

Jefferson County

Board of

Zoning Appeals

Thursday,

February 16, 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

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MEMORANDUM

TO: Jefferson County Board of Zoning Appeals Members

FROM: Jennilee Hartman, Zoning Clerk

DATE: February 10, 2012

SUBJECT: February 16, 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, February 16, 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.

AGENDA
Jefferson County Board of Zoning Appeals
Thursday, February 16, 2012, 3:00 p.m.

1. Postponed from the January 19, 2012 meeting. Election of Officers.
2. Approval of the minutes from the January 19, 2012 meeting.
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.
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.
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.
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.
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.
8. Director's Report.

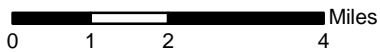
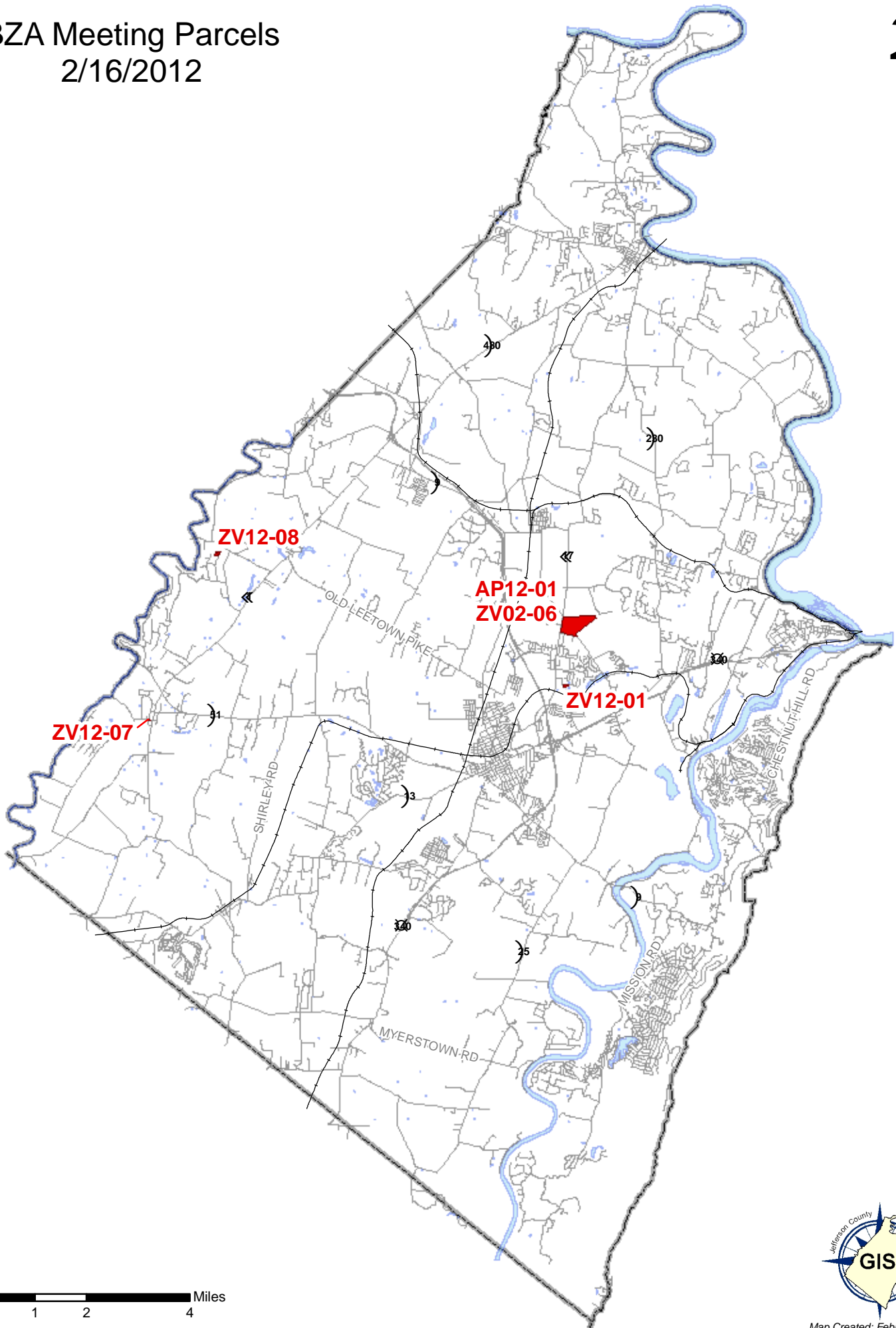
9. Legal Update.

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.

11. Correspondence.

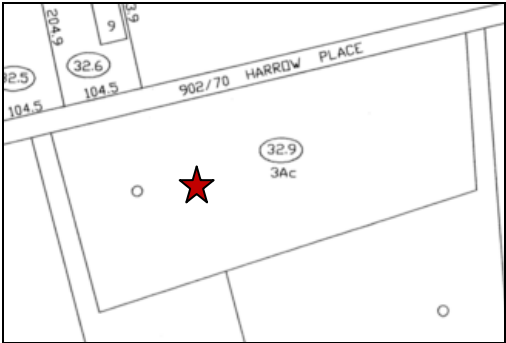
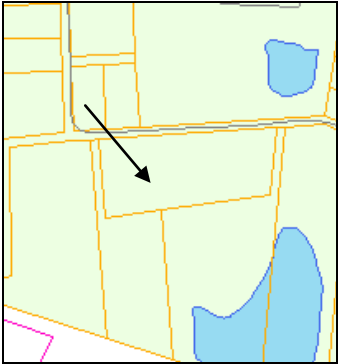
BZA Meeting Parcels
2/16/2012



Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 February 16, 2012

Brandon French Variance Request (#ZV12-01)

Item #2 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.

APPLICANT:	Brandon French
OWNER:	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	47 Harrow Place, Charles Town, West Virginia
LEGAL DESCRIPTION:	District: Charles Town (02); Map: 8-1; Parcel: 32.9 
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:	3 acres
PRIOR CASES:	None
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential

Staff Report
Jefferson County Board of Zoning Appeals Meeting
February 16, 2012

Brandon French Variance Request (#ZV12-01)

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a 30 foot reduction of the rear setback distance of 50 feet to 20 feet for the construction of a new 50' x 16' structure. The application implies that the existing temporary buildings which were placed without proper permits will be removed upon construction of the new 50' x 16' building.

This case was previously scheduled for the January 19, 2012 Board of Zoning Appeals meeting. At this meeting, the Board voted to postpone the case to the following meeting as a result of sign posting requirements not being met.

2. Previous Case History

The applicant has previously applied for a building permit for the placement of Sea Containers on the rear of this property. The building permit application for this use was denied because the land use was not permitted by the Zoning Ordinance in effect at that time. These uses currently exist on the property.

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, "Still allows for adequate maintenance around the 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, "Previously vehicles have driven onto property due to ice/snow on adjoining Harrow Pl. hill so in future subdividing lot into 1½ acres and by allowing 20 foot setback it would allow a home to be built further away from hill to keep from damage due to loss of control of vehicles."

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

The application states, "If this was granted it would allow a lot more square footage of lawn instead of creating dead spots that would not be suitable of use."

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

The application states, "It's still going to be 20 feet from adjoining neighbors and I'll be meeting all building codes while applying for permits."

Staff Report
Jefferson County Board of Zoning Appeals Meeting
February 16, 2012

Brandon French Variance Request (#ZV12-01)

4. Staff Evaluation of Request

The Zoning and Land Development Ordinance allows for shorter setbacks for accessory structures with an area of less than 150 square feet. However, the proposed accessory structure would have an area of 800 square feet. As such, the standard Rural District setback requirements of Section 9.7 would apply.

During a site visit to the property, staff noted that two storage containers were already in place on the property. Per the Engineering Department, no permit application has been submitted for these containers in recent months. There also appear to be several inoperable vehicles on the property.

Staff notes that the property is 3 acres in size and appears to be relatively unencumbered by significant natural features or topography. The western portion of the lot contains a residence and a shed.



Staff Report
Jefferson County Board of Zoning Appeals Meeting
February 16, 2012

Brandon French Variance Request (#ZV12-01)

5. Possible Conditions of Approval

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

- a) The variance applies only to the building described in the variance application.
- b) Any required building permits for this building must be approved prior to construction.
- c) Any other existing accessory structures located on the property must be brought into compliance with all existing codes, including building code and setbacks.
- d) The property must be in compliance with the Salvage Yard Ordinance prior to issuance of building permits.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 9.7 Other Exceptions³

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

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

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

JEFFERSON COUNTY BOARD OF ZONING APPEALS
VARIANCE REQUEST

ZV12-01

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

Property Owner(s): Brandon French
Address: 261 Hunt Drive
Kearneysville WV 25430
Phone Number: (304) 283-6923
Location of Property: 47 Harrow Place
Lot Size: 3 Acres
Deed Book Reference: Deed Book Number 8 Page Number _____
Tax Map Reference: District B2 Map 8-1 Parcel 32.9
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.

I would like to keep the building close to rear of property. I will like to decrease setback from 50 foot to 20 foot from property line.

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

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

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JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

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

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

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

still Allows for Adequate maintenance around the property

- 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:

Previously vehicles have driving onto property due to ice/snow on adjoining narrow pl. Hill so in future subdividing lot into 1/2 acre and by allowing 20 foot setback it would allow a home to be built further away from hill to keep from damage due to loss of control of vehicles.

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

If this was granted it would allow that more square footage of lawn instead of creating dead spots the would not be suitable of use.

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

Its still going to be 20 feet from adjoining neighbors and I'll be meeting all building codes while applying for permits.

Brandon French
Signature of Property Owner

Brandon French
Print Name

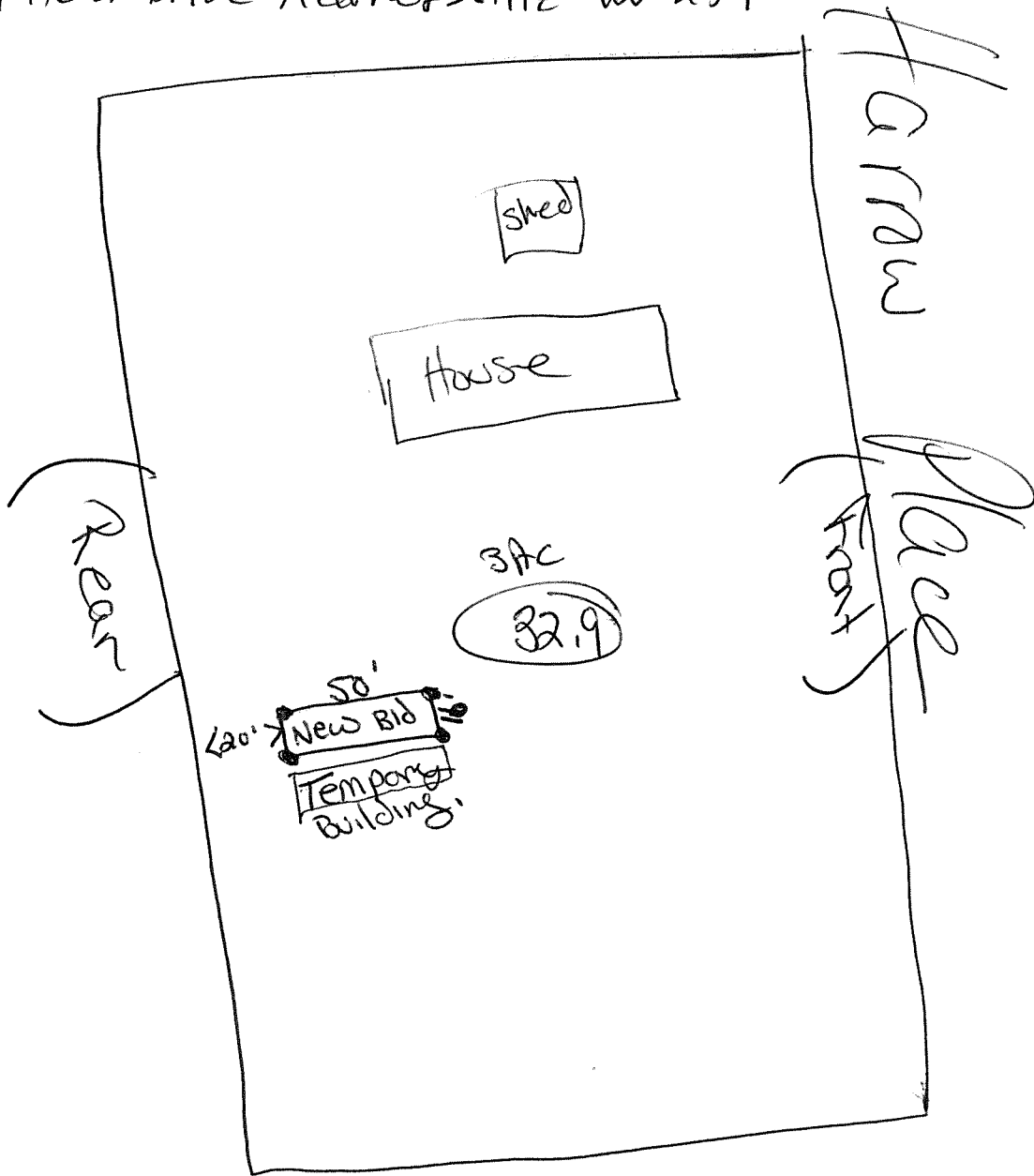
12/5/11
Date

<u>CASH</u>	FOR OFFICAL USE ONLY
Fees Paid: <u>\$100.00</u>	Date Application / Fees Received: <u>DECEMBER 8.2011</u>
Date of meeting / Public Hearing: <u>THURSDAY JANUARY 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 JANUARY 4.2012 (overtime)</u>	
Official Action of Board: _____	
Official Signature and Seal: _____	

RE: Jefferson County Board of Zoning

Brandon French (304) 283-6923

261 Hunt Drive Kearneyville W 25436



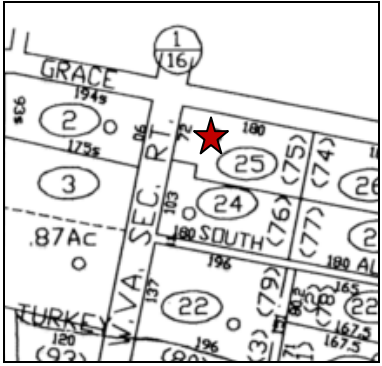

Brandon French 12/9/11

#ZV12-01

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 February 16, 2012

James E. G. Grantham Variance Request (#ZV12-07)

Item #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 an attached garage with a length of 20' and a width of 24' – 30'.

APPLICANT:	James E. G. Grantham
OWNER :	Same
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	98 King Street, Middleway, West Virginia 25430
LEGAL DESCRIPTION:	District: Middleway (07); Map: 22B; Parcel: 25 <div style="text-align: center;">  </div>
ZONING DISTRICT:	Zoning Map Designation: Village (V) <div style="text-align: center;">  </div>
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North: V South: V</i> <i>East: V West: V</i>
LOT AREA:	0.362 acres
PRIOR CASES:	None
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential

Staff Report
Jefferson County Board of Zoning Appeals Meeting
February 16, 2012

James E. G. Grantham Variance Request (#ZV12-07)

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a reduction of the front setback distance from 20' to 1' to allow for the construction of a 10' x 20' addition to a residence and an attached garage with a length of 20' and a width of 24' – 30'.

2. Previous Case History

There is no previous case history for this property.

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, "Sight line for turning cars on King St. will not be affected."

b) *Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance.*

The application states, "The addition will be made on the north of the existing house to maintain the comfort and viewscape of the bedrooms and kitchen."

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

The application states, "A porch and entertainment area is planned for the south side if the house and the addition cannot interfere."

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

The application states, "All other applicable building codes will be adhered to. This will improve the historic look of the home."

*Please see the supplemental information that was submitted by the applicant regarding Community Consistency and House Orientation.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
February 16, 2012

James E. G. Grantham Variance Request (#ZV12-07)

4. Staff Evaluation of Request

Because the home is located on a corner lot, a front setback applies to the street side yard. Per Section 5.10, the Village District allows for shorter setbacks than the other Jefferson County zoning districts. For existing structures, Section 5.10C states that the applicable setback is “As exists not less than 6’ on sides and rear.” However for new structures, the standards of Section 9.7 apply. For the subject property, with a lot area of approximately 15,800 square feet, the applicable setback would be 20’.

Zoning Ordinance Section 9.4 also allows for the minimum setback for a proposed building to be based on the average of at least two existing buildings on the same side of the street within 200’ of the proposed building. However, the ordinance states, “in no case shall the setback line be less than thirty-five (35) feet from the centerline of any abutting road or street.” Because the portion of Grace Street abutting the subject property has a right-of-way dimension of only 30 feet – or a 15’ distance from the road centerline to the property – this section of the ordinance does not provide relief to the applicant.

One of the key purposes for front yard setback requirements is to allow sufficient room for future roadway expansion. However, in the case of the subject property, it should be noted that the existing home, in addition to nearby structures on other properties, is already located very close to the right-of-way. As these structures are located in a National Register Historic District, it appears unlikely that they would be demolished for the purpose of expanding a road. As such, staff finds that the proposed variance would not have an impact on future right-of-way expansion.

Front setback requirements are also applied for the purpose of maintaining neighborhood character. Based on the photographs presented by the applicant as well as a site visit to the property, it is evident that shorter front setbacks are a common feature of the neighborhood. For this reason, staff finds that the proposed variance would not have a negative effect on the existing neighborhood character.



*View of subject property in background,
House located across King St. in foreground.*

Staff Report
Jefferson County Board of Zoning Appeals Meeting
February 16, 2012

James E. G. Grantham Variance Request (#ZV12-07)



Side view of subject property (King Street).



Side view of subject property (King Street).



View of nearby properties (Grace Street).

5. Conditions of Approval

No possible conditions of approval are identified.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
February 16, 2012

James E. G. Grantham Variance Request (#ZV12-07)

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 5.10 Village District

C. Setbacks

1. Residential

a. Section 9.7, Residential Growth standards

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:

Residential Growth District

Single family residences –

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

#ZV12-07

JEFFERSON COUNTY BOARD OF ZONING APPEALS
VARIANCE REQUEST

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

Property Owner(s): James E. G. Grantham
Address: 98 King St.
Middleway, WV 25430
Phone Number: 304-728-6367
Location of Property: Southeast corner of Grace and King St.
intersection in Middleway
Lot Size: 0.362 Ac.
Deed Book Reference: Deed Book Number 993 Page Number 657
Tax Map Reference: District 7 Map 22B Parcel 0025 0000 0000
Zoning District: Village
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.

Reduction in the front setback from 20ft to 1ft.
for the construction of additional living space
and a garage.

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

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

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JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

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

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

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

Sight line for turning cars on King St. will not be affected.

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:

The addition will be made on the North of the existing house to maintain the comfort and view scope of the bedrooms and kitchen

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

A porch and entertainment area is planned for the South side of the house and that addition cannot interfere

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

All other applicable building codes will be adhered to. This will improve the historic look of the home.

James E. G. Grantham

Signature of Property Owner

James E. G. Grantham

Print Name

1/20/2012

Date

FOR OFFICIAL USE ONLY

Fees Paid: _____ Date Application / Fees Received: _____

Date of meeting / Public Hearing: _____

Official Administrative Body: Jefferson County Board of Zoning Appeals

Posting Requirements: _____ Number of Days Prior to Scheduled Hearing

Advertising Dates: _____

Official Action of Board: _____

Official Signature and Seal: _____

Jefferson County Board of Zoning Appeals - February 16, 2012 Meeting

Supplement to Variance Request Application for: James E. G. Grantham, 98 King St., Middleway, WV

This request has been made for the following reasons (expanded upon below):

1. An addition that closely borders the property line along Grace St., an east/west street, would be consistent within the community, and
2. The orientation of the existing house and the narrow property, leads to a design that extends the house along Grace St.

1. Community Consistency

- Typical buildings of the time period in this village extend the house along the property line (typically on the east/west crossing streets). This was usually the result of enclosing the space between the main house and the separate kitchens and/or outbuildings built along those roadways.
 - Figure 1 is the next door neighbor to the west and the roadway shown is Grace St.
 - Figure 2 is one block away. The road in the foreground is Queen St. and the road on the right is Grace St.
 - Figure 3 is two blocks away. The road in the foreground is Queen St. and the road in the center is Charles St.



Figure 1



Figure 2



Figure 3

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 JEFFERSON COUNTY
 PLANNING, ZONING AND ENGINEERING

- The current house roof line and the 10 foot indentation of the current addition on the rear of the house are not found on the other homes of the same time period.
 - Figures 4 and 5 show the current roof line.
 - The proposed roof will slope in the opposite direction, similar to all the homes in the village including those in Figures 1, 2, and 3.



Figure 4



Figure 5

2. House Orientation

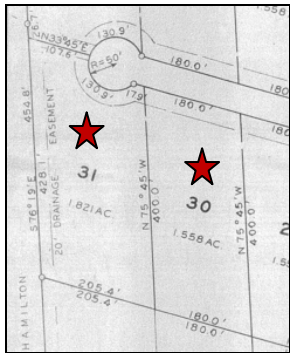

- The entire property is relatively narrow.
 - The property is approximately 90 feet at its widest, but
 - The western end, where the house sits, it is almost 20 feet narrower.
 - The current house is over 40 feet wide along that boundary,
 - Leaving very little room to expand before reaching the property boundary to the south.
 - In addition, both the neighboring house on the south and a well are very close to that boundary and building in that direction would crowd that area.
- The master bedroom and kitchen currently have southern facing windows that are needed to warm and light those rooms (especially in the winter).
 - Any additions on the south side of the house would take away both the sun and yard view from those rooms.
 - Instead the entertainment opportunities of the south side of the house will be further enhanced by a long porch and kitchen garden once the vehicles are moved to the eastern end of the house.
- Solar panels may be added in the future and those will require a south facing roof that can reach above the shade produced by many trees lining the southern side of the yard.

Thank you for your consideration of this variance request.

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 February 16, 2012

Mark and Jessica Howard Variance Request (#ZV12-08)

Item #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'x36' barn that will be constructed on the same footprint as the original structure.

APPLICANT:	Mark and Jessica Howard
OWNER :	Same
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	Wide Horizon Subdivision, 541 Hillcrest Drive, Kearneysville, West Virginia 25430
LEGAL DESCRIPTION:	District: Middleway (07); Map: 13; Parcel(s): 136 & 137 
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:	1.821 acres
PRIOR CASES:	None
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential
Final Plat (PC File #72-19)	Plat approved late 1973.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
February 16, 2012

Mark and Jessica Howard Variance Request (#ZV12-08)

RELEVANT INFORMATION:

1. Overview of Request

The applicant is seeking a reduction of the rear setback requirement for barns from 75' to 58' to allow for the replacement of an existing 30'x36' barn that will be constructed on the same footprint as the original structure.

2. Previous Case History

There is no previous case history for this property.

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, "30' x 40' current structure built prior to purchase of property by the Howards, 60' from closest property line."

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, "Current structure (30' x 40') in present location prior to lot purchase by Howards."

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

The application states, "Current location of structure to be replaced – same footprint to be used"

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

The application states, "No adverse impact to lot or property. Building footprint the same."

4. Staff Evaluation of Request

Typically the setbacks for an accessory structure of this size in the Rural zoning district would be 40 feet in the front, 15 feet on the side and 50 in the rear. However Section 8.2 of the Zoning Ordinance requires that barns or feeding pens be set back 75 feet from "...a lot with a residential use".

Staff notes that it appears that granting the proposed variance would not increase the impact on adjacent properties because the request is to rebuild an existing structure, rather than to build a new structure.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
February 16, 2012

Mark and Jessica Howard Variance Request (#ZV12-08)



5. Possible Conditions of Approval

The Howards own two lots that encompass their home, accessory structures and the horse arena. Functionally the site operates as unit even though the uses are on two legally buildable lots. The existing garage is on the lot line and the Section 9.4B of the Zoning Ordinance states “A structure may be located on a common side or rear lot line of contiguous property owned by the same entity. Provided, however, that the structure shall only be a single family dwelling or an accessory structure. Also provided, however, that the Land Use Ordinances of Jefferson County shall view the contiguous lots as one lot for all purposes.” As such, the two lots are considered merged via the garage. Staff proposes a possible condition that if the garage were to be torn down or otherwise destroyed, a lot line merge would have to be processed to legally combine the two existing buildable lots or a side yard variance could be applied for in the future.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 8.2 Barns and Feeding Pens²³

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.

ZV12-08

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): Mark and Jessica Howard

Address: 541 Hillcrest Drive
Kearneysville WV 25430

RECEIVED

Phone Number: 304 724 6158

JAN 23 2012

Location of Property: Wide Horizon Subdivision

JEFFERSON COUNTY 9:20am
PLANNING, ZONING AND ENGINEERING

Lot Size: 1.821 a

Deed Book Reference: Deed Book Number 1011 Page Number 132

Tax Map Reference: District Middleway Map 13 Parcel 136-137

Zoning District: M Rural

Section of Ordinance: 8.2

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.

In June 2005 we, Mark + Jess Howard purchased lot 30+31.
Lot 31 had a 30'x40' barn in place (see sketch). We
would like to replace existing structure (which is a safety
hazard) on the same footprint of existing. The
original was built 60' from the closest boundary

There is no other suitable place to rebuild other than original placement.
Please note variances to the Zoning Ordinance must comply with Article §8A-7-11 of the WV State Code.

We are requesting a set back from 75' to 58'.
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:
30x40 Current structure built prior to purchase of property by the Howards 60' from closest property line
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:
Current structure (30'x40') in present location prior to lot purchase by Howards
3. Would eliminate an unnecessary hardship and permit a reasonable use of the land:
Current location of structure to be replaced - same footprint to be used.
4. Will allow the intent of the zoning ordinance to be observed and substantial justice done (2004, c.153.):
No adverse impact to lot or property Building footprint the same.

Jessica Howard
Signature of Property Owner

Jessica Howard
Print Name

Dec 29, 2011
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: _____	

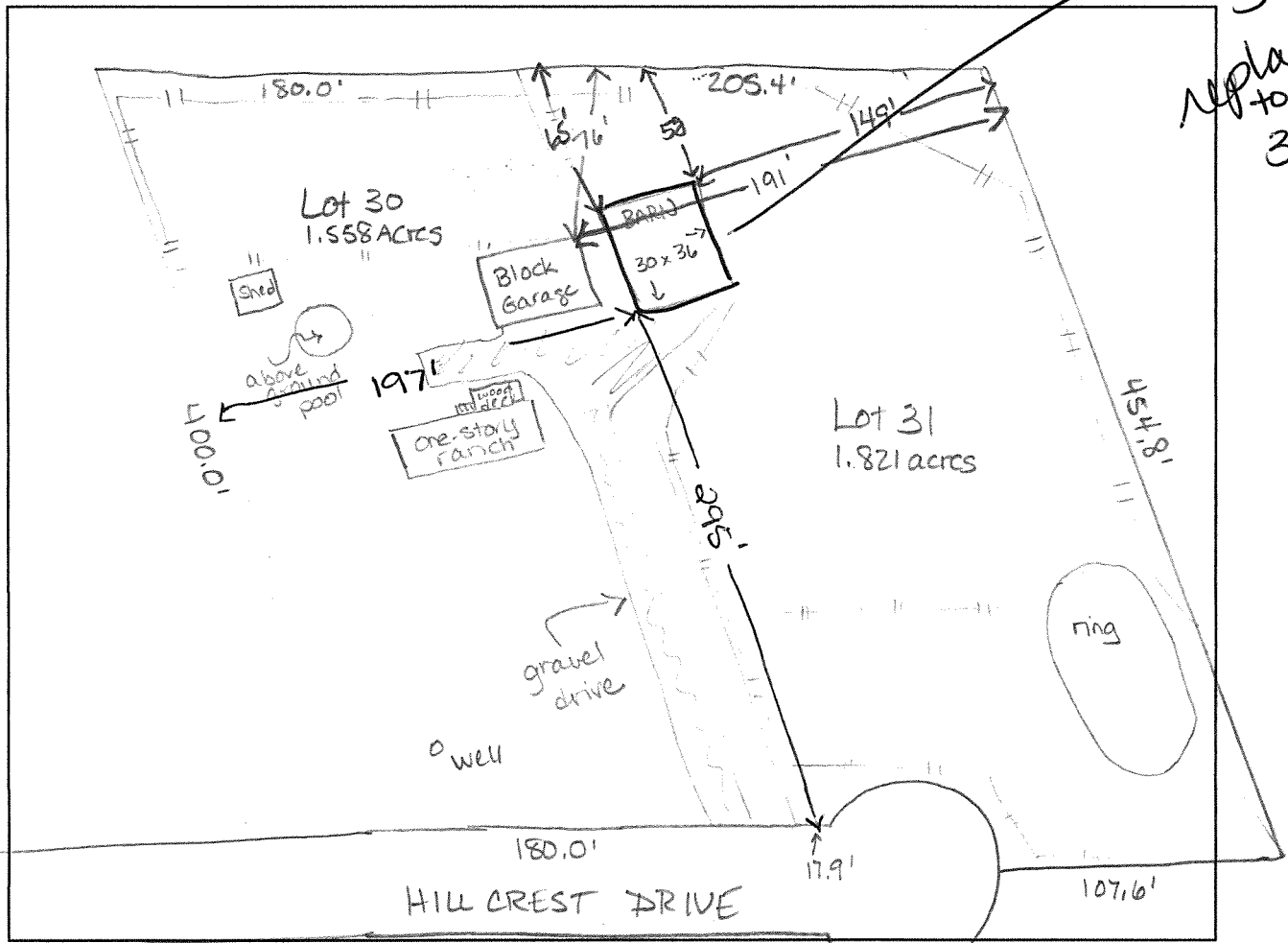
PROPERTY SKETCH SHEET

Sketch the shape and location of the lot and show the following:

1. All existing roads with names and/or route numbers.
2. All rights-of-way and/or easements.
3. Septic reserve areas.
4. Location of the intended construction or land use; and show the building setback lines and the distances from the property line to the setback lines; and the distance from the property line to the structure.
5. Show the size and height of the structure.
6. Show all existing buildings/structures on the parcel/property.
7. On Renovation's and Addition; Please indicate number of bedrooms and if adding a kitchen

Note: The sketch may be on a separate sheet; however, it shall be signed and dated by the applicant.

*Current
Bara
30x40
Replacement
to be
30x36*



Property Owner/Applicant's Signature *Jessie Howard* Date: 12 / 30 / 11

AP12-01

BZA CUP Preliminary Plan Inclusion

CUP #Z02-06;
CIS JCPC File #07-15

APPEAL FORM
JEFFERSON COUNTY BOARD OF ZONING APPEALS

Type of Appeal (please specify): ADMINISTRATIVE DECISION LESA POINT SCORE
OTHER _____

Name of Project: ASPEN GREENS

Project File Number: CUP #Z02-06; CIS JCPC File #07-15

Appeal Number: AP12-01

Date Received: 25 Jan 12 By: CC Fees Paid: \$100.00 Date: 1/25/12

Hearing / Meeting Date: 02/16/12

* to replace variance submitted on 1/20/12

Advertising Dates: 02/01/12

Posting Requirements: 15 Number of Days Prior to Scheduled Hearing / Meeting

Name of Appellant(s): See Owner below

Address: _____

Telephone: _____ Cell: _____

If there is more than one Appellant please provide the names, addresses and telephone numbers of each Appellant on a separate sheet of paper.

Name of Property Owner(s): Roderick Planes, LLC

Address: 5509 Mt. Zion Road, Box 777; Frederick, Md. 21705

Telephone: 1-301-663-6060 Cell: _____

Name of Developer(s): See Owner above

Address: _____

Telephone: _____ Cell: _____

ATTACHMENTS:

- Copy of CUP for Aspen Greens
- Discussion Narrative of Issues and Resolve Request
- USGS Vicinity Map
- Signed sketches locating area of issue
- Copies of pertinent correspondence
- Copy of Affidavit for consultant signature.
- Added Notes for clarity

RECEIVED

JAN 25 2012

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Property Description: District Charles 2 - Town Tax Map# 4 Parcel 19
 Deed Book# 952 Page# 565

Physical Location of Property: Easterly of Flowing Springs Road (Rte. 17)
and Old Country Club Road (Rte. 24) at and near their intersection.

Please complete the following if appealing LESA : N/A

If you are appealing check Yes or if you are not appealing check No. Also complete the Score assessed by Zoning Administrator and the Score claimed by Appellant, regardless if you have checked Yes or No.

	YES	NO	Score assessed by Zoning Administrator	Score claimed by Appellant
1. Size of Site	_____	_____	_____	_____
2. Adjacent Development	_____	_____	_____	_____
3. Distance to Growth Corridor	_____	_____	_____	_____
4. Comprehensive Plan Compatibility	_____	_____	_____	_____
5. Proximity to Schools	_____	_____	_____	_____
6. Public Water Availability	_____	_____	_____	_____
7. Public Sewer Availability	_____	_____	_____	_____
8. Roadway Adequacy	_____	_____	_____	_____
9. Emergency Service Availability	_____	_____	_____	_____

For items checked Yes above please explain by separate attachment(s) reasons/justifications for appeal and desired action by Board. Be sure to keep your reasons/justifications in numerical order.

Please note: If the two scores in each column above are different please provide a separate sheet for each differentiation with the reasons justifying the differences. Also, when applicable, provide the justification for each difference by citing the Comprehensive Plan of Jefferson County.

Support Data:

If you are appealing check Yes, and if you are not appealing check No. For any of the support data that has been checked Yes, provide a separate sheet for each differentiation with the reasons justifying the differences. Be sure to keep your reasons of justification in numerical order. Also, when applicable, provide the justification for each difference.

	YES	NO
1. Name and address of owner/developer.	_____	_____
2. Name and address of contact person.	_____	_____
3. Type of development proposed.	_____	_____
4. Acreage of original tract and property to be developed.	_____	_____
5. General description of surface conditions (topography).	_____	_____
6. Soil and drainage characteristics.	_____	_____
7. General location and description of existing structure.	_____	_____
8. General location and description of existing easements or rights-of-way.	_____	_____
9. Existing covenants and restrictions on the land.	_____	_____
10. Intended improvements and proposed building locations including locations of signs.	X	All others are N/A
<i>Administrative Decision Appeal</i>		
11. Intended land uses.	_____	_____
12. Earthwork that would alter topography.	_____	_____
13. Tentative development schedule.	_____	_____
14. Extent of the conversion of farmland to urban uses.	_____	_____
15. Effected wildlife populations.	_____	_____
16. Ground water and surface water and sewer lines within 1320 feet.	_____	_____
17. Distance to fire and emergency services that would serve the site.	_____	_____
18. Distance to the appropriate elementary, middle, and high school.	_____	_____
19. Traffic characteristics – type and frequency of traffic; adequacy of existing transportation routes.	_____	_____
20. Demand for school services created by this development.	_____	_____
21. Proximity and relationship to historic structure or properties within two hundred (200) feet.	_____	_____
22. Proximity to recreational facilities.	_____	_____
23. Relationship of the project to the Comprehensive Plan.	_____	_____

Any and all information should be provided in accordance with the Rules of Procedure of the Jefferson County Board of Zoning Appeals.

Please provide description / grounds for the appeal sought:
See Attached Discussion Sheet

<i>CK#13858</i>	FOR OFFICAL USE ONLY
Fees Paid: <u>\$100.00</u>	Date Application / Fees Received: <u>January 20, 2012</u>
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: _____	

Effective 10/88 – Revision Dates: 2/17/05

**JEFFERSON COUNTY
DEPARTMENT OF ZONING
CONDITIONAL USE PERMIT
ASPEN GREENS SUBDIVISION #Z02-06**

This is to certify that effective **December 20, 2007**, the property described as:

Owner: Maurice A. Gladhill, Manager
Roderick Planes, LLC, Owner
Address: 5509 Mt. Zion Road, P.O. Box 777
Frederick, MD 21705
(former address 900 East Patrick Street,
Frederick, MD 21705)
Telephone Number: 301-663-6060
Developer: Same as Owner
Telephone Number: Same as Owner
Tax Map Reference: Charles Town District, Map 4 Parcel 19
Deed Book
Reference: Deed Book 952, Page 565
Subdivision Name: Aspen Greens Subdivision
Zoning District: Rural

Has been granted permission to use said property in the following way: **203 Single-Family Lots.**

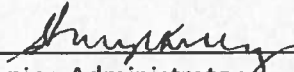
CONDITIONAL UPON:

1. Installation of a left turn lane for the proposed entrance to Aspen Greens off of Old Country Club Road (Route 24) unless prohibited by the WV Department of Highways;
2. Installation of a left turn lane for the proposed entrance to Aspen Greens off of Flowing Springs Road (Route 17) unless prohibited by the WV Department of Highways;
3. Installation of a left turn lane off of Flowing Springs Road (Route 17) to Daniel Road (Route 18) unless prohibited by the WV Department of Highways;
4. Installation of a left turn lane off Flowing Springs Road (Route 17) to Old Country Club Road (Route 24) unless prohibited by the WV Department of Highways;
5. Provide a minimum of 8' paved shoulder along Flowing Springs Road (Route 17) and Old Country Club Road (Route 24);
6. 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;
7. Submitting a letter to the WV Department of Highways notifying them about the potential for growth and to ask for their thoughts about a traffic light at the intersection of Daniel Road (Route 18) and Flowing Springs Road (Route 17); and,

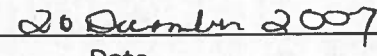
8. Any further change in use or expansion processing through the Jefferson County Departments of Planning, Zoning, and/or Engineering to update this certificate; and, all other applicable County regulations being followed.

In the event the construction or use has not commenced by **June 20, 2009**, said permission will expire unless an extension is granted. Extensions must be formally requested of the Jefferson County Board of Zoning Appeals prior to the expiration date.

This certificate in no way relieves the owner, applicant, or user from any requirements of the Jefferson County Ordinances unless appropriate variances are granted by the appropriate County authority.



Zoning Administrator



Date

Seal:

Seal for the Departments of
Planning, Zoning, and Engineering:



Discussion Narrative
ASPEN GREENS
Request for Administrative Appeal
Of CUP Condition #6 Interpretation

25 Jan 2012

PROJECT STATUS: Aspen Greens Preliminary Plan has had three response staff reviews and all utilities, state oversight (WVDEP, WVDOH, WVHD) and county PE Issues satisfactorily completed with the exception of the Zoning Administrator's item #2 raised by Memo attached.

BZA REQUESTED SECOND DECISION: ASPEN GREENS believes that the Zoning Administrator's interpretation of the condition intent raises concerns of the 50 foot easement only by the insertion of new criteria he now provides in the attached Memo. If the first decision request aimed at working with these newly defined conditions for a workable compromise that will not harm the design of the Preliminary Plan has not been approved as it has been presented from the beginning, then this Appeal is now made. Therefore we ask you to now entertain our BZA Requested Second Decision for an Appeal of an Administrative Decision by upholding our interpretation of the condition as shown from the beginning (otherwise moot and withdrawn).

REQUESTED DECISION: Aspen Greens requests that CUP Item #6 be interpreted as is has been from the initial 2002 presentation on this issue through all reviews to date and we elect the Zoning Administrator's preferred guidance that we:

'ask the Board of Zoning Appeals to uphold (y)our interpretation of the condition,' then this request would take the form of an Appeal of an Administrative Decision'

ADDED DISCUSSION:

This request is for BZA approval of existing Preliminary Plat Design for compliance with CUP condition #6 as interpreted by this Zoning Administrator (See attached Memo Item 2). Administrator deems that the Preliminary Plan as shown is at odds with his newly provided criteria so as to require this Appeals Board to modify the condition. The Administrator re-defines the CUP condition by selectively limiting the CUP language meaning, and adding criteria that is harmful to the long standing approved design that were never part of the agreed upon condition. Future walk placement depends on many future variables. The current use is allowed for. These will be harmful to the design already approved. This request is not timely, and constitutes a serious undue and unintended hardship. The improvements shown now are infinitely greater than nearby approvals in allowing for pedestrian traffic, bike traffic and safe down auto or near collision pull off. This Appeals Board should approve this design on the merits of what is included already so that is can be built.

The public health, safety and welfare are all positively affected by the Preliminary Plat design graphically shown in the attached documents. Not only is adequate grading already included and DOH approved, but additional future options meet the CUP wording as discussed when included. What is shown surpasses all other roadside upgrades for this county to allow for these factors to date. Public interest is well served.

This request is the result of actions taken by others. This Preliminary Plan (submitted on 15 April 2011) is equal to the design as approved through DRS, through CIS and three reviews by Staff over the past year. This issue surfaced as a surprise in the 11th hour of this Preliminary Plat Review. Our current design included space beyond this condition.

Denying this design extension request would unnecessarily harm ASPEN GREENS as approved. The newly inserted criteria would harm lot owners or require unnecessary total project re-design. Moreover, this new criteria is unreasonable given the unknown future changes that will alter added current grading before walks are in fact needed. Current design is reasonable. No combined similar frontage upgrades now included exist in this county.

It is precisely in the spirit of orderly ordinance application that this design extension is sought. The Intent of the Zoning Ordinance is to permit reliance on the CUP wording as stated so that responsible designs can be created, reviewed and approved. Every design element is subject to re-definition if the approval wording is not dependable. Good developments should not be beyond financial risk reach. This Preliminary Plan is very responsible in design and clearly meets all zoning ordinance intent delineated when submitted in July 2002 as is required. This a first class effort dedicated to making a better home environment available for future residents.

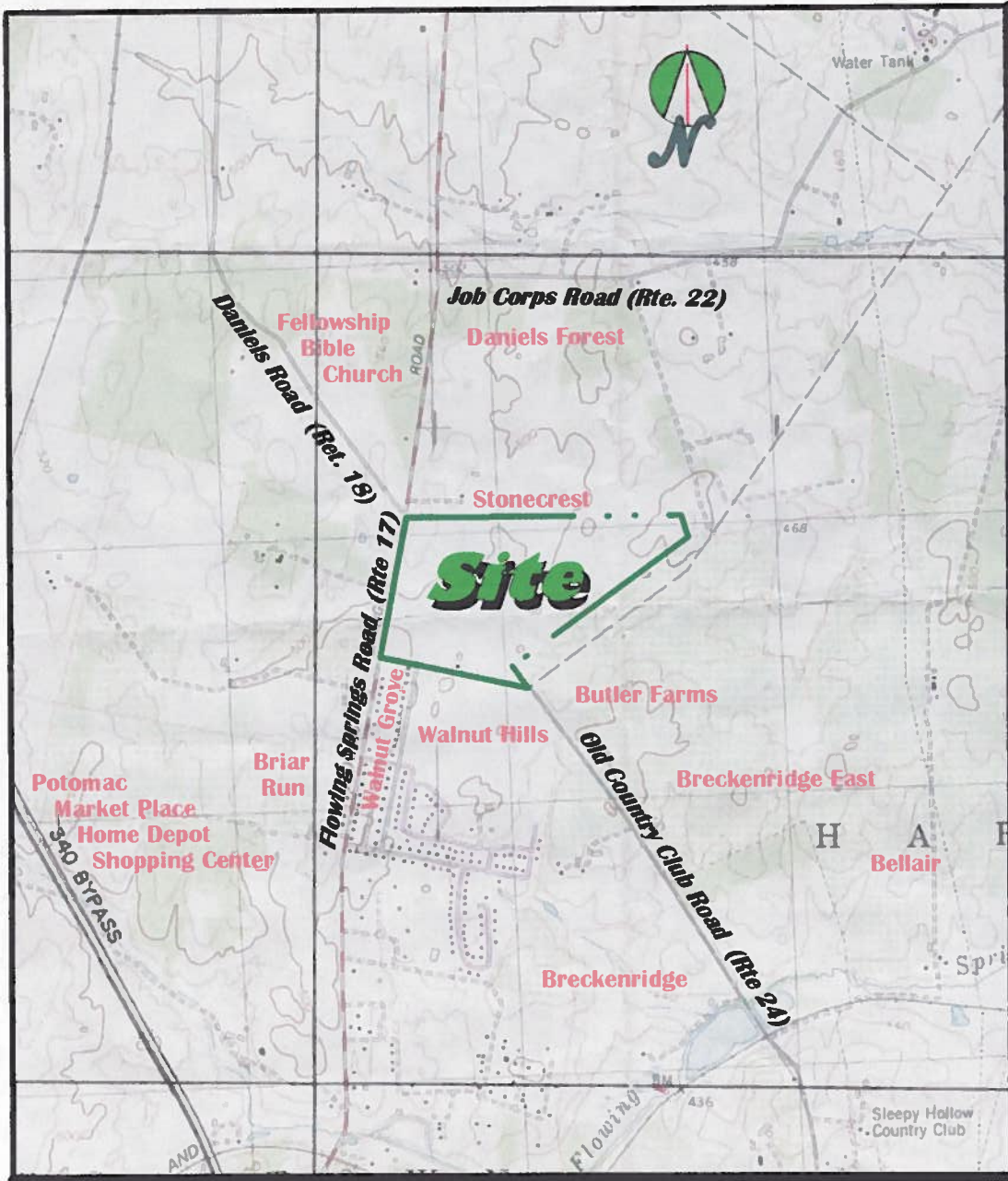
We believe that the added narrow interpretation of the existing CUP is too limited and does not merit being changed. There is literally no design element of any plans that can not be re-defined in this manner so as to block many upgrades above the minimal county ordinances. Additionally we have provided added note wording (not requested) on the plans also attached hereto to allow future homeowner alert of changes and use issues raised within the CUP condition area as sited when granted.

We as for approval of the design as being understood to be within the terms of the CUP Condition #6 since 2002.

Respectfully submitted on behalf of ASPEN GREENS subdivision:

 25 Jan 12
Fred W. Gates, agent for Roderick Planes LLC (see affidavit attached)

ASPEN GREENS Site Location



USGS Charles Town Quad Map

Scale 1" = 2000'

(Roads & Development Names Added)



Gates Associated, Inc.

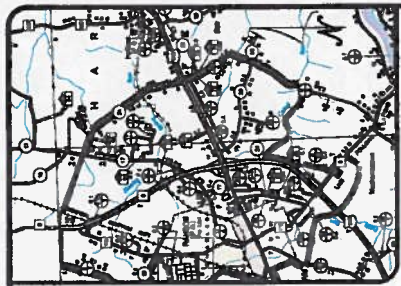
288 Venice Way (off Rte. 45)

Shepherdstown, West Virginia 25443

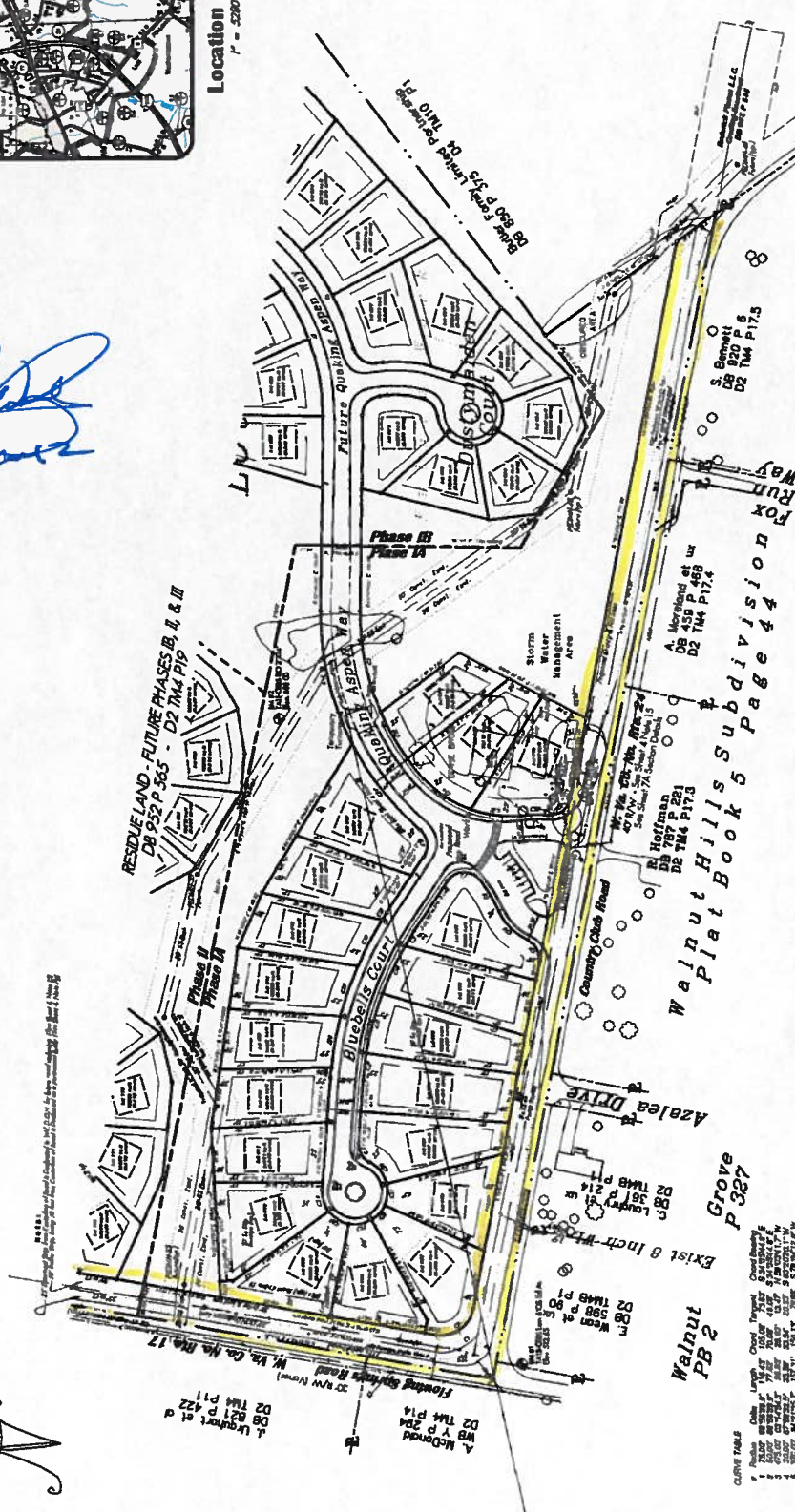
[email:gatesassociated@aol.com phone/fax/voicemail:1-304-876-6124]

PHASE IA - ASPEN GREENS
 Lot Plan Showing Boundary, Bearings and Distances
 Preliminary Plans

Gates Associated, Inc.
 151 West May Ave., 45 Shepherdson, W.V. 26444
 Phone: 304.271.1111
 Fax: 304.271.1112
 Email: gates@ga-inc.com
 Website: www.gatesassociated.com

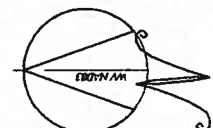


Reviewed



P/O D 2 TM 4 P 19
Phase IA - Lots 1 thru 20
ASPEN GREENS
RODERICK PLANES, L. L. C.
P/O Deed Book 952 Page 565

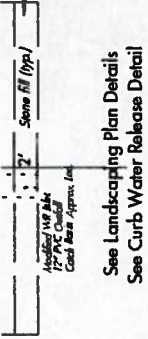
See Sheet 4 for 'Lot Notes'
 Sheet 2 for 'General Plan Construction Notes'
 See Sheet 7A for 'Road Work Details' of road surface sections
 See Sheet 8 for 'Entry Layout Geometry Sheet'



CURVE TABLE

Station	Order	Length	Chord	Offset	Point
1+00.00	1	100.00	100.00	0.00	1+00.00
1+10.00	1	100.00	100.00	0.00	1+10.00
1+20.00	1	100.00	100.00	0.00	1+20.00
1+30.00	1	100.00	100.00	0.00	1+30.00
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1+50.00	1	100.00	100.00	0.00	1+50.00
1+60.00	1	100.00	100.00	0.00	1+60.00
1+70.00	1	100.00	100.00	0.00	1+70.00
1+80.00	1	100.00	100.00	0.00	1+80.00
1+90.00	1	100.00	100.00	0.00	1+90.00
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9+50.00	1	100.00	100.00	0.00	9+50.00
9+60.00	1	100.00	100.00	0.00	9+60.00
9+70.00	1	100.00	100.00	0.00	9+70.00
9+80.00	1	100.00	100.00	0.00	9+80.00
9+90.00	1	100.00	100.00	0.00	9+90.00
10+00.00	1	100.00	100.00	0.00	10+00.00
10+10.00	1	100.00	100.00	0.00	10+10.00
10+20.00	1	100.00	100.00	0.00	10+20.00
10+30.00	1	100.00	100.00	0.00	10+30.00
10+40.00	1	100.00	100.00	0.00	10+40.00
10+50.00	1	100.00	100.00	0.00	10+50.00
10+60.00	1	100.00	100.00	0.00	10+60.00
10+70.00	1	100.00	100.00	0.00	10+70.00
10+80.00	1	100.00	100.00	0.00	10+80.00
10+90.00	1	100.00	100.00	0.00	10+90.00
11+00.00	1	100.00	100.00	0.00	11+00.00
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12+40.00	1	100.00	100.00	0.00	12+40.00
12+50.00	1	100.00	100.00	0.00	12+50.00
12+60.00	1	100.00	100.00	0.00	12+60.00
12+70.00	1	100.00	100.00	0.00	12+70.00
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13+30.00	1	100.00	100.00	0.00	13+30.00
13+40.00	1	100.00	100.00	0.00	13+40.00
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16+20.00	1	100.00	100.00	0.00	16+20.00
16+30.00	1	100.00	10		

2' Radius X 19" Stone Catcher
Class 1 Riprap Stone
Placed on Geo-Textile
Install 4 per Cul-de-Sac
See "C/MR" Detail



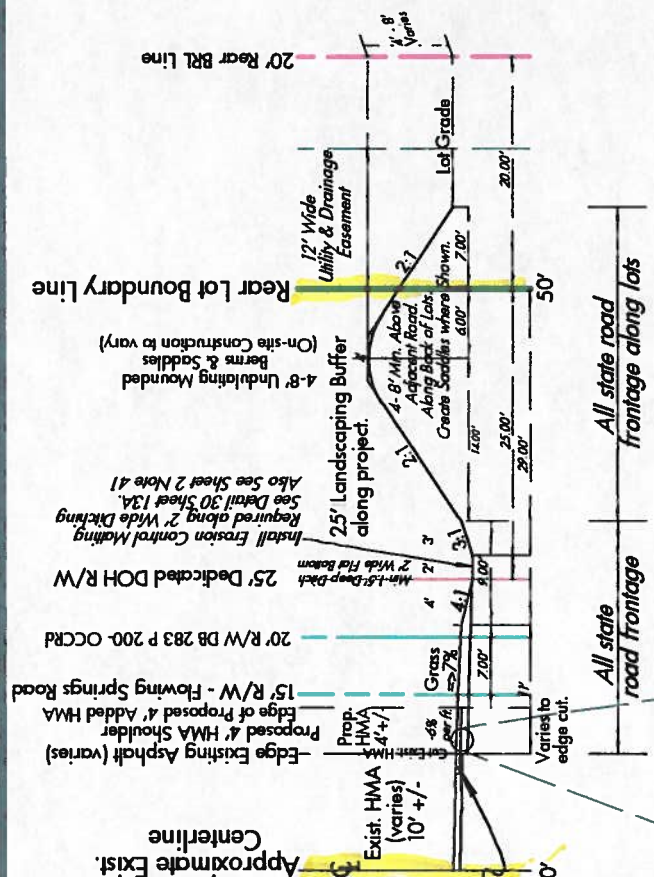
NOTE: Overflow experience may require the installation of a perforated drain pipe at base of catch basin for bottom drain.

TYPICAL CUL-DE-SAC SECTION A-A DETAIL
BIO-RETENTION CIRCLE
NTS

See Landscaping Plan Details
See Curb Water Release Detail

25 Jan 12

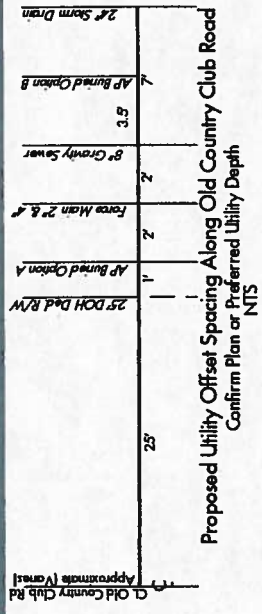
Note: Offsets from center of road of shown surface changes are not rigid and may vary slightly along frontage to allow for utilities, upgrades, drainage, walks, paths or trails, road widening or other safe use needs; either now or in the future. Vertical changes shall vary along with the natural ground and existing road. Berms shall undulate in height so as to allow for the best crossing of drainage, walks or landscaping.



All state road frontage
All state road frontage along lots

1.5" HIBC Wear Course (#2 WVDH Sec. 401.4.6)
4.5" HIBC Base Course (#2 WVDH Sec. 409)
8' Compacted Chrusier Run 1.5' (WVDH Sec. 704.6) 95% Dry Density
Compacted Subgrade 98% Dry Density

See Sheet 15 Details



Notes

- CONTACT Mr. Larry Ali @ W. VA. D. O. H. (Phone 1-304-289-3521) for MAJOR QUESTIONS regarding regulation requirements, work scheduling, inspection, safety, approvals, proposed traffic flagging, traffic signs, safety apparel or other required information.
- SILT FENCE all developments. SEED all disturbed ground to stabilize.
- MOVE ALL POWER POLES which might encumber the above work or safety of us.
- MAINTAIN 25' MINIMUM DITCHING grades along 3' shoulders in order to establish drainage to lower elevations without dips or ponding.
- GRAVEL COURSE shall extend laterally to daylight in the shoulder or in slope of the ditch to ensure adequate drainage of the pavement base and subgrade. Underdrain systems or other methods of drainage may be used with the approval of the County Engineer.
- LOT OWNERS RETAIN THE RIGHT TO ADD TREE SCREEN density along rear boundary lines within the Landscape Buffer or within the rear twenty feet of each road frontage lot by planting a mature of the herein identified subdivision motif trees.
- ALL LINE STRIPING AND SIGNAGE to be per WY DOT Standards within state right-of-way. Convert edge line cartway lines along entries from solid to dashed after confirmation with WY DOT.

ALL State Road Work within 25' from CL Easement
Typical State Roadside Upgrade Detail
NTS

JEFFERSON COUNTY, WEST VIRGINIA
Department of Planning and Zoning
104 East Washington Street
P.O. Box 338
Charles Town, West Virginia 25414

Phone: (304) 728-3228
Fax: (304) 728-8126

Email: planningdepartment@jeffersoncountywv.org

MEMORANDUM

TO: Fred Gates, Gates Associated, Inc.

FROM: Steve Barney, Zoning Administrator, Jefferson County

DATE: January 12, 2012

SUBJECT: Determination Regarding Compliance with Aspen Greens CUP Conditions

I am writing to follow up on our recent meeting regarding the Conditional Use Permit conditions for the Aspen Greens Subdivision. Regarding the Preliminary Plat currently in review, the two significant issues we discussed were:

1. The applicant's need to document why the required WVDOH improvements are not applicable to the first phase of the development.

At our meeting, you brought to my attention an email exchange between yourself and West Virginia Division of Highways staff (Larry Alt and Jeffery Stanislawczyk). However, this message was not sufficient to document the WVDOH's position regarding the required improvements.

Following our meeting, I contacted Larry Alt to ask him to provide feedback on each condition and am currently awaiting receipt of this information. It should be noted that securing this documentation is the applicant's responsibility; however, as a courtesy, I have made the request of Mr. Alt.

2. The fulfillment of the intent of the CUP condition related to the required sidewalk / trail easement.

Condition #6 of the approved CUP reads as follows:

Provide a note on the plat indicating a 50' easement along Flowing Springs Road (Route 17) and Old Country Club (Route 24) for the potential of sidewalks and trails.

I am confirming my determination that sidewalk / trail easement shown on the plat does not meet the intent of CUP condition #6, as approved by the Board of Zoning Appeals:

Staff interprets the word "along" to mean "beside" or "adjacent to." As the proposed easement includes a portion of Flowing Springs Road and Country Club Road, it cannot be said to be located

"along" the road – rather, a portion of the easement is located within the road. Staff also finds that it is not feasible for a sidewalk or a trail to be installed within the existing paved area of either road.

Moreover, the topography of the section shown for the proposed trail easement is not sufficiently level to allow installation of a sidewalk or trail without significant grading.

Options to resolve this issue include the following:

A. Modify the plat to show along both Flowing Springs Road and Old Country Club Road:

- the 50' easement beginning at the edge of the pavement;
- a continuous area of flat topography with a dimension of at least 15', in which a trail or sidewalk could be placed without the need for significant grading

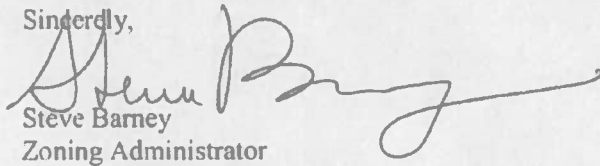
OR

B. Request that the Board of Zoning Appeals modify the condition of approval. This request must be heard as a public hearing, with required notification.

Following resolution of issues #1 and #2 above – in addition to any other outstanding issues noted in the review checklist – I will be happy to sign off on the Preliminary Plat.

Please let me know if you need additional information.

Sincerely,


Steve Barney
Zoning Administrator

Cc: Jennifer Brockman, Director, Planning and Zoning Department
Seth Rivard, County Planner
Jonathan Saunders, County Engineer

Subj: **BZA application - Aspen Greens**
Date: 1/20/2012 5:01:56 P.M. Eastern Standard Time
From: sbarney@jeffersoncountywv.org
To: GatesAssociated@aol.com
CC: jhartman@jeffersoncountywv.org, jbrockman@jeffersoncountywv.org
Fred,

Thank you for your BZA submittal. I wanted to review with you a couple of issues with your application, which will need to be resolved before the application can be placed on a BZA agenda.

Because the application was submitted by the submittal deadline, we can allow additional time (until close of business on Wednesday January 25th) to address these issues, which are as follows:

- 1) It is not clear what type of request is being made. A variance application has been submitted; however, the issue is with a CUP condition rather than a Zoning Ordinance requirement. Therefore, the variance request is not relevant.

Instead, the request should take the form of one of the following:

- a. If the intent is to appeal my determination that the Preliminary Plat does not meet the CUP conditions, then an application for an Appeal of Administrative Decision should be submitted.
- OR
- b. If the intent is to ask the BZA to modify or eliminate a condition of the CUP, then a CUP application should be submitted, with a request to modify the condition. (Please note that for a request to amend the conditions of a CUP, only the first two pages of the CUP application need be submitted, in addition to a narrative describing the requested change in conditions. The "support data" listed in Section 7.4D does not need to be submitted. Because no lots are involved in the request, only the base fee of \$250 would apply.)

Applications are available at the following URL:

<http://www.jeffersoncountywv.org/government/departments/planning-and-zoning-department/forms.html>

- 2) The application makes reference to an "extension request." This reference is unclear; is this remaining text that was inadvertently included from a previous application?
- 3) The application must have the original signature of the property owner, or the owner must submit an affidavit allowing an agent for the property owner to file the application.

Please let me know if you need additional information.

Sincerely,
Steve Barney

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

Please note that Jefferson County email correspondence is subject to the West Virginia Freedom of Information Act.

Monday, January 23, 2012 AOL: GatesAssociated

Subj: **RE: BZA application - Aspen Greens**
Date: 1/23/2012 2:49:48 P.M. Eastern Standard Time
From: sbarney@jeffersoncountywv.org
To: GatesAssociated@aol.com
Fred,

To respond to your questions:

- 1) A faxed affidavit from Mr. Gladhill will be acceptable, provided that the Department receives an original copy of a signed affidavit afterwards.
- 2) As you are aware, the relevant CUP condition is:

Provide a note on the plat indicating a 50' easement along Flowing Springs Road (Route 17) and Old Country Club (Route 24) for the potential of sidewalks and trails.

If the intent of your request is to change the CUP condition, the most straightforward option is to request to reduce the dimension of the easement (e.g. to 40') and to clarify that the area within the easement need not be exclusive of improvements installed by the developer, such as berms and stormwater management features.

However, if your intent is to ask the Board of Zoning Appeals to uphold your interpretation of the condition, then this request would take the form of an Appeal of an Administrative Decision.

- 3) The updates to the CUP form are intended to improve its clarity and usability. However, if you choose to use the pre-update version of the form (instead of the version available online), it is attached.
- 4) The Board of Zoning Appeals would be the body to decide either an Appeal of an Administrative Decision or an amendment to a Conditional Use Permit. I have noticed that we have not yet updated the Appeal form, so I have attached the form in PDF. (The appeal form online is for a Planning Commission appeal.)

You and the property owner can decide whether you choose to pursue either a modification of the CUP condition, or an appeal.

Please let me know if you need additional information.

Thanks,
Steve Barney

From: GatesAssociated@aol.com [mailto:GatesAssociated@aol.com]
Sent: Monday, January 23, 2012 10:48 AM
To: sbarney@jeffersoncountywv.org
Subject: Re: BZA application - Aspen Greens

Monday, January 23, 2012 AOL: GatesAssociated

Steve,

On this option below, who makes the decision? I take it the application you want, you mean to be that listed on the web site as 'Application for an Appeal of Decision', and what you refer to below is not some other, true?

Hoping to align our submissions with your last email within your time frame. Looking forward to your guidance on my last two emails as well.

Thank you very much for sharing your desired path insights.

Fred W. Gates, P.S., President

GATES ASSOCIATED, Inc.

153 Venice Way

Shepherdstown, WV 25443

304-876-6124 (voicemail)

240-720-5801 (voicemail)

gatesassociated@aol.com (email)

In a message dated 1/20/2012 5:01:56 P.M. Eastern Standard Time, sbarney@jeffersoncountywv.org writes:

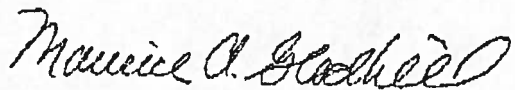
- a. If the intent is to appeal my determination that the Preliminary Plat does not meet the CUP conditions, then an application for an Appeal of Administrative Decision should be submitted.

Roderick Planes, LLC
6107 River View Ct.
Frederick, MD 21704

January 20, 2012

I, Maurice Gladhill, give Fred Gates permission to sign any documents necessary
to transact business for the Aspen Greens Project.

Sincerely,

A handwritten signature in cursive script that reads "Maurice A. Gladhill".

Maurice A. Gladhill

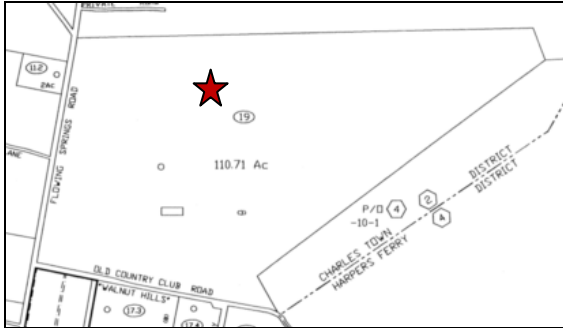
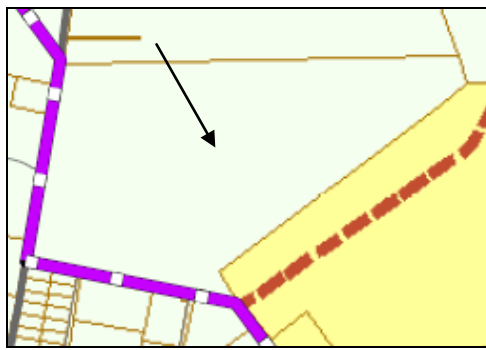
Managing Partner

- d. **REAR LOT BUFFER PLANTING RIGHTS ALONG STATE ROADS** shall be retained by adjacent lot owners above and beyond the plantings scheduled for the developer so long as the authorized tree types are used to maintain the planting motif of subdivision design where used for off lot plantings within the 25' buffer beyond lot limits. HOA oversight decision shall prevail where questions arise. The Lot owner may plant what he chooses on his lot.
- e. **RIGHT-OF-WAYS, BUFFERS and GREEN OPEN SPACE** shall become the sole obligation and maintenance of the Home Owners Association and shall remain consistent with the landscaping outlined herein subject to existing access rights of record that can impact herbaceous growth over time.
- f. **FUTURE DEVELOPMENT USE RIGHTS** shall mature over the full development of **ASPEN GREENS** Concept at such point that construction on them is complete. This includes use of all open space created, paths and walks once transferred to a properly organized Home Owners Association.
- g. **A 50' WIDE BUFFER** is hereby dedicated along the northerly and easterly side of both state frontage roads from approximate road center perpendicularly distant for 50 feet extending to the back of lots. This land shall be conveyed in fee to the HOA. It is subject to a **WVDOH** future road widening easement strip 25 feet from centerline (Note 15). The buffer shall be subject to current and future easements for utilities or future pedestrian walks to be constructed by others. (See Note 'e'.)
- h. **UTILITY ACCESS FOR REPAIR AND MAINTENANCE** shall be provided by HOA and lot owners as needed to maintain service for the common good of all to the appropriate persons including restraint of dogs or animals of concern.
8. **LIMITED YARD FENCING** - Only yard fencing no further forward than the rear corner of any dwelling. Fences must be visually open and not higher than five feet. A rail fence with welded wire attached for animal yard enclosure is permissible. Blockade fencing is prohibited. Fences may be placed at the boundary lines. Pool fences limited to area above. Visual privacy shall be limited to plantings. Surveys by professionals shall determine all construction locations to be within boundaries.
9. **NO MOTORIZED VEHICLES** other than licensed automobiles or motorcycles are permissible. Non-motor devices are permissible subject to HOA review and oversight. Due care for the mutual health and safety of others is required within this development.
10. **COVENANTS** shall be recorded and referred to in the deeds that convey these lots that specify additional common usage requirements.

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 February 16, 2012

Aspen Greens Subdivision Conditional Use Permit Revision (Z02-06)

Item #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."

APPLICANT:	Roderick Planes, LLC
OWNER:	Same
DEVELOPER:	Same
SURVEYOR/ENGINEER:	Gates Associated, Inc.
PROPERTY LOCATION:	This property is located northeast of the intersection of Old Country Club Road with Flowing Springs Road.
LEGAL DESCRIPTION:	District: Charles Town; Map: 4; Parcel(s): 19 
ZONING DISTRICT:	Zoning Map Designation: Rural (R) 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North: R South: R</i> <i>East: RG West: R</i>
LOT AREA:	110.71 acres
PROPOSED DENSITY:	203 single-family lots
PERMIT APPROVALS:	
Health Department Permit	N/A
Department of Highways	N/A

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 February 16, 2012

Aspen Greens Subdivision Conditional Use Permit Revision (Z02-06)

APPROVALS:	
Conditional Use Permit PC File #Z02-06	Submitted: 08/08/02 Site Assessment Passed: 10/02/02 1 st Neighborhood Compatibility Scheduled: 10/30/02 2 nd Neighborhood Compatibility Scheduled: 05/10/06 Public Hearing Scheduled: 06/15/06 PH & BZA Action: Approved CUP Official Issuance Signature: 12/20/07 Original Expiration Date: 06/20/09 <u>Variances:</u> 06/18/09: BZA approved a CUP extension request from 06/20/09 to 12/20/2010. 11/18/10: BZA approved an extension of the CUP to 07/01/12.
Community Impact Statement PC File #07-15	Submitted: 06/15/07 Staff Review Meeting: 07/06/07 County Planner Approval: 02/2008 County Engineer Approval: 01/14/08 PC Approval: 03/25/08 <u>Variances:</u> 05/26/09: PC approved variance to extend the file expiration date from 07/06/09 to 12/31/09. 08/11/09: PC approved variance to extend the file expiration date from 12/31/09 to 12/20/10. 11/09/10: PC approved variance to request extend CIS expiration date from 12/20/10 to 07/01/12.
Preliminary Plat	Submitted: 04/15/11 Staff Review Meeting: 05/20/11 Returned to applicant: 11/22/11
Final Plat	N/A
OTHER APPROVALS:	N/A

Staff Report
Jefferson County Board of Zoning Appeals Meeting
February 16, 2012

Aspen Greens Subdivision Conditional Use Permit Revision (Z02-06)

RELEVANT INFORMATION:

1. Overview of Request

The applicant seeks to amend condition of approval #6 for the Aspen Greens Conditional Use Permit.

2. Previous Case History

The Board of Zoning Appeals approved the Aspen Greens Conditional Use Permit (case #Z02-06) on June 15, 2006. The conditions of approval required by the Board were the same conditions identified to resolve issues resulting from the Compatibility Assessment Meeting for this development.

For reasons described below, staff determined that the sidewalk easement, as shown on the Preliminary Plat, did not meet the intent of Conditional Use Permit condition #6:

Provide a note on the plat indicating a 50' easement along Flowing Springs Road (Route 17) and Country Club Road (Route 24) for the potential location of sidewalks and trails.

Accordingly, the applicant has submitted a request to modify condition of approval #6.

It should be noted that the applicant has also submitted an Appeal of an Administrative Decision regarding staff's interpretation of condition #6. The applicant has indicated that if the Board amends the condition to be consistent with the amendment request, then the applicant will not pursue the appeal of the administrative decision. The appeal request is scheduled to be heard at the same meeting at which the CUP amendment is scheduled to be heard.

3. Background

Similar to many state roads in Jefferson County, the land that portions of Old Country Club Road and Flowing Springs Road cross that about the Aspen Greens subdivision are owned by adjacent property owners rather than by the state of West Virginia.

As such, the Aspen Greens subdivision property extends to the centerlines of Old Country Club Road and Flowing Springs Road. (See Figure 1.)

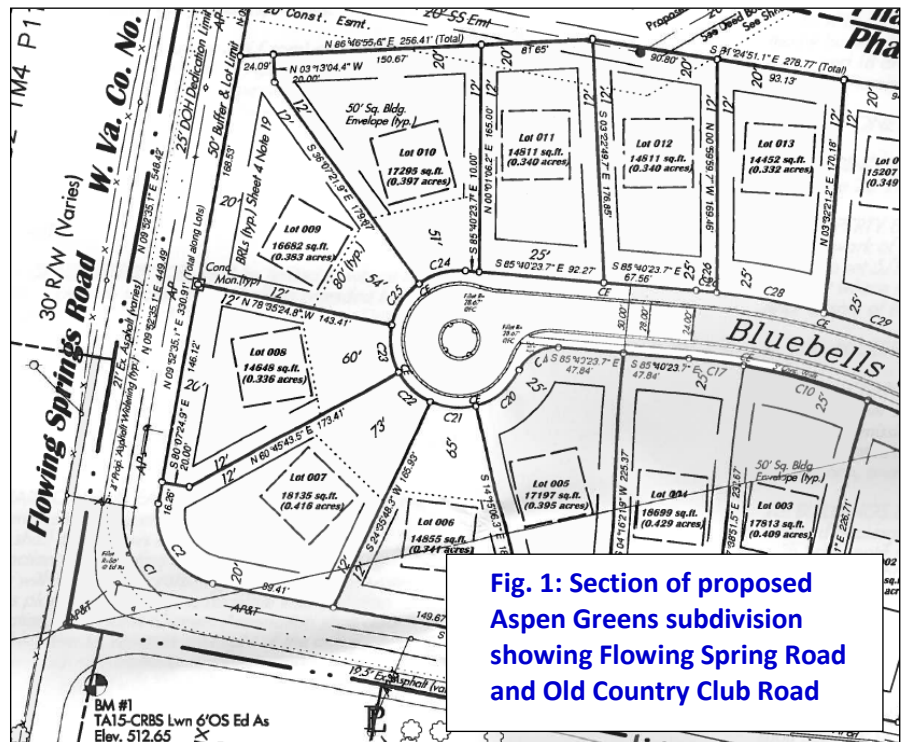
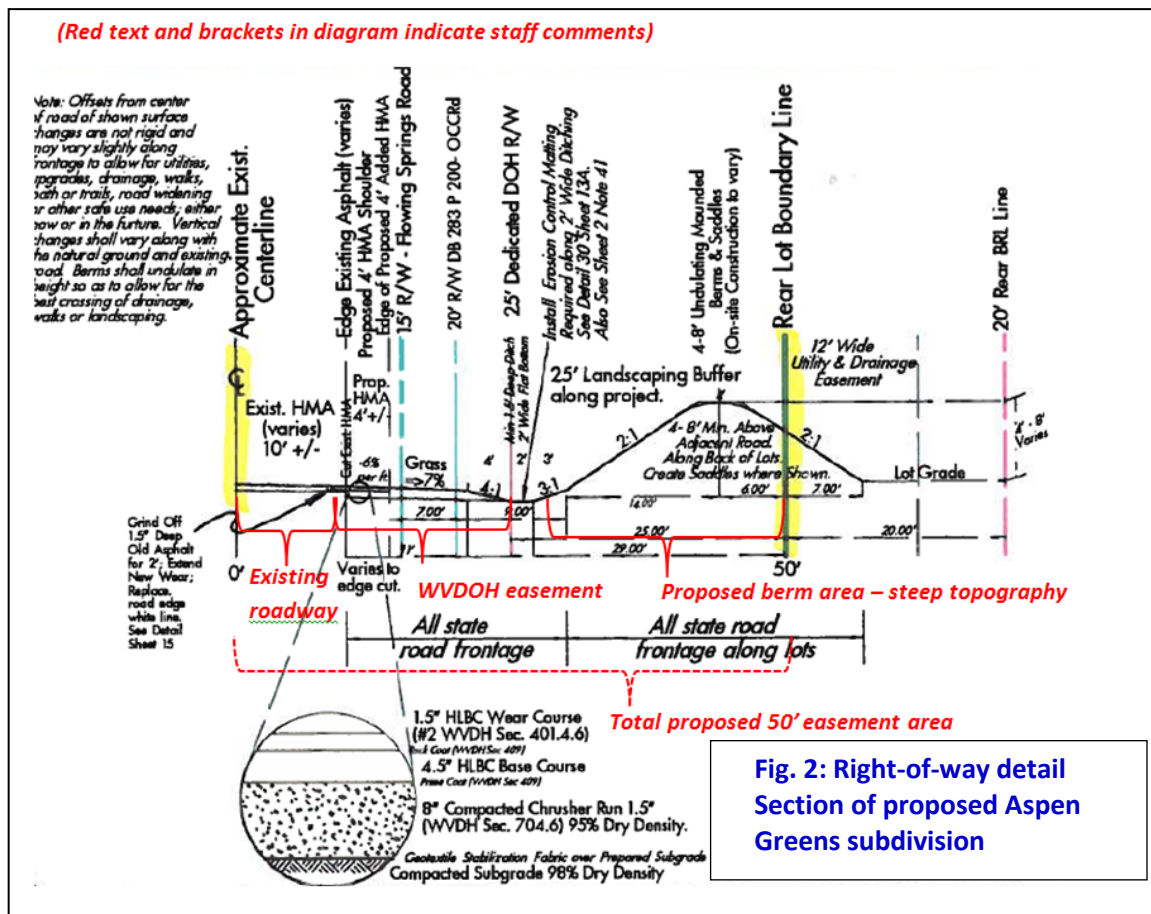


Fig. 1: Section of proposed Aspen Greens subdivision showing Flowing Spring Road and Old Country Club Road

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 February 16, 2012

Aspen Greens Subdivision Conditional Use Permit Revision (Z02-06)

The proposed 50' easement sidewalk / trail easement indicated on the Preliminary Plat is shown as beginning at the centerlines of these two roads. Therefore, the proposed sidewalk and trail easement includes paved area within an existing vehicular travelway. Staff determined that this alignment did not meet the intent of the Conditional Use Permit condition, because the proposed easement area located within the existing roadway cannot feasibly be utilized for sidewalk or trail area.



Additionally, the subdivision shows a 25' dimension of roadway dedication area, beginning at the centerline of the road. Jefferson County subdivision regulations require this dedication at the time of subdivision. The West Virginia Division of Highways (WVDOH) will have the right to utilize this dedication area (including approximately 15' of unpaved land adjacent to the road) for expansion of Old Country Club Road and Flowing Springs Road. Staff finds that the portion of the sidewalk easement located within the roadway dedication area is subject to use by the WVDOH for roadway construction, and therefore is not available for sidewalks or trails. (See Figure 2.)

The proposed easement area also includes a proposed berm. The topography of the berm (a 2:1 slope) would be too steep to allow for the construction of sidewalks without re-grading and the construction of a retaining wall.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
February 16, 2012

Aspen Greens Subdivision Conditional Use Permit Revision (Z02-06)

4. Applicant's Justification of Request

In the application submitted, the applicant "requests that CUP item #6 be re-worded to reflect the Zoning Administrator's preferred changes:

'to request to reduce the dimension of the easement (e.g. to 40') and to clarify that the area within the easement need not be exclusive of improvements installed by the developer, such as berms and stormwater management features.'"

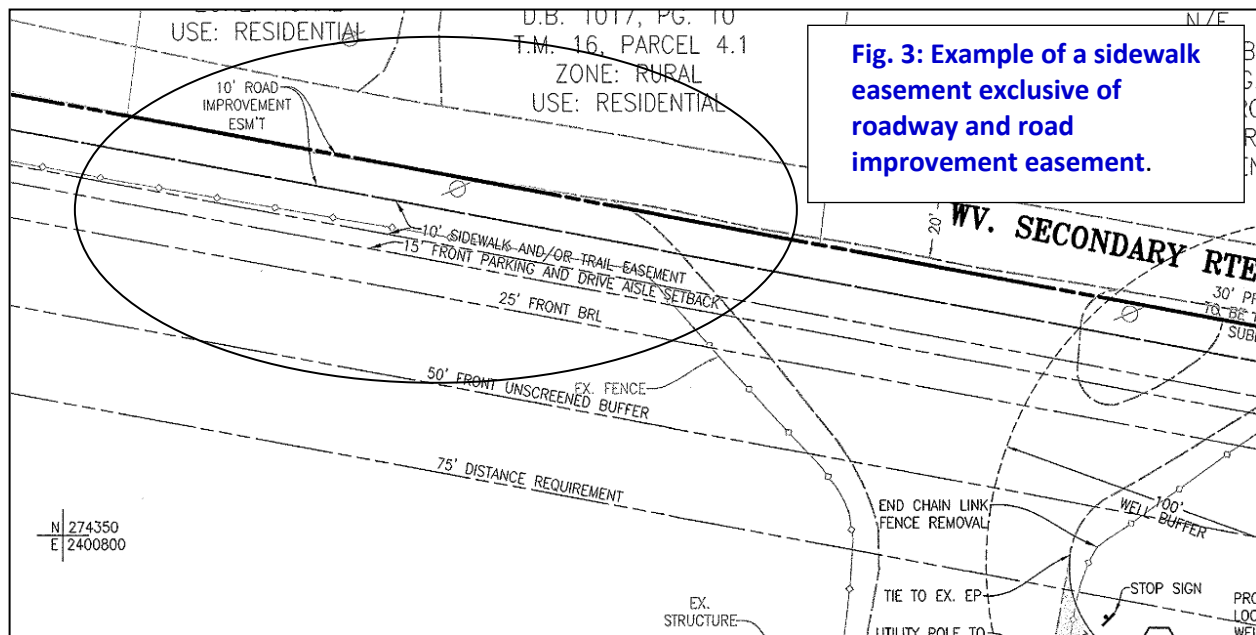
(Contrary to the statement in the application, it should be clarified that this approach is not the Zoning Administrator's preferred revision to the condition.)

5. Staff Evaluation of Request

Staff finds that a Conditional Use Permit condition to require an easement for a sidewalk or trail is appropriate. Considering the significant amount of residential development that the Aspen Greens Subdivision will entail, it is reasonable to expect pedestrians and bicyclists to use Old Country Club Road and Flowing Springs Road. Other nearby subdivisions (such as Daniels Forest and Stonecrest) are also proposed, and allowing for a sidewalk / trail connection to these developments is important.

However, staff finds that a dimension of 50' is unnecessarily broad for a sidewalk and trail easement, and that a smaller dimension would suffice.

In recent sidewalk waiver cases, the Planning Commission has approved sidewalk and trail easements of 10'-15' associated with the Country Roads Market redevelopment, as well as the Stasis site plan. For example, Figure 3, showing the sidewalk/trail easement for the Stasis site plan, is included below.



Staff Report
Jefferson County Board of Zoning Appeals Meeting
February 16, 2012

Aspen Greens Subdivision Conditional Use Permit Revision (Z02-06)

Staff would recommend that the sidewalk/trail easement be reduced to 15'. However, in order for the sidewalk/trail easement to be useable, it should be located outside of existing roadways and any road improvement easements, and should not include a required landscaping area. Moreover, if the Preliminary Plat includes grading within the easement area, the topography should be sufficiently flat to allow for construction of either a sidewalk or a trail. The easement should not include berms or other features that would require subsequent re-grading in order for the easement to be usable.

If the applicant finds the recommendation above to be unfeasible, an easement meeting lesser standards could be approved, with a compensating requirement such as: "The development will include 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." (This property is proposed for the Stonecrest subdivision. Currently, no connections between the two subdivisions are shown in the proposed Aspen Greens Preliminary Plat.) Similar provisions could be made to require connections to the Breckenridge development northeast of Aspen Green.

These recommendations are reflected in the possible conditions of approval identified below.

6. Possible Conditions of Approval

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

- a. The easement may be reduced to a width of 15'; and
- b. The easement shall be located outside of existing roadways and any road improvement easements, and shall not include a required landscaping area; and
- c. If the Preliminary Plat includes grading within the easement area, the topography shall be sufficiently flat to allow for construction of either a sidewalk or a trail. The easement shall not include berms or other features that would require subsequent re-grading in order for the easement to be usable.

Alternative to conditions a, b, and c:

- d. The development will include 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.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
February 16, 2012

Aspen Greens Subdivision Conditional Use Permit Revision (Z02-06)

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 7.6 Compatibility Assessment Meeting

- (a) The Compatibility Assessment Meeting allows the adjacent and confronting property owners and all other interested parties the opportunity to hear the developer's presentation and proposal. In his presentation, he will address the compatibility of his project to the existing areas adjacent to the site. Following the developers presentation, those who are in attendance may ask questions. Any discussion shall be limited to the proposal's compatibility as presented rather than whether the site should be developed by any other use. At the end of the discussion, the staff shall summarize the positions presented by those in attendance to determine if his account of the issues is accurate. If the majority of those in attendance are in agreement that the staff record is accurate, the meeting will end and the staff will prepare a report for the next Board of Zoning Appeals meeting. If there is need for clarification of a particular issue or issues the staff will allow additional time for clarification before ending the meeting.

- (f) If all issues raised at the Compatibility Assessment Meeting with the staff were resolved at that meeting, there will be no public hearing required. At the Board of Zoning Appeals meeting thereafter, 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 Appeal's 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 Compatibility Assessment Meeting will be held on February 15, 2012 and any agreed upon resolved issues and/or unresolved issues will be reported by staff to the BZA at the February 16, 2012 meeting.

APPLICATION FOR CONDITIONAL USE PERMIT

Name of Project: ASPEN GREENS

Have fees been paid? YES NO Amount 250

Name of Applicant: Roderick Planes, LLC

Address: 5509 Mt. Zion Road, Box 777; Frederick, Md. 21705

Telephone Number: 1-301-663-6060

Name of Property Owner: See Applicant above

Address: _____

Telephone Number: _____

Tax Map Reference – District 2 - Charles Town Map# 4 Parcel# 19

Deed Book # 952 Page# 565

Tract Size 20 Lot Phase IA of 203 Lots on 110 Acres

Discuss the proposed change in use with respect to compatibility in the Plan? _____

See Attached Discussion Sheet

What is the proposed use of the property? Residential Lots; Average 0.41 Ac.

Sketch plat must be provided (refer to 7.4b). Signed and dated attached

Is the sketch plat pursuant to 7.4b YES NO

Signature of Property Owner:  as agent for

Print Name: Fred W. Gates, Pres; Gates Associated, Inc.

Date: 25 Jan 2012 As Agent for Roderick Planes, LLC

ATTACHMENTS:

- Copy of CUP for Aspen Greens
- Discussion Narrative of Issues and Resolve Request
- USGS Vicinity Map
- Signed sketches locating area of issue
- Copies of pertinent correspondence
- Copy of Affidavit for consultant signature.
- Added Notes for clarity

RECEIVED

JAN 25 2012

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

CK# 13859

FOR OFFICIAL USE ONLY

Fees Paid: #250.00

Date Application / Fees Received: January 25, 2012

Date of meeting / Public Hearing: _____

Official Administrative Body: Jefferson County Board of Zoning Appeals

Posting Requirements: _____ Number of Days Prior to Scheduled Hearing

Advertising Dates: _____

Official Action of Board: _____

Official Signature and Seal: _____

Discussion Narrative
ASPEN GREENS
Request for CUP Condition #6 Adjust
25 Jan 2012

PROJECT STATUS: Aspen Greens Preliminary Plan has had three response staff reviews and all utilities, state oversight (WVDEP, WVDOH, WVHD) and county PE Issues satisfactorily completed with the exception of the Zoning Administrator's item #2 raised by Memo attached.

BZA REQUESTED FIRST DECISION: ASPEN GREENS believes that the Zoning Administrator's interpretation of the condition intent raises concerns of the 50 foot easement only by the insertion of new criteria he now provides in the attached Memo. This first decision request is aimed at working with these newly defined conditions for a workable compromise that will not harm the design of the Preliminary Plan as it has been presented from the beginning on this issue. Should this body be unable to approve wording satisfactory to the Zoning Administrator, then we ask you to now entertain our BZA Requested Second Decision for an Appeal of an Administrative Decision by upholding our interpretation of the condition as shown from the beginning (otherwise moot and withdrawn).

REQUESTED DECISION: Aspen Greens requests that CUP Item #6 be re-worded to reflect the Zoning Administrator's preferred changes:

'to request to reduce the dimension of the easement (e.g. to 40') and to clarify that the area within the easement need not be exclusive of improvements installed by the developer, such as berms and stormwater management features.'

ADDED DISCUSSION: If this wording allows the Administrator to approve the plans, it is acceptable with the project. We believe that the added narrow interpretation of the existing CUP is too limited and does not merit being changed, but for this consideration to work, we accept them. There is literally no design element of any plans that can not be re-defined in this manner so as to block many upgrades above the minimal county ordinances. Additionally we have provided added note wording (not requested) on the plans also attached hereto to allow future homeowner alert of changes and use issues raised within the CUP condition area as sited when granted.

JEFFERSON COUNTY
DEPARTMENT OF ZONING
CONDITIONAL USE PERMIT
ASPEN GREENS SUBDIVISION #Z02-06

This is to certify that effective **December 20, 2007**, the property described as:

Owner: Maurice A. Gladhill, Manager
Roderick Planes, LLC, Owner
Address: 5509 Mt. Zion Road, P.O. Box 777
Frederick, MD 21705
(former address 900 East Patrick Street,
Frederick, MD 21705)
Telephone Number: 301-663-6060
Developer: Same as Owner
Telephone Number: Same as Owner
Tax Map Reference: Charles Town District, Map 4 Parcel 19
Deed Book
Reference: Deed Book 952, Page 565
Subdivision Name: Aspen Greens Subdivision
Zoning District: Rural

Has been granted permission to use said property in the following way: **203 Single-Family Lots.**

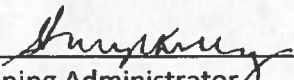
CONDITIONAL UPON:

1. Installation of a left turn lane for the proposed entrance to Aspen Greens off of Old Country Club Road (Route 24) unless prohibited by the WV Department of Highways;
2. Installation of a left turn lane for the proposed entrance to Aspen Greens off of Flowing Springs Road (Route 17) unless prohibited by the WV Department of Highways;
3. Installation of a left turn lane off of Flowing Springs Road (Route 17) to Daniel Road (Route 18) unless prohibited by the WV Department of Highways;
4. Installation of a left turn lane off Flowing Springs Road (Route 17) to Old Country Club Road (Route 24) unless prohibited by the WV Department of Highways;
5. Provide a minimum of 8' paved shoulder along Flowing Springs Road (Route 17) and Old Country Club Road (Route 24);
6. 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;
7. Submitting a letter to the WV Department of Highways notifying them about the potential for growth and to ask for their thoughts about a traffic light at the intersection of Daniel Road (Route 18) and Flowing Springs Road (Route 17); and,

8. Any further change in use or expansion processing through the Jefferson County Departments of Planning, Zoning, and/or Engineering to update this certificate; and, all other applicable County regulations being followed.

In the event the construction or use has not commenced by **June 20, 2009**, said permission will expire unless an extension is granted. Extensions must be formally requested of the Jefferson County Board of Zoning Appeals prior to the expiration date.

This certificate in no way relieves the owner, applicant, or user from any requirements of the Jefferson County Ordinances unless appropriate variances are granted by the appropriate County authority.



Zoning Administrator

20 December 2007

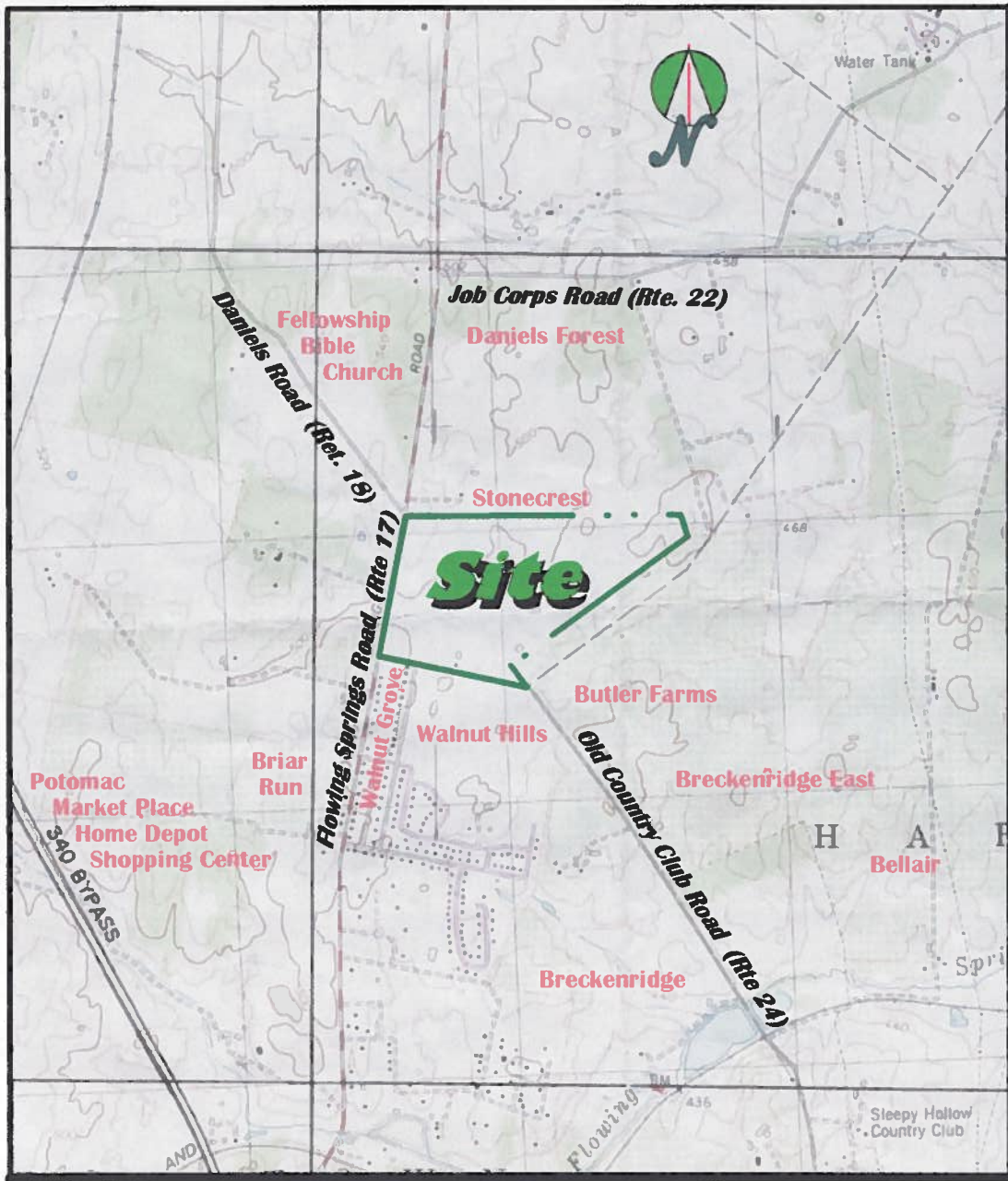
Date

Seal:

Seal for the Departments of
Planning, Zoning, and Engineering:



ASPEN GREENS Site Location



USGS Charles Town Quad Map

Scale 1" = 2000'

(Roads & Development Names Added)



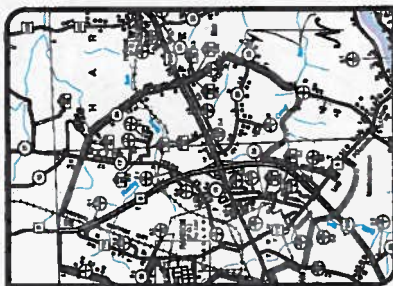
Gates Associated, Inc.

288 Venice Way (off Rte. 45)

Shepherdstown, West Virginia 25443

[email: gatesassociated@aol.com phone/fax/voicemail: 1-304-876-6124]

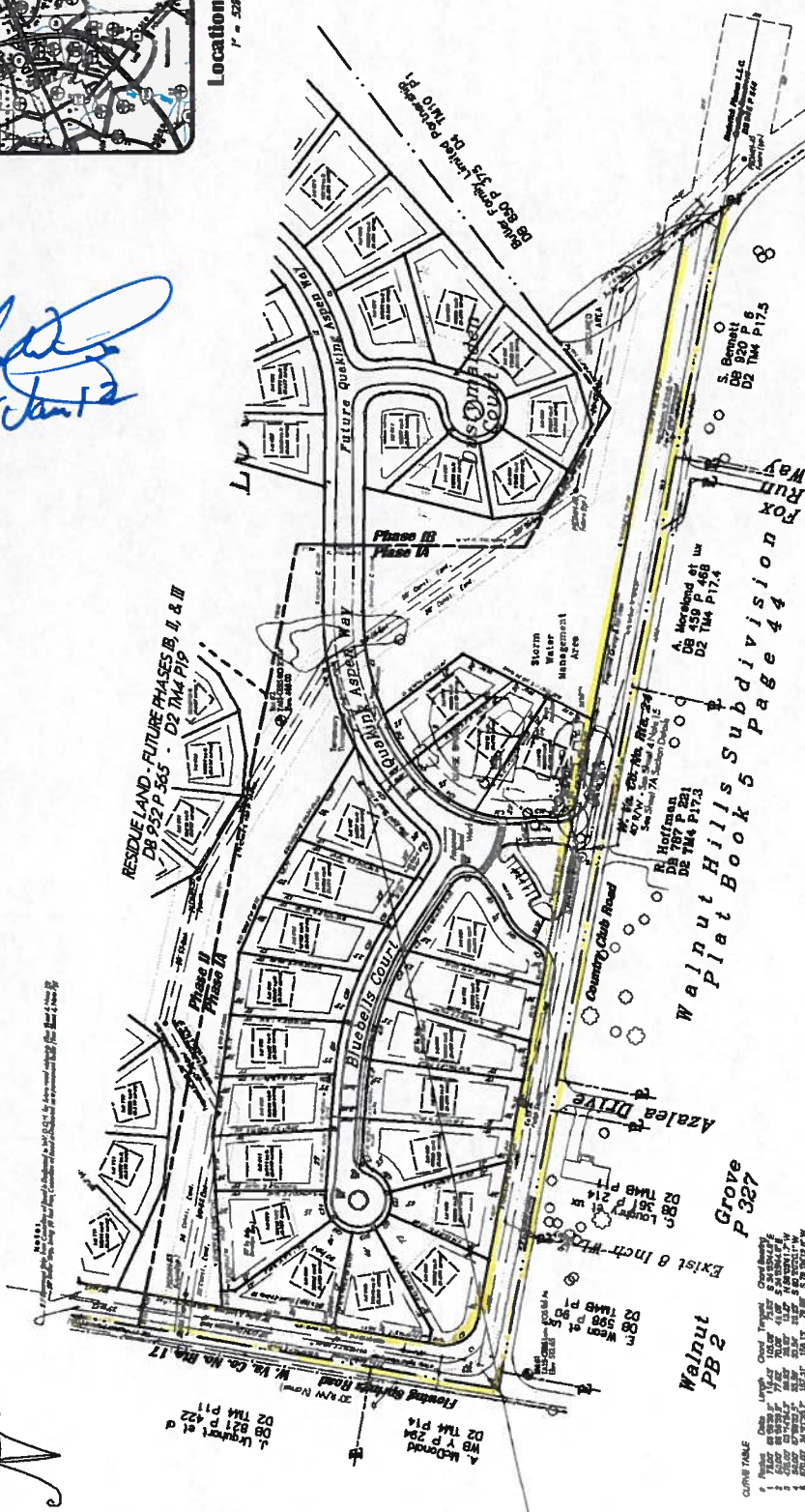
Sheet: 3 of 3
 Date: 1/24/11
 Entry: LC & WN
 Scale: As shown



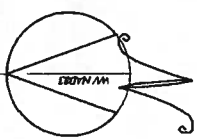
PHASE IA - ASPEN GREENS
 Lot Plan Showing Boundary, Bearings and Distances
 Preliminary Plans

Gates Associated, Inc.
 157 Years Way, P.O. Box 45, Spotsylvania, VA 22450
 Phone: (541) 337-1237
 Fax: (541) 337-1238
 Email: info@gatesassoc.com

*Final
 25 Jan 11*



P/O D 2 TM 4 P 19
Phase IA - Lots 1 thru 20
ASPEN GREENS
RODERICK PLANES, L. L. C.
P/O Deed Book 952 Page 565



Scale in Feet 1" = 80'

RESIDUE LAND - FUTURE PHASES B, II, & III
 DB 952 P 565 - D2 TM 4 P 19

Walnut Hills Subdivision
 Page 44

See Sheet 4 for "Lot Notes"
 See Sheet 7 for "General Plan Construction Notes"
 See Sheet 7A for Road Work Details of road surface sections.
 See Sheet 8 for Entry Layout Summary sheet.

OWNER TABLE

Lot	Area	Owner	Deed	Page	Book
1	0.12	W. V. Co. No. 17			
2	0.12	W. V. Co. No. 17			
3	0.12	W. V. Co. No. 17			
4	0.12	W. V. Co. No. 17			
5	0.12	W. V. Co. No. 17			
6	0.12	W. V. Co. No. 17			
7	0.12	W. V. Co. No. 17			
8	0.12	W. V. Co. No. 17			
9	0.12	W. V. Co. No. 17			
10	0.12	W. V. Co. No. 17			
11	0.12	W. V. Co. No. 17			
12	0.12	W. V. Co. No. 17			
13	0.12	W. V. Co. No. 17			
14	0.12	W. V. Co. No. 17			
15	0.12	W. V. Co. No. 17			
16	0.12	W. V. Co. No. 17			
17	0.12	W. V. Co. No. 17			
18	0.12	W. V. Co. No. 17			
19	0.12	W. V. Co. No. 17			
20	0.12	W. V. Co. No. 17			

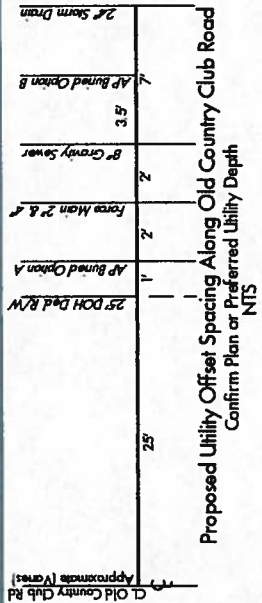
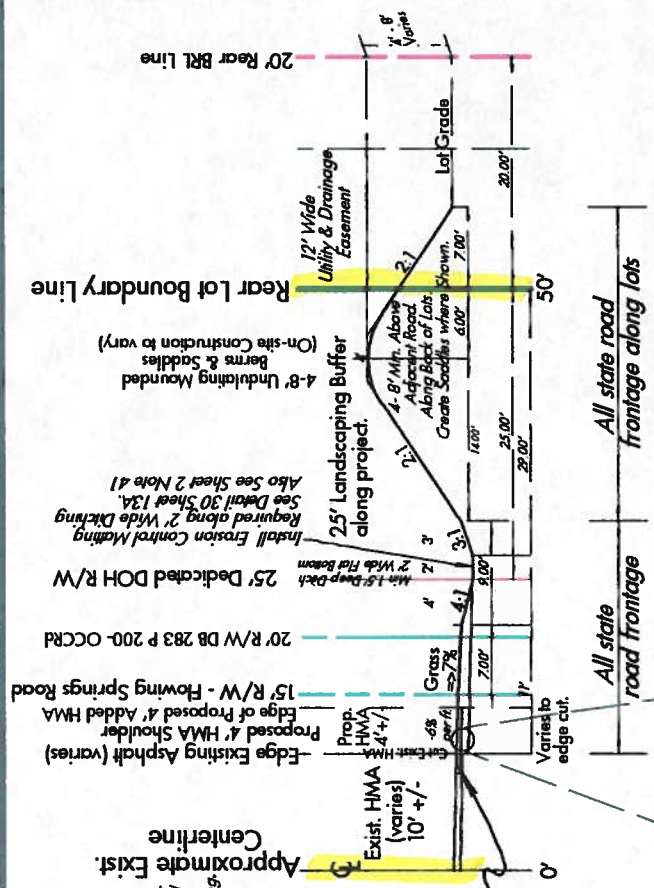
2' Radius X 19" Stone Catcher
 Class 1 Riprap Stone
 Placed on Geo-Textile
 Install 4 per Cul-de-Sac
 See "CVWR" Detail

2' Deep Drain Stone full bottom
 Use Small Riprap Stone (4" - 8" Clean
 with no dust or fines). Cover with rain
 paper or filter fabric prior to back fill.

See Landscaping Plan Details
 See Curb Water Release Detail

TYPICAL CUL-DE-SAC SECTION A-A DETAIL
BIO-RETENTION CIRCLE
 NTS

Note: Offsets from center of road of shown surface changes are not rigid and may vary slightly along frontage to allow for utilities, upgrades, drainage, walks, path or trails, road widening or other safe use needs; either now or in the future. Vertical changes shall vary along with the natural ground and existing road. Berms shall undulate in height so as to allow for the best crossing of drainage, walks or landscaping.



Notes:

- CONTACT Mr. Larry Ali @ W. VA. D. O. H. (Phone 1-304-289-3321) for MAJOR QUESTIONS regarding regulation requirements, work scheduling, inspection, safety, approvals, proposed traffic flagging, traffic signs, safety approval or other required information.
- SILT FENCE all developments. SEED all disturbed ground to stabilize.
- MOVE ALL POWER POLES which might encumber the above work or safety of us.
- MAINTAIN 25' MINIMUM DITCHING grades along 3' shoulders in order to establish drainage to lower elevations without dips or ponding.
- GRAVE COURSE shall extend laterally to daylight in the shoulder or in slope of the ditch to ensure adequate drainage of the pavement base and subgrade. Underdrain systems or other methods of drainage may be used with the approval of the County Engineer.
- LOT OWNERS RETAIN THE RIGHT TO ADD TREE SCREEN density along rear boundary lines within the Landscape Buffer or within the rear twenty feet of each road frontage lot by planting a mature of the herein identified substitution motif trees.
- ALL LINE STRIPING AND SIGNAGE to be per WV DOT Standards within state Right-of-Way. Convert edge line roadway lines along setbacks from solid to dashed after confirmation with WV DOT.

ALL State Road Work within 25' from CL Easement
Typical State Roadside Upgrade Detail
 NTS

See Sheet 15 Details



1.5" HIBC Wear Course (#2 WVDH Sec. 401.4.6) (See Code WVDH Sec. 409)
 4.5" HIBC Base Course (See Code WVDH Sec. 409)
 8" Compacted Chruscher Run 1.5" (WVDH Sec. 704.6) 95% Dry Density.
 Geotextile Stabilization Fabric over Proposed Subgrade
 Compacted Subgrade 98% Dry Density

JEFFERSON COUNTY, WEST VIRGINIA
Department of Planning and Zoning

104 East Washington Street
P.O. Box 338
Charles Town, West Virginia 25414

Phone: (304) 728-3228
Fax: (304) 728-8126

Email: planningdepartment@jeffersoncountywv.org

MEMORANDUM

TO: Fred Gates, Gates Associated, Inc.

FROM: Steve Barney, Zoning Administrator, Jefferson County

DATE: January 12, 2012

SUBJECT: Determination Regarding Compliance with Aspen Greens CUP Conditions

I am writing to follow up on our recent meeting regarding the Conditional Use Permit conditions for the Aspen Greens Subdivision. Regarding the Preliminary Plat currently in review, the two significant issues we discussed were:

1. The applicant's need to document why the required WVDOH improvements are not applicable to the first phase of the development.

At our meeting, you brought to my attention an email exchange between yourself and West Virginia Division of Highways staff (Larry Alt and Jeffery Stanislawczyk). However, this message was not sufficient to document the WVDOH's position regarding the required improvements.

Following our meeting, I contacted Larry Alt to ask him to provide feedback on each condition and am currently awaiting receipt of this information. It should be noted that securing this documentation is the applicant's responsibility; however, as a courtesy, I have made the request of Mr. Alt.

2. The fulfillment of the intent of the CUP condition related to the required sidewalk / trail easement.

Condition #6 of the approved CUP reads as follows:

Provide a note on the plat indicating a 50' easement along Flowing Springs Road (Route 17) and Old Country Club (Route 24) for the potential of sidewalks and trails.

I am confirming my determination that sidewalk / trail easement shown on the plat does not meet the intent of CUP condition #6, as approved by the Board of Zoning Appeals:

Staff interprets the word "along" to mean "beside" or "adjacent to." As the proposed easement includes a portion of Flowing Springs Road and Country Club Road, it cannot be said to be located

"along" the road – rather, a portion of the easement is located within the road. Staff also finds that it is not feasible for a sidewalk or a trail to be installed within the existing paved area of either road.

Moreover, the topography of the section shown for the proposed trail easement is not sufficiently level to allow installation of a sidewalk or trail without significant grading.

Options to resolve this issue include the following:

A. Modify the plat to show along both Flowing Springs Road and Old Country Club Road:

- the 50' easement beginning at the edge of the pavement;
- a continuous area of flat topography with a dimension of at least 15', in which a trail or sidewalk could be placed without the need for significant grading

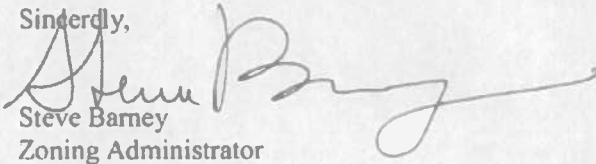
OR

B. Request that the Board of Zoning Appeals modify the condition of approval. This request must be heard as a public hearing, with required notification.

Following resolution of issues #1 and #2 above – in addition to any other outstanding issues noted in the review checklist – I will be happy to sign off on the Preliminary Plat.

Please let me know if you need additional information.

Sincerely,


Steve Barney
Zoning Administrator

Cc: Jennifer Brockman, Director, Planning and Zoning Department
Seth Rivard, County Planner
Jonathan Saunders, County Engineer

Subj: **BZA application - Aspen Greens**
Date: 1/20/2012 5:01:56 P.M. Eastern Standard Time
From: sbarney@jeffersoncountywv.org
To: GatesAssociated@aol.com
CC: jhartman@jeffersoncountywv.org, jbrockman@jeffersoncountywv.org
Fred,

Thank you for your BZA submittal. I wanted to review with you a couple of issues with your application, which will need to be resolved before the application can be placed on a BZA agenda.

Because the application was submitted by the submittal deadline, we can allow additional time (until close of business on Wednesday January 25th) to address these issues, which are as follows:

- 1) It is not clear what type of request is being made. A variance application has been submitted; however, the issue is with a CUP condition rather than a Zoning Ordinance requirement. Therefore, the variance request is not relevant.

Instead, the request should take the form of one of the following:

- a. If the intent is to appeal my determination that the Preliminary Plat does not meet the CUP conditions, then an application for an Appeal of Administrative Decision should be submitted.

OR

- b. If the intent is to ask the BZA to modify or eliminate a condition of the CUP, then a CUP application should be submitted, with a request to modify the condition. (Please note that for a request to amend the conditions of a CUP, only the first two pages of the CUP application need be submitted, in addition to a narrative describing the requested change in conditions. The "support data" listed in Section 7.4D does not need to be submitted. Because no lots are involved in the request, only the base fee of \$250 would apply.)

Applications are available at the following URL:

<http://www.jeffersoncountywv.org/government/departments/planning-and-zoning-department/forms.html>

- 2) The application makes reference to an "extension request." This reference is unclear; is this remaining text that was inadvertently included from a previous application?
- 3) The application must have the original signature of the property owner, or the owner must submit an affidavit allowing an agent for the property owner to file the application.

Please let me know if you need additional information.

Sincerely,
Steve Barney

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

Please note that Jefferson County email correspondence is subject to the West Virginia Freedom of Information Act.

Monday, January 23, 2012 AOL: GatesAssociated

Subj: RE: BZA application - Aspen Greens
Date: 1/23/2012 2:49:48 P.M. Eastern Standard Time
From: sbarney@jeffersoncountywv.org
To: GatesAssociated@aol.com
Fred,

To respond to your questions:

- 1) A faxed affidavit from Mr. Gladhill will be acceptable, provided that the Department receives an original copy of a signed affidavit afterwards.
- 2) As you are aware, the relevant CUP condition is:

Provide a note on the plat indicating a 50' easement along Flowing Springs Road (Route 17) and Old Country Club (Route 24) for the potential of sidewalks and trails.

If the intent of your request is to change the CUP condition, the most straightforward option is to request to reduce the dimension of the easement (e.g. to 40') and to clarify that the area within the easement need not be exclusive of improvements installed by the developer, such as berms and stormwater management features.

However, if your intent is to ask the Board of Zoning Appeals to uphold your interpretation of the condition, then this request would take the form of an Appeal of an Administrative Decision.

- 3) The updates to the CUP form are intended to improve its clarity and usability. However, if you choose to use the pre-update version of the form (instead of the version available online), it is attached.
- 4) The Board of Zoning Appeals would be the body to decide either an Appeal of an Administrative Decision or an amendment to a Conditional Use Permit. I have noticed that we have not yet updated the Appeal form, so I have attached the form in PDF. (The appeal form online is for a Planning Commission appeal.)

You and the property owner can decide whether you choose to pursue either a modification of the CUP condition, or an appeal.

Please let me know if you need additional information.

Thanks,
Steve Barney

From: GatesAssociated@aol.com [mailto:GatesAssociated@aol.com]
Sent: Monday, January 23, 2012 10:48 AM
To: sbarney@jeffersoncountywv.org
Subject: Re: BZA application - Aspen Greens

Monday, January 23, 2012 AOL: GatesAssociated

Steve,

On this option below, who makes the decision? I take it the application you want, you mean to be that listed on the web site as 'Application for an Appeal of Decision', and what you refer to below is not some other, true?

Hoping to align our submissions with your last email within your time frame. Looking forward to your guidance on my last two emails as well.

Thank you very much for sharing your desired path insights.

Fred W. Gates, P.S., President

GATES ASSOCIATED, Inc.
153 Venice Way
Shepherdstown, WV 25443

304-876-6124 (voicemail)
240-720-5801 (voicemail)
gatesassociated@aol.com (email)

In a message dated 1/20/2012 5:01:56 P.M. Eastern Standard Time, sbarney@jeffersoncountywv.org writes:

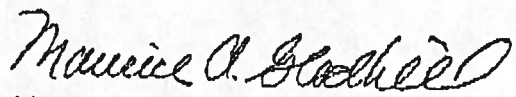
- a. If the intent is to appeal my determination that the Preliminary Plat does not meet the CUP conditions, then an application for an Appeal of Administrative Decision should be submitted.

Roderick Planes, LLC
6107 River View Ct.
Frederick, MD 21704

January 20, 2012

I, Maurice Gladhill, give Fred Gates permission to sign any documents necessary
to transact business for the Aspen Greens Project.

Sincerely,

A handwritten signature in cursive script that reads "Maurice A. Gladhill".

Maurice A. Gladhill

Managing Partner

- d. REAR LOT BUFFER PLANTING RIGHTS ALONG STATE ROADS shall be retained by adjacent lot owners above and beyond the plantings scheduled for the developer so long as the authorized tree types are used to maintain the planting motif of subdivision design where used for off lot plantings within the 25' buffer beyond lot limits. HOA oversight decision shall prevail where questions arise. The Lot owner may plant what he choses on his lot.*
- e. RIGHT-OF-WAYS, BUFFERS and GREEN OPEN SPACE shall become the sole obligation and maintenance of the Home Owners Association and shall remain consistent with the landscaping outlined herein subject to existing access rights of record that can impact herbaceous growth over time.*
- f. FUTURE DEVELOPMENT USE RIGHTS shall mature over the full development of ASPEN GREENS Concept at such point that construction on them is complete. This includes use of all open space created, paths and walks once transferred to a properly organized Home Owners Association.*
- g. A 50' WIDE BUFFER is hereby dedicated along the northerly and easterly side of both state frontage roads from approximate road center perpendicularly distant for 50 feet extending to the back of lots. This land shall be conveyed in fee to the HOA. It is subject to a WVDOT future road widening easement strip 25 feet from centerline (Note 15). The buffer shall be subject to current and future easements for utilities or future pedestrian walks to be constructed by others.(See Note 'e.')*
- h. UTILITY ACCESS FOR REPAIR AND MAINTENANCE shall be provided by HOA and lot owners as needed to maintain service for the common good of all to the appropriate persons including restraint of dogs or animals of concern.*
- 8. LIMITED YARD FENCING - Only yard fencing no further forward than the rear corner of any dwelling. Fences must be visually open and not higher than five feet. A rail fence with welded wire attached for animal yard enclosure is permissible. Blockade fencing is prohibited. Fences may be placed at the boundary lines. Pool fences limited to area above. Visual privacy shall be limited to plantings. Surveys by professionals shall determine all construction locations to be within boundaries.*
- 9. NO MOTORIZED VEHICLES other than licensed automobiles or motorcycles are permissible. Non-motor devices are permissible subject to HOA review and oversight. Due care for the mutual health and safety of others is required within this development.*
- 10. COVENANTS shall be recorded and referred to in the deeds that convey these lots that specify additional common usage requirements.*

