



Jefferson County
Board of Zoning Appeals
Thursday, June 25, 2015, 2:00 p.m.

Members
Tyler Quynn, Chair
Jeffrey Bannon, Vice Chair
Christy Huddle
Matt Knott
Ted Schiltz
Jeff Breese, Alternate

The Jefferson County Board of Zoning Appeals will meet in the Charles Town Library Conference Room located at 200 East Washington Street, at the side entrance on Samuel Street, in Charles Town, West Virginia. Unless otherwise noted, all requests are pursuant to the Zoning & Land Development Ordinance.

1. Approval of the minutes from the May 28, 2015 meeting.
2. Swearing in of members of the public intending to provide testimony.
3. **Postponed until July 16, 2015.** Postponed from the May 28, 2015 meeting. Variance request from Sections 9.6C & 9.7 to reduce the front setback from 25' to 0' and the side setback from 12' to 18" for an 8' tall fence. Owner: Lisa Gasque. Location: 5753 Charles Town Rd, Kearneysville, WV. District: Middleway 07; Map: 3C; Parcel: 3; Zone: Village; File: ZV15-11.
4. Variance request from Section 9.7 to reduce the side setback from 15' to 5' for an existing deck that was constructed without a building permit. Owner: Laurice Berry. Location: 155 Hollow Tree Ln, Kearneysville, WV. District: Kabletown 06; Map: 19A; Parcel: 1.1; Zone: Rural; File: ZV15-09.
5. Variance request from Sections 4.11.B.2, 4.11.B.3, 4.11.E and Appendix B to remove the front, side and rear buffers/screening for an industrial development. Owner: Delaware Corp dba Kent Cartridge of America, Owners, Panhandle Builders & Excavating, Applicant. Location: 795 Hite Rd, Kearneysville, WV. District: Middleway 07; Map: 8; Parcel: 4; Zone: Rural; File: ZV15-12.
6. Variance request from Table 5.4-1 to reduce the side setback from 12' to 8' and rear setback from 20' to 5' to allow for the installation of an irregularly shaped in-ground pool. Owner: Roy Jr. & Kristin Vella. Location: Breckenridge Subdivision, 47 Shire Ct, Charles Town, WV. District: Charles Town 02; Map: 4F; Parcel: 190; Zone: Residential Growth; File: ZV15-13.
7. Variance request from Table 5.4-1 to reduce the side setback from 12' to 6' for the attached garage of a townhouse unit. Owner/Developer: Pete Kubic. PFK, LLC. Location: Locust Hill Subdivision, Lot TH73, Baltustrol Dr, Charles Town, WV. District: Charles Town 02; Map: 13A; Parcel: 555; Zone: Rural; File: ZV15-14.
8. Director's Report.
 - a) Monthly Activity Report
9. Legal Update.
 - a) All Good Music Festival Pending Litigation CA #14-C-390
 - b) William Neufeld Pending Litigation CA #14-C-394
 - c) Shenandoah Air Conditioning & Heating Inc. Pending Litigation CA #15-P-73
10. Discussion with possible deliberative session and signing of draft findings/decisions.

Meeting Date: May 28, 2015

 - a) Variance request from Section 5.4-1 to reduce the side setback from 12' to 8' for a garage attached to a townhouse unit. Owner/Developer: Pete Kubic. PFK, LLC. Location: Lot TH73, Locust Hill Subdivision, Baltustrol Dr, Charles Town, WV. District: 02; Map: 13A; Parcel: 555; Zone: R; File: ZV15-10.

Draft Minutes
Jefferson County Zoning Board of Appeals

1 Meeting Date: May 28, 2015
2 Meeting Location: Conference Room, Old Charles Town Library
3 200 East Washington Street, Charles Town, West Virginia
4
5 Board members present: Tyler Quynn, Chair; Jeffrey Bannon, Vice Chair, Ted Schiltz and
6 Matt Knott
7 Board members absent: Christy Huddle (with notification)
8 Staff members present: Jennifer Brockman, Acting Zoning Administrator/Director of
9 Planning and Zoning; David Simon, County Planner; Lydia Lehman,
10 Assistant Prosecuting Attorney; Jennilee Hartman, Zoning Clerk
11

12 All requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.
13

14 Mr. Bannon moved to start the meeting at 2:00 p.m. Mr. Schiltz seconded the motion, which
15 carried unanimously.
16

17 Ms. Hartman swore in members of the public who indicated they would be providing testimony.
18

19 1) Approval of the minutes from the April, 23, 2015 meeting.
20

21 Mr. Quynn suggested the following corrections:
22

- 23 a) Page 2, line 27, insert *Attorney* after *Scales*.
 - 24 b) Page 2, line 42, change *President* to *Chair*.
 - 25 c) Page 3, line 2, change *President* to *Chair*.
- 26

27 Mr. Bannon moved to approve the minutes as amended. Mr. Quynn called for a vote, which
28 carried unanimously.
29

30 2) Swearing in of members of the public intending to provide testimony.
31

32 Ms. Hartman swore in members of the public who indicated they would be providing testimony
33 at the beginning of the meeting
34

35 3) Variance request from Section 5.4-1 to reduce the side setback from 12' to 8' for a garage
36 attached to a townhouse unit. Owner/Developer: Pete Kubic. PFK, LLC. Location: Lot TH73,
37 Locust Hill Subdivision, Baltustrol Dr, Charles Town, WV. District: Charles Town 02;
38 Map: 13A; Parcel: 555; Zone: R; File: ZV15-10.
39

40 Ms. Brockman presented her staff report to the Board, noting that the subject parcel was
41 located adjacent to a drainage/golf cart easement. Kristen Stolipher, consultant with Gordon,
42 represented the request. Ms. Stolipher explained that although the request, if granted, would
43 permit the garage to encroach closer to the easement, that it would not impact or hinder the
44 flow of the drainage easement. Ms. Stolipher answered questions raised by the Board.

45 Mr. Quynn opened the public hearing. There was no public comment. Mr. Quynn closed
46 the public comment. The Board agreed a deliberative session was not necessary.

1 Mr. Bannon moved to approve the variance as requested. Mr. Knott seconded the motion,
2 which carried unanimously.

3
4 4) Variance request postponed until June 25, 2015. Variance request from Section 9.6C & 9.7 to
5 reduce the front setback from 25' to 0' and the side setback from 12' to 18" for an 8' tall fence.
6 Owner: Lisa Gasque. Location: 5753 Charles Town Rd, Kearneysville, WV. District: Middleway
7 07; Map: 3C; Parcel: 3; Zone: V; File: ZV15-11.

8
9 This item was postponed until the June 25, 2015 Board of Zoning Appeals meeting.

10
11 5) Director's Report.

12
13 a) Monthly Activity Report. No action taken.

14 b) Ms. Brockman updated the Board on the following items:

15 i) Introductions were made between David Simon, the new County Planner/Zoning
16 Administrator, and the Board members.

17 ii) Bolivar requested an Urban Growth Boundary. The County Commission forwarded
18 the request to the Planning Commission to schedule a public hearing. The public
19 hearing is scheduled for June 9, 2015.

20 iii) No recent activity regarding the Mass Events text amendment.

21 iv) The All Good Music Festival continues to process their Concept Plan and various
22 approvals have been received by the office.

23 v) The next BZA meeting will be June 25, 2015. Ms. Brockman will not be in
24 attendance; however, Mr. Simon will be present.

25 vi) A Conditional Use Permit for a Bed and Breakfast is scheduled for their next
26 meeting. The item had two unresolved issues for the Board to address.

27
28 6) Legal Update.

29
30 a) All Good Music Festival Pending Litigation CA #14-C-390. None.

31 b) William Neufeld Pending Litigation CA #14-C-394. None.

32
33 7) Signing of Findings of Fact and Conclusions of Law/written decisions from prior Board of
34 Zoning Appeals meetings.

35 Meeting Date: April 23, 2015

36 a) Variance request from Sections 9.6C and 9.7 to reduce the front setback from 20' to 17'6"
37 for an unlawfully constructed 16' x 30' building. Owner: Matthew and Jennifer Welder.
38 Location: Glen Haven Subdivision, 815 Mason Dr., Harpers Ferry WV. District: Harpers
39 Ferry 04; Map: 3D; Parcel: 40; Zone: R; Size: .40 ac; File: ZV15-08.

40 *The Findings were signed by Mr. Quynn.*

41
42 Mr. Bannon would not be present at the June 25, 2015 meeting.

43
44 Mr. Knott moved to adjourn the meeting at 2:26 p.m. Mr. Quynn called for a vote, which carried
45 unanimously.

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 June 25, 2015

Laurice Berry Variance Request (#ZV15-09)

Item #4 Variance per Sec. 9.7 to reduce the side setback from 15' to 5' for an existing deck that was constructed without a building permit.

APPLICANT:	Laurice Berry
OWNER:	n/a
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	155 Hollow Tree Dr., Summit Point, WV
LEGAL DESCRIPTION & ZONING DESIGNATION:	District: 06; Map: 19A; Parcel: 1.1; Size: 1.62; Zone: R
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North: R</i> <i>South: R</i> <i>East: R</i> <i>West: R</i>
PRIOR CASES:	None
VARIANCE(S):	None
APPROVED ACTIVITY:	Two Nonconforming Single-Family Dwelling Units on one Rural lot

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 June 25, 2015

Laurice Berry Variance Request (#ZV15-09)

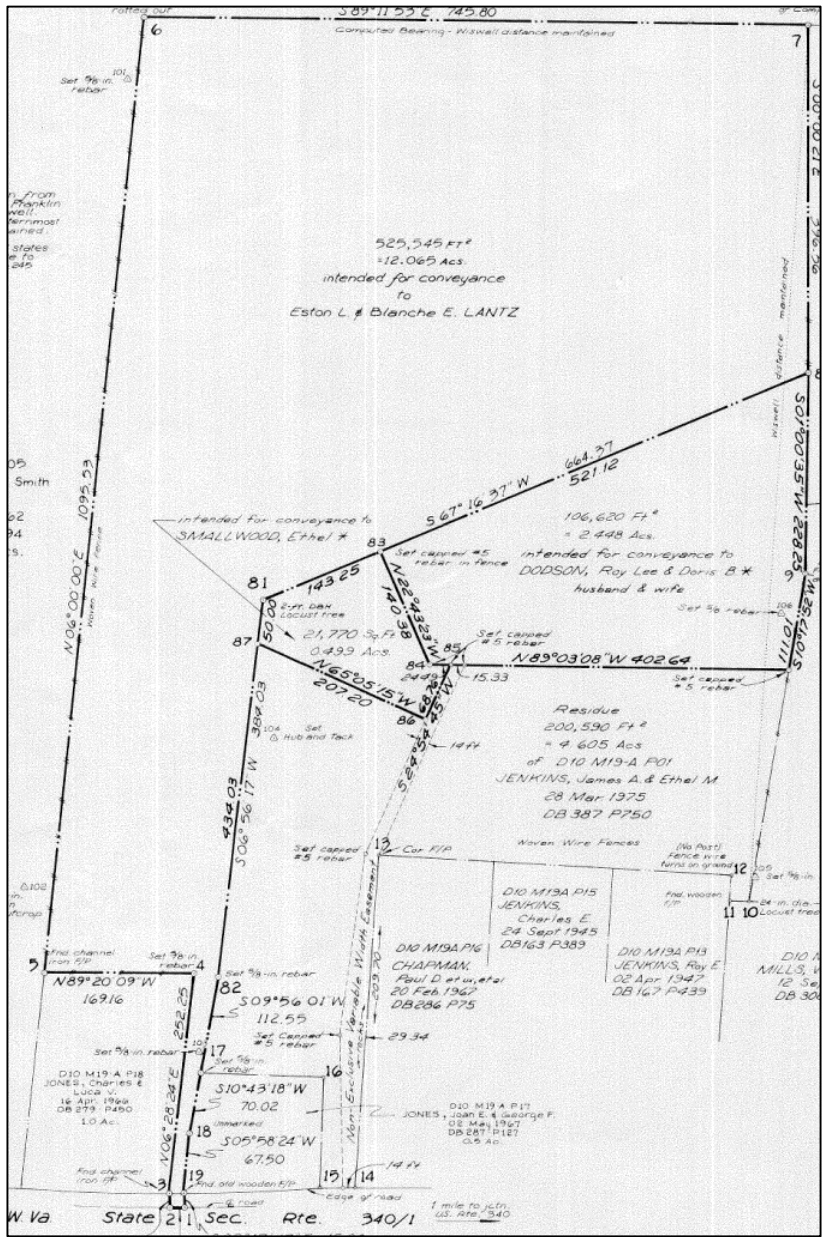
RELEVANT INFORMATION:

1. Overview of Request

This is a variance request per Section 9.7 to reduce the side setback from 15' to 5' for an existing deck that was constructed without a building permit.

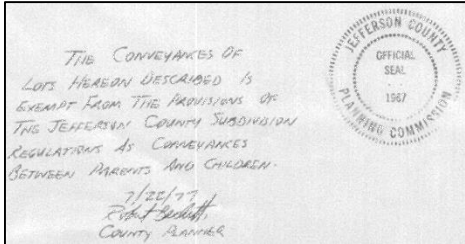
2. History of the Property

The subject parcel was created utilizing the parent to child process that was in effect at that time. The survey plat describing the lot was approved by the County Planner and recorded on July 22, 1977.



(Left) The following was noted by the Planner on the Plat as a condition of approval:

“The conveyance of the lots hereon described is exempt from the provisions of the Jefferson County Subdivision Regulations as conveyances between parents and children.”



(Above) The Subdivision Ordinance that was in effect in 1977 did not require an applicant to include a single family restriction.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
June 25, 2015

Laurice Berry Variance Request (#ZV15-09)

History of Property, cont'd

In the late 1970's to early 1980's, several residential structures were constructed on this single rural lot on Hollow Tree Drive. It was determined that no more than two of these residences were occupied at one time. For this reason, when it was discovered that the occupied structure that is the subject of this variance request was being renovated for occupancy, staff required the smallest trailer to be removed from the site, so that no more than two habitable structures were on the property. This removal of the trailer occurred in the Fall 2014 in compliance with the County mandate.

Because the two residential structures existed before Zoning was adopted in Jefferson County, this lot is considered a nonconforming lot. The renovation of the northern-most occupied structure on the property, which is the subject of this variance request, occurred without the benefit of a building permit. Most of the renovations occurred within the existing construction of the original home; however a deck and ramp were constructed at the rear of the home, along the property's side lot line, approximately 5 feet from the property line which requires the processing of this variance request.

3. Applicant's Justification of Request

In the attached application submitted for the variance request the applicant provided a response to the following four criteria for a variance:

- a) *Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents.*
- b) *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.*
- c) *Would eliminate an unnecessary hardship and permit a reasonable use of the land.*
- d) *Will allow the intent of the Zoning and Land Development Ordinance to be observed and substantial justice done.*



4. Staff Evaluation of Request

a. Source and purpose of ordinance requirements

The creation of Parcel 1.1 predates the establishment of the Zoning Ordinance; therefore, the applicant must comply with Section 9.7, which regulates setbacks for properties created prior to 1988. Due to the property's zoning district, size and history, the setbacks would be 40' Front, 15' Side and 50' Rear.

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

Staff Report
Jefferson County Board of Zoning Appeals Meeting
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Laurice Berry Variance Request (#ZV15-09)

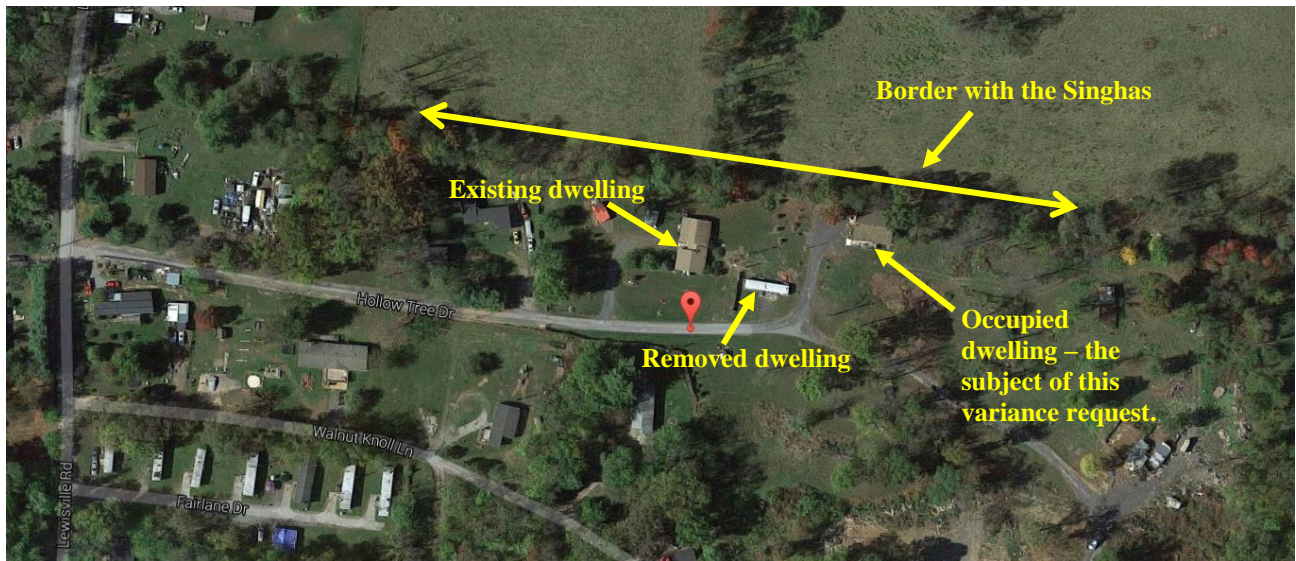
b. Unique characteristics of property

The subject property is located in an established subdivision that predates both the County Zoning Ordinance and County Subdivision Regulations. The property consists of:

- Original home: exact building date unknown (possibly late 70s to early 80s)
- Small trailer: exact building date 1973 (removed September 2014 per County)
- Other trailer: exact building date 1976 (restored as residence) – the subject of this variance

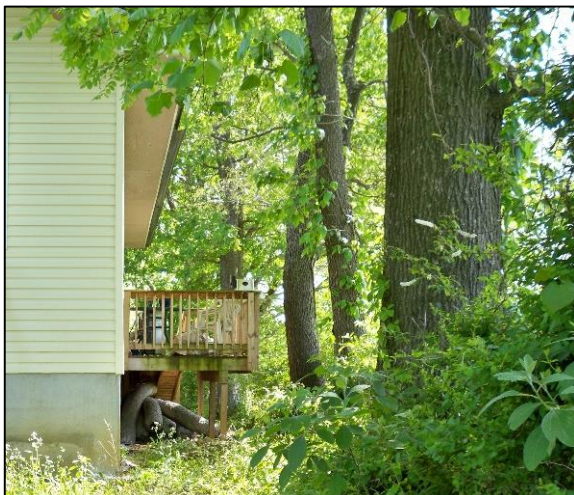
c. Character of area

The character of the area surrounding the property in question is diverse. The land to the south and west of the property has experienced low-levels of residential development intensity, while the large rural property immediately west of the applicant’s property has been occupied by the same family for many years, but also has had some land subdivided. The northern end of the property has gravel paths that reach deep into the lot, with no development or dwelling units.



(above; Aerial Site View)

d. Impact on adjacent properties.



The only comments received to date are from the Singhas, the neighbors who would be the most impacted by this variance. See the attached letter from Singhas stating their support of this variance request. Due to the size of the Singhas’ property, the proposed setback variance allowing the deck and ramp to be constructed 5 feet from the side lot line should have minimal impact on their abutting property. Other properties that share Hollow Tree Road should not be impacted by the approval of the requested variance as the request is being made for a far side of the existing occupied structure.

(left; view from rear of property abutting, facing north)

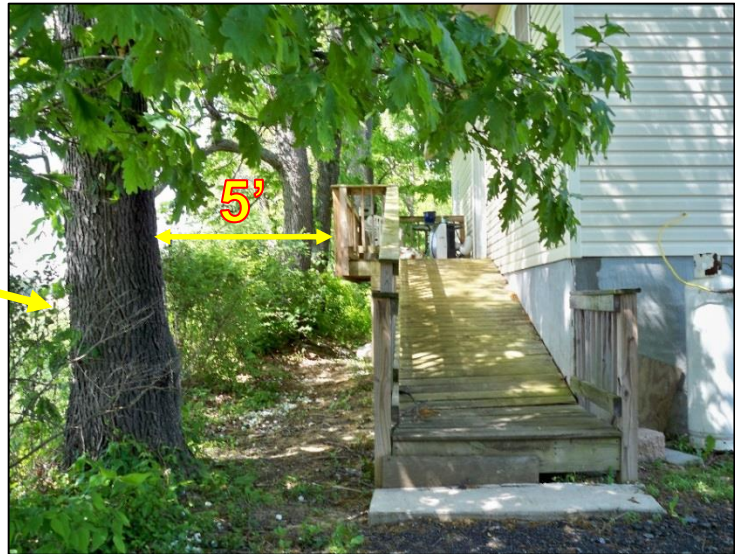
Staff Report
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Laurice Berry Variance Request (#ZV15-09)

- e. Feasibility of complying with the ordinance by other means

The structure has already been constructed, the applicant would have to demolish the deck, which is the second entrance into the residence, and could cause potential hardship on applicant.

**Singhas
Property**



(above; view from other side of deck, facing south)

5. Conditions of Approval

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

- a) This variance shall be limited to the existing deck, as presented by the applicant.
- b) A building permit must be obtained for the unlawfully constructed deck within 90 days of the approval of this variance request.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 9.7 Other Exceptions³

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 process²³:

Rural Agricultural and Industrial Commercial

Single Family Residences

Over 2 acres -- 40' front, 15' side and 50' rear



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, 2nd Floor, P.O. Box 338
Charles Town, WV 25414

File Number: #ZV15-09

Staff Initials: C/C

Fees Paid (\$100 or \$150): \$ 150.00

www.jeffersoncountywv.org/government/departments/planning-and-zoning-department.html

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Variance Request

Variances to 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: Laurence Berry
Mailing Address: PO Box 73
City: Rippon, WV 25441 State: _____ Zip Code: _____
Phone Number: 304-596-4858 Email: laurence.berry@yahoo.com

Applicant Information

Name: Same
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Phone Number: _____ Email: _____

Engineer(s) or Surveyor(s) Information

Name: _____
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Phone Number: _____ Email: _____

Physical Property Details

Physical Address: 155 Hollow Tree Dr. (Previously 141 Hollow Tree Dr.)
City: Summit Point State: WV Zip Code: 25446
Tax District: 06 Kohle town Map No: 19 A Parcel No: 1.1
Parcel Size: 11.02 Acre Deed Book: 1135 Page No: 680

Zoning District (please check one)

RECEIVED

APR 23 2015

JEFFERSON COUNTY PLANNING,
ZONING & ENGINEERING

Rural (R-A)	Residential Growth (R-G)	Industrial Commerical (I-C)	Residential- Light Industrial- Commercial (R-L-C)	Village (V)
<input checked="" 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 ways, 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 Ordinance pertaining to this request:

Briefly describe the nature of the variance request Section 9.7
reduction in side setback from existing deck
on non-conforming residence

I'm asking for permission to continue to reside in 155 Home on
Hollow Tree Dr. I have complied with the demolition of 139 Trailer and the
removal of it.

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

Front Setback Side Setback Rear Setback Reduction From 15' to 5'

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

I talked to Singhas and they are in total agreement that 155 home stays.
Furthermore, the structure has stood there since the 1980s. Singhas and the
Berres are in agreement of property should remain.

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?

I need to get the approval to put 155 residence on the deed.
I am getting taxed for this home with the county. Therefore, I
want to be harmonious with all procedures that pertain to the County.

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

The home or structure has not created hardship to the Singhas.
If this residence has to be torned down, the kids and I are
in financial bind. We have live there since 2010 with no issues.

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

By granting this variance, it will sustain the habital home for
my two children. This home doesn't infringe on the Singhas property.
This structure has not interfered with the quality of live for me or the
Singha Family.

By signing this application, I give permission for the Departments 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. Note: Original signature is required. If additional signatures are necessary, please attach a separate sheet of paper.

[Signature] 4/23/15
Signature of Property Owner Date

Signature of Property Owner Date

Notification Requirements (to be completed by staff)

Notice of a public hearing for an appeal shall be advertised in a newspaper having general circulation in the County at least 15 days before the hearing. The subject property shall be posted conspicuously by a zoning notice no less than 28" x 22" in size, at least 15 days before the hearing (pursuant to Zoning and Land Development Ordinance Section 3.4A(3)(b)).

THURSDAY, MAY 28, 2015 @ 2:00pm
Date of Public Hearing

WEDNESDAY, MAY 13, 2015
Advertising Date

WEDNESDAY, MAY 13, 2015
Placard Posting Date

LDB

TD 6
M0019
P00050000

TD 6
M 019A
P 0001.0001

137

153

HOLLOW-TREE DR

TD 6
M019A
P00010005

TD 6
M019A
P00010003

117

TD 6
M019A
P00010002

Staff Report
Jefferson County Board of Zoning Appeals Meeting
June 25, 2015

Kent Cartridge Variance Request (#ZV15-12)

RELEVANT INFORMATION:

1. Overview of Request

Variance request from Section 4.11.B.2, 4.11.B.3, 4.11.E and Appendix B to remove the front, side and rear buffers/screening for an industrial development.

2. Previous Case History

Kent Cartridge (previously called Activ Industries) is a manufacturing and warehousing industrial supplier of ammunition that was established prior to the adoption of zoning in the County. The existing buildings located on the property include the following:

- Metal building used for manufacturing/warehousing (29,337 sq. ft.)
- Storage building (2,325 sq. ft.)
- Office/Administrative Building, converted from a three story residential structure (7,890 sq. ft.)
- Multiple barns/sheds associated with previous agricultural uses (6,100 sq. ft.)

The total floor area of all existing structures is 45,651 sq. ft. On June 9, 2015 the Planning Commission approved a Concept Plan for a proposed 20,000 sq. ft. expansion of the existing manufacturing/warehouse facility. No additional parking or utility upgrades are required or proposed. Additionally, at the same meeting, the Planning Commission approved a request submitted by the applicant to waive the Major Site Plan process and to allow them to process as a Minor Site Plan with a Concept Plan. As the structures located on the site relating to the manufacturing operation total 39,552 square feet (excluding the barn/sheds), a 20,000 square foot addition would result in a cumulative square footage greater than 50,000 square feet, which exceeds the definition of a Minor Site Plan. Although the Planning Commission approved the request to waive the Major Site Plan process, the applicant must still process a full site plan, which requires storm water management, landscaping, etc.

3. Applicant's Justification of Request

In the attached application submitted for the variance request the applicant provided a response to the following four criteria for a variance:

- a) *Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents.*
- b) *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.*
- c) *Would eliminate an unnecessary hardship and permit a reasonable use of the land.*
- d) *Will allow the intent of the Zoning and Land Development Ordinance to be observed and substantial justice done.*

4. Staff Evaluation of Request

a. Source and purpose of ordinance requirements

Landscape buffers are typically included as a land development requirement in local Zoning Ordinances or Subdivision Regulations to absorb, lessen or neutralize the impacts of one land use from another, reducing the impact that a land use might cause to an adjacent property by serving as a barrier to visibility, air borne particles, glare or noise. Ordinances may differentiate between buffers which are screened or buffers which are unscreened based on the types of uses involved.

Staff Report
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Kent Cartridge Variance Request (#ZV15-12)

The text of Section 4.11 of the Jefferson County Zoning and Land Development Ordinance refers to a provision that allows applicants to choose between larger unscreened buffers and narrower screened buffers meeting standard landscape detail; however in May, 2014, amendments were made to the Zoning Ordinance approving Appendices A and B, which include landscape buffer requirements. The tables further state that where there is a conflict between the text and the table, the table prevails. In June, 2014, while considering an amendment related to landscaping between like commercial uses, the County Commission made a decision to change the table to refer to the standard details for ease of use by applicants. Unfortunately, this change (perhaps inadvertently) also deleted the provision for the larger unscreened buffers to be utilized.

In Jefferson County, the largest buffers relate to industrial uses. Appendix B requires the use a Wide Buffer Detail No M-52 for all industrial uses adjoining a Residential district, or a lot with a residence, school, church, or institution of human care. Because the adjoin properties to this lot are either residential lots or approved for residential development, this is the buffer that would be applied to this industrial use. The M-52 detail is required to be 40 to 100 feet in width with a variety of planting options.

b. Unique characteristics of property

Kent Cartridge's existing manufacturing structure is in a clearing of the lower segment of its property. Dense vegetation surrounds the central manufacturing building, providing substantial seclusion to the point that the building cannot be seen clearly from Hite Road (approximately 700 feet away). Beyond the main manufacturing structure, the property has a dense tree line (approximately 300 feet away) which then leads to two large empty fields which cover a large portion of northeast portion of the property and provides further buffer to abutting neighbors. From the manufacturing building to the neighboring property to the east there is approximately 700 feet of densely wooded area which acts as an existing landscape buffer as it exists.

c. Character of area

The spatial area immediately surrounding the Kent Cartridge facility but within their property boundary is densely wooded with dense vegetation which acts as a verdant natural buffer between the main manufacturing building and the property frontage on Hite Road and the closest residential neighbor. The secluded nature of the property gives Kent Cartridge the necessary privacy to operate without worry of impacting any immediate abutters.

d. Impact on adjacent properties

The Kent Cartridge manufacturing structure which is proposed to expand is centrally located on the property. This location provides adequate distance and an extensive natural vegetative buffer to shield adjacent properties from the proposed addition in manner that meets the intent of the setbacks and buffers that the ordinance requires. The secluded nature of the property gives Kent Cartridge the necessary privacy to operate without worry of directly impacting any immediate abutters.

e. Feasibility of complying with the ordinance by other means

Should the Board not grant the variance request, the applicant would be required to remove a significant amount of existing vegetation and invest in a significant landscape plan that would likely not provide as thorough of a buffer as the existing conditions will.

Existing dense screening

WOODBURY EST



PROPERTY SKETCH



EXISTING BARN

EXISTING ADMIN / OFFICE BUILDING (7,890 SQ. FT. FLOOR AREA)

EXISTING STORAGE BUILDING

EXISTING MANUFACTURING / WAREHOUSE BUILDING (29,337 SQ. FT. FLOOR AREA)

PROPOSED BUILDING EXPANSION (20,000 SQ. FT. FLOOR AREA)

EXISTING MATURE VEGETATION (TYP.)

KENT CARTRIDGE REQUEST ADDENDUM



1,390'

2,525'

710'

525'

875'

855'

ROAD

RESIDENTIAL STRUCTURE

JEFFERSON COUNTY PLANNING, ZONING & ENGINEERING

SHEET 1/1



Staff Report
Jefferson County Board of Zoning Appeals Meeting
June 25, 2015

Kent Cartridge Variance Request (#ZV15-12)

5. Conditions of Approval

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

- a) Approval of this variance shall be tied to the requirement that a 200 foot buffer around the perimeter of the entire property, including any existing vegetation within that 200 feet, shall be retained in an undisturbed manner other than maintenance for safety reasons.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 4.11 Landscaping, Screening and Buffer Yard Requirements

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

A. Industrial Development²⁷

- 1. All industrial development adjacent to any use other than an industrial use shall have screened front yard buffers of no less than one-half (½) the front yard building setback, which may be included within the 200-foot buffer required in this subsection.^{5, 7}
- 2. All industrial development adjacent to any use shall have 20' screened side and rear landscape buffers.

B. 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.^{7, 23, 27, 28}

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:^{27, 28}

- a. One (1) deciduous or evergreen tree with a height of six (6) feet or more when planted, likely to reach a height of twenty (20) feet or more at maturity, planted every fifty (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 fifty (50) linear feet; and
- c. Three (3) shrubs per each twenty five (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.^{7, 23, 26}

APPENDIX B: NON RESIDENTIAL SITE DEVELOPMENT STANDARDS TABLE²⁷

Zoning District	Development Type ⁹	Min Lot Area (MLA)	Min Lot Width	Max Building Height*	Imper-vious Surface Limit	Building Setbacks			Parking/Drive Aisle Setbacks*			Distance if Sec. 4.6 applies	Buffers (Sec. 4.11) (Screened / Unscreened)						
													a Residential district, or any lot with a residence, school, church, or institution of human care			Commercial Use			Industrial Use
						Front	Side	Rear	Front	Side	Rear		Front, Side, Rear	Front	Side	Rear	Front	Side	Rear
Industrial - Commercial**	Commercial sites 1.5 acres and smaller	N/A	N/A	75	80%	25			15	4	4	75	Narrow Buffer Detail No. M-54	N/A	10(S)	10(S)	N/A	10(S)	10(S)
	Commercial sites greater than 1.5 acres	N/A	N/A	75	80%	25	50 (or 25 if adjacent to industrial use)		15	10	10	75	Medium Buffer Detail No. M-53	N/A	10(S)	10(S)	N/A	10(S)	10(S)
	Industrial	3 acres***	N/A	75	90%	50 (or 25 if adjacent to industrial use)			25 (or 20 if adjacent to industrial use)			200	Wide Buffer Detail No. M-52	25(S)	20(S)	20(S)	N/A	20(S)	20(S)
Rural	Churches	2 acres	200	35	N/A	25	50	50	See Parking / Drive Aisle Setbacks for commercial sites (greater or less than 1.5 acres, based on lot size) in the Industrial-Commercial District.			N/A	50(U) or 15(S)	N/A	10(S)	10(S)	N/A	10(S)	10(S)
	Schools, Grades K-12	Grades K - 4: 10 acres+ Grades 5-8: 20 acres+ Grades 9-12: 30 acres+	500	35	N/A	100						N/A	N/A	N/A	N/A	N/A	N/A	N/A	
	Hospitals	10 acres	500	35	N/A	100						N/A	N/A	N/A	N/A	N/A	N/A	N/A	
	Other Rural principal permitted uses	40,000 sq. ft.	100	35	N/A	40	50	50				N/A	If a commercial or industrial use, see Industrial - Commercial District; otherwise N/A						
	Commercial or Industrial**					See Industrial - Commercial District													

*In the event of a conflict with the Ordinance the text of this Table shall prevail.



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, P.O. Box 338
Charles Town, WV 25414

File Number: ZV15-12
Staff Initials: CLK
Fees Paid (\$100 or \$150): \$100.00

www.jeffersoncountywv.org/government/departments/planning-and-zoning-department.html

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

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

Zoning Variance Request

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

Property Owner Information

Name: Delaware Corporation 637842 D/BA Kent Cartridge of America
Mailing Address: P.O. Box 849; Kearneysville, WV 25430
Phone Number: (304)725-0452 Email: Nathan@kentamebore.com

Applicant Contact Information

Name: Panhandle Builders & Excavating
Mailing Address: 222 Langston Boulevard; Martinsburg, WV 25404
Phone Number: (304)274-1920 Email: lah@panhandlebuilders.com

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

Name: Gordon
Mailing Address: 301 North Mildred Street; Charles Town, WV 25414
Phone Number: (304)725-8456 Email: jgerhart@gordon.us.com

Physical Property Details

Physical Address: 795 Hite Road
City: Kearneysville State: WV Zip Code: 25430
Tax District: Middleway Map No: 8 Parcel No: 4
Parcel Size: 173.58+/- acres Deed Book: 876 Page No: 294

Zoning District (please check one)

Residential Growth (RG) [] Industrial Commercial (IC) [] Rural (R) [x] Residential-Light Industrial-Commercial (R-LI-C) [] Village (V) [] Neighborhood Commercial (NC) [] General Commercial (GC) []

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Highway Commercial (HC) [] Light Industrial (LI) [] Major Industrial (MI) [] Planned Neighborhood Development (PND) [] Office/Commercial Mixed-Use (OC) []

Kent Cartridge Property

Variance Request Addendum

May 11, 2015

Briefly describe the nature of your variance request:

The requested variance is to remove the screening requirements associated with the front, side and rear buffers /screening for an industrial development.

- **Applicable/Related Sections of the Zoning and Land Development Ordinance**
 - Section 4.11.B.2.
 - All industrial development adjacent to any use other than an industrial use shall have screened front yard buffers of no less than one-half (½) the front yard building setback, which may be included within the 200-foot buffer required in this subsection.
 - Section 4.11.B.3.
 - All industrial development adjacent to any use shall have 20' screened side and rear landscape buffers.
 - Section 4.11.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.
 - Appendix B: Non Residential Site Development Standards Table
 - 20 foot side and rear screened buffer (references Section 4.11).
 - Wide buffer detail number M-52 when adjacent any lot with a residence.
- **Development Information**
 - Parcel Area: 173.58+/- acres.
 - Existing structures predate the adoption of Zoning in Jefferson County.
 - Multiple buildings are locate on the property, including:
 - Metal Building used for manufacturing / warehouse (29,337 sq. ft.).
 - Storage Building (2,325 sq. ft.).
 - Office / Administration Building, converted from a residential structure (7,890 sq. ft.).
 - Multiple barns /sheds associated with previous agricultural use.
 - Proposed development will include a 20,000 sq. ft. expansion to the existing manufacturing / warehouse building. No additional parking or utility upgrades are proposed.
 - Areas surrounding the proposed building expansion are forested.

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

- **The existing / proposed condition of the property exceeds all screened buffer requirements in the Zoning Ordinance.** The proposed condition will provide a minimum of approximately 800' of wooded area between the proposed building and adjacent residential properties. This provides an increased separation in uses that exceeds what the Zoning Ordinance deems as safe and acceptable.



- **The proposed building expansion will provide no additional impact to the surrounding community.** The current building / property use will not change and the expansion of the building will allow for flexibility in the facility's operations. The current use does not affect the health, safety, welfare or the rights of the surrounding properties and the expansion of that use will have no additional impacts.
- **This facility is not open to the public and is not visible from the adjacent road.** This is a private facility and vehicle access is controlled. The proposed building expansion will not be visible from the road or the general public. The proposed expansion will have no impact, physically or visually, to the general public. It should be noted that the land to the east is owned by the applicant.

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 a variance?

- **Screened buffer requirements within the Zoning Ordinance do not provide site specific considerations for each proposed development.** The Zoning Ordinance places the same screening requirements on all parcels regardless of size or the property's physical characteristics.

The context of this building expansion differs from that of a small parcel cleared of vegetation to maximize developable area. A variance allows for the context of a development to be considered and the intent of the Zoning Ordinance to prevail.

- **The existing building was constructed prior to the adoption of Zoning in Jefferson County.** The restrictions and obligations for the expansion of this facility were unknown when selecting a site for development. Regulations for the development of this parcel have since changed and are a hindrance for the growth of this company. One reason this location was initially selected was for its seclusion from adjacent property owners and it is in the owner's interest to maintain its separation from adjacent properties.

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

- **The implementation of screened buffer would require that existing mature vegetation be cleared to provide area for the screened buffer.** The existing vegetation provides a superior screen to the buffer requirements found in the Zoning Ordinance.

- **Approximately 2,220 evergreen shrubs, 1,110 small evergreen trees, 555 large evergreen trees and 555 deciduous trees will be required if a variance is not granted.** This number was calculated based on the property's approximately 11,100 feet of boundary and the Zoning Ordinance's Detail M-54, Option A for a wide buffer. Pursuant to the Jefferson County Construction Bond Estimate Form, this would cost approximately \$663,780 plus the cost to clear the buffer area of existing mature vegetation. This cost is unnecessary for a structure which is and will remain fully screened from adjacent properties.



- **The approval of this variance request will maintain the intended use of the buffer area as a screen between different land uses.** The intended use of the land within the buffer area is to provide a vegetative screen and distance from different land uses. No reductions to distance requirements are proposed and the existing vegetation will provide the vegetative screen.

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

- **The preservation of the existing vegetation within the buffer area will achieve the intent of the buffer requirements of the Zoning Ordinance.** The existing vegetation provides a mature

vegetative screen which is the eventual goal for buffers required by the Zoning Ordinance. Removal of this vegetation would be in contradiction to the intent of the Zoning Ordinance.

- **All distance requirements found in the Zoning Ordinance will be observed.** There will be a minimum separation of 800' to the nearest two (2) residential structures and over ¼ mile to the next closest residential structure. This is much greater than the 200' requirement found in the Zoning Ordinance and will provide additional buffering / protection to adjacent property owners.

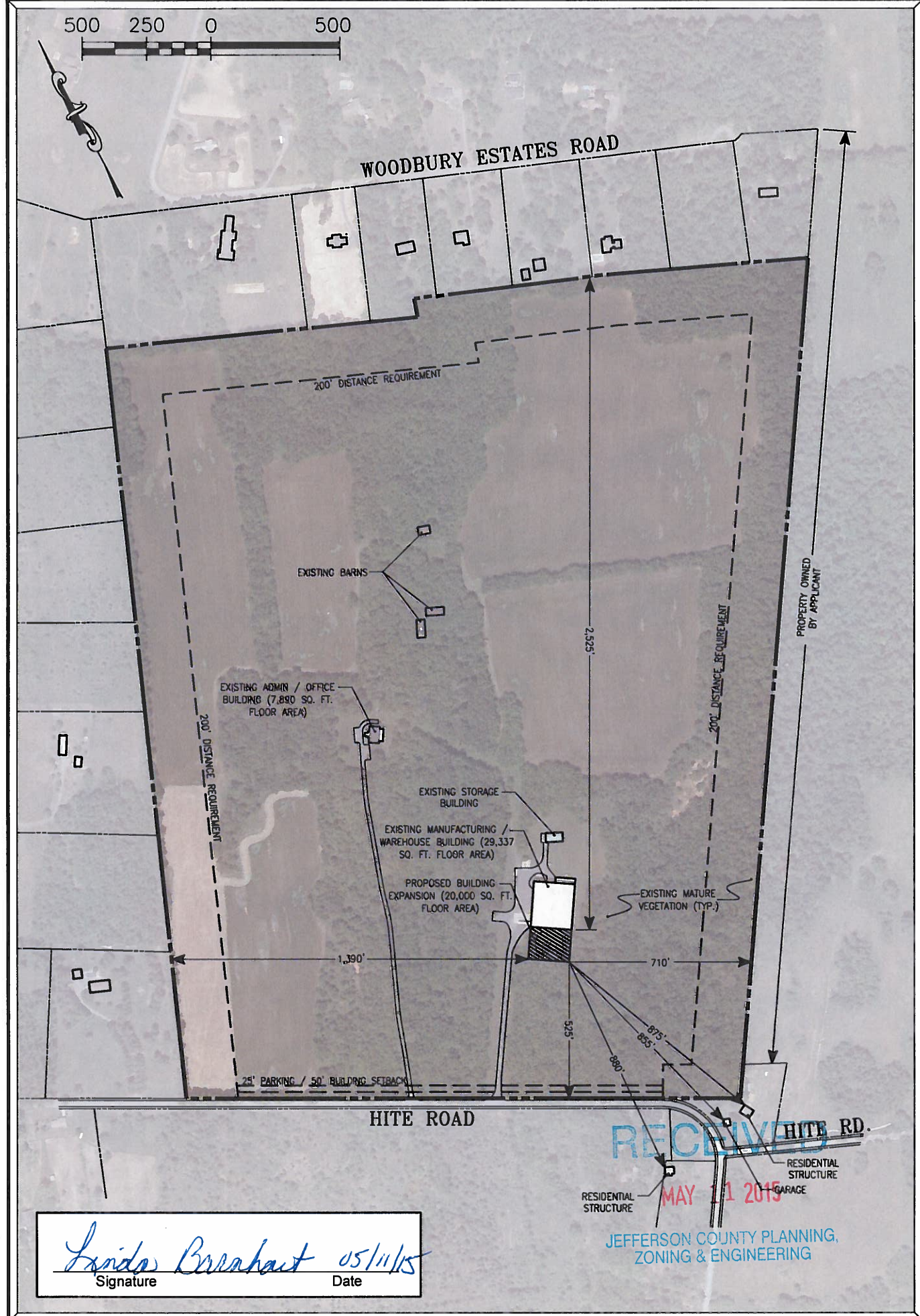


PROPERTY SKETCH

KENT CARTRIDGE
VARIANCE REQUEST ADDENDUM

05-11-2015

SHEET
1 / 1



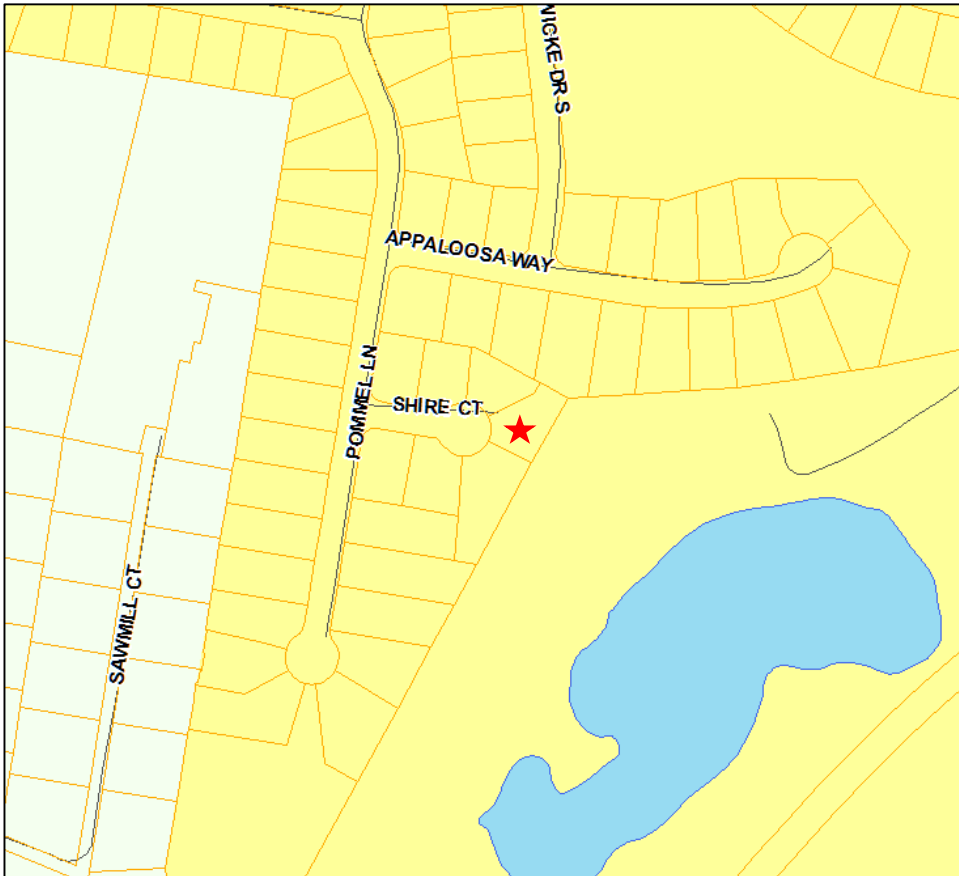
Linda Breakant 05/11/15
 Signature Date

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Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 June 25, 2015

Roy Jr. & Kristin Vella Variance Request (#ZV15-13)

Item #6 Variance request from Section 5.4-1 to reduce the side setback from 12' to 8' and rear setback from 20' to 5' to allow for the installation of an irregularly shaped in-ground pool.

APPLICANT:	Roy Jr. & Kristin Vella
OWNER:	Same as above
DEVELOPER:	Same as above
SURVEYOR/ENGINEER:	Same as above
PROPERTY LOCATION:	Breckenridge Subdivision, Lot 190 47 Shire Ct, Charles Town, WV
LEGAL DESCRIPTION & ZONING DESIGNATION:	<p style="text-align: center;">District: Charles Town 02; Map: 4F; Parcel: 190; Size: .27 Zone: Residential Growth</p> 
SURROUNDING PROPERTIES:	<p style="text-align: center;">Zoning Map Designation:</p> <p style="text-align: center;">North: RG South: RG East: RG West: RG</p>
HISTORY	See history below
VARIANCE(S):	None
APPROVED ACTIVITY:	Single Family Dwelling

Staff Report
Jefferson County Board of Zoning Appeals Meeting
June 25, 2015

Roy Jr. & Kristin Vella Variance Request (#ZV15-13)

RELEVANT INFORMATION:

1. Overview of Request

Variance request from Section 5.4-1 to reduce the side setback from 12' to 8' and rear setback from 20' to 5' to allow for the installation of an irregularly shaped in-ground pool.

2. Previous Case History

In 1995 the Planning Commission approved the Community Impact Statement (CIS) for the Breckenridge Subdivision consisting of 299 single family dwelling lots. By July of 2000 the developer had platted 100 of 299 lots; however due to the time constraints defined in the 1979 Subdivision Ordinance, Section 6.3, the CIS expired thus closing the file. Due to the closure of the file, the developer submitted a new CIS, which was approved by the Planning Commission on August 8, 2000. This section of the subdivision was approved in 2002 as Breckenridge 1C, Lots 167-221 and was recorded on July 26, 2002.

3. Applicant's Justification of Request

In the attached application submitted for the variance request the applicant provided a response to the following four criteria for a variance:

- a) *Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents.*
- b) *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.*
- c) *Would eliminate an unnecessary hardship and permit a reasonable use of the land.*
- d) *Will allow the intent of the Zoning and Land Development Ordinance to be observed and substantial justice done.*

4. Staff Evaluation of Request

a. Source and purpose of ordinance requirements

The property is located in the Residential Growth Zoning District. Typically the setbacks for a parcel located in a subdivision in the residential growth zone would be 25' in the front, 12' on the side, and 20' in the rear.

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

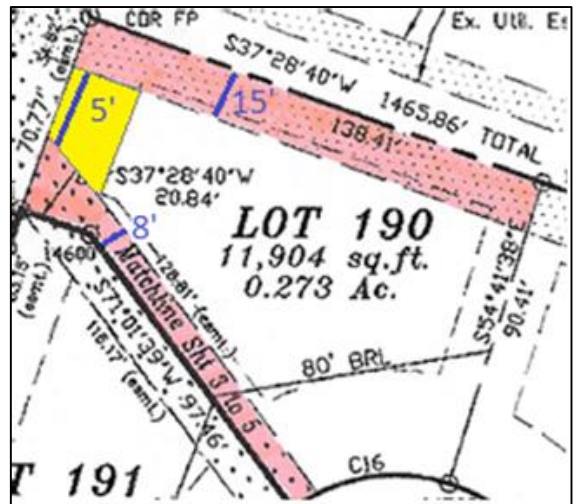
b. Unique characteristics of property

This property is 11,904 square feet and has an existing 6' privacy fence around the backyard. The provisions in place at the time of recordation were a minimum lot frontage of 80'. As this lot fronts on a cul-de-sac, the developer was required to begin the setbacks from the point at which the lot measured 80' in width (see diagram for context). Due to this provision the front setback for this lot is 50', as opposed to the typical 25'.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
June 25, 2015

Roy Jr. & Kristin Vella Variance Request (#ZV15-13)

The Breckenridge Subdivision is served by public water and sewer lines; therefore, many of the lots in the development have easements along their property lines. This particular lot is encumbered by two public utility easements. One is a 15' wide utility easement, which connects to a pump station; and another is a drainage easement which is 20' wide, but straddles the property line so that 8' of this easement is on this property. These easements, in addition to the unique shape of the subject parcel, greatly reduce the buildable area for a pool in this lot.

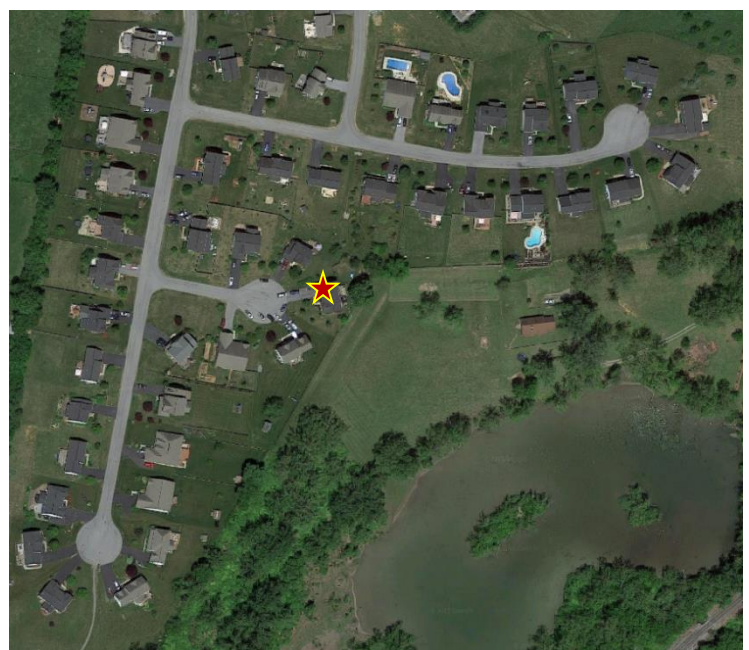


c. Character of area

The Breckenridge Subdivision consists entirely of single family dwelling units. A number of the lots in the subdivision have both above and in-ground pools.

d. Impact on adjacent properties.

Bordering the 15' utility easement is a neighbor with private property measuring thirty-two acres. This neighbor's residence is approximately 300' from the proposed pool. The other properties adjoining the subject parcel (Lot 190) are close in proximity; however, a 6' privacy fence divides the parcels.



Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 June 25, 2015

Roy Jr. & Kristin Vella Variance Request (#ZV15-13)

e. Feasibility of complying with the ordinance by other means

The applicant has worked with staff and has attempted to propose alternative layouts; however, the lot is greatly hindered due to its size and shape, as well as the two easements located along the longest property lines.

5. Conditions of Approval

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

- a) This variance shall be limited to the reduction of the side setback from 12' to 8' and rear setback from 20' to 5' to allow for the installation of an irregularly shaped in-ground pool as described in the application.

SECTION OF ORDINANCE TO BE CONSIDERED:

SECTION 5.4b RESIDENTIAL GROWTH DISTRICT
 HEIGHT AND YARD REQUIREMENTS

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1999]

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



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning
116 East Washington Street, P.O. Box 338
Charles Town, WV 25414

File Number: #ZV15-13
Staff Initials: [Handwritten]
Fees Paid (\$100 or \$150): \$100.00

www.jeffersoncountywv.org/government/departments/planning-and-zoning-department.html

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

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

Zoning Variance Request

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

Property Owner Information

Name: Roy Vella Jr.
Mailing Address: 47 Shire Ct Charles Town, WV 25414
Phone Number: 304-940-0043 Email: vellafella@gmail.com

Applicant Contact Information

Name: Kristin Vella
Mailing Address:
Phone Number: 304-940-0042 Email: kristinvella@gmail.com

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

Name: Kevin
Mailing Address:
Phone Number: 304-676-4187 Email:

Physical Property Details

Physical Address: 47 Shire Ct Lot 190 (Breckennidge)
City: Charles Town State: WV Zip Code: 25414
Tax District: 02 - Charles Town Map No: 4F Parcel No: 190
Parcel Size: 0.2202 acers Deed Book: 1153 Page No: 339

Zoning District (please check one)

Grid of zoning districts with checkboxes: Residential Growth (RG) [checked], Industrial Commercial (IC), Rural (R), Residential-Light Industrial-Commercial (R-LI-C), Village (V), Neighborhood Commercial (NC), General Commercial (GC), Highway Commercial (HC), Light Industrial (LI), Major Industrial (MI), Planned Neighborhood Development (PND), Office/Commercial Mixed-Use (OC).

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

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

Reference the section of the Zoning Ordinance pertaining to this request: 5.4-1

Briefly describe the nature of the variance request:

To fit a pool of decent size for our family (medium sized) in a small area with large setbacks.

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

Front Setback Side Setback Rear Setback Reduction From Side 12 to 5 ft. @ setback Rear 20 to 5 ft. @ setback 6/18/15 JH

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:

it will not affect the public health safety because we have fenced lines and our back neighbor is a large empty field. Fitting a larger pool in a small area will not affect our

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?

We have a large family and are trying to fit a decent size pool and these setbacks are preventing it from fitting in our yard.

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

It will allow us to invest in a nicer pool size and our concrete area will allow for many many years of family memories.

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

We want to work within your guidelines that is why we are asking for a reduction and we don't feel this will affect the zoning.

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 Departments 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] 5/26/15
Signature of Property Owner Date

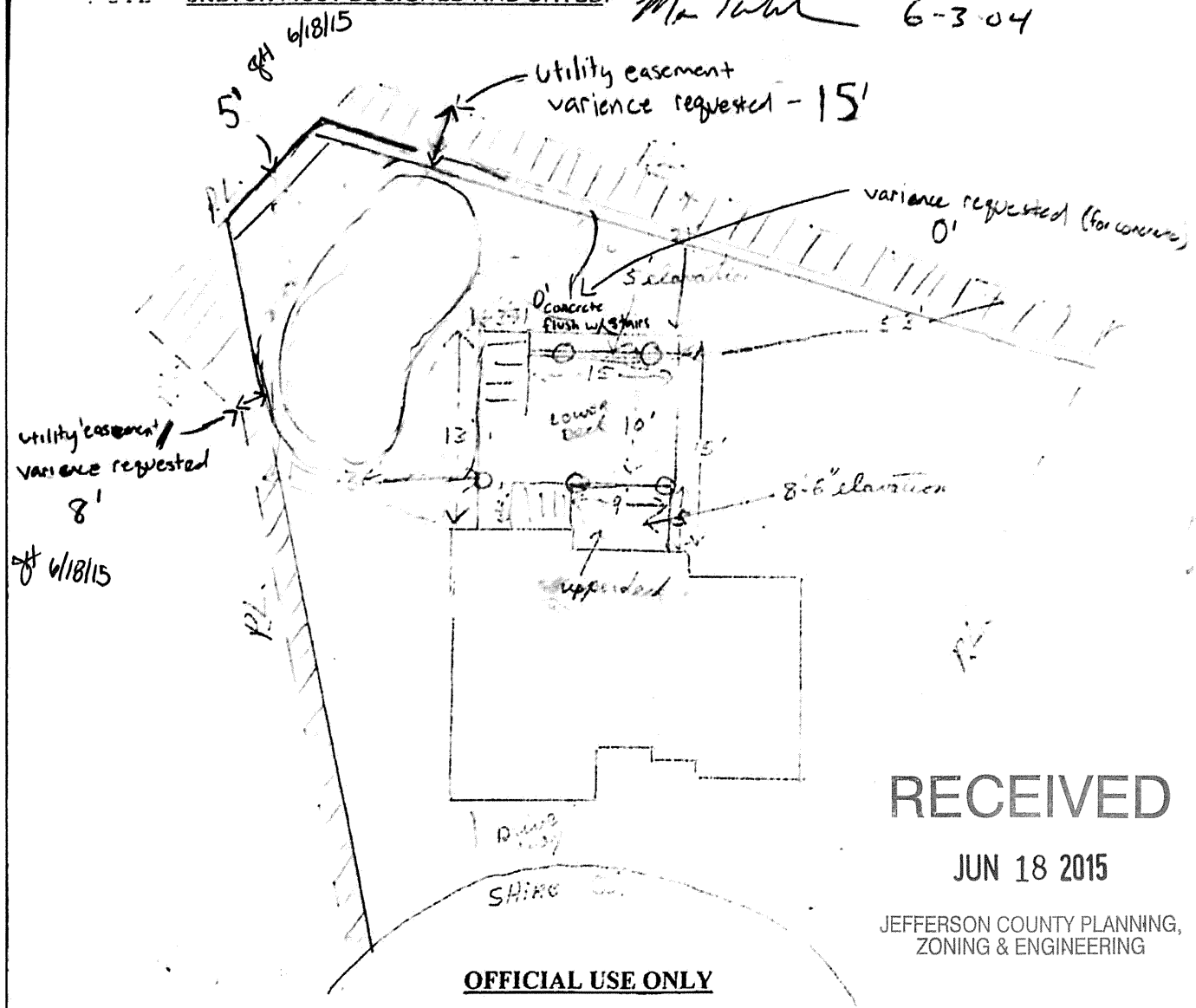
[Signature] 5/26/15
Signature of Property Owner Date

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 3.4A(3)(b)).

THURSDAY, JUNE 25, 2015 @ 2:00pm WEDNESDAY, JUNE 10, 2015 WEDNESDAY, JUNE 10, 2015
Date of Public Hearing Advertising Date Placard Posting Date

Mr. [Signature] 6-3-04



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JUN 18 2015

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OFFICIAL USE ONLY

Subdivision	<input checked="" type="radio"/> Yes or No	Conditions of Approval:
Zoning	<input checked="" type="radio"/> Yes or No	
Flood Plain	Yes or <input checked="" type="radio"/> No	
Other:		
Plans Reviewed By:	<i>[Signature]</i>	
Date:	<i>6/18/04</i>	
By:	<i>D. Mason Carter</i>	
Date:	<i>6-15-04</i>	

Permit # 04-607

Expiration Date: 12-15-04

Staff Report
Jefferson County Board of Zoning Appeals Meeting
June 25, 2015

PFK, LLC Variance Request (#ZV15-14)

RELEVANT INFORMATION:

1. Overview of Request

The variance request is from Table 5.4-1, *Residential Growth District – Height and Yard Requirements* located in Section 5.4B *Minimum Lot Area, Height and Yard Requirements*, to reduce the side setback from 12' to 6' for an attached garage on the south side of the property identified as TH73, to allow for additional storage space in the property's garage. The applicant previously received a variance from 12' to 8' for this same purpose but realized that an additional 2' was required.



2. Previous Case History

The Locust Hill Subdivision was approved as a Conditional Use Permit in 1992 for 387 single family residences, 200 townhomes and 60 duplexes. The final plat for Phase III of the Locust Hill Subdivision, consisting of Lots 56-95, was recorded on December 28, 2004.

On May 28, 2015, the Board heard a similar variance for this applicant, approving a reduction of the side setback from 12' to 8' for an attached garage. However, due to a communication error, the applicant is requesting the setback be reduced an additional two feet.

3. Applicant's Justification of Request

In the attached application submitted for the variance request the applicant provided a response to the following four criteria for a variance:

- a) *Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents.*
- b) *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.*
- c) *Would eliminate an unnecessary hardship and permit a reasonable use of the land.*
- d) *Will allow the intent of the Zoning and Land Development Ordinance to be observed and substantial justice done.*

4. Staff Evaluation of Request

a. Source and purpose of ordinance requirements

The property is located in the Rural Zoning District. Typically the setbacks for a parcel located in a subdivision in the rural zone would be 40' in the front, 15' on the side and 50' in the rear. However, the Locust Hill Subdivision was processed as a Conditional Use Permit. Jefferson County Zoning and Land Development Ordinance Section 5.7B.2 states that '*for any residential use that complies with the Development Review System (approved CUP), the setbacks and lot size shall be as outline in Article 5.4.*' Table 5.4-1 permits townhouse dwellings to have a 25' front, 12' side (exterior only) and 12' rear setback.

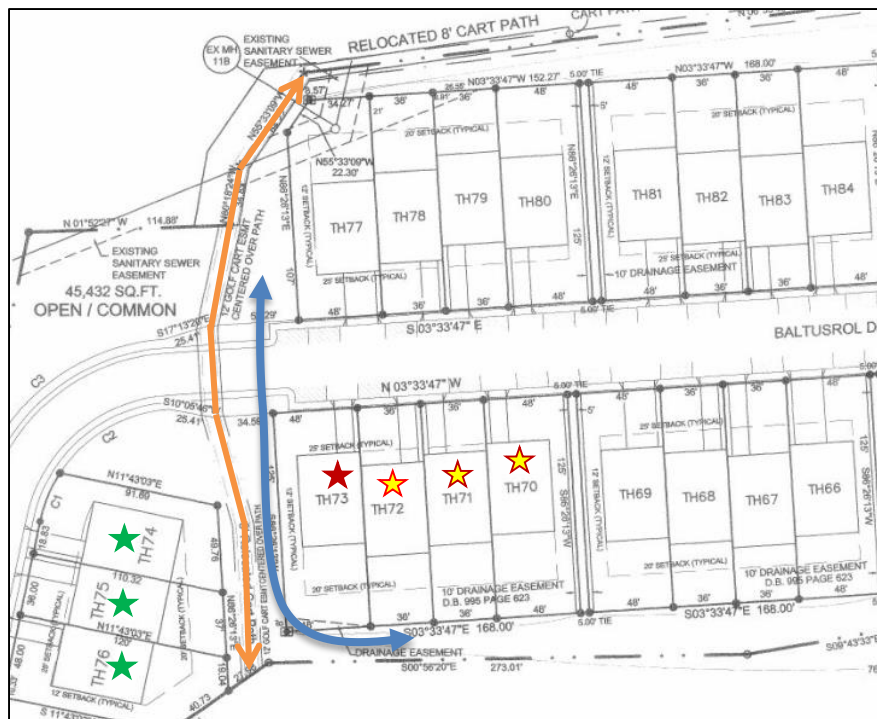
Staff Report
Jefferson County Board of Zoning Appeals Meeting
June 25, 2015

PFK, LLC Variance Request (#ZV15-14)

The purpose of side and rear yard setback requirements is to reduce the impact that a land use might have on an adjacent property; to allow adequate space between a structure and a property line so that maintenance of the structure is feasible; to maintain adequate separation between structures for fire prevention purposes; and to allow room for utility easements. In this particular instance, an open space area and an 8' wide trail used for golf carts and walking is adjacent and runs parallel to the subject parcel. These amenities provide a buffer between the subject parcel and the lots that could be potentially be adversely impacted by approval of this variance request.

b. Unique characteristics of property

The Locust Hills subdivision was constructed to have the Locust Hill Golf Course nestled between the residential streets of this community. The lot in question is at the anchor of a row of attached residential structures soon to be developed. The lot is situated near the golf cart path that loops through the neighborhood, which also serves as a walking trail for residents. It should be noted that there is a drainage easement that abuts the rear and side of this lot. With this proximity comes the exposure to potential flooding in the case of adverse climatic events. The golf cart path is indicated below with an orange arrowed line; the drainage easement path is indicated by a blue arrowed line.



c. Character of area

The Locust Hills subdivision consists of the Locust Hill Golf Course, as well as a variety of residential structures including single family homes, duplexes, and townhomes. The neighborhood is well integrated into the golf course's footprint. The community has seen a phased development pattern being implemented on undeveloped lots in the subdivision over the past two decades. With this final phase of development being proposed, Locust Hills will have completed their build-out of the subdivision.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
June 25, 2015

PFK, LLC Variance Request (#ZV15-14)

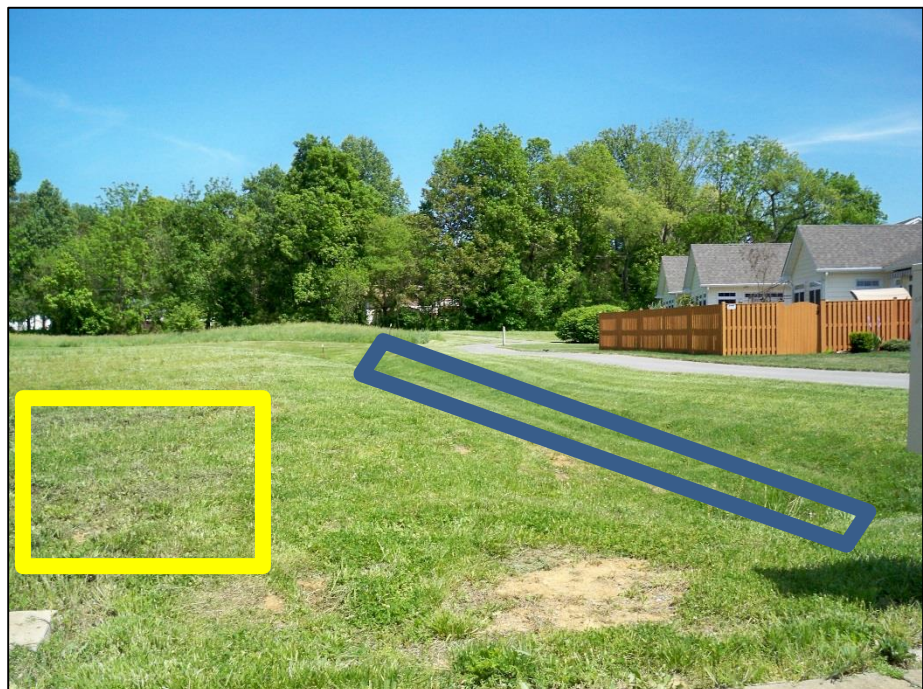
d. Impact on adjacent properties.

The applicant owns Lot TH73 (red star above), as well as the attached and surrounding planned units lots TH70-TH72 (yellow stars above). Lots TH74-TH76 (green stars above) have been developed and sold.



Left - Lot TH73, general area (outlined in yellow) of site of proposed further garage expansion under consideration by the BZA

Right – General area of setback (outlined in yellow) under review by BZA; depression to the left of the cart path (outlined in blue) is drainage easement. TH 74-76 can be seen in the background to the right of the cart path and drainage easement.



Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 June 25, 2015

PFK, LLC Variance Request (#ZV15-14)

e. Feasibility of complying with the ordinance by other means

Should the Board not grant the variance request, the applicant would have to reduce the size of the proposed expansion of the structure and build within the required building restriction lines.

5. Conditions of Approval

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

- a) This variance shall be limited to the reduction of the side setback from 12' to 6' for the requested garage as described in the application.

SECTION OF ORDINANCE TO BE CONSIDERED:

SECTION 5.4b RESIDENTIAL GROWTH DISTRICT
 HEIGHT AND YARD REQUIREMENTS

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1999]

<u>Development Type</u>	<u>Minimum Lot Area (MLA) Area per Dwelling Unit (ADU)</u>	<u>Required Yards</u>	<u>Maximum Building Height*</u>
3. Townhouse			
Public/Central water and sewer	1,400 sq. ft. MLA 3,500 sq. ft. ADU	25 ft. front 12 ft. side (exterior only) 20 ft. rear	40 ft.



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning
116 East Washington Street, P.O. Box 338
Charles Town, WV 25414

File Number: #ZV1514
Staff Initials: CLC
Fees Paid (\$100 or \$150): \$100.00

www.jeffersoncountywv.org/government/departments/planning-and-zoning-department.html

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

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

Zoning Variance Request

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

Property Owner Information

Name: PFK, LLC.
Mailing Address: 241 Edmond Road, Kearneysville, WV 25430
Phone Number: 304-886-9408 Email: kubicconst@aol.com

Applicant Contact Information

Name: Pete Kubic
Mailing Address: 241 Edmond Road, Kearneysville, WV 25430
Phone Number: 304-886-9408 Email: kubicconst@aol.com

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

Name: Gordon, c/o Kristen Stolipher
Mailing Address: 391 North Mildred Street, Charles Town, WV 25414
Phone Number: 304-930-5780 Email: kstolipher@gordon.us.com

Physical Property Details

Physical Address: Baltustrol Drive, Lot T73
City: Charles Town State: WV Zip Code: 25414
Tax District: Charles Town Map No: 13A Parcel No: 555
Parcel Size: 0.14 Deed Book: 962 Page No: 349

Zoning District (please check one)

Grid of zoning districts with checkboxes: Residential Growth (RG), Industrial Commercial (IC), Rural (R), Residential-Light Industrial-Commercial (R-LI-C), Village (V), Neighborhood Commercial (NC), General Commercial (GC), Highway Commercial (HC), Light Industrial (LI), Major Industrial (MI), Planned Neighborhood Development (PND), Office/Commercial Mixed-Use (OC). Rural (R) is checked.

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JEFFERSON COUNTY PLANNING, ZONING & ENGINEERING

Place Received Date Stamp Here

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

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

Reference the section of the Zoning Ordinance pertaining to this request: Table 5.4-1

Briefly describe the nature of the variance request:

This request is for a variance of the required 12' side yard setback on Lot T 73 of the Locust Hill Subdivision from 12' down to 6' so that the purchaser of this unit may expand his garage to the side by 6' in order to allow for additional storage within the townhome units garage area.

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

Front Setback Side Setback Rear Setback Reduction From 12' to 6'

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:

Since Lot T73 is an end unit which is adjacent to the Locust Hill Golf Course cart part, we do not feel that there will be any impact of this addition to the garage to the public health, safety of welfare, or the rights of adjacent property owners. There is approximately 30' between Lot T73 and T 74 for the golf course cart path and open space area.

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?

We are requesting this variance since this particular lot is unique given the significant setback from adjacent properties and the existence of the golf course open space and cart path. We feel that this open area allows for a minor 6' reduction of the allowable side yard buffer.

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

The granting of this variance will allow for the future homeowner to have additional storage within their home with negligible impacts to any adjacent uses.

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

The granting of this variance will be in conformance with the Zoning Ordinance since there are many provisions throughout the ordinance that allow for modifications of setbacks given unique and reasonable circumstances.

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 Departments 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.

 6/4/2015
Signature of Property Owner Date

Signature of Property Owner Date

Notification Requirements (to be completed by staff)

Notice of a public hearing for an appeal shall be advertised in a newspaper having general circulation in the County at least 15 days before the hearing. The subject property shall be posted conspicuously by a zoning notice no less than 28" x 22" in size, at least 15 days before the hearing (pursuant to the Zoning and Land Development Ordinance Section 3.4A(3)(b).

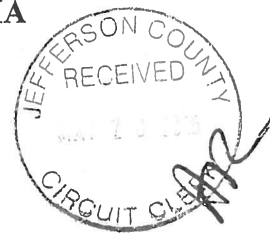
JUNE 25, 2015 at 2:00pm
Date of Public Hearing

JUNE 10, 2015
Advertising Date

JUNE 10, 2015
Placard Posting Date

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

SHENANDOAH AIR CONDITIONING &
HEATING, INC., a West Virginia corporation,
and JAMES F. YOUNG, SR.,



Petitioners,

v.

Civil Action No.: 15-P-73
Judge DAVID H. SANDERS

JEFFERSON COUNTY BOARD OF
ZONING APPEALS,

Respondent.

ORDER

On this 29th day of May, 2015, this matter came before the Court upon a duly verified Petition for Writ of Certiorari by the Petitioners, Shenandoah Air Conditioning & Heating, Inc., a West Virginia corporation, and James F. Young, Sr., pursuant to West Virginia Code § 8A-9-1 *et seq.*, challenging the March 26, 2015 decision and corresponding April 23, 2015 Order of the Respondent, Jefferson County Board of Zoning Appeals, denying Petitioners' appeal of a March 2, 2015 Administrative Decision. The Court, having examined said Petition and it appear proper so to do, it is **ORDERED** and **ADJUDGED** that the Respondent show cause, if any, within twenty (20) days from the date hereof, why a Writ of Certiorari should not issue.

It is further **ORDERED** and **ADJUDGED** that a true copy of this Order be served upon:

Kenneth J. Barton, Jr. (W.Va. Bar No. 6044)
Kelsey L. Swaim (W. Va. Bar No. 12574)
STEPTOE & JOHNSON PLLC
1250 Edwin Miller Blvd., Suite 300
P.O. Box 2629
Martinsburg, WV 25402-2629
Counsel for Petitioners

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JEFFERSON COUNTY PLANNING,
ZONING & ENGINEERING

Jefferson County Board of Zoning Appeals
c/o J. Tyler Quynn, Chair
116 East Washington Street, Suite 200
P.O. Box 338
Charles Town, WV 25414
Respondent

2 cc's:

H. Benton / K. Swann
filed to BZA c/o T. Quynn

5.29.15
Bc



Judge of the Circuit Court of Jefferson
County, West Virginia

A TRUE COPY
ATTEST:

LAURA E. STORM
CLERK, CIRCUIT COURT
JEFFERSON COUNTY, W.VA.

BY 
DEPUTY CLERK