



**Jefferson County**  
**Board of Zoning Appeals Agenda**  
**Thursday, January 23, 2025 at 2:00 p.m.**

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

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

**Broadcast Information:** ZOOM Meeting Link: <https://us02web.zoom.us/j/83363864562>  
Phone Option (Dial by Location): 301-715-8592 / Meeting ID: 833 6386 4562

**Note:** *The County does not transcribe meeting proceedings. Any party desiring a meeting transcript is responsible for providing a stenographer at their own expense.*

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

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**Approval of Minutes: Approval of the December 12, 2024 Minutes**

**Public Hearing – Administer Oath**

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**Item #1**      **File #: 25-1-ZV**  
Request: Variance from Section 9.7 to reduce the rear setback from 12’ to 8’ to replace an existing 12’ x 60’ mobile home with a 16’ x 60’ mobile home.  
Parcel Info: Richard A Shiflett Et Al / Attn: William Shiflett, Jr.  
41 Prospect Ave, Charles Town, WV  
Parcel ID: 02010A01220000; Property Size: .34 ac; Zoning District: Residential Growth

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**Item #2**      **File #: 25-2-ZV**  
Request: Variance from Appendix B and Section 4.11 to eliminate the required landscape buffer for a proposed 12,000 sf warehouse (Site Plan File #24-8-SP).  
Parcel Info: Jefferson Rentals, LLC  
Vacant lot on the SW corner of W Burr Blvd. and James Burr Blvd., Kearneysville, WV  
Parcel ID: 02000100160017; Property Size: 3.44 ac; Zoning District: Industrial Commercial

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**Item #3**      **File #: 25-1-CUP**  
Request: Request for a Conditional Use Permit to establish the following land uses: a Convenience Store (dba The Country Store); and, an Automobile Repair, Sales and Service (dba RC Auto Service). The proposal includes continuing the use of the existing grocery store and establishing an auto repair business within an existing metal-frame building. The applicant intends on consolidating the subject parcels to expand the parking area for the proposed land uses. All new signage will comply with Article 10.  
Parcel Info: Corey Ramey, Owner  
4360 Sulphur Springs Rd and 4378 Sulphur Springs Rd, Kearneysville, WV  
Parcel ID: 07001200020002 and 07001200020004; Project Size: 2.12 ac; Zoning District: Rural

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**Item #4**      **File #: 25-2-CUP**  
Request: Request for a Conditional Use Permit to establish a federal firearms business to include retail sales and gunsmithing in accordance with the Alcohol, Tobacco, Firearms and Explosives (ATF) approvals. The proposal consists of utilizing a 1 acre portion of the 10 acre tract. The land use will be conducted from the existing dwelling unit and the accessory structure. The land use will operate by appointment only. No new structures or signage are proposed as part of this application. The proposed land use designations as listed in Appendix C are Retail Sales and Service, General and Custom Manufacturing, as defined in Article 2.

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**Item #4 File #: 25-2-CUP - continued**

Applicant: QRF Solutions K9 LLC

Parcel Info: Nicolas Russo and Alice Davenport, Owners

1899 Trough Rd., Shepherdstown, WV

Parcel ID: 09000900070006; Project Size: 1 ac; Zoning District: Rural

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**Item #5 File #: 25-3-ZV and 25-5-ZV**

Request #1: Variance from Section 11.1 to reduce the required number of parking spaces from 25 to 10 for a proposed Nursing Home operating as an Assisted Living Facility for up to 16 residents (#25-3-ZV).

Request #2: Variance from Section 4.10 waive the requirement of a site plan for the installation of a parking lot for a proposed Nursing Home operating as an Assisted Living Facility for up to 16 residents (#25-5-ZV).

Parcel Info: Blue Iris, LLC, Owner

1163 Gardners Ln., Shepherdstown, WV

Parcel ID: 09001700090003; Property Size: 6.63 ac; Zoning District: Rural

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**Item #6 File #: 25-4-ZV**

Request: Variance from Section 9.7 to reduce the rear setback from 50' to 15' for a 16' x 32' accessory structure.

Parcel Info: Elody & Chris Mackey

Oak Tree East Subdivision, Lot 11, 335 Acorn Cir., Harpers Ferry, WV

Parcel ID: 04000100240008; Property Size: 2.19 ac; Zoning District: Rural

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**Zoning Administrator Report**

- a. Monthly Zoning Certificate Activity Report

**Legal Update**

- a. Discussion with possible deliberative session 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-19-2024-C-14 (RE: Jeremy Martin, Tiffany Martin and Earthworx General Contracting Services, LLC v. Jefferson County Board of Zoning Appeals
- b. Discussion with possible deliberative session and signing of draft Findings/Decisions.

**Meeting: December 12, 2024**

- 1. Variances from Section 10.7H & Section 10.4B and Special Exception Permit for electronic sign. Property Owner: Middleway Volunteer Fire Company, Inc / Attn: Mike Mood. File #24-2-SE & 24-39-ZV.
- 2. Special Exception Permit to allow renting out an Accessory Dwelling Unit. Property Owner: Julia Reynes. File #24-3-SE
- 3. Variances from Section 4.6 & Section 4.11 and a Conditional Use Permit to create a Storage Center, Private Gym, Convenience Store, and Professional Office. Property Owner: Mark Roper. File #24-8-CUP, 24-40-ZV, 24-41-ZV

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

- 1 Meeting Date: December 12, 2024
- 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, and Matthew McKinney, Vice Chair
- 6 were in attendance in person. David Wiegand was present via ZOOM.
- 7 Board Members Absent: Jacob Harris and Mikala Shremshock, Alternate were absent with
- 8 notice.
- 9 Staff Members Present: Mason Carter, Acting Zoning Administrator; and Colin Uhry, Planning &
- 10 Zoning Clerk

11 Mr. McKinney moved to call the meeting to order at 2:00 pm. Mr. Quynn called for a vote, which

12 carried unanimously.

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

**14 Approval of Minutes: Approval of the October 24, 2024 Minutes**

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

16 Mr. Uhry swore in members of the public who indicated they would be providing testimony.

**17 Agenda Item #1: File #: 24-2-SE & 24-39-ZV**

- 18 Request #1: Request for a Special Exception Permit for an 8’ tall (24 square foot) Electronic Sign.
- 19 Request #2: Variance from Section 10.7H to reduce the distance requirement of a freestanding
- 20 sign from the southern and northern property line.
- 21 Request #3: Variance from Section 10.4B to allow a freestanding sign to face a property that
- 22 contains a residence to the north & south.
- 23 Parcel Info: Middleway Volunteer Fire Company Inc. / Attn: Mike Mood, Applicant
- 24 110 Dark Hill Road, Kearneysville, WV Parcel ID: 07002400020000;
- 25 Property Size: 6.11 ac; Zoning District: Rural

26 Mr. Mike Mood, representative with the Middleway Volunteer Fire Company Inc, was present to

27 address the Board.

28 Mr. Carter provided an overview of his staff report to the Board stating that the request was to

29 establish an electronic sign outside the local firehouse that faced in the direction of properties to the

30 north and south. The request also asked for variances to reduce the distance requirement along the

31 northern and southern property line.

32 Mr. Quynn opened the public comment portion of the hearing. No members of the public provided

33 testimony. Mr. Quynn closed the public comment portion of the hearing.

34 Mr. Wiegand joined the meeting at 2:14 pm.

35 Mr. Guier questioned the placement of the electronic sign in relation to the already established

36 freestanding sign currently on the property. Mr. Mood provided an overview regarding the location of

37 the electronic sign and community input regarding the applications.

38 Mr. McKinney moved for a Summary Approval in accordance with Section 5.7(9) of the Boards’

39 Rules of Procedure (as amended 01/26/23) with the condition that the applicant is bound by their

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

41 Mr. Wiegand left the meeting at 2:27 pm.

**1 Agenda Item #2: File #: 24-3-SE**

2 Request: Request for a Special Exception Permit to convert an existing Accessory Dwelling  
3 Unit for a family member into a rental unit.

4 Parcel Info: Julia Reynes, Property Owners  
5 Potomac Ridge Subdivision, Lot 7, 386 Potomac Ridge Lane, Shepherdstown, WV  
6 Parcel ID: 09001000090017; Size: 3.01 acres; Zoning District: Rural

7 Ms. Julia Reynes, property owner, and Mr. Anthony Tedesco, partner of the property owner, were  
8 present to address the Board.

9 Mr. Carter provided an overview of his staff report to the Board stating the request was to convert an  
10 existing Accessory Dwelling Unit already constructed for a family member into a rental unit.

11 Ms. Reynes explained the accessory dwelling unit was already built in this location as the property  
12 owners planned on letting their children live in this space. Ms. Reynes explained that her children no  
13 longer needed the accessory dwelling unit since joining the military. As such, Ms. Reynes stated she  
14 would like to use the structure as a rental unit. Mr. Carter noted that the applicant has provided four  
15 letters of support from members of the community.

16 Mr. McKinney made note regarding the November 10, 2022 Board of Zoning Appeals and the  
17 conditions of approval that the accessory dwelling unit was specifically approved with the knowledge  
18 the applicant would not be allowed to rent out the building.

19 Mr. Wiegand joined the meeting at 2:30pm.

20 Mr. Quynn opened the public comment portion of the hearing. The following member of the public  
21 provided testimony: Mr. Dominic Valentine, Joseph Valentine, Mr. David Miljour, Mrs. DoreAnn  
22 Miljour, Mr. Jeremiah Pulmon, and Mr. Dave Milshore. Mr. Quynn closed the public comment  
23 portion of the hearing.

24 In rebuttal, Ms. Reynes provided pictures documenting that the driveway/parking area for the  
25 accessory dwelling unit was located outside of the subdivision road right-of-way.

26 Mr. Harris moved moved to approve the request (24-3-SE), noting this property will not be used as a  
27 short term rental and there will be no parking in the access easement outside the property, with the  
28 condition that the applicant is bound by their testimony. Mr. Quynn called for a vote, which carried  
29 unanimously.

**30 Agenda Item #3: File #: 24-8-CUP, 24-40-ZV, & 24-41-ZV**

31 Request #1: Request for a Conditional Use Permit to establish the following land use categories:  
32 Storage, Commercial (self-storage units); Retail Sales and Service, General (a private  
33 gym); Retail Sales, Limited; Convenience Store, Limited; Professional Office. The  
34 applicant is proposing to construct new building(s) and will be expanding the existing  
35 parking lot. All new signage will be in accordance with Article 10.

36 Request #2: Variance from Appendix B and Section 4.6 to reduce the setback and distance  
37 requirements for the proposed mixed-use project.

38 Request #3: Variance from Appendix B and Section 4.11 to reduce the landscaping and buffer  
39 requirements for the proposed mixed-use project.

40 Consultant: Seth Rivard

41 Parcel Info: Mark Roper, Property Owner  
42 11065 Middleway Pike and 600 Eagle Ave, Charles Town, WV

1 Parcel IDs: 02001100130000, 02001100130001, 02001100140000, and  
2 02001100120001; Project Size: ~2.2 acres; Zoning District: Residential Growth

3 Mr. Seth Rivard, consultant, was present to address the board.

4 Mr. Carter provided an overview of his staff report to the Board stating the request was to establish a  
5 storage unit, a private gym, a convenience store, and a professional office in this location. The  
6 applicant was also requesting a reduction of setback and distance requirements and landscaping and  
7 buffer requirements for these proposals.

8 Mr. Rivard gave a presentation regarding specifics of the project to the Board. When discussing the  
9 long term impact Mr. Mark Roper has had on the surrounding area and what impacts will be affected  
10 going forward, Mr. Rivard noted that Mr. Roper built homes in the neighborhood, took into account  
11 parking for his property, was willing to not operate heavy machinery and limit himself to pickup  
12 trucks and cargo vans, and was willing to establish a sidewalk along Eagle Avenue. Mr. McKinney  
13 questioned whether or not the Conditional Use Permit could be possible without the Variances. Mr.  
14 Rivard explained that due to zoning, setbacks, and age this project would require the proposed  
15 Variances.

16 Mr. Quynn opened the public comment portion of the hearing. The following member of the public  
17 provided testimony: Ms. Linda Ballard and Mr. Jeremiah Pullman..Mr. Wiegand tried directing  
18 attention to Ms. Arthena Roper, a participant via ZOOM. The Board reminded Mr. Wiegand that  
19 public comments are only available in person the day of the meeting. Ms. Roper sent her comment  
20 via chat, allowing for Mr. Wiegand to read it out loud for other Board members to hear. Mr. Quynn  
21 closed the public comment portion of the hearing.

22 Mr. Harris moved to approve the request (24-8-CUP, 24-40-ZV, & 24-41-ZV) with the condition  
23 that the applicant is bound by their testimony. Mr. Quynn called for a vote, which carried  
24 unanimously.

### 25 **Zoning Administrator Report**

26 Mr. Carter provided the Board with the following information:

27 1. Monthly Zoning Certificate Activity Report. The Report was included in the Agenda packet.

### 28 **Legal Update**

- 29 a. Discussion with possible deliberative session of the following pending lawsuits:  
30 1. Jefferson County Circuit Court Case #CC-19-2022-C-141 (RE: Rippon Solar  
31 Energy Facility / File 22-9-CUP) Rockwell v. JCBZA  
32 2. Jefferson County Circuit Court Case # CC-19-2024-C-14 (RE: Jeremy Martin,  
33 Tiffany Martin and Earthworx General Contracting Services, LLC v. Jefferson  
34 County Board of Zoning Appeals

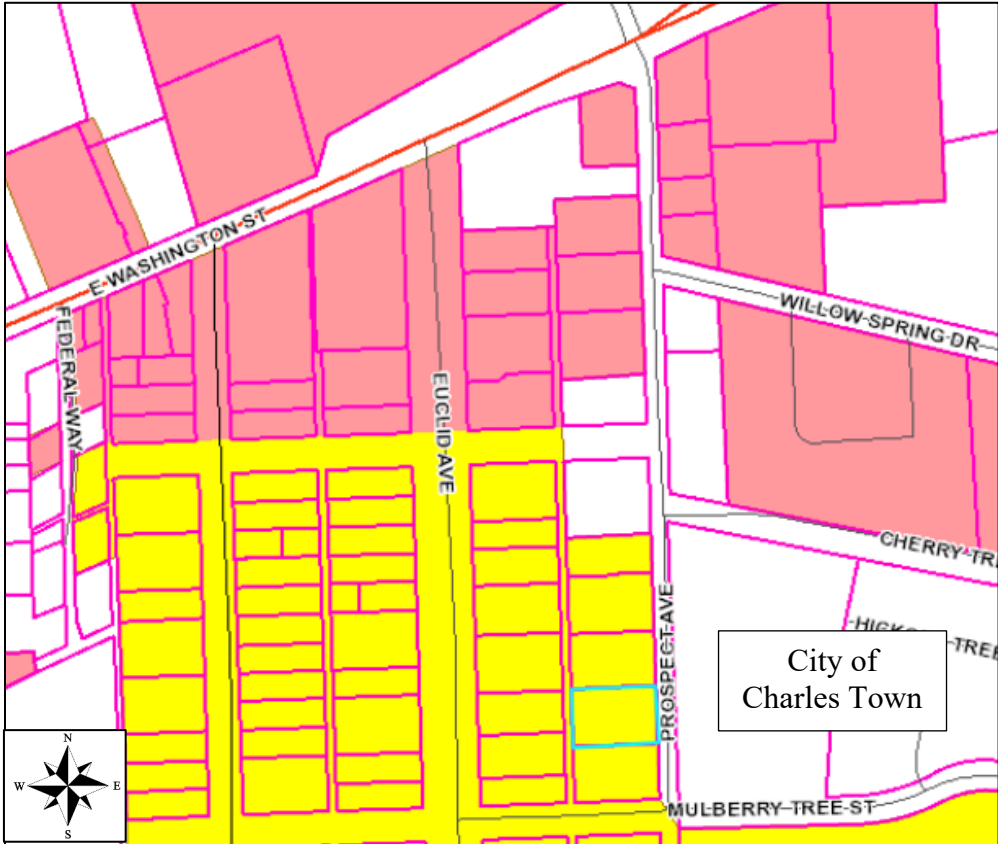
35  
36 Mr. Guier reminded Board members that he is stepping down from the Board of Zoning Appeals.

37 Mr. McKinney moved to adjourn the meeting at 4:17 pm. Mr. Quynn called for a vote, which carried  
38 unanimously.



Staff Report  
 Jefferson County Board of Zoning Appeals  
 January 23, 2025  
**25-1-ZV Shiflett Variance Request**

Item #1: Variance from Section 9.7 to reduce the rear setback from 12' to 8' to replace an existing 12' x 60' mobile home with a 16' x 60' mobile home.

Owner:	Richard A Shiflett Et Al / Attn: William Shiflett, Jr.
Parcel Information & Zoning District:	<p style="text-align: center;">41 Prospect Ave, Charles Town, WV          Parcel ID: 02010A01220000; Property Size: .34 ac          Zoning District: Residential Growth</p> 
History:	Lots 9 and 10 created prior to the adoption of Zoning.
Waivers/Variances:	<p>02/21/08: BZA variance to reduce the setback from to 20' to 10' to allow the replacement of a mobile home that was destroyed by fire (ZV08-02).</p> <ul style="list-style-type: none"> <li>• BZA denied request “until such time that the Applicant provides evidence that the site has been cleared of the mobile home wreckage...”.</li> </ul> <p>04/17/08: BZA variance to reduce the setback from to 20' to 10' to allow the replacement of a mobile home that was destroyed by fire (ZV08-09).</p> <ul style="list-style-type: none"> <li>• BZA approved the request with the condition that the Applicant erect a sign that prohibits residents/guests from parking in the alley.</li> </ul>
Approved Activity:	Residential
Site Visit Conducted:	No

Staff Report  
Jefferson County Board of Zoning Appeals  
January 23, 2025  
**25-1-ZV Shiflett Variance Request**

**Staff Overview**

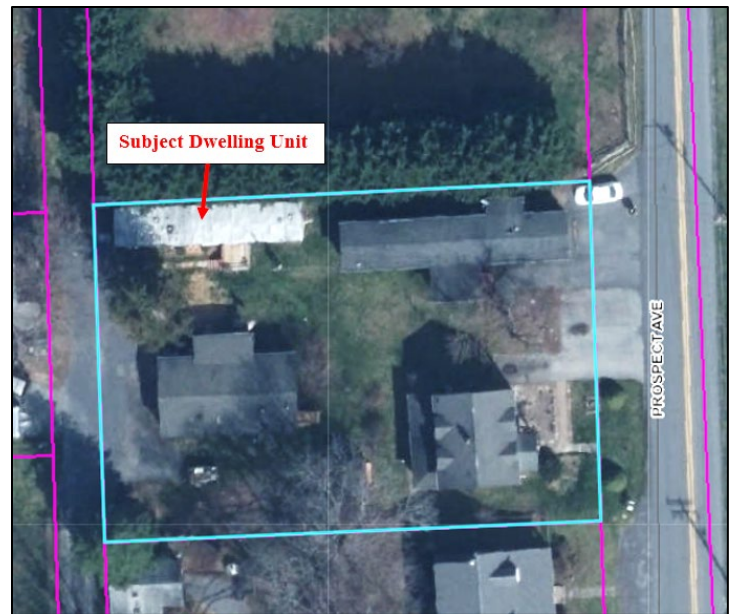
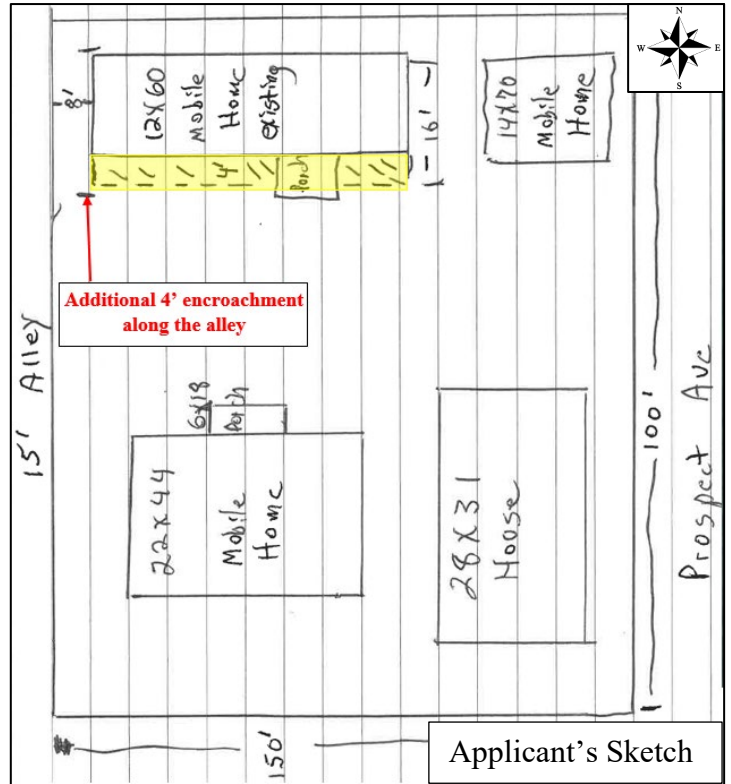
The subject parcel is designated a Lots 9 and 10 of Charles Town City Block 6. These lots were created prior to the adoption of Zoning (10/05/1988). As such, Section 9.7 of the Zoning Ordinance would apply. The required setbacks for the subject lot are: 20' Front, 8' Side, and **12' Rear**.

According to the definition of *Lot Line, Front*, for a property with a rear yard adjacent to a right-of-way that is designated as an alley, a rear yard setback shall apply.

The applicant is requesting to reduce the rear setback requirement along the western property line from 12' to 8' to replace an existing 12' x 60' mobile home with a 16' x 60' mobile home.

This property has historically contained four residential dwelling units. Each dwelling unit is considered a legal Nonconforming Structure. While Section 4.3H of the Zoning Ordinance would allow for the replacement of the existing mobile home, the proposed mobile home is larger (wider) than the existing mobile home, which would result in a greater setback encroachment.

Generally, the purpose of a rear setback requirement is to reduce the impact that a land use might have on an adjacent property; to allow adequate space between a structure and a property line so that maintenance of the structure is feasible; to maintain adequate separation between structures for fire prevention purposes; and to allow room for utility easements. In this case, the rear setback line adjoins an alley. Due to the number of existing structures along the alley, it is unlikely that the alley will be widened/expanded in the future.



The applicant has indicated that it is difficult to obtain a newer mobile home that is less than 16' wide. As such, in order to replace the current mobile home with a newer model, this variance is required.

Staff Report  
Jefferson County Board of Zoning Appeals  
January 23, 2025  
**25-1-ZV Shiflett 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. All resident/guest parking shall be located wholly on the subject parcel. No parking shall be permitted in the alley.

**Section of Ordinance to be Considered:**

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

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

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

Residential Growth District<sup>23</sup>

Single Family Residences

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

Rural Agricultural and Industrial Commercial

Single Family Residences

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

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





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

File #: 25-1-ZV  
 Mtg. Date: 1-23-25  
 Fee Paid: \$ 150

Email: [zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org) Phone: (304) 728-3228

**Zoning Variance Application**

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

**Property Owner Information**

Owner Name: William R Shiflett Jr.  
 Business Name: Kircher/Shiflett Mobile Home Parks  
 Mailing Address: 215 Hotwheels Dr. Ranson W.V. 25438  
 Phone Number: 304-261-1645 Email: hotwheels215@comcast.net

**Applicant Contact Information**

Applicant Name: \_\_\_\_\_ Same as owner:   
 Business Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**Consultant Information**

Consultant Name: Same as owner  
 Business Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**Physical Property Details** Vacant Lot:

Physical Address: 41 Prospect Ave Charles Town W.V. 25414  
 Parcel ID: (Tax District / Map No. / Parcel No.) 122.0.6002, Map 10 A  
 Parcel Size: 100x150 Deed Book: 980 Page No: 573

**Zoning District (please check one)**

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

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

**RECEIVED**

Date Received:

NOV 15 2024

JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING

**Briefly describe the nature of the request (include the dimensions of the proposed structure, if applicable):**

Section of the Zoning Ordinance pertaining to this request: to replace a 12x60 mobile with 16x60 mobile home

\* Section 9.7 gtt

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

Front Setback       Side Setback       Rear Setback      Reduction from 12' to 8' gtt

**Required Sketch:** 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.

**Required Responses:** Each of the following questions must be answered in detail. The Board will evaluate your request based on the answers provided (attach a separate sheet of paper if necessary).

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

This will affect anyone because I am adding 4 ft width on mobile home which encroaching on my property.

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? 12 ft existing mobile home encroaches setback on alley so new mobile would be encroaching 4 ft more on width.

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

Because you can't find 12x60 mobile home

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

To make affordable home.

I authorize the Planning and Zoning staff to revise the application/sketch on my behalf. I understand that said revisions will be discussed with me prior to revising the application/sketch.

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

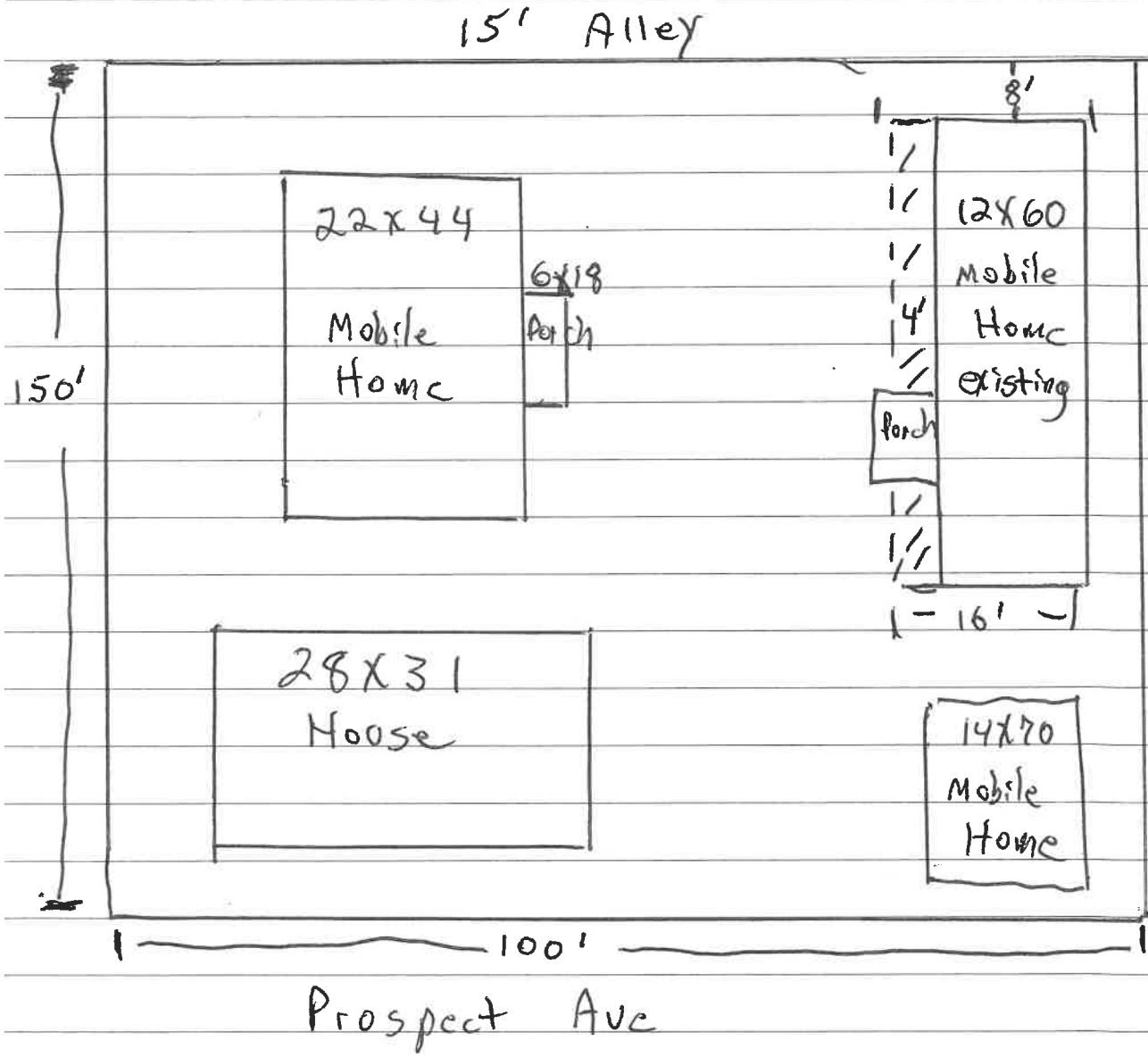
*By signing this application, I grant permission to County staff to walk onto the subject property to take photos for the Board of Zoning Appeals staff reports.*

William R. Sheffer for  
Property Owner Signature

11/15/24  
Date

Property Owner Signature

Date



2112  
proposed



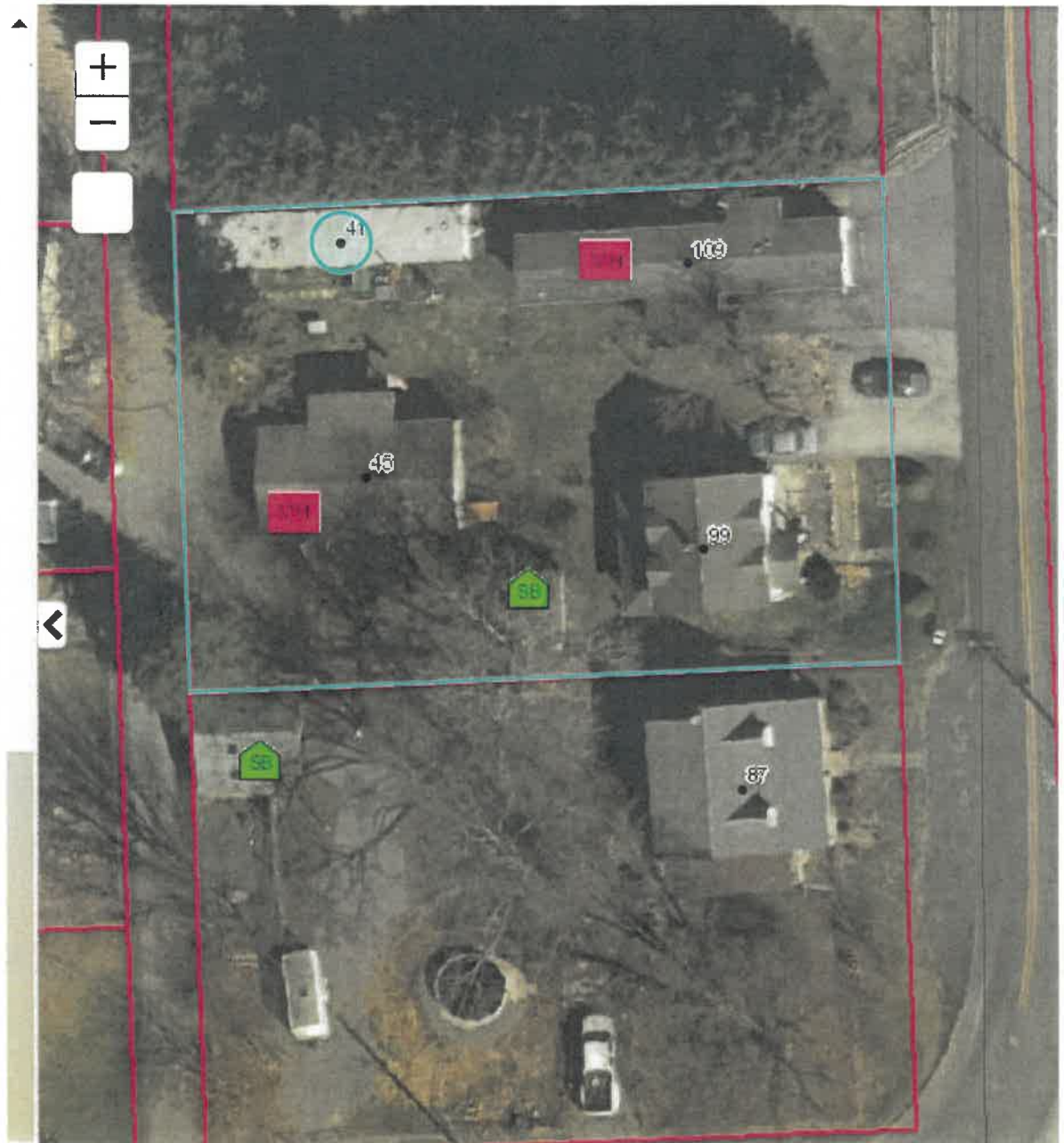
# Jefferson County WV My Government Online Map

## Jefferson County GIS/Addressing Office

Help

TD: 2 / Map: 10A / Pcl: 0122.0000  
Deeded Owner: SHIFLETT RICHARD A ET AL  
Owner Address: 215 HOT WHEELS DR  
City: RANSON  
State: WV  
Zip: 254385682  
Deed Book/Page: [WB39/220](#)  
Description: BLK 6-#9.10 - HOUSE (#7575)  
Lot Size: 0.3444  
Tax Class: 2  
Living Unit: 1  
Year Built: 1940  
Stories: 2  
First Floor Area: 780  
Rooms: 6  
Bedrooms: 3  
Full Baths: 1  
Half Baths: 1  
Attic: None  
Heat Type: Central with A/C  
Fuel Type: Oil  
Heat System: Warm Air  
Last Sale Date: 19-DEC-2023  
Last Sale Amount: 0  
Tax Year: 2025  
Bldg Appraisal: 0  
Land Appraisal: 0  
Total Appraisal: 0  
Bldg Assessed: 65800  
Land Assessed: 60400  
Total Assessed: 126200  
Map Card: [Map Card](#)

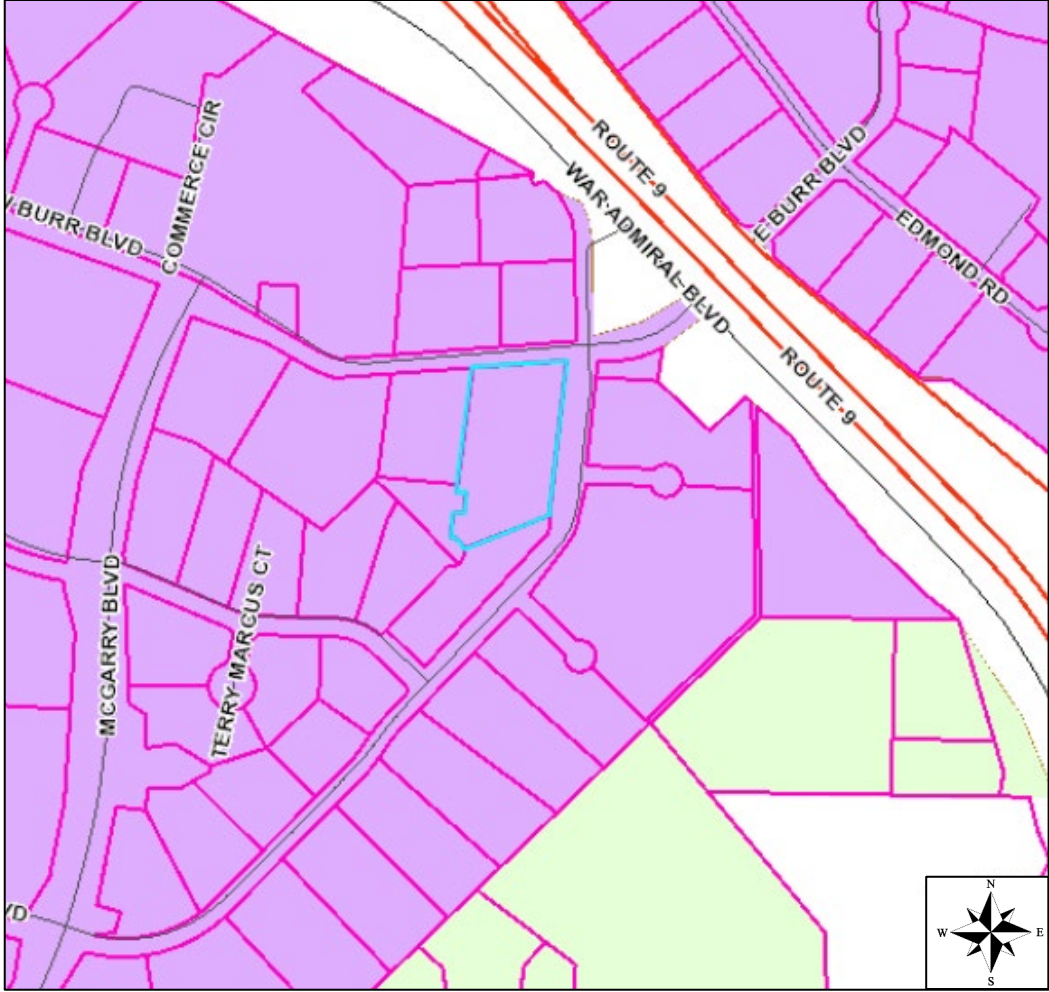
*304-725-2998  
Mike Monahan*



Staff Report  
 Jefferson County Board of Zoning Appeals  
 January 23, 2025

**25-2-ZV Jefferson Rentals, LLC Variance Request**

Item #2 Variance from Appendix B and Section 4.11 to eliminate the required landscape buffer for a proposed 12,000 sf warehouse (Site Plan File #24-8-SP).

Owner:	Jefferson Rentals, LLC
Parcel Information & Zoning District:	<p style="text-align: center;">James Burr Technology Center, Lot 2A, vacant lot on the SW corner of West Burr Blvd. and James Burr Blvd., Kearneysville, WV          Parcel ID: 02000100160017; Property Size: 3.44 ac          Zoning District: Industrial Commercial</p> 
History:	05/10/91: James Burr Technology Center Subdivision (PB 10/Pg 20).
Waivers/Variations:	01/14/25: PC approved a waiver request to eliminate the required sidewalks along the road frontage.
Site Visit Conducted:	No

**Staff Overview**

The subject parcel is designated as Lot 2A of the James Burr Technology Center, which was recorded on May 10, 1991 in Plat Book 10, at Page 20. The request is to eliminate the required street tree and landscaping buffer requirements that would be required as part of the site development proposal to establish a new warehouse for Jefferson Rentals in the Burr Business Park (Site Plan File #24-8-SP).

Staff Report  
 Jefferson County Board of Zoning Appeals  
 January 23, 2025

**25-2-ZV Jefferson Rentals, LLC Variance Request**

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

The applicant is requesting to eliminate both required the street trees along the northern and eastern property lines and the perimeter landscaping along the southern and western property lines.

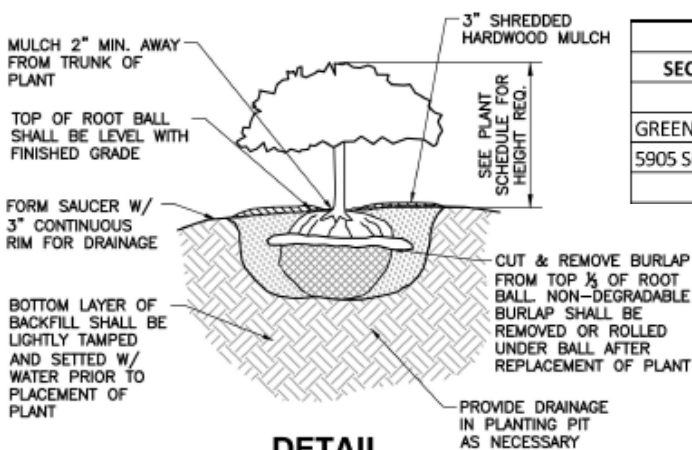
**Street Tree Requirement**

In accordance with Section 4.11I.1.b of the Zoning Ordinance, the property lines along West Burr Boulevard and James Burr Boulevard are considered a “front” and as such street trees would be required. This section states the following: “Site with street frontage exceeding 200 feet: The greater of 4 trees or 1 tree per 100 feet”. The total street frontage equals 800 linear feet. As such, eight (8) street trees would be required. While it appears feasible to comply with this provision, the applicant is requesting to eliminate the street trees to allow for greater visibility to the subject parcel. The applicant has stated that they would like to utilize the frontage as an area to showcase their equipment. Note: Staff has not evaluated the feasibility of this proposed use. Additionally, the applicant would like to erect a sign along the frontage of the proposed building. Note: the signage must comply with Article 10 of the Zoning Ordinance.

**Landscaping/Buffer Requirement**

With regard to the landscaping along the western and southern property lines, the applicant would be required to install either a 6’ tall opaque (board) fence or a planted buffer in accordance with the County’s Standard Detail M-53 (attached). Section 4.11E would allow a modified planted buffer provided the proposed land use does not contain any outside storage (section attached). Note: if the applicant proceeds with parking/showcasing equipment on the property this would constitute outdoor storage.

The applicant has stated that they will adhere to the internal landscaping required by the Subdivision Regulations as part of the site plan process. This requires the installation of a greenspace area that is equivalent to 5% of the parking lot area (see excerpt from site plan below).



**DETAIL  
 PLANTING DETAIL FOR SHRUBS**

N.T.S.

LANDSCAPING REQUIREMENTS		
SECTION 10.10 OF THE SUBDIVISION AND LAND DEVELOPMENT ORDINANCE		
REGULATIONS	REQUIRED	PROVIDED
GREENSPACE- 5% OF PARKING LOT AREA:		
5905 SQ. FT. X 0.05	296 SQ. FT.	340 SQ. FT.
CONSIDER 1 TREE =50 SQ. FT. & 1 SHRUBS= 20 SQ. FT.		

Staff Report  
Jefferson County Board of Zoning Appeals  
January 23, 2025

**25-2-ZV Jefferson Rentals, LLC Variance Request**

It should be noted that while the property to the west is owned by the same entity (Jefferson Rentals, LLC), that each business would operate as a standalone business.



Staff Report  
Jefferson County Board of Zoning Appeals  
January 23, 2025

**25-2-ZV Jefferson Rentals, LLC 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. No structures, equipment or parking shall be located within the delineated parking/drive aisle setbacks.

**Sections of Ordinance to be Considered:**

- Section 4.11 Landscaping, Screening, and Buffer Yard Requirements (attached)
- Appendix B – Non Residential Site Development Standards Table (attached)

2. Uses permitted within the Protection Radius include Residential Uses as listed in Appendix C, barns, and residential accessory structures as defined by this Ordinance. Existing structures (which existed prior to the adoption of this text amendment) within the protection radius may be converted to a non-residential use in accordance with Appendices B & C and shall comply with applicable district regulations as required by Article 5.

#### **Section 4.7 Essential Utility Equipment**

Essential utility equipment, as defined in Section 2.2, shall be permitted in any district, as authorized and regulated by law and ordinances of Jefferson County, it being the intention hereof to exempt such essential utility equipment from the application of this Ordinance. Wireless telecommunication towers, however, shall conform to the requirements of Article 4B.<sup>7, 22</sup>

#### **Section 4.8 Buildable Lot**

Any lot which was a buildable lot under the terms or regulations in effect at the time of the adoption of this ordinance and which was established or recorded at that time shall be deemed a buildable lot for the erection of a single-family dwelling, subject to the provisions of the appropriate district regulations of this Ordinance.

#### **Section 4.9 Traffic Visibility Across Corner Lots**

On any corner in all districts, there shall be no obstruction to traffic visibility within 35 feet of the intersection of the two street property lines of the corner lot. Site plan and subdivision applications must comply with the Intersection Design requirements of the Subdivision and Land Development Regulations.<sup>23</sup>

#### **Section 4.10 Site Plan Requirements<sup>39</sup>**

- A. Submittal and approval of a site plan is required for all commercial, townhouse and multi-family residential, industrial, and institutional development in any district and for all major additions or expansions of existing uses as defined in Article 2, in accordance with the requirements of the Subdivision and Land Development Regulations and this Ordinance.<sup>23, 26</sup>
- B. Site plan submittal is not required for single-family or two-family dwelling units unless planned as part of a multi-unit or mixed use development plan.
- C. Site Plan submittal is not required for any Agricultural Use defined in Article 2. Agricultural Uses which are open to the public (Agricultural Special Event Facility, Farm Market, etc.) established on parcels of less than 20 acres shall process a Concept Plan in accordance with the Subdivision and Land Development Regulations.
- D. The site plan format and informational requirements that must be followed are referenced in the Jefferson County Subdivision and Land Development Regulations, and this Ordinance.<sup>23</sup>
- E. The Planning Commission has the authority to waive any site plan standards in accordance with the Subdivision and Land Development Regulations.<sup>10, 17, 21, 23</sup>

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

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

- A. Commercial Development<sup>27</sup>
  1. All commercial development adjacent to any Residential district, or any lot with a residence, school, church, or institution of human care shall have a 50 foot or greater unscreened green space buffer or a 15 foot screened green space buffer along common property lines. The screening may be either vegetative or opaque fencing and may be placed anywhere within the buffer. No structures, materials, or vehicular parking shall be permitted within the side and rear yard buffers.

2. All commercial development adjacent to all other uses must maintain ten foot side and rear yard landscape buffers.<sup>5</sup>

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

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

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

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

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

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

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

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

- a. One (1) deciduous or evergreen tree with a height of six (6) feet or more when planted, likely to reach a height of 20 feet or more at maturity, planted every 50 linear feet; at least every other tree shall be an evergreen;
- b. One (1) ornamental tree with a height of four (4) feet or more when planted, likely to reach a height of six (6) feet or more at maturity, planted every 50 linear feet; and
- c. Three (3) shrubs per each 25 feet along the property line, round upward.
- d. These requirements shall be required on both sides of a property line for adjoining properties.
- e. A 10 foot landscape area on the property unless shared parking is proposed. In the event shared parking is proposed, the required property line planting would be in addition to other plantings.<sup>7, 23, 26</sup>

2. It will be the responsibility of the landowner to replace any trees that die and shall be so noted on the site plan.

3. Screen planting shall be a minimum of ten (10) feet wide but shall be placed so that it is no closer than four (4) feet at maturity from a property line or from any street.
4. No structure, fence, planting, or other obstruction shall be permitted which would interfere with traffic visibility.

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

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

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

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

**Section 4.12 Design Standards for Multi-Family Developments<sup>23</sup>**

- A. Common open space shall be oriented to the interior of the development and shall consist of land suitable for passive and active recreational use. No more than 50 percent of land dedicated to recreational use shall be within the 100 year Floodplain.

**APPENDIX B: NON RESIDENTIAL SITE DEVELOPMENT STANDARDS TABLE<sup>27, 32, 35</sup>**

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

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

All dimensions are in feet unless otherwise indicated by “ac” (acres).

\* Maximum building height is subject to Sec. 9.2.

\*\* If land use(s) approved via the Conditional Use process in accordance with this Ordinance.

\*\*\* MLA for Industrial uses does not apply if the site is located in an approved Industrial Park [Source: Sec. 5.6E]

\*\*\*\* Schools in Rural district: Plus one (1) additional acre for every 100 pupils. Minimum lot size for Vocational Schools shall be based on State of West Virginia Code. If a sewer treatment plant and retention ponds are required, acreage shall be increased accordingly.

¥ Non-Residential Site Development in an existing structure in the Village District shall comply with Section 5.10A.2.

‡ Setback may be reduced if adjacent to industrial use.

⊕ For an industrial use, no structures, stored materials, or vehicular parking shall be permitted within the buffer yard. For a commercial use, no structures, materials, or vehicular parking shall be permitted within the side and rear yard buffers.

⊖ A rear yard setback may be reduced to 10' for a non-residential use abutting a commercial or industrial use at a rear lot line

⊖ Churches in any district: (1) are treated as a commercial use on a lot of greater than 1.5 acres in determining buffer requirements and parking/drive aisle setbacks; (2) building setbacks are 25' (front) and 50' (side/rear); and (3) distance requirements do not apply.

£ For a non-residential use abutting a commercial or industrial use, no side yard setback is required, unless required by Building Code or other law or regulation.



**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: \_\_\_\_\_  
 Staff Initials: \_\_\_\_\_  
 Meeting Date: \_\_\_\_\_  
 Fees Paid (\$100 or \$150): \_\_\_\_\_

Email: zoning@jeffersoncountywv.org

Phone: (304) 728-3228

**Zoning Variance Request**

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

**Property Owner Information**

Name: \_\_\_\_\_ \*Jefferson Rentals, LLC \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**Applicant Contact Information**

Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

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

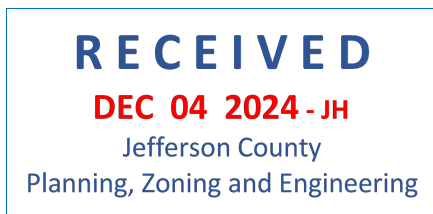
Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**Physical Property Details**

Physical Address: ---- Vacant lot on the SW corner of W. Burr and James Burr Blvd.  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
 Tax District: \_\_\_\_\_ Map No: \_\_\_\_\_ Parcel No: \_\_\_\_\_  
 Parcel Size: \_\_\_\_\_ Deed Book: ---- 1325 jth Page No: ---- 638 jth

**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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



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: \_\_\_\_\_

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

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

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

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


*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?*  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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

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

  
\_\_\_\_\_  
Signature of Property Owner                      12-3-24  
Date

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

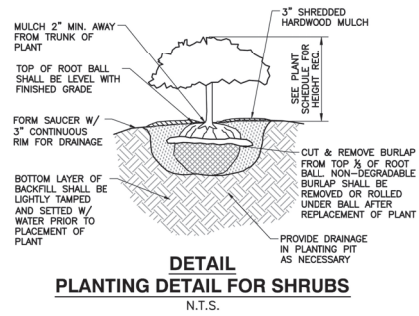
*Notification Requirements (to be completed by staff)*

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).

\_\_\_\_\_  
**Date of Public Hearing                                      Advertising Date                                      Placard Posting Date**



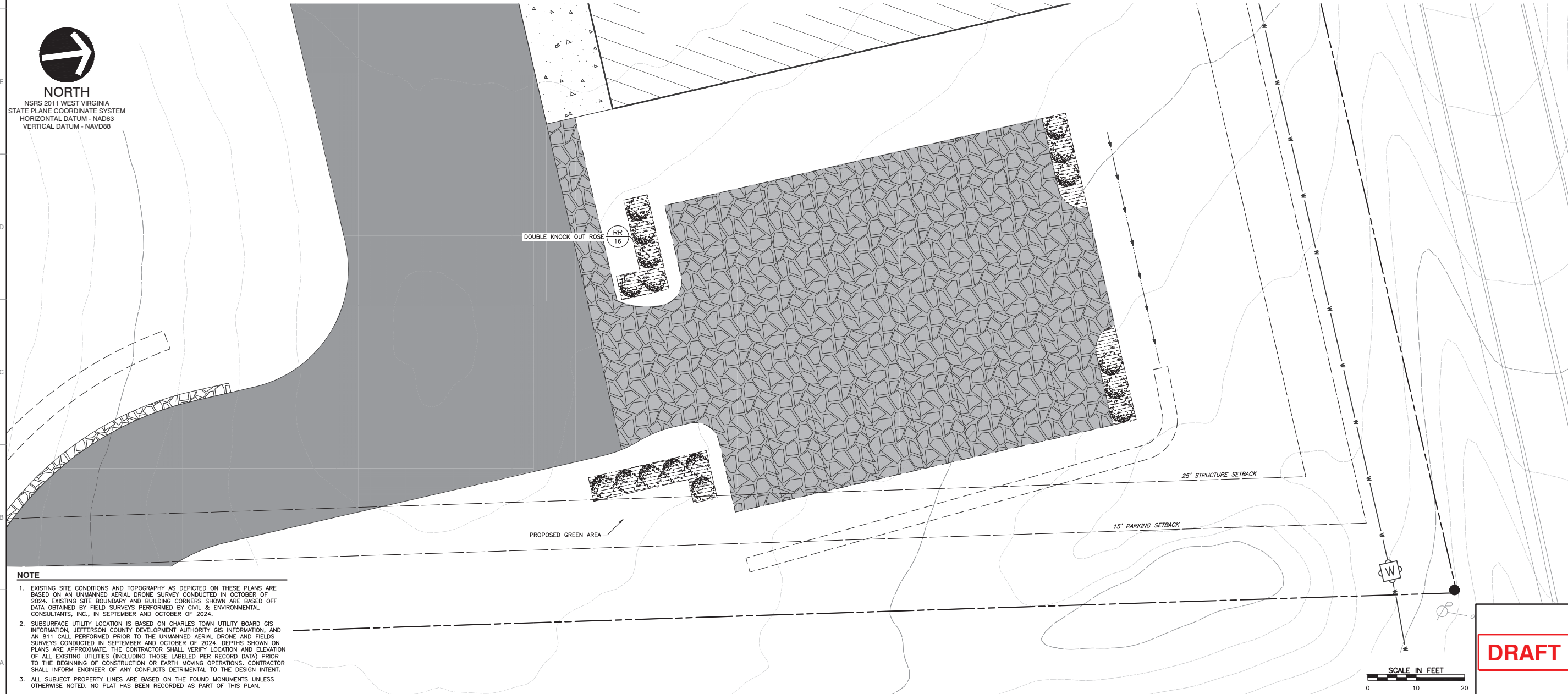
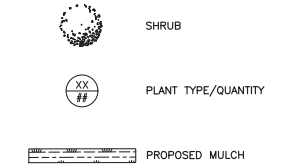
- NOTE**
- A VARIANCE WAS APPROVED TO MODIFY THE REQUIREMENTS OF SECTION 4.11.E.1 OF THE JEFFERSON ZONING AND LAND DEVELOPMENT ORDINANCE.
  - ALL BUFFER SIZES AS REQUIRED PURSUANT TO THE JEFFERSON COUNTY ZONING & LAND DEVELOPMENT ORDINANCE.
  - SPECIES LISTED ARE PRELIMINARY AND MAY CHANGE WITH AVAILABILITY UPON APPROVAL BY THE OWNER OR OWNERS REPRESENTATIVE.
  - ALL PERVIOUS AREAS WITHIN THE LIMITS OF CONSTRUCTION THAT ARE NOT SHOWN AS PLANTING BEDS SHALL BE TURF.
  - ALL LANDSCAPE MATERIALS SHALL CONFORM TO THE LATEST VERSION OF THE AMERICAN STANDARD OF NURSERY STOCK (ANSI Z60.1). PLANT MATERIALS SHALL BE OF STANDARD QUALITY OR BETTER TRUE TO NAME AND TYPE OF THEIR SPECIES OR VARIANT.
  - ALL WORKMANSHIP AND MATERIALS (INCLUDING PLANTS) TO BE GUARANTEED FOR ONE FULL YEAR FOLLOWING INITIAL ACCEPTANCE OF INSTALLATION BY OWNER.
  - THE CONTRACTOR SHALL COMPLY WITH THE LATEST EDITION OF THE LANDSCAPE SPECIFICATION GUIDELINES ADOPTED BY THE LANDSCAPE CONTRACTORS ASSOCIATION FOR PLANTING BED PREPARATION AND SOIL MIX GUIDELINES AND PROCEDURES.
  - THE EXISTING UNDERGROUND UTILITIES SHOWN HEREON ARE BASED UPON AVAILABLE INFORMATION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING MISS UTILITY TO DETERMINE THE EXACT LOCATION OF ALL UTILITIES BEFORE COMMENCING WORK AND IS RESPONSIBLE FOR ANY DAMAGES WHICH OCCUR BY THEIR FAILURE TO LOCATE OR PRESERVE THESE UNDERGROUND UTILITIES.
  - IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY FIELD CONDITIONS PRIOR TO CONSTRUCTION AND TO NOTIFY CEC IF THE FIELD CONDITIONS ARE NOT IN CONFORMANCE WITH THE APPROVED PLANS.
  - IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO ENSURE THAT ALL TREES ARE NOT PLANTED WITHIN 5' OF ANY UNDERGROUND UTILITY.
  - THE CONTRACTOR IS RESPONSIBLE FOR EVALUATING INDIVIDUAL TREES FOR STABILITY AT THE TIME OF PLANTING. BASED ON THIS EVALUATION, TREES SHALL BE STAKED AND GUYED AS NECESSARY TO ENSURE THAT THEY REMAIN IN AN UPRIGHT POSITION. STAKES ARE TO BE REMOVED BY OWNER AFTER ONE GROWING SEASON.
  - ALL PLANT MATERIAL TO BE INSPECTED BY OWNER OR OWNERS REPRESENTATIVE PRIOR TO INSTALLATION. PLANTS THAT ARE DAMAGED OR DO NOT CONFORM TO THE REQUIRED SPECIFICATION SHALL BE REJECTED.
  - ALL PLANTING BEDS ADJACENT TO TURF SHALL HAVE A 6" SPADE EDGE.
  - EXISTING TREES TO BE SAVED WHEREVER PRACTICAL.
  - ALL VEGETATION WITHIN 10' OF THE SOUTH AND SOUTHWESTERN MOST PROPERTY LINE SHALL REMAIN UNDISTURBED THROUGH THE PRESERVATION OF EXISTING VEGETATION. IN THE EVENT THAT ANY EXISTING VEGETATION BE REMOVED WITHIN THIS BUFFER (EXCEPT FOR GENERAL LANDSCAPE MAINTENANCE), THE OWNER SHALL REPLANT THE AFFECTED AREA.



LANDSCAPING REQUIREMENTS		
SECTION 10.10 OF THE SUBDIVISION AND LAND DEVELOPMENT ORDINANCE		
REGULATIONS	REQUIRED	PROVIDED
GREENSPACE- 5% OF PARKING LOT AREA: 5905 SQ.FT. X 0.05	296 SQ.FT.	340 SQ.FT.
CONSIDER 1 TREE =50 SQ.FT. & 1 SHRUBS= 20 SQ.FT.		
SECTION 4.11.I.BA OF THE ZONING ORDINANCE		
REGULATIONS	REQUIRED	PROVIDED
THE GREATER OF 4 TREES OR 1 TREE PER 100': 240' OF FRONTAGE / 100' = 3	WAIVED	WAIVED

PLANT SCHEDULE					
TREES					
SYMBOL	QUANTITY	BOTANICAL NAME	COMMON NAME	SIZE	REMARKS
RR	17	ROSA "RADRAZZ" KNOCK OUT	DOUBLE KNOCK OUT ROSE	#3 CONTAINER	

LEGEND:



- NOTE**
- EXISTING SITE CONDITIONS AND TOPOGRAPHY AS DEPICTED ON THESE PLANS ARE BASED ON AN UNMANNED AERIAL DRONE SURVEY CONDUCTED IN OCTOBER OF 2024. EXISTING SITE BOUNDARY AND BUILDING CORNERS SHOWN ARE BASED OFF DATA OBTAINED BY FIELD SURVEYS PERFORMED BY CIVIL & ENVIRONMENTAL CONSULTANTS, INC., IN SEPTEMBER AND OCTOBER OF 2024.
  - SUBSURFACE UTILITY LOCATION IS BASED ON CHARLES TOWN UTILITY BOARD GIS INFORMATION, JEFFERSON COUNTY DEVELOPMENT AUTHORITY GIS INFORMATION, AND AN 811 CALL PERFORMED PRIOR TO THE UNMANNED AERIAL DRONE AND FIELDS SURVEYS CONDUCTED IN SEPTEMBER AND OCTOBER OF 2024. DEPTHS SHOWN ON PLANS ARE APPROXIMATE. THE CONTRACTOR SHALL VERIFY LOCATION AND ELEVATION OF ALL EXISTING UTILITIES (INCLUDING THOSE LABELED PER RECORD DATA) PRIOR TO THE BEGINNING OF CONSTRUCTION OR EARTH MOVING OPERATIONS. CONTRACTOR SHALL INFORM ENGINEER OF ANY CONFLICTS DETRIMENTAL TO THE DESIGN INTENT.
  - ALL SUBJECT PROPERTY LINES ARE BASED ON THE FOUND MONUMENTS UNLESS OTHERWISE NOTED. NO PLAT HAS BEEN RECORDED AS PART OF THIS PLAN.

REVISION RECORD

NO.	DATE	DESCRIPTION

786 Foxcroft Ave.  
Martinsburg, WV 25401  
Ph: 304.808.7600  
www.ccecinc.com



JEFFERSON RENTALS, LLC  
JEFFERSON RENTALS EXPANSION  
SITE DEVELOPMENT  
KEARNEYSVILLE, WV

LANDSCAPE PLAN	
DATE: NOVEMBER 2024	DRAWN BY: LDT
DWG SCALE: AS SHOWN	MAS
PROJECT NO: 345-583	CHECKED BY: TWA
APPROVED BY:	

DRAWING NO: **C700**  
SHEET 12 OF 16

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 January 23, 2025

**25-1-CUP Ramey Conditional Use Permit Request**

**Item #3** Request for a Conditional Use Permit to establish the following land uses: a Convenience Store (dba The Country Store); and, an Automobile Repair, Sales and Service (dba RC Auto Service). The proposal includes continuing the use of the existing grocery store and establishing an auto repair business within an existing metal-frame building. The applicant intends on consolidating the subject parcels to expand the parking area for the proposed land uses. All new signage will comply with Article 10.

Applicant:	Corey Ramey, Owner
Parcel Information & Zoning District:	4360 Sulphur Springs Rd and 4378 Sulphur Springs Rd, Kearneysville, WV Parcel ID: 07001200020002 and 07001200020004 Project Size: 2.12 ac; Zoning District: Rural
Surrounding Zoning:	North, South, East, and West : Rural
Approvals:	Various Alcohol Beverage Control Administration (ABC) letters issued.
Site Visit Conducted:	No

**Property Description (Background/History)**

The subject property is comprised of two parcels totaling approximately 2.12 acres in the Rural zoning district. The surrounding parcels consist of both residential and farm uses. The property has direct access onto Sulphur Springs Road.

The existing general store pre-dates the adoption of the Zoning Ordinance. Staff was able to document that the store has existed since at least 1975. As such, this property is considered a legal nonconforming use. The past and current property owners have worked with the office to ensure that the legal nonconforming status has not ceased. Converting the existing store from a nonconforming use to a conditional use will ensure that this property does not lose the nonconforming status. Additionally, this

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**25-1-CUP Ramey Conditional Use Permit Request**

will preserve the commercial use of the property should it be destroyed by a natural or unnatural calamity.

Lastly, as Section 4.3B limits the expansion of a conforming use's property size as follows:

“However, expansion of any nonconforming structure or use shall be limited to the lot that existed at the time of adoption of this Ordinance. Additional acreage shall not be added to enlarge any nonconforming use unless a variance is approved by the Board of Zoning Appeals after review and a public hearing in accordance with Section 6.1C.”

Approval of the requested conditional use permit will allow the applicant to consolidate the parcels.

Based on aerial and street view imagery, it appears that the applicant may be operating some aspect of the automobile business from this location. By obtaining a conditional use permit for the proposed land use this will allow the property owner to come into compliance with the County's Zoning Ordinance and Subdivision Regulations



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

This request for a Conditional Use Permit is to allow the expansion and redevelopment of an existing nonconforming use. The proposal includes continuing the use of an existing grocery store and establishing an auto repair business within an existing metal-frame building. The applicant intends on consolidating the subject parcels to expand the parking area for the proposed land uses.

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**25-1-CUP Ramey Conditional Use Permit Request**

The two land use designations subject to this request are listed in Appendix C and are defined in Article 2 as Convenience Store and Automobile Repair, Sales and Service.

Article 2 defines *Convenience Store* as, “An establishment, not exceeding 10,000 square feet of gross floor area, engaged in the retail sale, from the premises, of food, beverages and other frequently or recurrently needed items for household use. This land use does not include a gas station.”

Article 2 defines *Automobile Repair, Sales and Service* as, “The use of a site for the repair and maintenance of automobiles, motorcycles, trucks, trailers, or similar vehicles including but not limited to body, fender, muffler, or upholstery work, oil change and lubrication, painting, and tire service, but excluding dismantling or salvage.”

The applicant will be limited to the land uses specifically outlined within the conditional use permit application and the testimony provided during the Board of Zoning Appeals meeting.

**Conditional Use Permit Process**

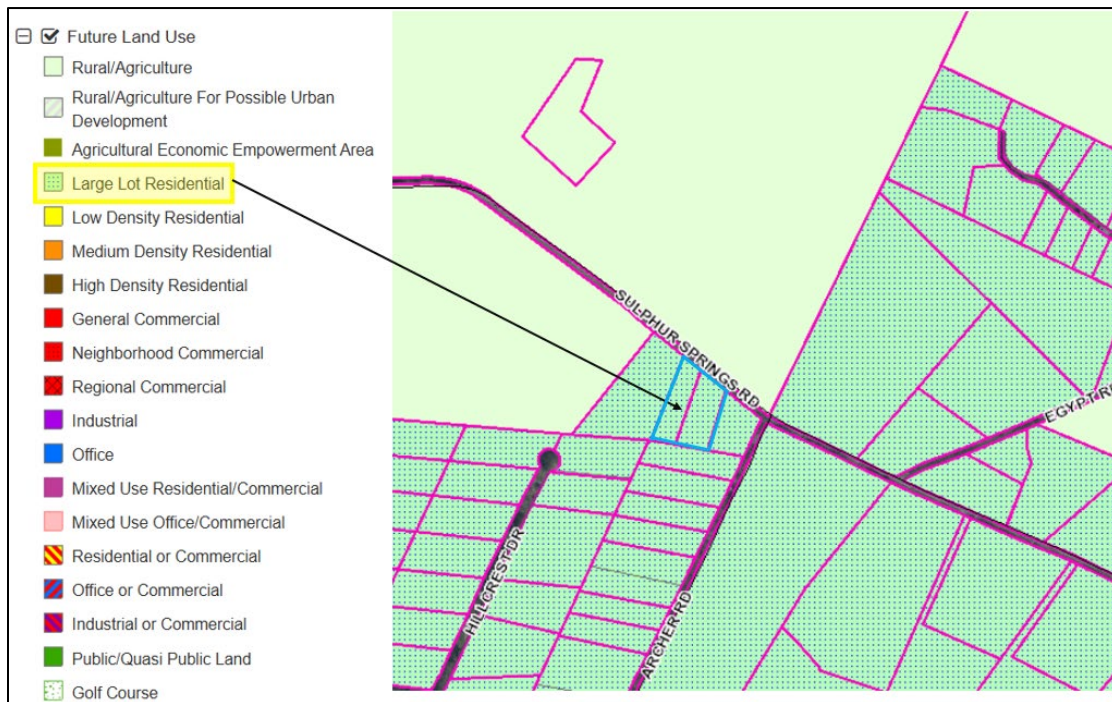
Section 6.3 of the Zoning Ordinance states:

“The Board of Zoning Appeals shall have the authority over the issuance of or denial of a Conditional Use Permit (CUP) for uses listed as “Conditional Uses” 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 by the Board 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 parcels are shown as “Large Lot Residential” on the Envision Jefferson 2035 Comprehensive Plan’s Future Land Use Guide (see exhibit below) and is located outside of the County’s urban growth boundary.



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**25-1-CUP Ramey Conditional Use Permit Request**

One theme repeated throughout the Comprehensive Plan is to allow non-residential uses which are compatible in scale and intensity with the rural environment to process as a conditional use (see excerpts below).

“...allow the use of a more traditional CUP process in the Rural District for non-residential uses which are compatible in scale and intensity with the rural environment and that pose no threat to public health, safety, and welfare.” (Page 14, Goals and Objectives)

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

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

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

“While most of these types of Cottage Industries and Home Occupations are permitted by right in the Rural District, some more intense uses may require a CUP. This Plan recommends that the use of the CUP in the Rural District be limited to non-residential uses not permitted in the Rural District which are compatible in scale and intensity with the rural environment and that pose no threat to public health, safety, and welfare.” (Page 74, Rural Economic Activities)

“Recommendation 5: Amend the Zoning and Land Development Ordinance to permit additional non-residential rurally compatible uses.”

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

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

On page 2 of the application the applicant states that the proposed land use will be located within an existing steel building.

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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)**

On page 2 of the application the applicant states that the proposed land use will be contained to the subject parcels.

**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)**

The applicant has acknowledged that they will adhere to the landscaping provisions of the Zoning Ordinance.

Should a site plan be required for the expanded land use, the applicant will be required to install landscaping in accordance with Section 4.11 and Appendix B, as well as ensuring that the proposed structure complies with the 75' distance requirement from any lot with a dwelling unit, church, or institution for human care as required by Section 4.6 of the Zoning Ordinance. This will help mitigate any potential impact from the proposed land use.

Due to the configuration of the parcels, additional processing may be required.

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

Section 8.9 of the Zoning Ordinance is attached to the staff report for reference.

**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)**

The subject parcels are located on a Major Collector road, as such trip generation data is not required.

**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.

**Current Signage**

There is one existing sign on the subject property that is affixed to the existing store.

**Proposed Signage**

The applicant's sketch depicts one new sign for RC Auto. The sign's exact location and dimensions were not included in the application.

If approved by the BZA, any new signage will require a Building Permit and Zoning Certificate documenting it meets the requirements of Article 10 of the Zoning Ordinance.

**Staff Report Attachments:**

- Section 8.9 of the Zoning Ordinance

B. Standards for Hunting, Shooting and Fishing Clubs<sup>20</sup>

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 Clubs<sup>20</sup>

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 Uses<sup>23</sup>**

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

1. Noise

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

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

The following sources of noise are exempt:

- a. Transportation vehicles not under the control of the industrial use.
  - b. Occasionally used safety signals, warning devices and emergency pressure relief valves.
  - c. Temporary construction activity between 7:00 a.m. and 7:00 p.m.
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 <sup>3</sup> /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.<sup>1</sup>

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

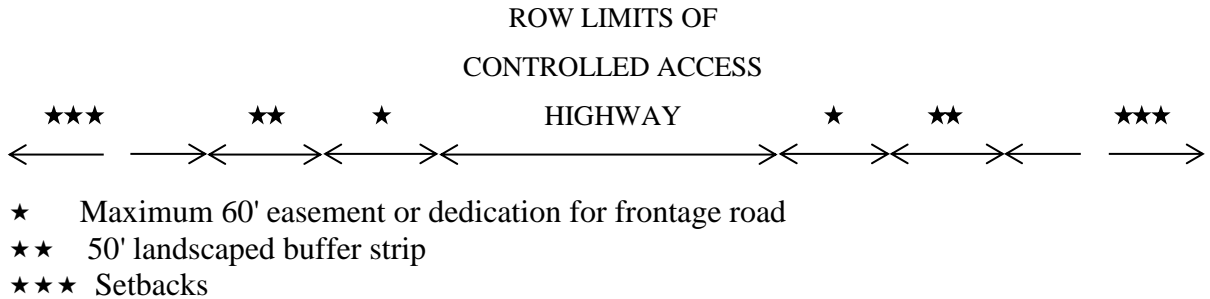
Easements or fee simple dedications will be provided along all limited access highways at the site plan or subdivision phases. Said easement/dedication shall not exceed 60 feet in width. The width may vary but must be adequate for extension, continuation or establishment of a minimum 20' wide paved frontage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

10. Landscape Buffer

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

A fifty (50) foot wide landscape buffer strip will be provided along all limited access highways. Said buffer shall be adjacent to the frontage road. In the case where existing roads not adjacent to controlled access highway serve as frontage road the landscape buffer may be placed against the highway right-of-way.

All front setbacks (building and parking lot) are to be measured from the landscape buffer. (See diagram)



This provision shall also apply to any ramps or access roads connecting to a controlled access highway within ½ mile of a controlled access highway.<sup>5</sup>

**Section 8.10 Model Homes/Sales Offices<sup>23</sup>**

Model homes with a staffed sales office for sales exclusively within the residential subdivision in which they are located are permitted provided that they are contained on the first lot on either or both sides of any road/right-of-way that enters the subdivision; provided also that they are so designated on the preliminary and final plats during the subdivision process.

Model homes with a staffed sales office in any other location within the subdivision must be approved or denied by the Board of Zoning Appeals after a public hearing advertised for 15 days.<sup>17, 21</sup>

Model homes without staffed sales offices are permitted internally within the subdivision.<sup>12</sup>

**Section 8.11 Petroleum Products Refining or Storage<sup>23</sup>**

Petroleum refining or storage (above ground in tanks) requires adherence to all state and federal laws, as well as National Fire Underwriters Codes.

**Section 8.12 West Virginia Legal Fireworks<sup>23</sup>**

Sales of fireworks are permitted in the Industrial-Commercial, Residential-Light Industrial-Commercial, General Commercial, Highway Commercial, Highway Commercial, Light Industrial, and Major Industrial zoning districts provided all other restrictions such as setbacks and the requirements of the Jefferson County Subdivision and Land Development Regulations are met.<sup>8, 27</sup>

**Section 8.13 Dormitory<sup>23</sup>**

A dormitory shall be located on the same property or campus as the use it is intended to serve. A dormitory shall not offer accommodations to the general public or to persons who are visiting the property or campus primarily for the purpose of being a spectator at a sporting event or other gathering held at the facility. A dormitory may include one common kitchen or dining facility and common gathering rooms for social purposes for use only by its temporary occupants.

**Section 8.14 Special Event Facilities<sup>39</sup>**

The purpose of this sections is to create a process by which a property owner in the Rural, Residential Growth, and Village zoning districts may establish a Special Event Facility. A Special Event Facility in any other zoning district may process in accordance with Appendix C.





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

File #: 25-1-CUP  
 Mtg. Date: 1/23/25  
 Fee Paid: \$ 375 CAU

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

Phone: (304) 728-3228

**Application for a Conditional Use Permit**

**Project Name**

Rc Auto Service

**Property Owner Information**

Name: Corey Ramey  
 Business Name: The Country Store  
 Mailing Address: 4360 Sulphur Springs Rd Kearneysville Wv 25430  
 Phone Number: 6812420036 Email: crameysr08@gmail.com

**Applicant Information**

Name: Corey Ramey  
 Business Name: Rc Auto Service  
 Mailing Address: 4360 Sulphur Springs Rd Kearneysville Wv 25430  
 Phone Number: 6812420036 Email: crameysr08@gmail.com

**Consultant Information**

Name: \_\_\_\_\_  
 Business Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**Physical Property Details** 4378 Sulphur Springs Rd, Kearneysville, WV

Physical Address: 4360 Sulphur Springs Rd Kearneysville Wv 25430  
 Parcel ID: (Tax District / Map No. / Parcel No.) Middleway/// 19-07-0012-0002-0002 and 07001200020004  
 Parcel Size: 1.0 acre 2.12 Project Size 2.12 acres Deed Book: 1282 Page No: 458

**Zoning District (please check one)**

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

**Provide the Land Use Designation (see Appendix C of the Zoning Ordinance).**

Rural Land Use Designation: Convenience Store and Automobile Repair, Sales and Service: (jth)

**For properties in the Rural Zoning District:**

Is property located on a primary or secondary road?

Yes  No

Name of Road/Route Number: Sulphur Springs Rd

**RECEIVED**

**DEC 10 2024**

**JEFFERSON COUNTY PLANNING  
 ZONING & ENGINEERING**

**Provide a detailed description of the proposed business (include information such as hours of operation, anticipated employee and/or customer visits, etc. A site sketch is required to be included with the application, delineating existing and proposed structures and parking areas, proposed signs, proposed landscaping, etc.**

The Country Store has three employee's business hours are 6am-9pm Monday thru Saturday, Sunday 8am-8pm

Rc Auto Service the hours would be Monday thru Saturday 8am-5pm, Auto repair would be contained and conducted inside of the existing metal framed garage. Parking would use existing gravel driveway area, would like to put in a pole sign to include store and auto repair at the front right corner of property. There will be three employees for Rc Auto as well.

**Provide a detailed response to the following questions to show how the proposed business complies with the criteria in Section 6.3 of the Zoning Ordinance. Feel free to attach a separate sheet with responses.**

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

Proposed use of the property will not affect surrounding properties value

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 (Section 6.3A.2)?

I feel as if it compatible for use being all repair work will take place inside of a steel building with a concrete floor. There will be no threat to public safety, health or welfare.

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).

The proposed use will be conducted inside of my property lines and would not affect any of the surrounding neighbors. With the current property use and proposed use I feel as if it will help the community grow and support my family.

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 seek 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.

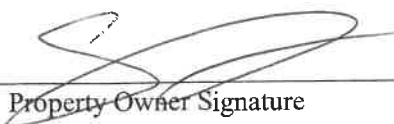
6. For properties in the Rural zoning district, roadway adequacy shall be assessed by the Comprehensive Plan's Highway Road Classification Map. If a rural parcel is not shown as commercial on the Future Land Use Guide or does not front on a primary or secondary road (as identified in the Comprehensive 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).

Trip Generation Data Attached

Not Applicable

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

*By signing this application, I grant permission for County staff to walk onto the subject property to take photos for the Board of Zoning Appeals staff reports.*

  
Property Owner Signature

12-10-24  
Date

Property Owner Signature

Date

# FARM FIELD

TREES

Sulphur Springs rd

Sign for Store:  
AUTO REPAIR

4360 Sulphur Springs rd

4378 Sulphur Springs rd



DRIVE WAY  
DRIVE WAY  
4378

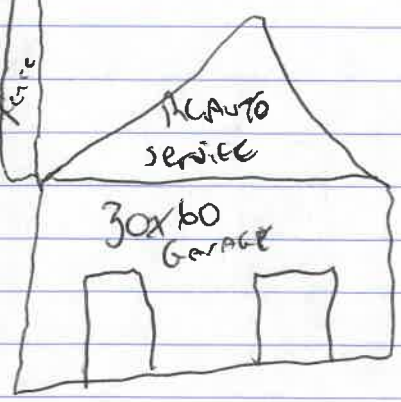
Mobile Home PARKING

Mobile Home 4378

NEW GATE ENTRANCE

PROPOSED request to  
USE for Commercial  
AUTO REPAIR

4378 would like  
to ADJOIN TO 4360 for  
Commercial USE



PARKING  
AREA  
CURRENTLY  
GRASS

FENCE

EXISTING FENCE

PROPOSED NEW FENCE

PROPOSED NEWS FENCE LINE

clear  
PAX

20.065  
Cdn: nwr

Fence

4360 - 4378 Sulphur Springs rd Adjoining neighbors

4340 Sulphur Springs rd KEARNEYVILLE MO 25430  
Corey Ramey / OWNER

---

SETH P. SHZMAN

1287 Archer rd KEARNEYVILLE MO 25430  
Borders 4378 Sulphur Springs rd

---

STEPHEN R. : STEPHANIE E. WALDRON

1255 ARCHER RD KEARNEYVILLE MO 25430

Rear Border of 4360 : 4378 Sulphur Springs rd

---

4183 Sulphur Springs rd KEARNEYVILLE MO 25430

153.52 Acres Across the roadway OWNED BY

DONALD D. FREMSTAD : JOSEPHINE M. FREMSTAD

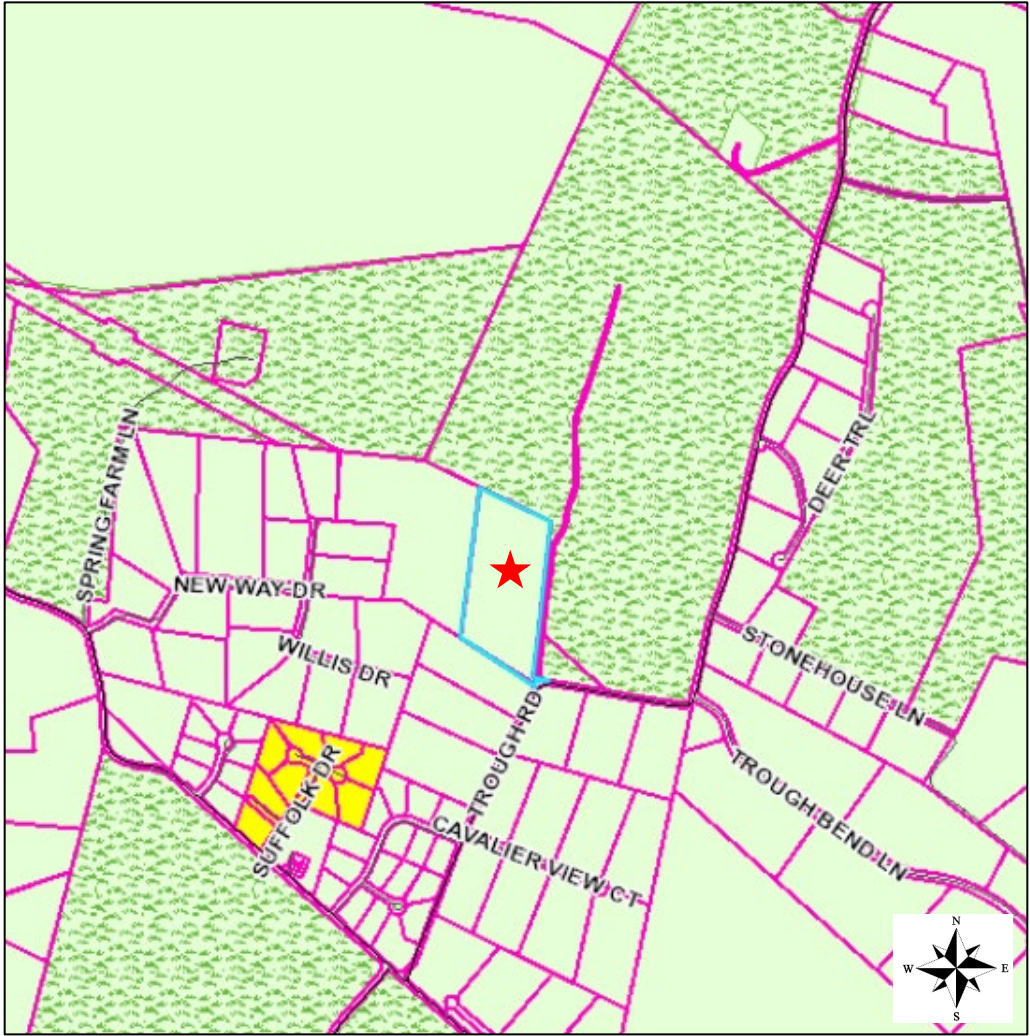
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No other Adjoining neighbors do these properties.

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**25-2-CUP QRF Solutions K9 LLC Conditional Use Permit Request**

Item #4 Request for a Conditional Use Permit to establish a federal firearms business to include retail sales and gunsmithing in accordance with the Alcohol, Tobacco, Firearms and Explosives (ATF) approvals. The proposal consists of utilizing a 1 acre portion of the 10 acre tract. The land use will be conducted from the existing dwelling unit and the accessory structure. The land use will operate by appointment only. No new structures or signage are proposed as part of this application. The proposed land use designations as listed in Appendix C are *Retail Sales and Service, General* and *Custom Manufacturing*, as defined in Article 2.

Owner:	Nicholas Russo and Alice Davenport
Business Name:	QRF Solutions K9 LLC
Parcel Information and Zoning District:	<p style="text-align: center;">1899 Trough Road, Shepherdstown, WV          Parcel ID: 09000900070006; Size: 10 acres; Zoning District: Rural</p>  <p style="text-align: center;">Conservation Easements</p>
	<p style="text-align: center;">Zoning Map Designation:          North, East, South, West: Rural</p>
Surrounding Properties:	

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**25-2-CUP QRF Solutions K9 LLC Conditional Use Permit Request**

History:	04/01/86: This 10-acre parcel was created through an Outsale Exemption recorded (DB 554/PG 142)
Waivers/ Variances:	07/25/23: Planning Commission approved a variance request to lift the single family restriction (File #23-2-PCV) 11/09/23: BZA approved variance request from Section 8.4 to reduce the distance requirement from 300' to 135' along the western property line and from 300' to 75' along the eastern property line for a proposed kennel with an outdoor training area (File #23-34-ZV).
Approved Activity:	Single family dwelling (Permit #87-450) Barn (Permit #87-449); Barn Expansion (Permit #90-611) Zoning Certificate 23-40-ZC: Issued 11/27/23 - Kennel: includes training to include scent detection training (i.e. cadaver, tracking, explosives, narcotics) and shall be licensed in accordance with State and Federal regulations, as required. Re-issued 11/08/24 – Kennel: revised to include the following: <ul style="list-style-type: none"> <li>• <u>Permitted to create/assemble cadaver, tracking, explosives, narcotics tools and devices related to scent detection training provided that no detonation devices are included in the tools or devices.</u></li> <li>• <u>Incidental on-line sales of training tools and devices related to on-going scent detection training.</u></li> </ul>
Site Visit Conducted:	Site visit not conducted.

**Property Background/History**

On November 27, 2023, the applicant was issued a Zoning Certificate (File #23-40-ZC) to operate a dog kennel that included the following restrictions:

- The approved land use shall comply with Section 8.4 of the Zoning Ordinance. On 11/09/23 the Board of Zoning Appeals granted a request to reduce the 300' distance requirement (File #23-34-ZV). The applicant is bound by their testimony as presented in their written application and verbal presentation to the Board. Any changes, including expansions, from what was presented to the Board shall be reevaluated for compliance with the Zoning Ordinance.
  - No outdoor runs or kennels are permitted.
  - Overnight boarding to remain incidental to dog training operation and shall be contained to existing cinderblock structure containing 18 – 12' x 12' stalls.
  - Dogs permitted outside only while accompanied by a dog trainer.
  - Training to include scent detection training (i.e. cadaver, tracking, explosives, narcotics) and shall be licensed in accordance with State and Federal regulations, as required.
- Customer parking shall be located on premises. No parking shall occur within the shared access easement along southern property boundary providing access to the adjoining parcel 7.25 / Tract A.

As part of this application the property owner submitted a copy of their Controlled Substance Permit issued by the West Virginia Board of Pharmacy (License #TI0555198).

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**25-2-CUP QRF Solutions K9 LLC Conditional Use Permit Request**

In order to address the specific text required by the Alcohol, Tobacco, Firearms and Explosives (ATF) regarding the permitted uses on the subject parcel, the Zoning Certificate was re-issued on November 8, 2024, to include the following conditions:

- Permitted to create/assemble cadaver, tracking, explosives, narcotics tools and devices related to scent detection training provided that no detonation devices are included in the tools or devices.\*
- Incidental on-line sales of training tools and devices related to on-going scent detection training.\*

Generally, retail sales that are accessory to the operations of a Kennel, would be permitted. These types of sales could include dog collars and leashes, dog treats, behavior deterrents, etc. However, the applicant was informed that a conditional use permit would be required in order to expand the land use to include the sale or assembly of firearms.

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

This request is to establish a federal firearms business to include retail sales and gunsmithing by appointment only. The land use will be conducted from the dwelling unit and accessory structure, which is situated within and limited to a 1-acre portion of the 10 acre parcel. The applicant intends on utilizing the parking area of the existing Kennel. There is a testing component that will be incidental to the proposed land use that will occur at the applicant's private range on the subject property. The applicant stated that the testing component is limited and not open to the public.

While the land use will primarily occur within the dwelling unit and accessory structure, the applicant has stated that any new structures associated with this land use will be constructed within the 1-acre portion of the property and that the existing vegetation will be retained. The structures will also process in accordance with any applicable site developments standards in effect at that time. No signs are proposed as part of this land use.

The two land use designations subject to this request are listed in Appendix C and are defined in Article 2 as Retail Sales and Service, General and Custom Manufacturing.

Article 2 defines *Retail Sales and Service, General* as, "A commercial facility engaged in the indoor sale or rental, with incidental service, of goods or merchandise to the general public for personal or household consumption, or providing retail services or entertainment to the general public. Typical retail sales uses include department stores, apparel stores, discount retail stores, furniture stores, or establishments providing the following products or services: household cleaning and maintenance products; food, pharmaceutical products, cards, books, tobacco products, cosmetics, and specialty items; flowers, plants, pets and pet supplies, hobby materials, toys, and handcrafted items; apparel, jewelry, fabrics and similar items; cameras, photography services, household electronic equipment, video and music products, sporting equipment, home furnishings and appliances, art supplies and framing, arts and antiques, paint and wallpaper, hardware, carpeting and floor covering; interior decorating services; office supplies; mail order or catalog sales; bicycles; and automotive parts and accessories (excluding service and installation). Typical service-related uses include eating and drinking establishments; finance, real estate and insurance; amusement and recreational services or establishments such as bowling alleys and miniature golf courses; health, educational and social services. This use does not include Retail Store, Large, and does not include any other use specifically classified in another definition herein.

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**25-2-CUP QRF Solutions K9 LLC Conditional Use Permit Request**

Article 2 defines *Custom Manufacturing* as, “Use of a site for the manufacturing of products that are usually handmade and/or are made in small-scale enclosed workshops, involving the use of hand tools, the use of domestic mechanical equipment, or a kiln. This category also includes incidental direct sale to customers of those goods produced on the site. Examples include clay products, glass blowing, jewelry, leatherworking, custom bookbinding, metalworking, and woodworking.”

The applicant will be limited to the land uses specifically outlined within the conditional use permit application and the testimony provided during the Board of Zoning Appeals meeting.

**Property Description**

The subject parcel is comprised of approximately 10 acres in the Rural zoning district. The land to the north of the subject parcel, known as Far Away Farms, was recently placed in a conservation easement and is owned by the Jefferson County Historic Landmarks Commission. The property has direct access onto Trough Road.



**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:”

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**25-2-CUP QRF Solutions K9 LLC Conditional Use Permit Request**

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

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

The subject parcel is shown as “Rural/Agricultural” on the Envision Jefferson 2035 Comprehensive Plan’s Future Land Use Guide (see exhibit below) and is located outside of the County’s urban growth boundary.



One theme repeated throughout the Comprehensive Plan is to allow non-residential uses which are compatible in scale and intensity with the rural environment to process as a conditional use (see excerpts below).

“...allow the use of a more traditional CUP process in the Rural District for non-residential uses which are compatible in scale and intensity with the rural environment and that pose no threat to public health, safety, and welfare.” (Page 14, Goals and Objectives)

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

“...This Plan further recommends amending the Zoning Ordinance to eliminate the LESA point system and to develop procedures that would allow the use of a more traditional CUP process in the Rural District for non-residential uses. This CUP process 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)

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**25-2-CUP QRF Solutions K9 LLC Conditional Use Permit Request**

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

“While most of these types of Cottage Industries and Home Occupations are permitted by right in the Rural District, some more intense uses may require a CUP. This Plan recommends that the use of the CUP in the Rural District be limited to non-residential uses not permitted in the Rural District which are compatible in scale and intensity with the rural environment and that pose no threat to public health, safety, and welfare.” (Page 74, Rural Economic Activities)

“Recommendation 5: Amend the Zoning and Land Development Ordinance to permit additional non-residential rurally compatible uses.”

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

The applicant had provided additional justification on pages 3, 4, and 5 of their application.

- 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 pages 5 and 6 of their application.

As noted by the applicant, all proposed land uses will be regulated by the ATF and will operate in accordance with the FFL License. This includes any required inspections.

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

The applicant addressed this criteria on page 7 of their application.

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

The applicant acknowledged this criteria on page 2 of their application.

As the proposed land use will be located within two existing structures and will utilize an existing parking area, no site plan will be required. As a site plan is not required, the landscaping provisions in Appendix B and Section 4.11 of the Zoning Ordinance are not applicable. The applicant does not intend on clearing/grading the site for the proposed use (see page 6, paragraph 2). The structures subject to this request meet the 75' distance requirement.

As noted by the applicant, any new structure will necessitate review by the Office of Planning and Zoning, which may necessitate a site plan in the future.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
January 23, 2025

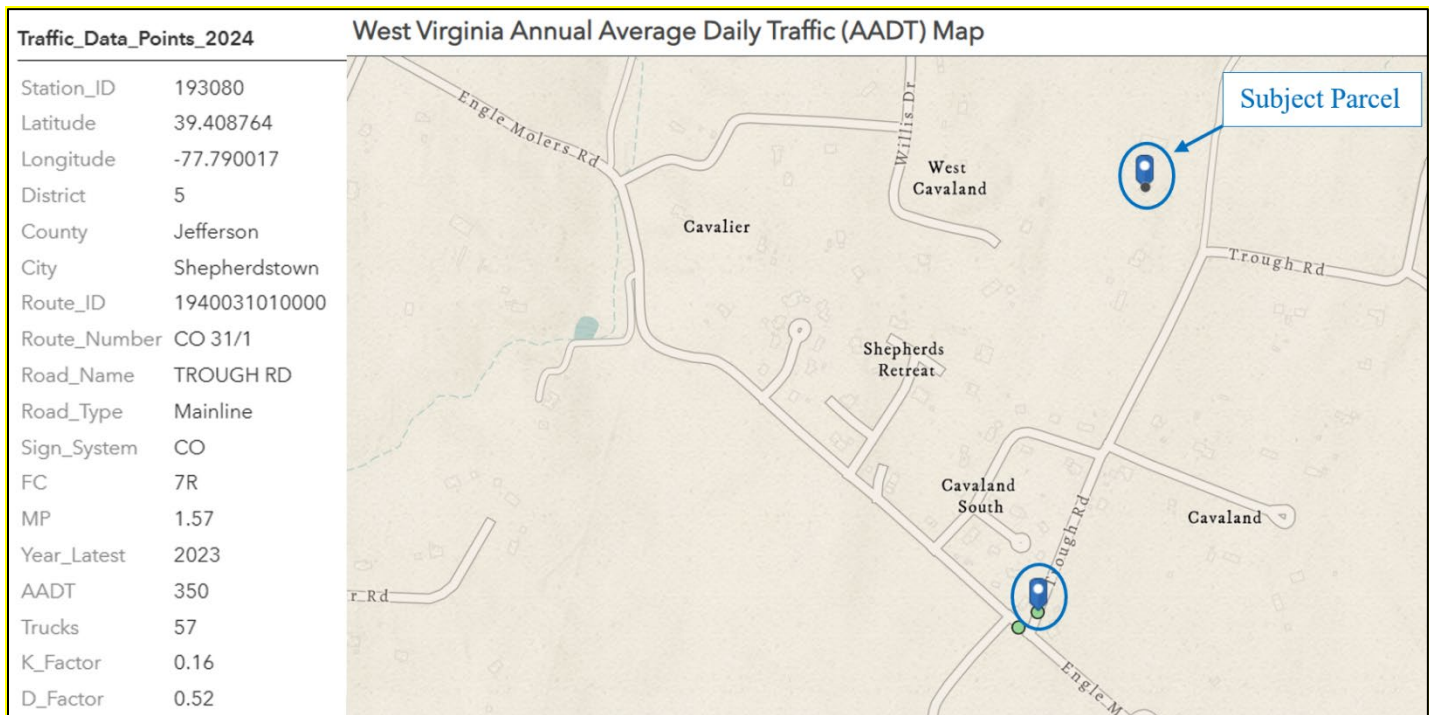
**25-2-CUP QRF Solutions K9 LLC Conditional Use Permit Request**

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

Section 8.9 of the Zoning Ordinance is attached to the staff report for reference.

**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)**

Trough Road is classified as a Local road and is subject to this criteria. On page 7 of the application the applicant states that the “West Virginia Annual Average Daily Traffic (AADT) Map did not contain any data about traffic or daily trips on this segment of Trough Road...” The [West Virginia Annual Average Daily Traffic \(AADT\) Map](#) shows an AADT of 350 approximately .35 miles south of the subject parcel.

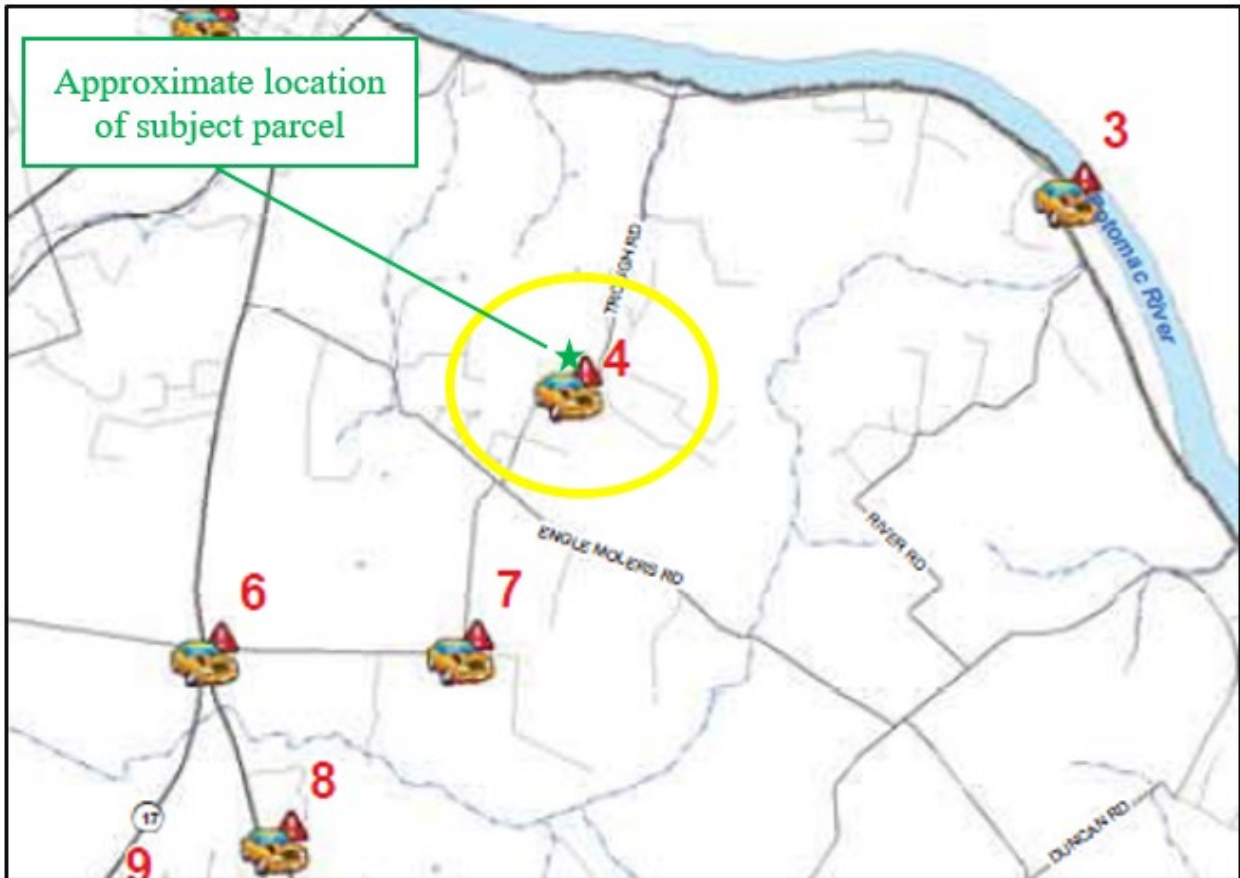


The applicant explained that there are no schedule daily shipments and that they do not have any employees. In speaking with the applicant, they represented that they do not anticipate any more than 3-5 customers per month related this this land use. The applicant may be able to expound on this during his verbal testimony.

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**25-2-CUP QRF Solutions K9 LLC Conditional Use Permit Request**

Below is an excerpt from the Comprehensive Plan’s Highway Problem Areas Map. There appears to be one problem area reflected on the map (see below). The floating “4” relates to this general location of Trough Road. The rationale for this determination is cited below.



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 Moler's	Two 90 degree turns

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**25-2-CUP QRF Solutions K9 LLC Conditional Use Permit Request**

Due to the identified highway problem area, the applicant may wish to consult with the West Virginia Division of Highways to determine what, if any, mitigation techniques could be utilized to promote public safety at this location.



**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)**

The applicant did not provide any information on proposed signs. Any future signs may necessitate review by the Board.

**Staff Report Attachments:**

- Section 8.9 of the Zoning Ordinance

B. Standards for Hunting, Shooting and Fishing Clubs<sup>20</sup>

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 Clubs<sup>20</sup>

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 Uses<sup>23</sup>**

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

1. Noise

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

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

The following sources of noise are exempt:

- a. Transportation vehicles not under the control of the industrial use.
  - b. Occasionally used safety signals, warning devices and emergency pressure relief valves.
  - c. Temporary construction activity between 7:00 a.m. and 7:00 p.m.
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/	/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.<sup>1</sup>

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

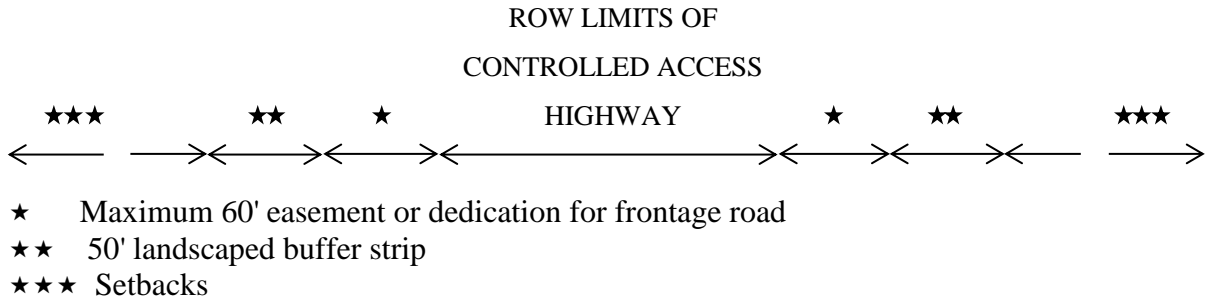
Easements or fee simple dedications will be provided along all limited access highways at the site plan or subdivision phases. Said easement/dedication shall not exceed 60 feet in width. The width may vary but must be adequate for extension, continuation or establishment of a minimum 20' wide paved frontage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

10. Landscape Buffer

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

A fifty (50) foot wide landscape buffer strip will be provided along all limited access highways. Said buffer shall be adjacent to the frontage road. In the case where existing roads not adjacent to controlled access highway serve as frontage road the landscape buffer may be placed against the highway right-of-way.

All front setbacks (building and parking lot) are to be measured from the landscape buffer. (See diagram)



This provision shall also apply to any ramps or access roads connecting to a controlled access highway within ½ mile of a controlled access highway.<sup>5</sup>

**Section 8.10 Model Homes/Sales Offices<sup>23</sup>**

Model homes with a staffed sales office for sales exclusively within the residential subdivision in which they are located are permitted provided that they are contained on the first lot on either or both sides of any road/right-of-way that enters the subdivision; provided also that they are so designated on the preliminary and final plats during the subdivision process.

Model homes with a staffed sales office in any other location within the subdivision must be approved or denied by the Board of Zoning Appeals after a public hearing advertised for 15 days.<sup>17, 21</sup>

Model homes without staffed sales offices are permitted internally within the subdivision.<sup>12</sup>

**Section 8.11 Petroleum Products Refining or Storage<sup>23</sup>**

Petroleum refining or storage (above ground in tanks) requires adherence to all state and federal laws, as well as National Fire Underwriters Codes.

**Section 8.12 West Virginia Legal Fireworks<sup>23</sup>**

Sales of fireworks are permitted in the Industrial-Commercial, Residential-Light Industrial-Commercial, General Commercial, Highway Commercial, Highway Commercial, Light Industrial, and Major Industrial zoning districts provided all other restrictions such as setbacks and the requirements of the Jefferson County Subdivision and Land Development Regulations are met.<sup>8, 27</sup>

**Section 8.13 Dormitory<sup>23</sup>**

A dormitory shall be located on the same property or campus as the use it is intended to serve. A dormitory shall not offer accommodations to the general public or to persons who are visiting the property or campus primarily for the purpose of being a spectator at a sporting event or other gathering held at the facility. A dormitory may include one common kitchen or dining facility and common gathering rooms for social purposes for use only by its temporary occupants.

**Section 8.14 Special Event Facilities<sup>39</sup>**

The purpose of this sections is to create a process by which a property owner in the Rural, Residential Growth, and Village zoning districts may establish a Special Event Facility. A Special Event Facility in any other zoning district may process in accordance with Appendix C.





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

File #: 25-2-CUP  
 Mtg. Date: 1/23/25 CAU  
 Fee Paid: \$ 375.00  
12/11/24  
Check #192  
 Phone: (304) 728-3228

Email: zoning@jeffersoncountywv.org

**Application for a Conditional Use Permit**

**RECEIVED**

DEC 11 2024

**Project Name**

QRF Solutions K9 Conditional Use Permit

**Property Owner Information**

Name: Nicholas Russo & Alice Davenport  
 Business Name: QRF Solutions K9 LLC  
 Mailing Address: 1899 Trough Rd Shepherdstown WV 25443  
 Phone Number: 631-335-9654 Email: qrfsolutionsk9@outlook.com

JEFFERSON COUNTY PLANNING  
 ZONING & ENGINEERING

**Applicant Information**

Name: Nicholas Russo and Alice Davenport  
 Business Name: QRF Solutions K9 LLC  
 Mailing Address: 1899 Trough Rd Shepherdstown WV 25443  
 Phone Number: 631-335-9654 Email: qrfsolutionsk9@outlook.com

**Consultant Information**

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

**Physical Property Details**

Physical Address: 1899 Trough Rd Shepherdstown WV 25443  
 Parcel ID: (Tax District / Map No. / Parcel No.) 19-09-0009-0007-0006  
 Parcel Size: 10 acre Project Size 1 acre Deed Book: 1301 Page No: 452

**Zoning District (please check one)**

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

**Provide the Land Use Designation (see Appendix C of the Zoning Ordinance).**

112 - Active Farm Retail Sales and Service, General and Custom Manufacturing (jth)

**For properties in the Rural Zoning District:**

Is property located on a primary or secondary road?

Yes  No

Name of Road/Route Number: Trough Rd

**Provide a detailed description of the proposed business (include information such as hours of operation, anticipated employee and/or customer visits, etc. A site sketch is required to be included with the application, delineating existing and proposed structures and parking areas, proposed signs, proposed landscaping, etc.**

For FFL related business we will have a by-appointment policy. See attached for site sketch.

**Provide a detailed response to the following questions to show how the proposed business complies with the criteria in Section 6.3 of the Zoning Ordinance. Feel free to attach a separate sheet with responses.**

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

See Attached

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 (Section 6.3A.2)?

See Attached

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).

See Attached

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 seek 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 primary or secondary 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).

Trip Generation Data Attached

Not Applicable

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

*By signing this application, I grant permission for County staff to walk onto the subject property to take photos for the Board of Zoning Appeals staff reports.*

  
Property Owner Signature

12/11/2024  
Date

Property Owner Signature

Date

## 1. How is the Proposed Use compatible with the goals of the adopted Comprehensive Plan?

The proposal is to provide support for an existing reputable business in Jefferson County known as QRF Solutions K9 LLC. This is a dog training facility located in Shepherdstown for pet owners and working dogs. It has supported and help train pet owners and municipality k9s in the surrounding areas as well as other states including Georgia, Missouri, Maryland, Pennsylvania and North Carolina. QRF Solutions K9 LLC holds an active FEL and the Principal of the business lives on the property. The subject parcel is 10 acres and is covered in trees and farmland with the exception for the area around one house and accessory structure. The house and accessory structure are both addressed from 1899 Trough Rd Shepherdstown and are well internal to the site. The owner is seeking a CUP on 1 acre of the 10 acres around the approximately 3,000 square foot house and accessory structure. The property is served by one existing driveway that leads to 1899 address as well as 1895 Trough Rd that only has right of way.

In the future, this will allow us to enhance our already known working relationship with *local government municipalities by sourcing them certain products they would need.* We would also like to do by appointment only gunsmithing and firearm pickup for local civilians.

The Envision Jefferson County 2035 Comprehensive Plan supports commercial uses and businesses that the County deems compatible by Conditional Use. This proposed use has been deemed to be an acceptable Conditional Use by the Zoning Ordinance and all other similar operations in more residential areas have been approved by the Board. As such, it is a considered a permitted use as approved by the Board of Zoning Appeals with conditions if necessary.

*The Comprehensive Plan addresses Rural Area Land Use both as it relates to Agricultural Land mostly West of the Shenandoah River and the Mountain area East of the Shenandoah River. Nearly all of the Rural Land Use Planning Recommendations in this section of the Plan pertain to Agriculture or Residential Uses and Farm Related Business expansion on Farms. In this section of the Plan, it does promote 'Artisan' businesses in the Rural Zone. Certainly, the custom work on firearms can fall under this category.*

Recommendation 3 of the Rural Land Use Planning Recommendations on Page 39 of the Plan can be broadly applied for this use:

3. "Revise existing Jefferson County land use requirements and site plan standards to reduce regulatory barriers related to agricultural and/or **artisan operations**."

- a. **Revise local regulations to balance production and marketing of artisan or agricultural products on-site**, considering the individual use, size, and scale of the operation as appropriate to the property site”.

There are however several recommendations that deal with the expansion of County Businesses and the Rural Economy in Jefferson County:

Recommendations:

Economic Development Recommendations, Page 70:

5. Create a business friendly environment in Jefferson County.

- a. Streamline the State licensing of various business enterprises by providing regional or satellite offices in Jefferson County (page 70 Economic Development Recommendation)

Rural Economy Recommendations, Page 77, 78 and 79:

**5. Amend the Zoning and Land Development Ordinance to permit additional nonresidential rurally compatible uses.**

- b. 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.

8. Coordinate with key agricultural and rural stakeholders to identify ways to **expand marketing and value added production activities for farmers and artisans on their properties in rural areas of Jefferson County.**

- a. Amend existing regulations in order to identify and **facilitate ways to allow the sale of items** grown, processed, **crafted, or manufactured in Jefferson County** on farms other than the farm where the product originated.

- b. Develop a streamlined process for such uses when there are minimal impacts to surrounding neighbors.

9. Collaborate with the local artisan community and Jefferson Arts Council to review and amend the local land use regulations **to promote and enhance the viability and livelihood of artisans in the rural areas of Jefferson County.**

- a. Encourage local non-profit organizations and local and regional economic development agencies to create a regular forum where all County artisans, businesses, and members of the non-profit and arts communities can meet to network and collaborate.
- b. **Work to improve connections between County businesses and artisans that may have products and services that can be sold in local stores or other businesses.**

There is also narrative in the Rural Economy section that also supports this type of business in the rural area including the following statement on page 72:

“The County’s citizens benefit from the proximity of rural based activities and services and the rural enterprises benefit from nearby markets for goods and services. With this potential, the rural areas of Jefferson County should be seen as ripe for investment and reinvestment.”

Accordingly, the use of the existing house and land would allow an important Jefferson County Business to expand, as well as to allow it to source its commodities from a location in the county. *The expansion of this business on this property is compatible with the Envision Jefferson 2035 Comprehensive Plan.* This aspect of the business is very much a rural based business that is the primary type of business that is promoted by the Plan in the Rural District. The existing house and accessory buildings are internal to the 10 acre property and will be the center of the 1 acre portion included in the application. Any additional buildings that may need to be constructed in the future will follow the existing rules for site planning if applicable, but this application for Zoning Conditional Use Permit wanted to address (and be permitted for) all of the uses listed on the form and included in the ATF Application as presented to the Office.

**2. How is the proposed use compatible in intensity and scale with the existing and potential land uses on surrounding properties, and poses no threat to public health, safety and welfare?**

This CUP Application is a request to use the existing house/building for an ATF Regulated Use, which requires permits and inspections, on an over 10 acre property that will be limited to 1 acre. The building and area is located in a rural area that is served by an existing long driveway. The immediate intended use is for gunsmithing and custom manufacturing and storage operation and sourcing materials for k9 scent detection that is intended to serve the existing QRF Solutions K9. Again, all operations will be under the ATF

purview. Similar uses have been approved by the Board for Conditional Use Permits as required. This application just wants to be transparent so that further zoning processing is not needed with further expansion.

Many of the customers of the intended use and QRF Solutions K9 LLC are from this area of the county. While this will allow local sourcing and storage of some of the products that feed into the existing K9 operation, even if the use is expanded to retail, much of the users *are anticipated to be served from the area. The location of the building and 1 acre around the building is farm land with not many neighbors.* The use is minimal and is supported by the plan and there will be little to no clearing or earthwork associated with the existing site. If additional buildings are later added, they will meet the site planning regulations as appropriate or otherwise receive. If additional buildings are later added, they will meet the site planning regulations as appropriate or otherwise receive Planning Commission Approval. It is in an area that is already screened. There will not need to be additional parking, as there is an area for parking for the anticipated several employees. Any new parking that may be needed if there is an expansion will be addressed by the Planning Department and Planning Commission. No additional site improvements are anticipated at this time other than maintenance of the existing drives as appropriate.

Generally, there will not be a large volume of business or traffic associated with the use initially, but may expand later and be addressed. Gunsmithing and Custom Assembly/Manufacturing our ATF associated terminology, but most of the businesses approved included those in the ATF licenses for the previously approved CUPs. This area is rural, and the use is very rural in nature. Again, even if a retail component is added later, it is anticipated that the business will be generated from local area residents.

In terms of public health, safety and welfare, this area of the county, as well as all of the rural areas of the County, are used heavily for hunting and discharging of weapons as the Constitution allows under the Second Amendment. Providing a location for gunsmithing and customizing (and even sales) by an already proven and successful local business and owner, would allow a closer and safer source for such supply. The existing QRF has the proper permits and has been operational in Jefferson County for some time under the regulation of ATF. The expansion of the business and services to this site will not only allow economic growth for the County, but it allows for the expansion to remain in Jefferson County. The Plan supports the expansion of existing businesses in the County.

Furthermore, as already indicated, the use will be limited to an internal 1 acre of a 10 acre site and all of the uses will be permitted and monitored by the ATF, among other agencies (Local, State, and Federal).

**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?**

Neither the proposed immediate use, nor the listed potential uses of the site under this CUP will have any impact on the potential for development or use of the adjacent land or buildings.

**4. Highway Problem Area Map and Anticipated Trip Generation:**

The Highway Problem Area Map from the Envision Jefferson 2035 Comprehensive Plan is attached since the property is not on a Primary Road. There are no scheduled daily shipments and currently there are no employees. Per the West Virginia Annual Average Daily Traffic (AADT) Map there is no data about traffic or daily trips on the segment of Trough Rd where QRF Solutions K9 LLC is located.

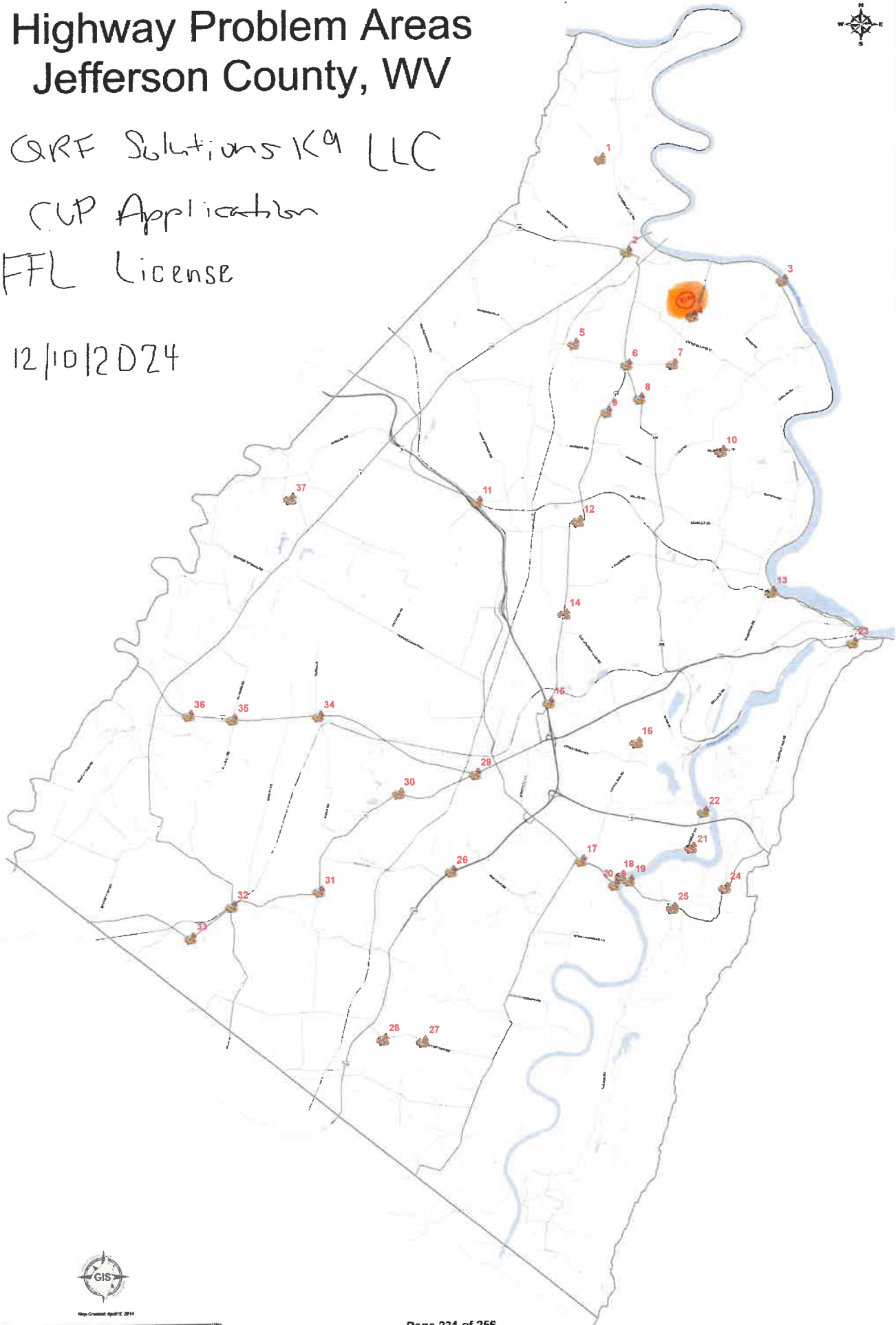
# Highway Problem Areas Jefferson County, WV

QRF Solutions K9 LLC

CUP Application

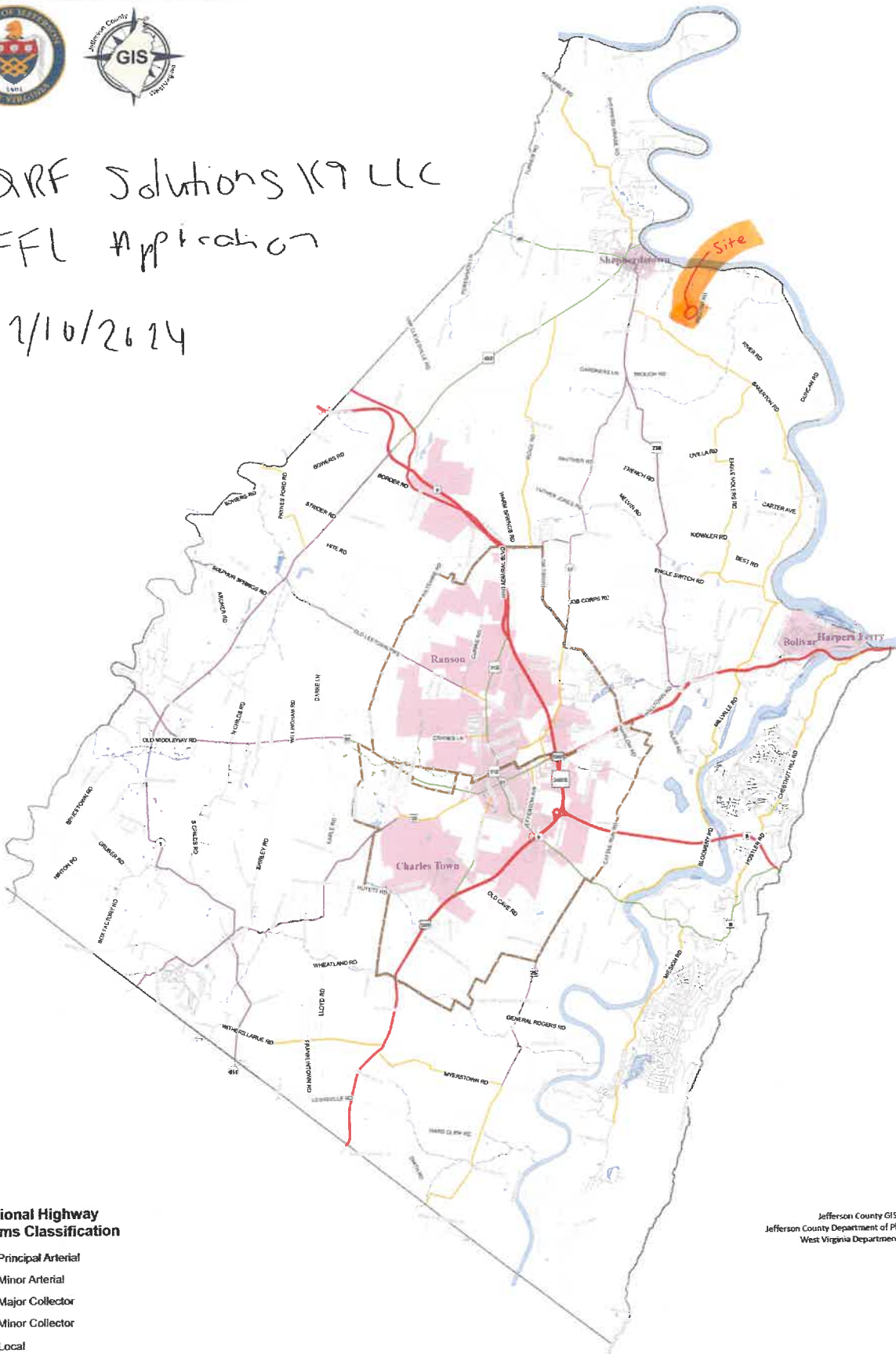
FFL License

12/10/2024





GRF Solutions K9 LLC  
 FFL Application  
 12/10/2024



**Functional Highway Systems Classification**

- Principal Arterial
- Minor Arterial
- Major Collector
- Minor Collector
- Local
- Urban Growth Boundaries
- Towns

Data Sources:  
 Jefferson County GIS/Addressing Office  
 Jefferson County Department of Planning and Zoning  
 West Virginia Department of Transportation



**Roadway Classification Map  
 Envision Jefferson 2035**

## List of Neighboring Properties

Gregory Mason

1895 Trough Rd.

Shepherdstown WV 25443

Casey Warriner Brassfield

1869 Trough Rd.

Shepherdstown WV 25443

Julie (Kentle)

Jefferson HLC (Gunnick)

1901 Trough Rd.

Shepherdstown WV 25443



1899 and 1895 Trough Rd



Imagery ©2023 Airbus, CNES / Airbus, Commonwealth of Virginia, Maxar Technologies, U.S. Geological Survey, USDA/FPAC/GEO, Map data ©2023 100 ft



## **25-2-CUP QRF Solutions K9 Public Comment Index**

- 1) Bradley Shiflett
- 2) Paul & Teresa (Copenhaver)  
Pennington
- 3) Barbara Scholz
- 4) Rebecca Smith-Terry
- 5) Morgen Truver
- 6) Rob DePartee
- 7) James Flannery
- 8) M. Hammond
- 9) Afsoun Sichani
- 10) Victor Vega
- 11) Gary Cohen
- 12) Sharla Essick
- 13) Scarlet Fannin
- 14) CJ Feeser
- 15) Bill Gentry
- 16) Rachael Grossman
- 17) Alex Hobbs
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- 20) Theresa Noel
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- 32) Carolyn Rodis
- 33) Dana Smiles
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- 35) Patricia Weaver & John Buckley
- 36) Keith Baumbach
- 37) Carol Blessing
- 38) Jason Braman
- 39) Miranda Brundt
- 40) Thomas & Patricia Dowell
- 41) Sharla Essick
- 42) Perry Fleri
- 43) Sandy Fleri
- 44) Stacie Gulizia
- 45) Stephen Kemp
- 46) Rosemary Nickerson
- 47) Sara Smith
- 48) Terry & Celeste Stotler
- 49) Stephanie Unger
- 50) James & Sandra Watkins
- 51) Diane Blust
- 52) Thomas Clemens
- 53) Catherine Falknor & Sam Morgan
- 54) Jack Fleri
- 55) Donald Gulizia
- 56) Sharon & Michael Helman-Harman
- 57) David, Dore Ann, Ben Miljour, &  
Janelle Hoover
- 58) Ellie Lloyd
- 59) Gregory & Susan Mason
- 60) Peter Milcetic
- 61) Mary Vann
- 62) Will Vann
- 63) Henry Willard
- 64) American Battlefield Trust
- 65) Jefferson County historic Landmarks  
Commission
- 66) Land Trust of the Eastern Panhandle
- 67) Shepherdstown Battlefield  
Preservation Association – Mike  
Nickerson
- 68) Shepherdstown Battlefield  
Preservation Association – Stephen  
Aleamar



**From:** [Zoning](#)  
**To:** "[Bradley Shiflett](#)"  
**Subject:** RE: QRF solutions K9  
**Date:** Monday, December 16, 2024 9:15:00 AM

---

Good morning,

This email is to confirm receipt of your submission. We will include it in the BZA packet for January 23, 2024 for our Board to review.

Thanks!

Colin Uhry  
Planning/Zoning Clerk  
Office of Planning and Zoning  
304-728-3228

**From:** Bradley Shiflett <[zyclaw.twistbray@gmail.com](mailto:zyclaw.twistbray@gmail.com)>  
**Sent:** Saturday, December 14, 2024 12:46 PM  
**To:** Zoning <[Zoning@jeffersoncountywv.org](mailto:Zoning@jeffersoncountywv.org)>  
**Subject:** QRF solutions K9

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

My name is Bradley Shiflett, I live at 12 Harbor Ct, Falling Waters, WV 25419.

I'm writing in to say that as someone who's somewhat local and spends a lot of time in Jefferson county, I believe that going forward with the FFL for QRF Solutions K9 is a good idea. I believe it will be beneficial to the community and a good addition to Jefferson county.



## Zoning

---

**From:** Zoning  
**Sent:** Thursday, January 2, 2025 4:14 PM  
**To:** 'Teresa Copenhaver'  
**Subject:** RE: QRF K9 Solutions

Good afternoon,

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Teresa Copenhaver <kinderhook214@gmail.com>  
**Sent:** Thursday, January 2, 2025 3:21 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** QRF K9 Solutions

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

Good afternoon,

We are contacting you to offer support for QRF K9 Solutions for acquiring an FFL from the ATF. We have worked with Mr. Russo for several years and believe that this will be a good addition for our area.

Sincerely,

Paul and Teresa (Copenhaver) Pennington



## Zoning

---

**From:** Zoning  
**Sent:** Thursday, January 2, 2025 4:14 PM  
**To:** 'B J'  
**Subject:** RE: Federal Firearm license

Good afternoon,

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** B J <tennwh@bluetiehome.com>  
**Sent:** Thursday, January 2, 2025 3:42 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** Federal Firearm license

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

To whom it may concern.....I have known Nick Russo and QRF K9 solutions for over a year. He is very knowledgeable and an asset to the industry. I would support him with getting an FFL. Feel free to reach out to me if you need more information. Barbara Scholz, 11402 Georges Mill Rd, Lovettsville, Va 20180 cell 6164026633

Remember to keep your fork...the best is yet to come.



## Zoning

---

**From:** Zoning  
**Sent:** Thursday, January 2, 2025 4:14 PM  
**To:** 'Rebecca Smith'  
**Subject:** RE: QRF Solutions

Good afternoon,

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Rebecca Smith <[rebecca@knightsarmorsecuritytraining.com](mailto:rebecca@knightsarmorsecuritytraining.com)>  
**Sent:** Thursday, January 2, 2025 3:21 PM  
**To:** Zoning <[Zoning@jeffersoncountywv.org](mailto:Zoning@jeffersoncountywv.org)>  
**Subject:** QRF Solutions

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

As co-owner of Knight's Armor Security Training, LLC. in Winchester, VA, I am contacting you on behalf of QRF Solutions K9 application for their Federal Firearms License. We have been working closely with Nicholas Russo and his company for over a year now, our partnership with him has been invaluable to our business, and I believe that the application of QRF Solutions to obtain their FFL would be of great benefit to Jefferson County and the surrounding areas.

Thank you for your time and consideration. Sincerely,

--

Rebecca Smith-Terry  
Co-owner/Director of Training  
Knight's Armor Security Training, LLC  
540-955-7174  
540-550-2498



## Zoning

---

**From:** Zoning  
**Sent:** Thursday, January 2, 2025 4:14 PM  
**To:** 'Morgen Truver'  
**Subject:** RE: QRF Solutions K9 FFL

Good afternoon,

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Morgen Truver <morgen.j.truver@gmail.com>  
**Sent:** Thursday, January 2, 2025 2:59 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** QRF Solutions K9 FFL

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

I, Morgen James Truver, live at 600 W John St Martinsburg, WV 25401 and is in support of QRF Solutions K9 getting an FFL for training dogs. I think this would be a great for the safety of our community and bring in more revenue to the county.

Morgen James Truver  
600 W John St  
Martinsburg, WV 25401



## Zoning

---

**From:** Zoning  
**Sent:** Wednesday, January 8, 2025 9:06 AM  
**To:** 'Robert DePartee'  
**Subject:** RE: QRF Solutions K9

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Robert DePartee <rob.departee@gmail.com>  
**Sent:** Sunday, January 5, 2025 7:55 AM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** QRF Solutions K9

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

My name is Rob DePartee and I currently live in Hagerstown, MD.

I would like to support QRF Solutions K9's zoning request for their FFL in Shepherdstown, WV.

I know having another qualified firearms dealer and gunsmith in the area would be beneficial for the community and surrounding area.

Thank you.

Sincerely,  
Rob DePartee



## Zoning

---

**From:** Zoning  
**Sent:** Wednesday, January 8, 2025 9:06 AM  
**To:** 'James Flannery'  
**Subject:** RE: Letter of Recommendation for Nick Russo

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** James Flannery <jrflannery@franklincountypa.gov>  
**Sent:** Tuesday, January 7, 2025 11:16 AM  
**To:** Nick Russo <nickrusso249@gmail.com>; Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** Fwd: Letter of Recommendation for Nick Russo

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

Please see attached letter of recommendation for Nick Russo

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

From: **Benjamin Sites** <[bhsites@franklincountypa.gov](mailto:bhsites@franklincountypa.gov)>  
Date: Tue, Jan 7, 2025 at 8:30 AM  
Subject: Re: Letter of Recommendation for Nick Russo  
To: James Flannery <[jrflannery@franklincountypa.gov](mailto:jrflannery@franklincountypa.gov)>

Here you go.

On Mon, Jan 6, 2025 at 10:59 AM James Flannery <[jrflannery@franklincountypa.gov](mailto:jrflannery@franklincountypa.gov)> wrote:

Please see attached and if you're good with it, please sign and return to me.

Thanks

--

Franklin County Sheriff's Office  
Field Operations Division  
Deputy K9 Handler  
14 N. Main St  
Chambersburg, Pa 17201  
Office : 717-261-3877  
Work Cell: 717-262-3313  
Fax : 717- 261-3822

--

Sheriff Benjamin H. Sites, MPA  
Franklin County Sheriff's Office  
14 North Main Street  
Chambersburg, Pa 17201  
Phone: 717-261-3877  
Cell: 717-360-5322  
Fax: 717-261-3882  
Web: [FCSO Website](#)  
Facebook: [FCSO Facebook](#)

"As iron sharpens iron, so one man sharpens another."  
Proverbs 27:17      B>

\*Dissemination Constraints: This document is designated for "**Criminal Justice Use Only**" (as defined in 18 Pa.C.S. § 9102)." No portion of this document shall be released to the public, the media, or any other person or entity not possessing a valid right and need to know without prior authorization from the Franklin County Sheriff's Office.

--

Franklin County Sheriff's Office  
Field Operations Division  
Deputy K9 Handler  
14 N. Main St  
Chambersburg, Pa 17201  
Office : 717-261-3877  
Work Cell: 717-262-3313  
Fax : 717- 261-3822



## FRANKLIN COUNTY SHERIFF'S OFFICE

14 North Main Street  
Chambersburg, PA. 17201-2233

### SHERIFF BENJAMIN H. SITES

*Chief Deputy*

Daniel P. Foy

*Solicitor*

Clinton T. Barkdoll

Phone: (717) 261-3877

Hearing Impaired: (717) 264-8474

Fax: (717) 261-3882

01/07/2025

Jefferson County WV Zoning Board  
116 E. Washington Street  
Charlestown, West Virginia 25414

To whom it may concern,

It has been brought to my attention that Mr. Russo (Nick) of 1899 Trough Rd Shepardstown, WV 25443, is applying for his Federal Firearms License as a part of his business.

I would like to give a recommendation for Nick.

I have had professional interactions with Russo through his business, QRF K9 Solutions. Nick has been instrumental in assisting us with our K9 Program. Nick is a Master Trainer with AMPWDA (American Man trailing, Police and Work Dog Association). This accolade alone should speak to his professionalism and work ethic.

Nick has trained and certified our K9 at his facility in Explosive Detection, Criminal Apprehension, Tracking, building and article searching. Though my interactions with Nick are limited, they are nothing but good. I know this, my K9 handler, Deputy James Flannery, trusts him to no end.

In speaking with Deputy Flannery, we both agree and feel that Nick's business is a true asset to the law Enforcement community. Furthermore, I believe that if issued his FFL, he would be even more of an asset to the law enforcement community.

Please feel free to contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Benjamin Sites".

Benjamin Sites, Sheriff



## Zoning

---

**From:** Zoning  
**Sent:** Wednesday, January 8, 2025 9:06 AM  
**To:** 'MHammond'  
**Subject:** RE: Recommendation

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** MHammond <max@7vikings.com>  
**Sent:** Friday, January 3, 2025 10:21 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** Recommendation

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

Salutations,

I've had the pleasure of speaking with Nick of the business QRF Solutions K9, and he has my complete approval to move forward with every aspect he needs within the area, as it pertains to helping out the police force via explosives & illicit substance detection within the public sector, or as with similar pursuits within the private sector. Nick himself is a local guy, I see him come through to our shop within the area all the time and I approve of and have come to respect his character and due diligence in maintaining such a unique venture. I think this is a fantastic idea that would actually attract further local business to the area and I cannot recommend it enough. Residence: 488 Switchgrass Ct., Bunker Hill, WV 25413.

Thank you kindly,

-M. Hammond



## Zoning

---

**From:** Zoning  
**Sent:** Wednesday, January 8, 2025 9:05 AM  
**To:** 'Afsoun Sichani'  
**Subject:** RE: Support for QRF Solutions K9's FFL Application

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Afsoun Sichani <[afsounsichanimd@gmail.com](mailto:afsounsichanimd@gmail.com)>  
**Sent:** Friday, January 3, 2025 8:43 PM  
**To:** Zoning <[Zoning@jeffersoncountywv.org](mailto:Zoning@jeffersoncountywv.org)>  
**Subject:** Support for QRF Solutions K9's FFL Application

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

To Whom it May Concern,

I am writing to express my support for QRF Solutions K9 in their application for a Federal Firearms License (FFL). I believe their presence in the area would be a valuable addition, as there are currently few establishments capable of providing the specialized services they offer. Given the recent rise in attacks nationwide, the training that QRF Solutions K9 provides is increasingly crucial for enhancing public safety.

Thank you for your time and consideration.

Sincerely,

Afsoun Sichani



## Zoning

---

**From:** Zoning  
**Sent:** Friday, January 10, 2025 11:28 AM  
**To:** 'Victor Vega'  
**Subject:** RE: K9 facility letter

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Victor Vega <constablevega@gmail.com>  
**Sent:** Thursday, January 9, 2025 12:24 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** K9 facility letter

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





Pennsylvania State Constable

To whom it may concern,

My name is Pennsylvania State Constable Victor Vega and I wanted to write this letter of recommendation about Nicholas Russo of QRF Solutions K9 LLC and his training facility. On December 7<sup>th</sup>, 2024 I had the pleasure of visiting his facility in attempting to certify our K9s with other handlers and other Law Enforcement officers. The first thing that is noticeable is the level of organization that Mr. Russo and his staff displayed were unlike any other places I've visited. His record keeping, his safekeeping of documents are above all. I'm very impressed on how he meticulously kept all of the materials Needed for detection work, permits, licenses, and other documents displayed. He is very transparent in demonstrating his safeguard methods. Everything is in a very organized fashion. I visited over a dozen different facilities that only matched his level of organization and safekeeping with four times the amount of paid employees and, even then, did not match the level of security, cleanliness, and professionalism that were displayed. I would recommend Nick Russo and his QRF Solutions K9 LLC anytime someone needs his services. If any questions need to be answered in more detail, please feel free to contact me at the e-mail, phone number, or address provided, and I would gladly be obliged. I hope this recommendation letter serves the purpose of why it was written. Have a great day.

A handwritten signature in black ink that reads "V. M. Vega". The signature is written in a cursive style and is enclosed within a hand-drawn oval.

Victor Vega

Pennsylvania State Constable

570 290 7210

[Constablevega@gmail.com](mailto:Constablevega@gmail.com)



1/13/2025

Office of Planning and Zoning

We reside at 174 Farview Lane

We DO NOT want businesses near  
out of homes in our neighborhood.

This was a single-family zone location  
and reason we bought and remain  
in this area.

We already have to much noise  
from the shooting at their gun target  
range.

Opening a firearm selling business  
will only increase the shooting  
at their current range

Concerned Neighbors of  
Farview Farms,

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JAN 16 2025

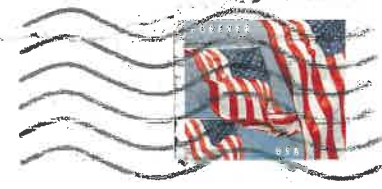
JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING

Ellen Cohen  
Doug Cohen

Mr. & Mrs. Gary M. Cohen  
174 Farview Ln.  
Shepherdstown, WV 25443

HARRISBURG PA 171

13 JAN 2025 PM 4 L



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JAN 16 2025

JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING

Office of Planning and Zoning  
116 East Washington Street 2<sup>nd</sup> Floor  
Charles Town WV 25414

25414-157299



Jefferson County, West Virginia  
Department of Engineering  
Office of Planning and Zoning  
116 E. Washington Street, 2nd Floor  
Charlestown, WV 25414

January 13, 2025

To the Board of Planning and Zoning,

I reside on Trough Road and I am requesting that the Planning and Zoning Commission deny the Request for a Conditional Use Permit to operate a Firearms business located at 1899 Trough Road, Shepherdstown, WV for the following reasons:

- Safety and Traffic Issues

Increased volume of traffic on a Rural road that many people use daily to walk, jog or bicycle

Increased traffic of non-residents on a Rural road

School buses and large vehicles barely have room to safely pass smaller vehicles

- Disturbances

Constant noise from gun shots at all hours

Disturbing the peacefulness of the area

Increased volume of traffic noise

- Devaluation of Property

Properties in the area are zoned for single family use

Property devaluation due to the constant noise from shooting of firearms

To my knowledge there are no other businesses being operated in the area. I have already been disturbed many times in the past few months from

what was assumed a personal target practice. I can not imagine what it would be like if target practice is multiplied by running a firearms business and the possibility of stray bullets flying all over the place.

Please think about all the people who live in proximity to this proposed request and the negative impacts to their property as well as their lives. Would you want a firearms business in or around your home? Surely there are other available properties in the county that are non-residential that would be more suitable for this type of business.

Sincerely,



Sharla Essick  
197 Windgale Drive  
Shepherdstown, WV 25443

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JAN 16 2025

JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING



Ms. Sharia M. Essick  
PO Box 633  
Shepherdstown, WV 25443-0633

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14 JAN 2025 PM 6 L



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JAN 16 2025

JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING

Jefferson County Dept of Engineering  
Office of Planning & Zoning  
116 E. Washington Street  
Charlestown, WV 25414

25414-100499





To whom it may concern,

01/13/2025

**RE: QRF Solutions K9 (File #25-2-CUP)**

My name is Scarlet Fannin. I live with my husband, two dogs and two cats @ 150 Stonehouse Lane, minutes from the Russo and Davenport home on 1899 Trough Rd. I am writing to provide my **strong opposition** to the “proposal for a permit to operate a firearms business from an existing dwelling unit.” “(Retail Sales and Services, General).”

My family moved here during COVID May 2019. We moved here for the peace and quiet this property offered. Let me be clear, I am not opposed to home gun ownership. I grew up hunting and shooting but I purposefully did not move into a township or near a firing range or gun shop.

I moved onto a dead-end dirt road so that I can walk out of my front door and take a walk with my dogs unmolested by noise from urban areas. The amount of growth happening in Jefferson county is alarming as it is. I however have felt secure in the decision to buy my home 150 Stonehouse Lane for the continued serenity it offers.

Below are several reasons that explains why I am in concert with the unreasonableness of this proposal from my point of view.

1. I am a psychiatric Mental health nurse practitioner, board certified. I see clients for therapy weekly in my home office. **This proposal would be in direct conflict to the peaceful environment for my clients** as I can hear the rapid gunshots all day sometimes, and well into the evening after dark from inside my home. It was so loud I called to report them in the fall 2024 due to the noise.
2. I have diagnosed tinnitus which affects my hearing. I have to manage not only my business but my home with my animals. **The rapid firing of guns is anxiety producing which increases the severity of my tinnitus.**
3. The land surrounding my home is mostly in land conservation. Along Stonehouse Lane, 300 acres as well as across the road from Stonehouse Lane, 200 acres or more running parallel to trough road are in conservation. Land value increased with these conservation parcels. **A gun range with rapid firing and a shop selling guns would bring our assessed home value down.**
4. I have two young dogs who are well behaved but full of energy. **When the rapid gun firing occurs, they are scared and their anxiety shoots through the roof.** I have to turn music up in the house to drown the rapid shots being fired. This is disrupting to my home and God forbid it’s happening when I am not home and they are terrified alone in the house.
5. **Studies show that increased environmental noise is conducive to increased diagnosis of depression and anxiety as well as increased incidences of worsening depression and anxiety to those who already have the diagnosis.** I have included excerpts of three scholarly articles that show the outcome of increased environmental noise. There are

many more such articles and there is currently more research being conducted. See below:

**In the following article:**

Beutel ME, Jünger C, Klein EM, Wild P, Lackner K, Blettner M, Binder H, Michal M, Wiltink J, Brähler E, Münzel T. **Noise Annoyance Is Associated with Depression and Anxiety in the General Population- The Contribution of Aircraft Noise.** PLoS One. 2016 May 19;11(5):e0155357. doi: 10.1371/journal.pone.0155357. PMID: 27195894; PMCID: PMC4873188.

**Excerpt:**

**“The demonstration of an association of noise annoyance with current depression and anxiety disorder is compatible with the hypothesis that annoyance induces stress, which in turn may precipitate or even worsen already existing depression and anxiety disorders. However, given the cross-sectional nature of our study and previous findings [6, 12, 13] we cannot preclude that depression, respectively anxiety disorders may also indicate a heightened noise sensitivity. Thus, existing mental disease may deteriorate due to noise [7]. As anxiety and depression are among the most frequent and burdening diseases in the general population, substantial parts of the population may thus be particularly vulnerable to environmental noise. Alternatively, increased annoyance may be a symptom of depression and anxiety related to the increased irritability sometimes found in these conditions or to the negativity to one's surroundings found in depression.”**

**Here is another example:**

Van Kamp I, Davies H. **Noise and health in vulnerable groups: a review.** Noise and Health. 2013;15(64):153 10.4103/1463-1741.112361 [DOI] [PubMed] [Google Scholar]

**Abstract**

**“Vulnerable or susceptible groups are mentioned in most reviews and documents regarding noise and health. But only a few studies address this issue in a concrete and focused way. Groups at risk most often mentioned in the literature are children, the elderly, the chronically ill and people with a hearing impairment. The other categories encountered are those of sensitive persons, **shiftworkers**, people with mental illness (e.g., schizophrenia or autism), **people suffering from tinnitus**, and fetuses and neonates. The mechanism for this vulnerability has not been clearly described and relevant research has seldom focused on the health effects of noise in these groups in an integrated manner. This paper summarizes the outcomes and major conclusions of a systematic, qualitative review of studies over the past 5 years. This review was prepared for the 10 th Conference on Noise as a Public Health Problem (ICBEN, 2011). Evidence is reviewed describing effects, groups assumed to be at risk, and mechanisms pertaining to noise sensitivity and learned helplessness.”**

**Lastly:**

Yoon JH, Won JU, Lee W, Jung PK, Roh J. Occupational noise annoyance linked to depressive symptoms and suicidal ideation: a result from nationwide survey of Korea. PLoS One. 2014;9(8):e105321 10.1371/journal.pone.0105321 [[DOI](#)] [[PMC free article](#)] [[PubMed](#)] [[Google Scholar](#)]

**Excerpts:**

**“Noise, or undesirable sound, is one of the most common environmental stressors, and it can cause various health effects. Beyond the auditory consequences of occupational noise exposure, extra-auditory effects such as psychological problems have also been found. The aim of the current study is to elucidate the association between occupational noise annoyance and psychological symptoms, including symptoms of depression and suicidal ideation.**

**A total of 10,020 participants (5,410 men and 4,610 women) were included in the current analysis, using data from the fourth Korean National Health and Nutrition Examination Survey (KNHANES). Self-report questionnaires were used to assess noise annoyance levels, depressive symptoms, and suicidal ideation. Odds ratios (ORs) and 95% confidence intervals (95% CIs) for psychosocial symptoms were calculated using multiple logistic regression models.**

**Our study shows that occupational noise annoyance is significantly related to mental health, including depressive symptoms and suicidal ideation after controlling for individual and socio-demographic characteristics even with gender stratification. However, prospective studies with quantified noise exposure assessment were needed to elucidate the causality on the association between noise annoyance and psychological symptoms.”**

I am hopeful you can see this would be a detrimental development for our small community. We are peaceful people living in a very peaceful area. Let's keep it that way. For those who are making the decisions please think about if this was happening where you or your family lived and you could do something about it to assure the public that they will not have to compromise their lifestyle for someone else aspirations. I do not have issue at all with any endeavor that Russo/Davenport want to undertake as long as it does not infringe upon my peace and quiet.

The thought also comes to mind: Give an inch and take a mile. Maybe the promise will be that the noise will be at a minimum, or they will not do this or will do that. That's all grand but after the permit is issued all bets are off. Then it will be up to the local community to come back to court to try to keep things in check.

I appreciate you reading this long letter. Believe me, as much as you didn't want to read it I certainly didn't want to write it. I have better things to do with my time and that is exactly what I am talking about in the paragraph immediately above.

Sincerely,  
Scarlet Fannin, Geoff Coleman and family  
01/13/2025

The Board of Zoning Appeals  
The Office of Planning and Zoning  
116 E. Washington Street  
Charles Town, WV 25414

Attention: Board of Zoning Appeals:

Jan 13, 2025

I am a long-time resident of Jefferson County. I live near the proposed firearms business of Russon & Davenport at 1899 Trough rd. Shepherdstown, WV. Project Name; QRF Solutions K9, File #25-2 CUP. I am writing to strongly speak against and urge you to deny the permit request.

The county has areas that are designated for commercial activity and Trough rd. is not one of them. QRF Solutions should never have been granted permission to operate a firing range in a residential neighborhood. The use of large automatic weapons is not compatible with this quiet area.

I am very concerned as this area is right next to the site to the Battle of Shepherdstown. Many neighbors in this area have worked for over twenty years to preserve this land in conjunction with the American Battlefield Trust, Farmland Protection, and the Jefferson County Historic Landmarks Commission, etc. Hopefully, this land will become part of the National Park Service in the foreseeable future. To grant this CUP could negatively undermine all of our efforts.

Sincerely,

CJ Feeser

5567 Engle Molers rd

Shepherdstown, WV 25443

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JAN 16 2025

JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING

NAME <b>Cindy &amp; Mick Fecser</b>		
STREET <b>5567 Engle Molars Rd</b>		
CITY <b>Shepherdstown</b>	STATE <b>WV</b>	ZIP CODE <b>25443</b>

HARRISBURG PA 171

14 JAN 2025 PM 6 L



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**JAN 16 2025**

JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING

The Board of Zoning Appeals  
Office of Planning & Zoning  
116 E. Washington St  
Charles Town, WV  
25414

25414-100499



## Zoning

---

**From:** Zoning  
**Sent:** Monday, January 13, 2025 11:17 AM  
**To:** 'bill gentry'  
**Subject:** RE: Zoning25-2-CUPdeny.doc

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** bill gentry <gentryrest@gmail.com>  
**Sent:** Monday, January 13, 2025 10:59 AM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** Zoning25-2-CUPdeny.doc

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To the Office of Planning and Zoning

Email: zoning@jeffersoncountywv.org

Regarding

File Number 25-2-CUP

QRF Solutions K9 LLC

Nicolas Russo and Alice Davenport, Owners

1899 Trough Rd., Shepherdstown, WV

Parcel ID: 09000900070006; Project Size: 1 ac; Zoning District: Rural

I am opposed to this request as it is written. What the applicant fails to mention is the outdoor shooting range that prompted this. We probably wouldn't have known the business existed if it weren't for the incessant firing of weapons.

Local residents are not opposed to small businesses. They are opposed to the noise of the outdoor shooting range of a commercial business and the potential for stray shots from business clients of unknown ability to handle firearms. Many of us that are opposed are gun owners that are respectful of our neighbors. This is a residential area and a commercial firing range is completely incompatible with the area and completely disrespectful of not only the adjoining neighbors, but all of us within gunshot range. The right to live peaceably should be protected.

If they want to maintain a business and a Federal Firearm License I don't think anyone would disagree with that.

Thank you for your time.



## Zoning

---

**From:** Zoning  
**Sent:** Monday, January 13, 2025 9:01 AM  
**To:** 'Grossman, Rachael'  
**Subject:** RE:

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Grossman, Rachael <rgrossma14@su.edu>  
**Sent:** Saturday, January 11, 2025 1:35 AM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:**

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

Good evening,

My name is Rachael Grossman and I reside at 52 Balsam Ct. Bunker Hill, WV 25413. I currently train with QRF Solutions K9 with my dog Leia who does tracking. We are in favor of QRF Solutions K9 getting their Federal Firearms License. They are very knowledgeable on explosives and firearms.

Rachael Grossman



## Zoning

---

**From:** Zoning  
**Sent:** Monday, January 13, 2025 9:02 AM  
**To:** 'd.hobbs'  
**Subject:** RE: Qrf solutions

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** d.hobbs <d.hobbs@myactv.net>  
**Sent:** Saturday, January 11, 2025 8:58 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** Qrf solutions

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

Greetings,

I have had the pleasure of meeting and working with Nick with QRF Solutions k9. He has informed me that they are going for their FFL. I think it would be a great addition to the area as it will allow them to help the local community out in both dog training and providing an additional service to the community with firearm sourcing and repair. As he does currently work with various law enforcement agencies, this additional service would potentially benefit not just this community but multiple other communities in the surrounding areas.

Alex Hobbs



## Zoning

---

**From:** Zoning  
**Sent:** Monday, January 13, 2025 9:02 AM  
**To:** 'Kenzal Jones'  
**Subject:** RE: QRF Solutions FFL

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

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

From: Kenzal Jones <[kenzalnjones@hotmail.com](mailto:kenzalnjones@hotmail.com)>  
Sent: Saturday, January 11, 2025 9:04 PM  
To: Zoning <[Zoning@jeffersoncountywv.org](mailto:Zoning@jeffersoncountywv.org)>  
Subject: QRF Solutions FFL

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

To whom it may concern

i have the pleasure of knowing Nick of QRF Solutions K9 he and his company do amazing things with dogs him getting his FFL would only amplify his ability to train dog it would also be great knowing I can get firearms worked on at a local place I fully support this idea

Kenzal Jones,

368 Cemetery Road, Martinsburg WV, 25404



## Zoning

---

**From:** Zoning  
**Sent:** Monday, January 13, 2025 9:03 AM  
**To:** 'VERNON MOWER JR'  
**Cc:** Auerbach, Douglas; gmason8598@aol.com; rkmyoung@frontiernet.net  
**Subject:** RE: File #25-2-CUP

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** VERNON MOWER JR <vmower921@comcast.net>  
**Sent:** Sunday, January 12, 2025 10:58 AM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Cc:** Auerbach, Douglas <douglasauerbach@msn.com>; gmason8598@aol.com; rkmyoung@frontiernet.net  
**Subject:** File #25-2-CUP

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

To the Board of Zoning Appeals:

We are writing you in regard and in opposition to the request for a CUP from QRF Solutions K9, LLC (File #25-2-CUP).

The proposal is in violation of the following from the Jefferson County Zoning and Land Use Ordinance:

### Section 4.4 Prohibited Uses

Sub-paragraph B. This proposal for commercial use will create objectionable noise and must be denied. We are already experiencing an unacceptable level of noise from that property from a distance of more than a quarter-mile away. This disturbing noise is generated by the repeated discharge of high-power firearms. Our neighbors have already called the local police to complain about this noise.

### Section 6.3 Conditional Use Permit

Sub-paragraph A2. The commercialization of this property is not within the intensity and scale of the neighborhood due to the increased noise and traffic it will produce.

Sub-paragraph A3. The adjacent neighbor has informed us that he intends to build another house for his daughter, on his property. The proposed use requires 500' clearance from adjacent houses.

Sub-paragraph A5. The proposal is not compatible with section 8.9 of this ordinance (see below).

### Section 8.9 Industrial and Commercial Uses

Sub-paragraph A1, Noise. The proposal will generate increased levels of noise exceeding the limits in this section. The noise, already generated, is disturbing at a distance of more than a quarter-mile, let alone the adjacent neighbors to this property.

This proposed use will negatively impact the existing bucolic, peaceful nature of the surrounding rural neighborhood. We purchased our house for the quiet enjoyment of this section of Jefferson County. This commercial use is an example of the creeping encroachment disturbing our quiet enjoyment.

We respectfully require the denial of this CUP.

Thank you,

Vernon E Mower, Jr  
Douglas Auerbach  
21 Farview Lane  
Shepherdstown, WV. 25443

## Zoning

---

**From:** Zoning  
**Sent:** Monday, January 13, 2025 10:47 AM  
**To:** 'T Noel'  
**Cc:** John Noël  
**Subject:** RE: Request for permit to operate a firearms business, File# 25-2-CUP)

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** T Noel <wvnoels@gmail.com>  
**Sent:** Monday, January 13, 2025 9:45 AM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Cc:** John Noël <jnoelwv@gmail.com>  
**Subject:** Request for permit to operate a firearms business, File# 25-2-CUP)

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

To Whom It May Concern:

I'm writing regarding the request for permit to operate a firearms business (QRF Solutions K9, File #25-2-CUP).

I am strongly opposed to this request. I live just down the road from this property and have been here for over 20 years. My neighbors and I have fought several times to keep businesses out of our area. We who live in rural, agricultural or single-family zoned areas are under assault. We moved here to enjoy the peace, quiet and safety of the area - not to have our homes invaded by loud noises; increased traffic on small, dangerous roads; and the potential threats that a dangerous business like firearms sales can create. **There are approximately five incidents per day where firearms go missing from gun dealers through robbery, burglary, larceny or other loss.** Further, Federal Firearms License holders, on average, are inspected **less than once per decade.** Who is going to make sure this individual is following the law? The federal license can also exempt individuals from many state-level laws, such as waiting periods and background-check requirements.

Allowing this business to exist is a threat to me and my community. I wonder what liability the Office of Planning and Zoning would face if they approved a variance for this and crimes were committed?

Thank you for considering my request to deny this application.

Theresa Noel  
284 Brierly Spring Lane  
Shepherdstown, WV, 25443



## Zoning

---

**From:** Zoning  
**Sent:** Monday, January 13, 2025 11:22 AM  
**To:** 'James Wiltshire'  
**Subject:** RE: 25-2-CUP QRF Solutions K9 LLC Zoning Request

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** James Wiltshire <mwilts@comcast.net>  
**Sent:** Monday, January 13, 2025 11:18 AM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** 25-2-CUP QRF Solutions K9 LLC Zoning Request

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

To the Office of Planning and Zoning

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

Regarding

File Number 25-2-CUP

QRF Solutions K9 LLC

Nicolas Russo and Alice Davenport, Owners

1899 Trough Rd., Shepherdstown, WV

Parcel ID: 09000900070006; Project Size: 1 ac; Zoning District: Rural

I am opposed to this request as it is written. What the applicant fails to mention is the outdoor shooting range that prompted this. We probably wouldn't have known the business existed if it weren't for the incessant firing of weapons.

Local residents are not opposed to small businesses. They are opposed to the noise of the outdoor shooting range of a commercial business and the potential for stray shots from business clients of unknown ability to handle firearms. Many of us that are opposed are gun owners that are respectful of our neighbors. This is a residential area and a commercial firing range is completely incompatible with the area and completely disrespectful of not only the adjoining neighbors, but all of us within gunshot range. The right to live peaceably should be protected.

If they want to maintain a business and a Federal Firearm License I don't think anyone would disagree with that.

Thank you for your time.

James Wiltshire

151 New Way Drive

Shepherdstown, WV 25443

[mwilts@comcast.net](mailto:mwilts@comcast.net)

## Zoning

---

**From:** Zoning  
**Sent:** Tuesday, January 14, 2025 8:58 AM  
**To:** 'Cavin Davis'  
**Subject:** RE: Zoning for FFL

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Cavin Davis <cavinedavis@gmail.com>  
**Sent:** Monday, January 13, 2025 5:04 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** Zoning for FFL

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

To whom it may concern:

I have been told Nick with QRF Solutions K9 is going for there FFL (Federal Firearms license) I think with what they are doing it a great idea I fully endorsed and encourage zoning to approve the conditional use permit it will also help local law enforcement and the Jefferson county community.

Sincerely,  
Cavin Davis  
445 Breckinridge Way, Shenandoah Junction, WV, 25442



## Zoning

---

**From:** Zoning  
**Sent:** Tuesday, January 14, 2025 8:58 AM  
**To:** 'Cynthia Feeser'  
**Subject:** RE: File 25-2 CUP

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Cynthia Feeser <cjfeeser@gmail.com>  
**Sent:** Monday, January 13, 2025 5:37 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** File 25-2 CUP

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

The Board of Zoning Appeals

The Office of Planning and Zoning

116 E. Washington Street

Charles Town, WV 25414

Attention: Board of Zoning Appeals:

Jan 13, 2025

I am a long-time resident of Jefferson County. I live near the proposed firearms business of Russon & Davenport at 1899 Trough rd. Shepherdstown, WV. Project Name; QRF Solutions K9, File #25-2 CUP. I am writing to strongly speak against and urge you to deny the permit request.

The county has areas that are designated for commercial activity and Trough rd. is not one of them. QRF Solutions should never have been granted permission to operate a firing range in a residential neighborhood. The use of large automatic weapons is not compatible with this quiet area.

I am very concerned as this area is right next to the site of the Battle of Shepherdstown. Many neighbors in this area have worked for over twenty years to preserve this land in conjunction with the American Battlefield Trust, Farmland Protection, and the Jefferson County Historic Landmarks Commission, etc. Hopefully, this land will become part of the National Park Service in the foreseeable future. To grant this CUP could negatively undermine all of our efforts.

Sincerely,

CJ Feeser

5567 Engle Molars rd

Shepherdstown, WV 25443

## Zoning

---

**From:** Zoning  
**Sent:** Tuesday, January 14, 2025 3:01 PM  
**To:** 'Paul S. Garrard'  
**Subject:** RE: Opposition Letter for File No. 25-2-CUP, 1899 Trough Road, Shepherdstown

Good afternoon,

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Paul S. Garrard <audiroudy@comcast.net>  
**Sent:** Tuesday, January 14, 2025 2:51 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Cc:** Paul Garrard <audiroudy@comcast.net>  
**Subject:** Opposition Letter for File No. 25-2-CUP, 1899 Trough Road, Shepherdstown  
**Importance:** High

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

Good afternoon, please see the attached, with thanks in advance for your consideration of this request opposing the above-referenced application.

Best regards.

Paul S. Garrard  
230 Willis Drive  
Shepherdstown, West Virginia 25443  
703.798.4112  
[audiroudy@comcast.net](mailto:audiroudy@comcast.net)

SENT BY EMAIL TO [ZONING@JEFFERSONCOUNTYWV.ORG](mailto:ZONING@JEFFERSONCOUNTYWV.ORG)

TO: Jefferson County, West Virginia  
Office of Planning and Zoning

FROM: Paul S. Garrard  
Current Resident at 230 Willis Drive, Shepherdstown, West Virginia

RE: Opposition to Request for Conditional Use Permit for Firearms Business  
Project Name: QRF Solutions K-9 (File No. 25-2-CUP)

DATE: January 14, 2025

I am writing to provide my strong opposition to the above-referenced request for what amounts to an outside shooting range for Nicolas Russo and Alice Davenport at 1899 Trough Road in Shepherdstown.

I have lived in my current home at 230 Willis Drive for almost 15 years. While my property does not immediately back up to 1899 Trough Road, the distance between us is minimal, and sound carries. One of the most pleasant aspects of living in this area (Cavaland) is the serenity that is most often enjoyed throughout the year, even with the occasional echos of gunfire during hunting season. Speaking of which, one neighbor in particular is always courteous to remind me of when hunting season will be in effect as well as when he might be practicing in the confines of his own barn. Such is an example of the respect most folks have for each other around here.

However, this past summer and fall such serenity was disturbed by the unmistakable sound of rapid gunfire which could only be coming from assault rifles, and it was clearly coming from 1899 Trough Road, not far behind my property. This became routine and often continued well past dark.

For the record, I am gun owner myself and have no intention of giving up such. However, also for the record, I am staunchly against any civilian owning an assault rifle and thus certainly opposed to supporting a business that caters to such, especially in our neighborhood.

Please help us keep our neighborhood free of the incessant and disruptive noise that would no doubt come from your approving their request.

Thank you in advance for your kind, respectful, and thoughtful consideration of this opposition request.

Paul S. Garrard  
230 Willis Drive  
Shepherdstown, West Virginia 25443  
703.798.4112  
[audiroudy@comcast.net](mailto:audiroudy@comcast.net) PSG/psg

## Zoning

---

**From:** Zoning  
**Sent:** Tuesday, January 14, 2025 9:00 AM  
**To:** 'wvguilds@gmail.com'  
**Subject:** RE: Applicant QRF Solutions K9, LLC , Project Name QRF Solutions K9 (File #25-2 CUP), Request for a Conditional Use Permit to operate a firearms business

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** wvguilds@gmail.com <wvguilds@gmail.com>  
**Sent:** Tuesday, January 14, 2025 8:16 AM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** : Applicant QRF Solutions K9, LLC , Project Name QRF Solutions K9 (File #25-2 CUP), Request for a Conditional Use Permit to operate a firearms business

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

January 14, 2025

Re: Applicant QRF Solutions K9, LLC , Project Name QRF Solutions K9 (File #25-2 CUP), Request for a Conditional Use Permit to operate a firearms business

To it may concern:

The referenced project is located on property surrounded by residential properties and borders on a reserve for a civil war battlefield. The residents, including ourselves, expect a quiet life as expected for a residential neighborhood in the county. The battlefield site supporters hope to have a visitors center there someday for educational purposes for the public. Noise pollution from the subject property is already a public nuisance. Commercial businesses of any type are not appropriate for the referenced location and especially ones with such noise impacts to the neighboring residents. We implore you to deny this Permit.

Sincerely,  
Tom and Linda Guild  
22 Cavalier View Ct.  
Shepherdstown, WV 25443

## Zoning

---

**From:** Zoning  
**Sent:** Tuesday, January 14, 2025 8:59 AM  
**To:** 'Kathy'  
**Subject:** RE: Permit for gun range 1899 Trough Rd

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

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

From: Kathy <[sweens1205@gmail.com](mailto:sweens1205@gmail.com)>  
Sent: Tuesday, January 14, 2025 6:16 AM  
To: Zoning <[Zoning@jeffersoncountywv.org](mailto:Zoning@jeffersoncountywv.org)>  
Subject: Permit for gun range 1899 Trough Rd

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

I oppose a conditional permit for this property bordering on the historic Shepherdstown Battlefield.

Please deny it.

Kathy Lloyd  
650 Main drag Way  
Harpers Ferry WV 25425

Sent from my iPad

## Zoning

---

**From:** Zoning  
**Sent:** Tuesday, January 14, 2025 8:58 AM  
**To:** 'Sue Morton'  
**Subject:** RE: DO NOT allow a Conditional Use Permit at 1899 Trough Rd

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Sue Morton <basil22@hotmail.com>  
**Sent:** Monday, January 13, 2025 8:01 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** DO NOT allow a Conditional Use Permit at 1899 Trough Rd

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

Fwd: Calling community awareness to a Jefferson County Zoning Board Conditional Use Permit at 1899 Trough Road. This property abuts the protected 122-acre Shepherdstown Battlefield with an entrance adjacent to the driveway leading to the Osbourn Farm house. Current owners appear to have purchased property in 2023.

This location was given a business license to train dogs some time ago, but the Shepherdstown Battlefield Preservation Association (SBPA) and other stakeholders and neighbors were unaware that they were also given permission to operate a gun range on their 10-acre property. Stakeholders and neighbors did not find out until neighbors heard the heavy weapons being fired at this location. Several neighbors close to this business report that the owners have setup silhouette targets along the battlefield boundaries and have regularly fired automatic assault weapons, various sniper rifles, and even 50 Cal machine guns with tracer ammunition at those targets (including at night). The noise can be heard for several miles. Now the proprietors are requesting a Conditional Use Permit to operate a firearms business, which will only increase practice at their gun range. Notably, one battlefield trailhead proposal is very close to the silhouette targets (and certainly in range of high-power automatic weapons like those being used there).

The SBPA spent 20 years and hundreds of thousands of dollars saving this location so that it could become a battlefield park. Also, the American Battlefield Protection program, The American Battlefield Trust, and other entities contributed over \$2 million to purchase this property (including Jefferson County). The state of West Virginia gave hundreds of thousands more for its protection. It is inconceivable that this Conditional Use Permit should be awarded and everyone has a stake and a voice in this.

Please deny this application to preserve the integrity and historical important area in Jefferson Co., in particular when it borders the Shepherdstown Battlefield.

We beg that this is denied

Susan Morton

26 Old Oak Ct  
Bloomfield, CT 06002

Formerly of Morgantown WV for 66 years.

Get [Outlook for iOS](#)

Tues., Jan. 14  
2025

Jeff. Cty. Zoning Board/Planning  
Charles Town WV

Dear Zoning/Planning Bd. :

Imploring you to deny the permit  
to have and use all manner of guns  
at the property on Trough Rd. (1899).  
Absolute madness to think that such  
a use of this land, so near to so  
many homes of people who only seek  
to live in rural peace and quiet, is  
anything but a horrible mistake.  
Please deny.

RECEIVED

JAN 16 2025

JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING

Rebecca Phipps  
Shepherdstown

POB 845  
Shepherdstown WV  
25443

HARRISBURG PA 17111

14 JAN 2025 11:17 A.M.



RECEIVED

JAN 16 2025

JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING

Bd. of Zoning Appeals  
Planning Comm.  
116 E. Washington St.  
Charles Town WV

25414-100499



## Zoning

---

**From:** Zoning  
**Sent:** Tuesday, January 14, 2025 1:52 PM  
**To:** 'rebecca phipps'  
**Subject:** RE: Trough Rd. debacle

Good afternoon,

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** rebecca phipps <beckyhipps502@gmail.com>  
**Sent:** Tuesday, January 14, 2025 1:48 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** Trough Rd. debacle

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

Greetings zoning board and all those who review appeals,

Please deny the zoning change that would turn a beautiful patch of land on Trough Road into a very dangerous area filled with all manner of firearms. Please try to preserve the rural beauty by allowing fewer guns and less violence. It's such a beautiful area, Trough Road, and so much has been done to try to keep it that way. Please add to previous efforts and deny the zoning change.

Respectfully,

Rebecca Phipps  
Shepherdstown, West Virginia



**From:** [Zoning](#)  
**To:** "David Plummer"  
**Subject:** RE: Zoning Application File No 25-2-CUP regarding the property at 1899 Trough Road, Shepherdstown  
**Date:** Wednesday, January 15, 2025 10:02:00 AM

---

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Colin Uhry, Panning & Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** David Plummer <sundogsdave@gmail.com>  
**Sent:** Tuesday, January 14, 2025 4:45 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>; Planning Department <PlanningDepartment@jeffersoncountywv.org>  
**Subject:** Zoning Application File No 25-2-CUP regarding the property at 1899 Trough Road, Shepherdstown

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

We are firmly against this application for a new FFL dealer in this location and the negative effects it will have on the local community. There is a reason for zoning and zoning approvals and enforcement, and that is to protect everyone's rights and property in a fair and open manner. This applicant, instead of establishing their business in an appropriately zoned area, wants to forego that expense and trouble by setting up shop in their residence and property. This convenience for them comes at the expense of the local population who would endure frequent gunfire along with all the other accoutrements of this business - lowering quality of life, depressed property values, increased traffic, etc.

In addition to the 150+ residences within one mile of the applicant's property, there are also several "protected forever" properties in the area. Immediately adjacent is 120+ acre Osbourn Farm (aka Far Away Farm) which was recently designated and preserved as part of the historic Shepherdstown Battlefield. Note that the Osbourn Farm Deed of Conservation Easement was recorded in Jefferson County on 22 March 2024, prior to this application.

Our position is that if the applicant wishes to create a law enforcement tactical training and acquisition business, they should do so in one of any number of appropriately-zoned locations

in Jefferson or neighboring counties.

Please deny this CUP, thank you.

William David Plummer  
Margaret Ellen Bowers  
Shepherdstown, WV

**From:** [Zoning](#)  
**To:** [Melissa Riner](#); [Planning Department](#)  
**Subject:** RE: Please deny Zoning Application for 1899 Trough Road.  
**Date:** Tuesday, January 14, 2025 12:53:00 PM

---

Good afternoon,

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Melissa Riner <[rinermelissa@gmail.com](mailto:rinermelissa@gmail.com)>  
**Sent:** Tuesday, January 14, 2025 12:06 PM  
**To:** Zoning <[Zoning@jeffersoncountywv.org](mailto:Zoning@jeffersoncountywv.org)>; Planning Department <[PlanningDepartment@jeffersoncountywv.org](mailto:PlanningDepartment@jeffersoncountywv.org)>  
**Cc:** Melissa Riner <[rinermelissa@gmail.com](mailto:rinermelissa@gmail.com)>  
**Subject:** Please deny Zoning Application for 1899 Trough Road.

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

**RE: Zoning Application File No 25-2-CUP regarding the property at 1899 Trough Road, Shepherdstown.**

As a local property owner, gun owner, and hunter, I initially had no concerns when I saw an application for a new FFL dealer in the area. However, after a little research, it became clear that the FFL piece of this is minor compared with the large-scale goals/plans for this 10-acre property nestled in the outskirts of Shepherdstown amidst several residential neighborhoods. I am firmly against this application and the effects it will have on the local community.

Overall, when the owners purchased this property in 2023 with the intent to run this business, they knew the zoning laws that were in effect. If they intended to build a firearms/dog training/boarding/retail business, they should have purchased property that was already zoned to allow those uses. By changing the zoning now, it would be forcing all of us that own surrounding properties to live with the noise and traffic that we moved here to explicitly avoid.

It is extremely discouraging to know that the property owners have apparently already received approvals for the boarding/training facility, and possibly the gun range, without the community being aware. This confirms that the property owners are not aiming for transparency with the community on their true

intentions for the property.

- Property values will be affected if this property owner is allowed to expand their business any further. The recent 3-day training activities that included all day/evening rapid-firing of weapons will only happen more often if this retail business is approved.
- Since the FFL would give an exemption to the nuisance noise restrictions of a gun range, the timing of this application after the range opened and the noise complaints began is concerning. There are 155 residences in a 1 mile radius of this property, which is the average distance that even basic handgun shots can be heard.
- The "protected forever" farmland and historic battlefields surrounding this small 10-acre property would have native wildlife affected by a firearms business and full-scale shooting range.
- The application claims that custom work on firearms is an 'artisan' business that would fit well in the rural zone. However, they specialize in police weapons and training, as you can easily see on their business websites. This is quite a stretch from the true intention of artisan businesses.
- They claim to be an important Jefferson County Business that will help the local community. However, their training focuses on law enforcement agencies in other states, and the local community wasn't even aware this business existed until the noise complaints started. It is misleading to claim that they will be directly benefiting our local government or community.
- They specifically state that they want to ensure 'further zoning processing is not needed with further expansion.' This verbiage makes it very clear that they are trying to remove all barriers to expanding this business to a large-scale retail firearms/training facility.
- They claim this business "Poses no threat to public health, safety and welfare." How can the local community be assured that they are operating their business in a safe and responsible manner? What have they done to ensure the noise generated isn't a nuisance to the community and habitat?

Bottom line, the only benefit to this zoning change is to allow the business owners to build out their dream facility, while destroying the serenity and property values of the entire surrounding area.

Thank you,  
Melissa Riner  
101 New Way Drive, Shepherdstown



## Zoning

---

**From:** Zoning  
**Sent:** Tuesday, January 14, 2025 3:00 PM  
**To:** 'Carolyn Rodis'  
**Subject:** RE: Oppose QRF Solutions K9 File #25-2-CUP

Good afternoon,

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's [webpage](#) by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Carolyn Rodis <rodiscj@gmail.com>  
**Sent:** Tuesday, January 14, 2025 2:18 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** Oppose QRF Solutions K9 File #25-2-CUP

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

This application requesting a "conditional use permit to operate a firearms business from a dwelling unit" speaks for itself.

Firearms from and near residences? This is an unwanted and dangerous proposal.

It will endanger residents, visitors to Shepherdstown Battlefield and hikers on the trails planned for the Battlefield, as it is near the trailhead. Residents can hear the noise from firearms. Property values will decline.

Please DENY this application.

Thank you.

Carolyn Rodis  
Shepherdstown



## Zoning

---

**From:** Zoning  
**Sent:** Tuesday, January 14, 2025 3:42 PM  
**To:** 'Dana Smiles'  
**Subject:** RE: Letter opposing permit for gun business

Good afternoon,

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

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

From: Dana Smiles <[gruversmiles@icloud.com](mailto:gruversmiles@icloud.com)>  
Sent: Tuesday, January 14, 2025 3:40 PM  
To: Zoning <[Zoning@jeffersoncountywv.org](mailto:Zoning@jeffersoncountywv.org)>  
Subject: Letter opposing permit for gun business

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

Let me know if you received this

Thank you  
Dana Smiles



Board of Zoning Appeals  
Jefferson County  
Charles Town WV

Sirs:

My wife and I oppose the Conditional Use Permit for a gun store near the Shepherdstown Battlefield site.

My son and grandson often hike in that area and would be in more danger if the nearby store is expanded.

Sincerely,

Bob and Dana Smiles  
331 W. High St  
Shepherdstown WV 25443



## Zoning

---

**From:** Zoning  
**Sent:** Tuesday, January 14, 2025 1:47 PM  
**To:** '(null) bspicher'  
**Subject:** RE: Opposition of Gun Range

Good afternoon,

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Jennilee Hartman, Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

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

From: (null) bspicher <bspicher@frontiernet.net>  
Sent: Tuesday, January 14, 2025 1:37 PM  
To: Planning Department <PlanningDepartment@jeffersoncountywv.org>  
Subject: Opposition of Gun Range

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

Dear Zoning Department,

I am in opposition of a gun range being considered as a special use permit. This would destroy the battlefield, the sound pollution is most unfair to the neighboring properties, and there is a safety risk to those in the vicinity. The gun range should not be allowed!!!!

Thank you for your consideration,

Barbara Spicher  
Sent from my iPhone



January 14, 2025

Jefferson County Board of Zoning Appeals  
116 E. Washington St., 2nd Floor  
Charles Town, WV 25414

Dear Board of Zoning Appeals

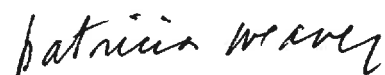
We are writing in opposition to the request by ORF Solutions K9, LLC and Nicholas Russo and Alice Davenport owners for a Conditional Use Permit to operate a firearms business from their property at 1899 Trough Road Shepherdstown.

We have owned a residence on Stonehouse Lane for almost 50 years. We were attracted to the area because of its rural nature. That has been substantially retained notwithstanding substantial development since that development has been residential in nature, not for nonfarm commercial use. We believe that the proposed firearms business would be inconsistent with the current state of the area and would impose negative impacts on existing homeowners through increased noise and congestion.

We also believe that the Board's decision in this matter could have a wider impact than merely the area around the proposed business. Approval would be a precedent that would make it very difficult to deny other requests for nonfarm business use, especially when that use would have fewer negative impacts than the one involved in this request.

We urge you to reject this request.

Sincerely yours,

  
Patricia Weaver

  
John Buckley

RECEIVED  
JAN 16 2025  
JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING

CAPITAL DISTRICT 208

14 JAN 2025 PM 3 L



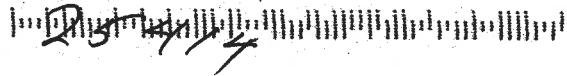
RECEIVED

JAN 16 2025

JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING

Jefferson County Board  
of Zoning Appeals  
116 E Washington St. 2nd Floor  
Charles Town, WV

25414-100499



**From:** [Zoning](#)  
**To:** ["Keith Baumbach"](#)  
**Subject:** RE: QRF Solutions K9 (File #25-2-CUP)  
**Date:** Wednesday, January 15, 2025 4:35:00 PM

---

Good afternoon,

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Colin Uhry, Panning & Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Keith Baumbach <keith@icongraphics.com>  
**Sent:** Wednesday, January 15, 2025 3:56 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** QRF Solutions K9 (File #25-2-CUP)

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

Attn: Office of Planning and Zoning  
116 E. Washington Street, 2nd floor  
Charles Town, WV 25414

Regarding project QRF Solutions K9 (File #25-2\_CUP) Conditional Use permit

This location is in a formerly quiet residential community and this request fails to mention or consider the personal gun range the landowners have been operating for the past year. They have been shooting semi-automatic rifles capable of travelling up to 2 miles in any direction at rapid fire into dirt and rocks which can easily ricochet putting innocent lives at risk. This past summer they fired hundreds of rounds every evening until dark for 2 weeks straight with zero regard for their neighbor's peace, quiet or safety. I also own similar firearms and know the sound of rifle fire when I hear it. I have verified the gunshots were coming from this property. Attached is a map showing that the area they are operating out of is virtually surrounded by residential homes. All of these homes are within range of rifle fire or a ricochet.

It is clear they intend to use this personal gun range in their newly proposed firearms business appointments. Allowing their customers to test fire the rifles and handguns being sold. This should never happen in a residential community and is not a suitable purpose for this location.

As if the incredibly poor judgement and dangerous discharge of semi auto rifles are not bad enough. Trough road is not built for traffic beyond local residents. The property shares a driveway with another resident. The driveway is located on a blind 90-degree turn. In many places it is not wide enough to get by the school buses that travel daily.

Sincerely,  
Keith & Marcie Baumbach  
117 Windgale Dr.  
Shepherdstown, WV 25443.

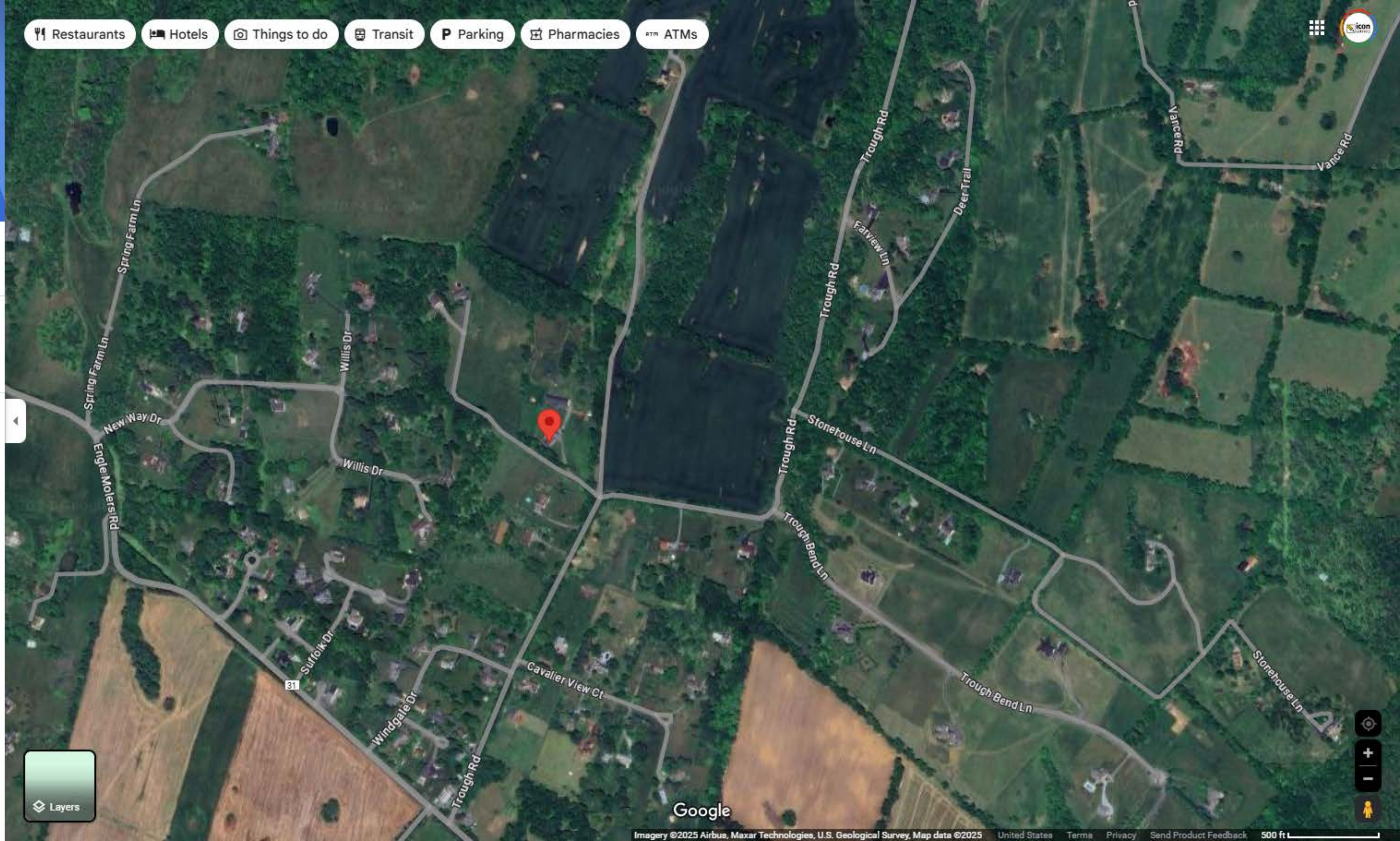


### 1899 Trough Rd

Building

- Directions
- Save
- Nearby
- Send to phone
- Share

- 1899 Trough Rd, Shepherdstown, WV 25443
- Suggest an edit on 1899 Trough Rd
- Add a missing place
- Add your business
- Add a label
- Your Maps activity



Google



**From:** [Zoning](#)  
**To:** ["C Blessing"](#)  
**Subject:** RE: Disapproval of Zoning Application for 1899 Trough Rd.  
**Date:** Wednesday, January 15, 2025 4:34:00 PM

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Good afternoon,

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Colin Uhry, Panning & Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

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

From: C Blessing <[greenbambooskincare@yahoo.com](mailto:greenbambooskincare@yahoo.com)>  
Sent: Wednesday, January 15, 2025 3:41 PM  
To: Zoning <[Zoning@jeffersoncountywv.org](mailto:Zoning@jeffersoncountywv.org)>; Planning Department <[PlanningDepartment@jeffersoncountywv.org](mailto:PlanningDepartment@jeffersoncountywv.org)>  
Subject: Disapproval of Zoning Application for 1899 Trough Rd.

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

RE: Zoning application File No 25-2-CUP regarding the property at 1899 Trough Rd Shepherdstown

I have lived in Shepherdstown since 1975 and have resided at 84 New Way Dr Shepherdstown since 1984. My home is about a mile from the above mentioned property. Since living here for decades, I have enjoyed the quiet, peaceful surroundings in a single home, residential community. If the zoning regulations are changed, it will not only be disruptive but completely change the landscape of the area. Consequently I am most adamantly opposed to this area being re-zoned to allow for firearms/dog training/boarding/retail purposes. The owners of this 1899 Trough Rd property knew the restrictions when they purchased it and if this was their intent, should have acquired property that was zoned thus.

Besides the horrific increase in the noise level, they're will be increased traffic and congestion - all things we, as nearby home owners, have enjoyed for decades!

Any benefit the owners may cite as community minded or beneficial is negligible compared to the harm being done to the local residents, wildlife and the farming community.

In addition our property values will be severely and negatively impacted if this re-zoning is approved. Let me ask you - "Would you be in favor of this action if it were to occur in your backyard?"

My sincere hope that you do the right thing,

Carol Blessing



**SUBJECT: OPPOSITION TO THE CONDITIONAL PERMIT FOR PROPOSED GUN RANGE**

DEAR JEFFERSON COUNTY ZONING COMMISSION,

I AM WRITING TO EXPRESS MY STRONG OPPOSITION TO THE CONDITIONAL PERMIT APPLICATION FOR THE PROPOSED GUN RANGE AT 1899 TROUGH ROAD. WHILE I RESPECT THE RIGHTS OF RESPONSIBLE GUN OWNERSHIP AND RECREATIONAL SHOOTING, THE ESTABLISHMENT OF A GUN RANGE IN THIS AREA RAISES SEVERAL SIGNIFICANT CONCERNS THAT I BELIEVE WARRANT CAREFUL CONSIDERATION.

**1. SAFETY RISKS**

THE PROXIMITY OF THE PROPOSED GUN RANGE TO RESIDENTIAL NEIGHBORHOODS, SCHOOLS, PARKS, AND OTHER PUBLIC SPACES CREATES A POTENTIAL SAFETY HAZARD. EVEN WITH STRICT OPERATIONAL PROTOCOLS, THE INHERENT RISKS ASSOCIATED WITH FIREARMS—INCLUDING ACCIDENTS, STRAY BULLETS, AND MISUSE—POSE A SERIOUS THREAT TO THE WELL-BEING OF THE COMMUNITY.

**2. NOISE POLLUTION**

GUN RANGES GENERATE SUBSTANTIAL NOISE POLLUTION THAT CAN NEGATIVELY IMPACT THE QUALITY OF LIFE FOR NEARBY RESIDENTS. THE PERSISTENT SOUND OF GUNFIRE MAY DISTURB HOUSEHOLDS, DISRUPT OUTDOOR ACTIVITIES, AND INTERFERE WITH THE NATURAL TRANQUILITY OF THE AREA. EVEN WITH SOUND MITIGATION MEASURES, THE NOISE LEVELS ARE LIKELY TO REMAIN A SIGNIFICANT ISSUE FOR THOSE LIVING IN CLOSE PROXIMITY.

**3. ENVIRONMENTAL CONCERNS**

GUN RANGES OFTEN USE LEAD-BASED AMMUNITION, WHICH CAN CONTAMINATE THE SURROUNDING SOIL AND WATER IF NOT PROPERLY MANAGED. THIS POSES A LONG-TERM ENVIRONMENTAL RISK, PARTICULARLY IN AREAS NEAR WETLANDS, WATER SOURCES, OR AGRICULTURAL LAND. THE POTENTIAL FOR ENVIRONMENTAL DEGRADATION MUST BE CONSIDERED AS A SERIOUS CONSEQUENCE OF GRANTING THIS PERMIT.

**4. IMPACT ON PROPERTY VALUES**

THE ESTABLISHMENT OF A GUN RANGE MAY ADVERSELY AFFECT PROPERTY VALUES IN THE SURROUNDING AREA. POTENTIAL BUYERS MAY BE DETERRED BY THE SAFETY, NOISE, AND ENVIRONMENTAL CONCERNS ASSOCIATED WITH SUCH A FACILITY, THEREBY IMPACTING THE ECONOMIC STABILITY OF THE COMMUNITY.

**5. COMMUNITY SENTIMENT**



MANY RESIDENTS HAVE EXPRESSED THEIR CONCERNS AND OPPOSITION TO THE PROPOSED GUN RANGE. AS ELECTED OFFICIALS AND REPRESENTATIVES OF THE COMMUNITY, I URGE YOU TO CONSIDER THE VOICES OF THOSE WHO WILL BE MOST DIRECTLY AFFECTED BY THIS DECISION.

CONCLUSION

WHILE I RECOGNIZE THE IMPORTANCE OF RECREATIONAL FACILITIES FOR FIREARMS ENTHUSIASTS, THE PROPOSED LOCATION OF THIS GUN RANGE IS UNSUITABLE GIVEN THE SAFETY, ENVIRONMENTAL, AND COMMUNITY CONCERNS. I STRONGLY URGE YOU TO DENY THE CONDITIONAL PERMIT APPLICATION FOR THIS PROJECT AND ENCOURAGE THE APPLICANT TO EXPLORE ALTERNATIVE LOCATIONS THAT ARE BETTER SUITED TO SUCH AN ESTABLISHMENT.

THANK YOU FOR YOUR TIME AND CAREFUL CONSIDERATION OF THIS MATTER. I AM CONFIDENT YOU WILL PRIORITIZE THE WELL-BEING AND INTERESTS OF THE COMMUNITY IN YOUR DECISION-MAKING PROCESS.

SINCERELY,



RECEIVED

JAN 15 2025

JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING



814.241.1242  
MIRANDAJO@GMAIL.COM

**SUBJECT: OPPOSITION TO THE CONDITIONAL PERMIT FOR PROPOSED GUN RANGE**

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SINCERELY,

Miranda J Brund

RECEIVED  
JAN 15 2025  
JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING



Date: January 12, 2025

From: Thomas & Patricia Dowell  
208 Willis Drive  
Shepherdstown, WV 25443

To: Jefferson County, West Virginia  
Department of Engineering, Planning and Zoning  
Office of Planning and Zoning  
116 E. Washington Street, 2<sup>nd</sup> Floor  
Charles Town, West Virginia 25414

Dear Members of Planning and Zoning:

We are contacting you in regard to Project: QRF Solutions K9 (File #25-2-CUP), regarding a permit to allow a firearms business in this residential area:

We live in the adjacent residential area: West Cavaland.  
We have experienced the disturbing noise of the owner doing firearms practice.  
We cannot imagine the irritating noise that we would experience if a business had multiple persons doing the same thing.

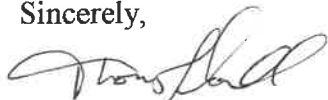
This is a residential area. A permit that would subject surrounding residents to this incessant "noise" is not only unfair, it is also unhealthy.  
It is also dangerous, as the danger of stray ballistic is very alarming, as a stray bullet can travel for miles, not 500 feet.

People that have small children and babies;  
People who have night jobs and need to rest during the day;  
People who have health issues and need daytime rest;  
all of these would be negatively affected.  
We all purchased our homes in these developments because of its quietness.  
Firearms shooting is not compatible with residential living.  
We should not be expected to reap the results of it and our property devaluation.

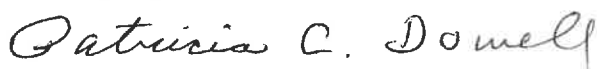
"Sales and service" should impact only the property it is on-  
NOT also all the neighbors surrounding it.  
Businesses in a residential area should not affect neighboring residences, and even nearby residences, such as us.  
We are urging you to reconsider and deny this Permit.  
If this is not done, then who knows what other "businesses", using this precedent, may also be allowed, which have detrimental effect on neighbors and neighborhoods.  
And these "businesses" will be in contention also, but the precedent may tie your hands.

We sincerely ask you to consider these and other arguments shared, and deny this permit in any form.

Sincerely,



Thomas J. Dowell



Patricia C. Dowell

RECEIVED

JAN 15 2025

JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING

Thomas & Patricia Dowell  
208 Willis Drive  
Shepherdstown, WV 25443

HARRISBURG PA 171

13 JAN 2025 PM 4 L



**Jefferson County, West Virginia  
Department of Engineering, Planning and Zoning  
Office of Planning and Zoning  
Attn: Board of Appeals**

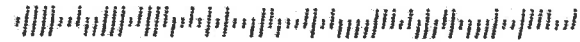
**116 E. Washington Street, 2<sup>nd</sup> Floor  
Charles Town, West Virginia 25414**

RECEIVED

JAN 15 2025

JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING

25414-100499



Jefferson County, West Virginia  
Department of Engineering  
Office of Planning and Zoning  
116 E. Washington Street, 2nd Floor  
Charlestown, WV 25414

January 13,2025

To the Board of Planning and Zoning,

I reside on Trough Road and I am requesting that the Planning and Zoning Commission deny the Request for a Conditional Use Permit to operate a Firearms business located at 1899 Trough Road, Shepherdstown, WV for the following reasons:

- Safety and Traffic Issues
  - Increased volume of traffic on a Rural road that many people use daily to walk, jog or bicycle
  - Increased traffic of non-residents on a Rural road
  - School buses and large vehicles barely have room to safely pass smaller vehicles
- Disturbances
  - Constant noise from gun shots at all hours
  - Disturbing the peacefulness of the area
  - Increased volume of traffic noise
- Devaluation of Property
  - Properties in the area are zoned for single family use
  - Property devaluation due to the constant noise from shooting of firearms

To my knowledge there are no other businesses being operated in the area. I have already been disturbed many times in the past few months from what was assumed a personal target practice. I can not imagine what it would be like if

target practice is multiplied by running a firearms business and the possibility of stray bullets flying all over the place.

Please think about all the people who live in proximity to this proposed request and the negative impacts to their property as well as their lives. Would you want a firearms business in or around your home? Surely there are other available properties in the county that are non-residential that would be more suitable for this type of business.

Sincerely,

Sharla Essick  
197 Windgale Drive  
Shepherdstown, WV 25443

On January 11, 2025, my birthday no less, I discovered that my life may be changed forever.

It was on this day that I came to learn that I may be living in a real-time nightmare war zone and I'm afraid someone might snap because it is SO stressful to live under war-time conditions in your own home or being outside.

I was hoping to be 1 year away from retirement in the beautiful home I created for me and my family over the past 24 years. I love (loved?) my home because we are in a great neighborhood, great neighbors, very close to Shepherdstown proper – a vibrant University town. I've planted an orchard (some trees are from my deceased father's yard), over 50 trees, many perennial plants – all of which I expected to enjoy for the rest of my life.

I LOVE (loved?) to swing in my hammock with my grandchildren snuggled up with me and I love to float in our little pool with my eyes closed listening to the wonderful sounds of the birds in my trees – relieving my stress BUT THAT IS BEING TAKEN FROM ME!

**I feel that Nicolas Russo and Alice Davenport are trying to take away my peace of mind, my sense of well-being, and they are trying to steal my property rights and my home value from me.** My home will be impossible to sell to any family because I and everyone else feel like we'll get shot while trying to enjoy our yards! My wife works from home, and she cannot focus on her work with the war raging for up to an hour at a time - repeatedly in our back yard – we used to gaze out at the horses running around on the property with the former owners – and can only think of the vicious dogs hanging around now. HOW SELFISH CAN THESE APPLICANTS BE?

I/we have made great sacrifices with our decision to relocate here from outside of Washington, DC (born and raised there). We moved here with our three (3) young children to get away from the crime, sirens, noise, the helicopters, etc. I still work in DC; I get up early and go to bed early – a common practice here. As I approach WV at the end of each day, I breathe a sigh of relief knowing I'm close to coming home to such beauty, peace and quiet, but I feel YOU ARE TRYING TO TAKE THIS FROM ME. Also, IT IS VERY DISTURBING TO MY MENTAL and PHYSICAL HEALTH TO HEAR A WAR RAGING WHEN I'M TRYING TO SLEEP OR ENJOY MY YARD ON A BEAUTIFUL SUNDAY. And the applicants state they want to expand their business. IF WE DON'T STOP THEM NOW, I'll feel like I'm in Vietnam with HELICOPTERS BUZZING OVERHEAD AND EVEN MORE GUNS, PEOPLE RUNNING AROUND WITH GUNS AND VICIOUS DOGS RUNNING OFF LEASH POSSIBLY COMING AT ME OR MY FAMILY.

This is so disturbing you cannot even imagine. They are setting off explosives too which is even MORE INSANE. We hear all of this on any given day and at any given time – even after dark.

Do we really want a militant, gun-craving situation ruin our county? Do we need more guns on the street? I can't help but worry about the applicant's well-being. YOU'VE TURNED MY HOME AND OUR GREAT NEIGHBORHOOD INTO A WAR ZONE!

I am an avid bird enthusiast – I even have a pet canary. I enjoy sitting on my back deck listening for all the bird calls but when the applicants start with the sirens, the yelling, the barking, the gunshots, the explosives, all the birds, including those that nest in our yard fly away! The animals run and the pet dogs get so afraid that one of them pees themselves. We have Bald Eagles, wild turkeys, Pileated woodpeckers, even blue jays were starting to come back – we saw new birds starting to migrate through during the summer - all of which migrate through our community – yours and mine

Nick and Alice - but you are ruining their lives, and YOU ARE RUNING MY PEACE, MY HOBBIES, MY LIFE!

We are now unable to enjoy our outdoor barbeques with friends and family! Who knows when the war will start – it is EXTREMELY DISTURBING! How dare a new neighbor be so insensitive, so rude, so selfish to take way our peaceful neighborhood from us!

The back of our house overlooks the applicant's property and when cars pull up or prepare to pull away from their house at night, the high-beam headlights can stay on for a very long time – half hour/one hour – shining into our windows making us feel like we're GETTING SPOTLIGHTED FOR A KILL.

I am concerned that I will be attacked by an aggressive dog, a gun from a purchaser or even a person utilizing their property may lose their minds/go rogue and come after me, my family, my house, my animals!

Who would want to have this type of business on such a small property in the middle of multiple neighborhoods? There are million-dollar homes here and many more are expected to be built in the future which will increase property values and revenue for the county. THIS WILL KILL PROPERTY VALUES AND REVENUE FOR THE COUNTY.

What they are operating – which I believe is against the law – is not a simple dog training/boarding firing range combo but it is more like MILITIA TRAINING!

Can you imagine how unnerving and upsetting it is to try and eat when you constantly get startled hearing explosives and automatic/semiautomatic heavy weapons firing? YOU'VE TURNED MY HOME INTO A WAR ZONE – IMAGINE OUR VETERANS WITH PTSD!

Nick and Alice – Obviously you were likely coached on how to set up/navigate through to get what you want. It is crystal clear that one of the reasons you are applying for this CUP for the FFL would assist you in getting around the noise ordinance. Have you already committed a misdemeanor?

Planning and Zoning – Please don't fall for these New Yorkers trying to pull the wool over your eyes – bringing their militant ways to our gorgeous and peaceful community. Please know that we love our home and Nick and Alice will destroy my life. **They are NOT ENTITLED TO RUIN MY LIFE, MY FAMILY'S LIVES, NOR MY NEIGHBORS LIVES!**

**I GRIEVE KNOWING THAT OUR GRANDCHILDREN WILL NOT BE ALLOWED TO COME TO OUR HOUSE BECAUSE THEIR PARENTS ARE AFRAID THEY WILL BE SHOT OR CHASED/BITTEN BY A VICIOUS DOG! THEY DON'T NEED TO BE EXPOSED TO A WAR ZONE!** Do you understand/realize you are taking away our home and our family?! This is just plain CRAZY!

I BEG YOU NICK AND ALICE, PLEASE WITHDRAW YOUR APPLICATION AND PLEASE SET UP SHOP AT A MORE SUITABLE LOCATION. You may think you're out the in the middle of nowhere, but you are NOT – you are smack-dab in the middle of housing developments – where neighbors have been very good to each other until you arrived. You are destroying my, my family, my neighbors' lives, our peace, and our sense of security.

You are also next to a protected battlefield – this is sacred and hallowed ground used for walks in peace and reflection. Soldiers died on this ground, and I believe that **DISTURBING THEIR FINAL**

**RESTING PLACE IS AN ATROCITY!** Don't be disrespectful, let them rest in peace vs subjecting them to the sounds of MORE WAR!

Please don't turn our beloved neighborhood into a hellscape. We feel like we're living in a war-torn area like Ukraine or in the Gaza region. Perhaps coming from Long Island, etc., you didn't realize you were NOT in a "very rural" area, and maybe you think 10 acres is sufficient to do what you want to do but now you know it's an unhealthy, dangerous, and distressing idea to your neighbors, your neighborhood, your area, your county. Please be a peaceful neighbor – don't you hear it when you're not shaking-up the world? We would welcome that.

Thank you,  
Perry Fleri

FYI: In my opinion, this picture speaks volumes about they type of person that is requesting this CUP





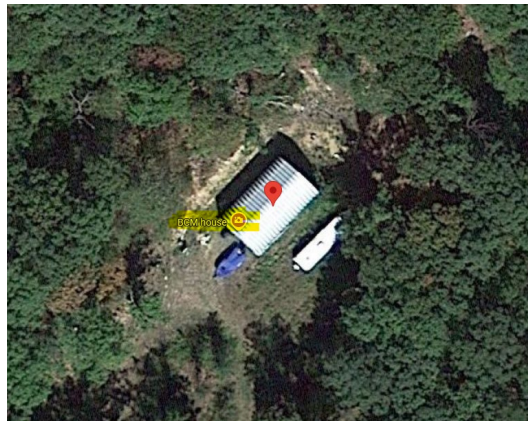
## Non-Compliance, Loss of Revenue, and Law Concerns

re Project Name: QRF Solutions K9 (File #25-2-CUP)

It seems that owners/applicants Nicholas (Nick) Russo & Alice Davenport – doing business as QRF Solutions K9 LLC (QRF) – have applied for a CUP “**For FFL related business...**” for at least two (2) possible reasons. One is because they may already be manufacturing guns at their current property in Shepherdstown.

### **History:**

It appears they relocated from Long Island, New York to Paw Paw, WV a couple/few years ago. It also appears that they may have labeled where they lived as a “BCM house” – further labeled as a “Tourist Attraction” on Google Maps.



When you look up BCM, you will find that Nick Russo works/worked with **Bravo Company Manufacturing (BCM)**. **BCM is in the business of manufacturing Combat Weapons including AR-15 rifles.**

The image displays two side-by-side screenshots from a web browser. The left screenshot shows the website for Bravo Company Manufacturing (BCM), with the URL 'bravocompanymfg.com'. The page features a navigation menu with 'BCM' and 'EMPLOYEE OWNED' logos. The main content area highlights a product called 'RAIDER' with the tagline 'FRONT TOWARDS ENEMY' and 'MODULAR INFRARED DEVICE ENABLER RAIL'. Below this, there is a section for 'COMBAT RAIL SYSTEMS' with an image of a soldier's helmet. The right screenshot shows a forum post on 'www.ar15.com'. The post title is '[ARCHIVED THREAD] - Superlative Arms Bleed Off Adjustable Gas Valve Problem'. The post content discusses a user's experience with a BCM rifle's gas valve, mentioning 'Nick Russo' and 'tec. dept.' in yellow highlights. The post is dated '10/12/2019 3:26:10 PM EST'.

Another reason why Nick and Alice may have applied for this CUP was to **circumvent/become exempt from County and State Laws/Ordinances & Noise Ordinances.**

**We believe their proposal does NOT meet criteria set forth in the zoning ordinance/law and it appears that they have misrepresented facts in their application.** Me and those of us that are their neighbors are sadly aware that they have already been operating a shooting range that is possibly out of compliance/breaking the law, and because they have had many noise complaints filed against them (in person and by neighbors calling law enforcement for shots fired [recorded]) I think law states they could be found guilty of a misdemeanor?

**I and my family are directly impacted by activities on their property, and we are critically concerned about what we feel is an illegal taking of our property rights, being stripped of our well-being, and subject to a significant decrease in our home's value.**

**FYI: I found three (3) firing ranges within Jefferson County and the average acreage of these properties is **287.73** acres. This CUP speaks to a property of **ONLY 10** acres.**

### **The Proposal:**

*Interesting to note: The owners of the property requesting this CUP have gone silent (no war zone) since they submitted their request. They have also removed the body/head kill targets from what I can tell however, there has been much activity on the property (cars/trucks, etc coming and going).*

The CUP proposal states it is compatible with the goals of the adopted Comprehensive Plan by comparing what they want to do to “promoting ‘Artisan’ businesses in the Rural Zone”. I know when I think about rural/agricultural artisans, I think about small quantity production of pottery, paintings, wool products, jams, baked goods, soap making, etc. – items that would be available in a farmer’s market vs an armory – and artisan products to me definitely do not include “Custom Assembly/Manufacturing” of weapons as regulated by the ATF, not to mention firing these customized combat weapons on the property (for testing, “training”, etc.) - and K9 training, the training of dogs with bite histories, and detonating explosives on the property. They talk about expanding and it would likely include training K9s with helicopters (see below) ....and much more. I think things will go from bad to worse.

Again, the applicant(s) consider manufacturing combat weapons, and selling them, to be an “artisan operation” but I believe they will be “firearms manufacturers” of militia-style combat weapons.

It is not an operation that is appropriate for the property site which is bound by high density residential housing developments. The noise from the explosives being detonated, the high powered automatic/semi-automatic gun shots every day at all times of the day – even after dark – is not indicative of being a friendly business in our beautiful and peaceful residential area just outside of Shepherdstown in Jefferson County.

Again, this potential business IS within a rural residential area – not a “nonresidential rural” area. It is not agriculturally nor rurally compatible due to the scale and intensity and poses great threat to public health, safety, and welfare. It does NOTHING to help preserve farmland or open spaces/agricultural operations. There is PROFOUND impact to all of us neighbors surrounding their property. As far as sales go, should assault/combat weapons be sold in a residential community? Are Shepherdstown

stores and Farmer's Markets throughout the county going to sell assault/combat weapons? THERE IS NO WAY THAT THIS COUNTY'S CITIZENS WILL BENEFIT IN ANY WAY FROM THE PROXIMITY OF THESE ACTIVITIES. IN FACT, THIS WILL DISCOURAGE ANY FUTURE INVESTMENT NOR REINVESTMENT - COMMERCIAL OR NON-COMMERCIAL DEVELOPMENT.

These types of activities/this type of business is NOT compatible nor promoted by the Envision Jefferson 2035 Comprehensive Plan. Quite the opposite. The proposal speaks to ATF (alcohol, tobacco, and firearms) Regulated Use for the manufacturing, CUSTOM 'gunsmithing', and storage of explosive materials. Much of this company's current customers are from out of state – not from the local area - as indicated on their social media. Even they are from out of state.

See the satellite images below that reveal their property is located within high density residential housing developments with direct impact to hundreds if not thousands of people. In fact, there are three (3) dwellings/residences that are within 500 feet. The property also abuts the sacred and hallowed ground of the Shepherdstown Battlefield preservation where many go to find peace and solitude for reflection - which would be destroyed. The property is rather open – not "screened", not covered by trees – in fact, most of the property is rather flat and open.

The entry to their driveway from Trough Road is a shared space – 3 dwellings utilize that area of the 90-degree bend in the very narrow road.

In terms of public health, safety and welfare, this particular property, nor any surrounding property has nor is currently being "used heavily for hunting and discharging of weapons". THIS IS A DENSELY POPULATED RESIDENTIAL AREA where hunting doesn't exist and where no one discharges weapons.

The expansion of their current business WILL NOT ALLOW for economic growth, in fact, it will deter economic growth and will decrease the County's tax base as all residences – ALL PROPERTIES surrounding this proposed facility will lose value. All future commercial or residential growth will be negatively impacted because who wants to live or be at a restaurant or hotel near a facility where you hear explosions, assault/combat guns firing, helicopters hovering, K9 dogs attacking people, and potential theft of firearms that would get into the wrong hands of people running through your property? Not to mention the potential for being killed by stray bullets! What if the property blows up due to all of the explosives they plan to store? It will end lives and damage property of those surrounding this property. WHAT A NIGHTMARE for this area! Also, I believe real estate agents are required to disclose this firing range/gun manufacturing business when listing a home or business for sale nearby, correct?

There will be GREAT negative impact on the potential for commercial and residential development or use of adjacent land and buildings. I have a direct line of sight to this property, and there are already many cars, delivery trucks, as well as other trucks coming and going from the property every day. According to their company's website, the company consists of at least five (5) employees already (see below for more information).

As has been revealed in my letter so far, the CUP proposal contains falsehoods and all negatives. There are no positives in this proposal for me, my neighbors, for Shepherdstown, nor Jefferson County. Since Jefferson County is a suburb of Washington, DC, and since this business has been working with people out of state already, this proposed business would likely attract people from far

and wide to purchase guns – therefore, it would be obtuse to infer that only local people will purchase modified weapons.

You'll find that evidence will support the conclusion that the proposed CUP has many adverse effects including but not limited to the items below:

- Cause excessive traffic impacts for a shared driveway space at a dangerous 90-degree angle in a narrow road
- Cause nuisances (noise for automatic/semi-automatic and other assault and high caliber guns, use of explosives, dust, odor, etc.) – if one dwelling is impacted, all surrounding is impacted
- Cause adverse health effects, including adverse mental health effects; possible gun shot wounds and dog bites
- Detrimental to the general welfare of people living in our neighborhood and neighboring housing developments & communities – including but not limited to Shepherdstown, a University System, Primary and Secondary Schools, Hotels, Restaurants, Potomac River recreation, Public Historic Battlefield, etc., etc.
- Reduce the safety of me, my family, my friends, all neighbors and our guests
- Overburden access to fair share of shared ground water, especially during periods of drought
- Will interfere with current and future development of all property types within a many multi mile radius
- Will devalue nearby properties (some neighboring properties are currently valued well over \$1,000,000.00. According to a Realtor.com study, a home valued at 500K can drop about \$40,000 in value when affected by noise – in fact, the EPA's Decibel Scale indicates fireworks sound at 140 dB which is the threshold of pain – heavy weapons fire & explosives exceeds 140 dB which is enough to cause great physical/mental pain and anguish.



Also, why would Jefferson County Planning and Zoning allow a CUP when residents, the county and the state invested millions of dollars to save the battlefield/protect public land for the enjoyment of

everyone? It just doesn't make sense they would approve this since the noise is VERY DISTURBING!

It appears at some point, Nicholas Russo "Nick" – one of the owners of this property – and his K9 were responsible for a large narcotics bust in New York. Why did they come to WV? Do they, like others from out of state, think that they can take advantage of or "get one over" on neighbors and local/state officials because they think we're ignorant, backwards, and/or corrupt? Do they think that **10 acres** is a lot of property to operate a gun manufacturing company, a firing range, militia-style combat training, detonation of explosives, a K9 training facility, and a dog training/boarding facility?

You can see here that 10 acres of land within a residential community is **INSUFFICIENT AND INAPPROPRIATE**. Here are comparisons. There are at least three (3) firing ranges in Jefferson County:

1. 340 Defense in Charles Town on **89.98 acres**, and
2. Leetown Izaak Walton League of America in Kearneysville on **56.20 acres**
3. Paramount Tactical Solutions in Summit Point (Raceway) on **717 acres**

### • Non-Compliance and Loss of Revenue

Current practices by Nick and Alice – doing business as "QRF" are completely out of compliance with local, county, and state laws, noise ordinances, general welfare, housing density/values, etc. due to assault weapons/large caliber gun fire, automatic/semiautomatic shooting, and the detonation of explosives with neighbors' **dwelling**s being within **500 feet from them** all without proper safeguards from what I can see. They are less than 50 feet from private and public roads! Even though I am about 600 feet away, I am directly impacted - I have a direct line of sight to their property. The sound of these large weapons and explosives is completely different/overwhelmingly disturbing vs the sound of the occasional hunter's gunshots heard in the far distance on a large tract of land, and only during the very short hunting season. FYI, see "explosives" indicated being used in these posts:

**TRAIN YOUR DOG WITH QRF SOLUTIONS K9**

**SERVICES OFFERED INCLUDE**

- BASIC OBEDIENCE**
  - ✓ SIT
  - ✓ LEASH ETIQUETTE
  - ✓ DOWN
  - ✓ RECALL
  - ✓ STAY
- ADVANCED OBEDIENCE**  
BASIC OBEDIENCE BUT WITH:
  - ✓ PUBLIC DISTRACTIONS
  - ✓ SOCIALIZATION
- BEHAVIOR MODIFICATION**
  - ✓ ELIMINATE ANY UNWANTED BEHAVIORS SUCH AS:
    - JUMPING ON COUNTERS
    - DOG REACTIVITY

**TRAINING SERVICES FOR WORKING DOGS INCLUDE**

- ODOR DETECTION INCLUDING
  - ✓ EXPLOSIVES
  - ✓ NARCOTICS
  - ✓ HUMAN REMAINS DETECTION
- PERSONAL PROTECTION
- PATROL (BITE WORK)

**BOARD AND TRAIN SERVICES**

BOARD YOUR DOG FOR 1-4 WEEKS AT OUR FACILITY WHERE THEY CAN BE TRAINED IN

- ✓ BASIC OBEDIENCE
- ✓ ADVANCED OBEDIENCE
- ✓ BEHAVIOR MODIFICATION
- ✓ ANY WORKING DOG TRAINING (AS DETAILED ABOVE)

OR ANY COMBINATION OF THE ABOVE!

CONTACT US FOR MORE INFORMATION ABOUT SPECIFIC RATES FOR ALL SERVICES

QRF SOLUTIONS K9 (831) 335-9654 www.qrfsolutionsk9.com 1899 Trough Rd, Shepherdstown, WV 25443

QRF Solutions K9 is with Friends of Franklin County Sheriff's Office. September 13, 2024

We have been super busy but still wanted to say congratulations to Franklin County for getting certified by AMPWDA for explosives, patrol and tracking!... See more

In addition to the non-compliance with laws and ordinances, QRFs operations will have a **tremendously negative impact on tax revenue** if allowed to move forward. **Commercial and Residential** sales prices will plummet drastically translating into lower assessed values/lower levy values resulting in an exceptionally large net negative revenue amount. An unbelievably bad investment/inconceivable to justify approving this CUP.

**Wouldn't it make more sense for the County to operate its own training facility and source of products on a larger, more appropriately sized, and actual rural county property away from a residential neighborhood? This could be a real revenue booster for the county (no middleman) and would also employ local residents.**

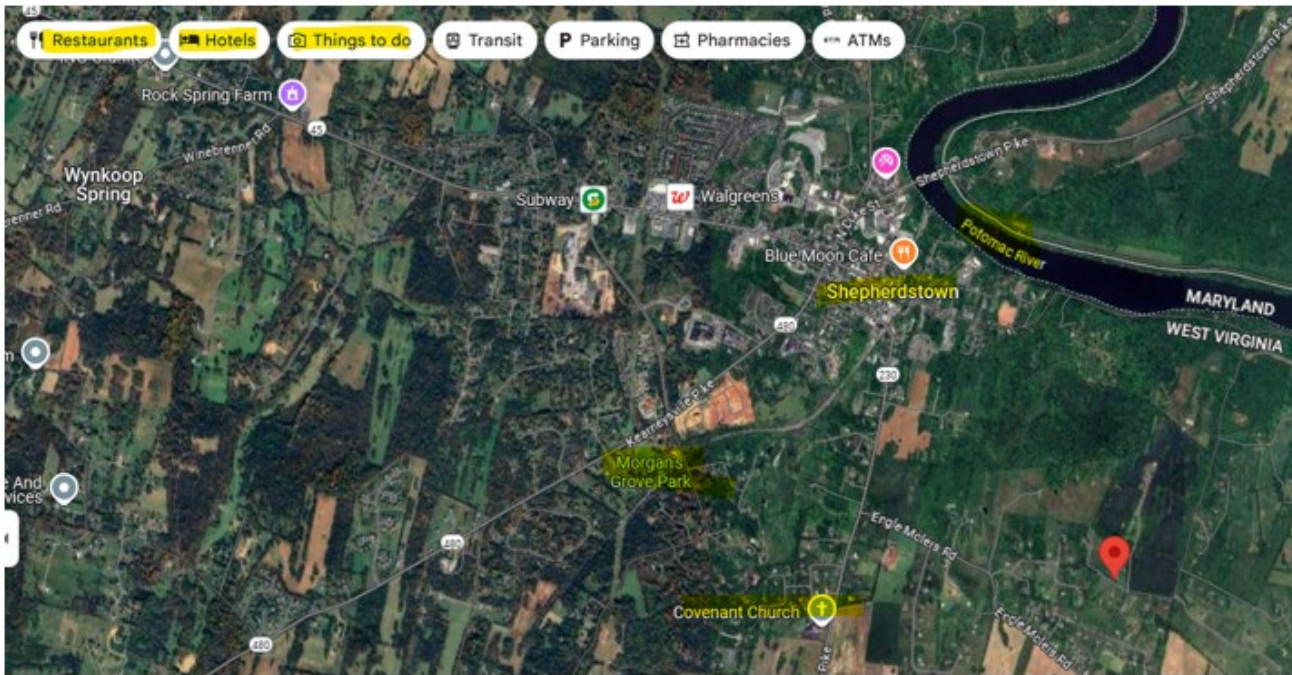
Here are some Google Maps Images that reflect a more realistic images of how the applicants' property fits into the local densely populated neighborhood.

The red point is the applicants' Trough Road property, and the other buildings are other homes/dwellings surrounding the applicant's property:



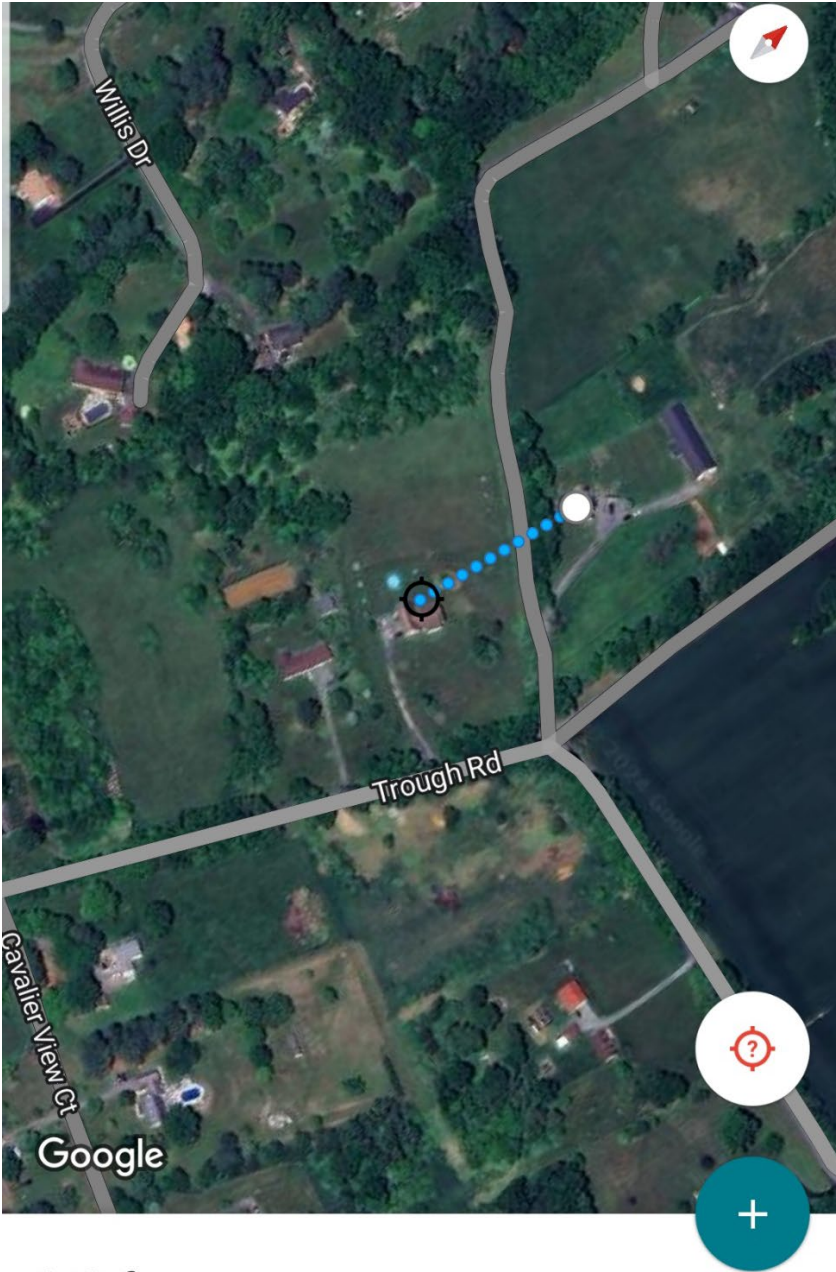
The image below reveals the proximity to the greater Shepherdstown area including Shepherdstown (attracts many tourists), Shepherd University, Hotels/Bed & Breakfasts, Restaurants including with outdoor seating, Churches, the Potomac River which is used for recreation, other neighborhoods, the C&O Canal tow path, Roads and Paths used for bicycle races and marathons (which also use Trough Road) as well as proximity to Protected Lands, as well as two (2) new schools that are currently

under construction less than a mile away. ALL are within the range of being disturbed by explosions, assault weapons, etc.



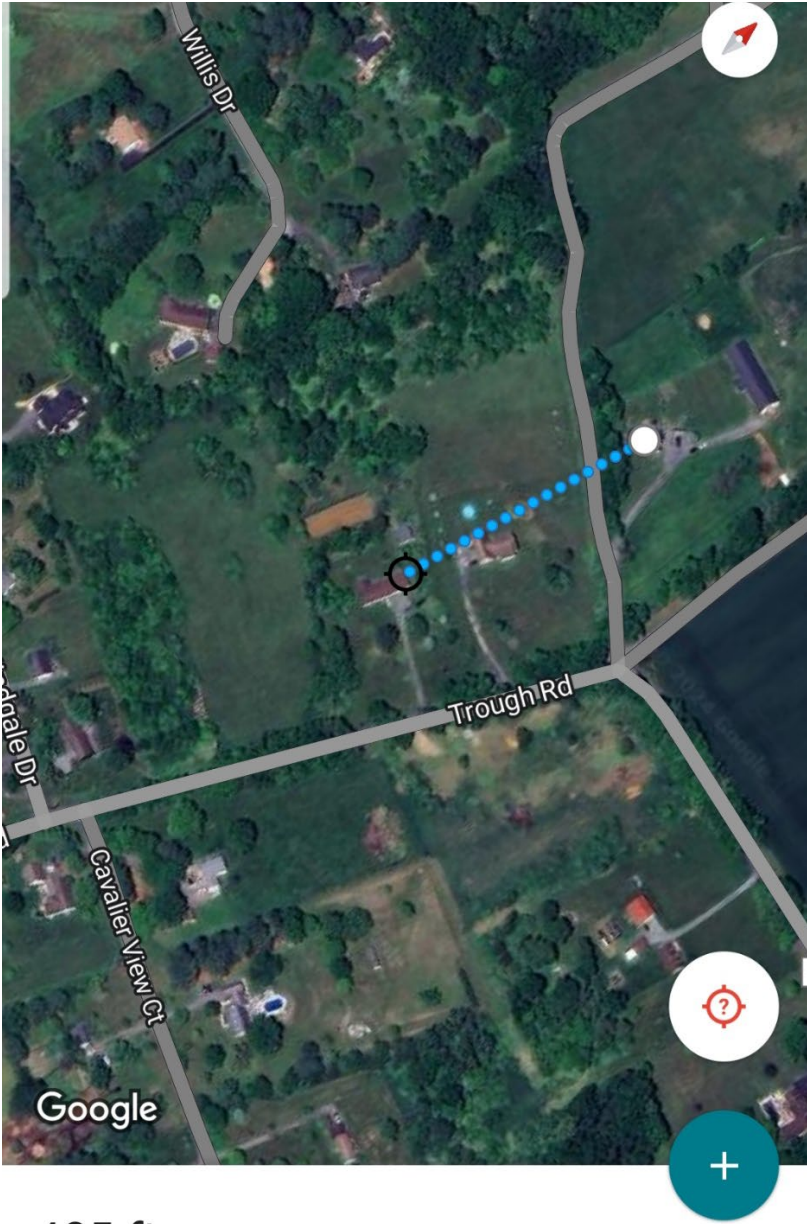
Here are images of 3 homes closest to the Applicants' dwelling (comparing dwelling to dwelling/apples to apples): *below*

**Dwelling #1:** Approximately 312 feet from applicants' dwelling



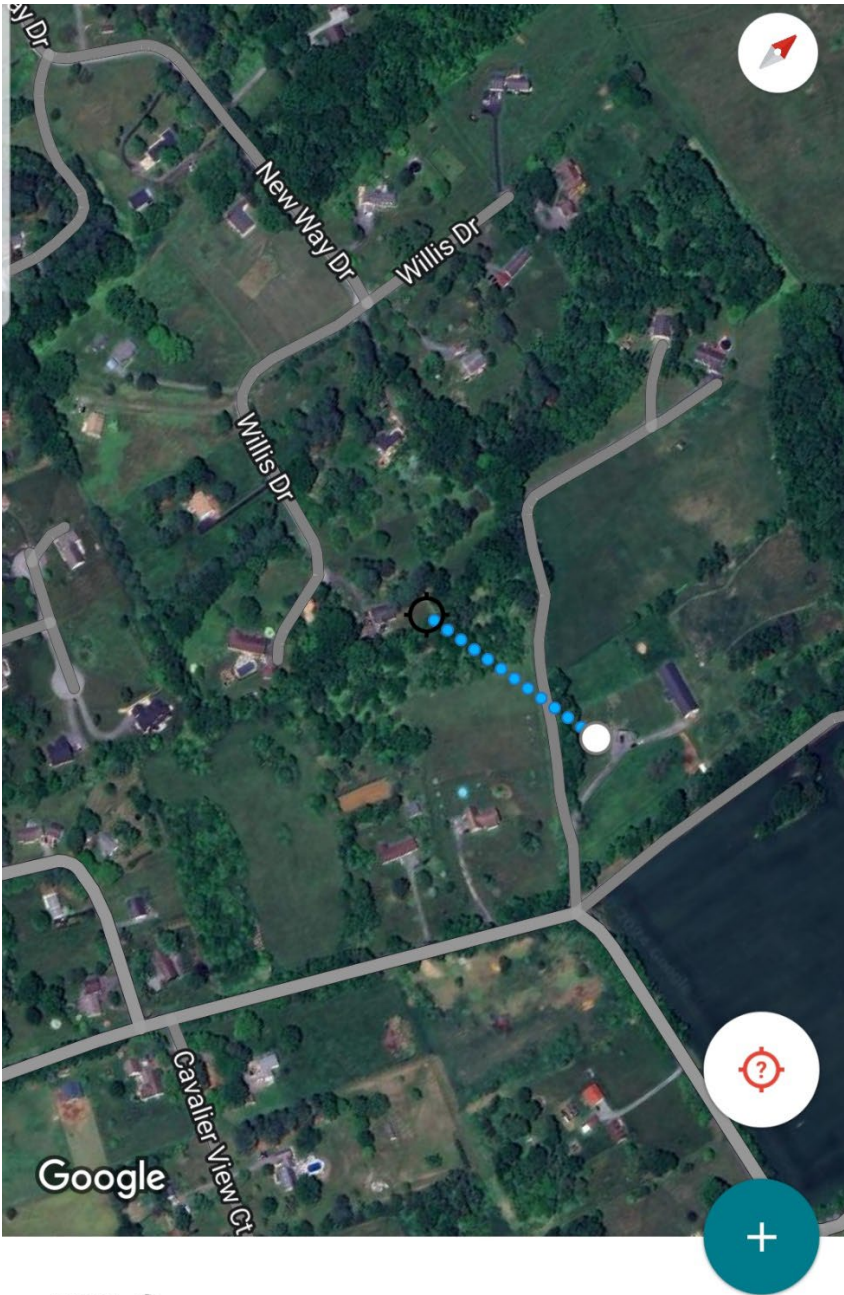
312 ft

**Delling #2:** Approximately 495 feet from applicants' dwelling



495 ft

**Dwelling #3:** Approximately 499 feet from applicants' dwelling

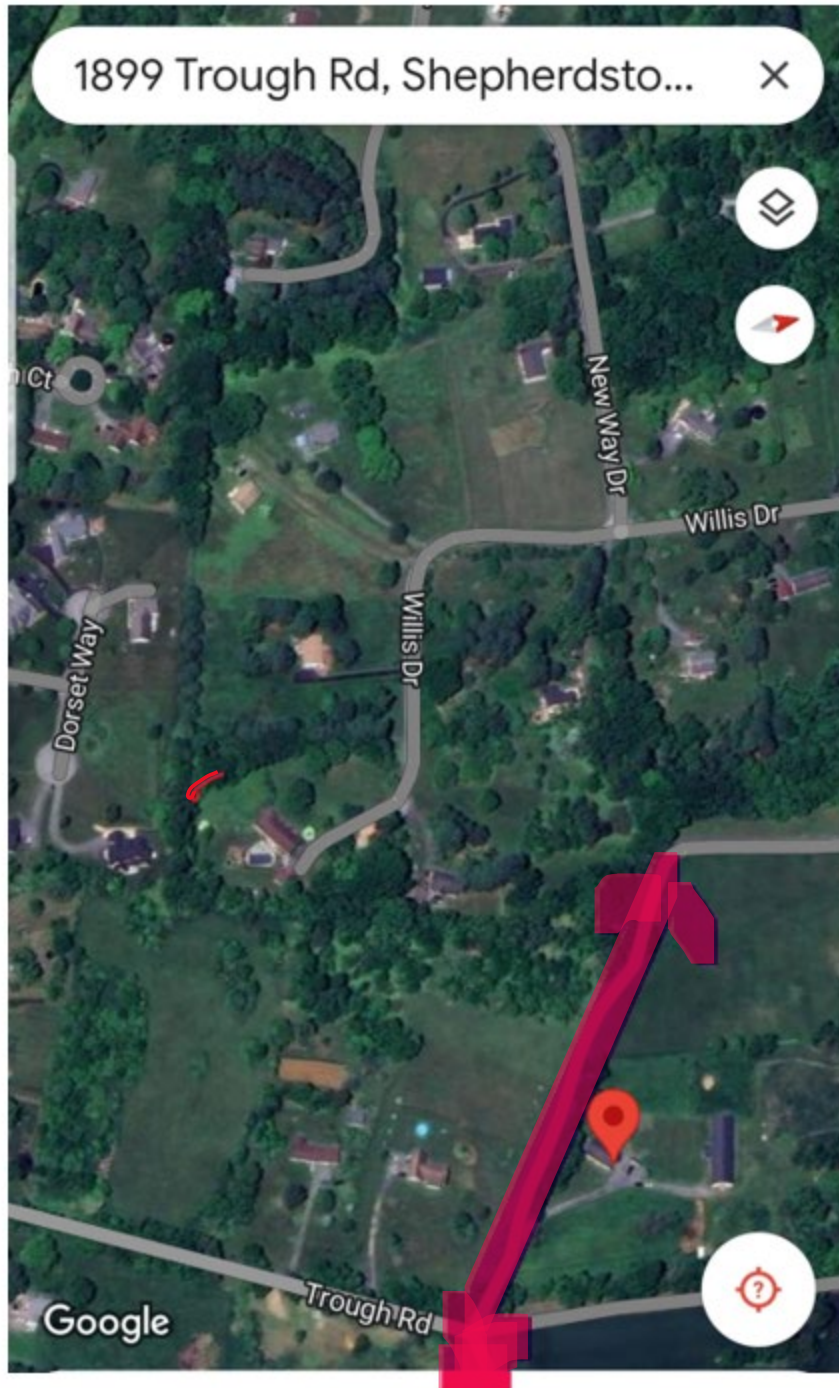


499 ft

**Red pin** in image below is the location of the applicants.

**Red line** indicates path of children to and from bus stop.

Private driveway of another dwelling indicated by the **red line**, to the left of the applicant's property, is utilized by elementary, middle, and high school students to get to my neighborhood from the school bus stop at that Trough Road location. **Children will be walking past live fire, explosives, aggressive dogs; police cars, helicopters, lots of parked cars, traffic, etc., etc.**



**Current Business:**

The applicants state they want to operate a firearms business, QRF, with two (2) employees however their company employees several others (**see below**). They also state in their FB posts that they own multiple vehicles for training. How are these vehicles licensed, registered, stored, etc? They do not state in the application anything about days/hours of operation, conducting background checks, etc. In addition, we do not want "local civilians" purchasing guns and shooting them in our back yard or in the protected Battlefield. I believe their property is mostly clear of trees – the only trees within

my line of site to their property are on our property. Their property is flat and is ripe for shooting accidents by shots missing targets, stray bullets, and ricochets. There is nothing to keep bullets and shot off neighboring properties and nothing to keep lead from leaching into the ground water we rely on for drinking. Accidents happen and we do NOT want to be killed while doing our gardening or attempting to enjoy our yard. What is their liability for accidents and lead poisoning?

In addition to **Nick and Alice**, QRF employs **Robert DePartee**-Technical Deployment Coordinator whose role with QRF is to allow “teams” to gain experience working in and around helicopters preparing for aviation insertion operations. Does this mean helicopters will be landing/taking-off/flying around this small property – all around our neighborhood and surrounding areas including Shepherdstown?

QRF has **Paul Pennington** working with them as well. Paul is a firearms instructor. Maybe he can explain to us how shooting large caliber guns, shooting automatic/semi-automatic guns is good for any dog they may be boarding? I know it scares off all wildlife that we enjoy and scare all our pets. I'm sure it's also a trigger for anyone with anxiety and for any of our veterans that are experiencing PTSD.

**Frank Zito** is QRF's police liaison and acquisitions expert. He has 20+ years of experience in the NYPD specializing in firearm tactics and training. He brokers deals/completes reports with police and federal agencies, and he works with QRF to train departments in “close quarter combat”. Seems like QRF has much experience with all types of “paperwork” including planning and zoning?

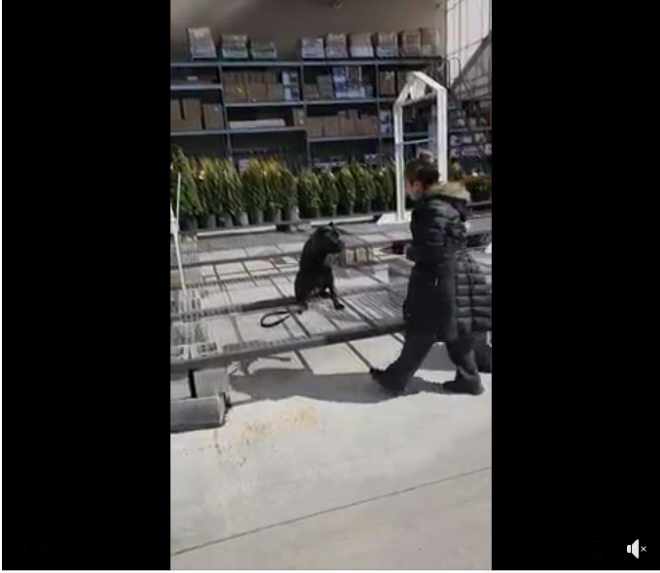
I don't know about you, but QRF appears to be setting up a military/Milita-style training facility – something like a Homeland Security base – but oh wait, there's already one nearby on Rt 340!

• **Information the Office of Planning and Zoning May Not Know (nor others that may read this)**

According to the QRF website, Nick Russo & Alice Davenport specialize in training dogs for police apprehension including vehicle bailouts, tracking, armed security, and personal protection (training dogs to be very aggressive. The site also states they train/board aggressive dogs, dogs with a bite history, in an attempt to make them less aggressive. I know I don't want, nor does any member of my family, children, grandchildren, or my guests want to get tracked/attacked by any trained or untrained vicious dog in my own yard that gets loose! Not all of their property is fenced. (Incidentally, I wonder if Lowe's/Home Depot are aware that QRF staff take aggressive dogs to their stores, where families shop, to “train” dogs)?

QRF Solutions K9  
March 5, 2023 · 🌐

Outing to Lowes for Phoenix to work on basic obedience, socialization, and environmental. Thanks to Jessica for letting us show off her dog's progress!



Jessica Cook · Follow  
Reels · Dec 22 · 🌐



Video and Pics of dog let out of car w lights & sirens chasing another car to apprehend fleeing "driver"  
**- without leash in the video:**

K9 Don · Follow  
Reels · Apr 12 · 🌐

Vehicle bailout drills



Vehicle bailout drills... Thank to Nick from QRF Solutions K9 for helping train and certify our K9's at the 2024 American Mantrailing, Police & Work Dog... See more

🔊 Original audio K9 Don - Ori

Alice Davenport updated her cover photo.  
August 11, 2023 · 🌐

17:49

📶 78% 🔋



# What is an international decoy?

QRF Solutions K9  
February 13, 2024 · 🌐

Huge thank you to international decoy Οοδωρης Μητροπουλος for coming out and giving our dogs a great learning experience!... See more



They also appear to be hosting events. **Does this require a CUP** in our neighborhood? In addition to any zoning restrictions, it appears that they could be mixing drinking alcohol with guns & explosives (“kegs”). Wonder if they are paying taxes on this income?

QRF Solutions K9  
September 13, 2023 · 🌐

Come hang out with us on September 23! We will be doing patrol and scent detection demos!

**QRF SOLUTIONS K9**  
**PUPTOBERFEST**

The perfect Halloween outing for **you and your furry friend!**

**October 12th, 2024 | begins at 12:00PM**  
1899 Trough Rd.  
Shepherdstown, WV 25443

**Costs: \$20 for non clients, \$15 for clients**

**What's included?**  
-kegs, soda & water  
-**food trucks** will be on site for personal purchases  
-activities for all ages!

Text (804) 835-4398 or email [qrfolutionsk9@outlook.com](mailto:qrfolutionsk9@outlook.com) to **reserve a spot!**

**CHARITY DOG WALK & POOL PAWTY**

**VIP POOL PASS**

**Special OFFER EARLY23**

RUNSIGNUP.COM

Charity Dog Walk + Pool Pawty

The Charity Dog Walk + Pool Pawty is on Saturday September 23, 2023.

Sign up

WV Codes of Interest (and more):

<https://code.wvlegislature.gov/61-6-23/>

ARTICLE 6. CRIMES AGAINST THE PEACE.

**§61-6-23. Shooting range; limitations on nuisance actions; noise ordinances.**

<https://code.wvlegislature.gov/20-2-58/>

ARTICLE 2. WILDLIFE RESOURCES.

**§20-2-58. Shooting across road or near building or crowd; penalty.**

Division of Natural Resources by Article I, Section 7, Chapter 20 of WV Code – rules and regulations

Thank you,

Sandy Fleri

West Cavaland

**From:** [Zoning](#)  
**To:** "Stacie Gulizia"  
**Subject:** RE: Please deny request for Conditional Use Permit at 1899Trough Rd  
**Date:** Thursday, January 16, 2025 9:08:00 AM

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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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Colin Uhry, Panning & Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Stacie Gulizia <staciegulizia@gmail.com>  
**Sent:** Wednesday, January 15, 2025 9:22 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>; Planning Department <PlanningDepartment@jeffersoncountywv.org>  
**Cc:** Stacie Gulizia <staciegulizia@gmail.com>  
**Subject:** Please deny request for Conditional Use Permit at 1899Trough Rd

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

RE: Zoning Application File No 25-2-CUP regarding the property at 1899 Trough Road, Shepherdstown.

I am writing this as a property owner in a peaceful, serene neighborhood (Cavaland) that is in close proximity to the property in question. I am strongly opposed to the request set forth by Nicolas Russo and Alice Davenport regarding the zoning ordinance for retail sales and services, specifically a gun/shooting range. Allowing a commercial business, as such, within a residential area would set a bad precedence. If this request is approved it will open the door for more commercial businesses to invade peaceful, residential areas in our community.

As a retired military couple, my husband and I chose to move into this neighborhood in order to enjoy a peaceful, quiet, serene respite from what can be a very noisy, chaotic world. While we are both gun owners and staunch supporters of the second amendment, we believe the proposed firearms/shooting range business will disrupt the tranquility of our beautiful neighborhood. This area that we reside in is one of those magical, rare areas that needs to be seen to be believed. We are surrounded by nature, wildlife, woodlands, pastures, and beautiful scenery. The area is quiet and peaceful. Our neighbors keep to themselves until one of us is in need, at which time any or all of us would jump in to help at a moment's notice. After being stationed all across our nation, I can honestly say this is the most wonderful place we have ever lived. It would be such a shame to see our tranquility destroyed by daily sounds of a commercial shooting range. The loud sounds of a gun range would disrupt the peace and quiet in our neighborhood.

Additionally, Trough Road is not conducive to the amount of traffic that this business would create. Causing congestion on the roads leading up to the proposed business, will negatively impact

the daily lives of the residents in the community.

Finally, it is important to consider that the property values in our neighborhood would be negatively affected by this commercial business. The residents in our neighborhood chose to live here because it was zoned for single-family homes, not commercial businesses.

In essence, the approval of this zoning application would ignore the pleas of many residents to protect our peaceful neighborhood. Please consider our point of view when making your decision.

Thank you for your consideration.

Respectfully,

Stacie M. Gulizia

263 New Way Drive, Shepherdstown

**From:** [Zoning](#)  
**To:** ["Stephen Kemp"](#)  
**Subject:** RE: Zoning application for 1899 Trough Road  
**Date:** Wednesday, January 15, 2025 4:23:00 PM

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Good afternoon,

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Colin Uhry, Panning & Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Stephen Kemp <skemp84@comcast.net>  
**Sent:** Wednesday, January 15, 2025 1:25 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** Zoning application for 1899 Trough Road

**CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or on clicking links from unknown senders.**  
Please DENY zoning application for 1899 Trough Road.

I am very firmly opposed to this application and the many negative effects it would have on our peaceful residential community. This area has long been a quiet neighborhood of responsible, hardworking families enjoying the many benefits of their efforts. To introduce such a disruptive (GUN RANGE!!) element would be utterly devastating to all who live here. Please hear our pleas and deny this application.

Thanks you,  
Stephen Kemp  
84 New Way Dr.  
Shepherdstown, WV



**From:** [Zoning](#)  
**To:** ["Rosemary Nickerson"](#)  
**Subject:** RE:  
**Date:** Wednesday, January 15, 2025 10:04:00 AM

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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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Colin Uhry, Planning & Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Rosemary Nickerson <rosemarynickerson@gmail.com>  
**Sent:** Tuesday, January 14, 2025 10:21 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:**

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

January 14, 2025

Jefferson County Board of Zoning Appeals  
116 E. Washington Street, 2nd Floor  
Charles Town, WV 25414  
Dear Board of Zoning Appeals,

I am writing this letter in opposition to the request by QRF Solutions K9, LLC and Nicholas Russo and Alice Davenport owners, for a Conditional Use Permit to operate a firearms business from their property at 1899 Trough Road , Shepherdstown, WV.

As a resident and property owner residing at 626 Stonehouse Lane, I strongly oppose allowing a commercial business to operate in our residential/farming area. There are several reasons for my opposition to the request by QRF Solutions K9, LLC:

1. The Trough Road, Windgale Drive, Cavalier View Court, Stonehouse Lane, Trough Bend area is not compatible with commercial businesses operating out of residences in the areas.
2. Trough road is a small road that already has challenges with the volume of traffic, and the capacity of school buses and farm equipment to utilize the road with normal vehicular traffic.
3. We have significant concerns about the effect a commercial business in our quiet

neighborhood would have on our property values, as if the frantic pace of overdevelopment wasn't enough.

4. The fact that they are already operating a gun range on their property, within a residential area, has created noise pollution that is not compatible for an residential and farming community. The addition of a firearms business would only add to the noise pollution, given the reasonable expectation that newly purchased firearms would be used in the range. The CUP previously granted to operate a shooting range at 1899 Trough Road was misdirected and should be revoked.

5. This type of business (shooting range and commercial gun sales) is not compatible with the stated goal of enhancing tourism in Jefferson County. The property at 1899 Trough Rd lies immediately adjacent to the site of the Battle of Shepherdstown. This battlefield site was deemed historically significant enough to qualify it's purchase and preservation by the American Battlefield Trust for \$2 million in 2023. The local organization, Shepherdstown Battlefield Preservation Association (SBPA) contributed \$100,000 toward this purchase. The money contributed by the SBPA was, in turn, donated by the citizens of Jefferson County and beyond for the stated goal of preserving this historic site. The American Battlefield Trust has, in turn, donated the Shepherdstown Battlefield site to the Jefferson County Landmarks Commission in 2024. Together with the SBPA the JC Landmarks Commission have plans to open this site to the public offering small guided walking tours (which have been ongoing with volunteer efforts), hiking trails, self-guided tours, a picnic pavilion, a museum, continuing on-site public education about the history of Jefferson County and the Civil War, and preservation of wildlife habitat.

There is a program currently in place at the site called "Birds in the Battlefield". Many area residents have contributed by constructing, maintaining, and monitoring bird houses located on the battlefield. Increased gun fire adjacent to the battlefield would disrupt and discourage nesting birds and render this community effort pointless.

All actions by numerous local residents have been to preserve the site of the Battle of Shepherdstown, preserve Jefferson County history, preserve the rural character of this historic site, and preserve it's natural resources with the goal of enhancing tourism and economic growth associated with tourism.

A commercial business selling and operating guns located directly adjacent to the Battle of Shepherdstown historic site would detract from this effort, and destroy the peaceful, sacred, rural character that our citizens have fought hard and donated much to preserve. A business selling and firing guns would impede tourism by making it less appealing to visitors, history, and nature seekers. The many citizens who have donated (\$100,000!!!) and worked tirelessly for over a decade to preserve and enhance this historic hallowed ground will have been betrayed by allowing this type of commercial business to operate next door.

I strongly request that the Board of Zoning Appeals deny this request from QRF Solutions K9, LLC.

Thank You,

Rosemary Nickerson  
625 Stonehouse Lane  
Shepherdstown, WV 25443

The Board of Zoning Appeals  
The Office of Planning and Zoning  
116 E. Washington Street  
Charles Town, WV 25414

Attention: Board of Zoning Appeals:

As a 25 year resident of Jefferson County and a near neighbor of a proposed firearms business, I must strongly urge you to deny the permit request to operate a business on the Russo and Davenport property by QRF Solutions K9,LLC. There are compelling reasons the Country has designated areas for commercial activity: one is increased traffic and noise, and another is the incompatibility of business transactions in an area designed for quite residences.

The sales of firearms will only exacerbate an already existing problem. ORF Solutions should never have been granted permission to operate firing range in a single family residential neighborhood. Shooting at silhouette targets with automatic assault weapons, sniper rifles, and 50 caliber machine guns is incompatible with this quiet rural area and potentially dangerous because this shooting range abuts parkland property.

I have great concern about its location adjoining the site of the Battle of Shepherdstown, whose preservation was supported by the American Battlefield Program, the American Battlefield Trust, and Farmland Protection. Contributors to the purchase and protection of this land included the State of West Virginia and Jefferson County. It would be shortsighted for the Commission to approve this permit to allow the sale of firearms adjacent to land that the county and State have done so much to preserve.

Sincerely,

*Sara W. Smith*

Sara W. Smith

RECEIVED

JAN 15 2025

JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING

S

Sara Smith  
317 Stonehouse Ln.  
Shepherdstown, WV  
25443-5028

HARRISBURG PA 171

13 JAN 2025 PM 3 L



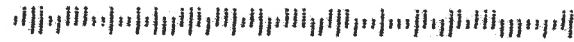
RECEIVED

JAN 10 2025

JEFFERSON COUNTY PLANNING  
& ENGINEERING

The Board of Zoning Appeals  
The Office of Planning and Zoning  
116 E. Washington Street  
Charles town, WV 25414

25414-100499



January 12, 2025

Jefferson County Board of Zoning Appeals  
116 E. Washington Street, 2<sup>nd</sup> Floor  
Charles Town, WV 25414

Dear Board of Zoning Appeals,


We are writing this letter in opposition to the request by QRF Solutions K9, LLC and Nicholas Russo and Alice Davenport owners, for a Conditional Use Permit to operate a firearms business from their property at 1899 Trough Road , Shepherdstown, WV.

As residents and property owners on Stonehouse Lane, which is near 1899 Trough Road, we are opposed to allowing a commercial business to operate in our residential/farming area. There are several reasons for our opposition to the request by QRF Solutions K9, LLC:

1. The Trough Road, Windgale Drive, Cavalier View Court, Stonehouse Lane, Trough Bend area is not compatible with commercial businesses operating out of residences in the areas.
2. Trough road is a small road that already has challenges with the volume of traffic, and the capacity of school buses and farm equipment to utilize the road with normal vehicular traffic.
3. We have significant concerns about what effect a commercial business would have on our property values.
4. The fact that they are already operating a gun range on their property, within a residential area, has created noise pollution that is not compatible for single family dwellings. The addition of a firearms business would only add to the noise, given the reasonable expectation that newly purchased firearms would be sighted on the range. This would significantly add to the noise neighbors have to contend with from the range.

We strongly ask that the Board of Zoning Appeals deny this request from QRF Solutions K9, LLC.

Thank You,

  
Terry and Celeste Stotler  
278 Stonehouse Lane  
Shepherdstown, WV 25443

RECEIVED  
JAN 15 2025  
JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING



Celeste Stotler  
278 Stonehouse Ln  
Shepherdstown, WV 25443-5030

HARRISBURG PA 171

13 JAN 2025 PM 3 L



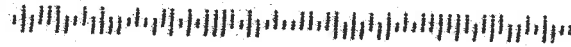
RECEIVED

JAN 15 2025

JEFFERSON COUNTY PLANNING  
ZONING & ENGINEERING

Jefferson County Board of Zoning Appeals  
116E. Washington Street, 2nd Floor  
Charles Town WV 25414

25414-100499



**From:** [Zoning](#)  
**To:** ["Stephanie Unger"](#)  
**Subject:** RE: Conditional Use Permit at 1899 Trough Road  
**Date:** Thursday, January 16, 2025 9:13:00 AM

---

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Colin Uhry, Planning & Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Stephanie Unger <stephanie62774@gmail.com>  
**Sent:** Wednesday, January 15, 2025 9:20 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** Conditional Use Permit at 1899 Trough Road

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

Dear Members of the Zoning Commission,

I am writing to formally oppose the request for a Conditional Use Permit to allow the sale of weapons from a residential property located at 1899 Trough Road. This request, if granted, would have significant and potentially harmful impacts on the safety, tranquility, and character of our residential community.

My primary concerns regarding this proposal are as follows:

1. **Safety Risks:** The sale of firearms in a residential area raises substantial safety concerns. Residential neighborhoods are not designed to accommodate the volume of traffic, security protocols, and oversight necessary for such an operation. The presence of weapons sales in close proximity to homes increases the risk of accidents, thefts, and violent crime.
2. **Zoning and Neighborhood Integrity:** Residential zoning is intended to create a peaceful environment where families, children, and seniors can feel secure. Allowing a weapons sales operation in a residential area undermines the character of the neighborhood and sets a precedent that could encourage further commercial activities in spaces not intended for such purposes.

3. **Potential for Increased Traffic and Noise:** The sale of firearms, especially if conducted in large volumes or with high foot traffic, could disrupt the peaceful nature of the area. The arrival and departure of customers, potential for frequent deliveries, and the necessary security measures could result in increased noise, congestion, and traffic in what is primarily a residential zone.
4. **Negative Impact on Property Values:** The introduction of a commercial business such as a weapons sales operation may lower property values in the surrounding area. Potential homebuyers could be deterred from purchasing homes nearby due to the association with a gun sale business, leading to a decrease in demand and property values.
5. **Lack of Community Support:** I believe this proposal lacks the support of the majority of residents in our neighborhood. Many of us moved to this area precisely because it is a quiet, family-friendly environment, and we want to preserve that atmosphere.

I urge you to carefully consider the long-term effects of permitting such an operation in our residential area. While I understand the rights of individuals to engage in lawful businesses, the placement of a weapons sales operation in a residential neighborhood is not appropriate and poses unnecessary risks to the community.

Thank you for your attention to this important matter. I respectfully request that you deny the Conditional Use Permit and preserve the integrity and safety of our neighborhood.

Sincerely,  
Stephanie Unger

Trough Road Resident

January 15, 2025

Mason Carter, Acting Zoning Administrator  
Office of Planning and Zoning  
116 E. Washington Street, 2<sup>nd</sup> Floor  
Charles Town, WV 25414

Project Name: QRF Solutions K9 (File #25-2-CUP)/Hearing date 01-23-2025

Mr. Carter:

Please include these considerations regarding the proposal to expand the scope and reach of the existing firing range that is already detrimental to the quality of life for new and long-time residents. On any given day or night, we are forced to be a participant in the firing range activities.

We live at 5 Willis Drive in the West Cavaland Subdivision next to 1899 Trough Road. We have lived here for 35 years. It has been a good place to live, to raise children, to be a part of a community, and have considered our property a good investment for our retirement as needed.

No one, no governmental body can deny that the proposed zoning amendment will have an adverse effect on property values. Approval would only ramp up the use of the existing firing range. We are not talking zeroing a rifle for hunting season range, but a full-on military grade exercise range with assault rifles and high-caliber rifles.

No one, no governmental body can claim that allowing a business in and among residential areas won't have a negative impact on neighborhoods, including increased traffic on the narrow Trough Road.

The property is in a single-family zone location compatible with development in this area. That should be the standard on which the proposed change should be weighed. There are ample outlets providing ammunition and shooting ranges in Jefferson County and the Eastern Panhandle and across the river in Maryland. They are longstanding, safe, and located strategically to not negatively impact residential developments.

The development of the 122-acre Shepherdstown Battlefield protected lands abuts 1889 Trough Road. There are strong concerns about the impact now and in the future regarding the safety of those using, touring, or the planned walking trails.

(More)

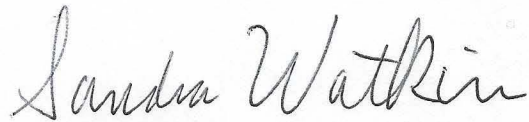
Please consider denying this proposed zoning change for this one single-family zoned home amid the hundreds of single-family homes and developments surrounding it.

As well, as a veteran, I believe there should be a review of how a full-fledged military grade shooting range ended up at a single-family zoned home that now impacts families and neighborhoods for miles and miles.

Thank you for your consideration.

A handwritten signature in black ink that reads "James Watkins". The signature is written in a cursive style with a large, sweeping initial "J" and a long horizontal stroke at the end.

James Watkins

A handwritten signature in black ink that reads "Sandra Watkins". The signature is written in a cursive style with a large, flowing initial "S" and a long horizontal stroke at the end.

Sandra Watkins

**From:** [Zoning](#)  
**To:** "[dblust73@gmail.com](mailto:dblust73@gmail.com)"  
**Subject:** RE: Comments Re: 25-2-CUP, QRF Solutions K9 Conditional Use Permit  
**Date:** Friday, January 17, 2025 9:20:00 AM

---

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Colin Uhry, Planning & Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** [dblust73@gmail.com](mailto:dblust73@gmail.com) <[dblust73@gmail.com](mailto:dblust73@gmail.com)>  
**Sent:** Thursday, January 16, 2025 4:26 PM  
**To:** Zoning <[Zoning@jeffersoncountywv.org](mailto:Zoning@jeffersoncountywv.org)>  
**Subject:** Comments Re: 25-2-CUP, QRF Solutions K9 Conditional Use Permit  
**Importance:** High

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

Re: 25-2-CUP, QRF Solutions K9 Conditional Use Permit

Dear Members of the Jefferson County Planning Commission and Planning and Zoning Staff:

I urge you to reject the referenced application because it is incomplete and there are safety concerns with the proposed business.

Specifically, the application form instructs the applicant to: "Provide a detailed description of the proposed business (include information such as hours of operation, anticipated employee and/or customer visits, etc. ...)" In response to a request for a detailed description of the proposed business, the applicant merely states, "For FFL related business we will have a by-appointment policy." This is not a detailed description of the business.

- a. What type of FFL business will be conducted by the business? There are eleven types of Federal Firearms Licenses. Which type of license (or licenses) applies in this case?
- b. The applicant's statement that business will be "by-appointment" does not provide enough information on operating hours. This appears to signify that business could be conducted at any hour of the day as long as there is an appointment.
- c. How much traffic will be generated by this business on this small rural road with several 90 degree turns?
- d. How many employees will eventually work at the site? (There is a reference to possible future employees buried down in the narrative attached to the application, but it is

vague.)

I am also concerned about the type and volume of vehicle traffic turning on to Trough Rd. from Engle Molders Rd., a road I frequently travel to get to Shepherdstown. The area of Trough Rd where the business is located must be accessed from River Rd. or Engle Molders Rd. The topography at the intersection of Trough and Engle Molders makes for a challenging and somewhat dangerous area, particularly given the high speeds some drivers use on Engle Molders. It is very difficult to see vehicles turning left onto to Trough from Engle Molders when one is heading west on Engle Molders to get to Shepherdstown Pike. Likewise, it is difficult for cars turning left onto to Trough to see oncoming traffic on Engle Molders. How much commercial and customer traffic will this proposed business generate?

Without having more specifics on the FFL business, it is impossible to judge the applicant's assertion that the business falls under the definition of an artisan business as mentioned in the comprehensive plan. There are many artisan businesses in the county, but they are traditional artisan businesses such as small food enterprises, jewelry, pottery, fabric, blacksmith, herbal preparations, etc. While making muskets or similar guns using hand tools and blacksmith equipment could very well be considered by most to be an artisanal pursuit, it strains credulity to say that the manufacturing or modern firearms would be on par with our existing jewelry or pottery artisans. I realize this is a subjective judgement, but one which merits discussion. Again, a full and complete description of the type of firearms business would help resolve this issue.

There are also issues of safety for the neighboring properties, particularly the Shepherdstown Battlefield lands which have recently been preserved through the hard work of many volunteers and organizations.

After a brief discussion of this matter with P&Z staff, it is apparent that staff have information on this proposed business obtained during discussions with the applicant. I strongly believe that all information on this business should be a matter of written record and readily available to the public. This is the only way the public can judge the merits or drawbacks of any given commercial development in our neighborhoods.

I urge you to reject the application in its current form and request additional information from the applicant to be placed into the public, written record.

Sincerely,  
Diane Blust  
1365 Uvilla Rd.  
Harpers Ferry, WV 25425

**From:** [Zoning](#)  
**To:** ["Thomas Clemens"](#)  
**Subject:** RE: CUP request  
**Date:** Friday, January 17, 2025 9:19:00 AM

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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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Colin Uhry, Planning & Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Thomas Clemens <[antietam@verizon.net](mailto:antietam@verizon.net)>  
**Sent:** Thursday, January 16, 2025 4:12 PM  
**To:** Zoning <[Zoning@jeffersoncountywv.org](mailto:Zoning@jeffersoncountywv.org)>  
**Subject:** CUP request

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

01/15/2025

RE: QRF Solutions K9 (File #25-2-CUP)

Save Historic Antietam Foundation Inc.  
PO Box 550  
Sharpsburg, MD 21782  
<http://www.shaf.org>

On behalf of our membership, several of whom live in Jefferson County, I write to comment on this CUP request.

The Shepherdstown Battlefield is enormously important in out

American history, and it must be preserved. While a gun manufacturing business may not pose a threat to the battlefield, which is now on its way to being a National Park, but a shooting range, or any discharge of modern firearms, certainly does.

It is our request to the Zoning Commission that a business making weapons is a minor detriment to the historic adjacent property, a firing range, or any other weapons testing, etc. should not be allowed.

Thank you for your consideration of these comments.

Thomas G. Clemens  
President, SHAF

**From:** [Zoning](#)  
**To:** ["Catherine Falknor"](#)  
**Subject:** RE: Board of Zoning Appeals, File 25-2-CUP, Firearms business permit  
**Date:** Friday, January 17, 2025 9:26:00 AM

---

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Colin Uhry, Planning & Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Catherine Falknor <catherinefalknor@gmail.com>  
**Sent:** Thursday, January 16, 2025 4:58 PM  
**To:** Planning Department <PlanningDepartment@jeffersoncountywv.org>  
**Subject:** Board of Zoning Appeals, File 25-2-CUP, Firearms business permit

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

To whom it may concern:

I believe that the conditional use permit of a firearms business near residences and the Shepherdstown Battlefield should not be approved. Presently, neighbors who weren't notified that there would be a shooting range established on the property, but were aware of a permit to have a dog business, are hearing ammunition fired that include heavy artillery even into the night-time hours.

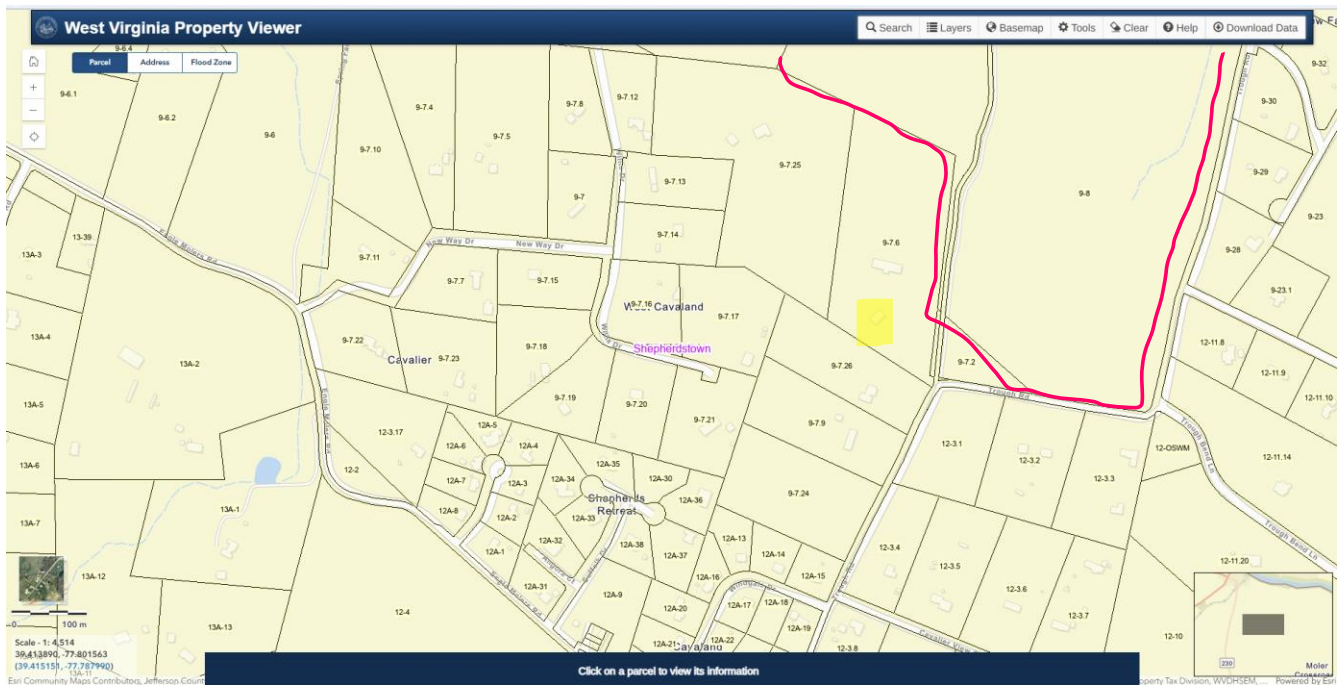
Such businesses should have to make provisions to contain the incredible noise ensuing from such practices. Having a firearms business there will only compound such noise levels. The incidence of shooting for target practice, incessant and rapid firing, is terrifying when you don't expect it and never thought it would be a regular practice.

Personally, when I bought land upriver to have peace and quiet and realized that gun shooting from a firing range made that expectation impossible, I had to sell.

Please do not approve such a permit and let the neighbors and park visitors have a peaceful experience there.

Sincerely,

Catherine Falknor and Sam Morgan



- **9-7.6 = Russo/Davenport Address (Highlighted in Yellow in map above):** You can see 2 sides of their property border Shepherdstown Battlefield which, along one side, includes the drive/access into the Public Park meant to be enjoyed by all; and: You can see this property is in the middle of many private residential properties – densely populated.
- **9-8 = Shepherdstown Battlefield – American Battlefield Trust – Hallowed Ground (Outlined in Red in map above):** Preserved as a PUBLIC PARK (with road access) dedicated to educating the public of its historical significance – a place of tranquility for all.

## **THIS AREA IS A MECCA FOR TOURISM & AGRITOURISM (+REVENUE) FOR JEFFERSON COUNTY**

The tax map above shows my greater neighborhood of Shepherdstown. Shepherdstown is a major tourist attraction with award winning restaurants; upscale Hotel, Inn, and Brewery; thriving music and arts scene; overflowing natural beauty; colonial ambience and old-world elegance; rich in history; boating, kayaking, rafting, and fishing on the Potomac River; local, municipal and Federal parks and preserves; hiking paths including the Appalachian Trail & the C&O canal towpath; home to the Contemporary American Theater Festival & Shepherd University. The town proper is within one (1) mile of the property requesting the CUP.

Current and Future Zoning – Commercial, Residential, Rural – in terms of Jefferson County **REVENUE EXPANSION** – would be **decimated**, and tourism would be **destroyed** by everyone being able to clearly hear large caliber/automatic/semiautomatic weapons fire, explosives, and other tactical activities from this location – a Military [style?] Training & Gun Manufacturing and Sales Facility (on such a small property in the middle of residences and a public park). For those of us that live or visit adjacent to the Russo/Davenport property, including our pets, none of us know when all hell will break loose – no preparation for sounds of war. I am not opposed to neighbors owning guns however, I am opposed to having a gun manufacturing and combat weapons firing, explosive use, and K9 drills/activities with sirens and/or helicopters in my back yard – **ALL OF WHICH** which will negatively impact my right to use and enjoy my property, shatter my sense of well-being/my mental health & safety, and wreck the town I live and work in.

Crime will likely increase due to simple fact that there will be more guns near our town & homes. The CUP will draw customers from DC & Baltimore and everywhere in between (proximity) for purchase & potential trafficking of customization and/or conversions of combat weapons – even likely to attract violent gang/cartel members and criminals to our beautiful and peaceful area and residences (*per FBI/DOJ*).

**COMPLETELY INAPPROPRIATE USE OF A PROPERTY IN THIS LOCATION – DENY**

**CUP!**

**From:** [Zoning](#)  
**To:** "Donald Gulizia"  
**Subject:** RE: Zoning Application File No 25-2-CUP regarding the property at 1899 Trough Road, Shepherdstown.  
**Date:** Thursday, January 16, 2025 9:12:00 AM

---

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Colin Uhry, Planning & Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Donald Gulizia <donald.gulizia@yahoo.com>  
**Sent:** Thursday, January 16, 2025 8:57 AM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Cc:** Planning Department <PlanningDepartment@jeffersoncountywv.org>  
**Subject:** RE: Zoning Application File No 25-2-CUP regarding the property at 1899 Trough Road, Shepherdstown.

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

01/15/2024

Donald Gulizia  
263 New Way Dr  
Shepherdstown, WV 25443

RE: Zoning Application File No 25-2-CUP regarding the property at 1899 Trough Road, Shepherdstown.

Applicant: QRF Solutions K9, LLC

Parcel Info: Nicolas Russo and Alice Davenport, Owner  
1899 Trough Road, Shepherdstown, WV  
Parcel ID: 090009000700006  
Project Size: 1 ac  
Zoning District: Rural

Project Name: QRF Solutions K9 (File #25-2-CUP)

Board of Zoning Appeals,

I am writing to you today to request that you deny the above zoning application. My main concern in requesting a denial is the precedent that a potential approval would create. If QRF Solutions K9's request is granted, that would open the possibility for others to establish commercial enterprises in our little portion of Jefferson County. Commercial enterprises decrease property values. According to multiple real estate websites, there are six main reasons that nearby commercial enterprises decrease residential home values. The proposal by QRF Solutions K9 would create three of these factors.

- 1) Businesses that generate noise or pollution
- 2) Businesses that create traffic congestion or parking issues
- 3) Businesses associated with negative externalities

It is unclear if QRF Solutions K9's business would include a firearms manufacturing element, but if it does, that would mean this one business alone would encompass 4 of the 6 negative factors for home values. Also, approving this application would open the possibilities of other businesses that would compound the problem and increase devaluation elements.

I like the idea of this business plan and welcome commercial expansion in Jefferson County, but in areas already designated for commercial enterprises. Please leave our rural, residential communities alone to live in peace. Thank you for your time and consideration.

Best regards,

*Don Gulizia*

U. S. Navy, Retired



**From:** [Zoning](#)  
**To:** "[nharmanshelman@gmail.com](mailto:nharmanshelman@gmail.com)"  
**Subject:** RE: Conditional Use Permit for a firearms business  
**Date:** Friday, January 17, 2025 9:23:00 AM

---

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Colin Uhry, Planning & Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** nharmanshelman@gmail.com <nharmanshelman@gmail.com>  
**Sent:** Thursday, January 16, 2025 4:54 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** Conditional Use Permit for a firearms business

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

To whom it may concern,

We have been made aware that there is a Conditional Use Permit being sought to operate a firearms business in very close proximity to the Shepherdstown Battlefield from County Zoning Board Conditional Use Permit at 1899 Trough Road. This property abuts the protected 122-acre Shepherdstown Battlefield with an entrance adjacent to the driveway leading to the Osbourn Farm house. This location was given a business license to train dogs some time ago, but the Shepherastown Battlefield Preservation Association (SBPA) and other stakeholders and neighbors were unaware that they were also given permission to operate a gun range on their 10-acre property. Stakeholders and neighbors did not find out until neighbors heard the heavy weapons being fired at this location. Several neighbors close to this business report that the owners have setup silhouette targets along the battlefield boundaries and have regularly fired automatic assault weapons, various sniper rifles, and even 50 Caliper machine guns with tracer ammunition at those targets including at night. The noise can be heard for several miles. Now the proprietors are requesting a Conditional Use Permit to operate a firearms business, which will only increase practice at their gun range. Notably, one battlefield trailhead proposal is very close to the silhouette targets (and certainly in range of high-power automatic weapons like those being used there). Additionally a bullet entered a resident's home posing an extremely dangerous situation that is currently requiring police intervention. This operation doesn't sound safe at all, or that it is demonstrating any consideration for neighboring residents at all. Additionally, used shell casings pose risk of lead contamination to the ground

and water sources, extremely dangerous to health of the residents and devaluing their property.

This proposed business is also close to the VA facility and could very possibly cause PTSD reactions to the sound of gunfire, and our Veterans don't deserve this lack of respect.

We urge that the zoning commissioners deny this Conditional Use Permit application in this area of Jefferson County to preserve the safety, environment, and property values of the residents therein.

Respectfully,

Sharon and Michael Helman-Harman

**From:** [Zoning](#)  
**To:** ["Superior Healthproducts"](#)  
**Subject:** RE: Conditional Use Permit# 1899 for Dog Training and Gun Range  
**Date:** Thursday, January 16, 2025 12:12:00 PM

---

Good afternoon,

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Colin Uhry, Planning & Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Superior Healthproducts <miljour@frontiernet.net>  
**Sent:** Thursday, January 16, 2025 12:09 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** Conditional Use Permit# 1899 for Dog Training and Gun Range

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

Good Day:

My wife Dore Ann and I live at 2129 River Road, our son Ben and Janelle at 3477 River Road, Shepherdstown, WV. Unfortunately, it has come to our attention that there is a gun range now operating nearby, which borders the Shepherdstown Battlefield and several residences. We must strongly recommend that Zoning Board DENY the conditional use of a gun range at this site as: 1) The Shepherdstown Battlefield is SACRED GROUND deserving respect, a place for remembering the horror and sacrifices of to many Americans (no less significant than Antietam Battlefield). To have a gun range operating next door is a mockery of those soldiers and their families.

2) Many residences are located adjacent to this site. So, unless the gun range is completely enclosed in a concrete building, they would be placing the neighbors in imminent danger for shot that can travel SEVERAL MILES!!!

We will be attending the Jan 23rd meeting.

Very Gratefully,  
David, Dore Ann, Ben Miljour, Janelle Hoover



**From:** [Planning Department](#)  
**To:** "[Ellie Lloyd](#)"  
**Subject:** RE: No to fire arm business  
**Date:** Thursday, January 16, 2025 9:16:00 AM

---

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Colin Uhry, Planning & Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

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

From: Ellie Lloyd <[lloyd.ellier@yahoo.com](mailto:lloyd.ellier@yahoo.com)>  
Sent: Thursday, January 16, 2025 7:39 AM  
To: Planning Department <[PlanningDepartment@jeffersoncountywv.org](mailto:PlanningDepartment@jeffersoncountywv.org)>  
Subject: No to fire arm business

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

Good morning planning dept.

I am writing to express concern over a firearm business and shooting range at 1899 trough road.

As a community citizen I request that this consideration be DENIED. Especially as its proximity to the Shepherdstown battlefield - the use of the location for firearms sales and shooting range would pose considerable risk to any person wanting to enjoy the protected Shepherdstown battlefield.

Please deny the permit request.

Thank you,

Ellie R. Lloyd

4443 shepherd grade road

Shepherdstown wv 25443

**To the Board of Zoning Appeals:**

**Subject: Conditional Use Permit Regarding Activities on Nick Russo and Alice Davenports Property**

**Presented by: Gregory and Susan Mason, 1895 Trough Road, Shepherdstown, WV**

Date of Meeting: January 23, 2025

---

### **Introduction**

Good [morning/afternoon], members of the Planning and Zoning Commission.

My name is Gregory Mason, and I am sending my comments, along with my wife, Susan, to voice our strong opposition to any conditioning use permit that would allow non-residential activities in our single-family rural/agricultural neighborhood. This is not a personal matter but a concern about the broader implications for our community, its safety, and its character.

I would like to present a detailed account of our concerns and provide additional evidence that highlights zoning violations and disruptions caused by activities on Nick Russo and Alice Davenports property.

---

### **Concerns Regarding Zoning and Activities**

#### **1. Preservation of Zoning and Land Use**

- Our neighborhood is zoned for single-family rural/agricultural use, which prohibits business activities such as dog training, boarding, firearm business or shooting ranges. And, yes, you have already granted a conditional use permit for dog training on this property.
- Allowing other such activities would set a dangerous precedent, opening the door for further incompatible developments and undermining the integrity of our zoning laws.

#### **2. Traffic and Road Safety**

- Trough Road is a narrow, winding road with limited capacity for increased traffic. It includes a 90-degree blind curve that poses significant safety risks, especially for school buses and large vehicles.
- The shared driveway leading to Nick Russo's property was designed for residential use. Increased traffic from non-residential activities would create additional hazards and maintenance burdens for neighbors.

#### **3. Noise and Disruption**

- The noise generated by shooting and dog training activities is disruptive to the peace and quiet of our neighborhood.
  - Nick Russo has scheduled shooting and training exercises already on the property.
  - Everyone in this neighborhood has been abused from the activity that has been going on this property. This is only expected to get worse with being able to open a gun business at this location.
- 4. Impact on Property Values**
- Introducing non-residential, non-compatible activities into our neighborhood would decrease or slow down the increase of our property values, making the area less desirable for future buyers.
- 5. Proximity to the Shepherdstown Battlefield**
- The affected property adjoins the historic Shepherdstown Battlefield, a site frequented by visitors and walkers.
  - A gun range and related activities create significant safety risks for individuals walking or driving near this area, compromising the historic and cultural value of the battlefield.
- 

## **Evidence and Specific Concerns**

- 1. Business Use of the Gun Range**
- Nick Russo provided me with a verbal quote of \$300.00 to train my dog on his gun range to handle gunshot sounds.
  - This demonstrates a direct connection between his dog training business and the use of the gun range, violating zoning regulations and contradicting his personal gun use statement.
- 2. Scheduled Shooting and Training Activities**
- Nick Russo has acknowledged scheduling shooting and training sessions on his property. On at least one occasion, he stated that he could not cancel an appointment; despite being informed of the disruption it would cause to my wife's sleep.
- 3. Use of High-Caliber Firearms**
- There are concerns about the types of firearms being used on the property, including high-caliber weapons.
  - It is essential to establish whether firearms such as a .50 caliber gun have been discharged on the property, as this would raise additional safety and noise concerns.
- 4. Additional Observations**
- Nick Russo has stated in multiple discussions that he has scheduled training and shooting exercises, which directly interfere with the neighborhood's peace.

- The shooting range and dog training activities are clearly interlinked. This is evident from the fact that he provided a quote for dog training on his gun range, further blurring the line between residential and business use.
- 

### **Requested Questions for Nick Russo**

I respectfully request that the Planning and Zoning Commission address the following questions to Nick Russo during the public meeting to clarify these issues:

#### **1. Business Operations**

- Has Nick Russo conducted any dog training to guns or shooting activities on his gun range for profit?
- Has he provided any verbal or written estimates for dog training related to how a dog will handle being around gun shots on his property?

#### **2. Firearm Usage**

- What is the largest caliber gun that has been fired on his property while he was there?
- Has a .50 caliber gun ever been discharged on the property while he was there?

#### **3. Compliance with Zoning Laws**

- How does Nick Russo justify the operation of a gun range and related dog training business within a single-family rural/agricultural zone?
  - What measures has he taken to ensure that his activities comply with zoning regulations and do not disrupt the neighborhood?
- 

### **Closing Request**

In conclusion, I urge the Board of Zoning and Appeals to:

1. Deny any conditional use permits or variances that would allow non-residential or non-farming activities on this property in our neighborhood.
2. Investigate the activities on Nick Russo and Alice Davenports property to determine their compliance with zoning laws.
3. Consider the broader implications of allowing such activities, including safety risks, noise disruption, and the impact on property values.
4. Consider denying this based on incomplete details related to the shooting and gun range on the property.

Thank you for your time and attention to this matter. I am happy to answer any questions or provide additional information as needed.

---

Respectfully,  
Gregory and Susan Mason  
1895 Trough Road  
Shepherdstown, WV

304-279-1052



Re: Conditional Use Permit 25-2 CUP (1899 Trough Rd)

To the Board Members of the Jefferson County WV Zoning Board of Appeals:

My name is Peter Milcetic. I am the homeowner and resident of the property located at 17 Cedar Ridge Lane in Jefferson County. I live approximately a mile or so straight distance from 1899 Trough Road and am sure that the noise from firearms activity there carries so that it can be heard from my property. I am writing to voice my opposition to the granting of a conditional use permit on the above referenced property which is zoned rural and whose land use designation is active farm.

My understanding from reading the application is that the applicant is saying that there justification for allowing this business to operate based on the County Comprehensive Plan encouraging the use of rural land for artisanal business purposes. The problem as I see it is that this business is not truly artisanal in nature such as the comprehensive plan intends for. Artisanal firearms manufacturing produces guns that are handcrafted and unique such as antique firearms, etc. From what I can ascertain, the applicant's current business QRF Solutions K9 LLC serves primarily law enforcement customers who make use of modern military grade firearms which are industrially produced. It does not seem likely that any sales to private individuals will be of artisanal character. They will likely be of the same character as sold to law enforcement agencies. To state in the application that this business use could be an artisanal use seems like overreach in trying to justify the granting of the permit.

I also think there is a threat to public health, safety and welfare in allowing a retail firearms business to operate in a rural zoned area. Guns are inherently risky. While I maintain that citizens have a right to discharge weapons within the stated parameters of the law, I don't think that adding a business where firearms will surely be discharged more frequently is without risk. This is especially true with regards to neighboring properties which are residential, as well as the historical battlefield adjacent to the applicant's property. My understanding is that the public will be using the adjacent historical battlefield property for viewing and walking on trails.

There will also be the added noise and nuisance factor. With more business being conducted on the site there will be more traffic, more activity disturbing the use and enjoyment of neighboring properties and the loud noise of more frequent discharging of firearms. This will likely add more stress to other neighbors and residents at the very least. Furthermore the application alludes to further expansion in the future with perhaps a brick and mortar site for sales. Residents of this county do not want "spot zoning" being granted in rural zoned places in this county. They want to enjoy the rural zoned areas of this county as they meant to inherently exist, i.e. mostly undisturbed wooded areas, farmland or low density single family housing sites with residential scale activity being conducted. They do not want commercial activity shoe-horned in just because someone asks for it.

While I encourage the attracting of entrepreneurial spirit into this county, I do not think it should come at the expense of other residents who have come here to live and enjoy the rural farm community that is the underlying nature of this county. There are other areas zoned in this county for commercial retail and the applicant should seek to operate a business there. For this reason and the other reasons stated above I respectfully ask that the conditional use permit not be granted. Thank you.

Sincerely,  
Peter Milcetic



January 15, 2025

Jefferson County WV

Office of Planning and Zoning

RE: Opposition to Request for Conditional Use Permit for Firearms Business

Project Name: QRF Solutions K-9 (File No. 25-2-CUP)

I am writing to say that I am very strongly AGAINST granting a Conditional Use Permit to operate a firearms business and a zoning change to QRF Solutions K9, LLC on 1899 Trough Road due to the following reasons:

1. There are neighborhoods all around this property plus it is close to town and the university. According to the online description of QRF Solutions K9 LLC they will be using helicopters to desensitize their dogs and they have explosives on the property . They also have an ex-military trainer and a helicopter pilot on staff.
2. The applicants just bought this property. They knew it was designated as rural when they bought it and there are at least 100 homes within a 1-mile radius. When we bought this property, it was deemed rural and that is the beauty here. It is quiet, serene, and private. We pay our taxes to have this and have worked hard and sacrificed to be able to stay here.
3. Personally, I support the 2nd Amendment as long as gun owners are responsible and courteous. We hear hunters during hunting season. This is different We are talking about noise level associated with rapid fire assault weapons. This can be over 175 decibels, and we could hear the rapid fire from inside our home last summer and fall. I do not support the use of assault weapons for personal use. This is dangerous, negligent, and disrespectful firing so close to neighborhoods. My husband walked across the field between our property and 1899 Trough Rd to see what was happening. We were afraid a militia was being trained. Yes!!!! That was what it sounded like! Our dogs were afraid to go outside. My neighbor called the sheriff's office, and they could hear it clearly on the phone.
4. All related business "to be by appointment only", makes it sound like only one person will be there at a time. My husband witnessed a group doing military type training. Not target practice at a target with a bullseye, but a group advancing on multiple targets shaped like a torso. He was afraid someone would see him and it scared him. This does not sound like one person by appointment only!!!!
5. Finally, as a new resident, I love this town, its community, stores, restaurants and history. I love having my little grandchildren visit. We have wonderful neighbors here. We also have people who are older, people who are sick, friends with PTSD, people who work nightshift and must sleep during the day. Let us continue to live our best lives here and in safety, security, and peace.

Sincerely yours,

Mary Vann



TO: Jefferson County, West Virginia  
Office of Planning and Zoning

FROM: Will Vann  
County Resident at 148 Willis Drive, Shepherdstown, West Virginia

RE: Opposition to Request for Conditional Use Permit for Firearms Business  
Project Name: QRF Solutions K-9 (File No. 25-2-CUP)

DATE: January 15, 2025

Commissioners, please,  
I am writing in opposition to the granting of this permit.

My wife and I moved to this wonderful town three years ago, and we absolutely love it. Every time I drive through town, I see a sign telling me that the noise ordinance (assumably within town limits) is enforced. It is obvious that this ordinance is enforced to maintain the high standard for quality of life that the town is known for. Pity, we don't live within the town limits. But don't we, two grandparents, with five young grandchildren, and loving dog owners, deserve to have the same quality of life.

Allowing this permit will seriously harm that quality of life. We are afraid to invite our grandchildren to be with us in our home with all the shooting they do. Our dogs cower in fear every time they are shooting, sometimes for several hours. I went myself and saw them training. And training it is. Men with aggressively approaching the set of silhouette targets while shooting numbers of rounds with their semi-automatic assault type weapons.

I am gun owner and hunter, and I am 100% behind the right to bear arms in this country. And like every responsible gun owner my first priority is safety. For that reason, I have trained and learned how to safely handle firearms at a gun range. The behavior I saw that day, almost directly behind our home, is not normal gun range behavior. Nothing about what I saw was about safety.

One other concern I have is the planned development of the Shepherdstown Battlefield. Also behind our property. My wife and I are association members and look forward to the day when we can walk the trails there with our dogs and our grandchildren. That would add even more to our quality of life. We don't want to, we can't do so under a hail of gunfire!

Respectfully, Will Vann



HENRY A. WILLARD, III

P.O. BOX 1192  
1502 RIVER ROAD  
SHEPHERDSTOWN, WV 25443  
(202) 236-2784  
HW3@FRONTIER.COM

January 15, 2025

Jefferson County, West Virginia  
Department of Engineering, Planning and Zoning  
Office of Planning and Zoning  
116 E. Washington Street  
Charles Town, WV 25414

RE: QRF Solutions K9 (File #25-2-CUP)

Dear Mr. Carter:

As a nearby neighbor, I am writing to register a strong objection to the CUP application referenced above. Allowing a firearms business to operate from this location and from a residential property of this nature is clearly an absurd and, I believe, illegal proposition.

The fact that a firearms shooting range has already been allowed at this location is hard to comprehend. I have heard from many neighbors who absolutely oppose the uses that have previously been permitted for this property. This proposed expansion of what is already an abuse of the existing zoning and adjacent private property rights in the area is something that I am sure will be challenged through the courts to the highest level.

It is becoming clear that the CUP process is being used widely in Jefferson County to undermine and invalidate the zoning provisions that all citizens depend upon to protect their property rights.

Respectfully,



Henry Willard

HENRY A. WILLARD, III

P.O. BOX 1192

1502 RIVER ROAD

SHEPHERDSTOWN, WV 25443

(202) 236-2784

HW3@FRONTIER.COM



# AMERICAN BATTLEFIELD TRUST ★ ★ ★

PRESERVE. EDUCATE. INSPIRE.

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*\*President Emeritus*

*^ Chair Emeritus*

January 16, 2025

Jefferson County Board of Zoning Appeals  
116 East Washington Street  
Charles Town, WV 25414

## Re: Conditional Use Permit (CUP) for QRF Solutions K9 (File #25-2-CUP)

Members of the Board of Zoning Appeals:

I am writing on behalf of the American Battlefield Trust, a national nonprofit organization dedicated to the preservation of our nation's historic battlefields. The Trust has preserved nearly 60,000 acres of battlefield land throughout the United States, including 893 acres associated with the 1862 Battle of Shepherdstown.

The Battle of Shepherdstown was identified as a national priority for preservation in the 1993 report of the Congressionally authorized Civil War Sites Advisory Commission (CWSAC). The report was later updated in 2010 by the National Park Service. The property, located at 1899 Trough Road, is identified as "core battlefield land" in these reports, the highest designation for the historic significance of a battlefield landscape. Due to these designations, the property is also eligible for inclusion in the National Register of Historic Places.

The firing range and gun manufacturing facility proposed under the submitted CUP is incompatible with the adjacent preserved battlefield land. The site is located immediately adjacent to the driveway for the historic Osborn Farm, land permanently protected by the American Battlefield Trust and donated to the Jefferson County Historic Landmarks Commission.

Preserved battlefields are solemn memorials to the young men who fought and bled there. They are places of quiet reflection, where visitors learn about the sacrifices made to forge the free nation we are today. Further, they are outdoor classrooms which attract school groups as well as adults, who come to learn more about our nation's history. Because of this battlefield's potential as a heritage tourism destination, weapons fire could also pose a safety hazard to visitors.

Weapons practice is already an intrusion on this peaceful landscape, and law enforcement has been called out to the property several times as result of noise disturbances impacting the

**Letter from the American Battlefield Trust (continued)**

Page 2 of 2

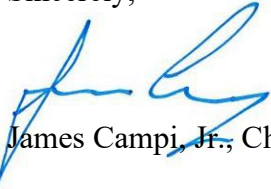
*January 16, 2025*

battlefield and nearby residential neighborhoods. Approval of the CUP would make a bad situation significantly worse.

We respectfully urge the Board of Zoning Appeals to reject the proposed Conditional Use Permit, and work with the American Battlefield Trust, the Shepherdstown Battlefield Preservation Association, and other interested parties to identify alternate uses more in keeping with a battlefield landscape.

Thank you for your consideration. If you have any questions, please contact me at 202-367-1861 ext. 7205, or by email at [jcampi@battlefields.org](mailto:jcampi@battlefields.org).

Sincerely,

A handwritten signature in blue ink, appearing to read 'James Campi, Jr.', is positioned above the typed name.

James Campi, Jr., Chief Policy and Communications Officer



January 16, 2025

To: Office of Zoning and Planning  
116 E. Washington Street, 2nd Floor  
Charles Town, West Virginia 25414

I am writing about concerns regarding a conditional use permit for QRF Solutions K9 LLC (File Number 25-2-CUP). The JCHLC owns an adjacent property that is part of the Shepherdstown Battlefield. For more than 25 years, multiple stakeholders including the U.S. Department of the Interior (National Park Service), American Battlefield Trust, West Virginia Outdoor Heritage Conservation Fund, and the Shepherdstown Battlefield Preservation Association have worked to acquire this historic property and have already invested more than two million dollars into the project.

The information outlined in this conditional use permit seems unclear regarding the actual proposed use and future expansion plans. Lines from the application such as “further zoning processing is not needed with further expansion” is especially concerning and confusing. Further altering the land use allowances for this adjacent property could negatively impact the Shepherdstown Battlefield visitor experience and impact proposed tourism to this site. I have heard from a number of people who are concerned that the applicant may want to have a shooting range and/or test their firearms on-site which adds safety concerns for adjacent properties. The presence of such a range or firearms testing would be fundamentally incompatible with the character of the neighboring properties and the preservation, educational, and tourism objectives associated with the Battlefield. Please consider denying this application until more specific information can be provided by the applicant, especially as it relates to shooting firearms on the property.

Thank you,

Addison Reese  
Jefferson County Historic Landmarks Chair





# The Land Trust of the Eastern Panhandle

Jefferson County Zoning Board of Appeals

Delivered via EMAIL

Reference: QRF Solutions K9 – File #24-2-CUP

To the Zoning Board of Appeals,

The Land Trust of the Eastern Panhandle requests that the application for a conditional use permit by QRF Solutions K9, LLC (owned by Nicolas Russo and Alice Davenport) at the property identified by Parcel ID 09000900070006 be denied. This parcel is located in the Rural District in Jefferson County and is adjacent to the James Osborne Farm. That parcel, at 122.576 acres, played a significant role in the Battle of Shepherdstown, which occurred 19-20 September 1862.

The Land Trust of the Eastern Panhandle holds a permanent conservation easement on the James Osborne Farm, which is owned by the Jefferson County Historic Landmarks Commission (JCHLC). The acquisition of this important property involved multiple funding sources, including large grants from the American Battlefield Trust and the West Virginia Outdoor Conservation Heritage Fund. The long term goal for this property would be to have it included in an expanded boundary for the Antietam National Battlefield. Presently, the JCHLC is working in conjunction with the Land Trust of the Eastern Panhandle to provide public access and a perimeter trail as part of the effort to help interpret the Civil War events which occurred on this land.

The proposed firearms business would be inconsistent with the adjacent protected, hallowed ground. Firearm noise is well documented to create stress in individuals within earshot (see a review of the research literature by Sivakumaran *et al.* Noise Health, 24(114):107-129 [2022]). It is important to remember that a government body such as the Zoning Board of Appeals must balance the rights of individual landowners against rights of the public at large. In this case, the proposed use adversely affects the rights of other governmental and private, non-profit organizations, as well as the rights of the general public to enjoy, peacefully, and without added stress, hallowed ground representing a significant historical event in our Country's past.

The Board of Directors of the Land Trust of the Eastern Panhandle requests that this conditional use permit be denied.

Jeff Feldman, President





## **SBPA comments on the CUP**

01/15/2025

RE: QRF Solutions K9 (File #25-2-CUP)

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

Dear Members of the Board of Zoning Appeals,

This letter is from Dr. Mike Nickerson, President, the Shepherdstown Battlefield Preservation Association (SBPA) and pertains to a CUP submitted by QRF Solutions K9 LLC operated by Nicholas Russo and Alice Davenport at 1899 Trough Road. We are a 25-year volunteer organization that has mobilized to protect, recognize and preserve the site of the Battle of Shepherdstown. The battle occurred on September 19 – 20, 1862 after the Battle of the Antietam / Sharpsburg.

We believe that the battlefield could be a major tourist destination for Jefferson County and a financial boon for businesses in Shepherdstown. For example, if 1 in 20 visitors to the Antietam National Battlefield in 2024, just 4 miles distant, visit the Shepherdstown Battlefield that translates to 15,000 visitors per year. Battlefield visitation has increased during and after COVID, and Battlefield education and preservation has broad support among U.S. citizens, international visitors and across the political spectrum.

The Shepherdstown Battlefield is currently defined by over 720 acres preserved by outright purchase, and farmland and land trust easements. In just the last 4 years, over \$3,300,000 has been spent to purchase the 120-acre Osbourn Farm at the center of the battlefield and establish farmland preservation easements on the Prinz farm (Aspen Pool) and the Borden farm, all located on Trough Road. Jefferson County is a major recipient of outside funds contributed towards these efforts. Funds for the purchase of the Osbourn Farm totaled \$2,100,000 from:

- The US Department of the Interior, NPS, American Battlefield Protection Program (\$963,000)
- The American Battlefield Trust (ABT), a 501c3 corporation (648,000)

- The West Virginia Outdoor Heritage Conservation Fund (\$300,000)
- The members of the Shepherdstown Battlefield Preservation Association, a 501c3 corporation (\$89,000).

Myself, the SBPA Board of Directors and our membership have significant concerns with the CUP submitted by QRF Solutions K9 that directly relate to the Jefferson County Zoning and Land Development Ordinances as described in Section 6.3. These include the following:

- The BZA 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 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 site development shall be such that the use will not hinder nor discourage the appropriate development and use of adjacent land and buildings.
- 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 the ordinance.

The Shepherdstown Battlefield directly adjoins the property where QRF Solutions K9 is located. As a frequent tour leader, Battlefield tours routinely stop at the entrance to the Osbourn Farm located at 1901 Trough Road, then proceed back to the farmhouse along the farm driveway a mere 20 yards from the QRF Solutions K9 property. Currently, there have been repeated episodes of weapons fired on that property and the police have been called several times based on excessive noise from the firing, which is incompatible with the neighborhood and Battlefield.

Our specific concerns are that the CUP does not specify what types of weapons will be manufactured, how they will be manufactured, how many will be manufactured per year, or how newly manufactured weapons will be tested, especially during the proposed sale of weapons. They propose gunsmithing and firearm pickup at the same location- how will the weapons be examined during these activities? Firing the weapons seem a likely requirement for all these activities. We cannot imagine a more incompatible activity than the outdoor firing of weapons associated with this business located immediately next to Battlefield tour stops frequented by groups including school children and their parents.

Additionally, the CUP states at the top of page 6, 'This application just wants to be transparent so that further zoning processing is not needed with further expansion.' This cryptic statement is entirely open ended and not transparent in any way as no details are provided about what is meant by 'further expansion.' Does this include firing weapons outdoors which would directly impact the Battlefield and tourists visiting the Osbourn Farm?

In closing, I urge the BZA to categorically state in writing to prohibit any outdoor firing of weapons associated with the proposed business due to its incompatibility with the neighborhood and Battlefield preservation, education and tourism.

Thank you for your attention to these critical issues.

With warm regards,

*Michael L. Nickerson, Ph.D.*

Dr. Mike Nickerson  
President  
Shepherdstown Battlefield Preservation Association  
P.O. Box 1695  
Shepherdstown, WV 25443  
Cell: 304-995-6975  
Email: [mrnick@frontiernet.net](mailto:mrnick@frontiernet.net)



**From:** [Zoning](#)  
**To:** ["Stephen Alemar"](#)  
**Subject:** RE: JC BZA 25-2-CUP - QRF  
**Date:** Thursday, January 16, 2025 3:19:00 PM

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Good afternoon,

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 January 23, 2025 Board of Zoning Appeals meeting. This packet will be made available on the County's webpage by close of business on Friday, January 17, 2025.

Thank you,

Colin Uhry, Planning & Zoning Clerk  
Office of Planning and Zoning  
[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)  
304-728-3228

**From:** Stephen Alemar <alemars@yahoo.com>  
**Sent:** Thursday, January 16, 2025 12:21 PM  
**To:** Zoning <Zoning@jeffersoncountywv.org>  
**Subject:** JC BZA 25-2-CUP - QRF

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

To the Board of Zoning Appeals:

I am writing you not only with my own opposition to the request for a Conditional Use Permit (CUP) from QRF Solutions K9, LLC (File #25-2-CUP), but also on behalf of the members of the Shepherdstown Battlefield Preservation Association (SBPA).

Not only does this request for a Conditional Use Permit violate the Jefferson County Zoning and Land Use Ordinances because it threatens the health and welfare of the local community (there are dozens of residential dwellings within 500 meters of this site), but issuing the requested CUP will negatively affect the national, state, and local preservation objectives for the adjacent 121 acre historic farm purchased in 2022 with federal funding from the American Battlefield Protection Program, private funds from the American Battlefield Trust, funds from the state of West Virginia, SBPA, and thousands of donations from citizens from across the nation, and locally from citizens of Jefferson County, WV. In fact, the property title for the adjacent property is held by Jefferson County Historic Landmarks Commission which is actively developing a plan to improve this site and make it accessible to the public without interfering with adjacent landowners and nearby residents (or lowering their property values). In fact,



according to local real estate agents the requested CUP, and the behavior of the current business, is already negatively lowering property values.

Approving this CUP request will have the following negative effects on the battlefield property:

1) It will likely make it harder for the JHLC to find tenants willing to pay premium rents for the large dwelling located on the property, and thus present a loss of revenue and additional expenses for Jefferson County.

2) It will likely negatively affect the relationship between JHLC farming contractors concerned about working in close proximity to gunfire. (Firearms retailers will inevitably provide their customers with product demonstrations and success of firearm repairs on the de facto gun range already in use by QRF.) In reality, anyone doing preservation or maintenance work on the battlefield will, rightfully, want to evaluate the prospect of gunfire interrupting their work schedule posing a danger to their wellbeing.

3) Events at the battlefield (e.g., battlefield tours and lectures) will inevitably need to be rescheduled or altered because of the noise associated with this firearm retail/repair operation.

4) Designating trailheads and visitor parking areas will also likely be affected by this firearms retail/repair business as customers will want to test firearms on the de facto gun range.

5) QRF, to date, has not demonstrated good stewardship of their site. They have allowed their trees to fall on battlefield land, and allowed trash and debris to be left in the vicinity of Trough Rd that is commonly blown onto the battlefield. Responsible businesses do not leave cleanup to their neighbors.

QRF's current business already interferes with the health and welfare of its close proximity neighbors. For example, we are reluctant to allow our grandchildren and dogs outside, or even prepare meals and eat around our pool when the sounds from the gunfire becomes dangerous and worrisome.

Although QRF is correct that the sound of gunfire in this area is not uncommon (especially during hunting season), even JCHLC, i.e., a county commission, has recognized the threat to the health and welfare of the immediate community posed by hunting, and therefore no longer offers hunting leases on the battlefield property, or even allows skilled law enforcement officers to hunt on the property. Moreover, the rate of automatic firearms, and the heavy caliber weapons being fired in this area was almost nonexistent until in QRF began its dog training operation. Particularly disconcerting is that the firing sometimes lasts for hours, and commonly continues late into the evening or night. It is also common knowledge that the range and the distance rounds travel far exceeds the 500-foot buffer from dwellings usually required for hunting or target shooting. If QRF's customers value their services, the neighbors and community in close proximity to this business, fear them, and recognize the denigration of safety in their homes and on their properties.

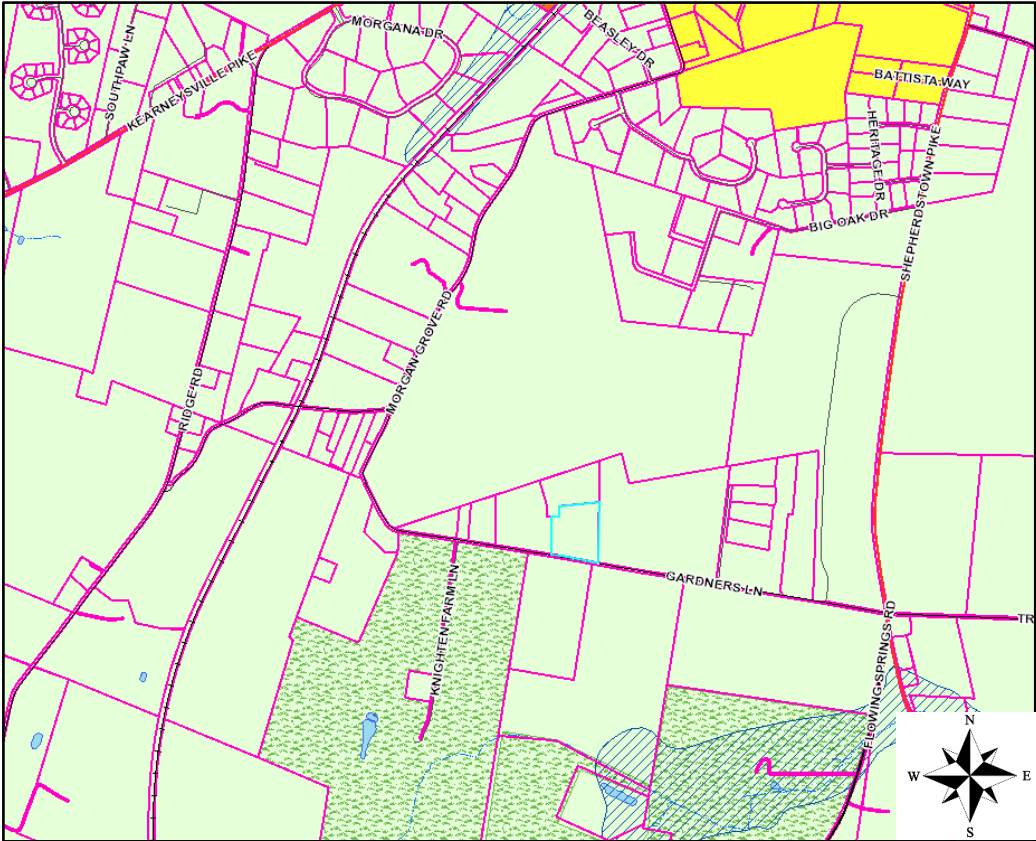
We respectfully require the denial of this CUP.

Stephen Alemar  
Vice President, Shepherdstown Battlefield Preservation Association  
77 Cavalier View Ct  
Shepherdstown, WV 25443

Staff Report  
 Jefferson County Board of Zoning Appeals  
 January 23, 2025

**25-3-ZV and 25-5-ZV Blue Iris - Songbird House Variance Request**

- Item #5: Request #1: Variance from Section 11.1 to reduce the required number of parking spaces from 25 to 10 for a proposed Nursing Home operating as an Assisted Living Facility for up to 16 residents (#25-3-ZV).
- Request #2: Variance from Section 4.10 to waive the requirement of a site plan for the installation of a parking lot for a proposed Nursing Home operating as an Assisted Living Facility for up to 16 residents (#25-5-ZV).

Owner:	Blue Iris LLC / Attn: Sharon Hallinan, Manager
Applicant:	Songbird House LLC
Parcel Information and Zoning District:	<p style="text-align: center;">Kristie George Minor Subdivision, Lot B          1163 Gardners Lane, Shepherdstown, WV 25443          Parcel ID: 09001700090003; Size: 6.63 acres; Zoning District: Rural</p> 
History:	01/15/02: Kristie George Minor Subdivision; <a href="#">PB: 19 @ PG: 15</a> (PC File: 01-36) 05/10/05: Minor Plat Change Approved; Deed Book 1008 @ Page 333 02/22/24: BZA approved a CUP for a Nursing or Retirement Home (File 24-4-CUP)
Approved Activity:	Nursing or Retirement Home
Site Visit Conducted:	No site visit conducted.

Staff Report  
Jefferson County Board of Zoning Appeals  
January 23, 2025  
**25-3-ZV and 25-5-ZV Blue Iris - Songbird House Variance Request**

**Staff Overview**

The subject parcel is Lot B of the Kristie George Subdivision which processed in 2001 (PC File #01-36). The lot is approximately 6.63 acres in size and surrounded primarily by agricultural and residential development. The property is accessed off of Gardners Lane, which is a 30' wide state owned road right-of-way (State Route 16/1). There is a platted 40' wide access easement along the eastern property line.

On February 22, 2024, the Board of Zoning Appeals granted a Conditional Use Permit to operate Nursing or Retirement Home for up to 32 residents and 12 caregivers. At that time, the former Zoning Administrator determined that the Zoning Ordinance does not contain a land use designation/definition for an Assisted Living Facility and that the term 'Nursing or Retirement Home' would be the most appropriate land use designation.

The Board issued the Conditional Use Permit with the following conditions:

1. The applicants are bound by their testimony.
2. The applicant will satisfy all necessary requirements, including the installation of the parking area unless a variance is obtained.
3. The applicant shall pursue all necessary permits.

The issued Conditional Use Permit is attached.

**Request #1 – Parking Standards (#25-3-ZV)**

Section 11.1A states that the parking standards for a *Nursing Home* are as follows: *1 space per 400 square feet floor space*. The existing home is 10,000 square feet in size. As such, the applicant would be required to install 25 parking spaces.

The applicant is requesting a variance from Section 11.1A to reduce the number of required parking spaces from 25 to 10 spaces. The applicant's rationale for this request is based on the fact that they are reducing the number of residents from 32 to 16. The applicant has also included supplemental information from the West Virginia Code, "Title 64, Legislative Rule, Bureau For Public Health, Series 14, Assisted Living Residences" that provides the following parking requirements (see page 14 of the supplemental information):

<b>64CSR14</b>
<b>3.12.16. The residence shall have parking areas with:</b>
3.12.16.a. Clean, solid, earth beds; a compacted stone base; and a hard surface, all-weather finish coat; free of broken, gaped, or uneven paving, with slopes that permit good drainage; and
3.12.16.b. Adequate spaces for all staff on duty and a minimum of one parking space for each five beds.

The purpose of nonresidential parking requirements is to ensure that off-street parking, loading, and access demands associated with new development will be met without adversely affecting other nearby land uses and surrounding neighborhoods.

**Conditions of Approval**

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

1. All resident/guest parking shall be located wholly on the subject parcel.

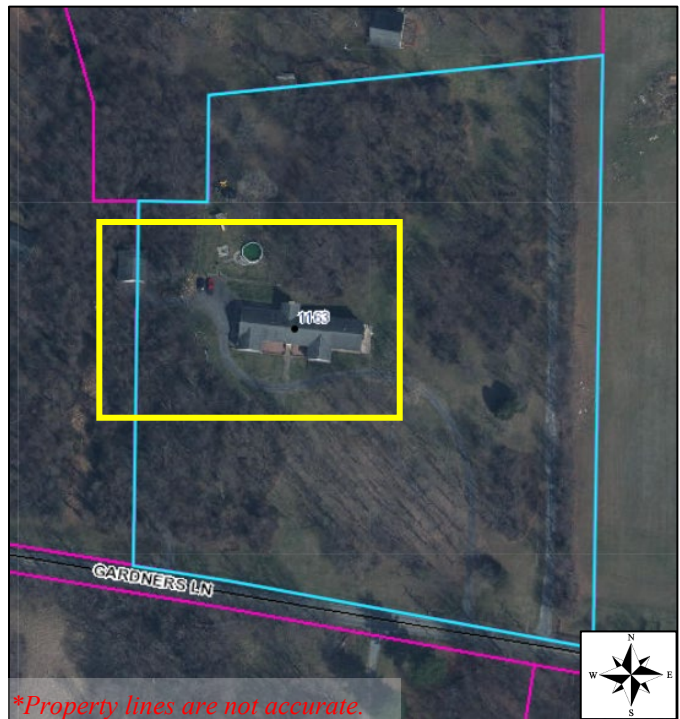
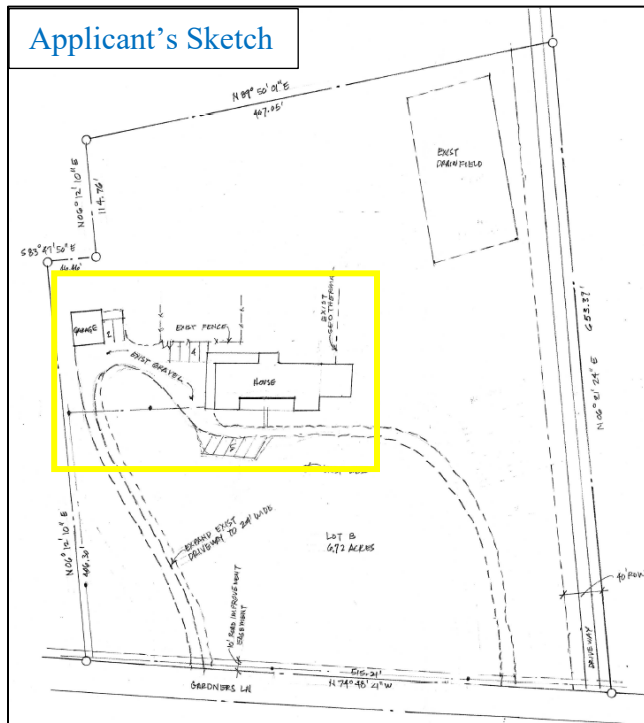
Staff Report  
Jefferson County Board of Zoning Appeals  
January 23, 2025

**25-3-ZV and 25-5-ZV Blue Iris - Songbird House Variance Request**

**Request #2 – Site Plan Requirement (#25-5-ZV)**

The applicant is also requesting a variance to waive the requirement of a site plan. Section 4.10 states that a site plan is required for all nonresidential land uses.

Should the Board approve the variance related to the number of parking spaces, then the only site improvements that will be required is the installation of 10 parking spaces. It seems reasonable to waive the requirement of a site plan as the subject parcel is 6.3 acres in size.



**Conditions of Approval**

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

1. No additional site improvements shall occur without further evaluation by the Office.
2. The applicant shall process a Zoning Certificate documenting the number of residents, employees, and parking spaces.

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."





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

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

Phone: 304-728-3228

April 10, 2024

Blue Iris LLC and Blue Tulip LLC  
Attn: Sharon Hallinan, Manager  
[ladyslipperproperties@gmail.com](mailto:ladyslipperproperties@gmail.com)

Ms. Hallinan:

Enclosed is the Conditional Use Permit for Songbird House Assisted Living Residence (File #24-2-CUP) to operate an Assisted Living Residence to provide care for up to 32 residents with 12 caregivers/employees under the land use designation Nursing or Retirement Home as listed in Appendix C of the Zoning Ordinance. The request was granted by the Board of Zoning Appeals on February 22, 2024.

Please review the Restrictions/Conditions noted in the Permit. Any future change in use or expansion will require processing through the Jefferson County Department of Engineering, Planning, and Zoning to update this Permit and ensure compliance with applicable County Regulations.

Additional processing through the following government agencies may be required:

- West Virginia Division of Highways (entrance permit): 681-320-2039
- Jefferson County Health Department (well & septic): 304-728-8416
- Office of Building Permits & Inspections: 304-725-2998
- Office of Impact Fees, Contact Michelle Mason: 304-728-3331
- State Fire Marshal: 304-558-2191

In accordance with Section 3.2G of the Zoning Ordinance, a Conditional Use Permit shall become void eighteen (18) months after the date of issuance if the construction or use for which the permit was issued has not commenced. Therefore, **if the use has not commenced by October 10, 2025**, the Conditional Use Permit will expire, unless an extension is granted. If an extension is required, the request must be submitted to the Office of Planning & Zoning for consideration by the Board of Zoning Appeals, prior to the expiration date.

Should you have any questions, please do not hesitate to contact our office.

Sincerely,

Alexandra Beaulieu  
Deputy Director & Zoning Administrator



# JEFFERSON COUNTY, WEST VIRGINIA

## OFFICE OF PLANNING AND ZONING

116 EAST WASHINGTON STREET

CHARLES TOWN, WV 25414

### CONDITIONAL USE PERMIT #24-2-CUP

#### SONGBIRD HOUSE ASSISTED LIVING RESIDENCE

This is to certify that effective **April 10, 2024**, the property described below has been granted a Conditional Use Permit.

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

**Contact Information:** [ladyflipperproperties@gmail.com](mailto:ladyflipperproperties@gmail.com) / 703-401-5884

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

**Contact Information:** [beata.scott.idb@gmail.com](mailto:beata.scott.idb@gmail.com) / 703-867-1193

**Property Location:** Kristie George Minor Subdivision, Lot B  
1163 Gardners Lane, Shepherdstown, WV 25443  
Parcel ID: 09001700090003; Size: 6.63 acres; Zoning District: Rural

**Approved Use:** Assisted Living Residence providing care for up to 32 residents with 12 caregivers/employees. Approval granted under the land use designation *Nursing or Retirement Home* as listed in Appendix C of the Zoning Ordinance.

Pursuant to Article 6 of the Zoning Ordinance, as amended June 16, 2022, the Board of Zoning Appeals held a public hearing on February 22, 2024, for the purpose of determining if the Conditional Use met the criteria outlined in Section 6.3A.1-8. Finding that the Conditional Use met all of the criteria, the Board voted to **Grant** the request as presented to operate an assisted living residence to provide care for up to 32 residents with 12 caregivers/employees, with the following conditions of approval:

1. The applicants are bound by their testimony.
2. The applicant will satisfy all necessary requirements, including the installation of the parking area unless a variance is obtained.
3. The applicant shall pursue all necessary permits.

In the event that the operation of this land use has not commenced by **October 10, 2025**, this Permit will expire. Prior to the expiration date, pursuant to Section 3.2G of the Zoning Ordinance, an extension request must be submitted to the Office for consideration by the Board of Zoning Appeals.

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

Any future change in use or expansion will require processing through the Jefferson County Department of Engineering, Planning, and zoning to ensure compliance with County Regulations.

April 10, 2024

Alexandra Beaulieu

Date

Deputy Director & Zoning Administrator





JEFFERSON COUNTY, WEST VIRGINIA  
Department of Engineering, Planning and Zoning

**Office of Planning and Zoning**

116 East Washington Street, 2<sup>nd</sup> Floor  
Charles Town, West Virginia 25414

File #: \_\_\_\_\_  
Mtg. Date: \_\_\_\_\_  
Fee Paid: \$ \_\_\_\_\_

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

Phone: (304) 728-3228

**Zoning Variance Application**

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

**Property Owner Information**

Owner Name: \_\_\_\_\_  
Business Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**Applicant Contact Information**

Applicant Name: \_\_\_\_\_ Same as owner:   
Business Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**Consultant Information**

Consultant Name: \_\_\_\_\_  
Business Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**Physical Property Details**

Vacant Lot:

Physical Address: \_\_\_\_\_  
Parcel ID: \_\_\_\_\_ (Tax District / Map No. / Parcel No.)  
Parcel Size: \_\_\_\_\_ Deed Book: \_\_\_\_\_ Page No: \_\_\_\_\_

**Zoning District (please check one)**

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

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

Date Received: [Received via email 12/18/24 \(jth\)](#)

Briefly describe the nature of the request (include the dimensions of the proposed structure, if applicable):

Section of the Zoning Ordinance pertaining to this request: Section 11 Parking  
CUP 24-2 considers Songbird House to be a nursing home as the ordinance does not have a category for Assisted Living residential purpose, and 25 parking spaces are required in the CUP. The ALR has reduced its residents from 32 in the CUP to 16, and much less parking is needed.

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

- Front Setback  Side Setback  Rear Setback Reduction from \_\_\_\_\_ to \_\_\_\_\_

Required Sketch: 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.

Required Responses: Each of the following questions must be answered in detail. The Board will evaluate your request based on the answers provided (attach a separate sheet of paper if necessary).

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

All parking will be on the property in existing parking areas. There is substantial distance and landscape buffer with adjacent property owners. There is no adverse effect on public health, safety or welfare. This variance is seeking a reduction of parking from 25 spaces required in CUP 24-2 to 10 parking spaces IAW the WV Office of Health Facility and Licensure Regulations for Assisted Living.

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?

WV OHFLAC governs Assisted Living Residences, and its regulations require 1 parking space for every 5 residents (for which there will be 16 residents), and parking for staff, which will be 4. This totals 7 parking spaces, and we would add 3 for visitors. Requesting a parking reduction from 25 spaces to 10 spaces, which already exist on the property.

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

There is a hardship in the unnecessary cost of 15 unneeded parking spaces, trees and landscaping will need to be removed to accommodate the extra 15 spaces, which is costly and reduces the aesthetic value of the property. The topography of the property, combined with the Health Dept approved septic expansion, has limited the available land area for extra parking.

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

The Zoning Ordinance is observed via CUP 24-2 which will allow for the first and only Assisted Living Residence in Jefferson County. A Zoning Certificate has previously been submitted.

I authorize the Planning and Zoning staff to revise the application/sketch on my behalf. I understand that said revisions will be discussed with me prior to revising the application/sketch.

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

By signing this application, I grant permission to County staff to walk onto the subject property to take photos for the Board of Zoning Appeals staff reports.

*Shane Hollenberger*  
Property Owner Signature

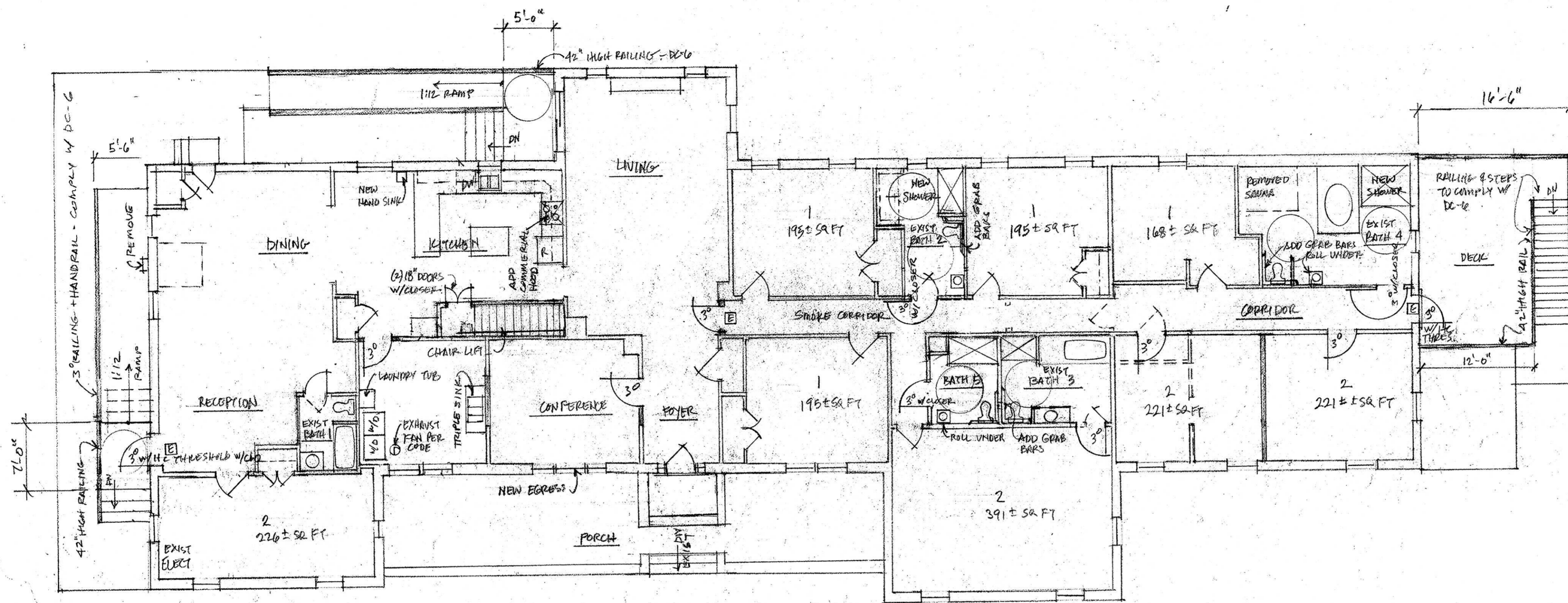
12/17/24  
Date

Property Owner Signature

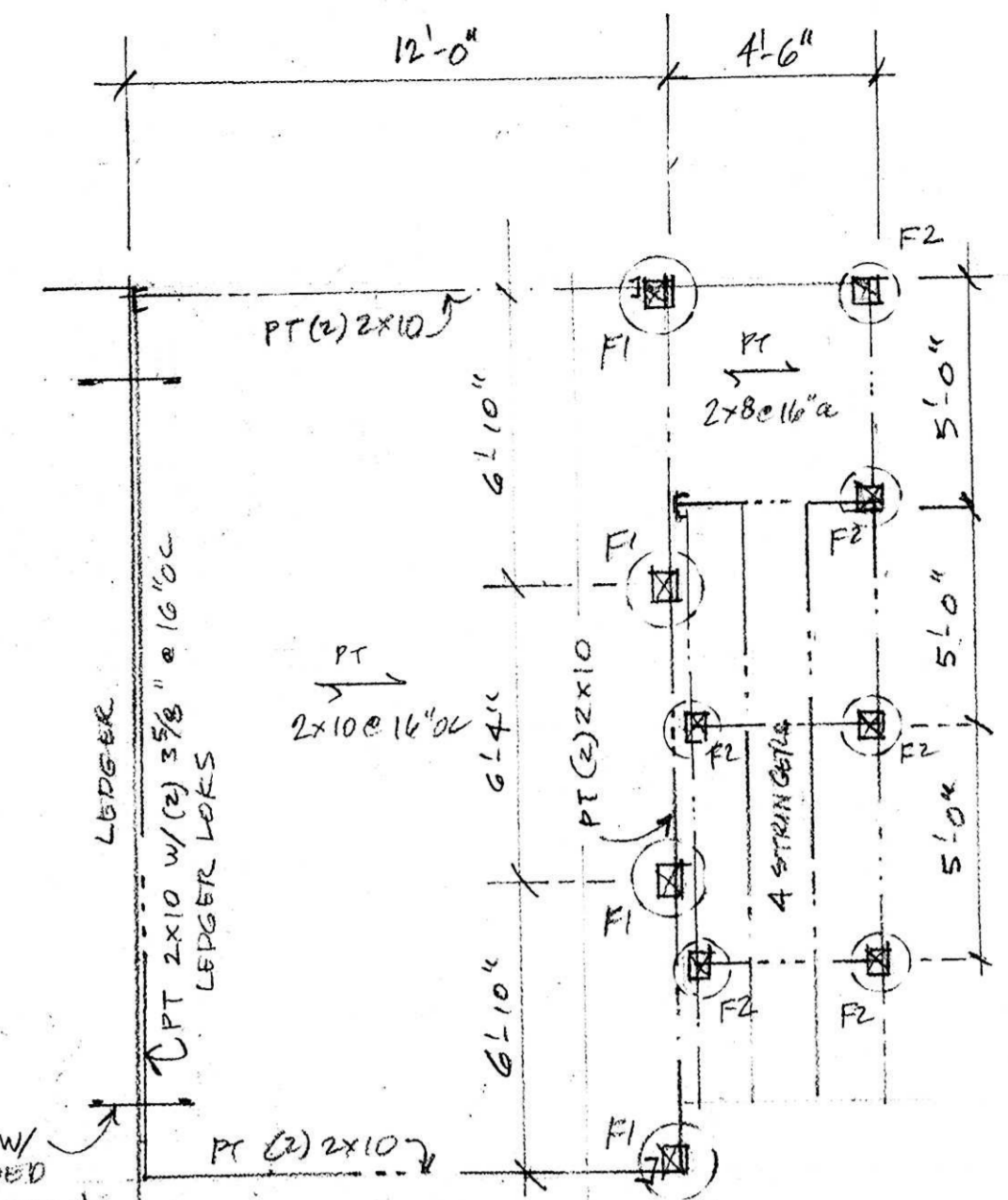
Date



FOSALIND E. WELSH  
ARCHITECT  
REGISTERED - WEST VIRGINIA  
NO. 11133  
P.O. Box 147 • Summit Point • WV • 26415  
304-723-4013

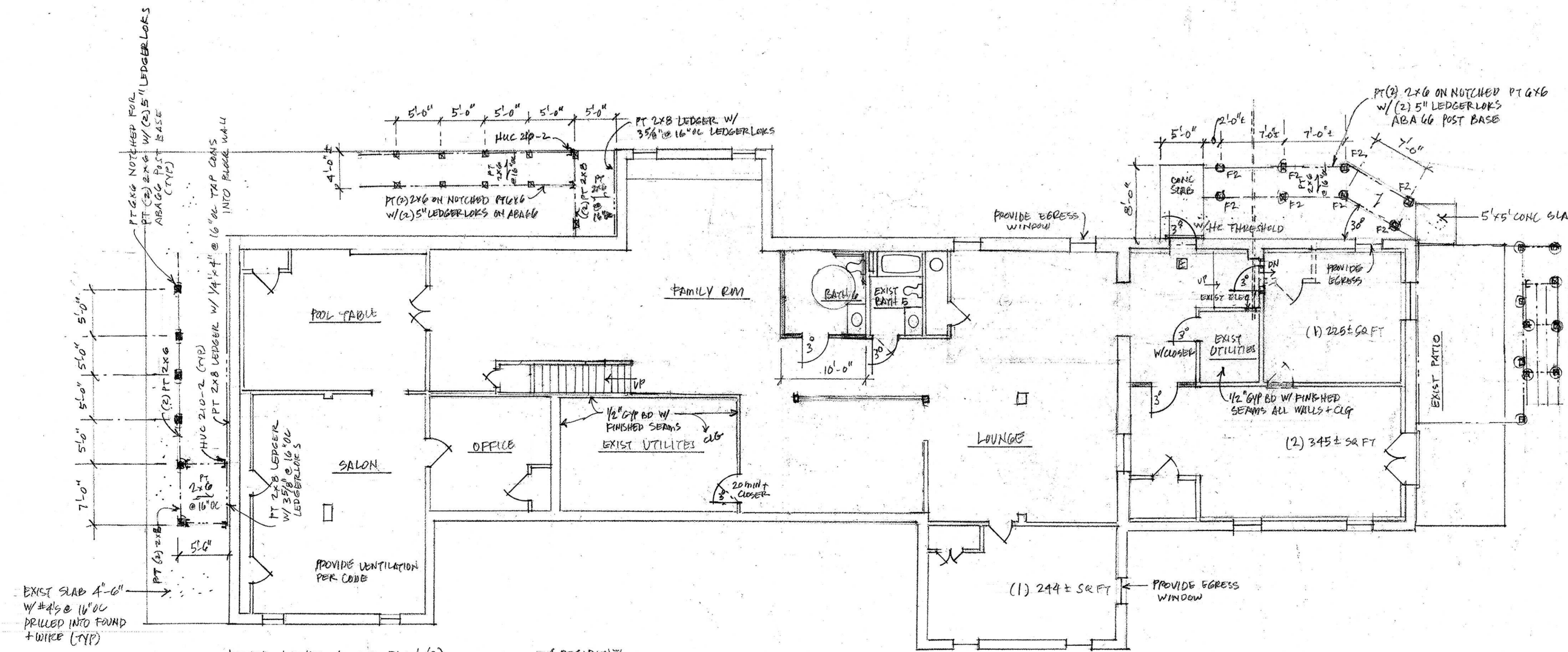


REVISED FIRST FLOOR PLAN (3) 12 RESIDENTS 5080 ± SQ FT  
SCALE: 1/8" = 1'-0"  
--- REMOVED  
== NEW WALL  
3° DOOR SWINGING INTO SMOKE CORRIDOR 180° SWING + CLOSER.



DECK FOUNDATION PLAN  
SCALE: 1/4" = 1'-0"

F1 - 18" Ø x 30" MIN CONC PILES  
F2 - 12" Ø x 30" MIN CONC PILES

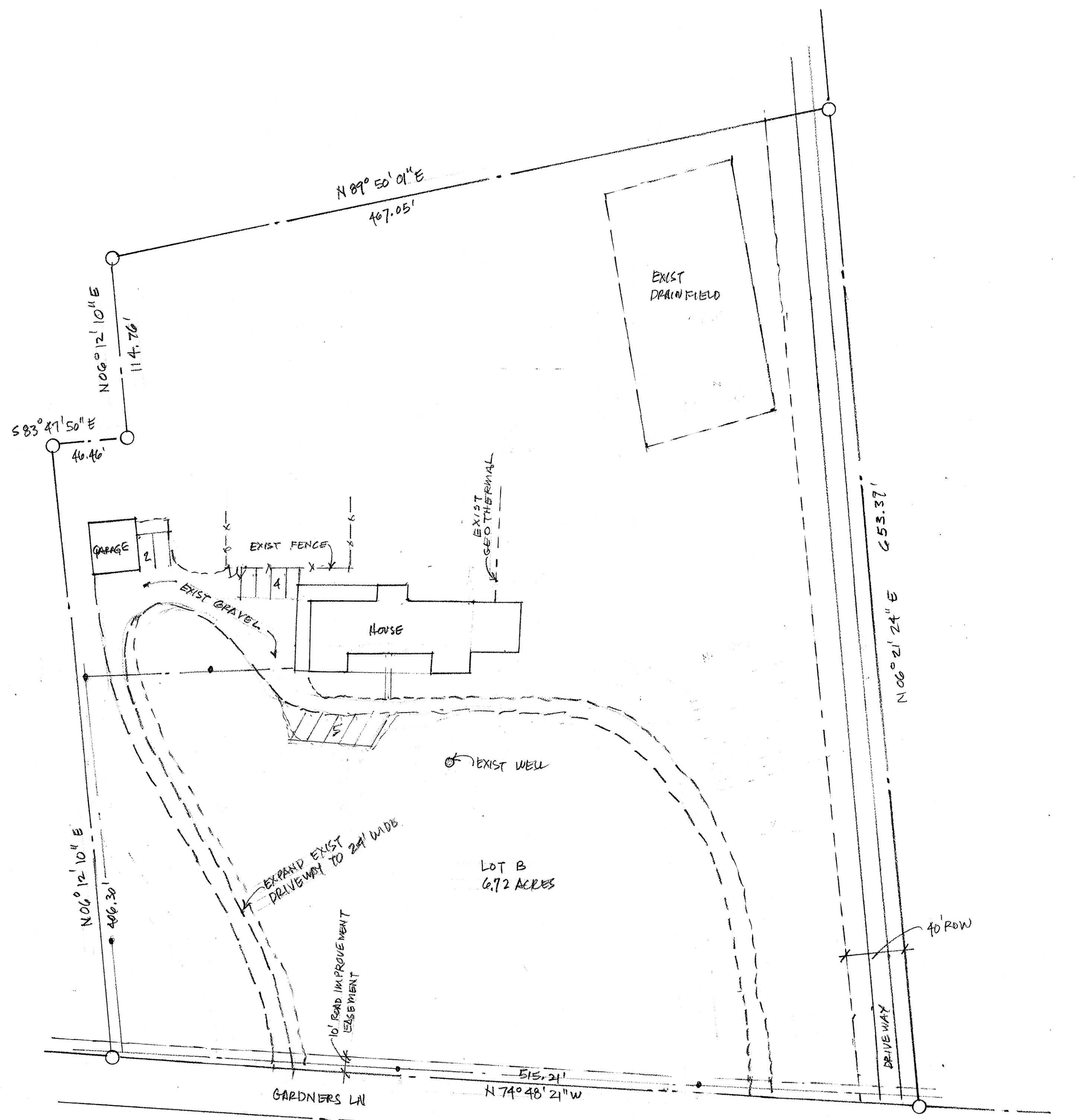


LOWER LEVEL FLOOR PLAN (3) 4 RESIDENTS 5080 ± SQ FT  
SCALE: 1/8" = 1'-0"

- GENERAL NOTES
- 1) ASSUMED SOIL BEARING - 2000 PSF (FIELD VERIFY)
  - 2) CONC - 3000 PSI
  - 3) FRAMING LUMBER - PT SOUTHERN PINE
  - 4) DESIGN LOAD - 40 PSF FLL, 35 PSF SNOW @ GRADE
  - 5) CONSTRUCTION TO COMPLY W/ IBC 2018 & ALL LOCAL CODES
  - 6) MEP, SPRINKLERS, SMOKE DETECTORS, FIRE ALARM BY OTHERS

RENOVATIONS BY BLUE IRIS, LLC  
1113 GARDENERS LN  
SHEPHERDS TOWN, WV

AI  
10/24/24



SITE PLAN  
 SCALE: 1" = 50'  
 INFO FROM SURVEY BY PETER LORENZEN  
 NO SITE CHANGES EXCEPT WIDENED DRIVEWAY



ROSALIND E. WELSH  
 ARCHITECT  
 REGISTERED: WEST VIRGINIA  
 MARYLAND  
 VIRGINIA  
 P.O. Box 147 • Summit Point • WV • 25446  
 304-725-4015

RENOVATIONS by BLUE IRIS, LLC  
 1103 GARDNERS LN  
 SHEPHERDSTOWN, WV 25443

SI

10/29/24





64CSR14

TITLE 64  
LEGISLATIVE RULE  
BUREAU FOR PUBLIC HEALTH

SERIES 14  
ASSISTED LIVING RESIDENCES

**§64-14-1. General.**

1.1. Scope. -- This legislative rule establishes specific standards and procedures to provide for the health, safety, and the protection of the rights and dignity of residents of assisted living residences. This rule should be read in conjunction with W. Va. Code §§16-5D-1, *et seq.* The West Virginia Code is available in public libraries and on the Legislature's web page, <http://wvlegislature.gov/>.

1.2. Authority. -- W. Va. Code §16-5D-5 and §16-1-4.

1.3. Filing Date. -- May 1, 2024.

1.4. Effective Date. -- May 1, 2024.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2029.

1.6. Application. -- This rule applies to any individual person and any organization, incorporated or unincorporated, including a partnership, corporation, trust, association or political subdivision of the State establishing, maintaining or operating an assisted living residence as defined in W. Va. Code §16-5D-2 and this rule. This rule does not apply to homes or asylums operated by fraternal orders pursuant to W. Va. Code §§35-3-1, *et seq.*, or to health care facilities subject to other applicable licensure rules, such as nursing homes, residential care communities, and behavioral health centers.

1.7. Enforcement. -- This rule is enforced by the Secretary of the Department of Health and Human Resources, or his or her designee.

**§64-14-2. Definitions.**

2.1. Definitions incorporated by reference. -- Those terms defined in W. Va. Code §§16-5D-1, *et seq.*, are incorporated herein by reference.

2.2. Abuse. -- The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods and services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain, or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology. Willful, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

2.3. Activities of Daily Living. -- The activities that an individual generally performs regularly in the course of maintaining his or her physical self, such as eating, dressing, oral hygiene, toileting, personal grooming, and moving themselves from one location to another.

2.4. Administration of Medication. -- Assisting a person in the ingestion, application or inhalation of medications, including both prescription drugs and non-prescription drugs.

2.5. Administrator. -- The owner or individual selected by the licensee to be responsible for the day-to-day operation of the assisted living residence.

2.6. Adult Day Care. -- Care and supervision for elderly or disabled adults during daytime hours only.

2.7. Bed Capacity. -- The number of residents an assisted living residence is licensed to house.

2.8. Classification of Standards. -- The designation assigned to the requirements in this rule indicating the level of impact the requirement has on the health, safety, and welfare of the residents. There are three levels used, indicated by Class I, Class II and Class III, with Class I having the most impact and Class III the least.

2.9. Communicable Disease. -- An illness caused by an infectious agent or its toxic product that is transmitted, directly or indirectly, to a susceptible host from an infected person or animal, or through the agency of an intermediate host or a vendor or through the inanimate environment.

2.10. Developmental Disorder. -- A group of disorders in which the predominant disturbance is in the acquisition of cognitive, language, motor, or social skills. The disturbance may involve a general delay, as in mental retardation, or a delay or failure to progress in a specific area of skill acquisition or multiple areas in which there are qualitative distortions of normal development.

2.11. Direct Care Staff. -- Individuals who assist or actually perform activities for residents such as eating, dressing, oral hygiene, toileting, personal grooming, repositioning, ambulating residents from one location to another, or provide care to residents who have one or more inappropriate behaviors that reasonably requires additional staff to control.

2.12. Disability. -- Any limitation of physical, mental, or social activity of an individual as compared with other individuals of similar age, sex, and occupation. It frequently refers to limitation of the usual or major activities, most commonly vocational.

2.13. Exploitation. -- The act or process of taking unjust advantage of another individual for one's own benefit that includes, but is not limited to, the deliberate misplacement or wrongful use of a resident or the resident's belongings or money without the resident's consent.

2.14. Extensive Nursing Care. -- The nursing care required when there is a major deviation from normal in a body system or multiple body systems of such magnitude that the deviations are life threatening and the individual's condition is unstable and unpredictable.

2.15. Functional Needs Assessment. -- Any measurement tool that identifies for the resident and the licensee those services that the licensee will need to obtain or provide for the resident in order to promote the resident's health, comfort, dignity, and independence.

2.16. Health Care Facility. -- A public or privately-owned institution, entity or adult residential facility or any part or unit thereof, that offers or provides health care services, such as personal assistance, supervision, nursing care, or behavioral health care, that are required to be licensed in accordance with state law to provide the services.

2.17. Immediate and Serious Threat. -- A situation that presents a high probability of serious harm or injury to one or more residents. An immediate or serious threat need not result in actual harm to any resident.

2.18. Imminent Danger. -- A situation that could reasonably be expected to immediately cause or contribute to death, serious physical harm, or illness to a resident, household member, or staff before the situation can be eliminated through a plan of correction according to subsection 3.10. of this rule.

2.19. Legal Representative. -- A person chosen by the resident or appointed by an individual or by a duly authorized agency or court, or otherwise authorized by law to exercise some degree of control over a resident's affairs. Legal representatives may have limited authority to act on behalf of the resident. For example, a conservator has responsibility for financial affairs, but not personal affairs such as medical care. Legal representatives include:

2.19.1. A conservator, temporary conservator or limited conservator appointed pursuant to the West Virginia Legal Guardianship and Conservatorship Act, W. Va. Code §§44A-1-1, *et seq.*, within the limits set by the most recent court order;

2.19.2. A guardian, temporary guardian or limited guardian appointed pursuant to the West Virginia Guardianship and Conservatorship Act, W. Va. Code §§44A-1-1, *et seq.*, within the limits set by the most recent court order;

2.19.3. An individual appointed as committee or guardian prior to June 9, 1994, within the limits set by the appointing order and W. Va. Code §44A-11-2(d) and §§44A-1-1, *et seq.*;

2.19.4. An individual having a medical power of attorney pursuant to the West Virginia Health Care Decisions Act, W. Va. Code §§16-30-1, *et seq.*, within the limits set by law and the appointment;

2.19.5. A representative payee under the U.S. Social Security Act, Title 42 U.S. Code §§ 301, *et seq.*, within the limits of the payee's legal authority;

2.19.6. A health care surrogate decision-maker appointed pursuant to the West Virginia Health Care Decisions Act, W. Va. Code §§16-30-1, *et seq.*, within the limits set by the appointment;

2.19.7. An individual having a durable power of attorney pursuant to W. Va. Code §39B-1-101, or a power of attorney under common law, within the limits of the appointment;

2.19.8. An individual identified pursuant to W. Va. Code §16-3C-4, to grant consent for HIV-related testing and for the authorization of the release of test results;

2.19.9. A parent or guardian of a minor; or

2.19.10. An individual lawfully appointed in a similar or like relationship of responsibility for a resident under the laws of this state, or another legal jurisdiction, within the limits of the applicable law and appointing authority.

2.20. Licensed Health Care Professional. -- A health care professional currently licensed in West Virginia including, but not limited to, a social worker, dentist, practical nurse, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, registered professional nurse, or speech-language pathologist.

2.21. Life Care Contract. -- A financial agreement between the licensee and an individual in which the licensee agrees to provide specified care to the individual for the rest of the individual's life.

2.22. Limited and Intermittent. -- No more than two hours of nursing care per day for a period of time no longer than 90 consecutive days per episode.

2.23. Major Incident. -- An event or occurrence, the outcome of which places one or more resident's health and well-being in imminent danger, such as:

2.23.1. A fall, an accident, or another event that seriously injures or threatens the life of the resident;

2.23.2. A resident's death occurring from other than natural causes;

2.23.3. A missing resident who is likely to injure himself or herself, or who needs medication or treatment on a regular basis, and who is likely to have difficulty returning to the assisted living residence on his or her own;

2.23.4. Assault on a resident resulting in injury; and

2.23.5. Other suspected criminal activity or events that cause the disruption of normal assisted living residence activity, including threats or occurrences of extreme violence, explosions, fire, or natural disasters.

2.24. Mental Abuse. -- Includes, but is not limited to, subjecting or exposing a resident to behavior that may result in psychological trauma or injury, including, but not limited to, humiliating, harassing, teasing, or threatening; unreasonably restricting a resident's contact with family, friends, or other residents; unreasonably ignoring a resident's requests; threats of punishment or deprivation; or willfully violating a resident's rights, including confidentiality.

2.25. Mental Disorder. -- An illness that affects the psychological well-being or behavior of an individual to the extent that the individual requires treatment for his or her own welfare or the welfare of others.

2.26. Neglect. -- Failure of the facility, its employees, or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress.

2.27. Ombudsman. -- Any person or organization designated by the State Long-Term Care Ombudsman as part of the West Virginia Long-Term Care Ombudsman Program.

2.28. Ongoing Nursing Care. -- Nursing care that continues in excess of 90 consecutive days.

2.29. Residence. -- An assisted living residence as defined in W. Va. Code §16-5D-2.

2.30. Restraint.

2.30.1. Any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove at will and that physically limits, restricts, or deprives the resident of movement or mobility; or

2.30.2. Any drug used to limit movement or mental capacity of a resident for non-medical reasons beyond the requirements of therapeutic treatment.

2.31. Self-Administration of Medications. -- The act of a resident, who is independently capable of reading and understanding the labels of prescribed medication, in opening and accessing a prepackaged container of medication, and accurately identifying and taking the correct dosage of the medication, at the correct time and under the correct circumstances as prescribed by the physician.

2.32. Service Plan. -- A written description of the services that need to be provided to a resident to meet all of the needs identified in his or her functional needs assessment.

2.33. Sexual Abuse. -- Includes, but is not limited to, sexual harassment, sexual coercion, sexual exploitation, sexual assault, or sexual contact. It also includes taking or disseminating photographs, films, audio, or other recordings of a resident, without informed consent, when such items serve no health, well-being, safety, or medical purpose, and would serve to demean or humiliate the resident, including but not limited to, items that contain nudity, sexual and intimate relations, bathing, showering, toileting, or otherwise showing the resident in a compromising position, or agitating the resident to elicit a response, regardless of whether the resident has capacity.

2.34. Significant Change. -- A change in a resident's condition that is major, impacts on more than one area of the resident's health status, and requires intervention by a health care professional.

2.35. Supervision. -- The assumption of varying degrees of responsibility for the safety and well-being of residents including, but not limited to:

2.35.1. Being aware of the resident's whereabouts, to the extent identified as a need by the resident's assessment or service plan;

2.35.2. Monitoring the activities of a resident while on the premises of the residence to ensure the resident's health, safety, and well-being;

2.35.3. Reminding the resident of any important activities of daily living;

2.35.4. Overseeing the administration of medication, if not administering it;

2.35.5. Purchasing of food and other supplies, and meeting nutritional and food needs; and

2.35.6. Arranging for or providing transportation as necessary.

2.36. Verbal Abuse. -- Includes, but is not limited to, the use of oral, written, or gestured language that willfully includes disparaging and derogatory terms to residents or their families, or within their hearing distance, regardless of their age, ability to comprehend, or disability. Examples of verbal abuse include, but are not limited to, threats of harm; saying things to frighten a resident, such as telling a resident that he or she will never be able to see his or her family again; intimidation; humiliation; threats of hostility; or vulgarity.

### § 64-14-3. State Administrative Procedures.

#### 3.1. General Licensing Provisions.

3.1.1. No person, partnership, association, or corporation may operate an assisted living residence in the state of West Virginia without first obtaining a license pursuant to W. Va. Code §16-5D-6 and this rule.

3.1.2. A license is valid only for the person and for the location named in the application and on the license, and is not transferable.

3.1.2.a. The assisted living residence shall notify the Secretary in writing 30 days prior to a change in name or physical address of the program and request an application for a licensure amendment.

3.1.2.b. If the ownership of an assisted living residence changes, the new owner shall notify the Secretary within 10 days and immediately apply for a new license. The new owner's application for a license is valid for three months from the date the application is received by the Secretary.

3.1.3. Each assisted living residence location shall be licensed separately, regardless of whether the assisted living residence is operated under the same business name or management as another assisted living residence.

3.1.4. The words "clinic," "hospital," "nursing home," "residential care community" or any other words that suggest a type of facility other than an assisted living residence shall not be used in the name or the advertising of the residence.

3.1.5. The licensee is responsible for compliance with this rule, W. Va. Code §§16-5D-1, *et seq.*, and other relevant federal and state laws.

3.1.6. The Secretary may issue an initial or a renewal license for a period not to exceed one year, except if an applicant submits an application for renewal of a license currently in effect in accordance with this rule and W. Va. Code §§16-5D-1, *et seq.*, together with the required fee described in W. Va. Code §16-5D-6(i). The Office of Health Facility Licensure and Certification shall post the annual consumer price index increases on its website located at: <http://ohflac.wvdhhr.org/>. The license shall continue in effect until:

3.1.6.a. One year following the expiration date of the license;

3.1.6.b. The date of a revocation or suspension of the license pursuant to this rule and W. Va. Code §§16-5D-1, *et seq.*, or

3.1.6.c. The date of issuance of a new license, whichever date occurs first.

3.2. Initial Licensure Application.

3.2.1. An applicant for initial licensure shall submit a completed application to the Office of Health Facility Licensure and Certification, along with a non-refundable fee, and any additional information the Secretary may require.

3.2.2. The applicant shall have his or her signature on the application and have accompanying forms notarized. The signature shall serve as a release for obtaining references, credit, and other background information.

3.2.3. The applicant shall pay the cost of the initial licensure inspections, pursuant to W. Va. Code §16-5D-6(i) before the issuance of an initial license.

3.2.4. The applicant shall provide to the Secretary a preliminary operating plan that includes a proposed budget with projected monthly income, a balance sheet showing all expenses and income on forms provided by the Secretary, including but not limited to, reimbursement of the owners, lease payment, and monthly rates charged.

3.2.5. The applicant shall submit the application and fee at least 90 days prior to the date proposed for the commencement of operations.

3.2.6. Except as specified in subsection 3.5. of this rule, and after a satisfactory inspection to ensure compliance with this rule, the Secretary shall issue an initial license.

3.3. License Renewal.

3.3.1. The licensee shall submit an application for renewal of a license to the Secretary at least 90 days before the expiration date of the current license.

3.3.2. Except as specified in subsection 3.4. of this rule, the Secretary shall issue a renewal license to an assisted living residence when the following conditions are met:

3.3.2.a. The residence is found to be in substantial compliance with this rule;

3.3.2.b. The applicant has submitted a completed application and all requested financial information; and

3.3.2.c. The residence has met all Class I standards of this rule.

3.4. Non-Issuance of Initial or Renewal License.

3.4.1. The Secretary may refuse to issue or may revoke either an initial or a renewal license if he or she finds evidence of the following:

3.4.1.a. The applicant or licensee has a lack of financial stability to operate, such as insufficient capital, delinquent accounts, checks returned because of insufficient funds, and nonpayment of taxes, utility expenses, and other essential services;

3.4.1.b. The applicant or licensee has a personal history that has:

3.4.1.b.1. Evidence of abuse, fraud, or substantial and repeated violations of applicable laws and rules in the operation of any health care facility or service organization, or in the care of dependent persons; or

3.4.1.b.2. An ineligible employment fitness determination from the West Virginia Clearance for Access: Registry and Employment Screening unit of the Department of Health and Human Resources and not received a variance;

3.4.1.c. The applicant or licensee has been denied a license or has had a license to operate a health care facility revoked in West Virginia or any other jurisdiction during the previous five years;

3.4.1.d. The applicant or licensee has a record of noncompliance with lawful orders of the department or other licensing or certification agency for any jurisdiction in which the applicant has operated, directed, or participated in the operation of a health care facility;

3.4.1.e. The applicant, licensee, or person in charge of the residence has refused the Secretary entry and access to residents and records for an inspection or survey;

3.4.1.f. The applicant or licensee has converted the property of a resident for his or her own use, or has secured property, or a bequest of property, from a resident by undue influence;

3.4.1.g. The applicant, licensee, or administrator has submitted false information to the Secretary during the licensure process or during the course of an inspection or survey of the residence;

3.4.1.h. The applicant or licensee has moved residents of the assisted living residence to another location owned or operated by the applicant or licensee without prior approval of the location by the Secretary;

3.4.1.i. The applicant or licensee has built or renovated a residence without complying with the requirements of subsection 3.12. of this rule;

3.4.1.j. The applicant or licensee has failed to correct a violation of any Class I standard, or has failed to be in substantial compliance with the requirements of this rule; or

3.4.1.k. The residence has failed to receive a recommendation for licensure from the state fire marshal.

3.4.2. Before refusing to issue an initial or renewal license or revoking a license, the commissioner shall consider all available evidence at the time of the determination, including:

3.4.2.a. The history of the residence and the applicant or licensee in complying with this rule; and

3.4.2.b. Notices of violations that have been issued to the residence and the applicant or licensee, findings of surveys and inspections, and any evidence provided by the applicant or licensee, residents, law enforcement officials, and other interested individuals.

3.5. Provisional License.

3.5.1. The Secretary may issue a provisional license when:

3.5.1.a. The licensee has failed to meet all the requirements of W. Va. Code §§16-5D-1, *et seq.*, but care given in the residence is adequate for the residents' needs and the licensee has demonstrated improvement and evidences potential for substantial compliance during the term of the provisional license; or

3.5.1.b. All requirements for renewal of a license are not met prior to the expiration of the previously issued license.

3.5.2. When the Secretary issues a provisional license, he or she shall determine the period of time for which the license is valid, but the period shall not exceed one year.

3.5.3. The Secretary shall not renew a provisional license.

3.5.4. If the Secretary denies a provisional license or a provisional license expires, the applicant for a license shall meet the requirements for an initial license, including the cost of an initial application fee and inspections as determined by the Secretary.

3.5.5. The Secretary shall not issue a provisional license when the residence is in violation of any Class I standard or has a record of noncompliance with this rule.

3.6. Inspections.

3.6.1. The Secretary shall inspect an assisted living residence as necessary to carry out the intent of W. Va. Code §§16-5D-1, *et seq.*, and this rule.

3.6.2. The Secretary shall conduct at least one inspection of a residence prior to issuing an initial license, but shall not conduct an inspection until after the following conditions are met:

3.6.2.a. The application and application fee have been received and the application has been determined to be complete; and

3.6.2.b. All requested documentation has verified the readiness of the residence for an inspection.

3.6.3. The Secretary shall conduct periodic unannounced inspections to determine the residence's continued compliance with this rule.

3.6.4. The Secretary has the right to enter a home or structure that is believed to be operating or maintained as an assisted living residence without a license, to conduct inspections without prior notice. If the operator or person in charge of the suspected assisted living residence or licensed assisted living residence refuses entry, the Secretary may apply to the circuit court in which the suspected residence is located or the circuit court of Kanawha County for a warrant to authorize an inspection or to compel attendance to the premises of the suspected residence.

3.7. Complaint Investigation.

3.7.1. Any person may register a complaint with the Secretary alleging a violation of this rule by an assisted living residence or an individual alleged to be unlawfully operating an assisted living residence, by stating the complaint and identifying the name and address of the residence.

3.7.2. The Secretary may conduct investigations as necessary to determine the validity of the complaint and shall notify the licensee of the residence or the individual alleged to be operating an illegal assisted living residence of the complaint at the time of the completion of the investigation.

3.7.3. The Secretary shall notify the licensee or the operator of an unlicensed residence of any corrective action required, the time frame for completion of the corrective action, and any disciplinary action to be taken by the Secretary.

3.7.4. Except as provided in subdivision 3.7.5. of this rule, the Secretary shall keep the names of a complainant and of any resident named in the complaint confidential and shall not disclose the names to the public without written or verbal permission of the complainant and the resident, and his or her legal representative, if any, unless there is an immediate risk to the resident. The Secretary shall delete the name of a complainant or resident named in a complaint or information contained in the report of an investigation that could reasonably identify the complainant or any resident. Information contained in any report of abuse, neglect, or an emergency situation made in accordance with W. Va. Code §9-6-8 shall be confidential and shall not be released except as provided in that article.

3.7.5. If a complaint becomes the subject of a judicial proceeding, nothing in this rule is construed to prohibit the disclosure of information that would otherwise be disclosed in judicial proceedings.

3.7.6. Any type of discriminatory treatment of a resident or employee by whom or on whose behalf a complaint has been submitted to the Secretary, within 120 days of the filing of the complaint or the institution of the action, raises a rebuttal presumption that the discriminatory treatment action was taken by the licensee in retaliation for the complaint or action.

### 3.8. Waivers.

3.8.1. The Secretary may waive a requirement of this rule if after thorough investigation, he or she determines that the waiver will not adversely affect the health, safety, welfare, or rights of the residents.

3.8.2. The licensee shall submit a written request for a waiver and the request shall:

3.8.2.a. Specify the specific requirement in this rule for which the waiver is requested;

3.8.2.b. Specify the time period for which the waiver is requested;

3.8.2.c. Include specific and detailed reasons for the request;

3.8.2.d. Explain why the specific requirement cannot be complied with; and

3.8.2.e. Document that there will be no adverse effect on the residents' health, safety, welfare, or rights if the waiver is granted.

3.9. Reports and Records.

3.9.1. The Secretary shall prepare a written report of any inspection made pursuant to this rule within 15 days of the completion of the inspection and shall mail or electronically transmit to the licensee or administrator, as applicable, a statement of deficiencies that contains the violations of this rule.

3.9.2. The names of residents shall be kept confidential and shall not be disclosed without the resident's written permission or by order of court of record. Nothing contained in this rule shall be construed to require or permit the public disclosure of confidential medical, social, personal, or financial records of any resident. Before releasing a report or record judged public information, the Secretary shall delete any information regarding a resident that would reasonably permit identification of the resident.

3.9.3. The Secretary shall provide notification to the social security administration if a residence demonstrates continued noncompliance with this rule.

3.10. Plans of Correction.

3.10.1. The licensee of an assisted living residence, found on the basis of inspection or other investigation to have violations of requirements in this rule, shall develop, sign, and date a plan of correction, and submit it to the Secretary within 15 working days of receipt of the statement of deficiencies.

3.10.2. The Secretary shall require immediate correction of violations identified as constituting immediate and serious threats to the health or safety of a resident or employee.

3.10.3. For deficiencies other than those constituting immediate and serious threats, the licensee is expected to comply with the rule within 60 days of the inspection, unless the Secretary waives this requirement and allows more time to correct certain types of deficiencies.

3.10.4. The plan of correction shall specify:

3.10.4.a. The violations to be corrected;

3.10.4.b. The actions taken or proposed to correct the violations and procedures to prevent their recurrence; and

3.10.4.c. The dates on which each violation is corrected or by which each will be corrected, that allows the shortest possible time to reasonably correct each specific violation.

3.10.5. The Secretary shall notify the licensee in writing of his or her approval, suggested modifications, or rejection of the plan of correction, or any part thereof.

3.10.6. If modifying or rejecting the proposed plan of correction, the Secretary shall state the reasons for the modification or rejection.

3.10.7. If the Secretary rejects the plan of correction, the licensee has up to 15 working days from the receipt of the Secretary's determination to submit a revised plan.

3.10.8. The Secretary may conduct a follow-up, on-site inspection to verify the correction of any violations identified during an inspection or any other investigation.

3.11. Classification of Standards.

In accordance with W. Va. Code §16-5D-5(c), the classification for each standard indicates the most serious classification that may be assigned to that standard.

3.12. New Construction, Additions, Renovations, and Alterations.

3.12.1. The requirements of this section apply in total to all proposed assisted living residences. Existing residences proposing additions and renovations shall meet only the requirements determined applicable by the Secretary to the new or renovated portion.

3.12.2. For new construction, additions, renovations, or alterations to existing residences, and before construction begins on a proposed residence, the applicant shall submit a complete set of drawings and specifications for the architectural, structural, and mechanical work as follows:

3.12.2.a. For a large assisted living residence, an architect or engineer registered in West Virginia shall prepare, sign, and seal the submitted set of construction drawings and specifications and submit one set of these documents to the Secretary and the state fire marshal for approval. The registered architect or engineer shall also inspect the new residence, or the additions and renovations, during the construction phase.

3.12.2.b. For a small assisted living residence, the applicant shall submit a set of drawings and specifications that are drawn to scale and fully dimensioned, to the Secretary and state fire marshal for approval.

3.12.2.c. Unless substantial construction is started within one year of the date of approval of final drawings, the architect, engineer, or applicant, whichever applicable, shall obtain written permission from the Secretary that the plan approval for construction is still valid and in compliance with this rule.

3.12.3. The Secretary shall inspect sites for all proposed residences and sites of additions or renovations to existing residences, prior to the applicant initiating construction. Sites shall:

3.12.3.a. Have adequate drainage to divert surface water and be located in an area above the 100-year flood plain;

3.12.3.b. Have a water supply that is safe and sized to meet all residential needs and requirements of the sprinkler system and has as its source of water either:

3.12.3.b.1. A public water system that complies with the Bureau for Public Health rule, "Public Water Systems," W. Va. Code R. §§64-3-1, *et seq.*; or

3.12.3.b.2. A water well that complies with the Bureau for Public Health rules, "Water Well Regulations," W. Va. Code R. §§64-19-1, *et seq.*, and "Water Well Design Standards," W. Va. Code R. §§64-46-1, *et seq.*; and

3.12.3.c. Have precautions to assure the residents' safety, if located near railroads, freight yards, traffic arteries, or airports.

3.12.4. A qualified soils engineer shall review any questionable soil conditions, high walls, or surface water runoff, and if conditions require, perform earth core borings and laboratory tests. If engineered soil is installed or other soil tests conducted, the applicant shall provide the Secretary with copies of the soil test reports.

3.12.5. The Secretary shall inspect and approve all construction, new additions, renovations, or alterations prior to the admission of new or additional residents. When construction is substantially complete, the applicant shall submit a substantial completion form signed by all the parties involved and a completed inspection request form to the Secretary.

3.12.6. An assisted living residence shall pay a \$400 fee plus the actual costs of the initial inspections made by the Secretary prior to issuing a license. The cost shall be billed to the assisted living residence or owner(s) by the Secretary after the inspections and must be paid in full before a license is issued.

3.12.7. The applicant shall submit plans for the addition, removal, or modification of equipment that is permanently affixed to the building or that may otherwise involve or necessitate new construction, alterations, or additions to the residence to the Secretary for approval.

3.12.8. Other changes involving equipment, that may or may not require physical changes in the residence, but that may relate to other standards and requirements of this rule may require the Secretary's approval. The applicant shall request approval in advance from the Secretary regarding a specific change or rearrangement. Areas in which changes are likely to require approval include, but are not limited to, the kitchen, the laundry, and the heating equipment.

3.12.9. The applicant shall submit the plan of operation to the Secretary for approval, and the Secretary shall determine the licensed bed capacity. For an increase in the licensed bed capacity, the licensee shall obtain prior written approval of the Secretary.

3.12.10. The residence shall comply with the state fire commission, the International Building Code, 2003 Ed.

3.12.11. The residence shall comply with the Fire Commission rule, "Fire Code," W. Va. Code R. §§87-1-1, *et seq.*

3.12.12. The residence shall comply with the Americans with Disabilities Act (ADA) and the American National Standards Institute (ANSI) codes.

3.12.13. The residence shall comply with local building or zoning codes if they require standards higher than those required by this rule.

3.12.14. The applicant shall have evidence of compliance signed by local fire, building, and zoning officials available onsite for review.

3.12.15. The residence shall have an all-weather, hard surface road that connects directly to a highway.

3.12.16. The residence shall have parking areas with:

3.12.16.a. Clean, solid, earth beds; a compacted stone base; and a hard surface, all-weather finish coat; free of broken, gaped, or uneven paving, with slopes that permit good drainage; and

3.12.16.b. Adequate spaces for all staff on duty and a minimum of one parking space for each five beds.

3.12.17. The residence shall have hard, slip-resistant surface concrete walks at all exits that connect to the main walk or parking area, that are a minimum of 36 inches wide.

3.12.18. The applicant shall ensure that low windows, open porches, changes in floor level, and similar potential hazards are designed so that the danger of accidents is minimized, and that dangerous areas on the site are safeguarded.

3.12.19. The applicant shall store oxygen outdoors in an enclosure protected from the weather or in a well-ventilated oxygen storage room of approved construction, with doors locked to prevent unauthorized entry.

3.12.20. The residence shall have a call system that is audible to staff who are on duty and that can be accessed from each bed and other areas as necessary for the safety of residents. Electronic call systems may be required based on the size of the residence, the staffing patterns, and the configuration of the building.

3.12.21. Bedrooms shall:

3.12.21.a. Have at least 100 square feet of floor area per resident in single occupancy rooms, and 90 square feet of floor area per resident in double occupancy rooms;

3.12.21.b. Have an outside exposure through a vertical transparent window;

3.12.21.c. Not extend below ground level unless granted written approval by the Secretary;  
and

3.12.21.d. Not be occupied by more than two persons.

3.12.22. The residence's toilet and bathing facilities shall provide the following:

3.12.22.a. A minimum of two bathrooms, each containing a flushing toilet and hand washing sink, with a mirror over the sink, at a ratio of no less than one toilet and lavatory for every six residents;

3.12.22.b. A minimum of one bathing facility per floor, with a bath tub or shower, equipped with non-slip surfaces, a flushing toilet, and a hand washing sink, at a ratio of no less than one bathing facility for every 10 residents;

3.12.22.c. Grab-bars at toilets, tubs, and showers that are securely mounted to the finished wall with a steel plate or a two inch by six-inch wood plate backing behind the wall. Grab bar brackets shall be spaced to support 250 pounds of a concentrated load at any point on the grab bar; and

3.12.22.d. Bathroom doors with locking type hardware that swing outward and can be opened from outside in the event of an emergency.

3.12.23. The residence shall have a dining area of at least 15 square feet per resident and an area of at least 15 square feet per resident for leisure space. The dining room may serve as part of the leisure room, and if combined, a dining and leisure room area shall have a minimum of 30 square feet per resident.

3.12.24. If the residence provides laundry services, the laundry room shall have separation between the soiled and clean laundry, mechanical ventilation in the soiled area, a clean area large enough for folding linens, and venting to the outside for any electric or gas dryer.

3.12.25. The residence shall have at least one service sink per floor for a sanitary means of disposal of waste water in an area inaccessible to residents.

3.12.26. The residence shall have sewage disposal in accordance with Bureau for Public Health rules, "Sewer Systems, Sewage Treatment Systems, and Sewage Tank Cleaners," W. Va. Code R. §§64-9-1, *et seq.*, and "Sewage Treatment and Collection System Design Standards," W. Va. Code R. §§64-47-1, *et seq.*

#### **§64-14-4. Administrative Requirements.**

##### 4.1. General Administrative Requirements.

4.1.1. The licensee shall develop and adopt written policies and procedures that are consistent with this rule and specific to the assisted living residence, governing the care and safety of residents, and all other policies and procedures required by this rule. The licensee shall sign and date the policies and procedures at the time of adoption and of any changes. (Class III)

4.1.2. The licensee shall have a copy of the policies and procedures available for review on request by employees, residents, and the general public. (Class III)

4.1.3. The licensee shall have a resident bill of rights, and house rules governing resident behavior and responsibilities, that are both in writing and consistent with this rule. (Class III)

4.1.4. Unless otherwise approved in writing by the Secretary, a licensee shall not rent, lease, or use any part of the residence for any purpose other than the operation of housing residents. (Class III)

4.1.5. A licensee that intends to provide adult day care shall obtain prior approval from the Secretary by notifying the Secretary of the number of individuals the residence proposes to serve in addition to the residence's licensed bed capacity. Individuals to be served shall have the same health screening as required for the residents and shall not have extensive or ongoing nursing care needs. The Secretary's determination shall be based on space requirements, services proposed to be provided, staffing, and the residence's history of compliance with this rule. (Class III)

4.1.6. Any individual, including an employee, or his or her spouse, having a financial interest in the residence shall not serve as a resident's legal representative, with the exception of a representative

payee under the United States Social Security Act, unless he or she is related to the resident within the consanguinity of second cousin. (Class III)

4.1.7. All employees of an assisted living residence shall be subject to the provisions of the West Virginia Clearance for Access: Registry and Employment Screening Act, W. Va. Code §§16-49-1, *et seq.* and W. Va. Code R. §§69-10-1, *et seq.* (Class II)

#### 4.2. The Licensee.

4.2.1. The licensee shall comply with this rule; the terms of the assisted living residence's license; W. Va. Code §§16-5D-1, *et seq.*; other applicable federal, state, or local laws; and with the residence's policies. (Class II)

4.2.2. The licensee shall protect the physical and mental well-being of residents. (Class II)

4.2.3. The licensee shall maintain accurate records and reports required by this rule. (Class II)

4.2.4. The licensee shall administer the residence on a sound financial basis consistent with good business practices and shall maintain fiscal records that accurately identify, summarize, and classify funds received and disbursed for the operation of the residence. The issuance of bad checks or accumulation of delinquent bills constitute evidence that the licensee lacks satisfactory proof of financial ability to operate the residence in accordance with the requirements of W. Va. Code §16-5D-6. (Class II)

4.2.5. The licensee shall notify the Secretary in writing within 10 days of any permanent change in the administrator and in the consulting or supervising registered professional nurse of the residence. A licensee shall not operate a residence more than 30 days without a qualified administrator or supervising registered professional nurse, unless the Secretary grants an extension, based on a determination that a reasonable attempt has been made to find a suitable replacement. (Class III)

4.2.6. The licensee shall report major incidents, as defined in subsection 2.23. of this rule, to the Office of Health Facility Licensure and Certification as soon as possible, and no later than the next business day. (Class III)

#### 4.3. Administrator.

4.3.1. A large residence shall have an administrator who is at least 21 years of age and has an associate degree or its equivalent in a related field, except an individual who was approved as an administrator prior to August 15, 1996, who shall have at least a high school education or its equivalent approved by the State Department of Education. A small residence shall have an administrator who is at least 21 years of age and has completed high school or a general education development (GED) certificate. (Class III)

4.3.2. The assisted living residence shall have an administrator who has received an eligibility fitness determination or variance from the West Virginia Clearance for Access: Registry and Employment Screening unit of the Department of Health and Human Resources. (Class II)

4.3.3. The administrator shall participate in eight hours of training related to the operation of a residence annually and a record of this training shall be available for review. (Class III)

4.3.4. The administrator shall know the requirements of this rule, develop and execute all policies and procedures required by this rule, ensure compliance with all applicable laws, and ensure the adequacy and appropriateness of services delivered to the residents. (Class II)

4.3.5. The administrator or a responsible employee, designated in writing, shall be present and in charge of the residence at all times. (Class II)

#### 4.4. Staffing Requirements.

4.4.1. Each assisted living residence shall have a minimum of one direct care staff person 24 hours per day, who can read and write, and shall have a sufficient number of qualified employees on duty to provide the residents with all of the care and services they require. (Class I)

4.4.1.a. Day shift – In addition to the one direct care staff person on the day shift, the residence shall have one direct care staff on the day shift for each 10 residents identified on their needs assessments to have two or more of the following care needs: dependence on staff for eating, toileting, ambulating residents from one location to another, bathing, dressing, repositioning, oral hygiene, personal grooming, or one or more inappropriate behaviors that reasonably require additional staff to control, such as sexually acting out, stripping in public settings, refusing basic care, destroying property, or injurious behavior to self or others (hereinafter referred to as “special care needs”);

4.4.1.b. Evening shift – In addition to the one direct care person on the evening shift, the residence shall have at least one additional direct care staff on the evening shift for each 15 residents identified on their functional needs assessments to have two or more special care needs;

4.4.1.c. Night shift – In addition to the one direct care person on the night shift, the residence shall have at least one additional direct care staff on the night shift for each 18 residents identified on their functional needs assessments to have two or more special care needs.

4.4.2. One employee who has current first aid training and current cardiopulmonary resuscitation (CPR) training, as applicable, shall be on duty at all times. A record of this training shall be available for review. (Class I)

4.4.3. A multi-story residence shall have at least one awake staff per story while residents are sleeping, unless the residents are certified by a physician or psychologist as not in need of sleep time supervision, and the residence has an emergency call system from the residents to the awake staff person. (Class I)

4.4.4. The residence shall have sufficient staff to meet the laundry, food service, housekeeping, and maintenance requirements of this rule. (Class II)

4.4.5. The licensee shall maintain staffing records that accurately reflect the actual employees on duty in the residence at any given time, including the hours they have worked and the positions they worked, and provide them to the Secretary upon request. (Class III)

4.4.6. If a resident experiences a poor outcome related to a lack of supervision or unmet care needs, the Secretary may require the licensee to add staff. (Class I)

#### 4.5. Employee Orientation and Training.

4.5.1. The licensee shall provide and maintain a record of training to new employees prior to scheduling them to work unsupervised, and no later than within the first 15 days of employment, in accordance with a written plan that includes, at a minimum, emergency procedures and disaster plans; the residence's policies and procedures; resident rights; confidentiality; abuse prevention and reporting requirements; the ombudsmen's role; complaint procedures; specialty care based on individualized resident needs and service plans; the provision of group and individual resident activities; and infection control. (Class II)

4.5.2. The licensee shall provide and maintain a record of in-service training annually to all staff on the topics of resident rights, confidentiality, abuse prevention and reporting requirements, the provision of resident activities, infection control, fire safety and evacuation plans, and specialty care based on individual resident needs and service plans. (Class II)

4.5.3. The licensee shall provide training to all new employees within 15 days of employment and annually thereafter on Alzheimer's disease and related dementias. The licensee shall maintain an employee training record. The training shall be a minimum of two hours in duration and shall include all the following: basic understanding of Alzheimer's disease and other dementias; communication approaches and techniques for use when interacting with persons with Alzheimer's disease or a related dementia; prevention and management of problem behaviors; and activities and programming appropriate for these individuals. (Class II)

#### 4.6. Personnel Records.

4.6.1. The licensee shall maintain a confidential personnel record for each employee, including the administrator, and for volunteers who provide personal assistance to more than one resident. Each record shall contain at least the following:

4.6.1.a. The employee's date of employment, current home address and telephone number, social security number, and proof of compliance with age requirements of applicable federal and state laws;

4.6.1.b. Evidence that each assisted living residence employee, independent contractor, or volunteer has received an eligibility fitness determination or variance from the West Virginia Clearance for Access: Registry and Employment Screening unit of the Department of Health and Human Resources, if applicable;

4.6.1.c. A position title and proof of any required education or license; and

4.6.1.d. A health record containing the results of a pre-employment and annual screening for tuberculosis and other communicable diseases as indicated by exposure, prevalence, or currently accepted medical practice in congregate living situations as indicated by the Secretary. (Class III)

4.6.2. The licensee shall maintain personnel records on file at the residence for at least three years following the termination of an employee and shall document the date and reason for the termination. (Class III)

#### 4.7. Administrative Admission and Discharge.

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4.7.1. The licensee shall not discriminate against residents or a prospective resident on the basis of race, national origin, religion, age, gender, sexual orientation, or disability. (Class III)

4.7.2. The licensee shall enter into a written contract with the resident on admission to the residence that specifies, at a minimum, the following information:

4.7.2.a. The type of resident population that the residence is licensed to serve and will serve;

4.7.2.b. The health and nursing care services that the residence will provide to meet the resident's needs, including cardiopulmonary resuscitation, and how they will be provided;

4.7.2.c. An annual or monthly contract price, full disclosure of all costs including what changes in care needs will result in increases, additions or modifications to the costs, the refund policy, and an assurance that the resident shall not be held liable for any cost that was not disclosed;

4.7.2.d. Discharge criteria, including notification policies;

4.7.2.e. How to file a complaint;

4.7.2.f. Medication storage, handling, distribution, and disposition, and responsibility for payment;

4.7.2.g. Management of residents' funds; and

4.7.2.h. Whether or not the residence has liability insurance coverage. (Class III)

4.7.3. The licensee shall provide a copy of the contract to each party in the contract and maintain a copy of the contract on file in the residence. If the existing contract does not meet the requirements of this rule, the licensee shall provide current residents with a new or updated contract that includes the required provisions within 90 days of the effective date of this rule. (Class III)

4.7.4. At the same time as providing the contract, the licensee shall also provide the resident with the following information:

4.7.4.a. House rules governing resident behavior and responsibilities, including the residence's smoking policy;

4.7.4.b. The resident's bill of rights;

4.7.4.c. How the resident's personal property will be protected from loss and theft;

4.7.4.d. The requirements for medical examinations and treatment orders;

4.7.4.e. How the resident will be assisted in making appointments for medical, dental, nursing, or mental health services, and how transportation to and from these services will be arranged; and

4.7.4.f. How to access the residence's policies and procedures. (Class III)

4.7.5. The licensee is prohibited from entering into a life care contract without the prior written permission of the Secretary. In making a determination to grant permission, the Secretary shall consider the licensee's financial situation by reviewing the licensee's financial statements for a minimum of three years and any related information he or she requests; the licensee's experience in the management of a life care community; and the licensee's ability to potentially manage residents with a catastrophic illness or disease. (Class III)

4.7.6. Thirty days prior to any increase, addition, or other modification of the rates of the resident's care or services, the licensee shall give the resident a written notice of the proposed change. However, when the increase, addition, or modification in cost is required by the resident's increased care needs as determined by a licensed health care professional, and the licensee has informed the residents, in writing, of the possibility of such increase, addition, or modification at the time of admission and periodically during his or her stay, the 30-day notice shall be waived. The licensee shall instead give the residents a choice between paying the increase, addition, or modification or moving to another residence. If the resident chooses to move, the resident is required to give notice of the move as set out in the admission contract. (Class III)

4.7.7. The licensee shall give the resident notice of and file a copy of the notice in the resident's record of the 30-day written notice prior to discharge, unless an emergency situation arises that requires the resident's transfer to a hospital or other higher level of care, or if the resident is a danger to him or herself or others. (Class III) The licensee shall assist the resident to find an alternative placement that is appropriate to the resident's individual needs as identified by the service plan.

4.7.8. The licensee shall maintain a register of all residents in order by the dates of the residents' admissions. The register shall include each resident's name, the date of admission, the date of his or her last day in the residence, and if transferred, the name of the place to which the resident was transferred. (Class III)

4.7.9. The licensee shall keep resident records in safe storage for at least five years from the date of the death, discharge, or transfer of the resident. If the residence ceases to operate, the licensee shall procure a holding area for the resident records that will ensure the confidentiality and safety of the records from loss, destruction, or unauthorized use. (Class III)

#### 4.8. Management and Control of Resident Funds.

4.8.1. The licensee shall manage a resident's funds at the written request of the resident only, in the manner directed by the resident, in the resident's best interests, using generally accepted accounting principles to manage the funds, and in accordance with this rule. (Class III)

4.8.2. The licensee shall assure that the accounting system does not commingle resident funds with the assisted living residence's funds or with the funds of any other person. (Class III)

4.8.3. The licensee shall deposit a resident's personal funds exceeding \$200 in an interest-bearing account at a local bank. (Class III)

4.8.4. If the licensee handles resident funds in excess of \$25 per resident and in excess of \$500 for all residents in any month, he or she shall file a bond in an amount and with such surety as the Secretary approves that is sufficient to cover all resident funds at all times. The sum of the bond to be fixed by the Secretary based upon the amount of resident funds may not be less than \$2,500, as shown in Table 64-14

A at the end of this rule. When the amount of any bond that is filed is insufficient to adequately protect the resident funds, or when the amount of the bond is impaired, the licensee shall file an additional bond in an amount necessary to adequately protect the resident funds. (Class III)

4.8.5. The licensee shall maintain an account record with supporting documentation for each resident that shows in detail all funds received on behalf of the resident and the disposition of all funds received. Persons shopping for residents shall provide a list with a description and price of items purchased if the purchase exceeds \$10, along with payment receipts, for these items. (Class III)

4.8.6. The licensee shall provide upon request a complete, accurate accounting of the receipt, management, and disposition of resident funds to the resident and his or her representative, any authorized entity, and to the Secretary, and at least quarterly to the resident if not requested. (Class III)

4.8.7. If the resident or legal representative requests to terminate the resident's account, the licensee shall provide an accounting for all funds received and expended, and refund any money remaining in the account to the resident or legal representative. (Class III)

#### **§64-14-5. Resident Rights.**

##### 5.1. General Rights.

5.1.1. The licensee shall post in a conspicuous place the assisted living residence's license, a copy of the residents' rights, the house rules including visiting hours, and the phone numbers of the abuse hotline, the Office of Health Facility Licensure and Certification, and the state ombudsman. (Class III)

5.1.2. The licensee shall also post the name, address, and telephone number of the designated long-term care ombudsman program serving the region in which the residence is located, with a brief description of the services provided by the long-term care ombudsman program, and a statement of the penalties for willful interference and retaliation. (Class III)

5.1.3. The licensee shall provide one or as many copies as needed of the residents' rights to the resident. (Class III)

5.1.4. The licensee shall promptly notify the resident and the resident's legal representative or designated family member when there is a change in residents' rights. (Class III)

5.1.5. The licensee shall notify the resident and his or her representative or designated family member at least 72 hours prior to a change in room or roommate assignment unless an emergency situation occurs. (Class III)

5.1.6. The resident has the right to have a representative exercise one or more of the resident's rights, to the extent provided by federal and state law.

5.1.6.a. The licensee must treat the decisions of the legal representative as the decisions of the resident to the extent required by a court or delegated by the resident, in accordance with federal and state law.

5.1.6.b. The resident retains the right to exercise those rights not delegated to the legal representative, including the right to revoke a delegation of rights, except as limited by state law.

5.1.6.c. The licensee shall not extend to the legal representative the right to make decisions on behalf of the resident beyond the extent required by the court or delegated by the resident, in accordance with federal and state law.

5.1.7. Nothing in this rule shall in any way be construed to diminish or deprive any individual of his or her rights under federal and state laws. (Class III)

5.1.8. A resident shall be encouraged and assisted to exercise his or her rights as a resident and as a citizen, including voting in governmental elections. (Class III)

5.1.9. A resident has the right to be free from restraint, interference, coercion, discrimination, or reprisal from the licensee in exercising his or her rights. (Class II)

5.1.10. A resident has the right to be free from discriminatory practices related to admission or services on the grounds of race, religion, national origin, age, gender, sexual orientation, or disability. (Class II)

5.1.11. A resident has the right to manage his or her financial affairs and shall not be required to deposit his or her personal funds with the residence. (Class III)

5.1.12. A resident has the right to inspect all of his or her records, to obtain one free copy of the records, and to purchase additional copies at a reasonable cost. (Class III)

5.1.13. A resident has the right to view the results of inspections and complaint investigations conducted by the licensing agency. The licensee shall make available, in a place accessible to residents, the deficiencies cited during the most recent survey, any complaint investigation conducted within the preceding 12 months, and the residence's plan of correction. (Class III)

5.1.14. A resident has the right to retain and use personal possessions including furnishings and clothing as space permits, unless to do so would infringe upon the rights, health, or safety of other residents. (Class III)

## 5.2. Treatment.

5.2.1. A resident has the right to participate in planning his or her overall care, to use the physician and pharmacist of his or her choice, to be fully informed in advance about care and treatment that may affect him or her, to make advanced directives about his or her medical care, and to refuse treatment. (Class II)

5.2.2. The licensee shall ensure that no resident is abused, exploited, neglected, mistreated, or restrained by physical or chemical means. Staff shall only use physical restraints in an emergency under physician's order and for the safety of the resident or others in the assisted living residence until professional help arrives on the premises. Restraint use shall not exceed a 24-hour period. Restraints used during emergencies are limited to a cloth vest or soft belt restraints, and only trained staff shall apply a restraint. Staff shall release the restraint every two hours for at least 10 minutes. Staff shall document in the resident record the reason for restraint use and all procedures followed. Only half-length bed side rails are permissible. (Class I)

5.2.3. The licensee or staff shall report neglect, abuse, or emergency situations immediately, in accordance with W. Va. Code §9-6-9, by contacting the adult protective services at the centralized reporting center utilizing the hotline number. In all situations of suspected abuse or neglect, the Department of Health and Human Resources adult protective services reporting form must be completed within 48 hours and sent to the appropriate parties as written follow-up to the immediate report. In addition, the licensee or staff shall contact the assisted living residence's licensing agency as provided in subdivision 5.2.6. of this rule. The Secretary may report alleged failures by a licensed health care professional to report alleged incidents of neglect, abuse, or emergency situations to the individual's licensing board. (Class I)

5.2.4. The licensee shall ensure that all allegations involving abuse, exploitation, or neglect are immediately and thoroughly documented and investigated by the licensee, or his or her designee, on receipt of the allegation. While the investigation is in progress, the licensee shall take measures to ensure that further abuse does not occur. (Class I)

5.2.5. If the allegation is substantiated, the licensee shall assure that appropriate sanctions are invoked, or actions are taken to prevent a reoccurrence of alleged abuse, exploitation, or neglect. (Class I)

5.2.6. The licensee shall notify the licensing agency within 72 hours of the date of an allegation of abuse, exploitation, or neglect. The licensee shall concurrently forward to the licensing agency documentation of the investigation, the results of the investigation and the response to the investigation. (Class III)

5.2.7. A resident has the right to refuse to participate in experimental research. A resident may participate in experimental research only when he or she has given prior written informed consent that conforms with applicable federal and state laws. (Class II)

5.2.8. A resident has the right to make choices regarding the activities of his or her daily life, including but not limited to when to retire at night or arise in the morning. (Class III)

5.2.9. A resident has the right to be free to leave the residence and grounds according to his or her needs and capabilities as documented in the service plan. (Class II)

5.2.10. A resident has the right to personal privacy and confidentiality, including accommodations, medical treatment, records, written and telephone, computer and other electronic communications, personal assistance, and visits and meetings of family and resident groups. (Class II)

5.2.11. The use of visual and auditory devices to monitor areas of the assisted living residence is restricted to common areas only. The licensee shall provide written notice to the resident or his or her legal representative of the use of these devices at the time of admission and also post a notice about their use in a prominent place in the residence. (Class III)

5.2.12. No person shall enter a resident's room without identifying himself or herself to the resident and receiving the resident's permission to enter. (Class III)

5.2.13. A resident has the right to voice grievances with respect to treatment or care provided without discrimination or reprisal for voicing the grievance. (Class II)

5.2.14. A resident has the right to prompt action by the licensee to resolve any complaints the resident has, including those with respect to the behavior of other residents. The licensee shall respond to the complainant in writing no later than four days after the complaint is filed. (Class III)

5.2.15. A resident has the right to be employed inside or outside the residence if the resident enters into the agreement voluntarily and the agreement to work in the residence is not a condition for admission or continued stay in the residence. A resident who performs staff duties shall meet the personnel and health requirements for that position and shall not perform work that creates conditions potentially hazardous for himself, herself, or others. (Class II)

5.2.16. A resident has the right to refuse to perform services for the residence. (Class III)

### 5.3. Access, Visitation, and Communication.

5.3.1. A resident has the right to participate in social, religious, and community activities of his or her choice. (Class III)

5.3.2. A resident has the right to meet and communicate privately with persons of his or her choice. (Class III)

5.3.3. A resident has the right to assemble and organize with other residents to solicit and recommend improvements in the assisted living residence's services and to resolve problems that arise between the residents and the licensee. (Class III)

5.3.4. A resident has the right to send and promptly receive unopened mail. A staff member shall only open and read correspondence when requested by a resident. (Class III)

5.3.5. A resident shall have access to stationery, postage, and writing tools. (Class III)

5.3.6. A resident shall have access to a telephone and privacy during its use. (Class III)

5.3.7. A resident has the right to receive visitors during established and mutually agreed upon visiting hours, but relatives, members of the clergy, and other individuals of the resident's choosing may visit at any time, subject to the resident's right to withdraw consent. No visitor's presence may infringe upon the rights of other residents. (Class II)

5.3.8. A resident has the right to receive information from agencies acting as client advocates, such as the state's long-term care ombudsman program, and to contact these agencies. (Class II)

5.3.9. All of the following shall have immediate access to any resident and the premises of the assisted living residence; any representative of the state acting in an official capacity related to assisted living residences; the resident's individual physician; the state and local long-term care ombudsmen; and agencies responsible for the protection and advocacy system for mentally retarded or developmentally disabled individuals and the mentally ill. (Class I)

## **§64-14-6. Health Care Standards.**

### 6.1. Admission and Discharge.

6.1.1. The licensee shall not admit to the assisted living residence individuals requiring ongoing or extensive nursing care and shall not admit or retain individuals requiring a level of service that the residence is not licensed to provide or does not provide. (Class I)

6.1.2. A resident whose condition declines after admission and is receiving services coordinated by a licensed hospice or certified home health agency, may receive these services in the residence if the residence has a backup power generator for services using equipment that requires auxiliary electrical power in the event of a power failure. The licensee shall ensure that a resident who requires ongoing or extensive nursing care is provided the care and services necessary to meet his or her needs. The provision of services to the residence receiving nursing care or hospice care shall not interfere with the provision of services to other residents. (Class I)

6.1.3. If a resident exhibits symptoms of a mental or developmental disorder that pose a risk to self or others, and the resident is not receiving behavioral health services, the licensee shall advise the resident or his or her legal representative of the behavioral health service options within the community. The resident shall have 30 days to obtain necessary services. If the resident or his or her legal representative fails to seek treatment in a timely manner and the risk persists, then the licensee after consultation with the resident's physician, shall refer the resident to a licensed behavioral health provider. (Class II)

6.1.4. The licensee shall seek immediate treatment for a resident or may refuse to admit or retain a resident if there is reason to believe that the resident may suffer serious harm, or is likely to cause serious harm to himself, herself or to others, if appropriate interventions are not provided in a timely manner. (Class I)

6.1.5. If a resident has care needs that exceed the level of care for which the residence is licensed or can provide, the licensee shall inform the resident, or his or her legal representative in writing, of the need to move to a health care facility that can provide the needed level of care. (Class III)

6.1.6. The licensee shall assist the resident, or his or her legal representative, to secure placement in another health care facility and shall document in the resident's record the efforts made to obtain placement. (Class III)

6.1.7. Prior to transfer or discharge of a resident, the licensee shall prepare a summary to accompany the resident that includes the resident's medical history, functional needs assessment and service plans, the current physician's orders, the resident's advanced directives, any allergies and pertinent progress notes. The licensee shall retain a copy of such documentation in the resident's record. (Class II)

## 6.2. Records.

6.2.1. The licensee shall retain residents' records in a secure area in the residence and shall make the records available for inspection by the Secretary. (Class III)

6.2.2. Upon a resident's admission, the licensee shall start a record for him or her that includes:

6.2.2.a. The resident's name, social security number, date of birth, sex, marital status, and religious preference, if any;

6.2.2.b. The names, addresses, and telephone numbers of the following, if applicable: the resident's physician, dentist, legal representative, person or agency responsible for the resident's support payments, next of kin or person to be notified in case of an emergency, and any case management agency involved in the resident's care.

6.2.2.c. All agreements or contracts entered into between the resident and the licensee;

6.2.2.d. Advanced directives; allergies; the dates of appointments with physicians, dentists, or other health care providers; all contacts by the residence's staff with the residence's physician; and observations by licensed nurses, physicians, and others authorized to care for the resident; and

6.2.2.e. Copies of all documents granting legal authority to a representative.

6.2.2.f. Any other information as required in subsections 6.3., 6.4., 6.5., 6.6., 6.7., and 8. of this rule. (Class III)

6.2.3. The licensee shall keep in each resident's record current documentation regarding the resident's health status, any changes in health status, and staff responses to the changes. (Class II)

### 6.3. Assessments and Service Plans.

6.3.1. Each resident shall have a written, signed, and dated health assessment by a physician or other licensed health care professional, authorized under state law to perform this assessment, not more than 60 days prior to the resident's admission, or no more than five working days following admission, and at least annually after that. The admission and annual health assessment shall include screening for tuberculosis and other communicable diseases if indicated by exposure, prevalence, or risk according to current medical practice to congregate living situations as indicated by the Secretary. The licensee shall maintain documentation of the assessment in the resident's medical record. (Class II)

6.3.2. Within five days of admission, each resident shall have an individualized functional needs assessment completed in writing by a licensed health care professional which is maintained in the resident's medical record. At a minimum, the resident's assessment shall include a review of health status and functional, psycho-social, activity, and dietary needs. (Class II)

6.3.3. Within seven days of admission, each resident shall have a service plan based upon his or her functional needs assessment and individual needs that includes, but is not limited to, the type of assistance needed to perform activities of daily living; the ability to receive prescribed medications and treatments; the ability to follow any planned diet, rest, or activity regimen; the ability to engage in activities and programs appropriate to the individual's level of functioning; and the ability to use equipment such as hearing aids, glasses, and canes. Staff shall have access to the service plan, use it as a guide for providing resident care, and maintain it as a part of the resident's medical record. (Class II)

6.3.4. The licensee shall ensure that the functional needs assessment and service plans reflect the resident's current needs and are updated annually or as indicated by a significant change in the resident's condition. (Class II)

### 6.4. Medications and Treatments.

6.4.1. The licensee shall ensure that resident care is provided by appropriately licensed health care professionals, and that medications and treatments given to residents are administered as required by applicable federal and state law, including W. Va. Code §§16-50-1, *et seq.* and Department of Health and Human Resources rule, "Medication Administration and Performance of Health Maintenance Tasks by Approved Medication Assistive Personnel," W. Va. Code R. §§64-60-1, *et seq.* (Class I)

6.4.2. A prescription or written or verbal order from a professional authorized by state law to prescribe medications is required for obtaining, altering, discontinuing, and administering or self-administering prescription and over-the-counter medications, treatments, and therapies. The licensee shall keep copies of the prescriptions or written orders in the resident's record. (Class I)

6.4.3. A licensed health care professional shall determine whether or not a resident is capable of self-administration of medications in accordance with subsection 2.35. of this rule and shall document it in the resident's medical record prior to the resident self-administering medications, and also on a significant change of the resident's condition. (Class II)

6.4.4. The prescribing health care professional who gives a verbal order shall review and sign the order within 30 working days of the original order date. (Class II)

6.4.5. The attending physician, prescribing health care professional, or a consulting pharmacist shall review the medication regimen of each resident as needed, and at least annually. The resident's record shall contain documentation of this review. (Class II)

6.4.6. The licensee shall keep a record of all medications given to each resident indicating each dose administered. The record shall include the resident's name; the name of the medication; the dosage to be administered and route of administration; the time or intervals at which the medication is to be administered; the date the medication is to begin and end; the printed name, initials, and signature of the individuals who administered the medication; and any special instructions for handling or administering the medication, including instructions for maintaining aseptic conditions and appropriate storage. (Class I)

6.4.7. The licensee shall keep medications in a locked room, cabinet, or other storage receptacle, accessible only to the staff responsible for medications. If a resident is capable of self-administration of medication, the licensee shall provide him or her resources to store medications in a manner to be inaccessible to other residents. (Class I)

6.4.8. The licensee shall store all medications in their original containers, legally dispensed, and labeled in accordance with the rules of the West Virginia Board of Pharmacy, for the resident for whom it has been prescribed, including the name and strength of medication, manufacturer name, lot number, and expiration date. Only a licensed pharmacist shall re-label medications. If the prescribing health care provider changes medication directions, the licensee shall have a written, signed, and dated order for the change in the resident's record. (Class I)

6.4.9. If refrigeration of medication is required, the licensee shall provide: a refrigerator in a locked room, a locked refrigerator, or a locked box within the refrigerator for storage. A thermometer is required in a refrigerator storing medications. The licensee shall store refrigerated medications within the recommended temperature range on the medication package. (Class II)

6.4.10. If Schedule II drugs of the Uniform Controlled Substances Act W. Va. Code §§60-A-1-101, *et seq.* are administered, a copy of the written prescription signed by the physician shall be in the resident's record and a proof of use record shall be maintained. Schedule II drugs shall be stored in a manner so that they are securely protected by two locks. The key to the separately locked Schedule II drugs shall not be the same key that is used to gain access to the non-scheduled drugs. (Class I)

6.4.11. The licensee shall not return unused, discontinued, or outdated drugs listed in Schedules II, III, IV or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. § 801, *et seq.*, to the pharmacy, but shall destroy them in the presence of a pharmacist and a registered nurse; and keep a record for at least two years that contains the resident's name that was on the prescription, the name and strength of the drug, the prescription number, the amount destroyed, the date of destruction, and the signatures of the witnesses. (Class III)

6.4.12. The licensee shall have a policy regarding unused over-the-counter and non-scheduled drugs of a resident no longer at the facility.

6.4.13. When a resident requires oxygen, the licensee shall ensure there is a portable source available for out-of-room activities and in the event of power failure.

6.4.14. The licensee shall provide all resident care and services in accordance with current standards of practice using appropriate infection control techniques. (Class I)

#### 6.5. Accident, Illness, and Major Incident Procedures.

6.5.1. The licensee shall have readily available at all times a standard first-aid kit, or its equivalent, to provide emergency aid for commonly occurring household injuries. (Class III)

6.5.2. When a resident has an illness or accident that results in an injury or a resident complaint, the staff shall contact an appropriately licensed health care professional to assess the severity and cause of the illness or accident, advise of the treatment needed related to the accident or illness, and record actions taken in the resident's record. If the resident needs emergency assistance, the staff on duty shall first obtain the necessary assistance. (Class I)

6.5.3. Staff shall monitor and document the resident's condition at least once every eight hours for a period of 24 hours following the accident or the onset of the illness, more frequently if specified by the licensed health care professional, or at least every four hours if the resident suffers from Alzheimer's disease or a related dementia and cannot communicate his or her condition or needs. (Class II)

6.5.4. When a major incident or any significant change in the resident's condition occurs, the staff shall promptly notify the resident's physician or other appropriately licensed health care professional, such as emergency medical personnel, and the responsible party or next of kin, and document this notification in the resident's record. (Class I)

6.5.5. If an epidemic occurs or a reportable disease is diagnosed, the licensee shall comply with the recommendations of the local public health authority in handling and reporting it. (Class I)

#### 6.6. Limited and Intermittent Nursing Care.

6.6.1. The licensee shall arrange for a registered professional nurse to assume responsibility for the oversight of nursing care and services. Arrangements for nursing services may be made by contract with a registered nurse or a nursing service with a management entity; or the licensee may employ a registered nurse. Arrangements with a home care agency will satisfy the requirement for nursing oversight if they meet all the requirements of this section. (Class I)

6.6.2. The licensee shall ensure that the registered nurse is notified immediately when a resident with nursing care needs is admitted or readmitted, and immediately when a nursing care need for a current resident is identified. Documentation of the notification shall be in the resident's record. (Class I)

6.6.3. The licensee shall implement the recommendations of the registered nurse regarding care, services, and staff training. (Class I)

6.6.4. Unless the licensee employs a full-time registered nurse, he or she shall ensure that the registered nurse maintains a record with an entry for each visit which shall include at least the date, time in, and time out; a list of duties performed during each visit; a brief statement regarding identified concerns and recommended actions taken to resolve them; and a complete signature. (Class III)

6.6.5. The licensee shall develop a plan that provides for 24-hour accessibility between the residence, the registered nurse, and other emergency personnel. (Class I)

6.6.6. A registered nurse shall perform and document a nursing assessment for each resident with nursing needs within 24 hours following admission and update the assessment at the time of any significant, temporary, or permanent change in the resident's condition. (Class I)

6.6.7. A registered nurse shall develop and document a service plan to meet any identified nursing and medical needs of the resident within seven days after admission and shall update the plan at the time of a significant temporary or permanent change in condition. (Class I)

6.6.8. A registered nurse shall see the resident weekly, if the resident has nursing care needs, and more often if indicated by the needs of the resident, and document a progress note in the resident's record reflecting the status of the resident and any changes in his or her condition. (Class II)

6.6.9. A registered nurse shall provide needed training or recommend to the licensee appropriate training for staff, including when to contact the registered nurse regarding changes in a resident's condition. (Class II)

6.6.10. A registered nurse shall participate in the decision to admit or discharge a resident with nursing care needs. (Class II)

#### 6.7. Resident Death.

6.7.1. Staff shall immediately report the suspected death of a resident to the resident's physician, to the resident's next of kin or legal representative, and hospice staff, if applicable. Any death suspected to be the result of abuse or neglect shall be immediately reported to the coroner. (Class III)

6.7.2. Upon the death of a resident, the following information shall be entered in the resident's record:

6.7.2.a. A record of the date and time of the notification of the resident's physician or hospice staff, the resident's representative or next of kin; and

6.7.2.b. The date, time, and circumstance of death, including the name of person to whom the body was released and any other details specific to the death. (Class III)

6.7.3. Upon a resident's death, the licensee shall release all of the resident's belongings and funds to the estate administrator or executor. Documentation of release to the estate administrator or executor shall be maintained by the assisted living residence. (Class III)

**§64-14-7. Activities.**

7.1. The licensee shall provide an activity program designed to meet the interests of, and promote the highest level possible of well-being in, all dimensions of life including physical, psychological, social, and spiritual, of each resident.

7.2. The program shall:

7.2.1. Provide information and referral services and facilitate opportunities for using the social, recreational, and vocational activities within the community;

7.2.2. Provide a minimum of seven hours per week, one hour per day, unless the residents request more, of various types of scheduled activities, including activities appropriate for residents with Alzheimer's disease or a related dementia; and

7.2.3. Provide a monthly calendar that lists the type, time, and duration of all social and recreational activities for the residents and documentation that activities did or did not take place. (Class III)

**§64-14-8. Dietary Services.**

8.1. The licensee shall provide meals that are in substantial compliance with current Recommended Dietary Allowances of the Food and Nutrition Board of National Academy of Sciences, National Research Council, or as specified in this rule, except as ordered by a physician. (Class II)

8.2. The licensee shall ensure that each resident is offered at least three freshly prepared meals seven days a week, and also special diets and snacks that meet the resident's needs and choices, as identified in his or her needs assessment. The meals shall provide a variety of foods as follows:

8.2.1. Breakfast: fruit or juice, cereal, whole-grain or enriched bread products, and Grade A vitamin D milk.

8.2.2. Noon and evening meals: protein sources, such as meat, poultry, fish, eggs, cooked dried legumes, cheese, or peanut butter; vegetables or fruit; whole-grain or enriched grain food products; and Grade A vitamin D milk. (Class II)

8.3. When therapeutic or modified diets are provided by the residence, the licensee shall maintain on file a physician's order for each diet. The licensee shall prepare therapeutic or modified diets, as ordered by the physician, according to written instructions that includes types and amounts of food to be

served, obtained from the resident's physician or a dietician. At no time shall a resident be offered less than 1,400 calories daily, unless specifically ordered by a physician. (Class I)

8.4. The licensee shall provide each resident with the amount of food and fluid on a daily basis necessary to maintain his or her appropriate minimum average weight. Staff shall weigh residents upon admission and monthly thereafter and document the resident's weight in his or her record. If the staff notes an unplanned weight loss or gain of five pounds or more in the resident's record, the staff shall report it to the resident's physician. (Class III)

8.5. The licensee shall encourage resident participation in menu planning and shall serve meals at times mutually agreed upon by residents in the assisted living residence with consideration of individual resident preferences. (Class III)

8.6. The licensee shall accommodate residents who are unable to eat at the planned mealtime and provide for a meal substitution if the resident does not tolerate or like the foods planned for the meal. (Class III)

8.7. The licensee shall maintain a daily record of actual foods served for each meal and vary the menu content. (Class III)

8.8. The licensee shall keep grocery receipts and records of actual food served to the residents on file in the assisted living residence for at least 30 days. (Class III)

8.9. The licensee's food service facilities shall comply with Bureau for Public Health rule, "Food Establishments," W. Va. Code R. §§64-17-1, *et seq.* (Class II)

**§64-14-9. Fire Safety, Disaster and Emergency Preparedness and Training.**

9.1. Fire Safety.

The licensee shall provide evidence of compliance with applicable rules of the state fire commission. The state fire marshal's and Secretary's written approval are required for any variation from compliance with the fire code. (Class I)

9.2. Disaster and Emergency Preparedness Plan.

9.2.1. The assisted living residence shall have a written disaster and emergency preparedness plan with procedures to be followed in any emergency that could severely affect the operation of the residence. (Class II)

9.2.2. The disaster and emergency preparedness plan shall have procedures with specific tasks and responsibilities for each class of employee in the event of missing residents, high winds, tornadoes, floods, bomb threats, utility failure, and severe winter weather. (Class II)

9.2.3. The disaster and emergency preparedness plan shall include a minimum of an emergency alternate shelter agreement, an emergency transportation policy, and a three-day food and drinking water supply. (Class II)

9.2.4. The licensee shall provide copies of the disaster and emergency preparedness plan at all staff stations; and staff shall know the location of the plan at all times. (Class I)

9.2.5. The licensee or administrator shall review and update the disaster and emergency preparedness plan on an annual basis and shall sign and date the plan to verify review. (Class III)

9.2.6. The licensee shall conspicuously post emergency call information near each telephone in the residence, excluding telephones in residents' rooms, with the telephone numbers of the fire department, the police, an ambulance service, and other appropriate emergency services, and key staff telephone numbers. (Class I)

9.2.7. The licensee shall rehearse the disaster and emergency preparedness plan with all staff from each shift annually and shall keep documentation of the rehearsal that includes verification of participation by each employee's signature and a critique of the rehearsal by the licensee or administrator. (Class I)

9.2.8. The licensee shall within 24 hours of admission, show all new residents how to evacuate the residence in an emergency, and shall document this in the residents' records. (Class I)

**§64-14-10. Physical Facilities.**

10.1. Physical Facilities and Equipment.

10.1.1. The licensee of an assisted living residence built, renovated, or altered after the effective date of this rule shall maintain the residence in accordance with the requirements of subsection 3.12. of this rule. (Class I)

10.1.2. The licensee shall provide maintenance and housekeeping to the interior and exterior of the residence that maintains a safe, sanitary, and accident-free living environment. (Class I)

10.1.3. The licensee shall establish and conduct a program of preventative maintenance for all equipment as recommended by the manufacturer. (Class III)

10.1.4. The licensee shall keep the interior and exterior of the residence clean and in good repair. (Class II)

10.1.5. The licensee shall keep the residence free of insects, rodents, and vermin. (Class III)

10.1.6. Any method of extermination of insects, rodents, and vermin used by the licensee in the residence shall not create a fire or health hazard. (Class I)

10.1.7. The residence shall have a heating system capable of maintaining a temperature in all rooms used by residents of at least 72 degrees Fahrenheit. (Class II)

10.1.8. The residence shall have cooling devices or a system so that inside temperatures do not exceed 80 degrees Fahrenheit. Acceptable cooling devices include, but are not limited to, air conditioners, electric fans, and heat pumps. (Class II)

10.1.9. The residence shall have a call system that is audible to staff and can be accessed from each bed and other areas as necessary for the safety of residents. (Class II)

10.1.10. The Secretary may require the licensee to provide alarm systems for resident safety if a resident exhibits potentially harmful behaviors such as wandering from the residence. (Class I)

10.1.11. The residence shall have space for the storage of linens, maintenance and housekeeping supplies, equipment, and food supplies. (Class II)

## 10.2. Bedrooms.

10.2.1. The licensee shall provide each resident with a bed in a bedroom and shall not place beds in corridors, living rooms, kitchens, dining rooms, basement, attic, or any other area not commonly used as a bedroom. (Class II)

10.2.2. In an existing large assisted living residence, bedrooms shall contain at least 80 square feet of floor area per resident. In an existing small assisted living residence, semi-private bedrooms shall contain at least 60 square feet of floor area per resident and private rooms shall contain 80 square feet. (Class III)

10.2.3. In a newly constructed or renovated residence no more than two persons shall occupy a bedroom. In an existing residence no bedroom shall be occupied by more residents than the bed capacity approved by the Secretary on the effective date of this rule. (Class III)

10.2.4. Staff of the residence shall not share bedrooms with residents and shall not use resident bedrooms for any purpose other than to house residents. (Class III)

10.2.5. At least three feet of space shall separate beds. (Class III)

10.2.6. The licensee shall ensure that each resident has a bed and mattress at least 36 inches wide that are substantially constructed, in good repair, comfortable, and able to accommodate the resident's needs and promote independence. (Class III)

10.2.7. Each bed shall have a clean, comfortable pillow, pillow case, two sheets, a bed spread or other type of covering, and additional bed covering to keep residents warm during emergencies and cold weather. (Class III)

10.2.8. The licensee shall ensure that there is a supply of sheets, pillow cases, bed coverings, towels, wash cloths, and other linens necessary to provide a minimum of two changes per bed, and clean bed linens for each resident at least once a week and more often if needed. (Class III)

10.2.9. The licensee shall ensure that every closet door latch can be readily opened from inside in case of emergency. (Class II)

10.2.10. The licensee shall ensure that windows have curtains, shades, or blinds that may be opened and closed and are kept clean and in good repair. (Class III)

10.2.11. The licensee shall ensure that each bedroom has at least the following furniture for each resident:

10.2.11.a. A night stand or the equivalent;

10.2.11.b. A closet, locker, or wardrobe space with a minimum dimension of 20 inches by 22 inches by 60 inches, excluding shelf and storage space;

10.2.11.c. A chest of drawers, or the equivalent, with at least three drawers for the storage of clothing and personal items; and

10.2.11.d. A chair suitable to the resident's needs and an adequate light source for reading. (Class III)

10.2.12. The licensee shall provide bedroom furnishings that are in good repair, reasonably attractive and comfortable, of a nature to suggest a private home setting, and with residents' individual tastes taken into consideration. When space permits, residents' personal furniture may be used. (Class III)

### 10.3. Toilets, Hand Washing, and Bathing Facilities.

10.3.1. An existing residence's toilet and bathing facilities shall consist of the following:

10.3.1.a A bathroom containing a flushing toilet and hand washing sink, with a mirror over the sink, at a ratio of one toilet and lavatory for every six residents; and

10.3.1.b. A minimum of one bathing facility per floor, with a bath tub or shower, equipped with non-slip surfaces, a flushing toilet, and a hand washing sink; at a ratio of one per 10 residents. (Class III)

10.3.2. The licensee shall ensure that toilet and bathing facilities are provided with liquid soap, toilet tissue, and a sanitary method for drying hands. (Class III)

10.3.3. The licensee shall provide towel bars either in the residents' bedroom or the bathroom. Space for towel bars shall accommodate the number of residents using the bathing facility.

10.3.4. Bath tubs, showers, and sinks shall not be used for storage of linens and clothing to be laundered or for laundering of soiled linens and clothing. (Class III)

### 10.4. Dining Area and Leisure Area.

10.4.1. The residence shall have a dining area of at least 15 square feet per resident. (Class III)

10.4.2. The residence shall have an area of at least 15 square feet per resident for leisure space that is equipped for reading and recreational purposes. The leisure area shall have furniture that provides good lower back support, arm rests, and that is clean, odor free, and in good repair. (Class III)

10.4.3. The dining room may serve as part of the leisure room. A combined dining and leisure room shall have a minimum of 30 square feet per resident. (Class III)

### 10.5. Water Supply and Sewage.

10.5.1. The residence shall have hot and cold running water in sufficient supply to meet the needs of the residents, household members, and employees. (Class I)

10.5.2. The licensee shall maintain hot water temperatures above 105 degrees Fahrenheit and no higher than 115 degrees Fahrenheit at all hot water sources, except for dishwashers and laundry facilities. (Class II)

10.5.3. Hot water temperatures exceeding 120 degrees Fahrenheit shall be considered an immediate and serious threat. (Class I)

10.5.4. The licensee shall use a thermostatic mixing valve to control the temperature of hot water tanks exceeding 80-gallon capacity. (Class II)

10.5.5. The residence shall have a sewage system that is adequate to meet the residents' needs, kept in good working order, and properly operated and maintained. (Class II)

#### 10.6. Laundry.

10.6.1. The licensee shall ensure that all laundry is dried mechanically in an electric or gas clothes dryer that is vented to the outside, or that a chemical sanitizing agent is added to the rinse water, and the laundry air-dried. (Class II)

10.6.2. The licensee shall ensure that soiled and clean laundry are not stored together at any time; that soiled laundry is stored in non-absorbent, easily cleanable covered containers, or disposable plastic bags; that table and kitchen linens are laundered separately from other washable goods; and that sanitizing agents are used when laundering kitchen, bath, and bed linens. (Class II)

10.6.3. The licensee shall use locked storage facilities, separate from food and drugs, for laundry supplies, housekeeping supplies, insecticides, work supplies, and any other toxic or hazardous material or equipment. (Class I)

#### 10.7. Pets and Other Animals.

10.7.1. Pets are permitted at assisted living residences, provided that all residents are advised prior to admission that pets are kept on the premises. If pets are added after the admission of residents, all residents shall agree to the addition of the pets. (Class III)

10.7.2. Wild, dangerous, or obviously ill animals are prohibited. (Class I)

10.7.3. The licensee shall keep animals and the animals' quarters in a clean condition at all times. (Class I)

10.7.4. The licensee shall maintain proof that dogs and cats kept in the assisted living residence or on the grounds are properly vaccinated. For dogs, this includes rabies, leptospirosis, distemper, and parvo; and for cats, this includes rabies. (Class II)

### **§64-14-11. Licensure Denials, Revocations, and Suspensions.**

11.1. An assisted living provider licensed by the Department of Health and Human Resources adversely affected by an order or citation of a deficient practice may request an informal dispute resolution process. A licensee may contest a cited deficiency as contrary to rule, regulation, or law or unwarranted by the facts, or any combination thereof.

11.2. The informal dispute resolution process is not a formal evidentiary proceeding and utilization of the informal dispute resolution does not waive the right of the licensee to request a formal hearing with the Secretary.

11.3. The informal dispute resolution process shall consist of the following:

11.3.1. The Secretary shall transmit to the licensee a statement of deficiencies attributed to the licensee and request that the licensee submit a plan of correction addressing the cited deficiencies no later than 10 working days following the last day of the survey or inspection, or no later than 10 working days following the last day of a complaint investigation. Notification of the availability of the informal dispute resolution process and an explanation of the process shall be included in the transmittal.

11.3.2. When the licensee returns its plan of correction to the Secretary, the licensee may request, in writing, to participate in the informal dispute resolution process to protest or refute all or part of the cited deficiencies within 10 working days. The Secretary may not release the final report until the informal dispute process is final.

11.3.3. The informal dispute resolution must be held, unless additional time is requested by either the licensee or the Secretary, within 10 working days of receipt of the written request for the informal dispute resolution process by a licensee. The licensee or the Secretary may submit additional information before the informal dispute resolution conference.

11.3.4. Neither the Secretary nor the licensee may be accompanied by counsel during the informal dispute resolution conference. The manner in which the informal dispute resolution conference is held is at the discretion of the licensee, but is limited to:

11.3.4.a. A review of written information submitted by the licensee;

11.3.4.b. A telephonic conference; or

11.3.4.c. A face-to-face conference held at a mutually agreed upon location.

11.3.5. If the informal dispute resolution determines the need for additional information, clarification, or discussion at the conclusion of the informal dispute resolution conference, the Secretary and the licensee shall present the requested information.

11.3.6. The informal dispute resolution committee, consisting of qualified individuals who have no involvement in the investigation or survey being reviewed, shall make a determination within 10 working days of receipt of any additional information as provided or the conclusion of the informal dispute resolution conference, based upon the facts and findings presented, and shall transmit a written decision containing the rationale for its determination to the Secretary.

11.3.7. If the Secretary disagrees with the determination, the Secretary may reject the determination made by the informal dispute resolution process and shall issue an order setting forth the

rationale for the reversal of the informal dispute resolution's decision to the licensee within 10 working days of receiving the independent review provider's determination.

11.3.8. If the Secretary accepts the determination, the Secretary shall issue an order affirming the informal dispute review's determination within 10 working days of receiving the review determination.

11.3.9. If the review determines that the original statement of deficiencies should be changed as a result of the informal dispute resolution process and the Secretary accepts the determination, the Secretary shall transmit a revised statement of deficiencies to the licensee within 10 working days of the review determination.

11.3.10. The licensee shall submit a revised plan to correct any remaining deficiencies to the Secretary within 10 working days of receipt of the Secretary's order and the revised statement of deficiencies.

11.4. Establishment of the informal dispute resolution process does not preclude licensees from utilizing other processes provided by statute or rule in lieu of the informal dispute resolution process.

11.5. Administrative and judicial review of a decision rendered through the informal dispute resolution process may be made in accordance with provisions of this rule.

11.6. Any decision issued by the Secretary as a result of the informal dispute resolution process shall be made effective from the date of issuance.

11.7. The pendency of administrative or judicial review does not prevent the Secretary or a licensee from obtaining injunctive relief as provided by statute or rule.

11.8. Grounds for Denial, Revocation, or Suspension.

11.8.1. The Secretary may deny, revoke, or suspend a license issued pursuant to this rule if any provisions of subdivision 11.8.2. are violated. The Secretary may revoke a license based upon the findings and results of an annual, periodic, complaint, or other inspection and evaluation. The period of suspension for the license of an assisted living residence shall be prescribed by the Secretary but may not exceed one year.

11.8.2. The Secretary may deny, revoke, or suspend an assisted living residence license for one or more of the following reasons:

11.8.2.a. The Secretary makes a determination that fraud or other illegal action has been committed by any owner of the assisted living residence;

11.8.2.b. The assisted living residence has violated federal, state, or local law relating to licensure, building, health, fire protection, safety, sanitation, or zoning;

11.8.2.c. The assisted living residence engages in practices that jeopardize the health, safety, welfare, or clinical treatment of a resident;

11.8.2.d. The assisted living residence has failed or refused to submit reports or make records available as requested by the Secretary;

11.8.2.e. An assisted living residence has refused to provide access to its location or records as requested by the Secretary;

11.8.2.f. An assisted living residence's administrator or owner has knowingly, and intentionally misrepresented actions taken to correct a violation;

11.8.2.g. An administrator or owner of an assisted living residence concurrently operates an unlicensed assisted living residence;

11.8.2.h. An administrator or any owner knowingly operates, owns, or manages an unlicensed assisted living residence that is required to be registered;

11.8.2.i. The owners of an assisted living residence fail to apply for a new license for the residence upon a change of ownership and operate the residence under the new ownership;

11.8.2.j. An administrator or any owner acquires or attempts to acquire a license for an assisted living residence through misrepresentation or fraud or procures or attempts to procure a license for an assisted living residence for any other person by making or causing to be made any false representation; or

11.8.2.k. The assisted living residence fails to have an administrator at the residence location as required by this rule.

11.9. Effect of Denial, Revocation, or Suspension.

11.9.1. If a license for an assisted living residence has been revoked, the Secretary may stay the effective date of the revocation if the owner or owners or administrator of the assisted living residence can show that the stay is necessary to ensure appropriate referral and placement of residents.

11.9.2. If the license of an assisted living residence is denied, revoked, or suspended, no person, firm, association, or corporation may operate the residence as an assisted living residence as of the effective date of the denial, revocation, or suspension. The owners of the assisted living residence are responsible for removing all signs and symbols identifying the premises as an assisted living residence within 30 days from the date of the denial, revocation, or suspension.

11.9.3. If a license for an assisted living residence has been denied, revoked, or suspended the residence must supply, at a minimum, a copy of the following information to the Secretary;

11.9.3.a. A closure notice to be provided to all residents;

11.9.3.b. The date the closure notice will be provided to all residents;

11.9.3.c. The number of residents to receive the closure notice;

11.9.3.d. A Class II legal advertisement that complies with the requirements of W. Va. Code §§59-3-1, *et seq.*, regarding the residence closure, including the dates the notice will appear and the name of the newspaper; and

11.9.3.e. Contact information the assisted living residence has supplied to residents who may need help locating a new assisted living residence.

11.9.4. Upon the effective date of the denial, revocation, or suspension the administrator or owner of the assisted living residence shall advise the Secretary and the West Virginia Board of Pharmacy of the disposition of all drugs located at the premises. The disposition is subject to the supervision and approval of the Secretary and the Drug Enforcement Agency. Drugs that are purchased or held by an unlicensed assisted living residence may be deemed adulterated.

11.9.5. If the license of an assisted living residence is revoked or suspended, no persons owning or operating the assisted living residence, may apply to own, license, or operate another assisted living residence for five years after the date of revocation or suspension, either individually or as part of a group, firm, association, or corporation.

11.9.6. If an assisted living residence license is denied or revoked, a new application for licensure shall be considered by the Secretary, if, when, and after the conditions upon which denial or revocation were based have been corrected and evidence of this fact has been furnished. A new license may then be granted after proper inspection has been made and the Secretary makes a written finding that all provisions of this rule have been satisfied.

#### **§64-14-12. Penalties and Equitable Relief.**

##### 12.1. Grounds for Penalties and Injunctions.

12.1.1. Any person, partnership, association, or corporation which establishes, conducts, manages, or operates an assisted living residence without first obtaining a license therefore or which violates any provisions of this law or rule may be assessed a civil money penalty by the Secretary in accordance with this rule, and, if applicable, W. Va. Code §16-5D-10. Each day of continuing violation after notification of the infraction may be considered a separate violation and may be subject to an additional civil money penalty.

12.1.2. If the assisted living residence's owner or owners or administrator knowingly and intentionally misrepresent actions taken to correct a violation, the Secretary may impose a civil money penalty not to exceed \$10,000, and revoke or deny the assisted living residence's license.

12.1.3. If an owner or owners of an assisted living residence concurrently operates an unlicensed assisted living residence, the Secretary may impose a civil money penalty upon the owner or owners or administrator, or both, not to exceed \$5,000. If the owner or owners continue to operate the unlicensed assisted living residence 10 days after notification of the infraction, the Secretary may impose a civil monetary penalty not to exceed \$5,000 per day.

12.1.4. If the owner of an assisted living residence that requires a license under this article fails to apply for a new license for the residence upon a change of ownership and operates the residence under the new ownership, the Secretary may impose a civil money penalty not to exceed \$5,000.

12.1.5. If an owner knowingly operates, owns, or manages an unlicensed assisted living residence that is required to be licensed pursuant to this article; knowingly dispenses or causes to be dispensed, controlled substances in an unlicensed assisted living residence that is required to be licensed; or obtains a license to operate an assisted living residence through misrepresentation or fraud; procures or attempts to procure a license for an assisted living residence for any other person by making or causing to be made any false representation, the Secretary may assess a civil money penalty of not more than \$20,000. The penalty may be in addition to or in lieu of any other action that may be taken by the Secretary or any other board, court, or entity.

12.2. The Secretary may deny an assisted living residence's application for licensure or application for renewal licensure; revoke or suspend a license; order an admissions ban or reduction in patient census for one or more of the following reasons:

12.2.1. The Secretary makes a determination that fraud or other illegal action has been committed;

12.2.2. The residence has violated federal, state, or local law relating to building, health, fire protection, safety, sanitation, or zoning;

12.2.3. The residence conducts practices that jeopardize the health, safety, welfare, or clinical treatment of a resident;

12.2.4. The residence has failed or refused to submit reports, comply with the documentation requirements of this rule, or make records available as requested by the Secretary or his or her designee; or

12.2.5. A residence has refused to provide access to its location or records as requested by the Secretary, or his or her designee.

12.3. Notwithstanding the existence or pursuit of any other remedy, the Secretary may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association, or corporation to restrain or prevent the establishment, conduct, management, or operation of any assisted living residence or violation of any provisions of this rule without first obtaining a license therefore in the manner hereinbefore provided.

12.3.1. The Secretary may also seek injunctive relief if the establishment, conduct, management, or operation of any assisted living residence, whether licensed or not, jeopardizes the health, safety, or welfare of any or all of its residents.

12.3.2. In determining whether a penalty is to be imposed and in fixing the amount of the penalty, the Secretary shall consider the following factors:

12.3.2.a. The gravity of the violation, including the probability that death or serious physical or emotional harm to a resident has resulted, or could have resulted, from the assisted living residence's actions or the actions of the administrator or any licensed practitioner employed by or associated with the residence, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated.

12.3.2.b. What actions, if any, the administrator or licensed professional took to correct the violations;

12.3.2.c. Whether there were any previous violations at the assisted living residence; and

12.3.2.d. The financial benefits that the assisted living residence derived from committing or continuing to commit the violation.

12.4. Upon finding that a licensed professional has violated the provisions of this rule, the Secretary shall provide notice of the violation to the applicable professional licensing board.

**§64-14-13. Administrative Due Process.**

13.1. Before any assisted living residence is denied, suspended, penalized, or revoked, written notice shall be given to the owner or owners of the residence stating the grounds of the denial, suspension, revocation, or penalty and the date set for any enforcement action.

13.1.1. The notice shall be sent by certified mail to the address where the assisted living residence concerned is located.

13.1.2. Within 30 days of receipt of the notice, the owner or owners may submit a request for an administrative hearing or an informal meeting to address and resolve the findings.

13.1.3. The assisted living residence and its owner or owners shall be entitled to be represented by legal counsel at the informal meeting or at the hearing at their own expense.

13.1.4. All of the pertinent provisions of W. Va. Code §§29A-5-1, *et seq.*, and W. Va. Code R. §§ 69-1-1, *et seq.*, shall apply to and govern any hearing authorized by this rule.

13.1.5. If an owner fails to request a hearing within the time frame specified, he or she shall be subject to the full penalty imposed.

13.1.6. The filing of a request for a hearing does not stay or supersede enforcement of the final decision or order of the Secretary. The Secretary may, upon good cause shown, stay such enforcement.

**§64-14-14. Administrative Appeals and Judicial Review.**

14.1. Any owner of an assisted living residence who disagrees with the final administrative decision as a result of the hearing may, within 30 days after receiving notice of the decision, appeal the decision to the Circuit Court of Kanawha County.

14.1.1. The filing of a petition for appeal does not stay or supersede enforcement of the final decision or order of the Secretary. An appellant may apply to the circuit court for a stay of or to supersede the final decision or order.

14.1.2. The Circuit Court may affirm, modify, or reverse the final administrative decision. The owner or owners, or the Secretary may appeal the court's decision to the West Virginia Supreme Court of Appeals.

Table 64-14 A Surety Bond Schedule

AVERAGE RESIDENT FUNDS MONTHLY BALANCE	REQUIRED SURETY BOND AMOUNT
\$1 to \$2,000	\$2,500
\$2,001 to \$2,100	\$2,625
\$2,101 to \$2,200	\$2,750
\$2,201 to \$2,300	\$2,875
\$2,301 to \$2,400	\$3,000
\$2,401 to \$2,500	\$3,125
\$2,501 to \$2,600	\$3,250
\$2,601 to \$2,700	\$3,375
\$2,701 to \$2,800	\$3,500
\$2,801 to \$2,900	\$3,625
\$2,901 to \$3,000	\$3,750
\$3,001 to \$3,100	\$3,875
\$3,101 to \$3,200	\$4,000
\$3,201 to \$3,300	\$4,125
\$3,301 to \$3,400	\$4,250
\$3,401 to \$3,500	\$4,375
\$3,501 to \$3,600	\$4,500
\$3,601 to \$3,700	\$4,625
\$3,701 to \$3,800	\$4,750
\$3,801 to \$3,900	\$4,875
\$3,901 to \$4,000	\$5,000
\$4,001 to \$4,100	\$5,125
\$4,101 to \$4,200	\$5,250
\$4,201 to \$4,300	\$5,375
\$4,301 to \$4,400	\$5,500
\$4,401 to \$4,500	\$5,625
\$4,501 to \$4,600	\$5,750
\$4,601 to \$4,700	\$5,875
\$4,701 to \$4,800	\$6,000
\$4,801 to \$4,900	\$6,125
\$4,901 to \$5,000	\$6,250
\$5,001 to \$5,100	\$6,375
\$5,101 to \$5,200	\$6,500
\$5,201 to \$5,300	\$6,625
\$5,301 to \$5,400	\$6,750
\$5,401 to \$5,500	\$6,875
\$5,501 to \$5,600	\$7,000
\$5,601 to \$5,700	\$7,125
\$5,701 to \$5,800	\$7,250
\$5,801 to \$5,900	\$7,375

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\$5,901 to \$6,000	\$7,500
\$6,001 to \$6,100	\$7,625
\$6,101 to \$6,200	\$7,750
\$6,201 to \$6,300	\$7,875
\$6,301 to \$6,400	\$8,00
\$6,401 to \$6,500	\$8,125
\$6,501 to \$6,600	\$8,250
\$6,601 to \$6,700	\$8,375
\$6,701 to \$6,800	\$8,500
\$6,801 to \$6,900	\$8,625
\$6,901 to \$7,000	\$8,750
\$7,001 to \$7,100	\$8,875
\$7,101 to \$7,200	\$9,000
\$7,201 to \$7,300	\$9,125
\$7,301 to \$7,400	\$9,250
\$7,401 to \$7,500	\$9,375
\$7,501 to \$7,600	\$9,500
\$7,601 to \$7,700	\$9,625
\$7,701 to \$7,800	\$9,750
\$7,801 to \$7,900	\$9,875
\$7,901 to \$8,000	\$10,000
\$8,001 to \$8,100	\$10,125
\$8,101 to \$8,200	\$10,250
\$8,201 to \$8,300	\$10,375
\$8,301 to \$8,400	\$10,500
\$8,401 to \$8,500	\$10,625
\$8,501 to \$8,600	\$10,750
\$8,601 to \$8,700	\$10,875
\$8,701 to \$8,800	\$11,000
\$8,801 to \$8,900	\$11,125
\$8,901 to \$9,000	\$11,250
\$9,001 to \$9,100	\$11,375
\$9,101 to \$9,200	\$11,500
\$9,201 to \$9,300	\$11,625
\$9,301 to \$9,400	\$11,750
\$9,401 to \$9,500	\$11,875
\$9,501 to \$9,600	\$12,000
\$9,601 to \$9,700	\$12,125
\$9,701 to \$9,800	\$12,250
\$9,801 to \$9,900	\$12,375
\$9,901 to \$10,000	\$12,500
\$10,001 or more	Calculate



# Office of Health Facility Licensure & Certification

- Home
- Applications
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- Health Care Facilities ▾
- Rules & Regulations
- Contacts ▾

Home > Facility Type List > Assisted Living Residence

## FACILITY TYPE INFORMATION

### ASSISTED LIVING RESIDENCE

A housing alternative for older adults who may need help with dressing, bathing, eating, and toileting, but do not require the intensive medical and nursing care provided in nursing homes.

[Click here for a detailed classification of assisted living residences.](#)

**Licensure Applications**

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For a listing of health facility licensure fees please click or tap here.

For information about the AMAP (Approved Medication Assistive Personnel) program click here.

**Rules & Regulations**

**Code of Federal Regulations**

Name	Title Part
No federal regulations related to selection.	

**West Virginia Code of State Rules**

Name	Title-Series
Assisted Living Residences	64-14

**West Virginia Codes**

Name	Chapter-Article
Assisted Living Residences	16-5D



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

File #: 25-5-ZV  
 Mtg. Date: 01/23/25  
 Fee Paid: \$ 150

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

Phone: (304) 728-3228

**Zoning Variance Application**

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

**Property Owner Information**

Owner Name: Blue Iris LLC, Manager Sharon Hallinan  
 Business Name: Songbird House LLC  
 Mailing Address: 20383 Middlebury St Ashburn VA 20147  
 Phone Number: 703-401-5884 Email: LADYSLIPPERPROPERTIES@GMAIL.COM

**Applicant Contact Information**

Applicant Name: \_\_\_\_\_ Same as owner:   
 Business Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**Consultant Information**

Consultant Name: Rosalind Welsh  
 Business Name: Rosalind Welsh Architect  
 Mailing Address: \_\_\_\_\_  
 Phone Number: 304-725-4013 Email: welsharch@yahoo.com

**Physical Property Details**

Vacant Lot:

Physical Address: 1163 Gardners Lane Shepherdstown WV 25443  
 Parcel ID: (Tax District / Map No. / Parcel No.) Shepherdstown 09 Map 0017 Parcel 0009  
 Parcel Size: 6.6 A Deed Book: 1123 Page No: 428

**Zoning District (please check one)**

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

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

Date Received: [Received via email 12/27/24 \(jth\)](#)

**Briefly describe the nature of the request (include the dimensions of the proposed structure, if applicable):**

Section of the Zoning Ordinance pertaining to this request: Section 4.10 Site Plan  
CUP 24-2 considers Songbird House to be a nursing home (commercial) as the ordinance does not have a category for "Assisted Living" residential purpose. Request waive the site plan as it really is N/A. Songbird House should be considered a Residential Care Home as WV regs cover this as ALR.

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

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

**Required Sketch:** 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.

**Required Responses:** Each of the following questions must be answered in detail. The Board will evaluate your request based on the answers provided (attach a separate sheet of paper if necessary).

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

All parking will be on the property in existing parking areas. There is substantial distance and landscape buffer with adjacent property owners. There is no adverse effect on public health, safety or welfare. This variance is seeking a reduction of parking from 25 spaces required in CUP 24-2 to 10 parking spaces IAW the WV Office of Health Facility and Licensure Regulations for Assisted Living.

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?

WV OHFLAC governs Assisted Living Residences, which includes "Residential Care Home" as an assisted living residence. Residential Care Home is in the ordinance as residential, and permitted in rural area. Residential standards should apply, not commercial, thus site plan is N/A.

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

There is a hardship in the unnecessary cost of compliance with commercial nursing home standards when this property is not a nursing home, and is residential. See attachments.

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

The Zoning Ordinance is observed via CUP 24-2 which will allow for the first and only Assisted Living Residence in Jefferson County. A Zoning Certificate has previously been submitted. A variance from commercial nursing home parking requirements has also been submitted.

I authorize the Planning and Zoning staff to revise the application/sketch on my behalf. I understand that said revisions will be discussed with me prior to revising the application/sketch.

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

By signing this application, I grant permission to County staff to walk onto the subject property to take photos for the Board of Zoning Appeals staff reports.

Sean Delaney, Manager  
Property Owner Signature      Date 10/26/24

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



# Office of Health Facility Licensure & Certification

[Home](#) [Applications](#) [Forms & Tools](#) [Programs](#) [Health Care Facilities](#) [Rules & Regulations](#) [Contacts](#)



[Home](#) > [Facility Type List](#) > [Residential Care Community](#)

## FACILITY TYPE INFORMATION

### RESIDENTIAL CARE COMMUNITY




Any group of seventeen (17) or more residential apartments, however named, which are part of a larger independent living community, for the express or implied purpose of providing residential accommodations, personal assistance and supervision on a monthly basis to seventeen (17) or more persons who are or may be dependent upon the services of others by reason of physical or mental impairment or who may require limited and intermittent nursing care but who are capable of self preservation and are not bedfast. Each apartment in a residential care community shall be at least three hundred square feet in size, have doors capable of being locked and contain at least: (1) One bedroom; (2) one kitchenette that includes a sink and a refrigerator; and (3) one full bathroom that includes a bathing area, toilet and sink. Services utilizing equipment which requires auxiliary electrical power in the event of a power failure may not be used unless the residential care community has a backup power generator.

#### Licensure Applications

-  [Initial or Change of Ownership\(CHOW\)](#)
-  [Renewal](#)



For a listing of health facility licensure fees please click or tap here.

#### Forms & Tools

-  [Major Incident Report](#)
-  [Resident Admission Assessment](#)
-  [Waiver Request](#)

[See more...](#)

#### LSC Forms & Tools

-  [Site Inspection Request](#)
-  [Life Safety Services Fees](#)

[See more...](#)

#### Rules & Regulations

[Code of Federal Regulations](#)

Name	Title Part
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No federal regulations related to selection.

**West Virginia Code of State Rules**

Name	Title-Series
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Residential Care Communities	64-75
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**West Virginia Codes**

Name	Chapter-Article
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Residential Care Communities	16-5N
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West Virginia Department of Health and Human Resources

# Adult Residential Services

Bureau for Social Services Social Service Manual Chapter 5

Revised September 2021

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## SECTION I Introduction

### 1.1 Introduction and Overview

Adult Residential Services includes Adult Family Care homes and Assisted Living Facilities. These placement options may be an appropriate option for individuals who are no longer able to safely remain in their own homes due to physical, cognitive, and/or emotional deficits. Although an individual may be experiencing deficits in one (1) or more of these domains, the deficits are not significant enough to warrant the level of care provided in a nursing home.

Adult Family Care homes are placement settings for adults that provide support, protection and security in a family setting. The Adult Family Care Home may provide care for up to three (3) adults and is certified to provide care by the Department of Health and Human Resources homefinder. Assisted Living Facilities are residential settings for adults that provide supervision, support, protection, and security in a group living setting to four (4) or more residents. The residents may need limited and intermittent nursing care. Assisted Living Facilities must be licensed by the Department of Health and Human Resources, Office of Health Facilities Licensure and Certification.

A reasonable attempt will be made to accommodate clients with disabilities and examples of this include: Auxiliary aids for individuals with disabilities where necessary to ensure effective communication with individuals with hearing, vision or speech impairments will be arranged and provided. All offices have the capability to accommodate individuals that utilize TTY equipment. If further assistance is needed, the worker will contact the local Division of Rehabilitation as well as the West Virginia Commission for Deaf and Hard of Hearing at (304) 558-1675. The TTY toll free number is 1-866-461-3578.

Culturally competent practice will be ensured by recognizing, respecting, and responding to the culturally defined needs of individuals that we serve. If someone needs an interpreter, the worker must contact local resources to locate an interpreter. Examples include, but are not limited to, the Board of Education, local colleges, and Division of Rehabilitation. If a local community resource cannot be located, the worker will seek other resources such as the Department of Justice Immigration and Naturalization Service at (304) 347-5766, 210 Kanawha Blvd. W, Charleston, WV 25302.

### 1.2 Definitions

<p>Abuse: The infliction or threat to inflict physical pain or injury on or the imprisonment of any incapacitated adult or facility resident according to WV Code §9-6-1. (Similar definition is contained in §61-2-29 that addresses penalties for abuse or neglect of incapacitated adult or elder person).</p>	<p>WV Code §9-6-1.</p>
<p>Activities of Daily Living (ADL): Routine activities that people do every day without needing assistance. There are six (6) basic ADL's: eating, bathing, dressing, toileting, transferring and continence.</p>	
<p>Adult Family Care Home: A placement setting within a family unit that provides support, protection and security for up to three (3) individuals over the age of eighteen (18) who meet the criteria for Adult Residential Services.</p>	
<p>Adult Family Care Provider: An individual or family unit certified by Department of Health and Human Resources. The Provider will provide support, supervision and assistance to adults placed in their home and receive a supplemental payment from DHHR for the adults' care.</p>	
<p>Advance Directives: Mechanism used by individuals to make health care decisions prior to their potential incapacity. State law recognizes living wills, medical power of attorney and durable power of attorney that include provisions for making medical decisions as advance directives.</p> <p>Note: DHHR Departmental and Adult Services staff is prohibited to assist with the completion of Advance Directives.</p>	<p>WV Code §44A-1-3</p>
<p>Advanced Nurse Practitioner: A nurse with substantial theoretical knowledge in a specialized area of nursing practice and a proficient clinical utilization of the knowledge in implementing the nursing process and has met the applicable licensing requirements.</p>	
<p>Adult Residential Services: Adult Residential Services is made to encompass all Adult Placement types including Adult Family Care and/or Assisted Living.</p>	
<p>Assisted Living Facility: Any living facility, residence or place of accommodation available for four (4) or more residents, which is advertised, offered, maintained or operated by the ownership or management, 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. The facility is licensed by the Office of Health Facilities and Licensure and Certification (OHFLAC) and provides twenty-four hour (24) awake supervision of activities of daily living.</p> <p>Note: Previously defined Personal Care Home and Residential Board and Care Homes are now defined in the Legislative Code of Rules 64-14-3.6 and policy as Assisted Living Facilities.</p>	<p>WV Code §64-14-3.6</p>
<p>Attending Physician: A licensed physician who is selected by or assigned to the person and has the primary responsibility for treatment and care of the person.</p>	

<p>Change of Venue: This is a legal process whereby the court with jurisdiction over a guardianship proceeding may transfer jurisdiction of the proceeding to a court in another county or state pursuant to WV Code §44A-1-7. A guardian and/or conservator shall continue to file their respective reports and/or accountings to the court that has jurisdiction over the proceeding.</p>	<p>WV Code §44A-1-7</p>
<p>Comprehensive Child Welfare Information System (CCWIS): The automated client information system used by West Virginia Department of Health and Human Resources Bureau for Social Services.</p>	
<p>Cognitive Deficit: Impairment of an individual’s thought processes.</p>	
<p>Conservator: A person appointed by the circuit court and is responsible for managing the estate and financial affairs of a protected person. The ‘estate’ can include personal property, stocks, bonds or other interest in property. The conservator appointment could be a full conservator, limited conservator or temporary conservator.</p> <p>De facto Conservator: A person who is not the power of attorney representative or appointed surrogate and has assumed substantial responsibility for any portion of the estate and financial affairs of another person later found to be a protected person.</p> <p>Limited Conservator: A person appointed by the Circuit Court who has only those responsibilities for managing the estate and financial affairs of a protected person, as specified in the order of appointment.</p> <p>Temporary Conservator: A person appointed by the Circuit Court who has only those responsibilities for managing the estate and financial affairs of a protected person, as specified in the order of appointment. A temporary conservator is time limited to six (6) months unless terminated or extended by the Circuit Court upon good cause following a hearing.</p>	
<p>Disposable Income: The amount of money that households have available for spending and saving after income taxes and other mandatory payments have been deducted.</p>	
<p>Do Not Resuscitate (DNR): A written, signed directive by a capacitated individual directing the health care provider not to administer cardiopulmonary resuscitation or any mechanical means to prolong or continue life.</p>	
<p>Durable Power of attorney: A written, signed directive by a capacitated individual designating another person to act as their representative. The durable power of attorney specifies the areas in which this individual can exercise authority. A Durable Power of Attorney will become effective or remain effective in the event the individual becomes disabled or incapacitated.</p>	
<p>EFT (Electronic Funds Transfer): An electronic transfer of provider payment, commonly known as Direct Deposit, into the provider’s designated bank account.</p>	
<p>Elder: A person age sixty-five (65) or older.</p>	
<p>Electronic Communication: Any communication sent or received electronically through one or more computers and/or electronic communication devices, which includes but is not limited to cell phones, iPads, fax machines, etc.</p>	

<p>Emancipated Minor: A child over the age of sixteen (16) who has been emancipated by 1) order of the court based on a determination that the child can provide for his/her physical well-being and has the ability to make decisions for him/herself or 2) marriage of the child. An emancipated minor has all the privileges, rights and duties of an adult including the right to contract.</p>	
<p>Emergency or Emergency Situation: A situation or set of circumstances which present a substantial and immediate risk of death or serious injury to an incapacitated adult.</p>	
<p>Estate: Any real and personal property or any interest in the property and anything that may be the subject of ownership.</p>	
<p>FACTS: Acronym for Family and Children’s Tracking System and is the automated client information system used by the West Virginia Department of Health and Human Resources, Bureau for Social Services.</p>	
<p>FACTS PLUS: The Family and Children’s Tracking System Provider Look- Up and Update System which allows registered providers to view details of their payments and individuals served on a secured site. Information is available twenty-four (24) hours a day.</p>	
<p>Fiduciary Duty: Means that a special relation of trust, confidence, or responsibility exists. This duty legally obligates one entity/individual to act in the best interest of another. A guardian has a fiduciary relationship to a protected person.</p>	
<p>Financial Exploitation: A type of neglect of an incapacitated adult involving the illegal, unethical and/or improper use of or willful dissipation of an individual’s funds, property or other assets by a person, formal or informal caregiver, family member, or legal representative - either directly (i.e. as the perpetrator) or indirectly (i.e. by allowing or enabling the condition which permitted the financial exploitation).</p>	
<p>Guardian: A person appointed by the circuit court responsible for the personal affairs of a protected person including living arrangements, daily care and health care decisions. The guardianship appointment can be a full guardian, limited guardian or temporary guardian.                  De facto Guardian: A person who is not the medical power of attorney representative or appointed surrogate and has assumed substantial responsibility for any of the personal affairs of another person later found to be a protected person.                  Limited Guardian: A guardian appointed by the court who has only those responsibilities for the personal affairs of a protected person, as specified in the order of appointment.                  Temporary Guardian: A person appointed by the circuit court who has only those responsibilities for the personal affairs of a protected person, as specified in the order of appointment. A Temporary Guardian may be appointed upon finding that an immediate need exists, that adherence to the procedures otherwise set forth in Chapter 44A for the appointment of a guardian may result in significant harm to the person that no other individual or entity appears to have the authority to act on</p>	

<p>behalf of the person, or that the individual or entity with authority to act is unwilling, unable or has ineffectively or improperly exercised the authority. A Temporary Guardian is time limited to six (6) months unless terminated or extended by the circuit court upon good cause following a hearing.</p>	
<p>Guardian Ad Litem: A guardian appointed by a court to protect the interest of an incapacitated adult in a particular matter. State employees are prohibited from serving as Guardian Ad Litem.</p>	
<p>Health Care Decision: A decision to give, withhold or withdraw informed consent to any type of health care, including, but not limited to, medical and surgical treatments, including life-prolonging interventions, psychiatric treatment, nursing care, hospitalization, treatment in a nursing home or other facility, home health care and organ or tissue donation.</p>	
<p>Health Care Facility: A facility including but not limited to hospitals, psychiatric hospitals, medical centers, ambulatory health care facilities, physician’s offices and clinics, extended care facilities, nursing homes, rehabilitation centers, hospice, home health care and other facilities established to administer health care in its ordinary course of business practice.</p>	
<p>Health Care Provider: Any licensed physician, dentist, nurse, physician’s assistant, paramedic, psychologist or other person providing medical dental or nursing, psychological or other health care services of any kind.</p>	
<p>Health Care Surrogate: An individual eighteen (18) years of age or older or an authorized entity appointed or selected by an attending physician or advanced nurse practitioner to make medical decisions on behalf of an incapacitated individual.</p>	
<p>Incapacitated Adult: Any person, by means of physical, mental or other infirmity is unable to physically carry on the daily activities of life necessary to sustaining life and reasonable health. NOTE: Incompetence of an adult is determined by a legal proceeding and is not the same as a determination of incapacity. Similar definition “incapacitated adult” is contained in WV State Code. §61-2-29, abuse or neglect of incapacitated adult or elder person regarding criminal penalties.</p>	
<p>Incapacity: The inability because of physical or mental impairment to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented and to communicate that choice in an unambiguous manner.</p>	
<p>Incompetence: A legal determination that an individual lacks the ability to understand the nature and effects of their acts and as a result is unable to manage his/her business affairs or is unable to care for his/her physical well-being thereby resulting in substantial risk of harm.</p>	
<p>Interested Person: A person who is the subject of a guardianship or conservator proceeding, an appointed guardian or conservator, or any other person with an actual and substantial interest in the proceedings either generally or as to a particular matter.</p>	

<p>Legal Representative: A person lawfully invested with the power and charged with the duty of taking care of another person or with managing the property and rights of another person, including, but not limited to, a guardian, conservator, medical power of attorney, trustee, or other duly appointed person.</p>	
<p>Life Prolonging Interventions: Any medical procedure or intervention that, when applied to a person, would serve to artificially prolong the dying process or to maintain the person in a persistent vegetative state. Includes, among others, nutrition and hydration administered intravenously or through a feeding tube. Does not include administration of medication or performance of other medical procedure deemed necessary to provide comfort or alleviate pain.</p>	
<p>Limited and Intermittent Nursing Care: Direct hands on nursing care of an individual who needs no more than two (2) hours of nursing care per day for a period of time no longer than ninety (90) consecutive days per episode: These limitations do not apply to an established resident who subsequently qualifies for and receives services through a licensed hospice. Neither do the time limitations apply to Medicare certified home health agencies providing services to the residents. Limited and intermittent nursing care may only be provided by or under the supervision of a registered professional nurse.</p>	
<p>Liquid Assets: Cash, or property immediately convertible to cash, such as securities, notes, life insurance policies with cash surrender values, U.S. savings bonds, or an account receivable. Although the ownership of real property is considered an asset, it is not a liquid asset because it cannot be readily converted into cash.</p>	
<p>Living Will: A written, witnessed advanced directive governing the withholding or withdrawing of life prolonging intervention, voluntarily executed by a person in accordance with the provisions of WV Code §16-30-3.</p>	
<p>Medical Power of Attorney: A written, witnessed advanced directive that authorizes an individual that is at least 18 years of age to make medical decisions on behalf of another individual. A medical power of attorney must be duly executed prior to the individual becoming incapacitated and duly executed in accordance with the provisions of WV Code §16-30-3. or existing and executed in accordance with the laws of another state.</p>	
<p>Missing Person: An adult individual, eighteen years of age or older, who is absent from his/her usual place of residence in the state and whose whereabouts are unknown for a period of six (6) months or more.</p>	
<p>Most Integrated Setting: Is defined in the Olmstead Decree as a setting which enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.</p>	
<p>Neglect: A) The unreasonable failure by a caregiver to provide the care necessary to assure the physical, safety or health of an incapacitated adult; or B) The unlawful expenditure or willful dissipation of the funds or other assets owned or paid to or for the benefit of an incapacitated adult or facility resident.</p>	
<p>Personal Expense Allowance: The amount of monthly income the resident in an Adult Residential Services placement is permitted to retain for personal expenses.</p>	

They must receive the full personal expense allowance monthly or have it readily available for their use; when West Virginia Department of Health and Human Resources is making a supplemental provider payment. The amount of this allowance is regulated by the Office of Social Services and may be adjusted periodically.	
Physical Deficit: Impairment of an individual’s physical abilities.	
POST Form: The Physician Orders for Scope of Treatment (POST) is a form developed for the purpose of documenting orders for medical treatment and directives concerning provision of CPR, code/no code, level of intervention, etc. WV Code §16-30-25.	WV Code §16-30-25
Protected Person: A protected person is an adult, 18 or older, who has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to such an extent that the individual lacks the capacity to: Meet the essential requirements for his or her health, care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or Manage property or financial affairs or to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator	
Qualified Physician: A physician licensed to practice medicine who has personally examined the person.	
Qualified Psychologist: A psychologist licensed to practice psychology who has personally examined the person.	
Representative Payee: An individual appointed by the funding source to handle that individual’s benefits.	
Substitute Decision Maker: A substitute decision maker can be an Surrogate Decision Maker or Health Care Surrogate or a court appointed Guardian.	
Surrogate Decision-Maker: Means an individual identified as such by an attending physician in accordance with the Health Care Decisions Act, WV Code §16-30-3	WV Code §16-30-3

## SECTION 2 Intake

### 2.1 Eligibility Criteria

Assisted Living Residence and Adult Family Care services and the associated services, including pre-admission evaluation, placement, supportive services, supervision and discharge planning, are available to adults who are no longer able to remain in their own home and require an alternate living arrangement due to physical, mental, or emotional limitations. Assisted Living Residence provides twenty-four (24) hour awake care. In addition to the income and assets requirement listed below, eligibility for placement and supplemental payment by DHHR in this type of setting requires that an individual must meet at least one (1) of the following criteria:

- He/she must be age sixty-five (65) or older and in need of supportive living;
- He/she must be at least eighteen (18) years of age and have an established disability or a disability may be established by a thorough evaluation and documentation of the

- person's condition by a licensed physician and a determination by the Adult Service worker that this medical evaluation does indicate the need for supervised care; or,
- Currently receiving Adult Protective Service or APS Preventive Services from the Department.

Supplemental payment by the Department for placement in an Adult Residential Services placement is limited by the amount of income received by the client and the level of liquid assets available. Client's monthly disposable income cannot exceed the current rate of pay as established by the Department of Health and Human Resources and the clients' assets cannot exceed the established level, currently \$2,000.

In the case of eligibility based on an active APS or APS Preventive Services case, Adult Residential Services placement must be needed to eliminate the abuse, neglect or exploitation that was verified during the APS investigation. The identified problem area(s) and placement in the Adult Residential Services placement must be documented in the client's Service Plan in the APS case and Adult Residential case.

### ***Required Information***

Basic identifying information and detailed information about the client's needs are to be gathered during the Intake process. This information must be sufficient to determine the type of services and/or assistance being requested, the specific needs of the individual, and other relevant information. At a minimum, the following must be included:

- Name of client;
- Date of birth or approximate age of the client;
- Social security number;
- Client's current living arrangements;
- Client's current location;
- Household composition;
- Physical and/or mailing address of client;
- Directions to client's home;
- Telephone number of client;
- Significant others - relatives, neighbors, friends;
- Legal representative(s), if known;
- Reporter/caller information, if different than client;
- Physical, mental or emotional limitations of the client;
- Description of how needs are currently being met;
- Any known income or assets;
- Any known DHHR benefits; and,
- Other relevant information.

### ***Referent Information***

Information about the person(s) making the referral is to be documented.

- Referent name;
- Referent address;

- Referent telephone number;
- Relationship to the client;
- How they know of the client's needs;
- Referent's expectations of the Department
- Referent name;
- Referent address;
- Referent telephone number;
- Relationship to the client;
- How they know of the client's needs;
- Referent's expectations of the Department
- 

### ***Services Requested***

Document the specific service(s) being requested. This should include information such as the following:

- The specific type(s) of assistance being requested;
- Why assistance is being requested;
- How needs are currently being met
- Determine if the referral is to be assigned for an Adult Services Initial Assessment or screened out.

## **2.2 Referral Triage/Disposition**

The disposition provides for referrals to be assigned for assessment and assigned a response time or allow for the referral to be screened out.

### ***Accept/Screen Out***

*Considerations in determining whether to accept or screen out the referral:*

- The presence of factors which do/could present a risk to the adult;
- Determine if allegations of abuse, neglect or exploitation are indicated, then an APS referral may be required;
- The information related to the identified client and their current circumstances
- Whether the information collected appears to meet the eligibility criteria for Adult Residential Services placement;
- The sufficiency of information in order to locate the individual/family; and,
- Client's wishes and capacity to make their own decisions.

*After Referral is Accepted and/or Screened Out*

- If the referral is accepted; a response time and a primary worker will be assigned for Initial Assessment.
- If the referral is Screened Out – any necessary referrals will be completed, and the intake will be closed.
- Whether the information collected appears to meet the eligibility criteria for Adult Residential Services placement;
- The sufficiency of information in order to locate the individual/family; and,

- Client's wishes and capacity to make their own decisions.

### ***Response Times***

Depending on the degree of risk to the client's health, safety and well-being, contact with the adult may require a face-to-face contact in less than fourteen (14) days. The policy rules for determining response time are as follow:

- **Response - Within 5 Days** this time frame will apply in cases where it is determined that, based on the referral information, a situation where a prompt response is critical (Example - A situation or set of circumstances which present a substantial and immediate risk to the adult, such as the hospital discharge is imminent in less than five (5) days). A face-to-face contact with the identified client must be made within 5 days. This contact is to occur in the adult's usual living environment whenever possible.
- **Response - Within 14 Days** This time frame will apply in cases where it is determined that, based on the referral information, a situation where a prompt response is critical does not currently exist and/or is not expected to develop without immediate intervention. A face-to-face contact with the client must be made within fourteen (14) days. This contact is to occur in the adult's usual living environment whenever possible.

### ***Considerations in Determining Response Time***

To assist with the determination of the appropriate response time for initiation of an Adult Residential Services Initial Assessment; the following will be considered:

- Whether the information reported indicates the presence of a situation requiring prompt attention;
- The location of the adult at the time the intake is received;
- Whether the circumstances that exist could change rapidly;
- Whether the living arrangements are life threatening or place the adult at risk;
- Determine if allegations of abuse, neglect or exploitation are indicated, then an
- APS referral may be required;
- Whether the adult requires medical attention;
- Whether the adult is without needed assistance and supervision;
- Whether the adult is capable of self-preservation/protection;
- Whether the adult is currently connected to any formal support system;
- Whether there are any family or friends available for support;
- Whether there is a caregiver(s) and if so, are they physically, cognitively and
- emotionally able to provide needed care to the adult;
- Whether there is a past history of referrals or current referrals requesting assistance;
- Whether there are injuries

## **SECTION 3 Assessment**

### **3.1 Adult Initial Assessment**

Completion of the Initial Assessment involves gathering a variety of information about the client and his/her current status. Information is gathered by conducting interviews with the

client, caregiver (if applicable), legal representative (if any), family member(s), or others having knowledge of the situation. The information gathered will be focused on determining the level of risk the client's circumstances present to their well-being and safety, whether or not Adult Residential Services are indicated based on the adult's circumstances, if Adult Residential services are not indicated, what other services may be needed, eligibility criteria, and the role the Department is to play beyond the Initial Assessment.

### 3.2 Information for the Initial Assessment

Information for completion of the Initial Assessment is obtained by conducting interviews with the client and all other relevant parties during face to face interviews with the client and all other relevant parties.

In addition to the above, information gathering may include documents, reports, records, written statements, etc. These may require a written release from the client and/or legal representative.

### 3.3 Information to Be Collected and Documented

#### ***Identifying Information***

Demographic information about the client, their family and their unique circumstances is to be documented.

This includes information such as (not an all-inclusive list):

- Name;
- Address (mailing and residence);
- Telephone number;
- Date of birth/age;
- Household members;
- Other significant individuals;
- Legal representatives/substitute decision-makers (if applicable);
- Identification numbers (SSN, Medicaid, Medicare, SSA Claim, etc.);
- Gender/ethnicity;
- Marital status
- Advance Directives in effect; and,
- Directions to the home.

#### ***Living Arrangements***

Information regarding the client's current living arrangements:

This should include information about where the client currently resides such as the following:

- Client's current location (own home, relative's home, hospital, etc.);
- Is the current setting considered permanent or temporary;
- Type of setting (private home/residential facility, etc.);
- Household/family composition;

- Physical description of the current residence (single family dwelling, duplex, townhouse, apartment, retirement community, foster home, group home, nursing facility, etc.);
- Interior condition of the residence;
- Exterior condition of the residence;
- Type of geographic location (rural, urban, suburban, etc.);
- Access to resources such as family/friends, transportation, shopping, Medical care/services, social/recreational activities, religious affiliations.

### ***Physical/Medical Health***

Information about the physical condition and description of the client and information about the clients diagnosed health status. Included are areas such as:

- Activities of daily living (ADL);
- Whether or not his/her needs are currently being met and by whom;
- Caregiver functioning, if applicable;
- Ability to manage finances;
- Ability to manage personal affairs;
- Ability to make and understand medical decisions; and,
- Assessment of decision-making capacity
- Observed/reported physical conditions of the client;
- Primary care physician;
- Diagnosed health conditions;
- Current medications;
- Durable medical equipment/supplies used; and,
- Nutritional status including special dietary needs, if applicable.

### ***Mental/Emotional Health***

Information regarding the client current functioning level, current needs and supports and past history of mental health treatment, if applicable. Included are areas such as: Current treatment status;

- Current mental health provider;
- Mental health services currently receiving;
- Medication prescribed for treatment of a mental health condition;
- Prescribing/treating professional;
- Observed/reported mental health/behavioral conditions; and,
- Mental health treatment history.

### ***Financial Information***

Information regarding the financial resources available and the client's ability to manage the resources independently. The thoroughness and accuracy of financial information is especially critical for clients who will receive Adult Residential Services since the payment calculation is determined utilizing the client's financial information.

- Financial resources - type, amount and frequency;
- Other resources available to the client (non-financial);

- Assets available to the client (cannot exceed a maximum of \$2,000 liquid assets to be eligible for an Adult Residential Services supplemental payment);
- Outstanding debt(s) owed by the client.
- Health insurance coverage
- Life insurance coverage
- Income Maintenance benefits received from DHHR;
- Information about the client's ability to manage their own finances. If they aren't, who is?
- Pre-need burial arrangement in effect; and,
- Court ordered obligation for child support/alimony
- 

### ***Educational/Vocational Information***

Information about the educational/vocational training the client has received or is currently receiving. This should include information such as:

- Last grade completed;
- Field of study;
- History of college attendance/graduation; and,
- History of special licensure/training.

### ***Employment Information***

Information about the client's past and present employment, including but not limited to sheltered employment. Information should include:

- Current employment status;
- Current employer;
- Type of employment; and,
- Prior employment history.

### ***Military Information***

Information about the client's military history including information such as:

- Branch of service;
- Type of discharge received;
- Date of discharge;
- Any veteran's benefits (such as, pharmacy, medical, financial, etc.); and,
- Service-related disability, if applicable.

### ***Legal Information***

Information about all known legal representatives, and the specific nature/scope of that relationship, such as:

- Assessment of the client's decision-making capacity by the Adult Service worker;
- Information about legal determination of competence, if applicable;
- Information about efforts to have the client's decision-making capacity formally evaluated; and,
- Assessment of the client's decision-making capacity by the Adult Service worker;

- Information about legal determination of competence, if applicable;
- Information about efforts to have the client's decision-making capacity formally evaluated; and,
- Identification of specific individuals who assist the client with decision making.
- Is the adult safe or can his/her safety be arranged/assured through resources available to him/her? (Resources include financial, social, family, etc.)

### ***Critical Questions that must be Considered***

In addition to gathering information, several critical questions must also be considered. These include the following:

- Assessment of the client's decision-making capacity by the Adult Service worker;
- Does the adult appear to meet eligibility criteria for Adult Residential services?
- Has there been a medical determination that the adult does/does not have decision making capacity?
- Does the adult have an acting substitute-decision maker? (guardian, conservator, defacto guardian, de facto conservator, health care surrogate, medical power of attorney, power of attorney, representative payee, etc.
- Does the adult have any advance directive in effect? (Living Will, DNR, Power of Attorney, Medical Power of Attorney, etc.) and,
- If Adult Residential Services are not to be provided, are referrals to other resources needed?

### **3.3 Time Frames**

The Initial Assessment process will provide face to face interviews within assigned time frame not to exceed 14 days. The Initial Assessment will be completed within thirty (30) calendar days from the date intake received.

### **3.4 Assessing Eligibility**

Client must meet one of the following criteria:

- Age sixty-five (65) or older and be in need of supportive living;
- Be at least eighteen (18) years of age or an emancipated minor and be physically and/or mentally incapacitated and need supportive living; or,
- Be a recipient of APS or APS Preventive services and in need of supportive living

In order for an individual to be eligible to receive Adult Residential Services provided by the Department, the individual must be a resident of West Virginia; their liquid assets cannot exceed \$2000.00 they must be a US citizen must be willing to apply their income (less the allowable amount for personal needs) to the Department's established cost of placement in the Adult Residential Services Placement. If a client has over \$2,000 in assets, has no DPOA, and client is not able to manage their own finances, then the worker should consult their supervisor to determine if a conservator will need to be applied for through the Conservatorship process in that district. Prior to going to filing the petition, the supervisor is to send an email with the petition to be filed to the Assistant Attorney General for review.

Client Assessment for Adult Residential Services Placement A thorough assessment of the client in order to determine if an Adult Residential Services placement is an appropriate placement option will be completed. If so, a client who is being considered for this type of placement setting must meet the following criteria:

- In need of supportive living in order to remain in or return to a community living setting;
- Ambulatory and capable of self-preservation - able to vacate the premises independently in an emergency (devices to aid ambulation such as a wheelchair or walker may be permitted only if the client is capable of using the device unassisted and he/she is able to remove themselves from the home by his/her own power);
- Able to care for his/her own personal needs such as bathing and dressing with minimal assistance or has the capacity to develop these skills with training from the Adult Residential Placement provider and/or other professional;
- Alert and stable enough to be able to express their wishes regarding their living arrangements and able to participate in planning for their needs or has been determined by a medical professional to be in need of Adult Residential Services and able to benefit from placement;
- Able, or have a legally appointed representative who is able, to understand what Adult Residential Services placement is and expresses a desire for this type of placement;
- Unable to live alone as a result of physical or mental incapacity;
- No other suitable living arrangements are available;
- Able to meet the established admission criteria for the facility being considered; and,
- Unable to live alone as a result of physical or mental incapacity;
- No other suitable living arrangements are available;
- Able to meet the established admission criteria for the facility being considered; and,
- Free from communicable disease that would endanger the health of others; and,
- Willing to contribute to their cost of care to the extent possible.

**In addition, they must NOT:**

- Be incontinent at time of admission or if incontinent, the provider must be willing to accept the client in their facility;
- Be in need of nursing home care or highly structured institutional care;
- Be in need of acute medical or psychiatric care;
- Be intoxicated by alcohol or drugs; and,
- Be dangerous to themselves or others (“dangerous” means a person who currently exhibits/has exhibited behavior that can or is likely to result in infliction of injury or damage other persons or property).

If a client requires an assistive medical support, such as oxygen, this will not necessarily disqualify the individual from participation in the Adult Residential Services program.

### 3.5 Short-Term Service Planning

Consideration is to be given to both short- and long-term planning including planning for eventual discharge from Adult Residential Services as appropriate.

These two (2) situations are described below:

- Department will provide social services beyond Initial Assessment
- Department will NOT provide social services beyond Initial Assessment

### 3.6 Conclusion of Initial Assessment

Whether or not Adult Residential Services provided by the Department are needed and a case opened. In order for a case to be opened, the adult must have been determined to meet the applicable eligibility criteria.

#### ***Initial Assessment Disposition Options***

The possible dispositions available are:

- Open an Adult Residential case;
- Refer to other resources (internal/external to Department); or,
- No additional action needed.

#### **Incomplete assessment**

In rare instances, it will not be possible to complete an assessment.

- The disposition shall be based on all the information gathered during completion of the Initial Assessment.
- Advising the client of their approval to receive Adult Residential Services.
- Location and selection of an appropriate provider; including pre-placement visits when appropriate.
- Furnish the provider with any special considerations/information about the client/client needs necessary for the provider to meet the client's needs. Facilitate the client to move into the Adult Family Care home.
- Explaining the payment process to the provider, client, and/or decision maker; and completing Payment Agreement.
- Complete all necessary paperwork and documentation
- Review and monitor the case as required.

## SECTION 4 Case Review

### 4.1 Comprehensive/Global Assessment

Completion of the Comprehensive Assessment involves interviews with the client and other significant individuals.

### 4.2 Time Frames

This assessment will be completed within the first thirty (30) calendar days following the date the case is opened and annually thereafter. If the adult service worker is knowingly going to court for a guardianship assessment, the worker should go ahead and open the case so that it does not go backlogged past 30 days while waiting on the court hearing.

### 4.3 Case Management Activities

Once a client has been opened as a recipient of Adult Residential services through the

department, various case management activities must occur.

These include tasks such as:

- Advising the client of their approval to receive Adult Residential Services.
- Location and selection of an appropriate provider; including preplacement visits when appropriate.
- Furnish the provider with any special considerations/information about the client/client needs necessary for the provider to meet the client's needs.
- Facilitate the client to move into the Adult Family Care home.
- Explaining the payment process to the provider, client, and/or decision maker; and completing Payment Agreement.
- Complete all necessary paperwork and documentation
- Make a face-to-face visit with the client every 90 days unless the client is also receiving Guardianship Services, then make face-to-face visit with the client every 60-days (refer to the below sections *Non-Guardianship Adult Residential Services Client* and *Guardianship Client Receiving Adult Residential Services*)
- Review and monitor the case as required

#### ***Non-Guardianship Adult Residential Services Client***

For an individual who is not receiving Guardianship Services but is receiving Adult Residential Services, face-to-face contact should be made at least once during the first month. Thereafter, the worker must have face-to-face contact with the individual at least **every 90 days**. These contacts are to be documented in CCWIS within 3 business days of completion of the contact. Documentation is to be pertinent and relevant to carrying out the activities set forth in the Service Plan. This is a minimum standard. Workers are strongly encouraged to have more frequent contact, and the need for more frequent contact with the client should be determined based on their unique needs and circumstances.

An individual who is not receiving Guardianship Services but is receiving Adult Residential Services is:

- A client receiving Adult Residential Services, and DHHR is not a Substitute Decision-Maker (e.g., DHHR is not Guardian or Health Care Surrogate)
- A Health Care Surrogate client who is receiving Adult Residential Services, placed in an Adult Family Care home
- A Health Care Surrogate client who is receiving Adult Residential Services, placed in Assisted Living

#### ***Guardianship Client Receiving Adult Residential Services***

For an individual receiving Guardianship Services and Adult Residential Services (either Assisted Living or Adult Family Care), face-to-face contact should be made at least once during the first month. Thereafter, the worker must have face-to-face contact with the protected person at least **every 60 days**. These contacts are to be documented in CCWIS within 3 business days of completion of the contact, and documentation is to be pertinent and relevant to carrying out the activities set forth in the Service Plan. This is a minimum standard. Workers are strongly

encouraged to have more frequent contact. The need for more frequent contact with the client should be determined based on their unique needs and circumstances.

An individual who is receiving Guardianship Services and Adult Residential Services is:

- A Guardianship client who is receiving Adult Residential Services, placed in an Adult Family Care home
- A Guardianship client who is receiving Adult Residential Services, placed in a participating Assisted Living facility

*Refer also to Substitute Decision-Maker Policy Section 6 Case Review, Subsection 6.3 Time Frames, which outlines face-to-face contact minimum standards for Substitute Decision-Making clients.*

#### **4.4 Placement**

When placing a client in an Adult Residential Placement, a supplemental payment by DHHR will NOT be made if there is any source available that will pay for the client's cost of care. DHHR will supplement the cost of care as a last resort only.

WV Code §16-5D-6 states that no public official or employee may place any person in, or recommend that any person be placed in, or directly or indirectly cause any person to be placed in, any Assisted Living placement or Legally Unlicensed Homes as defined in section two of this article, which is being operated without a valid license from the secretary. Therefore, DHHR cannot place or cannot authorize, recommend, or facilitate placement in an unlicensed Assisted Living Residence.

#### ***Selection of the Provider***

The successful placement of a client in an Adult Residential Services will depend largely on assuring a good "match" between the client being placed and the Assisted Living facility.

#### ***Placement of Clients Being Discharged From a State Institution***

Individuals who have resided in a state operated facility for an extended period of time will face some unique challenges as they adjust to an Adult Residential Services setting. In order to ensure a smooth adjustment, it is important for the Adult Residential Services provider to be aware, not only of the client's needs, but also of the prior routine and personal habits to which the client has become accustomed. A gradual transition from the familiar routine to a new setting and new routines will make for a smoother and more successful transition to the Adult Residential Residence.

In no instance shall a client who has been institutionalized in a mental health facility on an involuntary commitment be fully discharged from the institutional setting to placement in/with an Adult Residential Services provider per WV Code §27-7-2. Clients who are coming from this type of placement in a mental health facility are required to be released from the mental health facility on Convalescent Status and placed on a provisional basis into the Adult Residential Services placement. This provisional placement may last for a period of up to six (6) months.

***Trial Visit - General***

If possible, a trial visit, can last up to seven (7) days between the client and the prospective Adult Residential Services provider. The worker also must provide all contact information so that the provider is able to keep in contact. A worker should also ensure that they call and check up on the client if client is there longer than one (1) day.

***Trial Visit - Clients from another County or Institutional Setting***

If the client is coming from another county the sending county will provide a detailed client summary. You should also provide any contact information to speak to an Adult Service Worker in that District.

**4.5 Client Medical Evaluation**

A current medical evaluation is required to document the current health status of the client and it verifies that he/she is free of communicable diseases to the best of the physician's knowledge for both Adult Family Care and Assisted Living. This evaluation needs uploaded into the document imaging respirator in the case and the hardcopy should be placed in the paper file.

**4.6 Ongoing Medical Care for Adult Residential Services clients**

All clients placed in an Adult Residential Services are to receive ongoing medical care through their placement. They are also to receive an annual client medical evaluation. This evaluation needs uploaded into the document imaging respirator in the case and the hardcopy should be placed in the paper file.

**4.7 Initial Placement Period**

During the first several weeks following placement, the client and provider will need regular guidance and support. Ensure you contact the provider and client to ensure they are aware of the districts contact numbers and the contact information for Centralized Intake.

**4.8 Resident Agreement for Participation**

At the time of placement in the Adult Residential Services program, the client must be able to understand and agree with the terms set forth and to signify his/her agreement by his/her signature.

**4.9 If the Adult Residential Services Placement Fails**

It is essential the characteristics and needs of the client and the characteristics and resources of the provider are considered to ensure a stable placement. It is recommended to have a trail visit to help prevent any failed placement. If the placement fails, the worker will need to ensure they work on finding alternative placements and keep in contact with the provider to let them know of the workers progress on alternative placements until that alternative placement is secured and client is transported from provider to the alternative placement.

#### 4.10 Complaint Against the Provider

When a complaint is received against Adult Residential Services provider appropriate information will be obtained and appropriate referrals made. If it is against an adult family care home; the home finding supervisor must be notified.

#### 4.11 Placement When No Supplemental Payment Made by Department

All placements will be handled as private pay arrangements if financial resources exceed the determined cost of care. In private pay arrangements, the department shall not be responsible for any portion of the payment. The provider and the client or the client's representative will be responsible for determining payment arrangements.

#### 4.12 Service Planning

Following completion of the comprehensive assessment or review process, a service plan shall be developed to guide the provision of services; to provide the milestones for assessing progress and success in the implementation of the plan.

##### ***Inclusion of the Incapacitated Adult in Service Planning***

Inclusion of incapacitated adults in the service planning process presents some unique challenges. Although legally determined to lack decision-making capacity, the client may have the capacity to participate in the development of the service plan and should be permitted and encouraged to participate in the development as well as signing of the completed document.

##### ***Determining the Least Intrusive Level of Intervention***

In the provision of services to adults, the principle is well established both in law and policy that the least intrusive means of intervention should always be used. When applying this principle to individual situations there is some discretion in determining the appropriateness of the manner in which the Department intervenes in the life of the client and the level of care/assistance required in order to meet the client's needs.

##### ***Required Elements - General***

The service plan is part of the assessment/review process and developed based on the information gathered during the assessment/review.

Other important considerations for the service planning process are:

- the client's real and potential strengths;
- attitudes, influences and interpersonal relationships and their real or potential impact on implementation of the service plan and,
- Levels of motivation of both the client and the Adult Residential Services provider.

##### ***Developing a Plan to Reduce Risk/Assure Safety***

When developing a plan to assure safety of the client, it is important to involve them in the discussion of the behaviors which are problematic, options for managing the behaviors and, the formalization of a plan to address the behaviors and their cause(s).

### **4.13 Case Review**

Evaluation and monitoring of the Adult Residential Services case and the progress being made should be a dynamic process and ongoing throughout the life of the case. For Adult Residential Services cases, regular monitoring is essential in order to evaluate progress, identify potential problems and seek prompt resolution. A case review should occur, at a minimum, of every six (6) months or when there is a substantial change in the client's functioning.

#### ***Purpose***

The purpose of case review is to consider and evaluate progress made toward achievement of identified goals in the service plan. Re-examination of the service plan is a primary component of the review process.

#### ***Time Frames***

However, the service plan is required to be reviewed, at a minimum, once every six months, during the case review process. However, may be reviewed and modified as necessary (i.e. any changes in the case)

#### ***Conducting the Review***

The review process consists of evaluating progress toward the goals identified in the current service plan.

Information that may be considered during review process:

- summary of changes in the individual or family's circumstances;
- summary of significant case activity since the last review;
- evaluate need for clothing allowance;
- if applicable, collect receipts/bills for any co-pays which may be eligible for a reimbursement/payment via a demand payment;
- if applicable, assess the need for continued Special Medical Card;
- assessment of the extent of progress made toward goal achievement;
- whether or not the identified goals continue to be appropriate and, if not, what changes and/or modifications are needed;
- barriers to achieving the identified goals; and,
- other relevant factors.

#### ***Review of Personal Expense Allowance Use***

The accounting records for the client's personal needs allowance maintained by the facility or Adult Family Care Provider are reviewed to ensure that the client is receiving the benefit of their personal needs allowance. If it is believed the Adult Residential Services provider is negligent, exploitive, or is mismanaging the client's personal expense allowance; a referral will be made to Adult Protective Services and law enforcement will be notified in writing.

#### ***Documentation of Review***

The review process will include reviewing the service plan, completing a case summary and determination of whether the case will continue or will be closed.

### ***Record Keeping***

Upon placement of the client in the Adult Residential Services or shortly thereafter, information about the client's service needs will be provided to the Adult Residential Provider to be placed in the client's individual file.

Information that must be provided to the Adult Residential Provider and maintained in the client file by the provider includes the following:

- identifying information about the client;
- information about significant others such as family members, friends, legal representatives, etc.;
- information about the client's interests, hobbies and church affiliation;
- medical status including current medications, precautions, limitations, attending physician, hospital preference;
- advance directive(s) in force;
- information about client's burial wishes, plans and resources;
- the Social Evaluation (this form may contain much of the required/client identifying information)
- copy of the signed Resident Agreement for Participation;
- copy of the current and previous Payment Agreements for their facility; and,
- Copy of the current Service Plan.

## **SECTION 5 Confidentiality**

### **5.1 Confidential Nature of Adult Services Records**

Legal provisions concerning confidentiality have been established on both the state and federal levels. In federal law, provisions are contained in the Social Security Act. On the state level, a provision related to confidentiality of client information is contained in West Virginia Code. Additionally, requirements related to confidentiality specifically related to Adult Protective Services cases are contained in §9-6-8.

#### ***When Confidential Information May be Released***

All records are to be kept confidential and may not be released except as follows:

In many instances, courts will seek information for use in their proceedings. The process by which a court commands a witness to appear and give testimony is typically referred to as a subpoena. The process by which the court commands a witness who has in his/her possession document(s) which are relevant to a pending controversy to produce the document(s) at trial is typically referred to as subpoena duces tecum. For reporting and statistical purposes, non-identifying information may be released for the preparation of non-client specific reports. The client may request to view his/her client record and should be permitted to do so; although, certain information contained in the record may not be accessible.

### **5.2 Records Maintained by the Provider**

Records maintained by the provider are confidential and are to be maintained in a secure location. Information about the client shall only be released to other parties in order to provide needed services (examples: medical information to medical providers, income information if

eligibility is based on financial information, allergies/dietary needs to day treatment provider, etc.).

### 5.3 Subpoenas, Subpoena Duces Tecum, Administrative Subpoenas, & Court Orders

The department may be requested by the court or other parties to provide certain information regarding adult services cases with which we are currently involved or had previous involvement. The various mechanisms that may be used are 1) subpoena, 2) subpoena duces tecum, or 3) court order. Upon receipt of any of these, the department MUST respond. Failure to comply is contempt of court and could result in penalties.

#### ***Subpoena***

A subpoena commands a witness to appear to give testimony. Subpoenas may be court ordered or administrative (ordered by a party other than the court). Though all subpoenas must be responded to, the manner in which this response occurs is somewhat different dependent on who issues the subpoena. If an AS worker receives a subpoena, the worker is to notify their supervisor immediately so that they can provide that information to their chain of command and the Assistant Attorney General.

#### ***Subpoena Duces Tecum***

While a subpoena duces tecum commands a witness, who has in his/her possession document(s) that is relevant to a pending controversy, to produce the document(s) at trial.

#### ***Court ordered Subpoenas***

These include subpoenas issued by the circuit court, the magistrate court or the mental hygiene commissioner. There may be times when a questionable court order or a subpoena requesting that confidential information be provided is received.

#### ***Administrative Subpoenas***

These include subpoenas issued by an attorney or administrative law judge (other than a DHHR administrative law judge). These subpoenas generally request that the Adult Service worker appear to provide testimony and/or produce the case record.

## SECTION 6 Case Management

### 6.1 Introduction

Once an individual has been approved for Adult Family Care, various case management activities must occur. These activities may include: identification of available homes based on the characteristics of individual needing placement, monitoring of the placement setting, follow-up on complaints related to compliance with program standards, providing and/or arranging needed training, and completion of annual provider reviews.

### 6.2 Responsibilities of the Client

- The client or his/her legal representative is responsible to make payment to the provider in accordance with the terms of the payment agreement;

- The client shall inform the provider before inviting friends or relatives to the home;
- It is the responsibility of the client, or his/her legal representative, to immediately inform the social worker and the provider of changes in his income and/or living arrangements;
- The client, or his/her legal representative, will be responsible to make restitution in the event there is an error in payment as a result of his/her failure to immediately inform the social worker and the provider of any changes;
- The client is to respect the rights of others in the home, including the provider; and,
- The client is to become familiar with and abide by the provider's house rules and regulations.

**Note:** Please see 4.3 for the Case Manager's responsibilities for case activity.

## SECTION 7 Payments

### 7.1 Determination of Rate of Payment

Determination of the rate of payment due to an Adult Residential Services provider is done automatically and based on a variety of client information entered in the system by the social worker. Key areas used in calculating the rate of payment include employment information including sheltered employment, income and asset information, and debts and expense information. Complete and accurate documentation in each of these areas is essential in determining the rate of payment. Adult Residential Placement providers are paid a flat rate for the care and supervision furnished to each adult placed in the facility by the department.

In addition to the client's income, if there is a payment made from any other source on behalf of the client, this amount must be applied toward the client's cost of care to reduce or eliminate the supplemental amount paid by DHHR. If the supplemental payment made by DHHR is eliminated, the case must be closed.

If the client receives services from any other agency that provides supervision or care for the client, this must be evaluated to determine if the client remains eligible to receive a supplemental payment from DHHR.

Key areas used in calculating the rate of payment include:

- employment information, including sheltered employment;
- income and asset information; and
- Debt and expense information

#### ***Resource Deductions***

In unique situations the client may be allowed to redirect a portion of his/her monthly resources rather than using these to pay for his/her care. These should not typically be for routine requests, but rather for necessary expenditures that are extraordinary. (Examples: irrevocable pre-need burial plan IF this was in effect for a long period of time prior to placement in Adult Residential Services and the total amount of the pre-need burial does not exceed \$5,000.00. In addition, the client must have paid at least 50% of the total cost of the pre-need burial.); OTC/Non-Medicaid covered medications that are needed on a regular basis; conservator charge

(the usual fee is 5% of the total monthly income of the client.). Life insurance policies must not be considered for a resource deduction

If the only financial responsibility of the conservator is the disbursement of the monthly income of the client (with no assets involved), the worker must explore the possibility of the provider becoming the representative payee and document these efforts in the contact screen in FACTS. If the provider is willing to become the representative payee, a petition must be filed for removal of the conservator. If the court approves removal of the conservator, a new contract must be done in FACTS to remove the resource deduction.

Granting of a resource deduction may be considered only when the following criteria are met:

- client has a special need (if a medical need - must be documented by their physician);
- All potential resources must be thoroughly explored and documented;
- to validate no resources are available to meet this need. The adult service worker should explore community/civic organizations, family members, religious organizations, Medicare Part D, drug company assistance programs, samples from physicians, mental health agencies, health right clinics, and any other potential available resource.
- All potential resources must be thoroughly explored and documented; to validate no resources are available to meet this need. The adult service worker should explore community/civic organizations, family members, religious organizations, Medicare Part D, drug company assistance programs, samples from physicians, mental health agencies, health right clinics, and any other potential available resource.
- There are no potential resources to meet this need. If the resource deduction is for a prescription need, a statement from the client's physician stating why this particular medication is needed.
- After a thorough search, if alternate resources are not available, a resource deduction may be considered. When the Payment Agreement is completed with a resource deduction request, the contract becomes a two-tiered approval.
- If the resource deduction is not being applied to the approved expense, the resource deduction must be discontinued, and reimbursement recouped for each month the resource deduction was not used for the allowable expense.

If an alternate source is located that will pay part, but not all the monthly amount, the worker will indicate the amount on the contract that is to be considered as a resource deduction. Example total debt amount is \$100.00, and \$40.00 of this will be paid by a civic organization, then \$60.00 is the amount to be requested as a Granting of a resource deduction may be considered only when the following criteria are met:

- client has a special need (if a medical need - must be documented by their physician);
- All potential resources must be thoroughly explored and documented;
- to validate no resources are available to meet this need. The adult service worker should explore community/civic organizations, family members, religious organizations, Medicare Part D, drug company assistance programs, samples from physicians, mental health agencies, health right clinics, and any other potential available resource.

- All potential resources must be thoroughly explored and documented; to validate no resources are available to meet this need. The adult service worker should explore community/civic organizations, family members, religious organizations, Medicare Part D, drug company assistance programs, samples from physicians, mental health agencies, health right clinics, and any other potential available resource.
- There are no potential resources to meet this need. If the resource deduction is for a prescription need, a statement from the client's physician stating why this particular medication is needed.
- After a thorough search, if alternate resources are not available, a resource deduction may be considered. When the Payment Agreement is completed with a resource deduction request, the contract becomes a two-tiered approval.
- If the resource deduction is not being applied to the approved expense, the resource deduction must be discontinued, and reimbursement recouped for each month the resource deduction was not used for the allowable expense.
- If an alternate source is located that will pay part, but not all of the monthly amount, the worker will indicate the amount on the contract that is to be considered as a resource deduction. Example total debt amount is \$100.00, and \$40.00 of this will be paid by a civic organization, then \$60.00 is the amount to be requested as a resource deduction.

## 7.2 Personal Expense Allowance

The personal expense allowance is the amount a client placed in an Adult Residential Services placement is permitted to retain from the total income they receive in order to meet their personal expenses.

The amount of the personal expense allowance is established by the Bureau for Social Services and may be adjusted periodically. All clients placed by the Department in an Adult Family Care Home shall receive the full personal expense allowance amount each month or have this amount readily available for their use. An exception to this would be when the client enters placement after the first day of the month. In this situation, the personal expense allowance is to be pro-rated. When the client moves from one provider to another provider in the middle of the month, any personal expense allowance remaining must be given either to the client or the new provider, if the new provider is going to handle the client's personal expense allowance (serve as representative payee or handling the client's personal expense allowance) the provider must maintain a record of funds received and expenditures made on the client's behalf.

OHFLAC regulations require an Assisted Living Residence to set up an accounting system so as not to co-mingle resident's funds with the facility funds or with the funds of any other person. If the resident's fund exceeds two-hundred dollars (\$200), these funds shall be deposited for the resident in an interest-bearing account at a local bank. The resident account record shall show in detail, with supporting documentation, all monies received on behalf of the resident and the disposition of all funds received. Persons shopping for the resident shall provide a list showing a description and price of items purchased if the purchase exceeds \$10.00, along with payment

receipts for these items. This record must be available for review by the resident, his/her legal representative, any authorized entity and to the department at any time.

The client may use his/her personal expense allowance to purchase any item(s) they choose so long as the purchases do not conflict with established house rules or regulations applicable to operation as an Adult Residential Services placement. The allowance must be available to the client and used as he/she desires.

The personal expense allowance shall NOT be used to obtain basic necessities such as food, clothing, shelter costs, medication, transportation, or medical care unless it is the desire of the client to do so.

Examples of items that may be purchased:

- Hair styling/permanents;
- Tobacco products;
- Hair spray, cologne, aftershave;
- Extra clothing;
- Jewelry;
- Radio or television;
- Games, books and other recreational items of interest to the client;
- Postage stamps and stationary;
- Long distance telephone calls;
- Cosmetics;
- Pre-need burial trust fund; and,
- Hair care above and beyond the basic care that must be provided to maintain cleanliness and neatness of the client's hair.
- 

**Examples of items that may not be purchased:**

- Basic personal hygiene articles (toothbrush, toothpaste, soap, deodorant, towels, wash cloths, etc.);
- Regular hair cut (applies to all clients, male and female);
- Basic recreational needs;
- Medications, including over the counter drugs prescribed by the client's physician; and,
- Co-pay on client's medication.

If certain prescribed medications are determined, by a physician, to be the sole drug the client can take, and that drug is not eligible for reimbursement by Medicaid, alternative resources will be explored to pay for this medication. (Examples of alternate resources include Medicare Part D waiver process, drug company program assistance programs, samples from physicians, mental health agencies, health right clinics, etc.).

If the client has a court appointed legal representative, the legal representative has the ultimate decision making authority regarding the use of the personal expense allowance, however, the

funds must be used for the client's benefit and the client should be permitted and encouraged to be involved in decisions about how the funds are to be used.

### ***Income***

Adults who have been placed in an Adult Family Care setting by the Department who receive income for sheltered employment are entitled to keep a portion of their income from this source. The adult is permitted to keep up to \$65.00 of their net income earned from this source. Individuals who receive \$65.00 or less per month from this source are entitled to keep the full amount earned while those who earn more than \$65.00 from this source are permitted to keep \$65.00 and the balance is to be applied to their monthly payment to their Adult Residential Services provider. Therefore, if the in earnings exceed \$65.00 a new contract will need to be completed.

### **7.3 Payment Agreement**

When placing a client in an Adult Residential Services a supplemental payment by DHHR will NOT be made if there is any source available that will pay for the client's cost of care up to the current State rate. DHHR will supplement the cost of care as a last resort. If the client receives services from Title XIX Waiver program, the client is not eligible for a Supplemental Adult Family Care payment and the client's AFC case may be closed.

In addition, the Adult Family Care Home must be evaluated for closure. If the Adult Family Care Home provider is certified as a Title XIX Waiver provider or employed as a Personal Care provider, the provider must decide if they want to continue being a provider with that program or if they want to be a provider through the AFC program.

If the decision is to continue as a provider with the Title XIX Waiver program or as a Personal Care provider, the AFC Provider Record must be closed.

If the client receives services from any other agency that provides supervision or care for the client, this must be evaluated to determine if the client remains eligible to receive a supplemental payment from DHHR or remains eligible for AFC placement.

If the decision is to continue as a provider with the Title XIX Waiver program or as a Personal Care provider, the AFC Provider Record must be closed. If the client receives services from any other agency that provides supervision or care for the client, this must be evaluated to determine if the client remains eligible to receive a supplemental payment from DHHR or remains eligible for AFC placement.

Whenever the Department is making a supplemental payment, the amount set forth in the Payment Agreement is PAYMENT IN FULL. The client shall not be assessed additional charges, payable by the client or others for the care furnished by the Adult Residential Services provider.

Specifically:

- The total monthly rate of payment due to the provider for a full month of care;
- The total daily rate due to the provider for a partial month's care;
- The portion of the monthly payment which is to be paid by the client for a full month
- The portion of the daily rate that is to be paid by the client for a partial month's care;
- The portion of the monthly payment, if any, which is to be paid by the Department for a full month of care;
- The portion of the daily rate, if any, that is to be paid by the Department for a partial month's care; and,
- The amount, if any, the provider must furnish the client for their personal expense allowance.

### ***No Income***

The Payment Agreement also identifies the date on which the agreement becomes effective. Payment to the Adult Family Care provider will be an automatic payment and will be based on the amounts set forth in the Payment Agreement.

The Payment Agreement is created by FACTS based on a variety of information entered in FACTS by the social worker. Specifically, information from the following areas of FACTS is used in creating the Payment Agreement: 1) financial, 2) debt/expenses and 3) employment.

### ***Payment For Individuals With No Available Income***

If a client who is being placed in an Adult Residential Services has no income, all potential financial resources must be explored including preparation of referral(s) to other agencies such as the Social Security Administration or Veterans Administration.

If the client requires assistance with these applications, the provider may assist the client in order to secure the necessary resources to pay for their cost of care. However, if the client requires that an application be made on their behalf and there isn't anyone to assist with this, the worker may need to have a petition filed for Guardianship and/or Conservatorship appointment in order to get the necessary applications made to secure potential financial resources for the client.

If the client has no income, the department will reimburse the provider for the full cost of care. In addition, payment will be included in the provider's reimbursement for the client's personal expense allowance, which the provider is then responsible to make available for the client's use. If, at some point, the client begins to receive income, the Payment Agreement will need to be reevaluated.

### ***Income not available***

If a client has income but it is not presently available to him/her, it must be determined how the client might gain access to their resources and what other potential resources the client might be eligible for. This may involve working closely with individual(s) who are assisting the client in making their personal and financial decisions.

If the client has income but it is not available for their use at the time of placement, the Payment Agreement developed between the Adult Service worker, provider and the client will reflect that the department will reimburse the provider for the full cost of care.

In addition, payment will be included in the provider's reimbursement for the client's personal expense allowance, which the provider is then responsible to make available for the client's use. At the point the client's income becomes available for their use; the Payment Agreement will need to be reevaluated.

### ***Review of the Payment Agreement***

The Payment Agreement must be reviewed, whenever there is a change in the client's financial situation and a new payment agreement created (if applicable).

### ***Overpayment***

After all reasonable attempts, if the provider does not agree to repay or defaults on monthly payments the provider will be considered for Corrective Action and/or closure of the home.

## **7.4 Automatic Payments**

The primary method used to make payment to Adult Residential Service providers will be the automatic payment process. The automatic payment process takes in consideration the following conditions:

- Type of placement;
- Client's personal expense allowance;
- Client benefit income;
- Client employment income;
- Client sheltered employment income;
- Client assets; and,
- Client monthly expenses (in certain circumstances)
- Date of placement; and
- Date of discharge

Whenever the Department is making a supplemental payment; the amount set forth in the Payment Agreement is PAYMENT IN FULL. The client shall not be assessed additional charges, payable by the client or others for the care furnished by the Adult Residential Services Provider.

Based on all these various pieces of information, FACTS will calculate the total rate of the monthly payment due to the provider. In order to assure that monthly payments to the provider are accurate and received by the provider without delay, it is essential that the Adult Service worker enter the required information in a timely manner. Payment information and supervisory approval must be completed by noon on the fourth (4th) working day of the month in order to prevent inaccurate or delayed automatic payment. Payment information that is not entered and approved by noon of the fourth (4th) working day of the month will require the Adult Service

worker to request a Demand Payment for the purpose of doing a payment adjustment/correction.

After the total rate of payment is determined by FACTS, the Adult Service worker can create the Payment Agreement. The Payment Agreement will reflect several amounts related to the payment the provider is to receive. These include:

- the total monthly rate of payment due to the provider for a full month of care;
- the total daily rate due to the provider for a partial month's care;
- the portion of the monthly payment which is to be paid by the client for a full month of care;
- the portion of the daily rate that is to be paid by the client for a partial month's care;
- the portion of the monthly payment, if any, which is to be paid by the department for a full month of care;
- the portion of the daily rate, if any, that is to be paid by the department for a partial month's care; and,
- The amount, if any, the provider must furnish the client for their personal expense allowance.

### ***General Requirements & Information***

The Assisted Living Residence must submit a monthly invoice in order to receive payment from the department. Payment will not be made without an invoice. The invoice is to include all adults for whom DHHR is making a payment. Residents for whom the department is NOT making a supplemental payment are NOT to be included on the invoice.

### ***Invoicing Procedures***

An original, signed invoice must be submitted by the provider to the Bureau for Children and Families, Office of Financial Services, by the 5th working day of month following services provided. A faxed invoice is not acceptable. The invoice must be on the agency's letterhead.

## **7.5 Demand Payments**

Most costs associated with the care of an adult placed in an Adult Residential Services will be included in the monthly reimbursement paid to the provider by automatic payment. There are, however, certain specific costs that may be incurred that are not included in the monthly reimbursement. The demand payment process may be used to request reimbursement for certain costs incurred for/on behalf of clients placed in Adult Residential Services by the Department or for specific expenses incurred by the Adult Residential Services provider that are not client specific.

## **7.6 Bed Hold**

There may be times when an adult who has been placed in an Adult Residential Services placement by the department must be out of the facility for a brief period of time for client hospitalization or scheduled social activities. The intent of the bed hold is to ensure the

availability of a bed and to prevent disruption of a stable placement whenever possible and appropriate.

### 7.7 Medical

A bed may be held for a resident for up to fourteen (14) days per episode when it is necessary for the client to be absent from the facility or adult family care placement for inpatient hospitalization/treatment. Payment at the established rate will continue for up to fourteen (14) days, or until such time as it is determined that the client will not be returning to the facility, not to exceed the fourteen (14) day limit.

Payment by the department and/or the client will continue in accordance with the terms of the Payment Agreement in effect. In order to grant a bed hold for medical treatment purposes ALL the following criteria must be met:

- the provider must notify the department of the adult's need for out of facility treatment (in advance whenever possible, the next working day whenever out of facility care is required on an emergency basis);
- the adult for whom payment is being continued was placed in the Assisted Living Facility or Adult Family Care Home by the department and the department is currently making a supplemental payment for their care;
- the adult's absence from the Adult Residential Services is to be temporary and short-term, not to exceed fourteen (14) days per episode;
- the resident is expected to continue to be appropriate for placement in an Adult Residential Services upon discharge from treatment/hospital; and,
- The resident will be returning to the Adult Residential Services placement upon discharge.

### 7.8 Social

Providers are to encourage residents to engage in appropriate social and recreational activities. Examples include natural family visitation, natural family vacations, special camps, overnight field trips, etc. A client may be absent from the facility for these types of events for up to fourteen (14) days per calendar year. During the resident's absence, the Adult Residential Services provider will continue to receive payments uninterrupted.

ALL the following criteria must be met:

- the activity must be scheduled in advance;
- the adult for whom payment is being continued was placed in the facility by the department and the department is currently making a supplemental payment for their care;
- the adult's absence from the Assisted Living Residence is to be;
- temporary and short-term, not to exceed 14 days per calendar year; and,
- The resident will be returning to the Adult Residential Services Placement.
- All overnight absences for this purpose must be approved in advance.

## 7.9 Respite Care

Respite care can be arranged to provide temporary care to elderly or disabled adults in order to offer short term relief to regular Adult Family Care providers. The purpose is to allow these full-time providers to have planned times for vacations or other activities and to provide emergency care in the event of illness of the provider or a provider's family member. Clients are not to be placed in with an unapproved respite provider. Household members cannot be paid for providing respite care.

### ***Planning and Paying for Respite Care***

All paid respite is to be planned and approved in advance, with the exception of respite which is needed as a result of an emergency involving the provider or a member of the provider's household. When respite is needed in an emergency, verbal approval must be obtained prior to placement of the client with an approved respite provider. The respite is not to exceed fourteen (14) days per calendar year per client for whom DHHR is making a supplemental payment.

Prior to payment for respite care, the respite provider must submit a written signed/dated statement or invoice, verifying dates respite care was provided and the client's name(s) that care was provided to, with the name of the respite provider and the regular AFC provider's name. Upon receipt of this written invoice/statement, the payment process will be started. In the event respite care would continue beyond the allowed fourteen (14) days, respite payment to the provider would be discontinued. The per diem rate paid to the respite provider will be based on the per diem rate for the regular AFC provider. Payment beyond the annual fourteen (14) days is the Adult Family Care Provider's responsibility.

## 7.10 Trial Visit

If a client who is currently an active Adult Services client is planning to move to another home or a different type of setting, a trial placement is recommended to assure a good match between the prospective provider and the client. If an overnight stay is planned as part of a trial visit, the Department may reimburse the prospective provider. In order to generate this type of demand payment, the provider would have to be set up in FACTS and the trial placement reflected on the Service Log in FACTS. The current provider will continue to receive payment, with the trial visit provider being paid for the number of days for the trial visit. If the client is being discharged from an institutional setting or coming from the community and is not an active Adult Services client at the time of the trial visit, the client must be encouraged to use his/her resources to make payment to the prospective provider. If it is determined that the client does not have resources to pay the provider for the trial visit, the client's social worker is to request that payment to the provider be made by the Department as a demand payment. Reimbursement made by the Department for a trial visit is to be at the current daily rate for the type of provider involved in the trial visit. The social worker shall request payment for the days the client is in the trial home (i.e., if the client goes to trial home visit on Friday at 6:00 p.m. and comes back on Sunday at 12:00 p.m. the provider will be paid for three (3) full days.

### **7.11 Payment Adjustment**

This demand payment type is to be used for the purpose of correcting an under payment to an Adult Residential Services provider. A payment adjustment may be requested to reimburse the provider for any unpaid portion due. For the Assisted Living Provider the demand payment would be used to correct an underpayment and can only be completed by the Division of Finance.

### **7.12 Specialized AFC Payment**

This demand payment type applies only to payments made to existing this type of provider is different from the rate of payment for a regular AFC Home, therefore, this demand payment type is to be used to reimburse Specialized AFC providers for the balance of payment due each month.

### **7.13 Educational Expenses for Special Education Students**

Adults who are enrolled in special education programming may incur costs associated with their educational program. In order for the Department to reimburse the provider for these costs, the adult must be enrolled on a full-time basis in an educational program. In addition, the costs for which reimbursement is requested must not be reimbursable by any other source and must be related to enhancing or completing their educational program. Examples of costs that may be reimbursable include graduation fees and reasonable special fees for school trips/functions.

### **7.14 Annual Client Medical Evaluation**

Each client placed by the Department in an Adult Family Care Home must receive an annual medical examination. The Adult Family Care provider is to arrange for this examination to be completed. If the Department is going to reimburse for this, the cost cannot not exceed Medicaid rates.

### **7.15 Co-Payment on Prescription Medications**

The cost incurred for co-payments for medications may be reimbursed at Medicaid and/or Medicare D rates for adults who have been placed in an Adult Residential Services placement by the Department and for whom the Department is making a supplemental payment.

### **7.16 Provider Training Incentive Payment**

Adult Family Care providers who are currently receiving a supplemental payment for a client(s) placed in their home by the Department are entitled to receive reimbursement for approved training they receive. This reimbursement is offered as an incentive to encourage providers to participate in relevant training opportunities to enhance their skills and knowledge as Adult Family Care providers. Training that would be acceptable in order to qualify for this payment would include training provided by the Department or training that is furnished by another agency/entity that has been approved IN ADVANCE by the Department. For the Assisted Living Provider this reimbursement is available for up to five (5) designated staff to attend.

Adult Family Care providers are required to attend a minimum of two (2) hours of training per quarter. However, in order to be eligible to receive this training allowance, the Adult Family Care provider or the Assisted Living staff member for whom reimbursement is being requested must attend a minimum of six (6) hours of approved training during the quarter for which reimbursement is being requested. The two (2) hours of required training may be included in the total hours required for the incentive payment. The quarters to be used for determining this allowance are based on the calendar year. Specifically, the quarters to be used are January - March; April - June; July - September; and October - December. Upon completion of the required hours of approved training, the provider may request payment of the training allowance by the Department. Verification of attendance of the approved training must be submitted at the time reimbursement is being requested. Without verification that training was attended, payment shall not be made.

The training allowance cannot be pro-rated. If a full six (6) hours of training is not completed within the quarter, the provider is not eligible for this payment. Also this demand payment type is not to be used for required training materials. Instead the "other demand payment" type is to be used. Respite providers are not eligible for the training incentive payment.

### **7.17 Annual Adult Family Care Provider Medical Report**

After an Adult Family Care Home is approved, the person(s) in the household who is primarily responsible for furnishing care to the clients placed in the home is required to have a medical evaluation completed at a minimum of every three (3) years; however, the homefinder has the flexibility of requesting an updated medical prior to the expiration of the three (3) year time frame, if they question the provider's ability to care for the incapacitated adult(s). The purpose of this evaluation is to ensure that the person(s) who has responsibility for providing care remains in good health and able to provide the necessary care and support to adults placed in their home.

The provider is to arrange for completion of the medical report with their physician. When arranging for completion of this evaluation, providers are to be encouraged to request that their physician complete this evaluation during a regularly scheduled medical appointment whenever possible.

If the provider has no other resources or insurance to pay for the medical report, reimbursement, the provider must submit a receipt, along with the completed medical report, to the Department and indicate that reimbursement is being requested. Reimbursement for completion of the medical report by the physician may not exceed the current Medicaid rate for a medical report.

### **7.18 Durable Medical Equipment and Supplies**

In certain situations, the cost of obtaining durable medical equipment or supplies may be reimbursed for adults who have been placed in an Adult Residential Services by the Department and for whom the Department is making a supplemental payment.

The following must be considered:

- Be prescribed by the adult's physician (written statement must be filed in the client's paper record);
- Meet an identified need on the adult's Service Plan;
- Be necessary to prevent the need for a higher level of care;
- Be a one (1) time only expense rather than a reoccurring cost; and,
- Not exceed the current Medicaid rate.
- Not in violation of OHFLAC requirements for an Assisted Living Provider.

**Note:** Examples of Durable Medical Equipment and Supplies may include safety rails, grab bars, quad canes, colostomy supplies, etc. that are not covered by Medicare/Medicaid or any other resource.

### 7.19 Food Supplements

In unique situations, food supplements may be required by an adult placed by the department in an Adult Residential Services placement type in order to maintain sound nutritional status. In certain situations, the cost of obtaining these food supplements may be reimbursed by the department. Reimbursement by the department may only be considered after it has been determined there are no other personal or community resource that can meet this need. In addition, the food supplements for which payment is requested must:

- Be prescribed by the adult's physician (written statement must be filed in the client's paper record);
- Meet an identified need on the adult's Service Plan;
- Be necessary to prevent the need for a higher level of care;
- Be a one (1) time only expense rather than a reoccurring cost; and,
- Not exceed the current Medicaid rate.
- Not in violation of OHFLAC requirements for an Assisted Living Provider.

### 7.20 Over-the-Counter Drugs/ Drug Efficacy Study Implementation (DESI) Drugs or Rx Not Covered

In certain situations, medications may be required by an adult placed by the department in an Adult Residential Services placement that is not covered by Medicaid or other insurance. These include items such as over-the-counter medications, DESI drugs, or other prescription medications that are medically necessary but not covered by Medicaid or other insurance. The cost of these medications may be reimbursed by the department. Reimbursement by the department may only be considered after it has been determined there are no other personal or community resource that can meet this need.

In addition, the medications for which payment is requested must:

- be prescribed/ordered by the adult's physician or deemed medically necessary by the adult's physician (written statement of need required);
- meet an identified need on the adult's service plan;
- be necessary to prevent the need for a higher level of care; and,

- Not in violation of OHFLAC requirements.

Prior to any expense being incurred, this expense must be, and the provider must submit the receipt for the medication after it has been purchased. DESI Drugs (Drug Efficiency Study Implementation) - These are older drugs that have since been replaced by newer versions and are now considered to be “less than effective”. In some situations, however, an individual cannot tolerate the newer versions of the drugs or experience higher degree of side effects and the physician chooses to continue prescribing the older version of the drug.

### 7.21 \$1,000 Incentive Payment

The intent of this incentive payment is to reward a provider who has been primarily responsible for a client improving to the point that they no longer require Adult Residential services and consequently can return to their own home to live. This payment is not intended to provide additional compensation for providers who have provided short term care to clients with short term needs.

In order for a provider to be considered for nomination to receive this incentive payment, all the following criteria must be met:

- The client must have been income eligible and the provider having received a monthly supplemental payment from the Department for the service they rendered (private pay clients are not to be considered);
- The provider must have provided full time care to the client for a minimum of twelve (12) consecutive months;  
A multi-disciplinary team, such as a Community Planning Team (CPT) used with Guardianship cases, must have been involved in the establishment of the goal of independent living and the development/monitoring of the Service Plan that was implemented;
- Independent living must have been the planned objective on the client’s Service Plan and progress toward the achievement of this goal must be well documented in the six (6) month case review;
- The provider must have been assigned, as part of the Service Plan, key/measurable tasks toward the achievement of the client’s goal of independent living;
- The social worker must be able to demonstrate the client’s return to the level of independence was primarily due to the efforts of the provider;
- An after care plan must be in place to identify the tasks to be accomplished, and by whom, during the six (6) month period the client is living in their own home; and,
- Once the client has returned to their home, they must remain there independently for at least six (6) months before the bonus can be given.

**Note:** Placement in the Adult Residential Services Placement will be end dated when discharge occurs. However, the Adult Residential Services case is to remain open until the end of the After-Care period and the incentive payment has been made.

## 7.22 Other Demand Payment - Not Specified

In certain situations, the cost of obtaining needed supplies or services may be reimbursed for the provider or for adults who have been placed in an Adult Residential Services Placement by the Department and for whom the Department is making a supplemental payment. Reimbursement by the Department may only be considered after it has been determined there are no other personal or community resource that can meet this need. In order for the Department to reimburse the provider for these costs, the provider must submit receipts for the costs incurred.

The supplies or services must:

- Be prescribed/ordered by the adult's physician or deemed medically necessary by the adult's physician (written statement of need required)
- Meet an identified need on the adult's service plan; and
- Be necessary to remain at the current level of care or prevent the need for a higher level of care
- Be a one (1) time only expense rather than a reoccurring cost
- Not exceed the current Medicaid Rate; and
- No other resources are available

## 7.23 Special Medical Authorization

Most clients who are placed in Adult Residential Services will be eligible for Medicaid or some other type of medical insurance to cover the cost of needed medical care. If a client currently receives Medicaid, the Special Medical Card must not be issued. The coverage for Medicaid and the Special Medical card is identical. If the client does not have coverage for necessary medical care, the social worker must thoroughly explore all potential options for securing appropriate medical coverage.

Examples include, but are not limited to, community/civic organizations, family members, churches, Medicare Part D, drug company assistance programs, samples from physicians, mental health agencies, health right clinics, etc. If, after this exploration, the client does not have the resources to pay for needed medical care, use of the Special Medical Authorization may be requested to pay for specific medical expenses. For clients that are eligible for Medicare, the Special Medical card will not cover any prescriptions that are covered under Medicare Part D, regardless of whether the client is enrolled in Medicare Part D or not; therefore, the Special Medical card must not be issued for any prescriptions covered by Medicare Part D for individuals eligible for Medicare. Eligibility for Medicare Part D is based upon the following:

The individual must be receiving either Medicare part A or B. To be eligible for either Medicare Part A or B, the individual must be sixty-five (65) years of age OR, if under sixty-five (65) years of age, the individual must be receiving disability Social Security benefits and must have been receiving disability Social Security benefits for two (2) years.

- Lack of resources means that:
  - The client does not have funds to pay for medical care;
  - No other resources available, such as family, friends, community/civic organizations, etc;
  - Is not eligible for any type of medical coverage; and,

- Is eligible for medical coverage but benefits are not currently available (recent application not yet approved for coverage), with the exclusion of Medicare Part D & A.
- Allowable costs.

Regardless of the reason(s) resources are not available, use of the Special Medical Authorization may only be used to meet an emergent need or to prevent an emergency from occurring. When this is the case, the social worker may request use of the Special Medical Authorization to cover the cost of certain medical care or services. The Special Medical Authorization may only be issued for a period of up to six (6) months. At the end of the approved eligibility period, if continuation of services is necessary, a new authorization must be requested.

In a situation where a client needs services from more than one vendor (i.e., an office visit with a physician and prescriptions from a pharmacy) a separate Special Medical Authorization request will be required for each vendor, with the appropriate eligibility period for each authorization.

Special Medical Authorization is available for use by adults placed by the Department in Adult Family Care in very limited situations. This authorization may only be used when all the following conditions exist:

- The client is currently a resident in an Adult Family Care Home;
- The client was placed by the Department or was placed by another party but the placement was approved by the Department;
- The treatment, service, or certain supplies for which authorization is being requested is deemed medically necessary by the client's physician;
- The medical treatment, service or certain supplies are needed to remedy an emergency medical situation or to prevent a medical emergency from developing; and,
- The Special Medical Authorization may be used to cover certain medical costs; however, all Medicaid eligible services are not necessarily covered by this authorization. The Special Medical card will not cover any prescription that is not on the Medicaid Drug Formulary. In addition, if the client is in a category that should be eligible for Medicare Part D, the Special Medical card will not cover any prescription costs that are covered by Medicare Part D. Therefore, the Special Medical card must not be issued for individuals in this category.

**Examples of costs that are typically covered:**

- Medication (must be prescribed by a physician);
- Limited doctor visit;
- Pads/Chux only - 150/month;
- Adult disposable briefs only - 200/month; and,

**Examples of costs that are NOT covered (not all inclusive):**

- Hospitalization;
- Nursing home placement;
- Psychiatric treatment;

- Behavioral health day treatment;
- Dental work;
- Glasses;
- Outpatient surgery; and,
- Diagnostic testing. D. Required Procedures

The Special Medical Authorization may be used to cover costs; however, all Medicaid eligible services are not necessarily covered by this certain medical authorization (i.e., hospitalization IS NOT covered by the Special Medical Authorization; nor is Case Management services at behavioral health centers).

If a client, who has been placed in an Adult Family Care Home by the Department, has no medical coverage, does not have the resources to pay for and is determined by their physician to be in need of medically necessary treatment or services, Special Medical Authorization may be requested to cover the cost.

When requesting a Special Medical Authorization, the following information will be considered:

- Identify client's goal(s) related to the request services on the Adult Service Plan;
- Explanation of how provision of the requested services will prevent movement the client to a higher level of care;
- List the specific service(s) payment is being requested for and associated cost (cannot exceed current Medicaid rate);
- Statement of verification that all potential resources have been explored and the amount of resources that will be paid through another source (if any) or that there are no other resources available to meet the cost;
- Anticipated duration of request;
- Name of provider;
- Income amount and source;
- Amount of supplemental payment being made by the Department.

In addition to the above information, private pay clients must be paying the current state rate and must not have any resources to pay for the medical need. If a private pay client has any excess income after paying current state rate to the Adult Family Care Home, minus the personal needs allowance this amount must be applied towards the cost of the medical need before using the Special Medical card.

## 7.24 Approval Process

### ***If approved***

A copy of the Authorization must be furnished to the vendor providing the service with this authorization. If at any time during the approval period, the authorized services are no longer required, written notification will be provided to the vendor advising them to discontinue provision of the authorized services.

***If denied***

Additional information may be resubmitted if the request if the denial was based on insufficient information. Otherwise alternate resources must be located and secured.

**Note:** Clozaril or an equivalent is covered by Medicare Part D. If the client is not eligible for Medicare Part D, Medicaid covers this for recipients of Medicaid. There is also Special Pharmacy Program for individuals who cannot meet a Medicaid spend down and who meet certain other criteria.

## 7.25 Clothing Allowance

***Purpose***

The purpose of providing a clothing allowance is to ensure that all clients placed by the Department of Health and Human Resources, and for whom the Department is making a supplemental vendor payment, have adequate clothing while in placement. Provision of a clothing allowance is not to be considered an automatic payment. Rather, it is to be based upon the individual client's need for clothing. There are two (2) types of clothing allowance available for eligible adults: an initial placement allowance, and a re-placement clothing allowance.

***Determination of Eligibility***

Certain adults in residential settings are eligible to receive a clothing allowance. In order to be eligible for this allowance, the client must meet two (2) criteria. These are: 1) they must reside in an Adult Residential Services Placement and 2) the Department must be making a supplemental payment to the residential placement provider for the client's care. Private pay clients in the home ARE NOT eligible for a clothing allowance from the Department.

***Initial Placement Allowance***

In order to ensure that the adult has sufficient and adequate clothing at the time of the original placement, an initial placement clothing allowance may be requested. Eligibility for the initial placement allowance begins on the date of placement and ends on the day prior to the date of the six (6) month review or the date of discharge, whichever occurs first. A lifetime maximum of \$100 is available for the initial placement clothing allowance. It is not necessary to use the entire amount permitted at one time, however, purchases do need to be completed prior to the six (6) month case review following placement. Any unspent portion of the client's initial clothing allowance will be forfeited and may not be carried over to the following six (6) month period.

The initial placement allowance is available at the first placement of the adult in an adult residential placement and is a one (1) time only allowance. In the event the adult would move from one residential placement setting to another, the adult is not again eligible for an initial placement allowance. The discharging provider is to send the adult's clothing with them at the time of removal from their home.

### ***Replacement Allowance***

In order to ensure that the adult has sufficient and adequate clothing throughout their placement, a replacement clothing allowance may be requested every six (6) months. Eligibility for a replacement clothing allowance begins on the date of the six (6) month review and ends on the day preceding the date of the next six (6) month review or upon discharge, whichever occurs first. A maximum of \$75 is available for each six (6) month period. It is not necessary to use the entire amount allowed at one time; however, purchases must be completed prior to the six (6) month case review. Any unspent portion of the client's clothing allowance will be forfeited and may not be carried over to the following six (6) month period.

**Note:** in cases, where it is verified that the clothing allowance was not used for the benefit of the client, a preplacement voucher can be reissued.

### ***Required Procedures***

To request an initial or replacement clothing allowance for an eligible client, the AFC provider may contact the client's social worker.

### ***Reimbursement to the Adult Residential Services Provider***

- The Adult Residential Services provider must purchase clothing. The adult must be encouraged to assist with selection and purchase of their clothing whenever possible;
- If the adult is unable to assist, the provider is to purchase the needed clothing for the adult, taking into consideration the adult's wishes and preferences; and,
- The Adult Residential Services provider must submit the itemized receipts to the Department's District Office for approval and reimbursement.

### ***Payment to the Vendor***

A BA-67 payable to the vendor, indicating the maximum amount for the purchase is to be provided.

## **7.26 Record Keeping by Provider**

Upon placement of the client in the home or shortly thereafter, information about the client and his/her needs is to be given to the provider. The provider is to establish a file for each individual placed in their home and maintain all information about the client for reference as needed.

### ***Client Information***

- Identifying information about the client;
- Information about significant others such as family members, friends, legal representatives, etc.;
- Information about the client's interests, hobbies and church affiliation;
- Medical status including current medications, precautions, limitations, attending physician, hospital preference, allergies, special diet, etc.;
- Advance directive(s) in force; and,
- Information about client's burial wishes, plans and resources.

**Client Documents**

- Copy of the signed Resident Agreement for Participation;
- Copy of the current and all previous Payment Agreements; and,
- Copy of the current Service Plan.

All other information received by the provider that is specifically related to the client is to be maintained in the provider’s client file. This information must be maintained in a confidential manner. This applies to all client information.

**SECTION 8 Closure**

**8.1 Case Closure**

The Adult Residential Services case must be closed when the client is no longer in Adult Residential placement. If the client is an Adult Guardianship or Health Care Surrogate case; they can remain open for those services.

**8.2 Notification of Case Closure**

If the Adult Residential Services case is closed for any reason other than client death, written notification to the client or his/her legal representative must be provided.

A client or his/her legal representative has the right to appeal a decision by the department at any time for any reason. To request an appeal, the client or his/her legal representative may make a verbal or written request. If the request is written it is recommended to complete the bottom portion of the “Notification Regarding of Application for Social Services” (Negative Action Letter) and submit this to the supervisor within ninety (90) days following the date the negative action letter was generated.

**8.3 Provider’s Right to Appeal**

A provider has the right to appeal a decision by the Department at any time for any reason. To request an appeal, the provider must complete the bottom portion of the “Negative Action Letter” (SS-13) and submitted to the supervisor within thirty (30) days following the date the action was taken by the Department.

If the provider is dissatisfied with the decision rendered by the supervisor, the appeal and all related information is to be forwarded by the supervisor to the hearings officer for further review and consideration.

**8.4 Grievances**

The Adult Residential Provider needs to be aware of the grievance procedure and their ability to file a grievance if they are dissatisfied with the services provided by the Department.

## **SECTION 9 Reports**

### **9.1 Adult Initial Assessment**

The Adult Initial Assessment is a summary of information gathered during the assessment focus. The report compiles several elements from the assessment and combines the information into the report.

### **9.2 Application to Provide AFC/E AFC**

The AFC/E AFC Application is part of the Application Packet and is to be furnished to potential providers upon request. It is to be completed by the applicant and returned within thirty (30) days.

### **9.3 Client Medical Evaluation**

Clients who are placed in Adult Family Care by the Department are required to have a medical evaluation completed during the placement process if one has not been completed recently and annually thereafter. This process is completed during the case management phase of the case work process.

### **9.4 Comprehensive Assessment**

The Comprehensive Assessment Screen is a summary of information gathered during the case management process. The report compiles several elements from the assessment and combines the information into the report.

### **9.5 Credit Reference Letter**

The Credit Reference Letter/Questionnaire is part of the Application Packet. The applicant is to make arrangements for this letter to be completed and returned to the local office within thirty (30) days. It must be completed by a current utility provider or bank/lending institution.

### **9.6 Fire Safety Checklist**

The Fire Safety Checklist is part of the Application Packet and is to be furnished to potential providers upon request. It is to be completed by the applicant and returned within thirty (30) days.

### **9.7 Physician's Letter (Provider)**

Providers who furnish Adult Family Care and all members of the household are required to have a Physician's Letter completed as part of the application process. A new Physician's Letter must be completed thereafter at a minimum of every three (3) years, unless there are questions regarding the provider's health.

### **9.8 Personal Reference Letter**

The Personal Reference Letter/Questionnaire is part of the Application Packet. The applicant is to make arrangements for these letters to be completed and returned to the local office within thirty (30) days.

### **9.9 Social Evaluation**

This form is used to provide information to the provider concerning this client. The report is provided to the Adult Residential Provider and is to be filed by the provider in the record they maintain for the client. Information included on this form is: identifying information, activities of daily living (ADL's), functioning capacity, medications, and characteristics, formal and informal support systems.

### **9.10 Payment Agreement**

The Payment Agreement is to be completed during the case management phase of the case work process and, is the document which sets forth the terms of payment for placement in Adult Residential Services.

The Payment Agreement Specifies:

- Total Payment Rate: Amount for full month and per day amount for partial month
- Clients Payment Rate: Amount for full month and per day amount for partial month.
- The DHHR Supplemental Payment Rate: Amount for full month and per day amount for partial month.
- Client Personal Expense Allowance Amount

### **9.11 Resident Agreement for Participation**

Resident Agreement for Participation is a standardized set of guidelines and regulations required for Adult Residential Services participation; outlining the rules and expectations while in placement and the adult residential client's agreement to abide by the guidelines and regulations.

### **9.12 Client Information Report**

The form, report which includes demographic and other information about the client, is to be used to furnish necessary information about the client to the Adult Residential Services provider at the time the client is placed in the facility

### **9.13 Service Plan**

The report is a compilation of task, goals, time frames and responsible parties set for the client.

### **9.14 Case Review Summary**

The case review process occurs during the case management phase of the case process. A formal review of the case will be completed during standardized intervals and at any time there is a significant change in the client's circumstances.

### **9.15 Negative Action Letter**

Notification Regarding Application for Social Services (SS-13) is the report that should be used for a negation action when required for an Adult Residential Services Provider. The report would be used in the event of case closure and/or a reduction in services; requiring written notification

to the client or legal representative. The letter clearly and specifically states the action being taken, the reason(s) for the action and client/legal representative.

### **9.16 Medicare Part D Letter**

When the client is receiving the Special Medical Card and becomes sixty-four (64) years of age, the Medicare Part D Letter will be sent to the client or their legal representative notifying them that an application for Medicare Part A, B and D must be made prior to the client's sixty-fifth (65th) birthday. Also, the letter notifies them that an application for QMB, SLIMB and QI-1 must be made through Income Maintenance, as well as Extra Help through Social Security. When the client becomes eligible for Medicare, regardless of whether they are receiving it or not, the Special Medical Card can only be issued for prescriptions and limited doctor's visits that are not covered by Medicare Part D.

### **9.17 W-9**

The W - 9 is part of the Application Packet. The applicant is to complete the form and return it to the local office within thirty (30) days. The provider's name, address and tax number (social security or federal identification) must be exactly as shown on income tax forms filed with the IRS by the provider.

### **9.18 Annual Fire and Safety Review**

This form is to be completed annually to determine fire safety and continued certification for the Adult Family Care provider. The homefinder may request the Fire Department to provide additional follow-up in those situations where he/she feels unable to make this determination.

### **9.19 Annual Sanitation Review**

This form is to be completed annually to determine sanitation compliance and continued certification for the Adult Family Care Provider. The homefinder may request the County Health Department to provide additional follow-up in those situations where he feels unable to make this determination.

### **9.20 Home Study Summary**

This form is to be used to document the results of the entire Home Study Process. Included are areas such as: all interviews, information about the home and neighborhood, characteristics of the provider and household members, results of references, homefinder's evaluation and recommendations, etc.

### **9.21 Provider Agreement for Participation**

This is an agreement between the Adult Residential Provider and the Department outlining the guidelines and expectations of a provider and the provider's agreement to follow the guidelines.

### **9.22 Respite Provider Agreement for Participation**

This is an agreement between the Adult Residential Respite Provider and the Department outlining the guidelines and expectations of a provider and the provider's agreement to follow the guidelines.

### **9.23 Insurance Loss Notice**

When the client does property damage to the provider's home and/or other negligent acts, the Insurance Loss Notice is to be completed by the provider.

### **9.24 Approval Letter**

The Approval Letter is used to inform the applicant that his/her home has been approved to provide Adult Family Care Home services to a specific number of individuals.

### **9.25 Certificate of Approval**

Once the home is approved a Certificate of Approval is presented to the provider indicating the number of adults the provider is approved to care for and the period of certification.

### **9.26 Re-certification Letter**

This letter is used to inform the Adult Family Care provider that they have been re-certified to continue providing Adult Family Care Home services for another year.

### **9.27 Notification of Application for Social Services**

Any time a negative action is taken in an Adult Family Care case, such as case closure or a reduction in services, the provider must be provided with written notification of the action being taken. This notification must be clearly and specifically stated, advising the provider of the action being taken and the reason(s) for the action. In addition to notification of the negative action, the provider must be made aware of their right to file a grievance on the decision and advised of what they must do to request a grievance hearing.

### **9.28 Payment Agreement**

The Payment Agreement, which is completed during the Case Management phase of the case work process, is the document which sets forth the terms of payment for placement in the Adult Family Care Home. Within this document, the following are specified: 1) the payment amount due to the provider, 2) the portion of payment to be paid by the client, and 3) the portion of the payment to be paid by the Department. The agreement further identifies the monthly rate (for full month of placement) and the daily rate (for a partial month of placement). Finally, the agreement identifies the amount that is to be available to the client as Personal expense allowance and whether the client is to retain this amount from their funds or if the provider is to furnish this amount from their reimbursement by the Department.

### **9.29 Annual Review Summary**

A formal review of the provider must be completed every twelve (12) months or at any time there is a significant change in the provider's circumstances.

### 9.30 Adult Residential Services Corrective Action Letter

The Corrective Action Letter is to be issued after the provider has been verbally notified of deficiencies. Deficiencies may be identified either: (1) during the regularly scheduled review or 2) at any other time deficiencies are observed. This letter is to be sent to the provider within seven (7) calendar days of the verbal notification. The deficiencies to be corrected are to be listed and a time frame for the completion of the corrections specified.

## **Section 10 Nondiscrimination, Procedure & Due Process Standards, Reasonable Modification Policies, and Confidentiality**

### **10.1 Nondiscrimination**

As a recipient of Federal financial assistance, the Bureau for Social Services (BSS) does not exclude, deny benefits to, or otherwise discriminate against any person on the ground of race, color, national origin, disability, age, sex, sexual orientation, gender identity, religion or creed in admission to, participation in, or receipt of the services and benefits under any of its programs and activities, whether carried out by BSS directly or through a contractor or any other entity with which BSS arranges to carry out its programs and activities.

This statement is in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (nondiscrimination on the basis of race, color, national origin) ("Title VI"), Section 504 of the Rehabilitation Act of 1973 (nondiscrimination on the basis of disability) ("Section 504"), the Age Discrimination Act of 1975 (nondiscrimination on the basis of age) ("Age Act"), regulations of the U.S. Department of Health and Human Services issued pursuant to these three statutes at Title 45 Code of Federal Regulations Parts 80, 84, and 91.

The Bureau for Social Services shall not retaliate against, intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title VI, Section 504 or the Age Act, or because she or he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

In addition, BSS will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all BSS programs, services, and activities. For example, individuals with service animals are welcomed in Department of Health and Human Resources, BSS, offices even where pets are generally prohibited.

In case of questions, or to request an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a BSS program, service, or activity, please contact:

Children and Adult Services  
Section 504/ADA Coordinator  
350 Capitol St. Rm 691  
Charleston, WV 25301  
Revised September 2021

(304) 558-7980

## 10.2 Non-Discriminatory Placement Protocol

The Department ensures that all parties involved in adult welfare programs have equal opportunities. All potential placement providers for vulnerable adults, are afforded equal opportunities, free from discrimination and protected under the [American's with Disabilities Act](#) (ADA). The Department will not deny a potential placement provider the benefit of its services, programs, or activities due to a disability.

Under the American's with Disabilities Act it defines a person with a disability as:

“An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.”

The ADA does not specifically name all the impairments that are covered. The ADA does not allow a person to be discriminated against due to a disability in employment, state and local government activities, public transportation accommodations, telecommunication relay services, fair housing, air carrier access, voting accessibility or education. Examples of disabilities include physical disabilities which require auxiliary aides and mental health issues. Those persons with substance use disorders, including opioid use disorder, currently participating in a treatment option such as Medication Assisted Treatment (MAT), are also covered by the ADA. Participation in a MAT program is not considered the illegal use of drugs. Qualifying MAT programs are defined in [W. Va. Code §16-5Y-1](#), *et seq.* The ADA also addresses the civil rights of institutionalized people and architectural barriers that impact people with disabilities.

When making diligent efforts to locate and secure appropriate placement for vulnerable adults, a worker cannot discriminate against a potential placement based upon a person with a disability according to the American's with Disabilities Act (ADA) Title II. The Department shall determine if the potential placement for the vulnerable adult represents a direct threat to the safety of the adult. Safety threat decisions will be based on assessment of the individual and the needs of the vulnerable adult, as the safety of the adult always remains at the forefront of the determination of the best interest of an adult, when placing a vulnerable adult in anyone's home. This determination cannot be based on generalizations or stereotypes of individuals.

If a provider protected under the ADA is identified as an appropriate and best interest placement for a vulnerable adult they may, at some point, require services specific to their disability in order to preserve the placement. In such situations, consideration for services must be given if it is in the best interest of the adult to preserve the placement. Any specific auxiliary aids or services should be determined by the worker at no cost to the provider and should be considered on a case by case basis.

### 10.3 Complaint Procedure and Due Process Standards

#### ***A: Complaints Based on Disability or other Forms of Discrimination***

It is the policy of the West Virginia Department of Health and Human Resources (DHHR), not to discriminate on the basis of on the basis of race, color, national origin, disability, age, sex, sexual orientation, gender identity, religion, or creed. DHHR has adopted an internal complaint procedure providing for prompt, equitable resolution of complaints alleging discrimination. Laws and Regulations, 28 C.F.R. Part 35 and 45 C.F.R. Part 84, may be examined by visiting <https://www.ada.gov/reg3a.html>. Additional laws and regulations protecting individuals from discrimination in adult welfare programs and activities may be examined by visiting the U.S Department of Health and Human Services website at <https://www.hhs.gov/civil-rights/for-individuals/special-topics/adoption/index.html>.

Any person who believes someone has been subjected to discrimination on the basis of race, color, national origin, disability, age, sex, sexual orientation, gender identity, religion, or creed may file a complaint under this procedure. It is against the law for the Bureau for Social Services, including employees, contracted providers or other BSS representatives, to retaliate in any way against anyone who files a complaint or cooperates in the investigation of a complaint.

#### ***Procedure***

Complaints due to alleged discriminatory actions must be submitted to the Department of Health and Human Resources, Equal Employment Opportunity (EEO)/Civil Rights Officer within sixty (60) calendar days of the date the person filing the complaint becomes aware of the alleged discriminatory action.

The complainant may make a complaint in person, by telephone, by mail, or by email. To file the complaint by mail or email, a Civil Rights Discrimination Complaint Form, IG-CR-3 (See Appendix A) must be completed and mailed or emailed to the West Virginia Department of Health and Human Resources, Office of Human Resources Management, EEO/Civil Rights Officer, One Davis Square, Suite 400, Charleston, WV 25301 or email at [DHHRCivilRights@WV.Gov](mailto:DHHRCivilRights@WV.Gov). If the complainant requires assistance completing the IG-CR-3 form, they may request assistance from the department. The complaint must state the problem or action alleged to be discriminatory and the remedy or relief sought. The complainant may also contact the WV DHHR, EEO/Civil Rights Officer, for more information.

West Virginia Department of Health and Human Resources  
Office of Human Resource Management  
EEO/Civil Rights Officer  
(304) 558-3313 (voice)  
(304) 558-6051 (fax)  
[DHHRCivilRights@WV.Gov](mailto:DHHRCivilRights@WV.Gov) (email)

The EEO/Civil Rights Officer shall conduct an investigation of the complaint. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit

evidence relevant to the complaint. The EEO/Civil Rights Officer will maintain the files and records of Bureau for Social Services relating to such complaints. To the extent possible, and in accordance with applicable law, the EEO/Civil Rights Officer will take appropriate steps to preserve the confidentiality of files and records relating to complaints and will share them only with those who have a need to know.

The EEO/Civil Rights Officer shall issue a written decision on the complaint, based on the preponderance of the evidence, no later than thirty (30) calendar days after its filing, including a notice to complainant of his or her right to pursue further administrative or legal remedies. If the EEO/Civil Rights Officer documents exigent circumstances requiring additional time to issue a decision, the EEO/Civil Rights Officer will notify the complainant and advise them of his or her right to pursue further administrative or legal remedies at that time while the decision is pending. The person filing the complaint may appeal the decision of the EEO/Civil Rights Officer by writing to the Director of Human Resources within fifteen (15) calendar days of receiving the EEO/Civil Rights Officer's decision. The Director of Human Resources shall issue a written decision in response to the appeal no later than thirty (30) calendar days after its filing.

The person filing the complaint retains the right to file a grievance with the U.S. Department of Health and Human Services, Office for Civil Rights, regardless of the decision made by the West Virginia Department of Health and Human Resources.

The availability and use of this procedure does not prevent a person from pursuing other legal or administrative remedies, including filing a complaint of discrimination on the basis of race, color, national origin, disability, age, sex, sexual orientation, gender identity, religion or creed in court or with the US Department of Health and Human Services, Office for Civil Rights. A person can file a complaint of discrimination electronically through the Office for Civil Rights Complaint portal at: <https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf> or by mail or by phone at:

U.S. Department of Health & Human Services  
Office for Civil Rights  
200 Independence Ave., S.W.  
Room 509F HHH Bldg.  
Washington, D.C. 20201  
800-368-1019 (voice) 800-537-7697 (TDD)  
[OCRComplaint@hhs.gov](mailto:OCRComplaint@hhs.gov)

For complaints to the Office for Civil Rights, complaint forms are available at: <https://www.hhs.gov/ocr/complaints/index.html>. Complaints shall be filed within one hundred and eighty (180) calendar days of the date of the alleged discrimination.

The Bureau for Social Services will make appropriate arrangements to ensure that individuals with disabilities and individuals with Limited English Proficiency are provided auxiliary aids and services or language assistance services, respectively, if needed, to participate in this process. Such arrangements may include, but are not limited to, providing qualified interpreters, providing

recorded material for individuals with low vision, or assuring a barrier-free location for the proceedings. The EEO/Civil Rights Officer will be responsible for such arrangements.

***B: Grievances Regarding the Adult Services Worker or Casework Process***

At any time that the Bureau for Social Services is involved with a client, the client, or the counsel for the vulnerable adult has a right to express a concern about the manner in which they are treated, including the services they are or are not permitted to receive.

Whenever a vulnerable adult or counsel for the vulnerable adult has a complaint about Adult Services or expresses dissatisfaction with Adult Services the worker will:

- Explain to the client the reasons for the action taken or the position of the BSS which may have resulted in the dissatisfaction of the client.
- If the situation cannot be resolved, explain to the client his/her right to a meeting with the supervisor.
- Assist in arranging for a meeting with the supervisor.

The supervisor will:

- Review all reports, records and documentation relevant to the situation.
- Determine whether all actions taken were within the boundaries of the law, policies and guidelines for practice.
- Meet with the client.
- If the problem cannot be resolved, provide the client with the form "Client and Provider Hearing Request", SS-28.
- Assist the client with completing the SS-28, if requested.
- Submit the form immediately to the Chairman, state board of Review, DHHR, Building 6, Capitol Complex, Charleston, WV 25305.

For more information on Grievance Procedures for Social Services please see Common Chapters Manual, Chapter 700, and Subpart B or see W.Va. Code §29A-5-1.

Note: Some issues such as the decisions of the Circuit Court cannot be addressed through the Grievance Process. Concerns about or dissatisfactions with the decisions of the Court including any approved Case plan must be addressed through the appropriate legal channels.

**10.4 Reasonable Modification Policy**

***A: Purpose***

In accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA), the Bureau for Social Services shall not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. The BSS shall make reasonable modifications in Adult Services program policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless BSS can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

***B: Policy***

DHHR is prohibited from establishing policies and practices that categorically limit or exclude qualified individuals with disabilities from participating in the BSS Adult Services program.

The Bureau for Social Services will not exclude any individual with a disability from the full and equal enjoyment of its services, programs, or activities, unless the individual poses a direct threat to the health or safety of themselves or others, that cannot be mitigated by reasonable modifications of policies, practices or procedures, or by the provision of auxiliary aids or services.

The Bureau for Social Services is prohibited from making Adult Services program application and retention decisions based on unfounded stereotypes about what individuals with disabilities can do, or how much assistance they may require. The BSS will conduct individualized assessments of qualified individuals with disabilities before making Adult Services application and retention decisions.

The Bureau for Social Services may ask for information necessary to determine whether an applicant or participant who has requested a reasonable modification has a disability-related need for the modification, when the individual's disability and need for the modification are not readily apparent or known. BSS will confidentially maintain the medical records or other health information of Adult Services program applicants and participants.

The Bureau for Social Services upon request, will make reasonable modifications for qualified Adult Service program applicants or participants with disabilities unless BSS can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. Individuals do not need to reference Section 504 or Title II or use terms of art such as “reasonable modification” in order to make a request. Further, BSS staff are obligated to offer such reasonable accommodations upon the identification of a qualifying disability or to an individual with Limited English Proficiency.

BSS must consider, on a case-by-case basis, individual requests for reasonable modifications in its Adult Services programs, including, but not limited to, requests for substitute caregivers, respite caregivers, more frequent support from a case worker, additional classroom and/or online training, mentorship with an experienced foster/adoptive parent, note takers, and other auxiliary aids and services. When auxiliary aids or language interpretation services to ensure effective communication for individuals with hearing, vision, speech impairments, or Limited English Proficiency (LEP) are needed, they shall be provided to the participant at no additional costs. DHHR evaluates individuals on a case by case basis to provide auxiliary aids and services as necessary to obtain effective communication. This would include but not be limited to:

- Services and devices such as qualified interpreters, assistive listening devices, note takers, and written materials for individuals with hearing impairments.
- And qualified readers, taped texts, and Brailled or large print materials for individuals with vision impairments.
- Access to language and interpretation services.

For more information on obtaining auxiliary aids, contact:

Center for Excellence in Disabilities (CED)  
959 Hartman Run Road  
Morgantown, WV 26505  
Phone: 304-293-4692.  
Toll Free: (888) 829-9426  
TTY: (800) 518- 1448

For language translation and interpretation services Adult Services may Contact 911 Interpreters or the Section 504/ADA Coordinator (see also section 11.5 Limited English Proficiency). To contact 911 Interpreters, utilize the information below:

911 Interpreters Inc.  
1-855-670-2500  
BSS Code: 25646

When requesting language translation services directly through 911 Interpreters, staff must report the accommodation to the Section 504/ADA Coordinator by completing the *Reasonable Accommodation Reporting Form*.

The Bureau for Social Services will not place a surcharge on a particular qualified individual with a disability or any group of qualified individuals with disabilities to cover the cost of measures, such as the provision of auxiliary aids and services or program accessibility, that are necessary to provide nondiscriminatory treatment required by Title II of the ADA and Section 504.

To address any violations of this Reasonable Modification Policy, consult the Bureau for Social Services Grievance Procedure. To request reasonable modifications, or if you have questions, please contact:

Children and Adult Services  
Section 504/ADA Coordinator  
350 Capitol St. Rm 691  
Charleston, WV 25301  
(304) 558-7980  
[DHRCivilRights@WV.Gov](mailto:DHRCivilRights@WV.Gov) (email)

Staff who make reasonable accommodations for an individual must be reported to the Section 504/ADA Coordinator utilizing the *Reasonable Accommodation Reporting Form*.

### **10.5 Limited English Proficiency**

The Bureau for Social Services (BSS) will take reasonable steps to ensure that persons with Limited English Proficiency (LEP) have meaningful access and an equal opportunity to participate in our services, activities, programs and other benefits. The policy of BSS is to ensure meaningful communication with LEP clients and their authorized representatives involving their case. The policy also provides for communication of information contained in vital documents, including but

not limited to, information release consents, service plans, etc. All interpreters, translators and other aids needed to comply with this policy shall be provided without cost to the person being served, and clients and their families will be informed of the availability of such assistance free of charge. Language assistance will be provided through use of contracted vendors, technology, or telephonic interpretation services. All staff will be provided notice of this policy and procedure, and staff that may have direct contact with LEP individuals will be trained in the effective use of an interpreter and the effective use of technology including telephonic interpretation services. The Bureau for Social Services will conduct a regular review of the language access needs of our population, as well as update and monitor the implementation of this policy and these procedures, as necessary.

***PROCEDURES:***

***1. IDENTIFYING LEP PERSONS AND THEIR LANGUAGE***

The Bureau for Social Services will promptly identify the language and communication needs of the LEP person. If necessary, staff will use a language identification card (or “I speak cards,” available online at [www.lep.gov](http://www.lep.gov)) or posters to determine the language. In addition, when records are kept of past interactions with clients or family members, the language used to communicate with the LEP person will be included as part of the record.

***2. OBTAINING A QUALIFIED INTERPRETER***

911 Interpreters Inc. has agreed to provide qualified interpreter services. The agency’s telephone number is 1-855-670-2500 (BSS Code: 25646). Interpretation services are available 24 hours a day. Some LEP persons may prefer or request to use a family member or friend as an interpreter. However, family members or friends of the LEP person will not be used as interpreters unless specifically requested by that individual and **after** the LEP person has understood that an offer of an interpreter at no charge to the person has been made by the facility. Such an offer and the response will be documented in the person’s file. If the LEP person chooses to use a family member or friend as an interpreter, issues of competency of interpretation, confidentiality, privacy, and conflict of interest will be considered. If the family member or friend is not competent or appropriate for any of these reasons, BSS will provide qualified interpreter services to the LEP person free of charge. Children and other clients will **not** be used to interpret, in order to ensure confidentiality of information and accurate communication.

***3. PROVIDING WRITTEN TRANSLATIONS***

When translation of vital documents is needed, BSS will submit documents for translation to 911 Translators Inc. or the Section 504/ADA Coordinator. BSS will generally provide language services in accordance with the following guidelines:

(a) BSS will provide written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent threshold in (a), BSS will not translate vital written materials but will provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

Additionally, when making a determination as to what languages services will be provided, BSS may consider the following factors: (1) the number and or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs.

Documents being submitted for translation will be in final, approved form with updated and accurate information. Staff who utilize 911 Translators must report the utilization using the *Reasonable Modification Reporting Form* to the Section 504/ADA Coordinator.

Documents being submitted for translation will be in final, approved form with updated and accurate information. Staff who utilize 911 Translators must report the utilization using the *Reasonable Modification Reporting Form* to the Section 504/ADA Coordinator.

#### 4. PROVIDING NOTICE TO LEP PERSONS

The Bureau for Social Services will inform LEP persons of the availability of language assistance, free of charge, by providing written notice in languages LEP persons will understand. At a minimum, notices and signs will be posted and provided in DHHR office lobbies and waiting areas. Notification will also be provided through one or more of the following: outreach documents and program brochures.

#### 5. MONITORING LANGUAGE NEEDS AND IMPLEMENTATION

On an ongoing basis, BSS will assess changes in demographics, types of services or other needs that may require reevaluation of this policy and its procedures. In addition, BSS will regularly assess the efficacy of these procedures, including but not limited to mechanisms for securing interpreter services, equipment used for the delivery of language assistance, complaints filed by LEP persons, feedback from clients and community organizations, etc.

Appendix A WVDHHR Civil Rights Discrimination Complaint Form



West Virginia Department of Health and Human Resources  
**Civil Rights Discrimination Complaint Form**

<b>Complainant First Name</b>		<b>Complainant Last Name</b>
<b>Home Phone</b> <i>(include area code)</i>		<b>Work Phone</b> <i>(include area code)</i>
<b>Street Address</b>		<b>City</b>
<b>State</b>	<b>Zip Code</b>	<b>Email</b> <i>(if available)</i>

Is this complaint being completed by someone other than the complainant?  Yes  No

If yes, please provide your information below:

<b>First Name</b>	<b>Last Name</b>	<b>Telephone Number</b> <i>(include area code)</i>
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The complainant feels they have been discriminated against on the basis of:

- Race/Color/National Origin       Religion/Creed       Sexual Orientation/Gender Identity  
 Disability       Age       Sex

Other *(please specify):*

Who or what bureau within the West Virginia Department of Health and Human Resources is believed to have been discriminatory?

<b>Name/Bureau/Office</b>		
<b>Street Address</b>	<b>City</b>	<b>County</b>
<b>Zip Code</b>	<b>Telephone</b>	

Date(s) discriminatory action is believed to have occurred:

--

Which program(s) is the complainant alleging the discriminatory action took place in?

- Child Welfare *(includes CPS, Youth Services, Foster Care, Adoption, Homefinding, and Legal Guardianship)*       Adult Welfare *(includes APS, Guardianship, Health Care Surrogate, Residential Services Request to Receive and Request to Provide)*       Low Income Energy Assistance Program (LIEAP)  
 Temporary Assistance for Needy Families (TANF)       School Clothing Voucher       Indigent Burial

Complaints involving the Supplemental Nutrition Assistance Program (SNAP) must be sent directly to the U.S. Department of Agriculture. See below for more information.

**Describe briefly what happened. How and why does the complainant believe they have been discriminated against? What is the relief or remedy sought by the complainant?**

*(Attach additional pages as needed.)*

Please sign and date this form. If submitting by email, you may type your name and date. Your email will represent your signature.

<b>Signature</b>	<b>Date (mm/dd/yyyy)</b>
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The West Virginia Department of Health and Human Resources shall not retaliate against, intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title VI, Section 504 or the Age Act, or because she or he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

EEO/Civil Rights Officer shall conduct an investigation of the complaint. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the complaint. EEO/Civil Rights Officer will maintain the files and records of DHHR relating to such grievances. The EEO/Civil Rights Officer shall issue a written decision on the complaint no later than thirty (30) calendar days after its filing, unless the Coordinator documents exigent circumstances requiring additional time to issue a decision. To submit this complaint or request additional information, please contact:

West Virginia Department of Health and Human Resources  
Office of Human Resource Management  
EEO/Civil Rights Officer  
(304) 558-3313 (voice)  
(304) 558-6051 (fax)  
[DHHCivilRights@WV.Gov](mailto:DHHCivilRights@WV.Gov) (email)

The person filing the grievance retains the right to file a grievance with the U.S. Department of Health and Human Services, Office for Civil Rights, regardless of the decision made by the West Virginia Department of Health and Human Resources. The availability and use of this grievance procedure does not prevent a person from filing a private lawsuit in Federal court or a complaint of discrimination on the basis of being a member of a protected class, with the:

U.S. Department of Health & Human Services  
200 Independence Ave., S.W.  
Room 509F HHS Bldg.  
Washington, D.C. 20201  
800-368-1019 (voice)  
202-619-3818 (fax)  
800-537-7697 (TDD)  
[OCRComplaint@hhs.gov](mailto:OCRComplaint@hhs.gov) (email)

The complaint form may be found at <https://www.hhs.gov/ocr/complaints/index.html>

*For SNAP complaints, please contact the U.S. Department of Agriculture.*

*The USDA Program Discrimination Complaint Form, can be found online at: <https://www.ocio.usda.gov/document/ad-3027>, or at any USDA office. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form by mail, email, or fax to:*

*U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW Washington, D.C. 20250-9410  
(202) 690-7442 (fax)  
(866) 632-9992 (telephone)  
[program.intake@usda.gov](mailto:program.intake@usda.gov) (email)*

# Appendix B WVDHHR Office of Social Services Client/Provider Grievance Form

I, \_\_\_\_\_, wish to file a grievance with the West Virginia Department of Health and Human Resources, Office of Social Services.

I am dissatisfied for the following reasons:

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I understand this form will be forwarded to the State Office, Chairman, Board of Review. A Grievance Hearing will be scheduled by a State Hearing Officer.

Signature of Client/Provider \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Worker \_\_\_\_\_ Date \_\_\_\_\_

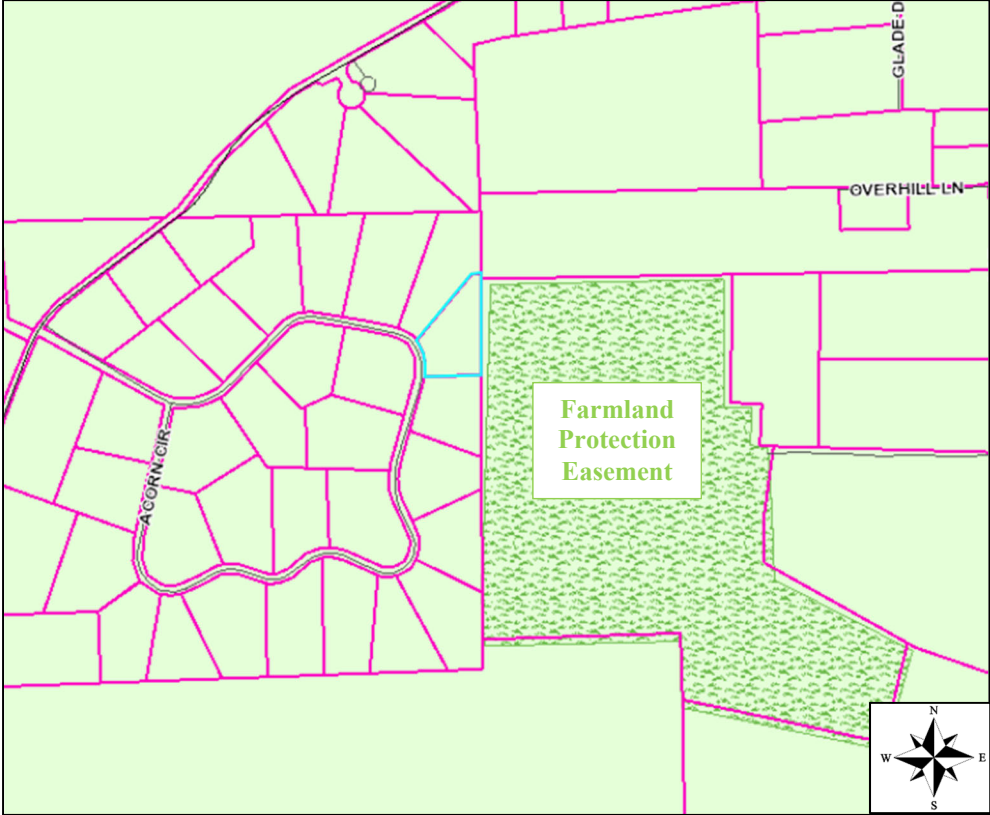
Signature of Supervisor \_\_\_\_\_ Date \_\_\_\_\_

Orig: Chairman, State Board of Review  
CC: Case Record  
Client/Provider

SS-28

Staff Report  
 Jefferson County Board of Zoning Appeals  
 January 23, 2025  
**25-4-ZV Mackey Variance Request**

Item #6: Variance from Section 9.7 to reduce the rear setback from 50' to 15' for a 16' x 32' accessory structure.

Owner:	Elody & Chris Mackey
Parcel Information & Zoning District:	Oak Tree East Subdivision, Lot 11, 335 Acorn Cir., Harpers Ferry, WV Parcel ID: 04000100240008; Property Size: 2.19 ac; Zoning District: Rural
	
History:	10/05/1978: Oak Tree East Subdivision (recorded Plat Book 5, Page 17)
Waivers/Variations:	None
Approved Activity:	Residential
Site Visit Conducted:	No

**Staff Overview**

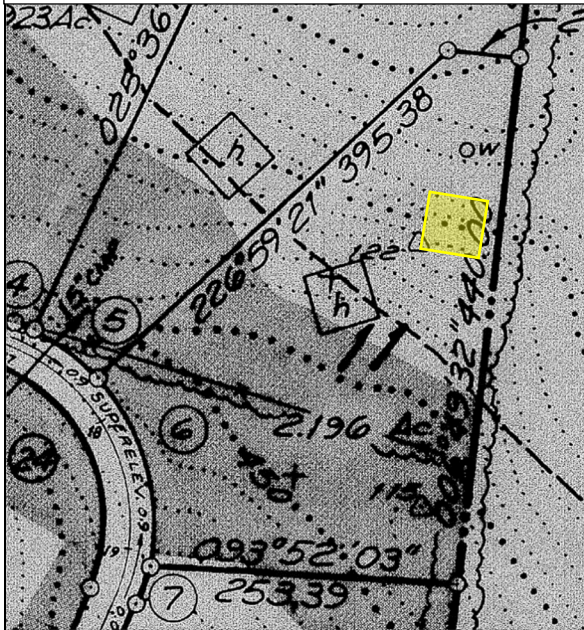
The subject parcel is designated as Lot 11 of the Oak Tree East Subdivision, which was recorded on October 5, 1978, in [Plat Book 5, at Page 17](#). These lots were created prior to the adoption of Zoning (10/05/1988). As such, Section 9.7 of the Zoning Ordinance would apply. The required setbacks for the subject lot are: 40' Front, 15' Side, and **50' Rear**.

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

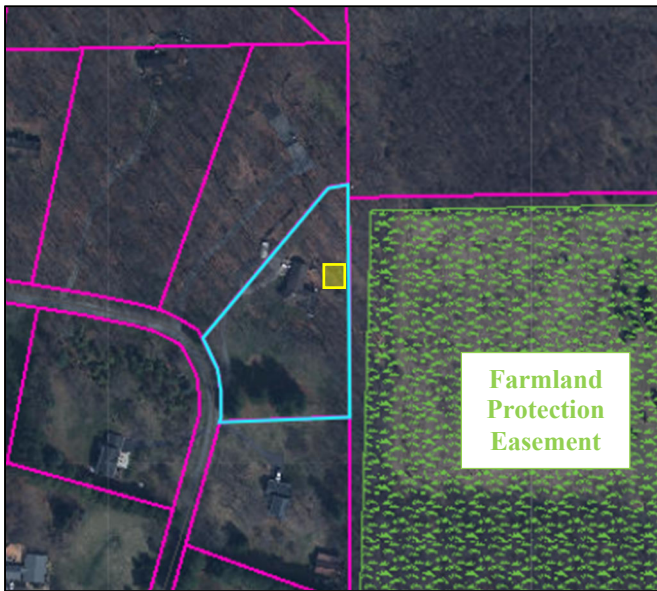
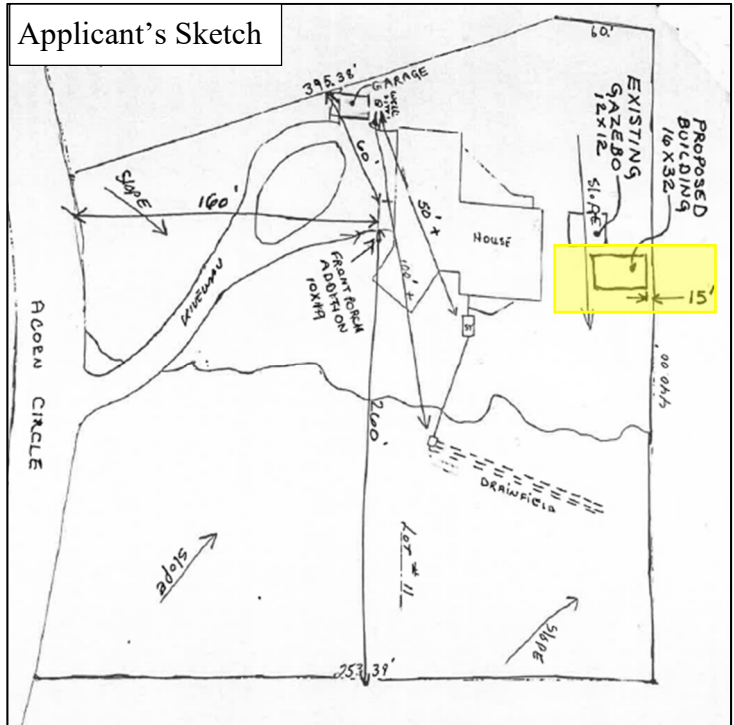
Staff Report  
Jefferson County Board of Zoning Appeals  
January 23, 2025  
**25-4-ZV Mackey Variance Request**

The applicant is requesting a variance from Section 9.7 to reduce the rear setback from 50' to 15' for a 16' x 32' accessory structure. The applicant has represented that the proposed location is reasonable due to the existing slope of the property, the location of the septic field, and the dense tree line that adjoins the eastern property line.

Oak Tree East Subdivision Plat  
[Plat Book 5, at Page 17](#)



Applicant's Sketch



Staff Report  
Jefferson County Board of Zoning Appeals  
January 23, 2025  
**25-4-ZV Mackey 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. No business may be operated from the accessory structure without further evaluation from the Office of Planning and Zoning.

**Section of Ordinance to be Considered:**

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

For all lots that were approved with setbacks by the Planning Commission as part of the subdivision process prior to September 1, 1989, the setbacks and sizes shall be as established as a part of that process. Setbacks are as follows in subdivisions for which no setback was stipulated previously by the Jefferson County Planning Commission as a part of the subdivision process:<sup>23</sup>

Residential Growth District<sup>23</sup>

Single Family Residences

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

Rural Agricultural and Industrial Commercial

Single Family Residences

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

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





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

File #: 25-4-21  
 Mtg. Date: 1-23-25  
 Fee Paid: \$ 150

Email: zoning@jeffersoncountywv.org

Phone: (304) 728-3228

**Zoning Variance Application**

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

**Property Owner Information**

Owner Name: Elady & Chris Mackey  
 Business Name: \_\_\_\_\_  
 Mailing Address: 335 Acorn Cir Harpers Ferry WV 25425  
 Phone Number: 509-947-7840 Email: Chris@mackeymail.com

**Applicant Contact Information**

Applicant Name: Chris Mackey Same as owner:   
 Business Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**Consultant Information**

Consultant Name: \_\_\_\_\_  
 Business Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**Physical Property Details**

Vacant Lot:

Physical Address: 335 Acorn Cir Harpers Ferry WV 25425  
 Parcel ID: (Tax District / Map No. / Parcel No.) 04000100240008 #1 #24.8  
 Parcel Size: 2.19 Acres Deed Book: 1306 Page No: 109

**Zoning District (please check one)**

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

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

Date Received: 12-19-24

Briefly describe the nature of the request (include the dimensions of the proposed structure, if applicable):

Section of the Zoning Ordinance pertaining to this request:

Request for Variance to reduce rear setback from 50' to 15' for 16' x 32' x 20' Tall accessory building to be used as Shop and Storage

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

Front Setback

Side Setback

Rear Setback

Reduction from 50 to 15

**Required Sketch:** 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.

**Required Responses:** Each of the following questions must be answered in detail. The Board will evaluate your request based on the answers provided (attach a separate sheet of paper if necessary).

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

The building will be located outside the Septic reserve area and in excess to the required distance from our well, and will not affect the adjoining Property to the rear as it has a treed buffer area and is open farmland

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

This location will not obstruct the views of the front or side of the residents and is the only location that is reasonably flat that would not require a large amount of dirt work.

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

Granting this Variance would allow the building of this building in a place to minimize excavation and change in the natural drainage of the lot

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

The approval of this Variance will not adversely affect public health, safety or welfare or the rights of adjacent property owners and allow for the best use of our land.

I authorize the Planning and Zoning staff to revise the application/sketch on my behalf. I understand that said revisions will be discussed with me prior to revising the application/sketch.

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

By signing this application, I grant permission to County staff to walk onto the subject property to take photos for the Board of Zoning Appeals staff reports.



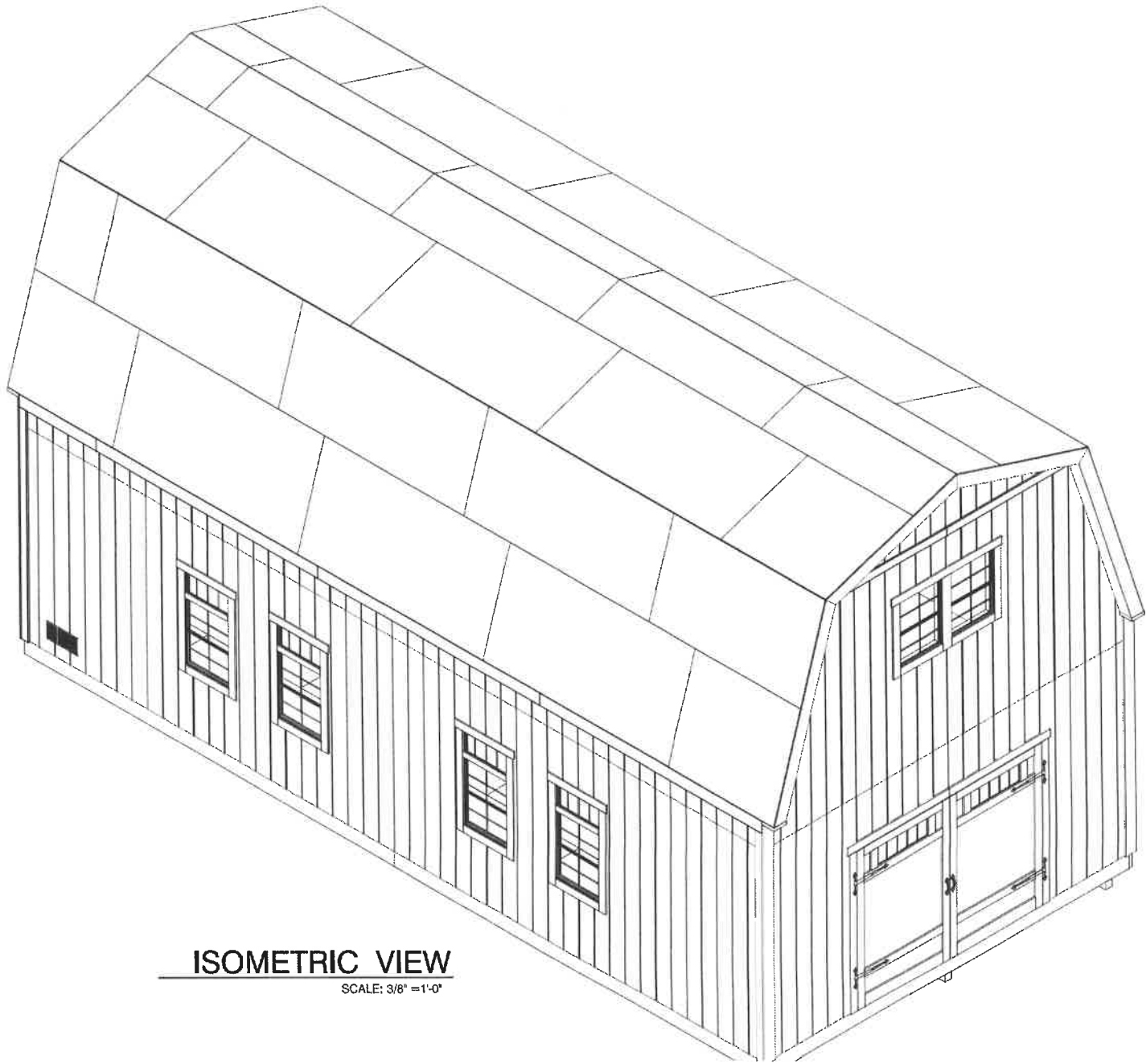
12-19-24

Property Owner Signature

Date

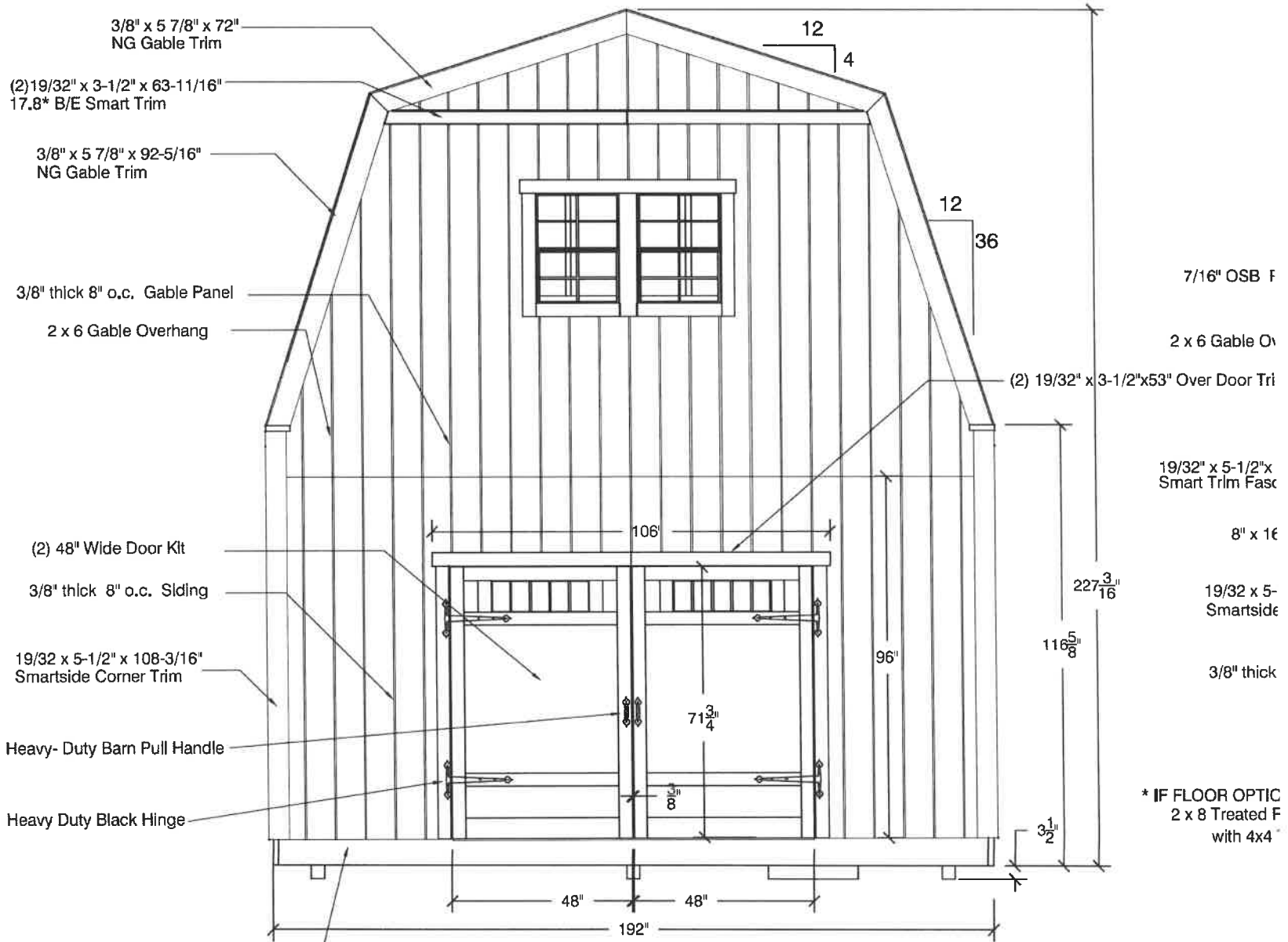
Property Owner Signature

Date



**ISOMETRIC VIEW**

SCALE: 3/8" = 1'-0"

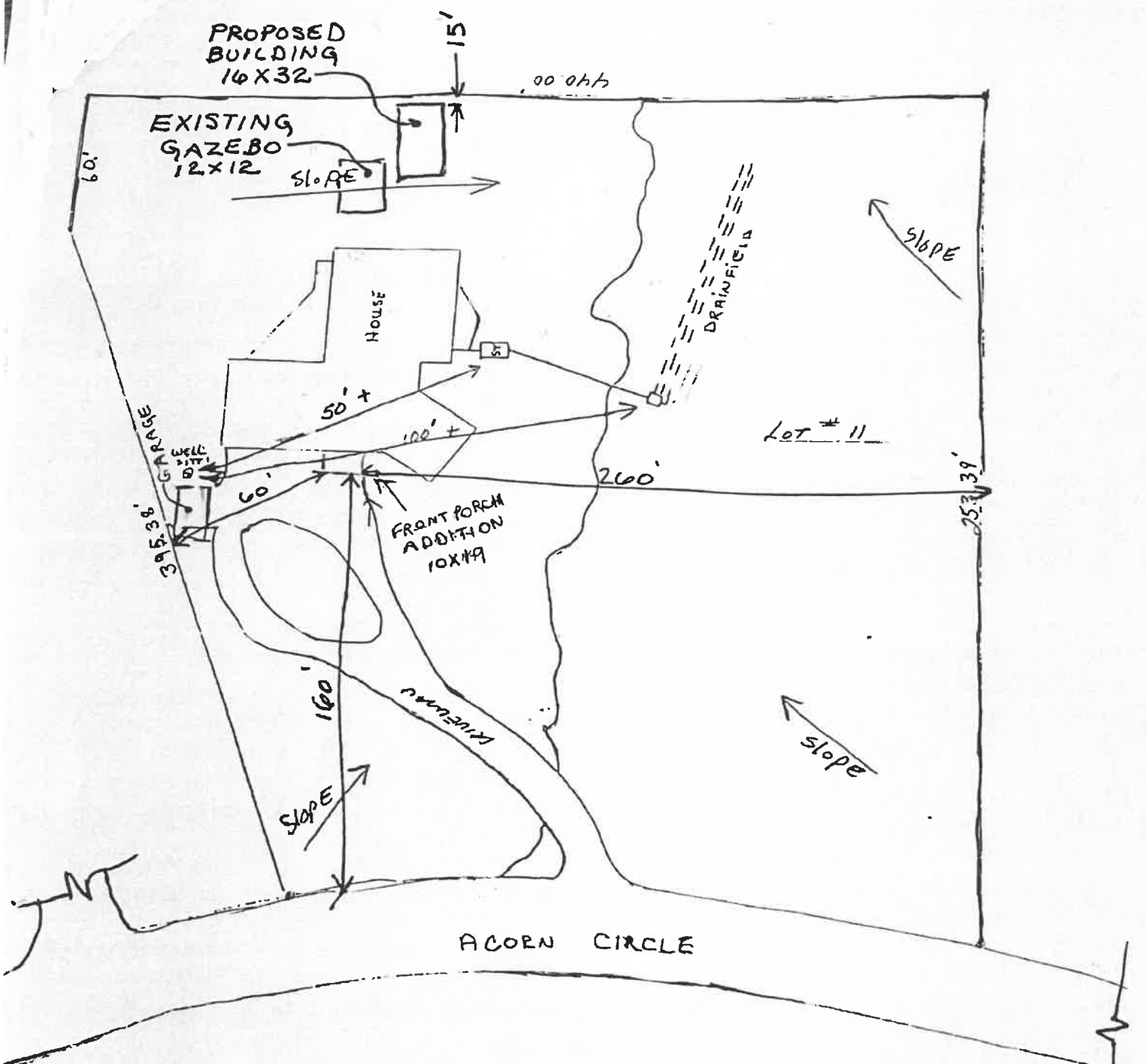


IF FLOOR OPTION SELECTED USE:  
 2 x 8 Treated Floor @ 16" O/C  
 with 4x4 Treated Runners



# FRONT ELEVATION

SCALE: 3/8" = 1'-0"



ELODY MACKEY  
 335 ACORN CIRCLE  
 HARPERS FERRY, WV

*John A. Johnson*  
*Pamela H. Johnson*





# Jefferson County, West Virginia

Department of Engineering, Planning, and Zoning

Office of Planning and Zoning

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

Charles Town, WV 25414

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

Phone: (304) 728-3228

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**Zoning Administrator's Report**  
**January 23, 2025 Board of Zoning Appeals Meeting**

**Date of Memo: January 17, 2025**

- 1) Next regular meeting scheduled for **February 27, 2025**
  - Deadline for submission is Friday, January 24, 2025.
- 2) **2045 Comprehensive Plan Status Update**

On January 14, 2025 the County Commission held a meeting to act on the draft *2045 Comprehensive Plan*. The County Commission voted to amend the draft *2045 Comprehensive Plan* and sent the amendments and the draft *2045 Comprehensive Plan* to the Planning Commission for action. The Planning Commission will consider the amendments and will act to either approve the amendments or provide recommendation to the County Commission on the amendments.
- 3) **Two alternate member positions remain open.** One term ended on 01/01/25; and the other term ends 01/01/27.
  - Persons interested in serving on the Board of Zoning Appeals should contact the County Commission Office at 304-728-3284 / [jjames@jeffersoncountywv.org](mailto:jjames@jeffersoncountywv.org).
- 4) **Zoning Certificate Activity Report - attached**





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

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**January 2025**  
**Zoning Certificate Activity Report**

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**File #** 24-46-ZC  
Request: Short Term Rental  
Property Owner: Kimberly & Jonathan Shoemaker  
Applicant: Homemaker Rentals LLC, Attn: Kimberly & Jonathan Shoemaker  
Parcel Information: 193 Scarlet Oak Drive, Harpers Ferry, WV 25425  
Parcel ID: 04013B00370000; Size: 0.3181 acres;  
Zoning District: Rural; Deed Book: 1328; Page: 659  
Date of Issuance: 01-03-2025

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**File #** 24-52-ZC  
Request: Franklinton Farm Solar Project - Solar Energy Facility  
Property Owner & Property Location  
Mark D. Stolipher 322 & 288 Scooter Ln, Charles Town, WV  
Parcel ID: 06001900160000; Parcel/Project Size: 50 ac  
Zoning District: Rural  
Deed Book: 913, Page 678  
261 Berry Hill Farm Ln, Summit Point, WV  
Parcel ID: 06001900070000; Parcel/Project Size: 150.31 ac  
Zoning District: Rural  
Deed Book: 1129, Page: 746\*  
\*All properties listed as being owned by Nancy Stolipher have been deeded to Mark Stolipher per Transfer on Death Deed (DB 1253 / PG 57)  
Franklinton Farm Trust / 651 & 653 Franklinton Rd, Summit Point, WV  
Paul Michael Chapman, Parcel ID: 06001900060000; Parcel/Project Size: 154.16 ac  
Trustee Zoning District: Rural  
Deed Book: 1249, Page 214  
Applicant: Franklinton Farm LLC / Attn: David Capparelli  
Date of Issuance: 12-13-2024

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**File #** 24-57-ZC  
Request: Modifications to an existing Telecommunications Tower site: Installation of Generator  
Property Owner: Victor Rushizky Et Al / Attn: Matthew Rushizky  
Consultant: Site Link Wireless Agent: James Marquez  
Parcel Information: 8428 Shepherdstown Pike, Shepherdstown, WV 25443  
Parcel ID: 09000900040000; Size: 205.97 acres  
Zoning District: Rural; Will Book: 35; Page: 677; Site Plan File #S97-4  
Date of Issuance: 01-03-2025

Zoning Certificate Activity Report

December 2024

Page 2 of 2

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<b>File #</b>	<b>24-55-ZC</b>
<b>Request:</b>	Flowing Springs Farm Solar Project – Solar Energy Facility
<b>Property Owner &amp; Property Location</b>	
B C Partners, Inc.	Vacant parcel south of Job Corps Road / south of Driswood Elementary School, Shenandoah Junction, WV Parcel ID: 02000300130000; Lot Size: 104.7 acres; Zoning District: Rural
	Vacant parcels east of Old Country Club Road / north of Beallair Subdivision, Charles Town, WV Parcel ID: 04001000020000; Lot Size: 99.5 acres; Zoning District: Residential Growth
	Parcel ID: 04001000030000; Lot Size: 233.5 acres; Zoning District: Residential Growth
	Vacant parcel west of Shepherdstown Pike, Harpers Ferry, WV Parcel ID: 04001000100000; Lot Size: 141.1 acres; Zoning District: Residential Growth & Residential-Light Industrial-Commercial
Butler Family Limited Partnership	Vacant parcel northeast of Old Country Club Rd / east of Aspen Greens Subdivision, Charles Town, WV Parcel ID: 04001000010000; Lot Size: 133.9 acres; Zoning District: Residential Growth & Rural
Potomac Edison Company	1320 Old Country Club Road (Substation), Charles Town, WV Parcel ID: 04001000030005; Lot Size: 3.67 acres; Zoning District: Residential Growth
Applicant:	Flowing Springs Farm LLC / Attn: Pricilla Magee
Date of Issuance:	12-13-2024
Butler Family Limited Partnership	Vacant parcel northeast of Old Country Club Rd / east of Aspen Greens Subdivision, Charles Town, WV Parcel ID: 04001000010000; Lot Size: 133.9 acres; Zoning District: Residential Growth & Rural
Potomac Edison Company	1320 Old Country Club Road (Substation), Charles Town, WV Parcel ID: 04001000030005; Lot Size: 3.67 acres; Zoning District: Residential Growth
Applicant:	Flowing Springs Farm LLC / Attn: Pricilla Magee
Date of Issuance:	12-13-2024