/11/1977: The Planning Commission approved the Middleway Village Final Plat, which was recorded in Plat Book 4 at page 72. The proposal is located on Lots 1 and 2 of said plat.



Middleway Village Final Plat



Middleway Village Final Plat (subject parcels)

Conditions/Restrictions on the Property

The Middleway Village (#77-06) final plat listed the following Restrictions:

1. “Entrance and exit to all parcels of Middleway Village shall be by the prescribed “Rights-of-Way” as indicated on this plat.”
2. “Any commercial or multi-family housing shall be required to provide asphalt areas for parking with one standard parking space per 100 sq. ft. of commercial floor space for commercial property and two standard parking spaces for each apartment unit for multi-family housing. Additionally, parking space shall be lined and have parking blocks.”
3. “Commercial signs which are not affixed to commercial buildings, will be restricted to no more than 100 square feet of area per parcel.”
4. “Building lines, as indicated on this plat, will restrict the use of the land within that area from any use, other than utility lines and service of those utility lines. No signs shall be permitted within the building line areas except as entrance and exit signs.”
5. “No out buildings shall be erected on these parcels, except for garages for residential use.”

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**Dollar General Conditional Use Permit (#CP14-02)**

Generally these “restrictions” would be treated as covenants that are not enforced by the County. The applicant will be required to comply with the Jefferson County Zoning and Land Development Ordinance’s parking and signage requirements. The setbacks found on this previously recorded plat will, however, be honored per Section 9.7 below.

Section 9.7 of the Zoning Ordinance states,

*“For all lots that were approved with setbacks by the Planning Commission as part of the subdivision process prior to September 1, 1989, the setbacks and sizes shall be established as part of that process.”*

- 1 The two previously approved access points labeled as “right-of-ways” and shown on the Middleway Village Final Plat shall be required to be vacated as part of the Site Plan approval process.

### **3. Public Testimony**

There were members of the public in attendance at the January 9, 2015 Compatibility Assessment Meeting (CAM) to offer testimony. The attached Staff Report addresses the concerns that were raised by the public, and includes the Applicant’s proposed resolution to each item. These proposed resolutions are to be considered Conditions of Approval should the CUP be granted.

Section 7.6E of the Zoning Ordinance states,

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

As there were no unresolved issues, the Dollar General CUP was scheduled to be heard by the Board at their next regularly scheduled meeting (January 22, 2015) without further public notice.

### **4. Outcome**

The meeting resulted in no unresolved issues; however, conditions of approval were agreed upon by members of the public and the Applicant and should be made a part of the CUP if it is approved.

Section 7.6F of the Ordinance states,

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

### **5. Site Plan**

If the CUP is approved, a Site Plan will be the required next step, which will be required to address the design and stormwater management concerns of the community. As a part of the Site Plan approval process, a final plat will need to be approved and recorded which merges the two parcels and vacates the previously recorded access points; one or more variances will be required related to the sign location; and sidewalks will be required unless an administrative waiver is approved.

JEFFERSON COUNTY, WEST VIRGINIA  
DEPARTMENTS OF PLANNING AND ZONING

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**COMPATIBILITY ASSESSMENT MEETING STAFF REPORT**  
DOLLAR GENERAL, FILE #CP14-02

Project Name: Dollar General  
Business Developer: Cross Development, LLC  
Mailing Address: 17430 Campbell Road, Ste. 225, Dallas, TX 75252  
Phone Number: 765-215-1444  
Property Owner: Wilbur A. Alger Jr. (parcel 16.6)  
Middle of the Way Real Estate, LTD (parcel 16.7)  
Property Address: Intersection of Middleway pike (Route 51) and Leetown Road (Route 1) in  
Kearneysville, West Virginia 25430  
Tax Reference: District: Middleway (07); Map: 19; Parcels: 16.6 and 16.7  
Deed Reference: Deed Book: 889; Page: 315 (16.6);  
Deed Book: 788; Page: 523 (16.7);  
Zoning District: Rural  
Parcel Size: 2 acres (combined)

A Compatibility Assessment Meeting for the proposed Conditional Use Permit for Dollar General was held on January 9, 2015, at 2:00 p.m. in the Old Charles Town Library meeting room located at 200 East Washington Street in Charles Town, West Virginia. Jennifer Brockman, Acting Zoning Administrator and Director of Planning and Zoning; Josh Allen, Cross Development, LLC, Developer; and, Jennilee Hartman, Zoning Clerk were in attendance.

The following use was proposed by the applicant (details may be found in PC File #CP14-02):

The proposal consists of a 9,100 square foot retail store, to include public restrooms, merchandise storage, storefront and pole signage and an asphalt parking lot that will accommodate the required 40 parking spaces, plus drive aisles.

Ms. Brockman opened the public hearing. Members of the public in attendance offered testimony.

Statements made by the applicant at the CAM which did not generate comment:

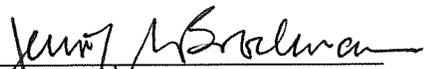
1. Hours shall be between 8 am and 9 pm
2. Generally 5-6 employees, 3 per shift
3. 9,100 square foot building
4. 40 parking spaces
5. Setbacks based on Middleway Village approved 10/11/77
6. No access proposed to Leetown Road
7. Variances may be required for spacing of signs between the proposed Dollar General sign and Images Nightclub sign; the proposed Dollar General sign and the Middleway Market sign; and other business signs in the area
8. An administrative waiver allowing an easement in lieu of the sidewalks along the road frontages may be requested

The following is a list of resolved conditions agreed to by the public and Developer:

#	Issue	Citizen Comment	Applicant Response/ Agreed-Upon Condition	Staff Comment
1)	<b>Stormwater Management</b>	After improvements occurred to the (adjacent) Images site in 1991, properties to the west have experienced significant stormwater backup on their property.	Applicant will be required to meet all County stormwater standards which will not permit the rate of runoff to increase.	<b>Resolved</b>
2)	<b>Traffic:</b> Speed Amount Safety Turn Lane	<p>Concern was expressed about safety of this area of Middleway Pike and Leetown Road due to the amount and speed of traffic and the lack of a turn lane and a traffic signal at the intersection due to amount.</p> <p>Concern was expressed that the impact of the proposed WV 51 bypass around Inwood and the 4-laning of WV 51 toward the Jefferson County line would result in increased speeding in this area and therefore a traffic signal is necessary.</p>	The WV DOH controls all improvements within DOH right-of-way. DOH has recently completed a traffic study for this area and have determined that neither a turn land or light is warranted.	<b>Resolved</b>
3)	<b>Lighting</b>	Concern was expressed about proposed lighting at the eastern end of the proposed building, which could impact the houses across Leetown Road	<p>The applicant stated that they would prepare a photometric drawing as a part of their site plan and agreed that lighting related to the development of this site for Dollar General would include specifications for full cut-off lighting. The applicant further clarified that the exterior parking lot lights are turned off one hour after closing (approx.. 10:00 pm); however, the security lights surrounding the building would remain on.</p> <p>Additionally, the placement of street trees would take in to consideration the possibility of screening any lighting.</p>	<b>Resolved</b>

#	Issue	Citizen Comment	Applicant Response/ Agreed-Upon Condition	Staff Comment
4)	<b>Water and Sewer</b>	<p>Questions were raised about whether public water and sewer was proposed or imminent.</p> <p>Additional concerns were raised about impacts to existing wells during well construction.</p> <p>It was pointed out that the well on the Images nightclub property may be close to the western property line within 100 feet of the proposed septic system.</p>	<p>There are currently no plans by any private or public entity to install public water and sewer in this vicinity. The proposed development will be utilizing on-site well and septic.</p> <p>The applicant indicated that if their well construction impacted neighboring wells in any way, they would work with the neighbors to mitigate the issue.</p> <p>The applicant is obligated to meet the Board of Health requirements regarding the spacing between all wells and their septic system prior to Site Plan approval.</p>	<b>Resolved</b>
5)	<b>Historic Battlefield</b>	<p>Comment was made by a representative of the Middleway Conservancy District stating that this property was on the edge of the Battle of Smithfield Crossing battlefield, requesting that an archaeological survey be conducted in conjunction with any soil disturbance on site prior to construction.</p>	<p>The applicant asked for more information about the battlefield and what is involved in archaeological mapping prior to construction; discussion regarding options of using Shepherd students for a “salvage assessment” prior to soil disturbance occurred and the applicant agreed to pursue this possibility.</p>	<b>Resolved</b>
6)	<b>Dry Hydrant</b>	<p>Request that the applicant consider installing a dry hydrant on-site to provide better fire protection opportunities for this development and the neighborhood. Suggested working with Fire Company #6, which serves this area, to determine design requirements.</p>	<p>The applicant indicated that they had contacted the local fire department who indicated that the state fire marshal would have final review from a fire perspective. The fire marshal has indicated that sprinklers will not be required. Applicant indicated a willingness to investigate the option of installing a dry hydrant on site.</p>	<b>Resolved</b>

Ms. Brockman closed the public hearing. As there were no unresolved issues the Conditional Use Permit for Dollar General will be placed on January 22, 2015 Board of Zoning Appeal's meeting for action.

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

January 16, 2015  
Date



Departments of Planning and Zoning Seal