



Jefferson County
Board of Zoning Appeals Agenda
Thursday, December 14, 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: 859 6001 7007
Meeting Link: <https://us02web.zoom.us/j/85960017007>
Phone Option (Dial by Location): 301-715-8592
Find your local number: <https://us02web.zoom.us/j/85960017007>

**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: November 9, 2023

Public Hearing – Administer Oath

ITEM # 1 FILE #: 23-36-ZV – POSTPONED UNTIL JANUARY 25, 2024

Request: Variance request from Section 9.7 to reduce the front setback along Mahoney Drive from 20' to 4'; and to reduce the rear setback along the eastern property line from 12' to 2' for an existing 12' tall fence.

Owner: Guy Chappuis

Parcel Info: 26 Benson Drive, Harpers Ferry WV

Parcel ID: 04003A00370000; Size: .58 acres; Zoning District: Village

ITEM # 2 FILE #: 23-37-ZV

Request: Variance request from Appendix B to reduce the non-residential side setback requirement from 50' to 8' along the northern property line for a 12' x 28' shed to be used for equipment storage related to an existing landscaping business (Snyder's Property Squad, LLC).

Owner: Stephen Patrick Snyder

Parcel Info: Riverside Subdivision, Sec. 7A, Lot 735. 38 Marcum Lane, Harpers Ferry, WV

Parcel ID: 06002601510000; Size: 1.18 ac; Zoning District: Rural

ITEM # 3 FILE #: 23-10-CUP

Request: Request by Songbird House Assisted Living Residence for a Conditional Use Permit to operate a Nursing or Retirement Home, as defined in Article 2 of the Zoning Ordinance. The proposal consists of providing homecare for up to 16 residents. The application includes a 560 square foot expansion to increase the existing living space. The facility will have up to four (4) caregivers/employees. All parking will occur on site. No signs are proposed.

Owner: Blue Iris LLC and Blue Tulip LLC / Attn: Sharon Hallinan, Manager

Applicant: Songbird House Assisted Living Residence / Attn: Beata Scott

Parcel Info: Farview Farm, Lot 8, 217 Deer Trail, Shepherdstown, WV

Parcel ID: 09000900350000; Size: 2.52 acres; Zoning District: Rural

ITEM # 4 FILE #: 23-38-ZV

Request: Variance request from Section 5.6B to reduce the distance requirement for Industrial Uses from 1,000' to 300' along the southern property line to allow for the construction of an asphalt plant accessory to the quarry operation.

Owner: Millville Quarry, Inc.

Parcel Info: 165 Bradstone Lane, Harpers Ferry, WV 25425

Parcel ID: 04001100220000; Size: 272+ ac; Zoning District: Industrial Commercial

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: November 9, 2023

- 1. Variance request from Section 8.4. Applicant: QRF Solutions K9. Owner: Nicholas Russo and Alice Davenport. File: 23-34-ZV.
- 2. Variance request from Section 10.4.B.4. Applicant: Dino Kids / Attn: Cordelia Courtney. Owner: Peter Corum. File: 23-35-ZV.
- 3. Request Earthworx General Contracting Services, LLC for a Conditional Use Permit. Owner: Jeremy and Tiffany Martin. File: 23-9-CUP.
- 4. Request by Rippon Energy Facility, LLC for an extension of the previously issued Conditional Use Permit for a Solar Energy Facility. Applicant: Rippon Energy Facility, LLC / Attn: Sam Gulland and Brian Kusiak. Owners: Bullskin LLC, Clarence E Hough, Et Al, View Mountain Farm LLC, and Stanley & Katherine Dunn. File: 22-9-CUP.

DRAFT - Minutes

Jefferson County Board of Zoning Appeals

- 1 Meeting Date: November 9, 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; Steve Guier, Secretary; Jacob Harris and David
6 Wiegand were present in person.
7 Board Members Absent: Matthew McKinney, Vice Chair and Mikala Shremshock, Alternate,
8 with notification
9 Staff Members Present: Alexandra Beaulieu, Deputy Director & Zoning Administrator;
10 Steve Groh, Assistant Prosecuting Attorney; and Jennilee Hartman,
11 Zoning Clerk

12 All requests were pursuant to the Jefferson County Zoning and Land Development Ordinance.
13 Mr. Guier moved to call the meeting to order at 2:00 pm. Mr. Quynn called for a vote, which
14 carried unanimously.

15 Approval of Minutes: October 26, 2023

16 Mr. Harris moved to approve the minutes as drafted. Mr. Quynn called for a vote, which carried
17 unanimously.
18 Ms. Hartman swore in members of the public who indicated they would be providing testimony.
19 Mr. Quynn called for Item #4 to be heard first.

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

- 21 Request: Request by Rippon Energy Facility, LLC for an eighteen month extension of their
22 Conditional Use Permit to operate a Solar Energy Facility. Per Section 3.2G of the
23 Zoning Ordinance, the applicant is requesting an extension from June 7, 2024 to
24 December 7, 2025.
25 Applicant: Rippon Energy Facility, LLC / Attn: Sam Gulland and Brian Kusiak
26 Parcel Info: Bullskin LLC, Owner
27 673 Old Shennandale Rd, Charles Town, WV
28 Parcel ID: 06001100090000; Lot Size: 133.75 / Project Size: 106.52 ac
29 Parcel Info: Clarence E Hough, Et Al, Owner
30 Vacant parcel west of the property addressed as 957 Myerstown Rd, Charles Town, WV
31 Parcel ID: 06001000030001; Lot Size: 108.66 ac / Project Size: 99.84 ac;
32 Parcel Info: View Mountain Farm LLC, Owner
33 28 Dutch Hill Rd, Charles Town, WV
34 Parcel ID: 06002100060000; Lot Size: 101.6 ac / Project Size: 97.01 ac;
35 Parcel Info: Stanley & Katherine Dunn, Owner
36 2646 Kabletown Rd, Charles Town, WV
37 Parcel ID: 06002100050000; Lot Size: 174.6 ac / Project Size: 165.52 ac;
38 Parcel Info: Stanley & Katherine Dunn, Owner
39 Vacant parcel east of the property addressed as 28 Dutch Hill Rd, Charles Town, WV
40 Parcel ID: 06002100070000; Lot Size: 89.39 ac / Project Size: 86.07 ac
41 Parcel Info: Stanley & Katherine Dunn, Owner
42 Vacant parcel east of the property addressed as 2646 Kabletown Rd, Charles Town, WV
43 Parcel ID: 06002200050001; Lot Size: 232 ac / Project Size: 169.15 ac;

1 Parcel Info: Stanley & Katherine Dunn, Owner
2 1371 Myerstown Rd, Charles Town, WV
3 Parcel ID 06001000050000; Lot Size: 366 ac / Project Size: 12.27 ac

4 *All of the subject parcels are zoned Rural.

5 Mr. Brian Kusiak and Mr. Scott Leech were present to address the Board on behalf of Rippon
6 Energy, LLC. Ms. Beaulieu provided an overview of her staff report, noting that the request was
7 permitted in accordance with Section 3.2G and that the request was limited to the expiration date of
8 the CUP.

9 Mr. Kusiak explained the nature of the request to the Board and provided an overview of the
10 project's history and an explanation pertaining to hardship for the Board's evaluation.

11 Mr. Kusiak and Mr. Leech addressed the Board's questions.

12 Mr. Guier moved to approve the extension request as presented with the condition that the applicants
13 are bound by their testimony. Mr. Quynn called for a vote, which carried unanimously.

14 **AGENDA ITEM #1 FILE #: 23-34-ZV**

15 Request: Variance request from Section 8.4 to reduce the distance requirement from 300' to
16 135' along the western property line and from 300' to 75' along the eastern property
17 line for a proposed kennel with an outdoor training area.

18 Owner: Nicholas Russo and Alice Davenport

19 Parcel Info: 1899 Trough Road, Shepherdstown, WV

20 Parcel ID: 09000900070006; Size: 10 acres; Zoning District: Rural

21 Mr. Nicholas Russo and Ms. Alice Davenport, property owners, were present to address the Board.

22 Ms. Beaulieu provided an overview of her staff report to the Board noting that the Planning
23 Commission had lifted the single family restriction from the subject parcel for the purpose of
24 operating the proposed kennel, which is a permitted use in the rural zoning district.

25 Mr. Russo provided an overview of the proposed kennel business, noting that the primary
26 component included training for government dogs (including scent detection), service dogs, task
27 oriented training, etc. Mr. Russo stated that no outdoor runs were proposed and noted that the entire
28 property is fenced. Mr. Russo stated that the existing structure is cement cinder block, which
29 mitigates sound. Mr. Russo stated that there are 18 stalls, each 12' x 12', within the cinder block
30 structure. Mr. Russo stated that outdoor training with dogs will only occur with trainers present.
31 Mr. Russo stated that boarding would be an incidental service to the dog training.

32 Mr. Quynn opened the public hearing. Ms. Hartman swore in additional members of the public who
33 arrived after the start of the meeting.

34 Mr. Steve Flowers and Ms. Suellen Wimsatt, county residents, spoke in support of the request.

35 Mr. Quynn closed the public hearing.

36 Mr. Russo noted that he lived on the subject property and would therefore ensure that any sound
37 associated with the business was properly mitigated.

38 Mr. Harris moved to approve zoning variance #23-34-ZV with the condition that the applicants are
39 bound by their testimony.

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

1 AGENDA ITEM #2 FILE #: 23-35-ZV

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

4 Owner: Peter Corum

5 Applicant: Dino Kids Childcare, LLC / Attn: Cordelia Courtney

6 Parcel Info: 3988 Kearneysville Pike, Shepherdstown, WV 25443

7 Parcel ID: 09001300260002; Size: 2 acres; Zoning District: Neighborhood Commercial

8 Ms. Cordelia Courtney, applicant, was present to address the Board. Ms. Beaulieu provided an
9 overview of her staff report to the Board.

10 Ms. Courtney provided an overview of the request stating that the proposed sign would make
11 identifying the property easier and therefore safer for parents. Ms. Courtney also noted that the sign
12 would help advertise the day care to future clients. Ms. Courtney confirmed that the proposed sign
13 would meet the setback requirements.

14 Mr. Quynn opened the public hearing.

15 Mr. Joseph Spurgas, adjoining neighbor, stated he was not opposed to the daycare business but had
16 concerns pertaining to traffic safety.

17 Mr. Quynn closed the public hearing.

18 Ms. Courtney reiterated that the sign would help parents to identify the property sooner, which
19 would allow them sufficient time to slow down and access the property safely. Ms. Courtney stated
20 that she is working with the WV Division of Highways regarding the daycare and will be installing
21 traffic safety measures on the property.

22 Mr. Harris moved to approve zoning variance #23-35-ZV with the condition that the applicant is
23 bound by their testimony.

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

25 AGENDA ITEM #3 FILE #: 23-9-CUP

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

31 Owner: Jeremy and Tiffany Martin

32 Applicant: Earthworx General Contracting Services, LLC

33 Parcel Info: 104 Winebrenner Road, Shepherdstown, WV 25443

34 Parcel ID: 09000700020002; Size: 16.5 acres; Zoning District: Rural

35 Mr. Jeremy Martin and Ms. Tiffany Martin, property owners, were present to address the Board.

36 Ms. Beaulieu provided an overview of her staff report to the Board and reviewed each of the criteria
37 for a Conditional Use Permit.

38 Mr. Martin provided an overview of the proposed land use including an explanation of business
39 hours and operation. Mr. Martin emphasized that their equipment was used both for their off-site
40 excavation business and their farm operations. Mr. Martin stated that he was aware of the noise
41 requirements of the Ordinance and confirmed that the business operations would adhere to the noise
42 restrictions. Ms. Martin stated that they had planted 21 evergreen trees along the northern property

1 line since purchasing the property. Mr. Martin added that they had snow removal contracts, which
2 would necessitate early hour operations in the event of inclement weather.

3 Mr. Quynn opened the public hearing.

4 Andrew Long, Tad Kochel, Deb Blake, Shannon Plotner, Ted Maciag, Melissa Murray, David
5 Bateman, and Marco Cerbone spoke in opposition to the request.

6 Erik Berndt, Mason Cantrell, Tanner Cantrell, Randy Davis, Karen Lemons, and Kenneth Sutton
7 spoke in support of the request. As Heather Duncan was unable to stay for the duration of the meeting,
8 Ms. Martin submitted Ms. Duncan's written comments for the record.

9 Mr. Quynn closed the public hearing.

10 The Martins addressed their neighbors' concerns regarding traffic, noise, pollution, and the potential
11 for decreased property values. Ms. Martin noted that they had purchased a decibel meter to ensure
12 that their business did not exceed the permissible noise level. Ms. Martin reiterated that since they
13 lived on the subject property that they would not conduct activities that would pollute their ground
14 water.

15 Mr. Wiegand moved to go into deliberative session at 4:26 pm. Mr. Quynn called for a vote, which
16 carried unanimously.

17 Mr. Harris moved to come out of deliberative session at 4:43 pm. Mr. Quynn called for a vote,
18 which carried unanimously.

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

20 Mr. Harris moved to approve the conditional use permit with the following conditions:

- 21 1. The applicants are bound by their testimony.
- 22 2. The applicant shall relocate their business equipment storage area and employee parking
23 area to the southern border of the property, in accordance with County setback
24 requirements, within 12 months.
- 25 3. The applicant shall access the storage and parking area from the western property line /
26 southern end of the platted 40' access easement and not through the subject parcel via the
27 existing driveway.

28 Mr. Guier seconded the motion, which carried unanimously.

29 **Zoning Administrator Report**

30 a. Monthly Zoning Certificate Activity Report.

31 The Report was included in the mailed packet.

32 Ms. Beaulieu noted that the last regularly scheduled meeting for 2023 is December 14 and that the
33 first regularly scheduled meeting for 2024 would be January 25.

34 **Legal Update**

35 a. Discussion of the following pending lawsuits.

- 36 1. Jefferson County Circuit Court Case #CC-19-2022-C-141 (RE: Rippon Solar Energy
37 Facility / File 22-9-CUP) Rockwell v. JCBZA
- 38 2. Jefferson County Circuit Court Case #CC-19-2023-C-131 (RE: Williamson Fence /
39 23-13-ZV) Gallagher v. JCBZA and Timothy Williamson.

1 Mr. Groh stated that there were no changes to the status of Item #1 and that Item #2 had
2 been stayed.

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

4 **Meeting: October 26, 2023**

5 1. Variance from Section 5.4B. Owner: David Cebulski. File: 23-33-ZV.

6 2. Request by Tracy Dove dba Charles Town Storage for a Conditional Use Permit. Owner:
7 Tracy and Marketa Dove. File: 23-8-CUP.

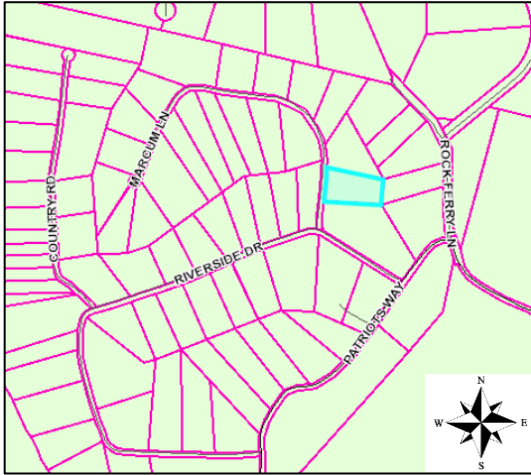
8 3. Request by Wild Hill Solar Project for an extension of the previously issued Conditional
9 Use Permit. Applicant: Wild Hill Solar, LLC. Owners: Clarence & Donna Hough, T. Todd
10 & Susan Hough, and Charles & Marie Hough (Life). File: 22-5-CUP.

11 The findings were not available at the meeting. Legal Counsel will provide at a later date.

12 Mr. Wiegand moved to adjourn the meeting at 5:13 pm. Mr. Quynn called for a vote, which carried
13 unanimously.

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 December 14, 2023
Snyder Variance Request (#23-37-ZV)

Item #2 Variance request from Appendix B to reduce the non-residential side setback requirement from 50' to 8' along the northern property line for a 12' x 28' shed to be used for equipment storage related to an existing landscaping business (Snyder's Property Squad, LLC).

Applicant:	Stephen Patrick Snyder, Snyder's Property Squad, LLC
Property Owner:	Stephen Patrick Snyder
Parcel Information and Zoning District:	<p style="text-align: center;">Riverside Subdivision, Sec. 7A, Lot 735 38 Marcum Lane, Harpers Ferry, WV Parcel ID: 06002601510000; Size: 1.18 ac; Zoning District: Rural</p> 
Surrounding Properties:	Zoning Map Designation: North, South, East, & West: Rural
History:	Riverside Subdivision, Sec. 7A: recorded in Deed Book 333, Page 366 on 09/23/71
Waivers/Variations:	01/27/22: BZA approved variance from App. B to reduce the non-residential side setback from 50' to 15' along the northern property line for a 12' x 24' shed to be used for equipment storage related to a proposed landscaping business (21-37-ZV).
Approved Activity:	Single Family Residence. Landscaping Business (Zoning Certificate File #22-4-ZC issued 02-04-2022)
Site Visit Conducted:	Site Visit Not Conducted

Summary of Request and Purpose of Ordinance Requirements

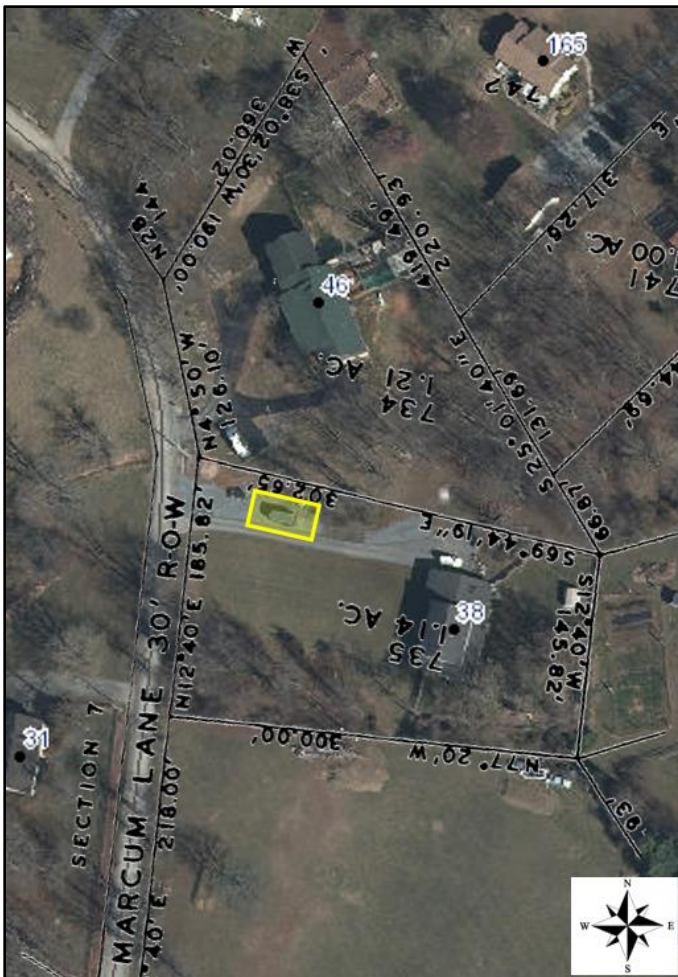
The applicant is requesting a variance from Appendix B to reduce the non-residential side setback requirement from 50' to 8' along the northern boundary line to allow for placement of a 12' x 28' shed to be used for equipment storage related to a proposed landscaping business.

The purpose for non-residential building setback requirements is to reduce the impact that a land use might have on an adjacent property, including visual impact created from the glare of exterior lights; to allow adequate space between a structure and a property line so that maintenance of the structure is feasible; to maintain adequate separation between structures for fire prevention purposes; and to allow room for utility easements.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 14, 2023
Snyder Variance Request (#23-37-ZV)

Staff Evaluation of Request

The subject parcel is Lot 735 of the Riverside Subdivision, Section 7A, which was recorded in September 1971. While the property was created prior to the adoption of the Zoning Ordinance, it meets the minimum lot size requirement for lots in the Rural zoning district. The property contains an existing residential dwelling unit, paved driveway/parking area, and a 20' x 100' gravel area. The property is surrounded entirely by residential development.



Appendix C lists the land use designation “Landscaping Business” as a Principal Permitted Use in the Rural Zoning District. Appendix B requires greater building setbacks for non-residential uses that are permitted by right than is required for residential uses. The side setback requirement for a residential storage shed is 15’ and the side setback requirement for a non-residential storage shed for a principal permitted use is 50’.

The purpose for requiring a greater setback for a non-residential use is typically to lessen the impact that a non-residential use may have on a residential property, including the visual impact of the glare created from exterior lighting. It is not expected that outdoor lighting would provide any offensive glares beyond what is created from a typical residential use.

Note that the adjoining property owner to the north provided a letter of support for the subject request.

Based on the size of the proposed shed, a site plan is not required to process; therefore,

compliance with the County’s landscaping/buffer standards is not required. The Board has the discretion to impose conditions of approval, such as requiring that landscaping or screening be installed to buffer the land use from the adjoining residence property. The property owner depicted on their sketch that new foliage will be planted along a portion of the subject property line to provide a buffer where the shed is located.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 14, 2023
Snyder Variance Request (#23-37-ZV)

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. If the proposed landscaping business expands to include large equipment and/or machinery, additional processing may be required through the Office of Planning and Zoning.

Section of Ordinance to be Considered:

See Appendix B (attached).

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 December 14, 2023
Snyder Variance Request (#23-37-ZV)

APPENDIX B: NON RESIDENTIAL SITE DEVELOPMENT STANDARDS TABLE 27, 32, 35

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



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: 23-37-ZV
 Staff Initials: gt
 Meeting Date: 12-14-23
 Fees Paid (\$100 or \$150): 150.00

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: Stephen Snyder
 Mailing Address: 38 marcum Ln Harpers Ferry WV, 25425
 Phone Number: 246 793 4114 Email: SPS

Applicant Contact Information

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

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

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

Physical Property Details

Physical Address: 38 marcum Ln
 City: Harpers Ferry State: WV Zip Code: 25425
 Tax District: Jefferson Map No: 26 Parcel No: 151
 Parcel Size: 1.18 Deed Book: 1125 Page No: 393

Zoning District (please check one)

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

RECEIVED

OCT 30 2023

JEFFERSON COUNTY PLANNING
 ZONING & ENGINEERING

Place Received Date Stamp Here

Highway Commercial (HC)	Light Industrial (LI)	Major Industrial (MI)	Planned Neighborhood Development (PND)	Office/Commercial Mixed-Use (OC)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

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

Reference the section of the Zoning Ordinance pertaining to this request: Sec. 4.6 + App. B gvt

Briefly describe the nature of the variance request:

Reduce NON Residential setback requirements,
- Building is 12' x 28' gvt

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

Front Setback Side Setback Rear Setback Reduction From 50' gvt to 8'

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

I have spoke to All property owners that are adjacent and next to proposed variance Request,
All in favor, no objections to Request

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?

preferred area, no need for excavating and leveling

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

Allowing to use front yard for Residential purposes

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

uphold the intent of zoning ordinance by installing landscape buffer

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

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

[Signature] 10-30-27
Signature of Property Owner Date

Signature of Property Owner Date

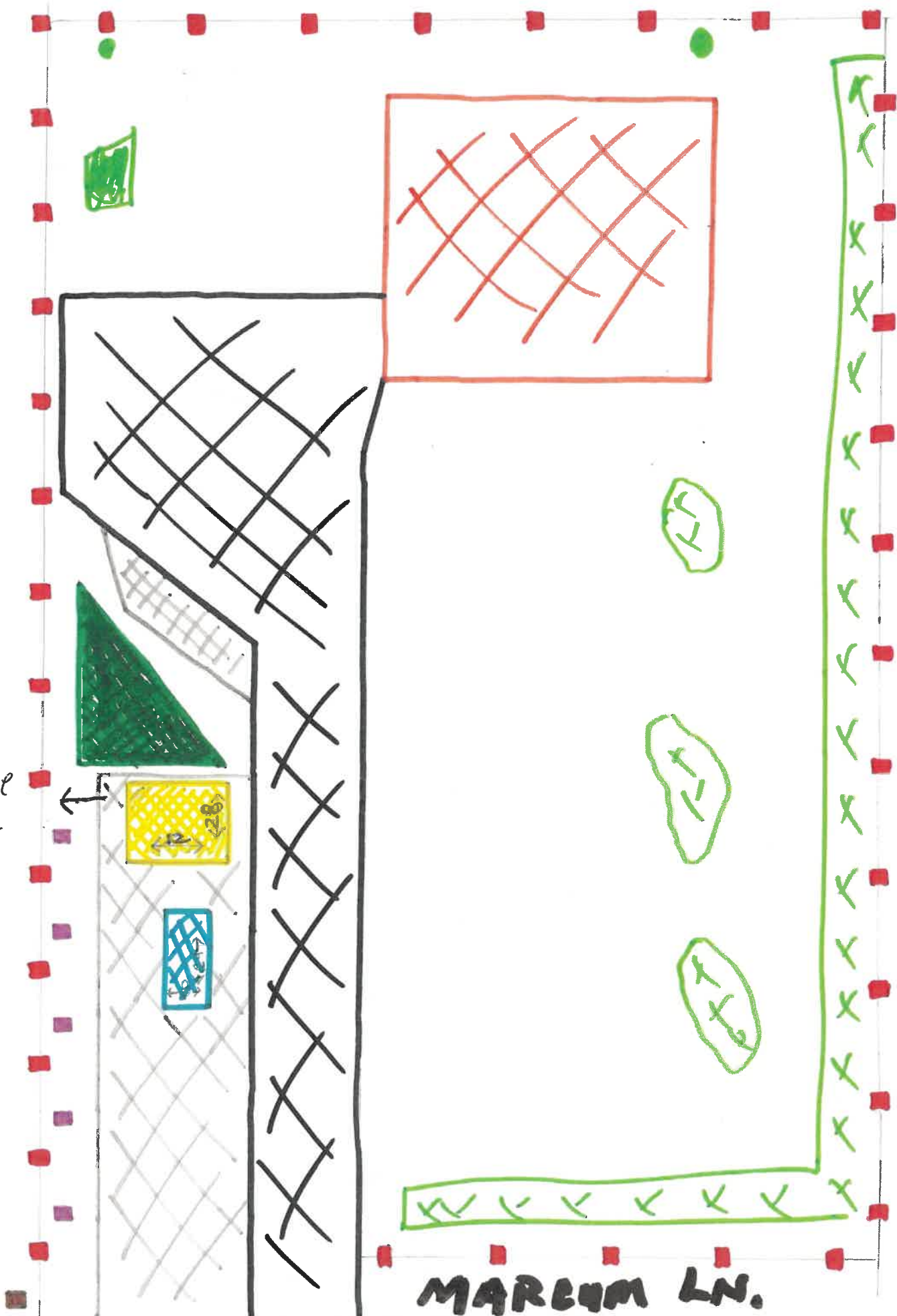
Notification Requirements (to be completed by staff)

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

12-14-23
Date of Public Hearing

11/29/23
Advertising Date

11/29/23
Placard Posting Date



8' variance Request

MARCUM LN.

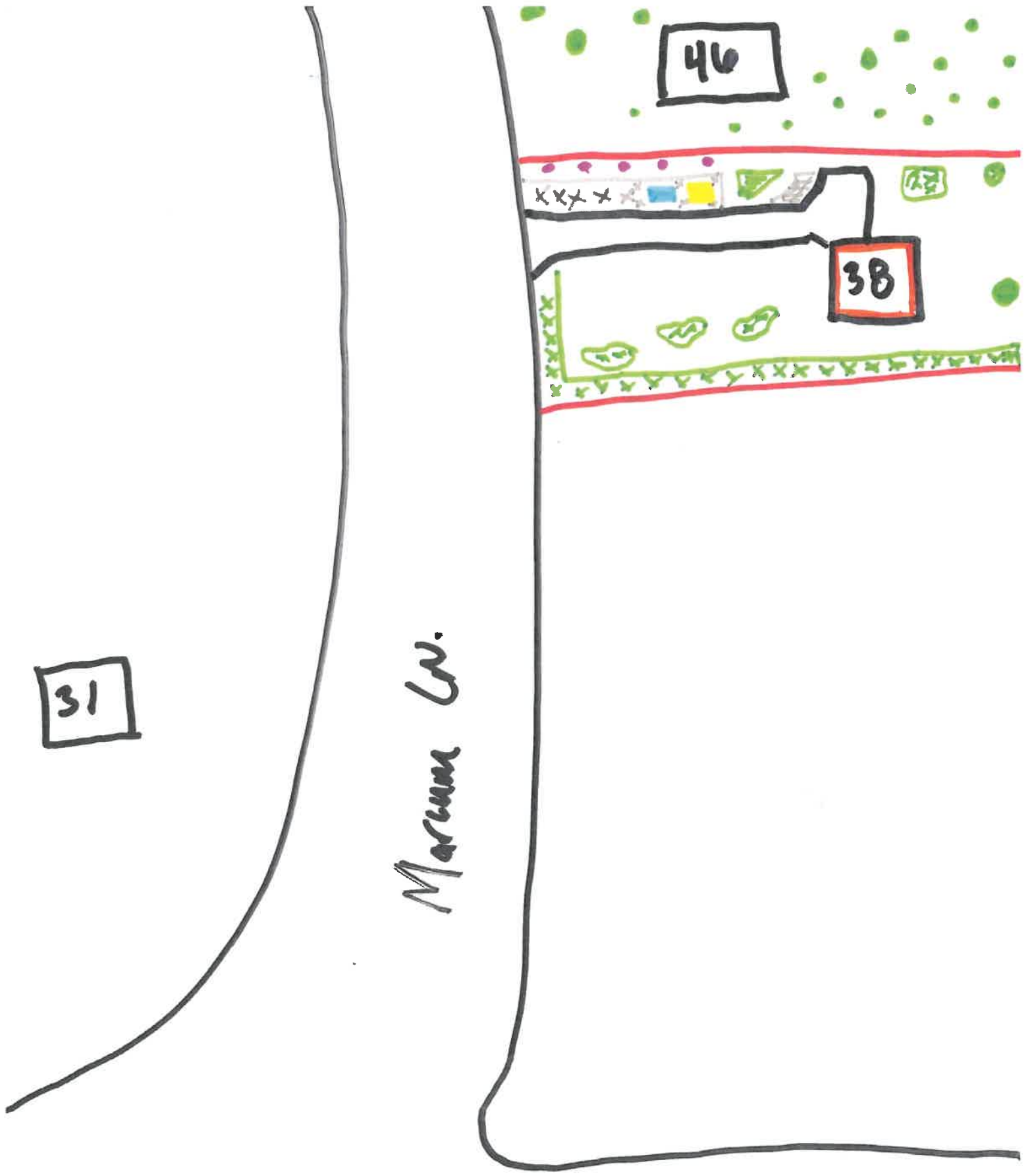
31

Marum Ln.

46

38

Riverside Dr.



Snyder's Property Squad L.L.C.

38 Marcum Ln.

Harpers Ferry, WV. 25424

Color Key :

RED ~ Property Line

Orange ~ Residence

Green ~ Existing Foliage

Yellow ~ Pre-built Shed 12'W x 24'L

Blue ~ Enclosed Cargo Trailer 8'W x 24'L

Purple ~ New Foliage

Grey ~ Added width to driveway

Brown ~ Telephone Pole

Black ~ Driveway

Zoning

From: Zoning
Sent: Tuesday, October 31, 2023 9:29 AM
To: 'sps.llc@yahoo.com'
Subject: RE: Project File #23-37-ZV

Good morning,

Thank you for forwarding this email to our office. This email will be included in your project file (23-37-ZV).

Have a nice day.

Jennilee Hartman, Zoning Clerk
Office of Planning and Zoning
304-728-3228

From: sps.llc@yahoo.com <sps.llc@yahoo.com>
Sent: Monday, October 30, 2023 5:59 PM
To: Zoning <Zoning@jeffersoncountywv.org>
Subject: Project File #23-37-ZV

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

Good morning, this was emailed to me by my neighbor

Terri and Maria. Please file to have on hand when I go before the board again for another variance request. Thanks much

[Sent from Yahoo Mail for iPhone](#)

Begin forwarded message:

On Monday, October 30, 2023, 5:47 PM, Terri McLellan <raftingirl55@hotmail.com> wrote:

Begin forwarded message:

From: Terri McLellan <raftingirl55@hotmail.com>
Subject: Property
Date: October 30, 2023 at 3:15:05 PM EDT
To: "snyder's Property Squad L.L.C." <notification@getjobber.com>

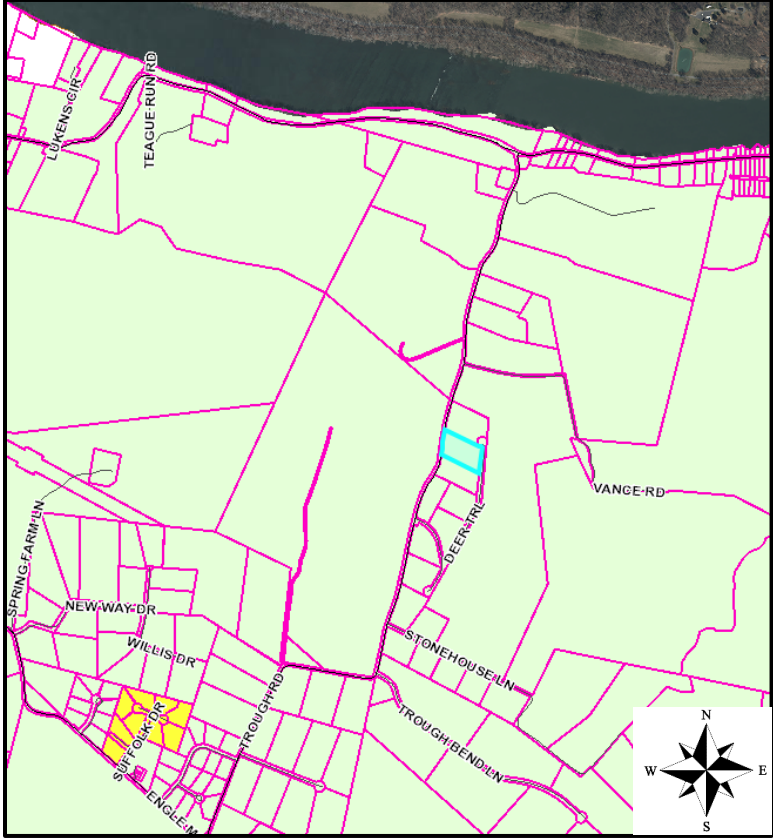
To whom it may concern,

Stephen Snyder has my permission to build as close to my property as needed. His shed is not infringing on my land, and I have no issue with its placement. If you have any questions, please let me know.

Terri McLellan & Maria Hopgood
46 Marcum Lane
Harpers Ferry, WV 25425

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 December 14, 2023
23-10-CUP Songbird Assisted Living (Nursing / Retirement Home)
Conditional Use Permit Request

Item #3 Request for a Conditional Use Permit to operate an assisted living residence (proposed land use as listed in Appendix C: Nursing or Retirement Home). The proposal consists of providing homecare for up to 16 residents. The application includes a 560 square foot expansion to increase the existing living space. The facility will have up to four (4) caregivers/employees. All parking will occur on site. No signs are proposed.

Owner:	Blue Iris LLC and Blue Tulip LLC / Attn: Sharon Hallinan, Manager
Applicant:	Songbird House Assisted Living Residence / Attn: Beata Scott
Parcel Information and Zoning District:	<p style="text-align: center;">Farview Farm Subdivision, Lot 8 217 Deer Trail, Shepherdstown, WV 25443 Parcel ID: 09000900350000; Size: 2.52 acres; Zoning District: Rural</p> 
Surrounding Properties:	<p style="text-align: center;">Zoning Map Designation: North, South, East, West: Rural</p>
History:	12/29/87: Farview Farm Subdivision; Plat Book: 7 @ Page: 67 (PC File: 87-10)
Approved Activity:	Single Family Residence, Farm Use
Site Visit Conducted:	Yes – 12/06/2023

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Summary of Request and Purpose of Ordinance Requirements

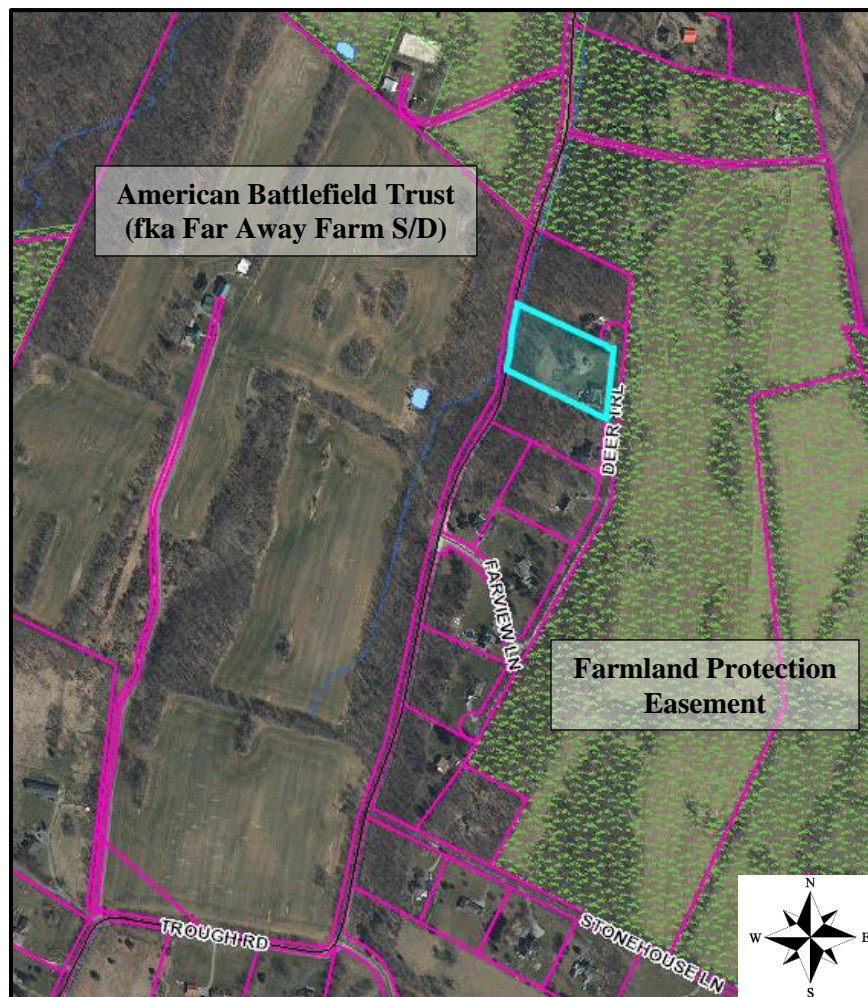
Request for a Conditional Use Permit to operate an assisted living residence under the land use designation Nursing or Retirement Home, as defined in Article 2 of the Zoning Ordinance. The proposal consists of providing homecare for up to 16 residents. The application includes construction of a 560 square foot expansion to the existing 3,460 square foot single family dwelling to increase the living space. The facility will have up to four (4) caregivers/employees. All parking will occur on site. No signs are proposed

Article 2 defines Nursing or Retirement Home as:

This term includes rest homes, nursing homes, convalescent homes for children and homes providing chronic and convalescent care.

Property Description

The subject parcel is Lot 8 of the Farview Farm Subdivision which processed in 1987, prior to the adoption of zoning in Jefferson County. The lot is approximately 2.52 acres in size and surrounded primarily by agricultural and residential development. The property is accessed off of Deer Trail, which is a 40' wide private road. Pursuant to the final plat approval, all lots in the subdivision are required to have vehicular access to Trough Road by way of Deer Trail and Farview Lane only.



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Conditional Use Permit Process

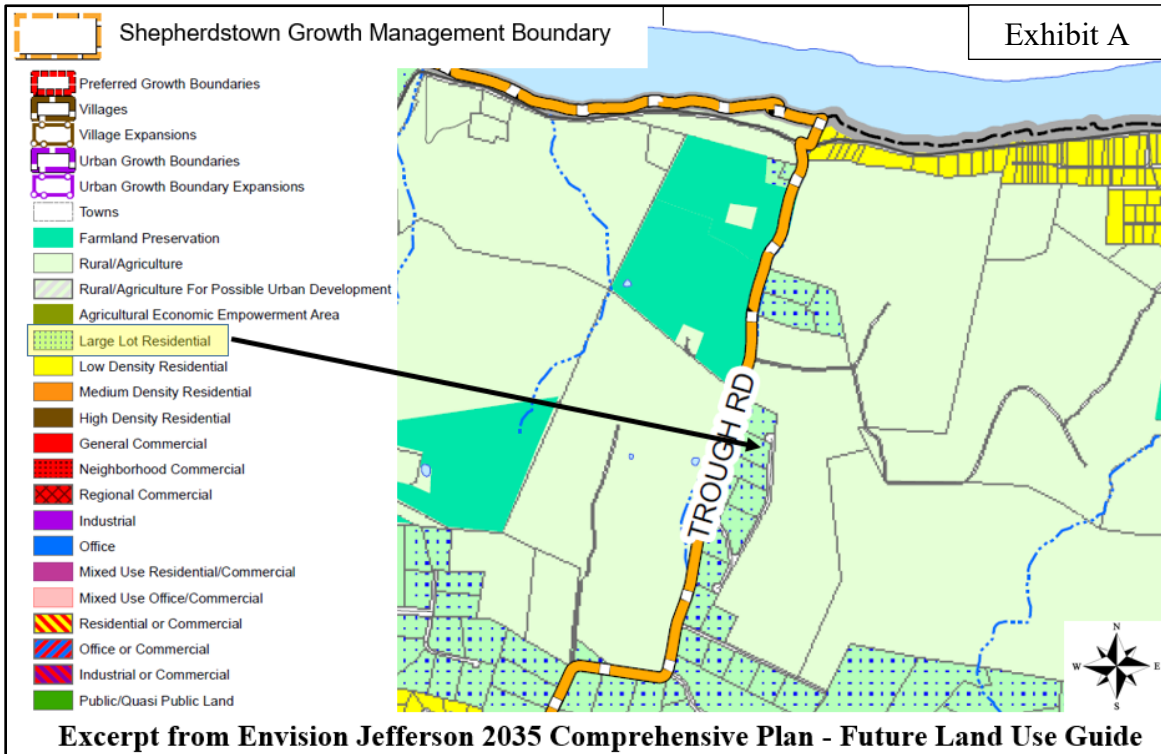
Section 6.3 of the Zoning Ordinance states:

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

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

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

The subject parcel is shown as “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 identified growth areas.



The Plan supports allowing non-residential 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 non-residential land uses that were identified as appropriate land uses to process under the Conditional Use Permit provisions.

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Pursuant to Appendix C of the Zoning Ordinance, the land use designation **Nursing or Retirement Home** is listed as an appropriate non-residential 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))

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)

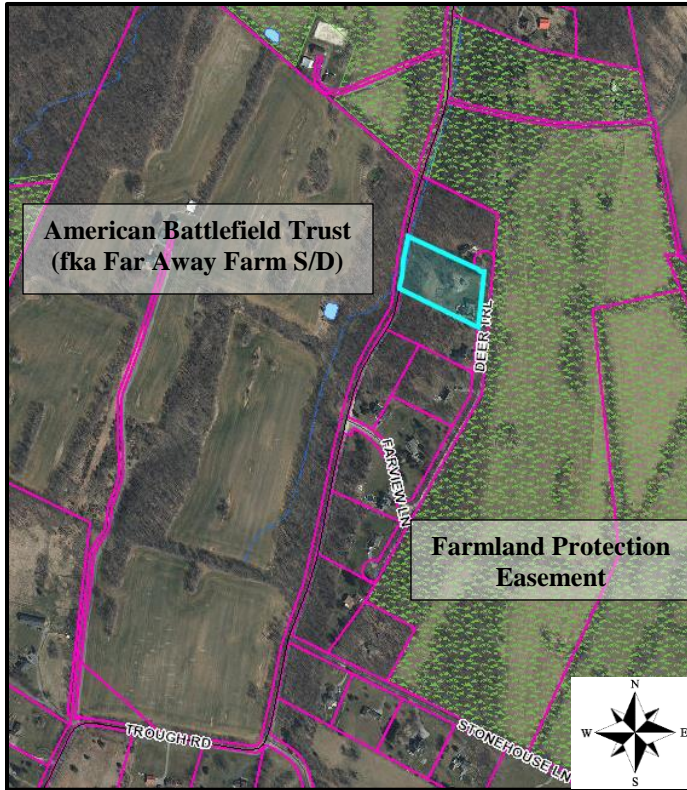
The applicant addressed this criteria on page 3 of their application.

The properties to the north and south of the subject parcel are part of the Farview Farm Subdivision. The properties to the east and west are under conservation easements (Farmland Protection [east] and American Battlefield Trust [west]).

As noted on page 9 of the application, Blue Iris LLC / Blue Tulip LLC purchased the subject lot in April of 2023. A 560 sf expansion is proposed to increase the existing 3,460 square foot single family dwelling. No signs are proposed to be placed on the property. The applicant provided trip generation data on pages 3 & 4 of their application and included an addendum dated 11/30/23. Based on the information submitted by the applicant, residents are not expected to have vehicles and the number of daily visitors permitted on site is limited by the company’s visitation policy. As such, the applicant estimated that the average daily trips will be five total on weekdays and six total on Sundays.

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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 properties to the north and south are already residentially developed as part of the Farview Farm Subdivision. The lots to the east and west are under preservation easements and cannot be developed further.

The applicant stated in their application that the existing single family dwelling is 3,460 square feet in size and that they would like to increase the living space by 560 square feet. All parking is required to be located on site on gravel or asphalt area.

Pursuant to Article 11, Section 11.1A, the parking requirement for a Nursing Home is 1 parking space per 400 square feet floor space. Based on the total proposed square footage, 10 parking spaces are required to be provided on site. The applicant describes a total of nine (9) parking spaces available on the property (*page 9 of application*); however, based on the applicant's proposed floor plan (*pages 12 & 15 of application*),

the attached two car garage will be converted to bedrooms and the 560 sf expansion to include additional bedrooms has been placed within the existing paved parking area.



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On December 6, 2023 Staff conducted a site visit and verified that two care garage is no longer accessible to vehicles and observed that the 560 sf expansion was placed within the existing paved parking area (*see photos to left and below*). Based on staff's evaluation of the proposed floor plan drawings and the existing site conditions, it appears that approximately five of the nine parking spaces described in the application have been eliminated as a result of the 560 sf expansion. It does not appear that the driveway has sufficient space to accommodate more than one parking space. While there are two detached garages on the property which may be able to satisfy three of the required parking spaces, there does not appear to

be a means of access to these structures. As such, the applicant may be required to install additional parking spaces, as well as a usable access drive to the existing parking garage in order to satisfy the County's parking requirements.



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

While the applicant acknowledged this criteria on page 2 of their application, the narrative and sketches do not provide details as to what efforts will be made to maintain or improve existing vegetative buffers.

During a site visit, staff noted that the property appears to contain dense vegetation along the western (rear) property line (along Trough Road) and along a portion of the northern (side) property line. Vegetation along the southern (side) property line is scarce, except for what exists on the adjoining lot.

A site plan is the mechanism in place for the county to ensure compliance with the landscaping standards. As presented, staff was unable to determine whether or not a site plan will be required to process. It appears that as proposed, the requirement to process a site plan is *unlikely* but a site dimensioned site sketch will need to be submitted to the County Engineer for evaluation.

If a site plan *is not* required, then the County does not require landscaping to be installed *unless* the Board requires landscaping, fencing, or other buffer screens to be installed as a condition of approval.

Compliance with the required 25' commercial building setback shall be satisfied (required along all property lines) and will be enforced with the building permit application. A building permit is required to process to show the change in use of the existing dwelling from residential to institutional, as well as to address any expansions or new buildings (i.e. the 560 sf expansion). Note that the 75' distance requirement that is typical for most commercial uses is not applicable because the proposed use is an institution for human care.



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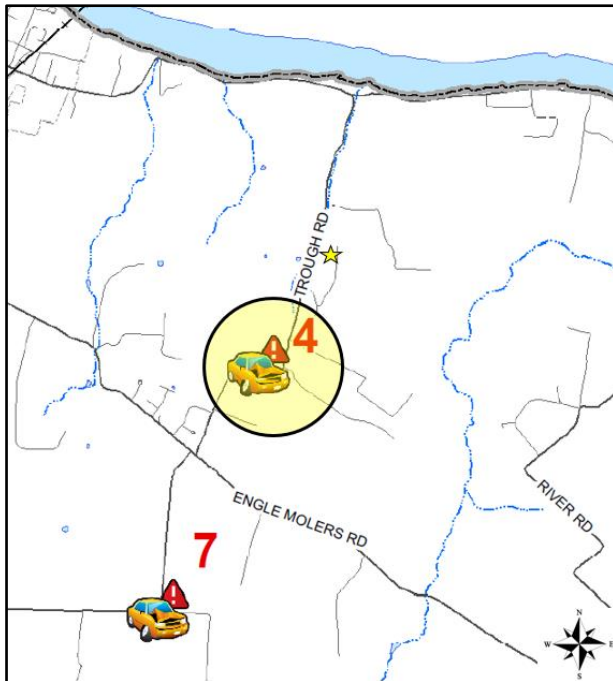
5. Commercial and Industrial Uses shall be in conformance with Section 8.9 of this Ordinance. (Sec. 6.3A.5)


As part of the Conditional Use Permit application, the applicant was informed of this criteria and shall comply with this standard. Section 8.9 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.

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)

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

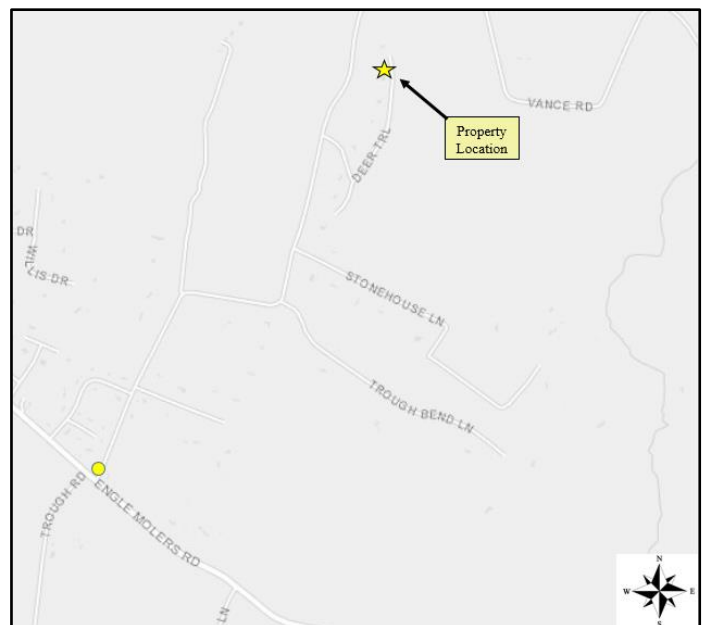


A traffic county study was conducted by the [WV Department of Transportation](#) in 2017 at the intersection of Engle Molers Road and Trough Road (location identified on the map exhibit to the right with yellow dot ). The annual average daily traffic counts for the study was 222.

The Jefferson County Engineer provided the following summary (top of page 9 of staff report) on trip generation data obtained from the ITE Trip Generation’s “Data Plots and Equation” for Nursing Homes (excerpts attached to staff report).

The applicant provided a trip generation summary on page 4 of their application. The applicant stated that the average daily trips will be four trips, except on Monday, Wednesday, and Friday when the average daily trips is five, and Sundays, six. The residents are not expected to have their own cars and therefore, they were not included in the daily trip calculations submitted by the applicant.

Below is an excerpt from the Comprehensive Plan’s Highway Problem Areas Map. It appears that the closest problem area is located one mile east of WV 230 (identified as problem area #4 on the map). The problem identified in the plan is described as “90 Degree Turn”.



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A 4,000 square foot nursing home would produce the following traffic:

- Average Daily Traffic ADT is around 30 to 31 trips per day.
- Peak Hour in the AM is around 2 to 3 trips in the AM.
- Peak Hour in the PM is around 3 to 4 trips in the PM.

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 did not include any details related to proposed signs. Any future signs may necessitate review and approval by the Board of Zoning Appeals.

Attachments:

- 1. Site Visit Photos from 12-06-2023**
- 2. Section 6.3 of the Zoning Ordinance**
- 3. Section 8.9 of the Zoning Ordinance**
- 4. Appendix C of the Zoning Ordinance**
- 5. Excerpt of Envision Jefferson 2035 Comprehensive Plan – Future Land Use Guide**
- 6. Envision Jefferson 2035 Comprehensive Plan’s Highway Problem Areas Map and Key**
- 7. Excerpts from the ITE Trip Generation’s “Data Plots and Equation” for Nursing Homes, provided by Jefferson County Engineer**

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View of buffer along southern (side) property line from yard looking toward Trough Road

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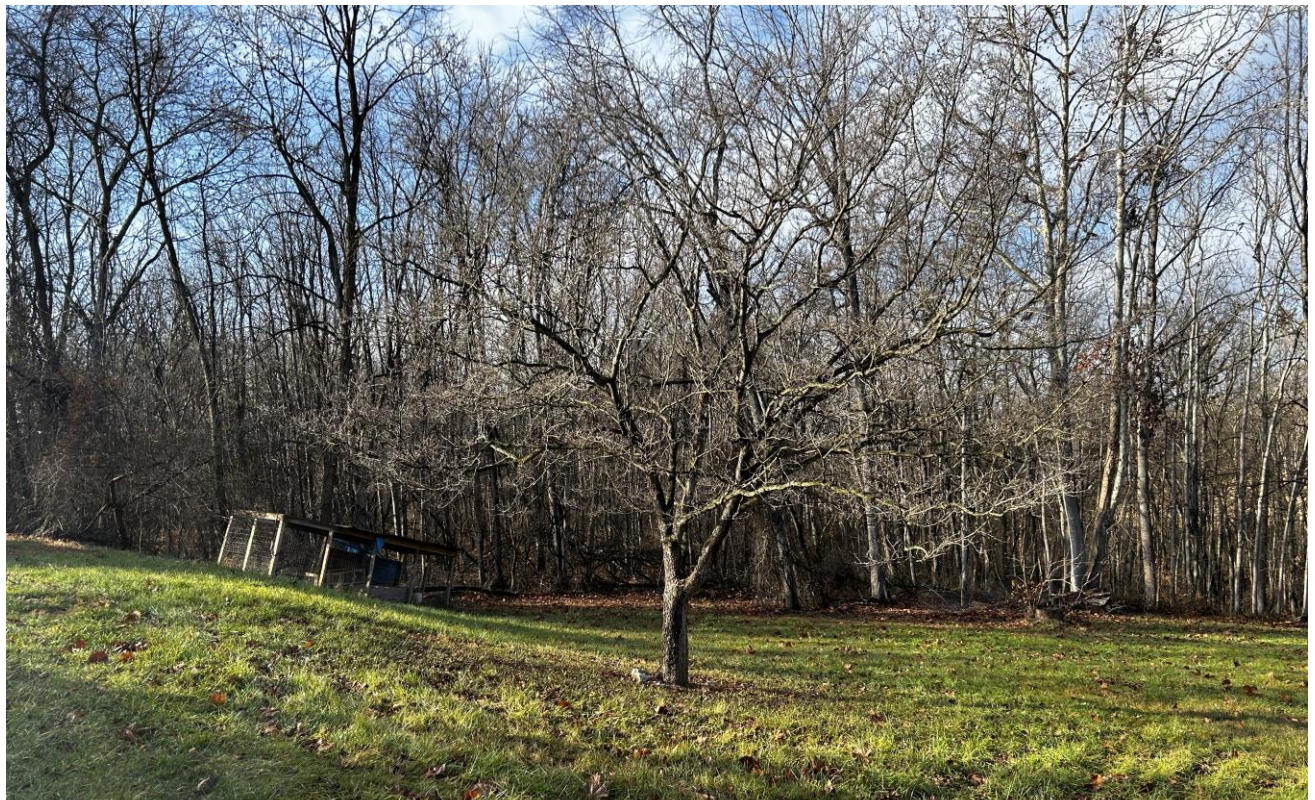
Real Estate Listing Photos – Zillow.com



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Western (rear) Property Line – Existing Vegetation



Western (rear) Property Line – Existing Vegetation – view from middle of back yard toward the south-west corner

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View of existing vegetation along northern (side) property line



Two Detached Garages – one car and two car

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

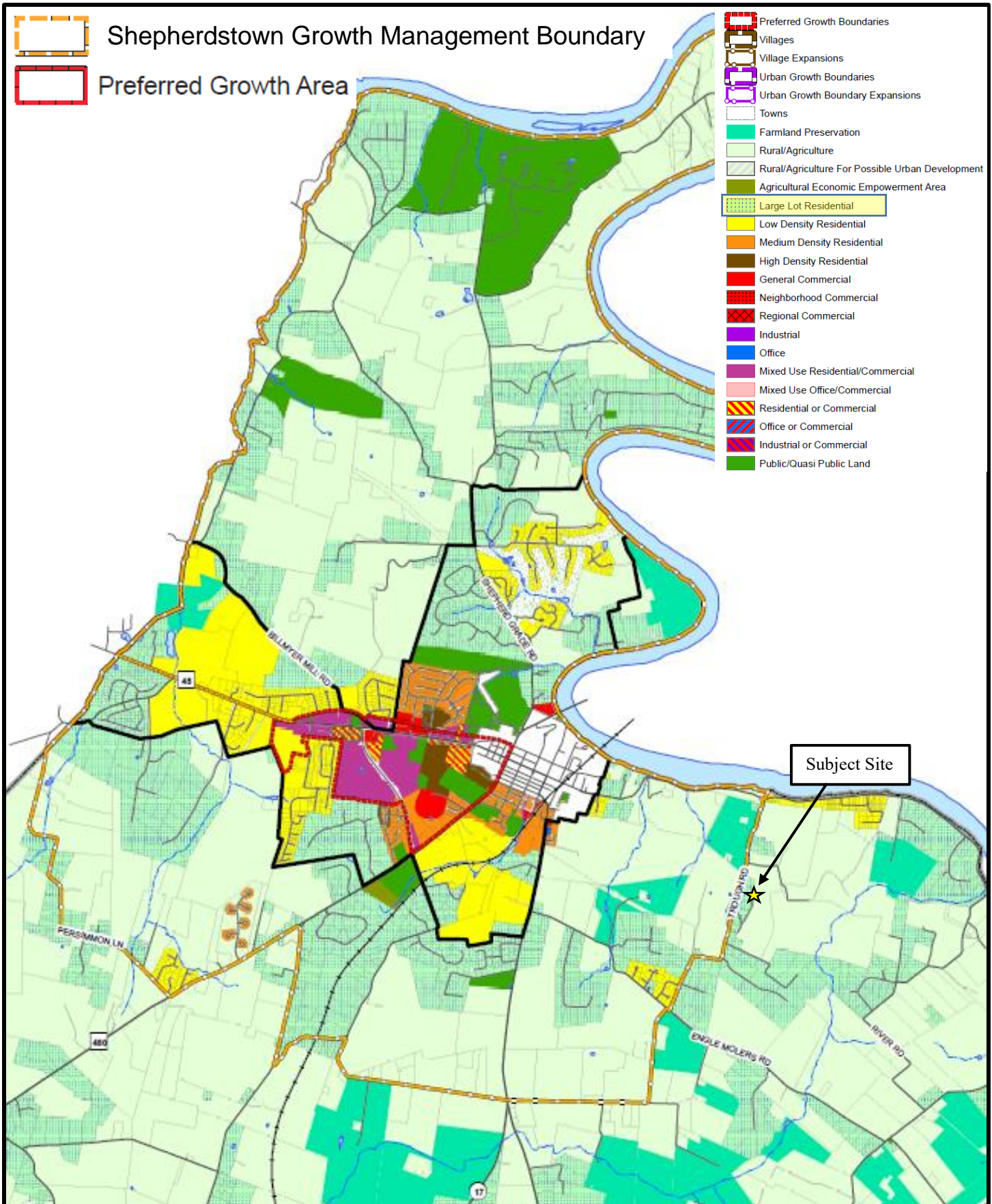
Easements or fee simple dedications will be provided along all limited access highways at the site plan or subdivision phases. Said easement/dedication shall not exceed 60 feet in width. The width may vary but must be adequate for extension, continuation or establishment of a minimum 20' wide paved frontage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

10. Landscape Buffer

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

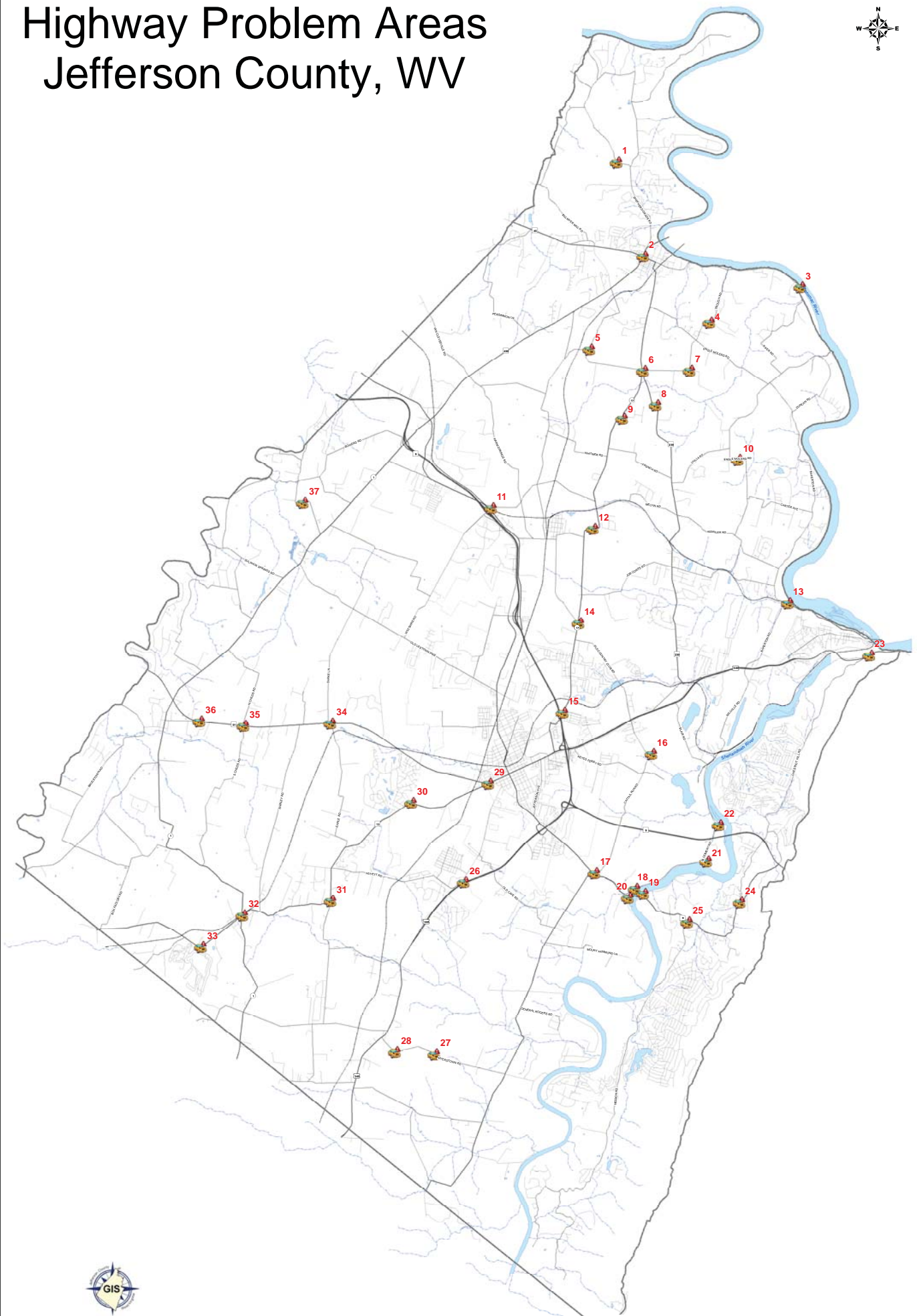
APPENDIX C: PRINCIPAL PERMITTED AND CONDITIONAL USES TABLE^{23, 29, 32, 33, 35, 37, 39, 43}

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	



Excerpt from Envision Jefferson 2035 Comprehensive Plan - Future Land Use Guide

Highway Problem Areas Jefferson County, WV



Map Created: April, 2014



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

Nursing Home (620)

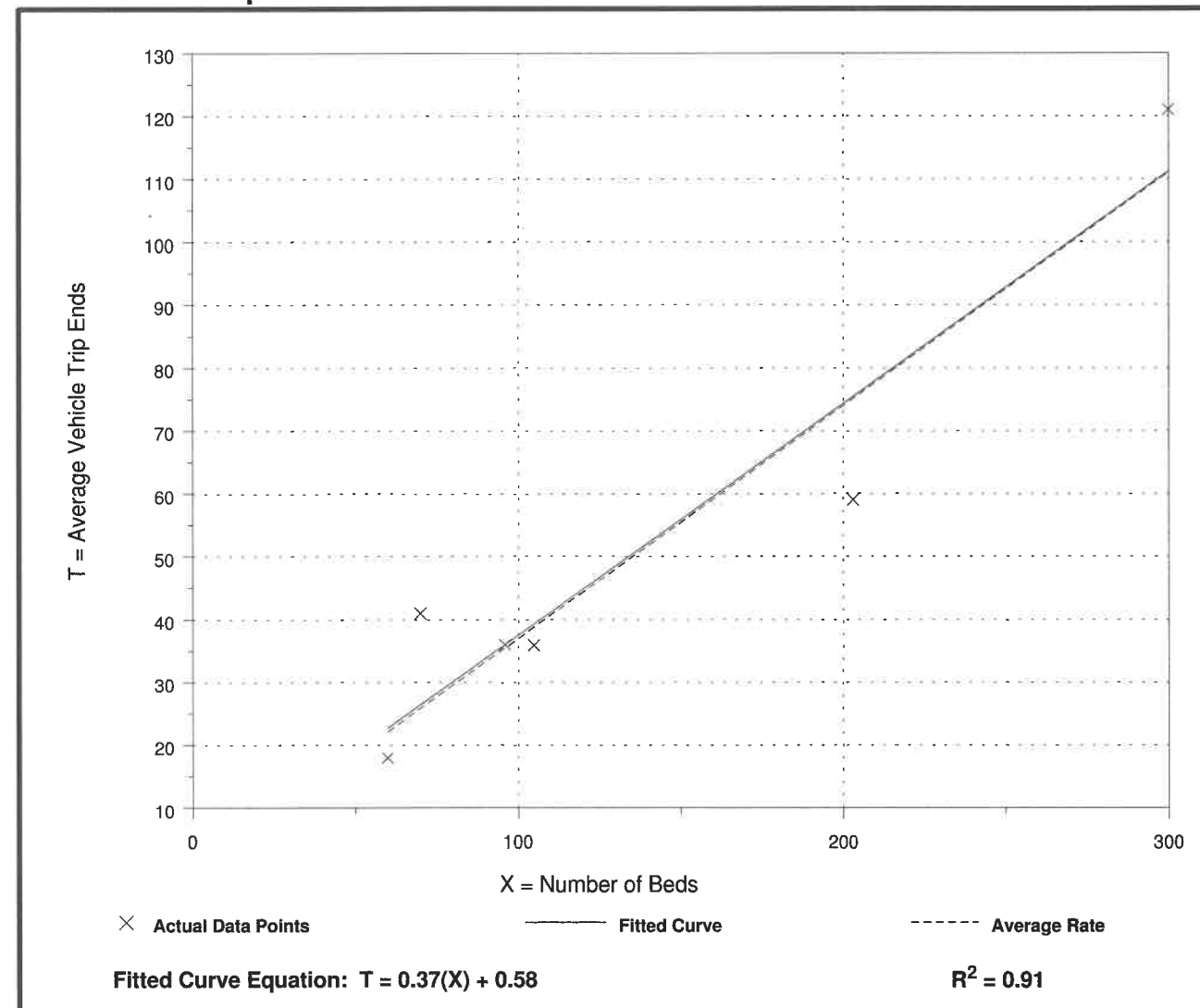
Average Vehicle Trip Ends vs: Beds
On a: Sunday,
Peak Hour of Generator

Number of Studies: 6
 Average Number of Beds: 139
 Directional Distribution: 57% entering, 43% exiting

Trip Generation per Bed

Average Rate	Range of Rates	Standard Deviation
0.37	0.29 - 0.59	0.61

Data Plot and Equation



Nursing Home (620)

Average Vehicle Trip Ends vs: 1000 Sq. Feet Gross Floor Area
On a: Weekday

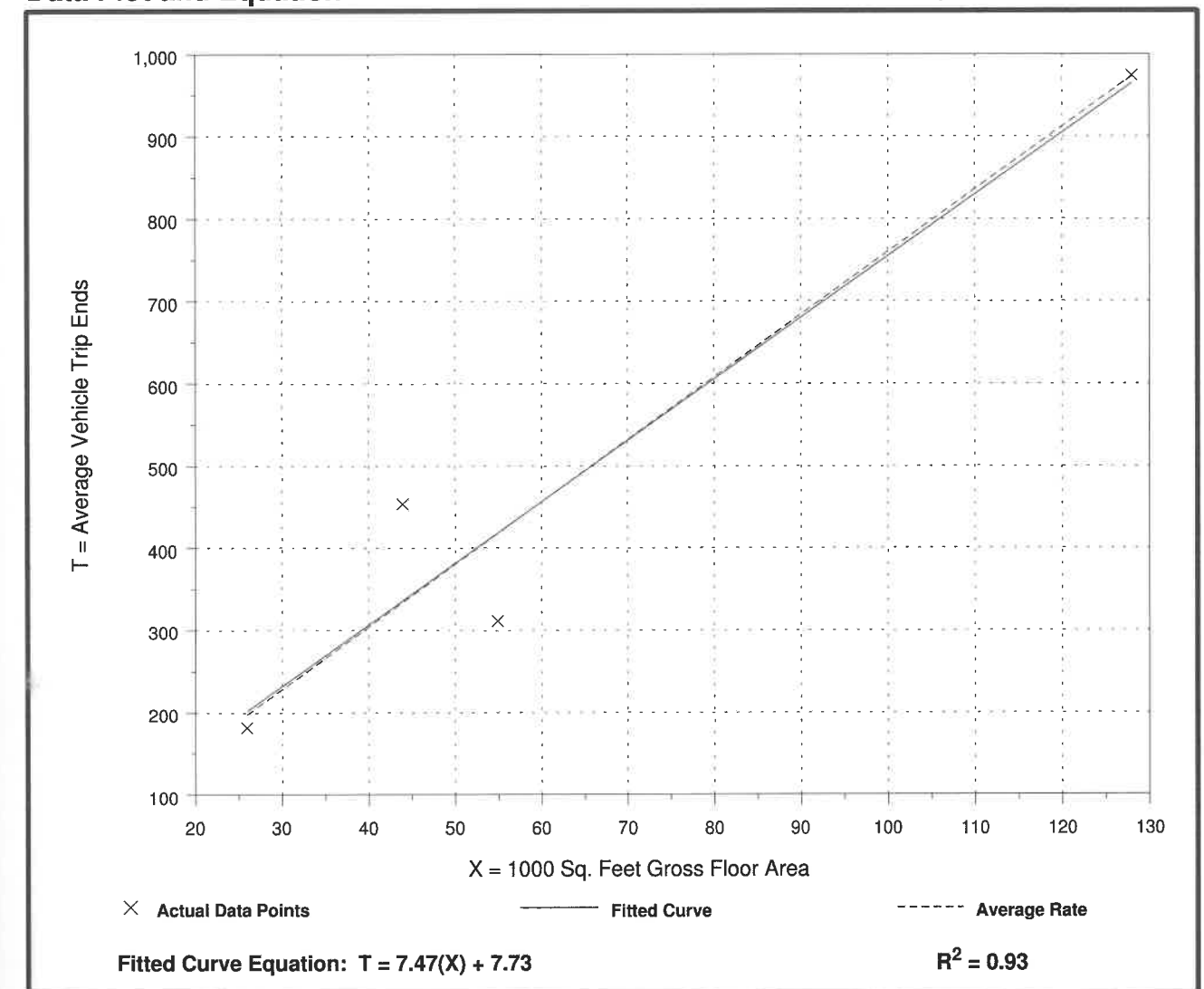
Number of Studies: 4
 Average 1000 Sq. Feet GFA: 63
 Directional Distribution: 50% entering, 50% exiting

Trip Generation per 1000 Sq. Feet Gross Floor Area

Average Rate	Range of Rates	Standard Deviation
7.60	5.67 - 10.31	3.10

Data Plot and Equation

Caution - Use Carefully - Small Sample Size



23-10-CUP - Staff Report - Attachment 7

Nursing Home (620)

Average Vehicle Trip Ends vs: 1000 Sq. Feet Gross Floor Area
On a: Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 7 and 9 a.m.

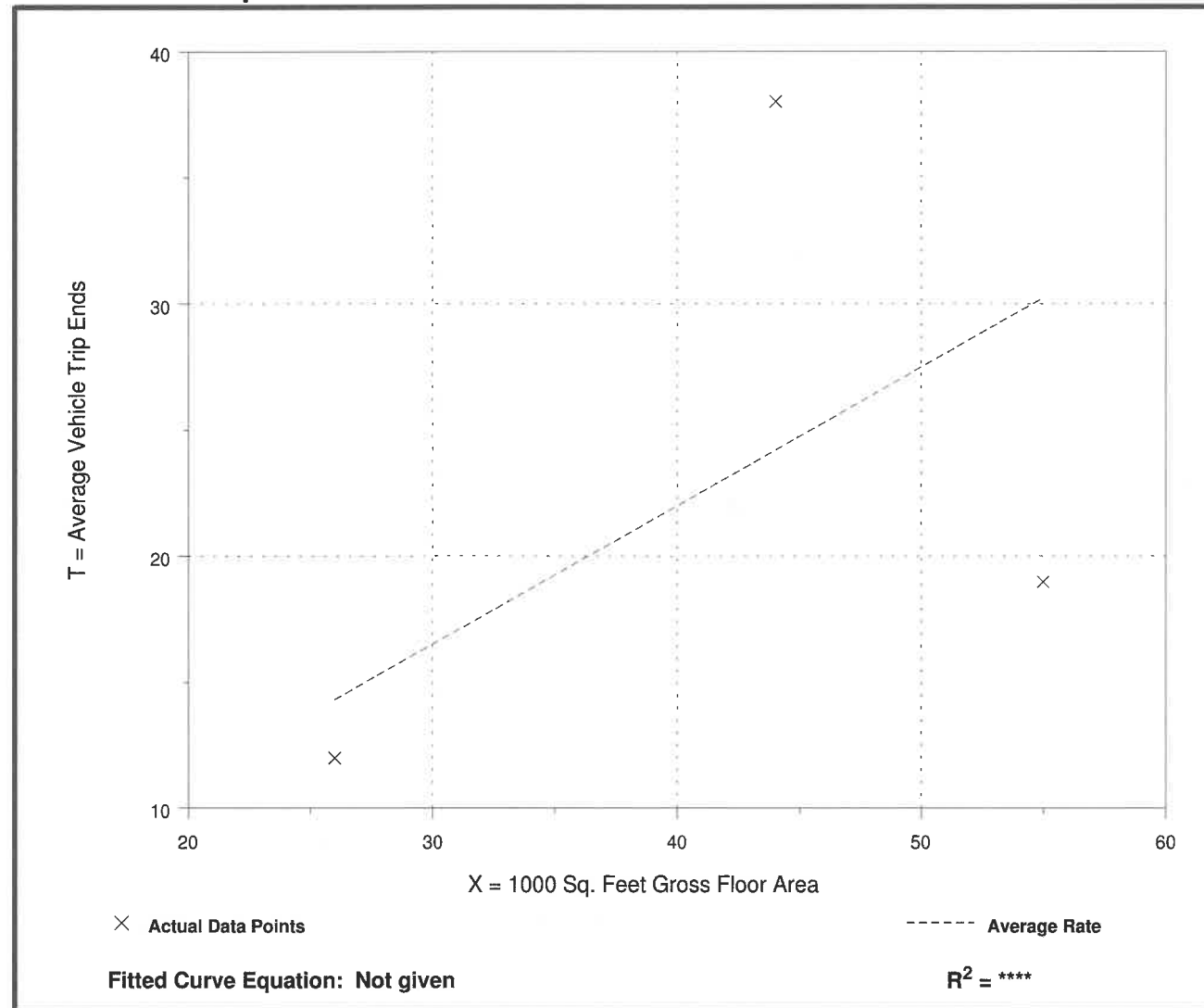
Number of Studies: 3
 Average 1000 Sq. Feet GFA: 42
 Directional Distribution: 71% entering, 29% exiting

Trip Generation per 1000 Sq. Feet Gross Floor Area

Average Rate	Range of Rates	Standard Deviation
0.55	0.35 - 0.86	0.77

Data Plot and Equation

Caution - Use Carefully - Small Sample Size



Nursing Home (620)

Average Vehicle Trip Ends vs: 1000 Sq. Feet Gross Floor Area
On a: Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 4 and 6 p.m.

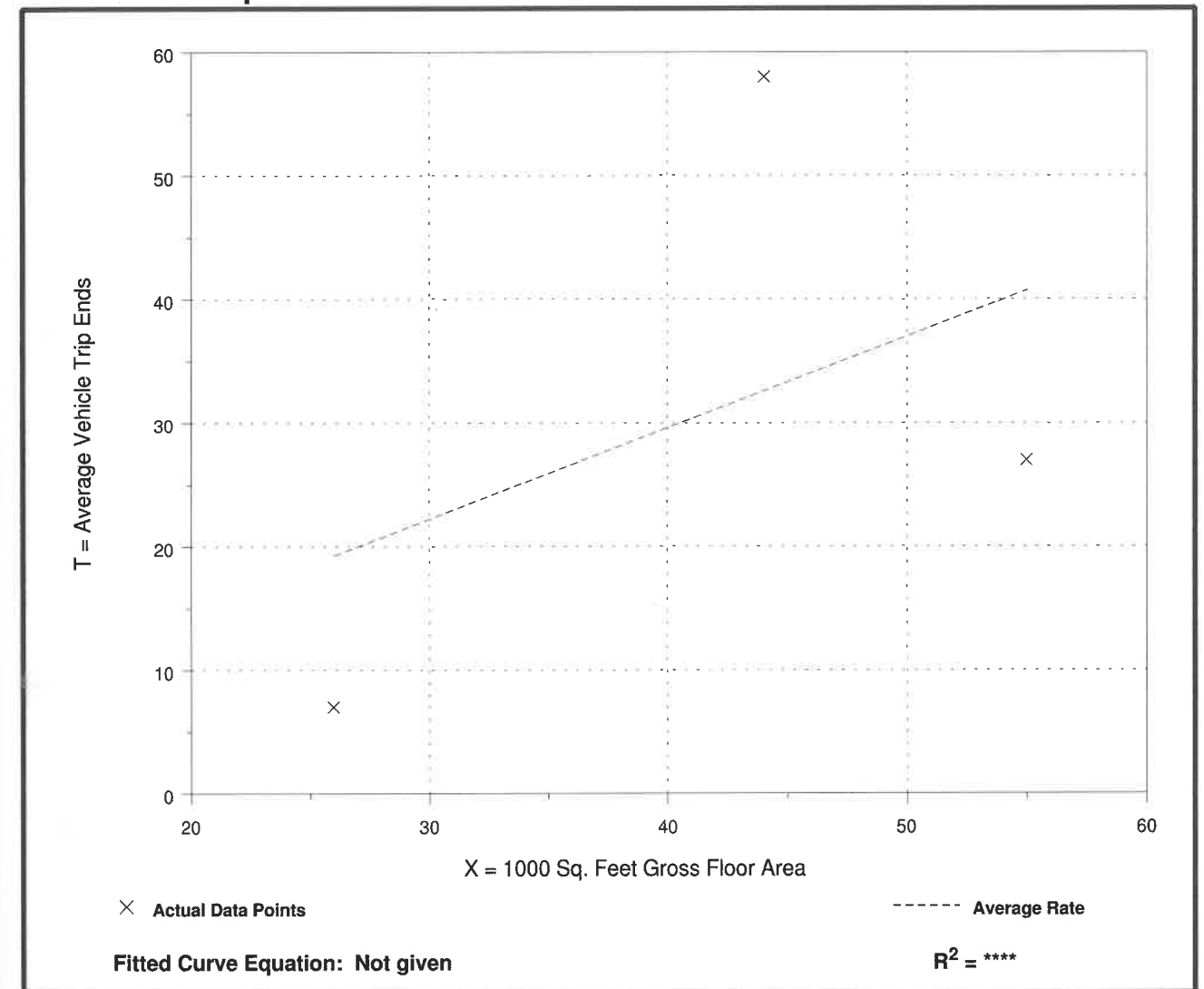
Number of Studies: 3
 Average 1000 Sq. Feet GFA: 42
 Directional Distribution: 52% entering, 48% exiting

Trip Generation per 1000 Sq. Feet Gross Floor Area

Average Rate	Range of Rates	Standard Deviation
0.74	0.27 - 1.32	0.96

Data Plot and Equation

Caution - Use Carefully - Small Sample Size





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 #: 23-10-CUP
 R'cvd Date: 11 / 05 / 23
 Mtg. Date: 12 / 14 / 23
 Fee Paid: \$ 400.00
 Staff Int.: AB

Email: zoning@jeffersoncountywv.org

Phone: (304) 728-3228

Application for a Conditional Use Permit

Project Name

Property Owner Information

Name: _____

Business Name: _____

Mailing Address: _____ Mail Yes

Phone Number: _____ Email Response: _____ Response: No

Applicant Information

Name: _____

Business Name: _____

Mailing Address: _____ Mail Yes

Phone Number: _____ Email Response: _____ 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: _____

Tax District: _____ Map No: _____ Parcel No: _____

Parcel Size: _____ Deed Book: _____ Page No: _____

Zoning District (please check one)

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

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

Name of Road and/or Route Number: _____

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

Nursing or Retirement Home, per Article 2 and Appendix C

AB

Please provide any information or known history regarding this property.

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

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

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

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.**

November 5, 2023

Property Owner

Date

Property Owner

Date

Trip Data; Songbird House Assisted Living Residence at 217 Deer Trail Shepherdstown WV 25443

<u>Time of Day</u>	<u># Cars</u>	<u>Purpose</u>	<u>Day of Week</u>
7am	2	Caregiver Staff	Mon-Sun
3pm	1	Caregiver Staff	Mon-Sun
8pm	1	Caregiver Staff	Mon-Sun
Noon-3pm	1	Visitors	Mon, Wed, Fri
Noon-6pm	2	Visitors	Sunday

Visitation schedules may be coordinated with families such that the residence is not overwhelmed with visitors or the quality of visiting is less than desired. Visitation for compassionate care will increase this schedule depending on residents needs and circumstances.

Zoning

From: Sharon Hallinan <ladyslipperproperties@gmail.com>
Sent: Thursday, November 30, 2023 9:13 PM
To: Zoning
Subject: Re: Trip Data

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

Alex,

It is highly unlikely that any residents will have a car. Our visiting policy will have limitations because private space for visiting is fairly limited. We will be asking visitors to confirm in advance so that we can plan for their arrival. By giving us advance notice, we will be limiting the number of residents that they can have family members visiting simultaneously, because we simply don't have enough interior private space to allow for a quality visit for multiple families. Not that this relates to the parking and traveling situation, but family connections with our guests will also be made through our Private Facebook and social media pages to post pictures and show videos of activities and celebrations that are happening within the residence. We also have devices to allow for video conversations, such as zoom or FaceTime timing on our iPads so families can continue to stay connected, even if they don't make an in person visit. These other means of visiting and staying connected, are not being done to discourage in person visits, but rather to promote family connection, such that if in person visits are difficult for families, logistics, and schedules they can still stay connected to their family member.

Hope that helps? Thanks, Sharon.

On Thu, Nov 30, 2023 at 3:48 PM Zoning <Zoning@jeffersoncountywv.org> wrote:

Good afternoon,

I'm working on my staff report and have some questions related to the trip data on page 4 of your application, which indicates that the average daily trips will be five total / six on Sundays, and lists caregiver staff and visitors only (see screenshot below).

- Does this mean that residents will not have cars?
- Does the facility only allow one visitor at a time from noon – 3pm total or one visitor per hour, which would mean that there could be three trips during that timeframe?
- Also, does this mean that visitors for multiple residents at the same time is prohibited? For example, if there are 16 residents, only one visitor could come to the property during that timeframe? Or one visitor per resident would be permitted to come to the facility?

Additional information is needed to adequately address this criteria.

Trip Data; Songbird House Assisted Living Residence at 217 Deer Trail Shepherdst

<u>Time of Day</u>	<u># Cars</u>	<u>Purpose</u>
7am	2	Caregiver Staff
3pm	1	Caregiver Staff
8pm	1	Caregiver Staff
Noon-3pm	1	Visitors
Noon-6pm	2	Visitors

Visitation schedules may be coordinated with families such that the residence is overwhelmed with visitors or the quality of visiting is less than desired. Visitation for care will increase this schedule depending on residents needs and circumstances.

Thank you,

Alex

Alexandra Beaulieu

Deputy Director & Zoning Administrator

Department of Engineering, Planning, & Zoning

Jefferson County, WV

304-728-3228

217 Deer Trail Shepherdstown WV 25443

Request to lift the single family restriction and permit the use for a residential assisted living/care home through a conditional use permit.

I. Background Information; WV Policy

§16-5D-1. Purpose.

(a) It is the policy of this state to encourage and promote the development and utilization of resources to ensure the effective care and treatment of persons who are dependent upon the services of others by reason of physical or mental impairment who may require limited and intermittent nursing care, including those individuals who qualify for and are receiving services coordinated by a licensed hospice. Such care and treatment requires a living environment for such persons which, to the extent practicable, will approximate a normal home environment. To this end, the guiding principle for administration of the laws of the state is that such persons shall be encouraged and assisted in securing necessary care and treatment in noninstitutional surroundings.

(b) In recognition that for many such persons effective care and treatment can only be secured from proprietary, voluntary and governmental assisted living residences, it is the policy of this state to encourage, promote and require the maintenance of assisted living residences so as to ensure protection of the rights and dignity of those using the services of assisted living residences.

II. National Issues regarding Shortages for Senior Care

It is not surprising that it is the policy of WV to promote assisted living residences in a normal home environment in noninstitutional surroundings especially considering national issues of shortages for senior care.

- Forbes Magazine, October 2022 article stated
 - “The assisted living industry is in crisis. There simply aren’t enough communities to house the rising number of senior who need them.”
 - “Researchers say the number of people age 85+ will triple by 2060. The solution for ensuring they have access to comfortable housing they can afford is not simple, but it presents an unprecedented opportunity for the business community-building more facilities to meet this demand.”
- A May 2023 survey of 425 nursing home providers by the American Health Care Association showed 48 % of nursing homes have a wait list for prospective patients/residents.
- A shortage of beds has forced hospitals to keep patients longer, cited by National Public Radio interview in October 2022 with health care professionals in Vermont.

- In April 2023, Relias Media interviewed officials at the Veterans Administration about the shortage of nursing home beds and the need for creative solutions.
 - “The nursing home crisis of too few beds....is expected to continue for the foreseeable future. Case managers....and care leaders need to find alternative solutions that will keep patients safe and avoid unnecessary hospitalizations.”
 - The American Health Care Association and National Center for Assisted Living (AHCA/NCAL), which represents more than 14,000 nursing homes and long term care facilities released a report in August 2023 stating economic reasons” are forcing nursing homes to limit admissions, down size or even close entirely, leaving tens of thousands of vulnerable residents displaced, and countless prospective residents and families in desperate search of care.”
 - The shortage of beds in Minnesota is forcing residents to stay in hospitals longer, as cited in “Skilled Nursing News” April 2023.
 - All of this has risen to national attention as the Biden Administration is taking action as outlined in the State of the Union address earlier this year to “protect seniors lives” and “enhance access to home and community based-services”, among many other initiatives.
-

With all that background clearly demonstrating the need for senior care, Songbird House researched numerous state regulations, geographic areas and settled on purchasing a property in Shepherdstown Songbird House LLC obtained a business license from WV. We engaged with the State of West Virginia, Department of Health and Human Resources, Office of the Inspector General, Office of Health Facility Licensure and Certification (OHFLAC) prior to the purchase to ensure the property would meet regulations, and within days after closing on the property, we scheduled a preliminary site survey with OHFLAC as well as the local fire marshal.

April 18, 2023 Songbird House received its site approval to establish an assisted living residence from the State of West Virginia, Department of Health and Human Resources, Office of the Inspector General, Office of Health Facility Licensure and Certification (OHFLAC).

Required therein was submission of drawings by a WV licensed architect for approval of any needed renovations. Songbird House received its OHFLAC approval to begin construction August 28, 2023.

August 17, 2023 Songbird House received its approval from the State of West Virginia, Department of Health and Human Resources, Health Care Authority, that our proposed project meets the qualifications for exemption of the Certificate of Need process IAW WV Code Title 65-29-11©(24).

Interior renovations began, including the delivery of 2 hand crafted 14x20 modular units to ultimately be attached to the house as expanded living space. Curious, and apparently distressed neighbors, notified the county permitting office and a stop work notice was issued for the property. To resolve this matter, Songbird House contacted the permitting office and was told a new piece of information, that being we needed to discuss our plans with the zoning board and seek a conditional use permit as our residential zoning code 101 does not allow an assisted living residence. We have been under the impression, as

stated above, that we are operating within the residential domain. We are now requesting the residence 101 restriction to be lifted and allow the property to be used as an assisted living residence.

Our prior understanding based on our due diligence was that we are separate and distinct from nursing homes, and the maximum 16 bed licensing we will be seeking is non-commercial for several reasons discussed herein.

First, WV Title 64 of West Virginia Legislative Rule clearly distinguished nursing homes from assisted living residences as each has its own regulations as cited below:

- Series 13 Nursing Home Licensure
- Series 14 Assisted Living Residences (this is the guidance Songbird House is following as provided by OHFLAC).

Second, in accordance with West Virginia Code at §16-5D-2. Definitions.

(1) “Assisted living residence” means any living facility, residence, or place of accommodation, however named, available for four or more residents, in this state which is advertised, offered, maintained, or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment and who may also require nursing care at a level that is not greater than limited and intermittent nursing care: Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute an assisted living residence within the meaning of this article. Nothing contained in this article applies to hospitals, as defined under §16-5B-1 of this code; or state institutions, as defined under §25-1-3 or §27-1-6 of this code; or residential care homes operated by the federal government or the state; or institutions operated for the treatment and care of alcoholic patients; or offices of physicians; or hotels, boarding homes, or other similar places that furnish to their guests only room and board; or to homes or asylums operated by fraternal orders pursuant to §35-3-1 et seq. of this code;

(6) “Limited and intermittent nursing care” means direct hands-on nursing care of an individual who needs no more than two hours of nursing care per day for a period of time no longer than 90 consecutive days per episode: Provided, That such time limitations shall not apply to an individual who, after having established a residence in an assisted living residence, subsequently qualifies for and receives services coordinated by a licensed hospice and such time limitations shall not apply to home health services provided by a Medicare-certified home health agency. Limited and intermittent nursing care may only be provided by or under the supervision of a registered professional nurse and in accordance with rules proposed by the secretary for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code.”

Individuals whose needs exceeding the limits of intermittent nursing care must be placed in other than assisted living residences, such as skilled nursing facilities, or nursing homes. Nursing homes are associated with zoning code 316, not residential 101. Songbird House is not a nursing home and is not intending to be one.

Third, WV Title 64 of West Virginia Legislative Rule makes clear distinctions in assisted living facilities as small (16 beds maximum) or large (17 beds or greater), with the only element of commerciality for a small facility is a commercial cooking vent hood when there are more than 12 residents. Large facilities have different and higher standards as they typically provide a level of care

that exceeds an assisted living residence, with some building standards becoming commercial (kitchens, sprinkler systems as examples) and thus a non-residential zoning code.

Fourth, our WV licensed sprinkler system contractor submitted and received plan approval for a residential standard sprinkler system. The Fire Marshall did recommend additional holding tanks beyond the residential standard, for which have agreed.

IV. Songbird House LLC Specifics regarding 217 Deer Trail Shepherdstown WV

At this time, Songbird House is requesting the single family restriction be lifted and allow the property to operate as an assisted living residence. The following is a brief description of the property facts and operational notions of Songbird House.

1. Property Characteristics
 - a. Residence to maintain its residential purpose for up to 16 elderly occupants who need personal home care. Fully compatible for its current use as a residence.
 - b. Leasing the rooms, and all inclusive lease includes cooking, housekeeping, and care.
 - c. Property, purchased in April 2023, was sold as a 3,460 ft² home 5 bed 4 bath with a 2 car attached garage, 2 detached garages and a driveway sufficient for 4 cars, a total of 9 parking spaces. Two tier deck with a built in pool, handicapped ramp on a 2.5 acre lot, in a tranquil location across from an expansive horse farm complete the picture of a beautiful property.
2. Why this property for an Assisted Living Residence?
 - a. Features that make this property ideal include 1,000 ft² across 4 social spaces of a living rm, dining room, sunroom, and great room with cathedral ceilings and double French doors opening to the deck already established with handicapped ramp and wooded view. An established 350 ft² garden for farm to table organic produce is a truly unique feature for the ALR purpose.
 - b. Pre-built additions to expand living space, handcrafted by the Amish in Lancaster PA, same style and color scheme of the house.
 - c. Peaceful, natural surroundings are a stress free environment.
 - d. Residents would enjoy a mature and very small immediate neighborhood of just 8 houses
3. No damage to public interests at all.
 - a. There is benefit to the public interests
 - i. There is profound need for senior care
 - ii. WV policy recognizes this as well, encouraging care delivered in a normal home environment in non-institutional surroundings
 - iii. The surplus from our garden and fruit trees will be shared with the neighborhood and community thru food bank donations, partnering with local groups such as the boy scouts to help harvest and donate.
4. No damage to any public property at all as there is no public property adjacent to or touching our property boundaries.
5. No nuisance concerns
 - a. Residents are quiet

- b. No commercial traffic
 - i. No food suppliers as we shop ourselves, grow in our garden, and the onsite Executive Chef prepares all meals fresh every day in the residence.
 - ii. No commercial trash as we compost, recycle, repurpose, and will use Apple Valley Waste in the same fashion as the neighborhood
 - iii. No moving trucks with resident belongings/furnishings as we are a fully furnished turned key residence
 - c. Caregivers are 3-4 total, and the property already contemplates 9 vehicles with its well established driveway and 3 garages
 - i. we do not intend to have 9 cars
 - ii. Visiting hours are limited, brief, not every day, and do not extend into any time of day generally considered as "quiet hours"
 - d. Nothing about elderly residents or the lifestyle within the residence will produce offensive odors, noise, dirt, debris, bright exterior lights to impact neighbors, for which there are only 2, both more than 60 meters away with wooded area in between on both sides.
 - e. No nuisance objects have been or will be added to the property, such as satellite dishes or cell towers or anything of that sort.
6. Songbird House is abiding by all WV regulations for licensing.

217 DEER TRAIL; PARKING

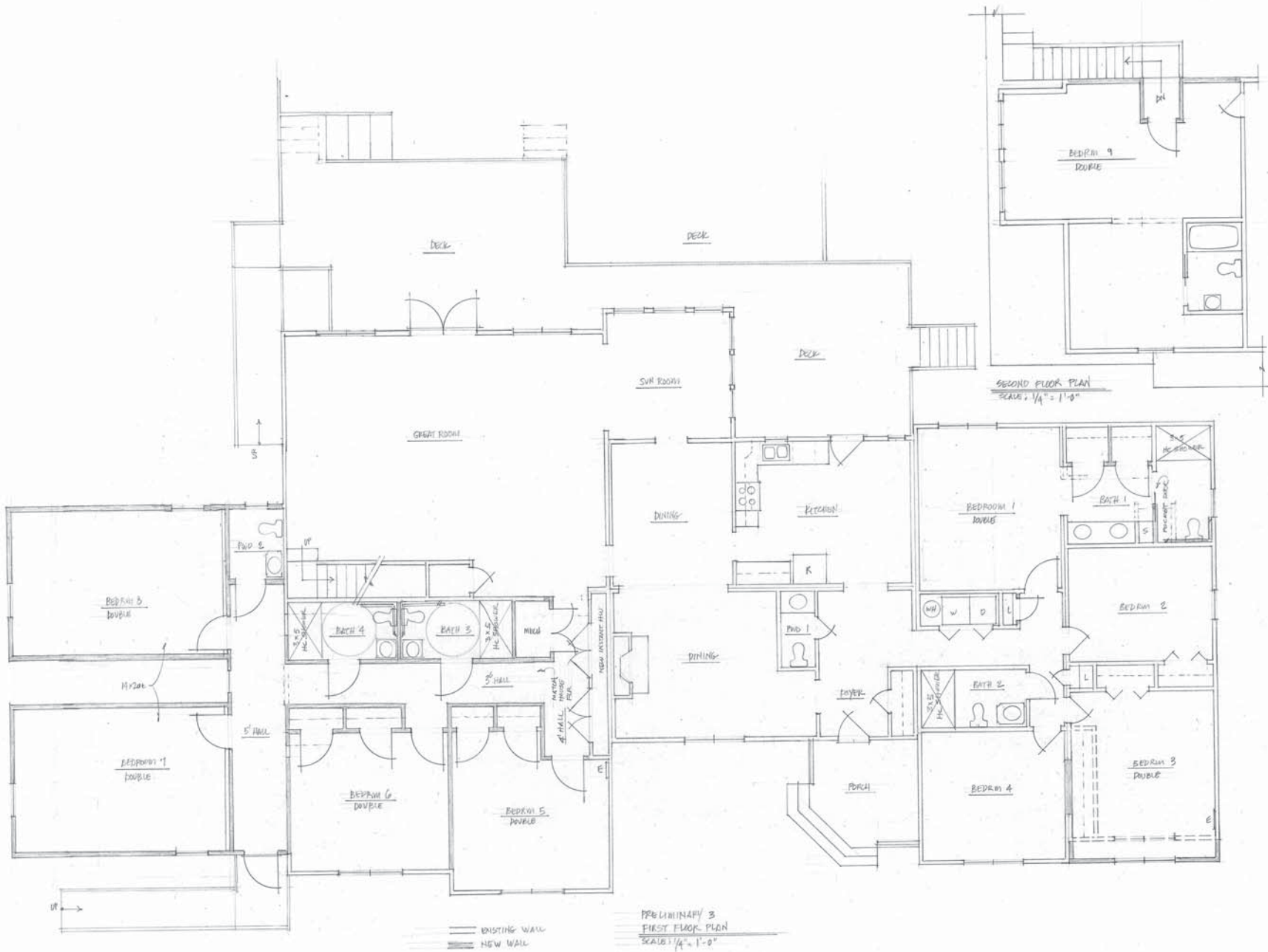


PROPERTY EXISTING
DRIVEWAY

DRIVEWAY TO
BE ADDED

VISITOR PARKING
1-2 CARS

↑
STAFF
PARKING
to
EXISTING
GARAGES
2-3
CARS



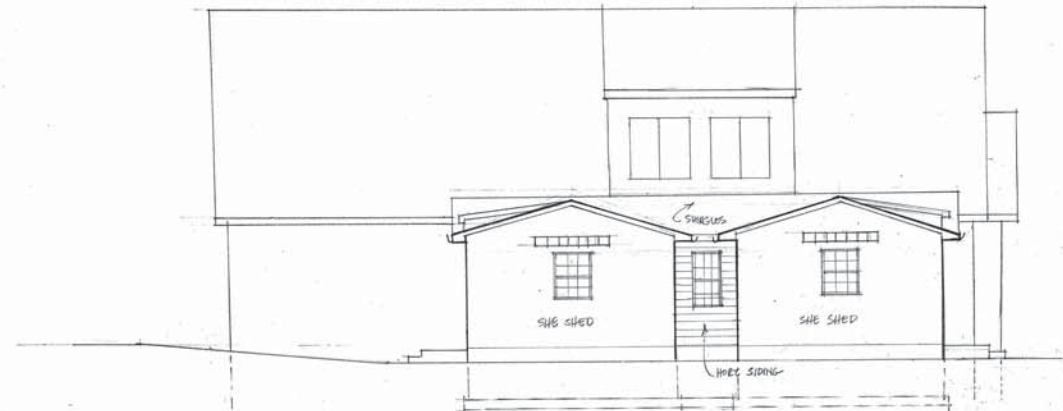
ROSALIND E. WELSH
 ARCHITECT
 REGISTERED ARCHITECT
 304725-0173
 P.O. Box 147 • Summit Point • WV • 25448

SENIOR HOUSING
 217 BEECH TRAIL
 SHELDONSTOWN, WV

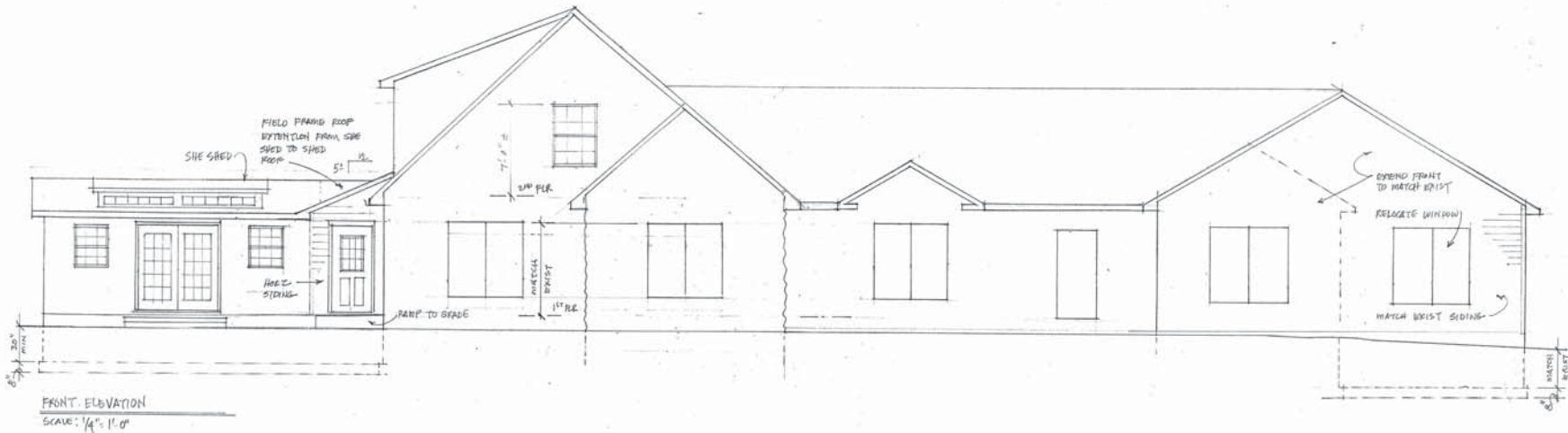
6/5/23



ROSALIND E. WELSH
ARCHITECT
REGISTERED WEST VIRGINIA
ARCHITECT
NO. 25446
P.O. Box 147 • Summit Point • WV • 26446
204-722-6473



LEFT SIDE ELEVATION
SCALE: 1/4" = 1'-0"

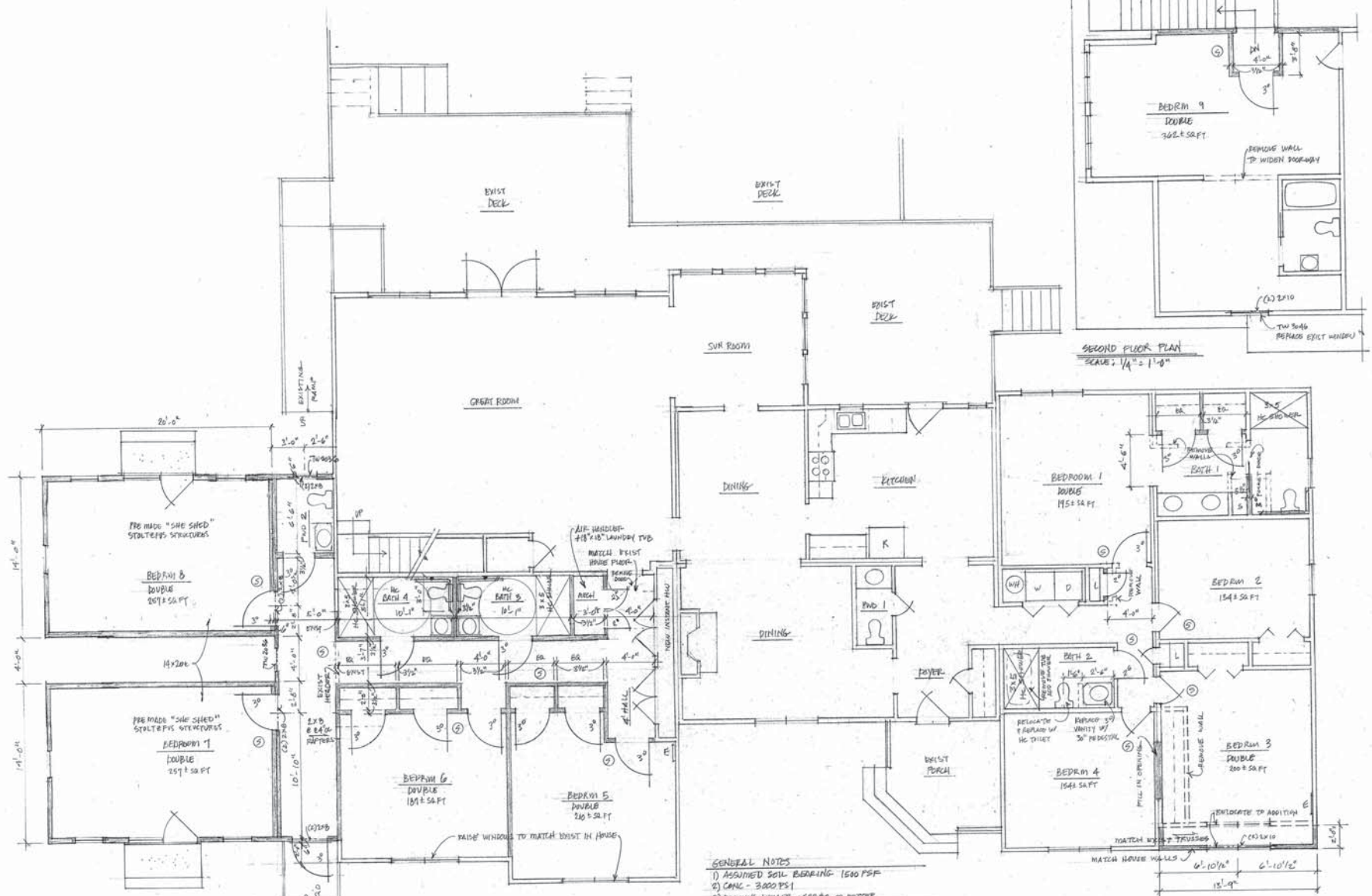


FRONT ELEVATION
SCALE: 1/4" = 1'-0"

SNAG BIRD HOUSE RENOVATIONS
217 PEAR TRAIL
SHEPHERDSTOWN, WV

A3

7/11/23



FIRST FLOOR PLAN
SCALE: 1/4" = 1'-0"

SECOND FLOOR PLAN
SCALE: 1/4" = 1'-0"

EXISTING WALL
NEW WALL
SPOKE DETECTOR

- GENERAL NOTES
- 1) ASSUMED SOIL BEARING - 1500 PSF
 - 2) CONC - 3000 PSI
 - 3) FRAMING LUMBER - SPP #2 OR BETTER
 - 4) DESIGN LOADS: FLR - 40 PSF, SNOW - 30 PSF @ GRADE
 - 5) WINDOW NUMBERS FROM ANDERSEN AND
 - 6) MECP BY SUN CONTRACTOR
 - 7) REQUIREMENTS/PLANS BY OTHERS
 - 8) CONSTRUCTION TO COMPLY W/ IRC 2018 & ALL LOCAL CODES
 - 9) 1/4 BEDR = RESIDENTIAL, NOT COMMERCIAL - IBC-2018



ROSALIND E. WELSH
ARCHITECT
10000 WOODLAND
AVENUE, SUITE 100
P.O. Box 187 • Summit Point • W.V. 25446
304-775-4133

SANG HALL HOUSE RENOVATIONS
217 DEER TRAIL
SHEPHERDSTOWN, WV

AI
7/17/23



RECEIVED
NOVEMBER 15, 2023
Jefferson County, WV
Office of Planning & Zoning

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Office of Health Facility Licensure and Certification

Jeffrey H. Coben, MD
Interim Cabinet Secretary

Sheila Lee
Interim Inspector General

April 18, 2023

Sharon Hallinan
Songbird House
20383 Middlebury Street
Ashburn, VA 20147

RE: Site Inspection
OHFLAC #2023-032

Dear Ms. Hallinan:

A site inspection was conducted on April 12, 2023 for a proposed Assisted Living facility to be located at 217 Deer Trail, Shepherdstown, WV. This site is approved.

Please submit a full set of drawings by a WV licensed architect which includes architectural, mechanical, electrical, and plumbing, to scale for review by our office of the proposed construction.

Please address the following items in your plans:

1. Addition of an ADA bedroom and bathroom/shower room on the 1st floor area and ADA entrance/exit in your plans.
2. This site is not sprinkler protected.
3. Laundry area will need separation of soiled and clean laundry and mechanical ventilation on the soiled side.

Approval of your plans is necessary prior to beginning construction at this site.

If you have any questions, please contact me at 304-352-0822.

Sincerely,



Forest "PJ" Cooper
Life Safety Program Manager

cc: Assisted Living Program - OHFLAC



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Health Care Authority

Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary

Stacy L. Pridemore
Executive Director

August 17, 2023

Sharon Hallinan/Property Manager
Songbird house, LLC
20383 Middlebury St
Ashburn, VA 20147

Subject: **Songbird House, LLC**
CON File #23-9-12751-X

Dear Ms. Hallinan:

On August 4, 2023, the West Virginia Health Care Authority (Authority) received the exemption application submitted by Songbird House, LLC for the development of a 16-bed Assisted Living Facility located at 217 Deer Trail, Shepherdstown, Jefferson County, West Virginia. In providing notification, the Applicant also submitted the required exemption application pursuant to W. Va. Code § 16-2D-11.

In support of the exemption, the following information was provided regarding compliance with W. Va. Code St. R. § 65-29-11(c)(24), which states "Assisted living facilities and services".

The Authority has reviewed the exemption application and determines that the Applicant has adequately addressed and is consistent with the criteria contained in W. Va. Code St. R. § 65-29-1, *et seq.* The Authority further determines that the project, as described in the exemption application, meets the qualifications for the exemption for which the applicant has applied.

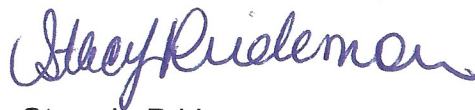
Exemption approval issued by the West Virginia Health Care Authority (WVHCA)

100 Dee Drive • Charleston, West Virginia 25311 • 304.558.7000 • 304.558.4776 (fax) • hca.wv.gov

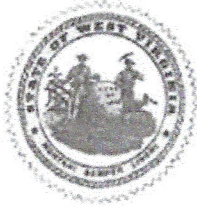
for a proposed health service that is exempt from the Certificate of Need process does not guarantee licensure. The provider must meet the standards and applicable laws, rules, and regulations when submitting an application for licensure to OHFLAC.

The WVHCA verifies with OHFLAC the current licensed bed count of the county specific to the proposed project at the time the exemption application is received/approved by the WVHCA. This exemption approval does not guarantee the availability of beds in the county.

Sincerely,



Stacy L. Pridemore
Executive Director



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Office of Health Facility Licensure and Certification

Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary

Christopher G. Nelson
Interim Inspector General

August 28, 2023

Sharon Hallinan
20383 Middlebury St.
Ashburn, VA 20147

RE: OHFLAC #2023-032

Dear Ms. Hallinan:

The plans that were submitted on June 18, 2023 for the renovation of the house and garage space into a 16 bed Assisted Living facility called Songbird House located at 217 Deer Trail, Shepherdstown, WV, have been reviewed and appear to be acceptable and construction may begin.

Please provide this office with the following during the construction phase:

After you **conduct the Punch List Inspection** and issue **Substantial Completion**, submit a request (form available OHFLAC.wvdhhr.org) to this office for a **Pre-Opening Inspection***. Now and where appropriate the following documents and certified test results will be required for:

- A. **AIA Substantial Completion Signed by All Parties**
- B. **Certification for Electrical Work**
- C. **Sprinkler System Certification**
- D. **Fire Alarm System Certification**
- E. **HVAC Test and Air Balance Report**
- F. **State Fire Marshal Final Inspection Report**
- G. **Certification of Interior Finishes (Flame Spread Rating)**

Songbird House
August 25, 2023
Page 2

It should be noted that approval of these documents for construction in no way "approves" or "certifies" the design for full conformance with relevant state and federal regulations. It is the responsibility of the designer and owner to verify all applicable requirements.

Renovated areas must be isolated from occupied areas during construction using airtight barriers, and exhaust airflow shall be sufficient to maintain negative air pressure in the construction zone. Air quality requirements at areas not being renovated should be maintained at existing levels. Precautions must be taken always to maintain patient safety and health standards.

If you have any questions, please contact me at 304-352-0822.

Sincerely,

Forest P. Cooper

Forest "PJ" Cooper
Life Safety Program Manager

FPC/scb

Cc: Assisted Living Program
Office of Health Facility Licensure and Certification

TITLE 65
LEGISLATIVE RULE
HEALTH CARE AUTHORITY

SERIES 29
EXEMPTION FROM CERTIFICATE OF NEED

§65-29-1. General.

1.1. Scope. -- This legislative rule establishes the general criteria and procedures for applying for an exemption from Certificate of Need.

1.2. Authority. -- W. Va. Code §16-2D-4(a)(2), §16-2D-11 and §16-29B-8(a)(1).

1.3. Filing Date. -- April 29, 2021.

1.4. Effective Date. -- April 30, 2021.

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect on August 1, 2026.

§65-29-2. Definitions.

As used in this legislative rule, all terms that are defined in W. Va. Code §16-2D-2 have those same meanings which are in some cases further clarified in this rule. All terms not defined in W. Va. Code §16-2D-2 have the following meanings unless the context expressly requires otherwise.

2.1.a. "Authority" means the West Virginia Health Care Authority which is designated to administer the Certificate of Need program by W. Va. Code §16-2D-3(a)(1).

2.1.b. "Medically underserved population" is defined on a county-by-county basis. Applicants seeking an exemption for a proposed new end-stage renal disease treatment facility under this rule shall identify the service area as the county where the new facility is proposed to be located. For purposes of this rule only, a county service area with fewer than 50,000 residents is deemed to be a medically underserved population if there is no kidney disease treatment center located less than six driving miles from the location provided in the exemption application.

2.1.c. "Statute" means the West Virginia Health Care Authority Certificate of Need statute, W. Va. Code §16-2D-1 *et seq.*

2.1.d. "Verification" means a statement made under oath before a notary public that the information is knowingly provided and is true and correct.

§65-29-3. General Requirements.

3.1. A health service exempt from certificate of need review by W. Va. Code § 16-2D-11 may not be acquired, offered, or developed within this state unless notification of the performance of the exemption is provided to the Authority.

3.2. A person or health care facility may not knowingly charge or bill for a health service exempted from certificate of need review by W. Va. Code §16-2D-11 without first submitting a notification of

performance of the exemption to the Authority.

§65-29-4. Application.

An application for an exemption shall, at a minimum, include the following:

- 4.1.a. Name, address, and contact information for the applicant;
- 4.1.b. Name, address, and contact information for the person making the application;
- 4.1.c. Verifications from the person making the application and the CEO of the applicant entity;
- 4.1.d. A copy of the governing body's written authorization empowering the CEO or his or her designee to authorize specified individuals to sign the application and to act on its behalf; and
- 4.1.e. A detailed description of the project, including but not limited to:
 - 4.1.e.1. The location of the proposal;
 - 4.1.e.2. A detailed statement of the services to be provided;
 - 4.1.e.3. The exemption for which the applicant is applying with the appropriate Code citation;
 - 4.1.e.4. A statement of the circumstances justifying approval of the exemption; and
 - 4.1.e.5. A timetable for implementation of the project. In the case of a kidney disease treatment center, the facility must be operational within one year of the approval or the exemption will expire after one year.
- 4.1.f. In the case of an exemption of a kidney disease treatment center, the application shall also contain:
 - 4.1.f.1. The address of the proposed facility and a copy of the executed lease or option to lease or option to purchase agreement for the facility; and
 - 4.1.f.2. Evidence that there is adequate water and other utilities at the site to support the facility.

16-2D-11, 24

§65-29-5. Expiration of Exemption.

If a kidney disease treatment facility is not operational within one year from the date of the decision on exemption, the exemption will expire unless good cause can be demonstrated.

§65-29-6. Appeals.

6.1. An appeal of the Authority's decision may be filed with the Office of Judges in accordance with W.Va. Code §16-2D-16.

6.2. In lieu of an appeal, the applicant may refile an application with the Authority.

§65-29-7. Notification of Completion of Project.

The applicant shall notify the Authority in writing upon the completion of the project. The notification shall contain a brief description of the project, the assigned case file number, the date of the completion of the project and the date that the project became or will become operational.

Trip Data: Songbird House Assisted Living Residence at 217 Deer Trail Shepherdstown

<u>Time of Day</u>	<u># Cars Leave/Arrive</u>	<u>Purpose</u>	<u>Day of Week</u>
7am	2	Caregiver Staff	Mon-Sun
3pm	2	Caregiver Staff	Mon-Sun
11pm	2	Caregiver Staff	Mon-Sun
Noon-3pm	1	Visitors	Mon, Wed, Fri
Noon-6pm	2	Visitors	Sunday

Visitation schedules may be coordinated with families such that the residence is not overwhelmed with visitors or the quality of visiting is less than desired. Visitation for compassionate care will increase this schedule depending on residents needs and circumstances.

Note: For benchmarking purposes only, a cottage industry IAW Section 4A.5 Zoning Ordinance

- A. Can have up to 4 non-resident employees working at the property
- E. Excluding employee commuting, 15 business related vehicle visits per day with no more than 60 visits per week are allowed.

Compared to a cottage industry:

	<u>Employees Commuting</u>	<u>Visits Per Day</u>	<u>Visits Per Week</u>
Songbird House	6	1-3	4-12
Cottage Industry	4	15	60

RECEIVED

DEC 08 2023

JEFFERSON COUNTY PLANNING
ZONING & ENGINEERING

RECEIVED

DEC 08 2023

JEFFERSON COUNTY PLANNING
ZONING & ENGINEERING



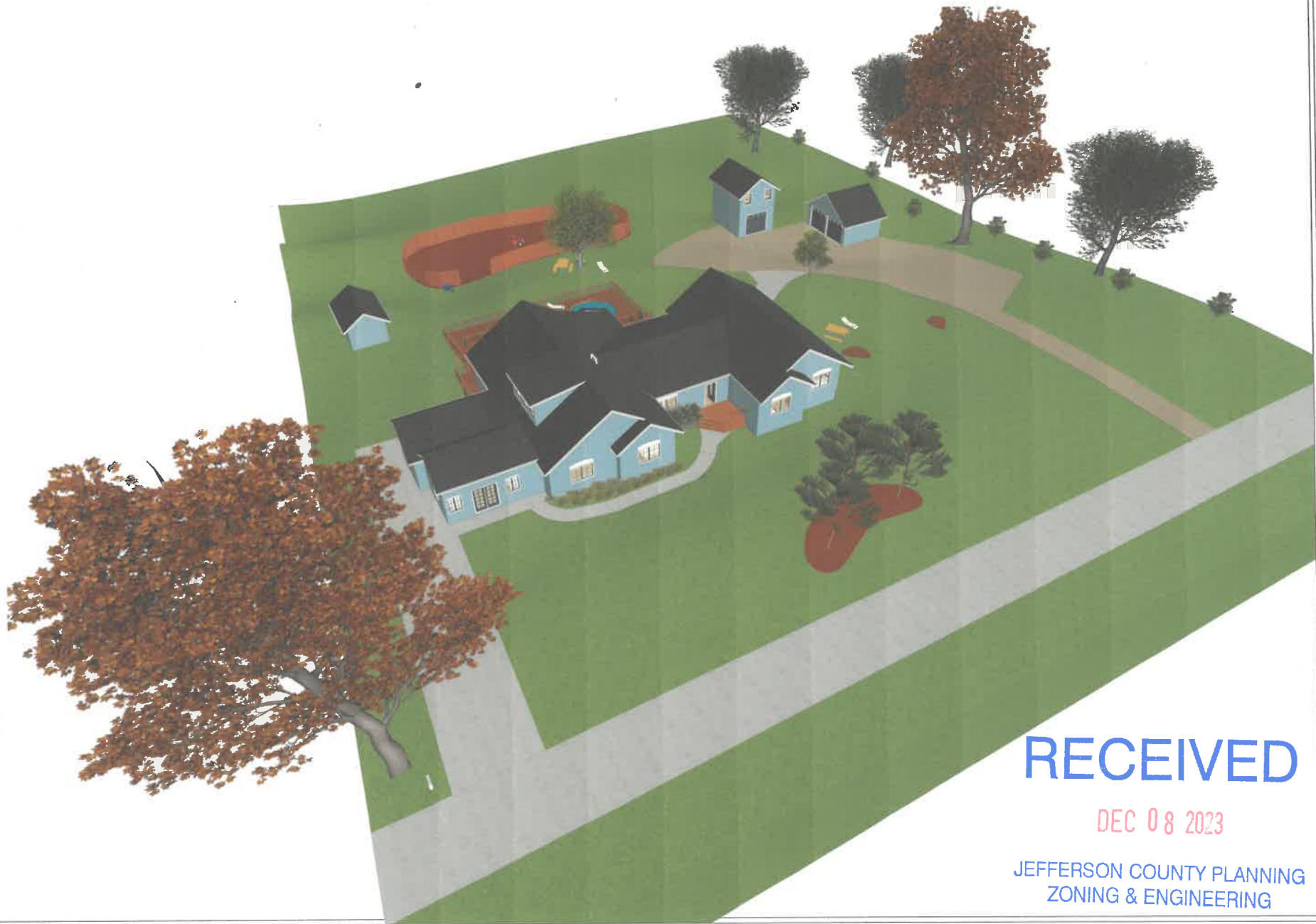
REVISION	DATE	DESCRIPTION

DRAWINGS PROVIDED BY:

DATE:
12/8/2023

SCALE:

SHEET:



RECEIVED

DEC 08 2023

JEFFERSON COUNTY PLANNING
ZONING & ENGINEERING

NO.	DATE	REVISION	DESCRIPTION

DRAWINGS PROVIDED BY:

DATE:

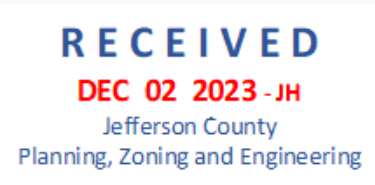
12/7/2023

SCALE:

SHEET:

23-10-CUP Songbird House Assisted Living Facility - Public Comment Index

1. Submitted 2023-12-02 by Farview Farm Residents
2. Submitted 2023-12-07 by Panhandle Legal (Chris Stroeck)



November 29, 2023

To: Jefferson County Board of Zoning Appeals

From: Farview Farm residents (8 of 9)

Subject: Proposed Assisted Living Facility (ALF)/ Conditional Use Permit Application File #23-10-CUP for 217 Deer Trail, Shepherdstown, WV. 25443, Farview Farm Subdivision.

We the undersigned owner/residents of Farview Farm strongly oppose the proposed CUP/ commercial use of 217 Deer Trail, for the following reasons:

1: This project is a violation of the following items of the Farview Farm Conditions and Restrictions, recorded with the county, in plat book 7, page 67, approved Dec. 29, 1987.

Item 1 "All lots in the Farview Subdivision shall be used for residential purposes only and shall not be used for any commercial or manufacturing purposes"

Item 2 "No lot shall contain more than a single one-family residence and no lot shall be subdivided or restructured except with the approval of the Jefferson Co. Planning Comm."

Item 6 "Septic facilities must be approved by the Dept of Health."
(existing septic was not approved for the proposed purpose.)

Item 7 "No mobile home, house trailer or temporary building of any kind shall be constructed or maintained on said property at any time, either temporarily or permanently, for use as living quarters, storage, or for other purposes."

2. The ALF will change the nature of the community from residential to commercial, bringing unwanted sights and sounds to our peaceful/sleepy area and opening the door to commercial use.

3. It will drastically increase, traffic on this unpaved road, including from ALF nursing staff, housekeeping staff, laundry staff or laundry trucks, activities staff, food delivery, pharmacy delivery, trash pick-up, maintenance staff, emergency rescue staff, state review staff, administrative staff, as well as visitors to the residents. This private road simply cannot accommodate this drastic traffic increase without negatively impacting road conditions and safety, particularly in the winter months.

4. The ALF will more than double the number of people living in the neighborhood, something never intended by the original developer and in violation of the Farview Farm Conditions.

5. Our neighborhood is on well water. This will negatively impact our water supply. There appear to be no provisions to mitigate this problem.

6. ALF patients are generally 75 years of age and older and in poor health. As such, they need to be transported to the hospital periodically, and sometimes at the most inconvenient times. The condition of this unpaved road will certainly deteriorate with this drastic traffic increase. There appear to be no provisions to assure that the police, the fire safety staff, and particularly the emergency rescue operation will be able to safely get to the facility in rain or snow to transport the residents to the hospital.

We recognize that assisted living is a valuable and needed service for every community. However, locating an ALF at the end of a dirt road, fifteen miles from the nearest hospital, in a very sparsely populated community, in our opinion, does not appear to be in the best interest of the residents, the families of the residents, or the community.

We, the undersigned, 8 of 9, are unanimous in our opposition to the request to lift the single-family restriction.

Respectfully:

Douglas Auerbach 804-301-2413 Lot - #4

Vernon E. Mower, Jr. 240-678-0298

21 Farview Ln. Shepherdstown, WV

D. & L. Danson

Lot - #5

53 Farview Ln. Shepherdstown, WV

John & Lynette Brown

Lot - #6

111 Deer Trail, Shepherdstown, WV

Dorothy James

Lot - #7

163 Deer Trail, Shepherdstown, WV

Gail Patterson

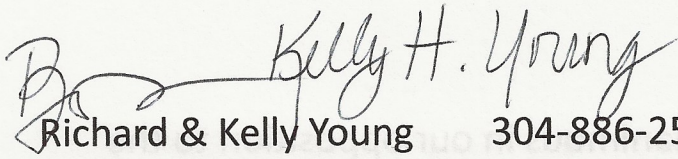
Lot - #9

251 Deer Trail, Shepherdstown, WV

Ellen & Gary Cohen

Lot - #1

174 Farview Ln., Shepherdstown, WV

 Kelly H. Young

Richard & Kelly Young 304-886-2592

Lot - #2

144 Farview Ln., Shepherdstown, WV



Dale & Laura Renninger

Lot - #3

92 Farview Ln., Shepherdstown, WV

Additional points of view/questions are:

1. Has there been an engineering study on the impact this proposed assisted living facility will have on the neighborhood's water supply?
2. What effect will an enlarged septic system for the proposed 16 bed assisted living facility have on the surrounding properties?
3. Is an assisted living facility better served by a location that provides services including paved roads (snow removal) and reliable utilities (water and sewer)?
4. What is the plan in the event that our water supply fails due to increased demand/draw down?
5. What is the plan in the event that an enlarged septic system failure contaminates the neighborhood's water supply and or the adjacent watershed below this property running along Trough Road emptying into the Potomac river?



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

23-10-CUP

Email: zoning@jeffersoncountywv.org

Phone: 304-728-3228

Certified Mail #7015 0640 0004 5288 4893

November 22, 2023

Merlyn M & Gail L Patterson
251 Deer Trl
Shepherdstown, WV 25443

Merlyn M & Gail L Patterson:

The Board of Zoning Appeals will hold a public hearing on **December 14, 2023 at 2:00 p.m.** to consider the following request.

- Meeting Location:** County Commission Meeting Room
Lower level of Charles Town Library (entrance on Samuel St).
200 East Washington St, Charles Town, WV 25414
- Owners:** Blue Iris LLC and Blue Tulip LLC / Attn: Sharon Hallinan, Manager
- Applicant:** Songbird House Assisted Living Residence / Attn: Beata Scott
- Property Location:** Farview Farm, Lot 8, 217 Deer Trail, Shepherdstown, WV
Parcel ID: 09000900350000; Size: 2.52 acres; Zoning District: Rural
- Nature of Request:** Request by Songbird House Assisted Living Residence for a Conditional Use Permit to operate a Nursing or Retirement Home, as defined in Article 2 of the Zoning Ordinance. The proposal consists of providing residential homecare for up to 16 occupants. The application includes a 560 square foot expansion to the existing home to expand the living space. The facility will have up to four (4) caregivers/employees and will utilize an existing parking area. No signs are proposed.

This file is available for review during normal business hours. The online packet will be made available (www.jeffersoncountywv.org) on the Friday prior to the scheduled meeting date.

Pursuant to Section 6.3 of the Zoning Ordinance, the site will be posted with a green and white placard, a legal ad will appear in the November 29, 2023 edition of the Spirit of Jefferson, and all adjoining property owners will be notified of this meeting by certified mail.

Written comments must be submitted no later than one week prior to the meeting to be included in the Board's mailed packet (see County contact information provided in the letterhead). For additional submission options, please contact Staff at 304-728-3228.

Sincerely,

Alexandra Beaulieu,
Deputy Director & Zoning Administrator

Zoning

From: Zoning
Sent: Monday, December 4, 2023 9:19 AM
To: 'VERNON MOWER JR'; Permits
Cc: cstroe@panhandle-legal.com; Auerbach, Douglas
Subject: RE: Application #23-10-CUP 217 Deer Trail Shepherdstown

Good morning,

Please note that our office is in receipt of your email and your comments will be included in the Board's mailed packet for the upcoming December 14, 2023 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, December 8, 2023.

Thank you,

Jennilee Hartman, Zoning Clerk
Office of Planning and Zoning
304-728-3228

From: VERNON MOWER JR <vmower921@comcast.net>
Sent: Saturday, December 2, 2023 10:53 AM
To: Zoning <Zoning@jeffersoncountywv.org>; Permits <permits@jeffersoncountywv.org>
Cc: cstroe@panhandle-legal.com; Auerbach, Douglas <douglasauerbach@msn.com>
Subject: Application #23-10-CUP 217 Deer Trail Shepherdstown

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

Please find attached letter of opposition to the Application #23-10-CUP, signed by all other homeowners in Farview Farm Subdivision.

Also, for your convenience, I have attached the letter from you to Merlyn and Gail Patterson, the adjacent homeowners.

We will all be present at the December 14, 2023 public hearing.

I will hand deliver the original signed letter to your office on Monday, December 4.

thank you
Vernon (Nick) Mower, Jr
21 Farview Lane
240-678-0298

Douglas Auerbach
21 Farview Lane
804-301-2413



23-10-CUP
Copies included in the 12/14/23 BZA packet (jth)

RECEIVED
DEC 07 2023 at 4:48PM
Jefferson County
Planning, Zoning and Engineering

December 7, 2023

Jefferson County Board of Zoning Appeals
Jennilee Hartman, Zoning Clerk
116 East Washington Street, Suite 200
Charles Town, WV 25414
zoning@jeffersoncountywv.org

Re: Application #23-10-CUP / 217 Deer Trail, Shepherdstown

To the Board of Zoning Appeals:

Please be advised that I represent Vernon Mower, Jr. and Douglas Auerbach, owners of certain property located at 21 Farview Lane, in Shepherdstown. My clients strongly oppose the request of the applicant for a conditional use permit to operate a sixteen (16) - bed commercial nursing facility in the Rural District.

The Farview Farm Subdivision is a common interest community with nine (9) lots. *See* Plat attached as Exhibit A. All lots were developed as, and have remained, single-family residential parcels. It is important to first note that all of the other eight (8) lots oppose the requested use. *See* Community Letter attached as Exhibit B.

The Covenants and Restrictions for Farview Farm expressly do not permit the proposed use. More specifically, the Covenants and Restrictions provide, in part, as follows:

1. All lots in the Farview Subdivision shall be used for residential purposes only and shall not be used for any commercial or manufacturing purposes.
2. No lot shall contain more than a single one-family residence and no lot shall be subdivided or restructured except with the approval of the Jefferson Co. Planning Comm.
7. No mobile home, house trailer or temporary building of any kind shall be constructed or maintained on said property at any time, either temporarily or permanently, for use as living quarters, storage, or for other purposes.

See Covenants and Restrictions for Farview Farm attached as Exhibit C.

Undoubtedly, a sixteen (16) – bed nursing facility is a commercial use. It will further violate Covenant #2 as the intended occupants are not part of a single one-family unit. The applicant has requested that the BZA “lift the single family restriction and permit the use for a residential assisted living / care home through a conditional use permit. As you know, the BZA

cannot “lift” this restriction. Should the BZA grant the conditional use, the neighborhood will appeal this decision to the Circuit Court, needlessly using the county’s resources to defend the same. My clients will also seek injunctive relief based upon the identified Covenants.

Regarding the specific request for a conditional use permit, Section 6.3 of the Zoning and Land Development Ordinance (“ZDO”) guides the BZA as follows:

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 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, in part, and as related to this specific application, shall be considered in approving or denying this conditional use permit. My clients hereby respond to these factors as follows:

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

Goal #2 of the Comprehensive Plan is to “Maintain and Enhance the Agricultural and Artisan Economy, Rural Land Uses, Rural Neighborhoods, and Rural Character of the Areas of the County Outside the Preferred Growth Areas.”

Objective #6 for Goal #2 is to “Recognize the vested rights that are present on existing properties in Jefferson County.”

Objective #8 for Goal #2 is to “Recognize the rights and viability of existing rural residential neighborhoods.”

Upon information and belief, the Farview Farm Subdivision is located in an existing and future area limited to rural and residential uses. It is not located in a preferred growth area, nor anywhere close to commercial or high-density uses.

The vested right of all other residents within the Subdivision, as identified in the Covenants and Restrictions, to remain a residential community without commercial uses is indeed an important factor for the BZA to consider.

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.

The proposed use is not compatible in intensity and scale with the neighboring land uses. The community is zoning residential, with all other 2-acre lots being used by one single families. All parcels use well water and septic systems. The proposed use will permit over twenty (20) persons (patients and staff) to use the water and septic systems daily. There is great concern that these systems are not adequate to serve the same. Overused wells can lead to a water shortage. Overused septic systems can lead to groundwater contamination. Upon information and belief, no site plan has been submitted, and the Jefferson County Health Department has not been contacted regarding the well and septic issues. The roads are privately owned, single-lane, and choppy dirt roads, making it difficult for emergency services to easily access the facility. The applicant has proposed a new access route directly off of Trough Road, but this is likely impossible due to local zoning and state requirements.

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

In the event that the conditional use is approved, landscaping and safety buffers have not been addressed. Upon information and belief, a site plan has not been submitted.

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

The proposed use is indeed a commercial nursing facility. The Deed for the subject parcel indicates that it is jointly owned by Blue Iris, LLC and Blue Tulip, LLC. *See* Deed attached as Exhibit D. The use has been approved as an Assisted Living Facility pursuant to state regulations. *See* DHHR letters attached as Exhibit E. Large modular units have been connected to the garage bays, presumably to expand facility space. *See* Photos attached as Exhibit F.

As defined in the ZDO, “commercial” is defined as “[a]ny wholesale, retail or service business activity established to carry on trade whether or not for profit.” ZDO, Pg. 19. Upon information and belief, this nursing facility will operate for profit and is therefore a commercial use.

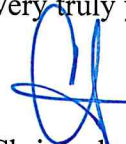
As such, the ZDO provides varying requirements regarding setbacks, buffers, road access, and other considerations for commercial uses. The applicant has failed to identify how these varying requirements have been satisfied. A site plan has not been submitted. It should be noted that the applicant began construction without any of the necessary county permits.

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.**

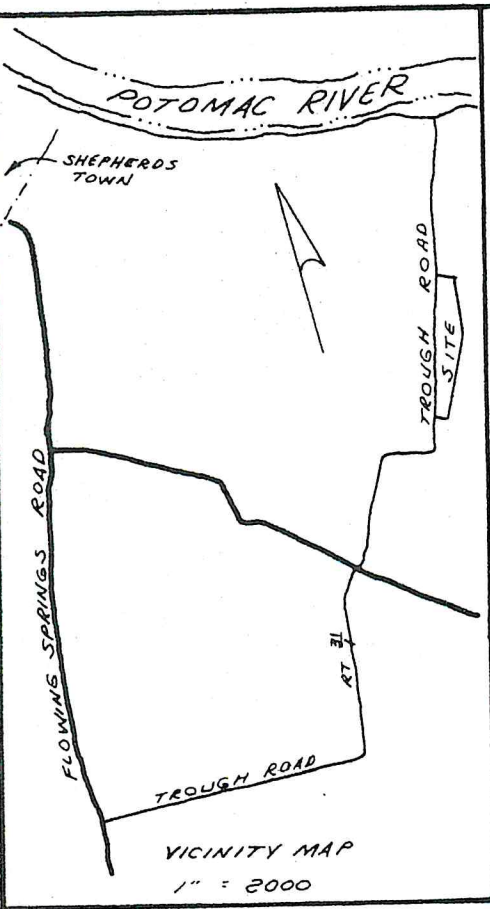
With sixteen (16) patients, the required staff, visitors, deliveries, and emergency services, there is no question that traffic will significantly increase. The roads are privately owned, single-lane and choppy dirt roads. The applicant has failed to provide the required data and failed to show that adequate access exists.

Commercial nursing facilities are permitted, without the need for a conditional use permit, in several zoning districts within the county. My clients and the entire neighborhood appreciate the services such a facility will provide; however, for the many reasons identified herein, it is not appropriate for the rural and residential Farview Farm Subdivision. We appreciate your diligence and consideration.

Very truly yours,



Christopher P. Stroeck, Esq.

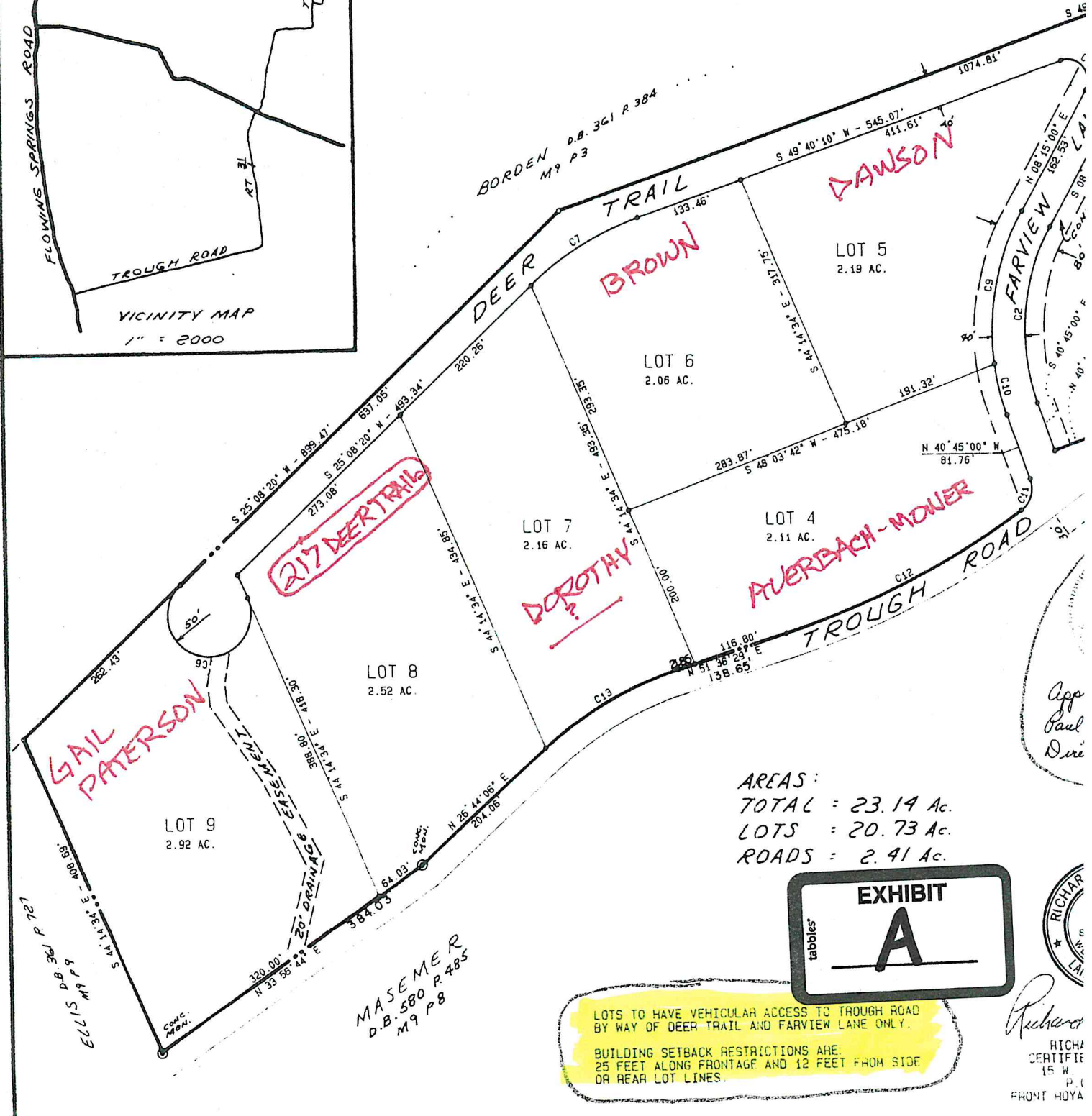


LEGEND

- FOUND PLANTED STONE
 - IRON PIN SET
-

CURVE TABLE

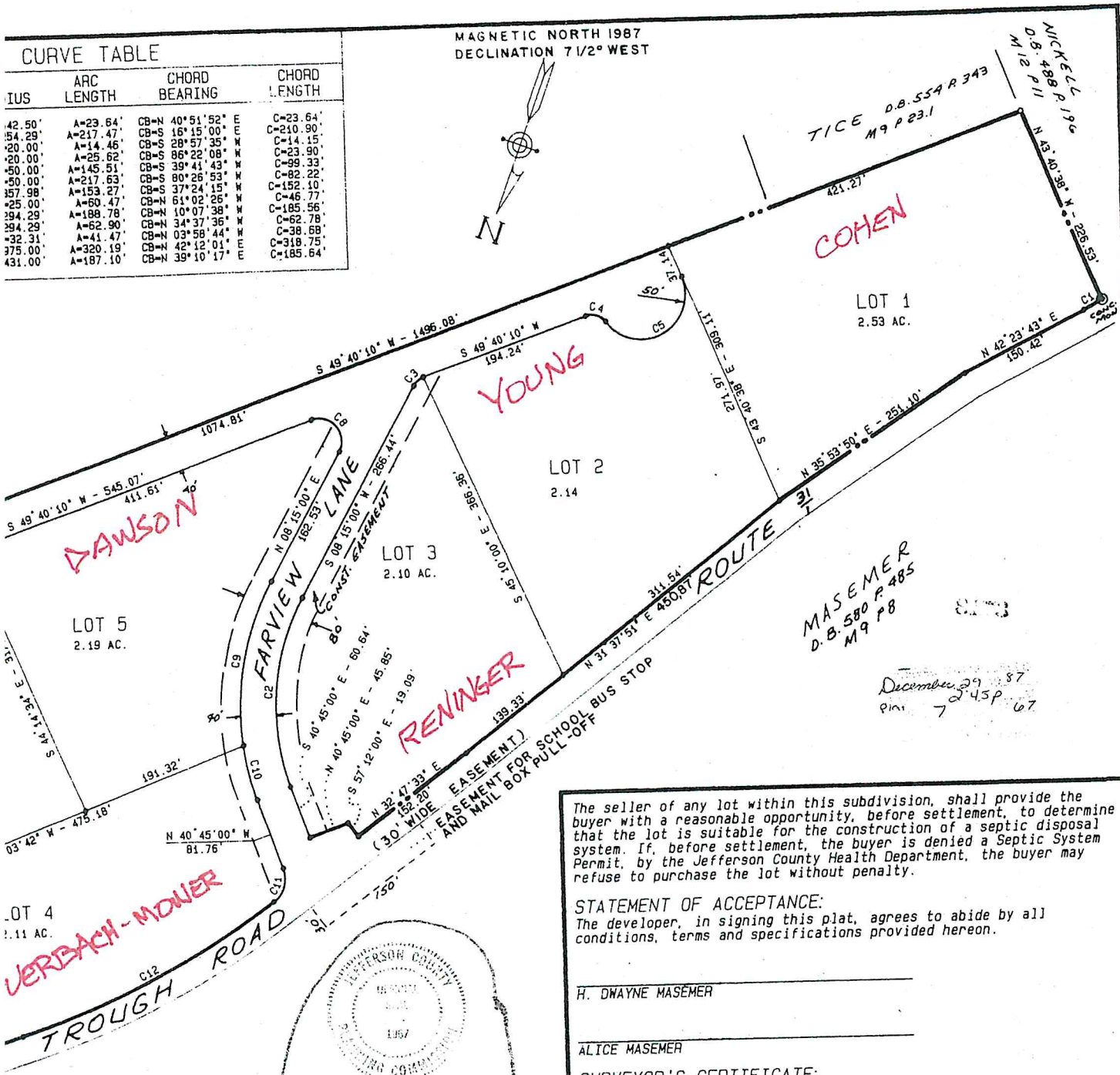
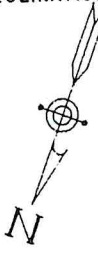
ARC	DELTA ANGLE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH
1.	A=03°03'39"	R=442.50'	A=23.64'	CB=N 40°51'52" E	C=23.64'
2.	A=49°00'00"	R=254.29'	A=217.47'	CB=S 16°15'00" E	C=210.90'
3.	A=44°25'10"	R=20.00'	A=14.46'	CB=S 28°57'35" W	C=14.15'
4.	A=73°23'54"	R=20.00'	A=25.62'	CB=S 86°22'08" W	C=23.90'
5.	A=166°44'42"	R=50.00'	A=145.51'	CB=S 39°41'43" W	C=99.33'
6.	A=249°22'54"	R=50.00'	A=217.63'	CB=S 80°26'53" W	C=82.22'
7.	A=24°31'50"	R=357.98'	A=153.27'	CB=S 37°24'15" W	C=152.10'
8.	A=138°34'50"	R=25.00'	A=60.47'	CB=N 61°02'26" W	C=46.77'
9.	A=36°45'16"	R=294.29'	A=188.78'	CB=N 10°07'38" W	C=185.56'
10.	A=12°14'44"	R=294.29'	A=62.90'	CB=N 34°37'36" W	C=62.78'
11.	A=73°32'33"	R=32.31'	A=41.47'	CB=N 03°58'44" W	C=38.68'
12.	A=18°48'57"	R=975.00'	A=320.19'	CB=N 42°12'01" E	C=318.75'
13.	A=24°52'23"	R=431.00'	A=187.10'	CB=N 39°10'17" E	C=185.64'



CURVE TABLE

ARC LENGTH	CHORD BEARING	CHORD LENGTH
42.50'	A=23.64° CB=N 40° 51' 52" E	C=23.64'
54.29'	A=21.47° CB=S 16° 15' 00" E	C=21.09'
20.00'	A=14.46° CB=S 28° 57' 35" W	C=14.15'
20.00'	A=25.82° CB=S 86° 22' 08" W	C=23.90'
50.00'	A=145.51° CB=S 39° 41' 43" W	C=99.33'
50.00'	A=217.63° CB=S 80° 26' 53" W	C=82.22'
157.98'	A=153.27° CB=S 37° 24' 15" W	C=152.10'
25.00'	A=62.90° CB=N 61° 02' 26" W	C=46.77'
394.29'	A=189.78° CB=N 10° 07' 38" W	C=185.96'
394.29'	A=62.90° CB=N 34° 37' 36" W	C=62.78'
32.31'	A=41.47° CB=N 03° 58' 44" W	C=38.68'
375.00'	A=42.12° CB=N 42° 12' 01" W	C=318.75'
431.00'	A=187.10° CB=N 39° 10' 17" E	C=185.64'

MAGNETIC NORTH 1987
DECLINATION 7 1/2° WEST



TICE D.B. 559 P. 343
M 9 P 23.1

NICKELL
D.B. 488 P. 196
M 12 P 11
N 43° 40' 38" W - 226.53'

LOT 1
2.53 AC.

LOT 2
2.14

LOT 3
2.10 AC.

LOT 5
2.19 AC.

LOT 4
2.11 AC.

MASEMER
D.B. 580 P. 485
M 9 P 8

December 29, 87
Pine 7 2:45 P. 67

The seller of any lot within this subdivision, shall provide the buyer with a reasonable opportunity, before settlement, to determine that the lot is suitable for the construction of a septic disposal system. If, before settlement, the buyer is denied a Septic System Permit, by the Jefferson County Health Department, the buyer may refuse to purchase the lot without penalty.

STATEMENT OF ACCEPTANCE:
The developer, in signing this plat, agrees to abide by all conditions, terms and specifications provided hereon.

H. DWAYNE MASEMER

ALICE MASEMER

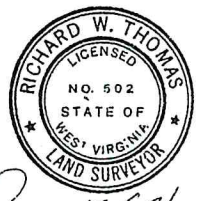
SURVEYOR'S CERTIFICATE:

I hereby certify that this plat and the survey on which it is based, is correct and accurate to the best of my knowledge and belief, and relative error of closure exceeds 1: 10,000.

JEFFERSON COUNTY
PLANNING COMMISSION
1987

Approved 12/29/87
Paul J. Rao
Director of Planning

EAS:
TAL = 23.14 Ac.
TS = 20.73 Ac.
TADS = 2.41 Ac.



Richard W. Thomas
RICHARD W. THOMAS
CERTIFIED LAND SURVEYOR
15 W JACKSON STREET
P.O. BOX 1463
FRONT ROYAL, VIRGINIA 22630

FINAL PLAT SHOWING
FARVIEW FARM SUBDIVISION
SITUATED ON TROUGH ROAD
WITHIN THE SHEPHERDSTOWN DISTRICT
JEFFERSON COUNTY, WEST VIRGINIA

DEVELOPED BY:
H. DWAYNE AND ALICE MASEMER - 8537 GEORGETOWN PIKE, MCLEAN VA. 22101
SCALE: 1" = 100'
DATE: NOV. 13 1987

ACCESS TO TROUGH ROAD
D FARVIEW LANE ONLY.

NOTATIONS ARE
AND 12 FEET FROM SIDE

November 29, 2023

To: Jefferson County Board of Zoning Appeals

From: Farview Farm residents (8 of 9)

Subject: Proposed Assisted Living Facility (ALF)/ Conditional Use Permit Application File #23-10-CUP for 217 Deer Trail, Shepherdstown, WV. 25443, Farview Farm Subdivision.

We the undersigned owner/residents of Farview Farm strongly oppose the proposed CUP/ commercial use of 217 Deer Trail, for the following reasons:

1: This project is a violation of the following items of the Farview Farm Conditions and Restrictions, recorded with the county, in plat book 7, page 67, approved Dec. 29, 1987.

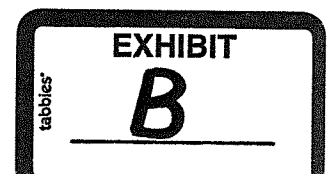
Item 1 *"All lots in the Farview Subdivision shall be used for residential purposes only and shall not be used for any commercial or manufacturing purposes"*

Item 2 *"No lot shall contain more than a single one-family residence and no lot shall be subdivided or restructured except with the approval of the Jefferson Co. Planning Comm."*

Item 6 *"Septic facilities must be approved by the Dept of Health."*
(existing septic was not approved for the proposed purpose.)

Item 7 *"No mobile home, house trailer or temporary building of any kind shall be constructed or maintained on said property at any time, either temporarily or permanently, for use as living quarters, storage, or for other purposes."*

2. The ALF will change the nature of the community from residential to commercial, bringing unwanted sights and sounds to our peaceful/sleepy area and opening the door to commercial use.



3. It will drastically increase, traffic on this unpaved road, including from ALF nursing staff, housekeeping staff, laundry staff or laundry trucks, activities staff, food delivery, pharmacy delivery, trash pick-up, maintenance staff, emergency rescue staff, state review staff, administrative staff, as well as visitors to the residents. This private road simply cannot accommodate this drastic traffic increase without negatively impacting road conditions and safety, particularly in the winter months.

4. The ALF will more than double the number of people living in the neighborhood, something never intended by the original developer and in violation of the Farview Farm Conditions.

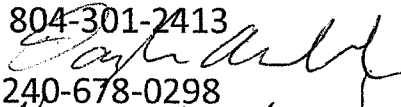
5. Our neighborhood is on well water. This will negatively impact our water supply. There appear to be no provisions to mitigate this problem.


6. ALF patients are generally 75 years of age and older and in poor health. As such, they need to be transported to the hospital periodically, and sometimes at the most inconvenient times. The condition of this unpaved road will certainly deteriorate with this drastic traffic increase. There appear to be no provisions to assure that the police, the fire safety staff, and particularly the emergency rescue operation will be able to safely get to the facility in rain or snow to transport the residents to the hospital.

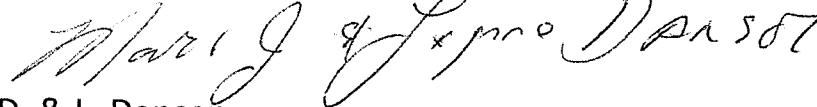
We recognize that assisted living is a valuable and needed service for every community. However, locating an ALF at the end of a dirt road, fifteen miles from the nearest hospital, in a very sparsely populated community, in our opinion, does not appear to be in the best interest of the residents, the families of the residents, or the community.

We, the undersigned, 8 of 9, are unanimous in our opposition to the request to lift the single-family restriction.

Respectfully:

Douglas Auerbach 804-301-2413  Lot - #4

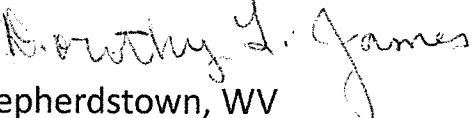
Vernon E. Mower, Jr. 240-678-0298  21 Farview Ln. Shepherdstown, WV



D. & L. Danson Lot - #5


53 Farview Ln. Shepherdstown, WV


John & Lynette Brown Lot - #6

111 Deer Trail, Shepherdstown, WV

Dorothy James  Lot - #7
163 Deer Trail, Shepherdstown, WV

Gail Patterson  Lot - #9
251 Deer Trail, Shepherdstown, WV

Ellen & Gary Cohen  Lot - #1
174 Farview Ln., Shepherdstown, WV


Richard & Kelly Young 304-886-2592

Lot - #2

144 Farview Ln., Shepherdstown, WV

Dale & Laura Renninger

Lot - #3

92 Farview Ln., Shepherdstown, WV

Additional points of view/questions are:

1. Has there been an engineering study on the impact this proposed assisted living facility will have on the neighborhood's water supply?
2. What effect will an enlarged septic system for the proposed 16 bed assisted living facility have on the surrounding properties?
3. Is an assisted living facility better served by a location that provides services including paved roads (snow removal) and reliable utilities (water and sewer)?
4. What is the plan in the event that our water supply fails due to increased demand/draw down?
5. What is the plan in the event that an enlarged septic system failure contaminates the neighborhood's water supply and or the adjacent watershed below this property running along Trough Road emptying into the Potomac river?

FARVIEW FARM

CONDITIONS AND RESTRICTIONS

1. All lots in the Farview Subdivision shall be used for residential purposes only and shall not be used for any commercial or manufacturing purpose.
2. No lot shall contain more than a single one-family residence and no lot shall be subdivided or restructured except with the approval of the Jefferson Co. Planning Comm.
3. Any dwelling erected on any lot shall be in a traditional or country style and shall contain a minimum of 1500 square feet of living space exclusive of basement, attic, garage, porch and carport.
4. No part of any building shall be erected nearer than 50 ft. to the side of any public road or any private roadway shown on the recorded Farview plat.
5. No building shall be constructed thereon with exposed concrete or cinderblock walls. All must be covered with permanent facing materials.
6. Septic facilities must be approved by the Dept. of Health.
7. No mobile home, house trailer or temporary building of any kind shall be constructed or maintained on said property at any time, either temporarily or permanently, for use as living quarters, storage, or for other purposes.
8. No chickens or poultry, swine, sheep, or other farm animals or wild animals shall be kept on the land, but this shall not prohibit the keeping of horses, ponies and household pets NON-COMMERCIALY.
9. Each lot must be maintained (mowed), no unused or abandoned automobiles, junk or rubbish of any kind shall be kept on any lot. Trash and garbage shall be kept in closed containers and disposed of on a regular basis.

10. All electrical power lines and telephone lines shall be placed underground.
11. All pipes shall be in-ground.
12. All lots are subject to the easements and right-of-way specified on the recorded Farview plat. As long as the interior roadways continue in private ownership, the lot owners bind and obligate themselves, their respective heirs, personal representatives and assigns, to share equally in the cost of maintaining said roadways, and to abide by the decision of a majority of owners as to what extent repairs shall be necessary and further consent to be borne equally by the various lot owners. This covenant applies to maintenance only and not to improvements. No right-of-way for roadway purposes shall be granted by any lot owner across any lot shown on said plat.
13. Enforcement of these covenants and restrictions against any person violating the same shall be by proceedings at law or in equity, and may be filed by the developers, or by any one or more of the other lot owners. Invalidation of any part of these covenants by court order shall in no wise affect any other provision of the covenants which shall remain in full force and effect.



BLUE IRIS LLC
217 DEER TRAIL
SHEPHERDSTOWN WV 25443-5033

Jefferson County
Jacqueline C Shadle, Clerk
Instrument 20230003543
04/07/2023 @ 02:46:07 PM
DEED
Book 1300 @ Page 79
Pages Recorded 5
Recording Cost \$ 52.00
Transfer Tax \$ 2597.00
Farm Land Tax \$ 1166.00

This document was prepared by:

Tasha Keller Catrow, Esq.
Catrow Law PLLC
300 Foxcroft Avenue, Suite 200
Martinsburg, WV 25401

After recording please return to:
Blue Iris LLC and Blue Tulip LLC
217 Deer Trail
Shepherdstown, WV 25443

THIS DEED, made and entered into this 4th day of April, 2023, by and between Elmer F. Buckler, III, hereinafter party of the first part, and Blue Iris LLC, a West Virginia limited liability company and Blue Tulip LLC, a Nevada limited liability company, hereinafter parties of the second part.

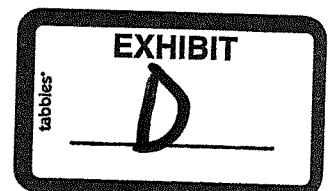
WITNESSETH: That for and in consideration of payment of \$530,000.00, the receipt of which is hereby acknowledged, the party of the first part does hereby grant, bargain, sell and convey, a 20% interest in the whole to Blue Tulip LLC and an 80% interest in the whole to Blue Iris LLC, and by these presents has granted, bargained, sold and conveyed, to and unto the said parties of the second part, as tenants in common, in fee simple, with covenants of general warranty, all of that certain lot or parcel of real estate, with the improvements thereon and the appurtenances thereunto belonging, situate, lying and being in Shepherdstown District, Jefferson County, West Virginia, and more particularly described as follows:

SMA / SMA

1

230145

Catrow Law PLLC
300 Foxcroft Avenue, Suite 200
Martinsburg, WV 25401
304-579-1211



Lot No. Eight (8), containing 2.52 acres, more or less, of the Fairview Farm Subdivision on Old Trough Road in Shepherdstown District, Jefferson County, West Virginia, as said lot is described as on a plat of record in the Office of the Clerk of the County Commission of said County in Plat Book Seven (7) at Page 67, to which reference is hereby made for a more particular description of said real estate, being the same real estate conveyed to the Grantor by deed dated July 15, 1988, from Dwayne Masemer and Alice B. Masemer, recorded in Deed Book 609, at Page 284.

CURRENT PROPERTY ADDRESS: 217 Deer Trail, Shepherdstown, WV 25443

AND BEING the same real estate conveyed to Elmer F. Buckler, III by a deed from Flora T. Buckler, dated March 27, 2023 and recorded in the aforesaid Clerk's Office in Deed Book 1299 at Page 451. And being the same real estate conveyed to Elmer F. Buckler, III and Flora T. Buckler by Deed dated July 30, 1998 from Dennis J. Kubicki and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia in Deed Book 910 at Page 735.

THIS CONVEYANCE IS SUBJECT TO and TOGETHER WITH the following: all covenants, restrictions, conditions, easements, reservations, rights-of-way, public utility easements, and other matters of record or in existence, to the extent valid, subsisting, and enforceable, including but not limited to those plat matters of record in the aforementioned Clerk's office in Plat Book 7 at Page 67; those covenants, conditions, and restrictions of record in the aforementioned Clerk's Office; and those easements or rights-of-way of record in the aforementioned

Clerk's office; any lien of taxes for the current year and subsequent years, accrued but not yet payable; matters that would be shown by an accurate survey and inspection of the property; zoning requirements, statutes, rules, orders, restrictions, regulations, and ordinances of governmental agencies or their instrumentalities relating to the property, the buildings located thereon, their construction and uses, in force on the date hereof (if any such exist); and, all roads and legal highways.

It is the intention of the Grantor to convey title to the Grantees as tenants in common with Blue Tulip LLC possessing a 20% interest in and to the whole and Blue Iris LLC possessing an 80% interest in and to the whole.

DECLARATION OF CONSIDERATION OR VALUE

Under the penalties of fine and imprisonment as provided by law, the undersigned party of the first part does hereby declare that the total consideration of the property transferred by the document to which this declaration is appended is Five Hundred Thirty Thousand Dollars and 00/100 cents (\$530,000.00).

The party of the first part further hereby does certify that, under the penalties of perjury, this transaction is not subject to the Withholding Tax on West Virginia Source Income of Non-Residents, as the Grantor is a resident of the State of West Virginia, or, alternatively, the property herein conveyed was the principal residence of the Grantor as defined in IRC §121.

WITNESS the following signature and seal:

Elmer F. Buckler III
Elmer F. Buckler, III

STATE OF South Carolina

COUNTY OF Oconee, TO-WIT:

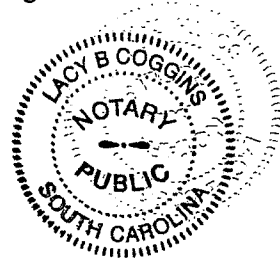
Lacy Coggins, a notary public in and for the

County and State aforesaid, do certify that Elmer F. Buckler, III, whose name is signed to the writing hereto annexed, dated this 4 day of April, 2023, has this day acknowledged the same before me in my said County.

Given under my hand this 4 day of April, 2023.

Lacy Coggins
Notary Public

My commission expires: July 28, 2032





STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Office of Health Facility Licensure and Certification

Jeffrey H. Coben, MD
Interim Cabinet Secretary

Sheila Lee
Interim Inspector General

April 18, 2023

Sharon Hallinan
Songbird House
20383 Middlebury Street
Ashburn, VA 20147

RE: Site Inspection
OHFLAC #2023-032

Dear Ms. Hallinan:

A site inspection was conducted on April 12, 2023 for a proposed Assisted Living facility to be located at 217 Deer Trail, Shepherdstown, WV. This site is approved.

Please submit a full set of drawings by a WV licensed architect which includes architectural, mechanical, electrical, and plumbing, to scale for review by our office of the proposed construction.

Please address the following items in your plans:

1. Addition of an ADA bedroom and bathroom/shower room on the 1st floor area and ADA entrance/exit in your plans.
2. This site is not sprinkler protected.
3. Laundry area will need separation of soiled and clean laundry and mechanical ventilation on the soiled side.

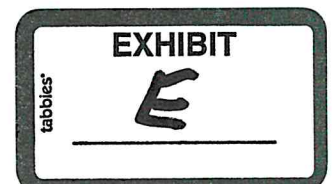
Approval of your plans is necessary prior to beginning construction at this site.

If you have any questions, please contact me at 304-352-0822.

Sincerely,

Forest "PJ" Cooper
Life Safety Program Manager

cc: Assisted Living Program - OHFLAC





STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Health Care Authority

Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary

Stacy L. Pridemore
Executive Director

August 17, 2023

Sharon Hallinan/Property Manager
Songbird house, LLC
20383 Middlebury St
Ashburn, VA 20147

Subject: **Songbird House, LLC**
CON File #23-9-12751-X

Dear Ms. Hallinan:

On August 4, 2023, the West Virginia Health Care Authority (Authority) received the exemption application submitted by Songbird House, LLC for the development of a 16-bed Assisted Living Facility located at 217 Deer Trail, Shepherdstown, Jefferson County, West Virginia. In providing notification, the Applicant also submitted the required exemption application pursuant to W. Va. Code § 16-2D-11.

In support of the exemption, the following information was provided regarding compliance with W. Va. Code St. R. § 65-29-11(c)(24), which states "Assisted living facilities and services".

The Authority has reviewed the exemption application and determines that the Applicant has adequately addressed and is consistent with the criteria contained in W. Va. Code St. R. § 65-29-1, *et seq.* The Authority further determines that the project, as described in the exemption application, meets the qualifications for the exemption for which the applicant has applied.

Exemption approval issued by the West Virginia Health Care Authority (WVHCA)

for a proposed health service that is exempt from the Certificate of Need process does not guarantee licensure. The provider must meet the standards and applicable laws, rules, and regulations when submitting an application for licensure to OHFLAC.

The WVHCA verifies with OHFLAC the current licensed bed count of the county specific to the proposed project at the time the exemption application is received/approved by the WVHCA. This exemption approval does not guarantee the availability of beds in the county.

Sincerely,

A handwritten signature in cursive script that reads "Stacy Pridemore".

Stacy L. Pridemore
Executive Director



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Office of Health Facility Licensure and Certification

Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary

Christopher G. Nelson
Interim Inspector General

August 28, 2023

Sharon Hallinan
20383 Middlebury St.
Ashburn, VA 20147

RE: OHFLAC #2023-032

Dear Ms. Hallinan:

The plans that were submitted on June 18, 2023 for the renovation of the house and garage space into a 16 bed Assisted Living facility called Songbird House located at 217 Deer Trail, Shepherdstown, WV, have been reviewed and appear to be acceptable and construction may begin.

Please provide this office with the following during the construction phase:

After you **conduct the Punch List Inspection** and issue **Substantial Completion**, submit a request (form available OHFLAC.wvdhhr.org) to this office for a **Pre-Opening Inspection***. Now and where appropriate the following documents and certified test results will be required for:

- A. **AIA Substantial Completion Signed by All Parties**
- B. **Certification for Electrical Work**
- C. **Sprinkler System Certification**
- D. **Fire Alarm System Certification**
- E. **HVAC Test and Air Balance Report**
- F. **State Fire Marshal Final Inspection Report**
- G. **Certification of Interior Finishes (Flame Spread Rating)**

Songbird House
August 25, 2023
Page 2

It should be noted that approval of these documents for construction in no way "approves" or "certifies" the design for full conformance with relevant state and federal regulations. It is the responsibility of the designer and owner to verify all applicable requirements.

Renovated areas must be isolated from occupied areas during construction using airtight barriers, and exhaust airflow shall be sufficient to maintain negative air pressure in the construction zone. Air quality requirements at areas not being renovated should be maintained at existing levels. Precautions must be taken always to maintain patient safety and health standards.

If you have any questions, please contact me at 304-352-0822.

Sincerely,

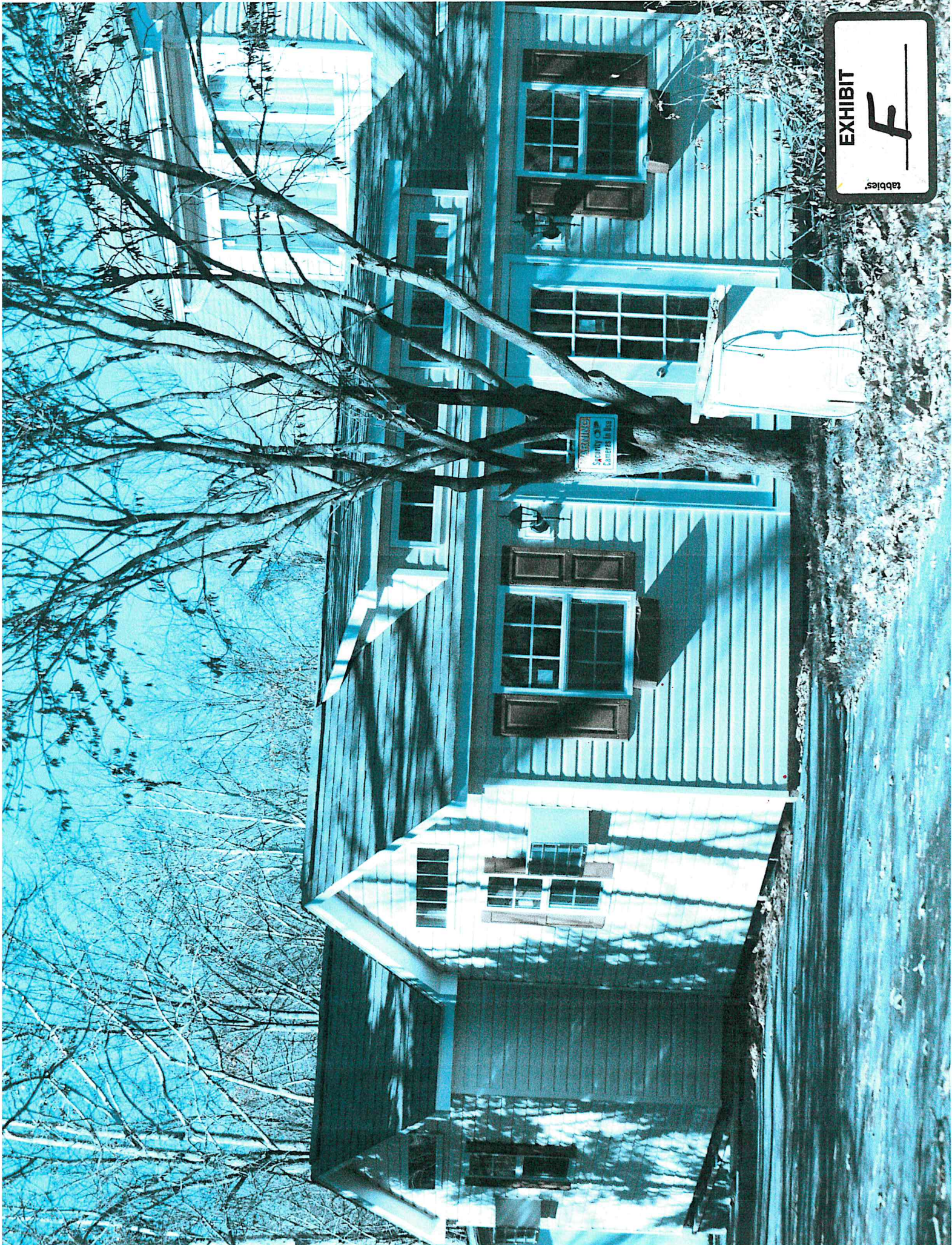
Forest P. Cooper

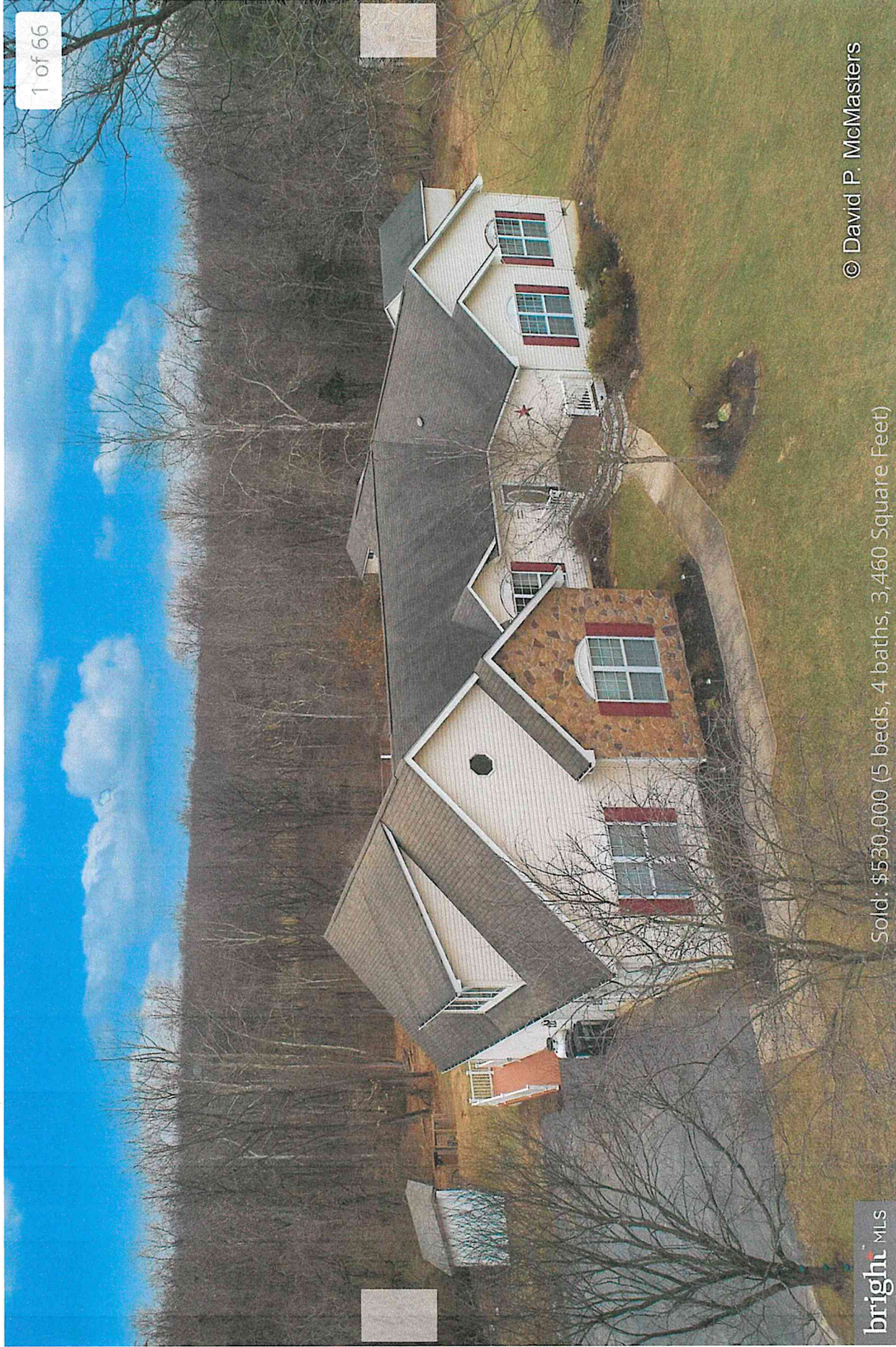
Forest "PJ" Cooper
Life Safety Program Manager

FPC/scb

Cc: Assisted Living Program
Office of Health Facility Licensure and Certification

EXHIBIT
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1 of 66

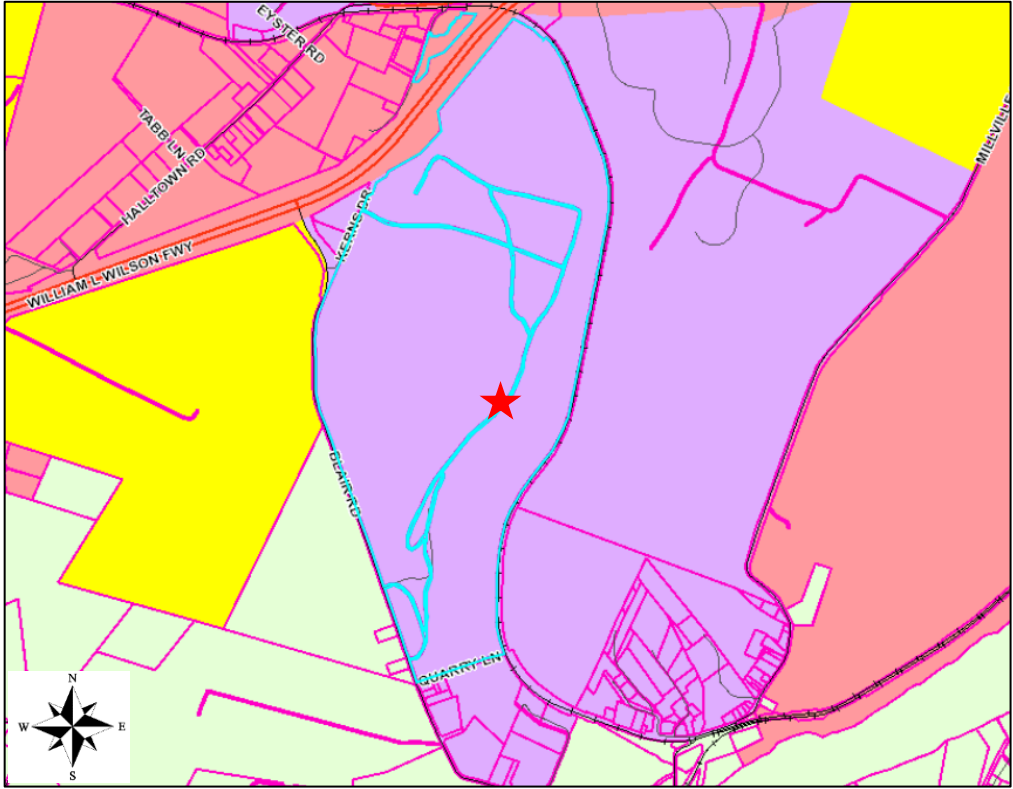
brighi MLS

Sold: \$530,000 (5 beds, 4 baths, 3,460 Square Feet)

© David P. McMasters

Staff Report
 Jefferson County Board of Zoning Appeals
 December 14, 2023
23-38-ZV Millville Quarry Variance Request

Item #4 Variance request from Section 5.6B to reduce the distance requirement for Industrial Uses from 1000' to 300' along the southern property line to allow for the construction of an asphalt plant accessory to the quarry operation.

Owner:	Millville Quarry, Inc.
Consultant:	P.J. Raco Consulting, LLC / Attn: Paul Raco
Parcel Information and Zoning District:	<p style="text-align: center;">165 Bradstone Lane, Harpers Ferry, WV Parcel ID: 04001100220000; Size: 272± acres Zoning District: Industrial Commercial</p> 
History:	S04-14 Bradstone - Shenandoah Casting Plant
Waivers/Variations:	04/21/04: BZA approved a variance request from Section 5.6B to reduce the distance requirement from 1,000' to 200' along the western property line for a concrete plant (File #04-25-ZV).
Approved Activity:	Millville Quarry
Site Visit Conducted:	Yes – 12-06-2023

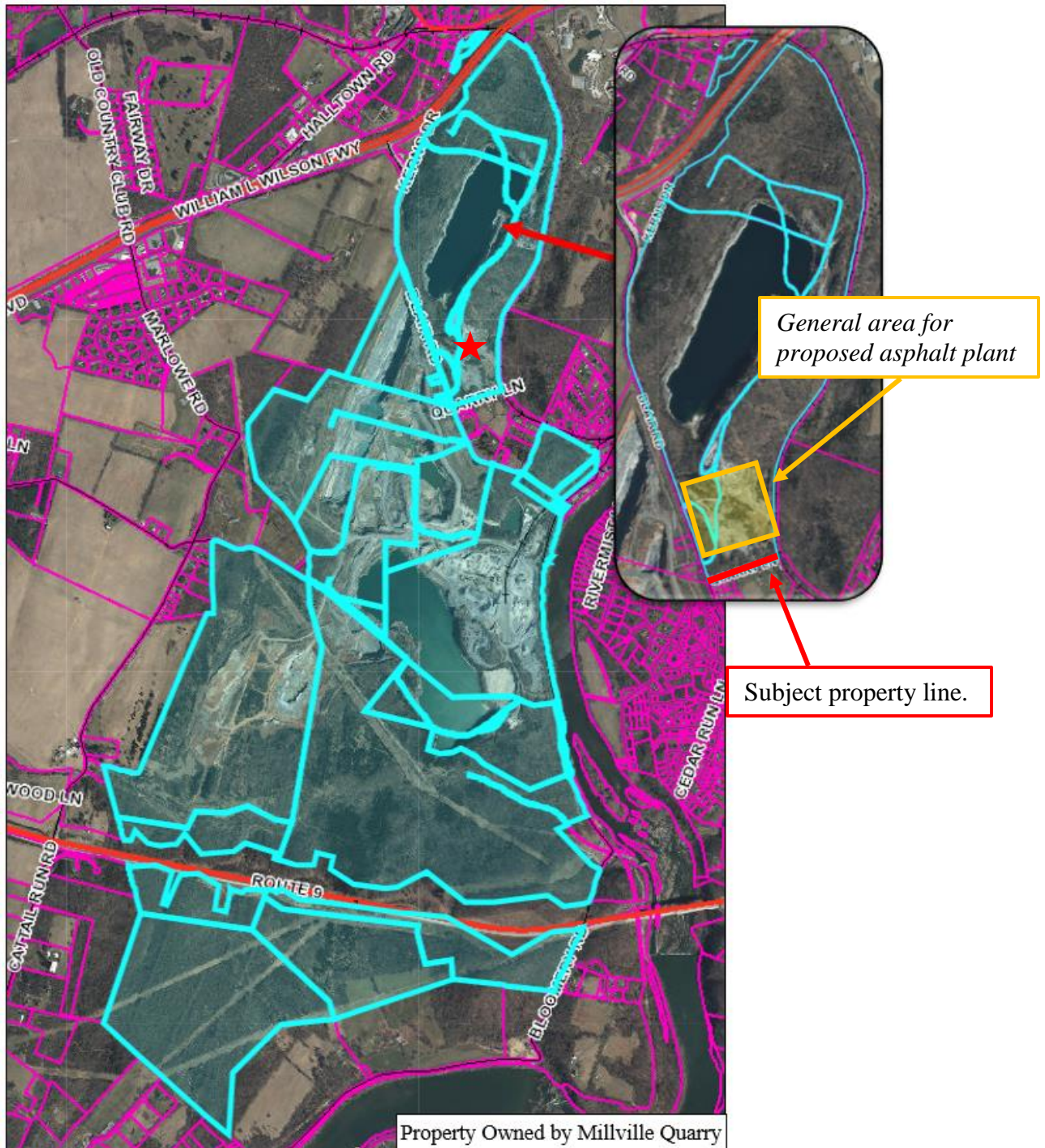
Staff Overview

The subject request pertains to the construction of a new asphalt plant facility and associated stockpile areas. The applicant represented that the State Department of Environmental Protection permitting process for an Asphalt Plant requires a 300' setback; therefore, the applicant is requesting to reduce the 1,000 foot distance requirement required by the Zoning Ordinance down to 300' along the southern property line, adjoining residential properties.

Staff Report
Jefferson County Board of Zoning Appeals
December 14, 2023
23-38-ZV Millville Quarry Variance Request

The purpose of non-residential site development standards is typically to lessen the impact that a non-residential use (*in this instance, a heavy industrial use*) may have on an adjoining residential use, including the visual impact created from the glare of exterior lights, noise generated from the land use, etc.

Exact dimensions of the asphalt facility and stockpile areas have not been determined but the estimated square footage of the proposed asphalt facility is 100,000 square feet. Including the stockpile areas, it is anticipated that approximately 300,000 square feet of area will be utilized in the proposed project.



Staff Report
Jefferson County Board of Zoning Appeals
December 14, 2023
23-38-ZV Millville Quarry Variance Request

Deed research appears to indicate that the subject parcel was used for quarrying stone as early as 1908, when a portion of the property was leased to Blair Limestone Company (*DB 102 @ PG 18*). Subsequent deeds indicate that various entities subleased the property for quarrying purposes. The current property owner, Millville Quarry, Inc., purchased the property in 1998 (*DB 889 @ PG 271*).

In 2004, it was determined that a batch plant operation could be established on the subject parcel as an accessory use to the quarry operation. The property owner at the time was granted a similar variance to reduce the 1,000 sf distance requirement down to 200' along the western property line (*File #04-25-ZV*). The applicant subsequently processed a site plan (*File #S04-14*) and obtained a building permit / zoning certificate (*File #05-116*). Based on a site visit conducted December 6, 2023, it appears that the batch plant which was constructed in 2004 is still utilized (see staff photo below).

The applicant represented that the proposed asphalt plant will replace an existing, now outdated (though still operational), asphalt facility located on a separate parcel owned by Millville Quarry, Inc. (page 3 of application). Once the new facility is constructed, the applicant stated that the existing plant will be abandoned (page 3 of application).

Existing concrete batch plant located on subject parcel.
Applicant states this plant is used to cast concrete pavers and other concrete products (page 5 of application).



Staff Report
Jefferson County Board of Zoning Appeals
December 14, 2023
23-38-ZV Millville Quarry Variance Request



*Above: Google Street View Picture Taken July 2021 – existing vegetation at the corner of Blair & Quarry Road
Below: Staff Site Visit Photo Taken December 2023 – existing vegetation at the corner of Blair & Quarry Road*



Staff Report
Jefferson County Board of Zoning Appeals
December 14, 2023
23-38-ZV Millville Quarry Variance Request



Subject property line - view from Quarry Road



Subject property line - view from Quarry Road

Staff Report
Jefferson County Board of Zoning Appeals
December 14, 2023
23-38-ZV Millville Quarry 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 300' unscreened buffer yard. No structures, stored materials, or vehicular parking shall be permitted within the buffer yard. The required buffer screen shall be installed within the 300' unscreened buffer area, along the property line, in accordance with Appendix B and Standard Detail M-52.

Section of Ordinance to be Considered

Section 5.6 Industrial – Commercial (IC) District (attached)

Section 5.5 Reserved²³

Section 5.6 Industrial - Commercial (IC) District^{23, 32}

The purpose of this district is to provide locations for manufacturing, processing, and commercial uses which may require extensive transportation and central or public water and sewer services. It is not the purpose of this district to encourage the use of land within the district for retail services; however, it is anticipated that there may be areas or locations where retail services can be reasonably and logically considered due to their relationship with other uses existing within the district, as well as their relationship with the district boundary line or the configuration of the property and the relative scale of the project.

A. Principal Permitted and Conditional Uses^{23, 32}

1. Uses that are permitted, conditional, and not permitted in this district shall be as indicated in Appendix C, Principal Permitted and Conditional Uses Table and this section.^{27, 32}
2. Uses shown as conditional uses (CU) for this district in Appendix C, Principal Permitted and Conditional Uses Table shall be subject to the requirements of this section and to review and approval by the Board of Zoning Appeals per the requirements of this Ordinance.^{27, 32}

B. The following heavy industrial uses shall require review and approval of the Board of Zoning Appeals under the Conditional Use Permit process and shall not be located less than 1000 feet from any Residential property line or property listed on the National and State Historic Register/Survey.³²

1. Bituminous concrete mixing and recycling plants
2. Concrete and ceramic products manufacture, including ready mixed concrete plants
3. Petroleum products refining or storage (subject to the requirements for such standards in Article 8)²³
4. Commercial sawmills
5. Salvage Yards (subject to the Jefferson County Salvage Yard Ordinance)
6. Garbage or dead animal reduction or processing
7. Slaughterhouses, Stockyards
8. Acid or heavy chemical manufacturer, processing or storage
9. Cement or lime manufacture
10. Explosive manufacture or storage
11. Foundries and/or casting facilities
12. Mineral extraction, mineral processing
13. Jails and Prisons (subject to requirements for this use in Article 8)²³

C. Height Regulations

No structure shall exceed 75 feet in height except as provided in Section 9.2.

D. Development Standards

1. Setbacks, height, and other site development standards shall be as indicated in Appendix A, Residential Site Development Standards, and Appendix B, Non-Residential Site Development Standards, except as provided elsewhere in this Ordinance.^{5, 23, 27}
2. Compliance with Section 4.11 and Section 8.9A(1-9)^{7, 23}

3. Distance Requirements
 - a. Commercial shall comply with Section 4.6B
 - b. Industrial shall comply with Section 4.6A^{7, 23}

E. Lot Area

A minimum lot size of three acres shall be required for any industrial use unless the site is located in an approved Industrial Park.²³

F. Additional Commercial and Industrial Design Standards²⁷

1. Commercial Design Standards^{23, 27}

- a. Impervious site coverage (parking areas, building areas and other paved surfaces) shall not be greater than 80% of the gross area of the site.
- b. Adequate provision shall be made for storage and collection of refuse. Refuse containers are subject to Section 4.11F.²⁷
- c. Permeable areas of the site shall be planted with ground cover, shrubs and trees.
- d. Lighting shall be provided for all parking areas which will receive night use. Such lighting shall be directed to the parking area and be shielded to prevent adverse glare on adjacent public highways, streets and properties.

2. Industrial Design Standards

- a. Impervious site coverage (parking areas, building areas and other paved surfaces) shall not be greater than 90% of the gross area of the site.²³
- b. Adequate provision shall be made for storage and collection of refuse, subject to Section 4.11F.²⁷
- c. Permeable areas of the site shall be planted with ground cover, shrubs or trees if subject to Section 4.6.

Section 5.7 Rural (R) District^{23, 32}

The purpose of this district is to provide a location for low density single family residential development in conjunction with providing continued farming activities. This district is generally not served with public water or sewer facilities, although certain size developments processed under the cluster provision of Section 5.7D(2) may choose to do so. A primary function of the low density residential development permitted within this section is to preserve the rural character of the County and the agricultural community. All lots subdivided in the Rural District are subject to Section 5.7D. The Envision Jefferson 2035 Comprehensive Plan recommends that the cluster provision of the Zoning Ordinance be the preferred method of residential development in the Rural zoning district.^{8, 23, 32}

A. Principal Permitted and Conditional Uses^{23, 27, 32}

1. Uses that are permitted, conditional, and not permitted in this district shall be as indicated in Appendix C, Principal Permitted and Conditional Uses Table.^{27, 32}
2. Uses shown as conditional uses (CU) for this district in Appendix C, Principal Permitted and Conditional Uses Table shall be subject to review and approval by the Board of Zoning Appeals in accordance with Section 6.3 of this Ordinance.^{27, 32}

B. Minimum Lot Area, Lot Width and Yard Requirements²³



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: 23-382V
 Staff Initials: gm
 Meeting Date: 12-14-23
 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: Millville Quarry Inc
 Mailing Address: 6211 N Ann Arbor Road, Dundee, MI 48131
 Phone Number: c/o Paul 304/676-8256 Email: pjraco.consulting@gmail.com

Applicant Contact Information

Name: W-L Construction and Paving, Inc.
 Mailing Address: 125 John J Thomas Way, Charles Town, WV 25414
 Phone Number: c/o Paul 304/676-8256 Email: pjraco.consulting@gmail.com

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

Name: Joe Knechtel, P.E. Potesta & Associates, Inc P.J. Raco Consulting, LLC
 Mailing Address: 15 S Braddock Street, Winchester, VA 22601
 Phone Number: 540.450-0180 Email: kjknechtel@potesta.com

Physical Property Details

Physical Address: Corner of Bradstone Lane and Blair Road 165 Bradstone Lane
 City: Harpers Ferry State: WV Zip Code: 25425
 Tax District: Harpers Ferry Map No: 11 Parcel No: 22
 Parcel Size: 272+- Acres Deed Book: 889 Page No: 271

Zoning District (please check one)

Residential Growth (RG) <input type="checkbox"/>	Industrial Commercial (IC) <input checked="" type="checkbox"/>	Rural (R) <input type="checkbox"/>	Residential- Light Industrial- Commercial (R-LI-C) <input type="checkbox"/>	Village (V) <input type="checkbox"/>	Neighborhood Commercial (NC) <input type="checkbox"/>	General Commercial (GC) <input type="checkbox"/>	
<p align="center">RECEIVED</p> <p align="center">NOV 17 2023</p> <p align="center">JEFFERSON COUNTY PLANNING ZONING & ENGINEERING</p> <p align="center"><small>Place Received Date Stamp Here</small></p>			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"/>

Millville Quarry, Inc
W-L Construction and Paving Inc
Replacement Asphalt Plant
Article 5, Section 5.6(B)
1000' Setback to Residential Property
Jefferson County Board of Zoning Appeals
November 17, 2023

Brief Description

The Ordinance has several setback provisions for Asphalt Plants. There is a general setback for all industry of 200' from residential uses and then another distance requirement for several uses such as Concrete and Asphalt Plants that is 1000'. The State DEP Permitting process for an Asphalt Plant is 300'. This Application seeks the application of the State's 300' distance requirement from the residential uses to the south. This State Permit is pending and should be issued by the time this BZA Meeting is held. If issued, it will be presented at the meeting if not sooner.

The Quarry owns over 1900 acres for Heavy Industrial Mineral Extraction. The uses of Concrete Plants and Asphalt Plant have been determined to be Accessory Uses to the operation of an active quarry. This Plant will be located on a quarry property also Zoned for Heavy Industrial Uses as is the residentially used property to the south of this property. So, the proposed use is a Principal Permitted Use, but the existing residential use is considered a nonconforming use under the current Zoning Ordinance in this Zoning District.

The proposed Plant is intended to replace an existing Asphalt Plant on Millville Quarry that is reported to be over 50 years old. This new Plant will replace that plant and the existing Plant will be abandoned once the new Plant is approved. The new Plant will be updated utilizing current Federal, State, and Local Laws including Air Quality, Water Quality and Discharge, Health, and Highway Approvals.

The new Plant will be located where there is heavy existing buffer existing between the site and the uses to the South. It will be located within the existing buffer on an existing and long established 18-44 inch compacted aggregate base that has been left after years of being used for staging area and other uses.

Finally, the Prosecuting Attorney's Office has long maintained in other quarry zoning matters through the years since Zoning was adopted in 1988 in Jefferson County, that Quarrying, Mineral Extraction, Complete Use of Natural Resources and Protection of Existing, Expansion, and Future Satellite Industrial and Manufacturing Uses appear to be addressed in WV Code 8A-7-10(c) and (e) as it relates to Zoning in the West Virginia State Code (attached). This section replaces the similar long time existing section that was provided for in Previous 8-24-50 of the State Code that was in place until replaced by 8A in 2004. This is provided as a reference for the Board to seek advice from the Board's Counsel if deemed necessary. It is only provided for your counsel as a notation and is not a legal opinion.

Millville Quarry, Inc.
W-L Construction and Paving, Inc
Article 5, Section 5.6(B)
1000' Setback to Residential Property
Jefferson County Board of Zoning Appeals
November 17, 2023

Four Criteria

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

This property and the adjacent residential property are all Zoned Industrial-Commercial. The intent of this zone is to allow heavy industrial uses. In this case the Asphalt Plant, Quarry Operation, and all Accessory Uses are the Principal Permitted Uses in this Zone, and any residential uses are actually the nonconforming uses. This new Asphalt Plant will need to receive approved Department of Environmental Protection Air and Water Permits and then the Plant will have to have fully Professionally Engineered Site Plan approved by the County that addresses Health and Highway Permits, along with SWM Approvals. The Project will also need an NPDES Permit for both Industrial and Storm Water Discharge through the DEP during this phase. These permits are all intended to ensure public health, safety and welfare of the County.

Furthermore, the proposed Asphalt Plant will replace an out of date (built approximately 50 years ago) Asphalt Plant on the Millville Quarry Inc Properties. This will abandon an existing Plant in favor of a new Plant meeting current DEP, State, and County Regulations. This area is an active and taxpaying industry for many, many years in Jefferson County that has provided for an extraordinary amount of employment through the years. The County continues to recognize this industrial use in the official Future Land Use Map/Guide in the Jefferson County Comprehensive Plan both on the subject parcel and the adjacent parcels to the south.

Finally, as stated in the description, according to the Jefferson County Assessor's records, Millville Quarry, Inc owns over 1,900 acres in this area all of the way to the south side of Route 9. Furthermore, as it has been previously held by the Prosecuting Attorney's Office in other quarry zoning matters, Quarrying, Mineral Extraction, Complete Use of Natural Resources, and Protection of Existing, Expansion, and Future Satellite Industrial and Manufacturing Uses appear to be addressed in WV Code 8A-7-10(c) and (e) as it relates to Zoning in the West Virginia State Code (attached). This section replaces the similar long time existing section that was provided for in Previous 8-24-50 of the State Code that was in place until replaced by 8A in 2004. This is provided as a reference for the Board to seek advice from the Board's Counsel if deemed necessary. It is only provided for your counsel as a notation and is not a legal opinion.

The new Plant will be located where there is heavy existing buffer existing between the site and the uses to the South. It will be located within the existing buffer on an existing and long established 18-44 inch compacted aggregate base that has been left after years of being used for staging area and other uses. And the existing, out of date, plant will be abandoned.

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

As explained in the Description, this approximate 1900 acre group of properties are protected at the State and Local Zoning Level for continued and complete use for the extraction of minerals and natural resources. When seeking a location to replace and upgrade the existing Plant, this parcel was already almost impervious since the entire area that isn't planted in heavy buffer is a compacted pad of 18-44 inches (based on recent borings) of aggregate. This area and parcel also includes an existing Bradstone Plant that was granted the same variance to cast concrete pavers and other concrete products utilizing the natural resources available from the quarries. The new Plant that will share the entrance to the Bradstone Plant and will be built on the existing compacted pad. This site shares similar uses and traffic on the same access road. It is the logical place for the newly minted Plant that will meet all current DEP and Local Engineering Site Planning Standards.

The Quarry and all of its associated mining and related industrial operations and uses have always been told by the County that they will be able to continue to do so on these properties based on the Codes that allow these uses and the complete use of the minerals and natural resources. These uses are permitted by both the State and Local Ordinances. This portion of this parcel is the most logical place to utilize since active quarrying is across Blair Road and there is already a buffered compacted subbase. The Air Quality Permit is currently in process at the State DEP. The proposed industrial use is the Permitted Use in this District.

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

This property is zoned for Industrial Use. Also, the State further recognizes existing industrial and manufacturing uses, along with mineral extraction and complete use of natural resources on the property. The State Department of Environmental Protection has established a 300' buffer/setback and the Plant will meet that setback. The County willfully zoned this property Industrial, because of the location of the quarry. It would seem that it was not the intent to zone it for this use, but to render a perimeter of 1000' around all properties owned by Millville to be prevented from that commercial use. The hardship would be to continue to pay the State and Local Taxes for Industrial uses but not allow the reasonable industrial use of 1000' feet completely around each of the properties. This site will share the Road with another Accessory Industrial Concrete Plant so as not to provide more parcels for Plants. This site was also selected specifically because of the existence of a completely compacted area within a natural buffer of heavy vegetation. The reasonable use of this land has been determined by the County Commission and the Planning Commission in both the Comprehensive Plan and the Zoning Ordinance.

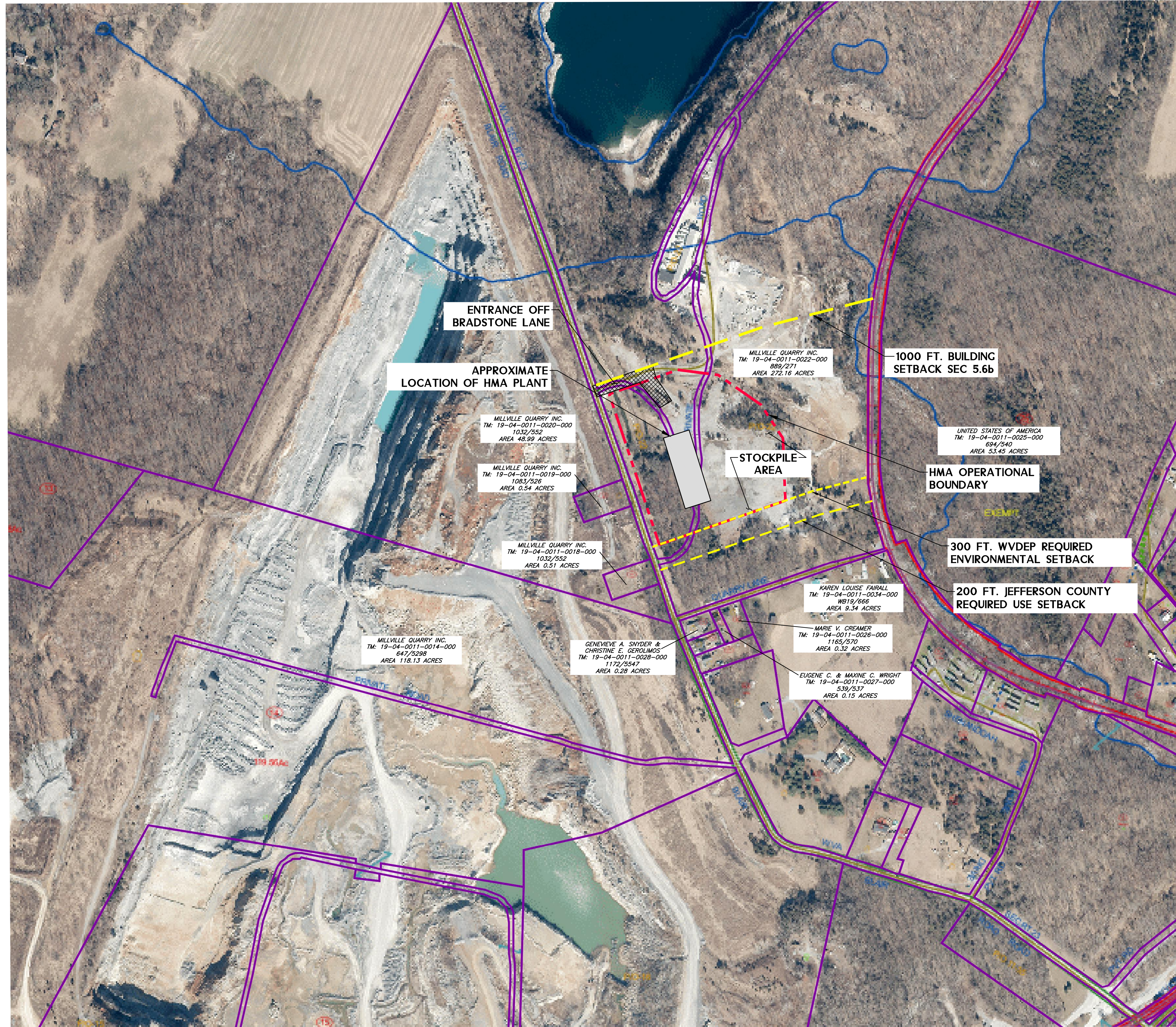
Finally, it is completely reasonable to use this site to allow the replacement of an inefficient, out of date, Asphalt Plant in this area, which will allow the construction of a brand new State of the Art Plant that has all State DEP and County Site Plan approval.

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

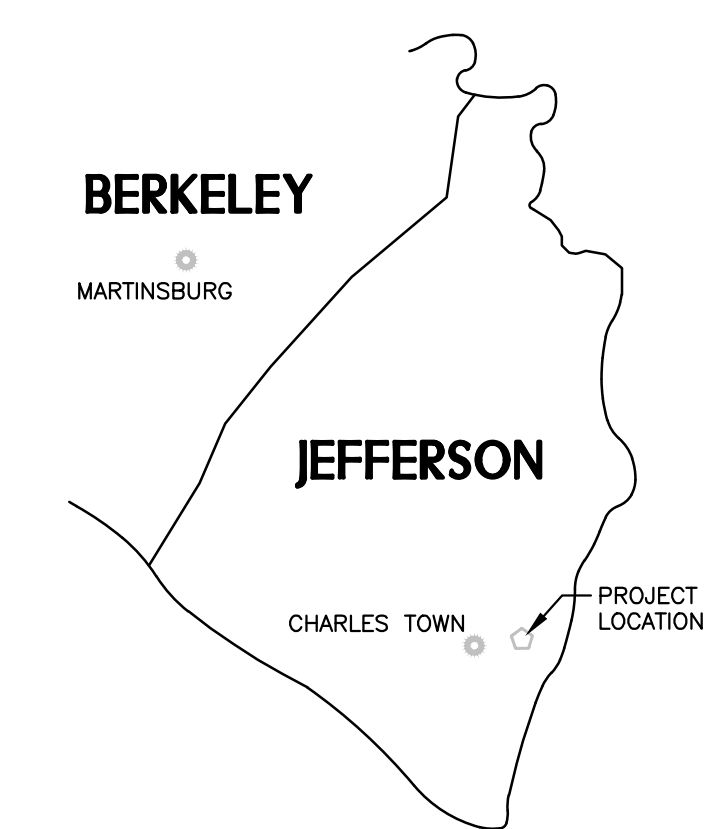
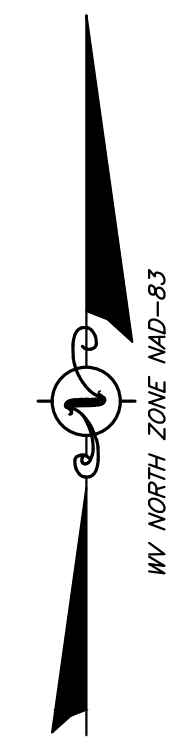
The intent of the Ordinance and the Comprehensive Plan along with the WV State Code is to allow Industrial Use and Expansion, along with Mineral Extraction on this property and in this area. The State requires a 300' buffer/setback for this use and that will be achieved. This 300' buffer/setback is more than the normally required 200' distance requirement for other industrial uses in Jefferson County. Where the 1000' setback may make sense in other areas of the County not specifically intended for Quarrying (nearly 2000 acres in this area owned by Millville Quarry) and Industrial Use. This area has been historically many years before zoning was contemplated or considered in Jefferson County. This is the only logical area for Concrete Plants and Asphalt Plants to utilize the resources that are available from the mining operation. Allowing them in other certain areas of the County may indicate a need for a 1000' setback, this area is the historical area for quarrying, mineral extraction, and industrial uses.

Substantial justice would be to approve the requested variance, so that this long time owner and business applicant can continue to thrive in the area of Jefferson County that has been deemed in the Comprehensive Plan as the preferred and intended area for this use and any other industrial related uses to quarrying.

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



No.	Date	Eng.	Revision



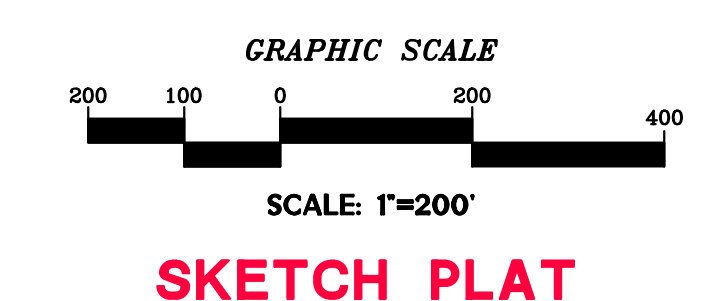
SKETCH PLAT
 CAD File No.
 POTESTA
 Drawn
 POTESTA
 Checked
 POTESTA
 Approved
 NOTED
 Scale:
 OCTOBER 2023
 Date:
 23-0305
 Project No.

POTESTA
 POTESTA & ASSOCIATES, INC.
 ENGINEERS AND ENVIRONMENTAL CONSULTANTS
 15 South Broadneck St., Winchester, VA 22601
 TEL: (540) 400-0100 FAX: (540) 400-0186
 E-MAIL: Address: potesta@potesta.com

Client
 W-L CONSTRUCTION & PAVING, INC.
 175 JOHN J. THOMAS WAY
 CHARLES TOWN, WEST VIRGINIA 25414

Title
 PPC SKETCH PLAT
 HOT MIX ASPHALT PLANT RELOCATION
 JEFFERSON CO., WEST VIRGINIA

1
 Drawing No.



ISSUE DATE: 11/13/2023

WEST VIRGINIA CODE: §8A-7-10

§8A-7-10. Effect of enacted zoning ordinance.

(a) After enactment of a zoning ordinance by a municipality or county, all subsequent land development shall be done in accordance with the provisions of the zoning ordinance.

(b) All zoning ordinances, and all amendments, supplements and changes thereto, legally adopted under any prior enabling acts, and all actions taken under the authority of any such ordinances, are hereby validated and continued in effect until amended or repealed by action of the governing body of the municipality or the county taken under authority of this article. These ordinances shall have the same effect as though previously adopted as a comprehensive plan of land use or parts thereof.

(c) Land, buildings or structures in use when a zoning ordinance is enacted may continue the same use and that use may not be prohibited by the zoning ordinance so long as the use of the land, buildings or structures is maintained, and no zoning ordinance may prohibit alterations or additions to or replacement of buildings or structures owned by any farm, industry or manufacturer, or the use of land presently owned by any farm, industry or manufacturer but not used for agricultural, industrial or manufacturing purposes, or the use or acquisition of additional land which may be required for the protection, continuing development or expansion of any agricultural, industrial or manufacturing operation of any present or future satellite agricultural, industrial or manufacturing use. A zoning ordinance may provide for the enlargement or extension of a nonconforming use, or the change from one nonconforming use to another.

(d) If a use of a property that does not conform to the zoning ordinance has ceased and the property has been vacant for one-year, abandonment will be presumed unless the owner of the property can show that the property has not been abandoned: *Provided*, That neither the absence of natural resources extraction or harvesting nor the absence of any particular agricultural, industrial or manufacturing process may be construed as abandonment of the use. If the property is shown to be abandoned, then any future use of the land, buildings or structures shall conform with the provisions of the zoning ordinance regulating the use where the land, buildings or structures are located, unless the property is a duly designated historic landmark, historic site or historic district.

(e) Nothing in this chapter authorizes an ordinance, rule or regulation preventing or limiting, outside of municipalities or urban areas, the complete use (i) of natural resources by the owner; or (ii) of a tract or contiguous tracts of land of any size for a farm or agricultural operation as defined in §19-19-2 by the owner. For purposes of this article, agritourism includes, but is not limited to, the definition set forth in §19-36-2.

Zoning

To: Zoning
Subject: RE: Photos of the existing Millville asphalt plant

Good afternoon Paul,

This email is to confirm receipt of the attached Zoning Variance application, supporting documentation, and email thread. This project has been assigned File #23-38-ZV. Provided the fee is submitted to our office by close of business today, this request will be placed on the Board's December 14, 2023 Agenda.

Thank you and see you soon.

Jennilee Hartman, Zoning Clerk
Office of Planning and Zoning
304-728-3228

From: Paul Raco <pjraco.consulting@gmail.com>
Sent: Friday, November 17, 2023 1:59 PM
To: Jennilee Hartman <jhartman@jeffersoncountywv.org>; Alexandra Beaulieu <abeaulieu@jeffersoncountywv.org>
Cc: Zoning <Zoning@jeffersoncountywv.org>
Subject: Fwd: Photos of the existing Millville asphalt plant

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

Hello, Jennilee and Alex.

Attached, please find a Variance Application for BZA for the Quarry property for the relocation of the Asphalt Plant.

Should include:

1. This email with Pictures and narrative regarding existing Plant Condition;
2. Unsigned Application Form;
3. Sketch Plat;
4. Brief Description;
5. Four Criteria; and,
6. WV State Code Excerpt.

I will bring in \$100 and the signature page this afternoon. I may supplement the package as it gets closer, but please let me know if I am missing anything or you would like something specific.

Thanks, Paul

----- Forwarded message -----

From: Brookover, Bob (West Virginia Paving)
Date: Mon, Oct 9, 2023 at 10:12 AM
Subject: Photos of the existing Millville asphalt plant
To: Paul Raco <pjraco.consulting@gmail.com>



Appendix 1 – Condition of Existing Batch Tower and Hot Elevator

The existing batch tower and hot elevator have been in service and performed well for 50+ years. The overall structure and components of the tower and elevator are old and worn out. The pug mill would have to be completely rebuilt as well. The cost of doing a complete rehab would not make good business sense.

Photos of Existing Millville plant

Appendix 2 – Condition of Existing Baghouse

The existing baghouse is old and undersized. With the need for high rap percentage mixes now and into the future, it will require a new baghouse of the correct size to operate efficiently. It does not make sense to upgrade an old plant with a new baghouse that is past its life cycle.



Photos of Existing Millville Asphalt Plant

Appendix 3 – Condition of Existing 4 Cold Feed Bins

The existing 4 Cold feed Bins are well past its life cycle as well. The same is true of the existing feeders and other conveyers and screens. With all the different mixes that are required for WVDOH, the 4 cold feed system makes the plant inefficient. The new 5- Compartment Cold Feed System would be more cost-efficient now and into the future.

Photo of Existing Millville Asphalt plant.



Paul,

Let me know if you have any questions or require any further information?

Thx

Robert Brookover
Executive Vice President
Appalachian Materials Region
A CRH COMPANY

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Paul J. Raco
P. J. Raco Consulting, LLC
PO Box 548
Charles Town, WV 25414
304/676-8256



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 December 14, 2023 Board of Zoning Appeals Meeting

Date of Memo: November 30, 2023

- 1) The first meeting in 2024 is scheduled for **January 25, 2024**
 - Deadline for submission is Friday, December 29, 2023.
- 2) 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.
- 3) 2045 Comprehensive Plan Status Update
 - No update.
- 4) Zoning Certificate Activity Report



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

December 2023
Zoning Certificate Activity Report

File #	23-39-ZC
Request:	Agricultural Use: Farm Distillery, Pick Your Own Farm Products, & Agricultural Special Event Facility
Applicant:	Reddington's LLC / Farm & Orchard
Property Owner:	Quintina and Matthew Reddington
Parcel Information:	Vacant- Ridgefield Farm Lot 3 - Kidwiler Road, Harpers Ferry, WV 25425 Parcel ID: 04000400020003; Size: ~24.3772 acres* Zoning District: Rural; Deed Book: 1314; Page: 592; Plat Book 26 @ Page 673 (boundary line adjustment)
Date of Issuance:	12/06/2023
File #	23-40-ZC
Request:	Kennel
Applicant:	QRF Solutions K9
Property Owner:	Nicholas Russo and Alice Davenport
Parcel Information:	1899 Trough Rd, Shenandoah Junction, WV 25442 Parcel ID: 09000900070006; Size: 10 acres; Zoning District: Rural; Deed Book: 1301; Page: 452; Outsale Exemption Parcel (DB 554/PG 142)* *07/25/2023: Planning Commission approved variance to lift single family restriction (File #23-2-PCV)
Date of Issuance:	11/27/2023
File #	23-51-ZC
Request:	Restaurant / Bar
Applicant:	DSP Shepherdstown Tavern, LLC dba Rumsey Tavern
Property Owner:	Federal Group Inc. / Attn: Tripp Lowe
Consultant:	P.J. Raco Consulting, LLC / Attn: Paul Raco
Parcel Information:	233 Lowe Drive, Shepherdstown, WV Parcel ID: 09000800100009; Size: 23.67 acres; Deed Book: 1230; Page: 490; Kensington Subdivision, Phase 1 recorded on 07/24/2020 in PB 26 at PG 109 Parcel ID: 09000800240003; Size: 1.02 acres; Deed Book: 967; Page: 723; Rempe Minor Subdivision, recorded on 11/17/2000 in PB 18 at PG 30 Zoning District: Residential-Light Industrial-Commercial Zoning Map Amendment (rezoning) Approved 03/16/23 (File: 23-2-Z)
Date of Issuance:	11/17/2023
File #	23-52-ZC
Request:	Shopping Center - Change in Tenant: Indoor Play Facility & Trampoline Park with Arcade
Property Owner:	Tianxia, LLC / Attn: Tain Feng Zhou & Bruce Lee
Parcel Information:	Jefferson Crossing Shopping Center, Lot 3 91 Saratoga Drive, Suite B, Charles Town, WV 25414 Parcel ID: 02000800240008; Size: 2.5 acres; Zoning District: Residential-Light Industrial-Commercial; Deed Book: 1306; Page: 615; See PC File: 04-06 (site plan)
Date of Issuance:	11/17/2023
