

Jefferson County
Board of
Zoning Appeals

Thursday,
March 15, 2012

JEFFERSON COUNTY, WEST VIRGINIA

Department of Zoning

116 East Washington Street, 2nd Floor

P.O. Box 338

Charles Town, West Virginia 25414

Phone: 304-728-3228

Email: zoning@jeffersoncountywv.org

Fax: 304-728-8126

MEMORANDUM

TO: Jefferson County Board of Zoning Appeals Members

FROM: Jennilee Hartman, Zoning Clerk

DATE: March 09, 2012

SUBJECT: March 15, 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, March 15, 2012. Also for your review, you will find corresponding information regarding said Meeting. When applicable, I will include copies submitted to this office that pertain to items of new business. If you have any questions, or will not be able to attend the upcoming meeting, please do not hesitate to contact me.

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Department of Zoning

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MEMORANDUM

TO: Board of Zoning Appeals Members
CC: Engineering & Building Permits Departments
FROM: Steve Barney, Zoning Administrator
DATE: March 9, 2012
SUBJECT: March Monthly Report of Department Activities

ISSUED ZONING CERTIFICATES

#ZC12-01 DANIE ARMSTRONG, OWNER

Issue Date: February 22, 2012
Proposed Use: Cottage Industry – Internet Bakery (customized cakes)
Physical Location: 331 Willingham Road; Charles Town, West Virginia 25414
Zone: Rural

#ZC12-04 HOXTON CENTER, LLC
ARCHIBALD R. HOXTON, IV & FREDERICK C. HOXTON, MEMBERS

Issue Date: February 23, 2012
Proposed Use: Change in Non-Conforming Use in Basement area from a Dance Studio to Professional Use / Office Space.
Physical Location: 8530 Shepherdstown Pike; Shepherdstown, West Virginia 25443
Zone: Rural

#ZC12-03 DAVE MELLOTT, SR., OWNER

Issue Date: March 01, 2012
Proposed Use: Farm & Lawn Equipment Repair
Physical Location: 372 Up Top Road; Kearneysville, West Virginia 25430
Zone: Rural

ISSUED ZONING CERTIFICATES

#ZC12-06 WHEATLANDS PROPERTY MANAGEMENT, LLC, OWNER
JESSE MORGAN, APPLICANT

Issue Date: March 09, 2012
Proposed Use: Country Market
Physical Location: 2201 Berryville Pike; Charles Town, West Virginia 25414
Zone: Village

#ZC11-27 RECREATIONAL ADVENTURES CAMPGROUNDS, LLC
J. ALAN JOHNSON, CONTACT

Issue Date: March 09, 2012
Proposed Use: Harpers Ferry KOA
Physical Location: 343 Campground Road; Harpers Ferry, West Virginia
Zone: Residential-Light Industrial-Commercial

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

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

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

#ZC12-05 DAVE MELLOTT, SR., OWNER

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

PENDING ZONING CERTIFICATES

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

Issue Date: TBD

Proposed Use: “STaSIS”– designs, engineers & sells aftermarket automotive parts.

Physical Location: 500 Motor Sport Park Circle; Summit Point, West Virginia 25446

Zone: Rural

AGENDA
Jefferson County Board of Zoning Appeals
Thursday, March 15, 2012 at 3:00 p.m.

1. Approval of the minutes from the February 16, 2012 meeting.
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.
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.
5. Director's Report.
6. Legal Update.
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.

Draft Minutes

Jefferson County Board of Zoning Appeals
Thursday, February 16, 2012

The Jefferson County Board of Zoning Appeals met on Thursday, February 16, 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: Jennifer Brockman, Director of Planning and Zoning; Steve Barney, Zoning Administrator; Steve Groh, Assistant Prosecuting Attorney and Jennilee Hartman, Zoning Clerk.

Ms. Huddle motioned to commence the meeting. Mr. Kelly seconded the motion, which carried unanimously. Mr. Bresee called the meeting to order at 3:04 p.m.

1. Postponed from the January 19, 2012 meeting. Election of Officers.

Mr. Kelly motioned to keep the Officers as seated with Mr. Bresee as Chair and Ms. Huddle as Vice Chair. Mr. Quynn seconded the motion, which carried unanimously. Mr. Bresee and Ms. Huddle accepted the positions.

2. Approval of the minutes from the January 19, 2012 meeting.

Ms. Huddle motioned to approve the minutes, however, had a few corrections to note for the record. Mr. Quynn seconded the motion for discussion. The following corrections were requested:

- a) Page 1, Item #4, line 2, change "trees" to "tree".
- b) Page 2, paragraph 1, line 1, insert "*site plan*" before the word scaling.
- c) Page 2, Item #5, paragraph 2, third line, remove "a" before the number 19.
- d) Page 3, Item #8, third bulleted item, change "*restrict*" to "*restrictions on the...*".
- e) Page 6, seventh line, change the word "*motioned*" to "*motion*".

Mr. Bresee called for a vote which carried 3 for with one abstention due to Mr. Bresee's absence from January's meeting.

At this time Mr. Bresee announced the Board would be rearranging the items on the agenda because Mr. Groh would be unable to stay for the duration of the meeting and his presence would be necessary for the Appeal (Item #6). Mr. Quynn motioned to hear Items #6 and #7 first on the agenda. Mr. Kelly seconded the motion, which carried unanimously.

Mr. Bresee explained to the applicant of Items #6 and #7 that he may proceed with his argument and may combine the two items within his argument or may argue them individually.

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

6. 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." Property location: Aspen Greens Subdivision, northeast intersection of Flowing Springs and Old Country

Club Roads in Charles Town, West Virginia. District: Charles Town (02); Map: 4; Parcel: 19; Size: 110 acres; Zoned: Rural; File: #AP12-01.

See Item #7 for testimony.

7. 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." Property location: Aspen Greens Subdivision, northeast intersection of Flowing Springs and Old Country Club Roads in Charles Town, West Virginia. District: Charles Town (02); Map: 4; Parcel: 19; Size: 110 acres; Zoned: Rural; File: #Z02-06.

Fred Gates, surveyor with Gates Associated Inc., addressed the Board. Mr. Gates gave a presentation to the Board, providing a detailed overview of the project. Mr. Gates referenced emails from the West Virginia Department of Highways (WVDOH) regarding approval of the proposed layout of the easement in question. Mr. Gates referenced Exhibit H as the proposed layout the WVDOH had been provided. Mr. Gates went on to reference other exhibits and discussed the use of walking areas adjacent to roadways as common practice. Ms. Huddle stated she had concerns regarding the close proximity of the walking areas to the road and the slope of the berms.

Patrick Henry, Attorney for the applicant, explained that the issue was with the word "along" within Condition #6 and how one would interpret its meaning. Mr. Henry further went on to explain that the property in question extends to the centerline of the road and therefore the engineer placed the 50' easement from the beginning of the applicant's property line *along* the required roadways.

Maurice Gladhill, owner, stated both the public and staff agree that a 50' wide easement is excessive. Mr. Gladhill also stated that what was needed was a new width that could be located on the site. Mr. Gladhill referenced the 16' dimension that is currently being proposed on Exhibit H, arguing that it seems sufficient for its intended use.

Mr. Barney gave a detailed PowerPoint presentation which addressed both Items #6 and #7 to the Board. Mr. Barney informed the Board that he had contacted the WVDOH and found out that the Department, in nearly all cases, would not allow sidewalks to be placed within their dedicated easements. Mr. Barney also mentioned that if a sidewalk were to be installed that it would have to meet ADA standards while a trail would not. Mr. Barney agreed that a 50' wide sidewalk easement seemed excessive and that recent approvals had been granted for easements as wide as 10-15', however, the land the easement is to be located on would need to be flat, not within a dedicated WVDOH area and not included in a landscaping area. Mr. Barney suggested possible conditions of approval as listed within the staff report.

Mr. Bresee called for public comment. Pat Masters stated he was not in opposition to the request with regard to the dimension of the sidewalk; however, it was imperative to him that a sidewalk be located somewhere on the property.

Ms. Huddle motioned to go into deliberative session at 4:25 p.m. Mr. Kelly seconded the motion, which carried unanimously.

Mr. Kelly motioned to come out of deliberative session at 4:33 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Board of Zoning Appeals Rulings

6. 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."

Ms. Huddle motioned to deny the aforementioned appeal and deferred to the Zoning Administrator's interpretation. Mr. Kelly seconded the motion, which carried unanimously.

7. 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."

Ms. Huddle motioned to modify the existing conditional use permit to add the following condition, "Revise the plat to show two points of pedestrian and vehicular access that would allow future connections between Aspen Greens Subdivision and the property located to the north of the subdivision." (Possible locations would be near the intersection of Ladythumb Circle and Scented Spruce Way and also Rushpink Circle and Springbeauty Lane.) Ms. Huddle continued by stating that condition #6 of the existing conditional use permit be provided as follows, "A note on the plat indicating a 50' easement along Flowing Springs Road (Route 17) and Country Club (Route 24) starting at the centerline of the road for the potential location of sidewalks and trails." Mr. Barney stated for the record that the motion on the table satisfied Staff's concern with the Applicant's proposed design in meeting the intent of the original Conditional Use Permit Condition. Mr. Kelly seconded the motion, which carried unanimously.

3. 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'x16' storage building. Property location: 47 Harrow Place, Charles Town, West Virginia. District: Charles Town (02); Map: 8-1; Parcel: 32.9; Size: 3 acres; Zoned: Rural; File: #ZV12-01.

The applicant was not present to address this Item. The Board proceeded to Item #4.

4. Variance request by property owner, James E. G. Grantham, from Section 9.7 of the Zoning and Land Development Ordinance for a reduction of the front setback distance from 20' to 1' to allow for the construction of a 10' x 20' living space and a 20' x 24-30' garage. Property location:

98 King Street, Middleway, West Virginia 25430. District: Middleway (07); Map: 22B; Parcel: 25; Size: 0.362 acres; Zoned: Village; File: #ZV12-07.

James Grantham, applicant, presented his request to the Board. Mr. Grantham stated he has an application pending with the West Virginia Department of Highways for an entrance permit. Mr. Bresee called for public comment. There was no public comment.

5. Variance request by property owners, Mark and Jessica Howard, from Section 8.2 of the Zoning and Land Development Ordinance for a setback distance reduction from 75' to 58' to allow for the replacement of an existing 30' x 36' barn that will be constructed on the same footprint as the original structure. Property location: Wide Horizon Subdivision, 541 Hillcrest Drive, Kearneysville, West Virginia 25430. District: Middleway (07); Map: 13; Parcel(s): 136 & 137; Size: 1.821 acres; Zoned: Rural; File: #ZV12-08.

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

Ms. Huddle motioned to go back into deliberative session at 4:48 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Ms. Huddle motioned to come out of deliberative session at 5:00 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Board of Zoning Appeals Rulings

3. 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.

Mr. Quynn motioned to deny the above referenced request noting for the record that the property is 3 acres in size and appears to have enough room to place a building within regular setbacks. Mr. Kelly seconded the motion, which carried unanimously.

4. Variance request by property owner, James E. G. Grantham, from Section 9.7 of the Zoning and Land Development Ordinance for a reduction of the front setback distance from 20' to 1' to allow for the construction of a 10' x 20' living space and a 20' x 24-30' garage.

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

5. Variance request by property owners, Mark and Jessica Howard, from Section 8.2 of the Zoning and Land Development Ordinance for a setback distance reduction from 75' to 58' to allow for the replacement of an existing 30' x 36' barn that will be constructed on the same footprint as the original structure.

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

8. Director's Report. Mr. Barney updated the Board on the proposed new commercial zoning districts, stating there are currently 8 districts being proposed. Mr. Barney also mentioned the joint meeting between the County Commission and the Planning Commission regarding the US 340 Plan on March 8, 2012.
9. Legal Update. None.
10. Vote on written decisions from prior Board of Zoning Appeals meetings.
 - a. Public hearing and action on the Conditional Use Permit request by Always LTD, LLC d/b/a The Bakerton Market, Wanda Mason-Ballenger, for a community Laundromat to be located in an existing structure. Heard on January 19, 2012. Ms. Huddle, acting as Vice Chair of the January meeting, signed the Findings.
11. Correspondence. None.


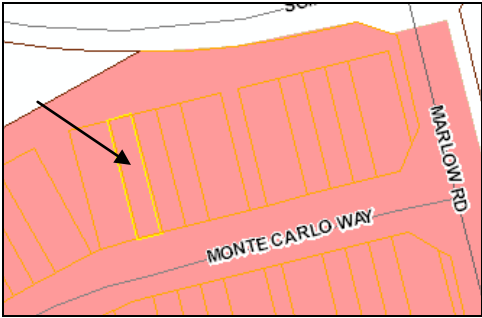
Mr. Kelly motioned to adjourn the meeting at 5:13 p.m. Ms. Huddle seconded the motion, which carried unanimously.

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

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 March 15, 2012

Elaina and Reuben McFadden Request (#ZV12-09)

Item #3 Variance request by property owner, 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 foot expansion of the existing deck.

APPLICANT:	Elaina & Reuben McFadden
OWNER:	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	Windmill Crossing Subdivision, 44 Monte Carlo Way, Charles Town, West Virginia
LEGAL DESCRIPTION:	District: Charles Town (02); Map: 9C; Parcel: 60 
ZONING DISTRICT:	Zoning Map Designation: Residential-Light Industrial-Commercial (R-LI-C) 
SURROUNDING PROPERTIES:	Zoning Map Designation: North: R-LI-C South: R-LI-C East: R-LI-C West: R-LI-C
LOT AREA:	2,000 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
March 15, 2012

Elaina and Reuben McFadden Request (#ZV12-09)

RELEVANT INFORMATION:

1. Overview of Request

The applicant seeks a rear yard setback variance of 5 feet in order to expand the existing deck by an additional 5 feet.

Per the material submitted with the variance request, the townhome is approximately 28 feet from the rear property line. The proposed deck would be 17' 10" wide and would extend 5' from the existing 8' deck 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 17' 10' in width and encroaches an additional foot 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, "To improve property value and accommodate wheelchair. No, the property is within the boundary of the property and will not be an obstruction."

- 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, "Neighbor approves small building lot. Yes, and offset townhome."

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

The application states, "Yes, allow more outdoor living space and wheelchair access."

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

The application states, "Will obtain proper permits and will be constructed by Handyman Solutions, a licensed contractor."

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 March 15, 2012

Elaina and Reuben McFadden Request (#ZV12-09)

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), and January 19, 2012 (Stine, ZV12-03, Kimmel, ZV12-04, Franz, ZV12-05).

The applicant's rear property line adjoins the subdivision's dedicated utility and public easement and therefore would not appear to adversely affect adjacent property owners.

4. Possible Conditions of Approval

No conditions of approval are identified for this variance request.

SECTION OF ORDINANCE TO BE CONSIDERED:

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

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

ZV12-09

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): Elaina + Reuben McFadden

Address: 44 Monte Carlo Way
Charles Town WV 25414

Phone Number: 240-357-2139

Location of Property: Windmill Crossing

Lot Size: 1/4 acre

Deed Book Reference: Deed Book Number 1031 Page Number 404

Tax Map Reference: District 02 Map 9C Parcel 60

Zoning District: Residential Light Industrial / Commercial

Section of Ordinance: 5.4.B.

RECEIVED
FEB 07 2012
JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

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.

Extension of existing deck by 5 feet.
garage floor to reduce set back from 20' to 15'.
Deck with the

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:

To improve property value and accommodate wheel chair
NO, the property is within the boundary of the
property and will not be an obstruction.

- 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:

Neighbor approve small building lot
Yes, and offset townhomes

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

Yes. Allow more outdoor living space and
wheel chair access.

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

Yes Will obtain proper permits and will
be constructed by Handyman Solutions, a licensed contractor

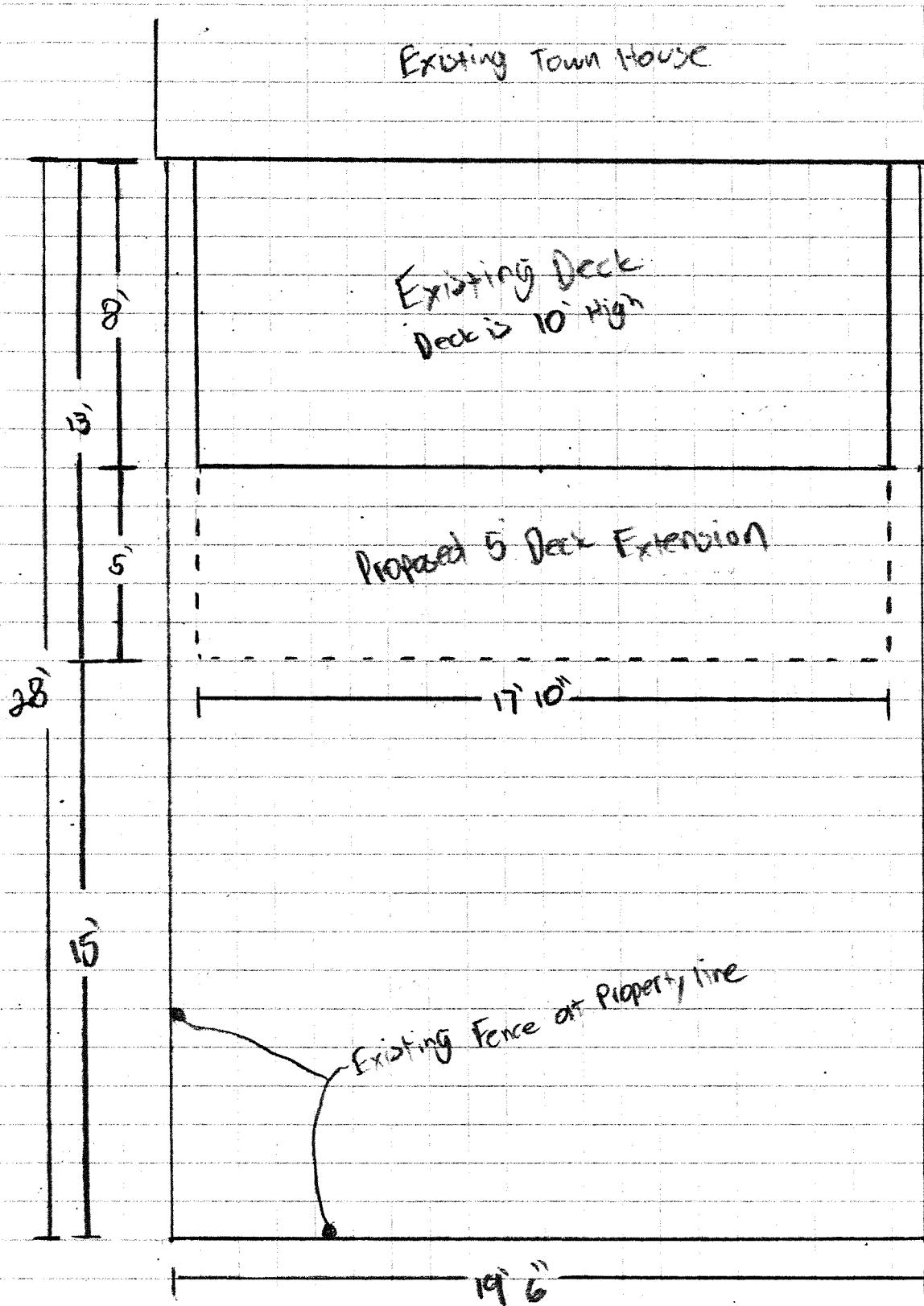
Elena J. McFaddey
Signature of Property Owner

Elena J. McFaddey
Print Name

2-7-12
Date

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

Official Signature and Seal: _____	


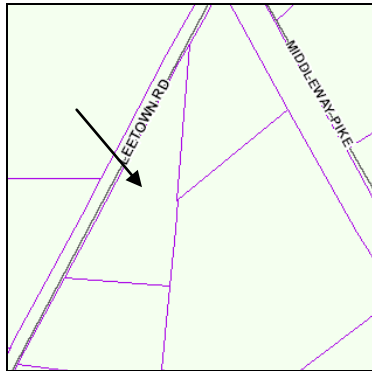


Clara J. McYada
2-7-12

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 March 15, 2012

Frank and Tammy Spiker Variance Request (#ZV12-10)

Item #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 an existing residence.

APPLICANT:	Frank and Tammy Spiker
OWNER :	Same
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	7678 Leetown Road, Kearneysville, West Virginia
LEGAL DESCRIPTION:	District: Middleway (07); Map: 22; Parcel: 15 
ZONING DISTRICT:	Zoning Map Designation: Rural (R) 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North: R South: R</i> <i>East: R West: R</i>
LOT AREA:	1.266 acres
PRIOR CASES:	None
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential

Staff Report
Jefferson County Board of Zoning Appeals Meeting
March 15, 2012

Frank and Tammy Spiker Variance Request (#ZV12-10)

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a reduction of the side setback distance from 12' to 5' construct a 684 square foot addition which will include a bathroom, living room with wet bar and home office.

2. Previous Case History

There is no previous case history for this property. A building permit (#12-09) for the addition was submitted and approved prior to the submittal of the variance application.

3. Applicant's Justification of Request

In the application submitted for the variance request, the applicant has provided the following responses to the four criteria for a variance:

a) *Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents.*

The application states, "No. This does not include any issues with current structure or water runoff."

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, "Extreme rock ledges causing hard digging."

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

The application states, "Yes as the cost to remove rock would be huge. The land is currently not being used and would provide a family room to allow accommodations for 11 handicapped children."

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

The application states, "Yes it will as this allowance will not be detrimental to adjacent property and any soil or land disruption will be repaired to original or better standard."

4. Staff Evaluation of Request

For properties located in the Rural District for which no subdivision was approved by the Planning Commission, the setbacks of Section 9.7 apply. For this lot, the applicable side yard setback is 12'.

The building permit application submitted by the applicant shows a distance of 15' between the proposed construction and the side lot line. Following the approval of the permit by the Engineering Department and the initiation of construction, an adjacent neighbor submitted a survey that indicates that the distance between the foundation of the building addition and the side lot line is 5.32 feet. Accordingly, the applicant has submitted a variance to reduce the side yard setback to 5 feet.

The adjacent neighbor has submitted two letters indicating opposition to the granting of the variance, and has also submitted a copy of the survey.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
March 15, 2012

Frank and Tammy Spiker Variance Request (#ZV12-10)



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Jefferson County Board of Zoning Appeals Meeting
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Frank and Tammy Spiker Variance Request (#ZV12-10)



5. Conditions of Approval

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

- a. A vegetative buffer of a minimum of four evergreen trees or shrubs of at least six feet in height shall be planted on the applicant's property abutting the southern lot line. The locations of the plantings shall be approved by the Planning and Zoning Department.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 9.7 Other Exceptions

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

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

Rural Agricultural and Industrial Commercial

Single family residences --

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

ZV12-10

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): FRANK + Tammy SPIKER

Address: 7628 Leetown Rd
Kearnesville WV, 25430

Phone Number: _____

Location of Property: In Middleway off of Rt 51 on
Leetown Road (Queen Street)

Lot Size: _____

Deed Book Reference: Deed Book Number 295 Page Number 29

Tax Map Reference: District Middleway Map 22 Parcel 15

Zoning District: Rural District

Section of Ordinance: 9.7

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 allow addition to exceed setback by 6'
also due to severe rock ledges in ground causing
heavy digging.
from 12 to 5'
304-283-1430 Kevin

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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FEB 14 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 - This does not include any issues with current structure or water run off

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:

Extreme rock ledges causing hard digging

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

yes as the cost to remove rock would be huge. The land is currently not being used and would provide a family room to allow accommodations for all Handicap

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

yes it will as this allowance will not be detrimental to adjacent property and any soil or land disruption will be repaired to original or better standard.

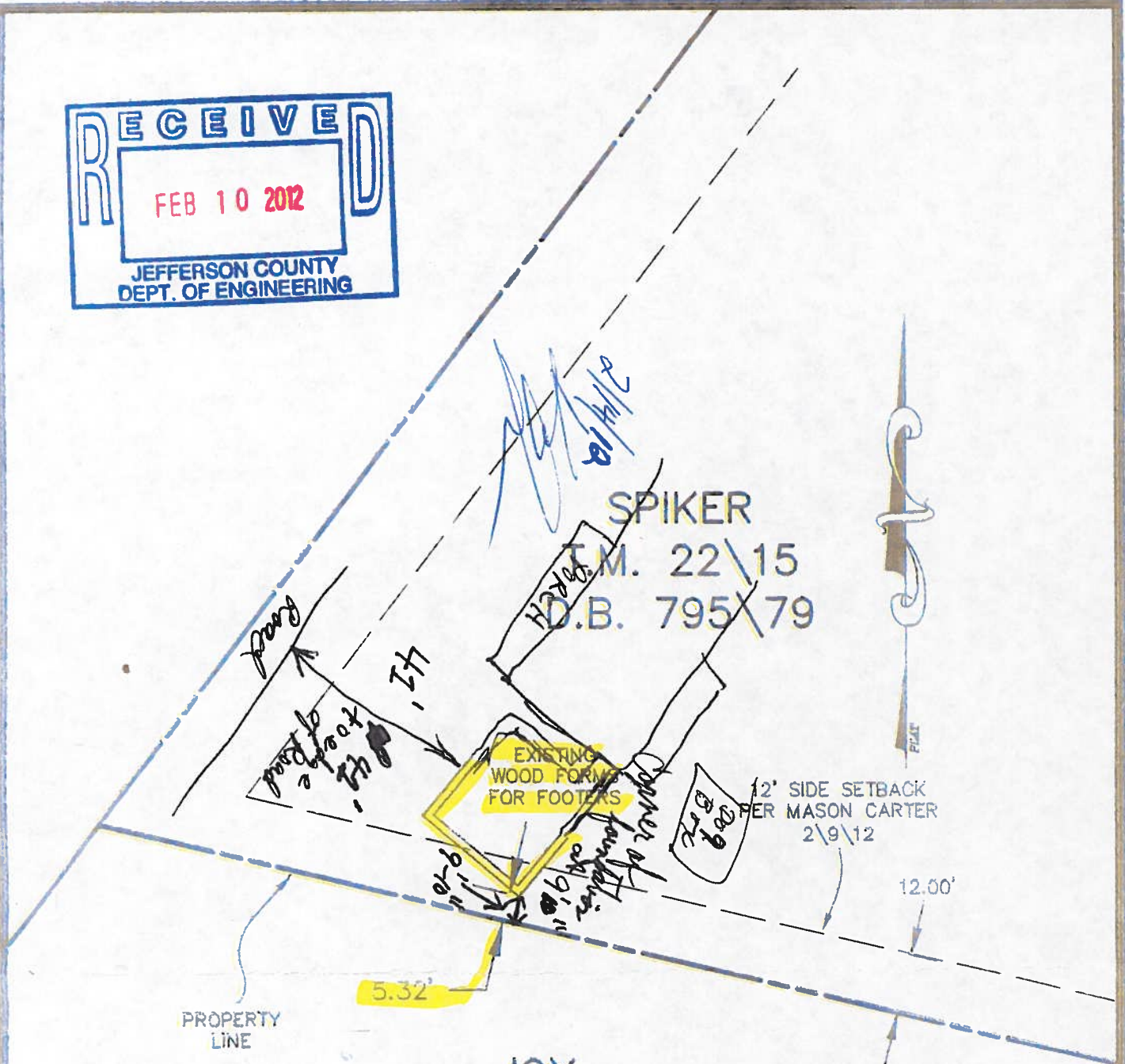
[Signature]
Signature of Property Owner

Frank L. Spiker III
Print Name

2-14-2012
Date

<u>CHECK # 6004</u>	FOR OFFICAL USE ONLY
Fees Paid: <u>\$150.00</u>	Date Application / Fees Received: <u>TUESDAY, FEBRUARY 14, 2012</u>
Date of meeting / Public Hearing: <u>THURSDAY MARCH 19, 2012 @ 3:00 P.M.</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 FEBRUARY 29, 2012</u>	
Official Action of Board: _____	
Official Signature and Seal: _____	

ZV12-10



JOY
T.M. 22\14
D.B. 1016\76



SKETCH PLAT

SKETCH FOR MASON CARTER SHOWING WOOD FORMS FOR CONCRETE FOOTERS, SPIKER PROPERTY TAX MAP 22 PARCEL 15

DWG # JOY

DATE-2/10/12

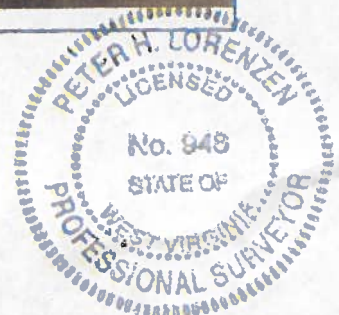
GRAPHIC SCALE



(IN FEET)
1 inch = 30 ft.

SURVEYED BY:

PETER H. LORENZEN P.S.
SUMMIT POINT, W.V. 728-6093



Donna Joy
P.O Box 582
Charles Town, WV 25414

March 7, 2012

Jefferson County Board of Zoning Appeals
116 East Washington Street
P.O. Box 338
Charles Town, WV 25414

RECEIVED

MAR 07 2012

JEFFERSON COUNTY PLANNING,
ZONING & ENGINEERING

Dear Zoning Board:

I am strongly opposed to the Jefferson County Board of Zoning Appeals approving Frank Spiker's variance request.

The main reason for my opposition is that I believe building the proposed "addition" so close to my house will detract from the value of my home. I am in the process of selling my house and there is an option to make this property a historical landmark. Additionally, Mr. Spiker has been dishonest about his intentions regarding this issue as described below.

Ever since I moved next door to Mr. Spiker in 2005, he has harassed me over our shared "property line." He has approached me on many occasions saying, "I'm going to put a fence right up against your house." I would just listen to him and not say anything as I would be completely irritated by him. Even though he continued cutting the grass closer and closer to my house each year, I just assumed that he was all talk and just ignored the behaviors. On two separate occasions, people who had been working at my house/yard told me that Mr. Spiker approached them saying that he would be building up against my house and that I ought to agree to straighten out the property line to avoid this. It would concern me that he would go to these strangers and never talk to me. Straightening the property line would mean that there would be less of Spiker's property in the front, but more in the back. I never knew why he had this suggestion, so I told the workers to just ignore him. At that time, I didn't know that there were rules about building close to the property line.

I have since moved to Shepherdstown, and recently, when I went to move more items from my house and begin small repairs, I saw that the ground was dug up beside the house. He came over as I stood at the edge of the property line wondering what had happened to the trees and grass. He said his wife wanted to build a house for her mother, so we are building her a house and we are going to have a walkway from our house to hers and it will be such and such dimensions. Mr. Spiker went on to tell me that I had moved the property line and that he had had a survey done. I told him that the property line was not where he claimed according to the realtor when I bought the house, etc. He then told me to get a survey done and that he would look at it and compare it to his.

The person with me told me that Mr. Spiker wasn't allowed to build so close to the property line anyway and that there ought to be ordinances against it.

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The following Monday, I went to the zoning office to see if Mr. Spiker applied for a building permit and inquired about the required distance. There was a permit filed, but there were items on it that were not true. The setback from property line and the size of his lot were not correct. Also, he stated that he was building a house for his mother-in-law while he is claiming only an addition to his home in the permit.

I was very angry that he wasn't being honest. I was told that I would need to hire a surveyor to prove that the distance wasn't 12 feet from the property line. Anyone could see that it wasn't even half that far.

I had to pay \$700.00 to show the property line and determine the setback wasn't correct. Meanwhile, the trucks kept driving through my yard and the eyesore grew.

I submitted the certified surveyor's report and Mr. Spiker was asked to stop building. He had poured concrete that day.

The following Sunday, I was in my house painting and Mr. Spiker started yelling and banging on the door. Russ Byrum was also there working and I told him that the neighbor was banging on the door and that he seemed very angry. I decided it was best not to answer the door. Mr. Spiker opened the door and walked into my house and confronted me about the property line again. He said that I had lied to the surveyor and that I had moved the property line... Russ Byrum and I walked outside with him and he started yelling about the property line again. His wife walked over and she said that it was "useless." He said that I had stabbed him in the back and they walked off eventually.

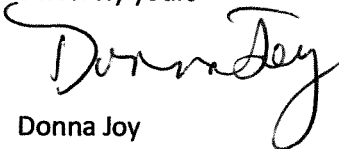
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Finally, I am in the process of applying to have my property registered as a national historic landmark as this house was used to make the famous Higgs rocker (one of which is in the Ford Museum).

Even if it truly is only a deck that he wants to build now, I am still opposed for the reasons already described.

Sincerely yours

A handwritten signature in cursive script that reads "Donna Joy". The signature is written in black ink and is positioned to the right of the typed name "Donna Joy".

Donna Joy

COPY

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T.M. 22\15
D.B. 795\79



ST. RT. # 1 (40' R/W)
21.49'

SET CAPPED
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N76°28'57\"W
215.22'

8\" CEDAR
FENCE POST

26.87'

2 STORY
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FENCE POST

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MAR 07 2012

JEFFERSON COUNTY PLANNING,
ZONING & ENGINEERING

PAYNE
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D.B. 757\98

GARRETT
T.M. 22\18
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PLAT OF RESURVEY

PLAT SHOWING RESURVEY OF TAX MAP 22 PARCEL 14,
STANDING IN THE NAME OF DONNA E. JOY, AS RECORDED IN THE OFFICE
OF THE COUNTY CLERK OF JEFFERSON COUNTY IN DEED BOOK 1016\76
LOCATED IN MIDDLEWAY DISTRICT, JEFFERSON COUNTY, WEST VIRGINIA.

DWG # JOY

DATE-2/10/12

GRAPHIC SCALE



(IN FEET)
1 inch = 50 ft.

SURVEYED BY:

PETER H. LORENZEN P.S.
SUMMIT POINT, W.V. 728-6093



Addendum to original letter after reading Mr. Spiker's variance application

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MAR 08 2012

JEFFERSON COUNTY PLANNING,
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- In some areas, my house is only 7.33ft from the property line, if Mr. Spiker builds 5 feet from the property line our houses will be too close.
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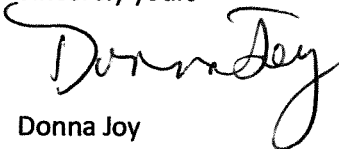
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