



**Jefferson County
Board of Zoning Appeals
Thursday, November 12, 2020 at 2:00 p.m.**

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

By order of the Jefferson County Board of Zoning Appeals, Jeffrey Bannon, Chair, this Board of Zoning Appeals Meeting will be held virtually via ZOOM. This meeting will NOT be a LIVE broadcast on our website. Instead, it will be accessible live through ZOOM Meeting. If you wish to participate in public comment for one of the agenda items, please type your name, address, and agenda item # in the chat function at the start of the meeting.

Please use the following information to join the ZOOM Meeting:

<https://us02web.zoom.us/j/83542283973>

Meeting ID: 835 4228 3973

Dial by your location: +1 301 715 8592 US

Find your local number: <https://us02web.zoom.us/u/kb65f6MrBt>

Access from desktop, laptop, iPad, or from a phone. You will be prompted to download the software. If accessing from a phone, you must have the ZOOM app.

Please mute yourself when you are not talking. When participating, remember that your video is streaming to others.

All requests are pursuant to the Zoning & Land Development Ordinance.

Approval of Minutes: October 22, 2020

Public Hearing – Administer Oath

ITEM #1 FILE #: 20-8-CUP

Request: Request by River Chase Wedding Venue for a Conditional Use Permit to operate a Special Event Facility. The proposal consist of hosting up to 15 wedding receptions and other special events per year. The applicant is proposing a maximum of 150 grass parking spaces.

Owner: Nancy Stevens

Applicant: Charles Stevens, River Chase Wedding Venue

Parcel Info: 1122 Duncan Rd, Harpers Ferry, WV. Parcel ID: 09001100100000; Size: 6 acres;
Zoning District: Rural

ITEM #2 FILE #: 20-35-ZV

Request: Variance from Section 5.4B (Zoning Ordinance, as amended 01/10/2002) to reduce the rear setback from 20' to 11' for a 10' x 20' deck.

Owner: Waverly and Sharon Paige

Applicant: Same

Parcel Info: Robelei Estates Subdivision, Lot 24, 14 Stiles Way, Charles Town, WV. Parcel ID: 02000700790000; Size: .14 acres; Zoning District: Residential-Light Industrial-Commercial

ITEM #3 FILE #: 20-36-ZV

Request: Variance from Section 9.7 to reduce the north side setback from 25' to 6' for a 14' x 28' accessory structure.

Owner: Howard Herbert

Applicant: Same

Parcel Info: Brentwood Subdivision, Lot 36, 60 Brentwood Dr., Harpers Ferry, WV.
Parcel ID: 04000600090006; Size: 1.18 acres; Zoning District: Rural

ITEM #4 FILE #: 20-37-ZV

Request: Variance from Section 5.4B and Section 9.6C (Zoning Ordinance, as amended 10-04-1990) to allow an in ground pool within the required front yard and to reduce the front setback from 25' to 5'. The dimensions for the proposed pool and surrounding concrete area are 42' x 20'.

Owner: Kevin Hanigan and Tina Sinnott

Applicant: Same

Parcel Info: Carriage Park Subdivision, Lot 17, 33 Jenny Lind Dr., Charles Town, WV
Parcel ID: 04009C00170000; Size: .95 acres; Zoning District: Residential Growth

Zoning Administrator Report

- a. Monthly Zoning Certificate Activity Report
- b. 2021 Board of Zoning Appeals Meeting Schedule

Rules of Procedure – discussion with possible action to amend the Rules of Procedure to create a process to allow for a summary approval by unanimous consent for variance applications where no one has filed written opposition and no one but the applicant appears to testify.

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: October 22, 2020

- 1. Variance from Section 10.4B.3. Owner: HDW, LLC. File: 20-32-ZV.
- 2. Variance from Section 4.6B.2. Owner: HDW, LLC. File: 20-33-ZV.

Minutes
Jefferson County Board of Zoning Appeals

1 Meeting Date: October 22, 2020
2 Meeting Location: By order of the Chair, the Board of Zoning Appeals meeting was held
3 virtually via ZOOM.
4 Board Members Present: Jeffrey Bannon, Chair; Tyler Quynn, Vice Chair; and Leeds Corbin
5 Board Members Absent: Matt McKinney and Deirdre Catterton with notification
6 Staff Members Present: Alexandra Beaulieu, Zoning Administrator; Nathan Cochran,
7 Assistant Prosecuting Attorney; and, Jennilee Hartman, Zoning Clerk
8 All requests were pursuant to the Jefferson County Zoning and Land Development Ordinance.
9 Mr. Quynn moved to called the meeting to order at 2:00 pm. Mr. Bannon called for a vote, which
10 carried unanimously.

11 **Approval of Minutes: September 24, 2020**

12 Mr. Bannon suggested the following edit:

13 a) Page 1, Line 9: after Mr. Quynn add the words **moved to**.

14 Mr. Corbin moved to approve the September 24, 2020 meeting minutes as amended. Mr. Bannon
15 called for a vote, which carried four (4) in support and one (1) abstention (Mr. McKinney was not
16 present for this meeting).

17 **Public Oath**

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

19 **ITEM #1 FILE #: 20-32-ZV**

20 Request: Variance from Section 10.4B.3 to reduce the front setback from 25' to 1.5' for a 64" W
21 x 84" H (38 sf) double-sided pylon (monument) sign.
22 Owner: HDW, LLC
23 Parcel Info: Whale of a Wash, 104 Maddex Square Dr., Shepherdstown, WV
24 Parcel ID: 09000800150006; Size: .73 ac;
25 Zoning District: Residential-Light Industrial-Commercial

26 Mr. Paul Raco with P.J. Raco Consulting, LLC, was present to address the Board. Ms. Beaulieu
27 provided an overview of her staff report noting that should the Board approve the request that a
28 possible condition of approval could be to retain the existing street trees that were required as part
29 of the original site plan approval. Mr. Raco explained the nature of the request. Mr. Raco stated that
30 the lower level of the existing tree canopy may be tall enough to accommodate the proposed sign.
31 Mr. Raco proffered to raise the canopy should the sign not fit as proposed; or, that new trees would
32 be planted per approval from the Zoning Administrator.

33 Mr. Bannon opened the public hearing. There was no public comment. Mr. Bannon closed the
34 public hearing.

35 Mr. Quynn moved to approve the variance as requested, noting that the applicant is bound by his
36 testimony. Mr. Bannon called for a vote, which carried unanimously.

37 **ITEM #2 FILE #: 20-33-ZV**

38 Request: Variance from Section 4.6B.2 to reduce the distance requirement from 75' to 65'
39 along the rear property line for an 8' x 12' (96 sf) accessory structure (storage shed).
40 Owner: HDW, LLC

1 Parcel Info: Whale of a Wash, 104 Maddex Square Dr., Shepherdstown, WV
2 Parcel ID: 09000800150006; Size: .73 ac;
3 Zoning District: Residential-Light Industrial-Commercial

4 Mr. Paul Raco with P.J. Raco Consulting, LLC, was present to address the Board. Ms. Beaulieu
5 provided an overview of her staff report. Mr. Raco explained the nature of the request, noting that
6 the accessory structure would have a minimal impact on the adjacent property.

7 Mr. Bannon opened the public hearing. There was no public comment. Mr. Bannon closed the
8 public hearing.

9 Mr. Corbin moved to approve the variance as requested, noting that the applicant is bound by his
10 testimony. Mr. Bannon called for a vote, which carried unanimously.

11 **Zoning Administrator's Report**

12 a) Monthly Zoning Certificate Activity Report. The Report was included in the mailed packet.

13 Ms. Beaulieu updated the Board on the status of the following amendments: Solar Energy Facilities
14 (ZTA19-03); the Reorganization of the Zoning Ordinance and the Subdivision Regulations by
15 Greenway Engineering; Commercial Cemeteries (ZTA20-01); and change in classification for Drive-
16 Through Restaurants in the Residential-Light Industrial-Commercial zoning district (ZTA20-02).

17 Ms. Beaulieu stated that the next Board meeting would be on November 12, 2020.

18 **Request from Board Chair**

19 a) Discussion with possible action to amend the Rules of Procedure to create a process to allow
20 for a summary judgment for applications that do not have public comment.

21 Referring to a document drafted by the Chair, Mr. Bannon explained that the purpose of
22 the proposed amendment to the Rules of Procedure would be to streamline the approval
23 process, provided the variance application met certain criteria. Board members were
24 amiable to the suggested amendment. Mr. Cochran stated he would research the proposed
25 amendment for the next meeting. Ms. Beaulieu stated she would create a sample draft
26 motion for the Board to evaluate for such applications. The Board agreed to review this
27 item at their November 12, 2020 meeting.

28 **Legal Update**

29 a) Possible executive session on the following pending lawsuits. None.

30 b) Discussion with possible deliberative session and signing of draft Findings/Decisions.

31 **Meeting: September 24, 2020**

32 1. Variance from Section 5.4B. Owner: Lance and Michelle Paul. File: 20-28-ZV.

33 2. Variance from Section 5.4B. Owner: Kimberly Purvis. File: 20-29-ZV.

34 3. Variance from Section 5.4B. Owner: Sharon Neubauer. File: 20-30-ZV.

35 4. Request for a CUP for Automotive Repair, Sales and Service shop.

36 Owner: Bret de Pedro. File: 20-7-CUP.

37 5. Variance from Section 5.7D.2.b.i(b). Owner: Lutman Land Development, LLC.

38 File: 20-31-ZV.

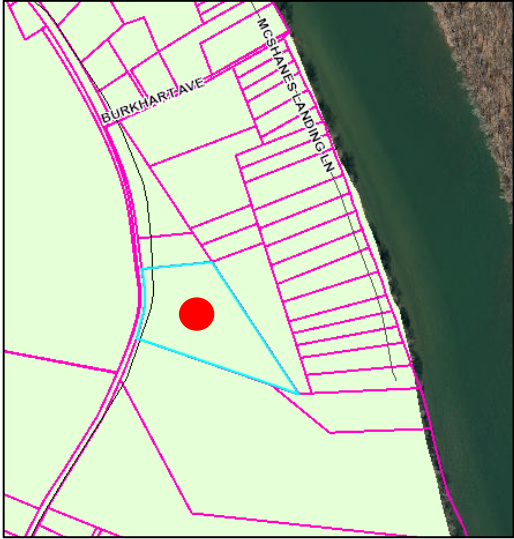
39 Mr. Bannon stated he would sign the Findings and deliver them to the Office.

- 1 Mr. Cochran informed the Board that he was in the process of drafting a decommissioning plan for
- 2 solar energy facilities per the County Commission's request.
- 3 Mr. Quynn moved to adjourn the meeting at 2:37 pm. Mr. Bannon called for a vote, which carried
- 4 unanimously.

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 November 12, 2020

Stevens Conditional Use Permit Request (#20-8-CUP)

Item #1 Request by River Chase Wedding Venue for a Conditional Use Permit to operate a Special Event Facility. The proposal consists of hosting up to 15 wedding/special events per year. The applicant is proposing a maximum of 150 grass parking spaces.

Applicant:	Chuck Stevens
Owner:	Nancy Stevens
Developer:	Same as applicant
Consultant:	N/A
Parcel Information and Zoning District:	<p style="text-align: center;">1122 Duncan Rd, Harpers Ferry, WV Parcel ID: 09001100100000; Size: 5.9 acres; Zoning District: Rural</p> 
Surrounding Properties:	Zoning Map Designation: North & South: Rural East & West: Rural
Approvals:	Johnson Parent to Child Transfer (recorded on 09/19/1994 in PB 13, PG 17) Bed and Breakfast Operation – Zoning Certificate #ZC17-34 issued 10/06/2017
Site Visit Conducted:	No.

Summary of Request and Purpose of Ordinance Requirements

Request by River Chase Wedding Venue for a Conditional Use Permit to operate a Special Event Facility. The proposal consist of hosting up to 15 wedding receptions and other special events per year. The applicant is proposing a maximum of *75 grass parking spaces.

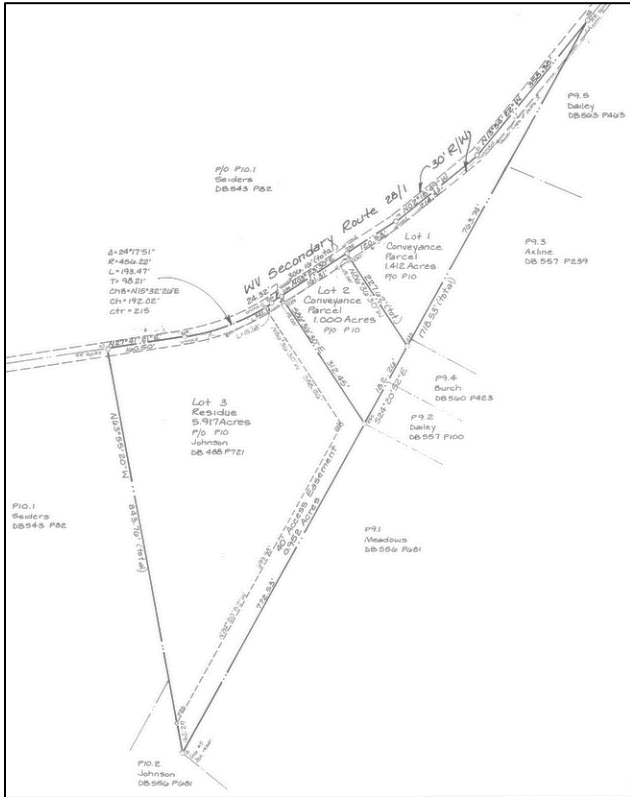
**Application and sketch were not clear as to the number of parking spaces; further email correspondence indicated that the maximum number of parking spaces would be 75.*

Article 2 defines Special Event Facility as: “A facility where special events are permitted to occur. Special event facilities are subject to a use agreement between a private group or individual and the facility owner. The facility owner may or may not charge a rental fee for the use of the facility. Facilities may operate entirely within a structure, entirely outside of a structure, or both inside and outside a structure.”

Article 2 defines Special Event as: “A gathering of individuals for the common purpose of attending a celebration, ceremony, reception, or similar activity for the benefit of someone other than the property owner. Private parties, gatherings, and similar activities that are not subject to a use agreement between a private individual or group and the property owner are not defined as a special event.”

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Stevens Conditional Use Permit Request (#20-8-CUP)

Property Description



The subject parcel is the residue parcel of the Johnson Parent to Child Subdivision, which was recorded in December of 1994 in [Plat Book 13 at Page 17](#). The approximately 6 acre lot is surrounded primarily by residential development and undeveloped, wooded land.

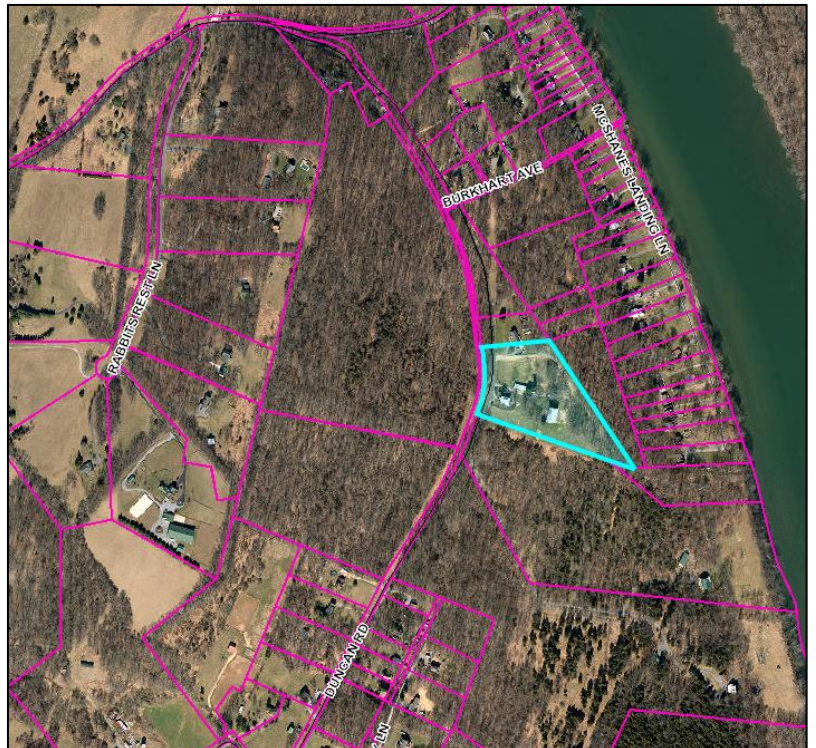
Impact on adjacent properties

The applicant is currently operating a Bed and Breakfast under the provisions of Section 8.3, which allows up to four receptions per year (PC File #ZC17-34). A Bed and Breakfast is a Principal Permitted Use (by right) in the Rural zoning district. The applicant would like to increase the number of events to 15 per year, which requires processing a Conditional Use Permit.

Access to the property is available directly off of Duncan Road (Route 28/1), which is a 30' wide state secondary road (i.e. not a private / HOA subdivision road).

The property is buffered along the west, east, and south boundaries by existing trees on adjoining lots;

however, the northern boundary does not include any buffer and adjoins the closest residential dwelling unit. There is a platted 40' access easement that runs along the northern and eastern property lines, granting access to an adjoining property under the applicant's ownership. Due to the residential nature of the area, it is expected that an increase in traffic and the noise generated from events may have an impact on nearby properties; however, it appears that aside from the property to the north which contains a residence, the properties immediately surrounding the subject parcel are densely wooded, containing a natural buffer from noise typically generated from an event.



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Conditional Use Permit Process

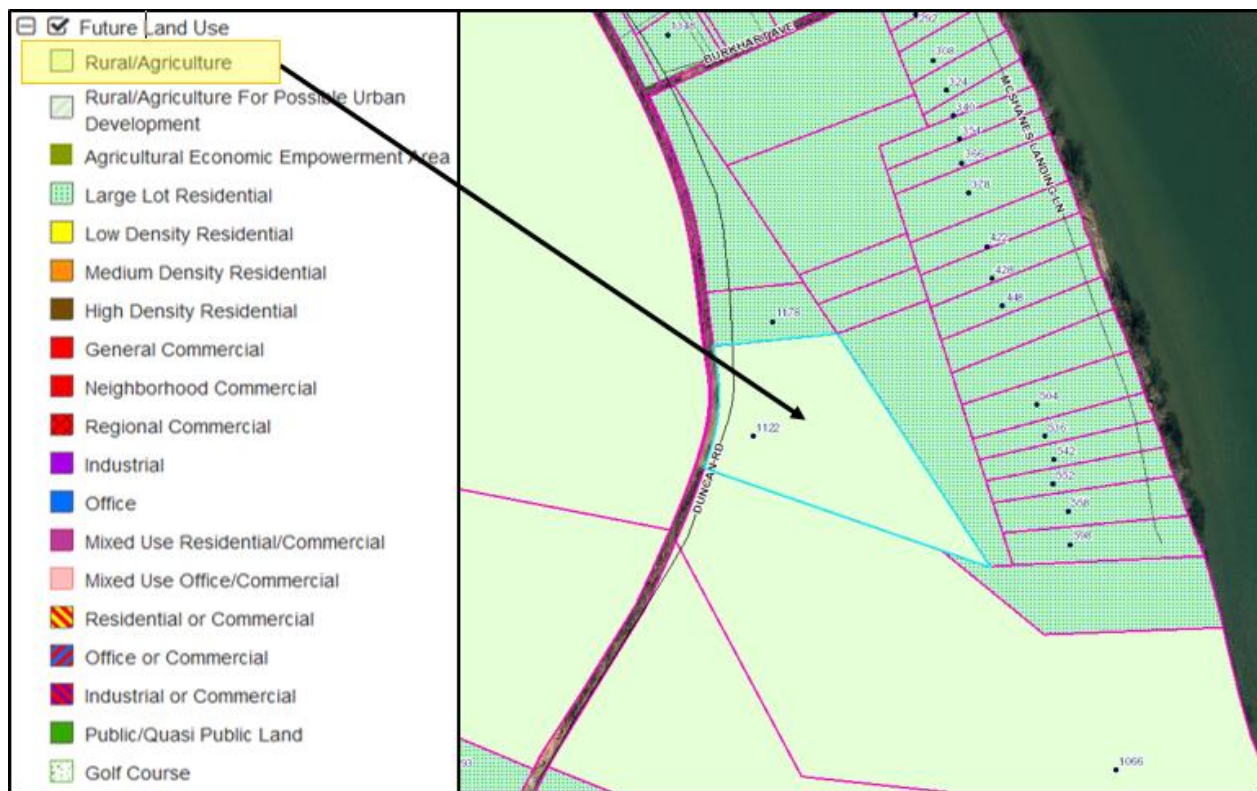
Section 6.3 of the Zoning Ordinance states:

“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. (Sec. 6.3A.1)

The subject parcel is shown as “Rural/Agricultural” on the Envision Jefferson 2035 Comprehensive Plan’s Future Land Use Guide (see below) and it is outside of the County’s urban growth boundary; however, one of the Plan’s goals is to allow Conditional Use Permits to process in the Rural district for non-residential uses which are compatible in scale and intensity with the rural environment.



“...allow the use of a more traditional CUP process in the Rural District for non-residential uses which are compatible in scale and intensity with the rural environment and that pose no threat to public health, safety, and welfare.” (Page 14, Goals and Objectives)

“...This Plan recommends eliminating the LESA system and modifying the CUP process for use exclusively for non-residential development projects in the Rural Zoning District.” (Page 24, Rural/Agricultural Areas)

“...This Plan further recommends amending the Zoning Ordinance to eliminate the LESA point system and to develop procedures that would allow the use of a more traditional CUP process in the Rural District for non-residential uses. This CUP process

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should require a public hearing before the Board of Zoning Appeals to determine if the use is compatible in scale and intensity with the rural environment and poses no threat to public health, safety, and welfare.” (Page 36, Rural Land Use)

“Amend the Zoning Ordinance to eliminate the Land Evaluation Site Assessment (LESA) system and to modify the Conditional Use Permit (CUP) process in the Rural Zoning District, which would be used for compatible non-residential development only.” (Page 39, Recommendation #4.b – Rural Land Use Planning Recommendations (Goal 2))

“While most of these types of Cottage Industries and Home Occupations are permitted by right in the Rural District, some more intense uses may require a CUP. This Plan recommends that the use of the CUP in the Rural District be limited to non-residential uses not permitted in the Rural District which are compatible in scale and intensity with the rural environment and that pose no threat to public health, safety, and welfare.” (Page 74, Rural Economic Activities)

“Recommendation 5: Amend the Zoning and Land Development Ordinance to permit additional non-residential rurally compatible uses.

Recommendation 5b: Amend local land use regulations to permit non-agriculturally related commercial uses by the Conditional Use Permit (CUP) process in the Rural zone if the use is agriculturally and rurally compatible in scale and intensity, poses no threat to public health, safety, and welfare, and if the use helps to preserve farmland and open space and continue agricultural operations. (Page 77, Agricultural and Rural Economy Recommendations (Goal 8))”

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. (Sec. 6.3A.2)

With regard to compatibility, the property is located off of State Route 28/1, Duncan Road. The property is surrounded primarily by residential development, with large undeveloped lots in close proximity.

The proposal includes utilizing an existing barn structure and the applicant would like to utilize grass parking (as opposed to installing gravel or asphalt parking). The applicant is not proposing to construct any new buildings; therefore, the proposed use appears to be compatible in scale with the existing and potential land uses on surrounding properties.

Due to an increase in traffic and the potential for an increase in noise generated from the events in an area that is primarily residential, the proposed use would be more intense than a typical residential land use.

Based on the applicant’s proposal, there does not appear to be any threat to public health, safety, and welfare.

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. (Sec. 6.3A.3)

Based on the information provided, the proposed site development will not hinder nor discourage the appropriate development and use of adjacent land and buildings.

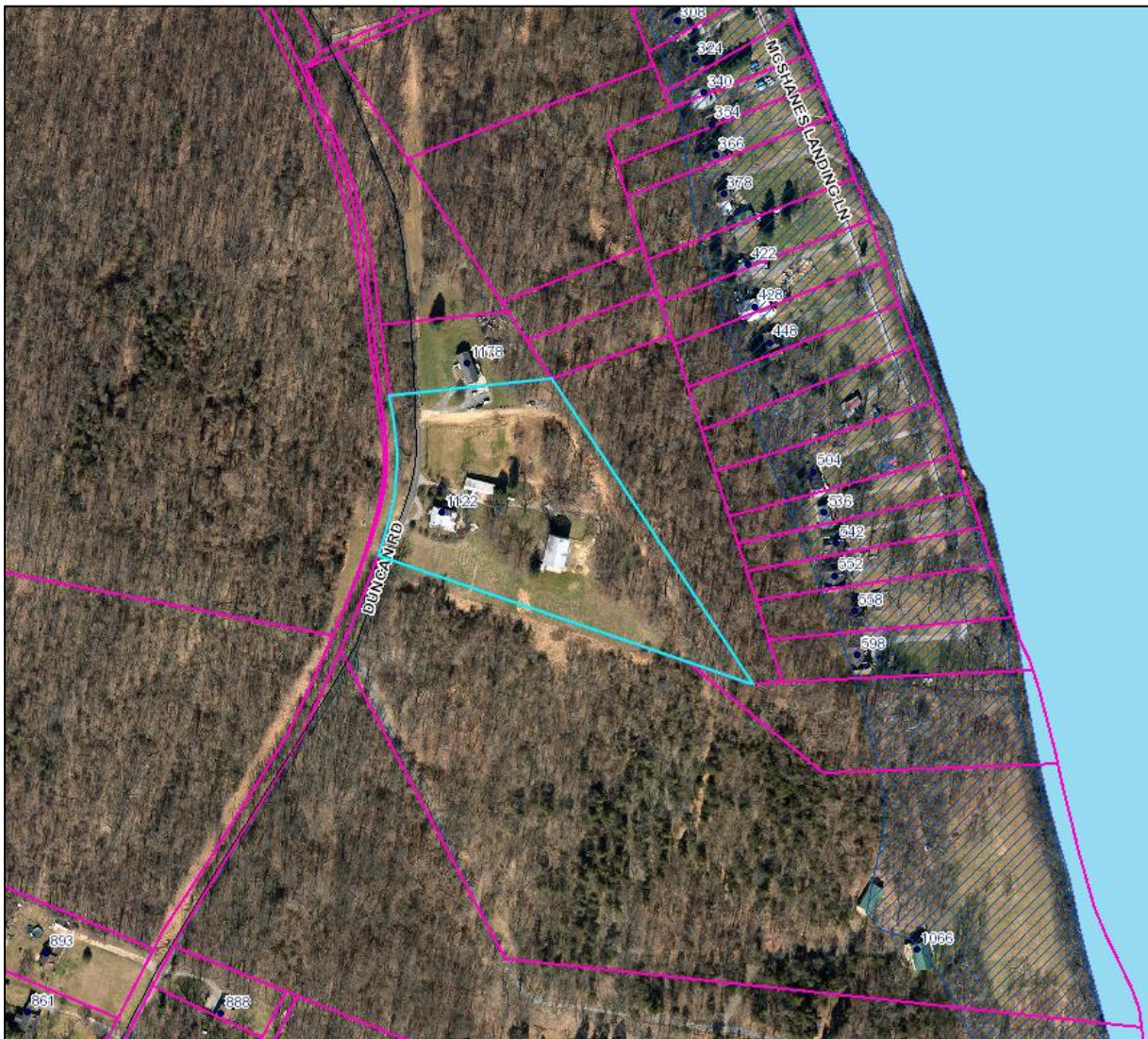
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4. Neighborhood character and surrounding property values shall be safeguarded by requiring implementation of the landscaping buffer requirements found in Appendix B and Section 4.11 of this Ordinance. (Sec. 6.3A.4)

A site plan **is not** required because there are no new buildings proposed and the applicant is proposing to utilize grass parking. If a site plan were required, the applicant would be required to install a 20' wide buffer along the southern property line; and would be required to install street trees along the western, northern, and eastern boundaries. The closest residence is approximately 60' from the northern property line and is parallel to the proposed parking area. The lot adjoining the southern boundary is densely wooded with a residential dwelling over 800' from the property line.

The Board has the authority to require that landscaping buffers be installed as a condition of approval; however, the Board should keep in mind that there is a platted 40' access easement on the property and landscaping cannot be placed within a platted easement.

Section 4.6 requires a 75' distance requirement from any lot with a dwelling unit, church, or institution for human care. Based on the applicant's sketch, it appears that the land use will comply with this standard. Note: parking is not subject to the 75' distance requirement.



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5. Commercial and Industrial Uses shall be in conformance with Section 8.9 of this Ordinance. (Sec. 6.3A.5)

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

Section 8.9 Industrial and Commercial Uses²³

A. Industrial and commercial uses in all districts shall comply with the following standards:

1. Noise

All noise shall be muffled so as not to be objectionable due to intermitting, beat frequency, or shrillness. Noise levels shall not exceed the following sound levels dB(A). The sound-pressure level shall be measured at the property line with a sound level meter.

<u>Sound Measured In</u>	<u>DAY</u> 7 AM - 6 PM	<u>NIGHT</u> 6 PM - 7 AM
Adjoining Agricultural or Residential Growth District	60 dB(A)	50 dB(A)
Residential Uses in R-LI-C District	65 dB(A)	55 dB(A)
Commercial Uses	70 dB(A)	60 dB(A)
Light Industrial Uses adjacent to noise source	85 dB(A)	80 dB(A)

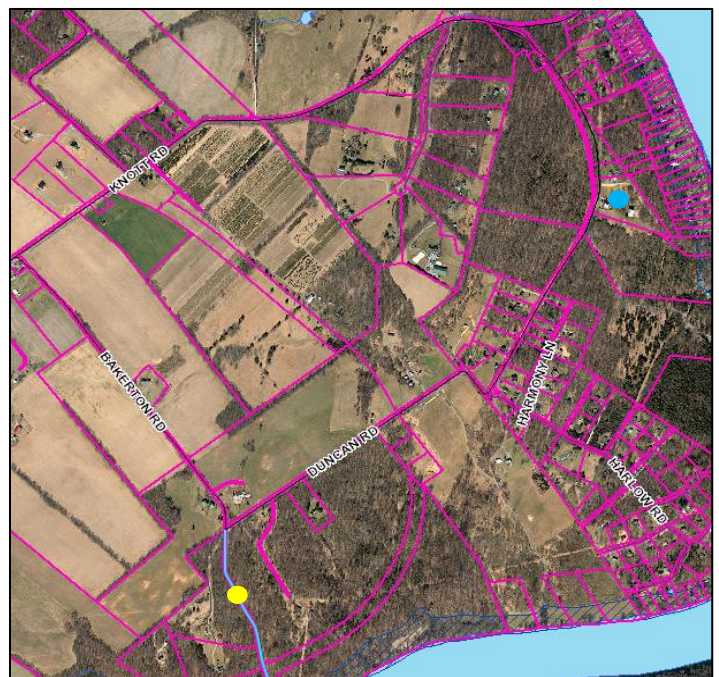
The following sources of noise are exempt:

 - a. Transportation vehicles not under the control of the industrial use.
 - b. Occasionally used safety signals, warning devices and emergency pressure relief valves.
 - c. Temporary construction activity between 7:00 a.m. and 7:00 p.m.

6. For properties in the Rural zoning district, roadway adequacy shall be assessed by the Comprehensive Plan’s Highway Road Classification Map. (Sec. 6.3A.6)

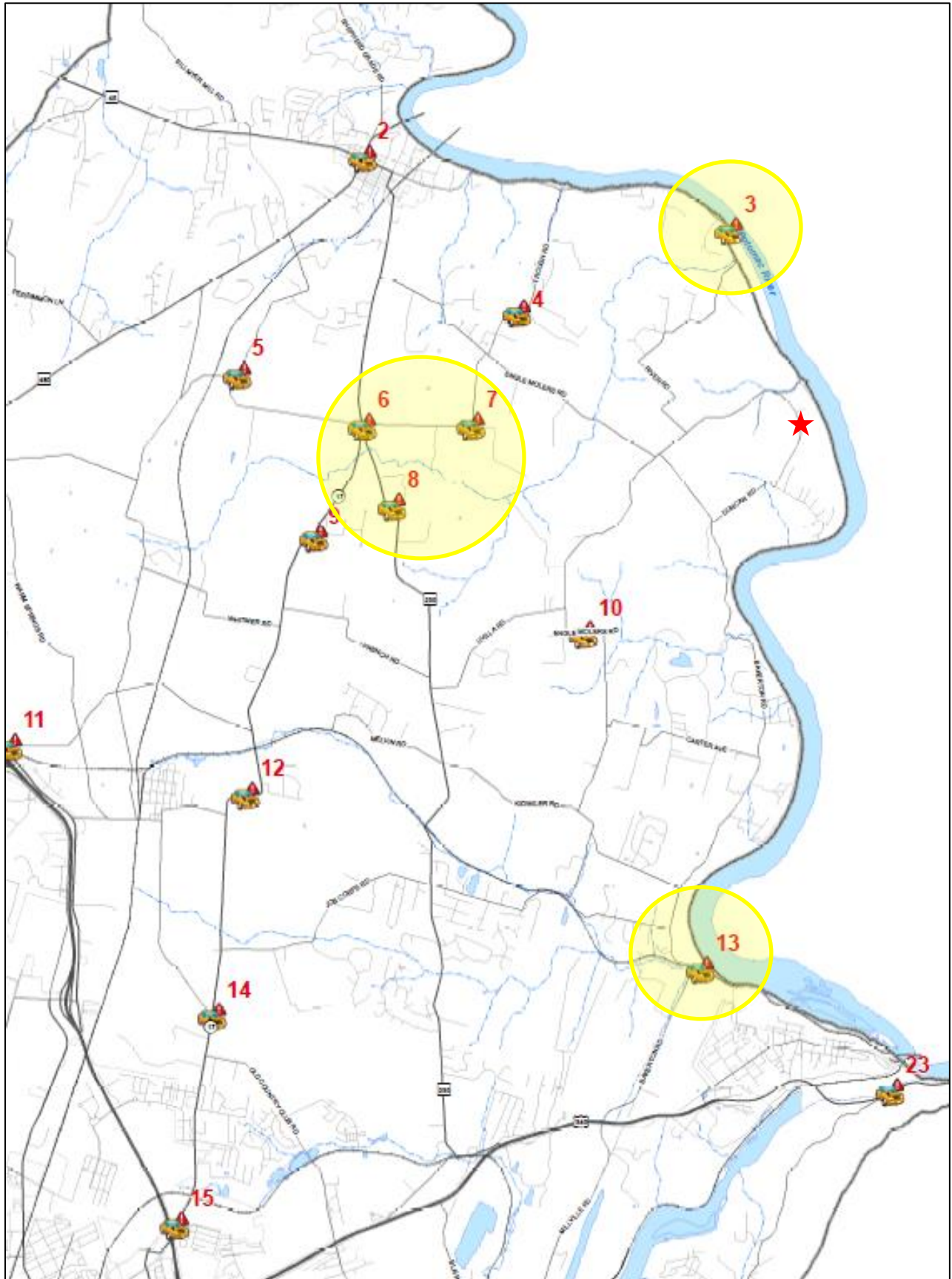
Duncan Road is classified as a Local Road and is subject to this criteria. The applicant provided a summary of the expected traffic impact as being 50-75 cars once every Saturday, 15 times per year. Peak hour trip data was not provided and Special Event Facility or similar use was not listed in the Trip Generation Manual, published by the Institute of Transportation Engineers.

As a reference, a traffic count study was conducted by Department of Transportation in 2017 near the Bakerton/Duncan Road intersection [●]. The study reflects that the annual average daily traffic count on Bakerton Road (Station ID 193023) was 386 (Source: [2017 WVDOT AADT – Traffic County Study](#)). The proposed land use would create a minimal increase in average daily trips when considering the frequency of the events and the existing daily trip calculations.



Below is an excerpt from the Comprehensive Plan’s Highway Problem Areas Map followed by the map index.

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Highway Problem Areas in Jefferson County			
Number	Route/Road	Location	Problem
1	Scrabble Road	1/4 mile West of Shepherherd Grade Road	90 Degree turn
2	WV 45	Intersection with WV 480, WV 45 and WV 230	Road width through historic area limits turn movements
3	River Road	Near Potomac Ridge Lane	Prone to flooding
4	Trough Road	One mile east of WV 230	90 Degree turn
5	Ridge Road	Intersection with Gardners Lane	Poor intersection angle causing poor visibility
6	Intersection of WV 230 and Flowing Springs Road	Intersection of WV 230, Flowing Springs Road, Gardners Lane and Trough Road	High number of access and turning movements, visibility constraints
7	Trough Road	1/2 mile north of Engle Molers	Two 90 degree turns
8	WV 230	1 mile south of Flowing Springs Rd	S Curve
9	Flowing Springs Road	Approximately 1 south of WV 230 intersection	Curve
10	Engle Molers Road	1/4 mile south of Uvilla	Two 90 degree turns
11	Luther Jones Road	Intersection with Wiltshire Road and Old Charlestown Road	Limited stacking area at light due to tracks. Development is expected to take place in this area over next two decades
12	Flowing Springs Road	Approximately 700 feet north of Shenandoah Junction Road	Two 90 degree turns
13	Bakerton Road	Bakerton Road Tunnel	Sharp Curve, Poor Sight Distance, One Lane Tunnel
14	Daniel Road	Intersection with Flowing Springs Road just north of Old Country Club Road	Poor intersection angle causing poor visibility
15	Sun Road	Intersection with WV 9 West	No merge lane on Route 9
16	Cattail Run Road	Intersection with Marlow RD and Cattail RD	90 Degree turn
17	Cattail Run Road	At intersection with WV 115	Poor sight distance pulling onto WV 115
18	Bloomery Road	1,000 north of WV 115	Within 100 Year Floodplain, periodic flooding
19	Wilt Road	From WV 115 at to dead end	Within 100 Year Floodplain, periodic flooding
20	John Rissler Road	From WV 115 at Bloomery to dead end	Within 100 Year Floodplain, periodic flooding
21	Bloomery Road	2,500 South of Rt. 9 tunnel	90 Degree turn
22	Bloomery Road	1,250 north of WV 115	90 Degree turn
23	US 340 and Chestnut Hill Road	Intersection with Chestnut Hill Road	Inadequate Turning Area onto Chestnut Hill Road; Poor intersection angle causing poor visibility, steep slope
24	WV 115	At Chestnut Hill	Poor intersection angle causing poor visibility
25	WV 115	At Mission Road	Multiple Accident Location Long dead-end road with only 1 point of ingress/egress
26	Augustine Ave	Intersection with US 340	Adjacent intersection with Hyuett Road may lead to stacking during peak hours.
27	Meyerstown Road	One mile east of US 340	Two 90 degree turns
28	Meyerstown Road	1/2 mile east of US 340	90 degree turn
29	Summit Point Road	Intersection with WV 51 (Washington St)	Poor intersection angle causing poor visibility, intersection at capacity
30	Summit Point Road	Near Lindsay Drive	90 Degree turn
31	Summit Point Road	Intersection with Lloyd Road	90 Degree Turn
32	Summit Point Road	At intersection with Leetown Road and Summit Point Road	Poor intersection angle causing poor visibility
33	Summit Point Road	In vicinity of Summit Point Raceway	90 Degree turn
34	WV 51	Intersection with Earl and Darke Lane	Misalignment of intersection
35	WV 51	Intersection with Childs Road	Poor sight distance turning onto WV 51
36	Old Middleway Road	Intersection with WV 51	Poor sight distance and intersection angle
37	Paynes Ford Road	3,500 feet west of Leetown Road	Two 90 degree turns

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Stevens Conditional Use Permit Request (#20-8-CUP)

7. Historic Landmarks Commission’s Findings related to the proposed land use. (Sec. 6.3A.7)

The subject property 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. (Sec. 6.3A.8)

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 verbally represented that no permanent signs would be erected and that the intent would be to place temporary signs for each event.



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

File #: CUP 20-8
 Mtg. Date: 11/12/20
 Fee Paid: \$ 550.⁰⁰
 Staff Int.: GH

Email: zoning@jeffersoncountywv.org

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

Application for a Conditional Use Permit

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

Project Name: River Chase Wedding Venue **RECEIVED**

OCT 02 2020

Property Owner Information

Name: Nancy E. Stevens JEFFERSON COUNTY PLANNING
 Business Name: River Chase Plc. ZONING & ENGINEERING
 Mailing Address: 1122 Duncan Rd. Harpers Ferry WV Mail Yes
 Phone Number: 304-870-0000 Email Response: hokie09@hotmail.com Response: No

Applicant Information

Name: _____
 Business Name: Same as above
 Mailing Address: _____ Mail Yes
 Phone Number: 304-263-0157 Response: No

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

Name: Andy Dimagno
 Business Name: Dimagno Dimagno Engineering
 Mailing Address: _____ Mail Yes
 Phone Number: 304-263-0157 Response: No

Physical Property Details

Physical Address: 1122 Duncan Rd. Harpers Ferry WV, 29925
 Tax District: * Select a District SR-11 Map No: 5h-11 Parcel No. 10
 Parcel Size: 5.92 Acres Deed Book: 488 Page No: 721

Zoning District (please check one)

Residential Growth (RG) <input type="checkbox"/>	Industrial Commercial (I-C) <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"/>

* 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: Duncan Rd. County RTE 28/1

Sketch Plan (see cover sheet for description)

Attached

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

Attached On Plat

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

Special Events -> Small

Host weddings & small events - 15/year Max.
75 Gers & 150 Max

Please provide any information or known history regarding this property.

House & Barn are both class III historical
House was first B&B in the Dept. of Agricultural
exchange Program

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

The use will not change the existing property
in any way. look

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 use will not impact with respect to adjoining
properties

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 property is woodland
on 3 sides with no house within 500' of the property
Neighbor on 4th side is on board.

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.

Nancy C. Howes 10/2/2020
Property Owner Date

Charles T. Stear 10/2/2020
Property Owner Date

River Chase
Nancy Stevens

20-8.cup

Reginald Seiders
1066 Duncan Rd
Harpers Ferry, WV 25425

Michael Johnson
1178 Duncan Rd.
Harpers Ferry, WV 25425

Dewey Meadows
448 McShanes Landing
Shepherdstown 25443

Zoning

From: nancy stevens <hokie09@hotmail.com>
Sent: Thursday, October 8, 2020 8:52 PM
To: Zoning
Subject: RE: Conditional Use Permit Application

Hey Alexandra, Duncan Rd. started as a driveway to our farm, only to be turned into a thru road in the 70's. I need 50 to 75 cars once every Saturday 15 times per year. $50 - 75$ divided by 7 equals 9-11 cars per day four months. USPS and UPS come by more than that at 55MPH on a 25MPH RD. I am a common man, not an engineer, what do you want? I thought we were encouraging agribusiness. Do I submit a drawing, a diagram, I really don't know what I need to provide. Help me please. What is trip generation data ? Thanks, Chuck Stevens

From: [Zoning](#)
Sent: Thursday, October 8, 2020 2:28 PM
To: 'hokie09@hotmail.com'
Subject: Conditional Use Permit Application

Mr. Stevens,

Thank you for submitting your conditional use permit application. One of the questions on the application pertains to road type as identified by the Comprehensive Plan. It looks like Duncan Road is listed as a local road on the Plan's roadway classification map (attached); therefore, the data requested in question #5 pertaining to trip generation is required.

As part of the application, please submit an addendum addressing question #5 on the application, specifically addressing trip generation data to include Average Daily and Peak Hour trips calculated for the proposed venue. If you are working with Andy Dimagno Engineering, they may be able to provide a brief summary addressing this criteria.

Do you intend to place a sign on the property? If so, can you please note the location of the proposed sign and an approximate size? The Board is required to evaluate all signs affiliated with a Conditional Use Permit application. If no signs are proposed at this time, you can come back to the Board to have a future sign reviewed/approved by the Board.

Thank you,

Alex

Alexandra Beaulieu
Zoning Administrator
Jefferson County Office of Planning and Zoning
www.jeffersoncountywv.org
304-728-3228

Public
Comments
Received

Zoning

From: Robert Commisso <bobby.commisso@gmail.com>
Sent: Monday, November 2, 2020 3:04 PM
To: Zoning
Subject: Conditional Use Permit 20-8-CUP Wedding Venue - 1122 Ducan Rd.

To the Zoning / Permit Office:

My name is Robert Commisso and I live at 185 Rabbits Rest Lane, Shepherdstown, WV. My home is due west of the proposed Wedding Venue (walking distance through the woods). I have heard the music and voices from previous events held at the Duncan Rd. venue. This email is to register my vigorous objection to the subject-line Change Use Permit (CUP) to increase the number and size of events.

The proposed CUP will open up the Duncan-Rd. location from 4 to as many as 15 events per year. This is on average more than one per month; more than 2 per month for the 6 months of good weather. In addition, the permit allows up to 150 cars per event. I understand 12 events already have been booked or are in the process of being booked.

The proposed CUP is simply unacceptable for the following reasons:

1. The roads in the local vicinity of the event area, Duncan and Knott, are not lit and have no painted lines to divide the lanes or identify the shoulders. In addition there are many hazardous pop-ups, including on the lined roads like Bakerton and Engle-Muller, neither of which is lit. Even local residents have concerns navigating these roads. People who are not familiar with the area will be at risk. Having relatively high traffic with the possibility of drinking is a recipe for serious accidents.
2. Necessary road maintenance is sure to increase. The area in and around the events was meant to be rural residential and zoned that way. The roads are not built for increased traffic.
3. Hearing music and voices 4 times a year is one thing. Part of the reason I live here is to enjoy the quietude and the sounds of nature. This area is zoned rural residential after all. The noise from such a large number of events is unacceptable.

I am adamantly opposed to this CUP to increase the number of events. I would like an opportunity to speak in opposition to the proposed CUP **at the public hearing scheduled for Thursday, November 12th.**

Robert J. Commisso

Zoning

From: Dana Ashford-Kornburger <dana0000@msn.com>
Sent: Monday, November 2, 2020 4:05 PM
To: Zoning
Cc: Dana Ashford-Kornburger
Subject: Conditional Use Permit 20-8-CUP Wedding Venue - 1122 Duncan Road

Jefferson County Planning Commission -

I would like to provide comment/question on the proposed Conditional Use Permit 20-8-CUP Wedding Venue - 1122 Duncan Road.

I am not sure yet if I will be able to attend the Zoom meeting where this will be covered due to work commitments, but can I please get the log in information for the meeting where this will be presented for review. Please provide my comments for the record in the situation I am unable to verbally convey them during the Zoom meeting.

1. Noise - The location currently hosts events which can be a significant noise nuisance to our neighborhood. It is my understanding they are currently approved for only 4 events per year (but it seems they have held more than that during this calendar year). We moved to rural area for peace and quiet from excessive noise outside of our control, additional events and noise reduces the area's desirability as a quiet, rural area.
2. Traffic - I am not sure why this application for permit did not require the traffic/roadway adequacy study. The permit application indicates the events will host 75-150 cars, this will be a significant amount of traffic on our small country roads. Duncan Road and Knott Road are both narrow roads with no shoulder and an increase in weekend traffic would not be desirable for many reasons: (1) wear and tear on the roads, (2) rural agricultural transportation safety, (3) increased litter, (4) potential negative impacts to local wildlife populations and domestic animals, and (5) rural quality of life - I like to be able to walk, bike, and jog on the quiet country roads without fear of being run over by someone rushing to get to an event.
3. As of this past weekend the applicants had not posted notification of the CUP application, I am not sure what the time requirement of posting is for this but that should be taken into consideration when deciding on this matter to ensure all area residents and landowners will have the ability to properly review and comment.

Please feel free to contact me if you require clarification or additional information.
Thank you!

Dana Kornburger
289 Rabbits Rest Lane, Shepherdstown, WV
831-392-7382
Dana0000@msn.com

Dana Kornburger

~Not All Heroes Wear Capes, Ours Wear Kevlar~

Zoning

From: carolgibson@frontier.com
Sent: Tuesday, November 3, 2020 1:01 PM
To: Zoning
Cc: anitatrotter-coxanitac@aol.com
Subject: conditional use permit 20-8 CUP Wedding Venue-1122 Duncan Rd.

This communication is in regard to the Nancy E. Stevens application for a Conditional Use Permit (CUP 20-8) at 1122 Duncan Road, Harpers Ferry, WV. I live on Rabbits Rest Lane approximately 400 yards west of the proposed wedding venue. My objection to this proposed expansion of her wedding venue use is three fold:

1. Section 5 of the application refers to "roadway adequacy for the proposed use." The applicant writes in the "state the proposed use as listed in appendix C" that the property will be used for small special events such as weddings 15 times per year max, with 75 to 150 cars per event. There is nothing small about 75-150 cars traversing our already deteriorating Knott Rd. and/or Duncan Rd. In my view this makes the property commercial in a residential area and therefore unacceptable as a business.
2. What person or entity will monitor the number of events per year permitted on the property and who or what will monitor the number of cars at each event. Both the number of cars and number of events can be easily exceeded without a mechanism of enforcement and for that reason I strongly oppose this conditional use permit.
3. It is my understanding that there is a 10:00 pm curfew for any noise emanating from the current 4 wedding/small events at this venue. That curfew has been violated multiple times and without a strict enforcement mechanism, noise will continue to disturb the peace of all of us on Rabbits Rest Lane.

For the above stated reasons I strongly object to the approval of CUP 20-8 regarding increasing the number and size of events to be held at 1122 Duncan Rd.

Sincerely,

Rick and Carol Gibson

Zoning

From: Anita <anitatc@aol.com>
Sent: Wednesday, November 4, 2020 1:16 PM
To: Zoning
Cc: ahump@me.com; bobby.commisso@gmail.com; carolgibson@frontier.com; dana0000@msn.com; deniseleith6@gmail.com; dh10@frontiernet.net; hiodon@yahoo.com; jguedel@yahoo.com; platzja@yahoo.com; sking25443@frontiernet.net; wv.dbello@gmail.com; wvcrazy1@yahoo.com
Subject: 20-8-CUP Wedding Venue Public Hearing
Attachments: Signatures 110220 1122 Duncan Rd.pdf; Comments to Board of Zoning Appeals.pdf

Good afternoon,

Attached you will find my comments regarding 20-8-CUP, which references the application for increasing the number of wedding / events from 4 to 15 per year at 1122 Duncan Rd.

You will also find a list of names and signatures of neighbors affected by the current 4 events and who do not want to experience any additional events with the loud music playing well into the night at 1122 Duncan Rd. Expanded comments are contained in the attachment.

I look forward to speaking at the Public Hearing through Zoom on Thursday, November 12th. I understand I have to request my time through the "Chat" feature of Zoom.

Thank you for your attention in this important matter.

Anita Trotter-Cox
365 Rabbits Rest Lane
Shepherdstown, WV 25443
(h) 304 876 8202
Email: anitatc@aol.com

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Wednesday, November 4, 2020

To the Jefferson County Board of Zoning Appeals:

Noise Pollution

Enduring the loud music emanating from 1122 Duncan Rd. on quiet evenings in our country home / farm is extremely difficult. The Stevens' are probably not aware of how much the noise is amplified and carried over the fields and hills of our community.

They are also probably not aware of how much the animals (my horses) are disturbed by the noise. On the evenings when the loud music starts until it finishes – sometimes well beyond 10:00 PM, I have to bring them into their stalls early. There are other horses, dogs, etc. and wildlife in our neighborhood as well. (Ref: EPA publication “Effects of Noise (music) on Wildlife and Domestic Animals.”)

Even with the windows closed and the air-conditioning on, it is still disturbing and I am unable to sleep.

My husband and I moved to Jefferson County to enjoy nature and the peace and quiet that our county offers. Had we been aware of the commercial (business aspect) of the event property at 1122 Duncan Rd. and their intention to expand, we would not have chosen this location. Approval of this application for additional events would indicate further erosion of the rural character of our county.

It is an unreasonable amount of noise in a residential / rural neighborhood. And now, increasing the number of events to 15 creates an unacceptable nuisance. The events will most likely be concentrated in warmer months. That would be about one every week or two. This has and will impact the serenity of our home / farm and neighborhood.

At the very least, please grant the neighborhood peace in the evenings with only the current CUP of 4 events. Actually, we would prefer none. Going from 4 to 15 events indicates a movement toward commercial land use. Please do not increase the events.

Wear and Tear on Narrow Country Roads / Personal Safety

Application states 75-150 cars per event. Our roads (especially Knott Rd) are currently not in good repair; numerous potholes, blind hills, no shoulders, etc. They are narrow country roads with no centerline. Even without the consumption of alcohol, it would be difficult for a driver to navigate on unfamiliar roads at night after the event. We are also very concerned for the safety of our walkers and joggers.

Questions:

1. Why would 12 events be booked when the CUP is only for 4 events? Are the current owners selling a residence or a business? Is this appeal intended to increase the value of the property at the neighborhood's expense?

When sold, the current owner will be gone, but we will have to continue enduring the loud music, noise, increased traffic, wear and tear on our narrow roads, and experience a higher risk of an accident with our walkers and joggers.

2. Why was the Notice of Public Hearing not placed outside the property until the late afternoon of November 1st? (This is not much time for neighbors to make comments by Nov. 6th). This action is also not in compliance with Section 6.3 "Posting of Property".

3. There is a wedding event advertising sign (actually a painted skid / pallet) leaning up against a county street sign. Has this been approved?

4. Where are the 150 cars going to park?

In conclusion, I would like to speak at the Public Hearing regarding 20-8-CUP (1122 Duncan Rd. Wedding Event Venue) on November 12th


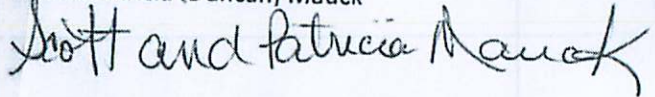
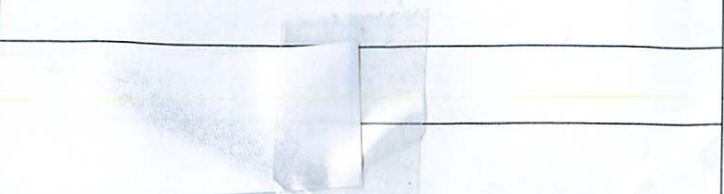
Thank you in advance.

Anita Trotter-Cox
365 Rabbits Rest Lane
Shepherdstown, WV 25443
(h) 304 876 8202
Email: anitatc@aol.com

A list of neighbors, along with signatures, who would not want to have the number of events increased from 4 to 15 at 1122 Duncan Rd. are also attached to this email.

Below is a signature list of neighbors who experience loud music during spring, summer and fall who do not want additional events at 1122 Duncan Rd. We ask that the 20-7-CUP Wedding Application be denied. Please reference individual comments.

NAME (PRINT)	SIGNATURE	STREET ADDRESS
Anthony Elworthy	<i>Anthony Elworthy</i>	150 Rabbits Rest Ln
PATRICIA ELWORTHY	<i>Patricia Elworthy</i>	150 Rabbits Rest Ln.
Amita Trotter-Cox	<i>Amita Trotter-Cox</i>	365 Rabbits Rest Lane
CHRISTOPHER WRIGHT	<i>Christopher Wright</i>	105 RABBITS REST LN
John E Guedel	<i>John E Guedel</i>	302 RABBITS REST LN
SANDRA K. KING	<i>Sandra K King</i>	371 RABBITS REST LN
Peg Humphreys	<i>Peg Humphreys</i>	343 RABBITS REST LN
Tammy de Nobel	<i>Tammy S de Nobel</i>	129 Rabbits Rest Lane
Dana & Mike Kornburger	<i>Dana & Mike Kornburger</i>	289 Rabbits Rest Lane
Cathy Fudge	<i>Cathy Fudge</i>	48 Melody Ln
Glen Fudge	<i>Glen Fudge</i>	" " "
Robert J. Commisso	<i>Robert J. Commisso</i>	155 Rabbits Rest Lane
Denise Leith	<i>Denise Leith</i>	185 Rabbits Rest LN
^{Mrs} Richard L. Gibson	<i>Richard L. Gibson</i>	243 Rabbits Rest LN
FRED WilcoxON	<i>W C WilcoxON</i>	1071 KNOTT RD.

NAME (PRINT)	SIGNATURE	STREET ADDRESS
KEVIN + Nicole HELPS		767 DUNCAN ROAD, HARPER'S FERRY, WV 25425
Scott & Patricia (Duncan) Mauck		

Zoning

From: D Bello <wv.dbello@gmail.com>
Sent: Wednesday, November 4, 2020 7:26 PM
To: Zoning
Cc: Anita
Subject: Zoning / Permit Office: Duncan Rd, Wedding Venue CUP /ChangeUsePermit Submission

TO: The Zoning / Permit Office

(zoning@jeffersoncountywv.org):

Our names are Arturo & Diana Bello and we live at 370 Rabbits Rest Lane, Shepherdstown, WV.

This e-mail letter serves to register our adamant objection to any continuance much less increase number of events or cars to all current and proposed events at the above mentioned venue.

Our home is also due west of the proposed Wedding Venue, a .75 mile direct line walk distance through the woods & field. We see their lights.

We hear their music and drunken voices from previous events held at this Duncan Rd. venue. They have not honored county noise curfew ordinances. This once-farm is next to our family farms wherein farm equipment has precedence vs. texting drivers checking their GPS to the event to the peril of all.

The proposed CUP intends to open up the Duncan-Rd. location from 4 to as many as 15 + events per year. This is on average more than one per month; more than 2 per month for the 6 months of good weather. In addition, the permit allows up to 150 cars per event. It is our understanding 12 events already have been booked or are in the process of being booked.

This effectual change of an agricultural/residential zoning definition to something resembling commercial is unacceptable.

The proposed CUP is simply egregious for the following reasons:

1. The roads in the local vicinity of the event area, Duncan and Knott, are not lit, have no painted lane lines, no road shoulder as well as have many hazardous pop-ups (including on the lined roads like Bakerton and Engle-Moler). Even local residents have concerns navigating these roads. People who are not familiar with the area put themselves and others at risk. Having relatively high traffic with the probability of driving under the influence of drinking, recreational drugs as well as texting is grounds for serious accidents.

Did we mention avoiding deer?

2. Necessary road maintenance is sure to increase. The area in and around the events was meant to be rural residential and zoned that way. The roads are not built for increased traffic.

3. Hearing music and voices 4 times a year is one thing. Living here for 60 years in a quiet, neighborly, rural setting is important. This would-be entrepreneur didn't consult nor discuss with neighbors how this could effect surrounding neighborhoods. This area is zoned rural residential afterall.

The noise & traffic volume from such a large number of events is absolutely unacceptable.

We adamantly oppose this CUP to increase the number of events. We would like to speak in opposition to the proposed CUP at the public hearing scheduled for Thursday, November 12th, but cannot per another commitment; therefore, we give our names in support of Anita Cox and Dr. Bob Cossimmo, among others, to represent us in unity against the proposed CUP.

Arturo & Diana de Bello

November 5, 2020

To the Zoning/Permit Office:

My name is Tammy de Nobel and I live at 129 Rabbits Rest Lane, Shepherdstown, WV. My home is near the "Wedding Venue" at 1122 Duncan Road. I am concerned about the proposed changes from 4 to 15 events in the permit that the owner currently has.

On several occasions my family and I have heard music and voices from previous events. Although I don't appreciate sitting on my patio hearing other people's music while trying to enjoy the quiet of summer evenings, I can tolerate it a few (4) times a year but to have to endure it up to 15 times is unacceptable in our rural residential area. We purchased our land years ago because of the beauty and solitude and I worry that increasing the number of events would completely disrupt that solitude.

In addition, I am greatly concerned about the traffic that the increased number of events would bring to the area. Our road conditions are not the best to begin with having potholes, no shoulder, narrow roads with no center line, sharp turns, etc.... and can be difficult to navigate even for residence especially in the evening. Also, there are many in our area that enjoy the "country" roads to exercise on and increased traffic would make that dangerous. My husband and I walk these roads several times a week and my teenage son runs almost daily. Residence are respectful of the speed in which they drive, especially around those exercising, but I'm afraid that others will not be as courteous. If you add an evening event, alcohol, and wildlife (deer) to the mix you are looking at a disaster waiting to happen.

My final concern is that the Event Venue has already more than the allotted 4 events booked for next year prior to the CUP approval. This brings into question who would actually be monitoring the number of events? It is my understanding that the owner of the venue is getting ready to sell their property so why are they interested in increasing the number of events anyway unless it is to sell their property as a business?

In closing I would like to make mention of the fact that there was not a Notice of Public Hearing sign posted until Nov. 1 for a brief period of time and taken down again by Nov. 4. This provided a very small window of opportunity for neighbors to become aware of the application and respond to it. Fortunately, we were able to hear about it by word of mouth even without the signage.

Thank you for taking the time to read my concerns/objections to this CUP to increase the number of events.

Tammy de Nobel

Zoning

From: Sandy <sking25443@frontiernet.net>
Sent: Thursday, November 5, 2020 3:36 PM
To: Zoning
Subject: Conditional Use Permit 20-8-CUP Wedding Venue - 1122 Duncan Rd.

To the Zoning / Permit Office:

My name is Sandra King and I live at 371 Rabbits Rest Lane, Shepherdstown, WV. My home is due west of the proposed Wedding Venue (walking distance through the woods). I have heard the music and voices from previous events held at the Duncan Rd. venue. This email is to register my vigorous objection to the subject-line Change Use Permit (CUP) to increase the number and size of events.

The proposed CUP will open up the Duncan-Rd. location from 4 to as many as 15 events per year. This is on average more than one per month; more than 2 per month for the 6 months of good weather. In addition, the permit allows up to 150 cars per event. I understand 12 events already have been booked or are in the process of being booked.

The proposed CUP is simply unacceptable for the following reasons:

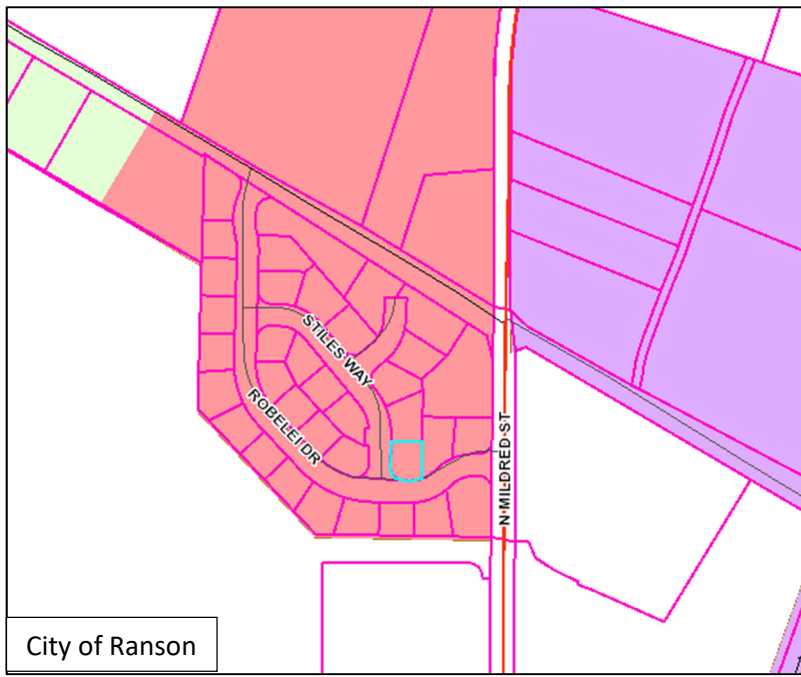
1. The roads in the local vicinity of the event area, Duncan and Knott, are not lit and have no painted lines to divide the lanes or identify the shoulders. In addition there are many hazardous pop-ups, including on the lined roads like Bakerton and Engle-Muller, neither of which is lit. Even local residents have concerns navigating these roads. People who are not familiar with the area will be at risk. Having relatively high traffic with the possibility of drinking is a recipe for serious accidents.
2. Necessary road maintenance is sure to increase. The area in and around the events was meant to be rural residential and zoned that way. The roads are not built for increased traffic.
3. Hearing music and voices 4 times a year is one thing. Part of the reason I live here is to enjoy the quietude and the sounds of nature. This area is zoned rural residential after all. The noise from such a large number of events is unacceptable.

I am adamantly opposed to this CUP to increase the number of events. I would like an opportunity to speak in opposition to the proposed CUP **at the public hearing scheduled for Thursday, November 12th.**

Sandy King

Staff Report
 Jefferson County Board of Zoning Appeals
 November 12, 2020
Paige Variance Request (#20-35-ZV)

Item #2 Variance from Section 5.4B (Zoning Ordinance, as amended 07/15/93) to reduce the rear setback from 20' to 11' for a 10' x 20' deck.

Applicant:	Waverly and Sharon Paige
Owner:	Same
Developer:	N/A
Consultant:	N/A
Location:	Robelei Estates Subdivision, Lot 24, 14 Stiles Way, Charles Town, WV
Parcel Information and Zoning District:	<p style="text-align: center;">Parcel ID: 02000700790000; Size: .14 acres; Zoning District: Residential-Light Industrial-Commercial</p> 
Surrounding Properties:	<p style="text-align: center;">Zoning Map Designation: <i>North, South, East and West:</i> Residential-Light Industrial-Commercial</p>
History:	Robelei Estates Subdivision (File 94-30) Recorded on 06/16/97 in Plat Book 14 at Page 86A
Waivers/Variations:	None
Approved Activity:	Single Family Residence
Site Visit Conducted:	No

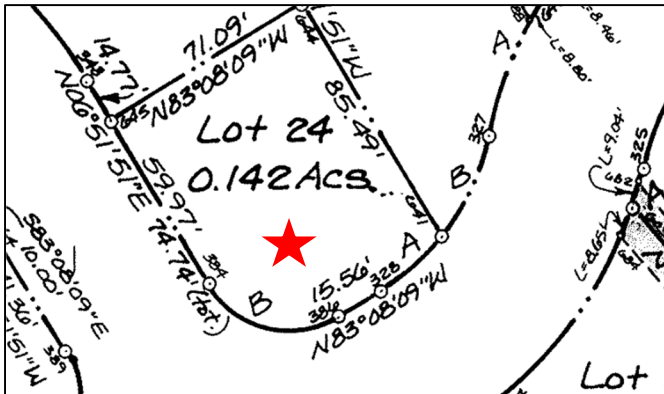
Summary of Request and Purpose of Ordinance Requirements

The applicant is seeking a variance from Section 5.4B (Zoning Ordinance, as amended 07/15/93) to reduce the rear setback from 20' to 11' for a 10' x 20' deck.

The purpose of side and rear 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
 November 12, 2020
Paige Variance Request (#20-35-ZV)

Staff Evaluation of Request

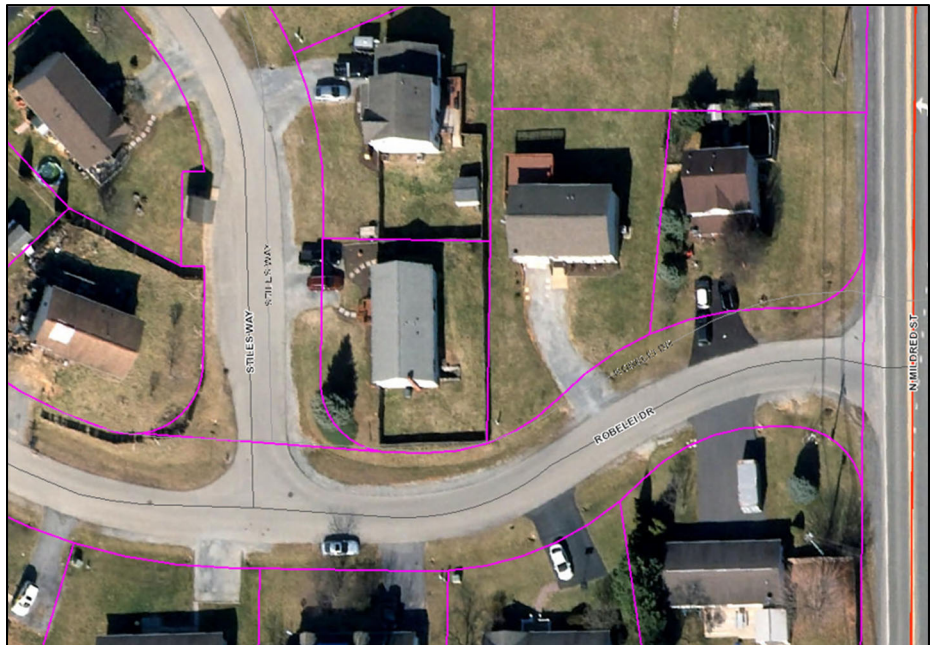


The subject parcel is Lot 24 of the Robelei Estates Subdivision, which was recorded on June 16, 1997 in [Plat Book 14 at Page 86A](#). The required setbacks for the subject lot are 25' Front; 12' Side; and 20' Rear.

The subject parcel is located on the corner of Robelei Drive and Stiles Way; therefore, the lot is subject to front setbacks, which reduces the buildable area.

The proposed deck and stairs will project 9' into the required setback area, placing the structure 11' from the rear property line. In addition to the fact that the yard is fenced, the applicant has also represented that their neighbors do not object to the subject request; therefore, it appears that impact on adjoining properties would be minimal.

Due to the limited buildable area, it is not feasible to comply with the Ordinance by other means.



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 5.4B RESIDENTIAL GROWTH DISTRICT
 HEIGHT AND YARD REQUIREMENTS

<u>Development Type</u>	<u>Minimum Lot Area (MLA) Area per Dwelling Unit (ADU)</u>	<u>Required Yards</u>	<u>Maximum Building Height*</u>
&1 Single family detached dwelling Public/Central water and sewer	6,000 sq. ft. ADU** 10,000 sq. ft. MLA	25 ft. front 12 ft. side 20 ft. rear	40'
Public/Central water or sewer	20,000 sq. ft. MLA		
No Public/Central water or sewer	40,000 sq. ft. MLA		



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: 20-35-ZV
 Staff Initials: jth
 Meeting Date: 11/12/20
 Fees Paid (\$100 or \$150): \$100.00

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: Waverly T. & Sharon L. Paige
 Mailing Address: 14 Stiles Way Ranson, WV 25438
 Phone Number: 703-298-1815 Email: wtpaige@comcast.net

Applicant Contact Information

Name: Waverly T. Paige
 Mailing Address: 14 Stiles Way. Ranson, WV 25438
 Phone Number: 703-298-1815 Email: wtpaige@comcast.net

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

Name: N/A
 Mailing Address: _____
 Phone Number: _____ Email: _____

Physical Property Details

Physical Address: 14 Stiles Way
 City: Ranson State: WV Zip Code: 25438
 Tax District: 02-Charles Town Map No: 7 Parcel No: 79
 Parcel Size: .138 Deed Book: 1117 Page No: 168

Zoning District (please check one)

*parcel info changes - jth-10/09/20

Residential Growth (RG) <input checked="" type="checkbox"/>	Industrial Commercial (IC) <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"/>

Received 10/09/2020 jth
 Place Received Date Stamp Here

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

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

Reference the section of the Zoning Ordinance pertaining to this request: Section 5.4B jth-10/09/20

Briefly describe the nature of the variance request:

The rear setback is 20 feet, because of how the house sits it is all but impossible to put a reasonable size deck on the house.

Proposed deck is 10'x 20' with attached stairs. - jth-10/09/20

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

Front Setback Side Setback Rear Setback Reduction From 20' to 11' jth-10/09/20

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:

Both adjoining neighbors have decks that they use and both stated that they have no issue with me building one.

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?

We do not have way to utilize our rear sliding door to access the yard, having a deck will make this possible for us to enjoy the yard space.

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

We would be able to access the yard without having to use the far side door and it would make it easier for my wife to enjoy her time outside.

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

The yard is fenced and the deck will not be in the way of any of my neighbors. The closest neighbor's back deck sits in another direction.

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.

Waverly T. Paige 10/9/2020
Signature of Property Owner Date

Sharon L. Paige 10/9/2020
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).

11/12/20
Date of Public Hearing

10/28/20
Advertising Date

10/28/20
Placard Posting Date

Existing RESIDENCE
| Sliding Door

10'
DECK LENGTH

GUARD RAIL

HAND RAIL

15'
to FENCE

20'
DECK WIDTH

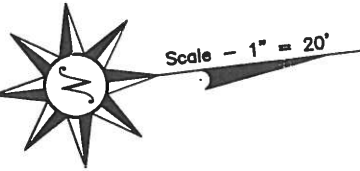
11'
to FENCE

49'
to FENCE

LINE

LINE

August 14, 2003



STILES WAY 50' R/W

MORTGAGE INSPECTION

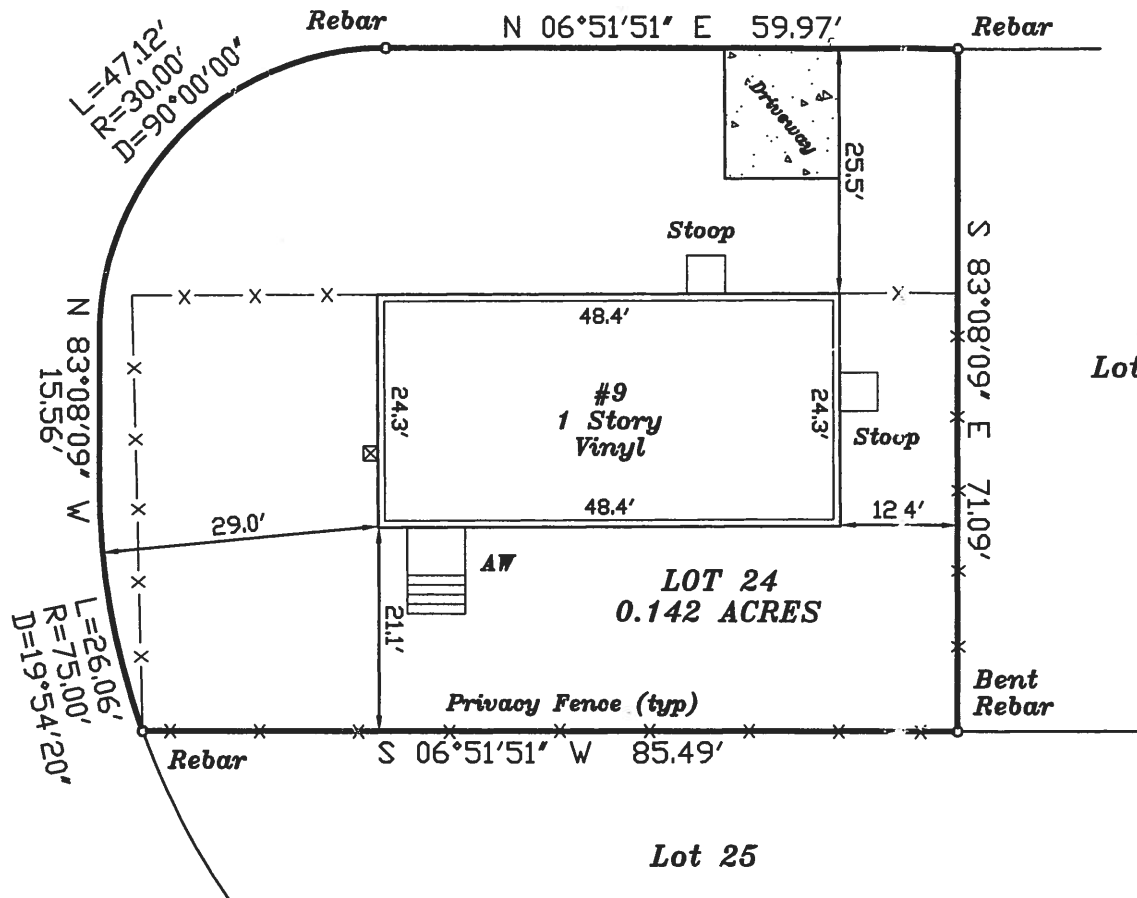
Lot 24 - ROBELEI - PB. 14 PG. 86
Charles Town Dist. - Jefferson Co., West Virginia
Tax Map 7-1 Parcel 79

Seller: Ernest & Susan Swartz - DB. 954 PG. 433
Buyer: Sharon W. Mauro

Building Setback Minimums: Front - 25', Side - 12'
& Rear - 20'.

Note - This Lot is not in a 100 Year Flood Plain
according to FIRM Community Panel 540065 0035 C
effective August 2, 1993.

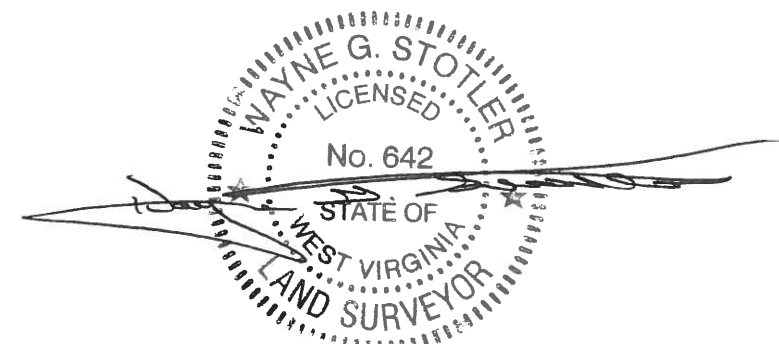
ROBELEI DRIVE
50' R/W



Lot 23

LOT 24
0.142 ACRES

Lot 25

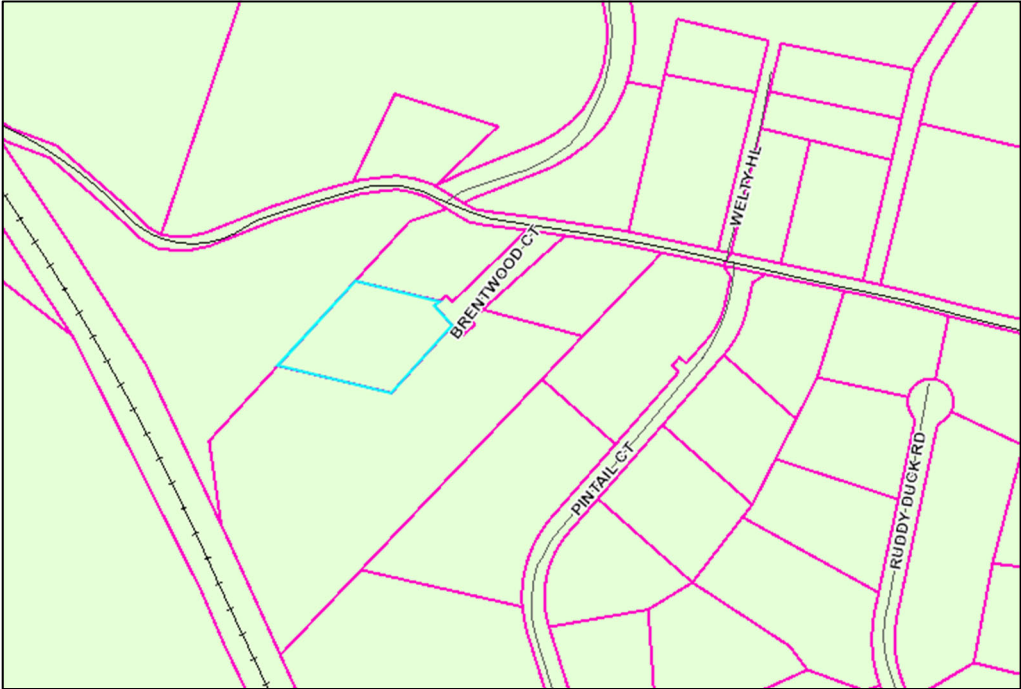


This Plat does not represent a Boundary Survey. It is intended to show the Lender the improvements located on this Lot.

Stotler & Associates
Land Surveyors
P.O. Box 519, Martinsburg, WV 25402
(304)258-6388 • (800)879-9688 • (304)258-4655, fax

Staff Report
 Jefferson County Board of Zoning Appeals
 November 12, 2020
Herbert Variance Request (#20-36-ZV)

Item #3 Variance from Section 9.7 to reduce the north side setback from 25' to 6' for a 14' x 28' accessory structure.

Applicant:	Howard Herbert
Owner:	Same
Developer:	N/A
Consultant:	N/A
Location:	Brentwood Subdivision, Lot 2, 60 Brentwood Dr., Harpers ferry, WV
Parcel Information and Zoning District:	Parcel ID: 04000600090006; Size: 1.18 acres; Zoning District: Rural 
Surrounding Properties:	Zoning Map Designation: North, South, East and West: Rural
History:	Brentwood Subdivision (PC File #88-26) Recorded on 07/09/90 in Plat Book 9 at Page 37
Waivers/Variations:	None
Approved Activity:	Single Family Residence
Site Visit Conducted:	No.

Summary of Request and Purpose of Ordinance Requirements

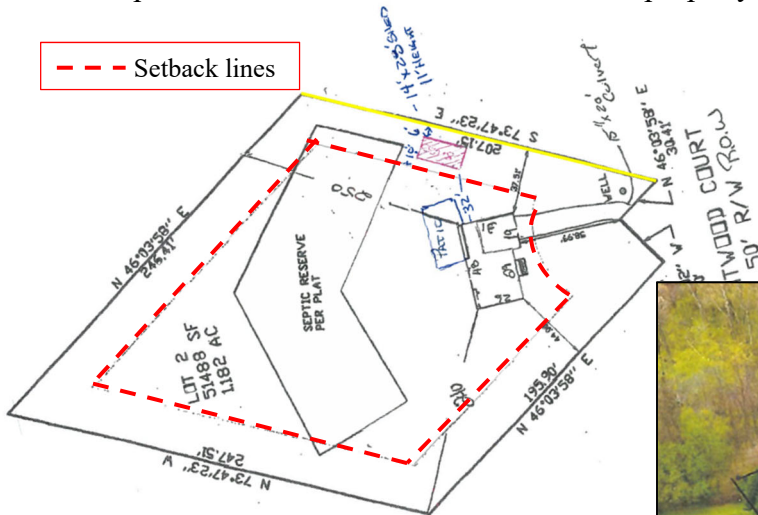
The applicant is seeking a variance from Section 9.7 to reduce the north side setback from 25' to 6' for a 14' x 28' accessory structure.

The purpose of side and rear 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
November 12, 2020
Herbert Variance Request (#20-36-ZV)

Staff Evaluation of Request

The subject parcel is Lot 2 of the Brentwood Subdivision, which was recorded on July 9, 1990 in [Plat Book 9 at Page 37](#). The lots in this subdivision were created with the following setbacks: 50' Front; 25' Side and Rear. The applicant is proposing to construct a 392 square foot accessory structure and would like to place the structure 6' from the northern property line (subject property line highlighted below).



The Ordinance allows accessory structures to be placed as close as 6' from the side or rear property line on parcels that are 40,000 square feet or less. The subject parcel is 51,488 square feet and therefore, cannot utilize this exception by right.

The applicant included a letter from the adjoining property owner most impacted by the request, who stated that he has no objection to the setback reduction.

In addition to a letter of support from the adjoining neighbors, the proposed accessory structure will be screened by existing trees on the neighboring property; therefore, it is expected that impact on adjoining properties is expected to be minimal.

It is feasible to comply with the Ordinance by other means; however, as the applicant has represented, the subject location is preferred based on the location of an existing patio as well as proximity to access to the house and garage.

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.



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: 20-36-ZV
 Staff Initials: GH
 Meeting Date: 11/12/20
 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: Howard Herbert
 Mailing Address: 60 Brentwood Court, Harpers Ferry, WV 25425
 Phone Number: 301-707-2996 Email: hkherbert4@gmail.com

Applicant Contact Information

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

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

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

Physical Property Details

Physical Address: 60 Brentwood Ct / Lot 2 Brentwood Subdivision (PC File #88-26)
 City: Harpers Ferry State: WV Zip Code: 25425
 Tax District: 04 Map No: 06 Parcel No: 9.6
 Parcel Size: 1.18 acre Deed Book: 1246 Page No: 644

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"/>	
			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

OCT 15 2020

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: Section 9.7

Briefly describe the nature of the variance request:

The variance request is to reduce the right (North) side setback from 25 feet to 6 feet to install a storage shed.

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

Front Setback Side Setback Rear Setback Reduction From 25 ft to 6 ft

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 variance will allow a 14'x28' storage shed to be placed on a gravel pad on the right side of the lot approx. +/- 100' from the lot frontage along the tree line and will not impact public health, safety or welfare. The neighbors on both sides have received the set back request and shed location and are in agreement with no objections (see attachment).

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 slope of the lot, septic reserve, and existing 25' setback greatly limit the possible locations of a storage shed. The variance will allow reasonable use of the lot.

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

The variance will allow a storage building to be placed close to the patio, house access and garage access without impinging on the septic reserve or neighbors.

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

This variance will increase the health and safety of the residence by locating the shed in close proximity to the patio and house/garage access without effecting any future access needs between lots. The proposed shed location is along a tree line and will not impact the aesthetic value of the subdivision. The shed is portable and can be moved if needed.

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.

 10-13-20
Signature of Property Owner Date

 10-13-20
Signature of Property Owner Date

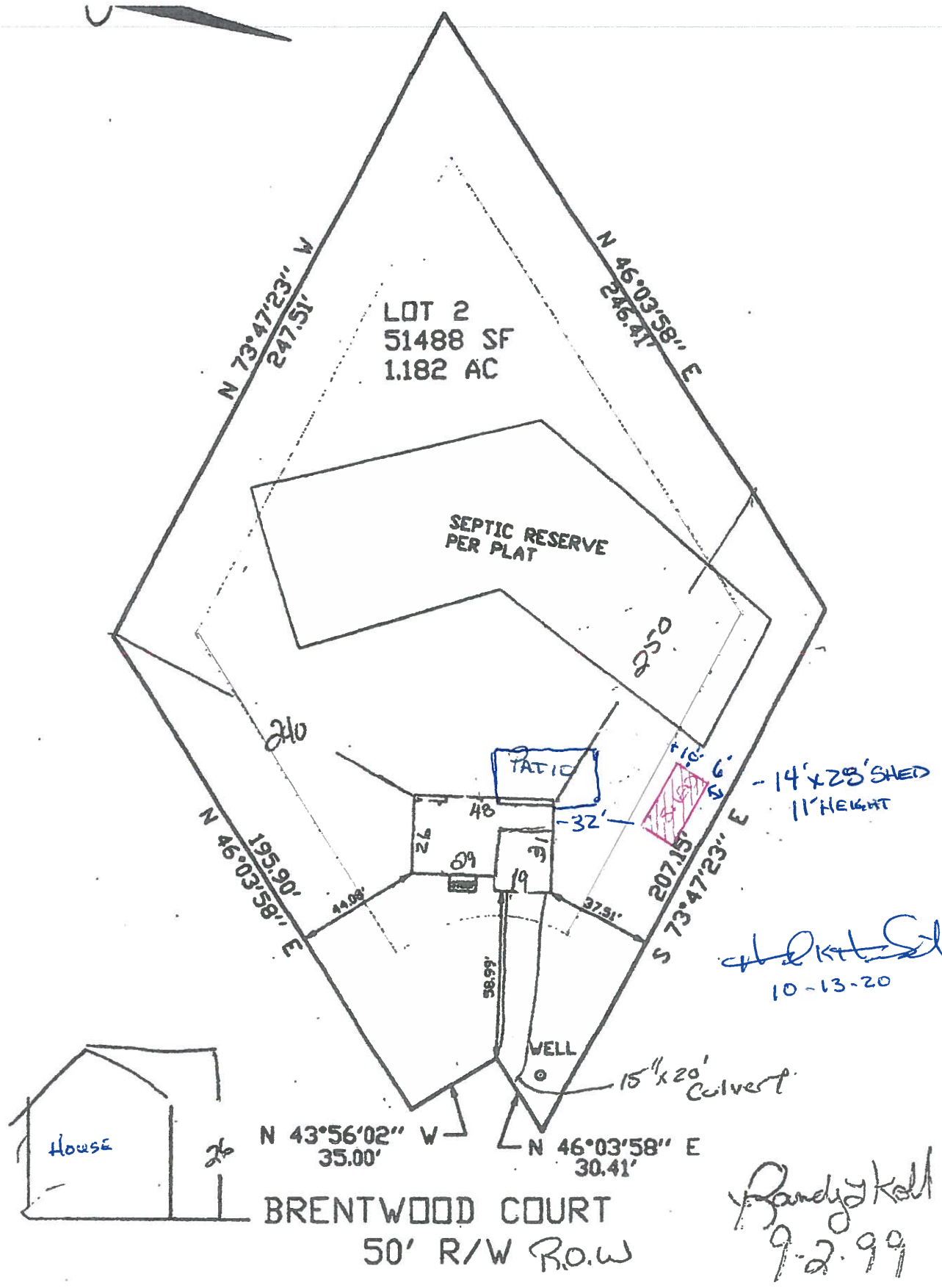
Notification Requirements (to be completed by staff)

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).

11-12-2020
Date of Public Hearing

10-28-2020
Advertising Date

10-28-2020
Placard Posting Date



Al O'Keefe 10-13-20



Tom Chapman
46 Brentwood Court
Harpers Ferry, WV
25425

October 13, 2020

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

To Whom it May Concern,

This letter is in reference to the Zoning Variance Request from Howard and Kathi Herbert at 60 Brentwood Ct Harpers Ferry, WV 25425 for a side setback reduction from 25 ft to 6 ft to install a storage shed.

I am the neighbor on the rights side of the above-mentioned property. I have reviewed the setback variance and proposed placement of the storage shed and agree with both with no objections.

A handwritten signature in cursive script that reads "Tom Chapman".

Tom Chapman

Robert Dudash
63 Brentwood Court
Harpers Ferry, WV
25425

October 13, 2020

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

To Whom it May Concern,

This letter is in reference to the Zoning Variance Request from Howard and Kathi Herbert at 60 Brentwood Ct Harpers Ferry, WV 25425 for a side setback reduction from 25 ft to 6 ft to install a storage shed.

I am the neighbor on the left side of the above-mentioned property. I have reviewed the setback variance and proposed placement of the storage shed and agree with both with no objections.

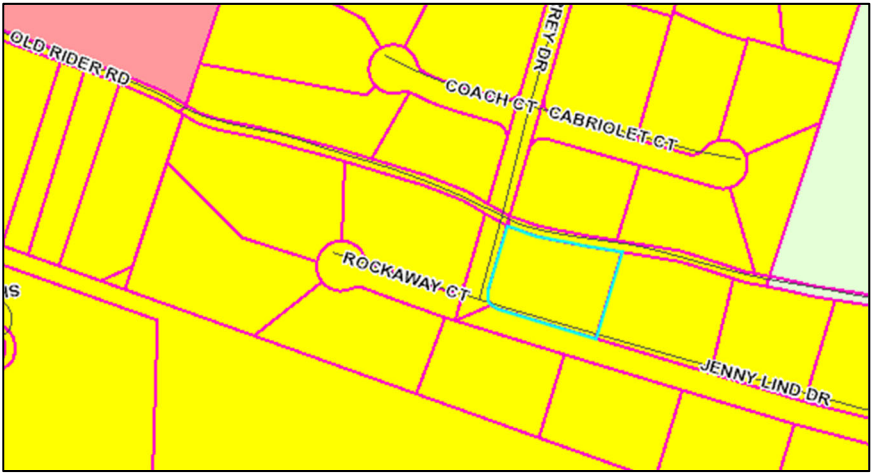


Robert Dudash

Staff Report
 Jefferson County Board of Zoning Appeals
 November 12, 2020

Hanigan-Sinnett Variance Request (#20-37-ZV)

Item #4 Variance from Section 5.4B and Section 9.6C (Zoning Ordinance, as amended October 4, 1990) to reduce the front setback from 25' to 2' for a 42' x 20' in ground pool and surrounding concrete.

Applicant:	Kevin Hanigan and Tina Sinnett
Owner:	Same
Developer:	N/A
Consultant:	N/A
Location:	Carriage Park Subdivision, Lot 17, 33 Jenny Lind Dr., Charles Town, WV
Parcel Information and Zoning District:	<p style="text-align: center;">Parcel ID: 04009C00170000; Size: .95 acres; Zoning District: Residential Growth</p> 
Surrounding Properties:	Zoning Map Designation: <i>North, South, East and West: Residential Growth</i>
History:	Carriage Park Subdivision (recorded on 12/31/92 in Plat Book 11, Page 6)
Waivers/Variations:	None
Approved Activity:	Single Family Residence
Site Visit Conducted:	No

Summary of Request and Purpose of Ordinance Requirements

The applicant is seeking a variance from Section 5.4B (Zoning Ordinance, as amended October 4, 1990) to reduce the front setback from 25' to 2' for a 42' x 20' in ground pool and surrounding concrete. Additionally, the applicant is requesting a variance from Section 9.6C to allow an accessory structure within the required front yard.

The key purpose of front yard setback requirements is to ensure that any future right-of-way expansion or utility placement will not be obstructed by structures built too close to a road. It also ensures that sight visibility is not impaired for drivers along the right-of-way.



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: 20-37-2V
 Staff Initials: gjt
 Meeting Date: 11/12/20
 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: Kevin and Tina Hanigan (formerly Tina Sinnett)
 Mailing Address: 33 Jenny Lind Drive, Harpers Ferry, WV 25425
 Phone Number: 240.315.6000 or 240.578.7206 Email: tina9674@gmail.com or kevinhanigan@yahoo.com

Applicant Contact Information

Name: Same as above
 Mailing Address: _____
 Phone Number: _____ Email: _____

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

Name: Not applicable
 Mailing Address: _____
 Phone Number: _____ Email: _____

Physical Property Details

Physical Address: 33 Jenny Lind Drive
 City: Harpers Ferry State: WV Zip Code: 25425
 Tax District: 04 Map No: 9C Parcel No: 0017
 Parcel Size: 0.95 Deed Book: 1234 or 1168 Page No: 109 or 476

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

OCT 16 2020

**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: ~~WV Code 8A 7-11 (2017)~~ Sec. 5.4B

Briefly describe the nature of the variance request:

9.6C PH

Waiver request to allow for construction of a partially above ground pool that is less than 25 ft set back. The entirety of our backyard cannot accommodate the 25ft set back in addition to the easment for Old Rider Road.

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

Front Setback Side Setback Rear Setback Reduction From 25' to 5'

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:

This pool is intended for personal/private use. It does not create a visual nuisance. It will not create visual nuisance as it will be hidden by a 6ft privacy fence. The swim area will be surrounded by an additional fence for added safety. The pool will be outside of the right of way for Old Rider Road. This section of the gravel road is used exclusively by (approx) 2 farms and 6 residential homes behind Carriage Park. The pool is within the Carriage Park HOA C&R requirements and has been verbally approved by board pending this zoning approval.

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 location of the existing dwelling, the septic field (in addition to the 10ft set back requirement of that area), set back from the neighbor's property line, plus the easement for Old Rider Road are preexisting and creates the need for the variance waiver. In evaluation of the property and set back requirements in their entirety, the proposed (requested) location would require the least amount of variance possible.

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

Based on the existing location of the dwelling and the septic field, there are no alternative locations that would adhere to the set back requirements. Adhering to the requirement of the ordinance would result in the removal of an extensive brick patio already in place.

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

It will allow for the use and enjoyment of our personal property while continuing to respect and enable the continued use of Old Rider Road. We wish to add a pool without any direct or indirect impact to the gravel road and will maintain 6ft privacy fence along the side of the requested variance to ensure there is no impact to the users of Old Rider Road. There is still a sufficient set back to the gravel road and our proposal will maintain both privacy and continued use of the road in question, just as today. Our fence line is already 10 feet from the start of gravel road, offering substantial distance from the road.

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]
Signature of Property Owner
10-16-220
Date

[Signature]
Signature of Property Owner
11/01/2020
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).

11/12/20
Date of Public Hearing

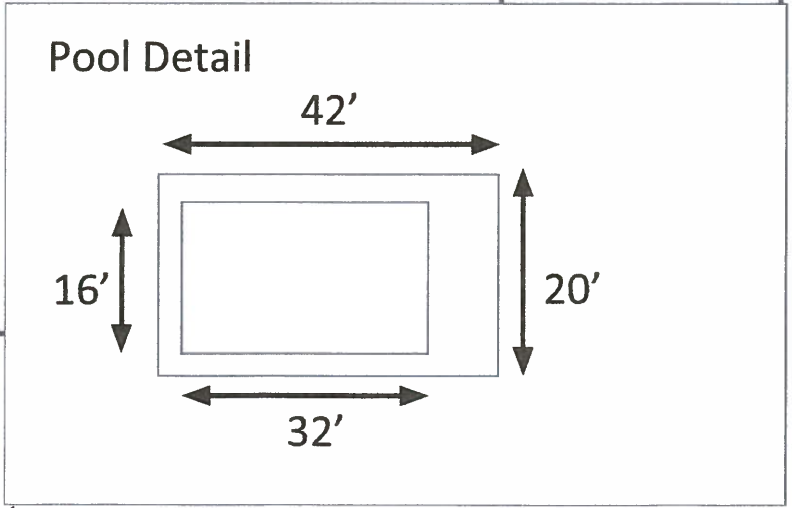
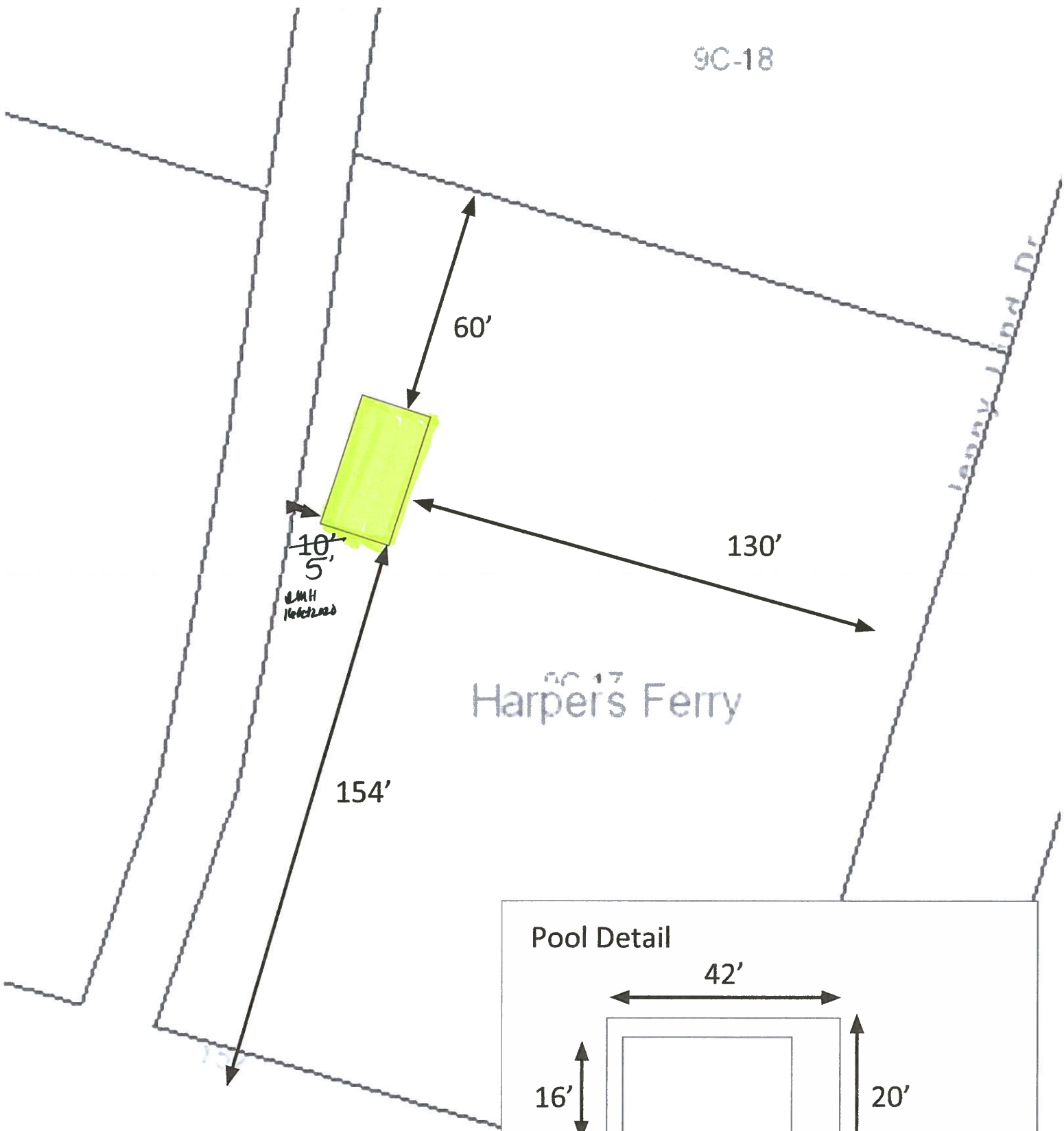
10/28/20
Advertising Date

10/28/20
Placard Posting Date

9C-18

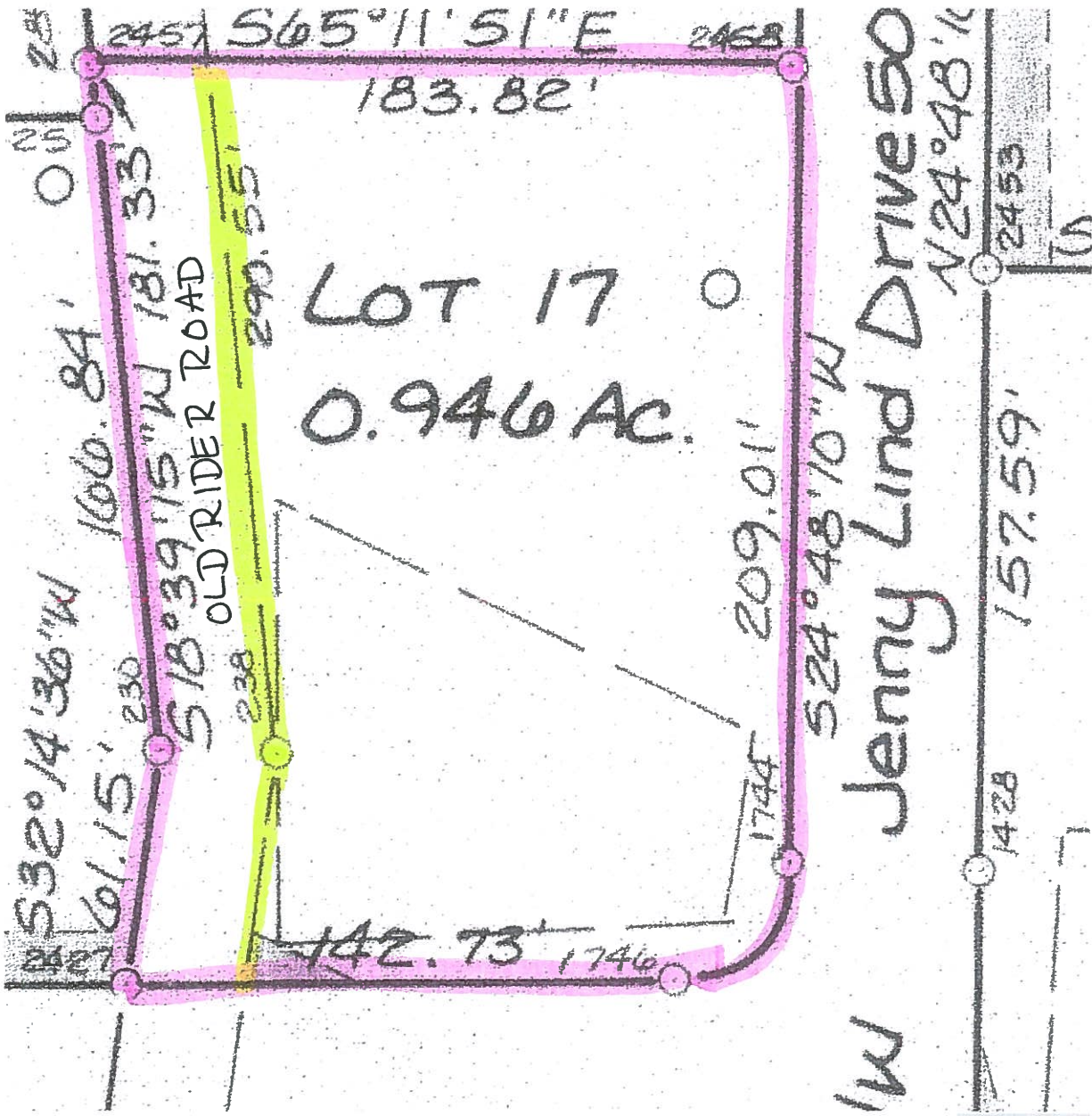
Lenny Lind Dr.

9C-17
Harper's Ferry



John M. Hanigan
16 Oct 2020

Kevin Hanigan
10-16-2020



S32°14'36"W
 61.15'

230
 S18°39'15"W 181.33'
 238

1060.84'
 OLD RIDER ROAD
 290.55'

142.73'

1744'

209.01'

S24°48'10"W

1746'

183.82'

2457 S65°11'51"E 2468

1428

157.59'

N24°48'10"

2453

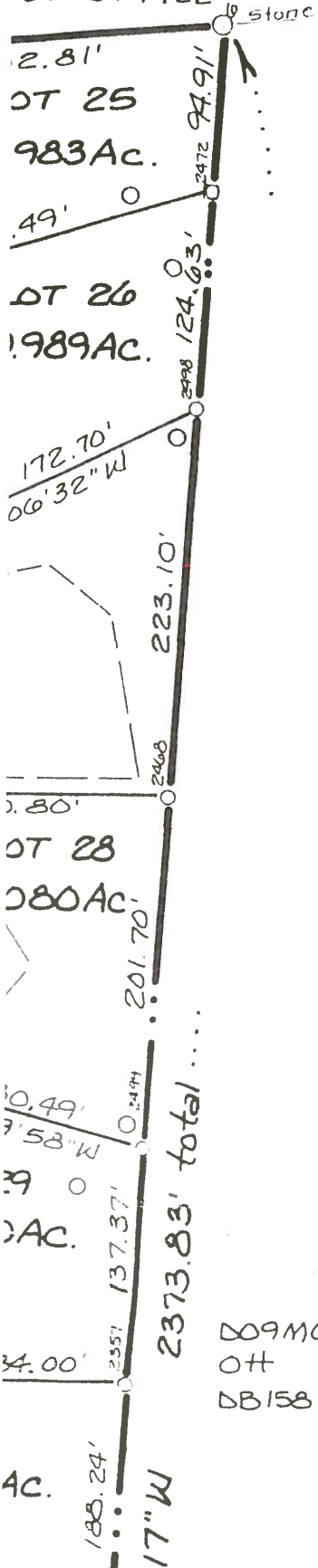
(N)

LOT 17
 0.946 Ac.

W Jenny Lind Drive SO

DO9M06P07
 Kilham
 DB637 P122

NOTES:



1. Corners are set 5/8" x 30" rebars with I.D. caps unless noted otherwise.
2. Set Back Limits: 25' front, 12' side and 20' rear.
3. The seller of any lot within this subdivision shall provide the buyer with a reasonable opportunity, before settlement to determine that the lot is suitable for construction of a septic disposal system. If, before settlement, the buyer is denied a septic system construction permit by the County Health Dept. the buyer may refuse to purchase the property without penalty.
4. Each parcel shown on this plat shall be restricted to a single family residence only, unless otherwise approved by the Planning Commission in conformance with the prevailing county land development laws.
5. All wells shall be pressure grouted in accordance with State Health Department Standards.
6. Public Service District may require hooking up to a centralized system when and if it becomes available.
7. By graphic plotting only, this property is in Zone "C" per F.I.R.M. map 540065,0036B dated 15 October 1980. Exact designation can only be determined by an elevation certificate. Based on the above information, this property is not in a special flood hazard area.
8. A blanket easement shall be given to the appropriate Public Service District in all subdivision rights of way for the purpose of constructing water and/or sewer lines and facilities.
9. All trees to remain except for the minimum necessary to construct roads and houses.
10. No building or structure to be placed in Easements or Septic Reserve Areas.
11. Driveway culverts to be 15" round CMP or equivalent arch CMP on lots 1-13, 17-27, 31-36 40 & 41. Lots 14, 15, 38, 39, 43 & 44 to be 24" CMP. Lot 16 to have 24" CMP on Cabriolet Ct. & 15" CMP on Surrey Drive. Lot 37 to be 15" CMP on Rockaway Ct. & 24" CMP on Surrey Drive. Lot 42 to be 15" CMP on Surrey Drive & 24" CMP on Carriage Drive.
12. Carriage Drive, Surrey Drive, Coach Drive, Cabriolet Court, Rockaway Court, & Jenny Lind Drive are to be dedicated to the Carriage Park Homeowners Association at such time as 22 of 44 lots are sold.
13. Once a homeowners assoc. is formed, they shall petition the County Commission to adopt a "Leash Law".
14. Building Restriction Limits from "Rider Road" Easement are 25'.
15. No lots to have driveway access from "Rider Road". No lots in this subdivision to use "Rider Road" for access to Route 340/13.

DO9M09P36
 OH
 DB158 P410

2373.83' total

185.24'
 17" W





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, WV 25414

Email: zoning@jeffersoncountyv.wv.org

Phone: (304) 728-3228

Zoning Administrator's Report November 12, 2020 Board of Zoning Appeals Meeting

Date of Memo: October 30, 2020

1) **Text Amendments:**

- ZTA20-01 – Request to create a new definition for “cemetery” and request to amend Appendix C to reflect “Commercial Cemetery” as a Conditional Use in the Rural zoning district.
 - County Commission scheduled a public hearing on the proposed text amendment for December 3, 2020 (time to be determined).
- ZTA20-02 – Request to amend the Zoning Ordinance to change the classification for Drive-Through Restaurants in the Residential-Light Industrial-Commercial (RLIC) zoning district in Appendix C from Conditional Use (CU) to Permitted Use (P). Additionally, the draft amendment also includes eliminating Section 5.8C.3, which refers to Drive-Through Restaurants requiring a Conditional Use Permit.
 - County Commission scheduled a public hearing on the proposed text amendment for December 3, 2020 (time to be determined).
- Greenway Engineering - Reorganization of the Subdivision Regulations and Zoning Ordinance: no update.

2) **New BZA Alternate Member**

On 10-29-20 the County Commission appointed an alternate member to the BZA: Mikala Shremshock

3) **Upcoming BZA meeting**

- The next regular meeting is scheduled for **December 10, 2020** (deadline for submission is Monday, November 16, 2020).



Jefferson County, West Virginia
Department of Engineering, Planning and Zoning
Office of Planning and Zoning
116 E. Washington Street, 2nd Floor, P.O. Box 716
Charles Town, West Virginia 25414
www.jeffersoncountywv.org

November 2020
Zoning Certificate Activity Report

File # 20-25-ZC
Request: Home Occupation, Level 2: Miss Booger's LLC: Pet Sitting/Doggie Daycare and Internet Pet Supply Business
Property Owner: Roger Lee Shelton and Michelle Krassowski
Applicant: Same.
Parcel Info: 1339 John Brown Farm Rd, Harpers Ferry, WV 25425
Parcel ID: 06008E00090000; Size: 4 acres (total);
Zoning District: Rural; Deed Book: 1242; Page: 254
Issuance Date: 10-21-2020

File # 20-26-ZC
Request: Day Care Center, Large
Property Owner: Cristhian Torrico-Caceres
Applicant: Silvia Caceres
Parcel Info: 358 Jefferson Ave., Charles Town, WV 25414
Parcel ID: 02010C00430000; Size: .278 acres;
Zoning District: Residential Growth; Deed Book: 1249; Page: 221
Issuance Date: 10-02-2020



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Email: planningdepartment@jeffersoncountywv.org
zoning@jeffersoncountywv.org

Phone: 304-728-3228
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2021 MEETING SCHEDULE

JEFFERSON COUNTY BOARD OF ZONING APPEALS

Board of Zoning Appeals meetings are held in the Old Charles Town Library Meeting Room located at 200 East Washington Street, at the side entrance on Samuel Street at 2:00 p.m.

<u>Submission Deadlines</u>	<u>Newspaper/Placard Posting</u>	<u>Scheduled Meetings</u>
Monday, January 4, 2021	Wednesday, January 13, 2021	Thursday, January 28, 2021
Monday, February 1, 2021	Wednesday, February 10, 2021	Thursday, February 25, 2021
Monday, March 1, 2021	Wednesday, March 10, 2021	Thursday, March 25, 2021
Monday, March 29, 2021	Wednesday, April 7, 2021	Thursday, April 22, 2021
Monday, May 3, 2021	Wednesday, May 12, 2021	Thursday, May 27, 2021
Monday, May 31, 2021	Wednesday, June 9, 2021	Thursday, June 24, 2021
Monday, June 28, 2021	Wednesday, July 7, 2021	Thursday, July 22, 2021
Monday, August 2, 2021	Wednesday, August 11, 2021	Thursday, August 26, 2021
Monday, August 30, 2021	Wednesday, September 8, 2021	Thursday, September 23, 2021
Monday, October 4, 2021	Wednesday, October 13, 2021	Thursday, October 28, 2021
Monday, October 25, 2021	Wednesday, November 3, 2021	Thursday, November 18, 2021*
Monday, November 15, 2021	Wednesday, November 24, 2021	Thursday, December 9, 2021*

*Meeting dates have been modified in observance of the Thanksgiving and Christmas Holidays.

The required zoning variance request form signed by the legal property owner, supporting documentation and applicable fees must be submitted to the office by close of business on the Submission Deadline date in order for the request to be sufficiently review and noticed in the Spirit of Jefferson. For all other applications please contact the office for the Submission Deadline date.

Changes in the time or location of the meeting shall be noticed on the County's website at www.jeffersoncountywv.org.
Note: if the President of the County Commission or the Chair of the Board of Zoning Appeals determines that weather conditions make travel unsafe for the public, County offices may close and/or the Board of Zoning Appeals meeting may be cancelled. Please check the County's website for possible meeting updates during inclement weather.

Agenda items that have been deferred due to a cancellation will be rescheduled. Per the Board's Rule of Procedure, no additional newspaper notice shall be given. All signs must remain posted on the respective properties until the rescheduled meeting date. Please call the office or check the County's website for the rescheduled meeting date.

Agenda Item:

Rules of Procedure: discussion and possible action to amend the Rules of Procedure to create a process to allow for a summary approval by unanimous consent for variance applications where no one has filed written opposition and no one but the applicant appears to testify.

Attachments:

1. Proposal from Board Chair
2. Redline to the Rules of Procedure Section 5.7
3. Draft Motion Template
4. Section 3.4 and section 6.2 from the Zoning Ordinance
5. West Virginia State Code §8A-7-11 – Variance.

Summary Approval

- Would apply only to variance requests (not appeals or CUP)
- Only where no opposition (either written or at hearing)
- At meeting, any member may move for summary approval by unanimous consent based on the application and administrator's report

Move to amend section 5.7 of Rules by inserting the following after “(8) After consideration, Board reopens public hearing and renders a decision.” and before the final paragraph beginning “The Chairperson....”:

In the case of a variance request where no one has filed written opposition and no one but the applicant appears to testify, any member may move for summary approval by unanimous consent based on the application and the administrator's report.

Section 5.3 – Ex Parte Communications

For purposes of these Rules of Procedure, ex parte communications consist of communications regarding the substance of an item that is or will be before the Board for consideration and/or discussion, when such communications are between one or more members of the Board and one or more individuals involved with the item. No member of the Board shall voluntarily and knowingly engage in ex parte communications without the authority of the Board. In the event that a member of the Board has engaged in or receives any ex parte communication, said member shall bring the same to the attention of the Board and shall publicly disclose the same. Communications with third parties regarding procedural aspects of items do not constitute ex parte communications.

Section 5.4 – Continuance

The Board may continue, reschedule, or re-open proceedings on an item for any good cause.

Section 5.5 – Notice

All items shall be noticed in accordance with the Ordinance, these Rules of Procedure, and staff procedures. In accordance with Section 3.4A(3)(b)(ii) of the Jefferson County Zoning and Land Development Ordinance (6/1/14), “the subject property shall be posted conspicuously” shall mean that a notice shall be posted on every road, right-of-way, and/or easement on which the public may travel adjoining or abutting the property, as determined by the Zoning Administrator. If an item is continued, rescheduled, or postponed, and the new time and date are announced at the same meeting, then no additional notice is required for that item. If an item is continued, rescheduled, or postponed, and the new time and date are not announced at the same meeting, all parties of record shall be provided not less than seven (7) calendar days notice of the new time and date.

Section 5.6 – Submissions to the Board

Submissions regarding all items for Board consideration shall be made in accordance with the Ordinance, these Rules, and relevant staff procedures. Staff may establish deadlines for submittal of applications and supplemental material. Late submissions, including submissions made the day before or the day of any meeting of this Board, may not receive full consideration by the Board due to the lack of time for proper Board and staff review.

Section 5.7 – Procedure for Hearings

Prior to hearings on all items, the Board will require all persons present who wish to give comments on any item to place their name on a written list of anticipated speakers.

Hearings on items shall be conducted in the following manner:

- (1) Chairperson opens public hearing;
- (2) Staff presents summary of application and staff report;
- (3) Applicant/Appellant testimony;

- (4) Respondent(s) testimony;
- (5) Public comment;
- (6) Rebuttals of staff, applicant/appellant and respondent(s);
- (7) Chairperson calls for a vote for closed deliberation and recesses public hearing if motion carries;
- (8) After consideration, Board reopens public hearing and renders a decision.
- ~~(8)~~(9) In the case of a variance request where no one has filed written opposition and no one but the applicant appears to testify, any member may move for summary approval by unanimous consent based on the application and the administrator's report.

The Chairperson shall preside at the hearing and shall make such rulings as may be necessary to conduct a hearing in an efficient and orderly manner including, but not limited to, the imposition of time limitations and the exclusion of irrelevant, repetitive, or cumulative evidence or testimony. A member may question the rulings of the Chairperson, and such questions may be decided by a motion and subsequent majority vote of the Board.

Section 5.8 – Reopening Hearing

At any time prior to the rendering and/or filing of a decision, the Board may, upon the request of a party or upon its own motion, reopen proceedings on an item for the receipt of further evidence or information. All parties of record shall be given proper notice of the reopening and granted an opportunity to review additional evidence and information and file any rebuttal or additional comments.

ARTICLE VI – APPEALS

Section 6.1 – Scope of Appeals to the Board

Pursuant to W.Va. Code § 8A-8-9, the Board shall hear, review and determine appeals from an order, requirement, decision or determination made by an administrative official or party charged with the enforcement of a zoning ordinance or rule and regulation adopted pursuant thereto.

Section 6.2 – Time

All appeals to the Board shall be filed within thirty (30) days of the entry of the order, requirement, decision or determination which is the subject of the appeal. Within ten (10) days of receipt of a complete appeal form and associated fee(s), the Board, through its Staff, shall set a date for a public hearing of the appeal.

Section 6.3 – Posting of Property

If an appeal hearing involves the use of land, including requests for exceptions, variances, and conditional use permits, the property owner shall post signs on the property showing the date, time, and place of the hearing on every road, right-of-way, and/or easement on which the public

**Motion Regarding a Variance Request by [APPLICANT NAME] (File #20-__-ZV)
Brought Before the Jefferson County Board of Zoning Appeals
Thursday, [DATE]**

Whereas, [APPLICANT] has applied for a variance from [SECTION] of the Zoning and Land Development Ordinance for [SUMMARY e.g. reduction of the rear setback from 50' to 25' for an accessory structure], at [ADDRESS] [PARCEL ID]; and

Whereas, the subject lot is zoned [ZONING DISTRICT] and the proposed [STRUCTURE] is a permitted accessory use for the existing single family dwelling on the lot; and

Whereas, the applicant has adequately addressed the following four criteria for a variance per the Zoning and Land Development Ordinance, Section 6.2A.1-4:

1. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents.
2. Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance.
3. Would eliminate an unnecessary hardship and permit a reasonable use of the land.
4. Will allow the intent of the Zoning and Land Development Ordinance to be observed and substantial justice done.

Now therefore be it moved, that the Jefferson County Board of Zoning Appeals

Approves Disapproves the above referenced request with the following conditions:

1. The applicant is bound by the testimony given; and
2. This variance shall be limited to the construction of the [REQUEST e.g. accessory structure]; and
3. _____; and
4. _____.

The portion of the record of the Jefferson County Board of Zoning Appeals meeting pertaining to this application and the official minutes thereof are incorporated herein by reference as if set forth in full herein.

Action taken this [DATE]

By vote of the Jefferson County Board of Zoning Appeals

By a vote of ____ Yes ____ No

[NAME], Board of Zoning Appeals, Chair

- F. The Zoning Administrator shall approve or disapprove issuance of a zoning certificate within sixty (60) days of the initial filing date providing the application is complete and fees are paid when filed and the request is in compliance of the provisions of this Ordinance.^{17, 21}
- G. A zoning certificate and/or conditional use permit shall become void eighteen (18) months after the date of issuance if the construction or use for which the permit was issued has not commenced. A one-time extension of this time frame may be granted by the Board of Zoning Appeals after evaluation of the hardship involved with noncompliance of this regulation. The length of time extended shall be at the discretion of the Board of Zoning Appeals and shall not exceed eighteen (18) months. Pursuant to Chapter 8A of the West Virginia Code as amended, a Zoning Certificate or Conditional Use Permit associated with a subdivision or land development plan - whether recorded or not yet recorded, valid under West Virginia law and outstanding as of January 1, 2010 - shall remain valid until July 1, 2012, provided that the land development plan or plat received at least preliminary approval by the Planning Commission or County Commission by March 1, 2010.^{17, 21, 23}
- H. A filing fee, in accordance with the County fee structure, shall be charged for all zoning certification.

Section 3.3 Enforcement

- A. The Zoning Administrator or Staff shall promptly investigate any written complaint alleging a violation of this Ordinance and determine if a violation has occurred.^{17, 21}
- B. As provided in §8A-1-1 et seq of the West Virginia Code, as amended, any person who violates any provision of this Ordinance shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than fifty (\$50.00) or more than five hundred dollars (\$500.00) per day. Each day during which any violation of this Ordinance continues shall constitute a separate offense.^{5, 17, 21}
- C. When it appears to the Board of Zoning Appeals or the Zoning Administrator or Staff that a violation of this Ordinance has occurred, the County shall notify the responsible person by means of a written Violation Notice. The Violation Notice shall specify the nature of the violation and shall request that the violation be terminated within 15 days from the date appearing on the Notice. Failure to terminate the violation within the requested time shall be cause for the Board of Zoning Appeals or the Zoning Administrator or Staff pursuant to §8A-10-1, 2 and 3 of the West Virginia Code, as amended, to: ^{17, 21, 23}
 - 1. Seek an injunction in the Circuit Court of Jefferson County to restrain the responsible person from continuing the violation cited or seek an injunction requiring the removal of structures or land uses from the property involved; or,
 - 2. Issue a warrant for the arrest of the person responsible for the violation and seek a conviction in the Circuit Court of Jefferson County.

Section 3.4 Boards and Commissions^{23, 32}

A. Board of Zoning Appeals

- 1. The Board of Zoning Appeals will consist of five members to be appointed by the County Commission. Their terms of office, succession, removal, filing of vacancies, and their powers and duties shall be provided in Chapter 8A of the West Virginia Code, as amended.
- 2. Meetings of the Board of Zoning Appeals shall be conducted according to the Rules of Procedure adopted by the Board of Zoning Appeals. In the event of a conflict between this Ordinance and the Rules of Procedure, the Rules of Procedure shall prevail.²

3. The powers and duties of the Board of Zoning Appeals include but are not limited to the following:
 - a. The Board of Zoning Appeals shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official in regard to the enforcement of this Ordinance or of any ordinance adopted thereto.³²
 - b. The Board of Zoning Appeals shall consider requests for variances, seasonal use permits, and special exceptions from the terms of this Ordinance.³²
 - c. The Board of Zoning Appeals shall have authority over the issuance or denial of a Conditional Use Permit.³²

B. Planning Commission²³

1. Membership, terms of office, jurisdiction, and rules of procedure are established in the Bylaws of the Jefferson County Planning Commission and Chapter 8A of the West Virginia Code, as amended.
2. The powers and duties of the Jefferson County Planning Commission include but are not limited to the following:
 - a. Review applications for major site plans, major subdivisions, and waivers from minimum standards, pursuant to the Subdivision and Land Development Regulations;
 - b. Review requests for amendments to the County zoning map and Zoning and Land Development Ordinance;
 - c. Research and recommend to the County Commission improvements to the Zoning and Land Development Ordinance and the Subdivision and Land Development Regulations;
 - d. Make recommendations to the County Commission concerning planning and zoning issues;
 - e. Make an annual report to the County Commission concerning the operation of the Planning Commission and the status of planning within its jurisdiction;
 - f. Prepare the Jefferson County Comprehensive Plan and recommend to the County Commission for adoption or amendment.

C. County Commission²³

1. General. The County Commission shall have all powers conferred upon it by the Constitution, the laws of the State of West Virginia, and the County Charter. With respect to development approval and amendments to this Ordinance and the County's Comprehensive Plan, the powers that the County Commission retains and shall exercise include but are not limited to the powers set out in this Section.
2. Approvals. Following a public hearing and the submittal of recommendations by Staff and the Planning Commission, the County Commission may take action on the proposed adoption of, or amendments to, the following, including text, maps, and other elements:
 - a. Comprehensive Plan
 - b. Zoning and Land Development Ordinance
 - c. Subdivision and Land Development Regulations
 - d. The Jefferson County Zoning Map
 - e. An Urban Growth Boundary in accordance with Chapter 8 of the West Virginia Code, as amended:
 - i. A boundary shall be established by the County Commission in agreement with each individual municipality regarding that municipality's boundary.

ARTICLE 6: Board of Zoning Appeals Applications³²

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

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

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

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

Section 6.1 Appeals³²

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

A. Filing an Appeal

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

B. Notification

1. Notice of a public hearing for an appeal shall be advertised in a newspaper having general circulation in the County at least 15 days before the hearing.^{5, 17, 21}
2. The subject property shall be posted conspicuously by a zoning notice no less than 28 inches by 22 inches in size, at least 15 days before the hearing. The sign will be prepared by the Office of Planning and Zoning but posting the sign is the responsibility of the applicant. The Board, in its discretion, may otherwise visit the specific property prior to or after the hearing.

C. Public Hearing

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

D. Continuance of Hearing

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

Section 6.2 Variances³²

The Board of Zoning Appeals shall consider requests for variances from the terms of the Ordinance.²³

- A. The Board shall approve a variance request if the Board finds that a variance:
 1. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;
 2. Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance;
 3. Would eliminate an unnecessary hardship and permit a reasonable use of the land; and
 4. Will allow the intent of the Zoning and Land Development Ordinance to be observed and substantial justice done.^{17, 21}
- B. The owner or authorized representative of the owner of the property which is the subject of a variance request shall complete and sign forms provided for this purpose by the Board, and shall pay the associated fees. The variance request shall be filed with the Board in the Office of Planning and Zoning.
- C. Notification for a variance must be conducted according to the requirements of Section 6.1B.
- D. A public hearing must be conducted according to the requirements of Section 6.1C and such hearing may be continued according to the requirements of Section 6.1D.

Section 6.3 Conditional Use Permit³²

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.^{2, 32}

- A. The Board shall consider each Conditional Use Permit request that is filed in accordance with this Ordinance and the procedural requirements of the Board of Zoning Appeals. The Board may require reasonable conditions or special requirements which allows for the proper integration of the proposed uses into the community and 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.
 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.
 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.
 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.
 5. Commercial and Industrial Uses shall be in conformance with Section 8.9 of this Ordinance.
 6. 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

(e) Nothing in this chapter authorizes an ordinance, rule or regulation preventing, outside of urban areas, the complete use of natural resources by the owner.

§8A-7-11. Variance.

(a) A variance is a deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.

(b) The board of zoning appeals shall grant a variance to the zoning ordinance if it finds that the variance:

(1) Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;

(2) Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance;

(3) Would eliminate an unnecessary hardship and permit a reasonable use of the land; and

(4) Will allow the intent of the zoning ordinance to be observed and substantial justice done.

§8A-7-12. Validation of prior zoning ordinance.

All zoning ordinances, all amendments, supplements and changes to the ordinance, legally adopted under prior acts, and all action taken under the authority of the ordinance, are hereby validated and the ordinance shall continue in effect until amended or repealed by action of the governing body taken under authority of this article.

§8A-7-13. Process to replace nontraditional zoning ordinance.

(a) A governing body that has adopted or enacted a nontraditional zoning ordinance may replace the nontraditional zoning ordinance with a zoning ordinance. A nontraditional zoning ordinance may be replaced with a zoning ordinance by:

(1) The governing body; or

(2) A petition by the voters in the affected area. If the voters petition to replace the nontraditional zoning ordinance with a zoning ordinance, then the provisions of this section and this chapter shall be followed.

(b) At least ten percent of the total eligible voters in the affected area may petition the governing body to replace the nontraditional zoning ordinance with a zoning ordinance. The petition must include:

(1) The governing body's name to which the petition is addressed;

(2) The reason for the petition, including:

(A) Replacing the nontraditional zoning ordinance with a zoning ordinance; and