



**Jefferson County**  
**Board of Zoning Appeals**  
**Thursday, June 28, 2018**

Members  
Tyler Quynn, Chair  
Jeffrey Bannon, Vice Chair  
Deirdre Catterton  
Matt Knott  
Jeff Bresee

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 Minutes – May 24, 2018
2. Swearing in of members of the public intending to provide testimony
3. Public Hearing. Appeal of the Zoning Administrator's Determination regarding the applicability of Section 4.4C pertaining to the proposed Magnolia Springs Subdivision and the Belvedere House which is listed on the National Register of Historic Places. The development consists of 301 single family homes. Appellant: Jefferson County Historic Landmark's Commission. Subject Parcel: 76 Belvedere Farm Ln. Charles Town, WV. Tax District: Charles Town (02); Tax Map: 10; Parcels: 8 & 8.6; Size: 124 ac combined; Zone: Residential Growth. Property Owner: Walter J. Truettner, III & William K. Truettner. Developer: NLP Finance, LLC c/o Hunter Wilson. File: AP18-01.
4. Public Hearing. Request for a Special Exception Permit for a 6' W x 10' L Electronic Sign, which is to replace an existing 6' x 10' sign, to be affixed to an existing supporting structure approximately 25' in height. Property Owner: Bolivar International Pentecostal Church of Christ. Applicant: B.G. Turner, Pastor. Church address: 87 Old Taylor Ln., Harpers Ferry, WV. Sign located parallel to US 340 adjacent to church parking lot. Tax District: Harpers Ferry (04); Tax Map: 7; Parcel: 18.3; Size: .75 ac; Zone: Residential Growth. File: SE18-01.
5. Zoning Administrator Report
  - a. Monthly Zoning Certificate Activity Report
6. Legal Update
  - a. Possible executive session on the following pending lawsuits. None.
  - b. Discussion with possible deliberative session and sign of draft Findings/Decisions  
Meeting: May 24, 2018
    - i. Variance from Sec. 9.7. Owners: Michael and Whitney Spry. File: ZV18-06.
    - ii. Request for a CUP for Imam Abdel Salam, applicant, to reestablish an automobile sales and repair shop utilizing the existing buildings and parking areas. Signage is addressed in the application. Owner: Willard A. & Dorothy Daniels (c/o Pricilla Cameron). File: CUP18-01
    - iii. Variance from Sec. 11.1A (ZV18-07) and Sec. 4.11. (ZV18-08). Owner Kentland Foundation, Inc. Applicant: Starbucks (CUP17-06).



## Minutes

### Jefferson County Board of Zoning Appeals

- 1 Meeting Date: May 22, 2018
- 2 Meeting Location: Charles Town Library Conference Room  
3 200 East Washington Street, Charles Town, West Virginia
- 4 Board Members Present: Tyler Quynn, Chair, Matt Knott, and Deirdre Catterton
- 5 Members absent: Jeffrey Bannon, Vice Chair and Jeff Bresee (with notification)
- 6 Staff members present: Alexandra Beaulieu, Zoning Administrator; Nathan Cochran, Assistant  
7 Prosecuting Attorney; and, Jennilee Hartman, Zoning Clerk

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

9 Ms. Catterton moved to call the meeting to order at 2:05 pm, which carried unanimously. Mr.  
10 Quynn explained to the public how the meeting would be conducted.

11 1. Approval of Minutes – April 26, 2018. Mr. Knott moved to approve the minutes, which carried  
12 unanimously.

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

14 3. Public Hearing. Variance from Section 9.7 to reduce the rear setback from 50' to 10' to  
15 construct a 40' x 48' pole barn. Property Owners: Michael and Whitney Spry. Property  
16 Location: John Day Farm Subdivision, Lot D, 3953 Shepherd Grade Rd., Shepherdstown, WV.  
17 Tax District: Shepherdstown (09); Tax Map: 2; Parcel: 10.5; Size 10 ac; Zone: Rural. File:  
18 ZV18-06.

19 Michael and Whitney Spry, property owners, were present to address the Board. Ms. Beaulieu  
20 presented her staff report to the Board. Mr. Spry explained the nature of the request to the Board  
21 and verified that he had confirmed the location of the property corners. Mr. Quynn opened the  
22 public hearing. There was no public comment. Mr. Quynn closed the public hearing. Mr. Knott  
23 moved to approve the variance as requested, which carried unanimously.

24 4. Public Hearing. Request for a Conditional Use Permit for Imam Abdel Salam to reestablish an  
25 automobile sales and repair shop utilizing the existing buildings and parking areas. Signage is  
26 addressed in the application. The proposed land use is defined in Article 2 as Automobile  
27 Repair, Sales and Service. Property Owner: Willard A. & Dorothy Daniels (in care of Pricilla  
28 Cameron). Applicant: Imam Abdel Salam. Property Location: 5383 & 5409 Charles Town Rd.  
29 Kearneysville, WV. Tax District: Middleway (07); Tax Map: 3; Parcel: 1.1; Size: 5.34 ac; Zone:  
30 Village. File: CUP18-01.

31 Mohammad Aly, applicant, and Celia Lainez, real estate agent, were present to address the Board.  
32 Ms. Beaulieu presented her staff report to the Board. Ms. Beaulieu noted that the property had  
33 historically been used as a commercial property and that it had operated as an automobile sales  
34 and repair business in the past. Ms. Beaulieu explained that the applicant was informed of the  
35 potential to reestablish the previous land use as a nonconforming use if documentation could be  
36 provided to prove it had not been abandoned; however, the applicant chose to apply for a  
37 conditional use permit instead. Mr. Aly and Ms. Lainez explained the request to the Board.  
38 Mr. Aly stated he would like to utilize the entire 5 acre parcel for the business so as to comply  
39 with all setback and safety regulations. Mr. Aly answered the Board's questions stating the  
40 business may contain up to 100 vehicles on site. The Board expressed concern that the application  
41 and legal ad implied the land use would be reestablished within the existing buildings and  
42 conducted on the existing parking lot and did not clearly explain the intent to expand the proposed  
43 use into the entire 5 acre parcel.

- 1 Mr. Knott moved to go into deliberative session at 2:30 pm, which carried unanimously.  
2 Mr. Knott moved to come out of deliberative session at 2:47 pm, which carried unanimously.
- 3 Mr. Knott moved to approve the Conditional Use Permit for Imam Abdel Salam to reestablish  
4 an automobile sales and repair shop utilizing the existing buildings and parking areas. Mr. Knott  
5 clarified that the conditional use permit was to reestablish the proposed land use on the  
6 previously occupied 1 acre site and that any expansion of the business beyond the 1 acre area  
7 will be required to come back before the Board. Ms. Catterton seconded the motion, which  
8 carried unanimously.
- 9 5. Public Hearing. Variance from the following Sections for the construction of the proposed dine-  
10 in and drive thru Starbucks (CUP17-06):
- 11 a) Section 11.1A: to eliminate the required 24 parking spaces for the proposed use and to  
12 remove 58 existing parking spaces from the approved Somerset shopping center parking lot;  
13 (File: ZV18-07);
- 14 b) Section 4.11 and App. B: to eliminate the required landscape buffer along the side/rear  
15 property lines and to limit the street tree installation to immediately in front of the Starbucks  
16 site (File: ZV18-08).
- 17 Property Owner Kentland Foundation, Inc. Property Location: Somerset Village Shopping Center,  
18 58 Somerset Blvd, Charles Town, WV. Tax District: Charles Town (02); Tax Map: 9; Parcel: 8.7;  
19 Proposed site: ~1 ac; Total Site: 15 ac; Zone: Residential-Light Industrial-Commercial.
- 20 Jamie MacLean, representative with Greenway Engineering, and Helene McCarron,  
21 representative with Kentland Foundation, were present to address the Board. Ms. Beaulieu  
22 provided an overview of each request to the Board and explained that the Board would need to  
23 vote on each request separately. Ms. MacLean explained the nature of each request to the Board.  
24 Ms. MacLean briefly described their analysis of the available parking spaces based on the  
25 shopping center's current tenants and the proposed impact the Starbucks would have.
- 26 Ms. Catterton moved to approve Section 11.1A to eliminate the required 24 parking spaces for  
27 the proposed use and to remove 58 existing parking spaces from the approved Somerset  
28 shopping center parking lot (File: ZV18-07), which carried unanimously.
- 29 Ms. Catterton moved to approve Section 4.11 and Appendix B to eliminate the required  
30 landscape buffer along the side/rear property lines and to limit the street tree installation to  
31 immediately in front of the Starbucks site (File: ZV18-08), which carried unanimously.
- 32 6. Discussion and possible action regarding the Starbucks Drive-Through Coffee Shop Conditional  
33 Use Permit (CUP17-06) Supplemental Signage Information submitted by Greenway Engineering  
34 on behalf of The Kentland Foundation, Inc. This item is in response to a condition of approval for  
35 the Starbucks CUP which was granted at the December 14, 2017 Board of Zoning Appeals  
36 meeting. Property Owner Kentland Foundation, Inc. Location: Somerset Village Shopping Center,  
37 58 Somerset Blvd, Charles Town, WV. Tax District: Charles Town (02); Tax Map: 9; Parcel: 8.7;  
38 Proposed site: ~1 ac; Total Site: 15 ac; Zone: Residential-Light Industrial-Commercial.
- 39 Jamie MacLean, representative with Greenway Engineering, and Helene McCarron,  
40 representative with Kentland Foundation, were present to address the Board. Ms. Beaulieu  
41 presented her memorandum to the Board stating that this item was intended to be informational.  
42 Ms. Beaulieu explained that during the conditional use permit (CUP) public hearing the Board  
43 placed a condition of approval requiring that the signage be brought back before the Board by

1 way of a variance. Ms. Beaulieu noted that during the CUP public hearing, the applicant had  
2 proposed a second free-standing sign on the property which exceeded the provisions of the  
3 Ordinance. She noted that the applicant had revised the proposed signage so that it complies  
4 with Article 10 and does not necessitate a variance from any provision of the Zoning Ordinance.  
5 Ms. MacLean explained that the pictures provided in the packet were of the exact store and  
6 signage designs that would be utilized at this location. The Board accepted the information as  
7 presented and felt that no further action was necessary.

8 7. Zoning Administrator's Report

9 a. Monthly Zoning Certificate Activity Report. This report was provided to the Board in their  
10 mailed packet.

11 Ms. Beaulieu informed the Board that the text amendments to Article 10 regarding signage had  
12 been adopted by the County Commission on May 17, 2018. Ms. Beaulieu also informed the  
13 Board of an appeal that would be on the next regularly scheduled meeting, which would be held  
14 on June 28, 2018.

15 8. Legal Update

16 a. Possible executive session on the following pending lawsuits. None.

17 b. Discussion with possible deliberative session and signing of draft findings/decisions.

18 Meeting: April 26, 2018

19 i. Variance from Section 9.6C. Owner: Robert & Geraldine Hanshew. File: ZV18-05.

20 Mr. Cochran provided the draft Findings to Mr. Quynn to review and sign.

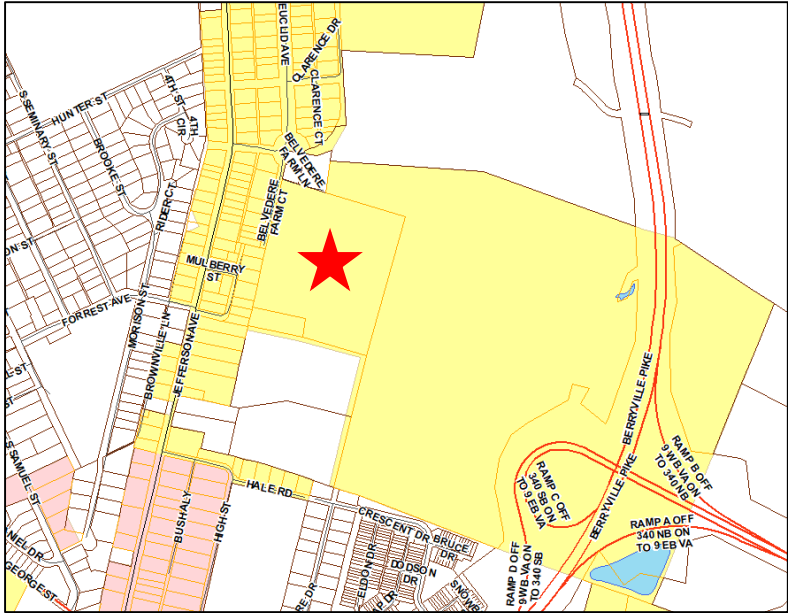
21 Mr. Knott moved to adjourn the meeting at 3:16 pm. Mr. Quynn called for a vote, which carried  
22 unanimously.



Staff Report  
 Jefferson County Board of Zoning Appeals  
 June 28, 2018

**Zoning Determination Regarding Section 4.4C #AP18-01**

Item #3 Appeal of the Zoning Administrator’s Determination as to the applicability of Section 4.4C to the Magnolia Springs Subdivision (PC File #18-05).

Appellant:	Jefferson County Historic Landmarks Commission Martin Burke, Chair
Appellant’s Representative:	Adams Law Firm, PLLC Jared Adams, Esq (WVSB #11011)
Property/Project Owner:	Belvedere Family Trust C/O Walter J. II & William K. Truettner, Trustees
Property/Project Location:	76 Belvedere Farm Lane, Charles Town, WV
Consultant/Surveyor/Engineer:	Gordon
Legal Description & Zoning District:	<p style="text-align: center;">Tax District: Charles Town (02); Tax Map: 10; Parcel: 8.6          Size: 20.57 acres; Zone: Residential Growth</p> 
Surrounding Properties	The property is surrounded by lots zoned Residential Growth in the County and residential lots within the City of Charles Town.
History:	04/10/18: Planning Commission approved Concept Plan for a 301 Lot Major Subdivision. 04/10/18: Planning Commission granted three waivers related to the 301 Lot Major Subdivision
Approved Activity:	301 Lot Major Subdivision (Single Family Homes)

**Overview of Magnolia Springs Subdivision and Appeal**

On February 5, 2018 the Office of Planning and Zoning notified the Historic Landmarks Commission that an application for a Pre-Proposal Conference (PPC) had been submitted for Belvedere Farm. The PPC was held on February 7, 2018 and Ms. Lauren Kelly, with the JCHLC, was in attendance. During the meeting, the proposed 301 lot subdivision was discussed, as well as the fact that a category 1 (National Register) structure existed on the property.

On February 21, 2018 the Magnolia Springs Concept Plan was submitted to the Office of Planning and Zoning, which reflected a 301 lot subdivision, comprised of single family homes. Within the application, a copy of the

Staff Report  
Jefferson County Board of Zoning Appeals  
June 28, 2018

**Zoning Determination Regarding Section 4.4C #AP18-01**

“Letter of Transmittal” to the Historic Landmarks Commission was provided, verifying that the applicant had provided a copy of the Concept Plan to the HLC as required by the Subdivision Regulations.

On April 9, 2018, the Historic Landmarks Commission submitted their Agency Review Letter with comments pertaining to the Magnolia Springs subdivision.

On April 10, 2018, the Planning Commission held a Public Workshop to review the Magnolia Springs Concept Plan. Mr. Martin Burke with the Historic Landmarks Commission was in attendance, but did not speak during the Public Workshop for the Concept Plan nor did he speak during the Public Hearing for the three waiver applications. The HLC’s Agency Review Letter was submitted to the Planning Commission the night of the meeting because it was not submitted to Staff until the day before the meeting and therefore, could not be included in the mailed packet.

The Planning Commission voted to accept the Concept Plan as presented with agreed upon recommendations, which passed with a vote of 6 in favor and two opposed (Commissioners Peter Onoszko and Jack Hefestay).

On April 12, 2018, two days after the Planning Commission meeting, Mr. Burke submitted a letter to the Planning Commission stating that the proposed subdivision was in violation of Section 4.4C of the Zoning Ordinance.

On April 14, 2018, Commissioner’s Onoszko and Hefestay submitted a letter to the Planning Commission requesting that the vote approving the Magnolia Springs Concept Plan be reconsidered. They cited Mr. Burke’s letter dated April 12, 2018.

On April 25, 2018, the Zoning Administrator made a determination as to the applicability of Section 4.4C of the Zoning Ordinance to the proposed Magnolia Springs subdivision.

On May 1, 2018, the Planning Commission held their regularly scheduled meeting and reviewed the Historic Landmarks Commission’s letter dated April 12, 2018 along with the memo from Jennifer Brockman, County Planner, and the Zoning Administrator’s written determination. The developer proffered to restrict the lots adjoining the proposed five acre lot with the Belvedere House from Road 2 to Road 8 to single story homes and to keep the building envelope as close to the roads as regulations allow.

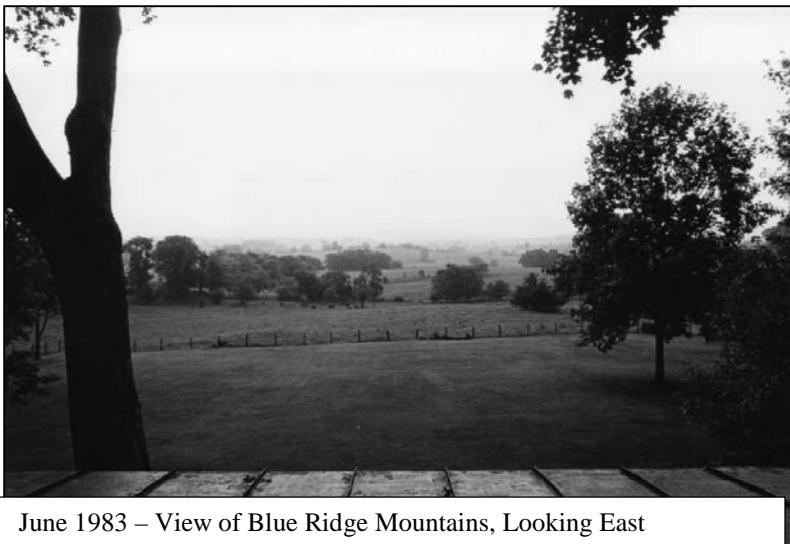
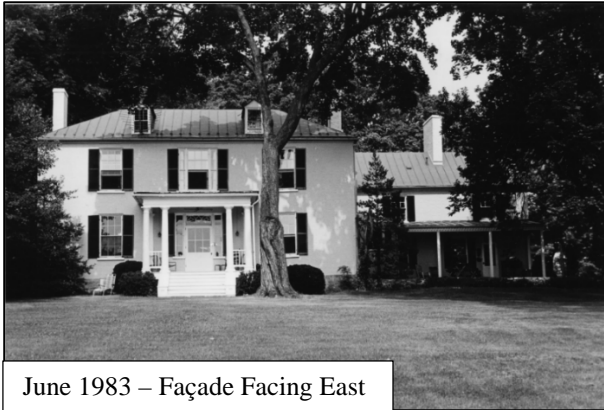
The Appellant is appealing the Zoning Administrator’s determination that Section 4.4C of the Zoning Ordinance did not apply to the proposed Magnolia Springs Subdivision (see Zoning Administrator Memo dated April 25, 2018).

Staff Report  
Jefferson County Board of Zoning Appeals  
June 28, 2018

**Zoning Determination Regarding Section 4.4C #AP18-01**

**Property History**

- On January 12, 1984 the referenced Belvedere House and ten acres surrounding the property were entered in the National Register.



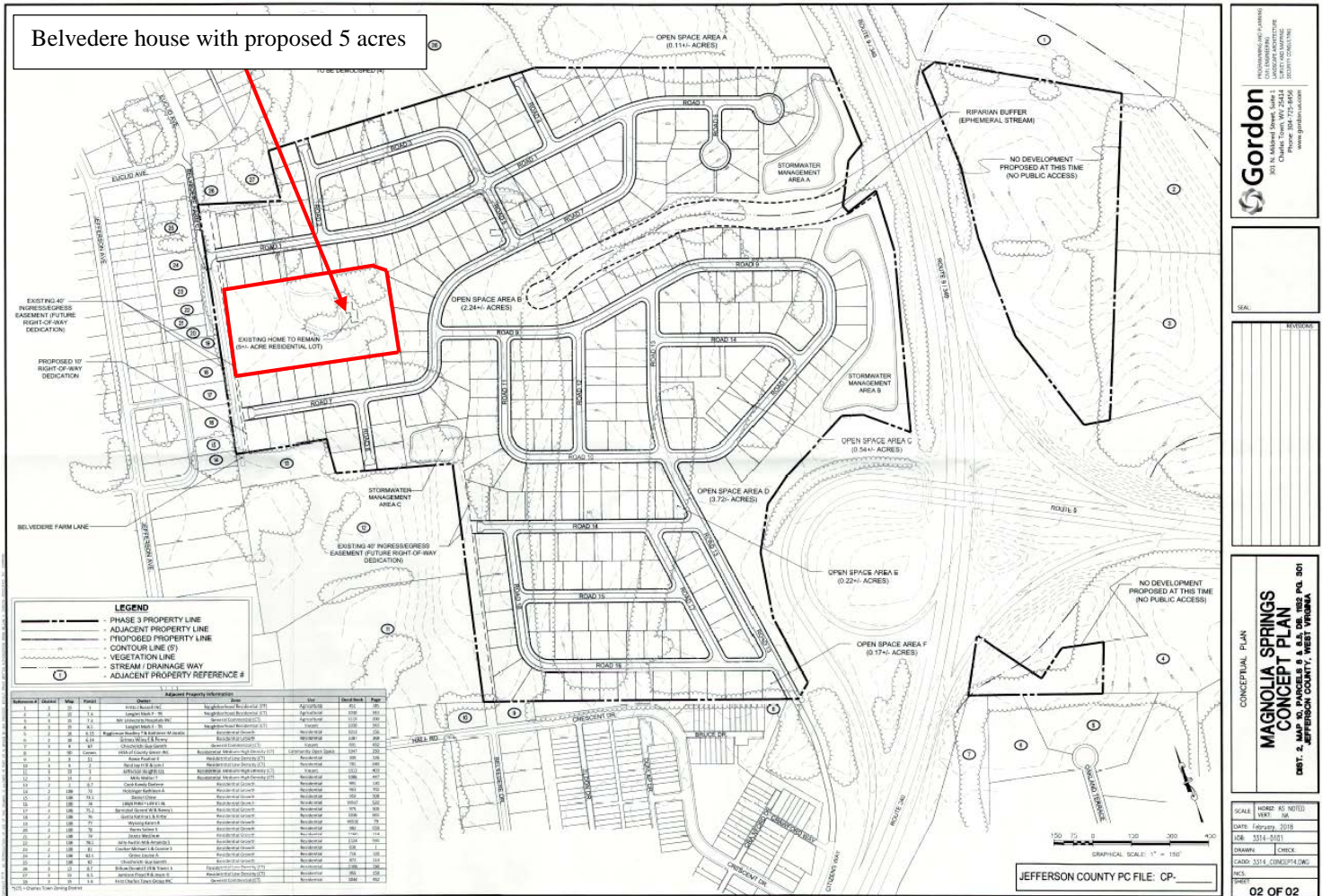
*\*B&W Images taken from the National Register Nomination Form, available on the NPS website*

*\*Color Image taken from letter from Gordon to Planning Commission dated April 25, 2018*



Staff Report  
 Jefferson County Board of Zoning Appeals  
 June 28, 2018

**Zoning Determination Regarding Section 4.4C #AP18-01**



**Board of Zoning Appeals Role**

**ARTICLE 6 Board of Zoning Appeals Applications**

The Board of Zoning Appeals, in accordance with the procedures outlined in this Section, shall review and consider the following applications: Appeals, Variances, Conditional Use Permits, Seasonal Use Permits, and Special Exceptions.

In exercising its power and authority, the Board of Zoning Appeals may reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination appealed from, and make such order, requirement, decision or determination as the Board deems appropriate.<sup>17, 21</sup>

Any party may appeal any decision of the Board of Zoning Appeals to the Circuit Court of Jefferson County within 30 days of the Board's decision, pursuant to Chapter 8A of the West Virginia Code, as amended.<sup>2, 17, 21</sup>

Nothing in this Section shall be construed as permitting the Board of Zoning Appeals to exercise any power or refrain from the performance of any duty not authorized or directed by the provisions of Chapter 8A of the West Virginia Code, as amended, which provisions of the Code are hereby incorporated herein by reference.<sup>14, 17</sup>

**Zoning Determination Regarding Section 4.4C #AP18-01**

**Section 6.1 Appeals<sup>32</sup>**

The Board of Zoning Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official in regard to the enforcement of this Ordinance or of any ordinance adopted thereto.

**A. Filing an Appeal**

1. An appeal to the Board may be taken by any person, board, associate, corporation or official allegedly aggrieved by any administrative decision based or claimed to be based, in whole or in part, upon the provisions of this Ordinance. The property owner of the subject appeal shall sign the application or an affidavit allowing an agent for the property owner to file the application which shall be submitted.
2. Such appeal shall be filed with the Board within 30 days from the decision appealed.

**B. Notification**

1. 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.<sup>5, 17, 21</sup>
2. The subject property shall be posted conspicuously by a zoning notice no less than 28 inches by 22 inches in size, at least 15 days before the hearing. The sign will be prepared by the Office of Planning and Zoning but posting the sign is the responsibility of the applicant. The Board, in its discretion, may otherwise visit the specific property prior to or after the hearing.

**C. Public Hearing**

1. The Board shall hold a hearing within 45 days of the date the appeal is received in the Office of Planning and Zoning. At the hearing, any party may appear and be heard in person or by agent or attorney.<sup>5, 8, 17, 21</sup>
2. The Board shall render its determination on the application no more than 30 days following the public hearing by registered mail.

**D. Continuance of Hearing**

1. The Board may continue a hearing at another time and/or date once such hearing has been started; however, the Board shall announce the date and hour of continuance of such hearing while in session. Any hearing continued shall be held within 30 days from the initial hearing.





JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, 2nd Floor, P.O. Box 338

Charles Town, WV 25414

Appel Number: AP18-01

Staff Initials: rlg

Fees Paid (\$100): \$ 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

Appeal Form - Board of Zoning Appeals

Pursuant to Section 3.4 of the Jefferson County Zoning and Land Development Ordinance, the Board of Zoning Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official in regard to the enforcement of this Ordinance or any ordinance adopted thereto.

Name and/or File Number of Project

Name of Project: Magnolia Springs Concept Plan File Number: 18-05

Appellant Information

Appellant Name: Jefferson County Historic Landmarks Commission, by Martin Burke, Chair
Mailing Address: P.O. Box 23
City: Charles Town State: WV Zip Code: 25414
Phone Number: 304-876-3883 Email: martinburke@frontiernet.net

Appellant Representative(s) Information

Company Name: Adams Law Firm, PLLC
Representative Name(s): Jared Adams, Esq. (WVSB #11011)
Mailing Address: P.O. Box 755
City: Martinsburg State: WV Zip Code: 25402
Phone Number: 304-881-1152 Email: jared@adamslawfirmpllc.com

Appellant Physical Property Details

Physical Address: Magnolia Springs Concept Plan
City: near Charles Town State: WV Zip Code: 25414
Tax District: 2 Map No: 10 Parcel No: 8+8-6
Size: 301 lots Deed Book: 1132 Page No: 301

Zoning District (please check one)

RECEIVED

MAY 24 2018

JEFFERSON COUNTY PLANNING, ZONING AND ENGINEERING

Table with 6 columns: Residential (R-A), Residential Growth (R-G), Industrial Commerical (I-C), Residential-Light Industrial-Commercial (R-L-C), Village (V). Includes checkboxes and a 'RECEIVED' stamp.

Only if applicable to your request, provide a sketch showing the shape and location of the lot indicating all roads, rights of ways, 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 and submit with this form.

*Decision Being Appealed*

Decision by Zoning Administrator Alexandra Beaulieu in Memo  
dated April 25, 2018, Re: Section 4.4- Prohibited Uses

*Type of Appeal*

Administrative Decision       LESA Point Score       Other

If other, please describe: \_\_\_\_\_

*Please explain reasons/justifications for appeal and desired action by Board, in numerical order. Use a separate sheet of paper if necessary.*

See Attached

*Original signature is required. The information given is correct to the best of my knowledge.*

Martin Berke  
Signature of Appellant      Date

Jared M. Adams      5-24-18  
Signature of Appellant      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 twenty-eight (28) inches by twenty-two (22) inches in size, at least 15 days before the hearing (pursuant to Zoning and Land Development Ordinance Section 3.4A(3)(b)).

06/28/18  
Date of Public Hearing

06/03/18  
Advertising Date

06/13/18  
Placard Posting Date

**Jefferson County Historic Landmarks Commission's attachment to  
Appeal Form - Board of Zoning Appeals**

**I. Introduction**

The Jefferson County Historic Landmarks Commission (“the Historic Landmarks Commission”) appeals the decision made by Zoning Administrator Alexandra Beaulieu contained in her memo dated April 25, 2018, with the subject identified as “Section 4.4 - Prohibited Uses” where she found that Section 4.4C of the Zoning Ordinance does not apply to the proposed Magnolia Springs Subdivision. Section 4.4C states, “[a]ny development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.” By refusing to conduct any analysis on whether the proposed development would destroy the historical character of the Belvedere property with the National Register designation, the Zoning Administrator essentially invalidated Section 4.4C by finding that Section 4.4C does not apply to the proposed Magnolia Springs Subdivision. The Zoning Administrator did not have the authority to invalidate Section 4.4C, and was required to consider whether the proposed development “would destroy the historical character” of the Belvedere property as expressly required by Section 4.4C. The Historic Landmarks Commission details relevant procedural history and argument below.

**II. Procedural History.**

1. The Historic Landmarks Commission appeals the decision made by Zoning Administrator Alexandra Beaulieu contained in her memo dated April 25, 2018, with the subject identified as “Section 4.4 - Prohibited Uses” where she found that Section 4.4C of the Zoning

Ordinance does not apply to the proposed Magnolia Springs Subdivision. The Historic Landmarks Commission details relevant procedural history below.

2. On April 10, 2018, the Jefferson County Planning Commission held a meeting, which included a Public Workshop for a Concept Plan for Magnolia Springs Subdivision (PC File # 18-05), a proposed 301 lot Major Subdivision. The Planning Commission voted to accept the Concept Plan as presented with agreed upon recommendations from County staff and the City of Charles Town as detailed on the record.

3. On April 12, 2018, Martin Burke, as Chair of the Jefferson County Historic Landmarks Commission submitted a letter to Donnie Fisher, as President of the Jefferson County Planning Commission. In the letter, Mr. Burke states in part that the Magnolia Springs Concept Plan presented and approved by the Jefferson County Planning Commission on April 10, 2018 is not in conformance with the Section 4.4C of the County Zoning Ordinance, which states, “[a]ny development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.” *See* Exhibit 1. Mr. Burke asked for the vote to be nullified immediately, and explained the need for Section 4.4C to be considered and applied. Mr. Burke also explained that the Jefferson County Historic Landmarks Commission would be happy to work with the developer to devise a concept plan for Magnolia Springs that would be acceptable and profitable to all parties and protects the historic character of the site and Belvedere, listed on the National Register of Historic Places

4. In a similar letter, two members of the Jefferson County Planning Commission (Jack Hefestay and Peter Onoszko) wrote to Mr. Fisher as President of the Jefferson County

Planning Commission on April 14, 2018, requesting reconsideration of the April 10, 2018 decision regarding the Magnolia Springs development. *See* Exhibit 2.

5. After receiving these two letters, staff of the Jefferson County Commission further researched the historic significance of the Belvedere House and property, and reviewed the National Historic Register nomination form. *See* Exhibit 3. Staff confirmed the National Register designation, and learned that the historic house and a ten acre area around the house are listed on the National Register of Historic Places. In response to the April 12 and 14 letters, and this additional research by staff, Zoning Administrator Alexandria Beaulieu issued a memo to the Jefferson County Planning Commission on April 25, 2018. *See* Exhibit 4. The Jefferson County Planning Commission appeals Ms. Beaulieu's decision contained in this memo (hereinafter referred to as "Ms. Beaulieu's memo.")

6. In her memo, Ms. Beaulieu was writing in response to Mr. Burke's April 12, 2018 on behalf of the Historic Landmarks Commission, and Ms. Beaulieu wrote that "she was providing a written determination regarding the applicability of Section 4.4C of the Prohibited Uses in the Zoning Ordinance to the proposed Magnolia Springs Subdivision."

Ms. Beaulieu cited Section 4.4C, but concluded that Section 4.4C does not apply, to the proposed subdivision,

Section 4.4C Prohibit Use states

Any development which would destroy the character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.

I have determined that Section 4.4C of the Zoning Ordinance does not apply to the proposed Magnolia Springs Subdivision. Section 4.4C is ambiguous and does

not define the criteria for “historic character of a property” nor does it clarify what is meant by “destruction of”.

*See* Exhibit 4. Ms. Beaulieu made no effort to interpret Section 4.4C, finding that it does not apply to the proposed subdivision because the ordinance is “ambiguous” in her opinion. Ms. Beaulieu’s decision that Section 4.4C does not apply has the effect of nullifying Section 4.4C ~~does not apply to any~~. Ms. Beaulieu, as Zoning Administrator, does not have the authority to invalidate an ordinance: the Zoning Administrator shall “administer and enforce” the Zoning and Land Development Ordinance, and this includes the ability to “[i]nterpret the provisions of the Ordinance as required by law[,]” but no Ordinance or any other legal authority allows the Zoning Administer to invalidate Section 4.4C or any other Ordinance. *See* Section 3.2A (quoting Section 3.2.)

7. In the May 1, 2018 memo from County Planner Jennifer Brockman, Ms. Brockman detailed the history of the matter, cited Sections 24.110D and Section 24.112, and concluded, “Staff believes that even with the ten acres as part of the National Register nomination, the proposed Magnolia Springs subdivision complies with the requirements of the Subdivision Regulations and the Zoning Ordinance and staff’s recommended conditions from the staff report would not have changed.” *See* Exhibit 3. Ms. Brockman ended the memo by stating, “This memo is for the Planning Commission’s information and use in determining whether this new information requires the previous approval to be reconsidered.”

8. After the May 1, 2018 memo was issued, the Jefferson County Planning Commission met the same day and discussed the issue, and relied on Ms. Beaulieu’s memo as referenced in the recorded video from the public meeting held on May 1, 2018 archived at <http://www.jeffersoncountywv.org/county-government/departments/planning-and-zoning-department/>

archived-pc-and-bza-meetings-after-september-2015. Among other points, the Planning Commission discussed whether the proposed development would destroy the historical character of the Belvedere property.

**III. In the Zoning Administrator's April 25, 2018 memo, the Zoning Administrator erred in finding that Section 4.4C of the Zoning Ordinance does not apply to the proposed Magnolia Springs Subdivision.**

The memo from County Planner Jennifer Brockman dated May 1, 2018 contradicts the finding by the Zoning Administrator that Section 4.4C is ambiguous, as Ms. Brockman's memo comments on alternative designs, and concludes that the original staff report would have been unaffected by the application of Section 4.4C. This illustrates that the alleged ambiguity in Section 4.4C is not so ambiguous that reasonable people cannot discuss and debate aspects in design as they relate to Section 4.4C. Section 4.4C obviously requires discussion and debate by the Planning Commission on whether any proposed development would destroy the historical character of a property listed on the West Virginia or National Register of Historical Places, based on the specific facts of each proposed development that could effect the historic character of a listed property. Instead of directing the Planning Commission ~~of~~ to determine whether the proposed Magnolia Springs Subdivision would destroy the historical character of Belvedere, as expressly required by Section 4.4C, the Zoning Administrator decided that Section 4.4C did not apply. That decision must be reversed.

The effect of the Zoning Administrator's decision is essentially striking Section 4.4C from the Zoning Ordinance without any public comment or required vote. This is a power which the Zoning Administrator does not have. The application of Section 4.4C will not result in unnecessary hardship for applications, and this is proven by watching the video from the

Planning Commission's May 1, 2018 meeting where the Commissions were open to a robust dialogue on the interpretation of whether Section 4.4C using the applicable facts involving a specific proposed development and a listed property.

The Board of Zoning Appeals must reverse the Zoning Administrator's decision which essentially invalidates Section 4.<sup>H.S.A.</sup>~~XC~~, and the Supreme Court of Appeals of West Virginia's opinion in St. Mary's Hosp. v. State Health Planning and Development Agency, 178 W.Va. 792 (1987). While not addressing a land use issue, the St. Mary's Hosp. case makes clear that an administrative decision maker cannot refuse to ignore the requirements of a rule which they are bound to consider. In St. Mary's Hosp., the dispute involved the application for a certificate of merit for the construction of a hospital, and an administrative agency (the State Health Planning and Development Agency, referred to as SHPDA) was empowered by state statute to determine whether a certificate of merit should be issued. The applicable state statute required the SHPDA to consider a number of specific factors in making the decision, required SHPDA to rule on all proposed findings, and required SHPDA to accompany any findings with a concise and explicit statement of the underlying facts supporting the findings. Id. at 796. The Supreme Court found that the SHPDA did not make an attempt to rule on the parties' proposed findings as the rule required. Id. at 796. The Supreme Court further reversed the SHPDA's decision because the SHPDA's decision was inadequate because several of the findings required by the rule were "made in conclusory fashion or **ignored completely.**" Id. at 796 (emphasis added.) Just like the SHPDA completely ignored some of the factors that it had to in making its decision, the Zoning Administrator completely ignored the need for the Planning Commission to apply Rule 4.4C. The Zoning Administrator went even farther than completely ignoring Rule 4.4C- she essentially

invalidated by offering her opinion that the Planning Commission should not consider Rule 4.4C. Just like the Supreme Court intervened when the SHPDA did not apply the rules it was required to, the Board of Zoning Appeals must likewise intervene and overturn the Zoning Administrator's decision that Section 4.4<sup>y J.A.</sup>C does not apply.

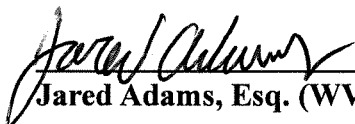
Keeping Section 4.4C of the Zoning Ordinance intact and enforceable maintains the spirit of the Zoning Ordinance and in the citizens' directives outlined in the Vision Statement for Envision Jefferson 2035 Comprehensive Plan:

“We envision Jefferson County in the year 2035 as a **place of natural beauty and historic value**. It is an active, vibrant place to live, work, and play. The county has economic growth potential as a result of its location in the Washington, D.C. and Baltimore, MD Metropolitan Areas, as well as its skilled workforce. There is a well-diversified economic base of manufacturing, services, government, tourism, and agriculture that is not reliant on any single business type. **The County's rich historic, cultural and natural resources are preserved and are an integral part of its economy**. Excellent infrastructure, public facilities and services are available to all residents and employers. It is a community with well-defined rural, village, and urban areas. Residents enjoy a countrywide system of well-programmed parks, as well as recreational opportunities serving all ages. Safe, congestion free, and convenient transportation access is available throughout the County.”

See Exhibit 5 (emphasis added).

Accordingly, the Board of Zoning Appeals should reverse the Zoning Administrator's decision that Section 4.4C does not apply.

**Submitted by Jefferson County Historic Landmarks Commission**

  
\_\_\_\_\_  
Jared Adams, Esq. (WVSB #11011)



# EXHIBIT 1





April 12, 2018

Mr. Donnie Fisher,  
President  
Jefferson County Planning Commission  
c/o Jefferson County Office of Planning and Zoning  
PO Box 716  
Charles Town, West Virginia 25414

Dear Mr. Fisher,

The Magnolia Springs Concept Plan presented and approved at the JC Planning Commission meeting April 10, 2018 is not in conformance with the County Zoning Ordinance, specifically **Section 4.4 C. Prohibited Uses.**

Section 4.4 C Prohibited Uses: states:

Any development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.

Applications that violate the ordinance cannot be approved by the Planning Commission(PC). It is exactly the same situation as an application coming before the PC with a setback violation. It is regrettable this non-conformance was not addressed earlier, but the application should never have been brought to the PC for a public workshop and vote. We request that the Planning Commission vote be nullified immediately.

The Jefferson County Historic Landmarks Commission (JCHLC) would be happy to work with the developer to devise a concept plan for Magnolia Springs that would be acceptable and profitable to all parties and protects the historic character of the site and Belvedere, listed on the National Register of Historic Places. We believe that protecting the historic setting and context of a property, including the degree of open space and building density, must always be considered when planning new construction on a historic site. This entails identifying the formal or informal arrangements of buildings on the site, and whether they have a distinctive urban, suburban, or rural character.

If you have any questions or need additional information, please feel free to contact me.

Sincerely,

Martin Burke  
Chair  
Jefferson County Historic Landmarks Commission  
P.O. Box 23  
Charles Town, WV 25414

cc: Nathan Cochran, Attorney, JC Civil Division (via email)  
Chad Wallen, Gordon (via email)  
Hunter Wilson, NLP Finance, LLC (via email)

## EXHIBIT 2



April 14, 2018

Mr. Donnie Fisher  
President,  
Jefferson County Planning Commission  
c/o Jefferson County Office of Planning and Zoning  
PO Box 716  
Charles Town, West Virginia 25414

RECEIVED

APR 16 2018

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

Dear Mr. Fisher:

As members of the Jefferson County Planning Commission we the undersigned request an expeditious reconsideration of the decision taken by the Planning Commission on April 10, 2018 regarding the Magnolia Springs sub-development for the reasons stated in the enclosed letter from Mr. Martin Burke, Chair, Jefferson County Historic Landmarks Commission. It is our opinion that this matter be addressed as soon as practicable so as to allow the developer and the Historic Landmarks Commission to work something out amicably that would be to the benefit of the project while simultaneously preserving the character of Belvedere, a nationally recognized historic place in our county. We recommend that this reconsideration be placed on the agenda for May 1, 2018.

Respectfully,



Jack Hefestay  
Member, Jefferson County Planning Commission



Peter Onosko  
Member, Jefferson County Planning Commission

encl

cc: Jenny Brockman  
Martin Burke



## EXHIBIT 3





# JEFFERSON COUNTY, WEST VIRGINIA

## Office of Planning and Zoning

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

P.O. Box 716

Charles Town, WV 25414

[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)

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

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

---

### MEMO

**TO:** Jefferson County Planning Commission  
**FROM:** Jennifer M. Brockman, AICP, County Planner  
**DATE:** May 1, 2018  
**RE:** Discussion of and Possible Action on Magnolia Springs Subdivision  
Concept Plan (PC File# 18-05)

---

On April 12, 2018, staff received a letter (Attachment 1) from the Jefferson County Historic Landmarks Commission (JCHLC) questioning the validity of the vote by the Planning Commission (PC) at April 10, 2018 PC Meeting regarding the Magnolia Springs Concept Plan (PC File #18-05). A follow up letter (Attachment 2) was received from Jack Hefestay and Peter Onoszko asking for the JCHLC letter to be addressed quickly.

As a result of these letters, staff conducted further research into the historic significance of the Belvedere House and property and reviewed the National Historic Register nomination form (Attachment 3). Staff also followed up with the State Historic Preservation Office (SHPO) to confirm the National Register designation and was told that the house and a 10 acre area around the house are listed on the National Register of Historic Places (Attachment 4).

Because the information presented to the Planning Commission strongly represented that it was only the structure included on the National Register and not the ten acres surrounding the Belvedere house, Staff with the advice of Legal, felt that it was important to place this information on this Agenda so that the Commission can determine whether this information would have changed the motion and/or the vote to approve this Concept Plan at the April 10, 2018 meeting.

In response to these letters and this research, the Zoning Administrator prepared a written determination regarding whether the Magnolia Springs Concept Plan is in violation of Section 4.4C of the Zoning Ordinance (Attachment 5). She determined that Section 4.4C of the Zoning Ordinance does not apply to the proposed Magnolia Springs Subdivision.

On April 25, 2018, the applicant's engineer sent a letter to the Planning Commission responding to the JCHLC comments and clarifying why they feel the proposed five acres around the Belvedere house preserve the most significant portion of the property and meet the goal of maintaining its historic character (Attachment 6).

Staff would like to remind the Planning Commission that, per Section 24.110D of the Subdivision Regulations, the Department's role in the review of a Concept Plan includes the following:

“1. Whether the density, use, and plan meet the requirements of the Zoning Ordinance and any other zoning issues that can be identified at the concept plan submission. . . .Staff shall identify conditions that would enable the plan to meet the standards. It shall also identify any other zoning issues the developer shall address in a preliminary plat submittal.

2. Staff’s opinion as to whether the plan meets the site development planning or subdivision criteria of these Regulations. The Department shall review the concept plan for modifications that would improve the plan.”

Staff believes that even with the ten acres as part of the National Register nomination, the proposed Magnolia Springs subdivision complies with the requirements of the Subdivision Regulations and the Zoning Ordinance and staff’s recommended conditions from the staff report would not have changed.

Section 24.112 details the Planning Commission’s role at the close of the Concept Plan’s Public Workshop, as follows:

“A. **Direction.** The Planning Commission shall direct the preparation of a preliminary plat subject to conditions to be addressed in the preliminary plat application. The purpose of this review is to guide the developer so that when the preliminary plat application is formally reviewed by the staff, there should not be a whole range of issues being raised for the first time. The developer shall cite conditions and demonstrate that they have been met or otherwise addressed.

B. **Conditions.** In the direction, it is anticipated that there will be numerous conditions from the Department, agencies, and public comment. There may well be public comment that seeks to lower density of the project below that permitted by the Zoning Ordinance, or to deny the project because of concerns outside the scope of the zoning or subdivision regulations. The applicant may make proffers to address these concerns, but the Planning Commission may not use them as conditions unless they are proffered by the applicant. (emphasis added).”

This memo is for the Planning Commission’s information and use in determining whether this new information requires the previous approval to be reconsidered.

#### **ATTACHMENTS:**

1. Letter to Planning Commission (PC) from the Jefferson County Historic Landmarks Commission (JCHLC), dated 4/13/18
2. Letter to PC from Peter Onoszko and Jack Hefestay with a letter attached from the Jefferson County Historic Landmarks Commission date, 4/16/18
3. Belvedere House National Register Nomination, dated 12/16/93
4. SHPO comments on National Register Nomination, dated 4/16/18
5. Zoning Administrator determination related to the applicability of Section 4.4C to Magnolia Springs, dated 4/25/18
6. Letter to PC from Gordon/applicant responding to letter from JCHLC, dated 4/25/18



April 12, 2018

Mr. Donnie Fisher,  
President  
Jefferson County Planning Commission  
c/o Jefferson County Office of Planning and Zoning  
PO Box 716  
Charles Town, West Virginia 25414

Dear Mr. Fisher,

The Magnolia Springs Concept Plan presented and approved at the JC Planning Commission meeting April 10, 2018 is not in conformance with the County Zoning Ordinance, specifically **Section 4.4 C. Prohibited Uses.**

Section 4.4 C Prohibited Uses: states:

Any development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.

Applications that violate the ordinance cannot be approved by the Planning Commission(PC). It is exactly the same situation as an application coming before the PC with a setback violation. It is regrettable this non-conformance was not addressed earlier, but the application should never have been brought to the PC for a public workshop and vote. We request that the Planning Commission vote be nullified immediately.

The Jefferson County Historic Landmarks Commission (JCHLC) would be happy to work with the developer to devise a concept plan for Magnolia Springs that would be acceptable and profitable to all parties and protects the historic character of the site and Belvedere, listed on the National Register of Historic Places. We believe that protecting the historic setting and context of a property, including the degree of open space and building density, must always be considered when planning new construction on a historic site. This entails identifying the formal or informal arrangements of buildings on the site, and whether they have a distinctive urban, suburban, or rural character.

If you have any questions or need additional information, please feel free to contact me.

Sincerely,

Martin Burke  
Chair  
Jefferson County Historic Landmarks Commission  
P.O. Box 23  
Charles Town, WV 25414

cc: Nathan Cochran, Attorney, JC Civil Division (via email)  
Chad Wallen, Gordon (via email)  
Hunter Wilson, NLP Finance, LLC (via email)

April 14, 2018

Mr. Donnie Fisher  
President,  
Jefferson County Planning Commission  
c/o Jefferson County Office of Planning and Zoning  
PO Box 716  
Charles Town, West Virginia 25414

RECEIVED

APR 16 2018

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

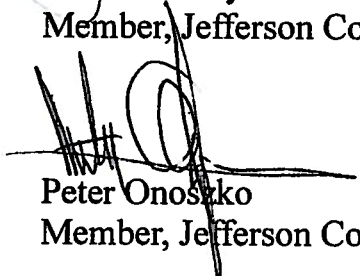
Dear Mr. Fisher:

As members of the Jefferson County Planning Commission we the undersigned request an expeditious reconsideration of the decision taken by the Planning Commission on April 10, 2018 regarding the Magnolia Springs sub-development for the reasons stated in the enclosed letter from Mr. Martin Burke, Chair, Jefferson County Historic Landmarks Commission. It is our opinion that this matter be addressed as soon as practicable so as to allow the developer and the Historic Landmarks Commission to work something out amicably that would be to the benefit of the project while simultaneously preserving the character of Belvedere, a nationally recognized historic place in our county. We recommend that this reconsideration be placed on the agenda for May 1, 2018.

Respectfully,



Jack Hefestay  
Member, Jefferson County Planning Commission



Peter Onosko  
Member, Jefferson County Planning Commission

encl

cc: Jenny Brockman  
Martin Burke



United States Department of the Interior  
National Park Service

For NPS use only

National Register of Historic Places  
Inventory—Nomination Form

received **DEC 16 1983**  
date entered

See instructions in *How to Complete National Register Forms*  
Type all entries—complete applicable sections

1. Name

historic Belvedere

and or common

2. Location

street & number 811 Belvedere Farm Drive not for publication

city, town Charles Town vic.  vicinity of

state West Virginia code 54 county Jefferson code 037

3. Classification

<b>Category</b>	<b>Ownership</b>	<b>Status</b>	<b>Present Use</b>	
<input type="checkbox"/> district	<input type="checkbox"/> public	<input checked="" type="checkbox"/> occupied	<input checked="" type="checkbox"/> agriculture	<input type="checkbox"/> museum
<input checked="" type="checkbox"/> building(s)	<input checked="" type="checkbox"/> private	<input type="checkbox"/> unoccupied	<input type="checkbox"/> commercial	<input checked="" type="checkbox"/> park
<input type="checkbox"/> structure	<input type="checkbox"/> both	<input type="checkbox"/> work in progress	<input type="checkbox"/> educational	<input type="checkbox"/> private residence
<input type="checkbox"/> site	<b>Public Acquisition</b>	<b>Accessible</b>	<input type="checkbox"/> entertainment	<input type="checkbox"/> religious
<input type="checkbox"/> object	<u>N/A</u> in process	<input checked="" type="checkbox"/> yes: restricted	<input type="checkbox"/> government	<input type="checkbox"/> scientific
	<input type="checkbox"/> being considered	<input type="checkbox"/> yes: unrestricted	<input type="checkbox"/> industrial	<input type="checkbox"/> transportation
		<input type="checkbox"/> no	<input type="checkbox"/> military	<input type="checkbox"/> other:

4. Owner of Property

name Nancy Wilson Truettner

street & number 811 Belvedere Farm Drive

city, town Charles Town  vicinity of state West Virginia

5. Location of Legal Description

courthouse, registry of deeds, etc. Jefferson County Courthouse

street & number George and Washington Streets

city, town Charles Town state West Virginia

6. Representation in Existing Surveys

Historic Resource Survey, Charles Town  
title By-Pass Project, by Paul D. Marshall and Associates has this property been determined eligible?  yes  no  
date 1980  federal  state  county  local

depository for survey records Historic Preservation Unit, WV Dept. of Culture & History

city, town Charleston state West Virginia

---

## 7. Description

---

<b>Condition</b>		<b>Check one</b>	<b>Check one</b>
<input checked="" type="checkbox"/> excellent	<input type="checkbox"/> deteriorated	<input type="checkbox"/> unaltered	<input checked="" type="checkbox"/> original site
<input checked="" type="checkbox"/> good	<input type="checkbox"/> ruins	<input checked="" type="checkbox"/> altered	<input type="checkbox"/> moved date _____
<input type="checkbox"/> fair	<input type="checkbox"/> unexposed		

---

### Describe the present and original (if known) physical appearance

The stately mansion "Belvedere," sits at the end of tree shaded Belvedere Farm Drive, outside of Charles Town, Jefferson County, West Virginia, commanding a majestic, panoramic view that has remained virtually unchanged since the farm came into existence in the 18th century.

The Belvedere Mansion as we find it today is a composite of the original house believed to have been built about 1807 by Magnus Tate II, and a larger house built in 1824 by Magnus' son, William. The original smaller house is generally referred to as the kitchen house. Thomas Willis joined the two units together in 1939 although there is no opening between spaces on the second floor. During this work, the remains of a wood sill were found embedded in a masonry foundation, suggesting an earlier log building on the site of the kitchen house.

Both units of the building are designed in the Federal style. The 1807 unit is two-story constructed with an exterior of hand-molded brick. American common brick coursing was used for the north, south, and west facades. Flemish bond coursing is on the east facade. The existing entrance to the kitchen building is a doorway on the north side which is flanked by side lights and has an ornamental transom above. A circular window is located in the gable end above the second floor window. The west facade has a shed roof porch with a dentiled architrave supported by four square wood posts. One interior chimney interrupts the standing seam metal roof of the building. The roof of the original kitchen building is a gable type similar to the earlier Georgian style. The windows are six over six light sash with louvered shutters.

The original kitchen house was about 20 feet wide and 32 feet long with two rooms on each floor and a center chimney serving fireplaces in each room. The 1939 renovation added space to the north end of the building to facilitate the connection of the two buildings and provide bath facilities.

The main section of the house, built circa 1824, is also two stories in height constructed with an exterior pressed brick using Flemish bond on the front and American Common on the north, east, and south. An important feature of both units of the house is a well preserved example of brick corbeled dentil cornice work. Both units of the house rest on a random coursed limestone foundation. The west entry is an excellent example of Federal style architectural detail. The podium entrance has four Doric columns all connected with a wood railing. The door is flanked by sidelights and has an ornamented transom. Three window openings are balanced on the second level with six over six lights and louvered shutters. The center window is tripart aligned above the entrance door. Two attic dormers interrupt the metal roof on the west elevation and all window openings are double sash, six over six lights. The north chimney is inside the north end of the house and the south chimney extends to the outside of the south wall. The 1824 building has a low-pitch hip type roof design typical of the Federal architectural period. The main unit measures approximately 49' x 24' with essentially a "two over two" arrangement and center stair hall between rooms on both floors. Except for a second floor bath located at the end of what was originally the center hall, the original room arrangements are basically unchanged. A small bath room, added in 1978, is located at the point where the two buildings intersect.

Belvedere is a property whose architectural significance and pristine setting make it one of Jefferson County's most noteworthy landmarks.

## 8. Significance

Period	Areas of Significance—Check and justify below			
<input type="checkbox"/> prehistoric	<input type="checkbox"/> archeology-prehistoric	<input type="checkbox"/> community planning	<input type="checkbox"/> landscape architecture	<input type="checkbox"/> religion
<input type="checkbox"/> 1400-1499	<input type="checkbox"/> archeology-historic	<input type="checkbox"/> conservation	<input type="checkbox"/> law	<input type="checkbox"/> science
<input type="checkbox"/> 1500-1599	<input checked="" type="checkbox"/> agriculture	<input type="checkbox"/> economics	<input type="checkbox"/> literature	<input type="checkbox"/> sculpture
<input type="checkbox"/> 1600-1699	<input checked="" type="checkbox"/> architecture	<input type="checkbox"/> education	<input type="checkbox"/> military	<input type="checkbox"/> social/ humanitarian
<input type="checkbox"/> 1700-1799	<input type="checkbox"/> art	<input type="checkbox"/> engineering	<input type="checkbox"/> music	<input type="checkbox"/> theater
<input checked="" type="checkbox"/> 1800-1899	<input type="checkbox"/> commerce	<input type="checkbox"/> exploration/settlement	<input type="checkbox"/> philosophy	<input type="checkbox"/> transportation
<input type="checkbox"/> 1900-	<input type="checkbox"/> communications	<input type="checkbox"/> industry	<input checked="" type="checkbox"/> politics/government	<input checked="" type="checkbox"/> other (specify) local history
		<input type="checkbox"/> invention		

Specific dates 1807;1824 Builder/Architect unknown

### Statement of Significance (in one paragraph)

"Belvedere," located in a pristine rural setting near Charles Town in Jefferson County, West Virginia, is significant as a fine example of Federal style architecture in a rural area.<sup>1</sup> It is also significant as home to prominent Jefferson County families, particularly the well known Tate family.<sup>2</sup>

### Explanatory Notes

1. "Belvedere," meaning "beautiful view" is situated in one of the most awe inspiring rural settings in West Virginia. From the front porch of "Belvedere" one has an unobstructed view of an immense estate of gently rolling fields to the Blue Ridge Mountains in the distance. From "Belvedere" this vista extends to include four counties, Jefferson County, West Virginia, Washington County, Maryland, and Clarke and Loudoun Counties, Virginia. Although its architectural style and detailing is addressed in Part 7, the Description, it should be noted that "Belvedere" is a significant example of two Federal style building units that are situated in such a manner as to render them architecturally unique in this region of West Virginia.

2. Evidence indicated that the Tate family, a prominent one in local, state, and even national affairs, occupied the present site of "Belvedere" as early as the 1760's. Magnum Tate III is known to have been born there in 1767. The original structure was probably of log construction, though nothing of it remains. The first unit of the present "Belvedere" mansion was constructed in 1807 by Magnus Tate II (1732-1808), who was prominent in the organization of the city of Charles Town and served on its first board of trustees (1787). Of the four sons of Magnus Tate II, all of them born and reared at Belvedere, three of them rose to prominence. George Tate was twice (1803, 1804) elected to represent Jefferson County in the Virginia Assembly. William Tate (1776-1818), who inherited "Belvedere" (then spelled "Belvidere") from his father in 1808, was a member of the first organized bar of Jefferson County, and, like his brother, served two terms (1809, 1812) in the Virginia Assembly. Magnus Tate III (1767-1823) was the most prominent of the three. He served seven terms in the Virginia Assembly (1797, 1798, 1799, 1802, 1803, 1809, and 1810), was twice High Sheriff of Berkeley County, and from 1815 to 1817 was a member of the U.S. House of Representatives.

After the death of William Tate, in 1818, the "Belvedere" estate, one of Jefferson County's largest farms, passed to his son George Tate II, Abigail Humphreys Tate, continued to reside there until her death in 1862. In 1824 the second (now the main section) of the house was constructed, in similar style to the 1807 building. During the Civil War, it is recorded, a Confederate raiding party under Capt. R. Preston Chew, left their horses at "Belvedere" while they raided the Union garrison in Charles Town, making off with 54 prisoners and 75 horses.

"Belvedere" passed from the Tate family to the T. H. Bates family in 1882. Mr. Bates was a prominent Jefferson County attorney. The estate has passed into the prominent Wilson family in the second half of the 20th century and retains not only its architectural

## 9. Major Bibliographical References

Bushong, Millard K., Historic Jefferson County, Carr Publishing Co., Boyce, Va., 1972.  
 Evans, Willis F., History of Berkeley County, West Virginia, privately printed,  
 Martinsburg, WV, 1928.  
 McIlhany, Hugh Milton, Jr., Some Virginia Families, Stoneburner & Prufer, Staunton, VA,  
 1903.

## 10. Geographical Data

Acreeage of nominated property Approximately 10 acres  
 Charles Town, WV

Quadrangle scale 1:24,000

UTM References

A	18	254480	4351960	B	18	254520	4352150
	Zone	Easting	Northing		Zone	Easting	Northing
C	18	254720	4352080	D	18	254680	4351920
E				F			
G				H			

Verbal boundary description and justification Beginning at the point where the southern fence line intersects the western fence-line hedge at the rear elevation of the Belvedere Mansion; thence 600 feet along the fence-hedge north to where said line intersects the Private Belvedere Farm Road; thence approximately 800 feet east along the southern edge of said

List all states and counties for properties overlapping state or county boundaries

state	N/A	code	county	code
state		code	county	code

## 11. Form Prepared By

name/title Michael J. Pauley, Historian and Paul D. Marshall, Architect  
 Historic Preservation Unit  
 organization WV Dept. of Culture and History date November 18, 1983  
 Cultural Center  
 street & number Capitol Complex telephone (304) 348-0240  
 city or town Charleston state West Virginia

## 12. State Historic Preservation Officer Certification

The evaluated significance of this property within the state is:

national  state  local

As the designated State Historic Preservation Officer for the National Historic Preservation Act of 1966 (Public Law 89-665), I hereby nominate this property for inclusion in the National Register and certify that it has been evaluated according to the criteria and procedures set forth by the National Park Service.

State Historic Preservation Officer signature 

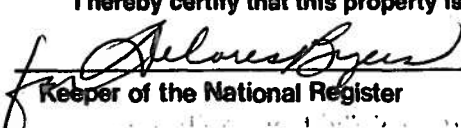
title State Historic Preservation Officer date November 18, 1983

For NPS use only

I hereby certify that this property is included in the National Register

Entered in the  
 National Register

date 1/12/84

  
 Keeper of the National Register

Attest:

date

Chief of Registration

**United States Department of the Interior  
National Park Service**

**National Register of Historic Places  
Inventory—Nomination Form**

For NPS use only  
received 12/12/83  
date entered

Continuation sheet Belvedere

Item number 8

Page 2

ambience but is still the seat of a 273 acre farm that commands, as it always has, on of the area's most pleasant vista's.

Officially declared a Jefferson County Historic Landmark in 197 , "Belvedere" retains an early 19th century character of significance to the region.

**United States Department of the Interior  
National Park Service**

**National Register of Historic Places  
Inventory—Nomination Form**

For NPS use only  
received 12/16/83  
date entered

Continuation sheet Belvedere

Item number 9

Page 2

---

Norris, J. E., History of the Lower Shenandoah Valley, A. Warner & Co.,  
Chicago, Ill., 1890.

**United States Department of the Interior  
National Park Service**

**National Register of Historic Places  
Inventory—Nomination Form**

"Belvedere", Jefferson County, West Virginia

Continuation sheet

Item number 10

Page 2

For NPS use only  
received *[initials]*  
date entered

#10 Geographical Data

Verbal boundary description and justification:

farm road to where it intersects the first western fence line; thence approximately 550 feet south along the fence line to its terminus with the southern fence line; thence approximately 800 feet west along the southern fence line to the point of beginning encompassing approximately 10 acres. This boundary allows for the inclusion of the major portion of the lawn fronting on the principal residence, maintaining the integrity of the vista that, historically, gave its name to the property: "Belvedere" - "beautiful view".



**From:** Smith, Jeffrey S  
**To:** [Alexandra Beaulieu](#)  
**Cc:** [Brennan, Jennifer L](#)  
**Subject:** RE: Belvedere - National Register of Historic Places  
**Date:** Monday, April 16, 2018 12:13:16 PM

---

Alex,

If you read over section ten (10) of the [nomination](#), you'll see that the nominated parcel includes ten (10) acres as well as the historic building. If you read the final paragraphs in Section eight (8), you'll see that the acreage is historically associated with the building, and that is why it was included as part of the National Register-listed resource. With historic farms like Belvedere, there is often a larger parcel of land - beyond the immediate grounds - that is associated with the resource. So, the confirmation that you seek is found within the nomination.

The "building" resource type that you mentioned is simply a category (one of five resource types) that the NPS uses to classify the primary resource, which is Belvedere.

Jeff Smith  
Structural Historian  
National Register and Architectural Survey Coordinator  
WV State Historic Preservation Office

**From:** Brennan, Jennifer L  
**Sent:** Monday, April 16, 2018 11:07 AM  
**To:** Alexandra Beaulieu <[abeaulieu@jeffersoncountywv.org](mailto:abeaulieu@jeffersoncountywv.org)>  
**Cc:** Smith, Jeffrey S <[Jeffrey.S.Smith@wv.gov](mailto:Jeffrey.S.Smith@wv.gov)>  
**Subject:** RE: Belvedere - National Register of Historic Places

Alexandra

This is more a question for our National Register Coordinator, Jeff Smith. I have copied him on this email so hopefully he can clear that up.

Jennifer

Jennifer Brennan  
Structural Historian  
West Virginia State Historic Preservation Office  
304-558-0240 Ext. 138  
[Jennifer.L.Brennan@wv.gov](mailto:Jennifer.L.Brennan@wv.gov)

**From:** Alexandra Beaulieu [<mailto:abeaulieu@jeffersoncountywv.org>]  
**Sent:** Monday, April 16, 2018 10:54 AM  
**To:** Brennan, Jennifer L <[Jennifer.L.Brennan@wv.gov](mailto:Jennifer.L.Brennan@wv.gov)>  
**Subject:** Belvedere - National Register of Historic Places

Good morning Jennifer,

I was wondering if you could help clarify something for me.

We have a proposed development processing through our Office and the development includes a historic structure (Belvedere). We were informed the structure was the only resource on the National Register; however, the nomination form describes ten acres surrounding the structure. How can our Office confirm if the acreage is included on the register or if it truly is only the structure, as the applicant described to our Office?

The Resource Type just says "Building" which is why we assumed it was just the structure, as the applicant had informed us. But, reading the nomination form, I wonder if there wasn't more included.

<https://npgallery.nps.gov/NRHP/AssetDetail?assetID=d145b562-144e-40eb-9c35-1ffc35f08801>

I appreciate your assistance.

Alex

Alexandra Beaulieu  
Zoning Administrator  
Jefferson County Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228



# JEFFERSON COUNTY, WEST VIRGINIA

Office of Planning and Zoning  
116 East Washington Street, 2<sup>nd</sup> Floor  
P.O. Box 716  
Charles Town, WV25414

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

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

---

---

## MEMO

**TO: Jefferson County Planning Commission**  
**FROM: Alexandra Beaulieu, Zoning Administrator**  
**DATE: April 25, 2018**  
**RE: Section 4.4 – Prohibited Uses**

---

---

In response to Mr. Burke's letter on behalf of the Historic Landmarks Commission, dated April 12, 2018, as the Zoning Administrator, I am providing a written determination regarding the applicability of Section 4.4C Prohibited Uses in the Zoning Ordinance to the proposed Magnolia Springs Subdivision. Section 3.4A of the Zoning Ordinance authorizes the Zoning Administrator to administer, enforce and interpret the Ordinance as required by law.

Section 4.4C Prohibit Uses states,

Any development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.

I have determined that Section 4.4C of the Zoning Ordinance does not apply to the proposed Magnolia Springs Subdivision. Section 4.4C is ambiguous and does not define the criteria for "historical character of a property" nor does it clarify what is meant by "destruction of".

The letter from the Historic Landmarks Commission does not address specifically how the proposed subdivision would destroy the historical character of the property; therefore, Staff did not have any criteria to consider when reviewing the Concept Plan.

Further, at the time that Magnolia Springs initially submitted their plans to our Office, the Zoning Ordinance did not contain any requirements for Historic Preservation. When referencing Federal Regulations for historic properties, there is nothing prohibiting development of a property nor is there anything prohibiting the demolition of a historic structure (see attached Section 60.2).

The Belvedere Property is in the Residential Growth zoning district and has been identified for future development on the Future Land Use Guide. The proposed Magnolia Springs appears to comply with the site development standards of the Zoning Ordinance in effect at the time of application with regards to density.

Any member of the public may appeal the Planning Commission's decision to Circuit Court within 30 days. Legal has upheld that the 30 days starts after the minutes are approved; therefore, the 30 day timeframe for an appeal of the Planning Commission's decision begins May 1.

Alternatively, pursuant to Section 6.3 of the Zoning Ordinance and in accordance with the Board of Zoning Appeals' Rules of Procedures, any member of the public may appeal my determination regarding Section 4.4C of the Zoning Ordinance to the Board of Zoning Appeals within 30 days of the date of this letter.

## **Sec. 60.2 Effects of listing under Federal law.**

The National Register is an authoritative guide to be used by Federal, State, and local governments, private groups and citizens to identify the Nation's cultural resources and to indicate what properties should be considered for protection from destruction or impairment. Listing of private property on the National Register does not prohibit under Federal law or regulation any actions which may otherwise be taken by the property owner with respect to the property.

(a) The National Register was designed to be and is administered as a planning tool. Federal agencies undertaking a project having an effect on a listed or eligible property must provide the Advisory Council on Historic Preservation a reasonable opportunity to comment pursuant to section 106 of the National Historic Preservation Act of 1966, as amended. The Council has adopted procedures concerning, inter alia, their commenting responsibility in 36 CFR part 800. Having complied with this procedural requirement the Federal agency may adopt any course of action it believes is appropriate. While the Advisory Council comments must be taken into account and integrated into the decision making process, program decisions rest with the agency implementing the undertaking.

(b) Listing in the National Register also makes property owners eligible to be considered for Federal grants-in-aid for historic preservation.

(c) If a property is listed in the National Register, certain provisions of the Tax Reform Act of 1976 as amended by the Revenue Act of 1978 and the Tax Treatment Extension Act of 1980 may apply. These provisions encourage the preservation of depreciable historic structures by allowing favorable tax treatments for rehabilitation, and discourage destruction of historic buildings by eliminating certain otherwise available Federal tax provisions both for demolition of historic structures and for new construction on the site of demolished historic buildings. Owners of historic buildings may benefit from the investment tax credit provisions of the Revenue Act of 1978. The Economic Recovery Tax Act of 1981 generally replaces the rehabilitation tax incentives under these laws beginning January 1, 1982 with a 25% investment tax credit for rehabilitations of historic commercial, industrial and residential buildings. This can be combined with a 15-year cost recovery period for the adjusted basis of the historic building. Historic buildings with certified rehabilitations receive additional tax savings by their exemption from any requirement to reduce the basis of the building by the amount of the credit. The denial of accelerated depreciation for a building built on the site of a demolished historic building is repealed effective January 1, 1982. The Tax Treatment Extension Act of 1980 includes provisions regarding charitable contributions for conservation purposes of partial interests in historically important land areas or structures.

(d) If a property contains surface coal resources and is listed in the National Register, certain provisions of the Surface Mining and Control Act of 1977 require consideration of a property's historic values in the determination on issuance of a surface coal mining permit.

April 25, 2018

Jefferson County Planning Commission  
c/o Jefferson County Office of Planning & Zoning  
PO Box 716; Charles Town, WV 25414

Subject: Magnolia Springs Concept Plan (Jefferson County PC File 18-05)

Dear Planning Commission Members,

**Request**

**On April 10<sup>th</sup>, the Planning Commission passed a motion to approve the concept plan for Magnolia Springs. The Applicant requests the Planning Commission maintain their prior motion as it was in accordance with Jefferson County regulations and represents a reasonable approach to the Belvedere house.**

**Planning Commission Meeting, April 10<sup>th</sup>, 2018**

The applicant presented the Magnolia Springs Concept Plan at the April 10<sup>th</sup> Public Hearing and discussed the historical significance of the Belvedere house as it is classified within the National Register of Historic Places Inventory – Nomination Form prepared by the Historic Preservation Unit of the WV Department of Culture and History dated November 18, 1983. Under section 3 [Classification] it is clearly shown the category is for buildings and not the site. Although there is reference to a parcel (approximately 10 acres) and views, the architecture of the house is obviously the single most important historical factor as it relates to the nomination. The applicant simply stated that the Belvedere house would be preserved on a 5-acre residue parcel.

The nomination form was not presented in its entirety to hide or mislead the Planning Commission in any way but to emphasize the importance of preserving the existing house within the best features of the property. The vista view as referenced in 1983 is not the same view in 2018 with construction of two (2) major roadways (Route 340 & Route 9) located directly in this viewshed.

**Regulatory Overview**

In response to the Jefferson County Historic Landmarks Commission letters we offer the following response as it relates to applicable Federal, State, and Local rules and regulations and how they apply to properties on the National Register of Historical Places.

**1. Federal Regulations**

It is very important to understand how Federal Law protects property owners of historic places and what restrictions, rules, and regulations apply. The following citation is taken from the National Park Service website.

*"Under Federal Law, the listing of a property in the National Register places no restrictions on what a non-federal owner may do with their property up to and including destruction, unless the property is involved in a project that receives Federal assistance, usually funding or licensing/permitting.*

*<http://www.nps.gov/nr/regulations.htm> "*

**The property owners have not received any Federal assistance, funding or licensing/permitting.**

## 2. West Virginia Regulations

The role and/or authority of the West Virginia State Historic Preservation Office defined below:

*"The West Virginia State Historic Preservation Office (SHPO) is dedicated to preserving and protecting our state's important cultural resources. One way we achieve this is by working with government agencies as projects are developed. When a project requires a government license or permit or makes use of government money, federal and state laws require that the project be sent to the SHPO for review. Once submitted, the SHPO staff determines how that project will affect West Virginia's historic resources and provides comments to the government agency. After the SHPO receives a project for review, the office has 30 days to comment on the project's effects to historic resources. **These laws DO NOT apply to private owners of historic properties who are planning alterations to their property unless they are receiving state or federal funds, permits or licenses for the property, or are applying for a state or federal income tax credit.**"*

## 3. Jefferson County Regulations

The role of the Jefferson County Historic Landmarks Commission as defined by Jefferson County Zoning and Subdivision Ordinances.

### Jefferson County Zoning Ordinance

Section 3.4.D.3 – **Historic Preservation is not to infringe on the property owner's rights.** The Jefferson County Historic Landmarks Commission is encouraged to protect historic sites in Jefferson County by raising capital to purchase historic sites and battlefields at fair market value.

- Emphasis added above. The development of the property is clearly within the rights of the applicant, it is zoned residential growth and the proposed uses are permitted.
- Per the citation provided from federal regulation there are no restriction on what the owner may do with their property, including its destruction.
- Per the citation provided from WV, the State Historic Preservation Officer does not have authority over the proposed project.
- This section of the Zoning Ordinance was adopted after the submission of the concept plan.

Section 3.4.D.4 - **This Ordinance encourages the preservation of historic buildings and historic sites by working with the landowner on a voluntary basis.** All historic sites in Jefferson County are classified by their Category of Importance, used to determine the level of protection afforded that site. The categories are as follows:

- Emphasis added above, cooperation with the Historic Landmarks Commission is voluntary.
- This section of the Zoning Ordinance was adopted after the submission of the concept plan.

The Historic Landmarks Commission sent a second letter in which they state the approval of the concept plan is invalid since it would destroy the historical character of the property.

- The Zoning Ordinance intentionally set a very high bar when assessing impacts to historical properties. The use must **destroy** the historic character.
- The applicant acknowledges that Belvedere will be impacted by the development, but there is no interpretation of the concept plan that could meet a reasonable definition of destroy. The nomination is based on a structure, not a site.

*Section 4.4 - Any development which would **destroy** the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.*

- The applicant acknowledges the historic resource will be impacted by the proposed development. However, there is no case that can be made to suggest that the building and its historical relevance will be destroyed by the proposed development.
- The applicant directs County Staff to the classification submitted with the national historic register. It is a historic building, not a historic district or site. Given that federal law places no restriction on property owners, the reduction of the "nominated property" from 10 acres to 5 acres cannot be construed as destroying the historical character of a property.

*Section 4.6.G.1 Protection Radius - Uses permitted within the Protection Radius **include Residential Uses as listed in Appendix C**, barns, and residential accessory structures as defined by this Ordinance.*

- Emphasis added, the use for the proposed development is single family houses, which are found under residential uses in Appendix C.
- The Protection Radius does not apply to the application.

#### **Jefferson County Subdivision Ordinance**

*Section 23.203.C - Jefferson County Historical Landmarks Commission. This body shall submit a report and findings on whether historical resources exist on the site of the proposed subdivision of site development. If there are, they shall submit findings on whether the proposal **meets the requirement of zoning** with respect to such structures or places at Concept Plan stage.*

- The role of the Historic Landmarks Commission (HLC) is to evaluate whether a Concept Plan meets the requirements of the Zoning Ordinance. The requirements of this ordinance have been stated above.
- The following pertains to the Historic Landmark Commission letter to the Planning Commission.
  - The citation provided by the HLC in relation to viewshed was written in 1983. Since this description was written two major highway projects have been constructed within the houses viewshed, this was ignored by the HLC.
  - The Belvedere nomination form does not list any barns or contributing structures, reference to these buildings was added at the discretion of the HLC.
  - The HLC cites the National Park Service's rehabilitation standards, these do not apply to the property and can be found nowhere in the zoning ordinance.
  - The HLC commission has not followed their mandated role, their review of the proposed subdivision plan reflects their feelings not the requirements of the ordinance.
  - The proposed plan does not impact the architecture of the structure which is the true basis of the registration.



View of 340 Bypass and new Route 9



View from Route 9 Offramp to Belvedere

The design of the Belvedere parcel was a careful exercise based on the existing conditions found in 2018 as opposed to the idealic description of the property included in the National Historic Register nomination form. The view from the house looking towards the east is not what was described in 1983. While the Blue Ridge Mountains still command the distant view, the viewshed close to the house is dominated by car and truck traffic on the Route 340 bypass. Cars are always visable from the front porch with the few exceptions when a stop light on 340 creates a break in the traffic flow. While the cars have in impact on the viewshed, it is the noise from this road that has the greatest impact from the front of the house.

While the front view is heavily impacted by time and progress, the back of the house presents a unique opportunity for preservation of a site with significant landscape architectural importance. The lawn is dominated by majestic white oaks that can live 300 years. The spacing and character of these trees indicate that they are part of the natural forest that once covered Jefferson County and may predate the construction of Belvedere.





The Concept Plan presented to the Planning Commission proposed a 5 acre lot for Belvedere that included the best features of the property. The following description is a comparison of the 10 acre property vs. the 5 acre lot. (note that the 10 acres is not legally defined as a parcel in the Jefferson County Tax Maps)

Southern Property Line – this property line is moved to the south to include additional forested area and mature trees. Increasing the land to the south enhances the character and privacy of the Belvedere parcel.

Eastern Property Line – this property line moved 400' to the west, decreasing the front yard area by approximately 2.9 acres (0.9 acres of this area will be contained in a proposed park). This area is significantly lower than Belvedere, the preliminary plat will be graded to limit the visual impact of the houses in this area. The viewshed from the Belvedere house to the Blue Ridge Mountains will remain.

Western Property Line – The property line moved 250' to the west, increasing the size of the Belvedere parcel by approximately 2 acres. This area is heavily wooded and contains numerous trees that likely date back to the construction of Belvedere. The connection between these trees and the house is an unbroken line that represents significant historical context. If the 10 acre parcel was maintained this area would be developed as residential lots.

Northern Property Line – the property line is moved approximately 250' closer to the house, although the distance varies since the parcel lines are not parallel. The movement of this line results in a decrease of 4.6 acres. Much of this land is not visible from the existing house and has little if any contribution to the historic viewshed.

Summary – the applicant acknowledges the importance of the future Belvedere parcel. The parcel lines described in 1983 were selected for convenience, an existing farm lane, a old fence, etc, resulting in a 10 acre parcel. If the road or fence line had been in a different location it may have been a 5 acre parcel.

The Concept Plan places emphasis on preserving native white oaks in a historical landscape opposed to a viewshed of the Route 340 bypass. The decrease in parcel size is largely associated with reduction of land to the north of Belvedere, an area that is not visible from the house and would not have been visible in 1983. The Concept Plan places value on stately open space over an impaired viewshed. The development of the Preliminary Plat will seek to further reduce visual impacts to Belvedere through site grading and landscaping.

There is no case to be made that this Concept Plan is destroying a historic resource. Creating the 5 acre parcel in its proposed configuration will preserve the more pristine historic landscape as it exists today. The applicant is not violating any Federal, State, or Local regulatory requirements and are fully within their rights to develop this property.

Sincerely,  
GORDON



Chad Wallen, PLA  
Project Manager



# EXHIBIT 4





# JEFFERSON COUNTY, WEST VIRGINIA

Office of Planning and Zoning  
116 East Washington Street, 2<sup>nd</sup> Floor  
P.O. Box 716  
Charles Town, WV25414

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

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

---

---

## MEMO

**TO:** Jefferson County Planning Commission  
**FROM:** Alexandra Beaulieu, Zoning Administrator  
**DATE:** April 25, 2018  
**RE:** Section 4.4 – Prohibited Uses

---

---

In response to Mr. Burke's letter on behalf of the Historic Landmarks Commission, dated April 12, 2018, as the Zoning Administrator, I am providing a written determination regarding the applicability of Section 4.4C Prohibited Uses in the Zoning Ordinance to the proposed Magnolia Springs Subdivision. Section 3.4A of the Zoning Ordinance authorizes the Zoning Administrator to administer, enforce and interpret the Ordinance as required by law.

Section 4.4C Prohibit Uses states,

Any development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.

I have determined that Section 4.4C of the Zoning Ordinance does not apply to the proposed Magnolia Springs Subdivision. Section 4.4C is ambiguous and does not define the criteria for "historical character of a property" nor does it clarify what is meant by "destruction of".

The letter from the Historic Landmarks Commission does not address specifically how the proposed subdivision would destroy the historical character of the property; therefore, Staff did not have any criteria to consider when reviewing the Concept Plan.

Further, at the time that Magnolia Springs initially submitted their plans to our Office, the Zoning Ordinance did not contain any requirements for Historic Preservation. When referencing Federal Regulations for historic properties, there is nothing prohibiting development of a property nor is there anything prohibiting the demolition of a historic structure (see attached Section 60.2).

The Belvedere Property is in the Residential Growth zoning district and has been identified for future development on the Future Land Use Guide. The proposed Magnolia Springs appears to comply with the site development standards of the Zoning Ordinance in effect at the time of application with regards to density.

Any member of the public may appeal the Planning Commission's decision to Circuit Court within 30 days. Legal has upheld that the 30 days starts after the minutes are approved; therefore, the 30 day timeframe for an appeal of the Planning Commission's decision begins May 1.

Alternatively, pursuant to Section 6.3 of the Zoning Ordinance and in accordance with the Board of Zoning Appeals' Rules of Procedures, any member of the public may appeal my determination regarding Section 4.4C of the Zoning Ordinance to the Board of Zoning Appeals within 30 days of the date of this letter.

## **Sec. 60.2 Effects of listing under Federal law.**

The National Register is an authoritative guide to be used by Federal, State, and local governments, private groups and citizens to identify the Nation's cultural resources and to indicate what properties should be considered for protection from destruction or impairment. Listing of private property on the National Register does not prohibit under Federal law or regulation any actions which may otherwise be taken by the property owner with respect to the property.

(a) The National Register was designed to be and is administered as a planning tool. Federal agencies undertaking a project having an effect on a listed or eligible property must provide the Advisory Council on Historic Preservation a reasonable opportunity to comment pursuant to section 106 of the National Historic Preservation Act of 1966, as amended. The Council has adopted procedures concerning, inter alia, their commenting responsibility in 36 CFR part 800. Having complied with this procedural requirement the Federal agency may adopt any course of action it believes is appropriate. While the Advisory Council comments must be taken into account and integrated into the decision making process, program decisions rest with the agency implementing the undertaking.

(b) Listing in the National Register also makes property owners eligible to be considered for Federal grants-in-aid for historic preservation.

(c) If a property is listed in the National Register, certain provisions of the Tax Reform Act of 1976 as amended by the Revenue Act of 1978 and the Tax Treatment Extension Act of 1980 may apply. These provisions encourage the preservation of depreciable historic structures by allowing favorable tax treatments for rehabilitation, and discourage destruction of historic buildings by eliminating certain otherwise available Federal tax provisions both for demolition of historic structures and for new construction on the site of demolished historic buildings. Owners of historic buildings may benefit from the investment tax credit provisions of the Revenue Act of 1978. The Economic Recovery Tax Act of 1981 generally replaces the rehabilitation tax incentives under these laws beginning January 1, 1982 with a 25% investment tax credit for rehabilitations of historic commercial, industrial and residential buildings. This can be combined with a 15-year cost recovery period for the adjusted basis of the historic building. Historic buildings with certified rehabilitations receive additional tax savings by their exemption from any requirement to reduce the basis of the building by the amount of the credit. The denial of accelerated depreciation for a building built on the site of a demolished historic building is repealed effective January 1, 1982. The Tax Treatment Extension Act of 1980 includes provisions regarding charitable contributions for conservation purposes of partial interests in historically important land areas or structures.

(d) If a property contains surface coal resources and is listed in the National Register, certain provisions of the Surface Mining and Control Act of 1977 require consideration of a property's historic values in the determination on issuance of a surface coal mining permit.

# EXHIBIT 5



## **Envision Jefferson 2035 Comprehensive Plan**

### **Vision Statement**

***“We envision Jefferson County in the year 2035 as a place of natural beauty and historic value. It is an active, vibrant place to live, work, and play. The county has economic growth potential as a result of its location in the Washington, D.C. and Baltimore, MD Metropolitan Areas, as well as its skilled workforce. There is a well-diversified economic base of manufacturing, services, government, tourism, and agriculture that is not reliant on any single business type. The County’s rich historic, cultural and natural resources are preserved and are an integral part of its economy. Excellent infrastructure, public facilities and services are available to all residents and employers. It is a community with well-defined rural, village, and urban areas. Residents enjoy a countywide system of well-programmed parks, as well as recreational opportunities serving all ages. Safe, congestion free, and convenient transportation access is available throughout the County.”***



**AP18-01, Respondent  
Alexandra Beaulieu, Zoning Administrator**

**Staff Response to Appeal**

Section 3.2 of the Zoning Ordinance addresses the role of the Zoning Administrator. It states,

“The Zoning Administrator shall administer and enforce the Zoning and Land Development Ordinance. This includes but is not limited to the following:

2. Interpret the provisions of the Ordinance as required by law.
6. Prepare and submit reports as required by the Ordinance or the Board of Zoning Appeals or Planning Commission.”

The Zoning Administrator has the role of interpreting the Zoning Ordinance, not the Historic Landmarks Commission and not the Planning Commission. Therefore, it is an inaccurate statement to find fault with the Zoning Administrator’s determination based on not “directing the Planning Commission to determine whether the proposed Magnolia Springs Subdivision would destroy the historical character of Belvedere” (Page 5 of Appeal).

Additionally, at no point in time is the Zoning Administrator’s determination subject to public input (Page 5 of Appeal). The Zoning Administrator enforces the Ordinance, which includes interpreting the provisions of the Ordinance. In enforcing and interpreting the Ordinance, the Zoning Administrator considers information provided by the public, but procedurally, there is no provision which requires that the public provide input before the Zoning Administrator’s determination is final. If a member of the public disagrees with a Zoning Administrator’s determination, they have the opportunity to appeal the decision to the Board of Zoning Appeals.

The Historic Landmarks Commission alleges that I “[refused] to conduct any analysis on whether the proposed development would destroy the historic character of the property” (Page 1 of Appeal); however, I conducted an analysis based on the information provided to our Office by the Historic Landmarks Commission. I even went so far as to research the details of the National Register Nomination, Federal regulations Section 60.2 Effects of listing under Federal Law, and I contacted the State Historic Preservation Office (SHPO) to confirm my understanding of the National Register Nomination and Section 60.2.

Section 23.203C of the Subdivision Regulations states that the Historic Landmarks Commission “...shall submit a report and findings on whether historical resources exist on the site of the proposed subdivision of site development. **If there are, they shall submit findings on whether the**

**AP18-01, Respondent  
Alexandra Beaulieu, Zoning Administrator**

proposal meets the requirement of zoning with respect to such structures or places at Concept Plan stage.”

Staff relied upon the expertise of the Historic Landmarks Commission (HLC) to provide input on the historic character of the property during their review of the Concept Plan. The first letter submitted essentially states that the HLC does not like the proposed subdivision, which is not substantial criteria for denying a project. The letter submitted from the HLC was not received until the day before the Public Workshop, though the Subdivision Regulations require that reviewing agency comments shall be received by the Department 14 days prior to the scheduled public workshop (Section 24.106B.7). Due to the delay in submitting the letter, the Planning Commission did not receive the comments until the evening of the meeting and no one from the HLC spoke during the Public Workshop for the Concept Plan nor did they speak during the Public Hearing for the three waivers associated with the project. The Planning Commission, like Staff, could only base their approval upon the information presented to them.

The letter dated April 12, 2018 does not present any information as to how the proposed development would destroy the historic character. In their letter, the HLC argues that the proposed Magnolia Springs subdivision is not in conformance with Section 4.4 Prohibited Uses, specifically subsection C which states, “Any development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.”

The analysis I conducted in determining the applicability of Section 4.4C with regards to the proposed Magnolia Springs Subdivision included reviewing the letter submitted by the Historic Landmarks Commission, researching the National Register Nomination, contacting the State Historic Preservation Office (SHPO), and reviewing Federal regulations for historic preservation. When comparing this research with the requirements of the Zoning Ordinance, I came to the conclusion that Section 4.4C did not apply to the proposed Magnolia Springs Subdivision because the structure is not proposed to be demolished and there did not appear to be any conflict between the proposed subdivision and the development standards in the Zoning Ordinance. Section 4.4C is ambiguous because it does not define the criteria for preserving the historical character of a property such as how many acres should be retained or if additional setbacks/distance requirements should be imposed.

**AP18-01, Respondent  
Alexandra Beaulieu, Zoning Administrator**

In their letter, the Historic Landmarks Commission argues that they should be permitted to work with the developer to devise a concept plan that would be acceptable and profitable to all parties; however, if Section 4.4C were applicable, the development would be prohibited and therefore, not profitable to the developer. Either Section 4.4C is applicable and the project should be prohibited or it does not apply and the project should be allowed to continue. Based on the fact that the Zoning Ordinance did not contain any standards for preserving a historic property, I determined that Section 4.4C did not apply.

The Historic Landmarks Commission states that the memo from Jennifer Brockman, County Planner, contradicts my determination (Page 5 of Appeal); however, Ms. Brockman actually supports my determination. In her memo she states, “Staff believes that even with the ten acres as part of the National Register nomination, the proposed Magnolia Springs subdivision complies with the requirements of the Subdivision Regulations and the Zoning Ordinance and staff’s recommended conditions from the staff report would not have changed.”

Finally, it should be noted that while the Comprehensive Plan addresses Historic Preservation in several sections, the Comprehensive Plan holds no weight in enforcing standards or imposing rules. As you are aware, the Historic Landmarks Commission initiated a text amendment to the Zoning Ordinance to include standards for historic preservation and to acknowledge the Historic Landmarks Commission’s categories of importance. This text amendment was initiated based on goals outlined in the Comprehensive Plan because members of the public and the HLC recognized that the Zoning Ordinance did not have any substantial criteria for historic preservation. The HLC acknowledged that Section 4.4C was ambiguous and did not hold weight in preserving historic resources; therefore, with the recommendations of the Comprehensive Plan, they initiated a text amendment to incorporate clearly defined standards for preserving historic resources in Jefferson County.

**Conclusion**

Staff relied upon the Historic Landmarks Commission’s findings to determine whether the proposed subdivision satisfied the historic resources component of the Concept Plan review. The HLC did not provide substantial documentation for Staff to consider when reviewing the Concept Plan and the letter submitted violated the submission requirement of 14 days in advance of the meeting as required by the Subdivision Regulations.

**AP18-01, Respondent**  
**Alexandra Beaulieu, Zoning Administrator**

The second letter from the HLC argues both that the project should be prohibited (applying Section 4.4C) and that they [the HLC] should be granted the opportunity to work with the developer on an alternative design. Either Section 4.4C applies and the project would be prohibited or it does not apply and the project would be allowed to continue.

Federal regulations do not prohibit a property owner from tearing down a historic structure listed on the National Register and there is nothing prohibiting the development of a historic property.

The Belvedere property has been in the Residential Growth zoning district since the adoption of zoning and has been identified for future development on the Future Land Use Guide.

Section 4.4C is ambiguous because there is no criteria clarifying what is meant by historic character of a property (i.e. specific acreage or setbacks). The developer proposed to preserve the historic Belvedere house, as well as five acres surrounding the house. Therefore, I determined that the historic character was not being destroyed as a result of the proposed subdivision and that the Magnolia Springs subdivision should not be prohibited from continuing through the approval process.

**Attachments:**

1. Historic Landmarks Commission Letter dated April 3, 2018 received on April 9, 2018
2. Historic Landmarks Commission Letter dated April 12, 2018 received on April 13, 2018
3. Letter from Jack Hefestay and Peter Onoszko dated April 14, 2018 received on April 16, 2018
4. National Register Nomination for Belvedere
5. Federal Regulations Section 60.2 Effects of listing under Federal law
6. State Historic Preservation Office Correspondence April 16, 2018 through April 17, 2018
7. Zoning Administrator Memo dated April 25, 2018
8. Subdivision Regulations Section 23.203C
9. Subdivision Regulations Section 24.106B.7
10. Memo from Jennifer Brockman, dated May 1, 2018

## Planning Department

---

**From:** Martin Burke <martinburke@frontiernet.net>  
**Sent:** Monday, April 9, 2018 9:21 AM  
**To:** Planning Department  
**Subject:** Concept Plan Reviews  
**Attachments:** JCHLC Site Plan Review Letter - Chestnut Manor 4-6-18.pdf; JCHLC Site Plan Review Letter - Belvedere.pdf





April 3, 2018

Ms. Jennifer Brockman  
Jefferson County Office of Planning and Zoning  
PO Box 716  
Charles Town, West Virginia 25414

**Re: Magnolia Springs Concept Plan**

Dear Ms. Brockman,

I have reviewed the Concept Plan for Magnolia Springs, dated February 2018 and submitted to the JCHLC March 2018 by Gordon Inc., Martinsburg, West Virginia. The submitted documents outline the proposed site plan and topography for a 301-single family detached unit development off Belvedere Farm Lane in Jefferson County, WV.

“Belvedere,” meaning “beautiful view,” is a National Register listed historic home and a Jefferson County Category of Importance I and located on the project site. Belvedere is described in the 1980 National Register nomination as a “stately mansion commanding a majestic, panoramic view that has remained virtually unchanged since the farm came into existence in the 18<sup>th</sup> century”.

“Belvedere is a property whose architectural significance and pristine setting make it one of Jefferson County’s most noteworthy landmarks”.

The JCHLC is aghast at the Magnolia Springs Concept Plan. The plan casually disregards a more sensitive design that could have incorporated Belvedere and its barn as focal points of the entire development. The proposed plan has Belvedere surrounded on three sides by 23 backyards which sit approximately 150 feet away from the main house, and the historic barn, tenant house, and corncrib are destined for a landfill. The National Park Service’s rehabilitation standards state that:

Protecting the historic setting and context of a property, including the degree of open space and building density, must always be considered when planning new construction on an historic site. This entails identifying the formal or informal arrangements of buildings on the site, and whether they have a distinctive urban, suburban, or rural character. For example, a historic building traditionally surrounded by open space must not be crowded with dense development.

Part of maintaining a historic site means maintaining its historic context. Belvedere, which was carefully restored by its previous owner and is in pristine condition, loses its context when its viewshed is obstructed by cramped, modern housing and the outbuildings that contribute to its

current function and 200-year history as a working farm are destroyed. The JCHLC would like to see a development plan that respects the history of the site and its contribution to the historic character of Jefferson County. We would like to see more green space in general and the view from Belvedere protected in particular. We would like to see an attempt to use the 150-year-old barn preserved as a community space, especially as it sits so close to a stream that feeds into a wetland across Rt. 340. The current plan is one more instance of thoughtless development with no regard for the past or future of Jefferson County and importance of maintaining its unique sense of place.

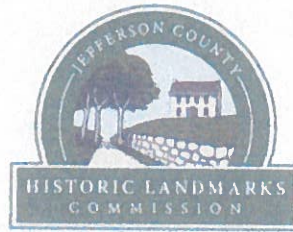
If you have any questions or need additional information, please feel free to contact me.

Sincerely,

*Martin Burke*

Martin Burke  
Chair, JCHLC  
P.O. Box 23  
Charles Town, WV 25414

cc: Gordon (via email)  
NLP Finance, LLC  
Belvedere Family Farm Trust



April 12, 2018

Mr. Donnie Fisher,  
President  
Jefferson County Planning Commission  
c/o Jefferson County Office of Planning and Zoning  
PO Box 716  
Charles Town, West Virginia 25414

Dear Mr. Fisher,

The Magnolia Springs Concept Plan presented and approved at the JC Planning Commission meeting April 10, 2018 is not in conformance with the County Zoning Ordinance, specifically **Section 4.4 C. Prohibited Uses.**

Section 4.4 C Prohibited Uses: states:

Any development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.

Applications that violate the ordinance cannot be approved by the Planning Commission(PC). It is exactly the same situation as an application coming before the PC with a setback violation. It is regrettable this non-conformance was not addressed earlier, but the application should never have been brought to the PC for a public workshop and vote. We request that the Planning Commission vote be nullified immediately.

The Jefferson County Historic Landmarks Commission (JCHLC) would be happy to work with the developer to devise a concept plan for Magnolia Springs that would be acceptable and profitable to all parties and protects the historic character of the site and Belvedere, listed on the National Register of Historic Places. We believe that protecting the historic setting and context of a property, including the degree of open space and building density, must always be considered when planning new construction on a historic site. This entails identifying the formal or informal arrangements of buildings on the site, and whether they have a distinctive urban, suburban, or rural character.

If you have any questions or need additional information, please feel free to contact me.

Sincerely,



Martin Burke

Chair

Jefferson County Historic Landmarks Commission

P.O. Box 23

Charles Town, WV 25414

cc: Nathan Cochran, Attorney, JC Civil Division (via email)  
Chad Wallen, Gordon (via email)  
Hunter Wilson, NLP Finance, LLC (via email)

April 14, 2018

Mr. Donnie Fisher  
President,  
Jefferson County Planning Commission  
c/o Jefferson County Office of Planning and Zoning  
PO Box 716  
Charles Town, West Virginia 25414

RECEIVED

APR 16 2018

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

Dear Mr. Fisher:

As members of the Jefferson County Planning Commission we the undersigned request an expeditious reconsideration of the decision taken by the Planning Commission on April 10, 2018 regarding the Magnolia Springs sub-development for the reasons stated in the enclosed letter from Mr. Martin Burke, Chair, Jefferson County Historic Landmarks Commission. It is our opinion that this matter be addressed as soon as practicable so as to allow the developer and the Historic Landmarks Commission to work something out amicably that would be to the benefit of the project while simultaneously preserving the character of Belvedere, a nationally recognized historic place in our county. We recommend that this reconsideration be placed on the agenda for May 1, 2018.

Respectfully,

  
Jack Hefestay  
Member, Jefferson County Planning Commission

  
Peter Onoszko  
Member, Jefferson County Planning Commission

encl

cc: Jenny Brockman  
Martin Burke



**United States Department of the Interior  
National Park Service**

For NPS use only

**National Register of Historic Places  
Inventory—Nomination Form**

received **DEC 16 1983**

date entered

See instructions in *How to Complete National Register Forms*  
Type all entries—complete applicable sections

**1. Name**

historic Belvedere

and/or common

**2. Location**

street & number 811 Belvedere Farm Drive \_\_\_ not for publication

city, town Charles Town vic.  vicinity of

state West Virginia code 54 county Jefferson code 037

**3. Classification**

<b>Category</b>	<b>Ownership</b>	<b>Status</b>	<b>Present Use</b>	
<input type="checkbox"/> district	<input type="checkbox"/> public	<input checked="" type="checkbox"/> occupied	<input checked="" type="checkbox"/> agriculture	<input type="checkbox"/> museum
<input checked="" type="checkbox"/> building(s)	<input checked="" type="checkbox"/> private	<input type="checkbox"/> unoccupied	<input type="checkbox"/> commercial	<input type="checkbox"/> park
<input type="checkbox"/> structure	<input type="checkbox"/> both	<input type="checkbox"/> work in progress	<input type="checkbox"/> educational	<input checked="" type="checkbox"/> private residence
<input type="checkbox"/> site	<b>Public Acquisition</b>	<b>Accessible</b>	<input type="checkbox"/> entertainment	<input type="checkbox"/> religious
<input type="checkbox"/> object	<u>N/A</u> in process	<input checked="" type="checkbox"/> yes: restricted	<input type="checkbox"/> government	<input type="checkbox"/> scientific
	<input type="checkbox"/> being considered	<input type="checkbox"/> yes: unrestricted	<input type="checkbox"/> industrial	<input type="checkbox"/> transportation
		<input type="checkbox"/> no	<input type="checkbox"/> military	<input type="checkbox"/> other:

**4. Owner of Property**

name Nancy Wilson Truettner

street & number 811 Belvedere Farm Drive

city, town Charles Town  vicinity of state West Virginia

**5. Location of Legal Description**

courthouse, registry of deeds, etc. Jefferson County Courthouse

street & number George and Washington Streets

city, town Charles Town state West Virginia

**6. Representation in Existing Surveys**

Historic Resource Survey, Charles Town  
title By-Pass Project, by Paul D. Marshall and Associates has this property been determined eligible?  yes  no  
date 1980  federal  state  county  local

depository for survey records Historic Preservation Unit, WV Dept. of Culture & History

city, town Charleston state West Virginia

## 7. Description

<b>Condition</b>		<b>Check one</b>	<b>Check one</b>
<input checked="" type="checkbox"/> excellent	<input type="checkbox"/> deteriorated	<input type="checkbox"/> unaltered	<input checked="" type="checkbox"/> original site
<input checked="" type="checkbox"/> good	<input type="checkbox"/> ruins	<input checked="" type="checkbox"/> altered	<input type="checkbox"/> moved date _____
<input type="checkbox"/> fair	<input type="checkbox"/> unexposed		

### Describe the present and original (if known) physical appearance

The stately mansion "Belvedere," sits at the end of tree shaded Belvedere Farm Drive, outside of Charles Town, Jefferson County, West Virginia, commanding a majestic, panoramic view that has remained virtually unchanged since the farm came into existence in the 18th century.

The Belvedere Mansion as we find it today is a composite of the original house believed to have been built about 1807 by Magnus Tate II, and a larger house built in 1824 by Magnus' son, William. The original smaller house is generally referred to as the kitchen house. Thomas Willis joined the two units together in 1939 although there is no opening between spaces on the second floor. During this work, the remains of a wood sill were found embedded in a masonry foundation, suggesting an earlier log building on the site of the kitchen house.

Both units of the building are designed in the Federal style. The 1807 unit is two-story constructed with an exterior of hand-molded brick. American common brick coursing was used for the north, south, and west facades. Flemish bond coursing is on the east facade. The existing entrance to the kitchen building is a doorway on the north side which is flanked by side lights and has an ornamental transom above. A circular window is located in the gable end above the second floor window. The west facade has a shed roof porch with a dentiled architrave supported by four square wood posts. One interior chimney interrupts the standing seam metal roof of the building. The roof of the original kitchen building is a gable type similar to the earlier Georgian style. The windows are six over six light sash with louvered shutters.

The original kitchen house was about 20 feet wide and 32 feet long with two rooms on each floor and a center chimney serving fireplaces in each room. The 1939 renovation added space to the north end of the building to facilitate the connection of the two buildings and provide bath facilities.

The main section of the house, built circa 1824, is also two stories in height constructed with an exterior pressed brick using Flemish bond on the front and American Common on the north, east, and south. An important feature of both units of the house is a well preserved example of brick corbeled dentil cornice work. Both units of the house rest on a random coursed limestone foundation. The west entry is an excellent example of Federal style architectural detail. The podium entrance has four Doric columns all connected with a wood railing. The door is flanked by sidelights and has an ornamented transom. Three window openings are balanced on the second level with six over six lights and louvered shutters. The center window is tripart aligned above the entrance door. Two attic dormers interrupt the metal roof on the west elevation and all window openings are double sash, six over six lights. The north chimney is inside the north end of the house and the south chimney extends to the outside of the south wall. The 1824 building has a low-pitch hip type roof design typical of the Federal architectural period. The main unit measures approximately 49' x 24' with essentially a "two over two" arrangement and center stair hall between rooms on both floors. Except for a second floor bath located at the end of what was originally the center hall, the original room arrangements are basically unchanged. A small bath room, added in 1978, is located at the point where the two buildings intersect.

Belvedere is a property whose architectural significance and pristine setting make it one of Jefferson County's most noteworthy landmarks.

# 8. Significance

Period	Areas of Significance—Check and justify below			
<input type="checkbox"/> prehistoric	<input type="checkbox"/> archeology-prehistoric	<input type="checkbox"/> community planning	<input type="checkbox"/> landscape architecture	<input type="checkbox"/> religion
<input type="checkbox"/> 1400-1499	<input type="checkbox"/> archeology-historic	<input type="checkbox"/> conservation	<input type="checkbox"/> law	<input type="checkbox"/> science
<input type="checkbox"/> 1500-1599	<input checked="" type="checkbox"/> agriculture	<input type="checkbox"/> economics	<input type="checkbox"/> literature	<input type="checkbox"/> sculpture
<input type="checkbox"/> 1600-1699	<input checked="" type="checkbox"/> architecture	<input type="checkbox"/> education	<input type="checkbox"/> military	<input type="checkbox"/> social/ humanitarian
<input type="checkbox"/> 1700-1799	<input type="checkbox"/> art	<input type="checkbox"/> engineering	<input type="checkbox"/> music	<input type="checkbox"/> theater
<input checked="" type="checkbox"/> 1800-1899	<input type="checkbox"/> commerce	<input type="checkbox"/> exploration/settlement	<input type="checkbox"/> philosophy	<input type="checkbox"/> transportation
<input type="checkbox"/> 1900-	<input type="checkbox"/> communications	<input type="checkbox"/> industry	<input checked="" type="checkbox"/> politics/government	<input type="checkbox"/> other (specify) local history
		<input type="checkbox"/> invention		

**Specific dates** 1807;1824 **Builder/Architect** unknown

**Statement of Significance (in one paragraph)**

"Belvedere," located in a pristine rural setting near Charles Town in Jefferson County, West Virginia, is significant as a fine example of Federal style architecture in a rural area.<sup>1</sup> It is also significant as home to prominent Jefferson County families, particularly the well known Tate family.<sup>2</sup>

Explanatory Notes

1. "Belvedere," meaning "beautiful view" is situated in one of the most awe inspiring rural settings in West Virginia. From the front porch of "Belvedere" one has an unobstructed view of an immense estate of gently rolling fields to the Blue Ridge Mountains in the distance. From "Belvedere" this vista extends to include four counties, Jefferson County, West Virginia, Washington County, Maryland, and Clarke and Loudoun Counties, Virginia. Although its architectural style and detailing is addressed in Part 7, the Description, it should be noted that "Belvedere" is a significant example of two Federal style building units that are situated in such a manner as to render them architecturally unique in this region of West Virginia.

2. Evidence indicated that the Tate family, a prominent one in local, state, and even national affairs, occupied the present site of "Belvedere" as early as the 1760's. Magnum Tate III is known to have been born there in 1767. The original structure was probably of log construction, though nothing of it remains. The first unit of the present "Belvedere" mansion was constructed in 1807 by Magnus Tate II (1732-1808), who was prominent in the organization of the city of Charles Town and served on its first board of trustees (1787). Of the four sons of Magnus Tate II, all of them born and reared at Belvedere, three of them rose to prominence. George Tate was twice (1803, 1804) elected to represent Jefferson County in the Virginia Assembly. William Tate (1776-1818), who inherited "Belvedere" (then spelled "Belvidere") from his father in 1808, was a member of the first organized bar of Jefferson County, and, like his brother, served two terms (1809, 1812) in the Virginia Assembly. Magnus Tate III (1767-1823) was the most prominent of the three. He served seven terms in the Virginia Assembly (1797, 1798, 1799, 1802, 1803, 1809, and 1810), was twice High Sheriff of Berkeley County, and from 1815 to 1817 was a member of the U.S. House of Representatives.

After the death of William Tate, in 1818, the "Belvedere" estate, one of Jefferson County's largest farms, passed to his son George Tate II, Abigail Humphreys Tate, continued to reside there until her death in 1862. In 1824 the second (now the main section) of the house was constructed, in similar style to the 1807 building. During the Civil War, it is recorded, a Confederate raiding party under Capt. R. Preston Chew, left their horses at "Belvedere" while they raided the Union garrison in Charles Town, making off with 54 prisoners and 75 horses.

"Belvedere" passed from the Tate family to the T. H. Bates family in 1882. Mr. Bates was a prominent Jefferson County attorney. The estate has passed into the prominent Wilson family in the second half of the 20th century and retains not only its architectural

## 9. Major Bibliographical References

Bushong, Millard K., Historic Jefferson County, Carr Publishing Co., Boyce, Va., 1972.  
 Evans, Willis F., History of Berkeley County, West Virginia, privately printed, Martinsburg, WV, 1928.  
 McIlhenny, Hugh Milton, Jr., Some Virginia Families, Stoneburner & Pruffer, Staunton, VA, 1903.

## 10. Geographical Data

Acreeage of nominated property Approximately 10 acres

Quadrangle name Charles Town, WV

Quadrangle scale 1:24,000

### UTM References

A 

1	8
---	---

2	5	4	4	8	0
---	---	---	---	---	---

4	3	5	1	9	6	0
---	---	---	---	---	---	---

  
 Zone Easting Northing

B 

1	8
---	---

2	5	4	5	2	0
---	---	---	---	---	---

4	3	5	2	1	5	0
---	---	---	---	---	---	---

  
 Zone Easting Northing

C 

1	8
---	---

2	5	4	7	2	0
---	---	---	---	---	---

4	3	5	2	0	8	0
---	---	---	---	---	---	---

D 

1	8
---	---

2	5	4	6	8	0
---	---	---	---	---	---

4	3	5	1	9	2	0
---	---	---	---	---	---	---

E 

--	--

--	--	--	--	--	--

--	--	--	--	--	--	--

F 

--	--

--	--	--	--	--	--

--	--	--	--	--	--	--

G 

--	--

--	--	--	--	--	--

--	--	--	--	--	--	--

H 

--	--

--	--	--	--	--	--

--	--	--	--	--	--	--

**Verbal boundary description and justification** Beginning at the point where the southern fence line intersects the western fence-line hedge at the rear elevation of the Belvedere Mansion; thence 600 feet along the fence-hedge north to where said line intersects the Private Belvedere Farm Road; thence approximately 800 feet east along the southern edge of said

### List all states and counties for properties overlapping state or county boundaries

state	code	county	code
N/A			

## 11. Form Prepared By

name/title Michael J. Pauley, Historian and Paul D. Marshall, Architect  
Historic Preservation Unit  
 organization WV Dept. of Culture and History date November 18, 1983  
Cultural Center  
 street & number Capitol Complex telephone (304) 348-0240  
 city or town Charleston state West Virginia

## 12. State Historic Preservation Officer Certification

The evaluated significance of this property within the state is:

national  state  local

As the designated State Historic Preservation Officer for the National Historic Preservation Act of 1966 (Public Law 89-665), I hereby nominate this property for inclusion in the National Register and certify that it has been evaluated according to the criteria and procedures set forth by the National Park Service.

State Historic Preservation Officer signature 

title State Historic Preservation Officer

date November 18, 1983

For NPS use only

I hereby certify that this property is included in the National Register

Entered in the  
National Register

date

1/12/84

  
Keeper of the National Register

Attest:

date

Chief of Registration

**United States Department of the Interior  
National Park Service**

**National Register of Historic Places  
Inventory—Nomination Form**

For NPS use only
received 12/12/83
date entered

Continuation sheet Belvedere

Item number 8

Page 2

ambience but is still the seat of a 273 acre farm that commands, as it always has, on of the area's most pleasant vistas.

Officially declared a Jefferson County Historic Landmark in 197 , "Belvedere" retains an early 19th century character of significance to the region.

**United States Department of the Interior  
National Park Service**

**National Register of Historic Places  
Inventory—Nomination Form**

For NPS use only

received

12/10/83

date entered

Continuation sheet Belvedere

Item number 9

Page 2

Norris, J. E., History of the Lower Shenandoah Valley, A. Warner & Co.,  
Chicago, Ill., 1890.

**United States Department of the Interior  
National Park Service**

**National Register of Historic Places  
Inventory—Nomination Form**

For NPS use only  
received 12/10/83  
date entered

"Belvedere", Jefferson County, West Virginia

Continuation sheet

Item number 10

Page 2

#10 Geographical Data

Verbal boundary description and justification:

farm road to where it intersects the first western fence line; thence approximately 550 feet south along the fence line to its terminus with the southern fence line; thence approximately 800 feet west along the southern fence line to the point of beginning encompassing approximately 10 acres. This boundary allows for the inclusion of the major portion of the lawn fronting on the principal residence, maintaining the integrity of the vista that, historically, gave its name to the property: "Belvedere" - "beautiful view".



**Sec. 60.2 Effects of listing under Federal law.**

The National Register is an authoritative guide to be used by Federal, State, and local governments, private groups and citizens to identify the Nation's cultural resources and to indicate what properties should be considered for protection from destruction or impairment.

Listing of private property on the National Register does not prohibit under Federal law or regulation any actions which may otherwise be taken by the property owner with respect to the property.

(a) The National Register was designed to be and is administered as a planning tool. Federal agencies undertaking a project having an effect on a listed or eligible property must provide the Advisory Council on Historic Preservation a reasonable opportunity to comment pursuant to section 106 of the National Historic Preservation Act of 1966, as amended. The Council has adopted procedures concerning, inter alia, their commenting responsibility in 36 CFR part 800. Having complied with this procedural requirement the Federal agency may adopt any course of action it believes is appropriate. While the Advisory Council comments must be taken into account and integrated into the decision making process, program decisions rest with the agency implementing the undertaking.

(b) Listing in the National Register also makes property owners eligible to be considered for Federal grants-in-aid for historic preservation.

(c) If a property is listed in the National Register, certain provisions of the Tax Reform Act of 1976 as amended by the Revenue Act of 1978 and the Tax Treatment Extension Act of 1980 may apply. These provisions encourage the preservation of depreciable historic structures by allowing favorable tax treatments for rehabilitation, and discourage destruction of historic buildings by eliminating certain otherwise available Federal tax provisions both for demolition of historic structures and for new construction on the site of demolished historic buildings. Owners of historic buildings may benefit from the investment tax credit provisions of the Revenue Act of 1978. The Economic Recovery Tax Act of 1981 generally replaces the rehabilitation tax incentives under these laws beginning January 1, 1982 with a 25% investment tax credit for rehabilitations of historic commercial, industrial and residential buildings. This can be combined with a 15-year cost recovery period for the adjusted basis of the historic building. Historic buildings with certified rehabilitations receive additional tax savings by their exemption from any requirement to reduce the basis of the building by the amount of the credit. The denial of accelerated depreciation for a building built on the site of a demolished historic building is repealed effective January 1, 1982. The Tax Treatment Extension Act of 1980 includes provisions regarding charitable contributions for conservation purposes of partial interests in historically important land areas or structures.

(d) If a property contains surface coal resources and is listed in the National Register, certain provisions of the Surface Mining and Control Act of 1977 require consideration of a property's historic values in the determination on issuance of a surface coal mining permit.



**From:** Smith, Jeffrey S  
**To:** [Alexandra Beaulieu](#)  
**Cc:** [Brennan, Jennifer L](#)  
**Subject:** RE: Belvedere - National Register of Historic Places  
**Date:** Tuesday, April 17, 2018 1:48:50 PM

---

Alex,

Your understanding is correct. The property owner of a listed resource can do with the property as they wish unless they are receiving federal assistance of some kind. However, if the character-defining features of a listed resource are altered to the degree that the property no longer possesses those qualities that made it eligible, the property could be delisted, or removed, from the National Register (see 36 CFR 60.15).

Jeff Smith  
Structural Historian  
National Register and Architectural Survey Coordinator  
WV State Historic Preservation Office

---

**From:** Alexandra Beaulieu <[abeaulieu@jeffersoncountywv.org](mailto:abeaulieu@jeffersoncountywv.org)>  
**Sent:** Monday, April 16, 2018 4:32 PM  
**To:** Smith, Jeffrey S <[Jeffrey.S.Smith@wv.gov](mailto:Jeffrey.S.Smith@wv.gov)>  
**Cc:** Brennan, Jennifer L <[Jennifer.L.Brennan@wv.gov](mailto:Jennifer.L.Brennan@wv.gov)>  
**Subject:** RE: Belvedere - National Register of Historic Places

As a follow up to my previous email, is my understanding correct that placement on the Historic Register is purely honorific and that there is nothing prohibiting a historic property from being developed and there is nothing prohibiting a historic structure from being torn down?

**Sec. 60.2 Effects of listing under Federal law.**

The National Register is an authoritative guide to be used by Federal, State, and local governments, private groups and citizens to identify the Nation's cultural resources and to indicate what properties should be considered for protection from destruction or impairment. **Listing of private property on the National Register does not prohibit under Federal law or regulation any actions which may otherwise be taken by the property owner with respect to the property.**

I didn't note anything in my review of the regulations, but I am also aware that this is not my field of expertise and I may have overlooked or misread the information. If I read correctly, there are tax incentives and some Federal grants available for preserving historic resources, but there isn't anything prohibiting, at the Federal level, development of a property.

Thanks again for your assistance,

Alex

Alexandra Beaulieu  
Zoning Administrator  
Jefferson County Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

---

**From:** Smith, Jeffrey S [<mailto:Jeffrey.S.Smith@wv.gov>]  
**Sent:** Monday, April 16, 2018 12:13 PM  
**To:** Alexandra Beaulieu  
**Cc:** Brennan, Jennifer L  
**Subject:** RE: Belvedere - National Register of Historic Places

Alex,

If you read over section ten (10) of the [nomination](#), you'll see that the nominated parcel includes ten (10) acres as well as the historic building. If you read the final paragraphs in Section eight (8), you'll see that the acreage is historically associated with the building, and that is why it was included as part of the National Register-listed resource. With historic farms like Belvedere, there is often a larger parcel of land - beyond the immediate grounds - that is associated with the resource. So, the confirmation that you seek is found within the nomination.

The "building" resource type that you mentioned is simply a category (one of five resource types) that the NPS uses to classify the primary resource, which is Belvedere.

Jeff Smith  
Structural Historian  
National Register and Architectural Survey Coordinator  
WV State Historic Preservation Office

---

**From:** Brennan, Jennifer L  
**Sent:** Monday, April 16, 2018 11:07 AM  
**To:** Alexandra Beaulieu <[abeaulieu@jeffersoncountywv.org](mailto:abeaulieu@jeffersoncountywv.org)>  
**Cc:** Smith, Jeffrey S <[Jeffrey.S.Smith@wv.gov](mailto:Jeffrey.S.Smith@wv.gov)>  
**Subject:** RE: Belvedere - National Register of Historic Places

Alexandra

This is more a question for our National Register Coordinator, Jeff Smith. I have copied him on this email so hopefully he can clear that up.

Jennifer

Jennifer Brennan  
Structural Historian  
West Virginia State Historic Preservation Office  
304-558-0240 Ext. 138

[Jennifer.L.Brennan@wv.gov](mailto:Jennifer.L.Brennan@wv.gov)

---

**From:** Alexandra Beaulieu [<mailto:abeaulieu@jeffersoncountywv.org>]  
**Sent:** Monday, April 16, 2018 10:54 AM  
**To:** Brennan, Jennifer L <[Jennifer.L.Brennan@wv.gov](mailto:Jennifer.L.Brennan@wv.gov)>  
**Subject:** Belvedere - National Register of Historic Places

Good morning Jennifer,

I was wondering if you could help clarify something for me.

We have a proposed development processing through our Office and the development includes a historic structure (Belvedere). We were informed the structure was the only resource on the National Register; however, the nomination form describes ten acres surrounding the structure. How can our Office confirm if the acreage is included on the register or if it truly is only the structure, as the applicant described to our Office?

The Resource Type just says "Building" which is why we assumed it was just the structure, as the applicant had informed us. But, reading the nomination form, I wonder if there wasn't more included.

<https://npgallery.nps.gov/NRHP/AssetDetail?assetID=d145b562-144e-40eb-9c35-1ffc35f08801>

I appreciate your assistance.

Alex

Alexandra Beaulieu  
Zoning Administrator  
Jefferson County Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228





# JEFFERSON COUNTY, WEST VIRGINIA

ZA Response - Attachment 7

Office of Planning and Zoning  
116 East Washington Street, 2<sup>nd</sup> Floor  
P.O. Box 716  
Charles Town, WV25414

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

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

---

---

## MEMO

**TO: Jefferson County Planning Commission**  
**FROM: Alexandra Beaulieu, Zoning Administrator**  
**DATE: April 25, 2018**  
**RE: Section 4.4 – Prohibited Uses**

---

---

In response to Mr. Burke's letter on behalf of the Historic Landmarks Commission, dated April 12, 2018, as the Zoning Administrator, I am providing a written determination regarding the applicability of Section 4.4C Prohibited Uses in the Zoning Ordinance to the proposed Magnolia Springs Subdivision. Section 3.4A of the Zoning Ordinance authorizes the Zoning Administrator to administer, enforce and interpret the Ordinance as required by law.

Section 4.4C Prohibit Uses states,

Any development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.

I have determined that Section 4.4C of the Zoning Ordinance does not apply to the proposed Magnolia Springs Subdivision. Section 4.4C is ambiguous and does not define the criteria for "historical character of a property" nor does it clarify what is meant by "destruction of".

The letter from the Historic Landmarks Commission does not address specifically **how** the proposed subdivision would destroy the historical character of the property; therefore, Staff did not have any criteria to consider when reviewing the Concept Plan.

Further, at the time that Magnolia Springs initially submitted their plans to our Office, the Zoning Ordinance did not contain any requirements for Historic Preservation. When referencing Federal Regulations for historic properties, there is nothing prohibiting development of a property nor is there anything prohibiting the demolition of a historic structure (see attached Section 60.2).

The Belvedere Property is in the Residential Growth zoning district and has been identified for future development on the Future Land Use Guide. The proposed Magnolia Springs appears to comply with the site development standards of the Zoning Ordinance in effect at the time of application with regards to density.

Any member of the public may appeal the Planning Commission's decision to Circuit Court within 30 days. Legal has upheld that the 30 days starts after the minutes are approved; therefore, the 30 day timeframe for an appeal of the Planning Commission's decision begins May 1.

Alternatively, pursuant to Section 6.3 of the Zoning Ordinance and in accordance with the Board of Zoning Appeals' Rules of Procedures, any member of the public may appeal my determination regarding Section 4.4C of the Zoning Ordinance to the Board of Zoning Appeals within 30 days of the date of this letter.



## Subdivision Regulations

## Jefferson County, West Virginia



4. **Hold.** The Department may hold the application for up for 45 days for additional information necessary to make a determination.

D. **Annual Report.** At least annually, the Planning Commission shall report to the County Commission any area where it believes the Subdivision and Land Development Regulations or the Zoning Ordinance could be improved to facilitate quality development in the county or eliminate a problem area to provide for quality development in the County. This is an advisory report.

### Sec. 23.203 County Agencies<sup>6</sup>

The following Jefferson County agencies are involved or may be involved in the subdivision and site development review process.

A. **On-Site Water Supply and Sanitary Waste Disposal.** The Jefferson County Health Department and West Virginia Department of Health shall be responsible for the review of any on-site water supply or sanitary waste disposal for the proposed development. Approval needed at Preliminary Plat stage.

B. **Centralized Water Supply/Distribution and Sewage Collection/Treatment.** The Jefferson County Public Service District or other applicable local agency supplying centralized utilities, West Virginia Health Department, and WVDEP shall be responsible for the review and approval for any centralized sewer and water supply intended to serve the proposed development. Approval needed at Preliminary Plat stage.

C. **Jefferson County Historical Landmarks Commission.** This body shall submit a report and findings on whether historical resources exist on the site of the proposed subdivision of site development. If there are, they shall submit findings on whether the proposal meets the requirement of zoning with respect to such structures or places at Concept Plan stage.

D. **Jefferson County Parks and Recreation Department.** This body shall determine the adequacy of park, recreation, and trail facilities intended to serve a proposed residential development at Concept Plan stage. This is a courtesy review for park planning purposes.

E. **Jefferson County GIS/Addressing Office.** This body shall verify adequacy of proposed addresses, road names, and names of subdivisions in accordance with Jefferson County E 9-1-1 Addressing Ordinance. Approval needed at either Concept Plan or Preliminary Plat stage.

F. **Jefferson County Office of Engineering.**<sup>4</sup> This body shall review and either approve or deny the Stormwater Management Plan relating to stormwater management.

### Sec. 23.204 Other Agencies

The following are the responsibilities of other agencies:

A. **West Virginia Division of Highways (WVDOH).** WVDOH is responsible for reviewing the site access and potential improvements to public roads at Preliminary Plat stage.

B. **Jefferson County Schools.** The Board of Education should determine the adequacy of school facilities intended to serve a proposed residential development at Concept Plan stage. This is a courtesy review for school planning purposes.



Division of Highways outlining the proposed improvements shall be received with the first submission of the Site Plan.

7. **Agency Reviews.** The reviewing agencies shall conduct reviews of the proposed Concept plan. Agency comments shall be received by the Department 14 days prior to the scheduled public workshop. The applicant shall distribute the Concept Plan to all reviewing agencies no later than seven (7) days after the review. Reviewing agencies are found in Sections 23.203 and 23.204. Applicant shall provide a copy of letter sent to outside agencies to the Office of Planning and Zoning within seven (7) days of submission of Concept Plan. If any review agency fails to respond, they shall be deemed by these Regulations to have approved the Plan.
  8. **Other Data.** Any other data or information the applicant believes will assist in the review.
  9. **Other Review.** Any other Staff or agency reviews of the plans.
  10. **Adjoining Property.** The applicant must provide an accurate list of all properties and owners' addresses adjoining the subject property. The adjoining and Homeowners' Association shall be notified by Staff of the date of the workshop.
- C. **Review Content.** The Department and agency reviews shall address the areas indicated in D through G below and may other areas of concern to the agencies.
- D. **Department.** The Department review shall include the following:
1. Whether the density, use, and plan meet the requirements of the Zoning Ordinance and any other zoning issues that can be identified at the Concept Plan submission. (Landscaping, for instance, is not generally available at this stage.) Staff shall identify conditions that would enable the plan to meet the standards. It shall also identify any other zoning issues the developer shall address in a Site Plan submittal.
  2. Staff opinion as to whether the plan meets the Site Plan criteria of these Regulations. The Department shall review the Concept Plan for modifications that would improve the plan.
- E. **WVDOH.** WVDOH shall submit a letter to the Office of Planning and Zoning indicating issues and data requirements or notice that there are no issues or data requirements. If WVDOH determines that a traffic study needs to include more area than required by these Regulations or the Zoning Ordinance, it shall specify the expanded area. Any issues regarding sight distances, access location, road configuration, or off-site improvements shall be noted with recommendations or required changes. The purpose is to ensure that, at Preliminary Plat review, all transportation information is available so the agency does not have to seek additional data for a qualitative review.
- F. **Traffic Impact.** The review shall indicate whether a traffic impact study will be required based on analysis required in Section 24.119.B.5.e.
- G. **Public Services.** The review shall indicate whether there are existing water and sewer systems in place that can handle the development. If not, the review shall indicate the type of extent of a system that shall be proposed by the developer to best meet the County's needs in that area of the County.

**JEFFERSON COUNTY, WEST VIRGINIA****Office of Planning and Zoning**116 East Washington Street, 2<sup>nd</sup> Floor

P.O. Box 716

Charles Town, WV 25414

[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)

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

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

---

**MEMO**

**TO:** Jefferson County Planning Commission  
**FROM:** Jennifer M. Brockman, AICP, County Planner  
**DATE:** May 1, 2018  
**RE:** Discussion of and Possible Action on Magnolia Springs Subdivision  
Concept Plan (PC File# 18-05)

---

On April 12, 2018, staff received a letter (Attachment 1) from the Jefferson County Historic Landmarks Commission (JCHLC) questioning the validity of the vote by the Planning Commission (PC) at April 10, 2018 PC Meeting regarding the Magnolia Springs Concept Plan (PC File #18-05). A follow up letter (Attachment 2) was received from Jack Hefestay and Peter Onoszko asking for the JCHLC letter to be addressed quickly.

As a result of these letters, staff conducted further research into the historic significance of the Belvedere House and property and reviewed the National Historic Register nomination form (Attachment 3). Staff also followed up with the State Historic Preservation Office (SHPO) to confirm the National Register designation and was told that the house and a 10 acre area around the house are listed on the National Register of Historic Places (Attachment 4).

Because the information presented to the Planning Commission strongly represented that it was only the structure included on the National Register and not the ten acres surrounding the Belvedere house, Staff with the advice of Legal, felt that it was important to place this information on this Agenda so that the Commission can determine whether this information would have changed the motion and/or the vote to approve this Concept Plan at the April 10, 2018 meeting.

In response to these letters and this research, the Zoning Administrator prepared a written determination regarding whether the Magnolia Springs Concept Plan is in violation of Section 4.4C of the Zoning Ordinance (Attachment 5). She determined that Section 4.4C of the Zoning Ordinance does not apply to the proposed Magnolia Springs Subdivision.

On April 25, 2018, the applicant's engineer sent a letter to the Planning Commission responding to the JCHLC comments and clarifying why they feel the proposed five acres around the Belvedere house preserve the most significant portion of the property and meet the goal of maintaining its historic character (Attachment 6).

Staff would like to remind the Planning Commission that, per Section 24.110D of the Subdivision Regulations, the Department's role in the review of a Concept Plan includes the following:

“1. Whether the density, use, and plan meet the requirements of the Zoning Ordinance and any other zoning issues that can be identified at the concept plan submission. . . .Staff shall identify conditions that would enable the plan to meet the standards. It shall also identify any other zoning issues the developer shall address in a preliminary plat submittal.

2. Staff’s opinion as to whether the plan meets the site development planning or subdivision criteria of these Regulations. The Department shall review the concept plan for modifications that would improve the plan.”

Staff believes that even with the ten acres as part of the National Register nomination, the proposed Magnolia Springs subdivision complies with the requirements of the Subdivision Regulations and the Zoning Ordinance and staff’s recommended conditions from the staff report would not have changed.

Section 24.112 details the Planning Commission’s role at the close of the Concept Plan’s Public Workshop, as follows:

“A. **Direction.** The Planning Commission shall direct the preparation of a preliminary plat subject to conditions to be addressed in the preliminary plat application. The purpose of this review is to guide the developer so that when the preliminary plat application is formally reviewed by the staff, there should not be a whole range of issues being raised for the first time. The developer shall cite conditions and demonstrate that they have been met or otherwise addressed.

B. **Conditions.** In the direction, it is anticipated that there will be numerous conditions from the Department, agencies, and public comment. There may well be public comment that seeks to lower density of the project below that permitted by the Zoning Ordinance, or to deny the project because of concerns outside the scope of the zoning or subdivision regulations. *The applicant may make proffers to address these concerns, but the Planning Commission may not use them as conditions unless they are proffered by the applicant.* (emphasis added).”

This memo is for the Planning Commission’s information and use in determining whether this new information requires the previous approval to be reconsidered.

#### **ATTACHMENTS:**

1. Letter to Planning Commission (PC) from the Jefferson County Historic Landmarks Commission (JCHLC), dated 4/13/18
2. Letter to PC from Peter Onoszko and Jack Hefestay with a letter attached from the Jefferson County Historic Landmarks Commission date, 4/16/18
3. Belvedere House National Register Nomination, dated 12/16/93
4. SHPO comments on National Register Nomination, dated 4/16/18
5. Zoning Administrator determination related to the applicability of Section 4.4C to Magnolia Springs, dated 4/25/18
6. Letter to PC from Gordon/applicant responding to letter from JCHLC, dated 4/25/18

## BEFORE THE JEFFERSON COUNTY BOARD OF ZONING APPEALS

**JEFFERSON COUNTY HISTORIC  
LANDMARKS COMMISSION,**

**Appellant,**

v.

**Appeal No. AP18-01**

**JEFFERSON COUNTY DEPARTMENTS  
OF PLANNING AND ZONING, and  
NLP FINANCE, LLC, HUNTER WILSON,  
AND MAGNOLIA SPRINGS SUBDIVISION,**

**Appellee.**

RECEIVED

JUN 19 2018

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

**NLP FINANCE, LLC – MAGNOLIA SPRINGS’ OPPOSITION TO PETITION FOR  
APPEAL BY THE JEFFERSON COUNTY HISTORIC LANDMARKS COMMISSION  
AND  
MOTION TO DISMISS THE PETITION FOR APPEAL**

COMES NOW, NLP Finance, LLC and Hunter Wilson (herein “NLP”), by counsel, Richard G. Gay, Esquire, and hereby files this opposition to the Petition for Appeal and a Motion to Dismiss the Appeal filed with the Board of Zoning Appeals of Jefferson County by the Historic Landmarks Commission of Jefferson County (herein “HLC”) from a decision of Alexandria Beaulieu, Zoning Administrator (herein “Zoning Administrator”), of April 25, 2018 which determined that Section 4.4.C – Prohibited Uses of the Jefferson County Planning and Land Development Ordinance (herein “Zoning Ordinance”) did not apply to the proposed Magnolia Springs subdivision (herein “Magnolia Springs”) which contains an historic structure known as Belvedere.

The proposed subdivision, “Magnolia Springs” preserves the historical character of the site “as is” with no additions, modifications and changes to the structure, except the proposal to reduce the site size from approximately ten (10) acres to five (5) acres.

## I. SUMMARY OF THE ARGUMENT

Section 4.4C of the Zoning Ordinance – Prohibited Uses states:

“Any development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.”

HLC objected to the development claiming the proposed subdivision would destroy the historical structure.

In her Memo, the Zoning Administrator states:

“I have determined that Section 4.4C of the Zoning Ordinance does not apply to the proposed Magnolia Springs Subdivision. Section 4.4C is ambiguous and does not define the criteria for “historical character of a property” not does it clarify what is meant by “destruction of.”

The Memo from HLC does not address specifically how the proposed subdivision would destroy the historical character of the property; therefore, staff did not have any criteria to consider when reviewing the concept plan.

Further, at the time that Magnolia Springs initially submitted their plans to the Office of the Planning and Zoning, the Zoning Ordinance did not contain any requirements for historic preservation. When referenced federal regulations for historic property, there is nothing prohibiting development of a property, nor is there anything prohibiting the demolition of a historic structure.

“The Belvedere property is in the Residential Growth Zoning District and has been identified for future development for Future Land Use Guide. The proposed Magnolia Springs appears to comply with the site development standards of the Zoning Ordinance in effect at the time of the application with regards to density.”

*Memo of April 25, 2018.*

**A. HLC lacks standing to appeal the Zoning Administrator's decision.**

The HLC lacks standing to challenge the Zoning Administrator's decision. The HLC is one of the County agencies involved or may be involved in the subdivision and site development review process as specified in Section 22.203C of the Subdivision and Land Development Regulations of Jefferson County (herein "Subdivision Regulations").

Section 22.203 states:

**"Jefferson County Historical Landmarks Commission.** This body shall submit a report and findings on whether historical resources exist on the site of the proposed subdivision of site development. If there are, they shall submit findings on whether the proposal meets the requirement of zoning with respect to such structures or places at Concept Plan stage."

As a reviewing agency, the HLC may provide input, make suggestions or otherwise comment on a proposed major subdivision but it has no power to overrule or modify a Planning Commission decision. Here, the Planning Commission had approved the Concept Plan and Waiver applications for Magnolia Springs. That approval by the Planning Commission has not been appealed by HLC, nor could they appeal it.

The HLC, an agency created by the County Commission, is not "aggrieved" or an "aggrieved person" as defined by the Zoning Ordinance. The Zoning Ordinance defines "aggrieved" or "aggrieved person" as:

"A person who is denied by the Planning Commission or the Board of Zoning Appeals, in whole or in part, the relief sought in any application or appeal or appeals, or has demonstrated that he or she will suffer a peculiar injury, prejudice or inconvenience beyond that which other residents of the county or municipality may suffer."

The HLC is not a person. Black's Law Dictionary 1178 (Bryan A. Garner ed., 8<sup>th</sup> ed. 1999) defines a "person" as "a human being" (also termed *natural person*).

The HLC is a County agency created by the County Commission of Jefferson County pursuant to W. Va. Code § 8-26A-1, et seq.

W. Va. Code § 8-26A-3 indicates the legislative intent and provides in pertinent part:

“... If there is a conflict between the requirements of the zoning district and the requirements of the historic district or property, the zoning district requirements apply.”

The Zoning Ordinance, Article 3, Section 3.2 defines the authority of the Zoning Administrator as:

The Zoning Administrator shall administer and enforce the Zoning and Land Development Ordinance. This includes but is not limited to the following:

1. Make determinations that all applications required by the Ordinance are complete and that all fees are paid.
2. **Interpret the provisions of the Ordinance as required by law.**
3. Issue Zoning Certificates as permitted by the Ordinance.
4. Determine sufficiency and completeness of applications for a Conditional Use Permit.
5. Issue all permits and Certificates as permitted by the Ordinance.
6. Prepare and submit reports as required by the Ordinance or the Board of Zoning Appeals or Planning Commission.
7. Conduct meetings and conferences pursuant to the Zoning and Land Development Ordinance.

*Jefferson County Zoning and Land Development Ordinance, Section 3.2A*

The HLC, a county agency, lacks “standing” to sue another county agency. Here, one county agency, the Planning Commission is responsible for approving a major subdivision and is in charge with the implementation of the Subdivision Regulations and the Zoning Ordinance. The HLC’s role is merely to review the Concept Plan and to prepare a study and report concerning its effects on any historic structures or sites. The HLC did not prepare a study or a report concerning the effects, if any, on the historical site Belvedere. The one role assigned by the Ordinance was not followed. The HLC merely claimed that the Magnolia Springs

subdivision would destroy the historical character of Belvedere. No facts supported this conclusion.

“Standing” is composed of three elements. *State v. Brandon B.*, 624 SE2d 761, Syl. Pt. 2 states:

"Standing is comprised of three elements: First, the party attempting to establish standing must have suffered an 'injury-in-fact' — an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent and not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct forming the basis of the lawsuit. Third, it must be likely that the injury will be redressed through a favorable decision of the court." Syllabus point 5, *Findley v. State Farm Mutual Automobile Insurance Co.*, 213 W.Va. 80, 576 S.E.2d 807 (2002)."

*West Virginia Division of Highways v. Shirley Mason*, No. 17-0430 (W.Va. Supreme Court, May 14, 2018)(memorandum decision) states:

“Standing is comprised on three elements: First, the party attempting to establish standing must have suffered an “injury-in-fact”—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent and not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct forming the basis of the lawsuit. Third, it may be likely that the injury will be redressed through a favorable decision of the court.”

The Historic Landmarks Commission is also not an “aggrieved person,” as defined in the Zoning Ordinance. The Zoning Ordinance defines “aggrieved” or “aggrieved person” as:

“A person who is denied by the Planning Commission or the Board of Zoning Appeals, in whole or in part, that relief sought in any application or appeals, or has demonstrated that he or she will suffer peculiar injury, prejudice or inconvenience beyond that which other residents of the county or municipality may suffer.”

*Zoning Ordinance* at Section 2.2

There is no authority in West Virginia law for a reviewing agency created by a County Commission, like the HLC to overrule a Planning Commission created by the same County

Commission, or a decision that the Zoning Ordinance does not apply to a particular project by the Zoning Administrator, who is required by the Ordinance to interpret the Ordinance. There is no destruction of the property at issue here, Belvedere, since it is proposed to be left “as is” and sold as a separate tract with five (5) acres as opposed to the originally general described ten (10) acres in order to preserve the historic oaks which were part of the entrance into the Belvedere property and site. Belvedere was declared an historic structure in 1983, which is prior to the construction of Route 9/340 by pass which took, through eminent domain proceedings, substantial portions of the Belvedere Farm through which the road now runs. The HLC cannot meet the requirements of standing – they do not exist except as authorized by the County Commission and legislature.

## **II. STATEMENT OF FACTS**

1. On December 11, 2017, Hunter Wilson entered into a Contract of Sale between Walter James Truettner, III and William K. Truettner, Trustees of the Belvedere Farm Family Trust, to purchase the subject property which is now being proposed as a major subdivision development in Jefferson County. (*See* Contract of Sale attached as *Exhibit 1*)

2. On February 7, 2018, a Pre-Proposal Conference with the Jefferson County Department of Engineering, Planning and Zoning (herein “Planning and Zoning staff”) was held to discuss the overall plan, the density of the project, and the Ordinance requirements applicable to the project were reviewed.

3. On February 13, 2018, a Pre-Proposal Conference Memorandum was issued by the Jefferson County Office of Planning and Zoning (herein “JCPZ”). The Pre-Proposal Conference Memorandum indicated the parcel sizes were 103.88 acres and 20.57 acres, with

approximately 107 acres proposed for a major subdivision leaving 17 acres east of Route 340 to remain as residue because it was inaccessible.

4. The proposed project consists of the creation of 301 single family detached units with associated infrastructure (roads, utilities, and stormwater management). The Pre-Proposal Conference Memorandum indicated that three (3) Jefferson County Historic Resources exists on the site: Belvedere Farm House (aka Tate House); Belvedere Tenant House and the Belvedere Barn. The applicant intends to divide the Belvedere Farm House off on a 5 acre +/- lot for sale. Belvedere Tenant House and Belvedere Barn will be removed as part of this development. The Landmarks Commission has requested access to these structures so that they can be documented before they are removed. The Memorandum concluded that the applicant may proceed with the submission of the Concept Plan for the proposed major subdivision. Upon receipt of the required materials, the JCPZ will place the Concept Plan on the next Planning Commission agenda within the time requisite stated in the Subdivision Regulations. (See Pre-Proposal Conference Memorandum attached as *Exhibit 2*)

5. On February 21, 2018, the Concept Plan and supporting documents were submitted to the JCPZ. (See Concept Plan attached *Exhibit 3*)

6. On February 27, 2018, the Concept Plan was deemed sufficient and complete by the JCPZ. (See Concept Plan Review Checklist attached as *Exhibit 4*)

7. On February 28, 2018, the second submission of the Concept Plan and comment response letter was submitted to the JCPZ with corrections to the typographical errors.

8. On March 22, 2018, four (4) waiver applications were submitted to the JCPZ. The applications were requests for waivers of Sections 21.101A, 21.104A , 21.306, and 2.2K.1.a. The waiver application for Section 21.101A requested to allow block lengths to contain up to 12

lots on one side of the street; waiver of Section 21.104A requested to allow 70' minimum lot frontage/width; waiver of Section 21.306 requested to permit the road intersections to be within 200' centerline distance of each other; and, waiver of Section 2.2K.1.a requested to allow open ditch road section. (See Waiver Request attached as *Exhibit 5*)

9. On April 3, 2018, the Landmarks Commission submitted a letter to Jennifer Brockman of the JCPZ commenting on the Magnolia Springs Concept Plan stating that the Landmarks Commission is against the Magnolia Springs Concept Plan and referenced the National Park Service rehabilitation standards regarding the design of the Magnolia Springs development. The letter further stated that it would like more green space in general, the viewshed of Belvedere protected, and an attempt be made to preserve the 150 year old Belvedere Barn as community space. (See April 3, 2018 letter attached as *Exhibit 6*)

10. On April 10, 2018, the Jefferson County Planning Commission (herein "JCPC") met and held a public hearing for the Concept Plan, public workshop and waiver requests. The JCPC approved the Concept Plan with conditions and all four (4) waiver applications were also approved. The JCPC staff provided a Staff Report for the project which indicated the approvals of the Zoning Administrator, the County Planner, and the County Engineer. A motion to accept the Concept Plan passed by a vote of 6-2 with Peter Osnozko and Jack Hefestay opposing. (See April 10, 2018 JCPC meeting minutes attached as *Exhibit 7*)

11. The applicant, NLP, provided a brief presentation stating that site acreage is 120 acres as opposed to 67 acres provided in the Staff Report, and the project is proposing to double the amount of open space required by the Ordinance and that five acres will be provided for the Belvedere House which is to be sold on a separate lot. NLP further stated that the development

will cooperate with the City of Charles Town with respect to road connections and right-of-way dedications.

12. The Concept Plan was reconsidered and a motion was made to modify the original motion approving the Concept Plan to clarify adjacent road requirements. The motion passed 8-0 by the Planning Commission.

13. On April 11, 2018, the Landmarks Commission held a meeting where a decision to write a second letter was made.

14. On April 12, 2018, the Landmarks Commission wrote a letter to the JCPC stating that the Concept Plan is not in conformance with Section 4.4C of the Zoning Ordinance. (*See* April 12, 2018 letter from the Landmarks Commission to the JCPC attached as *Exhibit 8*)

15. On April 14, 2018, Jack Hefestay and Peter Onoszko, members of the Planning Commission, wrote a letter to Donnie Fisher, President of the Planning Commission, requesting an expeditious reconsideration of the decision of the Planning Commission regarding the Magnolia Springs subdivision for the reasons stated in the letter of April 12, 2018 from Landmarks Commission to the JCPC. (*See* letter of April 14, 2018 attached as *Exhibit 9*)

16. On April 25, 2018, Chad Wallen, Project Manager for the Magnolia Springs subdivision, wrote a letter to the JCPC in response to the April 12 and April 14, 2018 letters from the Landmarks Commission and the JCPC members, respectively. (*See* letter of April 25, 2018 attached as *Exhibit 10*)

17. On May 1, 2018, a JCPC meeting was held wherein the Magnolia Springs subdivision Concept Plan approval was discussed. A motion was made to maintain previous approval with the condition limiting adjacent homes to one (1) level homes. The motion was passed. (*See* Memo of County Planner attached as *Exhibit 11*)

18. At the May 7, 2018 meeting of the Landmarks Commission, it was decided to appeal the JCPC's decision.

19. On May 24, 2018, the Landmarks Commission submitted their appeal to the Board of Zoning Appeals.

### **B. Belvedere House**

20. The Belvedere House was listed on the National Register of the Historic Places on December 16, 1983. It was described as being in excellent condition on the original site and described as:

“The stately mansion ‘Belvedere,’ sits at the end of tree shaded Belvedere Farm Drive, outside of Charles Town, Jefferson County, West Virginia, commanding a majestic, panoramic view that has remained virtually unchanged since the farm came into existence in the 18<sup>th</sup> century.”

21. “Belvedere,” according to the National Register’s explanatory notes, means “beautiful view.” Its acreage was described as approximately 10 acres and the verbal boundary is described as:

Beginning at the point where the southern fence line intersects the western fence-line hedge at the rear elevation of the Belvedere Mansion; thence 600 feet along the fence-hedge north to where said line intersects the Private Belvedere Farm Road; thence approximately 800 feet east along the southern edge of said farm road to where it intersects the first western fence line; thence approximately 550 feet south along the fence line to its terminus with the southern fence line; thence approximately 800 feet west along the southern fence line to the point of beginning encompassing approximately 10 acres. This boundary allows for the inclusion of the major portion of the lawn fronting on the principal residence, maintaining the integrity of the vista that, historically, gave its name to the property: “Belvedere” – “beautiful view.”

(See National Register of Historic Places attached as *Exhibit 12*)

22. Chad Wallen, Project Manager for Magnolia Springs subdivision, described the parcel as follows:

The design of the Belvedere parcel was a careful exercise based on the existing conditions found in 2018 as opposed to the idealic description of the property included in the National Historic Register nomination form. The view from the house looking towards the east is not what was described in 1983. While the Blue Ridge Mountains still command the distant view, the viewshed close to the house is dominated by car and truck traffic on the Route 340 bypass. Cars are always visible from the front porch with the few exceptions when a stop light on 340 creates a break in the traffic flow. While the cars have an impact on the viewshed, it is the noise from this road that has the greatest impact from the front of the house.

While the front view is heavily impacted by the time and progress, the back of the house presents a unique opportunity for preservation of a site with significant landscape architectural importance. The lawn is dominated by majestic white oaks that can live 300 years. The spacing and character of these trees indicate that they are part of the natural forest that once covered Jefferson County and may predate the construction of Belvedere.

The Concept Plan presented to the Planning Commission proposed a 5 acre lot for Belvedere that included the best features of the property. The following description is a comparison of the 10 acres property vs. the 5 acre lot. (note that the 10 acres is not legally defined as a parcel in the Jefferson County Tax Maps)

**Southern Property Line** – this property line is moved to the south to include additional forested area and mature trees. Increasing the land to the south enhances the character and privacy of the Belvedere parcel.

**Eastern Property Line** – this property line moved 400' to the west, decreasing the front yard area by approximately 2.9 acres (0.9 acres of this area will be contained in a proposed park). This area is significantly lower than Belvedere, the preliminary plat will be graded to limit the visual impact of the houses in this area. The viewshed from the Belvedere house to the Blue Ridge Mountains will remain.

**Western Property Line** – the property line moved 250' to the west, increasing the size of the Belvedere parcel by approximately 2 acres. This area is heavily wooded and contains numerous trees that likely date back to the construction of Belvedere. The connection between these trees and the house is an unbroken line that represents significant historical context. If the 10 acre parcel was maintained this area would be developed as residential lots.

**Northern Property Line** – the property line is moved approximately 250' closer to the house, although the distance varies since the parcel lines are not parallel. The movement of this line results in a decrease of 4.6 acres. Much of this land is not visible from the existing house and has little if any contribution to the historic viewshed.

Summary – the applicant acknowledges the importance of the future Belvedere parcel. The parcel lines described in 1983 were selected for convenience, an existing farm lane, an old fence, etc. resulting in a 10 acre parcel. If the road or fenceline had been in a different location it may have been a 5 acre parcel.

The Concept Plan places emphasis on preserving native white oaks in a historical landscape opposed to a viewshed of the Route 340 bypass. The decrease in parcel size is largely associated with reduction of land to the north of Belvedere, an area that is not visible from the house and would not have been visible in 1983. The Concept Plan places value on stately open space over an impaired viewshed. The development of the Preliminary Plat will seek to further reduce visual impacts to belvedere through site grading and landscaping.

There is no case to be made that this Concept Plan is destroying a historic resource. Creating the 5 acre parcel in its proposed configuration will preserve the more pristine historic landscape as it exists today. The applicant is not violating any Federal, State, or Local regulatory requirements and is fully within their rights to develop this property.

(See Project Manager’s observations attached as *Exhibit 13*)

23. The May 1, 2018 Memo from Jennifer Brockman, AICP, County Planner to the JCPC, discussed the possible action on Magnolia Springs subdivision and a reference to the Zoning Administrator’s written determination regarding whether Magnolia Springs’ Concept Plan is in violation of Section 4.4C of the Zoning Ordinance, and determined that Section 4.4C of the Zoning Ordinance does not apply to the proposed Magnolia Springs subdivision. (See *Exhibit 14*)

### **C. Regulatory overview**

In response to the Jefferson County Historic Landmarks Commission letters concerning Magnolia Springs relating to the claims that the proposed subdivision would “destroy the historical character of Belvedere,” NLP offered the following response as it relates to applicable Federal, State, and Local rules and regulations and how they apply to properties on the National Register of Historical Places.

1. Federal Regulations

It is very important to understand how Federal Law protects property owners of historic places and what restrictions, rules, and regulations apply. The following citation is taken from the National Park Service website.

*“Under Federal Law, the listing of a property in the National Register places no restrictions on what a non-federal owner may do with their property up to and including destruction, unless the property is involved in a project that receives Federal assistance, usually funding or licensing/permitting.  
<http://www.nps.gov/nr/regulations.htm>”*

The property owners have not received any Federal assistance, funding or licensing/permitting.

2. West Virginia Regulations

The role and/or authority of the West Virginia State Historic Preservation Office defined below:

*“The West Virginia State Historic Preservation Office (SHPO) is dedicated to preserving and protecting our state’s important cultural resources. One way we achieve this is by working with government agencies as projects are developed. When a project requires a government license or permit or makes use of government money federal and state laws require that the project be sent to the SHPO for review. Once submitted, the SHPO staff determines how that project will affect West Virginia’s historic resources and provides comments to the government agency. After the SHPO receives a project for review, the office has 30 days to comment on the project’s effects to historic resources. These laws DO NOT apply to private owners of historic properties who are planning alterations to their property unless they are receiving state or federal funds, permits or licenses for the property, or are applying for a state or federal income tax credit.”*

3. Jefferson County Regulations

The role of the Jefferson County Historic Landmarks Commission as defined by Jefferson County Zoning and Subdivision Ordinances.

**Jefferson County Zoning Ordinance**

*Section 3.4.D.3 – Historic Preservation is not to infringe on the property owner’s rights. The Jefferson County Landmarks Commission is encouraged to protect historic sites in Jefferson County by raising capital to purchase historic sites and battlefields at fair market value.*

- Emphasis added above. The development of the property is clearly within the rights of the applicant, it is zoned residential grown and the proposed uses are permitted.
- Per the citation provided from federal regulation there are no restriction on what the owner may do with their property, including its destruction.
- Per the citation provided from WV, the State Historic Preservation Officer does not have authority over the proposed project.
- This section of the Zoning Ordinance was adopted after the submission of the concept plan.

*Section 3.4.D.4 – This Ordinance encourages the preservation of historic buildings and historic sites by working with the landowner on a voluntary basis. All historic sites in Jefferson County are classified by their Category of Importance, used to determine the level of protection afforded that site. The categories are as follows:*

- Emphasis added above, cooperation with the Historic Landmarks Commission is voluntary.
- This section of the Zoning Ordinance was adopted after the submission of the concept plan.

The Historic Landmarks Commission sent a second letter in which they state the approval of the concept plan is invalid since it would destroy the historical character of the property.

- The Zoning Ordinance intentionally set a very high bar when assessing impacts to historical properties. The use must **destroy** the historic character.
- The applicant acknowledges that Belvedere will be impacted by the development, but there is no interpretation of the concept plan that could meet a reasonable definition of destroy. The nomination is based on a structure, not a site.

*Section 4.4 – Any development which would destroy the historical character of a property listed on the West Virginia National Register of Historic Places shall not be permitted.*

- The applicant acknowledges the historic resource will be impacted by the proposed development. However there is no case that can be made to suggest that the building and its historical relevance will be destroyed by the proposed development.
- The applicant directs County Staff to the classification submitted with the national historic register. It is a historic building, not a historic district or site. Given that federal law places no restriction on property owners, the reduction of the “nominated property” from 10 acres to 5 acres cannot be construed as destroying the historical character of a property.

*Section 4.6.G.1 Protection Radius – Uses permitted within the Protection Radius include Residential Uses as listed in Appendix C, barns, and residential accessory structures as defined by this Ordinance.*

- Emphasis added, the use for the proposed development is single family houses, which are found under residential uses in Appendix C.
- The Protection Radius does not apply to this application.

**Jefferson County Subdivision Ordinance**

*Section 23.203.C – Jefferson County Historical Landmarks Commission. This body shall submit a report and findings on whether historical resources exist on the site of the proposed subdivision of site development. If there are, they shall submit findings on whether the proposal meets the requirement of zoning with respect to such structures or places at Concept Plan state.*

- The role of the Historic Landmarks Commission (HLC) is to evaluate whether a Concept Plan meets the requirements of the Zoning Ordinance. The requirements of this ordinance have been stated above.
- The following pertains to the Historic Landmarks Commission letter to the Planning Commission.
  - The citation provided by the HLC in relation to viewshed was written in 1983. Since this description was written two major highway projects have been constructed within the houses viewshed, this was ignored by the HLC.
  - The Belvedere nomination form does not list any barns or contributing structures, reference to these buildings was added at the discretion of the HLC.
  - The HLC sites the National Park Service’s rehabilitation standards, these do not apply to the property and can be found nowhere in the zoning ordinance.
  - The HLC commission has not followed their mandated role, their review of the proposed subdivision plan reflects their feelings not the requirements of the ordinance.
  - The proposed plan does not impact the architecture of the structure which is the true basis of the registration.

*(See Exhibit 10)*

**III. LEGAL ARGUMENT<sup>1</sup>**

**A. The role of the Board of Zoning Appeals in reviewing a decision by the Zoning Administrator.**

West Virginia Code 8A-8-9(1) provides:

---

<sup>1</sup> NLP incorporates its standing argument here, as if specifically restated herein.

A board of zoning appeals has the following powers and duties:

“Hear, review and determine appeals from an order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance or rule and regulation adopted pursuant thereto.”

Here, the Landmarks Commission is appealing the decision of the Zoning Administrator regarding Section 4.4C of the Zoning Ordinance, Prohibited Uses, which states:

“Any development which would destroy the character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.”

The Zoning Administrator determined “that Section 4.4C of the Zoning Ordinance does not apply to the proposed Magnolia Springs subdivision because Section 4.4C is ambiguous and does not define the criteria for ‘historic character of a property’ nor does it clarify what is meant by ‘destroy.’”<sup>2</sup>

Webster’s Ninth New Collegiate Dictionary, 345 (Frederick C. Mish, ed., 1991) defines “destroy” as “to ruin the structure, organic existence, or condition of.”

As far as the historical character, it is undisputed that the Belvedere historic structure will not be altered in any way. It will be sold as a separate parcel with 5 acres surrounding it to protect the ancient oaks that were part of its historic character. The Planning Commission reviewed the Concept Plan and approved it, even after the HLC objections were raised. The

---

<sup>2</sup> In *Kaufman v. Planning & Zoning Comm. of the City of Fairmont*, 171 W. Va. 174, 298 S.E.2d 148 (1980), at Syl. Pt. 3, the Court held:

“A subdivision regulation enacted by a planning commission must be reasonable and the regulation must sufficiently restrain the discretion of the commission to insure fair administration and must sufficiently inform the property owner to insure adequate guidance in the preparation of plans.” Syllabus, *Singer v. Davenport*, 164 W. Va. 665, 264 S.E.2d 637 (1980)

The same principle also applies to zoning ordinances.

Planning Commission also accepted the Zoning Administrator's decision that Section 4.4C of the Zoning Ordinance was not violated by the proposed Concept Plan. (See *Exhibit 7*)

The Zoning Administrator further states that the letter from the Landmarks Commission does not address specifically how the proposed subdivision would "destroy the historical character" of the structure and therefore, the staff does not have any criteria to consider when reviewing the Concept Plan. This is especially true since no alterations to Belvedere are even proposed.

It is undisputed that because a property is registered on the National Register of Historic Places, that listing makes the property owners eligible to be considered for federal grants and aid for historic preservation and for certain tax benefits.

It is undisputed that none of the owners of Belvedere have applied for any special tax benefits, or received any funding directly or indirectly from the Federal, State or local government.

Further, Federal regulations state:

"Under Federal Law, the listing of a property in the National Register places no restrictions on what a non-federal owner may do with their property up to and including destruction, unless the property is involved in project that receives Federal assistance, usually funding or licensing/permitting."

The Jefferson County Zoning Ordinance, Section 3.4D.3 states:

**"Historic Preservation is not to infringe on the property owner's rights. The Jefferson County Historic Landmarks Commission is encouraged to protect historic sites in Jefferson County by raising capital to purchase historic sites and battlefields at fair market value."** (Emphasis added)

There is nothing that gives the HLC jurisdiction over the use of that property as provided in the Zoning Ordinance of Jefferson County. It is undisputed that the Magnolia Springs project

meets the requirements of the Subdivision Ordinance as far as the development process is concerned at this stage, and that it complies with the Zoning Ordinance.

The unsubstantiated assertions by the HLC that the reduction in the size of the historic site from 10 to 5 acres would “destroy the historic significance” of the structure is facially absurd.

There are no alterations proposed for the historic site or historic structure. Further, the Landmarks Commission has offered no evidence that would demonstrate that the proposed use would destroy Belvedere’s historical character. Just the opposite is true. The proposal for Magnolia Springs preserves the historical character of Belvedere. It preserves it as a separate site to be sold separately.

**B. The Zoning Administrator’s decision should be given deference by the Board of Zoning Appeals.**

While the Board of Zoning Appeals has complete power to reverse, modify, or affirm whatever decision is being appealed before it, it is clear that the law in West Virginia provides that:

“Interpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous.” Syl. Pt. 3, *Maplewood Estates Homeowners Assn. v. Putnam Cnty. Planning Comm’n*, 218 W.Va. 719, 629 S.E.2d 778 (2006), as quoted in *Donadieu v. Morgan County Planning Commission*, No. 15-1058, (W.Va. Supreme Court, Oct. 7, 2016)(memorandum decision). See also *Far Away Farm, LLC v. Jefferson County Board of Zoning Appeals*, 664 S.E.2d 137, Syllabus Point 2.

The BZA should apply the same standard of review to the Zoning Administrator’s decision as the Circuit Court applies to the review of the BZA’s decision.

In *Board of Zoning Appeals of the Town of Shepherdstown v. Tkacz*, 234 W.Va. 201, 764 S.E.2d 532 (2014), the Supreme Court states:

The standard that applied to the circuit court's review of the BZA's decision was announced in syllabus point five of *Wolfe v. Forbes*, 159 W.Va. 34, 217 S.E.2d 899 (1975): "While on appeal there is a presumption that a board of zoning appeals acted correctly, a reviewing court should reverse the administrative decision where the board has applied an erroneous principle of law, was plainly wrong in its factual findings, or has acted beyond its jurisdiction." Finally, "[i]n cases where the circuit court has amended the result before the administrative agency, the Court review the final order of the circuit court and the ultimate disposition by it of an administrative law case under an abuse of discretion standard and reviews questions of law *de novo*." Syl. Pt. 2, *Muscatell v. Cline*, 196 W.Va. 588, 474 S.E.2d 518 (1996).

In *Jefferson Utilities, Inc. v. Jefferson County Board of Zoning Appeals*, 481 W. Va. 436, 624 S.E.2d 873 (2005), in Syl. Pts. 4 and 5, the Court held:

The critical factor in determining whether the use of some limited discretion by a zoning administrator requires the additional protection that typically attach in evidentiary proceedings is whether the determination being made is one that qualifies as administrative or quasi-judicial in nature.

The provisions of West Virginia Code § 8-24-55 (1969) (Repl. Vol. 2003), which set forth the authority and power of a board of zoning appeals, do not expressly or implicitly prevent that administrative proceedings in reviewing determinations reached by a zoning administrator.

*Jefferson Utilities* involved an appeal of several parties from the Circuit Court's ruling and involved a lengthy evaluation and discussion of the Zoning Administrator's exercise of discretion.

The Court, in discussing the Zoning Administrator's responsibilities stated:

Under the Jefferson County ordinance, the zoning administrator is supposed to be hired by the planning commission. Consequently, the job duties and responsibilities assigned to the zoning administrator are to be determined by the planning commission or the ordinance language setting forth the duties of the zoning administrator. Contrary to the circuit court's approach to this issue, the "ministerial acts" statutory language is not the sole basis for identifying the zoning administrator's authority or job description. W.Va. Code § 8-24-14(5).

As additional authority for the creation of the zoning administrator position, we have previously recognized that county commissions and municipalities derive their general authority to adopt zoning ordinances from West Virginia Code § 8-

24-39 (1988) (Repl. Vol. 2003). See *Dewey v. Board of Zoning Appeals*, 185 W.Va. 578, 581, 408 S.E.2d 330, 333 (1991); *Wolfe*, 159 W.Va. at 39, 217 S.E.2d at 903. That statutory provision expressly grants authority to municipalities and county commissions for the implementation of zoning laws. We have further observed that the enactment of a zoning ordinance is an exercise of the broad police power of the state, as delegated to the local governing body. See *Par Mar v. City of Parkersburg*, 183 W.Va. 706, 709, 398 S.E.2d 532, 535 (1990).

An integral part of extending the state's police powers to local governing bodies is the related enforcement powers that are implicitly granted to such bodies for the purpose of carrying out local laws. See *State ex rel. State Line Sparkler v. Teach*, 187 W.Va. 271, 275, 418 S.E.2d 585, 589 (1992) (recognizing that "[t]he general rule is that a grant of the police power to a local government or political subdivision necessarily includes the right to carry it into effect and empowers the governing body to use proper means to enforce its ordinances"). These principles are illustrated in the case at bar by the fact that the County Commission *has reposed in the Planning Commission the responsibility for effectuating various laws, such as zoning matters, that pertain to land use. In turn, fulfillment of that responsibility for land use governance requires the employment of both employees and administrators. Central to the administration of the Ordinance under discussion is the position of zoning administrator.* (Emphasis added.)

*Id.* at 881-82.

Here, the Court in *Jefferson Utilities* specifically held:

“Consequently, the job duties and responsibilities assigned to the zoning administrator are to be determined by the planning commission or the ordinance language setting forth the duties of the zoning administrator.” *Id.* at 880.

In Section 3.2(A)(2), the Zoning Ordinance indicates that the Zoning Administrator shall administer and enforce the Zoning and Land Development Ordinance. This includes, but is not limited to the following:

\*\*\*

“Interpret the provisions of the Ordinance as required by law.”

Thus, the Zoning Administrator is specifically required by law under the Ordinance, to interpret the very Zoning Ordinance that Zoning Administrators are required to administer.

This is exactly the issue that was raised in *Corliss v. Jefferson County Board of Zoning Appeals*, 214 W. Va. 535, 591 S.E.2d 93 (2003). In *Corliss*, the issue of the Zoning Administrator's powers and responsibilities was squarely at issue.

At the time of the *Corliss* decision, the Jefferson County Commission operated under a Planning and Zoning Ordinance referred to as a Development Review System which, as the Court explained:

Pursuant to the procedures known as the Development Review System ("DRS"), which are set forth in the Ordinance, the Commission undertook an evaluation to determine whether the requested conditional use permit should be issued. As part of that process, a Land Evaluation and Site Assessment ("LESA") was performed by the Zoning Administrator, Paul Raco. The LESA evaluation utilizes a numeric rating scale which involves two components: a soils assessment that accounts for 25% of the LESA score and an amenities assessment that accounts for the remaining 75% of the LESA score. Upon the conclusion of the LESA evaluation, the combined score of these two components was 57.47. Only if this score was 60 or less could the DRS process continue. Given the appropriate range of the LESA score, the proposed development proceeded to the Compatibility Assessment Meeting. This stage of the review process provides a public forum for local citizens to voice their specific concerns about the development under consideration.

*Corliss* at 538.

The Planning Commission, on appeal, voted to approve the Conditional Use Permit issued to the developer, Arcadia. The Circuit Court reversed the Zoning Board's decision and found that the underlying administrative determinations considering the adequacy of the support data and other components of what was considered to be a LESA score under the Ordinance's purposes, was wrong because the Zoning Administrator did not have the power or authority to make those kinds of determinations. The Supreme Court, in reversing the Circuit Court's decision concerning the Zoning Administrator's powers, held:

In discarding the administrative determinations that the submitted support data was adequate, the lower court appears to have wrongly substituted its judgment for that of the administrative entities charged with handling zoning matters. It is

(1989) (holding that “[a] statute, or an administrative rule, may not, under the guise of ‘interpretation,’ be modified, revised, amended or rewritten”). (Emphasis added.)

*Id.* at 544-45.

Thus, under *Corliss*, the Zoning Administrator is not only required to interpret the Zoning Ordinance, the Zoning Administrator’s decisions are afforded deference. The *Corliss* Court held in Syllabus Point 3:

“Interpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous.” Syl. Pt. 4, *Security Nat’l Bank & Trust Co. v. First W. Va. Bancorp.*, 166 W.Va. 775, 277 S.E.2d 613 (1981).

In determining that Section 4.4C of the Zoning Ordinance did not apply to Magnolia Springs and the Concept Plan approved by the Planning Commission would not destroy the historical character of Belvedere, the Zoning Administrator did what was authorized and required by the Ordinance.<sup>3</sup>

In this particular case there are no disputed facts. The Belvedere house will not be altered at all. The only issue is concerning whether the reduction in the acreage would amount to a destruction of the property.

That argument is facially absurd. In 1983, the property was designated on the National Historic Registry. Since then, there has been added a major highway bisecting part of the farm with an intersection and a stop light which changed the historical setting forever.

This action was taken not by NLP for the development of the subdivision, but by the State of West Virginia.

---

<sup>3</sup> It is interesting to note that the Jefferson County Zoning Ordinance was adopted following the Court’s decision in *Jefferson Utilities* and *Corliss*.

So, any change in the historic character of the property is not by NLP, but by the State of West Virginia when it put in an intersection of Routes 9/340 that bisected part of farm on which Belvedere has historically been located.

West Virginia Code §§ 8A-5-6 and 8A-5-7 dealing with both the application for a major subdivision or land development and the contents of a major subdivision or land development plan, sets forth all the requirements for a major subdivision. Nowhere in that process is it provided that the HLC has the power to overrule a planning commission's decision, or a Zoning Administrator's decision that a certain part of the Zoning Ordinance does not apply to a project because the statute does not authorize that power. HLC's role as a reviewing agency under the Ordinance is specifically limited.

The Jefferson County Subdivision and Land Development Regulations, Section 23.203, states:

The following Jefferson County agencies are involved or may be involved in the subdivision and site development review process.

\*\*\*

**Jefferson County Historical Landmarks Commission. This body shall submit a report and findings on whether historical resources exist on the site of the proposed subdivision of site development. If there are, they shall submit findings on whether the proposal meets the requirement of zoning with respect to such structures or places at Concept Plan stage. (Emphasis added.)**

Here, the Subdivision Ordinance limits the role of HLC to submitting a report and findings as whether historical structures exist, and whether or not the proposal meets the requirement of the zoning with respect to such structures at Concept Plan stage. Nothing else.

The Concept Plan stage is not final approval of the subdivision; it is part of the process. The HLC is authorized by Ordinance to determine whether historical resources exist and "shall"

submit findings on whether the proposal meets the requirement of zoning with respect to such structures.<sup>4</sup>

Such structure here is Belvedere. It is unchanged.

Here, the Jefferson County Planning Commission is charged with both the administration and interpretation of the Planning and Subdivision Ordinance. The Zoning Administrator is charged with making an interpretation of Section 4.4C of the Zoning Ordinance as required by law. The Zoning Administrator's opinion is entitled to deference and the BZA should uphold and affirm that decision.

This is especially true in the case where the HLC has no authority to reject or approve a major subdivision application, a power that rests solely on the Planning Commission. Their only role is as a reviewing agency.

And that role is limited to findings of facts and recommendations. None of which, of course, were done in this instance.

### **C. The Historic Landmarks Commission.**

The HLC is established pursuant to W. Va. Code § 8-26A-1, and by an Order of the County Commission, as provided in § 8-26A-4.

Under the definitions section of § 8-26A-2, an "historic landmark" is defined as:

"a site, building, structure, or object designated as a "Landmark" either on a national, state, or local register."

It is clear that under the statute, that Belvedere is an historic building. It is a building or structure designated on a National Historic Register, and described as such in great detail. (*See Exhibit 13*)

---

<sup>4</sup> "Shall," in constructing statutes and ordinances is always construed by the West Virginia Supreme Court of Appeals as mandatory. *See Board of Education of the County of Grant v. Townshend*, 187 W.Va. 249, 418 S.E.2d 359 (1992).

W. Va. Code § 8-26A-3, entitled Legislative intent, provides:

The historic district and property regulation provided in this article is intended to identify, study, preserve and protect historic buildings and structures, sites and districts, some of which are located in zoning districts. Historical properties and districts lying within the boundaries of a zoning district are subject to the regulations for both the zoning district and the historic district and properties. **If there is a conflict between the requirements of the zoning district and the requirements of the historic district or property, the zoning district requirements apply.** (Emphasis added.)

It is clear the legislature intended that the zoning district's requirements trump any HLC's requirements. There are no HLC requirements in this case, because no criteria has developed by the HLC, and approved by the County Commission, or any other state agency determining what "destroys the historical character of the property."

This is especially anomalous in this case, since there is no destruction or change or alteration of any feature including the "exterior architectural features" as defined in W. Va. Code § 8-26A-2(a), which include:

the architectural character and general composition of the exterior of a structure, including, but not limited to, the kind, color and texture of the building material and the type, design and character of all windows, doors, light fixtures, signs, or other appurtenant elements and natural features when they are integral to the significance of the site, all of which are subject to public view from a public street, way or place.

**HLC has authority to review only changes to exterior architectural features.**<sup>5</sup>

Based on the legislative intent and the definition of an historic landmark, the HLC has no

---

<sup>5</sup> See W. Va. Code § 8-26A-3 which provides:

The historic district and property regulation provided in this article is intended to identify, study, preserve and protect historic buildings and structures, sites and districts, some of which are located in zoning districts. Historic properties and districts lying within the boundaries of a zoning district are subject to the regulations for both the zoning district and historic district and properties. If there is a conflict between the requirements of the zoning district and the requirements of the historic district or property, the zoning district requirements apply.

authority here to challenge the Zoning Administrator's decision that the development will not "destroy the historical character of Belvedere."<sup>6</sup>

Belvedere's exterior architectural features and historical location of the site will not be changed. The only change is the reduction of the acreage estimated to be approximately ten (10) acres. That change has been significantly explained to the Planning Commission, who accepted it, along with other proffers dealing with the locations of other proposed housing in front of the historic view of the Belvedere house. (See *Exhibit 7*)

**D. Historic Landmark Commission is a County created agency authorized by the legislature, and is not authorized to appeal any decision of another County agency unless specifically authorized by the legislature.**

In *State of West Virginia, ex rel. West Virginia Parkways Authority v. Barr*, No. 35757, (W.Va. Supreme Court, March 1, 2011)(writ of mandamus), the case involved a question of the power of a County Commission to overrule a decision of the West Virginia Parkways Authority on the relocation of the U.S. Route 35 parkway project. The Respondent refused to carry out his non-discretionary duties with regard to the project after the Commission voted to rescind their approval of the project.

The Court held in Syllabus Point 4:

The county [commission] is a corporation created by statute, and possessed only of such powers as are expressly conferred by the Constitution and legislature, together with such as are reasonably and necessarily implied in the full and proper exercise of the powers so expressly given. It can do only such things as are authorized by law, and in the mode prescribed. Point 3, syllabus, *Barbor v.*

---

<sup>6</sup> Here, two Planning Commission members, Jack Hefestay and Peter Onoszko, who voted against the Magnolia Springs Concept Plan, used the HLC to collaterally attack the Planning Commission's approval of the Concept Plan. No member of a planning commission or a board of zoning appeals is authorized by statute to appeal a decision of the very body they represent as a member because they disagree with a majority vote. The two Planning Commission members were also members of the HLC – one is a County Commissioner. Both have no authority or power except as created by the West Virginia legislature or by County Ordinance to challenge a decision of an administrative body they have been appointed to because they disagree with the majority decision of that body, here the Planning Commission.

*County Court of Mercer County*, 85 W.Va. 359 [101 S.E. 721 (1920)]. Syllabus Point 1, *State ex rel. County Court v. Arthur*, 150 W.Va. 293, 145 S.E.2d 34 (1965). Syllabus Point 1, *State ex rel. State Line Sparkler of WV, Ltd. v. Teach*, 187 W.Va. 271, 418 S.E.2d 585 (1992).

Likewise, the HLC has only those powers specifically authorized by the legislature and those powers enumerated in the County Ordinance authorizing its existence. In *Barr, supra*, the West Virginia Parkways Authority had obtained the approval of two counties in which the new U.S. Route 35 extended, and the County Commission had voted to approve the resolution for the location of the parkway but then later rescinded the original resolution and sought to prohibit the Parkway Authority from proceeding with the construction of the relocation project. The Court concluded that the County Commission lacked the authority to rescind their approval of the U.S. Route 35 Parkway project, and a writ of mandamus was issued enjoining them from interfering with the project.

Further supporting the argument that the HLC has no authority to challenge a Zoning Administrator's decision is *Lipscomb v. Tucker County Commission*, 197 W.Va. 84, 475 S.E.2d 84 (1996). There, the Court addressed the issue of whether or not a county commission when reviewing a Wage and Appeals Board decision was an "agency" within the meaning of Chapter 29A of the West Virginia Code dealing with State Administrative Procedures Act. The Court held that neither W. Va. Code § 29A-5-4(b) nor § 58-3-1 applied, but that:

An "agency" within the meaning of the State Administrative Procedures Act, W.Va. Code, 29A-1 et seq., refers to state, not local agencies...." Syllabus point 1, in part, *Southwestern Community Action Council, Inc. v. Huntington Human Relations Commission*, 179 W.Va. 573, 371 S.E.2d 70 (1988).

*Lipscomb, supra*, Syllabus Pt. 2.<sup>7</sup>

---

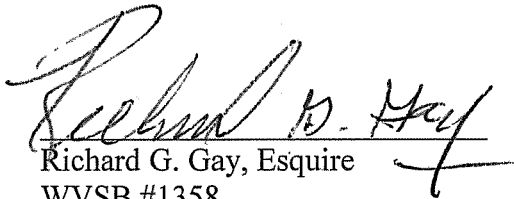
<sup>7</sup> The one case cited by Appellant, *St. Mary's Hosp. v. State Health Planning and Development Agency*, 178 W. Va. 792, 364 S.E.2d 805 (1987) dealt with a State agency under W. Va. Code § 29A-5-1, et seq. and had absolutely nothing to do with planning and zoning.

#### IV. CONCLUSION

For the foregoing reasons, NLP moves that the Petition for Appeal be dismissed for lack of standing by the HLC and request the Board of Zoning Appeals affirm the Zoning Administrator's decision that Section 4.4C of the Zoning Ordinance does not apply to the Magnolia Springs subdivision.

Respectfully submitted,

NLP and Hunter Wilson,  
By counsel.



Richard G. Gay, Esquire  
WVSB #1358  
Law Office of Richard G. Gay, LC  
31 Congress Street  
Berkeley Springs, WV 25411  
(304) 258-1966

**BEFORE THE JEFFERSON COUNTY BOARD OF ZONING APPEALS**

**JEFFERSON COUNTY HISTORIC  
LANDMARKS COMMISSION,**

**Appellant,**

**v.**

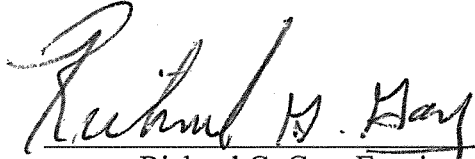
**Appeal No. AP18-01**

**JEFFERSON COUNTY DEPARTMENTS  
OF PLANNING AND ZONING, and  
NLP FINANCE, LLC, HUNTER WILSON,  
AND MAGNOLIA SPRINGS SUBDIVISION,**

**Appellee.**

**CERTIFICATE OF SERVICE**

I, Richard G. Gay, Esquire, do hereby certify that a true and accurate copy of the foregoing **NLP FINANCE, LLC – MAGNOLIA SPRINGS’ OPPOSITION TO PETITION FOR APPEAL BY THE JEFFERSON COUNTY HISTORIC LANDMARKS COMMISSION AND MOTION TO DISMISS THE PETITION FOR APPEAL** and **CERTIFICATE OF SERVICE** has been served upon Jared Adams, Esquire, Adams Law Firm, PLLC, P.O. Box 755, Martinsburg, West Virginia 25402 and Alexandra Beaulieu, Jefferson County Office of Planning and Zoning, 116 East Washington Street, 2<sup>nd</sup> Floor, Charles Town, West Virginia 25414 by United States first-class mail, postage prepaid, this 19<sup>th</sup> day of June, 2018.

  
Richard G. Gay, Esquire

# 6

**CONTRACT OF SALE**

(Sale in gross)

**THIS CONTRACT OF SALE** ("Contract"), made this 11th day of December, 2017, by and between **Walter James Truettner III and William K. Truettner Trustees of the Belvedere Farm Family Trust**, whose address is P.O. Box 247, Crested Butte, CO 81224 ("SELLER") and **Hunter Wilson**, his successors and assigns, P.O. Box 1875, Martinsburg, WV 25402 ("BUYER").

For good and valuable consideration as described hereinafter, SELLER hereby agrees to sell, and BUYER hereby agrees to buy the following property: 123 acres, more or less, and improvements thereon, located in Jefferson County, West Virginia (in Deed Book 1132, page 301) ("The Property"); LESS AND EXCEPTING 2 tracts of land on the east side of US Route 340 as shown on attached plat and made a part of this contract.

UPON THE FOLLOWING TERMS AND CONDITIONS:

1. PURCHASE PRICE **\$ 1,725,000.00**

a. Paid as follows:

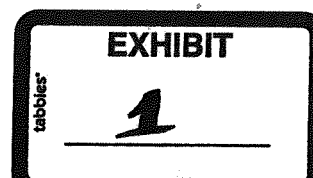
i. Cash or check delivered to Escrow Agent (defined below) within five (5) business days of the signing of this Contract by SELLER: **\$ 5,000.00**

ii. Balance at closing **\$ 1,720,000.00**

b. The SELLER will have the right to continue to market the manor house and approximately 10 acres as roughly shown on the attached plat. If SELLER sells this property, BUYER will receive a credit of \$600,000.00 which will reduce the contract purchase price to \$1,125,000.00. Easements for access and city water line shall be created if house is sold. SELLER also has the option to have the barn and/or tenant house and/or barnyard buildings salvaged and cleaned up. In the event a building is salvaged, SELLER shall remove all related materials and clean-up site as impacted by said salvage operation.

2. EVIDENCE OF TITLE: SELLER agrees to deliver, and BUYER agrees to accept a General Warranty Deed to the Property, free and clear of all liens and claims by, through and under SELLER.

3. FAILURE TO PERFORM: In the event BUYER fails to perform under the terms of this Contract, SELLER shall retain the sum of



\$5,000.00 as liquidated damages. In such event, this Contract shall become null and void and BUYER and SELLER shall have no further obligations hereunder.

4. FAILURE TO DELIVER CLEAR TITLE: In the event SELLER cannot provide good and clear marketable title to the Property, and BUYER is unable to obtain a commitment for title insurance (ALTA) policy by January 31, 2018, BUYER shall, at its sole discretion, have the option of electing:
  - i. An immediate return of all deposits from SELLER and Escrow Agent, and BUYER shall thereafter have no further obligations under this Contract. The BUYER shall be entitled to reimbursement of any cost for survey and soil tests from SELLER if SELLER knew of the title defect and did not disclose same to BUYER at time of signing this Contract, or
  - ii. BUYER may, at his own cost and expense, attempt a cure of any such title defect instead of opting for the immediate refund to which it would otherwise be entitled above. SELLER agrees to fully cooperate with BUYER and BUYER's legal counsel to cure any such title defects in order to render title to the Property marketable. BUYER reserves the right at any time during any such period to abandon its effort to cure and to demand and receive an immediate refund of all deposits as hereinabove provided. SELLER shall pay for and participate in only preapproved curing efforts and costs submitted by BUYER pertaining to clearing title, if necessary, to any part of the Property, as to liens, leases, adverse claims or any other defect by, through and under SELLER. In such event, the closing deadline provided hereinafter will be automatically extended to accommodate the time period necessary to cure or attempt to cure any such title defect.
5. CLOSING COST: The parties shall each pay their own attorney's fees. Excise taxes on the privilege of transferring real estate shall be paid by SELLER. Real Estate taxes shall be prorated between the parties at closing. All Deposits and interest shall be applied to the purchase price at closing on BUYER'S behalf.
6. DAMAGE AND REHABILITATION/CLEAN-UP: In the event that the Property is materially damaged before the date of closing, BUYER may treat this Contract null and void and will be entitled to an immediate refund of all deposits. SELLER agrees that all machinery and /or vehicles and any like debris shall be removed from the Property within 10 days prior to closing. Farm lease to Gary Cogle or others to be terminated and vacated prior to closing.

125

7. **INSPECTIONS; INDEMNIFICATION:** Upon the execution of this Contract, BUYER shall have the right to enter upon the subject Property with its subcontractors, employees and consultants for the purpose of inspection and generally for the reasonable assessment of the conditions of the Property, including making test borings drainage tests. Any operation which physically disturbs the Property shall be preapproved by SELLER. SELLER approval will not be unreasonably withheld. If BUYER fails to close, copies of all surveys, engineering and / or architectural drawings and test results shall be provided to SELLER. BUYER shall repair any damage and fill in any excavations made on account of any tests or inspections if BUYER terminates this Contract. BUYER shall indemnify, defend and hold SELLER harmless from any and all claims and damages (including reasonable attorney's fees and cost) arising from BUYER's occupancy of the Property for the purposes of conducting such test and inspections.
8. **SELLER DELIVERIES:** Within ten (10) days after the Effective date, Seller shall deliver to Buyer a true and correct copy of any and all documentation pertaining to the soil, topography, environmental condition, condition of title and governmental matters pertaining to the Property, to the extent the same are in Seller's possession or control, including, without limitation, plats, surveys, environmental assessments (e.g., Phase I or Phase 2), property restrictions, title policies, permits, bond information, tax bills, government entitlements, etc.
9. **CONTRACTS FOR THE SALE OF LOTS TO THIRD PARTIES:** BUYER may enter into non-recordable reservation agreements with potential third-party Lot purchasers at any time during the term of this Contract. Such agreements will be null and void and non-binding on SELLER in the event BUYER fails to close on the purchase of the Property. SELLER agrees that BUYER has the right to conduct advertising and test marketing for its proposed project as described herein as to the Property during the term of this Contract through closing. In the event BUYER does not close on Property it shall provide SELLER with all information regarding sales and inquiries of interest pertaining to said marketing and reservation agreements. BUYER shall obtain SELLER'S approval of, and indemnify SELLER from, any sales contracts signed before closing.
10. **APPROVALS, AND SETTLEMENT:** Contract is contingent upon Buyer being able to get all permits from Local, State, and Federal agencies, so that BUYER can obtain final plat approval from the Jefferson County Planning Commission. Buyer to keep seller informed as to progress of plat approval. Final plat approval shall be obtained by December 11, 2018. Closing to take place within 30 days of said final plat approval or this Contract is null and void, and above mentioned \$5,000.00 earnest money is forfeit. A non-refundable, earnest money deposit of \$50,000.00 paid to SELLER shall extend this contract 90 days. In the event Closing is further delayed due to conditions beyond BUYER'S control, this Contract may be extended another 90 days by the payment of an additional non-refundable, earnest money deposit of \$50,000.00 to SELLER.

WST

11. SELLER will cooperate with BUYER such that BUYER may obtain, all information pertinent to the Property concerning the transaction contemplated herein. Anticipated information to include, but not be limited to, surveys, engineering, any and all permits or correspondence from any Local, State, Federal agencies, or private companies that may perform work on the subject Property.
12. ESCROW: All deposits shall be held by Hill Crest Realty in an non-interest-bearing account.
13. REALTOR: The parties acknowledge that Snyder Bailey Real Estate address 404 West Burke Street, Martinsburg, WV 25401 is due a real estate sales commission of 3% at closing and Hill Crest Realty address 305 Aikens Center, Martinsburg, WV 25404 is due a real estate sales commission of 3% at closing to be paid from SELLER'S funds. SELLER affirmatively represents that no other realtor is involved in this transaction nor are any further commissions due or to become payable.
14. I.R.S CODE: SELLER shall deliver to BUYER at or prior to closing a fully executed Certificate of Affidavit in compliance with Section 1445 of the Internal Revenue Code indicating that the SELLER is not a "foreign Person" as such is defined by the aforesaid Section.
15. WASTE: No toxic or hazardous material or waste limited or regulated by any federal, state or local governmental or quasi-governmental authority, or that even if not so limited or regulated, could or does pose a hazard to the health or safety or the occupants of the Property or adjacent properties (collectively, "Substances"), including, but not limited to, petroleum products and substances regulated under any federal, state or local environmental statute, law, order, ordinance, regulation, rule, requirement or right or remedy existing under common law or in equity (collectively, the "Statutes and Laws") has been or, prior to the Closing, shall be, located, released (within the meaning of 42 U.S.C. - 6901(22), stored, treated, generated, transported to or from, disposed of (within the meaning of 42U.S.C. - 6903 (3) or allowed to escape on the Property, including, without limitation, the surface and subsurface waters of the Property. **With the exception of a heating oil, above ground tank at the manor house**, no above ground storage tanks ("ASTs") or underground storage tanks ("USTs") have been or are located on the Property or, if located on the Property, have been removed and disposed of in full compliance with all applicable Statutes and Laws (satisfactory evidence of which shall have been provided to BUYER). No portion of the Property has been used for waste treatment, storage or disposal. No investigation, administrative or judicial order, governmental notice of noncompliance or violation, remediation action plan, consent order and / or agreement, administrative proceeding, civil or criminal litigation or settlement under Statutes and Laws or with respect to Substances, ASTs or USTs have been or are proposed, threatened, anticipated or in existence with respect to the Property. The Property and Seller's operations at the Property have been in the past and will until the Closing be in compliance with all applicable Statutes and Laws. No notice has

UET

been served on or delivered to seller from any entity, governmental body or individual claiming any violation of any Statutes and Laws or demanding payment or contribution for environmental cleanup costs, environmental damage, or injury to natural resources, or asserting liability with respect to same.

16. NOTICE: All notices shall be delivered in writing at the addresses of the parties as shown in this Contract by certified mail

17. ENTIRE AGREEMENT; MISCELLANEOUS: The above provisions represent the entire and complete understanding of the SELLER and BUYER and will be binding upon their heirs, executors, administrators, assigns and representatives, and may only be altered by a writing signed by both SELLER and BUYER. This Contract shall be construed in accordance with West Virginia law. The terms and conditions of this Contract shall survive settlement for a period of 12 months. This Contract may be executed in one or more counterparts, each of which shall be deemed an original. BUYER reserves the right to assign this Contract to an entity(ies) affiliated with BUYER.

18. PERMITS AND COVENANTS: SELLER agrees to cooperate to allow BUYER to obtain all necessary permits and approvals.

19. MISCELLANEOUS:

- a. This Agreement shall be of no force or effect and shall be deemed and construed conclusively to be withdrawn by Buyer and null and void unless executed by Seller within 10 days of the date upon which this Agreement is delivered to Seller.
- b. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be full severable; this agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be add automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid or enforceable.
- c. Each party hereto represents and warrants to the other party that the execution of this agreement and any other documents required or necessary to be executed pursuant to the provisions hereof are valid, binding obligations and are enforceable in accordance with their terms.

UAT

d. If the final day of any period of time set out in any provision of this Agreement falls on a Saturday, Sunday or holiday recognized by a majority of banks in Berkeley county, West Virginia then in such case, such period shall be deemed extended to the next day which is not a Saturday, Sunday or such holiday.

BUYER:

HUNTER WILSON

By: [Signature]  
Hunter Wilson

12/11/17  
Date

STATE OF WEST VIRGINIA,

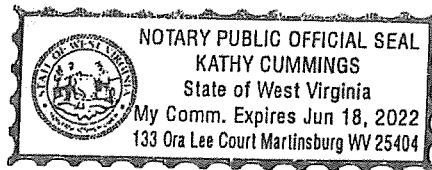
COUNTY OF BERKELEY, to-wit:

The foregoing instrument was acknowledged this 11<sup>th</sup> day of December, 2017, by Hunter Wilson

My commission expires:

June 18, 2022

[Signature]  
Notary Public



UBT

SELLER:

The Belvedere Farm Family Trust

BY: Walter James Truettner III 12/11/17  
Walter James Truettner III, Trustee Date

\_\_\_\_\_  
William K. Truettner, Trustee Date

STATE OF Colorado

COUNTY OF Garfield, to-wit:

The foregoing instrument was acknowledged this 11<sup>th</sup> day  
of December, 2017, by Walter James Truettner III, as Trustee of the  
Belvedere Farm Family Trust.

My commission expires:

09/16/20

CYNTHIA A. GROGG  
Notary Public  
State of Colorado  
Notary ID # 20164035996  
My Commission Expires 09-16-2020

Cynthia A. Grogg  
Notary Public

STATE OF \_\_\_\_\_,

COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_, by William K. Truettner, as Trustee of the  
Belvedere Farm Family Trust.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

11/17

SELLER:

The Belvedere Farm Family Trust

BY: Walter James Truettner III, Trustee Date

*Walter James Truettner III*  
William K. Truettner, Trustee 12/11/17  
Date

STATE OF \_\_\_\_\_,

COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_, by Walter James Truettner III, as Trustee of the  
Belvedere Farm Family Trust.

My commission expires:

\_\_\_\_\_

Notary Public

STATE OF California,  
COUNTY OF San Francisco to-wit:


A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

The foregoing instrument was acknowledged this 11<sup>th</sup> day  
of Dec, 2017, by William K. Truettner, as Trustee of the  
Belvedere Farm Family Trust.

My commission expires:

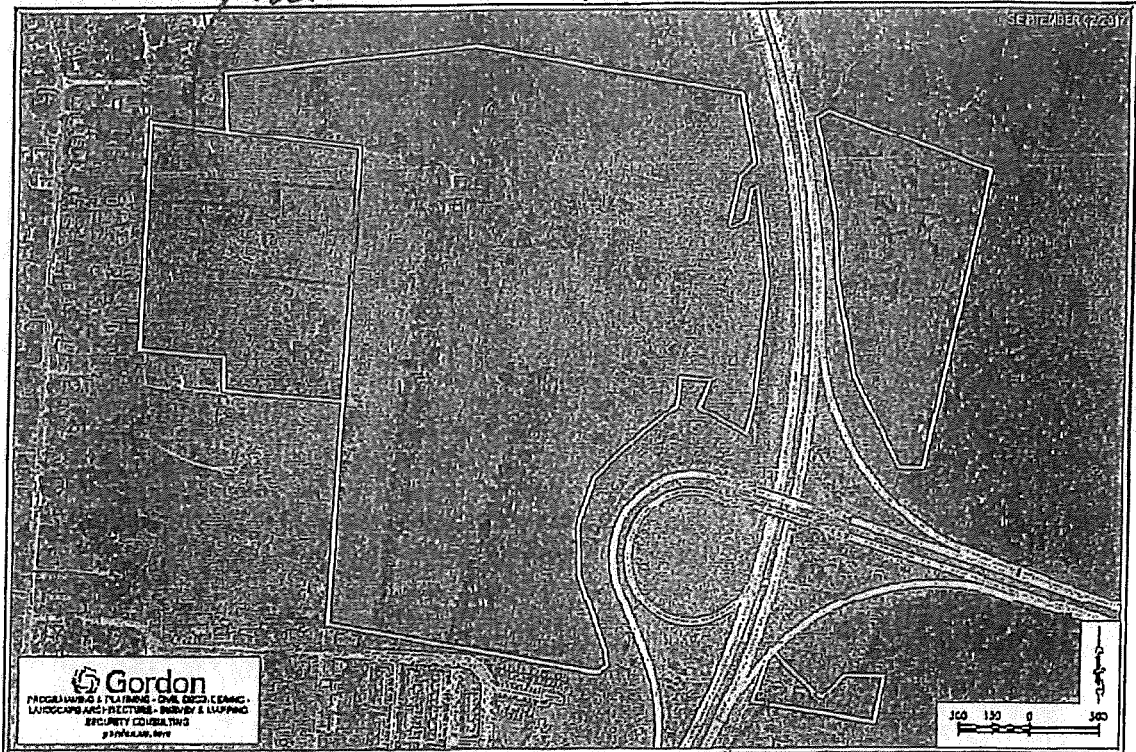
08/2/18

*R. Lozada*

 R. LOZADA  
COMM. #207667B  
Notary Public - California  
San Francisco County  
Comm. Expires Aug 2, 2018

Notary Public

House and 10 1/2 Acres



SELLER TO REFUSE

Attached to and made a part of the CONTRACT OF SALE, made the 11th day of December, 2017, by and between Walter James Truettner III and William K. Truettner Trustees of the Belvedere Farm Family Trust, and Hunter Wilson.

ast

**Jefferson County, West Virginia**  
**Department of Engineering, Planning, and Zoning**  
**Office of Planning & Zoning**  
116 East Washington Street; Suite 200  
P.O. Box 716  
Charles Town, West Virginia 25414

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

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

February 13, 2018

**PRE-PROPOSAL CONFERENCE MEMORANDUM**

**MEETING DATE:** Wednesday, February 7, 2018 @ 1:30 p.m.

**OWNER:** Walter J. Truettner, III & William K. Truettner

**MAILING ADDRESS:** P.O. Box 247 Crested Butte CO 81224

**TELEPHONE NUMBER:** None supplied

**APPLICANT:** NLP Finance, LLC Contact : Mr. Hunter Wilson

**MAILING ADDRESS:** P.O. Box 1875 Martinsburg, WV 25402

**TELEPHONE NUMBER:** 304-901-4931

**SURVEYOR/ENGINEER:** Gordon, Contact: Todd Heck

**MAILING ADDRESS:** 148 S. Queen Street, Suite 201 Martinsburg, WV 25401

**TELEPHONE NUMBER:** 304-725-8456

**PHYSICAL ADDRESS:** 76 and 88 Belvedere Farm Lane

**PROPOSED PROJECT:** RESIDENTIAL MAJOR SUBDIVISION

**TAX DISTRICT:** 02 / **MAP:** 10 / **PARCEL:** 8 & 8.6

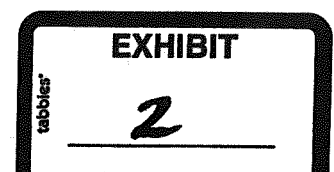
**DEED BOOK:** 1132 / **PAGE:** 301

**ZONING DISTRICT:** Residential Growth

**TOTAL PARCEL SIZE:** Parcel 8: 103.88 acres & Parcel 8.6: 20.57 acres;  
approximately 107 acres proposed for a major subdivision;  
approximately 17 acres east of US340 will remain as residue

**MEETING DESCRIPTION:**

- The meeting attendees included Jennifer Brockman, County Planner; Jonathan Saunders, County Engineer; Alex Beaulieu, Zoning Administrator; Jessica Gormont, GIS Analyst; Lauren Kelly, JCHLC AmeriCorps Intern; Chad Wallen, Todd Heck and Jason Cordon, Engineers/Representatives Gordon; Hunter Wilson, NLP Finance LLC, Developer.
- Overview: The proposed project consists of the creation of 300 single family detached units with associated infrastructure (roads, utilities, stormwater management)
- Tentative site capacity calculations for detached single family development on public water and sewer:
  - Minimum Lot Area: 6,000 square feet
  - Area per Dwelling Unit: 10,000 square feet
  - Setbacks: 25' Front; 20' Rear; 12' Side; 15' Street Side
  - Parkland Requirement per Section 21.105 is estimated to be 4% (based on density of residential area), with no more than 60% passive open space
- Potential environmental constraints and mitigation measures as required by Zoning Ordinance, Art. 4.
- West Virginia Division of Highways entrance permit (304-725-5821) and approval from WV Bureau of Health and appropriate utility providers required on Final Plats.
- A registered West Virginia Surveyor is required to stamp the Final Plat.



- Relevant references: DB 1132/PG 301; DB 560/PG 407; PB 10/PG 30; DB 570/PG 42

### COMMENTS:

- Proposed Major Subdivision: approximately 300 lots on 107 acres on the west side of US340 near intersection with WV9. Proposed lots to average 70' wide by 110' in depth (will vary). One five acre +/- lot is proposed containing the historic home.
- Proposed Roads:
  - Belvedere Drive, proposed by neighboring development along SW boundary, requires an additional 10' of Right-of-Way along this property line. As provided for in Section 21.102D, staff recommends providing a road connection and/or a ROW from this development to the undeveloped land that will contain Belvedere Drive. A sidewalk is desired within the proposed ROW.
  - Connection to Citizens Way is proposed to be the development's main entrance. This requires crossing DOH ROW and documentation of DOH approval will be required.
  - Allegheny Street, proposed by neighboring development, crosses Parcel 8.6 within an existing 40' ROW. An additional 10' of ROW is required along this road. A sidewalk is desired within the proposed ROW. This development will need to coordinate with the construction of Allegheny Street as a portion of this proposed road will also serve the proposed subdivision. The sketch plan depicts a cul-de-sac on the south side of the 5 acre parcel. Staff recommends providing a road connection to Allegheny Street or providing a temporary t-turnaround if Allegheny Street has not yet been constructed,
- Sidewalks are required on one side of all streets within a major subdivision:
  - Section 22.208(A) discusses the location of sidewalks and states "Sidewalks shall be provided along at least one side of streets in all zone districts. In the Rural District, when residential density in the proposed development is less than three (3) units per acre and/or when lot frontage is greater than 80 feet, sidewalks are not required."
  - Section 2.2K(1)(a) states "Roadway curbs, gutters and sidewalks shall be required in residential conventional subdivisions where net residential density is equal to or greater than three dwelling units per acre of land and/or when lot frontages are 80 feet or less."
  - Net residential density refers to the area occupied by lots only (exclusive of roads, Stormwater and parks).
- Three Jefferson County Historic Resources exists on the site: Belvedere Farm House (aka Tate House); Belvedere Tenant House and the Belvedere Barn. The applicant intends to divide the Belvedere Farm House off on a 5 acre +/- lot for sale. Belvedere Tenant House and Belvedere Barn will be removed as a part of this development. The JCHLC has requested access to these structures so that they can be documented before they are removed.
- A Phase I archaeological study and a historic resources impact study is required with the submission of the Preliminary Plat (after approval of the Concept Plan). The applicant intends to contact the State Historic Preservation Office (SHPO) for their input into this effort.
- Stormwater Management for a major subdivisions shall be designed for both quality and quantity. Section 2.2K(1)(a) requires curb and gutters where net residential density is equal to or greater than three dwelling units per acre of land and/or when lot frontages are 80 feet or less. The applicant is interested in pursuing approval of an open section will require a waiver.
- Floodplain/wetlands: Applicant stated that the property is not within a FEMA floodplain and will confirm the location of wetlands on this property prior to designing the subdivision.
- Sec. 21.101A states that blocks shall not, in most instances, exceed six lots in length on one side of the street. The length, width, and shape of blocks shall be determined with due regard to the provision of adequate sites for buildings of the type proposed, zoning requirements, fire access, emergency service, and

police protection. Sec. 21.305 provides some criteria by which block length may be modified but those criteria do not appear to apply in this situation. It is recommended that a waiver be applied for related to proposed block lengths.

- Applicant questioned whether Section 8.9A(10) of the Zoning Ordinance, which relates to a 50 foot landscape buffer and frontage road along limited access highways. The Zoning Administrator determined that since a non-residential component is not proposed (community center, pool, etc.), this section does not apply.
- If the conditions set forth in Section 21.306 regarding the spacing of intersections can be met, no waiver is required. Information regarding the use of these conditions should be included in the discussion of the street network.
- Information about Subdivision and Street naming protocols was distributed to the applicant at the PPC meeting. Any questions should be directed to the GIS office.
- The next step is the processing of a Concept Plan which requires a Public Workshop. It is advised that any known variances or waivers be discussed during the Concept Plan Workshop and it is possible to schedule the public hearings for the waivers which may be required at the same Planning Commission meeting.

Waivers which have been noted as likely to be required include the following:

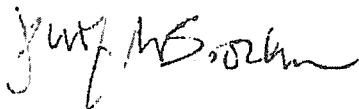
- Section 21.104A minimum frontage of 80'
- Section 2.2K(1)(a) curb and gutter requirement
- Sec. 21.101A block length

**CONCLUSION:**

The Applicant may proceed with the submittal of the Concept Plan for the proposed Major Subdivision. Upon receipt of the required material, the Office of Planning and Zoning will place the Concept Plan on the next Planning Commission agenda within the timeline requisites stated in the Subdivision Regulations.

Be advised that the purpose of this memo is informational only and is intended to provide general guidance in the submission of a formal Concept Plan, Preliminary Plat, Site Plan or Plat, whichever is applicable.

Sincerely,



Jennifer M. Brockman, AICP  
County Planner







JEFFERSON COUNTY, WEST VIRGINIA

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

File Number: 18-05
Staff Initials: SW
Total Fee(s):

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

Concept Plan Review Checklist

The Concept Plan submittal shall be on white paper and shall show in simple form the proposed project. Further details can be found in the checklist below. The Concept Plan shall be accompanied by a tract location map and a tentative list of restrictive covenants and conditions or a tentative statement of project objectives, rules, and regulations.

In order to determine sufficiency, this application and a copy of the Concept Plan must be submitted to the Jefferson County Departments of Planning and Zoning 45 days prior to the next regularly scheduled Planning Commission meeting. Please refer to Article 24 of the Subdivision Regulations for Concept Plan Requirements.

Property Owner Information

Name: Belvedere Farm Family Trust c/o Walter J III & William K Truettner
Mailing Address: P.O. Box 247; Crested Butte, CO 81224
Phone Number: 304-901-4931 Email: hwilson@hillcrestrealty.us

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

Name: GORDON
Mailing Address: 148 S. Queen Street, Suite 201; Martinsburg, WV 25401
Phone Number: 304-725-8456 Email: cwallen@gordon.us.com

Physical Property Details

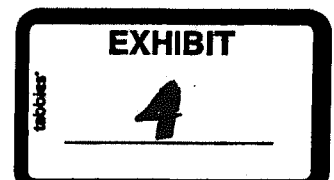
Physical Address: 76 Belvedere Farm Lane; Charles Town, WV 25414
City: Charles Town State: WV Zip Code:
Tax District: Charles Town (2) Map No: 10 Parcel No: 8 & 8.6
Parcel Size: 124.45+/- Total Deed Book: 1132 Page No: 301

Zoning District (please check one)

Grid of zoning districts with checkboxes: Residential Growth (RG), Industrial Commercial (IC), Rural (R), Residential-Light Industrial-Commercial (RLIC), 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). Includes a 'RECEIVED' stamp.

Signature of Property Owner: [Signature] Date: 11/1/18

Signature of Property Owner Date



**Checklist to be Completed by Department Staff**

Sub-Section	<i>Regulation Requirements:</i>	Engineer /Surveyor	1st Review	2nd Review	3rd Review	4th Review	Review Key	
							✓	Ok
							O	Incomplete
							N/A	Not Applicable
							X	Unacceptable
<b>Sub-Section</b>	<b>SUBDIVISION REGULATIONS Section 24.119 Major Site Plan Concept Plan</b>							
B.1	General Location Map showing an area of 500' around the property. Zoning boundaries shall be located on this document.							
B.2	Concept Plan - Appendix A, Section 1.2. Should be on 24 x 36 sheet, white paper. Show or note if features are addressed.							
	Proposed layout, as applicable: Layout of lots, parking areas, recreation areas, roads, building areas, and other features to depict the proposed project in relation to each other and the tract boundary.							
B.3	Zoning Information:							
	a. Determination of zoning district for proposed project.							
	b. Density calculations							
	c. Site resource map showing or noting: (see definition of site resource map)							
	Contours per USGS Topographical Quadrangle							
	Detail all natural features such as woods, watercourses, hillsides, prominent rock outcroppings, sink holes, and quarries.							
	Slope delineations per Section 22.504, use Table 22.504							
	Floodplain delineation per Jefferson Co. Floodplain Ordinance.							
	d. Use designations for all adjoining and confronting parcels.							
B.4	Proposal Description shall be a written description of the proposal with general identification of the number of dwelling units or floor area (square footage) proposed, commentary, zoning, and development option selected if the development is multifamily residential.							
B.5	Traffic Impact Data							
	a. ADT figures for the adjoining or accessible State road.							
	b. Trip generation based on table found in Section 24.119(B)5.b							
	c. Nearest key intersection that will serve the proposed project. A "key intersection" is defined as any intersection with a primary or secondary highway as classified by the current Comprehensive Plan.							
	d. "Highway Problem Areas" according to current Comprehensive Plan that falls within a one-mile radius of the project.							

	<i>Regulation Requirements:</i>	Engineer /Surveyor	1st Review	2nd Review	3rd Review	4th Review	Review Key	
							✓	Ok
							○	Incomplete
							N/A	Not Applicable
							X	Unacceptable
B.7	Agency Reviews: applicant shall provide a copy of the letter sent to outside agencies to Department within seven days of the submission. Agency comments shall be received by the department fourteen days prior to public workshop. If any review agency does not respond, they shall be deemed to have approved the plan.							
	<b>Reviewing Agencies (Sec. 23.203 and 23.204):</b>							
	Jefferson County Health Department							
	West Virginia Department of Health							
	Jefferson County Public Service District							
	West Virginia Department of Environmental Protection							
	Jefferson County Historical Landmarks Commission							
	Jefferson County Addressing/GIS Office							
	West Virginia Department of Division of Highways							
	Jefferson County Schools							
	Emergency Services							
B.8	Additional data that may assist in describing project(s).							
B.10	Adjoining Property: applicant must provide an accurate list of all properties and owners' addresses adjoining the subject property. Adjoiners and HOAs shall be notified by staff the date of workshop.							
E.	WVDOH shall submit a letter to the Department of Planning indicating issues and data requirements or notice that there are none.							
F.	Traffic Impact review shall indicate whether a traffic impact study will be required based on analysis required in 24.119.B.5.e							
G	Public Services: indicate existing water and sewer systems (or other system) in place for development.							

	1st Review	2nd Review	3rd Review	4th Review
Submittal Date				
County Engineer				
Zoning Administrator				
County Planner				
Return Date				

County Engineer Approval Stamp

*Approved/Denied by a vote of \_\_\_\_\_ for and \_\_\_\_\_ against, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.*

Approved

Denied

*Direction Given/Planning Commission Comments*

---



---



---



---



---



---



---



---



---



---



---



---



---



---



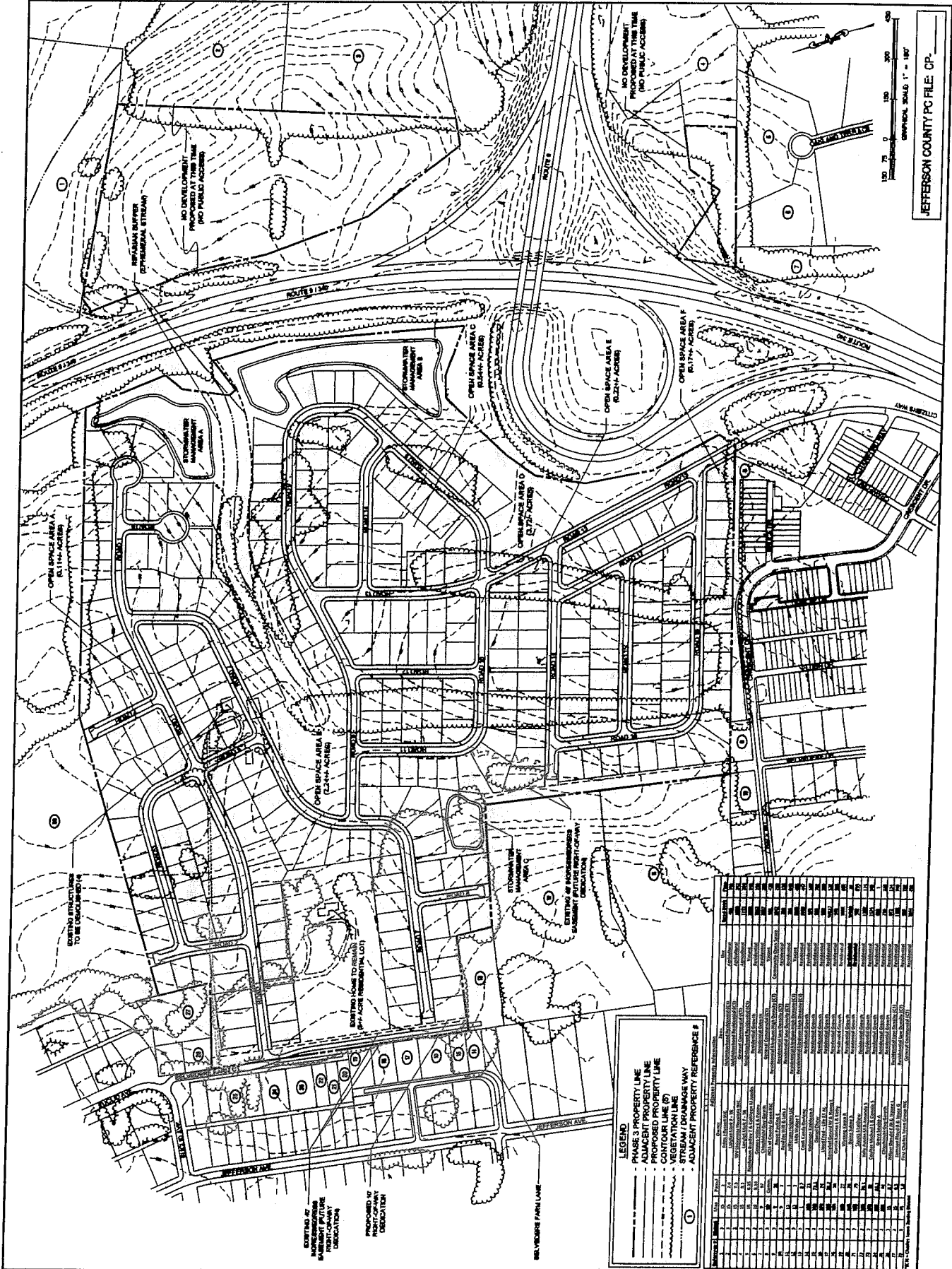
---



---



JEFFERSON COUNTY PC FILE: CP-



**LEGEND**

- PHASE 3 PROPERTY LINE
- - - ADJACENT PROPERTY LINE
- - - ADJACENT PROPERTY LINE
- - - CONTOUR LINE
- - - VEGETATION LINE
- - - STREAM / DRAINAGE WAY
- - - ADJACENT PROPERTY REFERENCE #

NO.	ADJACENT PROPERTY REFERENCE #	ADJACENT PROPERTY OWNER	ADJACENT PROPERTY ADDRESS
1	1514-001	GORDON ENGINEERING AND PLANNING	301 N. HILDRETH STREET, SUITE 1, CLARKSVILLE, TN 37041
2	1514-002	...	...
3	1514-003	...	...
4	1514-004	...	...
5	1514-005	...	...
6	1514-006	...	...
7	1514-007	...	...
8	1514-008	...	...
9	1514-009	...	...
10	1514-010	...	...
11	1514-011	...	...
12	1514-012	...	...
13	1514-013	...	...
14	1514-014	...	...
15	1514-015	...	...
16	1514-016	...	...
17	1514-017	...	...
18	1514-018	...	...
19	1514-019	...	...
20	1514-020	...	...
21	1514-021	...	...
22	1514-022	...	...
23	1514-023	...	...
24	1514-024	...	...
25	1514-025	...	...
26	1514-026	...	...
27	1514-027	...	...
28	1514-028	...	...
29	1514-029	...	...
30	1514-030	...	...
31	1514-031	...	...
32	1514-032	...	...
33	1514-033	...	...
34	1514-034	...	...
35	1514-035	...	...
36	1514-036	...	...
37	1514-037	...	...
38	1514-038	...	...
39	1514-039	...	...
40	1514-040	...	...
41	1514-041	...	...
42	1514-042	...	...
43	1514-043	...	...
44	1514-044	...	...
45	1514-045	...	...
46	1514-046	...	...
47	1514-047	...	...
48	1514-048	...	...
49	1514-049	...	...
50	1514-050	...	...

DESIGNED BY: JLD  
 PREPARED BY: JLD  
 CHECKED BY: JLD



\_\_\_\_\_

To Jefferson County Planning and Zoning  
116 East Washington St  
Charles Town, WV 25414

Date March 20, 2018  
Shipped Via Email  
Project Name Magnolia Springs  
Project No. 3314 /Phase No. 0101  
Subject Waiver Request (4)  
From Chad Wallen

County No./ Town No.

We are sending you  Print(s)  Correspondence(s)  Electronic Media  Originals  
 Submission  1<sup>st</sup>  2<sup>nd</sup>  3<sup>rd</sup>  Other

Copies	Date	Description
1	03/2018	Waiver Application
1	03/2018	Waiver Addendum for Section 21.101.A. (Block Length)
1	03/2018	Waiver Addendum for Section 21.104.A. (Lot Frontage)
1	03/2018	Waiver Addendum for Section 21.306 (Intersection Spacing)
1	03/2018	Waiver Addendum for Section 2.2.K.1.a. (Curb & Gutter)
1	03/2018	Property Sketch with Vicinity Map (Previously Submitted Concept Plan)
1	03/2018	Adjoining Property Owners

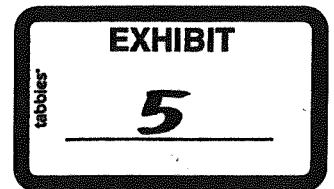
These are transmitted  For your use  As requested  For approval  For review and comment  
 Other \_\_\_\_\_

Comments

Please contact with any questions or comments. We will submit originals and fee check the next day the Department is open. Thank you.

Signature of Receipt \_\_\_\_\_ Date \_\_\_\_\_

CC:  
G:\project\Admin\3314 Belvedere Farm\0101110-Submissions\Original Submission documents\1-Transmittals\County\_City\2018-02-28\_Concept Plan.doc



www.gordon.us.com PROGRAMMING AND PLANNING  
DCJS License # Is 11-7158 CIVIL ENGINEERING  
LANDSCAPE ARCHITECTURE  
SURVEY AND MAPPING  
SECURITY CONSULTING

CHANTILLY: 4501 Daly Drive, Chantilly, VA 20151 — Phone: (703) 263-1900  
MARTINSBURG: 148 South Queen Street, Suite 201, Martinsburg, WV 25401 — Phone: (304) 725-8456



**JEFFERSON COUNTY, WEST VIRGINIA**  
**Dept. of Engineering, Planning, and Zoning**  
**Office of Planning and Zoning**  
 116 East Washington Street, P.O. Box 716  
 Charles Town, WV 25414  
 www.jeffersoncountywv.org

File Number: \_\_\_\_\_  
 Staff Initials: \_\_\_\_\_  
 Sketch Received: \_\_\_\_\_  
 List of Adjoiners: \_\_\_\_\_  
 Fees Paid: \_\_\_\_\_

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

Phone: (304) 728-3228

Fax: (304) 728-8126

**Waiver Request**

*Note: Waivers from the 2008 Amended Subdivision Regulations must comply with Division 2-4.300 of the Subdivision Regulations.*

*Sketch on a separate sheet of paper the shape and location of lot. Show the location of the intended construction or land use indicating building setbacks, size, and height. Identify existing buildings, structures, or land uses on the property. Sign and date the sketch. Provide a vicinity map of the area and a list of the adjoining property owner's mailing addresses.*

**Property Owner Information**

Name: Belvedere Farm Family Trust c/o Walter J III & William K Truettner  
 Mailing Address: P.O. Box 247; Crested Butte, CO 81224  
 Phone Number: 304-901-4931 Email: hwilson@hillcrestrealty.us

**Applicant Contact Information**

Name: NLP Finance, LLC c/o Hunter Wilson  
 Mailing Address: P.O. Box 1875; Martinsburg, WV 25402  
 Phone Number: 304-901-4931 Email: hwilson@hillcrestrealty.us

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

Name: GORDON  
 Mailing Address: 148 S. Queen Street, Suite 201; Martinsburg, WV 25401  
 Phone Number: 304-725-8456 Email: cwallen@gordon.us.com

**Physical Property Details**

Physical Address 76 Belvedere Farm Lane; Charles Town, WV 25414  
 Tax District: Charles Town Map No: 10 Parcel No: 8 & 8.6  
 Parcel Size: Charles Town (2) Deed Book: 1132 Page No: 301

**Zoning District (please check one)**

Residential Growth (RG)	Industrial Commercial (IC)	Rural (R)	Residential- Light Industrial- Commercial (R-LI-C)	Village (V)	Neighborhood Commercial (NC)	General Commercial (GC)	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
			Highway Commercial (HC)	Light Industrial (LI)	Major Industrial (MI)	Planned Neighborhood Development (PND)	Office/Commercial Mixed-Use (OC)
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Place Date Stamp Here

*What Section of the Subdivision Regulations are you Requesting to Waive?*

Section 21.101.A. (Block Length), Section 21.104.A. (Lot Frontage), Section 21.306. (Intersections), and Section 2.2.K.1.a. (Roadway curb, gutters)

*Briefly Describe the Nature of Your Waiver Request:*

Section 21.101.A. (Block Length): Allow block lengths to contain up to 12 lots on one side of the street

Section 21.104.A. (Lot Frontage): Allow a 70 foot minimum lot frontage / width.

Section 21.306. (Intersections): Permit road intersections to be within 200' centerline distance of each other

Section 2.2.K.1.a. (Roadway curb, gutters): Allow open ditch road section (no curb or gutter) in residential subdivisions which have a density greater than 3 units per acre and/or where lot frontages are less than 80'.

*Explain how the design of the project will provide public benefit in the form of reduction in County maintenance costs, greater open space, parkland consistent with the County Parks Plan or benefits of a similar nature.*

See attached.

*Explain how the waiver, if granted, will not adversely affect the public health, safety, or welfare or the rights of adjacent property owners or residents.*

See attached.

*Explain how the waiver, if granted, will be in keeping with the intent and purpose of this Ordinance.*

See attached.

*Explain how the waiver, if granted, will result in a project of better quality and/or character.*

See attached.

*Original signature is required. The information given is correct to the best of my knowledge.*

*W. L. Trotter 3/12/18*

Signature of Property Owner

Date

Signature of Property Owner

Date

*To Be Completed By Office*

\_\_\_\_\_ Date of Public Meeting/Public Hearing

\_\_\_\_\_ Date Property to be Posted By

\_\_\_\_\_ Official/Administrative Body

\_\_\_\_\_ Date Adjoiner Letters to be Mailed

Approved/Denied by a vote of \_\_\_\_\_ for and \_\_\_\_\_ against this \_\_\_\_\_ day of \_\_\_\_\_,

Approved  Denied

## Magnolia Springs

### Waiver Request Addendum (Block Length)

March 20, 2018

**What Section of the Subdivision Regulations are you requesting to waive.**

Section 21.101.A. **Block Length.** The blocks shall not, in most instances, exceed six lots in length on one side of the street. For attached units, that shall not exceed 12 lots. The length, width, and shape of blocks shall be determined with due regard to the provision of adequate sites for buildings of the type proposed, zoning requirements, fire access, emergency service, and police protection. Blocks may be longer in rural subdivisions due to topographic constraints and/or the total number of lots in the subdivision does not exceed 9 and the lots are over  $\frac{3}{4}$  acre in land area each.

**Briefly describe the narrative of your waiver request:**

It is requested that blocks may include up to twelve (12) lots on one (1) side of the street for single-family detached units. Block length requirements are not applicable to lots located along the perimeter of the property or lots abutting open space. Block lengths shall only apply to blocks interior to the community. Blocks are defined as "An area of land surrounded on all sides by streets or other transportation right-of-ways or by physical barriers such as water bodies or public open spaces. Blocks are normally divided into lots".

**Explain how the design of the project will provide public benefit in the form of County maintenance costs, greater open space, parkland consistent with the County Parks Plan or benefits of similar narrative.**

The increased block length relates directly to a reduced lot width (70') requested under a separate waiver for this community. Parkland requirements are based upon the density of a proposed subdivision. A density of 2 to 4 units per acre require that 4% of the community shall be reserved for open space, A density of 4 to 6 units per acre require 7% open space. The reduced lot width allows for a density of 4.5 dwelling units per acre which increases parkland requirements.

The increased block length allows for flexibility in the design of the proposed community. This flexibility allows the integration of parkland into the developments design and into the existing terrain. A rigid block structure based on the number of lots as opposed to actual distances can create an excessive amount of roads when lots of reduced width are utilized. This excessive street structure limits the ability to integrate contiguous parkland into the community.

Increased block lengths and the exclusion of lots abutting open space allows for the creation of a "greenway". This greenway will include a drainage corridor that serves as community open space and will

aid in the treatment of surface and subsurface water flows. Multiple road connections across these corridors results in fragmented open space and reduces the effectiveness of the greenway.

**Explain how the waiver, if granted, will not adversely affect public health, safety, or welfare or the rights of adjacent property owners or residents.**

The number of lots proposed in a block at Magnolia Springs will not impact the public's health, safety or welfare nor will it impact adjacent property owners and/or residents rights.

Public health, safety or welfare is not impacted by the number of lots provided within a single block. The Subdivision Ordinance states that *the length of a block shall be determined with due regard to the provision of adequate sites for buildings, fire access, emergency service, and polices protection.* Blocks located within a grid system provide interconnections within a community for these emergency responders and these interconnections are maintained in the design of Magnolia Springs. The lots will provide adequate sites for the proposed unit types and no modifications to required building setbacks are being requested.

Adjacent uses to Magnolia Springs include single-family residential, Route 9 and vacant land. The proposed residential use is compatible with the adjacent residential properties and provides a block structure similar to that of Jefferson Avenue, High Street and Belvedere Drive. Similar to the block length proposed within Magnolia Springs, blocks along Jefferson Avenue contain up to 14 lots, High Street up to 13 lots and Belvedere Drive contains up to 11 lots.

**Explain how the waiver, if granted, will be in keeping with the intent and purpose of this Ordinance.**

The intent of the Ordinance is to control block length. The metric used by the Ordinance to control block length is number of lots. The variable in this method of measurement is that lot widths will vary and there are no maximum width requirements. In addition, Magnolia Springs is seeking a related waiver to reduce the minimum lot width to 70'. So, a block of six-140 foot wide lots is the exact same length as a block of 12-70 foot lots. This allows the possibility for a block of six (6) lots could have greater length than a block of 20 lots.

As discussed in response to the public health & safety section of this document, proposed blocks will provide adequate building sites, fire access, emergency service, and police protection. The actual length of the block does not necessarily change, just the number of units allowed within that block.

**Explain how the waiver, if granted, will result in a project of better quality or character.**

The proposed block structure and length allows for the protection of existing natural resources, reduces excessive streets/impervious areas and will create a community in harmony with surrounding neighborhoods.

As discussed earlier, the requested waiver is directly related to the lot width waiver submitted under a separate application. Today's housing market includes a demand for smaller homes on smaller lots which have access to larger common open space areas. Granting this waiver request will allow this market sector to be recognized in Jefferson County and will blend the proposed development with adjacent neighborhoods.

## Magnolia Springs

### Waiver Request Addendum (Lot Frontage)

March 20, 2018

**What Section of the Subdivision Regulations are you requesting to waive.**

**Section 21.104.A. Frontage.** The minimum frontage shall be the minimum lot width for the Zoning District or 80 feet, whichever is less. Flag lots and lots on cul-de-sacs may be permitted to have a minimum frontage of 24 feet based on design and engineering approval.

**Briefly describe the narrative of your waiver request:**

It is requested that the 80' minimum lot frontage for single-family detached units be reduced by 10' to a 70' minimum lot frontage. No reduction in building setbacks are being sought.

Appendix A of the Jefferson County Zoning and Land Development Ordinance does not have a minimum lot width for a single family detached dwelling, and there is also a provision for "small lot single-family detached dwellings" which allow a minimum lot width of 35'. The requested 70' minimum lot width is greater than both of these requirements.

**Explain how the design of the project will provide public benefit in the form of County maintenance costs, greater open space, parkland consistent with the County Parks Plan or benefits of similar narrative.**

Parkland requirements are based upon the density of a proposed subdivision. A density of 2 to 4 units per acre require that 4% of the community shall be reserved for open space, A density of 4 to 6 units per acre require 7% open space. The reduced lot width allows for a density of 4.5 dwelling units per acre which increases parkland requirements.

Magnolia Springs will cater to the housing trend that provides smaller lots in exchange for greater common open space. More than 12% of the land within the proposed community is planned community open space and represents an additional 5% of the entire property being dedicated above that which is required by code. It also represents an increase of an additional 8% of the entire property being planned for community open space above that if the density were at 2 to 4 units per acre. The required minimum lot width of 80' could be achieved through reducing the amount of parkland / open space proposed at Magnolia Springs.

**Explain how the waiver, if granted, will not adversely affect public health, safety, or welfare or the rights of adjacent property owners or residents.**

The reduction of permitted lot width by 10' at Magnolia Springs will not impact the public's health, safety or welfare nor will it impact adjacent property owners and/or residents rights.

There are provisions within the Zoning and Land Development Ordinance (referenced by the Subdivision Ordinance) which allow for a 35' detached single-family residence and townhouse lot widths of 18-20' (could be less based on minimum lot area). The Zoning and Land Development Ordinance would not provide provisions for a lot which is ½ the width of the proposed 70' lot width if the reduced lot frontage was a detriment to the health, safety or welfare of Jefferson County citizens.

Adjacent uses to Magnolia Springs include single-family residential, Route 9 and vacant land. The proposed residential use is compatible with the adjacent residential properties and provides single-family detached lots similar to that of Jefferson Avenue, Belvedere Farm Court and Belvedere Drive. Similar to the lots proposed within Magnolia Springs, lots along Jefferson Avenue contain lots with a width of less than 50', Belvedere Farm Court contains lots of 50' width and Belvedere Drive contains lots of 70 width'.

**Explain how the waiver, if granted, will be in keeping with the intent and purpose of this Ordinance.**

As discussed in response to the public health & safety section of this document, the Zoning and Land Development Ordinance provides provisions for a minimum lot width of 35'. The requested waiver will provide a minimum lot width which is double that which the Ordinance determines acceptable.

Through its regulations, the Ordinance encourages density where public water and sanitary sewer is available. The proposed development will be served by public water/sanitary sewer and is similar in design to that of adjacent neighborhoods. Density is achieved through reduced lot widths, areas and additional housing options.

**Explain how the waiver, if granted, will result in a project of better quality or character.**

Today's housing market includes a demand for smaller homes on smaller lots which have access to larger common open space areas. Granting this waiver request will allow this market sector to be recognized in Jefferson County and will blend the proposed development with adjacent neighborhoods.

This community will provide larger community open spaces for its residents to enjoy. The proposed open space and density is in part due to the reduced lot width/area. The increase in open space also highlights and protects the natural resources of the site. The Magnolia Springs vision includes smaller lots with less maintenance and a highly amenitized neighborhood focused around central opens space.

## Magnolia Springs

### Waiver Request Addendum (Intersection Spacing)

March 20, 2018

**What Section of the Subdivision Regulations are you requesting to waive.**

**Section 21.306. Intersections.** Intersections may be permitted closer than the 300 foot centerline distances where...

**Briefly describe the narrative of your waiver request:**

It is requested that road intersections be permitted within 175 feet as measured at road centerline distances. This requirement will apply to internal subdivision streets only. This waiver does not and cannot override any state requirements for West Virginia Department of Highway roads.

The Subdivision Ordinance provides relief from the 300' intersection separation due to shallow lot depth, topography or natural resources. Reduced intersection spacing within the proposed Magnolia Springs development is due to shallow lot depth or to preserve the existing terrain and natural resources. There is an ambiguous statement within the Ordinance that states "An exception shall be granted unless a reasonable alternative street configuration exists which will provide the needed separation". The Applicant/Developer is seeking to clarify the acceptable intersection spacing through this waiver request. This will provide the Applicant/Developer direction prior to a substantial investment in detailed engineering design.

**Explain how the design of the project will provide public benefit in the form of County maintenance costs, greater open space, parkland consistent with the County Parks Plan or benefits of similar narrative.**

The reduced intersection distance allows for flexibility in the design of the proposed community. This flexibility allows the integration of parkland and existing terrain into the development. A standard intersection spacing can force the development to encroach upon desired open spaces and impact the preservation of natural resources.

Reduced intersection spacing allows for the creation of a "greenway". This greenway will include a drainage corridor that serves as community open space and will aide in the treatment of surface and subsurface water flows. The flexibility provided by reduced intersection spacing promotes the consolidation of open spaces and increase the effectiveness of the greenway.

**Explain how the waiver, if granted, will not adversely affect public health, safety, or welfare or the rights of adjacent property owners or residents.**

The reduced intersection distance applies to private subdivision roads within Magnolia Springs and will not impact the public's health, safety or welfare nor will it impact adjacent property owners and/or residents rights.

The proposed design of Magnolia Springs discourages pass through traffic by utilizing curves, multiple intersections and turning maneuvers. The low traffic volume, 25 mph speed limits and the implementation of stop signs/markings will provide a safe road network for residents.

**Explain how the waiver, if granted, will be in keeping with the intent and purpose of this Ordinance.**

The Subdivision Ordinance provides relief from the 300' intersection separation due to shallow lot depth, topography or natural resources. As discussed earlier, the proposed intersection spacing within Magnolia Springs is a result of these items, and the Applicant/Developer is seeking a waiver for documentation that the proposed intersection spacing is acceptable.

The provision for reduced intersection spacing demonstrates the intent of the Ordinance to accommodate modified block structures/lot depths and in preserving natural resources.

**Explain how the waiver, if granted, will result in a project of better quality or character.**

The proposed waiver supports the preservation of natural resources and allows for the development to integrate with the existing terrain. This flexibility allows for a united network of open spaces, trails and natural features which elevates the quality and character of Magnolia Springs.

This community will provide larger community open spaces for its residents to enjoy. The proposed waiver allows Magnolia Springs to provide a grid system built on a block structure consisting of shallow depth lots. The proposed open space and density is directly related to shallow lot depth. The Magnolia Springs vision includes smaller lots with less maintenance and a highly amenitized neighborhood focused around central open space.

**Magnolia Springs**  
**Waiver Request Addendum (Curbs and Gutters)**  
March 20, 2018

**What Section of the Subdivision Regulations are you requesting to waive.**

**Section 2.2.K.1.a. (Curbs and Gutters).** Roadway curbs, gutters and sidewalks shall be required in residential conventional subdivisions where net residential density is equal to or greater than three dwelling units per acre of land and/or when lot frontages are 80 feet or less.

**Briefly describe the narrative of your waiver request:**

It is requested that curb and gutters not be required in residential conventional subdivisions where net residential density is greater than three dwelling units per acre and when lot frontages are 70 foot or greater. An open ditch section will be provided in lieu of curb and gutter. This waiver seeks to utilize a stormwater conveyance system permitted under different subdivision conditions (density / lot width).

This waiver request is supported by the Jefferson County Stormwater Management Ordinance as outlined under the "intent and purpose of this Ordinance" section of this document.

**Explain how the design of the project will provide public benefit in the form of County maintenance costs, greater open space, parkland consistent with the County Parks Plan or benefits of similar narrative.**

Open ditch sections and drainage corridors require less maintenance and are subject to less repairs than other drainage pipe/inlet stormwater conveyance systems.

Open space will be increased to incorporate a greenway into the development. This greenway will include a drainage corridor that serves as community open space and will aide in the treatment of surface and subsurface water flows. The combination of open ditch section and the greenway will create an extended conveyance system to allow for increased infiltration and water treatment.

**Explain how the waiver, if granted, will not adversely affect public health, safety, or welfare or the rights of adjacent property owners or residents.**

The elimination of curb and gutter will not impact the public's health, safety or welfare nor will it impact adjacent property owners and/or residents rights.

The waiver does not request relief from water quality or quantity standards. Existing Local and State regulations require the post development surface water discharge be less or equal to pre development rates. These regulations ensure that the existing health, safety, welfare and rights of adjacent property owners or residents will not be impacted by this waiver request.

Adjacent uses to Magnolia Springs include single-family residential, Route 9 and vacant land. The proposed residential use is compatible with the adjacent residential properties and provides a road section similar to that of Jefferson Avenue, High Street, Belvedere Drive and Euclid Avenue, which do not contain curb & gutter.

**Explain how the waiver, if granted, will be in keeping with the intent and purpose of this Ordinance.**

The use of best management practices / low impact design measures are widely recognized as the preferred method of water treatment for proposed developments. The location of Magnolia Springs within karst geology and Chesapeake Bay watershed elevates the importance of increased water quality measures.

The Jefferson County Stormwater Management Ordinance encourages the use of water quality practices which include the use of swales. These swales (i.e. open ditch sections) will allow for greater water quality benefit than traditional curb, gutter and piping. The requested waiver is keeping with this intent of the Ordinance.

**Explain how the waiver, if granted, will result in a project of better quality or character.**

The inclusion of drainage swales opposed to curb and gutter provides a development which contributes to the health of downstream properties and the overall watershed. If allowed, the inclusion of grass swales represent quality through design in the treatment of surface water runoff.

The proposed treatment practices will be incorporated throughout the developments right-of-ways and open spaces to elevate Magnolia Springs overall quality and character.



April 3, 2018

Ms. Jennifer Brockman  
Jefferson County Office of Planning and Zoning  
PO Box 716  
Charles Town, West Virginia 25414

**Re: Magnolia Springs Concept Plan**

Dear Ms. Brockman,

I have reviewed the Concept Plan for Magnolia Springs, dated February 2018 and submitted to the JCHLC March 2018 by Gordon Inc., Martinsburg, West Virginia. The submitted documents outline the proposed site plan and topography for a 301-single family detached unit development off Belvedere Farm Lane in Jefferson County, WV.

“Belvedere,” meaning “beautiful view,” is a National Register listed historic home and a Jefferson County Category of Importance I and located on the project site. Belvedere is described in the 1980 National Register nomination as a “stately mansion commanding a majestic, panoramic view that has remained virtually unchanged since the farm came into existence in the 18<sup>th</sup> century”.

“Belvedere is a property whose architectural significance and pristine setting make it one of Jefferson County’s most noteworthy landmarks”.

The JCHLC is aghast at the Magnolia Springs Concept Plan. The plan casually disregards a more sensitive design that could have incorporated Belvedere and its barn as focal points of the entire development. The proposed plan has Belvedere surrounded on three sides by 23 backyards which sit approximately 150 feet away from the main house, and the historic barn, tenant house, and corncrib are destined for a landfill. The National Park Service’s rehabilitation standards state that:

Protecting the historic setting and context of a property, including the degree of open space and building density, must always be considered when planning new construction on an historic site. This entails identifying the formal or informal arrangements of buildings on the site, and whether they have a distinctive urban, suburban, or rural character. For example, a historic building traditionally surrounded by open space must not be crowded with dense development.

Part of maintaining a historic site means maintaining its historic context. Belvedere, which was carefully restored by its previous owner and is in pristine condition, loses its context when its viewshed is obstructed by cramped, modern housing and the outbuildings that contribute to its

EXHIBIT

6

current function and 200-year history as a working farm are destroyed. The JCHLC would like to see a development plan that respects the history of the site and its contribution to the historic character of Jefferson County. We would like to see more green space in general and the view from Belvedere protected in particular. We would like to see an attempt to use the 150-year-old barn preserved as a community space, especially as it sits so close to a stream that feeds into a wetland across Rt. 340. The current plan is one more instance of thoughtless development with no regard for the past or future of Jefferson County and importance of maintaining its unique sense of place.

If you have any questions or need additional information, please feel free to contact me.

Sincerely,

*Martin Burke*

Martin Burke  
Chair, JCHLC  
P.O. Box 23  
Charles Town, WV 25414

cc: Gordon (via email)  
NLP Finance, LLC  
Belvedere Family Farm Trust

Jefferson County Planning Commission  
April 10, 2018

The Jefferson County Planning Commission met on April 10, 2018 with the following Commission members present: Donnie Fisher, President; Steve Stolipher, Vice President; Wade Louthan, Secretary; Peter Onoszko, County Commission Liaison; Jack Hefestay, Ron Thomas, and Ray Bruning. Staff members present included Jennifer Brockman, County Planner; Jonathan Saunders, County Engineer; Alex Beaulieu, Zoning Administrator; Nathan Cochran, Assistant Prosecuting Attorney; and Rhonda Greenholtz, Planning Clerk. J Ware arrived at 7:20 PM.

Mr. Mike Shepp was absent with prior notification.

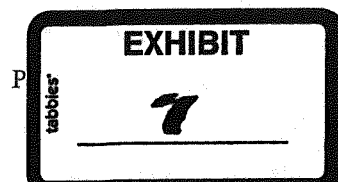
Mr. Fisher called the meeting to order at 7:00 PM.

1. The minutes from the March 13, 2018 meetings were approved with no objections.
2. Citizen Communications. None
3. Request for postponement. None
4. A Public Workshop was held for a Concept Plan for the proposed Chestnut Manor Subdivision. (PC File# 18-04) A proposed 19 lot Major Cluster Development including a 49.85 green space. Owner/Applicant: Daniel Zappe.

Ms. Jennifer Brockman provided an overview of the project. This project will process as a Cluster Subdivision. One of the key purposes of a cluster subdivision is to preserve prime agricultural land in the Rural Zoning District; however, the land on the mountain does not contain much prime agricultural land because of the topography. The steepness of the terrain in this part of the County generally requires any residential development to be on the flattest areas which potentially contain the best soils. In this circumstance, the green space provision related to the cluster provisions states that, in addition to retaining active or passive farmland, the cluster can be used to preserve steep slopes, hillsides, wooded, and environmentally sensitive areas, which is proposed in this cluster concept plan. Staff supports the concept of preserving the steeper slopes and having the lots on the limited flatter higher quality soils for the proposed Chestnut Manor development. Provisions regarding steep slopes and resource protection will need to be addressed at the Preliminary Plat stage.

Mr. Mike Roberts, Representative for the project, spoke. The project proposes individual wells and septic systems for each lot, interior streets and a single entrance to the subdivision. He also provided an overview of the layout of the proposed lots. The southeast portion of the property is the most desirable area for development as the grade is flatter. The proposed single entrance will be off of Chestnut Hill Road. The property is dissected by two major power line easements, one of which will be used as a buffer to the residential area, and the other will be used to separate the green space area.

Mr. Daniel Zappe, Owner/Developer stated that the lot is wooded and he desires to retain as much of that as possible. Clearing will mainly done for the houses, well and septic systems. The



Minutes  
Planning Commission  
April 10, 2018

entrance will be split with a median in the middle. Technically this will make two entrances so that emergency services will be able to access the subdivision.

Ms. Jennifer Brockman reported that the staff report is a bit more detailed than typical staff reports due to the Cluster provisions and soils information. Responses were received from the Jefferson County Historic Landmarks Commission (HLC) and the WV Division of Highways (WVDOH) after the agenda packets were mailed to the Commissioners and handouts were provided to the Planning Commission members before the meeting. The WVDOH had indicated that they offer no significant comments at this time but they will work with the applicant on the access permit. The Jefferson County HLC reported that there are three "Category 3" resources in proximity but none on the property and they therefore had no objections to the plan as it has been presented. Staff stated that the regulations require the residue access off the internal road and that a waiver request would be required to be approved before approval of the Preliminary Plat to allow for this lot to have its own access point off of Keyes Ferry.

Mr. Donnie Fisher opened the floor to Public Comment

No Public comment was made.

Mr. Fisher closed the floor to Public Comment.

Mr. Steve Stolipher made a motion to accept the Concept Plan as presented by the applicant with the staff recommendations noted in the staff report.

Mr. Wade Louthan seconded the motion. A vote was taken which carried unanimously (7-0).

5. A Public Workshop was held for a Concept Plan for Magnolia Springs Subdivision. (PC File# 18-05). A proposed 301 lot Major Subdivision. Owner/Applicant: Belvedere Family Trust. The property is designated as Tax District: Charles Town (02); Tax Map: 10; Parcels 8 & 8.6. Zoned: Residential Growth. Size: 67.8 acres [corrected by applicant to 120 +/- acres].

Ms. Brockman provided an overview of the project stating that it is located within the Charles Town Urban Growth Boundary and surrounded by City of Charles Town development. She pointed out two proposed entrances to the subdivision, which are required for subdivisions with more than 30 lots. One access will provide connectivity with Euclid Avenue and one is proposed to extend Citizen's Way across WVDOH right-of-way. The Residential Growth zoning designation allows for high density residential development, including single family and multi-family developments. The applicant is proposing 301 single family detached dwelling units. There is a proposed development adjacent to this property located within the City to be called "Jefferson Heights North". Two (2) 40' rights-of-way cross through the Magnolia Springs property in two separate areas which will serve the Jefferson Heights North property and will require coordination between these two developments. She pointed out the sections of the proposed Allegheny Street and Belvedere Drive which will be constructed as a part of the Jefferson Heights North development. Magnolia Springs is also providing the required future access points to a vacant property to its north which is located within the City and is zoned Commercial. Residue portions of the Magnolia Springs property exist across US 340 which have no access as a result of WV DOH highway projects. They are included with the acreage but not the proposed development.

Minutes  
Planning Commission  
April 10, 2018

Mr. Chad Wallen, Gordon, Representative for the applicant spoke. He pointed out the correct acreage for the property is approximately 120 acres, not the 67 stated in the Staff report. The 108 acres located on the west side of Route 9 are the location of the proposed subdivision. The applicant is looking to build off of the City grid with respect to the existing features of the property. The applicant is proposing to double the open space required by the Ordinance to 14 acres. Five (5) acres are proposed to surround the Belvedere House which will be sold as a separate lot. The applicant is intending to cooperate with the City of Charles Town with respect to the proposed streets: the right-of-way for Allegheny Street is to be increased by 10' and the right-of-way for Belvedere Drive will be expanded by 2' on the Belvedere property and 8' on the opposite side to bring it up to the required 50'.

Ms. Brockman provided an overview of the comments received from outside agencies:

- Office of GIS/Addressing has approved the road name.
- Sheriff's Department supplied a letter regarding their ability to serve the proposed development.
- The Board of Education Transportation Department would like to set up a meeting with the applicant/representative to discuss the location of bus stops and shelters. The alignment of the street is of concern to them. Coordination with the Board of Education before moving ahead with the Preliminary Plat is a recommended condition.
- The WVDOH is reserving their comments until the completion of the Traffic Study for Allegheny Street, which will intersect with Euclid Avenue, and serve both Jefferson Heights North and Magnolia Springs developments. The Citizens Way access will also require WV DOH approval as it will cross a large area of DOH right-of-way.
- Jefferson County Historic Landmarks Commission (distributed at the meeting) objected to the density and the design of the proposed development.
- The City of Charles Town provided comments on the proposed development related to the design of the street lights, the required 10' right-of-way, objecting to one of the waivers the applicant has submitted for consideration after Public Comment for the Concept Plan, requesting extension of the sidewalk along Allegheny Street, and regarding providing bus shelter..

Mr. Donnie Fisher opened the floor up to Public Comment.

Ms. Elizabeth Stacey Carson, Resident of Belvedere Farm Lane spoke in opposition to the development citing concern for traffic flow as the road is very narrow. She feels the development and the proposed new road would have a negative impact on the community.

Mr. Barry Grimm, Resident of Belvedere Farm Lane spoke in opposition to the development stating that a previous minor subdivision was not permitted due to inadequate road width to serve 3 lots. He believes that an entrance from Citizens Way should be a "monumental entrance" and that no entrance to Belvedere Farm Lane would be preferable.

Mr. Guy Chicchirichi, Resident of Charles Town and owner of 4 properties on Belvedere Farm Lane, stated that he believed the Belvedere house should be located on 10 acres instead of the 5 acres proposed to keep the view shed. He is in favor of curbs, gutters and sidewalks.

Minutes  
Planning Commission  
April 10, 2018

Mr. Seth Rivard, City Planner, City of Charles Town, spoke that the City of Charles Town has no principal opposition to the subdivision as it is located within the Charles Town Urban Growth Boundary which is keeping with the policies of both Jefferson County and the City of Charles Town. The city also recommends that the connections remain as shown. The 10' ROW dedication and 2' strip ROW dedication that was previously discussed is also agreed to. The City does not support the request of the waiver of curbs and gutters as this an urban area density level area. Future urban level density and infra- structure will occur in this area in the future. The City of Charles Town would like to keep the urban feel of the area. Regarding the other 3 waivers; the City believes that sidewalks should be required on both sides of the streets to provide consistency with the proposed development in the area and street lighting should be in keeping with City Standards for aesthetics. Street light spacing should be 200' apart. Lighting at entrances, intersections and cul-de-sacs would be recommended, preferably no more than 400' apart. Bus shelters should be provided. The City requested there should be a 5 year "sunset clause" as part of the HOA Covenants and Restrictions that will also be put on the Preliminary and Final Plat that would allow the City to acquire, at no cost, all or part of Open Space Areas B and/or D as a Public Park if the land was ever annexed within that time frame. Compatibility should occur between the County and City of Charles Town.

Mr. Fisher closed the floor to Public Comment.

Ms. Brockman clarified that the 40' easement along Belvedere Farm Lane is existing. A 50' right of way is required. This will be discussed with the waivers portion of this meeting unless the applicant can document that a 50' access right-of-way exists.-

Mr. Wallen responded that they will work with the Board of Education (BOA) regarding bus shelter locations. A request for a waiver will be applied for if the 50' easement requirement is unable to be met. A traffic study is currently underway and detailed information will be provided with the completion of the study. The applicant respects the opinion of the Jefferson County Historical Landmark Commission (JCHLC) however, only the existing structure is on the register, not the site. It is believed that the 5 acres reserved is sufficient. Waivers will be discussed under the next agenda items. A discussion with the City has been held to try to identify some common ground. Several comments from the City of Charles Town letter dated 4/10/18 were agreed upon; Item # 1 (connections proposed endure throughout the life of this project); #2 regarding increased right-of-way with the exception of 2' for Belvedere Drive to bring it up to 50'; #3 curbs and gutters will be discussed with the waiver portion of this meeting, #4 the applicant will only provide sidewalks on one side of the street in conformance with the County's requirements – their proposed layout and design will avoid congestion with crosswalks and not increase impervious areas. The applicant agrees with request #5 -- they will match the City's street light shape and style. The spacing will be maintained as provided per the County. #6 bus shelters were discussed earlier and is agreed that they will be provided. #7 the HOA will be the deciding factor as to whether the City will be able to acquire the open space property if annexed into the City boundary. #8 amenities will be provided but the plans are not at that point in the design stage yet.

Public comment concerns were mainly traffic concerns on Euclid Avenue. Upgrades are planned up to that intersection. If right of way widths cannot be met, the applicant will

Minutes  
Planning Commission  
April 10, 2018

appear before the Planning Commission with a waiver request for that standard requirement. This would require another Public Hearing where additional public comments can be made. The construction of the sidewalks along the proposed Belvedere Drive and Allegheny Street were not discussed as they are not part of this project, they are part of Jefferson Heights North subdivision plans. Magnolia Springs is dedicating land to that project and the burden of construction should be part of that project.

A discussion ensued between the Planning Commission and Mr. Wallen regarding the existing stream (which is currently being studied); the possibility of the open space being annexed into the City, sidewalks and street lighting requirements.

Mr. Steve Stolipher made a motion to accept the Concept Plan as presented with agreed upon recommendations from County Staff and The City of Charles Town as stated below:

- Coordination with the BOE and City of Charles Town on the design and location of bus shelters.
- It has been acknowledged that a traffic study is underway and once feedback has been received the design of the entryways may be completed. A waiver may be needed if County standards cannot be met.
- 5 acres will be maintained around the historic house located on the property.
- An additional 10' of right-of-way along the proposed Allegheny Street will be provided.
- An additional 2' of right-of-way along proposed Belvedere Drive will be provided
- Sidewalks are to be located along one side of street in accordance with the Subdivision Regulations of Jefferson County.
- Street lighting shall be matched with the City of Charles Town lighting style but meet the County spacing requirements.
- No requirement that the open space land be given to the City if the property is annexed in the city boundary. A provision shall be added that this will be at the discretion of the HOA.
- The construction of the sidewalk along the proposed Allegheny Street and Belvedere Drive will occur up to the point where Allegheny Street is to be used by this project.

Mr. Ron Thomas seconded the motion. The motion passed with a vote of 6 for to 2 against. Mr. Peter Osnozko and Jack Hefestay opposed both stating that they feel a more robust discussion should have been had.

Items 6-9: \*Mr. Fisher announced the following waivers will be heard at one time as they are all related to the previous agenda item "Concept Plan for Magnolia Springs". Owner/Applicant: Belvedere Family Trust. The property is designated as Tax District: Charles Town (02); Tax Map: 10; Parcels 8 & 8.6. Zoned: Residential Growth. Size: 120 +/- acres. Staff recommendations and motions for the requests are found at the end of the request portion of these minutes. \*

6. A Public Hearing was held for a Waiver Request for Magnolia Springs Subdivision. (PCW#18-03) Applicant is requesting a waiver from Section 21.101.A of the Subdivision

Minutes  
Planning Commission  
April 10, 2018

Regulations that require a block length to not exceed 6 lots. The applicant is requesting a block length of 12 lots on one side of the street.

7. A Public Hearing was held for a Waiver Request for Magnolia Springs Subdivision. (PCW#18-04) Applicant is requesting a waiver from Section 21.104.A of the Subdivision Regulations that requires a minimum lot frontage width of 80'. The applicant is requesting a minimum lot frontage of 70'.
8. A Public Hearing was held for a Waiver Request for Magnolia Springs Subdivision. (PCW#18-05) Applicant is requesting a waiver from Section 21.306 of the Subdivision Regulations due to shallow block depth, topography and natural resources.
9. A Public Hearing was held for a Waiver Request for Magnolia Springs Subdivision. (PCW#18-06) Applicant is requesting a waiver from Section 2.2.K.1.a of the Subdivision that require Roadway, curbs, gutters and sidewalks be required in residential conventional subdivisions where net residential density is greater than three dwelling units per acre of land where lot frontages are 80' or less. Applicant is requesting curb and gutters not be required if previous waiver (PCW18-04) of lot frontages has been approved.

Ms. Brockman presented a brief overview of the nature of the waivers and asked that the applicant explain the necessity of the requests and then the staff will provide feedback. The requests are integrated into the design of the project.

Mr. Jason Gerhart and Mr. Chad Wallen, Gordon spoke that all these waivers are intertwined.

#6: and #7 Block "lots" along Belvedere Farm Lane and High Street varied between 11 and 14 lots per block and were measured to be approximately 70' to 75' in width. The 80' requirement could be achieved but would result in the lessening of the open space which has been provided (twice the amount required.) It is being requested to be reduced to 70'. If the lots are smaller it is believed that the block length should be allowed to be longer. It would be more in keeping with the surrounding neighborhoods.

#8: It is believed that the required intersection spacing requirement has been met and it is unclear if this waiver is required. The development design includes provisions to protect the intermittent stream that is located on the property. A written determination is requested before full design of the engineering.

#9: The County's Stormwater Management Ordinance supports open ditch section. This is best management practice for infiltration and is better for the environment. Mr. Gerhart added that the curb and gutter was triggered by the lot width.

Ms. Brockman stated this is the first time the regulations for a major subdivision have been used since their adoption in 2008 and it has come to the staff's attention that some sections

Minutes  
Planning Commission  
April 10, 2018

are unclear or are contradictory. As some sections have never been used, further amendments to the Subdivision Regulations may be necessary.

#6: PCW 18-03 (Block Length): Planning and Zoning staff recommends that the waiver be granted to allow block lengths up to 12 lots on one side of the street, with the condition that pedestrian connectivity be provided to common open space areas. The request results in a subdivision design that integrates open space and parkland into the development and results in open space areas that protect the natural terrain and buffer the stream while still providing adequate interconnectivity to adjoining lots and developments.

#7: PCW18-04 (Lot frontage): Planning and Zoning staff recommend that if the decrease in the lot frontage requirements for this subdivision provides greater open, meets all other land development standards set forth by the County, and does not negatively impact the surrounding neighborhoods, the waiver request meets the criteria for approving such waivers.

#8: PCW18-05 (Intersection Spacing): Planning and Zoning staff recommends that the waiver be granted as the request is consistent with the site design and layout which reflects the topography and provides open space along natural features. Consideration should be given to interconnecting Roads 11 and 16 which may enhance traffic flow and circulation.

#9: PCW18-06 (Curb and Gutter): The stormwater management ordinance encourages the reduction of impervious surface for water quality. A grass swale/ditch can be credited as a water quality structure that filters water as it drains. Therefore, the Engineering Department recommends approval of this waiver due to the decrease in impervious surface.

Mr. Fisher opened the floor to Public Comment

Ms. Elizabeth Carson signed up to speak but declined.

Mr. Seth Rivard, Planner, City of Charles Town spoke on the waiver request regarding curb and gutter. The City believes that if the waiver for the curb and gutter is granted, it should be off-set by sidewalks on both sides of the streets. The city would also like the developer to install sidewalks along Allegheny Street and Belvedere Drive. .

Mr. Fisher closed the floor to Public comment.

Mr. Chad Wallen responded to Public comment made by Mr. Seth Rivard stating that the full construction of Allegheny Street is not required for this project and that the sidewalk would only be constructed along the section of road that is constructed for Magnolia Springs. Belvedere Drive is also not required for Magnolia Springs. He also responded that having sidewalks on one side of the street ensures that crosswalks would be safer.

Further discussion on the above waiver requests ensued.

The motions to each of the following requests are as follows:

PCW18-03 (Block length):

Minutes  
Planning Commission  
April 10, 2018

Mr. Steve Stolipher made a motion to approve the waiver requested as presented to allow the block length to include no more than 12 lots.

Mr. Ron Thomas seconded the motion.

A vote was taken and passed with a vote of 7 to 1. Mr. Peter Onoszko opposed.

PCW18-04 (Lot frontage)

Mr. Steve Stolipher made a motion to accept the waiver request to allow for a minimum 70' lot frontage.

Mr. Ron Thomas seconded the motion.

A vote was taken and passed with a vote of 7 to 1. Mr. Peter Onoszko opposed.

PCW18-05 (Intersection spacing)

Mr. Steve Stolipher made a motion to accept the waiver request as presented to allow intersection spacing to be 175' and not the required 300'.

Mr. Ron Thomas seconded the motion.

A vote was taken and passed with a vote of 7 to 1. Mr. Peter Onoszko opposed.

PCW18-06 (Curb and gutter)

Mr. Steve Stolipher made a motion to accept the waiver request that curb and gutter not be required. Sidewalks are not part of this request.

Mr. Ron Thomas seconded the motion.

A vote was taken which passed unanimously. (7-0)

Reconsideration of Concept Plan for Magnolia Springs Subdivision. (PC File# 18-05)

Mr. Steve Stolipher made a motion to modify the previous motion approving the Concept Plan to clarify that if the city approved the design of Allegheny Street does not meet the County Subdivision Regulation requirements, then the City of Charles Town requirements will prevail.

Mr. Wade Louthan seconded the motion. A vote was taken which carried unanimously (8-0).

Mr. Fisher called for a 10 minute break at 8:55 PM.

The meeting reconvened at 9:05 PM.

10. A Discussion was held for possible action on the public comment received on proposed text amendment to the Jefferson County Zoning and Land Development Ordinance, File #ZTA17-01. The text amendment, in accordance with WV Code 8A and Article 12 of the Zoning Ordinance, proposes revisions to Article 10 Provisions for Signs. The primary purpose of this amendment is to create provisions to allow electronic signs in Jefferson

Minutes  
Planning Commission  
April 10, 2018

County. The amendment also includes reorganization of existing text for clarification. (*This item was left open for two weeks after the 3/13/18 Public Hearing for written comments.*)

Ms. Alex Beaulieu gave an overview of public comment received. The majority of comments were a concern for the brightness level (NIT). The manufacturer of the lights can preset the brightness level. She stated that the proposed draft language of 600 NITS was recommended as a starting point for the brightness level at night.

Mr. Ray Bruning suggested reducing the NIT level from the draft's 7,000 during the day to 3,000 during the day and from the draft's 600 at night to 100 at night in rural areas and 150 at night in brighter areas.

Ms. Beaulieu suggested that variances may could be sought for brighter NIT levels.

Mr. Bruning made a motion to amend the text to allow for a brightness of 3,000 NITS during the day and 100 NITS at night.

Mr. Stolipher seconded the motion. A vote was taken which carried unanimously (8-0).

Mr. Onoszko suggested that a comment be included in the packet to the County Commission that explains why there is a need for a sign to be brighter during the day.

Ms. Brockman reminded the Planning Commission that this item will be heard at a Public Hearing held by the County Commission.

Discussion ensued.

11. Reports from Legal Counsel and legal advice to the Planning Commission.

a) Active Litigation:

- None

12. Planners Memo.

13. President's Report. None

14. Actionable Correspondence. None

15. Non-Actionable Correspondence. None

Mr. Fisher motioned to adjourn the meeting at 9:23 PM with no objections.

Staff Report  
 Jefferson County Planning Commission Meeting  
 April 10, 2018

**ITEM #5**

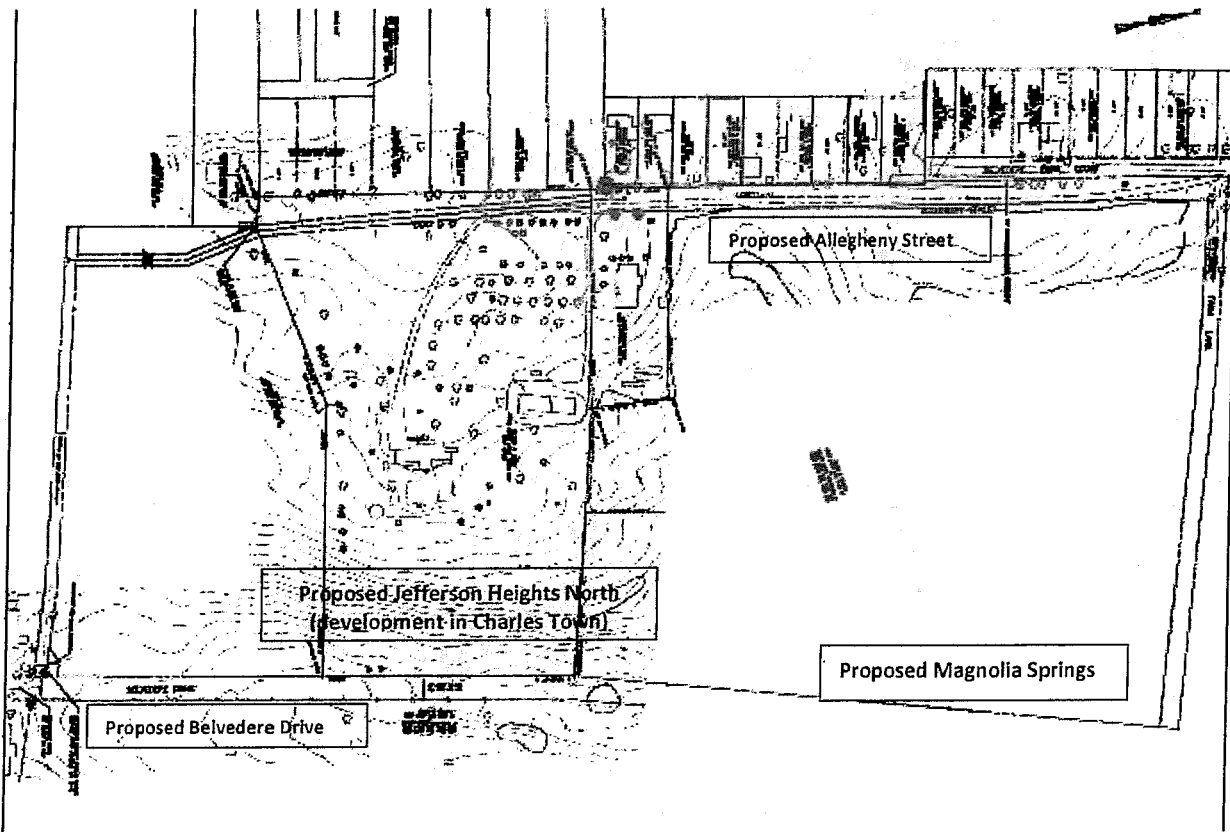
**Public Workshop:** Concept Plan for Magnolia Springs Subdivision. (PC File# 18-05) A proposed 301 lot Major Residential Subdivision.

APPLICANT:	Belvedere Family Trust C/O Walter J. III & William K. Truettner
OWNER:	Same as above
DEVELOPER:	Same as above
SURVEYOR/ENGINEER:	Gordon
PROPERTY LOCATION:	West side of Rte. 340 (Berryville Pike), East side of Belvedere Farm Lane
LEGAL DESCRIPTION:	Tax District: Charles Town (02); Tax Map: 10; Parcels 8 & 8.6; Zoned: Residential Growth; Size: 67.8 acres.
SURROUNDING PROPERTIES:	The properties are surrounded by residential lots within the town limits of Charles Town and small single family lots in the unincorporated area. The property to the north is zoned commercial in Charles Town.
LOT AREA:	67.8+/- Acres
PROPOSED ACTIVITY:	301 Lot Major Subdivision
Approvals	
Concept Plan	Submitted: 02/21/2018
	Staff Review Meeting: 02/26/2018
	County Planner Approval: 03/05/2018
	County Engineer Approval: 02/26/2018
	Zoning Administrator Approval: 02/26/2018

Staff Report  
Jefferson County Planning Commission Meeting  
April 10, 2018

**1. Summary of Request**

The applicant is proposing a 301 lot Single Family (Detached) Residential Major Subdivision with stormwater management and open space areas, associated utilities and sidewalks on this 67.8 acre property zoned Residential Growth within the Charles Town Urban Growth Boundary. A neighboring 9.0 acre property to the west (shown below), located within the City of Charles Town, has preliminary approval for a 96 unit apartment complex (in one or more buildings) and a 35 unit townhouse complex (Jefferson Heights North). This development is approved to construct a new road to be known as Allegheny Street which will go north from the development within an existing 40 foot right-of-way that crosses the Belvedere Family Trust Property, paralleling a part of Belvedere Farm Court, to Euclid Avenue. It will also construct a road to be known as Belvedere Drive which will go south from that development within another existing 40 foot right-of-way across the Belvedere Family Trust Property.



The roads constructed as a part of Jefferson Heights North will be built to city street standards and the rights-of-way will be required to be widened to 50 feet as a part of the Magnolia Springs development. Sections of roads constructed as a part of Magnolia Springs will be built to County road standards and will integrate with the city streets as shown in the approved plans. Section 21.102A of the Jefferson County Subdivision and Land Development Regulations requires that any proposed subdivision that is not adjacent to a public highway shall be connected to a public highway by rights-of-way and roads that meet the standards required within the subdivision.

Staff Report  
Jefferson County Planning Commission Meeting  
April 10, 2018

Because Magnolia Springs consists of more than 30 lots, Section 21.102C of the Jefferson County Subdivision Regulations requires a minimum of two access points from existing roads. The two points of external access proposed by the developer of Magnolia Springs will be a road that provides connectivity to Euclid Avenue via Belvedere Farm Court to the north and a road which provides connectivity to Citizens Way to the south. The developer of Magnolia Springs will be required to provide an extra 10 feet of right-of-way along the entire length of the proposed Allegheny Street and to provide a t-intersection for Road 7 within the right-of-way, but will only need to construct the portion from their first internal subdivision road (Road 1) to Euclid Avenue. The developer will need to confirm that 50 feet of right-of-way exists in this area or may be required to obtain a waiver from this requirement. The developer will also be required to provide an additional 10 feet of right-of-way along the proposed Belvedere Drive and to interconnect with this road (Road 14). The connection to Citizen's Way will require crossing through WV DOH right-of-way created for the intersection of US 340 and WV 9.

All 301 Lots will access off multiple internal subdivision roads, some of which are proposed to be cul-de-sacs and some of which provide connectivity to adjacent properties. When staff met with the applicant during the Pre-Proposal Conference (PPC), staff indicated that it would not support proposed cul-de-sacs for roads currently identified as Road 7 and Road 14. The revised Concept Plan currently shows these roads as t-turnarounds, which are permitted by the County; however, staff recommends that the Planning Commission require the t-turnarounds to be located within the future road alignments for Allegheny Street and Belvedere Drive. The proposed interconnectivity of Road 8 should be further discussed with the developer of Jefferson Heights North and city staff. Roads 2 and 4 provide the required future connections to vacant adjoining land to the north which is zoned General Commercial within the City of Charles Town.

The applicant has indicated that the design as proposed in the Concept Plan requires four waivers which will require Public Hearings by the Planning Commission and require separate approval for each request. One waiver relates to the applicants' proposal to use open ditch road sections throughout the development instead of curb and gutters. The merits of this will be addressed in the waiver staff report. The need for curb and gutter along Allegheny Street and Belvedere Drive should be discussed during this waiver request. Sidewalks are required along one side of streets for all subdivisions in all zone districts within the platted street right-of-way, a minimum of one foot from the property line.

The property is also crossed by an intermittent stream which is proposed to be included within one of the open space areas. Parkland is required for a Major Subdivision of this type, a portion of which may be classified as open space. This project, per Section 21.105 of the Subdivision and Land Development Regulations, requires an estimated 7% of the property to be dedicated to parkland (based on density of residential area, if the waiver for lot width is approved), with no more than 60% of the required open space to be dedicated as passive open space. This calculation will be finalized with the Preliminary Plat.

## **2. Staff Determination of Application Sufficiency and Concept Plan Completeness Review**

In accordance with the amended Subdivision Regulations, the Concept Plan process incorporates a sufficiency and completeness review in a single step. Staff found the submitted plan "sufficient" (i.e.

Staff Report  
 Jefferson County Planning Commission Meeting  
 April 10, 2018

meeting all requirements of Section 24.106 of the Jefferson County Subdivision and Land Use Regulations). These requirements, as well as the current review status for each requirement for the Magnolia Springs application, are provided below:

Required Item from Section 24.106(A-J)	Description	Status
<b>B. Submission Contents</b>	The submission shall contain the following elements:	
<b>1. General Location</b>	A map or aerial photograph showing an area of 500 feet around the property. Zoning boundaries shall be located on this document.	Provided
<b>2. Concept Plan</b>	A Concept Plan shall be submitted in accordance with the content and formatting guidelines provided in Appendix A, Plan & Plat Standards.	Provided
<b>3. Zoning Information</b>	This shall include: <ul style="list-style-type: none"> <li>a) Determination of the zoning district in which the proposed project is situated.</li> <li>b) Density calculations.</li> <li>c) Site resource map.</li> </ul>	Provided based on Residential Growth Zoning
<b>4. Proposal Description</b>	This site shall be a written description of the proposal with general identification of the number of dwelling units or floor area proposed, commentary, zoning, and development option selected if the development is residential.	Provided
<b>5. Traffic Impact Data</b>	This shall include: <ul style="list-style-type: none"> <li>a) Average Daily Trip figures for the adjoining or accessible State road.</li> <li>b) Trip generation figures</li> <li>c) Nearest key intersection that will serve the proposed project. A "key intersection" is defined as any intersection with a primary or secondary highway as classified by the current Comprehensive Plan.</li> <li>d) "Highway Problem Areas" according to the current Comprehensive Plan that falls within a one-mile radius of the project.</li> </ul>	Provided
<b>Trip Generation</b>	In the event trip generation in the peak hour exceeds 100 or the limitation designated in the most current DOH Traffic Engineering Directive, a traffic study will be required which includes generators, etc. unless the West Virginia Division of Highways has created an agreement with the applicant to provide site access improvements that are typically required	Trip generation is greater than 100; approval from WVDOH required with Preliminary Plat

Staff Report  
 Jefferson County Planning Commission Meeting  
 April 10, 2018

	by a traffic study. This type of study should be performed by a traffic engineering consultant. The effect of phasing the subdivision shall be cumulative.	
<b>6. Agency Reviews</b>	The reviewing agencies found in Section 23.203 and 23.204 shall conduct reviews of the proposed concept plan. Applicant shall provide copy of letters sent to outside agencies to the Departments of Planning and Zoning within 7 days of submission of Concept Plan. If any review agency fails to respond, they shall be deemed by these Regulations to have approved the plan.	Letters to required agencies provided; see responses below
<b>7. Adjoining Property</b>	Accurate list of all properties and owners' addresses adjoining the subject property to be notified by staff of the date of the workshop.	Provided
<b>8. Other Data</b>	Any other data or information the applicant believes will assist in the review.	
<b>9. Other Reviews</b>	Any other staff or agency reviews of the plans.	GIS/Addressing approved subdivision and road names
<b>C. Review Content</b>	The Department and agency reviews shall address the areas indicated in D through G below and any other areas of concern to the agencies.	See below
<b>D. Department</b>	The Department review shall include the following: <ol style="list-style-type: none"> <li>1. Whether the density, use, and plan meet the requirements of the Zoning Ordinance and any other zoning issues that can be identified at the concept plan submission. (Landscaping, for instance, is not generally available at this stage). Staff shall identify conditions that would enable the plan to meet the standards. It shall also identify any other zoning issues the developer shall address in a preliminary plat submittal.</li> <li>2. Staff opinion as to whether the plan meets the site development planning or subdivision criteria of these Regulations. The Department shall review the concept plan for modifications that would improve the plan.</li> </ol>	Staff determined that the proposed Concept Plan has met the requirements of the Zoning Ordinance and the Subdivision Regulations
<b>E. WVDOH</b>	The WVDOH approval is necessary prior to preliminary plat approval. The County defers to the WVDOH requirements and approval.	Noted

Staff Report  
 Jefferson County Planning Commission Meeting  
 April 10, 2018

<b>F. Traffic Impact</b>	The WVDOH shall determine whether a traffic impact study will be required during the preliminary plat stage.	Defer to WVDOH
<b>G. Public Service</b>	The review shall indicate whether there are existing water and sewer systems in place that can handle the development. If not, the review shall indicate the type or extent of a system that shall be proposed by the developer to best meet the County's needs in that area of the County.	Subdivision proposed to be served by city water and sewer systems
<b>H. Recommended Conditions</b>	All reviews shall contain recommended conditions for moving forward to a site plan or reasons why the plan should be denied.	DOH and Utility provider approval Required before Preliminary Plat approval
<b>I. Approval</b>	Unless there are reviews indicating that the development cannot conform to the Zoning Ordinance, be serviced by public services, or provide its own utilities, or other factors that make the development impossible, Planning staff shall accept or deny the concept plan as complete.	Planning Staff accepts the Concept Plan as complete.
<b>J. Effect</b>	Upon accepting the application as complete, Planning staff shall place it on the next possible Planning Commission agenda as a public workshop. Staff shall advertise the public workshop in a local newspaper and the applicant shall post notice on the property in accordance with the Subdivision Regulations.	The Concept Plan was scheduled for a Public Workshop consistent with this requirement.

**3. External Agency Reviews (attached)**

- Office of GIS/Addressing approval of road names is attached.
- Office of Sheriff/Treasurer of Jefferson has responded to state that they will handle any law enforcement demands required by this development.
- Jefferson County Board of Education Transportation Department provided comments requesting a discussion with the Magnolia Springs developer regarding whether school bus service within the community is be intended and proposed potential locations for bus stop locations. They also provided Jefferson County Schools "Subdivision Guidelines" for use by the developer which staff has forwarded to the engineer.
- WVDOH has responded that until a Traffic Study is complete, the review of the subdivision cannot be completed. Access via Citizens way may be possible with additional encroachment permits and/or agreements for construction and maintenance.

As of this date, no other agency review comments have been received. If additional comments are received, they will be provided to the Planning Commission for their consideration.

Staff Report  
Jefferson County Planning Commission Meeting  
April 10, 2018

- a. An additional 10' of right-of-way shall be dedicated along the existing 40' of rights-of-way where Allegheny Street and Belvedere Drive will be constructed.
- b. The developer shall confirm that 50 feet of right-of-way exists from their first internal subdivision road (Road 1) to Euclid Avenue to conform to County standards or may be required to obtain a waiver from this requirement.
- c. The t-turnarounds for Roads 7 and 14 shall be located with the road right-of-way for Allegheny Street and Belvedere Drive.

Based on the Subdivision Regulations, noted above, this project will process as a Major Subdivision and the next step is to process a Preliminary Plat.

**5. Planning Commission Direction**

The Concept Plan Public Workshop allows for the Planning Commission and the general public to comment on the proposed plan before complete engineering design and cost are incurred. The Subdivision and Land Development Regulations outline the procedure:

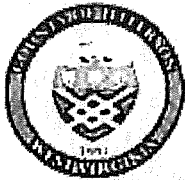
1. The applicant makes a short presentation.
2. Staff explains outside agency comments and whether the plan can meet the standards of the Zoning Ordinance.
3. Public comment is solicited.

Following the applicant's presentation, staff's explanation and the solicitation of public comment, the Planning Commission shall provide direction to the applicant as required under Concept Plan Direction outlined in the Subdivision Regulations. The Planning Commission has the option of providing this direction at the same meeting during which the Concept Plan public hearing takes place, or at a subsequent meeting that occurs within 14 days of the meeting at which the Concept Plan public hearing is closed.

The Subdivision and Land Development Regulations outline the direction to be provided to the applicant:

“The Planning Commission shall direct the preparation of a Preliminary Plat subject to conditions to be addressed in the application. The purpose of this review is to guide the developer so that when the Preliminary Plat is formally reviewed by the staff, there should not be a whole range of issues being raised for the first time. The developer shall cite conditions and demonstrate that they have been met or otherwise addressed.”

It should be noted that the direction provided to the applicant in the Concept Plan Public Workshop shall be applicable for a period of two years, with the provision that any amendments to the Subdivision and Land Development Regulations or the Zoning and Land Development Ordinance in the second year shall be applicable.



JEFFERSON COUNTY, WEST VIRGINIA

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

File Number: 18-05
Staff Initials: JH
Total Fee(s): 80

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

Concept Plan Review Checklist

The Concept Plan submittal shall be on white paper and shall show in simple form the proposed project. Further details can be found in the checklist below. The Concept Plan shall be accompanied by a tract location map and a tentative list of restrictive covenants and conditions or a tentative statement of project objectives, rules, and regulations.

In order to determine sufficiency, this application and a copy of the Concept Plan must be submitted to the Jefferson County Departments of Planning and Zoning 45 days prior to the next regularly scheduled Planning Commission meeting. Please refer to Article 24 of the Subdivision Regulations for Concept Plan Requirements.

Property Owner Information

Name: Belvedere Farm Family Trust c/o Walter J III & William K Truettner
Mailing Address: P.O. Box 247; Crested Butte, CO 81224
Phone Number: 304-901-4931 Email: hwilson@hillcrestrealty.us

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

Name: GORDON
Mailing Address: 148 S. Queen Street, Suite 201; Martinsburg, WV 25401
Phone Number: 304-725-8456 Email: cwallen@gordon.us.com

Physical Property Details

Physical Address: 76 Belvedere Farm Lane; Charles Town, WV 25414
City: Charles Town State: WV Zip Code:
Tax District: Charles Town (2) Map No: 10 Parcel No: 8 & 8.6
Parcel Size: 124.45+/- Total Deed Book: 1132 Page No: 301

Zoning District (please check one)

Grid of zoning districts with checkboxes: Residential Growth (RG), Industrial Commercial (IC), Rural (R), Residential-Light Industrial Commercial (RLIC), 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). Includes a 'RECEIVED' stamp and date FEB 21 2018.

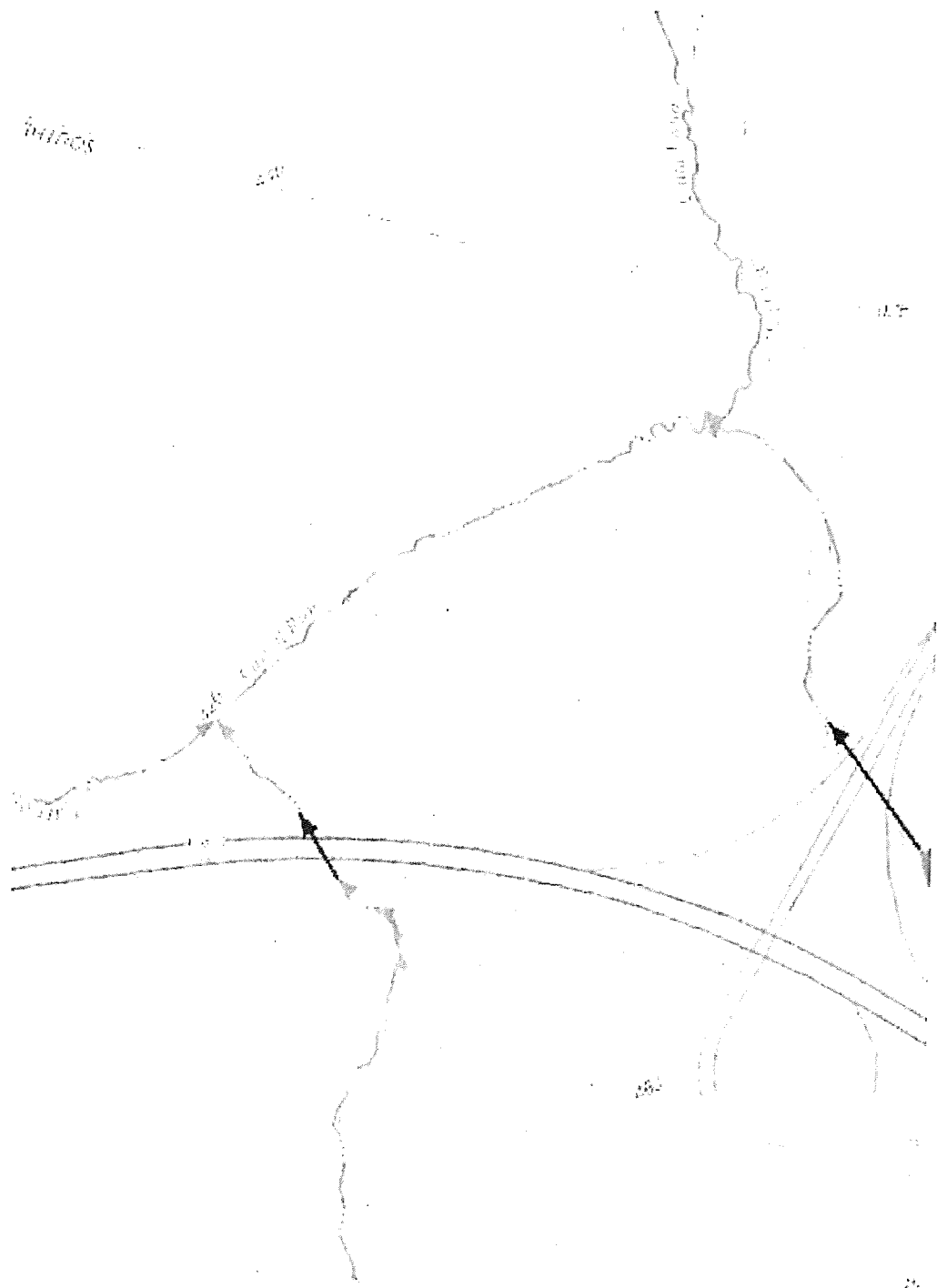
Signature of Property Owner: [Handwritten Signature] Date: 2/11/18

Signature of Property Owner: [Blank] Date: [Blank]









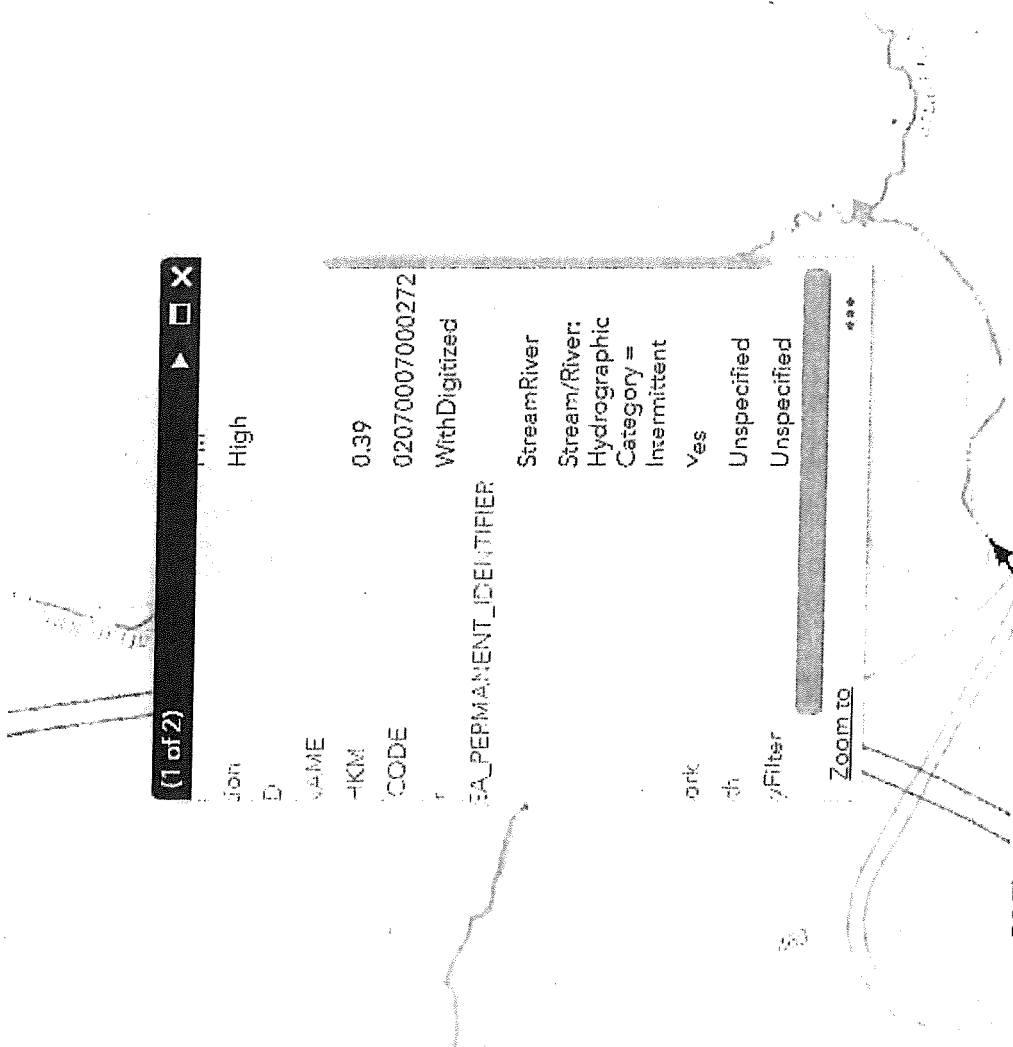
39.287 Degrees

PIE

15

15

SCALE MILE X



(1 of 2) [Close] [Back] [Forward]

Join High  
 ID  
 NAME  
 -KID 0.39  
 CODE 02070007000272

EA\_PERMANENT\_IDENTIFIER WithDigitized  
 StreamRiver  
 Stream/River:  
 Hydrographic  
 Category =  
 Intermittent  
 Yes  
 Unspecified  
 Unspecified

/Filter  
 Zoom to \*\*\*

The National, Man-Made National Boundaries Dataset National Elevation Dataset

**Flow Direction:**

PERMANENT_IDENTIFIER	{03FCA9B6-048E-462B-AFD4-0288F5FEB323}
FDATE	7/12/2016, 8:00 PM
Resolution	High
GNIS_ID	
GNIS_NAME	
LENGTHKM	0.05
REACHCODE	02070007000272
FlowDir	WithDigitized
WBAREA_PERMANENT_IDENTIFIER	
FType	StreamRiver
FCode	Stream/River: Hydrographic Category = Intermittent
InNetwork	Yes
MainPath	Unspecified
VisibilityFilter	Unspecified

Zoom to

NATHAN F

Elevation Index - 3DEP

Elevation Contours

Imagery (NAIP Plus)

Scale: 1:9,028  
Zoom Level: 16

600ft





U.S. Fish &amp; Wildlife Service

**National Wetlands Inventory**

Ecological Services

Enter Classification code:  (Example: L1UB1Hx)Optional: For geographically specific information\*, please enter a State code:  (Example: TX for Texas)[CLICK HERE TO DECODE](#)

Description for code R4SBC:

- R System RIVERINE:** The Riverine System includes all wetlands and deepwater habitats contained within a channel, with two exceptions: (1) wetlands dominated by trees, shrubs, persistent emergents, emergent mosses, or lichens, and (2) habitats with water containing ocean-derived salts of 0.5 ppt or greater. A channel is an open conduit either naturally or artificially created which periodically or continuously contains moving water, or which forms a connecting link between two bodies of standing water.
- 4 Subsystem INTERMITTENT:** This Subsystem includes channels that contain flowing water only part of the year. When the water is not flowing, it may remain in isolated pools or surface water may be absent.
- SB Class STREAMBED:** Includes all wetlands contained within the Intermittent Subsystem of the Riverine System and all channels of the Estuarine System or of the Tidal Subsystem of the Riverine System that are completely dewatered at low tide.
- C Water Regime Seasonally Flooded :** Surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.

Other Modifier(s):





**JEFFERSON COUNTY, WEST VIRGINIA**  
**DEPARTMENT OF ENGINEERING, PLANNING, & ZONING**  
**GIS / ADDRESSING OFFICE**

Todd Fagan, GISP • Manager  
116 East Washington Street • Suite 201  
Charles Town, WV 25414  
Telephone: (304) 724-6759 • FAX: (304) 724-8992  
gis@jeffersoncountywv.org



February 23, 2018

NLP Finance, LLC  
c/o Hunter Wilson  
PO Box 1875  
Martinsburg, WV 25402

**TO WHOM IT MAY CONCERN:**

This certifies that the Jefferson County GIS/Addressing Office has given final approval for the following road names for the **MAGNOLIA SPRINGS** subdivision.

Road Name	Suffix
Ansley	Way
Ashcroft	Drive
Balls Bluff	Drive
Bar Harbor	Terrace
Bell Tower	Lane
Brass Lantern	Way
Cabin Point	Court
Centergate	Drive
Chatwell	Terrace
Clifton	Terrace
Gatehouse	Place
Gumspring	Drive
Hemingway	Terrace
Olander	Court
Saber	Drive
Short Gap	Lane

Please note: Once you have chosen which roads receive which names, our office may require changes to the suffixes depending on the alignment of the roads (for example: "Court" is generally used to reference short enclosed roads that end in a cul-de-sac, so it would be inappropriate for a long road that intersects multiple other roads). Please feel free to contact us at any time if you would like help in determining which suffixes would be approved based on alignments.

All road signs must be purchased through the County's maintenance contract if the roadways are located within the unincorporated area of the County. A plat of the subdivision must be submitted and the GIS/Addressing Office will calculate the fees required for road sign purchase. Fees must be remitted to the GIS/Addressing office prior to the scheduling of road sign installation.

Should you have any questions, please contact the Jefferson County GIS/Addressing Office at (304) 724-6759 or via email at [gis@jeffersoncountywv.org](mailto:gis@jeffersoncountywv.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Jessica Gormont". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jessica Gormont, GIS Analyst  
Jefferson County GIS/Addressing Office



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

**Division of Highways**

Office of the District Engineer/Manager

District Five

Post Office Box 99 · Burlington, West Virginia 26710-0099 · (304) 289-3521

**Thomas J. Smith, P. E.**  
Secretary of Transportation/  
Commissioner of Highways

March 14, 2018

William H. Gordon Associates, Inc.  
148 South Queen Street, Suite 201  
Martinsburg, WV 25401  
Attn: Chad Wallen

Dear Mr. Wallen:

A concept plan for Magnolia Springs Subdivision at 76 Belvedere Farm Lane, Charles Town, WV was received in this office and a review was conducted.

WVDOH offers the following comments:

- We are working with Kittelson & Associates, Inc. on a scope for the Traffic Impact Study (TIS) on what appears to be the same development with a different name of "Belvedere Farm". Until the TIS is complete, we cannot complete a review of any subdivision plans.
- Citizens Way belongs to WVDOH for a length of 0.57 miles. It has not been constructed beyond its intersection with Crawford Way. Access via Citizens Way may be possible with additional encroachments permits and/or agreements for construction and maintenance.

If you have any further questions or need additional information, please contact me at [trixie.a.willis@wv.gov](mailto:trixie.a.willis@wv.gov) or 304-289-2229.

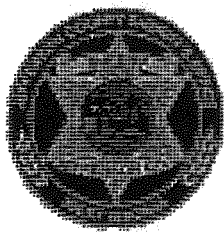
Sincerely,

A handwritten signature in black ink that reads "Trixie Willis".

Trixie Willis  
Permit Reviewer

TAW/rl

cc: file



## Office of Sheriff and Treasurer of Jefferson County

Law Enforcement Office  
102 Industrial Blvd  
Kearneysville, WV 25430  
304-728-3205  
Fax: 304-728-3299

Tax Office  
PO Box 9  
Charles Town, WV 25414  
304-728-3220  
Fax: 304-728-4034

*March 13, 2018*

*JC Department of Planning and Zoning  
VIA FACSIMILE and Inner Office Mail  
304-728-8126*

*Re: Magnolia Springs*

*Dear Ms. Brockman:*

*This is in response to the request from Mr. Wallen with Gordon Programming and Planning that this office furnish you with an account with respect to our ability to respond to calls for service regarding matters of law enforcement and preservation of the peace at the proposed Magnolia Springs subdivision located at 76 Belvedere Farm Lane, Charles Town in Jefferson County, West Virginia.*

*The Sheriff's Office is charged with the affirmative duty of investigating criminal activity, preserving the peace, and enforcing the law. This duty extends to all corners of the county and to any community, subdivision or a business property without regard to size or location.*

*However, as our community continues to grow, it becomes progressively more difficult to assure timely response due to the significant increase in the number of calls for service with the staffing that is currently being provided to the Sheriff's Office. On occasion, calls for service must be handled on a priority basis where the most-serious, urgent type of events must receive priority in response and other, less serious calls for service, are responded to as quickly as manpower becomes available.*

*The foregoing should not be construed as an expression from this office that we are unable or unwilling to respond to calls for service in a timely manner. Given the resources and level of manpower with which we are obligated to work, our level of service is, and will continue to be responsive, timely, and efficient in carrying out our duties and responsibilities in the areas of law enforcement, criminal investigation and preservation of the peace in the Jefferson County community.*

*Sincerely,*

A handwritten signature in black ink, appearing to read "Peter H. Dougherty", is written over a horizontal line.

*Peter H. Dougherty  
Sheriff and Treasurer  
Jefferson County*

**From:** Lawrence Willingham  
**To:** Planning Department  
**Cc:** Jennifer Brockman  
**Subject:** Magnolia Springs  
**Date:** Tuesday, March 27, 2018 10:02:37 AM  
**Attachments:** Subdivision Guidelines SOP 9.2.pdf

---

Good morning,

Regarding the Magnolia Springs community, we would very much like to have a discussion on:

- a) If school bus service within the community will be intended
- b) If so, be included on potential locations for bus stop locations

I have attached the Jefferson County Schools "Subdivision Guidelines"

Feel free to contact me should you have any questions.

Thank you,

Larry Willingham

*Computer Operator/Routing Specialist*

Jefferson County Schools - Transportation Department

635 McGarry Blvd

Kearneysville, WV 25430

(304) 885-5092 (O)

(304) 582-1014 (C)

(304) 725-5042 (Fax)

**The information contained in this electronic mail is intended for the recipient(s) only. If you believe that it has been sent to you in error, you are asked to please notify the sender immediately by reply e-mail and delete this message.**

## Guidelines for School Bus Entry and Service into Subdivisions

The following are “guidelines for school bus entry and service into subdivisions” in Jefferson County. Once a request has been approved, the following guidelines shall be met each school term. If the conditions are not maintained satisfactorily, in the opinion of the Coordinator of Transportation, the extension of bus service within that subdivision will be discontinued until improvements have been made. The Coordinator of Transportation shall make the final decision regarding school bus service within subdivisions.

Exceptions to these guidelines may be granted to provide transportation services for physically and/or severely impaired students transported on special needs school buses.

School bus transportation services on roadways not owned or maintained by West Virginia Department of Highways shall be equal to the highest specifications of the West Virginia Department of Highways, which are

- a paved surface over a good stone base
- a minimum of eighteen feet width of pavement
- Proper storm water drainage

Roadways within subdivisions shall be maintained in a satisfactory manner, which shall include

- brush, tree limbs, trash, basketball stands and other obstructions shall be clear of serviced roadways
- A contract/agreement with a snow removal service to keep roadways clear during inclement weather with a copy on file at the Jefferson County Schools Transportation Department
- "Speed Bumps" are approved with a height no greater than four inches from the road surface and shall be no less than twenty four inches wide

Because subdivisions are not patrolled by law enforcement, the community must take full responsibility in patrolling their roads and streets in maintaining a safe and acceptable environment for school bus transportation services.

Subdivisions must provide appropriate road markings, traffic and street signs which shall include

- Posted Speed limit signs (No less than 15 M.P.H.)
- Posted Stop signs
- Posted School bus stop signs
- Center line markings on pavement
- Crosswalks and any other markings deemed necessary for the safety and well being of all students within the community
- No parking along streets serviced during designated school bus service times

Subdivision roadways and streets must be designed in a way to allow ingress and egress by the school bus without the school bus negotiating a turn that involves backing in any way.

The Coordinator of Transportation or his designee will work with the President of the Homeowners' Association (or equivalent) or his/her designee to meet and agree on all guidelines and implementation of school bus service. It is strongly recommended that school bus stops be positioned

- At a “common area” within the community or at an intersection within the community.
- With vehicular parking in mind (parents waiting on the school bus while other residents of the community are attempting to maneuver into or out of the community)

- Free from culverts, ditches, drains and other obstructions which could pose a threat of injury

There shall be no more than three school bus stops designated within the community.

The President of the Homeowners' Association (or equivalent) or his/her designee shall communicate with all residents within the community pertinent information pertaining to Jefferson County Schools and the community during the discussion and planning process as well as any discussion which may occur after implementation of school bus service.

The President of the Homeowners' Association (or equivalent) or his/her designee shall communicate with the Jefferson County Schools Department of Transportation any changes in contact information.

Student school bus transportation population within subdivisions is a factor in determining, establishing and maintaining school bus service which is

- High School (grade 9 – 12)                      15 students
- Middle School (grade 6-8)                      10 students
- Elementary School (grade K-5)              8 students
- Emphasis is focused on Elementary school students

Overall student time on bus for the school bus route is also a determining factor in determining and establishing school bus service.

Updates or amendments can be made at any time at the discretion of the Jefferson County Schools Transportation Department and/or the West Virginia School Bus Transportation Department.

Upon completion and compliance of all amenities, it is the responsibility of the Homeowners' Association (or equivalent) to continue to meet all guidelines. If/When the Homeowners' Association fails to meet the above requirements, the privileges of school bus transportation will be discontinued until improvements have been made and requirements are met.



April 12, 2018

Mr. Donnie Fisher,  
President  
Jefferson County Planning Commission  
c/o Jefferson County Office of Planning and Zoning  
PO Box 716  
Charles Town, West Virginia 25414

Dear Mr. Fisher,

The Magnolia Springs Concept Plan presented and approved at the JC Planning Commission meeting April 10, 2018 is not in conformance with the County Zoning Ordinance, specifically Section 4.4 C. Prohibited Uses.

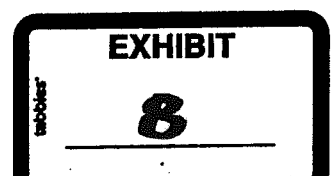
Section 4.4 C Prohibited Uses states:

Any development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.

Applications that violate the ordinance cannot be approved by the Planning Commission(PC). It is exactly the same situation as an application coming before the PC with a setback violation. It is regrettable this non-conformance was not addressed earlier, but the application should never have been brought to the PC for a public workshop and vote. We request that the Planning Commission vote be nullified immediately.

The Jefferson County Historic Landmarks Commission (JCHLC) would be happy to work with the developer to devise a concept plan for Magnolia Springs that would be acceptable and profitable to all parties and protects the historic character of the site and Belvedere, listed on the National Register of Historic Places. We believe that protecting the historic setting and context of a property, including the degree of open space and building density, must always be considered when planning new construction on a historic site. This entails identifying the formal or informal arrangements of buildings on the site, and whether they have a distinctive urban, suburban, or rural character.

If you have any questions or need additional information, please feel free to contact me.



Sincerely,



Martin Burke

Chair

Jefferson County Historic Landmarks Commission

P.O. Box 23

Charles Town, WV 25414

cc: Nathan Cochran, Attorney, JC Civil Division (via email)  
Chad Wallen, Gordon (via email)  
Hunter Wilson, NLP Finance, LLC (via email)

April 14, 2018

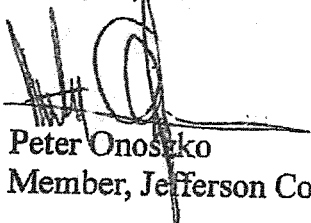
Mr. Donnie Fisher  
President,  
Jefferson County Planning Commission  
c/o Jefferson County Office of Planning and Zoning  
PO Box 716  
Charles Town, West Virginia 25414

Dear Mr. Fisher:

As members of the Jefferson County Planning Commission we the undersigned request an expeditious reconsideration of the decision taken by the Planning Commission on April 10, 2018 regarding the Magnolia Springs sub-development for the reasons stated in the enclosed letter from Mr. Martin Burke, Chair, Jefferson County Historic Landmarks Commission. It is our opinion that this matter be addressed as soon as practicable so as to allow the developer and the Historic Landmarks Commission to work something out amicably that would be to the benefit of the project while simultaneously preserving the character of Belvedere, a nationally recognized historic place in our county. We recommend that this reconsideration be placed on the agenda for May 1, 2018.

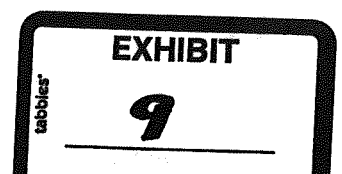
Respectfully,

  
Jack Hefestay  
Member, Jefferson County Planning Commission

  
Peter Onosko  
Member, Jefferson County Planning Commission

encl

cc: Jenny Brockman  
Martin Burke



April 25, 2018

Jefferson County Planning Commission  
c/o Jefferson County Office of Planning & Zoning  
PO Box 716; Charles Town, WV 25414

Subject: Magnolia Springs Concept Plan (Jefferson County PC File 18-05)

Dear Planning Commission Members,

**Request**

**On April 10<sup>th</sup>, the Planning Commission passed a motion to approve the concept plan for Magnolia Springs. The Applicant requests the Planning Commission maintain their prior motion as it was in accordance with Jefferson County regulations and represents a reasonable approach to the Belvedere house.**

**Planning Commission Meeting, April 10<sup>th</sup>, 2018**

The applicant presented the Magnolia Springs Concept Plan at the April 10<sup>th</sup> Public Hearing and discussed the historical significance of the Belvedere house as it is classified within the National Register of Historic Places Inventory – Nomination Form prepared by the Historic Preservation Unit of the WV Department of Culture and History dated November 18, 1983. Under section 3 [Classification] it is clearly shown the category is for buildings and not the site. Although there is reference to a parcel (approximately 10 acres) and views, the architecture of the house is obviously the single most important historical factor as it relates to the nomination. The applicant simply stated that the Belvedere house would be preserved on a 5-acre residue parcel.

The nomination form was not presented in its entirety to hide or mislead the Planning Commission in any way but to emphasize the importance of preserving the existing house within the best features of the property. The vista view as referenced in 1983 is not the same view in 2018 with construction of two (2) major roadways (Route 340 & Route 9) located directly in this viewshed.

**Regulatory Overview**

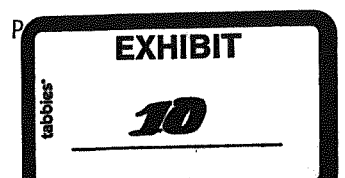
In response to the Jefferson County Historic Landmarks Commission letters we offer the following response as it relates to applicable Federal, State, and Local rules and regulations and how they apply to properties on the National Register of Historical Places.

**1. Federal Regulations**

It is very important to understand how Federal Law protects property owners of historic places and what restrictions, rules, and regulations apply. The following citation is taken from the National Park Service website.

*"Under Federal Law, the listing of a property in the National Register places no restrictions on what a non-federal owner may do with their property up to and including destruction, unless the property is involved in a project that receives Federal assistance, usually funding or licensing/permitting.  
<http://www.nps.gov/nr/regulations.htm> "*

**The property owners have not received any Federal assistance, funding or licensing/permitting.**



## 2. West Virginia Regulations

The role and/or authority of the West Virginia State Historic Preservation Office defined below:

*"The West Virginia State Historic Preservation Office (SHPO) is dedicated to preserving and protecting our state's important cultural resources. One way we achieve this is by working with government agencies as projects are developed. When a project requires a government license or permit or makes use of government money, federal and state laws require that the project be sent to the SHPO for review. Once submitted, the SHPO staff determines how that project will affect West Virginia's historic resources and provides comments to the government agency. After the SHPO receives a project for review, the office has 30 days to comment on the project's effects to historic resources. **These laws DO NOT apply to private owners of historic properties who are planning alterations to their property unless they are receiving state or federal funds, permits or licenses for the property, or are applying for a state or federal income tax credit.**"*

## 3. Jefferson County Regulations

The role of the Jefferson County Historic Landmarks Commission as defined by Jefferson County Zoning and Subdivision Ordinances.

### Jefferson County Zoning Ordinance

Section 3.4.D.3 – **Historic Preservation is not to infringe on the property owner's rights.** *The Jefferson County Historic Landmarks Commission is encouraged to protect historic sites in Jefferson County by raising capital to purchase historic sites and battlefields at fair market value.*

- Emphasis added above. The development of the property is clearly within the rights of the applicant, it is zoned residential growth and the proposed uses are permitted.
- Per the citation provided from federal regulation there are no restriction on what the owner may do with their property, including its destruction.
- Per the citation provided from WV, the State Historic Preservation Officer does not have authority over the proposed project.
- This section of the Zoning Ordinance was adopted after the submission of the concept plan.

Section 3.4.D.4 - **This Ordinance encourages the preservation of historic buildings and historic sites by working with the landowner on a voluntary basis.** *All historic sites in Jefferson County are classified by their Category of Importance, used to determine the level of protection afforded that site. The categories are as follows:*

- Emphasis added above, cooperation with the Historic Landmarks Commission is voluntary.
- This section of the Zoning Ordinance was adopted after the submission of the concept plan.

The Historic Landmarks Commission sent a second letter in which they state the approval of the concept plan is invalid since it would destroy the historical character of the property.

- The Zoning Ordinance intentionally set a very high bar when assessing impacts to historical properties. The use must **destroy** the historic character.
- The applicant acknowledges that Belvedere will be impacted by the development, but there is no interpretation of the concept plan that could meet a reasonable definition of destroy. The nomination is based on a structure, not a site.

*Section 4.4 - Any development which would **destroy** the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.*

- The applicant acknowledges the historic resource will be impacted by the proposed development. However, there is no case that can be made to suggest that the building and its historical relevance will be destroyed by the proposed development.
- The applicant directs County Staff to the classification submitted with the national historic register. It is a historic building, not a historic district or site. Given that federal law places no restriction on property owners, the reduction of the "nominated property" from 10 acres to 5 acres cannot be construed as destroying the historical character of a property.

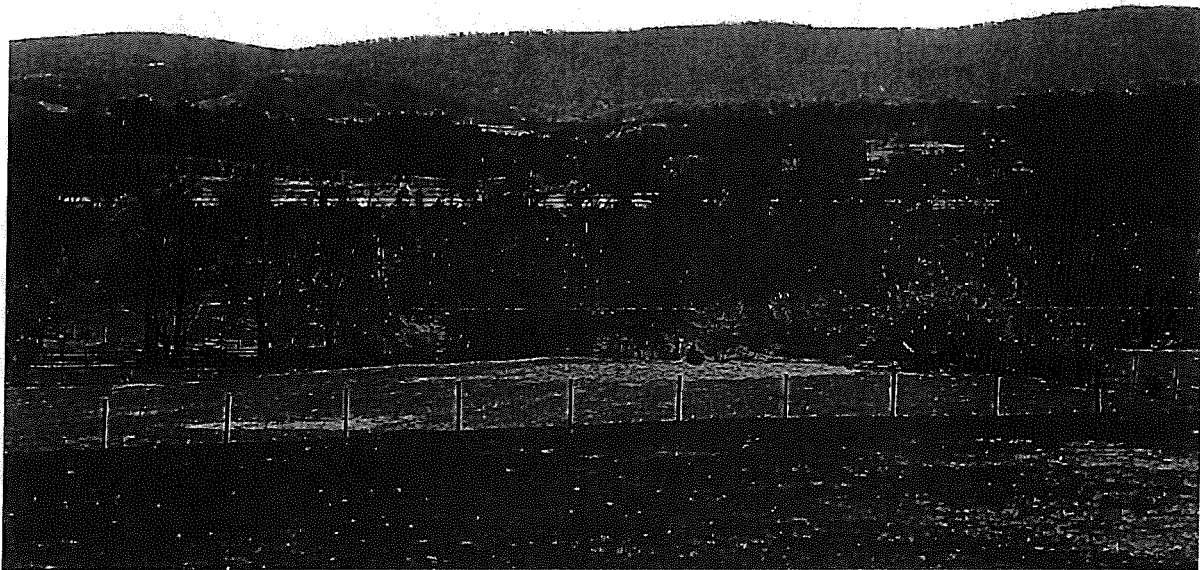
*Section 4.6.G.1 Protection Radius - Uses permitted within the Protection Radius **include Residential Uses as listed in Appendix C**, barns, and residential accessory structures as defined by this Ordinance.*

- Emphasis added, the use for the proposed development is single family houses, which are found under residential uses in Appendix C.
- The Protection Radius does not apply to the application.

#### **Jefferson County Subdivision Ordinance**

*Section 23.203.C - Jefferson County Historical Landmarks Commission. This body shall submit a report and findings on whether historical resources exist on the site of the proposed subdivision of site development. If there are, they shall submit findings on whether the proposal **meets the requirement of zoning** with respect to such structures or places at Concept Plan stage.*

- The role of the Historic Landmarks Commission (HLC) is to evaluate whether a Concept Plan meets the requirements of the Zoning Ordinance. The requirements of this ordinance have been stated above.
- The following pertains to the Historic Landmark Commission letter to the Planning Commission.
  - The citation provided by the HLC in relation to viewshed was written in 1983. Since this description was written two major highway projects have been constructed within the houses viewshed, this was ignored by the HLC.
  - The Belvedere nomination form does not list any barns or contributing structures, reference to these buildings was added at the discretion of the HLC.
  - The HLC cites the National Park Service's rehabilitation standards, these do not apply to the property and can be found nowhere in the zoning ordinance.
  - The HLC commission has not followed their mandated role, their review of the proposed subdivision plan reflects their feelings not the requirements of the ordinance.
  - The proposed plan does not impact the architecture of the structure which is the true basis of the registration.



View of 340 Bypass and new Route 9



View from Route 9 Offramp to Belvedere

The design of the Belvedere parcel was a careful exercise based on the existing conditions found in 2018 as opposed to the idealic description of the property included in the National Historic Register nomination form. The view from the house looking towards the east is not what was described in 1983. While the Blue Ridge Mountains still command the distant view, the viewshed close to the house is dominated by car and truck traffic on the Route 340 bypass. Cars are always visable from the front porch with the few exceptions when a stop light on 340 creates a break in the traffic flow. While the cars have in impact on the viewshed, it is the noise from this road that has the greatest impact from the front of the house.

While the front view is heavily impacted by time and progress, the back of the house presents a unique opportunity for preservation of a site with significant landscape architectural importance. The lawn is dominated by majestic white oaks that can live 300 years. The spacing and character of these trees indicate that they are part of the natural forest that once covered Jefferson County and may predate the construction of Belvedere.





The Concept Plan presented to the Planning Commission proposed a 5 acre lot for Belvedere that included the best features of the property. The following description is a comparison of the 10 acre property vs. the 5 acre lot. (note that the 10 acres is not legally defined as a parcel in the Jefferson County Tax Maps)

Southern Property Line – this property line is moved to the south to include additional forested area and mature trees. Increasing the land to the south enhances the character and privacy of the Belvedere parcel.

Eastern Property Line – this property line moved 400' to the west, decreasing the front yard area by approximately 2.9 acres (0.9 acres of this area will be contained in a proposed park). This area is significantly lower than Belvedere, the preliminary plat will be graded to limit the visual impact of the houses in this area. The viewshed from the Belvedere house to the Blue Ridge Mountains will remain.

Western Property Line – The property line moved 250' to the west, increasing the size of the Belvedere parcel by approximately 2 acres. This area is heavily wooded and contains numerous trees that likely date back to the construction of Belvedere. The connection between these trees and the house is an unbroken line that represents significant historical context. If the 10 acre parcel was maintained this area would be developed as residential lots.

Northern Property Line – the property line is moved approximately 250' closer to the house, although the distance varies since the parcel lines are not parallel. The movement of this line results in a decrease of 4.6 acres. Much of this land is not visible from the existing house and has little if any contribution to the historic viewshed.

Summary – the applicant acknowledges the importance of the future Belvedere parcel. The parcel lines described in 1983 were selected for convenience, an existing farm lane, a old fence, etc, resulting in a 10 acre parcel. If the road or fence had been in a different location it may have been a 5 acre parcel.

The Concept Plan places emphasis on preserving native white oaks in a historical landscape opposed to a viewshed of the Route 340 bypass. The decrease in parcel size is largely associated with reduction of land to the north of Belvedere, an area that is not visible from the house and would not have been visible in 1983. The Concept Plan places value on stately open space over an impaired viewshed. The development of the Preliminary Plat will seek to further reduce visual impacts to Belvedere through site grading and landscaping.

There is no case to be made that this Concept Plan is destroying a historic resource. Creating the 5 acre parcel in it's proposed configuration will preserve the more pristine historic landscape as it exists today. The applicant is not violating any Federal, State, or Local regulatory requirements and are fully within their rights to develop this property.

Sincerely,  
GORDON



Chad Wallen, PLA  
Project Manager

## Magnolia Springs

### Statement of Facts

June 4, 2018

- 02/07/2018: Pre-Proposal Conference meeting with Jefferson County Department of Engineering, Planning, & Zoning
- 02/13/2018: Pre-Proposal Conference Memorandum issued by Jefferson County Office of Planning and Zoning (JCPZ)
- 02/21/2018: Concept Plan and supporting documents submitted to JCPZ
- 02/27/2018: Concept Plan deemed sufficient and complete by JCPZ
- 02/28/2018: Concept Plan 2<sup>nd</sup> submission and comment response letter submitted to JCPZ
- 03/20/2018: Four (4) Waiver Applications submitted to JCPZ
- 04/03/2018: Date of letter from the Jefferson County Historic Landmarks Commission (HLC) commenting on the Magnolia Springs Concept Plan
- 04/10/2018: Jefferson County Planning Commission (JCPC) meeting and public hearing for Concept Plan Public Workshop and waiver requests. The JCPC approved the Concept Plan with conditions and all four (4) waiver applications
- 04/11/2018: HLC meeting minutes where decision to write second letter was made.
- 04/12/2018: Date of letter from HLC stating that the Concept Plan is not in conformance with the County Zoning Ordinance (Section 4.4.C)
- 04/14/2018: Date of letter from Planning Commission members Jack Hefestay and Peter Onoszko requesting reconsideration of the JCPC decision on the approved Concept Plan (letter received by JCPZ on 04/16/2018)
- 04/25/2018: Letter from Applicants representative (Chad Wallen) to the JCPC in response to the HLC letter dated 04/12/2018 and the Hefestay/Onoszko letter
- 04/25/2018: Jefferson County Zoning Administrator Memo of written determination that Section 4.4C of the County Zoning Ordinance does not apply to the Magnolia Springs development
- 05/01/2018: JCPC meeting including discussion on Magnolia Springs Concept Plan approval. Motioned made to maintain previous approval with condition limiting adjacent homes to one (1) level
- 05/07/2018: HLC meeting where the decision to appeal was made
- 05/24/2018: HLC submits appeal to the Board of Zoning Appeals



# JEFFERSON COUNTY, WEST VIRGINIA

Office of Planning and Zoning  
116 East Washington Street, 2<sup>nd</sup> Floor  
P.O. Box 716  
Charles Town, WV25414

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

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

---

---

## MEMO

**TO: Jefferson County Planning Commission**  
**FROM: Alexandra Beaulieu, Zoning Administrator**  
**DATE: April 25, 2018**  
**RE: Section 4.4 – Prohibited Uses**

---

---

In response to Mr. Burke's letter on behalf of the Historic Landmarks Commission, dated April 12, 2018, as the Zoning Administrator, I am providing a written determination regarding the applicability of Section 4.4C Prohibited Uses in the Zoning Ordinance to the proposed Magnolia Springs Subdivision. Section 3.4A of the Zoning Ordinance authorizes the Zoning Administrator to administer, enforce and interpret the Ordinance as required by law.

Section 4.4C Prohibit Uses states,

Any development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.

I have determined that Section 4.4C of the Zoning Ordinance does not apply to the proposed Magnolia Springs Subdivision. Section 4.4C is ambiguous and does not define the criteria for "historical character of a property" nor does it clarify what is meant by "destruction of".

The letter from the Historic Landmarks Commission does not address specifically how the proposed subdivision would destroy the historical character of the property; therefore, Staff did not have any criteria to consider when reviewing the Concept Plan.

Further, at the time that Magnolia Springs initially submitted their plans to our Office, the Zoning Ordinance did not contain any requirements for Historic Preservation. When referencing Federal Regulations for historic properties, there is nothing prohibiting development of a property nor is there anything prohibiting the demolition of a historic structure (see attached Section 60.2).

The Belvedere Property is in the Residential Growth zoning district and has been identified for future development on the Future Land Use Guide. The proposed Magnolia Springs appears to comply with the site development standards of the Zoning Ordinance in effect at the time of application with regards to density.

Any member of the public may appeal the Planning Commission's decision to Circuit Court within 30 days. Legal has upheld that the 30 days starts after the minutes are approved; therefore, the 30 day timeframe for an appeal of the Planning Commission's decision begins May 1.

Alternatively, pursuant to Section 6.3 of the Zoning Ordinance and in accordance with the Board of Zoning Appeals' Rules of Procedures, any member of the public may appeal my determination regarding Section 4.4C of the Zoning Ordinance to the Board of Zoning Appeals within 30 days of the date of this letter.

EXHIBIT

11

## **Sec. 60.2 Effects of listing under Federal law.**

The National Register is an authoritative guide to be used by Federal, State, and local governments, private groups and citizens to identify the Nation's cultural resources and to indicate what properties should be considered for protection from destruction or impairment. Listing of private property on the National Register does not prohibit under Federal law or regulation any actions which may otherwise be taken by the property owner with respect to the property.

(a) The National Register was designed to be and is administered as a planning tool. Federal agencies undertaking a project having an effect on a listed or eligible property must provide the Advisory Council on Historic Preservation a reasonable opportunity to comment pursuant to section 106 of the National Historic Preservation Act of 1966, as amended. The Council has adopted procedures concerning, *inter alia*, their commenting responsibility in 36 CFR part 800. Having complied with this procedural requirement the Federal agency may adopt any course of action it believes is appropriate. While the Advisory Council comments must be taken into account and integrated into the decision making process, program decisions rest with the agency implementing the undertaking.

(b) Listing in the National Register also makes property owners eligible to be considered for Federal grants-in-aid for historic preservation.

(c) If a property is listed in the National Register, certain provisions of the Tax Reform Act of 1976 as amended by the Revenue Act of 1978 and the Tax Treatment Extension Act of 1980 may apply. These provisions encourage the preservation of depreciable historic structures by allowing favorable tax treatments for rehabilitation, and discourage destruction of historic buildings by eliminating certain otherwise available Federal tax provisions both for demolition of historic structures and for new construction on the site of demolished historic buildings. Owners of historic buildings may benefit from the investment tax credit provisions of the Revenue Act of 1978. The Economic Recovery Tax Act of 1981 generally replaces the rehabilitation tax incentives under these laws beginning January 1, 1982 with a 25% investment tax credit for rehabilitations of historic commercial, industrial and residential buildings. This can be combined with a 15-year cost recovery period for the adjusted basis of the historic building. Historic buildings with certified rehabilitations receive additional tax savings by their exemption from any requirement to reduce the basis of the building by the amount of the credit. The denial of accelerated depreciation for a building built on the site of a demolished historic building is repealed effective January 1, 1982. The Tax Treatment Extension Act of 1980 includes provisions regarding charitable contributions for conservation purposes of partial interests in historically important land areas or structures.

(d) If a property contains surface coal resources and is listed in the National Register, certain provisions of the Surface Mining and Control Act of 1977 require consideration of a property's historic values in the determination on issuance of a surface coal mining permit.

**From:** Smith, Jeffrey S  
**To:** [Alexandra Beaulieu](mailto:abeaulieu@jeffersoncountywv.org)  
**Cc:** [Brennan, Jennifer L](mailto:Jennifer.L.Brennan@wv.gov)  
**Subject:** RE: Belvedere - National Register of Historic Places  
**Date:** Monday, April 16, 2018 12:13:16 PM

---

Alex,

If you read over section ten (10) of the [nomination](#), you'll see that the nominated parcel includes ten (10) acres as well as the historic building. If you read the final paragraphs in Section eight (8), you'll see that the acreage is historically associated with the building, and that is why it was included as part of the National Register-listed resource. With historic farms like Belvedere, there is often a larger parcel of land - beyond the immediate grounds - that is associated with the resource. So, the confirmation that you seek is found within the nomination.

The "building" resource type that you mentioned is simply a category (one of five resource types) that the NPS uses to classify the primary resource, which is Belvedere.

Jeff Smith  
Structural Historian  
National Register and Architectural Survey Coordinator  
WV State Historic Preservation Office

**From:** Brennan, Jennifer L  
**Sent:** Monday, April 16, 2018 11:07 AM  
**To:** Alexandra Beaulieu <[abeaulieu@jeffersoncountywv.org](mailto:abeaulieu@jeffersoncountywv.org)>  
**Cc:** Smith, Jeffrey S <[Jeffrey.S.Smith@wv.gov](mailto:Jeffrey.S.Smith@wv.gov)>  
**Subject:** RE: Belvedere - National Register of Historic Places

Alexandra

This is more a question for our National Register Coordinator, Jeff Smith. I have copied him on this email so hopefully he can clear that up.

Jennifer

Jennifer Brennan  
Structural Historian  
West Virginia State Historic Preservation Office  
304-558-0240 Ext. 138  
[Jennifer.L.Brennan@wv.gov](mailto:Jennifer.L.Brennan@wv.gov)

**From:** Alexandra Beaulieu [<mailto:abeaulieu@jeffersoncountywv.org>]  
**Sent:** Monday, April 16, 2018 10:54 AM  
**To:** Brennan, Jennifer L <[Jennifer.L.Brennan@wv.gov](mailto:Jennifer.L.Brennan@wv.gov)>  
**Subject:** Belvedere - National Register of Historic Places

Good morning Jennifer,

I was wondering if you could help clarify something for me.

We have a proposed development processing through our Office and the development includes a historic structure (Belvedere). We were informed the structure was the only resource on the National Register; however, the nomination form describes ten acres surrounding the structure. How can our Office confirm if the acreage is included on the register or if it truly is only the structure, as the applicant described to our Office?

The Resource Type just says "Building" which is why we assumed it was just the structure, as the applicant had informed us. But, reading the nomination form, I wonder if there wasn't more included.

<https://npgallery.nps.gov/NRHP/AssetDetail?assetID=d145b562-144e-40eb-9c35-1ffc35f08801>

I appreciate your assistance.

Alex

Alexandra Beaulieu  
Zoning Administrator  
Jefferson County Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

United States Department of the Interior  
National Park Service

For NPS use only  
received **DEC 16 1983**  
date entered

**National Register of Historic Places  
Inventory—Nomination Form**

See instructions in *How to Complete National Register Forms*  
Type all entries—complete applicable sections

**1. Name**

historic Belvedere

and/or common

**2. Location**

street & number 811 Belvedere Farm Drive \_\_\_ not for publication

city, town Charles Town vic.  vicinity of

state West Virginia code 54 county Jefferson code 037

**3. Classification**

Category	Ownership	Status	Present Use	
<input type="checkbox"/> district	<input type="checkbox"/> public	<input checked="" type="checkbox"/> occupied	<input checked="" type="checkbox"/> agriculture	<input type="checkbox"/> museum
<input checked="" type="checkbox"/> building(s)	<input checked="" type="checkbox"/> private	<input type="checkbox"/> unoccupied	<input type="checkbox"/> commercial	<input type="checkbox"/> park
<input type="checkbox"/> structure	<input type="checkbox"/> both	<input type="checkbox"/> work in progress	<input type="checkbox"/> educational	<input checked="" type="checkbox"/> private residence
<input type="checkbox"/> site	<b>Public Acquisition</b>	<b>Accessible</b>	<input type="checkbox"/> entertainment	<input type="checkbox"/> religious
<input type="checkbox"/> object	<u>N/A</u> in process	<input checked="" type="checkbox"/> yes: restricted	<input type="checkbox"/> government	<input type="checkbox"/> scientific
	<input type="checkbox"/> being considered	<input type="checkbox"/> yes: unrestricted	<input type="checkbox"/> industrial	<input type="checkbox"/> transportation
		<input type="checkbox"/> no	<input type="checkbox"/> military	<input type="checkbox"/> other:

**4. Owner of Property**

name Nancy Wilson Truettner

street & number 811 Belvedere Farm Drive

city, town Charles Town  vicinity of state West Virginia

**5. Location of Legal Description**

courthouse, registry of deeds, etc. Jefferson County Courthouse

street & number George and Washington Streets

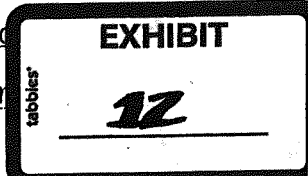
city, town Charles Town state West Virginia

**6. Representation in Existing Surveys**

Historic Resource Survey, Charles Town  
title By-Pass Project, by Paul D. Marshall and Associates has this property been determined eligible?  yes  no  
date 1980  federal  state  county  local

depository for survey records Historic Preservation Unit, WV Dept. of Culture & History

city, town Charleston state West Virginia



## 7. Description

<b>Condition</b>		<b>Check one</b>	<b>Check one</b>
<input checked="" type="checkbox"/> excellent	<input type="checkbox"/> deteriorated	<input type="checkbox"/> unaltered	<input checked="" type="checkbox"/> original site
<input checked="" type="checkbox"/> good	<input type="checkbox"/> ruins	<input checked="" type="checkbox"/> altered	<input type="checkbox"/> moved date _____
<input type="checkbox"/> fair	<input type="checkbox"/> unexposed		

### Describe the present and original (if known) physical appearance

The stately mansion "Belvedere," sits at the end of tree shaded Belvedere Farm Drive, outside of Charles Town, Jefferson County, West Virginia, commanding a majestic, panoramic view that has remained virtually unchanged since the farm came into existence in the 18th century.

The Belvedere Mansion as we find it today is a composite of the original house believed to have been built about 1807 by Magnus Tate II, and a larger house built in 1824 by Magnus' son, William. The original smaller house is generally referred to as the kitchen house. Thomas Willis joined the two units together in 1939 although there is no opening between spaces on the second floor. During this work, the remains of a wood sill were found embedded in a masonry foundation, suggesting an earlier log building on the site of the kitchen house.

Both units of the building are designed in the Federal style. The 1807 unit is two-story constructed with an exterior of hand-molded brick. American common brick coursing was used for the north, south, and west facades. Flemish bond coursing is on the east facade. The existing entrance to the kitchen building is a doorway on the north side which is flanked by side lights and has an ornamental transom above. A circular window is located in the gable end above the second floor window. The west facade has a shed roof porch with a dentiled architrave supported by four square wood posts. One interior chimney interrupts the standing seam metal roof of the building. The roof of the original kitchen building is a gable type similar to the earlier Georgian style. The windows are six over six light sash with louvered shutters.

The original kitchen house was about 20 feet wide and 32 feet long with two rooms on each floor and a center chimney serving fireplaces in each room. The 1939 renovation added space to the north end of the building to facilitate the connection of the two buildings and provide bath facilities.

The main section of the house, built circa 1824, is also two stories in height constructed with an exterior pressed brick using Flemish bond on the front and American Common on the north, east, and south. An important feature of both units of the house is a well preserved example of brick corbeled dentil cornice work. Both units of the house rest on a random coursed limestone foundation. The west entry is an excellent example of Federal style architectural detail. The podium entrance has four Doric columns all connected with a wood railing. The door is flanked by sidelights and has an ornamented transom. Three window openings are balanced on the second level with six over six lights and louvered shutters. The center window is tripart aligned above the entrance door. Two attic dormers interrupt the metal roof on the west elevation and all window openings are double sash, six over six lights. The north chimney is inside the north end of the house and the south chimney extends to the outside of the south wall. The 1824 building has a low-pitch hip type roof design typical of the Federal architectural period. The main unit measures approximately 49' x 24' with essentially a "two over two" arrangement and center stair hall between rooms on both floors. Except for a second floor bath located at the end of what was originally the center hall, the original room arrangements are basically unchanged. A small bath room, added in 1978, is located at the point where the two buildings intersect.

Belvedere is a property whose architectural significance and pristine setting make it one of Jefferson County's most noteworthy landmarks.

## 8. Significance

Period	Areas of Significance—Check and justify below			
<input type="checkbox"/> prehistoric	<input type="checkbox"/> archeology-prehistoric	<input type="checkbox"/> community planning	<input type="checkbox"/> landscape architecture	<input type="checkbox"/> religion
<input type="checkbox"/> 1400-1499	<input type="checkbox"/> archeology-historic	<input type="checkbox"/> conservation	<input type="checkbox"/> law	<input type="checkbox"/> science
<input type="checkbox"/> 1500-1599	<input checked="" type="checkbox"/> agriculture	<input type="checkbox"/> economics	<input type="checkbox"/> literature	<input type="checkbox"/> sculpture
<input type="checkbox"/> 1600-1699	<input checked="" type="checkbox"/> architecture	<input type="checkbox"/> education	<input type="checkbox"/> military	<input type="checkbox"/> social/ humanitarian
<input type="checkbox"/> 1700-1799	<input type="checkbox"/> art	<input type="checkbox"/> engineering	<input type="checkbox"/> music	<input type="checkbox"/> theater
<input checked="" type="checkbox"/> 1800-1899	<input type="checkbox"/> commerce	<input type="checkbox"/> exploration/settlement	<input type="checkbox"/> philosophy	<input type="checkbox"/> transportation
<input type="checkbox"/> 1900-	<input type="checkbox"/> communications	<input type="checkbox"/> industry	<input checked="" type="checkbox"/> politics/government	<input checked="" type="checkbox"/> other (specify) local history
	<input type="checkbox"/> invention			

Specific dates 1807;1824 Builder/Architect unknown

### Statement of Significance (in one paragraph)

"Belvedere," located in a pristine rural setting near Charles Town in Jefferson County, West Virginia, is significant as a fine example of Federal style architecture in a rural area.<sup>1</sup> It is also significant as home to prominent Jefferson County families, particularly the well known Tate family.<sup>2</sup>

### Explanatory Notes

1. "Belvedere," meaning "beautiful view" is situated in one of the most awe inspiring rural settings in West Virginia. From the front porch of "Belvedere" one has an unobstructed view of an immense estate of gently rolling fields to the Blue Ridge Mountains in the distance. From "Belvedere" this vista extends to include four counties, Jefferson County, West Virginia, Washington County, Maryland, and Clarke and Loudoun Counties, Virginia. Although its architectural style and detailing is addressed in Part 7, the Description, it should be noted that "Belvedere" is a significant example of two Federal style building units that are situated in such a manner as to render them architecturally unique in this region of West Virginia.

2. Evidence indicated that the Tate family, a prominent one in local, state, and even national affairs, occupied the present site of "Belvedere" as early as the 1760's. Magnum Tate III is known to have been born there in 1767. The original structure was probably of log construction, though nothing of it remains. The first unit of the present "Belvedere" mansion was constructed in 1807 by Magnus Tate II (1732-1808), who was prominent in the organization of the city of Charles Town and served on its first board of trustees (1787). Of the four sons of Magnus Tate II, all of them born and reared at Belvedere, three of them rose to prominence. George Tate was twice (1803, 1804) elected to represent Jefferson County in the Virginia Assembly. William Tate (1776-1818), who inherited "Belvedere" (then spelled "Belvidere") from his father in 1808, was a member of the first organized bar of Jefferson County, and, like his brother, served two terms (1809, 1812) in the Virginia Assembly. Magnus Tate III (1767-1823) was the most prominent of the three. He served seven terms in the Virginia Assembly (1797, 1798, 1799, 1802, 1803, 1809, and 1810), was twice High Sheriff of Berkeley County, and from 1815 to 1817 was a member of the U.S. House of Representatives.

After the death of William Tate, in 1818, the "Belvedere" estate, one of Jefferson County's largest farms, passed to his son George Tate II, Abigail Humphreys Tate, continued to reside there until her death in 1862. In 1824 the second (now the main section) of the house was constructed, in similar style to the 1807 building. During the Civil War, it is recorded, a Confederate raiding party under Capt. R. Preston Chew, left their horses at "Belvedere" while they raided the Union garrison in Charles Town, making off with 54 prisoners and 75 horses.

"Belvedere" passed from the Tate family to the T. H. Bates family in 1882. Mr. Bates was a prominent Jefferson County attorney. The estate has passed into the prominent Wilson family in the second half of the 20th century and retains not only its architectural

## 9. Major Bibliographical References

Bushong, Millard K., Historic Jefferson County, Carr Publishing Co., Boyce, Va., 1972.  
 Evans, Willis F., History of Berkeley County, West Virginia, privately printed,  
 Martinsburg, WV, 1928.  
 McIlhenny, Hugh Milton, Jr., Some Virginia Families, Stoneburner & Prufer, Staunton, VA,  
 1903.

## 10. Geographical Data

Acreeage of nominated property Approximately 10 acres

Quadrangle name Charles Town, WV

Quadrangle scale 1:24,000

### UTM References

A 

1	8	2	5	4	4	8	0	4	3	5	1	9	6	0
Zone	Easting			Northing										

B 

1	8	2	5	4	5	2	0	4	3	5	2	1	5	0
Zone	Easting			Northing										

C 

1	8	2	5	4	7	2	0	4	3	5	2	0	8	0
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

D 

1	8	2	5	4	6	8	0	4	3	5	1	9	2	0
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

E 

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

F 

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

G 

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

H 

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

**Verbal boundary description and justification** Beginning at the point where the southern fence line intersects the western fence-line hedge at the rear elevation of the Belvedere Mansion; thence 600 feet along the fence-hedge north to where said line intersects the Private Belvedere Farm Road; thence approximately 800 feet east along the southern edge of said

### List all states and counties for properties overlapping state or county boundaries

state	N/A	code	county	code
state		code	county	code

## 11. Form Prepared By

name/title Michael J. Pauley, Historian and Paul D. Marshall, Architect  
Historic Preservation Unit  
 organization WV Dept. of Culture and History date November 18, 1983  
Cultural Center  
 street & number Capitol Complex telephone (304) 348-0240  
 city or town Charleston state West Virginia

## 12. State Historic Preservation Officer Certification

The evaluated significance of this property within the state is:

national  state  local

As the designated State Historic Preservation Officer for the National Historic Preservation Act of 1966 (Public Law 89-665), I hereby nominate this property for inclusion in the National Register and certify that it has been evaluated according to the criteria and procedures set forth by the National Park Service.

State Historic Preservation Officer signature [Signature] date November 18, 1983  
 title State Historic Preservation Officer

For NPS use only

I hereby certify that this property is included in the National Register

Entered in the  
National Register

date 1/12/84

[Signature]  
Keeper of the National Register

Attest:

date

Chief of Registration

United States Department of the Interior  
National Park Service

# National Register of Historic Places Inventory—Nomination Form

For NPS use only  
received 1/14/83  
date entered

Continuation sheet Belvedere

Item number 8

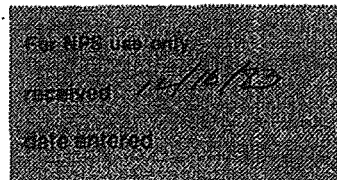
Page 2

ambience but is still the seat of a 273 acre farm that commands, as it always has, on of the area's most pleasant vista's.

Officially declared a Jefferson County Historic Landmark in 197 , "Belvedere" retains an early 19th century character of significance to the region.

**United States Department of the Interior  
National Park Service**

# **National Register of Historic Places Inventory—Nomination Form**



Continuation sheet Belvedere

Item number 9

Page 2

Norris, J. E., History of the Lower Shenandoah Valley, A. Warner & Co.,  
Chicago, Ill., 1890.

**United States Department of the Interior  
National Park Service**

**National Register of Historic Places  
Inventory—Nomination Form**

"Belvedere", Jefferson County, West Virginia

Continuation sheet

Item number 10

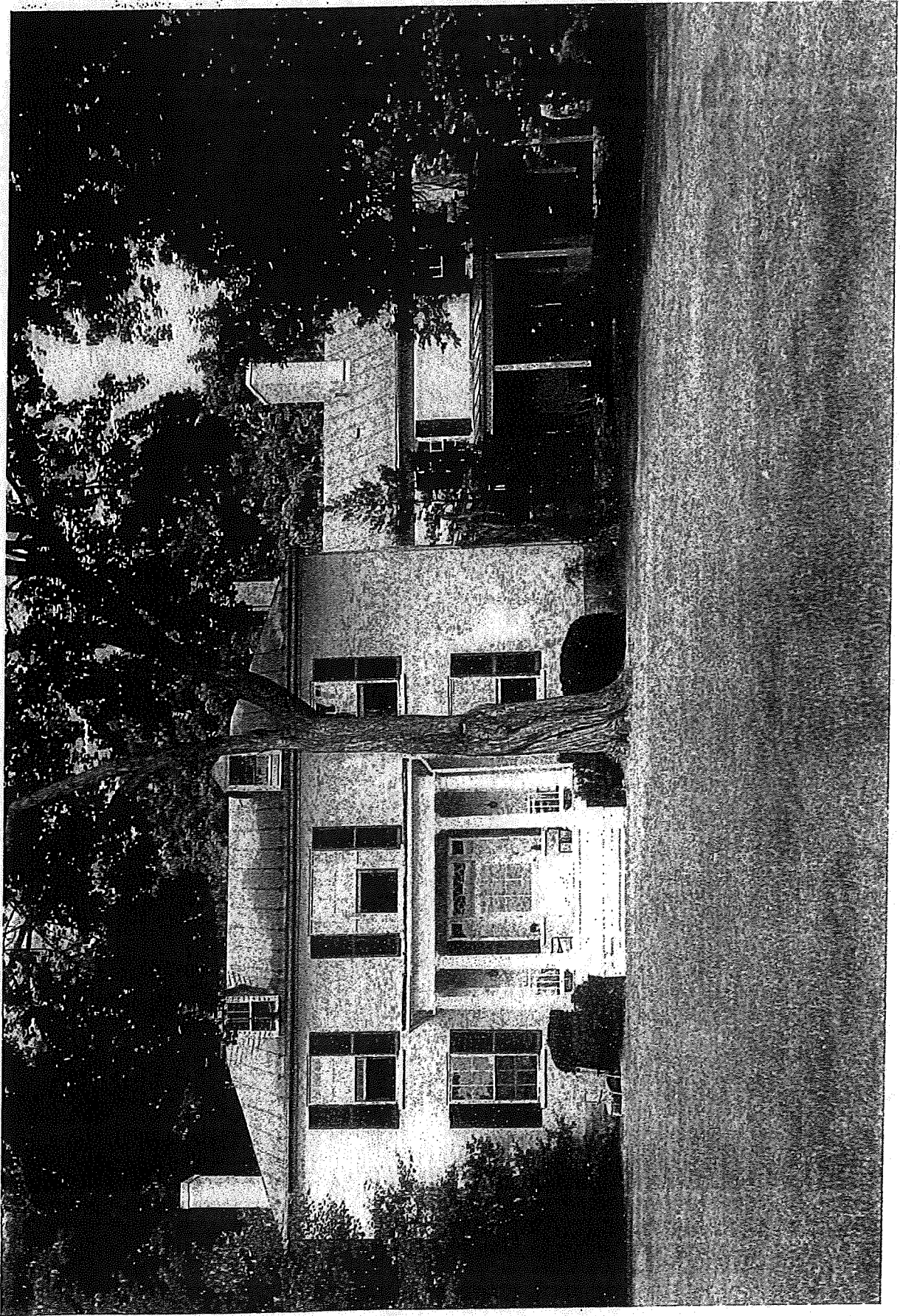
Page 2

For NPS use only  
received *[Signature]*  
date entered

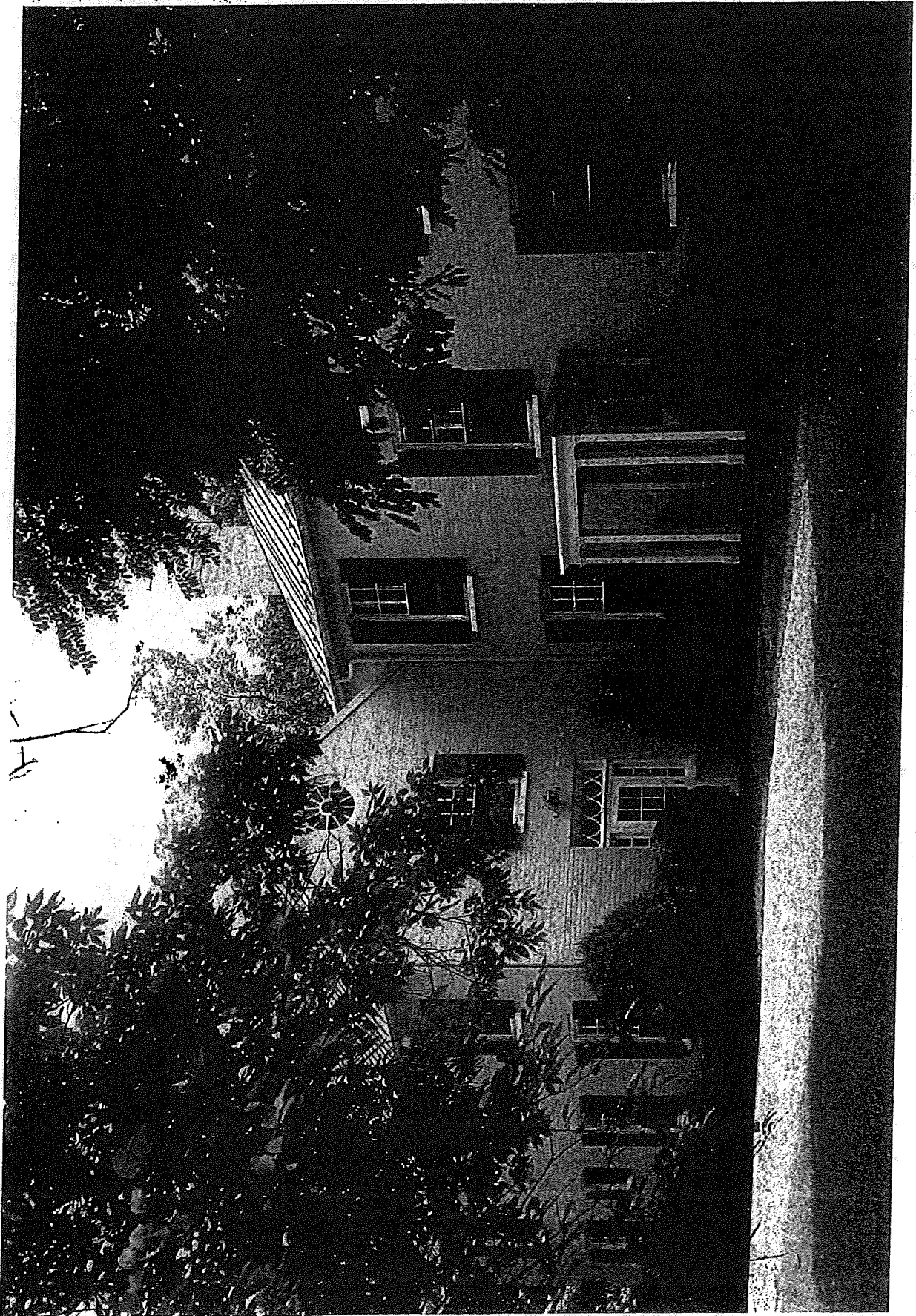
#10 Geographical Data

Verbal boundary description and justification:

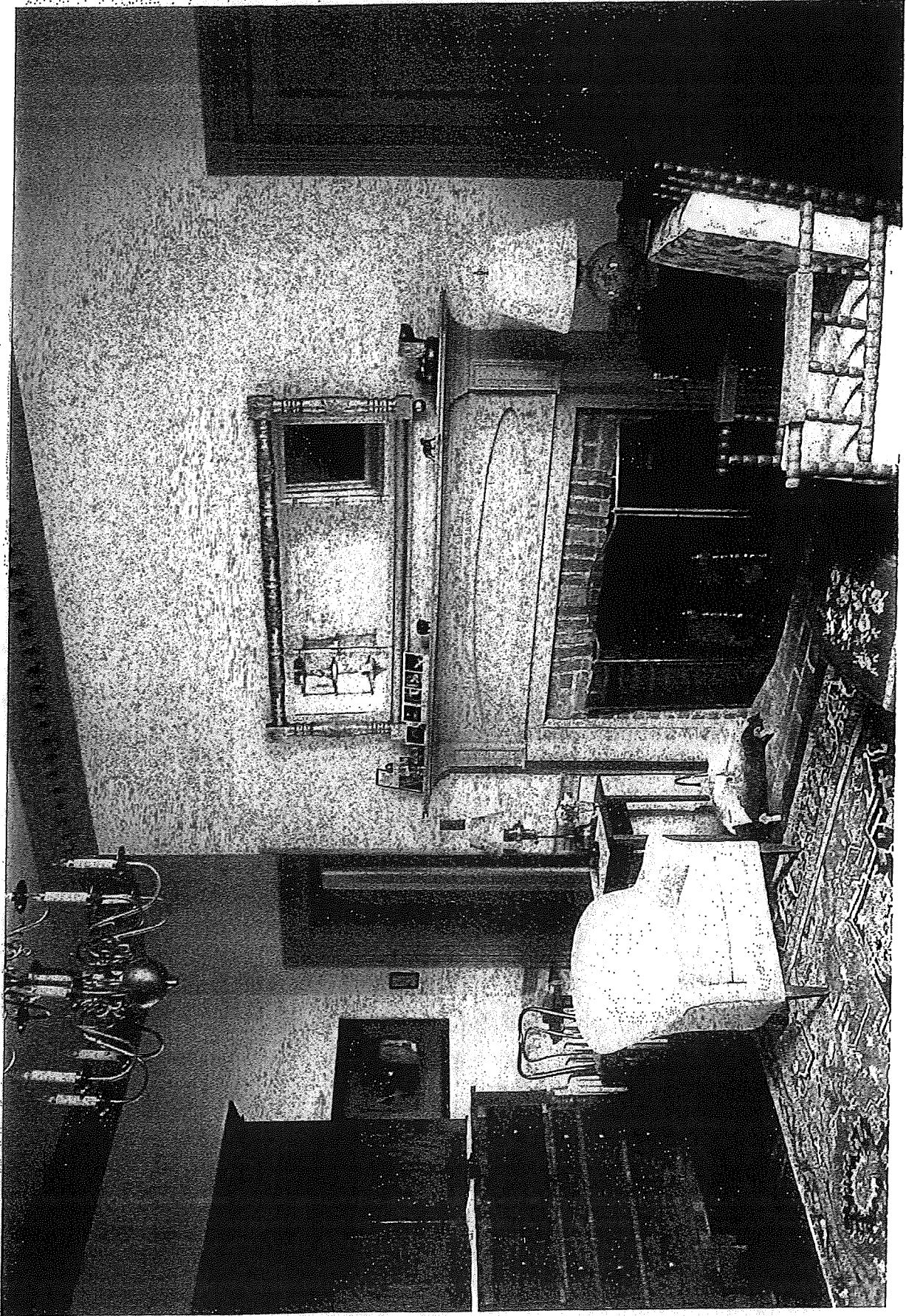
farm road to where it intersects the first western fence line; thence approximately 550 feet south along the fence line to its terminus with the southern fence line; thence approximately 800 feet west along the southern fence line to the point of beginning encompassing approximately 10 acres. This boundary allows for the inclusion of the major portion of the lawn fronting on the principal residence, maintaining the integrity of the vista that, historically, gave its name to the property: "Belvedere" - "beautiful view".



PROPERTY NAME : "Belvedere"  
LOCATION : 811 Belvedere Farm Road, Charles Town,  
vicinity, Jefferson Co., West Virginia  
PHOTO CREDIT : Michael J. Pauley  
DATE OF PHOTO : June, 1983  
NEGATIVE FILED AT : DEPT. OF CULTURE & HISTORY,  
HISTORIC PRESERVATION UNIT, THE CULTURAL CENTER,  
CAPITOL COMPLEX, CHARLESTON, W.VA. 25305  
DESCRIPTION OF PHOTO :  
Front elevation of 1824 section of  
Belvedere mansion.  
DIRECTION OF PHOTO :  
facade facing east  
1 of 6



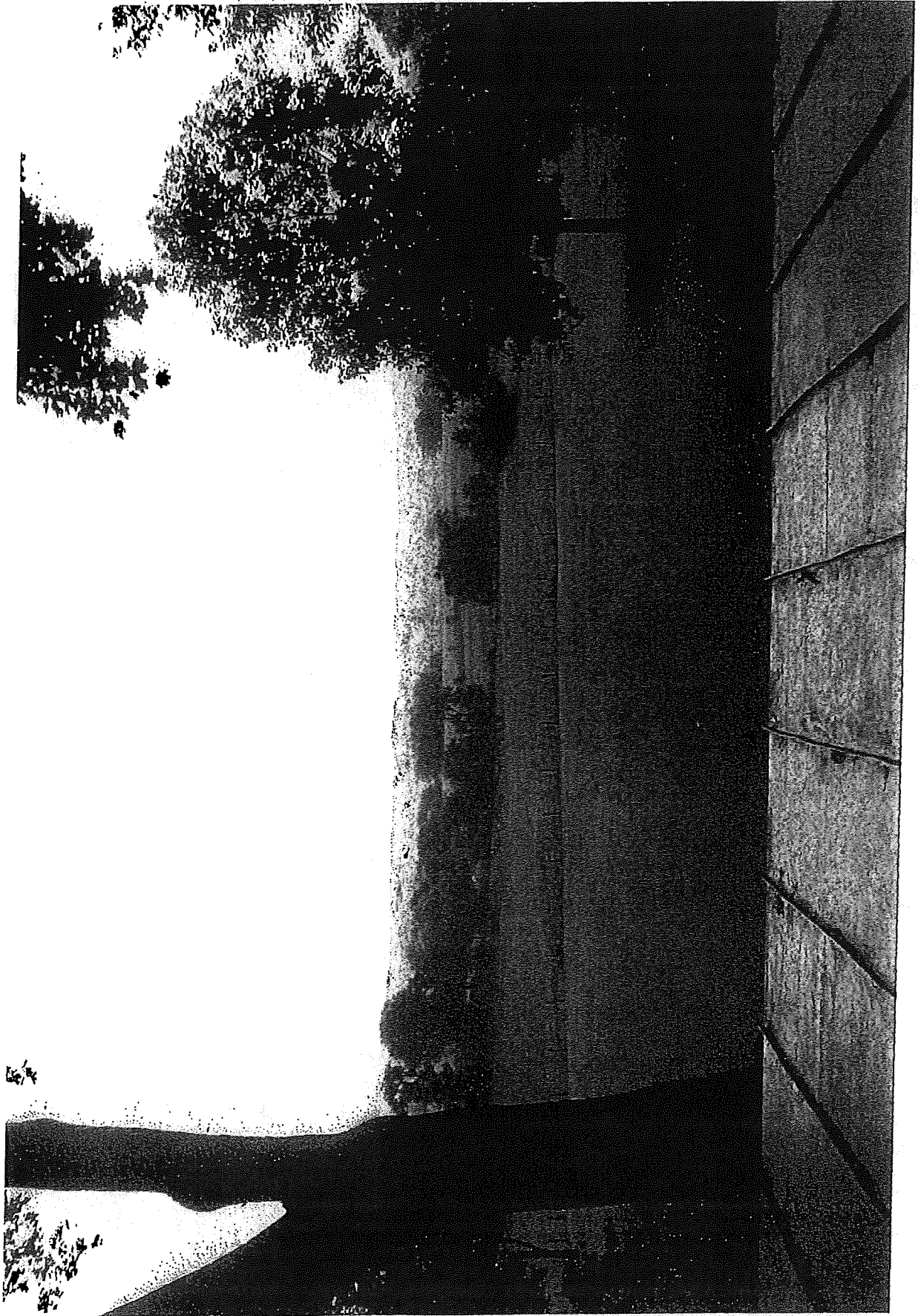
PROPERTY NAME : "Belvedere"  
LOCATION : 811 Belvedere Farm Road, Charles Town  
vicinity, Jefferson Co., West Virginia  
PHOTO CREDIT : Michael J. Pauley  
DATE OF PHOTO : June, 1983  
NEGATIVE FILED AT : DEPT. OF CULTURE & HISTORY,  
HISTORIC PRESERVATION UNIT, THE CULTURAL CENTER,  
CAPITOL COMPLEX, CHARLESTON, W. VA. 25305  
DESCRIPTION OF PHOTO :  
Rear elevation of both 1807 and 1824  
(right) sections of Belvedere mansion  
DIRECTION OF PHOTO :  
facade facing west  
2 of 6



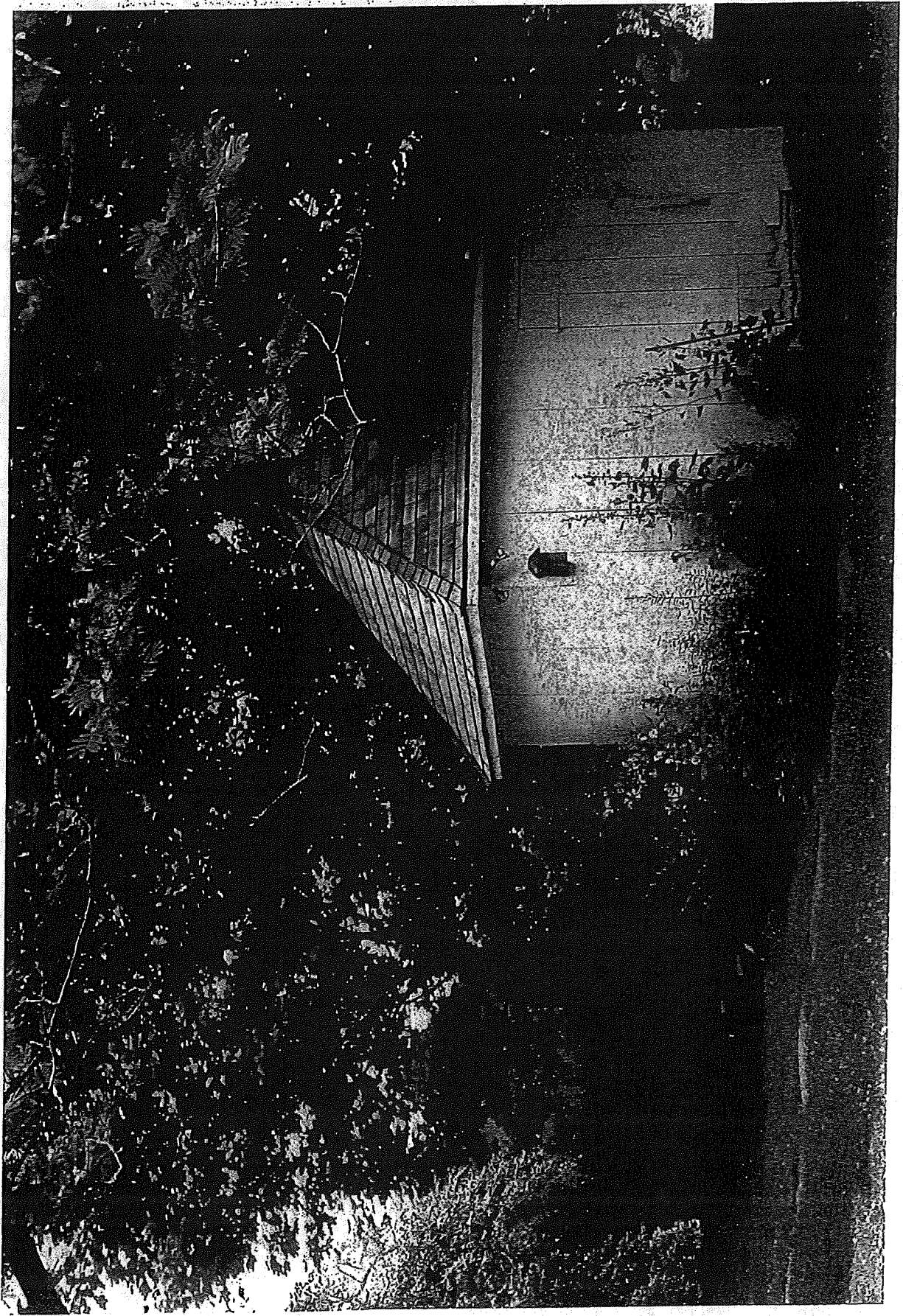
PROPERTY NAME : "Belvedere"  
LOCATION : 811 Belvedere Farm Rd., Charles Town  
vicinity, Jefferson Co., WV  
PHOTO CREDIT : Michael J. Paulley  
DATE OF PHOTO : June, 1983  
NEGATIVE FILED AT : DEPT. OF CULTURE & HISTORY,  
HISTORIC PRESERVATION UNIT, THE CULTURAL CENTER  
CAPITOL COMPLEX, CHARLESTON, W.VA. 25305  
DESCRIPTION OF PHOTO :  
Interior detail...mantle in principal parlor  
in 1824 section of Belvedere mansion  
DIRECTION OF PHOTO :  
facing south



PROPERTY NAME : "Belvedere"  
LOCATION : 811 Belvedere Farm Rd., Charles Town  
vicinity, Jefferson Co., WV  
PHOTO CREDIT : Michael J. Pauley  
DATE OF PHOTO : June, 1983  
NEGATIVE FILED AT : DEPT. OF CULTURE & HISTORY,  
HISTORIC PRESERVATION UNIT, THE CULTURAL CENTER  
CAPITOL COMPLEX, CHARLESTON, W.VA. 25305  
DESCRIPTION OF PHOTO :  
Interior detail: mansion stairway 1st floor  
of 1824 section of Belvedere mansion  
DIRECTION OF PHOTO :  
facing west  
4 of 6



PROPERTY NAME: "Belvedere"  
LOCATION: 811 Belvedere Farm Rd., Charles Town  
vicinity, Jefferson Co., WV  
PHOTO CREDIT: Michael J. Pauley  
DATE OF PHOTO: June, 1983  
NEGATIVE FILED AT: DEPT. OF CULTURE & HISTORY,  
HISTORIC PRESERVATION UNIT, THE CULTURAL CENTER,  
CAPITOL COMPLEX, CHARLESTON, W. VA. 25305  
DESCRIPTION OF PHOTO:  
View of Blue Ridge Mountains, across Belvedere  
Farm from 2nd floor; origin of name "Belvedere"  
DIRECTION OF PHOTO: "beautiful"  
view  
Looking east  
5 of 6



PROPERTY NAME : "Belvedere"  
LOCATION : 811 Belvedere Farm Rd., Charles Town  
VICINITY : Jefferson Co., WV  
PHOTO CREDIT : Michael J. Pauley  
DATE OF PHOTO : June, 1983  
NEGATIVE FILED AT : DEPT. OF CULTURE & HISTORY,  
HISTORIC PRESERVATION UNIT, THE CULTURAL CENTER  
CAPITOL COMPLEX, CHARLESTON, W. VA. 25305  
DESCRIPTION OF PHOTO :  
19th century outbuilding on grounds of  
Belvedere  
DIRECTION OF PHOTO :  
facing north  
6 of 6

The design of the Belvedere parcel was a careful exercise based on the existing conditions found in 2018 as opposed to the idealic description of the property included in the National Historic Register nomination form. The view from the house looking towards the east is not what was described in 1983. While the Blue Ridge Mountains still command the distant view, the viewshed close to the house is dominated by car and truck traffic on the Route 340 bypass. Cars are always visable from the front porch with the few exceptions when a stop light on 340 creates a break in the traffic flow. While the cars have in impact on the viewshed, it is the noise from this road that has the greatest impact from the front of the house.

While the front view is heavily impacted by time and progress, the back of the house presents a unique opportunity for preservation of a site with significant landscape architectural importance. The lawn is dominated by majestic white oaks that can live 300 years. The spacing and character of these trees indicate that they are part of the natural forest that once covered Jefferson County and may predate the construction of Belvedere.



The Concept Plan presented to the Planning Commission proposed a 5 acre lot for Belvedere that included the best features of the property. The following description is a comparison of the 10 acre property vs. the 5 acre lot. (note that the 10 acres is not legally defined as a parcel in the Jefferson County Tax Maps)

**Southern Property Line** – this property line is moved to the south to include additional forested area and mature trees. Increasing the land to the south enhances the character and privacy of the Belvedere parcel.

**Eastern Property Line** – this property line moved 400' to the west, decreasing the front yard area by approximately 2.9 acres (0.9 acres of this area will be contained in a proposed park). This area is significantly lower than Belvedere, the preliminary plat will be graded to limit the visual impact of the houses in this area. The viewshed from the Belvedere house to the Blue Ridge Mountains will remain.

**Western Property Line** – The property line moved 250' to the west, increasing the size of the Belvedere parcel by approximately 2 acres. This area is heavily wooded and contains numerous trees that likely date back to the construction of Belvedere. The connection between these trees and the house is an unbroken line that represents significant historical context. If the 10 acre parcel was maintained this area would be developed as residential lots.

Northern Property Line – the property line is moved approximately 250' closer to the house, although the distance varies since the parcel lines are not parallel. The movement of this line results in a decrease of 4.6 acres. Much of this land is not visible from the existing house and has little if any contribution to the historic viewshed.

Summary – the applicant acknowledges the importance of the future Belvedere parcel. The parcel lines described in 1983 were selected for convenience, an existing farm lane, a old fence, etc, resulting in a 10 acre parcel. If the road or fence line had been in a different location it may have been a 5 acre parcel.

The Concept Plan places emphasis on preserving native white oaks in a historical landscape opposed to a viewshed of the Route 340 bypass. The decrease in parcel size is largely associated with reduction of land to the north of Belvedere, an area that is not visible from the house and would not have been visible in 1983. The Concept Plan places value on stately open space over an impaired viewshed. The development of the Preliminary Plat will seek to further reduce visual impacts to Belvedere through site grading and landscaping.

There is no case to be made that this Concept Plan is destroying a historic resource. Creating the 5 acre parcel in it's proposed configuration will preserve the more pristine historic landscape as it exists today. The applicant is not violating any Federal, State, or Local regulatory requirements and are fully within their rights to develop this property.

Sincerely,  
GORDON

Chad Wallen, PLA  
Project Manager

April 25, 2018

Jefferson County Planning Commission  
c/o Jefferson County Office of Planning & Zoning  
PO Box 716; Charles Town, WV 25414

Subject: Magnolia Springs Concept Plan (Jefferson County PC File 18-05)

Dear Planning Commission Members,

**Request**

On April 10<sup>th</sup>, the Planning Commission passed a motion to approve the concept plan for Magnolia Springs. The Applicant requests the Planning Commission maintain their prior motion as it was in accordance with Jefferson County regulations and represents a reasonable approach to the Belvedere house.

**Planning Commission Meeting, April 10<sup>th</sup>, 2018**

The applicant presented the Magnolia Springs Concept Plan at the April 10<sup>th</sup> Public Hearing and discussed the historical significance of the Belvedere house as it is classified within the National Register of Historic Places Inventory – Nomination Form prepared by the Historic Preservation Unit of the WV Department of Culture and History dated November 18, 1983. Under section 3 [Classification] it is clearly shown the category is for buildings and not the site. Although there is reference to a parcel (approximately 10 acres) and views, the architecture of the house is obviously the single most important historical factor as it relates to the nomination. The applicant simply stated that the Belvedere house would be preserved on a 5-acre residue parcel.

The nomination form was not presented in its entirety to hide or mislead the Planning Commission in any way but to emphasize the importance of preserving the existing house within the best features of the property. The vista view as referenced in 1983 is not the same view in 2018 with construction of two (2) major roadways (Route 340 & Route 9) located directly in this viewshed.

**Regulatory Overview**

In response to the Jefferson County Historic Landmarks Commission letters we offer the following response as it relates to applicable Federal, State, and Local rules and regulations and how they apply to properties on the National Register of Historical Places.

**1. Federal Regulations**

It is very important to understand how Federal Law protects property owners of historic places and what restrictions, rules, and regulations apply. The following citation is taken from the National Park Service website.

*"Under Federal Law, the listing of a property in the National Register places no restrictions on what a non-federal owner may do with their property up to and including destruction, unless the property is involved in a project that receives Federal assistance, usually funding or licensing/permitting.*

*<http://www.nps.gov/nr/regulations.htm> "*

**The property owners have not received any Federal assistance, funding or licensing/permitting.**

## 2. West Virginia Regulations

The role and/or authority of the West Virginia State Historic Preservation Office defined below:

*"The West Virginia State Historic Preservation Office (SHPO) is dedicated to preserving and protecting our state's important cultural resources. One way we achieve this is by working with government agencies as projects are developed. When a project requires a government license or permit or makes use of government money, federal and state laws require that the project be sent to the SHPO for review. Once submitted, the SHPO staff determines how that project will affect West Virginia's historic resources and provides comments to the government agency. After the SHPO receives a project for review, the office has 30 days to comment on the project's effects to historic resources. These laws DO NOT apply to private owners of historic properties who are planning alterations to their property unless they are receiving state or federal funds, permits or licenses for the property, or are applying for a state or federal income tax credit."*

## 3. Jefferson County Regulations

The role of the Jefferson County Historic Landmarks Commission as defined by Jefferson County Zoning and Subdivision Ordinances.

### Jefferson County Zoning Ordinance

Section 3.4.D.3– Historic Preservation is not to infringe on the property owner's rights. The Jefferson County Historic Landmarks Commission is encouraged to protect historic sites in Jefferson County by raising capital to purchase historic sites and battlefields at fair market value.

- Emphasis added above. The development of the property is clearly within the rights of the applicant, it is zoned residential growth and the proposed uses are permitted.
- Per the citation provided from federal regulation there are no restriction on what the owner may do with their property, including its destruction.
- Per the citation provided from WV, the State Historic Preservation Officer does not have authority over the proposed project.
- This section of the Zoning Ordinance was adopted after the submission of the concept plan.

Section 3.4.D.4 - This Ordinance encourages the preservation of historic buildings and historic sites by working with the landowner on a voluntary basis. All historic sites in Jefferson County are classified by their Category of Importance, used to determine the level of protection afforded that site. The categories are as follows:

- Emphasis added above, cooperation with the Historic Landmarks Commission is voluntary.
- This section of the Zoning Ordinance was adopted after the submission of the concept plan.

The Historic Landmarks Commission sent a second letter in which they state the approval of the concept plan is invalid since it would destroy the historical character of the property.

- The Zoning Ordinance intentionally set a very high bar when assessing impacts to historical properties. The use must destroy the historic character.
- The applicant acknowledges that Belvedere will be impacted by the development, but there is no interpretation of the concept plan that could meet a reasonable definition of destroy. The nomination is based on a structure, not a site.

- If the HLC seeks to assert that the resource will be destroyed, the burden of proof is on them. They chose not to speak at the Planning Commission public hearing to make or defend this position. Writing a letter after the completion of the public hearing is malicious given the absence of any evidence that Belvedere will be destroyed.

*Section 4.4 - Any development which would **destroy** the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.*

- The applicant acknowledges the historic resource will be impacted by the proposed development. However, there is no case that can be made to suggest that the building and its historical relevance will be destroyed by the proposed development.
- The applicant directs County Staff to the classification submitted with the national historic register. It is a historic building, not a historic district or site. Given that federal law places no restriction on property owners, the reduction of the "nominated property" from 10 acres to 5 acres cannot be construed as destroying the historical character of a property.

*Section 4.6.G.1 Protection Radius - Uses permitted within the Protection Radius **include Residential Uses as listed in Appendix C**, barns, and residential accessory structures as defined by this Ordinance.*

- Emphasis added, the use for the proposed development is single family houses, which are found under residential uses in Appendix C.
- The Protection Radius does not apply to the application.

#### **Jefferson County Subdivision Ordinance**

*Section 23.203.C - Jefferson County Historical Landmarks Commission. This body shall submit a report and findings on whether historical resources exist on the site of the proposed subdivision of site development. If there are, they shall submit findings on whether the proposal **meets the requirement of zoning with respect to such structures or places at Concept Plan stage.***

- The role of the Historic Landmarks Commission (HLC) is to evaluate whether a Concept Plan meets the requirements of the Zoning Ordinance. The requirements of this ordinance have been stated above.
- The following pertains to the Historic Landmark Commission letter to the Planning Commission.
  - The citation provided by the HLC in relation to viewshed was written in 1983. Since this description was written two major highway projects have been constructed within the houses viewshed, this was ignored by the HLC.
  - The Belvedere nomination form does not list any barns or contributing structures, reference to these buildings was added at the discretion of the HLC.
  - The HLC cites the National Park Service's rehabilitation standards, these do not apply to the property and can be found nowhere in the zoning ordinance.
  - The HLC commission has not followed their mandated role, their review of the proposed subdivision plan reflects their feelings not the requirements of the ordinance.
  - The proposed plan does not impact the architecture of the structure which is the true basis of the registration.



# JEFFERSON COUNTY, WEST VIRGINIA

## Office of Planning and Zoning

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

P.O. Box 716

Charles Town, WV 25414

[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)

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

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

---

### MEMO

**TO:** Jefferson County Planning Commission  
**FROM:** Jennifer M. Brockman, AICP, County Planner  
**DATE:** May 1, 2018  
**RE:** Discussion of and Possible Action on Magnolia Springs Subdivision  
Concept Plan (PC File# 18-05)

---

On April 12, 2018, staff received a letter (Attachment 1) from the Jefferson County Historic Landmarks Commission (JCHLC) questioning the validity of the vote by the Planning Commission (PC) at April 10, 2018 PC Meeting regarding the Magnolia Springs Concept Plan (PC File #18-05). A follow up letter (Attachment 2) was received from Jack Hefestay and Peter Onoszko asking for the JCHLC letter to be addressed quickly.

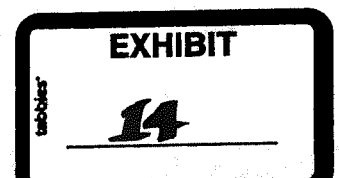
As a result of these letters, staff conducted further research into the historic significance of the Belvedere House and property and reviewed the National Historic Register nomination form (Attachment 3). Staff also followed up with the State Historic Preservation Office (SHPO) to confirm the National Register designation and was told that the house and a 10 acre area around the house are listed on the National Register of Historic Places (Attachment 4).

Because the information presented to the Planning Commission strongly represented that it was only the structure included on the National Register and not the ten acres surrounding the Belvedere house, Staff with the advice of Legal, felt that it was important to place this information on this Agenda so that the Commission can determine whether this information would have changed the motion and/or the vote to approve this Concept Plan at the April 10, 2018 meeting.

In response to these letters and this research, the Zoning Administrator prepared a written determination regarding whether the Magnolia Springs Concept Plan is in violation of Section 4.4C of the Zoning Ordinance (Attachment 5). She determined that Section 4.4C of the Zoning Ordinance does not apply to the proposed Magnolia Springs Subdivision.

On April 25, 2018, the applicant's engineer sent a letter to the Planning Commission responding to the JCHLC comments and clarifying why they feel the proposed five acres around the Belvedere house preserve the most significant portion of the property and meet the goal of maintaining its historic character (Attachment 6).

Staff would like to remind the Planning Commission that, per Section 24.110D of the Subdivision Regulations, the Department's role in the review of a Concept Plan includes the following:



- “1. Whether the density, use, and plan meet the requirements of the Zoning Ordinance and any other zoning issues that can be identified at the concept plan submission. . . .Staff shall identify conditions that would enable the plan to meet the standards. It shall also identify any other zoning issues the developer shall address in a preliminary plat submittal.
2. Staff’s opinion as to whether the plan meets the site development planning or subdivision criteria of these Regulations. The Department shall review the concept plan for modifications that would improve the plan.”

Staff believes that even with the ten acres as part of the National Register nomination, the proposed Magnolia Springs subdivision complies with the requirements of the Subdivision Regulations and the Zoning Ordinance and staff’s recommended conditions from the staff report would not have changed.

Section 24.112 details the Planning Commission’s role at the close of the Concept Plan’s Public Workshop, as follows:

“A. **Direction.** The Planning Commission shall direct the preparation of a preliminary plat subject to conditions to be addressed in the preliminary plat application. The purpose of this review is to guide the developer so that when the preliminary plat application is formally reviewed by the staff, there should not be a whole range of issues being raised for the first time. The developer shall cite conditions and demonstrate that they have been met or otherwise addressed.

B. **Conditions.** In the direction, it is anticipated that there will be numerous conditions from the Department, agencies, and public comment. There may well be public comment that seeks to lower density of the project below that permitted by the Zoning Ordinance, or to deny the project because of concerns outside the scope of the zoning or subdivision regulations. *The applicant may make proffers to address these concerns, but the Planning Commission may not use them as conditions unless they are proffered by the applicant.* (emphasis added).”

This memo is for the Planning Commission’s information and use in determining whether this new information requires the previous approval to be reconsidered.

**ATTACHMENTS:**

1. Letter to Planning Commission (PC) from the Jefferson County Historic Landmarks Commission (JCHLC), dated 4/13/18
2. Letter to PC from Peter Onoszko and Jack Hefestay with a letter attached from the Jefferson County Historic Landmarks Commission date, 4/16/18
3. Belvedere House National Register Nomination, dated 12/16/93
4. SHPO comments on National Register Nomination, dated 4/16/18
5. Zoning Administrator determination related to the applicability of Section 4.4C to Magnolia Springs, dated 4/25/18
6. Letter to PC from Gordon/applicant responding to letter from JCHLC, dated 4/25/18



April 12, 2018

Mr. Donnie Fisher,  
President  
Jefferson County Planning Commission  
c/o Jefferson County Office of Planning and Zoning  
PO Box 716  
Charles Town, West Virginia 25414

Dear Mr. Fisher,

The Magnolia Springs Concept Plan presented and approved at the JC Planning Commission meeting April 10, 2018 is not in conformance with the County Zoning Ordinance, specifically **Section 4.4 C. Prohibited Uses.**

Section 4.4 C Prohibited Uses: states:

Any development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places shall not be permitted.

Applications that violate the ordinance cannot be approved by the Planning Commission(PC). It is exactly the same situation as an application coming before the PC with a setback violation. It is regrettable this non-conformance was not addressed earlier, but the application should never have been brought to the PC for a public workshop and vote. We request that the Planning Commission vote be nullified immediately.

The Jefferson County Historic Landmarks Commission (JCHLC) would be happy to work with the developer to devise a concept plan for Magnolia Springs that would be acceptable and profitable to all parties and protects the historic character of the site and Belvedere, listed on the National Register of Historic Places. We believe that protecting the historic setting and context of a property, including the degree of open space and building density, must always be considered when planning new construction on a historic site. This entails identifying the formal or informal arrangements of buildings on the site, and whether they have a distinctive urban, suburban, or rural character.

If you have any questions or need additional information, please feel free to contact me.



Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
June 28, 2018

**Pentecostal Church of Christ Special Exception Request (#SE18-01)**

**Summary of Request**

On May 17, 2018 the Jefferson County Commission adopted a text amendment to the Zoning Ordinance which created provisions to allow electronic signs in the County. The new provision requires parcels which are located within the Residential-Growth (RG) zoning district to obtain a Special Exception Permit, subject to approval by the Board of Zoning Appeals.

Bolivar Pentecostal Church owns several separate parcels. The church itself is located on a parcel in the Residential-Light Industrial-Commercial zoning district; however, the location of the proposed electronic sign is in the Residential Growth zoning district and therefore, subject to the Board’s review and consideration.



**Staff Evaluation of the Applicant’s Request**

The existing sign is a legal nonconforming structure. As the electronic portion of the sign will be inserted into the existing supporting structure, the overall height of the sign will not be impacted.

Article 2 defines a Nonconforming Structure as “A building that lawfully existed at the time this Ordinance became effective and which does not conform with the site coverage, setback, height, open space, or other regulations describing the physical development standards of the district in which it is located.”

Section 4.3 addresses Nonconforming Uses and includes the following provision: “Nonconforming structures may be upgraded or repaired, or alterations made to the facilities.

Under the current Ordinance, the existing sign would be considered an Off-Premises Sign because it is not located on the same parcel as the use [church] for which it advertises. However, because the sign existed before the adoption of zoning, it is considered nonconforming and therefore, is not subject to the distance requirements of an Off-Premises Sign as required by Article 10.



Section 6.5B gives the Board the authority to approve a Special Exception permit for an Electronic Sign provided the sign conforms to existing State law and does not have a negative effect on the neighborhood or intent of the Ordinance.

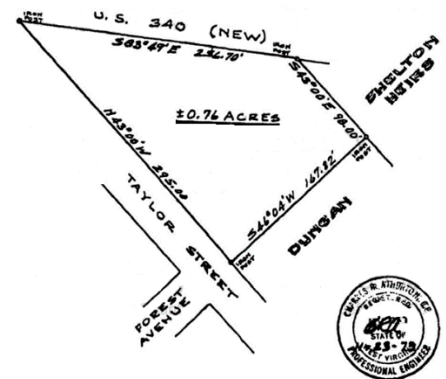
Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
June 28, 2018

**Pentecostal Church of Christ Special Exception Request (#SE18-01)**



**Unique characteristics of property**

The subject land use, the Bolivar Pentecostal Church of Christ, is comprised of multiple parcels. The church and youth building is located on Lots 9 & 10 of the Gap View Subdivision (not affiliated with the Gap View Village Subdivision located off Shepherdstown Pike). The parking lot is located on the former lots 1 & 2 of this subdivision; however, a series of boundary line adjustments were done in 1973 which reconfigured several lots and resulted in the current shape of the subject parcel.



**Impact on adjacent properties**

The impact on adjacent properties should be minimal given that a sign has always existed in this location. Additionally, because the sign is located on a lot in the Residential Growth zoning district, the sign would be required to automatically turn off at 10:00 p.m., which should minimize any negative impact from the lit sign. Staff does not have the expertise to determine the impact of the sign on Route 340, the adjacent property to the north; however, the Planning Commission greatly reduced the brightness level for night time to 100 nits, which is comparable to a standard TV. It is expected that this brightness level will have minimal impact on traffic on Route 340.

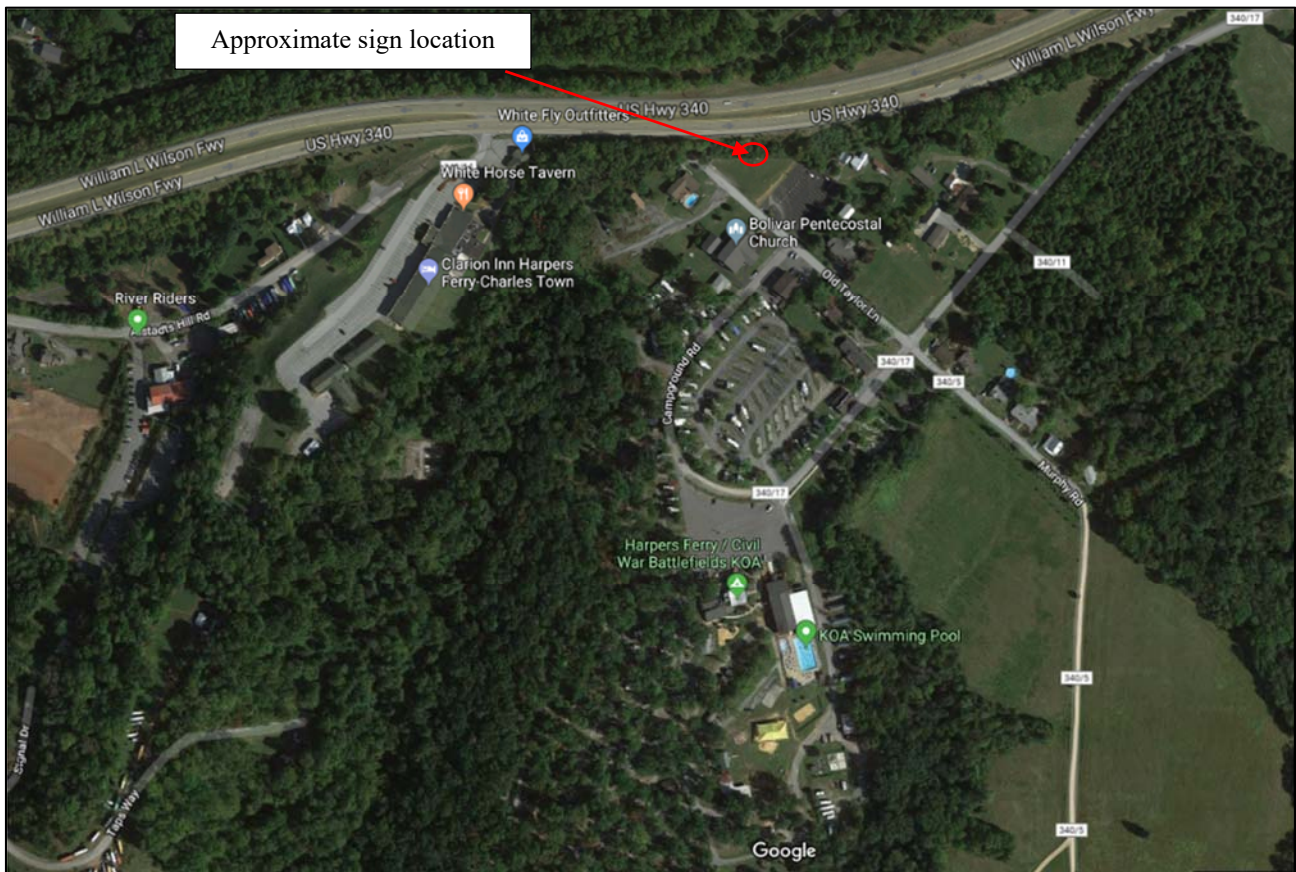
Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
June 28, 2018

**Pentecostal Church of Christ Special Exception Request (#SE18-01)**

**Compatibility with the Neighborhood**

The church is surrounded by a combination of commercial and residential uses. To the east, it is primarily residential and National Park Service. To the west is Kampgrounds of America (KOA), Clarion Inn Hotel, and River Riders. To the south is primarily National Park Service land. To the North is Route 340 and more National Park Service land.

An electronic sign is located nearby for the Clarion Inn Hotel (formerly known as the Cliffside Inn).



**Conditions of Approval**

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

1. Because the church owns various separate parcels, Staff recommends placing a condition of approval that the church is restricted to one freestanding electronic sign per Section 10.7F “There shall be only one electronic sign on each parcel of land. Off-premises electronic signs shall be subject to Section 10.5A.”

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
June 28, 2018

**Pentecostal Church of Christ Special Exception Request (#SE18-01)**

**SECTION OF ORDINANCE TO BE CONSIDERED:**

**ARTICLE 10**

**Section 10.7 Electronic Signs**

Electronic Signs are permitted in any commercial and/or industrial district. Electronic Signs located in the Rural, Residential Growth, and Village zoning districts shall process as a Special Exception before the Board of Zoning Appeals per Section 6.5. Any electronic sign accessory to a Conditional Use Permit application shall comply with Section 10.6 and the criteria outlined in this section. When permitted, Electronic Signs shall conform to the following criteria:

- A. The message or image shall be static, displayed for a minimum of 15 seconds and shall not be animated by scrolling, flashing, or other similar non-static displays.
- B. The message or image change shall occur simultaneously for the entire electronic sign face without any special effects. The time to complete the change from one message to the next is a maximum of one second.
- C. Electronic signs shall contain a default mechanism that will cause the sign to revert immediately to a black screen if a malfunction occurs.
- D. An electronic sign may not be animated, play video or audio messages, or blink in any manner.
- E. Electronic signs shall not exceed a maximum illumination of 3,000 nits during daylight hours and a maximum of 100 nits for the time period between ½ hour before sunset and ½ hour after sunrise as measured from the sign's face at maximum brightness.
  - 1. The applicant shall provide written certification from the sign manufacturer that the light intensity has been factory preset not to exceed the levels specified above, and the intensity level is protected from end-user manipulation by password protected software or other appropriate methods.
  - 2. The change from 3,000 nits to 100 nits shall be controlled by an automatic dimmer control system.
- F. There shall be only one electronic sign on each parcel of land. Off-premises electronic signs shall be subject to Section 10.5A.
  - 1. Community announcements, emergency alerts, weather, and time related messages are generally permitted and shall not be considered an off-premises sign.
- G. Electronic Signs shall not be located within 300 feet of a traffic light.
- H. Electronic signs shall not be located within 200 feet of the property line of a parcel with a residential structure. This setback does not apply to mixed-use buildings or residential structures located on the same parcel as a commercial development.
- I. Electronic signs proposed to locate adjacent to a lot in the Rural, Residential Growth, or Village zoning districts, or adjacent to residential structures in any zoning district, shall be oriented perpendicular to residential frontages. Electronic signs shall not be parallel to any residential structures in any zoning district.
- J. Electronic signs adjacent to lots in the Rural, Residential Growth, and Village zoning districts shall automatically shut-off by 10:00 p.m. and shall not turn on until 6:00 a.m.

Electronic signs shall be FCC certified as required by Federal Law. A valid copy of the FCC Manufacturers Testing Certificate shall be submitted to the Office of Planning and Zoning as part of the Zoning Certificate application.





# JEFFERSON COUNTY, WEST VIRGINIA

Department of Engineering, Planning, and Zoning

Office of Planning and Zoning

116 East Washington Street, P.O. Box 716

Charles Town, WV 25414

File Number: SE 18-01

Fee Paid: \$ 100

Mtg. Date: 6/28/18

Staff Initials: JH

Email: zoning@jeffersoncountywv.org

Phone: 304-728-2

## Application for Special Exception

The Special Exception process is outlined in Article 6 of the Zoning Ordinance.

See Supplemental Handout for additional information.

### Type of Special Exception

Accessory Dwelling Unit     Outdoor Advertising Sign     Rural Reception / Event Facility

### Property Owner Information

Name: Bolivar International Pentecostal Church of Christ (B.G. Turner, Pastor; \*Mark Grammo, Trustee)

Business Name: Bolivar International Pentecostal Church of Christ

Mailing Address: 87 Old Taylor Lane, Bolivar WV 25424

Phone Number: (304)535-2221    Email: bgturner49@gmail.com

### Applicant's Information 304-839-8277

Applicant Name: Bolivar International Pentecostal Church of Christ (B.G. Turner, Pastor; Mark Grammo, Trustee)

Business Name: Bolivar International Pentecostal Church of Christ (B.G. Turner, Pastor)

Mailing Address: 87 Old Taylor Lane, Bolivar WV 25424

Phone Number: (304)535-2221    Email: bgturner49@gmail.com

### Registered Engineer(s), Surveyor(s), or Consultant(s) Information

Name: N/A

Business Name: N/A

Mailing Address: N/A

Phone Number: N/A    Email:

### Physical Property Details

Physical Address: 87 Old Taylor Lane, Bolivar WV 25424

Tax District: Harpers Ferry    Map No: 7    Parcel No: 18.3

Parcel Size: 0.745    Deed Book: 322    Page No: 67

### Zoning Designation

Residential Growth (RG)	Industrial Commercial (IC)	Rural (R)	Residential-Light Industrial-Commercial (RLIC)	Village (V)	Neighborhood Commercial (NC)	General Commercial (GC)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Highway Commercial (HC)			Light Industrial (LI)	Major Industrial (MI)	Planned Neighborhood Development (PND)	Office/Commercial Mixed-U (O/C)
<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

# RECEIVED

MAY 30 2018

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

**How is the property currently used?**

A Church

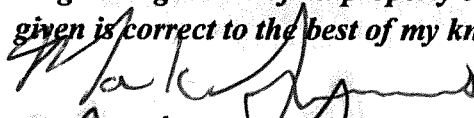
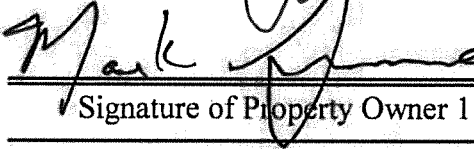
**Please provide any information or known history regarding this property (ex: previous zoning certificate, site plan, subdivision, variance, etc.).**

**Give a brief description of your proposal (include separate sheet of paper if necessary)**

We have an existing Church sign that is outdated and in need of repair and we would like to replace the existing sign (and sign only) with a digital sign 10' wide by 6' tall.

**On a separate sheet of paper, sketch the shape and location of the lot, including property boundaries, with accurate dimensions. Show the location of the intended construction or land use indicating building setbacks, size and height. Identify existing buildings, structures or land uses on the property. Please specify the number and location of the existing/proposed parking spaces (if necessary).**

**Original signature of all property owners is required. Attach additional signature page if needed. The information given is correct to the best of my knowledge.**

	5/29/18
	5/29/18

Signature of Property Owner 1

Date

Signature of Property Owner 2

Date

Section 10.7 - Electronic Signs  
Electronic Signs Supplemental Requirements  
Jefferson County Zoning and Land Development Ordinance, as amended May 18, 2018

The requirements for Electronic Signs are established in Section 10.7 of the Zoning Ordinance. Electronic Signs are permitted in any commercial and/or industrial district. **Electronic Signs located in the Rural, Residential Growth, and Village zoning districts shall process as a Special Exception before the Board of Zoning Appeals per Section 6.5.** Any electronic sign accessory to a Conditional Use Permit application shall comply with Section 10.6 and the criteria outlined in this section. When permitted, Electronic Signs shall conform to the following criteria:

**Property Owner(s) Name:** Bolivar International PCC Church (Mark Grammo) Trustee  
**Property's Physical Address:** 87 Old Taylor Lane, Bolivar WV 25424  
**Business Name:** Bolivar International Pentecostal Church of Christ  
**Tax District:** Harpers Ferry      **Tax Map #:** 7      **Parcel #:** 18.3  
**Zoning District:** BG

**General Provisions**

Please note the following provisions and requirements as outlined in Section 10.2 of the Zoning Ordinance:

- No sign erected before the enactment of this Ordinance shall be structurally altered or moved except in accordance with this Ordinance.
- No signs, other than subdivision signs approved by the Planning Commission, shall be located in the right-of-way of any road or on any slope or drainage easement for such road within any stormwater, drainage, or utility easement.
- No sign shall be permitted which imitates or which resembles an official traffic control device, railroad sign or signal, or which hides from view or interferes with the effectiveness of an official traffic control device or any railroad sign, signal, or traffic sight lines.
- No sign which implies the need or requirement of stopping or this existence of danger shall be displayed.
- No sign shall be placed on rocks, trees, or on poles maintained by public utilities.
- No sign shall be permitted which becomes unsafe or endangers the safety of the building, premises, or persons and unless maintained in a good general condition.
- No sign shall be permitted which contains statements, words or pictures of an obscene, indecent, or immoral character.
- Illuminated signs shall be so constructed as to avoid glare or reflection of any portion of an adjacent highway or residential building.
- Animated signs, Inflatable signs, and Vehicle signs as defined by Section 2.2, are prohibited.

**Electronic Signs – General Standards**

An Electronic Sign is defined as, "A sign utilizing lights that change to form a static message or graphic wherein the sequence of messages and rate of change is electronically programmed."

The standards for Electronic Signs are outlined in Section 10.7 of the Zoning Ordinance.

- The message or image shall be static, displayed for a minimum of 15 seconds and shall not be animated by scrolling, flashing, or other similar non-static displays.

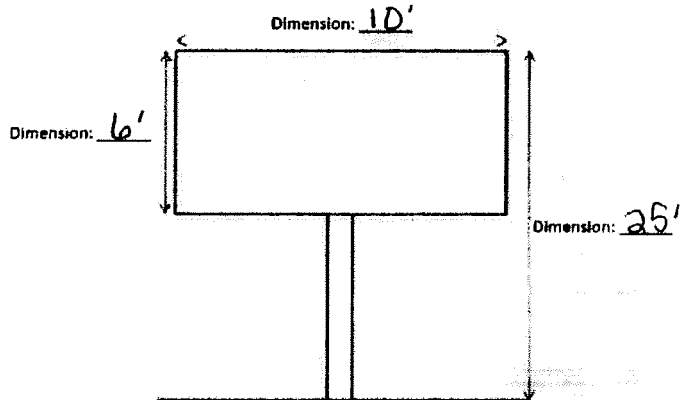
- The change shall occur simultaneously for the entire electronic sign face without any special effects. The time to complete the change from one message to the next is a maximum of one second.
- Shall contain a default mechanism to revert immediately to a black screen if a malfunction occurs.
- An electronic sign may not be animated, play video or audio messages, or blink in any manner.
- Maximum illumination: 3,000 nits during daylight hours and 100 nits for the time period between ½ hour before sunset and ½ hour after sunrise as measured from the sign's face at maximum brightness.
  1. The applicant shall provide written certification from the sign manufacturer that the light intensity has been factory preset not to exceed the levels specified above, and the intensity level is protected from end-user manipulation by password protected software or other appropriate methods.
  2. The change from 3,000 nits to 100 nits shall be controlled by an automatic dimmer control system.
- There shall be only one electronic sign on each parcel of land. Off-premises are subject to Section 10.5A.
- Electronic signs shall not be located within 300 feet of a traffic light.
- Electronic signs shall not be located within 200 feet of the property line of a parcel with a residential structure (excluding mixed-use buildings or mixed-use development).
- Electronic signs proposed to locate adjacent to a lot in the Rural, Residential Growth, and Village zoning districts shall automatically shut-off by 10:00 p.m. and shall not turn on until 6:00 a.m.

Electronic signs shall be FCC certified as required by Federal Law.

- Copy of Sign Manufacturer Certification
- Copy of FCC Manufacturers Testing Certificate

**Location and Dimensions of Sign**

Provide a sketch depicting the shape of the entire lot, adjacent roads, and existing structures. Show the location of the proposed sign and the distance to each property line. If known, include an image of the sign. Provide the following dimensions:



I certify that the sign shall adhere to the requirements of Sections 10.2 and 10.7 as outlined above.

Mark Grammo

Printed Name

*Mark Grammo*  
Signature

05/29/18

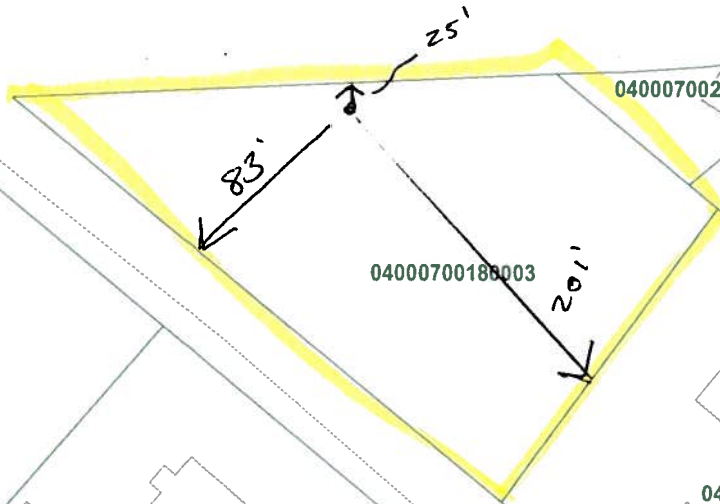
Date

04000700110000

04000700270000

WILLIAM L. WILSON FWY

WILLIAM L. WILSON FWY



04000700210000

04000700200000

04000700180003

04000700190000

04000700130001

04000700150001

04000700180005

04000700180001

OLD TAYLOR LN

04000700140000

04000700180004

04000700150000

04000700150000

04000700150003

CAMPGROUND RD

CAMPGROUND RD  
MURPHY RD

Sign B. S. Luma, Pastor  
Height 11' 25'  
Date 5/22/2018

04000700160000

04000900670000

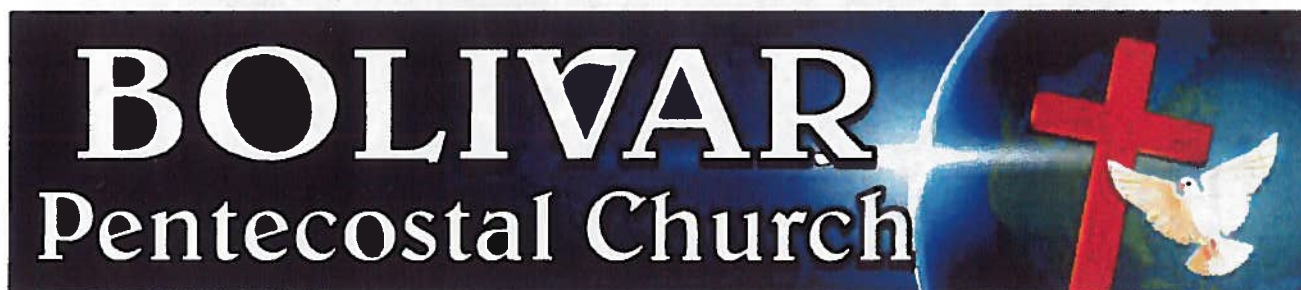




RECEIVED

JUN 12 2018

JEFFERSON COUNTY PLANNING,  
ZONING & ENGINEERING



H6PR901550-5b-s

Photo Realistic Face

Flat surface dimensions: 25.375" x 115.875"

With bleed: 25.875" x 116.375"

\*Replaces sketch submitted 05/30/18 - JH

Header Vinyl: Photo Real	Paint Color: Black	Approved as shown
Text Color: Photo Real	Draft: White	Date: 6/16/17
Cowling Text Vinyl:	SIGN DESIGN #	<i>Mark D. [Signature]</i>
<small>GRAPHICS DISCLAIMER: This custom artwork is not intended to provide an exact match between ink, vinyl, paint, or LED color. Brickwork, masonry and landscaping is not included in the proposal. Measurements shown are approximations; dimensions of final product may vary. LED images shown are simulated to replicate optimum viewing distance. Sign is designed to be illuminated at all times. Sketches are based off of this premise. Non-illumination during daylight hours may result in graphics appearing darker than expected.</small>		Approved with listed changes
		Date: _____

<p><b>stewart signs</b> America's Premier Sign Company</p>	5/8"=1'
	Sk: 901550-5b-s
	Cust: 3132753
	6/30/2017
	Ca/cWoehner
	SOLD
ORIGINAL DESIGN DO NOT DUPLICATE	
PH. 1-800-237-3928 - FAX 1-800-485-4280	

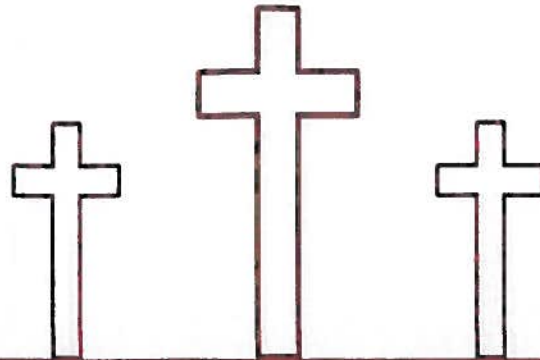
Mounted with  
Horizontal  
Angles and  
with Brackets

4"

6'

4"

10'



Mounted  
with  
Horizontal  
Angles  
and  
with  
Brackets

11' 4"

**BOLIVAR**  
Pentecostal Church

**CHRIST CONQUERS**  
**CHRIST REIGNS**

**TekStar Color**  
**16mm 60x180**  
**CABINET SIZE: 6'x10'**

CAPABILITIES  
1 TO 7 ROWS  
4.4" TO 37.8" CHARACTERS

Header Vinyl: Photo Real  
Text Color: Photo Real  
Cowling Text Vinyl:

Paint Color: Black  
Draft: White  
SIGN DESIGN #

Approved as shown

Date 5/16/17  
*[Signature]*  
Approved with listed changes

Date \_\_\_\_\_



5/8"=1'  
Sk: 901550-5b-s  
Cust: 3132753  
6/30/2017  
Ca/cWoehner  
SOLD

GRAPHICS DISCLAIMER: This custom artwork is not intended to provide an exact match between ink, vinyl, paint, or LED color. Brickwork, masonry and landscaping is not included in the proposal. Measurements shown are approximations; dimensions of final product may vary. LED images shown are simulated to replicate optimum viewing distance. Sign is designed to be illuminated at all times. Sketches are based off of this premise. Non-illumination during daylight hours may result in graphics appearing darker than expected.

**ORIGINAL DESIGN DO NOT DUPLICATE**

PH. 1-800-237-3928 - FAX 1-800-485-4280



# stewart signs

America's Premier Sign Company

RECEIVED

JUN 12 2018

6/12/2018  
 Jefferson Planning and Zoning  
 Alexandra Beaulieu

JEFFERSON COUNTY PLANNING,  
 ZONING & ENGINEERING

To whom it may Concern: Stewart signs certifies the sign for Bolivar Pentecostal Church will meet the requirements as set forth in section 10.7C shown below

Electronic signs shall not exceed a maximum illumination of 3,000 nits during daylight hours and a maximum of 100 nits for the time period between ½ hour before sunset and ½ hour after sunrise as measured from the sign's face at maximum brightness.

1. Written certification from the sign manufacturer that the light intensity has been factory preset not to exceed the levels specified above, and the intensity level is protected from end-user manipulation by password protected software or other appropriate methods.
2. The change from 3,000 nits to 100 nits shall be controlled by an automatic dimmer control system.

Feel free to contact me with any questions

**Charlie Miller**

Regional Manager

P: 1.800.237.3928 x216

F: 1.888.237.8137 M: 941.321.1173

web | email





# Getting Started

EBSCO Sign Group  
1400 8th Street North  
Clanton AL, 35045  
1-800-237-3928

## **FCC Notice**

All components have been tested and found to comply with the limits for a Class A digital device, pursuant to part 15 of the FCC Rules. These limits are designed to provide reasonable protection against harmful interference when the equipment is operated in a commercial environment. This equipment generates, uses, and can radiate radio frequency energy and, if not installed and used in accordance with the instruction manual, may cause harmful interference to radio communications.

Operation of this device is subject to the following two conditions: (1) This device may not cause harmful interference, and (2) this device must accept any interference received, including interference that may cause undesired operation. The user is cautioned that any changes or modifications not expressly approved by the party responsible for FCC compliance could void the user's authority to operate the equipment.

## **Each sign will contain one of the following LED modules:**

LED-10M-RGB-32X32P-320X320M, LED-16M-RGB-20X20P-320X320M, LED-20M-1RGB-16X16P-320X320M, LED-20M-1RGB-8x16P-160X320M, LED-20M-2R-8X16P-160X320M, LEDDM-10M-1RGB-32X32P-320X320M, LEDDM-10M-1RGB-32X32P-320X320M-2017, LEDDM-16M-2RGB-20X20P-320X320M, LEDDM-16M-2RGB-20X20P-320X320M-2017, LEDDM-20M-2RGB-16X16P-320X320M, LEDDM-20M-16X16P-320X320M-2017

## **Power Supply:**

Meanwell RSP-320-5

## **Send Card:**

SENDCARD-NS

## **Receive Card:**

RECCARD-MRV560-NS

## **Control System:**

Industrial PC - Lanner HQ-LEC-7020D V1.TS128MSQ64V8U GB DDR2 (FCC certified)

## **Wireless Radios and Modems (If ordered):**

Ubiquiti BulletM2HP with POE 24v (FCC Certified)

Sierra Wireless Airlink LS300 (FCC Certified)

Sierra Wireless R5-S1-10 RV-50 (FCC Certified)



# Jefferson County, West Virginia

Department of Engineering, Planning, and Zoning

Office of Planning and Zoning

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

P.O. Box 716

Charles Town, WV 25414

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

Phone: (304) 728-3228

---

## Zoning Administrator's Report Board of Zoning Appeals Meeting June 28, 2018

- 1) On June 7, 2018 the County Commission appointed Jennifer Brockman to serve as the Acting Zoning Administrator in my absence during maternity leave.
- 2) **Possible Upcoming Text Amendments**
  - Staff is researching landscaping and parking standards to update the County's Zoning Ordinance.
  - Following the March 29, 2018 text amendment, specifically the change to Appendix C to allow all Commercial Uses listed as "Not Permitted" to process as a Conditional Use, Staff will need to revise Section 5.10 Village District.
- 3) **Upcoming BZA meeting**
  - The next regular meeting is scheduled for **July 26, 2018** (deadline for submissions is Thursday, 07-05-18)





Jefferson County, West Virginia  
 Department of Engineering, Planning and Zoning  
**Office of Planning and Zoning**  
 116 E. Washington Street, 2<sup>nd</sup> Floor, P.O. Box 716  
 Charles Town, West Virginia 25414  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)

**June 2018**

**Zoning Certificate Activity Report**

File #	Property Owner/ Business Name	Applicant Name	Property Location	Description	Status Date
ZC18-11	McLucky, LLC	Cornerstone Lawn Services, LLC	154 Wolf Craft Way, Charles Town	Cornerstone Landscape Supply retail business	05-23-18
ZC18-14	Michael Collier, WV 340, LLC	Margot Johnson, Spirit of Halloween Superstores, LLC	186 Flowing Springs Rd, Charles Town,	Operation of Seasonal Halloween Retail Shop from 08- 11/2018	05-31-18
ZC18-15	SUSO 2 Alabama, LP	Lynette White, Wholesale Fireworks Enterprises, LLC	Charles Town Plaza - Walmart Parking Lot, 96 Patrick Henry Way, Charles Town	Temporary fireworks sale in a 30' x 50' tent. Dates/Times of operation: June 18, 2018 –July 9, 2018, from 9:00 a.m.-10:00 p.m. daily. Time- frame of tent removal: No later than July 09, 2018.	05-30-18
ZC18-16	Thomas E LeFevre	Hardy Cellular Telephone Co.	237 Tel Farm Ln, Kearneysville	Add & replace antenna & equip. to existing antenna array located in the existing 199.0' tower. No height increase to tower, no ground disturbance.	05-30-18
ZC18-17	Charles & Christine Peacock	Same	Same	One bedroom Bed & Breakfast	05-31-18
ZC18-18	Rosemary Leist	Tighe & Mary Cullinane	3643 Old Leetown Pike, Ranson	Accessory Dwelling Unit: In Law Suite	06-01-18
ZC18-19	Seminole, LLC, c/o Montauk Bohemia Realty	Keystone Novelties Distributors, LLC	49 Patrick Henry Way, Charles Town	Temporary fireworks sale in a 24' x 24' tent; new located = in grass area next to 7- Eleven Dates: 06/17/18-07/08/18.	06-15-18

June 2018

Zoning Certificate Activity Report

ZC18-20	Deerfield Real Estate, LLC	Ray Muth, Executive Emergency Lighting, LLC	21 South Paw Ln., Shepherdstown	General Office and machine shop and carpentry area for vehicular storage. Outdoor storage to be restricted to area delineated on sketch submitted by applicant. Installation of emergency equipment including but not limited to lights, sirens, restraining brackets, etc. that are commonly associated with converting vehicles into emergency vehicles such as police cruisers, ambulances, fire trucks, etc.	06-13-18
ZC18-21	Permelynn of Westchester	Vanessa Hixon, American Promotional Events aka TNT Fireworks	Charles Town Plaza, Walmart Parking Lot, 96 Patrick Henry Way, Charles Town	Temporary fireworks sale in a 30' x 50' tent and storage container. Dates/Times of operation: June 17, 2017 –July 10, 2017 from 10:00 a.m.- 10:00 p.m. daily. Time-frame of tent removal: No later than July 07, 2017.	TBD
ZC18-22	SUSO 2 Alabama, LP	Lynette White, Wholesale Fireworks Enterprises, LLC	Charles Town Plaza - Walmart Parking Lot, 96 Patrick Henry Way, Charles Town	Temporary fireworks sale in a 30' x 50' tent. Dates/Times of operation: June 18, 2018 –July 9, 2018, from 9:00 a.m.-10:00 p.m. daily. Time-frame of tent removal: No later than July 09, 2018.	06-15-18