

Jefferson County  
Board of  
Zoning Appeals

Thursday,  
March 21, 2013



# JEFFERSON COUNTY, WEST VIRGINIA

## Department of Zoning

116 East Washington Street

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### MEMORANDUM

TO: Board of Zoning Appeals Members

CC: Engineering & Building Permits Departments

FROM: Steve Barney, Zoning Administrator

DATE: March 15, 2013

SUBJECT: March Monthly Report of Department Activities

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### ISSUED ZONING CERTIFICATES

#ZC13-01 NOEL HENDERSON – OWNER / APPLICANT

*Issuance Date:* February 26, 2013

*Proposed Use:* Home Occupation. Warehousing inventory and distribution/  
wholesaling of veterinarian supplies and pharmaceutical products  
from residential garage. No public retail sales at facility.

*Physical Location:* 309 Pellinor Lane; Charles Town, West Virginia 25414

*Zone:* Rural

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#ZC13-02 ERIK R. JONES – OWNER / APPLICANT

*Issuance Date:* February 28, 2013

*Proposed Use:* Cottage Industry. Catering Business

*Physical Location:* 64 Rocky Ledge Lane; Shenandoah Junction, West Virginia 25442

*Zone:* Rural

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#ZC13-03 WAYNE & RENEE MOORE – OWNER / APPLICANT

*Issuance Date:* February 22, 2013

*Proposed Use:* General Store and Deli

*Physical Location:* 2142 Mission Road; Harpers Ferry, West Virginia 25425

*Zone:* Rural

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## **ISSUED ZONING CERTIFICATES**

#ZC13-05 AMERICAN TOWERS, LLC– OWNER /  
DYNIS, INC (ON BEHALF OF AT&T) – APPLICANT

*Issuance Date:* March 07, 2013

*Proposed Use:* Wireless Facility Co-location. Property contains self-support cell tower. AT&T to add three (3) panel antennas and ancillary equipment to an existing tower structure at current height.

*Physical Location:* 17425 Ravens Rock Road; Charles Town, West Virginia 25414  
*Zone:* Rural

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#ZC13-06 SUNNYSIDE LIMITED PARTNERSHIP – OWNER /  
DYNIS, INC (ON BEHALF OF AT&T) – APPLICANT

*Issuance Date:* March 07, 2013

*Proposed Use:* Wireless Facility Co-location. Property contains self-support cell tower. AT&T to add three (3) antennas to also include adding equipment inside an existing building shelter located within leased compound fenced area. No concrete will be poured. No work will be done outside of existing lease area on the tower and on the ground.

*Physical Location:* 836 Wheatland Road; Rippon, West Virginia 25541  
*Zone:* Rural

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## **PENDING ZONING CERTIFICATES**

#ZC12-15 THE MARTY MART GROUP, LLC (MARTHA WAREING) – OWNER /  
LES BOWMAN & ALICE JAMES – APPLICANTS

*Issuance Date:* TBD

*Proposed Use:* Wants to lease parking spaces at Sunoco Gas Station for the purpose of selling seafood on Friday, Saturday and Sundays.

*Physical Location:* 1422 Blair Road; Harpers Ferry, West Virginia 25425  
*Zone:* Residential-Growth

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**AGENDA**  
**Jefferson County**  
**Board of Zoning Appeals**  
**Thursday, March 21, 2013, 3:00 p.m.**

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

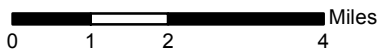
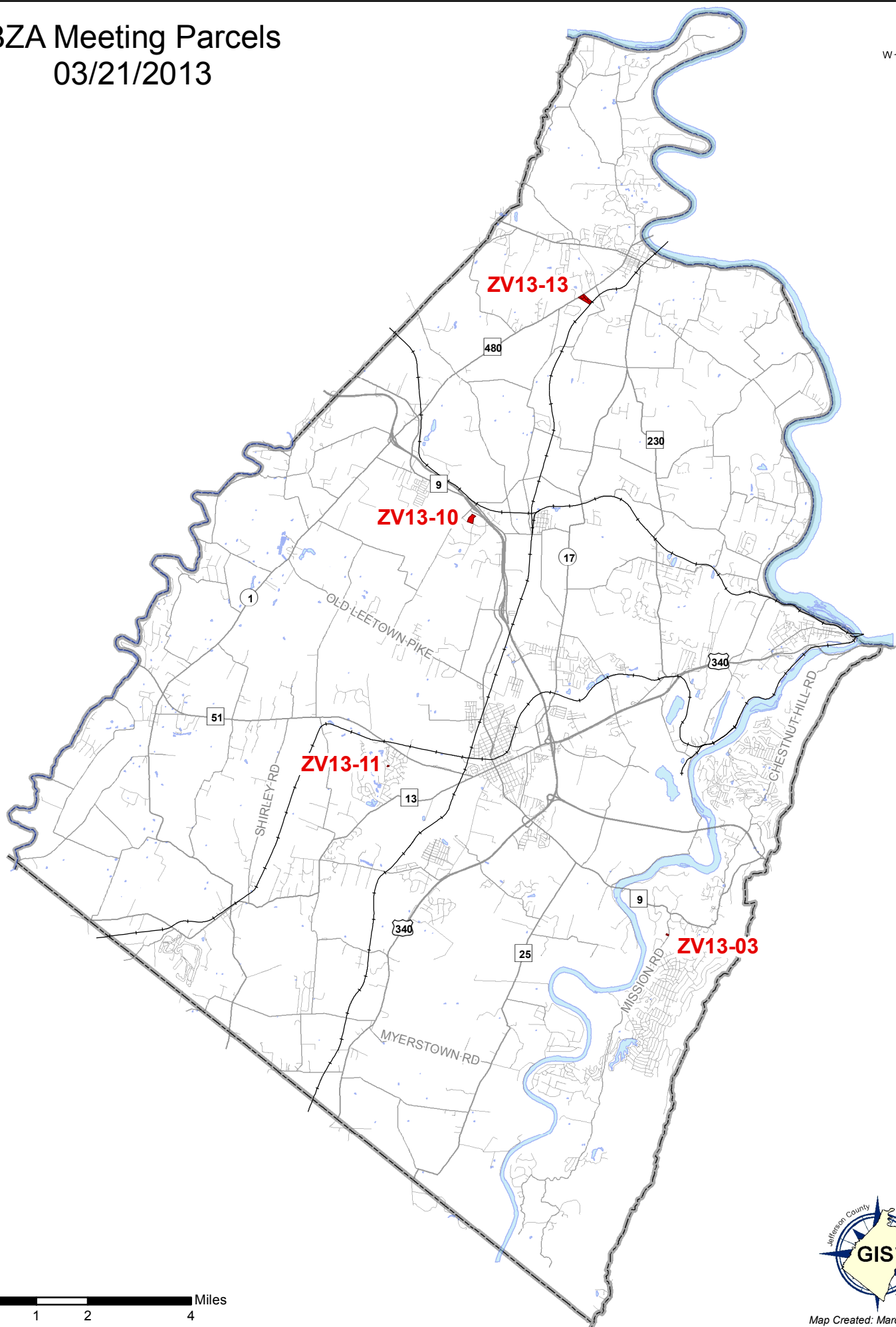
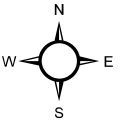
The Jefferson County Board of Zoning Appeals will meet in the Charles Town Library Conference Room located at 200 East Washington Street, at the side entrance on Samuel Street, in the City of Charles Town, WV.

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

1. Approval of the minutes from the February 21, 2013 meeting.
2. Swearing in of members of the public intending to provide testimony.
3. Variance request by applicant, Mission Tabernacle Church, represented by Pastor Bobby Roadcap, from Sections 4.11.A, 4.11.H, 5.7.B and 11.1, for a reduction of setback distances, to waive landscape buffer and street tree requirements and to reduce required parking spaces to allow for an addition to an existing Church. Property location: 446 Mission Road, Harpers Ferry, West Virginia. District: Charles Town (02); Map: 21A; Parcel: 9.2; Zoned: Rural; Size: .814 acres; File: #ZV13-03.
4. Variance request by applicant, Pete Kubic, Burr SK, LLC, from Sections 4.11.A and 5.6.D.5 for a reduction of the required parking and access drive setbacks, from 10' to 0', and a reduction of the required landscape buffer between two commercial uses, from 10' to 0', for two newly created parcels. Property location: 120 Commerce Circle, Kearneysville, West Virginia. District: Charles Town (02); Map: 1; Parcel: 71; Zoned: Industrial-Commercial; Size: 9.06 acres; File: #ZV13-10.
5. Variance request by applicants, Rocco and Marie Cipriano, from Section 4.3.H to allow replacement of a nonconforming above-ground swimming pool, destroyed by a storm in 2012. Property location: 26 Tall Oak Court, Charles Town, West Virginia. District: Charles Town (02); Map: 11B; Parcel: 116; Zoned: Residential-Growth; Size: 22,255 sq. ft.; File: #ZV13-11.
6. ***Request withdrawn by applicant.*** Variance request by applicant, Matt Bernazzoli, from Section 4.3.H to allow for replacement of a nonconforming shed destroyed by a storm in 2012. Property location: 664 Carter Avenue; Harpers Ferry, West Virginia. District: Harpers Ferry (04); Map: 3A; Parcel: 3; Zoned: Rural; Size: 0.62; File: #ZV13-12.
7. Variance request by applicant, Peter Corum (Twin Oaks Subdivision, LLC), from Sections 4.10 and 11.1 to waive Site Plan and Parking Requirements for a 1,200 sq. ft. tent structure to be used for a Farm Market. Property location: 3988 Kearneysville Pike; Shepherdstown, West Virginia. District: Shepherdstown (09); Map: 13; Parcels: 26.1, 26.2, 26.3, 26.4; Zoned: Rural; Size: 13.69 acres; File: #ZV13-13.
8. Director's Report.
9. Legal Update.
10. Signing of written decisions from prior Board of Zoning Appeals meetings.
11. Correspondence.

# BZA Meeting Parcels

03/21/2013



Draft Minutes  
Jefferson County Board of Zoning Appeals  
Thursday, February 21, 2013

The Jefferson County Board of Zoning Appeals met on Thursday, February 21, 2013. The meeting was held in the Charles Town Library meeting room located at 200 East Washington Street, at the side entrance of Samuel Street in Charles Town, West Virginia. Unless otherwise noted, all requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.

Board members Jeff Bresee, Chairman; Christy Huddle, Vice Chair; Tyler Quynn and Ed Kelly were present. Staff members present were: Jennifer M. Brockman, Director of Planning and Zoning; Steve Barney, Zoning Administrator; Stephen Groh, Assistant Prosecuting Attorney and Jennilee Hartman, Zoning Clerk.

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

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

1. Approval of the minutes from the January 8, 2013 meeting.

Ms. Huddle motioned to approve the minutes. Mr. Quynn seconded the minutes. The following edits were requested:

- a) Page 2, paragraph 3, line 2, change the word *that* to *then*.
- b) Page 2, paragraph 3, line 3, remove the word *that*
- c) Page 2, paragraph 3, line 8, insert the word *variances* behind *requests*.
- d) Page 2, paragraph 3, line 12, insert the word *stormwater* behind *pond*.
- e) Page 2, paragraph 9, line 2, insert *in response to* after the word *not*.
- f) Page 3, paragraph 3, line 4, insert the word *area* in front of the word *west*.
- g) Page 4, paragraph 8, line 2, insert the word *the* behind *approved*.

Mr. Bresee called for a vote which carried unanimously.

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

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

Ms. Hartman swore in the individuals who indicated they would be giving testimony at the onset of the meeting.

3. Variance request by applicant, Christopher L. Rankin (Rankin Properties, LLC), from Section 3.2.G to allow for an additional 18-month extension of the Conditional Use Permit for the Shepherdstown Professional Center project (#Z07-03). The Conditional Use Permit expired on January 11, 2013. Property location: the intersection of Rt. 480 and the Rt. 45 Bypass in Shepherdstown, WV. District: Shepherdstown (09); Map: 8; Parcel: 8.1; Zoned: Residential-Growth; Size: 3.56 acres; File: #ZV13-02.

Christopher Rankin presented the request to the Board. Mr. Rankin explained that his company, Christian Caine Jewelers, was currently occupying a 4,000 square foot unit within the Maddex Square shopping center and is planning on occupying additional square footage within the planned Professional Center once it is constructed however he needs additional tenants to offset the cost of

the project. Mr. Barney reviewed the original date of issuance of the Conditional Use Permit and stated there had been two previous extensions granted by the Board.

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

4. Variance requests by applicant, the Bavarian Inn, represented by Richard Klein, Alpha Associates, Inc. from the following sections:
  - i. Section 5.6.D.2: Reduce the side setback for a commercial site greater than 1.5 acres from 50' to 20' (File #ZV13-04)
  - ii. Section 5.6.D.3: Reduce the rear setback for a commercial site greater than 1.5 acres from 50' to 16' (File #ZV13-05)
  - iii. Section 4.6.B: Reduce the side distance requirement for a commercial use adjacent to a residential use from 75' to 20' (File #ZV13-06)
  - iv. Section 4.11.A: Eliminate the 10' screened buffer requirement for a commercial use adjacent to a commercial use (adjacent use is the Bavarian Inn Main Facility) (File #ZV13-07)
  - v. Section 4.6.B.1: Reduce the rear distance requirement for a commercial use adjacent to a commercial use in the Residential Growth Zone from 75' to 16' (adjacent use is the Bavarian Inn Main Facility) (File #ZV13-08)

Richard Klein presented the variances to the Board explaining that the applicant was seeking to remove the existing pool and replace it with a pool that met the 2010 Americans with Disabilities Act. Mr. Klein stated the proposed poolside building was intended to promote hotel guest safety because the present situation requires guests to traverse the parking lot in order to go back to their rooms when needing restroom facilities or to get refreshments. The new facilities will have restroom accommodations and will allow guests to purchase refreshments at the poolside building. Mr. Klein explained that the proposed location of the pool would be within the general area of the existing pool and therefore the required plumbing facilities were already in place. Mr. Klein addressed the Boards' concerns regarding buffering by stating there was an existing board fence along the property line, that the adjacent property had established pine trees and that additional landscaping would be provided. Mr. Klein submitted a schematic of the proposed layout for the Boards' review. Mr. Kelly asked if the proposed deck would look down into the adjacent property owner (Adkins) yard due to the topography. Mr. Klein explained that the property would be lowered approximately 6 feet prior to construction. Ms. Huddle expressed concern that the sale and consumption of onsite alcohol may create a disturbance in the evening. Mr. Klein stated the projected closing time for the pool would be at dusk. Mr. Barney confirmed that the existing pool is a nonconforming use and that the pool house would be a new use.

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

Ms. Huddle motioned to go into deliberative session at 3:47 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Mr. Kelly motioned to come out of deliberative session at 3:57 p.m. Ms. Huddle seconded the motion, which carried unanimously.

Minutes

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3. Variance request by applicant, Christopher L. Rankin (Rankin Properties, LLC), from Section 3.2.G to allow for an additional 18-month extension of the Conditional Use Permit for the Shepherdstown Professional Center project (#Z07-03). The Conditional Use Permit expired on January 11, 2013.

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

4. Variance requests by applicant, the Bavarian Inn, represented by Richard Klein, Alpha Associates, Inc. from the following sections:

- i. Section 5.6.D.2: (File #ZV13-04)

Ms. Huddle motioned to reduce the side setback of the poolside building for a commercial site greater than 1.5 acres from 50' to 20'. Mr. Quynn seconded the motion, which carried unanimously.

- ii. Section 5.6.D.3: (File #ZV13-05)

Ms. Huddle motioned to reduce the rear setback of the poolside building for a commercial site greater than 1.5 acres from 50' to 16'. Mr. Quynn seconded the motion, which carried unanimously.

- iii. Section 4.6.B: (File #ZV13-06)

Ms. Huddle motioned to reduce the side distance requirement of the poolside building for a commercial use adjacent to a residential use from 75' to 20'. Mr. Quynn seconded the motion, which carried unanimously.

- iv. Section 4.11.A: (File #ZV13-07)

Ms. Huddle motioned to approve the variance request for the poolside building to eliminate the 10' screened buffer requirement for a commercial use adjacent to a commercial use. Mr. Quynn seconded the motion, which carried unanimously.

- v. Section 4.6.B.1: (File #ZV13-08)

Ms. Huddle motioned to approve the variance request for the poolside building to reduce the rear distance requirement for a commercial use adjacent to a commercial use in the Residential Growth Zone from 75' to 16'. Mr. Quynn seconded the motion, which carried unanimously.

Ms. Huddle motioned that the staff treat all the requests as one application and for the applicant to be charged one fee. Mr. Kelly seconded the motion, which carried unanimously.

Ms. Hartman asked for clarification on when the 18-month conditional use permit extension started from. The Board determined that the start date was from the date of the meeting.

5. Director's Report

Ms. Brockman updated the Board on the upcoming Ethics and Roberts Rules of Orders Training on April 11, 2013, the status of the Envision Jefferson 2035/2014 Comprehensive Plan and recent Planning/County Commission actions.

6. Legal Update. None.

Minutes

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

- a) Variance request by Grant Wetmore, applicant, on behalf of the Bank of Charles Town, property owner, regarding the creation of internal lot lines and their corresponding setbacks for 340 Business Center (04-34) found in Section 4.11-1, with more specific reference located in the following Sections (i) Section 4.11(A): requires a 10' landscape buffer between commercial uses - requesting a reduction from 10' to 0'; (ii) Section 5.6(D)2: requires a 25'/50' building setback (depending on the resulting lot size) between commercial lots – requesting a reduction to a minimum of 18'; (iii) Section 5.6(D)5: requires a 10' setback for driveways, parking areas and internal access drives – requesting a reduction from 10' to 0'. Meeting was held 01/17/13. Mr. Breese signed the Findings of Fact and Conclusions of Law.
- b) Variance request by Peter Corum, applicant, on behalf of Twin Oaks Subdivision, LLC and Ed Slonaker, property owners, regarding existing internal lot lines and the required setbacks for Morgan's Grove Market (S12-06) found in Section 4.11-1, with more specific reference located in the following Sections (i) Section 4.11(A) - Providing a landscape buffer along the side and rear yards from 10' to 0'; (ii) Section 5.6(D) - The following are Yard Requirements for an approved commercial use (1) Front yard building setbacks from 25' to 0'; (2) Side yard building setbacks from 50' to 0'; (3) Rear yard building setbacks from 50' to 0'; (4) Parking, Driveway and Internal Access Drive Front Setbacks 15' to 0'; (5) Parking, Driveway and Internal Access Drive Side and Rear Setbacks 10' to 0'. Meeting was held 01/17/13. Additional changes to the Findings of Fact draft needed to be made. It was determined that once prepared, Mr. Breese would sign on the Board's behalf.

8. Correspondence. None.

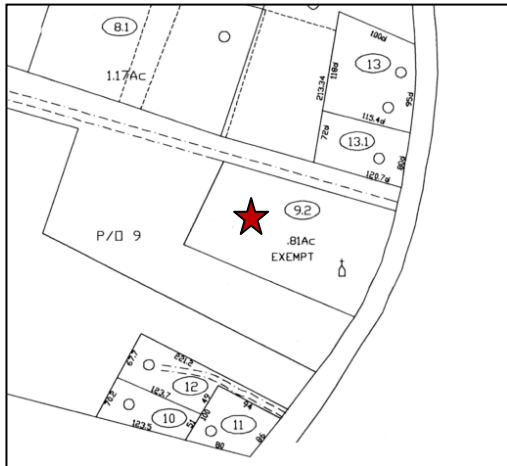
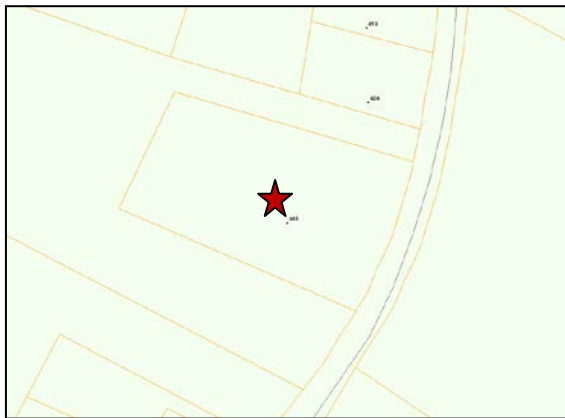
Ms. Huddle motioned to adjourn the meeting at 4:21 p.m. Mr. Kelly seconded the motion, which carried unanimously.

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

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 March 21, 2013

**Mission Tabernacle Church (#ZV13-03)**

Item #3 Variance request by applicant, Robert Roadcap (representing Mission Tabernacle Church), from Sections 4.11A, 4.11H, 5.7B and 11.1 for a reduction of setback distances, to waive landscape buffer and street tree requirements and to reduce required parking spaces to allow for an addition to an existing church.

APPLICANT:	Robert Roadcap
OWNER :	Mission Tabernacle Church
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	446 Mission Rd., Harpers Ferry, West Virginia
LEGAL DESCRIPTION:	<p style="text-align: center;">Charles Town (02); Map: 21A; Parcel: 9.2;</p> 
ZONING DISTRICT:	<p style="text-align: center;">Zoning Map Designation: Rural</p> 
SURROUNDING PROPERTIES:	<p>Zoning Map Designation:</p> <p><i>North:</i> Rural      <i>South:</i> Rural</p> <p><i>East:</i> Rural      <i>West:</i> Rural</p>
LOT AREA:	.814 acres
PRIOR CASES:	Site plan waiver to add an additional story (approved 5/26/98)
VARIANCE(S):	None
APPROVED ACTIVITY:	Church

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
March 21, 2013

**Mission Tabernacle Church (#ZV13-03)**

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a variance from the following sections of the Zoning and Land Development Ordinance to allow for an addition to an existing church:

- a. Section 4.11A to waive landscape buffer requirements
- b. Section 4.11H to waive street tree requirements
- c. Section 5.7B to reduce setback distances
- d. Section 11.1 to reduce required parking spaces

2. Previous Case History

The church was established prior to the adoption of zoning regulations. The church received approval of a waiver of Site Plan to add an additional story in 1998.

3. Applicant's Justification of Request

In the application submitted for the variance request, the applicant has provided the following responses to the 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.*

The application states, "The project is in a rural community, and will have only a positive affect for church usage, while adversely affecting no neighbors, landscape, or county."

- 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.*

The application states, "We have not yet begun the project and are only in preliminary stages that will decide the final outcome of the project. Our decision of finality will be based upon the decision of the board's."

- c) *Would eliminate an unnecessary hardship and permit a reasonable use of the land.*

The application states, "The project will only be constructed in an improved area that is paved and in place of a deck already constructed."

- d) *Will allow the intent of the Zoning and Land Development Ordinance to be observed and substantial justice done.*

The application states, "When granting these variances, it is our opinion that the ordinances that are current will not be jeopardized in any manner, but rather these precepts that the ordinances were created to validate will not be compromised."

Staff Report  
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**Mission Tabernacle Church (#ZV13-03)**

4. Staff Evaluation of Request

Based on the proposed addition as presented to staff at a Pre-Proposal Conference meeting on January 16, 2013, a Limited Site Plan will be required for the construction of the addition.

The property currently includes 31 striped parking spaces and an additional asphalt area that appears to have the potential to be used as an additional 6 parking spaces. This parking is sufficient for the existing church based on the capacity of the sanctuary (150 persons) as noted on the Sketch Plan submitted as an exhibit with the application. Staff has also determined that the proposed addition would not increase parking requirements because it would not increase sanctuary space.

However, there are several factors that may result in a reduction of up to 11 parking spaces:

- As part of the site plan process, the applicant must seek approval from the West Virginia Division of Highways (WVDOH) for an updated highway entrance permit. The WVDOH has indicated that the vehicular entrance onto Mission Road may need to be narrowed. A road improvement easement will also need to be granted along Mission Road. As a result of these requirements, per the WVDOH, up to 5 parking spaces may no longer be available for use.
- The proposed addition would remove 4 existing parking spaces.
- Staff has informed the applicant that handicapped accessible parking spaces are required. Because of the larger dimensions required for these spaces, staff estimates that 2 additional parking spaces would be lost.

a. Source of ordinance requirements

Section 4.11A establishes landscape buffer requirements for non-residential uses, as also reflected in Table 4.11-1 of the ordinance. For a church located adjacent to a lot with a residential use, a 15' screened buffer (or 50' unscreened buffer) is required.

Section 4.11H establishes street tree requirements. For sites with a street frontage of up to 200', 1 tree per 50' is required.

Section 5.7(B) of the Zoning Ordinance establishes setback requirements for churches in the Rural district (Front – 25', Side – 50', Rear – 50').

Section 11.1 establishes that permanent, off-street vehicular parking shall be provided for all non-residential land uses. For a church, the parking requirement is 1 space per each 5 persons for which seating is provided in the sanctuary.

b. Purpose of ordinance requirements

The purpose of landscape buffer requirements is to reduce the visual impact of a non-residential land use on an adjacent dwelling, school, church, or institution for human care.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
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**Mission Tabernacle Church (#ZV13-03)**

The purpose of street tree requirements is to provide a visual buffer from the roadway and to enhance the streetscape on the county's travelways.

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

The purpose of non-residential parking requirements is to ensure that adequate off-street parking space is available for non-residential (commercial) land uses. The requirement for permanent parking is to ensure that parking is safe for users, e.g. having a solid, level surface, adequate drive aisles, suitable topography, etc.

c. Unique characteristics of property

The subject property is approximately 0.814 acre in size, which is a small lot size for a non-residential use. The lot width ranges from 160' at the front of the lot to 130' at the rear of the lot, per an exhibit submitted with the application.

The property includes an existing church 5,075 square foot church with an uncovered deck, two sheds located at the rear of the property, a parking area and an open asphalt area. As noted above, the church was built prior to the enactment of the Zoning Ordinance; as such, many features of the site do not conform with current regulations. These nonconforming features include setbacks for buildings and parking areas, lack of landscape buffers and street trees, and other factors.



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**Mission Tabernacle Church (#ZV13-03)**

d. Character of area

The property was subdivided prior to the enactment of the 1988 Zoning Ordinance, and deed records show that the property was in its current configuration in 1974 when it was transferred to church ownership.

The property fronts onto Mission Road and is surrounded on all sides by residential uses.

e. Impact on adjacent properties

Regarding the required landscape buffers (Section 4.11A), it appears that the property line that would be most affected is the southern property line, the adjacent land is a wooded area of approximately 140' in width. It appears unlikely that the construction of the proposed addition would have a visual impact on the view of properties located to the south. The proposed building addition would be located approximately 55' from the western property line, and would be partially screened by existing buildings. The addition would be located approximately 40' from the access easement that forms one of the front property lines, and approximately 80' from the closest residential property located across the access easement.

Regarding the street trees, the only adjacent property that appears to be potentially affected by the variance is located across Mission Road. This property is heavily treed and there do not appear to be any buildings that have a view of Mission Road.

Regarding the proposed rear yard setback variance (Section 5.7B) for the southern property line, as noted above, it appears unlikely that the construction of the proposed addition within 25' of the property line would have a visual impact on the view of properties located to the south.

Regarding the proposed parking variance, it is possible that insufficient parking could impact adjacent properties if church attendees choose to make unauthorized use of the access easement as overflow parking. As noted above, the site currently has 31 parking spaces, and the proposed addition could result in the loss of up to 11 spaces, leaving 20 parking spaces remaining. The applicant should address how they intend to accommodate parking requirements at the BZA hearing.

f. Feasibility of complying with the ordinance by other means

Landscape Buffers: Significant portions of the site are paved up to the edge of the property, including the entire northern and western property lines. Approximately 54' of the southern property line is paved, as well as approximately 95' of the eastern property line. Installing landscape buffers in areas with existing pavement would result additional costs for the removal of pavement, as well as the removal of existing parking spaces.

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**Mission Tabernacle Church (#ZV13-03)**

Street Trees: Of the total 160.54' dimension of the road frontage, approximately 90' of frontage is paved and approximately 70' is greenspace. The standard street tree planting requirement for a frontage of this width would be 3 trees. It appears feasible for at least 1 street tree to be planted in the 70' greenspace area. Reconfiguration of the entrance per WVDOH requirements may result in creation of additional green areas of sufficient size for an additional street tree(s).

Setbacks: If the proposed addition were to be built using the same rear yard setback as the existing building (approximately 29'), no variance would be necessary. While the setback of the addition would not be conforming with current regulations, the addition would be permitted pursuant to Section 4.3 as an expansion of a nonconforming feature.

Parking: Because of the limited site area (.81 acres), it appears unlikely that parking requirements can be fully met on the property. The parking shortfall could be partially mitigated by the church utilizing some of the unstriped asphalt area to the west of the church as parking, in conformance with the design requirements of county ordinances. The parking area could also be expanded by removing the sheds on the west side of the property.

5. Conditions of Approval

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

- a. A minimum of 20 parking spaces are required.
- b. Where space permits, street trees will be planted in existing greenspace on the road frontage, as well as on any greenspace areas resulting from reconfiguration of the entrance.

Staff Report  
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**Mission Tabernacle Church (#ZV13-03)**

SECTION OF ORDINANCE TO BE CONSIDERED:

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

- A. All commercial development adjacent to any Residential district, or any lot with a residence, school, church, or institution of human care shall have a fifty (50) foot or greater unscreened green space buffer or a fifteen (15) foot screened green space buffer along common property lines. The screening may be either vegetative or opaque fencing and may be placed anywhere within the buffer. No structures, materials, or vehicular parking shall be permitted within the side and rear yard buffers.

ADJACENT USE		BUILDING SETBACKS		PARKING & ACCESS DRIVE SETBACKS		BUFFERS UNSCREENED/SCREENED				DISTANCE REQUIREMENTS						
		Any Use Except Industrial	Industrial Use	Any Use Except Industrial	Industrial	Residential Zone	Lot with a Residential Use	Church/School/Institution for Human Care	Commercial	Industrial	Residential Zone	Lot with a Residential Use	Church/School/Institution for Human Care	Commercial	Industrial	Structure or Lot on Historic Registry
PROPOSED USE																
<b>FRONT</b>	Comm'l Lot <=1.5 ac.	25	25	15	15	50/15		N/A	N/A	75		N/A	75			
	Comm'l Lot > 1.5 ac.	25	25	15	15	50/15		N/A	N/A	75		N/A	75			
	Industrial	50	25	25	25	200		25	N/A	200		N/A	200			
	Church	25	25	15	15	50/15		N/A	N/A	N/A		N/A	N/A			
	Multi-family	25	25	15	15	N/A	N/A/15	N/A	N/A	N/A		N/A	N/A			
<b>SIDE</b>	Comm'l Lot <=1.5	25	25	4	4	50/15		10	10	75		N/A	75			
	Comm'l Lot > 1.5 ac.	50	25	10	10	50/15		10	10	75		N/A	75			
	Industrial	50	25	25	20	200		20	20	200		N/A	200			
	Church	50	50	10	10	50/15		10	10	N/A		N/A	N/A			
	Multi-family	12	12	12	12	N/A	N/A/12	N/A	N/A	N/A		N/A	N/A			
<b>REAR</b>	Comm'l Lot <=1.5	25	25	4	4	50/15		10	10	75		N/A	75			
	Comm'l Lot > 1.5 ac.	50	25	10	10	50/15		10	10	75		N/A	75			
	Industrial	50	25	25	20	200		20	20	200		N/A	200			
	Church	50	50	10	10	50/15		10	10	N/A		N/A	N/A			
	Multi-family	30	30	15	15	N/A	N/A/15	N/A	N/A	N/A		N/A	N/A			

H. All required landscape plans shall contain the following elements:<sup>7</sup>

1. Deciduous street trees for shade and aesthetics, planted at the following average spacing:<sup>23</sup>
  - a. Site with street frontage of up to 200 feet: 1 tree per 50 feet.
  - b. Site with street frontage exceeding 200 feet: The greater of 4 trees or 1 tree per 100 feet.

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 March 21, 2013

**Mission Tabernacle Church (#ZV13-03)**

**Section 5.7 Rural District<sup>23</sup>**

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.
2. For any residential use that complies with the Development Review System, the setbacks and lot size shall be as outlined in Article 5.4.<sup>5</sup>

*Table 5.7-1 – Lot Area, Width, and Yard Requirements for Principal Permitted Uses in the Rural District*

Land Use	Lot Area	Lot Width	Front Yard Depth	Side Yard Depth	Rear Yard Depth
Dwellings	40,000 sq. ft.	100	40	15	50
Churches	2 acres	200	25	50	50
Schools, Grades K-4	10 acres +	500	100	100	100
Schools, Grades 5-8	20 acres +	500	100	100	100
Schools, Grades 9-12	30 acres +	500	100	100	100
Hospitals	10 acres	500	100	100	100
Other permitted uses	40,000 sq. ft.	100	40	50	50

3. Lot area for schools (K-12) as shown in Table 5.7-1 shall be increased by one (1) additional acre for every 100 pupils. Minimum lot size for Vocational Schools shall be based on State of West Virginia Code. If a sewage treatment plant and retention ponds are required, acreage shall be increased accordingly.<sup>1, 23</sup>

**Section 11.1 Non-Residential Parking Standards**

- A. To decrease congestion, permanent off-street automobile parking space and truck loading space shall be provided for all new structures and uses, and for existing structures or uses that are increased in size by 20 percent or more after adoption of these regulations.<sup>23</sup>

Spaces shall be required per use and are as follows:<sup>5</sup>

Church	1 space for each 5 persons for which seating is provided in the sanctuary
--------	---



# 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)

ZV13-03  
File Number: \_\_\_\_\_  
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: Mission Tabernacle Church  
Mailing Address: P.O. Box 814 ~~Ranson~~  
City: Ranson State: WV Zip Code: 254~~38~~<sup>38</sup>  
Phone Number: 304-279-4150 Email: michaelmenutt14@gmail.com

#### Applicant or Contact Information

Applicant / Contact Name: Robert Roadcap  
Mailing Address: P.O. Box 814  
City: Ranson State: WV Zip Code: 25438  
Phone Number: 304-279-4150 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: 446 Mission Rd Harpers Ferry WV 25425  
Tax District: Charles Town Map No: 21A Parcel No: 9.2  
Parcel Size: .814 Deed Book: 475 Deed Bk. Pg. No: 563

Zoning District:	Rural (R-A)	Residential Growth (R-G)	Industrial Commerical (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"/>

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JEFFERSON COUNTY  
PLANNING 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: 4.11H 4.11A 5.7B 11.1

Please briefly describe the nature of the variance request: Variances will be requested on the compliance of the following: rear set-backs; landscaping requirements; and exceeding maximum sq footage requirements of 1600 sq ft for minor site plan to include improving deck area.

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

Front Setback  Side Setback  Rear Setback Reduction From ? to 25 ft

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 project is in a rural community, and will have only a positive affect for church usage, while adversely affecting no neighbors, landscape, or county.

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?

We have not yet begun the project and are only in preliminary stages that will decide the final outcome of the project. Our decision of finality will be based upon the decision of the board.

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

The project will only be constructed in an improved area that is paved and in place of a deck already constructed.

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

When granting these variances, it is our opinion that the ordinances that are current will not be jeopardized in any manner, but rather that the ordinances were created to validate will not be compromised.

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] 2-19-13  
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)).

03/21/13  
Date of Public Hearing

03/06/13  
Advertising Date

03/06/13  
Placard Posting Date

**Jefferson County, West Virginia**

**Department of Zoning**

116 East Washington Street, Suite 201

P.O. Box 338

Charles Town, West Virginia 25414

zoning@jeffersoncountyv.wv.org

Phone: (304) 728-3228

Fax: (304) 728-8126

Staff Assignment #: 2/13/03

Please be advised that staff from the Department of Zoning is authorized to make necessary revisions to the enclosed submission if required for processing. I understand that said revisions will be discussed with me prior to content modification.

Applicant PRINTED Name: Pastor Bobby Rowan

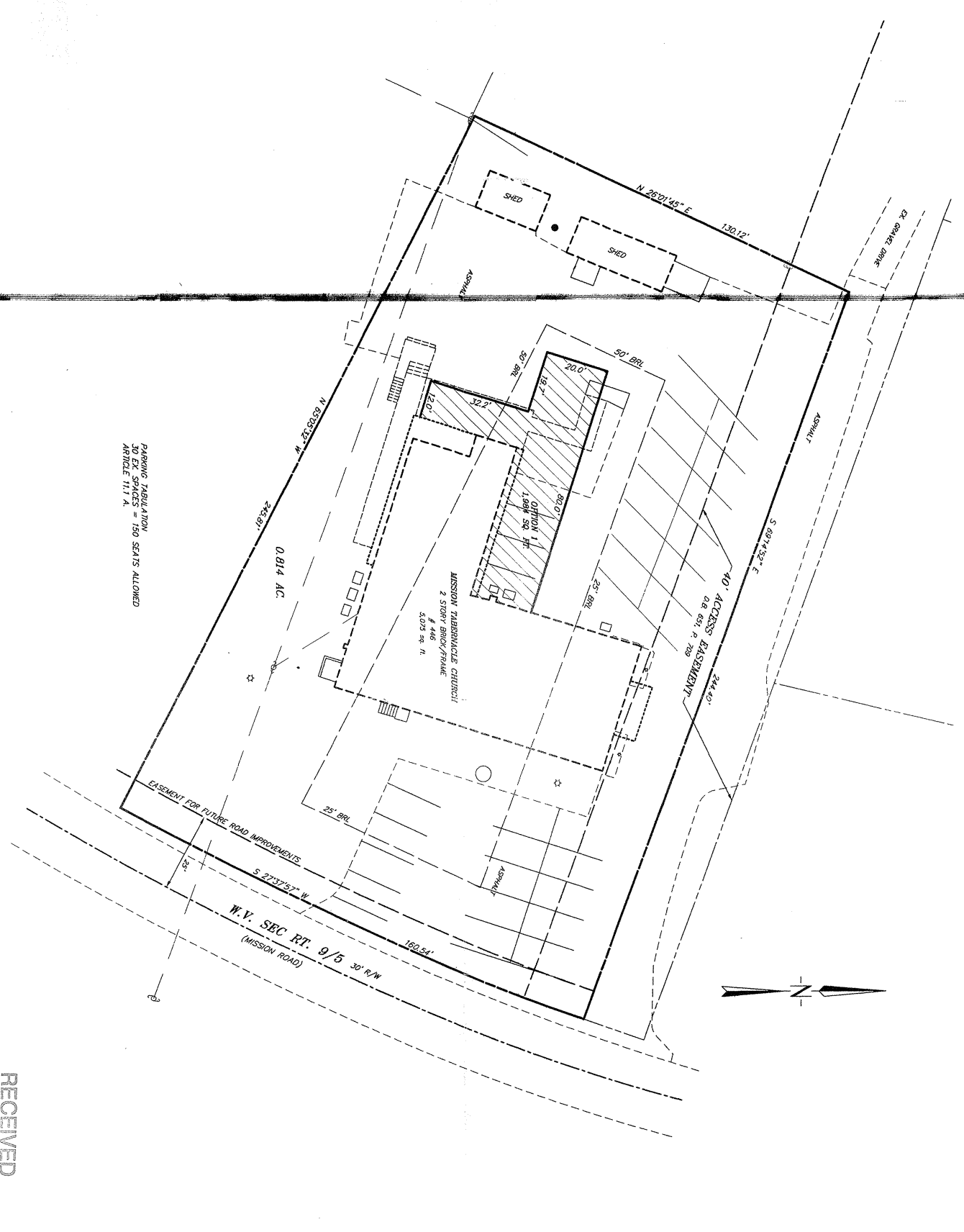
Applicant SIGNATURE: *Pastor Bobby Rowan*

Contact Number: 304-279-4150

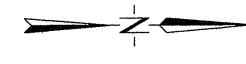
Date: 1-24-13

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PARKING TABULATION  
 30 EX. SPACES = 150 SEATS ALLOWED  
 ARTICLE 11.1.4.



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 JAN 24 2013  
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 PLANNING, ZONING AND ENGINEERING

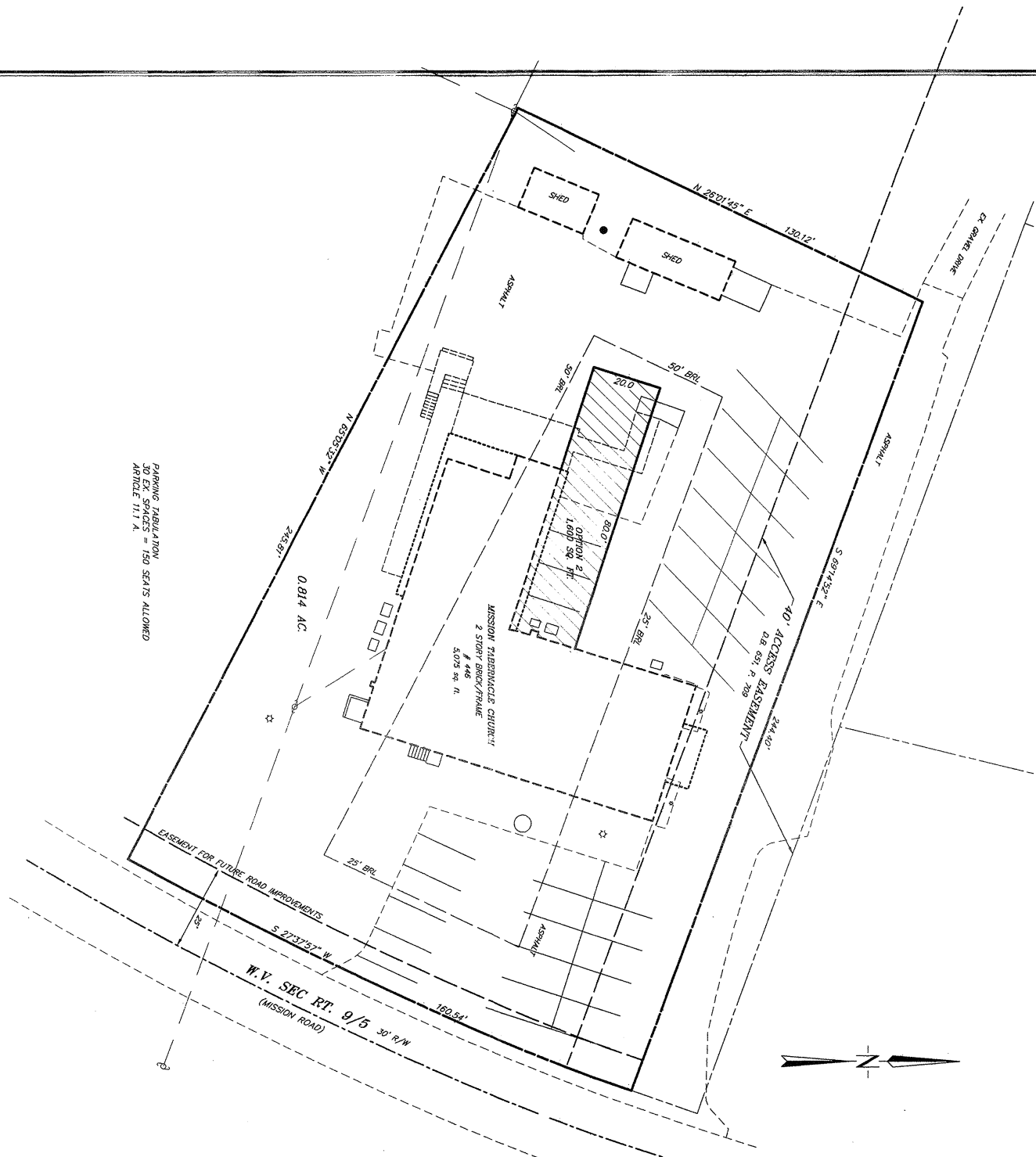
# 21/13-02

DATE:	January 14, 2013
SCALE:	" = 20'
PROJ. NO.:	13-003
FILE:	3/Mission tabernacle
DRAWN:	BP
PAGE:	OF 1

**SKETCH PLAN OPTION 2**  
**BUILDING ADDITION TO**  
**MISSION TABERNACLE CHURCH**  
  
 D.B. 371 PG. 549  
 TM 21A, P. 9.2  
 CHARLES TOWN DISTRICT  
 JEFFERSON COUNTY, WEST VIRGINIA

**LAVELLE & ASSOCIATES**  
**INCORPORATED**  
 PLANNERS • SURVEYORS  
 5732 INDUSTRY LANE, FREDERICK, MARYLAND 21704  
 TEL: (301) 695-9722; FAX: (301) 695-9766

REVISIONS



PARKING TABULATION  
 30 EX SPACES = 150 SEATS ALLOWED  
 ARTICLE 11.1.A

Pastor Bobby  
 ROADMAP  
 304-279-4150

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 JAN 24 2013  
 JEFFERSON COUNTY  
 PLANNING, ZONING AND ENGINEERING

#2113.03

DATE: January 14, 2013
SCALE: 1" = 20'
PROJ. NO. 13-003
FILE: 13-3/Mission Tabernacle
DRAWN: BA
PAGE: 1 OF 1

**SKETCH PLAN OPTION 2  
 BUILDING ADDITION TO  
 MISSION TABERNALE CHURCH**

D.B. 371 PG. 549  
 TM 21A, P. 9.2  
 CHARLES TOWN DISTRICT  
 JEFFERSON COUNTY, WEST VIRGINIA

**LAVELLE & ASSOCIATES  
 INCORPORATED**  
 PLANNERS • SURVEYORS

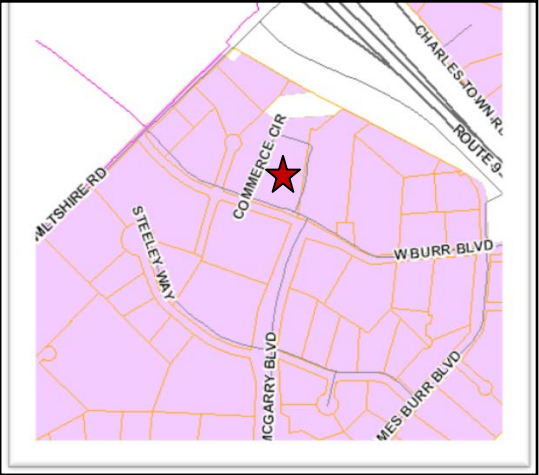
5732 INDUSTRY LANE, FREDERICK, MARYLAND 21704  
 TEL: (301) 695-9722; FAX: (301) 695-9766

REVISIONS

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 March 21, 2013

**Burr SK Limited Liability Company Request (#ZV13-10)**

Item #4 Variance request by applicant, Pete Kubic, from Section 5.6D.5 for a reduction of the parking and access drive side setback distance from 10' to 0' and Section 4.11A to reduce the landscape buffer between two commercial properties from 10' to 0', to allow for the resubdivision of an existing non-residential lot.

APPLICANT:	Pete Kubic
OWNER :	Burr SK Limited Liability Company
DEVELOPER:	Same as owner
SURVEYOR/ENGINEER:	W.H. Gordon and Associates
PROPERTY LOCATION:	Burr Industrial Park 120 Commerce Circle, Kearneysville, West Virginia
LEGAL DESCRIPTION:	Charles Town (02); Map: 01; Parcel: 71  
ZONING DISTRICT:	Industrial - Commercial District
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> City of Ranson <i>South:</i> IC <i>East:</i> IC <i>West:</i> IC
LOT AREA:	9.06 acres (1.67 acres were annexed into the City of Ranson)
VARIANCE(S):	None
SUBDIVISION	02/13/90: PC approved Final Plat (PC File #88-68) 06/11/96: PC approved Final Plat (PC File #96-03)
LOT LINE ADJUSTMENT	10/21/03: Director approved merger of Lot 18A and Lot 18B
SITE PLAN (PC File #S03-07)	03/29/04: Staff approved (PC approval not required because of its location within an approved industrial park)
VARIANCES	02/27/96: PC approved a variance from Section 8.2.E.3 to allow Lot 18 B to exceed the 3:1 depth to width ratio.
WAIVERS	03/12/13: PC approved waivers of Section 20.201(B)2 from the requirement that lots front on an existing internal subdivision road and Section 20.401 to allow temporary obstruction of shared access easement.
APPROVED ACTIVITY:	Commercial / Industrial

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
March 21, 2013

**Burr SK Limited Liability Company Request (#ZV13-10)**

RELEVANT INFORMATION:

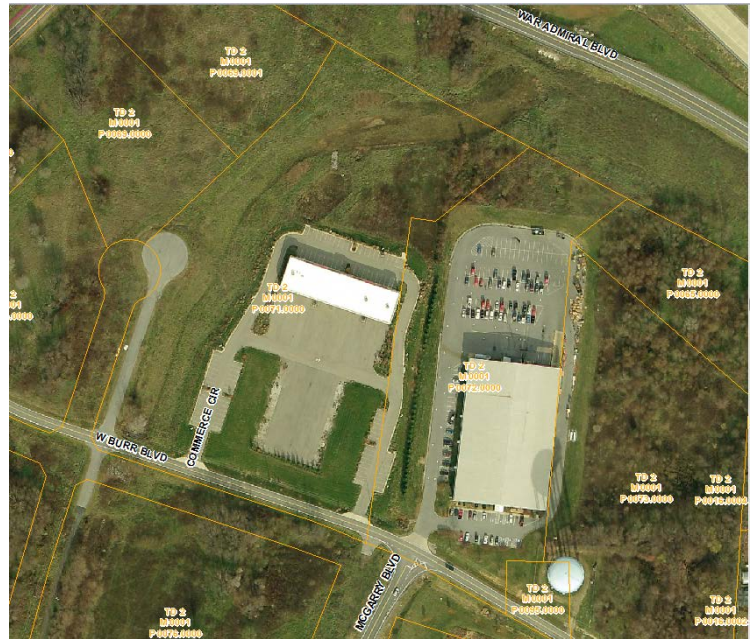
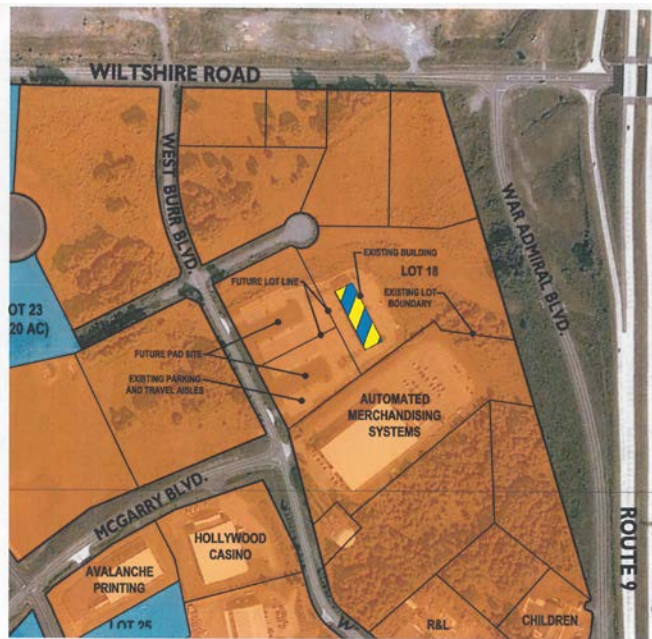
1. Overview of Request

The applicant is seeking a variance from Section 5.6D.5 for a reduction of the parking and access drive side setback distance from 10' to 0' and Section 4.11A to reduce the landscape buffer between two commercial properties from 10' to 0', to allow for the resubdivision of an existing non-residential lot.

The application states, "This variance request is for the parking & access drive setback. The parking area is existing, when this parcel is subdivided, the property line between the 2 future building pads will run along an existing parking area, therefore there will not be the required 10' setback from the property line to the parking."

2. Previous Case History

The subject property is located in the Burr Industrial Park. The subdivision plat for this lot was approved in 1996, and a site plan for three buildings was approved in 2004. To date, only one of these three buildings was has been developed.



3. Applicant's Justification of Request

In the application submitted for the variance request, the applicant has provided the following responses to the 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.*

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
March 21, 2013

**Burr SK Limited Liability Company Request (#ZV13-10)**

The application states, “The site plan for Lot 18 was approved by the County with 3 buildings and associated parking and travelways. This subdivision does not adversely impact the public health, safety or welfare or the rights of adjacent property owners since the ultimate use and build-out of the parcel will remain the same.”

- 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.*

The application states, “This lot was developed by a previous owner. The construction of the parking area as it exists creates the need for a variance from the setback requirements”

- c) *Would eliminate an unnecessary hardship and permit a reasonable use of the land.*

The application states, “The granting of this variance eliminates the need to remove existing pavement for the subdivision to achieve the setback requirement. There will be a shared parking agreement for these parcels.”

- d) *Will allow the intent of the Zoning and Land Development Ordinance to be observed and substantial justice done.*

The application states, “The intent of the ordinance is to ensure that lots have adequate setbacks to property lines. When the parcels are sold to purchasers, the existing pavement to the property line will be existing therefore there will be no negative impact to adjacent properties and the intent of the ordinance will be maintained.”



Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
March 21, 2013

**Burr SK Limited Liability Company Request (#ZV13-10)**

4. Staff Evaluation of Request

a. Source and purpose of ordinance requirements

Section 5.6 of the Zoning Ordinance establishes setbacks for buildings, parking areas, and drive aisles associated with commercial developments. Section 4.11A establishes landscape buffers between commercial uses.

On July 21, 2011, the Board approved an internal setback variance for St. James Lutheran Church (#ZV11-18) to reduce a side setback to 5' to allow for the construction of a 640 sq. ft. addition. On January 17, 2013, the Board approved a variance to waive building setbacks, parking and drive aisle setbacks, and landscape buffers for internal lot lines for the Twin Oaks Subdivision (#ZV12-35). On the same date, the Board approved a variance request by the Bank of Charles Town to reduce setback and buffer requirements along interior lot lines between adjacent commercial lots, for the development known as 340 Business Park (#ZV12-34). (Prior approvals by the Board do not necessarily indicate precedent because of the unique circumstances of each case.)

b. Unique characteristics of property

The size and shape of the property are not unusual. The property does have unique characteristics in that it has existing drive aisles, parking area, and a completed building. The layout of the site is designed for a total of three buildings.

c. Character of area

The property is located in an industrial park. Properties located to the west and south are vacant, platted lots within the Burr Industrial Park subdivision. The adjacent property to the west is a warehouse building occupied by Automated Merchandising Systems, and other warehouse-related uses are located to the southeast. On the north, the property is bounded by West Virginia Division of Highways right-of-way adjacent to War Admiral Boulevard.

d. Impact on adjacent properties

Staff finds that the variance, if granted, would have no greater impact on adjacent properties than would the proposed development if built without the internal lot line variances.

It should be noted that a portion of the property is within the jurisdiction of the City of Ranson. The area within municipal jurisdiction does not include any of the developed area of the site, including the area where the new lot lines are proposed.

e. Feasibility of complying with the ordinance by other means

It appears possible for the lots to be subdivided and individually developed without need of the requested variances. The subdivision plat and any future site plans could be designed to provide for building setbacks and buffering of the three proposed lots.

However, significant development improvements (buildings and paving) currently exist on the site and would need to be reconfigured in order to meet setback and buffering requirements. This would result in significant construction and engineering costs, and a likely reduction in the net development area.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
March 21, 2013

**Burr SK Limited Liability Company Request (#ZV13-10)**

5. Conditions of Approval

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

- a. The variance applies only to internal lot lines.
- b. The subdivision plat for the development shall include easements to allow access between the three lots.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
March 21, 2013

**Burr SK Limited Liability Company Request (#ZV13-10)**

SECTION OF ORDINANCE TO BE CONSIDERED:

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

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

**Section 5.6 Industrial - Commercial District**

<b>5. Parking, Driveway and Internal Access Drive Side and Rear Setbacks</b>	
Commercial sites greater than 1.5 acres	10 feet
Commercial sites 1.5 acres and smaller	4 feet
Industrial sites*	25 feet

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



# JEFFERSON COUNTY, WEST VIRGINIA

## Departments of Planning and Zoning

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

Charles Town, WV 25414

File Number: ZV13-10

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

Staff Initials: OK

[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: Burr SK Limited Liability Company

Mailing Address: 241 Edmond Road

City: Kearneysville State: WV Zip Code: 25430

Phone Number: (304) 886-9408 Email: burrsk@gmail.com

#### Applicant or Contact Information

Applicant / Contact Name: Mr. Pete Kubic

Mailing Address: 241 Edmond Road

City: Kearneysville State: WV Zip Code: 25430

Phone Number: (304) 886-9408 Email: burrsk@gmail.com

#### Applicant Representatives

Company/Organization Name: Gordon

Attorney(s), Engineer(s), or Surveyor(s) Name: Kristen Stolipher

Mailing Address: 301 North Mildred Street, Suite 1

City: Charles Town State: WV Zip Code: 25414

Phone Number: 304-725-8456 Email: kstolipher@whga.com

#### Physical Property Details

Physical Property Address: 120 Commerce Circle, Kearneysville, WV 25430

Tax District: Charles Town Map No: 1 Parcel No: 71

Parcel Size: 9.06 Deed Book: 1095 Deed Bk. Pg. No: 690

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

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JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

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

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

Reference the section of Ordinance pertaining to this request: Section 5.6.D.5 and 4.11.A

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

This variance request is for the parking & access drive setback. The parking area is existing, when this parcel is subdivided, the property line between the 2 future building pads will run along an existing parking area, therefore there will not be the required 10' setback from the property line to the parking.

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

Front Setback     Side Setback     Rear Setback    Reduction From 10' to 0'

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

The site plan for Lot 18 was approved by the County with 3 buildings and associated parking and travelways. This subdivision does not adversely impact the public health, safety or welfare or the rights of adjacent property owners since the ultimate use and build-out of the parcel will remain the same.

*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 lot was developed by a previous owner. The construction of the parking area as it exists creates the need for a variance from the setback requirements.

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

The granting of this variance eliminates the need to remove existing pavement for the subdivision to achieve the setback requirement. There will be a shared parking agreement for these parcels.

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

The intent of the ordinance is to ensure that lots have adequate setbacks to property lines. When the parcels are sold to purchasers, the existing pavement to the property line will be existing therefore there will be no negative impact to adjacent properties and the intent of the ordinance will be maintained.

*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]  
Signature of Property Owner 1    2/13/2013    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 MARCH 21, 2013  
Date of Public Hearing

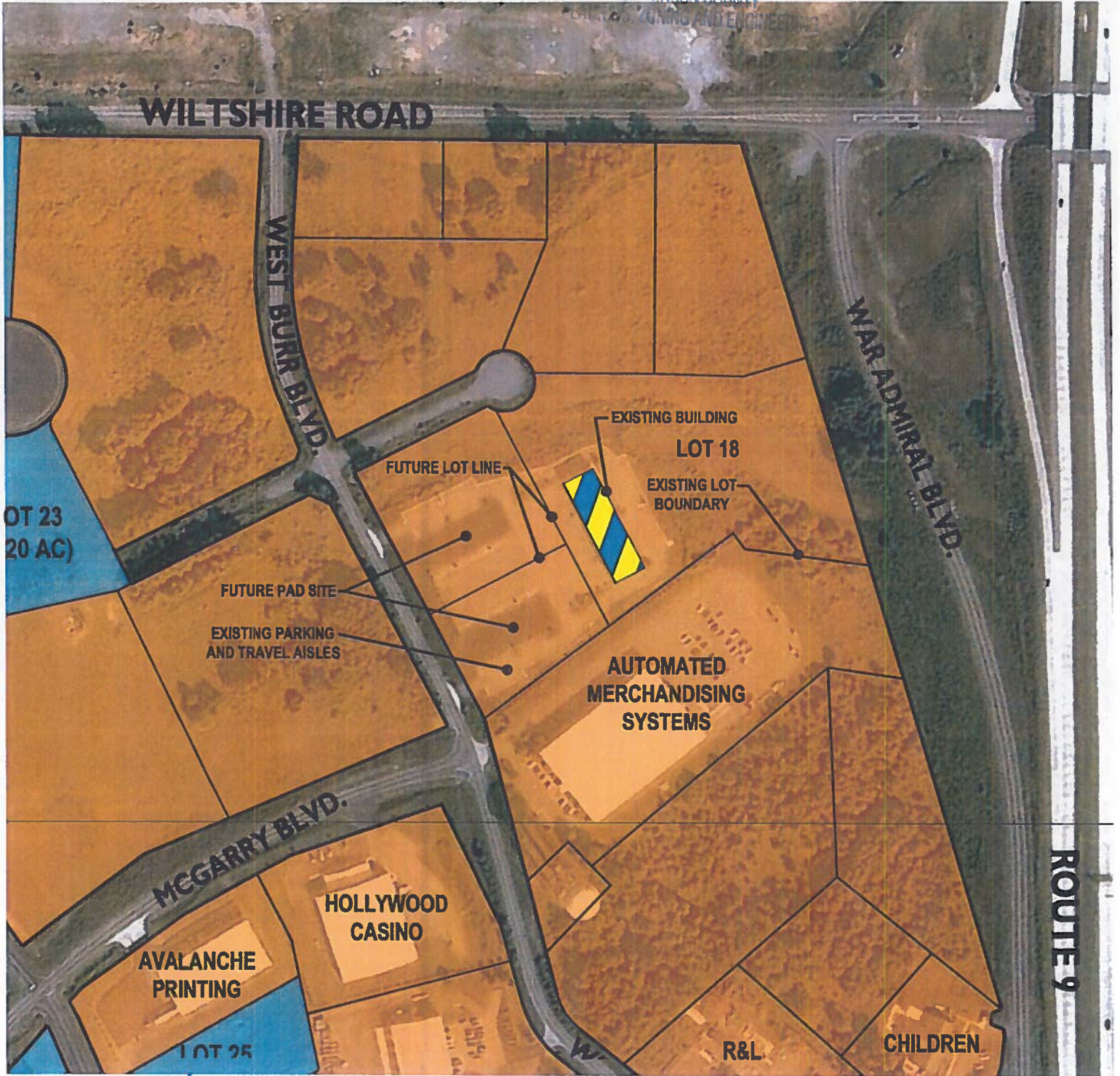
WEDNESDAY MARCH 6, 2013  
Advertising Date

WEDNESDAY MARCH 6, 2013  
Placard Posting Date

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JEFFERSON COUNTY  
PLANNING AND ENGINEERING



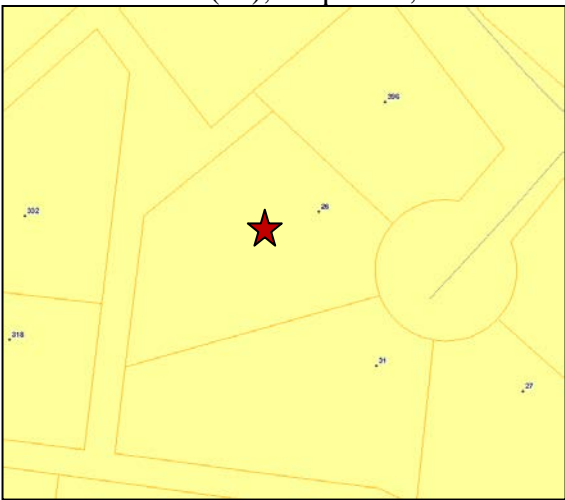
Pat Anli managing member Burrsk LLC 2/18/2013



Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 March 21, 2013

**Rocco and Marie Cipriano Request (#ZV13-11)**

Item #4 Variance request by applicant, Rocco and Marie Cipriano, from Section 4.3H to allow for replacement of a nonconforming above-ground swimming pool, destroyed by a storm in 2012.

APPLICANT:	Rocco and Marie Cipriano
OWNER :	Same
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	Tusawilla Hills Subdivision 26 Tall Oak Ct, Charles Town, West Virginia
LEGAL DESCRIPTION:	Charles Town (02); Map: 11B; Parcel: 116; 
ZONING DISTRICT:	Zoning Map Designation: Residential-Growth (RG)
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> RG <i>South:</i> RG <i>East:</i> RG <i>West:</i> RG
LOT AREA:	.51 acre
PRIOR CASES:	81-04, Tusawilla Hills, approved 8/25/81
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
March 21, 2013

**Rocco and Marie Cipriano Request (#ZV13-11)**

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a variance from Section 4.3H, to allow for replacement of an aboveground pool with nonconforming use setbacks, destroyed by a storm in 2012.

2. Previous Case History

The subject property is located in the Tuscawilla Hills Subdivision, which was established prior to the adoption of zoning regulations.

3. Applicant's Justification of Request

In the application submitted for the variance request, the applicant has provided the following responses to the 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.*

The application states, "A pool has been in this same area since 1986 without any issues, complaints or infringements to any neighbors or utilities within the easement."

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.*

The application states, "On June 29, 2012 a significant storm felled a tree that crushed the back wall of the pool that had been there since 1986."

c) *Would eliminate an unnecessary hardship and permit a reasonable use of the land.*

The application states, "It shall allow our family and friends to continue to utilize our back yard area in a manner consistent with the past 27 yrs."

d) *Will allow the intent of the Zoning and Land Development Ordinance to be observed and substantial justice done.*

The application states, "Granting the variance will put us in compliance with County regulations and enable us to enjoy our property in a manner consistent with nearly 3 decades previous."

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
March 21, 2013

**Rocco and Marie Cipriano Request (#ZV13-11)**

4. Staff Evaluation of Request

An exhibit submitted with the application shows that the pool would be located at a distance of 7' 10" from the rear property line, at its closest point. Other portions of the pool would be compliant with setback requirements. The subdivision plat for the development establishes a 12' setback requirement from side and rear property lines.

The adjacent area beyond the property line is a 20' common area designated on the subdivision plat for sewer, power lines, and storm drainage.

a. Source and purpose of ordinance requirements

Section 9.7 of the Zoning Ordinance establishes that, for properties in the Residential Growth district located in subdivisions that were approved prior to September 1<sup>st</sup>, 1989, setbacks shall be as shown on the plat.

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

b. Unique characteristics of property

The subject property is approximately 0.51 acre in size. The size and shape of the lot are generally consistent with other properties in the subdivision.

The property includes an in-ground pool with a 28' circumference. Per the applicant, the pool was installed in 1986, prior to the enactment of the Zoning Ordinance.



Staff Report  
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**Rocco and Marie Cipriano Request (#ZV13-11)**

c. Character of area

The property is located in the Tuscawilla Hills subdivision, and is surrounded on all sides by residential uses.

Several properties in the area include structures with shorter side yard setbacks. It is not known whether or not any of these structures is built within a side yard setback.

On May 20, 2004, the Board of Zoning Appeals approved a variance for a nearby property in the same subdivision located at 119 Beauregard Boulevard to reduce the required side yard setback distance from 8' to 2' for the construction of a carport (#ZV04-03). This request represented a slightly different set of circumstances, because of a more narrow lot width (80') and the fact that the variance was for a carport, which typically has open sides.

d. Impact on adjacent properties

As noted above, an area that appears to function as a utility easement is located to the northwest of the subject property, adjacent to the property line to which the proposed pool would be the closest.

e. Feasibility of complying with the ordinance by other means

It appears that the pool could be located on other parts of the property. However, relocating the pool would also entail relocating existing plumbing and would result in additional disturbed area.

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 replacement of a swimming pool.

SECTION OF ORDINANCE TO BE CONSIDERED:

**Section 4.3 Nonconforming Uses**

H. A nonconforming use destroyed by a natural or unnatural calamity cannot be rebuilt without approval of the Board of Zoning Appeals upon application by the owner and pursuant to the variance and appeal procedures outlined in Article 3.12, 17, 21, 23



# 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: ZV13-11

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

Staff Initials: ABC

[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

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

#### Property Owner Information

Property Owner Name: Rocco & Marie Cipriano

Mailing Address: 26 Tall Oak Ct

City: Charles Town State: WV Zip Code: 25414

Phone Number: 304-279-1770 Email: WVCipriano@comcast.net

#### Applicant or Contact Information

Applicant / Contact Name: Marie & Rocco Cipriano

Mailing Address: 26 Tall Oak Ct

City: Charles Town State: WV Zip Code: 25414

Phone Number: 304-279-1770 Email: WVCipriano@comcast.net

#### 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: 26 Tall Oak Ct Charles Town, WV

Tax District: Charles Town 02 Map No: 11B Parcel No: 116

Parcel Size: 22,255 sqft Deed Book: 516 Deed Bk. Pg. No: 203

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"/>

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

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

Reference the section of Ordinance pertaining to this request: 4.3.A.08A

Please briefly describe the nature of the variance request: To replace the above and pool in place since 1986 due to storm damage. We seek relief of the 12ft restriction for a structure from the property line. At it's nearest point, the pool comes to 8ft from the line with a 20ft easement behind property

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.

A pool has been in this same area since 1986 without any issues, complaints or infringements to any neighbors or utilities within the easement

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?

On June 29, 2012 a significant storm felled a tree that crushed the back wall of the pool that had been there since 1986.

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

It shall allow our family and friends to continue to utilize our back yard area in a manner consistant with the past 27 yrs.

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

Granting the variance will put us in compliance with County Regulations and enable us to enjoy our property in a manner consistant with nearly 3 decades previous.

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.

Rocco C. Giario 2/19/13  
Signature of Property Owner 1 Date

Maureen P. Giario 2/19/13  
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, MARCH 21, 2013  
Date of Public Hearing

WEDNESDAY MARCH 6, 2013  
Advertising Date

WEDNESDAY MARCH 6, 2013  
Placard Posting Date

**Jefferson County, West Virginia**

**Department of Zoning**

116 East Washington Street, Suite 201

P.O. Box 338

Charles Town, West Virginia 25414

zoning@jeffersoncountywv.org

Phone: (304) 728-3228

Fax: (304) 728-8126

Staff Assignment #: # ZV 13-11

Please be advised that staff from the Department of Zoning is authorized to make necessary revisions to the enclosed submission if required for processing. I understand that said revisions will be discussed with me prior to content modification.

Applicant PRINTED Name: Marie Cipriano

Applicant SIGNATURE: Marie Cipriano

Contact Number: 304 279-1770

Date: 2/19/13

**RECEIVED**  
**FEB 20 2013**  
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PLANNING, ZONING AND ENGINEERING

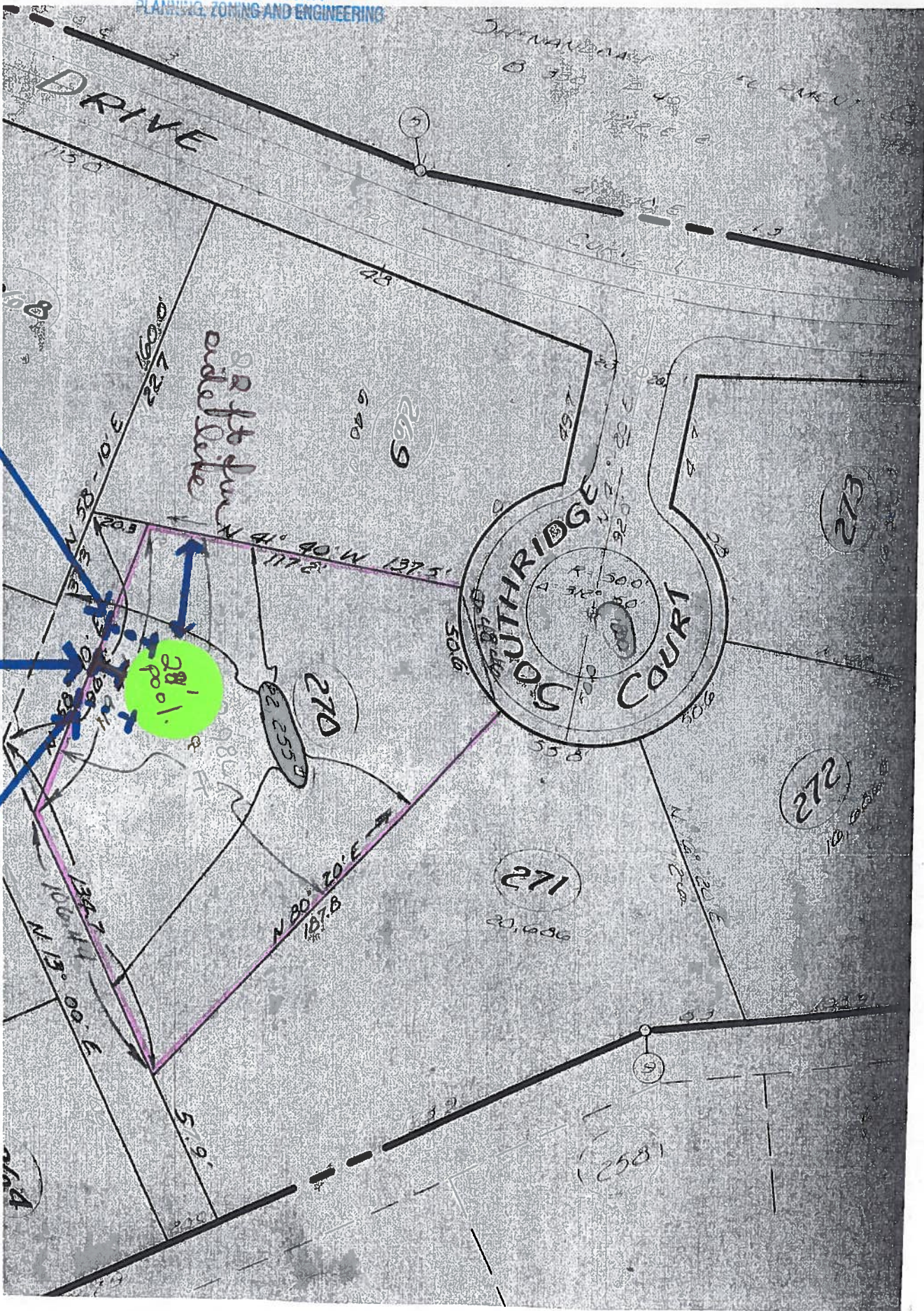
RECEIVED

Rocco C. Cymako  
2/19/13

ZV1311

FEB 20 2013

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING



(circumference is 20 ft + wide)

18 ft to property line making 6 ft in circumference

cleared to property line @ 7 Ft 10 in

18 ft to property line making 8 ft in circumference



Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 March 21, 2013

**Twin Oaks Subdivision, LLC (ZV13-13)**

BZA File #CP12-01	Approved: 4/19/12 Signature date: 6/28/12 Expiration date: 12/28/13
ZONING MAP AMENDMENT: PC File # Z11-05	Submitted: 9/22/11 Denied: 12/8/11
FINAL PLAT	Submitted: 8/8/08 Public Hearing and Approval: 10/14/08 <i>Note: Plat was not bonded / recorded; is no longer valid</i>
PRELIMINARY PLAT	Submitted: 11/30/07 Staff Review Mtg.: 12/10/07 Approved: 08/06/08 <i>Note: Expired when Final Plat was declared not valid</i>
COMMUNITY IMPACT STATEMENT (CIS) PC File #06-33	Submitted: 10/29/06 Staff Review Mtg.: 11/3/06 County Engineer Approval: 03/22/07 County Planner Approval: 03/19/07 PC Approval: 04/24/07 Original expiration date: 11/03/08; Extended to: 02/17/2009; 12/09/09 <i>Currently Expired</i>
CONDITIONAL USE PERMIT PC File #Z06-01	Submitted: 02/22/06 Approved: 08/17/06 Expired: 2/17/09
VARIANCE/WAIVER HISTORY	<p><b>Town Run Commons</b></p> <p>02/21/08: BZA approved a 12 month extension (until 02/17/09) for the expiration date of the CUP.</p> <p>08/26/08: PC granted a 3 month variance for Final Plat approval from 11/03/08 to 02/17/09.</p> <p>12/09/08: PC granted a 12 month variance from 12/09/08 to 12/09/09 to bond and record Town Run Commons S/D.</p> <p>12/08/09: Variance requested for 1 year extension to bond and record Town Run Commons S/D. This request could not be heard due to a recusal leaving a lack of a quorum.</p> <p>01/12/10: PC denied a request for a 1 year extension to bond and record Town Run Commons S/D.</p> <p><b>Morgan's Grove Market</b></p> <p>01/08/13: PC approved a waiver from Section 20.102(B) to allow rough site grading in anticipation of subsequent procedural and document approvals (PCW12-08).</p> <p>01/08/13: PC approved a waiver from Section 22.208 requesting relief from the road frontage sidewalk conditioned upon a 10'</p>

Staff Report  
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**Twin Oaks Subdivision, LLC (ZV13-13)**

	<p>pedestrian/bike easement being recorded along Rt. 480 (<i>PCW12-09</i>).</p> <p>01/08/13: PC approved (with conditions) a waiver Section 24.116(B): relief from subdivision ordinance requesting traffic study (<i>PCW12-10</i>).</p> <p>01/08/13 PC denied a request to schedule a public hearing for the Morgan’s Grove Market Major Site Plan (S12-06) prior to staff deeming the site plan complete.</p> <p>1/17/13: BZA approved (with conditions) variances from Section 4.11(A) and 5.6(D).</p>
<p>ZONING CERTIFICATE          #ZC11-15</p>	<p>Zoning Certificate issued for: “Market for the sale of farm products and incidental products, including arts and crafts . . . Live music, events, and performances are permitted if secondary to the market. Events may not be a primary attraction or conducted on non-market days.”</p>

**RELEVANT INFORMATION:**

1. Overview of Request

The applicant is seeking a variance from Sections 4.10 and 11.1 to waive site plan and parking requirements for a 1,200 sq. ft. tent structure to be used for a farm market.

The applicant requested to conduct site grading of the property in advance of the approval of the site plan for the Morgan's Grove Market CUP. The Jefferson County Subdivision and Land Development Regulations do not permit early grading. However, the applicant secured Planning Commission approval of a waiver to allow early grading in January, 2013.

As part of this grading, some existing site improvements currently used for the Morgan's Grove Farm Market (a parking lot and a concrete slab) would be removed. Staff has informed the applicant that, if the parking area and concrete pad were to be removed, then the farm market could not be conducted at the site unless either (a) a site plan is approved for a parking area and space for the market, or (b) variances from relevant requirements are approved.

The applicant seeks to continue to operate the farm market after the early grading has commenced, without the parking area and concrete slab, and for this reason has applied for a variance from the requirements for a site plan and permanent off-street parking.

Regarding the reason for the variance, the application states: “Attempt to continue Morgan's Grove Market during its site plan approval process and construction. A variance from additional site plan and parking standards for a 1200 square foot tent structure. This is a temporary variance in that it will become moot when the full site plan is approved.”

Staff Report  
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**Twin Oaks Subdivision, LLC (ZV13-13)**

2. Existing Conditions

a. Location

The property is located directly south of Morgan’s Grove Park on Kearneysville Pike (Rt. 480), approximately one mile from the corporate limits of Shepherdstown.

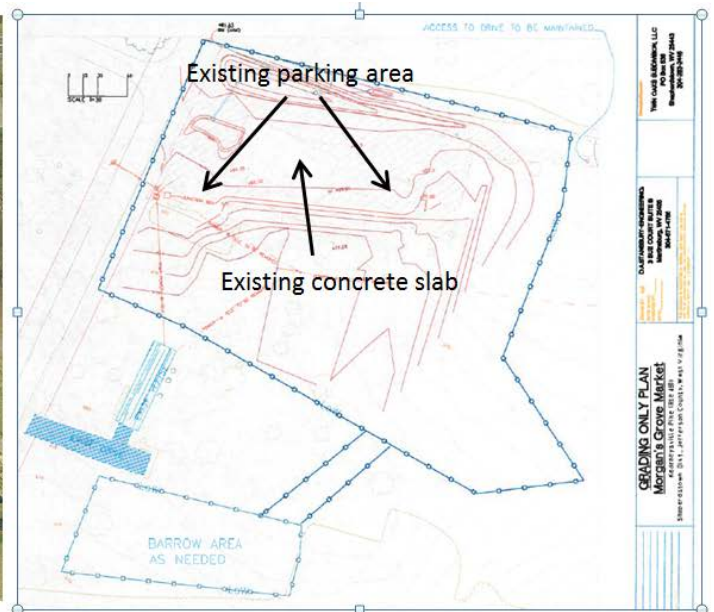
b. Zoning

The subject property lies within the Rural zoning district. Adjacent properties located to the south, west, and east of the subject property are zoned Rural. Adjacent properties located to the north are zoned Residential Growth.

c. Land Use

The property contains two existing single-family homes greenhouses and a community garden. Each house has a separate driveway connecting to Route 480.

The property also contains a concrete building pad (approximately 5000 square feet) and asphalt parking lot adjacent to Route 480 (approximately 30,000 square feet). This portion of the property is used on a seasonal basis as the vending area and parking area for Morgan’s Grove Market, an open-air farmers’ market.



Above: Grading plan for property. Area within blue line is intended to be graded.

3. Recent Case History

a. Morgan's Grove Market Zoning Certificate

On May 4, 2011, the Planning and Zoning Department issued a Zoning Certificate for this site to allow a “Market for the sale of farm products and incidental products, including arts and crafts... Live music, events, and performances are permitted if secondary to the market.”

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**Twin Oaks Subdivision, LLC (ZV13-13)**

Although the farm market was a new land use on a property with no existing commercial uses, the Department determined that no site plan was required for the market. The rationale for this determination is described in a Pre-Proposal Conference memo to Peter Corum, dated 3/15/11:

“Existing parking on the site may satisfy parking requirements. Parking requirements, for the market area, will be calculated using the parking use category “Commercial Retail Sales (Less than 2000 square feet floor space)” identified in Section 11.1 of the Zoning Ordinance, which establishes 1 space per 150 square feet for this use. Dimensions of parking spaces and drive aisles are specified in appendix B, Section 2.5 of the Subdivision and Land Development Regulations. Depending on the number of parking spaces on the site, at least one van-accessible parking space must be provided, meeting ADA standards.”

b. Morgan's Grove Market Conditional Use Permit

On April 19, 2012, the Board of Zoning Appeals approved a Conditional Use Permit for this property for “an agricultural based economic empowerment zone” with uses consisting of a food hub, general merchandise (retail), professional-business offices, and community amenities, as described in more detail in the approved Conditional Use Permit #CP12-01. Various other cases associated with this application are listed above.

The applicant has submitted a site plan for this development, which is currently in review. Approval is pending the applicant addressing minor staff comments and securing approvals from external agencies. The Planning Commission and Board of Zoning Appeals have approved several requests for variances and waivers associated with the site plan, as listed above.

4. Applicant’s Responses to Four Criteria for a Variance

West Virginia Code §8A-7-11 states that a Board of Zoning Appeals shall grant a variance if it finds that the variance meets the four criteria listed below.

In the application submitted for the variance request, the applicant has provided the following responses to the 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.*

The application states, “The farm market has been operated on this site since 2011. This variance will not relieve the applicant from any ordinance standard or that would affect the above listed concerns.”

- 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.*

The application states, “Continuation of an existing community amenity during site construction and expansion is not contemplated in current ordinance. Technical detail and interpretation are creating the special condition.”

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
March 21, 2013

**Twin Oaks Subdivision, LLC (ZV13-13)**

- c) *Would eliminate an unnecessary hardship and permit a reasonable use of the land.*

The application states, "Granting will eliminate the requirement for a redundant temporary site plan and construction of a county standard temporary parking lot."

- d) *Will allow the intent of the Zoning and Land Development Ordinance to be observed and substantial justice done.*

The application states, "The entire 13 acre site has a submitted site plan with storm water management and fully compliant permanent streets and parking. Development has CUP approval."

5. Staff Evaluation of Request

The application includes an exhibit labeled "Grading Only Plan" that shows the area proposed to be graded. However, the application does not provide information regarding where the proposed temporary parking will take place, the size or topography of the proposed parking area, the type of proposed parking surface, or where the market would be located. The information provided is not sufficient to determine whether the proposed parking and market areas would be in an appropriate location and established on a suitable surface.

The application does not clearly demonstrate why the existing improvements used for the market must be removed at this time. Aside from the early grading that is permitted for this site via a Planning Commission waiver, no construction on the site is permitted until the site plan (and subsequently, the building permit) is approved, and all required bonding is in place.

The site plan is not yet approved and bonded, and the time frame for approval of the site plan is unknown. While most of the outstanding comments are fairly minor, there are two significant unresolved issues that involve external agencies: approval of a highway entrance permit (WVDOH) and approval of engineering design for water and sewer infrastructure (Corporation of Shepherdstown and West Virginia State Health Department). On January 8, 2013, the applicant made a request to the Planning Commission to schedule a public hearing for the Morgan's Grove Market Major Site Plan (S12-06) prior to staff deeming the site plan complete. The Planning Commission denied the request.

- a. Source of ordinance requirements

Section 4.10 establishes that a site plan is required for all commercial development, in accordance with the requirements of the Subdivision and Land Development Regulations.

Section 11.1 establishes that permanent, off-street vehicular parking shall be provided for all non-residential land uses.

- b. Purpose of ordinance requirements

The purpose of site plan requirements is to ensure that a site is developed in a manner that protects public health, safety, welfare, and community character are protected. Zoning Ordinance and Subdivision and Land Development Regulations requirements that are reflected in a site plan include the following:

Staff Report  
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**Twin Oaks Subdivision, LLC (ZV13-13)**

- Stormwater management
- Buffering of adjacent properties via landscaping and/or fencing
- Handicapped accessibility (parking, accessible route to building entrances)
- Adequate parking
- Setbacks from property lines and roads
- Other factors (lighting, etc)

The purpose of non-residential parking requirements is to ensure that adequate off-street parking space is available for commercial land uses. The requirement for permanent parking is to ensure that parking is safe for users, e.g. having a solid, level surface, adequate drive aisles, suitable topography, etc.

c. Unique characteristics of property

The subject property is approximately 13.69 acres in size, including the combined area of all lots. Lot 26.4 (approximately 2 acres) will not be developed as part of this project, and will remain in single-family use. A power line easement bisects the property, and the rear of the property includes an area within the 100-year floodplain.

An unusual characteristic of the property is the existing improvements on the site (concrete building pad and asphalt parking lot), as illustrated above under the “existing conditions” section.



d. Character of area

The property is surrounded on the west, north, and south by single-family residential uses on parcels of varying size, between 2 acres and 13 acres. Morgan’s Grove Park, which is listed on the National Register of Historic Places, is located to the east of the subject property.

e. Impact on adjacent properties

Because the applicant has not identified the proposed location for the parking area and market area, the impact on adjacent properties is unknown.

f. Feasibility of complying with the ordinance by other means

The variance request would not be necessary were the applicant to defer the demolition of the existing parking area and slab until after the conclusion of the market season.

Staff Report  
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**Twin Oaks Subdivision, LLC (ZV13-13)**

6. Possible Conditions of Approval

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

- a. The variance has a duration of one year from the date of approval.
- b. A new Zoning Certificate for the land use is required prior to initiation.
- c. The applicant must submit to the Planning and Zoning Department an informal sketch plan showing locations of proposed parking areas, structures, and space designated for vendors.
- d. A van-accessible parking space, and an accessible route between the parking space and the market, both meeting ADA standards, are required.

It should be noted that, because the request is for variances from multiple sections, the Board should address each requested variance as a separate motion.

SECTION OF ORDINANCE TO BE CONSIDERED:

**Section 4.10 Site Plan Requirements**

- A. A site plan shall be submitted for all commercial, townhouse and multi-family residential, industrial, and institutional development in any district and for all major additions or expansions of existing uses as defined in Article 2, in accordance with the requirements of the Subdivision and Land Development Regulations and this Ordinance.<sup>23</sup>
- B. Site plan submittal is not required for single-family or two-family dwelling units unless planned as part of a multi-unit or mixed use development plan.
- C. The site plan format and informational requirements that must be followed are referenced in the Jefferson County Subdivision and Land Development Regulations, and this Ordinance.<sup>23</sup>
- D. The Planning Commission has the authority to waive any site plan standards in accordance with the Subdivision and Land Development Regulations.<sup>10, 17, 21, 23</sup>

**Section 11.1 Non-Residential Parking Standards**

- A. To decrease congestion, permanent off-street automobile parking space and truck loading space shall be provided for all new structures and uses, and for existing structures or uses that are increased in size by 20 percent or more after adoption of these regulations.<sup>23</sup>



# JEFFERSON COUNTY, WEST VIRGINIA

## Departments of Planning and Zoning

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

Charles Town, WV 25414

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

File Number: ZV13-13

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

Staff Initials: ESC

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: Twin Oaks Subdivision, LLC.

Mailing Address: PO Box 536

City: Shepherdstown State: WV Zip Code: 25443

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

#### Applicant or Contact Information

Applicant / Contact Name: Peter Corum

Mailing Address: PO Box 536

City: Shepherdstown State: WV Zip Code: 25443

Phone Number: 304.283.2467 Email: petercorum@gmail.com

#### Applicant Representatives

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

Attorney(s), Engineer(s), or Surveyor(s) Name: Fred Blackmer

Mailing Address: 9628 Moncove Lake Road

City: Gap Mills State: WV Zip Code: 24941

Phone Number: 304.536.3743 Email: fred@fredblackmer.com

#### Physical Property Details

Physical Property Address: 3988 Kearneysville Pike

Tax District: Shepherdstown Map No: 13 Parcel No: 26.1,2,3,4

Parcel Size: 13.68 acres Deed Book: attached Deed Bk. Pg. No: Attached

Zoning District:	Rural (R-A)	Residential Growth (R-G)	Industrial Commercial (I-C)	Residential-Light Industrial-Commercial (R-I-C)	Village (V)
	0	0	0	0	0

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 JEFFERSON COUNTY  
 PLANNING, ZONING AND ENGINEERING

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

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

Reference the section of Ordinance pertaining to this request: 4.10 and 11.1 (Staff advised)

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

Attempt to continue Morgan's Grove Farm Market during site plan approval process and construction. A variance from additional site plan and parking standards for a 1200 square foot tent structure. This is a temporary variance in that it will become moot when the full site plan is approved.

*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.*

The farm market has been operated on this site since 2011. This variance will not relieve the applicant from any ordinance standard or that would adversely affect the above listed concerns.

*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?*

Continuation of an existing community amenity during site construction and expansion is not contemplated in current ordinance. Technical detail and interpretation are creating the special condition.

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

Granting will eliminate the requirement for a redundant temporary site plan and construction of a county standard temporary parking lot.

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

The entire 13 acre site has a submitted site plan with storm water management and fully compliant permanent streets and parking. Development has CUP approval.

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]  
Signature of Property Owner 1

2/27/13  
Date

[Signature]  
Signature of Property Owner 2

2/27/13  
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)).

MARCH 21, 2013  
Date of Public Hearing

MARCH 6, 2013  
Advertising Date

MARCH 6, 2013  
Placard Posting Date

# ZV13-13

**Attachment 1:**

January 17, 2012

**Name and address of owner(s):**

Parcel 26.1 and 26.3  
Twin Oaks Subdivision, LLC  
PO Box 536  
Shepherdstown WV 25443  
Tel: (304) 283-2467

Parcel 26.2  
Peter S. Corum\*  
PO Box 536  
Shepherdstown WV 25443  
Tel: (304) 283-2467

Parcel 26.4  
J. Edward Slonaker\*  
PO Box 536  
Shepherdstown WV 25443  
Tel: (304) 283-2467

\*(Member of Twin Oaks Subdivision, LLC)

Developer of all Parcels  
Twin Oaks Subdivision, LLC  
PO Box 536  
Shepherdstown, WV 25443  
Tel: (304) 283-2467

**Name and address of contact person:**

Peter Corum  
PO Box 536  
Shepherdstown, WV 25443  
  
Tel: 304 283-2467

**Tract size, shape, location and zoning:**

The proposed area for zoning amendment is located in Shepherdstown District; Tax Map 13 parcel 26.1, parcel 26.2, parcel 26.3 & parcel 26.4.

The original tract acres:

Parcel 26.1	6.69 acres	DB 995	PG 321
Parcel 26.2	2.0 acres	DB 454	PG 445
Parcel 26.3	3.0 acres	DB 992	PG 60
Parcel 26.4	2.0 acres	DB 974	PG 346

The parcels have a total acreage of 13.69 acres.

Current zoning:

"Rural District"

RECEIVED  
FEB 27 2013  
JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

# ZV13-13

LOW = LIMITS OF WORK  
THIS PERMIT

 EXIST. ASPHALT  
TO BE REMOVED  
 EXIST. CONC.  
TO BE REMOVED

RECEIVED

FEB 27 2013

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING



SHEET	

G-1

**GRADING ONLY PLAN**  
**Morgan's Grove Market**  
 Kearneysville Pike (Rte 480)  
 Shepherdstown Dist., Jefferson County, West Virginia

DRAWN BY: DJS      **DABSTANBURY-ENGINEERING**  
 DATE: 01/10/13      **3 BUE COURT SUITE B**  
 CHECKED BY: \_\_\_\_\_      **Martinsburg, WV 25406**  
 DATE: \_\_\_\_\_      **304-671-4786**

Developer/Owner  
**TWIN OAKS SUBDIVISION, LLC**  
 PO Box 636  
 Shepherdstown, WV 25443  
 304-283-2446

THIS DRAWING IS PROTECTED BY FEDERAL COPYRIGHT LAW AND IS NOT TO BE REPRODUCED OR USED FOR CONSTRUCTION WITHOUT WRITTEN PERMISSION FROM THE ENGINEER.



# JEFFERSON COUNTY, West Virginia

## Departments of Planning and Zoning

116 East Washington Street, 2<sup>nd</sup> Floor  
Charles Town, WV 25414

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

Phone: (304) 728-3228

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

Fax: (304) 728-8126

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## Director's Report March 21, 2013 Board of Zoning Appeals Meeting

### 1) Introduce New Staff

### 2) Envision Jefferson 2035 (2014 Comprehensive Plan) Update

#### a) Steering Committee (15 members):

- Joint Meeting with County Commission – 2/21/13
- Monthly Meeting -- 3/19/13

#### b) Upcoming Brown Bag Lunch and Learns Scheduled:

Wednesdays, 12 – 1 pm, Old Charles Town Library Community Meeting Room:

- 3/20/13 Social Service Agencies (Jefferson County Office on Aging, Jefferson Center, United Way, Community Ministries)
- 3/27/13 Municipal Planners Roundtable (Charles Town, Shepherdstown, Ranson, Harpers Ferry, Bolivar)
- 4/17/13 *tentatively rescheduled* -- Public Safety (Sheriff, JCESA, Jefferson County Homeland Security and Emergency Management, representative from the one of the volunteer fire companies )

#### c) Public Input Meetings

- First series of public meetings (February 2, 4, and 6 2013)
- Agricultural Workshop (March 4, 2013)

#### d) Next Steps

- a. Draft Goals and Objectives

### 3) Recent PC/CC Actions of Interest:

- a) Landowner-initiated petition to amend the County Zoning Map for a 3.94 acre property owned by the **Aitcheson Family Trust**, designated as Tax District: Harpers Ferry, Map: 7, Parcel: 18, located on the south side of US Route 340 on Campground Road approximately a half mile east of its intersection with Old Taylor Lane (Public Hearing 1/31/13; approved 3/7/13)