



**Jefferson County**  
**Board of Zoning Appeals**  
**Thursday, December 11, 2014, 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 November 13, 2014 meeting.
2. Adoption of "Procedures for Small Boards" from Robert's Rules of Order, Newly Revised, 1970.
3. Swearing in of members of the public intending to provide testimony.
4. Variance request by Good Shepherd Interfaith Volunteer Caregivers, owner, from Section 4.10A to waive the requirement of a site plan due to off street parking standards. Location: 7311 Martinsburg Pk, Shepherdstown, WV. District: 09; Map 7A; Parcel: 51.3; Size: .0234 ac; Zone: Residential Growth; File: ZV14-20.
5. Variance request by Pastor Derick Amler, applicant, on behalf of Crossroads Church, owner, from Section 4.10A to waive the requirement of a site plan to allow the expansion of additional gravel parking lot. Location: 7595 Martinsburg Pk, Shepherdstown, WV. District: 09; Map: 7B; Parcels: 1; Size: 2.69 ac; Zone: Residential Growth; File: ZV14-21.
6. Appeal of an Administrative Decision to deny Zoning Certificate #ZC14-39. The Appellant argues the Acting Zoning Administrator is "not allowing dual use [of] equipment on my land". Location: 3 Sunstead Ln, Charles Town, WV. District: 07; Map: 16; Parcel: 2.12; Size: 10.05 ac; Zone: Rural; File: AP14-02.
7. Director's Report.
  - a) Monthly Activity Report
8. Legal Update.
  - a) All Good Music Festival Litigation
9. Signing of written decisions from prior Board of Zoning Appeals meetings.



Draft Minutes  
Jefferson County Board of Zoning Appeals  
Thursday, November 13, 2014

1 The Jefferson County Board of Zoning Appeals met on Thursday, November 13, 2014 at 2:00 p.m.  
2 The meeting was held at 200 East Washington Street, Charles Town, West Virginia, in the  
3 Conference Room of the Old Charles Town Library. Unless otherwise noted, all requests are  
4 pursuant to the Jefferson County Zoning and Land Development Ordinance.

5

6 Board members present: Tyler Quynn, Chair, Jeffrey Bannon, Vice Chair; Christy Huddle,  
7 Ted Schiltz, Matt Knott. Staff present: Jennifer M. Brockman, Acting Zoning Administrator/  
8 Director of Planning and Zoning, Steve Groh, Assistant Prosecuting Attorney, Jennilee Hartman,  
9 Zoning Clerk.

10

11 Ms. Huddle motioned to commence the meeting at 2:00 p.m. Mr. Quynn called for a vote, which  
12 carried unanimously.

13

14 1. Approval of the minutes from the October 23, 2014 meeting.

15

16 The following edits were suggested:

17

18 a) Page 1, line 2, delete *special-called*.

19 b) Page 1, line 34, change all references of 15' access to 15' right-of-way (and remove  
20 the term easement where it may be used subsequently).

21 c) Page 1, line 39, after *noted* insert on.

22 d) Page 1, line 44, replace ~~that a~~ with the.

23 e) Page 2, line 7, remove s from easementss.

24 f) Page 2, line 13, change the semicolon to a comma after the word therefore.

25 g) Page 2, line 24, add a d after placedd.

26 h) Page 2, line 23, after *his* insert the snow.

27 i) Page 2, line 27 and 30, replace ~~request~~ with appeal.

28 j) Page 2, line 35, replace ~~precedence~~ to precedent.

29

30 Ms. Huddle moved to approve the October 23, 2014 minutes with corrections. Mr. Quynn  
31 called for a vote to approve the minutes as corrected, which carried unanimously.

32

33 2. Approval of the 2015 Board of Zoning Appeals Meeting Schedule. Ms. Huddle moved to  
34 approve the 2015 meeting schedule as drafted. Mr. Quynn called for a vote, which carried  
35 unanimously.

36

37 3. Swearing in of members of the public intending to provide testimony. Ms. Hartman swore in  
38 the individuals who indicated they would be giving testimony.

39

40 4. Variance request by owners, Frank and Donna Greenwalt, from Sections 9.6C and 9.7 to  
41 permit an accessory structure in the required front yard and to reduce the front setback from  
42 25' to 19' for an existing 13' x 30' carport, which was erected without a building permit, to  
43 accommodate the mobility needs of his wife. Location: 182 Martin Payne Rd, Kearneysville,  
44 WV. District: 07; Map 23; Parcel: 13; Size: 1.01 ac; Zone: Rural; File: ZV14-18.

45

46 Mr. Frank Greenwalt presented his request to the Board. Due to the completeness of  
47 Mr. Greenwalt's testimony, Ms. Brockman did not have additional information to present to

1 the Board; however, she noted that a letter of support from an adjacent property owner was  
2 included in the packet. Mr. Greenwalt confirmed the carport was 20' in length and not 30', as  
3 referenced in the agenda and staff report. Mr. Quynn opened the public hearing. There was  
4 no public comment. Mr. Quynn closed the public hearing.

5  
6 The Board concurred that a deliberative session was not necessary.

7  
8 Ms. Huddle moved to approve the variance request by owners, Frank and Donna Greenwalt,  
9 from Sections 9.6C and 9.7 to permit an accessory structure in the required front yard and to  
10 reduce the front setback from 25' to 19' for an existing 13' x 20' carport, which was erected  
11 without a building permit, to accommodate the mobility needs of his wife; citing the fact that  
12 the applicant had met the four criteria of a variance request. Mr. Quynn called for a vote,  
13 which carried unanimously.

- 14  
15 5. Variance request by applicant, Mike Shepp with Allegheny Surveys, PLLC, from  
16 Sections 4.11A, 5.8C.2 and Appendix B to eliminate the parking/drive aisle and building  
17 setbacks and landscape buffer requirements for internal lot lines only for an All-Inclusive  
18 Family Adventure Resort. A Concept Plan for the proposed Resort was approved by the  
19 Planning Commission on February 25, 2014. Owners/Developers: Matt & Laura Knott, River  
20 Riders, Inc. & Harpers Ferry Holdings, LLC. Location: 408 Alstadts Rd., Harpers Ferry, WV.  
21 District: 04; Map 7; Parcels: 10 & 10.1; Map: 9; Parcels: 61, 62, 63, 63.1, 66.1, 69, 70, 72, 73,  
22 71, 74, 75; Size: 45 ac (total); Zone: Residential-Light Industrial-Commercial; File: ZV14-19.

23  
24 Mr. Knott recused himself for this item as he is the property owner and applicant; however,  
25 Mr. Knott stayed in the meeting room to present the request.

26  
27 Mr. Shepp asked Mr. Schiltz if he would be participating in this Item. Mr. Schiltz inquired  
28 under what grounds Mr. Shepp believed he should recuse himself. Mr. Shepp stated he was not  
29 an attorney and did not feel he should argue that point; however, he provided a letter drafted by  
30 Michael Scales, an attorney representing Mr. Knott; previously sent to Mr. Schiltz, which  
31 outlined the alleged conflict. Mr. Shepp stated he was requested to present the letter to preserve  
32 the record. In response, Mr. Schlitz stated that under the Rules of Procedure for the Board he  
33 had no interest in the application being presented; that he had no contract or relationship with  
34 what was being presented; that he was capable of making an impartial decision; that this Item  
35 had not been previously presented to the Board; therefore, there were no ground rules to ask  
36 him to recuse himself. Mr. Schiltz concluded by stating that he would be participating on this  
37 Item. The BZA asked some questions of Mr. Knott, Mr. Shepp, and Mr. Schiltz. Discussion  
38 regarding this matter ensued among the Board and Mr. Groh. Mr. Knott and Mr. Shepp stated  
39 they wished only to go on record as stating their objection regarding Mr. Schiltz presence.  
40 Mr. Schiltz did not recuse himself for this Item.

41  
42 Ms. Brockman presented a summary of her staff report. Ms. Brockman highlighted the fact  
43 that had the applicant been able to merge the subject properties together, the variances would  
44 be unnecessary. Ms. Brockman stated that among other possible conditions, Staff would  
45 suggest an easement plat or deed be recorded that would legally document cross access  
46 between the subject parcels. Mr. Shepp presented two exhibits that delineated the interior lot

1 lines and the proposed improvements, which would either be adjacent to or would cross the  
2 interior lot lines. Mr. Shepp explained that the lots were purchased separately and had not  
3 been subdivided by Mr. Knott. The Board asked Mr. Knott if he would be agreeable to the  
4 conditions suggested by Staff. Mr. Knott asked that the suggested deed or plat be addressed  
5 at a later time as each of the lots in question are not landlocked. Staff did not support this  
6 request. Mr. Quynn opened the public hearing. There were no public comments.  
7 Mr. Quynn closed the public comment.

8  
9 The Board concurred that a deliberative session was not necessary.

10  
11 Ms. Huddle moved to approve the variance request by applicant, Mike Shepp with Allegheny  
12 Surveys, PLLC, from Sections 4.11A, 5.8C.2 and Appendix B to eliminate the parking/drive  
13 aisle and building setbacks and landscape buffer requirements for internal lot lines only for  
14 an All-Inclusive Family Adventure Resort with the following conditions:

- 15 a) The variances for the reduced parking and access drive setbacks, reduced landscape  
16 buffer between properties, and reduced building setbacks as described above and  
17 reflected in in the Concept Plan (PC File #S13-07) apply only to internal lot lines;
- 18 b) No buildings shall cross lot lines; and,
- 19 c) The applicant was bound by their testimony.

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

22  
23 Mr. Knott rejoined the Board.

24  
25 7. Director's Report. Monthly Activity Report (in the packet). Ms. Brockman explained that  
26 the office would be readvertising for the Zoning Administrator position; gave a status update  
27 on the Comprehensive Plan; commented on the positive turnout for the November 5, 2014  
28 Ethics Training; and, a reminder that the next meeting would be held on December 11<sup>th</sup> due  
29 to the holiday season.

30  
31 8. Legal Update. None.

32  
33 9. Signing of written decisions from prior Board of Zoning Appeals meetings. Mr. Groh  
34 brought a copy of each required Finding to the meeting. The Board requested that Mr. Groh  
35 email them so they could review and suggest edits as necessary. Mr. Quynn will sign the  
36 final version when they are made available.

- 37 a) Request for a Special Exception by Jacob and Tia Collis, owners, under Section 10.5B.3  
38 for a Rural Reception/Event Facility to host farm weddings between March & October  
39 for Deerfield Farm Weddings. The applicant is seeking permission to operate the venue  
40 outdoors with rental tents during the event only; field parking would be provided for up  
41 to 75 cars, with an optional 10 handicap spaces in existing gravel lot; each event will  
42 cease by 11:00 p.m. Location: 6732 Scrabble Rd, Shepherdstown, WV. Shepherdstown  
43 (09); Map 3; Parcel: 8; Size: 10 ac; Zone: Rural; File: SE14-01.
- 44 b) Correspondence from Peter S. Corum, owner/applicant, on behalf of Morgan's Grove  
45 Market (#S12-06) requesting the Board to clarify the available uses for the existing  
46 residential rental property located at 3988 Kearneysville Pk., Shepherdstown, WV,

1 without changing the Conditional Use Permit (#CP12-01). The applicant is requesting  
2 to temporarily change the use of the residence to a nonresidential, private K-8 school  
3 (Morgan Academy) and seeks the Board's determination on the following issues:  
4 (a) Under the current CUP, can Morgan Academy use the house as a nonresidential use  
5 K-8 school? (b) If yes, can Morgan Academy use the existing well and septic for this  
6 use? District: Shepherdstown (09); Map 13; Parcels: 26.1, 26.2, 26.3, 26.4; Size: 13.69 ac  
7 (combined); Zoned: Rural; File: ZC14-37.

8

9 Ms. Huddle moved to adjourn the meeting at 3:05 p.m. Mr. Quynn called for a vote, which carried  
10 unanimously.

11

12 An audio transcript of this meeting can be found at the Department of Zoning and on the Department's  
13 website at [www.jeffersoncountywv.org](http://www.jeffersoncountywv.org). These minutes were prepared by Jennilee Hartman,  
14 Zoning Clerk.

Excerpted from Roberts Rules of Order Newly Revised 10<sup>th</sup> Edition 1970

PROCEDURE IN SMALL BOARDS.

In a board meeting where there are not more than about a dozen members present, some of the formality that is necessary in a large assembly would hinder business. The rules governing such meetings are different from the rules that hold in other assemblies, in the following respects:

- Members are not required to obtain the floor before making motions or speaking, which they can do while seated.
- Motions need not be seconded.
- There is no limit to the number of times a member can speak to a question, and motions to close or limit debate (\*15, 16) generally should not be entertained.
- Informal discussion of a subject is permitted while no motion is pending.
- Sometimes, when a proposal is perfectly clear to all present, a vote can be taken without a motion's having been introduced. Unless agreed to by a unanimous consent, however, all proposed actions of a board must be approved by vote under the same rules as in other assemblies, except that a vote can be taken initially by a show of hands, which is often a better method in such meetings.
- The chairman need not rise while putting questions to vote.
- The chairman can speak in discussion without rising or leaving the chair; and, subject to rule or custom within the particular board (which should be uniformly followed regardless of how many members are present), he usually can make motions and usually votes on all questions.

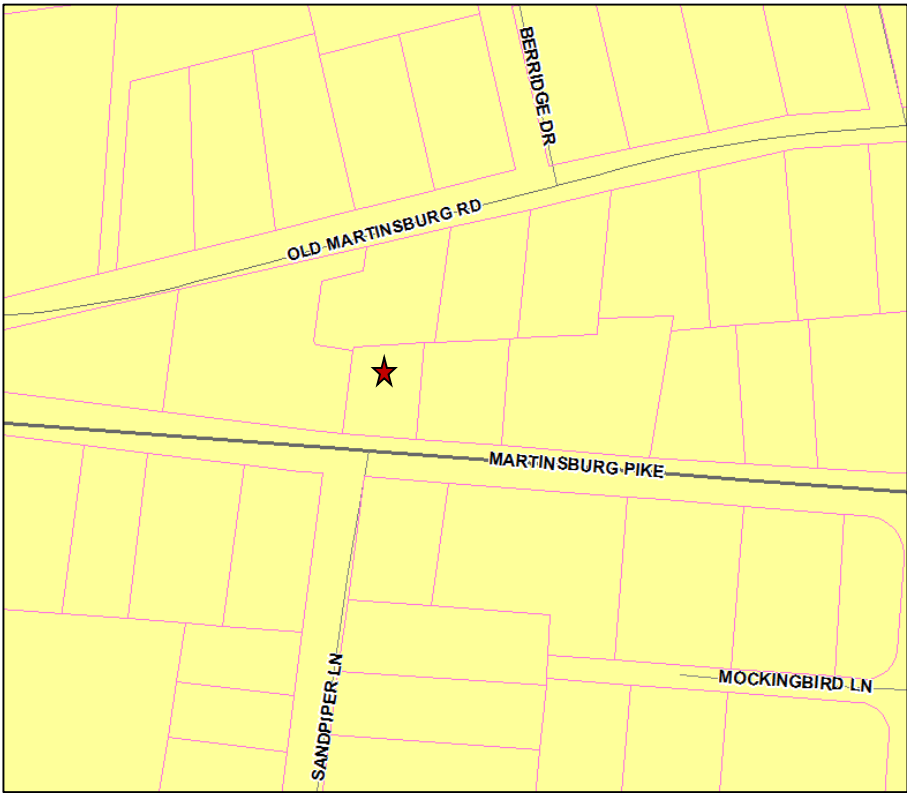
\*Section 6, Chapter 15: Limit or Extend Limits of Debate, Chapter 16: Previous Question  
(*Immediately to close debate and the making of subsidiary motions except the motion to lay on the table*)



Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 December 11, 2014

**Good Shepherd Interfaith Volunteer Caregivers Variance Request (#ZV14-20)**

Item #3 Variance request by Good Shepherd Interfaith Volunteer Caregivers, owner, from Section 4.10A to waive the requirement of a site plan due to off street parking standards.

APPLICANT:	Paula Marrone-Reese
OWNER:	Good Shepherd Interfaith Volunteer Caregivers
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	Richard Kline, Alpha Associates Inc.
PROPERTY LOCATION:	7311 Martinsburg Pk, Shepherdstown, WV
LEGAL DESCRIPTION & ZONING DISTRICT:	<p style="text-align: center;">District: 09; Map 7A; Parcel: 51.3; Size: 0.234 ac;          Zone: Residential Growth</p> 
SURROUNDING PROPERTIES:	<p style="text-align: center;">Zoning Map Designation:</p> <p style="text-align: center;"><i>North:</i> RG                      <i>South:</i> RG  <i>East:</i> RG                         <i>West:</i> RG</p>
PRIOR CASES:	08/19/10: BZA approved Conditional Use Permit(CP10-02) 10/26/10: Staff issued the CUP
VARIANCE(S):	N/A
APPROVED ACTIVITY:	Residential

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**Good Shepherd Interfaith Volunteer Caregivers Variance Request (#ZV14-20)**

RELEVANT INFORMATION:

**1. Overview of Request**

The applicant is seeking a variance from Section 4.10A of the Zoning Ordinance to waive the requirement of a site plan due to off street parking standards.

**2. Previous Case History**

A Compatibility Assessment Meeting (CAM) regarding the Good Shepherd Interfaith Volunteer Caregivers facility was held on July 16, 2010 Conference Room of the Charles Town Library.

A Conditional Use Permit (CUP), File #Z10-02, was approved by the Board of Zoning Appeals on August 19, 2010 and was subsequently issued by the Zoning Administrator on October 26, 2010. The CUP was issued for the following use: “to allow a non-profit volunteer organization to operate a non-medical care giving business within a unit of a duplex. The remaining unit is to be occupied by a residential tenant with the possibility of future expansion of the business. The business would provide off-street parking for two full-time and one part-time employee(s). A small, unlit sign on a single post will advertise the business. Proposed business hours are 8:00 a.m. to 4:00 p.m. Monday through Friday, with occasional work on weekends.”

**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 4.10 of the Jefferson County Zoning and Land Development Ordinance states that a site plan is required to be submitted and approved for a variety of uses including all commercial and institutional development in any district and for all major additions or expansions of existing uses. While the Zoning Ordinance requires a Site Plan, the Jefferson County Subdivision and Land Development Regulations defines the type of Site Plan based on the proposed uses on the property and details the site plan requirements. In 1992, the Jefferson County Planning Commission determined that all newly developed parking areas required an Improvement Location Permit (now processed as a Site Plan and/or Building Permit).

b. History and Unique Characteristics of Property

The issue in question that generates the need for a Site Plan is the parking required to accommodate the previously approved use as an office for the Good Shepherd Interfaith Volunteer Caregivers. The property is occupied by a structure that was previously utilized as a duplex. In 2010, this property was acquired for the purpose of moving the offices of the Good Shepherd Interfaith Volunteer Caregivers to one half of the structure. The property is less than

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**Good Shepherd Interfaith Volunteer Caregivers Variance Request (#ZV14-20)**

one-quarter acre and is on public water and served by an on-site septic system which occupies the entire front yard beside the driveway. The rear yard is very shallow and the Corporation of Shepherdstown has built two very large water towers on the property to the rear. There is no garage or carport and all parking has historically occurred in the driveway which is approximately 65 feet long.

In July 2010, the required Compatibility Assessment Meeting (CAM) regarding the request to utilize the structure for the offices of the Good Shepherd Interfaith Volunteer Caregivers was held. The Staff Report to the BZA regarding the discussion at the CAM meeting stated “Parking and Access: A driveway on the property provides for approximately 5 parking spaces”.

When the Conditional Use Permit, File #Z10-02, was approved by the Board of Zoning Appeals and was subsequently issued by the Zoning Administrator (October 26, 2010), it stated that “the business would provide off-street parking for two full-time and one part-time employee(s).”

In 2012, staff became aware that the applicant was not aware of other requirements related to occupancy of the structure for the proposed use and a letter was written on June 29, 2012 (attached) detailing the Building Permit requirements for the change of use from residential to office and the potential site plan requirements. At that time, the applicant was reminded that the CUP stated that there would be three parking spaces for the employees. In addition to this, one space is required for the tenant of the apartment and at least one of these four spaces shall be ADA compliant. In this letter, the Zoning Administrator stated that a site plan would not be required for the use of the site as an office, provided that:

- Sufficient on-site parking exists (spaces for 3 employees, as proposed, and 1 additional space for the residential use);
- Any proposed ground disturbance is less than 3,000 square feet in area; and
- Any proposed addition or new structure is less than 250 square feet in area.

Since that time, staff has worked with the applicant to meet the required parking on-site and/or to consider alternative solutions. Recently the applicant learned that their side lot is much closer to the existing driveway than originally thought. On September 30, 2104, another letter (attached) was written to the applicant explaining the site limitations and the difficulty in meeting the complete parking requirements of the Ordinance. That correspondence has resulted in this request to waive the required Site Plan.



View of 7311 Martinsburg Pike from across the street

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c. Character of area

The area in which this office/residential duplex is located is a mixture of residential development and small commercial/office developments as can be seen on the overview of the road. The subject property has driveway access to WV 45 (Martinsburg Pike).



Image capture: Sep 2012

The property to the west is a warehouse type facility (North Central Distribution). The property to the east is residential. Across the street is a commercial/office flex structure that changes uses regularly and, nearby, a 7-11. The other properties along WV 45 in this area are a mixture of uses.



Property to the west of 7311 Martinsburg Pike



Property to the east of 7311 Martinsburg Pike



Across the street from 7511 Martinsburg Pike

Image capture: Sept 2012 ©2014 Google

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d. Impact on adjacent properties

The request to waive the required Site Plan is, in essence, a request to continue to allow the stacked parking within the existing residential driveway to continue. The office and its staff are very small and work together to accommodate the needs of those arriving and leaving the property. Their customers primarily contact them by phone or internet and volunteers rarely need to come to the office. When Board meetings occur, parking may occur on neighboring properties through a cooperative agreement with those property owners. The need for more parking than can be accommodated within the existing driveway is limited. Allowing this parking arrangement to continue primarily impacts the applicants and should have minimal impact on neighboring properties due to the size of the business.

e. Feasibility of complying with the ordinance by other means

The property is not large enough to accommodate a parking area that meets the requirements of the Zoning Ordinance and Subdivision Regulations. It is further limited by the septic system in the front yard and the proximity of the neighboring uses. The applicants may consider the development of an off-site parking lot in a cooperative arrangement with a neighboring property if the parking needs increase; however, currently the demand for parking is limited and can be accommodated in the old residential driveway.



View from neighboring property to the west

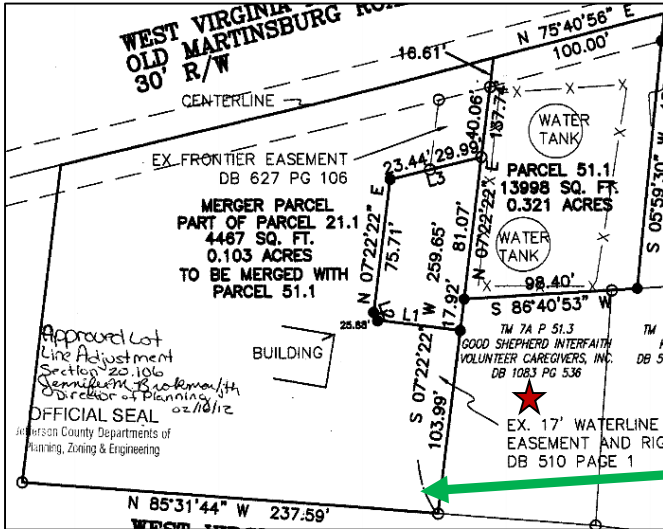


Sketch submitted by applicant

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**Good Shepherd Interfaith Volunteer Caregivers Variance Request (#ZV14-20)**

One other possible solution researched by Staff was a lot line adjustment to potentially increase the size of the lot or the acquisition of an easement for the purpose of platting a parking area. However, upon further research, it was discovered that this would not be a viable solution as there is a 17' wide waterline access easement/right-of-way (Deed Book 510, Page 1) that runs along the western property line (located on the adjacent property) for access to the Shepherdstown water tower. Consequently, this easement would prohibit any parking from occurring in this location.



Lot line adjustment approved between Grandeotto & Corp of Shepherdstown  
Deed Book 1104, Page 589 (02/24/12)

**5. Conditions of Approval**

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

- 1) This waiver shall apply to the use of this property for a non-profit volunteer organization to operate a non-medical care giving business, such as Good Shepherd Caregivers, with an adjoining duplex unit occupied as a residence only, approved under the CUP File #Z10-02, dated October 26, 2010, only and shall not extend to other potential non-residential uses of the property.
- 2) Should the subject property hook up to sewer lines in the future, alleviating the need for the septic field, the requirement to meet County parking standards will be reevaluated upon submission of an expansion request by the current applicant or by the submission of a zoning certificate for a new land use.

**SECTION OF ORDINANCE TO BE VARIED:**

**Section 4.10 Site Plan Requirements**

A. Submittal and approval of a site plan is required for all commercial, townhouse and multi-family residential, industrial, and institutional development in any district and for all major additions or expansions of existing uses as defined in Article 2, in accordance with the requirements of the Subdivision and Land Development Regulations and this Ordinance.<sup>23, 26</sup>

**Attachments:**

- 6-29-12 Letter to Paula Marrone-Reese
- 9-30-14 Letter to Paula Marrone-Reese

# JEFFERSON COUNTY, WEST VIRGINIA

## Department of Planning & Zoning

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

P.O. Box 338

Charles Town, West Virginia 25414

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

Phone: (304) 728-3228

Fax: (304) 728-8126

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June 29, 2012

Paula Marrone-Reese, Executive Director  
Good Shepherd Interfaith Volunteer Caregivers  
7311 Martinsburg Pike  
Shepherdstown, WV 25443

Dear Ms. Marrone-Reese,

I am writing to follow up on our June 15<sup>th</sup> meeting with Dan Rowzie, Susan Kersey, Mike Monaghan, Mason Carter, and myself.

On August 19, 2010, The Board of Zoning Appeals voted to grant a Conditional Use Permit (CUP) to Good Shepherd Caregivers, for the use of a duplex for office purposes. The purpose of a CUP is to allow a land use that would otherwise not be permitted in a given zoning district. However, a CUP does not address issues of building occupancy and any required site improvements.

I am aware that Good Shepherd representatives feel that additional requirements were not made sufficiently clear prior to the organization's acquisition of the property. If this is the case, I certainly regret any lack of clarity on the part of staff.

The Planning, Zoning, and Engineering Departments are committed to working with Good Shepherd to achieve compliance with applicable codes, and staff will make every effort to make the process as smooth as possible.

The following are to be the outstanding issues to be addressed:

### **1. Building Code**

A change of use of a structure from a residential use to a non-residential use triggers a different set of building code requirements.

In order to approve the occupancy of the building as an office, the Engineering Department must confirm that the building meets the required standards of the 2009 International Building Code (IBC). This review will entail submittal of a set of plans prepared by a registered West Virginia architect showing compliance with life safety, egress, use separation, and other requirements of the IBC.

Following submittal of plans, issuance of building permits, and initiation of any needed work, staff will inspect the construction for compliance with the approved building plans.

## 2. Parking

The approved Conditional Use Permit for this land use states that "The business would provide off-street parking for two full-time and one part-time employee(s)." The Conditional Use Permit implies that the existing parking is acceptable for the proposed land use. There were no conditions applied to the CUP by the Board of Zoning Appeals. As such, if the site currently has parking for three employees and a parking space for the adjacent residential use, no additional on-site parking is required.

Handicapped parking is required for a commercial use per the Americans with Disabilities Act. The required dimensions of a handicapped parking space are 8' x 20' with an adjacent access aisle of 8' x 20'. An accessible route meeting ADA standards must also connect the accessible parking space to an accessory building entrance.

In discussion with Good Shepherd representatives, it is apparent that the organization would like to make more parking available for drop-in customers and other visitors, and seeks to develop additional parking or lease offsite parking. Please be aware that any additional parking must meet standards such as parking setbacks. Parking should also not be located over a septic area. The organization may also want to explore the option of leasing offsite parking on an adjacent lot.

A site plan will not be required for the use of the site as an office, provided that:

- sufficient on-site parking exists (spaces for 3 employees, as proposed, and 1 additional space for the residential use); and
- any proposed ground disturbance is less than 3,000 square feet in area; and
- any proposed addition or new structure is less than 250 square feet in area

Again, it is the staff's intent to make the process of ordinance compliance as easy as possible. Please let us know if there is anything we can do on our part to facilitate the resolution of this issue.

Please feel free to let me know if you need additional information.

Sincerely,



Steve Barney  
Zoning Administrator

Cc: Jennifer Brockman, Director, Planning and Zoning Department  
Roger Goodwin, Director, Engineering Department  
Becky Burns, Office Manager, Engineering Department  
Mike Monaghan, Building Inspector, Engineering Department  
Mason Carter, Code Compliance Officer, Engineering Department

**JEFFERSON COUNTY, WEST VIRGINIA**  
**Engineering Department**  
**Jefferson County Government**  
116 East Washington Street, Suite 100  
P.O. Box 716  
Charles Town, West Virginia 25414

Roger Goodwin  
Engineering Department  
Chief County Engineer

Phone: (304) 728-3256  
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rgoodwin@jeffersoncountywv.org

September 30, 2014

Good Shepherd Interfaith Volunteer Caregivers  
P.O. Box 1882  
Shepherdstown, WV 25443

COPY

Attn: Ms. Paula Marrone-Reese

Re: Parking Requirements

Dear Ms. Marrone-Reese,

This letter is in regard to the parking requirements for the Good Shepherd Interfaith Volunteer Caregivers facility located at 7311 Shepherdstown Pike near Shepherdstown.

It is my understanding that when the Conditional Use Permit (CUP) was issued for your facility by the Jefferson County Zoning Administrator, it was determined that your facility does not require that a site plan be processed as long as you can demonstrate that the existing parking satisfies the number of required parking spaces under the Zoning Ordinance and the parking lot standards under the Jefferson County Subdivision Regulations.

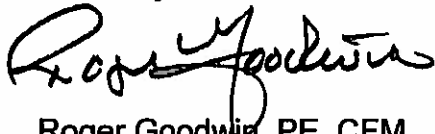
I reviewed the site sketch you provided to Jonathan Saunders, County Engineer, to determine if the parking requirements can be met. It is my understanding that two employee parking spaces, one van handicapped accessible parking space and one residential parking space are required. The existing access drive is 13' wide and is restricted to minimal expansion by an adjacent property line on one side and the limits of the septic reserve area on the other side (the septic reserve area cannot be utilized for parking or drive aisle access). Under the regulations, the minimum access drive aisle width is 22', regular parking spaces are to be 9'x20' and the van accessible handicapped parking space requires a 16' x 20' space. In addition, vehicles need to be able to enter and leave the site without backing out onto the state road. Also, the WVDOH state road right-of-way cannot be utilized for meeting the parking requirements.

Letter to Ms. Paula Marrone-Reese  
September 30, 2014  
Page 2

After looking at the required parking dimensions and considering a number of possible configurations for the parking, it appears that it is impossible to meet the parking requirements -even for just the one van accessible handicapped parking space- and the parking setbacks (15' from the front lot line and 10' from the side lot line) under the zoning requirements.

I recommend that you contact Jennie Brockman, Director of Planning & Zoning regarding any options you may have for meeting the requirements. The only option I see is to seek a full and complete variance of the parking requirements in order to be in compliance. This will require processing a variance request by the Board of Zoning Appeals from the requirements.

Sincerely,



Roger Goodwin, PE, CFM  
Chief County Engineer

C: Jenni Brockman, Director, Planning & Zoning  
Jonathan Saunders, County Engineer  
Rebecca Burns, Office Manager



JEFFERSON COUNTY, WEST VIRGINIA

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

File Number: ZV14-20
Staff Initials: CFC
Fees Paid (\$100 or \$150): WAIVED

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: Good Shepherd Interfaith Volunteer Caregivers (GSIVC)
Mailing Address: PO Box 1882, Shepherdstown, WV 25443
Phone Number: 304-876-3325 Email: Director@gsivc.org

Applicant Contact Information

Name: Paula Marrone-Reese
Mailing Address: PO Box 1882, Shepherdstown, WV 25443
Phone Number: 304-876-7182 or 304-579-7428 Email: Director@gsivc.org

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

Name: Alpha Associates Inc. Richard Klein
Mailing Address: 535 West King Street, Martinsburg, WV 25401
Phone Number: 304-264-0051 Email: Richard.Klein@thinkalphafirst.com

Physical Property Details

Physical Address: 7311 Martinsburg Pike
City: Shepherdstown State: WV Zip Code: 25443
Tax District: 09 Map No: 7A Parcel No: 51.3
Parcel Size: 0.234 Deed Book: #1083 Page No: #536

Zoning District (please check one)

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

RECEIVED

JUL 17 2014

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Place Received Date Stamp Here

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

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

Reference the section of the Zoning Ordinance pertaining to this request: Section 4.10

Briefly describe the nature of the variance request:

GSIVC is requesting omission of the site plan requirements as described in section 4.10A

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:

Since 8/2010, staff have coordinated services at this site or from their homes. The clients access our services by internet or phone. The volunteers go directly to the clients' homes. North of GSIVC are the Shepherdstown water towers, south is Route 45, west is North Central Distribution, and east is the Kidrick home. Across Route 45 is Potomac Trading and 7-Eleven.

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 conditional use permit effective 10/26/2010 states that the business would provide off-street parking for two full-time and one part-time employee. The lot size only allows for minimal parking, as described in the CUP.

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

Granting this variance will allow GSIVC to continue providing free service to needy and frail Jefferson Co. residents. The original plan to use a residential setting serves as an ideal fit since there is only a need for a few employees with flexible schedules.

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

Good Shepherd blends into the community, existing only to support the needs of families. Our work and hours of operation have never interfered with our business and residential neighbors.

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.

Paula Marrone-Rose Nov. 12, 2014  
Signature of Property Owner Date  
GSIVC CEO

\_\_\_\_\_  
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).

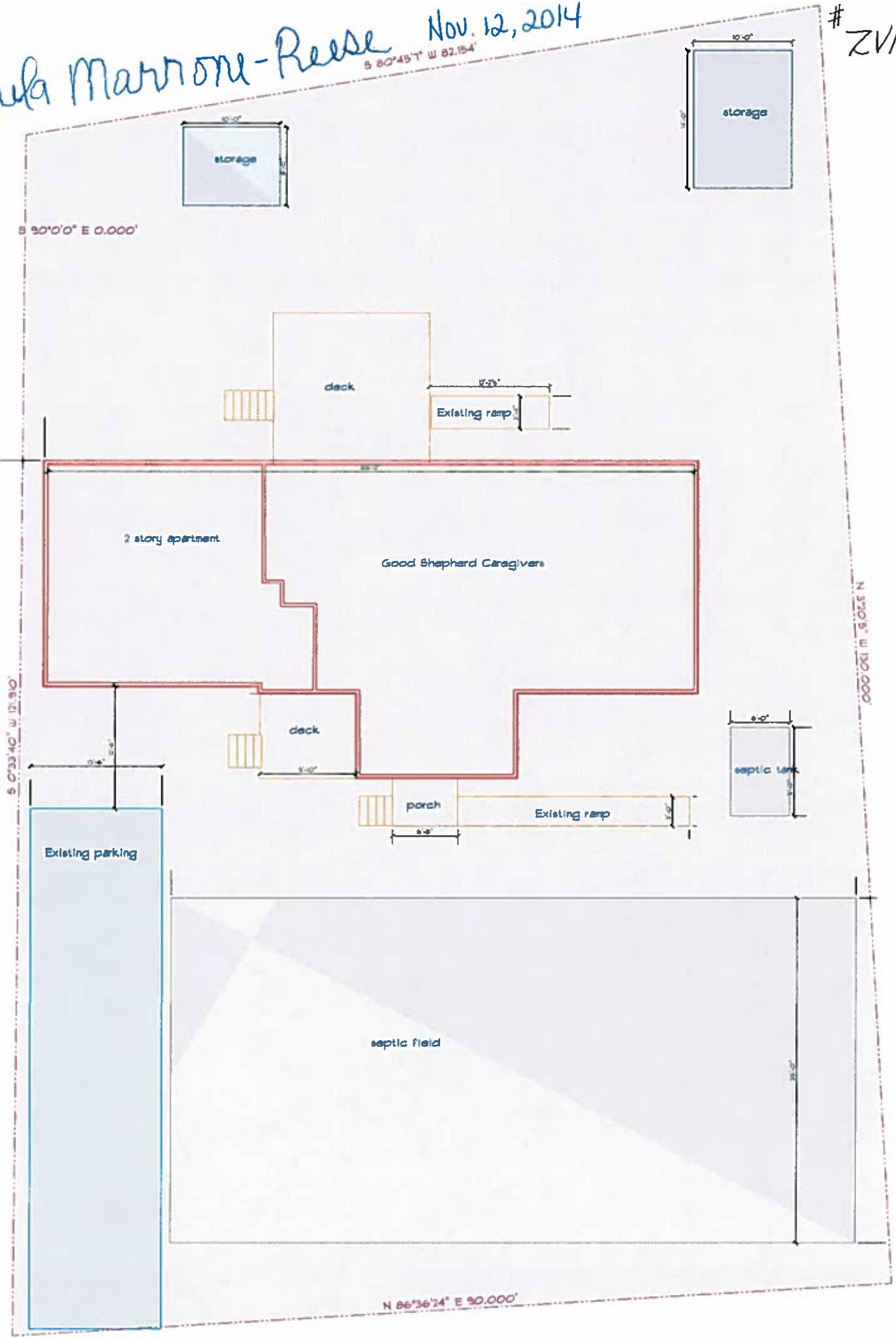
12-11-14  
Date of Public Hearing

11-26-14  
Advertising Date

11-26-14  
Placard Posting Date

Paula Marrone-Reese Nov. 12, 2014

# ZV14-20



OLD MARTINSBURG RD

148

160

146

7341

7311

7311

APT A,  
STE B

7291

7311

7341

*Paula Marrone Reese* Nov. 12, 2014

MARTINSBURG PIKE

SANDPIPER LN

7298

30

7330

#7114-20



Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
December 11, 2014

**Crossroads Church Variance Request (#ZV14-21)**

RELEVANT INFORMATION:

**1. Overview of Request**

The applicant is seeking a variance from Section 4.10A of the Zoning Ordinance to waive the requirement of a site plan to allow the expansion of a gravel parking lot.

**2. Previous Case History**

The subject property has existed as a church since approximately 1965, which predated the adoption of zoning and a majority of the site plan requirements regarding parking standards.

**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 4.10 of the Jefferson County Zoning and Land Development Ordinance states that a site plan is required to be submitted and approved for a variety of uses including all commercial and institutional development in any district and for all major additions or expansions of existing uses. While the Zoning Ordinance requires a Site Plan, the Jefferson County Subdivision and Land Development Regulations defines the type of Site Plan based on the proposed uses on the property. Under Section 20.203 of the Subdivision Regulations, "Minor Site Development" has provisions that state that no Site Plan or Stormwater Management Plan is required for additions to existing structures or structures ancillary to existing uses on a property, when (1) the footprint of the addition or the new structure is less than 250 square feet; (2) No additional parking is required per Zoning Ordinance standards; and (3) the disturbed area is no more than 3000 square feet. In 1992, the Jefferson County Planning Commission determined that all newly developed parking areas required an Improvement Location Permit (now processed as a Site Plan and/or Building Permit).

b. Unique characteristics of property

The structure on this property was established as a Church prior to Zoning in the County. The Church fronts on WV 45 (Martinsburg Pike) and has two entrances leading to 15 foot paved drive aisles, the front paved parking area, and continuing around the church to access the rear gravel parking areas. The rear property line abuts Old Martinsburg Pike and a gravel drive allows secondary access to the rear parking lot from this road. A Parish House is also located on the rear of the property fronting on Old Martinsburg Pike, with a separate access.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
December 11, 2014

**Crossroads Church Variance Request (#ZV14-21)**

The Church structure is being renovated for use by a new congregation. There are currently approximately 60 parking spaces total on the property, with roughly one-third on a paved surface in front of the church and two-thirds on gravel in the rear. The existing gravel lot has been impacted by the renovation and will be restored as previously developed. The Zoning Ordinance requires one parking space for every five seats in the Sanctuary. The Sanctuary, as renovated, will seat approximately 200 parishioners. Therefore, forty (40) parking spaces are required by the Ordinance. If this was new construction, these forty (40) spaces would be required to be paved; however, the existing parking is a nonconforming aspect of this site and can continue with the paved/non-paved scenario already in place.

The applicant would like to expand the existing gravel parking area by 40 – 50 additional spaces in the rear. These spaces are greater than 250 square feet; therefore, a limited site plan is required, which would also require stormwater management for the new impervious area. The property has public water, but is served by an on-site septic system located in the rear of the structure, which will impact the location and size of the proposed parking area.



Front of 7595 Martinsburg Pike



Front of 7595 Martinsburg Pike



Rear Drive facing gravel lot and rear of Parsonage



Rear gravel lot in disrepair and rear of Church Structure

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
December 11, 2014

**Crossroads Church Variance Request (#ZV14-21)**



Rear gravel drive – facing Old Martinsburg Pk



View from Old Martinsburg Pike toward rear of Church

c. Character of area

The area in which this church is located is a mixture of residential development and small commercial/office developments as can be seen on the overview of the road on the following page. The property itself has access to WV 45 and Old Martinsburg Pike and contains a residential structure as well as the Church. The properties along Old Martinsburg Pike and intersection streets are all residential. The properties along WV 45 are a mixture of uses.

Immediately to the east of the church property is a large WV DOH excess ROW area that sits lower than the road and church property and appears to act as a stormwater management area.



Aerial of 7595 Martinsburg Pike with Church and Parsonage

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
December 11, 2014

**Crossroads Church Variance Request (#ZV14-21)**



Image capture: Sep 2012

d. Impact on adjacent properties

Allowing the expansion of the existing gravel parking area without processing a Site Plan will have little to no impact on the neighboring properties. The church has existed on this site for decades and the parking in the rear has expanded and been reduced as necessary as the church size has fluctuated. Parking on a developed gravel lot is preferable to on-going parking on grass as there will be less opportunity for muddy run-off from a properly developed parking lot.

e. Feasibility of complying with the ordinance by other means

The property already meets the minimum required parking per the Zoning Ordinance. The applicant desires to increase the gravel parking area to accommodate a growing congregation and the church's related activities. A site plan would not be required if the applicant allowed overflow parking to occur on the grass but this is not a preferable situation.

**5. Conditions of Approval**

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

- 1) The applicant shall work with the Board of Health to ascertain the exact location of the septic field prior to any construction of expanded parking in the rear of the church.
- 2) The gravel parking lot must meet the current parking setback requirements at the time of construction.
- 3) The applicant shall submit an Improvement Location Permit, accompanied by a sketch plan, to the Engineering Department. The sketch shall include the dimensions and location of the proposed gravel parking area, the required parking setbacks and the existing septic field.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
December 11, 2014  
**Crossroads Church Variance Request (#ZV14-21)**

SECTION OF ORDINANCE TO BE VARIED:

**Section 4.10 Site Plan Requirements**

- A. Submittal and approval of a site plan is required for all commercial, townhouse and multi-family residential, industrial, and institutional development in any district and for all major additions or expansions of existing uses as defined in Article 2, in accordance with the requirements of the Subdivision and Land Development Regulations and this Ordinance.<sup>23, 26</sup>



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

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

# ZV14-21
File Number:
Staff Initials:
Fees Paid (\$100 or \$150):

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: Trustees of Crossroads Church
Mailing Address: 3737 Flowing Springs Road, Shenandoah Junction, WV 25442
Phone Number: 304/728-7743 Email:

Applicant Contact Information

Name: Pastor Derick Amsler Please use Paul Raco as contact for questions or posting
Mailing Address: Same as above
Phone Number: Email:

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

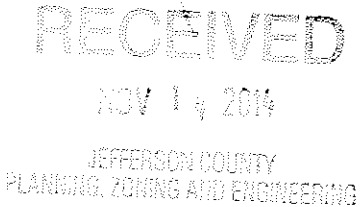
Name: P.J. Raco Consulting, LLC, Paul J. Raco; Allegheny Surveys, PLLC, Mike Shepp
Mailing Address: P.O. Box 548, Charles Town, WV 25414
Phone Number: 304/676-8256 Email: pjraco.consulting@gmail.com

Physical Property Details

Physical Address: 7595 Martinsburg Pike
City: Shepherdstown State: WV Zip Code: 25443
Tax District: Shepherdstown Map No: 7B Parcel No: 1
Parcel Size: 2.69 Acres Deed Book: 1145 Page No: 692

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). RG 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 4, Section 4.10

Briefly describe the nature of the variance request:  
See Attached

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:  
See Attached

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?  
See Attached

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

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

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

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

[Signature] 11/14/14  
Signature of Property Owner Date

[Signature] 11/14/14  
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).

12-11-14  
Date of Public Hearing

11-26-14  
Advertising Date

11-26-14  
Placard Posting Date





Existing



Option One



Option 2

Dev An  
11/14/14



Crossroads Church  
Request for Variance  
Article 4, Section 4.10  
Jefferson County Zoning Ordinance  
November 14, 2014

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JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

**Four Criteria:**

1. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents:

There will not be an adverse effect on any adjoining properties. The property and land has always been used as a Church and a parking lot. As a matter of fact, the additional gravel would actually have a positive effect since the site won't be muddy if the parishioners park on gravel as opposed to grass. There also won't be additional runoff since the property is relatively flat and the ground is already compacted because of previous parking and gravel on the area.

The proposed gravel area is in the area of the existing gravel to the rear of the Church. The property slopes away from Martinsburg Pike, so there will be no effect on the front (South) of the property. The Church also owns the house to the rear (North), so there will not be an impact on that side. That house may change into the parsonage in the future. Both the west and east sides of the property are tree lined, so there will not be a negative effect on either of those properties visually or functionally. The property to the west, sits higher than this property and the actual property to the east, serves as the Storm Water Management area for the State Road.

The additional gravel parking will allow safe passage for the parishioners from the parking lot to the Church without walking through the grass. There really would be no effect on the neighboring properties because of the way the property is graded and surrounded by trees and SWM.

2. Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance:

As explained in the description, the uniqueness of this situation is that the property was used for this purpose since 1965 and the Church has existed since the late 70s. The land behind the Church was already used as the parking prior to the Applicant purchasing the property for the same use. The new Church would just like to add the gravel for the parking on overflow Sundays without parking in the grass.

The special attribute is that there is no change of use, just the addition of gravel for parking for the convenience and safety of the congregation. The other special attribute is that it is adjacent to an existing SWM area for the State Roads.

3. Would eliminate an unnecessary hardship and permit a reasonable use of the land:

Crossroads Church has gone through a great deal of expense to convert a Church built before building codes to a safe building for the new congregation. Although Crossroads can use the property with the existing parking and parking on the grass, the variance is needed to permit a reasonable use of the land with the graveled area for additional overflow parking without having to park on the grass. Again, this additional area will primarily only be used on Sundays during the services. The added huge expense of the quoted site plan for only a limited amount of use would definitely qualify as an unnecessary hardship, especially since there will be no impact in the neighborhood.

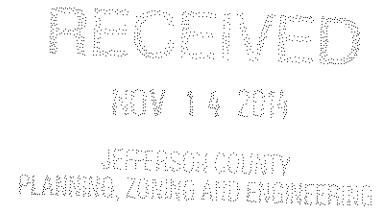
4. Will allow the intent of the zoning ordinance to be observed and substantial justice done:

The intent of the Ordinances is to protect a neighborhood from new uses that could possibly have a negative impact. In this case, the Church and associated parking have been there since 1965, with no negative impact. There is not going to be a new use, new access or new construction. The proposal is only to add gravel to facilitate some extra parking area in the same area that was used for parking over the years. Therefore, the intent of the ordinance will continue to be met. Furthermore, Crossroads Church has gone to great lengths to provide for the safety of the parishioners with the major internal upgrades to the actual facility. These improvements have been pursuant to the existing Building Codes in Jefferson County.

Substantial Justice would be to allow the additional gravel for parking at a Church that has existed for nearly 50 years without the additional expense of a site plan that would serve no purpose because of the way the site is graded and the fact that there will be no neighbors impacted.

Accordingly, Crossroads Church would ask the Board to grant the variance from the site plan to add the additional gravel in the grass for an additional 30 or 40 cars. Thank you.

Crossroads Church  
Request for a Variance from Article 4, Section 4.10  
Jefferson County Zoning Ordinance  
November 14, 2014



**BRIEF DESCRIPTION OF THE REQUEST:**

Crossroads Church is seeking a variance from the Jefferson County Zoning Ordinance to add some parking at their Church on Martinsburg Pike. This request is from Article 4, Section 4.10, which requires a site plan for all new construction or expansion of commercial, institutional, industrial and multi-family land uses. Crossroads is asking for permission to place additional gravel without providing an engineered site plan, because of the small size of the additional gravel parking lot in relationship to the larger parcel of land. The intended area is also where members of the previous congregation parked on the grass.

Currently, Crossroads Church has their office along Flowing Springs Road next to Jefferson High School. The Church services are being held weekly at Jefferson High School. Several years ago, Crossroads began the renovations of the existing Assemblies of God facility that they were going to purchase which is located on Martinsburg Pike. Since that Assemblies of God Parish was constructed prior to the adoption of building codes in Jefferson County (1965), Crossroads Church has been making extensive internal renovations to bring the structure up to the Building Code for safety and fire protection purposes. Crossroads has gone above and beyond the code requirements at the recommendation of the County Building Inspectors and has accepted all of the County's advice during the construction. For the past several years, including the required Architect, the Church has spent approximately \$200,000 for these renovations. That is why the improvements have taken so long to complete.

Finally, when nearing completion, the Church was going to add to the existing approximate 60 parking places on site. However, although several contractors said that no additional permits would be needed since the additional parking would be gravel, a third contractor said that they should again check with the County. At that point, Crossroads was only a month or so away from a long awaited opening service in the new Church. To see if they could still meet the opening deadline, the Pastor got a quote for a site plan and it was over \$50,000 to add an additional area of gravel that would park from 30 or 40 more cars than already provided.

However, more importantly, the \$50,000 site plan would only scratch the surface of all of the other requirements that the facility would have to upgrade. This facility has been used as a Church for many, many years, without any problems. The Assemblies of God purchased the property and built the main structure in 1965 and added onto the existing Church in the late 1970s. The new Church's officials, along with the congregation, are perplexed as to why a Church that was used for worship since before site plan standards existed, would have to undertake such additional expense to continue to use the facility for worship. During the heyday of the previous Church's ministry, there were over 100 cars parked at the facility on any given Sunday. However, the overflow cars were parked in the grass and gravel areas that were added over the years. This Pastor, however, wants to make sure that his parishioners don't have to walk through the mud with their families every Sunday.

Again, looking at Section 4.10, it says that a site plan is needed for a new or expanded institutional use. In this case, the institutional use has existed since 1965 and is neither new nor expanded (last expansion in late 70s). Plus, the Church already has the requisite number of spaces that the Ordinance requires, so there is no County requirement to expand the parking. The parking area to be graveled has been used for parking; however, the previous folks were content with parking in the grass area on Sundays when the existing parking was utilized. Although, as many know, church attendance on any given Sunday can be higher or lower than normal, the extra parking will just be used as overflow on Sundays. Currently, there are only plans to have two services on Sunday, so an expense of an entire site plan for the additional spaces would be hard to justify. The several years of savings for the new Church have already gone into the safety and code renovations required by the County and Fire Marshall.

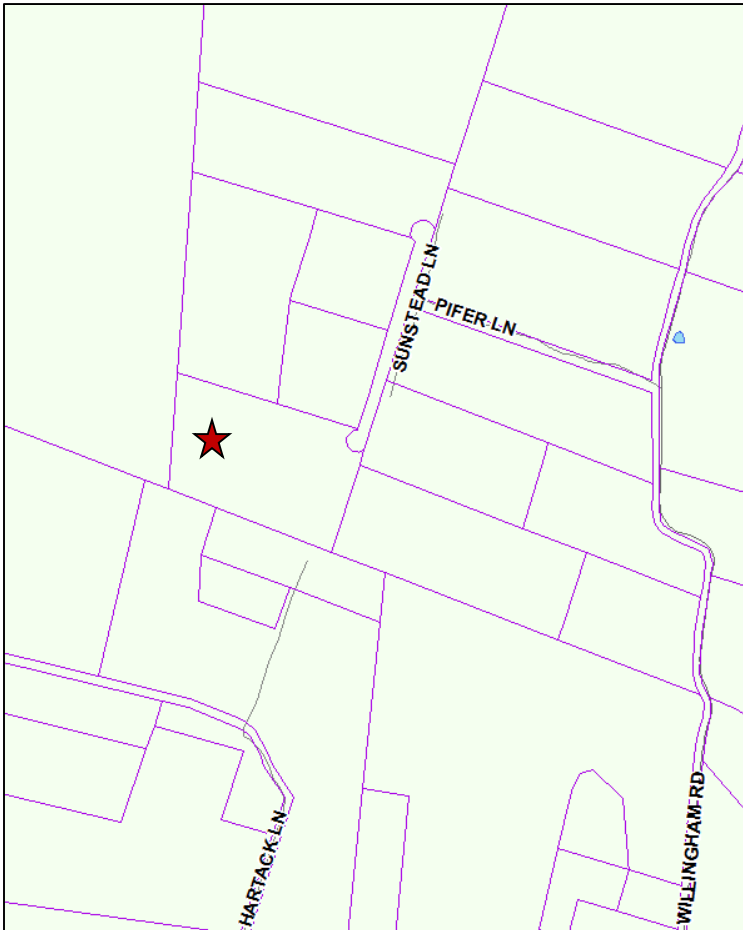
This property has been used for the same purpose since the facility was built in 1965 (many years before the site plan requirements). It also had the same amount of seats in the Sanctuary when it was built as what is going to be used now. Finally, the area proposed to be graveled has been used for parking already. Accordingly, we respectfully ask that the Board allows us to proceed with adding the additional gravel over the existing grass parking area without a site plan, since the use has not changed at all; nor, has the use expanded from what existed.

Thank you.

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 December 11, 2014

**Ben Thompson Request (#AP14-02)**

Item #6: Appeal of an Administrative Decision to deny Zoning Certificate #ZC14-39. The Appellant, Ben Thompson, argues the Acting Zoning Administrator is “not allowing dual use [of] equipment on my land”.

APPLICANT:	Ben Thompson
OWNER :	Same
DEVELOPER:	N/A
SURVEYOR/ENGINEER:	N/A
PROPERTY LOCATION:	Lot 13A, Piedmont Downs, 3 Sunstead Ln, Charles Town, WV
LEGAL DESCRIPTION & ZONING DISTRICT:	District: 07; Map: 16; Parcel: 2.12; Size: 10.05 ac Zone: Rural  
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North: R                      South: R</i> <i>East: R                        West: R</i>
SUBDIVISION:	03/26/75: Piedmont Downs Subdivision recorded Courthouse 09/11/80: Piedmont Downs Resubdivision deed recorded Courthouse
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential and Agricultural

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
December 11, 2014  
**Ben Thompson Request (#AP14-02)**

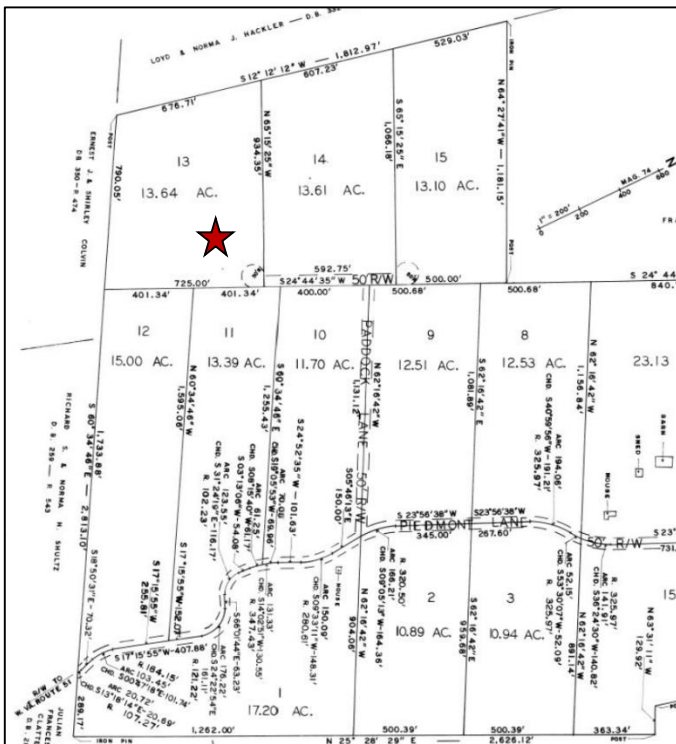
**RELEVANT INFORMATION:**

1. Overview of Appeal

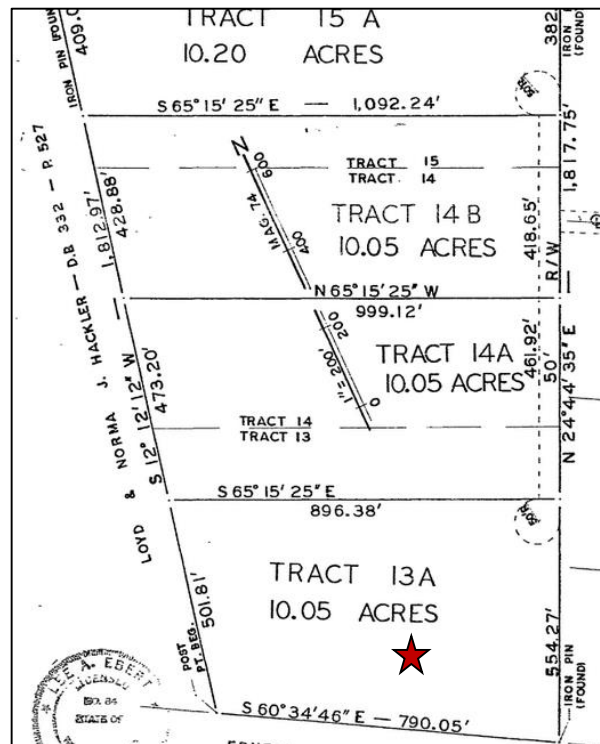
Appeal of an Administrative Decision to deny Zoning Certificate #ZC14-39. The Appellant, Ben Thompson, argues the Acting Zoning Administrator is “not allowing dual use [of] equipment on my land”.

2. Case History

The 10.05 acre property in question is located in the Rural (R) Zoning District and is a part of a residential subdivision, Piedmont Downs, which was recorded in 1975, and later amended in 1980, without processing through the Departments of Planning and Zoning. Both the division of the property and subsequent lot line adjustment were exempt from processing under the Jefferson County Subdivision Ordinance at that time



Piedmont Downs, recorded March 26, 1975  
(Plat Book 3, Page 60)



Piedmont Downs re-subdivision deed, recorded  
September 11, 1980 (Lots 13A, 14A, 14B & 15A)

A neighbor filed an Information Request Form (IRF) in October 2013 expressing concern that Ms. Ashley and Mr. Thompson were allowing her father to run his road paving business from their property and that large trucks and equipment were being parked there and using the gravel road on a regular basis, impacting the quality and safety of the road. The IRF was referred to the Code Compliance Officer and an effort was made to find out more about the business and determine if the use was in violation of the Ordinance. The neighbor subsequently submitted a formal Complaint Form regarding the same use on April 28, 2014.

In August 2014, the Code Compliance Officer, after requesting information from the Ashely/Thompson family and after collaborating with the Acting Zoning Administrator, notified the

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
December 11, 2014

**Ben Thompson Request (#AP14-02)**

Ashley/Thompson family that based on the information provided, the activity occurring on the property is classified as a “contractor with outdoor storage” which is not permitted in the Rural District. After continued communication, on September 2, 2014, Mr. Thompson applied for a Zoning Certificate to allow the outside storage of a non-resident’s construction equipment (dump trucks, roller, salt spreader, etc.) which serves dual purpose for resident’s agricultural operation and non-resident’s landscape/road maintenance business. No information was presented detailing the need for this type of equipment on a 10 acre property which appears to be primarily residential in nature. The applicant was provided an opportunity to detail how the equipment identified is used on a regular basis in any agricultural operations occurring on the property. On October 31, 2014, after further research and a site visit, the Zoning Certificate was denied based on the finding that the use is determined to be a “Contractor with Outdoor Storage”. This decision is the subject of this appeal.



3. Staff Response to Appeal

a. Source and Interpretation of Ordinance Requirements

The sections of the Jefferson County Zoning and Land Development Ordinance relevant to this appeal are the purpose and permitted uses in the Rural Zoning District and whether the proposed use is permitted within that District.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
December 11, 2014

**Ben Thompson Request (#AP14-02)**

Section 5.7 of the Zoning Ordinance states that the purpose of the Rural (R) District is “to provide a location for low density single family residential development in conjunction with providing continued farming activities.” It further states that “a primary function of the low density residential development permitted within this section is to preserve the rural character of the County and the agricultural community.” A wide variety of agricultural and/or agriculturally-compatible uses are permitted in this zone.

“Agricultural Use” is defined in the Zoning Ordinance as “The use of land for a bona-fide farming operation. . . .” This definition includes a wide variety of listed types of agricultural operations.

A review of the Zoning Ordinance for where road graders and dump trucks are permitted reveals that those terms are only mentioned in the definition for “Contractor with Outdoor Storage”. The ordinance defines what a contractor with outdoor storage is and the definition includes the phrase “. . . . This use may include outdoor storage of building materials and heavy equipment such as road graders, dump trucks, cement mixers.” It was concluded that the proposed use constitutes a Contractor with Outdoor Storage use. Contractor with Outdoor Storage is not permitted in the Rural Zone.



Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
December 11, 2014  
**Ben Thompson Request (#AP14-02)**



*\*Pictures on page 5 provided by neighbor.*

There are also provisions for Home Occupations and Cottage Industry which are permitted to occur in the Rural District; however, all such uses are required to be owned and operated by a full-time resident of the property. The applicant has clearly stated that any non-agricultural use of the equipment is conducted by his father-in-law who owns and operates a contractor business in Ranson, WV. The equipment could not be considered a part of a Home Occupation.

**b. Other Relevant Information**

The Piedmont Downs subdivision is located off of Willingham Road, which is a state maintained road up to the point of intersection with Pifer Lane. Pifer and Sunstead Lanes serve five houses and are essentially a 13-foot wide gravel drive (within a 50-foot right-of-way), owned and maintained by the residents. The Departments of Planning and Zoning have received repeated complaints from neighbors about the use of the very narrow one lane gravel drive by the large dump trucks and other heavy equipment on a regular basis. The reports of these trips and the counter arguments by the applicant are all anecdotal and difficult for code compliance staff to

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
December 11, 2014

**Ben Thompson Request (#AP14-02)**

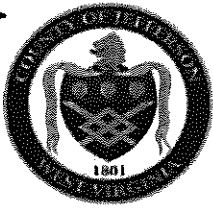
confirm. For this reason, the Zoning Administrator needed to look carefully at the provisions of the Rural Zone in the Zoning Ordinance and the apparent use of the property by the applicant to determine if the use was permitted on this property. Such a decision was made and is the subject of this appeal.

**SECTION OF ORDINANCE TO BE CONSIDERED:**

**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>



# 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

Appeal Number: AP14-02

Staff Initials: CLC

Fees Paid (\$100): \$ 100.00 (25)

[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

### 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. 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. Such appeal shall be filed with the Board within thirty (30) days from the decision appealed.

#### Name and/or File Number of Project

Name of Project: \_\_\_\_\_ File Number: \_\_\_\_\_

#### Appellant Information

Appellant Name: Ben Thompson  
Mailing Address: 3 Sunstead Lane  
City: Charles Town State: WV Zip Code: 25414  
Phone Number: 240-674-9827 Email: Coachthompson6450@gmail.com

#### Appellant Representative(s) Information

Company Name: \_\_\_\_\_  
Representative Name(s): \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

#### Appellant Physical Property Details

Physical Address: 3 Sunstead Lane  
City: Charles Town State: WV Zip Code: 25414  
Tax District: MIDDLEWAY (07) Map No: AP: 16 Parcel No: 2.12  
Size: 10.05 ACRES Deed Book: 1014 Page No: 402

#### Zoning District (please check one) (U. #1BA PIEDMONT OAKS)

	Residential	Industrial	Residential-	
	Growth	Commercial	Light Industrial-	
Rural			Commercial	Village
(R-A)	(R-G)	(I-C)	(R-L-C)	(V)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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JEFFERSON COUNTY  
PLANNING AND ZONING DEPARTMENT

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**

Not allowing dual use equipment on my land.

**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.

- ① The ordinance clearly states no rule shall prohibit Ag use. This would prohibit me from using the equipment on my land.
- ② The equipment is moved on & off my property less than an est. 20 times per year total for all equipment.
- ③ Permit me to use my land as I am.

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

 11/14/14

\_\_\_\_\_  
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)).

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

November 20th, 2014  
Charles and Mary Edgar  
145 Sunstead Lane  
Charles Town, WV 25414

To the Members of the Board of Zoning Appeal,

As expressed in our "Complaint Form", which was filed in Mr. Mason Carter's office, we, along with our neighbors, wish to express our consternation about the transport of trucks ( some very large) for business purposes, in and out of our neighborhood at Piedmont Downs. We make note of the fact that hired drivers must come in and out of the neighborhood no less than four times.

Last year, in December, (2013) we expressed our concern to the lot owners, the Thompsons, as explained in our letter to Ms. Brockman, (see attached) about the commercial vehicle traffic coming in and out of our 12' wide lane called Pifer Lane. We were told that this traffic would continue.

We then sought assistance from the Ordinance Compliance Officer, Mr. Mason Carter, C.F.M.. We were told that we could file an official Complaint Form with his office. We did this with the other gentleman neighbor, Woody Pifer, who maintains Pifer Lane with my husband, Charles Edgar. The road in question, as an aside, was named after Mr. Pifer, a recognition we were happy to see, for all the very hard work he has done maintaining this road, along with Mr. Edgar.

Our pictures of the Thompson's stored equipment, taken from a neighbor's lot, tell the story about what these trucks have done to our family neighborhood. We have been here for over 35 years; and, all seemed like a peaceful and safe neighborhood. Pifer Lane is only 12 feet wide; and, was never built to support this kind of equipment; nor, the kind of traffic it generates. Furthermore, as can be concluded on our pictures, Charles and another neighbor, had to repair smashed culverts, when the trucks would turn off of Pifer Lane. (See photo) The steel guard posts had to be replaced constantly. The commercial trucks, when turning, would destroy their work. Safe to conclude that the " rural zoning " that has been established here, should be followed through, by everyone, as intended. Further, anyone can conclude what this heavy equipment does to an 12' wide gravel road; and, that residential means just that. There is a reason for zoning. Residential means just that.

The inconvenience and unsafe factors are also an issue. One day, when coming home from town, my husband and I were told by a driver of one of the trucks, to stay back from entering Pifer Lane, because BIG TRUCKS WERE COMING. And, they did, as we waited for them to pass us by. That brings me to express my concern for our grandchildren, who bike this road in the Spring and Summer. We have 16 of them. The road has a steep incline, with very few areas where they can "go aside" if they are confronted by such traffic. We are all intelligent enough to know what the consequences could be.

Our only request, which seems to be more than reasonable, is that the Thompsons find a solution to having their father or father-in-law, park his commercial vehicles somewhere else. We really do not wish to have a neighborhood where animosity is part of the make-up. However, for that to be avoided, everyone must follow guidelines, such as zoning requirements and ordinances, that are meant for the benefit of the majority.

We thank Mr. Carter and Ms. Chalmers for their assistance in trying to resolve this matter.

Respectfully,  
Charles and Mary Edgar

AP14-02

From: Charles Edgar [mailto:wvsunstead@aol.com]  
Sent: Thursday, August 28, 2014 12:05 PM  
To: zoning@jeffersoncountywv.org  
Subject: Complaint Form: Piedmont Down

August 28th, 2014  
Charles and Mary Edgar  
145 Sunstead Lane  
Charles Town, WV 25414

Attention of: Jenny Brockman

Dear Ms. Brockman,

I wanted to express my most important concern in the Piedmont Down case before the county; i.e. my part in the Complaint Form submitted 4/28/2014. Actually, I have been speaking with Christine Chalmers, a most pleasant and helpful person, there, in your office. Also, Mr. Mason Carter, has spent quite a bit of time, which I know he must not have a lot of, patiently informing us as to procedures and what we could do in this matter.

The road in question, which we are in the hopes of preserving in decent condition; notwithstanding, the need, periodically, to invest in "stone" deliveries to keep it up to par, warrants another concern. My husband, Charles, built the road 34 years ago, and has, since then, worked at maintaining it. Mr. Pifer, a neighbor, then moved in our area and helped out, also. Charles filed ordinances at the court house, whose first item was declaring it a private road. It is only 12' wide; which allows for only one car to use it at a given time. You can, I'm sure, imagine what large construction trucks, parked on Ben Thompson's lot and traveling on it, do to this kind of traffic allowance. It was never intended to be used by businesses or business vehicles. It was meant as a private road for residents.

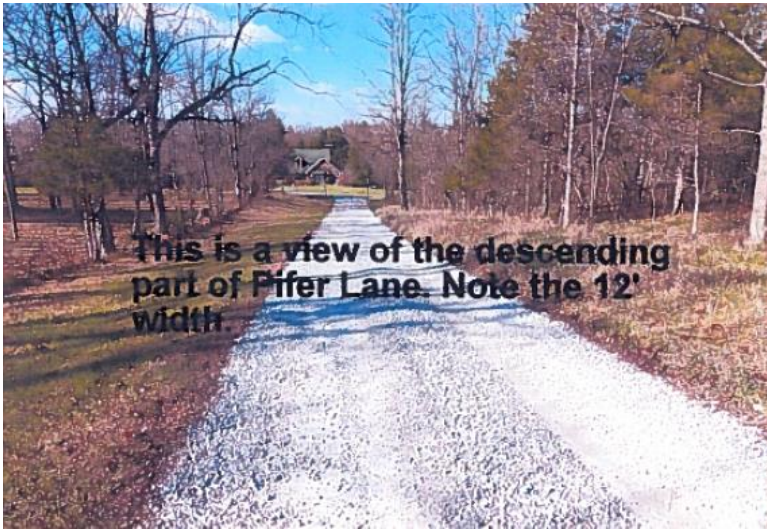
Far more importantly, Charles and I are the grandparents of 16 grandchildren. Many of them come here to enjoy our 10 acres, for recreational purposes; and, they bike that road. **We are deeply concerned about their safety.** The combination of a 12' wide road and heavy construction equipment, are not a good formula for safety, as well as the preservation of the road itself. That is in addition to considering the preservation of the road, to which neighbors contribute. But for us, as grandparents, the safety of the children is paramount. **Private does mean private.** We wish the perpetrators no ill will. We simply ask that Ben's relatives park their business vehicles somewhere else. That is another consideration: the persons using the commercial (construction) vehicles do not live here. That means that the drivers have no personal stake in preserving the road or the knowledge that children can be in the road. The drivers come in, park their vehicles, and drive the commercial vehicles out of here. Another red flag.

I wish to state that last December (2013) we made an appeal to Christine Thompson for the need to help us preserve our private road. In other words, we tried the peaceful way, first. It did not work; and, here we are pursuing an effort to see that the welfare of all the neighbors is preserved; and, more importantly that zoning laws be upheld as zoning laws should be upheld. Other neighbors feel the way we do; I "volunteered" to be the spokesperson. You can see that the Pifer family filed the complaint form with us.

Thank you to Christine Chalmers, Mason Carter and yourself for your time and attention. We would like to request that this letter be submitted to the Board of Zoning Appeals, as they will meet this September.

Sincerely,  
Charles and Mary Edgar

304-671-7773  
[WVsunstead@aol.com](mailto:WVsunstead@aol.com)



This is a view of the descending part of Pifer Lane. Note the 12' width.



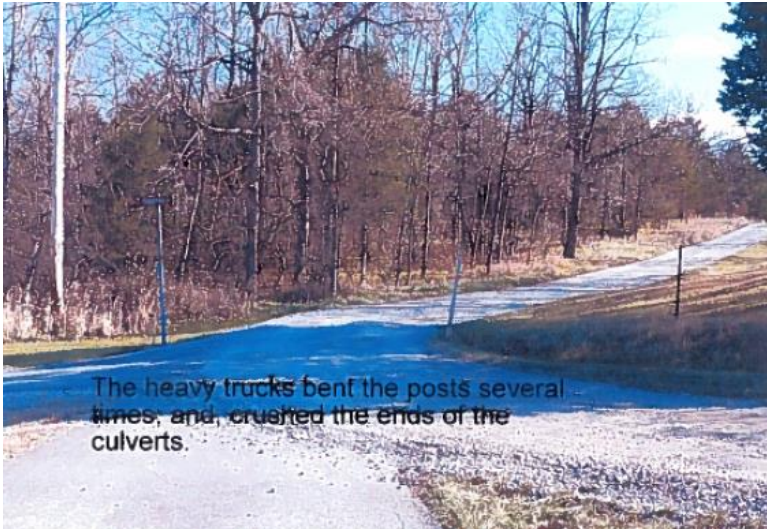
This is the ascending (entrance) part of Pifer Lane where much damage is done to the road by the heavy trucks.



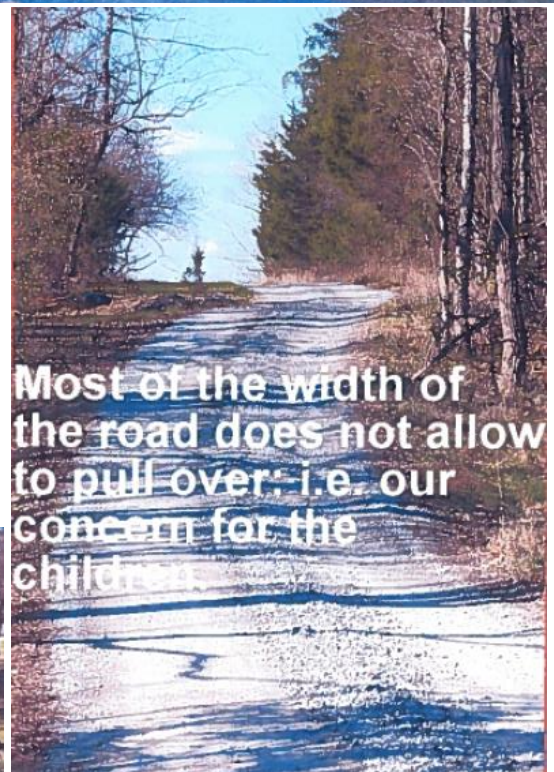
Note the bent posts at the culvert.



Note the narrow turning point.



The heavy trucks bent the posts several times, and, crushed the ends of the culverts.



Most of the width of the road does not allow to pull over: i.e. our concern for the children.



View of Pifer Lane



**Zoning**

API4-02

**From:** Kathleen Casey <kc472@caa.columbia.edu>  
**Sent:** Monday, December 01, 2014 11:37 AM  
**To:** zoning@jeffersoncountywv.org  
**Subject:** 3 Sunstead Lane, Charles Town

To: J. Tyler Quynn, Chairman, Jefferson County WV Board of Zoning Appeals  
Jeffrey C. Bannon, Vice Chair  
Christy Huddle, Matt Knott, Ted Schlitz, Members

116 E. Washington St. Suite 200  
Charles Town WV 25414

The undersigned live at 85 Sunstead Lane, Charles Town, in the Piedmont Downs development and this letter concerns a zoning violation in the development. We understand that the violation has already been called to your attention and an appeal of your decision has been made.

We want to emphasize that while we are anxious to continue the pleasant relations among Piedmont Downs residents, the violation cited, if permitted to continue, would gradually see a deterioration of the residential nature of the community. The harm to the intended nature of the community would come in the form of other violations; the new violators being able to cite the existing violation, which is evident from the photographs submitted by Charles & Mary Edgar.

The fact that a private road in the community is maintained by contributions from residents is an indication of the community's special residential nature. It does happen that there have been damages to the road because of heavy equipment using it. As we see it, the only sensible action to take is to remove the commercial equipment from where it is now parked at 3 Sunstead Lane.

We and other residents would appreciate your sustaining your previous action.

Jim & Kathleen Flood

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JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

**From:** Lori Dillman <LDillman@LEESBURGVA.GOV>  
**Sent:** Wednesday, December 03, 2014 6:00 PM  
**To:** zoning@jeffersoncountywv.org  
**Subject:** Revised- Attention Jennilee- Hearing Dec 11 @ 2pm

To: J. Tyler Quynn, Chairman, Jefferson County WV Board of Zoning Appeals

Jeffrey C. Bannon, Vice Chair

Christy Huddle, Matt Knott, Ted Schlitz, Members

116 E. Washington St. Suite 200

Charles Town WV 25414

We reside and are the property owners at 57 Sunstead Lane, Charles Town, WV 25414( Piedmont Downs). Our concern is that the property owners at 3 Sunstead Lane, are in violation of the zoning ordinance and the conveyance of the development, by allowing commercial vehicles and business to operate and use the privately owned, resident maintained road of Pifer Lane and Sunstead Lane on a daily basis. By allowing those commercial vehicles on Pifer Lane and Sunstead Lane, it is creating deterioration of the single lane gravel road, causing extreme pot holes and displacement of gravel which is not made to accommodate the size of the equipment and the heavy amount of traffic flow. This is causing unforeseen expense for materials to all the property owners involved, many residential labors hours and wear and tear on our own tractors to maintain the roadway.

By allowing their workers to use 3 Sunstead Lane as a meeting place to begin their workday, it brings safety concerns with people congregating, while no one in home.

Thank you,

Robert Dillman-703-216-8925

Lori Dillman- 703-216-9249

*Lori Dillman  
Senior Customer Service Representative  
Town of Leesburg Utilities Department  
Direct-703.771.2716  
ldillman@leesburgva.gov*

November 25, 2014

To the Members of the Department of Zoning and Planning:

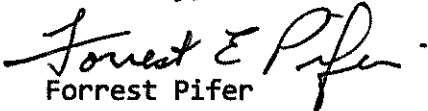
For the past 31 years I have owned and resided at the property located at 70 Pifer Lane. During this time there have been families living within the Piedmont Down community who have moved in and out and there have been no issues to note until now.

Beginning approximately a year ago, the Thompson property began housing numerous large lawn maintenance/paving equipment pieces, being transported by even larger flat-bed trucks and trailers, ten wheel dump trucks in and out of Pifer Lane no less than two times daily with additional personnel driving in and out as well. Pifer Lane is a gravel road and the only means of entering and exiting this section of the community. In past years six property owners who use Pifer Lane, according to a road maintenance agreement in book 738 have provided \$50.00 one time per year towards maintenance of Pifer Lane which until now has been sufficient, and I have arranged for that maintenance to be provided. Since this equipment started using Pifer Lane it has deteriorated rapidly, primarily due to the size of equipment and the excessive speed by which it is being operated. This road was built for residents and guests' private vehicles only.

Speaking on my own behalf, I built my home to enjoy my retirement in a quiet private residential only community and the Thompson's have all but ruined that. When any new owners come to this community, they are informed of the community's covenants stating specific rules, which was established over 31 years ago to protect ALL property owners. Within the covenants it states "The covenants shall run with the land and shall inure the benefit of each and all purchasers, and their heirs." The Thompson's have elected to disregard all of the rules protecting this community.

I trust the Members of the Department of Zoning and Planning will adhere to the law and make the right decision to have this problem resolved.

Sincerely,

  
Forrest Pifer

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DEC 01 2014

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING





# 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 Appeals Meeting December 11, 2014

- 1) Status of Zoning Administrator Search
- 2) Recent/Upcoming County Commission Actions relevant to Planning and Zoning:
  - a) Envision Jefferson 2035 Comprehensive Plan – status update of 2014 Comp Plan effort and discussion of next steps:
    - CC Workshop regarding for the Envision Jefferson 2035 Comprehensive Plan Land Use Map – Wednesday, December 3, 2014, 7:00 pm
    - CC Workshop regarding comments received on PC Redlined Version of the Draft 2014 Comprehensive Plan, entitled Envision Jefferson 2035 – Thursday, December 11, 2014 9:30 am
    - Action required on draft Envision Jefferson 2035 Comprehensive Plan by January 14, 2015
  - b) County Commission Public Hearing on proposed Zoning Ordinance text amendment regarding Mass Events (#ZTA 14-02) was held on Wednesday, October 1, 2014 (*County Commission workshop TBD in January 2015*)
- 3) Upcoming BZA meetings
  - a) Next Regular Meetings:
    - January 22, 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: December 05, 2014  
SUBJECT: December Monthly Report of Department Activities

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**ISSUED ZONING CERTIFICATES**

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#ZC14-45 ALVIN BROWN- OWNER  
HARDY CELLULAR TELEPHONE CO. / CONTACT: TOM HODGES - APPLICANT

*Issuance Date:* November 25, 2014  
*Proposed Use:* Property contains existing self-support tower. Hardy Cellular Telephone Company to add three (3) additional antennas for, US Cellular, at 296 feet; six (6) coax cables and three (3) RRU's small radio's in existing shelter. No ground disturbance or electrical work is required.  
*Physical Location:* 18 Hite Road; Kearneysville, West Virginia 25430  
*Zone:* Rural

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#ZC14-47 SUNNYSIDE LIMITED PARTNERSHIP / JAMES HUYETT - OWNER  
HARDY CELLULAR TELEPHONE CO. / CONTACT: TOM HODGES - APPLICANT

*Issuance Date:* November 25, 2014  
*Proposed Use:* Property contains existing self-support tower. Hardy Cellular Telephone Company to add three (3) additional antennas for US Cellular at 151.5 feet; six (6) coax cables and three (3) RRU's small radio's in existing shelter. No ground disturbance or electrical work is required  
*Physical Location:* 837 Wheatland Road; Charles Town, West Virginia 25414  
*Zone:* Rural

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## ISSUED ZONING CERTIFICATES

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ZC14-13      OBF PROPERTIES / CONTACT: CHRIS HANSEN – OWNERS  
ABS ENTERPRISES / CONTACT: SAAD SHADKAMI - APPLICANT

*Issuance Date:*            December 05, 2014  
*Proposed Use:*            Commercial warehouse for pre-packaged and refrigerated food  
Items, and a 5,000 square foot fresh bakery  
*Physical Location:*      Box Factory Road; Summit Point, West Virginia 25446  
*Zone:*                        Rural

---

#ZC14-15      OBF PROPERTIES / CONTACT: CHRIS HANSEN – OWNERS  
ABS ENTERPRISES / CONTACT: SAAD SHADKAMI - APPLICANT

*Issuance Date:*            December 05, 2014  
*Proposed Use:*            Commercial warehousing, agri-business, storage, document  
shredding and general business, heavy equipment leasing and  
repair, auto repair and recycling.  
*Physical Location:*      Box Factory Road; Summit Point, West Virginia 25446  
*Zone:*                        Rural

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## PENDING ZONING CERTIFICATES

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#ZC14-34      GINA BILLER – OWNER / APPLICANT

*Issuance Date:*            TBD  
*Proposed Use:*            Cottage Industry. Repair of stained glass items to also include sale  
of onsite stained glass creations and related class instruction. Said  
occupation will be conducted in an existing 24' x 32' studio  
located on premises.  
*Physical Location:*      4922 Charles Town Road; Kearneysville, West Virginia 25430  
*Zone:*                        Rural

---

#ZC14-48      AMERICAN TOWERS, LLC / OWNER  
VIGILANT GLOBAL c/o CIS COMMUNICATIONS / APPLICANT  
CONTACT: WILLIAM JENKINS

*Issuance Date:*            TBD  
*Proposed Use:*            Property contains existing Telecommunications self-support tower.  
Vigilan Global e/o CIS Communications, LLC to add three (3)  
proposed dishes, at 340 feet, to an existing tower. Contrator to  
utilize existing Vigilant cabinet.  
*Physical Location:*      17435 Raven Rock Road; Charles Town, West Virginia 25414  
*Zone:*                        Rural

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**WITHDRAWN ZONING CERTIFICATES**

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#ZC14-35      GINA BILLER – OWNER / APPLICANT

*Issuance Date:*              Withdrawn By Applicant – 11/20/14  
*Proposed Use:*              Farmers Market consisting of sale of fresh honey and eggs;  
hand-crafted wreaths from homegrown flowers and plants/produce  
from onsite garden. Size of existing Farmers Market structure:  
10' x 20'. Daily hours of operation: Thursday – Sunday,  
10:00 a.m. to 7:00 p.m. Seasonal opening dates:  
April 1<sup>st</sup> – December 15<sup>th</sup>.  
*Physical Location:*      4922 Charles Town Road; Kearneysville, West Virginia 25430  
*Zone:*                              Rural

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NOTICE

*Jennifer  
Brockman  
courtesy copy*

To: Jefferson County Board of Zoning Appeals  
c/o Tyler Quynn, Chair  
4482 Bakerton Rd.  
Harpers Ferry, WV 25425

Tim Walther and Junipa Contento, Developers  
2801 Chevy Chase Circle  
Jefferson, MD 21755

*CA# 14-C-590*

Nancy & Douglas Stolipher  
1599 North Fork Road  
Charles Town, WV 25414

Mark D. Stolipher  
P.O. Box 190  
Rippon, WV 25441  
or 261 Berry Hill Farm Lane  
Summit Point, WV 25446

1. Notice is hereby given that a petition for a writ of certiorari and other relief has been filed in the Circuit Court of Jefferson County asking for a review of the decision or order in Board of Zoning Appeals in docket no. ZV14-15.
2. The affected premises is 347.15 acres total, consisting of Tax Map 19, Parcel Nos. 7, 16, 8.4 and more particularly described in DB944, P45; DB913, P746 and DB1129, P678 in the Jefferson County Clerk's office.
3. The date of the decision or order appealed from is: October 31, 2014.

Robert D. Aitcheson, Petitioner  
P.O. Box 188  
Rippon, WV 25441  
304-582-1997

RECEIVED

NOV 17 2014

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

Robert D. Aitcheson, pro se,  
Petitioner

v.

Civil Action No. \_\_\_\_\_

Jefferson County Board of Zoning Appeals

Petition for Writ of Certiorari

1. Robert D. Aitcheson brings this Petition for himself as an individual. Petitioner is a resident and citizen of Jefferson County, West Virginia, and, through the Aitcheson Family Trust, is an aggrieved property owner of the real property located at 3780 Withers Larue Road, Rippon, West Virginia.
2. Said real estate lies in close proximity to the property upon which a multi-day drug-infested campout and rock concert, ironically called the "All Good" festival and campout, is to be held in the summer of 2015. Petitioner will suffer special or peculiar harm, damages and inconvenience not common to all if the requested relief is not granted.
3. The Jefferson County Board of Zoning Appeals is the quasi-judicial public body which, by its decision dated October 31, 2014 in docket no. ZV14-15, has acted illegally as herein-after set forth.
4. Pursuant to W.Va. Code Sec. 8A-9-2, Notice is being provided to adverse parties, to wit: Respondent c/o Tyler Quynn, Chair; Tim Walther and Junipa Contento, Developers; Doug Stolipher, Nancy Stolipher and Mark Stolipher, property owners.

I. Facts

5. On or about July 31, 2014, Walther, Contento and the Stoliphers filed applications with the Respondent for a variance (ZV14-14) and a seasonal use permit (ZV14-15) to conduct, in the summer of 2015, a five-day rock concert and camp-out on 347.15 acres of farmland in a Rural Zoning District in Jefferson County. The address of the property was given as 261 Berry Hill Farm Lane, Summit Point, WV 25446.
6. In those applications, there was **no request** by Applicants to define the seasonal use limitation of "...not more than a single three day consecutive period..." and **no confusion** as to the **meaning** of those terms.

7. On September 25, 2014, a public hearing on said applications was held by Respondent as required. The hearing was concluded that day. Deliberations were later continued to Thursday October 2, 2014.
8. **At no time** during the September 25, 2014 hearing did Applicant ask that the Respondent define the core definitional terms of seasonal use, to wit: "...not more than a single three day consecutive period..." nor did Applicant express any lack of understanding of those terms which were at the heart of their request.
9. On October 2, 2014, Respondent continued its deliberations and announced its decisions in ZV14-14 and ZV14-15, granting the seasonal use with conditions and denying the variance to extend the rock concert/camp-out from three to five days. The denial of the variance was proper and correct and is not at issue here.
10. On October 2, 2014, there was **no mention** by any members of Respondent in any open portion of the hearing of any need or effort to discuss the core definitional terms of seasonal use, to wit: "...not more than a single three day consecutive period...".
11. After the October 2 hearing adjourned, Walther, et al. spent several minutes outside of the library on the sidewalk discussing the matter with some of the BZA members.
12. In a thinly veiled effort to expand the BZA ruling limiting the event to three days, All Good's engineer, Mark Dyck, on October 3, 2014, verbally requested so-called "clarification" as to whether language in the JCZO "...a single three day consecutive period..." meant a 72 hour period or if a day started at midnight.
13. October 3, 2014 was the **first time ever** All Good questioned the meaning of the core definitional term "day" even though it was essential to their application. After all, they had asked for an expansion of the three day limit to five days.
14. As the Zoning Administrator is tasked with doing on a routine basis by the JCZO, she properly made her determination and responded as follows on October 6, 2014:

Mark

For the purposes of defining "day" to be used to calculate a three day event, **I have determined** that three days consists of "3 days of the week" (i.e.: Friday, Saturday, Sunday) or "3 dates on a calendar" (i.e.: the 10th through the 12th), using the definition of a day as "a period of twenty-four hours as a unit of time, reckoned from one midnight to the next, corresponding to a rotation of the earth on its axis" or "a period of 24 hours beginning at midnight: one of the seven time periods that make up a week". (Emphasis added)

Jennifer M. Brockman, AICP

See Exhibit 1

15. All Good disagreed with that determination. At that point, its remedy, if any, was to appeal to the BZA and have a public hearing after the required notice to the public. However, All Good **failed to appeal** the Zoning Administrator's determination, therefore letting it stand as the "law of the case".
16. Rather, All Good, by its attorney, Christopher Stroeck, sent a letter directly to the BZA dated October 15, 2014 (Exhibit 2) in yet another, not thinly veiled this time, but blatantly overt attempt to expand the three day period by not appealing but requesting supposed "clarification" of (a) whether the three days was a 72 hour period or three distinct days of the week and (b) when their time begins to run, when gates open, music begins in the main concert area and vendor area opens to the public.
17. By memo to the BZA, dated October 23, 2014, Ms. Brockman informed the BZA of her determination and reiterated that the appropriate means of challenging the Zoning Administrator's determination "is for the applicant to appeal this decision." (Exhibit 3) An appeal **has never** been pursued by All Good and could not now be done because the 30 day appeal period has expired.
18. Petitioner and another citizen filed a Motion to Dismiss "All Good"'s Request for Clarification (Exhibit 4) citing authorities demonstrating conclusively that Respondent had no authority to do what "All Good" wanted it to do. Exhibit 4 is incorporated herein as if fully set forth.
19. Although the matter was placed on the Respondent's agenda for October 23, 2014 (Exhibit 5), **no public hearing, ruling or decision** was made by Respondent on "All Good"'s request, the BZA deciding it would not take up the matter (in accord with Petitioner's Motion to Dismiss).
20. On October 31, 2014, Respondent issued its written Orders reflecting its decisions on October 2, 2014, and, in the ZV14-15, paragraph 5 on page 5 (which came completely out of the blue) a whole lot more (Exhibit 6). Respondent, without any discussion or ruling in open session and without a public hearing, overruled the determination of the aforesaid core definitional terms by the Zoning Administrator and gave the Applicant exactly what it wanted, a license to expand the event beyond the three day limit. Definition of the core term "day" was **not** part of their decision on October 2, 2014.

## II. Assignment of Error

21. The inclusion of paragraph 5 in the Order in ZV14-15 was a blatantly illegal and an intentional violation of the law by Respondent because:

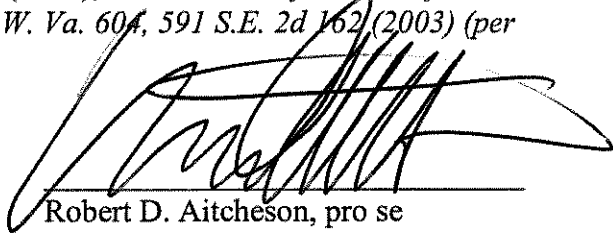
- A. The due process rights of the citizens of Jefferson County to notice and public hearing have been violated by the inclusion of paragraph 5 in the ZV14-15 decision. If “All Good” disagreed with the Zoning Administrator’s determination, its remedy, if any, was to appeal that decision to the BZA. See Jefferson County Zoning Ordinance (JCZO) Sections 3.2B (Zoning Administrator’s decisions subject to BZA appeal); 3.4A (BZA appeal procedure, notice, public hearing); *Jefferson Utilities, Inc. v. Jefferson County BZA*, 218 W. Va. 436, 624 S.E. 2d 873 (2005).
- B. After its decision was made and announced at a public hearing, Respondent had no lawful authority to, in effect, reopen the hearing to rule on a matter that was never in question in the underlying case. *Mustard v. Bluefield*, 130 W.Va. 763 (1947); *Wolfe v. Forbes*, 159 W. Va. 34, 217 S.E. 2d 899 (1975). See also *Harding v. BZA of Morgantown*, 159 W.Va, 73 (1975); *Appalachian Regional Health Care v. WVHRC*, 189 W. Va. 303, 376 SE 2d 317 (1988).
- C. The Respondent had no lawful authority to commence the three day period when “any onsite sales or music commences” because performing arts venues and campgrounds are not permitted uses in the Rural Zoning District and any of the prohibited activities such as erecting stages, admission of vendors, installation of sanitation facilities or sound system or admission of campers must commence within the three day period. At an absolute minimum, All Good’s time must commence at 12:01 A.M. on the first day of the three day period in accordance with the Zoning Administrator’s determination. See JCZO Section 5.7A.
- D. The Respondent failed to set forth a sufficient factual basis for its determination to grant a seasonal use permit to “All Good” in ZV14-15. *Burkey v. BZA of Moundsville*, 213 W. Va. 581 (2003); Syl. Pt. 7, *American Tower Corp. V. Common Council of Beckley*, 210 W. Va. 345, 557 SE 2d 752 (2001); Syl. Pt. 4, *Harding v. BZA*, 159 W. Va. 73, 219 SE 2d 324 (1975).
- E. Respondent acted unlawfully and improperly by making a ruling to benefit “All Good” after ex parte discussions with Walther and Contento following the October 2, 2014 hearing.

### III. Relief Sought

- 22. The decision of Respondent in ZV14-15 is plainly wrong in its factual findings, applies erroneous principles of law and Respondent has acted beyond its jurisdiction. Syl. Pt. 5, *Wolfe v. Forbes*, 159 W. Va. 34, 217 S.E. 2d 899 (1975) and its progeny.

WHEREFORE, Petitioner demands that this Court ORDER and DIRECT:

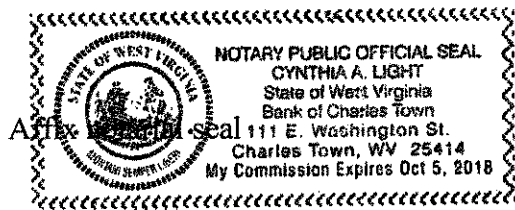

- A. That a writ of certiorari do issue.
- B. That Respondent's decision, as reflected in its October 31, 2014 Order in ZV14-15 be vacated, set aside and held for naught.
- C. In the alternative, that this Court ORDER paragraph 5 on page 5 stricken from the BZA Order dated October 31, 2014 in docket no. ZV14-15.
- D. In that the acts of Respondent in unlawfully ruling on "All Good's" post-decision request in violation of the JCZO and Petitioner's due process rights was in deliberate and knowing disregard of the mandatory provisions of the JCZO and the decisions of the Supreme Court of Appeals, this Court must award Petitioner his attorneys fees, if any, and his costs incurred. *Nelson v. Public Employees Ins. Bd.*, W. Va., 300 SE 2d 86 (1982); Syl. Pt. 3, *State ex rel. West Virginia Highlands Conservancy, Inc., v. West Virginia DEP*, 193 W. Va. 650, 458 SE 2d 88 (1995); *Trozzi v. Bd. of Review of W.Va., Bureau of Employment Programs* 214 W. Va. 604, 591 S.E. 2d 162 (2003) (*per curiam*).



Robert D. Aitcheson, pro se  
 P.O. Box 188  
 Rippon, WV 25441  
 304-582-1997

State of West Virginia,  
 County of Jefferson, to wit:

Taken, subscribed, verified and sworn to by Robert D. Aitcheson this 15<sup>th</sup> day of November, 2014, before me in my said County and State.

Notary Public

My commission expires Oct 5, 2018.

## Jennifer Brockman

---

**From:** Jennifer Brockman  
**Sent:** Monday, October 06, 2014 2:21 PM  
**To:** 'Mark Dyck (mdyck@gordon.us.com)'  
**Cc:** Jennilee Hartman  
**Subject:** definition of 3 days

Mark

For the purpose of defining "day" to be used to calculate a three day event, I have determined that three days consists of "3 days of the week" (i.e.: Friday, Saturday, Sunday) or "3 dates on a calendar" (i.e.: the 10th through the 12<sup>th</sup>), using the definition of a day as "a period of twenty-four hours as a unit of time, reckoned from one midnight to the next, corresponding to a rotation of the earth on its axis" or "a period of 24 hours beginning at midnight : one of the seven time periods that make up a week".

Jennie

Jennifer M. Brockman, AICP  
Director, Planning and Zoning  
116 E. Washington St. PO Box 338  
Charles Town, WV 25414  
304-728-3228

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ARNOLD & BAILEY  
ATTORNEYS AT LAW

S. Andrew Arnold, Esq. PARTNER  
Gregory A. Bailey, Esq. PARTNER  
Christopher P. Stroech, Esq. ATTORNEY

208 N. George Street  
Charles Town, WV 25414  
☎ 304 725 2002 ☎ 304 725 0282

8530 Shepherdstown Pike  
The Hoxton Financial Building  
Shepherdstown, WV 25443

VIA EMAIL AND HAND DELIVERY

October 15, 2014

Jefferson County Board of Zoning Appeals  
116 E. Washington Street  
Charles Town, WV 25414

Re: **REQUEST FOR CLARIFICATION**  
FILE: ZV14-14  
All Good Music Festival

To the Board of Zoning Appeals:

This letter is written as a request for clarification on the BZA approval of the seasonal use permit for the All Good Music Festival.

The applicant hereby seeks the following clarifications:

1. Is the event approved for a 72-hour time period or for three (3) distinct days of the week?
2. Does the event begin when the site gates open or when the music begins / main concert and vendor area opens to the public?

As neither the formal minutes nor the findings of fact and conclusions of law have yet been prepared and approved, this request is simply made to clarify the Board's verbal approval at the September meeting.

As the Ordinance and relevant WV statutes do not define "day," the legal definition is as follows: **"day. 1. Any 24-hour period; the time it takes the earth to revolve once on its axis..." Black's Law Dictionary, 7<sup>th</sup> Ed.** The practical import of this definition is staying one night in overnight lodging, i.e. arriving at a hotel at 3:00pm and departing at Noon the following day. This is generally considered a one-day lodging.

When the request was made to have this need for clarification be placed on the October BZA meeting agenda, Ms. Brockman responded that a 'day' "consists of '3 days of the week' (i.e.: Friday, Saturday, Sunday) or '3 dates on a calendar' (i.e.: the 10<sup>th</sup> through the 12<sup>th</sup>), using the definition of a day as 'a period of twenty-four hours as a unit of time, reckoned from one midnight to the next, corresponding to a rotation of the earth on its axis' or 'a period of 24 hours beginning at midnight: one of the seven time periods that make up a week, '" without referencing specific authority.

P-2

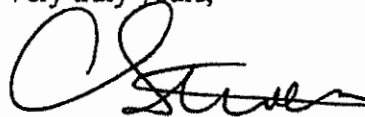
She has further indicated that providing this definition was an official action, and any objection thereto must be appealed through proper BZA appellate procedure. I respectfully disagree as: 1) The Board has not yet finalized its minutes and findings of fact and conclusions of law from the September meeting and therefore has not made any determination that can be interpreted by Ms. Brockman, and 2) Ms. Brockman was not acting within her powers enumerated in Section 3.2.A. of the Ordinance, and therefore her action is not appealable.

The applicant respectfully requests that the BZA clarify its verbal approval of the event and include the requested clarifications in its findings of fact and conclusions of law. This is similar to a recent request made by Peter Corum to clarify the BZA's prior issuance of a conditional use permit, as referenced in the agenda for the August 28, 2014 meeting. The Board indeed took action and approved the request for clarification made by Mr. Corum. Accordingly, authority does exist for the Board to address this request for clarification.

The alternative option of requiring the applicant to proceed again through the appeal process, with further consideration and public hearing, will cause an undue hardship on the applicant, as successful planning for this event should begin immediately.

I appreciate your consideration.

Very truly yours,



Christopher P. Stroeck, Esq.



# 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

### MEMORANDUM

**TO: Board of Zoning Appeals**  
**FROM: Jennifer M. Brockman, AICP, Director, Planning and Zoning/Acting Zoning Administrator**  
**DATE: October 23, 2014**  
**RE: Request for Clarification re: ZV14-15 All Good Music Festival**

\*\*\*\*\*

The Applicants for the All Good Music Festival have requested clarification of the items found in their letter dated 10-15-14 regarding how the time period for their proposed event is defined and measured. The question of whether this is appropriate to be heard and discussed by the BZA is a question for Legal Counsel and should be discussed at the BZA Meeting.

Note: The applicant's letter refers to PC File #ZV14-14, which pertains to the denied variance request. The approved Seasonal Use Application is #ZV14-15.

#### Background

On Friday, October 3, 2014, the Acting Zoning Administrator received a question from the Applicant's Consulting Engineering Firm requesting clarification of the provision in the Zoning Ordinance related to a three day event. They questioned whether it meant a 72 hour period or if a day started at midnight.

Among other duties, the Zoning Administrator is tasked with "interpreting the provisions of the Ordinance as required by law". As the term "Seasonal Use" is defined by the Jefferson County Zoning and Land Development Ordinance (June 1, 2014) as "A use that is carried on for not more than a single three day consecutive period in each of the four solar seasons", it was appropriate for the Zoning Administrator to be asked to make this interpretation.

As the Zoning Ordinance itself did not contain a definition of "day", the interpretation could logically be determined by what a reasonable person would think. To that end, the definition of day was researched and the following definitions were obtained. The Oxford Dictionary defines "day" as "a period of twenty-four hours as a unit of time, reckoned from one midnight to the next, corresponding to a rotation of the earth on its axis". The Merriam-Webster Dictionary defines "day" as "a period of 24 hours beginning at midnight: one of the seven time periods that make up a week".

Based on these findings, on Monday, October 6, 2014, the following e-mail was sent to the Applicant's Consulting Engineering Firm:

Mark

For the purpose of defining "day" to be used to calculate a three day event, I have determined that three days consists of "3 days of the week" (i.e.: Friday,

P-3

Saturday, Sunday) or "3 dates on a calendar" (i.e.: the 10th through the 12th), using the definition of a day as "a period of twenty-four hours as a unit of time, reckoned from one midnight to the next, corresponding to a rotation of the earth on its axis" or "a period of 24 hours beginning at midnight : one of the seven time periods that make up a week".

Jennifer M. Brockman, AICP

### **Conclusion**

The interpretation of a provision of the Zoning Ordinance found in the above referenced e-mail was made by the Acting Zoning Administrator; therefore, the appropriate method to have the interpretation reviewed by the BZA is for the applicant to appeal this decision.

Before the Board of Zoning Appeals (BZA) of Jefferson County, West Virginia

In re: "All Good" Festival and Camp-Out

Nos. ZV14-14  
ZV14-15

MOTION TO DISMISS  
ALL GOOD'S REQUEST FOR "CLARIFICATION"

Come Now Robert D. Aitcheson, County resident and Co-Trustee of the Aitcheson Family Trust, an aggrieved property owner, and Douglas S. Rockwell, County resident, and move to dismiss the above-styled, so-called request for "clarification" of All Good for the following reasons:

1. The BZA has no power or authority under West Virginia law to reopen, rehear or reconsider a matter where it has already rendered a final decision. *Mustard v. Bluefield*, 130 W.Va. 763 (1947). *Wolfe v. Forbes*, 159 W.Va. 34, 217 S.E.2d 899 (1975) confirmed the validity of this rule which is the general rule for all administrative agencies in West Virginia. See also *Harding v. BZA of Morgantown*, 159 W. Va. 73 (1975); *Appalachian Regional Health Care v. WVHRC*, 189 W. Va. 303, 376 SE 2d 317 (1988).
2. All Good now claims it does not know what the word "day" means in the context of the Jefferson County Zoning Ordinance. In fact, the word "day" is a **core definitional term** and therefore **essential** to the permit sought. **One must therefore ask "What did All Good think a day was when it asked for five of them"?** If they thought the word needed to be interpreted they should have asked for the BZA's ruling at the time of the hearing when Jefferson County residents opposing the application could have responded. However, they did not, instead choosing to continue their "money is no object" war of economic attrition against the residents of Jefferson County at a later time. This is particularly outrageous in light of the fact that All Good had ample notice of opponents' position that the number of days was definitional of the use from the Motion to Dismiss we previously filed.
3. In fact, the term "day" does not need "clarification or interpretation. The term "day" is not defined in the zoning ordinance (see JCZO, sec. 2.1). West Virginia law is absolutely clear that undefined words in a statutory provision are to be given their "common, ordinary and accepted meaning". See, for example, *Osbourne v. U.S.*, 211 W.Va. 667, 567 S.E. 2d 667 (2002); Syl. pt. 1, *IPI, Inc. v. Burton*, 217 W. Va. 181, 617 S.E. 2d 531 (2005); Syl. pt. 6, *State ex. rel. Cohen v. Manchin*, 175 W. Va. 525, 336 S.E. 2d 171 (1984); Syl. pt. 6, *Howell v. Goode*, 674 S.E. 2d 248 (W. Va. 2009); Syl. pt. 4, *W.Va. Consol. Pub. Retirement Bd. v. Weaver*, 671 S.E. 2d W. Va. 673 (W. Va. 2008).

4. "Day" is therefore Monday, Tuesday, Wednesday, Thursday, Friday, Saturday or Sunday and "three consecutive days" in the seasonal use provision means exactly what it says in its "common, ordinary and accepted meaning", i.e. Friday, Saturday, Sunday, or some other consecutive three day period.

5. Moreover, the BZA has already ruled that the number of days is definitional of the "seasonal use". To assign some meaning other than the "common, ordinary and accepted meaning" would require the BZA to legislate, which it cannot do. It is not a law-making body. *Wolfe v. Forbes*, 159 W. Va. at 45, 217 S.E. 2d at 906 (1975); *Ranson v. City of Charles Town*, 201 W. Va. 241, 496 S.E. 2d 191 (1997) (per curiam)

6. The Zoning Administrator has correctly determined the meaning of "day" based on its "common, ordinary and accepted meaning". If All Good disagrees, its remedy is to appeal that ruling to the BZA with notice to all neighbors and interested parties and an opportunity for them to be heard as required by the due process clause of the West Virginia and United States Constitutions. The remedy is not to sneak around behind the neighbors' backs and try to get the BZA to expand the ruling.

7. It must be noted that All Good is not just asking for "clarification" of the word "day" as used in the Seasonal Use permit provision. It is also asking the BZA to determine when that day begins for them. This is how they are trying to stretch out the allowed time. They want the BZA to rule that the festival begins when the music starts. They obviously do not want the time to start when activities of a campground or performing arts venue (neither of which are permitted principal uses in the Rural District) begin, such as setting up stages and allowing vendors in even before the gates open.

8. The purpose of the Seasonal Use permit's limitation of three consecutive days is to decrease the adverse impact on the neighborhood. Allowing All Good not to count the time that the biggest disruptive impact is underway (stage construction, admission of vendors and campers) is to totally disregard the intent of the ordinance.

9. All Good sought and received a variance from the permitted uses in the Rural District for three days, and three days only. When activities on the land are any of those not permitted in the Rural District, All Good's three day time period must begin. Likewise, all such activities must have terminated by the end of that three day period. Those activities include such things as stage construction, setup of vendors and admission of attendees.

WHEREFORE, for the foregoing reasons and those others that shall be shown at the hearing, All Good's request for "clarification" should be dismissed without further hearing or consideration.

---

Douglas S. Rockwell

---

Robert D. Aitcheson

cc: Stephen Groh, Esq.  
Linda M. Gutsell, Atty. at Law  
Brandon Stidham, Director of Planning  
Clarke Co., VA  
Thomas Loy  
Joyce S. Rawn  
James LaRue

NOTICE is hereby given that this Motion shall be brought on for hearing at the time All Good's so-called request for "clarification" is brought before the BZA.



Jefferson County  
Board of Zoning Appeals  
Thursday, October 23, 2014, 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  
Maintenance Department Conference Room located at 128 Industrial Boulevard, Kearneysville, WV.  
Unless otherwise noted, all requests are pursuant to the Zoning & Land Development Ordinance.

1. Approval of the minutes from the September 25, 2014 and October 2, 2014 meetings.
2. Swearing in of members of the public intending to provide testimony.
3. *Request postponed from September 25, 2014.* Appeal by Appellant William Neufeld of the Acting Zoning Administrator's decision that the Appellant's 15' access adjoining the Stonebrook Subdivision is not a road, which would require a front yard setback.
4. *Applicant has withdrawn the request.* Request postponed from September 25, 2014. Request by Harold Barlow, owner, from Section 8.2 to reduce the 75' distance requirement to 20' for Barn #1 and 33' for Barn #2 to accommodate a proposed minor subdivision. Location: 779 Persimmon Lane, Shepherdstown, WV. District: Shepherdstown (09); Map: 15; Parcels: 10; Size: 5 ac; Zoned: Rural; File: ZV14-17.
5. Request for clarification by Christopher P. Stroech, Esq., Attorney with Arnold & Bailey, regarding the BZA approval of the seasonal use permit for the All Good Music Festival (ZV14-15). The applicant is seeking clarification on the following:
  - a) Is the event approved for a 72-hour time period or for three (3) distinct days of the week?
  - b) Does the event begin when the site gates open or when the music begins/main concert and vendor area opens to the public?
6. Discussion and possible action on the Draft Rules of Procedure, revised June 26, 2014.
7. Director's Report.
  - a) Monthly Activity Report
8. Legal Update.
9. Signing of written decisions from prior Board of Zoning Appeals meetings.
  - a) Request postponed from July 24, 2014. Request for a Special Exception by Jacob and Tia Collis, owners, under Section 10.5B.3 for a Rural Reception/Event Facility to host farm weddings between March & October for Deerfield Farm Weddings. The applicant is seeking permission to operate the venue outdoors with rental tents during the event only; field parking would be provided for up to 75 cars, with an optional 10 handicap spaces in existing gravel lot; each event will cease by 11:00 p.m. Location: 6732 Scrabble Rd, Shepherdstown, WV. Shepherdstown (09); Map 3; Parcel: 8; Size: 10 ac; Zone: Rural; File: SE14-01.

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- b) Correspondence from Peter S. Corum, owner/applicant, on behalf of Morgan's Grove Market (#S12-06) requesting the Board to clarify the available uses for the existing residential rental property located at 3988 Kearneysville Pk., Shepherdstown, WV 25443, without changing the Conditional Use Permit (#CP12-01). The applicant is requesting to temporarily change the use of the residence to a nonresidential, private K-8 school (Morgan Academy) and seeks the Board's determination on the following issues:
- a) Under the current CUP, can Morgan Academy use the house as a nonresidential use K-8 school?
  - b) If yes, can Morgan Academy use the existing well and septic for this use?
- District: Shepherdstown (09); Map 13; Parcels: 26.1, 26.2, 26.3, 26.4; Size: 13.69 ac (combined); Zoned: Rural; File: ZC14-37.
- c) Request postponed from August 28, 2014. Variance request by Mark Dyck, Consultant, on behalf of Tim Walther and Junipa Contento, Developers, from Section 2.2 to extend the time permitted for a Seasonal Use, which limits an event to not more than three consecutive days in each of the four solar systems. The applicant is requesting to hold a 5-day music festival and camp out during the June/August 2015 summer season. Property Owner: Nancy & Douglas Stolipher and Mark Stolipher. Location: 261 Berry Hill Farm Ln., Summit Point, WV. District: Kabletown (06); Map: 19; Parcels: 7, 16, & 8.4; Size: 347.15 ac (total); Zoned: Rural; File: ZV14-14.
- d) Request postponed from August 28, 2014. Request by Mark Dyck, Consultant, on behalf of Tim Walther & Junipa Contento, Developers, to conduct a Seasonal Use event per Section 9.8 by hosting a 5 day musical festival and camp out, provided the previous variance request (ZV14-14) is approved, during the June/August 2015 summer season. Property Owner: Nancy & Douglas Stolipher and Mark Stolipher. Location: 261 Berry Hill Farm Ln., Summit Point, WV. District: Kabletown (06); Map: 19; Parcels: 7, 16, & 8.4; Size: 347.15 ac (total); Zoned: Rural; File: ZV14-15.

## **The Board of Zoning Appeals for Jefferson County, West Virginia**

**In re: Request by Mark Dyck, on behalf of Tim Walther and Junipa Contento from Section 2.2 to conduct a five day Season Use event under Section 9.8 and 2.2 for a music festival and camp out. Property Owner: Nancy & Douglas Stolipher and Mark Stolipher, Location: 261 Berry Hill Farm Lane, Summit Point, WV; Kabletown District, Map 19, Parcels 7, 16 and 8.4, size 347.15 acres, Zoned Rural.**

**File: #ZV14-15.**

### **Seasonal Use Approved with Conditions**

**On the 25<sup>th</sup> Day of September, 2014, before the Board of Zoning Appeals (hereinafter "BZA") came the applicant, Mark Dyck, on behalf of Tim Walther and Junipa Contento to conduct Seasonal Use event, a music festival and camp out, under Section 2.2 and 9.8 of the Zoning Ordinance of Jefferson County, West Virginia. The Board was present by members Tyler Quynn, Christy Huddle, Jeffrey Bannon, Matt Knott and Ted Schiltz. The Board continued deliberations and made a final decision on the issues presented until a Special Meeting held on October 2<sup>nd</sup>, 2014.**

**The applicant made a written request to conduct, in the period between June 15 through August 15<sup>th</sup>, 2015, a Seasonal Use event for five days, a music festival and camp out, under Section 2.2 and 9.8. However, a Seasonal Use event for five days required a variance which was denied by separate order so the Board took action for a Seasonal Use for a duration of three days which time frame does not require a Variance. The Staff informed the BZA that applicable fees had been paid, that the application was properly posted on site and that the application was advertised. The Staff presented and briefly discussed the written staff report on the proposal and presented a brief over-view of BZA actions with respect to the property in the past.**

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The Applicant presented testimony in support of the request and answered questions from the BZA. Tim Walther, Owner/Manager of the All Good Music Festival, Mark Dyck, consultant with Gordon, Kenneth Wersted, traffic consultant with Creighton Manning, Bob Martin, Attorney, and Christopher Stroech, Attorney, were present to address the Board. Mr. Walther provided the Board with a detailed summary of the proposal.

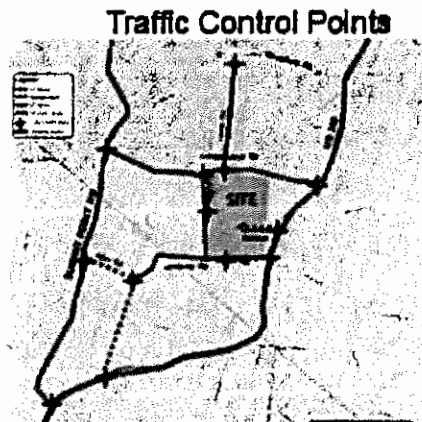
The applicant described the planned event in detail and argued that the event would be beneficial to the community, enjoyed by the attendees and would provide beneficial economic effects. Furthermore, the applicant presented a list of plans, limitations and conditions to make the event acceptable and well organized.

Specifically, the Applicants agreed to the following in their written proposal and testimony:

- The Applicant agrees to post a \$60,000 surety to cover unexpected costs to the County. To release the surety the Applicant will meet with the applicable County agencies within 60 days of the close of the event. At this meeting these agencies will provide a full accounting of any cost directly associated with the event and chargeable against the surety. The surety shall be submitted 45 days prior to the event.
- The applicant will submit a Concept Plan in accordance with the Minor Site Plan process. The plan will include the following items and reflect the noted design standards;
- Plan showing the layout of parking, performance areas, bathrooms, vendors, entrances, emergency entrances, entry gates, vehicle stacking areas, garbage locations, fencing, site security, buffers and equipment areas.
- All performance areas will be a minimum of 1,000' from any offsite residential structure.
- All festival elements, with the exception of site access points and security, will be set back 150' from any offsite residential structure.
- The Applicant will provide the Concept Plan to the following entities; Jefferson County Health Department, EMS and Fire, 911 agencies.
- The applicant will work with the Jefferson County Sheriff's office to prepare a safety plan that will cover all applicable situations. The plan

will include staffing requirements by the Sheriff's office as well as emergency planning that includes fire and ambulance. This agreement shall be completed 45 days prior to the event. As agreed to by the parties the agreement may include financial compensation to cover County staffing costs.

- The Applicant will provide a written agreement showing that a licensed garbage removal company and a licensed towing company have been engaged for the event.
- Provide \$2,000,000 of general commercial liability insurance.
- No amplified performance after 3 a.m. or before 10 a.m.
- No outdoor performance lighting after 3 a.m. or before 10 a.m.
- All sales of alcohol shall be regulated by the West Virginia Alcohol Beverage Control Administration.
- All trash shall be removed daily.
- Event site shall provide ample potable water supply and proper sanitation facilities.
- Install an 8' fence with green opaque windscreen at least 150' back from the frontage of Withers LaRue Road;
- Prevent all attendees from leaving the venue on foot. Those that leave on foot would have their ticket/wristband revoked
- Require all attendee vehicles to display an event hangtag
- Search all cars and confiscate all illegal drugs from patrons
- Prohibit animals, fireworks, glass containers, campfires, ATV and motorcycles
- Provide 24 hour perimeter, camping and event security.
- Follow traffic control plan as presented by the traffic engineer including dedicated access routes for local residents and provide the local residents with identification to allow their use of separate access routes as designated in the traffic plan



- Consult in advance with and cover County costs of the event, of both Jefferson County, West Virginia and Clark County Virginia Sheriff's

Offices, WV Division of Highways, Jefferson County Emergency Services Agency (ambulance), Jefferson County Board of Health, appropriate Jefferson County Fire Companies.

- Comply with the applicable noise ordinance and with the noise limitations found in the Zoning Ordinance.

Numerous members of the public and nearby residents made comment. Some people spoke in favor of the festival generally. Numerous property owners spoke in opposition to the festival occurring for more than the 3 days allowed under the Ordinance for a Seasonal Use and opposing musical performances late into the night and opposing the event generally.

The portion of the record of the BZA meeting pertaining to this application, the application itself and the official minutes thereof are incorporated herein by reference as if set forth in full herein.

**Whereupon, in consideration of the foregoing, the BZA made the following findings of fact and conclusions of law:**

1. The Jefferson County Zoning and Land Development Ordinance defines a Seasonal Use as: "A use that is carried on for not more than a single three day consecutive period in each of the four solar seasons."
2. Section 9.8 further states: "Seasonal uses must be approved by the Board of Zoning Appeals pursuant to a public hearing. Newspaper notification requirements of Section 3.4(A)(3)(b) apply. Seasonal uses cannot be approved for longer than one year at a time."

- 3. The Application presented a comprehensive description of the proposed event together with traffic plan, proposed sketch plan and extensive testimony about how the event would be conducted.**
- 4. The public presented supporting and opposing viewpoints.**
- 5. The Board determines that the proposed event may be conducted as proposed between June 15 and August 15, 2015 for a three consecutive day period (72 hours beginning when any on-site sales or music commences and shall not include more than three nights of camping)**
- 6. The Seasonal Use is approved upon the following conditions:**
  - a. Applicant shall use its best efforts to notify all homeowners within the 500 foot boundary of all properties and every property on Scooter Lane with exact dates to include possible 'rain dates', if any, of the festival and anticipated set-up dates, no later than 3 months before the festival, and provide the names and addresses of those notified to staff at the same time;**
  - b. Applicant shall run an advertisement in both the Spirit of Jefferson and Martinsburg Journal noticing the exact dates to include possible 'rain dates', if any, no later than 60 days before the festival for two consecutive weeks.**
  - c. The applicant shall comply with all requirements imposed for the purpose of this event by the Jefferson County Board of Health, the West Virginia Division of Highways, and the Jefferson County Sheriff's Department and submit written documentation with the Concept Plan.**


**Any costs, bonds, sureties and/or liability insurance shall be posted as required by these entities prior to the issuance of a Zoning Certificate. In addition, applicant shall consult with Jefferson County Emergency Services Agency on how to provide EMS services at applicant's cost.**

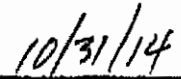
- d. While acknowledging that all parking will occur on grass fields, a Concept Plan in accordance with the Minor Site Plan process shall be submitted for staff review and comments detailing, at a minimum, the layout and locations of parking lots; performance and equipment areas (stages/sound systems); bathroom facilities; concessions and vendors; camping areas; all entrances, including emergency entrances, entry gates, and vehicle stacking areas; garbage collection locations and daily removal plans; fencing, site security, and proposed buffers. The applicant will schedule a meeting with Staff to determine a submission timeline.**
- e. A \$60,000 surety shall be posted to cover unexpected costs to the County at least 30 days prior to the event. Upon approval of the Concept Plan and posting of the required surety, a Zoning Certificate may be issued.**
- f. The applicant shall be bound by their application and by their testimony which includes all the conditions set forth within the body of this order as agreed by the Applicant as well as compliance with all written documents submitted with the application and all testimony of all the applicants and those experts testifying on their behalf. The entire application and the testimony of the applicant and their representatives is hereby incorporated fully by reference.**

- g. Approval of this Seasonal Use is limited to one year in accordance with Section 9.8 of the Zoning Ordinance and does not establish this festival as a legally existing non-conforming use should the Zoning Ordinance be amended to change the process for approval of such events. Any future festival shall comply with the regulations in effect at the time of application.
- h. Applicant shall confer with the Sheriff on a plan to expedite access for affected residents during the event.
- i. Applicant shall notify staff 45 days prior to the event of number of attendees expected (plus or minus 15%).

WHEREFORE, for the reasons set forth herein, the applicants request for a Seasonal Use of three days is hereby, GRANTED with conditions

Jefferson County Board of Zoning Appeals,

By   
Tyler Quynn, Chair

  
Date