

Jefferson County

Board of

Zoning Appeals

Thursday,

December 20, 2012

JEFFERSON COUNTY, WEST VIRGINIA

Department of Zoning

116 East Washington Street, 2nd Floor

P.O. Box 338

Charles Town, West Virginia 25414

Phone: 304-728-3228

Email: zoning@jeffersoncountywv.org

Fax: 304-728-8126

MEMORANDUM

TO: Jefferson County Board of Zoning Appeals Members

FROM: Jennilee Hartman, Zoning Clerk

DATE: December 14, 2012

SUBJECT: December 20, 2012 Board of Zoning Appeals Meeting

Please find enclosed a copy of the Agenda for the upcoming Board of Zoning Appeals meeting to be held on Thursday, December 20, 2012. Also for your review, you will find corresponding information regarding said Meeting. When applicable, I will include copies submitted to this office that pertain to items of new business. If you have any questions, or will not be able to attend the upcoming meeting, please do not hesitate to contact me.

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MEMORANDUM

TO: Board of Zoning Appeals Members

CC: Engineering & Building Permits Departments

FROM: Steve Barney, Zoning Administrator

DATE: December 14, 2012

SUBJECT: December Monthly Report of Department Activities

ISSUED ZONING CERTIFICATES

#ZC12-25 SANDRA TAYLOR– OWNER / APPLICANT

Issuance Date: December 06, 2012
Proposed Use: Bed & Breakfast to include 3-4 Outdoor Receptions annually.
Physical Location: 399 River Road; Shepherdstown, West Virginia 25443
Zone: Rural

DENIED ZONING CERTIFICATES

ZC12-19 CLAUDE G. PAYNE, JR. - OWNER/APPLICANT

Denial Date: November 14, 2012
Proposed Use: Farm Market
Physical Location: 3504 Warm Springs Road; Shenandoah Junction, West Virginia
Zone: Rural

#ZC12-21 JAMES & LISA BOYER - OWNERS/APPLICANTS

Denial Date: November 20, 2012
Proposed Use: Dog Kennel
Physical Location: 5404 Kabletown Road; Charles Town, West Virginia
Zone: Rural

#ZC12-23 Amy Cockerille - APPLICANT

Denial Date: October 3, 2012
Proposed Use: Taxi Service
Physical Location: 162 Georgia Avenue; Charles Town, West Virginia
Zone: Residential-Growth

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

#ZC12-26 MARK ODELL– OWNER / APPLICANT

Issuance Date: TBD
Proposed Use: Shooting Range
Physical Location: 459 Berryville Pike; Rippon, West Virginia 25441
Zone: Industrial-Commercial



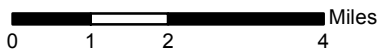
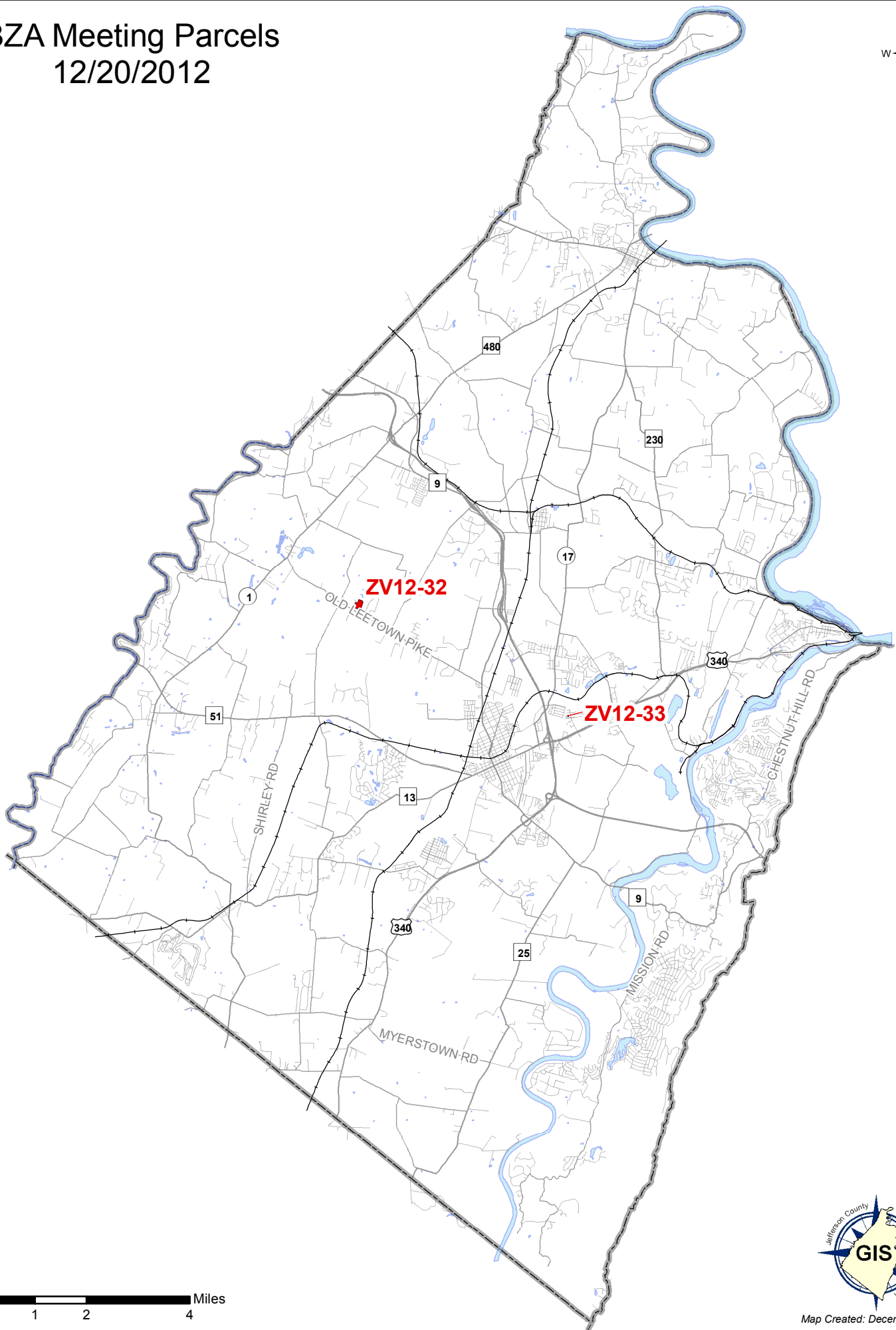
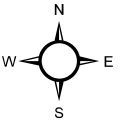
AGENDA
Jefferson County
Board of Zoning Appeals
Thursday, December 20, 2012, 3:00 p.m.

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

The Jefferson County Board of Zoning Appeals will meet in the second floor Conference Room located at 116 East Washington Street, in the Mason Building, in the City of Charles Town. Unless otherwise noted, all requests are pursuant to the Zoning & Land Development Ordinance.

1. Approval of the minutes from the November 15, 2012 meeting.
2. Swearing in of members of the public intending to provide testimony.
3. Variance request by applicant, Michael A. Lowrey on behalf of the property owner Rock Spring Church, from Section 4.10 for a waiver of the Site Plan requirements to allow for the installation of two modular units to be used as temporary classrooms during the construction of Phase II of the Site Plan (#S05-13). Said units measure 24' x 40' and 24' x 60' and are approximately 14' in height respectively. Anticipated start date is Spring 2013. Property location: 114 Poor Farm Road, Kearneysville, West Virginia. District: Middleway (07); Map: 15; Parcel: 1.5; Zoned: Rural; Size: 15 acres; File: #ZV12-32.
4. Variance request by applicant, Charles D. Betoney, II, from Section 9.7 for a reduction of the side setback distance from 8' to 7' to allow for the construction of a 24' x 18' attached garage to be positioned on an existing concrete slab. Property location: Patrick Henry Subdivision, 42 Fulton Avenue, Charles Town, West Virginia. District: Charles Town (02); Map: 8B; Parcel: 25; Zoned: Residential-Growth; Size: 0.233 acres; File #ZV12-33.
5. Director's Report.
6. Legal Update.
7. Signing of written decisions from prior Board of Zoning Appeals meetings.
8. Correspondence.

BZA Meeting Parcels 12/20/2012



Draft Minutes
Jefferson County Board of Zoning Appeals
Thursday, November 15, 2012

The Jefferson County Board of Zoning Appeals met on Thursday, November 15, 2012. The meeting was held in the Charles Town Library meeting room located at 200 East Washington Street, at the side entrance on 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; and Ed Kelly were present. Staff members present were: Jennifer Brockman, Director of Planning and Zoning; Steve Barney, Zoning Administrator; Stephen Groh, Assistant Prosecuting Attorney and Jennilee Hartman, Zoning Clerk.

Tyler Quynn was absent without notification.

Ms. Huddle motioned to commence the meeting. Mr. Kelly seconded the motion, which carried unanimously. Mr. Bresee called the meeting to order at 3:02 p.m.

1. Approval of the minutes from the October 18, 2012 meeting.

Ms. Huddle motioned to approve the minutes. Mr. Kelly seconded the motion, which carried unanimously.

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

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

3. Variance request by property owners, Steven D. & Rebecca A. McKinney, from Section 4A.1.E.4 to allow for short term storage of firearms (typically 8-72 hours), and Section 4A.3.C to allow sale of items not hand crafted on the premises. Property location: 149 Gray Squirrel Road, Harpers Ferry, West Virginia. District: Charles Town (02); Map: 23B; Parcel: 41; Zoned: Rural; Size: .5 acres; File: #ZV12-28.

Mr. McKinney presented his request to the Board. Mr. McKinney explained the process of how a firearm is purchased from an outside distributor, including internet sales that are not processed by Mr. McKinney. The item is then shipped to Mr. McKinney's residence where he logs it into his record book and performs a background check on the purchaser. Once the background check clears, Mr. McKinney contacts the purchaser to pick up the item and again logs the transaction into his record book. Mr. McKinney explained he is required to maintain the books, and they are reviewed by the Federal Firearms Commission. Ms. Huddle expressed her concern that this request was a variance that would in effect allow a land use that otherwise would not be permitted. Ms. Huddle reasoned that Article 4A specifically prohibited any business that involved storing firearms and that by granting a variance from this provision the Board would be allowing a land use (i.e. a firearms business) in a zone that would not otherwise permit it, contrary to the requirements of the West Virginia Code. Mr. McKinney countered that he was asking for a variance from the definition of 'storage' as it is not currently defined in the Ordinance and in this case is being interpreted to mean 'possession for any length of time'.

Mr. Barney stated he did not have any additional information to provide other than the business has been in operation since 1993. At the time Mr. McKinney sought and received his Federal Firearms License; staff believes that the Bureau did not check with local authorities to determine if the use was not permitted. Mr. McKinney has stated to staff that he was not aware of local zoning laws at

that time. During the time that Mr. McKinney has been in operation, the Planning, Zoning, and Engineering Departments have not received any written complaints regarding his business.

Mr. McKinney answered the Board's questions regarding the frequency of customers by stating he has at most sold 8 firearms in a month. Mr. McKinney answered additional questions regarding the safety mechanisms he has in place for the business.

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

4. Variance request by property owner, Randolph Anders, from Section 9.6A for a reduction of the side setback distance from 5' to 1' to allow for the construction of a 10' x 14' shed on existing 11' x 16' concrete pad. Property location: 2138 Berryville Pike, Rippon, West Virginia. District: Kabletown (06); Map: 10A; Parcel: 20; Zoned: Rural; Size: 0.75 acres; File: #ZV12-30.

Mr. Anders presented his request to the Board, stating that the concrete pad had been in place approximately 30 years and that he would like to locate the proposed shed on part of the pad. The remaining portion of the pad would be fenced in for his dog kennel. Mr. Barney stated that the alley adjacent to the proposed shed appears to be abandoned. Mr. Barney explained that the office had attempted to research which properties had legal access to the alley; however, the deeds could not be located. Mr. Barney described the property's features to the Board, listing the sizeable vegetable garden, septic area, existing shed and smaller-than-average lot size as features that could potentially hinder locating the shed elsewhere on the property. Mr. Bresee called for public comment. There was no public comment.

5. Variance request by property owner, Christopher Dimon, from Section 9.7 for a reduction of the front setback distance from 25' to 2' to allow an existing 16' x 23'9" storage shed to remain. Property location: 131 Gray Rock Road, Charles Town, West Virginia. District: Charles Town (02); Map: 8; Parcel 32.7; Zoned: Rural; Size: 1.5 acres; File #ZV12-31.

Mr. Dimon presented the request to the Board, stating the mobile home park is very old and that it was originally owned by his father. Mr. Dimon stated his opinion that the road that Staff believes the setbacks should be measured from is not truly a State road, but rather is a driveway that was installed by his father a number of years ago to allow access for the mobile units toward the rear of the property.

Mr. Barney explained that the right-of-way is delineated on the 1964 survey plat of the Virgil Lloyd Lots that is recorded in the Jefferson County Courthouse. Mr. Barney also stated that the deed for the property located to the south references the right-of-way in question.

Mr. Dimon stated he had the property surveyed and at that time the surveyor did not indicate that there was a right-of-way on the property. Mr. Dimon did not present a copy of the survey.

Ms. Huddle expressed concern regarding the safety of the tenant backing out of their driveway due to impaired visibility resulting from the location of the shed.

Mason Carter, Ordinance Compliance Officer, addressed the Board, stating he had received multiple complaints regarding the shed and a possible auto body business being conducted from it. Mr.

Carter explained that the structure is in violation and requires a building permit. If the variance is granted, the building permit may issued; however, if the request is denied the shed must be removed or relocated to an area that meets the setback requirements. Mr. Carter answered the Board's inquiry regarding building inspections, stating that all structures over 250 square feet require inspections per the current building code.

Mr. Barney explained that the existing land use on the property is a nonconforming use. Mr. Dimon stated there were 12 mobile home units at one time; however, currently there are 10 units in use on the property.

Mr. Bresee called for public comment. Sally Bray, adjacent property owner, spoke in opposition to the request, citing traffic safety as a concern. Ms. Bray stated that the shed has a set of double doors that open outward towards the right-of-way and that she cannot see oncoming traffic from the right. Ms. Bray stated that on one occasion she struck a neighbor (neighbor's car?) with her vehicle because the location of the shed blocked her view of the road. Ms. Bray also alleged that the tenant of the mobile unit was operating an auto body shop from the shed. Ms. Bray suggested that the shed could be relocated to one of the vacant mobile home lots that exist on Mr. Dimon's property. Ms. Bray expressed concern for the 15 children that live in the neighborhood, who may be at risk of being hit by an oncoming vehicle whose driver does not see them riding their bikes due to the location of the shed.

Ms. Huddle motioned to go into deliberative session at 3:53 p.m. Mr. Kelly seconded the motion, which carried unanimously.

Ms. Huddle motioned to come out of deliberative session at 4:08 p.m. Mr. Kelly seconded the motion, which carried unanimously.

5. Variance request by property owners, Steven D. & Rebecca A. McKinney, from Section 4A.1.E.4 to allow for short term storage of firearms (typically 8-72 hours), and Section 4A.3.C to allow sale of items not hand crafted on the premises. Property location: 149 Gray Squirrel Road, Harpers Ferry, West Virginia. District: Charles Town (02); Map: 23B; Parcel: 41; Zoned: Rural; Size: .5 acres; File: #ZV12-28.

Ms. Huddle motioned to not approve the above referenced variance request, citing the rationale for such is that the provision in Section 4.A.1.E.4 was added to the Zoning Ordinance for the specific reason that this type of land use was inappropriate in this zone, especially in a home occupation. Ms. Huddle also stated that the request does not meet the unnecessary hardship requirement, as the hardship was self-imposed. Mr. Kelly seconded the motion, which carried unanimously.

6. Variance request by property owner, Randolph Anders, from Section 9.6A for a reduction of the side setback distance from 5' to 1' to allow for the construction of a 10' x 14' shed on existing 11' x 16' concrete pad. Property location: 2138 Berryville Pike, Rippon, West Virginia. District: Kabletown (06); Map: 10A; Parcel: 20; Zoned: Rural; Size: 0.75 acres; File: #ZV12-30.

Mr. Kelly noted that the applicant has met all of the criteria for approval of a variance and motioned to approve the above referenced request. Ms. Huddle seconded the motion. Mr. Kelly raised a question regarding the size of the concrete pad and whether the size of the pad should be 11' x 30' as

cited in the application request and not 11' x 16' as cited in the agenda. Ms. Huddle moved to amend the motion to accurately describe the concrete pad size as 11' x 30'. Mr. Kelly seconded the motion to amend. The motion to approve the variance as amended carried unanimously.

7. Variance request by property owner, Christopher Dimon, from Section 9.7 for a reduction of the front setback distance from 25' to 2' to allow an existing 16' x 23'9" storage shed to remain. Property location: 131 Gray Rock Road, Charles Town, West Virginia. District: Charles Town (02); Map: 8; Parcel 32.7; Zoned: Rural; Size: 1.5 acres; File #ZV12-31.

Mr. Kelly motioned to disapprove the above referenced request, citing that the Board finds that the Applicant did not meet the four criteria necessary to grant a variance. Mr. Kelly referenced public safety as a concern due to the shed's location adjacent to the road, and the potential hazards associated with obstructed views of children playing in the vicinity of passing traffic.

8. Director's Report. Ms. Brockman updated the Board on the following items:
 - County Commission appointment of Comprehensive Plan Steering Committee
 - New hire Chris Whittaker as the Comprehensive Planner (2 year position)
 - Two members of the Department resigned – will be advertising for the vacancies
 - The County Commission public hearing for the Bank of Charles Town rezoning request was postponed by the Applicant until the early part of 2013
 - Another rezoning hearing was scheduled for the January 10, 2013 meeting, for a zoning request for a parcel located near the KOA property (Aitcheson Adkinson property).
 - The proposed commercial zoning categories amendment was tabled by the County Commission until the 2014 Comprehensive Plan is drafted.
 - The 340 Study was effectively tabled until the 2014 Comprehensive Plan is drafted and may be consulted by the Steering Committee.
 - The Morgan's Grove Market Concept Plan is scheduled for the December 11, 2012 Planning Commission meeting.
9. Legal Update. None.
10. Signing of written decisions from prior Board of Zoning Appeals meetings. None.
11. Correspondence. None.

Ms. Huddle motioned to adjourn the meeting at 4:30 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. These minutes were prepared by Jennilee Hartman, Zoning Clerk.

Jefferson County Board of Zoning Appeals Consideration of a Variance

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

Section 3.4 Boards and Commissions²³


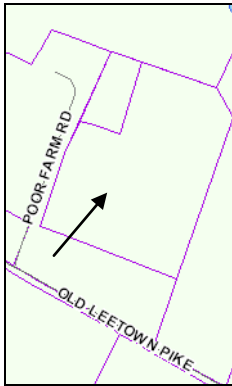
A. Board of Zoning Appeals

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

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 December 20, 2012

Rock Spring Church Request (#ZV12-32)

Item #3 Variance request by applicant, Michael A. Lowrey on behalf of the property owner Rock Spring Church, from Section 4.10 for a waiver of the Site Plan requirements to allow for the installation of two modular units to be used as temporary classrooms during construction of Phase II of the approved Site Plan (#S05-13). The units measure 24' x 40' and 24' x 60' respectively and are approximately 14' in height.

APPLICANT:	Michael A. Lowrey
OWNER :	Rock Spring Church
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	114 Poor Farm Road, Kearneysville, West Virginia
LEGAL DESCRIPTION:	District: Middleway (07); Map: 15; Parcel: 1.5 
ZONING DISTRICT:	Zoning Map Designation: Rural (R) 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North: R South: R</i> <i>East: R West: R</i>
LOT AREA:	14.5 acres
PRIOR CASES:	Rock Spring Church Site Plan (#S05-13), approved 4/25/06. Processed a merger with the JC Solid Waste Authority.
VARIANCE(S):	BZA variance to increase height limit from 35' to 46' for use of an existing building as a church (#ZV05-35), approved 1/19/06
APPROVED ACTIVITY:	Church

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 20, 2012

Rock Spring Church Request (#ZV12-32)

RELEVANT INFORMATION:

1. Overview of Request

Rock Spring Church seeks a variance from Section 4.10 (requirement for a site plan) in order to allow for the installation of two modular units to be used as temporary classrooms during construction of Phase II of an approved site plan. The units measure 24' x 40' and 24' x 60' and are approximately 14' in height. The combined area of the proposed modular units is 2400 square feet.

2. Previous Case History

In 2006, the Planning Commission approved a site plan for Rock Spring Church (#S05-13), for the reuse of an existing building previously used as a solid waste resource recovery facility.



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, "Site plan and storm water already in place. Temporary use until 2nd floor construction is complete. Construction should begin in the Spring 2013."

- 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, "Growth exceeding physical expansion."

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

The application states, "Space is needed to handle growth of our teen ministry. Phase two of our site plan will accommodate the growth but additional space is needed prior to construction completion."

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 20, 2012

Rock Spring Church Request (#ZV12-32)

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

The application states, "Site is already designed for more storm water and parking than this will impact."



4. Staff Evaluation of Request

Section 4.10 of the Zoning Ordinance requires site plan submittal for "all new commercial, townhouse and multi-family residential, industrial, and institutional land uses." The requirement for a site plan does not differentiate between permanent and temporary uses.

Typically, a minor proposed change to a development with an approved site plan may be addressed administratively via a "redline" revision. However, in the case of the Rock Spring Church site plan, the bonding has been closed out. As such, an informal redline revision to the site plan is no longer possible per Engineering Department policy. As such, a new site plan would need to be submitted for the portable units.

The primary purpose of a site plan in Jefferson County is to ensure that adequate stormwater management is planned and that adequate parking and landscaping is proposed.

a) *Stormwater management*

Because the stormwater management improvements shown in the approved site plan were designed to accommodate the proposed impervious surface, the stormwater management plan should be adequate for these temporary structures.

The area where the buildings are proposed is shown as the location of a Phase II addition. As such, the site plan identifies this site plan as a future impervious surface area.

b) *Parking*

The site plan accounts for the parking requirements for full buildout. Per the site plan, 138 parking spaces are required for a 690-seat sanctuary, and 194 parking spaces will be provided.

The site plan states that the site is to be developed in three phases. As part of each phase, sections of a pre-existing gravel area surrounding the building are to be paved and converted to a parking area, with striping, drive aisles, and landscaping. To date, the first phase has been completed, and this phase includes 61 parking spaces.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 20, 2012

Rock Spring Church Request (#ZV12-32)

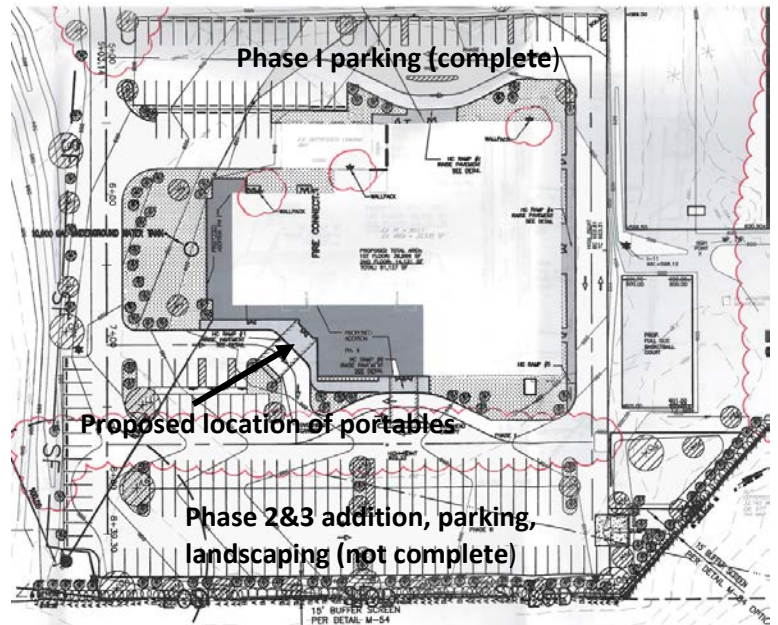
Because the proposed installation of the modular buildings would not increase the size of the sanctuary, the additional building square footage would not impact the required parking.

c) *Landscaping*

Because the site plan is phased, not all landscaping has been installed at this time. Visibility from adjacent property lines is as follows:

Vegetative screening that is required at the eastern property line is not yet in place. As such, the modular units would be visible from the eastern property line. The portable buildings would be located approximately 75' from this property line. The adjacent property is owned by Jefferson County and does not contain a residential use. By deed, this property is restricted to public recreation uses.

The portable buildings would be located approximately 600' from the southern property line. The buildings would not be visible from the northern and western property lines because of the position of the principal church building.



The Board previously approved similar variance requests by Fellowship Bible Church to allow installation of several modular classrooms without the requirement of site plan submittal (#ZV10-18, #ZV11-22, and #ZV12-13). In its evaluation of the three requests, the Board noted that an approved site plan was in place and that parking, landscaping, and stormwater management were addressed.

5. Conditions of Approval

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

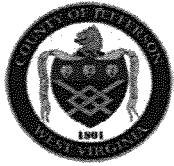
- a) The variance is valid for a period of 24 months from the date of issuance of the first building permit for a portable building.

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.

212-32



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

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

Charles Town, WV 25414

File Number: _____

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

Staff Initials: CC/STH

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

Email planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Email zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Variance Request

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

Property Owner Information

Property Owner Name: Rock Spring Church
 Mailing Address: 114 Poor Farm Road
 City: Kearneysville State: WV Zip Code: 25430
 Phone Number: 304-724-1942 Email: mike.Lowrey@rockspring.net

Applicant or Contact Information

Applicant / Contact Name: Michael A. Lowrey
 Mailing Address: 114 Poor Farm Rd.
 City: Kearneysville State: WV Zip Code: 25430
 Phone Number: 304-270-6876 Email: mike.Lowrey@rockspring.net

Applicant Representatives

Company/Organization Name: Keller Engineers
 Attorney(s), Engineer(s), or Surveyor(s) Name: Michael Pratt
 Mailing Address: 420 Allegheny St
 City: Hollidaysburg State: PA Zip Code: 16648
 Phone Number: 814-696-7430 Email: _____

Physical Property Details

Physical Property Address: 114 Poor Farm Road
 Tax District: Middleway Map No: 15 Parcel No: 1.5
 Parcel Size: 15 ac Deed Book: 1072 Deed Bk. Pg. No: 438

RECEIVED

NOV 13 2012

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Zoning District:

Rural (R-A)

Residential Growth (R-G)

Industrial Commerical (I-C)

Residential-Light Industrial-Commercial (R-L-C)

Village (V)

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

Please briefly describe the nature of the variance request:

Install one 24x40' and one 24x60' modular for temporary use while constructing phase two of site Plan S05-13. Waive the site plan requirements.

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

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.

Site plan and storm water already in place. Temporary use until 2nd floor construction is complete. Construction should begin in the Spring 2013.

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?

growth exceeding physical expansion

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

Space is needed to handle growth of our teen ministry. Phase two of our site plan will accommodate the growth but additional space is needed prior to construction completion.

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

site is already designed for more storm water and parking than this will impact

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

11/12/2012
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)).

12/20/12
Date of Public Hearing

12/05/12
Advertising Date

12/05/12
Placard Posting Date

2112-32

S05-13

11/21/2018
[Signature]

Temporary structure
 location one 24' x 40' x 14' high
 one 24' x 60' x 14' high

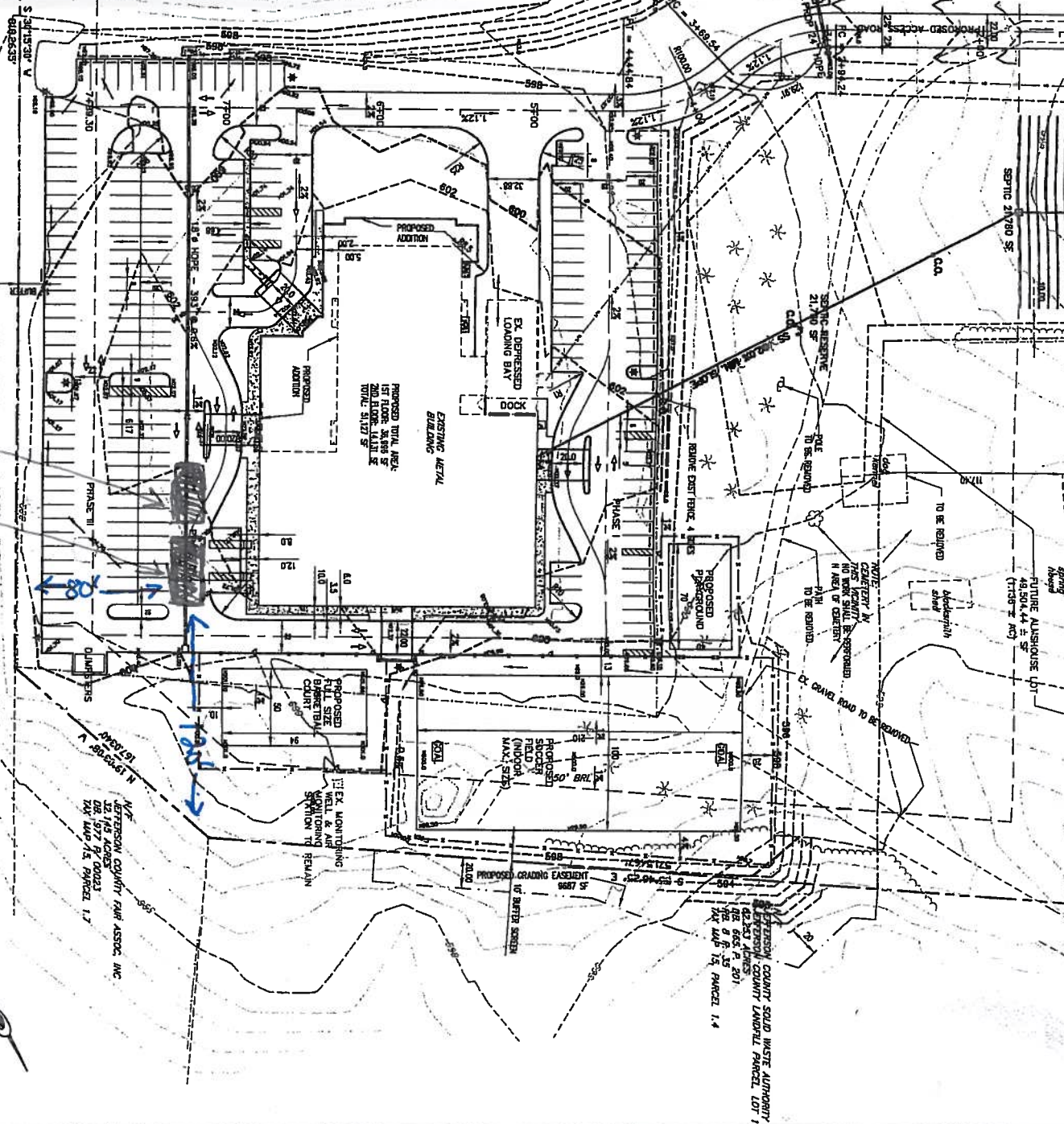
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SWM POND

JEFFERSON COUNTY
 PLANNING, ZONING AND ENGINEERING

N/E
 JEFFERSON COUNTY COMMISSION
 55.39 ACRES
 P/O TAX MAP 15, PARCEL 1
 DE 811 P. 277

N/E
 10.11 P. 0038
 DEE TOWN P. 0038
 14.37 ACRES
 P.B. 9 P. 51
 TAX MAP 15, PARCEL 13



NOT FOR CONSTRUCTION
 THESE PLANS ARE ISSUED FOR REVIEW
 AND/OR PERMITTING PURPOSES ONLY
 AND ARE SUBJECT TO CHANGE.

PROJECT NO.:	05-134 / 1830-1
FILE NAME:	
DATE:	6/29/05
DESIGNED BY:	LB

**ROCK SPRING CHURCH
 NEW WORSHIP FACILITY**

114 POOR FARM ROAD, NORTH OF WY ROUTE 15, OLD LESTOWN PIKE
 KEARNEYVILLE, JEFFERSON COUNTY, WEST VIRGINIA
 TAX MAP 15, PARCEL 1.5, MIDDLEWAY DISTRICT, ZONED RURAL DEEB BK 1001 PG 388


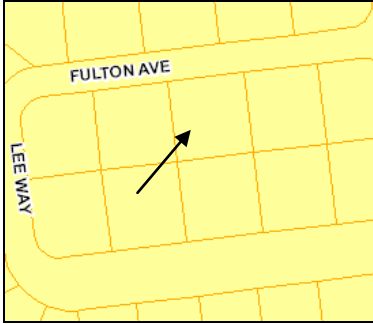
DATE & INITIALS	REVISION DESCRIPTION
9/21/05 LB	PER PZ&E REVIEW

SEAL

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 December 20, 2012

Charles D. Betoney, II Request (#ZV12-33)

Item #4 Variance request by applicant, Charles D. Betoney, II, from Section 9.7 for a reduction of the side setback distance from 8' to 7' to allow for the construction of a 24' x 18' attached garage to be positioned on an existing concrete slab.

APPLICANT:	Charles D. Betoney, II
OWNER :	Same
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	Patrick Henry Subdivision 42 Fulton Avenue, Charles Town, West Virginia
LEGAL DESCRIPTION:	Charles Town (02); Map: 8B; Parcel: 25; 
ZONING DISTRICT:	Zoning Map Designation: Residential-Growth (RG) 
SURROUNDING PROPERTIES:	Zoning Map Designation: North: RG South: RG East: RG West: RG
LOT AREA:	.233 acres
PRIOR CASES:	78-04: Patrick Henry Estates Section A
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 20, 2012

Charles D. Betoney, II Request (#ZV12-33)

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a variance from Section 9.7 for a reduction of the side setback distance from 8' to 7' to allow for the construction of an 18' x 24' attached garage to be positioned on an existing concrete slab. The application states that the slab was previously the foundation for a carport structure that was damaged during a storm.

2. Previous Case History

The subject property is located in the Patrick Henry Estates Subdivision, Section A (case number #78-04). This subdivision 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, "New detached garage will remain in previous footprint of carport. The new garage will be properly framed & supported unlike prior carport. Slab will be reinforced with footers at frost shield. Overall, new structure will be much more stable."

- 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, "The only setback issue encountered is that $\frac{3}{4}$ of the proposed garage will be between 8 ft & 7 ft from the property boundary. Slab is already existing which would make construction upon current conditions much easier."

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

The application states, "The design process was centered around foundation of the prior carport slab. As the carport was over 15-20 years old, the owner (new) assumed it was in compliance. The new garage will re-use the slab & align with driveway, improving home value."

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

The application states, "This variance has no adverse affect to public health, safety, welfare nor does it infringe upon the rights of adjacent residents. The request is for a one foot waiver that will ease construction proceedings and ultimately increase property value."

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 20, 2012

Charles D. Betoney, II Request (#ZV12-33)

4. Staff Evaluation of Request

a. Source and purpose of ordinance requirements

Section 9.7 of the Zoning Ordinance establishes setback requirements for properties in the Residential Growth district located in subdivisions that were approved prior to September 1st, 1989, with no setbacks identified 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 0.23 acre in size. Lot width is 96.5 feet per an exhibit submitted with the application. This is generally consistent with the dimensions of other properties in the subdivision.

The property includes an 18' x 24' concrete slab that was the former location of a carport. The location of the pad is between 8'1" and 7'0" of the side property line. The proposed garage would be the same size as the existing slab, and would be located the same distance from the property line.



c. Character of area

The property is located in the Patrick Henry Estates 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.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 20, 2012

Charles D. Betoney, II Request (#ZV12-33)

d. Impact on adjacent properties

A single-family home is located on the property directly adjacent to the proposed garage site. The home is situated approximately 25' from the side property line. The property line is partially screened with vegetation.

e. Feasibility of complying with the ordinance by other means

It appears possible for a garage to be built in other locations on the property, while still meeting ordinance requirements. However, due to the following factors, placement of the garage in a complying location could result in inconvenience to the property owner:

- A concrete slab of a size adequate for the structure already exists on the property
- The existing driveway is aligned with the location of the slab
- Building a garage in the rear of the property would require either cutting down an existing large tree behind the driveway, or relocating the existing driveway to the west side of the house. Either option would result in a greater amount of impervious surface on the lot.



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 construction of a garage or carport.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 20, 2012

Charles D. Betoney, II Request (#ZV12-33)

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 9.7 Other Exceptions³

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

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

Residential Growth District²³

Single family residences --

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



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

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

Charles Town, WV 25414

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

ZV12-33
File Number: _____
Fees Paid (\$100 or \$150): \$ 100.00
Staff Initials: CE

Email planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Email zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Variance Request

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

Property Owner Information

Property Owner Name: Charles D. Betoney II
Mailing Address: 42 Fulton Ave
City: Charles Town State: WV Zip Code: 25414
Phone Number: 757-660-4848 Email: cbetoney1@yahoo.com

Applicant or Contact Information

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

Applicant Representatives

Company/Organization Name: _____
Attorney(s), Engineer(s), or Surveyor(s) Name: _____
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Phone Number: _____ Email: _____

Physical Property Details

Physical Property Address: 42 Fulton Ave Charles Town, WV 25414 (Patrick Henry Grades)
Tax District: 02 Map No: 8B Parcel No: 0025 0000 0000
Parcel Size: 0.233 ac Deed Book: 1087 Deed Bk. Pg. No: 327

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

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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: 9.7 - GH 12/14/12

Please briefly describe the nature of the variance request:

Request is to construct a 24x18 foot attached garage on a pre-existing slab that formerly housed a carport structure that collapsed in a storm. Front corner of slab is approximately 8'0" from property boundary & rear corner is approximately 7'0".

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

Front Setback Side Setback Rear Setback Reduction From 8'0 to 7'0

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.

New garage will remain in previous footprint of carport. The new garage will be properly framed & supported unlike prior carport. Slab will be reinforced with footers at front shield. Overall, new structure will be much more stable.

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

The only setback issue encountered is that 34 of the proposed garage will be between 8ft & 7ft from property boundary. Slab is already existing which would make construction upon current conditions much easier.

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

The design process was centered around the foundation of the prior carport slab. As the carport was over 15-20 years old, the owner (new) assumed it was in compliance. The new garage will re-use the slab & align with driveway, improving home value.

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

This variance has no adverse affect to public health, safety, welfare nor does it infringe upon the rights of adjacent residents. The request is for a one foot waiver that will ease construction proceedings and ultimately increase property value.

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] 11/21/12
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)).

12/20/12
Date of Public Hearing

12/05/12
Advertising Date

12/05/12
Placard Posting Date

#ZV12-33

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 #: _____

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: Charles D. Betony II

Applicant SIGNATURE: 

Contact Number: (757) 660-4848

Date: 11/21/12

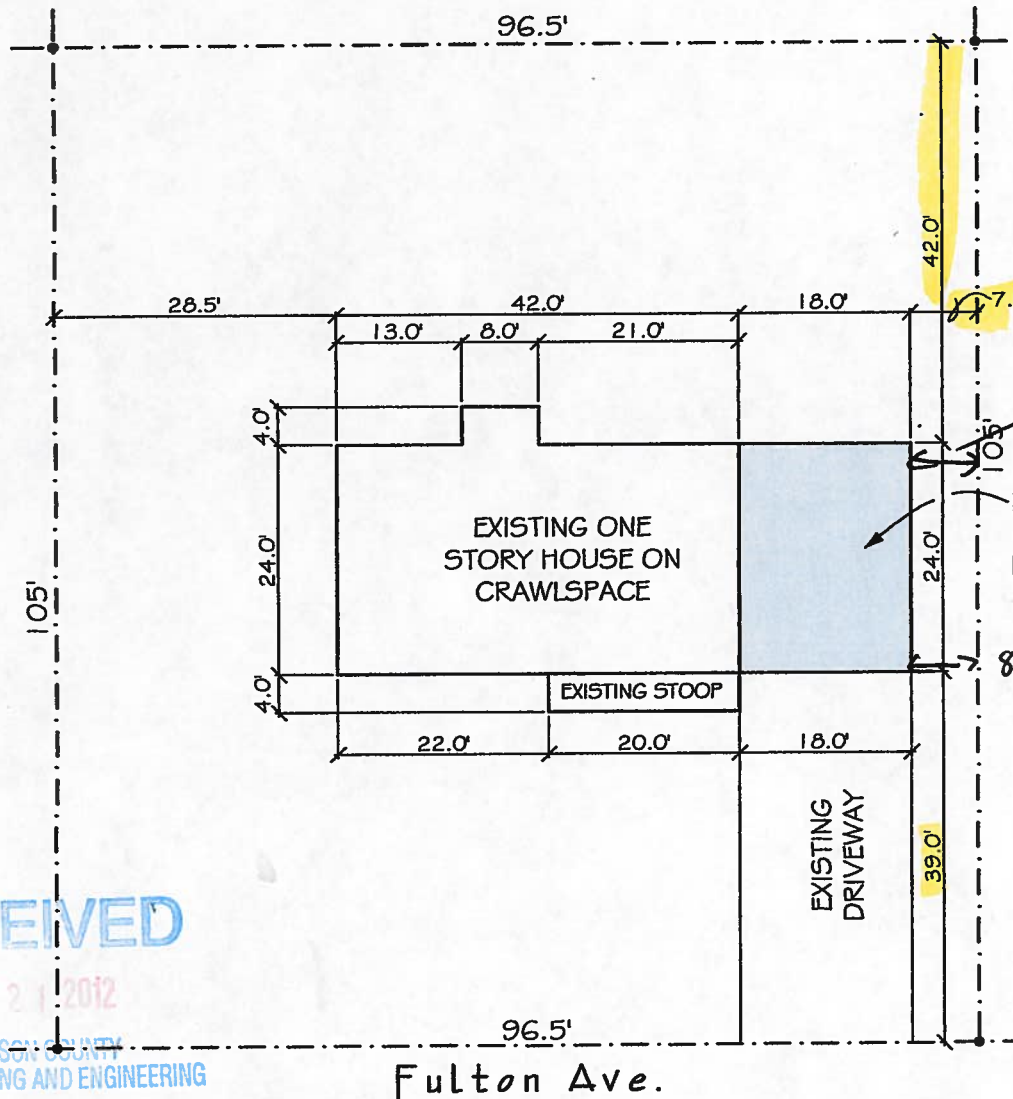
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DRAWING IS BASED UPON MEASUREMENTS TAKEN BY HOMEOWNER, AND PROPERTY SEARCH OF JEFFERSON COUNTY TAX OFFICE DATABASE.

SCOPE OF WORK: TO CONSTRUCT AN 18' X 24' OVERSIZED ONE-CAR GARAGE OVER EXISTING CARPORT SLAB.

LOT 25, SEC. A - PATRICK HENRY ESTATES
 MAP #8B, PARCEL 0025 0000 0000
 BOOK #1096, PAGE 383
 DISTRICT 02 - CHARLES TOWN DIST.
 JEFFERSON COUNTY, WV

*Pat Davis
 11-13-12*



*7.0' white
 "black"*
8.1"
*Pat Davis
 11/13/12*

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 PLANNING, ZONING AND ENGINEERING

Proposed garage addition to the:
Betoney Residence
 42 Fulton Ave., Charles Town WV 25414

Plot Plan
 1" = 20'-0"

#ZV12-33

10-18-12

General Contractor:
Bob Davis Home Improvement Co.
 P.O. Box 577, Falling Waters WV 25419
 (304) 274-0142
 www.bobdavishomeimpco.com

Architectural design & drafting by:
Fine Line Home Design LLC
 PO Box 367, Williamsport MD 21795
 phone: 301.416.8499 fax: 877.490.FLHD
 www.finelinehomedesign.com





JEFFERSON COUNTY, West Virginia

Departments of Planning and Zoning

116 East Washington Street, 2nd Floor
Charles Town, WV 25414

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Email: zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Director's Report December 20, 2012 Board of Zoning Appeals Meeting

- 1) **Changes in Planning and Zoning Staff**
- 2) **Envision Jefferson 2035 (2014 Comprehensive Plan) Update**
 - a) Reminder to "follow" website: "Envision Jefferson 2035"
- 3) **Recent CC Meetings relevant to Planning:**
 - a) Public Hearing Scheduled for 11/29/12 7:00 pm **RESCHEDULED** upon request of applicant until early 2013
Zoning Map Amendment Request for a 2.39 acre property owned by **the Bank of Charles Town**, at the corner of Washington Street and US 340 near Harpers Ferry
 - b) Date set for County Commission Public Hearing on Zoning Map Amendment Request for a 34.27 acre property owned by **Jefferson Asphalt Products, Inc.**, located west of Charles Town, south of Route 51 near the Tuscowilla Hills entrance: **1/10/13**
 - c) Date set for County Commission Public Hearing on Zoning Map Amendment Request for a 8.07 acre property owned by **John D. Lowe, III**, located west of Shepherdstown, south of Route 45 and east of Potomac Farms Road: **1/10/13**
 - d) Request for County Commission Approval of the **US 340 Corridor East Gateway Plan**, Incorporating Staff Recommended Changes Based on Public Comment (11/15/12; **no action taken on the Plan**)
- 4) **Recent PC actions of Interest**
 - a) Public Hearing, Zoning Map Amendment, for property owned by **Aitcheson Family Trust (Roger and Wanda Perry) and Frederica Adkinson**, currently zoned Residential Growth, requesting Residential/Light Industrial/Commercial zoning, located on the south of US Route 340 on Campground Road (12/11/12, recommended approval to CC)
 - b) Public Workshop regarding Morgan's Grove Market Concept Plan based on approved CUP – recommended moving forward with Site Plan based on CUP with variance and waiver requests to be submitted as necessary