



**Jefferson County**  
**Board of Zoning Appeals**  
**Thursday, December 10, 2020 at 2:00 p.m.**

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

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**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/81691966625>

**Meeting ID: 816 9196 6625**

**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.**

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

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**Approval of Minutes: November 12, 2020**

**Public Hearing – Administer Oath**

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**ITEM #1 FILE #: 20-8-CUP – continued from the 11/12/2020 meeting**

**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

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**ITEM #2 FILE #: 20-38-ZV**

**Request:** Variance from Section 9.7 to reduce the side setback from 15' to 10' and the rear setback from 50' to 13' for a 12' x 20' accessory structure (shed).

**Owner:** Deirdre Eychner-Raduns

**Applicant:** Same

**Parcel Info:** Meadowlands Subdivision, Section 2, Lot 23 / 647 New Meadow Dr., Kearneysville, WV  
Parcel ID: 07002000340000; Size: 2.51 acres; Zoning District: Rural

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**ITEM #3      FILE #: 20-39-ZV**

Request: Variance from Section 9.7 to reduce the front setback from 20' to 16' and the rear setback from 12' to 7' for a 16' x 18' addition to the existing house.

Owner: Scott and Margie Brown

Applicant: Dana Shorb

Parcel Info: Briar Patch Subdivision, Lot 6 / 45 Briar Patch Lane, Harpers Ferry, WV  
Parcel ID: 04000200260000; Size: 4,816 sf; Zoning District: Rural

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**ITEM #4      FILE #: 20-40-ZV**

Request: Variance from Section 4B.7J.2.a to increase the height restriction from 100' to 150' for a proposed telecommunications tower.

Owner: Potomac Edison Company

Applicant: John Melham, Melham Associates, PC

Parcel Info: 1320 Old Country Club Rd, Charles Town, WV  
Parcel ID: 04001000030005; Size: 3.67 ac; Zoning District: Residential Growth

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**Zoning Administrator Report**

- a. Monthly Zoning Certificate Activity Report

**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. **Continued from 11/12/2020 meeting.**

**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: November 12, 2020**

1. Variance from Sec. 5.4B. Owner: Waverly Paige. File: 20-35-ZV.
2. Variance from Sec. 9.7. Owner: Howard Herbert. File: 20-36-ZV.
3. Variance from Sec. 5.4B and Sec. 9.6C. Owner: Kevin Hanigan and Tina Sinnett. File: 20-37-ZV.

**Minutes - Draft**  
**Jefferson County Board of Zoning Appeals**

1 Meeting Date: November 12, 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; Leeds Corbin,  
5 Matt McKinney, and Mikala Shremshock, Alternate  
6 Board Members Absent: Deirdre Catterton  
7 Staff Members Present: Alexandra Beaulieu, Zoning Administrator; Nathan Cochran,  
8 Assistant Prosecuting Attorney; and Jennilee Hartman, Zoning Clerk  
9 All requests were pursuant to the Jefferson County Zoning and Land Development Ordinance.

10 Mr. Quynn moved to called the meeting to order at 2:00 pm. Mr. Bannon called for a vote, which  
11 carried unanimously.

12 As Ms. Catterton was absent, Ms. Shremshock participated in the meeting as a voting member.

13 **Approval of Minutes: October 22, 2020**

14 Mr. Bannon acknowledged the following edit noted by staff:

15 a) Page 1, Line 6: Deirdre Catterton and Matt McKinney **were** present for the meeting.

16 Mr. Corbin moved to approve the October 22, 2020 meeting minutes as amended. Mr. Bannon  
17 called for a vote, which carried four (4) in support and one (1) abstention (Ms. Shremshock was not  
18 present for this meeting).

19 **Public Oath**

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

21 **ITEM #1 FILE #: 20-8-CUP**

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

26 Owner: Nancy Stevens

27 Applicant: Charles Stevens, River Chase Wedding Venue

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

30 Mr. Charles Stevens was present to address the Board. Ms. Beaulieu reviewed the criteria for a  
31 conditional use permit from her staff report. Mr. Stevens explained the nature of the request. Mr.  
32 Stevens provided an overview of his existing Bed and Breakfast operation. Mr. Stevens  
33 acknowledged that his current approval allowed up to four events per year and stated that he hosted  
34 six events, two of which he believed did not meet the criteria for an event as the additional events  
35 were personal in nature and did not receive payment. Mr. Stevens also clarified his current proposal  
36 would be for a maximum of 75 cars per event.

37 Ms. Beaulieu confirmed that Mr. Stevens obtained approval to operate a Bed and Breakfast in 2017  
38 (PC File #ZC17-34). Ms. Beaulieu stated that under the Bed and Breakfast provisions found in  
39 Article 8, Mr. Stevens was permitted to host up to four events per year.

40 Mr. Bannon opened the public hearing. Mr. Robert Commisso, Ms. Anita Trotter-Cox, and Mr. Fred  
41 Wilcoxon, neighbors from the Dolly's Woods Subdivision, spoke in opposition to the request. The  
42 neighbors expressed concerns regarding the increased traffic on narrow roads, the frequency of the

1 proposed events in a residential area, decreased property values, and the excessive noise from the  
2 current Bed and Breakfast operations. The neighbors also expressed concern that the applicant may  
3 not abide by the conditions of the conditional use permit as he already exceeded the permitted  
4 number of events under the Bed and Breakfast approval. The neighbors also noted that they  
5 believed the required public notice placard had not been adequately posted.

6 In rebuttal, Mr. Stevens provided an overview of a typical event contract, stating that the music had  
7 to go down to 65 decibels at 10:00 p.m. He acknowledged that he misunderstood the requirements  
8 and would comply with the requirements for future events\*. Mr. Stevens stated that he spoke with a  
9 nearby neighbor, Ms. Meadows, who stated that she did not object to the music and didn't think it  
10 was a nuisance. He also stated that he spoke to his adjoining neighbor who said they believed the  
11 business increased their property values. Mr. Stevens stated he reached out to another adjoining  
12 neighbor, Bill Seiders, and he has never heard from him. Mr. Stevens stated that the required public  
13 notice placard had been posted on time; however, during the posting period he had relocated it to a  
14 more visible location.

15 Ms. Beaulieu provided an overview of Section 8.14 for Special Event Facilities and noted that Mr.  
16 Stevens' property did not currently meet the requirements for an agricultural event facility;  
17 however, should he obtain the Farm Use Status from the Assessor's Office, an agricultural event  
18 facility would be permitted by right. Ms. Beaulieu confirmed that she had been unable to conduct a  
19 site visit to confirm if the public notice placard had been sufficiently posted.

20 Mr. Stevens addressed several questions from Board members.

21 Mr. Quynn moved to go into deliberative session at 3:13 pm. Mr. Bannon called for a vote, which  
22 carried unanimously.

23 Mr. Quynn moved to come out of deliberative session at 3:38 pm. Mr. Bannon called for a vote,  
24 which carried unanimously.

25 Mr. Quynn moved to continue the request until the December 10, 2020 meeting due to concerns  
26 related to compliance with the public notice requirements. Mr. Quynn stated the site is to be  
27 reposted and that Staff is to verify that the placard is posted. Mr. Quynn clarified that the intent of  
28 continuing the public hearing is to provide new members of the public the opportunity to provide  
29 testimony and that repetitive testimony will not be permitted. Mr. Bannon called for a vote, which  
30 carried unanimously.

31 *\*Mr. Stevens referenced the requirements found in the Noise Ordinance enforced by the Sheriff's*  
32 *Department, which is to decrease noise levels to 65 dB between the hours of 10:00 p.m. and 6:00*  
33 *a.m.; however, the Zoning Ordinance requires that noise levels be reduced to 50 dB between 6:00*  
34 *p.m. and 7:00 a.m.*

35 **ITEM #2      FILE #: 20-35-ZV**

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

38 Owner:        Waverly and Sharon Paige

39 Applicant:    Same

40 Parcel Info:   Robelei Estates Subdivision, Lot 24, 14 Stiles Way, Charles Town, WV.

41                      Parcel ID: 02000700790000; Size: .14 acres; Zoning District: Residential-Light

42                      Industrial-Commercial

1 Mr. Waverly Paige was present to address the Board. Ms. Beaulieu provided an overview of her  
2 staff report. Mr. Paige explained the nature of the request and stated he had letters of support from  
3 his immediate neighbors. Mr. Paige stated he would submit the letters for the record.

4 Mr. Bannon opened the public hearing. There was no public comment. Mr. Bannon closed the  
5 public hearing.

6 Mr. Bannon moved to approve the variance as requested. Mr. Bannon called for a vote, which  
7 carried unanimously.

8 **ITEM #3 FILE #: 20-36-ZV**

9 Request: Variance from Section 9.7 to reduce the north side setback from 25' to 6' for a 14' x  
10 28' accessory structure.

11 Owner: Howard Herbert

12 Applicant: Same

13 Parcel Info: Brentwood Subdivision, Lot 36, 60 Brentwood Dr., Harpers Ferry, WV.

14 Parcel ID: 04000600090006; Size: 1.18 acres; Zoning District: Rural

15 Mr. Howard Herbert was present to address the Board. Ms. Beaulieu provided an overview of her  
16 staff report. Mr. Herbert explained the nature of the request and stated he had submitted letters of  
17 support from his immediate neighbors.

18 Mr. Bannon opened the public hearing. There was no public comment. Mr. Bannon closed the  
19 public hearing.

20 Mr. McKinney moved to approve the variance as requested. Mr. Bannon called for a vote, which  
21 carried unanimously.

22 Mr. Quynn temporarily excused himself from the meeting at 3:58 p.m.

23 **ITEM #4 FILE #: 20-37-ZV**

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

28 Owner: Kevin Hanigan and Tina Sinnett

29 Applicant: Same

30 Parcel Info: Carriage Park Subdivision, Lot 17, 33 Jenny Lind Dr., Charles Town, WV

31 Parcel ID: 04009C00170000; Size: .95 acres; Zoning District: Residential Growth

32 Mr. Kevin Hanigan and Ms. Tina Sinnett were present to address the Board. Ms. Beaulieu provided  
33 an overview of her staff report, noting that Rider Road is a 30' access easement that crosses over  
34 the subject parcel. Mr. Hanigan and Ms. Sinnett explained the nature of the request, noting that the  
35 entire pool would be within the existing fence, which is located on the edge of the Rider Road  
36 easement. Ms. Sinnett confirmed that their property line is located along the edge of Rider Road.

37 Mr. Bannon opened the public hearing. There was no public comment. Mr. Bannon closed the  
38 public hearing.

39 Mr. Corbin moved to approve the variance as requested, noting that the applicants are bound by  
40 their testimony. Mr. Bannon called for a vote, which carried unanimously (4-0).

41 Mr. Quynn returned to the meeting at 4:08 p.m.

1 **Zoning Administrator’s Report**

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

3 b) 2021 Board of Zoning Appeals Meeting Schedule. Mr. Corbin moved to approve the 2020  
4 meeting schedule as presented. Mr. Bannon called for a vote, which carried unanimously.

5 Ms. Beaulieu updated the Board on the status of the following amendments: Commercial Cemeteries  
6 (ZTA20-01); and the change in classification for Drive-Through Restaurants in the Residential-Light  
7 Industrial-Commercial zoning district (ZTA20-02).

8 Ms. Beaulieu welcomed Ms. Mikala Shremshock as the Board’s new alternate member.

9 Ms. Beaulieu stated that the next Board meeting would be on December 10, 2020.

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

13 The Board briefly discussed the purpose of a summary approval. The Board agreed to postpone  
14 this item until their December 10, 2020 meeting.

15 **Legal Update**

16 a) Possible executive session on the following pending lawsuits. Mr. Cochran noted that a  
17 new lawsuit had been filed pertaining to the recently approved Solar Energy Facilities  
18 (ZTA19-03) text amendment.

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

20 **Meeting: October 22, 2020**

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

22 2. Variance from Section 4.6B.2. Owner: HDW, LLC. File: 20-33-ZV.

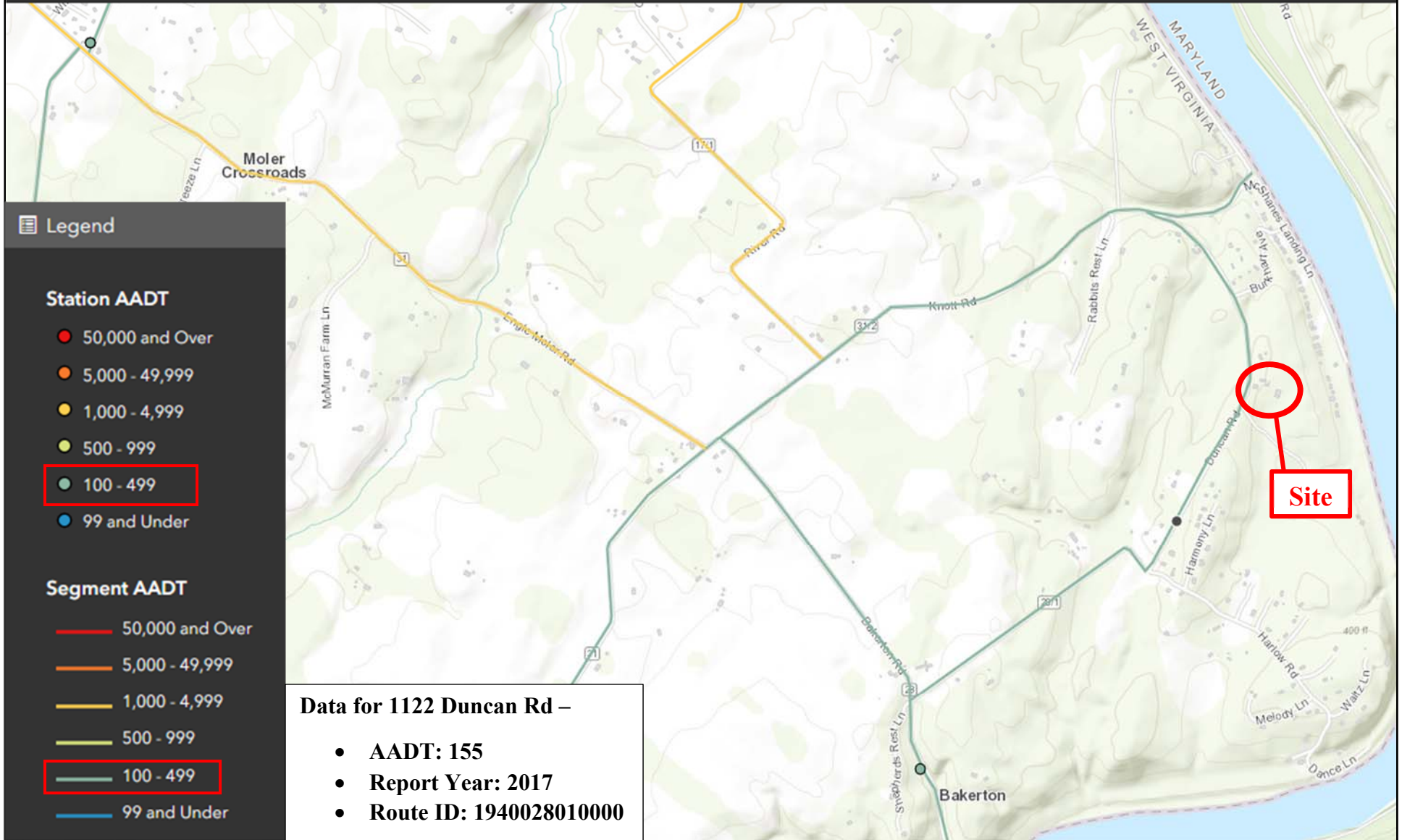
23 Mr. Bannon stated he would sign the Findings and deliver them to the Office.

24 Mr. Quynn moved to adjourn the meeting at 4:18 pm. Mr. Bannon called for a vote, which carried  
25 unanimously.

Supplemental Data Provided by Staff  
for 12-10-20 Meeting

RE: Traffic Data

PC File: 20-8-CUP





PC File #20-8-CUP


Traffic Data for 12-10-20 BZA Mtg

# Estimating Trip Generation and Distribution for a Wedding Venue



By Mike Spack

February 13, 2018

 10th Edition Trip Generation Manual, trip gen special occasion, Trip Generation, [tripgeneration.org](http://tripgeneration.org), wedding venue

By Mike Spack, PE, PTOE

Kent Harbert from the Colorado DOT reached out to me wondering if we have trip generation data for wedding venues. We don't, but we've estimated trip generation for a couple of wedding venues and I emailed our rough process to Kent. Kent ran with it and put together the draft guideline below for use in Colorado.

**Why am I sharing this with my readers?** I want to share this with you as it's a good process to think through for estimating trip generation at special events. I would however, like to get your thoughts on calculating trip generation data for special events.

1. **What Do You Think?** Kent and I would like to hear from you if you have thoughts on the guideline. Please add your thoughts to the comment section.
2. **Wedding Venue Data.** If you have trip generation data for wedding venues, please email data to me at [mspark@spackconsulting.com](mailto:mspark@spackconsulting.com) and we'll add it to our free [TripGeneration.org](http://TripGeneration.org) dataset. I'd like to share your data with Kent and the rest of the world.

*From Kent Harbert, Colorado DOT:*

*The ITE Trip Generation Guide does not include a land use category for wedding venues. It is, therefore, desirable to establish a standard methodology to project the trip generation rates and the trip distribution assumptions. The following is proposed:*

## **Trip Generation**

*A wedding is a single event at a pre-established time. All of the wedding party and wedding guests will be in attendance at the ceremony. Therefore, the trip generation rate will be based on the capacity of the area within the venue to be used for the ceremony.*

*Typically, a wedding party will rent a venue with a capacity near the size of their wedding. Estimate that 75% of the venue capacity will be the typical size used for trip generation.*

*Estimate that the wedding party and vendors represent 10% of those attending the wedding and that they arrive more than one hour before the ceremony. The remaining 90% will arrive during the one-hour period before the ceremony.*

Many of the wedding guests travel together as couples, families or groups of friends. Assume there will be 2 to 2.5 guests per vehicle.

Using the above factors gives a range of 0.27 to 0.33 for the trip generation factor as a function of the venue capacity. Use an average rate of 0.30 with 100% entering.

If the venue does not include a reception area use the same 0.30 rate for the exiting trips. If the venue has a reception area the exiting traffic will be dispersed over a few hours. Use a rate of 0.12 (0.30 x 40%) for the peak hour of exiting vehicles.

### **Trip Distribution**

Trip distribution for a wedding venue is not like other land uses where the traffic in one direction plus the traffic in the opposite direction totals to 100% of the design hour volume. For a wedding venue the majority of the traffic can be to and from one direction for one wedding and to and from the other direction for a different wedding. The two distributions need to be analyzed separately, not averaged.

### **Free Trip Generation Data at TripGeneration.org**

At **Spack Consulting**, we collect local data on many, if not most, of our traffic studies. And we make that data available to you for free. This living document now includes over 10,500 hours of data and allows you to see the full 24-hour data collected. Go to **TripGeneration.org** to download the raw data we've collected.

**Interested in helping us collect trip generation data?** We have a limited supply of **COUNTcam 2 traffic video recorders** that we lend to companies to collect traffic data, and make available on **TripGeneration.org**. If you would like to use a camera to collect your next turning movement count and participate in our trip generation data collection, please contact us at **sales@countingcars.com**.



#### **Mike Spack, PE, PTOE**

Mike is the founder of Spack Enterprise and creative force and principal writer behind MikeOn Traffic.

He is the recognized industry leader of traffic studies and traffic data collection. He is also the author of numerous industry leading guides used by transportation professionals around the world and presenter for Traffic Corner Tuesday webinars.



Resource: <http://www.spackconsulting.com/estimating-trip-generation-distribution-wedding-venue/>



Public Comments  
Received for  
12-10-20 Meeting



## Zoning

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**From:** Zoning  
**Sent:** Wednesday, November 25, 2020 12:44 PM  
**To:** 'Ruthlee holler'  
**Subject:** RE: File20-8-cup

Good afternoon,

This is to confirm receipt of your email. A copy of your email will be included in the December 10, 2020 Board of Zoning Appeals meeting packet.

Thank you and have a nice day.

Sincerely,

Jennilee Hartman  
Zoning Clerk  
304-728-3228

-----Original Message-----

**From:** Ruthlee holler <eveyevert@yaho.com>  
**Sent:** Wednesday, November 25, 2020 8:52 AM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** File20-8-cup

I would like to say or complain against changing the zoning. Our area is agriculture our roads here are very narrow and needs blacktop repair even now. It is overcrowded now with homeowners use only and no way can handle business venues. This would be a game changer on children walking home from bus stops no more bicycles or walkers there is no room now we all are trying to be respectful in this area and would only bring loss of life waiting to happen please do not allow this. Sounds carry in this farm land and river echo parties will be disturbing for humans, animals and wildlife. Please do not allow this change. It will bring more hardship than good Area is knott,Duncan,bakerton that will be impact the most but all other roads leading to this area are county back roads that are narrow Sent from my iPhone

## Zoning

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**From:** Amy Leonard <smily01@hotmail.com>  
**Sent:** Saturday, November 28, 2020 6:39 PM  
**To:** Zoning  
**Subject:** Proposed Zoning Change (File#20-8-CUP)

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Good Evening,

I am writing to express my concern about the zoning change that is proposed for 1122 Duncan Rd. Harpers Ferry, WV. 25425: File #20-8-CUP. I am greatly opposed to this change! I live in very close proximity to this property and can hear the loud music and commotion that comes from this property and the events they hold. I also have witnessed the increase in traffic on our roads because of the events held and since I walk these roads I am concerned about safety. The roads are narrow as it is and very windy and added traffic let alone impaired drivers that may be coming from events held here is a grave concern! Please think about the effects that this zoning change will have on the surrounding residents and do not allow this to take place!

Sincerely,  
Amy Trantum  
148 Harmony Ln.  
Harpers Ferry, WV. 25425

## Zoning

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**From:** Denise Leith <deniseleith6@gmail.com>  
**Sent:** Saturday, November 28, 2020 8:02 PM  
**To:** Zoning  
**Subject:** File #20-8-CUP proposed zoning change

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

I am writing to you regarding my opposition to the proposed zoning change for the property at 1122 Duncan Road. Over the past years I have noticed the loud music, commotion and increased traffic on weekends. The reason for this activity, I learned recently, is that a neighbor opened up their property as a wedding venue. In canvassing my neighbors, I learned that while they were concerned about the noisy disturbances, the vast majority of them were also unaware that this property is a wedding venue.

The following are my reasons for opposing this zoning change:

- Serious safety concerns with out-of-towners navigating our uniquely hazardous\* country roads, many under the influence of alcohol. (\*narrow roads, no painted lines, no lighting, no shoulders, wildlife and pop-ups)
- 75 vehicles per event, with an unlimited number of attendees, is simply too many! Having encountered the traffic exiting the venue one night, I can tell you that it is a huge disruption. Moreover, I personally encountered a car on Knott Road that nearly hit me crossing over the center at a pop-up! While I cannot say with certainty that the driver was coming from the event at 1122 Duncan Road, it seems likely based on the out-of-state license tag and timing.
- At the Nov. 12th zoning board meeting there was discussion about the adverse impact on Duncan and Bakerton Roads. No mention was made about the impact on Knott Road, which is narrower than the 30-foot wide Duncan Road and has more pop-ups.
- The music is very loud! The acoustics are such that the sound is carried up the ridge to where I live. (As the crow flies, we who live on Rabbits Rest Lane are about a tenth of a mile from the venue.) We are accustomed to the occasional party, but the proposed 15 larger events per year plus an unspecified number of "smaller events" would be untenable.
- As far as I know, there is no mechanism to ensure compliance with the zoning restrictions. In fact, by his own admission, the owner has violated the current restriction of 4 events per year several times. And it is incomprehensible to me that he has booked 12 events for 2021! Frankly, at best this suggests an overly optimistic expectation of approval and at worst, a prior understanding with the zoning board.
- At the Nov. 12th meeting Mr. Stevens clearly stated that someone residing on Rabbits Rest Lane booked a wedding for 2021. I have checked with every resident and no one has done so. I mention this because it reflects on the veracity of the applicant.
- The property is currently up for sale. The owners will benefit financially if the CUP is approved. However, those of us remaining are likely to see our property values fall.

For all of these reasons I am vehemently opposed to the approval of this zoning change.

Thank-you,  
Denise Leith  
185 Rabbits Rest Lane  
Shepherdstown, WV  
[deniseleith6@gmail.com](mailto:deniseleith6@gmail.com)

## Zoning

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**From:** Dana Ashford-Kornburger <dana0000@msn.com>  
**Sent:** Sunday, November 29, 2020 2:32 PM  
**To:** Zoning  
**Subject:** Conditional Use Permit 20-8-CUP Wedding Venue - 1122 Duncan Road (Additional Question/Comments)

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Jefferson County Planning Commission -

First, thank you for serving on this Commission.

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

And if allowed, I would like to submit additional comments for the December Meeting regarding this item. I was not able to attend the November Zoom meeting due to my work schedule but was able to listen/watch the hearing recording (thank you for making this available).

Please provide my question and additional comments for the record for the December Meeting, as it is very difficult to attend due to work commitments during the day.

Question for the Commission: Why is this conditional use permit application not required to submit all required data, specifically the traffic generation data?

My key concern is the traffic the additional events will produce on our roads. The permit SPECIFICALLY requires traffic generation data be provided to show roadway adequacy (which should be BOTH Duncan Road and Knott Road, not just Duncan Road - as both roads are used by guests attending the events). The study referenced by your staff was for Bakerton Road and was completed in 2017, this is not relevant for the local roads in question. To be considered in addition to the up to 150 cars of additional traffic for the events themselves is the 3 days of traffic - Mr. Stevens indicated the event access in the contracts are for Thursday, Friday, and Saturday, - over these days there would be car traffic, significant delivery truck traffic (tents, tables, chairs, linens, service items, music company, bartenders, wedding party, etc.) and also a septic holding tank pumping truck coming to the site at least once a month.

Additional Comments for the record in response to items mentioned in the previous meeting:

- My husband and I purchased our property here in Jefferson County (15 months ago) because of the beauty and quiet of the rural area, at our closing it was disclosed that there was a commercial venue which was approval to hold **4 events per year** on Duncan Road. Four events are something most can live with as long as the actual noise requirements are adhered to. However, you heard from Mr. Stevens himself that he has held more than the approved 4 events per year. In 2019, he indicates they hosted 6 events and in 2020 so far has hosted 6 events (this is questionable, as the frequency of noise indicates more than 6 events). We have been disappointed by several evenings when we wanted to

enjoy the peace of our property only to hear someone else's loud music (above the 50 decibel limit). It is disruptive and disappointing, as we have grown to love this area.

- Mr. Stevens in the meeting and on the sketch indicates there are a maximum of 75 parking spaces. Where do the other potential 75 cars park in the event there are 150 cars which show up?
- I have issue with Mr. Stevens referring to his COMMERCIAL EVENT SPACE as an Agribusiness. Agribusiness involves agriculture not just the hosting of commercial events in a historic building. We have many fine agribusinesses in the immediate area, county, state, and country, let's please not devalue the meaning. I suppose this is an issue to be brought to the zoning board and not this commission.
- I have serious concerns about the health and safety of the area related to both public health and the environment considering the information about the septic holding tank and overflow spread area of 20,000 sq ft. For events which could be attended by up to 300 people or more (low assessment of 2 people per car for a max of 150 cars), I believe there should be at least 5 standard restrooms and at least one additional enhanced (accessible) bathroom. Environmentally, the thought of the septic holding tank having to be pumped onto the surface area this close to the Potomac River is of concern. I am not sure of the county restrictions, and I understand this is only a worst-case scenario, but as one of the planning commissioners pointed out during the meeting, we do get significant rainfall events which can already lead to erosion and surface runoff, I would not want pumped septic waste to be in the runoff waters.
- Lastly, Mr. Stevens indicated he came to Rabbits Rest Lane on his golf cart to see if the noise was noticeable. I do not believe he visited any of our actual home sites (which are on the top of the ridge between his event site and the road) making the noise a straight shot into our backyards and homes. The noise is buffered when you are in the draw of the road (much lower elevation) due to the buffering of the hill/ridge where our homesites are located. I would argue the presence of a wooded lot does not equal a densely wooded tree buffer which can reduce noise. The wooded sites between our properties on Rabbits Rest Lane and Mr. Steven's event site on Duncan Road are not designed tree buffers, nor do they have the characteristics of one. Densely spaced tree buffers, which typically include a good number of evergreen trees and tight spacing in a linear design, can reduce noise by as much as 5 to 8 decibels.

Thank you for taking the time to thoughtfully review the permits and requests you receive!

Dana

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

December 2, 2020

RECEIVED

DEC 02 2020

JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING

Alexandra Beaulieu  
Jefferson County Zoning Department  
Charles Town, WV

Dear Alexandra,

RE: CUP #20-8

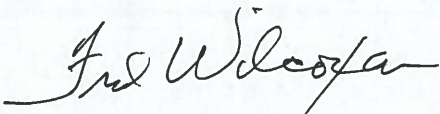
After numerous meetings with several residents living near Duncan Road, we have addressed each item within the Staff Report concerning the Stevens CUP Request #20-8, at 1122 Duncan Road.

The comments given were generated by us as a group and contain new information, gathered from the local residents in response to the CUP request. Please consider this information when coming to a decision on the disposition of the CUP.

We appreciate your service to the community and your consideration in this matter.

If there are any questions, you may email [208CUPinfo@gmail.com](mailto:208CUPinfo@gmail.com) and a concerned neighbor will respond or call me and I will reach out to other neighbors.

Thank you in advance,



Fred Wilcoxon

## Public Comments to CUP #20-8-CUP Staff Report

### -Annotated existing Staff Report-

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.

#### 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:

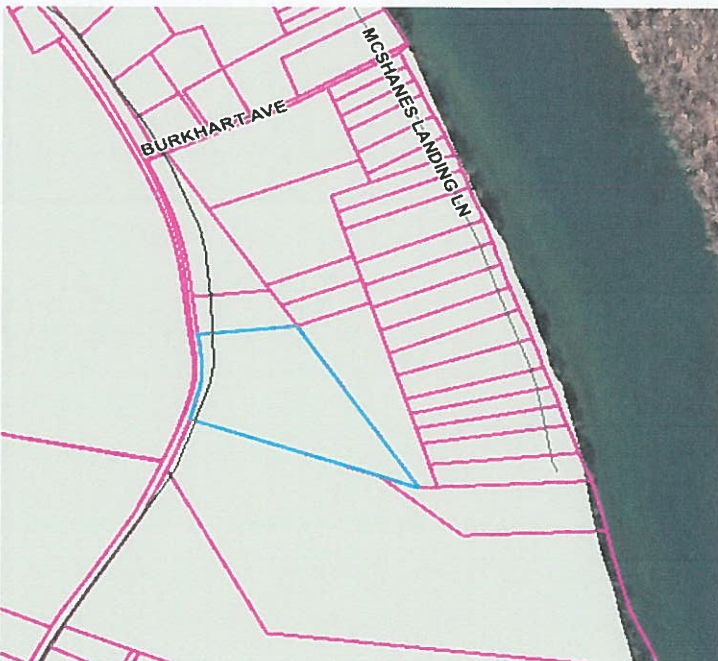
1122 Duncan Rd, Harpers Ferry, WV

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 Operation – Zoning Certificate #ZC17-34 issued 10/06/2017

Parcel ID: 09001100100000; Size: 5.9 acres; Zoning District: Rural



### **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.**

*Will the permit specify 15 wedding receptions or other events, so that total events will not exceed 15? Or will it be 15 weddings (and other events without limit) 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.***

*Can the parking spaces be used for busses? Is there any limit to the numbers of attendees? Are bus drop offs OK? Why is "grass" parking important? The applicant stated in the last meeting, that he was a road builder, and he scraped the topsoil off the parking area and installed roadbed material.*

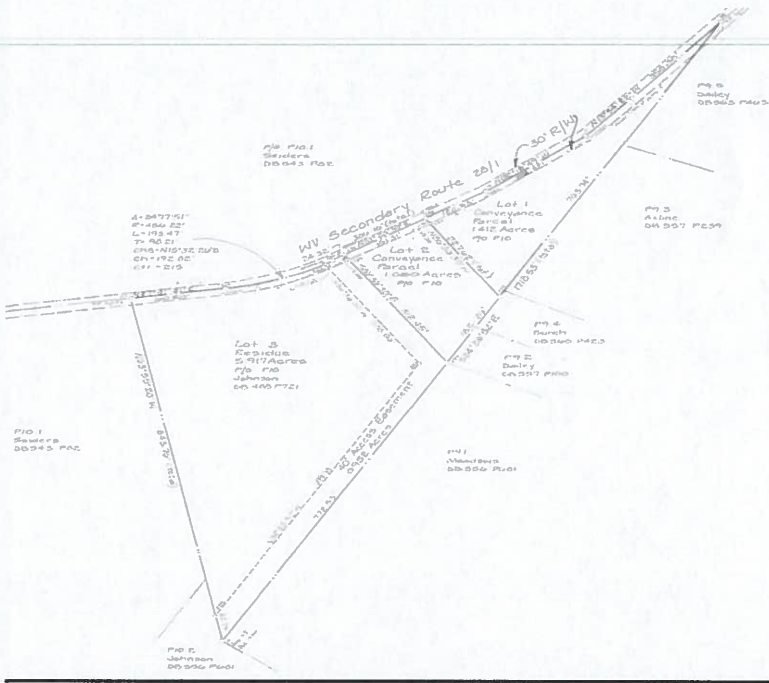
Article 2 defines Special Event Facility as: "A facility where special events are permitted to occur. Special event facilities are subject to a use agreement between a private group or individual and the facility owner. The facility owner may or may not charge a rental fee for the use of the facility. 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."

*Can a Special Event include band concerts of any music style such as Classical music, Rock bands celebrating the Beatles, Jimmy Hendrix etc., Grunge Bands, etc., motorcycle club events etc. The loud ones.*

### **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.

*Will the B&B rules have to be followed? Or Is this just a new and different permit CUP without the B&B limitations?*

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. here 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.

*In the past, under the B&B permit, noise complaints have been made from as much as one mile away. If this is a predictor of the future, the above is not correct for the given topography.*



### **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:”

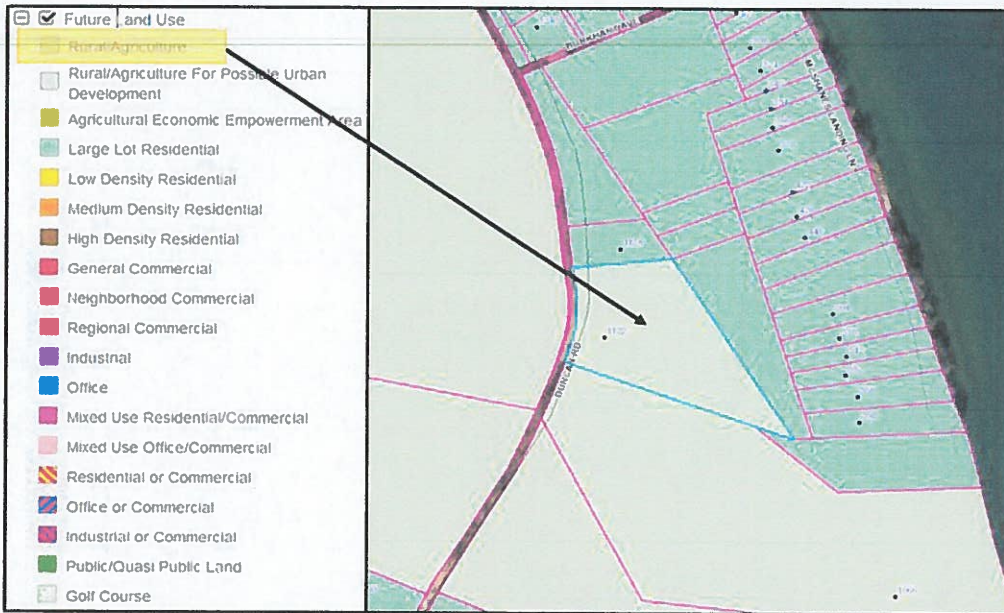
*If approves the permit and special conditions/ restrictions are made, the public would like to be notified and can comment, in writing, before the permit is officially issued.*

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.

*The public has responded strongly with their opposition to the permit based on many factors already discussed. This Permit use is not compatible in "scale and intensity".*



“...allow the use of a more traditional CUP process in the Rural District for nonresidential 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 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

**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.**

*After much discussion, the local community believes that community "health, safety and welfare" would be threatened by this permit.*

***Safety-***

*There are many pedestrian walkers in the community.*

*The roads would become more hazardous if this permit were to be granted.*

*The current buildings are not safe. It is doubtful that they have been permitted by Fire and Structural. Are the max permits posted in the buildings? The requested permit allows unlimited attendees. Are we protected from a collapse or fire that kills many?*

***Health and Welfare-***

*Accident risk to pedestrians and other vehicles would go up.*

*For some, the enjoyment and benefits of the secluded natural environment would be lost.*

*Repeated sound annoyance would affect quality of life and mental health.*

*Seniors and children would be put at risk on the roads.*

*Un-regulated alcohol use would add to the problems.*

*Roadside litter would increase- trash, beer cans etc.*

*Property values would go down. The existence of a possible "nuisance" event facility would have to be disclosed by the seller to the buyer, by law.*

### ***The COVID Issue-***

*We do not know how the WV "rules of gatherings" will be laid out in the future. As of now, no large gatherings are allowed due to COVID. Inviting large numbers of out of town people into our county invites risks that are not necessary currently. The "New Normal" future we are facing is very uncertain and we may find that such events hazardous to our health. No permit until we are sure of the threatening risk.*

### **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.

*Adjacent land value and use would be affected negatively. New residential use next to or near the Event Center, would require disclosure of the event center and its problems.*

### **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.

*The neighbor to the north is a lot with a dwelling unit. The Event Facility property is contiguous and does not meet, the requirement. The access road is next to the neighbor's property line.*

**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 Uses<sup>23</sup>**

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>	<u>NIGHT</u>
	<u>7 AM - 6 PM</u>	<u>6 PM - 7 AM</u>
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.

*Some past events have far exceeded the noise limits and were heard a mile away.*

**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, times per year. Peak hour trip data was not provided and Special Event Facility or similar use 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 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 calculation.



15  
was  
count

## **Roadway Adequacy Issue**

### **Highway Problem Areas for #20-8-CUP- "Yet to be Recognized"**

#### *Duncan Road exiting Event Facility South-*

*Two 90degree turns, one with limited visibility  
Two "pop-up" hills with limited visibility of oncoming traffic.  
Narrow rural road, partially "sunken" with not shoulder, limiting walking escape.*

#### *Duncan Road exiting North-*

*Narrow rural road without shoulder  
Several pop-up hills with limited visibility of oncoming traffic.  
Intersects with Knott Road at poor angle limiting visibility*

#### *Knott Road-*

*Narrow rural road (less than 30'), largely sunken with no shoulder for walkers to escape traffic  
Several pop-up hills with limited visibility of oncoming traffic or pedestrians.  
Sharp 90 degree turns with limited visibility.  
Note: This road has been and will be utilized as an access road to 1122 Duncan, however there was no assessment / adequacy study performed.*

#### *Bakerton Road going toward Harpers Ferry-*

*Rural road but wider than Duncan Road.  
Multiple pop-up hills with limited visibility of walkers or oncoming traffic  
Infamous "corkscrew" turns. Sight of many accidents against culvert  
Straightaway at Bolivar Battle Ground that teens use for speeding/ jumping pop-ups*

*These roads should be visited by Staff and the WVDOT asked for their evaluation and opinion. Safety is most important. The vehicular traffic to and from an event facility surges at a period before an event and when the event ends. Late ending events must be evaluated for the potential for alcohol consumption compounding the challenge of an unfamiliar driver.*

### **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.

*He already has a permanent sign in place in front of the house. A "temporary" sign has been located, non-stop through the event season, at the corner of Duncan and Bakerton Road.*

## Zoning

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**From:** WILLIAM KANWISHER <wkanwisher@comcast.net>  
**Sent:** Wednesday, December 2, 2020 7:27 AM  
**To:** Zoning  
**Subject:** Reference File#20-08-CUP

Members of the Zoning Board;

I am writing to oppose the Conditional Use Permit Application (File #20-08-CUP) to allow 1122 Duncan Road to be used as a wedding and event venue.

My wife and I purchased a home on McShane's Landing Lane last July as a weekend and vacation refuge for our family. We chose this property because of the natural setting, and the quiet it affords. Furthermore, we have so enjoyed the area, its natural beauty, and the friendly neighbors and community at large, that we are seriously considering making this our primary residence when my wife retires in three years.

Our property is separated from 1122 Duncan Rd by a wedge-shaped piece of property owned by our neighbor. It does not provide the necessary buffer to keep the noise from events at 1122 from coming straight down the hill to our property. We found this out when extremely loud music disrupted a family gathering over the Labor Day weekend.

The interference with the quiet enjoyment of our property is more than enough reason to oppose the CUP. But the danger posed by the proposed use of the property to the community (including my own children and grandchild) is so egregious that I feel the need to address it.

1. The local roads (Duncan Rd, Knott Rd, Bakerton Rd) are all narrow two-lane roads, unlit, without sidewalks, and filled with hairpin and blind turns and sudden dips. Community members must walk in the road by necessity, not choice. Those who travel by bicycle are equally at risk.
2. To allow events where alcohol is consumed in a completely unregulated and unsupervised manner, then allow the attendees to travel those roads is a clear and present danger to the community. The potentially tragic consequences are completely foreseeable and predictable.
3. It is important to stress that the intended use as an event venue would be less regulated than a bar or tavern. A bar or tavern is regulated by the liquor laws of the state and county, as well as by the dram shop laws allowing for injured parties to sue liquor providers for serving patrons who then subsequently cause injuries. That is not the case here, where those who lease the property would provide the alcohol.
4. The property also has a three acre waterfront lot. Should an event be held that uses the waterfront for recreation, we would also have potential for excessive noise along the river. More importantly, excessive alcohol use could lead to drownings, and boat/jet ski accidents.
5. The property is for sale. Any buyer of the property would not be bound by the promises of good order made by present owner.

6. The Applicant has chosen to make his request during a pandemic. Under current state and local protocols, he is prohibited from having the events he contemplates.

The standard of review states: "The proposed use...poses NO (emphasis added) threat to public health, safety and welfare." There is no qualifying language to the word "no". There is no mention of a balancing test. The clear language of the standard to be applied is unequivocal. Any threat to the public health, safety and welfare to the community disqualifies the application.

In summary, there are multiple reasons for the Board to deny the CUP. I urge the Board, in whatever findings it makes, to rely particularly on the concerns raised by the community regarding the ongoing and perpetual dangers posed by an event venue that would allow unregulated alcohol consumption and then have 75-150 drivers disgorged onto the dangerous roads in the community.

Thank you.

William Kanwisher  
504 McShane's Landing Lane

## Zoning

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**From:** Sam Donley <samdonley@frontiernet.net>  
**Sent:** Wednesday, December 2, 2020 8:13 AM  
**To:** Zoning  
**Subject:** File #20-8-CUP

My husband and I are very opposed to the event center at 1122 Duncan Road being granted the ability to enlarge their operation and increase the traffic, noise, and nuisance. As you are no doubt aware, this has always been an agriculture area and still is. Much of the land around the Moler Crossroads/Duncan Road area has been put in Farmland Protection. That was done for a reason: to continue the farming tradition and to maintain the land.

The road system is small and congested in every direction with and provides no shoulders. There is large farm equipment that uses this road system on a daily basis and there is no room or very little for cars to pull off to allow passage of this equipment. Even walkers have to get off the road when traffic is coming either direction. This is truly a hazardous and unsafe situation to bring a large number of cars to for special events. There are several bends in the road where vehicles must come to almost a complete stop to go around and if there is no knowledge of these turns, at night, surely someone will die. Between a road system that does not even have lines, voluminous deer, and very dangerous curves, it would be extremely unwise to increase any traffic on this road.

We would ask that this be reviewed very carefully again and that the planning and zoning boards please come and see the roads. Perhaps even the state highway department could lend some advice on this situation. It is extremely dangerous.

Thank you for your attention.

Sincerely,

Lane and Sam Donley  
4368 Engle Moler Road  
Shepherdstown 25443

## Zoning

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**From:** Glenn Fudge <glennfudge@gmail.com>  
**Sent:** Wednesday, December 2, 2020 8:18 AM  
**To:** Zoning  
**Subject:** Reference File #20-8-CUP

Distinguished Members of the Jefferson County Zoning Commission,

I am strongly apposed to zoning changes to accommodate events to be hosted at 1122 Duncan Rd.

Years ago Harper's Ferry stopped 4th of July fireworks due to the negative impact on the local ecosystem. We currently have at least two bald eagle nests in close proximity to the property in question.

Hundreds of people (all of us really) live in this area and moved here (recently or long ago) specifically for the peace, quiet, and to be respectful to neighbors. Peace and quiet is a rare commodity these days.

During past events at 1122 Duncan Rd., very loud noise can be heard far away. This is because the property is located close to the Potomac River and the sound carries down the valley over long distances.

If zoning is permitted to change, i recommend there be a substantial impact fee per event. ALL proceeds to go to ecological conservation.

Passing the change to local Zoning would be singularly beneficial and harmful to many.

Thank you,

Concerned Local Citizen

## Zoning

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**From:** Cathy Fudge <furryfacelover@yahoo.com>  
**Sent:** Wednesday, December 2, 2020 10:55 AM  
**To:** Zoning  
**Subject:** Zoning Change proposed for 1122 Duncan Rd File #20-8-CUP

Members of the Jefferson County Zoning Board,

Before passing the zoning change proposed for 1122 Duncan Road (File #20-8-CUP), please consider the negative impact it would have on the surrounding rural community. Please consider how the increased noise and traffic would affect the peaceful and quiet homes of those families living in close proximity. Regularly hearing loud parties that continue into the night is not congruent with the current family atmosphere that the neighboring homes expect from living in the rural area. Please consider the safety concerns of the families nearby that come with having a venue next door that serves a large crowd alcoholic beverages. Many would not agree this kind of venue is appropriate with young children in homes nearby at their bedtime. Please consider the negative ecological impacts including but not limited to the disruption to the wildlife living in the area, increase in litter, and the introduction of noise pollution to an otherwise quiet community.

In short, approving a big party venue in a residential area is completely in conflict with the established family neighborhoods. Allowing one owner to degrade and disturb the harmony of a quiet, private, family-oriented area is unreasonable and unwarranted. Thank you for your sincere consideration in not approving File #20-8-CUP.

Concerned Neighbor,  
Cathy Fudge

## Zoning

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**From:** Nancy Kautz <kautzenator@gmail.com>  
**Sent:** Wednesday, December 2, 2020 11:36 AM  
**To:** Zoning  
**Subject:** Zoning Board Meeting Reference File #20-8-CUP

Dear Jefferson County Planning and Zoning,

RE:#20-8-CUP

I am writing in reference to the proposed increased CUP (Conditional Use Permit) Hearing on Dec. 10, 2020, for the Stevens property at 1122 Duncan Rd., Harpers Ferry. I live one property over at 1062 Duncan Rd. My parents bought the Duncan Farm in 1962, and it has since been subdivided.

My concerns are that the use permit says an increase from what is allowed now (4) to a maximum of 15 weddings/events per year. I know for a fact there were at least 10 weddings/events from August 4, 2020 to November 7, 2020. I can hear the loud music and can see the cars parked in the lot. I had a bonfire gathering the night of Nov. 7th, and we had to listen to a loud band until 10 p.m. I am also concerned about the Airbnb, which can accommodate 16 people. I lived in that house; it has three bedrooms.

I feel the Stevens stretch the rules: at least 10 events already, instead of four, three bedrooms for 16 people, no posted permits for adding bathrooms, septic, adding electrical to the barn or a Highway permit for adding a road onto Duncan Rd. Don't these require permits to be posted?

If you have ever been on Duncan Rd., you realize it cannot handle a lot of traffic. Also this area, for the most part, is peaceful and quiet and is zoned rural. This larger proposed venue conflicts with the existing agricultural zoning. I raise livestock; there are already 26 properties that border the original Duncan Farm. I for one, do not want my summer evenings ruined by loud music I didn't pick. And I think it is only a matter of time, with the increased road traffic on Duncan, that someone will get hurt, either a walker, jogger, cyclist or someone being run off the 1 1/2 lane road. My opinion is **no** to an increased Conditional Use Permit for 15 weddings/events a year. The Stevens have already broken the 4 events they were allotted, and there is nothing in place to insure compliance.

Thank you for considering my concerns.

Sincerely yours,

Nancy Seiders Kautz  
1062 Duncan Rd.  
Harpers Ferry, WV 25425  
304-876-8117  
[kautzenator@gmail.com](mailto:kautzenator@gmail.com)

Sent from my iPad

## Zoning

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**From:** Chuck Axline <chuckaxline@gmail.com>  
**Sent:** Wednesday, December 2, 2020 2:39 PM  
**To:** Zoning  
**Subject:** Proposed zoning change for 1122 Duncan Road File#20-8-CUP

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Completed

I must say I fiercely oppose the idea of adjusting the zoning for the owners of 1122 Duncan Road . First of all you can hear the music from their parties . The music goes on well after dark in most cases there are people tooting horns and driving erratically after enjoying their selves at their parties. Most of their visitors are not local and drive far too fast on our small roads. The owners of 1122 have already caused problems in our neighborhood by infringing on property boundaries by putting up there dog fence outside of their property line. Trespassing on private property to gain access to our boat ramp after being told no. Burying metal junk an farm equipment and trash on their property EPA contacted. Shooting guns. Barking dog. And that's just the mention a few things that I know about first hand. Most of the folks in our neighborhood live in the country because we don't want the deal with a bunch of noise and stuff like this on the weekend or any time for that matter. The property is currently up for sale and we are all concerned about what a proposed zone change could open the door to. We absolutely do not want a rezoned commercial operated property in our backyard ! I vigorously request that you decline the rezoning of this property. Thank you . Sincerely Charles Axline

## Zoning

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**From:** Teresa McBee <teresamcbee@gmail.com>  
**Sent:** Wednesday, December 2, 2020 2:44 PM  
**To:** Zoning  
**Subject:** File #20-8-CUP

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

I live within walking distance of 1122 Duncan Road (ie. less than one mile) and have indeed noticed an increasing level of loud music and traffic over the past several months. We have enjoyed our rural home for many years, taking particular pleasure in the wildlife that also makes this area their home. During warm weather, I enjoy spending time outside in the late afternoon and evening, whether I'm alone, with my husband or visiting with friends on my deck. This has grown progressively less enjoyable as the levels of music, percussive instruments and additional vehicles has grown.

Aside from the interference and annoyance we are experiencing, I have additional concerns regarding this proposed zoning change.

- 1) I have real safety concerns over visitors to 1122 Duncan Road who are unfamiliar with our uniquely hazardous country roads driving in and out, many who could potentially be under the influence of alcohol. This happens at weddings and "special events" and needs to be considered.
- 2) Local residents who like to enjoy the rural setting and walk, jog or run along the road face increased risk as there are no shoulders on our rural roads. Given additional traffic, and considering that many of these events take place on the weekends, the potential for accidents involving a "pedestrian" increases substantially.
- 3) It appears that the current year's calendar of events for this venue far exceeds the "approved limit" of four events for this year with more than that having already been held and up to a dozen more scheduled. There is obviously no mechanism in place to insure compliance; our local law enforcement is burdened with far more serious issues in other parts of the county and shouldn't be expected to bear the responsibility for policing something like this. What other county agency would be in line to oversee and enforce compliance from a wedding/entertainment venue?
- 4) Based on past experience, I understand that once the zoning for this property is changed, it cannot be changed back to rural/residential. It's apparent that, with the property currently for sale, the owner is interested in maximizing the potential amount they can expect to ask with the zoning change. While this would obviously benefit the current owner, I cannot see that it would benefit a new owner, certainly with regards to any consideration of a positive acceptance by the neighborhood in which the venue is located. It certainly will not benefit the area as a whole; in fact, it will negatively impact the monetary and intrinsic value for those of us who call this area home.

I respectfully request that the Jefferson County Zoning Board decline to change the zoning for 1122 Duncan Road for the highest and best good of our area. There is little to be gained, and that only by the current owner, and much to be lost, by the potential new owner, current residents and wildlife in the area, should this zoning change be approved.

Thank you for your time and attention as you uphold your responsibility to your neighbors.

Sincerely,  
Teresa A McBee  
186 Harmony Lane  
Harpers Ferry, WV 25425

**To: The Office of Planning and Zoning, Jefferson Co., WV**

**December 2, 2020**

**In the Matter of: File-20-8-CUP -- Request by River Chase Wedding Venue**

*Thank you for serving on this Commission.*

*With regard to the referenced request, I strongly oppose approval of same. Some of my concerns are as follows:*

*1) The Stevens are running a business for profit in the midst of a quiet agricultural, residential community. With the community consisting mostly of retired, elderly, folks, I find it unfair that a hearing for such an important matter is being held during a pandemic (COVID 19). Most of these folks are not familiar with ZOOM, not to mention the spotty, slow internet service from Frontier.*

2) Is there a study for review of the historical barn and farm house as to compliance with fire, structural and capacity regulations?

3) By approving this request, it would mean that the entire Molars Crossroads community would be disrupted by noise, lots of traffic and strangers roaming on private properties. Mr. Stevens has indicated that he plans to upgrade the event center and then sell same. I have been advised that it will be up to the Sheriff's Department to monitor any problems occurring from the events, such as noise, parking, sewerage, rowdiness, etc. The outcome will be a NUICENCE to the community and lower surrounding property values.

Please at least postpone any decisions until we have a handle on COVID 19.

Thank you.

Respectfully, Kirk D. Meadows, 324 McShanes Landing, Shepherdstown

304-240-451545

**To: The Office of Planning and Zoning. Jefferson Co., WV**

**December 2, 2020**

**In the Matter of: File-20-8-CUP -- Request by River Chase Wedding Venue**

*Thank you for serving on this Commission.*

*With regard to the referenced request, my property adjoins the 1122 Duncan Road property, and I strongly oppose approval of the request. Some of my concerns are as follows:*

*The Stevens are running a commercial event facility in the midst of a quiet, agriculture and residential community.*

*I take issue with the parking area and the access easement (gravel road) Mr. Stevens has constructed. At the November 12 hearing, Mr. Stevens indicated that any runoff from the parking area would lead into a "pond". At present, the water table is low, and a visual check of the pond, yesterday, indicated that it was about a foot from spilling over onto my property. This is unacceptable. The pond needs to drain back towards his property by a spillway or some means to keep it from draining onto my property.*

*Also, I'm seriously concerned about what seems to me the makeshift septic system being used for events with hundreds of people. There again, spills would run off onto my property, which is along the Potomac River. Creating a health hazard. Mr. Stevens mentioned the use of portable toilets. The guidelines for portables are stringent, but no mention of such was made at the hearing.*

*The Staff Report of the November 12 hearing refers to adjacent properties being buffered by trees. True in summer with lots of leaves. My property borders on the east of the facility, and, actually, there are not enough trees to create an adequate buffer.*

Received: 12-02-2020  
RE File #20-8-CUP

*Contrary to that set forth in the Staff Report, the present and proposed use of the event center IS NOT compatible in intensity and scale with the existing and potential land uses on the adjoining properties. It poses a threat to public health, safety and welfare. I believe that, because of the existence and use of the event center, my property has been devalued. I disagree with item number 3. of the Staff Report. I cannot imagine anyone would want to build a nice home adjoining a parking lot, a pond of spills and runoffs, a center for large parties, loud music, boisterous participants and traffic. Plus Mr. Stevens has placed a target too near the property line for comfort. To use the target, it appears one would be shooting directly into my property. A nuisance and safety hazard!*

*Duncan and Knott Roads are dangerous on any given day. They are simply poorly maintained rural roads, unlined, with dangerous curves, no shoulders and blind spots. Locals are familiar with these roads, drive carefully and enjoy using them for walking, jogging, biking, etc. Most party goers will not be aware of the dangers of these rural roads and will not drive with the same respect and caution.*

*Approval of the request by River Chase Venue would leave the actions of one business to totally destroy the quiet, peaceful, tranquil community of Molars Crossroads.*

*Thank you.*

*Respectfully,*

*Beverly A. Meadows, 448 McShanes Landing Lane, Shepherdstown 304-876-2149*

## Zoning

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**From:** Tori de Nobel <tdenobel@icloud.com>  
**Sent:** Wednesday, December 2, 2020 7:21 PM  
**To:** Zoning  
**Subject:** Change of Permit for Venue on Duncan Road

Hello,

My name is Victoria de Nobel, and I live on Rabbits Rest Lane. I just returned from college about a week ago when I heard about the issue concerning the change of permit for the event venue on Duncan Road. The roads that lead back to the venue pass by the road on which I live. Over the summer, my mother and I would walk along these roads and pick up the trash along the sides to make our community a nicer and cleaner place to live. Already before requesting this change of permit, the main trash we picked up were alcohol bottles ranging from small single drink bottles up to even an entire wine bottle. With this request for holding more events, the liquor trash would increase because the venue owner has the guests bring their own alcohol to the venue. This already promotes dangerous driving conditions due to an increase in potential drunk drivers. Along with this concern, many residents including myself and my younger brother either walk or run regularly along these roads. Having more events occurring at this venue will increase the traffic on our roads which are narrow, don't have dividing lines, and are without shoulders. As well, the people driving to these venues are unaware of the blind hills and turns that are present. This has potential to cause more accidents driving and dangers to those who walk or run on the roads.

Thank you for your time,

Victoria de Nobel

## Zoning

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**From:** mike johnson <mikejrc2011@gmail.com>  
**Sent:** Wednesday, December 2, 2020 7:46 PM  
**To:** Zoning  
**Subject:** File # 20-8-cup 1122 Duncan Road property

I'm concerned about this proposal especially since it's right next door to me. Increase in road traffic when alcohol is definitely a huge factor in narrow roads where there's no shoulder and lots of pedestrian traffic including my children. The loud music and lights keep my son awake on the weekends when he has to work as well. It's tolerable a few times a year but no more than a few time's. The current owners of this property have it for sale and are looking at personal gain only with leaving the community here to deal with the after effect of what's to come with property values decreased and a pristine environment ruined by commercial gain. I'm against in full of this zoning request as well as all the others that have voiced their opinion on this. Please consider the danger and the accidents waiting to happen if this goes through. Vote NO!!!! There is absolutely no enforcement of what goes on now and nobody wants it here, ever. This is no good for anyone but the people looking to make gain at others expense. Please consider the majority of the people that own property here because I know there's an email to you from each property owner around here. Pissed off home owners will be all over this if it passes.

Sent from my iPhone

## Zoning

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**From:** davidwhitehead@frontiernet.net  
**Sent:** Wednesday, December 2, 2020 9:04 PM  
**To:** Zoning  
**Subject:** File: #20-8-CUP 1122 Duncan Rd.

Zoning Board,

I understand that the owners of 1122 Duncan Rd., a property that I am led to believe is currently for sale as a commercial enterprise, are applying for a zoning change.

There is a significant ground swell of opinion locally in opposition to any extension of the current zoning rules, especially as it would appear that the current zoning restrictions have been broken on many occasions already.

Please consider the following points before making a final decision on this decision:

Increase of number of events:

The current 4 weddings per year is already violated. The increase to 15 per year plus "special" events could result in excessive noise and disruption every weekend and, in some cases during the week too. The only restriction would be the number of days in a year!

Number of vehicles per event:

Although this is to be restricted to 75 vehicles per event, there does not appear to be any consideration regarding the type of vehicle!

Does this mean that mini buses or even full size 52 seater coaches could be utilized? Whereas I would applaud the guests desire to drink and not drive it allows no restriction on the number of "guests", drunk or sober.

As a side bar, how would the county monitor the number of vehicles or the number of events. Would any monitoring be effective and would there be violation penalties? Would the tax payer be required to pay for this monitoring?

Safety concerns:

Duncan Rd is a narrow country road, never designed for heavy traffic flow. Let us consider the following potential issues:

The road has many "blind" bends. It has intersections where the roads meet at 30 degrees or less. It also has inclines where it is difficult, if not impossible to know what is coming over the hill. Maybe an experienced **sober** driver could see lights approaching at night but even a day time drunk would be unable to avoid a potentially horrific accident.

This is especially true when one takes into consideration the fact that the road is narrow, has no shoulders and is frequented by many local people who enjoy walking, jogging, running and cycling.

What a recipe for disaster - a drunk on an unfamiliar road, a dark rainy night and your wife and baby driving home. There is no need to elaborate.

Please do not hesitate to contact me should you think that i could be of further assistance to your board.

Regards,

David Whitehead

## Zoning

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**From:** Lauren McInnes <lauren.i.mcinnnes@gmail.com>  
**Sent:** Wednesday, December 2, 2020 9:26 PM  
**To:** Zoning  
**Subject:** 1122 Duncan Rd | Zoning File 20-8-CUP

To Whom This May Concern,

I am writing today in regards to the Zoning Change that is being submitted to File# 20-8-CUP at 1122 Duncan Road, Harpers Ferry. I do not agree with the current proposal without having any safeguards or compliance measures in place. Here are my following concerns:

- Allowing an unspecified number of events leaves so many gray areas that do not protect current residents of the area.
  - I did not know there was a current zoning ordinance because there are already several events at the venue.
- The back roads of Duncan/Bakerton/Engle Molars Roads are very cumbersome and for those of us who routinely run/walk these roads there have been a few close calls with people rushing to the event and not knowing where they are going
- No access to cabs/rideshare on a regular basis makes it very risky for the several that leave the event space while under the influence of alcohol
- The property is up for sale and what the current owners allow but there is no promise of who it would be sold to.

With the continuing development of Jefferson County, I think this zoning change will also set a precedence in the county. I think we need to protect the county as a residential area where those of us who decide to live outside of the city can continue to do so in a reasonable manner.

If you would like any additional information please feel free to contact me.

Best Regards,  
Lauren McInnes



## Zoning

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**From:** Katrina Reynolds <katiedircksreynolds@gmail.com>  
**Sent:** Thursday, December 3, 2020 1:06 PM  
**To:** Zoning  
**Subject:** File #20-8-CUP: DO NOT WANT ZONING CHANGE APPROVED

Dear Zoning Board,

This zoning change proposed for 1122 Duncan Road will bring in many serious safety concerns bringing out-of-towners navigating our uniquely hazardous country roads, many under the influence of alcohol leaving one of these weddings/special events. As it is, the company hosting the wedding has had way more than 4 weddings which has been the event limit. Yet, we see the event sign posted at least every month or month and a half. There is loud party music and commotion and loud noise from dozens of vehicles coming and going (faster than the posted 15 mph speed limit). This disrupts people, livestock, and wildlife. There is an increased risk to residents who enjoy daily walking, jogging, running, or biking. These roads are very narrow and have NO SHOULDERS to allow others to pass. That is why we try to keep traffic to a minimum with the residents and community garbage, recycling, utility vehicles, UPS, Postal Service, etc. We already get plenty of extra vehicles on our rural road with services called in or provided to the residents. This is an HOA. Therefore, we should have some say in this. I want my family to feel safe running in our own community 4 times a week to continue to help our children stay safe and healthy. Especially at this time as we are going through this pandemic. Please help us keep our neighborhood enjoyable and peaceful as it should be.

Thanks for your consideration,

Katrina Reynolds

## Zoning

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**From:** Anita <anitac@aol.com>  
**Sent:** Thursday, December 3, 2020 3:03 PM  
**To:** Zoning  
**Subject:** Comments Ref: 20-8 CUP  
**Attachments:** Comments to the Zoning Board.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

To the Board of Zoning Appeals:

Attached are comments referencing 20-8 CUP. Please consider these and previous comments when making your decision.

Thank you in advance.

Anita Trotter-Cox  
365 Rabbits Rest Lane  
Shepherdstown, WV 25443

(h) 304 876 8202

To the Zoning Board of Appeals:

In addition to the comments submitted and presented at the November 12<sup>th</sup> Public Hearing: "Impact on neighborhood health, safety, and welfare," I am submitting the following additional issue for your consideration.

The observations stated below may seem minor when viewed independently, but are listed here to demonstrate that there is a consistent pattern of non-compliance. Given past history, why enter into an expanded CUP to establish a commercial entity knowing that the applicant will continue disregarding the associated restrictions / conditions?

- During the November 12th Public Hearing, Mr. Stevens seemed confused or unaware of the "Restrictions / Conditions" of the current ZC#17-34. For example, he did not know that 10:00 PM was a restriction. Neighbors have reported that many of the events go well beyond 10:00 PM.
- ZC#17-34 states that Mr. Stevens "cannot exceed **4 wedding events per year**." From 2017 to date this restriction has been exceeded. Furthermore, at least **12 weddings** are "booked" going forward. How can 12 be booked when the Zoning Certificate states restricts Mr. Stevens to 4?
- Per County Noise Restrictions: "noise levels shall not exceed the following sound levels 50 dB(A)." The **sound-pressure level** shall be measured at the property line with a sound level meter." This has been exceeded.
- "Permanent signs would not be erected and that the intent would be to place temporary signs for each event." The homemade **advertising sign** is actually a pallet / skid that has been posted (leaning against the street sign at Bakerton and Duncan) 24/7. After months, it was finally removed on November 27<sup>th</sup>. (Dated photos available.)

- Section 10.2 F. “No sign shall be placed on rocks, trees, or on poles maintained by public utilities.” The Public Hearing sign is posted on a utility pole and was not posted 15 days prior to the November 12<sup>th</sup> hearing.

Note: This pole/sign is on the other side of the easement road to the left of the Stevens’ home and appears not to be associated with the home. This is not “conspicuous” per “Requirements”. Hopefully, someone from the Zoning Board Office has visited the site and approved it.

- Many of the neighbors and myself are disturbed that the Stevens have hosted events during a pandemic (COVID). This is against State and County protocols. *“Governor Justice expressed his frustration and the frustration of the state’s health officials at having to repeat calls for West Virginians to wear masks, stay socially distance, avoid large crowds and gatherings, and wash hands.”*
- As the Board is aware, the property is for sale. In reading the description of the property listing, it is obvious that the property is being marketed as a commercial business.

How did we go from a Bed and Breakfast in rural WV to an **Event Center** (as was advertised on the “River Chase” sign)?

The purpose of the above comments is to demonstrate to date that there has been a pattern of non-compliance by the applicant under existing ordinances and ZC#17-34.

The applicant should have been monitored for compliance with the restrictions / conditions of ZC#17-34 before moving on to applying for 20-8 CUP. If the Board approves the application, who will monitor or enforce compliance with the additional events? For example, is it the neighborhood’s burden to use a dB sound meter for each large event...then call the Sheriff?

The entire surrounding communities have tolerated the current Bed and Breakfast per ZC#17-34 and beyond. We do not want the Bed and Breakfast transitioning to a commercial property in our rural neighborhood. Please deny this application: 20-8 CUP.

Thank you for reviewing my concerns.

Anita Trotter-Cox  
365 Rabbits Rest Lane  
Shepherdstown, WV 25443  
(304) 876 8202

Bar under the barn for pre-wedding refreshments or cocktail hour





## Zoning

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**From:** Mark Cato <info.gbccc@gmail.com>  
**Sent:** Thursday, December 3, 2020 10:51 PM  
**To:** Zoning  
**Subject:** #20-8-CUP

I am opposed to the zoning change proposed for 1122 Duncan Road. Since Covid, more people are walking/running, many with dogs, or riding bikes. The roads have no shoulders for walkers/runners to go to for safety when cars approach. River Road doesn't even have a center stripe to help guide those unfamiliar with the road to stay in their lane, especially on curves. Now, add people walking/running especially with many cars heading to the same destination around the same time.

What will be considered an acceptable music level? The party people or the neighbors? Sound travels in the open spaces. Not everyone keeps their windows closed.

This zoning change is not in the best interest for the safe, calm, and peaceful neighborhood we need and have in these challenging times.

Tami Wells Cato

Sent from my iPhone

## Zoning

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**From:** gbbaker1 <gbbaker1@frontiernet.net>  
**Sent:** Thursday, December 3, 2020 5:02 PM  
**To:** Zoning  
**Subject:** zoning change proposed for 112 Duncan Road

This is a very rural area of the county. It is mostly zoned for farming.

The proposal seems to profit someone who is leaving the area and harming the residents that will be staying here.

Why would we want to do this???????????????

Sent from [Mail](#) for Windows 10

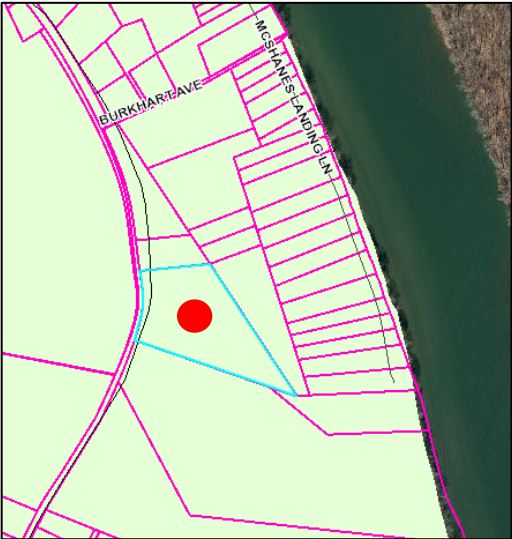
Agenda Item #1: File #20-8-CUP  
Original Meeting Documents  
from 11-12-20 BZA Meeting



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 <a href="#">PB 13, PG 17</a> ) 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.

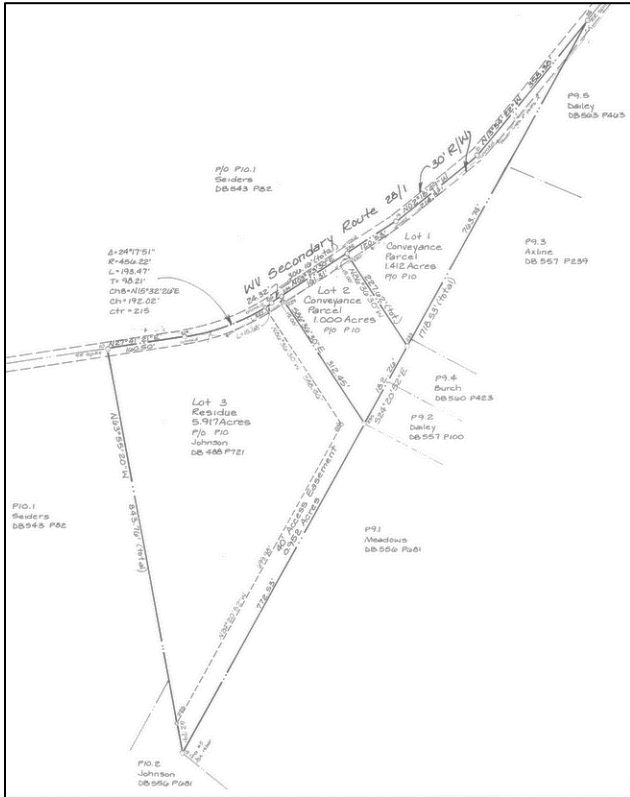
*\*Application and sketch were not clear as to the number of parking spaces; further email correspondence indicated that the maximum number of parking spaces would be 75.*

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.”

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

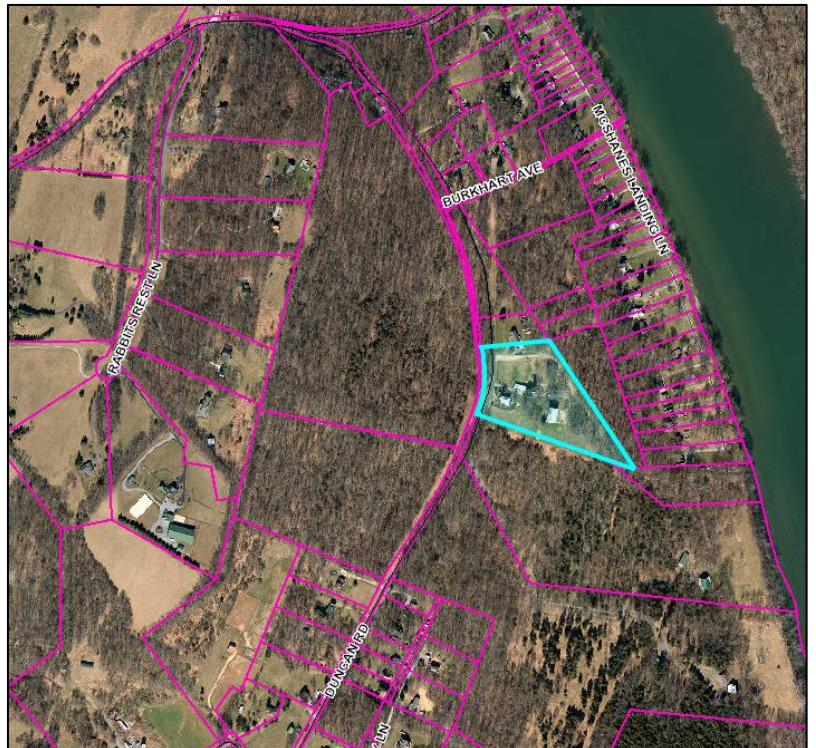
**Impact on adjacent properties**

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.



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

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

**Conditional Use Permit Process**

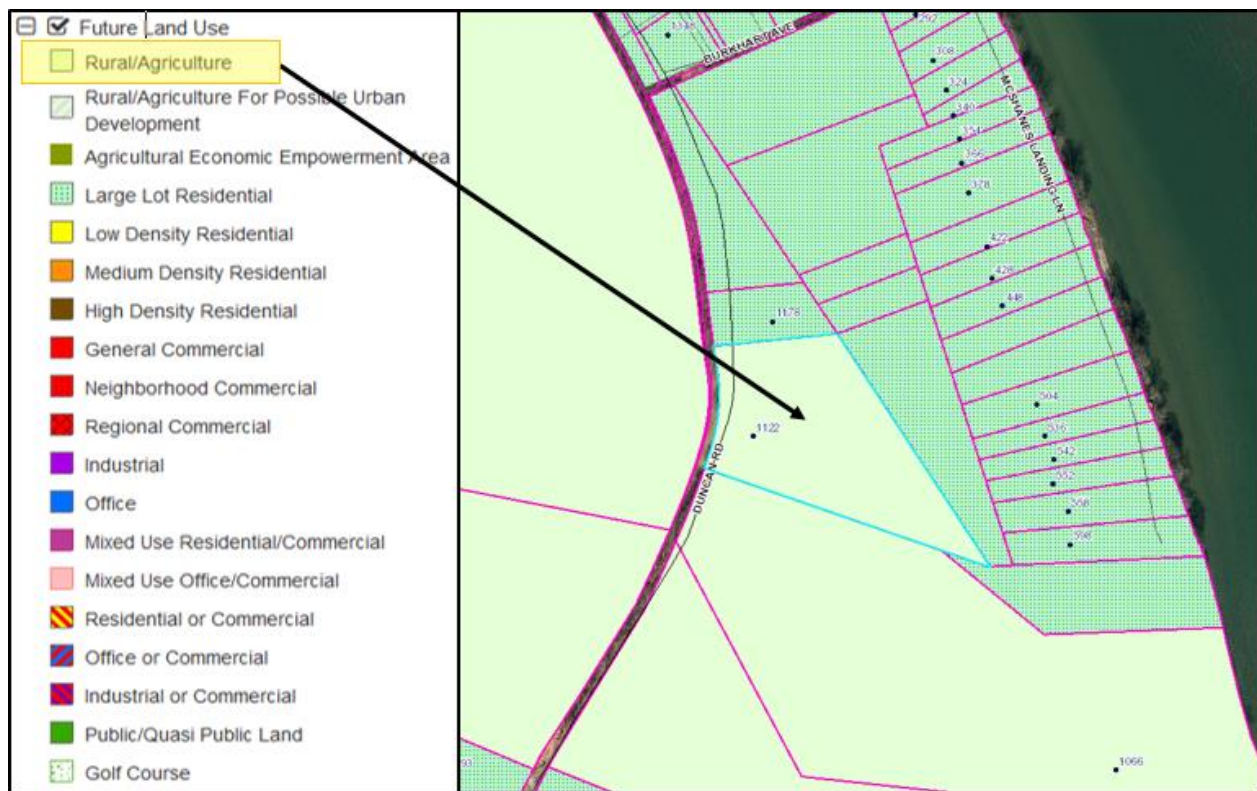
Section 6.3 of the Zoning Ordinance states:

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

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

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

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

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.

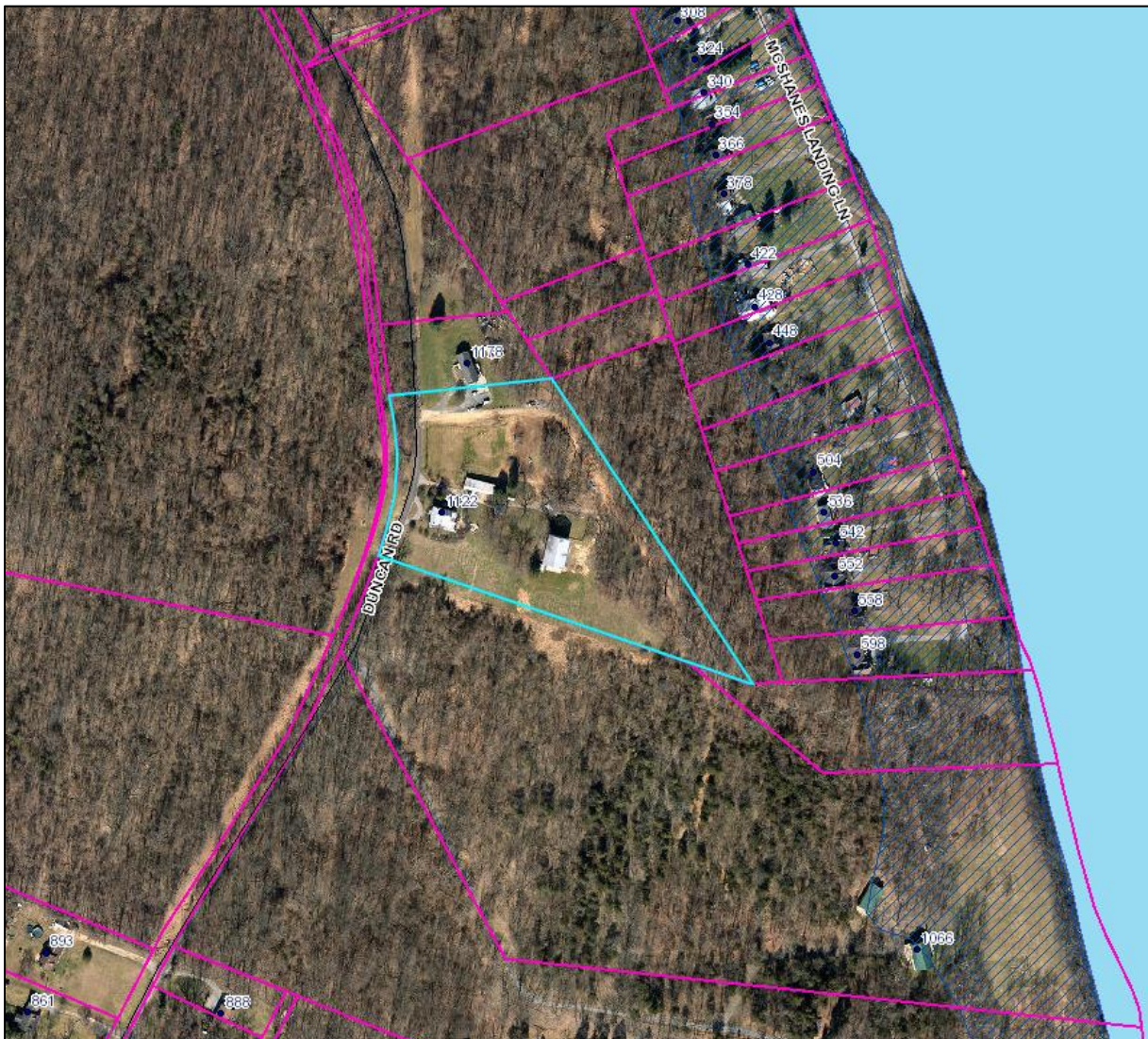
Staff Report  
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**4. Neighborhood character and surrounding property values shall be safeguarded by requiring implementation of the landscaping buffer requirements found in Appendix B and Section 4.11 of this Ordinance. (Sec. 6.3A.4)**

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.



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

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

**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 Uses<sup>23</sup>**

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)

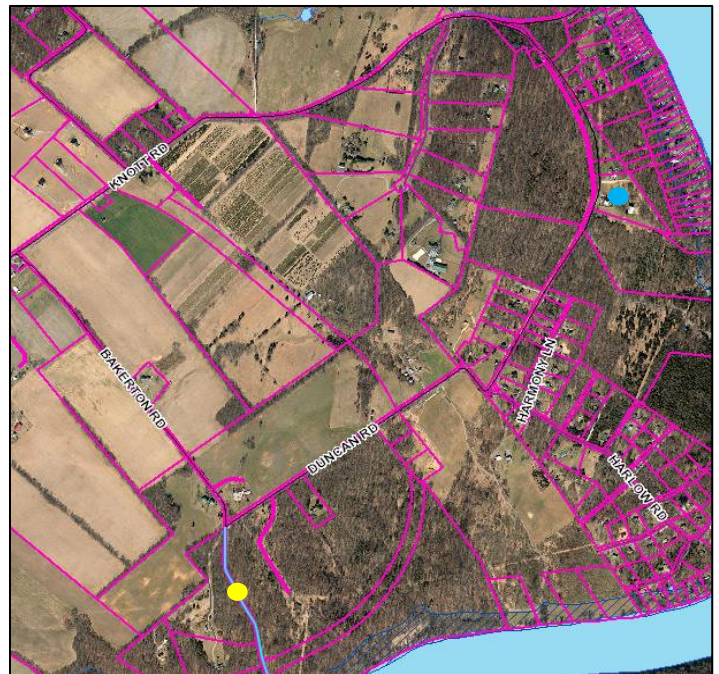
The following sources of noise are exempt:

  - 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)**

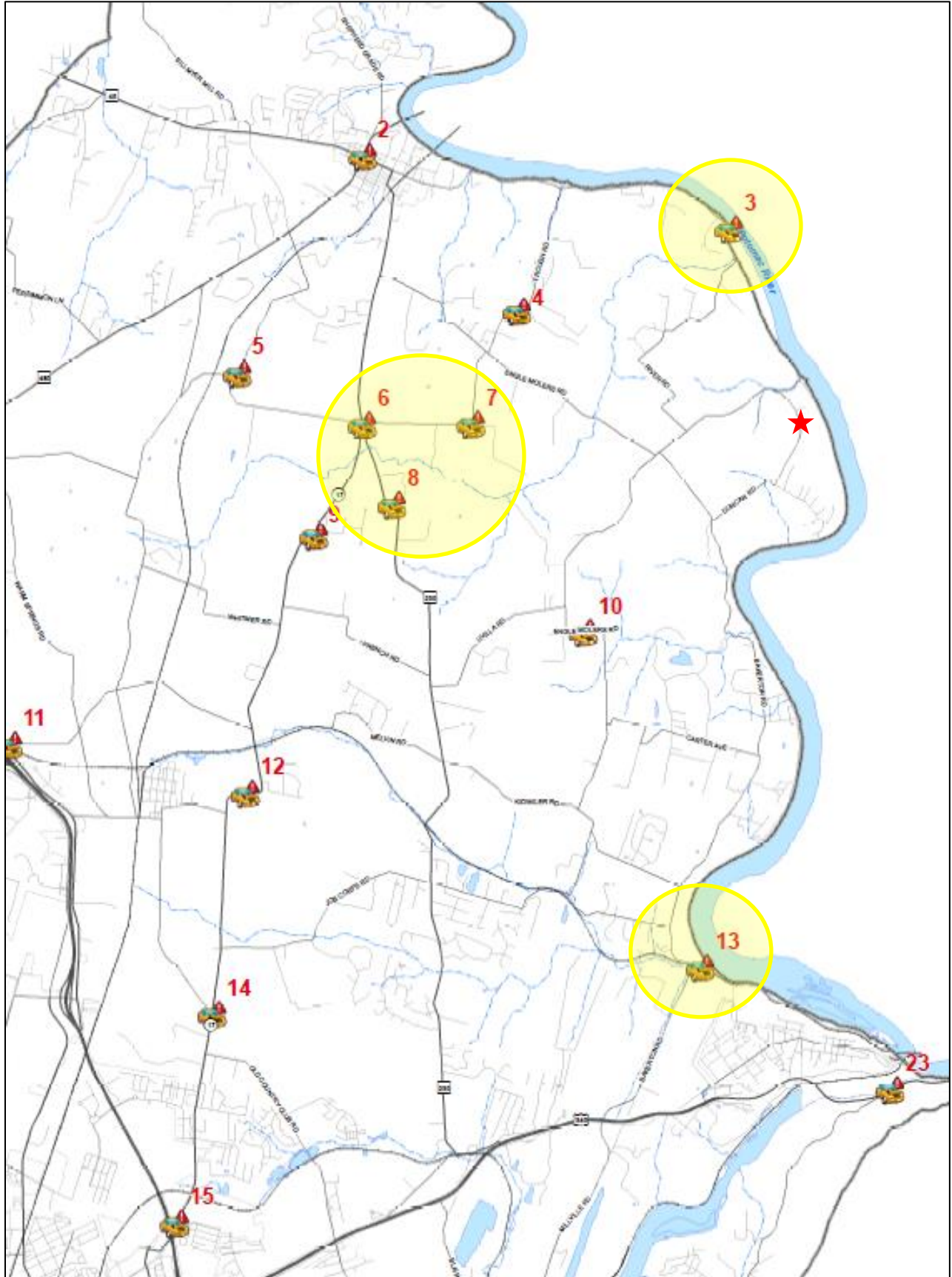
Duncan Road is classified as a Local Road and is subject to this criteria. The applicant provided a summary of the expected traffic impact as being 50-75 cars once every Saturday, 15 times per year. Peak hour trip data was not provided and Special Event Facility or similar use was not listed in the Trip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

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
November 12, 2020  
**Stevens Conditional Use Permit Request (#20-8-CUP)**



Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 November 12, 2020  
 Stevens Conditional Use Permit Request (#20-8-CUP)

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

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
November 12, 2020  
**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, 2<sup>nd</sup> Floor  
 P.O. Box 716  
 Charles Town, West Virginia 25414

File #: CUP 20-8  
 Mtg. Date: 11/12/20  
 Fee Paid: \$ 550.<sup>00</sup>  
 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: Sh-11 Parcel No. 10  
 Parcel Size: 5.92 Acres Deed Book: 488 Page No: 721

**Zoning District (please check one)**

Residential Growth (RG)	Industrial Commercial (I-C)	Rural* (R)	Residential-Light Industrial-Commercial (R-LI-C)	Village (V)	Neighborhood Commercial (NC)
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General Commercial (GC)	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"/>	<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

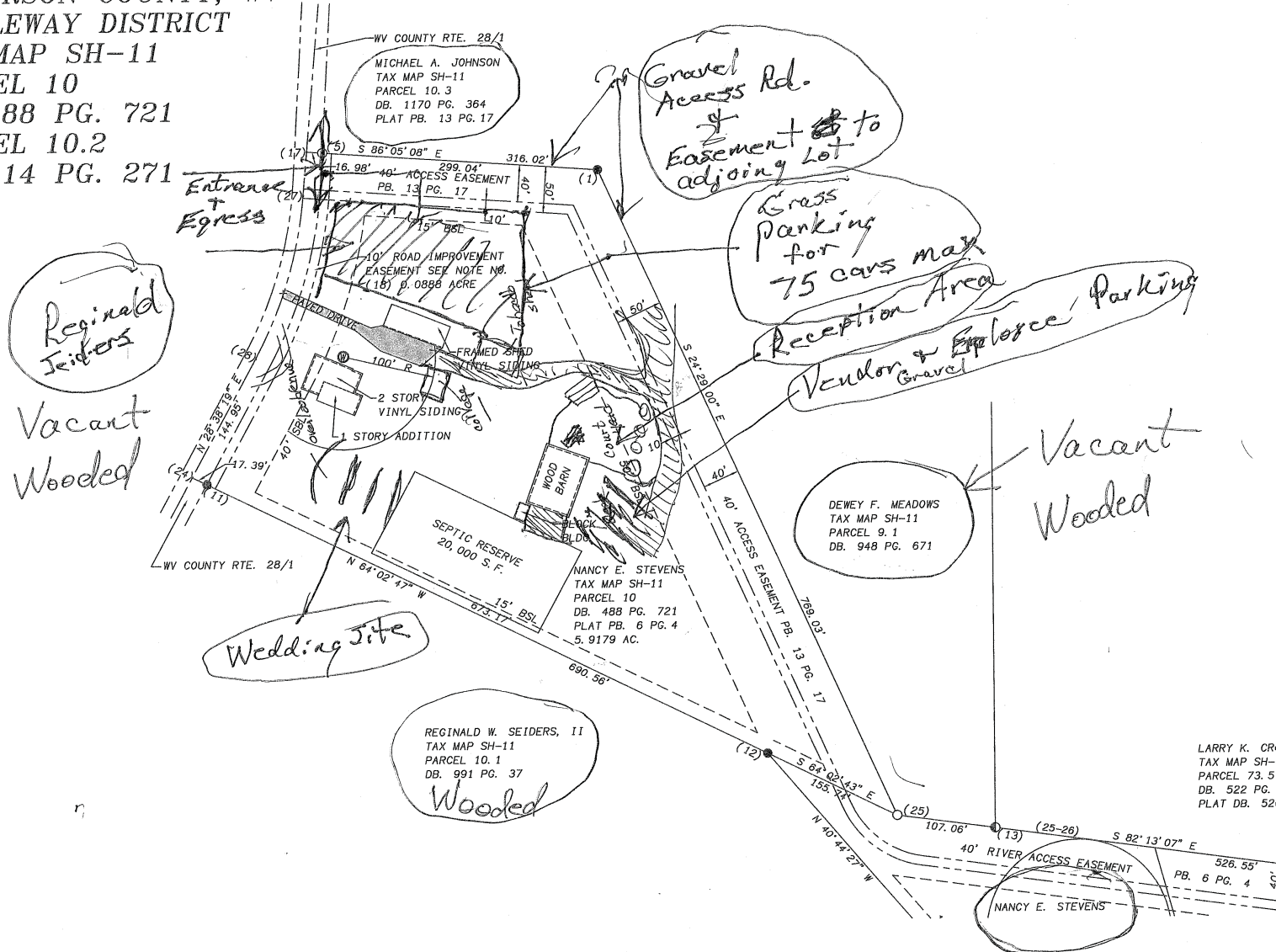
# River Chase Wedding Venue

Nancy E. Stevens

House - 1830  
 - ~~1870~~  
 Barn - 1870

Both  
 are  
 Class III Landmarks

JEFFERSON COUNTY, WV  
 MIDDLEWAY DISTRICT  
 TAX MAP SH-11  
 PARCEL 10  
 DB. 488 PG. 721  
 PARCEL 10.2  
 DB. 514 PG. 271



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

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**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

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**From:** [Zoning](#)  
**Sent:** Thursday, October 8, 2020 2:28 PM  
**To:** '[hokie09@hotmail.com](mailto: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](http://www.jeffersoncountywv.org)  
304-728-3228



Public  
Comments  
Received



## Zoning

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**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

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**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

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**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

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**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

-->

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 1<sup>st</sup>? (This is not much time for neighbors to make comments by Nov. 6<sup>th</sup>). 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 12<sup>th</sup>


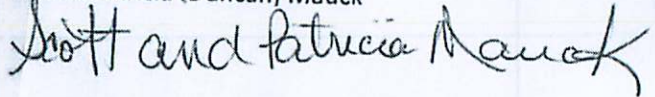

Thank you in advance.

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 &amp; 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
<sup>Mrs</sup> 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

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**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](mailto: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:**

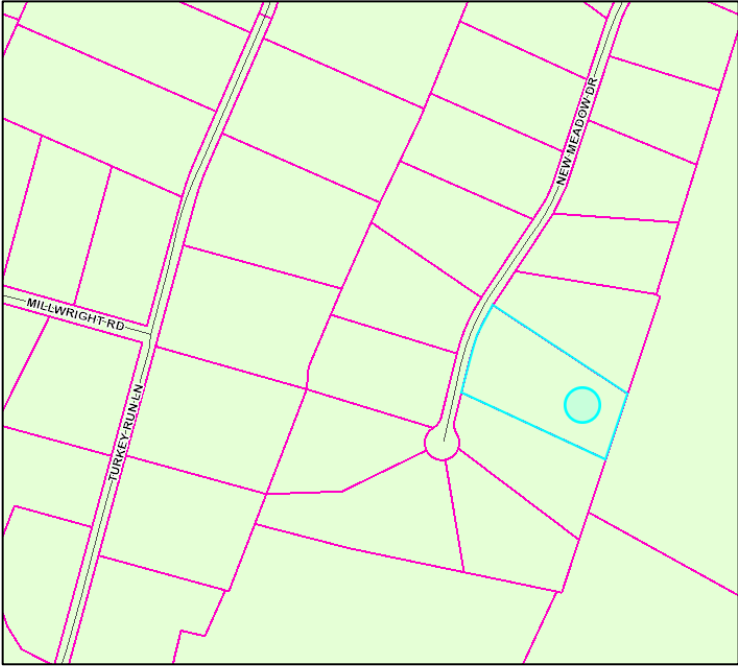
1. The roads in the local vicinity of the event area, Duncan and Knott, are not lit and have no painted lines to divide the lanes or identify the shoulders. In addition there are many hazardous pop-ups, including on the lined roads like Bakerton and Engle-Muller, neither of which is lit. Even local residents 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  
 December 10, 2020  
**Eychner-Raduns Variance Request (#20-38-ZV)**

Item #2 Variance from Section 9.7 to reduce the side setback from 15' to 10' and the rear setback from 50' to 13' for a 12' x 20' accessory structure (shed).

Applicant:	Deirdre Eychner-Raduns
Owner:	Same
Developer:	N/A
Consultant:	N/A
Location:	Meadowlands Subdivision, Lot 23, 647 New Meadow Dr., Kearneysville, WV
Parcel Information and Zoning District:	<p style="text-align: center;">Parcel ID: 07002000340000; Size: 2.51 acres; Zoning District: Rural</p>  <p style="text-align: center;">Zoning Map Designation:  <i>North, South, East and West: Rural</i></p>
History:	PC File #88-29: Meadowland Subdivision, Section II, Lots 17-35 (recorded on 12/31/91 in Plat Book 10, Page 60)
Waivers/Variations:	05/19/94: BZA approved a setback reduction to the County's required setbacks for the Rural district: 40' front; 15' side; and 50' rear.
Approved Activity:	Single Family Residence
Site Visit Conducted:	No

**Summary of Request and Purpose of Ordinance Requirements**

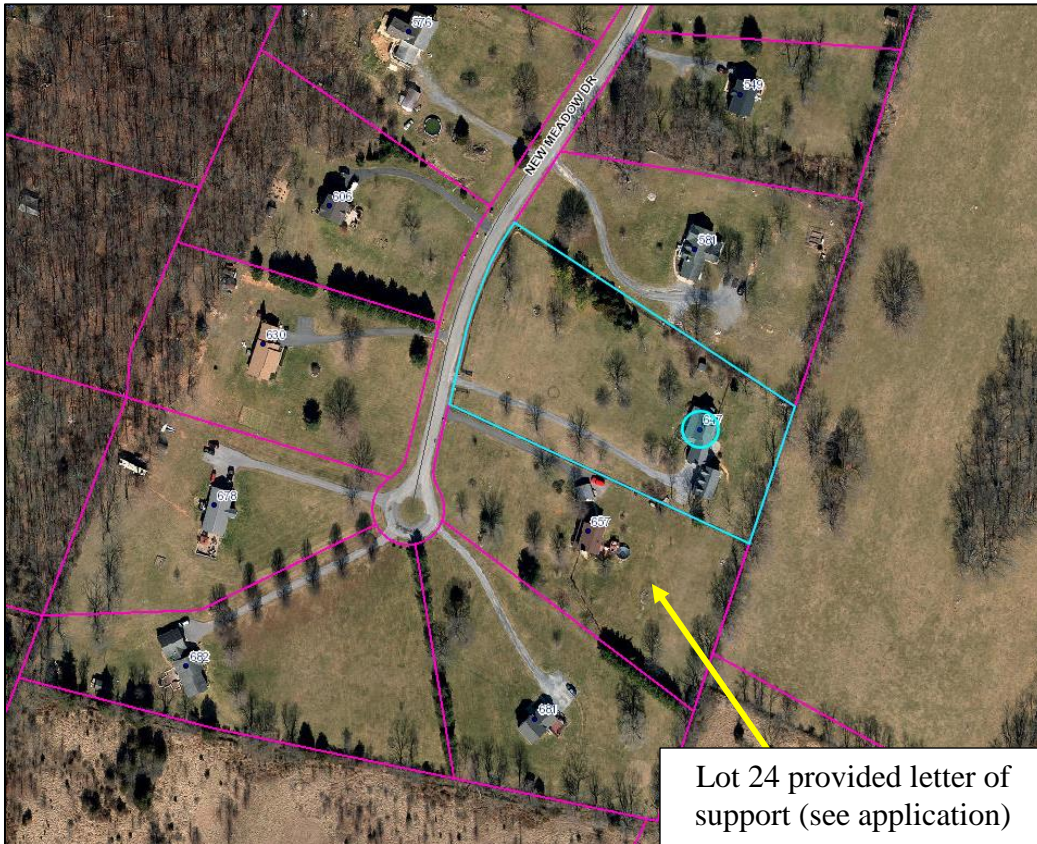
The applicant is seeking a variance from Section 9.7 to reduce the side setback from 15' to 10' and the rear setback from 50' to 13' for a 12' x 20' accessory structure (shed).

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  
December 10, 2020  
**Eychner-Raduns Variance Request (#20-38-ZV)**

**Staff Evaluation of Request**

The subject parcel is Lot 23 of the Meadowland Subdivision, Section II, which was recorded on December 31, 1991 in [Plat Book 10 at Page 60](#). As the Meadowland Subdivision Section II file was submitted prior to the enactment of the Zoning Ordinance, the developer chose to plat the following setbacks: 100' Front; 75' Side; and 75' Rear. On May 19, 1994 the Board of Zoning Appeals approved a variance to reduce the greater setbacks imposed by the developer to correspond with the setbacks required by the Zoning Ordinance, which are 40' front, 15' side and 50' rear. A deed modifying the setbacks for this section of the subdivision was recorded in Deed Book 779, Page 771 on June 8, 1994.



Section 9.6B provides an exception for accessory structures which allows the side and rear setbacks to be reduced to the longest horizontal dimension of the structure. The exception would allow the rear setback to be reduced to 20' without necessitating a variance; however, the applicant would like to further reduce the rear setback to 13'. The exception is not applicable to the side setback because the longest horizontal dimension (20') of the structure is greater than the side setback requirement (15').

The applicant selected the subject location based on the ease of access while also preserving existing, natural features on the property. The adjoining property owner, who would be most impacted by the request, has provided a letter of support (Lot 24, Kenneth Pohill). Additionally, the adjoining property to the rear is a 99+ acre lot and the residence is over 1,700 feet from the subject location. Based on this information, it appears the impact on adjoining properties would be minimal.

It is feasible to comply with the Ordinance by other means; however, as the applicant has represented, another location may necessitate removing existing trees and may not provide the same convenience as the selected location.

Staff Report  
Jefferson County Board of Zoning Appeals  
December 10, 2020  
**Eychner-Raduns Variance Request (#20-38-ZV)**

**Conditions of Approval**

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

1. No conditions of approval have been identified.

**Attachments:**

1. May 1994 Board of Zoning Appeals Minutes
2. Deed Book 779, Page 774 recorded in June 1994 reflecting a Minor Plat Change to the revised setback requirements.

**Section of Ordinance to be Considered:**

**Section 9.7 Other Exceptions<sup>3</sup>**

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

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

Residential Growth District<sup>23</sup>

Single Family Residences

Over 40,000 square feet --	25' front,	12' side	and	12' rear
30,000 sq. ft. to 40,000 sq. ft.--	20' front,	10' side	and	12' rear
Under 30,000 square feet --	20' front,	8' side	and	12' rear

Rural Agricultural and Industrial Commercial

Single Family Residences

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

For all lots under 40,000 square feet side and rear setbacks for residential accessory structures shall be 6'.

MINUTES  
JEFFERSON COUNTY ZONING BOARD OF APPEALS  
MAY 19, 1994

The Jefferson County Zoning Board of Appeals met on Thursday, May 19, 1994 at 3:00 p.m. in the Jefferson County Meeting Room. Members present were Leon Nawrocki, Mike Meyers, Bob Warren and Pat Fiori. John Laughland, County Engineer and Rebecca Burns, Secretary were present.

Marty Kable was absent with notification.

The meeting was called to order by Leon Nawrocki at 3:00 p.m. Mike Meyers motioned to accept the Minutes of the April 21, 1994 meeting. Bob Warren seconded the motion which carried unanimously.

John Laughland asked everyone who would be testifying to stand to be sworn in.

NEW BUSINESS

1. Request by Porter H. and John J. Thomas and Richard Bias for a variance from the Meadowlands Subdivision setbacks of 100' in the front, 75' on the sides and 75' in the rear to 40' in the front, 15' on the sides and 50' in the rear. Mr. Crawford presented the request stating they would like to reduce the setbacks to conform with the County requirements. Bob Warren motioned to grant the variance on the basis that they would conform with the Ordinance standards and it would not cause a hardship on the property owners. Mike Meyers seconded the motion which carried unanimously.

2. Administrative decision appeal by Mr. and Mrs. Richard L. Moore and Mr. and Mrs. Benedict F. Kinder that a training track and classroom at Summit Point Raceway qualifies as a "school". Leon stated that all discussion should be restricted to whether or not the proposal falls under the definition of "school"

The following individuals addressed their concerns and opposition to the definition: Richard Moore, Bo Lane, Renee Moore, Mary Kinder, Dan Hileman, Ann Lewis, Milicent Miller, Rebecca Davis, Norman Hills, Jeff Widmeyer, Norma Eisner, Mike Shifflet and Lisa Hileman.

The concerns addressed were: safety of horses, children and neighbors; noise; cutting of trees on the site; expansion is not a school but a racetrack; lengthening of existing racing and training circuit is not just a school; hazards of firing range; beyond scope of 35% expansion; need for a site plan to address stormwater management quantity and quality, parking, traffic, impact on community, NPDES Permit, distance and yard requirements, sewer and water facilities, buffering for visual and sound impacts; decibel limitations; preservation of Ordinance integrity; change of rural and historical character; number of cars on track at a time; waste from firing range; and, monitoring of track.

MODIFICATION OF PLAT AND COVENANTS OF THE MEADOW LAND SUBDIVISION

WHEREAS, Richard M. Bias is the declarant or developer of Phase 1 or Section 1 of the Meadow Lands Subdivision situate in the Middleway District, Jefferson County, West Virginia, and

WHEREAS, John J. Thomas and Porter H. Thomas are the declarants or developers of Phase 2 or Section 2 of the Meadow Lands Subdivision situate in the Middleway District, Jefferson County, West Virginia, and

WHEREAS, as part of the subdivision process, the declarants impose certain restrictive covenants upon said real estate and caused them to be recorded with plats of the aforesaid division, plat of Phase 1 being recorded in the Office of the Clerk of the County Commission, Jefferson County, West Virginia, in Plat Book 8, Page 22 and plat of Phase 2 being recorded in the aforesaid Clerk's Office in Plat Book 10, Page 60 et seq, and

WHEREAS, restrictive covenant number 27 in both sets of restrictions reserves under the declarant (Grantor) the right to alter or modify restrictive covenants so long as the scheme of the subdivision is generally maintained, and

WHEREAS, there have been three prior amendments of the restrictive covenants and there remains some ambiguity with regard to the appropriate setback limits be imposed, and

WHEREAS, any legal effect of the third amendment altered the plat of the aforesaid subdivision and any amendment of any plats of subdivisions in Jefferson County, West Virginia must be approved by the Jefferson County Planning Commission, and

WHEREAS, the parties hereto wish to eliminate any ambiguity with regard to the appropriate setback limits and the parties hereto wish to modify the plats of the aforesaid subdivision with the approval of the Jefferson County Planning Commission, and

NOW, THEREFORE, WITNESSETH: That Richard M. Bias, John J. Thomas and Porter H. Thomas do hereby exercise the powers reserved unto them in restrictive covenant number 27 and do hereby modify restrictive covenant number 3 as follows:

3. SET-BACK:

Building set-back requirements shall be forty (40) feet from the front line, fifteen (15) feet from the side lines and fifty (50) feet from the rear line.

It shall not be a violations of these restrictions for the owner of two adjacent units to erect a dwelling or outbuildings closer to the common boundary line between said units than the setbacks herein permit. Once two units are so joined they shall be deemed one unit for all purposes, excepting for road maintenance fees, and shall hence forth be used for a single residence utility easement reserved along common boundary lines shall be deemed released upon construction thereon.

No more than one outbuilding and one garage shall be permitted per unit, and the garage roof design shall conform to that of the house. None of the foregoing shall be built prior to the dwelling.

In all respects the third amendment to the restrictive covenants dated May 7, 1992 and recorded in the aforesaid Clerk's Office in Deed Book 712, Page 266 shall remain in full force and effect.

6/9/94  
changed + vacated

772

Richard M. Bias  
Richard M. Bias

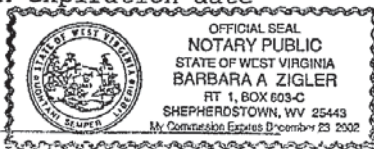
John J. Thomas  
John J. Thomas

Porter H. Thomas, by John J. Thomas, his attorney-in-fact

STATE OF WEST VIRGINIA  
COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this 8th day of March, 1994, by Richard M. Bias.

Commission expiration date and seal:

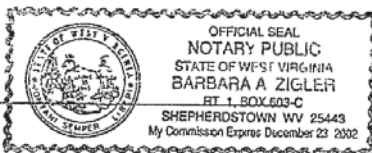


Barbara A. Zigler  
Notary Public

STATE OF WEST VIRGINIA  
COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this 8th day of March, 1994, by John J. Thomas and Porter H. Thomas by John J. Thomas, his attorney-in-fact.

Commission expiration date and seal:



Barbara A. Zigler  
Notary Public



Approved minor  
Plat Change  
Paul J. Racorff  
Director of Planning  
May 23, 1994

State of West Virginia, County of Jefferson, Sct.

IN THE CLERK'S OFFICE OF THE COUNTY THE COUNTY COMMISSION:

On JUN 08 1994, at 4:30 P. M., the foregoing document was received in my said office and duly admitted to record.

Test,

John E. Ott  
Clerk of County Commission



**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: 20-38-ZV  
 Staff Initials: gfi  
 Meeting Date: 12/10/20  
 Fees Paid (\$100 or \$150): 100-

Email: [zoning@jeffersoncountywv.org](mailto: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: Deirdre Eychner Rodun  
 Mailing Address: 647 New Meadow Drive Kearneysville, WV 25430  
 Phone Number: 585-771-0997 Email: Deirdre.Eychner@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: 647 New Meadow Drive  
 City: Kearneysville State: WV Zip Code: 25430  
 Tax District: Middleway Map No: 20 Parcel No: 0034 0000 0000  
 Parcel Size: 2.5 acres Deed Book: 1224 Page No: 418

**Zoning District (please check one)**

Residential Growth (RG) <input type="checkbox"/>	Industrial Commercial (IC) <input type="checkbox"/>	Rural (R) <input checked="" type="checkbox"/>	Residential- Light Industrial- Commercial (R-LI-C) <input type="checkbox"/>	Village (V) <input type="checkbox"/>	Neighborhood Commercial (NC) <input type="checkbox"/>	General Commercial (GC) <input type="checkbox"/>	
<b>RECEIVED</b> <b>NOV 04 2020</b> <b>JEFFERSON COUNTY PLANNING</b> <b>ZONING &amp; ENGINEERING</b> <small>Place Received Date Stamp Here</small>			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"/>

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

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

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

Briefly describe the nature of the variance request:

See attached letter

Note: shed will be approx 11' to 12' tall after pad placement.

If this request is for a setback variance, please check one of the following: Side: 15' to ~~X~~jh Rear: 20' to 13'

Front Setback  Side Setback  Rear Setback  Reduction From side to 10' -jhto

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 shed location is tucked in the back corner of our property and is not near any other structures. ~~where~~  
See signed letter from adjacent neighbor.

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 chosen location of the shed was determined by the ease of access while not disturbing the natural beauty of the property. Adhering to the original setbacks would require tree removal.

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

This variance would prevent us from having to cut down 2 healthy trees on our lot. We would also need to undergo the expensive process of creating a new pad if rejected.

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

Granting the variance will further allow us to obtain necessary permits in order to adhere to other county guidelines. The process to obtain this documentation will be followed.

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.

 11/4/20  
Signature of Property Owner Date

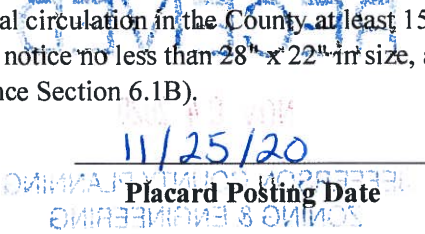
\_\_\_\_\_  
Signature of Property Owner Date

Notification Requirements (to be completed by staff)

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

12/10/20  
Date of Public Hearing

11/25/20  
Advertising Date

11/25/20  
Placard Posting Date  


# Zoning Certificate Application

647 New Meadow Drive Kearneysville WV, 25430 | (585) 771-0997 | Deirdre.Eychner@gmail.com

November 2<sup>nd</sup>, 2020

Jefferson County, West Virginia  
 Department of Engineering, Planning and Zoning  
 Office of Planning and Zoning  
 116 E. Washington Street, 2<sup>nd</sup> Floor, P.O. Box 716  
 Charles Town, WV 25414

**RECEIVED**

**NOV 04 2020**

JEFFERSON COUNTY PLANNING  
 ZONING & ENGINEERING

Dear Alexandra Beaulieu,

This letter is intended to provide additional information regarding our application for a zoning certificate for a 12' x 20' shed.

Being new to the area, we have never heard of needing a building permit or zoning certificate for a small, non-permanent structure such as a shed. Therefore, we proceeded with finding a space for the shed that would enable easy access to the structure, while respecting neighboring property lines and avoiding cutting down healthy trees. The finished pad is currently located 13' from the rear and ~~X~~' from the side. Please see attached photos and sketch.

10' -jh 11/10/20

While preparing the pad, several households in the neighborhood were also pursuing home projects, which prompted us to consult with zoning. When placing a phone call to your office, we were informed that the zoning for our property is as follows: 40' from the front, 20' from the rear and 15' from the side. This would mean that we have a ~~X~~<sup>10</sup>' difference for the rear setback requirement and an 8' difference for the side setback requirement. If we were to adhere to the original setback requirements, 2 trees will need to be removed as indicated in the attached photos.

After reading the meeting minutes for the Board of Zoning Appeals, we came across similar zoning variances granted on September 24<sup>th</sup>, 2020 which serve as precedents for our request. See the table below for the proposed variance and subsequent board decision

Reference	Proposal	Decision
Item #2 File #:20-29-ZV	Variance from Section 5.4B of the Zoning Ordinance to reduce the side setback from 12' to 7' and the rear setback from 20' to 11' for a 12' x 20' accessory structure	Approved
Item #1 File #:20-28-ZV	Variance from Section 5.4B of the Zoning Ordinance to reduce the side setback from 12' to 8' and the rear setback from 20' to 8' for a 12' x 16' accessory structure	

Further, we are also providing a signed letter of consent from the neighbors affected by the side setback variants.

The pre-fabricated shed has already been ordered from Winchester Amish Connections for \$6,800 and is custom manufactured to match the vinyl siding and accents to the house. The shed is intended to hold yard maintenance equipment and delivery is set for mid-November 2020, which is why we're hoping for quick approval.

Thank you for your time and consideration. We look forward to hearing back from you soon.

Sincerely,  
Deirdre Eychner Raduns  
James K Raduns

Property owners of 647 New Meadow Drive Kearneysville, WV 25430

## Zoning

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**From:** Deirdre Eychner <deirdre.eychner@gmail.com>  
**Sent:** Friday, November 6, 2020 12:40 PM  
**To:** Zoning  
**Subject:** 20-38-ZV Zoning Variance Request

Good Afternoon Jennilee,

Thanks for the clarification and for the call this morning. Based on the information you shared, we'd like to amend our zoning variance request. We will be keeping the rear variance request as 13', however, we'd like to change the side setback variance to 10'. This will exempt us from going to the planning commission meeting.

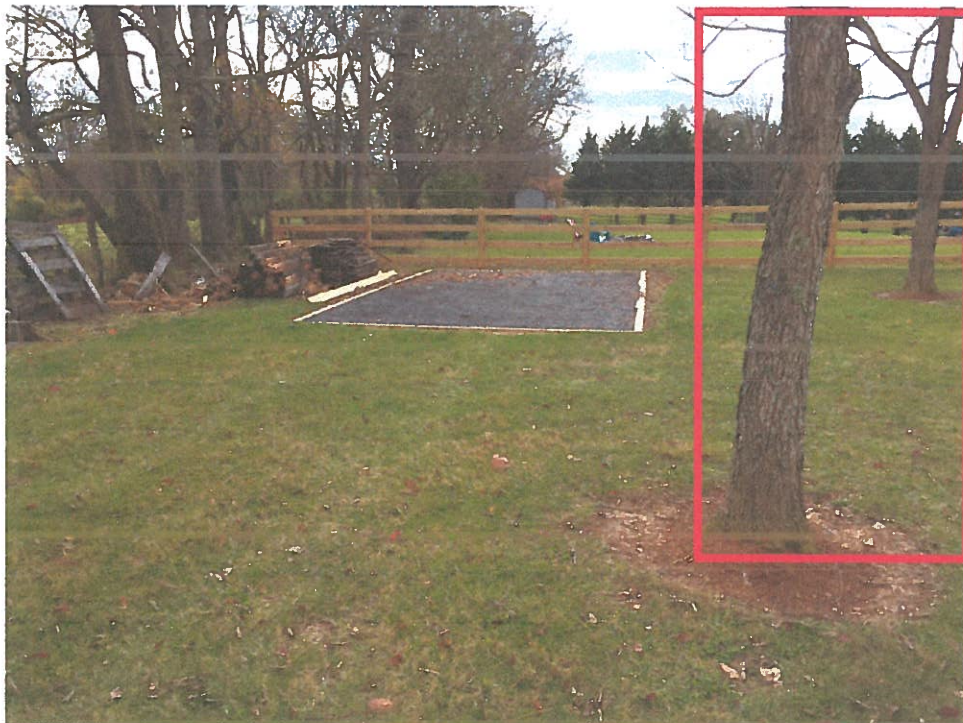
Kind Regards,  
Deirdre Eychner Raduns

Placement pictures of current stone pad

View to show both rear and side setbacks



View to show two trees that would need to be cut down if original setbacks were upheld



Sketch of property



X 10' -jh  
11/10/20

*Derj*

11/2/20

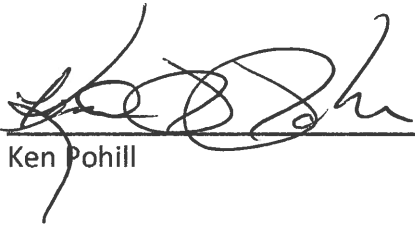
November 2<sup>nd</sup>, 2020

Jefferson County, West Virginia  
Department of Engineering, Planning and Zoning  
Office of Planning and Zoning  
116 E. Washington Street, 2<sup>nd</sup> Floor, P.O. Box 716  
Charles Town, WV 25414

Dear Alexandra Beaulieu,

We support and give consent for our neighbors, James and Deirdre Raduns, to add a 12' x 20' shed to the back corner of their lot. We understand that their proposal comes with a small zoning variance and have no objections.

Sincerely,  
Ken and Denise Pohill  
Property owners of 657 New Meadow Drive Kearneysville, WV 25430



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Ken Pohill

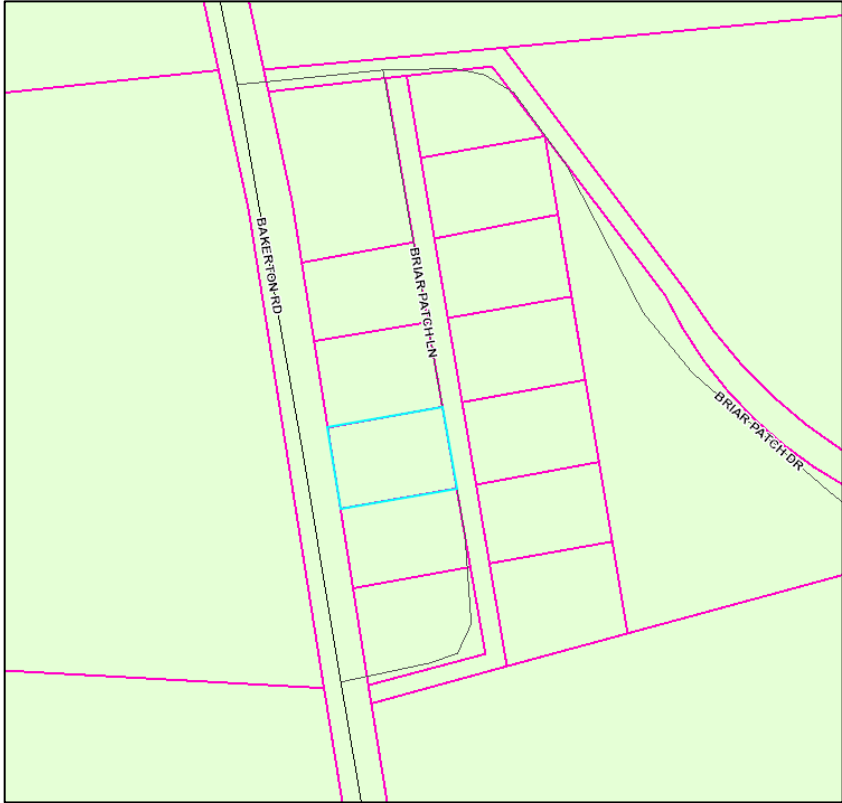


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Denise Pohill

Staff Report  
 Jefferson County Board of Zoning Appeals  
 December 10, 2020  
**Brown Variance Request (#20-39-ZV)**

Item #3: Variance from Section 9.7 to reduce the front setback from 20' to 16' and the rear setback from 12' to 7' for a 16' x 18' addition to the existing house.

Applicant:	Scott and Margie Brown
Owner:	Same
Developer:	N/A
Consultant:	Dana Shorb, Contractor
Location:	Briar Patch Subdivision, Lot 6, 45 Briar Patch Lane, Harpers Ferry, WV
Parcel Information and Zoning District:	<p>Parcel ID: 04000200260000; Size: 4,816 sf; Zoning District: Rural</p>  <p style="text-align: center;">Zoning Map Designation:  <i>North, South, East and West: Rural</i></p>
History:	Briar Patch Subdivision (recorded 05/10/67 in Deed Book 287, Page 191)
Waivers/Variations:	None
Approved Activity:	Single Family Residence
Site Visit Conducted:	No

Staff Report  
Jefferson County Board of Zoning Appeals  
December 10, 2020  
**Brown Variance Request (#20-39-ZV)**

**Summary of Request and Purpose of Ordinance Requirements**

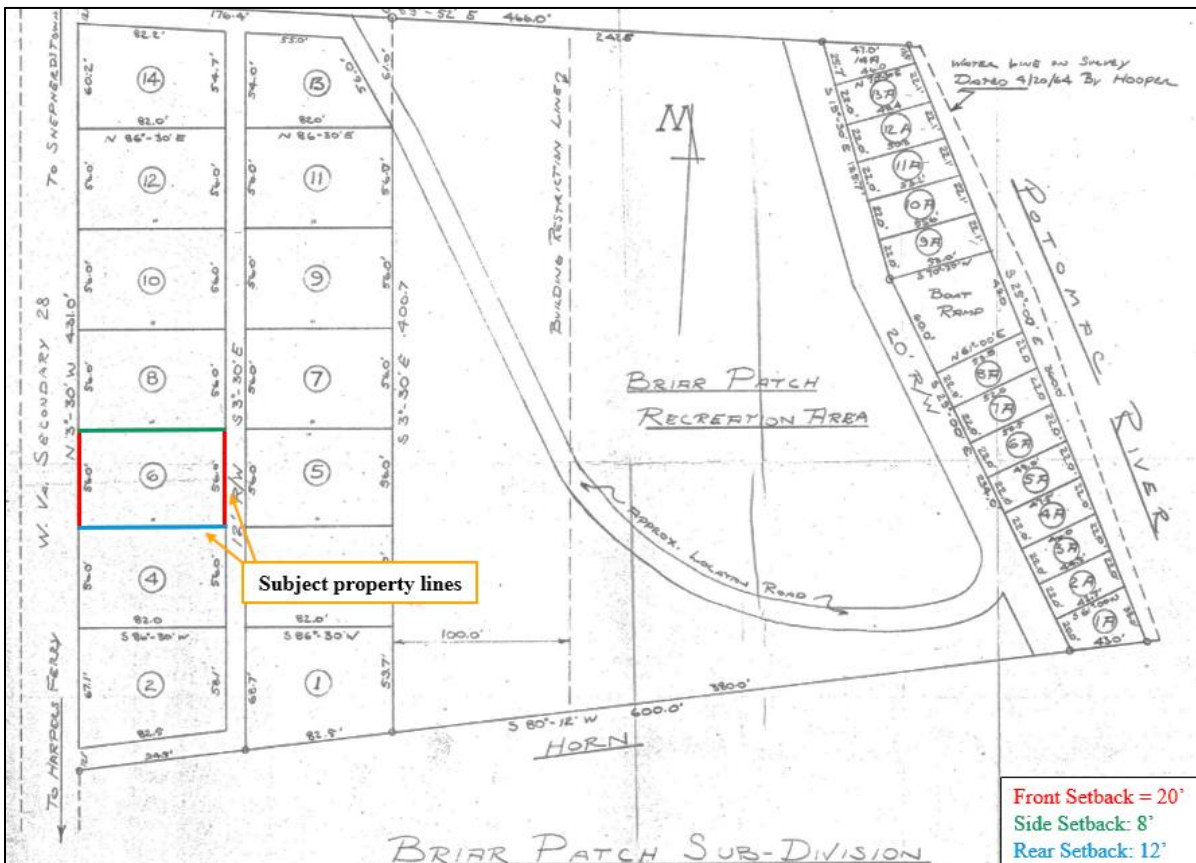
The applicant is seeking a variance from Section 9.7 to reduce the front setback from 20' to 16' and the rear setback from 12' to 7' for a 16' x 18' addition to the existing house.

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.

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 Evaluation of Request**

The subject parcel is Lot 6 of the Briar Patch Subdivision, which was recorded on April 10, 1967 in Deed Book 287, Page 191. Section 9.7 lists the required setbacks for lots within this subdivision and they are 20' Front; 8' Side; and 12' Rear. The subject lot has two fronts, one along Bakerton Road and the other along Briar Patch Lane, which is a platted 12' wide right-of-way.



The subject lot was created prior to the adoption of zoning (1988); therefore, it is considered a legal non-conforming lot as it does not meet the dimensional requirements of the current ordinance and the existing structures do not comply with the setback requirements.

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**Brown Variance Request (#20-39-ZV)**

The applicant has represented that the subject location is preferred based on the location of their well and the layout of their existing home. With regard to the rear setback, a reduction from 12' to 7' will still provide sufficient space to allow for maintenance. Regarding the front setback, the existing house is already 16' from the edge of the ROW; therefore, it is expected that the proposed addition would have no impact on the use of Briar Patch Lane, which is a platted 12' wide right-of-way. There are no plans to widen Briar Patch Lane.

Based on the limited buildable area and the location of the well, 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.

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**Section of Ordinance to be Considered:**

**Section 9.7 Other Exceptions<sup>3</sup>**

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

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

Residential Growth District<sup>23</sup>

Single Family Residences

Over 40,000 square feet --	25' front,	12' side	and	12' rear
30,000 sq. ft. to 40,000 sq. ft.--	20' front,	10' side	and	12' rear
Under 30,000 square feet --	20' front,	8' side	and	12' rear

Rural Agricultural and Industrial Commercial

Single Family Residences

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

For all lots under 40,000 square feet side and rear setbacks for residential accessory structures shall be 6'.



**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: 20-39-ZV  
 Staff Initials: gfh  
 Meeting Date: 12/10/20  
 Fees Paid (\$100 or \$150): 100-

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

Phone: (304) 728-3228

**Zoning Variance Request**

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

**Property Owner Information**

Name: SCOTT BROWN, MARGIE BROWN  
 Mailing Address: 45 BRIAR PATCH LANE HARPERS FERRY WVA  
 Phone Number: 240-557-9902 Email: margiebrown7@gmail.com

**Applicant Contact Information**

Name: DANA SHORB  
 Mailing Address: 8324 HAWKINS CREAMERY RD GAITHERSBURG MD 20882  
 Phone Number: 301-412-9178 Email: mrdanashorb@aol.com

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

Name: N/A  
 Mailing Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**Physical Property Details**

Physical Address: 45 BRIAR PATCH LN  
 City: HARPERS FERRY State: WVA Zip Code: 25425  
 Tax District: HARPERS FERRY Map No: 2 Parcel No: 26  
 Parcel Size: 6,670 SQ FT Deed Book: 1248 Page No: 339

**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 checked="" type="checkbox"/> -gfh	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>RECEIVED</b>			Highway Commercial (HC)	Light Industrial (LI)	Major Industrial (MI)	Planned Neighborhood Development (PND)	Office/Commercial Mixed-Use (OC)
<b>NOV 12 2020</b>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>JEFFERSON COUNTY PLANNING ZONING &amp; ENGINEERING</b>							

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

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

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

Briefly describe the nature of the variance request:

SEEKING TO ADD A MASTER ENSUITE TO EXISTING STRUCTURE WITH AN UNFINISHED GARAGE BELOW 1 STORY ADDITION

If this request is for a setback variance, please check one of the following: Front setback reduction from 20' to 16'; and,

Front Setback  Side Setback  Rear Setback  Reduction From 12' to 7'

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

I HAVE SPOKEN WITH THE NEIGHBORS. THE PROPOSED SETBACK REDUCTION WOULD HAVE PRECISELY THE SAME EFFECT ON PUBLIC HEALTH, SAFETY OR WELFARE AND THE RIGHTS OF ADJACENT PROPERTY OWNERS AS A NON-VARIAN NONE. THE NEIGHBORS ARE AWARE OF AND IN AGREEMENT TO THIS PROPOSAL

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 LOT IS EXTREMELY SMALL (6070 SQFT) AND THE PLACEMENT OF THE HOME AND THE LOCATION OF THE WELL PREVENTS US FROM BUILDING ON 3 OF THE 4 SIDES. IN BUILDING ON THE REAR "SIDE" WE WILL REQUIRE A VARIANCE

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

WE WISH TO INVITE MY ELDERLY, HANDICAPPED BROTHER TO LIVE WITH US AS HE IS LIVING ON SSI INCOME ONLY AND NEEDS ASSISTANCE. IN ORDER TO ACCOMODATE HIM WE NEED TO BUILD AN ADDITION

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

PRESUMING THE INTENT OF THE ZONING ORDINANCE IS TO SEPARATE RESIDENTIAL USE FROM COMMERCIAL USE AND TO PRESERVE THE ARCHITECTURAL INTEGRITY OF EXISTING OR PROPOSED BUILDINGS, THE GRANTING OF THIS VARIANCE WILL HAVE NO EFFECT ON EITHER CONDITION

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] 10/27/2020  
Signature of Property Owner Date

Marjorie Brown 10/27/2020  
Signature of Property Owner Date

Notification Requirements (to be completed by staff)

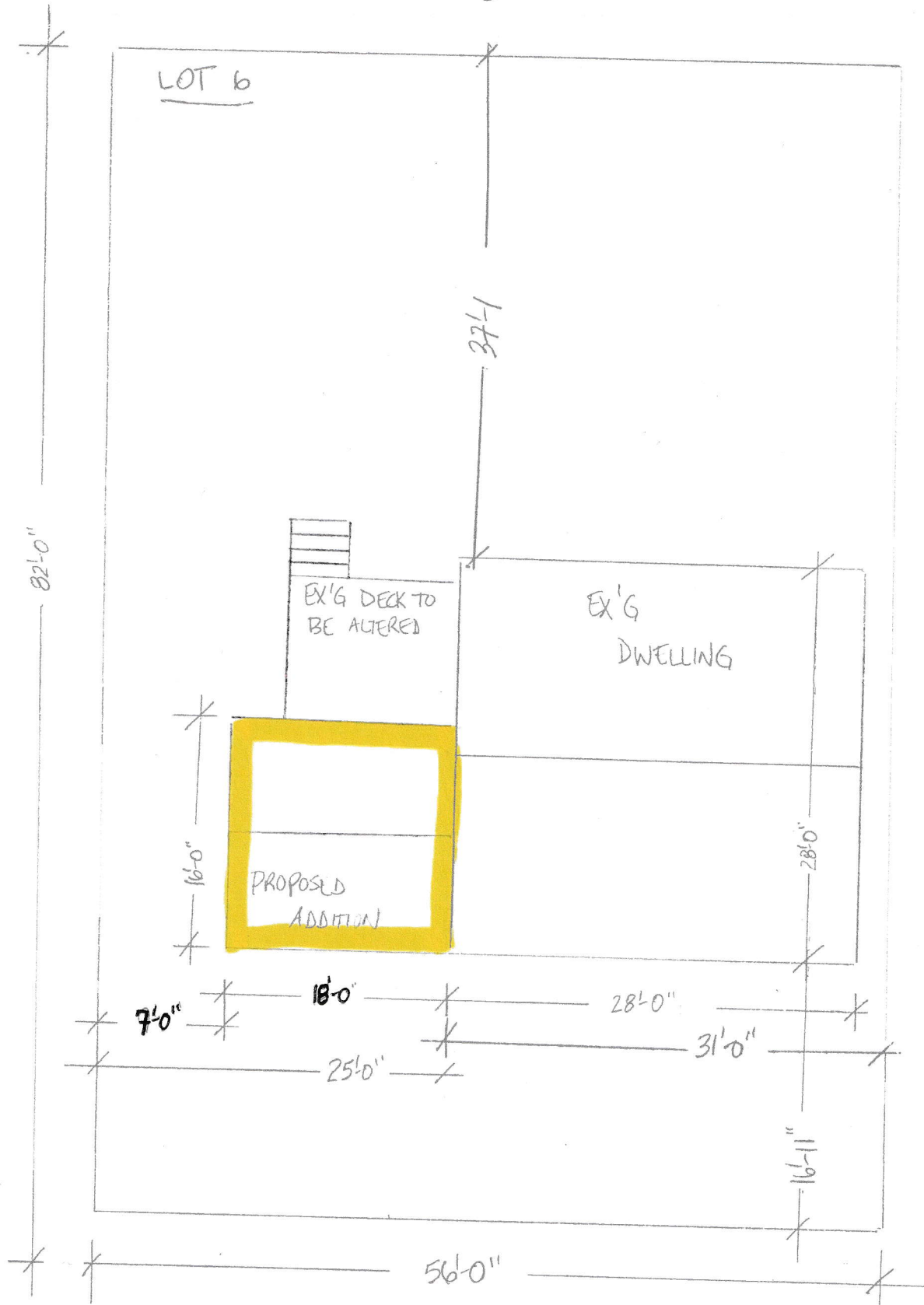
Notice of a public hearing for an appeal shall be advertised in a newspaper having general circulation in the County at least 15 days before the hearing. The subject property shall be posted conspicuously by a zoning notice no less than 28" x 22" in size, at least 15 days before the hearing (pursuant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

12/10/20  
Date of Public Hearing

11/25/20  
Advertising Date

11/25/20  
Placard Posting Date

BAKERTON RD



$3/32 = 1'$

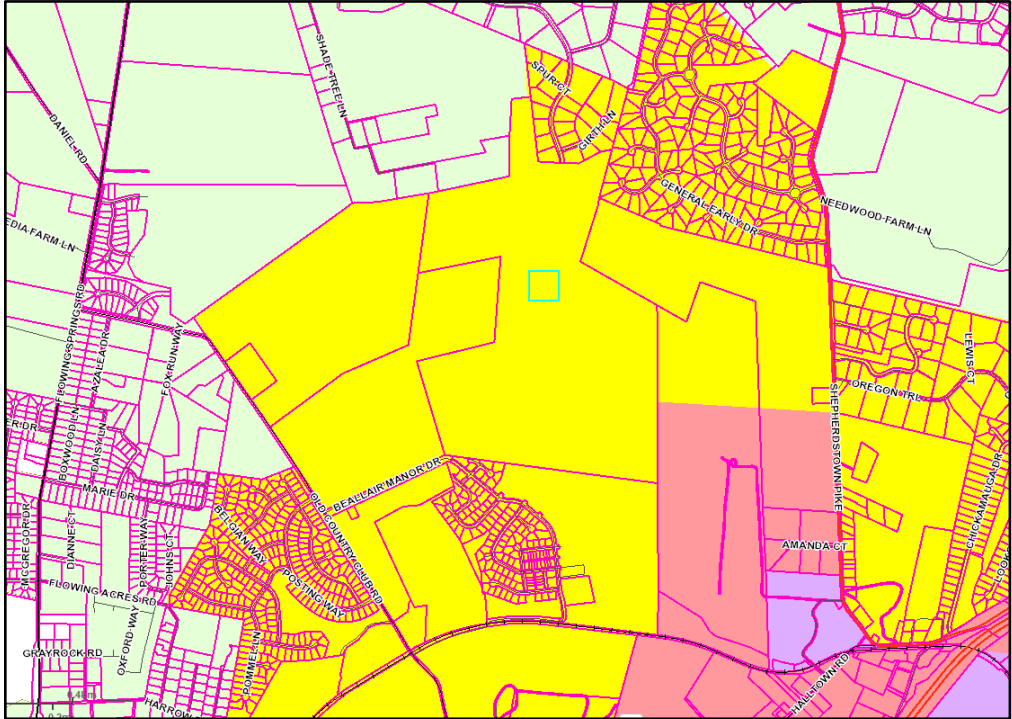
BRIAR PATCH LN

BROWN RESIDENCE: 45 BRIAR PATCH LN, HARPERS FERRY WVA



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**Potomac Edison Company - Variance Request (#20-40-ZV)**

Item #4 Variance from Section 4B.7.J.2.a to increase the height restriction from 100’ to 150’ for a proposed wireless telecommunications tower.

Applicant:	Potomac Edison Company
Owner:	Potomac Edison Company
Developer:	N/A
Consultant:	Melham Associates, PC / John Melham
Parcel Information and Zoning District:	<p style="text-align: center;">1320 Old Country Club Rd, Charles Town, WV          Parcel ID: 04001000030005; Size: 3.67 acres;          Zoning Designation: Residential Growth</p> 
History:	Substation
Waivers/Variations:	None
Proposed Activity:	Telecommunications Tower
Site Visit Conducted:	No.

**Summary of Request and Purpose of Ordinance Requirements**

The applicant is requesting a variance from Section 4B.7.J.2a to increase the height restriction from 100’ to 150’ for a wireless telecommunications facility in the Residential Growth Zoning District.

The intent of the height restriction is to encourage new facilities to be located in the Industrial-Commercial zone by allowing them to reach a height of 199’ in that zone. While new towers are restricted to 100’ in all other zones, the Ordinance provides an applicant the ability to increase the height of a new facility to 120’ if the facility is designed to use a silo as the supporting structure.

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**Staff Evaluation of Request**

The subject site is owned by Potomac Edison and contains an existing substation. The applicant has represented that the tower will be utilized only for Potomac Edison's internal data transmission and the tower will be regulated by the Federal Communications Commission (FCC).

The proposal includes construction of a 150' monopole facility in an area which is primarily residential and agricultural. The applicant has represented that the requested height increase would allow the telecommunications tower to function properly at this site.

Page 3 of this Staff Report includes an excerpt from the zoning map identifying nearby properties in the Industrial-Commercial zoning district (Exhibit A). On page 4 of the Staff report is a map identifying where existing telecommunications towers are located in the eastern side of the county (Exhibit B). Finally, on page 5 of the Staff report is an aerial map to provide an overview of the character of the area (Exhibit C).

The Zoning Ordinance has a Preferred Structures and Locations Policy (**Section 4B.7H**), which reads:

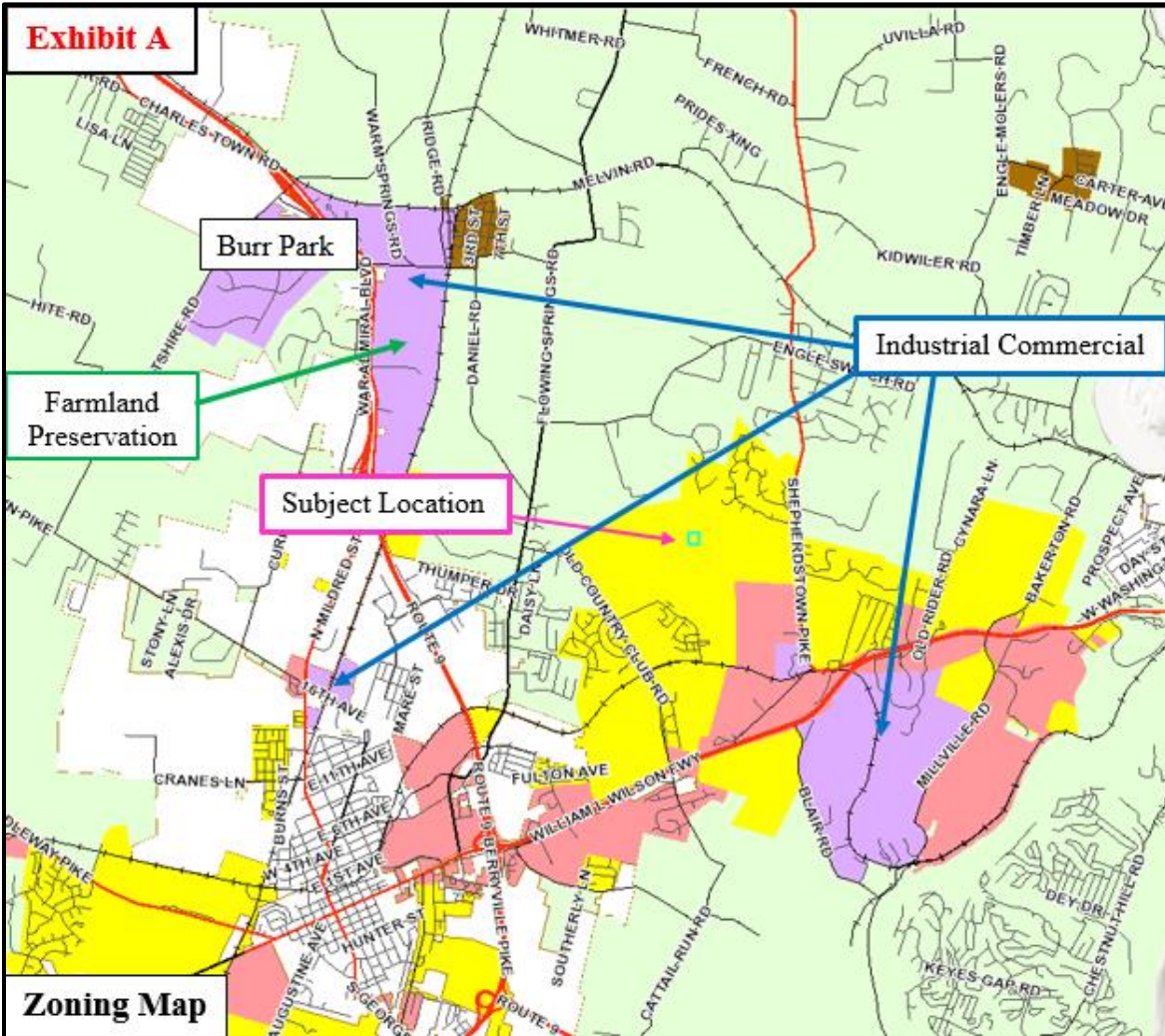
1. Co-location Encouraged. Prior to the approval of the construction of a new Tower, it is the policy of Jefferson County to encourage co-location of wireless facilities in the following locations:
  - a. Co-location of antennas on existing electric transmission towers.
  - b. Co-location and the use of existing or approved towers, buildings or alternative structures such as buildings, water towers, silos, church steeples, and utility poles more than fifty (50) feet in height within a one-quarter mile radius of a proposed Tower, where appropriate.
2. Preferred Support Structures. In light of Jefferson County's agricultural, and increasingly residential character, it is the policy of Jefferson County that for Facilities located outside the Industrial-Commercial zoning district, support structures for antennas are desired in the following descending order of preference:
  - a. Silos
  - b. Other Alternative Structures
  - c. Monopoles
  - d. Lattice Towers
3. Preferred Locations. For new Towers, it is the policy of Jefferson County to encourage use of the following facilities or locations, in descending order of priority:



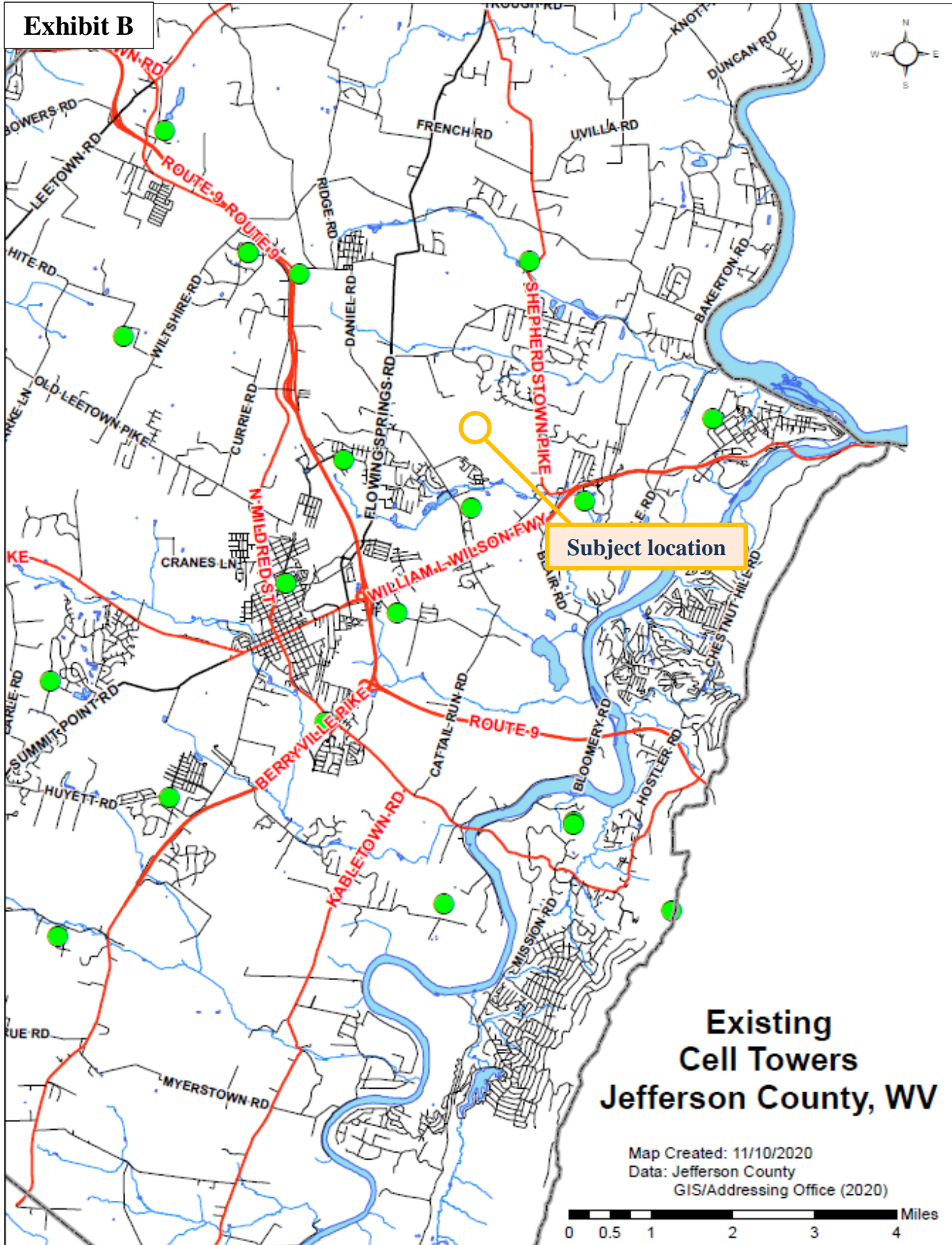
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**Potomac Edison Company - Variance Request (#20-40-ZV)**

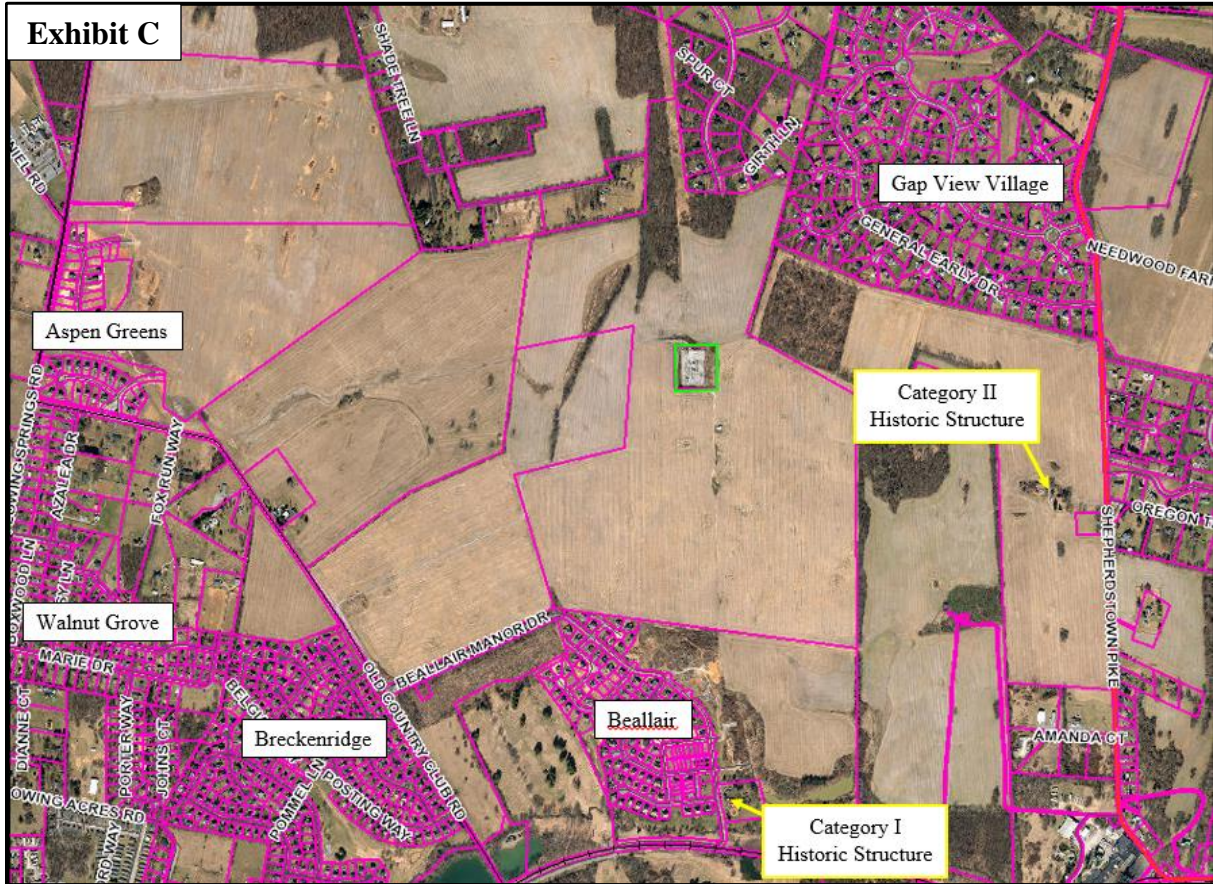
- a. The Industrial-Commercial District
- b. Non-residential areas screened by existing vegetation and located outside of the Industrial-Commercial District.



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The subject variance is the first step in the process for the proposed telecommunications tower. Following the variance, the applicant will be required to submit a Concept Plan, which is subject to a Public Hearing before the Planning Commission, and then a Site Plan. As part of the approval process, the applicant will be required to submit propagation maps demonstrating a technical need for the proposed tower, with a justification for the height of the antennas on the structure.

The Concept Plan requires that a balloon test be conducted (Sec. 4B.7.B2.k), to simulate the maximum height of the proposed tower. The applicant conducted a balloon test for the requested height of 150' on November 7, 2020 in order to provide a visual aid to the Board for consideration as part of the subject request.

The aerial below reflects the fall radius for a 150' tower, which is required to be 110% of the tower height (Section 4B.7J.3a). The Ordinance allows for easements to be acquired on adjacent properties to meet the fall zone requirement and the applicant is working to obtain approval from B C Properties to obtain an easement to accommodate the required fall radius. Legal documents would be required to be in place at the time the Concept Plan is submitted.

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Fencing and buffering will be considered by the Planning Commission during the Concept Plan phase. Generally, fencing and buffers provide a visual barrier from the ground equipment, such as generators. The Planning Commission may or may not require fencing or buffers.

**Conditions of Approval**

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

1. No conditions of approval were identified.

**SECTION OF ORDINANCE TO BE CONSIDERED:**

**Section 4B.7 Wireless Telecommunication Towers**

J. Design Criteria

Wireless Telecommunication Towers shall comply with the following design criteria:

2. Height Restrictions
  - a. Towers in the Industrial-Commercial zoning district shall not exceed 199 feet. **Towers in all other zoning districts shall not exceed 100 feet.** If a silo is used for a support structure for antennas, the height of the silo shall not exceed 120 feet.
  - b. Antennas may extend up to twenty (20) feet above the height of existing electric transmission towers if such height extensions are preferable to placement of a new Tower.

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**Section 4B.7 Wireless Telecommunication Towers<sup>35</sup>**

Wireless Telecommunication Towers (hereafter “Tower” or “Towers”) are permitted in all zoning districts subject to the provisions of this section. The provisions of this section apply to an application for a new Tower, as well as for a major modification to an existing Facility or Support Structure that results in a substantial change to the facility or structure, including but not limited to a height extension of more than twenty (20) feet or ten percent (10%) of the current height of a facility or structure, whichever is greater, and/or replacement of the structure.

This section is not applicable to co-location of a new antenna array on an existing structure.

**A. Site Plan Required**

A minor site plan shall be required for all new Towers, as well as for Major Modifications to an existing Facility or Support Structure resulting in a substantial change to the Facility or Structure. In addition to the site plan review requirements of the Subdivision and Land Development Regulations, the site plan shall include all elements of a Concept Plan as established in Subsection B, and shall address conditions established by the Planning Commission in its review of the Concept Plan.

**B. Concept Plan Submittal and Public Hearing Required**

In addition to the requirements for a minor site plan, a proposed Tower shall require the submittal of a Concept Plan, subject to the following requirements:

1. Required elements for a Wireless Telecommunications Tower Concept Plan shall be the same as for a site plan as established in the Subdivision and Land Development Regulations, Appendix A, Section 1.3A, with the exception of Subsections 1.3A.20-22, 24-29, 31-35.
2. The following additional elements must be submitted:
  - a. Outside dimensions, use, and setbacks of all existing and proposed buildings, structures, towers, antennas, utility lines, driveways, and parking areas.
  - b. Height of the proposed tower measured from ground level at the center of the proposed structure, and height comparison to any nearby buildings or trees, or other applicable structures and natural landforms part of the site’s background and foreground landscape.
  - c. Elevations and Cross-Section: Display topography with all proposed facilities including tower, equipment shelter and existing buildings.
  - d. Number, size and location of proposed and existing antennas; number of co-locations possible.
  - e. Method of camouflage (if any).
  - f. Locations of known historic structures.
  - g. A description of the anticipated construction and installation schedule.
  - h. Documentation verifying compliance with applicable Federal Communications Commission (FCC) standards and requirements to provide the proposed services.
  - i. Narrative addressing the design criteria of this section.
  - j. Dates, address list, and notice for Balloon Test.
  - k. Balloon Test exhibits as required in Subsection G of this Section.
  - l. Propagation maps as required in Subsection F of this Section.
  - m. Any other relevant information.
  - n. Additional application requirements of Subsection H of this Section.

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3. Submittal and review of a Concept Plan shall follow the review process and timeline established in Section 24.119 – 24.122 of the Subdivision and Land Development Regulations, with the following exceptions:
  - a. The application shall be exempt from Section 24.120A, Agency Reviews, and Section 24.120D, WVDOH, except as otherwise provided in this Subsection.
  - b. Following Staff’s determination of the sufficiency of a Concept Plan application:
    - i. Staff shall notify the Jefferson County Historic Landmarks Commission of an application filing.
    - ii. The Applicant shall provide a copy of the completed Concept Plan application to the Appalachian Trail Conservancy and the National Park Service, if required by the Cultural and Historic Sites Review standards of this Section.
  - c. The Concept Plan shall be reviewed at a public hearing conducted at a scheduled Planning Commission meeting. The scope of this public hearing shall include a demonstration of need as required under this Article, neighborhood compatibility, impact on cultural and historic sites, visual mitigation, the submittal and design criteria of this Article, and the compatibility of the facility proposal with the Comprehensive Plan, as well as any relevant information presented by any person that addresses the purpose and intent of this Article. The Planning Commission shall review the proposed Tower for compliance with the standards in this Article and, if applicable, provide conditions relevant to the scope of the public hearing and/or unique characteristics of the proposed development site, to be addressed in Staff’s approval of the site plan.
  - d. Before Staff may approve a site plan for a Tower, the Planning Commission must find, by a majority vote, that the Concept Plan application complies with this Article, and that the application is consistent with the Comprehensive Plan.

C. Retention of Consultants

Staff may elect to retain outside consultants or professional services to review a Concept Plan or site plan application for a Tower and to make recommendations on relevant issues including, but not limited to, verification of the applicant’s compliance with the provisions of this Article, analysis of alternatives, conditions of approval, and compliance with State and Federal rules and regulations at the applicant’s expense. Fees charged to the applicant shall not exceed the actual cost of services rendered.

D. Applicant’s Burden of Proof

The applicant for a site plan for any Tower bears the burden of demonstrating by substantial evidence in a written record that a *bona fide* need exists for the proposed structure at its proposed height and location-as required in Subsection F, “Demonstration of Need”, and that it has met all submittal and design criteria in this Article.

E. Proof of Eligibility

Speculative Towers are prohibited. Before an application for a Tower can be processed, a copy of the applicant’s FCC license must accompany its application. If the applicant is not an FCC licensee, the applicant must demonstrate that it has binding commitments from one or more FCC licensees to utilize the Tower within six (6) months of issuance of a certificate of occupancy for the Tower. Such demonstration shall include submittal of an affidavit by the FCC licensee(s), and a copy of each wireless provider’s FCC license. If such FCC licenses have been provided to Staff in conjunction with previous tower applications, the applicant may certify that such licenses remain in full force and effect.

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F. Demonstration of Need

As part of its application submission for a Concept Plan and for a site plan the applicant shall be required to submit propagation maps demonstrating a technical need for its proposed Tower and justifying the height of its antennas on the structure. One propagation map shall depict existing coverage without the proposed site and another depicting coverage with the proposed site. Such maps shall identify all adjacent sites whether existing, approved or proposed, and each map shall be accompanied by an engineer's affidavit attesting to the parameters or variables used to create the map.

Such propagation studies shall be submitted in both hard copy and in electronic format to facilitate information sharing, inclusion on the county's web site and to otherwise maximize public awareness.

G. Balloon Test

1. An applicant shall conduct a balloon or crane test to simulate the maximum height of the proposed Tower. Following the test, the applicant shall submit color photo simulations showing the proposed structure as it would appear viewed from the closest residential property or properties and from adjacent roadways. Photographs should be taken from appropriate locations on abutting properties, along each publicly used road from which the balloon is visible, and from up to five significant structures or locations identified by Staff. A map shall be supplied identifying the location of each photo. Before and after photo exhibits will be presented.
2. Notice of the dates and times of such tests shall be mailed to all property owners within a one-quarter mile (1320 feet radius) from the proposed location, in addition to the Historic Landmarks Commission at least ten (10) days prior to such tests. The applicant shall utilize address and owner information on file at the Jefferson County Assessor's Office. Such notices shall designate a primary date and an alternate date in case of inclement weather. Notices shall state that there is an application to the Planning Commission for a Wireless Telecommunication Tower on the property and provide the file number. Staff shall review and approve the sufficiency of the notice and the list of addresses prior to mailing. An affidavit of mailing accompanied by a list of recipients and addresses shall be included in the application file.
3. Such notice shall also be published in the legal advertisements section of a newspaper of general circulation in Jefferson County at least ten (10) days prior to such tests. Such notices shall designate a primary date and an alternate date in case of inclement weather. The newspaper's affidavit of publication shall be submitted as part of the application file.
4. In the event the applicant seeks to increase the height of the proposed Tower, or move its location more than one hundred (100) feet laterally, from that stated in its original notices, additional notice shall be required to be given consistent with the above requirements.

H. Preferred Structures and Locations Policy

1. Co-location Encouraged. Prior to the approval of the construction of a new Tower, it is the policy of Jefferson County to encourage co-location of wireless facilities in the following locations:
  - a. Co-location of antennas on existing electric transmission towers.

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- b. Co-location and the use of existing or approved towers, buildings or alternative structures such as buildings, water towers, silos, church steeples, and utility poles more than fifty (50) feet in height within a one-quarter mile radius of a proposed Tower, where appropriate.
2. Preferred Support Structures. In light of Jefferson County's agricultural, and increasingly residential character, it is the policy of Jefferson County that for Facilities located outside the Industrial-Commercial zoning district, support structures for antennas are desired in the following descending order of preference:
  - a. Silos
  - b. Other Alternative Structures
  - c. Monopoles
  - d. Lattice Towers
3. Preferred Locations. For new Towers, it is the policy of Jefferson County to encourage use of the following facilities or locations, in descending order of priority:
  - a. The Industrial - Commercial District
  - b. Non-residential areas screened by existing vegetation and located outside of the Industrial-Commercial District
4. Application Requirements. In furtherance of the Preferred Structures and Locations Policy in this Article, the following provisions shall apply to an application for a site plan for a Tower:
  - a. The application must demonstrate that the proposed Tower is designed structurally, electrically, mechanically and in all other respects to accommodate additional wireless users unless the applicant demonstrates that structure height, topography, or other factors render this requirement unfeasible. An application must include an affidavit from the tower owner affirming that, subject to exceptions for structure height, topography, or other factors which make co-location unfeasible, the Tower is available for co-location.
  - b. A site plan for a Tower shall not be approved if an electric transmission tower with capacity of 230 kV or less is located above, or within twenty-five (25) feet below, the ground elevation of, and within a one quarter mile radius laterally, of a proposed Tower, unless the applicant can demonstrate that:
    - i. Sufficient easements or other interests in real property cannot be obtained to accommodate the Facility on the electric transmission tower;
    - ii. The electric utility owning the electric transmission tower is unwilling to allow its use for wireless facilities;
    - iii. Reasonable terms, rates, or conditions cannot be negotiated with the electric utility;
    - iv. The location of the Tower will not allow the applicant to meet coverage or capacity requirements; or
    - v. Other unforeseen reasons make it infeasible to locate the planned telecommunications equipment upon existing or approved towers.
  - c. Where suitable electric transmission towers are not available for co-location of antennas, a site plan for a Tower located outside the Industrial-Commercial zoning district shall not be approved unless the applicant demonstrates that the equipment planned for the proposed Tower cannot be accommodated on existing or approved towers, buildings,

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**Potomac Edison Company - Variance Request (#20-40-ZV)**

silos or other alternative structures more than fifty (50) feet in height within a one-quarter mile radius of the proposed Tower due to one or more of the following reasons:

- i. The planned equipment would exceed the structural capacity of the existing or approved tower, building or alternative structures, as documented by a qualified and licensed professional engineer, and the existing or approved tower, building or structure cannot be reinforced modified or replaced to accommodate planned or functionally equivalent equipment at a reasonable cost;
  - ii. Existing and approved towers, buildings or other structures within the search radius, or combinations thereof, cannot accommodate the planned equipment at a height necessary to function reasonably, as documented by a qualified and licensed professional engineer;
  - iii. Reasonable terms, rates, or conditions cannot be negotiated with the owner of the structure and/or property;
  - iv. The location of the structure will not allow the applicant to meet coverage or capacity requirements; or
  - v. Other unforeseen reasons make it infeasible to locate the planned telecommunications equipment upon existing or approved towers, buildings or alternative structures.
- d. Antennas associated with an application for a Facility may not be co-located on a tower or other support structure developed as an Exempt Facility pursuant to this Article for the use of an amateur radio operator.

**I. Cultural and Historic Sites Review**

1. In addition to the notification requirements of this Section, an application for a Tower shall comply with the following:
  - a. An application for a proposed Tower within the Harpers Ferry Overlay District shall be provided, by the applicant, to the National Park Service for review and comment, and the applicant will provide Staff an affidavit certifying delivery.
  - b. An application for a proposed Tower located within one mile of the Appalachian Trail shall be provided, by the applicant, to the Appalachian Trail Conservancy and the National Park Service for review and comment, and the applicant will provide Staff an affidavit certifying delivery.

**J. Design Criteria**

Wireless Telecommunication Towers shall comply with the following design criteria:

**1. Antenna Mounting Preferences**

Antennas associated with a Tower shall, where practical, be mounted so as to present the smallest possible silhouette, profile or cross-section. Preferred antenna mounting scenarios are, in order of descending preference:

- a. Antennas within a cylindrical radome matching the diameter of a monopole.
- b. Antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the Tower.
- c. Antennas mounted as an array arranged around a platform extending from the monopole.

Staff Report  
Jefferson County Board of Zoning Appeals  
December 10, 2020

**Potomac Edison Company - Variance Request (#20-40-ZV)**

2. Height Restrictions

- a. Towers in the Industrial-Commercial zoning district shall not exceed 199 feet. Towers in all other zoning districts shall not exceed 100 feet. If a silo is used for a support structure for antennas, the height of the silo shall not exceed 120 feet.
- b. Antennas may extend up to twenty (20) feet above the height of existing electric transmission towers if such height extensions are preferable to placement of a new Tower.

3. Fall Zone

- a. With the exception of silos, Towers shall be set back from all property lines a distance equal to 110% of tower height measured from the base of the structure to its highest point. Additional easements may be acquired on adjacent properties to meet the fall zone requirement.
- b. No residential dwellings may be located in the fall zone on either the primary parcel or in any easement area on adjacent parcels.

4. Signage

Signage at any ground-based portion of a Facility site shall conform to FCC and FAA standards. No commercial signage is permitted.

5. Lighting & Marking

Towers shall not be lighted or marked unless required by the FCC or by the FAA.

6. Electrical Supply

Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages or for testing and maintenance purposes. Testing and maintenance of a generator shall only take place on weekdays between the hours of 8:00 a.m. and 7:00 p.m.

7. Fencing

Towers, equipment enclosures and other improvements shall be enclosed within a security fence consisting of chain link fencing at least eight (8) feet in height. The Planning Commission may require as a condition of approval that the fencing be screened by a landscaped buffer of at least 10 feet in width planted along the entire exterior perimeter of the fence. Such a buffer must contain at least one row of native vegetation and form a continuous screen at least 6 feet in height at planting. All buffer yards shall be maintained by the property owner. It will be the responsibility of the property owner to maintain the buffer yard and to replace any trees or shrubs that die.

The Planning Commission may waive or modify the fencing requirement upon a determination that doing so will enhance the overall appearance of the facility without any compromise in safety or security.

8. Tower Color

Towers shall have a flat gray or galvanized finish unless the Planning Commission determines that another color scheme would be a preferable alternative to address visual mitigation and such scheme is consistent with FCC and FAA standards for antenna structure marking.



**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: 20-40-ZV  
 Staff Initials: jth  
 Meeting Date: 12/10/20  
 Fees Paid (\$100 or \$150): 100.00

Email: [zoning@jeffersoncountywv.org](mailto: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: Potomac Edison Company  
 Mailing Address: 10435 Downsville Pike, Hagerstown, MD 21740  
 Phone Number: see applicant below Email: see applicant below

**Applicant Contact Information**

Name: Richard Marquiss, First Energy  
 Mailing Address: 10802 Bower Ave, Williamsport, MD, Mailstop WV-WPSC  
 Phone Number: (301) 331-7026 Email: rmarqui@firstenergycorp.com

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

Name: Melham Associates, PC  
 Mailing Address: 2247 N. Front Street, Harrisburg, PA 17110  
 Phone Number: (717) 238-5000 Email: jmelham@melham.com

**Physical Property Details**

Physical Address: 1320 Old Country Club Road  
 City: Charlestown State: MD Zip Code: 21740  
 Tax District: Harpers Ferry (04) Map No: 10 Parcel No: 04001000030005  
 Parcel Size: 3.67 acres Deed Book: 821 Page No: 484

**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 via email 11/16/2020 - 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: 4B.7J2.a

**Briefly describe the nature of the variance request:**

Telecommunication tower is a permitted use up to 100', but 150' is required to function properly at this site, necessitating a variance. Adjacent land surrounding substation is open and unoccupied.

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

Front Setback  Side Setback  Rear Setback  Reduction From \_\_\_\_\_ to \_\_\_\_\_

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

The property is surrounded by hundreds of acres of farmland. Although in time this will be developed, the tower will not pose any health hazard. Any future development will want to provide a much wider buffer from substation.

**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 variance request of 50' additional height is due to topographical constraints imposed on radio transmissions which are necessary to operate this area of the electrical energy grid.

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

The existing substation operations, and interconnected data transmissions between other towers, require updating with integral new equipment to maintain efficiency and reliability for the consuming public.

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

Granting the variance to allow this telecommunication tower to function is in conformance with the Jefferson County Zoning Ordinance per Article 1, Section 1., and the specific purposes enumerated therein, including A,B,C, F,G, and I.

**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.

Richard A. Hys  
Signature of Property Owner

November 13, 2020  
Date

\_\_\_\_\_  
Signature of Property Owner Date

**Notification Requirements (to be completed by staff)**

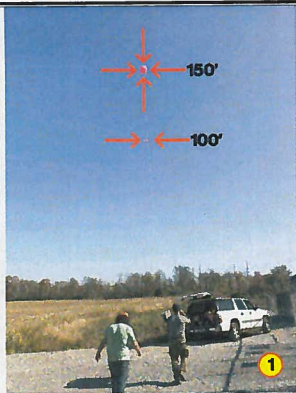
Notice of a public hearing for an appeal shall be advertised in a newspaper having general circulation in the County at least 15 days before the hearing. The subject property shall be posted conspicuously by a zoning notice no less than 28" x 22" in size, at least 15 days before the hearing (pursuant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

12/10/2020  
Date of Public Hearing

11/25/2020  
Advertising Date

11/25/2020  
Placard Posting Date





View of balloon from north side of substation



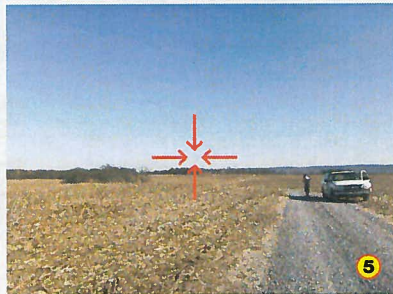
View west near balloon tether at northeast corner of substation, looking along northern fence



View south near balloon tether at northeast corner of substation, looking along eastern fence



View from drive at 1/4 mile radius, 1320' from balloon



View from drive at 1/2 mile radius, 2640' from balloon



View north from drive at 1/2 mile radius, 2640' from balloon



View from northwest bend on Old Country Club road (route 24), 4700' from balloon



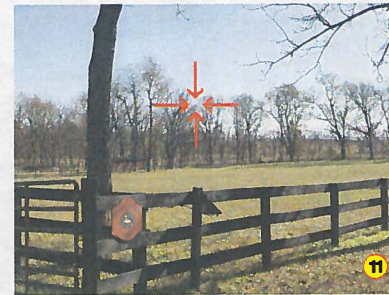
View from Aspen Greens, approximately 1.0 mile from balloon [BEYOND PLAN AREA]



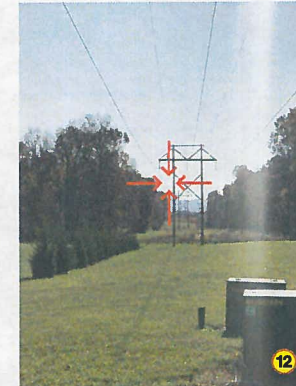
View from Aspen Greens along Flowing Spring Road (Route 17), approximately 1.1 mile from balloon [BEYOND PLAN AREA]



View from end of drive at Driswood Elementary School, 4300' from balloon [BEYOND PLAN AREA]



View from Shade Tree Lane, 2000' from balloon



View from Breckenridge Way looking south through power line easement, 3600' from balloon [BEYOND PLAN AREA]

architecture  
engineering  
landscape architecture  
planning  
surveying

**melham**  
ASSOCIATES, PC

2247 North Front Street  
Harrisburg, PA 17110

tel 717 238 6000

fax 717 238 2800

www.melham.com



Robert J. Heath PE, LLC

1118 WALNUT LANE  
LANSDALE, PA 19046  
301-261-6631

CLIENT

The Potomac Edison  
Company

50428 DOWNHILL PIKE  
HAUGERSTOWN, MD 21748

PROJECT

Sleepy Hollow  
Tower Site

1200 OLD COUNTRY CLUB ROAD  
CHARLES TOWN, WV 25414

PHASE

ZONING VARIANCE  
OFFICE OF PLANNING & ZONING  
JEFFERSON COUNTY, WV

ISSUES

PHOTOGRAPHS

© 2020 MELHAM ASSOCIATES PC

SCALE

NO SCALE

JOB #

10785

DATE

10/28/20

DATE

11/13/20

DATE

11/13/20

DATE

11/13/20

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11/13/20

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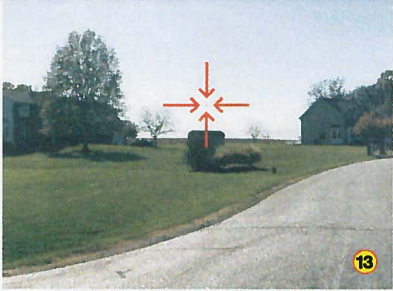
DATE

11/13/20

DATE

11/13/20





View from Girth Lane,  
2200' from balloon



View from Gap View Road and General Semmes Court,  
2700' from balloon



View from General Pender Drive,  
1600' from balloon



View from General Cobb Drive,  
1800' from balloon



View from General Lawton Court,  
2250' from balloon



View from Shepherdstown Pike at treeline,  
3800' from balloon



View from Clifford Court and Shepherdstown Pike,  
3900' from balloon



View from Beallair Manor & Lewis Washington Drive,  
3100' from balloon



View from southeast / southwest bend on Beallair Manor Drive,  
2900' from balloon



View from Posting Way / Old Country Club Road,  
4300' from balloon

architecture  
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surveying

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fax 717 236 2600

www.melham.com



Robert J. Heath PE, LLC

1118 WALNUT LANE  
LANESDALE, PA 19448  
281-252-8871

CLIENT

The Potomac Edison  
Company

10435 DOWNWELL ROSE  
HARRISBURG, MD 21748

PROJECT

Sleepy Hollow  
Tower Site

1330 OLD COUNTRY CLUB ROAD  
CHARLES TOWN, WV 25414

PHASE

ZONING VARIANCE  
OFFICE OF PLANNING & ZONING  
JEFFERSON COUNTY, WV

DRAWING

PHOTOGRAPHS

© 2020 MELHAM ASSOCIATES PC

SCALE

NO SCALE

JOB #

10785

DATE

11/13/20

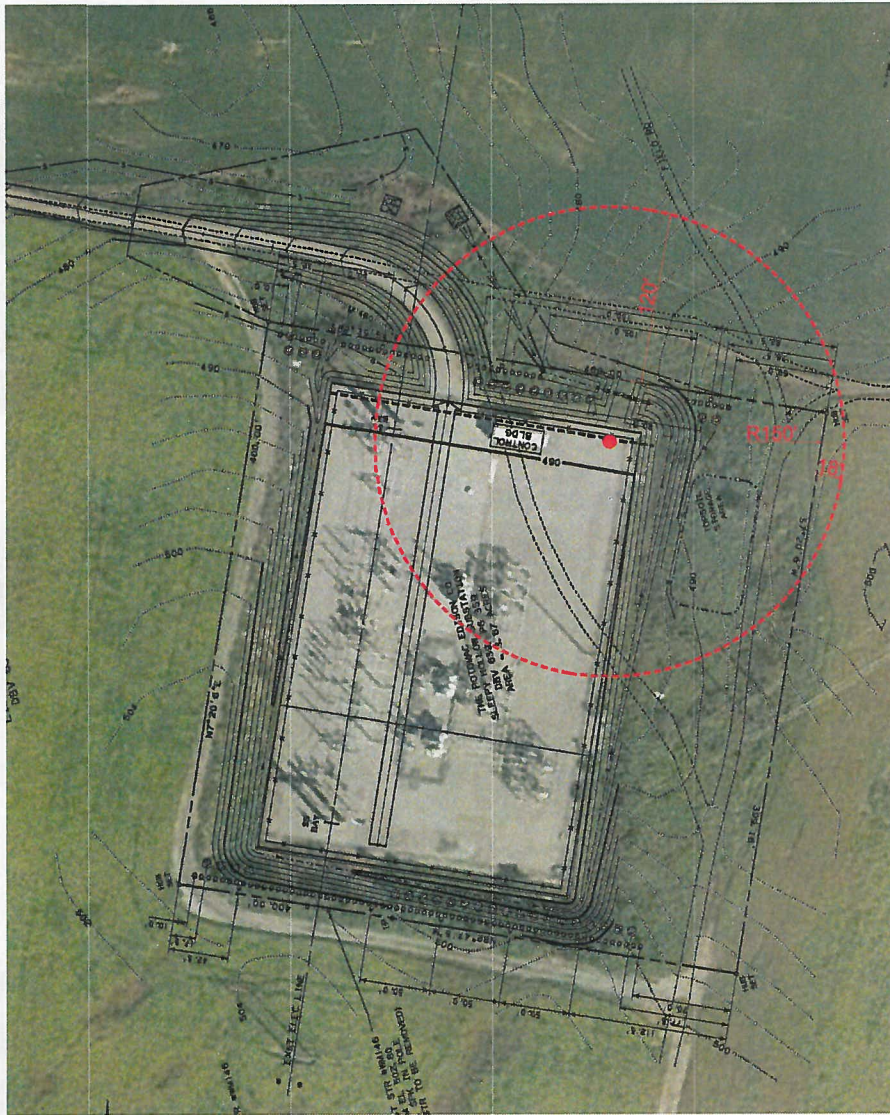
DATE

11/13/20

DATE

2 OF 2



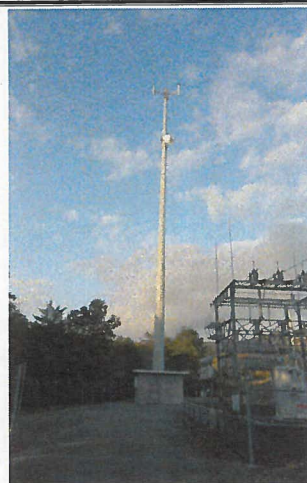


**SITE PLAN**  
 [ALLEGHENY POWER SYSTEM 12/7/93]  
 SCALE: 1" = 50'

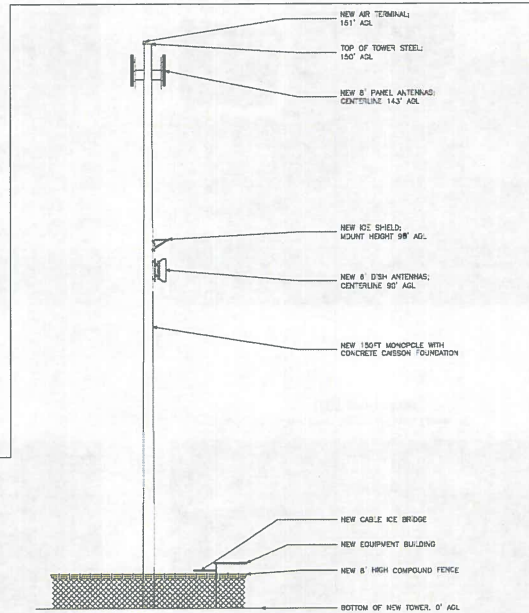


**TOWER ELEVATION VIEW**  
 SCALE 1" = 10'  
 (See 12 x 17 sheet)

**Note:**  
 All Proposed Antenna Support Structures and the New 150ft Monopole Tower Structure Are To Meet Industry Standards ASA/RFA/TIA 222-M and IBC2018- For Structural Integrity.



**TYPICAL MONOPOLE PHOTOGRAPH**  
 NO SCALE



architecture  
 engineering  
 landscape architecture  
 planning  
 surveying



2247 North Front Street  
 Harrisburg, PA 17110  
 tel 717 238 5000  
 fax 717 238 2800  
 www.melham.com



Robert J. Heath PE, LLC

1118 WALNUT LANE  
 LANCASTER, PA 17608  
 887-250-4831

**The Potomac Edison Company**

10428 DOWNTOWN PIKE  
 HAGERSTOWN, MD 21740

**Sleepy Hollow Tower Site**

1320 OLD COUNTRY CLUB ROAD  
 CHARLES TOWN, WV 25414

**ZONING VARIANCE**  
 OFFICE OF PLANNING & ZONING  
 SEPTEMBER COUNTY, WV

**TOWER DETAILS AND SITE PLAN**

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1" = 50'



11/12/20

1 OF 1



# Jefferson County, West Virginia

Department of Engineering, Planning, and Zoning

Office of Planning and Zoning

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

P.O. Box 716

Charles Town, WV 25414

Email: [zoning@jeffersoncountyvzw.org](mailto:zoning@jeffersoncountyvzw.org)

Phone: (304) 728-3228

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## Zoning Administrator's Report December 10, 2020 Board of Zoning Appeals Meeting

**Date of Memo: December 1, 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 @ 1:30 PM.
- 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 @ 1:45 PM.
- Greenway Engineering - Reorganization of the Subdivision Regulations and Zoning Ordinance: no update.

### 2) **Upcoming BZA meeting**

- The next regular meeting is scheduled for **January 28, 2021** (deadline for submission is Monday, January 4, 2021).



Jefferson County, West Virginia  
Department of Engineering, Planning and Zoning  
**Office of Planning and Zoning**  
116 E. Washington Street, 2<sup>nd</sup> Floor, P.O. Box 716  
Charles Town, West Virginia 25414  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)

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**December 2020**  
**Zoning Certificate Activity Report**

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File # 20-27-ZC  
Request: Personal Services – Nail Salon  
Property Owner: B33 Jefferson Crossing, LLC  
Applicant: Pure Nail Spa Attn: Vince Tram  
Parcel Info: 91 Saratoga Dr.; Suite D; Charles Town, WV 25414  
Parcel ID: 02000800240008; Size: 2.5 acres;  
Zoning District: Residential-Light Industrial-Commercial  
Date of Issuance: 11-05-2020

---

## **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.<sup>17, 21</sup>
- 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.<sup>17, 21, 23</sup>
- 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.<sup>17, 21</sup>
- 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.<sup>5, 17, 21</sup>
- 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: <sup>17, 21, 23</sup>
  - 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<sup>23, 32</sup>**

#### **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.<sup>2</sup>

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.<sup>32</sup>
  - b. The Board of Zoning Appeals shall consider requests for variances, seasonal use permits, and special exceptions from the terms of this Ordinance.<sup>32</sup>
  - c. The Board of Zoning Appeals shall have authority over the issuance or denial of a Conditional Use Permit.<sup>32</sup>

#### B. Planning Commission<sup>23</sup>

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 Commission<sup>23</sup>

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 Applications<sup>32</sup>**

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

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

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

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

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

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

#### **A. Filing an Appeal**

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

#### **B. Notification**

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

#### **C. Public Hearing**

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

#### **D. Continuance of Hearing**

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

## **Section 6.2 Variances<sup>32</sup>**

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

- 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.<sup>17, 21</sup>
- 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 Permit<sup>32</sup>**

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.<sup>2, 32</sup>

- 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