

Jefferson County

Board of

Zoning Appeals

Wednesday,
December 18, 2013

JEFFERSON COUNTY, WEST VIRGINIA

Department of Zoning

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MEMORANDUM

TO: Jefferson County Board of Zoning Appeals Members

FROM: Jennilee Hartman, Zoning Clerk

DATE: December 13, 2013

SUBJECT: December 18, 2013 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 Wednesday, December 18, 2013. 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
Board of Zoning Appeals
Wednesday, December 18, 2013, 3:00 p.m.

Members
Christy Huddle, Vice Chair
Jeffrey Bannon
Tyler Quynn
Edwin Kelly
Matt Knott

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 – Deferred to January Meeting
2. Approval of the minutes from the September 19, 2013, October 10, 2013 and November 14, 2013 meeting.
3. Swearing in of members of the public intending to provide testimony.
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.
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.
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.
7. Variance request by applicant, Jim Ruland, from Section 4.11.A for a reduction of the required parking and access drive setbacks from 10' to 0'; and, from Section 5.6.D.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.
8. Proposed Amendment to the Board of Zoning Appeals Rules of Procedure, Effective July 21, 2011.
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

12. Correspondence

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

Draft Minutes
Jefferson County Board of Zoning Appeals
Thursday, October 10, 2013

The Jefferson County Board of Zoning Appeals met on Thursday, October 10, 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 Jeff Bresee, Chairman; Christy Huddle, Vice Chair; Edwin Kelly, Tyler Quynn and Jeffrey Bannon were present. Staff members present were: Jennie Brockman, Director of Planning and Zoning; Stephen Groh, Assistant Prosecuting Attorney and Jennilee Hartman, Zoning Clerk.

Mr. Quynn motioned to commence the meeting. Mr. Kelly seconded the motion, which carried unanimously. Mr. Bresee called the meeting to order at 2:01 p.m.

1. Approval of the minutes from the September 19, 2013 meeting.

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 individuals who indicated they would be giving testimony.

Mr. Bresee explained to the public how the meeting would be conducted.

3. Action on a proposed amendment to the approved Conditional Use Permit for Rippon Brewery, LLC. This project has been approved for a micro-brewery with a tasting room, a future pub/restaurant, a store, a country inn and an office to be situated on 2 acres. The applicant is requesting an amendment to the approved Conditional Use Permit to add a four unit residential dwelling. Location: 2153 Berryville Pike, Charles Town, WV. District: Kabletown (06); Map: 10A; Parcel: 24; Zoned: Village; Size: .69 acres; File: Z11-01.

Mr. Bresee explained that there would not be a public hearing on this item because a Neighborhood Compatibility meeting had been previously held and that the purpose of this meeting was solely for Board action.

Mr. Jesse Morgan presented the requested to the Board explaining that the Brewery and associated uses had been approved at a prior meeting and that he was asking to add a four-unit residential dwelling to begin accruing revenue so that he could afford the rest of the renovations necessary for the project. The Board had questions regarding the existing and previous use of the structure, as well as its square footage. Mr. Morgan addresses each of the Boards' questions.

Ms. Brockman briefly outlined the project's history and explained that the current use as a two-family dwelling was a permitted use in the Village District.

4. 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 West Virginia / The Rt. Rev. W. Michie Klusmeyer and William F. Berry, Vice President of the Jefferson County

Homeless Coalition. Location: St. John's Episcopal Church; 2518 Berryville Pike; Rippon, WV
District: Kabletown (06); Map: 10; Parcel: 1; Zoned: Rural; Size 0.5 acres; File: #AP13-03.

Ms. Brockman stated that the request was pertaining to an existing structure located on approximately one acre known as Saint John's Episcopal Church. Ms. Brockman began by explaining that the basis for her determination was that the church ceased to function as a church in February 2011. While the structure had been used as a meeting place for various activities and a voting location it had not been actively used as a church since 2011.

The request presented to the office was to use the structure as a cold weather homeless shelter. Ms. Brockman reviewed the Principle Permitted Uses in the Rural zoning district and noted that a Church was a permitted use in that zone and that Accessory Uses are permitted with any Principle Use. Ms. Brockman determined that it was reasonable to assume that a homeless shelter was an acceptable accessory use to a Church. The decision was whether or not the current use of the structure could be designated an active Church. The zoning ordinance defines a Church as, "*A building or site wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes synagogue, temple, mosque, or other such place for worship and religious activities.*" Ms. Brockman stated that her determination was that because the structure was no longer holding regular services that it could not be considered a Church and therefore the homeless shelter could not be permitted as an accessory use.

Ms. Brockman stated she also looked at the Group Residential Facility; however, the facility would have to be owned, leased or operated by a behavioral health service provider and would have to have the following:

"(1) Provides residential services and supervision for individuals who are developmentally disabled or behaviorally disabled; (2) is occupied as a residence by not more than eight individuals who are developmentally disabled and not more than three supervisors or is occupied as a residence by not more than twelve individuals who are behaviorally disabled and not more than three supervisors; (3) is licensed by the Department of Health and Human Resources; and (4) complies with the State Fire Commission for residential facilities."

Ms. Brockman stated since those components did not exist that she could not classify the structure as a Group Residential Facility. Ms. Brockman noted that they would have exceeded the number of residents permitted in the facility; however, they could have come to the Board to seek a variance had this been a viable option.

Ms. Georgia DeBose, Episcopal Church Priest and founding member of the Jefferson County Homeless Coalition (JCHC), stated she would be representing Episcopal Bishop W. Michie Klusmeyer, Appellant, for the appeal. Ms. DeBose introduced Ms. Sherry Lynn Barton President of the JCHC and Jason Reifer, the immediate past president of the JCHC, as additional representatives of the appeal. Ms. DeBose also introduced members of the audience who were there in support of the project, Rev. Dr. Wyman Hall, former president of the JCHS; Jeff Levesque, volunteer trainer; Rev. Melanie McAlly of the Church Zion, the Episcopal Church that previously hosted the shelter for 3 winters; Carol Baty, Coordinator of the

Coalition's Step Up program; Rev. Lee Brumback of St. Thomas Lutheran Church who regularly provides meals for the homeless.

After introductions Ms. DeBose went on to read from a handout provided to the BZA (copy attached). Highlight's included the following:

- The Episcopal Bishop announced in writing on October 4, 2013, "using his canonical and state legal authority to do so" to create a new congregation at St. John's, Rippon.
- The congregation held its first service, and will hold regular worship services in the church the first and third Sunday evenings of each month.
- The first regularly scheduled service was held the previous Sunday, on October 6, 2013, at 5:00 p.m. and officiated by two ordained Episcopal priests.
- The new priests of the Church are Rev. Georgia DeBose and Rev. Melanie McCarley.
- The new trustees of the Church are Bishop Klusmeyer, Mr. David Ramkey and Mr. Tyler Dinsmore.
- While the Appellants argue the use of the Church was never abandoned; they ask the Board to recognize the use of the building in its present use.

Ms. DeBose concluded that since the church was now conducting regular services that any customary activities, such as the homeless shelter, should now be permitted.

Mr. Kelly wanted clarification from the Appellant that the church began holding service after Ms. Brockman had made her decision. Ms. DeBose answered in the affirmative.

Ms. Huddle asked Mr. Groh, given this announcement, is the appeal moot? Mr. Groh asked to defer his answer until deliberative session. Ms. Huddle also questioned if this use could have sought a Seasonal Use permit? Ms. Brockman explained that the applicant would not have met the current definition of a Seasonal Use.

Mr. Bannon expressed concern over the County's position regarding the Church's First Amendment Rights; however, since the appeal may be moot he may not need to have them addressed.

Mr. Quynn had questions for Ms. Brockman regarding the permitted use of a property even if said use is not active for more than 12 months. Mr. Quynn asked if that use would still be permitted. Ms. Brockman stated the difference in this case is that the Ordinance defines a Church using the words, "regular service" and unless the structure can meet that definition she cannot call it a church and therefore cannot allow accessory uses to it. Ms. Huddle also added that that there is a distinction between the land and a building that may be located on it and the active land use based on the zoning of the property.

Despite the recent information provided by the Appellant, Mr. Bresee stated he wished to proceed with the public hearing in order to give everyone the ability to speak and therefore asked if there was anyone in support of the request.

Jason Reifer, former president of the JCHC, described a letter was sent to the Department of Planning by the Bishop on September 3, 2013, prior to Ms. Brockman's determination, expressing his surprise that the

subject parcel had been listed commercial and clarified that the property was a church and was zoned rural. Mr. Reifer stated that the building was a community landmark where weddings, christening and funerals had been conducted. Mr. Reifer argued that the structure has not been known as anything except a church for over 140 years and further added that in the short time period that the congregation left the church that the overall use of the church had not been abandoned. Mr. Reifer explained that although the congregation left there have been prayer services and other gatherings held at the church. Mr. Reifer also pointed out that the Bishop clearly declares it a church. Mr. Reifer concluded by saying that the property has always being owned and/or maintained by the church Diocese since 1870 or has had an agent acting on their behalf do so; however the property has never been outside of their control.

Mr. Quynn asked how the property was taxed. Ms. DuBose stated it was tax exempt because it is a church of the Episcopal Church of West Virginia. Mr. Groh asked how the JCHC and the Episcopal Church were related. Ms. Dubose stated members of the church and clergy, as well as other a number of other churches in the surrounding area, were also members of the coalition. The JCHC was a nonprofit organization.

Mr. Bresee asked who owned the subject property. Ms. DuBose stated the Episcopal Church Diocese of West Virginia owns the church. A copy of the deed to the subject parcel was provided to the Board. Mr. Reifer stated the Rules of Perpetuity applied to this deed. Mr. Bresee stated they would take that under advisement and would consult with Counsel. Ms. DuBose informed Mr. Bresee that the language in the deed was known as a reversionary clause. Mr. Bresee thanked Ms. DeBose for the information.

Sherry Martin explained the purpose of the shelter would be to provide overnight accommodation during the cold weather season; meals would be served offsite; the guests would be transported back into the Charles Town/Ranson areas approximately 7:00 a.m.

Mr. Bresee called for anyone who may be in favor of the appeal.

Bob Aitcheson, land owner in Rippon, spoke in support of the appeal and in opposition to the request of the homeless shelter and stated that he was the co-owner of the Rippon school house, which is presently being used as an apartment complex. Mr. Aitcheson said he was concerned for the safety of his tenants due to the know substance abuse issues that tend to be associated with the homeless. Mr. Aitcheson stated that the previous members of the church were present and willing to testify to the fact that the church had been abandoned over 18 months ago. Mr. Aitcheson read language from the deed which stated that should the St. John's Episcopal Church cease to exist that the land will to revert back to the Burns family and it was Mr. Aitcheson's position that since the congregation dissolved the ownership of the property now belonged to the Burns family. Mr. Aitcheson wished to add that he was an inactive attorney. Mr. Aitcheson questioned the legal right to submit the applicant before the Board when the Appellants were not the legal owners of the property. Mr. Aitcheson reiterated his concerns about safety by adding that it would take the Sheriff's officers approximately 25 minutes to arrive if an incident were to occur and felt that it was up to the applicant to first prove that there were no safety concerns before proposing such a land use.

Mr. Kelly asked Ms. Brockman if she questioned the ownership of the property. Ms. Brockman stated she did not research the ownership of the property. Mr. Groh stated that it is the Department's position to

take whoever the owner of record is and in this case the land records indicate Episcopal Church Diocese of West Virginia.

Jeanne Morton, adjacent to the subject property, spoke in favor of the appeal and in opposition to the project. Ms. Morton stated she has assisted several homeless individuals in the past, has had a bad experience in doing so and is therefore fearful of having the shelter next to her property. Ms. Morton stated she sent a copy of petition with 130 signatures in opposition to the project to Bishop Klusmeyer but had not had an acknowledgement from him. Ms. Morton said several letters were sent to Bishop Klusmeyer by other neighbors, including Mr. William Weston, who provided a copy of the letter, which Ms. Morton read the following quote, "I wish St. John's could remain a place of worship." Ms. Morton read from another letter dated October 3rd to neighbor Sherry Clifton from Bishop Klusmeyer, "I wish St. John's could remain a place of worship." Ms. Morton surmised that these words meant that Bishop Klusmeyer did not believe St. John's was currently a place of worship. Ms. Morton stated she did not believe that the act of praying made the location a house of worship or a church. Ms. Morton addressed the safety concerns by referencing two Facebook posts saying there was a "desperate need" for help at the overnight shelter.

Ward Zigler had concerns regarding the Appellant's ability to meet the Health Department and Fire Marshal's regulations. Mr. Zigler stated the former trustees were not aware of the formation of the new church and that to his knowledge the staff had recently turned the water and heat system off. Mr. Zigler also questioned if a bond was going to be in place in the event the church sustained damage.

Warren LaRue stated he had been the former junior and senior warden of the church for 63 years and has assisted in the maintenance of the property for the past 5 years. Mr. Warren claimed that none of the past members of the church were invited to the last service. Mr. LaRue explained that Bishop Klusmeyer was the individual who ordered the closing of the congregation. Mr. LaRue was in opposition to opening a homeless shelter outside the city limits. Mr. LaRue stated it has taken up to three days to clear the roads due to a major storm and questioned how the residents of the shelter will be cared for during this type of an emergency situation if their meals are being provided offsite.

Lee Harrison questioned the legality of the property ownership and the church's right to be on property.

Steve Stolipher, former member of St. John's Episcopal Church, stated for the record that he was representing himself and not as a member of the Planning Commission. Mr. S. Stolipher stated that he had been baptized and married in the church; however, had not received an invitation to the past service. Mr. S. Stolipher also questioned the legal ownership of the property. Mr. S. Stolipher told the Board that he possessed a real estate license and that he did not believe the Rules of Perpetuity applied to the deed as the Appellant indicated. Mr. Quynn asked why the

Ann Dunn Smith, local resident, explained to the Board that she was a social worker and had an extensive background in working with the homeless population. Ms. Dunn Smith stated the shelter was located in the City of Martinsburg due to its proximity to emergency services; primarily law enforcement. Ms. Dunn Smith was concerned about the rural setting of the proposed shelter and that it currently takes local law enforcement approximately 45 minutes to get to Rippon.

Johnathon Burns, heir of Caleb Burns as noted in the deed that transferred the property to St. John's Episcopal Church, contested that he was the legal property owner and believed that the Appellants were currently trespassing on his property. Mr. Burns also concurred with others in support of the appeal regarding safety of those who live in Rippon and the welfare of the homeless if stranded at the church during a snow storm. Mr. Bannon asked Mr. Burns what steps he had taken to assert ownership of the property. Mr. Burns did not state any steps taken other than explaining that his brother had spoken to an attorney and if necessary they will pursue the matter further.

Doug Stolipher stated he had been the senior warden and is currently a trustee of the St. John's Episcopal Church. Mr. D. Stolipher explained there were approximately seven active members of the church and that due to age constraints had closed the church; however, they did not abandon the church. The church members continued to maintain the property and paid any expenses associated with the property. Mr. D. Stolipher stated that he suspected the reason for moving the shelter to Rippon was because of the supposed damage to the churches that had previously hosted the shelter. Mr. D. Stolipher stated that he was a license septic installer and explained that the current system was installed in the 1960's and that it was his professional opinion that the current system would not accommodate the number of people that would be housed at the proposed shelter.

Pritchard Zigler, local resident, had concerns regarding the safety of the proposed shelter and possible parking issues.

Jesse Morgan, local resident, felt that the church would not be used as a church but that it would be turned over to the JC coalition

Pritchard Zigler had closing remarks regarding the First Amendment.

Mr. D. Stolipher informed the Board of a discussion he had with Bishop Klusmeyer who had informed Mr. D. Stolipher that he did not believe that Rippon was a good location due to the distance of police and ambulance services.

Ms. Brockman stated that the office checked the tax records when the application was submitted and that the Assessor had the Episcopal Dioceses listed as the property owner. Ms. Brockman added that in order for the property to be tax exempt that the property would need to be under the Church's name; however, she was not clear on the details of that provision. Ms. Brockman stated that had another church proposed this use that she would have issued a zoning certificate for it. Regarding the service conducted the previous Sunday, Ms. Brockman did not have enough information to make a determination on the church's use. Ms. Brockman concluded by stating that at the time of application, the information provided by the Appellant, did not prove that a principle use existed and therefore she could not approve the requested homeless shelter as an accessory use. Ms. Huddle asked is the owner of the principle use had to also run the accessory use. Ms. Brockman stated they did not and gave an example of a church as the principle use and a day care being run by a separate entity as the accessory use. Ms. Huddle also asked if Staff considered impact to the community when approving an accessory use. Ms. Brockman responded by stating that an accessory use may be required to process a site plan if an addition or detached structure is being proposed to address adequate parking and stormwater management regulations. Ms. Huddle also asked if Staff considered emergency services when making a determination on a proposed accessory use. Ms. Brockman stated while it is something the office looks at there is not a

provision in the Ordinance that allows Staff to prohibit it because there is not sufficient access to the services.

In rebuttal Mr. Reifer stated that while the local residents and neighbors expressed a lot of concern, anger and fear regarding the proposed use of the property and that while those feelings are important and will be addressed by the church and coalition that they are not relevant to the present case. Mr. Reifer stated that the Assessor's Office listed the Episcopal Church as the legal owner of the property.

In closing, Ms. DuBose explained that it was her duty as a priest to care for the needs of the community.

Mr. Bob DuBose, retired diplomat, was the President of the Nelson Cluster of the Episcopal President of the Eastern Deanery of the Episcopal Church WV Code §36-1A-1 Rule Against Perpetuities states, "An interest that isn't vested or completed is invalid unless: a) it is intended to occur or terminated within 21 years of the death of an individual then alive; or, b) it actually occurs or terminates within 90 years after its creation. Mr. DuBose stated this was considered a reversionary clause; therefore, in his opinion the deed became invalid after 90 years.

Mr. Aitcheson addressed the Board in rebuttal stating that the church does not pay taxes; that simply because the building looks like a church and had been used for a church for approximately 140 years does not make its current use a church; and, Ms. DeBose informed Ms. Morton that the shelter would be for one year although they had signed a two-year lease and Ms. Morton had read in the paper that they had a 3 year lease. Mr. Aitcheson gave his opinion regarding the interpretation of the Rules of Perpetuity.

Jim Burns stated he would file an injunction against the Appellants to protect his ownership rights.

Ms. Huddle motioned to go into deliberative session at 4:00 p.m. Mr. Bannonseceded the motion, which carried unanimously.

Ms. Huddlemotioned to come out of deliberative session at 4:25 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Board of Zoning Appeals Rulings

3. Action on a proposed amendment to the approved Conditional Use Permit for Rippon Brewery, LLC. This project has been approved for a micro-brewery with a tasting room, a future pub/restaurant, a store, a country inn and an office to be situated on 2 acres. The applicant is requesting an amendment to the approved Conditional Use Permit to add a four unit residential dwelling.

Mr. Kelly motioned to approve the above referenced request. Ms. Huddle seconded the motion, which carried unanimously.

4. 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 West Virginia / The Rt. Rev. W. Michie Klusmeyer and William F. Berry, Vice President of the Jefferson County Homeless Coalition.

Ms. Huddle motioned that at the time of the decision that no regular services were being held and therefore the decision by Director Brockman was correct and that the request to appeal the Administrative Decision was denied. Ms. Huddle further stated that should regular church services be established that the applicant may reapply for the homeless shelter. Mr. Kelly seconded the motion. Mr. Bannon asked Ms. Brockman if the applicant could apply for the use the following business day. Ms. Brockman stated she was unsure if holding one service constituted 'regular' services and that documentation may need to be provided to the office showing the ongoing use. Mr. Bannon stated he could not support the motion because he believed that the County should not be regulating an applicant's First Amendment Right. Mr. Bresee called for a vote which carried three (3) for and two (2) in opposition (Mr. Bannon and Mr. Quynn).

5. Director's Report.

Ms. Brockman updated the Board on the following items (see packet for details):

1) **Envision Jefferson 2035 Update**

a) Hold the Date:

- Third Series of Public Meetings – Land Use Map – “what and how”:
 - Monday, October 21, 2013: South Jefferson Elementary
 - Wednesday, October 23, 2013: Shepherdstown Middle School
- Stakeholders Sessions – Friday, October 25, 2013 (four 1½ hour sessions)
- Future Land Use Map and Recommendations

2) **Recent CC Actions relevant to Planning:**

- a) Request for Approval to move forward with Job Offer for Zoning Administrator Position
- b) Discussion and Possible Action Regarding Potential Amendments to WV Code 8A

3) **Upcoming CC Actions relevant to Planning:**

- a) 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 (09/05/13; *CC voted to schedule a CC workshop (10/17/13 1:30 pm) to review changes since last Public Hearing and schedule a new Public Hearing to be held 10/17/13 at 7:00 PM*)
- b) 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) (09/05/13; *Voted to schedule Public Hearing to be held 10/10/13 at 7:00 PM*)

6. Legal Update. None.

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

- a) 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

Representative: J. Michael Cassell, Esq., Cassell & Printz, and PLLC. File: #AP13-01. Meeting Date: 09/19/13: *Not available for signature.*

- b) 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 and lawn equipment, to be enclosed in an outbuilding/garage, pending Building Permit approval. Appellants: R.K. and Marianne Hedrick; Wayne and Gloria Chastain; Scott and Alice Dillow; Mike and Pam Hinkle; and Chris and Christy Swisher. Property Owners: Robert and Donna Edwards. File: #AP13-02. Meeting Date: 09/19/13: *Not available for signature.*

8. Correspondence. None.

Mr. Bresee thanked everyone for making his tenure on the Board enjoyable. Mr. Kelly wished to go on record expressing his gratitude for the 10 years that Mr. Bresee devoted to the Board stating he believed Mr. Bresee was one of the best Chairmen the Board has had. Mr. Kelly told Mr. Bresee that he believed the public appreciated how well he ran the meetings. The other Members also expressed their thanks and agreed with Mr. Kelly's sentiments. Mr. Bresee emphasized how important it was to always let the public have the opportunity to speak.

Ms. Huddle motioned to adjourn the meeting at 4:40 p.m. Mr. Bannon 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. These minutes were prepared by Jennilee Hartman, Zoning Clerk.

Draft Minutes
Jefferson County Board of Zoning Appeals
Thursday, September 19, 2013

The Jefferson County Board of Zoning Appeals met on Thursday, September 19, 2013. The meeting was held in the Maintenance Department Conference Room, located at 128 Industrial Boulevard, in Kearneysville, West Virginia. Unless otherwise noted, all requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.

Board members Jeff Bresee, Chairman; Christy Huddle, Vice Chair; Edwin Kelly, Tyler Quynn and Jeffrey Bannon were present. Staff members present were: Jennie Brockman, Director of Planning and Zoning; Seth Rivard, County Planner; Stephen Groh, Assistant Prosecuting Attorney and Jennilee Hartman, Zoning Clerk.

Ms. Huddle motioned to commence the meeting. Mr. Bannon seconded the motion, which carried unanimously. Mr. Bresee called the meeting to order at 3:00 p.m.

1. Approval of the July 18, 2013 and August 15, 2013 meeting minutes.

Mr. Kelly motioned to approve the July 18, 2013 minutes. Mr. Bannon seconded the motion, which carried four (4) in support and one (1) abstention, as Ms. Huddle was absent for this meeting.

Ms. Huddle motioned to approve the August 15, 2013 minutes. Mr. Bannon seconded the motion. Ms. Huddle suggested the following edits:

- a) Page 2, Item #4, third paragraph, third sentence, place the word *having* after the word *not*.
- b) Page 3, Item #5, second paragraph, first sentence, replace the represented with presented.

Mr. Bresee called for a vote which carried three (3) in support and two (2) abstentions, as Mr. Quynn and Mr. Kelly were absent for this meeting.

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

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

Mr. Bresee explained to the public how the meeting would be conducted.

3. Continued from the July 18 and August 15, 2013 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 August 15, 2013 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. Location: Shannondale, (Section 1L), 1623 Lakeside Drive, Harpers Ferry, WV. District: Kabletown (06); Map: 6C; Parcel: 292; Zoned: Rural; Size: 25,000 sq. ft.; File: #ZV13-19.

Ms. Brockman stated this item had been continued from the previous two meetings and that the applicant had been advised to amend his variance request which would allow Staff to re-advertise with the correct setback distances along with any additional revised information. Ms. Brockman stated that the applicant had not amended his existing request nor submitted a new application. The Board asked if Staff had

contacted the applicant prior to the meeting. Ms. Brockman stated Staff had not. Ms. Brockman noted that action by the Board was required on the outstanding application.

4. Variance request by applicant, ARC-FD JV, LLC., c/o Arland Property Co., from Sections 4.11A and 4.11D and Table 4.11-1 to reduce the required landscaping buffer from 10' to 0' for the proposed 40,000 square foot U.S. Coast Guard office building within the Burr Business Park. Owner: Jefferson County Development Authority. Applicant Representative: Kristen Stolipher, Gordon. Location: Burr Industrial Park, Lot 8, James Burr Boulevard, Kearneysville, West Virginia. District: Charles Town (02); Map: 1; Parcel: 108; Zoned: Industrial-Commercial; Size: 5.624 acres; File: #ZV13-25.

Mr. Mark Dyck stated for the record that he is not present as a member of the Jefferson County Development Authority Board and that he would be representing the request as the project's consultant from Gordon. Mr. Dyck stated the site would have no outdoor storage, manufacturing or land use which would impact adjacent properties. Mr. Dyck presented an exhibit to the Board which depicted an aerial view of the Burr Industrial Park. Mr. Dyck referred to various property lines on the exhibit which represented lots that had either been required to provide the landscaping buffer, received a variance from the landscaping provision or had not been required to provide landscaping. Mr. Dyck provided a second exhibit to the Board which indicated the trees they would be planting, including an alternative tree planting to the required buffer shown in a lighter graphic on the Exhibit. Mr. Dyck reviewed each of the four criteria and how the applicant felt they were substantiating the request. Mr. Quynn asked if there was any hardship other than financial. Mr. Dyck argued that safety was a concern of the applicant and that they contended that the ability to see in and see out increased safety and security.

Ms. Brockman informed the Board that there had been projects in the past for which this section of the ordinance was inadvertently overlooked, and others for which the BZA approved or denied a variance from the landscaping buffer section as well as projects which were required to plant the buffer. Ms. Brockman could not explain the inconsistencies but did attest to the fact that a text amendment should be considered to address landscaping within existing business parks; that a neighborhood atmosphere would be more suitable. Ms. Brockman approved of the applicant's alternate plan as the proposed trees would provide shade and assist in slowing the stormwater.

Mr. Bresee called for public comment. Ms. Amy Allen was present on behalf of John Reisenweber, Director of Jefferson County Development Authority, who was in a County Commission meeting. Ms. Read a letter from the JCDA into the record. (copy in the file).

5. 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 Representative: J. Michael Cassell, Esq., Cassell & Prinz, PLLC. Location: 1371 Myerstown Road, Charles Town, West Virginia. District: Middleway (07); Map: 17; Parcel: 4; Zoned: Rural; Size: 7.485 acres; File: #AP13-01.

*Note: All references made to 5.7D and subsections thereof are to be understood to refer to Section 5.7D of the Jefferson County Zoning and Land Development Ordinance

Attorney J. Michael Cassell, outlined his presentation stating the Board would be hearing testimony from the people who drafted the original 5.7D amendment, and from them they would learn the intent of 5.7D, its interpretation and its legislative history. Mr. Cassell introduced Paul Raco and stated he would be directing his testimony. Mr. Cassell also stated that according the Boards' Rules of Procedure, Section 6.5, the applicant should have received Ms. Brockman's Staff Report eight (8) days prior to the meeting and, because they did not, wished to note his objection for the record. Mr. Bannon asked Mr. Cassell if he wanted to defer the meeting. Mr. Cassell stated he did not want to defer; however, if necessary, he may ask that the document be excluded from the record.

Mr. Cassell began his opening argument by asking Mr. Raco to state for the record where he was formerly employed and the nature of his responsibilities. Mr. Raco explained that he worked for Jefferson County as the Assistant Planner in 1986 and then became the Acting Zoning Administrator and Director of Planning and Zoning after the adoption of zoning in 1988 until 2000. Mr. Raco went on to state that he then became the Executive Director of Planning, Zoning and Engineering until leaving the County in 2007. Mr. Raco stated he served as the County's Zoning Administrator since the adoption of zoning in 1988 until 2007. In response to Mr. Cassell's questioning, Mr. Raco stated that as the Zoning Administrator his duties included enforcement, administration, and interpretation of the zoning ordinance, as well as managing the other ordinances of Jefferson County; including text amendments pertaining to all ordinances under the purview of the Department.

Mr. Cassell asked Mr. Raco to explain where he researched the information for the appeal. Mr. Raco stated he reviewed all the files on amendments and the general correspondence files that were available in the Department of Planning and Zoning; the Clerk's files that pertained to any subdivision that utilized the "two lots every five years" provision and those that subsequently processed again after the 5 year period had lapsed; and, the County Commission files regarding ordinance amendments. Mr. Cassell referenced a list of subdivisions that was previously provided to the Board explaining that Column A were subdivisions that had processed one subdivision under this provision and that Column B indicated if there was a second subdivision from the same parcel after 5 years.

Mr. Cassell asked Mr. Raco to explain the discussion between the Planning Commission (PC) and the [Rural] Committee meetings regarding the purpose of Section 5.7. Mr. Raco explained that in 1988 when the original zoning ordinance was adopted there was only one method by which someone could subdivide their property, other than the parent to child exemption, which was known at that time as Section 5.1.7 Maximum Number of Lots which allowed an individual to subdivide two lots every 5 years. Mr. Raco stated that in 1989 the zoning ordinance was amended, which renumbered Article 5, particularly the section in question, though this amendment did not change Maximum Number of Lots. Mr. Raco went on to further explain that the "1 for 10" and "1 for 15" [speaking in reference to the current Sections 5.7D(1) and 5.7D(2)] provisions were not added to the zoning ordinance until 1995. The County Commission (CC) and PC were under pressure from the agricultural community to provide an alternative subdivision process other than the two lots every 5 years. After the Comprehensive Plan was approved 1994, the PC president, Scott Coyle, developed three committees to discuss major amendments to the zoning ordinance. Mr. Raco stated that the amendment committee relevant to this case was the Rural Committee (RC) which was created in February 1995. Mr. Raco stated that a charge was given to the RC to expand the permitted uses to provide residential opportunities in the rural district and as a result they held many work sessions, committee meetings & public sessions to draft a proposed recommended amendment to Section 5.7. Mr. Raco produced a copy of a Press Release dated

September 26, 1995, which explained the proposed text changes to Section 5.7. Mr. Raco read into the record the following statement, “proposed changes which would allow property owners the ability to subdivide more lots in the rural zone based on acreage; all property owners may opt to continue to subdivide two lots and a residue off their property every five years or may choose one of the two other options...”. Mr. Bannon asked Mr. Raco to clarify his involvement with the case. Mr. Quynn asked if all the information being presented could be found in the courthouse. Mr. Cassell and Mr. Raco confirmed that all the information was public record. Mr. Raco stated a public hearing was held on a proposed text amendment to the zoning ordinance and that a Notice dated January 29, 1996 explained the nature of the amendment. Mr. Raco read the following from the Notice, “the proposed amendments also allow areas in the rural zone more residential lot rights other than the current method than allowing two lots every five years two other methods are proposed to be added; the first is to allow one lot to be created every ten years per ten acres owned by an entity provided that the minimum lot size is three acres...”

Mr. Cassell questioned Mr. Raco on his interpretation of the use of the word “or” within the sentence, “All parcels of land that were on record as of October 5, 1988 are entitled to subdivide for single family residences based on Subsections 5.7(d)1, 5.7(d)2 or 5.7(d)3 below...”. Mr. Raco stated that he believed an applicant could choose between either of the three subdivision options available. Mr. Cassell drew attention to the last sentence of the same paragraph which read, “A property owner may use a combination of these subsections provided that the number lots are prorated by density.”

Mr. Cassell asked Mr. Raco to confirm that he was the drafter of 5.7D(3). Mr. Raco confirmed that he was. Mr. Cassell asked Mr. Raco to clarify what, “Not in addition to...” meant. Mr. Raco explained the following, should an applicant subdivide their parcel and “max out” or develop all their density rights utilizing 5.7D(1) the “1 for 10” provision, they would not be permitted to further subdivide the ‘Residue’ parcel by utilizing 5.7D(3) the “two every five years” provision. Mr. Cassell then asked, “What did not in addition to mean?” Mr. Raco explained that the purpose of the language was to prevent people from further subdividing the residue once their density rights were used. Mr. Cassell asked Mr. Raco if there was a phrase, a word or anything in 5.7D(3) that indicates that the density qualification or condition is applicable to 5.7D(3). Mr. Raco answered there was not. Mr. Raco stated that was not the intention when he drafted the amendment or the words “during any five year period” would have been removed.

Mr. Cassell asked Mr. Raco if the sentence in 5.7D(4) in any way implied that 5.7D(3) was restricted by density. Mr. Raco stated it did not. Mr. Raco explained that the PC and RC wanted to keep the two lots every five years provision because it was something the public already had from 1988-1996 and they did not want to change that provision. The purpose of the amendment was to meet the need of the farmers who were asking for the larger subdivision rights but did not want to take away the public’s ability to do smaller subdivisions. During the public meetings the farmers wanted the residue of the subdivisions the created under 5.7D(1) & (2) to be “rechargeable”; however, the PC added 5.7D(4) as a way of preventing a major subdivision from further subdividing once they had maxed out their density rights.

Mr. Cassell asked Mr. Raco to address the sentence in 5.7D(3) and read, “All lots qualifying under this section must meet subdivision requirements.” Mr. Raco stated that all the previous information was based on the zoning ordinance; should an applicant wish to subdivide they must meet the subdivision

requirements. Mr. Raco gave an example of the changing road requirements should an applicant wish to exceed 3 lots, 5 lot, 10 lots and then 12 lots.

Mr. Cassell and Mr. Raco reviewed the emails that had been submitted as part of the supplemental record which were intended to show a consistent interpretation of the two every five years provision in 5.7D(3) by multiple staff members of the Department of Planning and Zoning through 2009.

Mr. Bannon stated that under 5.7D(3) it appeared clear that an applicant could do multiple subdivisions; however, he did not believe someone would be able to subdivide once an applicant's property was under 10 or 15 acres. Mr. Cassell stated the applicant would still have to abide by the subdivision regulations. Mr. Bannon stated that the first paragraph in 5.7 states that the purpose of this district is to provide for low density single family residence. Mr. Bannon stated that if an individual had a large parcel of land that 5.7D(3) was reasonable; however, if an individual was starting with 8 acres and wanted to subdivide that the section in question appeared to be inconsistent with the purpose of the zoning district. Ms. Huddle contended that it was not the Boards' position to discuss the purpose of the zoning district in generality. Mr. Quynn concurred. Mr. Bannon disagreed.

Lyle Campbell Tabb, former PC member from 1990-2000, stated he was Chair of RC and served with former committee members Scott Coyle and Al Hooper. Mr. Tabb explained that the purpose of the committee was to address the local farmer's desire to have additional subdivision options that would allow them to do larger subdivision. Mr. Tabb stated the 1 for 10 and 1 for 15 was approved and the two lots every five years remained in the ordinance. Mr. Tabb noted that to his knowledge the two lots every five years provision was never rescinded, removed or changed.

Chris Stiles, former PC member, concurred with Mr. Tabb in that the interpretation of the two lots every five years has never been changed.

Ernie Benner, former PC member from 1991-2000 and former BZA member, Mr. Benner stated that the two lots every five years has always been interpreted the way it has been described by the previous speakers.

Mr. Cassell referred to West Virginia case law from 1907 *State v Davis* and continued to site the section. A copy was provided for the file.

Mr. Groh asked Mr. Raco how he would interpret the first paragraph's sentence, "...combination of these subsections provided that the number lots are prorated by density." with regard to 5.7D(3). Mr. Raco gave an example of if an applicant owned a 100 acre farm and first processed under the 5.7D(3) provision and then the following year requested to further subdivide under 5.7D(1), the applicant would be permitted; however, the first two lots that were previously created would then count towards the overall density of the farm. Mr. Raco also explained how an applicant could combine 5.7D(1) and 5.7dD(2) as each provision allowed for different lot sizes. Mr. Raco and Mr. Cassell discussed the minimum standards required for establishing a single family lot in the rural district.

Michael Shepp, a local surveyor who's worked in the area since 1976, stated that he has processed many subdivisions under the argued interpretation. Mr. Shepp also stated that he designed Mr. Dunn's, the Appellant, minor subdivision in anticipation of a future subdivision. Mr. Shepp addressed Mr.

Bannon's concerns regarding the theoretical infinite ability to subdivide a large parcel by stating that at a certain point the subdivision regulations would apply and the addition of two lots would require an applicant to do stormwater management and to design and pave the roads. Mr. Shepp explained that the addition of the two lots would not pay for the cost of doing the subdivision.

Ms. Brockman thanked all the speakers for their information and history regarding the subject and stated that she found it very interesting and useful to the Staff. Ms. Brockman stated that she would contend that may have been the intent of the text; however, that it is not the way the text reads and is not how the text has been consistently interpreted since July of 2009. Ms. Brockman drew attention to the text highlighted of 5.7 within her Staff Report and stated she believed the phrase, "Not in addition to..." was a process. Ms. Brockman explained by giving the example of an applicant having 100 acres and stated that if they were processing under the 1 for 10 they would get ten lots. The applicant then had the option to utilize 5.7D(3) as a process and be permitted to subdivide two lots every five years until they reached the tenth lot. Ms. Brockman informed the Board of a text amendment which reversed the 1 for 10 provision to 1 for 15 and then reversed it again. Ms. Brockman went on to explain that 5.7D(4) was all inclusive and did not specify 5.7D(1) and (2) nor did it remove 5.7D(3) therefore she had to assume that all lots had a certain density right. Ms. Brockman stated that Staff now has developers add a note to their plat which lists the remaining density rights for the property. Ms. Brockman explained that hearing the history of 5.7D was interesting for Staff as their assumption was the purpose in the provision was to provide a subdivision process for property owners with less than 20 acres as these parcels could not process under the 1 for 10 or the 1 for 15 provisions.

Mr. Stanley Dunn, husband to Katherine B. Dunn, supported Mr. Cassell, Mr. Raco and the additional speakers who were also in support of the appeal.

Robin Butler, neighbor to the Dunn parcel named in the appeal, was opposed to the appeal.

In rebuttal Mr. Cassell reiterated the sentence which reads, "A property owner may use a combination of these subsections provided that the number lots are prorated by density." Mr. Cassell argued that if an applicant utilized two or more of the three subsections, it is a density conditioned subdivision; however, the sentence did does not say that they individually must be prorated. Mr. Cassell also argued that in subsection (3) that there is no mention of density; neither in subsection (4).

Ms. Brockman wished to counter by saying that the reference to density in subsection (3) is by way of the phrase, "Not in addition to..." which staff since 2009 has always interpreted to mean that you would use subsections (1) or (2) to set your density and that this subsection is not in addition to that. You can use this method to accomplish parts of one and two.

6. Variance request by applicant, Matt Bernazzoli, from Section 4.3.H to allow a current 25'7" x 8'2" shed to remain located on an existing concrete slab where an original shed was formerly situated. Property Owner: Bakerton Bible Church. Location: 662 Carter Avenue; Harpers Ferry, West Virginia. District: Harpers Ferry (04); Map: 3; Parcel: 57; Size: 1.44 acres; Zoned: Village; File: #ZV13-26.

Mr. Matt Bernazzoli presented his request to the Board explaining that when he built the shed he was under the assumption that it was on his property. Mr. Bernazzoli stated he was not aware that a

building permit would be required to replace an existing shed. Mr. Bernazzoli also stated that since discovering the shed was located on the Church's property an agreement has been made with them to allow him to continue utilizing the shed.

Ms. Brockman briefly explained the history of the property to the Board.

Mr. Bresee called for public comment. There was no public comment.

7. Variance request by applicant, Diane De Laet for Verizon Wireless, from Section 4B.7.J.2 to allow an increase of height from 120' to 130' tall stealth silo design for its wireless telecommunications facility, which is required to meet its network objective. Property Owner: George Randolph Welsh, Jr. Location: 231 Trough Road; Shepherdstown, West Virginia. District: Shepherdstown (09); Map: 17; Parcel: 11; Size: 123.6 acres; Zone: Rural; File: #ZV13-27.

Ms. Diane De Laet, Verizon Representative, and Peter Chakmakian, Attorney, were present to address the Board. Mr. Chakmakian stated that cell towers are permitted in all districts. Mr. Chakmakian outlined the necessity for the applicant's request; citing from the Zoning Ordinance that a silo is the preferred design. Mr. Chakmakian stated that the proposed height is requested to achieve optimum service. Mr. Chakmakian acknowledged that there is neighboring concern regarding the proposed location of the silo. Mr. Chakmakian stated that the objection is based on the belief that the proposed location of the cell tower will impair the view from a historical structure. Mr. Chakmakian argued the objectivity of the belief and likened it to a "they say it will and we say it won't" defense. Mr. Chakmakian referred to a letter he received from the Jefferson County Historic Landmarks Commission (JCHLC) and read, "It is the consensus of this commission that this proposed tower at this site is unsuitable and another location should be chosen." Mr. Chakmakian described how meetings with the Shepherdstown Battlefield Preservation Association (SBPA) led to the relocation of the initially selected site to a site further from Trough Road to its current location. Mr. Chakmakian explained that due to the elevation of the property the relocation dropped the silo's height by 30' and, therefore, in order to accommodate the SBPA, the applicant is requesting a 10' variance to recover the lost height in order to achieve optimum coverage. Mr. Chakmakian provided handouts to the Board which depicted a computer generated image of a structure in the proposed silo/cell tower location. Ms. De Laet assisted in orienting the Board regarding the photos. Mr. Chakmakian also presented a before and after service map. Discussion ensued among the Board and the applicant regarding the maps and pictures of the site (copies were provided for the file). Ms. De Laet also informed the Board that Verizon will still be processing the site plan in conformance with all subdivision requirements. Ms. De Laet informed the Board of various meeting that Verizon representatives held with multiple interested parties and historic preservationists within the past two years. Ms. Huddle questioned Ms. De Laet about the coverage map asking if Verizon had explored other sites. Ms. De Laet answered in the affirmative and elaborated by stating that they even investigated the potential of utilizing the existing silos on Mr. Welsh's farm, as well as reviewed the list of preferred site provided the JCHLC; however, their options were very limited with regard to their network objectives. Mr. Bannon asked why the additional 10' was required. Ms. De Laet responded by stating that the additional 10' would allow their signal to reach another tower and it would give them the ability to provide the space necessary for colocation within the silo, as required by the zoning ordinance. Ms. De Laet stated that the one proposed silo would accommodate three carriers and explained that the Federal Communications Commission (FCC) requires space between the antennas which the additional 10' will assist in meeting.

Mr. Bresee called for public comment.

Ms. Katy Fiddler was present to speak in favor of the variance. Ms. Fiddler stated that she lived at 48 Trough Road and claimed she was as close as anyone could get to the property and that her home was approximately 75 years old. Ms. Fiddler stated that she did not believe the cell tower would not be obtrusive and informed the Board that another cell tower is already visible from the property from the tops of the trees and that it was fairly unobtrusive as well. Ms. Fiddler stated she supported the farmer's right and need to have an additional income. Additionally, Ms. Fiddler shared that she had Verizon as a provider and worked from home and that having the coverage would be a huge advantage to her because she currently experienced dropped calls consistently.

Mr. Martin Burke, President of the JC Historic Landmarks Commission, spoke in opposition to the request due to the adverse visual impact the request would have on adjacent historic resources. Mr. Burke stated that the HLC also opposes the location of the tower; however, they appreciate that is not the Board's decision. Mr. Burke explained the ways in which the HLC is involved in the review of cell tower locations as a consulting party to cell tower representatives, providing input to the County via Section 4B of the Zoning Ordinance, and to the FCC. Mr. Burke elaborated on this role by stating that cell towers must comply with Section 106 of the National Historic Preservation Act which shares a common goal with the HLC and the text in the Ordinance which is to minimize and mitigate any potential adverse impacts associated with the construction of towers through a variety of reasonable design and landscape construction practices. This is accomplished by identifying historic properties that would be affected by the project and to assess the potential effects on each of the properties and to first seek ways to avoid them or to minimize and mitigate the adverse impacts. Mr. Burke confirmed they have been working with the applicant on this site since December 2011. Mr. Burke stated the HLC has attended all meeting with EBI, a consulting firm with Verizon, and with Verizon representatives and has attended numerous balloon tests. Mr. Burke stated he had propagation maps which depicted coverage if the tower was built at 120', 100' and 80'. Mr. Burke agreed that the higher a tower is built the better the coverage would be; however, colocation was still attainable without the additional 10'. Mr. Burke stated the HLC is opposed to the height and location of the stealth silo and noted it is twice the height of any local agricultural silo.

Mr. Paul Rosa, resident of Jefferson County, spoke in opposition to the request and discussed how the applicant addressed the four criteria listed in the variance request. Mr. Rosa stated he was the principle author of the cell tower ordinance. Mr. Rosa believed that the applicant was not meeting the fourth criteria which require that substantial justice is done when granting a variance because he felt that the file was not complete. Mr. Rosa stated his main objections were procedural in nature. Ms. Huddle questioned whether there would be additional processing should this variance be approved. Mr. Brockman stated there would be a Concept Plan and Site Plan and that Staff believed that the information Mr. Rosa is referring to would be submitted at that time and is not necessary for the variance. Mr. Rosa stated he had a different interpretation than that of Staff. Ms. Huddle discussed her concerns of hearing a variance application for a project when the location has not been approved. Ms. Huddle stated the location seemed to be the more substantive request and that a 10' height extension was secondary. Ms. Brockman explained that it was the PC that approved the location and that the BZA that would hear the height request. Ms. Brockman agreed the order in which the approvals were being heard might appear confusing; however, it would not be appropriate for the

applicant to spend a lot of time and money processing a concept and site plan to have the location approved by the PC and subsequently have a height variance denied and have to begin the process over again. It seemed logical to seek a height extension first and then go to the PC to continue the public process.

Edward Dunleavy, President of the Shepherdstown Battlefield Preservation Association, wanted to state for the record that he has not had any communication with Verizon at all; but rather, has been contacted by EBI consulting who was hired by Verizon to look at how the project could comply with Section 106 of the Historic Preservation Act. Ms. Huddle asked if being contacted by a consultant of Verizon was as if being contacted by Verizon. Mr. Dunleavy stated that he intended to be precise. Mr. Dunleavy proceeded to provide the Board a handout created by the Civil War Sites Advisory Commission and reviewed various pages with the Board. Mr. Dunleavy commended Verizon for their efforts in protecting the viewshed; however he believed they had not done enough. Mr. Dunleavy informed the Board of efforts made to have the Shepherdstown Battlefield designated as a National Park.

In rebuttal, Ms. De Laet stated she wished to address a few items, the first being the Board's position and conveyed that Verizon would have the burden of proof. Ms. De Laet reiterated that they would meet every standard of the regulations and to continue to work with the local historic authorities to preserve the area in the best way possible. Ms. De Laet went on to address the 'single site solution' concerns that had been raised by Mr. Rosa and stated that Verizon has multiple sites throughout the County and that this site would assist in closing a gap in their existing coverage area. Ms. De Laet applauded the possibility of the Park being designated and noted that the additional coverage would aid in the safety and security of the visitors and tourists. Ms. De Laet stated that during emergencies, cell coverage may be down although texts generally still work and that can be useful. Ms. De Laet explained they needed 3' of separation between antennas, which could be between 2 – 6' in length. Additional benefits to the Battlefield Park could be the new National Park barcode App that has been developed to allow visitors to become more engaged and informed when visiting parks.

Ms. Brockman wanted to state for the record that if the Board approved the request that they would only be approving the height and not the location. Ms. Brockman stated this would be made clear to the PC should the application be moved ahead.

8. Variance request by applicants, Gilbert and Catherine Smallwood, from Section 9.7 for a reduction of the side setback distance from 6' to 2' to allow for the construction of a 12' x 21' garage. Location: 932 Jefferson Avenue, Charles Town, West Virginia. District: Charles Town (02); Map: 10A; Parcel: 64; Size: 0.25 acres; Zone: Residential-Growth; File: #ZV13-28.

The applicant was not present to address the Board. Ms. Brockman presented the request on behalf of the applicant and addressed questions raised by the Board.

Mr. Bresee called for public comment. There was no public comment.

9. Variance request by applicant, George Armstrong, from Section 5.7.B.1 for a reduction of the rear setback distance from 50' to 28' to allow a recently constructed garage to remain located where an original building was formerly situated. Location: 129 Marrs Lane, Kearneysville, West Virginia. District: Middleway (07); Map: 5; Parcel: 12.5; Size: 3.0337; Zone: Rural; File: #ZV13-29.

Mr. George Armstrong presented his request to the Board explaining that he built the garage in question in the same location as a previous building had been situated. Mr. Armstrong stated he was not aware that a permit would be required to replace an existing structure.

Ms. Brockman briefly explained the history of the property to the Board. Ms. Brockman pointed out that while this case was similar to Mr. Bernazzoli this applicant would be seeking a variance from the setback requirements and not requesting to reestablish a non-conforming use.

Mr. Bresee called for public comment. There was no public comment.

10. 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 and lawn equipment, to be enclosed in an outbuilding/garage, pending Building Permit approval. Appellants: R.K. and Marianne Hedrick; Wayne and Gloria Chastain; Scott and Alice Dillow; Mike and Pam Hinkle; and Chris and Christy Swisher. Property Owners: Robert and Donna Edwards. Location: Elk Run Subdivision, Lot 7, 235 Elk Branch Drive, Shenandoah Junction, West Virginia. District: Shepherdstown (09); Map: 22; Parcel: 30; Size: 1.93 acres; Zoned: Rural; File: #AP13-02.

Mr. R.K. Hedrick presented the request to the Board stating that the named Appellants Chastain, Dillow, Hinkle and Swisher had filed the appeal; however, since that time three additional neighbors wished to join in the appeal; Dan and Carolyn Perry, Dan and Marge Neff and Bernie and Darlene Carmody. Mr. Hedrick stated this totaled 8 out of 13 property owners within the subdivision. Mr. Hedrick referenced a letter that was drafted by Bernard and Thelma Carmody. Mr. Hedrick listed various issues that have become a nuisance to the community during the past three years such as trucks moving back and forth, witnessed hours long struggle of moving seal coating tanks on and off trucks, equipment testing and the storage of vehicles and trailers in the driveway and on the property. Mr. Hedrick stated he spent approximately \$1,500 planting a buffer between him and Mr. Edwards' property in order to block the view of the trucks, trailers and other equipment. Mr. Hedrick stated they had lived with the business operation for a couple of years until he and his wife had noticed what appeared to be an oil/driveway seal spill 20 feet away from his (Mr. Hedrick's) well. Mr. Hedrick stated that while Mr. Edwards was quick to resolve the matter he was now concerned that it would happen again. Mr. Hedrick stated he contacted Mason Carter, the Ordinance Compliance Officer for Jefferson County, who contacted Mr. Edwards and told him to contact the Zoning Department. Mr. Edwards subsequently did, filed for a zoning certificate and was issued a certificate within four days. Mr. Hedrick argues that process was not followed and that Mr. Edwards proposed use is not permitted as a Home Occupation, Level 2. Mr. Hedrick also stated that he was told by a real estate agent that the business would reduce his property value.

Ms. Huddle asked Staff at what point may a homeowner violate an approved zoning certificate before it is revoked? Ms. Brockman stated she was unaware of a procedure for that. Ms. Brockman stated that in this case the homeowner was in violation of the ordinance and applied for a zoning certificate and did so under the Home Occupation, Level 1 (HOL1) and Home Occupation, Level 2 (HOL2). She also explained that HOL1 did not require posting and that HOL2 did require posting. Ms. Brockman stated she did not know why Steve issued the certificate for an HOL2 other than it allowed the applicant the

ability to have additional employees; however, then the property should have been posted. Ms. Brockman did not know why the sign had not been posted and had to assume it was inadvertently overlooked. Ms. Brockman argued that she believed it was a valid zoning certificate and that it was issued correctly. Ms. Brockman explained that based on the information provided by the applicant it appeared that the business met all the requirements of the HOL2 standards conditioned upon the fact that they construct the building as described in the zoning certificate. Ms. Brockman explained that it appeared that the Appellant's main contention is that the business must be wholly within the dwelling unit and that one of the requirements of the zoning certificate was to build an accessory structure; however, there was no time limit imposed. Ms. Brockman addressed the concern regarding the signage on the trucks by stating that the County does not prohibit people from driving a truck home that states the name of the business on the side.

Marianne Howard, Appellant, believes Mr. Edwards has the right to operate a business; however, not one that would negatively impact adjacent property owners and the rights of those in the community. Mr. Ronald Perry, neighbor, supported the appeal stating he was concerned about the effects on the property values of the community. Mr. Lawrence Chastain, Appellant, supported the appeal stating he was also concerned about the effects on the property values and that he believed that the equipment being utilized by Mr. Edwards was minimized on the zoning certificate application. Mr. Chastain stated Mr. Edwards used a 16' trailer, 2 pickup trucks with a tank in the rear and a second trailer with a tank which is occasionally loaded and unloaded onto the trucks and trailers. Mr. Chastain also stated that other seal coating equipment was being serviced and tested and that grinding and welding was being done at the site, all in conjunction with the business. Mr. Chastain stated that Mr. Edwards had two employees and that he could see the equipment and vehicles from his property.

Discussion between the Board and Ms. Brockman regarding the chart within the Staff Report ensued.

Mr. Robert Edwards was present to address the Board. Mr. Edwards explained to the Board that he did bookkeeping, scheduled appointments and stored his equipment at his home. Mr. Edwards stated the equipment is loaded onto the trucks/trailer for departure in the morning and then they return in the evening. Mr. Edwards explained that the business of sealing the driveways is conducted at the client's home. Mr. Kelly asked where maintenance of the equipment is done. Mr. Edwards stated that the oil is changed once a year and that it is synthetic and water based which is approved by the EPA. Mr. Edwards further described the oil stating that it does not catch fire, explode, pollute the environment, there is no runoff, it is 96-97% water and there is no smell. Ms. Huddle asked when the structure would be built. Mr. Edwards explained that they just submitted the building permit during that week because he recently suffered a back injury and had been unable to walk without a cane. Ms. Donna Edwards stated the building was ordered approximately one month ago. Ms. Edwards wanted to explain that the second truck and trailer were not used for the business. The second tank was used in the event of a large job. Mr. Edwards stated the second trailer was used typically for hauling wood. Mr. Edwards stated he did not believe his business affect property values. Mr. Edwards defined his business as a part-time job; operating only in the summer and on the weekends. Mr. Edwards stated he has never cleaned a tank. Ms. Edwards answered Ms. Huddle's question regarding noise stating that it is possible that their generator could have been the noise that the neighbors are speaking of; however, many in the community have generators. In addition, Mr. Edwards stated he has a compressor which he used to pump up the tires. Other noise may be attributed to a leaf blower and other lawn maintenance equipment. Ms. Huddle stated she was not concerned about equipment for personal use. Mr. Edwards

addressed Mr. Bannon's questions regarding the oil spill which Mr. Edwards contested was approximately 60' from Mr. Hedrick's well and not 20'. Mr. Edwards stated he acted immediately, had EPA come to the site, at which time he was informed that the oil was the safest on the market. Mr. Edwards answered Mr. Bresee's question by stating that the tank was filled in Fredrick, MD. Mr. Groh asked Mr. Edwards to address the employee allegations. Mr. Edwards stated that when he injured his back he had a tenant from a separate residence that had not been paying their rent work for him as payment and only while his back was injured. Mr. Quynn asked Mr. Edwards to describe the garage. Mr. Edwards stated the garage was made by Carolina Carports and was a metal, 19' x 26' building with pad. Mr. Edwards stated that the structure would not be enclosed. It was explained to Mr. Edwards that the equipment was not permitted to be visible from any property line and that the zoning certificate was conditioned upon the structure being enclosed.

Ms. Huddle motioned to go into deliberative session at 6:39 p.m. Mr. Bannon seconded the motion, which carried unanimously.

A member of the public stated they wished to speak in opposition to the appeal. Ms. Huddle retracted her motion.

Christy and Joseph Michaels spoke in opposition to the appeal. Ms. Michaels stated that among all the noises that can be heard from their home including roosters crowing, generators from neighboring property owners, the school's PA system which is located 2 miles away and dogs barking, that she could not identify any sound that was clearly identifiable as Mr. Edwards' business. Ms. Michaels stated they too owned a compressor and stated she did not believe anything could compare to the noise level of a compressor and that nothing had ever reached or exceeded that level regarding Mr. Edwards' property. Ms. Michaels stated there is nothing visible from the road that would stand out as a business. Ms. Michaels pointed out that Mr. Hedrick's concerns of the seal coating being spilled on the road and that this posed a risk to the children that played there was unfounded as the material was road sealant. Ms. Michaels stated she agrees that the Edwards should build the structure as they were required to do. Ms. Michaels also wanted to address the neighbor's concerns regarding property value by stating that when she purchased her home the value of the home was approximately the same as what the homes in the community had sold for in previous years.

Ms. Huddle motioned to go into deliberative session at 6:46 p.m. Mr. Bannon seconded the motion, which carried unanimously.

Ms. Huddle motioned to come out of deliberative session at 7:06 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Board of Zoning Appeals Rulings

10. 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 and lawn equipment, to be enclosed in an outbuilding/garage, pending Building Permit approval. Appellants: R.K. and Marianne Hedrick; Wayne and Gloria Chastain; Scott and Alice Dillow; Mike and Pam Hinkle; and Chris and Christy Swisher. Property Owners: Robert and Donna Edwards.

Mr. Kelly motioned to affirm the Zoning Administrator's decision to issue Zoning Certificate #ZC13-23. Mr. Kelly added that any equipment pertaining to the business must be in a fully enclosed building with four sides, which [the equipment] cannot be seen by anyone. This shall include the trucks and other accessory equipment. The building must be constructed within 90 days. Mr. Kelly stated this was the end of the motion; however wanted to add that should the property owner be found in violation of the Zoning Certificate's restrictions, the County may take action and revoke the Zoning Certificate. Ms. Huddle seconded the motion, which carried unanimously.

- Continued from the July 18 and August 15, 2013 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 August 15, 2013 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.

Ms. Huddle motioned to disapprove the variance request for a reduction of the front setback distance from 20' to 5' because this request would not meet the actual distance necessary to construct the proposed garage. Mr. Kelly seconded the motion, which carried unanimously.

- Variance request by applicant, ARC-FD JV, LLC., c/o Arcland Property Co., from Sections 4.11A and 4.11D and Table 4.11-1 to reduce the required landscaping buffer from 10' to 0' for the proposed 40,000 square foot U.S. Coast Guard office building within the Burr Business Park. Owner: Jefferson County Development Authority. Applicant Representative: Kristen Stolipher, Gordon.

Mr. Kelly motioned to approve the above referenced request noting the request applies only to the subject lot within the Burr Industrial Park and that the applicant will plant the 13 dark green trees as depicted on the alternative landscape plan submitted as an exhibit to the Board, prepared by Gordon, marked as Page 20 of 23. Ms. Huddle seconded the motion, which carried unanimously.

The Board requested that Staff begin drafting a text amendment that would address the standards for landscaping and buffering on lots within industrial parks.

- 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 Representative: J. Michael Cassell, Esq., Cassell & Prinz, PLLC.

Ms. Huddle motioned to grant the appeal based on hearing the testimony explaining the history of the text amendment. Ms. Huddle stated that while the text of the Ordinance isn't as well worded, the explanation was clear. Mr. Quynn seconded the motion and requested the motion be amended to add that the Board also vacates the decision in the Memo and allows the applicant to subdivide. Ms. Huddle accepted the amendment. Mr. Bannon stated he was opposed the motion because he believed the Ordinance should be read in its plain meaning and that the rural district is limited by density. Mr. Bresee called for a vote, which carried four (4) in support and one (1) in opposition (Mr. Bannon).

6. Variance request by applicant, Matt Bernazzoli, from Section 4.3.H to allow a current 25'7" x 8'2" shed to remain located on an existing concrete slab where an original shed was formerly situated. Property Owner: Bakerton Bible Church.

Mr. Quynn motioned to approve the above referenced request. Ms. Huddle seconded the motion, which carried unanimously.

7. Variance request by applicant, Diane De Laet for Verizon Wireless, from Section 4B.7.J.2 to allow an increase of height from 120' to 130' for a stealth silo design for its wireless telecommunications facility, which is required to meet its network objective. Property Owner: George Randolph Welsh, Jr.

Mr. Quynn motioned to approve the above referenced request contingent upon Planning Commission approval of the site plan. Mr. Quynn added that approval of this variance request does not, in any way, suggest that the Board advocates for this site. Ms. Huddle seconded the motion, which carried unanimously.

8. Variance request by applicants, Gilbert and Catherine Smallwood, from Section 9.7 for a reduction of the side setback distance from 6' to 2' to allow for the construction of a 12' x 21' garage.

Mr. Bannon motioned to approve the above referenced request. Mr. Kelly seconded the motion, which carried unanimously.

9. Variance request by applicant, George Armstrong, from Section 5.7.B.1 for a reduction of the rear setback distance from 50' to 28' to allow a recently constructed garage to remain located where an original building was formerly situated.

Mr. Quynn motioned to approve the above referenced request. Ms. Huddle seconded the motion, which carried unanimously.

10. 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 and lawn equipment, to be enclosed in an outbuilding/garage, pending Building Permit approval. Appellants: R.K. and Marianne Hedrick; Wayne and Gloria Chastain; Scott and Alice Dillow; Mike and Pam Hinkle; and Chris and Christy Swisher. Property Owners: Robert and Donna Edwards.

This agenda item was moved and addressed immediately after reconvening from deliberative session.

11. Director's Report.

Ms. Brockman updated the Board on the following items (see packet for details):

- 1) Envision Jefferson 2035 Update
 - a) County Fair input
 - b) Next steps:
 - Third Series of Public Meetings – Land Use Map – “what and how”:

- Monday, October 21, 2013: South Jefferson Elementary
 - Wednesday, October 23, 2013: Shepherdstown Middle School
 - Stakeholders Sessions – Friday, October 25, 2013 (four 1½ hour sessions)
 - Future Land Use Map and Recommendations
- 2) Recent CC Actions relevant to Planning:
- a) Request by the Planning Commission that the County Commission Reconsider their Motion of 10/25/13 Regarding the Proposed Zoning Ordinance Text Amendment Related to New Commercial and Industrial Zoning Categories (09/05/13; CC voted to schedule a CC workshop to review changes since last Public Hearing and schedule a new Public Hearing – date tbd)
 - b) 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) (09/05/13; Voted to schedule Public Hearing – date tbd)
- 3) Upcoming CC Actions relevant to Planning:
- a) Public Hearings related to items above – dates to be determined.

The Board discussed alternative meeting dates and times due to the reoccurring meeting room availability conflict. The Board agreed that the fourth Thursday of each month at 2:00 p.m. was an amiable solution and requested that Staff revise the Rule or Procedure for the 2014 meeting schedule and, if necessary, have the County Commission amend them with the suggested date and time. Ms. Huddle motioned to hold the Board's October meeting on the fourth Thursday (October 24, 2013) at 2:00 p.m. Mr. Kelly seconded the motion, which carried unanimously.

12. Legal Update. None.

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

- a) Variance request by applicant, Jason Shelton, from Section 5.7(B) for a reduction of the rear setback distance from 50' to 8' for an approximate 16' x 32' existing building, which the applicant renovated and expanded prior to the issuance of a building permit. File: #ZV13-21. *Mr. Bresee signed the Findings for this request.*

14. Correspondence. None.

Ms. Huddle motioned to adjourn the meeting at 7:38 p.m. Mr. Bannon 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. These minutes were prepared by Jennilee Hartman, Zoning Clerk.

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 1, 2013 meeting.

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; Zoned: 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. Matt's question.

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

5. Variance request by applicant, John Fridley, from Section 9.6(C) & 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, Section 1L, 1623 Lakeside Drive, Harpers Ferry, WV. District: Kabletown (06); Map: 6C; Parcel: 292; Zoned: 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 Lane, Charles Town, WV. District: Kabletown (06); Maps: 20 & 21; Parcels: 13 & 4.1; Zoned: Rural; Size: 271 (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 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 stated 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. Variance request by applicant, John Fridley, from Section 9.6(C) & 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 that 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 applicant. 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 she 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 leasee 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 9.6(C) & 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 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 the Board that a site must meet many of the criterion necessary for 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. Walter stated they would reimburse the County for any additional costs. Mr. Dyck informed the Board that Sheriff Dougherty 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 to the Board 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. Walter 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 and allows them to staff a beverage or ice stand which helps them raise money for their cause. A system is also in place to encourage 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 it will encourage tourism in the area 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's 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 attending 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 member to confirm for the record if any had had ex parte communications with any of the applicants or their representatives. Mr. Groh stated they 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 were 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 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 had 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; 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; confirmed that while the event is self-contained the estimate revenue to the County remains the same and all local hotels will be occupied; 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. 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 Commissions²³

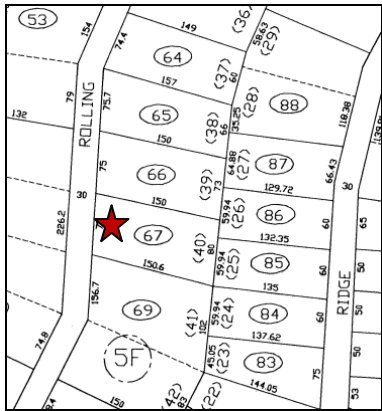
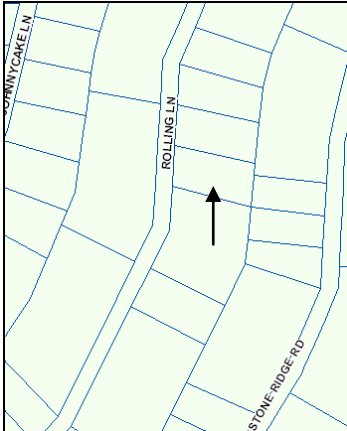
A. Board of Zoning Appeals

4. The Board of Zoning Appeals shall consider requests for variances from the terms of the Ordinance.²³
 - 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.^{17, 21}
 - 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 Exceptions³

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

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

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, 2nd Floor, P.O. Box 338

Charles Town, WV 25414

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

Phone: (304) 728-3228

Email 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

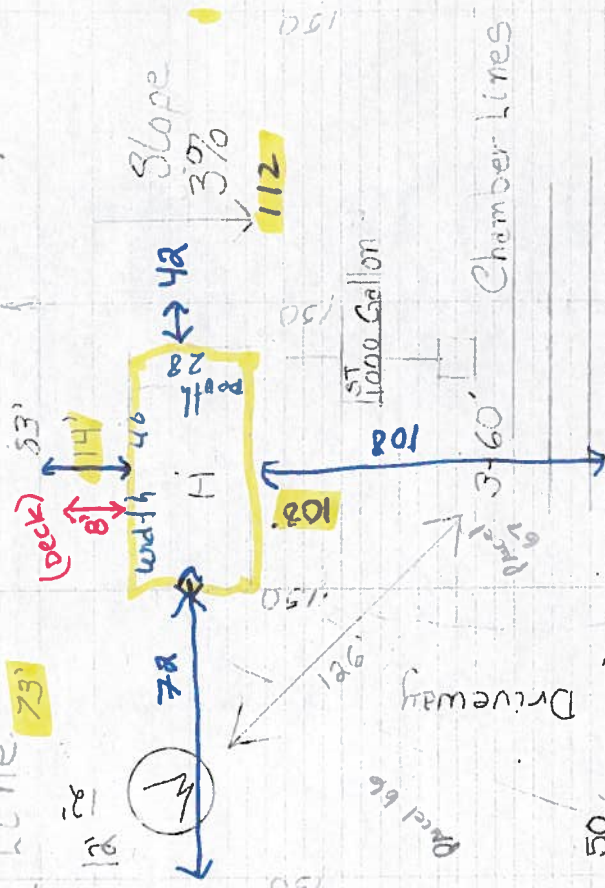
October 30, 2013
Placard Posting Date

*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'

Rolling lane

RECEIVED

SEP 26 2013

JEFFERSON COUNTY PLANNING, ZONING & ENGINEERING

Susan Taylor
304 359-2110
Hse Width 40'
Depth 28'
1,120 sq ft
H: 11 17 feet

(W)

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 18, 2013

Bill and Belinda Lewis Variance Request (#ZV13-35)

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a variance from Section 4.3B to re-establish a nonconforming commercial use. The applicant has stated that the property has been continuously market for commercial purposes since the J&M Homes and J&M Motor Company ceased to operate on the property; however, no documentation to that effect was available to submit as it was all occurring by the owner and word of mouth marketing. For this reasons, the applicant is applying for a variance from the Section 4.3B which contains the provisions of the Zoning Ordinance stating “whenever a nonconforming use has been abandoned for a period of twelve (12) months, such use shall not be reestablished”.

Staff does not dispute that the property has been used for non-residential and non-rural purposes since before 1988 when zoning went into effect in the County.

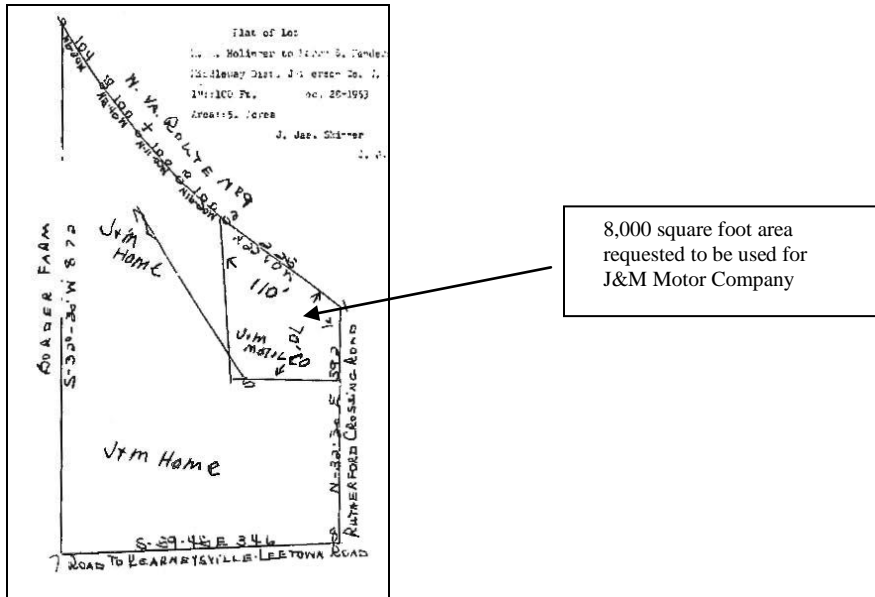


2. Previous Case History

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

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 18, 2013

Bill and Belinda Lewis Variance Request (#ZV13-35)



The applicant wishes to reestablish a nonconforming commercial use that appears to have ceased on a parcel with a significant nonresidential background. The exact timeframe is unknown; presumably prior to the adoption of zoning ordinances.

The previous change in nonconforming use indicated that the motor home sales would be located where depicted above where the applicant would like their wholesale sales area.

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 4.3B of the Zoning Ordinance establishes that, whenever a nonconforming use has been abandoned for a period of twelve months, the use shall not be reestablished and any future use shall comply with the Zoning Ordinance.

The Zoning Ordinance defines "Abandonment or Abandoned" as:

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 18, 2013

Bill and Belinda Lewis Variance Request (#ZV13-35)

“The relinquishment of property or cessation of the use of the property by the owner or lessee without any intention of transferring rights to the property to another owner or resuming the nonconforming use of the property for a period of one year.”

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.

It should be noted that a nonconforming use may only be substituted for other comparable nonconforming uses at a staff level, only with an approved zoning certificate, and all other uses must be approved by the Board at a public hearing.

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

c. Unique characteristics of property

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

Below is a sketch of the applicant’s proposed layout for the flea market, wholesale area and existing structure with relevant photos for the BZA’s information. There are existing gravel areas along the front of the property where the proposed flea market spaces and wholesale area are located. In the rear there is a large area with gravel under the grass where customer parking could be accommodated. Paved handicapped spaces and a ramp are proposed near the proposed thrift store.

The property is large and has frontage on Border and Oak Tree Roads but no access related to the proposed business will relate to these two roads.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 18, 2013

Bill and Belinda Lewis Variance Request (#ZV13-35)

Applicant's Sketch Plat



Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 December 18, 2013

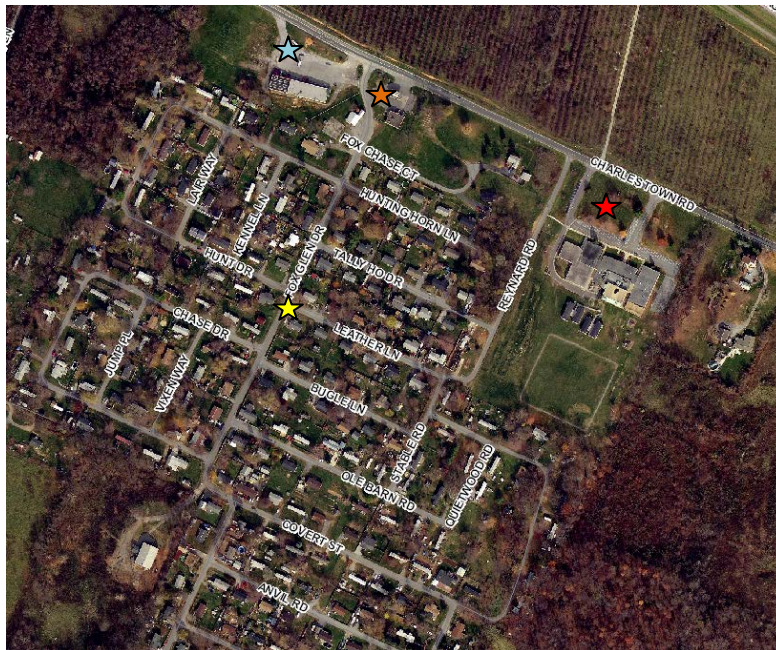
Bill and Belinda Lewis Variance Request (#ZV13-35)

d. Character of area

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



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



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

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 18, 2013

Bill and Belinda Lewis Variance Request (#ZV13-35)

e. Impact on adjacent properties

The proposed use will sit on a fairly large rural property (5 acres) and is proposed to occupy less than half of the property. While there may be an effect on properties across Old Charles Town Road, the property has always been a non-residential property and negative impacts could be mitigated with conditions of approval.

f. Feasibility of complying with the ordinance by other means

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

g. Conditions of Approval

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

- a. The owner of the property must seek a zoning certificate for each change in nonconforming use or change in tenant to ensure that the nonconformity of the subject parcel and structure is uninterrupted.
- b. The uses are limited to the areas depicted on the sketch and no access is permitted to occur other than that permitted by the WV DOH off Old Charles Town Road.
- c. All setbacks for commercial uses shall be met.
- d. Outside display is permitted while the flea market is open; however no other outdoor storage is permitted other than in the wholesale area. Conditions may provide more guidance as to appearance if the BZA chooses.
- e. If a principle permitted use is granted approval by the issuance of a zoning certificate, the nonconforming use shall cease to exist.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 4.3 Nonconforming Uses

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

- B. Whenever a nonconforming use has been abandoned for a period of twelve (12) months, such use shall not be reestablished and any future use shall be in conformance with the provisions of this Ordinance.^{5, 17, 21}



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: ZV13-35

Staff Initials: bc

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

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

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Variance Request

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

Property Owner Information

Name: Gilbert A. Mobley Sr.
 Mailing Address: 8291 Washington Blvd.
 City: Jessup State: Md Zip Code: 20794
 Phone Number: 410-792-9193 Email: _____

Applicant Information

Name: Bill and Belinda Lewis
 Mailing Address: 6468 Charlestown Rd
 City: Kearneysville State: WV Zip Code: 25430
 Phone Number: 304-725-5508 ~~Home:~~ Cell 304-240-7164

Engineer(s) or Surveyor(s) Information

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

Physical Property Details

Physical Address: 6468 Charlestown Rd
 City: Kearneysville State: WV Zip Code: 25430
 Tax District: MIDDLEWAY-07 Map No: 4 Parcel No: 8
 Parcel Size: 5 ac. Deed Book: 901 Page No: 642

Zoning District (please check one)

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JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

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

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

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

Reference the section of Ordinance pertaining to this request: 4.3B - CH 12/02/13

Briefly describe the nature of the variance request

① To be able to open Thrift Store and flea market to help people in need

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.

② I have woods and roads around the property therefore granting this variance will NOT adversely affect the public health, safety or welfare of adjacent property owners or residents.

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

I was under the impression that it was okay to operate our business on the property because it was always a commercial use, which is why I have put so much time and money into the business.

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

Since I have over \$6000.00 invested, already, granting this variance would help lessen my financial hardship

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

③ Granting this variance will allow the intent of the zoning ordinance to be observed and substantial justice to be done because it will enable me to use the property to benefit both myself and provide a service to the community.

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

X Gilbert A. Mobley
Gilbert A. Mobley SR 10-17-2013
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).

DECEMBER 18, 2013 11/27/13 12/03/13
Date of Public Hearing Advertising Date Placard Posting Date

#ZV13-35



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Highways

Office of the District Engineer/Manager
District Five

P. O. Box 99 · Burlington, West Virginia 26710-0099 · (304) 289-3521

Paul A. Mattox, Jr., P. E.
Secretary of Transportation/
Commissioner of Highways

Earl Ray Tomblin
Governor

May 14, 2013

Thrift Store & Flea Market
6468 Charles Town Road
Kearneysville, West Virginia 25430

To whom it may concern,

An Encroachment Permit Form MM-109 has been prepared by this office on your behalf.

Please have the enclosed permit signed where indicated, and return it to this office under the attention of Permit Review Larry Alt. Upon receipt of the signed permit, as well as further review by the District Engineer/Manager, your permit will be issued.

Should you have any questions or need additional information, please contact Mr. Alt at 304-289-2284 or Larry.A.Alt@wv.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Stanislawczyk".

Jeff Stanislawczyk
Design Engineer

JSS:k

Enclosure

Cc: Permit File

ZV13-35
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PLANNING, ZONING AND ENGINEERING

#ZV13-35

**WEST VIRGINIA
STATE TAX DEPARTMENT
BUSINESS REGISTRATION
CERTIFICATE**

ISSUED TO:
**BELINDA LEWIS
DBA THRIFT STORE AND MORE FLEA MARKET
6468 CHARLES TOWN RD
KEARNEYSVILLE, WV 25430-5050**

BUSINESS REGISTRATION ACCOUNT NUMBER: 2289-8163

This certificate is issued on: **10/8/2013**

*This certificate is issued by
the West Virginia State Tax Commissioner
in accordance with Chapter 11, Article 12, of the West Virginia Code*

*The person or organization identified on this certificate is registered
to conduct business in the State of West Virginia at the location above.*

This certificate is not transferrable and must be displayed at the location for which issued
This certificate shall be permanent until cessation of the business for which the certificate of registration
was granted or until it is suspended, revoked or cancelled by the Tax Commissioner.

Change in name or change of location shall be considered a cessation of the business and a new
certificate shall be required.

TRAVELING/STREET VENDORS: Must carry a copy of this certificate in every vehicle operated by them.
CONTRACTORS, DRILLING OPERATORS, TIMBER/LOGGING OPERATIONS: Must have a copy of
this certificate displayed at every job site within West Virginia.

atL006 v.4
L1755574336

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JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

**BEFORE DIGGING OR OTHERWISE DISTURBING
THE EARTH CALL: 1-800-245-4848 TO NOTIFY
MANY UNDERGROUND OWNERS* FREE SERVICE**

ZV1335

PERMIT NO. 05-2013-0236

PERMIT TO ENTER UPON, UNDER, OVER OR ACROSS THE STATE ROADS OF THE STATE OF WEST VIRGINIA, AS PROVIDED FOR IN §§17-16-6, 17-16-9 and 17-4-8, WEST VIRGINIA CODE, 1931, AS AMENDED.

THIS PERMIT, Made this 14th day of May 2013, between the WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS, a statutory corporation hereinafter called DIVISION and

Name: THRIFT STORE & FLEA MARKET

Address: 6468 CHARLES TOWN ROAD

Address: KEARNEYSVILLE, WV 25430 Phone No: (304) 725-5508

Email: _____ hereinafter called APPLICANT.

WITNESSETH

In consideration of the hereinafter set out covenants and in accordance with §§17-16-6, 17-16-9 or 17-4-8, of the Official Code of West Virginia, 1931, as amended, and the rules and regulations promulgated thereunder, APPLICANT does hereby apply to enter:

Route Type & No.: WV OLD 9 DOH Project No.: _____ (if applicable);
at south side of Old WV 9, 0.179 mile west of CR 1/2 (SLS) Mile Post: 2.451
in 19 - Jefferson County, for the purposes hereinafter set forth and in accordance with the plans and specifications which are attached hereto and made a part hereof:

To maintain 1-25' paved entrance to serve Thrift Shop & Flea Market. This work shall be constructed and maintained so that water and debris will not flow or be tracked onto the roadway. Should this parcel develop commercially any further, subdivide, or be located within a subdivision with internal access, this permit will be invalid. Applicant shall apply for a new permit to fit altered conditions. See attachment.

APPLICANT further agrees to accept the conditions hereinafter set forth:

1. APPLICANT shall deposit with DIVISION the sum of \$ _____ in the form of an official, certified or cashier's check, or executed bond with surety satisfactory to DIVISION to cover any damage and inspection costs DIVISION may sustain by reason of the granting of this permit, including any expense incurred in restoring said highway to its original condition or the proper repair of any and all damages that may result within one (1) year from the date of the completion of said work.

2. APPLICANT agrees to reimburse DIVISION for inspection costs as follows:

- A. For any inspection costs incurred under this permit.
- B. At \$ _____ per linear foot for _____ feet of water line installed under this permit.
- C. At \$ _____ per linear foot for _____ feet of sewer line installed under this permit.

3. APPLICANT shall notify DIVISION at least 48 hours in advance of the date the work will begin. Failure to comply will be cause for cancellation of this permit.

4. APPLICANT agrees to protect its employees, equipment and users of the highway at all times in accordance with the current Division of Highways manual "Traffic Control For Street and Highway Construction and Maintenance Operations".

5. APPLICANT agrees to comply with all applicable state and federal laws in the performance of work under this permit.

6. Supplementary conditions cited on the reverse side of this permit are understood and agreed to be part hereof.

7. The work authorized under this permit shall be completed on or before (Date); May 14, 2014.

Applicant's signature on this permit affirms that all text herein is a verbatim reproduction of The West Virginia Division of Highways Encroachment Permit Form MM-109, revision date May 19, 2005. All attachments are inclusive to this permit.

RECOMMENDED: [Signature]
Permit / Utility Supervisor

APPLICANT: [Signature] owner
Signature and Title of Applicant

BOND REQUIREMENT:
BOND NO: _____ DATE: _____

APPROVED: [Signature]
District Engineer / District Manager
West Virginia Division of Highways

INSPECTION: Periodic - NoCost

AUTHORIZATION NO. _____

PERMIT NO. 05-2013-0236

RECEIVED

NOV 08 2013

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

APPROVE!

JUN 07 2013

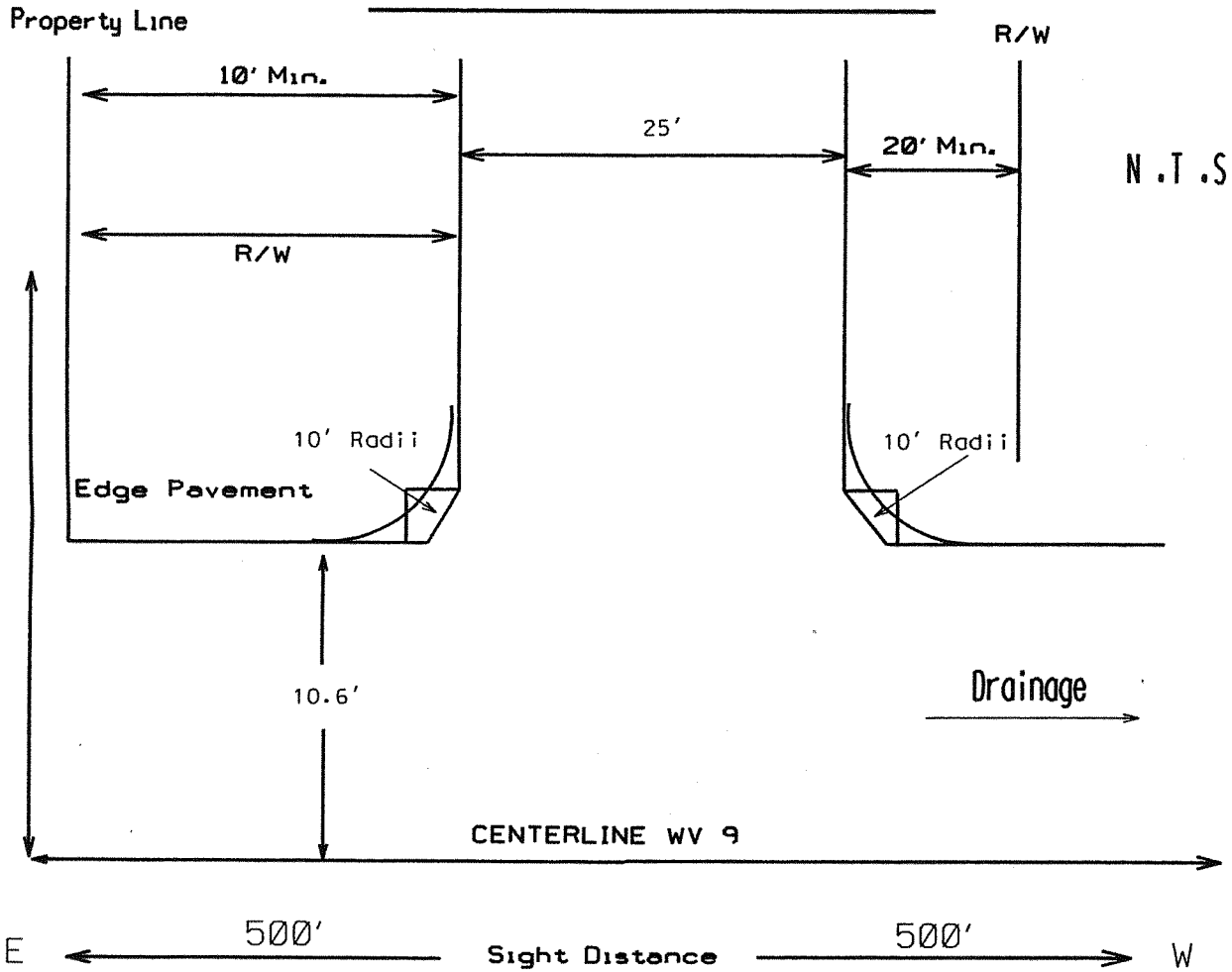
WV DOT
District 5

ADDENDUM

APPLICANT'S RESPONSIBILITY

1. Construct approach in conformance to permit and attached drawings.
2. Be sure that permit is in the possession of individual constructing approach and is followed.
3. Notify Division of Highways' County Office immediately upon completion of approach. If approach is not constructed in accordance to "Rules and Regulations for Constructing Driveways on State Highway Rights of Way", it will be the applicant's responsibility to correct.
4. The applicant shall maintain approach as follows:
 - A. If approach includes a culvert, it shall be kept clean as well as inlet and outlet end to the culvert.
 - B. If approach is on ascending (plus) grade, a depression shall be maintained over pipe to prevent water and debris from flowing into the highway.
 - C. If approach is constructed with a depressed gutter as specified on permit, it shall be maintained so as not to interfere with the purpose it was made.
 - D. Maintain the surface of the approach as specified on permit from edge of pavement to the right of way line.
 - E. Keep brush cut, tall grass cut and trees trimmed on both sides of the driveway for an unobstructed view of the roadway.
5. If this entrance is within a previously approved subdivision with internal access, this permit may be invalid.
6. This permit is for highway use only. Applicant is responsible for any permits required from other state and federal agencies (USACE, DNR, DEP, etc.).
7. The West Virginia Department of Transportation, Division of Highways Standard Specifications for Roads and Bridge, as adopted in 2010 and its 2011 Supplemental Specifications are to be the governing authority pertaining to materials and methods of construction within Division of Highways right of way. (This is to be used for any widening or major construction within Division of Highways Right of Way.)

Proposed Entrance



N.T.S

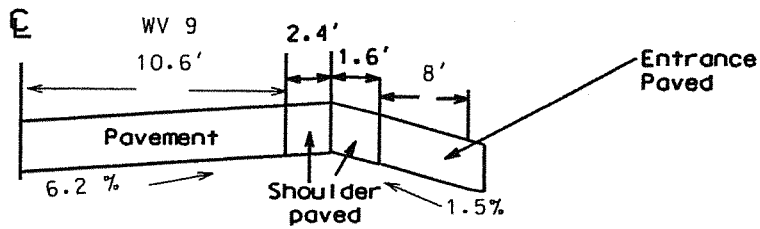
NO OBSTRUCTION PERMITTED BETWEEN PAVEMENT EDGE AND R/W LINE

REMARKS:

Need to close off the east and west entrance.
No parking along roadway

Posted Speed Limit 55 mph

Existing Section

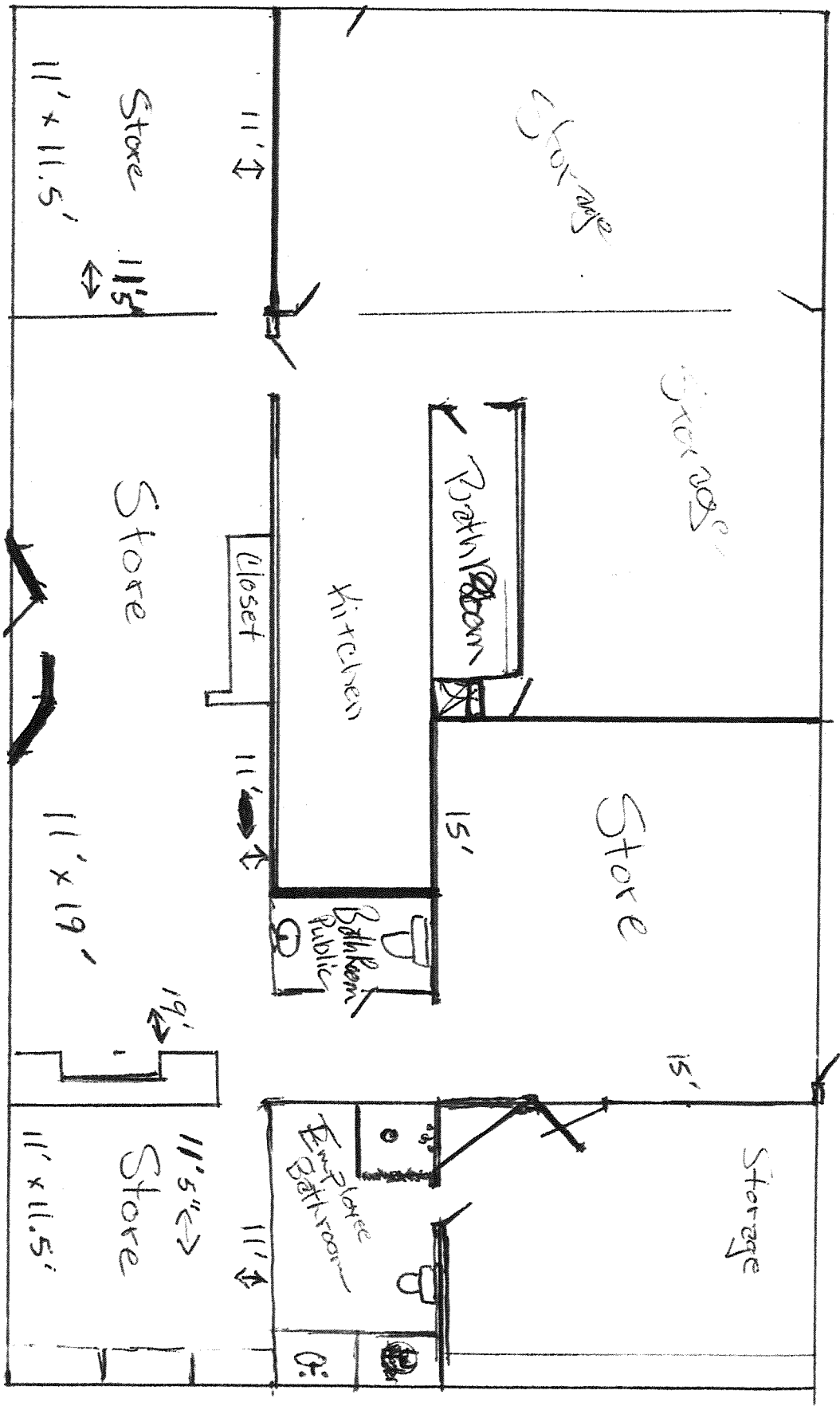


GPS
N 39.37377°
W 77.88838°

M P 2.451

NAME Thrift Store and Flea Market 304-725-5508
ADDRESS: 6468 Charles Town Road Kearneysville WV 25430
LOCATION: South side of Old WV 9
0.179 miles west of CR 1/2 SLS

COUNTY Jefferson
ROUTE Old WV 9
PROJECT _____
DATE _____



687 sq ft for Store Use
Thrift Store and more Flea Market
6468 Charles Town Road
Kearneysville, WV

Border Rd

Storage Trailer

Oak Tree Road

Storage Trailer

Extra Parking

Parking

Whole Sale Area

Employee Use

Private Parking

Thrift Store

Whole Sale Area

20' x 100' front

20' x 40' side

Charles town Road

Road

Wheel Chair Parking

20' x 24' (2) 10' x 24' Sections

Flea Market (only 9)

Spaces 1 to 12 are 20' x 20'

Spaces 13 to 15 are 10' x 40'

1 Space

2 Space

3 Space

4 Space

5 Space

13 Space

Space 8

14 Space

Space 10

15 Space

Space 9

Space 11

Space 12

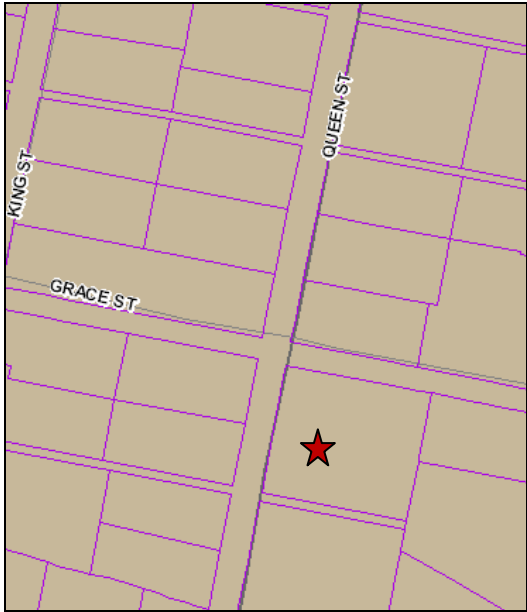
Space 16

Space 7

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 December 18, 2013

Bernard Heiler Variance Request (#ZV13-36)

Item #5 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.

APPLICANT:	Duane Dunn, Dunn’s Contracting, LLC
OWNER :	Bernard Heiler
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	7198 Queen Street, Kearneysville, West Virginia 25430
LEGAL DESCRIPTION & ZONING DISTRICT:	<p style="text-align: center;">District: Middleway (07); Map: 22B; Parcel: 27 Zoning Map Designation: Village (V)</p> 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North: V South: V</i> <i>East: V West: V</i>
VARIANCE(S):	10/17/91: BZA approved a reduction of the front setback from 20' to 11' for a proposed garage/workshop (ZV91-18).
APPROVED ACTIVITY:	Residential

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a variance from Section 5.10C *Setbacks*, in which subsection 1(a) requires an applicant building a residential structure to meet the Residential Growth Standards of Section 9.7 which, for a lot between 30,000 sq. ft. and 40,000 sq. ft., requires a 20' front yard setback. All sides of a lot abutting a street are required to utilize the front yard setback. The request is for a reduction of the front setback distance from 20’ to 12’ to allow for the construction of a 12’ x 18’ shed-roof overhang and a variance from Section 9.6C to permit a structure within the required front yard.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 18, 2013

Bernard Heiler Variance Request (#ZV13-36)

2. Previous Case History

The applicant is proposing to attach a lean-to roof structure to provide protection to the western edge of an existing 24' by 18' log structure which previously received a variance from the Board of Zoning Appeals to reduce the front yard setback from 20' to 11' (ZV91-18, Maish). The log structure was to be used as a garage/workshop at the time of the request. The overhang is to be offset approximately 1' from the log structure's present frontage along Grace Street.



View of the Structure from inside the yard behind Scollay Hall

3. Applicant's Justification of Request

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

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

4. Staff Evaluation of Request

a. Source and purpose of ordinance requirements

Section 5.10C.1(a) of the Zoning Ordinance refers you to Section 9.7, which establishes the setback requirements for residential properties in the Residential Growth & Village District. The Ordinance also makes some allowance for setbacks for existing structures, stating that the setbacks for these structures are, "As exists not less than 6' on sides and rear." This section

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 18, 2013

Bernard Heiler Variance Request (#ZV13-36)

implies that the intent of the Ordinance is to allow a certain degree of flexibility regarding setbacks in the Village District. For new structures, the standards of Section 9.7 apply. Because the home is located on a corner lot, a front setback applies to the street side yard. The subject property is between 30,000 – 40,000 square feet; therefore, the applicable setback would be 20’.

Zoning Ordinance Section 9.4 also allows for the minimum setback for a proposed building to be based on the average of at least two existing buildings on the same side of the street within 200’ of the proposed building. However, the ordinance states, “in no case shall the setback line be less than thirty-five (35) feet from the centerline of any abutting road or street.” Because the portion of Grace Street abutting the subject property has a right-of-way dimension of only 30 feet – or a 15’ distance from the road centerline to the property – this section of the ordinance does not provide relief to the applicant.



Photo of area where lean to/shed roof structure is proposed



Photo along front of existing log structure facing Grace Street (to the left)

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 18, 2013

Bernard Heiler Variance Request (#ZV13-36)

b. Unique characteristics of property

The subject property is approximately 0.826 acre in size. Lot width along Queen Street is 177 feet and along Grace Street is 202 feet, according to a survey provided. This lot is larger than many lots in Middleway. The existing logs structure is located approximately midway along the northern property line and therefore is not near any adjoining properties. There is also a six foot privacy fence and a four foot picket fence along Grace Street which minimizes potential effects on confronting properties.

In 1991, the applicant received a variance to construct a 24' by 18' log structure 11 feet from Grace Street. This application is for the purpose of constructing a lean-to roof to provide protection to the western edge of the log structure and additional storage space. Because the structure does not pre-date 1998, it cannot be considered an existing nonconforming structure for the purpose of this expansion.



Taken from driveway entrance to property, looking west along Grace Street

c. Character of area

The property is located in the Village of Middleway at the corner of Queen Street and Grace Street. It is occupied by a large house known as Scollay Hall and is surrounded by residential uses. It is located in the Village District, which is characterized by smaller lots and an existing development pattern. Several properties in the area include structures with shorter front and side yard setbacks.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 18, 2013

Bernard Heiler Variance Request (#ZV13-36)



Aerial View of Middleway - Right Image Includes Village Zoning Overlay

d. Impact on adjacent properties

One of the key purposes for front yard setback requirements is to allow sufficient room for future roadway expansion. However, in the case of the subject property, it should be noted that in addition to the existing log structure, there are other structures on nearby properties that are already located very close to the right-of-way. Many of the structures located in Middleway are located in the National Register Historic District; therefore, it appears unlikely that they would be demolished for the purpose of expanding a small side road such as Grace Street. As such, staff finds that the proposed variance would not have an impact on future right-of-way expansion.

Front setback requirements are also applied for the purpose of maintaining neighborhood character. Based on the photographs below taken by staff during a routine site visit to the property, it is evident that shorter front setbacks are a common feature of the neighborhood. For this reason, staff finds that the proposed variance would not have a negative effect on the existing neighborhood character.

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December 18, 2013

Bernard Heiler Variance Request (#ZV13-36)



Taken from the front of the existing log structure, looking across Grace Street



Across Grace Street from log structure

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 18, 2013

Bernard Heiler Variance Request (#ZV13-36)



Taken from the edge of Grace Street along front of existing log structure

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



Eastern Edge of the Log Structure

5. Conditions of Approval

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

The variance applies only to the proposed lean to/shed roof described in the application.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 18, 2013

Bernard Heiler Variance Request (#ZV13-36)

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 5.10 Village District

C. Setbacks

1. Residential

a. Section 9.7, Residential Growth standards

Section 9.7 Other Exceptions

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:

Residential Growth District

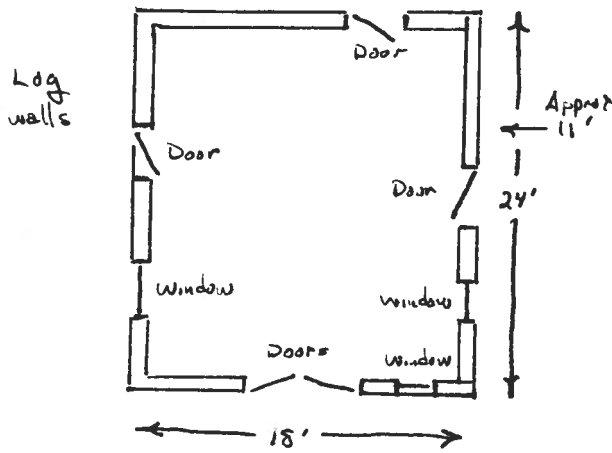
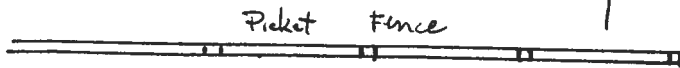
Single family residences –

Over 40,000 square feet --	25' front, 12' side and 12' rear
30,000 sq. ft. to 40,000 sq. ft.--	20' front, 10' side and 12' rear
Under 30,000 square feet --	20' front, 8' side and 12' rear

Section 9.6 Accessory Structures

Accessory structures, defined by Section 2.2, shall be permitted in all districts where single-family and two-family dwelling units are permitted. The provisions for accessory structures are as follows.

C. No accessory building shall be erected within the required front yard.



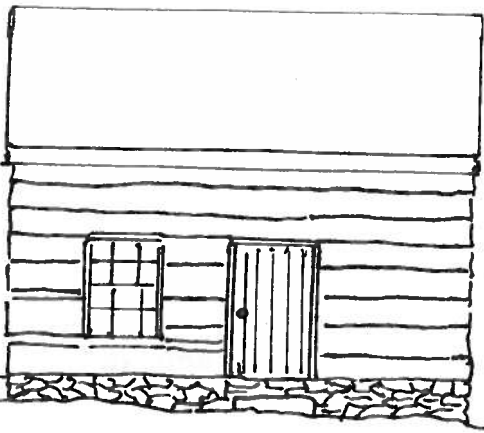
6-8'
To street

Property line

GRACE STREET

JEFFERSON COUNTY PLANNING COM

AUG 30



Shingle roof.

Field stone
Faced foundation
over concrete block
Stones match in
thickness in
neighborhood.

Log structure
(pre-revolution)
Original doors
and windows

Log structure

Approximate Appearance of Structure



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: ZV13-36

Staff Initials: AB

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

Variences 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: Bernard Heiler
Mailing Address: P.O. Box 1104
City: Charles Town State: WV Zip Code: 25414
Phone Number: 304-725-0637 Email: _____

Applicant Information

Name: Duane Dunn / Dunn's Contracting LLC
Mailing Address: 5534 Lectown Rd
City: Kearneysville State: WV Zip Code: 25430
Phone Number: 304-261-6500 Email: thedunnranch@frontiernet.net

Engineer(s) or Surveyor(s) Information

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

Physical Property Details

Physical Address: 7198 Queen St
City: Kearneysville State: WV Zip Code: 25430
Tax District: Middleway Map No: 22B Parcel No: 27
Parcel Size: .83 acre Deed Book: 1124 Page No: 354

Zoning District (please check one)

RECEIVED NOV 12 2013 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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> <i>GH</i> 11/26/13

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: Article 9.4 5.10C.1(a) + 9.6C

Briefly describe the nature of the variance request 8th 11/26/13

For adding ^{shed} roof structure on West side of Log Building to provide protection to weathered logs and provide storage, need it closer to street than allowed and would like it to be 12' in size as opposed to 8.75' that is allowed with the 35% of structure size

If this request is for a setback variance, please one of the following Front Setback Side Setback Rear Setback Reduction From 20' to 12' 8th

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.

A variance was already issued for the log structure 20+ years ago, there is a 6' privacy fence between these structures and the street, and it is basically in the middle of that side of the lot so it is a good distance from adjacent lots.

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?

Again, a variance was issued 20+ years ago to allow the log structure to be built so close to the street and now the weathered west side logs need protection in the form of a shed roof which can also be used as storage.

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

The shed roof will help maintain & protect the log structure which in turn will help keep the visual integrity of the historic village

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

Middleway district has so many houses/structures with very short setbacks and to change that with this shed roof would make it look well out of place if not built adjacent to the log structure and it would be of no protection from weathering.

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.

Bernard Heeler 7 NOV '13
Signature of Property Owner Date

Signature of Property Owner Date

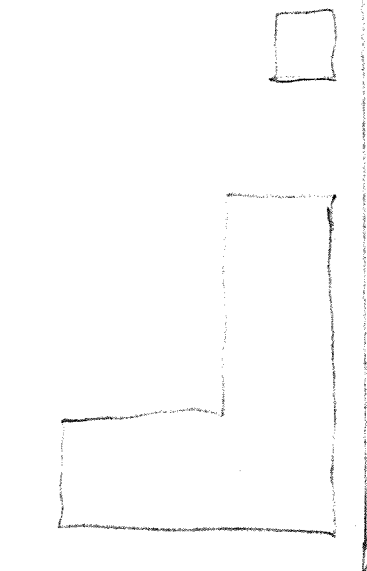
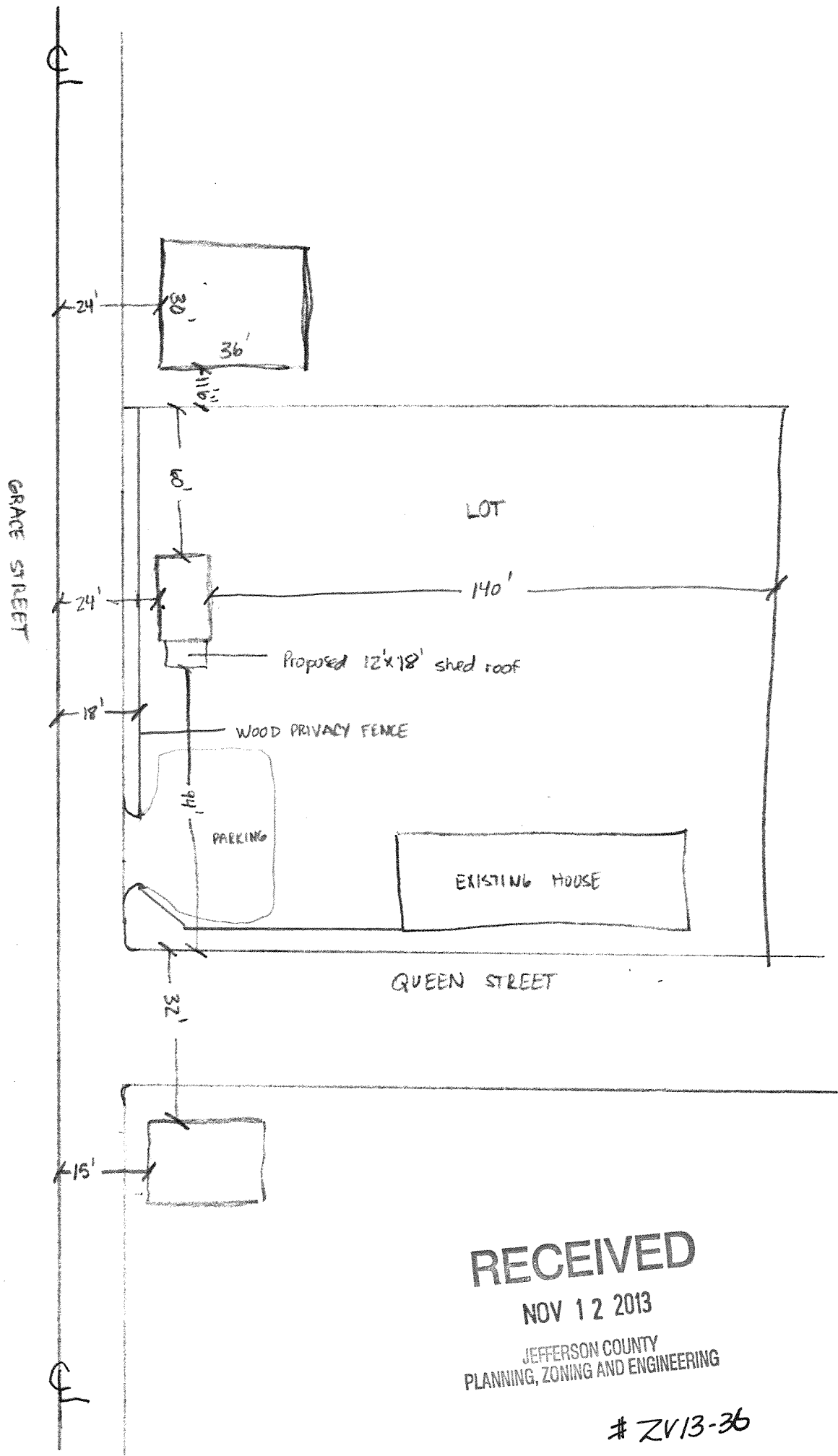
Notification Requirements (to be completed by staff)

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)).

12/18/13
Date of Public Hearing

11/27/13
Advertising Date

12/09/13
Placard Posting Date



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 JEFFERSON COUNTY
 PLANNING, ZONING AND ENGINEERING

ZV13-36

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 18, 2013

RAI GROUP 41, LLC Variance Request (#ZV13-37)

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a variance from Section 5.6D.5 for a reduction of the parking and access drive side setback distance from 10' to 0' and Section 4.11A to reduce the landscape buffer between two commercial properties from 10' to 0', to allow for the re-subdivision of an existing non-residential lot, Parcel 93(referred to as Lot 41), occupied by two existing office buildings, to create two individual commercial lots (Lots 40 and 41) with cross access easements.

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 plans for the two buildings were approved in 2003 and 2006. Both buildings have been constructed and occupied; however, there is now interest in selling them separately, which requires the requested variances.

3. Applicant's Justification of Request

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

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

4. Staff Evaluation of Request

a. Source and purpose of ordinance requirements

Section 5.6 of the Zoning Ordinance establishes setbacks for buildings, parking areas, and drive aisles associated with commercial developments. Section 4.11A establishes landscape buffers between commercial uses. As noted in the applicant's response on the variance application form, these requirements were not designed for the creation of a unified office park in which the traffic circulation, parking and landscaping was master planned in a cohesive manner. In this case, two office buildings occupy a single lot with shared parking and access and mature landscaping. 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 configuration or disturb the existing mature landscaping.

In similar cases, on January 17, 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). On the same date, the Board approved a variance request by the Bank of Charles Town to reduce setback and buffer requirements along interior lot lines between adjacent commercial lots, for the development known as 340 Business Park (#ZV12-34). (Prior approvals by the Board do not necessarily indicate precedent because of the unique circumstances of each case.)

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 18, 2013

RAI GROUP 41, LLC Variance Request (#ZV13-37)



Front View of Property Between the Existing Buildings (where the property line is proposed)



Rear View of Property

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 18, 2013

RAI GROUP 41, LLC Variance Request (#ZV13-37)

b. Unique characteristics of property

The size and shape of the property are not unusual. The property does have unique characteristics in that it has existing drive aisles, parking area, and two completed buildings.

One issue that exists is the location of an existing smoking shelter which is in the approximate location of the proposed property line. This structure will have to be moved prior to the approval of the minor subdivision required to create two separate lots.



Front of Smoking Shelter located where Property line is Proposed



Rear of Smoking Shelter located where Property line is Proposed

Additionally, the location of the utility boxes in the approximate location of the new property line will require an easement to be located on both properties when the subdivision is processed.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 18, 2013

RAI GROUP 41, LLC Variance Request (#ZV13-37)

c. Character of area

The property is located in an industrial park. Properties located to the east (behind the buildings) and west (across East Burr Boulevard) are vacant, platted lots within the Burr Industrial Park subdivision. The adjacent property to the northeast is occupied by the Peter Burr House, the oldest standing wood frame structure in West Virginia, owned and maintained by the Jefferson County Historic Landmarks Commission. 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.

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Jefferson County Board of Zoning Appeals Meeting
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RAI GROUP 41, LLC Variance Request (#ZV13-37)



e. Feasibility of complying with the ordinance by other means

It appears possible for the lots to be subdivided and retrofitted without need of the requested variances; however this would greatly negatively affect traffic flow and the unified nature of the existing development. Additionally, significant development improvements (buildings and paving) currently exist on the site and would need to be reconfigured in order to meet setback and buffering requirements, resulting in unnecessary costs, impede the flow of traffic and have no benefit to the public.

5. Conditions of Approval

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

- a. The variance applies only to internal lot lines between the existing buildings;
- b. The subdivision plat for the development shall include easements to allow access between the two lots and easements related to the existing utility boxes;
- c. The existing smoking shelter would have to be moved outside any required setback lines.

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Jefferson County Board of Zoning Appeals Meeting
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RAI GROUP 41, LLC Variance Request (#ZV13-37)

Staff also noted that there were some issues with the landscaping and would like to make the applicant aware that they are required to maintain and replace any landscaping that dies or fails to provide the required buffer. Additionally, it was noted that the dumpster is not located within the area provided within in which it would be blocked from view of the neighbors. The dumpster should be relocated where required.



Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 18, 2013

RAI GROUP 41, LLC Variance Request (#ZV13-37)



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.⁵

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.*



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: ZV13-37

Staff Initials: CR

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

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

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Variance Request

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

Property Owner Information

Name: RAI GROUP 41, LLC / RAI Properties, LLC

Mailing Address: PO Box 790

City: Charles Town State: WV Zip Code: 25414

Phone Number: 304/728-6225 Email: jkuland@citlink.net

Applicant Information

Name: Jim Ruland

Mailing Address: Same

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Email: _____

Engineer(s) or Surveyor(s) Information

Name: Appalachian Surveys, PLLC: Contact 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 41 and Lot 40 Phase 1, Burr Industrial Park (130 and 150 E. Burr Blvd.)

City: Kearneysville State: WV Zip Code: 25430

Tax District: Charles Town Map No: 1 Parcel No: 93

Parcel Size: 2.32 Acres Deed Book: 1027 Page No: 463

Zoning District (please check one)

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

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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: Section 4.11A and Section 5.6D.5

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 10 to 0

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

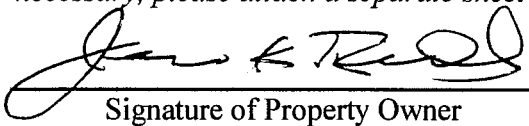
How will granting this variance eliminate an unnecessary hardship and permit a reasonable use of the land?

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.

 11/22/13
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)).

12-18-13 @ 3:00 pm
Date of Public Hearing

11-27-13
Advertising Date

12-3-13
Placard Posting Date

**RAI GROUP 41, LLC
RAI Properties, LLC
Request for Variances
Article 4, Section 4.11.A
Article 5, Section 5.6.D.5
Jefferson County Zoning Ordinance
November 22, 2013**

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NOV 22 2013

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Brief Description of Request:

RAI Properties, LLC (RAI) is seeking variances from Article 4, Section 4.11.A and Article 5, Section 5.6.D.5. Section 4.11.A requires a 10 feet landscape buffer between commercial lots and Section 5.6.D.5 requires a 10 feet side setback (actually 4', but due to the buffer requirement it equals 10') for parking and access aisles.

This request is due to the uniqueness of the history of this property. Lot 41 is actually two former commercial lots and a portion of a third that were merged into one parcel due to circumstances that arose during the processing of the site plan on the second lot. In 2003, RAI processed a complete site plan for a two story, 12,000sf office building on Lot 41 in the Burr Industrial Park. RAI received County approval of this site plan. In 2004, RAI began the processing of a second, similar office building on Lot 40, which was adjacent to Lot 41. The site plan for the second office building (on Lot 40) was approved in 2006. However, because it made sense to all parties, especially the prospective tenant who would occupy both buildings, RAI wanted to connect the parking lots and driveways to provide interconnectivity between the parcels. However, because of Sections 4.11.A. and 5.6.D.5, this connectivity would have required variances from these provisions. Unfortunately, since RAI had a contract to lease the building on Lot 40 to a federal government agency, RAI could not expend an additional 2 months to process and receive a variance from these two sections of the zoning ordinance. Therefore, RAI asked the Planning Commission for permission to allow the merger of the two lots to create one parcel with both office buildings. The Planning Commission approved this request which temporarily alleviated the need for the zoning setback and buffer variances. This allowed RAI to go forward with the needed construction to satisfy General Services Administration (GSA) schedule requirements.

RAI also purchased and merged a piece of land from an adjacent parcel in the industrial park to the east to expand parking beyond that required by the County for the benefit of the tenants.

Presently, because of potential contracts with the GSA for one building and a private sector company for the other, RAI needs the properties subdivided back into the original two parcels (with the added strip to the east split between the two lots). It should be noted that independently, Lots 41 and 40 already received site plan approvals by the County for meeting all of the standards, except for the variances for the buffer between the lots and the parking lot and access aisles. These are the same variances needed in 2006, but were avoided by the merger because of the urgency of GSA occupancy of the then new office building. It is important to note that no setback variance is needed between the buildings, because they were planned and built to the appropriate setback needed for each lot.

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JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

RAI GROUP 41, LLC
RAI Properties, LLC
Request for Variances
Article 4, Section 4.11.A
Article 5, Section 5.6.D.5
Jefferson County Zoning Ordinance
November 22, 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 separate site plan for Lots 41 and 40 were independently approved by the Planning Commission. The two office buildings still will complement each other by shared amenities such as parking and access. RAI has succeeded in creating an overall cohesive plan with buildings, uses and landscaping that complement each other.

Furthermore, neither of the variances will affect the perimeter of the property. Also, the project already has Highway and Health Department approvals for the development as designed. As such, the granting of the variances will only have a positive effect on the public health, safety or welfare; or the adjacent property owners' rights. As a matter of fact, closing the shared access drive would create more of a safety problem.

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?

RAI purchased many of these lots in the Burr Park to create a mini-office park. At the time, the County welcomed this unified-theme approach. Unfortunately, when the site plans were approved, the County's regulations were not conducive to connecting several commercial lots. Therefore, the variances are still necessary since the zoning ordinance has not yet been amended to permit these connections. However, according to the Staff, they are working on possible solutions to allow connectivity of adjacent commercial properties without the need for variances.

In the meantime, because of the decline in the economy in general and the commercial real estate market in particular, previously approved projects that were either merged or had more than one building on the lot, became more difficult to market and sell. Some of these projects have already come before the BZA to get the same variances to be able to subdivide into separate lots in order to be marketed individually. In this case, the special conditions are that the two office buildings already complement each other, so they shouldn't be separated by a buffer. Likewise, common sense dictates that they should be permitted to access each other's parking areas and drive aisles. These variances would have been requested at the time of the original developments; however, as explained in the description, the GSA restrictions required that the project move forward. Otherwise, the Applicant would have risked losing the GSA contract.

The fact that the project 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 won't adjust anything on the property. There will be no change to the function or appearance of the two buildings or development. The recreated parcels (40 and 41) will look and function exactly as they do now. This request, if granted, will merely give the Applicant the ability to sell the buildings individually should that requirement arise.

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 is not granted, then the two lots will be prevented from sharing a parking lot and access drive. Good planning now recognizes that commercial properties should be connected with shared amenities. Interconnectivity between properties for access and shared parking have become priorities for the County and local municipalities. Additionally, a site wide, County approved landscaping plan was used in order to achieve that sense of cohesion. Requiring a buffer between the lots would actually prevent that sense of connection between these properties

If the variances aren't granted, the two buildings will not be able to be sold separately without destroying the parking lot and closing the lots off to each other. The connection between the two office buildings would have to be closed. This could possibly prevent a deal to lease or sell one of the buildings to the federal government and the other building to a private sector company. The approval of this request will merely allow RAI to sell the already approved project to separate entities. RAI is currently in negotiations with several entities that have an interest to buy or lease the buildings separately. One of these entities is a federal agency and it may be necessary to act quickly in order to close the deal. RAI is attempting to resolve this issue now in order to avoid a time crunch as was encountered in 2006.

The Planning Commission has already determined that these two projects, as designed, 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 RAI the flexibility it needs to market the two buildings separately without changing the appearance of the development. Most importantly, the granting of these variances will allow the two office buildings to continue to appear as one cohesive project. The sharing of the parking and access between office buildings makes complete sense from a land management and planning standpoint.

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

The purpose of a buffer between lots is to help shield incompatible uses from each other. In this case, the two lots contain complementary office buildings. The buffer would totally break up the connection of these compatible uses. This type of buffer is more appropriate between commercial and industrial uses or commercial retail and commercial service uses. It was never intended to buffer two compatible uses from each other. The County should encourage a master planned commercial office area that complements each user, as opposed to requiring each user to be separated. The intent of the parking and drive aisle setbacks is so that neighboring properties aren't impacted by pavement on the property line and by conflicting

traffic patterns. The ordinance, however, was written before the County embraced connectivity and the sharing of amenities on adjacent properties. Now, the County encourages this connectivity.

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 case, the development is a master planned business center that all potential owners and/or leasees will understand was designed to function together. Plus, the new owners and/or tenants will also understand that there is an easement for the parking and access drives. As such, they will have advance knowledge of how the development was approved.

The entire intent of the Zoning Ordinance and Subdivision Ordinance remains intact if RAI is permitted to separate the project into the two individual phases that were originally approved. All of the design standards of the ordinance have been met in the two Site Plans that were submitted and approved. Again, nothing from a design standpoint will change from what is already approved. Furthermore, 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 that RAI can re-subdivide the property into the two lots that were originally approved by the Planning Commission. This would allow the project to continue to thrive in an economically feasible manner if an entity was interested in purchasing just one of the buildings. This will also help RAI in their negotiations with the federal agency that is currently interested in one of buildings.

NOV 22 2013

Introduction

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

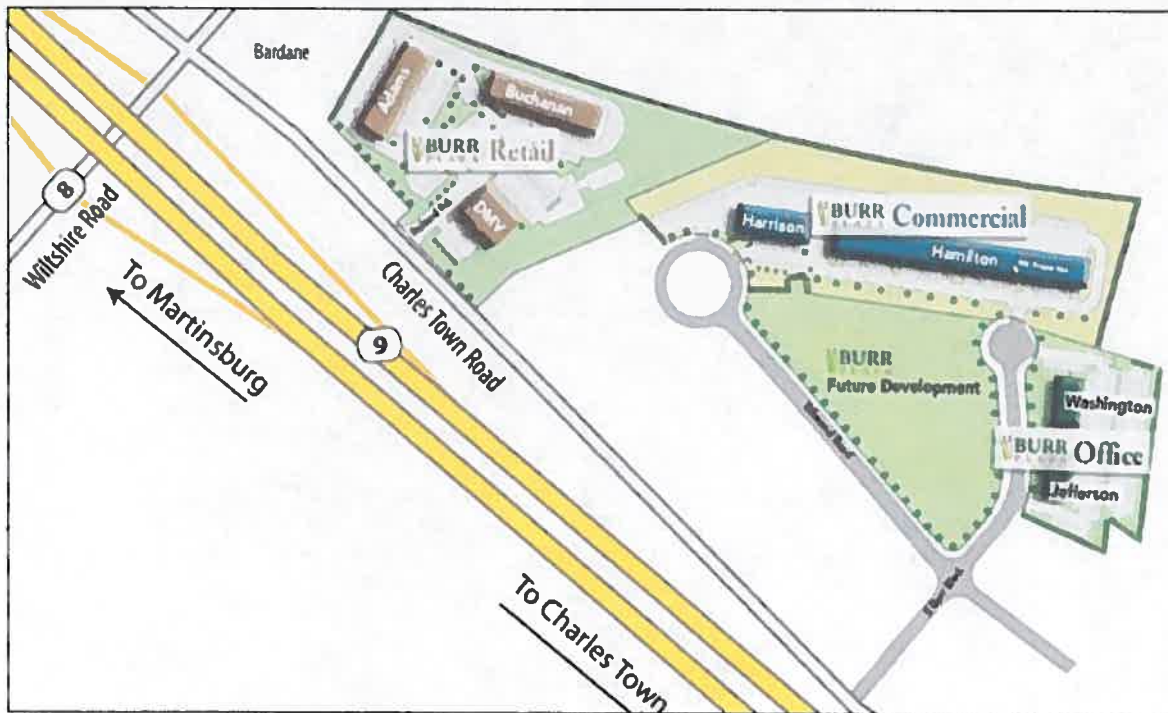
RAI Properties and BURR Plaza

RAI Properties, LLC was founded for the express purpose of fostering economic development here in Jefferson County, and has not engaged in any other building or development projects anywhere else. Our core belief was then and is now that more suitable, state of the art infrastructure would lead directly to company investment, job creation and improved economic conditions here close to home.. We have shared the Development Authority's goal of improving the economic climate in Jefferson County since 2003, when we purchased the first of five lots in Burr Park and began constructing office, commercial and retail space to meet the needs of small to mid-size businesses. To date, RAI Properties has invested more than \$10M to advance these goals. Twenty-six companies, with more than 450 employees now work in our "park within the park" and we have become the largest stakeholder in Burr Park.

RAI Properties is a values-driven company with a unique management mindset: that the ethics of an organization have as much to do with its achievements as do its management and technical expertise. We believe that doing business by doing the right thing is the only acceptable behavior. We believe that operating from the ethical high ground in accordance with all applicable laws and standards of conduct is entirely consistent with the goals of profit and perpetuity. These core beliefs guide us in all that we undertake.

Jim Ruland is the Managing Member of RAI Properties. He was also founder and principal of Ruland Associates, Inc. (RAI), an Information Technology solutions company that he guided from 1986 to 2011. Jim served as Jefferson County Commissioner (1997-2002), and was a JCDA Board Member during that period. Jim also spent twenty years uniform, and holds the rank of Commander, USN, (Retired). He has a Masters Degree in Business Administration.

RAI Properties has developed a 19+ acre business park, known as BURR Plaza, with 100,000sf of modern commercial and office space, all within the tax advantaged boundaries of county-owned Burr Park. We are located at the intersection of WV Route 9 and WV Route 8, about midway between Charles Town and Martinsburg, with visibility from and direct access to WV Route 9.



BURR Plaza Site Plan

KEY FEATURES:

- **State-of-the-Art Infrastructure.** Our facilities are state of the art, Energy Star rated, and International Building Code and Americans with Disabilities Act (ADA) compliant. All buildings include robust communication capabilities, high-speed Internet connections and centralized management of voice, video and network resources. The campus is served by major satellite, cable and mobile phone providers.
- **Competitive Rates.** Our lease rates compare very favorably, with no Common Area Maintenance (CAM) charges, or B&O or municipal taxes to pay.
- **Economical Build-outs.** We build all of our buildings ourselves and have the capability to accomplish any and all modifications needed to configure your space to your exact requirements. We provide this service at our cost of labor and materials, which results in significant cost savings to the tenant. Our flex-space construction (no interior load-bearing walls) will allow us to meet your precise space requirements both efficiently and economically.
- **Business-Friendly Flexible Leasing.** We know that when it comes to leasing, one size does not fit all. We will develop a customized lease arrangement that meets the individual requirements of your business and your budget.
- **Safe & Secure Work Environment.** We designed these buildings with controlled access, security monitoring and ample outdoor lighting to provide the peace of mind that comes from working in a safe and secure environment.
- **On-Site Management.** RAI Properties has located its company office within Burr Plaza in order to quickly respond to immediate service and emergency requirements. Five full-time staff members, including a property manager and maintenance, repair and grounds keeping personnel, are dedicated to attending to the needs of all of our tenants. From administrative queries to snow removal, we are here (Adams Building, Suite F) to serve.
- **Local Ownership.** The principals and employees of RAI Properties live here in the Eastern Panhandle. We operate Burr Plaza as if our personal reputations depended on it ... because they do.

BURR PLAZA RETAIL

The retail section of BURR Plaza consists of three single-story buildings totaling 30,000 square feet situated on a 6.24 acre lot (Lot 44) with 170 parking spaces. All three buildings are Structural Insulated Panel (SIP) constructed providing superior energy efficiency. The regional Department of Motor Vehicles (DMV), constructed in 2006, anchors the retail and services an estimated three to four hundred vehicles per day.



West Virginia Department of Motor Vehicles Regional Office

The DMV was attracted by the Property's ideal location on the main commuter route between Jefferson and Berkley Counties with immediate access to regional commuter routes and a traffic count which is approaching 40,000 cars daily.

The Adams and Buchanan buildings were placed in service in 2007. Retail tenants draw from the traffic generated by the DMV, the over 450 hundred people who work in the BURR Plaza itself, the workforce of over 2,000 employees in the surrounding Burr and Bardane Industrial Parks, and the general population at large.



Adams Building

Retail Tenants in the Adams and Buchanan Building include the Plaza Stop-N-Go convenience store, Jones Nationwide Insurance Agency, Kings Pizza, Uptown Plaza Consignments, Errol's Barber Shop, Weight Watchers, RAI Property Management Office, SugarRush! Bakery, Darnell & Co. CPAs, WV University Home Health Care, Kohlhepp All State Insurance Agency and Kidz Kastle day care center



Buchanan Building

BURR PLAZA COMMERCIAL

The commercial flex section of BURR Plaza is situated on a 6.18 acre tract (Lot 43B) adjacent to the retail area with 84 parking spaces with easy ingress/egress. The Hamilton Building is a single-story structure totaling 32,400 square feet and features a design without interior load bearing columns or walls providing tenants with the ultimate flexibility. Each unit features restroom and break room facilities and administrative space toward the front, with work assembly or warehousing area and a loading area to the rear.



Hamilton Building

The Harrison Building is a 9,000sf single-story building located adjacent to the Hamilton Building. The Harrison Building utilizes SIP Panel construction, is also designed to accommodate build-to-suit configurations, and was placed into service in the fall of 2008.



Harrison Building

Commercial tenants include the Jefferson County Public Service District, EastRidge Health Care, Property Management People, Inc, the county's only kidney dialysis center, Bank of Charles Town, Home Team Pest Defense, CT Floors, Digital Management Corporation, Potomac River Group, and the Appalachian Trail Conservancy

BURR PLAZA OFFICE

The office section of BURR Plaza is located on 2.72 acres (Lot 41) adjacent to the flex space area with 142 parking spaces with easy ingress/egress. The Washington Building and the Jefferson Building are two-story buildings totaling 22,904 rentable square feet featuring separate, secure entrances with electronic key access and monitoring, rest room facilities, well-equipped kitchens, and open floor plans suitable for a variety of business applications. The Washington Building was built in 2004. The Jefferson Building was placed in service toward the end of 2006 and is home to the U.S. Coast Guard.



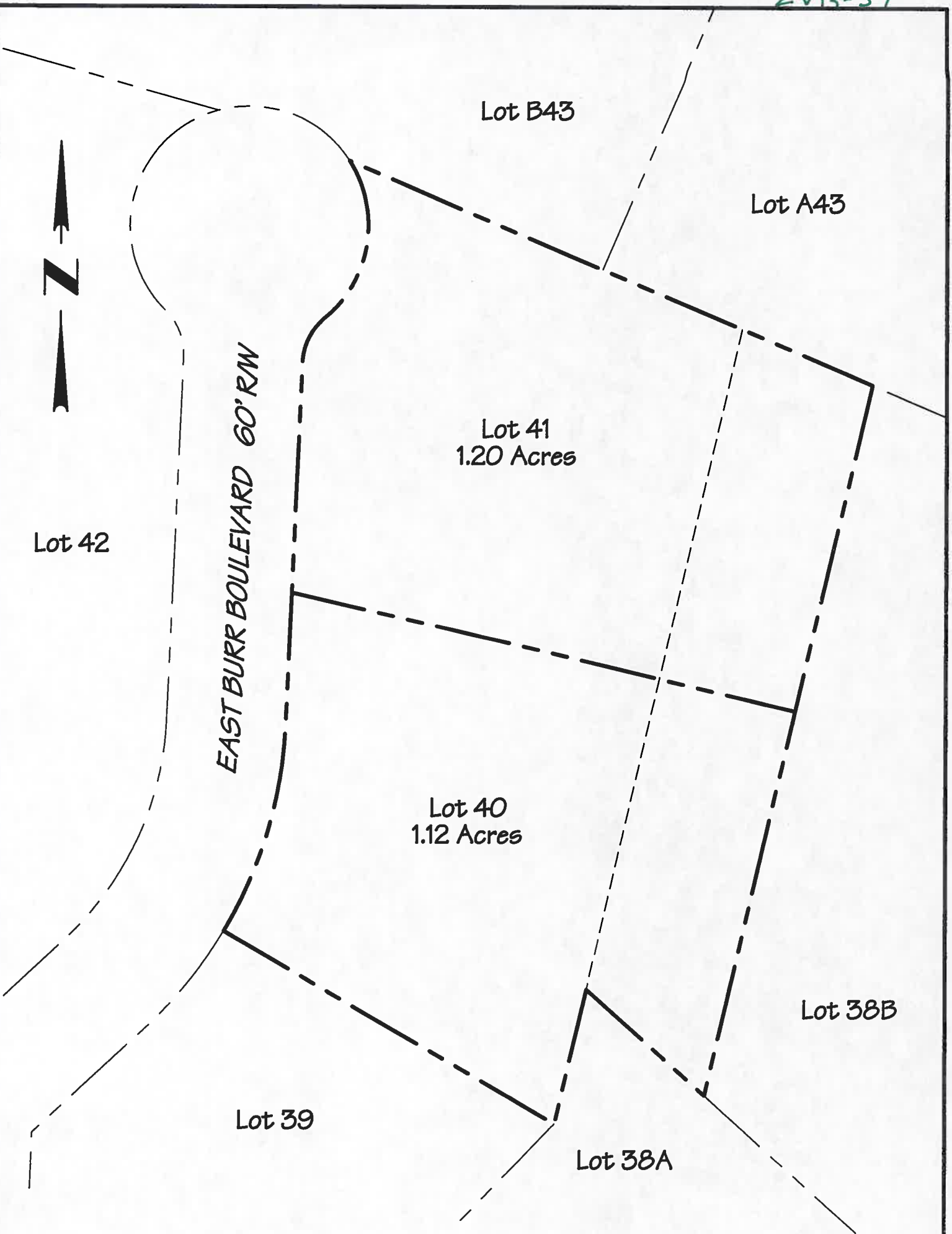
Washington and Jefferson Buildings

Crawl spaces allow for ease of access to wiring systems and first floor air handlers. Interior walls are painted drywall and the majority of the floor coverings are of commercial grade carpet. Doors and windows are insulated glass in aluminum frames. Both buildings have handicap accessible ramps, elevators and two ADA compliant restrooms on each floor. The Washington building has a light gauge steel frame with an insul-panel aluminum skin system for insulation and exterior finish and faux stone lower fascia trim accent at the front. The hip roof is a "maxi-rib" metal roofing system. The Jefferson Building consists of SIP panel construction with cementuous "stucco" siding and faux stone lower fascia trim accent at the front. The Jefferson building has a SIP panel constructed roof covered with rubber.

SUMMARY

BURR Plaza is a modern, state-of-the-art business complex, centrally located in Jefferson County with direct access to major roadways and public transportation. An impressive list of government, commercial and retail tenants are proud to call BURR Plaza home

RAI Properties is a veteran-owned small business with a ten year track record of successful commercial construction and property management that has made significant contributions to the economic climate of Jefferson County.



Lot 42

Lot B43

Lot A43

Lot 41
1.20 Acres

EAST BURR BOULEVARD 60' RW

Lot 40
1.12 Acres

Lot 38B

Lot 39

Lot 38A

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JEFFERSON COUNTY

John E. Treadwell
11/22/13

Sketch Plat Showing Proposed

RAI Group 41 LLC
Variance and Resubdivision

Appalachian Surveys, PLLC

401 S. FAIRFAX BOULEVARD, SUITE 3
RANSON, WV 25438-1611
PHONE: 304.724.5008
FAX: 304.724.5010

WWW.APPALACHIANSURVEYSPLLC.COM

November 21, 2013
1" = 60'

#ZV13-37

#2013078

TM 1 P 27.5
RAI GROUP 43B, LLC
DB 982 PG 746



Scale 1" = 60'

TM 1 P 27.4
JEFFERSON COUNTY HISTORIC
LANDMARKS COMMISSION
DB 983 PG 4

LEGEND:
○ FOUND #5 REBAR
● SET #5 REBAR

WEST VIRGINIA STATE GRID
NORTH ZONE
EAST BURR BOULEVARD
60' R/W

LOT 41
39854 SQ FT
0.9149 ACRES
TM 1 P 93
RAI GROUP 41, LLC
DB 985 PG 25
2.3153 ACRES AFTER MERGERS

LOT 40
36244 SQ FT
0.8321 ACRES
TM 1 P 92
RAI GROUP 40, LLC
DB 985 PG 23

OLD BOUNDARY LINE

NEW BOUNDARY LINE

TO BE MERGED WITH
PARCEL 27.3
PARCEL 93
24754 SQ FT
0.5683 ACRES

TM 1 P 27.3
SCHONSTEDT INSTRUMENT COMPANY, LLC
DB 997 PG 414
5.2317 ACRES REMAINING AFTER MERGER
(PER TAX MAP)

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JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

TM 1 P 90
HAINES
DB 960 PG 315

TM 1 P 90
SCHONSTEDT INSTRUMENT
COMPANY, LLC
DB 968 PG 733

NEW LOT LINES ARE SETBACK COMPLIANT
WITH EXISTING IMPROVEMENTS

NUMBER	DELTA ANGLE	RADIUS	ARC LENGTH	TANGENT	CHORD LENGTH	CHORD DIRECTION
C1	28°15'49"	220.99	109.01	55.84	107.91	N 12°26'07" E
C2	48°11'23"	30.00	25.23	13.42	24.49	N 22°23'53" E
C3	83°33'53"	60.00	87.51	53.81	79.96	N 04°42'38" E

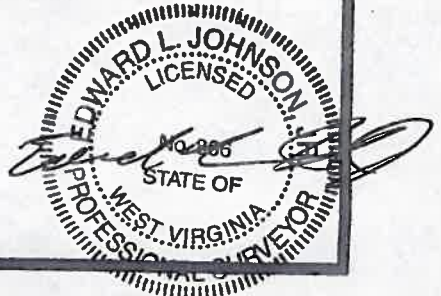
PLAT SHOWING A BOUNDARY LINE ADJUSTMENT AND CONSOLIDATION OF LOTS
BETWEEN THE LANDS OF

RAI GROUP 40, LLC
TAX MAP 1 PARCEL 92 DEED BOOK 985 PAGE 23
AND

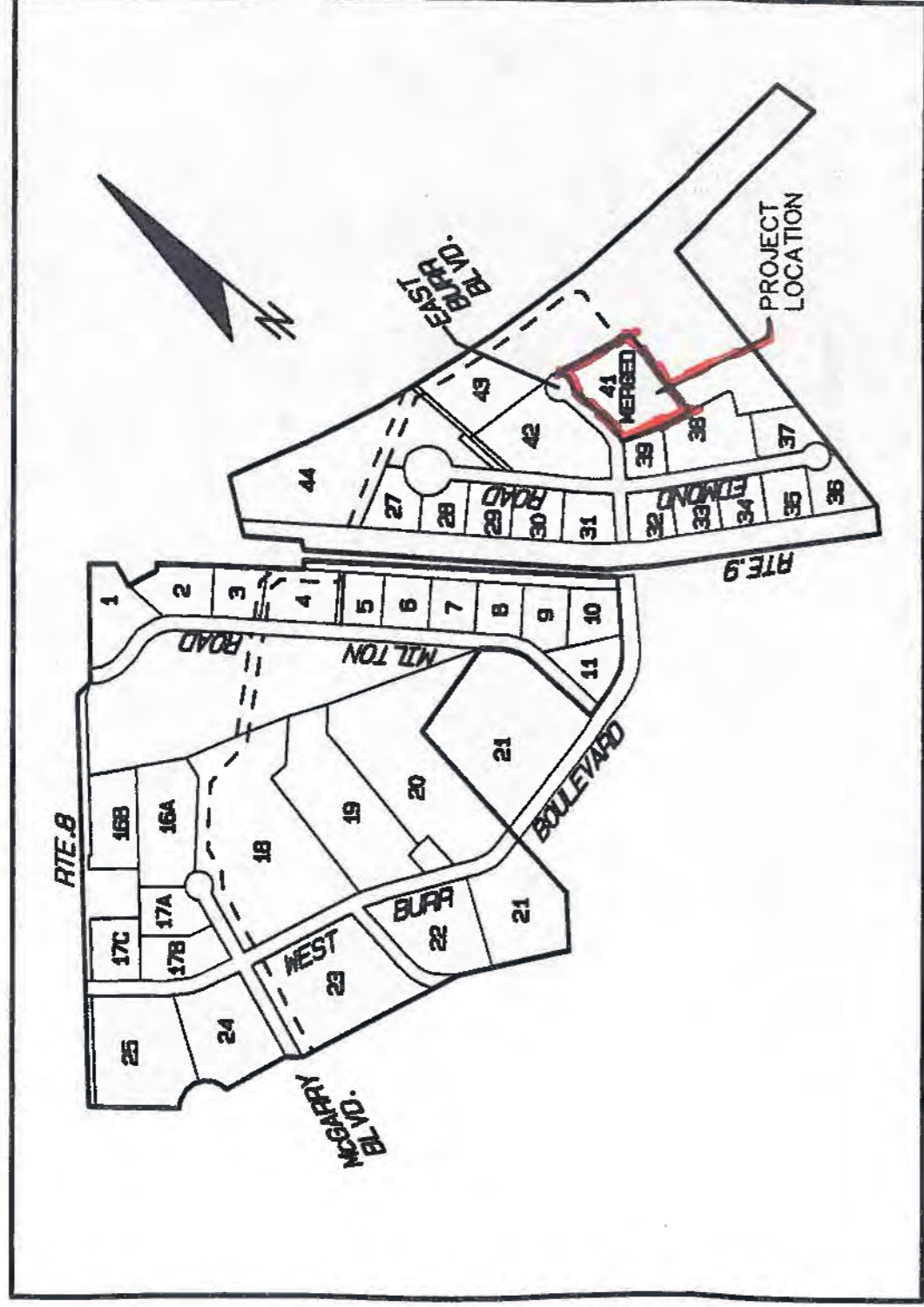
RAI GROUP 41, LLC
TAX MAP 1 PARCEL 93 DEED BOOK 985 PAGE 25
AND

SCHONSTEDT INSTRUMENT COMPANY, LLC
TAX MAP 1 PARCEL 27.3 DEED BOOK 997 PAGE 414

CHARLES TOWN DISTRICT
JEFFERSON COUNTY, WEST VIRGINIA
SCALE: 1" = 60' JULY 31, 2006
ED JOHNSON AND ASSOCIATES, INC.
LAND SURVEYORS
P.O. BOX 1277
CHARLES TOWN, WEST VIRGINIA 25414
(304)725-6060

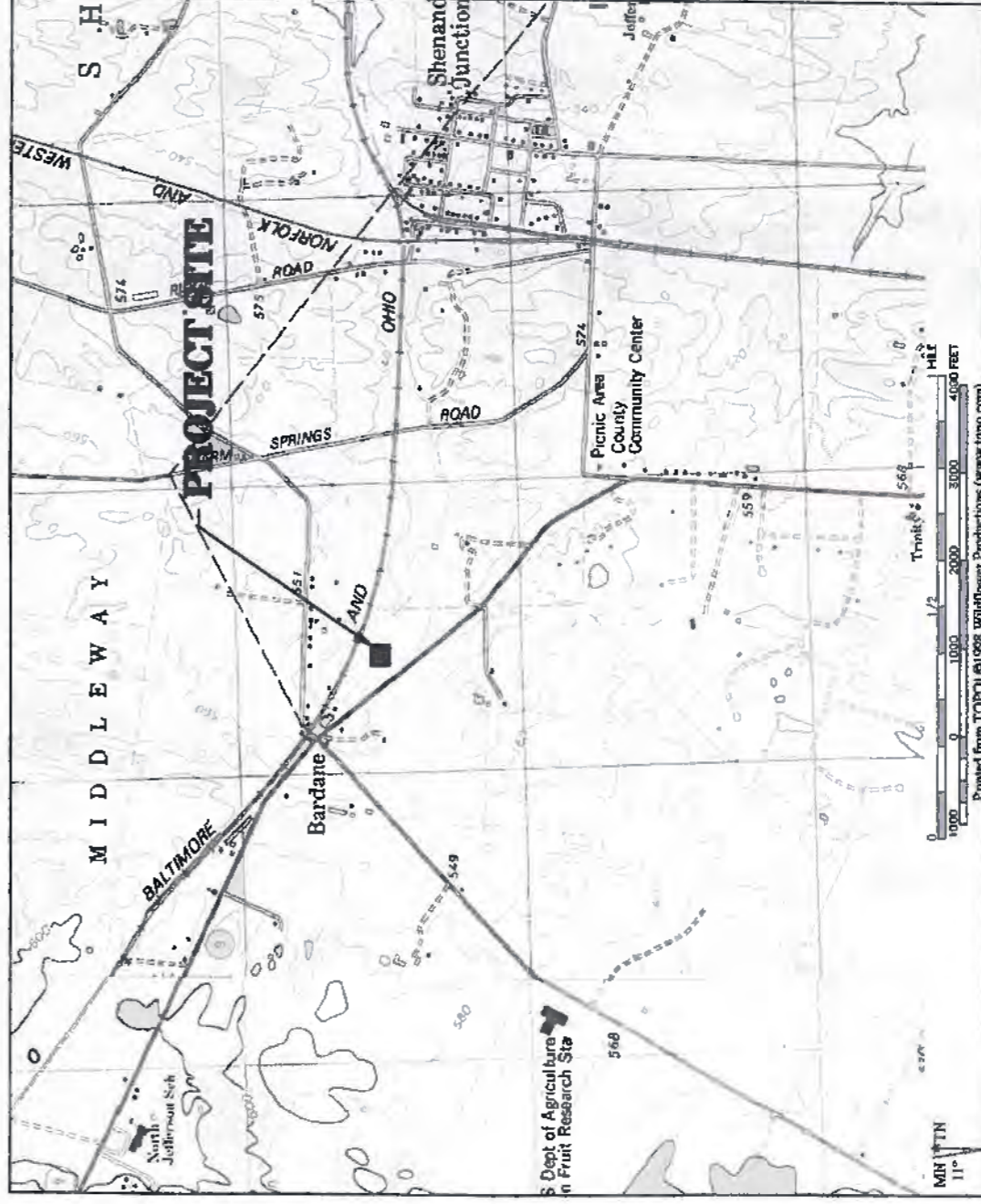


ZV13-37



BURR INDUSTRIAL PARK

NOT TO SCALE



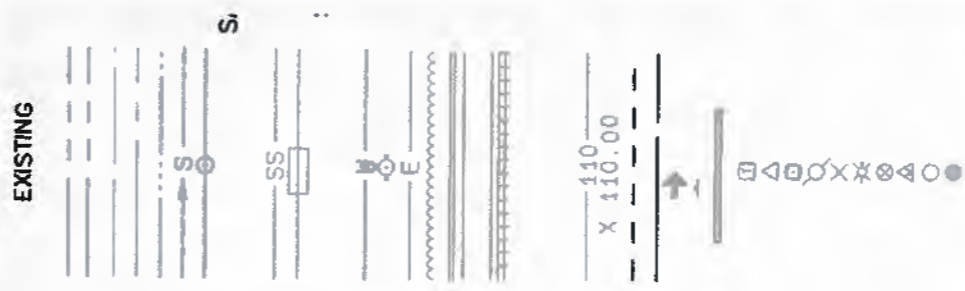
VICINITY MAP

U.S.G.S. 7.5 MINUTE SERIES QUADRANGLE
 CHARLES TOWN, WV.
 SCALE: 1"=2,000'

RECEIVED

NOV 22 2013

JEFFERSON COUNTY
 PLANNING, ZONING AND ENGINEERING



NOTE: SOME LINE ON THIS LI

OWNER/DEVELOPER CERTIFI
 BY SIGNING THIS PLAT, THE DEVI
 ALL CONDITIONS, TERMS AND SP

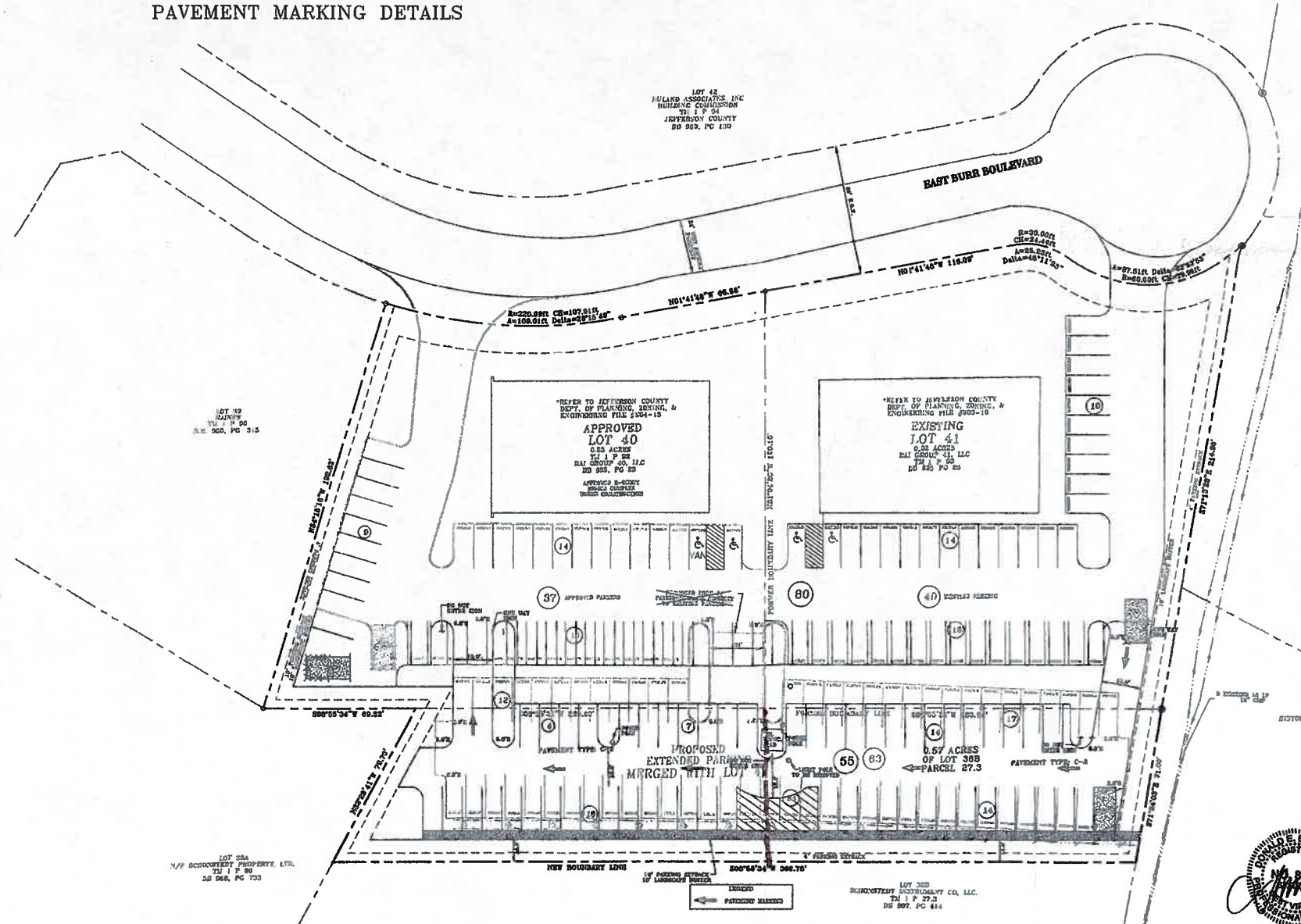
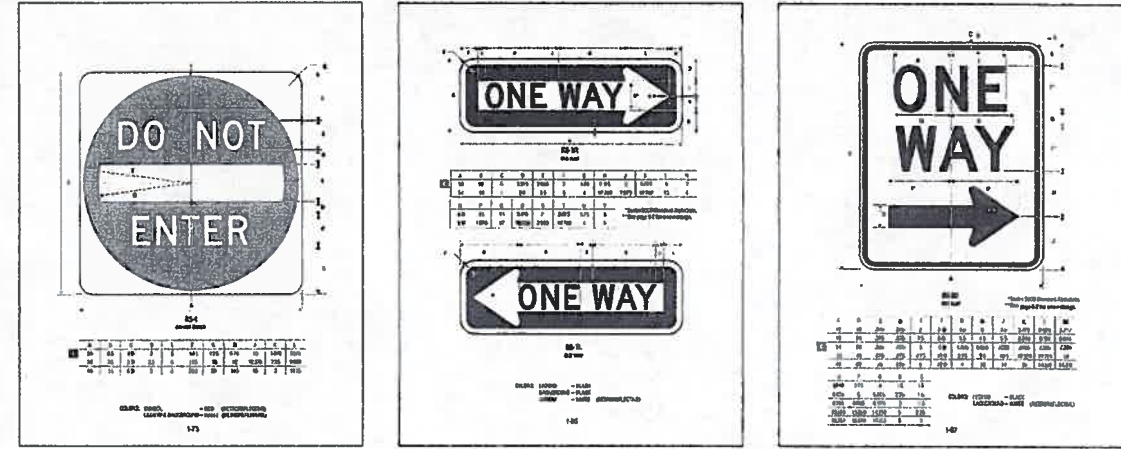
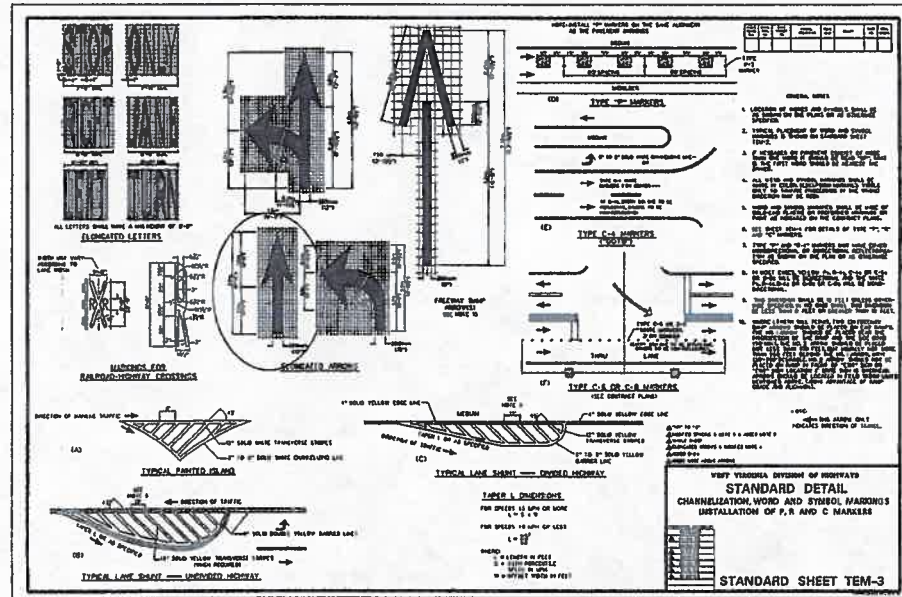
DAN DOORIDAS

ZV13-37

ZV13-37

SITE NOTES

- THIS SITE IS LOCATED IN THE BURR INDUSTRIAL PARK. AS SUCH, THE SITE MUST BE DEVELOPED WITHIN THE PARAMETERS OF THE "COVENANTS AND RESTRICTIONS FOR THE BARDANE INDUSTRIAL PARK".
- THIS SITE MUST BE DEVELOPED WITH 80 PERCENT IMPERVIOUS COVER, OR LESS. THIS SITE HAS 60 PERCENT IMPERVIOUS COVER. THEREFORE, IT IS WITHIN ACCEPTABLE LIMITS.
- EAST BURR BOULEVARD HAS BEEN ACCEPTED INTO THE WOOD ROAD SYSTEM. THEREFORE, AN ENTRANCE PERMIT IS REQUIRED. WDOT HAS ISSUED AN ENTRANCE PERMIT (45-03-0720) FOR THE ENTRANCE.
- SOILS ON THE ENTIRE SITE ARE DUFFIELD SANDY LOAM 2 TO 8 PERCENT SLOPES. DUFFIELD LOAMS ARE IN HYDROLOGIC GROUP TYPE 3. THE INFILTRATION RATE FOR THIS SOIL IS IN THE RANGE OF 0.2 TO 6.3 IN/HR.
- A CONCRETE APRON SHALL BE INSTALLED AT THE ENTRANCE TO THE SITE. SEE DETAIL ON THIS SHEET.
- SANITARY SEWER FLOWS FROM THIS SITE ARE EXPECTED TO BE ABOUT 3500 GALLONS PER DAY (PEAK FACTOR OF 2.5 INCLUDED).
- EXPECTED WATER USAGE FOR THIS SITE IS ABOUT 8 GALLONS PER MINUTE (PEAK HOUR DOMESTIC FLOW, INCLUDING A 2.7 PEAKING FACTOR).
- USING ANWVA M-22 "SIZING WATER SERVICE LINES AND METERS," THIS PROJECT HAS A COMBINED FUTURE VALUE OF 60, MEANING A ONE INCH METER IS ADEQUATE FOR THE EXPECTED FLOWS.
- FIRE FLOW WILL BE ABOUT 1500 GALLONS PER MINUTE. THIS REQUIRES ONE HYDRANT WHICH WILL BE LOCATED IN THE NORTHWEST CORNER OF THE PROPERTY, BETWEEN THE RIGHT OF WAY AND THE EDGE OF PAVEMENT.
- RESIDUAL PRESSURE OF THE NEXT CLOSEST HYDRANT IS ABOUT 56 PSI. THE NEXT CLOSEST HYDRANT IS LESS THAN 500 FEET. FIRE FLOW OF ABOUT 3,000GPM WILL CREATE A RESIDUAL PRESSURE OF 20PSI.
- WATER LINE IS BEING EXTENDED, WITH LOT 41 MERGED CONSTRUCTION BY HEALTH DEPARTMENT PERMIT #15841.
- THIS SITE WILL CONNECT TO AN EXISTING AND ADEQUATE WATER SYSTEM AND DOES NOT REQUIRE ADDITIONAL STORAGE FOR FIRE PROTECTION.
- ONE SIGN WILL BE INSTALLED AS PART OF THIS PROJECT. A SEPARATE PERMIT WILL BE REQUIRED. FUTURE SIGNS SHALL CONFORM WITH THE CURRENT JEFFERSON COUNTY SIGN ORDINANCE.
- ALL ROOF DRAINS SHALL DIRECT THE RUNOFF TOWARDS THE ONSITE INFILTRATION TRENCHES.
- THIS SITE DOES NOT HAVE A 100-YEAR FLOODPLAIN.
- THERE ARE NO WETLANDS ON THIS SITE.
- NO EASEMENTS (EXISTING, PROPOSED OR FUTURE) IMPACT THIS SITE.
- NO STRUCTURES, TREES OR SINKHOLES EXIST ON THE NEW PORTION OF THE SITE.
- NO PARCEL OR HISTORIC STRUCTURE OR DESIGNATED HISTORIC STRUCTURE IS LOCATED WITHIN 75 FEET OF THIS SITE.
- THIS SITE IS IN COMPLIANCE WITH SECTION 5.6(C) STANDARDS OF THE JEFFERSON COUNTY, WEST VIRGINIA ZONING AND DEVELOPMENT REVIEW ORDINANCE. NOISE LEVELS WILL NOT EXCEED PERMITTED SOUND LEVELS AT THE PROPERTY LINE. NO OPERATION WILL RESULT IN THE CREATION OF ODORS OF SUCH INTENSITY AND CHARACTER AS TO BE DETRIMENTAL TO THE HEALTH AND WELFARE OF THE PUBLIC OR WHICH INTERFERES WITH THE COMFORT OF THE PUBLIC. NO SMOKE, DUST, FUMES OR PARTICULATE MATTER WILL BE PERCEPTIBLE AT ANY LOT LINE. NO VIBRATION WILL BE PRODUCED WHICH IS TRANSMITTED THROUGH THE GROUND AND IS DISCERNIBLE WITHOUT THE AID OF INSTRUMENTS AT ANY POINT BEYOND THE LOT LINE. NO DIRECT OR SKY-REFLECTED GLARE WILL BE VISIBLE AT THE LOT LINE AND NO EMISSION OR TRANSMISSION OF HEAT OR HEATED AIR WILL BE DISCERNIBLE AT THE LOT LINE. THE RELEASE OF AIRBORNE TOXIC MATTER WILL NOT EXCEED ONE-THIRTEENTH OF THE THRESHOLD LIMIT VALUE ACROSS LOT LINES. THE TOTAL CAPACITY OF FLAMMABLE LIQUIDS AND GASES WILL NOT EXCEED PERMITTED QUANTITIES.
- THERE ARE NO STRUCTURES WITHIN 200' DOWNSTREAM OF ANY DAMAGE PIPE OUTFALL.
- THERE ARE NO RESIDENTIAL USES ADJACENT TO LOT 41 MERGED.



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 (4th) ~~third (3rd)~~ 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) ~~week~~ ~~eighteen (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 18th ~~21st~~ day of December ~~July~~, 2013~~4~~.

JEFFERSON COUNTY BOARD
OF ZONING APPEALS,

By: _____
Chairperson

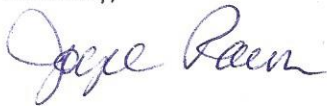
November 17, 2013

Riggs & Stiles, Inc.
Stanley and Barbara Stiles
118 Goshen Arrabon Lane
Charles Town, WV 25414

Stanley and Barbara,

This is a follow up to my notice of termination of farm lease sent to you Friday November 15, 2013. Any persons entering upon property of Stiles Family Partnership # 3 LLP without my expressed written authorization as manager and majority owner of Stiles Family Partnership # 3 LLP will be deemed trespassers and treated accordingly.

Sincerely,



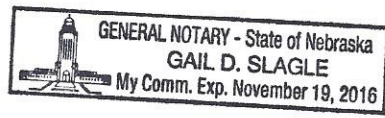
Joyce Rawn, majority owner and manager Stiles Family Partnership # 3 LLP
1202 W Main St
Sargent, NE 68874

Cc: Chris Stiles
Cc: Jim List, Attorney at Law
Cc: Jefferson County Board of Zoning appeals c/o Jennilee, clerk
Cc: Bob Frazee CEO Mid-Atlantic Farm Credit

State of Nebraska
County of Custer

The foregoing instrument was acknowledged before me this November 18,
2013 by Joyce Rawn.

Signature Gail D. Slagle
Title General Notary



ZV13-33

ZV13-34

December 4, 2013

Ms. Jennilee Hartman, Zoning Clerk
116 East Washington Street, Suite 200
P. O. Box 338
Charles Town, WV 25414

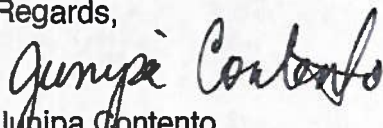
Dear Ms. Hartman and the Jefferson County Board of Zoning Appeals:

First and foremost, on behalf of the All Good Festival, we would like to thank you for your extensive time and consideration during the November Board of Zoning Appeals meeting for our requests to host a Seasonal Use event in Jefferson County as well as a waiver of the 3-day limit for such seasonal use. As we mentioned during our presentation we have been working under strenuous time constraints to properly schedule our event for the 2014 festival season.

Regrettably, we had later come to recognize that the property owners involved in the lease are in contention and unable to come to terms, thereby we will not be able to utilize our seasonal use permit and we are forced to withdrawal the permit to host our event during the 2014 season.

Thank you again for all of your time.

Regards,


Junipa Contento

RECEIVED

DEC 04 2013

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

*Copy mailed to BZA in 12/18/13 packet. - JH



Jefferson County, West Virginia

Departments of Planning and Zoning

116 East Washington Street, 2nd Floor

Charles Town, WV 25414

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Email: zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Director's Report December 18, 2013 Board of Zoning Appeals Meeting

1) County Budget Issues

Implications on Staffing

2) Envision Jefferson 2035 Update

See Updated Timeline Attached

3) Recent/Upcoming CC Actions relevant to Planning/Zoning:

- a) 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 held 11/21/13 and 12/05/13; revised version to CC 12/19/13*)
- b) 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; comments open until 12/05/13; follow up workshop with CC requested for 12/19/13*)
- 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 for 1/23/14, 6 pm*)

4) Upcoming Hearings/Meetings of Interest

a) January 14, 2014

- Public Hearing on the proposed Text Amendment to Section 4.11 of the Zoning and Land Development Ordinance regarding landscaping between similar non-residential uses

b) January 23, 2014 – BZA members welcome to attend

- Joint meeting of PC/CC to discuss key land use Goals and Objectives; discussion of Future Land Use Map and discussion of Upcoming Public Input

ENVISION JEFFERSON 2035 UPDATED TIMELINE

Tentative Dates	Tasks	Responsibility
August – December 2012	Phase 1: 2014 Plan Start Up/Organization	
<i>Completed</i>	Technical Advisory Committee formed for Existing Conditions element; Steering Committee appointed by County Commission and meetings initiated	
May 2012 – January 2013	Phase 2: Existing Conditions Data Collection, Mapping and Trends Analysis	
<i>Completed</i>	Nearly complete draft serving as a snapshot in time to be a separate baseline document including draft Existing Land Use Map	
January 2013 – February 2013	Phase3: Issues Analysis/Visioning	
<i>Completed</i>	4 public meetings held in February and March and on-line survey input received	
March 2013 – October 2013	Phase 4: Goals and Objectives	
Completed	15 Lunch and Learns (http://envisionjefferson2035.com/) 2 public meetings held in July and survey at County Fair 2 public meetings held in October 4 Stakeholder Meetings in October Goals and Objectives Draft finalized Future Land Map Draft underway – to be finalized for public review in early 2014	
October 2013 – May 2014	Phase 5: Plan Recommendations and Implementation Strategies (with the following milestones)	Steering Committee Staff
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 Review of October public input Land Use policy decisions	Steering Committee Staff
12/17/13	Steering Committee Meeting Review of proposed consolidated future land use map and SC input and edits;	Steering Committee Staff

	Discussion of other content maps and Land Use policy discussions	
1/21/14	Steering Committee Meeting Final review of maps for upcoming Public Input Meetings Preparation for Public Input Meetings	Steering Committee Staff
<i>January 23, 2014</i>	Joint meeting of PC/CC 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	PC/CC Staff/legal
February 2014 (1st or 2nd week)	4th series of Public Input Meetings (2 mtgs): <ul style="list-style-type: none"> • Open House Format • Focus on Future Land Use map and related maps • Overview of key draft recommendations and strategies 	Staff Steering Committee
2/18/14	Steering Committee Meeting Follow up to Public Input Sessions Next Steps to completing Recommendations for all Elements	Steering Committee Staff
3/18/14	Steering Committee Meeting	Steering Committee Staff
4/15/14	Steering Committee Meeting	Steering Committee Staff
4/22/14	4th Public Input Meeting – one large joint meeting instead of regional meetings ***PC/CC invited to attend this meeting Presentation of completed draft Plan	Staff Steering Committee
5/20/14	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 Staff
June 2014 – December 2014	Phase 6: 2014 Plan Workshops and Public Hearings by PC and CC and Adoption	PC/CC Staff/legal
12/11/14	CC Vote on 2014 Comprehensive Plan	CC