

Jefferson County  
Board of  
Zoning Appeals

Thursday,  
August 15, 2013



**JEFFERSON COUNTY, WEST VIRGINIA**

**Department of Zoning**

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

P.O. Box 338

Charles Town, West Virginia 25414

**Phone: 304-728-3228**

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

**Fax: 304-728-8126**

MEMORANDUM

TO: Jefferson County Board of Zoning Appeals Members

FROM: Jennilee Hartman, Zoning Clerk

DATE: August 9, 2013

SUBJECT: August 15, 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 Thursday, August 15, 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.

\*Important Notice: The minutes from the last meeting will not be available for this meeting due to staffing conflicts. Please note they will be available for your review at the September meeting.

Thank you for our support.





**Jefferson County**  
**Board of Zoning Appeals**  
**Thursday, August 15, 2013, 3:00 p.m.**

Members  
Jeff Bresee, Chair  
Christy Huddle, Vice Chair  
Edwin Kelly  
Tyler Quynn

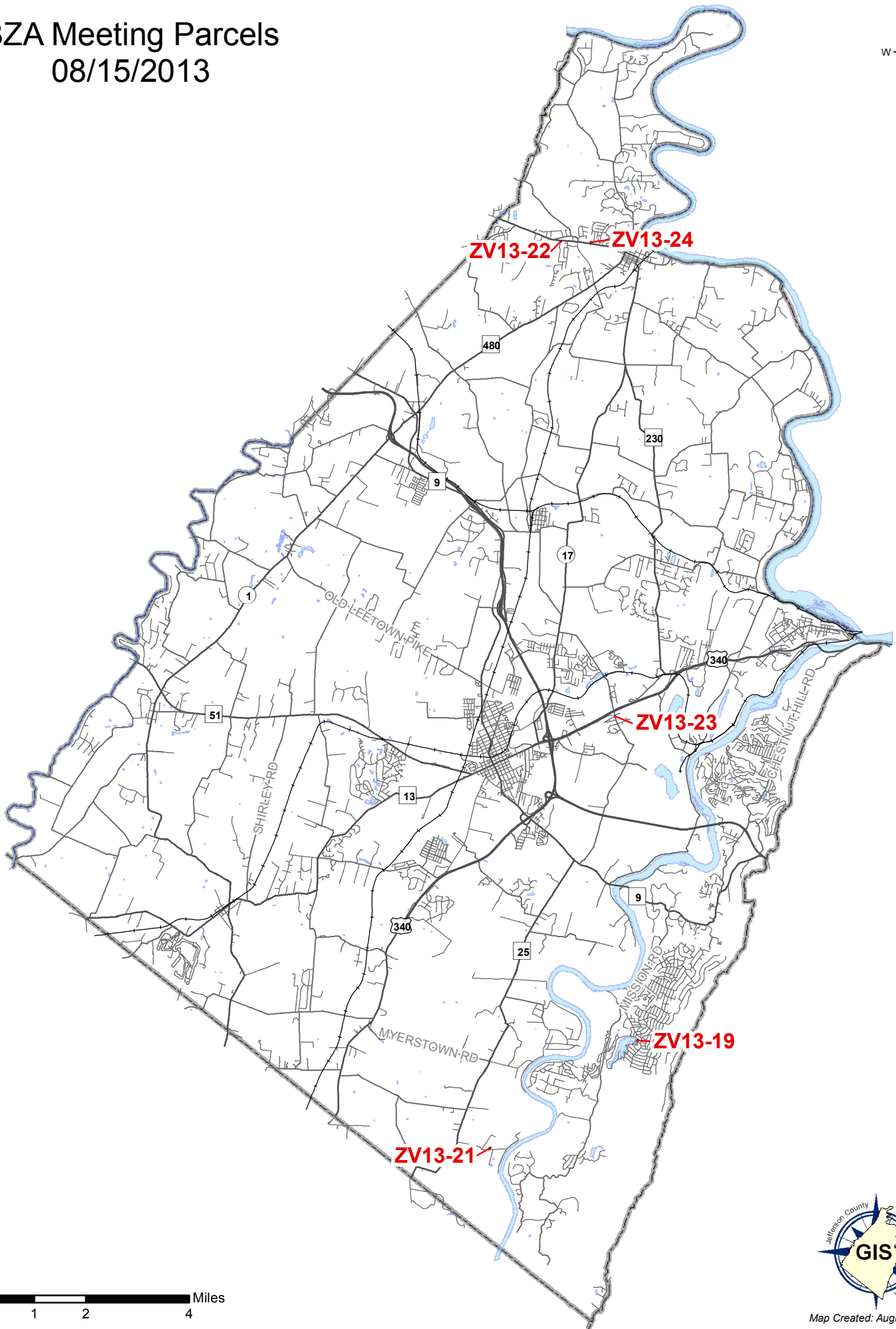
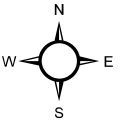
The Jefferson County Board of Zoning Appeals will meet in the Charles Town Library Conference Room located at 200 East Washington Street, at the side entrance on Samuel Street, in the City of Charles Town, WV.

Unless otherwise noted, all requests are pursuant to the Zoning & Land Development Ordinance.

1. Approval of the minutes from the July 18, 2013 meeting.
2. Swearing in of members of the public intending to provide testimony.
3. Continued from the July 18, 2013 meeting. Variance request by applicant, John Fridley, 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. 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.
4. 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. Location: 651 Ann Lewis Road, Charles Town, WV. District: Kabletown (06); Map: 22; Parcel: 6.2; Zoned: Rural; Size: 1 acre; File: #ZV13-21.
5. Variance request by applicant, John Orem, from Section 4.3(B) to re-establish a nonconforming commercial use. Applicant representative: Christopher Luttrell, Esq. with Luttrell & Prezioso PLLC. Location: 7330 Martinsburg Pike, Shepherdstown, WV. District: Shepherdstown (09); Map 7B; Parcel: 95; Zoned: Residential-Growth; Size: .36 acres; File: #ZV13-22.
6. Variance request by applicant, Kevin R. Blundon, from Section 5.4(B) for a reduction of the rear setback distance from 20' to 16' to construct a 20'x12' deck and corresponding stone patio situated underneath. Location: Windmill Crossing Subdivision, 6 Monte Carlo Way, Charles Town, WV. District: Charles Town (02); Tax Map: 9C; Parcel: 67; Zoned: Residential-Light Industrial-Commercial; Size: 3,350 sq. ft.; File: #ZV13-23.
7. Variance request by applicant, David Poyser with D & D, L.C., from Section 5.6(D) 1 & 2 for a reduction of the front and side setback distances from 25' to 15' for the placement of a 12' x 13' temporary storage shed. Applicant representative: Craig Jenkins. Location: Dairy Queen, 45 Maddex Square Drive, Shepherdstown, WV. District: Shepherdstown (09); Tax Map: 8C; Parcel: 67; Zoned: Residential-Light Industrial-Commercial; Size: 0.63 acres; File: #ZV13-24.
8. Director's Report.
9. Legal Update.
10. Signing of written decisions from prior Board of Zoning Appeals meetings.
11. Correspondence

# BZA Meeting Parcels

08/15/2013



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

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

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

#### A. Board of Zoning Appeals

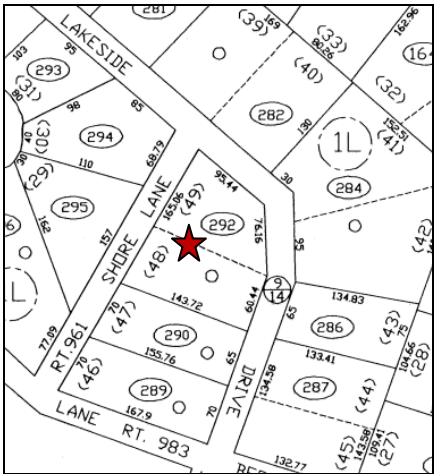
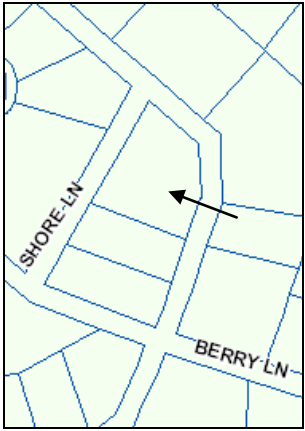
4. The Board of Zoning Appeals shall consider requests for variances from the terms of the Ordinance.<sup>23</sup>
  - a. The Board shall approve a variance request if the Board finds that a variance:
    - i. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property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



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

**John Fridley Request (#ZV13-19)**

Item # 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 5' to allow for the construction of a 20' x 22' detached garage.

APPLICANT:	John Fridley
OWNER :	William C. Palmer, Sr.
DEVELOPER:	John Fridley
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	Shannondale, (Section 1L) 1623 Lakeside Drive; Harpers Ferry, West Virginia
LEGAL DESCRIPTION:	Kabletown (06); Map: 6C; Parcel: 292 
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:	25,000 sq. ft
PRIOR CASES:	None
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential

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**John Fridley Request (#ZV13-19)**

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a variance from Section 9.6(C) & 9.7 for a reduction of the front setback distance from 20' to 5' to allow for the construction of a 20' x 22' detached garage.

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.

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 the garage would be constructed 14' from the existing home, would have a width of 20', a depth of 22' and a proposed door width of 16'. The garage is represented as being 5' from the edge of Lakeside Drive from the front corner of the garage and 8' from the rear corner of the garage as the property line is at a slight angle.

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. Because the property abuts roads on three sides, the front yard setback must be met on those three sides. The applicant has demonstrated to Staff that they can meet the rear setback distance requirements.

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 25,000 square feet in the rural district; the proposed addition of a detached garage of this size would not meet the required 20' front setback. The location of the existing well cap prevents the applicant from situating the

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**John Fridley Request (#ZV13-19)**

garage closer to the home; however, as indicted by the sketch submitted by the applicant if the garage were attached to the home in the absence of the well cap, the applicant would still require a 1' setback variance. In addition to the numerous trees that surround the property; a small creek runs in the rear of the property. It appears that multiple trees would have to be removed to place the garage in the proposed location.



**Location of Edge of Road**

**Location of Well Cap**

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**John Fridley Request (#ZV13-19)**



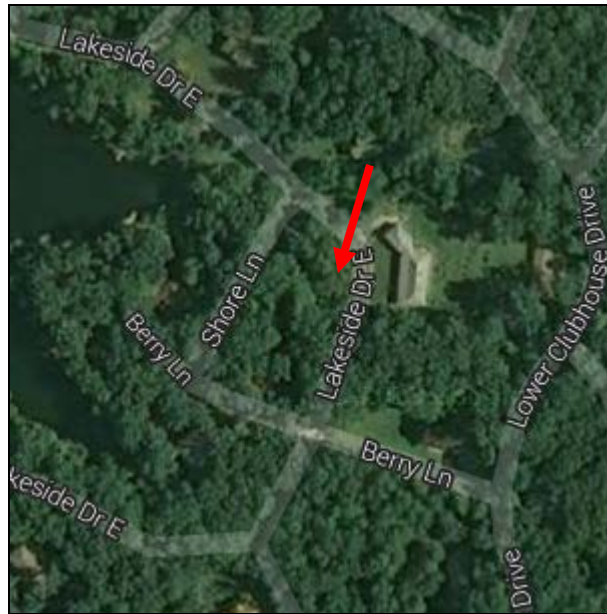
**Rear View of Property**

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. To the west of the parcel is the Mountain Lake Club lake, while the Lodge and its amenities are located approximately 800 linear feet from the rear of the subject parcel.

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**John Fridley Request (#ZV13-19)**



**Subject Parcel & Approximate Location of Garage**



**Mountain Lake Club**

d. Impact on adjacent properties

The construction of the garage within 5' of the property line on a sharp curve (creating a corner lot) could cause possible sight distance issues. However, the roads are narrow at this particular location which requires traffic to reduce their speed. In addition, existing landscaping and ornamental fencing obligate one to be mindful of oncoming traffic.

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**John Fridley Request (#ZV13-19)**



**Existing Landscaping**

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

The width of the proposed garage (20' x 22') is a one and a half car garage design. The applicant could potentially reduce the size of the garage to the traditional single car design of 12' in width, while still maintaining the additional depth, thus reducing the setback impact to 13' instead of the requested 5'. To compensate for the loss of supplemental storage area, the applicant may be able to extend the structure towards the rear of the property to maximize their storage potential, provided they meet the 12' setback.

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 9.6 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.

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**John Fridley Request (#ZV13-19)**

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

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

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

Rural Agricultural and Industrial Commercial

Single family residences --

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





# JEFFERSON COUNTY, WEST VIRGINIA

## Departments of Planning and Zoning

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

Charles Town, WV 25414

File Number: ZV13-19

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

Staff Initials: JS

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

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

Phone: (304) 728-3228

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

Fax: (304) 728-8126

### Zoning Variance Request

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

#### Property Owner Information

Property Owner Name: William C. Palmer Sr.  
 Mailing Address: 5 Short St. FL 2  
 City: Brocklyn Park State: MD Zip Code: 21225  
 Phone Number: 410-768-9096 Email: \_\_\_\_\_

#### Applicant or Contact Information

Applicant / Contact Name: John Fridley  
 Mailing Address: P.O. Box 1261  
 City: Harper Ferry State: WV Zip Code: 25425  
 Phone Number: 304-671-3175 Email: popspart2@yahoo.com

#### 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: 1623 Lakeside Dr. Sec. 1L # 48.49 Shannondale  
 Tax District: Kabletown Map No: 6C Parcel No: 292  
 Parcel Size: 25,000 sq. ft. Deed Book: 551 <sup>06/25/13</sup> Deed Bk. Pg. No: 558 <sup>06/25/13</sup>

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

RECEIVED

JUN 21 2013

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

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

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

Reference the section of Ordinance pertaining to this request (Required:): Section 9.6 C/9.7

Please briefly describe the nature of the variance request: Requesting to allow the front setback of a detached garage to be within 5' of the road instead of 20'  
20' x 22' ✓

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

Front Setback       Side Setback       Rear Setback      Reduction From 20' to 5'

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. Doesn't obstruct traffic flow on the road. Closest neighbor on that side is on the other side of the road, causing no issues with them. Closest road intersection is approx. 100' from the structure.

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? This is the only

logical location on the property for a garage. Without the variance, the garage is not possible. Due to the existing well cap and drainage swales, I cannot move the garage closer to the house or farther back.

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

The homeowners have to park outside now, which is inconvenient in the winter. That area is already where the car is parked sometimes.

How will granting this variance allow the intent of the Zoning Ordinance to be observed and substantial justice to be done? The homeowners will finally be able to protect the car from the elements

as well as gain some storage space for other items.

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.

William C. Palmer, Sr.  
Print Name of Property Owner 1      Date

\_\_\_\_\_  
Print Name of Property Owner 2      Date

William C. Palmer, Sr.  
Signature of Property Owner 1      Date

\_\_\_\_\_  
Signature of Property Owner 2      Date

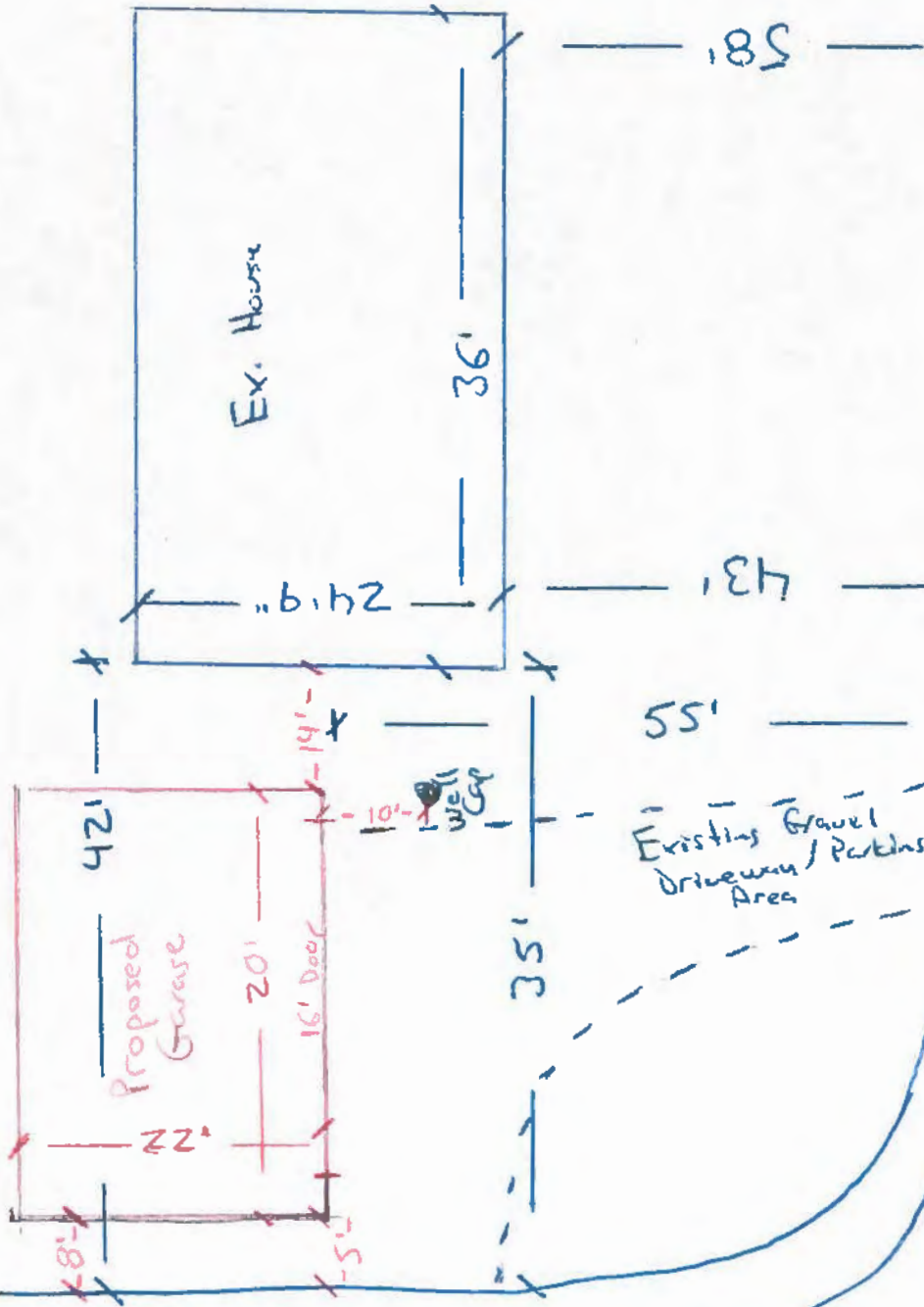
**Notification Requirements (to be completed by staff)**

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)).

July 18, 2013  
Date of Public Hearing

July 3, 2013  
Advertising Date

July 3, 2013  
Placard Posting Date



Jan 17 2013  
 GZV13

# ZV13-19



## Zoning

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**From:** Joan O'Dell <jeodell32@gmail.com>  
**Sent:** Thursday, July 18, 2013 12:26 PM  
**To:** zoning@jeffersoncountywv.org  
**Subject:** Fwd: lakeside drivw

**Zoning e-mail:** [zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org)

**RUSH DELIVERY TO JENNALEE HARTMAN, CLERK,**

**DUE TO MATTER SET FOR HEARING TODAY AT BZA MEETING**

Date: July 18, 2013

Subject: 30' R/W on Lakeside Drive -- ZV 13-19 (Fridley/Palmer)

To: Jennalee Hartman, Zoning Clerk

**From: Joan O'Dell and Dan Alexander**, homeowners and taxpayers of Shannondale; and the Mountain Lake Club Architectural Committee which has reviewed the application to the County for a Variance. All are opposed to the granting of this application.

Reason for objection: The garage would be built too close to the Road Right of Way, adversely affecting the public safety.

The request for Variance misstates the location and width of the State Right of Way, incorrectly measuring the setback from the edge of the pavement, rather than from 15' from each side of center. This means that he is using about 8' of the R/W in his setback calculations.

I am attaching an email from William Z. Paitsel, State Road Department, District 5, Right of Way Manager, that states as follows:

“Lakeside Drive has a R/W of 30' which is measured 15' from each side of center.”

The edge of the pavement is not the edge of the official Right of Way owned by the State of West Virginia.

Correctly measuring the R/W will place the 20' x 22' garage in the R/W and will use up all 20' of the setback, not just 15 feet of the setback.

(Using the method described by the WV Right of Way Manager does not require a survey; all it requires is a tape measurement from the center of the road out 15' to the owner's property line.)

**Please inform the BZA of the above facts.**

Lakeside Drive is a well traveled main road in Shannondale. Road repairs are needed to repair the road by Palmer's property due to its being undermined by aZVstreams passing into the property. The entire R/W is needed for the repairs and to create shoulders for pull-offs and traffic safety. There are no sidewalks but many pedestrians walk on Lakeside Drive, and their safety is of deep concern.

Objection to a smaller garage is also made, due to fact that the right of way is not properly computed, and will still result in using a large portion of the 20' setback and will block the view of travelers on Lakeside Drive. Extending the garage would place it closer to the stream bed in his yard.

SIGNED Joan E. O'Dell, Dan Alexander, and the Mountain Lake Club Architectural Committee

----- Forwarded message -----

From: **Paitsel, William Z** <[William.Z.Paitsel@wv.gov](mailto:William.Z.Paitsel@wv.gov)>

Date: Thu, Jul 18, 2013 at 10:57 AM

Subject: lakeside drivw

To: [jeodell32@gmail.com](mailto:jeodell32@gmail.com)

Dear Ms. O'Dell,

Please be advised that Lakeside Drive has a R/W of 30' which is measured 15' from each side of center. Should you need any further clarification please advise.

Zane Paitsel

D5 R/W Mgr.

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**Jason Shelton Request (#ZV13-21)**

Item # 4 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.

APPLICANT:	Jason Shelton
OWNER :	Same
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	651 Ann Lewis Road, Charles Town, West Virginia
LEGAL DESCRIPTION:	<p style="text-align: center;">Kabletown (06); Map: 22; Parcel: 6.2</p>
ZONING DISTRICT:	<p style="text-align: center;">Zoning Map Designation: Rural (R)</p>
SURROUNDING PROPERTIES:	<p>Zoning Map Designation:</p> <p>North: R                      South: R</p> <p>East: R                        West: R</p>
LOT AREA:	1 acre
PRIOR CASES:	Parent to Child Exemption
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential

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**Jason Shelton Request (#ZV13-21)**

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a variance 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

2. Previous Case History

The subject property was created utilizing Section 2.1(b) of the 1979 Jefferson County Subdivision Ordinance which allowed a parent to transfer a lot to a child once with the stipulation that the lot could not be transferred or sold for a five years. The Department approved this exemption on May 3, 1995.

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

All lots created under the parent to child exemption process are required to comply with the setback requirements of the Rural zoning district, found in Section 5.7(B) of the Zoning Ordinance: 40' in the front, 15' on the side and 50' in the rear.

Section 9.6 allows an accessory structure to be placed up to 5 feet to the side and rear property lines provided that the structure is less than 150 square feet; or, that the minimum distance, "shall not be less than the longest horizontal dimension of the accessory structure of the minimum specified for the District, whichever is the lesser of the two." Under this provision, the applicant could have erected the 16' x 32' shed up to 32' from the property line without seeking a variance.

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**Jason Shelton Request (#ZV13-21)**



**Subject Parcel – Front View**



**Subject Parcel – Rear View**

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**Jason Shelton Request (#ZV13-21)**

b. Unique characteristics of property

The parcel's septic field is located to right of the home while the left side is encumbered by a few large trees adjacent to the driveway; potentially limiting the usage of the property.

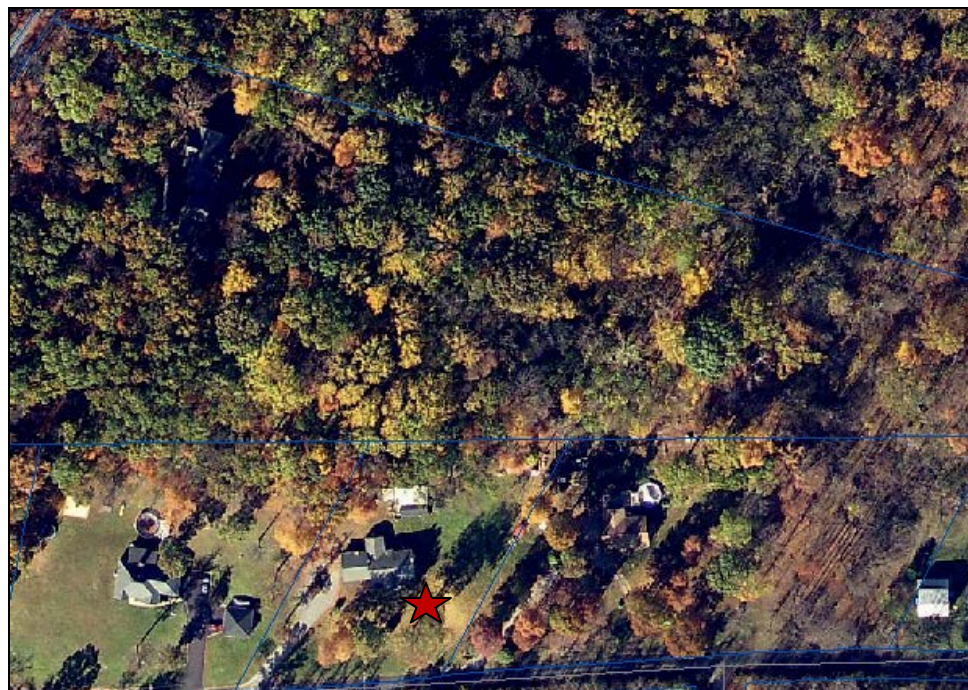


c. Character of area

Many of the lots in this area contain single family homes with accessory uses such as sheds and pools.

d. Impact on adjacent properties

The row of trees depicted in the aerial photography (pictured above) is no longer planted; therefore, it will not provide a buffer to the adjacent property to the east. The impact on the opposing neighbor appears minimal as there are some trees within the line of sight. The lot to the rear of the subject parcel is heavily wooded; therefore, it appears this request would not negatively impact this property. It should be noted that the neighboring property owner to the rear has expressed concern that the shed may be encroaching on their property and will appear at the BZA hearing (see attached email).



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**Jason Shelton Request (#ZV13-21)**



**Rear of Property – String Line from Rebar**

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**Jason Shelton Request (#ZV13-21)**

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

As the structure is already built the only way for the applicant to comply with the ordinance is to demolish the shed and obtain a building permit to construct one in an approved location.

5. Additional Relevant Information

Please note that the property appears to contain numerous sheds and outbuildings, some of which house various fowl and are not connected to the shed in question. Section 8.2 of the Zoning Ordinance contains the requirement for “barns and feeding pens” shall be 75 feet from any property line with a lot with a residential use.



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**Jason Shelton Request (#ZV13-21)**

6. Conditions of Approval

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

- a. The applicant must obtain a building permit for the shed;
- b. The variance is limited to the size and height of the shed requested and may not encroach further into the setback;
- c. No further additions or renovations will be made to the shed without obtaining a building permit; now or in the future;
- d. The shed will not be relocated without obtaining a building permit; and,
- e. This variance is limited to the shed noted in the application. Should any and/or all of the shed be damage and/or destroyed the applicant may not renovate or rebuild the shed without first seeking approval from the Departments of Planning, Zoning and Engineering.

SECTION OF ORDINANCE TO BE CONSIDERED:

A. Minimum Lot Area, Lot Width and Yard Requirements<sup>23</sup>

1. Minimum lot sizes, lot width, and yard requirements for principal permitted uses are shown in Table 5.7-1.

Land Use	Lot Area	Lot Width	Front Yard Depth	Side Yard Depth	Rear Yard Depth
Dwellings	40,000 sq. ft.	100	40	15	50





# JEFFERSON COUNTY, WEST VIRGINIA

## Departments of Planning and Zoning

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

Charles Town, WV 25414

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

File Number: # ZV13-21

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

Staff Initials: \_\_\_\_\_

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

Phone: (304) 728-3228

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

Fax: (304) 728-8126

### Zoning Variance Request

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

#### Property Owner Information

Property Owner Name: Jason Shelton

Mailing Address: 651 Ann Lewis Rd

City: Charlestown State: WV Zip Code: 25214

Phone Number: 304-582-8795 Email: jasonshelton73@yahoo.com

#### Applicant or Contact Information

Applicant / Contact Name: Jason Shelton

Mailing Address: 651 Ann Lewis Rd

City: Charlestown State: WV Zip Code: 25214

Phone Number: 304-582-8795 Email: jasonshelton73@yahoo.com

#### 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: same

Tax District: ~~06~~ 06 Map No: 22 Parcel No: 6.2

Parcel Size: 1 acre Deed Book: 947 Deed Bk. Pg. No: 68

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"/>

RECEIVED

JUL 19 2013

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

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

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

Reference the section of Ordinance pertaining to this request (Required:) 5.7B

Please briefly describe the nature of the variance request: I am asking for a variance on the rear setback of my building. It was an existing building when we bought the place in 1995. I restored the existing section and extended the west side.

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

Front Setback  Side Setback  Rear Setback Reduction From 50 to 8

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

The building is located in a very rural area with a backing of a heavily, large wooded area directly behind the structure.

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?

It was partially existent when we bought the residence in 1995.

It was a Parent to Child conveyance

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

It will grant a variance will greatly benefit myself or a future owner of this property and greatly add to the presentation and overall worth.

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

It will allow no demolition or reconstruction to an existing building

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.

Jason Shelton 7-19-13  
Print Name of Property Owner 1 Date

\_\_\_\_\_  
Print Name of Property Owner 2 Date

Jason Shelton 7-19-13  
Signature of Property Owner 1 Date

\_\_\_\_\_  
Signature of Property Owner 2 Date

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

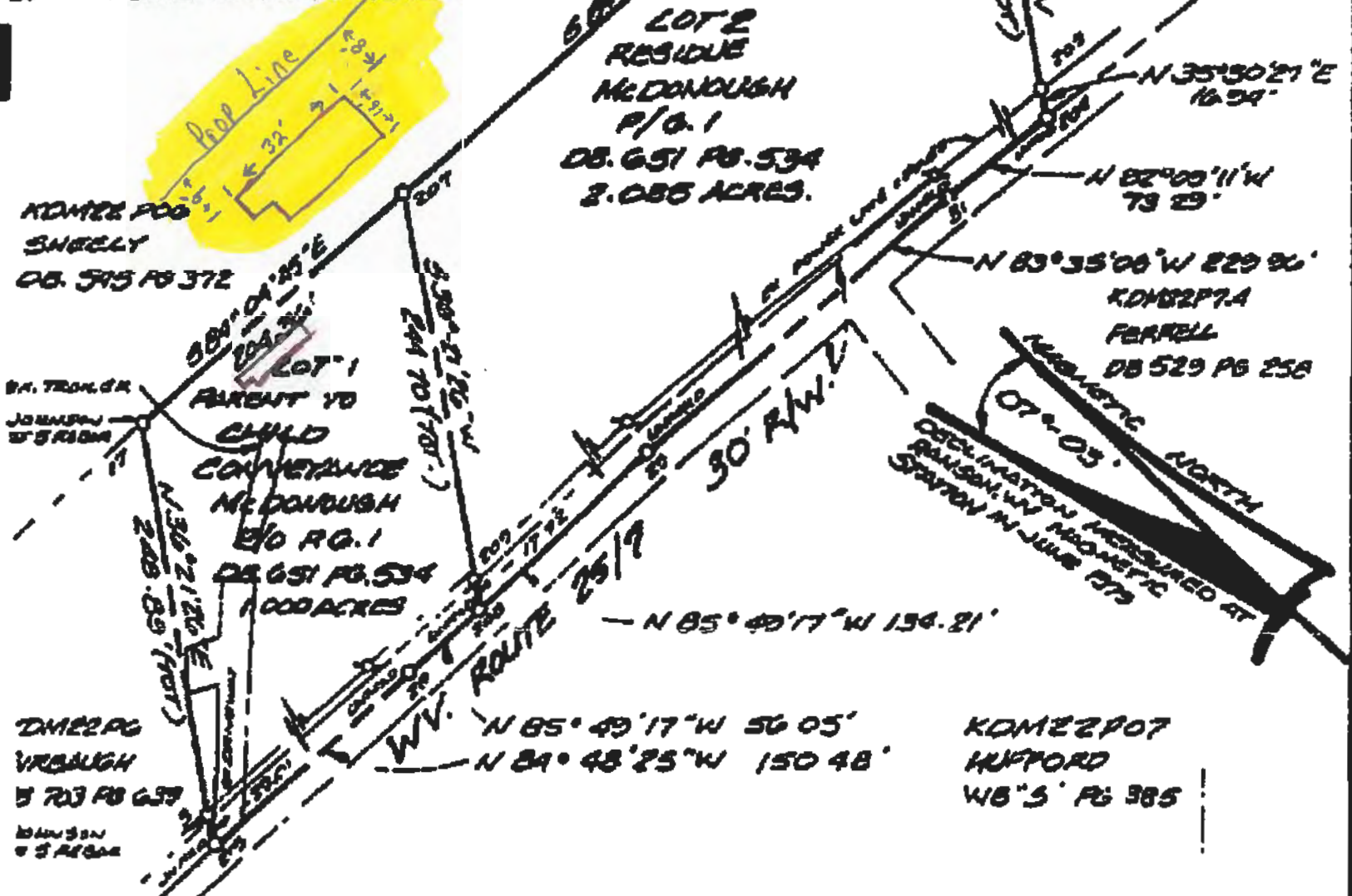
Notice of a public hearing for an appeal shall be advertised in a newspaper having general circulation in the County at least 15 days before the hearing. The subject property shall be posted conspicuously by a zoning notice no less than twenty-eight (28) inches by twenty-two (22) inches in size, at least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

THURSDAY - AUGUST 15, 2013  
Date of Public Hearing

WEDNESDAY JULY 31, 2013  
Advertising Date

WEDNESDAY JULY 31, 2013  
Placard Posting Date

- 1 CORNERS ARE SET  $\frac{3}{8}$ "  $\times$  30' REBARS WITH I.D CAPS UNLESS NOTED OTHERWISE
- 2 SETBACK UNITS 40' FRONT, 30' REAR, 15' SIDES PER J.C.P.C. APPLIES TO ALL CONSTRUCTION AFTER 10/5/88.
- 3 THIS PROPERTY IS NOT IN 100-YEAR FLOODPLAIN PER F.I.R.M. MAP 540065 6068 DATE 13 OCT 1980. PROPERTY IS IN ZONE "C" ON SAID MAP.
- 4. AT TIME OF THIS SURVEY ALL STRUCTURES WERE IN COMPLIANCE WITH COUNTY SETBACK REQUIREMENTS.



PLAT OF SURVEY SHOWING  
 PARENT TO CHILD CONVEYANCE  
 McDONOUGH PROPERTY

KABLETOWN DISTRICT - MAP 22  
 JEFFERSON COUNTY, WV.  
 DATE: 27 APRIL 1995 SCALE: 1" = 100'



*R. Michael Shepp*  
 R. MICHAEL SHEPP PS

APPALACHIAN SURVEYS, INC. #4906  
 P.O. BOX 95 CHARLES TOWN, WV 25414

804/665



## Zoning

---

**From:** Susan Rissler Sheely <susanrissler@frontiernet.net>  
**Sent:** Friday, August 09, 2013 11:54 AM  
**To:** zoning@jeffersoncountywv.org  
**Subject:** ZV13-21 August 15, 2013

**My husband, Bob Sheely, and I are the property owners of the adjoining property mentioned in the public hearing for ZV13-21. Below are a couple of the items we would like to share with the BZA prior to the meeting on August 15:**

**In order to determine the accuracy of the property line, we have scheduled a property survey by Ed Johnson and Associated, Inc, 217 N. George St, Charles Town, WV, 304-725-6060. Mr. Johnson is unable to provide an exact date that he will perform the survey but he will verify that he is scheduled to complete it in the next couple of weeks. We believe the corner marker involved in this case may have been tampered with from the original location. This corner marker is one of the markers which would be used to determine the property line between our property and Mr. Shelton's. We question the accuracy of the measurements taken for the location of the building and the addition which is being added to it.**

**We are also asking for verification from Mr. Shelton regarding a recent ditch/trench which he dug for drainage pipes. We believe part of this digging was against or even over our property line. The ditch was quickly covered, landscaped and grass seed planted before we could verify. We are unaware of the final destination of the pipes.**

**We will be attending the meeting with other issues regarding our property line bordering Mr. Shelton.**

**Thank you,  
Susan Rissler Sheely**

*Susan Rissler Sheely*  
[susanrissler@frontiernet.net](mailto:susanrissler@frontiernet.net)  
304-728-6622 (H)  
304-886-2390 (C)

RECEIVED  
AUG 09 2013  
JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

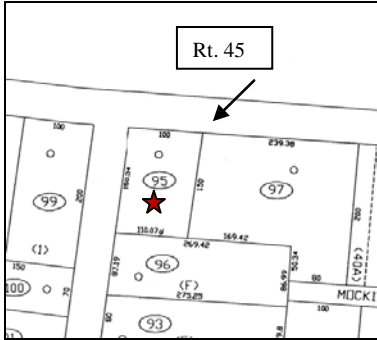
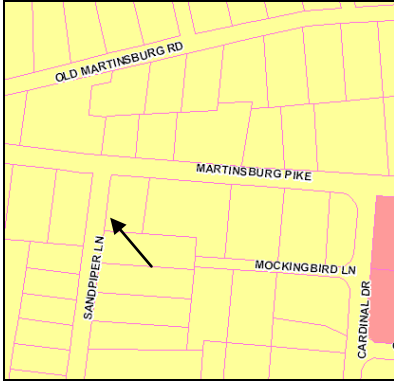
\*Copies mailed in BZA Packet for 08/15/13 mtg - gjt



Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 August 15, 2013

**John Orem Request (#ZV13-20)**

Item # 5 Variance request by applicant, John Orem, from Section 4.3(B) to re-establish a nonconforming commercial use. Applicant representative: Christopher Luttrell, Esq. with Luttrell & Prezioso PLLC.

APPLICANT:	John Orem
OWNER :	Orem, Inc.
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	7330 Martinsburg Pike, Shepherdstown, West Virginia
LEGAL DESCRIPTION:	Shepherdstown (09); Map 7B; Parcel: 95 
ZONING DISTRICT:	Zoning Map Designation: Rural (RG) 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North: RG                      South: RG</i> <i>East: RG                        West: RG</i>
LOT AREA:	.36 acres
PRIOR CASES:	ZC93-01: change in non-conforming use from Family Pharmacy to Carpet Country. ZC94-05: change in nonconforming use from Carpet Country to Olde Towne Motors (BZA approved 12/15/94). ZC03-02: change in non-conforming use from Olde Towne Motors (used car dealership) to Century 21 (real estate office). Signed 11/03/05.
VARIANCE(S):	None
APPROVED ACTIVITY:	Expired Nonconformity – No approved activity.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
August 15, 2013

**John Orem Request (#ZV13-20)**

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a variance from Section 4.3(B) to re-establish a nonconforming commercial use.

2. Previous Case History

The subject property is located in a section of the Mecklenburg Heights Subdivision that was recorded prior to the adoption of the subdivision and zoning ordinances. On October 12, 1971 the parcel was given the designation of Lot 130.

The applicant wishes to reestablish a nonconforming commercial use that appears to have ceased on a parcel with a significant nonresidential background. Staff understands that the structure originated as a High's Grocery Store in early 1970. The exact timeframe is unknown; presumably prior to the adoption of both the subdivision and zoning ordinances.

In 1993 this Department issued a Zoning Certificate (ZC93-01) for a change in nonconforming use from Family Pharmacy to Carpet Country. Staff cannot locate a zoning certificate for Family Pharmacy; we therefore assume it predated zoning.

On 12/15/94 the Board of Zoning Appeals granted another change in nonconforming use from Carpet Country to Olde Towne Motors. Staff issued ZC94-05 with conditions as a result.

Mr. Orem, the applicant, requested a change in nonconforming use from Olde Towne Motors to Century 21. Staff approved the request and issued ZC03-02; however it was not signed, and therefore not effective, until November 3, 2005. There is no documentation in the file to support a reasonable conclusion why the zoning certificate was signed two years after submittal.

Staff is unable to determine when the Century 21 business ceased to operate. The applicant's request appears to state that the real estate business closed in 2007. A new owner, Black Belt Enterprises, Inc., apparently operated a martial arts studio from 2007-2009 without the necessary approvals from the Department (*see notarized letter dated June 11, 2013 from applicant*).

On 12/03/09 Mr. Orem signed a Zoning Certificate Application for a change in nonconforming use which was submitted by Francis Gomes for a Subway/Deli. Staff requested documentation supporting the continuity of the nonconforming use. It appears the documentation was not submitted and Mr. Gomez check was returned on 12/09/09.

In 2009 the applicant regained ownership of the property until April 2011 when Christian Community Church entered into a financial agreement with the applicant. This agreement ended in May 2012 (*see notarized letter dated June 11, 2013 from applicant*). A zoning certificate was not issued for the use of the structure from 2009 – 2012 for either the applicant nor the church.

In August 2012 the applicant leased the property to Rev Cycle & Fitness. This use ceased operations in March 2013 (*information found on <https://www.facebook.com/RevCycleFitness>*) while their lease ended

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
August 15, 2013

**John Orem Request (#ZV13-20)**

on May 1, 2013 (*see notarized letter dated June 11, 2013 from applicant*). A zoning certificate was not obtained for this use by neither the applicant nor the tenant.

From 2009 - present the Department has received approximately five (5) Information Request Forms from members of the public inquiring about the potential uses of the property.

3. Applicant's Justification of Request

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

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

4. Staff Evaluation of Request

a. Source and purpose of ordinance requirements

Section 4.3(B) 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:

"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 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.

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

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
August 15, 2013

**John Orem Request (#ZV13-20)**

b. Unique characteristics of property

As mentioned above, the subject building has been used commercially since being constructed in early 1970 and a number of the surrounding parcels are currently being used for nonresidential purposes. The majority of the parcel is paved thereby eliminating the residential character the property.



**Front View of Property**

c. Character of area

Depicted in the aerial below is the subject parcel. To the south is an existing cell tower with a significant number of satellites. To the north is Good Shepherd Caregivers, a parcel that received a conditional use permit to operate a home medical supply company and duplex. Adjacent to the Good Shepherd property is a storage/warehousing facility and the Shepherdstown water towers. To the east is the 7-11 gas station and convenience store.



**Aerial View**

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
August 15, 2013

**John Orem Request (#ZV13-20)**



d. Impact on adjacent properties

Since this parcel has existed has a nonresidential lot since its construction and the access is from Route 45, with ample parking, the impact on adjacent properties appears minimal.

It should be noted that any requested change in a nonconforming use is subject to Section 4.3(D):

- D. 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

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
August 15, 2013

**John Orem Request (#ZV13-20)**

another retail, service or wholesale operation without such public hearing; provided again, however, the intended use does not include an adult use.<sup>7, 17, 21</sup>

e. Feasibility of complying with the ordinance by other means

While the structure and land may not be suitable for residential use there are possible permitted uses within the Residential Growth District that may be more appropriate. The following are examples of those uses:

1. Vocational and/or Training Facility for Adults<sup>12</sup>
2. Church
3. Day Care Center, Small
4. Day Care Center, Large

A zoning certificate application must be submitted prior to the commencement of any use within the structure in order for our Department to determine if the use is permitted and whether other Zoning, Subdivision or Permit requirements may be necessary.

Alternatively, the applicant may wish to pursue a conditional use permit. Two parcels along this road, coincidentally the parcel to the north, sought and were granted a Conditional Use Permit. This may be an appropriate process for the applicant to pursue; however, the applicant is attempting to market the property and a conditional use permit is typically “use specific” and therefore would either limit the sale of the parcel or limit the leasing potential of the parcel.

5. Conditions of Approval

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

- a. The owner of the property must seek a zoning certificate for each change in nonconforming use or change in tenant to ensure that the nonconformity of the structure is uninterrupted.
- b. 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:<sup>7</sup>

- 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.<sup>5, 17, 21</sup>

JOHN OREM & ASSOCIATES LLC  
"THE REAL ESTATE EXPERTS"



Jefferson County Planning Commission

June 11<sup>th</sup> 2013

RE: Non-Conforming Use Application

As requested I am providing you with a chronological history of use for the property located at 7330 Martinsburg Pike Shepherdstown WV 25443. The property was purchased by Orem Inc. January 2006. From that date till May 2007 the property was used as a real estate office. The property was then sold to Black Belt Industries and used as a Karate studio until December 2008 when the property was returned to me by means of deed in lieu. The property was immediately re-rented to Christian community church who ended up buying the property February 2011. They also ended up turning the property back to me by means of deed in lieu May 2012. August 2012 the property was rented to Rev Cycle & fitness. May 1<sup>st</sup> 2013 they ended their lease.

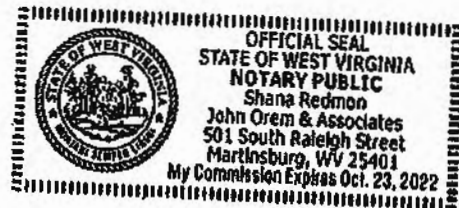
Accompanying this letter I have attached the occupancy permit. Additionally the property water and electric is still on at the property and in the name of Orem Inc.

Sincerely

A handwritten signature in black ink, appearing to read "John W. Orem".

John W. Orem

*Shana Redmon Exp 10-23-22*







# JEFFERSON COUNTY, WEST VIRGINIA

## Departments of Planning and Zoning

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

Charles Town, WV 25414

File Number: 7113-22

Staff Initials: CLC

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

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

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

Phone: (304) 728-3228

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

Fax: (304) 728-8126

### Zoning Variance Request

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

#### Property owner information

Property Owner Name: Orem, Inc.

Mailing Address: 501 South Raleigh Street

City: Martinsburg State: WV Zip Code: 25401

Phone Number: 304-264-8177 Email: john@johnorem.com

#### Applicant or contact information

Applicant / Contact Name: John Orem, President of Orem, Inc.

Mailing Address: 501 South Raleigh Street

City: Martinsburg State: WV Zip Code: 25401

Phone Number: 304-264-8177 Email: john@johnorem.com

#### Applicant representatives

Company/Organization Name: Luttrell & Prezioso PLLC

Attorney(s), Engineer(s), or Surveyor(s) Name: Christopher Luttrell, Esq.

Mailing Address: 206 West Burke Street

City: Martinsburg State: WV Zip Code: 25401

Phone Number: 304-267-3050 Email: luttrell@luttrellprezioso.com

#### Physical property details

Physical Property Address: 7330 Martinsburg Pike

City: Shepherdstown State: WV Zip Code: 25443

Tax District: 09 Map No: 7B Parcel No: 0095 0000 0000

Parcel Size: \_\_\_\_\_ Deed Book: 1060 Page No: 725

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

**RECEIVED**  
 JUL 19 2013  
 JEFFERSON COUNTY  
 PLANNING, ZONING AND ENGINEERING

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

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

Reference the section of Ordinance pertaining to this request: Article 4 Section 4.3(b)

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

See Exhibit A

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

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

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

See Exhibit B

**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 Exhibit C

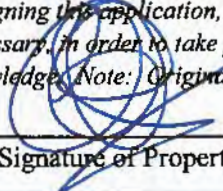
**How will granting this variance eliminate an unnecessary hardship and permit a reasonable use of the land?**

See Exhibit D

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

See Exhibit E

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.

 abehalf of Drew, Inc. 7/19/2013  
Signature of Property Owner 1 an Attorney 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)).

08/15/13  
Date of Public Hearing

07/31/13  
Advertising Date

07/31/13  
Placard Posting Date

← Martinsburg

SANDPIPER LANE

150.04'

Parking Lot

Existing Structure

Existing Commercial Sign

100'

W. VA. ROUTE 45

116.07'

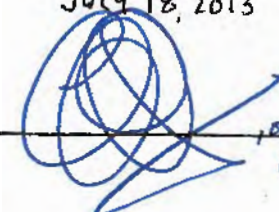
150'

### SKETCH OF EXISTING PROPERTY

7330 MARTINSBURG PIKE

SHEPHERDSTOWN, WV

JULY 18, 2013

 , on behalf of Orem, Inc.  
Attorney

Shepherdstown

⚠ NOT TO SCALE

⚠ MEASUREMENTS OF PROPERTY TAKEN FROM 2012 JEFFERSON COUNTY TAX MAPS



## Exhibit A

### Variance Request for 7330 Martinsburg Pike, Shepherdstown, WV 25443

#### Please briefly describe the nature of the variance request

In this matter, the property owner, Orem, Inc., requests for a variance to permit a non-conforming use of real property presently zoned as Residential Growth (R-1). The real property in question is known, for postal purposes, as 7330 Martinsburg Pike, Shepherdstown, WV 25443 (hereinafter the "Real Property").

Historically, the Real Property and the structures thereon have been used almost exclusively for commercial purposes. Believed to be constructed sometime in the 1970s, the commercial structure on the Real Property originally housed a "High's Dairy Store" and sits immediately adjacent to the 7-Eleven store located just North of Shepherdstown, still in operation today. Orem, Inc. most recently took title by Deed *in Lieu* of Foreclosure dated May 22, 2012, through which the Trustees of the Christian Community Fellowship (a religious organization) conveyed the Real Estate to Orem, Inc. in exchange for forgiveness of an existing secured lien on the Real Property. Although Orem, Inc. had previously owned the Real Property throughout the years of 2003 and 2011, and its existing commercial use was permitted by virtue of Article 4 Section 4.3(b)<sup>1</sup> for non-conforming use, the conveyance to a religious organization removed the prior exemption, as a religious organization is not considered a commercial enterprise. Because the prior religious organization occupied the Real Property for more than twelve (12) consecutive months, the prior permitted use was deemed "abandoned" according to Article 4 Section 4.3(b).

Through this petition, Orem, Inc. merely seeks a variance to allow the continued use of the Real Property for commercial purposes. Presently, Orem, Inc. has

---

<sup>1</sup> Article 4 Section 4.3(b) states:

"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:

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]

...

(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.

[AMENDED TWICE TIMES BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990 AND JULY 15, 1993] [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON \_\_\_\_\_]"

engaged discussions with an existing insurance agency that, contingent upon the approval of the Jefferson County Planning Commission, will lease and renovate the structure on the Real Property.

## Exhibit B

### Variance Request for 7330 Martinsburg Pike, Shepherdstown, WV 25443

- **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.**

To understand the history of the Real Property in question, it is necessary to examine the title ownership. The petitioner, Orem, Inc., most recently took title by Deed *in Lieu* of Foreclosure dated May 22, 2012, the original of which is of record in the office of the Clerk of the County Commission of Jefferson County, West Virginia, in Deed Book 1111, at Page 66. Prior to May 22, 2012, Orem, Inc. held a secured deed of trust dated April 4, 2011, on the Real Property, duly executed by the Trustees of the Christian Community Fellowship (a religious organization) and of record in the aforementioned Clerk's office in Deed of Trust Book 1843, at Page 551. This agreement, commonly referred to as "owner financing", was executed on the same date – April 4, 2011, that Orem, Inc. conveyed the Real Property to the Trustees of Christian Community Fellowship, the deed of which is of record in the aforementioned Clerk's office in Deed Book 1091, at Page 597. Upon default of the promissory note secured by the aforementioned Deed of Trust, the Trustees of Christian Community Fellowship offered to convey the Real Estate to Orem, Inc. in exchange for forgiveness of the promissory note. Orem, Inc. agreed to accept title to Real Property, prompting the recordation of the Deed *in Lieu* of Foreclosure referenced above.

Historically, with the exception of the time that Christian Community Fellowship occupied the Real Property, the Real Property and the structures thereon have been used exclusively for commercial purposes. Believed to be constructed sometime in the 1970s, the commercial structure on the Real Property originally housed a "High's Dairy Store" and sits immediately adjacent to the 7-Eleven store located just North of Shepherdstown, still in operation today. Prior to the ownership by the Christian Community Fellowship, Orem, Inc. was the owner of the Real Property from 2003 until 2007, and again from 2009 until April 2011, with the owner from 2007 until 2009 using the Real Property to house a martial arts business. During the entire period from 2003 until April 2011 (and, upon information and belief, all times prior), the Real Property housed commercial enterprises, including the High's Dairy Store, the martial arts business, and a real estate sales office for CENTURY 21 Diamond Realty.

Prior to Christian Community Fellowship taking title and possession to the Real Property, the Real Property was considered a prior exempt commercial use permitted by virtue of Article 4 Section 4.3(b) for non-conforming use, as it existing prior to the enactment of the conveyance to Community Christian Fellowship removed the prior exemption, as the ownership by a religious organization is not considered a commercial enterprise and because the prior religious organization occupied the Real

Property for more than twelve (12) consecutive months, deeming the prior permitted use "abandoned" according to Article 4 Section 4.3(b).

Thus, with the exception of the time that Christian Community Fellowship owned the Real Property, the Real Property has housed commercial enterprises. Through this petition, Orem, Inc. merely seeks a variance to allow the continued use of the Real Property for commercial purposes. Importantly, Orem, Inc. has engaged discussions with an existing insurance agency that, contingent upon the approval of the Jefferson County Planning Commission, will lease and renovate the structure on the Real Property. If permitted, the insurance agency will offer to the public of the surrounding area a value service and improve an existing older structure, without posing a threat to the community's public health, safety, or welfare.

## **Exhibit C**

### **Variance Request for 7330 Martinsburg Pike, Shepherdstown, WV 25443**

- 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?**

As set forth before, historically, with the exception of the time that Christian Community Fellowship occupied the Real Property from April 4, 2011 until May 22, 2012 (a period of one year, one month, and 18 days), the Real Property and the structures thereon have been used exclusively for commercial purposes. Believed to be constructed sometime in the 1970s, the commercial structure on the Real Property originally housed a "High's Dairy Store." Prior to the ownership by the Christian Community Fellowship, Orem, Inc. was the owner of the Real Property from 2003 until 2007, and again from 2009 until April 2011, with the owner from 2007 until 2009 using the Real Property to house a martial arts business. During the entire period from 2003 until April 2011 (and, upon information and belief, all times prior), the Real Property housed commercial enterprises, including the High's Dairy Store, the martial arts business, and a real estate sales office for CENTURY 21 Diamond Realty. Thus, with the exception of the one year, one month, and 18 days that Community Christian Fellowship held the Real Property, the Real Property has always been used for exclusively commercial purposes. Importantly, Orem, Inc. did not construct the structure on the Real Property, or the parking lot or commercial sign located on the Real Property. Upon information and belief, all such items were constructed in the 1970s by prior owners of the Real Property and used, lawfully, for commercial purposes. In short, Orem, Inc. did not contribute to the special conditions of the Real Property. The Real Property was already unique when he took title to the Real Property.

Additionally, the special attributes of the Real Property – the existing commercial structure, the existing parking lot, and the commercial sign located in front of the building, render it inoperable for any residential purpose without significant and costly renovations. Through this petition, Orem, Inc. merely seeks a variance to allow the continued use of the Real Property for commercial purposes. Due to the special nature in which Orem, Inc. took title to the Real Property, namely because the prior owner defaulted on a secured promissory note, permitting the variance would be the only fair course of action in this matter. Otherwise, Orem, Inc. will be forced to own a property that is taxed as an investment/business yet cannot be utilized for that very same purpose.

## Exhibit D

### Variance Request for 7330 Martinsburg Pike, Shepherdstown, WV 25443

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

As set forth before, historically, with the exception of the time that Christian Community Fellowship occupied the Real Property from April 4, 2011 until May 22, 2012 (a period of one year, one month, and 18 days), the Real Property and the structures thereon have been used exclusively for commercial purposes. Believed to be constructed sometime in the 1970s, the commercial structure on the Real Property originally housed a "High's Dairy Store." Prior to the ownership by the Christian Community Fellowship, Orem, Inc. was the owner of the Real Property from 2003 until 2007, and again from 2009 until April 2011, with the owner from 2007 until 2009 using the Real Property to house a martial arts business. During the entire period from 2003 until April 2011 (and, upon information and belief, all times prior), the Real Property housed commercial enterprises, including the High's Dairy Store, the martial arts business, and a real estate sales office for CENTURY 21 Diamond Realty. Thus, with the exception of the one year, one month, and 18 days that Community Christian Fellowship held the Real Property, the Real Property has always been used for exclusively commercial purposes.

If the variance is not granted, Orem, Inc. will suffer significant and costly harm. The Real Property, as presently constituted, consists of an existing commercial structure, an existing parking lot, and a commercial sign located in front of the building, rendering it inoperable for any residential purpose. For Orem, Inc. to change the structure to a residential use structure, demolition will likely be necessary, as the existing structure was originally designed as a convenience store. In the event a conversion of the structure is undertaken, the exterior appearance would be very inconsistent with surrounding homes as well.

In conclusion, Orem, Inc. merely seeks a variance to allow the continued use of the Real Property for commercial purposes. Due to the special nature in which Orem, Inc. took title to the Real Property, namely because the prior owner defaulted on a secured promissory note, permitting the variance would be the only fair course of action in this matter. Otherwise, Orem, Inc. will be forced to own a property that is taxed as an investment/business yet cannot be utilized for that very same purpose or invest significant sums of money and time converting it to a residential purpose.

## **Exhibit E**

### **Variance Request for 7330 Martinsburg Pike, Shepherdstown, WV 25443**

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

The intent of Jefferson County Zoning Ordinances is to curb unauthorized development in residential and rural areas and ensure that new development is compatible with the surrounding parcels. The Real Property is not a new development and has historically been used for commercial purposes in compliance with the non-conformance use. The commercial uses of the Real Property have served the surrounding community and will continue to do so if granted this variance request.

Commercial use of the property is also compatible with the surrounding parcels, as it is bordered by another commercial property, a 7-11 Convenience Store, located at 7364 Martinsburg Pike, and catty-cornered from another commercial property, North Central Distribution Center, located at 7291 Martinsburg Pike. The Real Property is, in fact, only .1 miles away the Residential-Light Industry Zone. Granting the variance will not cause an inconsistency that the Zoning Ordinances are designed to prevent.


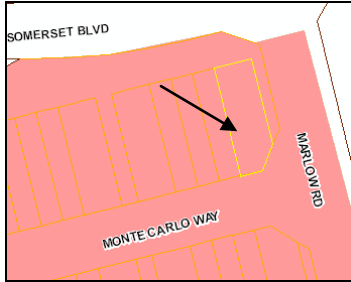
In conclusion, granting this Variance Request will enable the Real Property to be used for its highest and best use, as it was built for commercial activity. Substantial justice will be served by allowing the property owner to utilize the property in the manner in which it was intended to be used and for which it has been used, with the exception of a brief time when it was owned by a religious organization.



Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 August 15, 2013

**Kevin R. Blundon Variance Request (#ZV13-23)**

Item #6 Variance request by applicant, Kevin R. Blundon, from Section 5.4(B) for a reduction of the rear setback distance from 20' to 16' to construct a 20'x12' deck and corresponding stone patio situated underneath.

APPLICANT:	Kevin R. Blundon
OWNER:	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	Windmill Crossing Subdivision, 6 Monte Carlo Way, Charles Town, West Virginia
LEGAL DESCRIPTION:	District: Charles Town (02); Map: 9C; Parcel: 67  
ZONING DISTRICT:	Zoning Map Designation: Residential-Light Industrial-Commercial (R-LI-C)  
SURROUNDING PROPERTIES:	Zoning Map Designation: North: R-LI-C      South: R-LI-C East: R-LI-C      West: R-LI-C
LOT AREA:	3,350 sq. ft.
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential
Community Impact Statement	PC Approval: 02/11/03
Preliminary Plat	Staff Approval: 11/22/04
Final Plat (PC File #03-01)	PC Approval: 01/11/05

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
August 15, 2013

**Kevin R. Blundon Variance Request (#ZV13-23)**

RELEVANT INFORMATION:

1. Overview of Request

The applicant seeks a rear yard setback variance of 4' in order to construct a 12' x 20' deck.

Per the material submitted with the variance request, the proposed deck would actually be 19 ½' wide and would extend 12' from the townhome towards the rear property line. The applicant is also proposing a stone patio underneath the deck.

Section 5.8 of the Zoning Ordinance provides that the setback requirements of the Residential Growth District apply to a residential use in the Residential-Light Industrial-Commercial District. For a townhouse, these setbacks are 25 feet (front), 12 feet (exterior side), and 20 feet (rear).

2. Previous Case History

The original Windmill Crossing community was approved by subdivision plat in April 2005. This subdivision consisted of 15 commercial lots and 133 townhomes and is located in the Residential-Light Industrial-Commercial District (R-LI-C).

The Board of Zoning Appeals reviewed similar variance requests in the Windmill Crossing Subdivision, including requests approved on May 20, 2010 (Weaver, ZV10-04), July 15, 2010 (Brown, ZV10-08), September 16, 2010 (Einreinhof, ZV10-16), April 21, 2011 (Muniz, ZV11-08), August 18, 2011 (Reed, ZV11-24), January 19, 2012 (Stine, ZV12-03, Kimmel, ZV12-04, Franz, ZV12-05), March 15, 2012 (McFadden, ZV12-09), April 19, 2012 (Silva, ZV12-11), May 17, 2012 (Gonzalez and Mercado, ZV12-15, Gahagan, ZV12-16, Devolites, ZV12-18, Cox, ZV12-19), and June 21, 2012 (Powell, ZV12-20, Friend, ZV12-21), August 16, 2012 (ZV12-25, Somerville).

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:

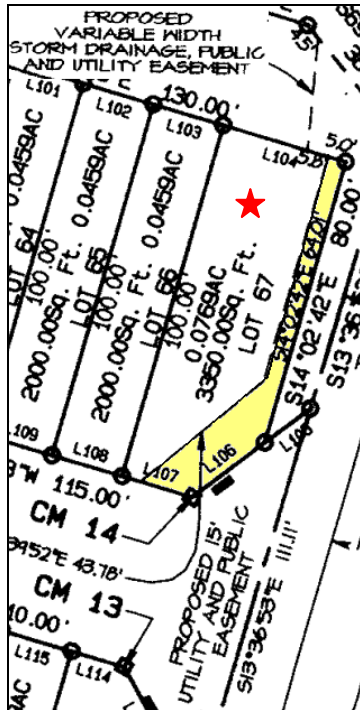
- a) *Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents.*
- b) *Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance.*
- 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

There is a Utility and Public Easement located on the northeastern side of the applicant's property. There is also a "Storm Drainage, Public and Utility Easement" of varying width that is adjacent to their rear property line. Somerset Boulevard is located to the north of this easement. Therefore granting this variance would not appear to adversely affect adjacent property owners to the rear.

Staff Report  
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 August 15, 2013

**Kevin R. Blundon Variance Request (#ZV13-23)**



Note: The Planning Commission is currently reviewing a proposed text amendment which will reduce the rear setback for a deck to 10' for properties under the follow conditions: located in the Residential - Light Industrial – Commercial District and Residential – Growth zoning districts; on townhouse lots with a lot depth of 110 linear feet or less and/or a lot area of 3,500 square feet or less; and, if the adjacent property located to the rear of the subject lot is a dedicated easement or common area and is not a lot that includes a residence.

5. Possible Conditions of Approval

No conditions of approval are identified for this variance request.

SECTION OF ORDINANCE TO BE CONSIDERED:

B. Minimum Lot Area, Height, and Yard Requirements

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

Development Type	Minimum Lot Area (MLA) Area per Dwelling Unit (ADU)	Required Yards	Maximum Building Height*
3. Townhouse			
Public/Central water and sewer	1,400 sq. ft. MLA 3,500 sq. ft. ADU	25 ft. front 12 ft. side (exterior only) 20 ft. rear	40 ft.





# JEFFERSON COUNTY, WEST VIRGINIA

## Departments of Planning and Zoning

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

Charles Town, WV 25414

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

File Number: #ZV1323

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

Staff Initials: CSC

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

Phone: (304) 728-3228

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

Fax: (304) 728-8126

### Zoning Variance Request

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

#### Property Owner Information

Property Owner Name: Kevin R. Blundon

Mailing Address: 6 Monte Carlo Way

City: Charles Town, State: WV Zip Code: 25414

Phone Number: 304-268-8416 Email: apple6uy@icloud.com

#### Applicant or Contact Information

Applicant / Contact Name: SAME AS ABOVE.

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: 6 Monte Carlo Way, Charles Town, WV-25414

Tax District: Charles Town<sup>02</sup> Map No: 9C Parcel No: 67

Parcel Size: \_\_\_\_\_ Deed Book: 1100 Deed Bk. Pg. No: 350

(Lot #67 Windmill Crossing)

RECEIVED

JUL 22 2013

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

Zoning District:	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 checked="" 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: 5.4(b)

Please briefly describe the nature of the variance request: Build a 20x12 Deck.  
Need to reduce set back 20ft. to 16ft. 5.4(B)

Future Plan to add a 20x12 patio under deck. (stone patio)

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

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.

In line w/ neighbors, they have decks also. I'm on end unit  
Monument behind my house.

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?

Lot is small yard (except end unit).  
Does not allow reasonable size deck.

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

Will allow me to use property to full extent, and upgrade  
property value.

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

enjoy sitting on/in backyard, plants outside, eating outside.

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.

Kevin R. Blunson 07-22-13  
Signature of Property Owner 1 Date

N/A  
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)).

08/15/13  
Date of Public Hearing

07/31/13  
Advertising Date

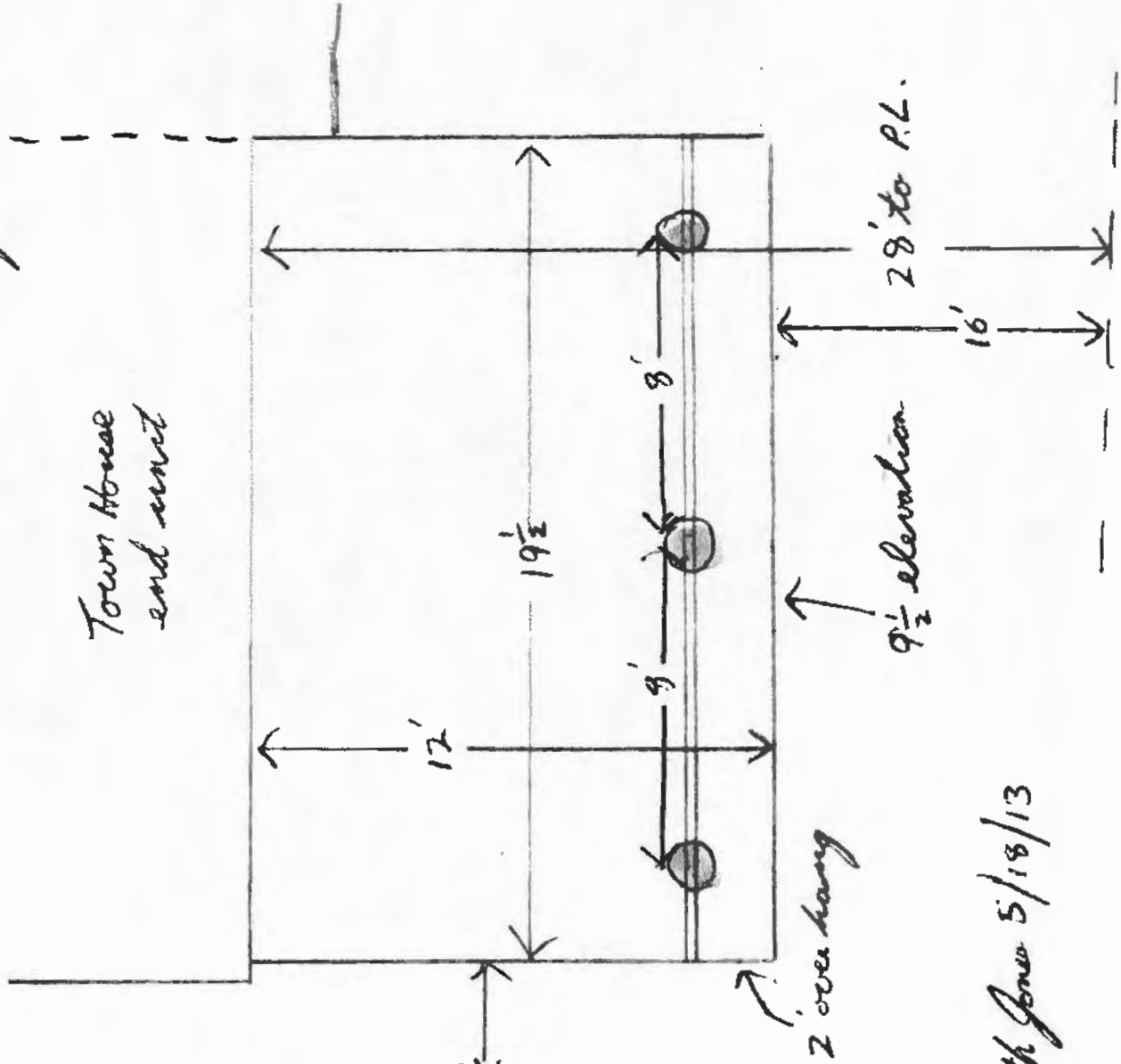
07/31/13  
Placard Posting Date

1/4 scale

Kevin Blundon  
6 Monte Carlo Way  
Windmill Crossing

Town House  
end unit

- all P.T. material
- 2 x 6 decking
- 2 x 8 joist (16" O.C.)
- double 2 x 10 beam
- 6 x 6 support post (16" x 30" footers)
- 2 x 10 wrap bd
- standard 36" rail
- 2-tie down bolts into ledger



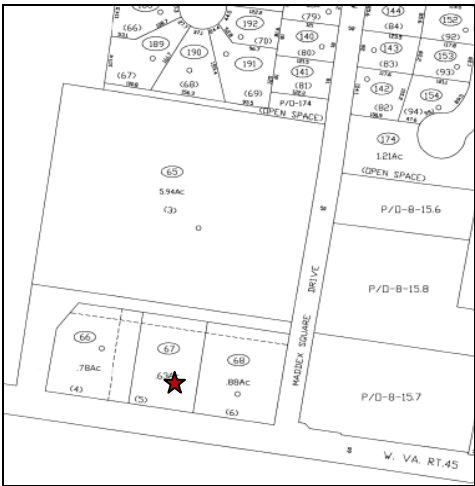
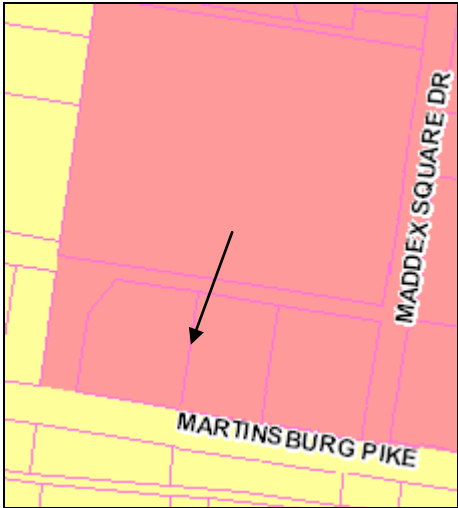
Keith Jones 5/18/13



Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 August 15, 2013

**David Poyser – Dairy Queen- Request (#ZV13-20)**

Item # 7 Variance request by applicant, David Poyser with D & D, L.C., from Section 5.4(D) 1 & 2 for a reduction of the front and side setback distances from 25' to 15' for the placement of a 12'x 13' temporary storage shed.

APPLICANT:	Craig Jenkins, Representative				
OWNER :	David Poyser				
DEVELOPER:	n/a				
SURVEYOR/ENGINEER:	n/a				
PROPERTY LOCATION:	Lot 5, Maddex Square Shopping Center: Dairy Queen 45 Maddex Square Drive, Shepherdstown				
LEGAL DESCRIPTION:	<p style="text-align: center;">Shepherdstown (09); Tax Map: 8C; Parcel: 67</p> 				
ZONING DISTRICT:	<p style="text-align: center;">Zoning Map Designation: Residential-Light Industrial-Commercial (R-LI-C)</p> 				
SURROUNDING PROPERTIES:	<p>Zoning Map Designation:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;"><i>North:</i> R-LI-C</td> <td style="width: 50%;"><i>South:</i> RG</td> </tr> <tr> <td><i>East:</i> R-LI-C</td> <td><i>West:</i> R-LI-C</td> </tr> </table>	<i>North:</i> R-LI-C	<i>South:</i> RG	<i>East:</i> R-LI-C	<i>West:</i> R-LI-C
<i>North:</i> R-LI-C	<i>South:</i> RG				
<i>East:</i> R-LI-C	<i>West:</i> R-LI-C				
LOT AREA:	0.63 acres				

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 August 15, 2013

**David Poyser – Dairy Queen- Request (#ZV13-20)**

Conditional Use Permit PC File #Z08-01	06/24/08: PC approve the issuance of the CUP 07/11/08: CUP issued 01/11/10: CUP expired 07/11/11: CUP expiration extended
Community Impact Statement PC File #04-18	07/27/04: PC approved CIS 12/21/04: Staff approved preliminary plat/site plat for 2 lot development
Site Plan PC File #S06-02	06/24/08: PC approved
VARIANCE(S):	11/19/09: BZA granted an 18-month extension of the CUP.
APPROVED ACTIVITY:	Commercial: Fast Food/Drive through

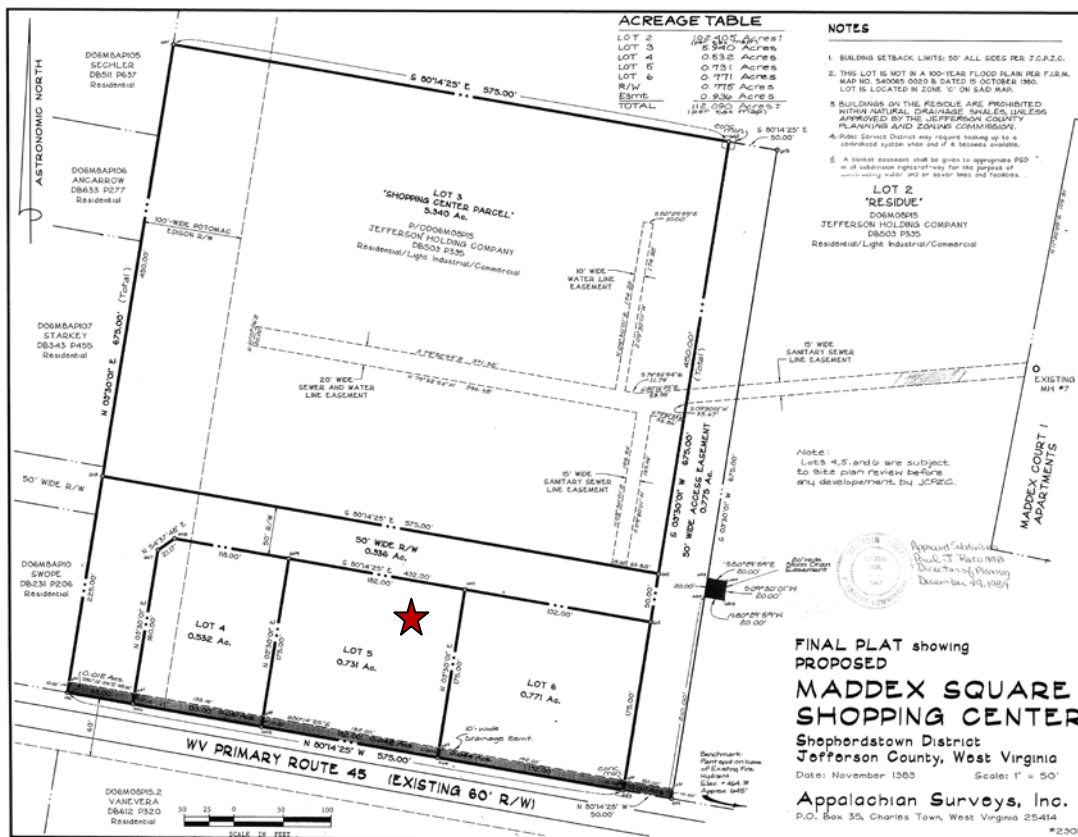
**RELEVANT INFORMATION:**

1. Overview of Request

The applicant is seeking a variance from Section 5.4(D) 1 & 2 for a reduction of the front and side setback distances from 25' to 15' for the placement of a 12'x 13' temporary storage shed.

2. Previous Case History

The subject property is located on Lot 5 of the Maddex Square Shopping Center (PC File #89-32), which was approved and recorded with the County Clerk on July 18, 1973. No additional variances have been sought for this lot.



\*Note: a merger has been processed since this plat was recorded to reduce the size of the subject lot from 0.731 ac to 0.63 ac.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
August 15, 2013

**David Poyser – Dairy Queen- Request (#ZV13-20)**

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 redline revision was approved on 07/23/12 to change the grade of the site and to add a 60' x 20' concrete pad toward the rear of the site which would support a future fenced propane tank and an outdoor cooler. As part of this revision the engineering consultant, RK&K, was advised that the owner would need to request a variance from the building setback requirements to install the outdoor cooler. The applicant has since located the walk-in cooler within the store; however, has expressed the need for additional storage and is therefore requesting that a 12'x 13' shed be situated in the proposed location of the outdoor cooler

While the placement of the pad and cooler initially raised concerns of reduced parking spaces in 2012; Staff has determined that the proposed shed will not negatively impact nor reduce the required parking as noted on the approved site plan.

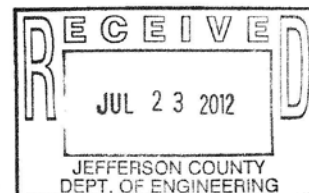


| Grand Central Park, Suite 2040 | Keyser, WV 26726 | P 304.788.3370 | T 877.460.3370 | F 304.788.3577 | www.rkk.com

July 17, 2012

Mr. Roger Goodwin, PE, County Engineer  
Jefferson County Planning, Zoning & Engineering  
PO Box 338  
104 East Washington Street  
Charles Town, WV 25414

Re: Dairy Queen – Maddex Square Shopping Center (Lot No. 5)  
Shepherdstown, West Virginia  
Planning Commission File # S06-02



Dear Mr. Goodwin:

At the request of the owner and contractor for the above referenced project, the following changes were made to the approved drawings dated March 17, 2010:

- Revised Title Page submittal date to July 6, 2012.
- To correct a drainage problem at the rear of the site, the finished grade of the building, catch basin #3, and catch basin #5 were raised one (1') foot.
- A 16'x20' concrete pad was added at the rear of the site for addition of a future outdoor cooler. The owner will have to request a variance of the building setback requirement to install the outdoor cooler.
- No parking spaces were deleted with the construction of the 16'x20' concrete pad. Owner will need to request a variance to eliminate parking spaces needed to install the outdoor cooler on the pad.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
August 15, 2013

**David Poyser – Dairy Queen- Request (#ZV13-20)**

a. Unique characteristics of property

The subject parcel is located in a planned shopping center which is zoned for commercial use. This parcel was vaguely referred to in a community impact statement as ‘a proposed commercial building’. Subsequently, the subject parcel was required to process as a conditional use permit as Section 5.8(b)11 states that restaurants where the primary mode of food distribution is by pick-up counter or drive in window...shall be subject to the Neighborhood Compatibility Process (now referred to as the Compatibility Assessment Meeting).

b. Character of area

The surrounding area is inundated by commercial uses. While only nine properties are zoned for commercial development there are approximately 17 known commercial enterprises within a half mile radius of the subject parcel.



c. Impact on adjacent properties

As the proposed shed will only be 156 square feet in size Staff does not anticipate the likelihood of any negative impact. The shed would be located on the opposite side of an existing propane tank from the adjacent property owner which would create a minimal visual buffer. The McDonald's parcel also contains landscaping that would appear to help screen the shed from their parcel and potential traffic traveling west on Route 45.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
August 15, 2013

**David Poyser – Dairy Queen- Request (#ZV13-20)**

The adjacent lot, McDonald's, erected a similar shed which would ultimately be on the adjoining property line of the applicant. This shed appears to have a minimal impact on the surrounding neighborhood and does not seem to impede the flow of traffic on site.



**Proposed Location of Shed**



**McDonald's Property - View of their Shed**

d. Feasibility of complying with the ordinance by other means

There does not appear to be an alternative location on this site to place a temporary structure of any size on the property. The Improvement Location Permit Ordinance requires all structures, regardless of size, to obtain a permit and therefore setback must apply. While Section 9.6

5. Conditions of Approval

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

None suggested.

SECTION OF ORDINANCE TO BE CONSIDERED:

**Section 5.6 Industrial - Commercial District<sup>23</sup>**

D. Yard Requirements as follows: (These requirements are also for an approved commercial or industrial use proposed for any other zone.)<sup>5, 23</sup>

1. Front yard building setback
  - Commercial sites 25 feet
  - Industrial sites 50 feet
2. Side yard building setback
  - Commercial sites greater than 1.5 acres 50 feet
  - Commercial sites 1.5 acres and smaller 25 feet
  - Industrial sites 50 feet





# JEFFERSON COUNTY, WEST VIRGINIA

## Departments of Planning and Zoning

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

Charles Town, WV 25414

File Number: 2V13-24

Staff Initials: etc

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

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

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

Phone: (304) 728-3228

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

Fax: (304) 728-8126

### Zoning Variance Request

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

#### Property owner information

Property Owner Name: D&D L.C.  
 Mailing Address: 118 W. Johnson St.  
 City: Staunton State: VA Zip Code: 24401  
 Phone Number: 540 887-8031 Email: \_\_\_\_\_

#### Applicant or contact information

Applicant / Contact Name: David Poyser  
 Mailing Address: same as owner  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
 Phone Number: 540 430 4098 Email:  david@Petersons1.com

#### Applicant representatives

Company/Organization Name: \_\_\_\_\_  
 Attorney(s), Engineer(s), or Surveyor(s) Name: CONTACT Craig Senkows  
540-877-4406  
 Mailing Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

#### Physical property details

Physical Property Address: 45 Maddex Square Dr  
 City: Shepherdstown State: WV Zip Code: 25443  
 Tax District: Shepherdstown Map No: 8C Parcel No: 67  
 Parcel Size: .63 A Deed Book: 1057 Page No: 624

Zoning District:	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"/>	<input type="checkbox"/>

**RECEIVED**  
 JUL 23 2013  
 JEFFERSON COUNTY  
 PLANNING, ZONING AND ENGINEERING

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

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

Reference the section of Ordinance pertaining to this request: sec. 5.6 D1/32-GH 08/05/13

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

change setback from 25' to 15' to ALLOW PLACEMENT OF A 12'x13' SHED TO BE USED AS TEMPORARY STORAGE. (CAC)

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

Front Setback  Side Setback  Rear Setback Reduction From 25' to 15'

**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.**

Change will not impede traffic flow or block line of sight or view.

**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?**

Concern about storage capacity in store.

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

Will reduce number of deliveries and not require employees to travel to offsite storage for supplies

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

will not affect public safety or the rights of other property owners or create an "eye sore".

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

[Signature] 7/23/13  
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)).

AUGUST 15, 2013  
Date of Public Hearing

JULY 31, 2013  
Advertising Date

JULY 31, 2013  
Placard Posting Date



