

Jefferson County  
Board of Zoning Appeals

**Meeting Packet**

Thursday,  
January 23, 2014



**JEFFERSON COUNTY, WEST VIRGINIA**

**Department of Zoning**

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

P.O. Box 338

Charles Town, West Virginia 25414

**Phone: 304-728-3228**

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

**Fax: 304-728-8126**

MEMORANDUM

TO: Jefferson County Board of Zoning Appeals Members

FROM: Jennilee Hartman, Zoning Clerk

DATE: January 16, 2014

SUBJECT: January 23, 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, January 23, 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

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### MEMORANDUM

TO: Board of Zoning Appeals Members

CC: Engineering & Building Permits Departments

FROM: Acting Zoning Administrator, Jennifer M. Brockman

DATE: January 17, 2014

SUBJECT: January Monthly Report of Department Activities

### **ISSUED ZONING CERTIFICATES**

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#ZC13-45 RAMEY'S ENTERPRISE, LLC – OWNER /  
CHRISTIAN RAMEY - APPLICANT

*Issuance Date:* December 17, 2013

*Proposed Use:* Grocery/Convenience Store to include alcohol and tobacco sales.

*Physical Location:* 4360 Sulphur Springs Road; Kearneysville, WV 25430

*Zone:* Rural

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#ZC13-51 SHENANDOAH LANES, INC – OWNERS /  
JAWAAN HOLMES - APPLICANT

*Issuance Date:* December 18, 2013

*Proposed Use:* Change in Tenant. Restaurant/Sports Bar to include five (5) slot machines.

*Physical Location:* 107 Keys Ferry Road; Charles Town, West Virginia 25414

*Zone:* Residential-Light Industrial-Commercial

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## ISSUED ZONING CERTIFICATES

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#ZC13-46 CABLE HOLDCO EXCHANGE V, LLC – OWNER /  
SHENANDOAH PERSONAL COMMUNICATIONS - APPLICANT

*Issuance Date:* December 24, 2013

*Proposed Use:* Wireless Facility Co-location. Property contains existing self-supporting Telecommunications Tower. Upgrade existing site to include alteration/repair. Replace six (6) existing antennas with six (6) new antennas; install one (1) new microwave dish; retrofit three (3) existing cabinets; and install one (1) new fiber distribution box to H-Frame (as per plans, as per code).

*Physical Location:* 521 Sandpiper Lane; Shepherdstown, WV 25430

*Zone:* Residential-Growth

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#ZC13-47 WILLIAM E. JR. & JO ANN KNODE – OWNERS /  
MOSHEN SADEGHZADEH - APPLICANT

*Issuance Date:* December 23, 2013

*Proposed Use:* Parking area for proposed reuse of Southern States building as a commercial retail Liquor Store and Restaurant.

*Physical Location:* 202 Washington Street; Shepherdstown, WV 25443

*Zone:* Residential-Growth

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#ZC13-48 EDWARD S. JR. & FRANCES H. KURZ – OWNERS / APPLICANTS

*Issuance Date:* December 24, 2013

*Proposed Use:* Two-unit rental in existing single family home. One unit has complete kitchen. The second unit consists of one large room with bath; does not have a complete kitchen.

*Physical Location:* 5091 Middleway Pike; Kearneysville, West Virginia 25430

*Zone:* Rural

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#ZC13-49 AMERICAN TOWERS, LLC – OWNERS /  
GENERAL COMMUNICATIONS, LLC - APPLICANT

*Issuance Date:* December 24, 2013

*Proposed Use:* Wireless Facility Co-location. Property contains self-support cell tower. General Communications to co-locate dish antenna equipment on an existing wireless telecommunications tower at 195' and install coaxial cable from the microwave dishes down the tower legs to existing ground cabinet. No increase in tower height or expansion of existing ground area.

*Physical Location:* 17435 Raven Rock Road; Charles Town, West Virginia 25414

*Zone:* Rural

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**PENDING ZONING CERTIFICATES**

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#ZC14-01      GEORGE RUSHIZKY – OWNER /  
SHENANDOAH TOWER SERVICES, LTD - APPLICANT

*Issuance Date:*            TBD  
*Proposed Use:*            Self-support Telecommunications Tower. Shenandoah Tower Services, LTD to perform structural modifications to an existing cell tower by replacing existing diagonal members, removing/ installing new secondary horizontals, reinforcing existing tower legs, and installing new bridge stiffeners to strengthen the tower, per included Construction Drawings.  
*Physical Location:*      8428 Shepherdstown Pike; Shepherdstown, West Virginia 25443  
*Zone:*                        Rural

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#ZC14-02      WVA 340 LP – MICHAEL COLLIER - OWNER /  
JEANNE MARZELL / APPLICANT

*Issuance Date:*            TBD  
*Proposed Use:*            Counseling Services  
*Physical Location:*      44 Trifecta Place Charles Town, West Virginia 25414  
*Zone:*                        R-LI-C

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#ZC14-03      KATHLEEN N. COLE – OWNER /APPLICANT

*Issuance Date:*            TBD  
*Proposed Use:*            Bed & Breakfast  
*Physical Location:*      853 River Road; Shepherdstown, West Virginia 25443  
*Zone:*                        Rural

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#ZC14-04      GILBERT A. MOBLEY, SR. – OWNER /  
BILL & BELINDA LEWIS - APPLICANT

*Issuance Date:*            TBD  
*Proposed Use:*            Thrift Shop.  
*Physical Location:*      6467 Charles Town Road; Kearneysville, West Virginia 25430  
*Zone:*                        Rural

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**DENIED ZONING CERTIFICATES**

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#ZC13-41      EPISCOPAL DIOCESE OF WEST VIRGINIA – OWNER /  
THE REVEREND GEORGIA DuBOSE - APPLICANT

*DENIAL Date:*            December 18, 2013

*Proposed Use:*            Use of the Church for various Religious purposes, such as  
Worship, Charitable Enterprises, Shelter for the Homeless,  
Meetings of Charitable Organizations, and other Religious  
Activities as approved and sponsored by the Episcopal Diocese of  
West Virginia.

*Physical Location:*      2518 Berryville Pike; Rippon, West Virginia 25441

*Zone:*                        Rural

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**Jefferson County**  
**Board of Zoning Appeals**  
**Thursday, January 23, 2014, 2:00 p.m.**

Members  
Christy Huddle, Vice Chair  
Jeffrey Bannon  
Tyler Quynn  
Edwin Kelly  
Matt Knott  
Ted Shiltz, 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. Election of Officers
2. Approval of the minutes from the November 14, 2013 and December 18, 2013 meeting.
3. Swearing in of members of the public intending to provide testimony.
4. Deferred from the October 10, 2013 and November 14, 2013 meeting. Variance request by property owner, Susan Powell, from Section 9.7 for a reduction of the rear setback distance from 12' to 6' to allow for the construction of an 8' x 12' deck to be used for wheelchair access. Location: Shannondale, Section 5F, Lot 40, 480 Rolling Ln., Harpers Ferry, WV. District: Kabletown (06); Map: 6B; Parcel: 67; Zone: Rural; Size 0.25 acres; File: #ZV13-30.
5. Variance request by applicant/owner, Vince Petti, Burr Park, LLC, from the following sections:
  - a) Section 5.6D.5: a reduction of the required parking and access drive setbacks from 10' to 0';
  - b) Section 4.11A: a reduction of the required landscape buffer between two commercial uses from 10' to 0' for two newly created parcels; and,
  - c) Section 5.6D.2: a reduction of the required setback distance between existing buildings from 25' to 4.25' on one lot and 25' to 5.25' on the other lot, for the purpose of subdividing Parcel 86 (referred to as Lot 34) to create two individual commercial lots (Lots 34A and 34B).Location: Burr Industrial Park, Phase I: Lot 34, 71 and 73 Edmond Rd., Kearneysville, WV.  
District: Charles Town (02); Map: 1; Parcel: 86; Size: 1.53 ac; Zone: Industrial-Commercial; File: #ZV13-38.
6. Variance request by applicants, Susan and Woody Sechrist, from Section 4.3H to re-establish a non-conforming single family dwelling in the Industrial-Commercial zoning district, which is intended to be demolished. The applicants are proposing to demolish an existing 1,392 sq. ft. single family dwelling and replace it with a 1,950 sq. ft. single family dwelling to be situated on the same footprint as the previous residence; however, the additional square footage shall not exceed the required setbacks for that zone. Property owner: Mary K. Carper. Location: 9107 Charles Town Rd., Charles Town, WV.  
District: Charles Town (02); Map: 1; Parcel: 19.2; Size .25 ac; Zone: Industrial-Commercial; File: #ZV14-01.
7. Action on proposed amendments to the Board of Zoning Appeals Rules of Procedure, Effective July 21, 2011.
8. Approval of the 2014 Meeting Schedule of the Board of Zoning Appeals
9. Director's Report.
10. Legal Update.

11. Signing of written decisions from prior Board of Zoning Appeals meetings.

- a. Continued from the 07/18/13 & 08/15/13 meetings. The variance request by applicant, John Fridley, was from Section 9.6(C) & 9.7 for a reduction of the front setback distance from 20' to 5' to construct a 20' x 22' detached garage. At the 08/15/13 meeting, the applicant indicated that the required setback from the DOH ROW was actually 12"; therefore, the applicant was advised to amend their application or reapply for a new variance. The applicant has not resubmitted and Board action is required on this outstanding request. Owner: William C. Palmer, Sr. File: ZV13-19. Meeting Date: 09/19/13
- b. Appeal of an Administrative Decision made by Jennifer Brockman, Acting Zoning Administrator, of the interpretation of Section 5.7D(3) regarding *Maximum Number of Lots Allowed* in the Rural zoning district. Appellants: Katherine B. Dunn & Sara V. Lowery, c/o Stanley Dunn. Appellant's Rep: J. Michael Cassell, Esq., Cassell & Prinz, PLLC. File: AP13-01. Meeting Date: 09/19/13
- c. Appeal of the Administrative Decision to issue Zoning Certificate #ZC13-23 for a Home Occupation Level 2 that allows a home-based asphalt repair business. The business includes a 16' trailer with seal coating & lawn equipment, to be enclosed in an outbuilding/garage, pending Building Permit approval. Appellants: R.K. & Marianne Hedrick; Wayne & Gloria Chastain; Scott & Alice Dillow; Mike & Pam Hinkle; and Chris & Christy Swisher. Owners: Robert & Donna Edwards. File: AP13-02. Meeting Date: 09/19/13
- d. Appeal of an Administrative Decision made by Jennifer Brockman, Acting Zoning Administrator, to deny the use of the St. John's Episcopal Church's facility as an overnight cold-weather shelter in the Rural Zoning District. Appellants: The Rev. Georgia DuBose; The Episcopal Diocese of WV / The Rt. Rev. W. Michie Klusmeyer & William F. Berry, VP of the JC Homeless Coalition. File: AP13-03. Meeting Date: 10/10/13
- e. Variance request by Kristen Stolipher, Consultant, on behalf of, Junipa Contento, Developer, from Section 2.2 to extend the time permitted for a Seasonal Use, which limits an event to not more than 3 consecutive days. The applicant is requesting to hold a 5-day music festival and camp out during the July/August 2014 summer season. Owner: Stiles Partnership 3 and 4. File: ZV13-33. Meeting Date: 11/14/13
- f. Request by Kristen Stolipher, Consultant, on behalf of, Junipa Contento, Developer to conduct a Seasonal Use event per Section 9.8 by hosting a 5-day musical festival and camp out, provided the previous variance request (ZV13-22) is approved, during the 2014 summer season. Owner: Stiles Partnership 3 and 4. File: ZV13-34. Meeting Date: 11/14/13

Draft Minutes  
Jefferson County Board of Zoning Appeals  
Thursday, November 14, 2013

The Jefferson County Board of Zoning Appeals met on Thursday, November 14, 2013. The meeting was held in the Charles Town Library Conference Room, located at 200 East Washington Street, in the City of Charles Town, West Virginia. Unless otherwise noted, all requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.

Board members Christy Huddle, Vice Chair; Tyler Quynn, Jeffrey Bannon, and Matt Knott were present. Staff members present were: Jennie Brockman, Director of Planning and Zoning; Stephen Groh, Assistant Prosecuting Attorney; and Jennilee Hartman, Zoning Clerk.

Edwin Kelly was absent with notification.

Ms. Hartman swore in the individuals who indicated they would be giving testimony.

Mr. Quynn motioned to commence the meeting. Mr. Bannon seconded the motion, which carried unanimously. Ms. Huddle called the meeting to order at 2:00 p.m.

1. Approval of the minutes from the September 19, 2013 and October 10, 2013 meetings.

The minutes were not available therefore they were deferred until the next meeting.

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

Ms. Hartman swore in the public prior to the meeting.

Ms. Huddle explained to the public how the meeting would be conducted.

3. Variance request by owner, Susan Powell, from Section 9.7 for a reduction of the rear setback distance from 12' to 6' to allow for the construction of an 8' x 12' deck to be used for wheelchair access. Location: Shannondale, Section 5F, Lot 40, 480 Rolling Lane, Harpers Ferry, WV. District: Kabletown (06); Map: 6B; Parcel: 67; Zoned: Rural; Size 0.25 acres; File: #ZV13-30.

No one was available to represent the request. The Board moved to the next item to allow the applicant additional time to arrive, if necessary.

4. Variance request by owners, James M. and Bonnie K. Pretre, from Section 9.7 for a reduction of the rear and side setback distances from 6' to less than 1' to allow for an existing 12' x 18' shed to remain placed on current site. Location: 297 Euclid Ave, Charles Town, WV. District: Charles Town (02); Map: 10A; Parcels: 86 & 87; Zone: Residential-Growth; Size 18,750 sq. ft.; File: #ZV13-31.

Mr. James Pretre presented the request to the Board stating he was not aware of the permitting process. Mr. Pretre explained that the shed was located at the intersection of two alleys that were rarely travelled and that there were other sheds built along the alley. Mr. Knott asked if the shed was located in a utility easement. Mr. Pretre and Staff were unable to answer Mr. Knott's question.

Ms. Huddle called for public comment. There was no public comment.

5. Variance request by applicant, John Fridley, from Section 9.6C & 9.7 for a reduction of the front setback distance from 20' to 8' to allow for the construction of a 20' x 25' detached garage. Owner: William C. Palmer, Sr. Location: Shannondale, Sec. 1L, 1623 Lakeside Dr, Harpers Ferry, WV. District: Kabletown (06); Map: 6C; Parcel: 292; Zone: Rural; Size: 25,000 sq. ft.; File: #ZV13-32.

Mr. John Fridley represented the request to the Board explaining how the proposed variance differed from the previous request that he had represented to the Board in July. Mr. Fridley stated that moving the garage closer to the home would assist in reducing the sight-distance concerns expressed by the neighbors at the previous meetings. Mr. Fridley reviewed the pictures that had been submitted in the application with the Board and explained that the well cap would be protected by situating it between the two garage doors. Ms. Brockman's staff report had not been included in the mailed packet; therefore, Ms. Hartman went to the Office to obtain copies of the report for the Board. Ms. Brockman answered questions the Board had concerning measurement from the right-of-way.

6. Variance request by Kristen Stolipher, Consultant, on behalf of, Junipa Contento, Developer, from Section 2.2 to extend the time permitted for a Seasonal Use, which limits an event to not more than 3 consecutive days. The applicant is requesting to hold a 5-day music festival and camp out during the July/August 2014 summer season. Property Owner: Stiles Partnership 3 and 4. Location: 118 Goshen Arrabon Ln, Charles Town, WV. District: Kabletown (06); Maps: 20 & 21; Parcels: 13 & 4.1; Zone: Rural; Size: 271 ac (proposed use); File: ZV13-33.

See Item #7.

7. Request by Kristen Stolipher, Consultant, on behalf of, Junipa Contento, Developer, to conduct a Seasonal Use event per Section 9.8 by hosting a 5-day musical festival and camp out, provided the previous variance request (ZV13-22) is approved, during the 2014 summer season. Property Owner: Stiles Partnership 3 and 4. Location: 118 Goshen Arrabon Ln, Charles Town, WV. District: Kabletown (06); Maps: 20 & 21; Parcels: 13 & 4.1; Zoned: Rural; Size: 271 (proposed use); File: ZV13-34.

Ms. Brockman suggested that the Board allow the applicant and the public the ability to speak on both items at one time.

Mr. Robert Aitcheson interjected with a Dispositive Motion to Dismiss stating that he questioned the applicant's right to sign as owner of the property. Ms. Huddle asked Mr. Groh if they were permitted to entertain the Motion. Mr. Groh stated that since it was questioning the ownership of the property and not the merits of the variance the Motion seemed appropriate. Mr. Dyck requested a five minutes recess for the applicant's counsel to review the Motion. Ms. Huddle announced that the Board would review Item 5 now that they had the Fridley Staff Report in hand, which would allow them time to review the Motion.

5. Continued... Variance request by applicant, John Fridley, from Section 9.6C & 9.7 for a reduction of the front setback distance from 20' to 8' to allow for the construction of a 20' x 25' detached garage.

Ms. Brockman reviewed the staff report with the Board highlighting the portion that included why she determined the applicant did not have "three fronts". Ms. Brockman explained how the Ordinance defined a front and side line, and due to the curvature of Lakeshore Road she had determined that the property had a continual frontage.

Upon completing Ms. Brockman's review of her staff report for the Fridley variance request, Ms. Huddle asked Counsel how the Board should proceed with Items 6 and 7 in response to Mr. Aitcheson's Motion to Dismiss. Mr. Groh advised the Board to allow Mr. Aitcheson to argue the Motion to Dismiss. Bob Martin, attorney for the applicant of said Items, argued that property ownership would be part of their presentation and that the public would have an opportunity to rebut during the public hearing portion of the meeting. Ms. Huddle stated the Board would be hearing Mr. Aitcheson's Motion to Dismiss.

Items #6 and #7 continued

Mr. Aitcheson stated he was a former lawyer; however, was not representing any interested party other than speaking as an adjacent landowner. Mr. Aitcheson stated his basis for the Motion is that Christopher Stiles, the individual who signed the variance request, did not have the legal authority to sign the application. Mr. Stiles was not a general partner of the Stiles Family Partnership 3, LLC. Mr. Aitcheson directed the Board's attention to Exhibit 1, which was an affidavit within the Motion signed by Joyce Rawn the controlling partner of the Stiles Family Partnership 3, LLC (hereinafter known as the Partnership), that states Ms. Rawn did not give permission for the requested activity and desires the Board to deny said request. Mr. Aitcheson stated for the record that he did not represent Ms. Rawn. Mr. Aitcheson proceeded to address each Exhibit within the packet attached to the Motion to Dismiss: Exhibit 1: Letter of objection from Joyce Stiles Rawn dated 11/13/13; Exhibit 1a: Stiles Property after Merger & Conveyance Plat, dated 01/08/92; Exhibit 2: Deed from Stanley and Barbara Stiles, Grantees to The Stiles Family Partnership Number Three, a West Virginia Partnership; Exhibit 3: West Virginia Certificate of Registry as a Limited Liability Partnership for the Stiles Family Partnership Number Three, LLP; Exhibit 4: Certification of ownership signed by Terrence Rawn and Joyce Rawn as Partners recorded on 04/23/2010; Exhibit 4a: Certification of ownership signed by Stanley Stiles and Barbara Stiles as Partners and Joyce Rawn as Witness recording date 03/10/2010; and, Exhibit 5: Notice of Public Hearing advertising the 11/14/13 BZA meeting for the Stiles' requests (see file for copies).

Mr. Martin addressed the Board stating that his clients are not contesting the ownership of the property; however, as Ms. Rawn's letter indicates a lease agreement exists between the Partnership and Riggs & Stiles, Inc., of which Chris, Stanley, and Barbara Stiles were the managing partners. Mr. Martin stated that C. Stiles signed the variance and seasonal use applications in his capacity as the lessee of the property. Mr. Aitcheson argued the lease agreement restricted the land to agricultural endeavors and submitted a copy of the lease as Exhibit 9 (see file for a copy). Ms. Huddle stated the Board did not enforce deed or lease agreements.

Mr. Quynn motioned to go into deliberative session at 2:55 p.m. Mr. Knott seconded the motion, which carried unanimously.

Mr. Quynn motioned to come out of deliberative session at 3:54 p.m. Mr. Knott seconded the motion, which carried unanimously.

Items #6 and #7 continued

The Board discussed various motions and agreed that the purpose of this motion was to act on Mr. Aitcheson's request. Ms. Huddle turned the Chair over to Mr. Quynn to make a motion. Ms. Huddle motioned to grant the Motion to Dismiss the applications as they have not been signed by the legal property owner or the legal owner's authorized representative. Mr. Quynn asked for a second. Mr. Bannon seconded the motion for discussion. Mr. Quynn called for discussion. Hearing none Mr. Quynn called for a vote, which failed one in favor (Ms. Huddle), two opposed (Mr. Quynn and Mr. Bannon) and one abstention (Mr. Knott).

Mr. Bannon motioned that the applicant be given an opportunity to address the issue of ownership before the item is dismissed. Ms. Huddle seconded the motion. Mr. Knott asked to amend the motion to state if the applicant did not own the property that they demonstrate how they are legally allowed to proceed. Mr. Bannon accepted the amendment. Mr. Quynn called for a vote, which carried unanimously. Mr. Quynn returned the Chair to Ms. Huddle.

Mr. Chris Stiles addressed the Board explaining that the purpose of the Partnerships was for estate planning purposes with the understanding that the Father could use the property as he saw fit until his death. Mr. C. Stiles stated the continued longevity of the lease was evidence of that fact. Mr. C. Stiles stated he was assured by his attorney that he had the right to sign the applications as President of Riggs & Stiles, Inc.

Mr. Martin stated he did not create the lease; however, he received a letter of intent from Mr. C. Stiles as the controlling partner of President of Riggs & Stiles, Inc. and the one authorized to conduct business on the property pursuant to the lease. Mr. Groh asked how the festival was meeting the criteria of the lease. Mr. C. Stiles stated the land would be in hay/ farming activities the other 360 days of the year. Mr. Martin stated it was not the Board's position to be arguing the contents of the lease. Mr. Martin also stated that Ms. Rawn has not terminated the lease but had only written a letter to the Board.

Ms. Huddle asked staff what the procedure was for having a lessee sign an application. Mr. Groh deferred to staff. Ms. Brockman stated the owner of the property typically signs the application as well as the lessee or interested applicant.

Mr. Bannon motioned to deny the request based on the fact that the application was not signed by the property owner. Ms. Brockman stated the application should not be denied but withdrawn due to improper filing. Mr. Bannon motioned to dismiss the request with the option for the applicant to reapply with the property owner's signature. Ms. Huddle turned the chair over to Mr. Quynn and seconded the motion. Mr. Quynn called for a vote, which failed two in support (Mr. Bannon and Ms. Huddle) and two opposed (Mr. Quynn and Mr. Knott). Mr. Quynn returned the chair to Ms. Huddle.

Mr. Groh stated that Robert's Rules of Order would dictate that since the Board cannot come to a consensus that status quo must be maintained and in this case that would be to allow the application to be heard. Ms. Huddle announced she had a more pressing engagement and left the meeting at 4:09 p.m. Ms. Huddle turned the Chair over to Mr. Quynn for the duration of the meeting.

Mr. Aitcheson stood to address the Board presenting a second point of order with a Motion to Continue. Mr. Quynn asked Mr. Aitcheson to wait until the Board addressed him. Mr. Aitcheson explained his Motion was to continue the public hearing to a later time to give Ms. Rawn time to attend. Mr. Quynn asked Mr. Aitcheson again to return to the audience stating he was out of order. Mr. Quynn explained to the audience that the Board would be deliberating on the first three variance requests and when they returned would continue the public hearing for the Stiles requests.

Mr. Bannon motioned to go into deliberative session at 4:19 p.m. Mr. Knott seconded the motion, which carried unanimously.

Mr. Quynn motioned to come out of deliberative session at 4:28 p.m. Mr. Knott seconded the motion, which carried unanimously.

### **Board of Zoning Appeals Rulings**

3. Variance request by property owner, Susan Powell, from Section 9.7 for a reduction of the rear setback distance from 12' to 6' to allow for the construction of an 8' x 12' deck to be used for wheelchair access.

Mr. Bannon motioned to defer this item until the next available Board meeting until the applicant can be present. Mr. Knott seconded the motion, which carried unanimously.

4. Variance request by property owners, James M. and Bonnie K. Pretre, from Section 9.7 for a reduction of the rear and side setback distances from 6' to less than 1' to allow for an existing 12' x 18' shed to remain placed on current site.

Mr. Quynn motioned to approve the above referenced request contingent upon the structure not being located in a power line right of way or easement and the applicant obtaining a building permit. Mr. Knott seconded the motion, which carried unanimously.

5. Variance request by applicant, John Fridley, from Section 9.6C & 9.7 for a reduction of the front setback distance from 20' to 8' to allow for the construction of a 20' x 25' detached garage.

Mr. Knott motioned to approve the above referenced request contingent upon the applicant installing a permanent protective device around the well cap. Mr. Bannon seconded the motion, which carried unanimously.

### Items #6 and #7 continued

Mr. Martin introduced himself and stated that he is the Assistant Prosecuting Attorney for Pocahontas County; however, he was not speaking in that capacity. Mr. Martin stated he met Mr. Walther and Ms. Conteno when having to represent the County and in doing so found them to be fine people who obeyed all the regulations. He has attended each All Good Festival since that time. Mr. Martin confessed that he had asked them to return to Pocahontas County but they did not have an adequate road system. Mr. Martin suggested Jefferson County, due to its proximity to airports and interstates. Mr. Martin explained that in his capacity as a County official he is asked to assess situations that may impact his county, for example whether the project would be a cost or a benefit to the County.

Mr. Aitcheson called for a point of order and objected to how Mr. Martin is using his official position to sway the Board and believes it is unethical. Mr. Martin argued that Mr. Aitcheson is out of line. Mr. Aitcheson stated that he wished a ruling on his objection for the record. Mr. Quynn asked Mr. Aitcheson to return to his seat. Mr. Martin stated that when presented with a proposal one should determine if it is more beneficial to the County than costly, and if so then it is good for the County. Mr. Martin brought out that West Virginia is primarily a tourism state and that this proposal would enhance that market. Mr. Martin added that the festival would hire hundreds of people, utilize an additional one hundred volunteers, and would work with law enforcement and sanitary officials to ensure the site is compliant. Mr. Martin agreed that the traffic would be a drawback. Mr. Martin concluded by stating that this festival is run by a highly organized company that has been doing this same festival for many years.

Tim Walther, owner and manager of the All Good Festival, provided the Board a brief history of the All Good Festival and listed their previous locations. Mr. Walther described the growth of the company and how they have tightened up their operations as they have grown over the last 20 years. Mr. Walther informed the Board that, as an example of their work, they had been nominated as *2012 Festival of the Year* by Pollstar Magazine.

Junipa Contento, owner and manager of the All Good Festival, explained that they have been doing festivals for approximately 20 years and that aside from their annual festival their group assists in organizing other well-known events throughout the year. Ms. Contento stated that they researched a number of properties before settling on the Stiles property. Ms. Contento explained to the Board that a site must meet many of the criteria necessary for a successful event. Ms. Contento stated they had met with Sheriff Dougherty prior to submitting the application. Further, Ms. Contento specified that they would be hiring Craig Manning to do a traffic control plan so that the event would be well organized.

Mark Dyck, consultant with Gordon, informed the Board that through many meetings with his clients that they are familiar with all the steps necessary to run a large scale event. Mr. Dyck stated the expected attendance is approximately 15 – 20,000 people. Mr. Dyck clarified that this is a 5-day event and that there would be performances on Thursday night in order to keep the arriving guests onsite to reduce traffic flow. There would be a two week set up period prior to the event and a 10-day period to clean on and off the site after the event. Mr. Dyck stated that there would be approximately 1,000 hired staff and 300 volunteers. Mr. Dyck explained the positive economic impact the event would have for the County. Mr. Dyck described the large scale exhibits which were displayed in the meeting room; Mr. Dyck provided and reviewed the following handouts with the Board (copies in the file):

- 1) Vicinity Map outlining the property owned by the Stiles family;
- 2) Site Aerial Map outlining the proposed event site and depicts the ridgeline;
- 3) A letter acknowledging an established working relationship with the representatives of the All Good Music Festival, dated 11/07/13.

Mr. Dyck stated that, in addition to working with local law enforcement, the applicant would be drafting an action plan with Fire and Emergency Management Services. Mr. Groh asked the applicants if they would be willing to reimburse the Sheriff's office for services rendered. Mr. Walther stated they would reimburse the County for any additional costs. Mr. Dyck informed the Board that Sheriff Dougherty

## Minutes

Board of Zoning Appeals

November 14, 2013

Page 7 of 12

offered to provide the Reserves which are their volunteer force. Mr. Dyck stated they would have a neighborhood plan which would include providing each surrounding neighbor with a direct telephone number to site security in the event they need assistance. Also, if requested, security can be posted on the neighboring properties. The site will be secured with a 6' chain link fence around the perimeter of the camping/event area with controlled access points to and from the site.

Kenneth Wersted, traffic consultant with Creighton Manning, provided the Board with an Event Transportation Sketch Plan and proceeded to review a PowerPoint presentation which addressed gates, access, parking availability, an arrival and exit plan, dissemination of traveler information, and the development of a plan to address emergency services, traffic management and other traffic control provisions such as barricades, signage, law enforcement and staffing (copy of handout and PowerPoint in file). Mr. Walther stated their company relied on social media to inform their customers of travel routes and greatly encouraged them to follow them. In addition, Mr. Walther informed the Board that they would have traffic control measures to prevent customers from attempting to take back roads to access the event. Ms. Contento stated she designed an application that could be downloaded to a Smart Phone which could alert the customer of alternate routes should traffic become too congested at one point of entry. Ms. Contento explained that during the initial check-in period customers are discouraged from leaving the site to allow the staff to concentrate on the influx of customers arriving. Mr. Walther stated that one measure of discouraging the customers from leaving is warning them that they will have to park in the day parking site upon re-entry and not their original campsite.

Mr. Dyck presented a large scale exhibit, as provided in the packet, which was a schematic plan of the proposed locations for the camping/parking areas, RV/day parking, 2 ticketing/security check points with queuing stations, event area, spectator area, production area and 2 performance stages. Mr. Dyck stated that the way the stages and sound systems were situated were to allow the sound to be projected toward the Stiles property, crowd, and the existing ridgeline. Mr. Dyck contended that the ridgeline would absorb the majority of the sound projected towards the west and that there would not be a substantial amount of noise to the rear of the property. Mr. Groh asked what time the music would end. Mr. Walther stated approximately 2:00 am. Mr. Groh asked the applicant if they were aware of the noise restrictions in the Ordinance, citing that noise cannot exceed 50 decibels at the property line. Mr. Dyck stated they were aware of that section of the Ordinance. Mr. Groh asked if they could meet that standard. Mr. Dyck stated that Staff has stated that the noise requirements do not apply to commercial developments and that the festival would fall under that. Ms. Brockman did not concur. Mr. Walther stated they would meet noise requirements. Mr. Groh had additional questions for the applicants. Mr. Dyck, Mr. Walther and Ms. Contento respond to Mr. Groh's questions. Mr. Dyck explained there would be 250 security personnel on site at all times. Mr. Walther stated that by their calculations \$2.3 million in revenue will be brought into the County by means of the event. Approximately \$1.1 million would relate to gas and convenience items in the County with \$300,000 of the same to other areas of the State. Mr. Walther added that 1,200 staff members would be utilizing the hotels in the area and projecting another 2,200 guests would also accommodate the hotels. Mr. Walther's estimated \$150,000 – \$200,000 in sale taxes from the onsite vendors would go to the State. In addition, the festival hires local people and solicits local charities by allowing them to staff a beverage or ice stands, which help them raise money for their cause. Mr. Walther explained a promotion which encourages people to donate 10 pounds of food to receive a free poster, which has successfully risen up to 5,000 lbs in food for local charities. Mr. Walther stated the festival will encourage and promote return visitors. Mr. Groh asked what assurances the

County had that the festival would not exceed the allowable noise decibel. Mr. Dyck responded by saying that the festival wished to return the following year and that they would only be able to do that by proving themselves to County officials and the public. Mr. Dyck responded to Mr. Groh's concerns regarding a letter received from Preston County's County Commissioner by stating that Jefferson County is accustomed to dealing with large crowd relating to tourism and that in speaking with Sheriff Dougherty that he feels confident the event will succeed. Mr. Dyck stated there are arrests, as an example, during Redskin events; however, that did not make the event a bad event. Mr. Walther answered Mr. Groh's questions regarding illegal drug use by stating they prohibit its use using multiple avenues in addition to restricting any items that could be used as weapons.

Mr. Quynn opened the public hearing stating it would be for both Items #6 and #7. Mr. Quynn asked for a show of hands for those in support and then for those in opposition. Mr. Quynn then set a three minutes time limit on individuals wishing to provide testimony and 5 minutes for those who would be representing a group. Mr. Quynn asked that anyone giving testimony not duplicate information. The applicant would have an opportunity to rebut after public comment.

John Reisenweber, Director of the JCDA, stated for the record that they were not aware of the ownership issues regarding the property and it is not their policy to weigh in on those matters. Mr. Reisenweber stated his comments are limited strictly to the land use in question. Mr. Reisenweber read a letter of support into the record and added that the festival had a professional history and is successful (copy of letter in the file).

Annette Gavin, representative with the Jefferson County Visitor Bureau, read a letter of support into the record. Ms. Gavin stated the applicants have been open, honest, and proactive regarding their proposal. Ms. Gavin stated they were not aware of the current property owner issues but were only relating to the positive economic impact the proposal would have to Jefferson County (copy of letter in the file).

Mr. Steve Stolipher stated he was not present as a member of the Planning Commission but as a local property owner. Mr. Stolipher expressed his support of the project by explaining that tourism dollars were essential to Jefferson County. While acknowledging the festival would create temporary traffic issues, Mr. Stolipher stated that this type of revenue did not require the County to build housing and road systems; and therefore the County should embrace any tourism endeavors.

Chris Stray, attorney in Charles Town and resident in Shepherdstown, stated he has produced the one-day Shepherdstown festival for the past several years. Mr. Stray spoke in support of the request stating that he saw the impact the festival had not only during the festival but from the repeat visitors who took an interest in Shepherdstown because of the festival. Mr. Stray stated he has attended more than half of the events hosted by Mr. Walther and Ms. Contento and has been impressed at how well they manage and operate events.

Ron Rissler, local resident, stated that this is a property rights issue and therefore the owner should be permitted to what they want to do on their land. Mr. Rissler also believed that the land is primarily used for agriculture and that the event would only disturb the farming aspect for the requested 5 days.

Doug Rockwell, neighboring property owner, was concerned about the traffic generated by the event and stated that the width of Ward Clipp Road is 15' and that the feeder roads do not have a centerline.

Mr. Rockwell listed other road safety concerns and asked how emergency services would be able to reach neighboring properties due to the stacking of traffic.

Mary Goodson, neighboring property owner, spoke in opposition to the request stating she was concerned about the excess noise, the additional traffic on substandard roads, and the lack of willingness of the applicant to pay \$250,000 for police presence.

Angus Goodson, neighboring property owner, informed the Board that he commuted for 6 years and stated that there was a fair amount of traffic on Kabletown road early in the morning from people going to Virginia. Mr. Goodson was concerned that the added traffic from the event would create a hardship for those commuting.

Bill Napalie, neighboring property owner, questioned how the event will bring in additional revenue to the County if the event will be self-contained onsite, such as providing their own alcohol and food. Mr. Napalie expressed concern of how the festival will devalue his property as they have expressed a desire to continue the festival annually. Mr. Napalie stated the Nissan Pavilion does not stay open until 2:00 a.m. Mr. Groh asked what time would be more appropriate. Mr. Napalie stated, out of respect for a rock concert, he believed 12:00 a.m. would be a fair time although he'd prefer 11:00 p.m. Mr. Napalie expressed his hesitation in responding to Mr. Groh's question as he felt it was lending his support to the festival. Mr. Groh assured Mr. Napalie his response was not meant to insinuate his support of the request.

Kenny Nicewarner, neighboring property owner, stated his opposition to the request was not a personal affront to the property owner or the applicants. Mr. Nicewarner had concerns regarding the substandard roads that would access the property.

Robert Aitcheson, neighboring property owner, drew two ovals on Mr. Dyck's large exhibit plat and informed the Board that the property owners allow septic companies to spread treated sewage on their adjacent farms in the specified locations. Mr. Aitcheson was concerned that the applicant was asking to hold the event without providing the Board a site plan for review. Mr. Aitcheson stated Mr. Stolipher would be gaining a commission should the request be granted. Mr. Aitcheson asked the Board members to confirm for the record if any of them had ex parte communications with any of the applicants or their representatives. Mr. Groh stated the Board did not have to address Mr. Aitcheson's question. Mr. Quynn explained to Mr. Aitcheson that he was permitted to have an additional three minutes and was advised not to duplicate any of the testimony that had been given by previous individuals. Mr. Aitcheson argued the fact that the applicant and their representatives had a one and half hour presentation; however, the public was being restricted to three minutes. Mr. Aitcheson also contested that the applicant had submitted new material at the meeting; therefore, they [the public] have not been given the opportunity to review the record in order to comment accordingly. Mr. Aitcheson argued that because he could not review the record which would then allow him to 'make a record' when he took the matter to court, he claimed the judge would send the matter back to the Board to allow him the right to 'make a record'. Mr. Aitcheson's three minutes had ended and Mr. Quynn allowed Mr. Aitcheson to have an additional minute but advised Mr. Aitcheson to provide testimony that was relevant to Jefferson County. Mr. Aitcheson argued that the experiences of past locations were relevant. Mr. Aitcheson asked that the Board continue the meeting for the following reasons: to provide Ms. Rawn an opportunity to attend the meeting because he was claiming that Ms. Rawn had terminated the lease agreement with Mr. Stiles; and because Craig Jennings, President of the Preston County Commission,

expressed an interest in attending the meeting but could not adjust his schedule to attend this meeting on short notice. Mr. Aitcheson asked that Dallas Wolfe's testimony be added into the record,

[the following excerpt is from page two of the Motion to Continue.]

The problem that the promoter can't control is the undesirable clientele that are attracted to these festivals. They are "the worst of the worst from everywhere", California, Colorado, Georgia, Canada, etc. Very few are from West Virginia. "You don't want those kinds of people in your County."

The Preston County festivals were "a big drugfest, like an open air drug market. The drug of choice from every part of the country. heroin, cocaine, molly, etc., was there. Traffic was bumper-to-bumper for three days". Over 30,000 people attended. Sheriff Wolfe had to hire over 100 police officers and State Troopers...

Mr. Quynn informed Mr. Aitcheson that his time had ended. Mr. Aitcheson argued that he should be given the opportunity to make a record. Mr. Aitcheson asked the Board if they would be ruling on his Motion to Continue. Mr. Quynn again informed Mr. Aitcheson that his time had ended. Mr. Aitcheson asked the Board if they would rule on his Motion to require a detailed site plan in compliance with permitting procedures before considering or granting the application. Mr. Quynn gave Mr. Aitcheson a final opportunity to return to his seat. Mr. Aitcheson again asked if the Board would rule on the Motion to Continue. Mr. Quynn stated that the outcome of the meeting would be determined after the continuance of the hearing. Mr. Aitcheson stated he wished to preserve his objection to the Board's failure to allow him to present evidence.

Mr. Quynn invited Mr. Rockwell up should he have additional testimony. Mr. Rockwell stated he did and addressed the Board. Mr. Rockwell noted that the Ordinance does not specify what standard apply to a Seasonal Use and how the Board should approve or disapprove one. Mr. Rockwell stated that in absence of any standards the Board should consider the other provisions of the Ordinance, "Section 1.1 *Purpose* A) Protect and encourage the health, safety and general welfare of the present and future population of Jefferson County." Mr. Rockwell added it may also be their purpose to protect those coming to the event. Mr. Rockwell questioned if an applicant could ask for a variance from the Section 2 Definitions, as he believed it to be a legislative decision and wished to note his objection for the record. Mr. Rockwell asked that should the Board grant the request that they put any exceptions and conditions in writing. Mr. Rockwell also asked the Board to consider the lighting and noise issues that would come from having 20,000 people on site, not just the music venue itself.

Ms. Hartman swore in Donna Gwine as she arrived late yet wished to provide testimony. Ms. Gwine stated she had concerns regarding the noise and sanitary conditions on site. Mr. Quynn informed Ms. Gwine that these issues had been addressed during the applicant's presentation and that she could review the video and audio record the following day. Ms. Gwine asked how the site was selected and asked if other sites could have been chosen. Ms. Brockman stated the purpose of this meeting is to review the specific application and not to discuss if an alternative site would be more suitable. Ms. Gwine also had traffic safety concerns.

Mr. Dyck rebutted the opposing testimony by addressing the following: the roads currently have semi-trailers and milk trucks safely traveling the road; if there are sight distance issues they will have a flag person stationed at those designated areas to slow traffic; he anticipated slow traffic due to the heavy volume of traffic; the traffic plans must be reviewed and approved by the Department of Highways; the event must have Health Department approvals; the applicant will cooperate with the local Sheriff's Department; he confirmed that while the event is self-contained the estimated amount of revenue to the County remains the same and all local hotels will be occupied; Mr. Dyck believes the variance is valid and that the Board has the authority to grant it as the use is permitted, only the days are limited.

Mr. Bannon motioned to go into deliberative session at 6:37 p.m. Mr. Knott seconded the motion, which carried unanimously.

Mr. Knott motioned to come out of deliberative session at 8:05 p.m. Mr. Bannon seconded the motion, which carried unanimously.

Mr. Bannon motioned to approve Items# 6 and #7 be approved with the following conditions:

- 1) The Applicants are bound by their testimony regarding the event.
- 2) Further, the applicants shall abide by the following conditions:
  - a. Comply with all governmental regulations.
  - b. Musical performance shall cease by 2:00 am Thursday, Friday and Saturday and by midnight Sunday. Musical performances shall not begin before 9:00 am on Friday, Saturday and Sunday.
  - c. No performance before 4:00 pm on Thursday. No performance on Monday.
  - d. Obtain an alcohol license, West Virginia Department of Highways permit, Health Department approval, state tax and business license and all other governmental approvals and provide written copies of same 90 days in advance to Planning Staff (only for the record/file).
  - e. Meet with Jefferson County Sheriff's Department, Jefferson County Emergency Services Agency, Jefferson Medical Center, and Jefferson County Homeland Security and provide each entity with anticipated attendance numbers. Obtain written requirements from the Police and EMS/Fire services and develop a public safety plan to meet public safety concerns; comply with all reasonable requests. The Applicants shall be responsible for the reasonable costs associated with the public safety plan. The Applicants shall provide written proof of public safety plan and cost recovery arrangements to Planning Staff 90 days in advance of the concert.
  - f. Provide public legal advertisement of performance dates and times 60 days in advance of the concert in Spirit of Jefferson.
  - g. Post the property continuously for 30 days in advance of concert with event dates and time.
  - h. Provide a Sketch Plan (Not To Scale) to the Planning Staff 120 days in advance of the concert addressing the locations of proposed stages, sound systems, bathroom

facilities, parking areas, concessions, fencing and access points. The Sketch Plan shall substantially match presentation provided to Board of Zoning Appeals.

Mr. Knott seconded the approval, which carried unanimously.

8. Director's Report. Ms. Brockman informed the Board there was a Director's Report in the packet if they wished to know of any prior or upcoming events.
9. Legal Update. None.
10. Signing of written decisions from prior Board of Zoning Appeals meetings. None.
11. Correspondence. None.

Ms. Brockman stated she would check the availability of the meeting room for the January meeting and will contact the Board with possible meeting dates.

Mr. Bannon motioned to adjourn the meeting at 8:09 p.m. Mr. Knott seconded the motion, which carried unanimously.

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

Draft Minutes  
Jefferson County Board of Zoning Appeals  
Wednesday December 18, 2013

The Jefferson County Board of Zoning Appeals met on Wednesday, December 18, 2013. The meeting was held in the Charles Town Library Conference Room, located at 200 East Washington Street, in the City of Charles Town, West Virginia. Unless otherwise noted, all requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.

Board members Christy Huddle, Vice Chair; Edwin Kelly, Tyler Quynn Matt Knott and Jeffrey Bannon were present. Staff members present were: Jennie Brockman, Director of Planning and Zoning and Jennilee Hartman, Zoning Clerk.

Mr. **Quynn** motioned to commence the meeting. Mr. **Kelly** seconded the motion, which carried unanimously. Ms. Huddle called the meeting to order at 3:14 p.m.

1. Election of Officers – Deferred until the January 2014 meeting.
2. Approval of the minutes from the September 19, 2013, October 10, 2013 and November 14, 2013 meeting.

Ms. Huddle called for action on the September 19, 2013 minutes.

- 1) Ms. Huddle suggested the following edits:
- 2) Page 1, Item 1b, insert *word* before *represented* and italicize the words *represented* and *presented*.
- 3) Page 3, first paragraph, fourth line down, insert *to* after *according*.
- 4) General comment: all references to *Boards'* change to *Board's*.
- 5) Page 3, second paragraph, second line up, change the semicolon to a comma.
- 6) Page 3, last paragraph, sixth line up, insert *in* after *approved*.
- 7) Page 4, first paragraph, last sentence, confusing language within the quote cited. Confirm direct quote and correct accordingly.
- 8) Page 4, third paragraph, third line, change the comma to a colon.
- 9) Page 4, third paragraph, add comma after the word *amendment*.
- 10) Page 4, fourth paragraph, third line up, change *the created* to *they created*.
- 11) Page 5, eighth paragraph, second line down, add *As an example*, before *Mr. Raco* and replace *gave an example of* with *said* (within the same sentence).
- 12) Page 5, last paragraph and line, add parentheses around the words *the Appellant* and remove the commas.
- 13) Page 6, second paragraph, fifth line down, reword the sentence which references *text highlighted* so that it reads clearer.
- 14) Page 7, Item 7, second paragraph, fifth line down, change *neighboring* to *neighborhood*.
- 15) Page 7, Item 7, second paragraph, eleventh line up, pluralize *meetings*.
- 16) Page 7, Item 7, second paragraph, seventh line up, pluralize *sites*.
- 17) Page 8, second paragraph, third line down, remove the second *not*.
- 18) Page 8, second paragraph, fourth line down, insert *above* after *from*.
- 19) Page 8, second paragraph, sixth line up, pluralize *meetings*.
- 20) Page 8, second paragraph, fourth line up, change *were* to *was*.
- 21) Page 8, third paragraph, change reference from *Mr.* to *Ms.* Brockman.
- 22) Page 9, second paragraph, third line down, capitalize *Consulting*.
- 23) Page 9, third paragraph, fourth line down, change “on *the*” to “on *to*”.
- 24) Page 9, third paragraph, fifth line up, change *aide* to *aid*.
- 25) Page 10, second paragraph, second line down, add comma after *Bernazzoli*.

- 26) Page 11, last paragraph, seventh line up, change *affect* to *affected*.
- 27) Page 12, first paragraph, sixth line, add comma after *rent*.
- 28) Page 13, first paragraph, third line up, insert *he* after *however*.
- 29) Page 13, fifth paragraph, reword sentence to read, "...13 trees as depicted in dark green on..".
- 30) Page 13, last paragraph, second line down, insert the phrase *as it could be*, after *worded*.
- 31) Page 13, last paragraph, third line up, remove the word *was*.

Mr. Kelly motioned to approve the September 19, 2013 minutes as corrected. Mr. Bannon seconded the motion, which carried unanimously.

Ms. Huddle called for action on the October 10, 2013 minutes.

- 1) Page 1, Item 3, third paragraph, change *requested* to *request*.
- 2) General comment: all references to *Boards* change to *Board's*.
- 3) Page 2, third paragraph, last line, insert *be* after *permitted*.
- 4) General comment: replace and/or correct all references to read **Rev. Georgia DuBose**.
- 5) General comment: replace and/or correct all references to read *St. John's Episcopal Church*.
- 6) Page 4, sixth paragraph, seventh line up, insert a comma after *dissolved*.
- 7) Page 4, sixth paragraph, fifth line up, change *applicant* to *application*.
- 8) Page 5, second paragraph, fourth line down, insert an *a* before *petition*.
- 9) Page 5, second paragraph, sixth line down, insert *from* before *which*.
- 10) Page 5, third paragraph, third line down, change *heat* to *heating*.
- 11) Page 5, sixth paragraph, third line down, insert *he* after *however*.
- 12) Page 5, sixth paragraph, last line, remove "*Mr. Quynn asked why the...*".
- 13) Page 5, last paragraph, second line down, clarify where Ms. Dunn presently works.
- 14) Page 6, second paragraph, third line down, insert *they* after *constraints*.
- 15) Page 6, second paragraph, third line up, change *license* to *licensed*.
- 16) Page 6, fourth paragraph, only sentence, change *JC* to *JCHC*.
- 17) Page 6, last paragraph, third line down, change text as follows: '*...exempt, ~~that~~ the...*'
- 18) Page 6, last paragraph, fourth line down, insert *active* before *church*.
- 19) Page 6, last paragraph, eighth line down, remove comma after *Applicant*.
- 20) Page 6, last paragraph, ninth line down, change *is* to *if*.
- 21) Page 6, last paragraph, last line, add a comma after *at*.
- 22) General comment: correct spacing issues between words.

Mr. Kelly motioned to approve the October 10, 2013 minutes as corrected. Mr. Bannon seconded the motion, which carried unanimously.

Ms. Huddle called for action on the November 14, 2013 minutes.

Mr. Quynn motioned to defer action on the November 14, 2013 minutes until the next meeting. Mr. Kelly seconded the motion, which carried three (3) in support and one (1) abstention (Mr. Knott). Ms. Huddle stated that the Board would defer action on the November 14, 2013 minutes because the Board members did not have time to review the draft version of the minutes.

3. Swearing in of members of the public intending to provide testimony.

Ms. Hartman swore in the individuals who indicated they would be giving testimony prior to the meeting being recorded.

4. Deferred from the November 14, 2013 meeting. Variance request by property owner, Susan Powell, from Section 9.7 for a reduction of the rear setback distance from 12' to 6' to allow for the construction of an 8' x 12' deck to be used for wheelchair access. Location: Shannondale, Section 5F, Lot 40, 480 Rolling Ln, Harpers Ferry, WV. District: Kabletown (06); Map: 6B; Parcel: 67; Zoned: Rural; Size 0.25 acres; File: #ZV13-30.

Susan Powell was not in attendance. The Board asked if Staff had called the Applicant to remind her of the meeting. Ms. Brockman stated Staff had not; however, they had notified Ms. Powell of the new date and time for her deferred request. The Board postponed Ms. Powell's request until the end of the meeting in the event she was running late.

5. Variance request by applicants, Bill and Belinda Lewis, from Section 4.3B to re-establish an expired nonconforming commercial use in the Rural Zoning District. The applicants intend to establish an open air flea market consisting of 15 rental spaces totaling 6,000 sq. ft., a 2,000 sq. ft. whole sale parking area for the sale of RVs, boats, etc., and to utilize an existing building as indoor retail and storage space and public restrooms. The site was previously Eastern Homes Inc.; a mobile home sales and restoration operation. Property owner: Gilbert A. Mobley, Sr. Location: 6468 Charles Town Road, Kearneysville, WV. District: Middleway (07); Map: 4; Parcel: 8; Size 5 acres; Zoned: Rural; File: #ZV13-35.

Bill and Belinda Lewis presented the request to the Board. Ms. Lewis stated they wished to open a thrift store with an outdoor flea market that would be open Friday, Saturday, Sundays and on holidays during the summer. Mr. Lewis added that he felt the use would be an economic benefit to the community. Ms. Brockman explained that since the property owner was trying to sell the parcel privately that he could not produce a sales listing for the record and therefore required BZA action to reestablish a nonconforming use. Ms. Brockman stated that in 1994 the subject parcel was approved to have an 8,000 square foot area to sell motor vehicles, which encompasses the approximate location of the proposed whole sale area for RVs, boats, etc. Ms. Brockman informed the Board that the Department of Highways issued a permit for the proposed thrift shop and flea market contingent upon the Applicant closing the east and west entrances along Old Charles Town Road. Ms. Brockman reviewed the possible conditions of approval listed in the staff report.

Ms. Huddle called for public comment.

Tammy Turner and Butch McKinney, adjacent property owners, spoke in opposition to the request. Ms. Turner expressed concern regarding the way the site was maintained while the outdoor flea market was in operation the previous summer. Ms. Turner also referenced the onsite port-a-potties as potentially being a problem. Mr. McKinney stated that any vehicles sold at a commercial location must have a dealer license. Ms. Huddle confirmed with Mr. McKinney that this was a state law. Mr. McKinney asked why the Applicant was not utilizing the vacant commercial site located in close proximity to this parcel. Ms. Huddle addressed Ms. Turner's concerns by stating that the conditions listed by Staff included restricting outdoor storage. Ms. Turner also asked if the Applicant would be permitted to live on the property in addition to having the commercial venture approved. Ms. Brockman stated that a residential use is a principal permitted use on the subject parcel. Ms. Huddle explained that the request would not be changing the zoning of the property but would allow the Applicant to reestablish the

nonconforming use on the property. Ms. Turner stated they were not against businesses; however, they were concerned about their property value and that of their rental property located across the street.

The Applicants addressed their history with the property beginning with the violation notice in August 2013, which notified them that the open air flea market they were operating was not in compliance with the County's Zoning Ordinance. The Lewises informed the Board that they immediately closed the business and have been working with Mason Carter, the Ordinance Compliance Officer and Steven Barney, the previous Zoning Administrator, to rectify the situation since that time. The Lewises asserted they were in business with a third party who was not as cooperative in seeking compliance with the County's regulations. The Lewises explained that they are legally free to lease the subject parcel exclusively. Ms. Lewis stated the individual who would be selling wholesale vehicles has a dealer's license to sell vehicles. Mr. Lewis assured the Board that the property would not operate as it had the previous summer and that they would follow all of the County's regulations.

6. Variance request by applicant, Duane Dunn with Dunn's Contracting, LLC., from Section 5.10C.1(a) for a reduction of the front setback from 20' to 12' to attach a 12' x 18' shed-roof to an existing log building; and, from Section 9.6C to permit a structure within the required front yard. Property owner: Bernard Heiler. Location: 7198 Queen St., Kearneysville, WV. District: Middleway (07); Map: 22B; Parcel: 27; Size .83 acres; Zoned: Village; File: #ZV13-36.

Duane Dunn, applicant, and Bernard Heiler, owner, were present to address the Board. Mr. Dunn concisely explained the request to the Board. Mr. Heiler stated various lawn care items would be stored inside the log structure. Mr. Heiler explained that the log structure had been neglected over time and the intent of the proposed shed-roof would be to protect the logs from further weather damage. Mr. Heiler stated the logs, from the structure in question, came from a historical structure that was previously dismantled and then reassembled on the subject property; however, it is not on the historical register. Mr. Quynn had questions for Mr. Heiler regarding the structure's history.

Ms. Huddle called for public comment.

Ms. Dolores Milstead and Carol Pitts, local residents, spoke in opposition to the request. Ms. Milstead read a petition into the record, which was signed by five (5) adjacent property owners, requesting that the Board deny the applicant's request for the reasons stated within. Ms. Milstead submitted the petition for the record. Ms. Milstead argued that the application uses the term structure; however, the agenda incorrectly stated a shed-roof. Ms. Huddle explained that they consider the term structure to mean any form of building or construction. Ms. Milstead pointed out that the 6' fence referenced in the application does not extend along the entire length of the property line in question, and therefore would not block the view structure. Ms. Milstead stated they have had conversations with the applicant regarding the renovation or replacement of the damaged logs, and therefore do not believe the shed-roof is necessary to cover damage to two logs. Ms. Milstead argued that the shed-roof would not keep the visual integrity of the historic district because neighboring roofs are gables. Ms. Milstead also stated that they are concerned about the size of the proposed structure and that water and sewer has been recently connected to the structure. Ms. Pitts stated she was present to support Ms. Milstead's comments. Ms. Huddle stated that [West Virginia] state law requires a historical district to have standards/guidelines so that a homeowner knows what they are permitted to do with their property. Ms. Huddle asked if Middleway had such standards. Ms. Milstead stated Middleway was unincorporated. Ms. Huddle stated that was not a necessary criterion.

Mr. Heiler responded to Ms. Milstead's remarks regarding the water and sewer connections. Mr. Heiler explained he hired an excavator to remove two tree stubs in the general location where Ms. Milstead was referencing. Mr. Heiler had Mr. Dunn install three (3) PVC pipes of varying widths to be buried between the house and the log structure. Mr. Heiler will be putting electric into the log structure via the pipes and reserving the other two (2) pipes for a future use; however, they will not and cannot contain water. In addition, the Health Department did not have any documentation for the location of the septic lines.

7. Variance request by applicant, Jim Ruland, from Section 4.11A for a reduction of the required parking and access drive setbacks from 10' to 0'; and, from Section 5.6D.5 for a reduction of the required landscape buffer between two commercial uses from 10' to 0', for the purpose of subdividing Parcel 93 to create two individual commercial lots. Property owner: RAI GROUP 41, LLC/RAI Properties, LLC. Location: Burr Industrial Park, Phase I: Lots 40 & 41, 130 and 150 E. Burr Blvd., Kearneysville, WV. District: Charles Town (02); Map: 1; Parcel: 93; Size: 2.32 acres; Zoned: Industrial-Commercial; File: #ZV13-37.

Mike Shepp, consultant, represented the request; stated that Jim Ruland was unable to attend. Mr. Shepp provided the Board with a brief history of the property and then explained the purpose of the request. Mr. Shepp addressed Staff's proposed conditions stating that the smoking shelter would be removed by the current tenants when they vacant the building and that the applicant will replace the dead trees in the existing landscape buffer.

Ms. Huddle called for public comment. There was no public comment.

Mr. Knott motioned to go into deliberative session at 4:52 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Mr. Quynn motioned to come out of deliberative session at 5:31 p.m. Mr. Bannon seconded the motion, which carried unanimously.

### **Board of Zoning Appeals Rulings**

4. Deferred from the November 14, 2013 meeting. Variance request by property owner, Susan Powell, from Section 9.7 for a reduction of the rear setback distance from 12' to 6' to allow for the construction of an 8' x 12' deck to be used for wheelchair access.

Mr. Quynn motioned to defer the above referenced variance request until the next BZA meeting. Mr. Kelly seconded the motion, which carried unanimously.

5. Variance request by applicants, Bill and Belinda Lewis, from Section 4.3B to re-establish an expired nonconforming commercial use in the Rural Zoning District. The applicants intend to establish an open air flea market consisting of 15 rental spaces totaling 6,000 sq. ft., a 2,000 sq. ft. wholesale parking area for the sale of RVs, boats, etc. and to utilize an existing building as indoor retail and storage space and public restrooms. The site was previously Eastern Homes Inc.; a mobile home sales and restoration operation.

Mr. Quynn motioned to approve the above referenced request with the following conditions:

- 1) The applicants are bound by their testimony.

- 2) The uses are restricted to the areas depicted on the sketch submitted by the applicant.
- 3) No access is permitted other than what is approved by the Department of Highways.
- 4) All commercial setbacks shall be met.
- 5) Outdoor display shall be permitted while the flea market is open; however, no outdoor storage is permitted inside the whole sale area.
- 6) Clean up must be conducted after every week's session and the lot must be maintained in a clean and sanitary condition.

Mr. Knott seconded the motion, which carried unanimously.

6. Variance request by applicant, Duane Dunn with Dunn's Contracting, LLC., from Section 5.10C.1(a) for a reduction of the front setback from 20' to 12' to attach a 12' x 18' shed-roof to an existing log building; and, from Section 9.6C to permit a structure within the required front yard.

Mr. Bannon motioned to approve the above referenced request with the condition that the structure may not exceed 12' x 18', as represented. Mr. Kelly seconded the motion, which carried unanimously.

7. Variance request by applicant, Jim Ruland, from Section 4.11A for a reduction of the required parking and access drive setbacks from 10' to 0'; and, from Section 5.6D.5 for a reduction of the required landscape buffer between two commercial uses from 10' to 0', for the purpose of subdividing Parcel 93 to create two individual commercial lots.

Mr. Knott motioned to approve the above referenced requests conditioned upon the smoking shelter being removed from the property. Mr. Bannon seconded the motion, which carried unanimously.

9. Proposed Amendments to the Board of Zoning Appeals Rules of Procedure, Effective July 21, 2011. Ms. Brockman alerted the Board that Mr. Quynn and Mr. Knott's terms were expiring in January of 2014. Ms. Brockman directed the Board's attention to the draft 2014 Board of Zoning Appeals Meeting Schedule which would change their meeting to the fourth Thursdays at 2:00 p.m. (except for the November and December meetings due to the holidays). A copy was provided to the Board. Ms. Brockman stated this schedule was drafted based on the proposed amendments outlined in the Board of Zoning Appeals Rules of Procedure, Effective July 21, 2011, which the Board had asked Staff to revise. Ms. Brockman explained to the Board that both the Schedule and the Amendments were informational items and that action on these items would be scheduled for their January meeting.
10. Director's Report. See the packet for a copy of the Director's Report. Ms. Brockman did not review the report with the Board.
11. Legal Update. None.
12. Signing of written decisions from prior Board of Zoning Appeals meetings. No action was taken.
  - a) Continued from the 07/18/13 & 08/15/13 meetings. The variance request by applicant, John Fridley, was from Section 9.6(C) & 9.7 for a reduction of the front setback distance from 20' to 5' to construct a 20' x 22' detached garage. At the 08/15/13 meeting, the applicant indicated that the required setback from the DOH ROW was actually 12"; therefore, the applicant was advised to amend their application or reapply for a new variance. The applicant has not resubmitted and Board action is required on this outstanding request. Owner: William C. Palmer, Sr. File: ZV13-19. Meeting Date: 09/19/13

- b) Appeal of an Administrative Decision made by Jennifer Brockman, Acting Zoning Administrator, of the interpretation of Section 5.7D(3) regarding *Maximum Number of Lots Allowed* in the Rural zoning district. Appellants: Katherine B. Dunn & Sara V. Lowery, c/o Stanley Dunn. Appellant's Rep: J. Michael Cassell, Esq., Cassell & Prinz, PLLC. File: AP13-01. Meeting Date: 09/19/13
- c) Appeal of the Administrative Decision to issue Zoning Certificate #ZC13-23 for a Home Occupation Level 2 that allows a home-based asphalt repair business. The business includes a 16' trailer with seal coating & lawn equipment, to be enclosed in an outbuilding/garage, pending Building Permit approval. Appellants: R.K. & Marianne Hedrick; Wayne & Gloria Chastain; Scott & Alice Dillow; Mike & Pam Hinkle; and Chris & Christy Swisher. Owners: Robert & Donna Edwards. File: AP13-02. Meeting Date: 09/19/13
- d) Appeal of an Administrative Decision made by Jennifer Brockman, Acting Zoning Administrator, to deny the use of the St. John's Episcopal Church's facility as an overnight cold-weather shelter in the Rural Zoning District. Appellants: The Rev. Georgia DuBose; The Episcopal Diocese of WV / The Rt. Rev. W. Michie Klusmeyer & William F. Berry, VP of the JC Homeless Coalition. File: AP13-03. Meeting Date: 10/10/13
- e) Variance request by Kristen Stolipher, Consultant, on behalf of, Junipa Contento, Developer, from Section 2.2 to extend the time permitted for a Seasonal Use, which limits an event to not more than 3 consecutive days. The applicant is requesting to hold a 5-day music festival and camp out during the July/August 2014 summer season. Owner: Stiles Partnership 3 and 4. File: ZV13-33. Meeting Date: 11/14/13
- f) Request by Kristen Stolipher, Consultant, on behalf of, Junipa Contento, Developer to conduct a Seasonal Use event per Section 9.8 by hosting a 5-day musical festival and camp out, provided the previous variance request (ZV13-22) is approved, during the 2014 summer season. Owner: Stiles Partnership 3 and 4. File: ZV13-34. Meeting Date: 11/14/13

### 13. Correspondence

- a) Letter from Joyce Rawn terminating lease agreement.
- b) Letter from Junipa Contento withdrawing Seasonal Use Application ZV13-34.

Mr. Knott motioned to adjourn the meeting at 5:36 p.m. Mr. Quynn seconded the motion, which carried unanimously.

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



## Jefferson County Board of Zoning Appeals Consideration of a Variance

Article 3, Section 3.4 of the Jefferson County Zoning and Land Development Ordinance amended by the County Commission on July 7, 2011, states the following:

### **Section 3.4 Boards and Commissions<sup>23</sup>**

#### A. Board of Zoning Appeals

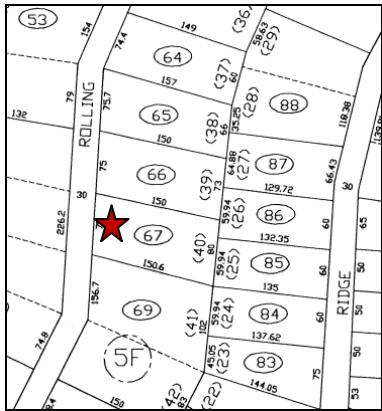
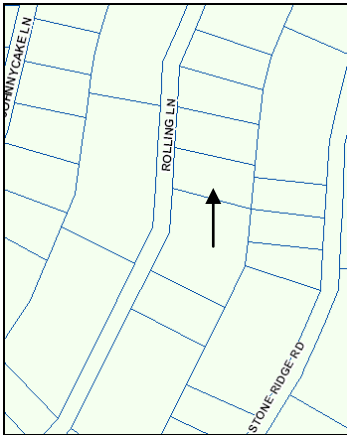
4. The Board of Zoning Appeals shall consider requests for variances from the terms of the Ordinance.<sup>23</sup>
  - a. The Board shall approve a variance request if the Board finds that a variance:
    - i. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;
    - ii. 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;
    - iii. Would eliminate an unnecessary hardship and permit a reasonable use of the land; and
    - iv. Will allow the intent of the Zoning and Land Development Ordinance to be observed and substantial justice done.<sup>17, 21</sup>
  - b. The owner or authorized representative of the owner of the property which is the subject of a variance request shall complete and sign forms provided for this purpose by the Board, and shall pay the associated fees. The variance request shall be filed with the Board at offices of the Departments of Planning and Zoning.
  - c. Notification for a variance must be conducted according to the requirements of Section 3.4A(3)(b).
  - d. A public hearing must be conducted according to the requirements of Section 3.4A(3)(c) and such hearing may be continued according to the requirements of Section 3.4A(3)(d).



Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 November 14, 2013

**Susan Powell Variance Request (#ZV13-30)**

Item #3 Variance request by applicant, Susan Powell, from Section 9.7 for a reduction of the rear setback distance from 12' to 6' to allow for the construction of an 8' x 12' deck to be used for wheelchair access.

APPLICANT:	Susan Powell
OWNER :	Same as above
DEVELOPER:	N/A
SURVEYOR/ENGINEER:	N/A
PROPERTY LOCATION:	Shannondale, Section 5F, Lot 40 480 Rolling Lane, Harpers Ferry, West Virginia
LEGAL DESCRIPTION:	Kabletown (06); Map: 6B; Parcel: 67 
ZONING DISTRICT:	Zoning Map Designation: Rural (R) 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North: R                      South: R</i> <i>East: R                         West: R</i>
LOT AREA:	.25 acres
PRIOR CASES:	None
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
November 14, 2013

**Susan Powell Variance Request (#ZV13-30)**

**RELEVANT INFORMATION:**

1. Overview of Request

The applicant is seeking a variance from Section 9.7 for a reduction of the rear setback distance from 12' to 6' to allow for the construction of an 8' x 12' deck to be used for wheelchair access.

2. Previous Case History

The subject property is located in Shannondale Subdivision which was approved and recorded prior to the adoption of subdivision and zoning regulations in Jefferson County.

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

An exhibit submitted with the application shows that there is only 14' between the back of the house and the rear property line. The house sits fairly far back on the property due to the terrain, existing trees and the location of the septic system in the front yard. The rear yard setback for this parcel is 12'. The proposed deck is 8' in depth thus encroaching into the rear setback 6'.



**Front View of Property**

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
November 14, 2013

**Susan Powell Variance Request (#ZV13-30)**

a. Source and purpose of ordinance requirements

The recordation of this section of the Shannondale Subdivision predates the establishment of the zoning ordinance therefore the applicant must comply with Section 9.7 of the Zoning Ordinance which regulates setbacks for properties created prior to 1988. Due to the property's location, size, zoning district and history, the setbacks would be 20' Front, 8' Side and 12' Rear.

b. Unique characteristics of property

The subject property is located in an established subdivision that predates both the zoning and subdivision ordinances. A lot of this size and in this zoning district would not be permitted under the current regulations and is therefore considered a nonconforming lot. While the existing home meets the current zoning setbacks for lots that are under 30,000 square feet in the rural district; a proposed deck of this size would not meet the required 12' rear setback.



**Rear of House**

c. Character of area

The property is located in the Shannondale Subdivision and is situated in a particularly heavily forested section, surrounded on three sides by residential uses.

d. Impact on adjacent properties

The property toward the rear of the subject parcel rises steeply applicant states that the abutting property is unbuildable due to the topography of the lot.



**Rear of Property**

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
November 14, 2013

**Susan Powell Variance Request (#ZV13-30)**

e. Feasibility of complying with the ordinance by other means

Due to the existing location of the home and rear entry, the proposed deck appears to be situated a reasonable location. The proposed size of the deck also appears practical as the purpose of the deck is to accommodate the current handicapped tenants.



**View of Rear Entry**

5. Conditions of Approval

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

- a. The variance is limited to the dimensions described in the application.

SECTION OF ORDINANCE TO BE CONSIDERED:

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

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

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

Rural Agricultural and Industrial Commercial

Single family residences --

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



# JEFFERSON COUNTY, WEST VIRGINIA

## Departments of Planning and Zoning

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

Charles Town, WV 25414

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

File Number: ZV13-30

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

Staff Initials: AS

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

Phone: (304) 728-3228

Email [zoning@jeffersoncountywv.org](mailto: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

Property Owner Name: Susan Powell

Mailing Address: 152 N. Bolton Street

City: Romney State: WV Zip Code: 26757

Phone Number: 540-687-0845 Email: USAOURCOUNTRY@YAHOO.COM

#### Applicant or Contact Information

Applicant / Contact Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

#### Applicant Representatives

Company/Organization Name: \_\_\_\_\_

Attorney(s), Engineer(s), or Surveyor(s) Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

#### Physical Property Details

Physical Property Address: 480 Rolling Lane, Harpers Ferry, WV 25425

Tax District: Kabletown, (06) Map No: 6B Parcel No: 67

Parcel Size: ~.25 acre Deed Book: 1108 Deed Bk. Pg. No: 406

SECTION 5F #40 SURROUNDAGE

RECEIVED

SEP 26 2013

JEFFERSON COUNTY PLANNING,  
ZONING & ENGINEERING

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

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 (Required:) Article 9.7

**Please briefly describe the nature of the variance request:**

Reduction in setback requirements from 12' to 6'  
would like to construct 8'x12' deck for wheelchair access. AB

**If this request is for a setback variance, please complete the section below:**

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

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

Abutting property is "unbuildable" - hill lot. AB

**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?**

Residents are disabled. AB

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

Wheelchair access for residents - otherwise, muddy backyard. AB

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

A deck will increase assessed value of the home. AB

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.

Susan Powell  
Print Name of Property Owner 1 Date

Print Name of Property Owner 2 Date

[Signature] 9.26.13  
Signature of Property Owner 1 Date

Signature of Property Owner 2 Date

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

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

November 14, 2013  
Date of Public Hearing

October 30, 2013  
Advertising Date

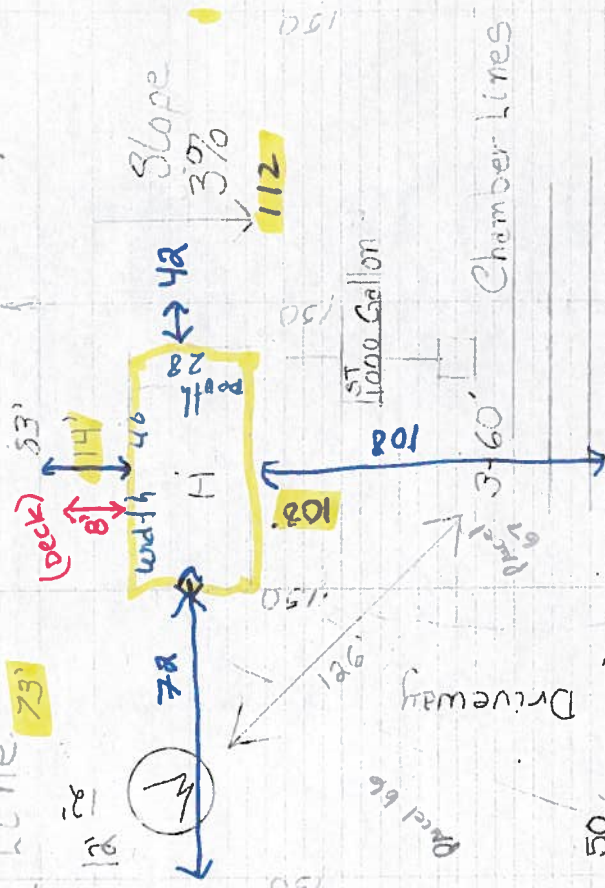
October 30, 2013  
Placard Posting Date

\*Application filled in by Alexandra Beaulieu per applicant's request due to being visually impaired.

#ZM1330

Sec 5F

Property Line 73'



37

38

39

40

47

42

New Well to Septic 126'

Ex Well to Septic 110'

RECEIVED

SEP 26 2013

JEFFERSON COUNTY PLANNING, ZONING & ENGINEERING

Susan Taylor  
304 359-2110  
Hse Width 40'  
Depth 28'  
1,120 sq ft  
Height 17 feet

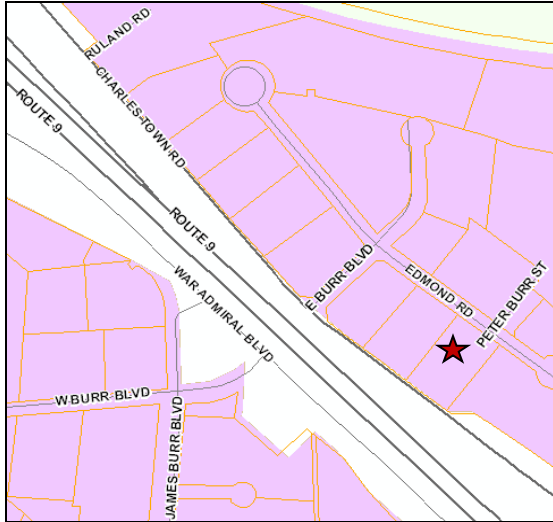
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Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 January 23, 2014

**BURR PARK, LLC Variance Request (#ZV13-38)**

- Item #5 Variance request by applicant/owner, Vince Petti, Burr Park, LLC, from the following sections:
- a) Section 5.6D.5: a reduction of the required parking and access drive setbacks from 10' to 0' ;
  - b) Section 4.11A: a reduction of the required landscape buffer between two commercial uses from 10' to 0' for two newly created parcels; and,
  - c) Section 5.6D.2: a reduction of the required setback distance between existing buildings from 25' to 4.25' on one lot and 25' to 5.25' on the other lot, for the purpose of subdividing Parcel 86 (referred to as Lot 34) to create two individual commercial lots (Lots 34A and 34B).

APPLICANT:	Burr Park, LLC
OWNER:	Vince Petti
DEVELOPER:	Same as owner
SURVEYOR/ENGINEER:	Appalachian Surveys, PLLC
PROPERTY LOCATION:	Burr Industrial Park, Phase I: Lot 34, 71 and 73 Edmond Road, Kearneysville, West Virginia
LEGAL DESCRIPTION & ZONING DISTRICT:	<p style="text-align: center;">District: Charles Town (02); Map: 1; Parcel: 86; Size: 1.53 acres          Zoning Map Designation: Industrial - Commercial District</p> 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> IC <i>South:</i> Old Rt. 9/City of Ranson/IC <i>East:</i> IC <i>West:</i> IC
SUBDIVISION: PC File #88-69 PC File #02-32	02/13/90: PC approved Final Plat 11/12/02: PC approved Final Plat
SITE PLAN: PC File #S98-04 PC File #S03-08	09/30/98: Staff approves Marrone's Interior Finishes, Lot 34 <ul style="list-style-type: none"> <li>• File closed</li> </ul> 10/10/03: Staff approves Advanced Pest Control Co. Lot 34 PC approval not required due to its location in an approved industrial park.
VARIANCES: PC File #ZV06-11	08/20/06: BZA denies a reduction of the side parking and access drive setback from 4' to 0' for an existing paved parking lot expansion
LOT LINE ADJUSTMENT:	04/30/09: Dept approves merger to adjust boundary line by 4'.
APPROVED ACTIVITY:	Commercial / Industrial

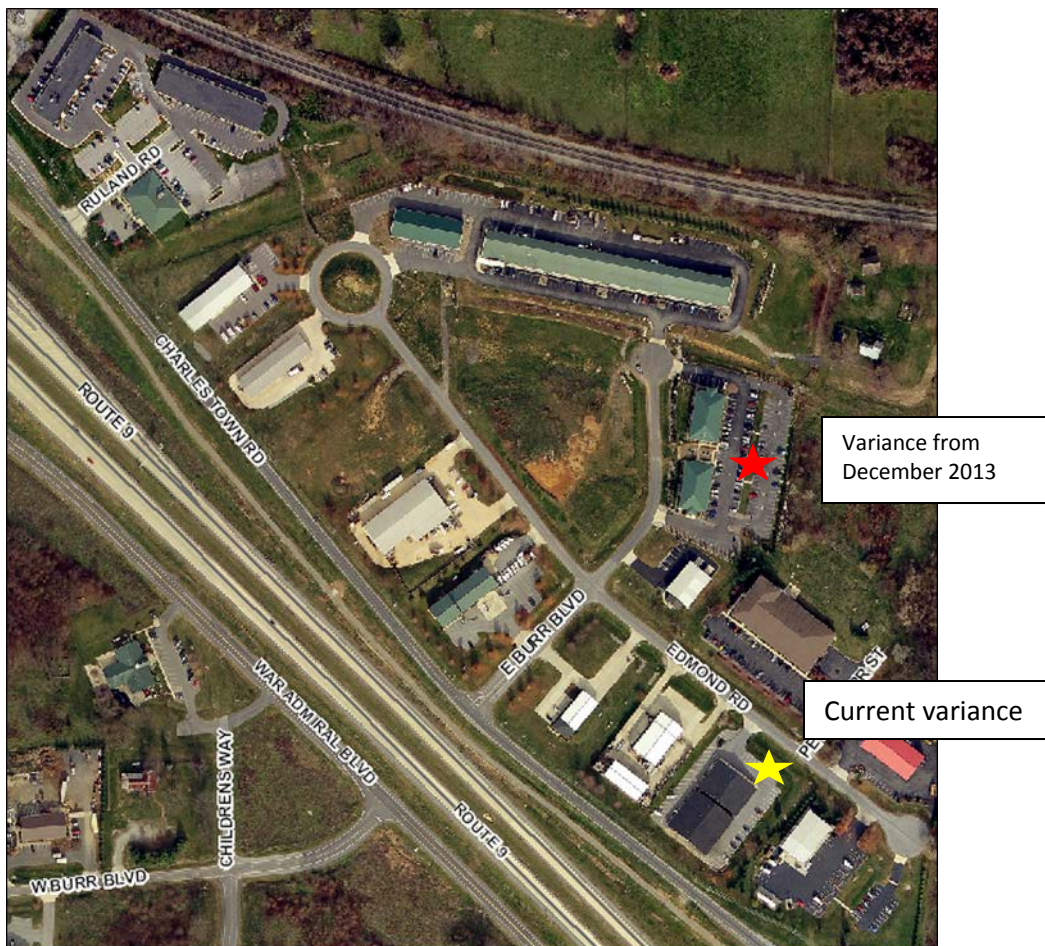
Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
January 23, 2014

**BURR PARK, LLC Variance Request (#ZV13-38)**

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking variances from Sections 5.6.D.5 and 4.11.A for a reduction of the required parking and access drive setbacks from 10' to 0' and a reduction of the required landscape buffer between two commercial uses from 10' to 0' for two proposed newly created parcels; and a variance from Section 5.6.D.2 for a reduction of the required setback distance between existing buildings from 25' to 4.25' on one lot and 25' to 5.25' on the other lot, for the purpose of subdividing Parcel 86 (referred to as Lot 34) to create two individual commercial lots (Lots 34A and 34B).



2. Previous Case History

The subject property is located in the Burr Industrial Park. The subdivision plat for this lot was approved in 1990, and site plan for the two buildings was approved in 2003. Both buildings have been constructed and occupied; however, there is now interest in selling them separately, which requires the requested variances. The property has processed a series of lot line adjustments to reach its current configuration.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
January 23, 2014

**BURR PARK, LLC Variance Request (#ZV13-38)**

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 and discussion of request

There are three variance requests included in this application and each needs to be examined separately. They all relate to the applicant's goal of subdividing Parcel 86 (referred to as Lot 34) to create two individual commercial lots (Lots 34A and 34B).

- i. Section 5.6.D.5 for a reduction of the required parking and access drive setbacks from 10' to 0' for two parcels proposed to be created;
- ii. Section 4.11.A for a reduction of the required landscape buffer between two commercial uses from 10' to 0' for two parcels proposed to be created;
- iii. Section 5.6.D.2 for a reduction of the required setback distance between existing buildings from 25' to 4.25' on one lot and 25' to 5.25' on the other lot from a new property line proposed to be created between the two existing buildings.

Section 5.6.D.5 of the Zoning Ordinance establishes setbacks for parking areas and drive aisles associated with commercial developments in the Industrial-Commercial Zoning District. Section 4.11A establishes landscape buffers between commercial uses. The purpose of this requirement is to provide for a separation of different uses, their parking areas and drive aisles so that they do not have a negative effect of the adjoining structures or land uses. Typically, even in a business or industrial park, each lot is developed separately and independently of each other. As noted in the applicant's response on the variance application form, the two existing buildings are architecturally similar and intended to be located in a manner that complement each other and act as a unified office complex in which the traffic circulation, parking and landscaping is master planned in a cohesive manner. While there is no provision for this type of development in the current regulations, the interconnectivity of commercial developments is a good planning principle. In this case, two office buildings occupy a single lot with shared parking and access and the applicant is interested in putting each building on its own lot. A limited amount of mature landscaping exists on the outer perimeter and it appears that a portion of the required landscaping (shown on the site plan) was removed when the parking lot was expanded. The applicant would like to be able to divide the lot so that each building occupies its own lot but not be required to change the existing parking or access configuration or add additional landscaping in the narrow space between the existing buildings.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
January 23, 2014

**BURR PARK, LLC Variance Request (#ZV13-38)**

In similar cases, in 2013, the Board approved a variance to waive building setbacks, parking and drive aisle setbacks, and landscape buffers for internal lot lines for the Twin Oaks Subdivision (#ZV12-35); to reduce setback and buffer requirements along interior lot lines between adjacent commercial lots for the development known as 340 Business Park (#ZV12-34); and to reduce parking and access drive setbacks and landscape buffer between two commercial for Burr Industrial Park, Phase I: Lots 40 & 41 (#ZV13-37). (Prior approvals by the Board do not necessarily indicate precedent because of the unique circumstances of each case.)

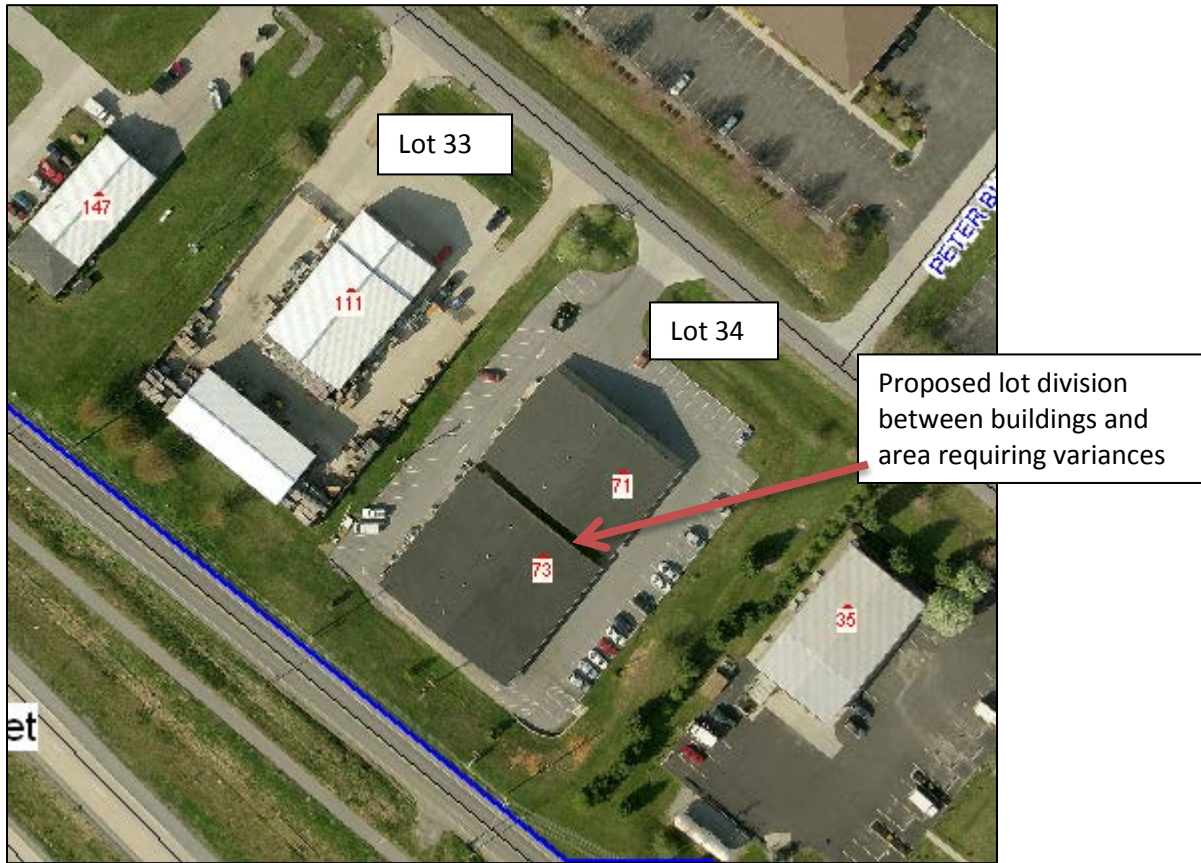
Section 5.6.D.2 established the building setback for commercial and industrial uses in the Industrial-Commercial Zoning district. Setbacks are a standard provision of Zoning Ordinances in order to ensure that adjacent uses are separated enough for public health and safety and to minimize various nuisances. The front, rear and side setbacks for all commercial sites less than 1.5 acres (which the two proposed newly created lots will be) is 25 feet. While there may be some opportunity to discuss whether the new lot line should be called a side or a front/rear lot line, they all have the same 25 foot requirement, and for the purposes of this request are being referred to as side lot lines. It should be noted that the request for the variance related to the side yard setbacks is for a reduction of the required setback distance between existing buildings from 25' to 4.25' on one lot and 25' to 5.25'. This is because the State Building Code, adopted locally, requires that any commercial structure located between three (3) to five (5) feet from a property line is required to have all openings (windows etc.) to be fire rated/protected and these openings cannot exceed 15% of wall area. Any commercial structure located greater than five (5) feet to ten (10) feet from a property line can have up to 10% unprotected openings in the wall. This requirement is why the proposed new property line is to be off-set and why the variance from Section 5.6.D.2 for a reduction of the required setback distance between existing buildings is requested to be from 25' to 4.25' on one lot and from 25' to 5.25' on the other lot. Because the space between the two buildings measures to be 9'9", the property line is proposed to be off-set in a manner that allows one building to be over five (5) feet from the property line.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
January 23, 2014

**BURR PARK, LLC Variance Request (#ZV13-38)**

b. Unique characteristics of property

The size and shape of the property are not unusual; however, the property does have unique characteristics in that it has existing drive aisles, parking area, and two completed buildings located in a manner that will not allow them to meet the parking and drive aisle setbacks and/or the landscaping requirements between the two buildings if the property is divided. .



Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
January 23, 2014

**BURR PARK, LLC Variance Request (#ZV13-38)**



c. Character of area

The property is located in an industrial park. Lot 34 backs up to Old Rt. 9/City of Ranson. Properties located to the northeast (across Edmond Road) and to the northwest and southeast are all occupied by commercial or office structures located in the industrial park. The balance of this portion of the industrial park is nearly completely occupied.

d. Impact on adjacent properties

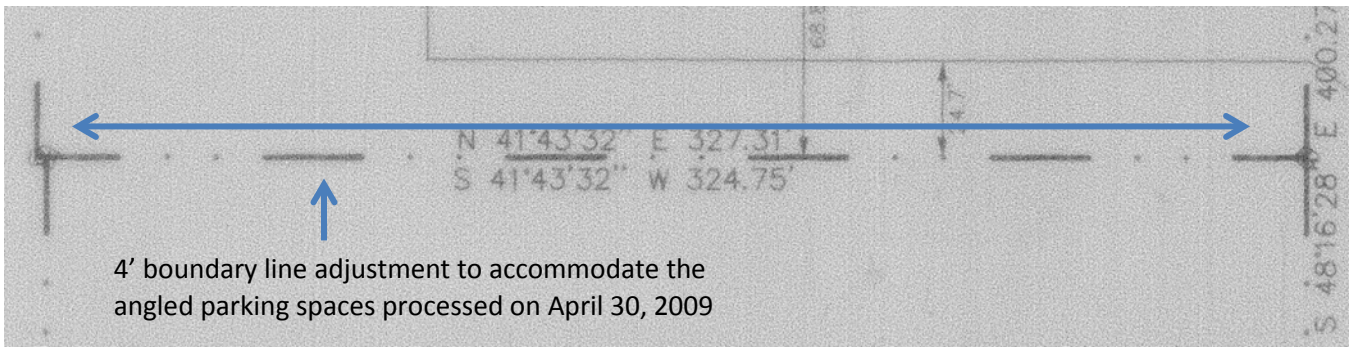
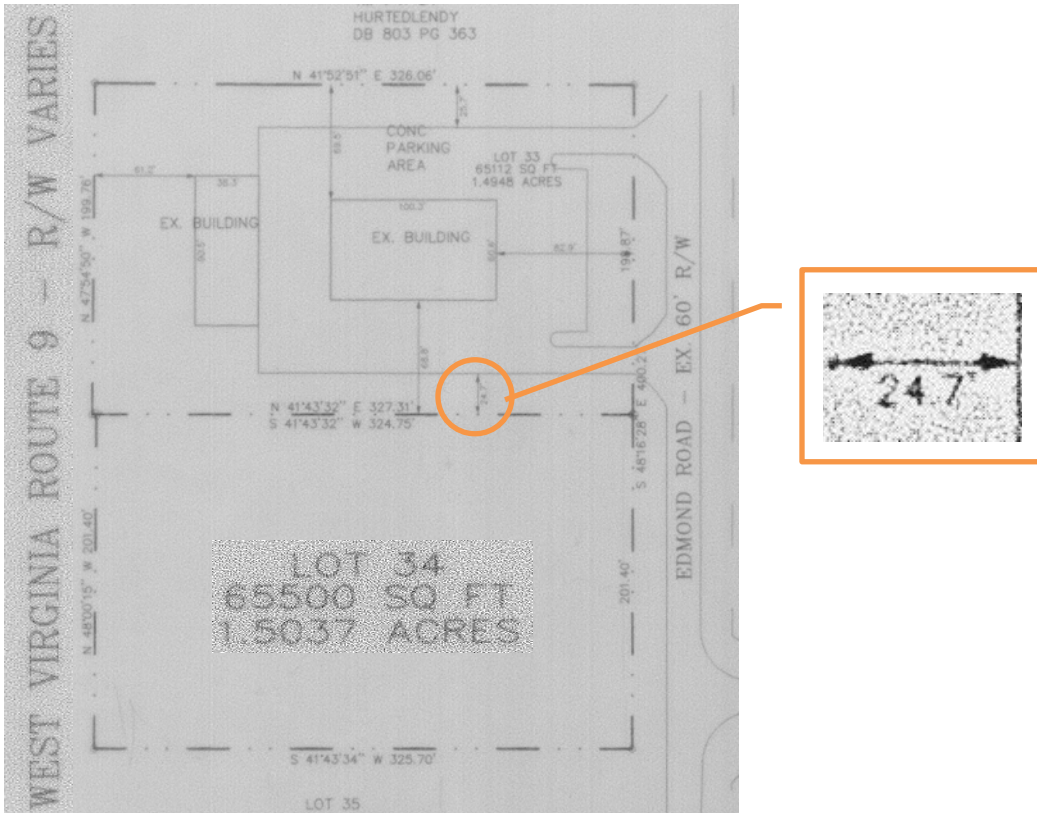
Staff finds that the variance, if granted, would have no greater impact on adjacent properties than would the existing developed office buildings and shared parking area. Staff has some concern that the current plat and site plan do not accurately reflect the relationship of the edge of the parking area to the merged property line and that the traffic circulation is not reflected on the site plan. As the applicant will be required to apply for Subdivision Regulation Waivers related to the existing drive aisle width along the diagonal parking and the rear of the back building and to allow access to the rear building via an access, a revised site plan will need to be prepared prior to Planning Commission approval of the waivers. Additionally, the proposed division will require a Final Plat which will be required to show cross access easements and cross parking easements and reflect the approved variances. If it is determined that the parking lot does not meet the minimum 4 foot setback from the property line along Lot 33, an additional variance will be required or other options for resolving this violation will have to occur.

Staff also noted that it appeared that some of the required landscaping along the Lot 33 property line has been removed contrary to the Site Plan. It appears that when the redline revision statement regarding the 4 foot merger and expansion of the parking lot was approved, the

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
January 23, 2014

**BURR PARK, LLC Variance Request (#ZV13-38)**

removal of the landscaping was in effect approved (see attached Approved Revision to Advanced Pest Control Site Plan, dated 04/24/09). Staff would like to clearly state that this process was an anomaly and any future changes to requirements to site plans are required to be approved by either the Planning Commission (Subdivision Regulation requirements) or the Board of Zoning Appeals (Zoning Ordinance requirements). Typically, applicants are required to maintain and replace any landscaping that dies or fails to provide the required buffer.



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

Due to the configuration of the existing buildings, it is not possible for the lots to be subdivided without need of the requested variances.

**BURR PARK, LLC Variance Request (#ZV13-38)**

5. Conditions of Approval

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

- a. The variances for the reduced parking and access drive setbacks, reduced landscape buffer between two commercial uses, and reduced building setbacks as described above apply only to internal lot lines between the existing buildings;
- b. The Final Plat for the proposed division shall include cross access easements and cross parking easements and reflect the approved variances;
- c. The applicant shall also apply for required Subdivision Regulation Waivers related to the existing drive aisle width along the diagonal parking and the rear of the back building and to allow access to the rear building via an access and shall submit a revised site plan to reflect all revisions prior to Planning Commission approval of the waivers;
- d. If it is determined that the parking lot does not meet the minimum 4 foot setback from the property line along Lot 33, an additional variance will be required or other options for resolving this violation will have to occur.

SECTION OF ORDINANCE TO BE CONSIDERED:

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

- A. ...All commercial development adjacent to all other uses must maintain ten (10) foot side and rear yard landscape buffers.<sup>5</sup>

**Section 5.6 Industrial - Commercial District**

**5. Parking, Driveway and Internal Access Drive Side and Rear Setbacks**

Commercial sites greater than 1.5 acres	10 feet
Commercial sites 1.5 acres and smaller	4 feet
Industrial sites*	25 feet

*\* Driveways and Internal Access Drives Only. Parking must abide by buffer requirements.*

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
January 23, 2014

**BURR PARK, LLC Variance Request (#ZV13-38)**





## Revision to Advanced Pest Control Site Plan File S03-08 Lot 34, Burr Industrial Park

1. Pavement was added in an area not shown on the approved site plan as hatched on the attached Exhibit A.
2. This addition to the paved area was for additional parking and a drive lane around the building.
3. The revision to the site plan could not be approved because the new pavement went all of the way to the property line eliminating the required four foot parking setback.
4. A merger deed is being prepared to add the additional required four feet to the subject property to correct the setback violation.
5. Once the merger is approved, the area between the building and the newly approved northern boundary will include a 14 foot one way drive lane, 10' x 18' angled parking spaces and a 4 foot parking setback.
6. This narrative along with the attached Exhibit A and the approved merger deed is intended to correct the violations on the site.
7. No other changes will be made on the site without prior Department of Engineering approval.

O.K.  
Roge Moore  
Chief County Engineer  
04/24/09

# EXISTING PAVEMENT

EXIST EOP

EXISTING 4' (MIN) REQUIRED PARKING SETBACK  
PROPOSED 0' PARKING SETBACK

INSTALL CULVERT INLET PROTECTION

12' WIDE TURNAROUND

6" PVC SCH 40 SS @ 1.04 % MIN C/O @ 100' MAX

N41°43'31"E

324.75

104

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SCALE: 1"=30'

829 SF GREENSPACE REQUIRED (5%  
1000 SF PROVIDED BETWEEN BLDGS)

PHASE I  
FF = 105.5  
9,600 SF

PHASE II  
FF=105.0  
7,200 SF

PHASE II CONCRETE SIDEWALK

PHASE II 6" CONC S/W

10'x10' DUMPSTER PAD & SCREENING

10' WIDE GRASS WEIR @ 100.5

4" CONCRETE W/ 6X6X10/10 WWF ON 4" GRAVEL

9'x20' PARK SPACE (TYP)  
18 SPACES PHASE I  
4 SPACES PHASE II

STOCKPILE AREA

10' PE WATER

2" PE WATER

1-1/4" METER & BOX

PVC SCH 40 ROOF DRAIN

PVC SCH 40 ROOF DRAIN

4' TOP BERM WIDTH

SETBACK

SETBACK

SETBACK

SETBACK

SETBACK

SETBACK



EXISTING PAVEMENT

EXISTING 4' (MIN) REQUIRED PARKING SETBACK

PROPOSED 0' PARKING SETBACK

INSTALL CULVERT INLET PROTECTION

6" PVC SCH 40 SS @ 1.04 % MIN C/O @ 100' MAX

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12' WIDE TURNAROUND

17'x10' ASPHALT PAVE

10'x10' DUMPSTER PAD & SCREENING

10' WIDE GRASS WEIR @ 100.5

4" CONCRETE W/ 6X6X10/10 WWF ON 4" GRAVEL

9'x20' PARK SPACE (TYP)

STOCKPILE AREA

10' PE WATER

2" PE WATER

1-1/4" METER & BOX

PVC SCH 40 ROOF DRAIN

PVC SCH 40 ROOF DRAIN

4' TOP BERM WIDTH

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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: ZV13-38

Staff Initials: JLC

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

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

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

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

Zoning Variance Request

Variances 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: Burr Park, LLC
Mailing Address: 348 Hermitage Blvd.
City: Berryville State: VA Zip Code: 22611
Phone Number: 304/261-8089 Email: vpetti64@aol.com

Applicant Information

Name: Contact for Burr Park, LLC: Vince Petti
Mailing Address: Same
City: State: Zip Code:
Phone Number: Email:

Engineer(s) or Surveyor(s) Information

Name: Appalachian Surveys, PLLC Karen Brill and Mike Shepp
Mailing Address: 401 S. Fairfax Blvd, Suite 3
City: Ranson State: WV Zip Code: 25438
Phone Number: 304/724-5008 Email: mshepp@appalachiansurveyspllc.com

Physical Property Details

Physical Address: Lot 34 Burr Park 71 and 73 Edmond Road,
City: Kearneysville State: WV Zip Code: 25430
Tax District: Charles Town Map No: 1 Parcel No: 86
Parcel Size: 1.53 Acres Deed Book: 1044;1063 Page No: 445;723

Zoning District (please check one)

Table with 5 columns: Rural (R-A), Residential Growth (R-G), Industrial Commerical (I-C), Residential-Light Industrial-Commercial (R-L-C), Village (V). Includes checkboxes, with I-C checked.

RECEIVED

DEC 12 2013

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

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: Sections 5.6.D.2; 5.6.D.5; and 4.11.A

Briefly describe the nature of the variance request

See Attached

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

Front Setback  Side Setback  Rear Setback

Reduction From 25 & 10 to X & 0 *Building 425' x 5.25' Buffer Parking access Buffer*

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

See Attached

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

See Attached

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

See Attached

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

See Attached

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.

Vincent Letts, managing member 12/16/2013  
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)).

01/23/14  
Date of Public Hearing

01/08/14  
Advertising Date

01/08/14  
Placard Posting Date

Burr Park, LLC  
Lot 34  
Request for Variances  
Article 4, Section 4.11.A  
Article 5, Section 5.6.D.2  
Article 5, Section 5.6.D.5  
Jefferson County Zoning Ordinance  
December 12, 2013

RECEIVED

DEC 12 2013

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

**Brief Description of Request:**

Burr Park, LLC is seeking variances from Article 4, Section 4.11.A, Article 5, Section 5.6.D.2 and Article 5, Section 5.6.D.5. Section 4.11.A requires a 10 foot landscape buffer between commercial lots and Section 5.6.D.5. requires a 10 foot side setback (actually 4', but due to the buffer requirement it equals 10') for parking and access aisles. For Sections 4.11.A and 5.6.D.5., the Applicant is requesting a variance from 10' to 0'. Section 5.6.D.2 requires a 25 foot side setback for buildings or structures. For this section, the Applicant is requesting a reduction to 4 feet. Although there currently appears to be 10 feet between the existing buildings, the Applicant is requesting a reduction to 4 feet (on each side) in an effort to be cautious in case there are areas less than 10 feet.

In 2003, Burr Park, LLC processed a complete site plan for 2 one story office buildings. Burr Park, LLC received County approval for this site plan. One of the office buildings is approximately 7,200sf and the other one is approximately 9,600sf. Each of these buildings has several separate leasable spaces. As in similar cases that have recently come before the BZA, the Applicant would like to separate the buildings because they would like to sell the buildings separately. Although the Applicant has been trying to sell the lot with both buildings on the property for some time, they have not been successful due to the economy and the availability of lending funds for commercial projects. However, several interested prospects have indicated a desire to purchase one of the office buildings separate from the other office building. The Applicant has now decided to move forward since the leasable spaces are nearly vacant and a potential buyer has expressed interest in one of the buildings. Based on this, the Applicant thought that this would be a good time to process the variance requests and subdivision application.

Under the new subdivision ordinance, this re-subdivision can be processed as a Minor Subdivision. However, these variances are needed in order to begin the process. The project was approved and designed to work together, so the subdivision of the property will only require a new property line between the buildings. This property line will have absolutely no effect on anything aesthetically or from a technical standpoint. It would simply allow the buildings to be sold as separate components in a slow commercial real estate market.

These are similar circumstances and the same variances that were discussed and granted by the BZA when BCT's 340 Business Center (Sears building) and the Peter Kubic Buildings in the Industrial Park wanted to separate their buildings in the past year. There is also one pending for RAI for the December meeting. RAI's property is only a couple of lots away from this property. These types of situations, where multiple office buildings on small lots share common parking and access, are permitted in most jurisdictions that allow office parks. These occurrences are frequently seen in Frederick County, MD and most other Counties from Frederick into D.C. Furthermore, because of the previous variances granted by the BZA and the fact that this type

of development is common in other areas, the Applicant understands that the Staff may be proposing amendments to the ordinance to address this issue.

The improvements for this site plan and office buildings were bonded and all of the necessary work was completed for this project as it is currently built. These variances will just allow the ability for the buildings to be marketed to several buyers.

Two of the specific variances that are requested include the elimination of the 10 feet buffer required between the two commercial lots; and, the elimination of the parking lot, driveway and access drive setback. Typically, the setback for the parking and access drive is 10 feet. However, since these office buildings were originally built as one project, the parking and access is already shared by both buildings. Burr Park, LLC will create easements to be given to both properties to ensure that the properties remain connected for access and parking purposes. This easement will eliminate the need for a parking and access drive setback and will allow the project to appear as one project.

The third variance is a building setback variance. Currently, there is approximately 10 feet between the buildings. Regardless of whether or not a property line goes between the buildings, there will still be 10 feet between buildings. Accordingly, there will be no effect or even appearance that anything has changed, except that there will be a property line between the properties. The request is for a reduction to 4 feet, but most likely each building will be 5 feet from the new property line, once the survey is completed.

The Board's approval of these variances would allow Burr Park, LLC the ability to lease or sell what is already approved and built as two separate office buildings. The potential purchasers will know what they are buying in advance and will understand that the access and parking easements exist for both parties and they will have 5 feet between their building and the property line. The Applicant is willing to provide a shared pedestrian easement within the entire 10' to ensure that foot traffic won't be adversely affected by the proposed property line. As the Board knows from previous applicants, the business and real estate markets have changed drastically from when these two office buildings were originally developed. Granting these variances will allow Burr Park, LLC the ability to market the two buildings to smaller commercial customers.

Keeping the shared parking and access between two office buildings with the ability to be marketed separately will have a positive effect on economic development in Burr Park and in Jefferson County. Burr Park, LLC was one of the original developers in Burr Industrial Park and would respectfully request the Board to grant variances from Sections 4.11.A., 5.6.D.2. and 5.6.D.5.

Thank you for your consideration of this matter.

Burr Park, LLC  
Lot 34  
Request for Variances  
Article 4, Section 4.11.A.  
Article 5, Section 5.6.D.2.  
Article 5, Section 5.6.D.5.  
Jefferson County Zoning Ordinance  
December 12, 2013

1. Granting the variances will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents.

A site plan for Lot 34 which showed both office buildings was approved by the Planning Commission in 2003. The two office buildings will continue to function exactly as they do now with shared amenities such as parking and access.

Furthermore, the variances will have no effect on the perimeter of the property. The property will look exactly as it does now. It will only have a property line added between the buildings and through the shared parking lot. Easements will be added between the buildings and between the parking and access roads to allow mutual use of all of the area outside of the buildings. Furthermore, the project already has Highway and Health Department approvals for the development as designed. Therefore, the granting of the variances will only have a positive effect on the public's health, safety or welfare; and, the adjacent property owners' rights. Also, once the variances are granted, the Applicant will still need to process through the subdivision ordinance for County approval of the division.

2. 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?

Burr Park, LLC purchased one of the original lots in the Burr Park on the East side of Route 9. The intent was ultimately to do condominium units so that each of the separate leasable spaces could be sold. At the time, no one had processed a condominium subdivision in the County, so Burr Park, LLC chose to move forward with the two buildings thinking that they could subdivide the buildings at a later time through the condominium standards. Now, there is more interest from buyers to purchase each of the separate buildings. The market has shifted from when the original site plan was processed. Also, at the time the site plan was processed, the County's ordinances and commissions weren't really endorsing connecting commercial projects, so Burr constructed the two office buildings on the one property. Now, the County actually encourages the connection of commercial developments. The current Staff understands that the Condominium Standards in the Ordinance needs a huge update to make it more business friendly when it comes to multiple commercial buildings with commonly shared elements.

Because of the decline in the real estate market and the reluctance of banks to provide lending for large commercial projects, previously approved projects that had more than one building on the lot, became more difficult to market and sell. As the BZA and Staff is

aware, some of these projects have already come before the BZA to get the same variances to be able to subdivide the office buildings into separate lots in order to feasibly market them. In this case, the special conditions are that the two office buildings already complement each other, so they shouldn't have to change from the way they now exist. The shared amenities such as parking and access and pedestrian areas will ensure that they remain a cohesive development, but with the ability to be sold separately.

The fact that this project, like other business park developments that the BZA has seen lately, is approved with the buildings, parking and access drives and landscaping already located on the property makes this a unique situation. The new property line will just split the property into two, without any changes in appearance or function. The Applicant will make sure that the shared easements for vehicles and public are added during the subdivision process and in the deeds transferring the land.

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

If the parking and access drive variance and the building setback variance are not granted, then Burr Park, LLC will be at risk of losing the property. There is now a potential buyer of one of the buildings that intends to fully occupy the space. These office buildings will remain a reasonable use of the land if there are separate owners. The shared amenities between the two new lots is a tenet of good planning which recognizes that commercial properties should be connected. These connections between properties have become priorities for many jurisdictions.

If the variances aren't granted, the two buildings will not be able to be sold separately. That will create a hardship, because Burr Park, LLC needs to sell the property. During the past several years, they have not had any luck selling the project as a whole, but they have had an interest by several buyers in buying one of the buildings. The granting of these variances will allow that to happen by eliminating the hardship of selling the project as a whole. The same use, with separate owners, is a reasonable use of the land.

The County has already determined that these two office buildings, as designed and approved, are a reasonable use of the land. Since nothing will change on the property, the same types of uses will continue to be a good and reasonable use of the land. The granting of the variances, however, will allow the office buildings to be sold like office buildings in other jurisdictions. It just makes good business sense to allow commercial and office development to share infrastructure and site amenities. The approval of these variances will allow the project to continue to be a viable business commodity during these trying economic times

4. *The spirit of this Ordinance will be observed and substantial justice done.*

The purpose of a buffer between lots is to protect property owners from uses that don't complement each other. In this case, other than size, the two office buildings are nearly identical. They are architecturally similar and they very much complement each other. Not only would the buffer look out of place between the buildings, it would also create a security issue. This type of buffer is more appropriate between two different types of use

categories, such as commercial and industrial. The Applicant does not believe that it was intended to buffer two similar buildings from each other. Regarding the parking and drive aisle setbacks, based on the size of the development, it only makes sense to keep the parking lot connected. The shared access and parking lot will ensure that the two buildings will make efficient use of the land. Pedestrian and vehicle easements will make sure the two lots function as one. Likewise, the intent of a building setback is for safety and compatibility issues. In this case, the buildings are already located 10 feet from each other. This isn't going to change if a property line with a common easement between them is added.

The variances requested are for items that typically would protect one property owner from building something that would negatively affect a neighboring property. In this instance the buildings, access drives and parking areas already exist. Therefore, the new owners and/or tenants will also understand that there are shared easements for the parking, access drives and pedestrian areas. As such, they will have advance knowledge of how the development was approved.

If the variances are granted, the intent of the ordinances remains unaffected since the project already went through the site plan process and the buildings and improvements were built as designed. All of the design standards of the ordinance have been met for the two office buildings. Once the variances are approved, the project will still need to process through the subdivision ordinance. This will ensure that the two proposed lots will continue to meet the ordinance standards. Since the variances only affect the interior portions of the lot, the granting of the variances will have no effect on any other adjacent property owner.

Substantial justice would be to approve the requested variances, so Burr Park, LLC can finally market the property in a feasible way based on the current real estate market. This would allow the project to be sold separately to two entities that can more easily obtain bank financing based on the individual sizes of the new parcels. This should help the project to be fully occupied in the future.



Lot 38A

Lot 33

WV Rt. 9/48 EX. 60' RW  
"EDMOND ROAD"

Lot 34-A  
0.75 Acres

Lot 34-B  
0.75 Acres

PARKING  
AND  
ACCESS  
DRIVES

See Site Plan  
For building  
and parking layout  
Buildings not to  
Scale on this  
Sketch  
Lot 35 & 36



WV ROUTE 9 RW VARIES

*[Handwritten signature]*

Sketch Plat Showing Proposed

Vincent G. Pitt, managing member for Burr Park LLC  
11/16/2013

Burr Park LLC

DEPT...



# JEFFERSON COUNTY WEST VIRGINIA

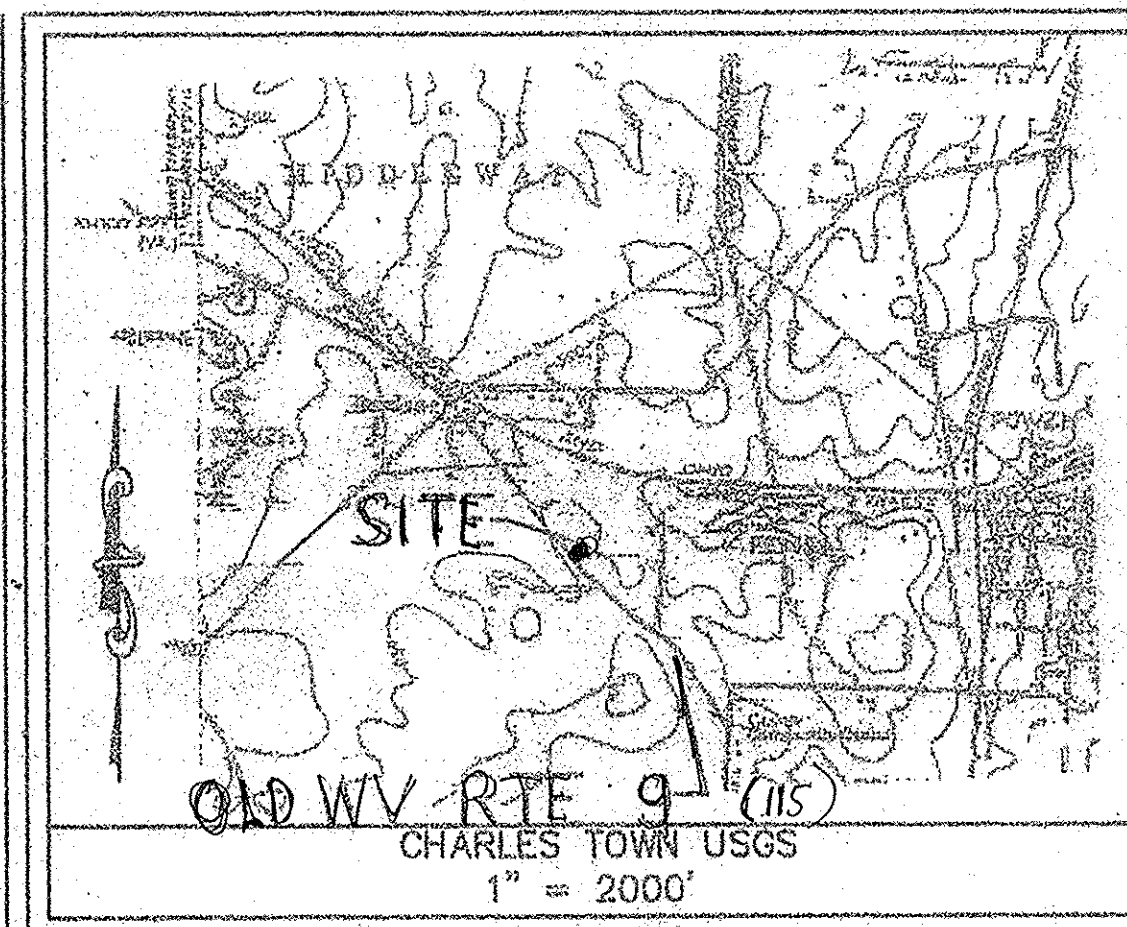
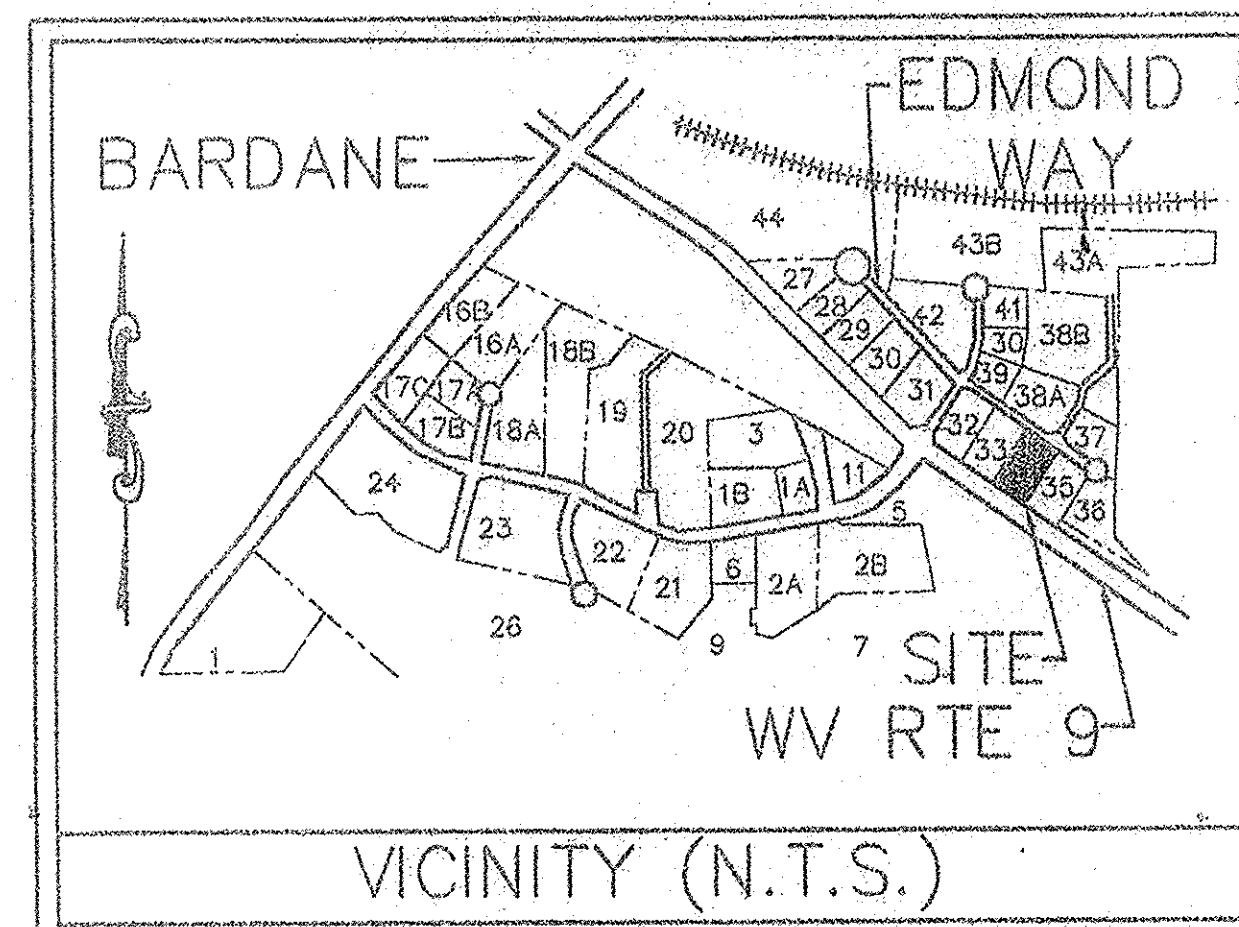
ADVANCED PEST CONTROL COMPANY  
Burr Industrial Park Lot #34  
Charles Town District Map 1 PB 885 P 712

11-14-11  
3-22-11  
3-22-11  
3-22-11

DEVELOPED BY  
**KUBIC CONSTRUCTION, INC.**

103 EDMOND WAY  
KEARNEYSVILLE, W. VA. 25430  
304-728-4384

LEGEND	
EXISTING IRON PIN	⊙
IRON PIN (PB/PG)	⊙
FENCE POST (PB/PG)	⊙
CONC MONUMENT (PB/PG)	⊙
DEED/SURVEY POINT	○
RIGHT OF WAY	---
PROPERTY LINE	---
WATER EASEMENT	---
SEWER EASEMENT	---
DRAINAGE EASEMENT	---
OVERHEAD UTILITY	---
EXISTING:	
EDGE OF RD	---
CURB (& GUTTER)	---
EDGE OF SHOULDER	---
DRIVEWAY	---
WATER MAIN	W
TEE, VALVE, BEND	⊕
HYDRANT, BLOW-OFF	⊕
SANITARY SEWER	S
STORM DRAIN	S
STREAM	---
WET WEATHER SWALE	---
BUILDING	---
TREELINE	---
INDICATOR CONTOUR	---
INTERMEDIATE CONTOUR	---



## INDEX OF DRAWINGS

SHEET NO. 1 OF 3 (C-1) - TITLESHEET  
SHEET NO. 2 OF 3 (C-2) - CONSTRUCTION SITE PLAN, LAYOUT, GRADING, UTILITIES & NOTES  
SHEET NO. 3 OF 3 (C-3) - SEDIMENT & EROSION CONTROL & LANDSCAPE NOTES & DETAILS

Approved for:  
**Site Plan**  
By **10/10/03**  
County Engineer Date

**RECEIVED**  
OCT - 9 2003

APPROVED  
JCPC FILE: **S03-08** DATE: **10/10/03**  
**Roger Goodwin**  
ROGER GOODWIN, P.E., COUNTY ENGINEER  
JEFFERSON COUNTY PLANNING, ZONING AND ENGINEERING

STATEMENT OF ACCEPTANCE:  
The Owner in signing this Title Sheet, agrees to abide by all conditions, terms, and specifications provided herein.

**Advanced Pest Control Company**  
620 East Washington Street  
Charles Town, West Virginia 25414  
304-724-7241

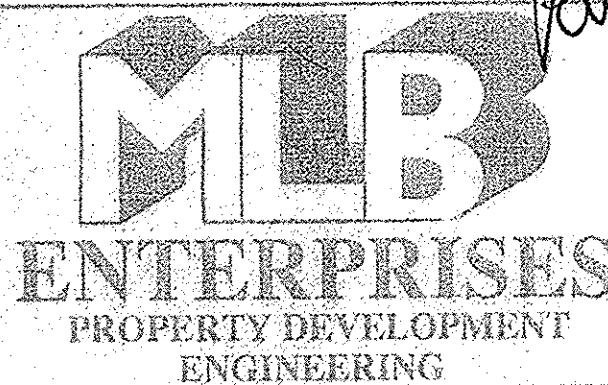
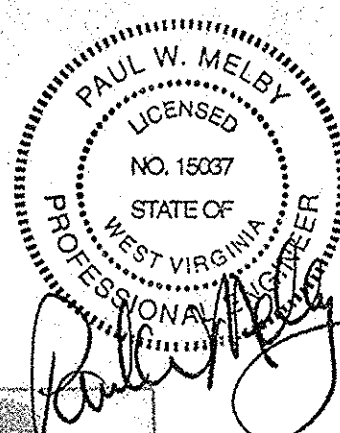
SURVEYOR'S CERTIFICATION  
The topographic survey shown herein has been established by control having a random bench mark elevation of 100.00 established. Boundary certifications are recorded in Deed Book 885, Page 712.

**Gregory Yebeknetsky**  
YEBEKNETSKY, ROBERTS & STANSBERG  
Rte 51 East, P.O. Box 536  
Inwood, West Virginia 25428  
304-229-2123

NOTE: FOR ERROR OF CLOSURE FOR LOT #34 SEE RECORDED PLAT IN JEFFERSON COUNTY PB 15, PG 645.

PRINTED: 10/8/03  
C-1

ENGINEER:  
PAUL W. MELBY, P.E.  
17703 Meadowood Drive  
Hagerstown, Maryland 21740  
Phone: 301-797-9814  
Fax: 301-797-9095  
mlb\_enterprises@msn.com



DEVELOPER SHALL REQUEST COUNTY ENGINEER INSPECTIONS (304-728-3228) 48 HOURS IN ADVANCE OF THE FOLLOWING:

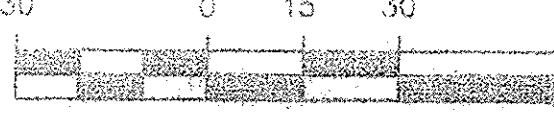
### GENERAL CONSTRUCTION NOTES:

- The developer shall request County Engineer inspections 48 hours in advance whenever possible (Call 304-728-3228). Inspections shall be requested according to the Table of Milestones shown hereon.
- Erosion and Sediment Control measures shall be in place prior to performing any significant earth disturbing activities.
- Earthwork shall be compacted to the percentages of maximum dry density (according to AASHTO T99C) as shown below:
  - Roadways 98%
  - Building pads 100%
  - Parking lots for passenger vehicles 95%
  - Parking lots for heavy trucks 98%
  - Utility trenches 98%
- Compaction of subgrades shall be certified by a professional engineer or technician certified by the WVDOH or a professional institute acceptable to the County Engineer, as meeting the above standard.
- Changes or revisions in construction plans and specifications shall not be made unless first approved by the County Engineer and other appropriate agencies.
- Traffic control signs shall comply with the standards of the West Virginia Department of Highways.

### TABLE OF MILESTONE INSPECTIONS

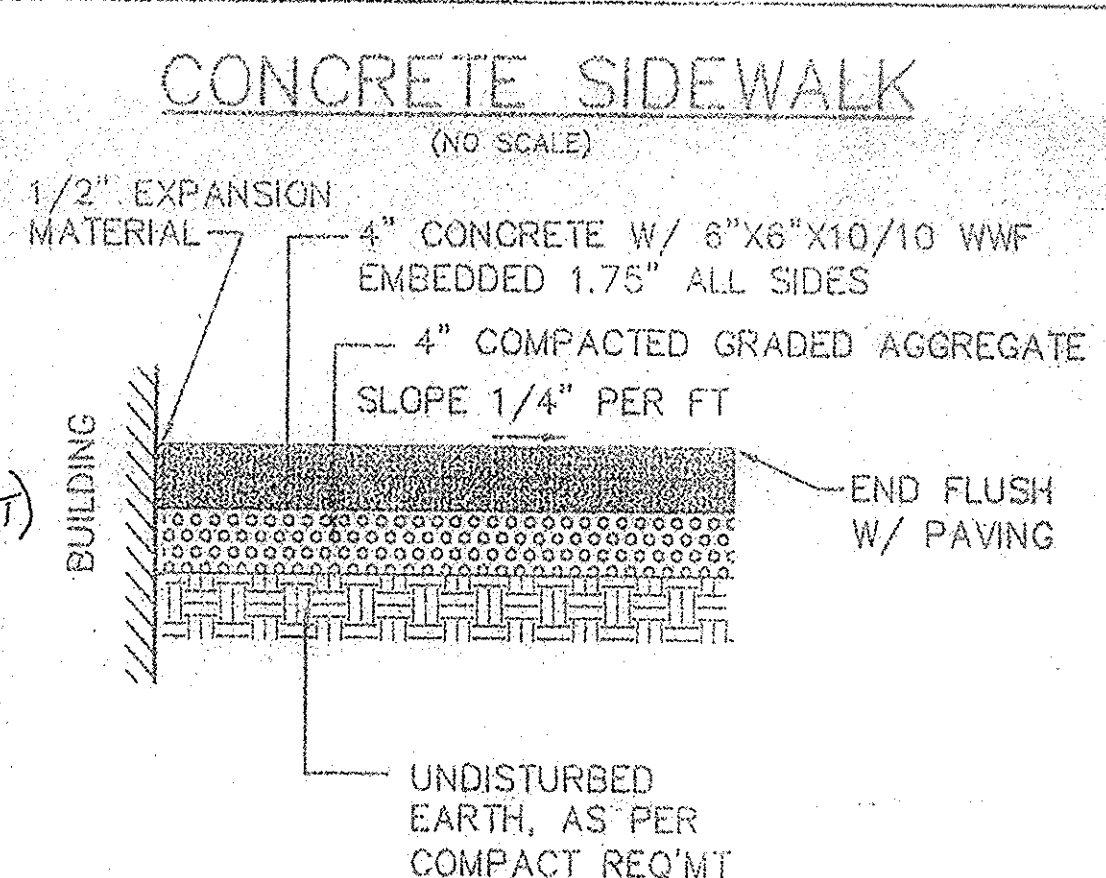
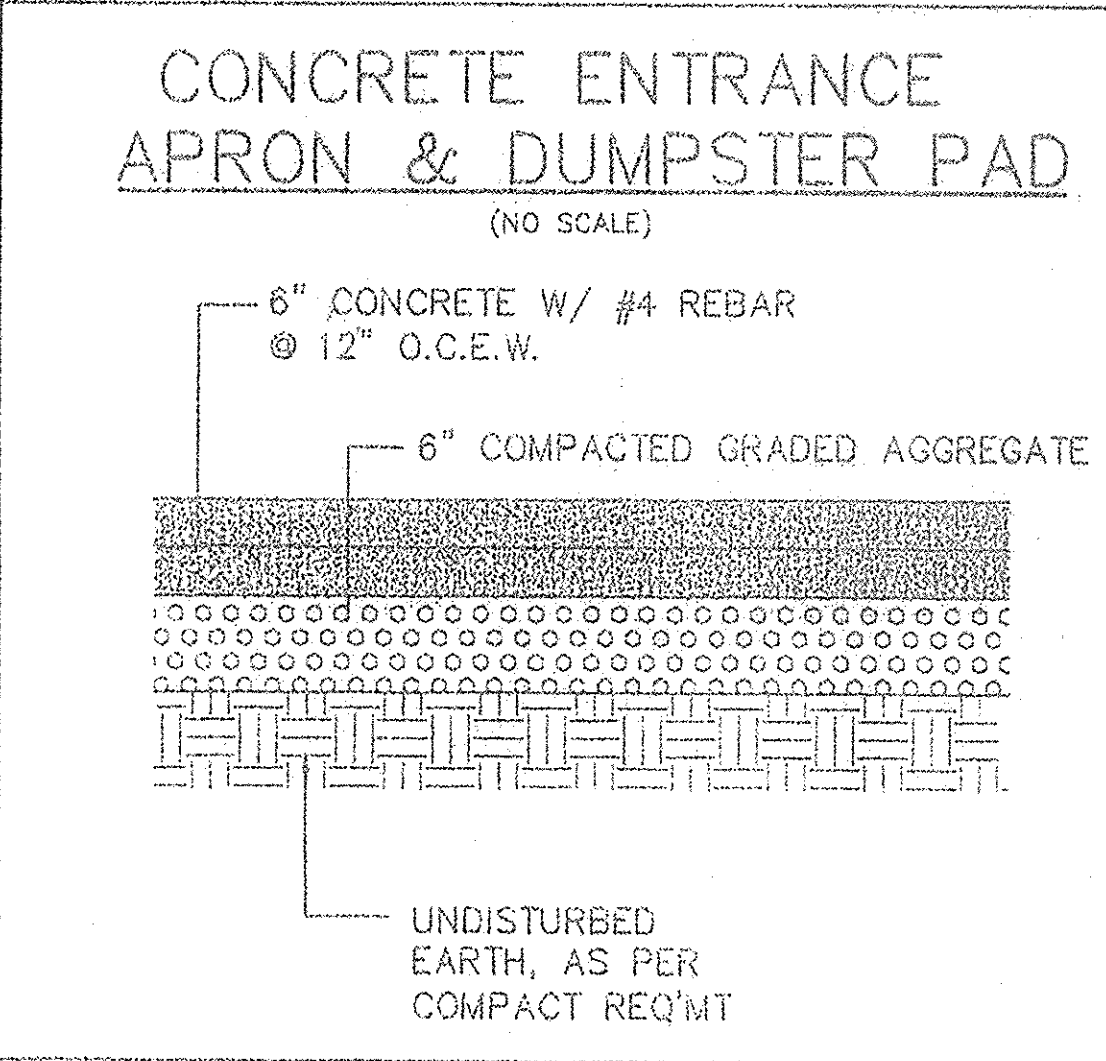
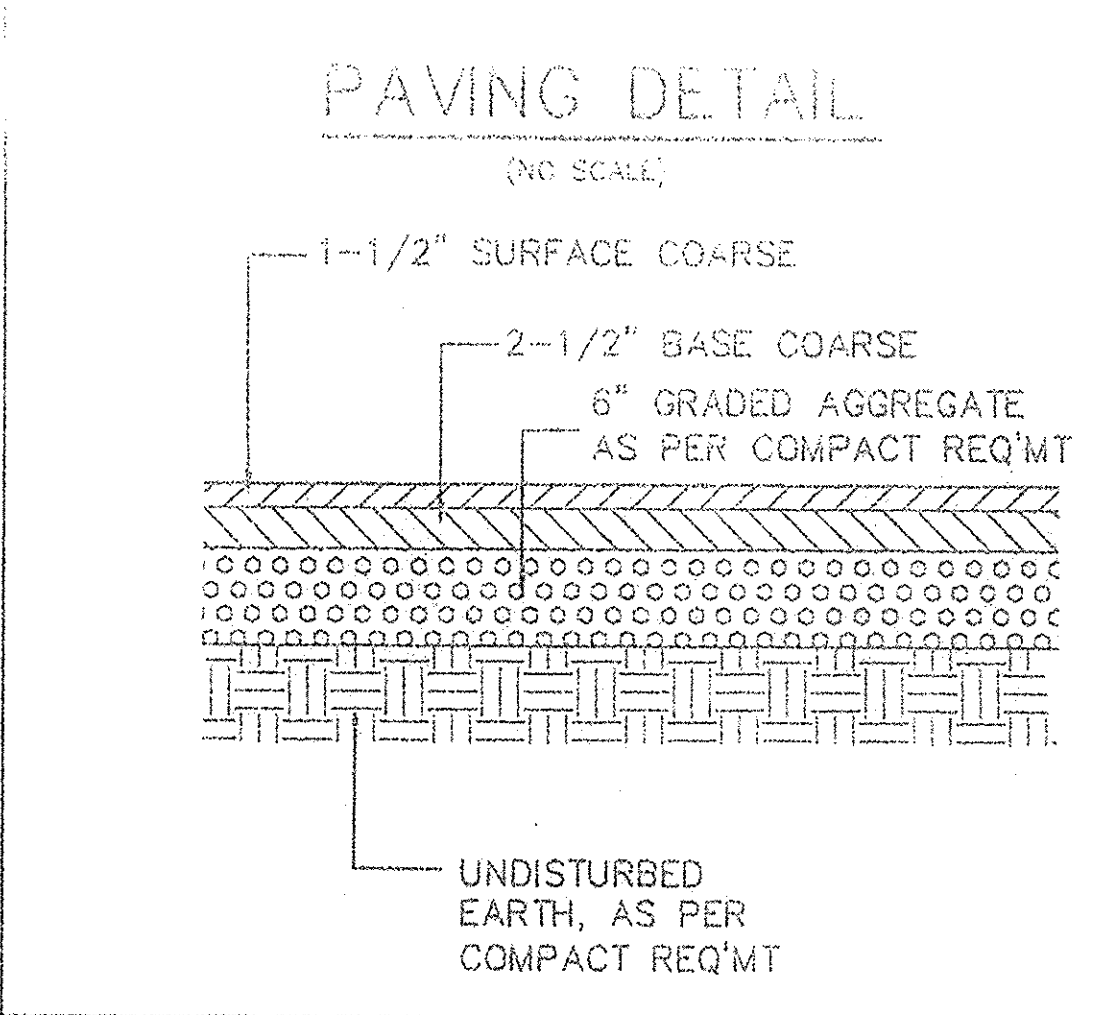
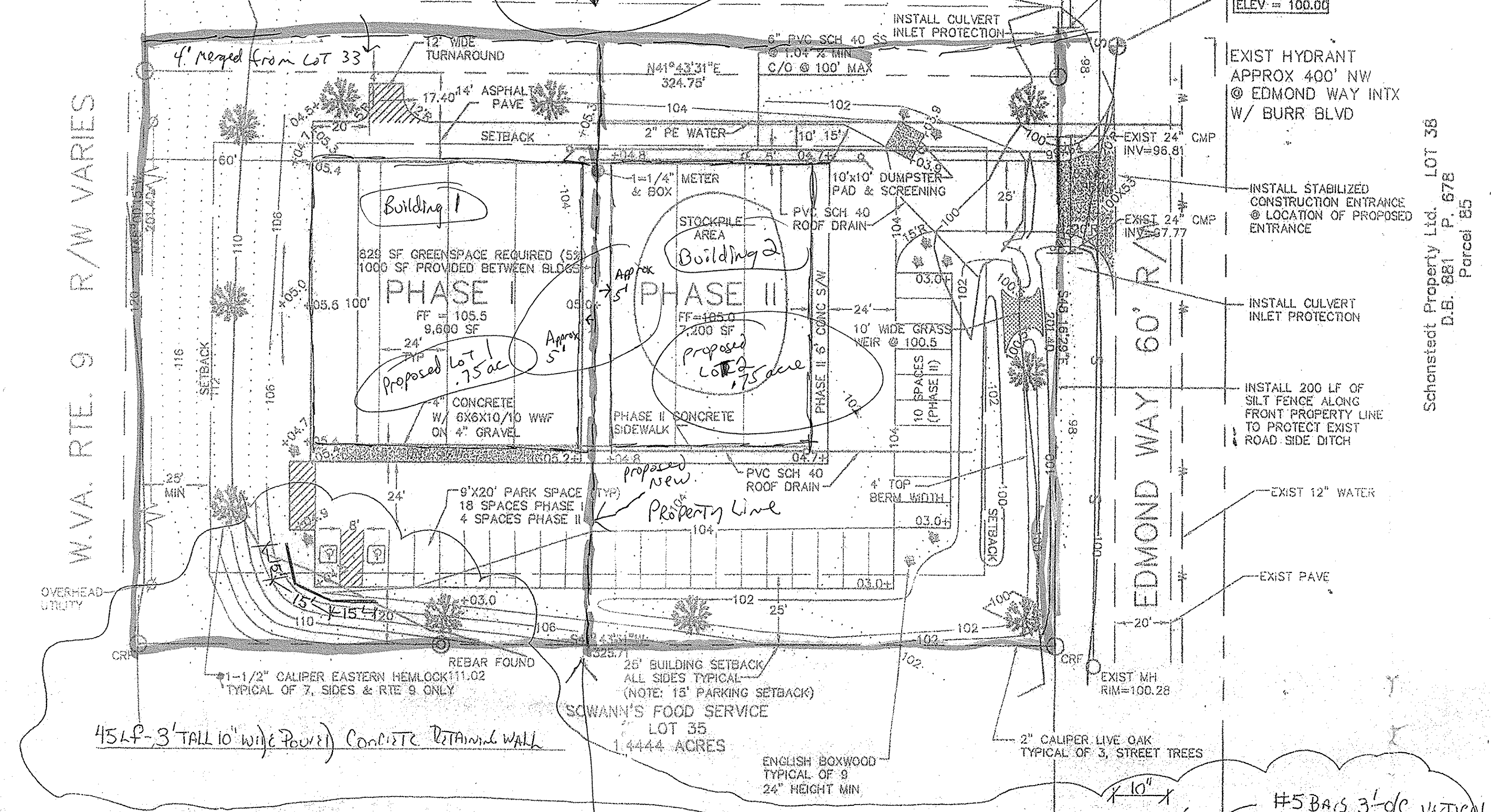
NO.	DESCRIPTION	DATE INSPECTED	INSPECTOR'S INITIALS	NO.	DESCRIPTION	DATE INSPECTED	INSPECTOR'S INITIALS
1*	INSTALLATION OF SEDIMENT CONTROL DEVICES			7	COMPLETION OF FINAL GRADING AND SEEDING		
2	COMPLETION OF UNDERGROUND UTILITY INSTALLATION			8	COMPLETION OF FINAL PROJECT DETAILS		
3**	COMPLETION OF GRADING FOR ROADS			9	COMPLETION OF STORMWATER MANAGEMENT ROUGH GRADING		
4	COMPLETION OF GRADING FOR BUILDINGS			10	COMPLETION OF STORMWATER MANAGEMENT DETAILS		
5**	COMPLETION OF BASE STONE INSTALLATION AND COMPACTION						
6	COMPLETION OF SIDEWALKS	N/A	N/A				

**GRAPHIC SCALE**



( IN FEET )  
1 inch = 30 ft.

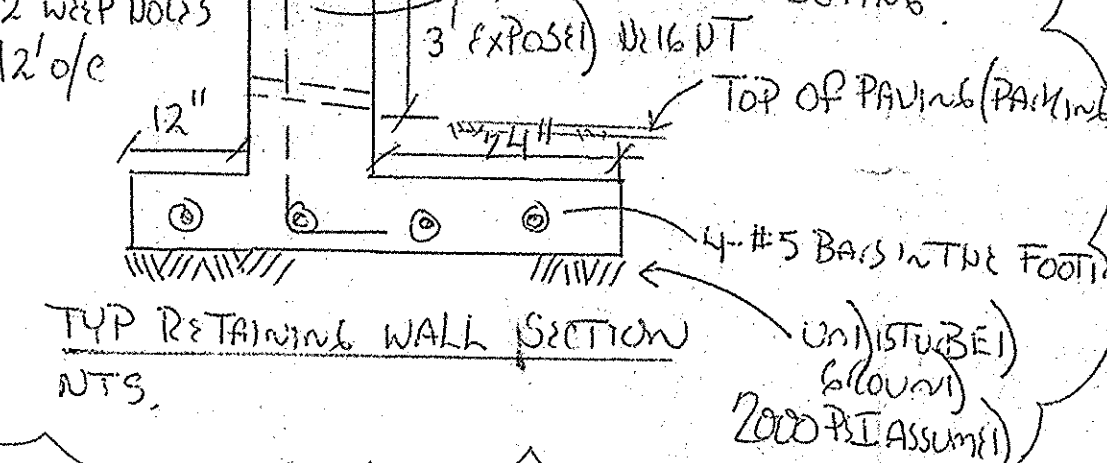
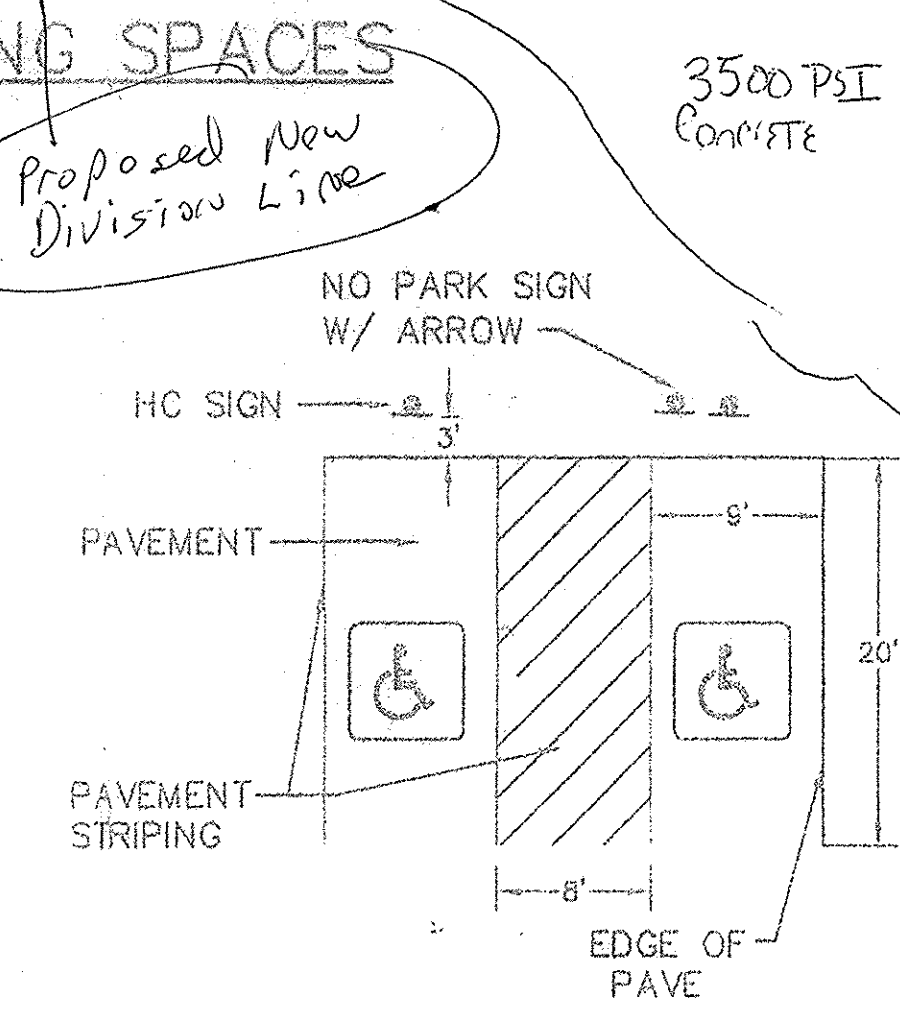
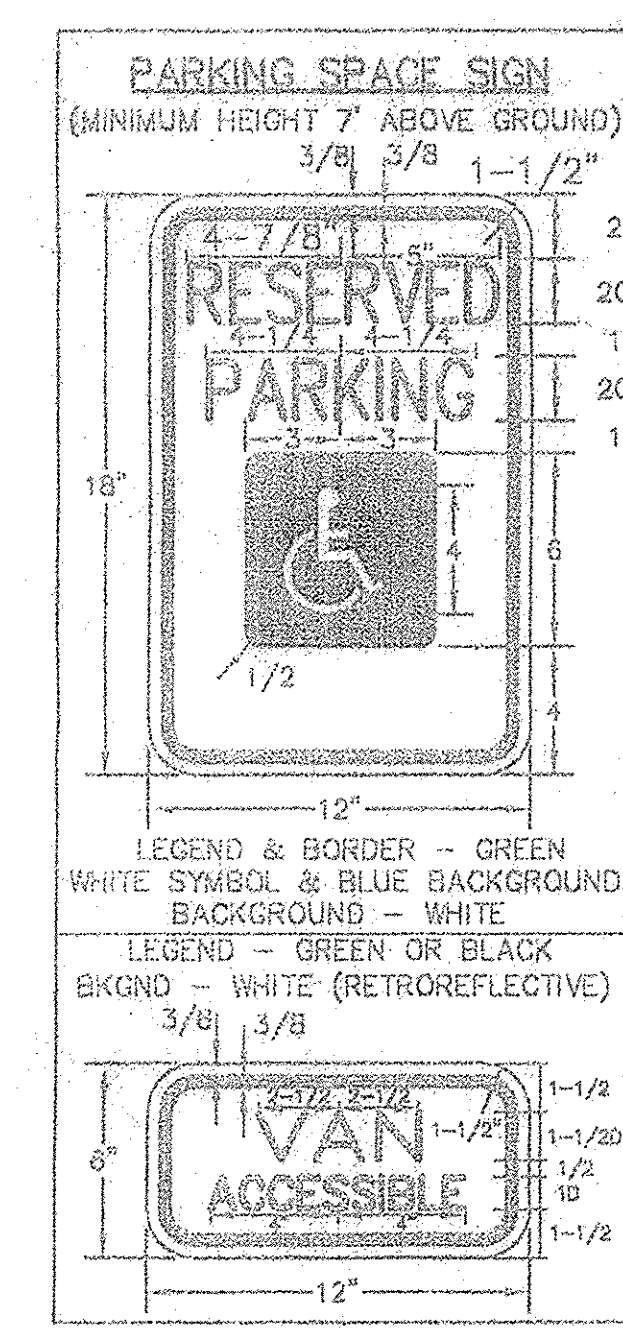
*Handwritten notes:*  
Vanoy & Co., possibly number for Burr Ind. LLC 12/16/10  
Arthur P. Marrone LOT 33 D.B. 916 P. 344  
New Division Line Parcel 85



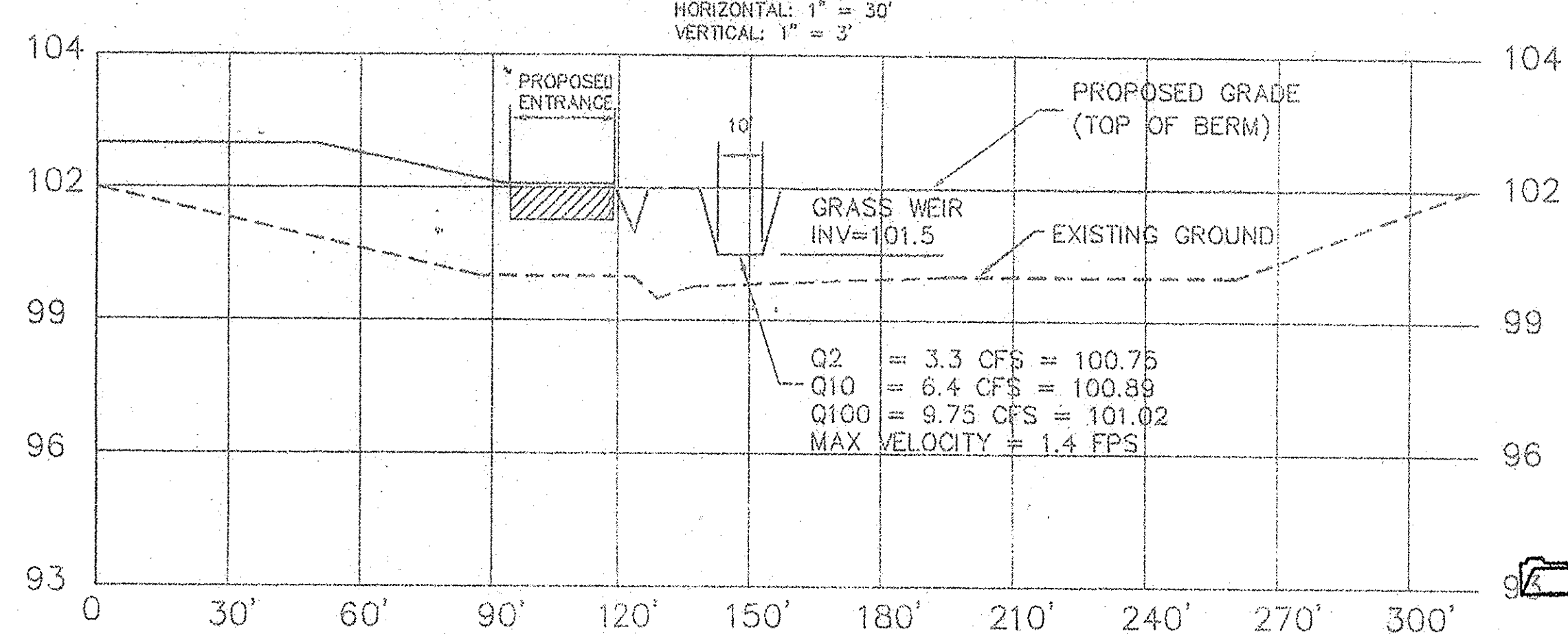
**CONTRACTOR NOTES**

- SEE DRAWING C-3 FOR SEQUENCE OF CONSTRUCTION.
- CONTRACTOR SHALL NOTIFY MISS UTILITY OF WEST VIRGINIA, 800-245-4848, 72 HOURS PRIOR TO THE START OF CONSTRUCTION AND VERIFY TO THE ENGINEER THAT ALL UTILITY CONNECTIONS ARE IN COMPLIANCE WITH THE PROPOSED WORK.
- ALL WORK SHALL COMPLY WITH "WEST VIRGINIA EROSION AND SEDIMENT CONTROL HANDBOOK FOR DEVELOPING AREAS, MAY 1993". CONTACT LOCAL SOIL CONSERVATION DISTRICT FOR PRE-CONSTRUCTION CONFERENCE.
- CONTRACTOR SHALL NOTIFY THE ENGINEER TO RESOLVE DISCREPANCIES BETWEEN THE PLANS AND FIELD CONDITIONS THAT CONFLICT WITH THAT PROPOSED, AS SHOWN HEREON, PRIOR TO PROCEEDING WITH CONSTRUCTION IN THE AREA OF CONCERN.
- CONTRACTOR SHALL BE RESPONSIBLE FOR REMOVING, REPLACING, AND/OR REPAIRING EXISTING FENCES, DRIVEWAYS, SIGNS, ETC., AND NOT NOTED AS PART OF THE WORK, AND DAMAGED OR REMOVED BY HIM DURING CONSTRUCTION. ALL REPAIRS/REPLACEMENTS MADE BY THE CONTRACTOR SHALL BE EQUAL TO PRE-CONSTRUCTION CONDITION OR BETTER.
- JEFFERSON COUNTY SHALL HAVE AUTHORITY OVER ALL CONSTRUCTION ACTIVITIES AS RELATES TO THE APPROVED PLANS AND COUNTY ORDINANCES.
- SANITARY SEWER AND WATER SUPPLY CONNECTIONS SHALL COMPLY WITH JEFFERSON COUNTY PUBLIC SERVICE DISTRICT AND JEFFERSON UTILITIES REQUIREMENTS FOR MATERIALS' STANDARDS, INSTALLATION AND INSPECTION.
- EXISTING UTILITIES ARE SHOWN FROM AVAILABLE RECORDS. CONTRACTOR SHALL VERIFY QUESTIONABLE OR CRITICAL LOCATIONS AND ELEVATIONS BY TEST PIT AT HIS OWN EXPENSE, PRIOR TO CONSTRUCTION. CONSTRUCTION METHODS TO CONNECT TO OR ARE NEAR TO EXISTING UTILITIES SHALL COMPLY WITH THE REQUIREMENTS OF THE UTILITY OWNER AT NO COST TO THE PROJECT OWNER.
- ALL EXTRANEOUS MATERIALS (RUBBLE, WOOD PILES, STONE, ETC.) NOT UTILIZED AS PART OF THE FINISH WORK SHALL BE REMOVED & DISPOSED LEGALLY.
- FILL AREAS SHALL HAVE ALL TOPSOIL RUBBLE & ANY EXTRANEOUS MATERIALS REMOVED. GOOD MATERIAL SHALL BE APPROVED BY THE ENGINEER. PLACEMENT OF GOOD MATERIAL SHALL BE IN 8" LOOSE LIFTS & COMPACTED TO 95 PERCENT OF MAXIMUM DENSITY FOR PAVEMENT AREAS AND 100% FOR BUILDING PADS. MATERIAL PROFILE SHALL BE SUBMITTED TO THE ENGINEER FOR APPROVAL PRIOR TO PLACEMENT. THE LAST TWO LIFTS IN PAVEMENT AREAS SHALL BE COMPACTED TO 98 PERCENT OF MAXIMUM DRY DENSITY. DRY DENSITY DETERMINATION SHALL CONFORM TO AASHTO T99C METHOD. CONTRACTOR SHALL PROVIDE TESTING RESULTS TO THE ENGINEER FOR EACH TWO FEET LIFT PER 3,000 SQUARE FEET AREA.
- SUBGRADE COMPACTION SHALL BE CERTIFIED BY A PROFESSIONAL ENGINEER OR TECHNICIAN CERTIFIED BY THE WOOD OR OTHER CERTIFIED PROFESSIONAL ACCEPTABLE TO THE COUNTY ENGINEER.
- PAVEMENT SHALL NOT BE PLACED ON FROZEN SUBGRADES NOR ON SUBGRADES THAT WILL NOT ADEQUATELY MEET THE TESTING REQUIREMENTS.
- IF BEDROCK IS ENCOUNTERED AT THE SUBGRADE, REMOVE AN ADDITIONAL 6 INCHES BELOW SUBGRADE AND BACKFILL WITH SUITABLE MATERIAL TO THE REQUIREMENTS OF ITEM NO. 7 ABOVE.
- STORM DRAINAGE CULVERTS SHALL BE ALUMINIZED TYPE II CORRUGATED METAL WITH STANDARD FLARED END SECTIONS.
- MLB ENTERPRISES HAS NOT PERFORMED GEOLOGICAL/SUBSURFACE INVESTIGATION OF THIS SITE. UNUSUAL CONDITIONS ENCOUNTERED SUCH AS UNUSUAL SOIL CLASSIFICATIONS, WATER TABLE, SINK HOLE, BURIED RUBBAGE, ETC., SHALL BE REPORTED TO THE ENGINEER PRIOR TO PROCEEDING WITH THE WORK.
- THE CONTRACTOR SHALL VERIFY ALL REQUIREMENTS OF THE BUILDING CONTRACTOR FOR MATERIALS AND SUITABILITY TO THE REQUIREMENTS INDICATED HEREIN. VEHICULAR AND PEDESTRIAN TRAFFIC MUST HAVE ACCESS TO ALL STREETS, BUSINESSES AND RESIDENCES AT ALL TIMES THROUGHOUT THE PROJECT.
- BUILDING DIMENSIONS SHOWN ARE TO OUTSIDE FINISHED WALLS.
- DUMPSTER SCREENING SHALL BE 6' HEIGHT PRESSURE TREATED WOOD STOCKADE FENCE. GATE SHALL BE FULL WIDTH WITH HOLD OPEN DEVICE.

**HANDICAP PARKING SPACES**



**PROFILE ALONG CL OF BERM**



**PARKING & SITE DATA**

TOTAL SITE AREA = 1.504 ACRES = 65,514 SF  
 TOTAL PARKING & BUILDING AREA = 37,615 SF  
 TOTAL SITE GREEN SPACE = 27,899 SF = 42.5%  
 PARKING GREEN SPACE FOR EMPLOYEES > 5% ON NE & SE AREAS  
 INTERNAL PARKING AREA = 16,579 SF  
 INTERNAL GREEN SPACE = 1000 SF = > 5% BETWEEN BUILDINGS  
 TOTAL BUILDING AREA (PHASE I & II) = 16,800 SF  
 PROPOSED USE IS OFFICE @ 4 EMPLOYEES PER UNIT X 7 UNITS = 28 EMPLOYEES  
 PARKING SPACES PROPOSED = 32 (INCL 2 HANDICAP)  
 HANDICAPPED SPACES REQUIRED = 4% X 28 = 2  
 SANITARY SEWER FLOW FOR THIS PARCEL IS ESTIMATED TO BE APPROXIMATELY TWO (2) EQUIVALENT DWELLING UNITS PER DAY, OR 420 GPD.  
 WATER SUPPLY PEAK DESIGN FLOW FOR THIS PARCEL IS ESTIMATED TO BE EIGHTEEN GALLONS PER MINUTE (18 GPM).

**SITE SIGNING**

ALL SIGNAGE SHALL MAINTAIN A MINIMUM 25' SETBACK FROM RTE 9 R/W. OWNER SHALL SPECIFY SIGNS IN ACCORDANCE WITH ZONING ORDINANCE.

*Redline for Retaining Wall only*

Approved for: *Paul Marrone*  
 County Engineer Date

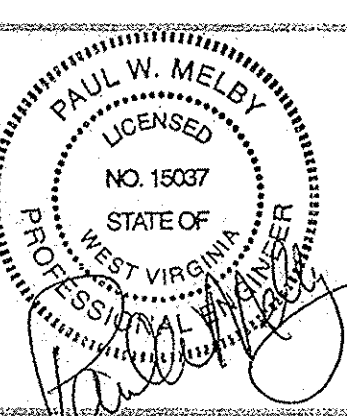
FILE

RECEIVED NOV - 4 2004

JEFFERSON COUNTY PLANNING, ZONING AND ENGINEERING

**MLB ENTERPRISES**  
PROPERTY DEVELOPMENT ENGINEERING

PAUL W. MELBY, P.E.  
17703 MEADOWWOOD DRIVE  
HAGERSTOWN, MD. 21740  
301-797-9814  
FAX: 301-797-9093  
mib\_enterprises@msn.com



DESIGN BY: PWM  
 DRAWN BY: MLB  
 CAD FILE: PFK-APC-2  
 PRINTED: 9/24/09  
 SHEET NO. 2 OF 3

NO.	DESCRIPTION	BY	DATE

THIS DRAWING INDICATES THE GENERAL DESIGN, ARRANGEMENT AND INTENT OF WORK, AND IS PARTLY DIAGRAMATIC. DIMENSIONS & TEXT SHALL PRESEIDE OVER SCALING.

**CONSTRUCTION SITE PLAN LAYOUT, GRADING, UTILITIES & NOTES**

TAX MAP: CT-1

PARCEL NO:	DEED BOOK	PAGE
34	885	712

PROJECT NO. 217020

**ADVANCED PEST CONTROL CO.**  
**BURR INDUSTRIAL PARK LOT #34**

SITUATE BETWEEN WEST VIRGINIA ROUTE 9 & EDMOND WAY, BURR INDUSTRIAL PARK, LOT #34, KEARNEYSVILLE, JEFFERSON COUNTY, WEST VIRGINIA.

ph. Kim w/ Rubie 11/9/04.



Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
January 23, 2014

**Susan and Woody Sechrist Variance Request (#ZV14-01)**

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking to remove an existing non-conforming 1,392 sq. ft. single family dwelling in the Industrial-Commercial zoning district and to replace it with a 1,950 sq. ft. single family dwelling to be situated over the same footprint as the previous residence; however, the additional square footage shall not exceed the required setbacks for that zone. This is a 40% increase in size.

The current resident requires the use of a power chair and requires live in help to be able to remain in her home. Approval of this request will allow the construction of a larger handicapped accessible home that will allow relative to live with her to allow her to remain in her home. The existing structure would require extensive rehabilitation and would be difficult to make handicapped accessible.

2. Previous Case History

The lot was subdivided from the Gap View Farm prior to subdivision and zoning regulations.

3. Applicant's Justification of Request

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

- a) *Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents.*
- b) *Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance.*
- c) *Would eliminate an unnecessary hardship and permit a reasonable use of the land.*
- d) *Will allow the intent of the Zoning and Land Development Ordinance to be observed and substantial justice done.*

4. Staff Evaluation of Request

a. Source and purpose of ordinance requirements

Section 4.3H of the Zoning Ordinance establishes that, whenever a nonconforming use is destroyed by a natural or unnatural calamity, it cannot be rebuilt without approval of the Board of Zoning Appeals (BZA) upon application by the owner and pursuant to the variance and appeal procedures outlined in Article 3. This allows the BZA to consider the impact of the nonconforming use on the area in which it is located to determine if the reconstruction of the non-conforming use will have a detrimental effect upon the County.

Additionally Section 4.3D of the Zoning Ordinance establishes that whenever a nonconforming use expands over 35% of the existing square footage of its operation, said use shall meet all the applicable requirements of this Ordinance unless otherwise allowed by the BZA, while Section 4.3A limits the expansion of any nonconforming use to the lot that existed at the time of adoption of this Ordinance. This ensures that the expansion of a non-conforming use does not negatively impact neighboring properties and/or create further non-conforming aspects to the use.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
January 23, 2014

**Susan and Woody Sechrist Variance Request (#ZV14-01)**

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

b. Unique characteristics of property

This property has a long history of being used for residential purposes. The applicant states that there has been a residential use located on this property for 50 years and that the current manufactured home that occupies the property is 39 years old. Prior to the construction of the new limited access Route 9, this property fronted on a very busy street and continued use for residential purposes may have been difficult. Currently, this stretch of Charles Town Road (Old Rt 9) serves as a frontage road and there is significantly less traffic along the road.

When zoning was established in 1988, the area between the railroad and Route 9 from Shenandoah Junction south to Ranson was established as Industrial-Commercial zoning. A number of small residential lots along the road frontage then became non-conforming uses. As such, they have been permitted to continue to exist until such time that this area redevelops as an industrial or commercial use.

The single family house that exists on the property at this time is a 39 year old manufactured home that is need of extensive repair. It is occupied by an older, handicapped resident who requires it to be retrofitted for handicapped accessibility. It has been determined that this is not a cost-effective solution and the request is to replace the home with a 1,950 square foot stick-built home in approximately the same location.

There are residential structures on either side of this lot and a small storage unit located to the rear. The lot is 0.25 acres and will also require permits from the Board of Health to address onsite septic requirements.



Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
January 23, 2014

**Susan and Woody Sechrist Variance Request (#ZV14-01)**

c. Character of area



d. Impact on adjacent properties

The lot in question is near the end of a row of residential lots that front on Charles Town Road just south of Shenandoah Junction Road. Most of the lots are over 0.5 acres; however, this lot is 0.25 acres. Immediately behind this lot is a small storage building with a number of units. The lots in this area were all divided from Gap View Farm before zoning was adopted in the County (1988). Section 9.7 of the Zoning Ordinance provides minimum setbacks for all lots created prior to September 1, 1989 for which no setback was stipulated previously by the Jefferson County Planning Commission as a part of the subdivision process. For a lot under 30,000 square feet in the Industrial-Commercial zoning district those setbacks are 20' front, 8' side, and 12' rear. For all lots under 40,000 square feet side and rear setbacks for residential accessory structures shall be 6'.

The proposed new home on this lot will meet all setbacks required by Section 9.7 of the Zoning Ordinance. There are existing outbuildings that do not meet the required setbacks; however, they are not affected by this request to replace the single family home with a larger stick built home.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
January 23, 2014

**Susan and Woody Sechrist Variance Request (#ZV14-01)**

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

The only option to create a livable structure for the handicapped resident, other than pursuing this variance, would be to do substantial rehabilitation and upgrades to the existing 39 year old manufactured home which is not cost effective and would not result in a more up to date handicapped accessible home.



5. Conditions of Approval

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

- a. The variance is only applicable to the request to remove the existing non-conforming 1,392 sq. ft. single family dwelling and to replace it with a 1,950 sq. ft. single family dwelling to be situated over the same footprint as the previous residence, meeting all required setbacks from Section 9.7 of the Zoning Ordinance.

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:<sup>7</sup>

- H. 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.<sup>12, 17, 21, 23</sup>





# JEFFERSON COUNTY, WEST VIRGINIA

## Departments of Planning and Zoning

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

Charles Town, WV 25414

File Number: # ZV14-01

Staff Initials: CJC

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

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

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

Phone: (304) 728-3228

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

Fax: (304) 728-8126

### Zoning Variance Request

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: Mary K. Carper  
 Mailing Address: 9107 Charles Town Rd  
 City: Charles Town State: WV Zip Code: 25414  
 Phone Number: 304-671-1318 Email: MotherKittenCarper@yahoo.com

#### Applicant Information

Name: Susan Sechrist / Woody Sechrist  
 Mailing Address: 703 Thomas Ln.  
 City: Martinsburg State: WV Zip Code: 25401  
 Phone Number: 304-671-0599 Email: woody.sechrist@yahoo.com

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

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

#### Physical Property Details

Physical Address: 9107 Charles Town Rd.  
 City: Charles Town State: WV Zip Code: 25414  
 Tax District: Charles town 2 Map No: 1 Parcel No: 19.2  
 Parcel Size: .25 acres Deed Book: 481 Page No: 111

#### Zoning District (please check one)

# RECEIVED

JAN 06 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)
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

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

Reference the section of Ordinance pertaining to this request: 4.3H

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

We are requesting to Remove a 39 yr old modular mobile home and replace it with a stick built structure of similar design. Its been a residential property for 50 yrs.

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

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

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

The property is on old Rt 9 between Buckles + ShenJet Rd. A residential structure has been in place on the property for nearly 50 years. We are requesting to replace the modular structure with a stick built structure in basically the same location and design adding 504 sq ft.

**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 existing home is a mobile structure that is 39 yrs old. It is in need of extensive repair. These repairs are not cost effective due to age of the home.

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

The property owner is a 72 yr old handicapped female. She has difficulty walking and needs to use a power chair but her home will not accommodate one. She can no longer live alone. My wife and I need to move in with her to care for her but the home will not accommodate all of us and needs extensive repairs that are not cost effective.

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

It will allow Mrs. Carper to have a handicapped accessible home on the property which she has lived for 48 yrs. And allow us to move into the home with her to care for her.

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.

Mary K. Carper 1-6-14  
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)).

January 23, 2014 @ 2:00pm  
Date of Public Hearing

January 8, 2014  
Advertising Date

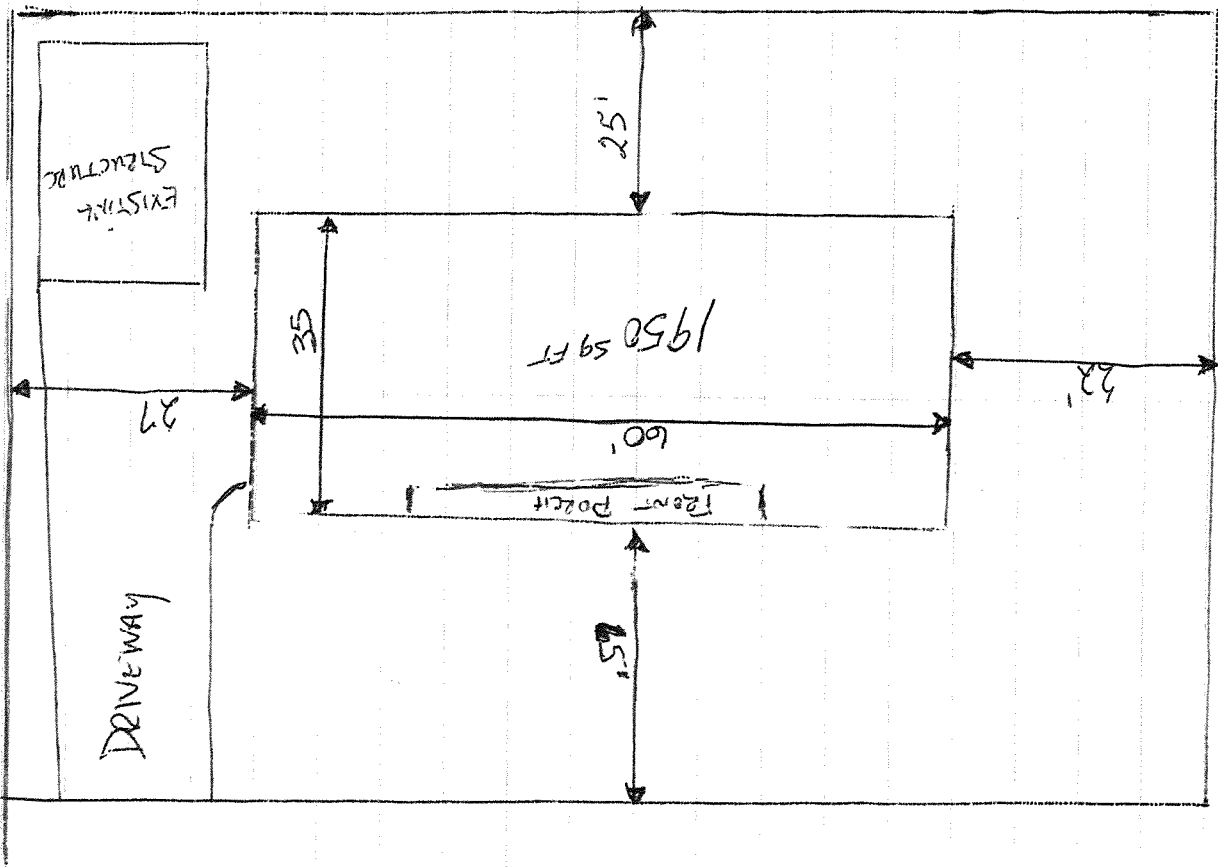
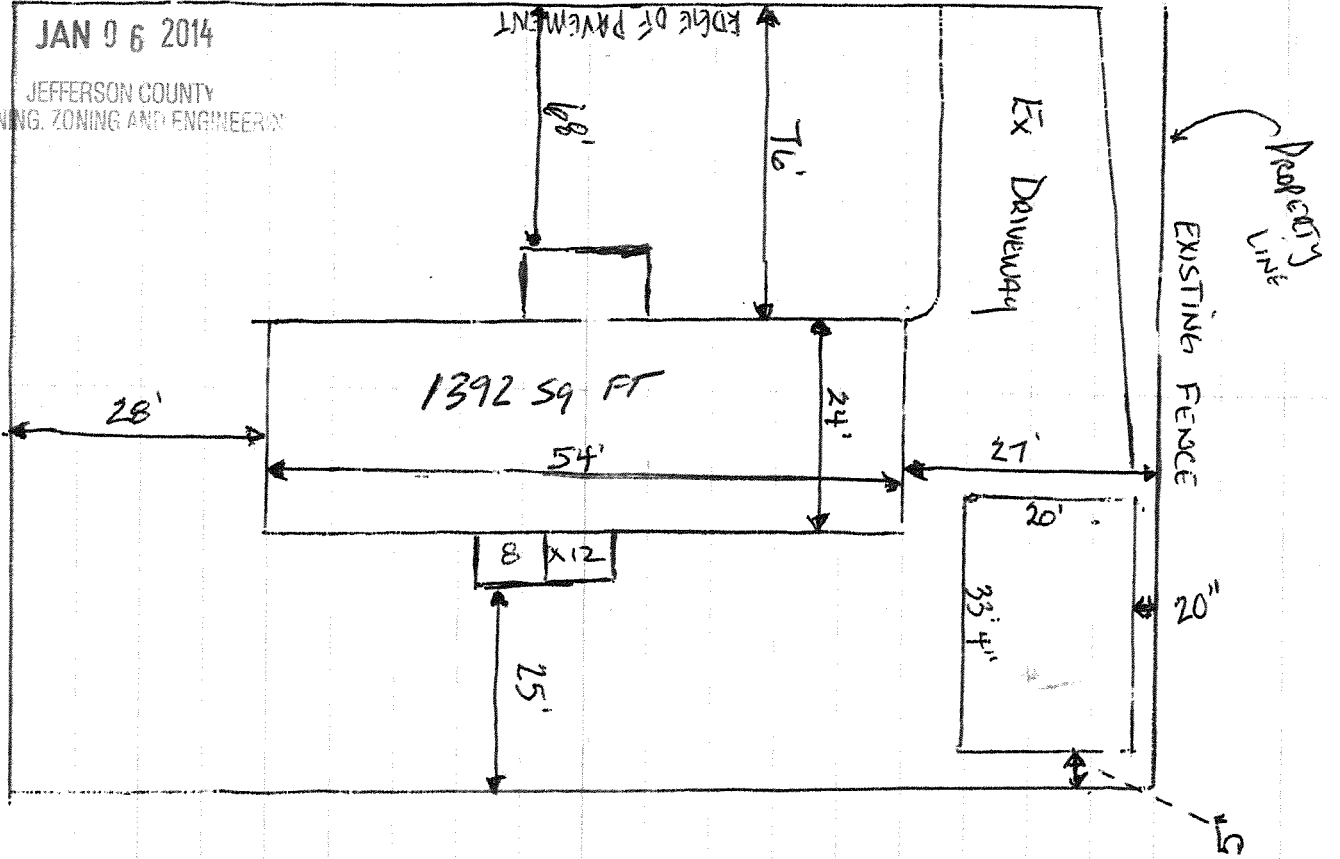
January 8, 2014  
Placard Posting Date

RECEIVED

OLD RT 9

EXISTING STRUCTURES

JAN 06 2014  
JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING



Wendy Jackson

PROPOSED NEW HOME

# 7/14-01



**DRAFT**

**RULES OF PROCEDURE OF THE  
JEFFERSON COUNTY BOARD OF ZONING APPEALS**

**WHEREAS**, W.Va. Code § 8A-8-1, et seq., provides for the establishment and powers of a Board of Zoning Appeals, and

**WHEREAS**, the Jefferson County Board of Zoning Appeals is duly authorized, pursuant to W.Va. Code § 8A-8-9, to adopt rules of procedure to carry out its obligations pursuant to the Jefferson County Zoning and Development Review Ordinance and West Virginia law, and

**WHEREAS**, the Jefferson County Board of Zoning Appeals wishes to establish certain rules and regulations to effectuate its purpose and provide consistency for its proceedings,

**NOW, THEREFORE**, the Jefferson County Board of Zoning Appeals hereby adopts these Rules of Procedure which shall be applicable to all proceedings of the Board.

**Article I – General**

**Section 1.1 – Definitions**

As used throughout these Rules of Procedure, the following terms shall be defined as follows:

**Administrative official** – refers to any member of staff, including but not limited to the zoning administrator, who has made a decision or determination of an issue relating to the zoning ordinance.

**Appellant** – refers to any party which has filed a timely appeal with the Board.

**Board** – refers to the Jefferson County Board of Zoning Appeals.

**County Commission** – refers to the County Commission of Jefferson County.

**Intervenor** – refers to any party who does not have a direct interest in an appeal but has clearly ascertainable interests essential to a determination and whose standing has been granted by the Board.

**Item** – refers to any matter before the Board for consideration or discussion, and shall be construed broadly.

Member – refers to a member of the Board.

Ordinance – refers to the Jefferson County Zoning and Land Development Ordinance.

Respondent – refers to any party who replies to and contends against an appeal, or a party against whom an appeal is taken.

Staff – refers to the Department of Zoning and its employees.

### Section 1.2 – Authority

These Rules of Procedure and its provisions are authorized by W.Va. Code § 8A-8-9, which empowers the Board, among other things, to adopt rules and regulations concerning the filing of appeals, applications for variances and conditional uses, the giving of notice, and the conduct of hearings.

### Section 1.3 – Severability

The invalidation of any provision or section of these Rules of Procedure shall not invalidate any other provision of section of these Rules of Procedure.

### Section 1.4 – Amendments

These Rules of Procedure may be amended at any regular meeting of the Board by a majority vote of the Board, and shall take effect immediately or at a date certain determined by the Board.

## **Article II – Organization**

### Section 2.1 – Membership

Pursuant to W.Va. Code § 8A-8-4, the Board shall be comprised of five (5) members appointed by the County Commission. Membership on the Board shall be in compliance with all the requirements of W.Va. Code § 8A-8-4.

### Section 2.2 – Term of Office

Upon appointment to the Board, a member shall serve a term of three (3) years pursuant to W.Va. Code § 8A-8-4(d). If a vacancy occurs, the County Commission shall appoint a member for the unexpired term.

### Section 2.3 – Powers and Duties

In addition to the powers and duties provided in these Rules of Procedure, the Board and its members shall have such other powers and duties as provided by ordinance and/or law, including but not limited to W.Va. Code § 8A-8-9.

## *Article III – Officers*

### Section 3.1 – Elections

At its first regular meeting each year, the Board shall elect from its members a Chairperson and Vice Chairperson.

### Section 3.2 – Chairperson

The Chairperson shall serve a term of one (1) year, and shall preside at all public hearings held by the Board. The Chairperson may call special meetings of the Board as necessary, and is empowered to certify by signature or otherwise any official and valid action of the Board. The Chairperson shall also perform such duties and functions as may from time to time be required by the Board.

### Section 3.3 – Vice Chairperson

During any absence of the Chairperson, the Vice Chairperson shall assume the duties and functions of Chairperson. The Vice Chairperson shall also perform such duties and functions as may from time to time be required by the Board.

### Section 3.4 – Absence of Chairperson and Vice Chairperson

In the absence of both the Chairperson and Vice Chairperson, any present member may call to order a regular or special meeting of the Board, which shall thereupon immediately empower one or more of its present members to fulfill the duties and functions of Chairperson and/or Vice Chairperson during said absence.

### Section 3.5 – Replacing Officers

In the event of the death, resignation, or removal of an officer of the Board, the Board shall thereupon elect one of its members to complete the unexpired term. A four-fifths majority of the total membership of the Board may, at any regular meeting, remove the Chairperson and/or the Vice Chairperson from office, provided that a new election to fill the remaining term(s) of office is immediately held.

### Section 3.6 – Alternate Members

Pursuant to W.Va. § Code 8A-8-4(e), the County Commission may appoint up to three (3) additional members to serve as alternate members of the Board. The term for an alternate

member is three (3) years. An alternate member shall serve on the Board when one of its regular members is unable to serve, and in such instance shall have all powers and duties of a regular member. The alternate member shall serve until a final determination is made in the matter to which the alternate member was initially called on to serve. Alternate members shall be entitled to be present at all Board meetings and deliberations.

#### Article IV – Meetings

##### Section 4.1 – Regular Meetings

The Board shall hold regular meetings on the fourth (4<sup>th</sup>) ~~third (3<sup>rd</sup>)~~ Thursday of each month at 2:00 ~~3:00~~ p.m. in the ground floor meeting room of the Old Charles Town Library, at 200 East Washington Street, Charles Town, West Virginia. Prior notice shall be provided in the event that any regular meeting is held at a different location or at a different time. A regular meeting may be postponed, ~~or~~ cancelled or rescheduled for appropriate reasons such as inclement weather or conflict with a holiday, and in such case prior notice of said postponement or cancellation shall be provided if possible.

##### Section 4.2 – Special Meetings

A special meeting may be called by the Chairperson or by two or more members of the Board, with said meeting to be held on a different day and/or a different time than regular meetings. Pursuant to W.Va. Code § 8A-8-5, notice for all special meetings shall be in writing, include the date, time and place of the special meeting, and be sent to all members at least two days before the special meeting. Written notice of a special meeting is not required if the date, time and place of the special meeting were set in a regular meeting. A special meeting may be postponed or cancelled for appropriate reasons, and in such case prior notice of said postponement or cancellation shall be provided to the public and members if possible.

##### Section 4.3 – Recording of Meetings

All meetings of the Board shall be recorded, and such recordings shall be maintained and made available, upon request and in accordance with the procedures of the Board and/or its staff, to the public. Recordings shall be maintained by staff for a minimum of five years.

##### Section 4.4 – Quorum and Majority Vote

In order to conduct a regular or special meeting, a quorum of members must be present. A majority of members of the Board shall constitute a quorum. Once the requirement for a quorum has been met, no action of the Board shall be official or valid unless authorized by a majority of members making up said quorum at a regular or special meeting.

##### Section 4.5 – Agendas

An agenda shall be made available prior to the start of all regular and special meetings. Items shall be listed on the agenda in such a manner as to sufficiently identify the substance of

the item and allow for a vote on the item by the Board if necessary. The Board may deviate from the order of an agenda if necessary.

#### Section 4.6 – Executive Sessions

The Board may hold an executive session, closed to the public, during any meeting to consider matters permissible in executive sessions pursuant to W.Va. Code § 6-9A-4, including, but not limited to, deliberations toward a decision on an appeal or other item, privileged discussions with legal counsel, and personnel matters.

#### Section 4.7 – Procedures for Conducting Meetings

In the absence of state law or of other procedures of the Board, Roberts Rules of Order, current edition, shall be the parliamentary authority of meetings of the Board.

#### Section 4.8 – Open Governmental Proceedings

All meetings and actions of the Board shall comply with the requirements of West Virginia’s open meetings laws, codified at W.Va. Code § 6-9A-1, et seq.

### **Article V – Consideration of Items**

#### Section 5.1 – Voting

A member must be physically present at a meeting to vote on any item considered at said meeting. Voting via telephone or proxy is not permitted. Abstention and recusal shall be permitted only for reasons set forth in these Rules. Any member who abstains, recuses himself/herself, or otherwise chooses not to participate in a vote shall thereupon publicly state the reason.

#### Section 5.2 – Recusal

A member may recuse himself/herself in relation to an item for the reasons set forth herein, in which case such member shall not participate in discussion, consideration or vote on said item. Valid reasons for recusal include (1) having a personal interest in an item, (2) having a contractual, employment, or other relationship with a party involved with an item, (3) being unable to impartially consider an item, or (4) having been absent from part or all of the discussion or consideration of an item. A member recusing himself or herself shall thereupon state the reason for such recusal and leave the meeting, remaining absent for the duration of consideration and/or discussion of the item.

At all times, a member shall recuse himself or herself when his or her participation in the consideration, discussion, or vote regarding an item would give rise to the appearance of impropriety.

At all times, a member shall make full public disclosure of any and all issues which may tend toward an appearance of impropriety, and such disclosure shall be made prior the Board’s consideration of the relevant item.

### Section 5.3 – Ex Parte Communications

For purposes of these Rules of Procedure, ex parte communications consist of communications regarding the substance of an item that is or will be before the Board for consideration and/or discussion, when such communications are between one or more members of the Board and one or more individuals involved with the item. No member of the Board shall voluntarily and knowingly engage in ex parte communications without the authority of the Board. In the event that a member of the Board has engaged in or receives any ex parte communication, said member shall bring the same to the attention of the Board and shall publicly disclose the same. Communications with third parties regarding procedural aspects of items do not constitute ex parte communications.

### Section 5.4 – Continuance

The Board may continue, reschedule, or re-open proceedings on an item for any good cause.

### Section 5.5 – Notice

All items shall be noticed in accordance with the Ordinance, these Rules of Procedure, and staff procedures. If an item is continued, rescheduled, or postponed, and the new time and date are announced at the same meeting, then no additional notice is required for that item. If an item is continued, rescheduled, or postponed, and the new time and date are not announced at the same meeting, all parties of record shall be provided not less than seven (7) calendar days notice of the new time and date.

### Section 5.6 – Submissions to the Board

Submissions regarding all items for Board consideration shall be made in accordance with the Ordinance, these Rules, and relevant staff procedures. Staff may establish deadlines for submittal of applications and supplemental material. Late submissions, including submissions made the day before or the day of any meeting of this Board, may not receive full consideration by the Board due to the lack of time for proper Board and staff review.

### Section 5.7 – Procedure for Hearings

Prior to hearings on all items, the Board will require all persons present who wish to give comments on any item to place their name on a written list of anticipated speakers.

Hearings on items shall be conducted in the following manner:

- (1) Chairperson opens public hearing;
- (2) Staff presents summary of application and staff report;
- (3) Applicant/Appellant comments;
- (4) Intervenors and/or Appellees comment, if applicable;
- (5) Public comment;

- (6) Rebuttals of staff, applicant/appellee, intervenor(s), appellee(s), and public;
- (7) Chairperson closes or recesses public hearing;
- (8) After consideration, Board renders a decision.

The Chairperson shall preside at the hearing and shall make such rulings as may be necessary to conduct a hearing in an efficient and orderly manner including, but not limited to, the imposition of time limitations and the exclusion of irrelevant, repetitive, or cumulative evidence or testimony. A member may question the rulings of the Chairperson, and such questions may be decided by a motion and subsequent majority vote of the Board.

#### Section 5.8 – Reopening Hearing

At any time prior to the rendering and/or filing of a decision, the Board may, upon the request of a party or upon its own motion, reopen proceedings on an item for the receipt of further evidence or information. All parties of record shall be given proper notice of the reopening and granted an opportunity to review additional evidence and information and file any rebuttal or additional comments.

### *Article VI – Appeals*

#### Section 6.1 – Scope of Appeals to the Board

Pursuant to W.Va. Code § 8A-8-9, the Board shall hear, review and determine appeals from an order, requirement, decision or determination made by an administrative official or party charged with the enforcement of a zoning ordinance or rule and regulation adopted pursuant thereto.

#### Section 6.2 – Time

All appeals to the Board shall be filed within thirty (30) days of the entry of the order, requirement, decision or determination which is the subject of the appeal. Within ten (10) days of receipt of a complete appeal form and associated fee(s), the Board, through its Staff, shall set a date for a public hearing of the appeal.

#### Section 6.3 – Posting of Property

If an appeal hearing involves the use of land, including requests for exceptions, variances, and conditional use permits, the property owner shall post signs on the property showing the date, time, and place of the hearing. The signs shall be posted at least fifteen (15) days in advance of the hearing. All signs shall be prepared by the Board's staff and the Appellant shall bear reasonable costs associated therewith.

The property owner is responsible for compliance with the posting requirements set out herein, and said property owner shall bear the burden of proof of compliance in the event that a question regarding compliance arises. In the event that a property owner is unable to properly post signs as required herein, it shall be sufficient that a property owner has made a good faith effort to comply with the requirements of this section.

Section 6.4 – Publication of Notice

At least fifteen (15) days prior to an appeal hearing, the Board, through its staff, shall publish a notice of public hearing in a local newspaper. The notice shall include the date, time, and place of the hearing and shall be a class I legal advertisement in compliance with W.Va. Code § 59-3-1, *et seq.* The Board may require the Appellant to pay for the cost of the advertisement.

Section 6.5 – Supplementation of Record for an Appeal Hearing

Appellants may provide two copies of supplemental materials in advance of a hearing on an appeal of an administrative decision, but the same must be submitted no later than three (3) weeks ~~eighteen (18) days~~ prior to the hearing date. Persons wishing to act as an Intervenor shall apply to the Board for that recognition. The Appellant shall also deliver complete copies of the supplemental materials to any applicable Respondent(s) and Intervenor(s) no later than three (3) ~~weekseighteen (18) days~~ prior to the hearing date.

No later than eight (8) ~~days~~ one (1) week prior to an appeal hearing, any applicable Respondent(s) and Intervenor(s) may file with the Board documentation for consideration and must deliver complete copies of the same to all other parties. Such deliver shall be documented either by signed receipt.

All submissions shall be made in accordance with the rules and procedures promulgated by the staff.

Section 6.6 – Appeals of Board Decisions

Pursuant to W.Va. Code § 8A-9-1, every decision of the Board is subject to review by petition for writ of certiorari in circuit court.

These rules become effective on the 18<sup>th</sup> ~~21st~~ day of December ~~July~~, 20131.

JEFFERSON COUNTY BOARD  
OF ZONING APPEALS,

By: \_\_\_\_\_  
Chairperson



## JEFFERSON COUNTY, WEST VIRGINIA

### Department of Planning and Zoning

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

P.O. Box 338

Charles Town, West Virginia 25414

Phone: 304-728-3228

Fax: 304-728-8126

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

## APPROVED 2014 MEETING SCHEDULE OF THE JEFFERSON COUNTY BOARD OF ZONING APPEALS

Board of Zoning Appeals meetings are held in the Old Charles Town Library Meeting Room located at 200 East Washington Street, at the side entrance on Samuel Street at 2:00 p.m.

<b>Scheduled Meetings</b>	<b>Submission Deadline*</b>
Thursday, January 23, 2014	Friday, December 27, 2013
Thursday, February 27, 2014	Friday, January 31, 2014
Thursday, March 27, 2014	Friday, February 28, 2014
Thursday, April 24, 2014	Friday, March 28, 2014
Thursday, May 22, 2014	Friday, April 25, 2014
Thursday, June 26, 2014	Friday, May 30, 2014
Thursday, July 24, 2014	Friday, June 27, 2014
Thursday, August 28, 2014	Friday, August 1, 2014
Thursday, September 25, 2014	Friday, August 29, 2014
Thursday, October 23, 2014	Friday, September 26, 2014
Thursday, November 13, 2014**	Friday, October 24, 2014
Thursday, December 11, 2014**	Friday, November 14, 2014

\*The required zoning variance request form signed by the legal property owner, supporting documentation and applicable fees must be submitted to the office by close of business on the Submission Deadline date in order for the request to be sufficiently reviewed and noticed in the Spirit of Jefferson. For all other applications please contact the office for the Submission Deadline date.

\*\*This is a rescheduled meeting date. County Offices are closed in observance of the Thanksgiving and Christmas Holidays, which coincides with the Boards' original meeting dates of November 27 and December 25, 2014.

Changes in the time or location of the meeting shall be noticed on the County's website at [www.jeffersoncountywv.org](http://www.jeffersoncountywv.org). Note: If the President of the County Commission or Chair of the Board of Zoning Appeals has determined weather conditions make travel unsafe for the public, County offices may close and/or the Board of Zoning Appeals meeting may be cancelled. Please check the County's website for possible meeting updates during inclement weather.

Agenda items that have been deferred due to a cancellation will be rescheduled. Per the Board's Rules of Procedure, no additional newspaper notice shall be given. Please keep signs posted on the respective properties until the reschedule meeting date. Please call the office or check the County's webpage for the rescheduled meeting date.





# Jefferson County, West Virginia

## Departments of Planning and Zoning

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

Charles Town, WV 25414

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

Phone: (304) 728-3228

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

Fax: (304) 728-8126

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## Director's Report January 23, 2014 Board of Zoning Appeals Meeting

### 1) Envision Jefferson 2035 Update

See Updated Timeline Attached (*revised in January 2014*)

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

- a) **ZTA13-01** - Minor Amendments to the Jefferson County Zoning and Land Development Ordinance Sections 2.2, 4.10, 4A.5, 5.7, 5.8, 8.5, 8.14(new), 8.15 (new), 9.5, 10.5, 11.1, 12.2 and Appendix C (Agricultural Use and Other Amendments) (*Public Hearing held 10/10/13; follow up CC workshop 11/21/13, continued to 12/05/13; **CC Approved 01-02-14***) – do members need a new paper copy?

These amendments include provisions related to:

- Agricultural Accessory Units (requires BZA approval for more than one)
  - Farm Winery, Distillery, Brewery
  - Rural Reception Event Facility (some of which require BZA approval as a special exception)
  - Removed requirement for CUP for take-out and drive through restaurants and convenience stores if located within a shopping center with an approved site plan
  - Changed the setbacks for decks and related projections for townhouse lots in R-LI-C and RG zones with a lot depth of 110 linear feet or less and/or a lot area of 3,500 square feet or less to 10' if the adjacent property located to the rear of the subject lot is a dedicated easement or common area and is not a lot that includes a residence
  - Allows Zoning Administrator to administratively waive permanent off-street automobile parking and loading requirements for seasonal or temporary uses under certain circumstances
- b) **ZTA12-01** - Request by the Planning Commission that the County Commission Reconsider their Motion of 10/25/12 regarding the Proposed Zoning Ordinance Text Amendment Related to New Commercial and Industrial Zoning Categories (*Public Hearing held 11/21/13; follow up workshop with CC continued to 01/23/14*)

- c) Zoning Map Amendment request by the Hunter Family c/o Ann Hunter to rezone property located on the north side of Old Route 9 (Route 115) approximately 700 feet southeast of Berkeley/Jefferson County Line from Rural to Residential-Light Industrial-Commercial zoning (*CC Public Hearing set PH 01/23/14, 6:00 pm*)

# ENVISION JEFFERSON 2035 STATUS UPDATE (*REVISED*)

Tentative Dates	Tasks	Responsibility
<b>August – December 2012</b>	<b>Phase 1: 2014 Plan Start Up/Organization</b>	
<i>Completed</i>	Technical Advisory Committee formed for Existing Conditions element; Steering Committee appointed by County Commission and meetings initiated	
<b>May 2012 – January 2013</b>	<b>Phase 2: Existing Conditions Data Collection, Mapping and Trends Analysis</b>	
<i>Completed</i>	Nearly complete draft serving as a snapshot in time to be a separate baseline document including draft Existing Land Use Map	
<b>January 2013 – February 2013</b>	<b>Phase3: Issues Analysis/Visioning</b>	
<i>Completed</i>	4 public meetings held in February and March and on-line survey input received	
<b>March 2013 – October 2013</b>	<b>Phase 4: Goals and Objectives</b>	
Completed	15 Lunch and Learns ( <a href="http://envisionjefferson2035.com/">http://envisionjefferson2035.com/</a> ) 2 public meetings in July (Land Use - where and why) Survey/Input at County Fair (August) 2 public meetings in October (Land Use – what and how) 4 Stakeholder Meetings in October  Goals and Objectives Draft finalized  Future Land Map Draft underway – to be finalized for public review in early 2014	
<b>October 2013 – May 2014</b>	<b>Phase 5: Plan Recommendations and Implementation Strategies</b>	
11/18 – 11/23/13	Open Houses at five Libraries for public review and input of proposed PGAs and future land uses in those areas	Staff
11/19/13	Steering Committee Meeting	Steering Committee/ Staff
12/17/13	Steering Committee Meeting	Steering Committee/ Staff
1/13/14	Steering Committee Meeting Final review of maps for upcoming Public Input Meetings Preparation for Public Input Meetings	Steering Committee/ Staff

January 23, 2014	<b>Joint meeting of PC/CC</b> to discuss the following: Review of key land use Goals and Objectives Discussion of Future Land Use Map for public add'l input Discussion of Upcoming Public Input Meetings	PC/CC Staff/legal
<b>February 10, 2014</b>	<b>4<sup>th</sup> Public Input Meeting:</b> <ul style="list-style-type: none"> <li>• <b>Open House Format</b></li> <li>• <b>Focus on Future Land Use map and related maps</b></li> </ul>	<b>Staff</b> <b>Steering Committee</b>
2/18/14	Steering Committee Meeting Review and Revise Education and Finance, Public Safety, & Governance Recommendations	Steering Committee Staff
3/4/14	Steering Committee Meeting Review and Revise Natural, Cultural, Historic Resources and Parks and Recreation Recommendations	
3/18/14	Steering Committee Meeting Review and Revise Land Use and Growth Management Recommendations	Steering Committee Staff
4/1/14	Steering Committee Meeting Review and Revise Economic Development, Employment, and Infrastructure Recommendations	Steering Committee Staff
4/15/14	Steering Committee Meeting Wrap up of entire draft Envision Jefferson 2035 Plan – review and revised complied version and preparation for final public meeting	Steering Committee Staff
<b>5/6/14</b>	<b>5<sup>th</sup> Public Presentation Meeting</b> <b>***PC/CC invited to attend this meeting</b> <b>Presentation by staff on behalf of Steering Committee of completed draft Plan</b>	<b>Staff</b> <b>Steering Committee</b>
5/20/14	Steering Committee Meeting FINAL Steering Committee Meeting to forward draft Envision Jefferson 2035 Plan to the Planning Commission for initiation of formal public hearing and adoption process – Steering Committee draft letter of referral	Steering Committee Staff
6/10/14	Draft delivered to PC at their regular meeting with request for Public Hearing to be held on 7/22/14 (recommend workshop to be held 6/24 with Steering Committee)	
<b>June 2014 – December 2014</b>	<b>Phase 6: 2014 Plan Workshops and Public Hearings by PC and CC and Adoption</b>	<b>PC/CC/ Staff/legal</b>
12/11/14	<b>CC Vote on 2014 Comprehensive Plan</b>	<b>CC</b>