

Jefferson County  
Board of  
Zoning Appeals

Thursday,  
January 19, 2012

**JEFFERSON COUNTY, WEST VIRGINIA**

**Department of Zoning**

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

P.O. Box 338

Charles Town, West Virginia 25414

**Phone: 304-728-3228**

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

**Fax: 304-728-8126**

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MEMORANDUM

TO: Jefferson County Board of Zoning Appeals Members

FROM: Jennilee Hartman, Zoning Clerk

DATE: January 13, 2012

SUBJECT: January 19, 2012 Board of Zoning Appeals Meeting

Please find enclosed a copy of the Agenda for the upcoming Board of Zoning Appeals meeting to be held on Thursday, January 19, 2012. Also for your review, you will find corresponding information regarding said Meeting. When applicable, I will include copies submitted to this office that pertain to items of new business. If you have any questions, or will not be able to attend the upcoming meeting, please do not hesitate to contact me.

# JEFFERSON COUNTY, WEST VIRGINIA

## Department of Zoning

116 East Washington Street

P.O. Box 338

Charles Town, West Virginia 25414

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### MEMORANDUM

TO: Board of Zoning Appeals Members

CC: Engineering & Building Permits Departments  
Capital Planning & Management Department

FROM: Steve Barney, Zoning Administrator

DATE: January 13, 2012

SUBJECT: January Monthly Report of Department Activities

### ISSUED ZONING CERTIFICATES

#ZC11-29 DAVID BARRY WADDELL

*Issue Date:* December 13, 2011  
*Proposed Use:* Classic Automobile Dealership  
*Physical Location:* 118 Amanda Court; Halltown, West Virginia 25423  
*Zone:* Residential-Light Industrial-Commercial

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#ZC11-35 RODNEY W. KIDWELL

*Issue Date:* **Denied** / December 27, 2011  
*Proposed Use:* Residential / Small Office business space.  
*Physical Location:* 43 Halltown Road, Harpers Ferry, West Virginia 25425  
*Zone:* Residential-Light Industrial-Commercial

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#ZC11-31 CATHERINE and OLAN HOTT

*Issue Date:* December 28, 2011  
*Proposed Use:* Change in Ownership / Vehicle Auto Repair & Sales  
*Physical Location:* 15 Willingham Road; Charles Town, West Virginia 25414  
*Zone:* Rural

## **ISSUED ZONING CERTIFICATES**

#ZC11-34 JUSTIN LANDON

*Issue Date:* January 12, 2012  
*Proposed Use:* Change in Nonconforming Use /  
Contractor's Office & Storage Space.  
*Physical Location:* 481 Millville Road; Millville, West Virginia 25432  
*Zone:* Industrial-Commercial

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#ZC11-36 DAVE MELLOTT, SR., OWNER

*Issue Date:* January 12, 2012  
*Proposed Use:* Small Daycare Center  
*Physical Location:* 372 Up Top Lane; Kearneysville, West Virginia 25430  
*Zone:* Rural

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## **PENDING ZONING CERTIFICATES**

#ZC11-11 ERIC and ANNA SOKEL, OWNERS

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

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

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

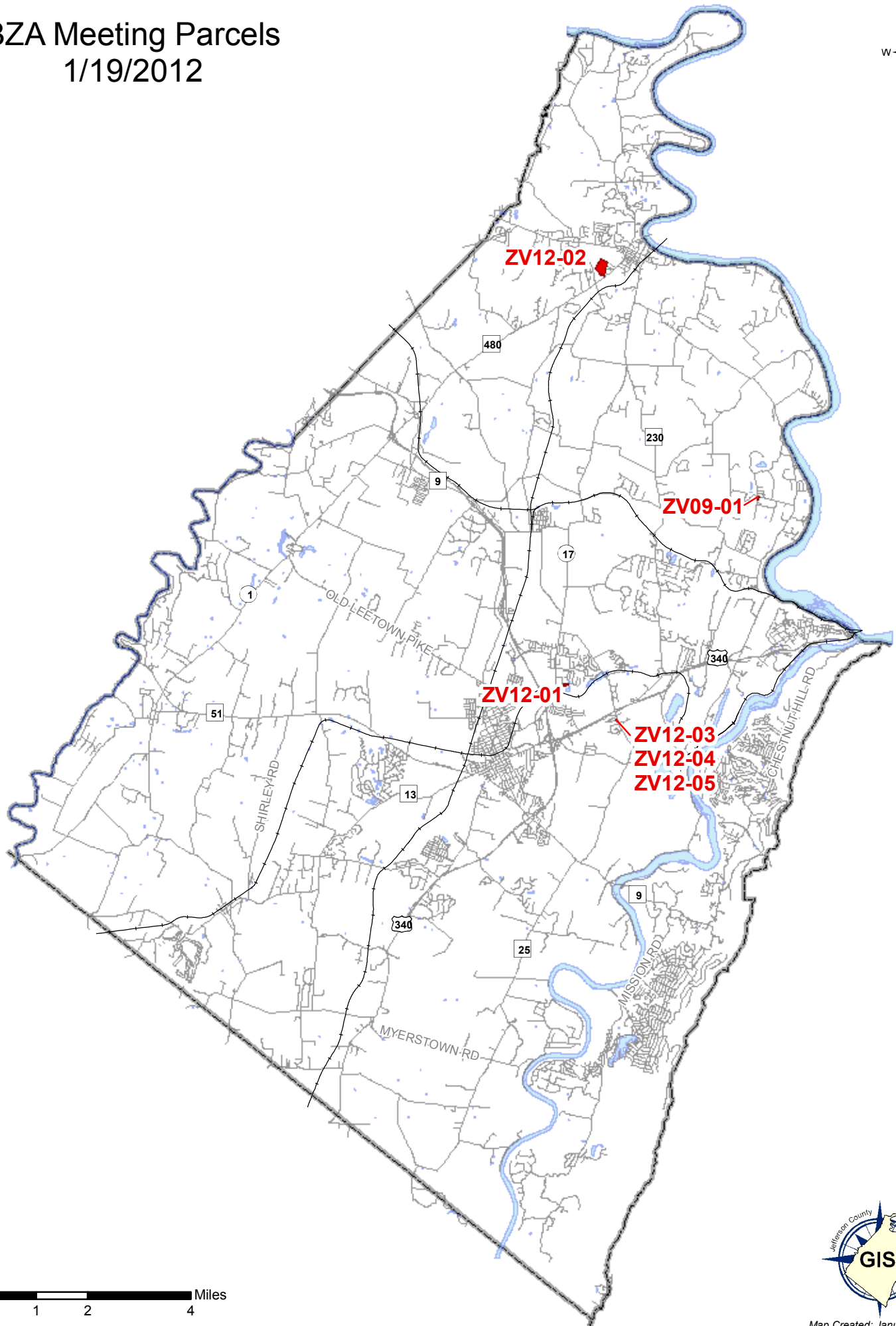
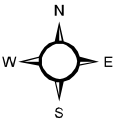
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**AGENDA**  
**Jefferson County Board of Zoning Appeals**  
**Thursday, January 19, 2012, 3:00 p.m.**

1. Approval of the minutes from the December 15, 2011 meeting.
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. 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.
3. Variance request by property owner, Federal Group, Inc., Kenneth F. Lowe, Jr. (President) from Section 4.11(D) 1 & 3 of the Zoning and Land Development Ordinance to utilize the existing trees line as the required landscape buffer. Property location: Clarion Hotel, 233 Lowe Drive, Shepherdstown, West Virginia. District: Shepherdstown (09); Map: 8; Parcel: 10.9; Size: 30.01 acres; Zoned: Residential Growth; File: #ZV12-02.
4. Variance request by property owner, Dean Stine, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 10' to allow for the construction of a 12' x 19' deck with 3' wide steps and the addition of a concrete slab under the entire deck for future a hot tub installation. Property location: Windmill Crossing Subdivision, 9 Don Quixote Drive, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 149; Size: .0758 acre; Zoned: Residential-Light Industrial-Commercial; File: #ZV12-03.
5. Variance request by property owner, David Kimmel, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 10' to allow for the construction of a 12' x 20' deck with no steps. Property location: Windmill Crossing Subdivision, 16 Don Quixote Drive, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 115; Size: 2,000 sq. ft.; Zoned: Residential-Light Industrial-Commercial; File: #ZV12-04.
6. Variance request by property owner, Mark M. Franz, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 10' to allow for the construction of a 12' x 20' deck with no steps. Property location: Windmill Crossing Subdivision, 25 Don Quixote Drive, Charles Town, West Virginia. District: Charles Town (02); Map: 9C; Parcel: 145; Size: 2,000 sq. ft.; Zoned: Residential-Light Industrial-Commercial; File: #ZV12-05.
7. 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. Property location: 834 Carter Avenue at the intersection of Rte. 30 (Carter Road) and Rte. 30/1 (Maple Avenue) in Harpers Ferry, West Virginia 25425. District: Harpers Ferry (04); Map 3A; Parcels: 23 and 26; Size: .95589 acres; Zoned: Village; File #Z09-01.
8. Director's Report.
9. Legal Update.
10. Vote on written decisions from prior Board of Zoning Appeals meetings.
11. Correspondence.

# BZA Meeting Parcels

1/19/2012



## Draft Minutes

Jefferson County Board of Zoning Appeals  
Thursday, December 15, 2011

The Jefferson County Board of Zoning Appeals met on Thursday, December 15, 2011. The meeting was held in the Charles Town Library meeting room located at 200 East Washington Street, at the side entrance on Samuel Street in Charles Town, West Virginia. Board members Jeff Bresee, Chairman, Christy Huddle, Tyler Quynn and Ed Kelly were present. Staff members present were: Jennifer Brockman, Director of Planning and Zoning; Steve Barney, Zoning Administrator; Steve Groh, Assistant Prosecuting Attorney and Jennilee Hartman, Zoning Clerk.

Ms. Huddle motioned to commence the meeting. Mr. Quynn seconded the motion, which carried unanimously. Mr. Bresee called the meeting to order at 3:00 p.m.

1. Approval of the Minutes from the October 20, 2011 meeting.

Ms. Huddle motioned to approve the minutes of October 20, 2011. Mr. Quynn seconded the motion with the following corrections; page 1, first paragraph add "*Planning*" to Ms. Brockman's title and on page 2, fourth paragraph add the word "*at*" after the word session. Mr. Bresee called for a vote which carried unanimously.

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

2. Variance request by property owners, Ruth Insley and Joe Weitz, from Section 8.2 of the Zoning and Land Development Ordinance for a reduction of the barn setback from 75' to 55' to allow for a lot line adjustment between an existing house and the existing barn. Property location: 8293 Leetown Road, Kearneysville, West Virginia. District: Middleway - 07; Map: 19; Parcel: 19; Size: 11.02 acres; Zoned: Rural; File: #ZV11-32.

Pete Lorenzen was present on behalf of the applicant to address the Board. Mr. Lorenzen addressed questions raised by the Board. Mr. Bresee called for public comment. There was no public comment. Mr. Barney explained the variance request was due to a proposed lot line adjustment with the neighbor and therefore did not appear adversely affect the adjacent property owner.

3. Variance request by the Trustees of the Ebenezer Mt. Calvary Holiness Church from Section 11.1(a) to reduce the required parking spaces from 25 to 18 for the proposed construction of a 1,140 square foot social hall. Property location: 408 Shirley Road, Summit Point, West Virginia. District: Kabletown - 06; Map: 15A; Parcel(s): 12, 12.1 & 13; Size: 0.4593, 0.4081 & 0.1325; Zoned: Rural; File: #ZV11-33.

Kimberly Shrader, Engineer for the project, was present on behalf of the applicant to address the Board. Charles Hunter, Pastor of the Church, addressed the Board. The Board expressed concern that the existing parking would not be enough to meet the needs of the church. Mr. Hunter stated there was an additional one acre grass parcel behind the church for overflow parking and that some members walked to church. Mr. Barney stated that Staff concurred with the applicant's argument that the social hall would not be adding to the Church's parking needs in that users of the social hall would be the same attendees as those of the church. Mr. Bresee called for public comment. There was no public comment.

4. Variance request by M. J. Firestone on behalf of Lakeland Properties, LLC from Section 8.8(B)(5) of the Zoning and Land Development Ordinance for a reduction of the acreage required to qualify as a Fishing Club, from 150 acres to 50 acres. Property location: 1329 Lakeside Drive, Harpers Ferry, WV. District: Kabletown – 06; Map: 6; Parcel: 9; Size: 70 acres; Zoned: Rural; File #ZV11-34.

Joan O'Dell, co-owner of Lakeland Properties, was present on behalf of the applicant to address the Board. Ms. O'Dell described the nature of the request to the Board by providing them with the history of the previous lodge, an exhibit which depicted various pictures of the site, an overview of the proposed activities that would help offset the cost of maintaining the property. Ms. O'Dell described the upgrades Ms. Firestone had already made to the property, including upgrades to the septic system. Ms. Huddle raised a concern that the current zoning certificate is issued for a public restaurant whereas, if approved, the fishing club restaurant would be restricted to members only. Mr. Barney confirmed Ms. Huddle's findings, however, he also pointed out that the original restaurant had been destroyed in the fire and all that remained was the small snack shop which was limited to a 35% expansion. The proposed fishing club would allow for a larger restaurant and lodging accommodations. Mr. Bresee called for public comment. Ellen Hardesty, neighbor, had a concern regarding the number of members permitted at the club. Mr. Bresee stated they did not have control over the number of members the club had. Ray Menser, neighbor, spoke in support of the variance.

5. Possible action on the Conditional Use Permit request by Always LTD, LLC d/b/a The Bakerton Market for a community Laundromat to be located in an existing structure. Property location: 834 Carter Avenue at the intersection of Rte. 30 (Carter Road) and Rte. 30/1 (Maple Avenue) in Harpers Ferry, West Virginia 25425. District: Harpers Ferry-04; Map 3A; Parcel(s) 23 and 26; Size: .3068 acres; Zoned: Village District; File #Z09-01.

Due to a series of unresolved issues from the December 14, 2011 Compatibility Assessment Meeting a Public Hearing has been scheduled for the January 19, 2012 Board of Zoning Appeals Meeting.

Mr. Kelly motioned to go into deliberative session at 3:32 p.m. Mr. Quynn seconded the motion, which carried unanimously.

Ms. Huddle motioned to come out of deliberative session at 3:42 p.m. Mr. Quynn seconded the motion, which carried unanimously.

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

2. Variance request by property owners, Ruth Insley and Joe Weitz, from Section 8.2 of the Zoning and Land Development Ordinance for a reduction of the barn setback from 75' to 55' to allow for a lot line adjustment between an existing house and the existing barn

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

3. Variance request by the Trustees of the Ebenezer Mt. Calvary Holiness Church from Section 11.1(a) to reduce the required parking spaces from 25 to 18 for the proposed construction of a 1,140 square foot social hall.

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

4. Variance request by M. J. Firestone on behalf of Lakeland Properties, LLC from Section 8.8(B)(5) of the Zoning and Land Development Ordinance for a reduction of the acreage required to qualify as a Fishing Club, from 150 acres to 50 acres. Property location: 1329 Lakeside Drive, Harpers Ferry, WV. District: Kabletown – 06; Map: 6; Parcel: 9; Size: 70 acres; Zoned: Rural; File #ZV11-34.

Ms. Huddle motioned to approve the above referenced request stating that the Board has found that the neighborhood character will be enhanced with the establishment of a fishing club, that they do not find any issues with traffic and that the proposal is adequately buffered from the adjacent uses. Ms. Huddle further added that A) The approval of the variance applies to the use of the property as a fishing club only, and does not apply to use of the property as a Hunting or Shooting Club. An accessory shooting range is not permitted. B) Approval of a Zoning Certificate for any residential accommodations must be preceded by approval from the Jefferson County Health Department (or other applicable service provider) for water and sewage disposal. Mr. Kelly seconded the motion, which carried unanimously.

5. Possible action on the Conditional Use Permit request by Always LTD, LLC d/b/a The Bakerton Market for a community Laundromat to be located in an existing structure.

This Item has been rescheduled as a Public Hearing for the January 19, 2012 Board of Zoning Appeals Meeting.

6. Discussion and action on a proposed policy regarding variances for residential accessory dwelling units.

The Board discussed whether multiple homes on one parcel should be done by department policy or by text amendment. It was mentioned that a variance could not be sought from the permitted uses due to state law. The Health Department would not allow shared systems. The Board determined that an applicant could not seek a variance from the definition from Two Family Dwelling and that a text amendment was the best course of action.

7. Director's Report. Ms. Brockman informed the Board that they may be receiving a conditional use permit from Mr. Corum in the near future.
8. Legal Update. None.

9. Vote on written decisions from prior Board of Zoning Appeals meetings. None.

10. Correspondence. None.

Ms. Huddle motioned to adjourn the meeting at 4:13 p.m. Mr. Kelly seconded the motion, which carried unanimously.

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

## Jefferson County Board of Zoning Appeals Consideration of a Variance

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

### **Section 3.4 Boards and Commissions<sup>23</sup>**

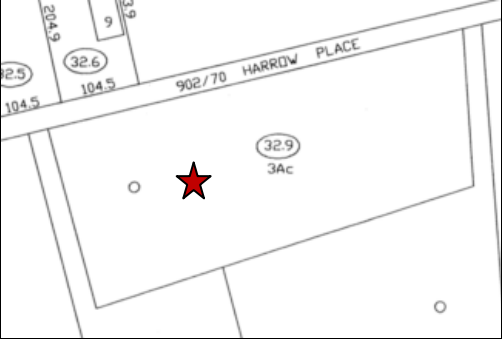
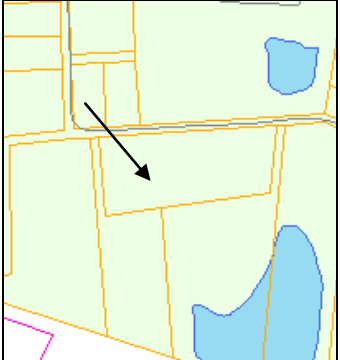
#### A. Board of Zoning Appeals

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

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 January 19, 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  
January 19, 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.

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  
January 19, 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.

It is noted 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  
January 19, 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 Exceptions<sup>3</sup>**

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:<sup>23</sup>

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.

RECEIVED

DEC 08 2011

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

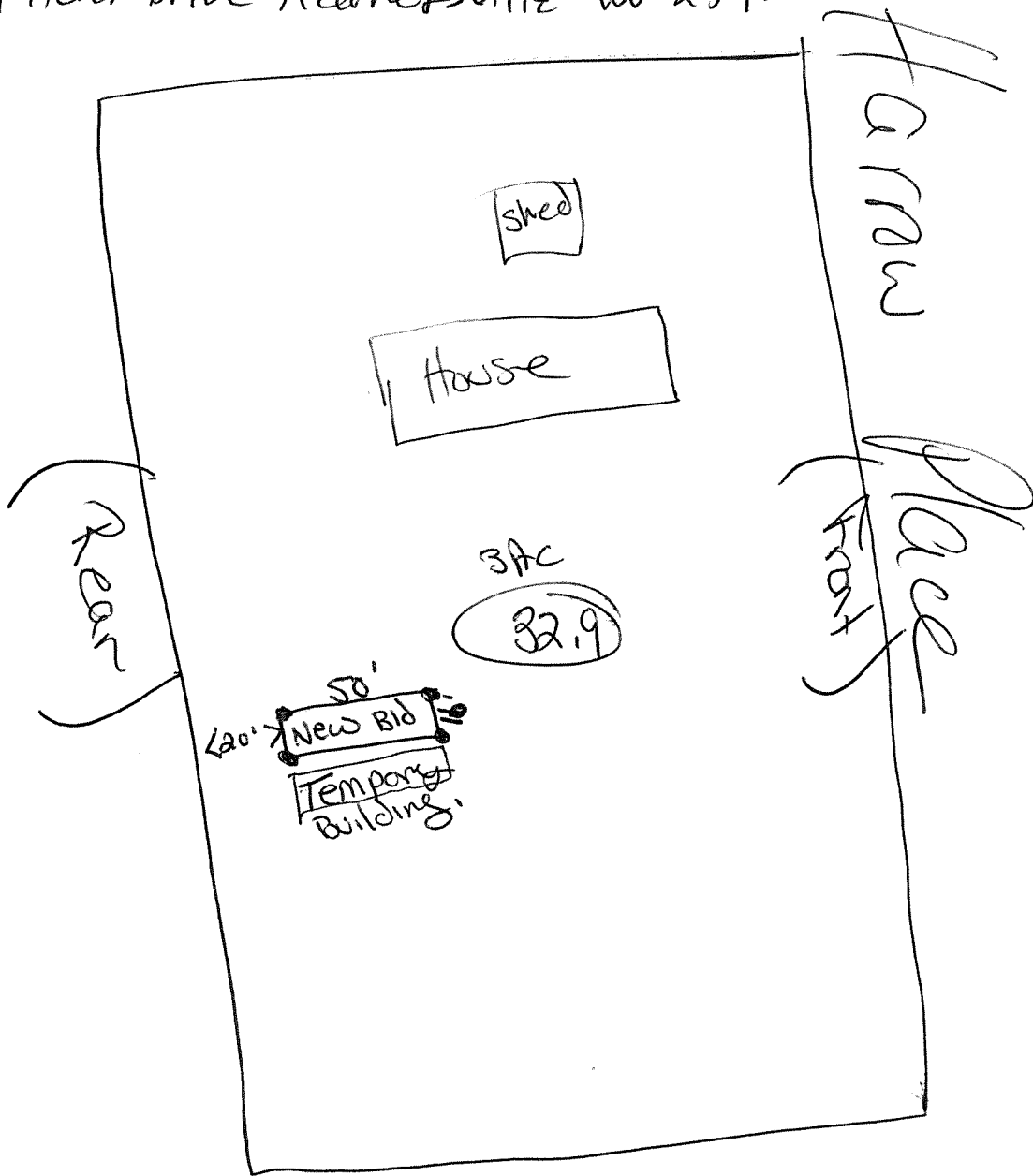
12/5/11  
Date

<u>CASH</u>	<b>FOR OFFICAL USE ONLY</b>
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



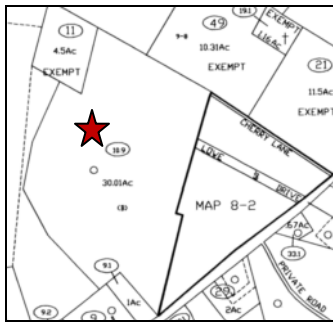
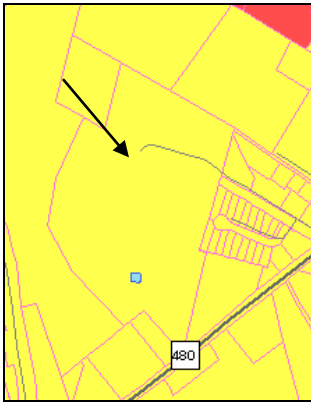
Brandon French 12/9/11

#ZV12-01

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

**Federal Group, Inc., Variance Request (#ZV12-02)**

Item #3      Variance request by property owner, Federal Group, Inc., Kenneth F. Lowe, Jr. (President) from Section 4.11(D) 1 & 3 of the Zoning and Land Development Ordinance to utilize the existing treeline as the required landscape buffer. Property location: Clarion Hotel, 233 Lowe Drive. District: Shepherdstown (09); Map: 8; Parcel: 10.9; Size: 30.01 acres; Zoned: Residential Growth; File: #ZV12-02.

APPLICANT:	Kenneth F. Lowe, Jr., President
OWNER :	Federal Group, Inc.,
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	Clarion Hotel, 233 Lowe Drive, Shepherdstown, West Virginia
LEGAL DESCRIPTION:	District: Shepherdstown (09); Map: 8; Parcel: 10.9  
ZONING DISTRICT:	Zoning Map Designation: Residential Growth (RG)  
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North: RG                      South: RG</i> <i>East: RG                        West: RG</i>
LOT AREA:	30.01 acres
PRIOR CASES:	None
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential

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

**Federal Group, Inc., Variance Request (#ZV12-02)**

Conditional Use Permit	Training facility including 174 sleeping rooms, dining facility, training classrooms, offices for permanent government staff, office space for the owner, gymnasium, outdoor pool, outdoor tennis courts. Effective: 08/13/96
Site Plan (S96-17)	Training facility. PC approval and issuance: 01/14/97
Site Plan (S00-07)	12x25 Maintenance Bldg. PC approval and issuance: 07/25/00
Site Plan (S07-07)	1595 square feet addition and 393 square feet interior renovation.

RELEVANT INFORMATION:

1. Overview of Request

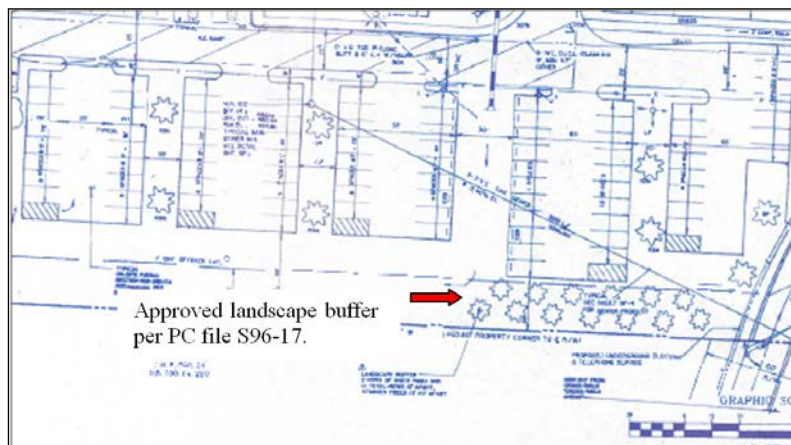
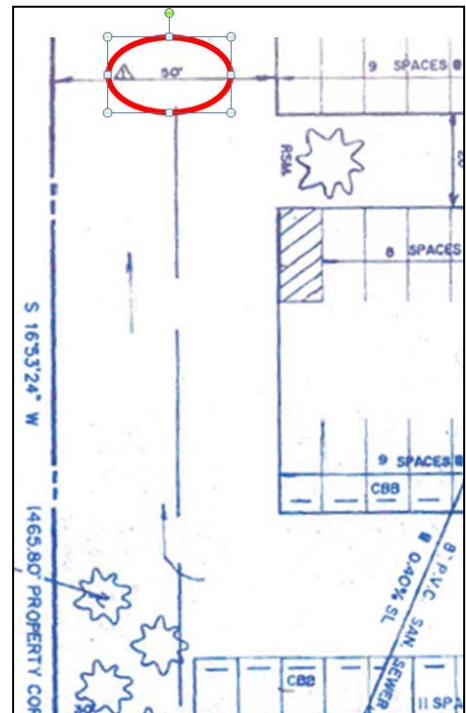
The applicant seeks to waive the requirement for a 15' screened landscape buffer for a commercial use adjacent to a residential property.

2. Previous Case History

Section 4.11D of the Zoning Ordinance requires a landscape buffer for commercial development located adjacent to a residential use. The buffer can either be a 50' unscreened buffer or a 15' screened buffer.

When the original site plan for the Clarion Hotel (S96-17, approved in 1997), was submitted, the site plan was reviewed for landscaping requirements. Text on the site plan shows a 50' dimension between four of the eastern parking lots and the adjacent property line. (It should be noted that the scaling on the site plan reflects approximately a 47' dimension; however, it appears that the scaling of the entire site plan – not only the buffer distance – is incorrect.)

Therefore, only the parking area located closest to the eastern property line was required to be buffered (approximately 130 linear feet).



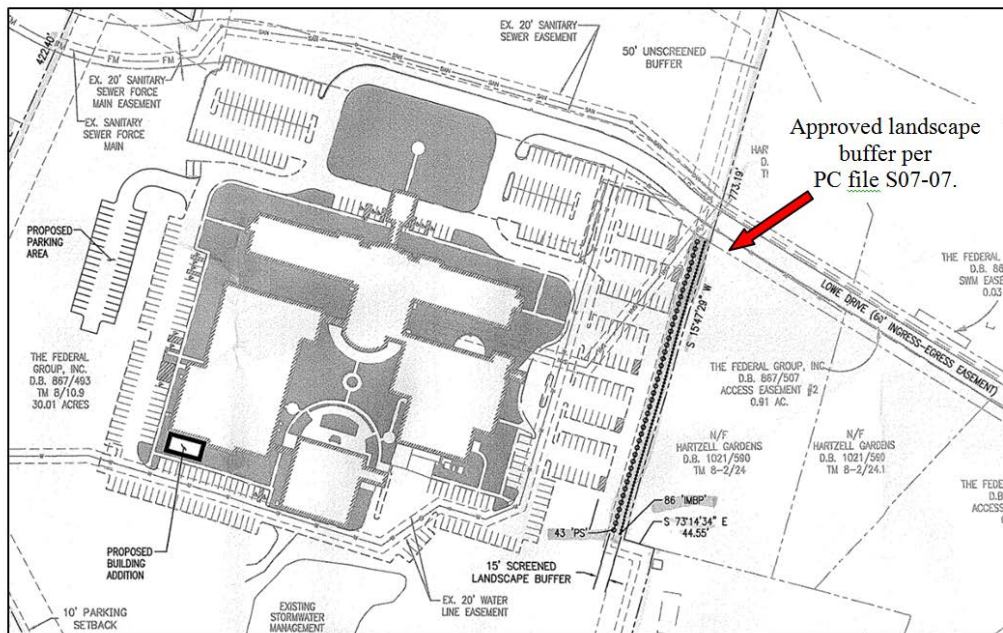
Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
January 19, 2012

**Federal Group, Inc., Variance Request (#ZV12-02)**

Following the construction of the Clarion Hotel and Conference Center, the Preliminary Plat for the adjacent Hartzell Gardens residential subdivision (19 residential lots) was approved in 2006. As part of the development process for this subdivision, a portion of the treeline located on the Hartzell Gardens property was cleared.

Subsequently, site plan S07-07, for a 1,595 square feet addition, was submitted. During the review process, staff identified the need for a landscape buffer on the east side of the property, for a length of approximately 300 square feet. This buffer is shown on the approved site plan.

It is not fully clear why the landscaping was required during the review of the 2007 site plan. The requirement may have been applied because of the aforementioned scaling issue, which causes difficulties in determining whether or not the unscreened buffer dimension is indeed 50' in width.



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

**Federal Group, Inc., Variance Request (#ZV12-02)**

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, "Existing tree line has been there forever and a day."

- 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, "Existing natural stormwater drainage is located in this area."

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

The application states, "Would require paving remodel and elimination of parking spaces and interference of stormwater drainage area."

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

The application states, "Based on existing treeline and comments stated at Hartzell Gardens public hearing the welfare of the adjacent property owners will be protected."

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

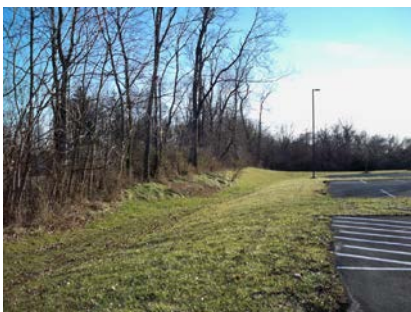
**Federal Group, Inc., Variance Request (#ZV12-02)**

4. Staff Evaluation of Request

While some of the pre-existing treeline between the subject property and the adjacent residential subdivision has been removed as a result of development activity for the subdivision, a substantial natural landscape buffer remains in place between the two properties. The existing trees, however, are deciduous rather than evergreen, and therefore do not provide screening during winter months.

Staff notes that site plan S07-07, for which the screening along the Hartzell Gardens property line was required, was for a 1,595 square feet addition – a relatively minor development that would typically qualify as a Limited Site Plan. This location of this addition on the site effectively conceals the new construction from the adjacent residential subdivision.

In the application, the applicant has stated that the installation of the 15' buffer “[w]ould require . . . interference of stormwater drainage area.” To date, staff has not verified whether the stormwater management area would require re-grading if the landscaping were to be planted. However, staff notes that the grading and stormwater management features were planned and implemented for the entire property based on the originally approved site plan. Significant alteration of grading and stormwater management for the purpose of building a 1,595 square feet addition could be seen as a disproportionate requirement.



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

**Federal Group, Inc., Variance Request (#ZV12-02)**

5. Possible Conditions of Approval

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

- a. Prior to release of bonding obligations for site plan S07-07, staff must verify that the landscaping required for site plan S96-17 is in place.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 4.11 Landscaping, Screening and Buffer Yard Requirements

- (d) All buffer yards shall include a fence or a dense screen planting of trees, shrubs, or other plant materials or both, to the full length of the lot line to serve as a barrier to visibility, air borne particles, glare or noise. Such screen planting shall meet the following requirements.
  - (1) Vegetative screening shall comply with Standard Details M52, M53 or M54 depending on the buffer width. At the time of the planting the vegetation shall be at least four (4) feet in height. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]
  - (3) Screen planting shall be a minimum of ten (10) feet wide but shall be placed so that it is no closer than four (4) feet at maturity from a property line or from any street.

#ZV12-02

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): Federal Camp, Inc.

Address: Kenneth F. Lowe Jr, president  
233 Lowe Drive Shepherdston Wd 25443

Phone Number: 304-870-7000 *klowe@decisionstephendston.com*

Location of Property: 233 Lowe Drive  
Shepherdston Wd 25443

Lot Size: 30.01 ac

Deed Book Reference: Deed Book Number 867 Page Number 493

Tax Map Reference: District 9 Map 8 Parcel 10.9

Zoning District: RG

Section of Ordinance: 4.11 D 1 & 3

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.

Requesting waiver of landscape buffers utilizing existing tree line  
buffer

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

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

RECEIVED  
DEC 14 2011  
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:

Existing tree line has been there forever and a day!

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:

Existing natural stormwater drainage is located in this area.

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

Would require paving removal and elimination of parking spaces and interference of stormwater drainage area.

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

Based upon existing tree line and comments stated at Harold Gorman's public hearing the welfare of the adjacent property owners will be protected.

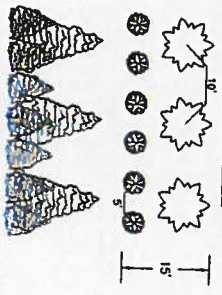
[Signature]  
Signature of Property Owner

Kasseth F. Lowe, Jr., president  
Print Name

12/14/11  
Date

<b>FOR OFFICIAL USE ONLY</b>	
Fees Paid: <u>\$100.00 CASH</u>	Date Application / Fees Received: <u>DECEMBER 14, 2011</u>
Date of meeting / Public Hearing: <u>JANUARY 19, 2011</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</u>	
Official Action of Board: _____	
_____	
Official Signature and Seal: _____	

**REQUIRED LANDSCAPING**  
 TOP VIEW OF PLANTINGS



FRONT VIEW OF ULTIMATE GROWTH  
 SCALE FROM JEFFERSON COUNTY  
 STANDARD DETAIL NO. M-10-54

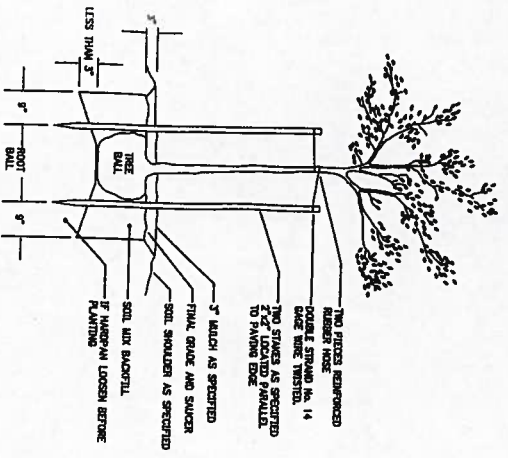
**GENERAL**

PLANTING DESCRIPTION - ONE ROW OF UNIFORMLY SPACED WITH A MINIMUM OF 10 FEET CLEARANCE FROM BUILDING, PARKING LOT, DRIVEWAY, SIDEWALK, OR OTHER OBSTACLE. PLANTING SHALL BE PLANTED IN A ROW OF 10 FEET CLEARANCE FROM THE BUILDING, PARKING LOT, DRIVEWAY, SIDEWALK, OR OTHER OBSTACLE. PLANTING SHALL BE PLANTED IN A ROW OF 10 FEET CLEARANCE FROM THE BUILDING, PARKING LOT, DRIVEWAY, SIDEWALK, OR OTHER OBSTACLE.

**SCREEN PLANTING NARROW BUFFER  
 OPTION F PLANTING DETAIL**

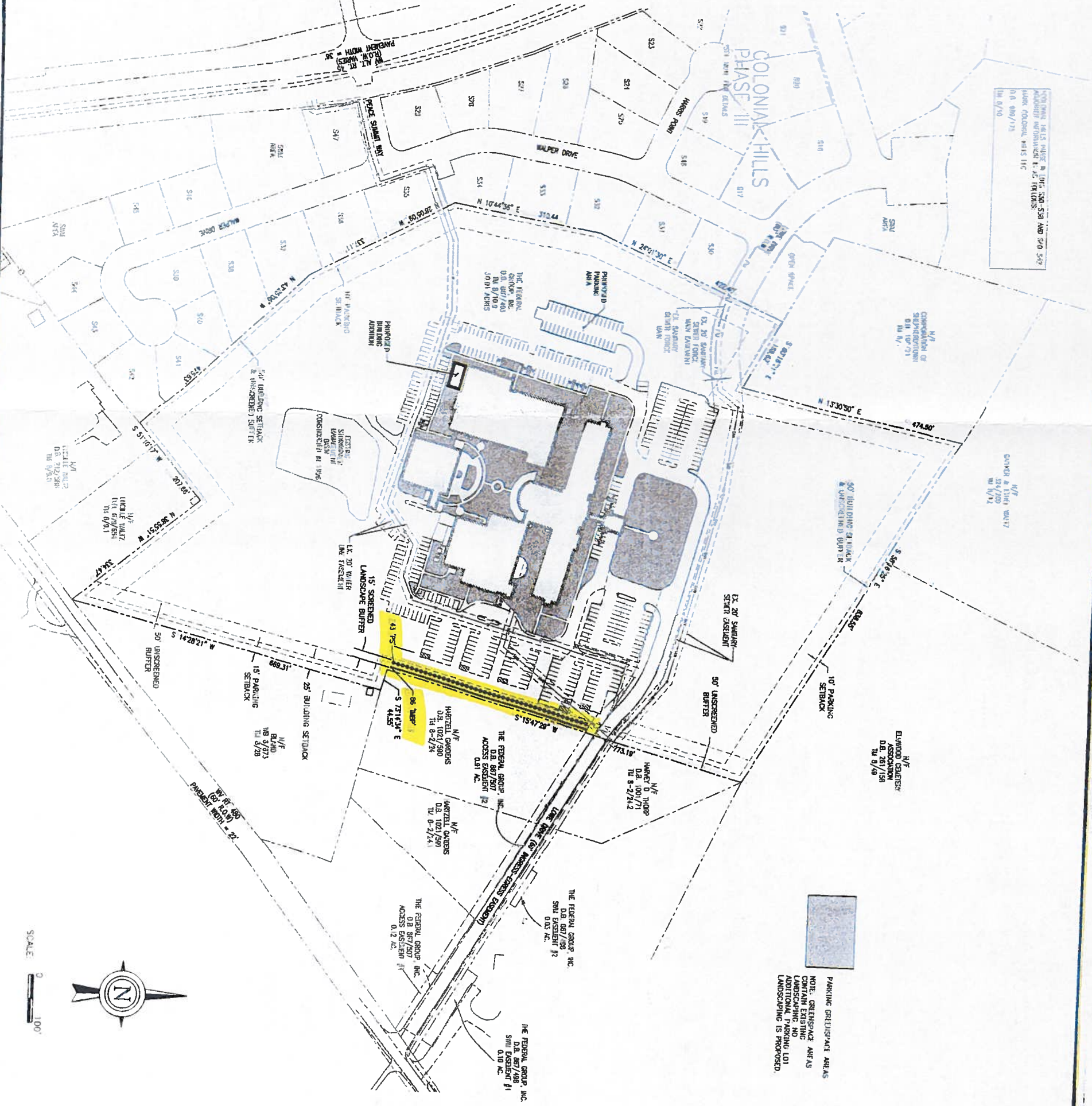
PLANT	AGE	QTY	SCIENTIFIC NAME	COMMON NAME	SIZE	CONDITION
1	18"	43	PAVS STRONGS	SYSTEM WHITE	8"	D & B
2	18"	14	LEA X. LEBESQUE SUE	BLUE BRASS	8"	D & B
3	18"	1	FRAXINUS	HALY	1"	1 CAL.

PARKING LOT GREENSPACE REQUIREMENTS PER JEFFERSON COUNTY ORDINANCE SECTION 112.4.1.1. PROVIDE GREENSPACE EQUAL TO A MINIMUM OF 5% OF THE AREA OF PARKING LOTS AND ONE-SITE DRIVEWAYS. GREENSPACE REQUIREMENTS: 4.44 AC OF PARKING/PARKWAYS X 5% = 0.22 AC. GREENSPACE REQUIREMENTS: 0.21 AC CONTAINED WITHIN A PERCENTAGE OF THE PARKING LOTS/PARKWAYS (SHADED AREA INDICATES SCREEN GREENSPACE PROVIDED).



**LANDSCAPE SPECIFICATIONS**

1. ALL SIZES AND SPECIES LISTED ARE TO BE IN ACCORDANCE WITH THE AMERICAN STANDARD FOR NURSERY STOCK (ANSI Z603-1-1990) OR L.A.M.I. (1995).
2. LANDSCAPE CONTRACTOR IS TO FOLLOW GUIDELINES SET FORTH IN THE LANDSCAPE SPECIFICATIONS FOR PLANTING, MAINTENANCE, AND PROTECTION FOR SOIL PREPARATION, ESTABLISHING TIME, AND INSTALLATION OF MULCH.
3. PLANTS AND MATERIALS SHALL BE GUARANTEED FOR A PERIOD OF ONE YEAR FOR PLANTING AND MAINTENANCE. SPECIFICATIONS GOVERN OVER ANY CONFLICTING SPECIFICATIONS FROM ANY OTHER CONTRACT DOCUMENTS.
4. OWNERS RESERVES THE RIGHT TO CORRECT THE UNDERSPECIFICATION AND TO CORRECT SPECIFICATIONS, PRACTICES AND INSTALLATION OF PLANTING LANDSCAPE PLAN.
5. NO PLANTING SHALL BE LOCATED WITHIN FOUR FEET OF A FIRE HYDRANT OR A SHARED CONNECTION.
6. ALL PLANTS, SET SET IN HEIGHT AND TALLER ARE TO BE STAKED PER JEFFERSON COUNTY STANDARD DETAIL M-10-54.
7. PLANTING CONTRACTOR SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL PLANTING AND SPECIFICATIONS DURING THE PERIOD OF ONE YEAR FOR PLANTING AND MAINTENANCE. SPECIFICATIONS GOVERN OVER ANY CONFLICTING SPECIFICATIONS FROM ANY OTHER CONTRACT DOCUMENTS.
8. ALL PLANTS AND MATERIALS SHALL BE GUARANTEED FOR A PERIOD OF ONE YEAR FOR PLANTING AND MAINTENANCE. SPECIFICATIONS GOVERN OVER ANY CONFLICTING SPECIFICATIONS FROM ANY OTHER CONTRACT DOCUMENTS.
9. ALL PLANTS AND MATERIALS SHALL BE GUARANTEED FOR A PERIOD OF ONE YEAR FOR PLANTING AND MAINTENANCE. SPECIFICATIONS GOVERN OVER ANY CONFLICTING SPECIFICATIONS FROM ANY OTHER CONTRACT DOCUMENTS.



PARKING GREENSPACE AREAS  
 NOTE: GREENSPACE AREAS  
 CONTAIN EXISTING  
 TREES AND OTHER  
 ADDITIONAL LANDSCAPING IS PROVIDED.

DRN: DVS/MAR  
 P.M.: RPP  
 PROJ. NO.: 0705041.00  
 DATE: Sep 13, 2007  
 SHEET NO.:  
**C-1.0**

**EASTERN MANAGEMENT DEVELOPMENT CENTER  
 ADDITION AND ALTERATIONS**  
 FOR  
**THE FEDERAL GROUP, INC.**  
 TM: 8 PCL: 10.9 DB: 867 PG: 493  
 SHEPHERDSTOWN DISTRICT  
 JEFFERSON COUNTY, WEST VIRGINIA

**OVERALL  
 PROPERTY  
 MAP**

DATE	BY	REVISIONS
10/3/07		

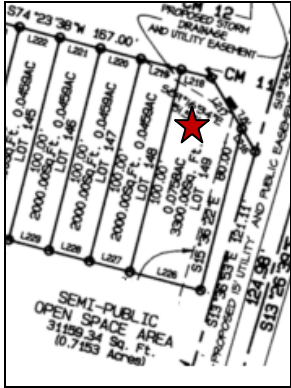
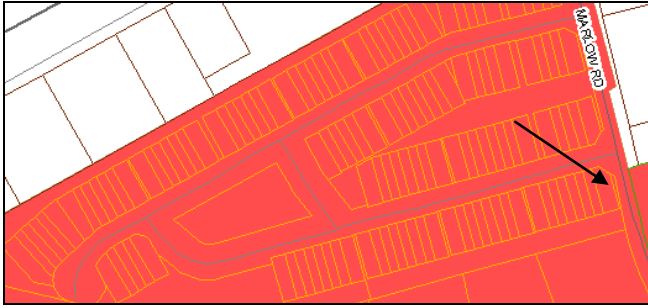
OWNER AND DEVELOPER:  
**THE FEDERAL GROUP, INC.**  
 215 SOUTH MAIN STREET  
 SHEPHERDSTOWN, WV 25443  
 (304)-870-7001

**ALPHA ASSOCIATES, INC.**  
 538 WEST 8TH STREET  
 SHEPHERDSTOWN, WV 25441  
 PHONE: 304-364-0051  
 FAX: 304-364-0051  
 WWW.ALPHAASSOCIATES.COM

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

**Dean Stine Request (#ZV12-03)**

Item #5 Variance request by property owner, Dean Stine, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 10' to allow for the construction of a 12' x 19' deck with steps and the addition of a concrete slab under the entire deck for future a hot tub installation.

APPLICANT:	Dean Stine
OWNER :	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	Windmill Crossing Subdivision, 9 Don Quixote Drive, Charles Town, West Virginia
LEGAL DESCRIPTION:	District: Charles Town – 02; Map: 9C; Parcel: 149 
ZONING DISTRICT:	Zoning Map Designation: Residential-Light Industrial-Commercial (R-LI-C) 
SURROUNDING PROPERTIES:	Zoning Map Designation: North: R-LI-C      South: R-LI-C East: R-LI-C      West: R-LI-C
LOT AREA:	.0758 acres
PRIOR CASES:	None
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential
Community Impact Statement	PC Approval: 02/11/03
Preliminary Plat	Staff Approval: 11/22/04
Final Plat (PC File #03-01)	PC Approval: 01/11/05

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

**Dean Stine Request (#ZV12-03)**

RELEVANT INFORMATION:

1. Overview of Request

The applicant seeks a rear yard setback variance of 10' in order to locate a deck and steps within 10' of the property line, and to locate a concrete slab under the entire deck for a future hot tub installation.

Per the material submitted with the variance request, the townhome is approximately 25 feet from the rear property line. The proposed deck would be 19' wide and would extend 12' from the townhome towards the rear property line, with an additional 3' extension for the steps.

Section 5.8 of the Zoning Ordinance provides that the setback requirements of the Residential Growth District apply to a residential use in the Residential-Light Industrial-Commercial District. For a townhouse, these setbacks are 25 feet (front), 12 feet (exterior side), and 20 feet (rear). This townhome is an end unit; however, the proposed steps do not encroach on the required 12' exterior side yard setback.

Section 9.5 of the Zoning Ordinance allows a 4-foot encroachment into yards for certain types of projections, including uncovered porches, provided that such projections are not over 10 feet in width. The variance request is to allow a 10-foot encroachment for a projection of 19 feet in width.

2. Applicant's Justification of Request

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

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

The application states, "N/A. Improve property value. I am a corner lot and back up to common area."

- 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, "Neighbors already OK with my deck. Small building lots. I have offset townhome."

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

The application states, "All neighbors will enjoy deck. Allow to have larger outdoor living space."

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

The application states, "Free to look any time. Will get proper permits to do correct job."

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

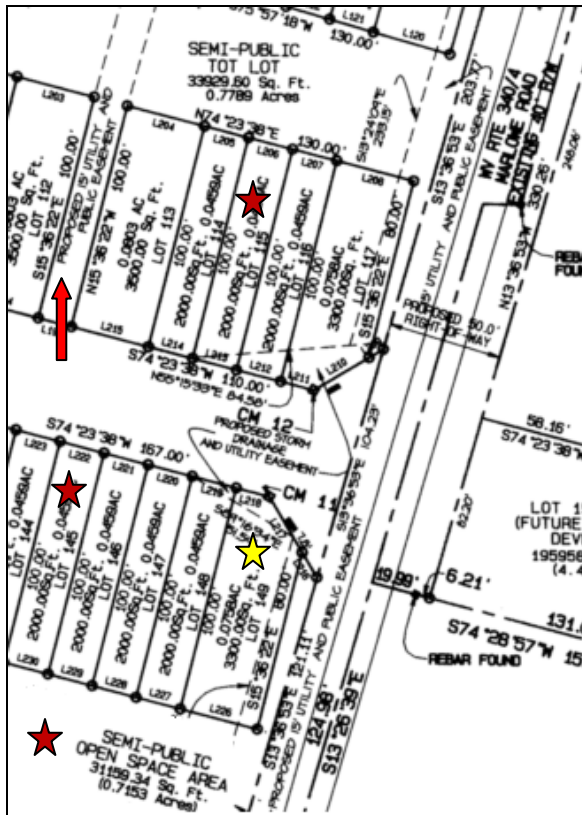
**Dean Stine Request (#ZV12-03)**

3. Staff Evaluation of Request

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

The Board of Zoning Appeals reviewed similar variance requests in the Windmill Crossing Subdivision on July 15, 2010 (Brown, ZV10-08), May 20, 2010 (Weaver, ZV10-04), September 16, 2010 (Einreinhof, ZV10-16), April 21, 2011 (Muniz, #ZV11-08), August 18, 2011 (Reed, #ZV11-24).

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



4. Possible Conditions of Approval

No conditions of approval are identified for this variance request.

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

**Dean Stine Request (#ZV12-03)**

SECTION OF ORDINANCE TO BE CONSIDERED:

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

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

2112-03

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): DEAN SINE

Address: 9 DON QUAYOTE DR  
CHARLES TOWN WV 25414

Phone Number: 703-499-1380

Location of Property: CORNER OF MARLOWE RD + DON QUAYOTE DR  
~~BRAYMAN~~ LAST TOWN HOUSES REPAIRS ROAD

Lot Size: 1/4 ACRES

Deed Book Reference: Deed Book Number 1095<sup>9A</sup> Page Number 596<sup>12/29/11</sup>

Tax Map Reference: District CHARLES TOWN DS Map 9C Parcel 149

Zoning District: ? JOFFDOWN RLIC (RLIC)

Section of Ordinance: ? DEVELOPMENT 5.4B

Sketch on a separate 8 1/2" X 11" sheet of paper the shape and location of the lot indicating all roads, rights of ways, and easements. Show the location of the intended construction or land use indicating building setbacks (distance structure is from all boundary lines) size and height. Identify all existing buildings, structures or land uses on the property. Sign and date the sketch.

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

WANT TO INSTALL DECK WITH STEPS NOTE MARSHES  
OTHER DECKS IN ROW OF MY TOWN HOUSES THAT ALREADY HAS  
VARIANCE APPROVED. NOTE BACK OF PROPERTY IS FENCE ROW  
ASKING TO REDUCE 20 FT SETBACK TO 10 FT SETBACK  
ALSO ADD CONCRETE SCAB UNDER ENTIRE DECK FOR FUTURE HOT TUB

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

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

RECEIVED

DEC 16 2011

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:

N/A N/A IMPROVED PROPERTY VALUES  
I AM A CORNER LOT AND BACK UP TO COMMON AREA

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:

NEIGHBORS ALREADY OK WITH MY DECK  
SMALL BUILDING LOTS I HAVE OFFSET YARD SPACES

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

ALL NEIGHBORS WILL ENJOY DECK  
ALLOW TO HAVE LARGE OUTDOOR LIVING SPACE

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

FREE TO LOOK ANY TIME  
WILL GET PROPER PERMITS TO DO CORRECT JOB

DMC

Signature of Property Owner

DENN C. STINE

Print Name

12/14/11

Date

**FOR OFFICIAL USE ONLY**

Fees Paid: \$100.00

Date Application / Fees Received: DECEMBER 16, 2012

Date of meeting / Public Hearing: THURSDAY, JANUARY 19, 2012 AT 3:00PM

Official Administrative Body: Jefferson County Board of Zoning Appeals

Posting Requirements: 15 Number of Days Prior to Scheduled Hearing

Advertising Dates: WEDNESDAY JANUARY 4, 2012 (ONE TIME)

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

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

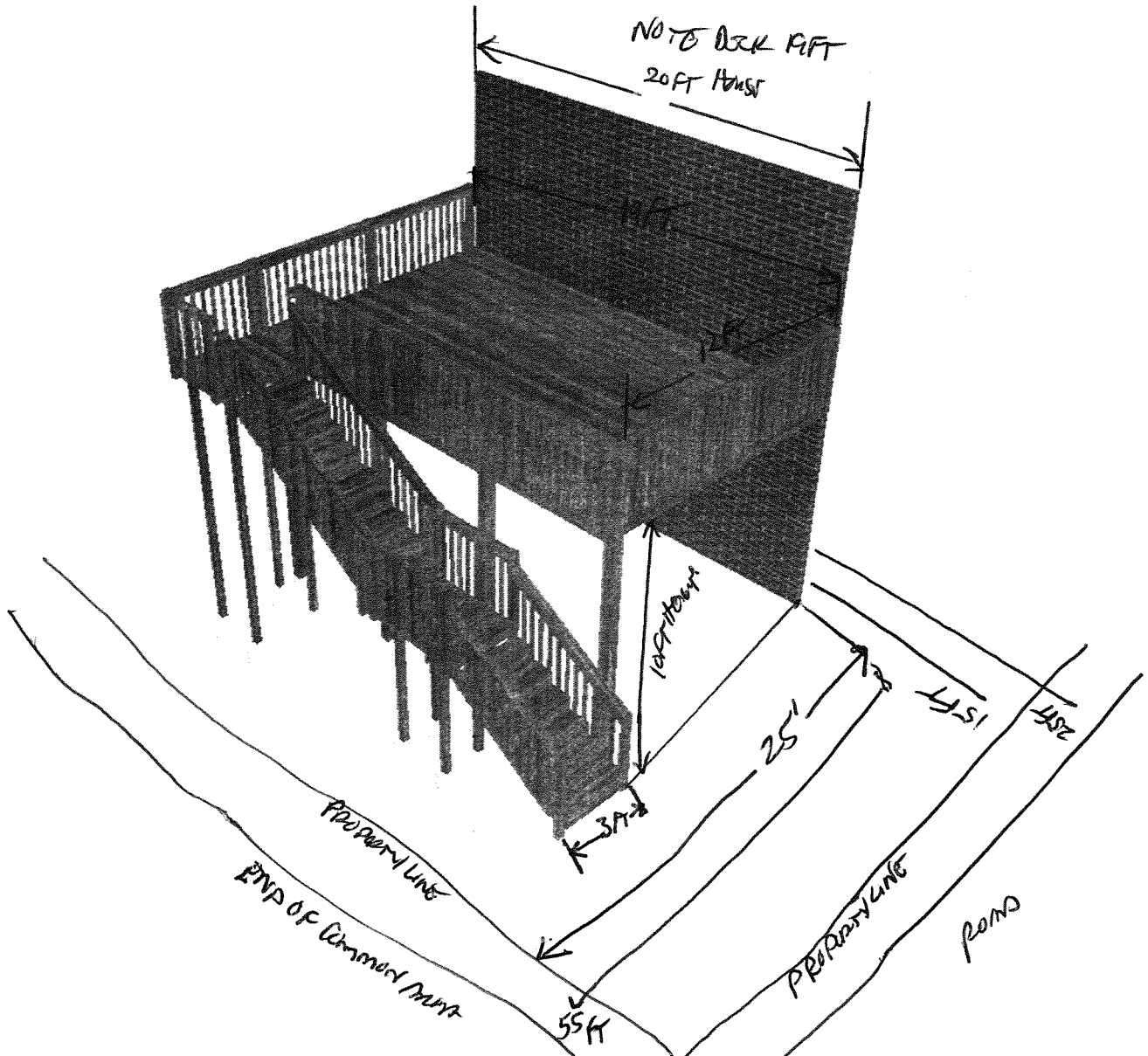


# Pro Deck Design™



3D View

NOTE DRAWING NOT TO SCALE



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Document Type DEED  
Pages Recorded 2  
Book-Page 1095-596  
Recording Fee \$11.00  
Transfer Tax \$997.60  
HB4331 Tax \$448.80  
Additional \$25.00

**DEED OF CONVEYANCE**

THIS DEED made this 23rd day of June, 2011, by and between **NVR, Inc.**, a Virginia corporation, party of the first part and referred to herein as Grantor, and **Dean C Stine**, party of the second part and hereinafter referred to as Grantee.

**WITNESSETH:** That for and in valuable consideration, the receipt of which is hereby acknowledged, the aforesaid Grantor does hereby grant and convey unto the aforesaid Grantee, in fee simple, with general warranty of title, free and clear of all monetary liens and encumbrances in and to the following described property:

**All of that certain parcel of land situate in the Charles Town District, Jefferson County, West Virginia and further described as follows:**

**Being all of Lot 149 as shown on a plat entitled "Windmill Crossing, Commercial Lots 1 - 15, Townhouse Lots 16 - 149" made by Resource International, Ltd., dated November 14, 2004 and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Plat Book 21, at Page 88.**

District Charles Town Dist  
Map 9C Parcel 149

Property Address: 9 Don Quixote Dr., Charles Town, WV 25814

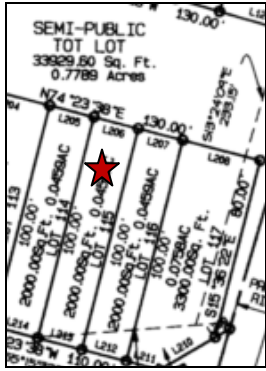
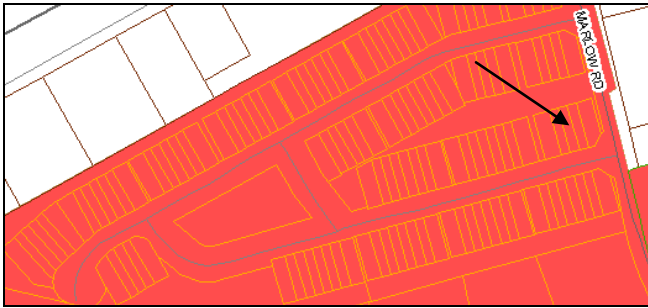
AND BEING the same real estate conveyed to the Grantor herein by a deed from New Vision Properties II, Inc. dated March 31, 2011 and recorded in the aforesaid Clerk's Office in Deed Book 1061, at Page 496.

This conveyance is made subject to any and all exceptions, covenants, conditions, restrictions, reservations, easements, rights-of-way and other matters of record and more particularly those covenants recorded in the aforesaid Clerk's Office in Deed Book 1006, at Page 595.

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

**David Kimmel Variance Request (#ZV12-04)**

Item #5 Variance request by property owner, David Kimmel, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 10' to allow for the construction of a 12' x 20' deck with no steps.

APPLICANT:	David Kimmel
OWNER :	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	Windmill Crossing Subdivision, 16 Don Quixote Drive, Charles Town, West Virginia
LEGAL DESCRIPTION:	District: Charles Town (02); Map: 9C; Parcel: 115; 
ZONING DISTRICT:	Zoning Map Designation: Residential-Light Industrial-Commercial (R-LI-C) 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> R-LI-C <i>South:</i> R-LI-C <i>East:</i> R-LI-C <i>West:</i> R-LI-C
LOT AREA:	2,000 square feet
PRIOR CASES:	None
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential
Community Impact Statement	PC Approval: 02/11/03
Preliminary Plat	Staff Approval: 11/22/04
Final Plat (PC File #03-01)	PC Approval: 01/11/05

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

**David Kimmel Variance Request (#ZV12-04)**

RELEVANT INFORMATION:

1. Overview of Request

The Applicant seeks a rear yard setback variance in order to locate a deck with no steps within 10' of the property line.

Per the material submitted with the variance request, the townhome is approximately 25 feet from the rear property line. The proposed deck is 20' wide and extends 12' from the townhome towards the rear property line.

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

Section 9.5 of the Zoning Ordinance allows a 4-foot encroachment into yards for certain types of projections, including uncovered porches, provided that such projections are not over 10 feet in width. The variance request is to allow a 10-foot encroachment for a projection of 20 feet in width.

2. Applicant's Justification of Request

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

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

The application states, "Improve property value. Deck will be within my property line and backs up to common area."

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, "Small building lot with townhouse offset."

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

The application states, "Allow for larger outdoor living space."

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

The application states, "Once approved, will obtain proper permits and work will be performed by licensed contractor."

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

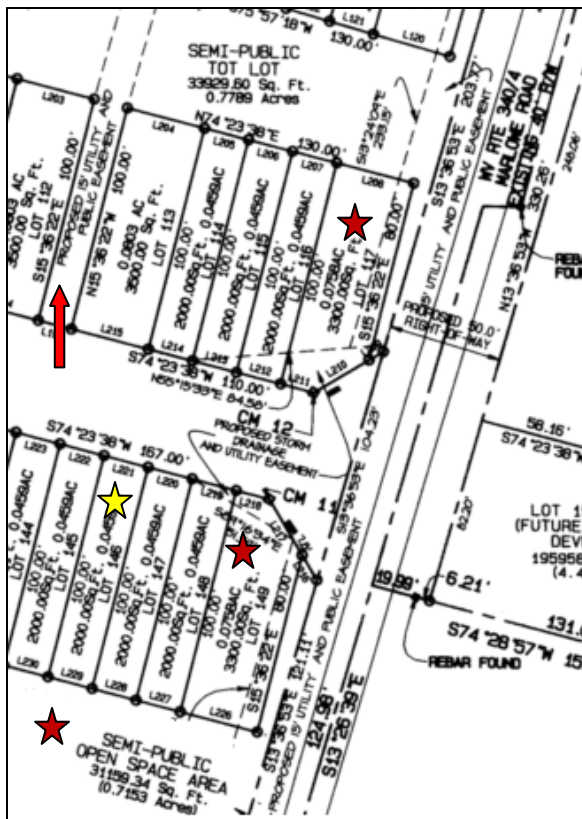
**David Kimmel Variance Request (#ZV12-04)**

3. Staff Evaluation of Request

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

The Board of Zoning Appeals reviewed similar variance requests in the Windmill Crossing Subdivision on July 15, 2010 (Brown, ZV10-08), May 20, 2010 (Weaver, ZV10-04), September 16, 2010 (Einreinhof, ZV10-16), April 21, 2011 (Muniz, #ZV11-08), August 18, 2011 (Reed, #ZV11-24).

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



4. Possible Conditions of Approval

No conditions of approval are identified for this variance request.

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

**David Kimmel Variance Request (#ZV12-04)**

SECTION OF ORDINANCE TO BE CONSIDERED:

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

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

# ZV12-04

JEFFERSON COUNTY BOARD OF ZONING APPEALS  
VARIANCE REQUEST

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

Property Owner(s): DAVID KIMMEL

Address: 16 DON QUIXOTE DRIVE  
CHARLES TOWN, WV 25414-6034

Phone Number: (845) 866-6514

Location of Property: CORNER OF MARLOWE + DON QUIXOTE DRIVE  
3RD TOWNHOUSE FROM CORNER ON RIGHT SIDE LOOKING UP DON QUIXOTE DR

Lot Size: 1/4 ACRE

Deed Book Reference: Deed Book Number 1006 Page Number 508

Tax Map Reference: District CHARLES TOWN Map 9C Parcel 115

Zoning District: JEFFERSON RLIC

Section of Ordinance: 5.4B

Sketch on a separate 8 1/2" X 11" sheet of paper the shape and location of the lot indicating all roads, rights of ways, and easements. Show the location of the intended construction or land use indicating building setbacks (distance structure is from all boundary lines) size and height. Identify all existing buildings, structures or land uses on the property. Sign and date the sketch.

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

REQUESTING TO REDUCE 20 FT SETBACK TO  
10 FT SET BACK TO BUILD 12'X20' DECK  
APPROXIMATELY 9'4" OFF GROUND - NO STEPS

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

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

RECEIVED  
DEC 20 2011  
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:

IMPROVE PROPERTY VALUE  
DECK WILL BE WITHIN MY PROPERTY LINE & BACKS  
UP TO COMMON AREA.

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:

SMALL BUILDING LOT WITH TOWN HOUSE OFFSET

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

ALLOW FOR LARGER OUTDOOR LIVING SPACE

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

ONCE APPROVED, WILL OBTAIN PROPER PERMITS  
AND WORK WILL BE PERFORMED BY LICENSED CONTRACTOR

David S. Kimmel

Signature of Property Owner

DAVID S. KIMMEL

Print Name

12/20/11

Date

<b>FOR OFFICIAL USE ONLY</b>	
Fees Paid: <u>CHECK # 181 \$100.00</u>	Date Application / Fees Received: <u>DECEMBER 20, 2011</u>
Date of meeting / Public Hearing: <u>THURSDAY JANUARY 19, 2012 @ 3:00PM</u>	
Official Administrative Body: <u>Jefferson County Board of Zoning Appeals</u>	
Posting Requirements: <u>15</u>	Number of Days Prior to Scheduled Hearing
Advertising Dates: <u>WEDNESDAY JANUARY 4, 2012 (one time)</u>	
Official Action of Board: _____	
_____	
Official Signature and Seal: _____	

MILL CROSSING  
FINAL

RECEIVED

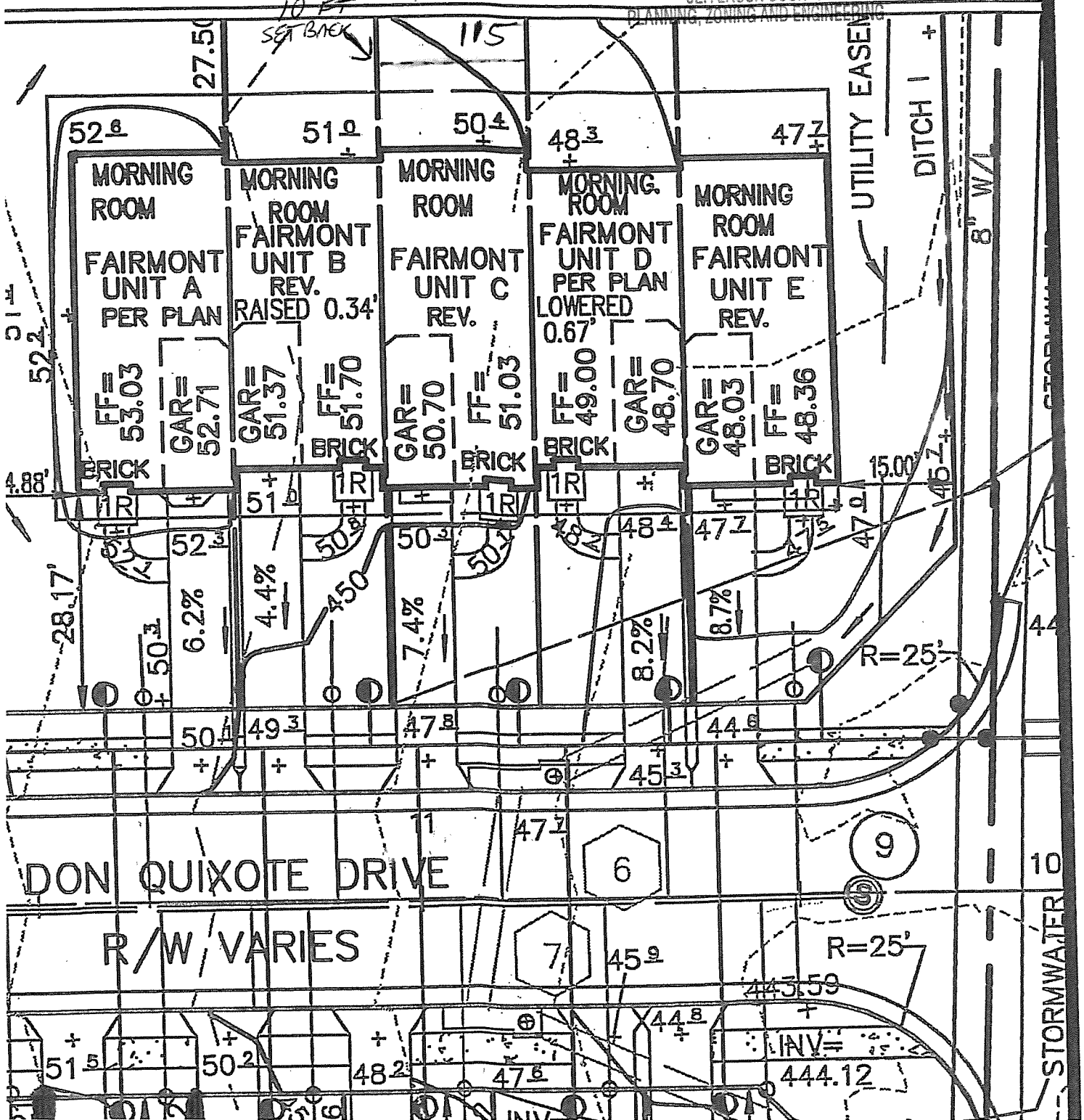
DEC 29 2011

JEFFERSON COUNTY

PLANNING, ZONING AND ENGINEERING

COMMON  
AREA

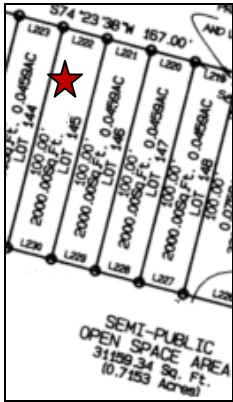
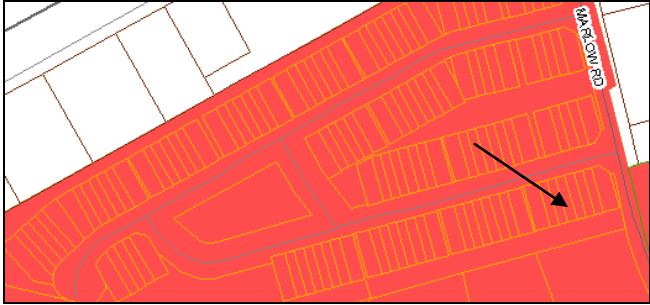
PROPOSED  
10 FT  
SET BACK



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

**Mark M. Franz Variance Request (#ZV12-04)**

Item #6 Variance request by property owner, Mark M. Franz, from Section 5.4(B) of the Zoning and Land Development Ordinance for a reduction of the rear setback distance from 20' to 10' to allow for the construction of a 12' x 20' deck with no steps.

APPLICANT:	Mark M. Franz
OWNER :	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	Windmill Crossing Subdivision 25 Don Quixote Drive, Charles Town, West Virginia
LEGAL DESCRIPTION:	District: Charles Town (02); Map: 9C; Parcel: 145  
ZONING DISTRICT:	Zoning Map Designation: Residential-Light Industrial-Commercial (R-LI-C)  
SURROUNDING PROPERTIES:	Zoning Map Designation: North: R-LI-C      South: R-LI-C East: R-LI-C      West: R-LI-C
LOT AREA:	2,000 square feet
PRIOR CASES:	None
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential
Community Impact Statement	PC Approval: 02/11/03
Preliminary Plat	Staff Approval: 11/22/04
Final Plat (PC File #03-01)	PC Approval: 01/11/05

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

**Mark M. Franz Variance Request (#ZV12-04)**

RELEVANT INFORMATION:

1. Overview of Request

The Applicant seeks a rear yard setback variance in order to locate a deck with no steps within 10' of the property line.

Per the material submitted with the variance request, the townhome is approximately 25 feet from the rear property line. The proposed deck is 20' wide and extends 12' from the townhome towards the rear property line.

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

Section 9.5 of the Zoning Ordinance allows a 4-foot encroachment into yards for certain types of projections, including uncovered porches, provided that such projections are not over 10 feet in width. The variance request is to allow a 10-foot encroachment for a projection of 20 feet in width.

2. Applicant's Justification of Request

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

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

The application states, "Improve property value, deck backs up to common area within property lines."

- 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, "Neighbors approve, small building lot and offset townhomes."

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

The application states, "All neighbors will enjoy deck. Allow to have larger outdoor living space."

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

The application states, "Will obtain proper permits. Will be built by licensed contractor."

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

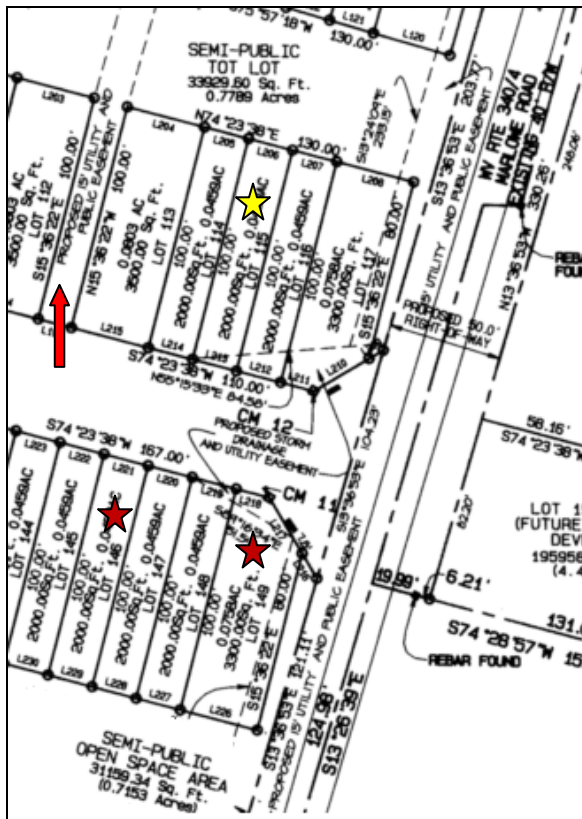
**Mark M. Franz Variance Request (#ZV12-04)**

3. Staff Evaluation of Request

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

The Board of Zoning Appeals reviewed similar variance requests in the Windmill Crossing Subdivision on July 15, 2010 (Brown, ZV10-08), May 20, 2010 (Weaver, ZV10-04), September 16, 2010 (Einreinhof, ZV10-16), April 21, 2011 (Muniz, #ZV11-08), August 18, 2011 (Reed, #ZV11-24).

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



4. Possible Conditions of Approval

No conditions of approval are identified for this variance request.

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

**Mark M. Franz Variance Request (#ZV12-04)**

SECTION OF ORDINANCE TO BE CONSIDERED:

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

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

8-5

5100 CHECK  
ZV 12-05

**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 M FRANZ

Address: 25 DON QUIXOTE DR.  
CHARLES TOWN, WV. 25414

Phone Number: 814-434-1141

Location of Property: CORNER OF DON QUIXOTE & MARLOWE  
5<sup>TH</sup> TOWNHOUSE FROM CORNER

Lot Size: 1/4 ACRE

Deed Book Reference: Deed Book Number 1095 Page Number 274

Tax Map Reference: District CHARLESTOWN Map 9C Parcel 145

Zoning District: JEFFERSON RLIC

Section of Ordinance: 5.4 B

Sketch on a separate 8 1/2" X 11" sheet of paper the shape and location of the lot indicating all roads, rights of ways, and easements. Show the location of the intended construction or land use indicating building setbacks (distance structure is from all boundary lines) size and height. Identify all existing buildings, structures or land uses on the property. Sign and date the sketch.

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

ASKING TO REDUCE SET BACK FROM 20' TO 10'  
TO BUILD DECK 20' X 12' APPROX 9'-4"  
NO STEPS

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

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

**RECEIVED**  
DEC 20 2011  
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:

IMPROVE PROPERTY VALUE. DECK BACKS UP TO COMMON AREA AND WITHIN PROPERTY LINES

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:

NEIGHBORS APPROVE, SMALL BUILDING LOT AND OFFSET TOWNHOMES

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

ALL NEIGHBORS WILL ENJOY DECK ALLOW TO HAVE LARGER OUTDOOR LIVING SPACE

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

WILL OBTAIN PROPER PERMITS WILL BE BUILT BY LICENSED CONTRACTOR

Mark Franz  
Signature of Property Owner

MARK FRANZ  
Print Name

12/20/11  
Date

CK. #1361

**FOR OFFICAL USE ONLY**

Fees Paid: \$100.00

Date Application / Fees Received: DECEMBER 20, 2011

Date of meeting / Public Hearing: THURSDAY, JANUARY 19, 2012 @ 3:00pm

Official Administrative Body: Jefferson County Board of Zoning Appeals

Posting Requirements: 15 Number of Days Prior to Scheduled Hearing

Advertising Dates: WEDNESDAY JANUARY 4, 2012 (pre-time)

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

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

all P.T. materials

2x6 decking

2x8 joist (16" O.C.)

double 2x10 beam

6x6 support post  
(16" x 30" footer)

2x10 wrap-bd.

standard 3/8" high sweeper nail

threaded rod on brackets to floor joist 10' elevation  
↑  
ledger

RECEIVED

DEC 29 2011

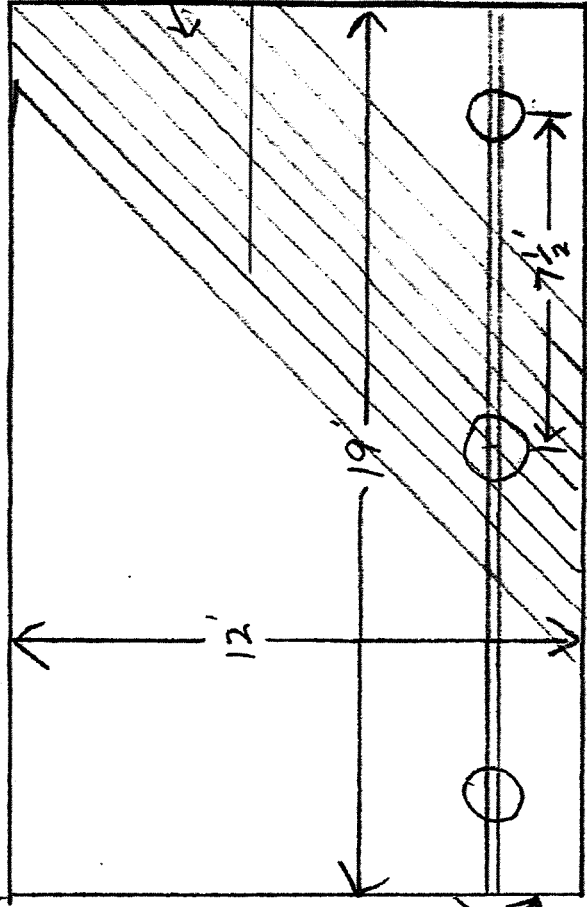
JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

Property  
Line

any? call James Deck  
(Keith)  
(304) 535-2179

1/4 scale

Townhouse



2' overhang

↑

10' elevation

↑  
ledger

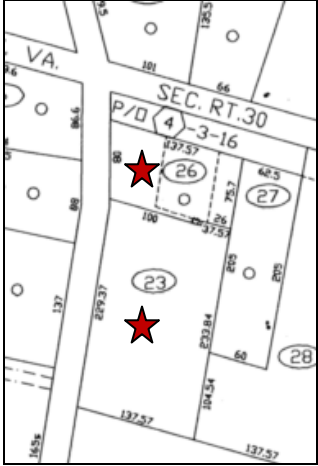

10'

PERPOSED SET BACK

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

**Always LTD, LLC d/b/a The Bakerton Market (#Z09-01)**

Item #5 Public hearing and possible action on the Conditional Use Permit request by Always LTD, LLC d/b/a The Bakerton Market for a community laundromat to be located in an existing structure.

APPLICANT:	Always LTD, LLC d/b/a The Bakerton Market
OWNER :	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	834 Carter Avenue, Harpers Ferry, West Virginia
LEGAL DESCRIPTION:	District: Harpers Ferry; Map: 3A; Parcel: 23 & 26 
ZONING DISTRICT:	Zoning Map Designation: Village (V) 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North: V                      South: V</i> <i>East: V                         West: V</i>
LOT AREA:	0.3068 acres and 0.64909 acres
PRIOR CASES:	ZC96-03 (for expansion of nonconforming use)
VARIANCE(S):	ZV92-69 (Section 9.5B, Projections into Yards)
APPROVED ACTIVITY:	Non-conforming commercial use

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

**Always LTD, LLC d/b/a The Bakerton Market (#Z09-01)**

RELEVANT INFORMATION:

1. Overview of Request

Always LTD, LLC d/b/a The Bakerton Market has requested a Conditional Use Permit to establish a coin-operated laundromat in an accessory building located on the same property as an existing market.

The Bakerton Market is an existing non-conforming commercial use. The market sells groceries, household goods, gifts, sandwiches and other made-to-order foods. The Bakerton Post Office is co-located within the same structure. The principal market building was significantly damaged by fire in 2005 and rebuilt in 2009.

Details provided in the application include:

- The proposed laundry would be located in an existing 12' x 16' building on the property formerly known as the "Snack Shop". This structure is located approximately 18' to the west of the principal building on the site and is located on the same lot as the principal structure.
- Washers and dryers would be installed in the building (per the applicant, a maximum of 5 washers and 5 dryers).
- The building will be improved with matching exterior features to be consistent with the existing market building.

2. Zoning

The subject property is located in the Village District. This district allows very few types of permitted non-residential land uses; however, it also includes several conditional uses that may be approved following completion of the Development Review System. For Village District conditional uses, a LESA score is not applicable.

Staff determined that the requested land use is similar in nature to one of the conditional uses named in this district (Dry Cleaners). For this reason, the application for a Conditional Use Permit was permitted to proceed without a LESA score.

Setbacks for an existing structure in the Village District are 6' on each side, and setbacks for a commercial use in this district may be modified as a result of the Compatibility Assessment Meeting.

Staff determined that the number of existing parking spaces for the site is adequate for the addition of this land use to the property.

3. Comprehensive Plan Compatibility

The applicant stated in the application, "This minuscule change in use does not impact the Comprehensive Plan in any magnitude. Further development is not required for the minor changes to the existing structure to facilitate a laundry. The Comprehensive Plan for our Village District and the concept therein find that a Dry Cleaning facility is acceptable; a laundry facility is the same concept without the caustic chemicals necessitated in a Dry Cleaning operation."

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

**Always LTD, LLC d/b/a The Bakerton Market (#Z09-01)**

4. Development Review System Process

The Development Review System (DRS) process begins when an application is submitted. At this time, staff conducts an evaluation of the application in accordance with the standards of Article 6. As noted above, for an application in the Village District, the Land Evaluation and Site Assessment (LESA) scoring process does not apply. As such, the application is advanced to the Neighborhood Compatibility Meeting (NCM). Following this meeting, the application is reviewed by the Board of Zoning Appeals (a public hearing is required if the NCM results in unresolved issues).

The status of the Bakerton Market CUP application in completing the DRS process is as follows:

<b>Milestone</b>	<b>Date</b>	<b>Status</b>
Application filing	April 8, 2009 (initial submittal) November 14, 2011 (resubmittal)	Application has met all submittal requirements of Section 7.4
Staff Evaluation per the Development Review System	N/A	N/A – No LESA evaluation required
Neighborhood Compatibility Meeting (NCM)	December 14, 2011	Meeting resulted in unresolved issues.
Board of Zoning Appeals Meeting (BZA)	December 15, 2011 (postponed)	This item was originally scheduled to be heard on this date, but postponed to the January 19 <sup>th</sup> meeting due to the outcome of the Compatibility Assessment Meeting.
Board of Zoning Appeals (BZA)	January 19, 2012	This item is on the BZA meeting agenda as a public hearing. The Board may approve, approve with conditions, or deny the application.

5. Related Cases

On April 11, 1996, the Department approved a Zoning Certificate for the expansion of a nonconforming use, within the 35% expansion limit permitted by Section 4.3 of the Ordinance.

6. North American Industry Classification System

As required by Section 7.5, staff has assigned a NAICS code to the proposed land use.

<b>NAICS Code</b>	<b>US NAICS Title</b>
812310	Coin-Operated Laundries and Drycleaners

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

**Always LTD, LLC d/b/a The Bakerton Market (#Z09-01)**

7. Compatibility Assessment Meeting

Planning and Zoning Department staff conducted a Compatibility Assessment Meeting on December 14th at 10:00 AM. The meeting was conducted in accordance of the requirements of the Zoning and Land Development Ordinance. Staff summarized the Conditional Use Permit process and outlined the purpose of the meeting. The applicant, Wanda Mason-Ballenger, provided an overview of the proposed land use, and stated that the laundry would include 4-5 washers and dryers, all of which would be front-loading. She stated that the proposed use would provide a local laundry option for Bakerton residents who currently must travel to neighboring towns to use a laundry, and noted that the laundry would also benefit many residents who do not have cars.

Several speakers asked questions and expressed concerns regarding the proposed land use, and the Applicant addressed these concerns. Following the end of public testimony, staff summarized the issues raised by attendees, and identified which issues had been resolved at the meeting and which issues remained unresolved. There was consensus among those in attendance regarding the list of issues and the resolution status. The list of issues discussed at the meeting is below, and includes the resolution status of each issue.

#	Issue	Description	Applicant Response	Issue Status
1	Water usage	Concern that additional use of well water dedicated to use by washing machines will affect availability of water for users of wells that access the same aquifer. Is there a definitive way to determine this impact?	Most of the water used by the washing machines will be returned to the aquifer, following treatment. <i>[Note: following the meeting, the Jefferson County Health Department provided additional information: Projected average use of washers is 400 gallons per day per machine; running out of water in this area appears unlikely. The owner may need storage tank capacity for peak water demand times.]</i>	Unresolved.
2	Groundwater quality	Concern that washing machine discharge – including detergent, chlorine bleach, and biohazard residues – will affect groundwater quality.	Wastewater treatment will need to meet Jefferson County Health Department standards. Applicant is currently researching different types of available filtration systems.	Unresolved.
3	Possible remaining gasoline soil contamination	A portion of the subject property was previously used as a gas station. It is possible that remaining gasoline contamination of the soil could be disturbed by construction of septic area and by wastewater release.  (Note: It was acknowledged that remediation has occurred; however, concerns were	The applicant was previously required to remove multiple tanks as well as significant quantities of soil. Documentation describing this remediation is available.  The septic drainfield area will be located behind the building; while the gas station/tanks were located at the front of the property, where the parking area is currently, per the applicant.	Unresolved.

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

**Always LTD, LLC d/b/a The Bakerton Market (#Z09-01)**

#	Issue	Description	Applicant Response	Issue Status
		voiced that not all contaminants may have been removed.)		
4	Sinkhole	Property contains the site of a former sinkhole, and the potential for other sinkholes exists.	Previous sinkhole has been filled.	Unresolved.
5	Hours of operation	How late will the laundry be open?	Laundry will be open only during hours when the store is open. Double doors will be installed in the front of the building and will be locked after hours. All machines will be located within the building.	Resolved.
6	Bathrooms	Will bathrooms be available to accommodate laundry customers?	Bathrooms in the Bakerton Market will be available to laundry customers. <i>[Note: Following the meeting, staff confirmed with the Jefferson County Health Department that the agency has no objection to the sharing of bathrooms.]</i>	Resolved
7	Parking	Concern that existing parking will be insufficient to accommodate the additional trips generated by the laundry, considering the likely duration of stay for a laundry user.	(Staff comment: Staff visited the site and determined that the number of existing parking spaces will be adequate for the additional commercial square footage.)	Unresolved (staff to reconfirm adequacy of parking)
8	School bus stop safety	A school bus stop is located in front of the store. There are concerns that the additional traffic generated by the laundry could pose a safety hazard to children who use the bus stop.	Limited number of washing machines will not generate significant traffic impact. (Staff comment: The school district can be advised that traffic may increase as a result of the laundry.)	Unresolved.
9	Property tax assessment	If the use of the structure changes, will the Tax Assessor's Office change the way adjacent properties are valued?	Staff comment: Assessments are based on each property's use, rather than the use of adjacent properties. In this case, the subject property is already used for commercial purposes.	Resolved.
10	Crime and public safety	There are concerns that an influx of laundry users would lead to additional crime and public safety issues.	It is unlikely that many additional people will choose to drive to Bakerton to use the laundry; most users are likely to be local residents.	Unresolved.

Two residents spoke in favor of the proposed laundry, but reiterated concerns regarding its potential impact on water supply and water quality. Additionally, one resident submitted two letters for the record, including one letter written by another resident.

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

**Always LTD, LLC d/b/a The Bakerton Market (#Z09-01)**

8. Board of Zoning Appeals Action

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

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

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

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

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

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

**Always LTD, LLC d/b/a The Bakerton Market (#Z09-01)**



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

**Always LTD, LLC d/b/a The Bakerton Market (#Z09-01)**

9. Possible Conditions of Approval

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

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

#	Issue	Agreed-Upon Condition
5	Hours of operation	Laundry will be open and unlocked only during hours when the store is open. All machines will be located within the building.
6	Bathrooms	Bathrooms in the Bakerton Market will be available to laundry customers.
9	Property tax assessment	N/A

- b. Conditions to address “unresolved” issues discussed at the Neighborhood Compatibility Meeting:

#	Issue	Proposed Condition
1	Water usage	Number of machines is limited to 5 washers and 5 dryers. Front loading machines are required.
2	Groundwater quality	Prior to issuance of a Zoning Certificate for the use, approval by the Jefferson County Health Department (or other applicable agency) for water and wastewater is required.
3	Possible remaining gasoline soil contamination	The owner shall provide documentation from the West Virginia Department of Environmental Protection regarding completion of removal of underground gasoline storage tanks.
4	Sinkhole	The owner shall send a letter to the Jefferson County Health Department and the West Virginia Department of Environmental Protection documenting the location of the previous sinkhole.
7	Parking	The owner shall install a handicapped accessible parking space if required by the Engineering Department.
8	School bus stop safety	Prior to issuance of a Zoning Certificate for the use, the owner shall send a letter to the school district stating that traffic may increase as a result of the laundry
10	Crime and public safety	No conditions are identified. Staff believes this issue to be beyond the scope of the Conditional Use Permit process.

SECTION OF ORDINANCE TO BE CONSIDERED:

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

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

**Section 5.10 Village District<sup>8, 23</sup>**

A. Conditional Uses<sup>23</sup>

The following uses may be approved after being evaluated by the Development Review System (Article 7). The LESA point system would not apply.

1. Barber/Beauty Shop, Limited
2. Dry Cleaners

**Section 7.6 Compatibility Assessment Meeting**

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

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

- A. Unless otherwise superseded by the Board of Zoning Appeals Rules of Procedure, a public hearing for a Development Review System application shall be conducted in accordance with this section.
- B. The public hearing will be conducted by the Board of Zoning Appeals. The purpose of the meeting is to hear the staff's report of the issues and concerns raised at the Compatibility Meeting. Any comments relative to the validity of the staff's report should be presented at this meeting. Concerns that have been addressed and agreed upon as accurate by the majority of

Staff Report  
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those present at the Compatibility Assessment Meeting should not be addressed at this hearing. Speakers shall be limited to resolution of issues which could not be resolved at the Compatibility Assessment Meeting and the compatibility of the project within the neighborhood.<sup>1, 17, 21</sup>

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

APPLICATION FOR CONDITIONAL USE PERMIT

Name of Project: THE BAKERTON LAUNDRY

Have fees been paid? YES  NO  Amount \$ 250.00

Name of Applicant: ALWAYS LTD LLC d/b/a THE BAKERTON MARKET

Address: 834 CARTER AVENUE  
HARPERS FERRY WV 25425

Telephone Number: 304/876-6280

Name of Property Owner: ALWAYS LTD LLC d/b/a THE BAKERTON MARKET

Address: 314 RIVER CLIFF DRIVE  
HARPERS FERRY WV 25425

Telephone Number: 304/876-6280

Tax Map Reference - District HARPERS FERRY Map# 3A Parcel# 23

Deed Book # 984 Page# 102

Tract Size .3068 AC

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

CONCEPT INDICATES "DRY CLEANER" IS ACCEPTABLE

TO THE PLAN; S. KELLY & J. SNYDER CONCUR THAT LAUNDRY WOULD COMPARE TO DRY CLEANER WITHOUT CAUSTIC CHEMICALS  
What is the proposed use of the property?

COMMUNITY LAUNDRY MAT-WASHERS & DRYERS

Sketch plat must be provided (refer to 7.4b).

Is the sketch plat pursuant to 7.4b  YES  NO

Signature of Property Owner: W. Mason Ballenger W. Mason Ballenger

Print Name: W. MASON-BALLENGER

Date: 28 MAR 09

11/14/2011

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APR 08 2009

JEFFERSON COUNTY PLANNING,  
ZONING & ENGINEERING

pd ck 1721

\$ 250.00

**FOR OFFICAL USE ONLY**

Fees Paid: \_\_\_\_\_ Date Application / Fees Received: \_\_\_\_\_

Date of meeting / Public Hearing: \_\_\_\_\_

Official Administrative Body: Jefferson County Planning Commission

Posting Requirements: \_\_\_\_\_ Number of Days Prior to Scheduled Hearing

Advertising Dates: \_\_\_\_\_

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

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

Support Data  
Application for Conditional Use Permit  
The Bakerton Laundry  
834 Carter Avenue  
Harpers Ferry, WV 25425

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1. Name and address of Owners:  
Always Ltd., LLC  
Gerald W. Ballenger and Wanda Mason-Ballenger  
314 River Cliff Drive  
Harpers Ferry, WV 25425
2. Name and address of contact person:  
Wanda Mason-Ballenger  
314 River Cliff Drive  
Harpers Ferry, WV 25425
3. Type of development proposed:  
Installation of commercial washing machines and dryers in the existing building that was used as the Snack Shop after the fire at The Bakerton Market and before the main facility rebuild.
4. Acreage of original tract and property to be developed:  
No additional acreage from the original tract will be used, only the use of the existing building will be changed.
5. General description of surface conditions:  
Virtually flat parcels covered with grass with exception of the parking lot, delivery lane and basketball court.
6. Soil and drainage characteristics:  
Examination of the soil texture reveals no compaction, good soil bulk density and adequate pore spaces; which are indicative of acceptable permeability. The color pattern does not show wetness indicators of gray or white mottling. Drainage of soil in posterior tract averages more than one inch per hour in a two foot by two foot test hole.
7. General location and description of existing structure:  
The structure was formerly utilized as The Snack Shop and is approximately eighteen feet to the West of the newly re-built Bakerton Market toward the Southern elevation of same on the posterior of the forward tract of land owned by Always, Ltd. LLC and measures twelve feet by sixteen feet, situated on a poured concrete slab.
8. General location and description of existing easements or rights-of-way:  
There is a thirty foot right-of-way on Carter Avenue; which runs on the Northerly side of the location and a thirty foot right-of-way on Maple Avenue; which runs on the Westerly side of the location. All existing lot lines are setback in compliance with the Jefferson County Zoning Ordinance.

9. Existing covenants and restrictions on the land:  
The land is governed by Section 5.10 as amended by act of the County Commission on May 18, 1996 and is recognized as part of a Village District. There are no covenants or restrictions in the Deed of Record.
10. Intended improvements and proposed building locations including locations of signs:  
The existing 12 x 16 building will be improved with matching exterior features to be in continuity with the newly re-built Market. The existing 6" black letters that read "THE BAKERTON MARKET" on the fascia of the existing building will be replaced with 6" black letters that will read "THE BAKERTON LAUNDRY", or comparable.
11. Intended land use:  
The existing Bakerton Market and a coin-operated Laundry, for public use, adjacent to the existing Bakerton Market are the proposed uses for these land parcels.
12. Earth work that would alter topography:  
Excavation is necessary for installation of a gray water reserve tank and appropriate lines to facilitate the use of this tank and supports required for same.
13. Tentative development schedule:  
Upon receipt of approval from Jefferson County, the work on the building can commence; the necessary work is primarily cosmetic, with some plumbing and electrical enhancements. The washing and drying units will be ordered and installed within weeks after Jefferson County approval.
14. Extent of the conversion of farm land to urban uses.  
No conversion will occur.
15. Effected wildlife populations:  
The local wildlife will not be impacted, with exception of probable delight due to the fresh scent of clean laundry in the neighborhood.
16. Ground water, surface water and sewer lines within 1320 feet:  
The waste water consists of gray water only; which does not significantly impact the ground water or the local hydrologic cycle. The sullage from the laundry is non-industrial wastewater. The ground and surface water technically "feed" one another and the machines we are placing in the facility are front loading to use minimal water and thus will not inundate our ground and surface water supplies. We have no sewer lines in this area. Additionally, we are intent upon placing a water recovery tank that would collect all gray water from the laundry and would be pumped out periodically and disposed of elsewhere, thus there would not be any impact on ground nor surface water.
17. Distance to fire and emergency services that would serve this site:  
The Bakerton Fire Department is approximately fifty yards from our Market on the opposite side of Carter Avenue.
18. Distance to the appropriate elementary, middle and high school:  
The distance to C. W. Shipley Elementary School is 4.87 miles; the distance to Harpers

Ferry Middle School is 5.5 miles and the distance to Jefferson High School is 4.52 miles.

19. **Traffic characteristics:**  
The speed limit on Carter Avenue is twenty-five miles per hour; Carter Avenue is a two lane, black topped road with two solid double lines. The traffic is light to moderate by virtue of being in a rural area with burgeoning urban overtones. Traffic would not be impacted significantly, inasmuch as the existing patrons of The Bakerton Market would comprise the majority of the users of the proposed laundry facility and a large portion of the proposed patrons are within walking distance. Many of the patrons that would most benefit from the proposed laundry facility do not own vehicles and this fact substantiates the need for a laundry in our neighborhood.
20. **Demand for school services created by this development:**  
There will be no changes impacting the demand for school service; The Bakerton Market is an official Jefferson County School Bus Stop.
21. **Proximity and relationship to historic structure or properties:**  
The Bakerton Market hosted a celebration for Bakerton's 120<sup>th</sup> anniversary in 2009; the Pentecostal Holiness Church is located at the end of Carter Avenue on Engle-Molers Road and is dated 1837 on its cornerstone. There are a several battlefields and grave-yards with historical merit within a five mile radius of the subject property.
22. **Proximity to recreational facilities:**  
KOA Campground, Harpers Ferry Historic Park, Sam Michaels Park, the Campgrounds owned and operated by Michael Knott of River Riders and utilized by sundry Outfitters, the Toy Train Museum, the 340 Flea Market and the Shenandoah and Potomac River are within an approximate fifteen mile proximity to the subject property.
23. **Relationship of the project to the Comprehensive Plan:**  
This miniscule change in use does not impact the Comprehensive Plan in any magnitude. Further development is not required for the minor changes to the existing structure to facilitate a laundry. The Comprehensive Plan for our Village District and the concept therein finds that a Dry Cleaning facility is acceptable; a laundry facility is the same concept without the caustic chemicals necessitated in a Dry Cleaning operation.

#### Section 7.4 (e)

1. Densil Nybert, 2224 Warm Springs Road, Shenandoah Junction, WV 25442
2. Zephyr (Carter House), Deborah Jackson, 67 Poke Street, Harpers Ferry, WV 25425
3. Heirs of Louise Talley, 813 Carter Avenue, Harpers Ferry, WV 25425
4. Todd Furr & Karen Furr, 12 Maple Avenue, Harpers Ferry, WV 25425
5. Mike Gavin & Ineata Gavin, 34 Maple Avenue, Harpers Ferry, WV 25425
6. Gerald Ballenger & Wanda Mason-Ballenger, 48 Maple Avenue, Harpers Ferry, WV 25425
7. Craig Terry & Stephanie Hixon, 95 Maple Avenue, Harpers Ferry, WV 25425



Scale 1" = 50'

- LEGEND:  
 ⊠ FENCE POST  
 ⊙ FOUND SQUARE BAR  
 ● SET #5 REBAR & CAP

WEST VIRGINIA STATE GRID  
 NORTH ZONE

WEST VIRGINIA ROUTE 30  
 CARTER AVENUE - 30' R/W  
 S 73°31'09" E 125.79'

WEST VIRGINIA ROUTE 30/1  
 MAPLE AVENUE = 30' R/W

N 10°24'55" E 110.47'  
 108.69'

N 77°09'15" W 128.04'

102.52'  
 S 09°36'45" W 102.53'

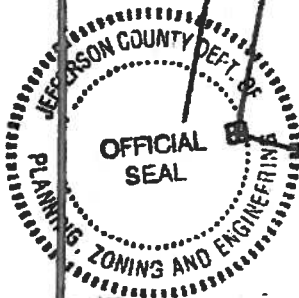
EXISTING BUILDING, FORMERLY USED AS SNACK SHOP DURING MARKET REBUILD.



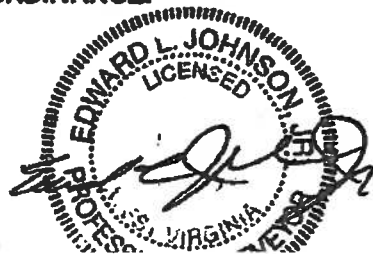
TN 3A P 23  
 ALWAYS, LTD, LLC.  
 BB 384 PG 102

TN 3A P 27  
 SNYDER  
 BB 166 PG 356

*W. Jason Ballenger*



NEW LOT LINES ARE SETBACK COMPLIANT WITH THE COUNTY ZONING ORDINANCE.



Good Morning,

I would like to extend my most humble appreciation to listening to my voice of concerns, regarding the change in use of the Bakerton Market property, not only as an adjacent homeowner; but, as a member of the community.

I feel the community would be adversely impacted by this change. Below please find my concerns:

1. What would be the impact of the water supply to community residents as everyone is on well. Several properties are constructed within 50 to 100 feet of the structure.
2. Is the septic system within the county guidelines to incur such an increase of demand? What measure would be taken if biohazard material entered in the water supply?
3. With such a drastic change with the discharge of sewage, what measure would be taken to present possible sinkhole or earth erosion?
4. What would be the hours of operation?
5. What type of facilities will be available to the patrons (i.e. bathroom) since the structure is not directly attached to the Bakerton Market?
6. Where would parking be located?
7. With the additional traffic and the school bus stop location what measure would be taken for the safety of the children?
8. Assuming the late hours of operation, how would public safety be addressed?
9. If this change is approved, how would the adjacent properties be assessed for tax purposes?

Todd and Karen Furr  
12 Maple Avenue  
Harpers Ferry, WV 25425

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DEC 14 2011  
JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

DEC 14 2011

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

My husband and I have lived less than 50ft from the Bakerton Market since July 2001.

I work for the Jefferson Co. Schools in Special Education and my husband Michael Gavin is an Executive Chef at Holiday Inn in Martinsburg.

We were not able to make it to the meeting due to our jobs.

We hope this letter will help. We are concerned. *Michael Gavin*

12-12-2011

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Bakerton Market laundry mat concerns

- Water concerns amount of water could affect adjacent well water supplies
- Waste water large amounts could leach in to well water of adjacent wells.
- Increase of traffic will make roads unsafe for pedestrian traffic.( most residents have laundry in resident)
  - Decrease in property values ( will cheapen our property values)
- Bring in unsavory individuals ( We don't have any localized police recourses )
  - Will spoil Bakerton's ascetics ( Will cheapen Bakerton's charm)
    - Could lead to further un wanted development
- Environmental Impact ( We don't know what may be washed & what will be used to wash it) introducing un wanted chemicals & possible bio hazards to our water as Bakerton has no sewage treatment set up to deal with this concern)
  - Most residents do not want nor will support a laundry mat.

*Michael  
G. Smith*

*Wanda  
Garvin*