



Jefferson County
Board of Zoning Appeals
Thursday, February 27, 2020 at 2:00 p.m.

Members
Jeffrey Bannon, Chair
Tyler Quynn, Vice Chair
Deirdre Catterton
Matthew McKinney
Leeds Corbin

Meeting Location: Charles Town Library Conference Room, 200 East Washington Street, Charles Town, WV
Unless otherwise noted, all requests are pursuant to the Zoning & Land Development Ordinance.

Approval of Minutes: January 23, 2020

Public Hearing – Administer Oath

ITEM #1 FILE #: 20-1-ZV

Request: Variance from Section 9.7 to reduce the side setback from 15' to 0' to convert an accessory structure into a residential dwelling unit; and, to reduce the rear setback from 50' to 28' to allow for a 36' x 44' attached garage.
Owner: Newman Sisk, Jr.
Parcel Info: Border Road and Southard Lane, Kearneysville, WV
Parcel ID: 07000500120004; Size: 6.18 acres; Zoning District: Rural

ITEM #2 FILE #: 20-2-ZV

Request: Variance from Appendix A to reduce the two front setbacks from 20' to 19' (Lace Leaf Way) and from 20' to 13' (unnamed right-of-way); and the side setback from 8' to 7' to complete the construction of a home with an attached garage.
Owner: Michael and Peggy Julian
Parcel Info: 27 Lace Leaf Way, Charles Town, WV
Parcel ID: 02010D00270000; Size: .50 acres;
Zoning District: Residential-Light Industrial-Commercial

ITEM #3 FILE #: 20-3-ZV

Request: Variance from Section 9.7 to reduce the side setback from 8' to 4' for a 24' x 24' attached garage.
Owner: Robert Graham
Parcel Info: 1191 Tusawilla Dr., Charles Town, WV
Parcel ID: 02011A00290000; Size: .37 acres; Zoning District: Residential Growth

ITEM #4 FILE #: 20-4-ZV

Request: Variance from Section 5.7D.2.b.i(b) to allow the required 50% green space to be allocated on each of the individual lots within the cluster.
Owner: Lutman Land Development, LLC
Parcel Info: Vacant. Old Cave Road, East of Cave Quarter Estates Subdivision
Parcel ID: 02001600120000; Size: 23.47 acres; Zoning District: Rural

ITEM #5 FILE #: 20-1-CUP

Request: Request by Potomac Crossroads Counseling for a Conditional Use Permit to operate a Medical/Dental/Optical Office and/or Professional Office as defined in Article 2. The proposal consists of operating a counseling facility with approximately eight therapists that meet with not more than eight clients during one appointment time. Parking requirements will be met on-site.
Applicant: Kathy Morotti, Potomac Crossroads Counseling, LLC
Owner: Kenneth F. Lowe Jr., Rev Trust
Parcel Info: 4781 Kearneysville Pike, Shepherdstown, WV
Parcel ID: 09000800230007; Size: .71 acres; Zoning District: Residential Growth

Zoning Administrator Report

- a. Monthly Zoning Certificate Activity Report

Legal Update

- a. Possible executive session on the following pending lawsuits. None
- b. Discussion with possible deliberative session and signing of draft Findings/Decisions

Meeting: January 23, 2020

- 1. Variance from Section 5.4B.1 and Appendix A. Owner: Beallair Homes LLC. File: 19-33-ZV.
- 2. Variance from Sections 4.11A, 5.8C.2 and Appendix B. Owner: SAB Real Estate 2. File: 19-37-ZV.
- 3. Variance from Section 4B.7.J.2.a. Owner: Richard Childs. Applicant: New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, LLC Attn: Joseph Prieto. File: 19-38-ZV.

Minutes

Jefferson County Board of Zoning Appeals

- 1 Meeting Date: January 23, 2020
2 Meeting Location: Charles Town Library Conference Room
3 200 East Washington Street, Charles Town, West Virginia
4 Board Members Present: Tyler Quynn, Chair; Jeffrey Bannon, Vice Chair; Matthew McKinney;
5 Deirdre Catterton and Leeds Corbin
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 Mr. Bannon moved to call the meeting to order at 2:00 pm. Mr. Quynn called for a vote, which
10 carried unanimously. Mr. Quynn explained to the public how the meeting would be conducted.

11 Election of Officers

12 Mr. Corbin nominated Mr. Bannon for Chair. Mr. Quynn seconded the nomination. Mr. Quynn
13 called for a vote, which carried unanimously.

14 Mr. McKinney nominated Mr. Quynn for Vice Chair. Ms. Catterton seconded the nomination.
15 Mr. Quynn called for a vote, which carried unanimously.

16 Mr. Bannon presided as Chair.

17 Approval of Minutes: December 12, 2019

18 Mr. McKinney moved to approve the minutes. Mr. Corbin seconded the motion, which carried
19 unanimously.

20 Presentation by Roger Goodwin, Director of Engineering, Planning and Zoning, providing an 21 overview of the purpose a site plan.

22 Mr. Roger Goodwin, Director of Engineering Planning and Zoning, and Mr. Joe Kent, Land
23 Development Inspector, presented a PowerPoint presentation to the Board in response to a request
24 made by the Board in October 2019. The presentation outlined the role of the Department as well as
25 the purpose of a site plan. Mr. Goodwin addressed the Board's questions.

26 Public Hearing – Administer Oath

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

28 ITEM #1 FILE #: 19-33-ZV - Postponed From November 14, 2019 and December 12, 2019

29 Request: Variance from Section 5.4B.1 and Appendix A to reduce the rear setbacks from 20'
30 to 15'; the front setbacks from 25' to 20'; and the side setback from 12' to 10' for
31 the proposed Phase 3A, Lots 134-159.

32 Parcel Info: Beallair Homes LLC, Unplatted section of Beallair Subdivision along Beallair
33 Manor Drive, proposed Phase 3A, Lots 134-159, Parcel ID: 04010ARESA0000;
34 Lot Sizes Average: 8,500-13,000 sf; Zoning District: Residential Growth

35 Mr. Paul Raco a consultant with P.J. Raco Consulting, LLC was present to represent the request on
36 behalf of the owner. Ms. Beaulieu provided an overview of her staff report explaining that this
37 section of Beallair was not yet platted; therefore, the developer had some flexibility with the design
38 of the lots. Ms. Beaulieu also noted that this section would be labelled as 4A as opposed to 3A.
39 Mr. Raco explained the nature of the request to the Board and pointed out that should the Board
40 grant the request that the applicant would still like to reserve the right to utilize Section 9.5
41 Projections into the Yard. Mr. Raco argued that Section 9.7 would permit lesser setbacks than the

1 setbacks the applicant was currently requesting. In response to Mr. Corbin's inquiry, Mr. Raco
2 confirmed that even with the reduced setbacks the houses would be able to meet building code
3 requirements for separation related to fire safety. Mr. Bannon asked why the lots were not designed
4 to accommodate the houses. Mr. Raco explained that the proposed lot and house layouts offered are
5 current with market demands. Mr. Bannon opened the public hearing. There was no public
6 comment. Mr. Bannon closed the public hearing.

7 Mr. Quynn moved to go into deliberative session at 2:34 pm. Mr. Bannon called for a vote, which
8 carried unanimously.

9 Mr. Quynn moved to go back into session at 2:48 pm. Mr. Bannon called for a vote, which carried
10 unanimously.

11 Mr. McKinney moved to approve the variance as requested. Mr. Quynn seconded the motion.

12 Mr. Bannon called for a vote, which carried four (4) in support and one (1) objection (Mr. Bannon).

13 ITEM #2 FILE #: 19-37-ZV

14 Request: Variance from Sections 4.11A, 5.8C.2 and Appendix B to eliminate the landscaping
15 and buffer requirements and parking/drive aisle and building setbacks for internal
16 lot lines only for the purpose of constructing the proposed ROCS gas station and
17 convenience store. A Concept Plan for the proposed project was approved by the
18 Planning Commission on 11-13-18 (File #S18-06).

19 Owner: SAB Real Estate 2

20 Parcel Info: Martinsburg Pike (WV45), Lots west of Sheetz, Shepherdstown, WV
21 8272 Martinsburg Pike, Shepherdstown, WV (former address-currently vacant parcel)
22 Parcel ID: 09008A00190000; 09008A00210000; 09008A00230000; Size: 3.56 acres
23 combined; Zoning District: Residential- Light Industrial- Commercial

24 Mr. Ryan Perks with Gordon and Mr. Greg Kennedy, Attorney with Franklin & Prokopik, were
25 present to represent the request on behalf of the owner. Ms. Beaulieu provided an overview of her
26 staff report confirming that no structures would be crossing the internal property lines. Mr. Perks
27 explained the nature of the request to the Board and Mr. Kennedy briefly explained that financing
28 issues hindered the property owner from merging the properties together. Mr. Bannon opened the
29 public hearing. There was no public comment. Mr. Bannon closed the public hearing.

30 Mr. Corbin moved to approve the variance. Mr. Quynn seconded the motion and requested to amend
31 the motion to include the following conditions:

- 32 1. The applicants are bound by their testimony.
- 33 2. No buildings shall cross lot lines.
- 34 3. Add a note to the site plan stating, "The owner/developer agrees that if any of the individual
35 lots are conveyed to an outside party, all appropriate or necessary road and/or parking
36 easements will be conveyed to the grantee if appropriate at the time of such transfer."

37 Mr. Corbin accepted the amended motion. Mr. Bannon called for a vote, which carried unanimously.

1 ITEM #3 FILE #: 19-38-ZV

2 Request: Variance from Section 4B.7.J.2.a to increase the height restriction from 100' to 199'
3 for a wireless telecommunications facility, in order to meet its coverage objectives.

4 Owner: Richard Childs

5 Applicant: New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, LLC Attn: Joseph Prieto

6 Parcel Info: Located on the corner of Leetown Road and South Childs Road in Summit Point

7 Parcel ID: 07002500110002; Size: 17 acres; Zoning District: Rural

8 Mr. Christopher Burns with SmartLink was present to represent the request on behalf of the owner.
9 Ms. Beaulieu provided an overview of her staff report. Ms. Beaulieu stated that staff had been
10 informed just prior to the meeting that the Historic Landmarks Commission had not been notified of
11 the balloon test and that the Board could require the applicant to conduct another balloon test for
12 the Concept Plan as a condition of approval if they were inclined to grant the request. Ms. Beaulieu
13 also noted that the balloon test was not required for the variance request, but was conducted to
14 provide exhibits for the Board's consideration. Mr. Burns explained the nature of the request to the
15 Board. Mr. Burns stated that the tower could accommodate at least three (3) providers and that the
16 tower would assist emergency service providers. Mr. Burns provided the Board with a copy of the
17 National Environmental Policy Act (NEPA) report, which detailed the potential environmental
18 impacts of the tower. Mr. Burns acknowledged that they had erroneously sent a letter to the wrong
19 historic agency and stated that they would be willing to redo the balloon test to properly notice the
20 Historic Landmarks Commission. Mr. Burns offered to show the Board and interested members of
21 the public the additional 40 pictures taken during the first balloon test. Mr. Bannon opened the
22 public hearing.

23 Mr. Martin Burke, Chair of the Historic Landmarks Commission, spoke in opposition to the request
24 stating that the proposed cell tower would be visible from various Category II historic resources.
25 Mr. Burke explained that these resources are eligible for the National Registry. Mr. Corbin asked if
26 the property owners of these resources objected to the proposed tower. Mr. Burke stated he had not
27 spoken with the individual property owners. Mr. Burke also expressed concern that the Historic
28 Landmarks Commission had not received notice of the balloon test.

29 Ms. Carmen Creamer entered the meeting during the public hearing. Ms. Hartman swore in
30 Ms. Creamer and provided her with a copy of the staff report. Ms. Creamer spoke in opposition to
31 the request expressing concerns that this request would allow for similar requests to be approved
32 in the future. Ms. Creamer was also concerned about the negative impacts the tower may have on
33 her property.

34 Mr. Bannon closed the public hearing.

35 Mr. Burns reiterated that his firm had notified the wrong historic agency and would conduct the
36 balloon test again. Mr. Steve Hathaway, Project Engineer, explained in detail how the increased
37 height of the tower would improve coverage in this specific area of the County. Mr. Burns noted
38 that the balloon test was advertised in the Spirit of Jefferson.

39 Mr. Quynn moved to go into deliberative session at 3:57 pm. Mr. Bannon called for a vote, which
40 carried unanimously. Ms. Catterton left the meeting stating she had a prior engagement to attend to
41 and did not return for the duration of the meeting.

42 Mr. Quynn moved to come out of deliberative session at 4:37 pm. Mr. Bannon called for a vote,
43 which carried unanimously.

1 Mr. McKinney moved to approve the variance as requested with the condition that the applicant
2 conduct another balloon test for the Concept Plan ensuring that all required parties are notified and
3 that the applicants were bound by their testimony. Mr. Quynn seconded the motion, which carried
4 unanimously.

5 **Zoning Administrator Report**

- 6 a. Monthly Zoning Certificate Activity Report. The Report was included in the mailed packet.
7 Ms. Beaulieu updated the Board on the status of text amendment ZTA19-03 regarding Solar
8 Energy Facilities. Ms. Beaulieu also stated that the upcoming public meetings related to
9 reorganization of the Subdivision Regulations and Zoning Ordinance had been cancelled
10 and will be rescheduled to a date to be determined.
11 Ms. Beaulieu informed the Board that their next meeting would be February 27, 2020.

12 **Legal Update**

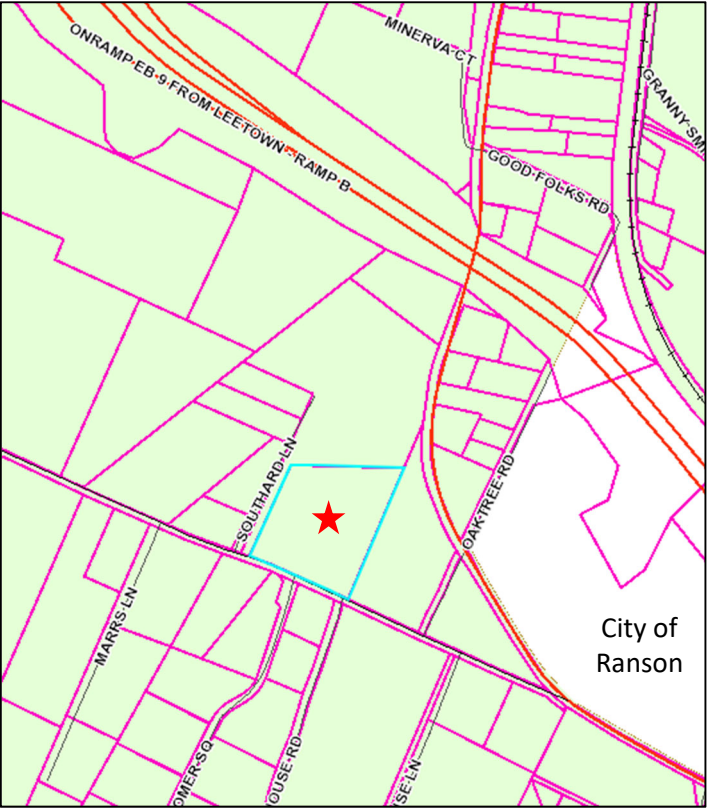
- 13 a. Possible executive session on the following pending lawsuits. None
14 b. Discussion with possible deliberative session and signing of draft Findings/Decisions

15 **Meeting: December 12, 2019**

- 16 1. Variance from Sec. 10.4B.3. Owner: I & K Farms, LLC. Applicant: C. Haymaker.
17 File: 19-35-ZV.
18 2. Variance from Sec. 5.7B and 9.6C. Owner: Joseph Costello. File: 19-36-ZV.
19 Mr. Cochran provided the Findings for Mr. Quynn to review and sign.
20 Mr. Quynn moved to adjourn the meeting at 4:49 pm, which carried unanimously.

Staff Report
 Jefferson County Board of Zoning Appeals
 February 27, 2020
Sisk Variance Request (#20-1-ZV)

Item #1 Variance from Section 9.7 to reduce the side setback from 15' to 0' to convert an existing accessory structure into a residential dwelling unit; and to reduce the rear setback from 50' to 28' to allow for a 36' x 44' attached garage.

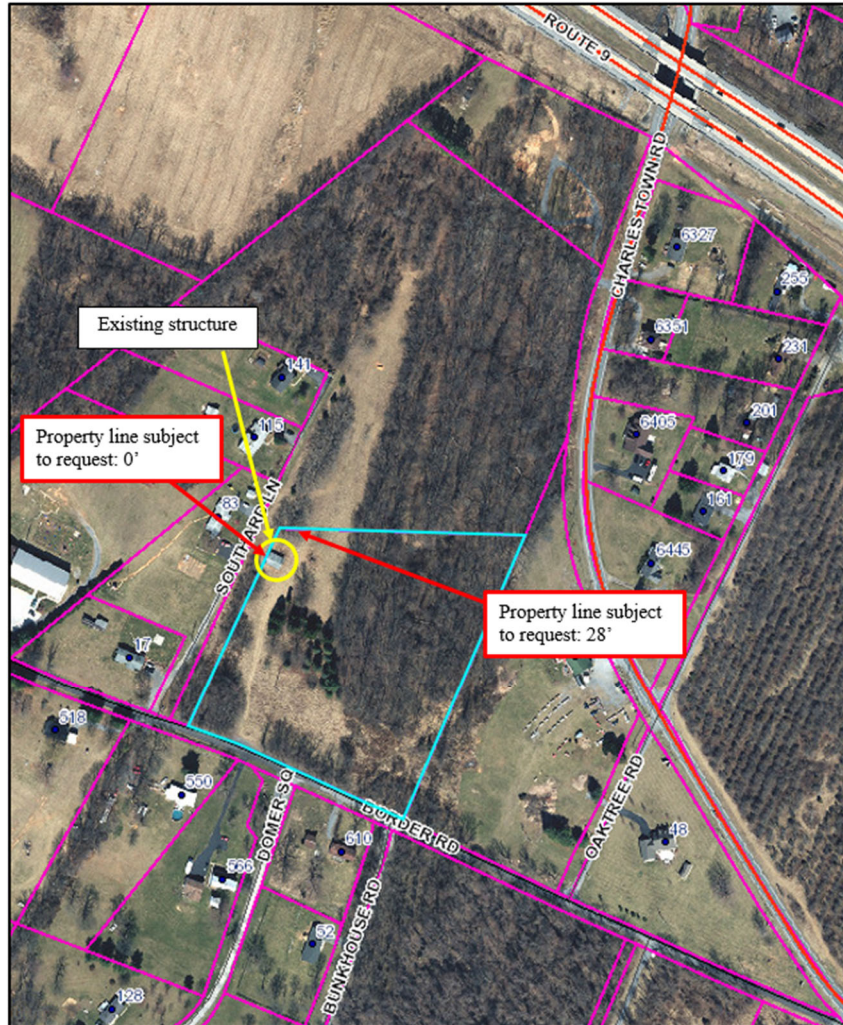
Applicant:	Newman Sisk, Jr.
Owner:	Same
Developer:	n/a
Consultant:	n/a
Parcel Information and Zoning District:	<p style="text-align: center;">Border Road and Southard Lane, Kearneysville, WV Parcel ID: 07000500120004; Size: 6.18 acres; Zoning District: Rural</p> 
Surrounding Properties:	Zoning Map Designation: <i>North: Rural South: Rural</i> <i>East: Rural West: Rural</i>
History:	08/29/13: Boundary Line Adjustment (PB 25, PG 402)
Waivers/Variations:	None
Proposed Activity:	Convert Existing Structure to Residential Dwelling Unit and Construct an Attached Garage
Site Visit Conducted:	Yes. 02-18-2020

Summary of Request and Purpose of Ordinance Requirements

Variance from Section 9.7 to reduce the side setback from 15' to 0' to convert an accessory structure into a residential dwelling unit; and, to reduce the rear setback from 50' to 28' to allow for a 36' x 44' attached garage.

Staff Report
Jefferson County Board of Zoning Appeals
February 27, 2020
Sisk Variance Request (#20-1-ZV)

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



Staff Evaluation of Request

The subject parcel is located at the corner of Border Road and Southard Lane. In August of 2013, a boundary line adjustment processed, which merged 5.58 acres out of the subject parcel and into the adjoining parcel, leaving a ~6.2 acre parcel (see Plat Book 25, Page 402). *Note: the applicant states that the County adjusted the property lines; however, the boundary line adjustment that processed in August 2013 did not impact the property line subject to the request for a reduction to 0' and was initiated by the landowner of record at that time. The County does not initiate boundary line adjustments/mergers. The requirement to process such plats through the Office of Planning and Zoning is to review each proposal for compliance with the County's regulations, specifically to ensure no setback violations will occur as a result of the boundary line adjustment and that access is not negatively impacted. The western property line was not being altered as a result of the 2013 merger and the accessory structure was reflected as "existing"; therefore, the boundary line adjustment did not create any setback violations.

Staff Report
Jefferson County Board of Zoning Appeals
February 27, 2020
Sisk Variance Request (#20-1-ZV)

The applicant represented that the existing structure was built in the early 1980's, prior to the adoption of zoning in Jefferson County. Based on Google Earth aerial imagery, Staff was able to verify that the structure existed as early as 1990. Imagery for this location does not go back any earlier than 1990.



View of property from Southard Lane

Presently, the applicant would like to convert the existing structure into a habitable dwelling unit, which necessitates that the Board reevaluate the request based on the change in use.

Additionally, the applicant would like to construct a garage onto the back of the proposed dwelling unit, which necessitates a reduction in the required rear setback from 50' to 28'.



Because the existing structure was built on the western property line and has existed in this location for 30+ years, it appears that granting a setback reduction for the purpose of converting to a dwelling unit would have minimal impact on the neighboring properties.

With regard to the rear setback reduction, it appears that 28' would still provide a sufficient setback between the two properties. Currently, the property which would be impacted by this request is a wooded, vacant parcel; therefore, it seems the request would have minimal impact on the adjoining parcel.

It is not feasible to comply with the Ordinance by other means along the western property line, unless a merger were to process between the adjoining properties, because the already structure exists. As for the proposed garage, it may be feasible to comply with the Ordinance by shifting the garage south on the property, or constructing a detached garage elsewhere on the property.

Staff Report
Jefferson County Board of Zoning Appeals
February 27, 2020
Sisk Variance Request (#20-1-ZV)

Conditions of Approval

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

1. No conditions of approval have been identified.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 9.7 Other Exceptions³

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

Setbacks are as follows in subdivisions for which no setback was stipulated previously by the Jefferson County Planning Commission as a part of the subdivision process:²³

Rural Agricultural and Industrial Commercial

Single Family Residences

Over 2 acres --	40' front,	15' side	and	50' rear
40,000 sq. ft. to 2 acres --	25' front,	12' side	and	12' rear
30,000 sq. ft. to 39,999 sq. ft. --	20' front,	10' side	and	12' rear
under 30,000 sq. ft. --	20' front,	8' side	and	12' rear



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
 www.jeffersoncountywv.org

File Number: 20-01-ZV
 Staff Initials: RBB
 Meeting Date: 2/27/20
 Fees Paid (\$100 or \$150): 100

Email: zoning@jeffersoncountywv.org

Phone: (304) 728-3228

Zoning Variance Request

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

Property Owner Information

Name: Newman Sisk
 Mailing Address: PO Box 474 Charles Town WV 25414
 Phone Number: 304-582-1460 Email: ameritechta@frontier-net.net

Applicant Contact Information

Name: Sam L
 Mailing Address: _____
 Phone Number: _____ Email: _____

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

Name: Bill Walls (builder)
 Mailing Address: _____
 Phone Number: _____ Email: _____

Physical Property Details

Physical Address: NONE
 City: _____ State: _____ Zip Code: _____
 Tax District: 07 Map No: 5 Parcel No: 12.4
 Parcel Size: 6.18 Deed Book: 1129 Page No: 83

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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

RECEIVED

JAN 03 2020

**JEFFERSON COUNTY PLANNING
 ZONING & ENGINEERING**

Place Received Date Stamp Here

Highway Commercial (HC)	Light Industrial (LI)	Major Industrial (MI)	Planned Neighborhood Development (PND)	Office/Commercial Mixed-Use (OC)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

Is there a Code Enforcement action pending in relation to this property?

Yes

No

Reference the section of the Zoning Ordinance pertaining to this request: Sec. 9.7 - gH

Briefly describe the nature of the variance request:

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

Front Setback

Side Setback

Rear Setback

Reduction From 15 to 0
50 to 28

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

Structure has existed since the 1980's addition, is further from other property owners structures than existing building

In what way does this request arise from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance?

property line was adjusted by the county to be right next to the existing structure. I would like to keep the addition in line with the existing structure

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

It would allow me a place of residence

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

Due to the existing structure being where it is due to the county's adjustment this will help bring it into compliance

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

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

 1/3/20
Signature of Property Owner Date

Signature of Property Owner Date

Notification Requirements (to be completed by staff)

Notice of a public hearing for an appeal shall be advertised in a newspaper having general circulation in the County at least 15 days before the hearing. The subject property shall be posted conspicuously by a zoning notice no less than 28" x 22" in size, at least 15 days before the hearing (pursuant to the Zoning and Land Development Ordinance Section 6.1B).

02-27-20

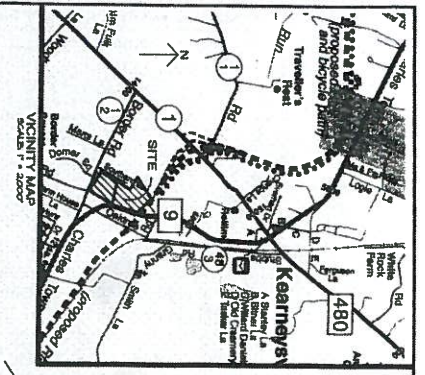
Date of Public Hearing

02-12-20

Advertising Date

02-12-20

Placard Posting Date



MAGNETIC & PLAT NORTH
AUGUST 1986
PLAT DB 563 PG 688

- LEGEND**
- ▲ SET 5/8" REBAR
 - FOUND 5/8" REBAR
 - FOUND 1" IRON PIPE
 - ⊗ FOUND 6" CONC. MONUMENT
 - ⊞ EX WELL
 - ⊚ POWER POLE
 - ⊙ POINT
 - ⊠ FOUND MAGNETIC NAIL

PARCEL 12,12,8
ACREAGE TABLE

Section	11.1289 AC
Merger	-5.5945 AC
Alter	6.1784 AC

Section	11.1242 AC
Merger	-5.5971 AC
Alter	+5.5945 AC
Alter	11.1242 AC

NOTES:

- BY GRAPHIC PLOTTING ONLY THIS PROPERTY IS IN ZONES "X" F.L.S.M., MAP 5403/0020E AND 5403/0110E DATED 18 DECEMBER 2009. EXACT DESIGNATION CAN ONLY BE DETERMINED BY ELEVATION CERTIFICATE BASED ON THE ABOVE INFORMATION.
- AT THE TIME OF THE SURVEY, ALL STRUCTURES WERE IN COMPLIANCE WITH COUNTY SEBACK REQUIREMENTS WITH REGARD TO THE NEW BOUNDARY LINES CREATED, EXCEPT FOR THE EXISTING GARAGE

SCALE: 1" = 100'

0 50 100 200

per permit # 19-610

**BOUNDARY LINE ADJUSTMENT
BY MERGER**

PROPERTY OF: LORRI A. & EDWARD K. SCHWARTZ
DB 563 PG 681, DB 563 PG 685 & DB 574 PG 644 PLAT DB 563 PG 688, DB 574 PG 646
293 DUNCAN FIELD LANE CHARLES TOWN, WV 25414 (304) 261-1555

FLICKR/CA SURVEYING COMPANY
214 1/2 ROCK CLIFF DRIVE, WASHINGTON, WV 25401 (304) 263-4487

TAX MAPS: 1995 PARCEL 12.4 & 12.8 & 12.15
DISTRICT: MIDDLEBURY JEFFERSON COUNTY, WEST VIRGINIA
SCALE: 1" = 100'
DATE: 08/28/13 PROJECT: 13-501 DRAWN BY: _____

Jonathan S. Hyslop
JUTTESBORO COUNTY 09-14-12 20' 40"
Instrument No. 2012016248
Date Recorded 08/27/2013
Book 1989 Page 1
Fees: Registered 1
Description Fee 27.00
Miscellaneous Fee \$1.00



JCRC Approval 08/28/13
Approved last line adjustment
Section 20.106
Jonathan S. Hyslop
Director of Planning
Jefferson County Department of
Planning, Zoning, and Engineering

SURVEYOR'S CERTIFICATION
The perimeter of parcels 12.8, 12.4 and 12.15 as shown hereon has been established by a network of traverse control having a relative error of closure of 1:7500 or better.

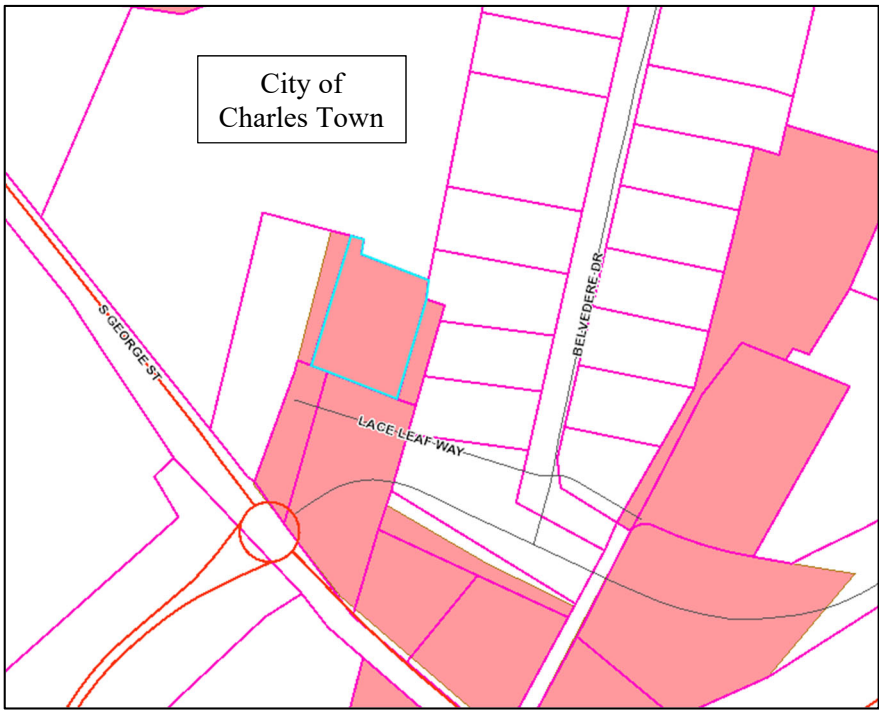
Terry Picochicko, P.S.

The land hereby conveyed is adjacent to and contiguous with that certain parcel of land which is owned by the grantees herein, having been conveyed to them by deed of record in the Clerk's office of Jefferson County, West Virginia in Deed Book 579 of Page 644 and this conveyance is made for the purpose of adjusting the boundary lines of said presently owned land of the grantees.

Owner
Lorri A. Schwartz
Edward K. Schwartz

Staff Report
 Jefferson County Board of Zoning Appeals
 February 27, 2020
Julian Variance Request (#20-2-ZV)

Item #2 Variance from Appendix A to reduce the two front setbacks from 20' to 19' and 13' respectively and the side setback from 8' to 7' to complete the construction of a home with an attached garage.

Applicant:	Michael and Peggy Julian
Owner:	Same as above
Developer:	N/A
Consultant:	N/A
Parcel Information and Zoning District:	<p style="text-align: center;">27 Lace Leaf Way, Charles Town, WV Parcel ID: 02010D00270000; Size: .50 acres; Zoning District: Residential-Light Industrial-Commercial</p> 
Surrounding Properties:	<p style="text-align: center;">Zoning Map Designation:</p> <p style="text-align: center;"><i>North:</i> City of Charles Town <i>South:</i> Residential-Light Industrial-Commercial <i>East and West:</i> Residential-Light Industrial-Commercial & City of Charles Town</p>
History:	None
Waivers/Variations:	None
Approved Activity:	Single Family Residence
Site Visit Conducted:	Yes: 02/18/2020

Summary of Request and Purpose of Ordinance Requirements

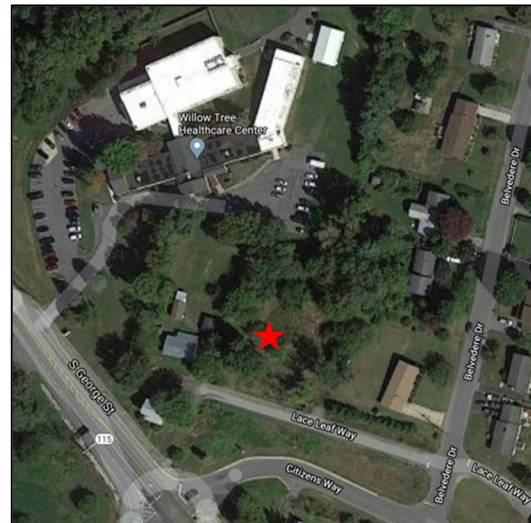
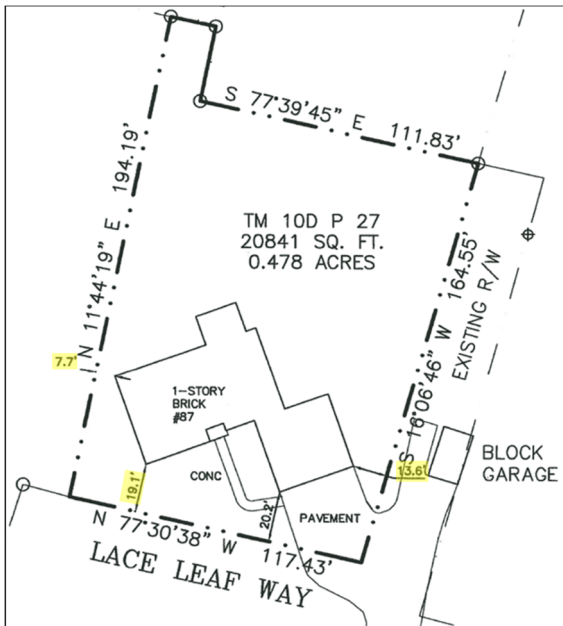
Variance from Appendix A to reduce the two front setbacks from 20' to 19' and 13' respectively and the side setback from 8' to 7' to complete the construction of a home with an attached garage

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

Staff Report
Jefferson County Board of Zoning Appeals
February 27, 2020
Julian Variance Request (#20-2-ZV)

Staff Evaluation of Request

The subject parcel is located in an older platted section of Charles Town that is still within the County’s jurisdiction. These lots were platted prior to the adoption of any County rules and regulations. Lace Leaf Way and a platted right-of-way (“Old Road”) border the parcel on two sides, which requires that a front setback be applied to both boundary lines.



The applicant is requesting to reduce the front setback from the required 20’ to 19’ along the southern boundary, adjacent to Lace Leaf Way. There does not appear to be any impact on neighboring properties. Lace Leaf Way is not expected to be widened in the near future.



Staff Report
Jefferson County Board of Zoning Appeals
February 27, 2020
Julian Variance Request (#20-2-ZV)



The applicant is requesting to reduce the front setback from the required 20' to 13' along the eastern boundary line, adjacent to a platted right-of-way. Based on Staff's research, this right-of-way does not appear to provide access to any of the existing lots and the applicant has provided a letter from his attorney which supports Staff's findings. Note: if "Old Road" was an easement as opposed to a right-of-way, Staff could have administratively applied the corner lot provision, which allows a side setback to apply. The side setback for this

lot would be 8'. Because this right-of-way does not appear to serve any existing lots, it appears that a reduction to 13' would have no impact on neighboring properties.

Finally, the applicant is also requesting to reduce the side setback from the required 8' to 7' along the western boundary line. While the request is to reduce to 7', based on the house location survey, the house appears to only go into the required setback area by about 4" and as depicted, only the corner of the house goes into the required setback. It is expected that impact on the neighboring property will be minimal.



It is not feasible to comply with the Ordinance by any other means because the construction of the house has already commenced.

Conditions of Approval

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

1. No conditions of approval have been identified.

Staff Report
 Jefferson County Board of Zoning Appeals
 February 27, 2020
Julian Variance Request (#20-2-ZV)

SECTION OF ORDINANCE TO BE CONSIDERED:

APPENDIX A: RESIDENTIAL SITE DEVELOPMENT STANDARDS TABLE^{27, 32}

Zoning District	Land use	Land Use Subtype	Min Lot Area (MLA) sq. ft.***	Area per Dwelling Unit (ADU) sq. ft.	Min Lot Width	Max Building Height*	Setbacks				Parking/ Drive Aisle Setbacks	Screened Buffers Sec. 4.11
							Front	Side	Street Side	Rear		
Residential Growth (RG)	Single Family Detached Dwelling	Public/Central water and sewer	6,000	10,000	N/A	40	25	12	15	20	N/A	N/A
		Public/Central water or sewer	20,000	N/A	N/A	"	"	"	"	"		
		No Public/Central water or sewer	40,000	N/A	N/A	"	"	"	"	"		
	Small Lot Single-Family Detached Dwelling	Public/Central water and sewer	3,200	7,500	35	40	20****	5	10	20	N/A	N/A
		Public/Central water and sewer	3,200	7,500	N/A	40	25	15**	15	20		
	Duplex Dwelling Unit	Public/Central water and sewer	N/A	10,000	N/A	"	"	"	"	"	N/A	N/A
		Public/Central water or sewer	N/A	10,000	N/A	"	"	"	"	"		
	Townhouse Dwelling	Public/Central water and sewer	1,400	3,500	N/A	40	25	12**	15	20	12 side 15 front 15 rear	12 side 15 front 15 rear
Multi-Family Dwelling (See Section 4.12)	Public/Central water and sewer	20,000	2,000	N/A	40	25	12**	15	30	N/A	N/A	
Single-Family Dwelling with setbacks not previously stipulated by Planning Commission	Over 40,000 sq. ft.	N/A	N/A	N/A	40	25	12	°	12	N/A	N/A	
	30,000 sq. ft. to 40,000 sq. ft.	N/A	N/A	N/A	40	20	10	°	12			
Rural (R) (See Sec. 5.7)	Single-Family Dwelling with setbacks not previously stipulated by Planning Commission	Under 30,000 sq. ft.	N/A	N/A	N/A	40	20	8	°	12	N/A	N/A
		Over 2 acres	N/A	N/A	N/A	45	40	15	°	50		
		40,000 sq. ft. to 2 acres	N/A	N/A	N/A	45	25	12	°	12		
	Dwellings	30,000 sq. ft. to 39,999 sq. ft.	N/A	N/A	N/A	45	20	10	°	12	N/A	N/A
		Under 30,000 sq. ft.	N/A	N/A	N/A	45	20	8	°	12		
Cluster Subdivision		See RG District										
Village (V)	Residential uses	See RG District										
Residential-Light Industrial-Commercial (RLIC)	Residential uses	See RG District ⁶										

Article 2 Definitions for Reference:

Easement: A lawfully acquired right or privilege to use a parcel of land or a portion thereof for a specified purpose. An easement is retained by a person other than the owner of the land parcel.

Lot, Corner: A lot abutting on two intersecting streets. Both sides abutting the streets forming the corner shall be considered front lot lines unless otherwise specified in this Ordinance, with the exception of corner lots that front on a private or public road on one edge and an access easement serving 5 lots or fewer on one edge. For such lots, a front yard setback for the principal structure applies to the edge of the lot that fronts on a private or public road and a side setback for a principal structure applies to the edge of the lot that fronts on the access easement. A corner lot must have at least one rear lot line.

Lot Line, Front: The side of sides of an interior or through lot which abut a street. Front lot lines shall be measured from the Road Improvement Easement where one exists. For a property with a rear yard adjacent to a right-of-way designated as an alley, a rear yard setback shall apply.

Lot Line, Side: Any lot line other than a front lot line or rear lot line.

Right-of-Way: A right which grants passage across or through a property. A right-of-way is also the (usually dimensioned) path along which the right of passage is granted.

Road: A prepared surface within a right-of-way which is intended for vehicular use. Road does not include shoulders.



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
 www.jeffersoncountywv.org

File Number: 20-2-ZV
 Staff Initials: gH
 Meeting Date: 2/27/20
 Fees Paid (\$100 or \$150): 150.00

Email: zoning@jeffersoncountywv.org

Phone: (304) 728-3228

Zoning Variance Request

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

Property Owner Information

Name: MICHAEL A. and PEGGY S. JULIAN
 Mailing Address: 27 LACE LEAF WAY, CHARLES TOWN, WV 25414
 Phone Number: 301-221-8704 Email: MIKE 5902@aol.com

Applicant Contact Information

Name: MICHAEL A. and PEGGY S. JULIAN
 Mailing Address: 27 LACE LEAF WAY, CHARLES TOWN, WV 25414
 Phone Number: 301-221-8704 Email: MIKE 5902@aol.com

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

Name: Ed JOHNSON AND ASSOCIATES - LAND SURVEYORS
 Mailing Address: 674 ACORN CIRCLE, HARPER'S FERRY, WV 25425
 Phone Number: 304-725-6060 Email: _____

Physical Property Details

Physical Address: 27 LACE LEAF WAY
 City: CHARLES TOWN State: WV Zip Code: 25414
 Tax District: CHARLES TOWN DISTRICT Map No: 10D Parcel No: 27
 Parcel Size: .478 ACRES Deed Book: 1221 Page No: 182

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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> <u>gH</u>	<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"/>		

RECEIVED
 JAN 23 2020 gH
 JEFFERSON COUNTY PLANNING
 ZONING & ENGINEERING
Please Received Date Stamp Here

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

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

Reference the section of the Zoning Ordinance pertaining to this request: Section 9.7 App. A ght

Briefly describe the nature of the variance request:

According to the December 27, 2019 site survey conducted by Ed Johnson and Associates of 674 Acorn Circle, Harper's Ferry, WV, 25425, the new residence is sited on the lot (parcel 27) such that there are three setback variances requested.

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

Front Setback Side Setback Rear Setback Reduction From 20' to 13' (East)
8' 19' (South)
7' (West)

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

The south side-abuts Lace Leaf Way--east side abuts the Old Road (unclaimed) Area-setbacks have no adverse effect on the public health safety or welfare and do not face any adjacent private property. The west side setback is 92.4 inches vice the 8 feet required-abuts an unimproved 18-foot wide strip of Burch property-it has no adverse effect on public health, safety, welfare, or his property rights.

In what way does this request arise from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance?

The special conditions include the contractor, Fairway Home Services, using the old Burch property line as the Julian property line absent a pre-construction site survey. The other special condition-the contractor abandoned the project as of December 4, 2019.

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

Granting the variances described above eliminates the unnecessary hardship created by the contractor and allows for the intended use of the property as a residence for the owners.

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

Granting the variances will allow substantial justice to be served as there was never any intent on the part of the owners to violate the zoning ordinance. The new property also provides substantial enhancements to the area. The need for the variances comes solely from the contractor's errors.

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

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

Michael A. Julian 01/29/2020
Signature of Property Owner Date

Peggy J. Julian Jan. 29, 2020
Signature of Property Owner Date

Notification Requirements (to be completed by staff)

Notice of a public hearing for an appeal shall be advertised in a newspaper having general circulation in the County at least 15 days before the hearing. The subject property shall be posted conspicuously by a zoning notice no less than 28" x 22" in size, at least 15 days before the hearing (pursuant to the Zoning and Land Development Ordinance Section 6.1B).

02/27/20
Date of Public Hearing

02/12/20
Advertising Date

02/12/20
Placard Posting Date

20-2-ZV

WEST VIRGINIA STATE
GRID NORTH ZONE

TM 9 P 66
BURCH
DB 1165 PG 103

TM 9 P 53
BROWN
DB 1052 PG 266

TM 10D P 27
20841 SQ. FT.
0.478 ACRES



PLAT OF RESURVEY
THE PROPERTY OF
GREGORY M. BURCH
DEED BOOK 1165 PAGE 103
TAX MAP 10D PARCEL 27
CHARLES TOWN DISTRICT
JEFFERSON COUNTY, WEST VIRGINIA
SCALE: 1" = 50' AUGUST 20, 2018

LEGEND:
O FOUND CAPPED REBAR
⊕ FOUND STEEL SPIKE



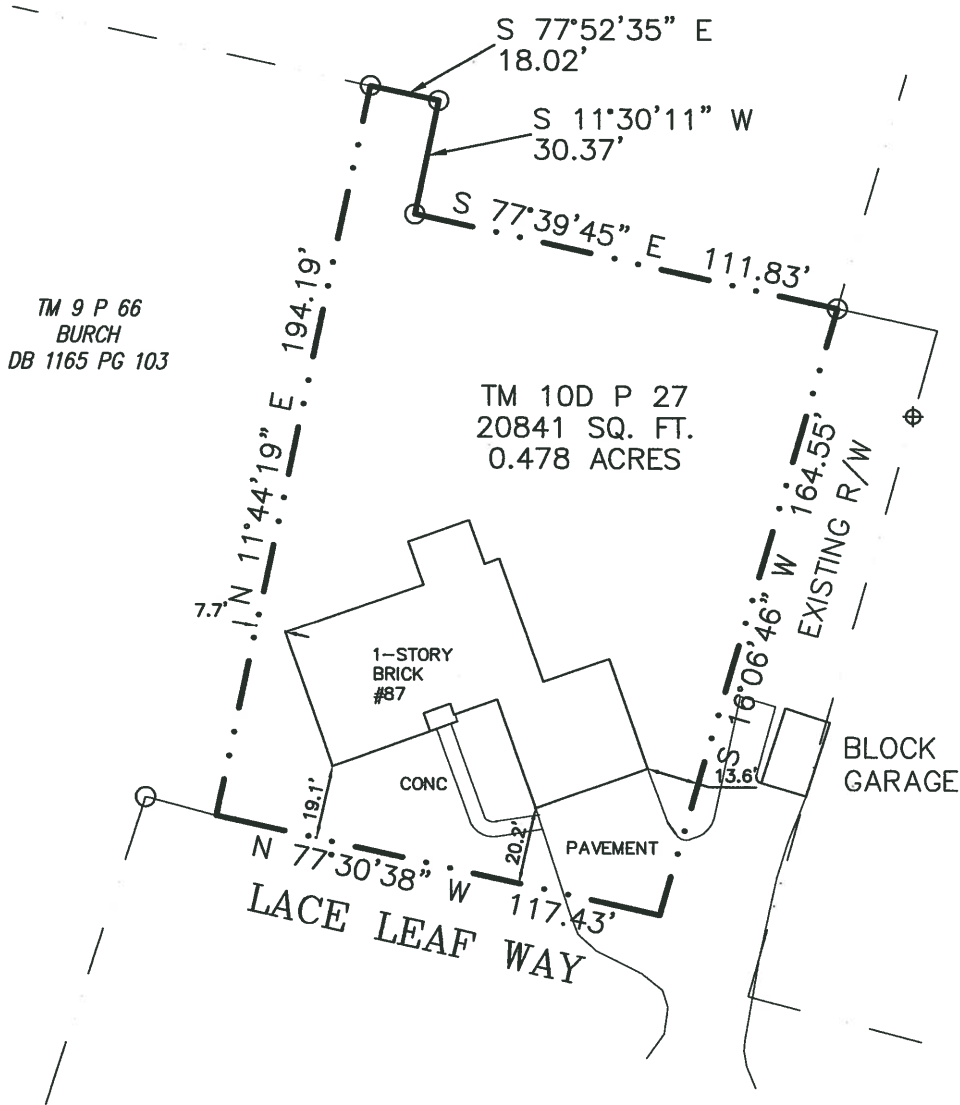
TM 9 P 17
PV REALTY
WILLOW TREE LLC
DB 1067 PG 656



TM 9 P 53
BROWN
DB 1052 PG 266

TM 9 P 66
BURCH
DB 1165 PG 103

TM 10D P 27
20841 SQ. FT.
0.478 ACRES



PLAT SHOWING
THE PROPERTY OF
MICHAEL A. JULIAN & PEGGY SUE JULIAN
DEED BOOK 1221 PAGE 182
TAX MAP 10D PARCEL 27
CHARLES TOWN DISTRICT
JEFFERSON COUNTY, WEST VIRGINIA
SCALE: 1" = 50' DECEMBER 19, 2019

ED JOHNSON AND ASSOCIATES, INC.
LAND SURVEYORS
674 ACORN CIRCLE
HARPERS FERRY, WEST VIRGINIA 25425
(304)725-6060



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



August 13, 2019

Michael A & Peggy Sue Julian
 613 Monarch Ridge Rd.
 Frederick, MD 21703

TO WHOM IT MAY CONCERN:

This letter is to certify that your property is located in the **Charles Town District (02)**, **Map 10D**, on **Parcel 27** and has been identified as:

27 LACE LEAF WAY, CHARLES TOWN, WV 25414

This physical location address is used to identify your structure in the event of an emergency. If you want rural mail delivery, you must also use this address; otherwise a Post Office box is the alternative.

According to Section 3.3 of Jefferson County's Addressing Ordinance, you must place the new physical address number on your structure near the main entrance in minimum 4" high numbers on a contrasting background so it is clearly visible to emergency responders. If the front door is more than fifty (50) feet away or not visible from the road, you must also post the address number at the end of the driveway, so that it is clearly visible from both directions of travel.

Should you have any questions, please contact the Jefferson County Addressing Office at (304) 724-6759 or via email at gis@jeffersoncountywv.org. Additional information can be found at our office website, www.jeffersoncountywv.org/county-government/departments/gis-addressing/gis.

Sincerely,

Rhonda Greenholtz

Rhonda Greenholtz,
 Administrative Assistant
 Jefferson County GIS/Addressing Office

James B. Crawford, III (WV & VA)
Katherine N. Ridgeway (WV)
E. Adelaide Crawford (WV)
Attorneys

Pamela T. Hinkle
Cheryl Brown
Paralegals

120 N George Street, Ste 100
Charles Town, WV 25414

214 Lutz Avenue
Martinsburg, WV 25405

380 Gateway Drive, Ste 1
Winchester, VA 22603

www.clgpllc.com

April 3, 2019

Mr. and Mrs. Michael A. Julian
613 Monarch Ridge Road
Frederick, MD 21703

Re: Old Road

Dear Mr. and Mrs. Julian:

I have researched the ownership of the "Old Road" and I have not found anything useful. The last plat that I find of the "Old Road" is on a plat made by M. W. McDonald dated January 1930 which conveys a portion of your property.

In attempting to find out who might be the owner of the property, I got back to a deed, which I believe is the genesis, from George Walker to Robert McDaniel dated June 1, 1889 which is recorded in Deed Book U at Page 311.

If this is the correct deed from 1889, I do not feel that there is any reasonable way that one can determine the ownership of the property at this time so as to acquire a deed. It is my suggestion that you exercise adverse rights over the property by fencing it and claiming it yours, and if after ten years, you wish to still proceed, you can file a suit in the Circuit Court of Jefferson County, West Virginia seeking to have the Court judicially find that you own the property. I would also suggest that you is to write a deed from yourselves to yourselves setting forth the conveyance of the property to give notice to the world that you are now claiming this property. Let me know your wishes.

Sincerely yours,


James B. Crawford, III

JBCIII/ce

deceased, all of the District of Columbia, parties of the first part and Thomas Carter Henretty and Mamie Belle Henretty, his wife of the County of Jefferson and State of West Virginia, of the other part,

WITNESSETH, That the said parties of the first part in consideration of Seven Hundred Dollars (\$700.00) to them in hand paid, the receipt whereof is acknowledged, do grant with General Warranty unto the said Thomas Carter Henretty and Mamie Belle Henretty, his wife, the following property, to-wit: A certain lot or parcel of land in the County of Jefferson and State of West Virginia, as follows:

Beginning at a post (fig. 1) on plat of the East side of the Charles Town and Bloemery Turnpike, now State Road No. 50, and on West side of the old road, running with the old road N 21° 10' E 275.5 feet to a post (fig. 2) a corner to Sallie McDaniel's purchase, now George Davis; thence with Davis N 68° W 108.5 feet to a post a corner to Lot No. 2, now G. T. Walters, (fig. 3); thence S 19° 10' E 213 feet to a post (fig. 4) on East side of said State Road, and with same S 34° 25' E 181 feet to the beginning, containing six-tenths (6/10) of an acre, according to Plat of said parcel of land prepared by M. W. McDonald, Surveyor of Jefferson County, West Virginia, January, 1930, hereto attached and made a part hereof.

TO HAVE AND TO HOLD the said lot and parcel of land described in the plat and survey of M. W. MacDonald hereinbefore referred to, to the said Thomas Carter Henretty and Mamie Belle Henretty, his wife, as Joint Tenants, and to their only proper use and behoof forever.

And the said parties of the first part covenant that the said Thomas Carter Henretty and Mamie Belle Henretty, his wife, shall have the same right to get water from the spring on the adjoining land formerly owned by Francis J. Manning, as was given in the deed from Manning to Richard Wilson, dated February 6th, 1872, and recorded May 24th, 1872 among the records of Jefferson County, West Virginia, in Book 7, folio 122.

And the said parties of the first part covenant that they have the right to convey said property; that the same is unencumbered, and that the grantees shall have quiet possession thereof.

Witness the following signatures and seals.

Little Jane Wilson Walker (SEAL)
Richard M. Wilson (SEAL)
Fannie M. Hawkins (SEAL)

DISTRICT OF COLUMBIA, ss:

I, William O. Davis, a Notary Public in and for said District do certify that Little Jane Wilson Walker, Richard M. Wilson and Fannie M. Hawkins, whose names are signed to the hereto annexed deed bearing date on the 20th day of January, 1930, have this day acknowledged the same before me in my said District.

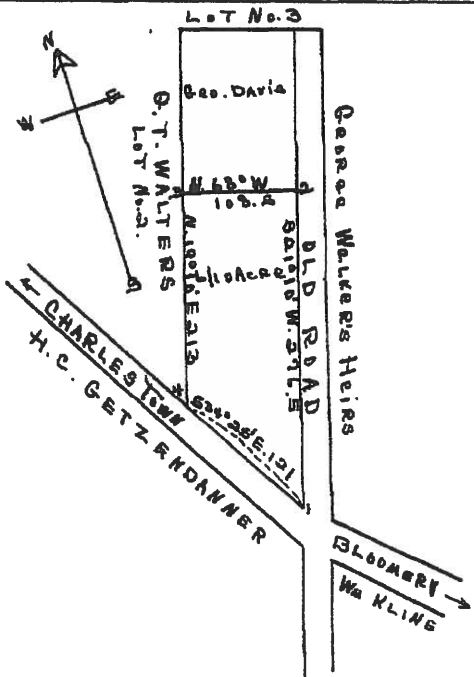
Given under my hand and Notarial Seal this 20 day of January, 1930.

William O. Davis

(Notarial seal)

Notary Public, D. C.

My commission expires June 12th, 1930.



Flat of Lot of Heirs of Richard Wilson
 One half mile Southeast of
 Charles Town, West Virginia
 Scale 100 feet :: 1 inch Jan. 1930.
 M. W. MacDonald
 S. J. C.

State of West Va., County of Jefferson, ss:
 IN THE CLERK'S OFFICE OF COUNTY COURT: FEBRY 1st, 1930.
 This Deed dated Jany. 20, 1930 from Littis J. W. Walker, et al. to Thos. C. Henretty
 & ux. was produced in this office and duly admitted to record.
 Test,
 Chas. A. Johnson, Clerk of said Court.

20-2-2V

Re: Off Lace Leaf Way

From: mike5902 <mike5902@aol.com>

To: reece.johnson <reece.johnson@fhswv.com>

Date: Sun, 24 Mar 2019 19:18

Just what we need-emails are legal documents-Crawford Law should be able to finish this for us-thank you

Sent from my iPhone

On Mar 24, 2019, at 7:12 PM, <reece.johnson@fhswv.com> <reece.johnson@fhswv.com> wrote:

See Message Below

No separate letter was attached but could be obtained upon request, I'm sure.

Thanks for your patience!

Reece

Get [Outlook for Android](#)

From: Naughton, James J

Sent: Wednesday, February 27, 8:56 AM

Subject: Off Lace Leaf Way

To: reece.johnson@fhswv.com

Cc: Wilson, Gary T

Mr. Johnson

We have reviewed the request to purchase the right of way that abuts the property owned by Michael & Peggy Julian. We can not find any record of ownership by the WVDOH for this right of way. If you or your clients have documentation showing WVDOH ownership then forward it to us for review. We have to be able to verify our ownership before considering any request.

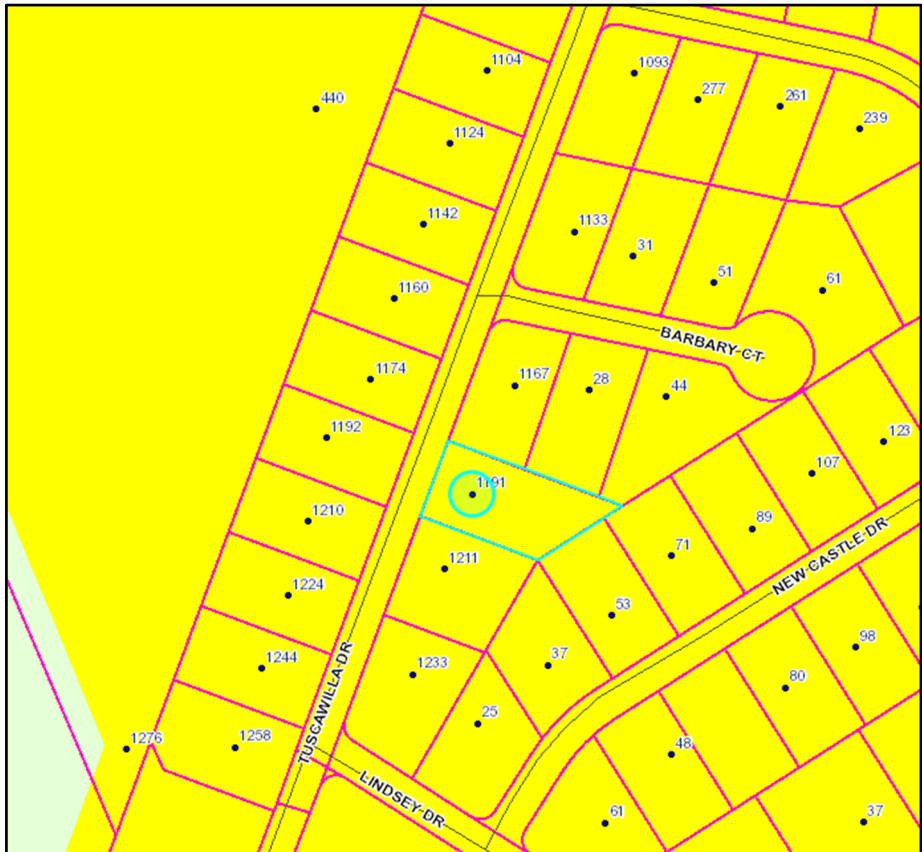
Jim Naughton
Property Manager
WV Division of Highways
District Five
PO Box 99
Burlington WV 26710
304-289-2233

James.J.Naughton@wv.gov

Confidentiality Statement: This e-mail and documents accompanying this transmission may contain confidential information that is legally privileged. This information is intended only for the use of the individuals or entities listed above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or action taken in reliance on the contents of these documents is strictly prohibited. If you have received this information in error, please notify the sender immediately and arrange for the return or destruction of these documents.

Staff Report
 Jefferson County Board of Zoning Appeals
 February 27, 2020
Graham Variance Request (#20-3-ZV)

Item #3 Variance from Section 9.7 to reduce the side setback from 8' to 4' for a 24' x 24' attached garage.

Applicant:	Robert Graham
Owner:	Same as above
Developer:	N/A
Consultant:	N/A
Location:	Tuscawilla Subdivision, Lot 51, 1191 Tuscawilla Dr., Charles Town
Parcel Information and Zoning District:	<p style="text-align: center;">Parcel ID: 02011A00290000; Size: .39 acres; Zoning District: Residential Growth</p> 
Surrounding Properties:	<p style="text-align: center;">Zoning Map Designation: <i>North & South:</i> Residential Growth <i>East and West:</i> Residential Growth</p>
History:	PC File #72-03, Lots 22-69 / PB 2, PG 285 (Recorded 02-09-72)
Waivers/Variations:	None
Approved Activity:	Single Family Residence
Site Visit Conducted:	Yes: 02/18/2020

Staff Report
Jefferson County Board of Zoning Appeals
February 27, 2020
Graham Variance Request (#20-3-ZV)

Summary of Request and Purpose of Ordinance Requirements

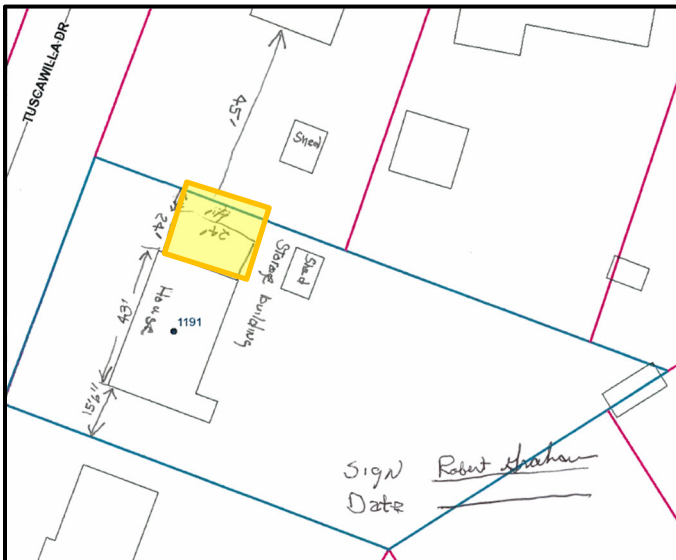
Variance from Section 9.7 to reduce the side setback from 8' to 4' for a 24' x 24' attached garage.

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

Staff Evaluation of Request

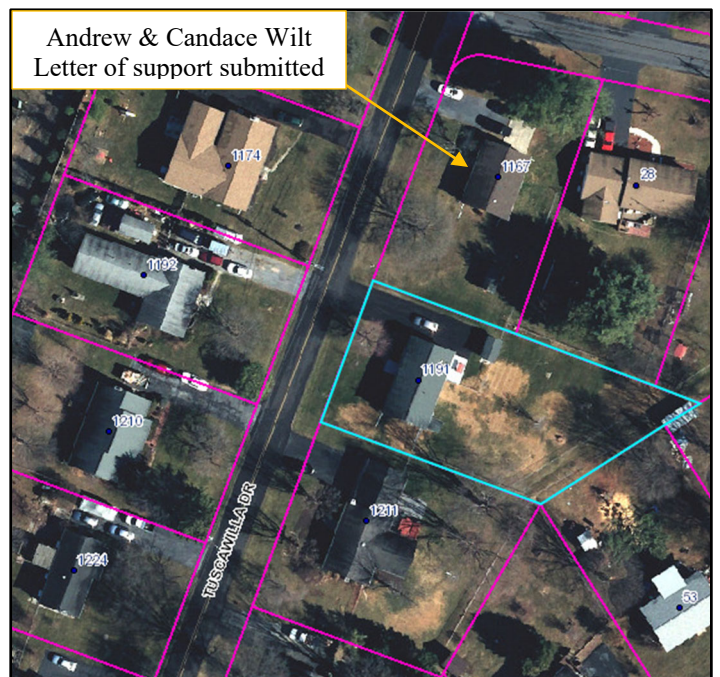
The subject parcel is Lot 51 in the Tuscanwilla Hills Subdivision, which was created prior to the adoption of zoning. The final plat for this section was recorded on February 9, 1972 (PB2, PG 285).

The proposed garage would be placed in a location that is currently utilized for parking and the applicants have represented that the driveway has existed since the home was built in 1973.



While there appears to be sufficient space to locate the garage to the rear of the home, the applicant has represented that the primary reason for selecting the proposed location was based on this side of the house having the only exterior door leading to the driveway.

The neighbors to the north would be most directly impacted by the setback reduction and they have provided a letter which states they do not object to the request; therefore, a setback reduction from 8' to 4' along the subject property line would have minimal impact on the neighboring properties.



Staff Report
Jefferson County Board of Zoning Appeals
February 27, 2020
Graham Variance Request (#20-3-ZV)

Conditions of Approval

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

1. No conditions of approval have been identified.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 9.7 Other Exceptions³

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

Setbacks are as follows in subdivisions for which no setback was stipulated previously by the Jefferson County Planning Commission as a part of the subdivision process:²³

Rural Agricultural and Industrial Commercial

Single Family Residences

Over 2 acres --	40' front,	15' side	and	50' rear
40,000 sq. ft. to 2 acres --	25' front,	12' side	and	12' rear
30,000 sq. ft. to 39,999 sq. ft. --	20' front,	10' side	and	12' rear
under 30,000 sq. ft. --	20' front,	8' side	and	12' rear



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
 www.jeffersoncountywv.org

File Number: 20-3-ZV
 Staff Initials: gt
 Meeting Date: 2/27/20
 Fees Paid (\$100 or \$150): 100-

Email: zoning@jeffersoncountywv.org

Phone: (304) 728-3228

Zoning Variance Request

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

Property Owner Information

Name: Robert L Graham
 Mailing Address: 1191 Tuscawilla, Dr
 Phone Number: 304 886-3199 Email: Suprememaw58@gmail.com

Applicant Contact Information

Name: Nancy J Graham
 Mailing Address: 1191 Tuscawilla, Dr
 Phone Number: 304 283-3502 Email: Suprememaw58@gmail.com

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

Name: _____
 Mailing Address: _____
 Phone Number: _____ Email: _____

Physical Property Details

Physical Address: 1191 Tuscawilla Dr
 City: Charles Town State: WV Zip Code: 25414
 Tax District: 2 map, 11A Parcel 29 Map No: 11A Parcel No: 29
 Parcel Size: 0.3717 Lot 51 Deed Book: 1211 Page No: 214

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"/>

RECEIVED
 9
 JAN 27 2020 *gt*
 JEFFERSON COUNTY PLANNING
 ZONING & ENGINEERING
Place Received Date Stamp Here

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

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

Reference the section of the Zoning Ordinance pertaining to this request: Sec 9.7

Briefly describe the nature of the variance request:

Side setback variance from 8' to 4'
24' x 24' Garage (attached) gth

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

Front Setback Side Setback Rear Setback Reduction From 8' to 4'

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

See attached

In what way does this request arise from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance?

See attached

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

See attached

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

See attached

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

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

Robert L. Graham 10/13/19
Signature of Property Owner Date

Conney J. Graham 10/13/19
Signature of Property Owner Date

Notification Requirements (to be completed by staff)

Notice of a public hearing for an appeal shall be advertised in a newspaper having general circulation in the County at least 15 days before the hearing. The subject property shall be posted conspicuously by a zoning notice no less than 28" x 22" in size, at least 15 days before the hearing (pursuant to the Zoning and Land Development Ordinance Section 6.1B).

02/27/20
Date of Public Hearing

02/12/20
Advertising Date

RECEIVED
02/12/20
PLANNING & ENGINEERING

Please explain why granting of the variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents: The most directly affected property owner, Gary Scott has provided a letter stating he has no objection to the proposed garage being located 4 foot from the common property line we share. The neighbors directly across the street from us who have the most direct view of our property have also provided a letter stating they do not object to the proposed garage being 4 foot from the side property line.

In what way does this request arise from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance? Our home and existing storage building were built in 1973 prior to the need for any type of building permit through the county; and prior to most of the land use regulations being adopted in the county. The existing storage building is approximately 4 foot from the side property line which we have in common with Andrew & Candice Wilt. The existing driveway has been in place since we purchased the home in 2018.

How will granting this variance eliminate an unnecessary hardship and permit a reasonable use of Land? We are getting older and due to health issues it is becoming increasingly more difficult for my wife and me to come out of the house and get into our vehicles safely during inclement weather. This is the only exterior door that leads directly to our driveway where the vehicles are parked; and, by allowing an attached garage to our home it will make it safer for both of us to get in and out of the house and in our vehicles safely. The driveway has been in place since the home was built in 1973 and there is no other location on our lot to place a garage. The garage will increase the value of our property and we believe it will also increase the value of other properties in our neighborhood.

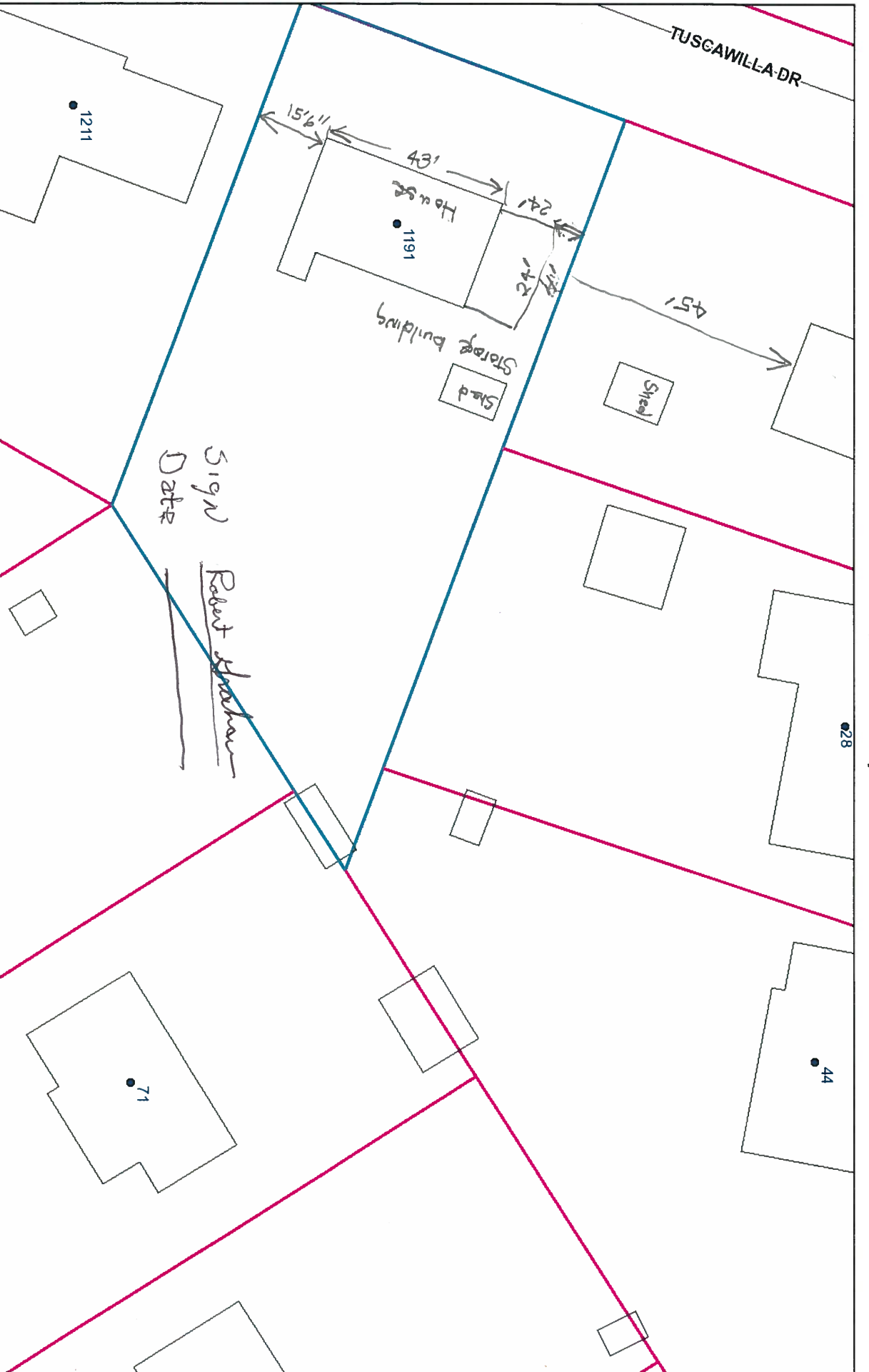
How will granting this variance allow the intent of the Zoning Ordinance to be observed and substantial justice to be done? As stated, when our home and shed were built in 1973 there were no building permit requirements nor was zoning in place. The zoning ordinance allows variances to be sought of its provisions subject to public hearing process. The most directly affected neighbors has no objection to the location of the proposed garage. The distance between the proposed garage and Andrew Wilt will be 45 feet or more.

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JAN 23 2020 *gm*

JEFFERSON COUNTY PLANNING
ZONING & ENGINEERING

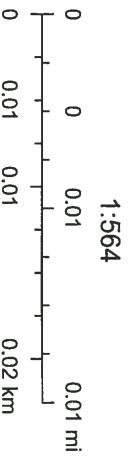
Viewer Map



October 11, 2019

Deed Book 1211 Page 214
District 2 Map 114 Parcel 29

Acreage
0.3717
Lot 51



Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS,

Me
Copyright 2017

Viewer Map



October 11, 2019

1:564

0 0 0.01 0.01 0.01 mi

0 0.01 0.01 0.02 km

Andrew
Andre and Candice Wilt
1176 Tusawilla Drive
Charlestown, WV 25414

January 13,2020

Jefferson County Zoning Board of Appeals
P.O. Box 716
116 East Washington Street
Charles Town, WV

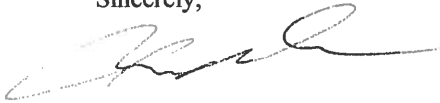
Dear Board Members:

Andrew
Our names are Andre and Candice Wilt and we have lived next door to Robert and Nancy Graham for 2 years. We have no objection to them building a garage on their property. Nor do I have objection to it being closer to the common side property line we share.

I understand they are seeking a variance from the side setback requirement of 12 feet to 4 foot from the side we have in common. As the most directly affected neighbor who is directly beside the Grahams I am not opposed to the Board granting a side setback variance from 12 feet to 4 foot.

Thank you for your consideration of their request.

Sincerely,



Andre Wilt
Andrew

Gary and Ruth Scott
1192 Tusawilla Drive
Charlestown, WV 25414

January 13, 2020

Jefferson County Zoning Board of Appeals
P.O. Box 716
116 East Washington Street
Charles Town, WV

Dear Board Members:

Our names are Gary and Ruth Scott and we have lived directly next door to Robert and Nancy Graham for 2 years. We have no objection to them building a garage on their property and believe it will not only increase their property value but ours as well. Nor do we have an objection to it being closer to the side property line.

We understand they are seeking a variance from the side setback requirement of 12 feet to 4 foot from the side property line. As the neighbor who is directly beside the Grahams we are not opposed to the Board granting a side setback variance from 12 feet to 4 foot.

Thank you for your consideration of their request.

Sincerely,

 
Gary and Ruth Scott

Earnest and Rebecca Burns
1211 Tusawilla Drive
Charlestown, WV 25414

January 13,2020

Jefferson County Zoning Board of Appeals
P.O. Box 716
116 East Washington Street
Charles Town, WV

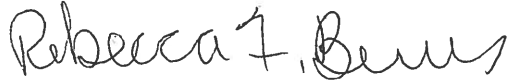
Dear Board Members:

Our names are Earnest and Rebecca Burns and we have lived directly next door to Robert and Nancy Graham for 2 years. We have no objection to them building a garage on their property and believe it will not only increase their property value but ours as well. Nor do we have an objection to it being closer to the side property line.

We understand they are seeking a variance from the side setback requirement of 12 feet to 4 foot from the side property line. As the neighbor who is directly beside the Grahams we are not opposed to the Board granting a side setback variance from 12 feet to 4 foot.

Thank you for your consideration of their request.

Sincerely,

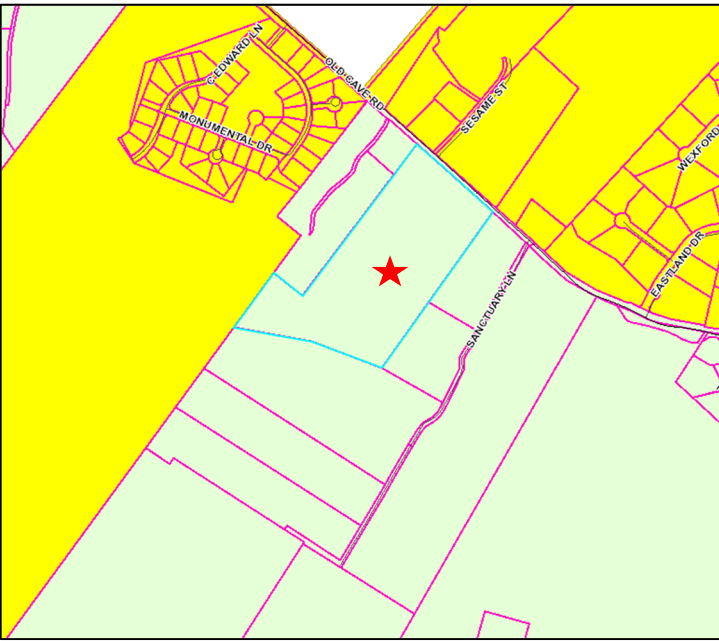
A handwritten signature in cursive script that reads "Rebecca F. Burns". The signature is written in black ink and is positioned below the word "Sincerely,".

Earnest and Rebecca Burns

Staff Report
 Jefferson County Board of Zoning Appeals
 February 27, 2020

Lutman Variance (20-4-ZV)

Item #4: Variance from Sec 5.7D.2.b.i(b) to allow the required 50% green space to be allocated on each of the individual lots within the cluster (the applicant is proposing a maximum of five lots).

Applicant:	Dave Lutman
Owner:	Lutman Land Development, LLC
Developer:	Same as Applicant
Consultant:	Paul Raco, P.J. Raco Consulting, LLC
Property Location:	Vacant Parcel, Old Cave Road, East of intersection of Cave Quarter Estates
Parcel Information & Zoning District	<p style="text-align: center;">Parcel ID: 02001600120000; Size: 23.47 ac; Zoning District: Rural</p> 
Surrounding Properties:	<p style="text-align: center;">Zoning Map Designation: <i>North:</i> City of Charles Town & Residential Growth <i>South:</i> Residential Growth & Rural <i>East:</i> Rural <i>West:</i> Rural & Residential Growth</p>
History:	Residual parcel from outsale division which occurred in 1986 (Deed Book 553, Page 355, recorded March 18, 1986)
Waivers/Variations:	None.
Site Visit Conducted:	Yes. 02/18/2020

Summary of Request and Purpose of the Ordinance Requirements

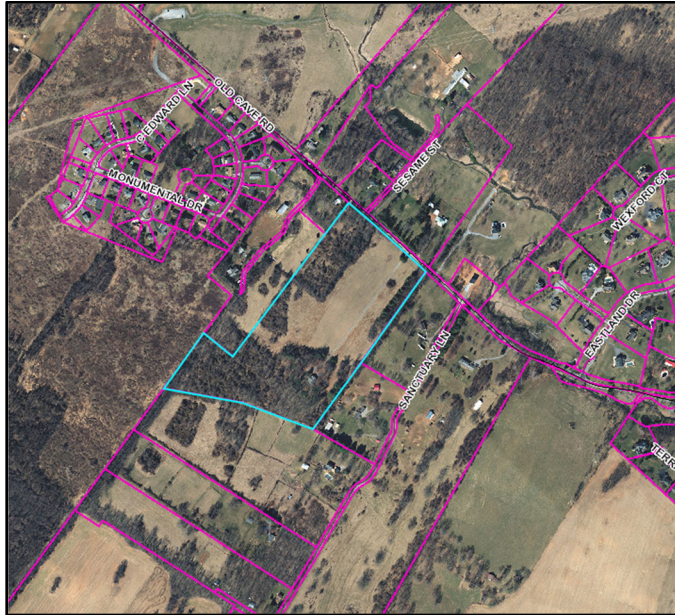
The applicant is requesting a variance from Section 5.7D.2.b.i(b) to allow the required 50% green space to be allocated on each of the individual lots within the cluster and has proffered that he will place an easement on each of the lots to preserve the green space area. The applicant is proposing a maximum of five lots. The purpose of the required green space in a cluster subdivision was intended to preserve farmland or other natural features while still providing land owners the opportunity to develop their land.

Staff Report
Jefferson County Board of Zoning Appeals
February 27, 2020
Lutman Variance (20-4-ZV)

Staff Evaluation of Request

The subject parcel contains 23.47 acres and is the residual parcel from an outsale division which occurred in 1986 (Deed Book 553, Page 355). Under the current cluster provisions, 11.75 acres would be required to be retained as green space.

The applicant would like disperse the required 50% green space area on each of the proposed five lots in



lieu of a single 11.75 acre green space lot. The applicant has proposed placing a perpetual green space easement on each of the lots, which would restrict any buildings from being placed within that green space area.

It is feasible to comply with the Ordinance by other means. The applicant has the right to create five lots under the cluster provision and would be required to retain ~11.75 acres in green space area. However, as the applicant noted in his application, allowing the green space to be dispersed between the proposed five lots would allow the developer to create larger parcels of approximately 5 acres in size (as opposed to 2.5 to 3 acres), which would maintain the character of the area. It should also be noted that the Ordinance

does not require that the green space area be placed in an easement; therefore, it would appear that placing individual easements on each lot would satisfy the intent of the green space requirement to preserve land in its natural condition.



Conditions of Approval

If the variance is granted, a possible condition of approval could be:

- a) The applicant, as proffered, shall place a perpetual green space easement on each of the five lots, with the total green space equal to or greater than the required 50% (~11.75 acres).

Staff Report
Jefferson County Board of Zoning Appeals
February 27, 2020

Lutman Variance (20-4-ZV)

Section of Ordinance to be Considered:

Section 5.7 Rural (R) District^{23, 32}

The purpose of this district is to provide a location for low density single family residential development in conjunction with providing continued farming activities. This district is generally not served with public water or sewer facilities, although certain size developments processed under the cluster provision of Section 5.7D(2) may choose to do so. A primary function of the low density residential development permitted within this section is to preserve the rural character of the County and the agricultural community. All lots subdivided in the Rural District are subject to Section 5.7D. The Envision Jefferson 2035 Comprehensive Plan recommends that the cluster provision of the Zoning Ordinance be the preferred method of residential development in the Rural zoning district.^{8, 23, 32}

A. Principal Permitted and Conditional Uses^{23, 27, 32}

1. Uses that are permitted, conditional, and not permitted in this district shall be as indicated in Appendix C, Principal Permitted and Conditional Uses Table.^{27, 32}
2. Uses shown as conditional uses (CU) for this district in Appendix C, Principal Permitted and Conditional Uses Table shall be subject to review and approval by the Board of Zoning Appeals in accordance with Section 6.3 of this Ordinance.^{27, 32}

B. Minimum Lot Area, Lot Width and Yard Requirements²³

1. Setbacks, height, and other site development standards shall be as indicated in Appendix A, Residential Site Development Standards, and Appendix B, Non-Residential Site Development Standards, except as provided elsewhere in this Ordinance.²⁷
2. Commercial and Light Industrial uses are subject to the requirements of Section 5.6D and the requirements for such standards in Article 8.²³
3. Any building or feeding pens in which farm animals are kept shall comply with distance requirements specified in Section 4.6 and the requirements for barns and feeding pens specified in Article 8. Also, any buildings used to store manure shall comply with distance requirements specified in Section 4.6A.²³

C. Height Regulations

No structure shall exceed 45 feet in height except as provided in Section 9.2.³²

D. Maximum Number of Lots Allowed

All parcels of land that were on record as of October 5, 1988 are entitled to subdivide for single family detached residences based on Subsections 5.7D.1, 5.7D.2 or 5.7D.3 below.

A property owner may use a combination of these Subsections, provided that the number of lots are prorated by density. The density rights for any rural development shall be based on the parcel of record as of October 5, 1988 utilizing the following alternatives:^{8, 32}

1. A property owner may create one (1) lot for every 15 acres with a minimum lot size of three (3) acres.^{17, 21}

Staff Report
Jefferson County Board of Zoning Appeals
February 27, 2020

Lutman Variance (20-4-ZV)

- a. Maximum number of lots allowed (density) shall be computed using acreage on record as of October 5, 1988. Any divisions which have occurred since that time shall be subtracted from the maximum number of lots allowed.³²
- b. A property owner may transfer rights to adjacent parcels which are owned by the same entity.^{17, 21}

2. Clustering

- a. Purpose and Intent
 - i. To encourage the conservation of farmland in the Rural Zoning District by planning the residential development allowed in the zone to provide for the best obtainable siting, access and location of lots on a tract while retaining a portion of the property as green space³².
 - ii. To provide for a well planned development while minimizing the use of prime agricultural land.

b. Requirements

- i. One (1) lot may be subdivided for every five (5) acres.^{17, 21, 23, 32}
 - (a) Maximum number of lots allowed (density) shall be computed using acreage on record as of October 5, 1988. Any divisions which have occurred since that time shall be subtracted from the maximum number of lots allowed.³²
 - (b) A minimum of 50% of the property shall be retained as green space and shall contain no further development rights unless the property is placed in another zone or further subdivision is allowed by ordinance. A note to this effect shall be placed on all cluster subdivision plats.³²
 - (c) For every additional 5% green space preservation, the following sliding scale may be utilized:³²

55% green space	1 lot per 4.5 acres
60% green space	1 lot per 4 acres
65% green space	1 lot per 3.5 acres
70% green space	1 lot per 3 acres
75% green space	1 lot per 2.5 acres
- ii. The residue of a lot divided utilizing either 5.7D.1 or 5.7D.2 prior to the date of adoption of this amendment on March 16, 2017, shall have additional rights based on the provisions of this Subsection, provided that the total lots developed shall not exceed one lot per five acres based on the parent parcel on October 5, 1988 and all other provisions of this Subsection are complied with.³²
- iii. Minimum lot size shall be 40,000 square feet for lots that will be served by individual wells and septic systems; 20,000 square feet for lots that will be served by a central water

Staff Report
Jefferson County Board of Zoning Appeals
February 27, 2020

Lutman Variance (20-4-ZV)

OR central sewerage system; and 10,000 square feet for lots that will be served by both a central water AND central sewerage system.^{17, 21, 32}

- (a) Setbacks shall be 25' front, 12' sides, and 20' rear.
- (b) All clusters of three (3) or more lots shall be served by an internal road; provided that all clusters utilizing the sliding scale in 5.7D.2.b shall have an internal road with direct access to a public road identified as a Major Collector or a Minor or Principal Arterial on the Envision Jefferson 2035 Comprehensive Plan Roadway Classification Map.²³
- (c) Clusters of three (3) or more lots shall not be along an existing public road.
- (d) A property owner may transfer rights to adjacent parcels which are owned by the same entity.^{17, 21}

iv. Procedures²³

- (a) Concept Plan. For the subdivision of tracts eligible for cluster lots, a concept plan must be submitted pursuant to the requirements of the Jefferson County Subdivision and Land Development Regulations. All cluster developments must be processed as a Major Subdivision.^{17, 21, 23}
- (b) The Concept Plan for a proposed Cluster Development can be combined with the required submittal and process requirements for a Concept Plan for a Major Subdivision as outlined in the Subdivision Regulations, provided that the Concept Plan includes all requirements of the Concept Plan in the Subdivision Regulations and includes the necessary soils and topographic data, together with a written narrative, required for the analysis listed below.³²
- (c) The Staff shall review and make a recommendation to the Planning Commission regarding the proposed design and layout of the proposed Cluster Development. Staff shall consider the following when reviewing the Cluster Concept Plan:³²
 - (1) Soils: The cluster plan should minimize the use of the higher quality soils (class I, II and III as designated in the soils classification study) and maximize the use of steeper sloped areas, areas of poorer soils and areas which are otherwise less productive for agricultural uses.
 - (2) Surrounding land use and zoning: The cluster plan shall consider the existing land uses and zoning in the vicinity. Generally, new lots which are adjacent to existing development or residential zoning are preferred to creating an isolated cluster of new houses.
- (d) If the concept plan is approved by the Planning Commission, the applicant may then proceed with platting of the clustered development in accordance with the Jefferson County Subdivision and Land Development Regulations and the approved concept plan. The plat shall bear a statement indicating “The land lies within an approved rural cluster development and no further subdivision of the remaining land is permitted unless the property is placed in another zone or further subdivision is allowed by ordinance or regulation”.²³

Staff Report
Jefferson County Board of Zoning Appeals
February 27, 2020

Lutman Variance (20-4-ZV)

3. If the development rights under Subsections 5.7D.1 and 5.7D.2 above have not been utilized, any property that was a lot of record as of October 5, 1988 may create three (3) total lots (including the residue) during any five year period. Such application may process as a Minor Subdivision, in accordance with the Subdivision Regulations, and shall be exempt from density limitations provided that all subdivision requirements are satisfied. Applications which exceed this number during any five year period shall process under Subsection 5.7D.1 or 5.7D.2 above. Only the residue or parent parcel may qualify under this provision once the original subdivision takes place. All lots that qualify under this section must meet subdivision requirements.³²
4. Subdivisions involving transfers of land between family members known as “Family Transfers”, as defined in Article 2, shall not be subject to the density requirements of this section. All lots that qualify under this section must meet subdivision requirements. Family transfers are not entitled to further subdivide except as another Family transfer.³²
5. Once the maximum number of lots are created under 5.7D, the property cannot be further subdivided unless the Ordinance is amended to allow such.
6. Notwithstanding any other provision contained in Article 5, Section 5.7D, if a property was previously subdivided under the one (1) lot per ten (10) acre provision after October 5, 1988 and before this Ordinance was amended on March 1, 2018, then the property may continue to subdivide, or finish subdividing, utilizing the property’s remaining development rights as they existed at the time(s) when the subdivision was previously processed. These vested rights may be shown on a previously approved Preliminary or Final Plat, Concept Plan, or Community Impact Statement, or otherwise contained within the property’s subdivision files within the Department of Engineering, Planning, and Zoning.³⁴



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
 www.jeffersoncountywv.org

File Number: 20-4-2V
 Staff Initials: AB
 Meeting Date: 02-27-2020
 Fees Paid (\$100 or \$150): \$100 Check 5747

Email: zoning@jeffersoncountywv.org

Phone: (304) 728-3228

Zoning Variance Request

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

Property Owner Information

Name: Lutman Land Development, LLC
 Mailing Address: 412 W Burr Blvd, Kearneysville, WV 25430
 Phone Number: c/o Paul 304/676-8256 Email: c/o Paul pjraco.consulting@gmail.com

Applicant Contact Information

Name: David Lutman Paul J Raco
 Mailing Address: Above and Below
 Phone Number: c/o Paul 304/676-8256 Email: c/o pjraco.consulting@gmail.com

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

Name: P.J. Raco Consulting LLC Paul J Raco
 Mailing Address: P.O. Box 548, Charles Town, WV 25414
 Phone Number: 304/676-8256 Email: pjraco.consulting@gmail.com

Physical Property Details

Physical Address: Vacant Old Cave Road Just East of Cave Quarter Estates Subdivision
 City: Charles Town State: WV Zip Code: 25414
 Tax District: Charles Town Map No: 16 Parcel No: 12
 Parcel Size: 23.47 Acres Deed Book: 1233 Page No: 605

Zoning District (please check one)

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

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 JEFFERSON COUNTY PLANNING
 ZONING & ENGINEERING

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

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

Reference the section of the Zoning Ordinance pertaining to this request: 5.7D2.bi(b)

Briefly describe the nature of the variance request:

See attached

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

Front Setback Side Setback Rear Setback Reduction From _____ to _____

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

See attached

In what way does this request arise from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance?

See attached

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

See attached

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

See attached

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

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



Signature of Property Owner Date



Signature of Property Owner Date

Notification Requirements (to be completed by staff)

Notice of a public hearing for an appeal shall be advertised in a newspaper having general circulation in the County at least 15 days before the hearing. The subject property shall be posted conspicuously by a zoning notice no less than 28" x 22" in size, at least 15 days before the hearing (pursuant to the Zoning and Land Development Ordinance Section 6.1B).

02-27-2020

Date of Public Hearing

02-12-2020

Advertising Date

02-12-2020

Placard Posting Date

Lutman Land Development, LLC
Request for Variance
Article 5, Sections 5.7D2(b)i(b)
Jefferson County Zoning Ordinance
February 3, 2020

Brief Description

Article 5, Section 5.7D2(b)i(b) requires that 50% of land developing under this section be retained in open space, farm, green space, forest, etc. The Staff has determined that this 50% provision should be retained and maintained on the Residue. The applicant is proposing to retain the 50% in open space on each individual proposed lot.

The 23.47 acre parcel is permitted to subdivide into 5 lots (4 lots and a residue) under this provision of the ordinance. In this case the 50 percent would be 11.75 acres would need to be left in open space. Under the current interpretation, this can be accomplished by subdividing four 2.5 acre lots and a larger residue. The Applicant is proposing to subdivide the property into four 5 acre parcels with an approximate 3.5 acre residue with the required 50% along the rear of the 5 acre parcels being put in a perpetual green space easement which would allow for no building in that area.

The applicant believes that this would allow the area around the subdivision to be buffered from each house construction site, while still accomplishing the goal of keeping 11.75 acres in open and green area. This would allow the same number of lots as a cluster subdivision with the same amount of open space.

The applicant could also develop this property by subdividing the property into 2 lots and a residue every 5 years until the entire property is developed into approximately 12 lots over time. If the Applicant is granted the variance as requested, then the land will only develop into the 5 lots as proposed and presented with this variance under this clustering provision.

Accordingly, the Applicant respectfully requests that the variance be granted to allow the 5 Lots with the open space being placed in an easement on each of the lots as opposed to just on the residue.

Lutman Land Development, LLC
Request for Variance
Article 5, Sections 5.7D2(b)i(b)
Jefferson County Zoning Ordinance
February 3, 2020

Four Criteria

1. Granting the variances will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents.

The Applicant isn't asking for any additional lots than what is already permitted. In fact, if the Applicant subdivided the property to the maximum density permitted, he could do an additional 7 lots over time utilizing the 2 lots every five year provision. Allowing the Applicant to develop 5 larger lots instead of 4 small lots and a larger residue will still allow the rural nature of the area with the required 11.75 acres of green space being provided on each of the lots. In other words, the overall density stays the same as what is permitted by the Cluster provision with the same amount of open, preserved green space.

Each lot will still need to obtain Health Department Approval and the subdivision will still need the appropriate Highway Department approval. Instead of having 4 lots as small as 1 acre with a larger residue, the applicant is requesting four 5 acre parcels and a residue, with the open space being spread over the lots instead of just on the residue.

The property is adjacent to the Residential Growth District on the front and the one side. Those parcels in the Residential Growth District could develop to much higher density levels. Therefore, the property could have much higher density along its border, while being required to keep 11.75 acre in open space. This can be accomplished by nearly equal sized lots on the property with the same amount of preserved green space as required.

2. In what way does this request arise from special conditions or attributes which pertain to the property for which a variance is sought, and which were not created by the person seeking the variance?

This property is bordered on two sides by the Residential Growth District, as such, those properties can develop into very small lots. It is unclear why this property wasn't included in the Residential Growth District when the Zoning Ordinance was adopted, but the open space required in the ordinance for this property would seem only to be adjacent to the higher density properties. The idea of keeping 50% of the land in the rural district is to allow the larger residue of cluster developments be clumped together to protect adjacent farm uses. In

this case, two of the sides are permitted for high density development instead of farms. So, the Applicant can still meet the requirement of 11.75 acres of open space but provide for lots of equal size.

The Applicant could still develop using different permitted provisions of the Zoning Ordinance. One provision would allow the Applicant to develop into 12 lots over the course of time. Or, because the property is adjacent to the Residential Growth District on two sides, the Applicant could attempt a rezoning to Residential Growth District to avoid the 50% rule. Instead, the Applicant is proposing to develop only 5 lots as permitted by clustering. Additionally, the Applicant is going to meet the open space by providing for a preservation easement on the required 11.75 acres divided through the lots. This is more than what is required on a cluster with the 11.75 acres on the residue, since the residue doesn't have to provide for a preservation easement.

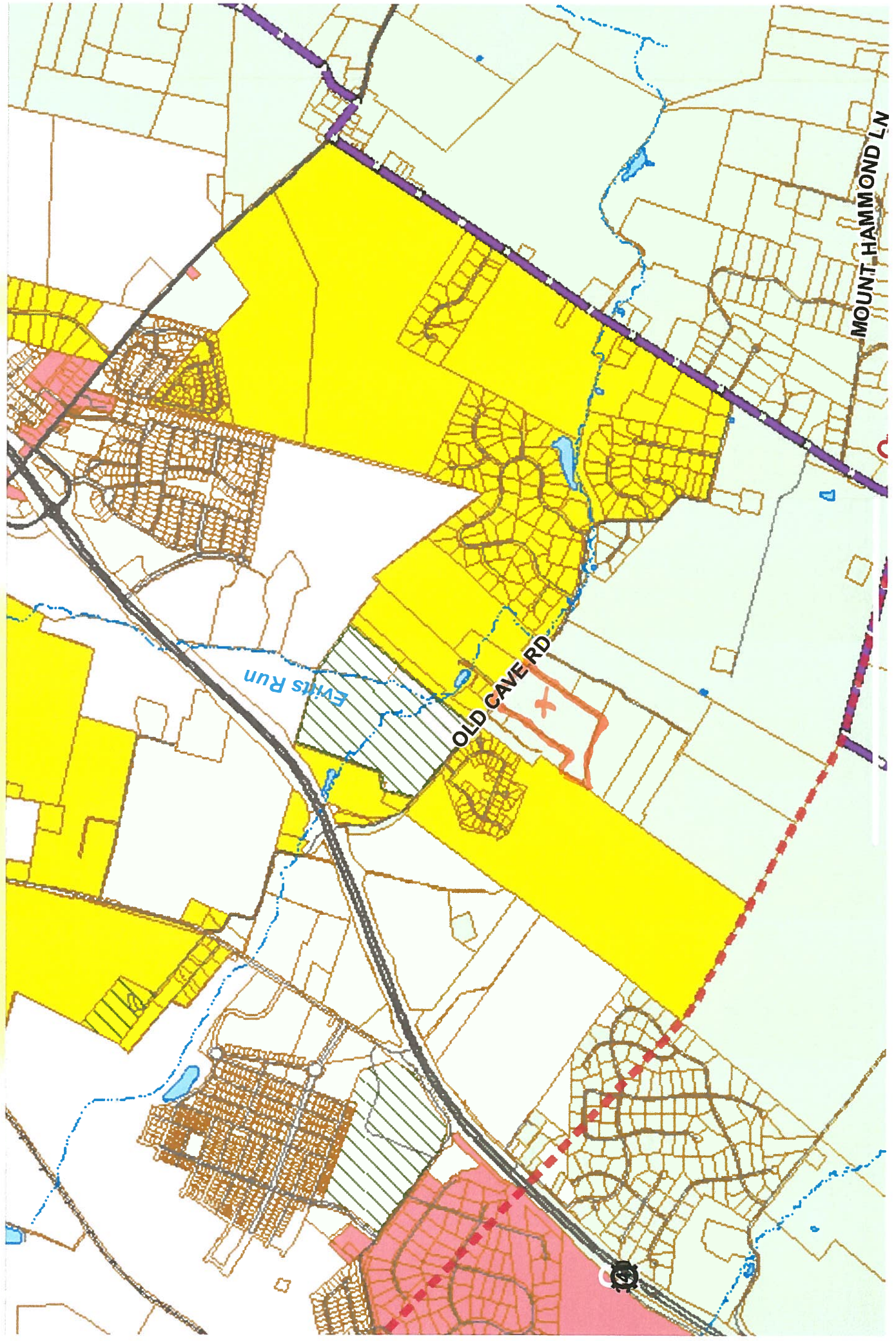
3. How will granting this variance eliminate an unnecessary hardship and permit a reasonable use of the land?

Again, there are 3 (4 with rezoning) ways to develop the property. One is to develop 2 lots every 5 years which would result in about 12 lots over time. Another way is to cluster 4 small lots with a residue of about 15 acres. This would push all the lots up front. The final way is to have this variance granted which would allow the same number of lots as the Cluster, but to spread it over the entire land. This would seem to meet the rural intent of the area. The Applicant believes that the third way would be best for the area since each of the new lots will contain about 5 acres with about half of each lot being placed in a preservation agreement.

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

There are several purposes of this provision. First, it would allow cluster developments with large residues that could be lumped together to be compatible for farming. In this case, there is adjacent land in the Residential Growth District, so high density can be located on two sides of the property. So, allowing larger lots for each of the permitted lots seems to be a good compromise for the intent of the ordinance.

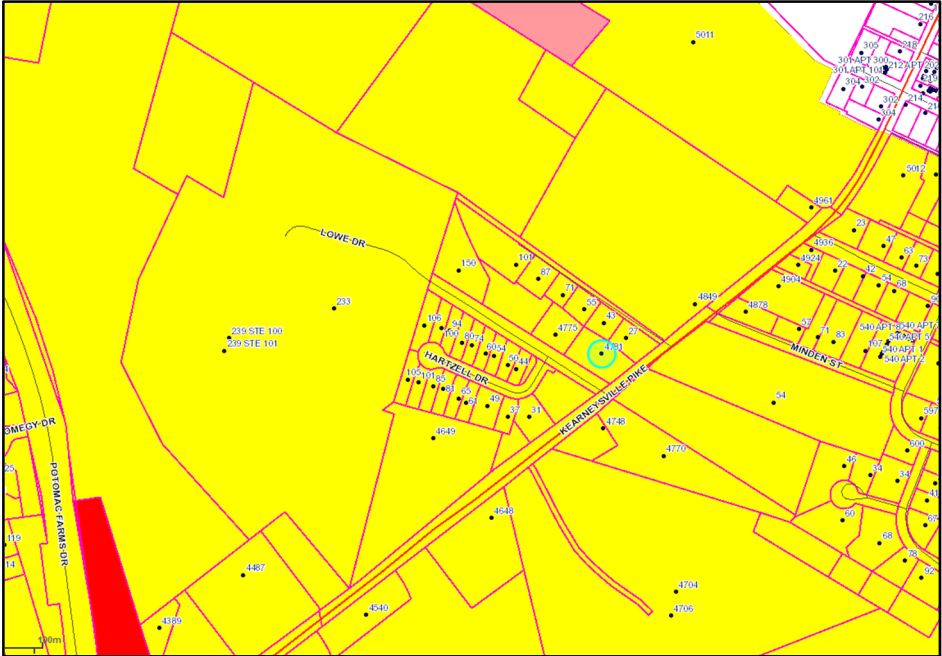
Second, this provision allows for half of property to remain undeveloped. In this case, that half equals 11.75 acres. By setting aside the same required 11.75 acres of land in a preservation easement on each of the lots, it still meets the goals and intent of the Zoning Ordinance to preserve half of the property. Really, this approach in this case will be better since this land will be in an actual easement from building on each lot. As such, the lots could not further subdivide under this provision.



Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 February 27, 2020

Potomac Crossroads Counseling, LLC
Conditional Use Permit Request (#20-1-CUP)

Item #5 Request for a Conditional Use Permit to operate a Medical/Dental/Optical Office and/or Professional Office as defined in Article 2. The proposal consists of operating a counseling facility with approximately eight therapists that meet with not more than eight clients during one appointment time. Parking requirements will be met on-site.

Applicant:	Kathy Morotti, Potomac Crossroads Counseling, LLC
Owner:	Kenneth F. Lowe, Jr., Rev Trust
Developer:	Same as applicant
Consultant:	N/A
Parcel Information and Zoning District:	<p style="text-align: center;">4781 Kearneysville Pike, Shepherdstown, WV Parcel ID: 09000800230007; Size: .71 ac Zoning District: Residential Growth</p> 
Surrounding Properties:	<p style="text-align: center;">Zoning Map Designation:</p> <p style="text-align: center;"><i>North:</i> Residential Growth, Residential-Light Industrial-Commercial, & Corporation of Shepherdstown (area shown in white) <i>South:</i> Residential Growth <i>East:</i> Residential Growth <i>West:</i> Residential Growth & General Commercial</p>
Approvals:	None
Site Visit Conducted:	Yes – 02-18-2020

Summary of Request and Purpose of Ordinance Requirements

Request for a Conditional Use Permit to operate a Medical/Dental/Optical Office and/or Professional Office as defined in Article 2. The proposal consists of operating a counseling facility with approximately eight therapists that meet with not more than eight clients during one appointment time. Parking requirements will be met on-site.

Article 2 defines Medical/Dental/Optical Office as: “A facility other than a hospital where medical, dental, optical, mental health, surgical, and/or other personal health care services are provided on an

Staff Report
Jefferson County Board of Zoning Appeals Meeting
February 27, 2020

Potomac Crossroads Counseling, LLC
Conditional Use Permit Request (#20-1-CUP)

outpatient basis, and that accommodates licensed primary practitioners (for example, chiropractors, dentists, medical doctors, optometrists, prescription opticians, psychologists, etc.) within a single office suite.”

Article 2 defines Professional Office as: “A building used primarily for offices for administrative, executive, professional, research, or similar organizations; and for real estate, advertising, and insurance agencies and similar firms. No merchandise is sold on the premises. An office building may include ancillary services for employees, such as a restaurant or coffee shop. This land use does not include a Medical/Dental/Optical Office.”

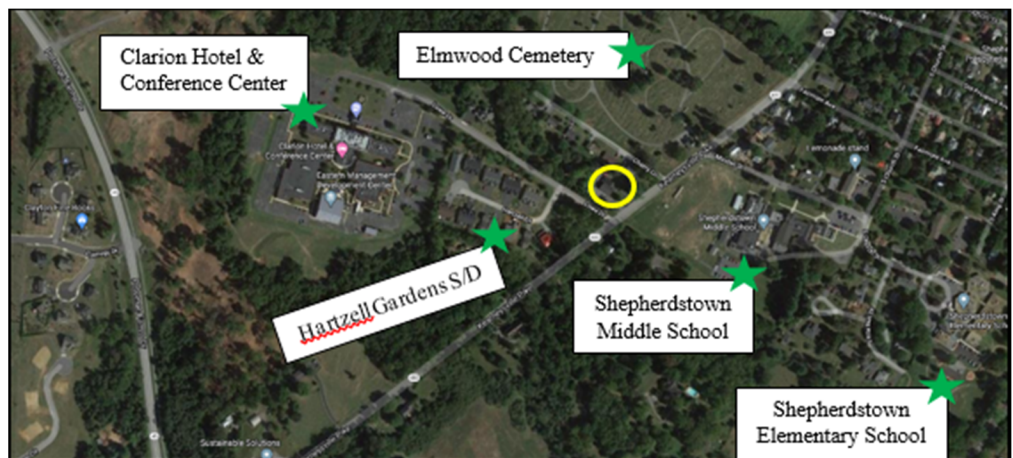


Property Description

The subject parcel contains an existing residential dwelling unit with a paved circular driveway. It is surrounded by residential and non-residential development. Within close proximity is the Clarion Hotel and Conference Center, Elmwood Cemetery, and Saint Agnes Church. Across the street are Shepherdstown Middle and Elementary Schools.

Impact on adjacent properties

The impact on adjacent properties is expected to be minimal because access is available directly off of Kearneysville Pike and sufficient space for parking is available onsite. The change in use from a residential property to a small business does not appear to pose a significant change in traffic patterns. The surrounding area is primarily zoned Residential Growth, with Residential-Light Industrial-Commercial and General Commercial zoning in the nearby vicinity (see zoning map on page 1).



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**Potomac Crossroads Counseling, LLC
Conditional Use Permit Request (#20-1-CUP)**

Conditional Use Permit Process

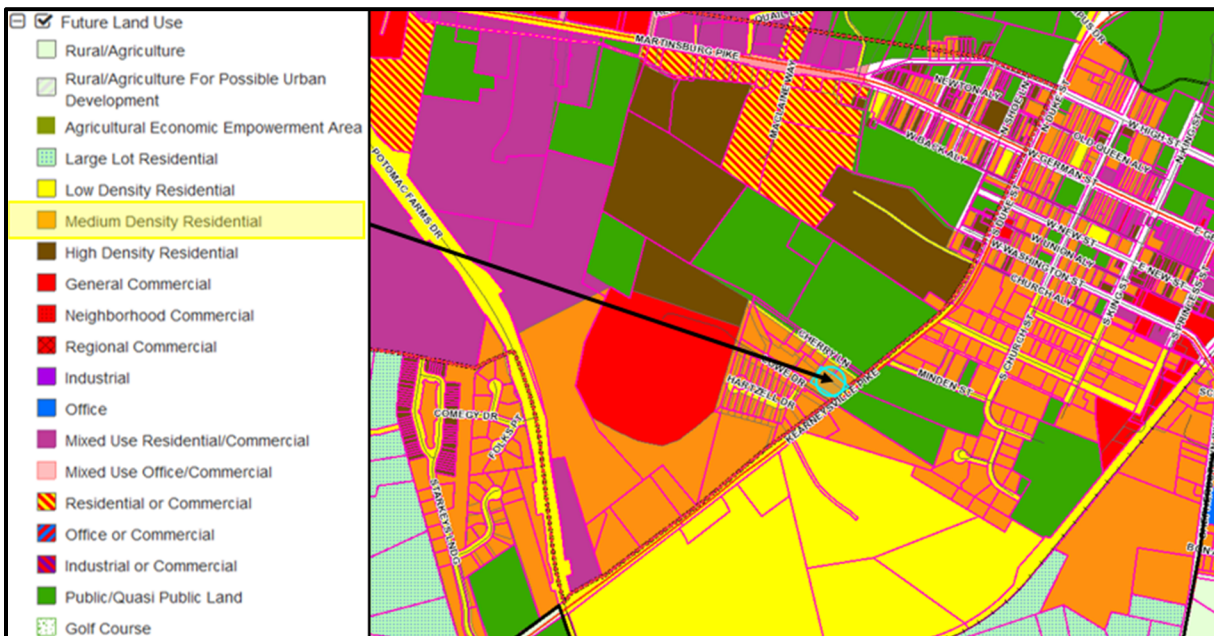
Section 6.3 of the Zoning Ordinance states:

“The Board of Zoning Appeals shall have the authority over the issuance or denial of a conditional use permit for uses listed as “Conditional Uses (CU)” in each zoning district. The Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed conditional use permit:”

The following General Standards shall be considered in approving or denying the CUP:

1. The proposed use is compatible with the goals of the adopted Comprehensive Plan.

The proposed use is compatible with the goals of Envision Jefferson 2035. While the subject parcel is shown as “Medium Density Residential” on the Envision Jefferson 2035 Comprehensive Plan’s Future Land Use Guide (see below), it is also located within the Shepherdstown Preferred Growth Area, which identifies where urban level growth is expected to occur and where it is expected that public utilities may expand.



2. The proposed use is compatible in intensity and scale with the existing and potential land uses on the adjoining and confronting properties, and poses no threat to public health, safety and welfare.

The proposed land use does not appear to pose any threat to public health, safety, and welfare.

With regards to compatibility, as noted previously, the property is located off of Kearneysville Pike, directly across from Shepherdstown Middle and Elementary Schools. The property adjoins residential uses to the east and Lowe Drive to the west, which serves Hartzell Gardens (residential) Subdivision, the Clarion Hotel and Conference Center, and will serve the proposed Shepherdstown Library (pending approval).

As far as compatibility with the residential land uses, it is worth noting that under the Cottage Industry provisions, a business may operate from a residential dwelling with no more than 60

Staff Report
Jefferson County Board of Zoning Appeals Meeting
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**Potomac Crossroads Counseling, LLC
Conditional Use Permit Request (#20-1-CUP)**

business-related vehicle visits per week. The Cottage Industry process was not an option for the applicant as she will not be residing on premises.

3. The proposed site development shall be such that the use will not hinder nor discourage the appropriate development and use of adjacent land and buildings.

The proposed use is complementary to the overall character of the area. Based on the information provided, the proposed site development will not hinder nor discourage the appropriate development and use of adjacent land and buildings.

4. Neighborhood character and surrounding property values shall be safeguarded by requiring implementation of the landscaping buffer requirements found in Appendix B and Section 4.11 of this Ordinance.

Section 4.10 of the Zoning Ordinance requires that a site plan process for all commercial development in accordance with the requirements of the Subdivision Regulations. The proposed project may not require processing a site plan as site disturbance is expected to comply with the “No Site Plan” criteria in the Subdivision Regulations (i.e. no new buildings or additions proposed; parking requirements as discussed to date appear to comply with “No Site Plan” criteria).

If the project complies with the “No Site Plan” criteria, landscaping and buffer requirements would not be required; however, the applicant noted that a privacy fence and/or vegetative planting could be installed if needed.



Staff Report
Jefferson County Board of Zoning Appeals Meeting
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**Potomac Crossroads Counseling, LLC
Conditional Use Permit Request (#20-1-CUP)**

5. Commercial and Industrial Uses shall be in conformance with Section 8.9 of this Ordinance.

As part of the Conditional Use Permit application, the applicant was informed of this criteria and shall comply with this standard.

6. For properties in the Rural zoning district, roadway adequacy shall be assessed by the Comprehensive Plan's Highway Road Classification Map.

The subject parcel is zoned Residential Growth; therefore, this criteria does not apply.

7. Historic Landmarks Commission's Findings related to the proposed land use.

On March 29, 2018 the County Commission adopted a text amendment supporting the preservation of historic sites in the County.

The referenced parcel does not contain any Category I or II historic sites as defined by the Zoning Ordinance; therefore, this criteria does not apply

8. Any signs associated with the proposed Conditional Use shall be reviewed by the Board in accordance with Section 10.6.

Signs accessory to a Conditional Use are subject to Section 10.6 of the Zoning Ordinance, which requires that as part of the application, signage shall be addressed for review and consideration by the Board at the required Public Hearing.

The applicant did not provide any examples of potential signs for the proposed land use; however, the applicant did acknowledge that in accordance with Section 10.6.C, "Signs shall comply with the front yard setback provisions in the districts in which they are permitted."

The front yard setback for the subject parcel is listed in Section 9.7 and requires a setback distance of 20'. It is possible, depending upon the configuration of the sign, a variance may be required from Section 10.4 which states that business signs shall not face an adjoining residence.

With a previous Conditional Use application, when the signs were not included with the application, the Board required that as a condition of approval that "the dimensions and locations of any proposed signage shall be reevaluated by the Board". Should the Board choose to approve the subject request, a similar condition of approval could be required of the applicant.



JEFFERSON COUNTY, WEST VIRGINIA
Department of Engineering, Planning and Zoning
Office of Planning and Zoning
 116 East Washington Street, 2nd Floor
 P.O. Box 716
 Charles Town, West Virginia 25414

20-1-CUP
 File #: CUP _____
 Mtg. Date: 02/27/2020
 Fee Paid: \$ 300 (ccc)
 Staff Int. AD

Email: zoning@jeffersoncountywv.org Phone: (304) 728-3228
 Fax: (304) 728-8126

Application for a Conditional Use Permit

Project Name

Conditional Use Permit process is outlined in Article 6 of the Zoning Ordinance

Potomac Crossroads Counseling, LLC

Property Owner Information

Name: Lowe Kenneth F JR-REV Trust
 Business Name: _____
 Mailing Address: 4781 Kearneysville Pike Shepherdstown, WV25443 Mail Yes
 Phone Number: _____ Email Response: _____ Response: No

Applicant Information

Name: Kathy Morotti
 Business Name: Potomac Crossroads Counseling, LLC
 Mailing Address: PO Box 192 Shepherdstown, WV 25443 Mail Yes
 Phone Number: 304-676-8192 Email Response: klm_pcc@frontier.com Response: No

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FEB 04 2020

JEFFERSON COUNTY PLANNING
 ZONING & ENGINEERING

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

Name: Jonathan Sherman
 Business Name: Berkeley Home Technologies
 Mailing Address: P.O. Box 2913 Martinsburg, WV 25402 Mail Yes
 Phone Number: 304-404-4248 Email Response: jonathan@berkeleyhometech.com Response: No

Physical Property Details

Physical Address: 4781 Kearneysville Pike Shepherdstown, WV 25443
 Tax District: 09 - Shepherdstown Map No: ~~8~~ 8 Parcel No: 00230007
 Parcel Size: .71 Deed Book: 839 Page No: 731

Zoning District (please check one)

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

* For properties in the Rural Zoning District:

Is property located on a primary or secondary road?

Yes No

Name of Road and/or Route Number: _____

Sketch Plan (see cover sheet for description)

Attached

A list of all adjacent and confronting property owners (see cover sheet for description)

Attached

State the proposed land use as listed in Appendix C and provide a description of the proposed use.

See Attached *Medical Office/Professional Office*

Please provide any information or known history regarding this property.

Property utilized as a residences and various businesses in past.

Please respond (in detail) to the following statements located in Section 6.3 of the Zoning Ordinance:

1. The proposed use is compatible with the goals of the adopted Comprehensive Plan. *Section 6.3A.1*

See Attached

2. The proposed use is compatible in intensity and scale with the existing and potential land uses on the adjoining and confronting properties, and poses no threat to public health, safety, and welfare. *Section 6.3A.2*

See Attached

3. The proposed site development shall be such that the use will not hinder nor discourage the appropriate development and use of adjacent land and buildings. *Section 6.3A.3*

See Attached

4. Neighborhood character and surrounding property values shall be safeguarded by requiring implementation of the landscaping buffer requirements found in Appendix B and Section 4.11 of this Ordinance. *Section 6.3A.4*

I am aware of the landscaping buffer requirements and will adhere to them.

I am aware of the landscaping buffer requirements; however, I may be seeking a variance to modify them.

5. For properties in the Rural zoning district, roadway adequacy shall be assessed by the Comprehensive Plan's Highway Road Classification Map. If a rural parcel is not shown as commercial on the Future Land Use Guide or does not front on a Principal Arterial, Minor Arterial, or Major Collector road (as identified in the Comprehensive Plan), the applicant shall submit trip generation data, including Average Daily and Peak Hour trips, for the Board of Zoning Appeals to review in conjunction with the Highway Problem Areas Map when determining roadway adequacy for the proposed use. *Section 6.3A.6*

Applicable (Trip Generation Data attached)

Not Applicable

The information given is correct to the best of my knowledge. Original Signature Required.

[Signature]
Property Owner *[Signature]* Date *2/3/20*

[Signature]
Property Owner *[Signature]* Date *2/3/20*

Conditional Use Permit Application

Potomac Crossroads Counseling, LLC/

Shepherdstown Health and Wellness Cooperative

Kathleen L. Morotti

4781 Kearneysville Pike

Shepherdstown, West Virginia 25443

February 2nd, 2020

Brief Narrative on Proposed Project:

The applicant for the proposed project wishes to continue servicing the community, which has been based out of Shepherdstown, WV since 2003. Kathy Morotti has been practicing since 1988 and wishes to add therapists to her practice to better serve her clients in the surrounding area. She wishes to purchase this property and keep her practice in Shepherdstown.

Potomac Crossroads Counseling/ will use property to grow Shepherdstown Health and Wellness Cooperative to serve and build its clientele in the capacity of talk and counseling for co-dependency & relationship therapy, etc., as well as Mindfulness and Dance Movement Therapy (which is a form of creative art therapy). With the ability to hire several new therapists, Shepherdstown Health and Wellness Cooperative hopes to provide modalities such as an Acupuncturist, a Nutritionist, etc.

The location of the property is an ideal setting for clientele. It is not only walkable to downtown Shepherdstown, which will serve the Shepherd Students and local Shepherdstown residents, but will offer more parking capacity to serve the greater population, as well as an area in the garage to hold her Dance and Movement therapy.

Residential Growth area is intended to provide a variety of residential uses and densities, which can be supported by central or public water and sewer and adequate roadways and services. This district encourages areas of commercial growth proposed as an appropriate and compatible integrated part of a residential development in conformance with Section 5.4C of this Ordinance.

4781 Kearneysville Pike, the subject property, is a 5 Bedroom home and already has approximately 6 parking spaces along with a 1-car garage. The house and driveway meet residential setback requirements as determined by the zoning administrator, but would possibly need a variance for commercial use. No exterior modifications to the current structures would be needed except for a wheelchair ramp to allow for ADA compliance and clientele. The zoning ordinance allows the board to grant conditional use permits for areas that proposals meet intent and compatibility of the current Comprehensive Plan and neighboring properties.

As a Residential Growth zoned property, a small professional office such as Potomac Crossroads should be a fit to be approved for a conditionally use permit approval based on the neighboring Middle School and Cemetery properties as well as the already busy road frontage of Kearneysville Pike. PC will be in future a part of the Shepherdstown Health & Wellness Cooperative, of which other therapists and modalities will be a part, i.e. acupuncturist, nutritionist, etc.

Utilities are not a hindrance as both public water and sewer service the property.

Regarding parking and traffic patterns, with 4 to 8 therapists, and no more than 4 to 8 clients having appointments at one time, there should not be a noticeable impact on current infrastructure.

Conditional Use Permit Application

Potomac Crossroads Counseling, LLC/

Shepherdstown Health and Wellness Cooperative

Kathleen L. Morotti

4781 Kearneysville Pike

Shepherdstown, West Virginia 25443

February 2nd, 2020

Conditional Use Criteria:

1. The proposed use is compatible with the goals of the adopted Comprehensive Plan. Section 6.3A.1. The proposed usage of Potomac Crossroads Counseling/ Shepherdstown Health and Wellness Cooperative is compatible with the residential growth district and with the Comprehensive Plan. RG zoned site approvals provide for a variety of residential uses and densities, which are supported by central or public water and sewer and have adequate roadways and services. RG district encourages areas of commercial growth if it is appropriate and compatible with the residential surroundings. PCC/Shepherdstown Health and Wellness Cooperative would also provide an enhancement of services in the community at large and fills a need to local residents.

The Comprehensive Plan 2035 lists goals and objectives for the County. On page 190

Several goals are in line with the proposed use:

“Goal #1: Require Urban Intensity Residential and Non-Residential Development to Occur within Existing Urbanized Areas, Approved Urban Growth Boundaries, Villages, and/or the County’s Identified Preferred Growth Areas.”

“Objective #8: Encourage the adaptive reuse of existing buildings and previously used sites within Jefferson County.”

And on page 195 several goals and objectives speak to economic development and support of new and existing businesses:

“Goal #6: Encourage the Growth of Jefferson County’s Economy and Enable the Creation of High Quality Jobs within the County.”

“Objective #1: In coordination with the Jefferson County Development Authority (JCDA) and other agencies, work to build and expand existing local businesses and to enable the start-up of new businesses within Jefferson County.”

“Objective #5: Provide opportunities to engage local employers with the existing local workforce to enable county residents to work locally.”

Objective #7: Provide incentives and opportunities for businesses in target industries identified by the JCDA and other local economic development agencies to relocate or to expand their operations within the County.

Potomac Crossroads Counseling/ Shepherdstown Health and Wellness Cooperative will provide the opportunity for professional jobs in our county and enhance our community by providing the services needed as our community grows. Kathy is a long-term resident and has been conducting business in Jefferson County for over 15 years.

2. The proposed use is compatible in intensity and scale with the existing and potential land uses on the adjoining and confronting properties, and poses no threat to public health, safety, and welfare. Section 6.3A.2 The proposed business is compatible with surrounding properties as it is across the road from a cemetery and a Middle School. The property is on a busy road frontage in Shepherdstown, but outside town limits. With the large area of Shepherdstown planned Growth Areas with Shepherdstown PGA along WV 45, WV 480 and WV 230, the need for local support systems and professional services will continue to increase.

Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposed will not cause undue harmful effect upon desirable neighborhood character. Traffic volume to the Clarion Hotel entrance which is adjacent to entrance to subject property and Shepherdstown Middle School both presently have higher flow than average residential traffic or turnoffs. Therefore, the proposed change of use is of less intensity than several of the surrounding existing enterprises.

Additionally, the proposed use will not create any additional noise, water or air pollution.

Potomac Crossroads Counseling/ Shepherdstown Health and Wellness Cooperative services its clientele in the capacity of talk and counseling for co-dependency & relationship therapy, etc and, as well as Mindfulness and Dance Movement Therapy (which is a form of creative art therapy). With the ability to hire several new therapists, Shepherdstown Health and Wellness Cooperative plans to provide modalities such as an Acupuncturist, a Nutritionist, etc. This will provide support and services for public health, safety, and welfare. It is therefore a positive addition to the nature of the surrounding areas, not of detriment.

3. The proposed site development shall be such that the use will not hinder nor discourage the appropriate development and use of adjacent land and buildings. Section 6.3A.3 The use should not have any effect on development or use of adjacent land or buildings, as there is no developable property nearby and the cemetery, which is the largest area of land close by will continue as is regardless of surrounding property use. The future development of the school system may cause the middle school to be developed into adult education or municipality/county buildings, etc. This would be even more compatible with the requested use.

Page 28 of the Comprehensive Plan States in Redevelopment section sites language that the plan supports repurposing buildings in RG and areas:

“There are numerous examples, both locally and nationally, of existing buildings that have been repurposed and retrofitted to meet modern needs. Examples range from large barns that have been repurposed for small local business or into apartment buildings to factories that have been reutilized as mixed-use facilities incorporating housing, offices and retail. More modern buildings have been repurposed as churches, schools, or public libraries with the ability for adaptive reuses presenting many applications. In many cases, the repurposing of a building not only benefits the community by redefining the fabric of a neighborhood but tends to be less costly than new construction once financial incentives are factored into the total cost.”

4. Neighborhood character and surrounding property values shall be safeguarded by requiring implementation of the landscaping buffer requirements found in Appendix B and Section 4.11 of this Ordinance. Section 6.3A.4 Although the exterior of the current building will not be altered for requested use, a privacy fence and/or planned planting of bush/tree vegetation will act as a buffer on the perimeters if needed.

Conditional Use Permit (CUP) Signs comply with the front yard setback provisions in the districts in which they are permitted.

Conditional Use Permit Application
Potomac Crossroads Counseling, LLC
Kathleen L. Morotti
129 E German Street
PO Box 192
Shepherdstown, West Virginia 25443
February 3, 2020

Brief Narrative on Proposed Project:

The applicant for the proposed project, "Potomac Crossroads Counseling", wishes to continue servicing the community, which has been based out of Shepherdstown, WV since 2003. Kathy has been practicing since 1988 and wishes to add therapists to her practice to better serve her clients in the surrounding area.

The location is an ideal setting for clientele. It is not only walkable to downtown Shepherdstown, but will offer more parking capacity, as well as an area in the garage to hold her Dance and Movement therapy.

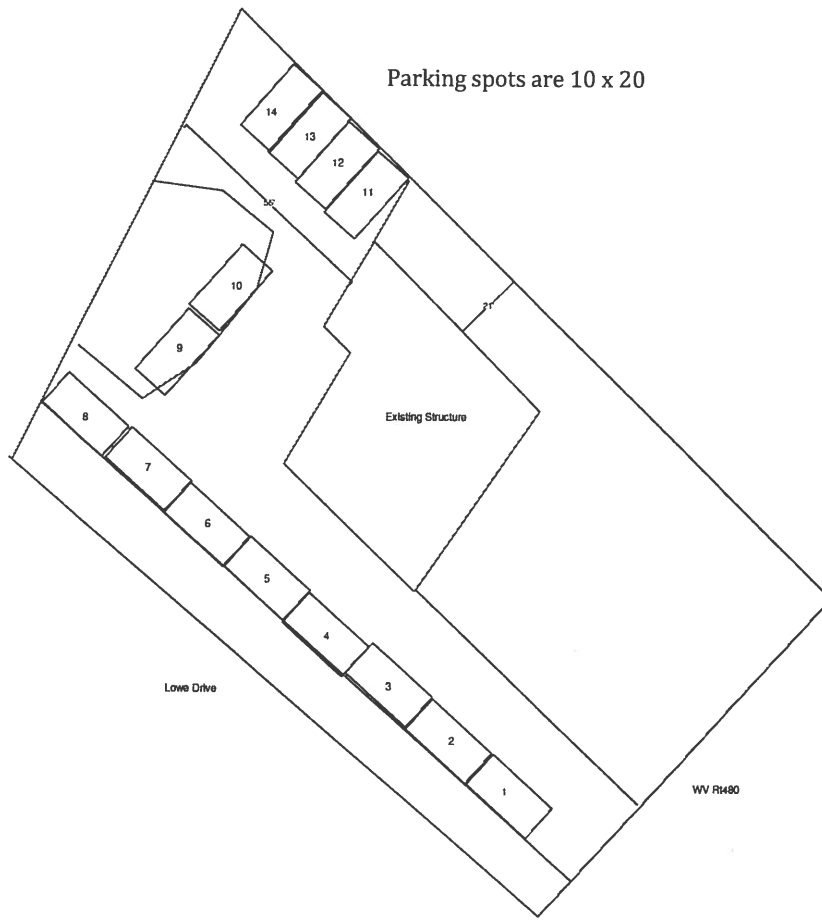
The Residential Growth area is intended to provide a variety of residential uses and densities, which can be supported by central or public water and sewer and adequate roadways and services. This district encourages areas of commercial growth proposed as an appropriate and compatible integrated part of a residential development in conformance with Section 5.4C of this Ordinance.

4781 Kearneysville Pike, the subject property, is a 5 Bedroom home and currently has approximately 6 parking spaces along with a 1-car garage. The house and driveway meets setback requirements as determined by the zoning administrator. No exterior modifications to the current structures would be needed. The zoning ordinance allows the board to grant conditional use permits for areas that proposals meet intent and compatibility of the current Comprehensive Plan, as well as the neighboring properties.

As a Residential Growth zoned property, a small professional office such as Potomac Crossroads should be a fit to be approved for a conditionally use permit based on the neighboring Middle School and Cemetery properties as well as the already busy road frontage of Kearneysville Pike. Utilities are not a hindrance as both public water and sewer service the property.

Regarding parking and traffic patterns, with 4 to 8 therapists, and no more than 8 clients having appointments at one time, there should not be a noticeable impact on current infrastructure.

Parking and Layout



Kathleen L. Morotti
Counselor, LPC, LCDAC, BC-DMT



[Email Me](#)

(304) 676-8192

Kathleen L. Morotti
Counselor, LPC, LCDAC, BC-DMT

The practice offers a variety of techniques to guide you into creating a pathway to healing and a direction that feels increasingly aligned with your own sense of inner core purpose. Over the years of counseling others, I have developed a specialty in working with depression, codependency issues, dual diagnosis & survivors of abuse. Since relocating to the area in 1999, I have been focusing on working with individuals, families, couples and groups. I lead two therapeutic support groups for women. I am also a dance/movement therapist offering a creative alternative on the therapeutic path.

I am a Licensed Professional Counselor and a Board-Certified Dance/Movement Therapist. I am licensed in West Virginia and Maryland and have been in practice since 1988, working in a variety of inpatient and outpatient settings. Types of insurance we work with include Anthem, BlueCross and BlueShield, Empire BlueCross BlueShield and Highmark.

Since 2003, I have been in private practice based out of the Entler Hotel building at 129 E German Street in Shepherdstown, WV. I am looking to develop my private practice into a wellness coop partnering with other therapists including family, couple and individual therapies, and add dance/movement therapy, and others such as acupuncture. Many of our clients are Shepherdstown residents and Shepherd University students. Having the office at 4781 Kearneysville Pike property would allow clients to be within walking distance from campus/town, also allow more parking, as well as more space to add therapists/offices to wellness co-op.

CONSULTANTS

Planning

Paul J. Raco

P. J. Raco Consulting, LLC

PO Box 548

Charles Town, WV 25414

304/676-8256

Contractor Consultant

Jonathan Sherman

Berkeley Home Technologies

P.O. Box 2913 Martinsburg, WV 25402

(304) 404-4248

jonathan@berkeleyhometech.com

Hartzell Gardens Homeowners Association
Shepherdstown, West Virginia

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February 20, 2020

FEB 20 2020

To the Board of Zoning Appeals:

JEFFERSON COUNTY PLANNING
 ZONING & ENGINEERING

In response to the letter from the Jefferson County Board of Zoning Appeals regarding a public hearing to be held on February 27, 2020, regarding a request by Kathy Morotti and Potomac Crossroads Counseling LLC for a conditional use permit to operate a professional office at 4781 Kearneysville Pike in Shepherdstown, the following comments are submitted by residents of Hartzell Gardens Homeowners Association (HGHOA). Following receipt of the Board's letter, it was shared with all current residents of the association, a number of whom responded with comments. Residents' comments and questions are summarized as follows:

1. The Board's letter indicates that the facility will employ 8 therapists who would be meeting with up to 8 clients per appointment time, and that parking requirements would be met on site. That would mean a minimum of 16 parking spaces would be needed. However, clients who arrive prior to their scheduled appointments would need parking as well, and it is possible that 8 additional clients could be waiting for their appointments, requiring an additional 8 parking spaces. If the facility employs any support staff, such as receptionist, secretarial or business office staff, that could add a need for a few additional spaces, so we are now looking at the possibility of 24-27 spaces needed. Group counseling sessions, if offered, could create additional demands for parking.
2. This is currently a residential, noncommercial neighborhood, and many residents would regard turning the grounds of the proposed counseling facility into a parking lot—especially if the front yard is utilized in that way—to be an eyesore. It is difficult to envision how the rear of the property could comfortably or safely accommodate the number of vehicles that the estimated usage would require.
3. In the past when the property was used as a residence for college students, there would occasionally be social gatherings held on the property, and inevitably some attendees would park their cars on Hartzell Drive. Hartzell Drive is a private street for use by residents and their guests only, and we have a sign posted indicating that violators who park on Hartzell Drive may have their vehicles towed. As far as we are aware, parking is also not permitted on Lowe Drive or along Route 480.
4. The Hartzell Gardens HOA "common area," a park-like grove of approximately ½ acre, is located between Route 480 and Hartzell Drive, and across Lowe Drive from the location of the proposed counseling facility. This area also is private property for use by HGHOA residents and guests only, and trespassing would not be tolerated.

* Copies provided in 02/27/20 BZA packet - gtt

The concern here is that clients of the counseling facility might be inclined to use it as a waiting area during pleasant weather.

5. The additional traffic (possibly up to 70 vehicles per business day) generated by the coming and going of clients and staff from the facility throughout the day could pose an increased safety hazard for people using Lowe Drive, including all Hartzell Gardens residents. The entrance to the counseling facility would be within a matter of feet and on the same side of Route 480 as the entrance to Lowe Drive. In particular, vehicles exiting those parallel locations at approximately the same time could be at greater risk of collision as the drivers would naturally be focusing on oncoming traffic along the highway. Exacerbating that possibility is the fact that a very large tree stands between the driveway and Lowe Drive, which could obscure drivers' vision of other vehicles exiting onto Route 480 at the same time.
6. The letter from the Board of Zoning Appeals did not provide much clarity about the nature of the counseling facility or its intended clientele. We presume that it would be entirely an outpatient facility and not a residential facility. HGHOA residents would be interested in additional information about how the property will be used and by whom, and whether or not and to what degree any risks might be posed to neighbors. We expect full disclosure by the business owner(s).

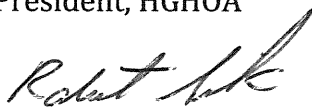
In view of the above identified concerns, we cannot support approval of a conditional use permit. Our preference would be for the property at 4781 Kearneysville Pike to be used as a single family dwelling since the surrounding area is presently almost entirely a residential neighborhood of single family homes and duplexes. Residents have invested in beautifying and enhancing the values of their properties as part of a residential area, and these properties are in demand. The only current commercial property is the Clarion Hotel, but it is discreetly located largely out of sight of most area residents and was built before many of the neighboring homes. We know of no compelling reason to further commercialize this pleasant residential area when several commercial areas already exist in and around Shepherdstown.

Several residents of the Hartzell Gardens neighborhood plan to attend the Board of Zoning Appeals Board meeting on February 27, and we look forward to a full and robust discussion of the issues involved in this matter.

Sincerely,



Samuel Fink, PhD
President, HGHOA



Robert Sisk
Vice President, HGHOA



JEFFERSON COUNTY, WEST VIRGINIA
Department of Engineering, Planning & Zoning
Office of Planning and Zoning

116 East Washington Street, 2nd Floor, P.O. Box 716
 Charles Town, West Virginia 25414

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Phone: (304) 728-3228
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Certified Mail #7012 1640 0000 4500 3236

February 12, 2020

Hartzell Gardens HOA
 81 Hartzell Dr
 Shepherdstown WV, 25443

To whom it may concern:

The Board of Zoning Appeals will hold a public hearing on February 27, 2020 at 2:00 p.m. in the Charles Town Library Conference Room located at 200 East Washington Street, Charles Town (side entrance on Samuel St.) to consider the following request:

Applicant Name: Kathy Morotti, Potomac Crossroads Counseling, LLC
 Consultant Name: N/A
 Property Owner: Kenneth F. Lowe Jr., Rev Trust
 Property Location: 4781 Kearneysville Pike, Shepherdstown, WV
 Parcel Information: Parcel ID: 09000800230007; Size: .71 acres; Zoning District: Residential Growth
 Nature of Request: Request by Potomac Crossroads Counseling for a Conditional Use Permit (File #20-1-CUP) to operate a Medical/Dental/Optical Office and/or Professional Office as defined in Article 2. The proposal consists of operating a counseling facility with approximately eight (8) therapists that meet with not more than eight (8) clients during one appointment time. Parking requirements will be met on-site.

This file is available for review during normal business hours. The online packet will be made available (www.jeffersoncountywv.org) on the Friday prior to the scheduled meeting date.

Pursuant to Section 6.3 of the Zoning Ordinance, the site will be posted with a green and white placard, a legal ad will appear in the February 12, 2020 edition of the Spirit of Jefferson, and all adjoining property owners will be notified of this meeting by certified mail.

Written comments must be submitted to our Office **no later than one week prior to the meeting**, to be included in the Board's mailed packet. For additional submission options please contact Staff at 304-728-3228.

Sincerely,

Alexandra Beaulieu,
 Zoning Administrator



Jefferson County, West Virginia

Department of Engineering, Planning, and Zoning

Office of Planning and Zoning

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Zoning Administrator's Report Board of Zoning Appeals Meeting February 27, 2020

1) Text Amendments:

- ZTA19-03 – At their December meeting, the Planning Commission motioned to accept into their work plan developing provisions to allow large scale solar facilities to process. At their February 11, 2020 meeting, the Planning Commission appointed a subcommittee to work with consultants on drafting a text amendment. Once a text amendment has been drafted and the Planning Commission has reviewed, they will hold a Public Hearing in accordance with Article 12 of the Zoning Ordinance.
- Greenway Engineering continues to work on the reorganization of the Subdivision Regulations and Zoning Ordinance. A Public Hearing has not yet been scheduled for Phase I (reorganization).

2) Upcoming BZA meeting

- The next regular meeting is scheduled for **March 26, 2020** (deadline for submission is Monday, March 2, 2020).



Jefferson County, West Virginia
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February 2020
Zoning Certificate Activity Report

File #	19-37-ZC
Request:	Accessory Dwelling Unit: In-Law Suite
Property Owner:	Bryan and Theresa Lock
Parcel Info:	Vacant Parcel: .4 miles west of Route 9 on WV Rt. 115 (Charles Town Road); Parcel ID: 04001500470000; Size: 19.24 ac; Zoning District: Rural
Issuance Date:	12/05/2019
File #	20-1-ZC
Request:	Professional Office, Edward Jones Financial Advisors
Property Owner:	Leonard and Margarita Mironov, KITA, LLC
Applicant:	Danielle Domnitz, Dedicated Construction Management, LLC
Parcel Info:	Burr Industrial Lots – Lot #44 Phase 1, 59 Ruland Road, Suite D; Kearneysville, WV; Parcel ID: 020001001600015; Size: 6.24 ac; Zoning District: Industrial-Commercial;
Issuance Date:	01/24/2020
File #	20-2-ZC
Request:	Church (S05-04), Day Care Center, Large, Preschool, Elementary School (K - 2 nd Grade)
Property Owner:	Pastor Michael Lowery, Rock Spring Church
Parcel Info:	114 Poor Farm Road, Suite 100, Kearneysville, WV; Parcel ID: 07001500010005; Size: 14.73 ac; Zoning District: Rural; Plat Book: 9; Page: 51 / Building Permit File #19-842
Issuance Date:	01/24/2020
File #	20-3-ZC
Request:	Attached Business Sign (Walgreens)
Property Owner:	Daniel A. Gainsburg – Trustee & Phyllis Chovitz – Trustee
Applicant:	Thomas Cable, TC Signs
Parcel Info:	26 Maddex Square Dr., Shepherdstown, WV; Parcel ID: 09000800150007; Size: 1.66 ac; Zoning District: Residential-Light Industrial-Commercial
Issuance Date:	01/31/2020
File #	20-5-ZC
Request:	Change in Nonconforming Use (Service): Tombstone Engraving (not open to the public)
Property Owner:	Robert and Christine Mullen
Applicant:	Stephen Worthington, Vets USA II, Inc.
Parcel Info:	4893 Charles Town Road, Kearneysville, WV; Parcel ID: 07000200090000; Size: 3.1 ac; Zoning District: Rural;
Issuance Date:	02/21/2020
