

Jefferson County

Board of

Zoning Appeals

Thursday,

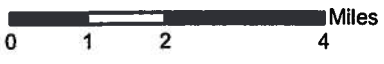
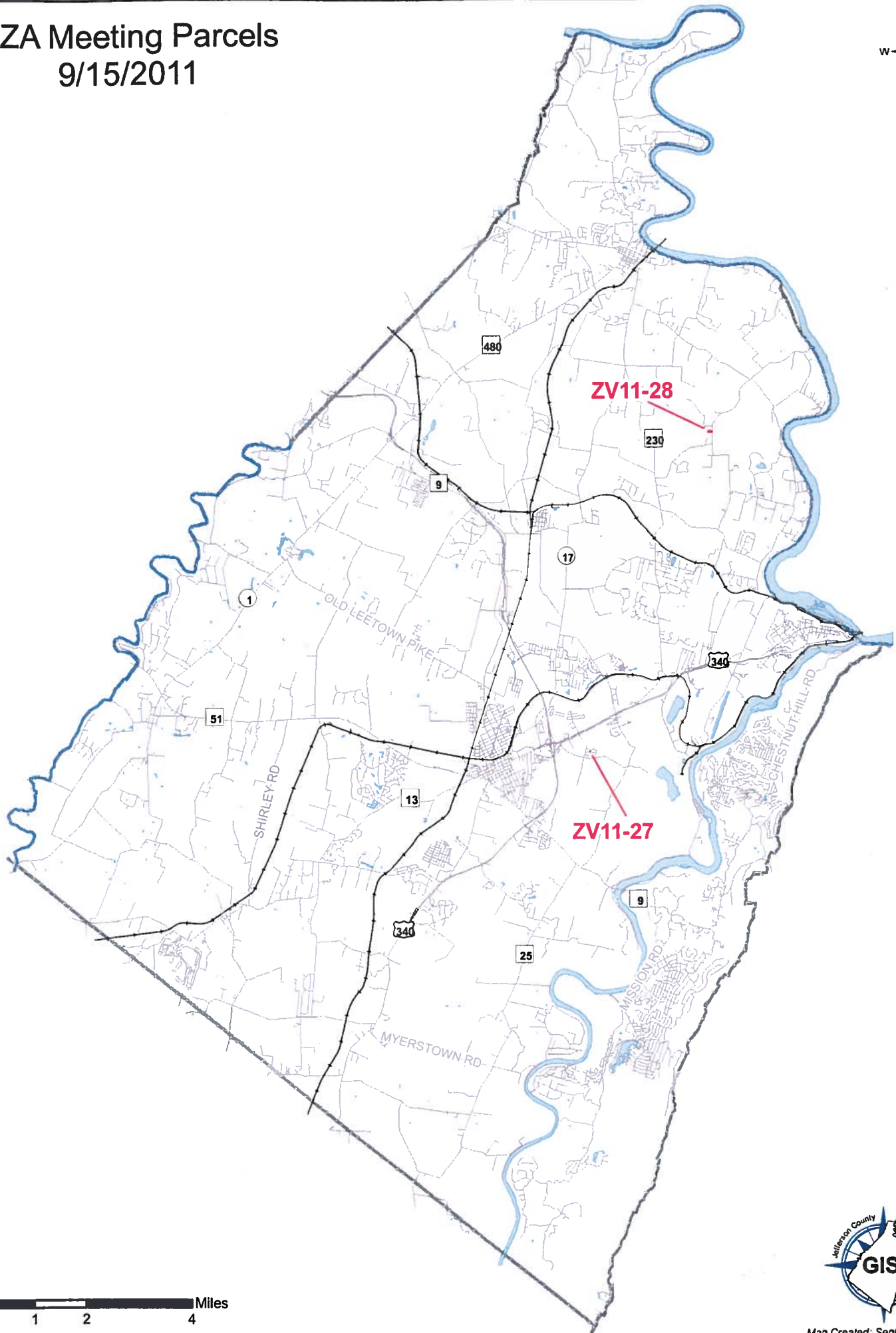
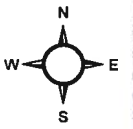
September 15, 2011

AGENDA
Jefferson County Board of Zoning Appeals
Thursday, September 15, 2011, 3:00 p.m.

1. Approval of the Minutes from the August 18, 2011 meeting.
2. Variance request by property owner, Douglas A. Carter, from Section 5.4(b) for a reduction of the side and rear setback distances to allow for the continued placement of an existing shed. Property location: Demory Farm Subdivision, 75 Victoria Lane, Charles Town, West Virginia. (District: Charles Town – 02; Map 9B; Parcel 46; Size: 0.20 acres; Zoned: Residential Growth; File: #ZV11-27).
3. Variance request by property owner, David P. McCloskey, from Section 5.7(b) for a reduction of the side and rear setback distances to allow for the continued placement of an existing pool and pool deck, and the proposed construction of a 42' x 30' x 22' detached garage. Property location: 3081 Engle Molers Road, Harpers Ferry, West Virginia. (District: Shepherdstown – 09; Map: 18; Parcel: 36; Size: 2.0 acres; Zoned: Rural; File: #ZV11-28).
4. Director's Report.
5. Legal Update.
6. Vote on written decisions from prior Board of Zoning Appeals meetings.
 - a. Findings of Fact and Conclusions of Law for the variance request by property owner, Glenn S. Cogle, from Section 8.2 to allow a seventy year old barn, rebuilt without permit, to remain sited on the original foundation.
7. Correspondence.

BZA Meeting Parcels

9/15/2011



Draft Minutes
Jefferson County Board of Zoning Appeals
Thursday, August 18, 2011

The Jefferson County Board of Zoning Appeals met on Thursday, August 18, 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, Tyler Quynn, Ed Kelly, Christy Huddle and Jon Brusco were present. Staff members present were: Jennifer Brockman, Director of Planning; Steve Barney, Zoning Administrator; Steve Groh, Assistant Prosecuting Attorney and Jennilee Hartman, Zoning Clerk.

Tiffany Hine was absent with notification.

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 May 19, 2011 and July 21, 2011 meetings.

Ms. Huddle motioned to approve the May 19, 2011 minutes. Mr. Quynn seconded the motion. Ms. Huddle questioned the use of the term 'electrical' on the last line of Page 3. Mr. Barney stated it should have been "power." Mr. Quynn pointed out that Ms. Hine was used as used twice on page 5, of Item 2, in paragraph 2. Ms. Hartman stated she would review her notes and correct the error. The May 19, 2011 minutes were approved, pending corrections, by Ms. Huddle, Mr. Bresee and Mr. Quynn. Mr. Brusco and Mr. Kelly abstained from voting because they were absent from the May 19, 2011 meeting.

Mr. Brusco motioned to approve the July 21, 2011 minutes. Mr. Kelly seconded the motion, which carried along with Mr. Bresee's vote. Ms. Huddle and Mr. Quynn abstained from voting because they were absent from the July 21, 2011 meeting.

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

2. Variance request by property owners, Faheem and Liliana Ramadan, from Section 5.4(b) for a reduction of the rear setback distance from 20' to 13' to allow for the construction of a freestanding deck. Property location: Deerfield Village Subdivision, 53 Mossy Oak Court, Shepherdstown, West Virginia. (District: Shepherdstown- 09; Map 14B; Parcel 27; Size: 0.267 acres; Zoned: Rural; File: #ZV11-19).

Ms. Ramadan was present to address the Board. The Board had questions about the structural components of a freestanding deck. Mr. Bresee called for public comment. There was no public comment. Mr. Barney noted that there is a utility and open space area behind the applicant property. Ms. Ramadan provided three letters of support from her neighbors.

3. Variance request by property owner, John D. Lowe, III ET AL from Section 9.5(b) to retain a 10' high deer fence within a required yard. Property location: West side of Alt. Rte. 45 Connector Road, Shepherdstown, West Virginia. (District: Shepherdstown-09; Map 8; Parcel 6; Size: 10.5 acres; Zoned: RG; File: #ZV11-21).

Mr. Philip Lowe, owner and operator of Potomac Nursery, was present to address the Board. Mr. Lowe explained that he had replaced a fence that had previously been in the same location. Mr. Lowe stated that the USDA paid for some of the cost of the fence, and that he had gotten permission from the bordering property owners to install the fence. Mr. Lowe stated he was not aware that a permit was needed for the fence. Mr. Lowe provided the Board with a petition signed by adjacent property owners in support of the fence. Mr. Lowe stated the fence is at least 20' or more from the property line. Mr. Lowe confirmed that the purpose of the fence is to exclude deer, and that the fence serves its purpose. The Board discussed agricultural uses. Mr. Bresee called for public comment. Judy Moore spoke from a previously submitted letter on behalf of Linda O'Brien, Christine Palank, Maureen Small and Leslie Williams. Ms. Moore stated they did not object to the fence; rather, that their concern was over the fact that the applicant did not apply for a permit prior to building the fence and that the applicant did not provide a survey showing the property boundary lines. Ms. Huddle explained that a survey is not required as part of the application process.

4. Variance request by Fellowship Bible Church (represented by Richard Beddow, Property Manager) from Section 4.10 to allow installation of one additional modular classroom without the requirement of a Site Plan. Property location: 160 Daniel Road; Charles Town, West Virginia. (District: Charles Town - 02; Map: 3; Parcel: 4.5; Size: 50 acres; Zoned: Rural; File: #ZV11-22).

Mr. Beddow was present to address the Board. Mr. Beddow stated the church's building committee projected that they would be building the permanent structure of the church within 2 years. Mr. Bresee called for public comment. There was no public comment. Mr. Barney added that this request would be an increase of 284 square feet above the previously approved variance request.

5. Variance request by property owner, Glenn S. Cogle, from Section 8.2 to allow a seventy year old barn, rebuilt without permit, to remain sited on the original foundation. Property location: 157 Cogles Fields Lane; Harpers Ferry, WV. (District: Charles Town - 02; Map 20-1; Parcels 48 & 48.5; Sizes: .65 & 19.67 acres; Zoned: Rural; File: #ZV11-23).

Mr. Glenn Cogle was present and provided a handout to the Board. Mr. Glenn Cogle explained the previous barn became dilapidated over time and eventually severely damaged due to a heavy snowfall. Mr. Glenn Cogle stated he used some remnants of the old barn to construct the new barn on the existing foundation. Mr. Glenn Cogle further stated that he did not believe he needed a permit since he did not change the use of the barn and did not change the location in order of the barn. Patty Cogle, property owner, explained to the Board that they built the barn in the same location to be in keeping with the 1977 deed which granted permission to other members of the family to have access to the barn. Had they built the barn solely on their own property the barn could not have been used by the other family members. Mr. Bresee called for public comment. Mr. Gary Cogle spoke in opposition to the request. Mr. Gary Cogle argued that the barn sitting in the right-of-way hinders the sale of the property. Mr. Gary Cogle further argued that Glenn Cogle is a contractor in Jefferson County and therefore knew about the permitting process. Mr. Barney clarified that the majority of the barn is located on the

applicant's property. A portion of the barn is located on a private access easement. The Board discussed the term nonconforming use.

6. Variance request by property owner, Tessa Yvonne Reed, from Section 5.4(b) for a reduction of the rear setback distance from 20' to 16' to allow for the addition of steps to an existing deck. Property location: Windmill Crossing Subdivision, 73 Don Quixote Drive, Charles Town, West Virginia. (District: Charles Town – 02; Map: 9C; Parcel: 134; Size: .345 ac; Zoned: Residential-Light Industrial-Commercial; File: #ZV11-24).

Ms. Reed was present to address the Board. Ms. Reed confirmed the deck would be entirely within the backyard. Mr. Bresee called for public comment. There was no public comment.

7. Variance request by property owners, George R. and Dixie A. Wolfe, from Section 9.7 for a reduction of the side setback distance from 20' to 4' to allow for the construction of an open carport. Property location: 1424 Summit Point Road; Summit Point, WV. (District: Middleway – 07; Map: 28; Parcel: 10.1; Size: 2.5 acres; Zoned: Rural; File #ZV11-26).

Mr. Wolfe was present to address the Board. Mr. Bresee called for public comment. There was no public comment. Mr. Barney noted that a paved driveway exists where the carport is proposed. Mr. Barney also stated there are a significant number of trees on the other side of the home that may have to be removed if the carport were to be located there instead of the applicant's requested location.

Mr. Brusco motioned to go into deliberative session at 4:17 p.m. Ms. Huddle seconded the motion, which carried unanimously.

Ms. Huddle motioned to come out of deliberative session 4:27 p.m. Mr. Brusco seconded the motion, which carried unanimously.

Board of Zoning Appeals Rulings

2. Variance request by property owners, Faheem and Liliana Ramadan, from Section 5.4(b) for a reduction of the rear setback distance from 20' to 13' to allow for the construction of a freestanding deck.

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

3. Variance request by property owner, John D. Lowe, III ET AL from Section 9.5(b) to retain a 10' high deer fence within a required yard.

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

4. Variance request by Fellowship Bible Church (represented by Richard Beddow, Property Manager) from Section 4.10 to allow installation of one additional modular classroom without the requirement of a Site Plan.

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

5. Variance request by property owner, Glenn S. Cogle, from Section 8.2 to allow a seventy year old barn, rebuilt without permit, to remain sited on the original foundation.

Mr. Quynn motioned to approve the above referenced request on the basis that the barn was built on the original foundation. Mr. Brusco seconded the motion, which carried unanimously.

6. Variance request by property owner, Tessa Yvonne Reed, from Section 5.4(b) for a reduction of the rear setback distance from 20' to 16' to allow for the addition of steps to an existing deck.

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

7. Variance request by property owners, George R. and Dixie A. Wolfe, from Section 9.7 for a reduction of the side setback distance from 20' to 4' to allow for the construction of an open carport.

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

8. Legal Update. None.

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

Ms. Brockman informed the Board of the upcoming text amendments to the Zoning Ordinance.

10. Correspondence. Leslie Williams email received July 25, 2011 regarding previous Lowe Products variance ZV11-10. The Board discussed the email.

Mr. Kelly motioned to adjourn the meeting at 4:43 p.m. Mr. Brusco seconded the motion, which carried unanimously.

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

JEFFERSON COUNTY, WEST VIRGINIA

Department of Zoning

116 East Washington Street

P.O. Box 338

Charles Town, West Virginia 25414

Phone: (304) 728-3228

Fax: (304) 728-8126

Email: zoning@jeffersoncountywv.org

MEMORANDUM

TO: Board of Zoning Appeals Members

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

FROM: Steve Barney, Zoning Administrator

DATE: September 9, 2011

SUBJECT: September Monthly Report of Department Activities

Issued Zoning Certificates

#ZC11-22 GLEN and PRICE SMITH, OWNERS

Issue Date: July 27, 2011
Proposed Use: Use existing residence as venue for small receptions.
Physical Location: 484 Augustine Avenue; Charles Town, West Virginia
Zone: Residential-Light Industrial-Commercial

#ZC11-24 EASTERN PANHANDLE RETAILERS, LLC
BONITA M. HUTZLER / CONTACT

Issue Date: August 25, 2011
Proposed Use: New owner / continued use of existing business -
dba Starting Gate Pub
Physical Location: 292 Prospect Avenue; Charles Town, West Virginia
Zone: Residential-Light Industrial-Commercial

#ZC11-26 J & J BAKERY, INC.
JOHN COSTANTINO, OWNER

Issue Date: August 31, 2011
Proposed Use: Restaurant, Take-out Bagel Bakery Sandwich &
Gourmet Coffee Shop
Physical Location: 126 Patrick Henry Way; Charles Town, West Virginia
Zone: Residential-Light Industrial-Commercial

Pending Zoning Certificates

#ZC11-11 ERIC and ANNA SOKEL, OWNERS

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

#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

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 Commissions²³

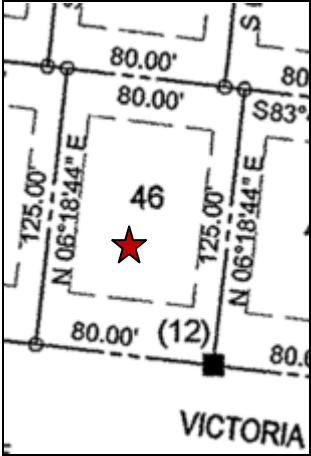
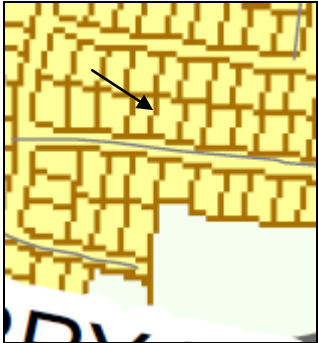
A. Board of Zoning Appeals

4. The Board of Zoning Appeals shall consider requests for variances from the terms of the Ordinance.²³
 - 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.^{17, 21}
 - 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
 September 15, 2011

Douglas A. Carter (#ZV11-27)

Item #2 Variance request by property owner, Douglas A. Carter, from Section 5.4(b) for a reduction of the side and rear setback distances to allow for the continued placement of an existing shed.

APPLICANT:	Douglas A. Carter
OWNER :	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	75 Victoria Lane, Charles Town, West Virginia
LEGAL DESCRIPTION:	District: Charles Town; Map: 9B; Parcel: 46 
ZONING DISTRICT:	Zoning Map Designation: Residential Growth (RG) 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> RG <i>South:</i> RG <i>East:</i> RG <i>West:</i> RG
LOT AREA:	0.2 acres
PRIOR CASES:	Demory Farm Subdivision #04-17
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 15, 2011

Douglas A. Carter (#ZV11-27)

RELEVANT INFORMATION:

1. Overview of Request

The Applicant seeks a setback variance from section 5.4.B of the Zoning and Land Development Ordinance for the following:

- Shed (existing) – Rear yard setback of 8’ (20’ required)
- Side yard setback of 8’ (12’ required)

Per the material submitted with the variance request, the shed is currently located approximately 8 feet from the side and rear property lines.

2. Applicant’s Justification of Request

The applicant’s justification of this request is as follows (see application for full text):

“Dismantling the structure and relocating it would result in the structure being placed in a spot undesirable to my neighbors and excessive financial burden to myself.”

“Location allows for adequate maintenance of the structure and existing neighbor’s fence. Structure provides for storage of lawn and garden tools.”



Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 September 15, 2011

Douglas A. Carter (#ZV11-27)

3. Staff Evaluation of Request

A shed is considered to be a residential accessory structure. The Zoning and Land Development Ordinance establishes shorter side and rear yard setbacks (5') for detached residential accessory structures with an area of less than 150 square feet.

The shed in question has an area of 192 square feet. As such, the standard zoning setbacks (20' rear, 12' side) apply. Alternatively, per Section 9.6.B, a property owner may use the dimension of the longest horizontal measurement of the structure (16') to establish the setback dimension; however, the existing shed would not comply with this setback.

On the application, the Applicant notes that the exceptions of Section 9.7 apply. However, these exceptions apply only lots approved prior to September 1, 1989 and lots approved without setbacks.



4. Possible Conditions of Approval

No conditions of approval are identified for this variance request.

SECTION OF ORDINANCE TO BE CONSIDERED:

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

	Development Type	Minimum Lot Area (MLA)	Required Yards (ft)				Maximum Building Height (ft)*
		Area per Dwelling Unit (ADU)	Front	Side	Street Side	Rear	
1	Single Family Dwelling	6,000 sq. ft. MLA**	25	12	15	20	40
	Public/Central water and sewer	10,000 sq. ft. ADU	“	“	“	“	“
	Public/Central water or sewer	20,000 sq. ft. MLA	“	“	“	“	“
	No Public/Central water or sewer	40,000. Sq. ft. MLA	“	“	“	“	“

ZV11-27

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): Douglas A. Carter

Address: 75 Victoria Lane
Charles Town, WV 25414

Phone Number: 304-724-9947

Location of Property: Demory Farm Subdivision

Lot Size: 0.20 acres (~ 8500 sqft)

Deed Book Reference: Deed Book Number 1076 Page Number 468

Tax Map Reference: District 2 Map 9B Parcel 0046 0000 0000

Zoning District: Residential Growth

Section of Ordinance: Article 5, Sections 5.4B c, d, e

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 am seeking this variance to allow me to have an accessory structure located 8'3" from the side and 8'1" from the rear property lines of my lot, which is in compliance with approved Jefferson County zoning exceptions as found in Article 9, section 9.7 of the county code.

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
AUG 12 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:

As required by Demon Farm Covenants + Restrictions, I sought and obtained approval of all of my immediate neighbors.

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

The structure is 12' x 16'. This was done for convenience in construction and not in defiance of county guidelines.

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

Disinventing the structure and relocating it would result in the structure being placed in a spot undesirable to my neighbors and excessive financial burden to myself.

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

Location allows for adequate maintenance of the structure and existing neighbors fence. Structure provides for storage of lawn and garden tools.

Douglas A Carter
Signature of Property Owner

Douglas A Carter
Print Name

8/12/11
Date

FOR OFFICIAL USE ONLY

Fees Paid: \$15000 Date Application / Fees Received: AUGUST 12, 2011

Date of meeting / Public Hearing: THURSDAY - SEPTEMBER 15, 2011 AT 3:00 P.M.

Official Administrative Body: Jefferson County Board of Zoning Appeals

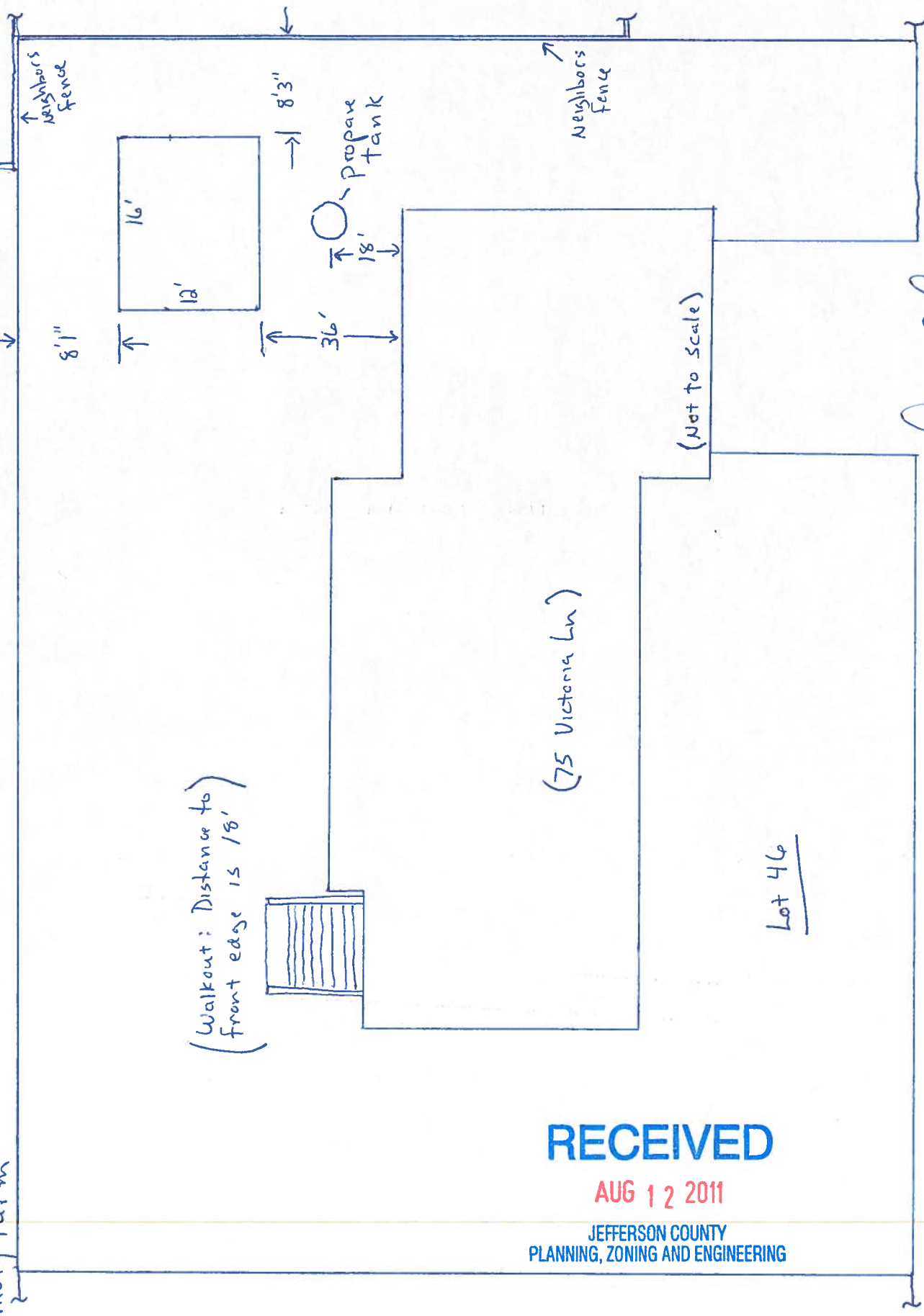
Posting Requirements: 15 Number of Days Prior to Scheduled Hearing

Advertising Dates: WEDNESDAY, ~~SEPTEMBER~~ AUGUST 31, 2011

Official Action of Board: _____

Official Signature and Seal: _____

Douglas A. Carter
75 Victoria Lane
Demory Farm



Douglas A. Carter 8/12/11

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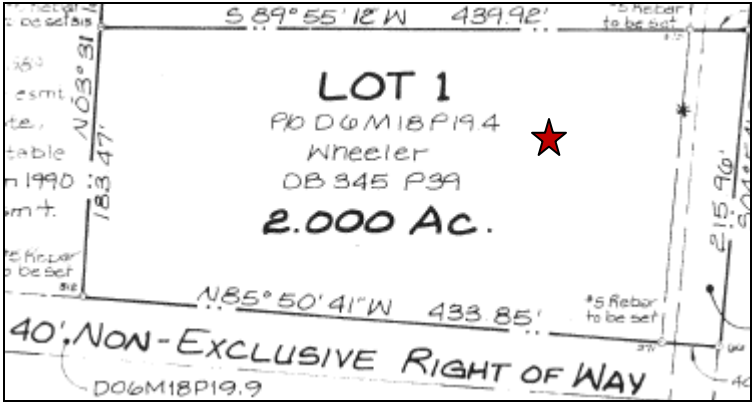
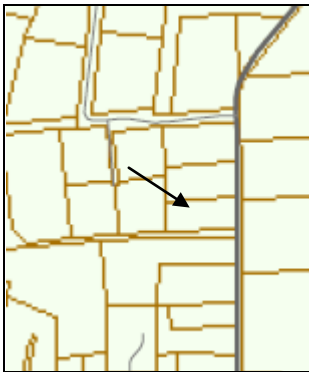
AUG 12 2011

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 September 15, 2011

David P. McCloskey (#ZV11-28)

Item #3 Variance request by property owner, David P. McCloskey, from Section 5.7.B for a reduction of the side and rear setback distances to allow for the continued placement of an existing pool and pool deck, and the proposed construction of a 42' x 30' x 22' detached garage.

APPLICANT:	David P. McCloskey
OWNER :	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	3081 Engle Molers Road, Harpers Ferry, West Virginia
LEGAL DESCRIPTION:	District: Shepherdstown; Map: 18; Parcel: 36 
ZONING DISTRICT:	Zoning Map Designation: Rural 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> Rural <i>South:</i> Rural <i>East:</i> Rural <i>West:</i> Rural
LOT AREA:	2 acres
PRIOR CASES:	Wheeler Minor Subdivision #89-57
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 15, 2011

David P. McCloskey (#ZV11-28)

RELEVANT INFORMATION:

1. Overview of Request

The Applicant seeks a setback variance from Section 5.7.B of the Zoning and Land Development Ordinance for the following:

Garage (proposed) – Rear yard setback of 33’ (50’ required)
– Side yard setback of 12’ (15’ required)

Pool (existing) – Rear yard setback of 15’ (50’ required)
Pool deck (existing) – Rear yard setback of 27’ (50’ required)

2. Applicant’s Justification of Request

The applicant’s justification of this request is as follows (see application for full text):

Pool / deck: “[T]he pool and pool deck were previously approved for construction on separate occasions and the setback for each were either different or overlooked 10 years ago.”

Garage: “Without this variance I will be unable to construct the garage at this size in a reasonable location on the property. The variance will allow storage of vehicles (and tractors) under roof and off the driveway pad. This will help prevent further damage as the driveway pad is currently crowded and is a source of vehicle collisions/damage.”

3. Staff Evaluation of Request

The Jefferson County Planning, Zoning and Engineering Department issued permits for both the pool (2004) and the pool deck (2005). The setbacks shown on the plans submitted with the permit applications match the setbacks of the built structures. Because the rear yard setback shown on the permit application is not consistent with the setback shown on the plat, it would appear that at the time the permit was reviewed, staff was not aware of the setbacks shown on the plat and instead applied the setbacks of Section 9.7b – which are appropriate in cases where a previously approved plat does not designate setbacks.

It should be noted that the 40’ side yard setback on the subdivision plat for this lot exceeds the Zoning and Land Development Ordinance setback requirement of 15’ for the Rural District.

Because this lot abuts two intersecting streets, it is considered a corner lot. However, because one of the streets is an access easement serving 5 or fewer lots, the lot edge fronting this easement is a side yard (not a front yard) per the Zoning and Land Development Ordinance.

The applicant has submitted letters of support from adjacent neighbors located to the south and to the west of the subject property.

4. Possible Conditions of Approval

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

- a. Access to the garage from the adjacent access easement is prohibited, unless the owner provides documentation to the Planning and Zoning Department that this lot has the legal right to access the easement.

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 September 15, 2011

David P. McCloskey (#ZV11-28)

SECTION OF ORDINANCE TO BE CONSIDERED:

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

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



North-facing view of rear (western) lot line, and trees screening pool area



West-facing view of proposed garage location



East-facing view of proposed garage location



South-facing view of pool area

ZVII-28

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 P. McCloskey

Address: 3081 ENGLE MOVERS Rd
HARPERS FERRY, WV 25425

Phone Number: (202)-1494-0650

Location of Property: SAME AS ADDRESS

Lot Size: 2.00 ACRES

Deed Book Reference: Deed Book Number 345 Page Number 39

Tax Map Reference: District Shepherdstown Map 18 Parcel 36000

Zoning District: Shepherdstown RURAL

Section of Ordinance: Regarding Setbacks 5.7B

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

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

SEE ATTACHED page 1 of 4 A)

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

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

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

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

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

See ATTACHED page 1 of 4 1.

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:

See ATTACHED page 1 of 4 2.

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

See ATTACHED page 1 of 4 3.

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

SEE ATTACHED page 1 of 4 4.

David P. McCloskey
Signature of Property Owner

David P. McCloskey
Print Name

August 25, 2011
Date

FOR OFFICIAL USE ONLY

Fees Paid: _____ Date Application / Fees Received: _____

Date of meeting / Public Hearing: _____

Official Administrative Body: Jefferson County Board of Zoning Appeals

Posting Requirements: _____ Number of Days Prior to Scheduled Hearing

Advertising Dates: _____

Official Action of Board: _____

Official Signature and Seal: _____

David P. McCloskey Variance Request

ZV11-28

- A) We humbly request variances on the setbacks of the aforesaid property on Lot 1 in the Wheeler Subdivision. The request is for an existing Pool, Pool deck and a proposed garage. Both existing construction, the pool and pool deck were previously approved for construction on separate occasions and the setbacks for each were either different or overlooked 10 years ago. Recently I was informed the setbacks of the covenants and are 40' from the front and sides and 50' from the rear.

During the approval process for the garage building permit, it was noticed that a variance would be needed and the existing previously approved constructed items should also be included in this request.

Without this variance I will be unable to construct the garage at this size in a reasonable location on the property. The variance would allow storage of vehicles (and tractors) under roof and off the driveway pad. This will help prevent further damage as the driveway pad is currently crowded and is a source of vehicle collisions/damage. Furthermore the previously approved construction items (Pool and Pool deck) should also be reviewed and approved to allow the property to be in compliance with zoning.

Requested variances as pictured in Figure 2 on page 2 of 4:

New Garage: Setback to 33' from previous setback of 50' from the rear of the property and to 12' from previous setback of 40' from the side.

Existing Pool: Setback to be 15' from previous setback of 50' from the rear of the property

Existing Pool Deck: Setback to 27' from previous setback of 50' from the rear of the property

1. The variance will NOT adversely affect the health, safety or welfare or the rights of the adjacent property owners. The variance will not adversely affect the continued convenience of access of the adjacent property owners. See figure 1 on page 2 of 4.
2. The variance arises from attributes of the property and was not knowingly created by the property owner.
3. The variance would allow for a garage to be constructed to secure storage of tools, pool supplies, lawn equipment and vehicles and reduce vehicle collision risks. The inclusion of the garage will be esthetically pleasing by its placement and will increase the overall value of the property.
4. The variance request consents to the intent of the zoning ordinance and permits substantial justice done. The variance promotes comfort, attractiveness, convenience, safety for the property owner and allows the property to be in compliance with zoning regulations.



Signature of Property Owner

David P. McCloskey

August 25, 2011

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David P. McCloskey Variance Request

ZV11-28

To whom it may concern,

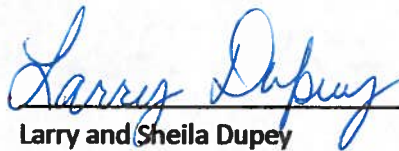
As neighbors of the McCloskey's, located directly south to their residence, we are aware and have been apprised that the existing construction and the requested new construction will require a variance of the zoning ordinances. We understand the variance to be as follows:

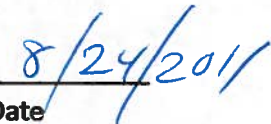
New Garage: Setback to 33' from previous setback of 50' from the rear of the property and to 12' from previous setback of 40' from the side.

Existing Pool: Setback to be 15' from previous setback of 50' from the rear of the property

Existing Pool Deck: Setback to 27' from previous setback of 50' from the rear of the property

We understand and believe that the construction on the McCloskey's property does not adversely affect the health, safety, welfare or the rights of the adjacent property owners. To our knowledge, the variance does not adversely affect the continued convenience of access of the adjacent property owners.


Larry and Sheila Dupey


Date

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#ZV11-23

David P. McCloskey Variance Request

To whom it may concern,

As neighbors of the McCloskey's, located directly behind their residence, we are aware and have been apprised that the existing construction and the requested new construction will require a variance of the zoning ordinances. We understand the variance to be as follows:

New Garage: Setback to 33' from previous setback of 50' from the rear of the property and to 12' from previous setback of 40' from the side.

Existing Pool: Setback to be 15' from previous setback of 50' from the rear of the property

Existing Pool Deck: Setback to 27' from previous setback of 50' from the rear of the property

We understand and believe that the construction on the McCloskey's property does not adversely affect the health, safety, welfare or the rights of the adjacent property owners. To our knowledge, the variance does not adversely affect the continued convenience of access of the adjacent property owners.

Sandy Kovach
Frank and Sandy Kovach

08/24/11
Date

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David P. McCloskey Variance Request

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Figure 1 – Actual aerial view, proposed Garage (in red center right).

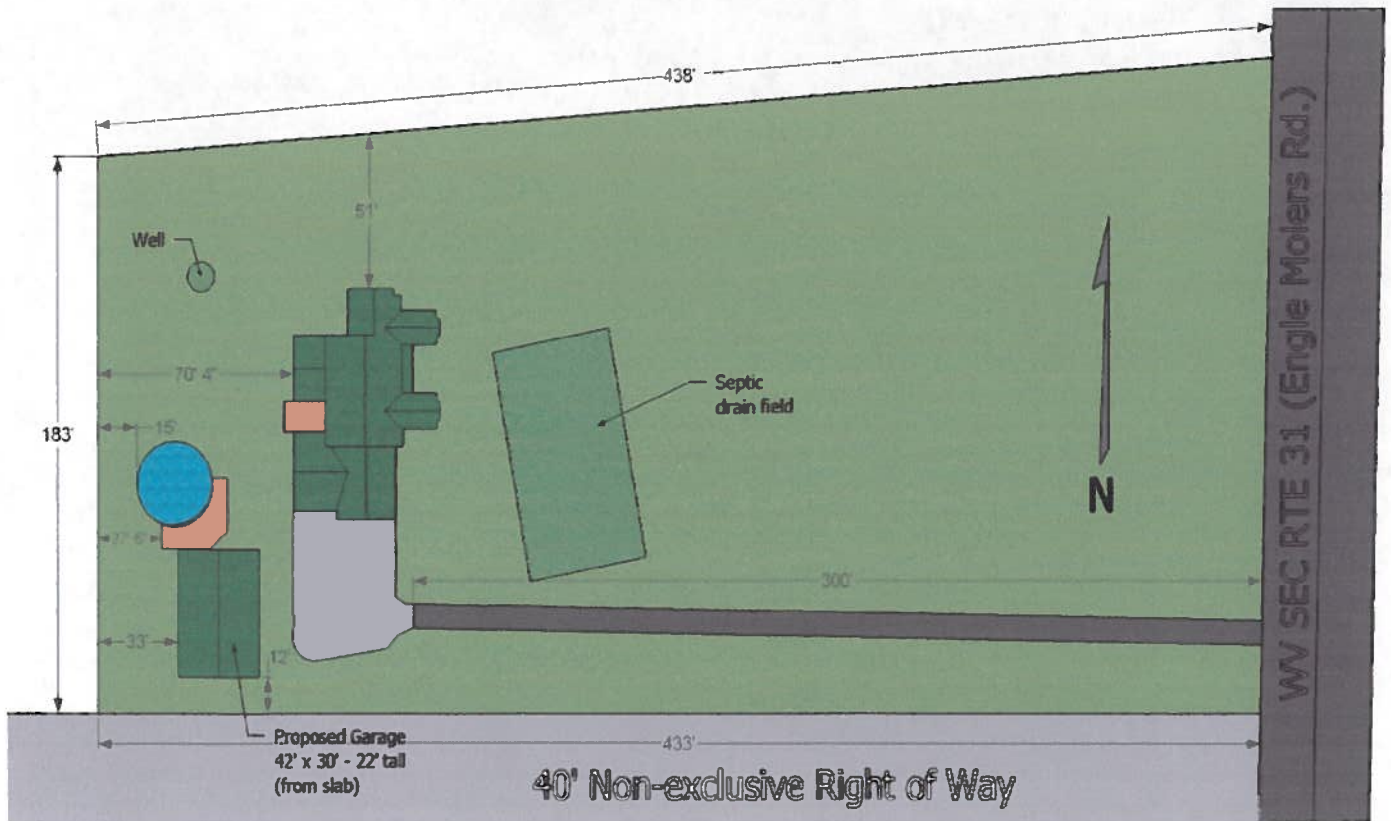


Figure 2 – Property layout front-of-residence looks eastward. Proposed Garage is in lower-left and is 42' x 30'-by-about-22' tall. Requesting a variance for setbacks on side to be 12' and 33' from the rear of garage to rear property line.

David P. McCloskey
 Signature of property owner