

Jefferson County  
Board of  
Zoning Appeals

Thursday,  
April 19, 2012

**JEFFERSON COUNTY, WEST VIRGINIA**

**Department of Zoning**

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

P.O. Box 338

Charles Town, West Virginia 25414

**Phone: 304-728-3228**

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

**Fax: 304-728-8126**

MEMORANDUM

TO: Jefferson County Board of Zoning Appeals Members

FROM: Jennilee Hartman, Zoning Clerk

DATE: April 13, 2012

SUBJECT: April 19, 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, April 19, 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

P.O. Box 338

Charles Town, West Virginia 25414

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### MEMORANDUM

TO: Board of Zoning Appeals Members

CC: Engineering & Building Permits Departments

FROM: Steve Barney, Zoning Administrator

DATE: April 13, 2012

SUBJECT: April Monthly Report of Department Activities

### **ISSUED ZONING CERTIFICATES**

#ZC12-02 HARPERS FERRY HOLDINGS, LLC  
MATT KNOTT, OWNER

*Issue Date:* March 14, 2012  
*Proposed Use:* Aerial Adventure Park  
*Physical Location:* 408 Alstadts Hill Road; Harpers Ferry, West Virginia 25425  
*Zone:* Residential-Light Industrial-Commercial

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#ZC12-07 SUMMIT POINT VENTURES, LLC / OWNER  
JAMES BRADBURY / APPLICANT

*Issue Date:* March 15, 2012  
*Proposed Use:* "STaSIS"– designs, engineers & sells aftermarket automotive parts.  
*Physical Location:* 500 Motor Sport Park Circle; Summit Point, West Virginia 25446  
*Zone:* Rural

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#ZC12-05 DAVE MELLOTT, SR., OWNER

*Issue Date:* April 2, 2012  
*Proposed Use:* Cottage Industry / Vehicle Maintenance & Repair  
*Physical Location:* 372 Up Top Road; Kearneysville, West Virginia 25430  
*Zone:* Rural

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**PENDING ZONING CERTIFICATES**

#ZC11-11     ERIC and ANNA SOKEL, OWNERS

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

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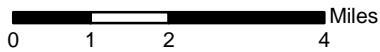
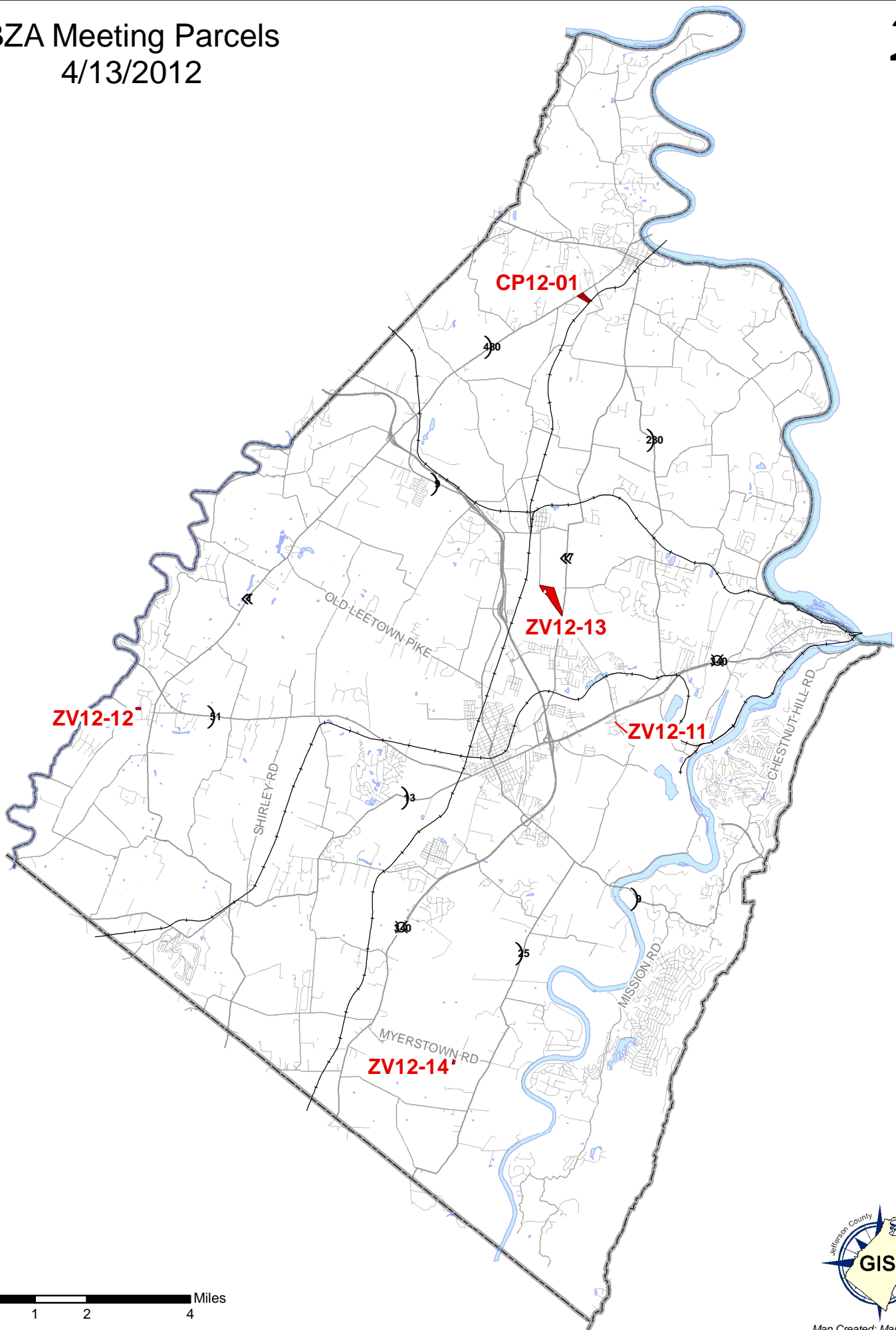
**AGENDA**  
**Jefferson County Board of Zoning Appeals**  
**Thursday, April 19, 2012 at 3:00 p.m.**

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 March 15, 2012 meeting.
2. Swearing in of members of the public intending to provide testimony.
3. Variance request by property owner, Wanderson Silva, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 10' to allow for the construction of a 12' x 19' deck. Property location: Windmill Crossing Subdivision, 21 Don Quixote Drive, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 146; Size: 2,000 sq. ft.; Zoned: Residential-Light Industrial-Commercial; Size: 2,000 square feet; File: #ZV12-11.
4. Variance request by property owners, David and Tammy Everhart, from Section 5.7(B) of the Zoning and Land Development Ordinance for a reduction of both the side setback distance from 15' to 5' and the rear setback distance from 50' to 35' to allow for the construction of a 34' x 50' storage building/garage. Property location: 193 Mason Farm Drive, Kearneysville, West Virginia. District: Middleway (07); Map: 22; Parcel: 61; Zoned: Rural; Size: 2.333 acres; File: #ZV12-12.
5. Variance request by property owner, Fellowship Bible Church from Section 4.10 of the Zoning and Land Development Ordinance to allow installation of a 30' x 60' modular classroom without the requirement of site plan submittal, and to amend the conditions of approval for case #ZV10-18. Property location: 160 Daniel Road, Shenandoah Junction, West Virginia. District: Charles Town (02); Map: 3; Parcel: 4.5; Zoned: Rural; Size: 50.768 acres; File: #ZV12-13.
6. Variance request by property owners, Patrick A. & Jennifer J. McMillan from Section 4.3(H) of the Zoning and Land Development Ordinance to re-establish a barn with nonconforming setbacks that was destroyed by fire and replace it with a 40'x 60'x 12' pole barn in approximately the same location. Property location: 1952 Meyerstown Road, Charles Town, West Virginia. District: Kabletown (06); Map: 20; Parcel: 12.2; Zoned: Rural; Size: 5 acres; File: #ZV12-14.
7. 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.

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)
11. Correspondence.

BZA Meeting Parcels  
4/13/2012



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

The Jefferson County Board of Zoning Appeals met on Thursday, March 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. Board members, Jeff Bresee, Chairman; Christy Huddle, Vice Chair; Tyler Quynn and Ed Kelly were present. Staff members present were: Steve Barney, Zoning Administrator; Steve Groh, Assistant Prosecuting Attorney and Jennilee Hartman, Zoning Clerk.

Ms. Huddle motioned to commence the meeting. Mr. Quynn seconded the motion, which carried unanimously. Mr. Bresee called the meeting to order at 3:03 p.m.

1. Approval of the minutes from the February 16, 2012 meeting.

Ms. Huddle motioned to approve the minutes. Mr. Kelly seconded the motion. Mr. Quynn suggested the following corrections:

- a) Page 1, Item #2, line 2, insert “*she*” after the word “*however*”.
- b) Page 1, Item #2, line 9, change sentence so that it reads, “*Mr. Bresee called for a vote which carried by 3, with one...*”.

Mr. Bresee called for a vote which carried unanimously.

2. Swearing in public.
3. Variance request by property owners, Elaina & Reuben McFadden, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20’ to 15’ to allow for a 5’ expansion of the existing deck. Property location: Windmill Crossing Subdivision, 44 Monte Carlo Way, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 60; Size: 2,000 sq. ft.; Zoned: Residential-Light Industrial-Commercial; File: #ZV12-09.

Elaina McFadden, applicant, presented her request to the Board. Mr. Bresee called for public comment. There was no public comment.

4. 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.

Tammy Spiker, applicant, represented the request. Ms. Spiker stated the original plan was to have the addition to be in line with the existing home, however, due to a large rock that extended underneath the home the addition had to be place a few feet back. The applicant explained they had not thought about the rear corner of the building going into the side setback. Mr. Quynn questioned how the structure would be attached. Ms. Spiker explained there would be a breezeway connecting the addition to the house. Mr. Breese asked what rooms would be in the addition. Mr.

Barney passed the building permit application around to the Board which depicted the layout of the addition which included a bathroom, office space, living room and wet bar area. Ms. Spiker indicated that she would be homeschooling her children from the addition. Ms. Spiker spoke to the accusations in the letters submitted by Ms. Joy stating that on occasion her mother would stay with them from time to time though would not be living with them on a permanent basis. Ms. Spiker stated her mother had her own residence in Middleway and would continue to reside there. Kevin Jenkins, contractor, answered the Board questions regarding the placement of the addition. Mr. Jenkins stated his crew spent 4 days attempting to remove the rock to locate the structure in the front of the property as originally planned. Mr. Jenkins explained when the rock could not be removed they had to redesign the location of the structure. Mr. Jenkins stated that even in its present location he had to pour the footers twice as thick because he could not get the proper depth. Mr. Jenkins mentioned that he strung line the structure to the property line and got 9' 11".

Mr. Bresee called for public comment. Donna Joy spoke in opposition to the request. Ms. Joy questioned the conflict of the setback drawn on the building permit application of 15' and the actual setback that contractor states he found of 9' 11". Ms. Joy went on to state that Mr. Spiker removed the fence to build the structure and that he told her it was being built so that his mother-in-law could live with them. Ms. Joy went on to address the four criteria of a variance request. Ms. Joy explained that she believed the public health, safety and welfare were at risk because having this addition so close to their shared property line with her home being 7 feet from the property line posed a fire risk and that it would take too long for the fire department to respond in the event a fire were to occur. Ms. Joy argued that her home was built 200 years ago and that her home is grandfathered to be located where it is. Ms. Joy stated Mr. Spiker knew where the property line was and built the structure anyway, therefore the hardship was created by Mr. Spiker. Ms. Joy stated that Mr. Spiker has the option to locate the structure elsewhere on the property thus he does not have a hardship. Ms. Joy stated this structure would devalue her property and cause a disruption to her. Ms. Joy continued her argument by stating the addition would hinder the sale of her property.

Ms. Huddle asked if the structure was intended to be used by the handicapped children as represented in the application. Ms. Spiker stated 4 of the 11 children were under the age of 18 and that currently 3 of them would be homeschooled in the addition. Ms. Spiker stated 10 of the children were adopted and they were working towards getting the last child adopted. Ms. Spiker stated they are not a group home as Ms. Joy is claiming. They are a family.

Mr. Barney clarified that the structure was built after issuance of a building permit and that this was not a situation in which the applicant had initiated construction prior to receiving approval by the Building Permit Department.

Mr. Kelly motioned to go into deliberative session at 4:04 p.m. Ms. Huddle seconded the motion, which carried unanimously.

Ms. Huddle motioned to come out of deliberative session at 4:20 p.m. Mr. Quynn seconded the motion, which carried unanimously.

### **Board of Zoning Appeals Rulings**

3. Variance request by property owners, Elaina & Reuben McFadden, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 15' to allow for a 5' expansion of the existing deck.

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

4. 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.

Mr. Quynn motioned to deny the 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 because he believed it did not meet the four criteria necessary for approving a variance in the following ways: because the welfare of the adjacent property owner would be adversely affected; that if the variance were granted that it would not alleviate an unnecessary hardship; that the Spiker's already have reasonable use of their land because of a previously built addition; that accommodations can be made within the normal setbacks for an addition; and that granting the variance would not create substantial justice. Mr. Kelly seconded the motion, which carried unanimously.

5. Director's Report. Mr. Barney reported on the status of the upcoming ordinance amendments and the US 340 Corridor Study.
6. Legal Update. Ralph Lorenzetti, Prosecuting Attorney, requested the Board estimate the number of hours they anticipate needing legal representation for the following year.
7. Signing of written decisions from the February 16, 2012 Board of Zoning Appeals meeting:
  - a) Postponed from the January 19, 2012 meeting. Variance request by property owner, Brandon French, from Section 9.7 of the Zoning and Land Development Ordinance for a reduction of the rear setback from 50' to 20' to allow for the placement of a 50' x 16' storage building. District: Charles Town (02); Map: 8-1; Parcel: 32.9; Size: 3 acres; Zoned: Rural; File: #ZV12-01.
  - b) Appeal by property owner, Roderick Planes, LLC, of the Zoning Administrator's decision regarding the interpretation of Condition #6, Aspen Greens Conditional Use Permit #Z02-06. Condition #6 states, "Provide a note on the plat indicating a 50' easement along Flowing Springs Road (Route 17) and Old Country Club Road (Route 24) for the potential location of sidewalks and trails." District: Charles Town (02); Map: 4; Parcel: 19; Size: 110 acres; Zoned: Rural; File: #AP12-01.
  - c) Request by property owner, Roderick Planes, LLC, to amend Condition #6, Aspen Greens Conditional Use Permit #Z02-06 regarding a 50' sidewalk/trail easement along Flowing Springs and Old Country Club Roads. Condition #6 states, "Provide a note on the plat indicating a 50' easement along Flowing Springs Road (Route 17) and Old Country Club Road (Route 24) for the potential

location of sidewalks and trails.” District: Charles Town (02); Map: 4; Parcel: 19; Size: 110 acres;  
Zoned: Rural; File: #Z02-06.

8. Correspondence. None.

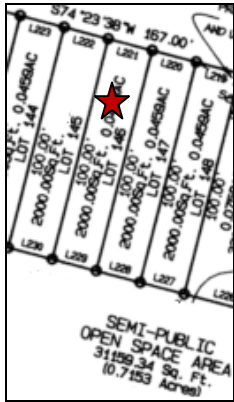
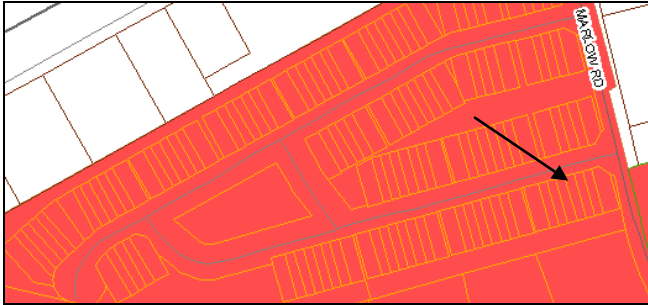
Mr. Kelly motioned to adjourn the meeting at 5:13 p.m. Ms. Huddle seconded the motion, which carried unanimously.

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

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 April 19, 2012

**Wanderson Silva Request (#ZV12-11)**

Item #3 Variance request by property owner, Wanderson Silva, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 10' to allow for the construction of a 12' x 19' deck.

|                             |   |
|-----------------------------|---|
| APPLICANT:                  | Wanderson Silva   |
| OWNER:                      | Same as above   |
| DEVELOPER:                  | n/a   |
| SURVEYOR/ENGINEER:          | n/a   |
| PROPERTY LOCATION:          | Windmill Crossing Subdivision,<br>21 Don Quixote Drive, Charles Town, West Virginia   |
| LEGAL DESCRIPTION:          | District: Charles Town (02); Map: 9C; Parcel: 146<br>                            |
| ZONING DISTRICT:            | Zoning Map Designation:<br>Residential-Light Industrial-Commercial (R-LI-C)<br> |
| SURROUNDING PROPERTIES:     | Zoning Map Designation:<br>North: R-LI-C      South: R-LI-C<br>East: R-LI-C      West: 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  
April 19, 2012

**Wanderson Silva Request (#ZV12-11)**

RELEVANT INFORMATION:

1. Overview of Request

The applicant seeks a rear yard setback variance of 10' in order to construct a 12' x 19' deck.

Per the material submitted with the variance request, the townhome is approximately 22 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 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, 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, "True. To improve living space area to accommodate outdoor activities. Deck will be within property boundaries."

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, "True. Neighbor approves deck. Offset townhouses."

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

The application states, "True. Allow more outdoor living space."

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

The application states, "True. Proper permit will be obtained. Will be built by a licensed contractor. Jones Deck & Fences."

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
April 19, 2012

**Wanderson Silva Request (#ZV12-11)**

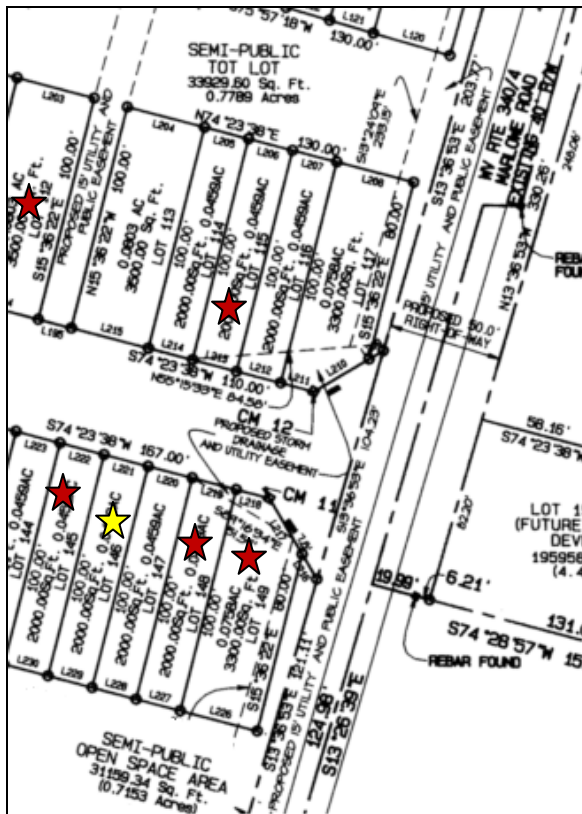
3. Staff Evaluation of Request

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 July 15, 2010 (Brown, ZV10-08), May 20, 2010 (Weaver, ZV10-04), 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) and March 15, 2012 (McFadden ZV12-09).

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.

The map below indicates neighboring properties that received approved variance requests of a similar nature.



\*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  
 April 19, 2012

**Wanderson Silva Request (#ZV12-11)**

SECTION OF ORDINANCE TO BE CONSIDERED:

**Table 5.4 - 1 Residential Growth District - Height and Yard Requirements**<sup>5, 19, 23</sup>

|   | 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            | “                   | “    | “           | “    | “                             |

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): WANDERSON SILVA

Address: 21 DON QUIXOTE DR.  
CHARLES TOWN WV 25414

Phone Number: 240 675 7222

Location of Property: \_\_\_\_\_

Lot Size: 2000

Deed Book Reference: Deed Book Number 1095 Page Number 328

Tax Map Reference: District CHARLES TOWN Map 9C Parcel 146

Zoning District: CHARLES TOWN R-LI-C-9th

Section of Ordinance: JEFFERSON COUNTY 5.4(B) - 9th



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 INCREASE AND IMPROVE THE LIVING SPACE  
BY BUILDING A DECK WITH A SOLE PURPOSE TO  
ENJOY OUTDOOR ACTIVITIES  
REDUCTION OF SETBACK FROM 20' TO 10'

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.

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:

TRUE TO IMPROVE LIVING SPACE AREA TO ACCOMMODATE  
OUTDOORS ACTIVITIES. DECK WILL BE WITHIN PROPERTY BOUNDARIES

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:

TRUE. NEIGHBOR APPROVES DECK. OFFSET TOWNHOUSES

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

TRUE. ALLOW MORE OUTDOOR LIVING SPACE

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

TRUE. PROPER PERMIT WILL BE OBTAINED.  
WILL BE BUILT BY A LICENSED CONTRACTOR.

JONES DECK & FENCES

Wanderson Silva  
Signature of Property Owner

WANDERSON SILVA  
Print Name

3/15/12  
Date

|   |   |
|---|---|
| <b>FOR OFFICAL USE ONLY</b>   |   |
| 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: _____  |   |

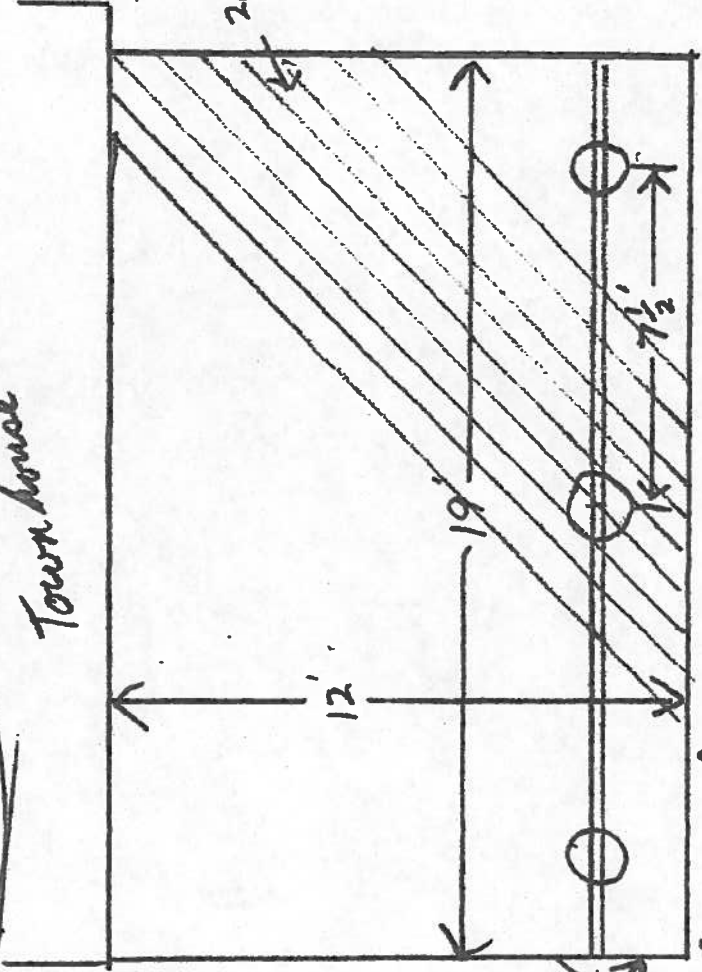


# ZV12-11

1/4 scale

Town house

2x6 decking



2' overhang

10' elevation

SET BACK

PROPOSED SET BACK

10'

10'

PROPERTY LINE

any P. call Jones Deck & Fence  
(Keith)  
(304) 535-2179

all P.T. materials

2x6 decking

2x8 joist (16" O.C.)

2x10 beam

2x6 support post

16" x 30" footer

2x10 wrap bd.

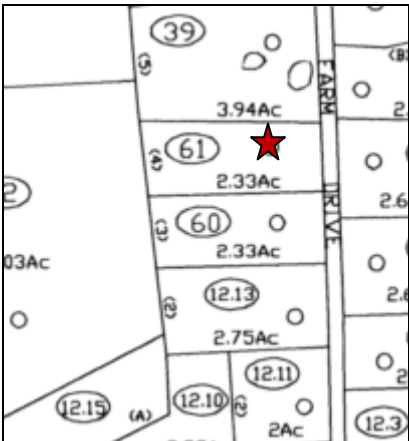
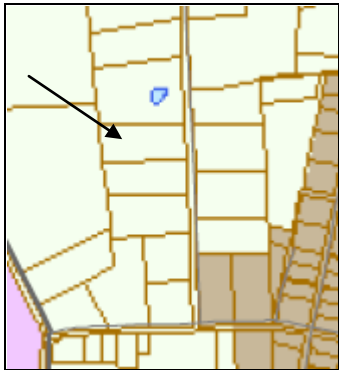
standard 36" high sweepers nail

welded rod on brackets to floor joist  
sledge

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 April 19, 2012

**David and Tammy Everhart Request (#ZV12-12)**

Item #4 Variance request by property owners, David and Tammy Everhart, from Section 5.7(B) of the Zoning and Land Development Ordinance for a reduction of both the side setback distance from 15' to 5' and the rear setback distance from 50' to 35' to allow for the construction of a 34' x 50' storage building/garage.

|                           |  |
|---------------------------|--|
| APPLICANT:                | David and Tammy Everhart   |
| OWNER:                    | Same as above  |
| DEVELOPER:                | n/a  |
| SURVEYOR/ENGINEER:        | n/a  |
| PROPERTY LOCATION:        | 193 Mason Farm Drive, Kearneysville, West Virginia   |
| LEGAL DESCRIPTION:        | District: Middleway (07); Map: 22; Parcel: 61<br> |
| ZONING DISTRICT:          | Zoning Map Designation:<br>Rural<br>             |
| SURROUNDING PROPERTIES:   | Zoning Map Designation:<br><i>North:</i> Rural <i>South:</i> Rural<br><i>East:</i> Rural <i>West:</i> Rural                          |
| LOT AREA:                 | 2.333 acres  |
| VARIANCE(S):              | None   |
| APPROVED ACTIVITY:        | Residential  |
| Parent to Child Exemption | Approved: 05/09/90   |

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
April 19, 2012

**David and Tammy Everhart Request (#ZV12-12)**

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a reduction of the side yard setback from 15' to 5' and the rear yard setback from 50' to 35' for the purpose of constructing a 34' x 50' garage/storage building.

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. A letter from the Lot 3 neighbor will be submitted at hearing stating it will not affect him. His house is 200+ feet from proposed structure."

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 the only level accessible area free of rocks and able to use driveway. Also will not affect vinyl fence located in rear."

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

The application states, "Yes. Would allow to store equipment, lawn, garden and a boat."

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

The application states, "Yes. I have left room for side maintenance and will be used as residential purposes."



Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 April 19, 2012

**David and Tammy Everhart Request (#ZV12-12)**

3. Staff Evaluation of Request

Staff notes that the proposed site of the garage appears to be a logical location based on the alignment of the existing driveway. The lot size is not small (2.33 acres) and, in theory, the garage could be placed elsewhere on the lot. However, if the applicant seeks to locate the garage in a pattern consistent with the existing garage configuration (i.e. located behind the front plane of the house), the available area is limited due to the home’s substantial distance from the road (approximately 250’). In addition, placement options are further limited due to the existing fence enclosure and existing trees.

The owner of the property located at 161 Mason Farm Drive (located to the south of the subject property) has submitted a letter indicating no objection to the proposed 5’ side yard setback.

4. Possible Conditions of Approval

No conditions of approval are identified for this variance request.

SECTION OF ORDINANCE TO BE CONSIDERED:

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

1. Minimum lot sizes, lot width, and yard requirements for principal permitted uses are shown in Table 5.7-1.
2. For any residential use that complies with the Development Review System, the setbacks and lot size shall be as outlined in Article 5.4.<sup>5</sup>

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

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

#212-12

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): DAVID AND TAMMY EVERHART

Address: 193 MASON FARM DRIVE  
KEARNEYSVILLE, WV 25430

Phone Number: 304-728-7693

Location of Property: \_\_\_\_\_

Lot Size: 2.333 ACRES

Deed Book Reference: Deed Book Number 977 ~~662~~ Page Number 228 ~~303~~

Tax Map Reference: District 07-MIDDLEWAY Map 22 Parcel 0061

Zoning District: MIDDLEWAY Rural-gA1 per applicant

Section of Ordinance: 5.7B

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.

Being able to use a level part of my lot for a building and also have access from my blacktop driveway to the building.  
Reduction of side <sup>from</sup> 15' to 5'  
Reduction of rear <sup>from</sup> 50' to 35'

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:

WILL NOT. A letter from the Lot 3 neighbor will be submitted at hearing stating it will NOT affect him. His house is 200+ feet from proposed structure.

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:

~~NO~~ ~~NO~~. This is the only level accessible area free of rocks and able to use driveway. Also will not affect vinyl fence located in rear.

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

YES. Would allow to store equipment, lawn, garden and a boat.

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

YES. I have left room for side maintenance and will be used as residential purposes.

  
Signature of Property Owner

DAVID EVERHART  
Print Name

3/1/12  
Date

|   |   |
|---|---|
| <b>FOR OFFICIAL USE ONLY</b>  |   |
| 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: _____  |   |

#ZV12-12

3-10-12

Jerry Lambert

215.99'

LOT 4

35'

Proposed  
34x50  
Garage/Storage  
building  
18' high

Fenced  
Back  
Yard

Garage

House

Well

100'

513.45'

Cherry Hill  
Subdivision

Septic

reservoir

184.63'

MASON DRIVE

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JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

Driveway

504.99'

504.99'

ZV12-12

3/21/12

To whom it may concern,

As a property owner adjacent to David L. Everhart at 193 Mason Farm Drive, I, Paul Propst, have no objection to the pending 5 foot property line variance being requested. I have no objections to the proposed garage he plans to set along this property line.

Sincerely, *Paul D. Propst*

Paul Propst

161 Mason Farm Drive

Kearneysville, WV 25430

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PLANNING, ZONING AND ENGINEERING



ZV12-12





ZV12-12

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 April 19, 2012

**Fellowship Bible Church (#ZV12-13)**

Item #5 Variance request by property owner, Fellowship Bible Church from Section 4.10 of the Zoning and Land Development Ordinance to allow installation of a 30' x 60' modular classroom without the requirement of site plan submittal, and to amend the conditions of approval for case #ZV10-18.

|                         |   |
|-------------------------|---|
| APPLICANT:              | Fellowship Bible Church   |
| OWNER :                 | Same as above   |
| DEVELOPER:              | n/a   |
| SURVEYOR/ENGINEER:      | n/a   |
| PROPERTY LOCATION:      | 160 Daniel Road, Shenandoah Junction, West Virginia   |
| LEGAL DESCRIPTION:      | District: Charles Town; Map: 3; Parcel: 4.5<br>                      |
| ZONING DISTRICT:        | Zoning Map Designation: Rural<br>                                   |
| SURROUNDING PROPERTIES: | Zoning Map Designation:<br><i>North:</i> Rural <i>South:</i> Rural<br><i>East:</i> Rural <i>West:</i> Rural   |
| LOT AREA:               | 50 acres  |
| PRIOR CASES:            | #S01-08 – PC approval: 9/25/01<br>#S04-20 – PC approval: 09/27/05   |
| VARIANCE(S):            | 09/16/10: BZA approved waiver of site plan for 2 modular units (ZV10-18).<br>08/18/11: BZA approved waiver of a site plan for 1 modular unit (ZV11-22). |
| APPROVED ACTIVITY:      | Church  |

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
April 19, 2012

**Fellowship Bible Church (#ZV12-13)**

RELEVANT INFORMATION:

1. Overview of Request

The applicant seeks to install a 36' x 60' modular building for use as a temporary classroom space until Phase 2 of an approved site plan for a church development is constructed.

In addition, the applicant is seeking to amend the condition of approval for case #ZV10-18. This case, heard by the Board of Zoning Appeals on September 16, 2010, was a request for a variance from Section 4.10 to waive site plan requirements for the installation of two temporary buildings with a combined area of 2,310 square feet. The Board approved the request, with one condition, as recorded in the minutes of this meeting:

“Ms. Hine motioned to approve the above referenced variance request for a period of 24 months from the date of issuance of the first building permit with the understanding that the applicant may request additional time as needed. Mr. Kelly seconded the motion, which carried unanimously.”

On August 18, 2011, the Board approved a second variance from Section 4.10 to waive site plan requirements for the installation of one additional modular building. The square footage of the three modular buildings totaled 2,594 square feet, or 284 square feet greater than the modular building area previously approved by the Board.

This request would allow the installation an additional 2,160 square feet of building area, for use as classroom space, without a site plan.

2. Applicant's Justification of Request

The application states, “Smaller modular classrooms are available but due to our space demands we need two of the smaller classrooms to replace the one larger classroom.”

In the application submitted for the variance requests, 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, “Storm water management is in place for phase II expansion and screen trees were planted during original construction to shield adjacent property.”

- 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 classroom space in the Phase I building was limited by design with the intent of adding additional classrooms with Phase II. This Phase I design allowed us to construct and move in our multipurpose building within our limited budget. Therefore, giving us time to grow our finances until Phase II construction can begin. We have begun the planning stages of Phase II and project construction in two years.”

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
April 19, 2012

**Fellowship Bible Church (#ZV12-13)**

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

The application states, "We have three modular classrooms in use at this time and have need for one additional modular classroom. The use of this classroom will greatly enhance our ministry. We will be able to offer more classes for adults and have a dedicated space for our teen ministry and junior high ministry."

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

The application states, "The original ordinance was not intended to prevent a church from installing a temporary modular classroom."

An addendum to the variance application provides an update regarding the status of the church's Phase II building project. The addendum states,

"In the next one to two years, Fellowship Bible Church plans to have a new site plan designed for Phase II including the modular classrooms that are in use at that time. The modular classrooms are positioned as to not impede construction of Phase II. The modular classroom 'D' that the variance request is for at this time will be the last modular classroom needed for the space demands until Phase II is complete."

The addendum also contains the following request:

"Fellowship Bible Church would also ask to extend the current variance that was issued in October 2010 for an additional two years."

3. Case History

On September 25, 2001, the Planning Commission approved a limited site plan for the Fellowship Bible Church property, including a 24' x 100' pavilion with restrooms and a kitchen, in addition to 50 parking spaces. Subsequently, on September 27, 2005, the Planning Commission approved a site plan for a 13,900 square foot church complex.

The Stormwater Report that accompanied the 2005 site plan included the following information:

"The project involves the construction of the Fellowship Bible Church consisting of the church building and parking lots. . . The project site has additional land that can be developed in the future but no additional development is planned at this time. . . .The project site is a 50.64 acres site located by the intersection of Route 17 and Route 18. . . The proposed pond is designed to accommodate the ultimate condition of the site development including future phases 2 and 3 that result in an ultimate impervious area of 13.63 ac or 63% imp."

The approved 2005 site plan notes that there are 70 required parking spaces for a 350 seat sanctuary. The church has provided 155 parking spaces with appropriate landscaping on the 2005 site plan. The proposed use of the modular units does not increase the size of the sanctuary and therefore does not impact the required parking.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
April 19, 2012

**Fellowship Bible Church (#ZV12-13)**

As noted above, the Board of Zoning Appeals approved two variances for this property to waive the site plan requirements of Section 4.10, on September 16, 2010 and August 18, 2011.

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

Because the 2005 Stormwater Report indicates that the design of the pond included the total build out of the site, the stormwater management plan should be adequate for these temporary structures. Additionally, the 2005 site plan accounts for the parking requirements for full build-out. As such, stormwater, parking, and landscaping have been adequately addressed for this temporary use on the 2005 site plan.

The Board, in its approval of case number #ZV10-18, applied a two-year time limit beginning at the date of issuance of the first building permit. This first permit was issued on October 6, 2010. As such, this variance would expire on October 6, 2012. No similar time limit was applied to the approval of case number #ZV11-22.

5. Possible Conditions of Approval

Two requests are associated with this application, as noted below.

- a. Should the Board choose to approve the request for a variance from Section 4.10 to install a 30' x 60' modular classroom without the requirement of site plan submittal, the Board may want to consider:

- 1) Applying the condition applied to its prior approval of case number #ZV10-18, as reflected in the minutes of the September 16, 2010 BZA meeting:

“Ms. Hine motioned to approve the above referenced variance request for a period of 24 months from the date of issuance of the first building permit with the understanding that the applicant may request additional time as needed. Mr. Kelly seconded the motion, which carried unanimously.”

- b. Should the Board choose to approve the request to amend the conditions of approval for case #ZV10-18 to extend the expiration date of the variance for another two years, the Board may want to consider:

- 1) Establishment of a single expiration date applying uniformly to all modular buildings.
- 2) A requirement that all modular buildings have access via an accessible route meeting the standards of the Americans with Disabilities Act.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
April 19, 2012

**Fellowship Bible Church (#ZV12-13)**

SECTION OF ORDINANCE TO BE CONSIDERED:

**Section 4.10 Site Plan Requirements**

- A. A site plan shall be submitted for all commercial, townhouse and multi-family residential, industrial, and institutional development in any district and for all major additions or expansions of existing uses as defined in Article 2, in accordance with the requirements of the Subdivision and Land Development Regulations and this Ordinance.<sup>23</sup>



# 2V12-13

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): FELLOWSHIP BIBLE CHURCH

Address: 160 DANIEL ROAD  
SHENANDOAH JUNCTION, WV 25442

Phone Number: 304-728-3700

Location of Property: CORNER OF FLOWING SPRINGS ROAD AND  
DANIEL ROAD

Lot Size: 50.768 ACRES

Deed Book Reference: Deed Book Number 992 Page Number 338

Tax Map Reference: District CT Map 3 Parcel 45

Zoning District: RURAL

Section of Ordinance: 4.10

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.

SEE ATTACHMENTS

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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:

\_\_\_\_\_  
\_\_\_\_\_

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.):

\_\_\_\_\_  
\_\_\_\_\_

SEE ATTACHMENTS

*Richard L Beddow Jr*

Signature of Property Owner

RICHARD L BEDDOW JR

Print Name

3-22-12

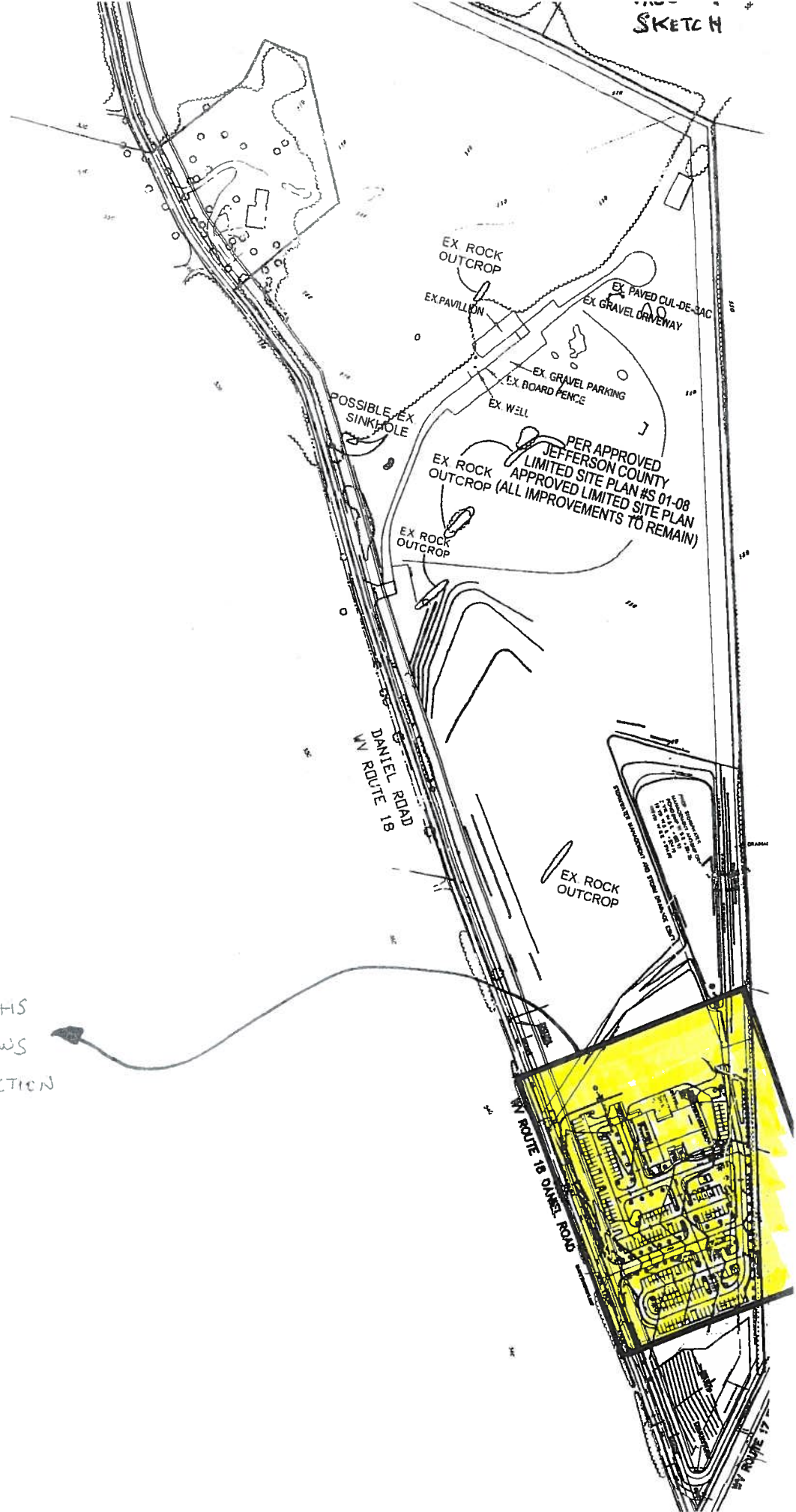
Date

|   |   |  |
|---|---|--|
| CK. #6571   | <b>FOR OFFICAL USE ONLY</b>                             |  |
| Fees Paid: \$100.00   | Date Application / Fees Received: <u>MARCH 23, 2012</u> |  |
| Date of meeting / Public Hearing: <u>APRIL 19, 2012 @ 3:00 pm</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 APRIL 4, 2012</u>                             |   |  |
| Official Action of Board: _____   |   |  |
| _____   |   |  |
| Official Signature and Seal: _____  |   |  |

Fellowship Bible Church  
Variance Request  
Page 1

Fellowship Bible Church is requesting a variance from ordinance 4.10 to allow set up of one additional modular classroom. Since September 2010, permission was given for three modular classrooms which have been installed and are in use. See attached photos. These three existing modular classrooms have been great in helping alleviate Sunday and Wednesday night classroom space needs. Space for youth groups still continues to be a problem. We have an opportunity to purchase one large modular classroom that could solve this problem until our Phase II project can be completed. Fellowship Bible Church is requesting permission for a fourth modular classroom.

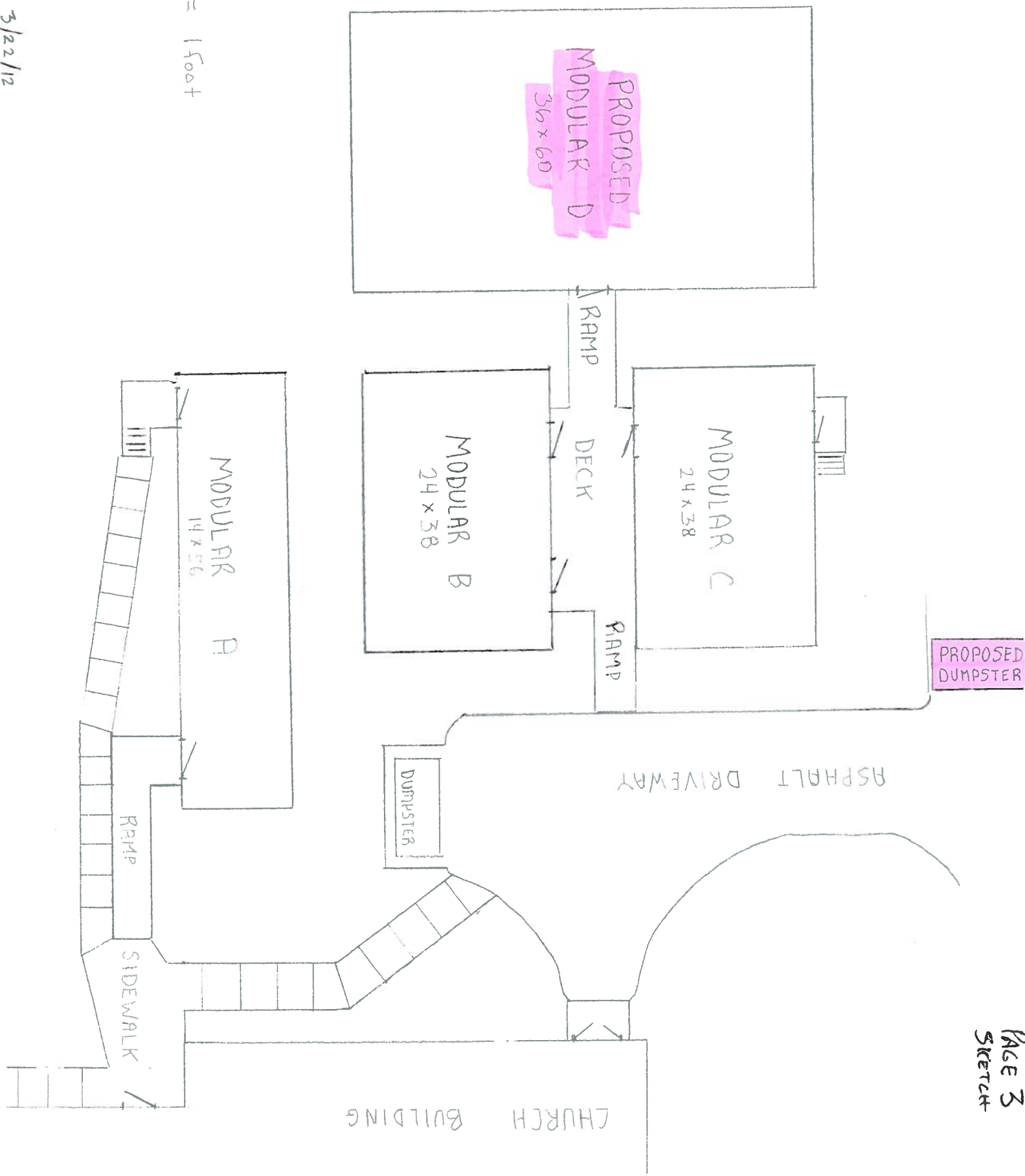
1. This variance will not adversely affect public health, safety or welfare, or the rights of adjacent property owners or residents. Storm water management is in place for phase II expansion and screen trees were planted during original construction to shield adjacent property.
2. This variance arises 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. Our classroom space in the Phase I building was limited by design with the intent of adding additional classrooms with Phase II. This Phase I design allowed us to construct and move in our multipurpose building within our limited budget. Therefore, giving us time to grow our finances until Phase II construction can begin. We have begun the planning stages of Phase II and project construction in two years.
3. The variance would eliminate an unnecessary hardship and permit a reasonable use of the land. We have three modular classrooms in use at this time and have need for one additional modular classroom. The use of this classroom will greatly enhance our ministry. We will be able to offer more classes for adults and have a dedicated space for our teen ministry and junior high ministry.
4. The variance will allow the intent of the zoning ordinance to be observed and substantial justice done. The original ordinance was not intended to prevent a church from installing a temporary modular classroom.



ENLARGED SKETCHES  
ON PAGE 243 SHOWS  
INTENDED CONSTRUCTION

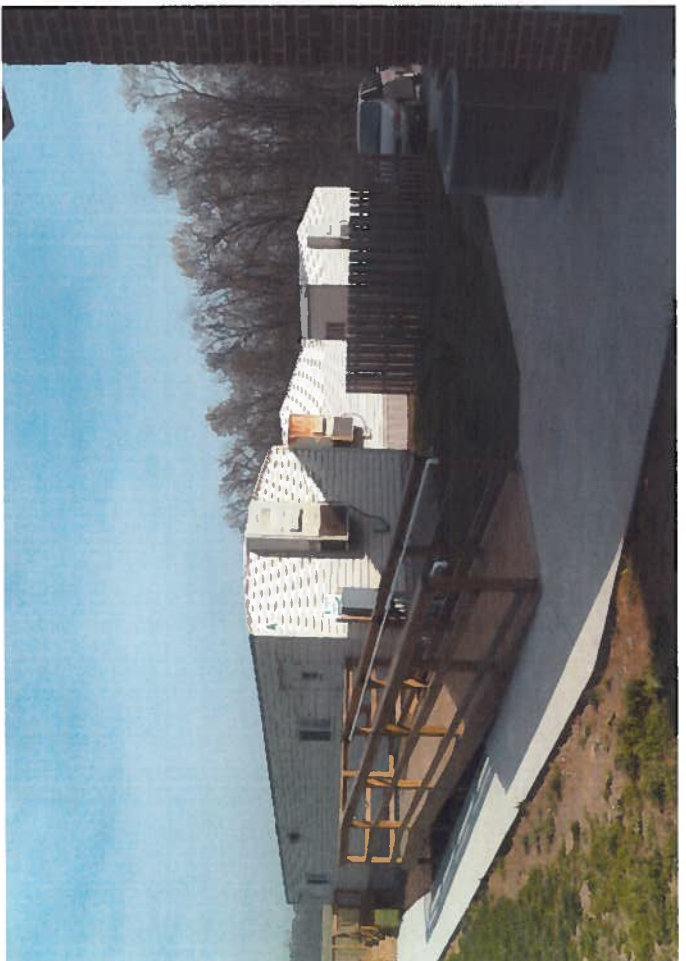
SITE MAP  
(SCALE: 1"=200')





SCALE  $\frac{1}{16}'' = 150ft$

R. BEDDARD  
P.L. JONES  
3/22/12



## Addendum to Variance Request for Fellowship Bible Church

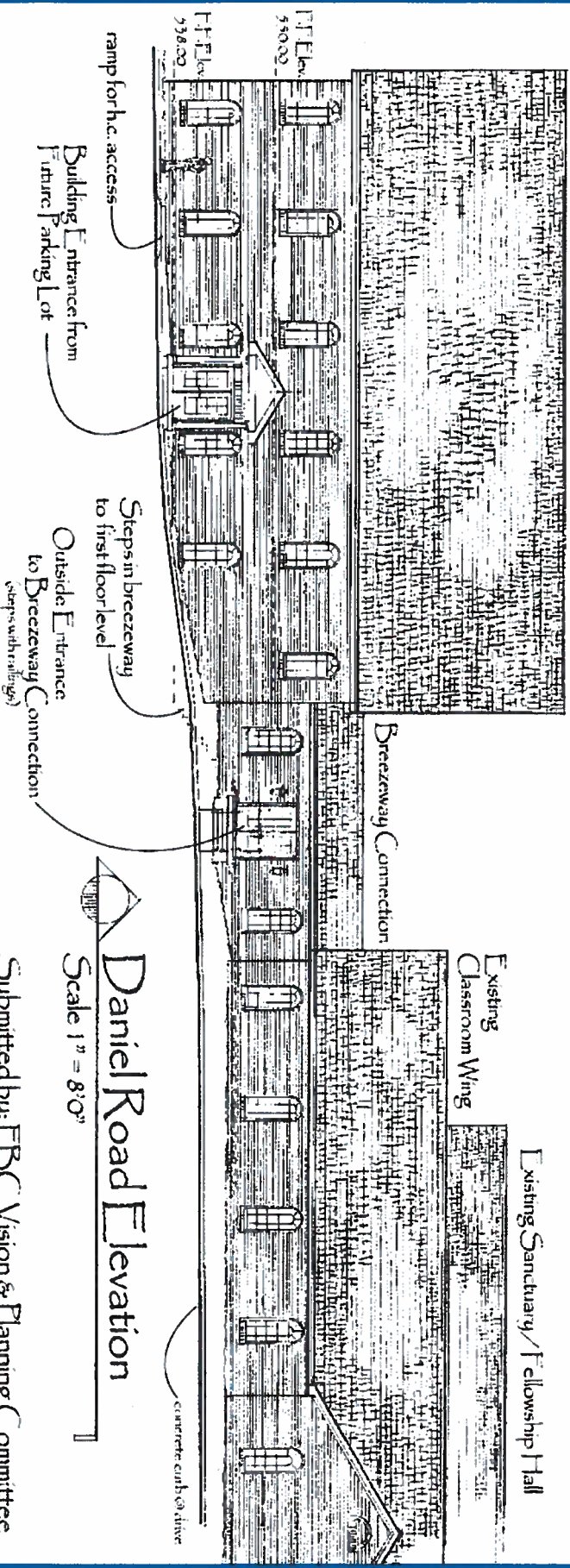
Fellowship Bible Church is progressing toward a Phase II building project. This addition to the existing building will provide an additional 12,000 square feet of space used for an educational wing. A building committee was formed in 2011 and has completed the first stages of planning and design. (See attached) In the next one to two years, Fellowship Bible Church plans to have a new site plan designed for Phase II including the modular classrooms that are in use at that time. The modular classroom locations are positioned as to not impede construction of Phase II. The modular classroom "D" that the variance request is for at this time will be the last modular classroom needed for the space demands until Phase II is complete. Fellowship Bible Church would also ask to extend the current variance that was issued in October 2010 for an additional two years.

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**JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING**

# Proposed Education Building



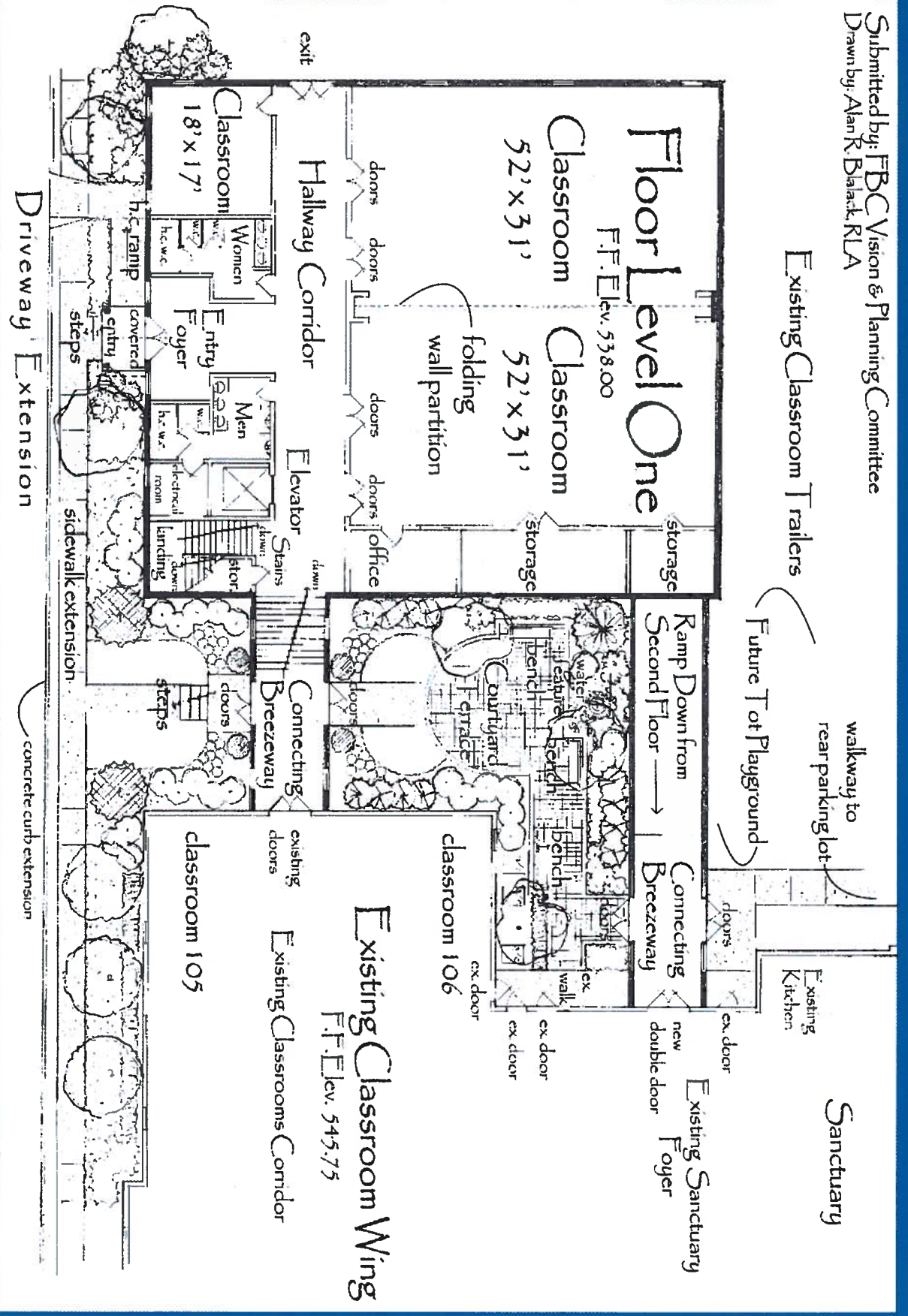
Daniel Road Elevation  
 Scale 1" = 8'-0"

Submitted by: FBC Vision & Planning Committee  
 Drawn by: Alan R. Balack, RIA

Fellowship Bible Church

Conceptual Plans  
 Proposed Education Building

Submitted by: FBC Vision & Planning Committee  
 Drawn by: Alan R. Black, RLA



Existing Classroom Trailers

Future T at Playground

walkway to rear parking lot

Sanctuary

# Floor Level One

F.F. Elev. 538.00

Classroom  
52' x 31'

Classroom  
52' x 31'

Classroom  
18' x 17'

Hallway Corridor

Elevator

Entry

Men

Women

Telephone room

Storage

Stairs

Connecting Brezeway

classroom 105

classroom 106

Existing Classroom Wing

F.F. Elev. 545.75

Existing Classrooms Corridor

Ramp Down from Second Floor

Connecting Brezeway

Existing Sanctuary Foyer

Existing Kitchen

Driveway Extension

sidewalk extension

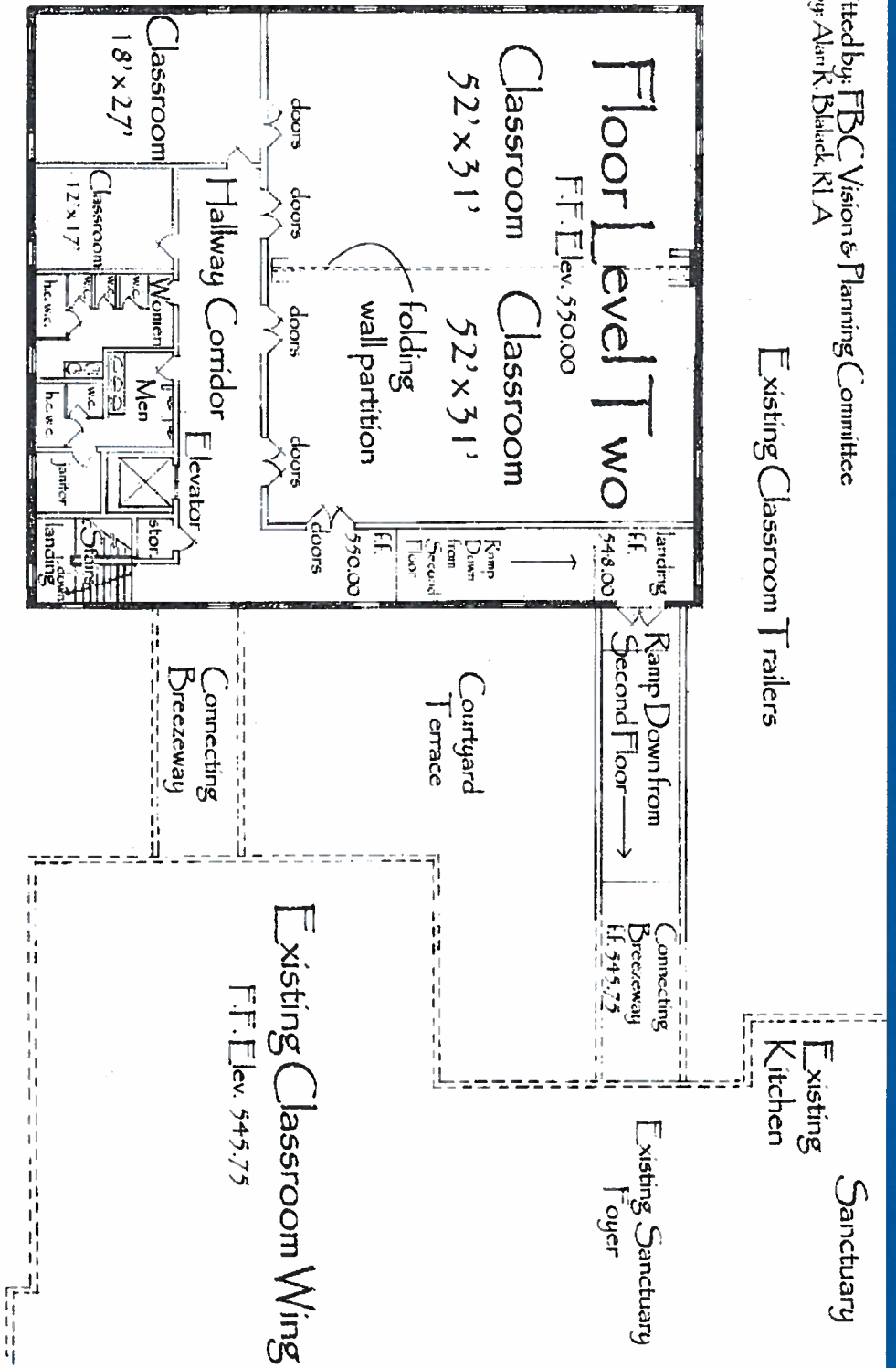
concrete curb extension

# Fellowship Bible Church

Conceptual Plans  
 Proposed Education Building

Submitted by: FBC Vision & Planning Committee  
Drawn by: Alan K. Baldeck, RIA

### Existing Classroom Trailers



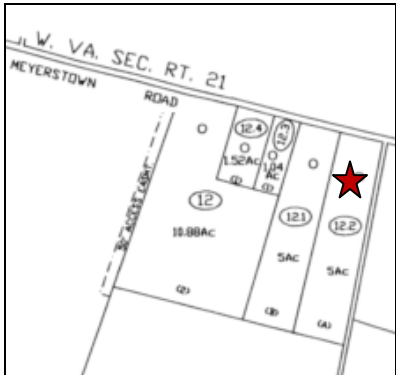
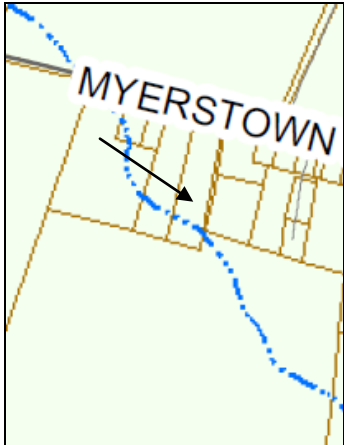
# Fellowship Bible Church

Conceptual Plans  
Proposed Education Building

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 April 19, 2012

**Patrick A. & Jennifer J. McMillan Request (#ZV12-14)**

Item #6 Variance request by property owners, Patrick A. & Jennifer J. McMillan from Section 4.3(H) of the Zoning and Land Development Ordinance to re-establish a barn with nonconforming setbacks that was destroyed by fire and replace it with a 40'x 60'x 12' pole barn in approximately the same location.

|                         |  |
|-------------------------|--|
| APPLICANT:              | Patrick A. & Jennifer J. McMillan  |
| OWNER:                  | Same as above  |
| DEVELOPER:              | n/a  |
| SURVEYOR/ENGINEER:      | n/a  |
| PROPERTY LOCATION:      | 1952 Meyerstown Road, Charles Town, West Virginia  |
| LEGAL DESCRIPTION:      | District: Kabletown (06); Map: 20; Parcel: 12.2<br> |
| ZONING DISTRICT:        | Zoning Map Designation:<br>Rural<br>               |
| SURROUNDING PROPERTIES: | Zoning Map Designation:<br><i>North:</i> Rural <i>South:</i> Rural<br><i>East:</i> Rural <i>West:</i> Rural                            |
| LOT AREA:               | 5 acres  |
| VARIANCE(S):            | None   |
| APPROVED ACTIVITY:      | Residential  |

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
April 19, 2012

**Patrick A. & Jennifer J. McMillan Request (#ZV12-14)**

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking to re-establish a barn with nonconforming setbacks that was destroyed by fire and replace it with a 40'x 60'x 12' pole barn that will be located approximately 25' from the side property line. The previous barn was located approximately 4' from the property line, per the Jefferson County GIS system.

The standard setback for a barn is 75', per Section 8.2 of the Zoning Ordinance.

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. The rebuild of the barn will pose no effect on public health, safety or welfare or rights of adjacent property owners – attached are signed affidavits of bordering owners."

- 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, "My barn was destroyed by fire and has posed hardships for storage and a safe environment for the horses during extreme inclement weather & feeding schedules – see attached."

A letter submitted with the application states, "My property is not level in most of the upper field area, and the previous barn site is the most level site in the upper field".

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

The application states, "Would eliminate loss of storage for farm equipment and hardships on the horses due to weather & feeding issues."

A letter submitted with the application states, "If I have to relocate the barn to another area in the upper field, I would have additional costs to clear and level that site and also the cost for 4-5 loads of shale to level that site. This would include removing 3 locust trees with additional costs for that and placing the pole barn where my round pen is currently located."

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

The application states, "By building the pole building in the location where previous barn was, it will not adversely affect neighboring property owners."

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
April 19, 2012

**Patrick A. & Jennifer J. McMillan Request (#ZV12-14)**

3. Staff Evaluation of Request

The applicant has submitted letters from Catherine Silver and Benjamin King, adjacent neighbors indicating approval of the proposed setback variance. Ms. Silver is an owner of the property located at 1974 Myerstown Road, abutting the subject property to the east – this property appears to be that which would be most affected by the proposed variance.

What appears to be a 20' access easement containing a driveway separates the subject property from the adjacent residential property. Aerial photos of the property indicate that other buildings situated along the access easement are located closer to the easement than setbacks would otherwise allow, although it is not known whether or not these buildings are used for agricultural purposes.

The property is of sufficient size for a barn to be located in other areas; however, the relatively narrow width of the lot (varying between 200' and 250' per the sketch submitted by the applicant) limits the placement options for the barn within the area that would otherwise be allowed by the required 75' setback. The applicant has also provided information regarding why the barn is proposed to be replaced in the same general location as the previous barn.

While no survey was submitted showing the exact location and dimensions of the previous barn, staff utilized geospatial tools to estimate its former size and location. The approximate dimensions of the former structure, as measured via aerial photos and GIS, are 35' x 62'. The proposed barn size (40' x 60') is generally consistent with the apparent size of the previous barn. GIS indicates that the barn was located approximately 4' from the adjacent driveway at its closest point. The proposed setback of 25' would – by comparison – be more consistent with the intent of the Zoning Ordinance than the setback of the previous barn.

4. Possible Conditions of Approval

No conditions of approval are identified for this variance request.

SECTION OF ORDINANCE TO BE CONSIDERED:

**Section 4.3 Nonconforming Uses**

H. A nonconforming use destroyed by a natural or unnatural calamity cannot be rebuilt without approval of the Board of Zoning Appeals upon application by the owner and pursuant to the variance and appeal procedures outlined in Article 3.<sup>12, 17, 21, 23</sup>

**Section 8.2 Barns and Feeding Pens<sup>23</sup>**

Barns and feeding pens must be set back a minimum of 75' from a residential district, a lot with a residential use, a church, a school, or an institution for human care.

#ZV12-14

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): Patrick A & Jennifer J. McMillan

Address: 1952 Meyerstown Road  
Charles Town, WV 25414

Phone Number: H-304-725-6287 c-304261011\*

Location of Property: Jefferson County  
Kabletown District, Meyerstown Road

Lot Size: 5 acres

Deed Book Reference: Deed Book Number 568 Page Number 678

Tax Map Reference: District 06 Map 20 Parcel 0012 0002 0000

Zoning District: 06 Kabletown Rural gen

✓ Section of Ordinance: 4.3.(H) gH

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.

See attached documents.

The pole barn is a 40x60x12  
that we would like to install -  
see attachments for engineering  
plans.

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.

RECEIVED  
MAR 23 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:

no - the rebuild of the barn will pose no affect on public health, safety or welfare or rights of adjacent property owners - attached are signed affidavits of bordering owners.

- 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:

My barn was destroyed by fire and has posed hardships for storage and a safe environment for the horses during extreme inclement weather & feeding schedules - see attached

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

would eliminate loss of storage for farm equipment and hardships on the horses due to weather + feeding issues

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

By building the pole building in the location where previous barn was, it will not adversely affect neighboring property owners

Patrick A. McMillan  
Jennifer J. McMillan

Signature of Property Owner

PATRICK A. McMillan

Jennifer J. McMillan

Print Name

3-20-2012

Date

**FOR OFFICAL USE ONLY**

Fees Paid: \$100.00 CASH Date Application / Fees Received: MARCH 23, 2012

Date of meeting / Public Hearing: THURSDAY APRIL 19, 2012 @ 3:00PM

Official Administrative Body: Jefferson County Board of Zoning Appeals

Posting Requirements: 15 Number of Days Prior to Scheduled Hearing

Advertising Dates: WEDNESDAY, APRIL 2, 2012

Official Action of Board: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Official Signature and Seal: \_\_\_\_\_

March 21, 2012

Patrick & Jennifer McMillan

TO: Jefferson County Zoning

1952 Meyerstown Road

Charles Town, WV 25414

I am requesting a variance to re-build my barn, which was destroyed by fire on February 14<sup>th</sup> 2012 around 3:05 a.m. The barn had been located in the approximate area on shown on Attachment B for 30 years. After the fire, I had paid a contractor to come to the barn site to clean-up and remove the debris and prepare the site to replace the barn (not realizing I had to go through the Planning/Zoning to apply for a variance at that time). This clean-up totaled \$1,650.00.

My property is not level in most of the upper field area, and the previous barn site is the most level site in the upper field and has been slated to install a new pole barn.

If I have to relocate the barn to another area in the upper field, I would have additional costs to clear and level that site and also the cost for 4-5 loads of shale to level that site. This would also include removing 3 locust trees with additional costs for that and placing the pole barn where my round pen is currently located (Attachment C).

The loss of my barn has created an immense hardship on us due to the loss of storage, and having a place to bring the horses in during extreme weather and replacement costs. The hardship is also reflected in having to move the barn location, due to extensive costs of leveling and filling in with shale in a new location, as we have already paid a contractor to clear/level the original site. My horses are only in the barn approximately 7% of the time which is during bad weather or during preparation for horse shows/grooming.

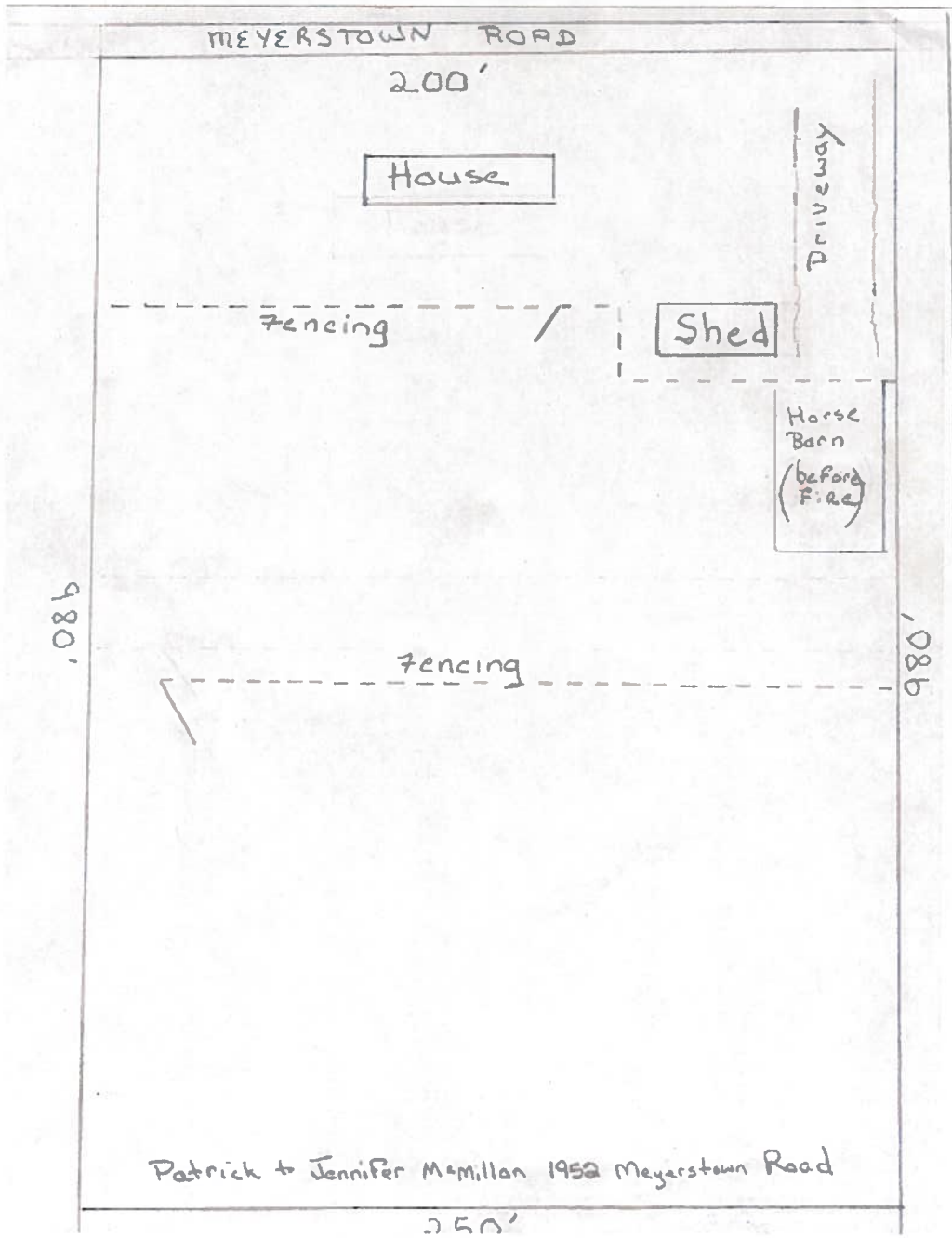
Also attached are photos of the original site of the barn (after clean-up & debris removal) Attachments (D, E & F) and an aerial photo taken off of Google Earth on 22 Mar 2012 (Attachment H) before the barn fire.

Our property is labeled as Rural and the front and back of the property are farm fields.

My neighbors have also signed a document saying they do not oppose me re-building on the original barn site. We would actually move the barn site an additional ~~8 to 10~~ <sup>37</sup> feet from our border line which would put the barn approximately ~~22~~ <sup>37</sup> feet from the neighbor's border line. There is a 12 foot driveway within that ~~37~~ <sup>37</sup> feet. All of the homes on any bordering property are located over 250 feet from the original barn location.

**Attachment A**

SMITH  
PROPERTY



SILVER  
PROPERTY

House

PRIVATE DRIVE

House

Patrick + Jennifer McMillan 1952 Meyerstown Road

250'

ATTACHMENT B



ATTACHMENT C



ATTACHMENT D

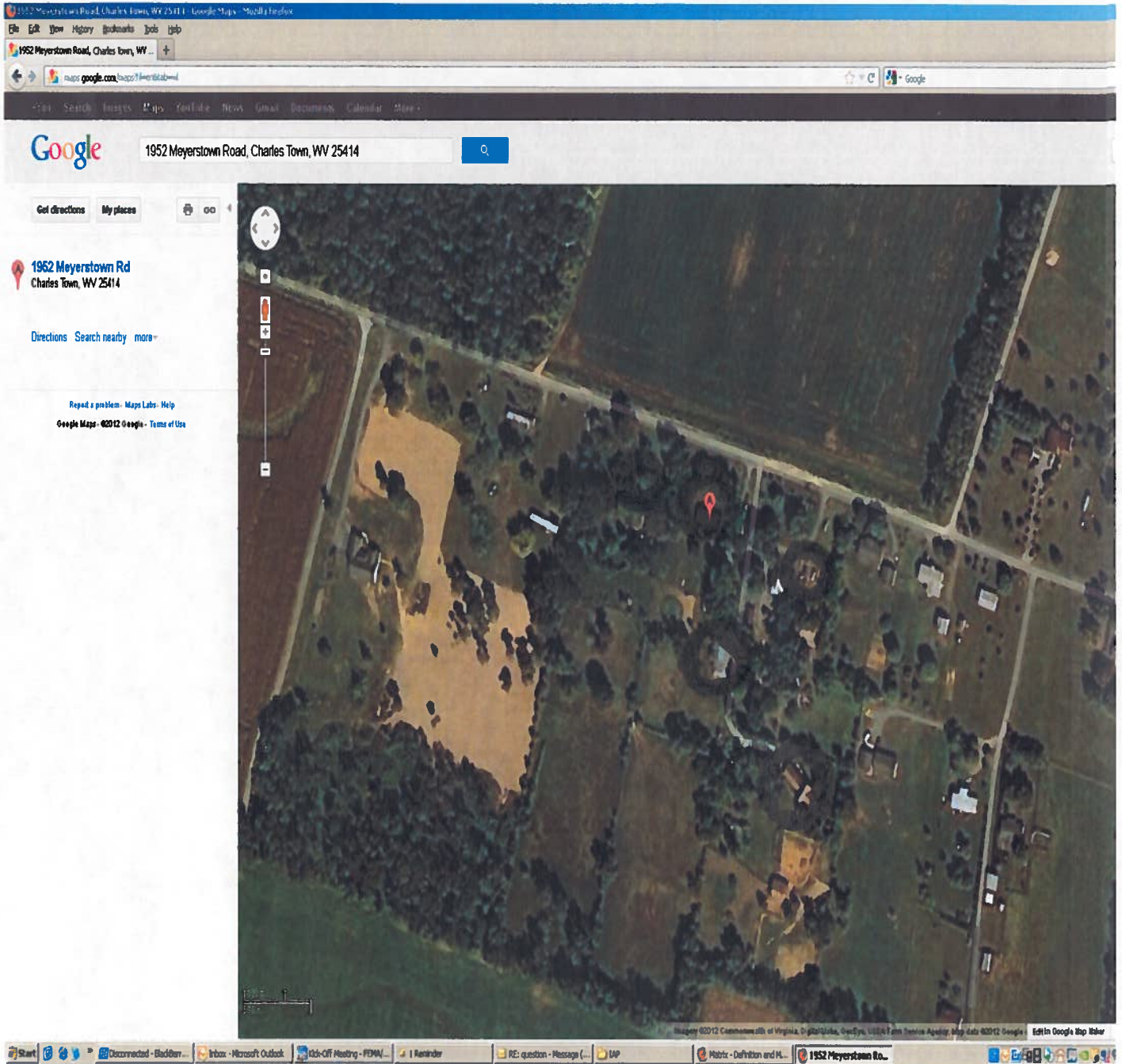


ATTACHMENT E



ATTACHMENT F





Attachment H





**EAVE SIDE 2/GABLE SIDE 2 3D PERSPECTIVE**



20 March 2012

To: Jefferson County Zoning

This is to notify you that I approve of my neighbors, Jennifer and Patrick McMillan at 1952 Meyerstown Road, Charles Town, WV 25414 to rebuild their horse barn on the same location or at least 5 feet from our bordering property line on Meyerstown Road, Charles Town, WV. This is the same location where their horse barn structure originally stood and they lost it to a fire on February 14, 2012.

20 March 2012

Benjamin King  


ZV12-14

20 March 2012

To: Jefferson County Zoning

This is to notify you that I approve of my neighbors, Jennifer and Patrick McMillan at 1952 Meyerstown Road, Charles Town, WV 25414 to rebuild their horse barn on the same location or at least 5 feet from our bordering property line of 1974 Meyerstown Road, Charles Town, WV. This is the same location where their horse barn structure originally stood and they lost it to a fire on February 14, 2012.



20 March 2012

**Jennilee Hartman**

ZV12-14

**From:** Zoning Dept <zoning@jeffersoncountywv.org>  
**Sent:** Thursday, April 12, 2012 9:29 AM  
**To:** jhartman@jeffersoncountywv.org  
**Subject:** Fw: Attached is the propped tree quote  
**Attachments:** DOC052.PDF

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

**From:** "Jennifer McMillan" <baymare01@hotmail.com>  
**Sent:** 4/11/2012 5:49:41 PM  
**To:** zoning@jeffersoncountywv.org  
**Subject:** FW: Attached is the propped tree quote

Zoning Committee

Attached is the estimate for the removal of the 3 locust trees on the only other area we could put the barn if we can't put it where we asked on the variance. I dropped off the estimate on preparing the only other site location which was \$4900, and if there was rock (which there is) it would be additional funds to move the barn to this site. This is another hardship on not being able to put the barn close to the original site. While I was there on Monday, I changed the variance papers to move the original barn site over to 25 feet from our border instead of the original 10 feet. So if we put the barn 25 feet from our border, and add the other 12 feet of the private road/drive it would be a total of around 37 feet from the neighbors border line. Please submit this estimate along with my 'variance' paperwork. We have already paid \$1650.00 to clear the original site and for all the debris removal....those receipts are already with my file there. Thank you for all of your help on this matter. I just hope we can get this resolved next week and I appreciate all of you guidance on this.

Jennifer McMillan

---

**From:** [DMcMillan@valleycrest.com](mailto:DMcMillan@valleycrest.com)  
**To:** [baymare01@hotmail.com](mailto:baymare01@hotmail.com)  
**Date:** Wed, 11 Apr 2012 11:48:07 -0700  
**Subject:** Attached is the propped tree quote

**Devin McMillan**

Production Manager

Valley Crest Tree Care

\* Copies mailed to BZA for 04/19/12 mtg. (packet) - gth

2V12-14

No. 1111423



Authorization for Extra Work

Date 4/7/12  
 Client Name Jennifer McMillan  
 Client/Jobsite Phone No. 304-725-6287  
 Job Name \_\_\_\_\_  
 Description of Work tree removals

**INTERNAL USE ONLY**  
 Client Number \_\_\_\_\_  
 Job Number/Coding \_\_\_\_\_  
 Purchase/Work Order \_\_\_\_\_  
 Tax Code: \_\_\_\_\_

OTHER NOTES:

- Do not mail; send invoice back to branch
- Attach copy of signed approval letter w/invoice

| Item No.  | Type of Labor, Equipment or Materials Used         | Hours or Quantity | Unit Price | Total            |
|---|--|-------------------|------------|------------------|
| ①   | Remove 3 locust trees bordering proposed barn plan |                   | \$800.00   | \$2400.00        |
|   | includes removal of all debris and fuel surcharge  |                   |            |                  |
| <b>RECEIVED</b>   |  |                   |            |                  |
| APR 12 2012   |  |                   |            |                  |
| JEFFERSON COUNTY<br>PLANNING, ZONING AND ENGINEERING    |  |                   |            |                  |
| <b>Total Labor &amp; Materials, including Sales Tax</b> |  |                   |            | <u>\$2400.00</u> |

This bid is valid for 60 calendar days unless otherwise approved by ValleyCrest Landscape Maintenance

**THIS IS NOT AN INVOICE**

Instructions to Job Superintendent: No work is to be performed without this written authorization being correctly completed and signed by the authorized agent of the Contractor or Owner. Give Customer's Copy to the agent. ALL other copies (with the exception of the Field Copy) MUST be submitted to your branch office promptly upon completion of the work.

Instructions to Contractor or Owner: This work order properly signed by your agent has been accepted as authorization to perform the work. An invoice accompanied by a copy of this order will be forwarded to your office for payment when the work is completed. All work will be performed in accordance with the "General terms and conditions" which are printed on reverse and are incorporated herein by reference.

X [Signature]  
 Approved by Valley Crest Representative

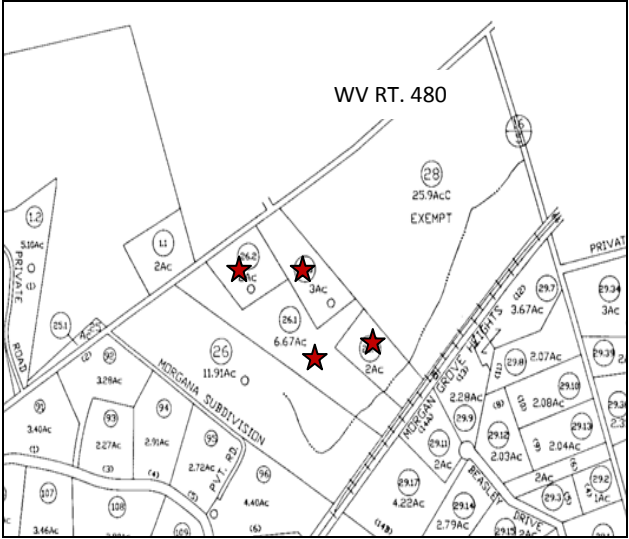
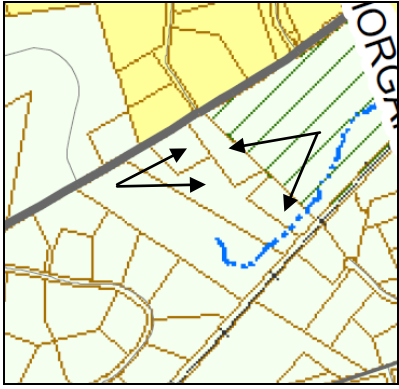
X \_\_\_\_\_  
 Approved by Client Representative Date

#Attached w/ email.

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 April 19, 2012

**Morgan's Grove Market Conditional Use Permit File (#CP12-01)**

Item #7 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 consist of a Food Hub, General Merchandise (retail), Professional/Business Offices, Community Amenities, and other associated uses as described in the application.

|                                      |   |                  |                 |                                      |                |
|--------------------------------------|---|------------------|-----------------|--------------------------------------|----------------|
| APPLICANT:                           | Peter Corum   |                  |                 |                                      |                |
| OWNER:                               | Twin Oaks Subdivision, LLC  |                  |                 |                                      |                |
| DEVELOPER:                           | Same as above   |                  |                 |                                      |                |
| SURVEYOR/ENGINEER:                   | None  |                  |                 |                                      |                |
| PROPERTY LOCATION:                   | 3988 Kearneysville Pike, Shepherdstown, West Virginia.<br>On Route 480, adjacent to Morgan's Grove Park.  |                  |                 |                                      |                |
| LEGAL DESCRIPTION:                   | <p style="text-align: center;">District: Shepherdstown; Map: 13;<br/>Parcel(s): 26.1, 26.2, 26.3 and 26.4</p>    |                  |                 |                                      |                |
| ZONING DISTRICT:                     | <p style="text-align: center;">Zoning Map Designation: Rural (R)</p>    |                  |                 |                                      |                |
| SURROUNDING PROPERTIES:              | <p style="text-align: center;">Zoning Map Designation:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"><i>North:</i> RG</td> <td style="width: 50%; border: none;"><i>South:</i> R</td> </tr> <tr> <td style="width: 50%; border: none;"><i>East:</i> R [Public/Quasi-Public]</td> <td style="width: 50%; border: none;"><i>West:</i> R</td> </tr> </table> | <i>North:</i> RG | <i>South:</i> R | <i>East:</i> R [Public/Quasi-Public] | <i>West:</i> R |
| <i>North:</i> RG                     | <i>South:</i> R   |                  |                 |                                      |                |
| <i>East:</i> R [Public/Quasi-Public] | <i>West:</i> R  |                  |                 |                                      |                |

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 April 19, 2012

**Morgan's Grove Market Conditional Use Permit File (#CP12-01)**

|  |  |
|--|--|
| LOT AREA:  | Total Site Area: 13.68 acres   |
| ZONING MAP AMENDMENT:<br><i>PC File # Z11-05</i>             | Submitted: 9/22/11<br>Denied: 12/8/11  |
| CONDITIONAL USE PERMIT<br><i>PC File #Z06-01</i>             | Submitted: 02/22/06<br>Approved: 08/17/06<br>Expired: 2/17/09  |
| COMMUNITY IMPACT STATEMENT<br>(CIS)<br><i>PC File #06-33</i> | Submitted: 10/29/06<br>Staff Review Mtg.: 11/3/06<br>County Engineer Approval: 03/22/07<br>County Planner Approval: 03/19/07<br>PC Approval: 04/24/07<br>Original expiration date: 11/03/08;<br>Extended to: 02/17/2009; 12/09/09  |
| PRELIMINARY PLAT   | Submitted: 11/30/07<br>Staff Review Mtg.: 12/10/07<br>Approved: 08/06/08   |
| SITE PLAN  | N/A  |
| FINAL PLAT   | Submitted: 8/8/08<br>Public Hearing and Approval: 10/14/08   |
| VARIANCE HISTORY   | 02/21/08: BZA approved a 12 month extension (until 02/17/09) for the expiration date of the Conditional Use Permit.<br>08/26/08: PC granted a 3 month variance for Final Plat approval from 11/03/08 to 02/17/09.<br>12/09/08: PC granted a 12 month variance from 12/09/08 to 12/09/09 to bond and record Town Run Commons Subdivision.<br>12/08/09: Variance requested for 1 year extension to bond and record Town Run Commons Subdivision. This request could not be heard due to a recusal leaving a lack of a quorum.<br>01/12/10: PC denied a request for a 1 year extension to bond and record Town Run Commons Subdivision. |
| ZONING CERTIFICATE<br><i>#ZC11-15</i>                        | Zoning Certificate issued for: "Market for the sale of farm products and incidental products, including arts and crafts . . . Live music, events, and performances are permitted if secondary to the market. Events may not be a primary attraction or conducted on non-market days."  |

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
April 19, 2012

**Morgan's Grove Market Conditional Use Permit File (#CP12-01)**

RELEVANT INFORMATION:

1. Overview

The applicant seeks to establish “an agricultural based economic empowerment zone.” The application lists the proposed land uses according to four categories: “Food Hub”, General Merchandise (retail), Professional/Business Offices, and Community Amenities. Up to 65,000 square feet of commercial-retail space is proposed.

The full set of proposed uses listed in the application is as follows:

Food Hub

- a. Retail-Wholesale food distribution-storage
- b. Community Kitchen
- c. Restaurant (limited to 100 seats)
- d. Bakery
- e. Butcher Shop
- f. Accessory Uses

General Merchandise (Retail)

- a. Fresh-Local Food Market
- b. Hardware Store
- c. Antique Shop
- d. Cottage Industry
- e. Accessory Uses

Professional - Business Offices

- a. Medical, Dental, Optical, Health Clinic (small)
- b. Banking, Accounting, Insurance
- c. Sales for offsite services (home improvements)
- d. Other types of professional - business offices

Community Amenities

- a. Health Activities Facility
- b. Alternative Energy Distribution point (limited)
- c. Public-Private Access Pool
- d. Entertainment-Sports Facility
- e. Conference-Meeting-Event Space

The application includes exhibits, including a sketch plan submitted with the application shows the proposed locations of buildings and parking areas on the site. The application includes an addendum submitted on January 27, 2012. This addendum included updated exhibits and is located at the back of the application.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
April 19, 2012

**Morgan's Grove Market Conditional Use Permit File (#CP12-01)**

The application describes the proposed development broadly as “a campus style mix of diverse economic growth opportunities with a common local sustainability theme.” The application also states the following objectives:

- *Provide a point of aggregation and distribution for locally grown and value added foods. (Critical- everything will be local. Ex Cedar Springs micro greens onsite)*
- *Educate the public about health and fitness, while providing a venue for public exercise (Ex. Shepherdstown CareJam, Outdoor Zumba).*
- *Provide a place for local artist to work, promote and sell their work (Ex. AHA! Washington Street Galley and Gifts and Over the Mountain Studio).*
- *Eliminate barriers of entry for entrepreneurs and their business ideas (Ex. Health Department- Community Kitchen).*
- *Provide an economic platform for non-profits and for profit businesses to collaborate (Ex. Sustainable Shepherdstown, 4-H, PV AS).*

Regarding the size and phasing of the project, the application states:

*“ . . . plans include an initial 15,000 square feet of commercial-retail space. The space would be in one or more individual structures. Negotiations for various operators of that space are in progress. The major theme of development will continue to be in support of the agricultural industry of Jefferson County. Providing facilities for entrepreneurs, small local retail and professional services is a priority. Previous use evaluations of this property have indicated that expansion to a total of 65,000 square feet of commercial-retail space can be accommodated comfortably. Total build out and time frame will be determined by continued community input and support.”*



Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
April 19, 2012

**Morgan's Grove Market Conditional Use Permit File (#CP12-01)**

2. Existing Conditions

a. Location

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

b. Zoning

The subject property lies within the Rural zoning district. Because many of the proposed land uses are not permitted in both of these districts, a Conditional Use Permit is required to establish the uses, per Section 4.1 of the Zoning and Land Development Ordinance. As such, the Applicant is required to complete the Development Review System and to attain Board of Zoning Appeals approval of the land uses prior to obtaining a Zoning Certificate. This process is as described in Articles 6 and 7 of the Ordinance, and is outlined below.

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

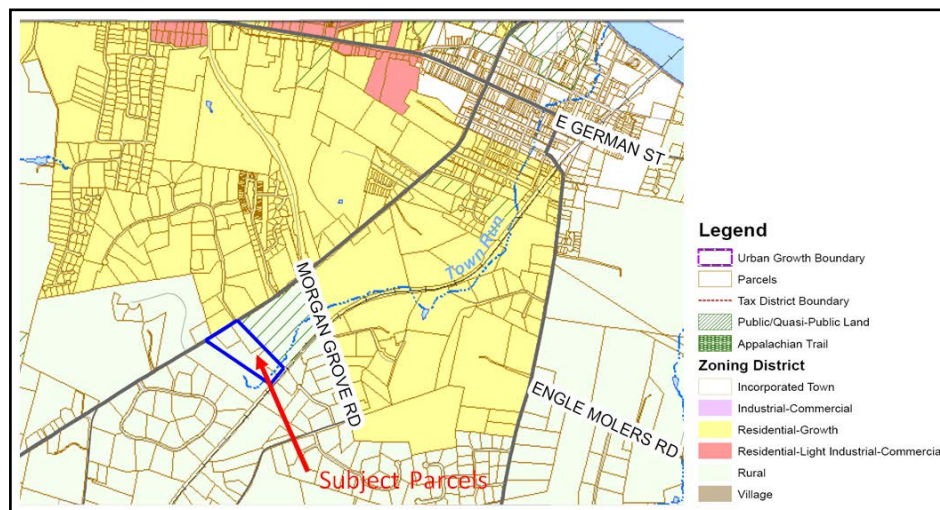
c. Land Use

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

The property also contains a concrete building pad and asphalt parking lot adjacent to Route 480. This portion of the property is currently used as the site for Morgan's Grove Market, an open-air farmers' market. The Planning and Zoning Department issued a Zoning Certificate for a "Market for the sale of farm products and incidental products, including arts and crafts . . . Live music, events, and performances are permitted if secondary to the market."

The building pad and parking lot were associated with a restaurant that previously occupied the site. Henry's Restaurant (a nonconforming use apparently established in 1968) was destroyed by fire in 1993. The Board denied a request to re-establish the nonconforming commercial on December 18, 2003.

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



Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
April 19, 2012

**Morgan's Grove Market Conditional Use Permit File (#CP12-01)**

d. Environmental Characteristics

Per the application narrative,

*“The subject property consists of open fields, tree groves and a riparian area associated with the Town Run stream. The most significant stands of trees occur along the property’s perimeter. Individual trees can be found in the vicinity of the existing structure along Kearneysville Pike and the existing structure adjacent to Town Run. Town Run is a perennial stream and is located on the eastern most section of the property running adjacent to the railroad right-of-way.”*

It is noted that the rear portion of the property also contains an area of 100-year floodplain.



Photo provided by applicant, 4/11/12. Description: “Stream buffer condition.”

e. Utilities

The application states that there are no sewer lines located within 1,320 feet of the subject property.

Following the submittal of the application, the Corporation of Shepherdstown provided a letter to the Board of Zoning Appeals stating, “The Utilities [i.e. Shepherdstown water and sewer] have main service lines located across Kearneysville Pike. We have not been made aware of any feasibility issues with connecting to those lines.” This letter is included in the Board of Zoning Appeals packet for the April 19, 2012 meeting.

f. Historic Resources

Regarding historic resources on or near the property, the application states:

*“There are no historic structures on the subject property and a review of the National Register of Historic Places and the Jefferson County Windshield Survey identified the following in proximity of the subject property:*

- *Morgan's Grove Park bordering north of the subject property.*
- *Balling Spring- Morgan's Grove located along Route 480 northeast of the subject property.*
- *Rockland located approximately 1.5 miles south of subject property on Route 480.*
- *Falling Spring Morgan's Grove located along Route 480.*

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 April 19, 2012

**Morgan’s Grove Market Conditional Use Permit File (#CP12-01)**

- *Morgan's Bedinger Dandridge House located southwest of Shepherdstown on Route 480*
- *Elmwood Cemetery is within 1 mile from the subject property. The Elmwood Cemetery includes the graves of several Confederate veterans.*
- *Elmwood (Building) located approximately 1.5 miles from subject property south of Shepherdstown off of Route 17.*
- *Cold Spring located approximately 1.5 miles from subject property south of Shepherdstown off of Route 17.*
- *Halper House, no details provided*
- *Rosebrake, constructed in the early 1800's Owned by the Morgan family.*
- *Marker Number 3, Marks no particular battle but records some incidents worthy of notice.*
- *Shepherdstown Historic District is approximately 1.2 miles north of the subject property.”*

It is noted that the property is adjacent to the Morgan’s Grove National Register Historic District, which is roughly bounded by WV 480, WV 230 and Morgan's Grove Rd.

g. Other Existing Conditions

The application describes other existing conditions for the property and the surrounding area, such as traffic characteristics, fire and emergency services, etc.

3. Comprehensive Plan Compatibility

The Applicant has identified several sections of the Comprehensive Plan that the Applicant believes support the appropriateness of the proposed land use. These sections are outlined in the application submitted.

4. Traffic Characteristics

Traffic characteristics of the development are described on page 3 of 5 of the addendum submitted with the application.

5. Development Review System Process

The Development Review System (DRS) process begins when an application is submitted. At this time, staff conducts an evaluation of the application in accordance with the standards of Article 6, including the Land Evaluation and Site Assessment (LESA) scoring process. A score of 60 points or fewer advances the application to the Neighborhood Compatibility Meeting (NCM) process. Following this meeting, the application is reviewed by the Board of Zoning Appeals (a public hearing is required if the NCM results in unresolved issues). The BZA may vote on the application during the meeting at which the case is heard, or at a subsequent meeting within 60 days.

The status of the Morgan's Grove Market CUP application in completing the DRS process is as follows:

| Milestone  | Date  | Status  |
|--|---|---|
| Application filing                                 | January 18, 2012 (initial submittal)<br>January 27, 2012 (addendum submitted) | Application has met all submittal requirements of Section 7.4 |
| Staff Evaluation per the Development Review System | N/A   | N/A – No LESA evaluation required per Section 6.5E            |

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 April 19, 2012

**Morgan’s Grove Market Conditional Use Permit File (#CP12-01)**

|  |                |  |
|--|----------------|--|
| Neighborhood Compatibility Meeting (NCM) | March 2, 2012  | Meeting resulted in unresolved issues.   |
| Board of Zoning Appeals (BZA)            | April 19, 2012 | This item is on the BZA meeting agenda as a public hearing. The Board may approve, approve with conditions, or deny the application. |

6. Neighborhood Compatibility Meeting

The Compatibility Assessment Meeting for this application took place on March 2, 2012. The meeting followed the format specified in Section 7.6. Several speakers asked questions and expressed concerns regarding the proposed land use, and the Applicant addressed these concerns. Following the end of public testimony, staff summarized the issues raised by attendees, and identified which issues had been resolved at the meeting and which issues remained unresolved. There was consensus among those in attendance regarding the list of issues and the resolution status.

The list of issues is located in the Compatibility Assessment Meeting staff report included in the packet for this meeting, and is also included in the section of this report entitled, “Possible Conditions of Approval.”

7. Previously Approved Conditional Use Permit

On 3/2/07, a Conditional Use Permit for Town Run Commons Subdivision (Z06-01) was approved, for the following land uses:

“Mixed use community centered on the arts, with designated living space, working space and open space consisting on 32 condominium units; one-third of which will be affordable housing; two 5,000 square foot commercial spaces; and, two existing single-family dwellings one of which will be demolished.”

This project expired after the Planning Commission denied a request for a 1 year extension to bond and record Town Run Commons Subdivision.

The current application differs from the previously approved Conditional Use Permit in various respects, including the fact that in the current proposal, no new residential units are proposed and a larger area of commercial space is proposed.

8. Development Requirements

As with any Conditional Use Permit, should this application be approved, the following standard requirements will apply to the development of this property, in addition to any conditions approved by the Board:

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- a. *Consistency with approved Conditional Use Permit.* All subsequent development applications must be consistent with the approved development as described in the Conditional Use Permit, and must address any conditions of approval associated with the CUP.
- b. *Site plan.* Any non-residential development of the property exceeding 250 square feet (or 3,000 square feet of disturbed area) will require a site plan, reviewed and approved by the Planning and Zoning Department. The site plan review process will include the following elements:
  - a. *Consistency with ordinances.* The Planning, Zoning, and Engineering Departments will review the site plan for consistency with the Subdivision and Land Development Regulations, the Zoning Ordinance, the Floodplain Ordinance, and other requirements.
  - b. *Setbacks and buffers.* The following setbacks and buffers will apply to non-residential development of the property:

|   | <b>Front</b> | <b>Side</b> | <b>Rear</b> |
|---|--------------|-------------|-------------|
| <b>Distance requirements<sup>1</sup></b><br>(applies to buildings or any portion of land use but not parking or drive aisles) | 75’          | 75’         | 75’         |
| <b>Building setbacks</b>  | 25’          | 50’         | 50’         |
| <b>Parking setbacks</b>   | 15’          | 10’         | 10’         |
| <b>Buffers<sup>2</sup></b> (Screened/unscreened)  | 15’/50’      | 15’/50’     | 15’/50’     |

- c. *Stormwater management.* A licensed civil engineer must prepare stormwater management plans, to be reviewed by the Engineering Department.
  - d. *West Virginia Division of Highways.* The WVDOH must review a request for an entrance permit for the proposed land use, and will review any required roadway improvements such as turn lanes or shoulder widening.
  - e. *Bonding.* All improvements must be bonded.
  - f. *Water and wastewater.* The Jefferson County Health Department (or a utility provider) must approve water supply and wastewater disposal.
  - g. *Concept Plan.* For a site plan exceeding 5,000 square feet of development, a Concept Plan must be submitted and approved by the Planning Commission at a public hearing. Adjacent property owners would receive notice of this hearing.
- c. *Impact fees.* Payment of any required impact fees must occur prior to initiation of the land use.
  - d. *Building permits.* All construction, unless of an agricultural type, will require permits and inspections.

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<sup>1</sup> Distance requirements are due to. Uses or buildings must be located at least 75’ from adjacent residential uses and property listed on the National Register of Historic Places (i.e. Morgan’s Grove Park), in addition to any lot in the Residential Growth district, schools, churches, or institutions for human care.

<sup>2</sup> Applies if adjacent to a dwelling, school, church or institution for human care not located on the same lot as the said use or buildings. Buffers may be either screened (15’) or unscreened (50’). In addition to this requirement, a landscape buffer with a minimum width of 10’ is required on side and rear lot lines.

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e. *Merging of separate lots.* Some or all of the lots may need to be merged to address requirements of the Subdivision and Land Development Regulations.

9. Applicant’s “Request for Consideration”

On April 11, 2012, the applicant submitted a document entitled “Request for consideration.” This document, which is included in the Board of Zoning Appeals packet states:

*“We will be requesting that should the BZA finding be “approval with conditions” that include some unresolved issues, the hearing be reopened for comment prior to the motion and vote. This will allow an opportunity to present information that might identify conditions that cause unintended outcomes. This use of procedure may in fact help avoid misunderstandings and unintended hardship. It is our intent to conclude this process on April 19, 2011.*

*“This reopening is allowed as described in the JC 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.”*

The document also notes that the applicant will also request consideration of text changes in the Compatibility Assessment Meeting staff report.



Photo provided by applicant, 4/11/12. Description: “Park boundary with 480 on the left and the greenhouse roof on the right.”



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10. Board of Zoning Appeals Public Hearing and Action

Because some of the issues raised at the Neighborhood Compatibility Meeting were not resolved during the meeting, a Board of Zoning Appeals public hearing is required.

Per Section 7.7, “The purpose of the meeting is to hear the staff’s report of the issues and concerns raised at the Compatibility Meeting. Any comments relative to the validity of the staff’s report should be presented at this meeting. Concerns that have been addressed and agreed upon as accurate by the majority of those present at the Compatibility Assessment Meeting should not be addressed at this hearing. Speakers shall be limited to resolution of issues which could not be resolved at the Compatibility Assessment Meeting and the compatibility of the project within the neighborhood.”

This section of the ordinance also establishes time limits for speakers at a public hearing for a Conditional Use Permit application: “the applicant or agent shall have 30 minutes for a presentation, each group who speaks may have 15 minutes, each individual who speaks is allotted 5 minutes, the applicant or agent is allowed 15 minutes for rebuttal. The time limit provision within this section may be modified by the Board of Zoning Appeals Chairperson in the event that there are a large number of persons to speak at a particular hearing. The Board shall announce any change to this section at the beginning of the hearing.”

Per Section 7.6F, “The Board of Zoning Appeals shall issue, issue with conditions, or deny the conditional use permit. The standards governing the issuance of the Conditional Use Permits shall be: successful LESA Point application, Board of Zoning Appeals resolution of unresolved issues; and, evidence offered by testimony and findings by the Board of Zoning Appeals that the proposed development is compatible with the neighborhood where it is proposed.”

The Board of Zoning Appeals may vote on the application during the meeting at which the case is heard, or at a subsequent meeting within 60 days after the public hearing.



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**Morgan’s Grove Market Conditional Use Permit File (#CP12-01)**

11. Possible Conditions of Approval

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

- a. Conditions for “resolved” issues agreed upon during the Compatibility Assessment Meeting

| # | Issue     | Agreed-Upon Condition  | Staff Comment  |
|---|-----------|--|--|
| 1 | Blasting  | Provide a pre- and post-blast survey within five hundred feet of the construction site prepared by a geological engineer or certified company that is agreed upon by both the Developer and the neighbors. The inspections will be limited to buildings, wells and other structures as recommended by the geological engineer. The surveys are to be paid for by the Developer.  | Similar to condition 15 of CUP #Z06-01.                            |
| 2 | Blasting  | The Developer will be responsible for ensuring that the blasting contractor/subcontractor has insurance for all work. Further, it will be a condition of the contract that should damage be caused offsite, including damage to wells, by onsite blasting, the contractor/subcontractor will be responsible for all damages caused by the blasting activity. Liability will be limited to those homes on which a pre-blast survey was taken; homeowners who refuse a pre-blast survey will not be covered. | Similar to condition 16 of CUP #Z06-01.                            |
| 3 | Blasting  | The Developer will provide all adjacent properties and those included in the pre-blast survey 24 hours’ notice for any blasting. The general blasting schedule will be provided in this notice. For blasting activities that occur on consecutive days a single notice identifying the time period shall be provided to the adjacent neighbors.  | Similar to condition 24 of CUP #Z06-01.                            |
| 4 | Liability | All contractors and subcontractors are to be insured.  |  |
| 5 | Town Run  | The Town Run and the immediately adjacent area shall be kept in its natural vegetative state. Recreational use of Town Run shall be prohibited, with the exception of an adjacent walking trail.   | Issue: No buffer width specified.                                  |
| 6 | Signage   | All signage will be low and mounted on brick or stone monuments. No pole signs or other strip mall type signage is permitted. No animated signs shall be permitted. Full cutoff lighting shall be used to facilitate “dark sky” practices.   | Similar to condition 21 of CUP #Z06-01.                            |
| 7 | Town Run  | The developer shall partner with the Shepherdstown Men’s Club to ensure that perpetual water testing of the Town Run before, during, and after construction is done with tests sites at Morgan’s Grove Park, the Spring House (Wilson’s property) and the greenhouses (Corum property).  | Issue: Requires third-party participation. May not be enforceable. |

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|    |                       |  |   |
|----|-----------------------|--|---|
| 8  | Lighting              | Exterior lighting will meet or exceed the Illuminating Engineering Society of North America (IESNA) standards for Lighting for Exterior Environments for achieving “Full Cutoff” of light pollution above the horizontal plane with little or no light at angles typically associated with glare.                  | Similar to condition #14 of CUP #Z06-01.  |
| 9  | Residential use       | No new residential living quarters are permitted except for the two (2) existing single family residences.   |   |
| 10 | Groundwater           | The Developer is to perform a well flow test on the Nuttall’s and Belchik’s properties, to be done before construction begins and again after the project has been completed, not to exceed 1 year from the date of completion of the project, at the Developer’s expense.   |   |
| 11 | Traffic study         | Provide a traffic study in accordance with West Virginia Division of Highways (WVDOH) requirements and address all traffic study and WVDOH requirements.   | Similar to condition #18 of CUP #Z06-01.  |
| 12 | Road improvements     | Address risks identified in the traffic study as warranted by the WVDOH as follows:<br>a. Ensure sight distance requirements are met.<br>b. Allow for safe access and egress to the property through the construction of turning lanes.<br>c. Improve the existing State roads to meet Jefferson County standards. | Similar to condition #19 of CUP #Z06-01.  |
| 13 | Road improvements     | A right hand turn lane will be installed if required by the WVDOH. The Developer will provide an area of right-of-way from the Developer’s property to accommodate a left-turn lane, if required by the WVDOH. Both turn lanes will be paid for by the Developer.  |   |
| 14 | Road improvements     | No stoplight will be installed, except as required by the WVDOH.   |   |
| 15 | Road improvements     | No land from the Spurgas property shall be used for a turn lane, with the exception of the land that is already within the WVDOH right-of-way.   |   |
| 16 | Stormwater management | The proposed parking lot will be graded to slope away from adjacent properties to protect land owners from potential stormwater runoff. The parking lot will conform to the standards within the Jefferson County Subdivision Regulations.   |   |
| 17 | Signage               | The Developer will remove the existing sign advertising Town Run Commons.  | Issue: Condition does not include sign structure, which should also be removed. |

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- b. Conditions to address “unresolved” issues discussed at the Compatibility Assessment Meeting.  
(Note: these issues should be the focus of the public hearing.)

| #  | Issue                                   | Proposed Condition   | Staff Comment   |
|----|---|--|---|
| 18 | Scope                                   | Provide the full scope of the project listing the type of businesses proposed.   |   |
| 19 | Phasing                                 | Provide a timeline for the phasing of the project.   |   |
| 20 | Water / Sewer                           | The development shall be served by public/central water and sewer systems, or a self-contained water and sewer treatment plant regulated by a State or federal agency that will not deposit into the Town Run.                         | Previous CUP condition #3 stated, “Subdivision utilizing public water and sewer only.” Condition #23 stated, “The developer shall install a waterline stub out on Route 480, to which Ledge Lowe Estates may connect.”  |
| 21 | Land uses                               | Prohibit convenience stores and fueling stations, including electric vehicle charging stations.  | Previous CUP condition #12 prohibited “adult theme stores, dollar type stores, drive-through restaurants, gas stations, and convenience stores.”  |
| 22 | Blasting                                | No blasting of any kind permitted on site.   | While the previous CUP restricted blasting, it did not prohibit blasting.   |
| 23 | Noise pollution                         | Concerns regarding the increased noise pollution caused by the proposed uses.  | Noise pollution issues can be addressed via hours of operation, setbacks and buffers.   |
| 24 | Danger to children in park              | Concerns regarding the increased danger to the children frequenting Morgan’s Grove Park.   |   |
| 25 | Fencing / Access to Morgan’s Grove Park | Provide an eight (8) foot tall solid fence between the subject property and adjacent properties (Morgan’s Grove Park and the Wilson property). Direct access between the subject property and Morgan’s Grove Park shall be prohibited. | Issue: Planning principles would suggest that pedestrian access, at a minimum, between the two properties would allow for shared parking, enhance recreational opportunities, and improve connectivity. It is also noted that a fence exceeding 6’ in height, built adjacent to the property line, would require a setback variance. (Previous CUP condition #9 required a 6’ fence adjacent to the Wilson property.) |

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|    |                                     |  |  |
|----|-------------------------------------|--|--|
| 26 | Landscaped buffer                   | Provide a buffer of five (5) foot wide shrubs and a buffer protecting the trees on the Wilson property.                          |  |
| 27 | Blasting                            | A geological engineer shall be on site to supervise any blasting or breaking of rock.  | Previous CUP condition #6 states, "...blasting only occurs under the direct supervision of a licensed firm specializing in the control of ground blast vibration effects and that individuals of the firm will be licensed and certified as needed."                   |
| 28 | Stormwater management               | Stormwater management ponds shall be lined with a synthetic liner to protect the karst topography.                               |  |
| 29 | Business type                       | Of the business located on the site, at least 75% must be of an agriculturally-related industry.                                 |  |
| 30 | Hours of operation                  | Limit business hours from 8:00 a.m. to 10:00 p.m.  | Related condition #28 on previous CUP limited business hours from 6:00 AM to midnight.   |
| 31 | Setbacks                            | Provide a 75 foot front setback for proposed buildings and a 50 foot setback for parking.  | A 25' front setback would typically apply. It is noted that the existing residence adjacent to Rte. 480 and the existing building pad are both located approximately 75' (or greater) from the front property line. Previous CUP condition #2 required a 100' setback. |
| 32 | Litter                              | The property owner shall be responsible for picking up all litter on both sides of Route 480 along the frontage of the property. | Issue: The ongoing nature of this proposed condition would create enforceability problems.   |
| 33 | Construction hours                  | Limit construction hours from Monday to Friday from 7:00 a.m. to 4:00 p.m.   |  |
| 34 | Bonding for removal of improvements | Bond the project to ensure structures and all site amenities will be removed if project does not go forward or is unsuccessful.  |  |
| 35 | Historic preservation               | Address historical issues.   |  |
| 36 | Building Height                     | Restrict proposed buildings to a maximum of 30' in height.   | This issue was listed incorrectly as a <i>resolved</i> condition of a maximum 35' height restriction in the draft staff report.  |

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**Morgan's Grove Market Conditional Use Permit File (#CP12-01)**

SECTION OF ORDINANCE TO BE CONSIDERED:

**Section 4.1 Ordinance Deemed Minimum Regulations; Uniformity**

For each zoning district, a limited number of principal permitted uses are listed, as well as several uses prohibited for all districts as listed in Section 4.4. All other uses, except prohibited uses, may receive a conditional use permit upon completion of the Conditional Use Permit process as described in this Ordinance, including a demonstration that the land use in a specific location will comply with the standards of the Development Review System and any other applicable requirements of this Ordinance.<sup>23</sup>

**Section 6.5 Computation of Soils/Amenities Assessment**

- E. Any land in the Rural District that is located on a primary or secondary road, as defined in the Comprehensive Plan, shall not have to process through the LESA points process for a commercial or industrial project and shall be advanced directly to the Compatibility Assessment Meeting.<sup>17, 21</sup>

**Section 7.6 Compatibility Assessment Meeting**

- E. If not all issues raised at the Compatibility Assessment Meeting were resolved at that meeting, a public hearing of the Board of Zoning Appeals will be required. Staff shall prepare a report summarizing the developer's proposal, the agreed upon conditions, and any other pertinent data and will advertise for the public hearing. A public hearing in conformance with this article will be conducted no fewer than 30 days but no more than 60 days from the date of the Compatibility Assessment Meeting. At the public hearing, the Board shall take action as described in Section 7.6F.<sup>1, 17, 21, 23</sup>
- F. The Board of Zoning Appeals shall issue, issue with conditions, or deny the conditional use permit. The standards governing the issuance of the Conditional Use Permits shall be: successful LESA Point application, Board of Zoning Appeals resolution of unresolved issues; and, evidence offered by testimony and findings by the Board of Zoning Appeals that the proposed development is compatible with the neighborhood where it is proposed.<sup>2, 17, 21, 23</sup>

**Section 7.7 Public Hearings for Development Review System<sup>23</sup>**

- A. Unless otherwise superseded by the Board of Zoning Appeals Rules of Procedure, a public hearing for a Development Review System application shall be conducted in accordance with this section.
- B. The public hearing will be conducted by the Board of Zoning Appeals. The purpose of the meeting is to hear the staff's report of the issues and concerns raised at the Compatibility Meeting. Any comments relative to the validity of the staff's report should be presented at this meeting. Concerns that have been addressed and agreed upon as accurate by the majority of those present at the Compatibility Assessment Meeting should not be addressed at this hearing. Speakers shall be limited to resolution of issues which could not be resolved at the Compatibility Assessment Meeting and the compatibility of the project within the neighborhood.<sup>1, 17, 21</sup>

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**Morgan's Grove Market Conditional Use Permit File (#CP12-01)**

- C. All public hearings shall have time limits allotted to those who speak, as follows: the applicant or agent shall have 30 minutes for a presentation, each group who speaks may have 15 minutes, each individual who speaks is allotted 5 minutes, the applicant or agent is allowed 15 minutes for rebuttal. The time limit provision within this section may be modified by the Board of Zoning Appeals Chairperson in the event that there are a large number of persons to speak at a particular hearing. The Board shall announce any change to this section at the beginning of the hearing.<sup>17, 21</sup>
- D. Notification requirements of Section 3.4A(3)(b) apply.
- E. The Board of Zoning Appeals shall render a decision no more than 60 days after the public hearing.<sup>17, 21</sup>



Staff Report – Compatibility Assessment Meeting  
Jefferson County Department of Planning and Zoning

**Morgan’s Grove Market Conditional Use Permit File #CP12-01**

A Compatibility Assessment Meeting for the proposed Morgan’s Grove Market Conditional Use Permit was held on March 2, 2012 at 10:00 a.m., in the Charles Town Library meeting room located at 200 East Washington Street in Charles Town, West Virginia.

Jennifer Brockman, Director of Planning and Zoning; Steve Barney, Zoning Administrator; Seth Rivard, County Planner and Becky Burns, Office Manager of the Department of Engineering were present as staff for the hearing. A complete description of the project can be found in File #CP12-01 in the Department of Planning and Zoning Office located at 116 East Washington Street in Charles Town, West Virginia.

Fred Blackmer, Consultant and Peter Corum, owner/applicant, were present on behalf of the project. Mr. Blackmer and Mr. Corum described the nature of the project.

Mike Austin, Ann Spurgas, Betty Nuttall, Tim Walsh, Tom Huddleson, Miriam Wilson, Charles Wilson, John Billmyer, Stanley Belchik, Beverly Belchik, Linda O’Brien, Joe Spurgess and Austin Porter with the Shepherdstown Men’s Club addressed compatibility issues.

The Developer agreed to the following and they are therefore considered *resolved* issues:

1. Provide a pre- and post-blast survey within five hundred feet of the construction site prepared by a geological engineer or certified company that is agreed upon by both the Developer and the neighbors. The inspections will be limited to buildings, wells and other structures as recommended by the geological engineer. The surveys are to be paid for by the Developer.
2. The Developer will be responsible for ensuring that the blasting contractor/subcontractor has insurance for all work. Further, it will be a condition of the contract that should damage be caused offsite, including damage to wells, by onsite blasting, the contractor/subcontractor will be responsible for all damages caused by the blasting activity. Liability will be limited to those homes on which a pre-blast survey was taken; homeowners who refuse a pre-blast survey will not be covered.
3. The Developer will provide all adjacent properties and those included in the pre-blast survey 24 hours’ notice for any blasting. The general blasting schedule will be provided in this notice. For blasting activities that occur on consecutive days a single notice identifying the time period shall be provided to the adjacent neighbors.
4. All contractors and subcontractors are to be insured.
5. The Town Run and the immediately adjacent area shall be kept in its natural vegetative state. Recreational use of Town Run shall be prohibited, with the exception of an adjacent walking trail.
6. All signage will be low and mounted on brick or stone monuments. No pole signs or other strip mall type signage is permitted. No animated signs shall be permitted. Full cutoff lighting shall be used to facilitate “dark sky” practices.
7. The developer shall partner with the Shepherdstown Men’s Club to ensure that perpetual water testing of the Town Run before, during, and after construction is done with tests sites at Morgan’s Grove Park, the Spring House (Wilson’s property) and the greenhouses (Corum property).
8. Exterior lighting will meet or exceed the Illuminating Engineering Society of North America (IESNA) standards for Lighting for Exterior Environments for achieving “Full Cutoff” of light

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pollution above the horizontal plane with little or no light at angles typically associated with glare.

9. No new residential living quarters are permitted except for the two (2) existing single family residences.
10. The Developer is to perform a well flow test on the Nuttall’s and Belchik’s properties, to be done before construction begins and again after the project has been completed, not to exceed 1 year from the date of completion of the project, at the Developer’s expense.
11. Provide a traffic study in accordance with West Virginia Division of Highways (WVDOH) requirements and address all traffic study and WVDOH requirements.
12. Address risks identified in the traffic study as warranted by the WVDOH as follows:
  - a. Ensure sight distance requirements are met.
  - b. Allow for safe access and egress to the property through the construction of turning lanes.
  - c. Improve the existing State roads to meet Jefferson County standards.
13. A right hand turn lane will be installed if required by the WVDOH. The Developer will provide an area of right-of-way from the Developer’s property to accommodate a left-turn lane, if required by the WVDOH. Both turn lanes will be paid for by the Developer.
14. No stoplight will be installed, except as required by the WVDOH.
15. No land from the Spurgess property shall be used for a turn lane, with the exception of the land that is already within the WVDOH right-of-way.
16. The proposed parking lot will be graded to slope away from adjacent properties to protect land owners from potential stormwater runoff. The parking lot will conform to the standards within the Jefferson County Subdivision Regulations.
17. The Developer will remove the existing sign advertising Town Run Commons.

The Developer did not agree to the following conditions and they are therefore considered *unresolved* issues:

1. Provide the full scope of the project listing the type of businesses proposed.
2. Provide a timeline for the phasing of the project.
3. The development shall be served by public/central water and sewer systems, or a self-contained water and sewer treatment plant regulated by a State or federal agency that will not deposit into the Town Run.
4. Prohibit convenience stores and fueling stations, including electric vehicle charging stations.
5. No blasting of any kind permitted on site.
6. Concerns regarding the increased noise pollution caused by the proposed uses.
7. Concerns regarding the increased danger to the children frequenting Morgan’s Grove Park.
8. Provide an eight (8) foot tall solid fence between the subject property and adjacent properties (Morgan’s Grove Park and the Wilson property). Direct access between the subject property and Morgan’s Grove Park shall be prohibited.
9. Provide a buffer of five (5) foot wide shrubs and a buffer protecting the trees on the Wilson property.
10. A geological engineer shall be on site to supervise any blasting or breaking of rock.
11. Stormwater management ponds shall be lined with a synthetic liner to protect the karst topography.
12. Of the business located on the site, at least 75% must be of an agriculturally-related industry.
13. Limit business hours from 8:00 a.m. to 10:00 p.m.
14. Provide a 75 foot front setback for proposed buildings and a 50 foot setback for parking.

Staff Report – Compatibility Assessment Meeting  
Jefferson County Department of Planning and Zoning

**Morgan’s Grove Market Conditional Use Permit File #CP12-01**

15. The property owner shall be responsible for picking up all litter on both sides of Route 480 along the frontage of the property.
16. Limit construction hours from Monday to Friday from 7:00 a.m. to 4:00 p.m.
17. Bond the project to ensure structures and all site amenities will be removed if project does not go forward or is unsuccessful.
18. Address historical issues.
19. Restrict proposed buildings to a maximum of 30 feet in height.

Because the Compatibility Assessment Meeting resulted in unresolved issues, a public hearing before the Board of Zoning Appeals has been scheduled for April 19, 2012 at its regularly scheduled meeting. The meeting will take place at 3:00 P.M. 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. Testimony will be limited to resolution of the unresolved issues.

This report was prepared by Steve Barney, Zoning Administrator on March 30, 2012.

DRAFT

#CP12-01



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

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

Charles Town, WV 25414

Proj. File Number: \_\_\_\_\_

Fees Paid (\$): \_\_\_\_\_

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

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

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

Phone: (304) 728-3228

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

Fax: (304) 728-8126

Application for a Conditional Use Permit

A. Name of Project

Morgan's Grove Market (MGM)

B. Applicant Contact Information

Applicant Name: Twin Oaks Subdivision, LLC
Mailing Address: PO Box 536
City: Shepherdstown State: WV Zip Code: 25443
Phone Number: 304 283 2467 Email: pcorum@franklinamerican.com

C. Property Owner Information

Name of Property Owner: Peter Corum
Mailing Address: PO Box 536
City: Shepherdstown State: WV Zip Code: 25443
Phone Number: 304 283 2467 Email: pcorum@franklinamerica.com

D. Applicant Representatives

Name of Registered Engineer(s) or Surveyor(s): None
Mailing Address of Engineer(s) or Surveyor(s):
City: State: Zip Code:
Phone Number: Email:

E. Physical Property Details

Physical Property Address: 3988 Kearneysville Pike
City: Shepherdstown State: WV Zip Code: 25443
Tax District: Shepherdstown Map #: 13 Parcel #: 26.1,2,3 and 4
Parcel Size: 13.69 acres Deed Book: (see attach 1) Deed Bk. Pg. #: (see attach 1)

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

RECEIVED

JAN 18 2012

F. Please provide any information or known history regarding this property (e.g., zoning certificate, site plan, subdivision variance, etc.)

See attached staff document

(2)

G. Original signatures of all property owners are required. The information given is correct to the best of my knowledge.

[Signature] 17 JAN 2012  
Signature of Property Owner 1 Date

[Signature] 17 JAN 2012  
Signature of Property Owner 2 Date

Do not write below this line

- Sketch Plan (Pursuant to Section 7.4 (B)(C))
- Support Data (Pursuant to Section 7.4(D))
- List of adjacent and confronting (in front of) property owners, with addresses (Section 7.4 E)

**Compatibility Assessment Meeting**

03/02/12  
Date

**Notification**

04/19/12  
Date of public hearing

04/04/12  
Advertising date

15 days  
Posting Requirements (Number of days prior to scheduled hearing)

**To Be Completed By Staff**

**Conditional Use Permit Supplemental Information**  
**As Required by the Jefferson County Zoning and Land Development Ordinance**  
*In addition to the Conditional Use Permit application, please submit the following items:*

- Support Data (Section 7.4D)
- Sketch Plan (Section 7.4A-C)
- A list of all adjacent and confronting property owners, with addresses

The process and requirements for a Conditional Use Permit application are summarized below. For details regarding the full process and requirements, please see Articles 6 and 7 of the Jefferson County Zoning and Land Development Ordinance.

|   | Process Steps   | Dates   |
|---|---|---|
| 1 | Application and fees submittal  | Applications may be submitted to the Planning and Zoning Department at any time during business hours |
| 2 | Scheduling of a Compatibility Assessment Meeting                                    | At least 10 days following submittal of a complete application  |
| 3 | Applicant submits 15 copies of Support Data and 15 copies of Sketch Plan.           | At least 15 days before the meeting date  |
| 4 | Planning and Zoning Department publishes notice of Compatibility Assessment Meeting | At least 15 days before the meeting date  |
| 5 | Applicant posts sign (provided by Planning and Zoning Department) on property       | At least 15 days before the meeting date  |
| 6 | Compatibility Assessment Meeting  | Within thirty (30) days from the date that the meeting is scheduled by the staff                      |
| 7 | Board of Zoning Appeals Meeting (if not subject to public hearing)                  | May be heard on the next available Board of Zoning Appeals agenda.                                    |
| 8 | Board of Zoning Appeals Meeting (if subject to public hearing)                      | Between 30 and 60 days from the date of the Compatibility Assessment Meeting.                         |

Copies of the application, sketch plan, and development review data shall be available for public review in the Planning Office at such time as the proposed development is advertised in the newspaper.

**Section 7.4A-C**

A sketch plan detailing the project shall be submitted. The sketch plan shall:

- Include the entire original parcel as it appeared on the date the Zoning and Land Development Ordinance took effect (Oct. 5, 1988).
- Be drawn to a reasonable scale (e.g. 1" = 50', 1" = 100', or 1" = 200').
- Show, in simple form, the proposed layout of lots, parking areas, recreational areas, streets, building areas, and other features in relation to each other and to the tract boundaries.
- Include contour lines, as shown on the appropriate U.S.G.S. Topographic Quadrangle Map or other data source approved by the Departments of Planning, Zoning, and Engineering, superimposed on the sketch plan. The source of all contour lines shall be noted on the plan (Please note: Upon request, the GIS/Addressing Department will provide a contour map).
- Delineate natural features such as woods, watercourses, prominent rock outcroppings, sinkholes and quarries.

The sketch plan should be accompanied by a tract location map and a soils report indicating the soil types on the parcel and a map delineating the boundaries of each soil type. For soil maps and data, see the USDA NRCS web soil survey at <http://websoilsurvey.nrcs.usda.gov>

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

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

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

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

\*(Member of Twin Oaks Subdivision, LLC)

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

**Name and address of contact person:**

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

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

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

**The original tract acres:**

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

The parcels have a total acreage of 13.69 acres.

Current zoning:

"Rural District"

Plat, locator maps and tax map attached as pages 2, 3, 4 and 5.

Attachment 2 for section "F" of application

**Staff Report**  
**Jefferson County Planning Commission Meeting**  
**November 8, 2011**

| <b>APPROVALS:</b>  |   |
|--|---|
| <b>Conditional Use Permit</b><br><i>PC File #Z06-01</i>          | Submitted: 02/22/06<br>Approved: 08/17/06   |
| <b>Community Impact Statement (CIS)</b><br><i>PC File #06-33</i> | Submitted: 10/29/06<br>Staff Review Mtg.: 11/3/06<br>County Engineer Approval: 03/22/07<br>County Planner Approval: 03/19/07<br>PC Approval: 04/24/07<br>Expires on: 11/03/08; Extended to: 02/17/2009; 12/09/09  |
| <b>Preliminary Plat</b>  | Submitted: 11/30/07<br>Staff Review Mtg.: 12/10/07<br>Approved: 08/06/08  |
| <b>Site Plan</b>   | N/A   |
| <b>Final Plat</b>  | Submitted: 8/8/08<br>Public Hearing and Approval: 10/14/08  |
| <b>Variance History</b>  | 02/21/08 BZA approved a 12 month extension (until 02/17/09) for the expiration date of the Conditional Use Permit.<br>08/26/08 PC granted a 3 month variance for Final Plat approval from 11/03/08 to 02/17/09.<br>12/09/08 PC granted a 12 month variance from 12/09/08 to 12/09/09 to bond and record Town Run Commons Subdivision.<br>12/08/09 Variance requested for 1 year extension to bond and record Town Run Commons Subdivision. This request could not be heard due to a recusal leaving a lack of a quorum.<br>01/12/10 PC denied a request for a 1 year extension to bond and record Town Run Commons Subdivision. |
| <b>OTHER APPROVALS:</b>  |   |

Rezoning request submitted September 22, 2012

Planning Commission finds the request  
 "consistent with the comprehensive plan" and  
 "recommend the to CC to rezone the property"  
 November 8, 2011

County Commission holds another public hearing  
 and denied the rezoning request December 8, 2012

Conditional Use Permit application submitted  
 January 18, 2012

# 2011 Zoning Map Jefferson County, WV



## Legend

- Urban Growth Boundary
- Parcels
- Tax District Boundary
- Public/Quasi-Public Land
- Appalachian Trail
- Zoning District**
- Incorporated Town
- Industrial-Commercial
- Residential-Growth
- Residential-Light Industrial-Commercial
- Rural
- Village



Prepared by:  
  
 John A. ...  
 County Planning Director  
 Jefferson County, WV

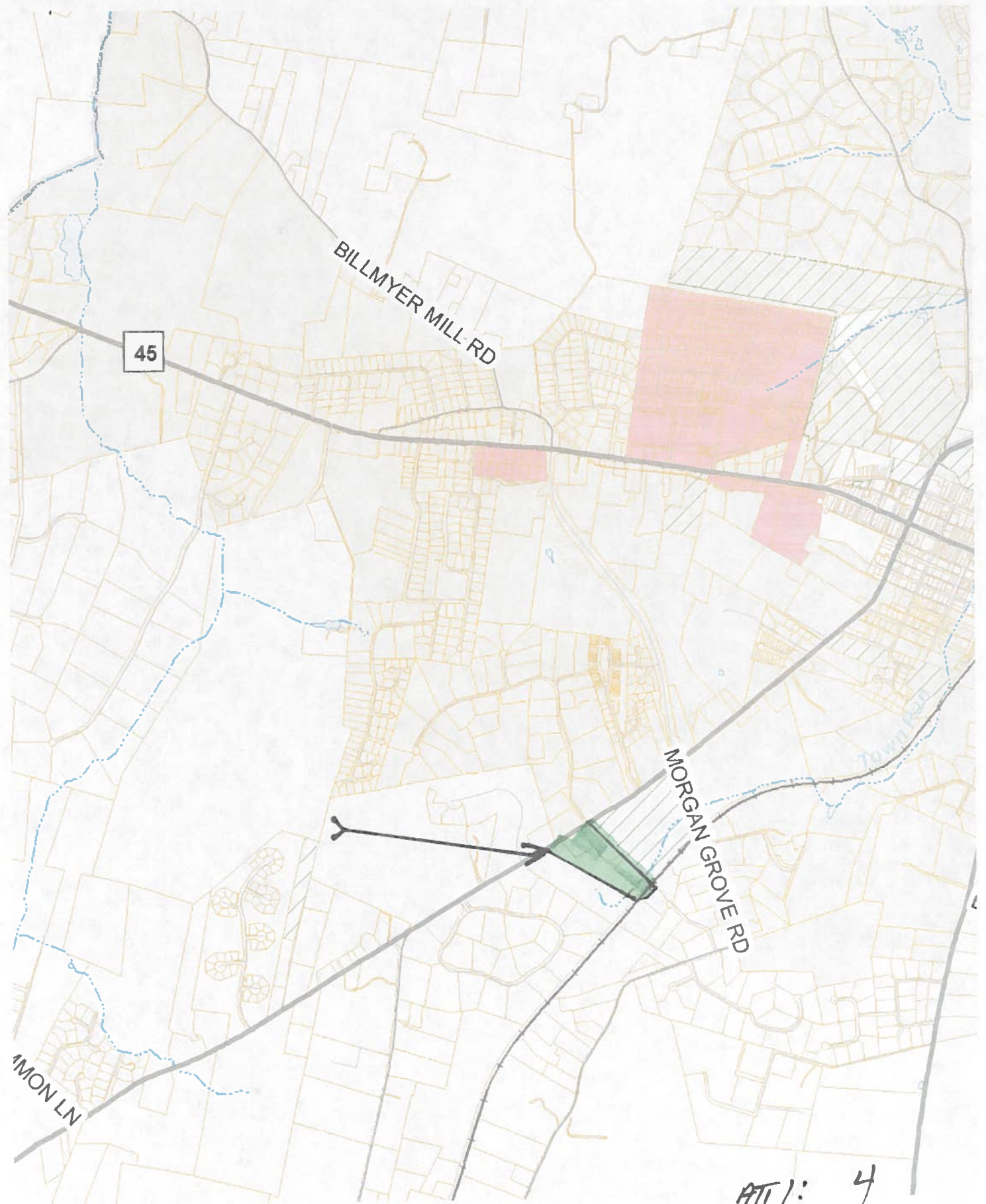
Map Prepared for:  
 Jefferson County Commission  
 Jefferson County Planning & Zoning Department  
 Jefferson County, WV  
 Date: 12/15/2011

- CONDITIONS OF USE:**
1. This map is prepared for informational purposes only. It is not intended to be used as a legal document. The user assumes all responsibility for the accuracy of the information shown on this map.
  2. The user assumes all responsibility for the accuracy of the information shown on this map.
  3. The user assumes all responsibility for the accuracy of the information shown on this map.
  4. The user assumes all responsibility for the accuracy of the information shown on this map.
  5. The user assumes all responsibility for the accuracy of the information shown on this map.

| REVISED | DATE       | BY  | REASON                                |
|---------|------------|-----|---------------------------------------|
| 1       | 12/15/2011 | JAC | INITIAL RELEASE                       |
| 2       | 12/15/2011 | JAC | REVISIONS TO PARCELS                  |
| 3       | 12/15/2011 | JAC | REVISIONS TO TAX DISTRICTS            |
| 4       | 12/15/2011 | JAC | REVISIONS TO URBAN GROWTH BOUNDARY    |
| 5       | 12/15/2011 | JAC | REVISIONS TO PUBLIC/QUASI-PUBLIC LAND |



ATT-1: 3



BILLYER MILL RD

45

MORGAN GROVE RD

MON LN

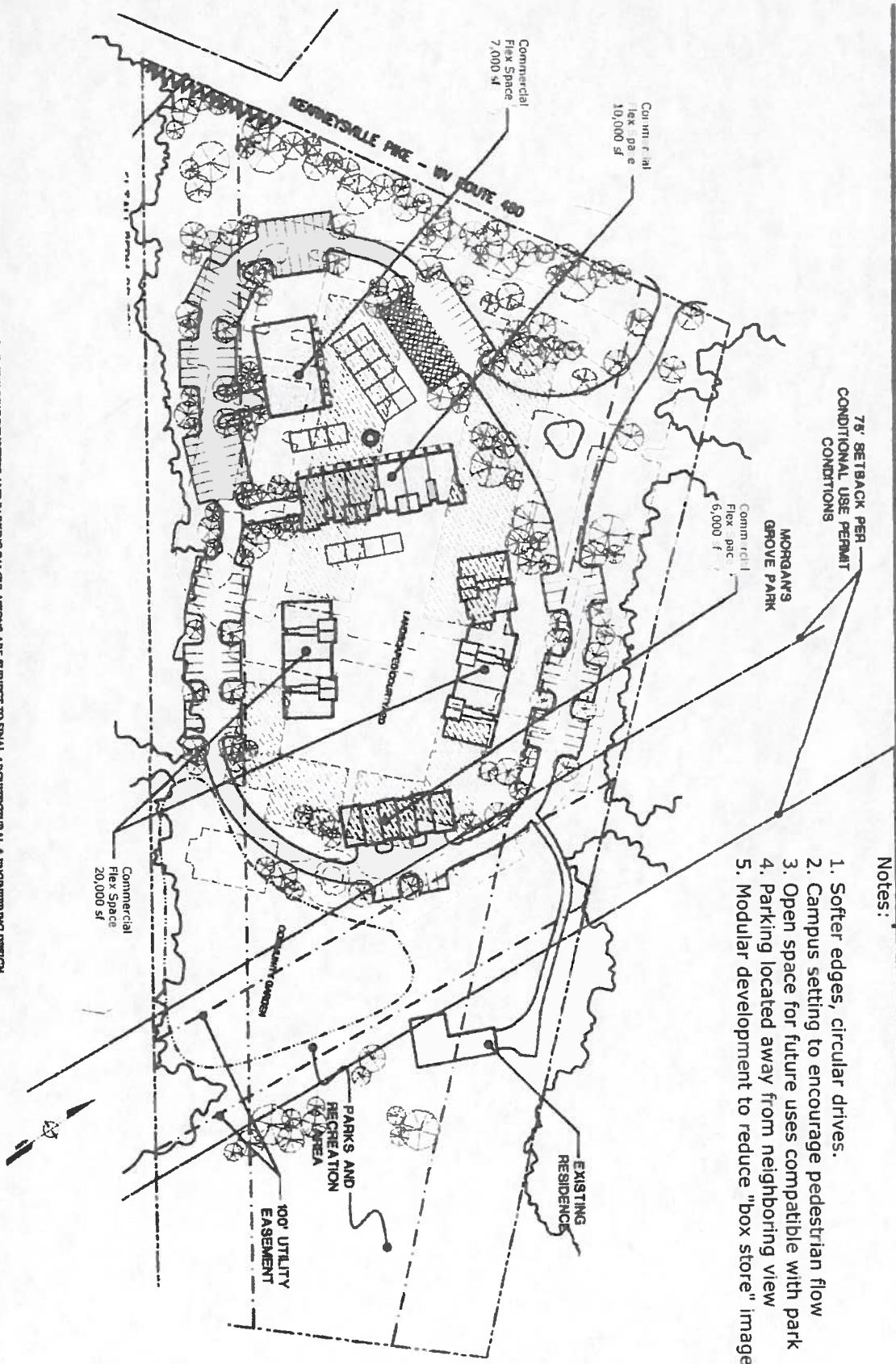
ATT 1: 4

**Morgan's Grove Market (MGM)**

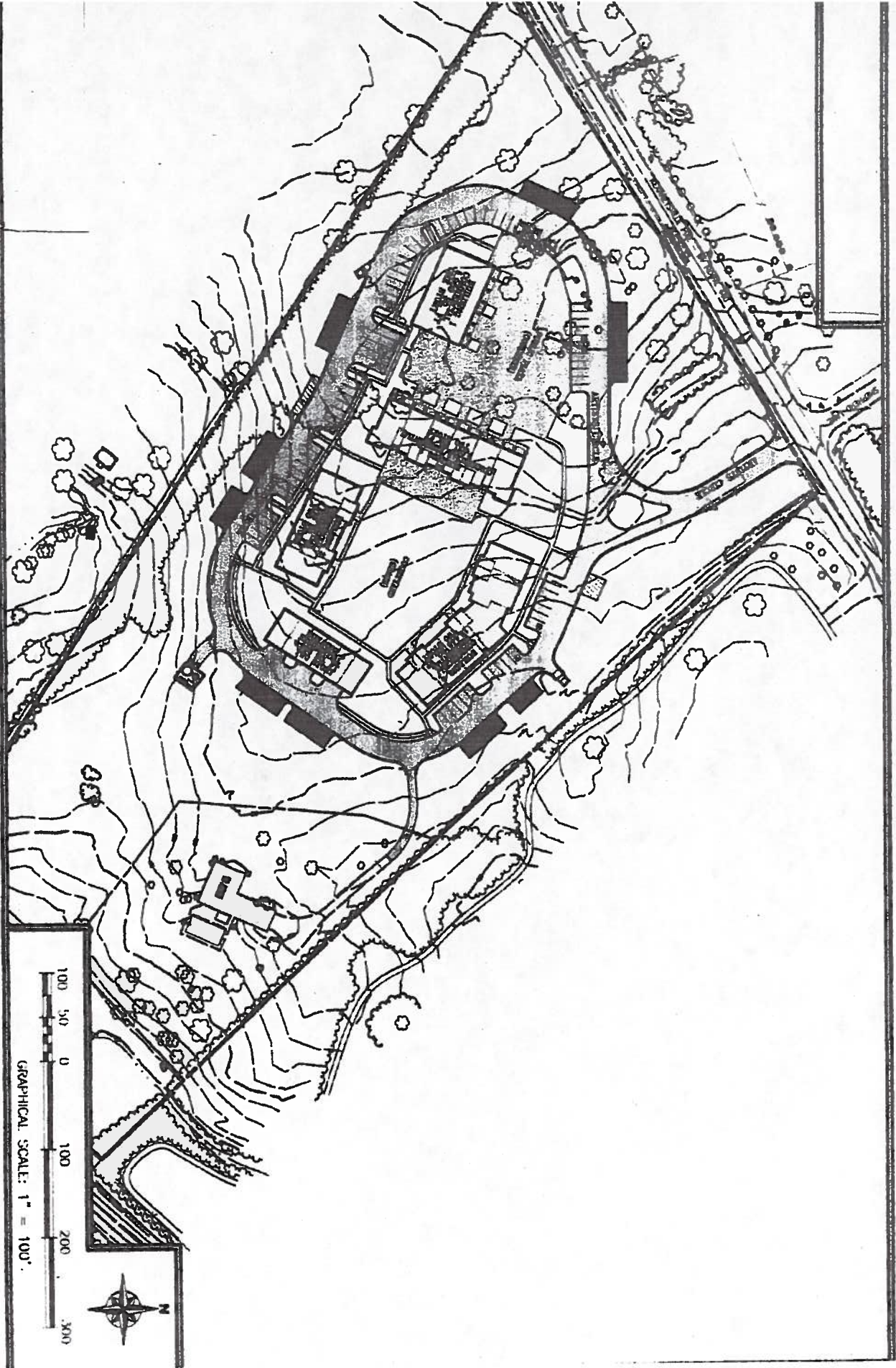
EXHIBIT 1 SKETCH PLAT

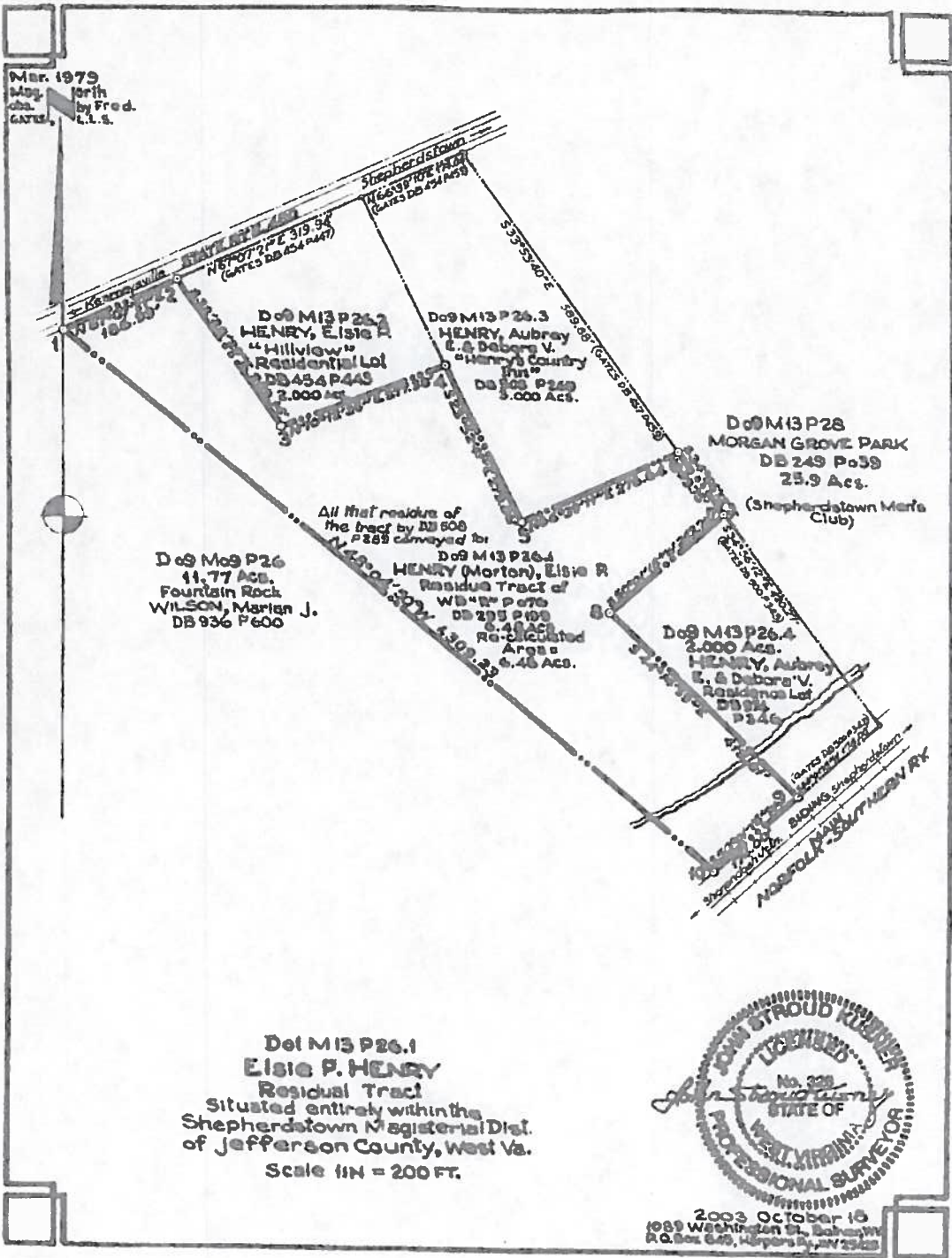
Jefferson County, West Virginia  
 Concept Plan January 17, 2012

PLAN FOR ILLUSTRATIVE PURPOSES ONLY. CONCEPTUAL LAYOUT, BUILDING FOOTPRINTS AND PARKING CALCULATIONS ARE SUBJECT TO FINAL ARCHITECTURAL & ENGINEERING DESIGN.



- 75' SETBACK PER CONDITIONAL USE PERMIT CONDITIONS
- Notes:**
1. Softer edges, circular drives.
  2. Campus setting to encourage pedestrian flow
  3. Open space for future uses compatible with park
  4. Parking located away from neighboring view
  5. Modular development to reduce "box store" image.





Mar. 1979  
 Map  
 GATS  
 by Fred.  
 L.L.S.

D09 M09 P26  
 11.77 Acs.  
 Fountain Rock  
 WILSON, Marian J.  
 DB 936 P600

All that residue of  
 the tract by DB 508  
 P 289 conveyed to

D09 M13 P26.4  
 HENRY (Morton), Elsie R  
 Residua Tract of  
 WB 412 P 076  
 DB 295 P100  
 6.48 Acs.  
 Re-calculated  
 Area 6.48 Acs.

D09 M13 P28  
 MORGAN GROVE PARK  
 DB 249 P039  
 23.9 Acs.  
 (Shepherdstown Mera Club)

D09 M13 P26.4  
 2.000 Acs.  
 HENRY, Aubrey  
 E. & Debra V.  
 Residence Lot  
 DB 294  
 P246

D01 M13 P26.1  
 Elsie P. HENRY  
 Residual Tract  
 Situated entirely within the  
 Shepherdstown Magisterial Dist.  
 of Jefferson County, West Va.  
 Scale 1/4" = 200 FT.



2003 October 16  
 1089 Washington St., Shepswn  
 P.O. Box 640, Shepswn, WV 25452

26.1

# FB solutions for all your management, regulatory and permit needs

191 Wild Hare Road

Harpers Ferry, WV 25425

304 725 6754

fred@fredblackmer.com

Jefferson County Zoning Administrator  
PO Box  
East Washington Street  
Charles Town, WV 25414

January 17, 2012

Subject: Conditional Use Permit Application

To Whom It May Concern,

The undersigned owner(s) of land identified as Shepherdstown District; Tax Map 13 parcels 26.1, parcel 26.2, parcel 26.3 and parcel 26.4 requests a Conditional Use Permit. This request is being made through procedures and regulation identified in WV Code 8A-1-1 and JC Zoning Ordinance Article 6, 7, 8 section 8.9, 10, 11.

The purpose of this request is to continue the visionary evolution of this property's uses through the issuance of a Conditional Use Permit (CUP). The designation should include an edited list (attached) of commercial uses currently identified in Jefferson County Zoning Ordinance, appendix C, Commercial.

Narrative of substantiation for this request:

The property included in this request has been approved for various commercial uses since 1968. The subject property is an island surrounded by suburban residential development. Granting a CUP for limited commercial use designation will accomplish several Comprehensive Plan goals. One of those would be to turn suburban sprawl into a mixed use community by adding small businesses serving agricultural and residential needs. Residential development potential would be limited while local jobs, commercial opportunities, neighborhood retail needs and community amenities could be enhanced.

Morgan's Grove Market (MGM) – Evolved from a vision based on a planned, mix-use community centered on the arts, with designated living space, working space, and open space. The community is being redesigned as an agricultural based economic empowerment zone. The intent is to provide a cutting edge approach to local sustainability while complimenting the mature character of Shepherdstown's community at large. This evolutionary vision began at an introductory meeting in November, 2005, with interested local parties representing artists, businesses, educational institutions, government, neighbors and non-profit groups meeting in an open forum to discuss ideas and alternatives for a 13-acre parcel of land adjacent to Morgan's Grove Park. The same open process of community involvement and input continues today.

By making this property a campus style mix of diverse economic growth opportunities with a common local sustainability theme, the integrity of the property's exterior will be maintained. The structural units are anticipated to maintain a tight physical relationship to increase the amount of open space on site.

The project is being designed to protect the existing character of the surrounding area. Community open space is provided adjacent to all property boundaries and the Route 480 right-of-way. The open space will provide the surrounding community with areas for recreational activities. Vegetation preserved within these open spaces will serve as visual buffers between the subject property and the adjoining parcels. Vehicular access will be from Route 480 and may provide frontage improvements, as required by WVDOT and the Jefferson County Subdivision Ordinance.

It is important that this application include a personal narrative from the applicant. The statement was provided for background information but really captures the essence of this project and goals.

#### Morgan's Grove Market

##### The Problem:

Our current economic model requires infinite growth and our planet has finite (energy) resources.

##### Mission Statement:

Provide our local citizens an opportunity to create an environmentally and economically sustainable community.

##### Objectives: Collaboration

- Provide a point of aggregation and distribution for locally grown and value added foods. (Critical – everything will be local. Ex Cedar Springs micro greens onsite)
- Educate the public about health and fitness, while providing a venue for public exercise (Ex. Shepherdstown CareJam, Outdoor Zumba).
- Provide a place for local artist to work, promote and sell their work (Ex. AHA!, Washington Street Galley and Gifts and Over the Mountain Studio).
- Eliminate barriers of entry for entrepreneurs and their business ideas (Ex. Health Department – Community Kitchen).
- Provide an economic platform for non-profits and for profit businesses to collaborate (Ex. Sustainable Shepherdstown, 4-H, PVAS).

##### Narrative of Vision:

We are "Thinking Globally, Acting Locally". Jefferson County and Shepherdstown in particular are uniquely positioned in terms of affluence, agricultural, education, entrepreneurship, history, and tourism to create an environmentally and economically sustainable community. We are just missing the physical infrastructure to aggregate the

ideas and product. Conceptually, we want to create an Agricultural Campus, where ideas can grow into businesses through eliminating barriers to entry in the food market and creating critical mass of products. This will allow businesses to become sustainable.

#### Aggregation of Local Produce:

After running Morgan's Grove Market, we quickly realized that there are not enough growers in the area to meet even local demand and the few growers we do have are inefficient in the delivery of their products. For example, The Dish in Charles Town cannot efficiently order and receive local products because they are forced to deal with each farmer (10+) individually. A middleman or in our case, food hub, is necessary and will be an anchor of our agricultural campus. Kilmer-Lewis Orchards, who have the first WV approved Food Hub certification have agreed to create a satellite facility in our first building. We are also promoting agriculture techniques onsite with expanding the existing community garden (Sustainable Shepherdstown partnership) and bringing in growers who use high tunnels for extending the growing season. Cedar Springs is already onsite and growing. These people can then use the food hub and the market to aggregate and sell their produce in the market and future home grown, homemade store. The store is going to be necessary to provide the level of convenience the consumer demands and the volume needed to sustain the grower.

Ancillary benefits of having a local aggregation point is the creation of an agri-tourism model, where people can see examples of food being grown, value being added (canning, freezing, etc) and then being sold either at the market, store or restaurant. There are expected savings in transportation costs for everyone involved in the food chain. We foresee a plethora of local products on our shelves because we have eliminated key barriers to entry with the health department certified community kitchen and retail point of sale.

#### Vertical Integration of Health:

Having local fresh food is just one piece of our total health picture. Exercise and education facilities will be integrated in the campus, similar to how a university is structured. The synergies are almost limitless with having Morgan's Grove Park next door and indoor facilities (i.e. dance, karate, tai chi) coupled with a community kitchen where food classes can be held and specific diet based foods prepared in quantity. Small local health related business, such as massage, beauty and preventative care facilities will logically be integrated.

#### Alternative Energy Hub:

We are a fossil fuel society, which besides population growth, is the primary driver in the devastation to our environment. There is a unique opportunity to facilitate the implementation of alternative fuels and their ancillary services. It is most cost effective to install solar and geothermal at the time of construction. Total operation costs of the facility will be less than traditional energy based systems (coal powered electric), when

heating and cooling the facilities. A benefit of solar power is the growing demand for electric charging stations, similar to one recently built in Martinsburg, WV (Martins Distributing) and Charles Town, WV (American Public University). Since we are a food based community, we also want to provide bio fuels based on corn and/or waste products such as biodiesel. There are local producers, like the Tabb's, who would benefit from another point of distribution.

The Agricultural Campus is going to be an incubator for building an environmentally and economically sustainable community. We fully expect businesses to start, fail, succeed and hopefully out grow us. The idea is to create an environment where they can do it quickly – succeed or fail – so, they can continue to move forward.

That statement by the applicant himself should help to guide the processing of this request for a CUP. The vision is there. It is an obligation of our regulations and system to not only set basic standards but to allow good ideas and projects to lead us into the future.

Previous uses have included a restaurant, approved plans for high density mixed use development and commercial activities including Farm markets, community events and a community garden. All of these activities have received both local government and community support.

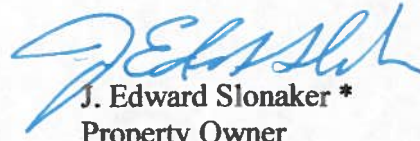
Economic development and commercial investment depend on predictability. In order for this property to continue attempts to fill local community needs it is imperative that the regulations regarding permitted use of the property be firm, understood yet flexible. Site development planning and community participation are not possible if potential future entrepreneurial use must be approved one piece at a time. It is much more efficient and beneficial for property development and public participation to have flexible plans that can be evaluated, regulated and approved through existing regulation.

Current plans for the property are based on previous experience and current social-economic trends. Those plans include an initial 15,000 square feet of commercial-retail space. The space would be in one or more individual structures. Negotiations for various operators of that space are in progress. The major theme of development will continue to be in support of the agricultural industry of Jefferson County. Providing facilities for entrepreneurs, small local retail and professional services is a priority. Previous use evaluations of this property have indicated that expansion to a total of 65,000 square feet of commercial-retail space can be accommodated comfortably. Total build out and time frame will be determined by continued community input and support.

This next step in developing the property and a community partnership cannot move forward without the predictability of the requested Conditional Use Permit granting limited commercial uses as a class. We look forward to the community compatibility process. Hearing new ideas and concerns will continue to improve the opportunities this project will provide. Turning a vision into predictable regulation should drive this process.

Thank you for your consideration.

Peter S. Corum \*  
Property Owner



J. Edward Slonaker \*  
Property Owner

\*(Member of Twin Oaks Subdivision, LLC)

# Conditional Use Permit Application

## Support Data

*(please attach additional pages if necessary)*

*January 17, 2012*

*(with addendum text changes Jan 27, 2012)*

1. Name and address of a contact person.  
*(Refer to Conditional Use Permit Application Section B)*

2. Name and address of the owner/developer.  
*(Refer to Conditional Use Permit Application Section C)*

3. Type of development proposed (provide as much detail as possible).

Morgan's Grove Market (MGM) – Evolved from a vision based on a planned, mix-use community centered on the arts, with designated living space, working space, and open space. The community is being redesigned as an agricultural based economic empowerment zone. The intent is to provide a cutting edge approach to local sustainability while complimenting the mature character of Shepherdstown's community at large. This evolutionary vision began at an introductory meeting in November, 2005, with interested local parties representing artists, businesses, educational institutions, government, neighbors and non-profit groups meeting in an open forum to discuss ideas and alternatives for a 13-acre parcel of land adjacent to Morgan's Grove Park. The same open process of community involvement and input continues today.

By making this property a campus style mix of diverse economic growth opportunities with a common local sustainability theme, the integrity of the property's exterior will be maintained. The structural units are anticipated to maintain a tight physical relationship to increase the amount of open space on site.

The project is being designed to protect the existing character of the surrounding area.

Community open space is provided adjacent to all property boundaries and the Route 480 right-of-way. The open space will provide the surrounding community with areas for recreational activities. Vegetation preserved within these open spaces will serve as visual buffers between the subject property and the adjoining parcels. Vehicular access will be from Route 480 and may

provide frontage improvements, as required by WVDOT and the Jefferson County Subdivision Ordinance.

4. Acreage of original tract and property to be developed.  
*(Refer to Conditional Use Permit Application Section E)*

5. General description of surface conditions (topography).

The subject property consists of open fields, tree groves and a riparian area associated with the Town Run stream. The most significant stands of trees occur along the properties perimeter. Individual trees can be found in the vicinity of the existing structure along Kearneysville Pike and the existing structure adjacent to Town Run. Town Run, is a perennial stream and is located on the eastern most section of the property running adjacent to the railroad right-of-way.

There are no other known water bodies located on the subject property. A visual inspection of the subject property revealed no known rock outcroppings or quarries on the subject property.

*(Addendum: There are no known sinkholes. Flood plain area identified in exhibit 4)*

6. Soil and drainage characteristics.

The subject property generally slopes toward Town Run with isolated areas throughout the subject property draining towards the adjacent properties to the northeast & southwest. One distinct swale exists in the northwest corner of the property; the drainage associated with this swale originates primarily from a culvert that enters from under Route 480 and exits the property on the northeast border. All drainage appears to enter Town Run by sheet or channelized flow directly from the subject property or by way of adjacent properties to the northeast or southwest.

7. General location and description of any existing structures.  
*(See Sketch Plan)*

*Addendum:* One of the existing residential structures is shown on the sketch plat. The other is covered by the bubble development sketch. The following narrative should be added to applicant submission, support data, item 7: Two existing homes are located on the subject properties. One house is located adjacent to Route 480, with the remaining house being located at the rear of the property between the existing overhead power lines and Town Run. Both structures are single-family detached brick homes and have individual driveways connecting to Route 480. Located

within the existing vegetation, adjacent to the southwest boundary, towards the front of the property is a shed and pavilion. A septic field and well are sited just behind the front house. The house in the rear of the property has a well, septic field and an in-ground swimming pool located in the back.

A concrete building pad and associated asphalt parking lot are located at the front northeast corner of the property adjacent to Route 480.

All structures appear to be in good condition with the exception of the asphalt parking lot and the concrete building pad. No structures on the property are known to have any historic value.

8. General location and description of existing easements or rights-of-way.  
(See Sketch Plan)

9. Existing covenants and restrictions on the land.

A search of the existing deeds identified no existing covenants and restrictions on the land.

10. Intended improvements and proposed building locations including locations of signs (in addition to narrative, please also show locations on sketch plan).

In keeping with the streetscape of Route 480, building locations will be set back from Route 480 and the adjoining properties boundaries. Community open space can be located throughout the development and adjacent to all property boundaries, to provide recreational areas for the proposed community and to provide a buffer to the neighboring properties.

Improvements will be those associated with the buildings noted on the sketch plat, which will include roads, utilities (including water, sanitary, storm water management, power, telephone and cable television) and other improvements as required by Jefferson County Ordinance. The improvements will establish a strong architectural character along Route 480 and remove the unsightly asphalt parking lot and concrete building pad that currently front Route 480.

Morgan's Grove Market has begun creating a dialogue with Jefferson County's Historic Landmarks Commission. Collaborations will be an important part of the exterior design characteristic process. Historic markers combined with kiosks could provide area residents and visitors the story of Morgan's Grove, Town Run and surrounding area.

Attention will also be focused on the impervious surface ratio. Second story space in some instances may prove complimentary to the overall campus design. It would contribute to preserving open areas and natural ground water recharge. Surface materials and design of

required parking areas will also be evaluated. MGM will be seeking input regarding the most environmentally sound treatment of parking surfaces.

Signage will be low and mounted on brick or stone monuments. No pole signs or other strip mall type signage will be permitted. Fascia signage or other main street type signage, internal to the property will be permitted. Only down lighting will be permitted for signage.

## 11. Intended land uses.

### Principle Permitted uses:

1. Food Hub
  - a. Retail-Wholesale food distribution-storage
  - b. Community Kitchen
  - c. Restaurant (limited to 100 seats)
  - d. Bakery
  - e. Butcher Shop
  - f. Accessory Uses
2. General Merchandise (Retail)
  - a. Fresh-Local Food Market
  - b. Hardware Store
  - c. Antique Shop
  - d. Cottage Industry
  - e. Accessory Uses
3. Professional - Business Offices
  - a. Medical, Dental, Optical, Health Clinic (small)
  - b. Banking, Accounting, Insurance
  - c. Sales for offsite services (home improvements)
  - d. Other types of professional – business offices
4. Community Amenities
  - a. Health Activities Facility
  - b. Alternative Energy Distribution point (limited)
  - c. Public-Private Access Pool
  - d. Entertainment-Sports Facility
  - e. Conference-Meeting-Event Space

*(Addendum response to staff comments)*

Staff Comment 6. On page 3 of the CUP Support Data, “Retail-Wholesale food distribution-storage” could use clarification to specify that “food” means local agricultural products (correct?)

Addendum to comment 6: There are as many definitions of “food” as there people to ask or answer the question. The real question should be what constitutes “local”? We believe that there is little doubt what the overall theme of this request is. The closest, freshest, and retail viable have been descriptions used by the applicant at several public hearings and community meetings.

Staff Comment 7. On page 4 of the Conditional Use Permit Support Data, some clarification of what is meant by “Entertainment-Sports Facility” is needed. If this is a distinct structure (i.e. not in one of the retail buildings), its general location should be identified on the sketch plan.

Addendum to comment 7: The US Supreme Court references the performing arts as “entertainment”. This project model and vision clearly supports the arts. It is anticipated that there will be live activities for the benefit of our artisan and performing arts community presented in various forms both indoors and out. The addition and success of live music performers during last year’s farm market is supportive of these uses. The possibilities are only limited by imagination. Identifying a specific building or space at this time is actually contrary to the projects vision. We are simply providing the physical and regulatory opportunity for artisans, startups and entrepreneurs to test their dreams in the community. “Sports” is similar. It is reasonable to expect that a health based venture would take advantage of the creative business hub campus. The goal here is to provide the words that can allow Physical, food, health and quality of life business space.

## 12. Earth work that would alter topography.

Earthwork for the project will include construction of roads, utilities, storm water management facilities and grading associated with construction of structures. Additional alteration may occur to optimize building locations and the collection of suitable on site fill material for the construction of the associated improvements. Erosion and sediment control measures will be constructed for all areas disturbed during the construction process as required by the Jefferson County Subdivision Ordinance.

## 13. Tentative development schedule.

As determined by market conditions the Developer intends to develop the project in 3 phases. This schedule would result in a 5-year build-out, however this schedule reflects an approximate rate of development and the proposed schedule may vary.

2012, First building with infrastructure and permitting to be complete

2013-2017. Additional buildings and amenities as market conditions dictate.

14. Extent of the conversion of farm land to urban uses.

The subject property has not been cultivated within the last twenty-five (25) years and as such will not result in the conversion of active farmland to urban use.

15. Affected wildlife populations.

The subject property fronts Route 480 and is bordered by Morgan's Grove Park and residential dwellings. It can be assumed that the land is frequented by wildlife typically found in Jefferson County which would include raccoons, opossums, foxes, white tail deer, groundhogs, skunks, squirrels and other species readily adapted to extensive contact with people in an urban environment. Primary habitat areas on the subject property will be retained, specifically the hedgerows on the perimeter of the property and the vegetation along Town Run. As appropriate, Town Run and the associated vegetation will be cleaned up to enhance existing habitat and its use as a passive recreational amenity.

West Virginia Department of Natural Resources (DNR) letter states, "We have no known records of any RTE (rare, threatened or endangered) species or sensitive habitats within the project area."

16. Ground water and surface water and sewer lines within 1320 feet.

Ground water:

Surface water: Town Run (stream)

Sewer lines within 1320 feet: None

17. Distance to fire and emergency services that would serve the site.

Shepherdstown Fire Department will provide primary response for fire protection and emergency rescue. The Department is located approximately 2 miles from the subject property.

18. Distance to the appropriate elementary, middle, and high school.

No residential development is planned.

19. Traffic characteristics - type and frequency of traffic; adequacy of existing transportation routes.

There have been several traffic studies completed over the past 10 years involving this property. Traffic issues have been contemplated and resolved during various stages of the permit process. Previous estimated traffic counts for expanded business development of this property have determined what, if any, improvements to the current Kearneysville Pike (Rt. 480) might be required by WV DOH for final permitting. Additions of the Shepherdstown Bypass and area intersection improvements have kept pace with traffic increases. A lowering of the speed limit from 55MPH to 40MPH along this section highway was accomplished through WVDOH by the applicant.

20. Demand for school services created by this development.

No residential component

21. Proximity and relationship to historic structures or properties within two hundred (200) feet.

There are no historic structures on the subject property and a review of the National Register of Historic Places and the Jefferson County Windshield Survey identified the following in proximity of the subject property:

- Morgan's Grove Park bordering north of the subject property.
- Balling Spring – Morgan's Grove located along Route 480 northeast of the subject property.
- Rockland located approximately 1.5 miles south of subject property on Route 480.
- Falling Spring Morgan's Grove located along Route 480.
- Morgan's Bedinger Dandridge House located southwest of Shepherdstown on Route 480
- Elmwood Cemetery is within 1 mile from the subject property. The Elmwood Cemetery includes the graves of several Confederate veterans.
- Elmwood (Building) located approximately 1.5 miles from subject property south of Shepherdstown off of Route 17.
- Cold Spring located approximately 1.5 miles from subject property south of Shepherdstown off of Route 17.
- Halper House, no details provided
- Rosebrake, constructed in the early 1800's Owned by the Morgan family.
- Marker Number 3, Marks no particular battle but records some incidents worthy of notice.

- Shepherdstown Historic District is approximately 1.2 miles north of the subject property.

## 22. Proximity to recreational facilities.

Adjoining Morgan Grove Park

## 23. Relationship of the project to the Comprehensive Plan.

Jefferson County – A Vision

### Plan Vision

This Plan recognizes that for our county to remain a vital, attractive community, new growth must include a balance of jobs and housing and be respectful of the very qualities that are attracting new residents every year: the rural landscape, the natural beauty and the pleasing character of our towns and villages.

*(Focus on economic development and infilling residential development with local jobs and retail opportunities creates that living version of the vision being described.)*

### Plan Policies

This Plan encourages new development patterns that foster mixed-use neighborhoods so that a sense of community begins at the subdivision levels.

*(The proposed project is intended to enhance current attempts to provide low impact, high quality business, distribution, professional services and retail in the area. This can only be accomplished by the proper use authorizations for the proposed Morgan's Grove Market economic campus. There has been conversation about the right place or why not someplace else? The answer is no place else has the vision and few have the proven economic potential of this location. This is the missing component to add "mixed-use" to the surrounding neighborhoods. It accomplishes this by leveraging local and regional producers with local consumers.)*

This Plan recommends that Jefferson County's natural features, particularly stream valleys, be conserved as green space and that significant natural features be afforded protection as development proceeds.

*(The Morgan's Grove Market agricultural hub property includes a portion of Town Run. Designating specific limited uses would generate the accompanying reviews and regulation. This property would become committed to. Granting of the CUP will ensure the strictest stream, storm water management and environmental regulatory compliance will be enforced. Approval of this application would create one of if not the most regulated-protected properties on Town Run.)*

This Plan encourages economic development so that residents can live and work in the County.

*(Specific permitted uses and the predictability of creating business opportunities is essential for diverse professional, retail, and business recruitment. These types of economic empowerment combined with a campus setting will benefit local surrounding residential communities. Jobs, services and local retail will enhance quality of life issues supported by the Comprehensive Plan.)*

This Plan encourages the opportunity to farm and recognizes the changing shift in agriculture to include large family owned farms and smaller agricultural operations.

*(Economic sustainability is a key component of maintaining viable farming operations. Providing space for value adding and aggregation of agricultural products for redistribution is essential to sustainable farming operations. This location continues to work toward providing those necessary components.)*

This Plan recognizes existing population centers as the focus of new, more intense development and the importance of working with municipalities to assure a pattern of development consistent with the Plan vision.

*(The subject property is an island surrounded by suburban residential development. Placing a "by right" standard of limited business activity will accomplish several Comprehensive Plan goals. One of those would be to turn suburban sprawl into a mixed use community. Residential development would be prohibited while local jobs, business opportunities and neighborhood retail needs could be enhanced.)*

This Plan identifies strategies to assure that community facilities and transportation infrastructure are provided in sequence with new development.

*(Morgan's Grove Market and its proposed use designation will fill a void in this portion of the county. The area is virtually surrounded by classic suburban residential housing. It is devoid of job and retail service centers. There is no place to buy food, small household needs or enjoy informal social activities without expended vehicle travel. Opportunities for long term primary employment in the surrounding neighborhoods are extremely limited. The economic empowerment campus that is being proposed has the potential of filling many of those needs. )*

Rule of Construction and Interpretation: This Comprehensive Plan is not intended to replace or supersede definite, specific ordinances that were in effect at the time of its adoption; instead, its purpose is to lay the foundation for the future enactment of land use ordinances. Proposals for future revisions, amendments or enactments of the land use and development ordinances should be reviewed for conformity with this Comprehensive Plan.

*(The Morgan's Grove Market property has been in continuous states of business and high density approvals since 1968. There have been several development proposals since zoning was first enacted. The last two uses were approved by conditional use permit or interpretation of current rural zoning restriction. In order for this property to continue as a community asset, the proper listing of permitted uses should be changed as outlined in the proposed CUP.)*

### Statement of Goals

A list of general goals was adopted as guidelines for the preparation of the 1986 Comprehensive Plan. These goals were readopted unchanged and incorporated into the 1994 Comprehensive Plan. "Webster's Dictionary" defines a goal as "the end toward which effort is directed." Given the changing nature of the County, adjustment of these goals is necessary to meet anticipated challenges. Therefore, adopts the following goals as the guidelines for the 2003 Comprehensive Plan, with no particular purpose as to their order:

Encourage growth and development in areas where sewer, water, schools, and other public facilities are available or can be provided without unreasonable cost to the community.

*(A business campus as proposed for the property is required to pay ALL costs incurred to provide services. There is no new residential component. Business and economic development defined projects must be completed without cost to current infrastructure providers. Taxes and*

*fees for service are charged at the highest approved rate. This is usually viewed as a benefit to predominantly residential neighborhoods.)*

Promote growth and development that are both economically and environmentally sound.

*(Current local, state and federal regulation ensures that both goals are met.)*

Promote the maintenance of an agricultural base in the County at a level sufficient to encourage the continued viability of farming in all its various forms.

*(Maintaining an agricultural base requires providing product outlets. Wholesale and retail options must be allowed in the local area to provide the best prospect for local support of local goods.)*

Encourage and support commercial, industrial, and agricultural activities to provide a diversified and sound local economy.

*(That is EXACTLY what this CUP application is about. Vision and the willingness to act on a plan are essential to diversified economic development in support of agriculture. This campus style economic empowerment zone did not just happen. It is the result of research, community input and hands on experience with agriculturally related retailers and consumers. Future progress is rarely realized by clinging to past practices. )*

Promote the conservation of the natural, cultural, and historical resources and the preservation of scenic beauty.

*(Infill of suburban residential areas with a neighborhood business in a campus type setting is one of the ways to accomplish this goal.)*

Advocate the maintenance and improvement of transportation systems so that people and goods can move safely and efficiently throughout the County.

*(Twin Oaks, LLC and Morgan's Grove Market have been pro active in dealing with transportation and safety improvements. The most visible example is the successful lowering of the speed limit not only for this property but for the benefit of existing residential and social*

*activities in the area of the subject property. Applications and approvals for other potential highway improvements are in the process of being reviewed.)*

Support and protect private property rights while supporting and protecting overall public health, safety and general welfare.

*(A CUP refining the use of this property as a small business campus in support of the areas greater agricultural community will provide two things. Property rights will be defined and enforcing ALL the associated regulation will protect overall public health, safety and welfare.)*

Promote a Planning and Zoning process that is understandable and straightforward, with ample opportunity for meaningful public input.

*(This CUP application process and the subsequent public participation requirements accomplish this goal.)*

Promote pedestrian friendly, livable communities.

*(Approval of this CUP request will work toward this goal. Jobs, amenities and retail opportunities will become available to the surrounding residential neighborhoods.)*

### Chapter 3: Management of the Natural and Built Environment.

#### Recommendation 3.12 (page 54)

##### A Diversified Agriculture Industry

Economic viability is key to the survival of farming. However, economic viability is contextual. The 1997 USDA Census of Agriculture reported that 47% of Jefferson County farmers have full-time jobs elsewhere and 57.7% of county farms produced less than \$10,000 in sales annually. Seventy-five percent posted sales of less than \$25,000. This is not unique to Jefferson County. Off-farm employment is becoming a way of life throughout the farming community.

*(Approval of the requested uses through a CUP will help support this recommendation. The statistics presented clearly demonstrate that wholesale and retail outlets are required to make small scale farming sustainable. Aggregation and wholesale redistribution fill the gap between having to supplement farming operations with other income and economic viability of small farm preservation.)*

**Existing County Economic Development Efforts:** (page 64)

**According to the United States Department of Commerce, economic development is fundamentally about enhancing the factors of productive capacity – land, labor, capital and technology – of a national, state or local economy. By using its resources and powers to reduce the risks and cost which could prohibit investment, the public sector has often been responsible for setting the stage for employment generating investment by the private sector. This is as true in this State and County as it is in other parts of the country.**

**Recommendation 3.18:**

The County should continue to pursue new industrial and commercial development in order to diversity its economy, increase the tax base and thereby mitigate the problems of increasing residential growth, and provide quality employment opportunities to its workforce.

This recommendation mirrors the existing mission statement of the Jefferson County Development Authority. It also encompasses a myriad of factors that affect the County's ability to succeed in new business attraction, addressed here individually:

*(Granting of a Conditional Use Permit for this particular property is directly supportive of meeting this recommendation. The property's historic use has been commercial and approved, but unbuilt, residential use. By granting the CUP designation of an agriculturally based economic empowerment campus, the predictability that economic and business development requires can be met. Business will be allowed and new residential development will not. Balance is what this recommendation seeks.)*

**Recommendation 3.21:** (page 68)

Once recommendation 3.20 is accomplished the County should review different zoning methods to see if LESA is still the zoning of choice for the County.

### Transferable Development Rights

Transfer Development Rights (TDR's) programs can be effectively used to allow landowners in the far reaches of the county to benefit from the development potential of their property without actually developing the land, while focusing the development the lots that would have been on that property in areas that are more appropriate for development. To avoid having to amend this Plan in the future to justify instituting a TDR program, this plan endorses investigating the creation of a TDR program in the Rural District. Further study will be required regarding how such a plan should be implemented and where the density receiving area should be.

*(Support of the farm community, preserving valuable agricultural land and maintaining individual property value is a challenge. Applications such as this one should be viewed as working drafts for the Transferable Development Right program. Assessing best use practices in the rural zoning district, combined with fair compensation for land restrictions is one of the best solutions to a land management dilemma. The proper use of the applicant property is the continued retail small business evolution that is being requested.)*

# **FB solutions** for all your management, regulatory and permit needs

191 Wild Hare Road      Harpers Ferry, WV 25425      304 725 6754      fred@fredblackmer.com

Jefferson County Zoning Administrator  
PO Box  
East Washington Street  
Charles Town, WV 25414

January 27, 2012

Twin Oaks, LLC request for Conditional Use Permit (submitted Jan 18, 2012)

Subject: Application addendum (submitted Jan 27, 2012)

The following is addendum material to address staff review comments.

*(Staff comments regarding Morgan's Grove Market CUP application) Jan 25, 2012*

Fred and Peter,

I have reviewed the Conditional Use Permit application for Morgans Grove Market.

The application is much more detailed than the draft we'd previously looked at, and (in my opinion) much more effective in conveying your vision for the site.

For the most part, things seem to be in order; however, I have just a few minor comments, listed below.

In the interest of saving a tree, we would accept an "application addendum" to address the changes. If you would like us to review a single copy or a PDF of the addendum prior to making the 15 copies, we'd be happy to do so.

Comments are as follows:

A. Items that will need to be addressed before the application can move forward:

1. Sketch Plan:
  - a. The sketch plan does not show contour lines. Section 7.4B of the Zoning Ordinance states that "Contour lines . . . should be superimposed on the sketch plan." You may want to create a new sketch plan using the contour map that the GIS Department provided you. (One of the diagrams that you provided as a sketch plan could also be included as an exhibit.) As we discussed earlier, if you do not want to show building footprints, you can use a bubble-diagram format to show general locations of land use areas on the site.

- b. Two sketch plans are in the application, with slightly different layouts. The labels on the buildings on the second sketch plan (the unlabeled plan) indicate residential uses. As such, this second plan should be removed from the application to avoid confusion.
- c. One of the sketch plans includes the notation, "75' setback per condition use permit conditions". This appears to be related to the previous conditional use permit application; as such, the note should not be included on the sketch plan.

Addendum for comments A.1a, b and c: Items a and b are related to the issue of sketch and contour lines. The base contour map inadvertently left previous structural use notes. That has been corrected on exhibit 1 attached. A comparison of contour lines produced by JC GIS department (exhibit 2) demonstrates that the property contour lines are adequately represented. Comment A.1c regards a condition of previous CUP approval regarding power line setbacks. It was left in support of previous issues raised regarding EMF associated with power transmission lines. The issue raised by staff was addressed by adding the word "previous" to the sketch plat note (exhibit 3)

- d. The sketch plan should include "natural features" per Section 7.4B; this should include a general outline of the floodplain area. Also, the sketch plan should include any known sinkholes; if none, a note should be added to the map or narrative stating that there are no known sinkholes.

Addendum for comment d: "Natural features" are described in the County application form as support data narrative items 5 and 6. While a requirement or mention of "floodplain" could not be found in Zoning Ordinance Section 7.4B, a drawing produced by the Department of Planning and Zoning is included as addendum exhibit 4. There are no sinkholes currently identified on the property and that statement should be included in support data narrative number 5.

- e. Question #7 asks for "general location and description of any existing structures." Please either show the existing structures on the sketch plan, or provide a separate exhibit, or include some narrative about existing structures in the application.

Addendum for comment e: One of the existing residential structures is shown on the sketch plat. The other is covered by the bubble development sketch. The following narrative should be added to applicant submission, support data, item 7: Two existing homes are located on the subject properties. One house is located adjacent to Route 480, with the remaining house being located at the rear of the property between the existing overhead power lines and Town Run. Both structures are single-family detached brick homes and have individual driveways connecting to Route 480. Located within the existing vegetation, adjacent to the southwest boundary, towards the front of the property is a shed and pavilion. A septic field and well are sited just behind the front house. The house in the rear of the property has a well, septic field and an in-ground swimming pool located in the back.

A concrete building pad and associated asphalt parking lot are located at the front northeast corner of the property adjacent to Route 480.

All structures appear to be in good condition with the exception of the asphalt parking lot and the concrete building pad. No structures on the property are known to have any historic value.

2. I did not see a list of adjacent and confronting property owners (including those located across a street or other right-of-way), with mailing addresses.

Addendum for comment 2: The adjacent and confronting property owners list supplied by the JC Planning and Zoning Department is included as exhibit 5.

3. Question #16 asks about water/sewer service. Is there a public water line from Shepherdstown in front of the property?

Addendum for comment 3: NO

4. Regarding question #19, I reiterate my previous comment on your draft application: "As we discussed in our meeting, the "Traffic Characteristics" section of the plan should be more detailed regarding types of vehicles (e.g. trucks for warehousing/aggregation), general projected volume, and anticipated times for peak volume at full buildout. Very specific traffic generation estimates are not needed, however."

Addendum to comment 4: The following narrative should be added to question #19. "Traffic characteristics" and volume are directly related to the business activities as they develop. It is reasonable to assume there will be occasional box truck activity in the early morning or evening for product deliveries. Vehicle traffic will match the pattern of individual business services. General retail should produce even traffic flow throughout the normal business day. A restaurant may see peak hourly traffic flow during the mid day lunch hours. It might also be expected that a higher vehicle count but lower hourly traffic flow might occur during the evening hours. A special event or promotional activity such as Saturday Farmers Market would have increased volume for very specific time periods. All of these factors are addressed during highway entrance permitting and design of required traffic safety improvements. Community input in addressing the traffic for not only this property but nearby high volume traffic activities conducted at Asbury Church, Morgan's Grove Park and proposed subdivisions will be extremely valuable.

5. One copy of the soils map provided by staff should be included.

Addendum to comment 5: Included as exhibit 6

6. On page 3 of the CUP Support Data, "Retail-Wholesale food distribution-storage" could use clarification to specify that "food" means local agricultural products (correct?)

Addendum to comment 6: There are as many definitions of "food" as there are people to ask or answer the question. The real question should be what constitutes "local"? We believe that there is little doubt what the overall theme of this request is. The closest, freshest, and retail viable have been descriptions used by the applicant at several public hearings and community meetings.

7. On page 4 of the Conditional Use Permit Support Data, some clarification of what is meant by "Entertainment-Sports Facility" is needed. If this is a distinct structure (i.e. not in one of the retail buildings), its general location should be identified on the sketch plan.

Addendum to comment 7: The US Supreme Court references the performing arts as "entertainment". This project model and vision clearly supports the arts. It is anticipated that there will be live activities for the benefit of our artisan and performing arts community presented in various forms both indoors and out. The addition and success of live music performers during last year's farm market is supportive of these uses. The possibilities are only limited by imagination. Identifying a specific building or space at this time is actually contrary to the projects vision. We are simply providing the physical and regulatory opportunity for artisans, startups and entrepreneurs to test their dreams in the community. "Sports" is similar. It is reasonable to expect that a health based venture would take advantage of the creative business hub campus. The goal here is to provide the words that can allow Physical, food, health and quality of life business space.

8. On page 4 of the cover memo, the biofuels concept is described. More clarification is needed – does this mean merely a single gas pump with biodiesel? Would tanks be aboveground or underground? Would any fuel processing occur onsite?

Addendum to comment 8: Bio fuels was a word used in the context of an alternative fuels narrative. Is it a potential future project? Yes in combination with an alternative fuels concept with many options if there is community support. The question for sighting and specific detail is one for a later time during site plan or permitting process IF any movement toward that concept were to begin..

**B. Other optional changes that you may want to consider:**

9. You may not want to limit yourself to only the types of office uses listed on page 4 of the CUP Support Data. Because office uses have similar characteristics, staff would support adding the category "d. Other types of professional – business offices".

Addendum to comment 9: The applicant agrees with staff recommendation. Add "d. Other types of Professional-Business offices" to the list of permitted uses.

10. Is there an intent to do other types of retail other than those types listed on page 4 of the CUP Support Data? (i.e. Art Gallery, Gift Store, or some other type of local-oriented retail) If so, you would want to add these to the list on page 4.

Addendum to comment 10: Expanding the list of specific permitted uses clouds the issue of types and intensity of use. The permitted uses and their sub-examples establish a type and level of expected businesses. The applicant relies on the ability of the JC Zoning Administrator and Board of Zoning Appeals to determine if future uses fit the standard of type and intensity of future activities.

11. Peter's signature does not appear on the cover memo. (The cover memo, of course, is not an ordinance requirement, but it would probably be best if both owners' signatures were on it because it is part of your application.)

Addendum to comment 11: In the interest of time and printing, add the word "signed" above Peter Corum , page 5 of the applicant cover letter.

Please let me know if you have any questions.

Thanks,  
Steve B

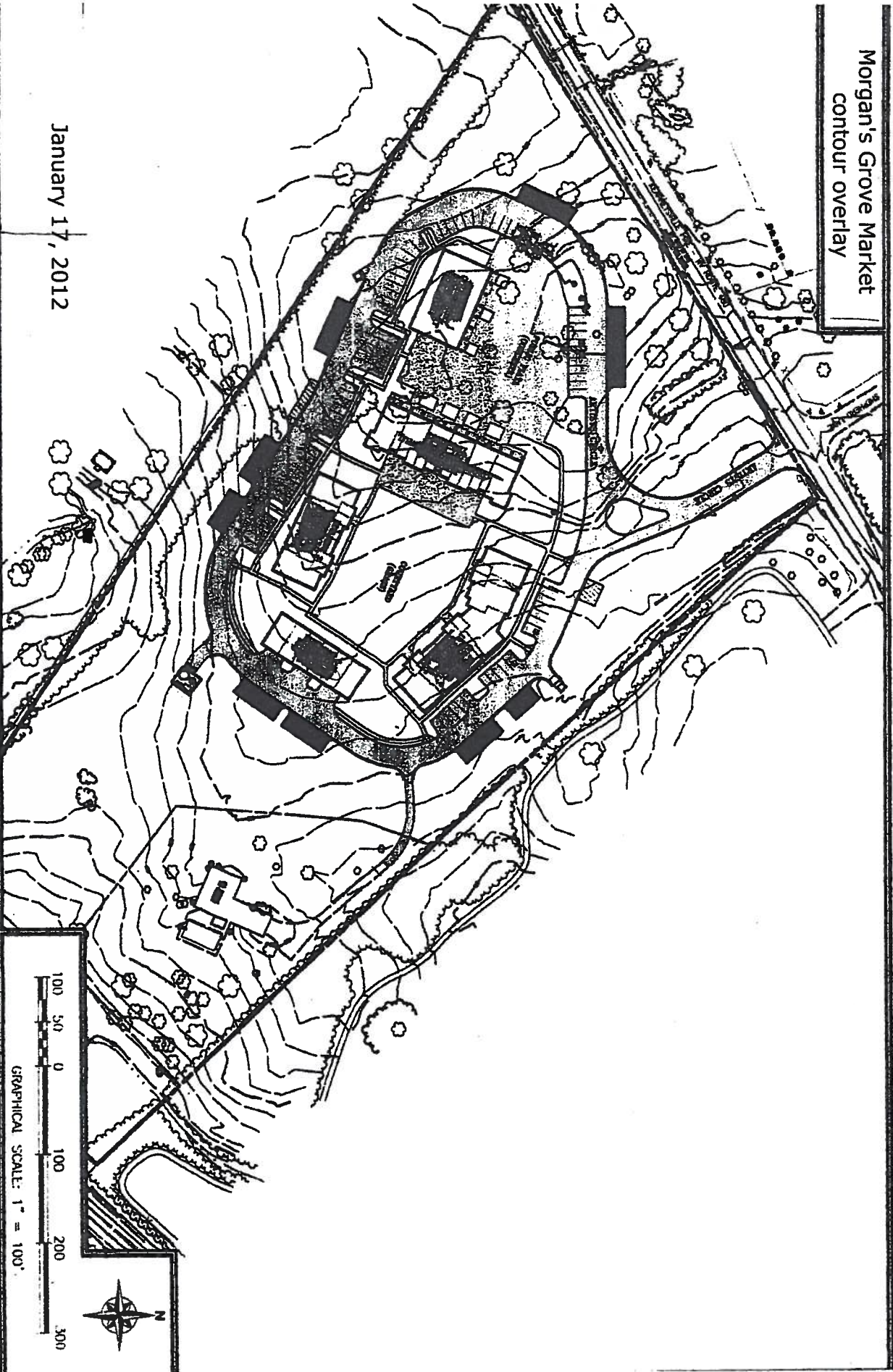
*Steve Barney*  
*Zoning Administrator*  
*Jefferson County Departments of Planning & Zoning*  
*(304) 728-3228*

Respectfully submitted,

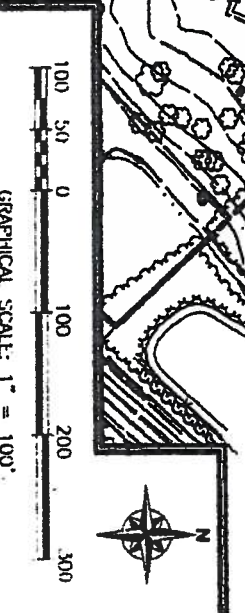
A handwritten signature in cursive script, reading "Fred Blackmer", followed by a long horizontal line extending to the right.

Fred Blackmer  
*For Twin Oaks, LLC*

Morgan's Grove Market  
contour overlay



January 17, 2012



APPENDIX

EXHIBIT 1

JAN 26 2012

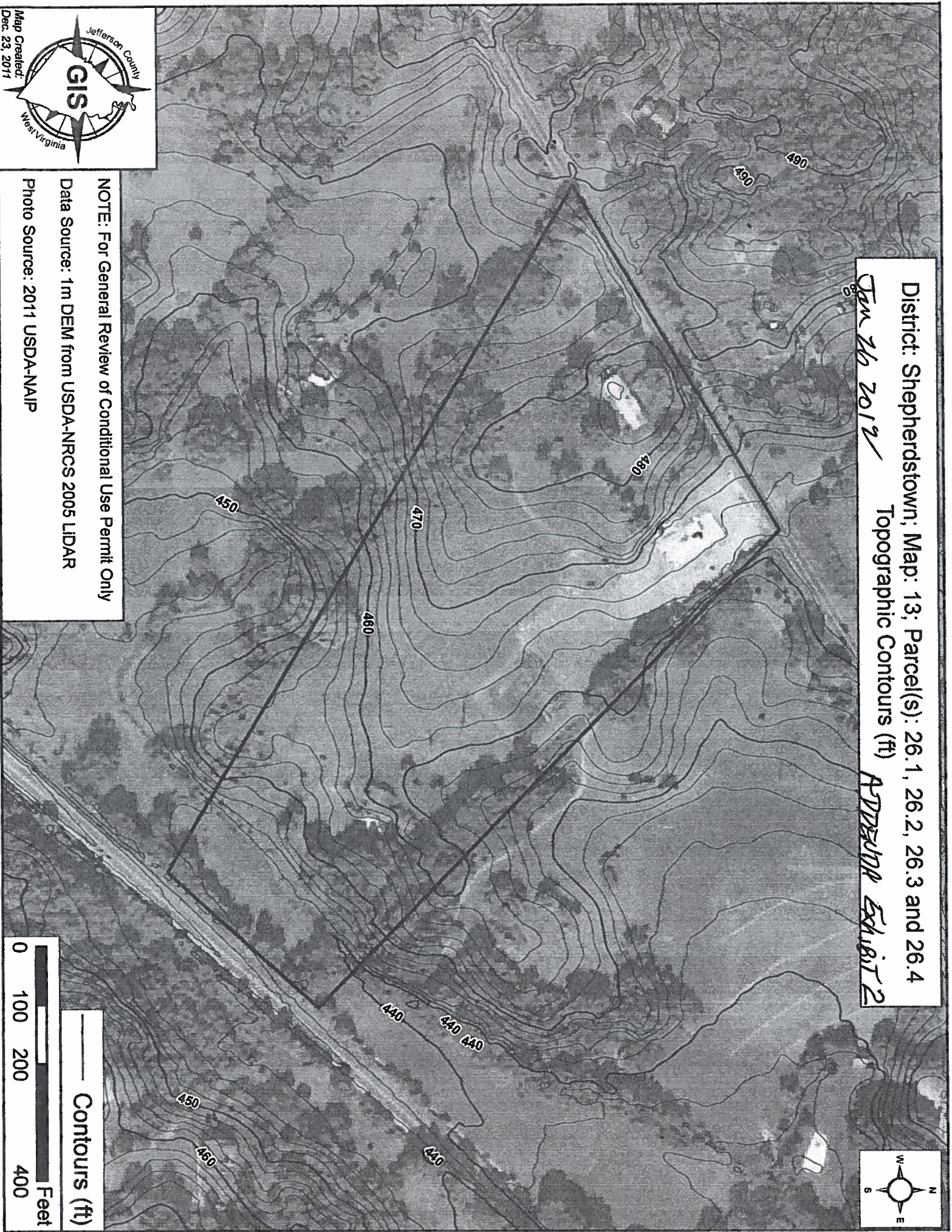
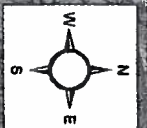


District: Shepherdstown; Map: 13; Parcel(s): 26.1, 26.2, 26.3 and 26.4  
*Jan 26 2012*  
Topographic Contours (ft)  
*APPENDIX EXHIBIT 2*

NOTE: For General Review of Conditional Use Permit Only

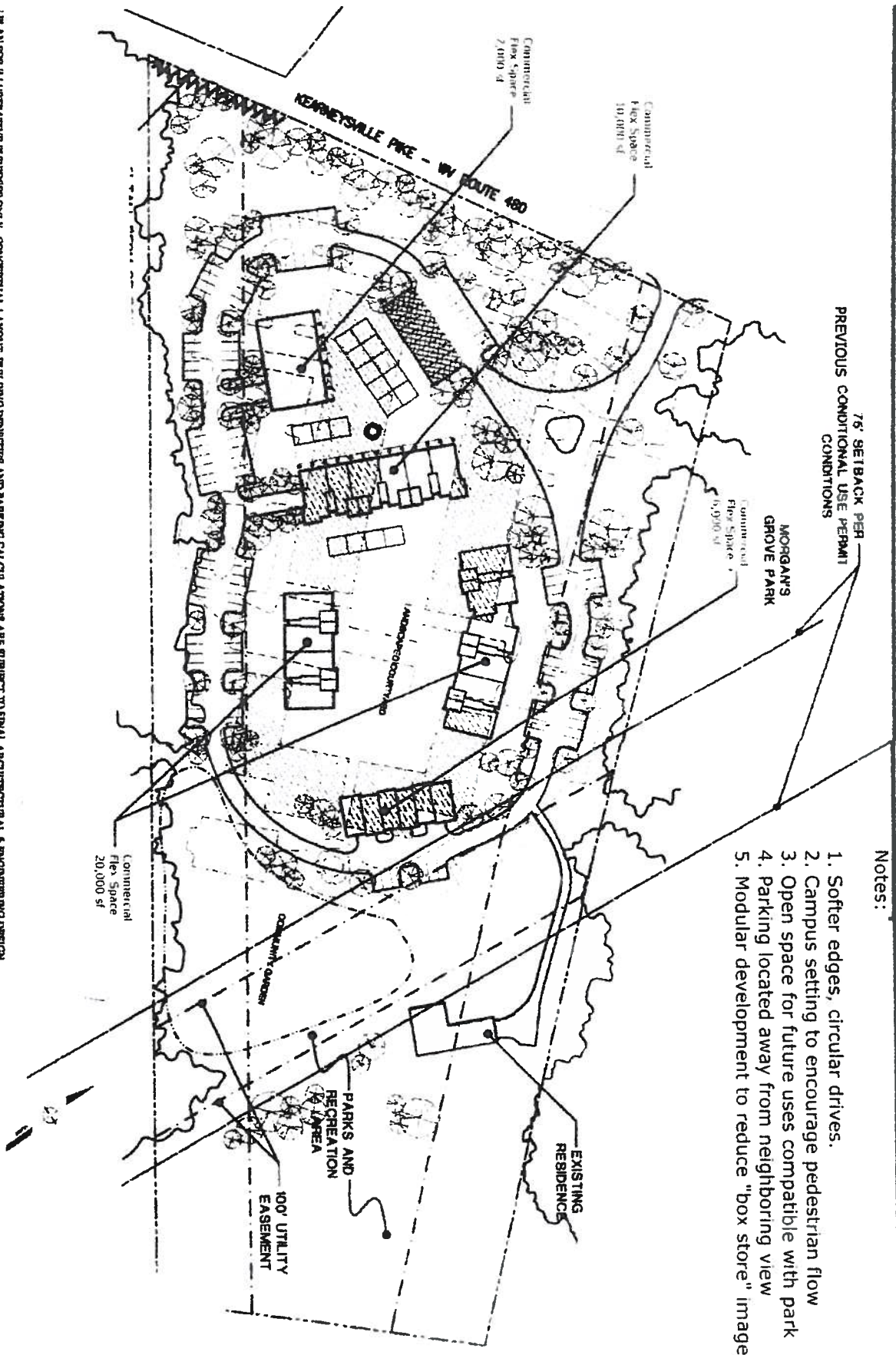
Data Source: 1m DEM from USDA-NRCS 2005 LIDAR

Photo Source: 2011 USDA-NAIP



*APPENDUM EXHIBIT 3*

- Notes:
1. Softer edges, circular drives.
  2. Campus setting to encourage pedestrian flow
  3. Open space for future uses compatible with park
  4. Parking located away from neighboring view
  5. Modular development to reduce "box store" image.



Morgan's Grove Market (MGM)

Concept Plan January 17, 2012

EXHIBIT 1 SKETCH PLAT

PLAN FOR ILLUSTRATIVE PURPOSES ONLY; CONCEPTUAL LAYOUT, BUILDING IDENTITIES AND PARKING CALCULATIONS ARE SUBJECT TO FINAL ARCHITECTURAL & ENGINEERING DESIGN.

JEFFERSON COUNTY, WEST VIRGINIA

*APPROVED JAN 27 2012*

MGM Property

ADDRESS EXHIBIT 4

National Register Historic District

1000 ft  
1000 ft  
1000 ft

10,000 sq ft  
.6 ac

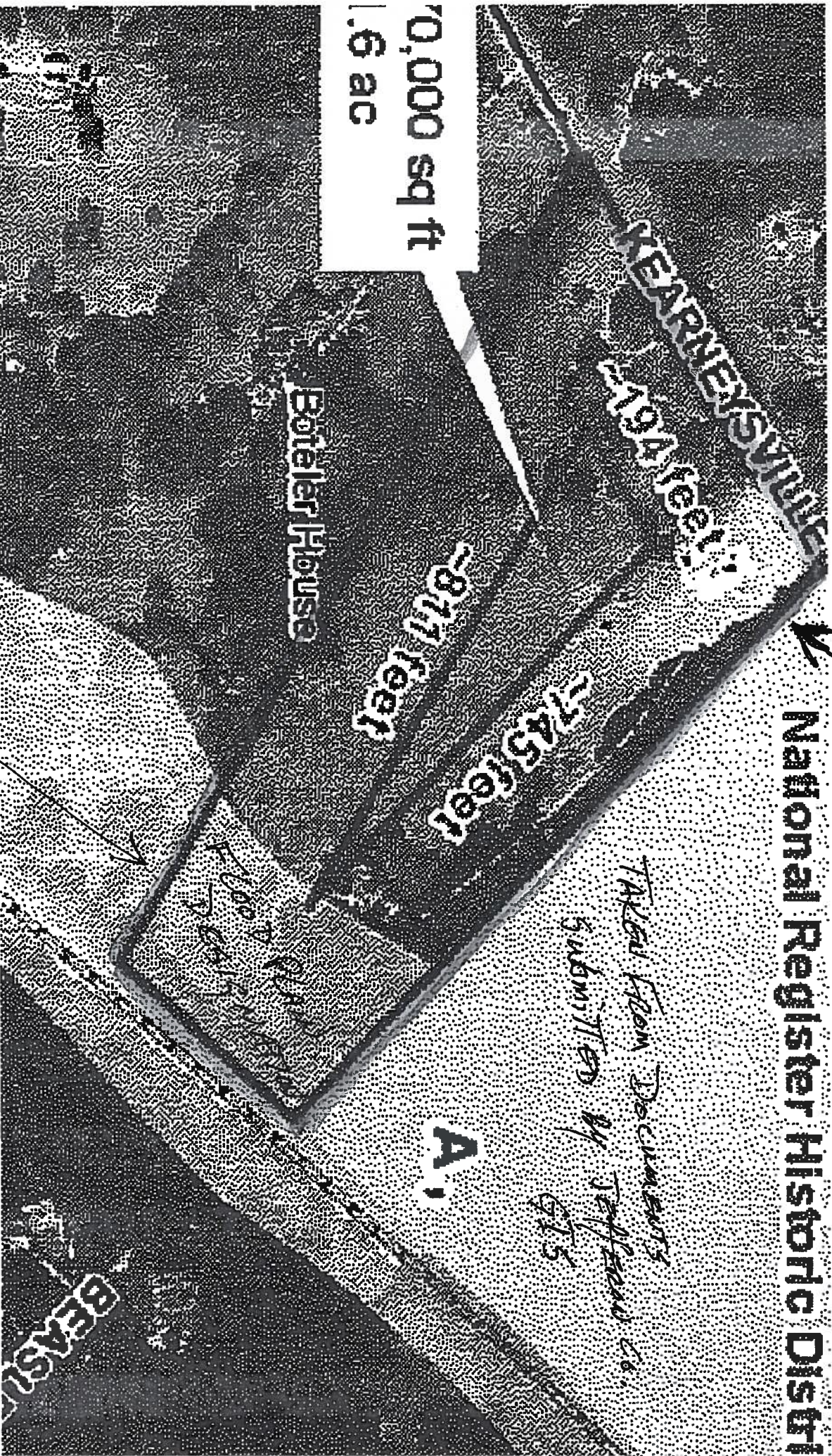
Hotel House

1077 feet  
1145 feet

Taken From Documents  
Submitted by Jeffery Co.  
GIS

A,

Flood Plain Designation Jan 24, 2012



ADDENDUM Exhibit 5

Jan 26, 2012

Peter Corum CUP Adjoiners

BILLMYER JOHN A & MYLENE  
3921 KEARNEYSVILLE PIKE  
SHEPHERDSTOWN WV 25443

WILSON MIRIAM J  
PO BOX 1194  
SHEPHERDSTOWN WV 25443

JOSEPHS DAVID  
BOX 177  
CROWN POINT NM 87313

ENGLISH JAMES H TR  
MARJORIE E B MOORE ET AL  
21800 WATSON RD  
LEESBURG VA 20175

SPURGAS JOSEPH R & CORNELIA A  
49 SHEPHERD LN  
SHEPHERDSTOWN WV 25443

FLITTIE WILLIAM H & SUSAN M H  
PO BOX 1484  
SHEPHERDSTOWN WV 25443

Applicant Info:

Twin Oaks Subdivision, LLC  
P.O. Box 536  
Shepherdstown, WV 25443

FB Solutions  
191 Wild Hare Road  
Harpers Ferry, WV 25425

**Soil Map: Morgans Grove Market Property**

District: Shepherdstown; Map: 13; Parcel(s): 26.1, 26.2, 26.3 and 26.4

*APPENDUM Exhibit 6*



*from 2/4 2012*



## CORPORATION OF SHEPHERDSTOWN

104 NORTH KING STREET  
P.O. Box 248  
SHEPHERDSTOWN, WEST VIRGINIA 25443-0248  
TEL: (304)876-2312  
FAX: (304) 876-1473

RECEIVED

APR 19 2012 -gth

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

April 6, 2012

Re: Twin Oaks Subdivision, 3988 Kearneysville Pike  
Morgan's Grove Market – Conditional Use Permit (File #CP12-01)  
Water and Sewer Service – *unresolved issue #3 in the draft Jefferson  
County Planning Staff Report (page 3 of 4)*

Jefferson County Board of Zoning Appeals  
c/o Jefferson County Department of Planning and Zoning  
116 E. Washington St,  
P.O. Box 338  
Charles Town, WV 25414

Dear Board of Zoning Appeals:

It has come to Shepherdstown's attention that the developers of the Twin Oaks Subdivision announced at the March 2, 2012 Compatibility Assessment Meeting that they are contemplating providing on-site utilities for the proposed project as opposed to connecting to the water and sewer systems operated by the Shepherdstown Utilities.

The Shepherdstown Water and Sewer Boards again wish to express our concern regarding the utilization of private water and sewer systems particularly where public utilities are available (The Water and Sewer Boards restated their concern and requested this letter be sent by unanimous motion at their 3-29-12 regular meeting).

Second, we would like to make the following points for the record:

- a. Both Utilities have capacity available to serve the proposed project.

- b. The Utilities have main service lines located nearby across Kearneysville Pike. We have not been made aware of any feasibility issues with connecting to those lines.
- c. We question the long-term advisability of investing in private utilities. We have found that there are often problems with the operation, maintenance, and replacement of such systems. (For instance, with the aged septic systems west of Town and the failing water system at Cavaland, the Health Department and the Public Service District have asked Shepherdstown to provide service, but we have no ready funding to do so. Had these developments been connected when built, past investment would have taken care of those problems.)
- d. Our experience has been that private systems address the needs of one specific area when others nearby have problems also (for instance, the failing septic systems in Mechlenberg Heights within sight of a recently constructed private sewer system). Such investment patterns seem short-sighted to us, especially when this area and our region as a whole (the Chesapeake Bay watershed) face so many challenges.
- e. Morgan's Grove Park, immediately adjacent to Twin Oaks, needs both water and sewer service to improve its abilities to meet the recreational needs of the northern part of the County. To date the Park has not been able to find funding to extend the lines. By working together, Twin Oaks and Morgan's Grove Park can both meet their needs with improved public systems that will then be available to serve others in the future. (At the 3-29-12 meeting of the Water and Sewer Boards, the Town offered to facilitate discussions among the parties.)
- f. Shepherdstown is about to put our new wastewater treatment plant into operation – a plant designed to meet the stringent Chesapeake Bay standards imposed by the EPA. We have been advised that it is not feasible for small private wastewater plants to meet those standards either in the short run or over time.

Again, we express our opposition to allowing private water and sewer systems at the Twin Oaks Subdivision when public utilities are nearby and when the proposed investment (if redirected) could strengthen the public systems and provide future opportunities for the wider area.

Sincerely,



Arthur J. Auxer, Mayor  
Chair of the Sewer Board  
Member of the Water Board

Amy Mathews Amos  
1104 Morgan Grove Rd.  
Shepherdstown WV 25443  
304-876-0647

Members, Board of Zoning Appeals  
Jefferson County

April 11, 2011

**Re: Conditional Use Permit conditions for Twin Oaks Subdivision LLC**

RECEIVED

APR 11 2012

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

Dear Members:

Applicants for a Conditional Use Permit (CUP) for the Twin Oaks Subdivision have outlined a vision for the use of this property that stresses local environmental and economic sustainability as a theme, through the promotion of local agricultural products and artistic work. However, many elements included in the application, or communicated recently, do not fit this vision. To ensure that this goal is met in a way consistent with the rural district status of this property, and to hold the developers accountable to goals they've communicated to the Jefferson County community, conditions are needed in the CUP.

Specifically:

**Local sustainable food:** The application for a CUP indicates that a primary goal is to provide a hub and distribution point for locally grown and value added food. Applicants assert in parentheses that: "Critical – everything will be local" (page 2 of their January 17, 2012 letter to the Jefferson County Zoning Administrator). However, at a public meeting hosted by the Town of Shepherdstown on April 10, Mr. Corum indicated that local will be defined as "the closest place you can get something." When questioned for clarification, he confirmed that if someone wanted a non-locally produced product such as an avocado from California, then that California-produced avocado would be defined as local.

To achieve the goal of supporting local and environmentally sustainable food, the CUP should indicate that food sold on site must be local. Exceptions should be rare and focus only on obtaining certified organic products. For example, in Jefferson County, the Charles Town Farmer's Market has identified products produced within 150 miles of Jefferson County as local, and limits its sales to these local products. Reasonable, well-recognized conditions such as this should be included in the CUP to promote local food and agriculture and ensure that this site cannot simply become a warehouse distribution center for major supermarkets to purchase food from all over the country or all over the world.

**Strip mall businesses:** Other goals outlined by the developers in their application for a CUP include educating the public about health and fitness, while providing a venue for public exercise; providing a place for local artists to work, promote and sell their work; eliminating barriers of entry for local entrepreneurs and their business ideas (e.g. the need for a community kitchen to address Health

Department concerns); and providing an economic platform for non-profits and for profit businesses to collaborate.

However, several categories of businesses listed in the CUP application do not fit any of these categories. Permitting these uses will allow this site to become simply a strip mall development in a rural zone. These proposed uses include professional business offices such as banking, insurance and accounting; sales for offsite services such as home improvement; medical and dental offices, and generically "Other types of professional offices – business offices." The application also lists General Merchandise such as hardware stores. In addition, Mr. Corum indicated in recent public notices and meetings that he is now considering adding two Montessori schools to the site.

None of these businesses promotes local food, agriculture, or the arts. The CUP should not allow these types of businesses on the site. They are inappropriate for a site zoned as a rural district.

**Undefined other uses - Alternative Energy Hub:** This proposed use is undefined in the application. Alternative energy can take many forms and have a wide variety of environmental benefits and costs, both globally and locally, including impacts on air quality, noise, hydrology and more. Such uses should not be permitted until and unless the applicant has a specific, detailed project that can be presented to the local community and BZA for comment and evaluation. No such project should be approved without careful detailed analysis. Therefore, the CUP should not allow for this use at this time.

**Undefined other uses - Entertainment and Sports:** Other proposed uses remain undefined and need to have clear limits given the surrounding neighborhoods. For example, the application includes "Entertainment and Sports Facility." In response to staff questions on the application, the developers suggest that these activities will not occur in a dedicated facility, but will occur throughout.

The CUP should explicitly state that the site will not include large entertainment and sports facilities that concentrate crowds and generate excessive noise.

**Confirm that industrial uses are not acceptable:** The CUP should explicitly recognize that industrial uses that relate to agriculture such as slaughterhouses, animal reduction processing and tanneries are not permitted. This is consistent with the County Commission's decision not to rezone this site for industrial-commercial uses, and the inappropriate nature of such activities on a property adjacent to a popular park and surrounded by homes.

**Truck traffic:** Nearby Morgan Grove Road is a small, windy, narrow, residential road less than a quarter mile from the entrance to the Morgan Grove Market site. Despite its small size, trucks do try to come down the road at times. (Most recently, I observed a school bus forced to halt on the side of the road to let a truck pass in the opposite direction.) Morgan's Grove Market has the potential to significantly increase truck traffic in the immediate area. Therefore, any development of this site should include working with WVDOT to impose a weight limit on Morgan Grove Road, to prevent large trucks from using this as an access route to Morgan Grove Market.

Thank you for your careful attention to these matters.

Sincerely,

A handwritten signature in black ink that reads "Amy Mathews Amos". The signature is written in a cursive, flowing style.

Amy Mathews Amos

Cc: Jennifer M. Brockman, Director of Planning and Zoning

County Commissioners

Jennilee Hartman

CP12-01

**From:** Zoning Dept <zoning@jeffersoncountywv.org>  
**Sent:** Thursday, April 12, 2012 9:59 AM  
**To:** jhartman@jeffersoncountywv.org  
**Cc:** sbarney@jeffersoncountywv.org; jbrockman@jeffersoncountywv.org  
**Subject:** Fw: Statement of Shepherdstown Community Club Comments on the TWin Oaks Development CUP Request  
**Attachments:** Memo to the BZA FOR 19 April Meeting.doc

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

**From:** <michael.austin@frontiernet.net>  
**Sent:** 4/12/2012 9:45:47 AM  
**To:** zoning@jeffersoncountywv.org  
**Subject:** Statement of Shepherdstown Community Club Comments on the TWin Oaks Development CUP Request

Jennifer and Staff:

Thanks very much for meeting with me on Tuesday. It was very helpful and I appreciate your professional insight and advice.

Here is the information from the SCC that I would like to have included in the BZA members packette in preparation for the 19 April public hearing on the CUP.

Mike

12 April 2012

RECEIVED

APR 12 2012

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

To: Jefferson County Board of Zoning Appeals Members

From: Mike Austin  
Shepherdstown Community Club Executive Board

Subject: Comments on Twin Oaks Subdivision Request for a Conditional Use Permit

**Introduction:** The Shepherdstown Community Club (SCC) (until recently known as the Shepherdstown Men's Club) owns Morgan's Grove Park which is currently leased to the Jefferson County Parks and Recreation Commission (JCPRC) who operate and maintain it for County residents. We retain of course, full responsibility as owners for preservation of the park, all capital improvements and attendant liability coverage. The SCC has owned and operated this historic community meeting place and recreational area since shortly after World War II. We are a non profit 501 – (3) c organization and an integral part of community life in the greater Shepherdstown area. Our Morgan's Grove Park is within the urban growth boundary of Shepherdstown and on the Official National Register of Historic Places. Periodically because of its historical significance the State of West Virginia has assisted with small community grants. It has long been acknowledged for its role in the famous "Bee Line March" during the Revolutionary War and important Civil War actions on the grounds and immediate surrounding areas. The Spring House, retaining walls and foundations of the Park's Pavilion date from the early 1830s. The Park and surrounding fields served as the local grounds for harvest festivals and county fairs for many years before the current County Fairgrounds was established. Without doubt one of the most attractive features that the park offers is simply a quiet restful place where individuals, families and organizations can come to spend a few hours pursuing their recreational activities without interruption or distraction.

The Park is frequently cited as the most heavily used Park in the JCPRC system. It supports the organized programs of several area soccer leagues involving over 1,000 children – many of them quite young. The exercise trail that follows the internal periphery of the park is extensively used as well as the playground equipment. Summer day camps are also conducted each year for young children and the pavilion is rented out to numerous groups and for individual family reunions and events. The SCC holds annual picnics and other activities in the park and sponsors events such as the up-coming 4th annual Earth Day. Most recently Senator Herb Snyder dedicated an information sign highlighting the significance of the Park in relation to the headwaters of Town Run and the Chesapeake Watershed. Next to the pavilion is a pedestal with a bronze plaque commemorating the nearby spring as the site in which the first organized elements of the U.S. Army were created. For these reasons we have major concerns about incompatible land use of the adjacent property in question where the Twin Oaks Subdivision proposes to develop intense commercial retail activities.

The general area is zoned Rural and land use surrounding our Park and the Twin Oaks Parcels is predominantly residential and agricultural. The land in question has a

significant controversial legacy that the BZA was also involved in, and which resulted in a long series of disruptive and costly legal actions. For that reason the neighboring property owners, including the SCC are extremely concerned about the prospect of incompatible commercial activities planned for the Twin Oaks properties.

**Background:** A prior CUP was obtained for this property by the Twin Oaks developers ostensibly to help save the local struggling artists community but even with an extension of time they failed to initiate development and the permit lapsed. Despite contrary assertions by the petitioners, there has been no commercial activity other than a token “Farmer’s Market” last summer on this property since the early 1990s when a local restaurant burned to the ground. In the intervening years the only vestige of any previous activity was a burned-out concrete pad and two private residences.

A recent effort to have the zoning classification of the property changed from Rural to Commercial/Industrial, which had been approved by the Planning Commission was unanimously rejected by the County Commissioners.

In objecting to the Commercial/Industrial zoning reclassification, we argued that the petitioner’s plans for development of the property could be more appropriately pursued through the CUP route. So we are committed to trying to find some reasonable compromise however the developers continue to significantly enlarge the purely commercial real estate aspects of their plans. The earlier tack taken was that they would build a 15,000 square foot facility and operate a more palatable farmers market with several activities directly related to local farm operations which included a restaurant, and a commercial kitchen. The almost philanthropic focus of their promotional efforts was on idealist measures to assist local farm families in marketing their produce. Now the effort has ballooned into a very large purely commercial retail operation with insignificant focus on local farm-related activities and been broadened to include a wide range of health facilities and medical services as well as apparently unlimited range of commercial businesses. The most recent addition was of children’s schools. The only operable criteria appear to be willingness to sign a commercial lease.

They lean heavily on the page-long list of “principal permitted uses” in a Rural District provided on page 73 of the Jefferson County Land and Zoning Ordinance. Their current plans are to build out 65,000 or more square feet of structures to house 15 -20, or more, commercial operations on the property. We believe that these significantly more expansive plans go beyond the intended purpose of a CUP to compensate for contrasting zone usage. The specific plans are intentionally not well defined and thus we do not have full disclosure and are inappropriately unable to assess the full impact of an excessive commercial real estate concentration within our well – established Rural Zone. As presented, we are being asked to grant the Twin Oaks Developers an undefined authorization to proceed where they can simply fill in the blanks as they conjure up new commercial operations. The “Conditional Use” intended is not properly defined or limited to protect the equally compelling rights and interests of nearby property owners in this rural zone.

We do not believe that the drafters of the Zoning and Land Development Ordinance intended that an inordinate number of “permitted use activities” would be allowed which transformed the land use into heavy commercial operations. Some realistic consideration must be given to the aggregate number of commercial enterprises allowed in this Rural District. If allowed to proceed to the maximum extent intended by the developers, it will significantly undermine the credibility of zoning within Jefferson County.

**Conclusion and Recommendations:** Regardless of the action taken on the specific issues identified at the 2 March we do not believe that the intended uses, as currently outlined will ever be compatible with nearby Rural land use. However the following adjustments would allow the Twin Oaks Development to proceed and promote greater acceptance and support from the surrounding land owners and the greater Shepherdstown Community.

A. The CUP should be limited to the original 15,000 sq. ft structures planned and the farmer’s market and farm related activities originally used to justify this commercial use of the property. We note that the ordinance sets the square footage for a Farmer’s Market at 1,500 sq. ft. The farmers market as advocated in the earlier proposals should focus on locally produced farm products with a requirement that 75% of the items should be produced within the Eastern Panhandle of West Virginia and Washington County in Maryland.

B. No more than 5 of the Principle Permitted uses outlined in the ordinance should be allowed. More than that would simply turn this development into a conventional strip mall which is not needed or desired by the community.

C. It is imperative that they be required to make use of Shepherdstown water and sewer facilities and not permitted to use a “package” sewer system. The Town of Shepherdstown is on record as strongly urging that the existing public water and sewer systems be used. They already exist within reasonable proximity of the property and the Corporation of Shepherdstown has formally notified them that necessary capacity of these systems is available. It should be noted that this same developer using this same land in seeking a prior CUP in 2006 fully agreed to hook up to the public water and sewer systems. This requirement is driven in part by the environmentally sensitive location of the property in the head waters of Town Run and specific concerns caused by local geology.

D. The developers should be required to adhere to the 75 ft distance requirements cited in the ordinance for lands adjacent to property on the Federal Register of Historic Places. This specifically required that there be “no land use” within this 75 ft setback from the Morgan’s Grove Park property line which we interpret to include such things as storage yards and parking areas.

Within this area adjoining Morgan’s Grove Park there should be a 10 ft buffer and within that buffer we request that a 6 ft opaque screening fence be installed. Our intent is to preclude any direct communication between the two properties which we believe is necessary to preserve the desired quiet and peaceful recreation areas now provided by

Morgan's Grove Park and to ensure the safety of people (particularly young children) who use the Park.

E. The traffic issues arising from this proposal will have a considerable impact on the flow of traffic along WV Route 480 and smaller nearby roads. While the need for traffic surveys and hopefully public hearings are already acknowledged, we would like to know the proposed solutions to these problems prior to final action on the CUP. This is particularly the case since creation of turn lanes and other traffic control measures may adversely impact access to our Morgan's Grove Property.

F. We have lived for the past 20 years with neglect and failed speculation previously on this property and we are doubtful that the overly ambitious plans now proposed will succeed. We therefore request that the property be appropriately bonded to ensure that its appearance, storm water and surface drainage and other environmental impact issues are properly addressed should the property be again left in an abandoned state.

G. Regarding intended operation of children's schools, we recommend that the lot area, width, and yard requirements cited in table 5-7-1 of the ordinance be enforced. We do not believe the children's school or schools can reasonably be safely combined with other commercial operations on this limited property.

There are a number of other open issues remaining from the list identified during the 2 March 2012 Community Compatibility Assessment meeting, but the items mentioned above, we believe are most critical from our perspective. I am sure that a number of other concerned neighbors and members of the Shepherdstown Community will attend the BZA meeting on 19 April to address those concerns.

We appreciate the opportunity to have a public hearing on this matter and provide any additional information that the BZA may desire.

My phone number is (304) 876-0598 and email address is [michael.austin@frontiernet.net](mailto:michael.austin@frontiernet.net).

CP12-01

Jefferson County Board of Zoning Appeals  
P.O. Box 250  
124 E. Washington Street  
Charles Town, WV 25414

RECEIVED

APR 12 2012

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

April 12, 2012

Dear Members,

It is with great sadness that we once again find ourselves defending our rights as private, tax-paying citizens. It seems that more and more the voices of individual taxpayers are being drowned out by developers/business people.

As longtime residents of Jefferson County, we have watched the continuous destruction of our beautiful county as it is bought out by commercial development and home construction on postage stamp lots. Now, we fear that you are about to destroy one of the nicest areas left around Shepherdstown by approving a strip mall that will be plopped right in the middle of a park, historic properties, and rural housing developments. Yes, I said strip mall, because no matter how you dress it up, and no matter what you call it, when you really look at what is being proposed by Twin Oaks Subdivision LLC for the former Henry property, it is still a bunch of different business crammed together in a single spot. A strip mall is an open area shopping center where the businesses are arranged in rows or units, have lots of parking spaces around them, and tend to be self-contained with few pedestrian connections to surrounding neighborhoods. The more we listen to the Twin Oaks Subdivision developers, the more we are convinced that this is exactly their intentions for this site!

The developers have seized upon the current popular trend of sustainability/health consciousness to promote their development, but what they are actually proposing is nothing different from most other strip malls. Many strip malls contain professional offices, health food stores, fitness facilities, and stores selling specialty items. We fail to see any difference between this proposed development and other strip malls, except for perhaps the slick way in which this development is being marketed.

To prove our point, we did our own version of "Where In World Is Carmen Sandiega" by asking people where they thought we were. We then listed the different businesses being proposed for the property in question.

First of all, not one person associated a farmer's market, or for that matter, almost anything related to sustainability, with this list. One person insisted that it had to be a city. When prompted to be more specific, they decided it must be Tyson's Corner! When asked to state which businesses they would associate with sustainability, the

\* Emailed. Copies provided in mailed BZA packet for 04/19/12 mtg. - JH

number of businesses they selected from the list amounted to approximately 30 percent or less of those being proposed by the developer of this project.

If we had wanted to live close to a strip mall, we wouldn't have built our home in an area that was zoned rural/agricultural. We'd had chosen an area that was already developed for commercial endeavors, or at the very least, zoned for that kind of development! It is very unfair, and should be illegal, for government to change the zoning of property when it is not compatible with surrounding neighborhood--especially when the surrounding neighborhood has made it emphatically clear that they do not want this type of development forced on them!

The developers of other properties in this area never met with the kind of opposition that the developers of this property have. That is because owners of those properties respected the nature of the area and kept their projects within the scope of the zoning that already existed. They followed the standards of low density, single-family residential development. In essence, they cared about the other people who lived in the area. They did not propose anything that was going to significantly alter the neighbors' quality of life or their property values. The property being considered for this permit should be held to the same standards.

If it is proposing selling locally grown foods, then at a maximum, all foods marketed from this establishment should be required to have been grown within a 50 mile radius of the market. The developer of this project felt that "local" was anywhere you could get what you needed to sell, as stated at a recent public meeting in Shepherdstown. Therefore, if you couldn't get avocados grown here (which you can't), then if the closest place you can get them is California that would be local for avocados. The same analogy was used for selling seafood. Pardon us, but if you are selling locally fished seafood, that might consist of catfish being pulled from the Potomac River—not crabs pulled from the Chesapeake Bay.

If a community kitchen is being proposed so that local people can make salsa, etc., then that is exactly what it should be used for—not to prepare restaurant food. The developer should be required to show exactly how he intends to schedule the use of this kitchen and fees required for such use to see if this is something that is even feasible.

Professional businesses such as banks, dentists, and dermatologists have been listed. Hardware stores, home improvement businesses, and fitness facilities have been proposed. Entertainment facilities have been mentioned. Could a movie theater be in the works? The developer has talked about an alternative energy hub. This could include something like wind machines, which could prove deadly to the large number of waterfowl who inhabit the area. Montessori schools have now been tossed into the mix. These proposals do nothing to promote local food and agriculture and should not be allowed in a rural/agricultural zone.

We have attended many meetings where the developer has presented his “vision” for this project. With each meeting, the developer has expanded his project. Before a CUP is granted, the developer needs to be required to submit specifics for this development, and he needs to be held to the scope of local (50 mile radius) and agricultural which is in keeping with the rural/agricultural zoning and the dynamics of the surrounding area. What is currently being proposed is totally in opposition to what already exists—historic properties, a rural park, and mostly single-family homes on large lots.

A conditional use permit should not allow carte blanche development, and yet that appears to be exactly what is happening with this property. Anything dreamed up gets added to the list. What started out as a local farmer’s market is now nothing short of a strip mall. The developer has taken great liberty with the meanings of sustainability, local, and agricultural. This should not be allowed to happen. It is time for government to protect the rights of its individual citizens—not submit to the desires of private business! Insist that the developer be more specific in his proposal and that he follow that plan exactly. ***Make that plan fit with the intentions of the original zoning of the property in question—Rural/Agricultural!***

Sincerely,

Joseph and Ann Spurgas  
49 Shepherd Lane  
Shepherdstown, WV 25443  
(304) 876-2485

**Jennilee Hartman**

CP12-01

**From:** Steve Barney <sbarney@jeffersoncountywv.org>  
**Sent:** Thursday, April 12, 2012 9:20 AM  
**To:** 'Hartman, Jennilee'  
**Subject:** FW: MGM resolved issues  
**Attachments:** Request for consideration.docx

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**From:** Fred Blackmer [<mailto:fred@fredblackmer.com>]  
**Sent:** Wednesday, April 11, 2012 11:25 PM  
**To:** Steve Barney  
**Subject:** MGM resolved issues

Steve,

I have attached a "resolved issues" language change consideration. A notice of the intent to have dialogue regarding decisions made after deliberation and prior to the actual vote is also included. We feel that these two subjects will benefit from prior notice. This and all other issues will be addressed during the meeting.

Thank you.

Fred Blackmer  
MGM government affairs

Request for consideration:

April 11, 2012

We will be requesting that should the BZA finding be “approval with conditions” that include some unresolved issues, the hearing be reopened for comment prior to the motion and vote. This will allow an opportunity to present information that might identify conditions that cause unintended outcomes. This use of procedure may in fact help avoid misunderstandings and unintended hardship. It is our intent to conclude this process on April 19, 2011.

This reopening is allowed as described in the JC 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.

We will also request consideration of text changes in the “Staff Report – Compatibility Assessment Meeting”. It is our position that 3 items in the “resolved issues” section need text modification to accurately represent the resolution. The highlighted portion is current language in question. The bold underscore is replacement language.

5. The Town Run and the immediately adjacent area shall be **(buffered with vegetation and natural materials)** kept in its natural vegetative state. Recreational use of Town Run shall be prohibited, with the exception of an adjacent walking trail.

11. The Developer **(will offer to have a well flow test performed)** is to perform a well flow test on the Nuttall’s and Belchik’s properties, to be done before construction begins and again after the project has been completed, not to exceed 1 year from the date of completion of the project, at the Developer’s expense.

17. The proposed parking lot will be graded to slope away from adjacent properties to protect land owners from potential storm water runoff. The parking lot will conform to the standards within the Jefferson County Subdivision Regulations.

**(17. Parking areas adjacent to neighboring properties will be properly sloped to protect landowners from potential storm runoff. All parking areas will be in compliance with Jefferson County Subdivision Regulations.)**

Submitted by Fred Blackmer on behalf of the applicants.

RECEIVED

APR 12 2012

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

\* Attached to email. - gH

**3rd Quarterly Report (January - March 2012)**  
**FY 2012 Work Plan Departments of Planning and Zoning**  
**and Planning Commission and Board of Zoning Appeals**

| PRIORITY | PROJECTS  | TIME FRAMES from FY 11-12 Work Plan | Status or Number Completed (July 11 -- Sept. 11)                              | Status or Number Completed (Oct. 11 -- Dec. 11)   | Status or Number Completed (Jan. 12 -- March 12)                                       | Outstanding Tasks                                       | REQUIRED RESOURCES/STAFF | REQUIRED HEARINGS | ANTICIPATED RESULTS |
|----------|---|-------------------------------------|---|---|--|---|--------------------------|-------------------|---------------------|
|          | <b>Day to Day Customer Service</b>  | <b>on-going</b>                     |   |   |  |   |                          |                   |                     |
|          | Walk in Customers - general information, zoning requests, process questions                     |                                     | 196   | 149   | 171  |   |                          |                   |                     |
|          | Information Request Forms   |                                     | 26  | 29  | 38   |   |                          |                   |                     |
|          | Zoning Certificates Issued  |                                     | 6   | 6 issued;<br>1 denied   | 6 Issued / 2 Pending   |   |                          |                   |                     |
|          | Call-in customers - general info, zoning, questions   |                                     | 471   | 469   | 467  |   |                          |                   |                     |
|          | E-mail to general planning/zoning mailboxes (note: individuals receive over 100 per month each) |                                     | 803   | 874   | 863  |   |                          |                   |                     |
|          | <b>Day to Day Development Review Responsibilities:</b>  | <b>on-going</b>                     |   |   |  |   |                          |                   |                     |
|          | Minor Site Plans  |                                     | 1   | 3   | 0  |   |                          |                   |                     |
|          | Limited Site Plan   |                                     | 1   | 0   | 0  |   |                          |                   |                     |
|          | Major Site Plans, including Concept Plans   |                                     | 4   | 1   | 1  |   |                          |                   |                     |
|          | Merger Deeds, Lot Line Adjustments  |                                     | 5   | 7   | 5  |   |                          |                   |                     |
|          | Conservation Easement Review  |                                     | --  | 7   | 0  |   |                          |                   |                     |
|          | Minor Subdivision Plats   |                                     | 3   | 3   | 0  |   |                          |                   |                     |
|          | Major Subdivision Plats (Concept, Preliminary, Final)   |                                     | 0   | 1   | 3  |   |                          |                   |                     |
|          | Conditional Use Permits/Neighborhood Compatibility Meetings                                     |                                     | 0   | 1 CUP/1 NCM (Bakerton)  | 1 CUP Approved (Bakerton 1/19/12)<br>2 NCM Held (Aspen Greens 2/15/12; Corum 3/2/12)   |   |                          |                   |                     |
|          | Zoning Variances (requirements, dimensional variances, CUP Time extensions)                     |                                     | 11  | 5   | 14 Variances / 2 "CUP"   |   |                          |                   |                     |
|          | Subdivision Waivers including requests related to time frames or requirements                   |                                     | 2   | 1   | 3 Waivers / 1 Variance   |   |                          |                   |                     |
|          | Pre-proposal Conferences  |                                     | 6   | 8   | 11   |   |                          |                   |                     |
|          | <b>Zoning Map Amendments (Rezoning)</b>   |                                     | 3 new<br>(Sanderson Approved by CC 6/30/11)                                   | PC and CC Public Hearings:<br>Hott (CC 10/6/11 - no action);<br>Gibson (PC 11/8/11);<br>Corum (PC 11/8/11; CC 12/8/11 - denied)   | Gibson CC Public Hearing (1/5/12; approved 1/12/12);<br>Hott rezoning withdrawn 2/2/12 | Capriotti Rezoning Public Hearing scheduled for 4/24/12 | SR, SB, JMB              |                   |                     |
|          | <b>Staff to Planning Commission meetings, including staff reports and presentations</b>         | <b>on-going</b>                     | 4 Regular Meetings<br>6 staff report related to land development applications | 2 Regular Meetings ;<br>9 staff reports related to land development applications;<br>Amendments to By-laws approved by CC 10/6/11 | 3 Regular Meetings ;<br>4 staff reports related to land development applications       |   |                          |                   |                     |

**3rd Quarterly Report (January - March 2012)  
FY 2012 Work Plan Departments of Planning and Zoning  
and Planning Commission and Board of Zoning Appeals**

| PRIORITY        | PROJECTS  | TIME FRAMES from FY 11-12 Work Plan | Status or Number Completed (July 11 -- Sept. 11)  | Status or Number Completed (Oct. 11 -- Dec. 11)   | Status or Number Completed (Jan. 12 -- March 12)   | Outstanding Tasks   | REQUIRED RESOURCES/STAFF | REQUIRED HEARINGS | ANTICIPATED RESULTS |
|-----------------|---|-------------------------------------|---|---|--|---|--------------------------|-------------------|---------------------|
|                 | Staff to Board of Zoning Appeals meetings, including staff reports and presentations  | on-going                            | 3 BZA meetings<br>11 staff reports for land development applications  | 2 BZA meetings<br>5 staff reports for land development applications   | 3 BZA meetings;<br>12 staff reports for land development applications<br>Bakerton CUP approved by BZA 1/19/12                  |   |                          |                   |                     |
|                 | Staff Training -- new skills, planning and zoning related functions   | on-going                            | None this Quarter   | Seth Rivard and Steve Barney -- Land Use and Zoning Law Litigation (11/2/11);<br>Dawn Childs - ArcGIS Desktop I: GIS Workflows and Analysis and ArcGIS Desktop II: Tools and Functionality (12/5-12/9/11)   | None this Quarter  | April - new PC member training;<br>April - PC training<br>Bonding and Recording;<br>APA National Conference (April 2012) - Steve Barney |                          |                   |                     |
|                 | Various non-PC and non-BZA Meetings including participation in County Commission; other agencies such as WAC, JCDA, Health Department, PSD, HEPMPO TAC, WIP II Work Group; other Region 9 Meetings as requested; and follow up meetings with applicants and their representatives | on-going                            | JB - 126 meetings attended;<br>SR - 69 meetings attended;<br>SB - 84 meetings attended  | JB - 100 meetings attended;<br>SR - 67 meetings attended;<br>SB - 72 meetings attended  | JB - 134 meetings attended SR - 85 meetings attended SB - 95 meetings attended   |   |                          |                   |                     |
| Special Project | Proposed Subdivision Regulations Amendments   |                                     | Proposed Am to Articles 20 & 26 re: Add'l minor site plan sq. footage (PC vote 7/26/11; CC 8/18/11; CC PH 9/15/11);<br>Proposed Am to Article 24 combining Submission & Completeness Reviews for Site Plans and Plats (PC PH 7/12/11; PC vote 7/12/11; CC 8/18/11; CC PH 9/15/11) | Proposed Am to Articles 20 & 26 re: Add'l minor site plan sq. footage (CC PH follow up 10/6/11; add'l follow up work session 11/3/11 & 11/10/11; requested add'l alternatives);<br>Proposed Am to Article 24 combining Submission & Completeness Reviews for Site Plans and Plats (CC Workshop 11/3/11; approved with edits by CC, 11/3/11) | Proposed Am to Articles 20 & 26 re: Add'l minor site plan sq. footage (new alternatives to PC 1/10/12; approved by CC 1/19/12) |   | SR, SB, JB               | possibly          |                     |

**3rd Quarterly Report (January - March 2012)  
FY 2012 Work Plan Departments of Planning and Zoning  
and Planning Commission and Board of Zoning Appeals**

| PRIORITY        | PROJECTS                                    | TIME FRAMES from FY 11-12 Work Plan               | Status or Number Completed (July 11 -- Sept. 11)   | Status or Number Completed (Oct. 11 -- Dec. 11)  | Status or Number Completed (Jan. 12 -- March 12)  | Outstanding Tasks   | REQUIRED RESOURCES/STAFF | REQUIRED HEARINGS | ANTICIPATED RESULTS |
|-----------------|---|---|--|--|---|---|--------------------------|-------------------|---------------------|
| Special Project | <b>Proposed Zoning Ordinance Amendments</b> |   | Policy Neutral Am. Approved by CC 7/7/11;<br>Am to Article 4A Home Occ./Cottage Ind (PC vote 7/26/11; CC 8/18/11; CC PH 9/15/11);<br>Am to Article 12 (PC PH and vote 7/12/11; CC 8/18/11; PC PH 9/15/11)  | Am to Article 4A Home Occ./Cottage Ind (Approved by CC with edits 11/3/11);<br>Am to Article 12 (Approved by CC 11/10/11);<br>Kick-off Roundtable Discussion with recreation providers 10/21/11 and follow up meeting with industry 12/20/11;<br>drafting new Commercial Zoning categories for PC review and action at January meeting | <b>Public Workshop/input into proposed new commercial zoning categories (2/12);<br/>Workshop regarding new ordinance language related to Recreation Uses (3/12)</b> | <b>Public Hearing proposed new commercial zoning categories (4/10/12)</b> | SR, SB, JB               | possibly          |                     |
| Special Project | <b>340 Corridor East Gateway Study</b>      | Spring 2011 - January 2012                        | 6/16/11 meeting summary and follow up;<br>preparation for and follow up to 3rd Public Meeting 9/17/11 meeting, including development of 3 land use alternatives based on public input and Traffic Analysis Zones for data analysis;<br>Metro Quest Phase 2 preparation | Joint meeting with HF NPS and Trail Blazers 10/18/11;<br>MetroQuest Phase 2 open 10/7/11 - 11/11/11;<br>Public Meeting #4 to chose preferred alternative 12/6/11 (KOA); drafting text and finalizing maps and working with HEPMPO consultants  | <b>Final Public Workshop 1/19/12;<br/>Joint PC/CC Meeting Presentation of Draft 3/8/12</b>  | <b>Planning Commisison Review and Next Steps 4/10/12</b>                  | SR, SB, JB               |                   |                     |
| Special Project | <b>340 Corridor South Study</b>             | Spring 2012 - Winter 2013                         | No Work this quarter   | No Work this quarter   | <b>No Work this quarter</b>   |   |                          |                   |                     |
| Special Project | <b>2014 Comprehensive Plan</b>              | Fall 2012 - Spring 2014 (18 month); adoption 2014 | No Work this quarter   | No Work this quarter   | <b>Summers interns solicited and interviewd/recommended to CC for Summer hire to assist with Base Analysis for Comp Plan Update</b>                                 |   |                          |                   |                     |
| Special Project | <b>Urban Tree Canopy Plan Adoption</b>      |   | Urban Tree Canopy Draft Plan & Goals Meetings: Shepherdstown (8/18/11), Bolivar (9/6/11); County PC PH (7/26/11)   | Approved and adopted by County Commission after Public Hearing 11/3/11   |   | completed   | JB                       |                   |                     |

**3rd Quarterly Report (January - March 2012)  
 FY 2012 Work Plan Departments of Planning and Zoning  
 and Planning Commission and Board of Zoning Appeals**

| PRIORITY           | PROJECTS  | TIME FRAMES<br>from FY 11-12<br>Work Plan | Status or Number Completed (July<br>11 -- Sept. 11)  | Status or Number Completed<br>(Oct. 11 -- Dec. 11)  | Status or Number Completed<br>(Jan. 12 -- March 12) | Outstanding Tasks | REQUIRED<br>RESOURCES/STAFF | REQUIRED<br>HEARINGS | ANTICIPATED<br>RESULTS |
|--------------------|---|---|--|---|---|-------------------|-----------------------------|----------------------|------------------------|
| Special<br>Project | <b>Urban Growth Boundaries</b>  |   | Shepherdstown UGB<br>recommended to CC 9/15/11   | drafted letter on behalf of CC to<br>Shepherdstown requesting more<br>information for CC signature  | <b>No Work this quarter</b>                         |                   | <b>JB</b>                   |                      |                        |
| Special<br>Project | <b>Participation in WIP II Meetings held by DEP and follow up<br/>Chesapeake Bay activities</b> |   | WIP II Developed Lands Work<br>Group 8/3/11;<br>Ches. Bay WIP II Summit 8/30/11;<br>speaker at 6th Annual Chesapeake<br>Bay Forum 9/30/11  | monthly conference calls  | <b>monthly conference calls</b>                     |                   | <b>JB</b>                   |                      |                        |
| Special<br>Project | <b>Review and Potential Implementation of Region 9 Model<br/>Stormwater Regulations</b>         |   | WIP II meetings (above)  | coordinating with County<br>Engineer in effort to apply for<br>grant to facilitate the<br>incorporation of these<br>regulations in local ordinances | <b>No Work this quarter</b>                         |                   | <b>JB, SR, engineering</b>  |                      |                        |
| Special<br>Project | <b>2011 Summer intern hired to initiate data analysis</b>                                       |   | Summer Intern worked May<br>through mid-Sept 2011;<br>researched existing conditions<br>data, 2010 Census data,<br>community facilities data, etc in<br>preparation for 2014 Comp Plan<br>Update; also assisted with TAZs<br>and land use alternatives for US<br>340 East Gateway Plan | no further action at this time  | <b>Completed</b>                                    |                   |                             |                      |                        |