

Jefferson County
Board of
Zoning Appeals

Thursday,
May 17, 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: May 11, 2012

SUBJECT: May 17, 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, May 17, 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.

JEFFERSON COUNTY, WEST VIRGINIA

Department of Zoning

116 East Washington Street
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Charles Town, West Virginia 25414

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Fax: (304) 728-8126

MEMORANDUM

TO: Board of Zoning Appeals Members
CC: Engineering & Building Permits Departments
FROM: Steve Barney, Zoning Administrator
DATE: May 11, 2012
SUBJECT: May Monthly Report of Department Activities

WITHDRAWN ZONING CERTIFICATE

#ZC11-11 ERIC and ANNA SOKEL, OWNERS

Inactive Date: May 01, 2012
Proposed Use: Food Stand – Seasonal Use: May-October
Physical Location: 164 Allstadts Hill Road; Harpers Ferry, West Virginia
Zone: Residential-Light Industrial-Commercial

PENDING ZONING CERTIFICATES

#ZC12-08 CLINTON and IRIS BLEVINS, OWNERS

Issuance Date: TBD
Proposed Use: Internet sales of self-defense items to include firearms, knives, and tactical clothing.
Physical Location: 805 Leetown Road; Summit Point, West Virginia
Zone: Rural

#ZC12-09 HAWTHORN /
TERESA GREGSON, APPLICANT

Issuance Date: TBD
Proposed Use: Country Inn
Physical Location: 9 Hawthorn Avenue; Summit Point, West Virginia
Zone: Rural

AGENDA
Jefferson County Board of Zoning Appeals
Thursday, May 17, 2012 at 3:00 p.m.

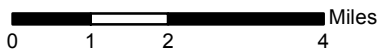
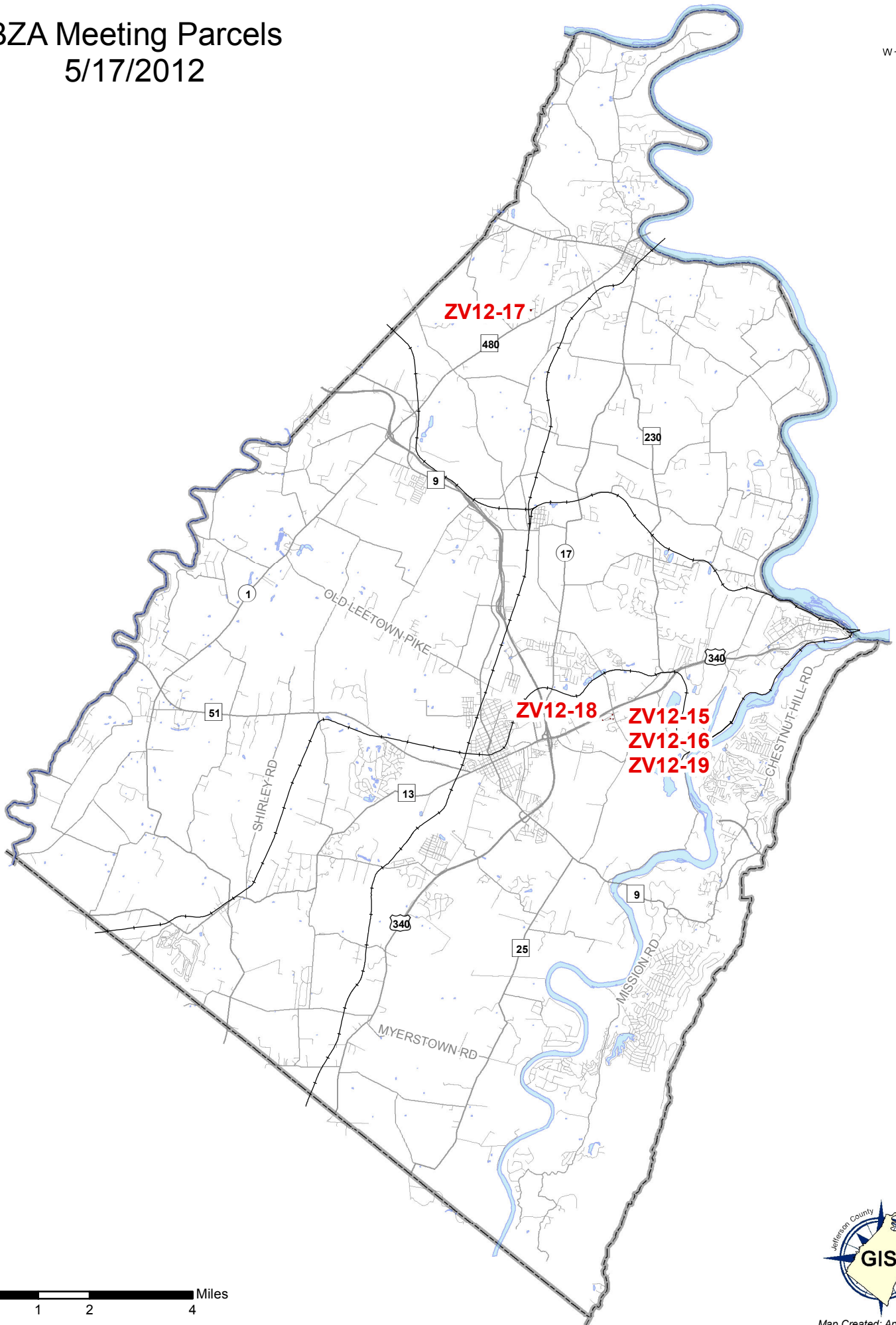
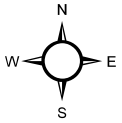
The Jefferson County Board of Zoning Appeals meet in the Charles Town Library Conference Room located at 200 East Washington Street at the side entrance on Samuel Street in the City of Charles Town.

1. Approval of the minutes from the April 19, 2012 meeting.
2. Swearing in of members of the public intending to provide testimony.
3. Variance request by property owners, Monique Gonzalez and Manuel Mercado, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 16' to allow for the construction of a 12' x 18' deck. Property location: Windmill Crossing Subdivision, 86 Don Quixote Drive, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 101; Zoned: Residential-Light Industrial-Commercial; Size: 2,000 sq. ft.; File: #ZV12-15.
4. Variance request by property owners, James and Lindsay Gahagan, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 16' to allow for the construction of a 12' x 20' deck. Property location: Windmill Crossing Subdivision, 37 Don Quixote Drive, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 142; Zoned: Residential-Light Industrial-Commercial; Size: 3,200 sq. ft.; File: #ZV12-16.
5. Variance request by property owner, Margaret Kubitschek, from Section 5.4-1 of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 17' to allow for the construction of a proposed covered porch. Property location: 75 Pathfinder Court, Shepherdstown, WV. District: Shepherdstown (09); Map: 14B; Parcel: 11; Zoned: Rural; Size: .257 acres; File: #ZV12-17.
5. Variance request by property owner, Barbara Devolites, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 19' to allow for the construction of a 10' x 18' deck. Property location: Windmill Crossing Subdivision, 240 Monte Carlo Way, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 17; Zoned: Residential-Light Industrial-Commercial; Size: 2,343 sq. ft.; File: #ZV12-18.
6. Variance request by property owner, Kevin Cox, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 12' to allow for the construction of a 12' x 19' deck with 4' bump-out for steps. Property location: Windmill Crossing Subdivision, 22 Monte Carlo Way, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 63; Zoned: Residential-Light Industrial-Commercial; Size: 3,500 sq. ft.; File: #ZV12-19.

7. Request by Linda M. Gutsell to reopen a hearing pursuant to Section 5.8 of the Board of Zoning Appeals (BZA) Rules of Procedure, regarding the April 19, 2012 BZA approval of a Conditional Use Permit application submitted by Twin Oaks Subdivision, LLC for the Morgan's Grove Market, file #CP12-01.
8. Director's Report.
9. Legal Update.
10. Signing of written decisions from prior Board of Zoning Appeals meetings.
 - a. Variance request by property owners, Frank and Tammy Spiker, from Section 9.7 of the Zoning and Land Development Ordinance, for a reduction of the side setback distance from 12' to 5' to allow for the expansion of the existing residence. Property location: 7678 Leetown Road, Kearneysville, West Virginia. District: Middleway (07); Map: 22; Parcel: 15; Zoned: Rural; File: #ZV12-10. (BZA meeting date 03/15/12)
 - b. Public hearing and action on the Conditional Use Permit application submitted by Twin Oaks Subdivision, LLC for the Morgan's Grove Market to establish "an agricultural based economic empowerment zone." Intended uses are to consist of, but are not limited to, a Food Hub, General Merchandise (retail), Professional/Business Offices, Community Amenities, and other associated uses. 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: #CP12-01. (BZA meeting date 04/19/12).
11. Correspondence.

BZA Meeting Parcels

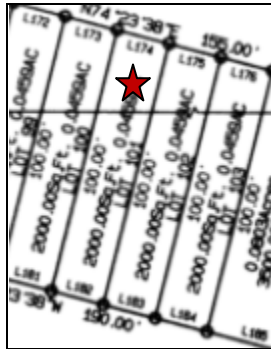
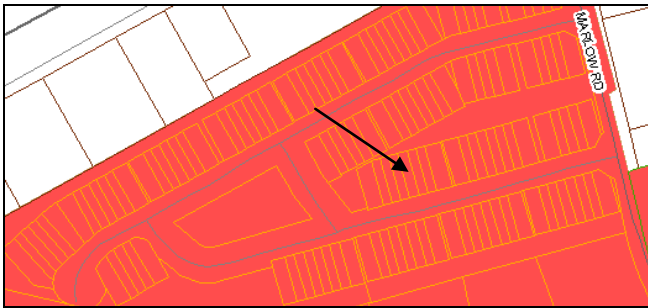
5/17/2012



Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 May 17, 2012

Monique Gonzalez & Manuel Mercado Variance Request (#ZV12-15)

Item #3 Variance request by property owners, Monique Gonzalez & Manuel Mercado, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 16' to allow for the construction of a 12' x 18' deck.

APPLICANT:	Monique Gonzalez & Manuel Mercado
OWNER:	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	Windmill Crossing Subdivision, 86 Don Quixote Drive, Charles Town, West Virginia
LEGAL DESCRIPTION:	District: Charles Town (02); Map: 9C; Parcel: 101 
ZONING DISTRICT:	Zoning Map Designation: Residential-Light Industrial-Commercial (R-LI-C) 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> R-LI-C <i>South:</i> R-LI-C <i>East:</i> R-LI-C <i>West:</i> R-LI-C
LOT AREA:	2,000 sq. ft.
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential
Community Impact Statement	PC Approval: 02/11/03
Preliminary Plat	Staff Approval: 11/22/04
Final Plat (PC File #03-01)	PC Approval: 01/11/05

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 17, 2012

Monique Gonzalez & Manuel Mercado Variance Request (#ZV12-15)

RELEVANT INFORMATION:

1. Overview of Request

The applicant seeks a rear yard setback variance of 4' in order to construct a 12' x 18' deck.

Per the material submitted with the variance request, the townhome is approximately 29 feet from the rear property line. The proposed deck would be 18' wide and would extend 12' from the townhome towards the rear property line with no proposed steps.

It should be noted that there are discrepancies between the application description and two sketches submitted with the application, as described in the table below:

Element	Request Description in Application	Sketch 1	Sketch 2
Width of deck	12'	12'	12'
Length of deck	18'	18'	19'
Rear setback proposed	16'	17'	17'

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

Section 9.5 of the Zoning Ordinance allows a 4-foot encroachment into yards for certain types of projections, including uncovered porches, provided that such projections are not over 10 feet in width. This section would not apply in this instance, however, because this structure is 19' in width and encroaches an additional 10' into the setback.

2. 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, "Will not. Most lot owners have deck."

- 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 is a townhouse comm[unity]."

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

The application states, "To provide outdoor entertainment."

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

The application states, "Using licensed contractor to do deck."

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 May 17, 2012

Monique Gonzalez & Manuel Mercado Variance Request (#ZV12-15)

3. Staff Evaluation of Request

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

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

The applicant's rear property line adjoins the subdivision's dedicated tot lot area and therefore would not appear to adversely affect adjacent property owners.

4. Possible Conditions of Approval

No conditions of approval are identified for this variance request.

SECTION OF ORDINANCE TO BE CONSIDERED:

Table 5.4 - 1 Residential Growth District - Height and Yard Requirements^{5, 19, 23}

	Development Type	Minimum Lot Area (MLA)	Required Yards (ft)				Maximum Building Height (ft)*
		Area per Dwelling Unit (ADU)	Front	Side	Street Side	Rear	
3	Townhouse Dwelling		25	12	15	20	40
	Public/Central water and sewer	1,400 sq. ft. MLA	“	“	“	“	“
		3,500 sq. ft. ADU	“	“	“	“	“

ZV12-15

JEFFERSON COUNTY BOARD OF ZONING APPEALS
VARIANCE REQUEST

I/We request a variance from the provisions of the Jefferson County Zoning and Development Review Ordinance.

Property Owner(s): Monique Gonzalez and Manuel Mercado

Address: 86 Don Quixote Dr.
Charles Town, WV 25414

Phone Number: (240) 620-9198

Location of Property: same as above

Lot Size: backyard 20' x 29 1/2'

Deed Book Reference: Deed Book Number 1862 Page Number 653

Tax Map Reference: District 2 Map 9C Parcel 101

Zoning District: R.L.I.C.

Section of Ordinance: 5.4B

Sketch on a separate 8 1/2" X 11" sheet of paper 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 (distance structure is from all boundary lines) size and height. Identify all existing buildings, structures or land uses on the property. Sign and date the sketch.

Briefly describe in your own words the nature of the variance request.

Want to build 12' deep x 18' wide deck on rear of
house at 9 1/2' elevation. Requesting setback reduction
from 20' to ~~20'~~ 16'

Please note variances to the Zoning Ordinance must comply with Article §8A-7-11 of the WV State Code.

A variance is a deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.

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JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Please provide an answer for each of the numbered items below using separate sheets of paper if necessary.

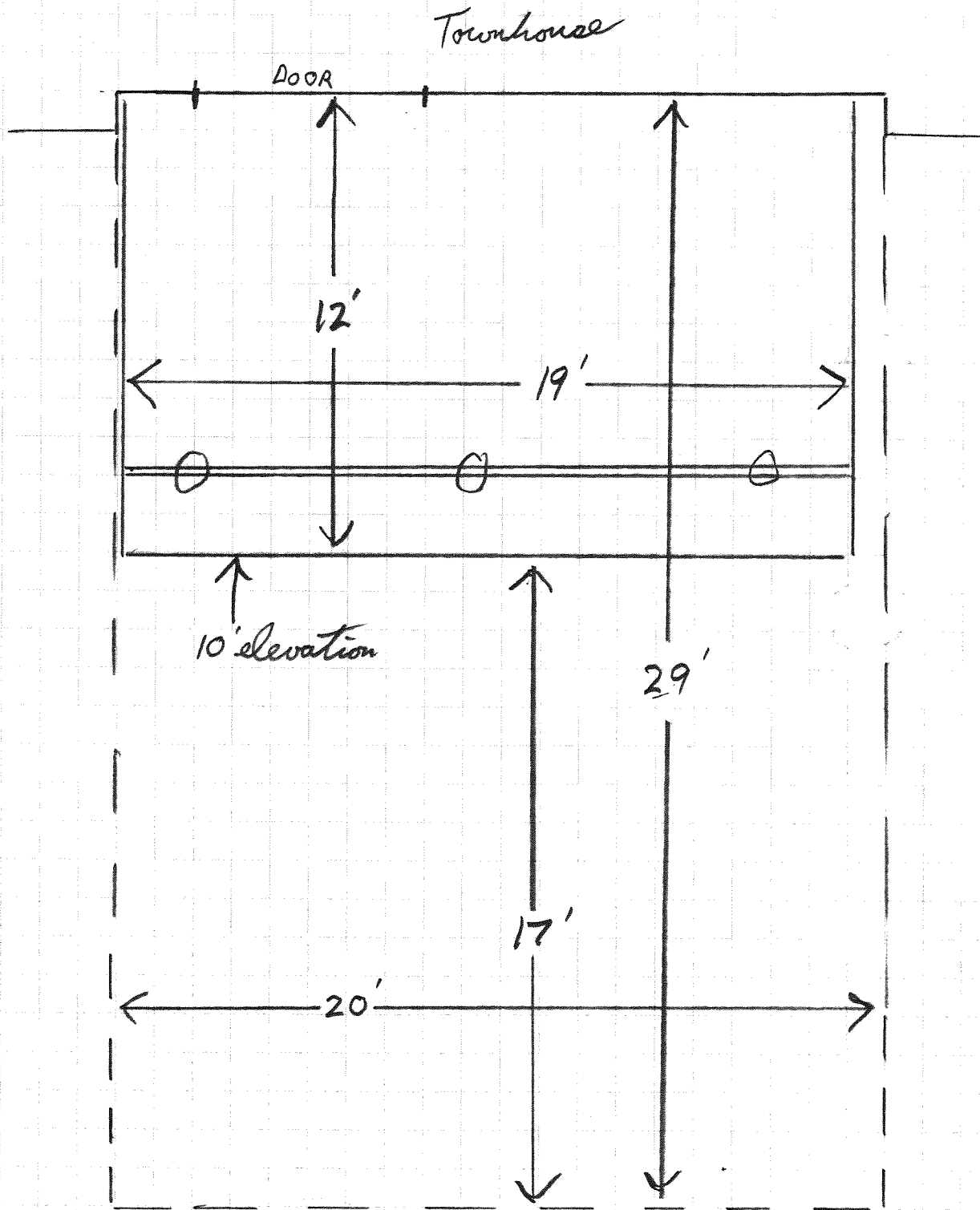
The board of zoning appeals shall grant a variance to the zoning ordinance if it finds that the variance:

1. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents:
will not / Most lot owners has deck
2. 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:
This is a town home comm.
3. Would eliminate an unnecessary hardship and permit a reasonable use of the land:
To profit out door entertainment
4. Will allow the intent of the zoning ordinance to be observed and substantial justice done (2004, c.153.):
using license contractor to do deck.

Mfg
Signature of Property Owner
Monique Gonzalez
Print Name
4/7/12
Date

FOR OFFICAL USE ONLY	
Fees Paid: _____	Date Application / Fees Received: _____
Date of meeting / Public Hearing: _____	
Official Administrative Body: <u>Jefferson County Board of Zoning Appeals</u>	
Posting Requirements: _____ Number of Days Prior to Scheduled Hearing	
Advertising Dates: _____	
Official Action of Board: _____	
Official Signature and Seal: _____	

ZV12-15



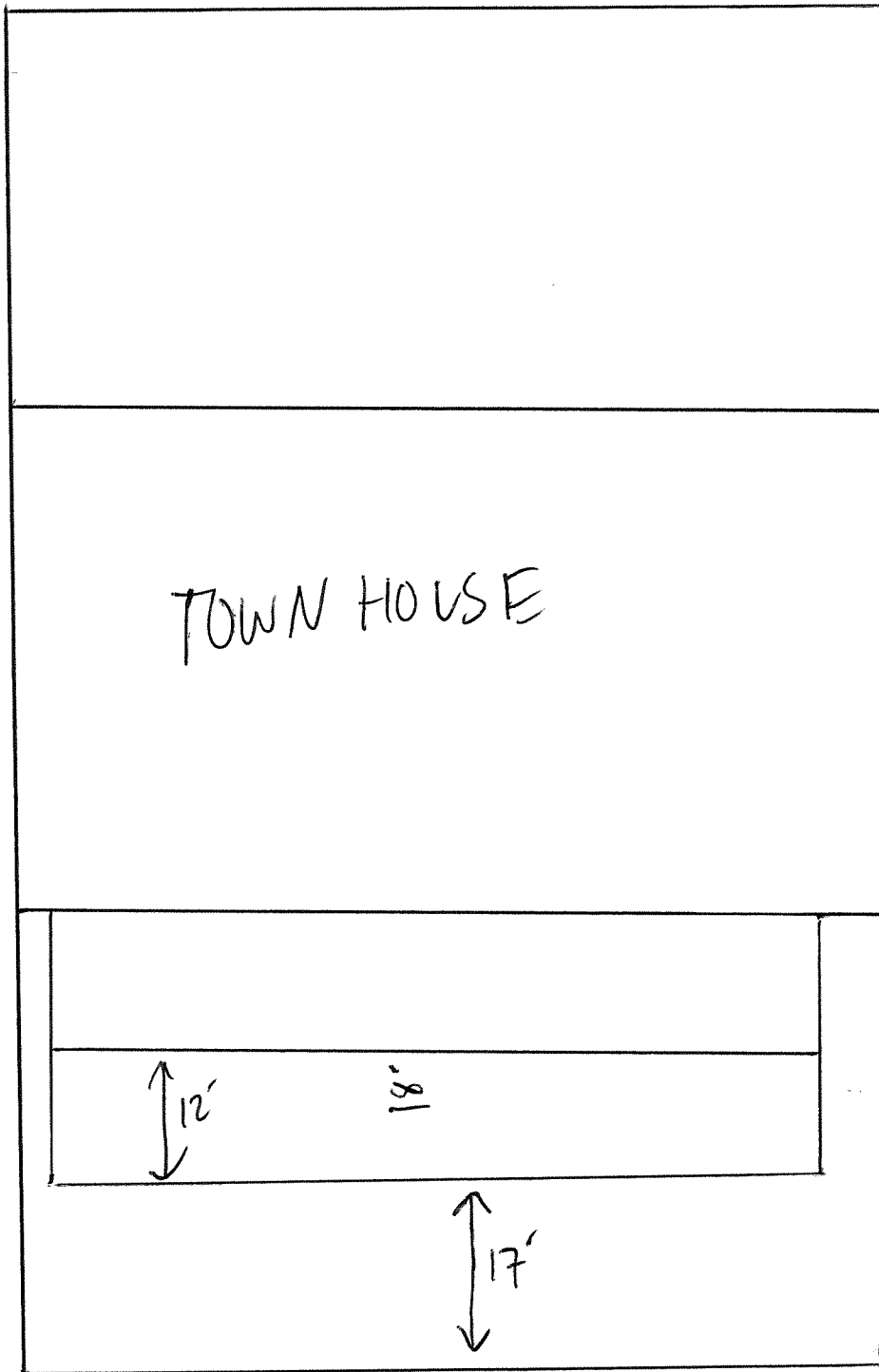
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ZV12-15

ROAD



TOWN HOUSE

12'

18'

17'

RECEIVED

APR 27 2012

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Rear

Handwritten signature

4-27-12

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 17, 2012

James and Lindsay Gahagan Variance Request (#ZV12-16)

RELEVANT INFORMATION:

1. Overview of Request

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

Per the material submitted with the variance request, the townhome is approximately 28 feet from the rear property line. The proposed deck would be 20' wide and would extend 12' from the townhome towards the rear property line with no proposed steps.

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

Section 9.5 of the Zoning Ordinance allows a 4-foot encroachment into yards for certain types of projections, including uncovered porches, provided that such projections are not over 10 feet in width. This section would not apply in this instance because this structure is 20' in width.

2. 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 variance we seek will not have any negative impact on public health, safety or welfare. The structure will be contained within our property and we have informed our neighbors of our intent."

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, "Our request for variance is sought to change our setback to allow for a larger deck to be built."

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

The application states, "If granted the variance will allow us to add a larger deck to our home. Intent is for the beautification, added value and recreational enjoyment it would bring."

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

The application states, "Intent of the zoning ordinance shall be observed by placarding as has been done by numerous other residents who have sought and received similar variances."

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 17, 2012

James and Lindsay Gahagan Variance Request (#ZV12-16)

3. Staff Evaluation of Request

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

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

The applicant's rear property line adjoins the subdivision's dedicated open space area and therefore would not appear to adversely affect adjacent property owners.



**Yellow star indicates applicant's property.*

4. Possible Conditions of Approval

No conditions of approval are identified for this variance request.

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 May 17, 2012

James and Lindsay Gahagan Variance Request (#ZV12-16)

SECTION OF ORDINANCE TO BE CONSIDERED:

Table 5.4 - 1 Residential Growth District - Height and Yard Requirements^{5, 19, 23}

	Development Type	Minimum Lot Area (MLA)	Required Yards (ft)				Maximum Building Height (ft)*
		Area per Dwelling Unit (ADU)	Front	Side	Street Side	Rear	
3	Townhouse Dwelling		25	12	15	20	40
	Public/Central water and sewer	1,400 sq. ft. MLA	“	“	“	“	“
		3,500 sq. ft. ADU	“	“	“	“	“

ZV12-16

JEFFERSON COUNTY BOARD OF ZONING APPEALS
VARIANCE REQUEST

I/We request a variance from the provisions of the Jefferson County Zoning and Development Review Ordinance.

Property Owner(s): James & Lindsay Gahagan

Address: 37 Don Quixote Drive
Charles Town, WV 25414

Phone Number: (814) 937-8219 / (814) 937-0540*

Location of Property: Windmill Crossing, Lot 142, Charles Town
WV 25414

Lot Size: 3,200 sq. ft.

Deed Book Reference: Deed Book Number 1094 Page Number 704

Tax Map Reference: District 02 Map 9C Parcel 142

Zoning District: Residential - ^{Light} Industrial - Commercial

Section of Ordinance: 5.4(b)

Sketch on a separate 8 1/2" X 11" sheet of paper 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 (distance structure is from all boundary lines) size and height. Identify all existing buildings, structures or land uses on the property. Sign and date the sketch.

Briefly describe in your own words the nature of the variance request.

To change the setback of our property to
allow for a larger deck to be constructed (12'x20' size)
Requesting setback reduction from 20' to 16'.

Please note variances to the Zoning Ordinance must comply with Article §8A-7-11 of the WV State Code.

A variance is a deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.

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Please provide an answer for each of the numbered items below using separate sheets of paper if necessary.

The board of zoning appeals shall grant a variance to the zoning ordinance if it finds that the variance:

1. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents:

* See external sheet

2. 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:

*

3. Would eliminate an unnecessary hardship and permit a reasonable use of the land:

*

4. Will allow the intent of the zoning ordinance to be observed and substantial justice done (2004, c.153.):

*

James J. Gahagan
Lindsay M. Gahagan

Signature of Property Owner
James G. Gahagan

Lindsay M. Gahagan
Print Name

4-16-12

4-16-12

Date

FOR OFFICAL USE ONLY

Fees Paid: _____ Date Application / Fees Received: _____

Date of meeting / Public Hearing: _____

Official Administrative Body: Jefferson County Board of Zoning Appeals

Posting Requirements: _____ Number of Days Prior to Scheduled Hearing

Advertising Dates: _____

Official Action of Board: _____

Official Signature and Seal: _____

Windmill Crossing. Variance request - Ganagan

ZV12-16

- 1) The variance we seek will not have any negative impact on public health, safety or welfare. The structure will be contained within our property and we have informed our neighbors of our intent.
- 2) Our request for variance is sought to change our setback to allow for a larger deck to be built
- 3) if granted, the variance will allow us to add a large deck to our home. Intent is for the beautification, added value and recreational enjoyment it would bring.
- 4) Intent of Zoning ordinance shall be observed by placarding as has been done by numerous other residents who have sought and received similar variances.

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APR 17 2012

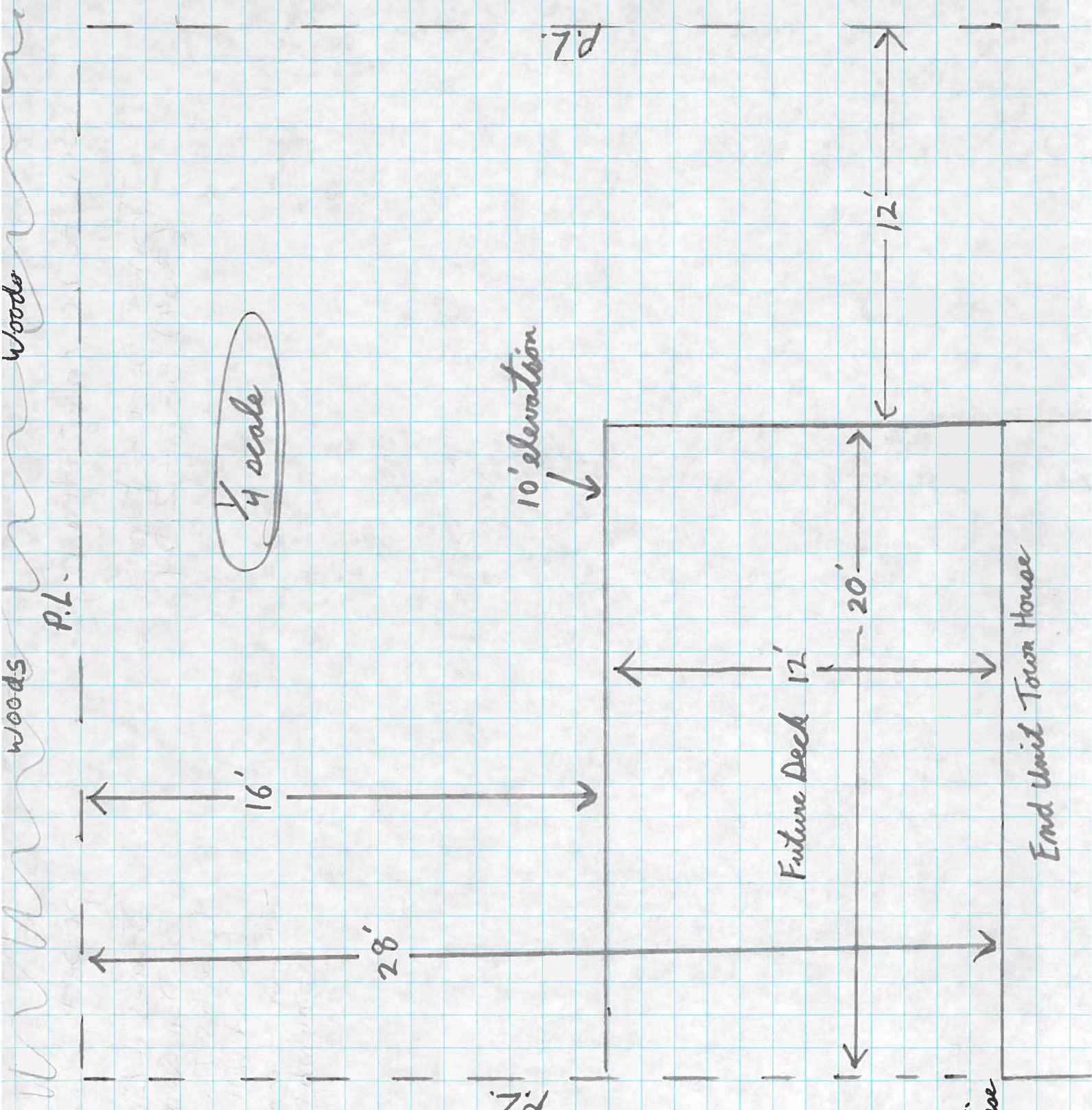
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ZV12-16

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PLANNING, ZONING AND ENGINEERING



work to be completed by:

Jones Deck & Fence
(304) 535-2179

property owned by:

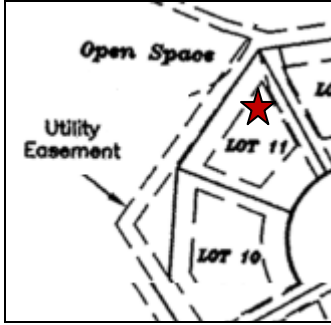
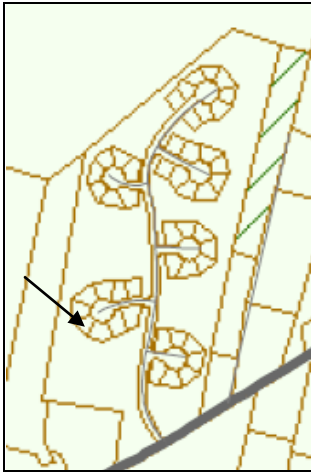
James & Lindsay Sabagan
37 Dan Quirk Drive
Charles Town, WV 25414
(Windmill Crossing)
- Ryan Homes
lot number 142

Atkinson
www.atkinson.com

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 May 17, 2012

Margaret Kubitschek Variance Request (#ZV12-17)

Item #5 Variance request by property owner, Margaret Kubitschek, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 17' for the construction of a covered porch.

APPLICANT:	Margaret Kubitschek
OWNER :	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	75 Pathfinder Court, Shepherdstown, West Virginia
LEGAL DESCRIPTION:	District: Shepherdstown; Map: 14B; Parcel: 11 
ZONING DISTRICT:	Zoning Map Designation: Rural 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> Rural <i>South:</i> Rural <i>East:</i> Rural <i>West:</i> Rural
LOT AREA:	.257 acres
PRIOR CASES:	Z02-07: PC approved CUP 03/11/03 03-15: PC approved the Deerfield Village final plat 04/13/04
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential Subdivision

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 17, 2012

Margaret Kubitschek Variance Request (#ZV12-17)

RELEVANT INFORMATION:

1. Overview of Request

The Applicant seeks a rear yard setback variance of 3' in order to construct a covered porch within 17' of the property line.

Per the material submitted with the variance request, the proposed porch is 16' wide and extends 14' from the home towards the rear property line, and would be located approximately 2-3 feet within the rear setback.

Section 5.7(b) of the Zoning Ordinance states that residential uses that process through the Development Review System use the setback requirements established in Article 5.4(b). For a single family dwelling, these setbacks are 25 feet (front), 12 feet (exterior side), and 20 feet (rear).

Section 9.5(a) of the Zoning Ordinance allows a 4-foot encroachment into yards for certain types of projections, provided that such projections are not over 10 feet in length. Although the covered porch would project only 3' into the setback, its proposed length is 16'. This provision also only applies to uncovered porches and the proposed structure is intended to be covered.

2. 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, "No residential lots are located to the rear of the proposed improvement."

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, "Lots are located in the Rural zoning district and required initial variance by the builder, resulting in larger setbacks."

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

The application states, "Construction of project would encompass and allow beneficial use of existing doors that face the rear of the property."

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

The application states, "Ordinance states 4' projection no more than 10' wide or 40 sq. ft., projection requested would encompass less than 40 sq. ft."

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 17, 2012

Margaret Kubitschek Variance Request (#ZV12-17)

3. Staff Evaluation of Request

The Deerfield Village Conditional Use Permit was approved on March 11, 2003. The Deerfield Village final plat was approved by subdivision plat on April 13, 2004. The project consists of 48 residential lots and is found in the Rural District (R). A review of the subdivision final plat indicates a 15' utility easement and open space area in the rear of the property. The combined easement and open space area provides for approximately 75' between the Applicant's rear property line and the property line of the nearest neighbor.

The Board of Zoning Appeals reviewed similar variance requests in the Deerfield Village Subdivision on July 19, 2007 (Simpson, ZV07-21), August 16, 2007 (Crouse ZV07-22) and May 19, 2011 (McSwain Z11-13).



4. Possible Conditions of Approval

No conditions of approval are identified for this variance request.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 17, 2012

Margaret Kubitschek Variance Request (#ZV12-17)

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 5.7 Rural District

(b) Minimum Lot Area, Lot Width and Yard Requirements

Minimum lot sizes, lot width, and yard requirements are as follows for principal permitted uses. For any residential use that complies with the Development Review System, the setbacks and lot shall be as outlined in Article 5.4(b).

Section 5.4b Residential Growth District - Height And Yard Requirements

[AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990 AND SEPTEMBER 1, 2006]

<u>Development Type</u>	<u>Minimum Lot Area (MLA) Area per Dwelling Unit (ADU)</u>	<u>Required Yards</u>
Single family detached dwelling	6,000 sq. ft. MLA**	25 ft. front
Public/Central water & sewer	10,000 sq. ft. ADU	12 ft. side
Public/Central Water or Sewer	20,000 sq. ft. MLA	20 ft. rear
No Public/Central water or sewer	40,000 sq. ft. MLA	

ZV12-17

JEFFERSON COUNTY BOARD OF ZONING APPEALS
VARIANCE REQUEST

I/We request a variance from the provisions of the Jefferson County Zoning and Development Review Ordinance.

Property Owner(s): Margaret Kubitschek

Address: 75 Pathfinder Court
Shepardstown WV 25443

Phone Number: (304) 876-2722

Location of Property: 75 Pathfinder Court
Shepardstown WV 25443

Lot Size: 0.257 Acres

Deed Book Reference: Deed Book Number 1017 Page Number 241

Tax Map Reference: District 9 Map 14B Parcel 11

Zoning District: Rural

Section of Ordinance: Section: 9.5 & Letter A
5.4-1 Residential Growth

Sketch on a separate 8 1/2" X 11" sheet of paper 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 (distance structure is from all boundary lines) size and height. Identify all existing buildings, structures or land uses on the property. Sign and date the sketch.

Briefly describe in your own words the nature of the variance request.

Request the entire 16' width of a proposed covered porch be permitted to extend into the rear setback by 3' on the left and 2' on the right.

(From 20' to 17' on the Left and 18' on right)

Please note variances to the Zoning Ordinance must comply with Article §8A-7-11 of the WV State Code.

A variance is a deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.

Contact: Mark Doody
Cell # 301-748-2550

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JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Please provide an answer for each of the numbered items below using separate sheets of paper if necessary.

The board of zoning appeals shall grant a variance to the zoning ordinance if it finds that the variance:

1. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents:

No residential lots are located to the rear of the proposed improvement.

2. 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:

Lots are located in the rural zoning district and required initial variance by the builder, resulting in larger setbacks.

3. Would eliminate an unnecessary hardship and permit a reasonable use of the land:

Construction of project would encompass and allow beneficial use of existing doors that face the rear of the property.

4. Will allow the intent of the zoning ordinance to be observed and substantial justice done (2004, c.153.):

Ordinance states 4' projection no more than 10' wide or 40 sq.ft., projection requested would encompass less than 40 sq.ft.

Margaret Kubitschek
Susan L. Michner

Signature of Property Owner
MARGARET KUBITSCHÉK

Susan L. Michner
Print Name

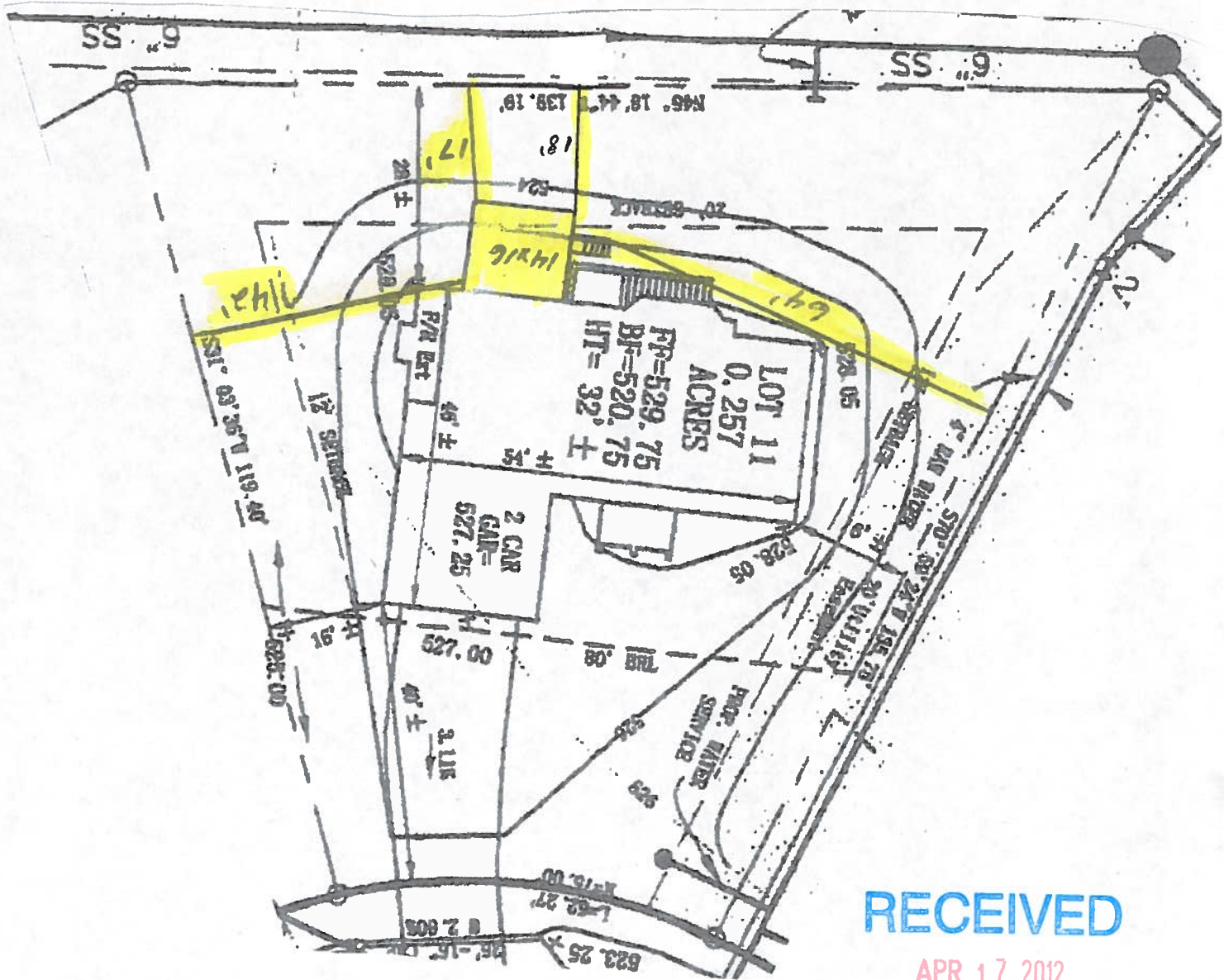
4/17/12
4-17-12

Date

<u>CHECK #11633</u>	FOR OFFICAL USE ONLY
Fees Paid: <u>\$100.00</u>	Date Application / Fees Received: <u>4/17/12</u>
Date of meeting / Public Hearing: <u>THURSDAY, MAY 17, 2012 @ 3:00PM</u>	
Official Administrative Body: <u>Jefferson County Board of Zoning Appeals</u>	
Posting Requirements: <u>15</u> Number of Days Prior to Scheduled Hearing	
Advertising Dates: <u>WEDNESDAY, MAY 2, 2012</u>	
Official Action of Board: _____	

Official Signature and Seal: _____	

#ZV12-17



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APR 17 2012

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Susan L. Mich
Margaret Kutitschek
Property owner


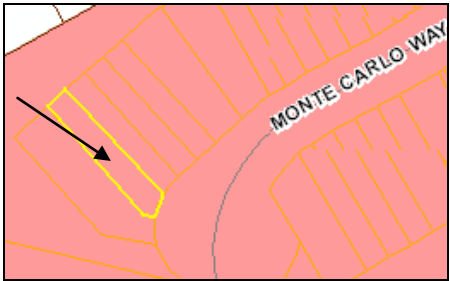
4/17/12
4-17-12

Date

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 May 17, 2012

Barbara Devolites Variance Request (#ZV12-18)

Item #6 Variance request by property owner, Barbara Devolites, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 19' to allow for the construction of a 10' x 18' deck.

APPLICANT:	Barbara Devolites
OWNER:	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	Windmill Crossing Subdivision, 240 Monte Carlo Way, Charles Town, West Virginia
LEGAL DESCRIPTION:	District: Charles Town (02); Map: 9C; Parcel: 17 
ZONING DISTRICT:	Zoning Map Designation: Residential-Light Industrial-Commercial (R-LI-C) 
SURROUNDING PROPERTIES:	Zoning Map Designation: North: R-LI-C South: R-LI-C East: R-LI-C West: R-LI-C
LOT AREA:	2,343 sq. ft.
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential
Community Impact Statement	PC Approval: 02/11/03
Preliminary Plat	Staff Approval: 11/22/04
Final Plat (PC File #03-01)	PC Approval: 01/11/05

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 17, 2012

Barbara Devolites Variance Request (#ZV12-18)

RELEVANT INFORMATION:

1. Overview of Request

The applicant seeks a rear yard setback variance of 1' in order to construct a 12' x 19' deck.

Per the material submitted with the variance request, the townhome is approximately 29 feet from the rear property line. The proposed deck would be 18' wide and would extend 10' from the townhome towards the rear property line.

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

Section 9.5 of the Zoning Ordinance allows a 4-foot encroachment into yards for certain types of projections, including uncovered porches, provided that such projections are not over 10 feet in width. This section would not apply in this instance because this structure is 18' in width.

2. 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, "This addition will not impact neighbors' access to common property nor harm individuals."

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, "Lot size is too small to accommodate."

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

The application states, "This deck would enhance the property and allow the use of outdoor space off the second floor of the house."

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

The application states, "Any access required will be granted by the home owner."

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 May 17, 2012

Barbara Devolites Variance Request (#ZV12-18)

3. Staff Evaluation of Request

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

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

The applicant's rear property line adjoins the subdivision's dedicated open space area which, in turn, is adjacent to a 25' utility easement. Therefore granting this variance would not appear to adversely affect adjacent property owners to the rear.



**Yellow star indicates applicant's townhome.*

**Red star indicates previously approved deck variance (Weaver, ZV10-04).*

4. Possible Conditions of Approval

No conditions of approval are identified for this variance request.

SECTION OF ORDINANCE TO BE CONSIDERED:

Table 5.4 - 1 Residential Growth District - Height and Yard Requirements^{5, 19, 23}

	Development Type	Minimum Lot Area (MLA)	Required Yards (ft)				Maximum Building Height (ft)*
		Area per Dwelling Unit (ADU)	Front	Side	Street Side	Rear	
3	Townhouse Dwelling		25	12	15	20	40
	Public/Central water and sewer	1,400 sq. ft. MLA	"	"	"	"	"
		3,500 sq. ft. ADU	"	"	"	"	"

KY 12-18

**JEFFERSON COUNTY BOARD OF ZONING APPEALS
VARIANCE REQUEST**

I/We request a variance from the provisions of the Jefferson County Zoning and Development Review Ordinance.

Property Owner(s): Barbara Devolites

Address: 240 Monte Carlo way
Charles town, WV 25414

Phone Number: 571-201-8584 Home 703-309-4326 Cell

Location of Property: Windmill Crossing

Lot Size: 109.81' x 20'

Deed Book Reference: Deed Book Number 1062 Page Number 357

Tax Map Reference: District 2 Map 9C Parcel 17

Zoning District: RLIC

Section of Ordinance: 5.4B

Sketch on a separate 8 1/2" X 11" sheet of paper 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 (distance structure is from all boundary lines) size and height. Identify all existing buildings, structures or land uses on the property. Sign and date the sketch.

Briefly describe in your own words the nature of the variance request.

I would like to add an 18' x 10' deck
on the back of my house. This is for adding
additional outdoor living and entertaining space.
From a reduction to setback from 20 to 19

Please note variances to the Zoning Ordinance must comply with Article §8A-7-11 of the WV State Code.

A variance is a deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.

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PLANNING, ZONING AND ENGINEERING

Please provide an answer for each of the numbered items below using separate sheets of paper if necessary.

The board of zoning appeals shall grant a variance to the zoning ordinance if it finds that the variance:

1. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents:
This addition will not impact neighbors access to common property nor harm individuals.
2. 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:
LOT Size is too small to accomodate.
3. Would eliminate an unnecessary hardship and permit a reasonable use of the land:
This deck would enhance the property and allow the use of ~~a deck~~ off the second floor of the house.
out door space
4. Will allow the intent of the zoning ordinance to be observed and substantial justice done (2004, c.153.):
any access required will be granted by the home owner

Barbara Devolites
Signature of Property Owner

Barbara Devolites
Print Name

4-19-2012
Date

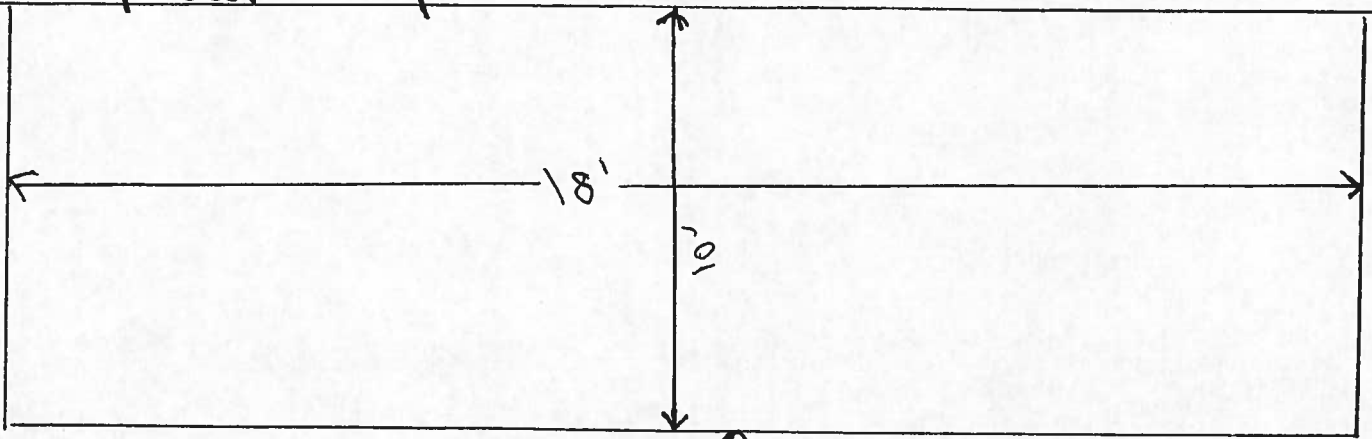
FOR OFFICAL USE ONLY	
Fees Paid: _____	Date Application / Fees Received: _____
Date of meeting / Public Hearing: _____	
Official Administrative Body: <u>Jefferson County Board of Zoning Appeals</u>	
Posting Requirements: _____	Number of Days Prior to Scheduled Hearing
Advertising Dates: _____	
Official Action of Board: _____	

Official Signature and Seal: _____	

#ZV12-18

240 monte Carlo way
Town House

Door



10'

18'

10' elevation

19'

PL

PL

Barbara Devolito
4-19-12

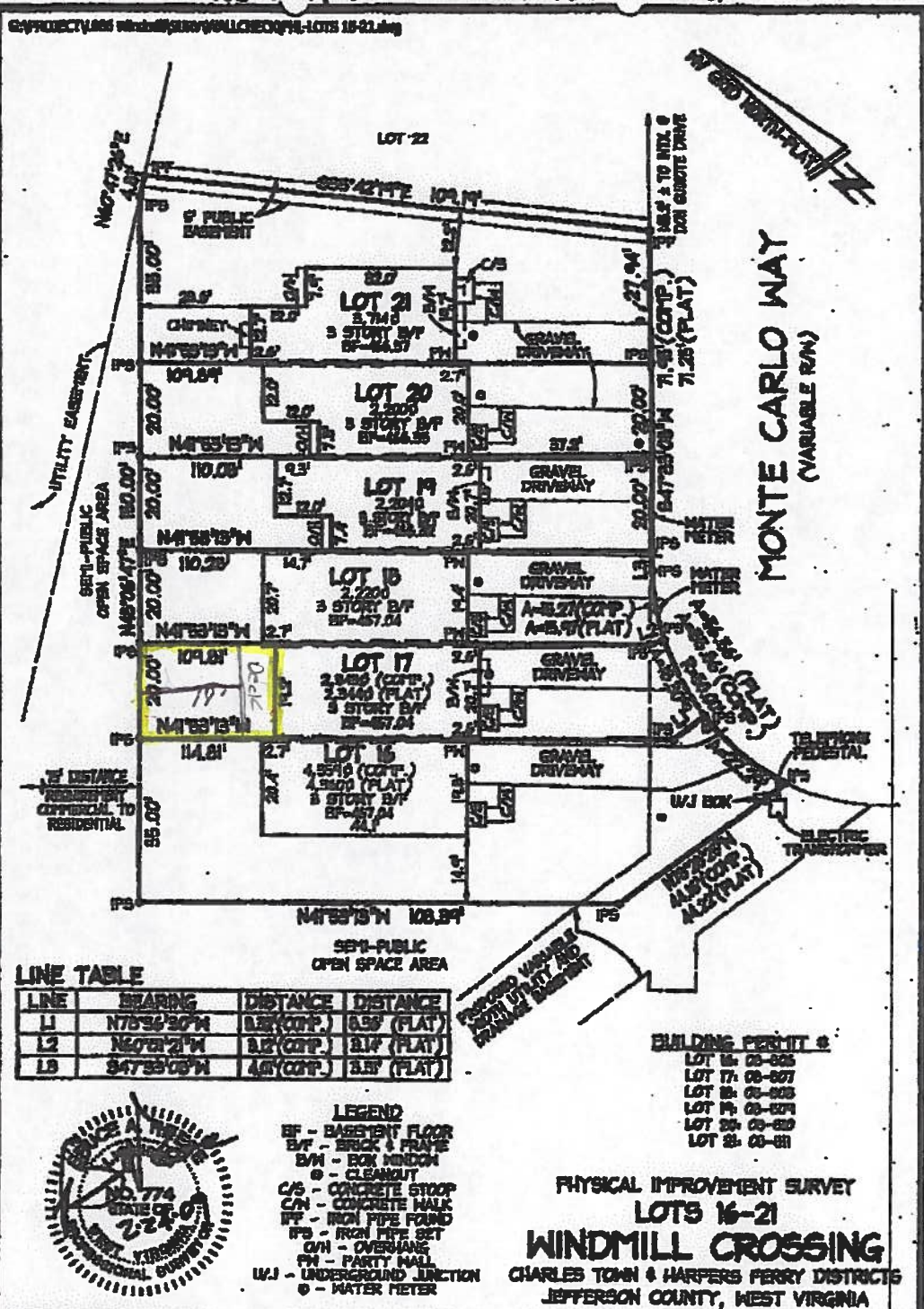
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PLANNING, ZONING AND ENGINEERING

#ZV12-18

WC 4' A-F WWS3338 Clover



LINE TABLE

LINE	BEARING	DISTANCE	DISTANCE
L1	N75°36'30"W	8.87 (COP.)	8.87 (FLAT)
L2	N67°21'21"W	8.17 (COP.)	8.17 (FLAT)
L3	S47°39'08"W	4.67 (COP.)	3.57 (FLAT)

- BUILDING PERMIT #**
- LOT 16: 08-828
 - LOT 17: 08-827
 - LOT 18: 08-828
 - LOT 19: 08-829
 - LOT 20: 08-829
 - LOT 21: 08-831



- LEGEND**
- BF - BASEMENT FLOOR
 - B/F - BRICK & FRAME
 - B/M - BOX MOUND
 - - CLEANOUT
 - CS - CONCRETE STOOP
 - C/M - CONCRETE MALK
 - RF - IRON PIPE FOUND
 - IFS - IRON PIPE SET
 - OH - OVERHANG
 - PM - PARTY WALL
 - U/J - UNDERGROUND UTILITY
 - - WATER METER

PHYSICAL IMPROVEMENT SURVEY
LOTS 16-21
WINDMILL CROSSING
 CHARLES TOWN & HARPER'S FERRY DISTRICTS
 JEFFERSON COUNTY, WEST VIRGINIA

BUILDER: RYAN WEST DRAFTED BY: M31

The Engineering Groupe Inc.

Engineers | Surveyors | Planners
 1280 George Mason Drive, Suite 200 Woodbridge, Virginia 22192
 Phone (703) 670-8285 Fax (703) 670-7785

FINAL: FEBRUARY 19, 2009 DATE: DECEMBER 30, 2008

SCALE: 1"=20'

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APR 19 2012

JEFFERSON COUNTY
 PLANNING, ZONING AND ENGINEERING

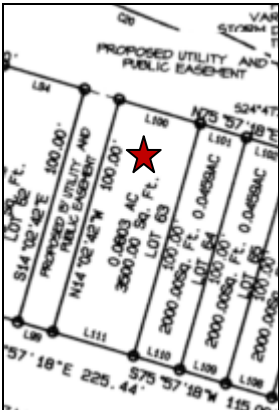
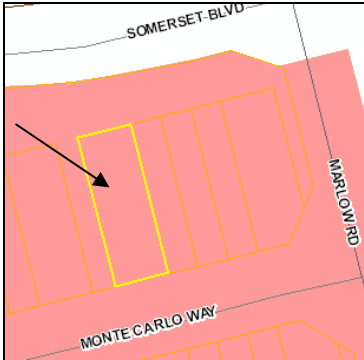
20'
100'

228-3228
 Zoning Dept

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 May 17, 2012

Kevin Cox Variance Request (#ZV12-19)

Item #7 Variance request by property owner, Kevin Cox, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 8' to allow for the construction of a 12' x 19' deck with steps.

APPLICANT:	Kevin Cox
OWNER:	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	Windmill Crossing Subdivision, 22 Monte Carlo Way, Charles Town, West Virginia
LEGAL DESCRIPTION:	District: Charles Town (02); Map: 9C; Parcel: 63 
ZONING DISTRICT:	Zoning Map Designation: Residential-Light Industrial-Commercial (R-LI-C) 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> R-LI-C <i>South:</i> R-LI-C <i>East:</i> R-LI-C <i>West:</i> R-LI-C
LOT AREA:	3,500 sq. ft.
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential
Community Impact Statement	PC Approval: 02/11/03
Preliminary Plat	Staff Approval: 11/22/04
Final Plat (PC File #03-01)	PC Approval: 01/11/05

Staff Report
Jefferson County Board of Zoning Appeals Meeting
May 17, 2012

Kevin Cox Variance Request (#ZV12-19)

RELEVANT INFORMATION:

1. Overview of Request

The applicant seeks a rear yard setback variance of 12' in order to construct a 12' x 19' deck and 4' steps.

Per the material submitted with the variance request, the townhome is approximately 28 feet from the rear property line. The proposed deck would be 19' wide and would extend 12' from the townhome towards the rear property line with steps 4' in width.

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

Section 9.5 of the Zoning Ordinance allows a 4-foot encroachment into yards for certain types of projections, including uncovered porches, provided that such projections are not over 10 feet in width. This section would not apply in this instance because this structure is 19' in width and encroaches an additional 8'.

2. 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, "It will not adversely affect my area because many of my neighbors have decks."

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, "Yes this does arise [from] special conditions because the builder didn't allow for enough space for proper decks."

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

The application states, "Yes, it would allow me to use the space in the rear of the house as more living space."

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

The application states, "It will allow me to enjoy my property as my neighbors do with theirs."

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 May 17, 2012

Kevin Cox Variance Request (#ZV12-19)

3. Staff Evaluation of Request

The original Windmill Crossing subdivision was approved in April 2005, consisting of 15 commercial lots and 133 townhomes located in the Residential-Light Industrial-Commercial District (R-LI-C).

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

The applicant's rear property line adjoins the subdivision's dedicated utility and public easement. A 15' public and utility easement is located along the left side of the property line. In addition, Somerset Boulevard is located immediately adjacent to the rear easement. Therefore granting this variance would not appear to adversely affect adjacent property owners.

It should be noted that the request for a setback variance of a 12' dimension (i.e. to reduce the setback from 20' to 8') may exceed the actual variance dimension needed. The sketch submitted by the applicant shows a 12' setback resulting from the proposed construction of the deck and stairs.



4. Possible Conditions of Approval

No conditions of approval are identified for this variance request.

SECTION OF ORDINANCE TO BE CONSIDERED:

Table 5.4 - 1 Residential Growth District - Height and Yard Requirements^{5, 19, 23}

	Development Type	Minimum Lot Area (MLA)	Required Yards (ft)				Maximum Building Height (ft)*
		Area per Dwelling Unit (ADU)	Front	Side	Street Side	Rear	
3	Townhouse Dwelling		25	12	15	20	40
	Public/Central water and sewer	1,400 sq. ft. MLA	“	“	“	“	“
		3,500 sq. ft. ADU	“	“	“	“	“

ZV12-19

JEFFERSON COUNTY BOARD OF ZONING APPEALS
VARIANCE REQUEST

I/We request a variance from the provisions of the Jefferson County Zoning and Development Review Ordinance.

Property Owner(s): KEVIN COX

Address: 22 MONTE CARLO WAY

CHARLES TOWN, WV. 25414

Phone Number: 703-447-0108

Location of Property: WINDMILL CROSSING

Lot Size: 3,500 sq. ft. - GA

Deed Book Reference: Deed Book Number 1100TH Page Number 84TH

Tax Map Reference: District 02 Map 9C Parcel 63

Zoning District: R-LI-C

Section of Ordinance: 5.4(B)

Sketch on a separate 8 1/2" X 11" sheet of paper 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 (distance structure is from all boundary lines) size and height. Identify all existing buildings, structures or land uses on the property. Sign and date the sketch.

Briefly describe in your own words the nature of the variance request.

Reduction of the rear setback distance
from 20 foot to 8^{1/2} foot to allow for
the construction of 8^{1/2} by 19 foot Deck
with 4 foot bump out for steps.

Please note variances to the Zoning Ordinance must comply with Article §8A-7-11 of the WV State Code.

A variance is a deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.

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APR 20 2012

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Please provide an answer for each of the numbered items below using separate sheets of paper if necessary.

The board of zoning appeals shall grant a variance to the zoning ordinance if it finds that the variance:

1. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents:

It will not adversely affect my area because many of my NEIGHBORS Have Decks

2. 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:

Yes this case Arises special Conditions because the builder didnt allow for enough space for proper Decks.

3. Would eliminate an unnecessary hardship and permit a reasonable use of the land:

Yes, it would allow me to use the space in the rear of the house as more living space.

4. Will allow the intent of the zoning ordinance to be observed and substantial justice done (2004, c.153.):

It will allow me to enjoy my property as my NEIGHBORS Do with there's.

Kevin Cox
Signature of Property Owner

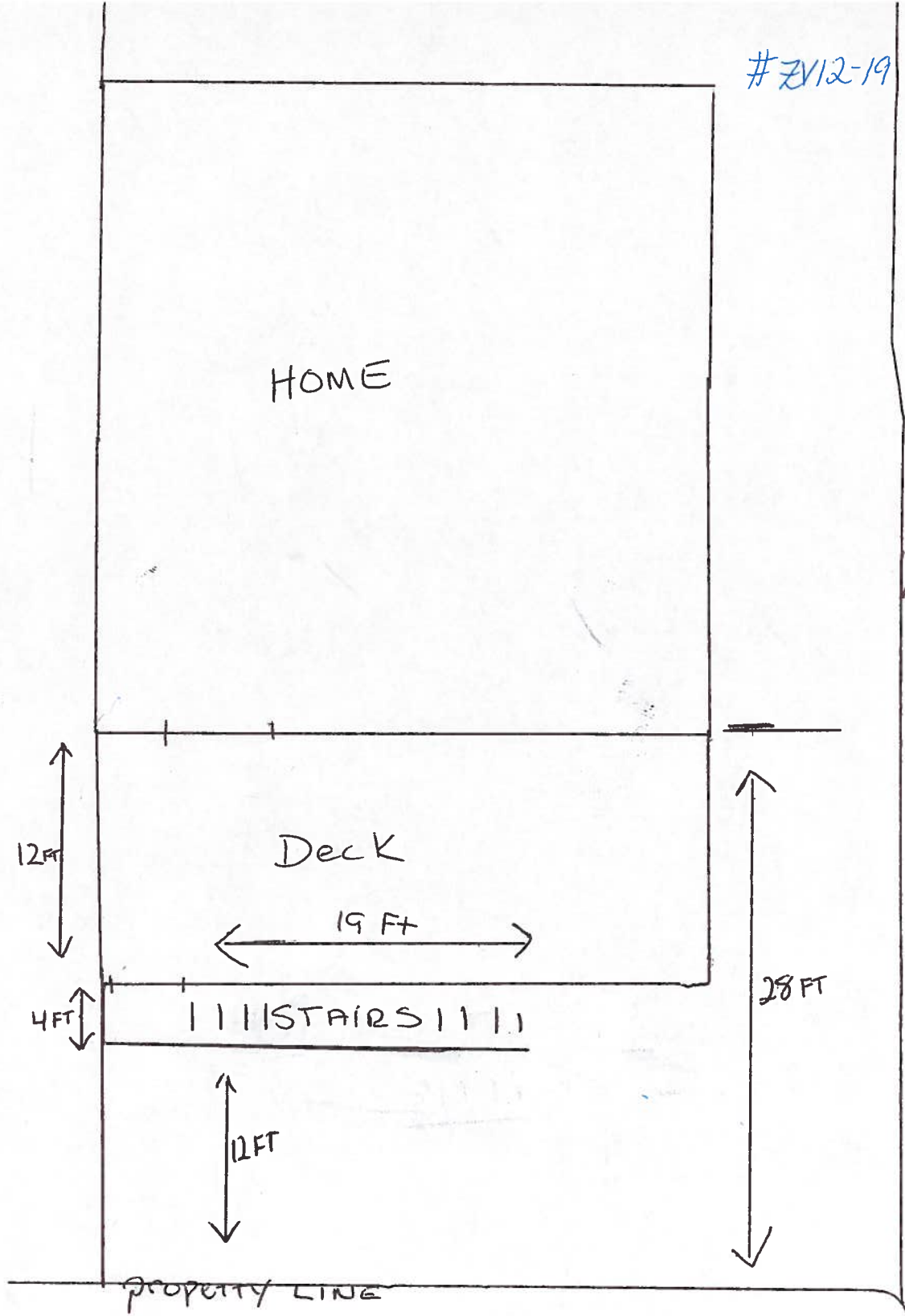
Kevin Cox
Print Name

4/20/12
Date

<u>CK #1003</u>	FOR OFFICAL USE ONLY
Fees Paid: <u>\$100.00</u>	Date Application / Fees Received: <u>April 20, 2012</u>
Date of meeting / Public Hearing: <u>THURSDAY, MAY 17 2012 @ 3:00pm</u>	
Official Administrative Body: <u>Jefferson County Board of Zoning Appeals</u>	
Posting Requirements: <u>15</u> Number of Days Prior to Scheduled Hearing	
Advertising Dates: <u>Wednesday May 2, 2012</u>	
Official Action of Board: _____	

Official Signature and Seal: _____	

#ZY12-19



Kevin Cox
KEVIN COX

4/20/12

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APR 20 2012

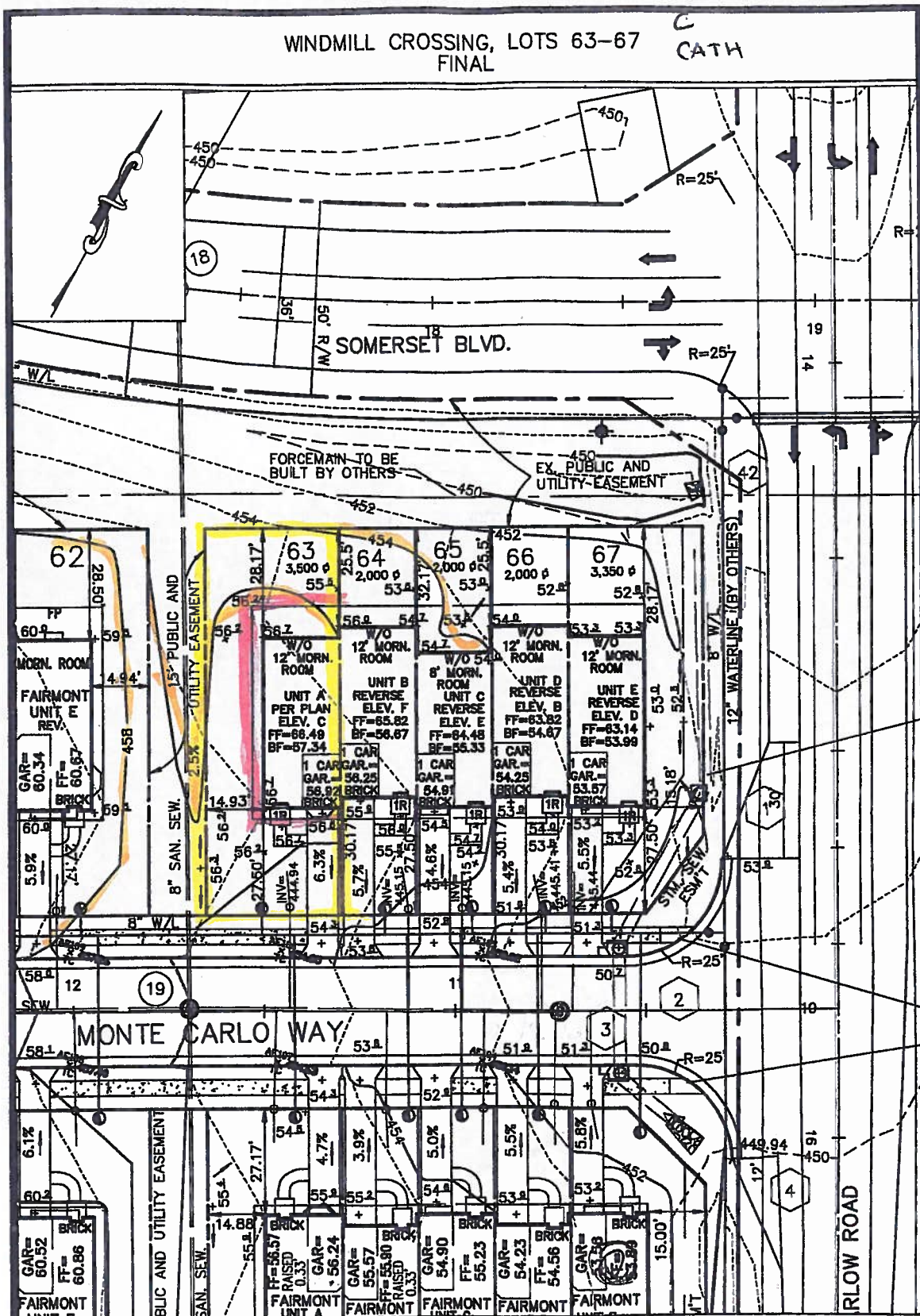
JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

WINDMILL CROSSING, LOTS 63-67
FINAL

CATH

EA 91348
91349
91347
91341

#ZV12-19



PUBLIC SIDEWALK= 338 SQUARE FEET
DRIVEWAY= 1,225 SQUARE FEET
SEEDING/SODDING= 7,026 SQUARE FEET



NOTES:
1. SANITARY LATERAL ELEVATIONS MUST BE FIELD VERIFIED.
2. THIS PLAN IS SUBJECT TO ALL COVENANTS, RESTRICTIONS AND EASEMENTS OF RECORD.
DATE: 2/17/11 DATE: 6/24/11
SCALE: 1"=30'
COUNTY: JEFFERSON COUNTY, WV
ZONE: C
DRAFTED BY: SLR/TF

The Engineering Group
Inc.

Engineers | Surveyors | Planners
13580 Groupe Drive, Suite 200, Woodbridge, Virginia 22192
Phone (703) 670-0985 Fax (703) 670-7199 www.enggroupe.com

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APR 20 2012

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Handwritten initials/signature

ZV12-19
5-17-12 BZA
meeting

TD 3
M 016A
P 008A.0000

SOMERSET BLVD

TD 3
M 016A
P COM2.0000

TD 3
M 016A
P 0007.0000

TD 2
M 009C
P COMM.0000

MARLOW RD

KEVIN
COX

TD 2
M 009C
P 0066.0000

TD 2
M 009C
P 0067.0000

TD 2
M 009C
P 0063.0000
•22

TD 2
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TD 2
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TD 2
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TD 2
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•52

TD 2
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TD 2
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P 0057.0000

R-LI-C

MONTE CARLO WAY

TD 2
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TD 2
M 009C
P 0092.0000

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JEFFERSON COUNTY, WEST VIRGINIA

Department of Planning and Zoning

116 East Washington Street

P.O. Box 338

Charles Town, West Virginia 25414

Phone: (304) 728-3228

Fax: (304) 728-8126

Email: planningdepartment@jeffersoncountywv.org

MEMORANDUM

TO: Jefferson County Board of Zoning Appeals

FROM: Steve Barney, Zoning Administrator
Jefferson County Planning and Zoning Department

DATE: May 10, 2012

SUBJECT: Request to Re-Open Public Hearing, Morgan's Grove Market Conditional Use Permit (#CP12-01)

1. Background

Linda M. Gutsell, Attorney at Law, has submitted a request to re-open a public hearing for a Conditional Use Permit (CUP), on behalf of Morgan's Grove Market. The public hearing for this CUP took place during a regularly scheduled Board of Zoning Appeals (BZA) meeting on April 19, 2012. The written request is included in the agenda packet for the May 17, 2012 BZA meeting. This request is being made pursuant to Section 5.8 of the BZA Rules of Procedure:

Section 5.8 – Reopening Hearing

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

This provision permits a party to request to be on the following BZA agenda to request that the case be re-opened at a subsequent meeting. (The public hearing cannot occur during the same meeting at which the request to re-open the hearing is made, because of public hearing notification requirements as described below.)

2. Consideration of a Request to Re-Open a Public Hearing

The decision to reopen the public hearing is at the discretion of the BZA. Because Section 5.8 refers to “further evidence or information”, a request to re-open a hearing should not be merely the opportunity for a party to revisit previous testimony. Staff recommends that the Board include the following criteria in its consideration of a request to reopen a hearing pursuant to Section 5.8:

- a) Has the party making the request demonstrated that there is further evidence or information to provide related to the request?
- b) Has the party making the request adequately explained why the evidence he or she seeks to present was not presented at the prior meeting?

3. Required Notification

If the BZA votes to re-open the meeting, Section 5.8 of the Rules requires that “All parties of record shall be given proper notice”, meaning that in addition to the standard public hearing notification requirements of Section 3.4A(3)(b) of the Zoning Ordinance (sign posting and newspaper advertisement), any party who attended one of the two public meetings regarding the CUP will be notified, if the party provided a legible name and contact information on a meeting sign-in sheet.

Please let me know if you need additional information.

LINDA M. GUTSELL

Attorney at Law
107 North College Street
Martinsburg, WV 25401

Telephone: (304) 262-0223

Facsimile: (304) 262-0225

May 3, 2012

Board of Zoning Appeals
c/o Jennifer Brockman, Director
Jefferson County Dept of Planning & Zoning
P.O. Box 338
Charles Town, WV 25414

RE: Morgan's Grove Market CUP

Dear Mrs. Brockman:

Pursuant to Section 5.8 of the BZA Rules of Procedure, the applicants wish to request rehearing/reconsideration of certain conditions proposed to be placed upon the conditional use permit ("CUP") awarded to Morgan's Grove Market following the hearing on April 19, 2012. As permitted by Section 5.8, we request the opportunity to present additional evidence on these conditions, so as to correct or clarify the factual premises on which the BZA appears to have relied, or material considerations which the BZA may have overlooked.

Although Section 5.8 does not require an applicant for rehearing to present its additional evidence or considerations in advance of the actual rehearing, we offer herein a summary of the concerns which have lead to this request.

1. Condition No. 18: "The development shall be served by public water and sewer."

The Director of the Shepherdstown Department of Public Works, by letter of April 13, 2012 (in file), indicated that there was, or would be, sufficient water and sewer capacity to serve the project. We believe that this may have led the BZA to erroneously conclude that public water and sewer would be available to the site. But, capacity is only half of the connection equation.

The Director's letter did not indicate that there was a connection point within the distance of mandatory extension. Moreover, voluntary extension from any of the nearby connection points would require either the permission of third parties, or the exercise of eminent domain by the Town. The Director's letter did not indicate that the Town would be willing to exercise its power of eminent domain in order to extend the water and sewer lines to the site. In short, it is by no means resolved that public water and sewer will be available to Morgan's Grove Market when water and sewer connections become necessary to the development.

Moreover, most of the extension routes identified by the Director's letter would have to cross private land. We believe that this would be viewed by many of the neighboring landowners, particularly those who oppose the project, as an unjustified negative impact on their property. Also, we observed at the April 19, 2012, hearing that some of the speakers who advocated for the public water and sewer condition appeared to have been misled by another very vocal individual who contended that the other landowners along an extension line could not be required to tap on to the public services. This is incorrect as a matter of long-established law. *See*, W.Va. Code § 16-13A-9(c); *Hutchinson v. City of Valdosta*, 227 U.S. 303 (1913); *Buda v. Town of Masontown*, 617 S.E.2d 831 (W.Va. 2005)(acknowledging power of town to require connection, even to properties lying outside the municipal limits); *Kingmill Valley Public Service District v. Riverview Estates Mobile Home Park, Inc.*, 182 W.Va. 116, 386 S.E.2d 483 (1989)(acknowledging power to require connection); *Rhodes v. Malden Public Service District*, 171 W.Va. 645, 301 S.E.2d 601 (1983)(acknowledging power to require connection). The substantial expense to other landowners who could be forced to connect to public services perceived to have been extended solely for the benefit of Morgan's Grove Market would likely cause even more vehement objections to and dissatisfaction with the project.

The onsite sewer and water systems planned for Morgan's Grove Market are such that can be incorporated into the public system if and when the Town is ready and willing to extend the lines. The availability of such a sewer system (and the additional capacity that it provides) tends to promote, rather than dissuade, the extension of public utilities when the Town decides if an extension is warranted. If the Town is unable or unwilling to extend lines to the site by the time that service will be needed for the development, the central system is the reasonable temporary alternative.

Accordingly, the applicants will request that Condition No. 18 be modified to include the necessary caveat, "if, at the time that service must be available at the site, there is sufficient capacity and the Town has extended lines to the site," or, "if, at the time of plat approval, there is sufficient capacity and the Town is willing and able to timely extend the lines to the site," or words of like effect.

The Town has just produced a new map of its sewer system which will shed additional light on these considerations, and which the applicants would propose to submit at a rehearing.

2. Condition No. 26. "The maximum gross floor area is restricted to 60,000 square feet; the maximum building footprint area is 30,000 square feet. No more than 20% of the 60,000 square foot gross floor area can be designated for any one use (i.e., 12,000 square feet)."

Condition No. 26 actually imposes two separate conditions. We believe that both require modification. Each will be addressed separately.

(a) The maximum building footprint is contrary to the design plan for the development. Moreover, and perhaps more importantly, the building footprint limitation will make the development less compatible with the surrounding neighborhood. The members of the public who spoke at the Compatibility Assessment Meeting and at the hearing of April 19, 2012, expressed strong objections to a development that would create the look and feel of the typical strip-mall, shopping center, commercial venue. The Morgan's Grove Market developers couldn't agree more.

The rural-aesthetic concept for Morgan's Grove Market is one of an open commons-style development designed to replicate the visual of a well-kept farm. The centerpiece structure in this plan has been designed to reproduce the exterior appearance of a traditional bank barn. The design of other structures in the development are also planned to reproduce other traditional rural structures. Just as the well-kept farm does not consist solely of bank barns, Morgan's Grove Market is not planned to consist only of several, such large, two-story buildings.

That, however, is what the building footprint limitations will produce. Not only does this defeat the purpose of achieving a rural aesthetic, it defeats the impetus for investment in the costly architectural work necessary to achieve the structurally diverse, yet functional, buildings. Once the pursuit of the current concept plan has to be abandoned, the developers may as well spare the significantly more expensive course of commissioning original rural-reproduction designs, and plan to build four identical two-story buildings according to any number of cookie-cutter, run-of-the-mill plans that are readily available on the market. Without the visual interest of differing building heights, roof lines and exterior design, the development will take on the appearance of the commonplace commercial development that both the neighbors and the developers are unanimously keen to avoid.

(b) We contend that the condition restricting any one use to 20% of the total square footage (i.e., 12,000 square feet) can only be imposed upon the uses for which a CUP was required, and should be amended to include such caveat. Otherwise, this condition would violate the Ordinance. There is no authority to restrict the occupancy proportion of uses that are permitted in the Rural Zone. If, hypothetically, a permitted use was to thrive and eventually grow to require more space within the development – or even all of the 60,000 square feet, for that matter – this would be an expressly authorized use of the space, for which a CUP would never have been necessary in the first instance. The relatively small footprint of the development relative to the acreage of the tract is well short of the maximum allowed, and, if fully occupied by one or more permitted uses, the CUP would become a functionally dormant permit.

Because the restriction on square footage occupation by permitted uses is not authorized by the Ordinance, we contend that the BZA should be able, without additional evidence from the applicants, to correct this mistake of law prior to its entry of the formal written decision on this

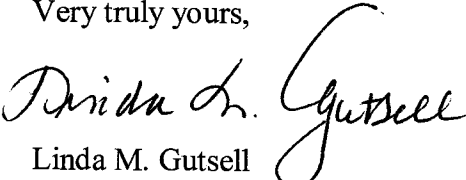
Board of Zoning Appeals
May 3, 2012
Page 4

application. However, if rehearing is granted, and additional presentation from the applicants is desired, the applicants will be prepared to further address this issue.

Conclusion

The conditions addressed above are, we believe, most likely the result of inadvertent oversight of a few points of fact or law at the end of a very long evening, and not because of a lack of evidence on these issues. The applicants did not fail to present evidence on these issues for the hearing of April 19. But, no applicant can anticipate what might be overlooked or misunderstood absent greater emphasis, and the time limitations did not realistically allow the presentation to linger on any one issue. We are confident that, but for oversight or misapprehension, the BZA would have moderated these few conditions as suggested herein. However, the applicants stand ready to present additional evidence and argument if rehearing is granted.

Very truly yours,


Linda M. Gutsell

JEFFERSON COUNTY, WEST VIRGINIA

Department of Planning and Zoning

116 East Washington Street

P.O. Box 338

Charles Town, West Virginia 25414

Phone: (304) 728-3228

Fax: (304) 728-8126

Email: planningdepartment@jeffersoncountywv.org

MEMORANDUM

TO: Jefferson County Board of Zoning Appeals

FROM: Steve Barney, Zoning Administrator
Jefferson County Planning and Zoning Department

DATE: May 11, 2012

SUBJECT: Recommendation to Revise Language, Condition #20, Morgan's Grove Market CUP (#CP12-01)

1. Background

The Morgan's Grove Market Conditional Use Permit was approved at the regularly scheduled Board of Zoning Appeals (BZA) meeting held on April 19, 2012.

Following this meeting, Mike Austin (representing the Shepherdstown Community Club) submitted a letter dated April 30, 2012 to the Planning and Zoning Department expressing various concerns. The key concern outlined in the letter is the wording of a sentence in Condition #20 of the CUP approval, as stated in the draft, unofficial list of CUP conditions made available on the Jefferson County website following the meeting. Mr. Austin further clarified his concerns in an email to staff on May 9, 2012. Both the letter and email message are included in the BZA agenda packet for the May 17, 2012 meeting.

2. Issue Raised Regarding Condition #20

The sentence in question is shown in bold text below:

20. The site plan for the Morgan's Grove Market development will include a ten (10) foot landscape buffer along the property line between the subject property and Morgan's Grove Park. **The buffer shall have defined access points to allow potential pedestrian access from the subject property to Morgan's Grove Park.** No solid fencing is required.

Regarding this sentence in Condition #20, Mr. Austin's email of May 9, 2012 states:

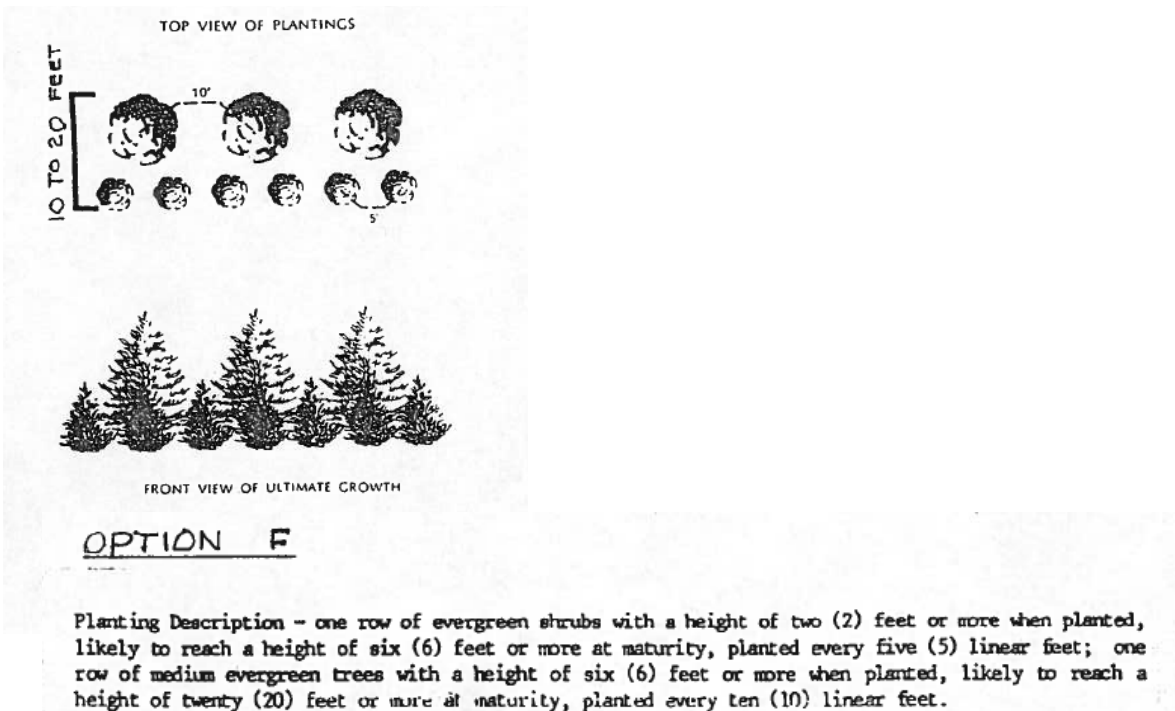
We interpret the "defined access points" as openings or other interruptions in the 10 ft landscaped buffer along the property line between our two properties. We are insisting that the buffer be continuous all along the length of our adjoining property lines.

As we read Para[graph] D of section 4.1¹ of the Zoning Ordinance, we should be entitled to a fence or dense screening of trees, shrubs or other plant materials or both to the full length of the lot line to serve as a barrier to visibility, air borne particles, glare or noise.

¹ It is assumed that "Section 4.11" was intended, as this is the section of the Zoning Ordinance that outlines buffer standards.

3. Staff Analysis of Issue

Section 4.11D of the ordinance specifies that buffers conform to the Jefferson County Engineering Standard Details. Detail M54 (for a 10' – 20' buffer, Option F) would be the applicable requirement. It requires one row of evergreen shrubs planted at 5' spacing and one row of trees planted at 10' spacing, as shown in the diagram below:



Implicit in Condition #20 is the assumption that plants can be spaced widely enough to allow for pedestrian access. However, once the buffer has been planted per Standard Detail M54 and has grown to maturity, the shrubs would likely impeded passage. Allowing for pedestrian access would appear to necessitate greater spacing between plants than permitted by the standard detail.

Allowing greater plant spacing (i.e. a buffer design not in conformance with the standard detail) would entail modifying the requirements of Section 4.11D. This modification would require a BZA variance, which would entail notification and posting requirements.

As no such variance request has been submitted or approved, I find that the portion of Condition #20 that reads, “The buffer shall have defined access points to allow potential pedestrian access from the subject property to Morgan’s Grove Park” to be not valid.

4. Staff Recommendation

I am recommending that the BZA make a corrective change to the language of Condition #20 for consistency with Zoning Ordinance requirements. This change can be made during the Board’s review of the written CUP order (prepared by Legal staff), during the May 17 meeting. The proposed change is to eliminate the second sentence of Condition #20, and to replace this sentence with the following:

“The buffer shall meet the standards specified in Section 4.11D of the Zoning and Land Development Ordinance.”

Please let me know if you need additional information.

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RECEIVED
MAY 01 2012
JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Ms. Jennifer Brockman
Director of Planning and Zoning
116 East Washington St. / P.O. Box 338
Charles Town, W.V. 25414

30 April 2012

Dear Jennifer:

As I mentioned in the 19 April BZA meeting, we have no choice but to accept the inevitable granting of the Conditional Use Permit for the Twin Oaks Development. We still believe that this specific excessive commercial land use in the rural zone is incompatible with the surrounding residential homes and Morgan's Grove Park. From the draft CUP conditions it appears that the BZA members took little note of the concerns that many citizens raised during the compatibility assessment meeting on March 2nd and the BZA itself on April 19. I think that many concerned citizens were disturbed by the conduct of the BZA meeting and the apparent lack of genuine interest in the unresolved issues that were raised and still persist.

Of particular concern is item 20 in the Draft CUP which states that "The buffer shall have defined access points to allow potential pedestrian access from the subject property to Morgan's Grove Park." We firmly believe that the BZA and the County are exceeding their authority in trying to force the Shepherdstown Community Club, owners of Morgan's Grove Park to provide access from the neighboring Twin Oaks Property. This is a blatant and inappropriate effort to assist the developers in pursuing commercial exploitation of our dedicated recreational area. We have no intention of granting an easement or access of any kind from the Twin Oaks property into the Morgan's Grove Park other than already existing accesses along Route 480 and Morgan's Grove Road. Morgan's Gove Park is not public property. It is owned and operated by us with the assistance of the Jefferson County Parks and Recreation Commission (JCPRC) for the benefit of county residents, but it remains private property subject to our control and management with all inherent rights and responsibilities. We take that stewardship as a non profit civic organization very seriously. To include this pejorative language in the CUP will only exacerbate relations with the Twin Oaks Development owners in the future and prevent neighborly relationships if, and when the property is actually developed.

- Although ignored by the BZA, there are safety and security considerations which we manage with the Sheriff's department, particularly after dark. Now the designated access and parking areas help us to monitor who is using the park.
- There has been an increase of vandalism, which can certainly be documented by the JCPRC. Pedestrian access, especially after dark from the adjoining property would make this more difficult to control.

- We close the Park during the winter season and require that the gates are locked. Water and rest room facilities are winterized and closed.
- This would interfere with use of the exercise trail which is one of the most popular recreational activities of the park and it as much an opportunity for quiet contemplation as it is for exercise purposes. This is another reason why an uninterrupted screen in the buffer and the 75 ft distance that we are entitled to as a property on the Federal and State Lists of Historic Places is desired.
- We anticipate increased and more diverse uses of the Morgan's Grove Park when the new Hite Road Park becomes operational and much of the soccer league activity transfers to that site. This may include scouting activities, including camp-outs which would be interfered with by transients from the Twin Oaks Development.
- As owners we retain and must provide appropriate liability insurance coverage which would be significantly more costly if we could not control access, as we now do to the park.
- The Jefferson County Parks and Recreation Commission and the Shepherdstown Community Club conduct events at the park from time to time that charge appropriate admission fees as a means of covering costs. We are working with the JCPRC to enhance the earnings from the park to help pay for operations and maintenance by them and capital improvements and insurance by ourselves. This loss of controlled access would significantly undercut our ability to generate these earnings.
- Often, the rental arrangements grant scheduled users of the park exclusive use of the facilities or the playing fields in the case of the soccer leagues. They pay for the privilege.
- Parents send their young children to participate in organized sports events and summer day camps in a safe and controlled environment where adequate adult supervision is manageable by coaches and assigned monitors. We have an obligation to continue providing that safe environment without encroachment by as yet unknown commercial activities and vehicular traffic.

For the above reasons, I hope that the second sentence of item 20 can be removed before the final draft is concluded. We would have little choice but to appeal this BAZ decision if it remains. Please advise what steps are necessary to accomplish this change in the draft. As necessary I will request time on the County Commission or BZA agendas to formally facilitate this change if that is required.

Sincerely,

Mike

Mike Austin

President Emeritus of the Shepherdstown Community Club
cc; Jefferson County Commissioners

Steve Barney

From: michael.austin@frontiernet.net
Sent: Wednesday, May 09, 2012 12:45 PM
To: Steve Barney; 'Jennifer Brockman'
Cc: 'Jennilee Hartman'; 'Stephen Groh'; 'Stephanie Grove'; 'Seth Rivard'; ShirleyandTJ@Aol.com; 'Art Wineburg'; 'Lyn Widmyer'; fberrymorgan@aol.com; Walterpellish@me.com; 'Dale Manuel'; pnoland@jeffersoncountywv.org; 'Harvey Heyser'
Subject: Re: Twin Oaks Development

Steve: Thanks for getting back to me. If the language in item 20 draft is misleading now, it will be even more so with the passage of time as we get into implementing the CUP decision.

We interpret the "defined access points" as openings or other interruptions in the 10 ft landscaped buffer along the property line between our two properties. We are insisting that the buffer be continuous all along the length of our adjoining property lines.

As we read Para D of section 4.1 of the Zoning ordinance, we should be entitled to a fence or dense screening of trees, shrubs or other plant materials or both to the full length of the lot line to serve as a barrier to visibility, air borne particles, glare or noise. This is particularly so since the anticipated heavy commercial activity on the Twin Oaks property will not be compatible with our recreational park activities.

We believe that simple elimination of the second sentence of item 20 would solve the problem. Future actions by Twin Oaks to gain access to Morgan's Grove should, in our view have not place in the CUP. It should not be the business of the BZA to get involved in forcing some action like this that is purely related to commercial exploitation after the CUP is granted.

I would suggest that item 20 be recast to read: "The site plan for the Morgan's Grove Market development will include a ten (10) foot landscape buffer along the property line between the subject property and Morgan's Grove Park in accordance with Para D of Section 4.1 of the Jefferson County Zoning and Land Development Ordinance." We are not insisting on a fence as long as the buffer meets these requirement and the setback requirements.

If that can be accomplished without putting item 20 on the agenda, then I will not ask for an agenda item.

However regarding a public hearing, I understand from Jennifer's last email that the Twin Oaks Developers have asked to reopen some of the conditions placed by the BZA on the proposed CUP. As the agenda is not yet out, we have no idea what conditions they are challenging. We strongly believe that if that is the so, since this has been such a contentious case, and we are still unhappy with the oral changes accepted of "agreed items" at the April 19 BZA, that a public hearing should be required. Since this decision is having such an adverse impact on neighboring property owners, we believe they are entitled to a fully transparent process. It might help to save some credibility in the County zoning process.

Thanks,

Mike

If necessary, to make that happen, I will I have not as yet seen an agenda, up.

----- Original Message -----

From: Steve Barney

To: michael.austin@frontiernet.net ; 'Jennifer Brockman'

Cc: 'Jennilee Hartman' ; 'Stephen Groh' ; 'Stephanie Grove' ; 'Seth Rivard' ; ShirleyandTJ@Aol.com ; 'Art Wineburg' ; 'Lyn Widmyer' ; fberrymorgan@aol.com ; Walterpellish@me.com ; 'Dale Manuel' ; pnoland@jeffersoncountywv.org ; 'Harvey Heyser'

Sent: Wednesday, May 09, 2012 10:17 AM

Subject: RE: Twin Oaks Development

Mike,

Regarding item 20, I believe the BZA's intent was only to require some openings in the required landscaping on the applicant's property to allow potential future access to Morgan's Grove Park. The Board did not intend to imply that the Park was required to provide this access. The Men's Club would of course retain the ability to either grant or deny access to the park from the Morgan's Grove Market property. For this item, staff can suggest a language clarification to the Board during the May 17th meeting.

If you want to request that the Board reopen the public hearing for this case, you can make the request pursuant to Section 5.8 of the BZA Rules of Procedure:

Section 5.8 – Reopening Hearing

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

This provision permits a party to request to be on the next BZA agenda to request that the case be re-opened at a subsequent meeting. As we have communicated to the applicants, the decision to reopen the public hearing would be solely at the discretion of the BZA. Because Section 5.8 refers to "the receipt of further evidence or information," the party making the request would need to be prepared to explain why the evidence s/he seeks to present was not presented at the prior meeting. This is not merely the opportunity to re-discuss previous testimony. It is staff's interpretation of this procedural rule that if the BZA agrees to re-open the meeting, the hearing would have to be re-posted, re-advertised, and adjoining land owners notified etc. to provide notice to all concerned, just like a regular hearing, at the expense of the party making the request.

If you would like to request that the hearing be reopened, please provide a brief written statement (email is fine) by 2:00 PM this Thursday, so that there will be time to place the item on the agenda.

Please let us know if you have any questions.

Sincerely,
Steve Barney

From: michael.austin@frontiernet.net [mailto:michael.austin@frontiernet.net]

Sent: Tuesday, May 08, 2012 12:12 PM

To: Jennifer Brockman

Cc: Steve Barney; Jennilee Hartman; Stephen Groh; Stephanie Grove; Seth Rivard; ShirleyandTJ@Aol.com; Art Wineburg; Lyn Widmyer; fberrymorgan@aol.com; Walterpellish@me.com; Dale Manuel; pnoland@jeffersoncountywv.org; Harvey Heyser

Subject: Re: Twin Oaks Development

Jennifer: Since the petitioners are requesting to reopen the conditions placed on the CUP by the BZA and to be on the agenda for the 17 May meeting, the Shepherdstown Community Club also requests time on the agenda. We are particularly concerned about item 20 in the draft CUP as I pointed out in my letter to you. We may wish to raise other issues as well.

If there is a more formal process of requesting to be on the agenda, please advise me.

Also, we think it would be appropriate and request a public hearing and that further action on this CUP be delayed until due process can be followed. As you know, and as pointed out by the Editor of the Shepherdstown Chronicle, there were a lot of problems with the conduct of the 19 April BZA meeting.

I would like to know about the prospect for a public hearing as early as possible in order to inform the many concerned citizens in our community, particularly neighboring property owners.

Thanks,

Mike
(304) 876-0598

----- Original Message -----

From: Jennifer Brockman
To: michael.austin@frontiernet.net
Cc: [Steve Barney](#) ; [Jennilee Hartman](#) ; [Stephen Groh](#) ; [Stephanie Grove](#) ; [Seth Rivard](#)
Sent: Tuesday, May 08, 2012 9:35 AM
Subject: RE: Twin Oaks Development

Mike
The link to the draft conditions is below:

[http://www.jeffersoncountywv.org/uploads/planning/bza/Minutes/2012/Draft%20CUP%20conditions%20for%20Morgans%20Grove%20Market%20\(CP12-01\),%2004-24-12.pdf](http://www.jeffersoncountywv.org/uploads/planning/bza/Minutes/2012/Draft%20CUP%20conditions%20for%20Morgans%20Grove%20Market%20(CP12-01),%2004-24-12.pdf)

Please note that the applicant has requested an opportunity to be on the May 17th agenda to request reconsideration of the conditions placed by the BZA. It is our understanding that if the BZA agrees to re-open the hearing, it will have to be re-posted and re-advertised as another public hearing on the topic at a future date.

Once the BZA has approved the order that summarizes their actions and recommendations, a CUP will be issued that includes the conditions. At that point, the applicant can apply for a site plan. Any site plans for development under 5,000 square feet are administrative. Site plans for development between 5,000 and 50,000 square feet require a concept plan public workshop to receive input and then process administratively. Site plans for development over 50,000 square feet require a concept plan workshop as well as a public hearing. I believe that if a development occurs in phases, it must comply with the requirement related the square footage of that phase.

I hope that this informantion is helpful.

Jennie Brockman
Director, Planning and Zoning

From: michael.austin@frontiernet.net [<mailto:michael.austin@frontiernet.net>]
Sent: Tuesday, May 08, 2012 8:56 AM
To: jbrockman@jeffersoncountywv.org
Subject: Twin Oaks Development

Jennifer: I haven't found anything on-line, but may have not found the right site.

Is there a final version of the CUP for Twin Oaks and also what is the next step in the process. Will there be a public hearing on the site plan?

Thanks,

Mike