



Jefferson County
Board of Zoning Appeals
Thursday, July 22, 2021 at 2:00 p.m.

Members
Tyler Quynn, Chair
Deirdre Catterton, Vice Chair
Matthew McKinney
Leeds Corbin
Steven Guier
Mikala Shremshock, Alternate

By order of Tyler Quynn, Chair of the Jefferson County Board of Zoning Appeals, this meeting will be held both in-person and virtually. This meeting will NOT be a LIVE broadcast on our website. Instead, it will be accessible live through ZOOM Meeting.

Physical (In-person) Location: Charles Town Library Conference Room (entrance on Samuel St.)
200 East Washington Street, Charles Town, WV 25414.

Virtual Meeting Information: The virtual meeting will be conducted via ZOOM. Please use the following information to join the ZOOM Meeting:

<https://us02web.zoom.us/j/84364851651>

Meeting ID: 843 6485 1651

Dial by location: 301-715-8592

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

If you wish to participate virtually 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 mute yourself when you are not talking. When participating, remember that your video is streaming to others.

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.

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

Approval of Minutes: June 24, 2021

Public Hearing – Administer Oath

ITEM #1 FILE #: 21-26-ZV

Request: Variance request from Section 5.4B of the Zoning Ordinance, as amended on May 1, 2003, to reduce the side setback from 12' to 10' and the rear setback from 20' to 10' for a 38' x 30' in-ground swimming pool and surrounding concrete patio.

Owner: Barbara & Thomas Yeager

Parcel Info: Demory Farm Subdivision, Lot 51, 157 Victoria Lane, Charles Town, WV
Parcel ID: 02009B00510000; Size: .23 ac; Zoning District: Residential Growth

Zoning Administrator Report

- a. Monthly Zoning Certificate Activity Report

Legal Update

- a. Discussion of the following pending lawsuits:
 1. Discussion/Action: Neighbors Against River Chase Event Center v. BZA re: 20-8-CUP (Civil Action No.: CC-19-2021-C-22)

Jefferson County
Board of Zoning Appeals
July 22, 2021

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

Meeting: June 24, 2021

- 1. Variance from Sec. 9.6C and 9.7. Owner/Applicant: Chad and Kimberly McGarrah. File: 21-16-ZV.

Nonactionable Correspondence

- a. Email from Josh Nimetz regarding short term rentals (July 6, 2021).

Minutes

Jefferson County Board of Zoning Appeals

- 1 Meeting Date: June 24, 2021
- 2 Meeting Location: By order of the Chair, the Board of Zoning Appeals meeting was held
3 in-person in the Charles Town Library Conference Room; and virtually
4 via ZOOM.
- 5 Board Members Present: Tyler Quynn, Chair; Steve Guier, Matt McKinney (via ZOOM), and
6 Mikala Shremshock, Alternate.
- 7 Board Members Absent: Leeds Corbin and Deirdre Catterton were absent with notice.
- 8 Staff Members Present: Alexandra Beaulieu, Zoning Administrator; and Nathan Cochran,
9 Assistant Prosecuting Attorney.

10 All requests were pursuant to the Jefferson County Zoning and Land Development Ordinance.

11 Mr. Guier moved to call the meeting to order at 2:01 pm. Mr. Quynn called for a vote, which
12 carried unanimously.

13 Mr. Quynn reviewed meeting protocol for those in attendance.

14 **Approval of Minutes: May 27, 2021**

15 Mr. McKinney moved to approve the minutes, which carried unanimously.

16 **ITEM #1 FILE #: 21-16-ZV - POSTPONED FROM 05/27/21**

- 17 Request: Variance request from Section 9.6C to allow an accessory structure in the required
18 front yard; and Section 9.7 to reduce the front setback from 25' to 2' for a 10' x 20'
19 accessory structure (shed).
- 20 Owner: Chad and Kimberly McGarrah
- 21 Parcel Info: Stone Brook Subdivision, Lot 16, 711 Apple Cross Drive, Harpers Ferry, WV
22 Parcel ID: 04005A00160000; Size: 1.04 ac.; Zoning District: Rural

23 Ms. Beaulieu swore in the applicant. Ms. Beaulieu noted that the postponement date was incorrect
24 on the agenda (06/24/21), but correct in the Staff report (05/27/21).

25 Mr. Chad McGarrah, owner, was present to address the Board. Ms. Beaulieu provided an overview
26 of her staff report, noting that the shed would be 2' from the privacy fence. Ms. Beaulieu noted that
27 both the applicant and a neighboring property owner, Mr. William Neufeld, represented that the
28 fence was actually 5' from the edge of the platted right-of-way. Ms. Beaulieu clarified that the
29 requested reduction would be from 25' to 7'. Ms. Beaulieu stated that a front setback standard
30 applies when adjacent to a platted right-of-way or easement. Ms. Beaulieu noted that the platted
31 right-of-way only serves one lot and is not expected to be widened. Mr. McGarrah explained the
32 nature of the request, noting that the selected location would create the least visual impact on
33 neighboring properties.

34 Mr. Quynn opened the public hearing.

35 Ms. Beaulieu swore in members of the public who indicated they would provide testimony.

36 Mr. Brett Williamson, president of the Stone Brook Homeowners Association (HOA), stated that the
37 HOA did not object to the requested placement of the shed.

38 Ms. Shremshock moved to approve the variance as requested. Mr. Quynn called for a vote, which
39 carried unanimously.

40 **Zoning Administrator's Report**

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

42 Ms. Beaulieu stated that the next Board meeting would be on July 22, 2021.

1 **Legal Update**

2 a) Discussion of the following pending lawsuits: None.

3 1. Discussion/Action: Neighbors Against River Chase Event Center v BZA re: 20-8-CUP
4 (Civil Action No.: CC-2021-C-22).

5 Ms. Shremshock moved to go into executive session at 2:24 pm. Mr. Guier seconded
6 the motion, which carried unanimously.

7 Mr. McKinney moved to come out of executive session at 3:05 pm, which carried
8 unanimously.

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

10 **Meeting: May 27, 2021**

11 1. Variance from Sec. 10.4B.3 and 10.7G. Owner: S. Petropouleas. Applicant: Mountain
12 View Diner. File: 21-8-ZV.

13 2. Variance from App. A. Owner: C. Beahm. Applicant: Mission Tabernacle Holiness
14 Church.
15 File: 21-17-ZV.

16 3. Variance from Sec. 5.4B. Owner: F. Sutton. File: 21-18-ZV.

17 4. Variance from Sec. 5.4B. Owner: R. Bounds. File: 21-19-ZV.

18 5. Variance from Sec. 9.6C and 8.2. Owner: C. Whisner. File: 21-20-ZV.

19 6. Variance from Sec. 9.6C and 9.7. Owner: R. Davis. File: 21-21-ZV.

20 7. Variance from Sec. 8.9A.9-10. Owner: G. Chicchirichi. Applicant: Sheetz, Inc. File: 21-
21 22-ZV.

22 8. Variance from Sec. 9.7. Owner: D. Shaffner. Applicant: E. Wilk. File: 21-20-ZV.

23 9. Variance from Appendix A. Owner: DR Acquisitions. File: 21-24-ZV.

24 10. Variance from Sec. 9.7. Owner: T. Phelps. File: 21-25-ZV.

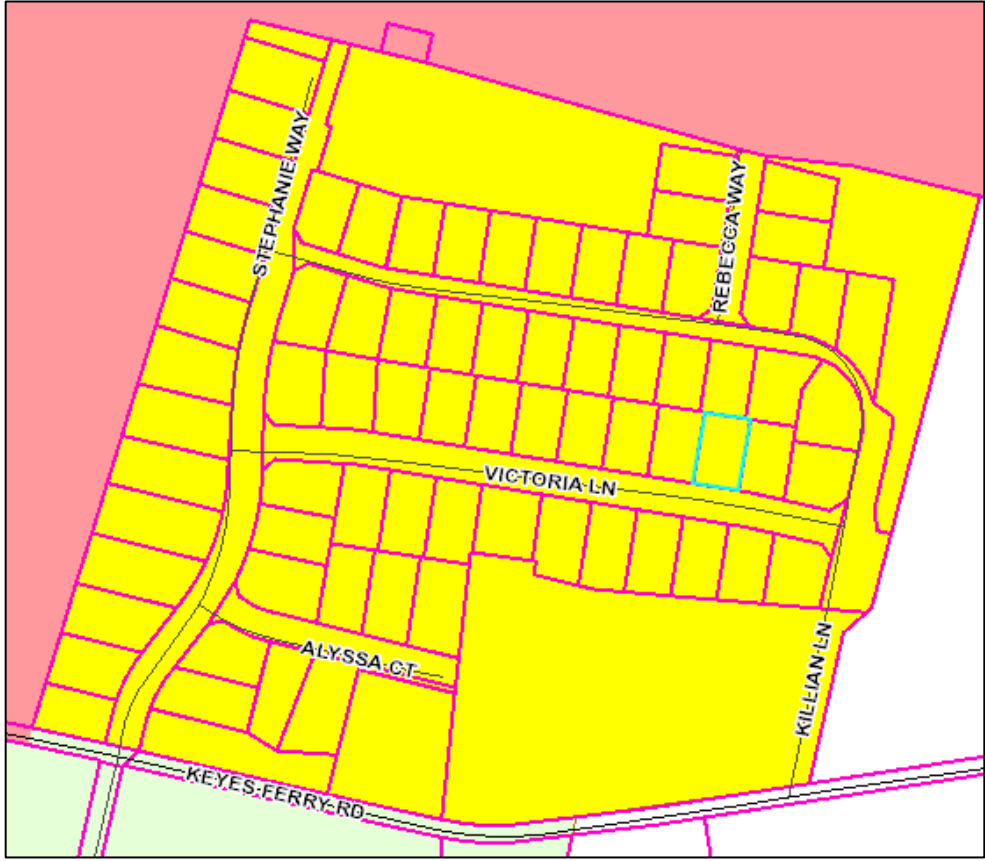
25 Mr. Cochran provided Mr. Quynn a copy of the draft Findings for his review and signature.

26 Mr. McKinney moved to adjourn the meeting at 3:06 pm. Mr. Quynn called for a vote, which carried
27 unanimously. Noting that members of the public entered the room during the motion to come out of
28 executive session, Mr. Cochran requested that the Board clarify their motion. Mr. Quynn explained
29 that the Board came out of executive session and moved to come back into regular session. Mr.
30 Quynn stated that the Board moved to adjourn the meeting.

Staff Report
 Jefferson County Board of Zoning Appeals
 July 22, 2021

Yeager Variance Request (File #21-26-ZV)

Item #1 Variance request from Section 5.4B of the Zoning Ordinance, as amended on May 1, 2003, to reduce the side setback from 12' to 10' and the rear setback from 20' to 10' for a 38' x 30' in-ground pool and surrounding concrete patio.

Applicant:	Barbara and Thomas Yeager
Owner:	Same
Developer:	n/a
Consultant:	n/a
Parcel Information and Zoning District:	<p>Demory Farm Subdivision, Lot 51, 157 Victoria Ln., Charles Town, WV Parcel ID: 02009B00510000; Size: .23 ac; Zoning District: Residential Growth</p> 
Surrounding Properties:	Zoning Districts: North, South, East, West: Residential Growth
History:	Demory Farm Subdivision, recorded on 03/11/05 in Plat Book 21, Page 79 (PC File #04-17)
Waivers/Variations:	None
Approved Activity:	Single family dwelling
Site Visit Conducted:	Site visit not conducted.

Staff Report
Jefferson County Board of Zoning Appeals
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Yeager Variance Request (File #21-26-ZV)

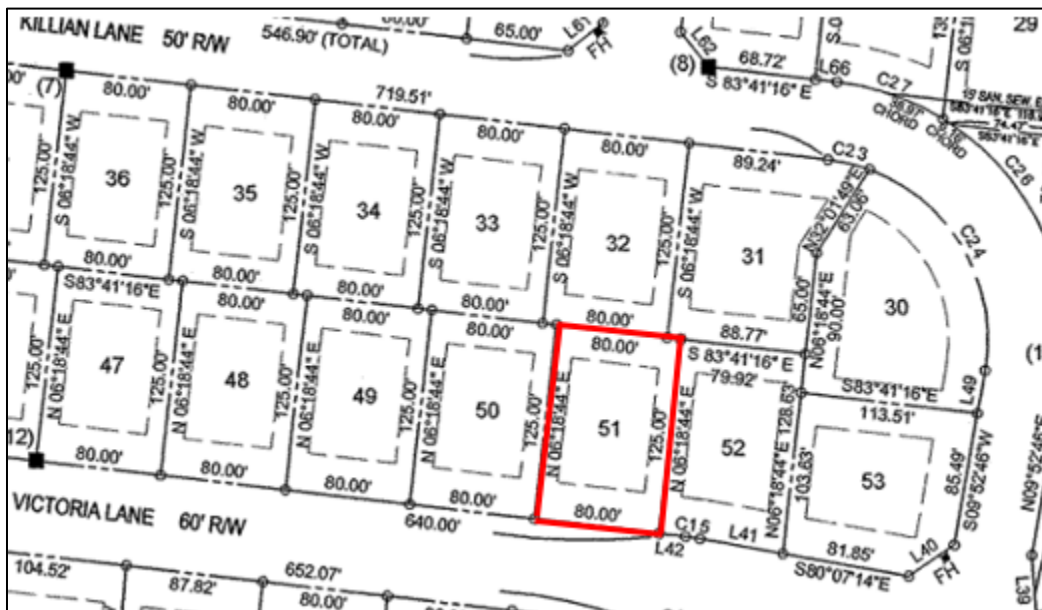
Summary of Request and Purpose of Ordinance Requirement

The applicant is requesting a variance from Section 5.4B of the Zoning Ordinance, as amended on May 1, 2003, to reduce the side setback from 12' to 10' and the rear setback from 20' to 10' for a 38' x 30' in-ground swimming pool and surrounding concrete patio.

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 the Request

The subject parcel is Lot 51 in the Demory Farm Subdivision, which was recorded on 03/11/05 in [Plat Book 21, Page 79A](#).



The subject lot is approximately 10,000 square feet in size and has an existing privacy fence around the backyard. The backyard area is fairly small and compliance with the required rear setback would require that the size of the pool be reduced significantly and placed closer to the home, which is generally not desired by homeowners due to safety.

Impact on adjoining properties is expected to be minimal due to an existing privacy fence that surrounds the property. Additionally, two of the adjoining neighbors (lots 50 & 51) have provided written consent to the requested placement of the pool as part of the Homeowner's Association approval process (included with application). The applicant represented that the neighbor to the rear (Lot 32) is aware of the request and did not object, but was unable to provide written consent at the time the variance application was submitted to our Office.

It may be feasible to comply with the Ordinance by other means by changing the proposed location or altering the dimensions of the pool to accommodate the required setbacks. However, as noted

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Yeager Variance Request (File #21-26-ZV)

previously, compliance with the rear setback would necessitate a significant reduction in the size of the pool, making the product less functional to the homeowners. Based on the proposed dimensions, it is not feasible to comply with the side setback requirement because Building Code requires that the pool be setback 4' from the deck. Additionally, as noted in similar requests for this subdivision, placing the pool too close to the house could create a safety hazard.

Conditions of Approval

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

1. No conditions of approval have been identified.

Section of Ordinance to be Considered

Section 5.4b Residential Growth District Height and Yard Requirements

<u>Development Type</u>	<u>Minimum Lot Area (MLA) Area per Dwelling Unit (ADU)</u>	<u>Required Yards</u>	<u>Maximum Building Height*</u>
1. Single family detached dwelling	6,000 sq. ft. ADU**		
Public/Central water and sewer	10,000 sq. ft. MLA	25 ft. front	40 ft.
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: 21-26-ZV
 Staff Initials: AB
 Meeting Date: 07-22-21
 Fees Paid (\$100 or \$150): \$100 cash

Email: zoning@jeffersoncountywv.org

Phone: (304) 728-3228

Zoning Variance Request

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

Property Owner Information

Name: Barbie + Tom Yeager
 Mailing Address: 157 Victoria Lane, Charles Town, WV 25414
 Phone Number: 304-725-1263 Email: cpugvy.522@gmail.com

Applicant Contact Information

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

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

Name: Mountaineer Pool Builders
 Mailing Address: Inwood, WV 25428
 Phone Number: 304-268-8276 Email: mountaineerpoolbuilders@gmail.com

Physical Property Details

Physical Address: 157 Victoria Lane
 City: Charles Town State: WV Zip Code: 25414
 Tax District: Charles Town Map No: 9B Parcel No: 51
 Parcel Size: .23 acre Deed Book: 1098 Page No: 701

Zoning District (please check one)

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

RECEIVED
JUN 28 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: Section 5.4B (a)

Briefly describe the nature of the variance request:
to put an in ground pool in our backyard

If this request is for a setback variance, please check one of the following:
Front Setback Side Setback Rear Setback Reduction From rear 20 side 12 to 10

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:
We have a fence in place. We have talked to the adjoining neighbors and they have agreed to us installing a pool.

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?
Due to the size of the yard and setback requirements, a pool will not fit without the variance.

How will granting this variance eliminate an unnecessary hardship and permit a reasonable use of the land?
By granting this variance, we will be able to have a pool installed for exercise and recreation.

How will granting this variance allow the intent of the Zoning Ordinance to be observed and substantial justice to be done?
We will be able to have the pool installed.

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.

Barbara Yeager 6/23/21
Signature of Property Owner Date

Steele Medley 6/23/21
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).

July 22, 2021
Date of Public Hearing

July 7, 2021
Advertising Date

July 7, 2021
Placard Posting Date

Smart Block

Pools

Count: 1

Envelope: 38' x 30'

Perimeter: 135' 11"

Area: 874.37 ft²

Int Surface Area: 1493.43 ft²

Depth: 3' to 4' 6" to 7'

Volume: 26,132 gallons

Interior Finish: Wet Edge, Sapphire Treasure

Tile Line: +6" 135' 11"

Tile Material: Stone, Gray

Exterior Facing: 29.65 ft²

Coping Area: 139.88 ft²

Coping Interior: 135' 11"

Coping Material: Stone, Blue, Linear

Raised Beams: 20' at +9"

Raised Beam Mtri: Pavers, Tahoe

Steps/Benches: 4

Step Linear Ft: 52'

Step Perimeter: 109' 11"

Step Area: 103.16 ft²

Concrete: 32.2 yards³

Rebar: 4644' 4"

Project Info

Project Name: Yeager

Address: 157 Victoria Lane

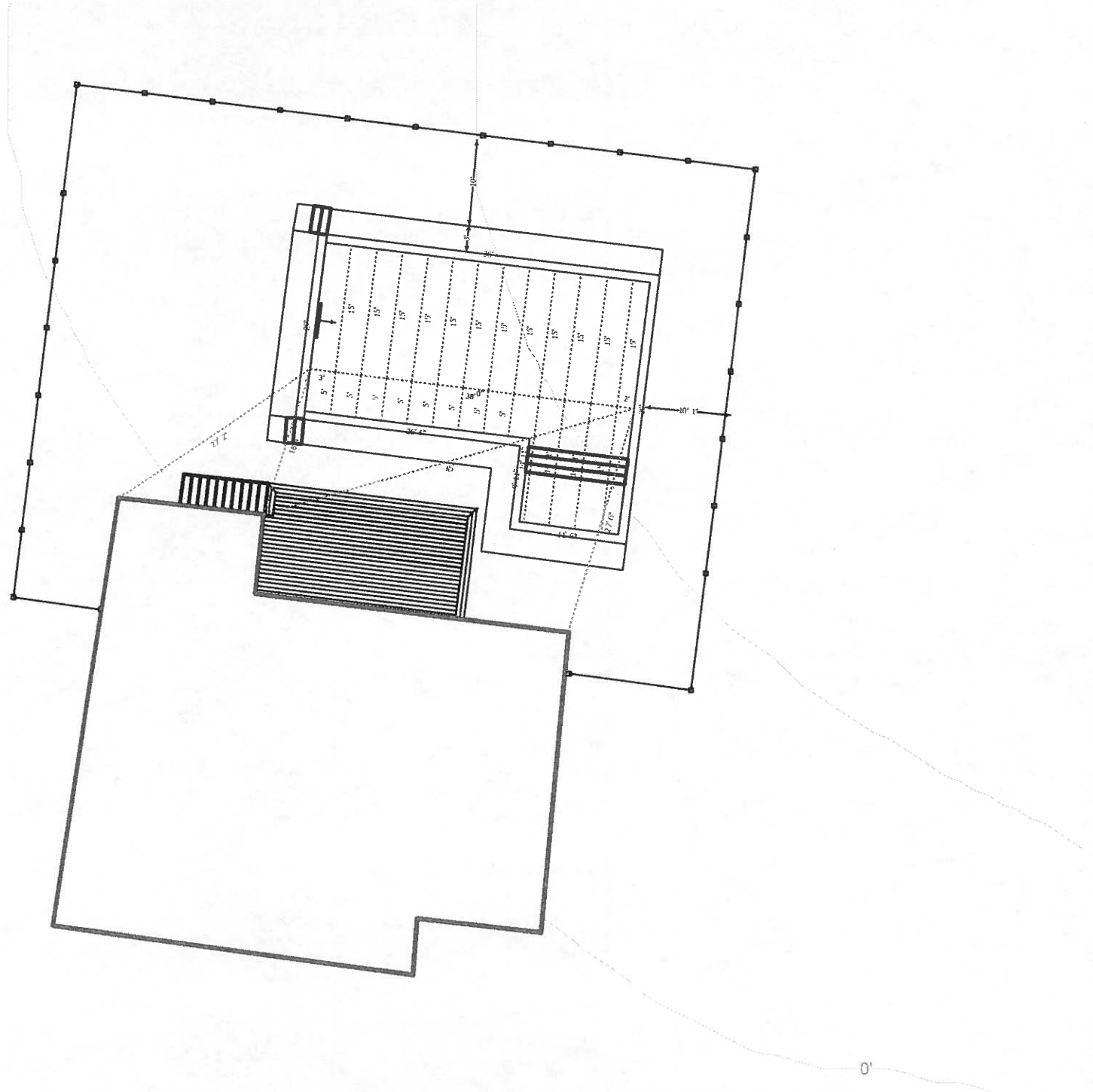
City: Charles Town

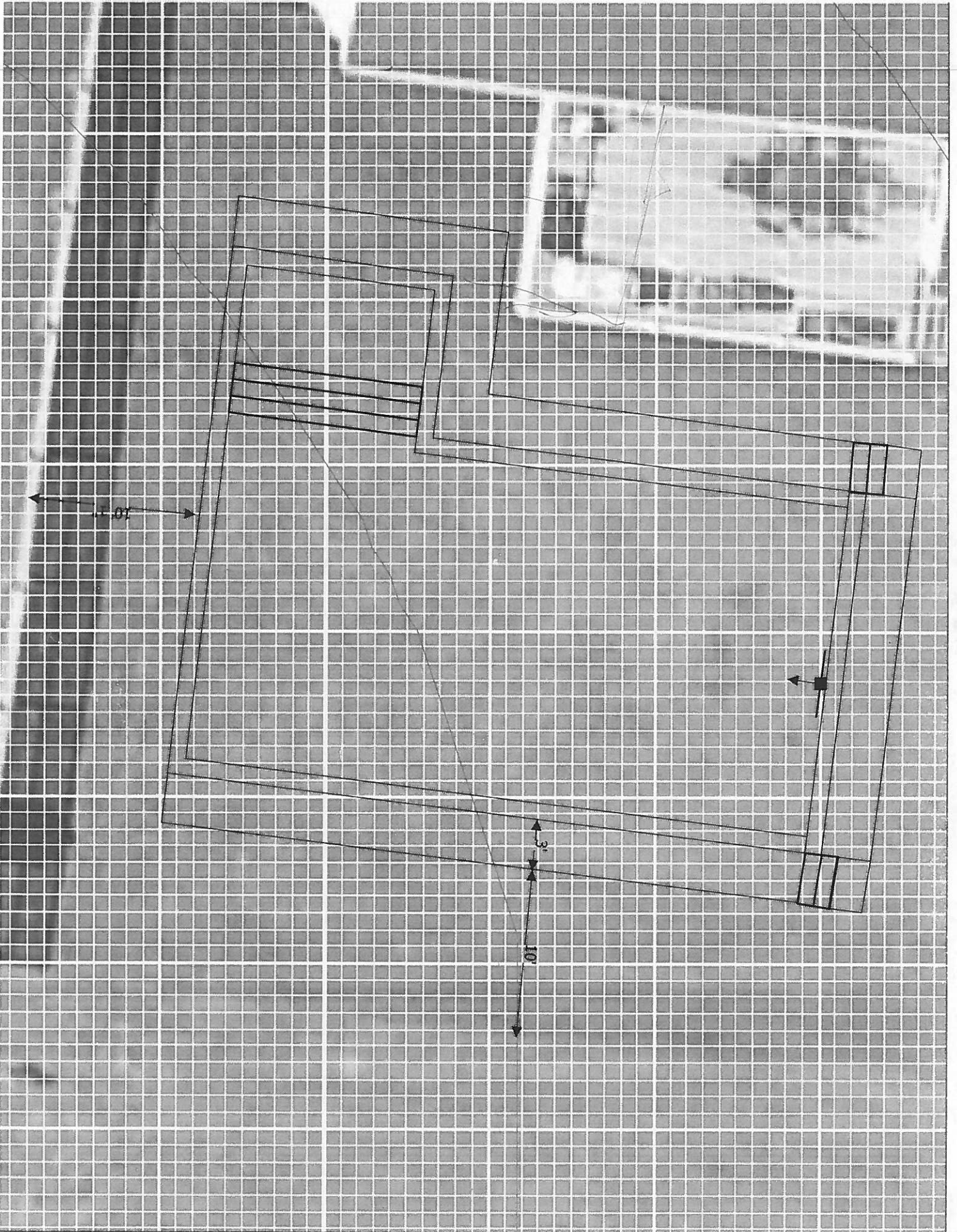
State/Province: WV

Zip/Postal Code: 25414

Designer Name: Jeff Thompson

Company Name: Mountaineer Pool Builders





DEMORY FARM ARCHITECTURAL IMPROVEMENT REQUEST FORM

Revised 05/09

Name of Applicant: Barbie and Tom Yeager Lot Number _____

Address: 157 Victoria Ln Charles Town, WV 25414

Telephone: (H) 304-725-1203 (W) _____ (Cell) _____

Email Address: Cpuqvy522@gmail.com Start Date: July Completion Date: Sept

DETAILED DESCRIPTION OF PROPOSED IMPROVEMENT(S):

40x20 Pool in Back yard
See attached

Use this space to sketch a drawing, insert a picture or provide additional details.

APPLICATION REQUIREMENTS:

The following items must be submitted with this request form. Failure to submit these items will delay your request.

1. Plat or survey of your property indicating the location of the proposed change(s). If you are planning to install a fence, include the fence type, height and style of the lots directly connected to yours.
2. Manufacturer's brochure, sketch (overhead and side view), and/or photograph showing the design or style of the proposed change(s).
3. **Detailed** written description of improvement including size, type of construction, color or finish, height for decks, etc.
4. Architectural plans or drawings (for major additions or improvements). Not necessary for fences, decks or patios.
5. Grading plan, if changes to the grading of your lot will change or affect adjoin lots.

PROPERTY OWNER/PERMIT APPLICANT'S CERTIFICATION OF INTENT AND ACKNOWLEDGEMENT OF RESPONSIBILITY:

I, (We), the Owner(s) of the property on which the intended improvement is to be constructed or placed, hereby certify and ensure that this intended improvement/construction and the intended use complies with all restrictive covenants of this property/real estate. And, I, (We), agree, understand and acknowledge that I, (We), assume full responsibility for compliance with any such private land use covenants and restrictions, and that a violation thereof may result in legal sanctions by court injunction, fines and civil damages, irrespective of the issuance of this permit by Jefferson County.

I, (We), further acknowledge and understand that:

1. Any construction prior to the issuance of this permit is in violation of the Jefferson County Ordinances, and is subject to prosecution to the fullest extent of the law. (This includes site work, utilities construction, building construction, etc.)
2. Any new structure/swimming pool shall be located at the required/prescribed setback distances from property lines.
3. By signing this application it is understood that employees, representatives and/or agents of the Jefferson County Departments of Planning, Zoning, and Engineering are authorized to enter in and/or upon the property for the purposes of performing site plan and building code compliance inspections and to check for code violations related to the property, site work and/or building activities identified on this application.
4. The Property Owner is responsible for providing employees, representatives, and/or agents of the Jefferson County Department of Planning, Zoning and Engineering, safe and open access to the site and all building components when conducting inspections.
5. All work will be performed in accordance with Jefferson County Ordinances and Building codes; and that the owner is responsible for ensuring that the person(s) and/or contractor performing the work is knowledgeable of the applicable ordinances and building codes; and that the contract should stipulate that all work be performed in accordance with the applicable building codes. For residential swimming pools, the 2015 International Swimming Pool and Spa Code, shall apply; this includes but is not limited to the requirements for fences, gates, latches, barriers, alarms, etc.
6. All roadways and properties shall be protected from damage and the deposit of mud, dirt, silt, trash and debris, etc., resulting from the work covered by this permit application. The property owner shall be responsible for any resulting damage and clean-up costs.
7. A copy of the 2015 International Swimming Pool and Spa Code and/or the International Building Code (IBC) may be purchased from the International Code Council at <http://www.iccsafe.org>; or are available for review at the Jefferson County Engineering Department, Office of Permits & Inspections.
8. No swimming pool shall be used and/or occupied until a "Use & Occupancy Certificate" is issued by the Jefferson County Office of Permits and Inspections; and that using or occupying such swimming pool prior to issuance of the Use & Occupancy Certificate is a violation of the Jefferson County Building Code Enforcement Ordinance and is subject to prosecution under the law.

I, (We), state that this application is true and accurate to the best of my (our) knowledge.

Barbara Yeager _____ 6/23/21 _____
Property Owner's (original/no copies) Signature(s) Date

Print Name
Stella Meredith Yeager _____ 6/23/21 _____
Property Owner's (original/no copies) Signature Date

Stella Meredith Yeager _____
Print Name

NEIGHBOR'S ACKNOWLEDGEMENT:

You are required to obtain the signatures of the two (2) property owners whom will be most affected by the proposed change. Signature by your neighbors indicates an awareness of your request and **does not** constitute approval or disapproval on their part. Neighbors can contact the Architectural Review Committee if they have any questions or comments about your request.

Name: Sadiya Siddiqi

Name: Grizelle Fivecoats

Address: 165 Victoria Ln Charles Town WV 25414

Address: 141 Victoria Ln, Charles Town WV, 25414

Lot Number: 52

Lot/ Number: 50

Signature: [Handwritten Signature]

Signature: Grizelle Fivecoats

Applicant hereby warrants that Applicant shall assume full responsibility for:

1. All landscaping, grading and/or drainage issues relating to the improvements (including replacing bonds or escrows posted by the Developer currently in place affecting the lot)
2. Obtain all required city, town or county approvals relating to your request and comply with each.
3. Any damage to adjoining property (including common area) or injury to third persons associated with improvement.
4. Contacting Miss Utility at (800) 245-4848 and any other utility companies to ensure utilities are not disrupted.
5. Applicant hereby states that they have read the ARC guidelines and agree that all work performed will be in compliance with those guidelines.

[Handwritten Signature]
Signature of Property Owner

6/17/2021
Date

**Submit To: Demory Farm Architectural Review Committee
c/o Chris Ott
12 Killian Way
Charles Town, WV 25414**

For Architectural Review Committee

Date this request form was received: 6/27/2021

APPROVED AS SUBMITTED

APPROVED SUBJECT TO: _____

NOT APPROVED DUE TO: _____

[Handwritten Signature]
Signature of Architectural Review Committee Member

6/27/2021
Date



Jefferson County, West Virginia

Department of Engineering, Planning, and Zoning

Office of Planning and Zoning

116 East Washington Street, 2nd Floor

P.O. Box 716

Charles Town, WV 25414

Email: zoning@jeffersoncountyvzw.org

Phone: (304) 728-3228

Zoning Administrator's Report July 22, 2021 Board of Zoning Appeals Meeting

Date of Memo: July 7, 2021

1) Text Amendments:

- ZTA20-01 – Short Term Rentals
 - On 06/08/21 the Planning Commission voted to accept into their work plan requests to develop provisions in the Zoning Ordinance to allow short term rentals (e.g. AirBnB, VRBO, etc.). – **No Update**.
- ZTA20-02 – Appendix A – Residential Setbacks in the Residential Growth zoning district
 - On 06/08/21 the Planning Commission voted to accept the Board of Zoning Appeal's recommendation into their work plan to amend the required setbacks in the Residential Growth zoning district. – **No Update**.

2) Upcoming BZA meeting

- The next regular meeting is scheduled for **August 26, 2021** (deadline for submission is Monday, August 2, 2021).



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

July 2021
Zoning Certificate Activity Report

File # 21-31-ZC
Request: Nonconforming Use: Change in Owner (mobile home park)
Property Owner: 340 Rainbow LLC / Attn: Rob Froggle
Applicant: 340 Rainbow LLC / Attn: HB Simpson
Parcel Info: 3511 Berryville Pike, Charles Town, WV 25414
Parcel ID: 06001100010002; Size: 9.31 ac; Zoning District: Industrial Commercial;
Deed Book: 963; Page: 532
Date of Issuance: 07-02-2021

Zoning

From: Josh Nimetz <joshnimetz@yahoo.com>
Sent: Tuesday, July 6, 2021 12:00 PM
To: Zoning
Subject: CUP Process

Follow Up Flag: Follow up
Flag Status: Completed

Zoning Board,

I live at 1591 Knott Rd Shepherdstown since February 2019. I have noticed that many of the places along the road are changing over to short term rentals or “tourist homes”¹. This is becoming a big problem. I know my neighbors have sent in complaints about this issue before, but it is getting out of control. I was reviewing the state laws and local ordinances and I found the following:

- According to WV law ^{1,2}, people who are renting their homes are considered commercial businesses and need to have business licenses. Some of these properties do, but some don't.
 - Business Permit – 1523 Knott Rd, 1365 Knott Rd and 28 McShane's Landing
 - Have a business permit in the owner's name, but not for this location 1529 Knott Rd
 - Can't find a business license for 1455 Knott Rd
- Then I read the Jefferson county ordinances and it says any commercial business in a rural area needs to go through a CUP process if it is not one of the ones listed as approved.
 - I saw in Appendix C that B&B are permitted in my rural area, but these are not B&Bs. However, hotels need a CUP and then all other commercial businesses are not permitted. According to WV Senate Bill 270, which was passed on March 9, 2021, any public or private building where the public pay for sleeping accommodation is considered a hotel.
- Based on these properties now being considered a Hotel according to the State, I would assume they have to go through the CUP process or have been through the CUP process already as they were a business prior to this new state law.
- I spoke to my neighbors as I haven't seen anything about conditional use permits being issued, and none of my neighbors have been informed there were Conditional Permits (CUP) being issued or hearings on any of the businesses that are running down near my home.
- I know some of the owners of these rentals are saying the rentals fall under the Home Sharing law Governor Justice signed, but that is only for municipalities that have signed up for Home Rule which Jefferson County has not done. Shepherdstown Proper has, but Jefferson County has not, so that rule doesn't apply. Home Sharing also does not negate the need for the CUP process in a rural area either.

I wanted to ask if any of these properties had received a conditional use permit as of yet, if not I would expect that the Zoning/County boards would send them cease and desist orders until they have filed for a CUP and it has gone through the proper channels.

Josh Nimetz

¹Senate Bill 270, based on March 9, 2021 and went into effect 90 days after the bill passed (June 9, 2021)

² WV Tax law