

Jefferson County
Board of
Zoning Appeals

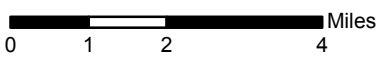
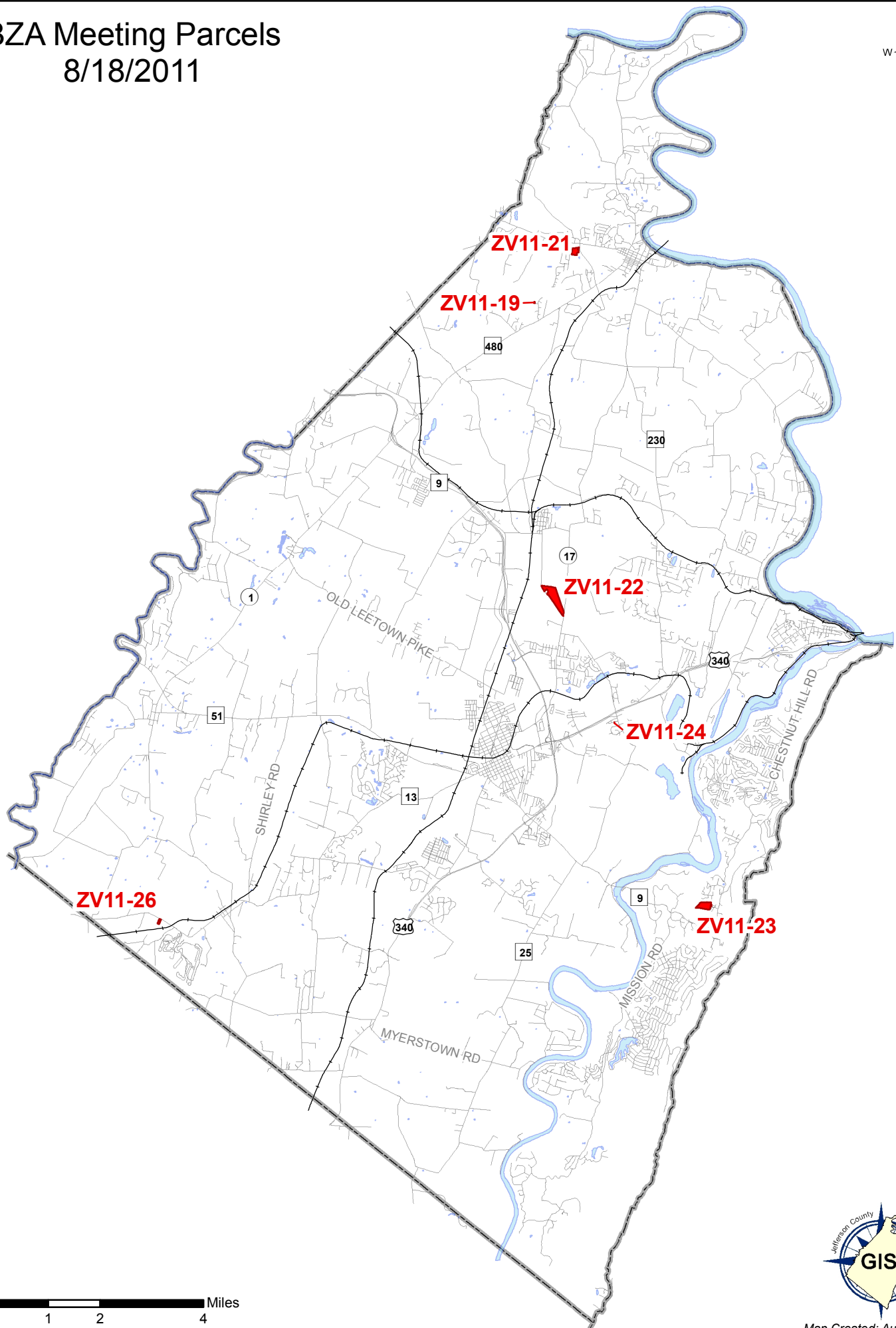
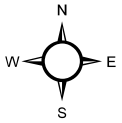
Thursday,
August 18, 2011

AGENDA
Jefferson County Board of Zoning Appeals
Thursday, August 18, 2011, 3:00 p.m.

1. Approval of the Minutes from the May 19, 2011 and July 21, 2011 meetings.
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).
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).
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).
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).
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).
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).
8. Legal Update.
9. Vote on written decisions from prior Board of Zoning Appeals meetings.
10. Correspondence.
 - a. Leslie Williams email received July 25, 2011 regarding previous Lowe Products variance ZV11-10.

BZA Meeting Parcels

8/18/2011



Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 August 18, 2011

Faheem and Liliana Ramadan (#ZV11-19)

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

APPLICANT:	Faheem and Liliana Ramadan
OWNER :	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	53 Mossy Oak Court, Shepherdstown, West Virginia
LEGAL DESCRIPTION:	District: Shepherdstown; Map: 14B; Parcel: 27
ZONING DISTRICT:	<p>Zoning Map Designation: Rural</p>
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North: Rural South: Rural</i> <i>East: Rural West: Rural</i>
LOT AREA:	.267 acres
PRIOR CASES:	Z02-07: PC approved CUP 03/11/03 03-15: PC approved the Deerfield Village final plat 04/13/04
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential

Staff Report
Jefferson County Board of Zoning Appeals Meeting
August 18, 2011

Faheem and Liliana Ramadan (#ZV11-19)

RELEVANT INFORMATION:

1. Overview of Request

The Applicant seeks a rear yard setback variance of 7' in order to construct a deck within 13' of the property line.

Per the material submitted with the variance request, the proposed deck is 18' wide and extends 9' towards the rear property line, and would be located approximately 7' within the rear setback at its furthest edge.

Section 5.7(b) of the Zoning Ordinance states that residential uses that process through the Development Review System use the setback requirements established in Article 5.4(b). For a single family dwelling, these setbacks are 25 feet (front), 12 feet (exterior side), and 20 feet (rear).

Section 9.5(a) 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 length. The variance request is to allow a 7-foot encroachment for a projection of 18 feet in length.

2. Applicant's Justification of Request

The application states that the addition to the deck will not impact the neighbors because of the open space located in the rear of the property. The Applicant also states that granting the variance would permit a reasonable use of the land.

3. Staff Evaluation of Request

The Deerfield Village Conditional Use Permit was approved on March 11, 2003. The Deerfield Village final plat was approved by subdivision plat on April 13, 2004. The project consists of 48 residential lots and is found in the Rural District (R). A review of the subdivision final plat indicates a 15' utility easement and open space area in the rear of the property. The combined easement and open space area provides for approximately 75' between the Applicant's rear property line and the property line of the nearest neighbor.

As indicated on the Applicant's sketch, the rear edge of the house is located within 2' of the rear setback line.

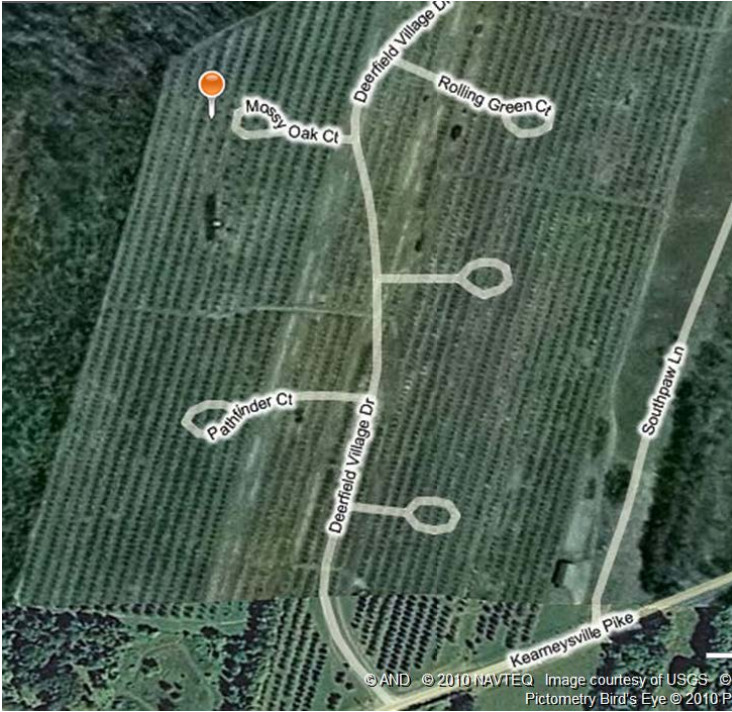
The Board of Zoning Appeals reviewed similar variance requests in the Deerfield Village Subdivision on July 19, 2007 (Simpson, ZV07-21), August 16, 2007 (Crouse ZV07-22) May 19, 2011 (McSwain ZV11-13).

4. Possible Conditions of Approval

No conditions of approval are identified for this variance request.

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 August 18, 2011

Faheem and Liliana Ramadan (#ZV11-19)



SECTION OF ORDINANCE TO BE CONSIDERED:

Section 5.8(C) Other Regulations

1. All sections of this ordinance applying to the residential growth district with the exception of Section 5.4(a) will apply to residential uses in this District.

Section 5.4(B), Table 5.4 - 1 Residential Growth District - Height and Yard Requirements

	Development Type	Minimum Lot Area (MLA) Area per Dwelling Unit (ADU)	Required Yards (ft)				Maximum Building Height (ft)*
			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	"	"	"	"	"

ZV 11-19

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): Fahem + Liliane Ramadan

Address: 53 Mossy Oak Ct.
Shepherdstown, WV 25443

Phone Number: (304) 870-0003

Location of Property: Deerfield Village Subdivision
Brookfield Deerfield

Lot Size: 27

Deed Book Reference: Deed Book Number DB1018 Page Number 649

Tax Map Reference: District SD Map 14B Parcel 27

Zoning District: C Brookfield Deerfield, LLC - Rural

Section of Ordinance: C (Lot 27) 540065 0020B
5.7(B) - 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.

Requesting a variance of 13 ft from the 20ft setback
to build a deck that will be free standing
from back exterior of home. ~~to 13 ft~~ A total
of 9 ft will be for the proposed deck requested
(Sketch can be provided upon request)

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

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

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JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

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

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

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

No adverse affects to anyone since its an open space + the neighbors approved of duck since theres no impact to them.

- 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:

Arises from the request to do a home improvement on the propert with no impact to those surrounding us

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

The zoning board should grant variance since it does not create an unnecessary hardship welcomes a permit for reasonable use of land

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

Yes the zoning ordinance will be observed + substantial justice.

-I will be filing for building permit.

Liliana Ramadan
Signature of Property Owner

Liliana + Faheem Ramadan
Print Name

6/25/2011
Date

FOR OFFICAL USE ONLY	
Fees Paid: <u>ck.#1086 \$100.00</u>	Date Application / Fees Received: <u>June 27, 2011</u>
Date of meeting / Public Hearing: <u>August 18 2011</u>	
Official Administrative Body: <u>Jefferson County Board of Zoning Appeals</u>	
Posting Requirements: <u>30</u> Number of Days Prior to Scheduled Hearing	
Advertising Dates: <u>July 13, 2011 and July 20 2011</u>	
Official Action of Board: _____	
Official Signature and Seal: _____	

Open
Space

Lot
28

Utility
Equipment
Open
Space



Open
Space

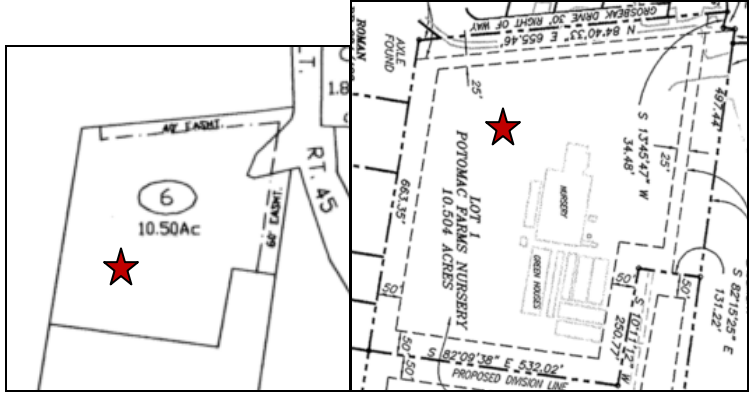
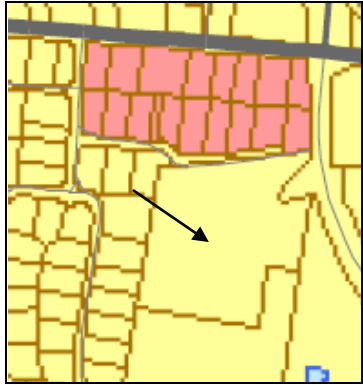
Lot
26

Homeowner: Bamadan
Lamadan
 Date: 6/25/2011

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 August 18, 2011

John D. Lowe, III et al (#ZV11-21)

Item #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.

APPLICANT:	Lowe Products, Inc.
OWNER :	John D. Lowe, III et al
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	West side of Alt. Rte. 45 Connector Road, Shepherdstown, West Virginia
LEGAL DESCRIPTION:	District: Shepherdstown; Map: 8; Parcel: 6 
ZONING DISTRICT:	Zoning Map Designation: Residential-Growth (R-G) 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> RLIC <i>South:</i> R-G <i>East:</i> R-G <i>West:</i> R-G
LOT AREA:	10.5 acres
PRIOR CASES:	S00-19, 05-07
VARIANCE(S):	Planning Commission Variances approved 7/27/93, 11/25/97, 10/12/04.
APPROVED ACTIVITY:	Potomac Farms Nursery

Staff Report
Jefferson County Board of Zoning Appeals Meeting
August 18, 2011

John D. Lowe, III et al (#ZV11-21)

RELEVANT INFORMATION:

1. Overview of Request

Property owner, John D. Lowe, III seeks a variance from Section 9.5(b) to locate a fence taller than 6' within a required yard.

A 10' tall fence is located along the boundaries of the subject property. The applicant has submitted a diagram showing the approximately placement of the fence, which is shown to be located 20' to 50' from adjacent property lines

This variance request was initiated as a result of the County's code compliance process. Per the narrative submitted with the application, the fence was funded by a USDA Agricultural Management grant, and neither the USDA/NRCS nor the property owner believed that a local permit would be required to construct the fence.



2. Applicant's Justification of Request

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

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

The application states that the fence does not adversely affect anyone on the northern, eastern, or southern boundaries, because of the distance from neighboring residential properties and because of an existing treeline on the western edge of the property.

The application also notes, "With respect to the health, safety and welfare, this deer fence should help lessen the impact of the large deer population in this area. Furthermore, the fence is virtually see through, so it doesn't affect visibility, air flow or view shed."

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

The application states, "This situation is unique, in that the deer fence was erected for the purpose of protecting an agricultural product from the large deer population in the area."

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

The application states that removal of the fence would result in a financial hardship, because the cost of the fence would need to be refunded to the USDA. Additionally, per the applicant, the nursery stock would suffer from deer damage.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
August 18, 2011

John D. Lowe, III et al (#ZV11-21)

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

The application states, “A major intent of the Zoning Ordinance is to promote all forms of agricultural uses. Both the Zoning Ordinance and the USDA recognize that a nursery is a viable agricultural use. As such, substantial justice would be to allow the fence as an agricultural activity. Also, height limitations for fences are usually required in order to prevent solid barricades around properties that would affect view sheds and similar types of impediments. In this case, the fence is virtually transparent except for the posts.”

3. Supplemental Information Submitted by Applicant

In addition to the application and narrative, the applicant has submitted the following materials:

- USDA/ NRCS Conservation Program Application
- USDA/NRCS Conservation Program Contract
- Fence diagram and specifications
- Photos of fence

4. Staff Evaluation of Request

As shown on the section of the plat map included below, the setbacks applicable to this property are 50’ (south and west), 25’ on the north (measured from the edge of a 40’ right-of-way) 25’ on the east (measured from a 60’ ingress/egress easement), and 50’ on the southeast edge of the property.

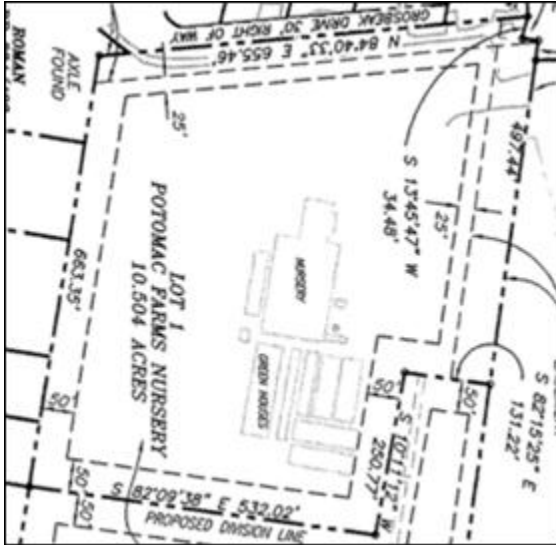
The intent of Section 9.2

It should be noted that, the applicant has claimed that the variance is unnecessary in light of Section 9.2, Building Height Limitations, which states that “Building height limitations shall not apply for public utilities, **agricultural uses**, communication poles and towers . . .”

Staff would note that the principal use of the property has not clearly been demonstrated to be agricultural. A commercial nursery with retail sales is not listed as an agricultural use in Section 2.2 under the definition of agricultural use. While this definition does include “The production of field crops including but not limited to tobacco, fruits, vegetables, nursery stock, ornamental shrubs . . .” the applicant has not demonstrated that production (rather than retail sales) is the principal use of the site. Staff concurs that, at minimum, the production of nursery stock on the site is accessory to a the principal retail use.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
August 18, 2011

John D. Lowe, III et al (#ZV11-21)



5. Possible Conditions of Approval

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

- a) The fence shall be limited to 10' in height, and must be located at least 10' from all property lines.
- b) The applicant shall secure any necessary permits from the Department of Engineering.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 9.5 Projections Into Yards⁸

- A. Projections such as bay windows, chimneys, entrances, uncovered porches, balconies, and eaves may extend into any required yard not more than four (4) feet; provided that such projections are not over ten (10) feet in width. All roof overhangs may extend into any required yard not more than two (2) feet; provided that the primary structure is located entirely within the appropriate setback.²³
- B. Fences and walls over six (6) feet in height shall meet building lines and yard requirements. A building permit is required before construction. Fences and walls six (6) feet and under in height shall be exempt from building lines and yard requirements unless obstructions to vision at an intersection as referenced in Section 4.9.²³

#ZV11-21

**JEFFERSON COUNTY BOARD OF ZONING APPEALS
VARIANCE REQUEST**

I/We request a variance from the provisions of the Jefferson County Zoning & Development Review

Property Owner (s): John D Lowe, III ET AL (Potomac Farms Nursery)

Address: P.O. Box 579
Shepherdstown, WV 25443

Phone Number: (304) 876-2546

Location of Property: West Side of Potomac Farms Drive (Alt Route 45 Connector Rd)
Potomac Farms Nursery

Lot Size: 10.5 Acres

Deed Book Reference: Deed Book Number 933 Page Number 643

Tax Map Reference: District Shepherdstown Map 8 Parcel 6

Zoning District: Residential Growth District

Section of Ordinance: 9.5(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.

See Attached

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 ordinance nor shall it involve changing the zoning classifications of a parcel of land.

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JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

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

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

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

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

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

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

Philip R.
Signature of Property Owner

Print Name

Date

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

Official Signature and Seal: _____	

ZV11-21

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JUL 0 1 2011

John D Lowe, III, ET AL
Potomac Farms Nursery

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Request for a Variance from Article 9, Section 9.5(b)
Jefferson County Zoning Ordinance
July 1, 2011

BRIEF DESCRIPTION OF THE REQUEST:

Potomac Farms Nursery is being required to seek a variance to retain a 10 feet high deer fence around the perimeter of their Nursery. Article 9, Section 9.5(b) states that fences and walls over six feet in height shall meet building lines and yard requirements. In this case the deer fence was erected as close as 20 feet to the northern, eastern and western property lines and 10 feet to the southern (Lowe Products) boundary. As such, Potomac Farms is seeking a variance to 10 feet in order to keep the deer fence in place. This would be consistent to the variance granted to Lowe Products for their fence (no closer to the property lines than the height of the fence).

In October 2009, Potomac Farms became aware of a United States Department of Agriculture (USDA) grant program to fund the erection of deer fences around crops and nursery stock in Jefferson County. This program, known as the Agricultural Management Assistance (AMA), was managed by the local National Resources Conservation Service (NRCS) in Ranson. In order to participate in the program, Potomac Farms Nursery was required to have a Conservation Plan approved by NRCS prior to the grant being approved by the USDA. This process was started in October 2009 and was finally approved in March 2010. As indicated in the attached application and contract, the grant was approved in the amount of \$8,787.00. Other farms in Jefferson County also took advantage of this program during this period.

The deer fence was built to USDA specifications as shown in the attached NRCS specifications document. The deer fence is a 10 feet high, see through, woven wire fence with posts at 10 feet intervals (see attached picture). On the northern boundary, the fence is located between 40 and 45 feet from the neighboring residential properties, because of a 40 feet easement which is located on the Potomac Farms property. On the eastern boundary the fence is located at least 50 feet from the adjoining Route 45 Connector Road and at least 20 feet from the adjoining Lowe property. On the southern boundary the fence is between 10 and 50 feet, and this is the shared property line with Lowe Products, which is also owned by the Lowe family. Finally, on the western boundary, the fence is located between 20 and 30 feet of the neighboring residential properties. At this boundary, the fence is inside a large, thick tree line as shown on the submitted pictures. As a matter of fact, a tree line hides the fence on both the eastern and western borders.

The purpose of the deer fence is obviously to keep the deer away from the nursery stock to prevent damage to the nursery inventory. If the deer fence was less than 10 feet in height, it would have little effect at keeping the deer away from the nursery stock. Since the deer fence was a federally approved, funded and monitored project, the need for a local permit was overlooked. This variance application is an attempt to correct the situation by obtaining a permit as requested by the Jefferson County Staff.

Additionally, there is one section of the Zoning Ordinance that may apply in this instance. Article 9, Section 9.2, Building Height Limitations states: "Building height limitations shall not apply for public utilities, ***agricultural uses***, communication poles and towers..." (emphasis added). Since this project was approved by the USDA under the Agricultural Management Assistance program, this deer fence should qualify as an agricultural use and be exempt. Other farms have added similar fences around their properties.

Finally, according to the USDA/AMA contract, if the fence was required to be dismantled, the funds utilized would have to be refunded to the USDA. This would be a great hardship, since the deer fence has already been erected and the fence company has already been paid.

Accordingly, Potomac Farms Nursery would greatly appreciate it if the Board would either consider the height of the deer fence to be exempt under Section 9.2, or grant the variance to keep the fence in its current location as requested.

ZV11-21

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JUL 01 2011

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

John D. Lowe, III, ET AL
Potomac Farms Nursery, Inc.
Request for a Variance from Article 9, Section 9.5(b)
Jefferson County Zoning Ordinance
July 1, 2011

Four Criteria as Required by Article 7, Section 7.8(b) (3):

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

The deer fence does not adversely affect anyone on the northern, eastern or southern boundaries. As explained in the Brief Description, the fence is over 40 feet from the neighboring residential properties and Alternate Route 45 on the northern and eastern side, and on the southern side, the adjoining property is owned by the same family. Also, on the Alternate Route 45 side, a thick tree stand hides the fence from the road. On the western side, it doesn't appear to affect the property owners, since the fence is located a good distance from the actual houses and is almost totally screened by the thick stand of trees. With respect to the health, safety and welfare, this deer fence should help lessen the impact of the large deer population in this area. Furthermore, the fence is virtually see through, so it doesn't affect visibility, air flow or view shed.

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:

This situation is unique, in that the deer fence was erected for the purpose of protecting an agricultural product from the large deer population in the area. This premise is supported by the fact that a USDA Agricultural Management Assistance grant funded the project. A deer fence simply cannot be effective if it was less than 10 feet in height.

Since this project was funded and approved by the USDA and NRCS, neither the agencies nor the owner believed that a local permit would be required.

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

If the height exemption for agricultural uses is not applied, or, in the alternative a variance is not granted by the Board, the deer fence would have to be removed. If that happens, the already expended \$8,787.00 would have to be returned to the USDA. In addition to that hardship, the nursery stock/inventory would continue to succumb to deer damage, thus affecting the sustainability of the nursery.

4. Will allow the intent of the zoning ordinance to be observed and substantial justice done:

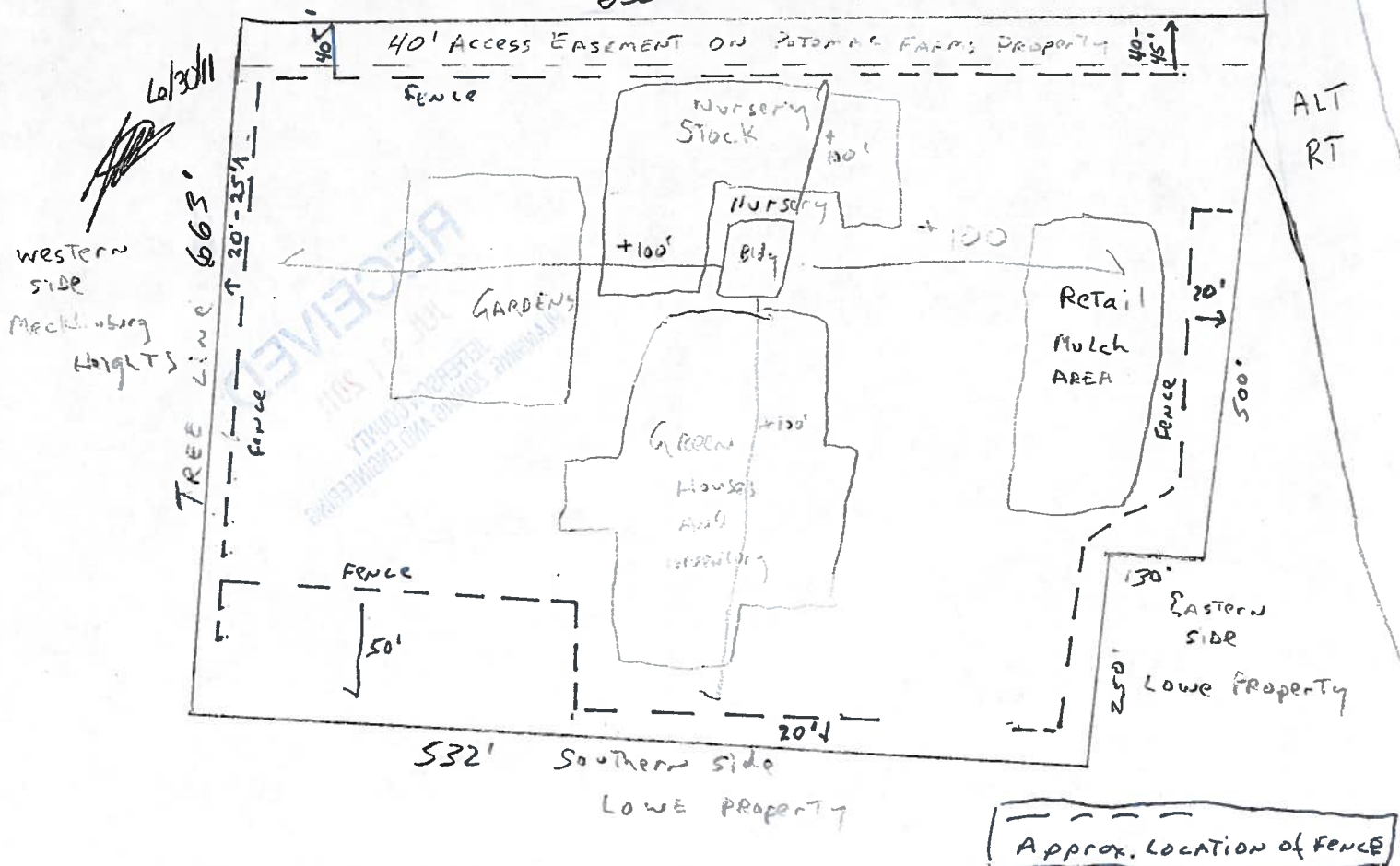
A major intent of the Zoning Ordinance is to promote all forms of agricultural uses. Both the Zoning Ordinance and the USDA recognizes that a nursery is a viable agricultural use. As such, substantial justice would be to allow the fence as an agricultural amenity. Also, height limitations for fences are usually required in order to prevent solid barricades around properties that would affect view sheds and similar types of impediments. In this case, the fence is virtually transparent except for the posts. And, the trees around the western and eastern perimeter hide the fence from the residences and Alternate Route 45.

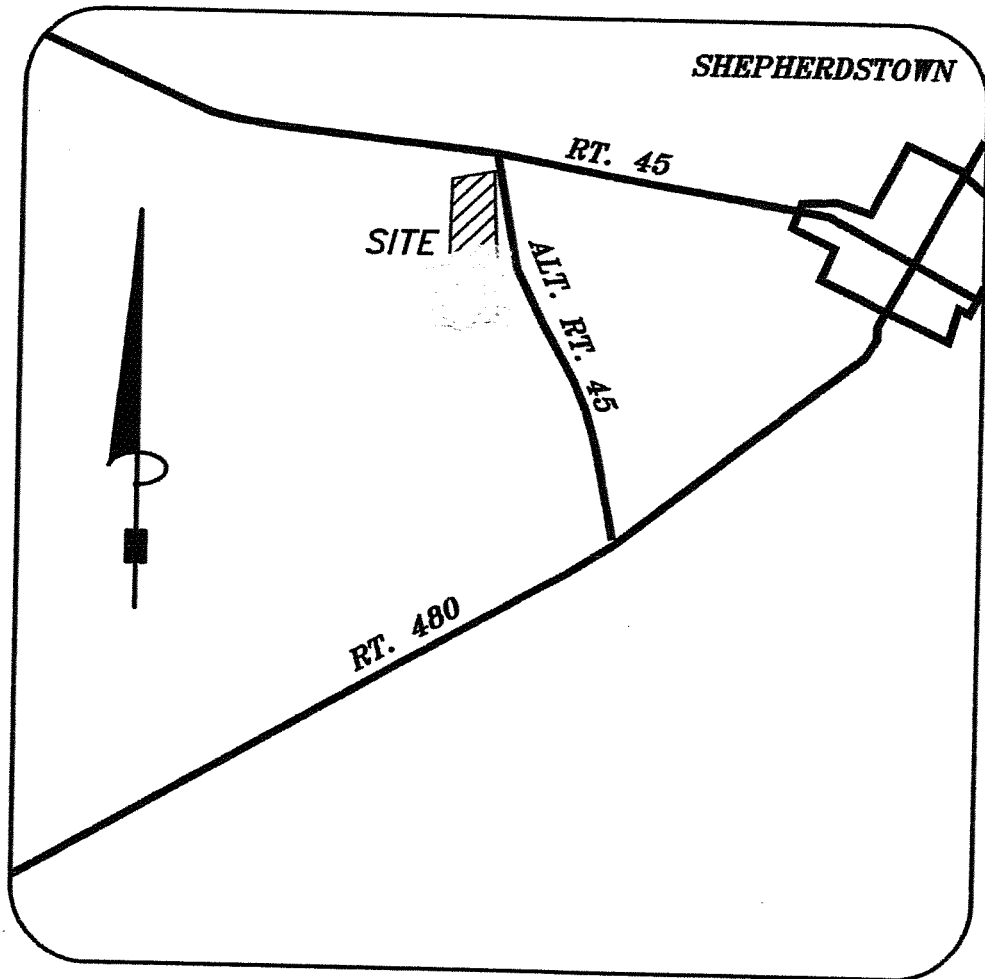
Based on the above and the brief description, Potomac Farms believes that substantial justice would be to allow the 10 feet high deer fence to remain either by agricultural exemption or by variance. If a variance is granted, a similar condition as approved by the Board for Lowe products (fence no closer to the property lines than the height) would work in this case, as well. Accordingly, Potomac Farms Nursery respectfully asks the Board to grant the relief that we are seeking to keep the deer fence as it is currently located. Thank you.

--- Approx. Location of Fence



NORTHERN PROPERTY ROAD MIXED USE
655'





VICINITY MAP

SCALE: 1"=2000'

ZVII-21

WEST



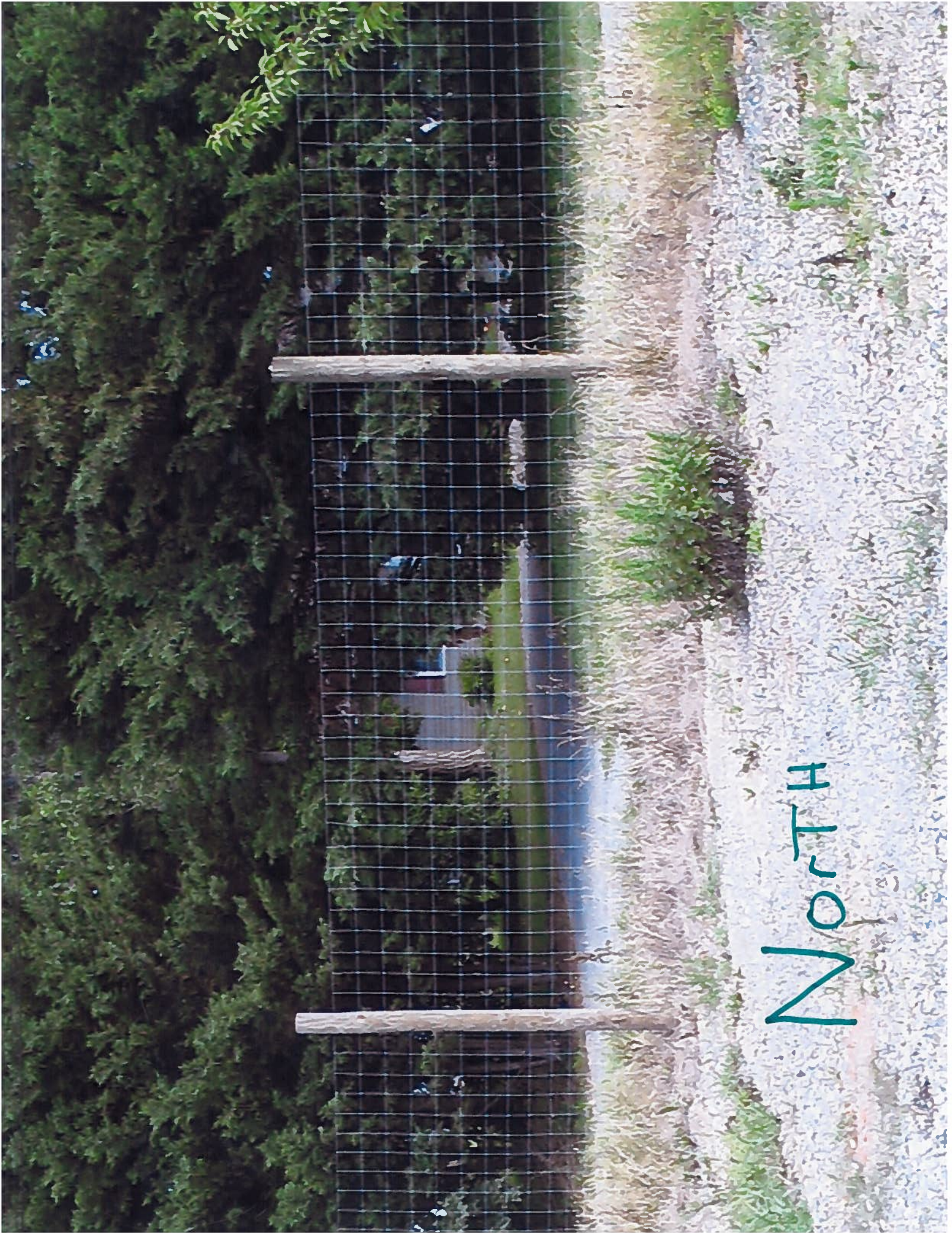
EAST



SOUTH



North



To: Jefferson County Board of Zoning Appeals
From: Judith Moore, Linda O'Brien, Christine Palank, Maureen Small, Leslie Williams
Date: August 10, 2011
Subject: Request for a Variance by Potomac Farms Nursery

In reviewing the application for a variance from county requirements by Potomac Farms Nursery regarding an unpermitted deer fence of 10 feet in height for the protection of nursery stock, we have some concerns which we think need to be addressed at the hearing.

Pertinent background:

The nursery is located in a residential growth neighborhood of Shepherdstown which abuts Lowe Products Mulch Plant, an industrial/commercial enterprise owned by the same family, John D. Lowe et. al.

We are well aware of the destructive nature of the local deer population. As neighbors we suffer from damage from the deer population as well. At issue is the failure of the nursery to apply to Planning and Zoning for a permit to erect the fence. We can cite several examples in the neighborhood where small property owners have been required to follow all county rules and submitted all documentation in order to secure the proper permitting.

The argument that because the fence was approved by the USDA should have precluded applying to the county is specious to say the least. The fencing was paid for by a grant from the USDA i.e. US taxpayers, in support of a thriving retail business, a business that does not grow or produce agricultural products which appears to be the intent of the federal grant program.


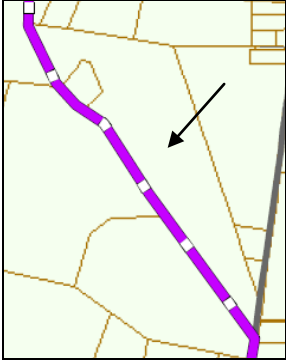
The Lowes are once again pleading ignorance of the law as they did in the Lowe Products variance request of May 19, 2011, which was a request to be exempt from county requirements from storing mulch and equipment closer than 200 feet from the property lines. On record in the planning and zoning files are numerous site plans filed on behalf of the two businesses by local engineering firms over the past 30 years. These plans clearly state what is and is not permitted in terms of setback requirements.

Our concern is that the current request is based on a sketch supplied by the owners. We believe that a survey should be provided to document the property lines and/or that the boundaries be marked by an engineering firm. We request that consideration of the variance request be postponed until such documentation is provided. In a similar vein, it appears that there has been some movement of mulch product from the perimeters of the Lowe Products property to the 50 foot setback required in the variance approval of May 19, 2011. However, again there was no survey submitted nor are the property lines clearly marked .

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 August 18, 2011

Fellowship Bible Church (#ZV11-22)

Item #4 Representing Fellowship Bible Church, variance request by Richard Beddow, Property Manager, from the Section 4.10 to allow installation of one additional modular classroom without the requirement of a Site Plan.

APPLICANT:	Fellowship Bible Church
OWNER :	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	160 Daniel Road, Shenandoah Junction, West Virginia
LEGAL DESCRIPTION:	District: Charles Town; Map: 3; Parcel: 4.5 
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:	50 acres
PRIOR CASES:	#S01-08 – PC approval: 9/25/01 #S04-20 – PC approval: 09/27/05
VARIANCE(S):	#ZV10-18 – BZA approved waived of site plan for 2 modular
APPROVED ACTIVITY:	Church

Staff Report
Jefferson County Board of Zoning Appeals Meeting
August 18, 2011

Fellowship Bible Church (#ZV11-22)

RELEVANT INFORMATION:

1. Overview of Request

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

On September 16, 2010, the Board approved a variance from Section 4.10 to waive site plan requirements for the installation of two temporary buildings with a combined area of 2,310 square feet.

The combined square footage of the three proposed modular buildings is 2,594 square feet, or 284 square feet greater than the modular building area previously approved by the Board.

2. Applicant's Justification of Request

Following approval of the previous variance request, one of the proposed buildings has been installed, but the second building proposed for installation is no longer available, according to the applicant.

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

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

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

The application states, "Storm water management is in place for phase II expansion and screen trees were planted during original construction to shield adjacent property."

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

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

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

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

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

Staff Report
Jefferson County Board of Zoning Appeals Meeting
August 18, 2011

Fellowship Bible Church (#ZV11-22)

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

Per the applicant’s previous variance application, the request for a variance from the site plan requirement is necessary due to limited existing classroom space in the Phase I building. Additional classroom space is planned for Phase II of the church development.

3. Case History

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

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

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

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

4. Staff Evaluation of Request

Section 4.10 of the Zoning Ordinance requires site plan submittal for “all new commercial, townhouse and multi-family residential, industrial, and institutional land uses.” The requirement for a site plan does not differentiate between permanent and temporary uses. The primary purpose of a site plan in Jefferson County is to ensure that adequate stormwater management is planned and that adequate parking and landscaping is proposed.

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

5. Possible Conditions of Approval

Should the Board choose to approve this variance request, the Board may want to consider the condition applied to its prior approval of case number #ZV10-18, as reflected in the minutes of the September 16, 2010 BZA meeting:

Staff Report
Jefferson County Board of Zoning Appeals Meeting
August 18, 2011

Fellowship Bible Church (#ZV11-22)

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

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 4.10 Site Plan Requirements

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



Staff Report
Jefferson County Board of Zoning Appeals Meeting
August 18, 2011

Fellowship Bible Church (#ZV11-22)



ZV11-22

**JEFFERSON COUNTY BOARD OF ZONING APPEALS
VARIANCE REQUEST**

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

Property Owner(s): FELLOWSHIP BIBLE CHURCH

Address: 160 DANIEL ROAD
SHENANDOAH JUNCTION, WV

Phone Number: 304-728-3700

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

Lot Size: 50 ACRES

Deed Book Reference: Deed Book Number 992 Page Number 338

Tax Map Reference: District 02 Map 3 Parcel 4.5

Zoning District: RURAL

Section of Ordinance: Sec 4.10

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

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

SEE ATTACHMENT PAGE 1

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

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

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JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

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

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

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

- SEE ATTACHMENT PAGE 2 -

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

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

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

Richard L Beddow

Signature of Property Owner

RICHARD L BEDDOW

Print Name

JULY 7, 2011

Date

Check # 1634

Fees Paid: \$100.00

FOR OFFICAL USE ONLY

Date Application / Fees Received: July 7, 2011

Date of meeting / Public Hearing: Thursday August 18, 2011

Official Administrative Body: Jefferson County Board of Zoning Appeals

Posting Requirements: 30 Number of Days Prior to Scheduled Hearing

Advertising Dates: WEDNESDAY, JULY 13, 2011 and WEDNESDAY, JULY 20, 2011

Official Action of Board: _____

Official Signature and Seal: _____

Fellowship Bible Church is requesting a variance from ordinance 4.10 to allow set up of one additional modular classroom. In September 2010 permission was given for two modular classrooms, the smaller of which is in use and the other large classroom is now unavailable. Smaller modular classrooms are available but due to our space demands we need two of the smaller classrooms to replace the one larger classroom. Fellowship Bible Church is requesting permission for a third modular classroom.

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

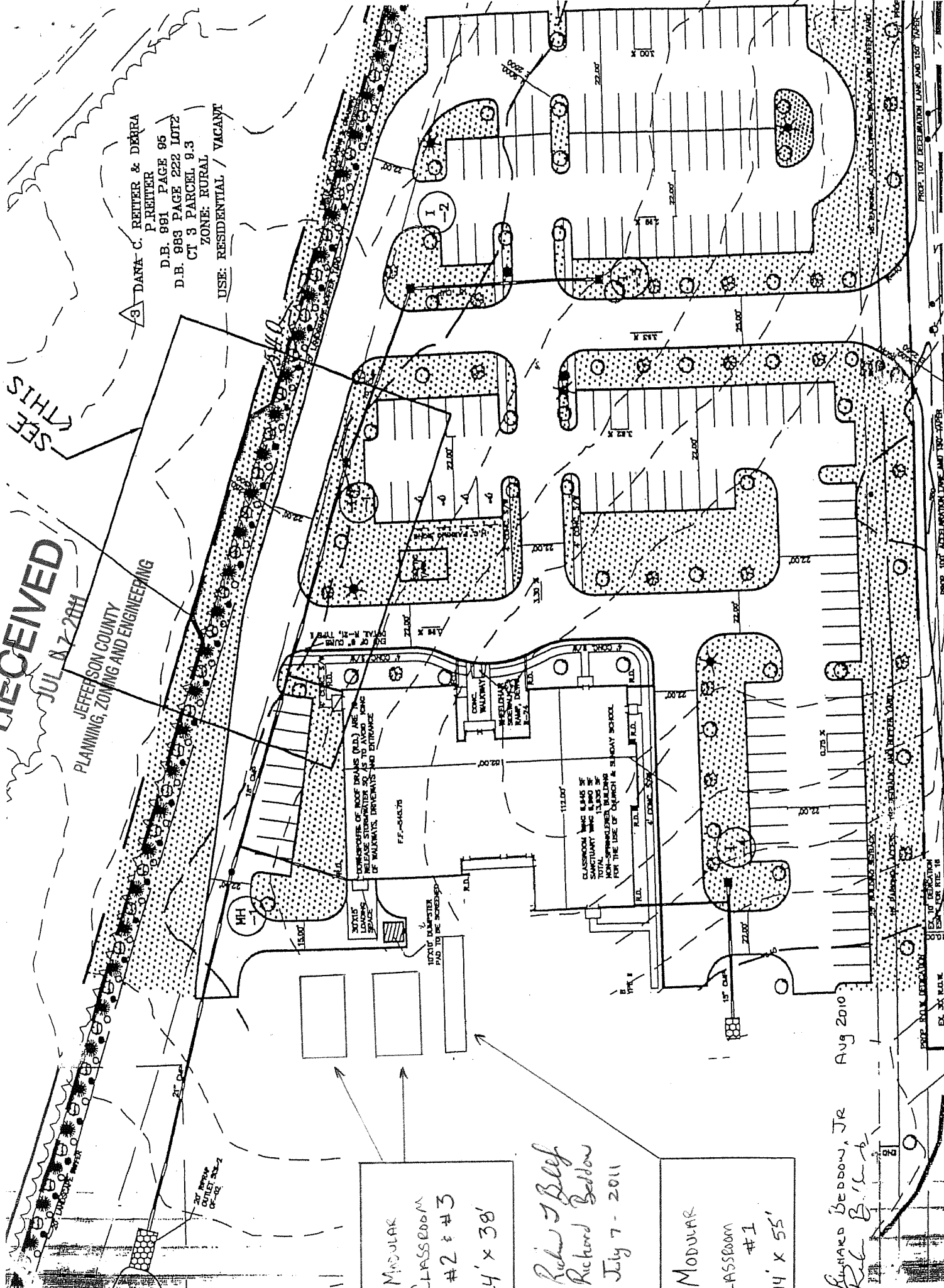
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PLANNING, ZONING AND ENGINEERING

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JUL 17 2011

SEE THIS

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

DANA C. REITER & DEBRA
P. REITER
D.B. 991 PAGE 95
D.B. 988 PAGE 222 LOT2
CT 3 PARCEL 9.3
ZONE: RURAL
USE: RESIDENTIAL / VACANT



MODULAR
CLASSROOM
#2 & #3
24' x 38'

Richard J. Bledsoe
Richard Bledsoe
July 7 - 2011

MODULAR
CLASSROOM
#1
14' x 55'

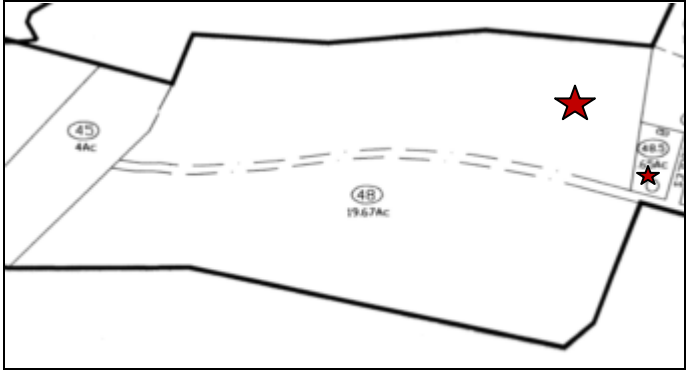

Richard Bledsoe, Jr
Aug 2010

PROP. 107 DEEP WATER LAKE AND 150' TRAIL
PROP. 107 ACCELERATION DRIVE AND 150' TRAIL
PROP. 107 DEEP WATER LAKE AND 150' TRAIL
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Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 August 18, 2011

Glenn S. Cogle (#ZV11-23)

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

APPLICANT:	Glenn S. Cogle
OWNER :	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	157 Cogles Fields Lane, Harpers Ferry, West Virginia, 25425
LEGAL DESCRIPTION:	District: Charles Town; Map: 20-1; Parcel: 48 & 48.5 
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:	19.67 acres and .65 acres
PRIOR CASES:	Office processed a Parent to Child Deed by way of Will in 1978.
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential

Staff Report
Jefferson County Board of Zoning Appeals Meeting
August 18, 2011

Glenn S. Cogle (#ZV11-23)

RELEVANT INFORMATION:

1. Overview of Request

Glenn S. Cogle has requested a variance from Section 8.2 to allow a seventy year old barn, rebuilt without a permit, to remain sited on the original foundation.

In reviewing the site, it was noted that the rebuilt barn does not meet the 75' front or side yard setbacks required for barn per Section 8.2 of the Zoning and Land Development Ordinance. Staff directed the owner to apply for a variance.

2. Applicant's Justification of Request

The applicant has noted the following:

- The barn was built in the 1940's and has been in the same location.
- The structure was damaged by heavy snow fall.
- All surrounding properties are owned by family members.



3. Staff Evaluation of Request

A. Applicability of Zoning and Land Development Ordinance

The barn was constructed prior to the adoption of the Zoning and Land Development Ordinance; as such, it was a legal, nonconforming use prior to being damaged by weather events and subsequently reconstructed.

Section 4.3 of the ordinance allows a nonconforming use to “be upgraded or repaired, or alterations made to the use’s facilities.” The ordinance also states that, “Repair includes the following: replacement of same size (+/-35%) porches, awnings, decks roofs, overhangs, patios, or any other similar construction as approved by the Zoning Administrator.”

Staff Report
Jefferson County Board of Zoning Appeals Meeting
August 18, 2011

Glenn S. Cogle (#ZV11-23)

In staff's determination, the complete removal and replacement of the barn structure (with the exception of the foundation) exceeds the scope of "repair" as defined in Section 4.3. For this reason, staff does not consider the reconstructed barn to be an existing, nonconforming use, and has determined that the applicable setbacks of the Ordinance apply.

B. Site Conditions

The applicant has noted that a portion of the barn is located in a 20' access easement. However, the applicant has provided to staff a copy of a deed that includes the following language:

The conveyance of a 20 foot nonexclusive right of way, however, is made subject to a barn situate in the southwestern corner of Tract No. 5 as more particularly shown on a plat by Dwight E. Wilkins, L.L.S."

A copy of the plat referenced in this language is included in this staff report.

4. Possible Conditions of Approval

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

- a. The structure shall not exceed the original footprint of the original barn.
- b. The owner shall secure all required permits.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 4.3 Nonconforming Uses

Any building, structure or premises lawfully existing at the time of the adoption of this ordinance, or lawfully existing at the time that this ordinance is subsequently amended, may continue to be used even though such building, structure, or premises does not conform to use, setbacks or dimensional regulations of the zoning district in which it is located or the regulations of the Development Review System; subject, however to the following provisions:⁷

- A. Nonconforming uses may be upgraded or repaired, or alterations made to the use's facilities. However, expansion of any nonconforming use shall be limited to the lot that existed at the time of adoption of this Ordinance.^{7, 23}

Repair includes the following: replacement of same size (+/-35%) porches, awnings, decks roofs, overhangs, patios, or any other similar construction as approved by the Zoning Administrator. Additional acreage shall not be added to enlarge any nonconforming use unless approved via the Development Review System.

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

Staff Report
Jefferson County Board of Zoning Appeals Meeting
August 18, 2011

Glenn S. Cogle (#ZV11-23)

Section 8.2 Barns and Feeding Pens

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



#ZV11-23

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): Glenn S Cogle

Address: 157 Cogles Fields Lane
Harpers Ferry WV 25425

Phone Number: 304-725-8622

Location of Property: 157 Cogles Fields Lane
Harpers Ferry WV 25425

Lot Size: .65 (Lot #1)

Deed Book Reference: Deed Book Number 485 Page Number 308

Tax Map Reference: District 02 Map 20-1 Parcel 48.5

Zoning District: Charles Town RURAL

Section of Ordinance: 8.2

Lot #2 = DISTRICT 02, MAP 20-1, PARCEL: 48 19.67 acres
DEED BOOK: 423 PAGE 272

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.

BARN was built in 1940's.
BARN was damaged by heavy snow fall.
Owner took barn back to most salvageable part.
Re-built with out large storage area for hay.

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

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

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JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

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

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

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

Barn was rebuilt to provide safe stable place for
beef, mules, horses to get out of weather.
All surrounding properties owned by family members

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:

Barn has been in the same place for 70 years.

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

Barn has been in the same place for 70 years
became safety hazard due to snow damage Barn put back
for use of family as it has been for last 70 years

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

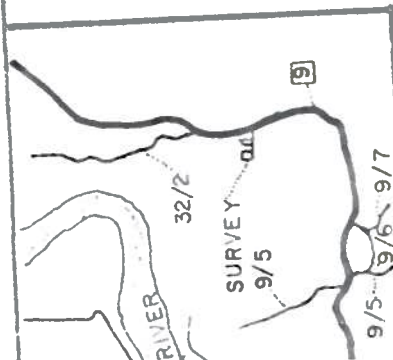
will appear ~~to~~ Took damaged unsafe barn & refurbished
to ensure safe use & shelter by family & animals

Glenn S Cogle
Signature of Property Owner

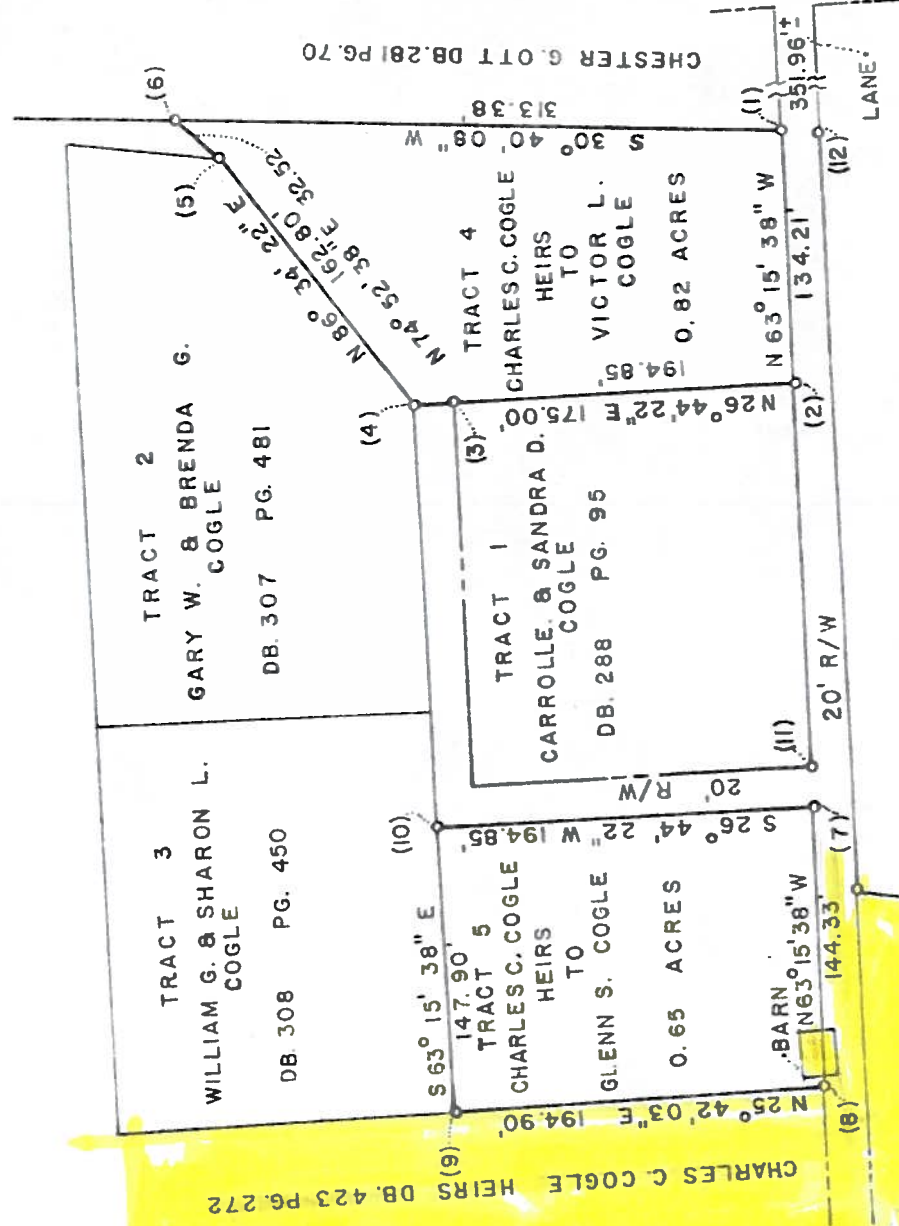
Glenn S Cogle
Print Name

7/8/2011
Date

CK.#7870	FOR OFFICIAL USE ONLY
Fees Paid: <u>\$150.00</u>	Date Application / Fees Received: <u>July 8, 2011</u>
Date of meeting / Public Hearing: <u>AUGUST 18 2011 @ 3:00pm</u>	
Official Administrative Body: <u>Jefferson County Board of Zoning Appeals</u>	
Posting Requirements: <u>30</u> Number of Days Prior to Scheduled Hearing	
Advertising Dates: <u>WEDNESDAY JULY 13, 2011 and WEDNESDAY JULY 20, 2011</u>	
Official Action of Board: _____	
Official Signature and Seal: _____	



PLAT OF SURVEY FOR CHARLES C. COGLE HEIRS
 CHARLES TOWN DISTRICT
 JEFFERSON COUNTY W.V.
 TAX MAP 20



CHARLES C COGLE HEIRS DB. 423 PG. 272

MAP
 NE MILE

GEND

AND (11) = 3/4" REBAR SET

FOUND

= 5/8" REBAR SET

FOUND

BAR FOUND

UND

OTES

19.65 ACRES

AUGUST 1977 BY DWIGHT E. WILKINS L.L.S.

IURG, W.V.

CATION AS SHOWN AND USED BY THE

C. COGLE HEIRS



20, 1977

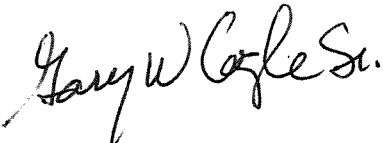
'7-16



D. E. Wilkins L.L.S.

August 8, 2011

I am one of the 5 shareholders of the 19.67 acres. The original barn fell down in 2003 and it was located in the right of way to said property. The barn can not be rebuilt in the same right of way as it stands now. If the property is ever sold, the right of way would be in dispute. I would like to say more but I've done said the building can not be left in that place. Thank you for you time and consideration.



Gary W. Cogle, Sr.



Brenda G. Cogle

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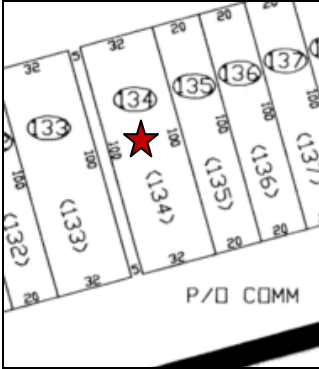
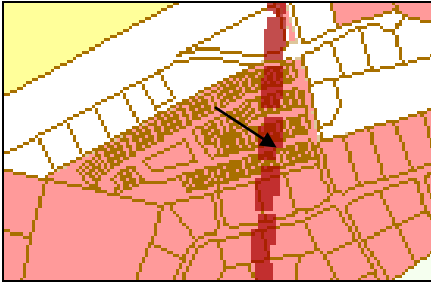
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JEFFERSON COUNTY PLANNING,
ZONING & ENGINEERING

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 August 18, 2011

Tessa Yvonne Reed (#ZV11-24)

Item #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.

APPLICANT:	Tessa Yvonne Reed
OWNER :	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	73 Don Quixote Drive, Charles Town, West Virginia
LEGAL DESCRIPTION:	District: Charles Town; Map: 9C; Parcel: 134 
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:	.345 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 Approval: 01/11/05

Staff Report
Jefferson County Board of Zoning Appeals Meeting
August 18, 2011

Tessa Yvonne Reed (#ZV11-24)

RELEVANT INFORMATION:

1. Overview of Request

The Applicant seeks a rear yard setback variance of 4' in order to locate a landing and steps to an existing deck within 16' of the property line.

Per the material submitted with the variance request, the townhome is approximately 32 feet from the rear property line. The existing deck is 20' wide and extends 12' from the townhome towards the rear property line, and is located immediately adjacent to the 20' setback 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). This townhome is an end unit; however, the proposed steps do not appear to encroach on the 12' side 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 length. The variance request is to allow a 4-foot encroachment for a projection of 20 feet in length.

2. Applicant's Justification of Request

The application states that the townhouse lot, as platted and developed, does not provide sufficient space for both deck and stairs. If the stairs could not be built, the applicant states that the residents will not be able to properly utilize the deck.

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) and April 21, 2011 (Muniz #ZV11-08).

4. Possible Conditions of Approval

No conditions of approval are identified for this variance request.

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 August 18, 2011

Tessa Yvonne Reed (#ZV11-24)

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

ZV11-24

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): TESSA LYMONNE REED

Address: 73 DON QUIXOTE DRIVE
CHARLES TOWN WV 25414

Phone Number: 304 240.8252

Location of Property: Windmill Crossing Subdivision

Lot Size: 0.345

Deed Book Reference: Deed Book Number 1084 Page Number 338

Tax Map Reference: District CT Map 9C Parcel 134

Zoning District: R-LT-C

Section of Ordinance: 54(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.

would like to add steps to pre-existing deck. (see attached)

Setback reduction from 20' to 16'

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

JUL 22 2011

JEFFERSON COUNTY PLANNING,
ZONING & 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:

it's private property for my use, primarily to ensure safety in the event of a fire

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:

To improve the homes quality & increase sell value, developer didn't leave sufficient room for deck and stairs

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

won't be able to properly utilize deck otherwise

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

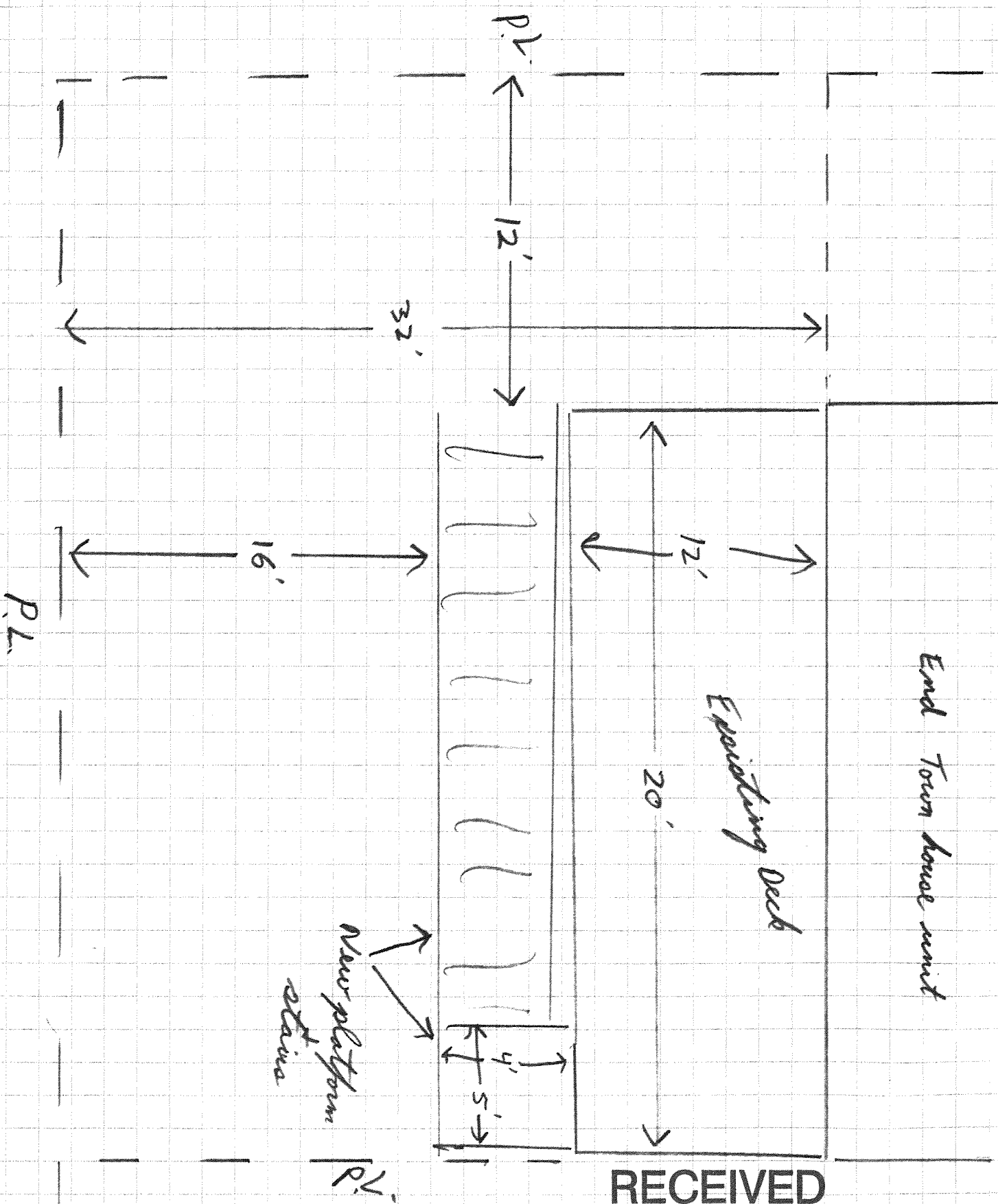
The requested variance is small enough to meet intent

Pessa Yvonne Reed
Signature of Property Owner

PESSA YVONNE REED
Print Name

7/22/11
Date

<u>CK. #1955</u>	FOR OFFICAL USE ONLY
Fees Paid: <u>\$100.00</u>	Date Application / Fees Received: <u>July 22, 2011</u>
Date of meeting / Public Hearing: <u>AUGUST 18, 2011 @ 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 AUGUST 3, 2011</u>	
Official Action of Board: _____	
Official Signature and Seal: _____	



New platform
New platform stairs

RECEIVED

JUL 22 2011

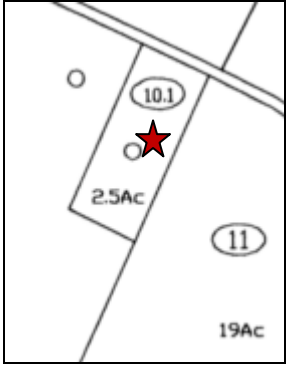
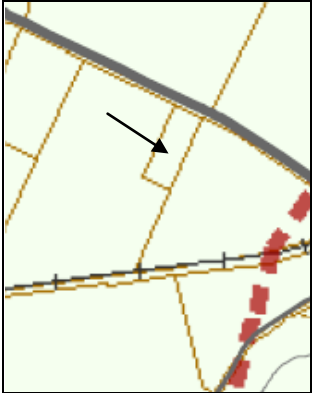
JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

2V11-24

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 August 18, 2011

George R. and Dixie A. Wolfe (#ZV11-26)

Item #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.

APPLICANT:	George R. and Dixie A. Wolfe
OWNER :	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	1424 Summit Point Road; Summit Point, WV 25446
LEGAL DESCRIPTION:	District: Middleway; Map: 28; Parcel: 10.1 
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:	2.5 acres
PRIOR CASES:	Lot created via parent-to-child transfer in 1998.
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential

Staff Report
Jefferson County Board of Zoning Appeals Meeting
August 18, 2011

George R. and Dixie A. Wolfe (#ZV11-26)

RELEVANT INFORMATION:

1. Overview of Request

The Applicant seeks a side yard setback variance of 11' in order to locate a carport within 4' of the property line.

Per the material submitted with the variance request, the home and garage are located approximately 20 feet from the side property line. The proposed carport would extend an additional 16' toward the side property line.

2. Applicant's Justification of Request

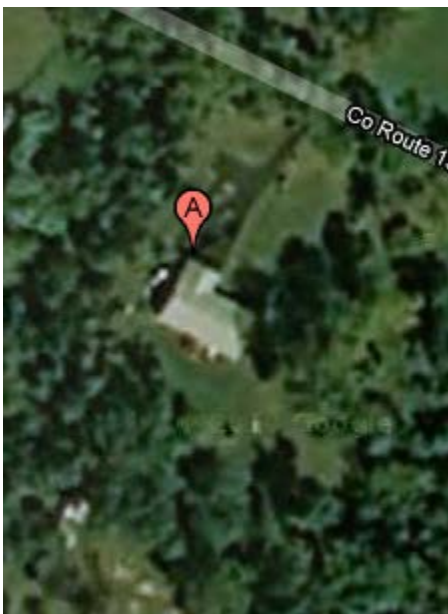
The application states that:

- There are no other existing homes near the proposed location of the garage.
- The owner seeks to build in the proposed location because of the alignment of the existing driveway.
- The property is surrounded by a wooded area.

3. Staff Evaluation of Request

The property, at 2.5 acres, is of sufficient size to accommodate placement of a carport elsewhere. However, the eastern side of the property, adjacent to the house, has a substantial number of large trees. There is also an existing driveway on the west side of the house.

Adjacent properties located to the east and west are of substantial size, with approximately 24 acres and 19 acres respectively, and appear to be heavily wooded.



Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 August 18, 2011

George R. and Dixie A. Wolfe (#ZV11-26)

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}

3.	Townhouse Dwelling		25	12	15	20	40
	Public/Central water and sewer	1,400 sq. ft. MLA	"	"	"	"	"
		3,500 sq. ft. ADU	"	"	"	"	"
			"	"	"	"	"

ZV11-26

**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): GEORGE R WOLFE + DIXIE A WOLFE

Address: 1424 SUMMIT POINT Rd
SUMMIT POINT WVA 25446

Phone Number: 304-725-3447

Location of Property: 1424 SUMMIT POINT Rd
SUMMIT POINT WVA 25446

Lot Size: 2.5 ACRES

Deed Book Reference: Deed Book Number 976 Page Number 402

Tax Map Reference: District MIDDLEWAY Map 29 Parcel 600 000 0000

Zoning District: 07 - MIDDLEWAY

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.

House is located 20' from property line
would like to build an open carport 16x20
between house + property line.
from 20 to 4' side setback

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

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

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

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

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

NO THEIR WERE NO OTHER HOUSE OR
EXISTING HOUSE NEAR PROPERTY WOODS

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:

BUILD CAR PORT FROM 20' SETBACK
TO 4' SET BACK SO IT CAN BE USED
FROM EXISTING DRIVEWAY

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

WOULD ALLOW EXTRA USE FOR 3
VEHICLE PROTECTION AND I CAN GET
TO IT FROM MY DRIVEWAY

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

MAKE MORE USE OF GARAGE AND
MORE USE OF DRIVEWAY ALL WOOD AROUND PROPERTY
SO I CAN ENJOY MY PROPERTY MORE

George R Wolfe
Signature of Property Owner

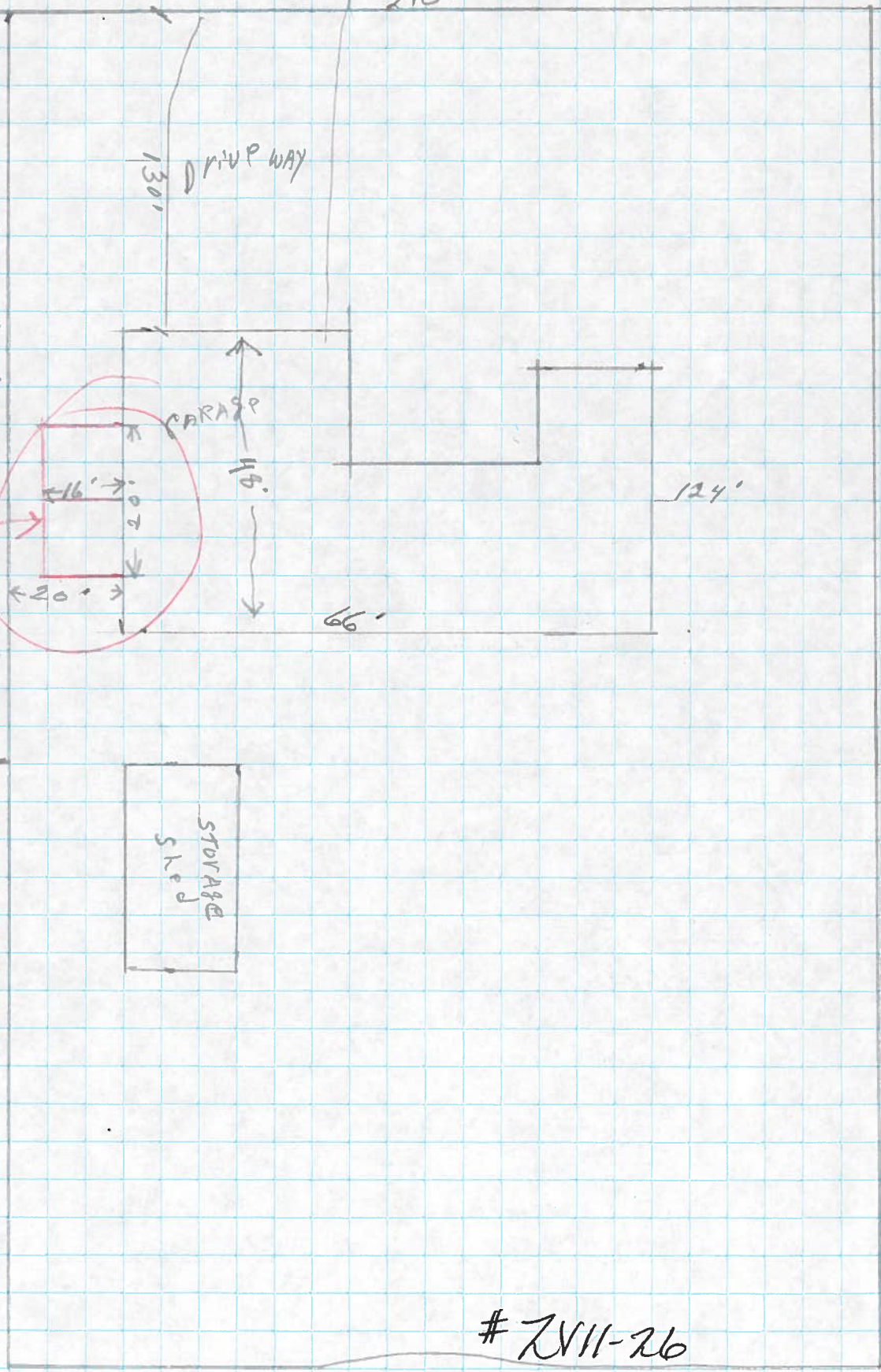
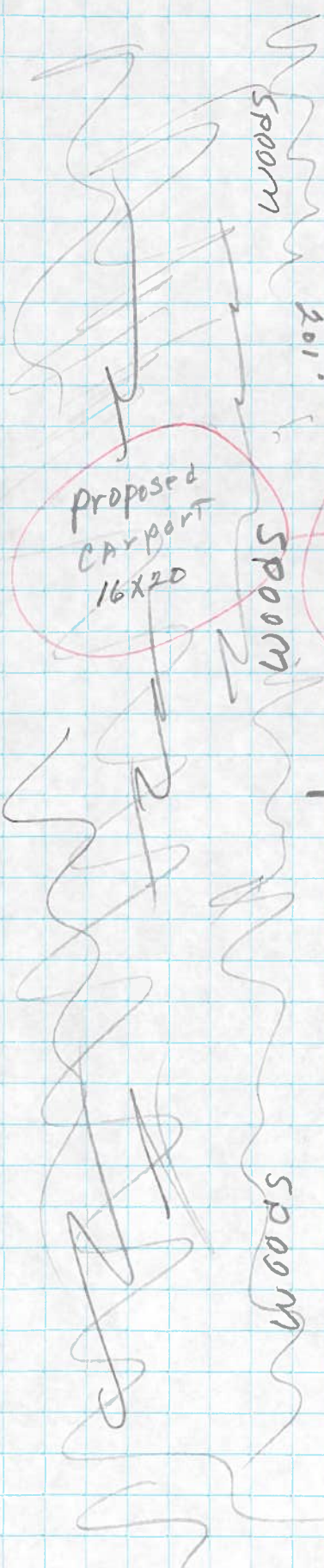
GEORGE R WOLFE
Print Name

7-29-11
Date

<u>CHECK # 1011</u>	FOR OFFICAL USE ONLY
Fees Paid: <u>100.00</u>	Date Application / Fees Received: <u>July 29, 2011</u>
Date of meeting / Public Hearing: <u>THURSDAY AUGUST 18, 2011 @ 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 AUGUST 3, 2011</u>	
Official Action of Board: _____	

Official Signature and Seal: _____	

W.VA. RT 13
210'



2V11-26

Woods

Steve Barney

From: Leslie Williams <williamsl@citlink.net>
Sent: Monday, July 25, 2011 4:59 PM
To: Steve Barney
Subject: Lowe Products particulate matter
Attachments: particulate cloud 3.jpeg; particulate cloud1.jpeg; particulate cloud 2.jpeg; Untitled attachment 00132.txt

Hi, Steve. As one of the citizens concerned about Lowe Products' impact on its residential neighbors, I wanted you to see the attached photos. Taken by Maureen Small of Ledge Lowe Estates, they show airborne mulch dust sweeping into her property during last Saturday's storm. The clouds you see here consist only of particulate matter from the mulch plant - it was not raining or foggy. As you may know, this kind of airborne material has been proven to be a significant health hazard. This was one of the main reasons that we wanted to see the 200' setback enforced - to reduce, in any way possible, the amount of particulate that reaches the air that we breathe. As you may remember, one of our other concerns was fire. If the mulch piles are allowed to get dry enough to spread this widely in the wind, it stands to reason that they are also dry enough to catch fire - especially in this heat. Having the mulch piles so close to residential property lines only worsens the risks to all neighbors.

While I understand that the BZA does not regulate environmental issues, I would like to express our continued concern that the granting of Lowe Products' setback variance request does, in fact, pose a substantial risk to neighbors' safety and health. I would welcome your passing this along to the BZA members as a way of letting them know of this perhaps-unforeseen consequence of their decision.

