



**Jefferson County  
Board of Zoning Appeals  
Thursday, January 28, 2021 at 2:00 p.m.**

Members  
Jeffrey Bannon, Chair  
Tyler Quynn, Vice Chair  
Deirdre Catterton  
Matthew McKinney  
Leeds Corbin  
Mikala Shremshock, Alternate  
Danesia Chicchirichi, 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/87501490915>**

**Meeting ID: 875 0149 0915**

**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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**Election of Officers**

**Approval of Minutes: December 10, 2020**

**Public Hearing – Administer Oath**

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**ITEM #1 FILE #: 21-1-ZV**

**Request:** Variance from Section 5.4B of the Zoning Ordinance, as amended 10/04/99 to reduce the rear setback from 20' to 10' for a 26' x 30' accessory structure.

**Owner:** David Groom

**Applicant:** Same

**Parcel Info:** Quail Ridge Subdivision, Lot 112, 294 Sundance Ln, Charles Town, WV  
Parcel ID: 07002A01120000; Size: .55 acres; Zoning District: Rural

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**ITEM #2 FILE #: 21-2-ZV**

**Request:** Variance from Section 4.11.A. and Appendix B to utilize the 50' unscreened buffer option in lieu of a vegetative screened buffer.

**Owner:** Federal Group Inc

**Applicant:** P.J. Raco Consulting, LLC

**Parcel Info:** 233 Lowe Dr., Shepherdstown, WV

Parcel ID: 09000800100009; Size: 29.84 acres; Zoning District: Residential Growth

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**ITEM #3**      **FILE #: 21-3-ZV**

**Request:** Variance from Section 4.6 to reduce the distance requirement from 75' to 0'; Section 4.11.A to reduce the buffer requirement of 20' to 0'; and, Appendix B to reduce the building setback from 25' to 0' and access/parking lot setback from 10' to 0' along the interior property line of a proposed subdivision. The proposed subdivision will divide the existing hotel from the conference center.

**Owner:** Federal Group Inc

**Applicant:** P.J. Raco Consulting, LLC

**Parcel Info:** 233 Lowe Dr., Shepherdstown, WV

Parcel ID: 09000800100009; Size: 29.84 acres; 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 12-10-20).

**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: December 10, 2020**

1. Request for a CUP to operate River Chase Wedding Venue. Owner: Nancy Stevens. Applicant: Charles Stevens. File: 20-8-CUP.
2. Variance from Sec. 9.7. Owner: Deirdre Eychner-Raduns. File: 20-38-ZV.
3. Variance from Sec. 9.7. Owner: Scott and Margie Brown. File: 20-39-ZV.
4. Variance from Sec. 4B.7J.2.a. Owner: Potomac Edison Company. File: 20-40-ZV.

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

- 1 Meeting Date: December 10, 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; Leeds Corbin, Matt McKinney, and Mikala  
5 Shremshock, Alternate  
6 Board Members Absent: Tyler Quynn, Vice Chair and Deirdre Catterton (with notice)  
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. Corbin moved to call the meeting to order at 2:04 pm. Mr. Bannon called for a vote, which  
11 carried unanimously.

12 As two members of the Board were absent, Ms. Shremshock participated in the meeting as a voting  
13 member.

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

15 Mr. Corbin moved to approve the November 12, 2020 meeting minutes. Mr. Bannon requested the  
16 following edit:

17 1) Page 1, line 6, note that Ms. Catterton had given notice of her absence.

18 Mr. Corbin amended his motion to include the suggested edit. Mr. Bannon called for a vote, which  
19 carried unanimously.

20 **Public Oath**

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

22 Mr. Bannon rearranged the agenda so that the Board would hear Items 2, 3, and 4 prior to Item 1.

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

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

26 Owner: Deirdre Eychner-Raduns

27 Applicant: Same

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

30 Ms. Deirdre Raduns was present to address the Board. Ms. Beaulieu provided an overview of her  
31 staff report. Ms. Beulieu informed the Board that the applicant provided a letter of support from a  
32 neighboring property owner with her application.

33 Ms. Raduns explained the nature of her request to the Board.

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

36 Mr. Corbin moved to approve the requested variance with the condition that the applicant was bound  
37 by her testimony. Mr. Bannon called for a vote, which carried unanimously.

38 **ITEM #3 FILE #: 20-39-ZV**

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

1 Owner: Scott and Margie Brown

2 Applicant: Dana Shorb

3 Parcel Info: Briar Patch Subdivision, Lot 6 / 45 Briar Patch Lane, Harpers Ferry, WV

4 Parcel ID: 04000200260000; Size: 4,816 sf; Zoning District: Rural

5 Mr. Scott Brown was present to address the Board. Ms. Beaulieu provided an overview of her staff  
6 report.

7 Mr. Corbin inquired as to whether the property was served by a septic system or a sewer.

8 Ms. Beaulieu deferred to the applicant to confirm. Mr. Brown stated that the property was served  
9 by a shared community septic system. Mr. Greg Harlensky, neighboring property owner, affirmed  
10 Mr. Brown's response.

11 Mr. Brown explained the nature of his request to the Board.

12 Mr. Bannon opened the public hearing. There was no public comment. Mr. Bannon closed the  
13 public hearing.

14 Mr. Corbin inquired as to whether the Health Department had approved an additional bedroom for  
15 the existing septic. Ms. Beaulieu noted that the Health Department approval would be required  
16 when the building permit application is submitted.

17 Mr. McKinney moved to approve the requested variance. Mr. Bannon called for a vote, which  
18 carried unanimously.

19 **ITEM #4 FILE #: 20-40-ZV**

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

22 Owner: Potomac Edison Company

23 Applicant: John Melham, Melham Associates, PC

24 Parcel Info: 1320 Old Country Club Rd, Charles Town, WV

25 Parcel ID: 04001000030005; Size: 3.67 ac; Zoning District: Residential Growth

26 Mr. Luke Thomas with Jackson Kelly law firm, Richard Marquis with First Energy, John Melham  
27 with Melham Associates, and Robert Heath with Robert J. Heath were present to address the  
28 Board. Ms. Beaulieu provided an overview of her staff report, noting that applicant had represented  
29 that the tower would support Potomac Edison operations for internal use only. Ms. Beaulieu further  
30 stated that while essential utilities were exempt from the provisions of the Zoning Ordinance,  
31 telecommunications towers which are subject to FCC regulations are not exempt.

32 Mr. Thomas stated that the selected location was identified as the only location that would not  
33 interfere with the operations of the existing substation and explained that the height increase was  
34 necessary in order to perform the necessary functions to support Potomac Edison. Mr. Thomas  
35 further explained the nature of the request to the Board. Mr. Marquis, Mr. Heath, and Mr. Melham  
36 addressed questions by the Board.

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 requested variance with the condition that the applicants are  
40 bound by their testimony. Mr. Bannon called for a vote, which carried unanimously.

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

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

6 Owner:        Nancy Stevens

7 Applicant:    Charles Stevens, River Chase Wedding Venue

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

10 Mr. Charles Stevens was present to address the Board. Mr. Bannon noted that this item was a  
11 continuation of the public hearing from the November 12, 2020 meeting. Ms. Beaulieu did not  
12 repeat her staff report.

13 Mr. Bannon opened the public hearing. Ms. Denise Leith, Mr. Robert Commisso, and Mr. Bill  
14 Kanwisher, neighboring property owners, spoke in opposition to the request. The neighbors  
15 expressed concerns regarding the increased traffic on narrow roads and excessive noise.

16 Mr. Stevens spoke in rebuttal to the neighbors’ concerns, including those that were submitted in  
17 writing (included in the packet). Mr. Stevens acknowledged that there may be an increased risk of  
18 traffic concerns, but argued this data is unknown. Mr. Stevens informed the Board that he purchased  
19 a sound meter to ensure compliance with the noise restrictions. Mr. Steven noted that he filled in the  
20 sinkholes on his property and attempted to route the water runoff into an existing pond. Mr. Stevens  
21 also noted that he has a \$6 million dollar insurance policy for the event facility.

22 Mr. Bannon moved to go into deliberative session at 3:14 pm. Mr. Corbin seconded the motion.  
23 Mr. Bannon called for a vote, which carried unanimously.

24 Mr. Bannon moved to come out of deliberative session at 3:38 pm. Mr. Corbin seconded the  
25 motion. Mr. Bannon called for a vote, which carried unanimously.

26 Mr. McKinney moved to approve the requested conditional use permit with the condition that the  
27 applicant is bound by his testimony. Mr. Bannon moved to amend the motion to include three  
28 conditions: 1) that all music be limited to acoustic only with no amplification; 2) that the cars are  
29 limited to 50 cars; and, 3) that the events be limited to eight (8) events. Mr. Bannon called for a vote  
30 on the amendment, which failed two (2) in support and two (2) in opposition (Mr. McKinney and  
31 Ms. Shremshock). Mr. McKinney clarified his original motion to note that the event was limited to  
32 75 cars. Mr. Corbin also requested a friendly amendment to clarify that the events be limited to 15  
33 total events per year. Mr. McKinney agreed to the clarification. Mr. Bannon called for a vote of the  
34 original motion, including the clarifications, which carried three (3) in support and one (1) opposed  
35 (Mr. Bannon).

36 **Zoning Administrator’s Report**

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

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

41 Ms. Beaulieu stated that the next Board meeting would be on January 28, 2021.

1 With regard to the upcoming Election of Officers on the January agenda, Mr. Bannon announced  
2 that he was no longer interested in presiding over the meetings. Mr. Bannon also stated that he  
3 intends to resign from the Board prior to his term expiring once a replacement is available.

4 **Rules of Procedure** – discussion with possible action to amend the Rules of Procedure to create a  
5 process to allow for a summary approval by unanimous consent for variance applications where no  
6 one has filed written opposition and no one but the applicant appears to testify. Continued from  
7 11/12/2020 meeting.

8 Mr. Cochran stated that he agreed with Mr. Bannon’s proposal provided the four criteria are  
9 addressed as part of the motion. Mr. Bannon referred to the proposed motion sheet that would  
10 address the criteria. Mr. Bannon clarified that the summary approval would be contingent upon  
11 unanimous consent of the Board. The Board was amiable to the proposal. Mr. Bannon stated he  
12 would work with Staff to complete the proposed motion sheet and would bring the draft to the  
13 January meeting.

#### 14 **Legal Update**

15 a) Possible executive session on the following pending lawsuits. Mr. Cochran noted that there  
16 was a pending lawsuit regarding the recently approved Solar Energy Facilities (ZTA19-03)  
17 text amendment.

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

#### 19 **Meeting: October 22, 2020**

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

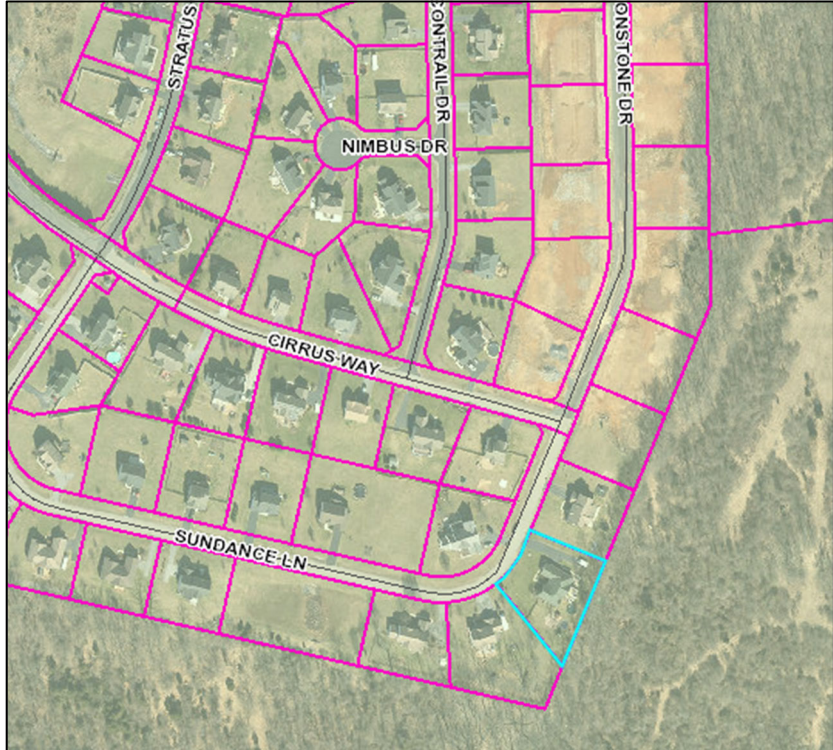
21 2. Variance from Section 4.6B.2. Owner: HDW, LLC. File: 20-33-ZV.

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

23 Mr. Corbin moved to adjourn the meeting at 3:52 pm. Mr. Bannon called for a vote, which carried  
24 unanimously.

Staff Report  
 Jefferson County Board of Zoning Appeals  
 January 28, 2021  
**Groom Variance Request (#21-1-ZV)**

Item #1 Variance from Section 5.4B of the Zoning Ordinance, as amended 10/04/99 to reduce the rear setback from 20' to 10' for a 26' x 30' accessory structure.

Applicant:	David Groom
Owner:	Same
Developer:	N/A
Consultant:	N/A
Location:	Quail Ridge Subdivision, Lot 112, 294 Sundance Ln, Charles Town, WV
Parcel Information and Zoning District:	<p style="text-align: center;">Parcel ID: 07002A01120000; Size: .55 acres; Zoning District: Rural</p> 
Surrounding Properties:	<p>Zoning Map Designation:  <i>North, South, East and West: Rural</i></p>
History:	<p>Quail Ridge Subdivision, Section II          Conditional Use Permit (PC File #Z00-01) : Approved 12/12/00          Quail Ridge Subdivision, Section II, Phase I, Lots 44-48 &amp; 51-81 (PC File #01-37)          Recorded on 04/11/03 in <a href="#">Plat Book 20 at Page 1</a>          Quail Ridge Subdivision, Section II, Phase II, Lots 82-128 (PC File #04-15)          Recorded on 12/06/05 in <a href="#">Plat Book 21 at Page 77</a>          Quail Ridge Subdivision, Section II, Phase III, Lots 129-159 (PC File #05-05)          Recorded on 01/05/07 in <a href="#">Plat Book 23 at Page 89</a>  <i>Note: the remaining lots are located in Berkeley County (Arden Tax District)</i></p>
Waivers/Variations:	None
Approved Activity:	Single Family Residence
Site Visit Conducted:	No.

Staff Report  
Jefferson County Board of Zoning Appeals  
January 28, 2021  
**Groom Variance Request (#21-1-ZV)**

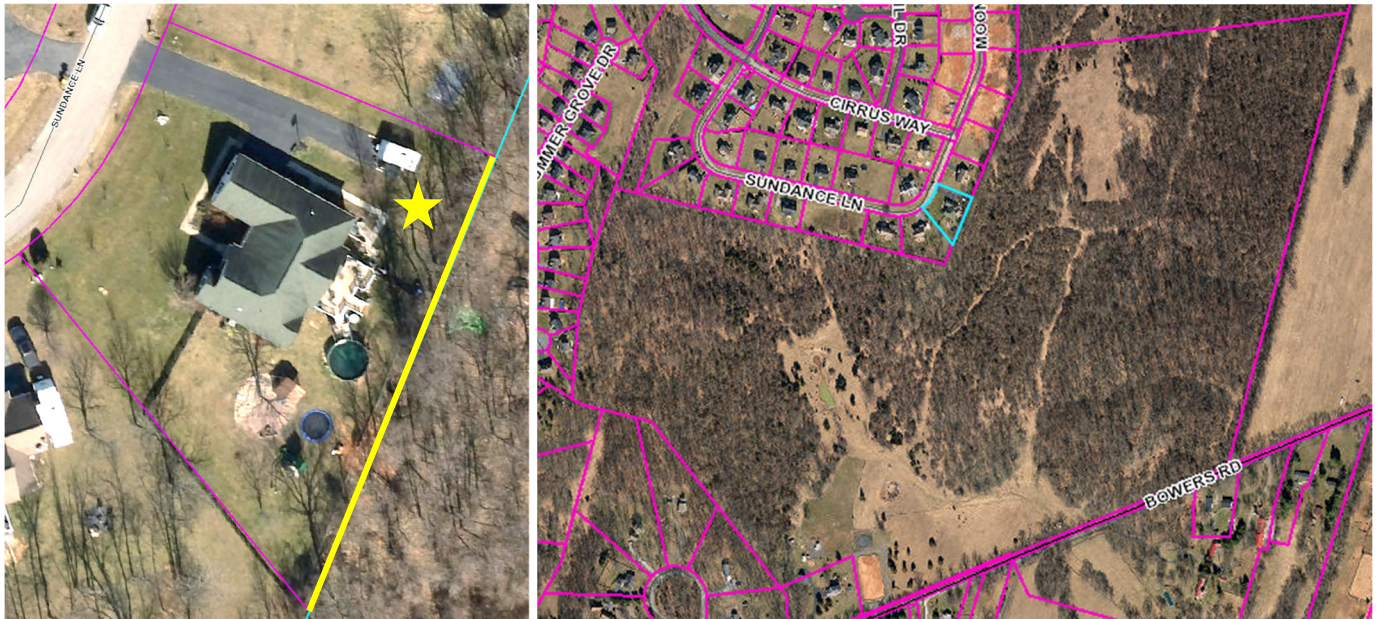
**Summary of Request and Purpose of Ordinance Requirements**

The applicant is seeking a variance from Section 5.4B of the Zoning Ordinance, as amended 10/04/99 to reduce the rear setback from 20' to 10' for a 26' x 30' accessory structure.

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

**Staff Evaluation of Request**

The subject parcel is Lot 112 of the Quail Ridge Subdivision, Section II, Phase II, which was recorded on December 6, 2005 in [Plat Book 21 at Page 77](#). The lots in this subdivision were created through the Conditional Use Permit process, which allowed the following setbacks: 20' Front; 12' Side and 20' Rear. The applicant is proposing to construct a 780 square foot accessory structure and would like to place the structure 10' from the eastern property line (subject property line highlighted below; star identifies general location of proposed structure).



The proposed accessory structure is adjacent to a 116-acre parcel that is densely wooded; therefore, it is expected that impact on adjoining properties is expected to be minimal.

It is feasible to comply with the Ordinance by other means; however, the applicant has represented that the proposed location is preferred based on convenience to the existing house and driveway. The proposed location would also avoid having to remove a mature maple tree.

**Conditions of Approval**

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

1. No conditions of approval have been identified.

Staff Report  
 Jefferson County Board of Zoning Appeals  
 January 28, 2021  
 Groom Variance Request (#21-1-ZV)

**SECTION OF ORDINANCE TO BE CONSIDERED:**

§ Section 5.7 Rural District

(b) Minimum Lot Area, Lot Width and Yard Requirements

& Minimum lot sizes, lot width, and yard requirements are as follows for principal permitted uses. For any residential use that complies with the Development Review System, the setbacks and lot shall be as outlined in Article 5.4(b).

& SECTION 5.4B RESIDENTIAL/GROWTH DISTRICT  
 HEIGHT AND YARD REQUIREMENTS

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





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

File Number: 21-1-ZV  
 Staff Initials: jth  
 Meeting Date: 01/28/21  
 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: David J Groom  
 Mailing Address: 294 Sundance Ln, Kearneysville, WV 25430  
 Phone Number: 540-771-0110 Email: dgrooman@gmail.com

**Applicant Contact Information**

Name: David J Groom  
 Mailing Address: 294 Sundance Ln, Kearneysville, WV 25430  
 Phone Number: 540-771-0110 Email: dgrooman@gmail.com

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

Name: Not Applicable  
 Mailing Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**Physical Property Details**

Physical Address: 294 Sundance Ln  
 City: Kearneysville State: WV Zip Code: 25430  
 Tax District: 07 Middleway Map No: 002A Parcel No: 0112  
 Parcel Size: 27466 sq ft Deed Book: 1,086 Page No: 232

**Zoning District (please check one)**

Residential Growth (RG)	Industrial Commercial (IC)	Rural (R)	Residential-Light Industrial-Commercial (R-LI-C)	Village (V)	Neighborhood Commercial (NC)	General Commercial (GC)	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Application received via email 01/04/21 - jth			Highway Commercial (HC)	Light Industrial (LI)	Major Industrial (MI)	Planned Neighborhood Development (PND)	Office/Commercial Mixed-Use (OC)
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Place 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: 5.4b - jth

*Briefly describe the nature of the variance request:*

I am requesting that the rear setback distance be reduced from 20 ft to 10 ft in order to have a 26x30 ft Timberline Pole Building erected that will sit 12 ft from the rear property line.

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

Front Setback  Side Setback  Rear Setback  Reduction From 20 ft to 10 ft

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

Our rear property line is shared with 116 acres of undeveloped land (TD: 07 / Map 02 / Pcl 0003.0002) that has been put into the Febrey Living Trust, prohibiting any future development. Thus a reduced rear setback will not adversely affect in any way that adjacent property owner.

*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 original plats and setbacks for the Quail Ridge community were set based upon an agreement with Dan Ryan builders in order for them to build a planned community with smaller lots and more houses in an area zoned as rural. My understanding is standard setbacks for rurals areas are usually much smaller and less restrictive.

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

Granting the variance will allow construction of a much needed storage building in an easily accessible location from the existing driveway. Denying the variance would result in an inability to construct the building as desired, or forcing the existing driveway to be partially removed, as well as removing a healthy 10 yr old Autumn Blaze Maple tree.

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

The location of our property at the rear of the community and the shared property boundary with a large, undeveloped area affords us a unique circumstance to which a variance will not adversely affect any neighboring property owner nor the community as a whole and allow the overall intent of the zoning ordinance to stand.

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

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

  
\_\_\_\_\_  
Signature of Property Owner                      1/4/21  
Date

  
\_\_\_\_\_  
Signature of Property Owner                      1/4/21  
Date

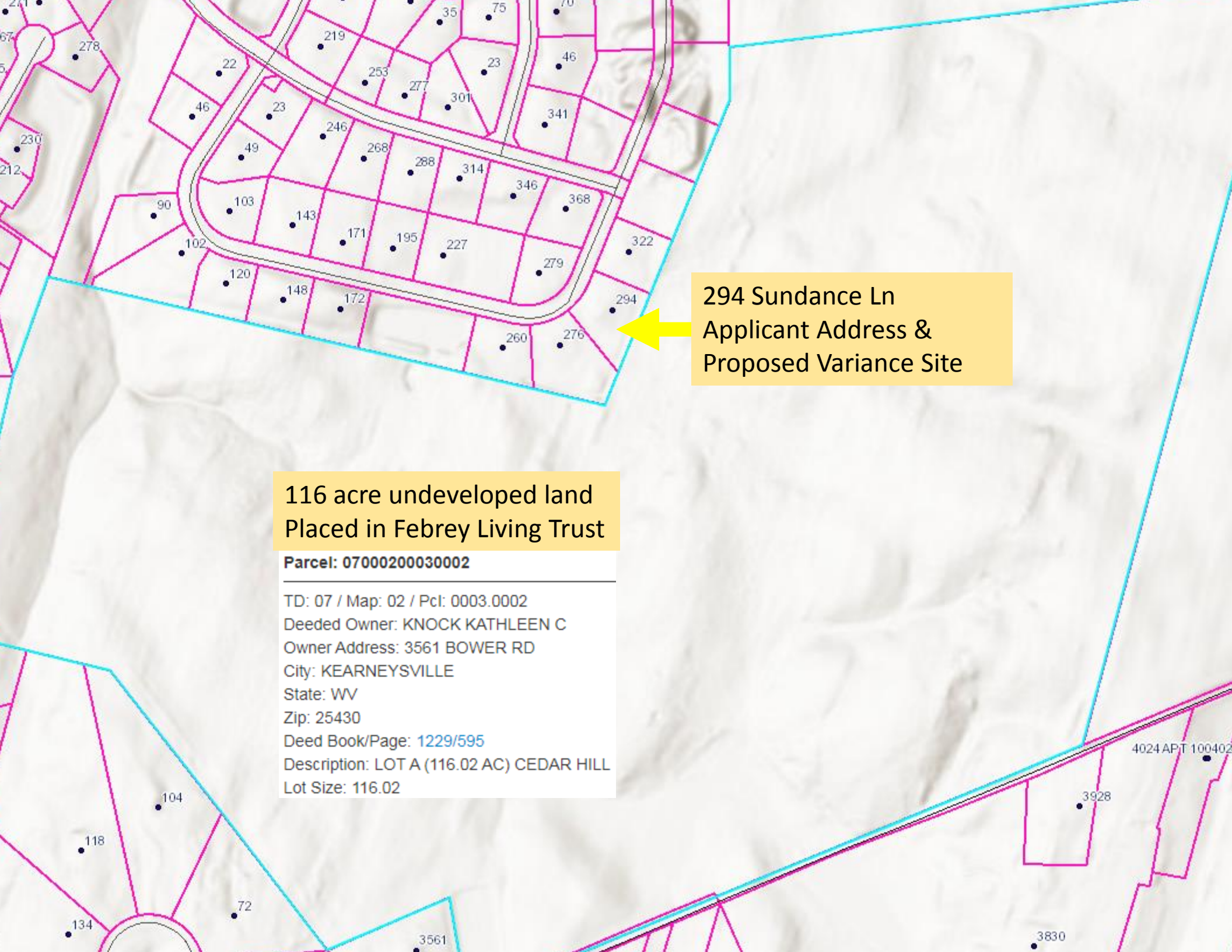
*Notification Requirements (to be completed by staff)*

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).

01/28/21  
Date of Public Hearing

01/13/21  
Advertising Date

01/13/21  
Placard Posting Date



294 Sundance Ln  
Applicant Address &  
Proposed Variance Site

116 acre undeveloped land  
Placed in Febrey Living Trust

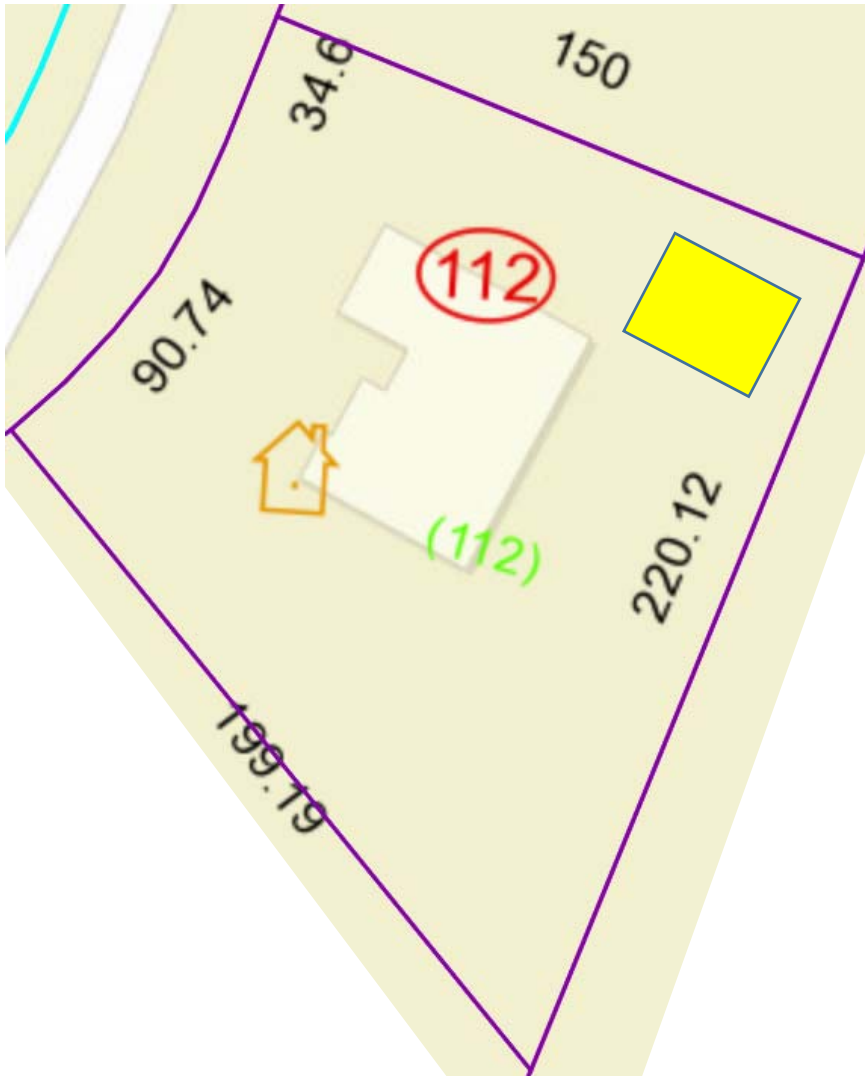
**Parcel: 07000200030002**

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TD: 07 / Map: 02 / Pcl: 0003.0002  
Deeded Owner: KNOCK KATHLEEN C  
Owner Address: 3561 BOWER RD  
City: KEARNEYSVILLE  
State: WV  
Zip: 25430  
Deed Book/Page: [1229/595](#)  
Description: LOT A (116.02 AC) CEDAR HILL  
Lot Size: 116.02

# Property Sketch

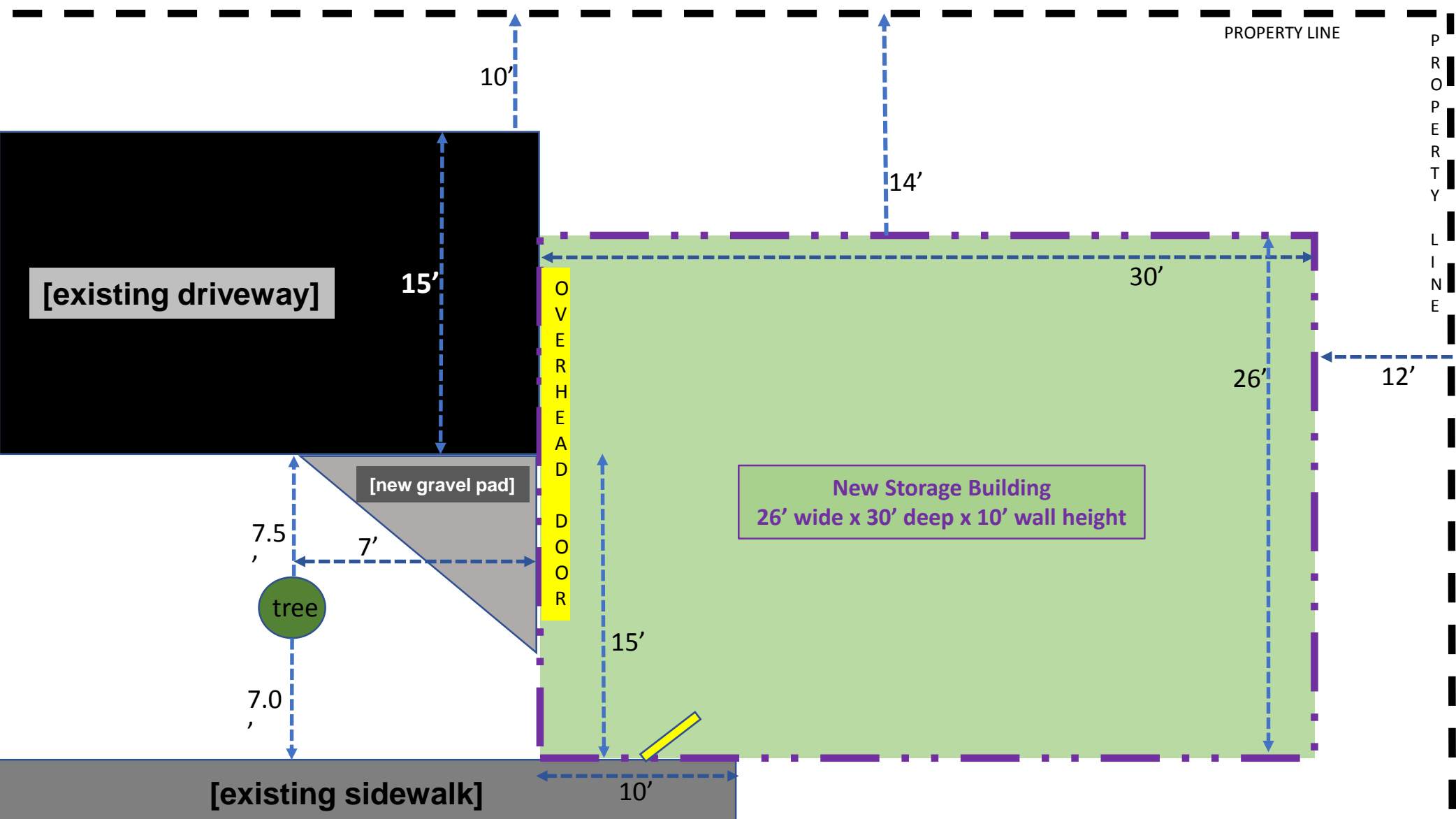
## Proposed Building Site in Yellow



*Did Choan*

04 Jan 2021

# Planned Building Footprint w/Measurements




Rear Corner of House

04 Jan 2021



Staff Report  
 Jefferson County Board of Zoning Appeals  
 January 28, 2021  
**Federal Group Variance Request (#21-2-ZV)**

Item #2 Variance from Section 4.11.A. and Appendix B to utilize the 50' unscreened buffer option in lieu of the required vegetative screened buffer.

Applicant:	Federal Group LLC
Owner:	Same
Developer:	N/A
Consultant:	Paul Raco, PJ Raco Consulting
Location:	233 Lowe Drive, Shepherdstown, WV 25443
Parcel Information and Zoning District:	<p style="text-align: center;">Parcel ID: 09000800100009; Size 30.01 acres; Zone: Residential-Growth</p> 
Surrounding Properties:	<b>Zoning Map Designation:</b> <i>North, South, East and West: Residential Growth</i>
<b>History:</b>	
Conditional Use Permit (Z96-5)	Federal training facility, including 174 sleeping rooms, dining facility, training classrooms, offices for permanent government staff, office space for the owner, gymnasium, outdoor pool, outdoor tennis courts. Effective 08-13-96
Site Plan (S96-17)	Training facility. PC Approval: 01-14-97
Site Plan (S00-07)	12' x 25' Maintenance Building. PC Approval: 07-25-00
Site Plan (S07-14)	1,595 square foot addition. Approved 10-26-07
Kensington Townhome Community Impact Statement (CIS) -- PC File #06-41	Submitted: 12/21/06 PC Approval: 04/24/07; Approval extended to 01/05/10; Further extended under SB595 to 07/01/20 based on a County Commission approved Resolution on 04/06/17
Kensington Preliminary Plat	Submitted: 06/04/09 County Planner Approval: 12/16/09 County Engineer Approval: 12/28/09 <i>Red-line Revision for Phases 1, 2 &amp; 3 Approved: 6/17/20</i>

Staff Report  
 Jefferson County Board of Zoning Appeals  
 January 28, 2021  
**Federal Group Variance Request (#21-2-ZV)**

Kensington Final Plat	PC Public Hearing/Approval: 03/23/10; not bonded and recorded due to SB 595 extensions <i>Phase 1 Lot 1 Final Plat Approval: 6/22/20; not yet recorded</i>
Waivers/Variances:	01-13-09: PC approved 12 month extension for Kensington Townhome Subdivision 05-15-12: PC approved 24 month extension for Kensington Townhome Subdivision (PCV12-02) 01-19-12: BZA approved Landscaping Variance (ZV12-02) 07-14-20: PC approved Allow Lowe Drive to be an Easement; allow parking within easement (20-3-PCW)
Approved Activity:	Clarion Hotel And Conference Center And Kensington Townhomes
Site Visit Conducted:	Yes. 01-16-2021

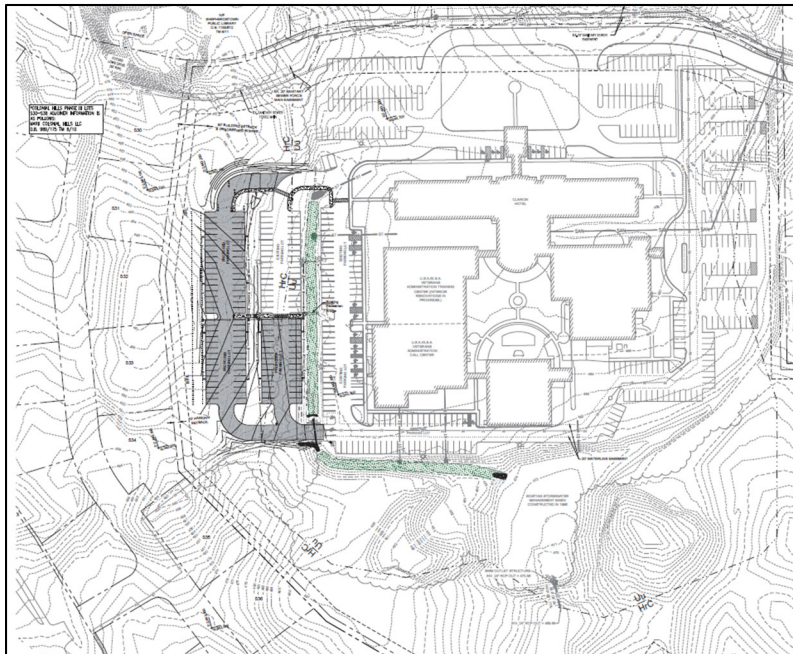
**Summary of Request and Purpose of Ordinance Requirements**

The applicant is seeking a variance from Section 4.11A and Appendix B to utilize the 50’ unscreened buffer option in lieu of the required vegetative screened buffer.

The purpose of landscape buffers is to reduce the impact that a land use might have on an adjacent property by serving as a barrier to visibility, airborne particles, glare, or noise.

**Staff Evaluation of Request**

The subject request is to utilize a 50’ unscreened buffer option in lieu of a vegetative screened buffer per Standard Detail M-53. The 50’ unscreened buffer option was permitted by right when the original project processed in 1996 (S96-17). The applicant is requesting to continue to utilize the previously approved 50’ unscreened buffer for the proposed parking lot expansion.

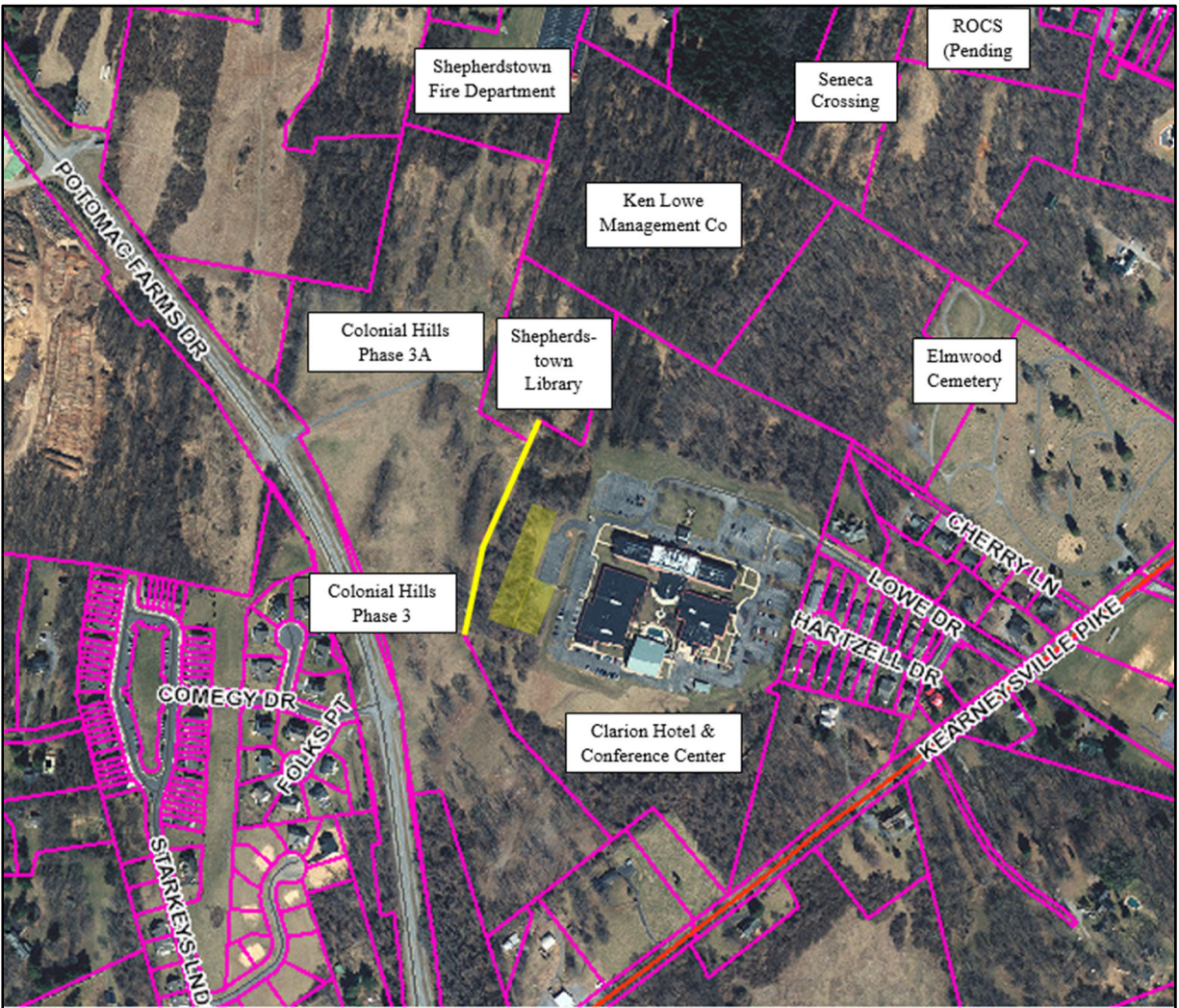


Section 4.11A.1 states that a 50’ or greater unscreened green space buffer **or** a 15’ screened green space buffer shall be installed along common property lines. Appendix B requires a medium buffer in accordance with Standard Detail M-53 and also states, “in the event of a conflict with the text, [Appendix B] shall prevail.” Therefore, Staff did not have the discretion to allow the 50’ unscreened

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January 28, 2021  
**Federal Group Variance Request (#21-2-ZV)**

buffer option to be utilized in lieu of the required medium buffer standard. This conflict was created in 2011, and as noted with similar requests reviewed by the Board, it is unclear as to whether the intent of the 2011 text amendment was to eliminate use of the 50' unscreened buffer and require that all buffers be screened buffers, or if the intent was to continue to allow the 50' unscreened buffer as an option.

It appears that allowing a 50' unscreened buffer to be utilized in lieu of the required planting would still meet the intent of the Ordinance. While it may be feasible to comply with the requirements established in Appendix B, it does not appear that allowing use of the 50' unscreened buffer option would adversely impact adjoining properties.



**Conditions of Approval**

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

1. Staff did not identify any conditions of approval.

**SECTION OF ORDINANCE TO BE CONSIDERED:**

**Section 4.11 Landscaping, Screening and Buffer Yard Requirements**

Buffer yard requirements are as shown in Appendix A and B of this Ordinance, and are summarized in this section.<sup>27</sup>

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**A. Commercial Development<sup>27</sup>**

2. All commercial development adjacent to any Residential district, or any lot with a residence, school, church, or institution of human care shall have a 50 foot or greater unscreened green space buffer or a 15 foot screened green space buffer along common property lines. The screening may be either vegetative or opaque fencing and may be placed anywhere within the buffer. No structures, materials, or vehicular parking shall be permitted within the side and rear yard buffers.
3. All commercial development adjacent to all other uses must maintain ten foot side and rear yard landscape buffers.<sup>5</sup>

**B. Industrial Development<sup>27</sup>**

1. All industrial development adjacent to any Residential district, or a residence, school, church, or institution for human care shall have an unscreened buffer yard of no less than 200 feet. No structures, stored materials, or vehicular parking shall be permitted within the buffer yard.
2. All industrial development adjacent to any use other than an industrial use shall have screened front yard buffers of no less than one-half ( $\frac{1}{2}$ ) the front yard building setback, which may be included within the 200-foot buffer required in this subsection.<sup>5,7</sup>
3. All industrial development adjacent to any use shall have 20 foot screened side and rear landscape buffers.

**C. Multi-family Development<sup>27</sup>**

1. All multi-family adjacent to any Residential district, or any lot with a residence, school, church, or institution of human care shall have, along common property lines, screened green space buffers as follows:
  - a. Front and rear: a minimum of 15 feet
  - b. Side: a minimum of 12 feet

D. In all buffer yards, the exterior width beyond the vegetative screen shall be planted with grass, seed, sod, or ground cover.

E. All buffer yards shall include a fence or a dense screen planting of trees, shrubs, or other plant materials or both, to the full length of the lot line to serve as a barrier to visibility, air borne particles, glare or noise. Such screen planting shall meet the following requirements.

1. Vegetative screening shall comply with Standard Details M52, M53 or M54, or other applicable Standard Details, depending on the buffer width. At the time of the planting the vegetation shall be at least six (6) feet in height.<sup>7,23,27,28</sup>

However, any development where a 10 foot side and/or rear yard vegetative landscaping buffer is required adjacent to proposed commercial uses and where no outdoor storage is being proposed or provided, the following standards shall be met:<sup>27,28</sup>

- a. One (1) deciduous or evergreen tree with a height of six (6) feet or more when planted, likely to reach a height of 20 feet or more at maturity, planted every 50 linear feet; at least every other tree shall be an evergreen;
- b. One (1) ornamental tree with a height of four (4) feet or more when planted, likely to reach a height of six (6) feet or more at maturity, planted every 50 linear feet; and
- c. Three (3) shrubs per each 25 feet along the property line, round upward.
- d. These requirements shall be required on both sides of a property line for adjoining properties.

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- e. A 10 foot landscape area on the property unless shared parking is proposed. In the event shared parking is proposed, the required property line planting would be in addition to other plantings.<sup>7, 23, 26</sup>
- 2. It will be the responsibility of the landowner to replace any trees that die and shall be so noted on the site plan.
- 3. Screen planting shall be a minimum of ten (10) feet wide but shall be placed so that it is no closer than four (4) feet at maturity from a property line or from any street.
- 4. No structure, fence, planting, or other obstruction shall be permitted which would interfere with traffic visibility.
- F. In any Commercial, Industrial, Institutional, or Residential development, all dumpsters shall be screened from any residences or from view of a public highway.<sup>23</sup>
- G. All buffer yards shall be maintained by the property owner.
- H. All development adjacent to a Sensitive Natural Area shall have a buffer of natural vegetation. Environmental standards contained in Section 8.9A, 1 through 7, will apply. The buffer shall meet the current Federal standard except as required in Table 4.11 -1 below:<sup>23</sup>

**Table 4.11 -1 Wetland Size in Acres<sup>5, 8, 23</sup>**

Greater Than	Less Than	Buffer Width in Feet
0.05	0.10	30
0.10	0.16	35
0.15	0.21	40
0.20	0.26	50
0.25	0.31	55
0.30	0.36	60
0.35	0.41	65
0.40	0.46	70
0.45	0.51	75
0.50	0.66	80
0.65	0.81	85
0.80	0.96	90
0.95	1.21	95
1.20	--	100

- I. All required landscape plans shall contain the following elements:<sup>7</sup>
  - 1. Deciduous street trees for shade and aesthetics, planted at the following average spacing:<sup>23</sup>
    - a. Site with street frontage of up to 200 feet: 1 tree per 50 feet.
    - b. Site with street frontage exceeding 200 feet: The greater of 4 trees or 1 tree per 100 feet.
  - 2. Evergreen buffer planting, as required, for full screening.
  - 3. Parking lot and internal drive plantings (mix of evergreen and deciduous) for partial screening and limited shade.
  - 4. Structure plants for aesthetics and limited shade.
  - 5. Schedule of plants including common name, scientific name, minimum size (height, caliper, etc.) quantity and specific limitation notes.
- J. Required landscape buffers for a non-residential use are indicated in Appendix B.<sup>27</sup>

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**Federal Group Variance Request (#21-2-ZV)**

APPENDIX B: NON RESIDENTIAL SITE DEVELOPMENT STANDARDS TABLE <sup>27, 32, 35</sup>																		
Zoning District	Development Type <sup>9</sup>	Min Lot Area (MLA)	Min Lot Width	Max Building Height*	Imperious Surface Limit	Building Setbacks			Parking/ Drive Aisle Setbacks			Buffers (Sec. 4.11) (Screened / Unscreened) Adjacent Use						
						Front	Side	Rear	Front	Side	Rear	A Residential district, or any lot with a residence, school, church, or institution of human care (Distance per Sec. 4.6)						
												Distance Front Side Rear	Street Trees	Narrow Buffer Detail No. M-54	Commercial Use	Industrial Use		
													Front	Side & Rear	Front	Side & Rear		
Industrial – Commercial (IC)**	Commercial sites 1.5 acres and smaller	N/A	N/A	75	80%	25			15	4	4	75	Street Trees	Narrow Buffer Detail No. M-54	N/A	10(S)	N/A	10(S)
	Commercial sites greater than 1.5 acres	N/A	N/A	75	80%	25			15	10	10	75	Street Trees	Medium Buffer Detail No M-53	N/A	10(S)	N/A	10(S)
	Industrial	3 ac***	N/A	75	90%	50 or 25 if adjacent to Industrial Use			25 or 20 if adjacent to Industrial Use			200	Street Trees	Wide Buffer Detail No. M-52	25(S)	20(S)	N/A	20(S)
Residential-Light Industrial-Commercial (RLIC)	Commercial or Industrial	N/A	N/A	75	80%	See IC District												
Rural (R)	Churches	2 acres	200	45	N/A	25	50	50	See IC District for commercial sites			N/A	50(U) or 15 (S)	N/A	10(S)	N/A	10(S)	
	Schools, Grades K-12	K-4: 10 ac+ 5-8: 20 ac+ 9-12: 30 ac+	500	45	N/A	100						N/A	N/A	N/A	N/A	N/A		
	Hospitals	10 ac	500	45	N/A	100						N/A	N/A	N/A	N/A	N/A		
	Other Rural principal permitted uses	40,000	100	45	N/A	40	50	50				N/A	See I-C District for commercial or industrial use; Otherwise, N/A					
	Commercial or Industrial**	See IC District																
Village (V)	Commercial <sup>v</sup>	N/A	N/A	35	N/A	25	10	40	See IC District									
	Industrial**	See IC District																
Residential Growth (RG)	Commercial or Industrial**	See IC District																
Neighborhood Commercial (NC)	Commercial	N/A	N/A	35	70%	15 min 25 max	10 <sup>E</sup>	10 <sup>D</sup>	See I-C District	25	See IC District							
General Commercial (GC)	Commercial	N/A	N/A	75	80%	20	10	25	See IC District									
Highway Commercial (HC)	Commercial	N/A	N/A	75	80%	25	25	25										
Light Industrial (LI)	Commercial or Industrial	N/A	N/A	75	80%	25	25	25										
Major Industrial (MI)	Commercial	N/A	N/A	75	90%	25	10	50										
	Industrial	3 ac***	N/A	75	90%	25	50	50										
Office/Commercial Mixed Use (OC)	Commercial	N/A	N/A	75	80%	15 min 25 max	10 <sup>E</sup>	10 <sup>D</sup>	See IC District									
Planned Neighborhood Development (PND)	Commercial	3 acres	See GC District Note: Planning Commission may amend development standards for developments in the PND District (see Article 5).															

The requirements in this table are in addition to any other applicable requirements in the text of this Ordinance. In the event of a conflict with the text, this table shall prevail.



**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

① on Agenda

File Number: 21-2-ZV  
 Staff Initials: AB  
 Meeting Date: 01-28-21  
 Fees Paid (\$100 or \$150): \$100/chk  
37175

Email: zoning@jeffersoncountywv.org

Phone: (304) 728-3228

**Zoning Variance Request**

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

**Property Owner Information**

Name: Federal Group Inc  
 Mailing Address: 233 Lowe Drive, Shepherdstown, WV 25443  
 Phone Number: c/o Paul 304/676-8256 Email: c/o pjraco.consulting@gmail.com

**Applicant Contact Information**

Name: Tripp Lowe  
 Mailing Address: above  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

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

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

**Physical Property Details**

Physical Address: 233 Lowe Drive  
 City: Shepherdstown State: WV Zip Code: 25443  
 Tax District: Shepherdstown Map No: 8 Parcel No: 10.9  
 Parcel Size: 29.84+- Acres Deed Book: 1230 Page No: 490

**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"/>

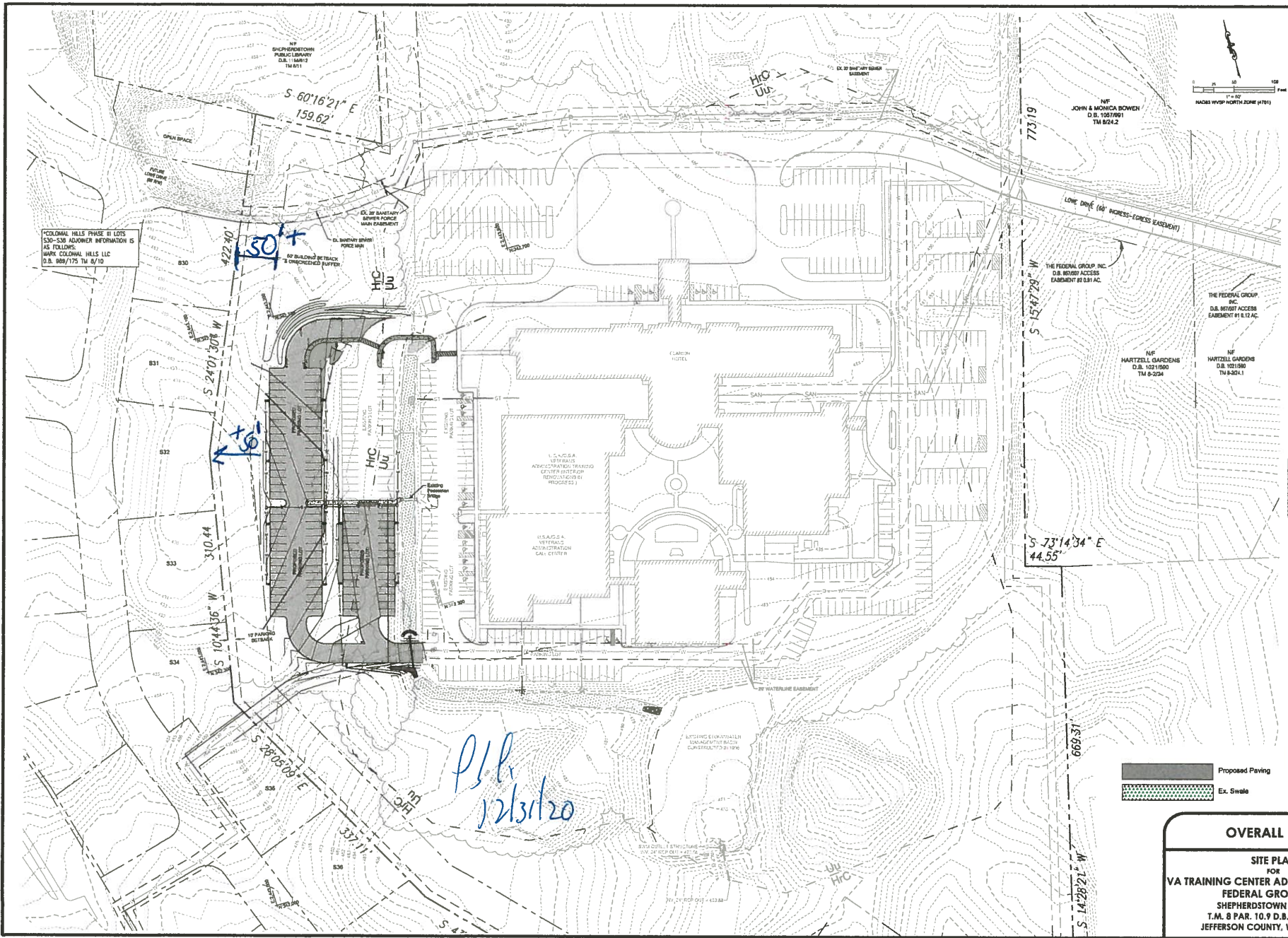
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**JEFFERSON COUNTY PLANNING  
 ZONING & ENGINEERING**



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**Alpha**  
ASSOCIATES, INC.  
ALPHA ASSOCIATES, INC.  
638 WEST 4TH STREET  
HARTZELL GARDENS, WV 26401  
PHONE: 304-264-8061  
FAX: 304-264-8077  
WWW.ALPHAASSOCIATES.COM

**SITE PLAN**  
**VA TRAINING CENTER ADDITIONAL PARKING**  
**FEDERAL GROUP INC.**  
SHEPHERDSTOWN DISTRICT 9  
T.M. & PAR. 10.9 D.B. 847 PG. 493  
JEFFERSON COUNTY, WEST VIRGINIA

**OWNER/DEVELOPER:**  
The Federal Group, Inc.  
**ADDRESS:**  
231 Lower D.  
Shepherdstown, WV 25443  
**PHONE:**  
304-875-7201  
**ATTN:** Kenneth F. Lewis

**REVISIONS**

No.	ITEM	DATE

**PROJ. NO.:** 1810101.00  
**DATE:** 1/17/2019  
**SHEET NO.:**  
**C101**  
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**OVERALL PLAN**  
**SITE PLAN**  
FOR  
**VA TRAINING CENTER ADDITIONAL PARKING**  
**FEDERAL GROUP INC.**  
SHEPHERDSTOWN DISTRICT 9  
T.M. & PAR. 10.9 D.B. 847 PG. 493  
JEFFERSON COUNTY, WEST VIRGINIA

Federal Group, Inc.  
Clarion Hotel, Conference Center and Government Offices and Training Center  
Request for Variances  
Article 4, Section 4.11.A (Buffer) and Appendix B (Buffer)  
Jefferson County Zoning Ordinance  
January 4, 2021

Brief Description of Request:

Article 4, Section 4.11.A states:

“Section 4.11 Landscaping, Screening and Buffer Yard Requirements

Buffer yard requirements are as shown in Appendix A and B of this Ordinance and are summarized in this section.

A. Commercial Development

1. All commercial development adjacent to any Residential district, or any lot with a residence, school, church, or institution of human care **shall have a 50 foot or greater unscreened green space buffer or** a 15 foot screened green space buffer along common property lines....”(emphasis added)

However, it appears that Appendix B now only offers the 15’ Screened Buffer as an option. While it is true that Appendix B does prevail if there is a conflict in the ordinance, there are not multiple sections in conflict. In other words, the provision that allows Appendix B to be controlling is in the ordinance to make it simple if there are several sections in the ordinance that provide conflicting setbacks and buffer requirements. In this case, there is only one section in the ordinance that deals with Commercial Buffer standards in the Residential Growth District. That is 4.11.A. and it allows for a 50 feet unscreened buffer between this development and the Residential Growth District boundary.

This 50’ unscreened buffer option was always available in the ordinance and it was available when the original construction of the entire project took place in the 90s. There is enough evidence available to suggest that when Appendix B was changed during the course of amendments over the years, it somehow dropped the 50’ unscreened buffer option by mistake. This is evident since 4.11.A still allows the 50’ unscreened option.

However, besides the fact that 4.11.A allows what the Applicant is requesting, it is just for the addition of a needed parking lot that will be used for the Government Offices and other uses within the existing structure. The Parking Lot is proposed because of a quota of parking that is needed for the government leases on the premises. The balance of the parking lot and entire building is under the 50’ unscreened buffer allowance and it would be oddly out of place to require a 20’ two or three layers of bushes and trees in this area for the new parking lot when it would comply with the actual provisions in Section 4.11.A.

The granting of this variance will allow a long time Jefferson County local business and Governmental and Tourist landmark to continue to develop in an area that the Comprehensive Plan lists as Commercial

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on the Future Land Use Map/Guide. The Staff is supportive of the Request and the variance will allow the Site Plan for the parking lot be completed and approved. This appears to be one of the last items that needs to be completed for Final Approval.

Thank you for your consideration of this matter.

Federal Group, Inc.  
Clarion Hotel, Conference Center and Government Offices and Training Center  
Request for Variances  
Article 4, Section 4.11.A (Buffer)  
Appendix B (Buffer)  
Jefferson County Zoning Ordinance  
January 4, 2021

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

There will be no impact on these issues as this property is already a well maintained facility. Currently, the Clarion Hotel, Conference Center and Government Offices/Training Facility is a beautifully landscaped business with an abundance of manicured open space. If the variance is approved, there will be no changes to what already exists. The new parking lot will fit in with the balance of the long ago approved site plan with the 50' unscreened buffer as allowed then and still appears to be allowed under Section 4.11.A.

Finally, the existing parcel already has agency approvals for the development as it exists. There will be no changes to the entrances, external access, or internal flow of traffic. Therefore, the granting of the waivers will not impact anything surrounding the property. There may not even be any increase in cars with the new parking lot. It is basically to fulfill a minimum number of required spaces for the lessee to have available.

Currently, the existing property has a positive impact on the surrounding area because it is a local and tourist landmark in Jefferson County with the co-utilization as government office and a government training center. If the variance is granted, the new parking lot meets all the other requirements of the ordinances will be met and the site plan can be approved.

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

The property's improvements have long existed in Jefferson County and were approved under the provision (Section 4.11.A) that allowed a 50' unscreened buffer option to be utilized. When the site plan for the new parking lot was being designed and processed, it was under the impression that 4.11.A still applied as it states (the allowance of the 50' unscreened option). It was pointed out by Staff after it was already designed that Appendix B conflicted with the body of the ordinance that allows this option. No one is sure exactly how one provision (Appendix B.) got changed without 4.11.A being changed. It appears to be a mistake in the ordinances or something that happened inadvertently during an amendment to the Appendix B Table.

The compliance with the screened buffer will essentially make this one area of the entire site to be different than what was previously allowed and still allowed in one section of

the Zoning Ordinance. This inadvertent change or conflict in the ordinance was not caused by the Applicant and it would be very costly to comply with the ordinance.

In the current economic climate, businesses need to constantly come up with creative financial strategies to remain successful and competitive. The variance will allow the current lease that requires additional parking to be available if needed.

The fact that this project, like other business parks is already approved with the buildings, parking and access drives and landscaping already located on the property makes this a unique situation. The one new parking lot that meets the standards under which the original development took place will allow conformity of the parking lot with the balance of the site.

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

The County has already determined that the buildings, parking lots, landscaping and access roads as designed and approved, are a reasonable use of the land in the area, especially since the recent Comprehensive Plan recognizes this site as an existing commercial use and is shown as such on the Future Land Use Map/Guide. Since nothing will change on the property, the same types of uses will continue to be a good and reasonable use of the land. The granting of the variance, however, will allow the owners to provide a parking lot for the continued viability of the existing use. This will allow the Clarion and the Government/Professional Offices to continue to be a good and viable operation in Jefferson County. It just makes good business sense to allow an existing successful business the flexibility during these trying times.

If the variances were to be denied, the hardship will be that the parking lot would have to be redesigned to meet the conflicted standard in Appendix B even though it meets the original standards and the current standard in Section 4.11.A.

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

The purpose of a buffer between lots is to protect property owners from uses that do not complement each other. In this case, the uses will continue to be the same. Since the facility is already built, the same amount of business can take place on the site, just this area will be dedicated parking for the users in this area of the site. This will allow for less conflict in traffic between the Government Uses and the Clarion Hotel and Conference Center uses. It will allow separate parking areas for each side of the business. Additionally, this site is already landscaped and buffered, so both the intent and the spirit of the ordinance is already being observed.

The variance requested is for an item that typically would protect one property owner from building something that would negatively affect a neighboring property. In this instance the buildings, access drives and parking areas already exist, so that really does not apply in this case. Plus, the site still will meet more than just the intent of the Ordinance since 4.11.A allows the unscreened buffer.

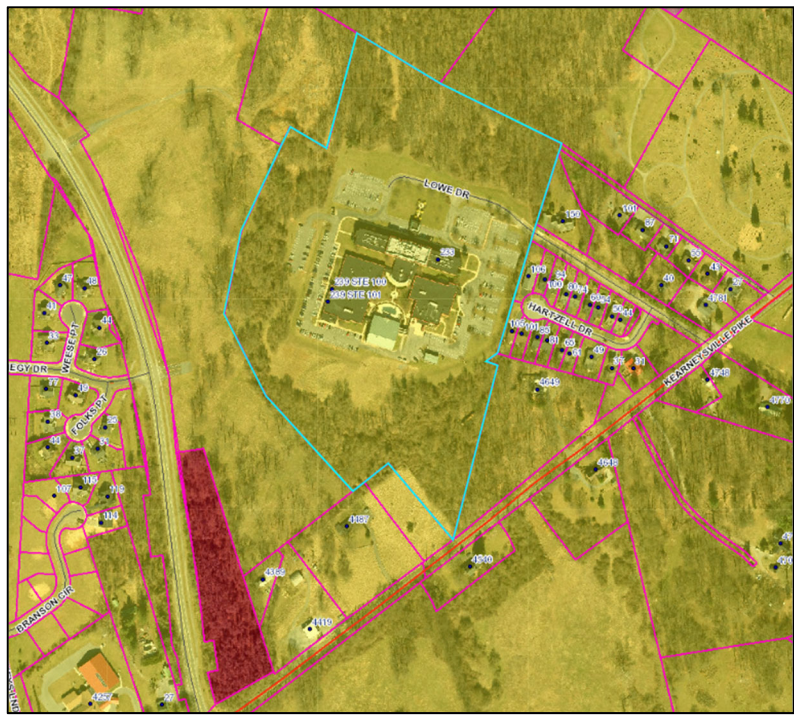
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Substantial justice would be to approve the requested variances, so that this long time commercial business and Government/Professional Office and Training Center can continue to thrive in Jefferson County for many years.

The Board's approval of the variances would be greatly appreciated.

Staff Report  
 Jefferson County Board of Zoning Appeals  
 January 28, 2021  
**Federal Group Variance Request (#21-3-ZV)**

Item #3 Variance from Section 4.6 to reduce the distance requirement from 75' to 0'; Section 4.11A to reduce the buffer requirement of 20' to 0'; and Appendix B to reduce the building setback from 25' to 0' and parking/drive aisle setback from 10' to 0' to allow for a proposed subdivision.

Applicant:	Federal Group LLC
Owner:	Same
Developer:	N/A
Consultant:	Paul Raco, PJ Raco Consulting
Location:	233 Lowe Drive, Shepherdstown, WV 25443
Parcel Information and Zoning District:	<p style="text-align: center;">Parcel ID: 09000800100009; Size 30.01 acres; Zone: Residential-Growth</p> 
Surrounding Properties:	<b>Zoning Map Designation:</b> <i>North, South, East and West: Residential Growth</i>
<b>History:</b>	
Conditional Use Permit (Z96-5)	Federal training facility, including 174 sleeping rooms, dining facility, training classrooms, offices for permanent government staff, office space for the owner, gymnasium, outdoor pool, outdoor tennis courts. Effective 08-13-96
Site Plan (S96-17)	Training facility. PC Approval: 01-14-97
Site Plan (S00-07)	12' x 25' Maintenance Building. PC Approval: 07-25-00
Site Plan (S07-14)	1,595 square foot addition. Approved 10-26-07
Kensington Townhome Community Impact Statement (CIS) -- PC File #06-41	Submitted: 12/21/06 PC Approval: 04/24/07; Approval extended to 01/05/10; Further extended under SB595 to 07/01/20 based on a County Commission approved Resolution on 04/06/17
Kensington Preliminary Plat	Submitted: 06/04/09 County Planner Approval: 12/16/09 County Engineer Approval: 12/28/09 <i>Red-line Revision for Phases 1, 2 &amp; 3 Approved: 6/17/20</i>

Staff Report  
 Jefferson County Board of Zoning Appeals  
 January 28, 2021  
**Federal Group Variance Request (#21-3-ZV)**

Kensington Final Plat	PC Public Hearing/Approval: 03/23/10; not bonded and recorded due to SB 595 extensions <i>Phase 1 Lot 1 Final Plat Approval: 6/22/20; not yet recorded</i>
Waivers/Variances:	01-13-09: PC approved 12 month extension for Kensington Townhome Subdivision 05-15-12: PC approved 24 month extension for Kensington Townhome Subdivision (PCV12-02) 01-19-12: BZA approved Landscaping Variance (ZV12-02) 07-14-20: PC approved Allow Lowe Drive to be an Easement; allow parking within easement (20-3-PCW)
Approved Activity:	Clarion Hotel And Conference Center And Kensington Townhomes
Site Visit Conducted:	Yes. 01-16-2021

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

The applicant is seeking a variance from Section 4.6 to reduce the distance requirement from 75’ to 0’; Section 4.11A to reduce the buffer requirement of 20’ to 0’; and Appendix B to reduce the building setback from 25’ to 0’ and parking/drive aisle setback from 10’ to 0’ to allow for a proposed subdivision. The proposed subdivision will divide the existing hotel from the conference center.

The purpose of landscape buffers is to reduce the impact that a land use might have on an adjacent property by serving as a barrier to visibility, airborne particles, glare, or noise.

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

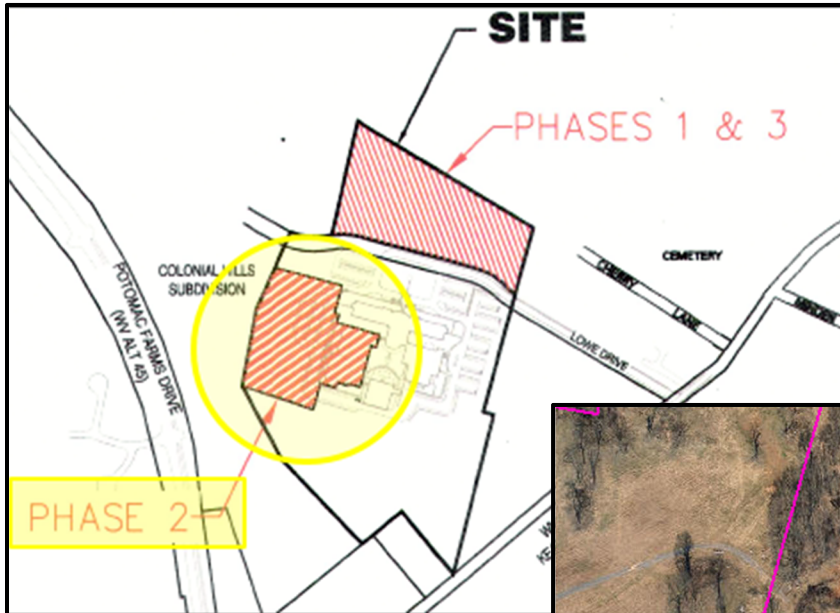
The purpose of parking and drive aisle setbacks is to reduce negative interactions between vehicles, as well as pedestrians, traveling on the roadway and using the parking area. Parking setbacks also serve to reduce the impact that a land use might have on an adjacent property, such as the bright lights from headlights and engine noise.

Applying setbacks to individual lots within a multi-lot development under the same ownership may appear redundant; however, the purpose of this requirement is to protect future lot owners in the event that an individual lot is sold or foreclosed on in the future.

**Staff Evaluation of Request**

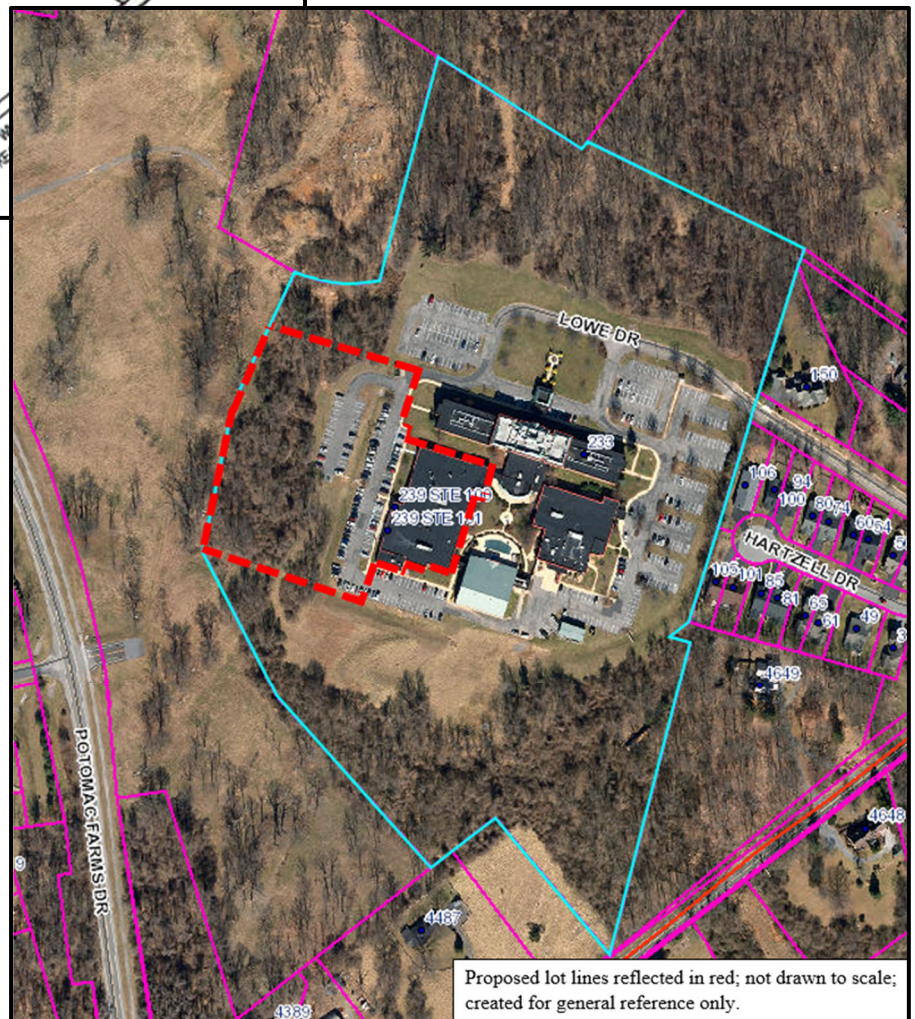
The subject request is to eliminate setbacks and landscaping requirements along the proposed interior lot lines for a proposed division, which will divide the existing hotel from the conference center. Based on the applicant’s representation, the proposed division is needed for financial reasons, as well as security purposes, to provide a separation between the hotel/conference area that is open to the public, and the government and professional/training office space. The use of the buildings will essentially remain the same. A portion of the site will continue to be used for government/professional offices and training areas and the other portion of the site will remain hotel/lodging/conference space.

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**Federal Group Variance Request (#21-3-ZV)**



Presently, there are no plans to expand the existing buildings. There is a proposal to expand the parking lot (previous variance, 21-2-ZV). Any further expansions would be subject to the site development standards in effect at the time of submission, unless additional variances are granted.

It appears that granting the variance would have no greater impact on adjacent properties than the current function of the building and parking areas. Based on the applicant's representation, the proposed division is needed for financial reasons, as well as security purposes to provide a separation between the hotel/conference area that is open to the public, and the government and professional/training office space. The use of the buildings will remain essentially the same.



Because the buildings and parking lots are all existing, it is not feasible to comply with the ordinance by other means, unless interconnectivity between the two proposed lots is eliminated and the buildings are significantly modified.

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**Conditions of Approval**

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

1. The variance applies only to the new internal lot lines created;
2. The Final Plat shall include a note granting cross access and cross parking for both lots and shall also state that should either lot be conveyed to another entity, an access easement and parking agreement shall be dedicated and recorded. A copy of the parking agreement shall be submitted to the Office of Planning and Zoning for their files.

**SECTION OF ORDINANCE TO BE CONSIDERED:**

**Section 4.6 Distance Requirements**

A. Industrial uses are subject to this subsection, unless otherwise specified in this Ordinance. Any uses (not including parking) or buildings subject to compliance with this Section shall be located at least 200 feet from:<sup>27</sup>

1. Any lot in the Residential Growth District;<sup>27</sup>
2. A dwelling, school, church or institution for human care not located on the same lot as the said use or buildings;<sup>1</sup>
3. Any lot which is part of a recorded subdivision; and
4. Any parcel, historic structure, or designated historic district which has been listed on the West Virginia or National Register of Historic Places.

B. Commercial uses are subject to this subsection, unless otherwise specified in this Ordinance. Adjacent uses (not including parking) or buildings subject to compliance with this Section shall be located at least 75 feet from:<sup>7, 27</sup>

1. Any lot in the Residential Growth District;
2. Any lot with a dwelling, school, church, or institution for human care not located on the same lot as said use or building;
3. Any parcel, historic structure, or designated historic district which has been listed on the West Virginia or National Register of Historic Places.<sup>23</sup>

**Section 4.11 Landscaping, Screening and Buffer Yard Requirements**

Buffer yard requirements are as shown in Appendix A and B of this Ordinance, and are summarized in this section.<sup>27</sup>

**A. Commercial Development<sup>27</sup>**

2. All commercial development adjacent to any Residential district, or any lot with a residence, school, church, or institution of human care shall have a 50 foot or greater unscreened green space buffer or a 15 foot screened green space buffer along common property lines. The screening may be either vegetative or opaque fencing and may be placed anywhere within the buffer. No structures, materials, or vehicular parking shall be permitted within the side and rear yard buffers.
3. All commercial development adjacent to all other uses must maintain ten foot side and rear yard landscape buffers.<sup>5</sup>

**B. Industrial Development<sup>27</sup>**

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1. All industrial development adjacent to any Residential district, or a residence, school, church, or institution for human care shall have an unscreened buffer yard of no less than 200 feet. No structures, stored materials, or vehicular parking shall be permitted within the buffer yard.
  2. All industrial development adjacent to any use other than an industrial use shall have screened front yard buffers of no less than one-half (½) the front yard building setback, which may be included within the 200-foot buffer required in this subsection.<sup>5, 7</sup>
  3. All industrial development adjacent to any use shall have 20 foot screened side and rear landscape buffers.
- C. Multi-family Development<sup>27</sup>
1. All multi-family adjacent to any Residential district, or any lot with a residence, school, church, or institution of human care shall have, along common property lines, screened green space buffers as follows:
    - a. Front and rear: a minimum of 15 feet
    - b. Side: a minimum of 12 feet
- D. In all buffer yards, the exterior width beyond the vegetative screen shall be planted with grass, seed, sod, or ground cover.
- E. All buffer yards shall include a fence or a dense screen planting of trees, shrubs, or other plant materials or both, to the full length of the lot line to serve as a barrier to visibility, air borne particles, glare or noise. Such screen planting shall meet the following requirements.
1. Vegetative screening shall comply with Standard Details M52, M53 or M54, or other applicable Standard Details, depending on the buffer width. At the time of the planting the vegetation shall be at least six (6) feet in height.<sup>7, 23, 27, 28</sup>

However, any development where a 10 foot side and/or rear yard vegetative landscaping buffer is required adjacent to proposed commercial uses and where no outdoor storage is being proposed or provided, the following standards shall be met.<sup>27, 28</sup>

    - a. One (1) deciduous or evergreen tree with a height of six (6) feet or more when planted, likely to reach a height of 20 feet or more at maturity, planted every 50 linear feet; at least every other tree shall be an evergreen;
    - b. One (1) ornamental tree with a height of four (4) feet or more when planted, likely to reach a height of six (6) feet or more at maturity, planted every 50 linear feet; and
    - c. Three (3) shrubs per each 25 feet along the property line, round upward.
    - d. These requirements shall be required on both sides of a property line for adjoining properties.
    - e. A 10 foot landscape area on the property unless shared parking is proposed. In the event shared parking is proposed, the required property line planting would be in addition to other plantings.<sup>7, 23, 26</sup>
  2. It will be the responsibility of the landowner to replace any trees that die and shall be so noted on the site plan.
  3. Screen planting shall be a minimum of ten (10) feet wide but shall be placed so that it is no closer than four (4) feet at maturity from a property line or from any street.
  4. No structure, fence, planting, or other obstruction shall be permitted which would interfere with traffic visibility.

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 January 28, 2021  
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- F. In any Commercial, Industrial, Institutional, or Residential development, all dumpsters shall be screened from any residences or from view of a public highway.<sup>23</sup>
- G. All buffer yards shall be maintained by the property owner.
- H. All development adjacent to a Sensitive Natural Area shall have a buffer of natural vegetation. Environmental standards contained in Section 8.9A, 1 through 7, will apply. The buffer shall meet the current Federal standard except as required in Table 4.11 -1 below:<sup>23</sup>

**Table 4.11 -1 Wetland Size in Acres<sup>5, 8, 23</sup>**

Greater Than	Less Than	Buffer Width in Feet
0.05	0.10	30
0.10	0.16	35
0.15	0.21	40
0.20	0.26	50
0.25	0.31	55
0.30	0.36	60
0.35	0.41	65
0.40	0.46	70
0.45	0.51	75
0.50	0.66	80
0.65	0.81	85
0.80	0.96	90
0.95	1.21	95
1.20	--	100

- I. All required landscape plans shall contain the following elements:<sup>7</sup>
  - 1. Deciduous street trees for shade and aesthetics, planted at the following average spacing:<sup>23</sup>
    - a. Site with street frontage of up to 200 feet: 1 tree per 50 feet.
    - b. Site with street frontage exceeding 200 feet: The greater of 4 trees or 1 tree per 100 feet.
  - 2. Evergreen buffer planting, as required, for full screening.
  - 3. Parking lot and internal drive plantings (mix of evergreen and deciduous) for partial screening and limited shade.
  - 4. Structure plants for aesthetics and limited shade.
  - 5. Schedule of plants including common name, scientific name, minimum size (height, caliper, etc.) quantity and specific limitation notes.
- J. Required landscape buffers for a non-residential use are indicated in Appendix B.<sup>27</sup>

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APPENDIX B: NON RESIDENTIAL SITE DEVELOPMENT STANDARDS TABLE <sup>27, 32, 35</sup>																			
Zoning District	Development Type <sup>9</sup>	Min Lot Area (MLA)	Min Lot Width	Max Building Height <sup>*</sup>	Imperious Surface Limit	Building Setbacks			Parking/ Drive Aisle Setbacks			Buffers (Sec. 4.11) (Screened / Unscreened) Adjacent Use							
						Front	Side	Rear	Front	Side	Rear	A Residential district, or any lot with a residence, school, church, or institution of human care (Distance per Sec. 4.6)							
												Distance Front Side Rear	Street Trees	Narrow Buffer Detail No. M-54	Commercial Use	Industrial Use			
A Residential district, or any lot with a residence, school, church, or institution of human care (Distance per Sec. 4.6)																			
Industrial – Commercial (IC) **	Commercial sites 1.5 acres and smaller	N/A	N/A	75	80%	25			15	4	4	75	Street Trees	Narrow Buffer Detail No. M-54	N/A	10(S)	N/A	10(S)	
	Commercial sites greater than 1.5 acres	N/A	N/A	75	80%	25			15	10	10	75	Street Trees	Medium Buffer Detail No M-53	N/A	10(S)	N/A	10(S)	
	Industrial	3 ac ***	N/A	75	90%	50 or 25 if adjacent to Industrial Use			25 or 20 if adjacent to Industrial Use			200	Street Trees	Wide Buffer Detail No. M-52	25(S)	20(S)	N/A	20(S)	
Residential-Light Industrial-Commercial (RLIC)	Commercial or Industrial	N/A	N/A	75	80%	See IC District													
Rural (R)	Churches	2 acres	200	45	N/A	25	50	50	See IC District for commercial sites			N/A	50(U) or 15 (S)	N/A	10(S)	N/A	10(S)		
	Schools, Grades K-12	K-4: 10 ac+ 5-8: 20 ac+ 9-12: 30 ac+	500	45	N/A	100						N/A	N/A	N/A	N/A	N/A			
	Hospitals	10 ac	500	45	N/A	100						N/A	N/A	N/A	N/A	N/A			
	Other Rural principal permitted uses	40,000	100	45	N/A	40	50	50				N/A	See I-C District for commercial or industrial use; Otherwise, N/A						
	Commercial or Industrial**	See IC District																	
Village (V)	Commercial <sup>y</sup>	N/A	N/A	35	N/A	25	10	40	See IC District										
	Industrial**	See IC District																	
Residential Growth (RG)	Commercial or Industrial**	See IC District																	
Neighborhood Commercial (NC)	Commercial	N/A	N/A	35	70%	15 min 25 max	10 <sup>F</sup>	10 <sup>D</sup>	See I-C District			25	See IC District						
General Commercial (GC)	Commercial	N/A	N/A	75	80%	20	10	25	See IC District										
Highway Commercial (HC)	Commercial	N/A	N/A	75	80%	25	25	25											
Light Industrial (LI)	Commercial or Industrial	N/A	N/A	75	80%	25	25	25											
Major Industrial (MI)	Commercial	N/A	N/A	75	90%	25	10	50											
	Industrial	3 ac***	N/A	75	90%	25	50	50											
Office/Commercial Mixed Use (OC)	Commercial	N/A	N/A	75	80%	15 min 25 max	10 <sup>F</sup>	10 <sup>D</sup>	See IC District										
Planned Neighborhood Development (PND)	Commercial	3 acres	See GC District Note: Planning Commission may amend development standards for developments in the PND District (see Article 5).																

The requirements in this table are in addition to any other applicable requirements in the text of this Ordinance. In the event of a conflict with the text, this table shall prevail.





**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

② on agreement

File Number: 21-3-ZV  
 Staff Initials: AB  
 Meeting Date: 01-28-21  
 Fees Paid (\$100 or \$150): \$100/chk  
37175

Email: zoning@jeffersoncountywv.org

Phone: (304) 728-3228

**Zoning Variance Request**

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

**Property Owner Information**

Name: Federal Group Inc  
 Mailing Address: 233 Lowe Drive, Shepherdstown, WV 25443  
 Phone Number: c/o Paul 304/676-8256 Email: c/o pjraco.consulting@gmail.com

**Applicant Contact Information**

Name: Tripp Lowe  
 Mailing Address: above  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

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

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

**Physical Property Details**

Physical Address: 233 Lowe Drive  
 City: Shepherdstown State: WV Zip Code: 25443  
 Tax District: Shepherdstown Map No: 8 Parcel No: 10.9  
 Parcel Size: 29.84+- Acres Deed Book: 1230 Page No: 490

**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**

**JAN 04 2021**

**JEFFERSON COUNTY PLANNING  
 ZONING & ENGINEERING**

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

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

Reference the section of the Zoning Ordinance pertaining to this request: Sec 4.6B, Sec 4.11A and Appendix B

Briefly describe the nature of the variance request:

4.6B 75' To 0' Distance  
4.11A / Appendix B 10'-20' Buffer between lots To 0'  
Appendix B setbacks 25' To 0' and Access<sup>ways</sup> Parking Lots 10' To 0'

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

Front Setback  Side Setback  Rear Setback  Reduction From 25 to 0

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

See Attached

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

See Attached

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

See Attached

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

See Attached

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

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

[Signature] Resident 12/31/20  
Signature of Property Owner Date

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

Notification Requirements (to be completed by staff)

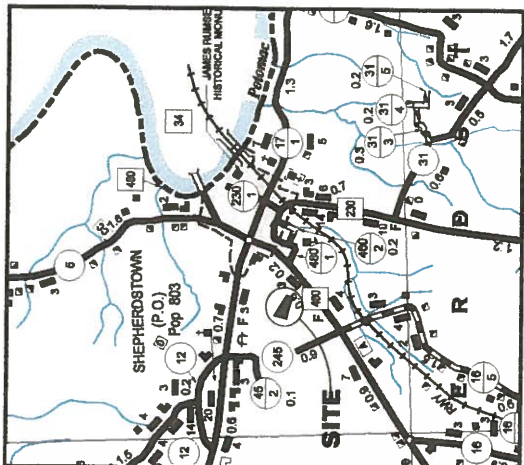
Notice of a public hearing for an appeal shall be advertised in a newspaper having general circulation in the County at least 15 days before the hearing. The subject property shall be posted conspicuously by a zoning notice no less than 28" x 22" in size, at least 15 days before the hearing (pursuant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

01-28-21  
Date of Public Hearing

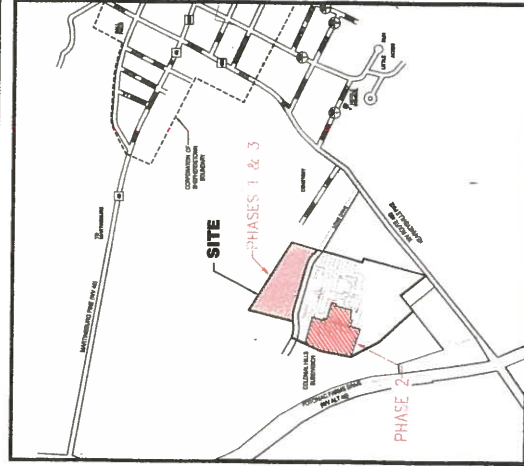
01-13-21  
Advertising Date

01-13-21  
Placard Posting Date

# PRELIMINARY PLAT FOR KENSINGTON TOWNHOME SUBDIVISION PHASES 1, 2 AND 3 SHEPHERDSTOWN DISTRICT JEFFERSON COUNTY, WEST VIRGINIA



**VICINITY MAP**  
OF  
**SHEPHERDSTOWN, WEST VIRGINIA**  
SCALE: 1" = 2000'



**LOCATION MAP**  
OF  
**PROJECT SITE**  
SCALE: 1" = 600'

DWG.	TITLE
<b>GENERAL</b>	
G-0.0	COVER SHEET (REDLINE CHANGE)
G-0.1	GENERAL NOTES (REDLINE CHANGE)
G-0.2	OVERALL LAYOUT (REDLINE CHANGE)
<b>CIVIL</b>	
C-1.0	PRELIMINARY PLAT
C-1.1	UTILITY EASEMENT PLAT
C-2.0	GRADING PLAN
C-3.0	UTILITY PLAN
C-4.0	ROAD PROFILES AND DETAILS
C-4.1	ROAD PROFILES
C-4.2	HW ROUTE 400 IMPROVEMENTS PLAN
C-5.0	WATER LINE PROFILES
C-6.0	SEWER LINE PROFILES
C-7.0	STORM DRAIN PROFILES
C-8.0	SEEDMENT AND EROSION CONTROL PLAN, NOTES AND DETAILS
C-9.0	UNDERGROUND STORM WATER MANAGEMENT SYSTEM 1 PLAN AND DETAILS
C-8.1	UNDERGROUND STORM WATER MANAGEMENT SYSTEM 2 PLAN AND DETAILS
C-10.0	SITE DETAILS
C-11.0	LANDSCAPING PLAN
C-12.0	LET SIGNAGE PLAN AND DETAILS

**CONSTRUCTION NOTES**

1. THE DEVELOPER SHALL NOTIFY COUNTY ENGINEERS IN ADVANCE BEFORE ANY CONSTRUCTION BEGINS. APPROVED SHALL BE OBTAINED ACCORDING TO THE FOLLOWING SECTIONS BELOW:

TABLE OF ADOPTED REFERENCES

- |  |                |                |
|--|----------------|----------------|
| 1. CONTROL OF EROSION  | SECTION 105.01 | ARTICLE 105.01 |
| 2. COMPLETION OF UNDERGROUND UTILITIES   | SECTION 105.02 | ARTICLE 105.02 |
| 3. COMPLETION OF FINISHING FOR BUILDINGS   | SECTION 105.03 | ARTICLE 105.03 |
| 4. COMPLETION OF FINISHING FOR BUILDINGS AND GARAGES   | SECTION 105.04 | ARTICLE 105.04 |
| 5. COMPLETION OF FINAL GRADING   | SECTION 105.05 | ARTICLE 105.05 |
| 6. COMPLETION OF FINAL SEWERAGE INSTALLATION   | SECTION 105.06 | ARTICLE 105.06 |
| 7. COMPLETION OF STORMWATER MANAGEMENT   | SECTION 105.07 | ARTICLE 105.07 |
| 8. COMPLETION OF STORMWATER MANAGEMENT   | SECTION 105.08 | ARTICLE 105.08 |
| 9. COMPLETION OF STORMWATER MANAGEMENT   | SECTION 105.09 | ARTICLE 105.09 |
| 10. FINISHING AND STORM CONTROL MEASURES SHALL BE IN PLACE PRIOR TO PERFORMING ANY SPECIAL EARTH RETAINING CONSTRUCTION. | SECTION 105.10 | ARTICLE 105.10 |
| 11. FINISHING AND STORM CONTROL MEASURES SHALL BE IN PLACE PRIOR TO PERFORMING ANY SPECIAL EARTH RETAINING CONSTRUCTION. | SECTION 105.11 | ARTICLE 105.11 |
| 12. FINISHING AND STORM CONTROL MEASURES SHALL BE IN PLACE PRIOR TO PERFORMING ANY SPECIAL EARTH RETAINING CONSTRUCTION. | SECTION 105.12 | ARTICLE 105.12 |
| 13. FINISHING AND STORM CONTROL MEASURES SHALL BE IN PLACE PRIOR TO PERFORMING ANY SPECIAL EARTH RETAINING CONSTRUCTION. | SECTION 105.13 | ARTICLE 105.13 |
| 14. FINISHING AND STORM CONTROL MEASURES SHALL BE IN PLACE PRIOR TO PERFORMING ANY SPECIAL EARTH RETAINING CONSTRUCTION. | SECTION 105.14 | ARTICLE 105.14 |
| 15. FINISHING AND STORM CONTROL MEASURES SHALL BE IN PLACE PRIOR TO PERFORMING ANY SPECIAL EARTH RETAINING CONSTRUCTION. | SECTION 105.15 | ARTICLE 105.15 |
| 16. FINISHING AND STORM CONTROL MEASURES SHALL BE IN PLACE PRIOR TO PERFORMING ANY SPECIAL EARTH RETAINING CONSTRUCTION. | SECTION 105.16 | ARTICLE 105.16 |
| 17. FINISHING AND STORM CONTROL MEASURES SHALL BE IN PLACE PRIOR TO PERFORMING ANY SPECIAL EARTH RETAINING CONSTRUCTION. | SECTION 105.17 | ARTICLE 105.17 |
| 18. FINISHING AND STORM CONTROL MEASURES SHALL BE IN PLACE PRIOR TO PERFORMING ANY SPECIAL EARTH RETAINING CONSTRUCTION. | SECTION 105.18 | ARTICLE 105.18 |
| 19. FINISHING AND STORM CONTROL MEASURES SHALL BE IN PLACE PRIOR TO PERFORMING ANY SPECIAL EARTH RETAINING CONSTRUCTION. | SECTION 105.19 | ARTICLE 105.19 |
| 20. FINISHING AND STORM CONTROL MEASURES SHALL BE IN PLACE PRIOR TO PERFORMING ANY SPECIAL EARTH RETAINING CONSTRUCTION. | SECTION 105.20 | ARTICLE 105.20 |

DEVELOPER ACCEPTANCE STATEMENT:  
THE DEVELOPER HAS REVIEWED THIS PLAT, AGREES TO ABIDE BY ALL CONDITIONS, TERMS AND SPECIFICATIONS PROVIDED HEREON.  
DATE: \_\_\_\_\_

OWNER ACCEPTANCE STATEMENT:  
THE OWNER HAS REVIEWED THIS PLAT, AGREES TO ABIDE BY ALL CONDITIONS, TERMS AND SPECIFICATIONS PROVIDED HEREON.  
DATE: \_\_\_\_\_

PRELIMINARY PLAT APPROVED BY THE JEFFERSON COUNTY DEPARTMENT OF ENGINEERING  
JEFFERSON COUNTY ENGINEER \_\_\_\_\_ DATE \_\_\_\_\_

I HEREBY CERTIFY THAT THIS PLAT IS CORRECT AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND THAT THE RELATIVE ERROR OF THIS PLAT IS 1:5000, OR BETTER.  
PLANNING & SURVEYING P.C. LINDSEY, INC. P.O. BOX 10717  
CHARLOTTE, NC 28217



**ALPHA ASSOCIATES, INCORPORATED**  
ASSISTED ENGINEERS, ARCHITECTS, PLANNERS, SURVEYORS  
1000 W. MARKET ST., SUITE 200  
FARMINGTON, WV 26031  
PHONE: 800-361-4861  
FAX: 304-341-6507  
WWW.ALPHAASSOCIATES.COM

**AGENCY REVIEW**

DATE	BY	REMARKS

**COVER SHEET**

**PRELIMINARY PLAT**  
**KENSINGTON TOWNHOME SUBDIVISION**  
**SHEPHERDSTOWN DISTRICT**  
**PHASES 1, 2 AND 3**  
**JEFFERSON COUNTY, WEST VIRGINIA**  
TM: 8, PARCEL: 10.9; DB: 067, PG: 493

DATE: MAY 2009  
SHEET NO. 1  
G-0.0

RED LINE CHANGES





Federal Group, Inc.  
Clarion Hotel, Conference Center and Government Offices and Training Center  
Request for Variances  
Article 4, Section 4.11.A (Buffer)  
Article 4, Section 4.6.B (Distance Requirement)  
Appendix B (Setbacks for Buildings, Access Drives and Parking Areas)  
Jefferson County Zoning Ordinance  
January 4, 2021

**Brief Description of Request:**

The Clarion Hotel, Conference Center and Government Offices and Training Facilities were developed many years ago in Jefferson County. This project was approved for zoning and site plan and has gone under several series of use and occupancy changes. Like many other businesses in Jefferson County that have been developed with multiple structures or uses, the Applicant would like to split a portion of the Building away from another portion of the Building. Currently a major portion of the Government Training Offices and Government Professional Offices are in a portion of the building that is attached to the main Hotel and Conference Center and Training Facility by two breezeways as shown on the attached plat. These Structures' uses were approved by a Conditional Use Permit many years ago and generally the uses are not changing. However, to separate the two sides of the Building for both financial, leasing, or other purposes, the Staff has determined that a new Conditional Use Permit will need to be processed, or in the alternative, a Rezoning requested. Both sides of the businesses (Government Training/Offices on one side and the Hotel, Fitness Center, Training and Conference Center on the other) have been operated for many, many years by the Federal Group which is locally owned.

However, prior to processing a Rezoning or a new Conditional Use Permit to separate the buildings onto their own parcels, the Staff and Applicant agree that 4 provisions of the Ordinance will need to be varied. These are the same four sections that have been varied for at least 4 other similar businesses by this Board. They include the 340 Business Center, the Alex Chevrolet Lots, the Bavarian Inn and RAI in the Industrial Park. These sections are the internal Building Setbacks from 25' to 0' (Appendix B), the Internal Distance Requirement from 75' to 0' (Section 4.6.B), the internal Buffering between buildings and uses from 20' to 0' (Section 4.11.A. and Appendix B) and Internal Setbacks for Parking and Access Aisle/Drives from 10' to 0' (Appendix B.). Again, these are setback, buffer, and distance requirements for the newly created internal lines and not the external lines that would impact the neighbors or perimeter of the property. All these variances have been granted multiple times by the BZA before for similar businesses wanting to separate their operations for Sale/Lease/Financial Purposes.

The one side of the site will remain Government/Professional Offices and Training Area (as will be explained in the Rezoning or CUP Application forthcoming if these variances are approved) and the other side of the site will remain Hotel/Lodging/Conference/Meeting/Training/Fitness Space. So, essentially, nothing will change on the site and there will be further processing for the separation from a zoning use standpoint.

There has been a major change to the area since this development was originally approved and that is that the new Envision Jefferson 2035 Comprehensive Plan that was approved in 2015 depicts this parcel to be Commercial as an Existing Use and it is listed as Commercial on the Future Land Use Map/Guide. As such, this type of multiple uses and lots on this property are endorsed by the Plan.

The purpose of this subdivision is for corporate, leasing, and financial reasons at this time. The new line will be created internally between a main building and the breezeways that connect it to the other main building. As nothing but the subdivision of land is being proposed at this time, the two parcels will not create any need for improvements, roads, stormwater management, water, or sewer approvals. Both parcels will utilize the same entrances and will continue to share the internal road system and parking areas as they do now. Absolutely nothing will change regarding the infrastructure or external appearance. As most in the community knows, this property is a beautifully landscaped property with a lot of open space.

Since there will be no external impact or changes in anything on the ground, the applicant is asking that the BZA to approve the same type of variances that have been granted to other existing businesses in Jefferson County to create separate, but same ownership lots. This will allow the Applicant to continue to operate, but with the ability to use the two parcels and buildings for leasing, financial and/or sale purposes. These types of requests are usually needed for corporate or other financial reasons to create a separate parcel. This is very similar to what has been happening with other businesses in the County. Therefore, the applicant is asking for the same internal setback, access roads, parking lots and buffer variances, as well as the internal distance requirement that have been granted for these other businesses. The Staff is currently working on ordinance amendments to eliminate the need for these types of variances since they have become routine for this type of business transaction.

The Staff has told the applicant's representative that they are supportive of these types of variances that are internal to an existing business. It provides a solution to a business that needs to create a parcel for both financial/corporate reasons and for the flexibility in the future to expand, lease or sell as needed. Often there is not a lot of time to go through the subdivision process when needed, so these variances will clear the way for that possibility. Plus, in this case, the separation is also required to go through an additional zoning approval process to separate the buildings/parcels. However, since everything that is currently in place meets all the appropriate requirements, no other variances are needed beyond the requested internal setback and buffer variances. Plus, these variances are only requested on the one new line between the lots that is being created with this request. Nothing external to the site is being requested at this time.

The specific variances that are requested are the variances that have been typically requested of the Board to create a nice, cohesive development that looks like a business campus. These include the elimination of the 10 to 20 feet required buffer required between commercial lots or lots in the RG Zone; the reduction of the building setback from 25 feet to 0'; the Distance Requirement from 75' to 0'; and the elimination of the access road and parking lot setbacks. Typically, the setback for the parking and access drive is 10 feet. However, since this Businesses and uses are already designed to work together, the parking and access drive will continue to be shared when and if further developed. As with the other cases that the BZA approved, these two parcels will continue to share the common use elements such as SWM, parking and access roads. If the property is every conveyed separately outside of the current ownership, then the owner will dedicate the appropriate cross access and parking easements and agreements to the potential buyers. This arrangement will eliminate the need for a parking and access drive setback, while continuing to provide interconnectivity.

The granting of these variances will allow a long-time Jefferson County business and tourist landmark to continue to function properly with the flexibility to expand and utilize their facilities as needed.

Thank you for your consideration of this matter.

Federal Group, Inc.  
Clarion Hotel, Conference Center and Government Offices and Training Center  
Request for Variances  
Article 4, Section 4.11.A (Buffer)  
Article 4, Section 4.6.B (Distance Requirement)  
Appendix B (Setbacks for Buildings, Access Drives and Parking Areas)  
Jefferson County Zoning Ordinance  
January 4, 2021

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

There will be no impact on these issues as this property is already a well maintained facility. Currently, the Clarion Hotel, Conference Center, Training Facility, Fitness Center and Government Professional Offices is a beautifully landscaped business campus with an abundance of manicured open space. If the variances are approved, there will be no changes to what already exists. If there are changes or prior to the subdivision, the Staff has said that there will be further processing for Zoning.

Furthermore, the variances will have no effect on the perimeter of the property. The property will look exactly as it does now. It will only have one new property line added internally creating a lot with one main portion of the building connected by two breezeways to the other main portion of the building. When this property was originally developed, the County required that all the buildings had to be connected by breezeways. Now, the County allow multiple structures on a property. However, it allows more flexibility for the Applicant to create separate parcels for business purposes.

Also, if necessary, easements will be dedicated if either of the properties are ever conveyed separately. The parking and access roads will continue to be used to mutually benefit both parcels just as they are now. If the properties are conveyed separately in the future, easements will be dedicated at that time.

Finally, the existing parcel already has agency approvals for the development as it exists. There will be no changes to the entrances, external access, or internal flow of traffic. Therefore, the granting of the waivers will not impact anything surrounding the property. It is even questionable if there will be any change in traffic since the size of the structures will remain the same size. Any expansion will require further County processing.

Currently, the existing property has a positive impact on the surrounding area because it is a local business and tourist landmark in Jefferson County. If the variances are granted, then the owner will be able to use the property for financial purposes and be more flexible for lease or sale of the buildings since the need of processing a subdivision and or zoning permit will already be completed.

The Applicant has been working with the Staff for over a year on this project in order to ensure compliance with all of the County Ordinances. This is just the first step in the overall process.

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

The property currently contains multiple structures connected by breezeways with multiple uses. The separation of this one parcel will allow the Applicant to separate the two main portions of building. Over the years, the government leases and contracts have changed, and separate areas and properties are needed for security purposes. The actual separation of the two areas into two separate parcels is necessary for both lease and sale and for security between the public section (hotel, conference area, fitness center, restaurant, and training areas) and the government and professional/training/office section that requires more of a secure area.

The variances will also allow the future separation of uses on the two new parcels with its own separate financial arrangements. The subdivision of the parcel now will allow the owner to make the arrangements that they need to make without affecting the current businesses.

In the current economic climate, businesses need to constantly come up with creative financial strategies to remain successful and competitive. The variances and subdivision will allow the owner to do such, without impacting anybody in the neighborhood. If there is future expansion on either parcel, then that expansion will comply with any regulations at that time.

The fact that this project, like other business park developments that the BZA has seen lately, is already approved with the buildings, parking and access drives and landscaping already located on the property makes this a unique situation. The one new property line will just split the property into two lots, without any changes in appearance or function (other than security).

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

The County has already determined that the buildings, parking lots, landscaping and access roads as designed and approved, are a reasonable use of the land. Since nothing will change on the property, the same types of uses will continue to be a good and reasonable use of the land. The granting of the variances, however, will allow the owners to be able to make good financial arrangements to continue to be a good and viable business in Jefferson County. It just makes good business sense to allow an existing successful business the flexibility to make proper arrangements that they need currently.

If the variances were to be denied, the hardship will be that the parking lots and access roads would have to be separated, which would eliminate all forms of interconnectivity. This scenario would not make good business sense. Furthermore, the buildings could not be separated. This would create a hardship from the standpoint of the two types of uses currently on site.

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

The purpose of a setback, distance requirement and/or buffer between lots is to protect property owners from uses that do not complement each other. In this case, the property owners will continue to be the same. Since the facility is already built, any potential purchaser will buy it exactly as the site is developed and built. Additionally, this site is already landscaped and buffered, so both the intent and the spirit of the ordinance is already being observed. Finally, if something new is built on either parcel, then additional processing will be required as a part of that process. Regarding the parking and drive aisle setbacks, based on the existing nature of the improvements, it only makes sense to keep the parking lots connected to adequately serve the entire site. The shared access and parking lots will ensure that the business will continue to make efficient use of the land.

The variances requested are for items that typically would protect one property owner from building something that would negatively affect a neighboring property. In this instance the buildings, access drives and parking areas already exist, so that really does not apply in this case. The variances only impact the newly created internal property line. The balance of the property already is built to the current ordinance standards, and any new expansion will be built to the appropriate ordinance standards at that time.

Substantial justice would be to approve the requested variances, so that the Clarion and all the uses and facilities on the property can continue to thrive in Jefferson County for many years.

The Board's approval of the variances would be greatly appreciated.



# Jefferson County, West Virginia

Department of Engineering, Planning, and Zoning

Office of Planning and Zoning

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## Zoning Administrator's Report January 28, 2021 Board of Zoning Appeals Meeting

**Date of Memo: January 21, 2021**

### 1) **Text Amendments:**

- ZTA19-03 – Zoning Ordinance Text Amendment to create provisions to allow Solar Energy Facilities to process in the County.
  - 12/10/2020: County Commission voted to vacate the October 1, 2020 approval of the text amendment and return the text amendment to the Planning Commission for further review and consideration.
  - 01/12/2021: The Planning Commission voted to hold a Public Hearing on 02/09/2021 at 7:00 PM.
- 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.
  - 12/17/2020: County Commission denied draft amendment as presented. No further direction provided.
- 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.
  - 12/17/2020: County Commission approved the draft amendment as presented.
- Greenway Engineering - Reorganization of the Subdivision Regulations and Zoning Ordinance: no update.

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

- The next regular meeting is scheduled for **February 25, 2021** (deadline for submission is Monday, February 1, 2021).



Jefferson County, West Virginia  
Department of Engineering, Planning and Zoning  
**Office of Planning and Zoning**  
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Charles Town, West Virginia 25414  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)

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**January 2021**  
**Zoning Certificate Activity Report**

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File # 20-28-ZC  
Request: Existing 160' Water Tank / Co-Located Telecommunications Facility:  
Equipment Modifications  
Property Owner: Jefferson Utilities Inc  
Applicant: Smartlink/AT&T Wireless  
Parcel Info: 307 W. Burr Boulevard, Kearneysville, WV 25430  
Parcel ID: 0200010095; Size: .38 acres; Zoning District: Industrial Commercial;  
Deed Book: 1024; Page: 38; Plat Book 10, Page 10F  
Date of Issuance: 12-22-2020

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File # 20-29-ZC  
Request: Medical Office  
Property Owner: RAI Properties, Inc  
Applicant: WVUHS Home Care, LLC  
Parcel Info: 130 E. Burr Boulevard, Kearneysville, WV 25430  
Parcel ID: 0200010093; Size: 3.77 acres; Zoning District: Industrial Commercial;  
Deed Book: 1130; Page: 602; Plat of Survey: PB: 25, Page 413  
Date of Issuance: 12-22-2020

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File # 21-1-ZC  
Request: Shopping Center Change in Tenant, Retail Sales and Services, General, Smoke Shop  
Property Owner: B33 Jefferson Crossing II, LLC  
Applicant: Charles Town Tobacco & Vape, LLC  
Parcel Info: 178 Flowing Springs Road, Charles Town, WV 25414  
Parcel ID: 02000800240004; Size: 15.16 acres; Zoning District: Residential-Light  
Industrial-Commercial; Deed Book: 1239; Page: 670; See PC File: 94-04 (site plan)  
Date of Issuance: 01-14-2021

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**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

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[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