



Jefferson County
Board of Zoning Appeals Agenda
Thursday, November 9, 2023 at 2:00 p.m.

Members
Tyler Quynn, Chair
Matthew McKinney, Vice Chair
Steven Guier, Secretary
David Wiegand
Jacob Harris
Mikala Shremshock, Alternate

Effective July 27, 2023, Public Participation is available in-person only. The meeting will be broadcast live for viewing purposes only.

Meeting Location: County Commission Meeting Room located in the lower level of the Charles Town Library (entrance on Samuel St.)
200 East Washington Street, Charles Town, WV 25414

Broadcast Information: Meeting ID: 875 6750 7251
Meeting Link: <https://us02web.zoom.us/j/87567507251>
Phone Option (Dial by Location): 301-715-8592
Find your local number: <https://us02web.zoom.us/u/kgkZrq439>

**If watching live broadcast, please ensure your microphone is muted and be mindful that your video is streaming to others.*

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

Approval of Minutes: October 26, 2023

Public Hearing – Administer Oath

ITEM # 1 FILE #: 23-34-ZV

Request: Variance request from Section 8.4 to reduce the distance requirement from 300' to 135' along the western property line and from 300' to 75' along the eastern property line for a proposed kennel with an outdoor training area.

Owner: Nicholas Russo and Alice Davenport

Applicant: QRF Solutions K9

Parcel Info: 1899 Trough Road, Shepherdstown, WV
Parcel ID: 09000900070006; Size: 10 acres; Zoning District: Rural

ITEM # 2 FILE #: 23-35-ZV

Request: Variance request from Section 10.4.B.4 to allow a freestanding business sign to be installed in a location that faces an adjoining residential property.

Owner: Peter Corum

Applicant: Dino Kids / Attn: Cordelia Courtney

Parcel Info: 3988 Kearneysville Shepherdstown, WV
Parcel ID: 09001300260002; Size: 2 acres; Zoning District: Neighborhood Commercial

ITEM # 3 FILE #: 23-9-CUP

Request: Request by Earthworx General Contracting Services, LLC for a Conditional Use Permit to operate a Contractor with Outdoor Storage business, as defined in Article 2 of the Zoning Ordinance. The proposal consists of storing construction equipment on an outdoor gravel pad. No customers will come to the property. No new structures or signs are proposed.

Owner: Jeremy and Tiffany Martin

Applicant: Earthworx General Contracting Services, LLC

Parcel Info: 104 Winebrenner Road, Shepherdstown, WV
Parcel ID: 09000700020002; Size: 16.5 acres; Zoning District: Rural

THE FOLLOWING REQUEST IS NOT SUBJECT TO A PUBLIC HEARING.

ITEM #4 EXTENSION REQUEST RE: FILE #: 22-9-CUP

Request: Request by Rippon Energy Facility, LLC for an eighteen month extension of their Conditional Use Permit to operate a Solar Energy Facility. Per Section 3.2G of the Zoning Ordinance, the applicant is requesting an extension from June 7, 2024 to December 7, 2025.

Applicant: Rippon Energy Facility, LLC / Attn: Sam Gulland and Brian Kusiak

Parcel Info: Bullskin LLC, Owner
673 Old Shennandale Rd, Charles Town, WV
Parcel ID: 06001100090000; Lot Size: 133.75 / Project Size: 106.52 ac

Parcel Info: Clarence E Hough, Et Al, Owner
Vacant parcel west of the property addressed as 957 Myerstown Rd, Charles Town, WV
Parcel ID: 06001000030001; Lot Size: 108.66 ac / Project Size: 99.84 ac;

Parcel Info: View Mountain Farm LLC, Owner
28 Dutch Hill Rd, Charles Town, WV
Parcel ID: 06002100060000; Lot Size: 101.6 ac / Project Size: 97.01 ac;

Parcel Info: Stanley & Katherine Dunn, Owner
2646 Kabletown Rd, Charles Town, WV
Parcel ID: 06002100050000; Lot Size: 174.6 ac / Project Size: 165.52 ac;

Parcel Info: Stanley & Katherine Dunn, Owner
Vacant parcel east of the property addressed as 28 Dutch Hill Rd, Charles Town, WV
Parcel ID: 06002100070000; Lot Size: 89.39 ac / Project Size: 86.07 ac

Parcel Info: Stanley & Katherine Dunn, Owner
Vacant parcel east of the property addressed as 2646 Kabletown Rd, Charles Town, WV
Parcel ID: 06002200050001; Lot Size: 232 ac / Project Size: 169.15 ac;

Parcel Info: Stanley & Katherine Dunn, Owner
1371 Myerstown Rd, Charles Town, WV
Parcel ID 06001000050000; Lot Size: 366 ac / Project Size: 12.27 ac

*All of the subject parcels are zoned Rural.

Zoning Administrator Report

- a. Monthly Zoning Certificate Activity Report

Legal Update

- a. Discussion of the following pending lawsuits:
 1. Jefferson County Circuit Court Case #CC-19-2022-C-141 (RE: Rippon Solar Energy Facility / File 22-9-CUP) Rockwell v. JCBZA
 2. Jefferson County Circuit Court Case #CC-19-2023-C-131 (RE: Williamson Fence / 23-13-ZV) Gallagher v. JCBZA and Timothy Williamson

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

Meeting: October 26, 2023

1. Variance request from Section 5.4B. Owner: David Cebulski. File: 23-33-ZV.
2. Request by Tracy Dove dba Charles Town Car Storage for a Conditional Use Permit Owner: Tracy and Marketa Dove. File: 23-8-CUP.
3. Request by Wild Hill Solar Project for an extension of the previously issued Conditional Use Permit for a Solar Energy Facility. Applicant: Wild Hill Solar, LLC. Owners: Clarence & Donna Hough, T. Todd & Susan Hough, and Charles & Marie Hough (Life). File: 23-5-CUP.

DRAFT Minutes

Jefferson County Board of Zoning Appeals

- 1 Meeting Date: October 26, 2023
- 2 Meeting Location: County Commission Meeting Room located in the lower level
- 3 of the Charles Town Library (entrance on Samuel St.)
- 4 200 East Washington Street, Charles Town, WV 25414
- 5 Board Members Present: Tyler Quynn, Chair; Matthew McKinney, Vice Chair; Steve Guier,
- 6 Secretary; Jacob Harris and David Wiegand were present in person.
- 7 Board Members Absent: Mikala Shremshock, Alternate, with notification
- 8 Staff Members Present: Alexandra Beaulieu, Deputy Director & Zoning Administrator;
- 9 Steve Groh, Assistant Prosecuting Attorney; and Jennilee Hartman,
- 10 Zoning Clerk

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

12 Mr. Guier moved to call the meeting to order at 2:00 pm. Mr. Quynn called for a vote, which
13 carried unanimously.

14 Due to technical difficulties, the ZOOM audio was unable to broadcast for a portion of the meeting.
15 The audio issue was resolved after Item#1. An audio-only recording of the complete meeting is
16 available upon request.

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

18 **AGENDA ITEM #1 FILE #: 23-33-ZV**

- 19 Request: Variance request from Section 5.4B of the Zoning Ordinance (as amended 11/07/02)
- 20 to reduce the rear setback along the eastern property line from 20' to 16' for an
- 21 18' x 8' deck.
- 22 Owner: David Cebulski
- 23 Applicant: Stoneridge Outdoor Living, LLC / Attn: Robert Warren
- 24 Parcel Info: Deerfield Village, Lot 43, 476 Deerfield Village Dr., Shepherdstown, WV
- 25 Parcel ID: 09014B00430000; Size: 0.26 ac; Zoning District: Rural

26 Mr. Robert Warren, representative with Stoneridge Outdoor Living, LLC, was present to address the
27 Board on behalf of the property owner. Ms. Beaulieu provided an overview of her staff report.

28 Mr. Warren explained the nature of the request to the Board stating that the deck, as proposed, would
29 be more aesthetically pleasing. Mr. Warren also noted that the property to the rear is open space
30 owned by the Deerfield Village homeowners association.

31 Mr. Quynn opened the public hearing. No members of the public provided testimony. Mr. Quynn
32 closed the public hearing.

33 Mr. McKinney moved for a summary approval in accordance with Section 5.7 of the Boards'
34 Rules of Procedure (as amended 01/26/23) with the condition that the applicant is bound by their
35 testimony. Mr. Quynn called for a vote, which carried unanimously.

36 **Approval of Minutes: September 28, 2023**

37 Mr. Guier moved to approve the minutes with the following edits:

- 38 1. Page 1, Lines 16 and 17: change the following sentence, "*Mr. Wiegand seconded the motion,*
39 *which carried unanimously.*" to "Mr. Wiegand seconded the motion. Mr. Quynn called for a
40 vote, which carried four (4) in support and one opposed (Mr. McKinney)."
- 41 2. Page 1, Line 9, change the word *Persecuting* to Prosecuting.

42 Mr. Quynn called for a vote, which carried unanimously.

1 Mr. Quynn called for Item #3 to be heard next.

2 **AGENDA ITEM #3 FILE #: 22-5-CUP**

3 Request: Request by Wild Hill Solar Project for an extension of the previously issued
4 Conditional Use Permit for a Solar Energy Facility. Per Section 3.2G of the Zoning
5 Ordinance, the applicant is requesting an extension from March 30, 2024 to
6 September 30, 2025.

7 Applicant: Wild Hill Solar, LLC

8 Parcel Info: Clarence & Donna Hough, Owner

9 Vacant parcel north of the property located at 340 Old Shennandale Rd.,

10 Charles Town, WV

11 Parcel ID: 06000500060000; Lot Size: 49.04 ac / Project Size: 49.04 ac;

12 Zoning District: Rural

13 Parcel Info: T. Todd & Susan Hough, Trustees

14 340 Old Shennandale Rd, Charles Town, WV;

15 Parcel ID: 06000500010000; Lot Size: 206.84 ac / Project Size: 181.70 ac;

16 Zoning District: Rural

17 Parcel Info: Charles & Marie Hough (Life), Owner

18 620 Old Shennandale Rd, Charles Town, WV;

19 Parcel ID: 06001100080000; Lot Size: 118.05 ac / Project Size: 32.11 ac;

20 Zoning District: Rural

21 Mr. Paul Raco with P.J. Raco Consulting, LLC and Mr. Bob McLusky with Jackson Kelly PLLC
22 were present to address the Board on behalf of the property owners and the applicant. Ms. Beaulieu
23 provided an overview of her staff report, noting that the request was permitted in accordance with
24 Section 3.2G and that the request was limited to the expiration date of the CUP.

25 Mr. Raco and Mr. McLusky explained the nature of the request to the Board. Mr. Raco highlighted
26 the fact that as the subject parcels are currently used for farming, the property owners would like to
27 know if they should be planting seed for next year's harvest. Mr. McLusky provided an overview of
28 the project's history and an explanation pertaining to hardship for the Board's consideration.

29 Mr. Raco and Mr. McLusky addressed the Board's questions.

30 Mr. McKinney moved to approve the extension request as presented with the condition that the
31 applicants are bound by their testimony and that any future extension request must be processed as a
32 zoning variance. Mr. Quynn called for a vote, which carried four (4) in support and one (1) opposed
33 (Mr. Harris).

34 **AGENDA ITEM #2 FILE #: 23-8-CUP**

35 Request: Request by Tracy Dove dba Charles Town Car Storage for a Conditional Use Permit
36 to operate a Commercial Storage facility, as defined in Article 2 of the Zoning
37 Ordinance. The proposal consists of converting an existing storage building into a
38 nonresidential car storage facility for up to 28 vehicles. No expansion of the existing
39 structure is proposed. No employees beyond the property owners. One 3' x 4' sign to
40 be located at the entrance of the property.

41 Owner: Tracy and Marketa Dove

42 Parcel Info: Dove Minor Subdivision, Lot 1 (Residue), vacant parcel located immediately south of
43 428 Flowing Acres Road, Charles Town, WV

44 Parcel ID: 02004D00110000; Size: 4.65 acres; Zoning District: Rural

1 Mr. Tracy Dove, property owner, was present to address the Board. Ms. Beaulieu provided an
2 overview of her staff report to the Board and reviewed the required criteria for a Conditional Use
3 Permit. Ms. Beaulieu noted that the current proposal would not necessitate a site plan.

4 Mr. Dove provided an overview of the proposed land use and addressed the Board's questions.
5 Mr. Dove confirmed that there would be no outside storage related to the business. Mr. Dove
6 acknowledged that the proposed sign would adhere to the required setbacks.

7 Mr. Quynn opened the public hearing. No members of the public provided testimony. Mr. Quynn
8 closed the public hearing.

9 The Board reviewed each of the General Standards outlined in Section 6.3A.1-8 of the Ordinance.

10 Mr. Guier moved to approve the conditional use permit with the condition that the applicant is
11 bound by their testimony.

12 Mr. McKinney requested a friendly amendment to include the following condition:

13 1. All vehicles related to the operation of this land use shall be brought indoors within 24-
14 hours of being dropped off at the subject parcel.

15 Mr. Quynn called for a vote on the friendly amendment, which carried unanimously.

16 Mr. Quynn called for a vote on the amended motion, which carried unanimously.

17 **Zoning Administrator Report**

18 a. Monthly Zoning Certificate Activity Report.

19 The Report was included in the mailed packet.

20 b. Approval of the 2023 Board of Zoning Appeals Meeting Schedule

21 Mr. Wiegand moved to approve the meeting schedule as presented. Mr. Harris seconded the
22 motion, which carried unanimously.

23 Ms. Beaulieu noted that the next regularly scheduled meeting is November 9, 2023.

24 **Legal Update**

25 a. Discussion of the following pending lawsuits.

26 1. Jefferson County Circuit Court Case #CC-19-2022-C-81 (RE: ZTA22-01 Solar Energy
27 Facilities) Rockwell v. JCPC, JCBZA and JCCC

28 2. Jefferson County Circuit Court Case #CC-19-2022-C-141 (RE: Rippon Solar Energy
29 Facility / File 22-9-CUP) Rockwell v. JCBZA

30 3. Jefferson County Circuit Court Case #CC-19-2023-C-131 f/k/a CC-19-2023-P-95 (RE:
31 Williamson Fence / 23-13-ZV) Gallagher v. JCBZA and Timothy Williamson

32 Mr. Groh stated there had been no changes to the status of the pending lawsuits.

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

34 **Meeting: September 28, 2023**

35 1. Variance from Section 9.7. Owner: Sharon Tennant. File: 23-27-ZV.

36 2. Variance from Section 8.10. Owner: Flowing Springs Road, LLC. File: 23-28-ZV.

37 3. Variance from Section 5.7(b). Owner: Charles and Shelly Wolfe. File: 23-29-ZV.

Board of Zoning Appeals

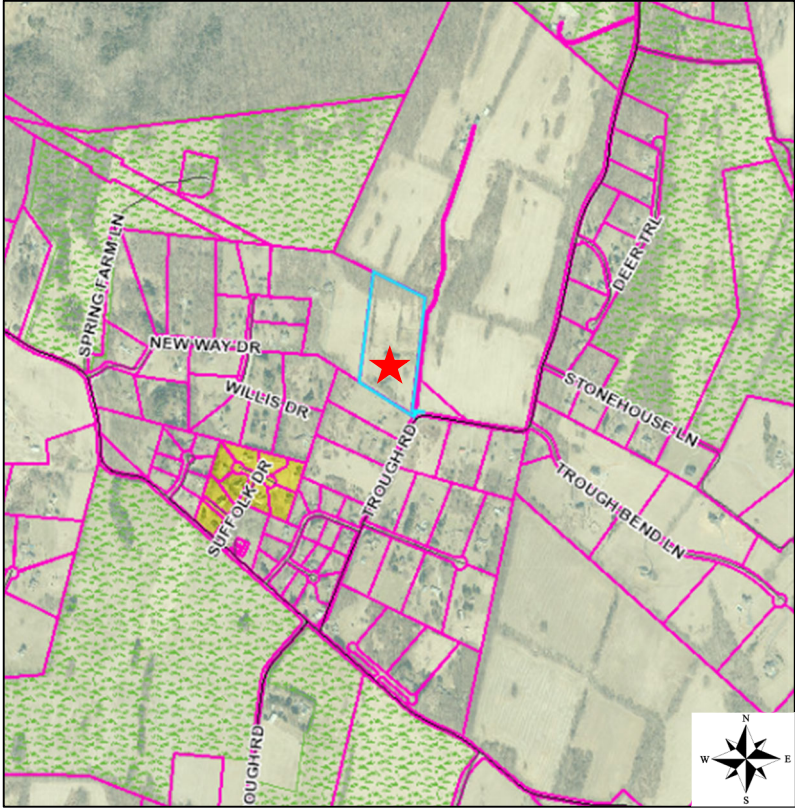
October 26, 2023

Page 4 of 4

- 1 4. Request for a Special Exception Permit for an Off-Premise Sign for Bakerton Market. Owner:
2 Barbara Sullivan. Applicant: Bakerton Market / Attn: Kevin Cueller and Katty Vocal. File:
3 23-2-SE.
- 4 5. Variance from Section 5.7(b). Owner: Barbara Sullivan. Applicant: Bakerton Market /
5 Attn: Kevin Cueller and Katty Vocal. File: 23-30-ZV.
- 6 6. Variance from Section 5.7D.2.b.i(b). Owner: Elevation Properties, LLC. Applicant: P.J.
7 Raco Consulting, LLC / Attn: Paul Raco. File: 23-31-ZV.
- 8 7. Variance from Section 10.4B.2. Owner: Charles Town Burr Park Station, LLC. Applicant:
9 Holtzman Oil Corp / Attn: Lindsay Racer. File: 23-32-ZV.
- 10 Mr. Quynn was provided a copy of the draft Findings for review.
- 11 Mr. Wiegand moved to adjourn the meeting at 3:06 pm. Mr. Quynn called for a vote, which carried
12 unanimously.

Staff Report
 Jefferson County Board of Zoning Appeals
 November 9, 2023
23-34-ZV Russo-Davenport Variance Request

Item #1 Variance request from Section 8.4 to reduce the distance requirement from 300' to 135' along the western property line and from 300' to 75' along the eastern property line for a proposed kennel with an outdoor training area.

Owner:	Nicholas Russo and Alice Davenport
Parcel Information and Zoning District:	<p style="text-align: center;">1899 Trough Road, Shepherdstown, WV Parcel ID: 09000900070006; Size: 10 acres; Zoning District: Rural</p>  <p style="text-align: center;">Conservation Easements</p>
History:	04/01/86: This 10-acre parcel was created through an Outsale Exemption recorded (DB 554/PG 142)
Waivers/Variations:	07/25/23: Planning Commission approved a variance request to lift the single family restriction (File #23-2-PCV)
Approved Activity:	Single family dwelling
Site Visit Conducted:	Site visit not conducted.

Staff Report
Jefferson County Board of Zoning Appeals
November 9, 2023
23-34-ZV Russo-Davenport Variance Request

Staff Overview

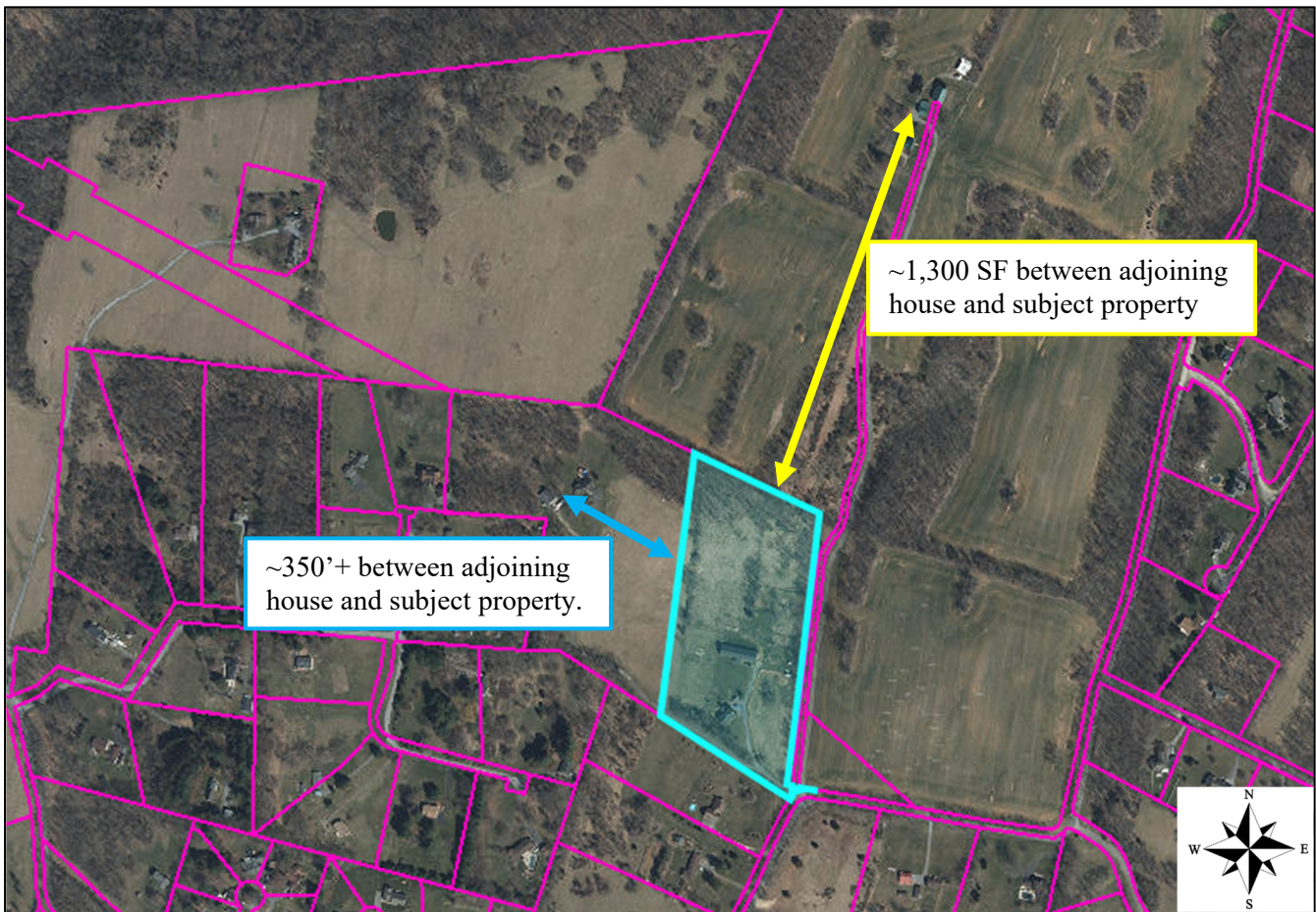
The subject parcel was created on April 1, 1986 as an Exemption Parcel (outsale) in accordance with Section 2.1 of the 1979 Subdivision Ordinance (see Deed Book 554 / Page 142). As such, it was created with a single family restriction. The Planning Commission lifted the single family restriction for the purpose of establishing a Kennel operation with an outdoor training area on July 25, 2023.

The land use designation “Kennel” is listed a Principal Permitted Use in the Rural Zoning District and requires compliance with the Supplemental Use Regulations outlined in Section 8.4, which states:

“All portions of a Kennel land use must be buffered pursuant to Article 4 and setback at least 300 feet from any other property line that contains a residence....”

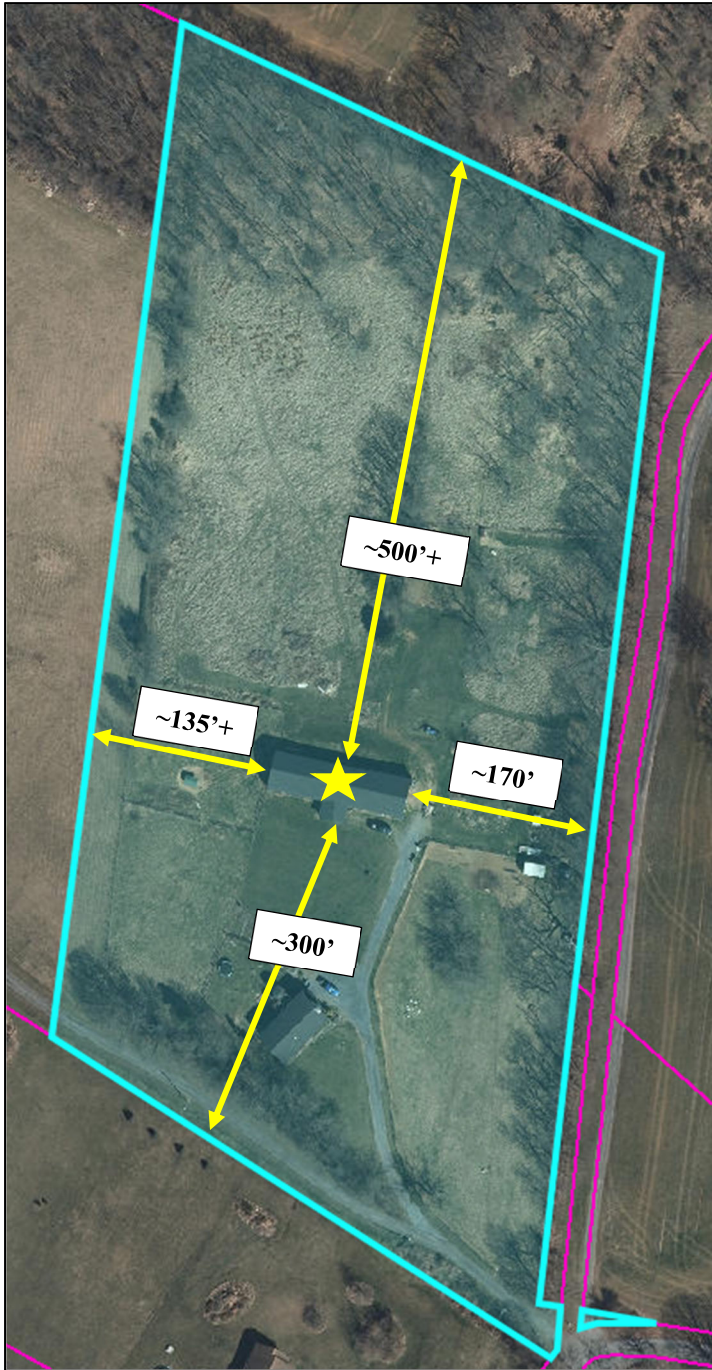
The applicant is requesting to reduce the 300’ distance requirement to 135’ along the western property line and to 75’ along the eastern property line for the proposed Kennel and outdoor training areas.

The purpose of the distance requirement referenced in Section 8.4 is to reduce the impact that a Kennel might have on an adjacent property.



Note that the 300’ distance requirement applies from the Kennel operation to the subject property lines. The subject property varies in width from 487’ to 557’; therefore, it is not feasible to comply with the 300’ setback requirement from all property lines.

Staff Report
Jefferson County Board of Zoning Appeals
November 9, 2023
23-34-ZV Russo-Davenport Variance Request



Pursuant to Article 2 of the Zoning Ordinance, Kennel is defined as “The boarding, breeding, raising, or training of more than six dogs... of any age note owned by the owner or occupant of the premises...”.

Pursuant to Appendix C, Kennel is a Principal Permitted Use in the Rural zoning district (i.e. allowed by-right).

The applicant’s proposal is to establish a facility to train dogs in basic and advances obedience, behavior modifications, personal protection K9s, patrol K9s, and scent detection.

The applicant represented that the boarding component will be accessory to the training operation and will be contained entirely within the existing barn structure (★). Dog breeding is not part of their business proposal. And scent detection related to explosives will be licensed and monitored by the ATF.

The applicant represented that the outdoor training components will primarily occur within the eastern and northern portions of the property, which adjoins the Osbourne Farm historic property, where the closest residence is 1,300 feet from the northern property line of the subject lot (see exhibit on page 2).

The eastern property line is included for literal application of the provision because the adjoining lot contains a residence; however, the residence is located 1,300’ from the northern property line; therefore, it appears that impact on the portion of the property to the east of the subject property will be minimal. The applicant has indicated that they will keep all components of the operation at

least 75’ from the eastern property line, which complies with the commercial distance requirement.

The applicant is also requesting a reduction from 300’ to 150’ along the western property line, where the closest residence is over 350’ from the subject property line.

Staff Report
Jefferson County Board of Zoning Appeals
November 9, 2023
23-34-ZV Russo-Davenport Variance Request

Pursuant to [WV Code Chapter §8A-7-11](#) and Article 2 of the [Jefferson County Zoning Ordinance](#), a variance is defined as "...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."

Pursuant to [WV Code Chapter §8A-7-11](#) and Article 6, Section 6.2 of the [Zoning Ordinance](#), the Board shall consider the following criteria and shall grant a variance 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 and Land Development Ordinance to be observed and substantial justice done.

Conditions of Approval

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

1. Applicant shall maintain a 10' vegetative buffer comprised of existing, mature vegetation along the perimeter of the property; and/or
2. In areas where vegetation does not exist, the applicant shall plant evergreen trees, to be six foot tall at the time of planting; and/or
3. In areas where vegetation does not exist, the applicant shall maintain a 50' unscreened buffer along the perimeter of the property with the condition that no structures, materials, equipment, etc. shall be located within the unscreened buffer area; and/or
4. Boarding shall be limited to use of the existing structure and shall not include use of outdoor kennels or runs for overnight use.

Section of Ordinance to be Considered

Section 8.4 Kennels

All portions of a Kennel land use must be buffered pursuant to Article 4 and set back at least 300 feet from any other property line that contains a residence. If the adjacent use is a commercial use, setbacks shall comply with commercial setbacks in Appendix B.



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: 2334-ZV
 Staff Initials: gt
 Meeting Date: 11-09-23
 Fees Paid (\$100 or \$150): 100

Email: zoning@jeffersoncountywv.org

Phone: (304) 728-3228

Zoning Variance Request

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

Property Owner Information

Name: Alice Davenport and Nicholas Russo
 Mailing Address: 1899 Trough Rd
 Phone Number: 631-335-9654 Email: alidav@ic@gmail.com

Applicant Contact Information

Name: Alice Davenport and Nicholas Russo
 Mailing Address: 1899 Trough Rd
 Phone Number: 631-335-9654 Email: alidav@connect.net, nickrusso249@gmail.com

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

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

Physical Property Details

Physical Address: 1899 Trough Rd State: WV Zip Code: 25424 25443
 City: Shepherdstown Map No: 9 gnt Parcel No: 7.6 gnt
 Tax District: _____ Deed Book: 1301 gnt Page No: 452 gnt
 Parcel Size: 10 acres

Zoning District (please check one)

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

RECEIVED

OCT 03 2023

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 8.4 opt

Briefly describe the nature of the variance request:

Reduce distance from property line for kennel use

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

Front Setback Side Setback Rear Setback Reduction From 300 to 150

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:

There will be indoor kennels and kennels only, we will also insulate the docks and if need be add additional landscaping for sound reduction

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

This will inhibit us from being able to train dogs as the land size is not wide enough and the previously established train tracks need to be moved.

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

This will inhibit the company from using the full potential of the space in train k9's

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

We will help reduce the noise that is caused by the dogs through house insulation, inside kennels only and planting house landscape

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

10/03/2023

Date



Signature of Property Owner

11/3/2023

Date

Notification Requirements (to be completed by staff)

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

11-09-23

Date of Public Hearing

10-25-23

Advertising Date

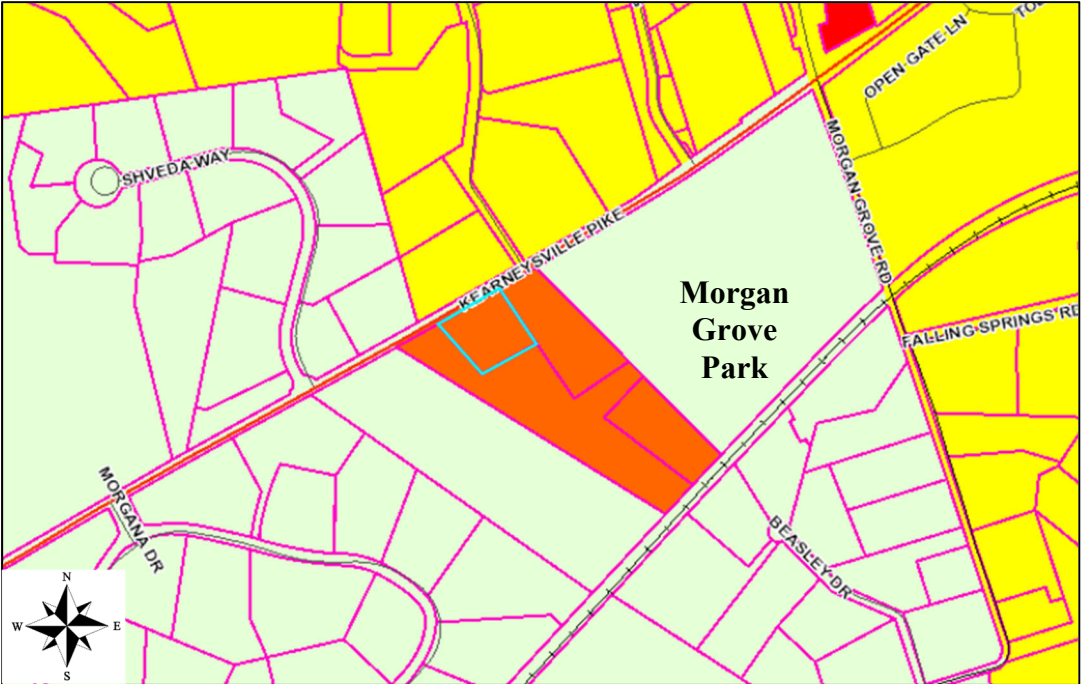
10-25-23

Placard Posting Date



Staff Report
 Jefferson County Board of Zoning Appeals
 November 9, 2023
23-35-ZV Dino Kids Day Care (sign)

Item #2 Variance request from Section 10.4.B.4 to allow a freestanding business sign to be installed in a location that faces an adjoining residential property.

Property Owner:	Peter Corum
Applicant:	Dino Kids Day Care / Attn: Cordelia Courtney
Parcel Information & Zoning District:	<p>3988 Kearneysville Pike, Shepherdstown, WV Parcel ID: 09001300260002; Size: 2 acres; Zoning District: Neighborhood Commercial</p> 
History	<p>04/24/79: Created via Deed Book 454, PG 445 as a Family Transfer parcel. 07/02/15: County Commission approved a Zoning Map Amendment to rezone the subject property from Rural to Neighborhood Commercial (Z15-01).</p>
Variances/Waivers:	11/14/23: PC waiver to allow a proposed day care to use gravel parking (File #23-24-PCW) - Pending
Approved Activity:	<p>10/05/23: Zoning Certificate issued to Dino Kids Childcare, LLC for a <i>Day Care Center, Large</i> (File #23-46-ZC) 03/10/15: Zoning Certificate issued for a temporary private school for up to 40 children (15-05-ZC)</p>
Site Visit Conducted:	No.

Staff Overview

The applicant is requesting a variance from Section 10.4.B.4 to allow a freestanding business sign to be installed in a location that faces an adjoining residential property.

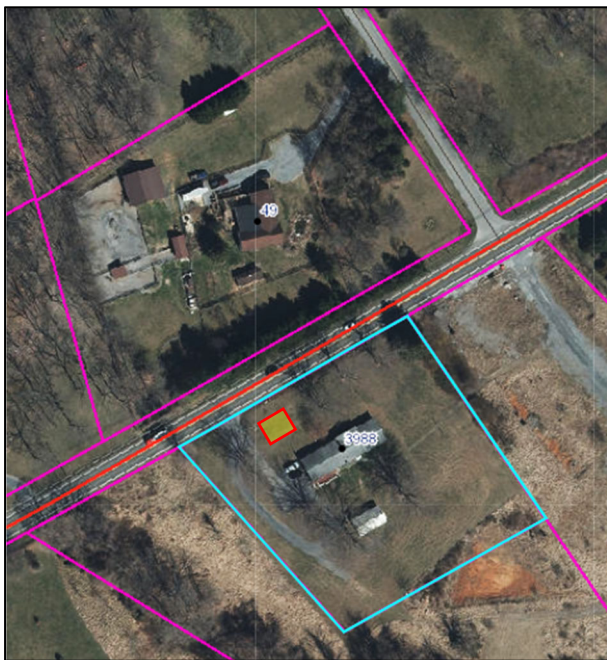
The intent of restricting a sign from facing a residence is to preserve the residential character of neighborhoods by minimizing the impact of an adjoining commercial lot.

Staff Report
Jefferson County Board of Zoning Appeals
November 9, 2023
23-35-ZV Dino Kids Day Care (sign)

Section 10.2 of the Zoning Ordinance states that signage should be “adequate, but not excessive, for the intended purpose of identification or advertisement.”

The applicant is requesting to place a 4’ x 6’ (24 square feet) freestanding sign along the front of the subject property to identify the place of business and advertise the childcare business. The proposed sign will be a one-sided vinyl banner and the proposed location faces an existing residential property across Kearneysville Pike.

The applicant represented that the height of the proposed sign will not exceed 8’ in height and that the residential property that the proposed sign will face across Kearneysville Pike is buffered by a row of evergreen trees which will block visibility of the sign from the residence (see street view exhibit below).



Applicant's Sign Detail

Staff Report
Jefferson County Board of Zoning Appeals
November 9, 2023
23-35-ZV Dino Kids Day Care (sign)

Pursuant to [WV Code Chapter §8A-7-11](#) and Article 2 of the [Jefferson County Zoning Ordinance](#), a variance is defined as "...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 change the zoning classifications of a parcel of land."

Pursuant to [WV Code Chapter §8A-7-11](#) and Article 6, Section 6.2 of the [Zoning Ordinance](#), the Board shall consider the following criteria and shall grant a variance 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 and Land Development Ordinance to be observed and substantial justice done.

Conditions of Approval

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

1. No conditions of approval were identified.

Section of Ordinance to be Considered:

Section 10.4 Signs Requiring a Zoning Certificate³⁶

Business and outdoor advertising signs in all zoning districts shall require a Zoning Certificate before placement on any property or building.² Sign types are defined in Section 2.2.

B. Freestanding Business Signs

Freestanding business signs related to the subject land use are permitted, provided:

1. The lot frontage is at least 40 feet.
2. One freestanding sign per street frontage is permitted. The total area for any sign or signs on one supporting structure shall not exceed 100 square feet and the maximum height of the sign structure shall not exceed 35 feet.
3. Freestanding business signs shall be located in such a manner that no part of the supporting structure is less than 25 feet from the street right-of-way, and that no part of the sign is closer than five feet to the right-of-way.
4. Freestanding business signs shall not face an adjacent residence.
5. Properties which consist of more than one land use shall be required to use a pylon sign. One pylon sign is permitted on each street frontage.
6. In addition to the provisions herein, electronic signs shall conform to the criteria outlined in Section 10.7.



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: 23-35-ZV
 Staff Initials: ME
 Meeting Date: 11/9/23
 Fees Paid (\$100 or \$150): \$100 ck# 159

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: Peter Corum
 Mailing Address: P.O.Box 536 Shepherdstown, WV 25442
 Phone Number: 304-283-2467 Email: petercorum@gmail.com

Applicant Contact Information

Name: Cordelia Courtney
 Mailing Address: _____
 Phone Number: 304-820-8922 Email: coricourtney@gmail.com

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

Name: Sara Lambert Architect
 Mailing Address: 2900 Fondren Drive Dallas, TX 75205
 Phone Number: 707-326-6443 Email: sara@saralambert.com

Physical Property Details

Physical Address: 3988 Kearneysville Pike
 City: Shepherdstown State: WV Zip Code: 25443
 Tax District: Shepherdstown Map No: 13 Parcel No: 26.2
 Parcel Size: 2 acres Deed Book: 1012 Page No: 429

Zoning District (please check one)

Residential Growth (RG) <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 checked="" type="checkbox"/>	General Commercial (GC) <input type="checkbox"/>	
Received 10/10/23 (jth)			Highway Commercial (HC) <input type="checkbox"/>	Light Industrial (LI) <input type="checkbox"/>	Major Industrial (MI) <input type="checkbox"/>	Planned Neighborhood Development (PND) <input type="checkbox"/>	Office/Commercial Mixed-Use (OC) <input type="checkbox"/>

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:

Article 10 Section 10.4.B.4

Briefly describe the nature of the variance request:

Permit a freestanding business sign to face an adjoining residence.

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

Front Setback Side Setback Rear Setback Reduction From _____ to _____

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

The property is zoned Neighborhood Commercial and signage is a necessary component of successful business activities. Properties to the left and right of the subject property (on same side of Kearneysville Pike) are also zoned NC. The property across the street (residence) is heavily screened with evergreen trees preventing view of sign.

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 is currently zoned NC, and properties across the street are RG which will ultimately result in business signage always adjacent to residential properties. Any adjacent signage will be across the ROW of Kearneysville Pike, which provides a wide buffer to this condition.

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

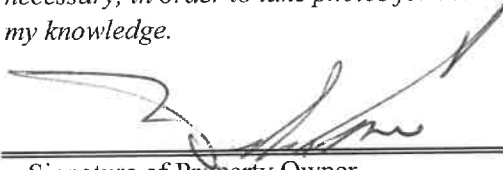
Signage is necessary to run a successful business, and the property is zoned appropriately as NC for this use. Vibrant neighborhood commercial zones are a key element in the success of the General Plan and the local economy.

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

Permitting the signage will allow for successful commercial use of the property and have a minimal effect on adjacent residences due to the heavy vegetation screen along the Kearneysville Pike ROW.

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

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


Signature of Property Owner Date 10/17/23

Signature of Property Owner Date

Notification Requirements (to be completed by staff)

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

11/09/23

Date of Public Hearing

10/25/23

Advertising Date

10/25/23

Placard Posting Date

Now Enrolling

Dino Kids



Childcare, LLC

M-F 8AM-8PM

(304)820-8922

max
height 1' 11"
+ 3'

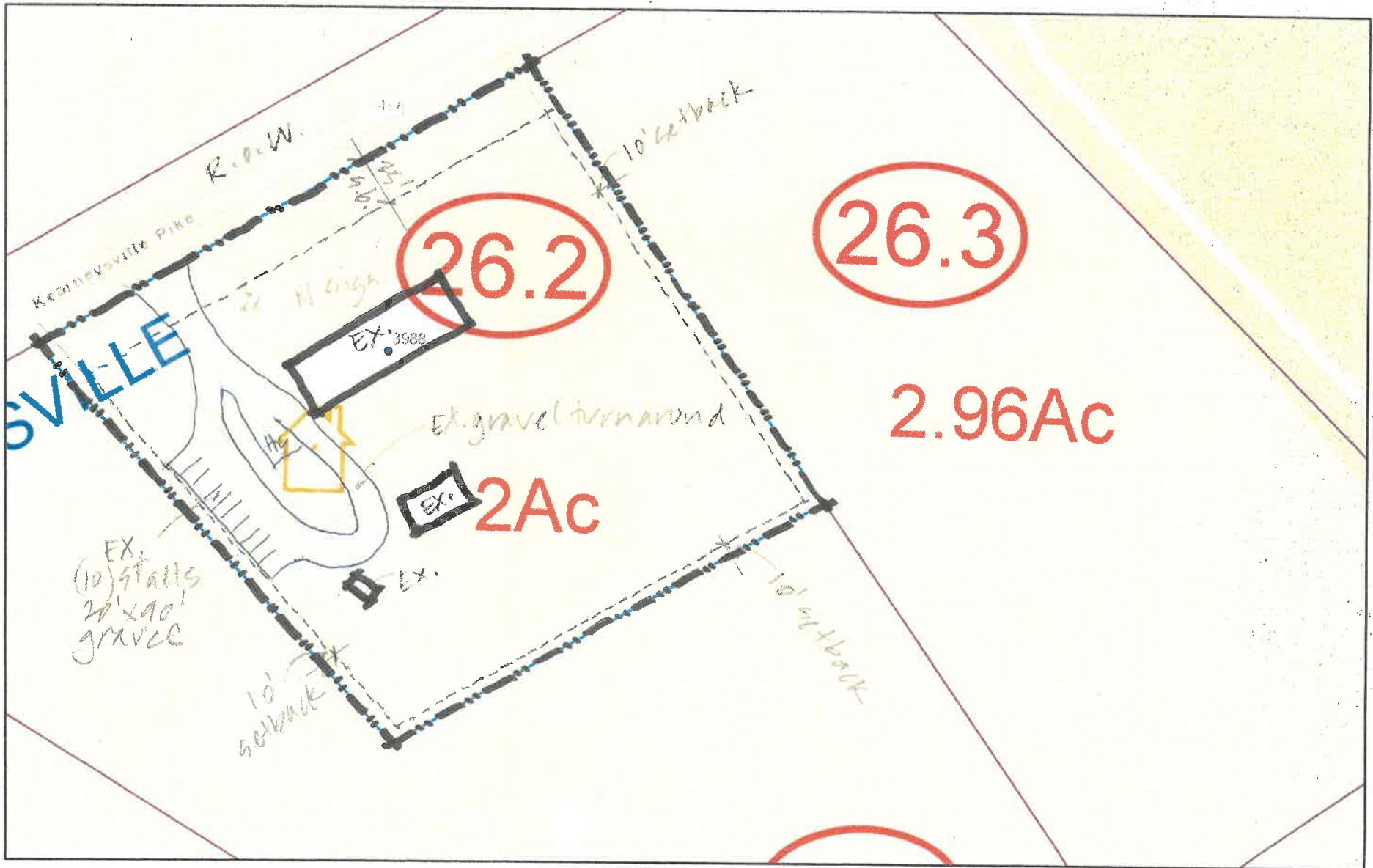
3988 KEARNEYSVILLE PIKE

TENANT: Dino Kids Childcare

ZONING CERT: #23-46-22

4'x6' banner
one-sided

Viewer Map



October 5, 2023

3988 KEARNEYSVILLE PIKE

TENANT: Binokids childcare

ZONING CERT: # 23-46-26

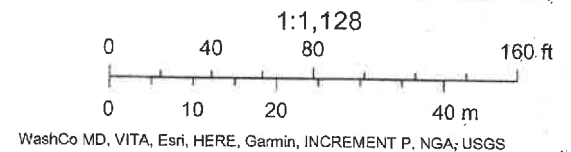




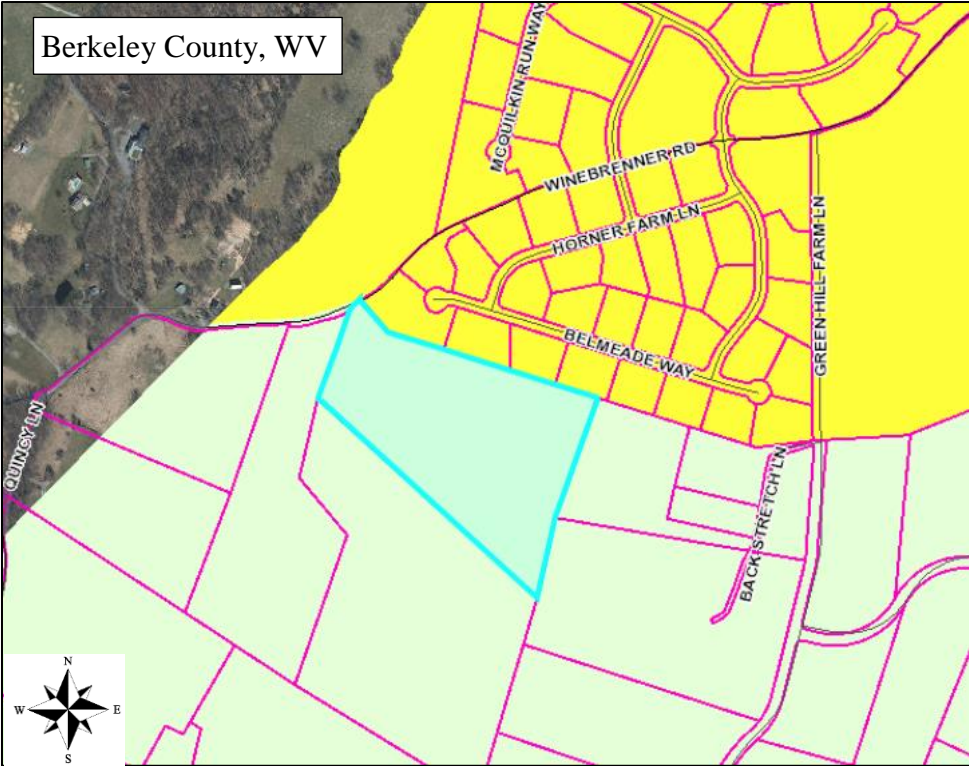
Image capture: May 2021 © 2023 Google

3155 KEARNEYSVILLE PIKE
TENANT: Dino Kids Daycare
ZONING CERT. # 23-46-26

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 November 9, 2023

**23-9-CUP Earthworx General Contracting Services (Contractor with Outdoor Storage)
 Conditional Use Permit Request**

Item #3 Request by Earthworx General Contracting Services, LLC for a Conditional Use Permit to operate a Contractor with Outdoor Storage business, as defined in Article 2 of the Zoning Ordinance. The proposal consists of storing construction equipment on an outdoor gravel pad. No customers will come to the property. No new structures or signs are proposed.

Owner:	Jeremy and Tiffany Martin
Applicant:	Earthworx General Contracting Services, LLC
Parcel Information and Zoning District:	<p style="text-align: center;">104 Winebrenner Road, Shepherdstown, WV Parcel ID: 09000700020002; Size: 16.5 acres; Zoning District: Rural</p> 
Surrounding Properties:	Zoning Map Designation: North: Residential Growth; South, East, & West: Rural
History:	06/17/92: Soule Minor Subdivision; Plat Book 10 @ Page 89 (PC File: 92-13) 10/02/97: Soule Minor Subdivision; Plat Book 15 @ Page 18 (PC File: 97-21)
Approved Activity:	Single Family Residence, Farm Use
Site Visit Conducted:	Yes – 10/27/23.

Summary of Request and Purpose of Ordinance Requirements

Request for a Conditional Use Permit to operate a Contractor with Outdoor Storage, as defined in Article 2 of the Zoning Ordinance (Project Name: Earthworx General Contracting Services). The proposal consists of parking construction equipment on an outdoor gravel pad. No customers will come to the property. No new structures or signs are proposed.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
November 9, 2023

**23-9-CUP Earthworx General Contracting Services (Contractor with Outdoor Storage)
Conditional Use Permit Request**

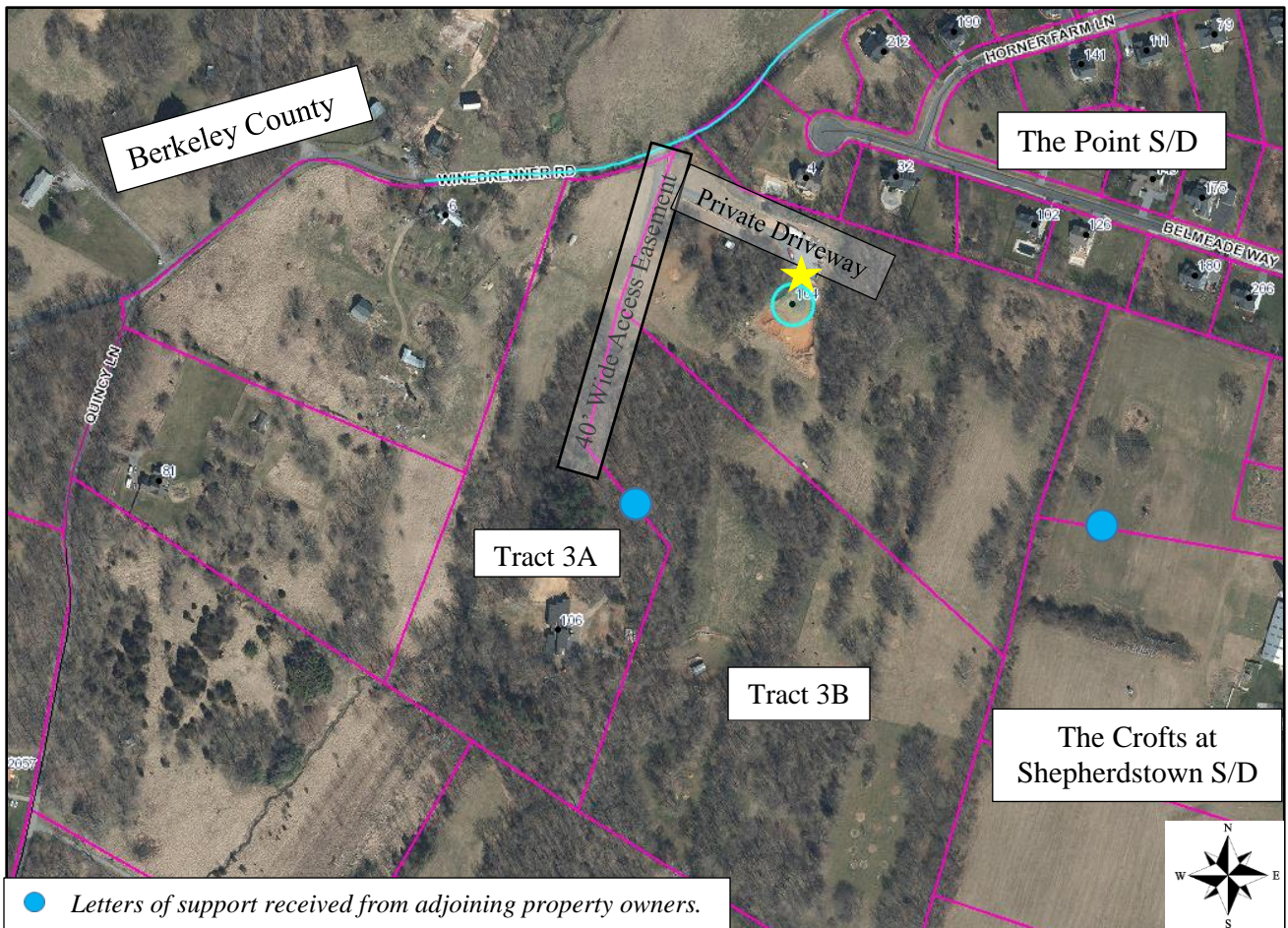
Article 2 defines Contractor with Outdoor Storage as:

Use of a site for the business office of a general contractor or builder engaged in the construction of buildings, either residences or commercial structures. The premises may include an enclosed space used for the housing and/or operating of machinery, the provision of services, the fabrication of building-related products, and interior storage. This use may include outdoor storage of building materials and heavy equipment such as road graders, dump trucks, cement mixers.

The applicant's description of the business is provided on page 3 of the application which states that they store their business equipment on the gravel parking pad. Currently, the property owners are the only two employees of the business; however, they would like to be able to grow their business and hire 4-5 additional employees over time. There are no signs proposed as part of the business operation, as customers do not come to the property. All work is conducted off-premises. In the future when additional employees are hired, staff will come to the property to park their personal vehicles in exchange for business vehicle and return at the end of the day.

Property Description

The subject parcel is the residue parcel of the Soule Minor Subdivision which processed in 1997. The lot is approximately 16.5 acres in size and surrounded primarily by agricultural and residential development. The property is accessed off of Winebrenner Rd (State Route 45/1) via a 40' wide access easement that serves the subject lot and two adjoining lots (tracts 3A and 3B).



**23-9-CUP Earthworx General Contracting Services (Contractor with Outdoor Storage)
Conditional Use Permit Request**

Conditional Use Permit Process

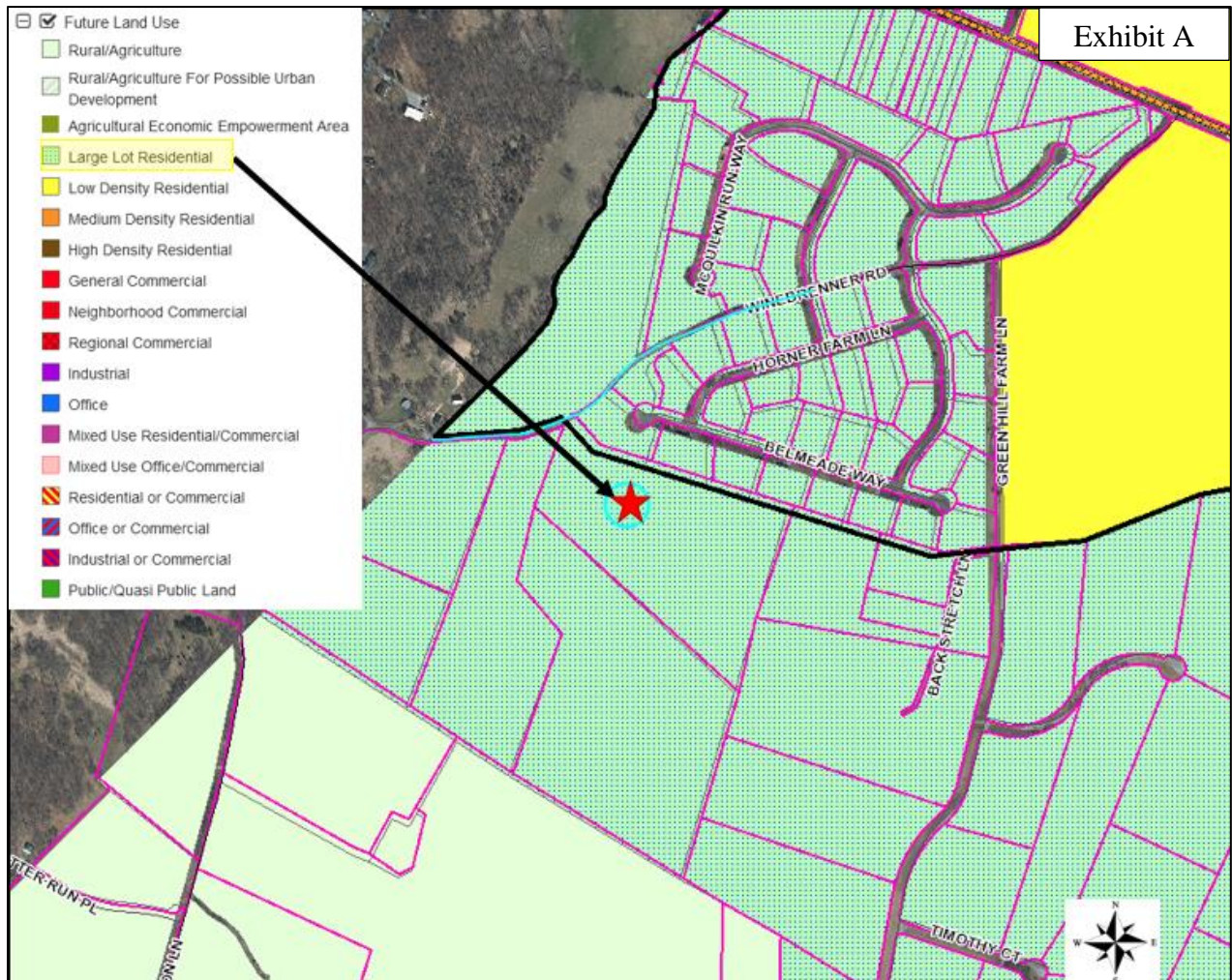
Section 6.3 of the Zoning Ordinance states:

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

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

1. The proposed use is compatible with the goals of the adopted Comprehensive Plan. (Sec. 6.3A.1)

The subject parcel is shown as “Large Lot Residential” on the Envision Jefferson 2035 Comprehensive Plan’s Future Land Use Guide (see Exhibit A below). The property is located outside of the County’s preferred growth areas but is still located within the Shepherdstown Growth Management Boundary, which the Plan describes as follows: “...Shepherdstown created a boundary called the Growth Management Boundary (GMB) which falls under the state definition of a UGB and was formally approved by the County Commission. Shepherdstown’s adopted GMB allows the Corporation to plan for future growth and annexations, but is not anticipated to have urban scale development if it remains in the unincorporated area.” (see Page 18 of Plan).



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**23-9-CUP Earthworx General Contracting Services (Contractor with Outdoor Storage)
Conditional Use Permit Request**

The Plan supports allowing commercial uses in the Rural zoning district to process via the Conditional Use Permit process. A central theme throughout the Plan is to support a Conditional Use process that allows for non-residential uses which are compatible in scale and intensity with the rural environment (see excerpts below).

In March 2017, the County Commission amended the Zoning Ordinance to modify the CUP process to align with the numerous goals and recommendations of the adopted Comprehensive Plan, which included eliminating the Land Evaluation and Soils Assessment (LESA) point system and incorporating a more traditional conditional use permit process. As part of the text amendment, the County Commission also updated Appendix C to include a list of commercial land uses that were identified as appropriate land uses to process under the Conditional Use Permit provisions.

Pursuant to Appendix C of the Zoning Ordinance, the land use designation **Contractor with Outdoor Storage** is listed as an appropriate commercial land use to process via the Conditional Use Permit process in the Rural zoning district.

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

“... This Plan further recommends amending the Zoning Ordinance to eliminate the LESA point system and to develop procedures that would allow the use of a more traditional CUP process in the Rural District for non-residential uses. This CUP process should require a public hearing before the Board of Zoning Appeals to determine if the use is compatible in scale and intensity with the rural environment and poses no threat to public health, safety, and welfare.” (Page 36, Rural Land Use)

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

“Recommendation 5: Amend the Zoning and Land Development Ordinance to permit additional non-residential rurally compatible uses (Page 77, Agricultural and Rural Economy Recommendations (Goal 8)).

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

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Jefferson County Board of Zoning Appeals Meeting
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**23-9-CUP Earthworx General Contracting Services (Contractor with Outdoor Storage)
Conditional Use Permit Request**

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

The properties to the north and east of the subject parcel are located within residential subdivisions (The Point and the Crofts at Shepherdstown). The properties to the south and west are agricultural properties with single family dwellings.

In September 2022, the applicant purchased the subject lot. Since that time, they have obtained building permits for agricultural storage buildings and are currently constructing a single family home. The applicant stated that they began parking their business equipment on the property in October 2022.



No signs are proposed to be placed on the property and no customers will visit the property. As noted by the applicant, the current traffic generated by the business is currently four (4) trips per week or, two trips a day, two days a week. The applicant represented that if and when the business grows, they anticipate that 4-5 employees will be needed, which would increase the number of trips per week to 50 (5 employees x 2 trips per day = 10 daily trips x 5 days a week = 50 trips per week). Note that the anticipated maximum number of trips is *less than* what is permitted under the cottage industry (home occupation) provisions, which allows up to sixty trips per week.

On page 3 of the application, the applicant states that the property will primarily be used for farming, as well as their primary residence. The applicant represented that several pieces of equipment on premises serve dual-purpose as they are used for farming purposes as well as for their business.

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

The applicant addressed this criteria on Page 2 and 3 of their application.

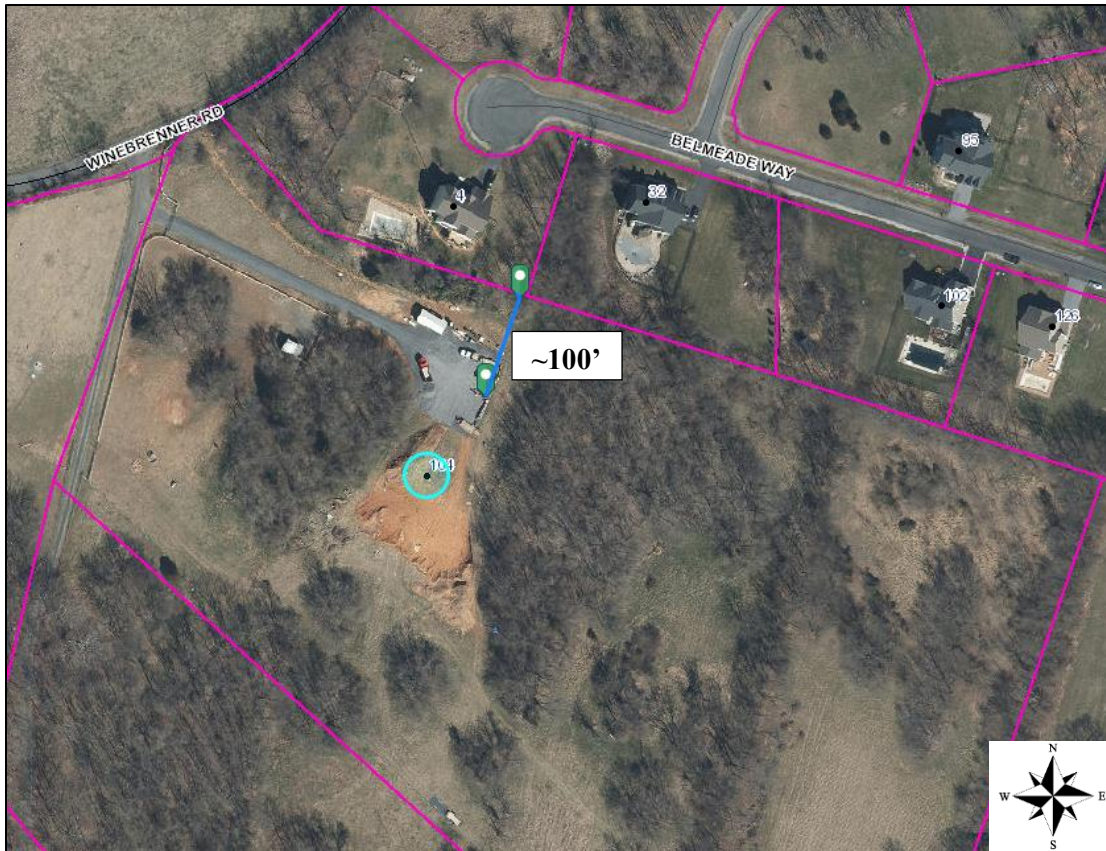
- 4. Neighborhood character and surrounding property values shall be safeguarded by requiring implementation of the landscaping buffer requirements found in Appendix B and Section 4.11 of this Ordinance. (Sec. 6.3A.4)**

A site plan is the mechanism in place for the county to ensure compliance with the landscaping standards. As presented, the proposed use does not appear to meet the criteria to necessitate processing a site plan. As such, landscaping will not be required unless the Board requires landscaping to be installed as a condition of approval.

Compliance with building setbacks and distance requirements shall be satisfied. It appears that the delineated parking area meets or exceeds the 75' distance requirement from the adjoining residential properties to the north (see exhibit below).

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**23-9-CUP Earthworx General Contracting Services (Contractor with Outdoor Storage)
Conditional Use Permit Request**



As noted on Page 3 of the staff report, Section 6.3A authorizes the Board to require conditions of approval in order to ensure that the use is compatible with the surrounding properties. Such conditions could include vegetative and/or fencing buffers.

The applicant has represented that existing vegetation will be retained around the perimeter of the property and that they have planted additional evergreen trees to provide a greater buffer between their property and lots located within The Point Subdivision as a means to mitigate potential impact.

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

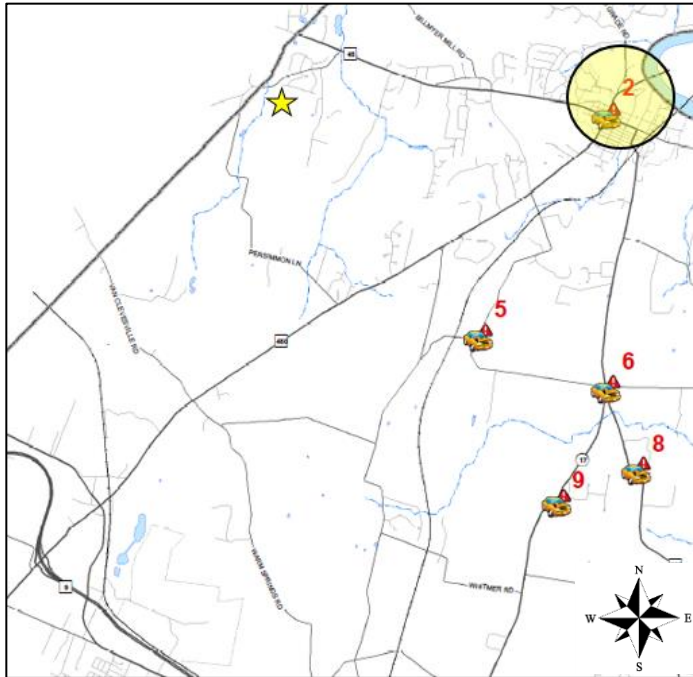
As part of the Conditional Use Permit application, the applicant was informed of this criteria and shall comply with this standard. Section 8.9 of the Zoning Ordinance is attached for reference as part of the Staff Report.

Section 8.9 regulates noise, odor, smoke, ambient air quality, vibration, glare and heat, toxic matter, and fire hazards related to commercial and industrial land uses.

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 Jefferson County Board of Zoning Appeals Meeting
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**23-9-CUP Earthworx General Contracting Services (Contractor with Outdoor Storage)
 Conditional Use Permit Request**

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

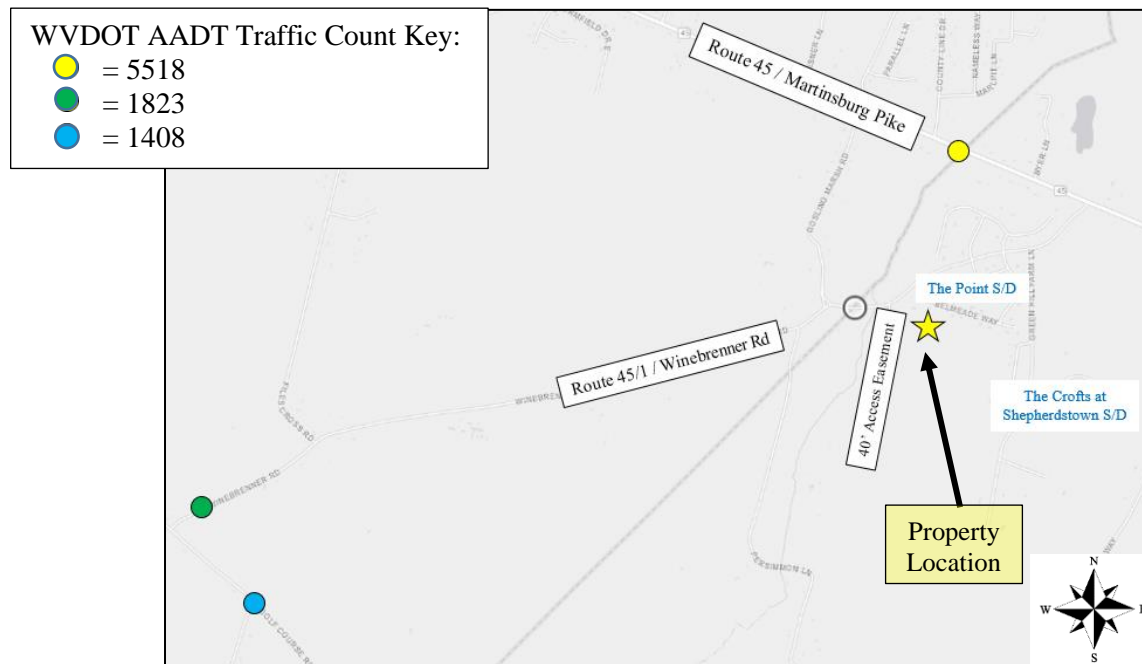


Winebrenner Road is classified as a Local Road on the Highway Road Classification Map and is, therefore, subject to this criteria.

The applicant provided a trip generation summary on page 3 of their application. The applicant stated that they will not have any customers visit the site and that the maximum number of employees expected is five, each of whom have the potential to access the site five days a week. The anticipated weekly trips associated with the business is less than what is permitted under the Cottage Industry (home occupation) provisions, which allows 60 trips per week.

Below is an excerpt from the Comprehensive Plan’s Highway Problem Areas Map. It appears that the closest problem area is located at the WV 480 / WV 45 / WV 230

intersection (identified as problem area #2 on the map). The problem identified in the plan is described as “Road width through historic area limits turn movements”.



A traffic county study was conducted by the [WV Department of Transportation](http://www.wv.gov/transportation) in 2017 along Winebrenner Road (locations identified on the above map with blue and green dots); and another study was conducted in 2020 on Route 45 (identified on the above map with a yellow dot). The annual average daily traffic counts for the studies are noted in the above map key.

Staff Report
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**23-9-CUP Earthworx General Contracting Services (Contractor with Outdoor Storage)
Conditional Use Permit Request**

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

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

8. Any signs associated with the proposed Conditional Use shall be reviewed by the Board in accordance with Section 10.6. (Sec. 6.3A.8)

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

The applicant represented that no signs are proposed as part of the business. Any future signs may necessitate review and approval by the Board of Zoning Appeals.

Attachments:

- 1. Section 6.3 of the Zoning Ordinance**
- 2. Section 8.9 of the Zoning Ordinance**
- 3. Appendix C of the Zoning Ordinance**
- 4. Excerpt of Envision Jefferson 2035 Comprehensive Plan – Future Land Use Guide**
- 5. Pages 18 & 19 of the Land Use and Growth Management Element – Envision Jefferson 2035 Comprehensive Plan**
- 6. Envision Jefferson 2035 Comprehensive Plan’s Highway Problem Areas Map and Key**

Section 6.2 Variances³²

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

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

Section 6.3 Conditional Use Permit³²

The Board of Zoning Appeals shall have the authority over the issuance or denial of a conditional use permit for uses listed as “Conditional Uses (CU)” in each zoning district. The Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed conditional use permit.^{2, 32}

- A. The Board shall consider each Conditional Use Permit request that is filed in accordance with this Ordinance and the procedural requirements of the Board of Zoning Appeals. The Board may require reasonable conditions or special requirements which allows for the proper integration of the proposed uses into the community and are directly related to and incidental to the proposed conditional use permit. The following General Standards shall be considered in approving or denying the CUP:
 - 1. The proposed use is compatible with the goals of the adopted Comprehensive Plan.
 - 2. The proposed use is compatible in intensity and scale with the existing and potential land uses on the adjoining and confronting properties, and poses no threat to public health, safety and welfare.
 - 3. The proposed site development shall be such that the use will not hinder nor discourage the appropriate development and use of adjacent land and buildings.
 - 4. Neighborhood character and surrounding property values shall be safeguarded by requiring implementation of the landscaping buffer requirements found in Appendix B and Section 4.11 of this Ordinance.
 - 5. Commercial and Industrial Uses shall be in conformance with Section 8.9 of this Ordinance.
 - 6. For properties in the Rural zoning district, roadway adequacy shall be assessed by the Comprehensive Plan’s Highway Road Classification Map. If a rural parcel is not shown as commercial on the Future Land Use Guide or does not front on a Principal Arterial, Minor Arterial, or Major Collector road (as identified in the Comprehensive Plan), the applicant shall submit trip generation data, including Average Daily and Peak Hour trips, for the BZA to review

in conjunction with the Highway Problem Areas Map when determining roadway adequacy for the proposed use.

7. For Historic Sites, the Historic Landmarks Commission, with the property owner's consent, may visit the property to review the proposed land development plan and use for sites designated as Category I or II. The Historic Landmarks Commission may make reasonable recommendation to the Board of Zoning Appeals on the suitability of a proposed multi-family dwelling or non-residential use for the building seeking a Conditional Use Permit. The Historic Landmarks Commission's recommendations may include the following findings:³⁵
 - a. Compatibility of the proposed use with the historic structure;
 - b. Any modifications to the building's façade is consistent and compatible with the building's architecture, style, and massing; and
 - c. Proposed parking and other activities are suitably located so as to preserve the historic character.

The Board of Zoning Appeals may consider these findings and if determined appropriate, may require compliance with some or all of the Historic Landmarks Commission's recommendations as a condition of approval.

8. Any signs associated with the proposed Conditional Use shall be reviewed by the Board in accordance with Section 10.6.³⁶
- B. The owner or authorized representative of the owner of the property for which the Conditional Use Permit is being requested shall complete and sign forms provided for this purpose by the Board, and shall pay the associated fees. The Conditional Use Permit request shall be filed with the Board at the Office of Planning and Zoning.
- C. Staff will notify the adjacent and confronting property owners of the date, time, and location of the Public Hearing by registered mail. Notification for a Conditional Use Permit 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.
- E. If there are no negative public comments received by the Board, the Board shall issue the Conditional Use Permit but may require reasonable conditions.

Section 6.4 Seasonal Uses^{5, 7, 32}

Seasonal uses must be approved by the Board of Zoning Appeals pursuant to a public hearing according to the requirements of Section 6.1C. Newspaper notification requirements of Section 6.1B apply. Seasonal uses cannot be approved for longer than one year at a time.^{17, 21, 23}

Section 6.5 Special Exception Permit^{26, 32, 36}

- A. Special Exception uses listed in this section may be approved by the Board of Zoning Appeals subject to a public hearing in accordance with the following.
 1. The public hearing is subject to the notification requirements of Section 6.1B.
 2. The public hearing shall be conducted according to the requirements of Section 6.1C.
 3. Such hearing may be continued according to the requirements of Section 6.1D.

B. Standards for Hunting, Shooting and Fishing Clubs²⁰

1. 75 foot setback for all structures and parking.
2. 150 yard setback for all shooting facilities.
3. Height
 - a. As is for conversion or reconstruction that does not exceed 135 percent of the original footprint of existing structures
 - b. 35 feet for new structures
4. Landscaping requirements of this Ordinance apply, with the following exception:
 - a. Perimeter landscaping shall be as approved by staff in order to preserve existing vegetation.
5. Minimum of 150 acres under common ownership.

C. Special Exceptions for Hunting, Shooting and Fishing Clubs²⁰

1. Limits exceeding requirements outlined above can be increased with Board of Zoning Appeals approval provided that the Board of Zoning Appeals find that the increase is compatible with the neighborhood after taking into consideration neighborhood character, traffic, and buffering. Such decision shall be rendered after a public hearing as outlined in the Board of Zoning Appeals Rules of Procedure.

Section 8.9 Industrial and Commercial Uses²³

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

1. Noise

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

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

The following sources of noise are exempt:

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

2. Odor

No operation shall result in the creation of odors of such intensity and character as to be detrimental to the health and welfare or the public or which interferes with the comfort of the public. Odor thresholds shall be in accordance with ASTM d139-57 "Standard Method for Measurement of Odor in Atmospheres (Dilution Method)" or its equivalent.

Odorous material released from any operation or activity shall not exceed the odor threshold concentration beyond the state line, measured either at ground level or habitable elevation.

3. Smoke

No smoke, dust, fumes, or particulate matter shall be perceptible at any lot line. Further, the regulations and standards governing the control of air pollution shall be the same as those adopted by the State of West Virginia.

For the purpose of grading the density or equivalent capacity of smoke, the Ringelmann Chart as published by the United States Bureau of Mines shall be used.

The emission of smoke darker than Ringelmann No. 1 from any chimney, stack, vent, opening, or combustion process is prohibited.

The total emission rate of dust and particulate matter from all vents, stacks, chimneys, flues or other opening or any process, operation, or activity except solid waste incinerators within the boundaries of any lot, will not exceed the levels set forth below.

Particulate matter emission from materials or products subject to becoming wind borne will be kept to a minimum by paving, sodding, oiling, wetting, covering or other means, such as to render the surface wind resistant. Such sources include vacant lots, unpaved roads, yards and storage piles or bulk material such as coal, sand, cinders, slag, sulfur, etc.

4. Ambient Air Quality Standard

Particulate Matter

Suspended

Annual Arithmetic Mean ug/m	65
24-hour Maximum b, ug/m	140

Settleable

Annual Arithmetic Average, mg/cm ³ /month	0.35
Monthly Maximum	0.7

5. Vibration

No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at any point beyond the lot line nor shall any vibration produced exceed 0.002g peak measured at or beyond the lot line using either seismic or electronic vibration-measuring equipment.

6. Glare and Heat

No direct or sky-reflected glare, whether from floodlights or from high temperature processes, such as combustion or welding or otherwise, so as to be visible at the lot line, shall be permitted. There shall be no emission or transmission of heat or heated air so as to be discernable at the lot line.

7. Toxic Matter

The ambient air quality standards for the State of West Virginia shall be the guide to the release of airborne toxic materials across lot lines. Where toxic materials are not listed in the ambient air quality standards of the State, the release of such materials shall be in accordance with the fractional quantities permitted below, of those toxic materials currently listed in the threshold limit values adopted by the American Conference of Governmental Industrial Hygienists.

Unless otherwise stated, the measurement of toxic matter shall be at ground level or habitable elevation, and shall be the average of any twenty-four (24) hours sampling period.

The release of airborne toxic matter will not exceed one-thirteenth of the threshold limit value across lot lines.

Such materials shall include but are not limited to: all primary explosives such as lead azide, lead styphnate, fulminates and tetracene; all high explosives such as TNT, RDX, HMX, PETN, and picric acid; propellants and components thereof, such as dry derivatives; pyrotechnics and fireworks such as acetylates, tetrazoles, and ozonides; unstable oxidizing agents such as perchloric acid, perchlorates, and hydrogen peroxide in concentration greater than thirty-five (35) per cent; and nuclear fuels, fissionable materials and products, and reactor elements such as Uranium 235 and Plutonium 239.

The storage, utilization or manufacture of materials or products which decompose by detonation is prohibited.

8. Fire Hazards

The storage, utilization or manufacture of solid materials which are active to intense burning shall be conducted within spaces having fire resistive construction of no less than two (2) hours and protected with an automatic fire extinguishing system.

The total capacity of flammable liquids and gasses shall not exceed those quantities permitted in the following Table for each of the industrial districts:

<u>CAPACITY</u>	<u>STORAGE</u>
Liquids	60,000 gallons
Gasses	
- Above ground	150,000 SCF
- Below ground	300,000 SCF

SCF - Standard Cubic Feet at sixty (60) degrees Fahrenheit and 29.92 inches Mercury.¹

The following setback requirements will apply to the location of any container which holds flammable liquids or gasses:

Container Setback from Lot Lines

Water Capacity per Container (Gallons)	Containers		Between Above Ground Containers (Feet)
	Underground (Feet)	Above Ground Containers (Feet)	
0 to 2,000	25	25	3
2,000 to 30,000	50	50	5
30,000 to 60,000	50	75	
In excess of 60,000	75	100	¼ the sum of diameters of adjacent containers

9. Frontage Road

Easements or fee simple dedications will be provided along all limited access highways at the site plan or subdivision phases. Said easement/dedication shall not exceed 60 feet in width. The width may vary but must be adequate for extension, continuation or establishment of a minimum 20' wide paved frontage road.

10. Landscape Buffer

All commercial and industrial developments shall comply with Section 4.11 unless otherwise specified in this Ordinance.²⁷

APPENDIX C: PRINCIPAL PERMITTED AND CONDITIONAL USES TABLE^{23, 29, 32, 33, 35, 37, 39, 43}

Land Use	NC	GC	HC	LI	MI	PND ¹	OC	R	RG	RLIC	IC	V	Additional Standards
Residential Uses													
Accessory Agricultural Dwelling Unit	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.15
Dwelling, Single Family	CU	NP	NP	NP	NP	P	NP	P	P	P	NP	P	
Dwelling, Single Family, Small Lot	CU	NP	NP	NP	NP	P	NP	NP	P	P	NP	P	
Dwelling, Two Family	CU	NP	NP	NP	NP	P	NP	P	P	P	NP	P	
Dwelling, Duplex	CU	NP	NP	NP	NP	P	NP	NP	P	P	NP	P	
Dwelling, Townhouse	CU	NP	NP	NP	NP	P	P	NP	P	P	NP	CU	
Dwelling, Multi-Family	CU	NP	NP	NP	NP	P	P	NP	P	P	NP	CU	
Day Care Center, Small	P	NP	NP	NP	NP	P	NP	P	P	P	P	P	
In-Law Suite	NP	NP	NP	NP	NP	P	NP	P	P	P	NP	P	Sec. 8.15
Mixed Use Building	P	NP	NP	NP	NP	P	P	NP	CU	P	NP	P	
Mobile Home Park	NP	NP	NP	NP	NP	NP	NP	NP	P	P	NP	NP	
Model Homes/Sales Office	P	CU	NP	NP	NP	P	NP	P	P	P	NP	NP	Sec. 8.10
Home Uses													
Home Occupation, Level 1	P	NP	NP	NP	NP	P	P	P	P	P	P	P	Art. 4A
Home Occupation, Level 2	P	NP	NP	NP	NP	P	P	P	P	P	P	P	Art. 4A
Cottage Industry	P	NP	NP	NP	NP	P	NP	P	P	P	P	P	Art. 4A
Institutional Uses													
Airport	NP	NP	NP	P	P	NP	NP	CU	NP	CU	CU	NP	
Airfield, Private/Helipad	NP	NP	NP	NP	NP	NP	NP	CU	NP	CU	CU	NP	
Church ³⁸	P	P	P	P	CU	P	P	P	P	P	CU	P	
Convention Center	NP	P	P	P	CU	P	P	CU	CU	P	CU	NP	
Cultural Facility	P	P	P	P	CU	P	P	P	P	P	P	P	
Day Care Center, Large	P	P	P	P	CU	P	P	CU	P	P	P	CU	
Electric Vehicle Charging Station	P	P	P	P	P	P	P	CU	CU	P	P	CU	
Elementary or Secondary School	P	P	CU	CU	NP	P	P	P	P	P	NP	CU	
Essential Utility Equipment	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 4.7
Group Residential Facility	P	P	P	NP	NP	P	CU	P	P	P	NP	P	
Group Residential Home	P	P	P	NP	NP	P	CU	P	P	P	NP	P	
Heliport	NP	CU	CU	P	P	CU	CU	NP	NP	CU	CU	NP	
Hospital	NP	P	P	P	CU	P	P	P	P	P	NP	NP	
Nature Center and Preserve	NP	NP	NP	NP	NP	P	NP	P	CU	P	NP	P	
Nursing or Retirement Home	CU	P	P	P	NP	P	P	CU	P	P	NP	CU	
Park	P	P	P	P	NP	P	P	P	P	P	NP	P	
Performing Arts Theater	P	P	P	P	P	P	P	CU	CU	P	P	CU	
Preschool	P	P	CU	CU	CU	P	P	P	P	P	NP	CU	
Public Safety Facility	P	P	P	P	P	P	P	P	P	P	P	P	
Publicly Owned Facility	P	P	P	P	P	P	P	P	P	P	P	CU	
Recycling Drop-Off Center	CU	P	P	P	P	P	P	NP	NP	P	P	NP	
Residential Care Home	P	P	P	NP	NP	P	CU	P	P	P	NP	P	
School, College or University	NP	P	P	P	NP	P	P	CU	CU	P	NP	NP	
School, Vocational or Professional	NP	P	P	P	NP	P	P	CU	CU	P	P	NP	
Vocational and Training Facility for Adults	P	P	P	P	P	P	P	P	P	P	NP	NP	

Land Use	NC	GC	HC	LI	MI	PND ¹	OC	R	RG	RLIC	IC	V	Additional Standards
Industrial													Sec. 8.9
Heavy Equipment Repair	NP	NP	CU	CU	P	NP	NP	NP	NP	NP	P	NP	
Heavy Industrial Uses	NP	NP	NP	NP	P	NP	NP	NP	NP	NP	P	NP	Sec. 8.9
Light Industrial Uses	NP	NP	NP	P	P	NP	NP	NP	** NP	P	P	NP	Sec. 8.9
Manufacturing, Heavy	NP	NP	NP	CU	P	NP	NP	NP	NP	NP	P	NP	
Manufacturing, Limited	NP	P	P	P	P	CU	NP	NP	NP	P	P	NP	
Printing and Publishing	NP	P	P	P	P	P	P	NP	NP	P	P	NP	
Salvage Yards	NP	NP	NP	NP	CU ²	NP	NP	NP	NP	NP	CU ²	NP	Sec. 4.4L
Shooting Range, Indoor	NP	CU	CU	P	P	NP	NP	CU	NP	CU	P	NP	
Shooting Range, Outdoor	NP	NP	NP	CU	CU	NP	NP	CU	NP	NP	CU	NP	
Slaughterhouses, Stockyards	NP	NP	NP	NP	CU	NP	NP	CU	NP	NP	CU	NP	
Transportation Terminal	NP	P	P	P	P	P	P	NP	NP	CU	P	NP	
Vehicle Storage	NP	NP	NP	P	P	NP	NP	NP	NP	NP	P	NP	
Warehousing and Distribution, General	NP	NP	NP	CU	P	NP	NP	NP	NP	CU	P	NP	
Warehousing and Distribution, Limited	NP	P	P	P	P	CU	P	NP	NP	P	P	NP	
Industrial Manufacturing & Processing													Sec. 8.9
Acid or heavy chemical manufacturer, processing or storage	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	
Bituminous concrete mixing and recycling plants	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	
Cement or Lime Manufacture	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	
Commercial Sawmills	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	
Concrete and ceramic products manufacture, including ready mixed concrete plants	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	
Explosive manufacture or storage	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	
Foundries and/or casting facilities	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	
Jails and Prisons	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	Sec. 8.7
Mineral extraction, mineral processing	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	
Petroleum products refining or storage	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	NP	Sec. 8.11
Adult Uses													
Adult Uses	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	P	NP	Sec. 4.4K, Sec. 8.1
Recreational Uses													
Hunting, Shooting, Archery and Fishing Clubs, public or private	NP	NP	NP	CU	CU	NP	NP	P	NP	NP	NP	NP	Sec. 8.8
Commercial Uses													Sec. 8.9
Antique Shop	P	P	P	P	NP	P	NP	CU	CU	P	P	P	
Appliance Sales	NP	P	P	P	CU	P	NP	CU	CU	P	P	NP	
Art Gallery or Artist Studio	P	P	P	P	NP	P	P	CU	CU	P	P	P	
ATM	P	P	P	P	NP	P	P	CU	CU	P	P	CU	
Automobile repair, sales and service	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Automobile parts, supplies and tire stores	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Automobile, light truck and light trailer rentals, indoor	P	P	P	P	P	P	NP	CU	CU	P	P	CU	
Automobile, light truck and light trailer rentals, outdoor	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Bail Bond Services	NP	P	P	P	CU	NP	NP	CU	CU	CU	P	CU	
Bank	P	P	P	P	CU	P	P	CU	CU	P	P	P	
Bank with Drive-Through Facility	CU	P	P	P	CU	P	P	CU	CU	P	P	CU	

Land Use	NC	GC	HC	LI	MI	PND ¹	OC	R	RG	RLIC	IC	V	Additional Standards
Commercial Uses continued													Sec. 8.9
Bar	P	P	P	P	NP	P	P	NP	NP	P	P	CU	
Barber/Beauty Shop, Limited	P	P	P	P	NP	P	P	CU	CU	P	P	P	
Bed and Breakfast	P	NP	NP	NP	NP	P	NP	P	CU	P	NP	P	Sec. 8.3
Brewpub	P	P	P	P	NP	P	P	CU	CU	P	P	CU	Sec. 8.5
Business Equipment Sales and Service	CU	P	P	P	CU	P	P	CU	CU	P	P	CU	
Building Maintenance Services	CU	P	P	P	P	P	P	CU	CU	P	P	CU	
Building Materials and Supplies	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Campground ³¹	CU	P	NP	NP	NP	P	NP	P	CU	P	P	CU	Sec. 8.17
Car Wash	NP	P	P	P	CU	P	P	CU	CU	P	P	CU	
Commercial Blood Plasma Center	NP	P	P	P	NP	CU	CU	CU	CU	CU	P	CU	
Commercial Uses	NP	NP	NP	NP	NP	NP	NP	NP	**	P	P	CU	Sec. 8.9
Contractor with No Outdoor Storage	P	P	P	P	P	P	P	CU	CU	P	P	CU	
Contractor with Outdoor Storage	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Convenience Store	CU	P	P	P	CU	P	NP	CU	CU	CU	P	CU	Sec. 5.8C (RLIC only)
Convenience Store, Limited	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Country Inn	P	P	P	P	NP	P	P	CU	CU	P	P	P	
Crematorium, Pet ³⁷	NP	P	NP	P	NP	NP	NP	P	NP	P	P	CU	Sec. 8.19
Custom Manufacturing	P	P	P	P	P	P	P	CU	CU	P	P	CU	
Dry cleaning and Laundry Services	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Dry cleaning and Laundry Facility	NP	P	P	P	P	P	P	CU	CU	P	P	CU	
Equipment Rental, Sales, or Service	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Exterminating Services	NP	P	P	P	P	P	P	CU	CU	P	P	CU	
Florist	P	P	P	P	CU	P	P	CU	CU	P	P	P	
Food Preparation	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Gambling Facilities	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	CU	Sec. 4.4G
Gas Station	NP	P	P	P	CU	P	P	CU	CU	P	P	CU	
Gas Station, Large	NP	CU	P	P	CU	CU	CU	CU	CU	P	P	CU	
Gas Station, Limited	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Golf Course	NP	P	P	P	NP	P	P	CU	CU	P	P	CU	
Grocery Store	P	P	P	P	CU	P	NP	CU	CU	P	P	CU	
Horse Racing Facility	NP	NP	NP	P	NP	NP	NP	CU	CU	P	P	CU	
Hotel/Motel	NP	P	P	P	NP	P	P	CU	CU	P	P	CU	
Kennel	NP	P	P	P	CU	P	P	P	CU	P	P	CU	Sec. 8.4
Medical/Dental/Optical Office, Small	P	P	P	P	CU	P	P	CU	CU	P	P	P	
Medical/Dental/Optical Office	NP	P	P	P	CU	P	P	CU	CU	P	P	CU	
Mobile Home, Boat and Trailer Sales	NP	P	P	P	CU	P	NP	CU	CU	CU	P	CU	
Movie Theater	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Nightclub	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Non Profit Commercial Uses	P	P	P	P	NP	P	P	CU	CU	P	P	CU	
Non-Profit Community Centers	P	P	P	P	CU	P	CU	P	CU	P	P	CU	
Parking, Commercial Offsite Accessory	NP	P	P	P	P	P	P	CU	CU	P	P	CU	
Pawn Shop Services	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Personal Services	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Professional Office	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Professional Office, Small	P	P	P	P	CU	P	P	CU	CU	P	P	P	
Restaurant	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Restaurant, Fast Food	CU	P	P	P	CU	P	P	CU	CU	CU	P	CU	

Land Use	NC	GC	HC	LI	MI	PND ¹	OC	R	RG	RLIC	IC	V	Additional Standards
Commercial Uses continued													Sec. 8.9
Restaurant, Fast Food, Drive-Through ⁴⁰	NP	P	P	P	CU	CU	P	CU	CU	P	P	CU	
Restaurant, Fast Food, Limited	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Retail Sales and Services, General	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Retail Sales Limited	P	P	P	P	NP	P	P	CU	CU	P	P	CU	
Retail Store, Large	NP	CU	P	CU	NP	CU	NP	CU	CU	CU	CU	CU	
Shipping and Mailing Services	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Short Term Rental ⁴¹	CU	NP	NP	NP	NP	P	NP	P	P	P	NP	P	Sec. 8.16
Solar Energy Facility ⁴³	NP	See Section 8.20				NP	NP	See Section 8.20				NP	Sec. 8.20
Special Event Facility	P	P	P	P	NP	P	P	CU	CU	P	P	CU	Sec. 8.14
Storage, Commercial	NP	P	P	P	CU	P	NP	CU	CU	P	P	CU	
Veterinary Services	P	P	P	P	CU	P	P	P	CU	P	P	CU	
Wireless Telecommunications Facilities	P	P	P	P	P	P	P	P	P	P	P	P	Art. 4B
Agricultural Uses*													
Agricultural Uses, as defined in Article 2	P	P	P	P	P	P	P	P	P	P	P	P	
Agricultural Repair Center	NP	P	P	P	P	P	P	P	CU	P	P	NP	
Agricultural Tourism	P	P	P	P	P	P	P	P	P	P	P	P	
Crematorium, Livestock ³⁷	CU	CU	CU	CU	CU	CU	CU	P	CU	CU	CU	CU	Sec. 8.19
Farm Brewery	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.5
Farm Winery or Distillery	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.5
Farm Market	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.6
Farmer's Market	P	P	P	NP	NP	P	NP	P	CU	P	NP	CU	Sec. 8.6
Farm Vacation Enterprise	P	P	P	P	P	P	P	P	P	P	P	P	
Feed and/or Farm Supply Center	CU	P	P	P	P	P	P	P	CU	P	P	NP	
Horticultural Nurseries and Commercial Greenhouses	P	P	P	P	P	P	P	P	CU	P	P	NP	
Landscaping Business	P	P	P	P	P	P	P	P	CU	P	P	NP	
Rental of Existing Farm Building for Commercial Storage Structure must have existed for 5 years	NP	P	P	P	P	P	P	P	CU	P	P	NP	
Special Event Facility, Agricultural	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.14
Accessory Uses													
Accessory Uses	P	P	P	P	P	P	P	P	P	P	P	P	

NC Neighborhood Commercial
GC General Commercial
HC Highway Commercial
LI Light Industrial
MI Major Industrial
PND Planned Neighborhood Development

OC Office / Commercial Mixed-Use
R Rural
RG Residential Growth District
RLIC Residential-Light Industrial-Commercial District
IC Industrial-Commercial District
V Village District

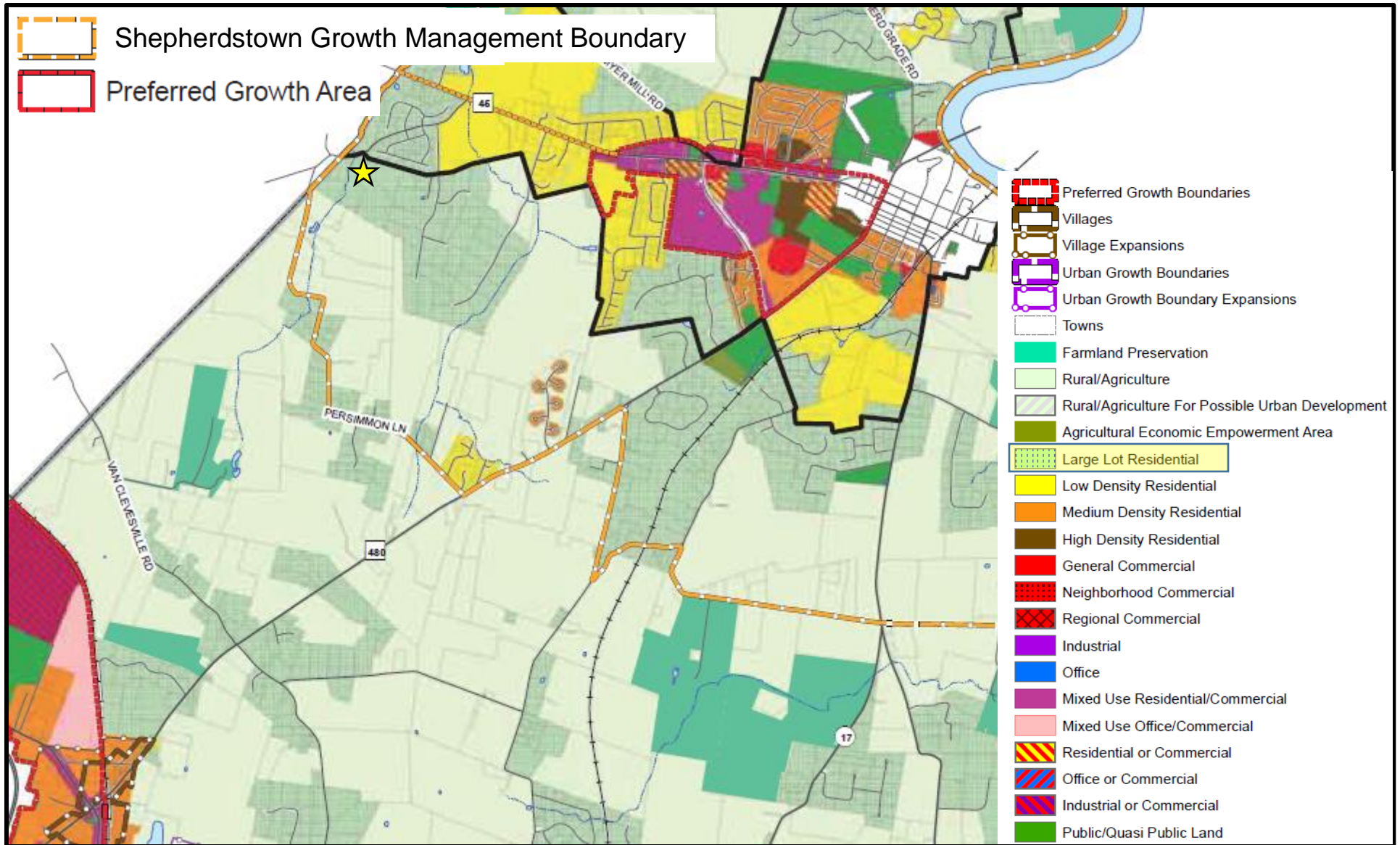
P Permitted Uses
NP Not Permitted Uses

CU Conditional Uses (subject to requirements of district and/or other requirements of this Ordinance)

** Accessory Use to a planned residential community, if permitted pursuant to Section 5.4 and processed as a CU

¹ The Planning Commission may amend the permitted uses for a development in the PND District per Article 5.

² Approval process is per the Salvage Yard Ordinance.



Excerpt from Envision Jefferson 2035 Comprehensive Plan - Future Land Use

Urban Growth Boundary (UGB)

According to §8-6-4a of the West Virginia Code, Urban Growth Boundaries (UGBs) are...*“an area around and outside the corporate limits of a municipality within which there is a sufficient supply of developable land within the boundary for at least a prospective twenty-year period of municipal growth based on demographic forecasts and the time reasonably required to effectively provide municipal services to the identified area.”*

UGBs are, according to state law, established by the County Commission in conjunction with the municipality looking to identify a boundary and are reflected on the County Zoning Map. In West Virginia, UGBs are used to acknowledge the extent to which a municipality can expand.¹

While all municipalities have the ability to create UGBs with the approval of the County Commission, at present, only three of the five municipalities in Jefferson County have planning boundaries that meet the definition of §8-6-4a of the West Virginia Code. In 2009, Charles Town and Ranson had their UGBs formally approved by the County Commission. In 2014, Shepherdstown created a boundary called the Growth Management Boundary (GMB) which falls under the state definition of a UGB and was formally approved by the County Commission. Shepherdstown’s adopted GMB allows the Corporation to plan for future growth and annexations, but is not anticipated to have urban scale development if it remains in the unincorporated area. If Bolivar or Harpers Ferry chooses to create a UGB in the future that is different than the Preferred Growth Areas (PGAs) depicted, the recommendations in this Plan related to UGBs may be extended to the newly created UGBs based on the town’s planning goals. The use of the term UGB throughout this document refers to the Charles Town and Ranson UGBs only.

This Plan expects that properties within the UGB may be annexed into the adjoining municipality which has created the UGB. However, an entity with property located within the UGB could choose not to annex their land into a municipality and could then develop the land under the County’s land development standards instead. In such circumstances, the UGB acts as a Preferred Growth Area for the County and urban level development is still anticipated in these areas.

Within the UGB, an intentional decision was made to depict property as it is either zoned or used. As such, there are large tracts of land designated rural. This Plan does not anticipate those areas to remain rural into the future. Since the properties in the UGB can either develop within the municipalities through annexation or in the County, there is some uncertainty as to the future use. Therefore, it was determined best to

¹ While in West Virginia, the concept of a UGB is tied to annexation exclusively. In other parts of the United States, the concept of an urban growth boundary is tied in with the provision of “a full range of urban services” such as sewer, water, broadband internet, quick response police, rescue/ambulance, and fire services; and a wide range of community facilities. In most areas, the provision of services is predicated on the presence of an urban growth boundary tied into an urban service area, with limited fire, rescue, and police services being provided to areas outside of the urban growth boundary.

show the existing land uses or zoning designation, including rural zoning, on the Future Land Use Guide within the UGB. It is not the intention of the Future Land Use Guide or this Plan for these areas to remain rural; the designation is temporary until the property owner determines if they desire to develop in either the municipality or the County.

A map of the Charles Town and Ranson UGB areas can be found in Appendix F – Maps.

a. Shepherdstown Growth Management Boundary (GMB)

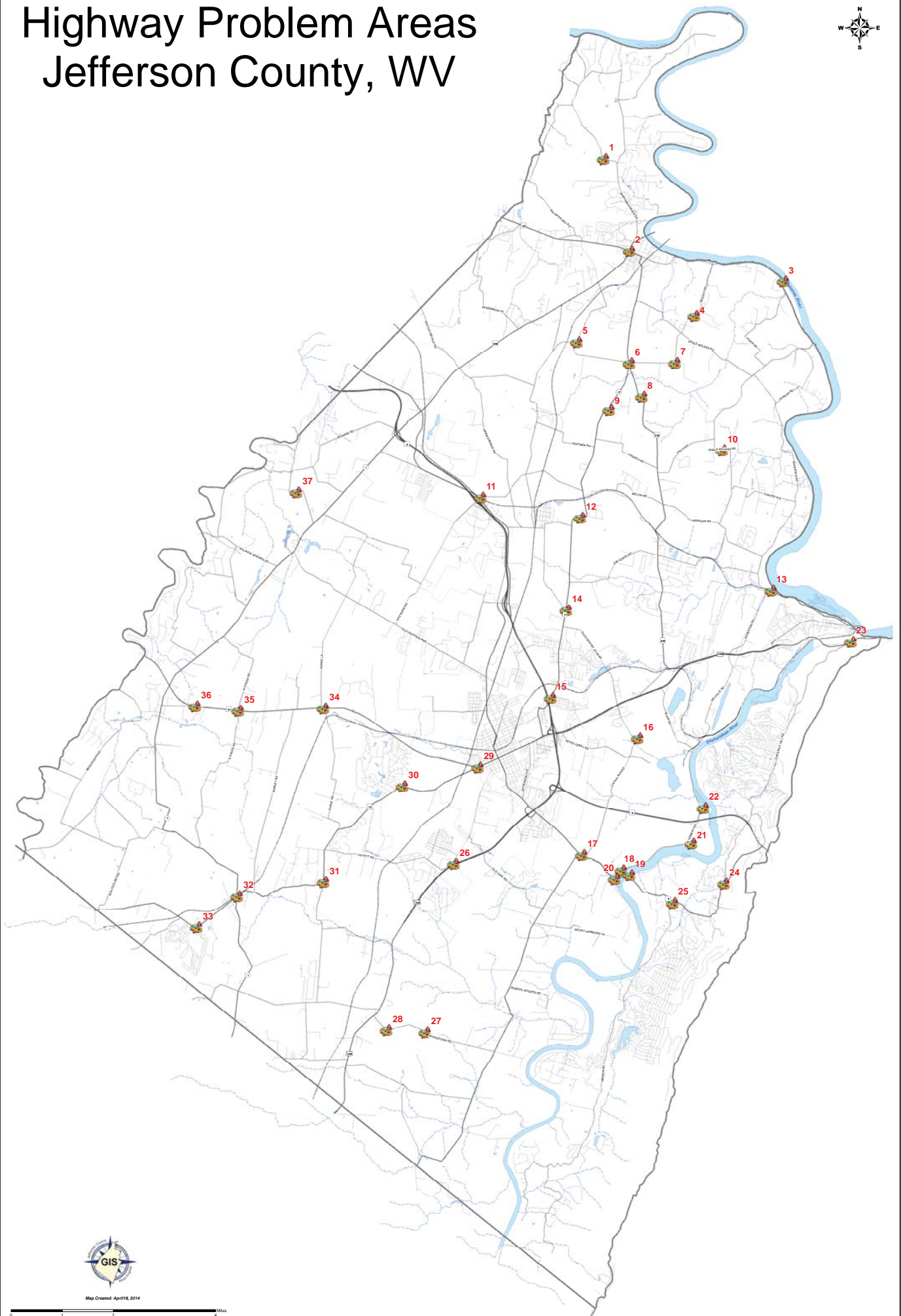
In 2014, Shepherdstown adopted a Growth Management Boundary (GMB) which is planned to have growth around the existing core of Shepherdstown and less intense development at the edges of the GMB. The full GMB is shown on the Future Land Use Guide. In Shepherdstown's 2014 Comprehensive Plan, within the GMB, Shepherdstown has also designated three phases of a Municipal Growth Area which are anticipated to allow phased expansion and urbanized growth within Shepherdstown. While this larger growth and annexation area is recommended in the Shepherdstown 2014 Comprehensive Plan, the *Envision Jefferson 2035 Comprehensive Plan* recognizes a smaller Preferred Growth Area to the west of the Shepherdstown core and the existing County zoning if it remains in the unincorporated area. The Future Land Use Guide of this Plan depicts the GMB and the proposed land uses if it remains unincorporated. The Shepherdstown GMB is treated differently from the Charles Town and Ranson UGBs due to the difference in Shepherdstown's growth management planning recommendations. If the land is annexed by Shepherdstown, the Shepherdstown Growth Management recommendations and Comprehensive Plan shall apply.

b. Ranson Urban Growth Boundary (UGB)

During the development of the 2008 Zoning Ordinance (which subsequently was not approved), the County and the Corporation of Ranson worked jointly to develop a land use planning tool referred to as the County Townscape Boundary which was reflected on the draft Zoning Map. When the state law was amended in 2009 to allow the creation of Urban Growth Boundaries, Ranson formally requested that the County Commission approve this draft boundary as their Urban Growth Boundary and reflect it on the County Zoning Map.

As part of *Envision Jefferson 2035*, it is proposed that the Ranson UGB be expanded to encompass the areas that are located outside of the existing UGB (Tackley Farm and Jefferson Orchards) but within the municipality boundary, as well as the unincorporated area northeast of the intersection of WV 9 and Luther Jones Road. This expansion area would allow the development of this area to occur in conjunction with the transit oriented development proposed for the Jefferson Orchard property known as Northport Station.

Highway Problem Areas Jefferson County, WV



Map Created: April 18, 2014

0 1 2 4 Miles

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

DRAFT



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

File #: 23-9-CUP
 R'cvd Date: 10/06/23
 Mtg. Date: 11/14/23
 Fee Paid: \$ 300/chk#0405
 Staff Int.: AS

Email: zoning@jeffersoncountywv.org

Phone: (304) 728-3228

Application for a Conditional Use Permit

Project Name

Property Owner Information

Name: Jeremy + Tiffany Martin
 Business Name: _____
 Mailing Address: 104 Winebrenner Rd Shepherdstown, WV 25443 Mail Yes
 Phone Number: _____ Email Response: hcooper1926@gmail.com Response: No

Applicant Information

Name: Jeremy + Tiffany Martin
 Business Name: Earthworx General Contracting Services, LLC
 Mailing Address: P.O. Box 1555 Shepherdstown, WV 25443 Mail Yes
 Phone Number: 304 283 8553 Email Response: earthworxgcs@outlook.com Response: No

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

Name: _____
 Business Name: _____
 Mailing Address: _____ Mail Yes
 Phone Number: _____ Email Response: _____ Response: No

Physical Property Details

Physical Address: 104 Winebrenner Rd Shepherdstown, WV 25443
 Tax District: Shepherdstown (09) Map No: 7 Parcel No: 2.2
 Parcel Size: 16.49 acres Deed Book: 1290 Page No: 456

Zoning District (please check one)

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

* For properties in the Rural Zoning District:
 Is property located on a primary or secondary road? Yes No

Name of Road and/or Route Number: Winebrenner Road

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

Supports some non-res use in the rural zoning district and encourages the Conditional use permit process.

Please provide any information or known history regarding this property.

Vacant until Sept 2022 when we purchased and began to develop.

Please respond in detail to the following questions to show how the proposed project complies with the criteria located in Section 6.3 of the Zoning Ordinance:

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

Contractor with outdoor storage - see attached narrative

2. How is the proposed use compatible in intensity and scale with the existing and potential land uses on surrounding properties? How will the proposed project mitigate potential threat to public health, safety, and welfare? Sec. 6.3A.2

There are several farms surrounding our property and the proposed business will have minimum impact. We planted trees as a buffer to lower impact.

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

proposed business is limited in scale.

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

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

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

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

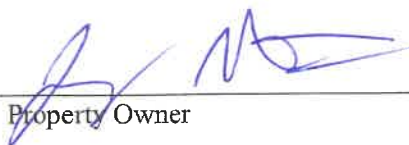
I am aware of the standards outlined in Section 8.9 of the Zoning Ordinance and will be in compliance.

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 commercial on the Future Land Use Guide or does not front on a Principal Arterial, Minor Arterial, or Major Collector road (as identified in the Comprehensive Plan), the applicant shall submit trip generation data, including Average Daily and Peak Hour trips, for the Board of Zoning Appeals to review in conjunction with the Highway Problem Areas Map when determining roadway adequacy for the proposed use. Section 6.3A.6.

Applicable (Trip Generation Data attached)

Not Applicable

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


Property Owner

10/5/23
Date


Property Owner

10/5/23
Date

Narrative for 104 Winebrenner Road, Shepherdstown, WV 25443

Description of land: This property is currently a farm registered as ag use. We have had our horses, cows there since November 2022. We also park our equipment for our small excavating business and have done so since October 2022. Currently, we are building our home on the farm. This property is primarily our home and farm and is our land personally, however, we do store our equipment on the gravel parking pad as shown on the site sketch. No customers come to our location, we have no employees, and we operate during construction hours off site.

Traffic: Currently the traffic to and from the farm is mainly for our personal use. However, we do operate our business on a part-time (2 days a week, currently). That equals 4 trips per week if you are including 2 trips per day for 2 days. This will not change with what is currently happening and has been happening since October 2022 as we have had the equipment stored there since then. However, in the future – our 10-year plan is to grow our business and possibly work 4-5 days a week and hire 4-5 employees which could then increase the trips to 50 in any given week. We do not believe that this will create any inconvenience to the surrounding properties due to the location and layout of our land.

Signage: There will be no signage for our business at this location.

Site Sketch/Pictures: Looking at the site sketch you can see that we planted 20 trees down the fence line where our property adjoins 4 Belmeade Way. There were a few bare spots in the fence line and we wanted to create more privacy for both parties. As you can see, our property line that adjoins all neighboring properties located in the neighborhood have trees, most areas thicker than just a tree line.

Other notes: Please note that we have had no complaints regarding our business storage or operation until this time and recently we started working on the foundation of our new home. In doing this, we ran into a rock ledge where the house needs to go and had to break rock and have upset neighboring properties due to the noise. However, we are operating during normal construction hours and once our home is complete the current issues will go away. As I first stated, I do not believe that parking our equipment is of concern to neighbors rather that we are building a home. Please also see attached the letter of support from Karen Lemons who is the neighbor behind us, located at 106 Winebrenner Road. We want to enjoy our land and our home. Yes, we also own a small business but we have a good reputation with our customers and have tried to reduce any impact that our business or home may cause.

List of adjoining properties to 104 Winebrenner Road:

Jarrold & Shannon Plotner
4 Belmeade Way
Shepherdstown, WV 25443

Daniel Murray
32 Belmeade Way
Shepherdstown, WV 25443

Aaron & Jennifer Krouse
102 Blemeade Way
Shepherdstown, WV 25443

Katelyn Phillips
126 Belmeade Way
Shepherdstown, WV 25443

Karen Lemons
106 Winebrenner Road
Shepherdstown, WV 25443

Michael Lillie - across Rd- Winebrenner
2001 Winebrenner Rd
Shepherdstown, WV 25443

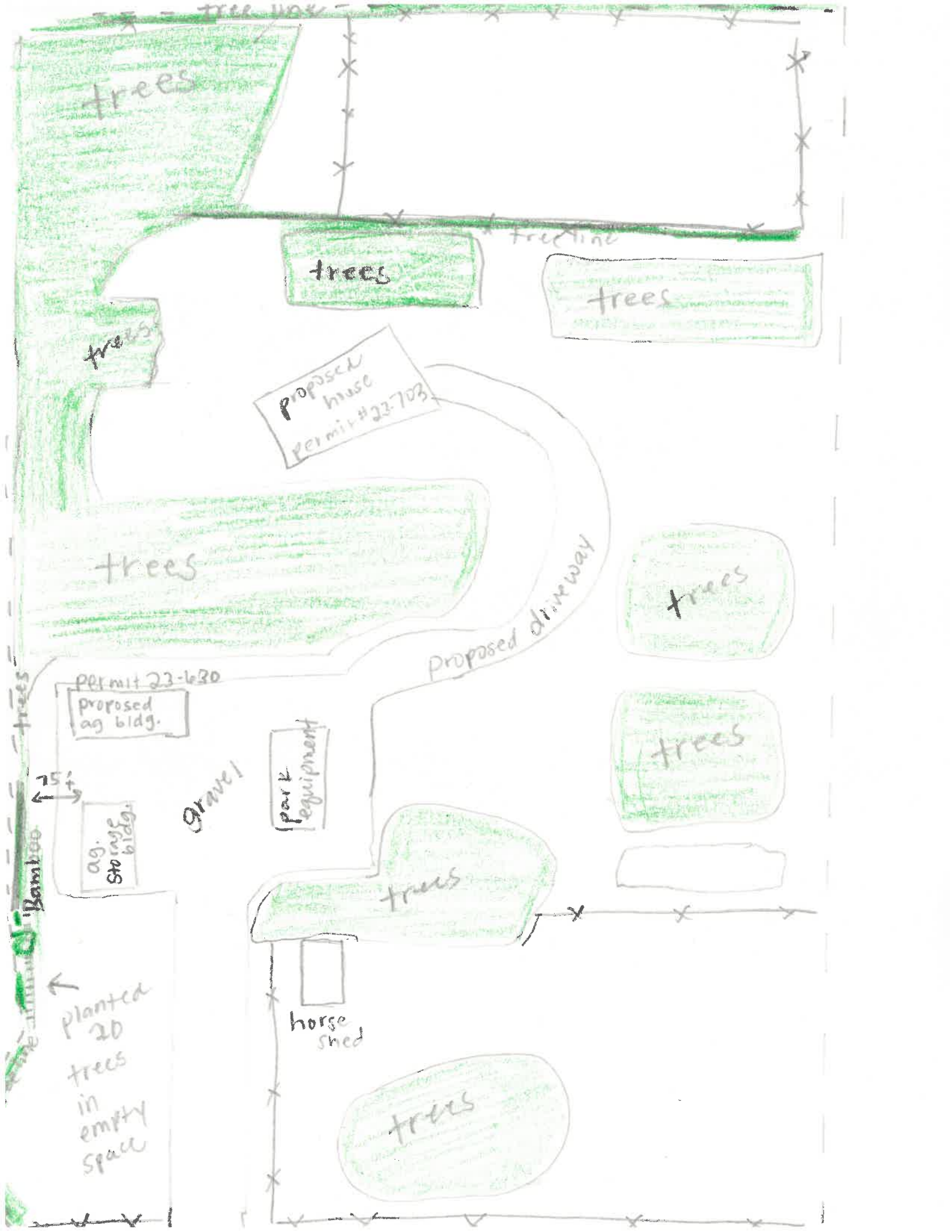
October 5, 2023

To Whom it May Concern:

I reside at 106 Winebrenner Road in Shepherdstown and it has come to my attention that Jeremy & Tiffany Martin are applying for a permit through Jefferson County. I have gotten to know Tiffany and Jeremy and their children after they purchased the 16 acre property adjacent to mine in September 2022. The property was used to store equipment for their business and as farmland for their horses. They have recently decided to make it their homestead and primary residence preparing to break ground to build a home. To my knowledge, the couple has been respectful of noise during waking hours although I am sure the county understands farmers must start their day early to get everything done. They have recently hit rock at the site of what will be their home causing an increase in the use of heavy equipment which is a normal part of construction. I understand it has caused issue with some neighbors but will be temporary as the excavation is done and the home is constructed. Thankfully my cattle rise early and have not complained about the matter. The Martins and myself share a driveway/right-of-way and Jeremy asked permission before making improvements to the driveway as it opens onto Winebrenner. He has improved visibility and keeps the property in wonderful shape. He has maintained both sides of the right-of-way mowing and even helped spread gravel in my driveway. They have not caused any issues for myself, my farm or my family and wish to be an asset to the neighborhood. Don't hesitate to contact me if I can be of assistance.

Karen Lemons

(540)535-6118



earthworxgcs@outlook.com

From: Jeremy Martin <jmartin32glove@gmail.com>
Sent: Thursday, October 5, 2023 6:17 PM
To: earthworxgcs@outlook.com
Subject: Pictures of trees etc at farm











View from Winebrenner Rd +
private farm lane (unnamed)







23-9-CUP Earthworx General Contracting Services - Public Comment Index

1. Submitted 2023-10-26 by Peter Corum
2. Submitted 2023-11-01 by Aaron Krouse
3. Submitted 2023-11-02 by Ted & Macy Maciag
4. Submitted 2023-11-02 by Fabian Plath
5. Submitted 2023-11-02 by Deb Blake
6. Submitted 2023-11-03 by Daniel Murray
7. Submitted 2023-11-03 by Greg & Christina Mason
8. Submitted 2023-11-03 by Shannon and Jarrod Plotner

Peter S Corum
404 Green Hill Farm Ln.,
Shepherdstown, WV 25443

RECEIVED
OCTOBER 26, 2023
Jefferson County, WV
Office of Planning & Zoning

October 26, 2023

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

Subject: Letter of Support for Jeremy Martin's 16 Acre Farm Use

Dear Sir or Madam,

I am writing to express my family's support for Jeremy Martin's 16 acre farm and home located at 104 Winebrenner Rd., Shepherdstown, WV 25443, Jefferson County. As residents of Shepherdstown, we frequently drive by Mr. Martin's property and have had the pleasure of observing the notable capital improvements made to his land. The sight of the small farm animals grazing and the overall enhancement to the property adds to the beauty and charm of our local neighborhood.

We appreciate and recognize the positive contributions such endeavors make to our community. The farm helps preserve the agricultural heritage of our region and also enhances the picturesque rural landscape that many of us cherish. It also provides flexibility for small business to flourish.

We believe that Jeremy Martin's farm perfectly aligns with the aesthetic and values of our community, and we hope to see continued support for his efforts from the Jefferson County Department of Engineering, Planning, and Zoning.

Thank you for considering our views. We remain invested in and optimistic about the growth and preservation of our community.

Warm regards,



Peter S Corum
Neighbor

Aaron B. Krouse
102 Belmeade Way
Shepherdstown, WV 25443

RECEIVED
NOVEMBER 1, 2023
Jefferson County, WV
Office of Planning & Zoning

November 1, 2023

Alexandra Beaulieu
Deputy Director & Zoning Administrator
Office of Planning and Zoning
Board of Zoning Appeals
116 E. Washington Street, 2nd Floor
Charles Town, WV 25414
(304) 728-3228

Re: Conditional Use Permit Application by Earthworx General Contracting (104 Winebrenner Road, Shepherdstown, WV)

Dear Ms. Beaulieu,

I am writing to express my strong opposition to the proposed conditional use permit requested by Earthworx General Contracting for the property located at 104 Winebrenner Road in Shepherdstown. As a neighboring homeowner in “The Point” neighborhood, the issuance of this permit would be an unjust infringement on my property rights.

Though I do not doubt the applicant’s sincere desire to cause no harm to neighboring landowners, the simple fact is that operating a heavy-excavation business next to a residential neighborhood will, by its very nature cause harm. In the brief time that the applicants have been operating their business, they have already caused significant disruption to The Point. Although they own over 16 acres, they have chosen to put their business structures as close as possible to residential homes. They have constructed these business-related buildings without receiving (or, to my understanding, even applying for) any sort of authorization from the Office of Planning and Zoning. They routinely operate loud, heavy-machinery beginning early in the morning and continuing off and on throughout the day, and into the evening hours. As a neighboring property owner I have felt the ground shaking from the operation of their equipment (I’m not referencing the temporary noise associated with the rock removal for their residence, I’m referring to the day-to-day operation of their earth moving equipment, trucks, etc.). Even at its current “small scale”, the applicant’s business operations have created a disruption. Further, they anticipate their business will grow to 10 times its current size over the next several years. The type of activity they envision is simply not consistent with a “rural” zoned property located directly beside a residential neighborhood.

Earthworx proposes operating a heavy excavation business utilizing earth moving machinery and eventually making up to 50 trips per week (10-13 trips per day). The noise, traffic, road damage, and industrial look of this type of business will certainly decrease the desirability of The Point located directly behind it. That will necessarily result in a loss of property value for homeowners like myself who have invested in this community. I sympathize with the landowner’s desire to use their property as they see fit, but it is crucial to strike a balance between the rights of all property owners. The proposed “conditional use” favors of the property rights of the applicant (who purchased his property knowing it was not zoned

File #23-9-CUP

for his intended use) over that of the dozens of adjacent landowners who bought their property relying on the fact that the neighboring property was zoned “rural”.

Moreover, this conditional use would be a regulatory taking of property value without just compensation. The Fifth Amendment prohibits the government from taking private property without providing just compensation to the property owner. Courts have ruled that reducing value through regulatory change constitutes a “taking” for eminent domain purposes. While this “taking” would apply to all homeowners in The Point (as the entire neighborhood would become less desirable), it is especially applicable to the three properties closest to this proposed heavy excavation business. ***At the time these houses were purchased, each homeowner paid a \$10,000 premium for these lots expressly because they backed up to property zoned as “rural”.*** Allowing that property to be used as a heavy-excavation business renders those \$10,000 payments meaningless. This is most definitely a “taking” under the Fifth Amendment. While I recognize the county’s right to make changes for the greater good, to do so without compensating neighboring landowners for the resulting loss in property value is a violation of the Fifth Amendment.

In summary, this proposed action is not consistent with the character of the area. It would result in decreased value of neighboring lots, and (without just compensation) would violate the Fifth Amendment of the Constitution. In light of the negative impact this change would have, I urge the Board of Zoning Appeals to reject this conditional use permit.

Sincerely,

/s/

Aaron B. Krouse
The Point Homeowner

Zoning

From: Ted M <tedacp@aol.com>
Sent: Thursday, November 2, 2023 3:32 PM
To: Zoning
Subject: ** Important: -- two Exhibits re: Letter re "EARTHWORX" Conditional Use Application -- 104 Winebrenner Road -- Parcel ID # 09000700020002 (16.5 acres)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or on clicking links from unknown senders.

To: Alexandra Beaulieu

Dear Ms. Beaulieu:

Please add this cover note and the two attached pictures, as supplemental Exhibits to our previously submitted Letter dated November 1, 2023;

- (1) Exhibit #1 shows the site in 2022, from the real estate listing at the time the principals of Earthworx, purchased the premises.
- (2) Exhibit #2, from Jefferson County's on-line mapping website, shows the site as of 2023, including the massive infrastructure already installed, apparently without any permits and in total violation of the Rural Zone Ordinance, just a few feet directly behind residents' backyards! (notwithstanding that Earthworx had 16.5 acres to work with!?)

Respectfully submitted,

- Ted & Mary Maciag

95 Belmeade Way

Shepherdstown, WV 25443

From: Zoning@jeffersoncountywv.org
Sent: November 2, 2023 8:32 AM
To: tedacp@aol.com
Subject: RE: Letter re "EARTHWORX" Conditional Use Application -- 104 Winebrenner Road -- Parcel ID # 09000700020002 (16.5 acres)

Good morning,

This email is to confirm receipt of your written comments for inclusion in the Board of Zoning Appeals' mailed packet for the upcoming November 9, 2023 meeting. This packet will be made available on the County's [webpage](#) by n close of business on Friday, November 3, 2023.

Thank you,

Alexandra Beaulieu
Deputy Director & Zoning Administrator
Department of Engineering, Planning, & Zoning
Jefferson County, WV

[304-728-3228](tel:304-728-3228)

From: tedacp@aol.com <tedacp@aol.com>

Sent: Wednesday, November 1, 2023 6:50 PM

To: Zoning <Zoning@jeffersoncountywv.org>

Subject: Letter re "EARTHWORX" Conditional Use Application -- 104 Winebrenner Road -- Parcel ID # 09000700020002 (16.5 acres)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or on clicking links from unknown senders.

Ms. Alexandra Beaulieu
Deputy Director & Zoning Administrator
Office of Planning and Zoning
Board of Zoning Appeals
County of Jefferson

Dear Ms. Beaulieu:

.
Please see our attached letter in response to the "Earthworx" Conditional Use Permit Application (Earthworx General Contracting Services LLC, 104 Winebrenner Road, Shepherdstown, WV), Parcel ID # 09000700020002 (16.5 acres). ***(See Attached)***

.
Respectfully submitted,

.
Ted & Mary Maciag
95 Belmeade Way
Shepherdstown, WV 25443
(phone [208-704-8802](tel:208-704-8802))



Ted & Macy Maciag, Exhibit #1



Ted & Macy Maciag, Exhibit #2

TED & MARY MACIAG
95 Belmeade Way
Shepherdstown, WV 25443
(phone: 908-704-8802)

RECEIVED
NOVEMBER 2, 2023
Jefferson County, WV
Office of Planning & Zoning

Ms. Alexandra Beaulieu
Deputy Director & Zoning Administrator
Office of Planning and Zoning
Board of Zoning Appeals
County of Jefferson
116 E. Washington Street, 2nd Floor
Charles Town, WV 25414
(304) 728-3228

November 1, 2023

(via email: zoning@jeffersoncountywv.org)

Re: “Earthworx” Conditional Use Permit Application
Earthworx General Contracting Services LLC
Property in Question: 104 Winebrenner Road, Shepherdstown, WV
Parcel ID # 09000700020002 (16.5 acres)

Dear Ms. Beaulieu,

We are writing to express our great concern, and our opposition to, the proposed Conditional Use permit requested by Earthworx General Contracting LLC (“Earthworx”) for the property located in a Rural [R] zone, at 104 Winebrenner Road, Shepherdstown.

We are homeowners at 95 Belmeade Way, in “The Point” neighborhood. Our home is located only 225 feet away from the Property in Question (the “Premises”). Our home includes two lots; our side yard is Lot 41 Horner Farm Lane, only 225 feet from the portion of the Premises that is proposed for the most intensive Commercial development.

As such, our family will be directly and adversely affected by the proposed intense Commercial use of the property in a Rural [R] zone, and as such any granting of the extensive Conditional Use Permit, as applied for, would be an unjust infringement on our property rights.

Before we purchased our home at 95 Belmeade Way and our side yard at Lot 41 Horner Farm Lane, we diligently and carefully researched the zoning status of adjacent lands. We carefully noted that the premises in question, 16.5 acres, was in an environmentally-sensitive area, and was located in a Rural [R] Zone. We therefore knew that the Zoning of the property prevented it from Commercial development, and we relied on that zoning in purchasing our home.

Prior to Earthworx’s owners purchasing the Premises, they too presumably reviewed

the applicable Zoning laws, and they had to know, before they bought their property, that their proposed Commercial use is simply Not Permitted in a Rural [R] Zone.

While we respect that the applicant, Earthworx, has stated a desire cause no harm to neighboring landowners, the simple fact is that, as others in our neighborhood have already noted, operating a heavy-excavation business directly next to an established residential neighborhood will, by its very nature, cause harm. In the short time that Earthworx has been operating its business, Earthworx has already caused a significant negative impact on our neighborhood.

Curiously, although the Premises totals 16.5 acres, Earthworx has elected to place significant business structures as close as possible to the neighboring residential homes, rather than elsewhere on their lot (. . . and, notably, the owners of Earthworx, Mr. and Mrs. Martin, have certainly taken care to very conveniently locate their commercial use at a relatively far distance from their own proposed new home site — they are quick to locate their commercial Earthworx business right behind the back yards of their neighbors, rather than locating their noisy commercial activities right next to their own home! I wonder why?)

Our home at 95 Belmeade Way is located only 225 feet from the Premises, and we frequently hear noises of Earthworx’s loud, heavy machinery, often beginning early in the morning and continuing off and on throughout the day, and into the evening hours, which sounds appear to be from their earth moving equipment and trucks). Thus, even at its current supposedly “small scale”, Earthworx’s business operations have already disrupted our neighborhood.

More significantly, the Application proposes that Earthworx is also seeking permission to grow their business to TEN TIMES its current size within the next few years, as Earthworx proposes operating a heavy excavation business utilizing earth moving machinery and eventually making up to FIFTY trips per week (10-13 trips per day, assuming a 4 to 5 day working week). The noise, traffic, road damage, and industrial nature of this type of business is not only inappropriate for a Rural [R] Zone property directly adjacent to an established residential neighborhood, it is also, in fact, a prohibited use in a Rural [R] Zone.

The Jefferson County Zoning and Land Development Ordinance is 100% clear and unambiguous as to the proposed use NOT being permitted in a Rural [R] Zone. At Appendix C, page 123 of that Ordinance, it plainly states that in a Rural [R] Zone, the following uses are not permitted:

- | | |
|-----------------------------------|---------------|
| Heavy Equipment Repair: | NOT PERMITTED |
| Light Industrial Uses: | NOT PERMITTED |
| Vehicle Storage: | NOT PERMITTED |
| Contractor w/ No Outdoor Storage: | NOT PERMITTED |
| Contractor w/ Outdoor Storage: | NOT PERMITTED |

While the Application in question references “Contractor with Outdoor Storage”

(which itself is plainly Not Permitted in a Rural [R] Zone), the nature of the proposed activities also appear to fall under one or more of the other four uses listed above — ALL of which are Not Permitted in a Rural [R] Zone. As to the reference that “no customers will come to the site”, to suggest that means minimal traffic to the site, is something of a *non sequitur*. The real key is not whether there will be customer visits to the site, but the fact that Earthworx’s own application admits on the record that they anticipate 4 to 5 Employees, and 50 (fifty) vehicle trips per week.

The above having been said, we can all certainly respect someone who is trying to run a “home occupation” type business on a large lot. The Question then is: what is a reasonable solution here that respects the adjacent residential neighborhood, and also recognizes the applicants’ anticipation of operating a rapidly growing and soon to be very large and very active business

I respectfully suggest that the Answer to that question is a simple one: if the Applicant, as its own application anticipates, intends to run a Commercial business in a Rural [R] Zone, then:

(A) even at the present “small scale” all business operations should include no new structures, vehicles should be limited to perhaps five or less commercial vehicles, and all parking of vehicles should be located along the northwest border of the Premises adjacent to 106 Winebrenner Road, which is itself a 13.2 Acre rural lot, and whose Owner has filed a letter indicating that she has no objection to Earthworx’s propose intense Commercial use; and

(B) once the business, as its own Application anticipates, grows to require business structures, or to include outside employees other than immediate family members, then at that juncture Earthworx should not be permitted to expand at all on the Premises, but can either purchase or lease property in an appropriate Commercial Zone. Let’s apply some common-sense here: the Application anticipates growing to “4-5 employees” and fifty (50) vehicle trips per week. Even if those employees are only earning, say, \$25 per hour with minimal overtime, that would be salary and wages of \$52,000.00 plus overtime for each employee, or \$65,000.00 plus overtime for each employee assuming a standard 25% for payroll taxes and benefits. That payroll alone would be somewhere around \$325,000.00 to \$400,0000, depending on benefits and overtime. Assuming expenses of operating the business, and assuming the Owners taking out a generous Profit to support their own lifestyle, Earthworx would at that juncture presumably be grossing somewhere around several hundred thousand dollars to a million dollars per year in annual revenues. Even when they are only partway to their anticipated 4-5 employees, they will already be at the stage of a few hundred thousand dollars in annual gross revenues once they are at 1 or 2 employees.

At that juncture, we can all tip our hat to Earthworx’s owners and congratulate them on their entrepreneurial success! — *and at that point Earthworx can easily afford a few thousand dollars per month to carry a Lease payment or Mortgage payment on a construction yard property in an appropriately-zoned Commercial area.* For example, a

\$200,000.00 parcel of vacant land with an 80% mortgage and property taxes would cost approximately \$1400 per month, a relatively *de minimis* sum for a successful business. Surely a growing business could afford the relatively modest cost of owning or leasing appropriate commercial premises, without need to locate itself directly adjacent to an established residential neighborhood! It is a common-place event that many people begin with home-based businesses in or adjacent to a residential neighborhood, but once their business grows, they go out and procure an appropriate commercial space for their growing business.

Conclusion

For the foregoing reasons, I and my wife Mary, as neighboring residential property owners, respectfully submit that the Conditional Use Permit should be Denied in its entirety, or, if granted, should include at the least these two conditions:

- (1) that all commercial uses must be located on the northwest side of the property, adjacent to the neighboring 13.2-acre property, as far away from the residential neighborhood as possible (and if any environmental sensitivity precludes locating there, then the Application should be denied in its entirety), and
- (2) that the Conditional Use commercial activity should be limited to the parking and storage of no more than 5 commercial vehicles, and to no more than 15 vehicle trips per week, with no employees of the business except for immediate family members. — If at some future date the business exceeds that level of activity, we can then all congratulate Earthworx on its growing success, and at that point it will be high time for Earthworx, like any growing business, to calmly proceed to purchase or lease appropriate alternate business premises in a Commercial Zone. That is why we have zoning laws.

Respectfully submitted,


Ted Maciag

Fabian Plath
259 Belmeade Way
Shepherdstown, WV 25443

RECEIVED
NOVEMBER 2, 2023
Jefferson County, WV
Office of Planning & Zoning

November 1, 2023

Alexandra Beaulieu
Deputy Director & Zoning Administrator
Office of Planning and Zoning
Board of Zoning Appeals
116 E. Washington Street, 2nd Floor
Charles Town, WV 25414

Re: Opposition of the Conditional Use Permit Application by Earthworx General Contracting
(104 Winebrenner Road, Shepherdstown, WV)

Dear Ms. Beaulieu,

I am contacting you to voice my strong opposition to the applied-for conditional use permit regarding the property located at 104 Winebrenner Road in Shepherdstown (County). My property at 259 Belmeade Way is located a few hundred feet from the subject property.

As a recent arrival to this area, I purchased my home in July 2022. Aside from my desire to reside in West Virginia, I carefully chose a home in a rural setting that offers the kind of peace and quiet I was looking for, nestled among farmland and other homes on larger lots. In recent months, there has been considerable noise emanating from the subject property on Winebrenner Road and upon discovering the conditional use permit application, I found it important to contact you to very clearly state my opposition to this application. The type of business contemplated would most certainly multiply the noise already experienced earlier this year, with heavy machinery coming and going frequently.

I am finding Jefferson County to be a wonderful place to live, and it is organizations such as yours that help maintain this county in a way that will continue to attract new residents such as myself. People moving here are often looking for a more rural, quiet, slower paced setting than the place they came from. To that end, it will be important to support the intent of a rural zone and not permit commercial businesses immediately next to established residential developments. The ability to rely on established zoning is important to new residents to Jefferson County. Without it, property values are at considerable peril.

I appreciate your attention to this letter as I will be unable to attend the hearing in person due to previously scheduled travel.

Sincerely,



Fabian Plath

File #23-9-CUP

Zoning

From: Deb Blake (debblake) <debblake@cisco.com>
Sent: Thursday, November 2, 2023 3:46 PM
To: Zoning
Cc: Xfinity
Subject: Letter of Objection to Rezoning of Parcel ID 09000700020002 from Rural to Conditional Use (104 Winebrenner Road)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or on clicking links from unknown senders.

To Ms Beaulieu and Board of Zoning Appeals members,

Thank you for bringing this rezoning request to our attention with the signage and postings.

This is concerning the 16.5 acres at 104 Winebrenner Road owned by Jeremy and Tiffany Martin d.b.a Earthworx General Contracting Services LLC.

I live at The Point Subdivision, and it is a quiet, well maintained with upper, middle class home sites. A couple years ago when we moved into our home, we were drawn to the surrounding farmland and quiet, rural life. We moved away from other city's growth, noise, and commotion knowing the zoning around us would allow us to retire here and enjoy our land. Now I fear that is being put into jeopardy.

We have had an uptick in noise since the Martins arrival (Earthworx) as you can imagine the noise of trucks and equipment, and as they have commented in their permit request from the last few weeks especially with the pounding of rock to build their homesite. Although, we have raised no concerns or objections until now.

It is my understanding that with most zoning boards, they board requires conditional use of property to support the general welfare of the community to gain this exception and prevent the landowner from going the full rezoning process (basically making the process administrative in nature). My question is what are the supportive attributes for the general welfare for our community to having this land changed from agricultural/rural? From reading through their permit and attached documentation I see benefits for the Martins, and increased revenue/growth for county, but the impact to the actual community would be increased traffic, noise pollution, potential ground or water pollution from excavation vehicles and setting a precedent for even more expansion of other surrounding agriculture/rural properties. They talk about their 5–10-year plan of increased employees and days of work – which would just further exacerbate the issue.

My biggest fear is what this will do to my property value. We purchased looking for rural, quiet home in a nice neighborhood in a certain price range (like most neighbors). Having a trucking/excavation business just 1000 feet away will not be a selling point for our home and will certainly depreciate its value.

Last, let me comment that I have no ill will towards the Martins or their desire to build a home and use their land for agriculture/rural use as outlined in the current zoning ordinance. I do applaud them for coming forward and submitting the paperwork and addressing the issue with the Board instead just continuing to use the property. I'm certain they can find other properties that are zoned for their business and hope they do well.

With all this in mind, I ask the Board to reject the Conditional Use permit for 104 Winebrenner Road.

Thank you,
Mike and Deb Blake
21 N Marvin Chapel Dr
Shepherdstown, WV 25443
(757) 328-2261

November 2, 2023

Alexandra Beaulieu
Deputy Director and Zoning Administrator
Office of Planning and Zoning
Board of Zoning Appeals
116 E. Washington Street, 2nd Floor
Charles Town, WV 25414
304-728-3228

RECEIVED
NOVEMBER 3, 2023
Jefferson County, WV
Office of Planning & Zoning

Reference: Conditional Use Permit Application by Earthworx General Contracting (104 Winebrenner Rd, Shepherdstown, WV.

To Ms. Beaulieu and whomever else it may concern,

My name is Daniel Murray and I am one of several properties that backs directly to the landowners that are requesting the conditional use permit for the Heavy construction vehicle “storage” and excavation company in reference above. I am currently deployed overseas and would like to submit this letter for the record of my strong opposition as I will not be able to attend this hearing in person.

First off, I would like to state that my wife and I enjoyed the peace and quiet of our back yard prior to the new owner’s excavation and development of the “farm use” land behind us. Since purchasing the land, it has been an almost constant noise of excavation and construction, from what I have heard while home between deployments. The loud noise of excavation equipment, the beeping of construction vehicles backing up, and the clanging of dump truck beds has been an annoyance to put it nicely.

Second, I do believe that the “storage” of such vehicles as they are claiming on their paperwork will most definitely have an impact on the wildlife that we had previously enjoyed seeing in our back yard. We used to have deer all the time, multiple deer grazing and hanging out on our property, prior to much of this construction. I also believe that the location being so close to our property line will have an impact on the soil and ground water (well location) due to the maintenance involved with storing and using such equipment. These types of vehicles often leak oil, hydraulic fluid, and/or diesel fuel or other contaminants, and need regular maintenance, which I am assuming will be performed on site in the large 2 garage bay building they recently put up. If stored on a gravel pad as they say, contaminants will most certainly penetrate in the ground at some point, especially if they are planning on growing the business in the future.

Third, the vehicular traffic this business will generate based on their proposed expansion will eventually be at least 12 times or up to “50 trips” per week according to them, on Winebrenner Rd, which is not very wide and will most certainly cause an issue with oncoming traffic around the narrow curves between their location and Rt 45. Not to mention the impact to the road

File #23-9-CUP

surface that all of these excavation vehicles will cause coming and going. I would be curious to know if there have been any drivers or vehicles impacted already by any of their vehicles. It would be a good question to ask.

Lastly, we purchased our property at a premium price on the lot due to the location and privacy with a deep tree line and "rural" farm land behind us so that we would not have to deal with any new subdivisions, noise, or a commercial business like this anywhere near our property. When I am home relaxing and enjoying my back yard, I do not wish to hear these vehicles or equipment starting up, revving up, backing up, etc., nor do I care to breath in the type exhaust these vehicles also create while operating. I strongly oppose the granting of this permit as I believe it will also bear a negative impact to my property value, as well as, others in the neighborhood based on such a business being located in such close proximity to our once quiet and peaceful neighborhood. I also believe thus far, the owners of Earthworx have been operating under the "it is better to ask for forgiveness than permission" method since they have done all of this work in advance before even requesting permits to operate such a business. They probably feel that since they have invested in all this work, that the zoning board will simply grant the issuance of such permitted use. It is up to you to do the right thing and deny this conditional use permit, as it will most likely grow into a much larger business and will be too late to stop at that point.

Therefore, I am asking you, please do not grant this permit and allow the neighborhood to keep the peaceful, relaxing, private and wildlife filled charm that we purchased our property in this neighborhood for.

Thank you,

Daniel Murray
32 Belmeade Way
Shepherdstown, WV 25443

Planning Department

RECEIVED
NOVEMBER 3, 2023
Jefferson County, WV
Office of Planning & Zoning

From: Greg Mason <cggreg@gmail.com>
Sent: Thursday, November 2, 2023 6:33 PM
To: Planning Department; Christina Caruso; earthworxgcs@outlook.com
Subject: 23-9-cup winebrenner road

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or on clicking links from unknown senders.

This email is in support of "23-9-cup winebrenner road" Request for a Conditional Use Permit to operate a Contractor with Outdoor Storage business, as defined by Article 2 of the Zoning Ordinance. The proposal consists of storing construction equipment on an outdoor gravel pad. No customers will come to the property. No new structures or signs are proposed."

I
We have shared a property line with the Martins since 2017. They are a wonderful, hardworking family with two young children who are an asset to their community. I was very sad to hear that they are moving but we understand they wanted more land to raise their family and maintain their animals. In the six years that they have lived next door to us they have meticulously maintained their property and ran their business without disturbing any of their neighbors. They have never been loud or disturbed my family in any way. I am a retired military Lieutenant Commander with service connected injuries and Jeremy has helped me several times helping me maintain my property when I was unable to do it by myself. I know he and his family will continue to contribute to his local community and Jefferson county through their hard work, meticulous care of their property and their charitable nature to the neighbors who will just take the time to get to know them. I am available at any time to answer any questions either written or through a phone call, I can be reached at (304)671-9789 and happily endorse and support them. I am proud to call them my friends and will sorely miss them as my neighbor. Thank you for your consideration.
Greg and Christina Mason, 399 River Rd Shepherdstown.

Zoning

RECEIVED
NOVEMBER 3, 2023
Jefferson County, WV
Office of Planning & Zoning

From: shannon <kiley716@cs.com>
Sent: Thursday, November 2, 2023 11:24 PM
To: Zoning
Subject: Earthworx construction/104 Winebrenner Rd.

Follow Up Flag: Follow up
Flag Status: Completed

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or on clicking links from unknown senders.

Ms. Beaulieu and Members of the Zoning Board,

My family plans on attending the meeting next week for the proposed conditional use permit that the Martin's are seeking. We fully support the statements of both the Blake and Krouse households. We do not want this approved. It is not because we don't want to see their business succeed. It is because they have a large parcel of land and they have chosen to place the business buildings and equipment directly behind our house. We have read their application which states the neighbors have not complained until the recent difficulties building the house. This is untrue. No one in the surrounding homes has issue with a farm or house being built. We have issue with the business that has been operating from this site since they purchased it.

We have lived in the area a long time. We are not transplants from the city. We also work within our community. Our house was built 10 years ago. We chose this neighborhood and this lot because of the rural setting. We had the opportunity to build the exact house in Berkeley County for significantly less. We chose to pay higher prices, impact fees, lot premiums and ultimately higher property taxes so that we and our kids had a peaceful rural setting. They look out the front to a field of cows. The property behind was fields for a long time. While we knew there was a chance for building to occur, the idea of an excavation business never came up. That was due to the zoning and plan to keep this area rural.

We welcome a farm behind us. We welcome the sounds of animals and the cutting of hay. We do not welcome the sound of dump trucks idling for 30 minutes at 0530 and then the sound of a trailer being dropped on the hitch. We do not welcome the trucks coming and going throughout the day, or the banging of the dump gate when they raise it at 2000 (8pm).

We know what the application states. We also know that it isn't true. Until recently they had two dumps and an employee. They did several jobs, working six to seven days straight from before dawn until way past dark. They stated that the small building, with HVAC and electric, was for the business office, but told you that its agricultural use. They stated they will expand the business and put a building in that's a shop because Mr. Martin

is a diesel mechanic, but they told you that its for agricultural use. We know that they failed to apply for initial permits until they were pushed. We know that they had no intention of submitting this application until pushed. So we have no reason to think that the contents of the application are complete.

We are attaching several photos and videos that are from our property over the last year. You will be able to see just how close they are putting the equipment to the house. You will see that their supporting neighbor's house (Karen Lemons) is a significant distance from the actual site. You will see the buffer of trees they planted. They are currently no more than 3 feet tall and no near the buildings. They will take 15 years to have any impact on privacy or noise. You will also see their old property that they used before this one, and again you will see how there was much more distance from where they parked equipment to where the neighbors house is located.

Please consider the impact this has on those closest before allowing them to place a commercial excavation and demolition business directly behind an established neighborhood.

Sincerely,

Shannon and Jarrod Plotner

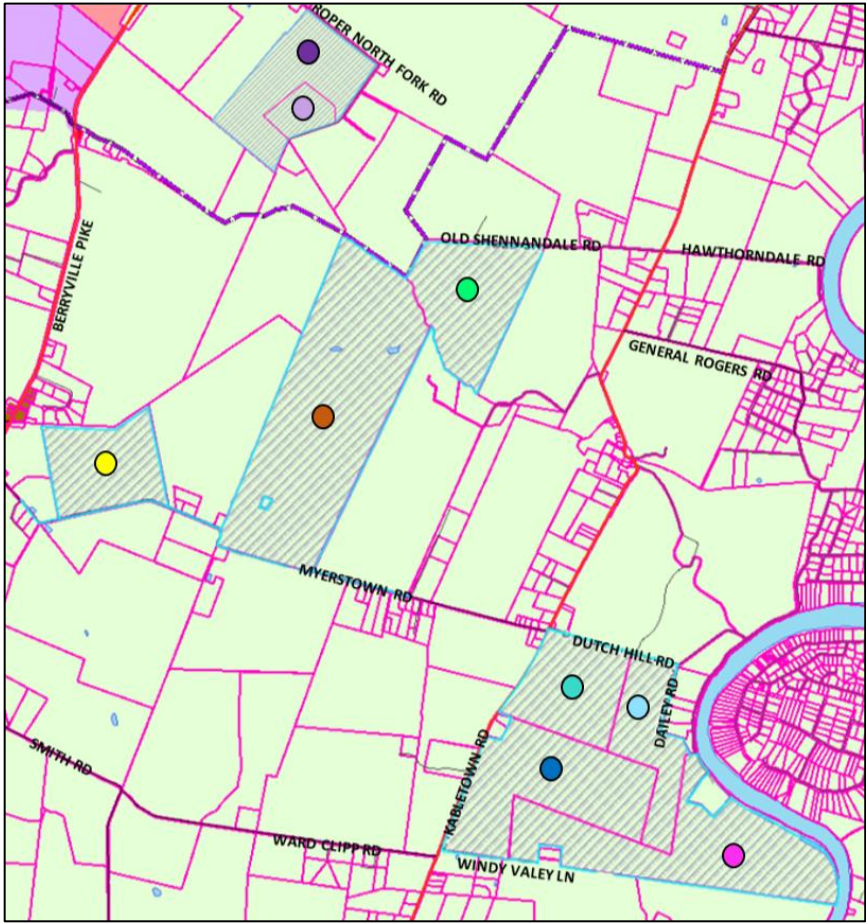
4 Belmeade Way

If pictures and videos cannot be sent in one email then they will follow in additional emails

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 November 9, 2023

Extension Request by Rippon Energy Facility, LLC RE: File #22-9-CUP





Item #4 Request by Rippon Energy Facility, LLC for an eighteen month extension of their Conditional Use Permit to operate a Solar Energy Facility. Per Section 3.2G of the Zoning Ordinance, the applicant is requesting an extension from June 7, 2024 to December 7, 2025.

Project Name:	Rippon Energy Facility (see full project description below)
Applicant:	Rippon Energy Facility, LLC
Owner:	Multiple Owners / See Exhibit Below
Consultant:	Torch Clean Energy / Attn: Sam Gulland and Brian Kusiak
Parcel Information/ Zoning District:	<p style="text-align: center;">Multiple Vacant Parcels / See Exhibit Below</p>  <p style="text-align: center;"> Proposed Solar Energy Facility Locations Urban Growth Boundary (UGB) </p>
Full Project Description:	<p>Rippon Energy Facility: a 99 MWac solar electric generating facility on approximately 878-acres. The project will consist of solar modules, a new substation to connect the solar facility with the electric grid, and underground utilities. The project site has existing high voltage power lines running through the property.</p>
History:	<p>10/27/22: Board of Zoning Appeals Meeting: Conditional Use Permit (#22-9-CUP) Public Hearing - Approved 11/15/22: Planning Commission Meeting: Concept Plan (#22-15-SP) Public Workshop - Approved 12/07/22: Conditional Use Permit Issued – Expiration Date 06/07/24 11/01/23: Zoning Certificate Issued</p>

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 November 9, 2023

Extension Request by Rippon Energy Facility, LLC RE: File #22-9-CUP

Property Owners / Property Locations

Map Reference	Property Owner	Property Location
	Bullskin LLC	673 Old Shennandale Rd, Charles Town WV Parcel ID: 06001100090000; Lot Size: 133.75 / Project Size: 106.52 ac;
	Clarence E Hough, Et Al	Vacant parcel located west of the property addressed as 957 Myerstown Rd, Charles Town, WV; Parcel ID: 06001000030001; Lot Size: 108.66 ac / Project Size: 99.84 ac;
	View Mountain Farm LLC	28 Dutch Hill Rd, Charles Town, WV; Parcel ID: 06002100060000; Lot Size: 101.6 ac / Project Size: 97.01 ac;
	Stanley & Katherine Dunn	2646 Kabletown Rd, Charles Town, WV; Parcel ID: 06002100050000; Lot Size: 174.6 ac / Project Size: 165.52 ac;
	Stanley & Katherine Dunn	Vacant parcel located east of the property addressed as 28 Dutch Hill Rd, Charles Town, WV; Parcel ID: 06002100070000; Lot Size: 89.39 ac / Project Size: 86.07 ac
	Stanley & Katherine Dunn	Vacant parcel located east of the property addressed as 2646 Kabletown Rd, Charles Town, WV; Parcel ID: 06002200050001; Lot Size: 232 ac / Project Size: 169.15 ac;
	Stanley & Katherine Dunn	1371 Myerstown Rd, Charles Town, WV; Parcel ID: 06001000050000; Lot Size: 366 ac / Project Size: 12.27
	Stiles Family Partnership LLC	Vacant parcel located north of the property addressed as 1337 Roper North Fork Rd, Charles Town, WV Parcel ID 06001100060001; Lot Size: 25.14 ac
	Stiles Family Partnership LLC	Vacant parcel located north of the property addressed as 1337 Roper North Fork Rd, Charles Town, WV Parcel ID 06001100060000; Lot Size: 115.8 ac

*All of the subject parcels are zoned Rural. *The parcels included in the last two rows were **not** subject to the Conditional Use Permit requirements and are included for information purposes only, as they are part of the overall project site, which was approved by the PC as part of the Concept Plan.*

Summary of Request and Purpose of Ordinance Requirements

The subject request by Rippon Energy Facility, LLC is for an eighteen month extension of their Conditional Use Permit which was issued on December 7, 2022 with an expiration date of June 7, 2024.

The subject request does not include any new proposals or modifications beyond what was previously approved and is limited only to the expiration date.

The expiration date for a Conditional Use Permit is established in Section 3.2G of the Zoning Ordinance which states that a "...conditional use permit shall become void eighteen months after the date of

Staff Report
Jefferson County Board of Zoning Appeals Meeting
November 9, 2023

Extension Request by Rippon Energy Facility, LLC RE: File #22-9-CUP

issuance if the construction or use for which the permit was issued has not commenced.” The construction for the Rippon Energy Facility has not yet commenced and prior to obtaining a building permit, the applicant will need to process a stormwater management report and/or plan in accordance with the Stormwater Management Ordinance.

Section 3.2G authorizes the Board of Zoning Appeals to grant a one-time extension after evaluating the hardship involved with noncompliance of the initial expiration date and further states, “The length of time extended shall be at the discretion of the Board of Zoning Appeals and shall not exceed eighteen months.”

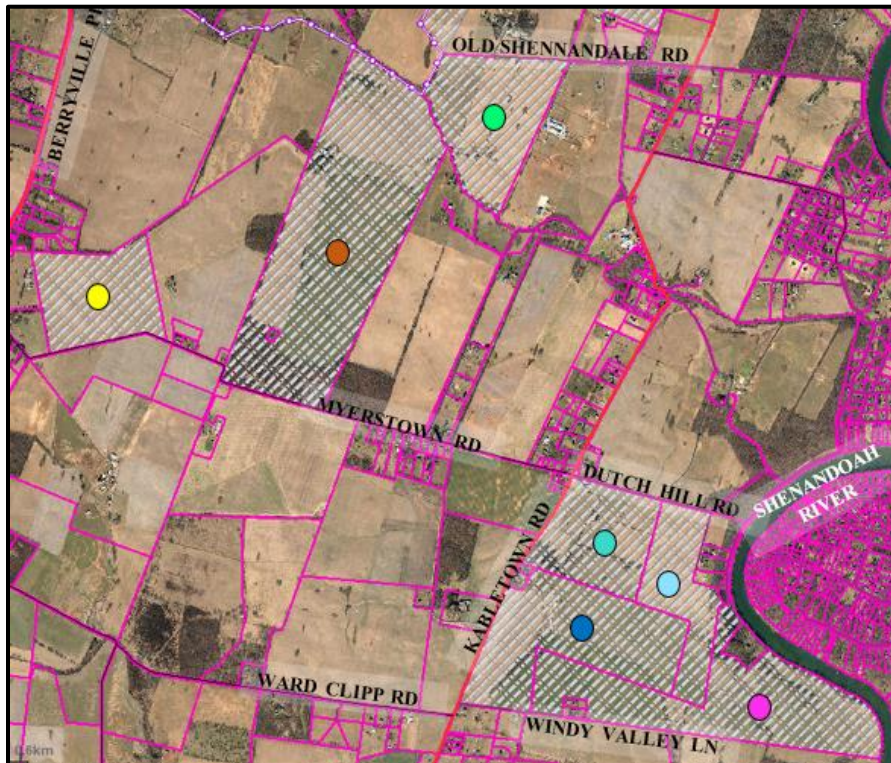
The process for an eighteen month extension is initiated with a written request to the Board. Any extensions beyond the eighteen months would necessitate a variance, subject to the process outlined in Article 6.

Project Status

- Conditional Use Permit for a 737 acre portion of an 878 acre Solar Energy Facility Site granted by the Board of Zoning Appeals on 10/27/2022.
- Conditional Use Permit #22-9-CUP Issued on 12/07/2022 / Expiration date: 06/07/2024.
- Concept Plan Approved by the Planning Commission on 11/15/2022 – approval is vested for two years (expiration date: 11/15/2024).
- Zoning Certificate Issued on 11/01/2023 (administrative process)

Project Description

The total acreage included in the project site is 878 acres, of which 737 acres were subject to review by the Board of Zoning Appeals, pursuant to the Conditional Use Permit provisions in Section 6.3 of the Zoning Ordinance. The parcels included in the 737 acre portion that the Board evaluated are shown on the exhibit below.



Staff Report
Jefferson County Board of Zoning Appeals Meeting
November 9, 2023
Extension Request by Rippon Energy Facility, LLC RE: File #22-9-CUP

Attachments:

- Sheet C3.0 of the Approved Concept Plan (PC File #22-15-SP)
- Article 3 – Administration and Enforcement
- Memo RE: Commencement of a Land Use – Conditional Use Permits and Zoning Certificates, dated June 17, 2013



NORTH

GRAPHIC SCALE IN FEET

0 425 850 1700

LEGEND:

- OVERALL PROJECT LIMITS (EXTERIOR PARCEL BOUNDARY)
- INTERIOR PARCEL BOUNDARY
- 100' PROPERTY LINE SETBACK
- DELINEATED WETLANDS
- DELINEATED STREAM
- 50' STREAM & WETLAND BUFFER
- FEMA FLOODPLAIN
- FEMA FLOODPLAIN 25' SETBACK
- PROPOSED ACCESS ROADS
- PROPOSED ACCESS POINTS
- PROPOSED CHAIN LINK FENCE
- PROPOSED INVERTERS
- PROPOSED SOLAR EQUIPMENT
- PROPOSED MV LINE
- SHENANDOAH RIVER APPROXIMATE OUTLINE
- SHENANDOAH RIVER 500' RIPARIAN SUFFER
- o KARST FEATURES
- o 50' BUFFER FROM HIGH RISK KARST FEATURES
- OVERHEAD ELECTRIC LINES
- APPROXIMATE ELECTRIC EASEMENTS
- VOLUNTARY/PROFFERED PROPOSED VEGETATIVE BUFFER, SEE SHEET C4.0 FOR MORE DETAIL
- VOLUNTARY/PROFFERED PROPOSED PRESERVED VEGETATIVE BUFFER
- PRESERVED EXISTING TREELINE ADJACENT TO SHENANDOAH RIVER
- EXISTING RIGHT OF WAY CENTERLINE
- 200' MIN.
- PANEL SETBACKS FROM NEAREST RESIDENTIAL STRUCTURES (PER SECTION 8.20C.3A)

- NOTES:
1. LAYOUT SHOWN WITHIN THESE PLANS IS CONCEPTUAL AND MAY CHANGE DURING FINAL ENGINEERING DESIGN.
 2. ACCESS POINTS SHOWN WITHIN THESE PLANS ARE CONCEPTUAL AND MAY CHANGE DURING FINAL ENGINEERING DESIGN AND WYDOW APPROVAL.
 3. BASED ON WRITTEN INSTRUCTIONS FROM THE COUNTY. OPEN THROAT KARST FEATURES MAY BE REMEDIATED. ONCE REMEDIATED, FEATURES WILL NOT REQUIRE A BUFFER.
 4. FINAL DESIGN CONSISTS OF ONE SUBSTATION.
 5. THE PROJECT SUBSTATION WILL REQUIRE UP TO APPROXIMATELY 1.5 ACRES AND THE ADJACENT UTILITY-OWNED SWITCHYARD WILL REQUIRE UP TO APPROXIMATELY 1.5 ACRES. THE LAND FOR THE SWITCHYARD WILL BE SUBDIVIDED AND DEEDED TO THE UTILITY, AEP, FOR THEIR CONSTRUCTION AND OPERATION OF SAID SWITCHYARD.
 6. AN ACCESS ROAD WILL BE CONSTRUCTED TO BOTH INTERCONNECTION FACILITIES. IF PROPOSED SUBSTATION LOCATION #1 IS SELECTED IN FINAL DESIGN, ITS ACCESS WILL BE ON MYERTOWN ROAD, AND THE ROAD WILL REQUIRE APPROXIMATELY 9 ACRES OF LAND.
 7. NO PANELS ARE PROPOSED WITHIN 200' OF ANY RESIDENCE OR HISTORIC STRUCTURE. DISTANCES BETWEEN LOCATION OF PROPOSED PANELS AND NEAREST RESIDENTIAL STRUCTURES ARE DELINEATED ON THIS SHEET.

PROJECT PARCELS - MV EASEMENT			
OWNER	PARCEL ID	TOTAL PARCEL AREA (AC)	CUP PROJECT AREA (AC)
HOUGH CLARENCE E & DONNA S	06 2100000010000	69.18	4.53
ATL FARMS LLC	06 9000040000000	171.50	2.06
WALSH HEATHER I & SEAN	06 10000800040000	10.01	0.72
ADAMS FRANKLIN W & JUNE O	06 20000900030000	17.35	1.58
ADAMS FRANKLIN W & JUNE O	06 20000900010000	57.02	0.68
HOUGH CLARENCE E & DONNA S	06 11000700010000	107.16	7.37
BULLSKIN LLC	06 10000000000000	225.10	2.83

REV	DATE	
1	10/28/2022	
2	12/22/2022	
3	01/05/2023	

KHA PROJECT NUMBER	DATE	SCALE	AS SHOWN	DESIGNED BY	DRAWN BY	CHECKED BY	SMM
1100000000000	9/30/2022	AS SHOWN		SAH	BAH		

RIPPOON ENERGY FACILITY PREPARED FOR TORCH CLEAN ENERGY

WEST VIRGINIA

CONCEPT PLAN

JEFFERSON COUNTY

APPROVAL SHEET NUMBER	C3.0
-----------------------	------

ARTICLE 3: ADMINISTRATION AND ENFORCEMENT

Section 3.1 Administration

- A. The provisions of this Ordinance will be governed by the County Commission or the Zoning Administrator and Staff in accordance with §8A-1-1 et seq of the West Virginia State Code, as amended. With enactment of the Ordinance, the County Commission shall designate a Zoning Administrator for the day to day administration of the ordinance.^{5,17,21}
- B. An appeal to this Ordinance, however, may be made to the Jefferson County Board of Zoning Appeals subject to the provisions of §8A-1-1 et seq of the West Virginia Code, as amended.^{17, 21}
- C. The Jefferson County Board of Zoning Appeals shall evaluate all conditional use applications and approve or deny issuance of a conditional use permit.^{2, 17, 21, 32}
- D. All departments, officials, and public employees of Jefferson County which are vested with the duty or authority to issue permits or licenses shall issue no permit or license for any use, building, or purpose if the same would be in conflict with the provisions of this Ordinance.

Section 3.2 Zoning Administrator

- A. The Zoning Administrator shall administer and enforce the Zoning and Land Development Ordinance. This includes but is not limited to the following:²³
 - 1. Make determinations that all applications required by the Ordinance are complete and that all fees are paid.
 - 2. Interpret the provisions of the Ordinance as required by law.
 - 3. Issue Zoning Certificates as permitted by the Ordinance.
 - 4. Determine sufficiency and completeness of applications for a Conditional Use Permit.³²
 - 5. Issue all permits and Certificates as permitted by the Ordinance.
 - 6. Prepare and submit reports as required by the Ordinance or the Board of Zoning Appeals or Planning Commission.
 - 7. Conduct meetings and conferences pursuant to the Zoning and Land Development Ordinance.^{17, 21, 23}
- B. Any decision or action by the Zoning Administrator based on Section 3.2A above is subject to appeal to the Board of Zoning Appeals.^{17, 21}
- C. It shall be unlawful to develop, construct, alter, or reconstruct any structure or to change the use of any structure or property without first obtaining a zoning certificate from the Zoning Administrator. This provision may not apply to the general maintenance or repair or any addition deemed not a major addition as defined in Section 2.2 of this Ordinance.^{17, 21, 23}
- D. Each application for a zoning certificate shall be accompanied by a copy of an approved site plan, if applicable, or by a legible drawing either drawn to scale or accurately indicating dimensions which show property boundaries and existing and proposed structures and other proposed changes or land development. The plans shall be retained in the Office of Planning and Zoning.^{17, 21, 23}
- E. Use of any property, developmental arrangement, or construction on any property other than that authorized in the zoning certificate is a violation of this Ordinance. All provisions of this Ordinance and amendments shall be maintained perpetually.
- F. The Zoning Administrator shall approve or disapprove issuance of a zoning certificate within sixty (60) days of the initial filing date providing the application is complete and fees are paid when filed and the request is in compliance of the provisions of this Ordinance.^{17, 21}

G. A zoning certificate and/or conditional use permit shall become void eighteen (18) months after the date of issuance if the construction or use for which the permit was issued has not commenced. A one-time extension of this time frame may be granted by the Board of Zoning Appeals after evaluation of the hardship involved with noncompliance of this regulation. The length of time extended shall be at the discretion of the Board of Zoning Appeals and shall not exceed eighteen (18) months. Pursuant to Chapter 8A of the West Virginia Code as amended, a Zoning Certificate or Conditional Use Permit associated with a subdivision or land development plan - whether recorded or not yet recorded, valid under West Virginia law and outstanding as of January 1, 2010 - shall remain valid until July 1, 2012, provided that the land development plan or plat received at least preliminary approval by the Planning Commission or County Commission by March 1, 2010.^{17, 21, 23}

H. A filing fee, in accordance with the County fee structure, shall be charged for all zoning certification.

Section 3.3 Enforcement

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

Section 3.4 Boards and Commissions^{23, 32}

A. Board of Zoning Appeals

1. The Board of Zoning Appeals will consist of five members to be appointed by the County Commission. Their terms of office, succession, removal, filing of vacancies, and their powers and duties shall be provided in Chapter 8A of the West Virginia Code, as amended.
2. Meetings of the Board of Zoning Appeals shall be conducted according to the Rules of Procedure adopted by the Board of Zoning Appeals. In the event of a conflict between this Ordinance and the Rules of Procedure, the Rules of Procedure shall prevail.²
3. The powers and duties of the Board of Zoning Appeals include but are not limited to the following:
 - a. The Board of Zoning Appeals shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official in regard to the enforcement of this Ordinance or of any ordinance adopted thereto.³²

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

B. Planning Commission²³

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

C. County Commission²³

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

- iii. Once the county has adopted an urban growth boundary by its designation on an adopted county zoning map, the gross area inside the boundary may not be reduced without written consent of the municipality.
 - iv. The County Commission shall review each urban growth boundary at a period not to exceed ten years or upon request of the individual municipality.
3. Hiring. The County Commission shall hire staff of the Office of Planning and Zoning.
 4. Appointments. The County Commission shall appoint the members of the Planning Commission and the Board of Zoning Appeals.
 5. Fees. The County Commission shall adopt a fee schedule for processing applications pursuant to this Ordinance. The fee schedule may be amended from time to time as determined appropriate by the County Commission.

D. Historic Landmarks Commission³⁵

1. A five member commission, appointed by the Jefferson County Commission. Powers, membership, terms of office, jurisdiction, and rules of procedure are established in the Bylaws of the Jefferson County Historic Landmarks Commission and Chapter 8 Article 26A of the West Virginia Code.
2. The Jefferson County Historic Landmarks Commission does not have the authority to nominate or designate a historic site for inclusion on the National Register without the property owner's consent and does not have the authority to create a Historic District due to the restrictions in WV State Code §8-26A-3 and related statutes.
3. Historic Preservation is not to infringe on the property owner's rights. The Jefferson County Historic Landmarks Commission is encouraged to protect historic sites in Jefferson County by raising capital to purchase historic sites and battlefields at fair market value.
4. This Ordinance encourages the preservation of historic buildings and historic sites by working with the landowner on a voluntary basis. All historic sites in Jefferson County are classified by their Category of Importance, used to determine the level of protection afforded that site. The categories are as follows:
 - a. **Category I.** These are the most important historic sites in Jefferson County. This category includes individually listed National Register structures and properties; Historic Districts including their contributing structures; and Federally recognized Civil War Battlefields. These properties retain a high level of original condition and integrity.
 - b. **Category II.** These sites are classified as important. This category includes Jefferson County Landmarks, historic sites that may be National Register eligible, and other Civil War battle sites. Sites in this Category may have been altered or changed to such a degree that they no longer retain the same level of integrity as the original condition.
 - c. **Category III.** These sites have moderate importance.
 - d. **Category IV.** These are sites that are at least 50 years old, have little or no significance, but are listed on the Landmarks Commission's inventory.

Refer to Section 4.6 for distance requirements and protection radius standards.

JEFFERSON COUNTY, WEST VIRGINIA
Department of Planning & Zoning
116 East Washington Street, 2nd Floor
P.O. Box 338
Charles Town, West Virginia 25414

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

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

MEMO

TO: Planning, Zoning, and Engineering Departments
FROM: Steve Barney, Zoning Administrator, Planning and Zoning Department
DATE: June 17, 2013
RE: Determination: Commencement of a Land Use – Conditional Use Permits and Zoning Certificates

Background

The validity period for Conditional Use Permits (CUPs) and Zoning Certificates is established in Section 3.2G of the Jefferson County Zoning and Land Development Ordinance, which states:

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.

Because the ordinance does not define what is meant by commencement of a land use, I am issuing a determination to interpret this provision of the ordinance.

Determination of Commencement of Land Use

Commencement of a land use for site plan developments, residential subdivision developments, and other developments associated with Conditional Use Permits and Zoning Certificates shall be as follows:

1. **Site Plan**

A Conditional Use Permit or Zoning Certificate associated with a site plan development (industrial, commercial, multi-family, etc.) shall be considered to have commenced following:

- a. Approval of a site plan for the land use by the appropriate approving entity designated in the Jefferson County Subdivision and Land Development Regulations¹; and
- b. Issuance of a building permit application for the use, following site plan approval, subject to the following:
 - i. If construction lawfully begins for work shown on the approved building permit, then the construction/commencement of the use shall be considered valid, and the CUP or Zoning Certificate is no longer subject to expiration per Section 3.2G.

- ii. If no construction work lawfully begins for work shown on the approved building permit associated with a CUP or Zoning Certificate, the CUP or Zoning Certificate shall be valid until the later of:
 - (a) The expiration date of the CUP or Zoning Certificate, whichever is applicable (as amended by any extensions approved by the Board of Zoning Appeals); or
 - (b) The expiration date of the building permit.

2. Residential Subdivision Development

A Conditional Use Permit for a residential subdivision shall be considered to have been commenced after approval of a final plat by the appropriate approving entity designated in the Jefferson County Subdivision and Land Development Regulations.ⁱ

3. Other Developments

For land uses that do not require approval of a site plan or a residential subdivision plat prior to initiation, the use shall be considered to have commenced following:

- a. Lawful occupancy of the site by the land use (i.e. establishment of the business or other land use type for which the Conditional Use Permit or Zoning Certificate was issued, on the subject property, in compliance with all county requirements); or
- b. Issuance of a building permit application for the use, subject to the following:**
 - i. If construction lawfully begins for work shown on the approved building permit, then the construction/commencement of the use shall be considered valid, and the CUP or Zoning Certificate is no longer subject to expiration per Section 3.2G.
 - ii. If no construction work lawfully begins for work shown on the approved building permit, the CUP or Zoning Certificate shall be valid until the later of:
 - (a) The expiration date of the CUP or Zoning Certificate, whichever is applicable (as amended by any extensions approved by the Board of Zoning Appeals); or
 - (b) The expiration date of the building permit

Please let me know if you need additional information.

ⁱ For site plans and final plats that require Planning Commission approval: In the event that a request to approve a site plan or final plat is scheduled on a Planning Commission agenda for a date prior to the expiration of the CUP or Zoning Certificate, and the meeting is postponed or the agenda item is postponed (by the behest of the Planning Commission rather than by request of the applicant) to a subsequent meeting, then the CUP or Zoning Certificate shall continue to be considered valid until the meeting at which the Planning Commission votes on the request.

October 26, 2023

VIA FEDERAL EXPRESS

J. Tyler Quynn, Chair, and Members of the Jefferson County Board of Zoning Appeals
c/o Alexandra Beaulieu, Zoning Administrator
Jennilee Hartman, Zoning Clerk
116 East Washington Street, 2nd Floor
Charles Town, WV 25414

RECEIVED

OCT 27 2023

JEFFERSON COUNTY PLANNING
ZONING & ENGINEERING

Re: **Rippon Energy Facility, LLC Conditional Use Permit File #22-9-CUP**

Dear Chair Quynn and Members of the Jefferson County Board of Zoning Appeals:

In accordance with Section 3.2G of the Jefferson County Zoning and Development Review Ordinance, Rippon Energy Facility, LLC (“Rippon”) hereby requests that the Board of Zoning Appeals extend Rippon Energy Facility’s Conditional Use Permit (“CUP”), which was issued on December 7, 2022, for a period of 18 months from its original expiration date of June 7, 2024.

In support of this request, Rippon Energy Facility observes that without the requested extension it will suffer unreasonable hardship as follows:

- On June 22, 2022, ZTA-22-01 (the “Solar Text Amendment”) became effective in Jefferson County, West Virginia, amending the Jefferson County Zoning and Land Development Ordinance to allow solar energy facilities to process as a conditional use in certain zones outside the Urban Growth Boundary and Preferred Growth Area. This action followed closely an April 2022 amendment to the County’s Comprehensive Plan (the governing document by which zoning decisions are statutorily required to following in West Virginia). Rippon Energy Facility moved expeditiously to apply for a CUP under the terms of the amended ordinance, which remains in effect, and the Board of Zoning Appeals approved Rippon’s request on October 27, 2022.
- On November 11, 2022, Jefferson County residents challenged the issuance of this CUP in a complaint to the Circuit Court. See *Douglas S. Rockwell, et al, v. Jefferson County Board of Zoning Appeals*, Civil Action No. 19-2022-C-141, Circuit Court of Jefferson County, West Virginia. Rippon intervened in this matter on December 19, 2022. The matter was not resolved until May 19, 2023 when the Court granted Rippon’s motion to dismiss the Verified Petition, denying the Petition for Writ of Certiorari and Complaint for Declaratory Judgment in its entirety.
- As noted above, Plaintiffs’ circuit court action has been dismissed and the CUP was affirmed; however, since that dismissal, Plaintiffs have both appealed the order to the West Virginia Intermediate Court of Appeals and instituted another action (see below) in Jefferson County. The appeal, *Rockwell v. Jefferson County Board of Zoning Appeals, et al.*, No. 23-269, was filed on June 16, 2023, and while it is unlikely that the Plaintiffs will prevail on appeal, the procedural schedule for the case dictates that there will likely not be a resolution before December 2023 at the earliest.

- On June 15, 2023, Douglas Rockwell filed yet another challenge. *See Douglas S. Rockwell v. The Jefferson County Planning Commission*, Civil Action No. CC-19-2023-C-112, Circuit Court of Jefferson County, West Virginia. On July 11, the Complaint was subsequently amended to include several solar facilities in the area as parties to the action, including Rippon. In that action, the plaintiff specifically asked that the Court void the Solar Text Amendment from its original approval date of June 16, 2022. That litigation has undergone multiple judicial reassignments—once due to a recusal motion and later due to a broader judicial realignment—slowing the timeline for resolution of the case. The Court will not hear arguments on Rippon and other parties’ motions to dismiss until November 29, 2023.
- Moreover, recent County Commission actions—particularly related to the 2-1 vote of commissioners at that body’s regularly scheduled meeting of September 7, 2023, to “rescind” the Solar Text Amendment—have added to uncertainty regarding permitting of solar facilities in Jefferson County. Because the considered action was neither specifically noticed nor preceded by advice of the Planning Commission nor a finding of its consistency with the County’s Comprehensive Plan, the effects of that action remain unconfirmed.
- Rippon has invested more than \$1 million towards developing the project including to acquire property rights; investigate the environmental, cultural, and geotechnical conditions of the site; obtain approval from and interconnection agreements with the electrical transmission operator and regional transmission organization; obtain a solar siting certificate from West Virginia’s Public Service Commission and associated clearances from relevant State and Federal wildlife and historic preservation agencies—in addition to incurring the time and expenditures associated with securing the necessary land use and subdivision approvals, the CUP and Concept Plan, from Jefferson County. The loss of these substantial investments would create or cause an unnecessary hardship.
- Despite the considerable sums already invested, due to the uncertainty created by the ongoing litigation and the County Commission’s alleged reversal of the Solar Text Amendment, Rippon believes it may be imprudent to allocate the necessary resources to initiate construction prior to receiving greater clarity with respect to the Solar Text Amendment and the ongoing litigation and that forcing Rippon to begin construction prior to receiving such clarity would create undue hardship.
- Much of Rippon’s intended project area will be secured via leases with property owners who currently farm these lands and wish to continue to farm these lands prior to construction of the Rippon Energy Facility. Planting for the next season, that will be harvested in late spring and summer, requires planning and expenditure well in advance, and these farmers do not have sufficient certainty of development timeline, due to these ongoing permitting matters, to make those expenditures. An extension of the CUP would relieve the farmers of this hardship and allow them to proceed with their farming operations.
- For the foregoing reasons, Rippon desires to retain its vested rights in the CUP issuance and to extend its CUP until the effect of the pending litigation and the County Commission’s purported rescission action can be resolved.



Accordingly, Rippon Energy Facility requests that its CUP be extended a full 18 months from its original expiration date. If you have specific questions, please feel free to contact me or Sam Gulland using the contact information provided below.

- Sam Gulland: sgulland@torchcleanenergy.com; (703) 999 – 4280
- Brian Kusiak: bkusiak@torchcleanenergy.com; (804) 337-4572

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "B. Kusiak".

Brian Kusiak
Project Development Manager

October 10, 2023

**Re: Rippon Energy Facility, LLC Conditional Use Permit File #22-9-CUP:
Extension Request**

Dear Chairman Quynn and Members of the Jefferson County Board of Zoning Appeals:

Pursuant to Section 3.2G of the Jefferson County Zoning and Development Review Ordinance, please accept this letter as a formal request for an extension of Conditional Use Permit # 22-9-CUP for the Rippon Energy Facility as outlined in the attached letter from Rippon Energy Facility, LLC.

If you have any questions, please contact Sam Gulland.

Sincerely,

Stanley Dunn 10/12/23 Katherine B. Dunn 10/12/23
Stanley Dunn Date Katherine Dunn Date

Neal Snyder Date
View Mountain Farm, LLC

Clarence Hough Date

Todd Hough Date

Donna Hough Date

Susan Hough Date

Robert Mathias Date
Bullskin, LLC

RECEIVED

OCT 27 2023

JEFFERSON COUNTY PLANNING
ZONING & ENGINEERING

October 10, 2023

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Extension Request**

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Sincerely,

Stanley Dunn

Date

Katherine Dunn

Date


Neal Snyder

View Mountain Farm, LLC

Date

10/12/23

Clarence Hough

Date

Todd Hough

Date

Donna Hough

Date

Susan Hough

Date

Robert Mathias
Bullskin, LLC

Date

October 10, 2023

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Sincerely,

Stanley Dunn Date

Katherine Dunn Date

Neal Snyder Date
View Mountain Farm, LLC

Clarence E. Hough 10-16-23

Clarence Hough Date

Todd Hough 10-16-23

Todd Hough Date

Donna Hough 10-16-23

Donna Hough Date

Susan Hough 10-16-23

Susan Hough Date

Robert Mathias Date
Bullskin, LLC

October 10, 2023

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Extension Request**

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If you have any questions, please contact Sam Gulland.

Sincerely,

Stanley Dunn Date

Katherine Dunn Date


Neal Snyder Date
View Mountain Farm, LLC

Clarence Hough Date

Todd Hough Date

Donna Hough Date

Susan Hough Date

DocuSigned by:

7F6820E067AC471

Robert Mathias Date
Bullskin, LLC



JEFFERSON COUNTY, WEST VIRGINIA
OFFICE OF PLANNING AND ZONING
 116 EAST WASHINGTON STREET
 P.O. BOX 716
 CHARLES TOWN, WV 25414

CONDITIONAL USE PERMIT
RIPPON ENERGY FACILITY
FILE #22-9-CUP

This is to certify that effective December 7, 2022, a Conditional Use Permit has been issued for the following:

Project Name: Rippon Energy Facility
Approved Use: Solar Energy Facility
Project Applicant: Torch Clean Energy / Attn: Sam Gulland
Applicant Contact: sgulland@torchcleanenergy.com / 703-999-4280
Parcel Information: Attached

RECEIVED
 OCT 27 2023
 JEFFERSON COUNTY PLANNING
 ZONING & ENGINEERING

Pursuant to Article 6 of the Jefferson County Zoning Ordinance, the Board of Zoning Appeals held a public hearing on October 27, 2022 for the purpose of determining if the Conditional Use (Solar Energy Facility) met the criteria outlined in Section 6.3A.1-8 and Section 8.20A. Finding that the Conditional Use met all of the criteria, the Board voted to **Grant** the requested Conditional Use Permit as presented, with the following conditions of approval:

1. The applicant is bound by their testimony;
2. The applicant will use Best Management Practices (BMP) while onsite; and
3. All 16 of the Supplemental Conditions as Proffered by the Applicant and modified by the Board at the hearing on October 27, 2022 (see attached).

In the event that the operation of this land use has not commenced by June 7, 2024, this Permit will expire. Prior to the expiration date, an extension request must be submitted to the Office for consideration by the Board of Zoning Appeals. See Section 3.2G of the Jefferson County Zoning and Land Development Ordinance, as amended June 16, 2022.

This Permit in no way relieves the Owner or Applicant from any requirements of Jefferson County Ordinances or Regulations unless the appropriate waivers/variances are granted by the appropriate County authority.

Alexandra Beaulieu

Alexandra Beaulieu
 Zoning Administrator

December 7, 2022
 Date



Supplemental Conditions of Approval
FOR RIPPON ENERGY FACILITY
FILE #22-9-CUP

1. **Floodplain; Conserved Trees.** The Facility or any part thereof shall not be located within five hundred (500) feet of the bank of the Shenandoah River, or in the One Hundred (100) Year Flood Zone associated with the Shenandoah River at the time of the Building Permit issuance. Other One Hundred (100) Year Flood Zones shall only be disturbed for access roads and electrical crossings where necessary.
2. **Conserved Trees.** Existing vegetation shall be used for screening where practicable. Additionally, Operator shall not cut, prune, or remove trees identified in the Concept Plan as the “Preserved Existing Tree line Adjacent to Shenandoah River.”
3. **Panel Information.** Operator will provide technical specification sheets and information on panel components for the specific model selected to the County prior to the issuance of the Building Permit.
4. **Panel Height.** Installed solar modules shall not exceed fifteen (15) feet in height, measured from grade to the top of the panel when at maximum tilt.
5. **Insurance.** From and after the start of commercial operations, the Operator shall secure and maintain during the Project’s Operational Phase Commercial General Liability for personal injuries, death and property damage, and umbrella insurance coverage for the duration of the Conditional Use Permit in the minimum amounts set forth below:
 - a. Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence / \$2,000,000 aggregate;
 - b. Automobile Coverage: \$1,000,000 per occurrence;
 - c. Excess Liability: \$4,000,000;
 - d. Workers’ Compensation and Employers Liability Insurance in accordance with applicable statutory amounts.
6. **Insurance Certificates.** The Operator’s insurance policies shall be issued by an insurance company licensed to do business in the State and with an AM Best’s rating of at least ‘A’. Prior to the commencement of construction and annually afterwards, Applicant shall provide the Zoning Administrator certificates of insurance that document the levels of insurance.
7. **Sewage Sludge.** The Applicant shall not use or distribute sewage sludge on the Property during construction or operation of the Project.
8. **Change in Ownership.** If any change of ownership of the Operator causes a change in contact information for the Project, Owner shall update the Zoning Administrator within sixty (60) days.
9. **Storage of Panels.** A sealed construction trailer, ConEx, storage container, or enclosed building shall be maintained on the Site for the storage of damaged solar panels prior to removal from the Site.

10. Use of Blasting in Construction. Good faith efforts shall be used to avoid blasting on the Site. If blasting is necessary, Owner shall consult with a qualified geotechnical engineering firm to develop best practices to be followed.
11. Construction Access. Construction and operational traffic for the portion of the Project located east of Kabletown Road and south of Dutch Hill Lane shall be limited to entrances from Kabletown Road.
12. Construction Hours. All construction that produces noise beyond the Facility shall be limited to between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday and between 8:00 a.m. and 2:00 p.m. on Saturday. The driving of piles shall only occur between 7:00 a.m. and 5:00 p.m. Monday through Friday and between 8:00 a.m. to 1:00 p.m. on Saturday.
13. Inverters and Transformers. Inverters and transformers shall be setback at least four hundred (400) feet from any residence that exists at the time of the Conditional Use Permit approval.
14. Collector Lines. All three-phase medium voltage collector electrical lines connecting the Project's photovoltaic arrays to the Project Substation shall be installed underground.
15. Invasive Species. On all leased and owned properties, the Operator shall use best management practices to control or manage any invasive plant species as defined by the West Virginia Department of Agriculture.
16. Rating. Operator will procure solar panels from a manufacturer receiving a Tier 1 rating from Bloomberg New Energy Finance or a top performer in the then current PV Module Reliability Scorecard Report by PVEL.

Alexandra Beaulieu

Alexandra Beaulieu
Zoning Administrator

December 7, 2022
Date



Property Owner	Property Location
Bullskin LLC	673 Old Shennandale Rd, Charles Town WV Parcel ID: 06001100090000; Lot Size: 133.75 / Project Size: 106.52 ac;
Clarence E Hough, Et Al	Vacant parcel located west of the property addressed as 957 Myerstown Rd, Charles Town, WV; Parcel ID: 06001000030001; Lot Size: 108.66 ac / Project Size: 99.84 ac;
View Mountain Farm LLC	28 Dutch Hill Rd, Charles Town, WV; Parcel ID: 06002100060000; Lot Size: 101.6 ac / Project Size: 97.01 ac;
Stanley & Katherine Dunn	2646 Kabletown Rd, Charles Town, WV; Parcel ID: 06002100050000; Lot Size: 174.6 ac / Project Size: 165.52 ac;
Stanley & Katherine Dunn	Vacant parcel located east of the property addressed as 28 Dutch Hill Rd, Charles Town, WV; Parcel ID: 06002100070000; Lot Size: 89.39 ac / Project Size: 86.07 ac
Stanley & Katherine Dunn	Vacant parcel located east of the property addressed as 2646 Kabletown Rd, Charles Town, WV; Parcel ID: 06002200050001; Lot Size: 232 ac / Project Size: 169.15 ac;
Stanley & Katherine Dunn	1371 Myerstown Rd, Charles Town, WV; Parcel ID: 06001000050000; Lot Size: 366 ac / Project Size: 12.27



Jefferson County, West Virginia

Department of Engineering, Planning, and Zoning

Office of Planning and Zoning

116 East Washington Street, 2nd Floor

Charles Town, WV 25414

Email: zoning@jeffersoncountywv.org

Phone: (304) 728-3228

Zoning Administrator's Report November 14, 2023 Board of Zoning Appeals Meeting

Date of Memo: October 31, 2023

- 1) The final meeting for 2023 is scheduled for **December 14, 2023**
 - Deadline for submission is Friday, November 17, 2023.
- 2) The first meeting in 2024 is scheduled for **January 25, 2024**
 - Deadline for submission is Friday, December 29, 2023.
- 3) Two alternate member positions remain open. One term ending 01/01/24 and the other term ending 01/01/25.
 - Persons interested in serving on the Board of Zoning Appeals should contact the County Commission Office at 304-728-3284 / jjames@jeffersoncountywv.org.
- 4) 2045 Comprehensive Plan Status Update
 - 2nd Public Input Survey – live 10/20/23 through 11/20/23 (see attached flyer with QR Code)
- 5) Zoning Certificate Activity Report



JEFFERSON COUNTY, West Virginia

Departments of Planning and Zoning

116 East Washington Street, 2nd Floor

Charles Town, WV 25414

Email: complan2045@jeffersoncountywv.org

Phone: (304) 728-3228

Envisioning Jefferson in 2045 Public Survey

The survey is open from October 20th to
November 20th

Make your voice heard! Tell us where you want to see Jefferson County in 2045 by filling out the survey with the QR code below. The survey only takes five to seven minutes to complete. If you would like a paper copy, visit your local Jefferson County Library or Jefferson County's Office of Planning and Zoning. Help get the word out and let your friends and neighbors know they can participate today!

The 2045 Comprehensive Plan is a community vision for Jefferson County over the next twenty years to guide future land use and development decisions. This survey is part of the public outreach for the comprehensive plan and includes questions about, housing, parks, transportation, and other aspects of what makes Jefferson County a unique place to live, work, and play. Additional public input opportunities will be posted on the county website.

Please be sure to sign up for the County email alerts to stay up-to-date!

To access all surveys, documents, and find out about future Public Input opportunities check out the Jefferson County website and look for the 2045 Comprehensive Plan page.



Fill out the survey here;
<https://arcg.is/1bTSKb>



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

November 2023
Zoning Certificate Activity Report

File # 23-48-ZC
Request: Change In Tenant: Professional Office
Applicant: Oval Construction / Attn: James Carney Jr
Property Owner: West Virginia American Water Company / Attn: Tony Witt
Parcel Information: 150 E Burr Blvd., Suite 200, Kearneysville, WV 25430
Parcel ID: 02000100930001; Size: ~1.20 acres;
Zoning District: Industrial Commercial; Deed Book: 1310; Page: 352;
Final Plat: 26 @ Page: 204 (PC File #20-17-SD)
Date of Issuance: 10/31/2023

File # 23-50-ZC
Request: Solar Energy Facility
Applicant: Rippon Energy Facility / Attn: Sam Gulland
Parcel Information:

1. Stiles Family Partnership LLC, Property Owner
Vacant parcel located north of 1337 Roper North Fork Rd, Charles Town, WV
Parcel ID 06001100060001; Lot Size: 25.14 ac; Zoning District: Rural
2. Stiles Family Partnership LLC, Property Owner
Vacant parcel located north of 1337 Roper North Fork Rd, Charles Town, WV
Parcel ID 06001100060000; Lot Size: 115.8 ac; Zoning District: Rural
3. Bullsken LLC, Property Owner
673 Old Shennandale Rd, Charles Town WV
Parcel ID: 06001100090000; Lot Size: 133.75 / Project Size: 106.52 ac; Zoning District: Rural
4. Clarence E Hough Et Al, Property Owner
Vacant parcel located west of the property addressed as 957 Myerstown Rd, Charles Town, WV;
Parcel ID: 06001000030001; Lot Size: 108.66 ac / Project Size: 99.84 ac; Zoning District: Rural
5. View Mountain Farm LLC, Property Owner
28 Dutch Hill Rd, Charles Town, WV;
Parcel ID: 06002100060000; Lot Size: 101.6 ac / Project Size: 97.01 ac; Zoning District: Rural
6. Stanley W Jr & Katherine B Dunn, Property Owner
2646 Kabletown Rd, Charles Town, WV;
Parcel ID: 06002100050000; Lot Size: 174.6 ac / Project Size: 165.52 ac; Zoning District: Rural
7. Stanley W Jr & Katherine B Dunn, Property Owner
Vacant parcel located east of the property addressed as 28 Dutch Hill Rd, Charles Town, WV;
Parcel ID: 06002100070000; Lot Size: 89.39 ac / Project Size: 86.07 ac; Zoning District: Rural
8. Stanley W Jr & Katherine B Dunn, Property Owner
Vacant parcel located east of the property addressed as 2646 Kabletown Rd, Charles Town, WV;
Parcel ID: 06002200050001; Lot Size: 232 ac / Project Size: 169.15 ac; Zoning District: Rural
9. Stanley W Jr & Katherine B Dunn, Property Owner
1371 Myerstown Rd, Charles Town, WV;
Parcel ID: 06001000050000; Lot Size: 366 ac / Project Size: 12.27 ac; Zoning District: Rural

Date of Issuance: 11/01/2023
