



**Jefferson County**  
**Board of Zoning Appeals**  
**Thursday, March 26, 2015, 2:00 p.m.**

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

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 February 26, 2015 meeting.
2. Swearing in of members of the public intending to provide testimony.
3. Variance request by Peter Corum, applicant, from Section 3.2G for an eighteen (18) month extension for the Morgan's Grove Market Conditional Use Permit #CP12-01, which expires on June 28, 2015. The CUP was approved for an agricultural-based market. Intended uses are to consist of, but are not limited to, a Food Hub, General Merchandise (retail), Professional/Business Offices, Community Amenities, and other associated uses. Owner: Twin Oaks S/D, LLC. Location: 3988 Kearneysville Pk, Shepherdstown, WV. District: Shepherdstown 09; Map: 13; Parcels: 26.1, 26.2, 26.3, 26.4; Zone: R; Size: 13.68 (combined total); File: ZV15-02.
4. **Application withdrawn; deemed unnecessary.** Variance request from Section 5.4B to reduce the rear setback from 20' to 10' for a deck with stairs. Owner: Thomas Marshall. Location: Colonial Hills, 75 Swearingen Way, Shepherdstown, WV. District: Shepherdstown 09; Map: 8E; Parcel: 18; Zone: RG; File: ZV15-03.
5. Request for a change in nonconforming use by Carl Webster & Connie Kitts, applicants, per Section 4.3C to allow for the reconfiguration of an approved Outdoor Flea Market (#ZC13-34). Owner: Gilbert Mobley. Location: 6468 Charles Town Rd, Kearneysville, WV. District: Middleway 07; Map: 4; Parcel: 8; Zone: R; Size: 5 ac; File: ZV15-04.
6. Variance request by Josh Allen, consultant with Cross Development LLC, from the following requirements:
  - a) Section 11A to reduce the required parking from 40 to 30 spaces for a 9,100 sq. ft. dollar store (ZV15-06).
  - b) Section 10.4E to allow a proposed freestanding sign, approved under the Development Review System, to be located less than the required 1000' from the existing signs along Middleway Pike (ZV15-07).Owner: Wilbur A. Alger & Middle of the Way Real Estate. Location: Corner of Middleway Pk (Rt 51) & Leetown Rd, (Rt 1) Kearneysville, WV. District: Middleway 07; Map: 19; Parcels: 16.6, 16.7; Zone: R; Size: 1.69 ac.
7. An appeal of an Administrative Decision by Kenneth Barton, Jr. and Kelsey Swaim, attorneys with Steptoe & Johnson PLLC, regarding the interpretation of 'Signs, Animated' in Section 2.2 pertaining to the Shenandoah Air Conditioning & Heating, Inc Animated Sign Conditional Use Permit #CP15-01. Owner: James Young, Sr. Location: 351 Edmond Rd, Kearneysville, WV. District: Charles Town 02; Map: 1; Parcel: 79; Zone: IC; Size: 1.768 ac; File: AP15-01.

8. Director's Report.
  - a) Monthly Activity Report
9. Legal Update.
  - a) All Good Music Festival Pending Litigation
  - b) William Neufeld Pending Litigation
10. Signing of written decisions from prior Board of Zoning Appeals meetings. None.

Draft Minutes  
Jefferson County Zoning Board of Appeals

1 Meeting Date: February 26, 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;  
6 Christy Huddle, Ted Schiltz and Matt Knott

7 Staff members present: Jennifer Brockman, Acting Zoning Administrator/Director of  
8 Planning and Zoning; Steve Groh, Assistant Prosecuting Attorney;  
9 Jennilee Hartman, Zoning Clerk

10

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

12

13 Mr. Bannon moved to start the meeting at 2:00 p.m. Mr. Quynn called for a vote, which carried  
14 unanimously.

15

16 1) Approval of the minutes from the January 22, 2015 meeting.

17 Ms. Huddle moved to approve the minutes with the following edits:

18 a) Page 3, Item 7, change all semicolons to commas.

19 b) Page 3, line 11, change to the following, “was rescheduled ~~until~~ to February 2, 2015.”

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

21

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

23 There were no actionable items to receive public testimony; therefore, there were no members  
24 of the public to be sworn in.

25

26 3) Discussion regarding the proposed Zoning Policy Related to Conditional Use Permits and  
27 Principal Permitted Uses drafted by Jennifer M. Brockman, AICP, Acting Zoning Administrator.

28

29 Mr. Quynn asked Mr. Groh if an executive session would be necessary for this item. Mr. Groh  
30 stated he did not believe so as it was an announcement of an office policy. Ms. Brockman  
31 explained the purpose of the policy to the Board and gave examples of when the policy would  
32 take effect.

33

34 Mr. Knott arrived at 2:07 p.m.

35

36 The Board discussed different aspects of the policy and suggested adding the following text,  
37 “Any use which does not meet these requirements would require an amendment to the approved  
38 CUP.” Ms. Brockman agreed with the suggested text. Ms. Brockman stated the policy would  
39 take effect immediately.

40

Draft Minutes  
Jefferson County Zoning Board of Appeals  
February 26, 2015

- 1 4) Director's Report
- 2       a) Activity Report. No discussion.
- 3       Ms. Brockman updated the Board on the status of the Zoning Administrator interviews and
- 4       informed them that the Comprehensive Plan was approved and stated the office would provide
- 5       them a copy.
- 6
- 7 5) Legal Update. Mr. Groh provided the Board with a brief update on both legal matters.
- 8       Mr. Groh stated neither issue had yet come to a resolution.
- 9
- 10       a) All Good Music Festival Litigation.
- 11       b) William Neufeld Pending Litigation
- 12
- 13 6) Signing of written decision from prior Board of Zoning Appeals meetings.
- 14       a) Discussion and action on the Dollar General Conditional Use Permit Application
- 15       (CP14-02). The applicant is proposing a 9,100 square foot retail store, to include public
- 16       restrooms, merchandise storage, storefront and pole signage and an asphalt parking lot
- 17       that will accommodate the required 40 parking spaces, plus drive aisles. This item is
- 18       not a public hearing. Property owners: Wilbur A. Alger Jr. and Middle of the Way Real
- 19       Estate, LTD. Location: Intersection of Middleway Pike (Route 51) and Leetown Road
- 20       (Route 1). District: 07; Map: 19; Parcels: 16.6 & 16.7. *Mr. Quynn signed a copy of the*
- 21       *Findings Mr. Groh provided to the Board.*
- 22
- 23 Ms. Huddle moved to adjourn the meeting at 3:39 p.m. Mr. Quynn called for a vote, which
- 24 carried unanimously.



Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 March 26, 2015

**Twin Oaks Subdivision, LLC (ZV15-02)**

<p>VARIANCE/WAIVER HISTORY  <i>CONTINUED</i></p>	<p>01/08/13 PC approved a waiver from Section 22.208 requesting relief from the road frontage sidewalk conditioned upon a 10' pedestrian/bike easement being recorded along Rt. 480 (PCW12-09).</p> <p>01/08/13: PC approved (with conditions) a waiver Section 24.116(B): relief from subdivision ordinance requesting traffic study (PCW12-10).</p> <p>01/08/13 PC denied a request to schedule a public hearing for the Morgan's Grove Market Major Site Plan (S12-06) prior to staff deeming the site plan complete.</p> <p>1/17/13: BZA approved (with conditions) variances from Section 4.11(A) and 5.6(D).</p> <p>03/21/13: BZA approved a variance to waive site plan and parking requirements for a 1,200 sq. ft. tent structure to be used for a temporary farm market.</p>
<p>ZONING CERTIFICATES  <i>#ZC11-15, #ZC13-07, #ZC14-19</i></p>	<p>Issued for: "Market for the sale of farm products and incidental products, including arts and crafts . . . Live music, events, and performances are permitted if secondary to the market. Events may not be a primary attraction or conducted on non-market days."</p>

**RELEVANT INFORMATION:**

**1. Overview of Request**

The applicant is seeking a variance to Section 3.2G to allow a second eighteen (18) month extension of the Morgan's Grove Market Conditional Use Permit (CUP). The CUP was originally issued on June 28, 2012 with an expiration date of December 28, 2013 and was extended for eighteen (18) months by the Board of Zoning Appeals on July 18, 2013 to a new expiration date of June 28, 2015.

The approved CUP states that the project is to consist of "an agricultural based economic empowerment zone" including the following land uses as described in the CUP:

Intended uses are to consist of, but are not limited to, a Food Hub, General Merchandise (retail), Professional/Business Offices, Community Amenities, and other associated uses.

Food Hub

- a. Retail-Wholesale food distribution-storage
- b. Community Kitchen
- c. Restaurant (limited to 100 seats)
- d. Bakery
- e. Butcher Shop
- f. Accessory Uses

General Merchandise (Retail)

- a. Fresh-Local Food Market
- b. Hardware Store/Garden Center
- c. Antique Shop
- d. Cottage Industry
- e. Accessory Uses

Professional - Business Offices

- a. Family Health Clinic
- b. Banking, Accounting, Insurance (only as accessory uses)
- c. Sales for offsite services (home improvements)
- d. Other types of professional-business offices (small scale)

Community Amenities

- a. Health Activities Facility
- b. Alternative Energy Distribution point (limited)
- c. Public/Private Access Swimming Pool. (The pool may not be emptied into the Town Run.)
- d. Entertainment-Sports Facility Conference

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**Twin Oaks Subdivision, LLC (ZV15-02)**

**2. Existing Conditions**

a. Location

The property is located adjacent to and southwest of Morgan's Grove Park on Kearneysville Pike (Rt. 480), approximately one mile from the corporate limits of Shepherdstown.

b. Zoning

The subject property lies within the Rural zoning district. Adjacent properties located to the south, west, and east of the subject property are zoned Rural. Adjacent properties located to the north are zoned Residential Growth. The property has an approved Conditional Use Permit for "an agricultural based economic empowerment zone" as described above.

c. Land Use

The property contains two existing single-family homes greenhouses and a community garden. Each house has a separate driveway connecting to Route 480.

The property previously contained a concrete building pad (approximately 5000 square feet) and asphalt parking lot adjacent to Route 480 (approximately 30,000 square feet) which have been removed through the approval of a waiver for an early grading permit.

d. Character of area

The property is surrounded on the west, north, and south by single-family residential uses on parcels of varying size, between 2 acres and 13 acres. Morgan's Grove Park, which is listed on the National Register of Historic Places, is located to the northeast of the subject property.

**3. Previous Case History**

On July 18, 2013 the Board of Zoning Appeals heard a request by the applicant for an eighteen (18) month extension stating, "It is anticipated that all requirements will be met and construction could begin within the 18 month window. Due to the unknowns of meeting schedules and third party approvals this is not guaranteed. This extension request is needed to ensure that full ordinance requirements will be met in the face of several actions over which the applicant has little control."

The Board granted the request per Section 3.2G, which extended the expiration date of the Morgan's Grove Market Conditional Use Permit from December 28, 2013 until June 28, 2015.

**4. 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.*

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**Twin Oaks Subdivision, LLC (ZV15-02)**

**5. Staff Evaluation of Request**

a. Source and purpose of ordinance requirements

Section 3.2G of the Ordinance states,

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

The purpose in establishing timeframes within an Ordinance is to provide the public an anticipated commencement or construction date. Timeframes can also assist Staff in monitoring and planning for growth in areas of the County. The Ordinance states that in order for a Conditional Use Permit to be valid, the use must commence within 18 months. For projects requiring approval of a Site Plan in Jefferson County, the term ‘commencement’ means the issuance of a building permit. This project received Site Plan approval in 2013 and the applicants have bonded the early grading portion of the Site Plan. No building permit has been processed for this project at this time.

The Board has approved CUP extensions in other circumstances. For example, the Board has approved conditional use permit extensions for the Dairy Queen (#Z08-01) located in the Maddex Square Shopping Center in Shepherdstown and the Shepherdstown Professional Center (Z07-03) located across from Route 480 and in close proximity to the subject property.

As the “by-right” one-time eighteen month extension for the Morgan’s Grove Market CUP has already been granted by the Board (in 2013), the applicant is now seeking a variance from Section 3.2G to request an additional eighteen month extension.

b. Current Characteristics of property

The subject property is approximately 13.69 acres in size, including the combined area of all lots. Lot 26.4 (approximately 2 acres) will not be developed as part of this project, and will remain in single-family use. A power line easement bisects the property, and the rear of the property includes an area within the 100-year floodplain. The applicant has initiated grading work in the area where the Old Henry’s Restaurant used to be located; has requested and received permission to operate the Morgan’s Grove Farmer’s Market seasonally from 2011 – present; and is utilizing one of the existing residential structures for a private school that intends to locate in one of their new buildings when constructed.

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**Twin Oaks Subdivision, LLC (ZV15-02)**

Aerial photos showing the site conditions in 2010 and 2015 are below.



c. Feasibility of complying with the ordinance by other means

While the applicant has an approved Site Plan, the applicant cannot apply for an improvement location permit/building permit for the structures proposed on the site plan due to a specific condition listed on the approved Conditional Use Permit, which requires the applicant to connect to water and sewer until such time as the water and sewer have been brought to the site. As such, the applicant cannot commence construction and therefore cannot comply with Section 3.2G.





JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, P.O. Box 338

Charles Town, WV 25414

File Number: #ZV15-02

Staff Initials: CC

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: Twin Oaks Subdivision, LLC,
Mailing Address: PO Box 536 Shepherdstown, WV 25443
Phone Number: 304-283.2467 Email: petercorum@gmail.com

Applicant Contact Information

Name: Peter Corum (managing partner)
Mailing Address: PO Box 536 Shepherdstown, WV 25443
Phone Number: 304.283.2467 Email: petercorum@gmail.com

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

Name: Fred Blackmer (consultant)
Mailing Address: 9628 Moncove Lake Road Gap Mills, WV 24941
Phone Number: 304.536.3743 Email: fred@fredblackmer.com

Physical Property Details

Physical Address: 3988 Kearneysville Pike
City: Shepherdstown State: WV Zip Code: 25443
Tax District: Shepherdstown (9) Map No: 13 Parcel No: 26-1 thru 26.4
Parcel Size: 13.68 combined acreage Deed Book: 1018 Page No: 516

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

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: Zoning Ordinance Section 3.2G

*Briefly describe the nature of the variance request:*

Request 18 month extension of Conditional Use Permit. Current permit expires June 28, 2015. Current approved site plan layout and all requested details are available with the Departments of Planing, Zoning and Engineering.

*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:*

Extension of this variance does not change the nature of the approved project. It does not allow any more activity or uses than authorized by current Zoning standards in the rural district.

*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?*

Special Conditions: BZA made modifications to the submitted CUP request. These conditions have created site design issues, financing obstacles and an infrastructure condition that the applicant does not have the power or authority to reasonably remedy. MGM continues to attempt resolution of these issues VS requesting CUP condition changes at this time.

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


Time extension of the CUP will allow applicant to continue its pursuit of creating the project that as presented and still resolve issues related to conditions of approval. Without this extension, the project will be forced to resubmit at some future date. This will in fact waste all the effort MGM and county agencies have put into making agricultural/health business theory a reality.

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

Granting this variance will follow the letter of Jefferson County Zoning and site design standards. Allowing this project to continue as designed and subsequently approved with conditions will ensure that the intent and letter of ordinances are observed. Continued balancing county standards, citizen input and efforts of the applicant will ensure 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 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.*

 2/2/15  
Signature of Property Owner Date

 2/2/15  
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)).

03/26/15  
Date of Public Hearing

03/11/15  
Advertising Date

03/11/15  
Placard Posting Date



Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
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**Carl Webster & Connie Kitts Change in Nonconforming Use Request (#ZV15-04)**

RELEVANT INFORMATION:

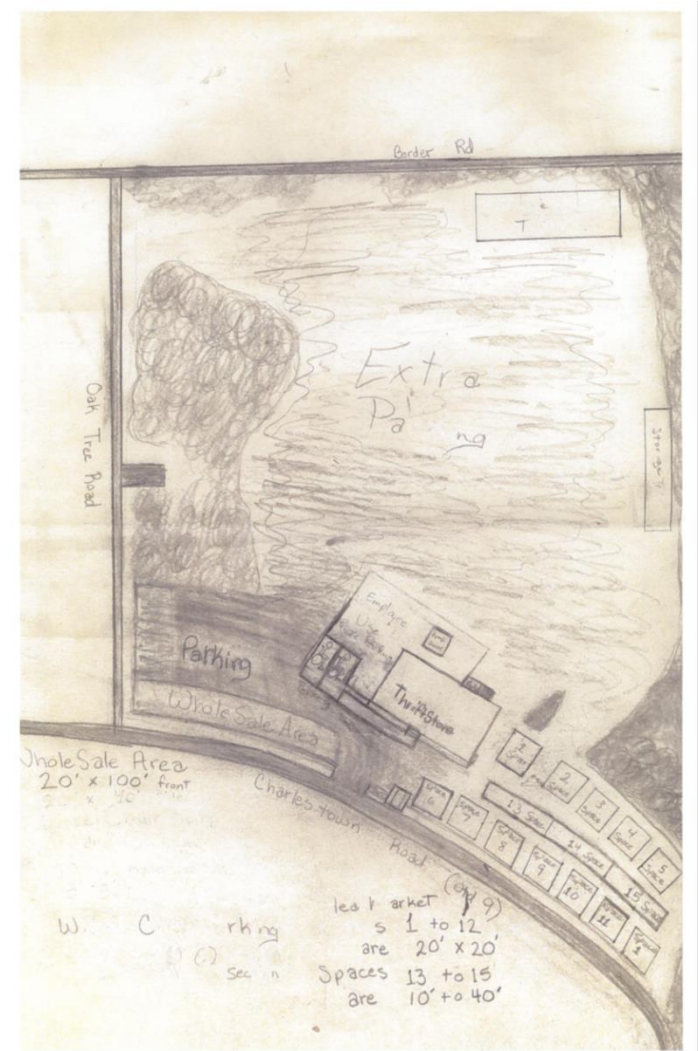
1. Overview of Request

The applicant is seeking a change of non-conforming use in accordance with Section 4.3C of the Jefferson County Zoning and Land Development Ordinance. The applicant is interested in establishing the previously approved open air flea market in a different location than previously approved and in locating an Antiques, Crafts and Collectibles Store in the previously approved thrift store. The BZA previously determined that the commercial non-conforming use of this property had not been abandoned and approved the thrift store and open air flea market with conditions. This proposed use has been actively pursued since the previous Zoning Certificate was issued. The property has been used for non-residential and non-rural purposes since before 1988 when zoning went into effect in the County.

2. Previous Case History

04/21/94: BZA approved a change in nonconforming use from J&M Homes to J&M Homes and J&M Motor Company conditioned on the applicant meeting all required setbacks (ZC94-01).

12/18/13: BZA approved a change in nonconforming use from J&M Homes and J&M Motor Company to an open air flea market; whole sale parking area; and an indoor retail, storage and public restrooms conditioned on the applicant meeting all required setbacks (ZV13-35/ZC13-34). The applicant wishes to establish an open area flea market utilizing a different proposed outdoor layout of tables/stalls for flea market sales and establish an Antiques, Crafts and Collectables Store in the previously approved Thrift Store. The applicant does not intend to have an outdoor wholesale sales area, but would like to retain the right to have sales in that area. The applicant has a current active Zoning Certificate (ZC15-11) in accordance with the BZA approved Zoning Variance (ZV13-35) for the open area flea market. The indoor business cannot open until all building code requirements are conformed with. The current approved Zoning Certificate was based on a decision by the Board of Zoning Appeals regarding a change in nonconforming use and limited the footprint of the proposed use to the estimated motor home sales operation which previously existed on the site.



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**Carl Webster & Connie Kitts Change in Nonconforming Use Request (#ZV15-04)**

Since this property was before the BZA in 2013, staff has obtained documentation in the format of the aerial photos below indicating that the former motor home sales operation occupied a larger portion of the property than previously thought. This documentation helps support the argument that the current proposal may not necessarily be considered an expansion of the nonconforming use.



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**Carl Webster & Connie Kitts Change in Nonconforming Use Request (#ZV15-04)**

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

Section 4.3 of the Zoning Ordinance discusses Nonconforming Uses and states that “any building, structure or premises lawfully existing at the time of the adoption of this Ordinance, or lawfully existing at the time that this Ordinance is subsequently amended, may continue to be used even though such building, structure, or premises does not conform to use, setbacks or dimensional regulations of the zoning district in which it is located or the regulations of the Development Review System . . . .”

The purpose of nonconforming use provisions is to allow reasonable use of a property which contains a land use, feature, or building which does not comply with current regulations, while also establishing limits for the continuation or expansion of the nonconformity.

Section 4.3C of the Zoning Ordinance requires that any significant change in use requires a public hearing before and approval of the Board of Zoning Appeals. While this use is essentially the same as previously approved by the Board of Zoning Appeals, at that time the BZA limited the area of the lot that could be dedicated to these uses based on the previous applicant's sketch and testimony. The current applicant's proposed open area flea market covers a larger area and is in a different location than previously approved. The applicant contends that the proposed open area flea market is in an area previously covered with gravel and was likely a part of the previous Motor Home Sales business. A field visit to the site has confirmed that a large area of the site previously dedicated to motor home sales has gravel under the existing grass area.

It should be noted that a nonconforming use may only be substituted for other comparable nonconforming uses at a staff level, with an approved zoning certificate, and all other uses must be approved by the Board at a public hearing. Because the previous change in nonconforming use was tied to the applicant's sketch plan layout, the proposed changes require action by the Board of Zoning Appeals.

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**Carl Webster & Connie Kitts Change in Nonconforming Use Request (#ZV15-04)**

b. Unique characteristics of property

This property has a long history of being used for nonresidential purposes. Prior to the construction of the new limited access Route 9, this property fronted on a very busy street and a use such as a flea market may have caused significant traffic issues at a location such as this. However, with much less through traffic travelling along old 9, there is less of a traffic issue at this location. WV DOH has restricted their entrance to one of the existing entrance points and required the other entrances to be closed.

Below is a sketch of the applicant's proposed layout for the open air flea market and existing structure with relevant photos for the BZA's information. There are existing gravel areas along the front of the property where the proposed customer and vendor parking will occur. Behind the proposed Antiques, Crafts and Collectables Store (in the existing office structure), there is a large area with gravel under the grass where the proposed flea market spaces and wholesale area are located. This cleared area is less than one acre of the five acre tract. Paved handicapped spaces and a ramp are proposed in front of and to the west of the proposed Antiques, Crafts and Collectables Store in an existing gravel area. If all parking can be accommodated in an existing gravel area, no site plan will be required.

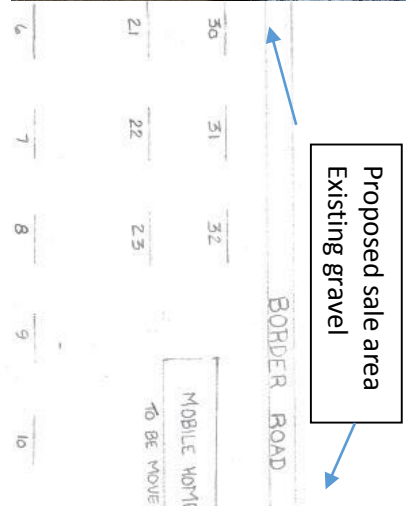
The property is large and has frontage on Border and Oak Tree Roads but no access related to the proposed business will relate to these two roads. In the future, the applicant may divide a lot along Oak Tree Road for a single family residence where an existing well and septic system exists. The applicant has indicated that the two existing substandard mobile homes will be removed within 90 days of the receipt of approval. The large treed areas along the western property line and along Oak Tree Road are currently intended to remain.

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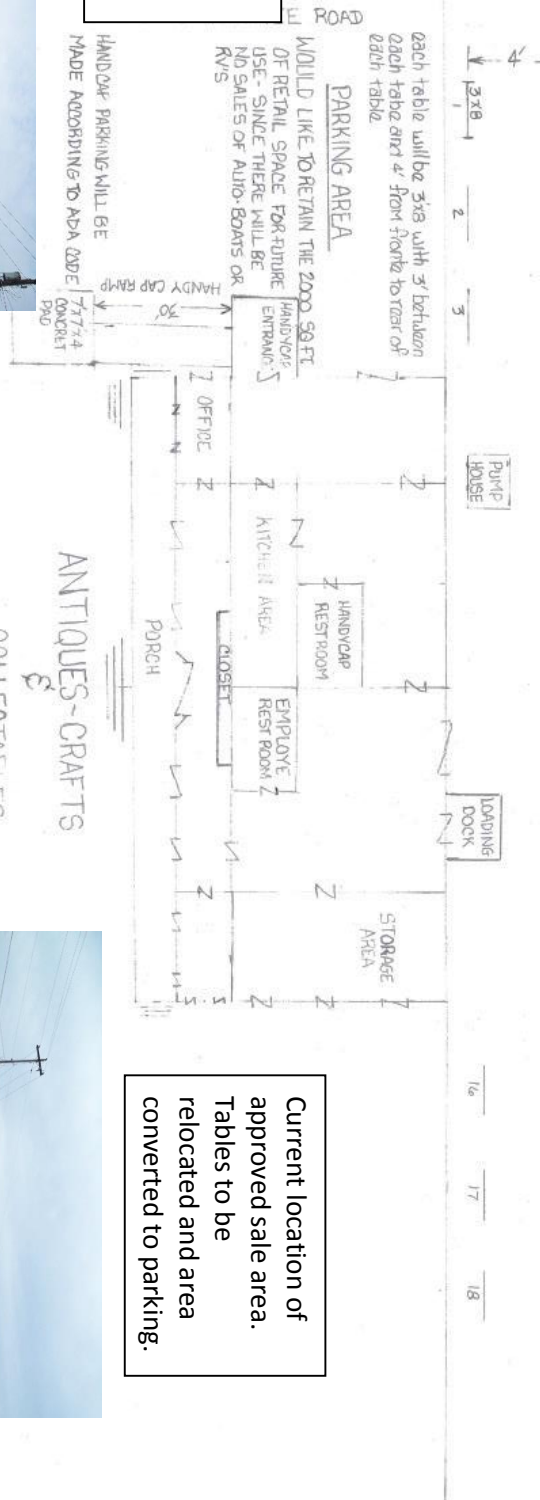
Current location of approved wholesale area – to be converted to parking



Proposed sale area Existing gravel



MOBILE HOME TO BE MOVED



Current location of approved sale area. Tables to be relocated and area converted to parking.



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c. Character of area

The area immediately around the proposed flea market is fairly rural and is located between the Bardane/Route 9 interchange and the Village of Kearneysville. It is located on the south side of new Route 9 and abuts a small portion of the Jefferson Orchard property annexed by the city of Ranson.

Immediately to the southeast, along Old Charles Town Road, is a small shopping center, gas station, the Fox Glen subdivision, and North Jefferson Elementary School.



- Aqua:           Route 9 Plaza
- Orange:        Gas station
- Red:            North Jefferson Elementary School
- Yellow:         Fox Glen Subdivision

d. Impact on adjacent properties

The proposed use is on a fairly large rural property (5 acres) and is proposed to occupy less than half of the property and to be centrally located on the property. The existing tree lines are not proposed to be removed. While there may be an effect on properties across Old Charles Town Road, the property has always been a non-residential property and negative impacts could be mitigated with conditions of approval. The placement of the open air flea market stalls behind the proposed store will lessen the impact on these neighbors.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
March 26, 2015

**Carl Webster & Connie Kitts Change in Nonconforming Use Request (#ZV15-04)**

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

While the proposed use could be located on another property, this property has a long history of nonresidential uses and that continued use may be reasonable. If the variance is not approved, the property can be utilized for large lot residential and other permitted rural uses.

5. Conditions of Approval

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

- a. The owner of the property must seek a Zoning Certificate for each change in nonconforming use or change in tenant to ensure that the nonconformity of the subject parcel and structure is not abandoned.
- b. The approved uses are limited to the area depicted in the sketch plan or the previously established area occupied by the former nonconforming use.
- c. No access is permitted to occur other than that permitted by the WV DOH. Any additional entrances approved by the WV DOH, other than the currently permitted access off Old Charles Town Road, shall require an updated Zoning Certificate.
- d. The existing substandard mobile homes shall be removed within 90 days of approval of this change in nonconforming use.
- e. All setbacks for commercial uses shall be met.
- f. Outside display is permitted while the flea market is open; however no other outdoor storage is permitted. Conditions may provide more guidance as to appearance if the BZA chooses.
- g. If the primary use of the property becomes a principle permitted use, the nonconforming use shall cease to exist.



# JEFFERSON COUNTY, WEST VIRGINIA

## Departments of Planning and Zoning

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

File Number: #ZV15-04

Staff Initials: CFC

Fees Paid (\$100 or \$150): \$ 100.00

[www.jeffersoncountywv.org/government/departments/planning-and-zoning-department.html](http://www.jeffersoncountywv.org/government/departments/planning-and-zoning-department.html)

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

Phone: (304) 728-3228

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

Fax: (304) 728-8126

### Zoning Variance Request

Variations 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: Gilbert A. Mobley, Sr.  
Mailing Address: 8291 WASHINGTON BOULEVARD  
City: JESSEP State: MARYLAND Zip Code: 20794  
Phone Number: (304) 229-1311 (office) Email: \_\_\_\_\_

#### Applicant Information

Name: CARL C WEBSTER and CONNIE D. KITS  
Mailing Address: 967B LOWER CLUB HOUSE ROAD  
City: HARPERSFERRY State: WVA. Zip Code: 25425  
Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

#### Engineer(s) or Surveyor(s) Information

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

#### Physical Property Details

Physical Address: 6468 CHARLESTOWN ROAD  
City: KEARNEYSVILLE State: WVA. Zip Code: 25430  
Tax District: MIDDLEWAY (07) Map No: 4 Parcel No: 8  
Parcel Size: (5) five ACRES Deed Book: 901 Page No: 642

#### Zoning District (please check one)

# RECEIVED

FEB 27 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**

Wanting to move flea market area to rear of building & adding additional tables from the front of building

**If this request is for a setback variance, please 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.**

By moving the flea market area to the rear of building the adjacent property owners will in no way be affected by their welfare or safety or the noise coming from the flea market itself

**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?**

By moving the flea market tables to the rear of the building, they are out of sight of the adjacent property owners

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

The opening of the flea market doesn't present a hardship and is bring a small business to the Kearnesville area

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

Being a small business to Jefferson City

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.

x [Signature] 3-3-15  
Signature of Property Owner Date

x \_\_\_\_\_  
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, MARCH 26, 2015  
Date of Public Hearing 2:00 PM

WEDNESDAY, MARCH 11, 2015  
Advertising Date

WEDNESDAY, MARCH 11, 2015  
Placard Posting Date

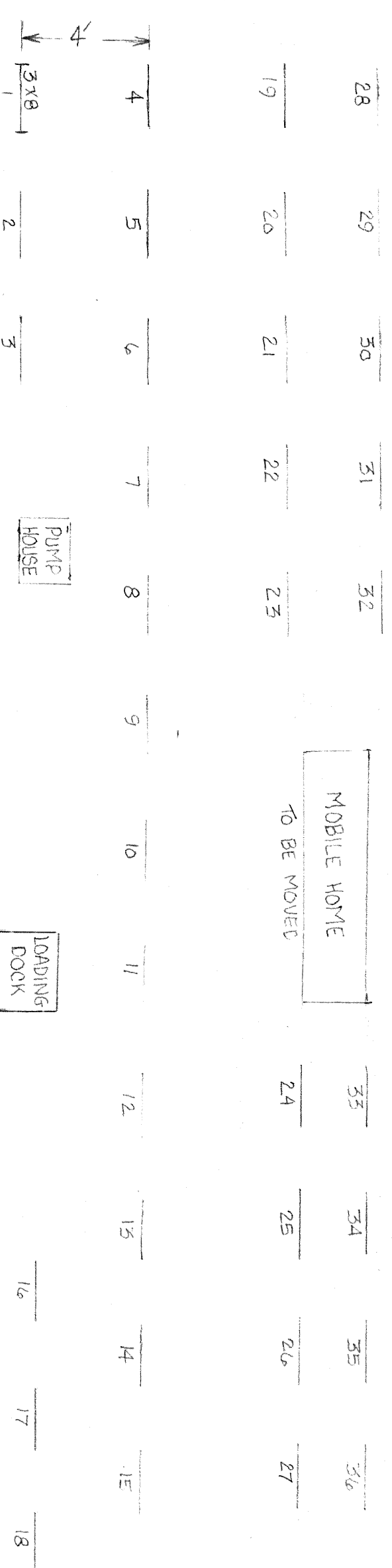
RECEIVED

MAR 10 2015

JEFFERSON COUNTY PLANNING,  
ZONING & ENGINEERING

*CS Perry*

BORDER ROAD

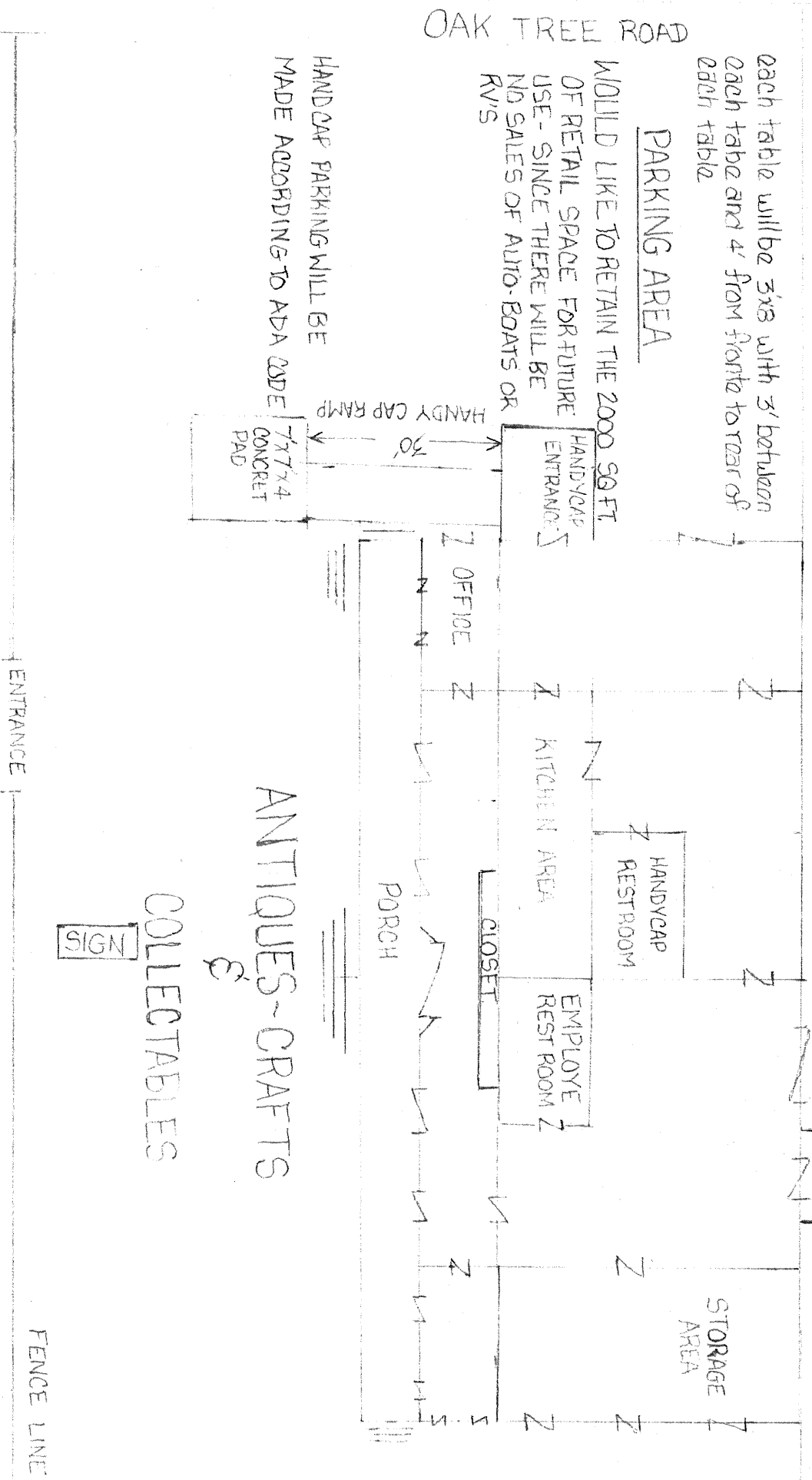


each table will be 3'x8 with 3' between each table and 4' from front to rear of each table

PARKING AREA

WOULD LIKE TO RETAIN THE 2000 SQ FT OF RETAIL SPACE FOR FUTURE USE - SINCE THERE WILL BE NO SALES OF AUTO-BOATS OR RV'S

HANDICAP PARKING WILL BE MADE ACCORDING TO ADA CODE



PARKING AREA

OLD RT#9 Charlestown Road

ENTRANCE

FENCE LINE

MOBILE HOME TO BE MOVED

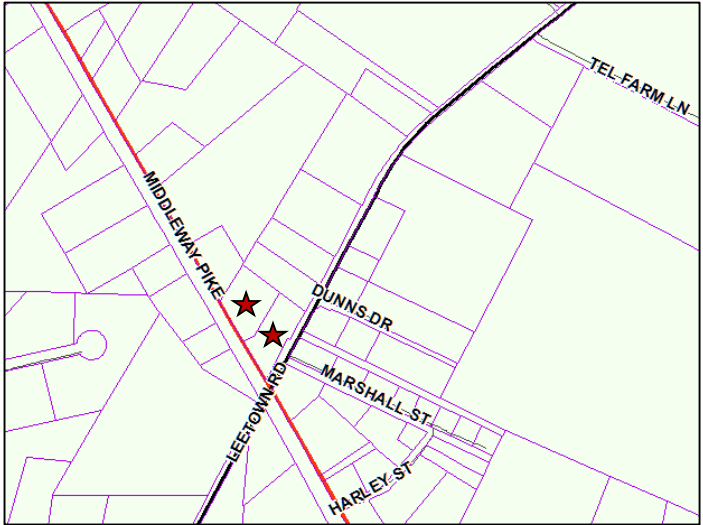


Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 March 26, 2015

**Dollar General Conditional Use Permit (#CP14-02)**

Item #6 Variance request by Josh Allen, consultant with Cross Development LLC, from the following requirements:

- a) Section 11A to reduce the required parking from 40 to 30 spaces for a 9,100 sq. ft. dollar store (ZV15-06).
- b) Section 10.4E to allow a proposed freestanding sign, approved under the Development Review System, to be located less than the required 1000' from the existing signs along Middleway Pike (ZV15-07).

APPLICANT:	Josh Allen, Cross Development, LLC
OWNER :	Wilbur A. Alger Jr. Middle of the Way Real Estate, LTD
DEVELOPER:	Cross Development, LLC
SURVEYOR/ENGINEER:	Potesta & Associates, Inc.
PROPERTY LOCATION:	The corner of Leetown Road (Route 1) and Middleway Pike (Route 51), Kearneysville, WV
LEGAL DESCRIPTION & ZONING DESIGNATION:	District: Middleway; Map: 19A; Parcels: 16.6 & 16.7; Size: 1.69 ac; Zoning Map Designation: Rural 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North: R                      South: R</i> <i>East: R                         West: R</i>
APPROVED ACTIVITY:	Residential/Agricultural
PRIOR CASES: PC File 77-06	10/11/77: PC approved final plat for Middleway Village *See below for restrictions/conditions of approval.
CONDITIONAL USE PERMIT #CP15-01	01/22/15: BZA granted CUP with conditions.
VARIANCES:	N/A

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
March 26, 2015

**Dollar General Conditional Use Permit (#CP14-02)**

RELEVANT INFORMATION:

**1. Overview of Request**

On January 22, 2015, the Board of Zoning Appeals approved a Conditional Use Permit for a 9,100 sq. ft. retail store, to include public restrooms, merchandise storage, storefront and pole signage and an asphalt parking lot that will accommodate the required 40 parking spaces plus drive aisles.

The BZA approved this CUP with the following conditions:

- a) The applicant is bound by his testimony.
- b) The applicant is bound by the resolved issues from the CAM.
- c) The applicant will consider the feasibility of a second entrance onto Leetown Road (Rt 1).
- d) The applicant will offer adjacent property owners a water quality well test to establish a baseline, and if the construction should negatively impact the adjoining wells the applicant will attempt to mitigate such problems.

The applicant and intended use is a proposed Dollar General store. One of the issues that was raised during the CAM was the location of the well for the neighboring commercial use on the proposed Dollar General site and the relationship to the Dollar General's proposed septic drainfield location. The resolution of this issue has required reconfiguration of the location of the well, septic system, and stormwater management facility. It has also resulted in the portion of Lot 16.7 containing Lot 16's well to be merged with Lot 16. This reconfiguration and lot merger has resulted in the need to request a reduction in the number of parking spaces from the required 40 spaces to a proposed 30 spaces.

Additionally, it was noted at the CAM that the applicant was aware that the spacing requirements for freestanding business signs in this area would require a variance to be requested.



These two issues result in the need to request the following variances under consideration today:

- a) Section 11A to reduce the required parking from 40 to 30 spaces for a 9,100 sq. ft. dollar general store (ZV15-06).
- b) Section 10.4E to allow a proposed freestanding sign, approved under the Development Review System, to be located less than the required 1000' from the existing signs along Middleway Pike (ZV15-07).

**2. 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.*

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
March 26, 2015

**Dollar General Conditional Use Permit (#CP14-02)**

- 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.*

**3. Staff Evaluation of Request**

a. Source and Purpose of Ordinance Requirements Related to Signage

Section 10.4E of the Zoning Ordinance states,

*“All signs accessory to land use that must be evaluated by the Development Review System (DRS) shall be proposed within the DRS application and assessed at the Compatibility Assessment Meeting. Such signs shall be maintained at least one thousand (1,000) feet between signs. Consideration of the placement of such signs with less than one thousand (1,000) foot intervals shall be determined by the Commercial or Residential Uses adjacent to the subject site. Commercial uses adjacent to the subject site may allow spacing intervals of three hundred (300) feet. The Planning Commission shall make this determination if the location cannot be agreed upon at the Compatibility Assessment Meeting.”<sup>2, 17, 21, 23</sup>*

The sketch plan submitted with the CUP depicts a proposed sign to be located at the intersection of Middleway Pike (Route 51) and Leetown Road (Route 1). The Applicant further indicated that the building would include signage with colors consistent with the retail store brand.

The Zoning Ordinance requires the proposed sign to be at least 300’ from the Images Nightclub and 1000’ from the Middleway Market sign. The proposed location of the 15’ pole sign does not appear to meet either of the required spacing intervals for DRS associated signs; therefore, requires this variance to be requested. The need for this variance was discussed at the Compatibility Assessment Meeting in accordance with the Zoning Ordinance requirements.

While the zoning in the vicinity of this intersection is rural, there are a number of nonconforming commercial uses located in the area that further support the redevelopment of this area for commercial development. This site is adjacent to or in close proximity to the following nonresidential uses.

- Hardings Service Station (diagonally across the street)
- Images (immediately adjacent)
- Middleway Market (less than 0.1 miles)
- Roy’s Glass Service (.2 miles)
- Tri-State Auction (.3 miles)
- Liskey Trucking (.3 miles)

It should also be noted that the recently adopted *Envision Jefferson 2035 Comprehensive Plan* includes the greater Middleway area as one of its Preferred Growth Areas (PGA). The PGAs are areas identified outside the Urban Growth Boundaries that are generally intended to develop using the County’s development standards. As seen in the graphic below, the intersection of Leetown Road and Middleway Pike is proposed to redevelop as Mixed Use Residential/ Commercial and it is likely that much of this intersection will eventually be commercial zoning

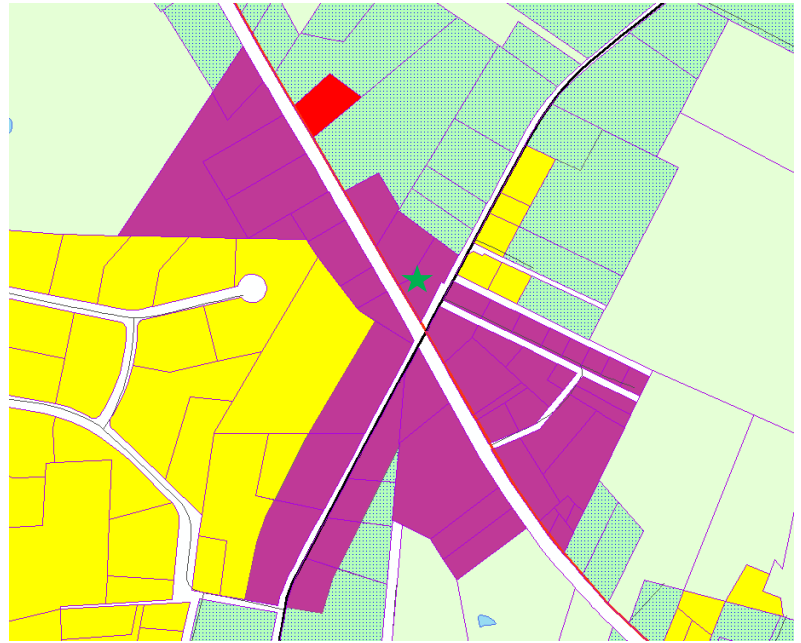
Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
March 26, 2015

**Dollar General Conditional Use Permit (#CP14-02)**

or land use. If the properties in this area were all zoned commercial, smaller spacing between freestanding signs would be permitted.



Imagery ©2015 Google Map data ©2015 Google



Future Land Use Guide, Envision Jefferson 2035, 2014 Comprehensive Plan

b. Source and Purpose of Ordinance Requirements Related to Parking

Article 11 establishes that permanent, off-street vehicular parking shall be provided for all non-residential land uses. The purpose of non-residential parking requirements is to ensure that adequate off-street parking is available for non-residential (commercial) land uses. The requirement for permanent parking is to ensure that parking is safe for users, e.g. having a solid, level surface, adequate drive aisles, suitable topography, etc. It is important to have adequate parking to meet the needs of the proposed land use without over-parking a lot due to the excess stormwater run-off that occurs with additional impervious pavement.

The parking summary provided on the sketch plan that accompanied the Dollar General CUP application states that of the 9,100 square foot gross floor area, 7,310 square feet would be reserved for the retail operations, with the remaining 1,790 square feet would be for storage/warehousing. Section 11.1 of the Zoning Ordinance requires 5.5 spaces/1000 square feet for a Shopping Center with retail floor space exceeding 2,000 square feet. The 7,310 square feet was utilized for the parking calculation, resulting in 40 required parking spaces. The sketch plan with the CUP included 38 paved regular parking spaces and 2 paved handicap parking spaces to meet the required 40 parking space.

c. Impact on adjacent properties

While members of the public raised concerns at the January 9, 2015 Compatibility Assessment Meeting, there were no issues raised in reference to either the location of proposed signage or the number of parking spaces. Concerns were raised, however, regarding stormwater management

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
March 26, 2015

**Dollar General Conditional Use Permit (#CP14-02)**

and lighting. Fewer parking spaces would result in less impervious area, which could minimize the overall impact of stormwater runoff.

The reduced number of parking spaces significantly changes the site design. This new design may reduce the number of parking lot lights, which was a concern of some neighbors. As proposed, the removal of a row of parking creates an additional 30'+ buffer between the proposed parking lot and Middleway Pike which may reduce the impact of the parking cars' headlights on traffic and neighboring properties.

d. Feasibility of complying with the ordinance by other means

i. Signage

The spacing requirement between freestanding signs for a project that is evaluated by the Development Review System (DRS) is a standard that cannot be met due to the location of the surrounding land uses. The only alternatives to requesting this variance would be to limit the project to wall mounted signs or to pursue a rezoning instead of a CUP which would allow more flexibility in the placement of signs.

ii. Parking

The request to reduce the amount of required parking spaces from 40 to 30 is a result of a redesign of the site to address the location of Lot 16's well on the adjoining property. This redesign has resulted in the reconfiguration of the location of the well, septic system, and stormwater management facility as well as a merger of a portion of Lot 16.7 with Lot 16 (Images) to rectify the encroachment of the Image's well on Parcel 16.7. This change has resulted in a smaller lot configuration for the Dollar General store site than what was originally presented at the Board of Zoning Appeals meeting January 22, 2015. It would appear that there would be an opportunity to retain a larger portion of Lot 16.7 for Dollar General's use (to be merged with Lot 16.6) which would allow a somewhat larger parking area and require less variance from the required 40 spaces.

The Board needs to carefully consider that such a variance is not only based on the needs of the current proposed business, but if a new business moves into this structure, the approval of the reduced parking request would go with the property and may not be adequate for a new business.

**4. Board Action Required**

The Board should to take action on each Variance request separately.





JEFFERSON COUNTY, WEST VIRGINIA

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

File Number: ZV15-06
Staff Initials: JLC
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: Wilbur A. Alger, Jr. & Middle of the Way Real Estate LTD
Mailing Address: PO Box 445 Bunker Hill, WV 25413
Phone Number: 304-264-6633 Email:

Applicant Contact Information

Name: Josh Allen - Cross Development, LLC
Mailing Address: 5317 Inverrary Drive Plano, TX 75093
Phone Number: 214-614-8252 Email: Josh@CrossDevelopment.net

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

Name: K. Joe Knechtel - Potesta & Associates, Inc.
Mailing Address: 15 South Braddock St. Winchester, Virginia 22061
Phone Number: 540-450-0180 Email: kjknechtel@potesta.com

Physical Property Details

Physical Address: Northeast Corner of Middleway Pike (Rt 51) and Leetown Road (Rt 1)
City: Middleway State: WV Zip Code:
Tax District: Middleway Village District 7 Map No: Map 19-16.6 & 16.7 Parcel No: 1 and part of 2
Parcel Size: 1.69 Deed Book: Page No:

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.

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

A-11 3/18/15

Reference the section of the Zoning Ordinance pertaining to this request: Article 11 of Zoning and Land Development

Briefly describe the nature of the variance request:

Waiver for the reduction in parking from 40 to 30 spaces

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

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

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

The reduction in parking from 40 spaces to 30 spaces will still provide more than enough parking for a Dollar General store. Typically, there is not more than 10 cars at any particular store at one time, including in the peak hours. The typical shopping time is short, so quick trips are the normal at a Dollar General.

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

The property size does not allow for 40 spaces, plus a 10,000 SF septic field, and a detention basin. By reducing the parking to 30 spaces, the property can now fit all required septic and stormwater improvements without the need to purchase more land.

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

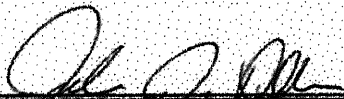
By not over parking the site, we can reduce the stormwater run-off and also create a more compact development, rather than having a large, unused bank of parking that will then cause the stormwater run-off to become greater than it needs to be for a store of this nature.

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

This variance request will still provide more than an adequate amount of parking spaces for this type of retail store, and by doing so meets the intent of the Zoning Ordinance. The intent of the Zoning Ordinance is not to require uses to over build its parking, but rather have an amount that appropriately fits the needs of the specific use.

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.



2.25.15

Signature of Property Owner

Date

APPLICANT



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)).

03/26/15

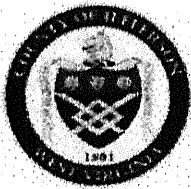
Date of Public Hearing

03/11/15

Advertising Date

03/11/15

Placard Posting Date



JEFFERSON COUNTY, WEST VIRGINIA

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

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

File Number: # ZV15-07
Staff Initials: [initials]
Fees Paid (\$100 or \$150): \$100.00

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

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

Zoning Variance Request

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Property Owner Information

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Mailing Address: PO Box 445 Bunker Hill, WV 25413
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Name: K. Joe Knechtel - Potesta & Associates, Inc.
Mailing Address: 15 South Braddock St. Winchester, Virginia 22061
Phone Number: 540-450-0180 Email: kjknechtel@potesta.com

Physical Property Details

Physical Address: Northeast Corner of Middleway Pike (Rt 51) and Leetown Road (Rt 1)
City: Middleway State: WV Zip Code:
Tax District: Middleway Village District 7 Map No: Map 19-16.6 & 16.7 Parcel No: 1 and part of 2
Parcel Size: 1.69 Deed Book: Page No:

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.

Place Received Date Stamp Here

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

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

Reference the section of the Zoning Ordinance pertaining to this request: Article 10 Section 10.4 E Zoning & Land Dev.

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

Waiver for the installation of a Freestanding Business Sign to be located less than the required 1000' from an existing Freestanding Business Sign along Middleway Pike (Route 51)

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

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

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

The nearest sign is almost 200' away from our proposed sign location. Another is more than 500' away on Middleway Pike. The addition of 1 additional freestanding sign between 2 existing signs located within 775' of each other does not adversely affect the visibility, surrounding light levels, or overall aesthetics of an area along a State Route with a 45 mph speed limit.

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

The special condition for this site is that any commercial use of this property would be required to ask for a similar waiver, due to the existing freestanding businesses being within 1000' of this property. The two existing signs are also within 1000' of each other, and there will not be additional area for a future 4th sign to be added in the adjacent area to this site.

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

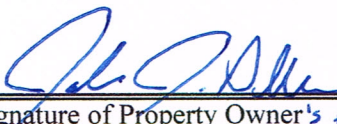
Any commercial use would require a waiver for the reduction in distance between freestanding business signs, because there is no location on this site that is not within 1000' from an existing freestanding business sign on Route 51.

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

This will allow for a commercial use, which is permitted, to be constructed on this site. Without a freestanding business sign for a use like this, it would be harder for potential customers to identify the site until they are almost next to it, resulting in rapid deceleration, instead of the gradual slowing down for turning into the business.

**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.

 3.9.15  
Signature of Property Owner's AGENT Date

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

**Notification Requirements (to be completed by staff)**

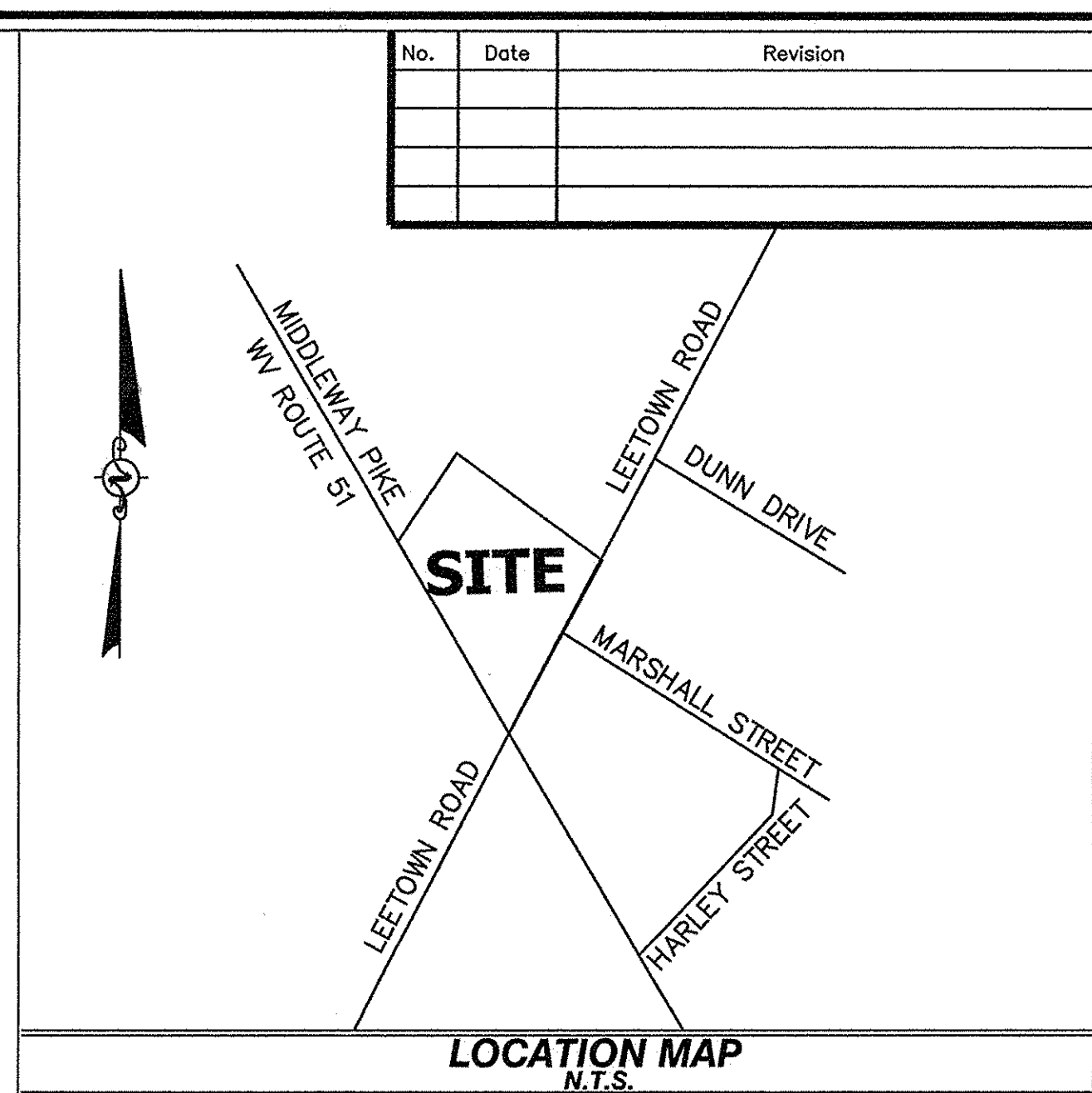
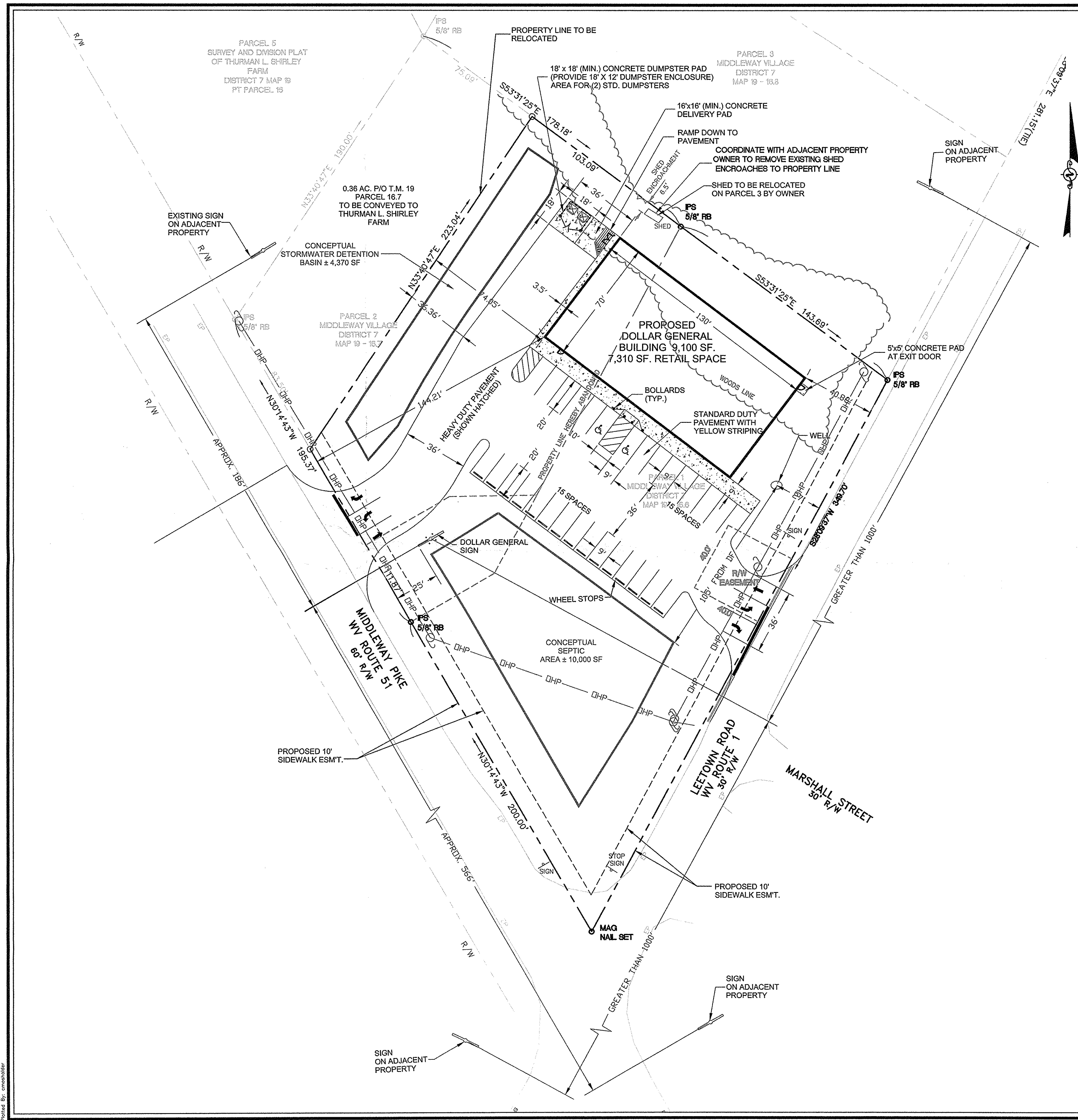
Notice of a public hearing for an appeal shall be advertised in a newspaper having general circulation in the County at least 15 days before the hearing. The subject property shall be posted conspicuously by a zoning notice no less than 28" x 22" in size, at least 15 days before the hearing (pursuant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

\_\_\_\_\_  
Date of Public Hearing

\_\_\_\_\_  
Advertising Date

\_\_\_\_\_  
Placard Posting Date

DATE: 02-27-15  
 DRAWN BY: J. B. Y. COI  
 CHECKED BY: J. B. Y. COI  
 PROJECT: 15-0012 - CROSS - DALLAS GENERAL SITE  
 FILE: 15-0012 - CROSS - DALLAS GENERAL SITE  
 PLOT: 15-0012 - CROSS - DALLAS GENERAL SITE  
 SCALE: AS SHOWN  
 DATE: 02-27-15



**LEGEND**

- ADJOINER
- SETBACK LINE
- RIGHT OF WAY
- H.D. PAVEMENT
- [Pattern] EXISTING CONCRETE
- [Pattern] NEW CONCRETE
- EXISTING CONTOUR LINE
- EXISTING POWER POLE, OVERHEAD ELECTRIC LINE AND GUY WIRE
- FENCE LINE (WOOD OR CHAINLINK)
- EXISTING SEWER MAIN AND MANHOLE
- EXISTING WATER MAIN WITH VALVE
- EXISTING GAS MAIN
- EXISTING TELEPHONE LINE
- EXISTING TREES
- FLOOD ZONE
- PROPERTY LINE & IRON PIN FOUND OR SET

**SITE INFORMATION:**

TAX PARCEL #: PARCEL 1 MIDDLEWAY VILLAGE DIST. 7 (MAP 19-16.6) = 1.05 AC.  
 PARCEL 2 MIDDLEWAY VILLAGE DIST. 7 (MAP 19-16.7) = 0.64 AC.  
 LOT SIZE: 1.69 ACRES (COMBINED)

ZONING INFORMATION:  
 ZONING: RURAL / COMMERCIAL  
 USE: SHOPPING CENTER (>2,000 SF. RETAIL FLOOR SPACE)

1977 MIDDLEWAY VILLAGE SUBDIVISION PLAT SETBACKS WILL APPLY AS RECORDED IN PLAT BOOK 4, PAGE 72.

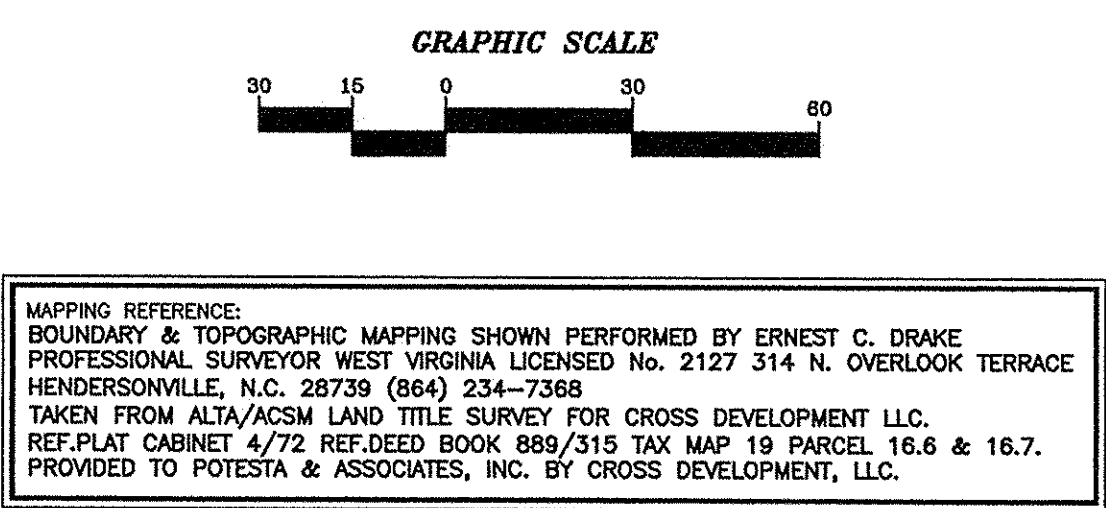
SIDEWALK: WAIVER OF SIDEWALK REQUIREMENT PER ARTICLE 22, SECTION 22.208 OF THE LAND DEVELOPMENT REGULATIONS

SIGN: VARIANCE OF 1000 FT. SPACING REQUIREMENT PER ARTICLE 10, SECTION 10.4, D. OF THE ZONING & LAND DEVELOPMENT ORDINANCE

\* PARKING: WAIVER NOT MEETING PARKING SPACE REQUIREMENT FOR COMMERCIAL RETAIL OF 5.5 SPACES PER 1000 SF. PER ARTICLE 11 OF THE ZONING & LAND DEVELOPMENT ORDINANCE

**\* PARKING SUMMARY:**

REGULAR SPACES	28
HANDICAP SPACES	2
TOTAL	30 PROVIDED



**PRELIMINARY**

No.	Date	Revision

VARIANCE  
 CAD File No.  
 CJM  
 Drawn  
 KJK  
 Checked  
 KJK  
 Approved  
 AS SHOWN  
 Scale:  
 FEB. 27, 2015  
 Date:  
 15-0012  
 Project No.

**POTESTA & ASSOCIATES, INC.**  
 ENGINEERS AND ENVIRONMENTAL CONSULTANTS  
 16 South Broadway St., Winchester, Virginia 22602  
 TEL: (540) 465-0180 FAX: (540) 465-0182  
 E-Mail Address: potesta@potesta.com

**POTESTA**

ISSUED 02-27-15

Client: CROSS DEVELOPMENT, LLC.  
 17430 CAMPBELL ROAD, SUITE 225  
 DALLAS, TX 75252

Title: VARIANCE PLAN  
 MIDDLEWAY VILLAGE  
 DISTRICT 7  
 JEFFERSON COUNTY, WEST VIRGINIA

1  
 Drawing No.





## Staff Report

Jefferson County Board of Zoning Appeals Meeting  
March 26, 2015

### James Young, Sr Appeal (#AP15-01)

#### RELEVANT INFORMATION:

##### 1. Overview of CUP Application and Appeal

On January 20, 2015, Shenandoah Air Conditioning and Heating applied for a Conditional Use Permit for the installation of an animated sign. Staff accepted the application and began processing the CUP; however, on March 2, 2015, upon further review of the Zoning Ordinance, it was determined that “animated signs” are prohibited and therefore cannot be processed as a conditional use.

An appeal of an Administrative Decision by Kenneth Barton, Jr. and Kelsey Swaim, attorneys with Steptoe & Johnson PLLC, regarding the interpretation of ‘Signs, Animated’ in Section 2.2 pertaining to the Shenandoah Air Conditioning & Heating, Inc. Animated Sign Conditional Use Permit #CP15-01 was submitted on March 6, 2015. The Appellant, Shenandoah Air Conditioning and Heating, Inc., argues that the Acting Zoning Administrator is misinterpreting the definition of Animated Sign (referred to as “Sign, Animated” in the Jefferson County Zoning and Land Development Review Ordinance). In a letter dated March 6, 2015, that was submitted along with the Appeal, the Appellant’s representative, Kelsey Swaim, argues that the sign proposed in #CP15-01, is not an animated sign but an “electronic sign”, which is not defined in the Zoning Ordinance.

##### 2. Case History related to Animated Signs in Jefferson County

The Jefferson County Zoning and Land Development Ordinance (hereinafter referred to as Ordinance) Section 10.2I states “No animated signs, as defined by Section 2.2 are allowed.” Section 2.2 defines Animated Signs as “A sign with action or motion, flashing lights, or color change requiring electrical energy, electronic, or manufactured sources of supply, but not including wind actuated elements such as flags, banners, or pennants”. While there have been numerous text amendments to the Ordinance, neither of these sections have been amended.

In the past, the Ordinance’s definition of Variance was “A departure from the terms of these regulations”. Due to this definition, animated signs were permitted to process as a Variance as the request was a departure from the regulations found in Section 10.2I.

However, the definition of Variance was amended in 2005, which was stayed as a part of a lawsuit, and reinstated in December 2009 when Zoning Ordinance text amendments referred to as the “Steptoe amendments” were ordered to be in effect. Since that time, the definition of Variance is “. . . a deviation from the minimum standards of the Zoning and Land Development 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.” However, it was not until June of 2014 when Staff determined that it was no longer permissible to process a request for an animated sign as a Variance. The following variances related to animated signs that processed prior to this change in definition.

File #	Meeting Date	Applicant	Action
ZV06-30	10/19/06	BCT Bank	Approved
ZV06-35	11/16/06	JSB Bank	Approved
ZV06-36	11/16/06	JSB Bank	Approved
ZV07-04	02/15/07	Shenandoah Lanes	Denied
ZV07-26	09/20/07	Shenandoah Lanes	Withdrawn (see ZV07-30)
ZV07-30	11/15/07	Shenandoah Lanes	Approved
ZV07-32	02/21/08	BCT Bank	Approved
ZV08-01	02/21/08	Cliffside	Denied/Appealed/Sign Erected

## Staff Report

Jefferson County Board of Zoning Appeals Meeting  
March 26, 2015

### James Young, Sr Appeal (#AP15-01)

File #	Meeting Date	Applicant	Action
ZV08-06	03/20/08	Comfort Inn	Approved
ZV09-13	10/15/09	Asbury Church	Approved
ZV11-05*	04/21/11	Victory Freewill Church	Approved
ZV14-10*	07/24/14	Leetown Baptist	Withdrawn

Staff then considered whether an animated sign could be processed as a Conditional Use Permit utilizing the Development Review System, as historically the CUP process has been utilized to allow uses that are otherwise not permitted in certain zoning districts. Section 6.1 specifically states, “All commercial uses and those uses which are not permitted in zoning districts shall be governed by the procedures outlines in Article 7 and all sections that reference requirements to obtain a conditional use permit.” It is Staff’s opinion that any use not listed in Appendix C, Principal Permitted Uses would be considered “not permitted” and thus a CUP could be applied for.

Further, Section 4.1 of the Zoning Ordinance states, “For each zoning district, a limited number of principal permitted uses are listed, as well as several uses prohibited for all districts as listed in Section 4.4. All other uses, except prohibited uses, may receive a conditional use permit upon completion of the Conditional Use Permit process as described in this Ordinance (emphasis added).” Because Section 10.2I states “No animated signs, as defined by Section 2.2 are *allowed*”, staff has determined that the intent of the Zoning Ordinance is to prohibit animated signs.

The Meriam-Webster’s definition of the word “allow” is “to permit (someone) to have or do something”. To further support Staff’s determination of the intent of Section 10.2I, this same source lists the following antonyms, *ban, enjoin, forbid, prohibit*, etc.

Source: <http://www.merriam-webster.com/dictionary/allow>

As this use is considered prohibited, this request cannot process as a Conditional Use Permit under the current provisions of the Ordinance.

### 3. Staff Response to Appeal

#### a. Source and Interpretation of Ordinance Requirements

All electronic and digital signs, similar to the one being requested in this application, have always processed under the definition of an animated sign. In keeping with the past interpretations of “animated sign”, and by the Appellant’s verbal description of the usage of the sign, it was determined that this application falls under the prohibition of animated signs. Until such time that a greater variety of signs can be defined in the Ordinance and added to the permitted uses, an animated sign is considered to be prohibited.

## Staff Report

Jefferson County Board of Zoning Appeals Meeting  
March 26, 2015

### James Young, Sr Appeal (#AP15-01)

#### SECTION OF ORDINANCE TO BE CONSIDERED:

The sections of the Jefferson County Zoning and Land Development Ordinance relevant to this appeal are the definition of animated sign, the prohibition of animated signs and the use of a CUP for a prohibited use. These sections are discussed in the “Case History” section above.

#### **Section 3.4 Boards and Commissions**

##### A. Board of Zoning Appeals

3. The Board of Zoning Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official in regard to the enforcement of this Ordinance or of any ordinance adopted thereto.
  - a. Filing an Appeal
    - i. An appeal to the Board may be taken by any person, board, associate, corporation or official allegedly aggrieved by any administrative decision based or claimed to be based, in whole or in part, upon the provisions of this Ordinance. The property owner of the subject appeal shall sign the application or an affidavit allowing an agent for the property owner to file the application which shall be submitted.
    - ii. Such appeal shall be filed with the Board within thirty (30) days from the decision appealed.
  - b. Notification
    - i. 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.
    - ii. The subject property shall be posted conspicuously by a zoning notice no less than twenty-eight (28) inches by twenty-two (22) inches in size, at least 15 days before the hearing. The sign will be prepared by the Departments of Planning and Zoning but posting the sign is the responsibility of the applicant. The Board, in its discretion, may otherwise visit the specific property prior to or after the hearing.
  - c. Public Hearing
    - i. The Board shall hold a hearing within forty-five (45) days of the date the appeal is received in the Departments of Planning and Zoning. At the hearing, any party may appear and be heard in person or by agent or attorney.
    - ii. The Board shall render its determination on the application no more than thirty (30) days following the public hearing by registered mail.
  - d. Continuance of Hearing
    - i. The Board may continue a hearing at another time and/or date once such hearing has been started; however, the Board shall announce the date and hour of continuance of such hearing while in session. Any hearing continued shall be held within thirty (30) days from the initial hearing.
6. In exercising its power and authority, the Board of Zoning Appeals may reverse or affirm, in whole or in part, or may modify the order, requirement, decision or determination appealed from, and make such order, requirement, decision or determination as the Board deems appropriate.<sup>17, 21</sup>

## **Staff Report**

Jefferson County Board of Zoning Appeals Meeting  
March 26, 2015

### **James Young, Sr Appeal (#AP15-01)**

#### **Section 4.1 Ordinance Deemed Minimum Regulations; Uniformity**

The regulations set forth by this Ordinance within each zoning district shall be minimum regulations and shall apply uniformly to each kind of structure or land except as hereinafter provided.

For each zoning district, a limited number of principal permitted uses are listed, as well as several uses prohibited for all districts as listed in Section 4.4. All other uses, except prohibited uses, may receive a conditional use permit upon completion of the Conditional Use Permit process as described in this Ordinance, including a demonstration that the land use in a specific location will comply with the standards of the Development Review System and any other applicable requirements of this Ordinance. (*emphasis added*)

#### **Section 10.2 General Provisions**

I. No animated signs, as defined by Section 2.2 are allowed.

#### **Section 2.2 Terms Defined**

Sign, Animated

A sign with action or motion, flashing lights, or color change requiring electrical energy, electronic, or manufactured sources of supply, but not including wind actuated elements such as flags, banners, or pennants.





# Jefferson County, West Virginia

## Departments of Planning and Zoning

116 East Washington Street, 2<sup>nd</sup> Floor  
Charles Town, WV 25414

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

Phone: (304) 728-3228

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

Fax: (304) 728-8126

---

March 2, 2015

Ms. Kelsey Swaim  
Steptoe and Johnson, PLLC  
1250 Edwin Miller Boulevard, Suite 300  
P.O. Box 2629  
Martinsburg, WV 25402-2629

RE: Shenandoah Air Conditioning and Heating, Inc. CUP Application

Dear Ms. Swaim:

After a careful review of the Jefferson County Zoning and Land Development Ordinance, it has been determined that "Animated Signs", defined by the Ordinance as "A sign with action or motion, flashing lights, or color change requiring electrical energy, electronic, or manufactured sources of supply, but not including wind actuated elements such as flags, banners, or pennants" are not allowed by the Zoning Ordinance in Section 10.2(l). Further, Section 4.1 of the Zoning Ordinance states that prohibited uses may not receive a Conditional Use Permit.

Therefore, we have determined that we cannot move forward with your Conditional Use Application submitted on January 20, 2015. Please note that a refund of your application fee requires action by the County Commission which staff can initiate upon your request.

In accordance with Section 3.4(A)(3) of the Jefferson County Zoning and Land Development Ordinance, this determination of the Zoning Administrator may be appealed to the Board of Zoning Appeals within 30 days from the date of this letter. Note that an appeal filed by Friday, March 6, 2015 can be placed on the March 26, 2015 BZA agenda. The fee for an appeal is \$100 and the fee already submitted can be applied to the appeal. Additionally, if the appeal is found in favor of the appellant, this fee is refunded.

Relevant sections of the Jefferson County Zoning and Land Development Ordinance are found below:

### **Section 4.1 Ordinance Deemed Minimum Regulations; Uniformity**

The regulations set forth by this Ordinance within each zoning district shall be minimum regulations and shall apply uniformly to each kind of structure or land except as hereinafter provided.

For each zoning district, a limited number of principal permitted uses are listed, as well as several uses prohibited for all districts as listed in Section 4.4. All other uses, except prohibited uses, may receive a conditional use permit upon completion of the

March 2, 2015  
Ms. Kelsey Swaim  
RE: Shenandoah Air Conditioning and Heating, Inc. CUP Application

Conditional Use Permit process as described in this Ordinance, including a demonstration that the land use in a specific location will comply with the standards of the Development Review System and any other applicable requirements of this Ordinance. (*emphasis added*)

**Section 10.2 General Provisions**

I. No animated signs, as defined by Section 2.2 are allowed.

**Section 2.2 Terms Defined**

Sign, Animated

A sign with action or motion, flashing lights, or color change requiring electrical energy, electronic, or manufactured sources of supply, but not including wind actuated elements such as flags, banners, or pennants.

Please feel free to contact our office if you have any further questions.

Sincerely,



Jennifer M. Brockman, AICP  
Acting Zoning Administrator

CC:

James Young Jr.

Bill Hynosky



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, 2nd Floor, P.O. Box 338

Charles Town, WV 25414

Appeal Number: #AP15-01
Staff Initials: CJC
Fees Paid (\$100): \$ 100.00

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

Appeal Form - Board of Zoning Appeals

Pursuant to Section 3.4 of the Jefferson County Zoning and Land Development Ordinance, the Board of Zoning Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official in regard to the enforcement of this Ordinance or any ordinance adopted thereto.

Name and/or File Number of Project

Name of Project: Shenandoah Air Conditioning & Heating, Inc. Animated Sign File Number: CP#15-01

Appellant Information

Appellant Name: James F. Young, Sr.
Mailing Address: 410 Deep Woods Trail
City: Shepherdstown State: WV Zip Code: 25443
Phone Number: (304) 728-3531 Email: jimshenandoah@yahoo.com

Appellant Representative(s) Information

Company Name: Steptoe & Johnson PLLC
Representative Name(s): Kenneth J. Barton, Jr. and Kelsey L. Swaim
Mailing Address: 1250 Edwin Miller Boulevard, Suite 300
City: Martinsburg State: WV Zip Code: 25404
Phone Number: (304) 262-3530 Email: kenneth.barton@steptoe-johnson.com

Appellant Physical Property Details

Physical Address: 351 Edmond Road
City: Kearnesyville State: WV Zip Code: 25430
Tax District: Charles Town Map No: 1 Parcel No: 79
Size: 1.768 acres Deed Book: 1071 Page No: 338

Zoning District (please check one)

Rural (R-A) Residential Growth (R-G) Industrial Commerical (I-C) Residential-Light Industrial-Commercial (R-L-C) Village (V)
[ ] [ ] [X] [ ] [ ]

RECEIVED

MAR 06 2015

Only if applicable to your request, 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 and submit with this form.

*Decision Being Appealed*

Zoning Administrator denial by letter dated March 2, 2015 of Conditional Use Permit Application submitted by Shenandoah Air Conditioning & Heating, Inc. on January 20, 2015.

*Type of Appeal*

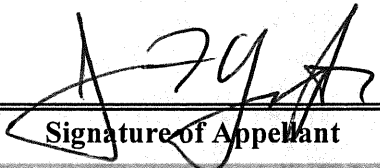
Administrative Decision       LESA Point Score       Other

If other, please describe: \_\_\_\_\_

*Please explain reasons/justifications for appeal and desired action by Board, in numerical order. Use a separate sheet of paper if necessary.*

Please see attached.

*Original signature is required. The information given is correct to the best of my knowledge.*

	3-6-15		
Signature of Appellant	Date	Signature of Appellant	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 twenty-eight (28) inches by twenty-two (22) inches in size, at least 15 days before the hearing (pursuant to Zoning and Land Development Ordinance Section 3.4A(3)(b)).

03/26/15  
Date of Public Hearing

03/11/15  
Advertising Date

03/11/15  
Placard Posting Date



1250 Edwin Miller Boulevard, Suite 300  
 P.O. Box 2629  
 Martinsburg, WV 25402-2629  
 (304) 263-6991 (304) 262-3541 Fax  
 www.steptoe-johnson.com

Writer's Contact Information

(304) 262-3516  
 kelsey.swaim@steptoe-johnson.com

March 6, 2015

Jefferson County Departments of Planning and Zoning  
 Board of Zoning Appeals  
 116 East Washington Street, 2nd Floor  
 P.O. Box 338  
 Charles Town, WV 25414

RECEIVED

MAR 06 2015

JEFFERSON COUNTY PLANNING,  
 ZONING & ENGINEERING

Re: Shenandoah Air Conditioning & Heating, Inc. Appeal Form

Dear Members of the Board:

We are counsel for Shenandoah Air Conditioning & Heating, Inc. ("Shenandoah") regarding an application for a Conditional Use Permit, allowing Shenandoah to install an electronic sign, which was filed with the Department of Planning and Zoning on January 20, 2015. The application was approved by the Zoning Administrator on January 28, 2015, and a Compatibility Assessment Meeting was scheduled for February 20, 2015. During the Compatibility Assessment Meeting, confusion arose regarding the appropriateness of the process for this type of request, and the meeting was postponed to allow Shenandoah to provide additional information to the Zoning Administrator. Prior to the submission of that requested additional information, the Zoning Administrator issued a letter, dated March 2, 2015, which stated that Shenandoah's application for a Conditional Use Permit was denied. As such, Shenandoah submits this appeal, pursuant to Section 3.4 of the Jefferson County Zoning and Land Development Ordinance (the "Zoning Ordinance").

According to the application submitted on January 20, 2015, Shenandoah seeks a Conditional Use Permit to install an "animated sign," which will permit Shenandoah to more effectively advertise the location of the business and the products sold. The application described the project as the installation of an "animated sign" because the sign definitions in Section 2.2 of the Zoning Ordinance did not provide an alternative, and more appropriate, characterization for the type of sign to be installed. In actuality, this sign does not involve any animation whatsoever. It is an electronic sign that will emit its messages by LED, but there will be no animation associated with the messages. The Zoning Administrator's denial of Shenandoah's application for a Conditional Use Permit was based on the determination that all "animated signs" are prohibited under Section 10.2(I) of the Zoning Ordinance.

As Shenandoah intended to explain in the additional information submitted prior to the continued Compatibility Assessment Meeting, the type of sign sought to be installed is most accurately described as an "electronic sign." A comparison of the Zoning Ordinance to the Outdoor Advertising article of the West Virginia Code, as well as the corresponding West Virginia Code of State Rule § 157-6-7.14.a, reveals a distinction between an "animated sign" and

the type of sign proposed by this Application. Section 17-22-4 of the West Virginia Code prohibits the installation of any advertising sign involving “rapid motion or rotation of the structure or any part thereof.” Comparing Section 17-22-4(1) to the definition of animated sign as contained in Section 2.2 of the Zoning Ordinance, it is clear that the apparent intent of the Zoning Ordinance is to prohibit signs that involve rapid action or motion. The inference that the Zoning Ordinance definition of animated sign mirror W. Va. Code § 17-22-4(1) and W. Va. C.S.R. § 157-6-7.14.a is further supported by the fact that the other “General Restrictions” enumerated in W. Va. C.S.R. § 157-6-7.14 are replicated as prohibitions for signs in Section 10 of the Zoning Ordinance.

The type of sign proposed by Shenandoah is better described as an “electronic sign,” because the sign will not depict any rapid action, motion, or flashing lights. In compliance with the conditions placed on other electronic signs approved in Jefferson County, the sign will display a maximum of eight (8) still images per day advertising the business of and the products sold by Shenandoah. The individual images will not involve any sort of action or motion, and the transition between each image will not occur rapidly. Additionally, each image will have a minimum display interval of eight (8) seconds. Finally, to address a common concern in the community, the type of sign proposed by Shenandoah is designed for a maximum day brightness of 10,000 NITs and a maximum night brightness of 750 NITs. Typically, the actual brightness utilized by this type of sign is no greater than 30% of the maximum value (i.e., an actual day brightness of 3,000 NITs). The brightness of the sign is fully adjustable, and is appropriately dimmed or brightened based on sunrise and sunset times.

Although Shenandoah’s request for an electronic sign is the first ushered through the Conditional Use Permit process, other signs of similar type have previously been approved by this Board. To be exact, eight (8) signs have been approved since 2006. Just like the sign proposed by Shenandoah, these previously approved signs were also “electronic signs” that were categorized as an animated sign based on the definitions in the then-applicable version of the Zoning Ordinance. However, these previously approved signs were all approved through the process of a variance request, despite the fact that every then-applicable version of the Zoning Ordinance had the same prohibition on animated signs in Section 10.2(I). In fact, the definition of “variance” in every then-applicable version of the Zoning Ordinance, as well as the current version, states that a variance shall not be issued for prohibited uses. In fact, in order to be consistent with prior decisions of this Board, Shenandoah had prepared an application for a variance. After contacting the Zoning Administrator about the process, Shenandoah was instructed to utilize the Conditional Use provisions of the Zoning Ordinance. Whether by a variance or conditional use, the fact of the matter is that these signs represent state of the art technology that this Board has permitted in this past. Therefore, since these previously approved signs were allowed, despite the fact that “animated signs” were prohibited, Shenandoah’s proposed sign request should not be denied.

As the sign proposed by Shenandoah does not directly comport with the Zoning Ordinance Section 2.2 definition of animated sign, it is likewise not prohibited by the provisions

Jefferson County Board of Zoning Appeals  
March 6, 2015  
Page 2

of Zoning Ordinance Section 10.2(I). Therefore, Shenandoah presents this appeal because the Zoning Administrator erred in denying Shenandoah's application for a Conditional Use Permit.

Thank you for your assistance with this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kelsey L. Swaim", with a long horizontal flourish extending to the right.

Kelsey L. Swaim

997260/00005





# Jefferson County, West Virginia

## Departments of Planning and Zoning

116 East Washington Street, 2<sup>nd</sup> Floor

Charles Town, WV 25414

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

Phone: (304) 728-3228

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

Fax: (304) 728-8126

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## Director's Report Board of Zoning Meeting March 26, 2015

### 1) Status of Zoning Administrator/Planner Search

Recommendation going to County Commission April 2, 2015

### 2) Recent/Upcoming CC Actions relevant to Planning:

- a) County Commission Public Hearing on the landowner-initiated petition to amend the County Zoning Map for a 0.98 acre property owned by David N. Slusher located on the southwest corner of the Route 340/Straithmore Farm Lane/Wheatland Road from Rural to General Commercial (*Approved 3/10/15*)
- b) County Commission Public Hearing on the landowner-initiated petition to amend the County Zoning Map for a 404.69 +/- acre property owned by Standard Land Company, LLC located on the east side of Millville Road (Route 27), ½ mile south of the intersection with Route 340 in Harpers Ferry from Rural and Residential Growth to Residential-Light Industrial-Commercial (*County Commission Public Hearing 3/19/15 7:00 pm*)
- c) Three public hearings on Planning Commission initiated text amendments to the Subdivision and Land Development Regulations (*County Commission Public Hearings: 3/26/15*)
  - i. Recommendation to amend the definition of “days” from business days to calendar days in Section 26.200 of the Jefferson County Subdivision and Land Development Regulations for the purpose of setting a public hearing to be held by the County Commission (STA15-01).
  - ii. Recommendation to amend Section 20.104, “Exceptions”, of the Jefferson County Subdivision and Land Development Regulations, subsection “C”, to “exempt” public utilities and private utility firms processing easements from these Regulations for the purpose of setting a public hearing to be held by the County Commission (STA15-02).

- iii. Recommendation to amend Section 24.300, "Waivers", of the Jefferson County Subdivision and Land Development Regulations to change the last sentence of the introductory paragraph stating "No process or procedural waivers shall be granted" to "Process and procedural waivers shall be reviewed and found consistent with the above criteria prior to approval" for the purpose of setting a public hearing to be held by the County Commission (STA15-03)
  - b) County Commission discussion/action on proposed Zoning Ordinance text amendment regarding Mass Events (#ZTA 14-02) (*County Commission workshop TBD in early 2015*)
- 3) Upcoming BZA meetings
- a) Next Regular Meeting: **April 23, 2015**

**JEFFERSON COUNTY, WEST VIRGINIA**  
**Department of Zoning**

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

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

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

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MEMORANDUM

TO: Board of Zoning Appeals Members  
CC: Engineering & Building Permits Departments  
FROM: Acting Zoning Administrator, Jennifer M. Brockman  
DATE: March 20, 2015  
SUBJECT: March Monthly Report of Department Activities

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**ISSUED ZONING CERTIFICATES**

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#ZC15-04 TODD & BRENDA PEAL – OWNER/APPLICANT

*Issuance Date:* February 23, 2015  
*Proposed Use:* Use of second home as a short-term rental property during times that Owners are not staying onsite.  
*Physical Location:* 443 Riverside Drive; Harpers Ferry, West Virginia 25425  
*Zone:* Rural

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#ZC15-05 PETER CORUM – OWNER/APPLICANT

*Issuance Date:* March 10, 2015  
*Proposed Use:* Temporary Use, until Violet Building is ready for occupancy, of existing residential structure on well and septic, as a private school for grades K-8, for up to forty (40) students.  
*Physical Location:* 3988 Kearneysville Pike; Shepherdstown, West Virginia 25443  
*Zone:* Rural

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## ISSUED ZONING CERTIFICATES

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#ZC15-11 GILBERT A. MOBLEY, SR. – OWNER  
CARL C. WEBSTER & CONNIE D. KITTS - APPLICANTS

*Issuance Date:* March 10, 2015  
*Proposed Use:* Open-Air Flea Market, consisting of 6,000 sq. ft., with fifteen (15) rental spaces; Antiques/Collectables Shop to include retail sales/indoor storage of household merchandise, clothing, books, antiques, collectibles, furniture, etc. (located in an existing building with public restrooms); and a 2,000 sq. ft. wholesale parking area where used vehicles, RV's, boats, etc. are sold.  
*Physical Location:* 6468 Charles Town Road; Kearneysville, West Virginia 25430  
*Zone:* Rural

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#ZC15-06 TWIN OAKS SUBDIVISION, LLC - OWNER/APPLICANT  
PETER CORUM – MANAGING PARTNER

*Issuance Date:* March 17, 2015  
*Proposed Use:* Market for sale of farm products and incidental products, including arts and crafts. Operation will be maintained under the cover of a 30' x 40' tent. Live music, events, and performances are permitted if accessory to the market. Events may not be a primary attraction conducted on non-market days. Seasonal Opening Dates: April 1st - November 1st, 2015. Hours of operation: Saturdays: 9:00 a.m. – 1:00 p.m. and Tuesdays: 4:00 p.m. – 8:00 p.m. (conditions from #ZC11-15, issued 5/4/11; #ZC13-07, issued 4/18/13; and #ZC14-19, issued 5/15/14 apply).  
*Physical Location:* 3988 Kearneysville Pike; Shepherdstown, West Virginia 25443  
*Zone:* Rural

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#ZC15-08 CITY OF CHARLES TOWN- OWNER  
HARDY CELLULAR TELEPHONE COMPANY - APPLICANT

*Issuance Date:* March 17, 2015  
*Proposed Use:* Property contains existing water structure which also acts as a concealed wireless Telecommunication Facility. Hardy Cellular Telephone Company to add three (3) antennas, for US Cellular, at 129' feet; six (6) coax cables (1 5/8") and three (3) RRU's on the existing water tower.  
*Physical Location:* 475 Keyes Ferry Road; Charles Town, West Virginia 25414  
*Zone:* Residential-Light Industrial-Commercial

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**PENDING ZONING CERTIFICATES**

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#ZC14-49 WESLEY SMOOT – OWNER / APPLICANT

*Issuance Date:* TBD  
*Proposed Use:* Office area for designing and storage of material for projects; storage and retail sales of nursery products (mulch, gravel, plants, etc.).  
*Physical Location:* 164 Tel Farm Lane; Kearneysville, West Virginia 25430  
*Zone:* Rural

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#ZC15-01 GEORGE W. & MARY L. RUSHIZKY – OWNER  
SHENANDOAH PERSONAL COMMUNICATIONS (SHENTEL) – APPLICANT  
CONTACT: JUSTIN D. BLANSET

*Issuance Date:* TBD  
*Proposed Use:* Wireless Telecommunications Facility Co-location. Property contains existing 200' self-support telecommunications tower. Shenandoah Personal Communications (Shentel) to remove and replace existing antennas, install new RRH (remote radio head) equipment on the structure and install an equipment cabinet.  
*Physical Location:* 8422 Shepherdstown Pike; Shepherdstown, West Virginia 25443  
*Zone:* Rural

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#ZC15-07 CHARLES J. BROWN - OWNER  
SHERYL GRAY - APPLICANT

*Issuance Date:* TBD  
*Proposed Use:* Change in Tenant. Current owner turning over operation of existing business to daughter. Said business, established in 1988, consists of general retail sale of clothing, groceries, sporting goods, tobacco/tobacco products, smoking accessories, guns/ammunition and beer.  
*Physical Location:* 15949 Charles Town Road; Charles Town, West Virginia 25414  
*Zone:* Rural

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## PENDING ZONING CERTIFICATES

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#ZC15-09 THE JOHN W. DARNELL TRUST c/o SANDRA FEIZOLLAHI - OWNER  
HARDY CELLULAR TELEPHONE COMPANY - APPLICANT

*Issuance Date:* TBD  
*Proposed Use:* Property contains existing self-support Telecommunications Tower. Hardy Cellular Telephone Company to add three (3) "LTE-5" antennas for, US Cellular, at 185'; six (6) coax cables (1 5/8") and three (3) RRU's on the existing water tower. No height increase to tower / no ground disturbance.  
*Physical Location:* 3343 Shepherdstown Pike; Shenandoah Junction, WV 25442  
*Zone:* Rural

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#ZC15-10 SUNNYSIDE LIMITED PARTNERSHIP / OWNER  
T-MOBILE – APPLICANT / CONTACT: JESSICA BINGHAM

*Issuance Date:* TBD  
*Proposed Use:* Wireless Telecommunications Facility Co-location. Property contains an existing 199.0' self-support telecommunications tower. T-Mobile to install three (3) new antennas; one (1) 6201 ode cabinet; a PTS 8003 battery support cabinet and six (6) new coax cables. Additionally, one (1) existing 2102 cabinet will be removed and one (1) existing antenna & TMA will be re-located within the existing fenced compound area. No concrete will be poured. No work will be done outside of the existing lease area on the tower and on the ground.  
*Physical Location:* 844 Wheatland Road; Charles Town, West Virginia 25414  
*Zone:* Industrial-Commercial

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## DENIED ZONING CERTIFICATES

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#ZC15-03 MICHAEL KANEHL – OWNER/APPLICANT

*DENIAL Date:* March 03, 2015  
*Proposed Use:* Display of portable sign in front of business. Sign is situated on a movable base with adjustable heights to approximately 15' or less. Sign area measures approximately 15 sq. ft. in size. Proposed set back distances are 25' from road and adjacent property lines.  
**Zoning Certificate DENIED per Section 1.3D of the Jefferson County Zoning and Land Development Ordinance as stated “if a proposed use is not one in the list of those permitted in each zoning district, it shall be prohibited...”; therefore, the requested portable sign with adjustable heights is not permitted.**  
*Physical Location:* 1850 S. Childs Road; Kearneysville, West Virginia 25430  
*Zone:* Rural

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RECEIVED

MAR 02 2015

JEFFERSON COUNTY PLANNING,  
ZONING & ENGINEERING



Received

MAR 02 2015

COMMONWEALTH of VIRGINIA

Jefferson County Commission

DEPARTMENT OF TRANSPORTATION

811 Commerce Road  
Staunton, VA 24401-9029  
[www.VirginiaDOT.org](http://www.VirginiaDOT.org)

Charles A. Kilpatrick, P.E.  
Commissioner

February 25, 2015

Mr. Tim Walther  
Walther Productions Presents  
P.O. Box 116  
Jefferson, Maryland 21755

Dear Mr. Walther:

I am writing in regards to the proposed All Good Music Festival which is proposed from July 9-11, 2015 on the Berry Hill Farm in Summit Point, West Virginia. Although comments were not officially solicited from the County of Clarke, County of Clarke Sheriff's Office, Virginia State Police, and Virginia Department of Transportation in the approval process for this event, the aforementioned entities need to be involved in finalizing the logistics of this event due to the impacts that the event will have on the County of Clarke and Commonwealth of Virginia.

This office was able to obtain a "Draft" version of a document from Mr. Kenneth W. Wersted, P.E. of Creighton Manning, Engineers, Planners dated September 24, 2014 titled Event Transportation Sketch Plan: All Good Music Festival, Charles Town, Jefferson County, WV. In reviewing the Route Map included with this document, it is noted that the two most direct routes into the venue in West Virginia, Lewisville Road and Larue Road, have been designated as restricted access. The restriction of these two routes forces a majority of southbound traffic on Route 340 from points north of the site in West Virginia to detour into Clarke County, Virginia via VA Routes 340, VA Route 611, Summit Point Road as the General Admission route and via VA Route 340 and VA Routes 641, Lewisville Road and VA Route 639, Allen Road as an alternate General Admission route. The restriction of the WV Lewisville Road and WV Larue Road also forces all event traffic traveling from Virginia into the site to utilize the same two aforementioned secondary routes to reach the site venue.

Due to the anticipated traffic impacts that this event will cause within Clarke County, Virginia, a maintenance of traffic plan designed by a professional engineer licensed in the Commonwealth of Virginia will need to be submitted for review and approval. Other "unofficial" directional signage which is not part of an approved maintenance of traffic plan will not be allowed on VDOT's right of ways. A back of queue analysis for Virginia Routes 340 and 7 (if necessary to handle the anticipated queue) will need to be performed along with all traffic control needed (signage, message boards, contractor provided traffic control and/or law enforcement traffic control provided). All traffic control is to be designed in accordance with the 2011 Edition of the Virginia Work Area Protection Manual. A

\*Copies provided to BZA in 03/26/15 packet. - JAH,

WE KEEP VIRGINIA MOVING

land use permit, which requires fees and bonding, will be required to implement the maintenance of traffic plan in Virginia once the plan has been reviewed and approved.

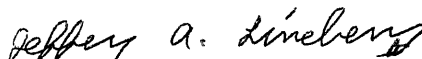
The proposed use of VA Routes 611, 641 and 639 to move this event traffic is unacceptable based on the information reviewed to date. These two lane secondary routes are not designed to handle the traffic volumes that this event is anticipated to generate and creates logistical issues for providing adequate levels of emergency response to residents who live adjacent to these routes and motorists queued for the site venue. VDOT has the authority to restrict all or certain classes of traffic on routes for the safety of the traveling public in accordance with 33.2-238 of the Code of Virginia. Access to Routes 641 and 639 for event traffic will be restricted by VDOT and/or law enforcement. Access to Route 611, Summit Point Road may be considered for event traffic if the Maintenance of Traffic plan prepared by a licensed Virginia Professional Engineer can demonstrate that traffic can be handled in a safe manner while maintaining emergency response capabilities to adjacent properties and event traffic. The routes that are definitely acceptable for moving this event traffic in Virginia are Route 7, Harry Bryd Highway, and Route 340, Lord Fairfax Highway. The event traffic queues on Routes 340 and Route 7 in Virginia will need to be restricted to a single lane of traffic in order to provide a clear access path for emergency vehicles in the remaining lane of the multi-lane sections of the facilities.

The Virginia Department of Transportation, in cooperation with the County of Clarke, County of Clarke Sheriff's Office and Virginia State Police also requests to be invited to any additional coordination meetings regarding this event involving West Virginia local government officials, law enforcement officials and transportation officials.

VDOT looks forward to working with you to address your traffic management needs within jurisdictions of the Commonwealth of Virginia.

Please advise if you have any additional questions.

Sincerely,



Jeffery A. Lineberry, P.E.  
Transportation and Land Use Director

JAL:jal

cc: Jennifer M. Brockman, AICP, Director, 116 East Washington Street, PO Box 338  
Charles Town, WV 25414  
J. Tyler Quynn, Chair, Jefferson County Board of Zoning Appeals, 124 East Washington Street  
Charles Town, West Virginia 25414  
Jefferson County Commission, P. O. Box 250, Charles Town West Virginia 25414  
David Ash, Clarke County Administrator, 101 Chalmers Court, Berryville, Virginia 22611  
Sheriff Anthony W. Roper, Clarke County Office of the Sheriff, 100 N. Church Street, Berryville,  
Virginia 22611  
West Virginia State Police, Attn: Sergeant Craig Morton, 409 Industrial Boulevard  
Kearneysville, WV 25430-2779  
Sergeant J. E. Smith, Virginia Department of State Police, 3680 Valley Pike, Winchester, Virginia  
22602