

Jefferson County
Board of Zoning Appeals

Meeting Packet

Thursday,
May 22, 2014

JEFFERSON COUNTY, WEST VIRGINIA

Department of Zoning

116 East Washington Street, 2nd Floor

P.O. Box 338

Charles Town, West Virginia 25414

Phone: 304-728-3228

Email: zoning@jeffersoncountywv.org

Fax: 304-728-8126

MEMORANDUM

TO: Jefferson County Board of Zoning Appeals Members

FROM: Jennilee Hartman, Zoning Clerk

DATE: April 16, 2014

SUBJECT: May 22, 2014 Board of Zoning Appeals Meeting

Please find enclosed a copy of the Agenda for the upcoming Board of Zoning Appeals meeting to be held on Thursday, May 22, 2014. Also for your review, you will find corresponding information regarding said Meeting. When applicable, I will include copies submitted to this office that pertain to items of new business. If you have any questions, or will not be able to attend the upcoming meeting, please do not hesitate to contact me.

JEFFERSON COUNTY, WEST VIRGINIA

Department of Zoning

116 East Washington Street

P.O. Box 338

Charles Town, West Virginia 25414

Phone: (304) 728-3228

Fax: (304) 728-8126

Email: zoning@jeffersoncountywv.org

MEMORANDUM

TO: Board of Zoning Appeals Members

CC: Engineering & Building Permits Departments

FROM: Acting Zoning Administrator, Jennifer M. Brockman

DATE: May 15, 2014

SUBJECT: May Monthly Report of Department Activities

ISSUED ZONING CERTIFICATES

#ZC14-11 JOSEPH & CYNTHIA GRUBER – OWNER / APPLICANT

Issuance Date: April 28, 2014

Proposed Use: Cottage Industry. Applicants are converting an existing 2-car garage into a Catering site, which will be used for the purpose of food preparation only. All associated Catering Events will be conducted offsite at a third-party location.

Physical Location: 2190 Hinton Road; Kearneysville, West Virginia 25430

Zone: Rural

#ZC14-12 TROY L. & JUDITH JOHNSON – OWNERS
EDMANUEL SOTO / APPLICANT

Issuance Date: April 29, 2014

Proposed Use: Cottage Industry. Lawn Care Business. Existing 12' x 18' shed to be used to store mowing equipment, to include riding mower, push mower and weed eaters.

Physical Location: 60 Runions Place; Harpers Ferry, West Virginia 25425

Zone: Rural

ISSUED ZONING CERTIFICATES

#ZC14-17 SHENANDOAH PROFESSIONAL CENTER, LLC /
CONTACT: TRISH SANDERSON – OWNER
JON G. PENNINGTON/ APPLICANT

Issuance Date: May 06, 2014
Proposed Use: Used Car Dealership to include sales office and outdoor inventory space.
Physical Location: 36 Bakerton Road; Harpers Ferry, West Virginia 25425
Zone: Industrial-Commercial

#ZC14-14 OBF PROPERTIES / CONTACT: CHRIS HANSEN – OWNERS
ABS ENTERPRISES / CONTACT: SAAD SHADKAMI - APPLICANT

Issuance Date: May 8, 2014
Proposed Use: Small existing shop will be used for light repair and maintenance of construction equipment.
Physical Location: Box Factory Road; Summit Point, West Virginia 25446
Zone: Rural

#ZC14-16 THE KENTLAND FOUNDATION, LLC – OWNERS
ROGER P. LEWIS, DAVID WASANYI & AMY WASANYI / APPLICANTS

Issuance Date: May 15, 2014
Proposed Use: Pharmacy
Physical Location: 82 Somerset Boulevard; Charles Town, West Virginia 25414
Zone: Residential-Light Industrial-Commercial

#ZC14-19 PETER CORUM – OWNER/APPLICANT

Issuance Date: May 15, 2014
Proposed Use: Market for sale of farm products and incidental products, including arts and crafts. Live music, events, and performances are permitted if accessory to the market. Events may not be a primary attraction or conducted on non-market days. Hours of operation: Saturdays, 9:00 a.m. – 1:00 p.m. with Tuesday pick-ups until November 1, 2014.
Physical Location: 3988 Kearneysville Pike; Shepherdstown, West Virginia 25430
Zone: Rural

PENDING ZONING CERTIFICATES

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

Issuance Date: TBD
Proposed Use: Commercial warehouse for pre-packaged & refrigerated food items.
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: TBD
Proposed Use: Commercial warehousing, agri-business, storage, document shredding and general business..
Physical Location: Box Factory Road; Summit Point, West Virginia 25446
Zone: Rural

#ZC14-18 JOSE F. OSORIO – OWNER/APPLICANT

Issuance Date: TBD
Proposed Use: Rodeo / Bull Wrestling Event to be hosted monthly from May to November (annually).
Physical Location: 1196 Van Clevesville Road; Kearneysville, West Virginia 25430
Zone: Rural

#ZC14-20 MIQUEL A. SANTOS – OWNER

Issuance Date: TBD
Proposed Use: Operation of Screen Printing Business in home.
Physical Location: 102 Don Quixote Drive; Charles Town, West Virginia 25414
Zone: Residential-Growth

#ZC14-21 DEANNA C. SHEA-WILLIAMS and HOWARD B. WILLIAMS – OWNERS

Issuance Date: TBD
Proposed Use: Retail ice cream sales, operating from 8' x 18' fully contained food trailer, to be located in parking lot of existing business (Railside Market). Weekend hours only; open from April to October.
Physical Location: 2871 Summit Point Road; Summit Point, West Virginia 25446
Zone: Village



Jefferson County
Board of Zoning Appeals
Thursday, May 22, 2014, 2:00 p.m.

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

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

1. Approval of the minutes from the April 24, 2014 meetings.
2. Swearing in of members of the public intending to provide testimony.
3. Action on the Conditional Use Permit for Middleway Market. The applicant is proposing to lift the nonconforming status from the following existing uses by granting said uses permanent legal status: convenience store, which includes incidental propane service, ABC off-premises packaged alcohol sales, video lottery/game room area & ABC on-premise alcohol service, office/storage area, counter & deli service. The applicant is also seeking to expand and/or add the following: increase the buildable area from 4,841.75 sq. ft. to 6,000 sq. ft.; to include a residential rental unit, to expand from counter & deli service to a restaurant service with alcohol sales and delivery service; and, to permit gas pumps either on-site or in conjunction with a partnership agreement with an adjacent neighbor. Owner: Jefferson Reality, LLC. Location: 4843 Middleway Pike, Kearneysville, WV 25430. District: Middleway (07); Map 19A; Parcels: 14 & 14.16; Size: 1.70 ac; Zone: Rural; File: CP14-01.
4. Variance request by applicant, Peter Wilkins, from Section 5.4B to reduce the rear setback from 30' to 20' for a 10' x 28' deck to include a 10' x 12' covered & screened porch. Owner: Christopher Wilkins. Location: Colonial Hills Subdivision, Phase I, Lot D16, 167 Starkeys Landing, Shepherdstown, WV. District: Shepherdstown (09); Map 8D; Parcel: 16; Size: .22 ac; Zone: Residential Growth; File: ZV14-03.
5. Variance request by owner, Gary Rodis, from Section 5.4B to reduce the rear setback from 20' to 12' to install an irregularly shaped pool. Location: Eastland Subdivision, Section III-B, Lot 85, 875 Eastland Dr., Charles Town, WV. District: Charles Town (02); Map 16; Parcel: 108; Size: 1.273 ac; Zone: Residential Growth; File: ZV14-04.
6. A request by applicant, ABS Enterprises, to change a nonconforming use per Section 4.3C to allow for the addition of a 5,000 sq. ft. fresh bakery to zoning certificate application #ZC14-13; and, to include heavy equipment and leasing, auto repair and recycling as approved uses to zoning certificate application #ZC14-15. Owner: OBF Properties LLC. Location: 1059 Box Factory Rd., Summit Point, WV. District: Middleway (07); Map 27; Parcel: 11; Size: 7.2 ac; Zone: Rural; File: ZV14-05.
7. Discussion on the proposed amendments to the Board of Zoning Appeals Rules of Procedure, Effective July 21, 2011, (Draft 2).
8. Director's Report.
9. Legal Update.
10. Signing of written decisions from prior Board of Zoning Appeals meetings.

- a) Action on the Conditional Use Permit (CUP) for Sustainable Solutions, LLC. The applicant is proposing to use the existing expired nonconforming use of commercial buildings for the operation of a business that helps private landowners, state & federal agencies and non-profits manage their land for ecological, economic and social returns. The business would include a 12' x 12' company office within Building A (as shown on Figure 1. Site Map). The remaining portion of Building A and Buildings B and C would be used as shop space for storage, maintenance and repair of company equipment and vehicles. Two alternate sign locations were proposed a) on the existing canopy; or, b) on Building A. Additional landscaping in the form of native trees, shrubs and flowers were also proposed. Property owner: Steve Wandless. Purchaser/Developer: James Remuzzi. Location: 4419 Kearneysville Pk., Shepherdstown, WV. District: Shepherdstown (09); Map 8; Parcel: 9.3; Zone: Residential Growth; Size: 1.79 ac; File: CP13-01. Meeting Date: 3/27/14

Draft Minutes
Jefferson County Board of Zoning Appeals
Thursday, April 24, 2014

1 The Jefferson County Board of Zoning Appeals met on Thursday, April 24, 2014 at 2:00 p.m..
2 The meeting was at 200 East Washington Street, Charles Town, West Virginia, in the Conference
3 Room of the Old Charles Town Library. Unless otherwise noted, all requests are pursuant to the
4 Jefferson County Zoning and Land Development Ordinance.

5
6 Board members present: Tyler Quynn, Chair; Jeffrey Bannon, Vice Chair; Christy Huddle,
7 and Ted Schiltz, Alternate. Staff present: Jennifer M. Brockman, Acting Zoning Administrator/
8 Director of Planning and Zoning; Stephen Groh, Assistant Prosecuting Attorney and Jennilee Hartman,
9 Zoning Clerk. Matt Knott was absent with notification.

10
11 Mr. Quynn explained the proceedings of the meeting to those in attendance off record while Staff
12 corrected technical difficulties that arose.

13
14 Ms. Huddle motioned to commence the meeting at 2:10 p.m. Mr. Bannon seconded the motion,
15 which carried unanimously.

16

17 1. Approval of the minutes from the March 27, 2014 meeting.

18

19 Ms. Huddle motioned to approve the minutes. The follow edits were requested:

20

21 1) Lines 30 and 65, insert use of after *nonconforming*.

22 2) Lines 31, 32, 66 and 67, edit as follows, ~~L~~andowners, ~~S~~state & ~~F~~federal ~~A~~gencies and
23 ~~N~~on-~~P~~rofits manage their land for ~~E~~cological, ~~E~~conomic and ~~S~~social returns.

24 3) Lines 34 and 69, insert and after *Building A*, and remove the comma after **B**.

25 4) Line 136, insert to after *correction*.

26

27 Mr. Bannon seconded the motion to approve the minutes as corrected, which carried unanimously.

28

29 2. Swearing in of the public intending to provide testimony. Ms. Hartman swore in the individuals
30 who indicated they would be giving testimony.

31

32 3. Variance request by applicant, William S. Bondurant II, from Section 5.4B-1 for a reduction
33 of the rear setback from 20' to 5' for a 650 square foot kidney shaped inground pool.

34 Location: 93 Killian Lane, Charles Town, WV. District: Charles Town (02); Map 9B;

35 Parcel: 19; Size: .23 ac; Zone: Residential Growth; File: ZV14-02.

36

37 Mr. William Bondurant presented the request, stating the reason for the variance was to set the
38 pool back further from the home to prevent his children from jumping into it from their second
39 story deck. Mr. Bondurant explained that the subdivision's common area was behind his
40 property and that his adjacent neighbors had signed a letter of support. Ms. Brockman clarified
41 that the agenda referenced 5.4-1; however, the ad and staff report referenced 5.4B, which was
42 all inclusive, and stated that she felt this covered the applicant's request. Mr. Quynn called for
43 public comment. There was no public comment.

44


45 Ms. Huddle stated that since there were no other items on the agenda that she believed it was
46 unnecessary for the Board to deliberate. The Board concurred. Ms. Huddle motioned to
47 approve the variance request, based on the facts found in the *Motion Regarding a Variance*

- 1 *Request by William S. Bondurant, II (#ZV14-02)* (attached) and contingent upon the
2 conditions listed therein. Mr. Quynn offered a friendly amendment to include a condition
3 that required the applicant to apply for a building permit. Ms. Huddle accepted the
4 amendment. Mr. Bannon seconded the amended motion, which carried unanimously.
5
- 6 4. Director's Report. Ms. Brockman updated the Board on the status of *Envision Jefferson 2035*,
7 recent and upcoming County Commission actions that may be relevant to Planning and Zoning
8 endeavors and current office staffing issues.
9
- 10 5. Discussion on the proposed amendments to the Board of Zoning Appeals Rules of Procedure,
11 Effective July 21, 2011, (Draft 2). A draft was not available for the Board to review. Mr.
12 Quynn asked Mr. Groh to have a draft of the Procedures prepared for the May meeting and to
13 have a clean version available so that they can compare the two documents.
14
- 15 6. Legal Update. Ms. Brockman informed Mr. Groh that Mr. Knott had requested that the Board
16 discuss and revise their Rules of Procedure to allow members to participate in a meeting via
17 teleconference. Mr. Groh provided a brief overview why he believed this was not a plausible
18 means of assembly for a quasi-judicial body. Mr. Groh stated he would research the topic for
19 the next meeting. Mr. Schiltz argued that if teleconferencing were permitted the Alternate
20 positions would seem unnecessary.
21
- 22 7. Signing of written decisions from prior Board of Zoning Appeals meetings. None.
23
- 24 Ms. Huddle motioned to adjourn the meeting at 2:35 p.m. Mr. Schiltz seconded the motion,
25 which carried unanimously.
26
- 27 An audio transcript of this meeting can be found at the Department of Zoning and on the
28 Department's website at www.jeffersoncountywv.org. These minutes were prepared by
29 Jennilee Hartman, Zoning Clerk.

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 May 22, 2014

Jefferson Reality, LLC Variance Request (#CP14-01)

Item #3 Action on the Conditional Use Permit for Middleway Market. The applicant is proposing to lift the nonconforming status from the following existing uses by granting said uses permanent legal status: convenience store, which includes incidental propane service, ABC off-premises packaged alcohol sales, video lottery/game room area & ABC on-premise alcohol service, office/storage area, counter & deli service. The applicant is also seeking to expand and/or add the following: increase the buildable area from 4,841.75 sq. ft. to 6,000 sq. ft.; to include a residential rental unit, to expand from counter & deli service to a restaurant service with alcohol sales and delivery service; and, to permit gas pumps either on-site or in conjunction with a partnership agreement with an adjacent neighbor.

APPLICANT:	Antonio Colandrea, Jefferson Reality, LLC
OWNER :	same
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	4843 Middleway Pike, Kearneysville, WV
LEGAL DESCRIPTION & ZONING DISTRICT:	District: Middleway; Map: 19A; Parcel: 14; Size: 1.70 ac Zoning Map Designation: Rural 
SURROUNDING PROPERTIES:	Zoning Map Designation: North: R South: R East: R West: R
APPROVED ACTIVITY:	Nonconforming commercial use with conditions
PRIOR CASES:	ZC99-05: (required BZA approval, 1/20/00) ZC01-02: (required BZA approval, 1/21/01) S03-06 ZC06-05: (approved 07/3/06) S11-08 <i>*Explanation of requests below</i>
VARIANCES:	12/19/96: ZV96-42 12/19/96: ZV96-43 12/16/10: ZV10-26 <i>*Explanation of requests below</i>

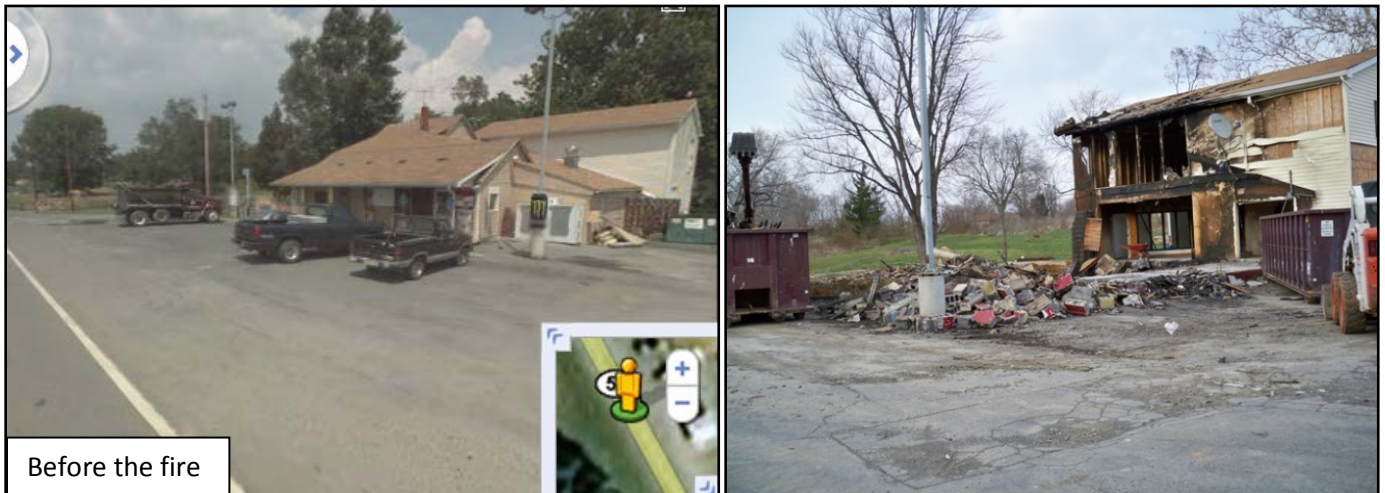
Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 22, 2014

Jefferson Reality, LLC Variance Request (#CP14-01)

RELEVANT INFORMATION:

Middleway Market, which was formerly known as Country Roads Market, was a lawfully created non-conforming use established prior to the 1988 Zoning Ordinance. In recent years, the Planning, Zoning and Engineering Department approved a site plan for a building addition (which was completed), and the Board of Zoning Appeals granted several approvals, including changes to the nonconforming use. See below for a list of variances and zoning certificates.

In May of 2010, the original Market was partially destroyed by fire. Section 4.3H of the Zoning Ordinance reads, “A nonconforming use destroyed by a natural or unnatural calamity cannot be rebuilt without approval of the Board of Zoning Appeals upon application by the owner and pursuant to the variance and appeal procedures outlined in Article 3.^{12, 17, 21, 23}” On December 16, 2010 the current applicant requested the Board to re-establish the nonconforming use. The Board granted the request and imposed the same conditions that were previously in place (list of conditions noted below).



A Compatibility Assessment Meeting was held on May 2, 2014 at 10:00 a.m. in the meeting room of the Old Charles Town Library located at 200 East Washington Street in Charles Town, West Virginia. Ms. Jennifer Brockman, Acting Zoning Administrator/Director of Planning and Zoning and Ms. Jennilee Hartman Zoning Clerk attended. No public concerns were expressed (see attached report).

1. Presentation of the Proposed Land Use

Description of Use

The applicant is proposing to lift the nonconforming status from the following existing uses by granting said uses permanent legal status through the approval of the Conditional Use Permit (CUP): convenience store, which includes incidental propane service, ABC off-premises packaged alcohol sales, video lottery/game room area & ABC on-premise alcohol service, office/storage area, counter & deli service.

This request is significant because if the Board were to grant the applicant’s request for a CUP, Section 4.3H would no longer apply. If approved, should a natural or unnatural calamity befall this property in the future, the applicant has the right to rebuild, within the approved perimeters of the CUP and would not be subject to a public hearing process.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 22, 2014

Jefferson Reality, LLC Variance Request (#CP14-01)

In addition, the applicant wishes to expand and/or add the following through the CUP approval process: increase the buildable area from 4,841.75 sq. ft. to 6,000 sq. ft.; to include a residential rental unit, to expand from counter & deli service to a restaurant service with alcohol sales and delivery service; and, to permit gas pumps either on-site or in conjunction with a partnership agreement with an adjacent neighbor.



Angled Front View of Market



Entrance to Proposed Residential Unit

Employees and Hours of Operation

While the CUP application does not address employees and hours of operation, the previous Market was not restricted in either of these categories. In January 2000, Mr. Virts, the former owner of Country Roads Market, requested the BZA approve a change in non-conforming use to include on-site consumption of alcohol, which would also allow the sale of KENO game lottery tickets; for this request Mr. Virts submitted a petition with 90 signatures in support. Since that initial request in 2000 until present, there are no known complaints that have been filed with the Departments of Planning and Zoning.

Parking and Access

While the applicant had originally requested a 0' front setback to reinstate the existing parking lot after the fire, the Department of Highways required the applicant to remove the paved/gravel parking area that gave unrestricted access to Middleway Pike/Route 51 and to install two separate access points onto Middleway Pike/Route 51. The access to the property is restricted to ingress only and egress only and has the appropriate traffic markings and signage clearly posted.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 22, 2014

Jefferson Reality, LLC Variance Request (#CP14-01)

Any expansion of the use will require a review of the parking area, to ensure that adequate employee and customer parking are provided.



Signage & Lighting

The sign currently posted on the property for Middleway Market meets the standards of the Ordinance. There is ample lighting, which is directed downward towards the parking lot.

2. Staff Comments

Land Evaluation and Soils Assessment

Due to the Rural zoning designation of the subject parcel, its location on a primary road (as defined in the 2004 Comprehensive Plan), and the proposed commercial uses, Section 6.5E permitted the applicant to ‘advance directly to the Compatibility Meeting’ without processing through the LESA point process.

Section 6.5E of the Zoning Ordinance states,

E. Any land in the Rural District that is located on a primary or secondary road, as defined in the Comprehensive Plan, shall not have to process through the LESA points process for a commercial or industrial project and shall be advanced directly to the Compatibility Assessment Meeting.^{17, 21}

Location

This site is adjacent to or in close proximity to the following nonresidential uses.

- Hardings Service Station (across the street)
- Images (.2 miles)
- Roy’s Glass Service (.3 miles)
- Tri-State Auction (.4 miles)

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 22, 2014

Jefferson Reality, LLC Variance Request (#CP14-01)

History

- 12/19/96 The Board of Zoning Appeals approved a variance for front and side setbacks for a sign.
- 01/20/00 The Board of Zoning Appeals approved a request for a change in nonconforming use for the store to obtain a Class A on premises West Virginia ABC license, allowing the sale of KENO game tickets (ZC99-05). The Board noted that the approval was “contingent upon the area of the store designated for the sale of beer and wine being restricted to the dining/game room area as shown on the sketch . . . submitted by Mr. Virts as part of his request.”
- 01/21/01 The Board of Zoning Appeals approved a change in nonconforming use to separate the convenience store from the dining area in order to comply with a change in State regulations regarding video poker machines. The request included the proposed construction of a room to serve food in conjunction with the site’s WVABC on premises license (ZC01-02).
- 06/04/02 The Planning, Zoning and Engineering Department issued a letter to the property owner establishing a total buildable square footage amount of 4,841 square feet, based on a calculation of 35% of the existing building area, per Section 4.3 of the Zoning Ordinance.
- 03/23/04 The Planning Commission approved Site plan S03-06, for a 2,400 square foot, two story addition to the existing store. The addition was approved for retail and storage uses.
- 07/03/06 The Planning, Zoning and Engineering Department issued a Zoning Certificate permitting the operation of video lottery machines. The certificate references the restrictions imposed by the Board of Zoning Appeals on January 20, 2000 (ZC06-05).
- 05/05/10 The Country Roads Market was destroyed by fire.
- 12/16/10 The applicant received a variance to reestablish a nonconforming land use destroyed by “a natural or unnatural calamity”, per Section 4.3(i); and to allow 0’ setbacks for an existing parking area per Sections 4.16 and 5.6(d) (this variance was not utilized due to DOH requirements).

Current Conditions/Restrictions on the Property

- a. The area in which alcohol can be served is restricted to the game room
- b. Buildable area is restricted to the square footage approved by the Planning, Zoning and Engineering Dept on June 4, 2002 (4,841.75)
- c. A front setback variance applies to the existing parking area only, and does not apply to any future parking developed for the site.

These are the conditions which the applicant is currently seeking to lift through the approval of this Conditional Use Permit (CUP).

3. Public Testimony

There were no members of the public in attendance at the May 2, 2014 Compatibility Assessment Meeting (CAM) to offer testimony. As there were no unresolved issues, the project was scheduled for the next available BZA meeting which the applicant could attend.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 22, 2014

Jefferson Reality, LLC Variance Request (#CP14-01)

The CAM and the BZA hearing are the only requirements to process this CUP application.

Section 7.6E of the Ordinance states,

“If all issues raised at the Compatibility Assessment Meeting were resolved at that meeting, no public hearing shall be required. At the next Board of Zoning Appeals meeting, the Board shall take action as described in Section 7.6F.”^{2, 17, 21, 23}”

4. Outcome

The meeting resulted in no unresolved issues.

Section 7.6F of the Ordinance states,

“The Board of Zoning Appeals shall issue, issue with conditions, or deny the conditional use permit. The standards governing the issuance of the Conditional Use Permits shall be: successful LESA Point application, Board of Zoning Appeals resolution of unresolved issues; and, evidence offered by testimony and findings by the Board of Zoning Appeals that the proposed development is compatible with the neighborhood where it is proposed.”^{2, 17, 21, 23}”

JEFFERSON COUNTY, WEST VIRGINIA
DEPARTMENTS OF PLANNING AND ZONING

COMPATIBILITY ASSESSMENT MEETING STAFF REPORT
MIDDLEWAY MARKET, FILE #CP14-01

Project Name: Middleway Market
Business Developer: Antonio Colandrea, Jefferson Reality, LLC
Telephone Number: 304-283-3120
Property Owner: Jefferson Reality, LLC
Property Address: 4843 Middleway Pike, Kearneysville, West Virginia 25430
Tax Reference: District: Middleway (07); Map: 19A; Parcel: 14
Deed Reference: Book: 1086; Page: 28 (prior to contract purchase)
Zoning District: Rural
Parcel Size: 1.70 acres

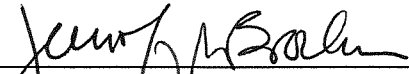
A Compatibility Assessment Meeting for the proposed Conditional Use Permit for Middleway Market was held on May 2, 2014, at 10:00 a.m., in the Old Charles Town Library meeting room located at 200 East Washington Street in Charles Town, West Virginia.

The following use was proposed by the applicant (details may be found in PC File #CP14-01):

To lift the nonconforming status from the following existing uses by granting said uses permanent legal status: Convenience store, which includes incidental propane service, ABC off-premises packaged alcohol sales, video lottery/game room area & ABC on-premise alcohol service, office/storage area, counter & deli service. The applicant is also seeking to expand and/or add the following: increase the buildable area from 4,841.75 sq. ft. to 6,000 sq. ft.; to include a residential rental unit, to expand from counter & deli service to a restaurant service with alcohol sales and delivery service; and, to permit gas pumps either on-site or in conjunction with a partnership agreement with an adjacent neighbor.

Jennifer Brockman, Acting Zoning Administrator and Director of Planning and Zoning; Antonio Colandrea, owner/developer; and, Jennilee Hartman, Zoning Clerk were in attendance.

Ms. Brockman opened the public hearing. There were no members of the public in attendance to offer testimony. Ms. Brockman closed the public hearing. As there was no public testimony or unresolved issues the Conditional Use Permit for Middleway Market will be placed on May 22, 2014 Board of Zoning Appeal's meeting for action.


Jennifer M. Brockman, AICP
Acting Zoning Administrator
Director of Planning and Zoning

May 7, 2014
Date



Departments of Planning and Zoning Seal



ADDENDUM
JEFFERSON COUNTY, WEST VIRGINIA

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

File Name: CP14-01
Staff Initials: CLC
Fees Paid: \$350.00

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

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

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

Application for a Conditional Use Permit

Name of Project:

Middleway Market

Property Owner Information

Name: Jefferson Reality, LLC
Mailing Address: 4843 Middleway Pike
City: Kearneysville State: WV Zip Code: 25430
Phone Number: 304-283-3120 Email: tonycolandrea@comcast.net

Applicant Contact Information

Name: Antonio Colandrea
Mailing Address: 62 Orchard Drive
City: Ranson State: WV Zip Code: 25438
Phone Number: 304-283-3120 Email: tonycolandrea@comcast.net

Registered Engineer(s) or Surveyor(s) Information

Name: Lavelle & Assoc. Inc. C/O Dustin Lavelle
Mailing Address: 5732 Industry Lane
City: Frederick State: MD Zip Code: 21704
Phone Number: 301-695-9722 Email: dustin@lavellesurvey.com

Physical Property Details

Physical Address: 4843 Middleway Pike
City: Kearneysville State: WV Zip Code: 25430
Tax District: Middleway - 07 Map No: 19A Parcel No: 0014
Parcel Size: 1.70 Acres Deed Book: 1086 Page No: 28

Zoning District (please check one)

RECEIVED

APR 23 2014

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

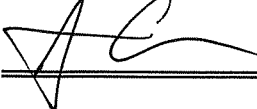
- Rural (R-A) [checked]
Residential Growth (R-G) []
Industrial Commerical (I-C) []
Residential-Light Industrial-Commercial (R-L-C) []
Village (V) []

*Original submitted on 04/11/14. This replaces that version. GH

Please provide any information or known history regarding this property.

The property used to have a fuel island and canopy but currently contains a Convenience Store as shown on the attached Sketch Plan.

Original Signature is Required. The information given is correct to the best of my knowledge.

 4/23/14

Signature of Property Owner

Date

Signature of Property Owner

Date

Do not write below this line

Sketch Plan (Pursuant to Section 7.4 (B)(C))

Support Data (Pursuant to Section 7.4(D))

List of adjacent and confronting (in front of) property owners, with addresses (Section 7.4 E)

Compatibility Assessment Meeting

05-02-14
Date

200 East Washington St Charles Town
Location

Notification

N/A
Date of public hearing

N/A
Advertising date

0
Posting Requirements
(Number of days prior to
scheduled hearing)

To Be Completed By Staff

Conditional Use Permit Application
Support Data
(please attach additional pages if necessary)

1. Name and address of a contact person.

(Refer to Conditional Use Permit Application Section B)

2. Name and address of the owner/developer.

(Refer to Conditional Use Permit Application Section C)

3. Type of development proposed (provide as much detail as possible).

Lifting the nonconforming status from the following existing uses by granting said uses permanent legal status: Convenience store, which includes incidental propane service, ABC off-premises packaged alcohol sales, video lottery/game room area & ABC on-premise alcohol service, office/storage area, counter & deli service. The applicant is also seeking to expand and/or add the following: increase the buildable area from 4,841.75 sq. ft. to 6,000 sq. ft.; to include a residential rental unit, to expand from counter & deli service to a restaurant service with alcohol sales and delivery service; and, to permit gas pumps either on-site or in conjunction with a partnership agreement with an adjacent neighbor.

4. Acreage of original tract and property to be developed.

(Refer to Conditional Use Permit Application Section E)

5. General description of surface conditions (topography).

The property consists mostly of <5% slopes on site but has a few areas that approach 10%. The area near the existing structure contains slopes around 2%.

6. Soil and drainage characteristics.

The site consists of OkC Oaklet Silty Clay Loam, 8 to 15 percent slope, very rock soils which have a Hydrologic Soil Group rating of "C". Group "C" soils have a slow infiltration rate when thoroughly wet. These consist chiefly of soils having a layer that impedes the downward movement of water or soils moderately fine texture or fine texture. These soils have a slow rate of water transmission.

7. General location and description of any existing structures.

(See Sketch Plan)

8. General location and description of existing easements or rights-of-way.

(See Sketch Plan)

9. Existing covenants and restrictions on the land.

- The area in which alcohol can be served is restricted to the game room
- Buildable area is restricted to the square footage approved by the Planning, Zoning and Engineering Dept. on June 4, 2002 (4,841.75 sq. ft.)
- A front setback variance applies to the existing parking area only, and does not apply to any future parking developed for the site.

10. Intended improvements and proposed building locations including locations of signs (in addition to narrative, please also show locations on sketch plan).

Expand and/or add the following: increase the buildable area from 4,841.75 sq. ft. to 6,000 sq. ft.; to include a residential rental unit, to expand from counter & deli service to a restaurant service with alcohol sales and delivery service; and, to permit gas pumps either on-site or in conjunction with a partnership agreement with an adjacent neighbor.

11. Intended land uses.

Convenience store, which includes incidental propane service, ABC off-premises packaged alcohol sales, video lottery/game room area & ABC on-premise alcohol service, office/storage area, counter & deli service. The applicant is also seeking to expand and/or add the following: increase the buildable area from 4,841.75 sq. ft. to 6,000 sq. ft.; to include a residential rental unit, to expand from counter & deli service to a restaurant service with alcohol sales and delivery service; and, to permit gas pumps either on-site or in conjunction with a partnership agreement with an adjacent neighbor.

12. Earth work that would alter topography.

No earth work is proposed at the current time. During the possible future expansion of the existing Retail Store from 4,445 SF to a maximum of 6,000 SF or the construction of gas pumps, minor earth work will occur. This earth work will include grading and parking lot relocation and/or expansion.

13. Tentative development schedule.

Restaurant delivery service, ABC on-premises alcohol service, & rental apartment to be implemented in the near future. Expansion of the existing convenience store, construction of the addition/gas pumps to take place in the distant future. The owner simply wishes to be allowed to expand in the future if that is a direction he, or future owners, would like to go.

14. Extent of the conversion of farm land to urban uses.

Not Applicable

15. Affected wildlife populations.

While wildlife experts have not been consulted, since the proposed development is minor no foreseeable wildlife populations should be affected. The future gas pumps would have to be designed and constructed with any applicable local, state, & federal regulations, thus ensuring safe use without any adverse impact on wildlife populations.

16. Ground water and surface water and sewer lines within 1320 feet.

The property as well as other nearby properties are currently served by private well and septic. There appears to be no surface water within 1,320 feet of the property. However, upon aerial photography investigation it appears there are small ponds around 1,700 or more feet away.

17. Distance to fire and emergency services that would serve the site.

Middleway Fire Department (110 Dark Hill Rd., Kearneysville, WV) is 3.19 miles away,
Independent Fire Company (200 W 2nd Ave, Ranson, WV) is 7.2 miles away,
Citizens Fire Company Inc (245 Citizens Way, Charles Town, WV) is 8.1 miles away,
Clearbrook Fire & Rescue (1256 First Town Rd, Clear Brook, VA) is 10.9 miles away,
Baker Heights Fire & Rescue Squad (2229 Charles Town Rd, Martinsburg, WV) is 11.1 miles away.

18. Distance to the appropriate elementary, middle, and high school.

South Jefferson Elementary School is 6.81 miles away,
Wildwood Middle School is 10.58 miles away, and
Jefferson High School is 10.73 miles away.

19. Traffic characteristics - type and frequency of traffic; adequacy of existing transportation routes.

The property is served by WV Primary Route 51, which has a sixty (60) foot right of way.

20. Demand for school services created by this development.

The proposed change of the on-site apartment from a private residence to a rental unit should not increase the current demand for school services, as there will still be only one apartment.

21. Proximity and relationship to historic structures or properties within two hundred (200) feet.

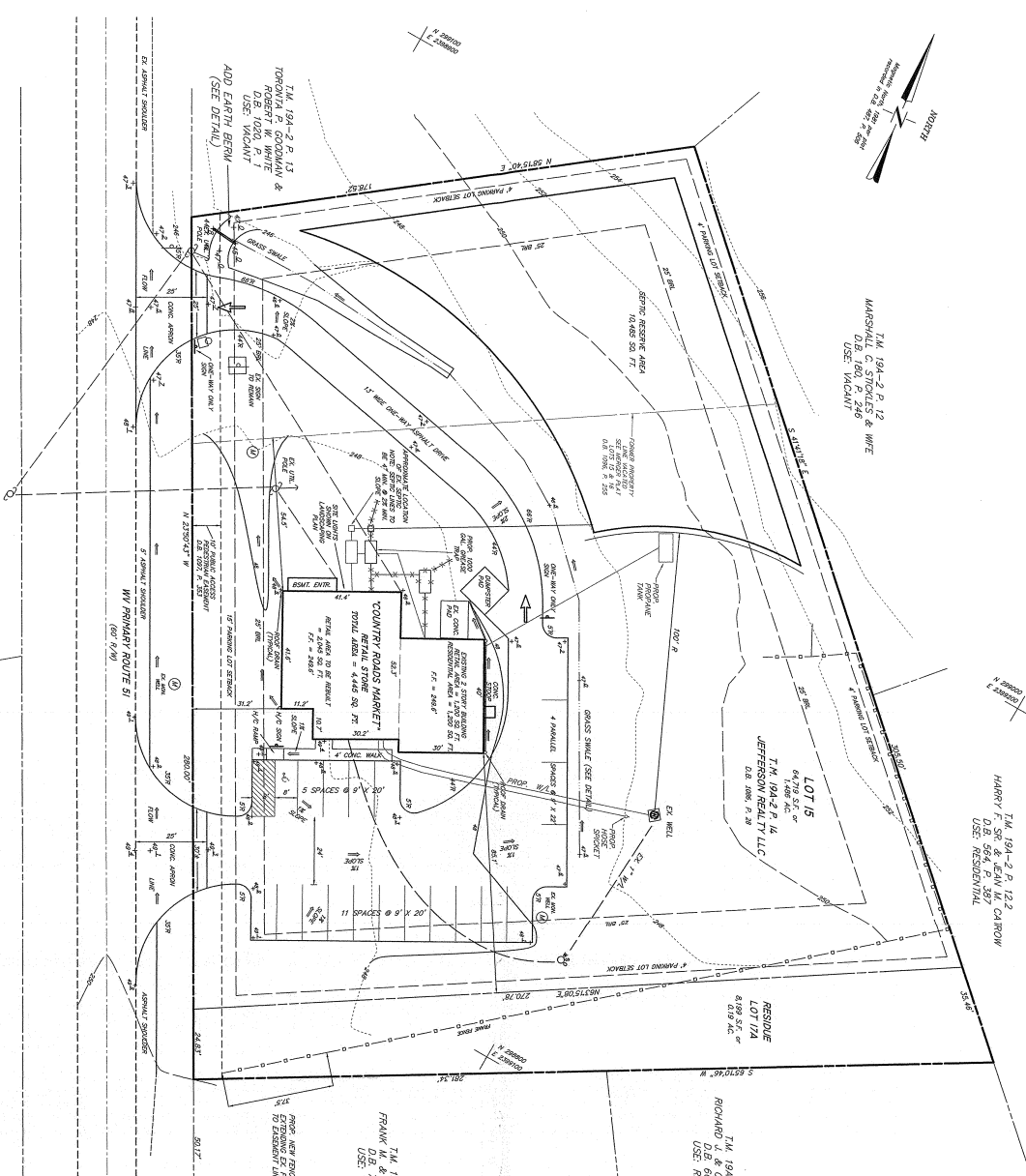
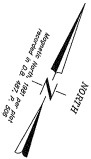
There are no historic structures or properties within two hundred (200) feet of this property.

22. Proximity to recreational facilities.

Evitts Run Park is 6.7 miles away, and,
Jefferson County Memorial Park is 7.7 miles away.

23. Relationship of the project to the Comprehensive Plan.

The 2014 Comprehensive Plan is currently being reviewed and updated. The previous version is from 2004. The minor development on this site should not adversely impact the Comprehensive Plan as there is already a convenience store on site and there has previously also been gas pumps on site.



T.M. 194-2 P. 17
FRANKLIN D. & MALET G. HARDING
D.B. 1801, P. 309
USE: COMMERCIAL

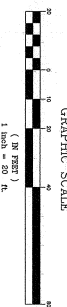
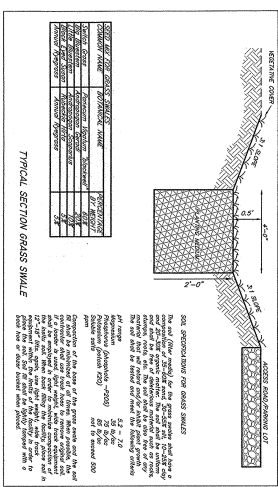
T.M. 22 P. 18
PAUL R. & ESTELLE T. GARRETT
D.B. 8801, P. 127
USE: VACANT

T.M. 194-2 P. 12
MARSHALL C. STOKES & WIFE
D.B. 1801, P. 248
USE: VACANT

T.M. 194-2 P. 122
HARRY F. SR. & JEAN M. CARROW
D.B. 1801, P. 248
USE: RESIDENTIAL

T.M. 194-2 P. 152
HOWARD A. & CONSTANCE F. SCHUL
D.B. 1801, P. 283
USE: RESIDENTIAL

T.M. 194-2 P. 115
FRANK D. & CHARLES W. SHARPER
D.B. 1801, P. 283
USE: RESIDENTIAL



**NOTE: PLAN REFLECTS EX. CONDITIONS ONLY
CONDITIONAL USE REQUEST NOT INCLUDED.**

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APR 11 2014

GRAPHIC SCALE
1 inch = 80 ft.

SKETCH PLAN
"COUNTRY ROADS MARKET"
BEING THE PROPERTY OF
JEFFERSON REALTY, LLC
DB. 1086, P. 28
T.M. 194, PARCEL 14
MIDDLEWAY DISTRICT, JEFFERSON COUNTY, WEST VIRGINIA

LAVELLE & ASSOCIATES INCORPORATED
PLANNERS • SURVEYORS
5732 Industry Lane, Frederick, Maryland 21704
TEL: (301) 695-9722, FAX: (301) 695-9766

REVISIONS
7/3/2012 - RED LINE REVISIONS - RELOCATE SEPTIC TANK, GREASE TRAP, H/C, AND ADD PROPANE TANK.

#204-01

DATE: APRIL 2011
SCALE: 1" = 20'
PROJ. NO. 11-028
SHEET: 1 OF 2
PAGE 3 OF 3

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 22, 2014

Christopher Wilkins Variance Request (#ZV14-03)

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a variance from Section 5.4B to reduce the rear setback from 30' to 20' for a 10' x 28' deck. The deck will include two 8' x 10' uncovered decks with staircases to the back yard, connected by a 10' x 12' covered & screened porch with access to the house through sliding doors.

The property is located within the Colonial Hills Subdivision south of Shepherdstown and consists of one side of an attached two-family structure on 0.22 acres. The attached unit is located on 0.24 acres. To the north is another two-family attached unit for which each unit sits on 0.22 acres. The property backs to a 5.6 acre property occupied by a single family home in Ledge Lowe Subdivision. The house on the Ledge Lowe lot sits approximately 135 feet from their rear property line and an in-ground pool is located approximately 40 feet from the rear property line.

When Colonial Hills Subdivision was approved in 2003, the required rear setback for duplexes was 30 feet. This setback is noted on the approved plat. Since that time, the Zoning Ordinance has been amended to require a 20 foot rear setback for duplex units.

2. Previous Case History

The final plat for the Colonial Hills Subdivision, Section III-B, Lots 82-92 (PC File #00-03) was approved by the Planning Commission on February 25, 2003 and recorded in the Courthouse on May 20, 2003.

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 5.4B of the Zoning and Land Development Ordinance, "Minimum Lot Area, Height, and Yard Requirements", sets these standards for the Residential Growth (RG) District and references the requirements found in Table 5.4 – 1. In 2003, when this development was approved, this section required that all duplex dwelling units in this zoning district have a 30 foot rear yard setback, which was noted on the approved plat.

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

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 22, 2014

Christopher Wilkins Variance Request (#ZV14-03)

On September 1, 2006, the rear setback requirement for duplex dwelling units in this zoning district was reduced to 20 feet. The request is to reduce the 30 foot setback required at the time of approval, and noted on the plat, through the issuance of a variance to allow the deck and porch to be constructed 20 feet from the rear property line.

b. Unique characteristics of property

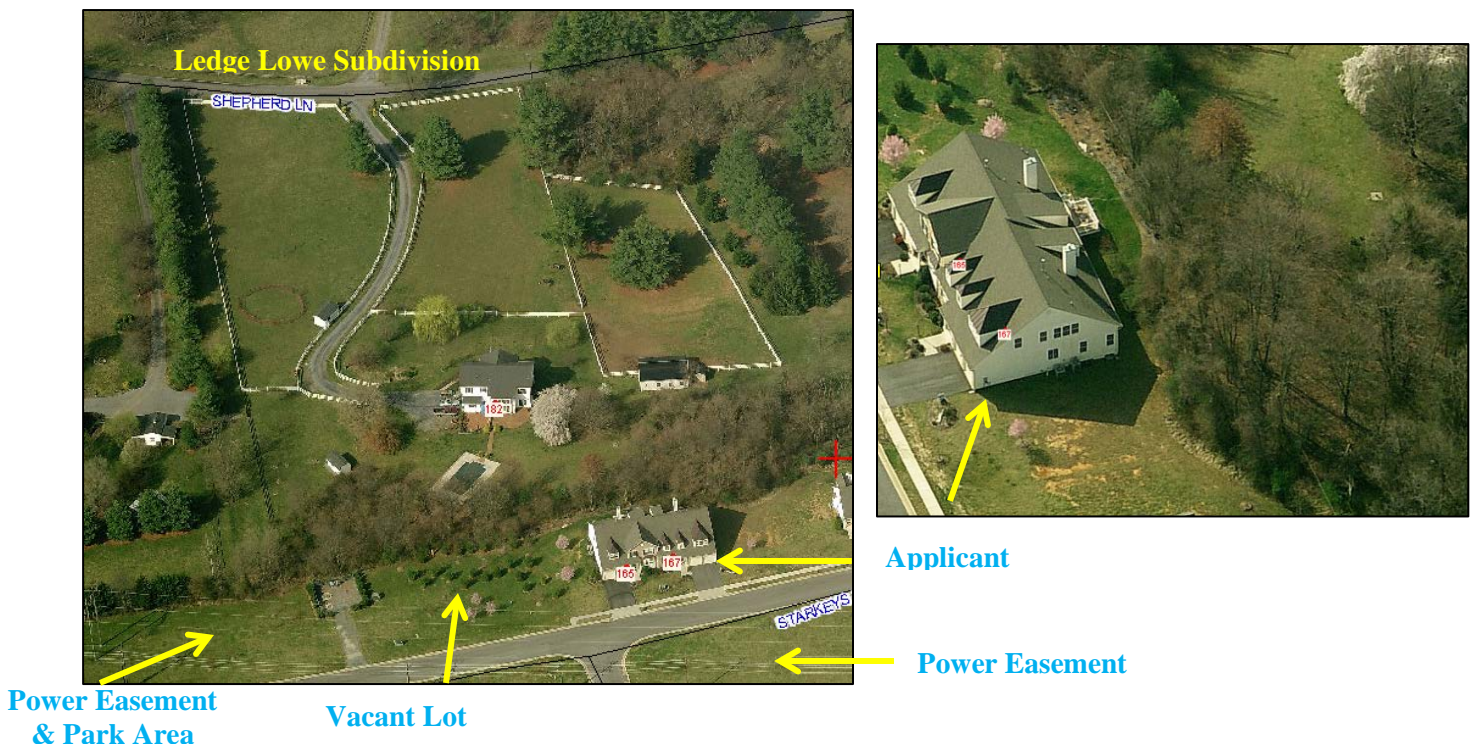
The duplex was constructed with a rear patio door but is located so that the back of the home is at the rear property line; therefore, without a variance, the only deck or porch which could be constructed would be 4 feet deep and 10 feet wide, which is not adequate to meet most families' outdoor needs. Since this subdivision was approved, the Zoning Ordinance has been amended to require a 20 foot rear setback for duplex units in this zoning district, which is what is being requested at this time.

c. Character of area

Colonial Hills Subdivision consists of a mixture of single family, duplex and townhouse lots on relatively small lots with short setbacks. The lot in question abuts Ledge Lowe Subdivision which is comprised of single family homes on lots one to five acres in size. Colonial Hills Subdivision has access to WV 480 (Kearneysville Pike) and Alternate WV 45 Bypass (Potomac Farms Drive). A 5-acre church site buffers the development from WV 480.

d. Impact on adjacent properties.

Within Colonial Hills Subdivision, the neighbors are the other duplex unit and another duplex structure. The proposed deck/screened porch would sit closer to the larger Ledge Lowe property; however, this home sits approximately 135 feet from the shared rear property line and there appears to be sufficient landscaping that would minimize the potential impact of the proposed use. The connected unit requested a reduction of the rear setback in 2008 to 18' (or less). The request was denied based on public comment at that time.



Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 22, 2014

Christopher Wilkins Variance Request (#ZV14-03)

e. Feasibility of complying with the ordinance by other means

Due to the shallowness of the lot and the fact that the structure was constructed at the rear setback line, the only option other than obtaining a variance that allows the utilization of the existing sliding doors would be the construction of a fairly small deck, 4 feet deep and 10 feet wide.

It should be noted that if these duplexes were constructed today, the required rear setback would be 20 feet, which is what is being request.



5. Conditions of Approval

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

- a) This variance shall be limited to the reduction of the rear setback from 30' to 20' for a 10' x 28' deck to include a 10' x 12' covered & screened porch as described in the application.

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 May 22, 2014

Christopher Wilkins Variance Request (#ZV14-03)

SECTION OF ORDINANCE TO BE CONSIDERED:

SECTION 5.4b RESIDENTIAL GROWTH DISTRICT
 HEIGHT AND YARD REQUIREMENTS

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

<u>Development Type</u>	<u>Minimum Lot Area (MLA) Area per Dwelling Unit (ADU)</u>	<u>Required Yards</u>	<u>Max Building Height*</u>
1. Single family detached dwelling	6,000 sq. ft. ADU**		
Public/Central water and sewer	10,000 sq. ft. MLA	25 ft. front	40 ft.
Public/Central water or sewer	20,000 sq. ft. MLA	12 ft. side	
No Public/Central water or sewer	40,000. Sq. ft. MLA	20 ft. rear	
2. Duplex dwelling unit			
Public/Central water and sewer	3,200 sq. ft. MLA	25 ft. front	40 ft.
Public/Central water and sewer	7,500 sq. ft. ADU	25 ft. front (exterior only)	
Public/Central water or sewer	10,000 sq. ft.	30 ft. rear	

***Chart is from the April 8, 2005, version of the Zoning Ordinance.*

**Motion Regarding a Variance Request by Christopher Wilkins (#ZV14-03)
Brought Before the Jefferson County Board of Zoning Appeals
Thursday, May 22, 2014**

Whereas, Christopher Wilkins has applied for a variance from Section 5.4B of the Zoning and Land Development Regulations for a reduction of the rear setback from 30' to 20' for a 10' x 28' deck to include a 10' x 12' covered and screened porch, at 167 Starkeys Landing, Shepherdstown, WV (Shepherdstown (09); Map 8D; Parcel: 16); and

Whereas, the 0.22 acre lot is zoned Residential Growth and the proposed deck is a permitted accessory use for the existing single family dwelling on the lot; and

Whereas, the applicant has adequately addressed the following four criteria for a variance per the Zoning and Land Development Ordinance, Section 3.4A.4.a.i-iv:

- 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.

Now therefore be it moved, that the Jefferson County Board of Zoning Appeals

Approves Approves with Conditions Disapproves

the above referenced request with the following conditions:

- 1. The applicant is bound by the testimony given; and
- 2. This variance shall be limited to the reduction of the rear setback from 30' to 20' for a 10' x 28' deck to include a 10' x 12' covered & screened porch as described in the application; and
- 3. _____; and
- 4. _____.

The portion of the record of the Jefferson County Board of Zoning Appeals meeting pertaining to this application and the official minutes thereof are incorporated herein by reference as if set forth in full herein.

Action taken this 22nd day of May 2014

By vote of the Jefferson County Board of Zoning Appeals

By a vote of ____ Yes ____ No

Tyler Quynn, Board of Zoning Appeals, Chair



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

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

Charles Town, WV 25414

File Number: ZV14-03

Staff Initials: AB

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

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

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Variance Request

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

Property Owner Information

Name: CHRISTOPHER C. WILKINS

Mailing Address: 167 STARKEYS LANDING

City: SHEPHERDSTOWN State: WV Zip Code: 25443

Phone Number: 347-400-5261 Email: wilkie@gmail.com

Applicant Information

Name: PETER C. WILKINS

Mailing Address: 167 STARKEYS LANDING

City: SHEPHERDSTOWN State: WV Zip Code: 25443

Phone Number: 304-376-8102 Email: petercwilkins@gmail.com

Engineer(s) or Surveyor(s) Information

Name: N/A * Call Mark Rakes -> 304-270-8787

Mailing Address: Contractor

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Email: _____

Physical Property Details

Physical Address: 167 STARKEYS LANDING

City: SHEPHERDSTOWN State: WV Zip Code: 25443

Tax District: JEFFERSON COUNTY 09 Map No: 8D Parcel No: 16

Parcel Size: 0.22 AC Deed Book: 1138 Page No: 108

Zoning District (please check one)

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JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

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

On a separate sheet of paper, provide a sketch showing the shape and location of the lot indicating all roads, rights of ways, and easements. Show the location of the intended construction or land use indicating building setbacks (i.e., the distance of the structure from all property lines), size and height. Identify all existing buildings, structures or land uses on the property. The sketch should show the full extent of the property. Sign and date the sketch. (SEE ATTACHMENT 1-4)

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

Reference the section of Ordinance pertaining to this request: 5.4B

Briefly describe the nature of the variance request

WANT TO BUILD A 10'D x 28'L DECK WITH A 12' x 10' SCREEN PORCH CENTERED AROUND SLIDING PATIO DOOR. SCREEN PORCH TO HAVE A ROOF.

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

Front Setback Side Setback Rear Setback Reduction From 30' to 20'

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.

WHEN COLONIAL HILLS WAS DEVELOPED, THE REAR SETBACK REQUIREMENT WAS 30'. AS OF 2006, THIS WAS AMENDED AND CHANGED TO 20'. THE STRUCTURE TO BE BUILT WILL FALL WITHIN THE NEW CRITERIA OF A 20' SETBACK.

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?

IF THE SETBACK REQUIREMENTS FOR COLONIAL HILLS ARE FOLLOWED TO ORIGINAL SPECS & LAWS, THEY WOULD ALLOW NO BUILDING AREA BEHIND THE HOUSE. HOME IS AT CURRENT SETBACK MINIMUM FOR 2000.

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

WILKINS FAMILY BOUGHT HOME 2/26/14. SEEING PATIO DOOR, WE EXPECTED TO ESSENTIALLY BUILD A DECK TO ENJOY THE OUTDOORS; USE THE BBQ; AND ENTERTAIN GUESTS. THE ONLY OTHER WAY TO ACCESS THE OUTDOORS IS THROUGH THE FRONT DOOR OR GARAGE.

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

NEW DECK STRUCTURE WOULD NOT EXCEED EXISTING AMENDED ORDINANCE FOR A 20' REAR SETBACK. REQUIREMENTS FOR RESIDENTIAL GROWTH PERMIT DISTRICT. DECK WILL MEET REQUIRED BUILDING CODES.

By signing this application, I give permission for the Departments of Planning and Zoning staff to walk onto the subject property, if necessary, in order to take photos for the Board of Zoning Appeals staff reports. The information given is correct to the best of my knowledge. Note: Original signature is required. If additional signatures are necessary, please attach a separate sheet of paper.

[Signature] 4/20/14
Signature of Property Owner Date

Signature of Property Owner Date

Notification Requirements (to be completed by staff)

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

05-22-14
Date of Public Hearing

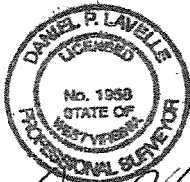
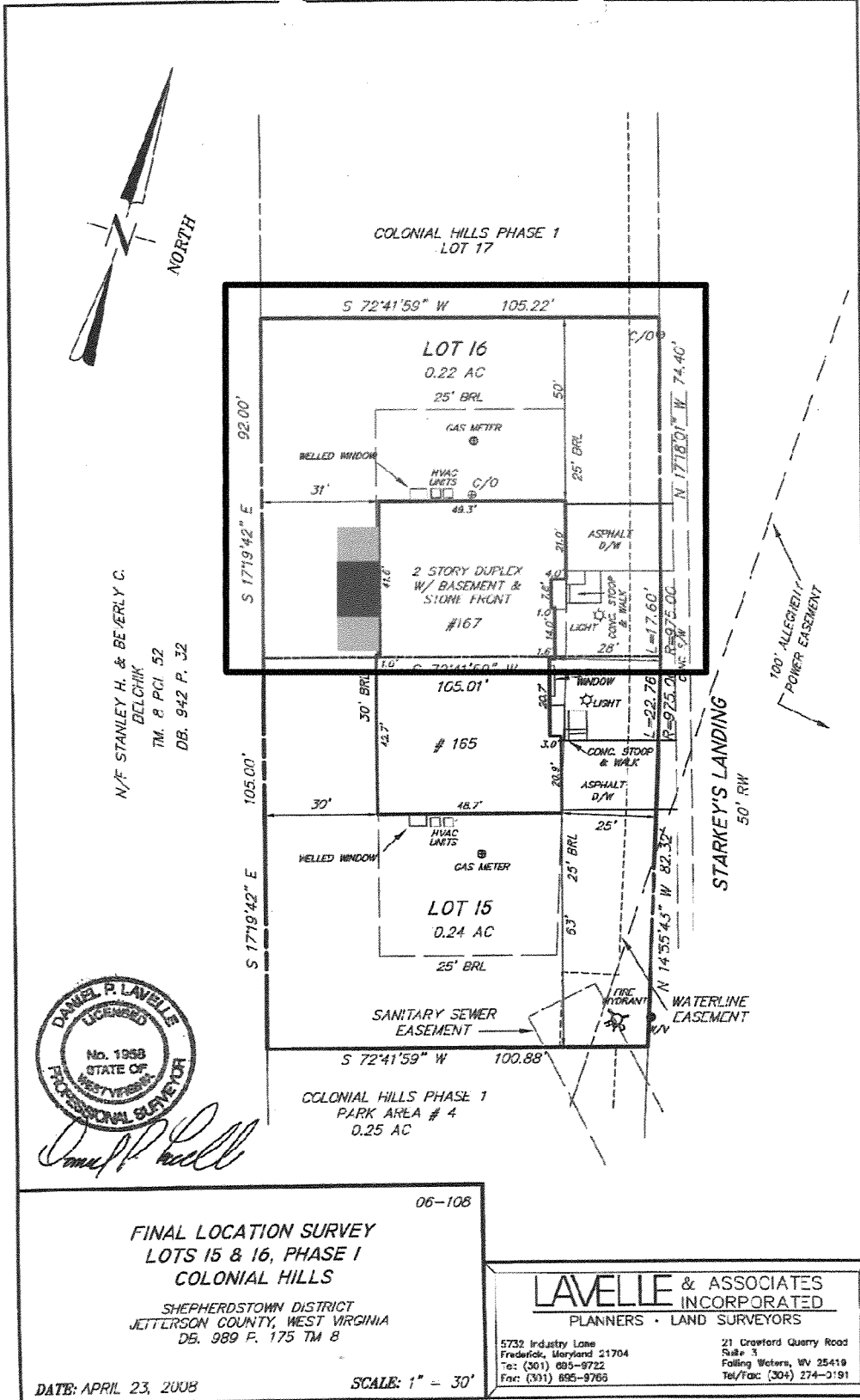
05-07-14
Advertising Date

05-07-14
Placard Posting Date

ZV14-03

Attachment 1

Proposed Screened Porch and Deck Project
167 Starkeys Landing, Shepherdstown, WV 25443



Daniel P. Lavelle

06-108
FINAL LOCATION SURVEY
LOTS 15 & 16, PHASE I
COLONIAL HILLS
 SHEPHERDSTOWN DISTRICT
 JEFFERSON COUNTY, WEST VIRGINIA
 DB. 989 P. 175 TM 8
 DATE: APRIL 23, 2008
 SCALE: 1" = 30'

LAVELLE & ASSOCIATES
INCORPORATED
 PLANNERS • LAND SURVEYORS
 5732 Industry Lane
 Frederick, Maryland 21704
 Te: (301) 895-9722
 Fax: (301) 895-9765
 21 Crawford Quarry Road
 Suite 3
 Falling Waters, WV 25419
 Tel/Fax: (304) 274-3191

[Signature]
 pcw: 4/8/14

[Signature]
 pcw: 4/20/14

Location Survey (2008) with Lot Framed and Proposed Addition Overlaid

ZV14-03

Attachment 2

Proposed Screened Porch and Deck Project
167 Starkeys Landing, Shepherdstown, WV 25443



Side View (Current)



Rear View (Current)

[Signature]
pcw: 4/8/14

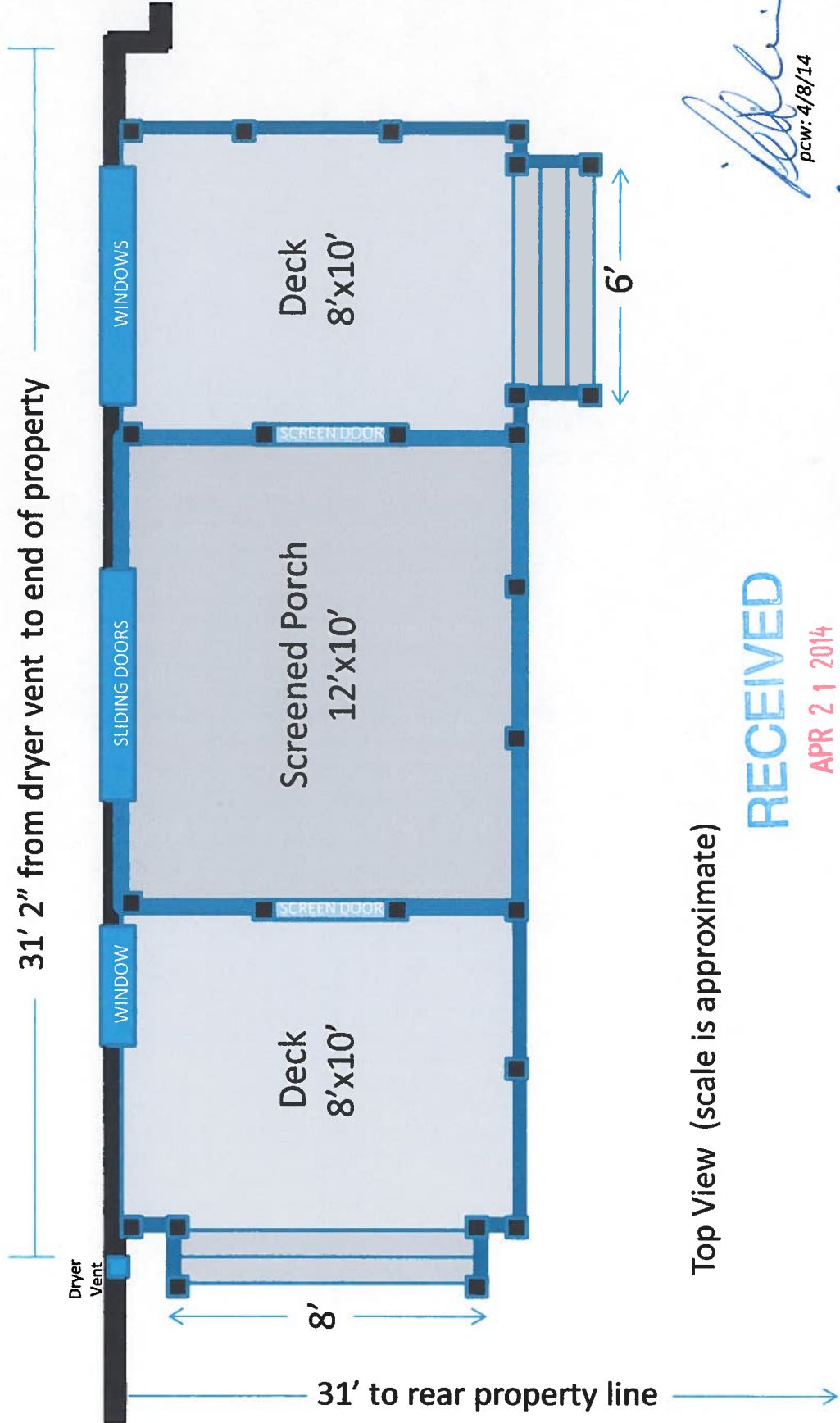
[Signature]
ccw: 4/8/14

ZV14-03

Attachment 3

Proposed Screened Porch and Deck Project

167 Starkeys Landing, Shepherdstown, WV 25443



[Signature]
 pcw: 4/8/14

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APR 21 2014

JEFFERSON COUNTY
 PLANNING, ZONING AND ENGINEERING

[Signature]
 ecw: 4/8/14

ZV14-03

Proposed Screened Porch and Deck Project

167 Starkeys Landing, Shepherdstown, WV 25443

Attachment 4



Rear View (scale is approximate)

Robert
pcw: 4/8/14

[Signature]
ew: 4/20/14

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 22, 2014

Gary Rodis Variance Request (#ZV14-04)

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a variance from Section 5.4B for a reduction of the rear setback from 20' to 12' for an irregularly shaped inground pool with a perimeter concrete walkway due to the irregular shape of the lot. The pool itself will meet all required setbacks; however, the walkway which is considered a part of the pool structure requires a variance. The lot is approximately 1.273 acres and is located within the Eastland Subdivision south of Charles Town.

The property backs up to a lot consisting of approximately five acres with a single family home and multiple outbuildings. The structures on this lot are located on the far side of the lot and the closest structure is a workshop which is 200 feet from the property line.

2. Previous Case History

The final plat for the Eastland Subdivision, Section III-B was approved by the Planning Commission on August 14, 2001 and was recorded in the Courthouse on October 26, 2001.

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 5.4B of the Zoning and Land Development Ordinance, "Minimum Lot Area, Height, and Yard Requirements", sets these standards for the Residential Growth (RG) District and references the requirements found in Table 5.4 – 1. This section requires that all single-family dwelling units in this zoning district have a 20 foot rear yard setback and allows all detached accessory structures less than 144 square feet in size to meet a 6 foot setback.

The purpose of side and rear yard setback requirements is to reduce the impact that a land use might have on an adjacent property; to allow adequate space between a structure and a property line so that maintenance of the structure is feasible; to maintain adequate separation between structures for fire prevention purposes; and to allow room for utility easements. Shorter setbacks are typically permitted for small accessory structures, because their reduced size equates to less of a visual impact on neighboring properties.

While an inground pool may not have the same impact on a neighboring use that a large structure could have, it is considered to be a structure that needs to meet setbacks from the edge of the concrete of the pool.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 22, 2014

Gary Rodis Variance Request (#ZV14-04)

b. Unique characteristics of property

This property is 1.273 acres and has an irregular shape. The rear yard is fairly shallow due to the configuration of the property line. The fairly large side yard is where the septic system is located. The properties in the neighborhood all average over one acre in size but most are more regularly shaped.

To the rear is a property that is nearly 5 acres in size with a house and multiple outbuildings. The closest building sits 200 feet from the property line.



d. Impact on adjacent properties.

Because of the size of the lots in this subdivision and the larger size of the lot to the rear of the proposed pool location, this variance would have minimal impact on the adjacent properties. The irregular shape of the lot creates an issue with the rear property line only. The pool itself will meet the setback; however, the concrete walkway around the pool will not be able to meet it without the requested variance. The proposed pool will meet the side yard setbacks and will therefore have no greater impact on the neighboring properties fronting on Eastland Drive.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 22, 2014

Gary Rodis Variance Request (#ZV14-04)



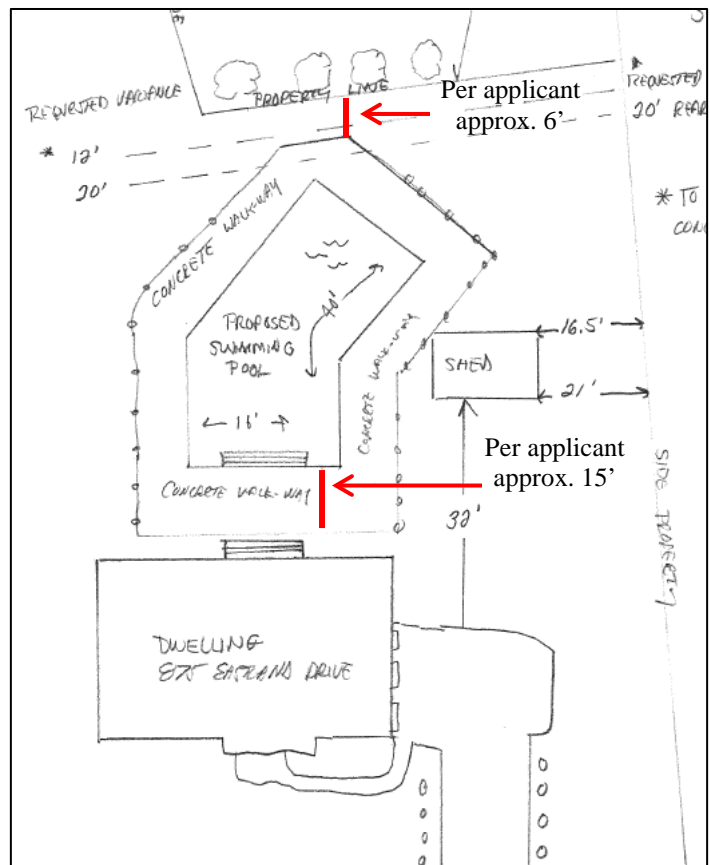
- e. Feasibility of complying with the ordinance by other means

Due to the shape of the lot and the shortened back yard, the pool and its accompanying concrete walkway, as it is proposed, cannot meet the required rear setback. One alternative to the requested variance would be to orient the pool in a different direction, allowing it to meet the setback for the entire structure.

5. Conditions of Approval

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

- a. This variance shall be limited to the construction of the concrete walkway for the described inground pool.



Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 May 22, 2014

Gary Rodis Variance Request (#ZV14-04)

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 5.4 Residential-Growth District

B. Minimum Lot Area, Height, and Yard Requirements

1. Minimum Lot Area, Height, and Yard Requirements are as shown in Table 5.4 – 1 below. The minimum lot area requirements are based on the availability of central or public water and sewer facilities and West Virginia Board of Health regulations.²³

Table 5.4 – 1 Residential Growth District - Height and Yard Requirements^{5, 19, 23}

	Development Type	Minimum Lot Area (MLA) Area per Dwelling Unit (ADU)	Required Yards (ft)				Maximum Building Height (ft)*
			Front	Side	Street Side	Rear	
1	Single Family Dwelling	6,000 sq. ft. MLA**	25	12	15	20	40
	Public/Central water and sewer	10,000 sq. ft. ADU	“	“	“	“	“
	Public/Central water or sewer	20,000 sq. ft. MLA	“	“	“	“	“
	No Public/Central water or sewer	40,000. Sq. ft. MLA	“	“	“	“	“

*Subject to Section 9.2

**Motion Regarding a Variance Request by Christopher Wilkins (#ZV14-03)
Brought Before the Jefferson County Board of Zoning Appeals
Thursday, May 22, 2014**

Whereas, Christopher Wilkins has applied for a variance from Section 5.4B of the Zoning and Land Development Regulations for a reduction of the rear setback from 30' to 20' for a 10' x 28' deck to include a 10' x 12' covered and screened porch, at 167 Starkeys Landing, Shepherdstown, WV (Shepherdstown (09); Map 8D; Parcel: 16); and

Whereas, the 0.22 acre lot is zoned Residential Growth and the proposed deck is a permitted accessory use for the existing single family dwelling on the lot; and

Whereas, the applicant has adequately addressed the following four criteria for a variance per the Zoning and Land Development Ordinance, Section 3.4A.4.a.i-iv:

- 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.

Now therefore be it moved, that the Jefferson County Board of Zoning Appeals

Approves Approves with Conditions Disapproves

the above referenced request with the following conditions:

- 1. The applicant is bound by the testimony given; and
- 2. This variance shall be limited to the reduction of the rear setback from 30' to 20' for a 10' x 28' deck to include a 10' x 12' covered & screened porch as described in the application; and
- 3. _____; and
- 4. _____.

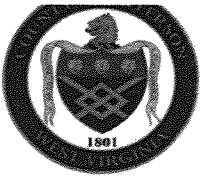
The portion of the record of the Jefferson County Board of Zoning Appeals meeting pertaining to this application and the official minutes thereof are incorporated herein by reference as if set forth in full herein.

Action taken this 22nd day of May 2014

By vote of the Jefferson County Board of Zoning Appeals

By a vote of ____ Yes ____ No

Tyler Quynn, Board of Zoning Appeals, Chair



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

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

Charles Town, WV 25414

File Number: ZV14-04

Staff Initials: AB

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

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

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3221

zoning@jeffersoncountywv.org

Fax: (304) 728-8121

Zoning Variance Request

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

Property Owner Information

Name: Gary Rodis
Mailing Address: 875 Eastland Drive
City: Charles Town State: WV Zip Code: 25414
Phone Number: 443-956-5664 Email: rodiair@comcast.net

Applicant Information

Name: Gary Rodis
Mailing Address: 875 Eastland Drive
City: Charles Town State: WV Zip Code: 25414
Phone Number: 443-956-5664 Email: rodiair@comcast.net

Engineer(s) or Surveyor(s) Information

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

Physical Property Details

Physical Address: 875 Eastland Drive
City: Charles Town State: WV Zip Code: 25414
Tax District: Sec 3B, #85 Eastland 02-GH Map No: 16 Parcel No: 01081
Parcel Size: 1.273 AC. Deed Book: 977 Page No: 425

Zoning District (please check one)

Table with columns: Rural (R-A), Residential Growth (R-G), Industrial Commercial (I-C), Residential-Light Industrial-Commercial (R-L-C), Village (V). Includes 'RECEIVED' stamp and 'JEFFERSON COUNTY PLANNING, ZONING AND ENGINEERING' text.

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

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

Reference the section of Ordinance pertaining to this request: 5.4B - GH

Briefly describe the nature of the variance request

Requesting variance to rear set-back to 12 feet due to irregular lot shape of back yard for purposes of installing in-ground swimming pool. This additional space will be needed to accommodate pool concrete enclosure.

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

Front Setback Side Setback Rear Setback Reduction From 20' to 12'

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.

This variance is requested for the rear portion of private property and will not adversely affect the adjacent rear property owner due to the larger size of their lot and location of their dwelling and out buildings. There is a sizable amount of land separating the two properties

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 rear property of the subject lot is irregular in shape which will limit the size and orientation of the pool location. Additionally, the septic system is installed on the side property of the subject lot and will not be suitable for the pool installation.

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

The granting of this request will provide the necessary additional area to accommodate installing a pool within this irregularly shaped rear yard, and will provide relief for the additional concrete walkway surrounding the pool without positioning the pool too close to the rear of the dwelling.

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

The subject dwelling's rear yard abuts the rear neighbor's rear yard separated by a fence. There is ample distance between both properties to allow adequate and reasonable zoning distance which will cause no impediment to either property while adhering to a reasonable intent of the zoning ordinance and justice to all parties involved.

By signing this application, I give permission for the Departments of Planning and Zoning staff to walk onto the subject property, if necessary, in order to take photos for the Board of Zoning Appeals staff reports. The information given is correct to the best of my knowledge. Note: Original signature is required. If additional signatures are necessary please attach a separate sheet of paper.



4-23-2014

Signature of Property Owner

Date

Signature of Property Owner

Date

Notification Requirements (to be completed by staff)

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

05-22-14

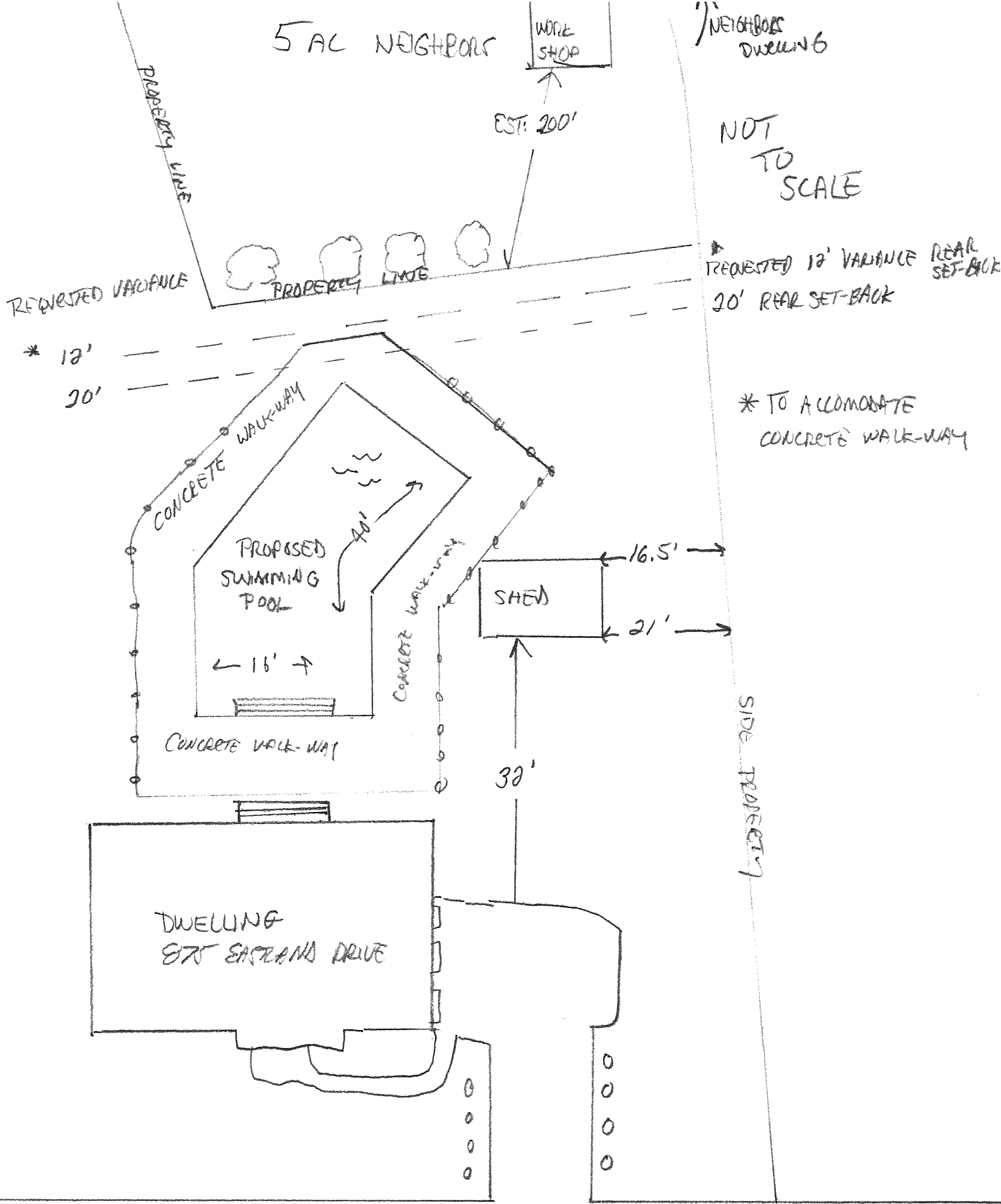
Date of Public Hearing

05-07-14

Advertising Date

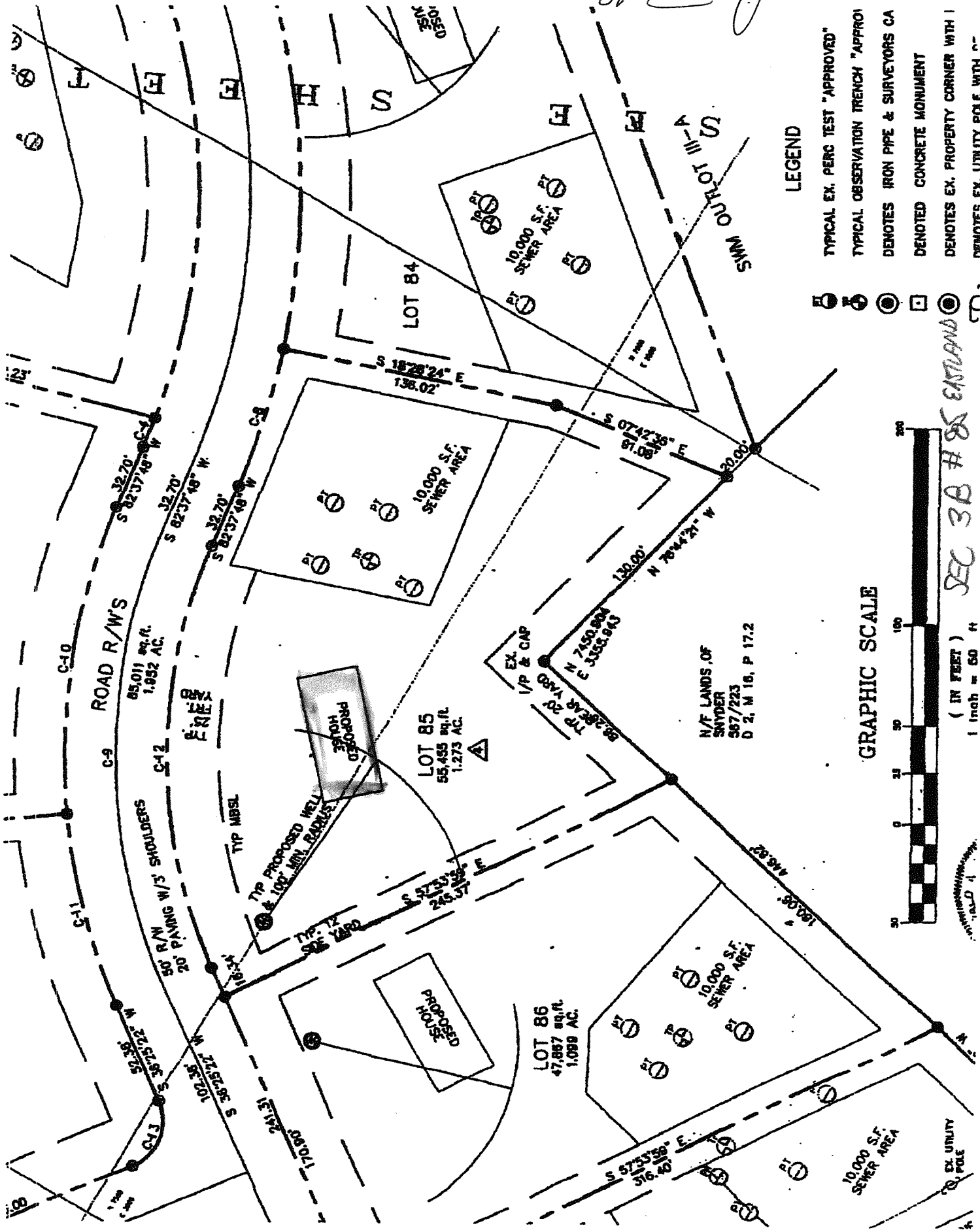
05-07-14

Placard Posting Date



Larry Rodis 4-23-2014

Jan 16/2014



LEGEND

- TYPICAL EX. PERC TEST "APPROVED"
- TYPICAL OBSERVATION TRENCH "APPROVED"
- DENOTES IRON PIPE & SURVEYORS CA
- DENOTES CONCRETE MONUMENT
- DENOTES EX. PROPERTY CORNER WITH IRON PIPE
- DENOTES EX. UTILITY POLE WITH IRON PIPE

GRAPHIC SCALE




SEC 3B # 85 EASTLAND
 MAR. 16 PAPER 0108 0000-0000

N/F LANDS OF
 SNYDER
 587/223
 D 2, M 16, P 17.2

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 May 22, 2014

OBF Properties LLC Change in Nonconforming Use Request (#ZC14-13 and #ZC14-15)

Item #6 Request by ABS Enterprises for a change in nonconforming use per Sec. 4.3C to allow for the addition of a 5,000 sq. ft. fresh bakery to zoning certificate application #ZC14-13 and to include heavy equipment leasing and repair, auto repair and recycling as approved uses to zoning certificate application #ZC14-15.

APPLICANT:	Saad Shadkami, ABS Enterprises
OWNER :	Chris Hansen, OBF Properties, LLC
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	1059 Box Factory Rd, Summit Point, West Virginia.
LEGAL DESCRIPTION & ZONING DISTRICT:	<p style="text-align: center;">District: Middleway; Map: 27; Parcel: 11 Zoning Map Designation: Rural</p> 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North: R South: R</i> <i>East: R West: R</i>
PRIOR CASES:	PC File #ZC10-10 PC File #ZC10-06
LOT AREA:	7.19 acres (the parcel on the west side of the road)
ACTIVITY:	Nonconforming Uses

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 22, 2014

OBF Properties LLC Change in Nonconforming Use Request (#ZC14-13 and #ZC14-15)

RELEVANT INFORMATION:

1. Case History

Prior documentation indicates that the Old Box Factory property has been used commercially since 1947. Prior to 2006, Burch Manufacturing established a nonconforming use on Parcels 4.1 and 11 that included a commercial sawmill and shipping container and pallet manufacturing business.

In February 2006, the Board of Zoning Appeals (BZA) heard a request by the owners for a change in nonconforming use from the sawmill / pallet business to a “general business, commercial warehousing, public storage and a secure document shredding business.” The owner stated during the hearing that there would not be any storage or warehousing of toxic or hazardous materials and outdoor storage would be limited to the areas where lumber and outside equipment had been located previously. Additionally, the owner proposed to fence the property and provide additional lighting. The approval of the change in nonconforming use was unanimous. While a zoning certificate was never issued for the use approved by the Board, previous departmental practice appears to have established the Board’s minutes as a substitute for the zoning certificate.

In October 2006, a zoning certificate was issued related to the previously established nonconforming uses. The use approved in the zoning certificate was for “manufacturing and reconditioning wooden pallets, boxes and wood products;” essentially, “to continue the pre-existing nonconforming use.” There is no documentation in the department files detailing the reasoning behind the difference in how the zoning certificate was issued and the Board’s action. Approval of a continued use would not have required Board action, but would have been approved by the Zoning Administrator. It is unclear whether or not the intent was to “abandon” the Board approved change in use.

On June 17, 2010, the Board heard a case for a “Change in Nonconforming Use from a Saw Mill, Shipping, and Pallet Manufacturing Business to Commercial Warehousing, Secure Document Shredding, and General Business.” The request was approved, and on June 18, 2010, a Zoning Certificate (#ZC10-06) was issued for the uses approved by the Board. On August 19, 2010, the Board heard a case to “to allow for the addition of a recovery and recycling of copper cable for baling and resale business to the existing approved zoning certificate (#ZC10-06)”. Discussion regarding the definition of “salvage yard” occurred and the outdoor storage related to this use was restricted to one-quarter acre so that the operation was not considered a salvage yard. The request was approved, and on September 14, 2010 a Zoning Certificate (#ZC10-10) was issued for the uses approved by the Board.

2. Definition of Requested Use

The Applicant has requested approval for three Zoning Certificates for changes in nonconforming uses specific to certain buildings on the properties owned by OBF Properties located at 1059 & 1061 Box Factory Road. Section 4.3Cc of the Zoning Ordinance provides that a nonconforming retail, service, or wholesale operation may be substituted with another retail, service or wholesale operation without a public hearing. Portions of #ZC14-13 and #ZC14-15 and all of the requested uses for #ZC14-14 have been determined to fall under this provision; however, the applicant has also requested an additional nonconforming use, for the addition of a 5,000 sq. ft. bakery, to #ZC14-13 and to include heavy equipment leasing and repair, plus auto repair and recycling as approved uses to #ZC14-15. These uses were determined to fall outside of the administrative approval and require action by the Board.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 22, 2014

OBF Properties LLC Change in Nonconforming Use Request (#ZC14-13 and #ZC14-15)

The current approved Zoning Certificate for the entire 16.085 acres includes “Commercial Warehousing, Secure Document Shredding, General Business and Recovery and Recycling of Copper Cable for Baling and Resale Business” and includes certain restriction and conditions particularly related to outdoor storage. The following statements analyze the zoning certificate requests for the 7.19 acre portion of the property located on the west side of Box Factory Road:

- a) #ZC14-13 includes a request for a change in nonconforming use to include a “commercial warehouse for pre-packaged and refrigerated food” and related delivery operations, within approximately 20,000 square feet currently used for warehousing, with no customers on-site. This use has been determined to be a change in use that can be administratively approved.

The application also requests that a “fresh bakery”, proposed to occupy about 5,000 square feet be permitted in addition to the food warehouse operation. It has been determined that this bakery would constitute a manufacturing operation that is not currently a part of the approved zoning certificate and therefore requires a public hearing before the BZA.



- b) #ZC14-15 includes a request for a change in nonconforming use to include spaces for lease for potential uses such as “commercial warehouse, race car and auto repair in association with Summit Point raceway, agri-business storage and equipment repair, equipment leasing and repair, recycling, document shredding and general business”. The applicant further clarified that equipment repair and leasing referred to “heavy equipment”. It has been determined that of this list, “commercial warehouse, agri-business storage and equipment repair, document shredding and general business” are changes in use that can be administratively approved.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 22, 2014

OBF Properties LLC Change in Nonconforming Use Request (#ZC14-13 and #ZC14-15)

The requested uses related to racecar and auto repair in association with Summit Point raceway was determined to potentially create customer traffic beyond that which has historically occurred with the previous sawmill operation and more recent, warehousing operation.

Additionally, the recycling aspect of the requested use has the potential to create significant traffic and potential outdoor storage issues that haven't previously existed on this site. During the BZA review of #ZC10-10, considerable discussion regarding the definition of Salvage Yard occurred and ultimately it was determined that the area within which the copper cable recycling, baling and resale could occur was within the structures and in a space not to exceed 0.25 acres where lumber had previously been stored. Recycling is a broad term and requires careful parameters to be placed on it in the rural environment in which this nonconforming use is located.

Finally, staff determined that "heavy equipment leasing and repair" was beyond the scope of the previous warehousing and general business uses. Such a business could generate considerable customer traffic that should be considered in a public forum.



Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 22, 2014

OBF Properties LLC Change in Nonconforming Use Request (#ZC14-13 and #ZC14-15)

It should also be noted that #ZC14-14, for the 8.9 acre portion of the property located on the east side of Box Factory Road, was approved administratively and includes a location for the storage, minor maintenance and deploying of heavy construction equipment, with up to 35 employees. While this may seem to be similar to the heavy equipment repair and leasing discussed above, it was determined that this was a business which would be managing and maintaining its own vehicles and employees and would not generate customer traffic on site. As such, it was determined that this could fall under the provision of general business and was administratively approved.



Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 May 22, 2014

OBF Properties LLC Change in Nonconforming Use Request (#ZC14-13 and #ZC14-15)



A site visit was conducted on May 2, 2014. The uses are proposed to occur in all of the large buildings found on these parcels. The buildings that are the subject of the BZA action are all located on the 7.19 acre lot on the west side of Box Factory Rd (Lot 11). The buildings have had some renovations completed since the last BZA hearing and can be adequately secured. They are currently occupied by goods related to OBF Properties, which will be relocated. Existing uses on adjacent properties include a sawmill and agricultural land. In addition, a single-family residence is located approximately 800 feet from the site of the proposed uses.



Red: 5,000 square foot fresh bakery

Blue: Refrigerated/prepackaged food for storage & delivery distribution.

Green: Lease space for commercial warehousing, auto repair, agri-business storage & equipment repair, construction tool and heavy equipment leasing & repair, recycling, document shredding, general business.

Blue Star: Not specified (buildings in disrepair)



Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 22, 2014

OBF Properties LLC Change in Nonconforming Use Request (#ZC14-13 and #ZC14-15)

3. Consideration of a Substitution of a Nonconforming Use

The Jefferson County Land Development and Zoning Ordinance defines a nonconforming use as “a use of a building or of land lawfully existing at the time this Ordinance becomes effective and which does not conform with the use regulations of the district in which it is located. Any new lines of division within a subdivision of a parcel that is a nonconforming use shall meet the regulations of this Ordinance.”

Because a non-conforming use is not a use that conforms to the local land use regulations, but is permitted to continue, careful consideration needs to occur when uses are proposed which are still not permitted but may be considered a change in nonconforming use. The County is obligated to minimize the impact that changes in nonconforming uses may have on neighboring properties and the local road system and other infrastructure. Typically, a change in nonconforming use to a lesser intensity of use would be an appropriate change. Likewise, a change from retail to retail or service to service for uses with similar staff and customer expectations would be permissible. When changes are proposed where the impact of the change in use is less clearly defined, it is appropriate for the Board of Zoning Appeals to hold a hearing to receive testimony in order to determine whether the use is appropriate and/or how to mitigate its impact.

4. Possible Conditions for the Proposed Changes in Nonconforming Use

The existing zoning certificate, #ZC10-10 included the following conditions imposed by the BZA:

- No storage or warehousing of any toxic or hazardous material will be permitted.
- Exterior storage will be limited to the area where lumber and outside equipment was formerly located.
- No smelting will be permitted.
- Exterior storage of copper and stripped plastic is limited to area of less than one quarter acre.

Staff has included the following restrictions/conditions on #ZC14-14:

- No storage or warehousing of any toxic or hazardous material will be permitted.
- Any waste oils and related maintenance fluids shall be properly disposed of off-site.
- No exterior storage of equipment.
- No smelting is permitted
- A sketch plan shall be submitted prior to the business opening, depicting adequate employee parking and the circulation pattern for construction equipment. Note that no customer parking is permitted on unpaved parking areas. If customers are expected on premises, a Site Plan depicting required paved parking and ADA compliant spaces shall be required.

Similar conditions are proposed with the uses that can be administratively approved on #ZC14-13 and #ZC14-15. The BZA can impose additional conditions if the requested uses are permitted.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 22, 2014

OBF Properties LLC Change in Nonconforming Use Request (#ZC14-13 and #ZC14-15)

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 4.3 Nonconforming Uses

Any building, structure or premises lawfully existing at the time of the adoption of this ordinance, or lawfully existing at the time that this ordinance is subsequently amended, may continue to be used even though such building, structure, or premises does not conform to use, setbacks or dimensional regulations of the zoning district in which it is located or the regulations of the Development Review System; subject, however to the following provisions:⁷

- A. Nonconforming uses may be upgraded or repaired, or alterations made to the use's facilities. However, expansion of any nonconforming use shall be limited to the lot that existed at the time of adoption of this Ordinance.^{7, 23}

Repair includes the following: replacement of same size (+/-35%) porches, awnings, decks roofs, overhangs, patios, or any other similar construction as approved by the Zoning Administrator. Additional acreage shall not be added to enlarge any nonconforming use unless approved via the Development Review System.²³
- B. Whenever a nonconforming use has been abandoned for a period of twelve (12) months, such use shall not be reestablished and any future use shall be in conformance with the provisions of this Ordinance.^{5, 17, 21}
- C. A nonconforming use may not be substituted for any other nonconforming use without the Board of Zoning Appeals review and public hearing, provided, however, to the following: upon notice to the Zoning Administrator with an application for and approval of a Zoning Certificate a nonconforming retail, service, or wholesale operation may be substituted with another retail, service or wholesale operation without such public hearing; provided again, however, the intended use does not include an adult use.^{7, 17, 21}

**Motion Regarding a Request by OBF Properties LLC
for a Change in Nonconforming Use (#ZC14-13 and #ZC14-15)
Brought Before the Jefferson County Board of Zoning Appeals
Thursday, May 22, 2014**

Whereas, OBF Properties LLC has requested a change in nonconforming use per Section 4.3C to allow for the addition of a 5,000 square foot fresh bakery to zoning certificate application #ZC14-13 and to include heavy equipment leasing and repair, auto repair and recycling as approved uses to zoning certificate application #ZC14-15, at 1059 Box Factory Rd, Summit Point, WV (Middleway; Map: 27; Parcel: 11); and

Whereas, the 7.19 acre lot is zoned Rural and the existing structures are considered legal nonconforming uses per Section 4.3 that have not ceased operation; and

Whereas, Section 4.3C of the Zoning and Land Development Ordinance reads,

- A. A nonconforming use may not be substituted for any other nonconforming use without the Board of Zoning Appeals review and public hearing, provided, however, to the following: upon notice to the Zoning Administrator with an application for and approval of a Zoning Certificate a nonconforming retail, service, or wholesale operation may be substituted with another retail, service or wholesale operation without such public hearing; provided again, however, the intended use does not include an adult use.^{7, 17, 21}; and

Whereas, Staff determined the requested uses were not administrative substitutions and therefore required Board review and a public hearing; and

Whereas, the Board finds the proposed uses to be appropriate additions to the existing nonconforming activities currently operating on the property.

Now therefore be it moved, that the Jefferson County Board of Zoning Appeals

Approves Approves with Conditions Disapproves

the above referenced request with the following conditions:

1. The applicant is bound by the testimony given; and
2. No exterior storage of equipment.
3. No storage or warehousing of any toxic or hazardous material will be permitted.
4. Exterior storage will be limited to the area where lumber and outside equipment was formerly located.
5. Exterior storage of copper and stripped plastic is limited to area of less than one quarter acre.
6. Any waste oils and related maintenance fluids shall be properly disposed of off-site
7. No smelting will be permitted.
8. A sketch plan shall be submitted prior to the business opening, depicting adequate employee parking and the circulation pattern for construction equipment. Note that no customer parking is permitted on unpaved parking areas. If customers are expected on premises, a Site Plan depicting required paved parking and ADA compliant spaces shall be required.

9. _____; and

10. _____.

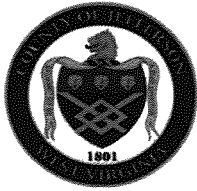
The portion of the record of the Jefferson County Board of Zoning Appeals meeting pertaining to this application and the official minutes thereof are incorporated herein by reference as if set forth in full herein.

Action taken this 22nd day of May 2014

By vote of the Jefferson County Board of Zoning Appeals

By a vote of _____ Yes _____ No

Tyler Quynn, Board of Zoning Appeals, Chair



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

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

Charles Town, WV 25414

File Number: ZC14-13

Staff Initials: _____

Total Fee: \$ 100.00

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

Email planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Certificate Application

The Zoning Administrator shall approve or disapprove issuance of a zoning certificate within sixty (60) days of the initial filing date providing the application is complete. A zoning certificate shall become void eighteen (18) months after the date of issuance if the construction or use for which the permit was issued has not commenced. Any future change in use or expansion will require processing through the Jefferson County Departments of Planning, Zoning and Engineering to ensure compliance with all applicable County regulations.

Property Owner Information

Name: OBF Properties - Mr. Chris Hansen
Mailing Address: c/o C2 Management 351 Station Road (PO Box 838)
City: Berryville State: VA Zip Code: 22611
Phone Number: 571 239-2396 Email: CHansen@tryc2.com

Applicant's Information

Applicant Name: Saad Shadkami
Mailing Address: ABS Enterprises 375 E. Main Street
City: Uniontown State: PA Zip Code: 15401
Phone Number: 703 927-8686 Email: ABS1997@gmail.com

Registered Engineer(s) or Surveyor(s) Information

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

Physical Property Details

Physical Address: 1059-1061 Box Factory Road
City: Summit Point State: WV Zip Code: 25446
Tax District: 07 Map No: 27 and 28 Parcel No: 11 and 4.1
Parcel Size: 7.19 and 8.9 acres Deed Book: 1048 Page No: 266

Zoning District (please check one)

RECEIVED
APR 23 2014
JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

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

Type of Certificate

Change in Use	Change in Non-Conforming Use	Change in Owner/Tenant	Sign
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cottage Industry	Home Occupation, Level 1	Home Occupation, Level 2	Other
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please list "other": _____

How is the property currently used?

Commercial warehousing, Secure Document shredding, General Business and Recycling of copper cable for bailing and resale.

Please provide any information or known history regarding this property (ex: previous zoning certificate, site plan, subdivision, variance, etc.).


Zoning Certificate Z10-10 issued 9/14/2010 for above stated use.

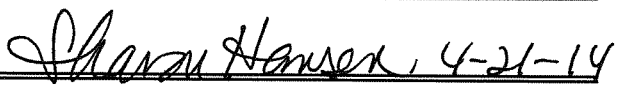
Give a brief description of your proposal (include separate sheet of paper if necessary)

Commercial warehouse will be for pre-packaged food items and refrigerated food items. This function will require approximate 20,000 s.f. with 10 delivery vans (no retail). In addition, applicant would like to install a fresh bakery about 5,000 square feet. (Deliveries will be made by same vans (no retail). Approximately 20 employees will operate business, ten of which will be deliver drivers out on route system. All functions in existing renovated blds.

On a separate sheet of paper, sketch the shape and location of the lot, including property boundaries, with accurate dimensions. Show the location of the intended construction or land use indicating building setbacks, size and height. Identify existing buildings, structures or land uses on the property. Please specify the number and location of the existing/proposed parking spaces (if necessary).

Original signature of all property owners is required. Attach additional signature page if needed. The information given is correct to the best of my knowledge.

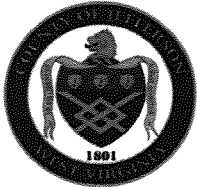
 4-21-14
Signature of Property Owner 1 Date

 Sharon Hansen, 4-21-14
Signature of Property Owner 2 Date

For Office Use

Restrictions/Conditions

Action Taken



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

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

Charles Town, WV 25414

File Number: ZC14-15

Staff Initials:

Total Fee: \$ 100.00

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

Email planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Certificate Application

The Zoning Administrator shall approve or disapprove issuance of a zoning certificate within sixty (60) days of the initial filing date providing the application is complete. A zoning certificate shall become void eighteen (18) months after the date of issuance if the construction or use for which the permit was issued has not commenced. Any future change in use or expansion will require processing through the Jefferson County Departments of Planning, Zoning and Engineering to ensure compliance with all applicable County regulations.

Property Owner Information

Name: OBF Properties - Mr. Chris Hansen
Mailing Address: c/o C2 Management 351 Station Road (PO Box 838)
City: Berryville State: VA Zip Code: 22611
Phone Number: 571 239-2396 Email: CHansen@tryc2.com

Applicant's Information

Applicant Name: Saad Shadkami
Mailing Address: ABS Enterprises 375 E. Main Street
City: Uniontown State: PA Zip Code: 15401
Phone Number: 703 927-8686 Email: ABS1997@gmail.com

Registered Engineer(s) or Surveyor(s) Information

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

Physical Property Details

Physical Address: 1059-1061 Box Factory Road
City: Summit Point State: WV Zip Code: 25446
Tax District: 07 Map No: 27 and 28 Parcel No: 11 and 4.1
Parcel Size: 7.19 and 8.9 Deed Book: 1048 Page No: 266

Zoning District (please check one)

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

RECEIVED

APR 23 2014

JEFFERSON COUNTY PLANNING, ZONING AND ENGINEERING

Type of Certificate

Change in Use	Change in Non-Conforming Use	Change in Owner/Tenant	Sign
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cottage Industry	Home Occupation, Level 1	Home Occupation, Level 2	Other
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please list "other": _____

How is the property currently used?

Commercial warehousing, Secure Document shredding, General Business and Recycling of copper cable for bailing and resale.

Please provide any information or known history regarding this property (ex: previous zoning certificate, site plan, subdivision, variance, etc.).


Zoning Certificate Z10-10 issued 9/14/2010 for above stated use.

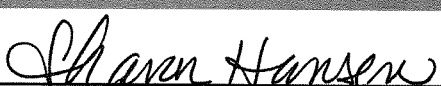
Give a brief description of your proposal (include separate sheet of paper if necessary)

Approximately 60,000 s.f. of existing buildings are located on this site. Owner plans to use about 35,000 s.f. for his business ventures and would like to lease out space for temporary income. Requesting reasonable uses such as commercial warehousing, race car and auto repair in association with Summit Point raceway, agri-business storage and equipment repair, equipment leasing and repair, recycling, document shredding and general business.

On a separate sheet of paper, sketch the shape and location of the lot, including property boundaries, with accurate dimensions. Show the location of the intended construction or land use indicating building setbacks, size and height. Identify existing buildings, structures or land uses on the property. Please specify the number and location of the existing/proposed parking spaces (if necessary).

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 4-21-14
Signature of Property Owner 1 Date

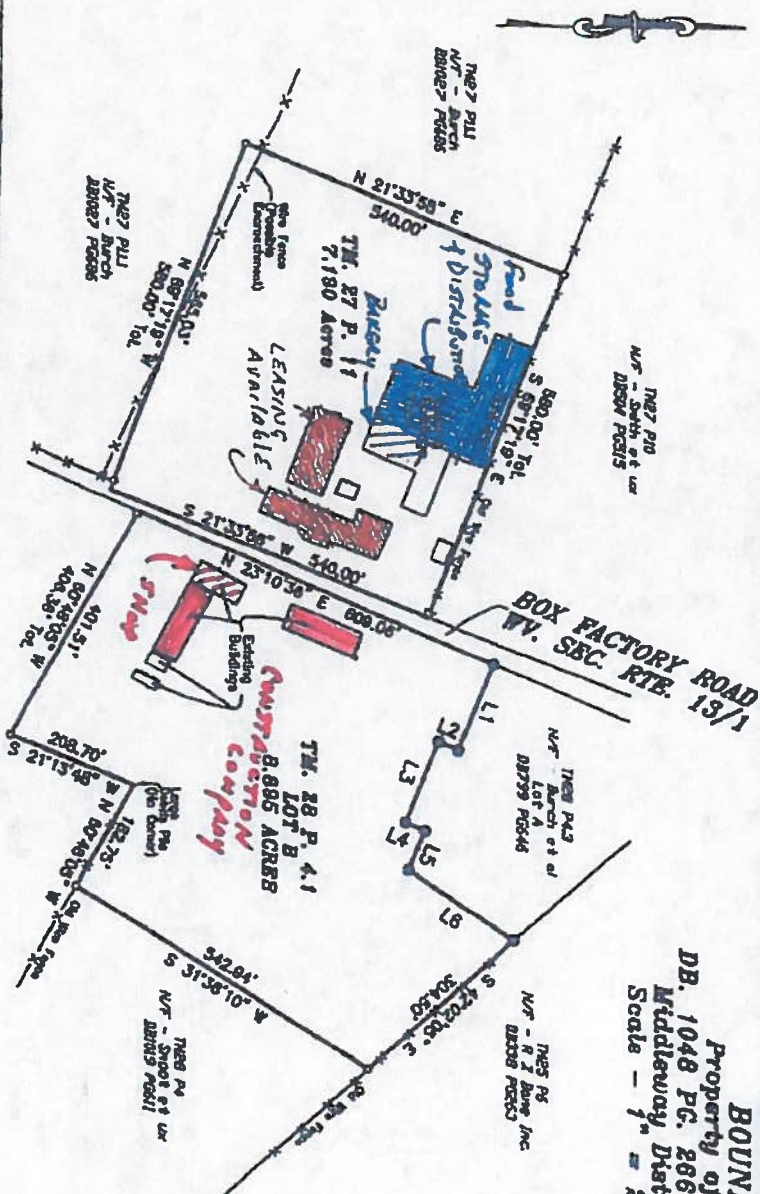
 4-21-14
Signature of Property Owner 2 Date

For Office Use

Restrictions/Conditions

Action Taken

BOUNDARY SURVEY
 Property of OBF Properties LLC
 DB, 1048 PG. 286 - TM27 P11 & TM28 P4.1
 Middleway District - Jefferson CO., WV
 Scale - 1" = 200' September 30, 2008



LINE	BEARING	DISTANCE
L1	S 68°17'04" E	143.89'
L2	S 22°23'00" W	33.49'
L3	S 67°38'02" E	134.67'
L4	N 22°23'00" E	33.49'
L5	S 67°37'02" E	67.31'
L6	N 33°43'17" E	199.38'

○ 5/8" Rubber Fd.
 △ RR Spike Fd.
 ● 5/8" Rubber Set

Note - This survey was done without the benefit of a title report.



DL Consulting, PLLC
 Land Surveys - Construction
 284 Centennial Lane - Great Cacapon, WV, 25422
 (804) 847-6589 • (804) 947-7082 (Fax)
 www.dlconsulting.com

ZC14-13
 ZC14-14
 ZC14-15



Jefferson County, West Virginia

Departments of Planning and Zoning
116 East Washington Street, 2nd Floor
Charles Town, WV 25414

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Email: zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Director's Report May 22, 2014 Board of Zoning Appeals Meeting

1) Board of Zoning Appeals Training

- Possible ethics training opportunities
- Orientation for New Members

2) Envision Jefferson 2035 Update

- Presentation of draft to Planning Commission at the 6/10/14 Meeting
- Special PC Workshop to be called for 6/24/14 to review entire draft with Steering Committee Reps (no public comment)
- Public Hearing needs to be scheduled for 7/22/14

3) Recent/Upcoming CC Actions relevant to Planning:

- a) Request by the Planning Commission that the County Commission Reconsider their Motion of 10/25/13 Regarding the Proposed Zoning Ordinance Text Amendment Related to New Commercial and Industrial Zoning Categories (*APPROVED 5/1/14; effective 6/1/14*)
- b) Recommendation related to the proposed Text Amendment to Section 4.11A of the Zoning and Land Development Ordinance regarding landscaping between similar non-residential uses (*APPROVED 5/15/14*)
- c) Public Hearing for the Corporation of Shepherdstown's proposed Growth Management Boundary under WV Code Section 8-6-4a (*APPROVED 5/15/14*)

4) Upcoming BZA meeting

- a) Next meeting date: June 26, 2014: