

Jefferson County  
Board of  
Zoning Appeals

Thursday,  
July 21, 2011

**JEFFERSON COUNTY, WEST VIRGINIA**

**Department of Zoning**  
116 East Washington Street  
P.O. Box 338  
Charles Town, West Virginia 25414

**Phone: (304) 728-3228**  
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**Email: zoning@jeffersoncountywv.org**

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MEMORANDUM

**TO:** Board of Zoning Appeals Members

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

**FROM:** Steve Barney, Zoning Administrator

**DATE:** July 15, 2011

**SUBJECT:** July Monthly Report of Department Activities

**Issued Zoning Certificates**

#ZC11-17 LAURA B. GODDARD

*Issue Date:* May 16, 2011  
*Proposed Use:* Equestrian Riding / Training Facility  
*Physical Location:* 261 Falcon Ridge Drive; Charles Town, West Virginia  
Zone: Rural

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#ZC11-14 DOVE, LLC  
CHRISTINA LANTZ

*Issue Date:* May 17, 2011  
*Proposed Use:* Transfer / Continued operation of established Business  
Consisting of Restaurant/Bar, Game Room and Convenience  
Store. Patron capacity: 45 count.  
*Physical Location:* 2005 Charles Town Road; Harpers Ferry, West Virginia.  
Zone: Rural

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#ZC11-19 RODNEY JUDD c/o GRUBB & ELLIS COMPANY

*Issue Date:* June 27, 2011  
*Proposed Use:* Signage (4'x30' Banner)  
*Physical Location:* 69 Clendening Drive; Kearneysville, West Virginia  
Zone: Industrial-Commercial

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#ZC11-21 PHIL FUST

*Issue Date:* July 12, 2011  
*Proposed Use:* Nonconforming Grandfathered Use / Billboard Signage  
*Physical Location:* Charles Town Pike  
Zone: Rural

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#ZC11-20 VICTORY FREEWILL BAPTIST CHURCH/  
PASTOR RICHARD NETHERCUTT

*Issue Date:* July 14, 2011  
*Proposed Use:* Animated Sign  
*Physical Location:* 76 Amanda Court; Halltown, West Virginia  
Zone: Residential-Light Industrial-Commercial  
BZA Meeting Date: April 21, 2011

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#ZC11-13 KNR INVESTMENTS, LLC /  
KAY SMOKER, MANAGER

*Issue Date:* July 15, 2011  
*Proposed Use:* Change in Non-Conforming Use of former Millville Post Office  
into a two-unit residence.  
*Physical Location:* 481 Millville, West Virginia  
Zone: Industrial-Commercial  
BZA Meeting Date: May 19, 2011

### **Pending Zoning Certificates**

#ZC11-11 ERIC and ANNA SOKEL

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

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#ZC11-18 HJE GROUP, LC / PROPERTY OWNER  
PETER CHAKMAKIAN, ESQ., CONSULTANT

*Issue Date:* TBD  
*Proposed Use:* Vehicle Auto Repair and Sales  
*Physical Location:* 15 Willingham Road; Charles Town, West Virginia  
Zone: Rural  
BZA Meeting Date: January 21, 2010

**AGENDA**  
**Jefferson County Board of Zoning Appeals**  
**Thursday, July 21, 2011, 3:00 p.m.**

1. Approval of the Minutes from the May 19, 2011 meeting.
2. Variance request by property owner, Jonathan A. Shively, from Section 5.4(b) for a reduction of the rear setback distance requirement from 20' to 8' to allow for the installation of an inground pool that includes a 4' concrete surround. Property location: Maddex Farm Subdivision, 100 Monument Court, Shepherdstown, West Virginia. (District: Shepherdstown; Map: 8C; Parcel: 154; Size: 0.25 acres; Zoned: R-LI-C; File: ZV11-16)
3. Variance request by property owners, Keith E. and Lisa Cranford, from Sections 5.4(b) for a reduction of the side setback distance requirement from 8' to 4' to allow for a lot boundary adjustment. Property location: 440 Euclid Avenue; Charles Town, WV. (District: Charles Town; Map: 10A; Parcel: 102; Size: 0.68 acres; Zoned: R-LI-C; File: ZV11-17)
4. Variance request by Adam Link, III, on behalf of the St. James Lutheran Church (Congregation) at Uvilla, from Section 4.10 to waive the requirement of a site plan and Section 5.7(b) for a reduction of the 50' side setback distance requirement for a church to 5' to allow for the construction of a 640 sq. ft. addition. Property location: 4328 Shepherdstown Pike, Shepherdstown, West Virginia. (District: Shepherdstown; Map: 20; Parcel: 16; Size: 3.7 acres; Zoned: Rural; File: ZV11-18)
5. Proposed amendment to advertising requirements in Board of Zoning Appeals Rules of Procedure.
6. Monthly Address by Director Jennifer M. Brockman.
7. Legal Update.
8. Vote on written decisions from prior Board of Zoning Appeals meetings.
  - a. Findings of Fact and Conclusion of Law: On behalf of Lowe Products, Inc., variance request by property owner, John D. Lowe, III ET AL, from Sections 4.6(a) and 4.11(b) for a reduction of the distance and buffer yard requirements of an Industrial Use and from Section 9.5(b) to locate a fence taller than 6' within the required yard.
  - b. Findings of Fact and Conclusion of Law: Appeal of the Administrative Decision of Zoning Certificate #ZC11-04 by Appellants, Joseph and Nancy Hoffman. The Zoning Certificate, issued on February 16, 2011, approves a Home Occupation, Level II - Pet Sitting / Doggie Daycare and Internet Pet Supply Business. The Appeal requests revocation of #ZC11-04 and any permits previously issued for the establishment/operation of this Business.
9. Correspondence.
  - a. Letter from Michelle Krassowski regarding Ms. Booger's Pet Sitting and Supplies.

**Minutes**  
Jefferson County Board of Zoning Appeals  
Thursday, May 19, 2011

The Jefferson County Board of Zoning Appeals met on Thursday, May 19, 2011. The meeting was held in the Charles Town Library meeting room located at 200 East Washington Street, at the side entrance on Samuel Street in Charles Town, West Virginia. Board members Jeff Bresee, Chairman, Christy Huddle, Vice Chairman, Tiffany Hine, Jon Brusco and Tyler Quynn, Alternate, were present. Staff members present were: Jennifer Brockman, Director; Steve Barney, Zoning Administrator; Stephen Groh, Assistant Prosecuting Attorney and Jennilee Hartman, Zoning Clerk.

Ed Kelly was absent with notification.

Ms. Huddle motioned to commence the meeting. Ms. Hine seconded the motion, which carried unanimously. Mr. Bresee called the meeting to order at 3:07 p.m.

1. Approval of Minutes from the April 21, 2011 meeting.

Ms. Huddle motioned to approve the minutes with the following correction:

- a. Page 2, Item #4, second paragraph, change the word "*building*" to "*installing*."
- b. Page 3, Item #5, second paragraph, add an "s" to the word "*client*".
- c. Page 3, Item #5, seventh paragraph, change the word "*swelling*" to "*dwelling*."
- d. Page 6, Item #2, third paragraph, change the designation "*i*" to "*1*."

Ms. Hine seconded the motion, which carried unanimously.

Christine Chalmers, Office Assistant, swore in individuals who indicated they would be giving testimony.

2. Postponed from the April 21, 2011 meeting. Variance request by property owner, Hawthorn Associates, LLC, c/o Harry F. Byrd III, from Section 5.7(a)17 to increase number of the permitted receptions from 4 to 30 and to increase the permitted tents from 1 to 2 per reception. Property location: 9 Hawthorn Avenue, Summit Point, West Virginia. District: Kabletown; Map: 16; Parcel: 13; Size: 230.7 acres; Zoned: Rural; File: ZV11-07.

Theresa Thomson Gregson addressed the Board on behalf of Hawthorn Associates, LLC. Ms. Gregson provided the Board letters of support from surrounding property owners in addition to before and after photos of the restoration of Hawthorn. Ms. Gregson stated that the applicants' current variance request is to permit up to 3 tents per reception and up to 30 receptions per year. Ms. Gregson explained that the additional tents were necessary to accommodate various receptions needs. Mr. Barney referenced facts from his staff report and suggested a possible condition of approval to require a site plan for the proposed use demonstrating where the parking and access would be. Mr. Bresee called for public comment. Richard Crim spoke in favor of the request.

3. On behalf of Lowe Products, Inc., variance request by property owner, John D. Lowe, III ET AL, from Sections 4.6(a) and 4.11(b) for a reduction of the distance and buffer yard requirements of an Industrial Use and from Section 9.5(b) to locate a fence taller than 6' within the required yard.

Property location: 777 Potomac Farms Drive (alt. Rte. 45 Connector) in Shepherdstown, West Virginia. District: Shepherdstown; Map: 8; Parcels: 5 & 6.20; Size: 50 (+/-) acres; Zoned: R-G; File: ZV11-10.

Michael Scales, attorney, spoke on behalf of his client Lowe Products, Inc. Mr. Scales detailed the history of the industrial use and provided aerial photographs of the site dated February 28, 1985, November 18, 1988 and November 30, 1999. Mr. Scales informed the Board of the West Virginia Code §8-24-50 and §8A-7-10(c) which prevents an ordinance, adopted after the inception of a use, to prohibit such use from continuing development or expansion. Mr. Scales and John D. Lowe, applicant, answered questions from the BZA.

Mr. Bresee called for public comment. The Board received public comment from supporters Walter Pellish and Thomas Bayuzik, Director of the Jefferson County Economic Development Authority. Judy Moore, Nannette Jenkins, Leslie Williams (who read a letter by Patrick Coskey), Ryan Hagerty, Diana Wesley, Jane Vanderhook, Michael Glenn and Russell Harp spoke in opposition to the request citing the following concerns: offensive and disruptive sound, air quality, pollution, and risk to personal safety and property.

Mr. Barney clarified that West Virginia Code §8A-7-10(c) states the County cannot prohibit an industrial use and not that the County could not regulate such use. Mr. Barney stated that enforcing setback and distance requirements does not prohibit the use. Mason Carter, Ordinance Compliance Officer, answered the Board's questions regarding complaints made by Ms. Moore in past years.

Mr. Scales rebutted the objections stated by those speaking in opposition.

Ms. Hine motioned to adjourn for a brief recess at 5:00 p.m. Ms. Huddle seconded the motion, which carried unanimously.

Ms. Huddle motioned to reconvene at 5:08 p.m. Ms. Hine seconded the motion, which carried unanimously.

4. Appeal of the Administrative Decision of Zoning Certificate #ZC11-04 by Appellants, Joseph and Nancy Hoffman. The Zoning Certificate, issued on February 16, 2011, approves a Home Occupation, Level II - Pet Sitting / Doggie Daycare and Internet Pet Supply Business. The Appeal requests revocation of #ZC11-04 and any permits previously issued for the establishment/operation of this Business. Property location: 31 Black Bear Trail, Harpers Ferry, West Virginia. District: Charles Town; Map: 23G; Parcel: 7; Size: 20,000<sup>+</sup> sq. ft.; Zoned: Rural; File: #AP11-02.

Joseph Hoffman presented the appeal to the Board. Mr. Hoffman asserted that the issuance of Zoning Certificate ZC11-04 which permitted Michelle Krassowski of 31 Black Bear Trail in Harpers Ferry, West Virginia to operate Miss Booger's Pet Service & Supplies, was issued in error. Mr. Hoffman went on to explain the Jefferson County Zoning Ordinance (Ordinance) did not define a "kennel" and therefore the County should use the State of West Virginia's

definition. Mr. Hoffman provided the Board with that definition and argued that Ms. Krassowski's business would be defined as a kennel by the State of West Virginia. Mr. Hoffman argued that the Ordinance restricts kennels in the Rural zoning district to a 500' buffer from residential uses and that Ms. Krassowski's business is approximately 54' from his bedroom window. Mr. Hoffman went on to further expound on how the current business does not conform to other restrictions of a Home Occupation Level 2 as defined in Article 4A of the Ordinance.

Mr. Bresee called for public comment. Ms. Krassowski, owner of Miss Booger's Pet Service & Supplies, spoke in opposition to the appeal arguing that she has abided by all the restrictions applied as part of the Zoning Certificate. Ms. Krassowski informed the Board that by granting the appeal she would have to move from her home and relocate her business because she would not have enough clients to sustain her livelihood.

Mr. Barney clarified that his role was not to evaluate whether or not the land use was permissible as the previous Zoning Administrator had already made that interpretation by issuing zoning certificate #ZC10-08. Mr. Barney informed the Board that State law prohibits staff from rescinding approved zoning certificates. Mr. Barney explained his role is to ensure the intent of the Ordinance is upheld. Mr. Barney stated Ms. Krassowski demonstrated a willingness to abide by the inclusion of additional restrictions and therefore granted the zoning certificate for 2 additional dogs. Mr. Barney justified his determination by arguing that the Ordinance did not define kennel as a use and therefore interpreted the term "kennel", as applied in Zoning Certificate #ZC10-08, to be a structure. As a result, he restricted Ms. Krassowski's business from installing kennels because she would not be able to comply with the 500' buffer requirement established in Article 5.7(a) of the Ordinance.

Mr. Hoffman rebutted staff's report.

5. **Request Withdrawn by Applicant** - Special exceptions request by applicant Scott Kegerreis, per Section 10.5 to allow for the installation of a 600 sq. ft. double-sided, off premise Billboard sign. Property location: 147 Edmond Road, Kearneysville, West Virginia. Property owner: Cindi L. Hertelendy. District: Charles Town; Map: 1; Parcel: 84; Size: 1.47 acres; Zoned: Industrial-Commercial; File: #ZV11-11.

Request withdrawn by Applicant.

6. Variance request by property owner, Daniel Anders, from Section 5.4(b) for a reduction of the rear setback distance from 20' to 14' to allow for the construction of a 10'x16' deck. Property location: Colonial Hills Subdivision, 380 Starkeys Landing, Shepherdstown, West Virginia. District: Shepherdstown; Map: 8E; Parcel: 39; Size: 2000 sq. ft.; Zoned: Residential-Growth; File: #ZV11-12.

Daniel Anders presented the Board with his request. Mr. Bresee called for public comment. There was no public comment. Mr. Barney informed the Board of a 100' electrical easement

along the rear of the applicant's property thus alleviating any burden on an adjoining rear property owner.

7. Variance request by property owner, Jane Mc Swain, from Section 5.7(b) for a reduction of the rear setback distance from 20' to 14' to allow for expansion of an existing deck. Property location: Deerfield Village Subdivision, 49 Rolling Green Court; Shepherdstown, West Virginia. District: Shepherdstown; Map: 14B; Parcel: 38; Size: .329 acres; Zoned: Rural; File #ZV11-13.

Jane Mc Swain presented the Board her request. Mr. Bresee called for public comment. There was no public comment. Mr. Barney informed the Board of a 75' easement along the rear of the applicant's property thus alleviating any burden from an adjoining property owner.

8. Variance request by property owner, Suzanne Walls, from Sections 4.11 and 4.16 from the required yard screening and buffer requirements to remove 159 shrubs from the approved Walls Nursery Site Plan (S04-16). Property location: 4274 Charles Town Road, Kearneysville, West Virginia. District: Middleway; Map: 2; Parcel: 2.6; Size: 3.91 acres; Zoned: Rural; File #ZV11-14.

Suzanne Walls and Jerry Walls presented the Board with the request. Mr. Bresee called for public comment. There was no public comment. Mr. Barney pointed out that the property is long and narrow in shape and that the 50' unscreened buffer provision could not be utilized at the time when the site plan was approved due to an existing drive. Mr. Walls described other characteristics of the property such as a reduction in traffic flow since the new Route 9 opened.

9. On behalf of KNR Investments, LLC, request for a Change in Non-Conforming Use by Manager, Kay Smoker, of the former Millville Post Office from a one-unit residential rental to a two-unit residential rental. Property location: 481 Millville Road, Millville, West Virginia. District: Harpers Ferry; Map: 11A; Parcel: 34; Size: 0.1 acres; Zoned: Industrial-Commercial; File #ZC11-13.

Ronald Smoker, applicant, presented the Board with the request. Mr. Smoker stated the main level of the building had previously been used as a post office; however, after the post office closed, he has been unable to rent the space for a non-residential use. The upper level is currently an apartment and thus the applicants would like to renovate the main floor to install a second apartment. Mr. Quynn inquired about the septic system. Mr. Smoker stated he had been informed by a contractor that the Health Department would not have an issue with the proposed apartment. Mr. Barney referred to facts from the staff report. Mr. Bresee called for public comment. There was no public comment.

10. **Request Withdrawn by Applicant** - Variance request by applicants, Chad and Tabitha Armentrout, from Section 4.16 for a reduction of a side setback distance from 25' to 5' to allow for the construction of an addition to an existing building. Property location: 798 Jefferson Avenue, Charles Town, West Virginia. Property owners: Becton and Traci Davis. District:

Charles Town; Map: 10A; Parcel: 58; Size: 15,000 sq. ft.; Zoned: Residential-Growth; File #ZV11-15.

Request withdrawn by Applicant.

Ms. Huddle motioned to go into deliberative session at 6:01 p.m. Ms. Hine seconded the motion, which carried unanimously.

Ms. Huddle motioned to come out of deliberative session 7:19 p.m. Mr. Quynn seconded the motion, which carried unanimously.

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

2. Postponed from the April 21, 2011 meeting. Variance request by property owner, Hawthorn Associates, LLC, c/o Harry F. Byrd III, from Section 5.7(a)17 to increase the number of permitted receptions from 4 to 30 and to increase the permitted tents from 1 to 2 per reception.

Ms. Hine motioned to approve the above referenced request contingent upon the staff approving a parking plan. Ms. Hine seconded the motion, which carried unanimously. Ms. Hine noted that the rationale for the approval of the increases is the very large acreage of the property.

3. On behalf of Lowe Products, Inc., variance request by property owner, John D. Lowe, III ET AL, from Sections 4.6(a) and 4.11(b) for a reduction of the distance and buffer yard requirements of an Industrial Use and from Section 9.5(b) to locate a fence taller than 6' within the required yard.

Ms. Hine motioned to approve the above referenced requests provided that the fence be not more than 12 feet in height; the fence shall be no closer to the property line than the height of the fence; the fence shall be made of a solid material (such as wood or concrete); the fence shall not be topped with barbed or razor wire. The purpose of the conditions is to abate the noise, light and dust concerns of the neighbors. Ms. Huddle seconded the motion and offered an amendment to approve the requests, including the conditions made by Ms. Hine and to make the erection of the fence a requirement. Ms. Huddle's amendment failed for the lack of a second. Ms. Huddle withdrew her second for the original motion. Mr. Quynn seconded the original motion made by Ms. Hine with all conditions. Mr. Bresee called for a vote. The motion passed with 4 in support and one opposed (Ms. Huddle).

4. Appeal of the Administrative Decision of Zoning Certificate #ZC11-04 by Appellants, Joseph and Nancy Hoffman. The Zoning Certificate, issued on February 16, 2011, approves a Home Occupation, Level II - Pet Sitting / Doggie Daycare and Internet Pet Supply Business. The Appeal requests revocation of #ZC11-04 and any permits previously issued for the establishment/operation of this Business.

Ms. Huddle stated it is the Board's opinion that Zoning Certificates ZC10-08 and ZC11-04 were issued in error, specifically because the Home Occupation, Level II requires that the use be conducted wholly within the dwelling unit and that it is clear that the use does not comply with

this requirement. Ms. Huddle motioned that the appeal by Joseph and Nancy Hoffman be upheld and that ZC11-04 be revoked. Regarding the revocation request of ZC10-08, the Board finds that because an appeal was not filed within the time frame established in the Ordinance, ZC10-08 remains in effect as issued. Ms. Hine seconded the motion, which carried unanimously.

5. **Request Withdrawn by Applicant** - Special exceptions request by applicant Scott Kegerreis, per Section 10.5 to allow for the installation of a 600 sq. ft. double-sided, off premise Billboard sign.

Request withdrawn by Applicant.

6. Variance request by property owner, Daniel Anders, from Section 5.4(b) for a reduction of the rear setback distance from 20' to 14' to allow for the construction of a 10'x16' deck.

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

7. Variance request by property owner, Jane Mc Swain, from Section 5.7(b) for a reduction of the rear setback distance from 20' to 14' to allow for expansion of an existing deck.

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

8. Variance request by property owner, Suzanne Walls, from Section 4.11 and 4.16 from the required yard screening and buffer requirements to remove 159 shrubs from the approved Walls Nursery Site Plan (S04-16).

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

9. On behalf of KNR Investments, LLC, request for a Change in Non-Conforming Use by Manager, Kay Smoker, of the former Millville Post Office from a one-unit residential rental to a two-unit residential rental.

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

10. **Request Withdrawn by Applicant** - Variance request by applicants, Chad and Tabitha Armentrout, from Section 4.16 for a reduction of a side setback distance from 25' to 5' to allow for the construction of an addition to an existing building.

Request withdrawn by Applicant.

11. Monthly Address by Director Jennifer M. Brockman. Mr. Barney informed the Board of the upcoming public hearing on June 9, 2011 regarding the policy neutral zoning ordinance

amendments. Mr. Barney also apprised the Board of the progress made on the proposed home business zoning ordinance amendments and the US 340 Corridor planning process.

12. Legal Update. None.

13. Vote on written decisions from prior Board of Zoning Appeals meetings.

- a. Findings of Fact and Conclusion of Law: Variance request by property owner, A.M.S. Morgan III on behalf of Rippon Brewery, LLC, from Sections 4.16, 5.6(d) and 5.7(b) to reduce the front setback to 8' for a proposed addition to an existing structure for a commercial use. No action taken.
- b. Findings of Fact and Conclusion of Law: Variance request by property owner, Victory Freewill Baptist Church, from Section 10.2(i) to allow for an animated sign. No action taken.
- c. Findings of Fact and Conclusion of Law: Appeal of an Administrative Decision of Zoning Certificate (ZC11-04) by Michelle Krassowski on behalf of Miss. Booger's Pet Services & Supplies. The Board requested that the name Joe be changed to Joseph and that the word 'swelling' be changed to 'dwelling.' Ms. Hine motioned to sign the Findings effective immediately. Ms. Huddle seconded the motion, which carried unanimously.

Ms. Huddle informed the Board that she would be absent from the July and August meetings. Ms. Hine stated she would also not be in attendance at the August meeting.

Ms. Hine motioned to adjourn the meeting at 7:44 p.m. Mr. Quynn 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](http://www.jeffersoncountywv.org). These minutes were prepared by Jennilee Hartman, Zoning Clerk.

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

**Section 7.8** of the current Jefferson County Zoning and Land Development Ordinance, dated December 3, 2009, states the following:

“Section 7.8 Board of Zoning Appeals Approval of Conditional Use Permit

...

(b) The Board of Zoning Appeals shall:

...

(3) Authorize such variances from the terms of the Ordinance if the Board finds that variance:

- a. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;
- 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;
- c. Would eliminate an unnecessary hardship and permit a reasonable use of the land; and
- d. Will allow the intent of the zoning ordinance to be observed and substantial justice done.

[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]”

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 July 21, 2011

**Jonathon A. Shively (#ZV11-16)**

Item #2 Variance request by property owner, Jonathan A. Shively, from Section 5.4(b) for a reduction of the rear setback distance requirement from 20' to 8' to allow for the installation of an inground pool that includes a 4' concrete surround.

APPLICANT:	Jonathan A. Shively
OWNER :	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	100 Monument Court, Shepherdstown, West Virginia
LEGAL DESCRIPTION:	District: Shepherdstown; Map: 8C; Parcel: 154
ZONING DISTRICT:	<p style="text-align: center;">Zoning Map Designation:          Residential-Light Industrial-Commercial (R-LI-C)</p>
SURROUNDING PROPERTIES:	<p>Zoning Map Designation:  <i>North:</i> R-LI-C      <i>South:</i> R-LI-C  <i>East:</i> R-LI-C      <i>West:</i> R-LI-C</p>
LOT AREA:	.25 acres
PRIOR CASES:	Subdivision file: 02-04
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential

**Staff Report**  
Jefferson County Board of Zoning Appeals Meeting  
July 21, 2011

**Jonathon A. Shively (#ZV11-16)**

**RELEVANT INFORMATION:**

1. Overview of Request

Jonathon Shively, property owner, seeks a variance from Section 5.4(b) of the Zoning and Land Development Ordinance to allow for the installation of an inground pool within the rear setback area.

A 20' rear setback applies to the property. The pool is proposed to be located 12' from the rear property line (measured from the water's edge), and the concrete surrounding the pool is proposed to be located within 8' of the rear property line.

2. Applicant's Justification of Request

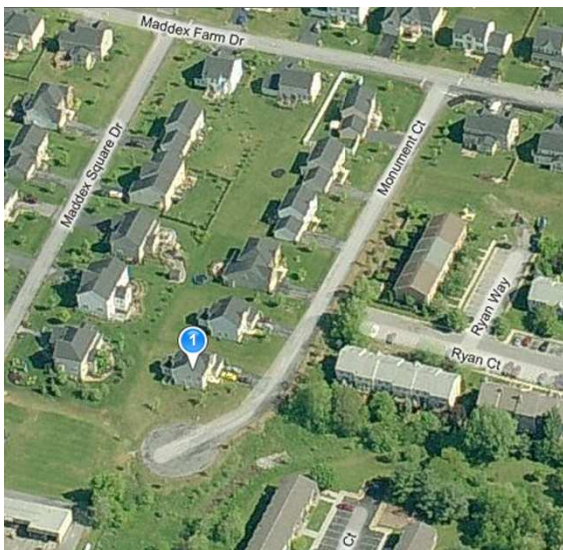
The application notes that the property is oddly shaped as a result of the cul-de-sac, and that there is no location within the lot's designated building area where a pool could be installed, meeting all required setbacks.

3. Staff Evaluation of Request

As a residential use in the Residential-Light Industrial-Commercial District, the applicable setbacks are established in Section 5.4b.

The land uses adjacent to the west (rear) and north (side) property lines are both single-family homes. The land use adjacent to the south is designated on the subdivision plat as "open space."

The pool and associated fence have been reviewed and approved by the Architectural Review Committee of the Maddex Farm Homeowners Association. Copies of the approval letters are included in the BZA packet for this meeting.



**Staff Report**  
 Jefferson County Board of Zoning Appeals Meeting  
 July 21, 2011

**Jonathon A. Shively (#ZV11-16)**

4. Possible Conditions of Approval

No conditions of approval are identified.

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	"	"	"	"	"

#ZV11-16

**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): Jonathan Adam Shively

Address: 100 Monument Ct.  
Shepherdstown WV 25443

Phone Number: 240-405-5575

Location of Property: Madder Farm Subdivision  
100 Monument Ct Shepherdstown WV

Lot Size: .25 Acres

Deed Book Reference: Deed Book Number 1066 Page Number 112

Tax Map Reference: District 09 Map 8C Parcel 015400000000

Zoning District: Shepherdstown Residential/Light Industrial/Commercial  
Section of Ordinance: 5.4(b) JA

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.

We are requesting a variance of the 25' setback on the rear of the property to install an inground pool. through Design and Build LLC. We are requesting that the concrete around the pool go to 8' from the fence and the waters edge to 12' from the rear fence designating the property line.

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

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

**RECEIVED**  
JUN 07 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:

The property is fully fenced to pool specifications and there is only one neighbor w/ visibility behind our home. to the left is Community Common Space.

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:

Our property is a very odd shape and the existing 25' setback adversely affects my property much more than it would a traditional rectangular lot in the same community.

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

There is no where in my yard that we could put a pool that would not require a variance due to the odd shape.

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

This variance does nothing to negatively impact the intent of the zoning ordinance, but allows for the homeowner reasonable enjoyment of property

*[Signature]*  
Signature of Property Owner

Jonathan A. Shively  
Print Name

6-7-11  
Date

**FOR OFFICIAL USE ONLY**

Fees Paid: \$100.00 CASH Date Application / Fees Received: TUESDAY, JUNE 7, 2011

Date of meeting / Public Hearing: THURSDAY, JULY 21, 2011 AT 3:00 P.M.

Official Administrative Body: Jefferson County Board of Zoning Appeals

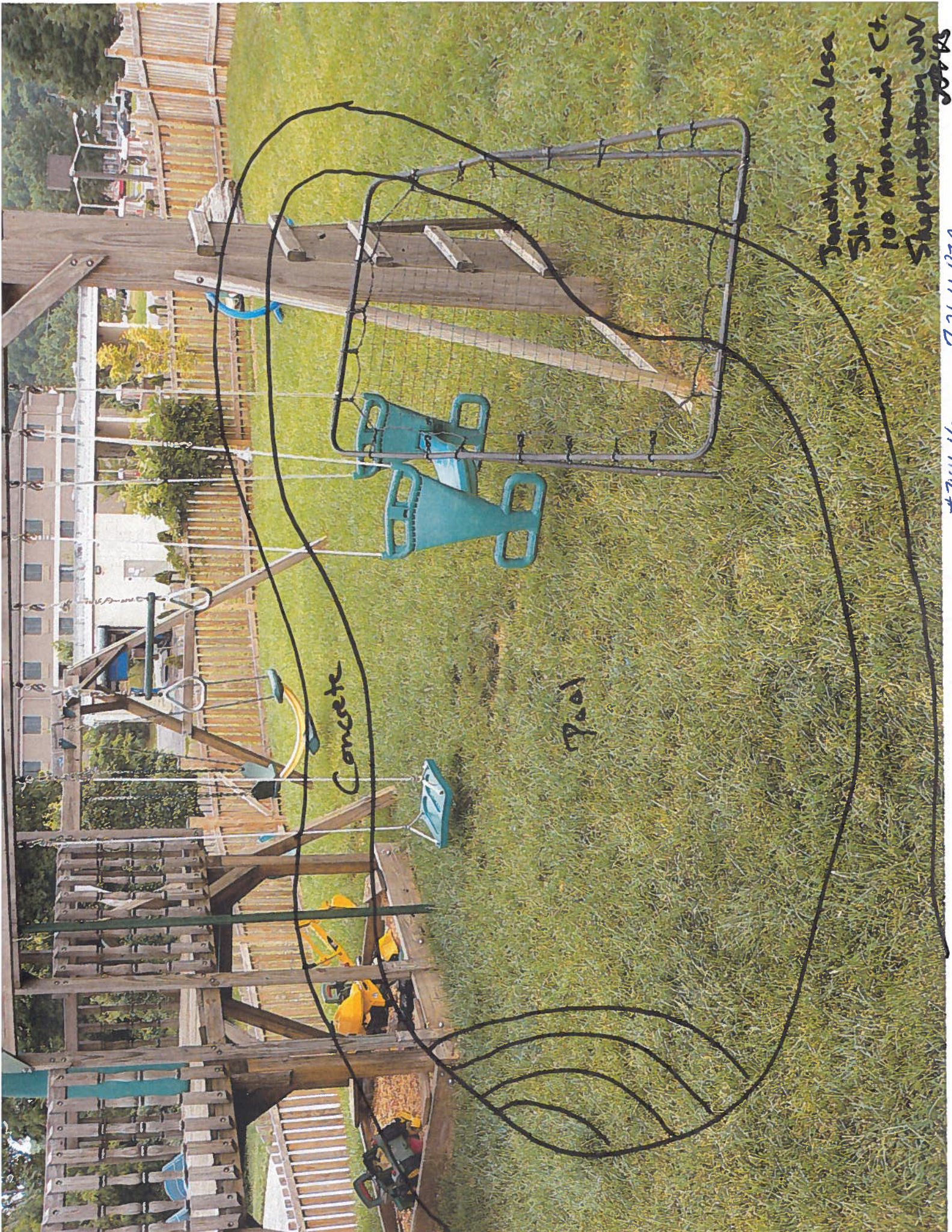
Posting Requirements: 30 Number of Days Prior to Scheduled Hearing

Advertising Dates: WEDNESDAYS: JUNE 15 TH GILL JUNE 22ND (2011)

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

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





Jonathan and Lesa  
Shirley  
100 Monument Ct.  
Shepherdstown WV  
26768

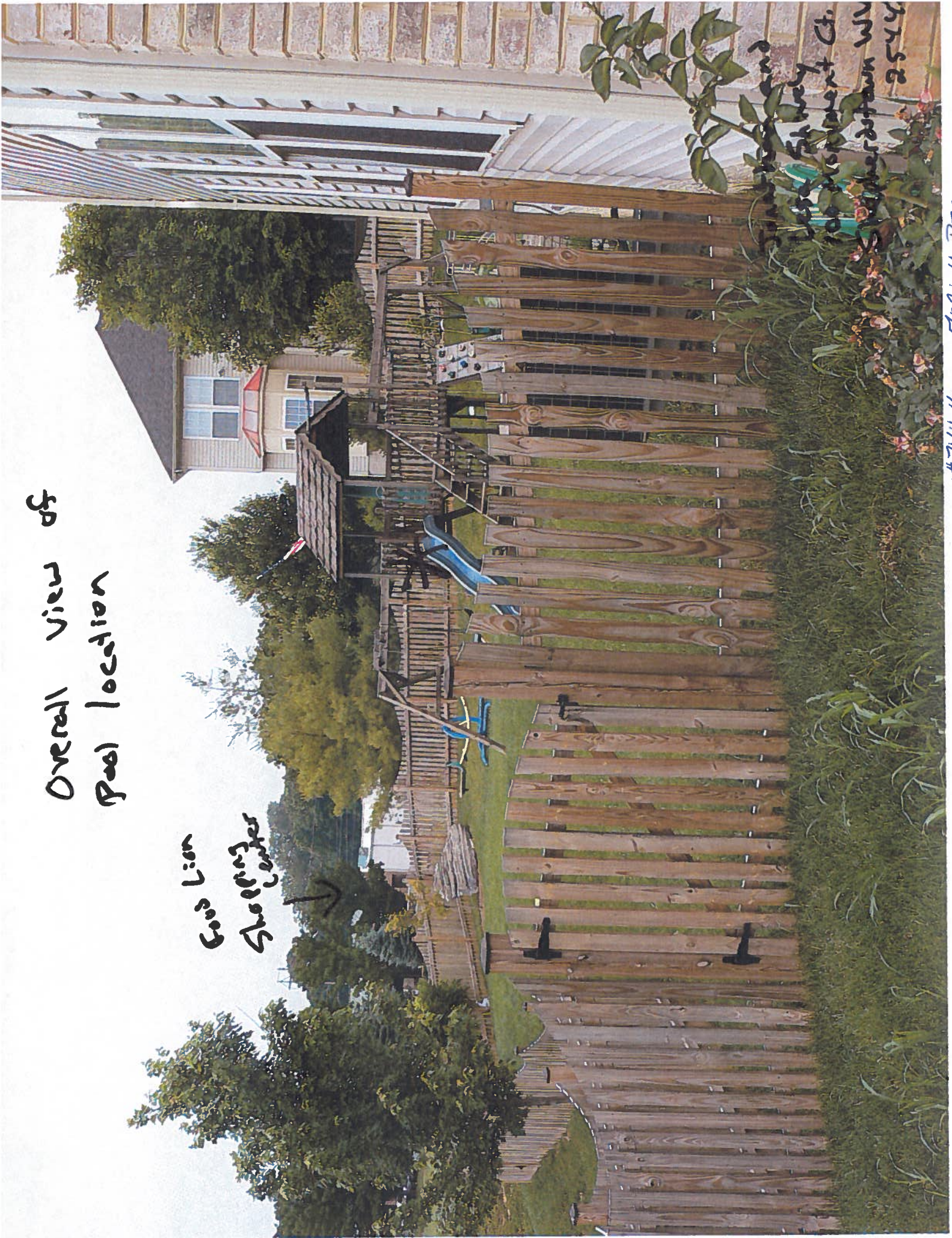
#2011-16 7-21-11 0320

Concrete

Pool

Overall view of  
Pool location

Go's Lion  
Shed Center  
↓



James Woodard  
1000 S. Hwy  
100 W. 1st St  
100 W. 1st St  
2544

#311116 7-9-11 2:20



and before  
Pump location  
25/1/16

PUMP  
location

#24/1/16 17-21-11 P-24



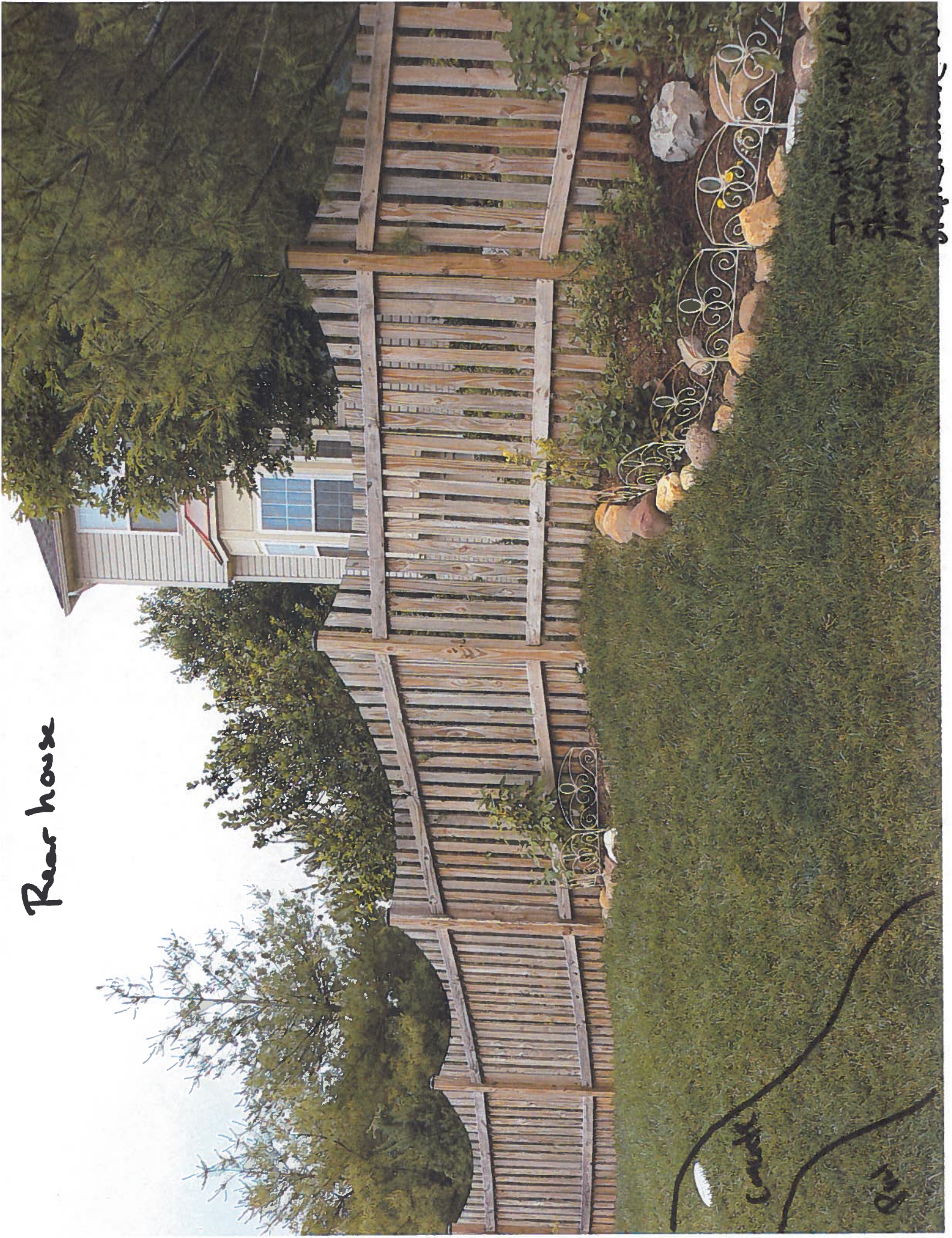
Concrete

Pool

Jacobson and  
Lisa Shively  
Dr. Michael

#21111 7-21-11 AZA Shagston W

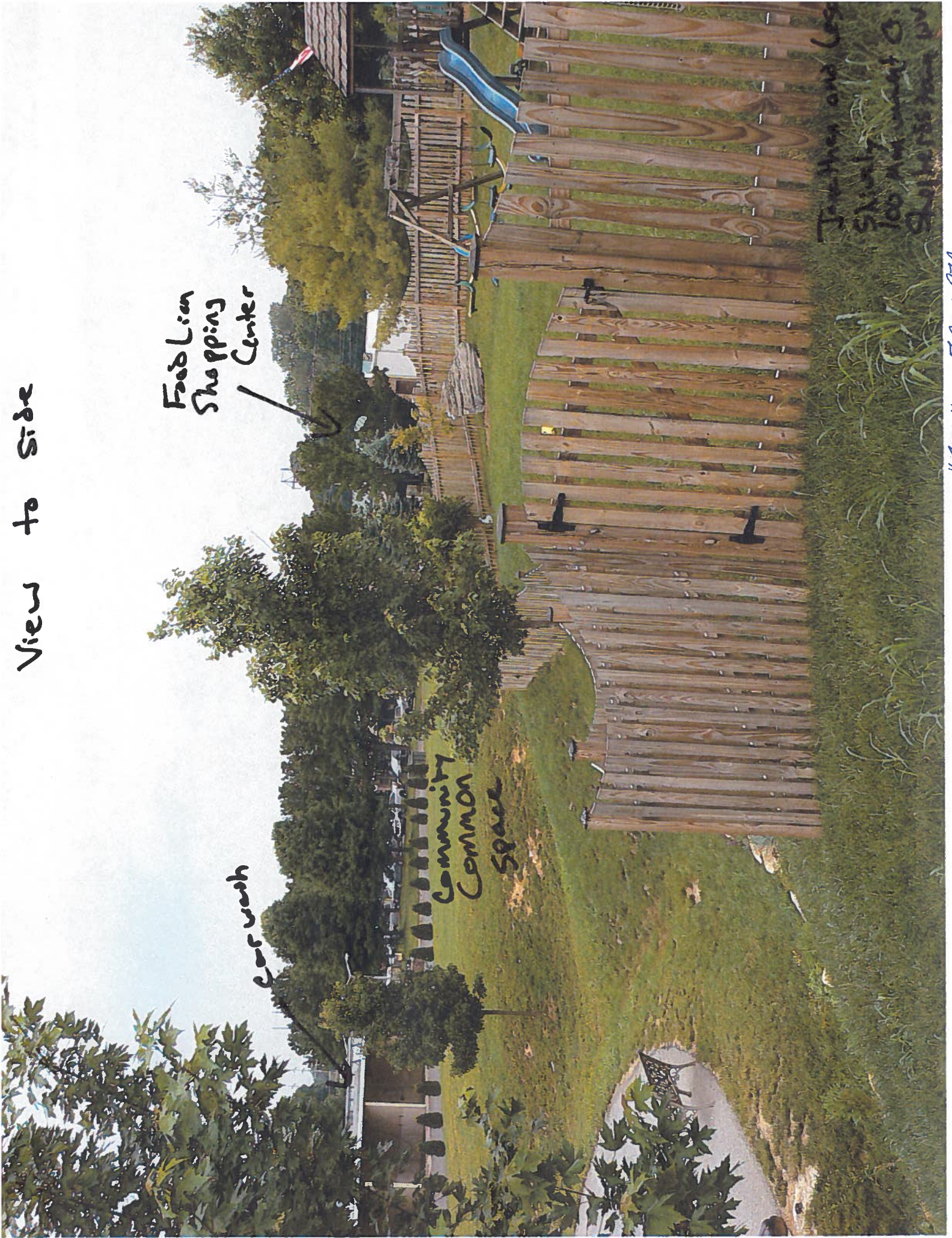
Rear house



Fence  
Gate

Front

View to Side




Food Lion Shopping Center

Car Wash

Community Common Space

Together and Caring

4 June 11 7:00 AM

From: Adam Shively  
To: zoning@jeffersoncountywv.org  
CC: Poolz by Design & Build  
Date: Tuesday, June 28, 2011 10:26:20 AM  
Subject: Jonathan Adam Shively Variance Attn: Steve Barney  
 [20110628094021252.pdf](#)

Attached are the HOA Approval Letters for my file. I come up for a Variance Hearing on July 21 at 3:00 PM. Please add these documents to my file as support for my variance. Thanks you for your time and attention...ADAM

----- Forwarded message -----

From: **Shively, Adam** <[4staterealestate@gmail.com](mailto:4staterealestate@gmail.com)>  
Date: Tue, Jun 28, 2011 at 9:40 AM  
Subject:  
To: "Shively, Adam" <[4staterealestate@gmail.com](mailto:4staterealestate@gmail.com)>

This E-mail was sent from "SAVIN4535" (C4535).

Scan Date: 06.28.2011 09:40:21 (-0400)

--

Adam Shively, Owner/Realtor  
4 State Real Estate LLC  
Keller Williams Rice Realty  
240-405-5575 (cell)  
304-870-0022 (home)  
304-725-2036 (fax)  
[www.4StateRealEstate.com](http://www.4StateRealEstate.com)

GIVE MORE...Ask me about how to make your home an RAI Exclusive Property!

# Maddex Farm Homeowners Association

Property Management People  
*"MANAGEMENT" is our middle name*

June 16, 2011

Johnathan Santacroce/Shively  
100 Monument Ct.  
Shepherdstown, WV 25443

RE: Architectural Submittal for 100 Monument Ct.  
Account#: 72632

Dear Homeowner(s):

Please be advised that your Architectural Change Request to install a in-ground swimming pool has been **APPROVED** by the Architectural Review Committee (ARC) as submitted in your application and subject to the following conditions:

1. Design and construction must meet the guidelines as specified in your CC&R's and Architectural Standards;
2. It is your responsibility to obtain all necessary permits required by the County and to comply with all building code requirements.
3. Contact Miss Utility prior to any digging at 811.
4. If any portions of the common elements are damaged during the installation, they must be returned to their original, if not better, condition.
5. There must not be any adverse effect to existing grading or water drainage.

Please note that any additions or modifications to the above referenced work requires a new application. If you have questions or comments, please contact me at (301) 694-6900, Ext. 1023. Thank you for following the approval process.

Sincerely,



Renee Hall, CMCA®, AMS®  
Community Manager  
[renee.ah@pmpbiz.com](mailto:renee.ah@pmpbiz.com)

cc: Property File  
Board of Directors

MANAGED BY PROPERTY MANAGEMENT PEOPLE, INC.

92 Thomas Johnson Drive, Suite 170 · Frederick, MD 21702 · Phone (301) 694-6900 · Fax (301) 694-9514

# Maddex Farm Homeowners Association

Property Management People  
*"MANAGEMENT" is our middle name*

June 16, 2011

Johnathan Santacroce/Shively  
100 Monument Ct.  
Shepherdstown, WV 25443

RE: Architectural Submittal for 100 Monument Ct.  
Account#: 72632

Dear Homeowner(s):

Please be advised that the Architectural Committee has **APPROVED** your request to install a wrought iron fence around swimming pool as submitted in your application and subject to the following conditions:

1. Design and construction must meet the guidelines as specified in your CC&R's and Architectural Standards;
2. The fence must not be higher than five (5) feet in height.
3. The fence **cannot** extend beyond property lines.
4. The beauty or finished side of the fence must face outward.
5. Fence must be proper maintained at all times.
6. Any changes to the fence design, once approved, must be resubmitted to the ARC.
7. It is your responsibility to obtain all necessary permits required by the Jefferson County and to comply with all County building and zoning code requirements and easements
8. Contact Miss Utility prior to any digging at 811.

Please note that any additions or a modification to the above referenced work requires a new application. If you have questions or comments, please contact me at (301) 694-6900, Ext. 1023. Thank you for your cooperation.

Sincerely,



Renee Hall, CMCA®, AMS®  
Community Manager  
[renee.ah@pmpbiz.com](mailto:renee.ah@pmpbiz.com)

cc: Property File  
Board of Directors

MANAGED BY PROPERTY MANAGEMENT PEOPLE, INC.

92 Thomas Johnson Drive, Suite 170 · Frederick, MD 21702 · Phone (301) 694-6900 · Fax (301) 694-9514

## Steve Barney

---

**From:** Zoning Dept <zoning@jeffersoncountywv.org>  
**Sent:** Thursday, July 14, 2011 9:12 AM  
**To:** sbarney@jeffersoncountywv.org  
**Subject:** Fw: Jonathan Adam Shively Variance Attn: Steve Barney

-----Original Message-----

**From:** "Adam Shively" <4staterealestate@gmail.com>  
**Sent:** 7/14/2011 8:09:59 AM  
**To:** "Zoning Dept" <zoning@jeffersoncountywv.org>, "Poolz by Design & Build" <ddesignbuild@aol.com>  
**Subject:** Re: Jonathan Adam Shively Variance Attn: Steve Barney

Hey Steve...

The pool is 14' x 30'. If it was a rectangle, the sq ft would be 420 sq ft, but it is a freeform shape, so the square footage is actually a little smaller as the measurements go from the farthest point to the farthest point. There should be a rendering of the Laguna Style Pool in the packet I left with you...The pool goes from 3.5' in the shallow end and 6' in the deep end. It holds 14,500 gallons of water. On the plat that I gave you guys, the drawing was very, very accurate. I have copied the installation company on this so that they can add to this or provide more detailed drawings if they have anything...Hope this helps. ADAM  
Mary or Dan--Can you send anything else you may have in terms of construction drawings...Thanks. ADAM

On Wed, Jul 13, 2011 at 5:40 PM, Zoning Dept <zoning@jeffersoncountywv.org> wrote:  
Adam,

Do you happen to have the square footage of the pool, or a proposed construction drawing?

Neither of these are required for the BZA hearing -- so don't put a lot of effort into this if you don't have them -- but they would be helpful information for the staff report.

thanks,  
Steve Barney

-----Original Message-----

**From:** "Adam Shively" <4staterealestate@gmail.com>  
**Sent:** 6/28/2011 10:26:20 AM  
**To:** zoning@jeffersoncountywv.org  
**Cc:** "Poolz by Design & Build" <ddesignbuild@aol.com>  
**Subject:** Jonathan Adam Shively Variance Attn: Steve Barney

Attached are the HOA Approval Letters for my file. I come up for a Variance Hearing on July 21 at 3:00 PM. Please add these documents to my file as support for my variance. Thanks you for your time and attention...ADAM

----- Forwarded message -----

**From:** Shively, Adam <4staterealestate@gmail.com>  
**Date:** Tue, Jun 28, 2011 at 9:40 AM  
**Subject:**



**Staff Report**  
Jefferson County Board of Zoning Appeals Meeting  
July 21, 2011

**Keith E. and Lisa Cranford (#ZV11-17)**

**RELEVANT INFORMATION:**

1. Overview of Request

Keith and Lisa Cranford, property owners, seek a variance from Section 5.4(b) of the Zoning and Land Development Ordinance to allow for a lot line adjustment between two lots.

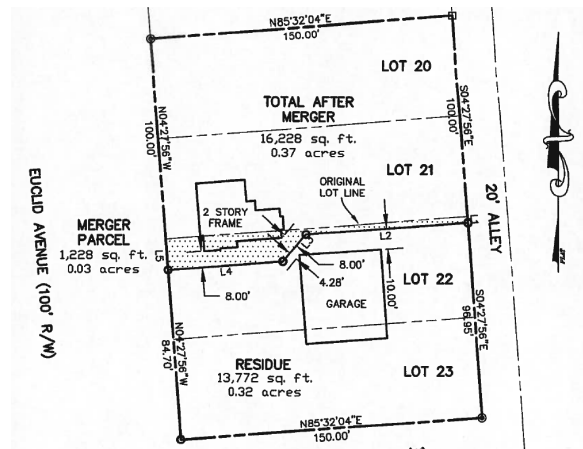
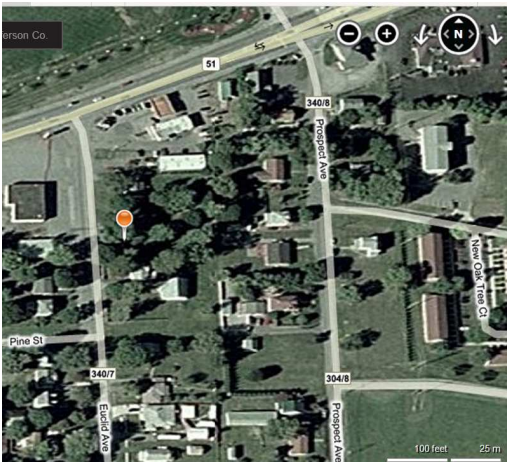
2. Applicant's Justification of Request

The Applicant states the existing structures on the property, constructed prior to the adoption of the Zoning Ordinance, are the special conditions or attributes which pertain to the property.

3. Staff Evaluation of Request

The subject property is comprised of four separate lots, 20-23. The applicant seeks to combine lots 20 & 21 into a single parcel, and combine lots 22 & 23 into a single parcel.

The need for the variance arises from the fact that an existing residential structure is located on the lot line that separates Lot 21 and 22. In addition, a garage is located on Lot 22, within 12' of the existing lot line.



Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
July 21, 2011

**Keith E. and Lisa Cranford (#ZV11-17)**

4. Possible Conditions of Approval

No conditions of approval are identified.

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 9.7      Other Exceptions

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

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

Residential Growth District

Single family residences --

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

For all lots under 40,000 square feet side and rear setbacks for residential accessory structures shall be 6'.

ZV11-17

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): KEITH E. & LISA CRANFORD

Address: 440 EUCLID AVE.  
CHARLES TOWN WV, 25414

Phone Number: 304-728-1190

Location of Property: CORNER OF EUCLID AVE  
& FIRST STREET

Lot Size: 0.68 ACRES

Deed Book Reference: Deed Book Number 1041 Page Number 385

Tax Map Reference: District CT Map 10A Parcel 102

Zoning District: RESIDENTIAL-LIGHT-INDUSTRIAL-COMMERCIAL

Section of Ordinance: 5.4B

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

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

REDUCTION OF 8' SIDE SETBACK  
TO 4' TO ALLOW A MERGER  
BETWEEN GARAGE AND HOUSE

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  
JUN 09 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:

WILL NOT, EXISTING STRUCTURES ARE TO REMAIN AS THEY ARE, UNLESS THE APPROPRIATE BUILDING IMPROVEMENT PERMITS ARE APPLIED FOR

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:

NO - EXISTING STRUCTURES WERE CONSTRUCTED PRIOR TO ZONING

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

YES, WOULD PERMIT REASONABLE USE IN THIS ZONING DISTRICT AND ALLOW FOR THE CONVEYANCE OF 2 PARCELS WHICH WOULD EXCEED THE SQUARE FOOTAGE OF MOST PARCELS IN THE AREA.

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

IT WILL, PROPERTIES WILL CONFORM WITH THE SURROUNDING AREA

Keith Cranford  
Signature of Property Owner

KEITH E. CRANFORD  
Print Name

6-8-11  
Date

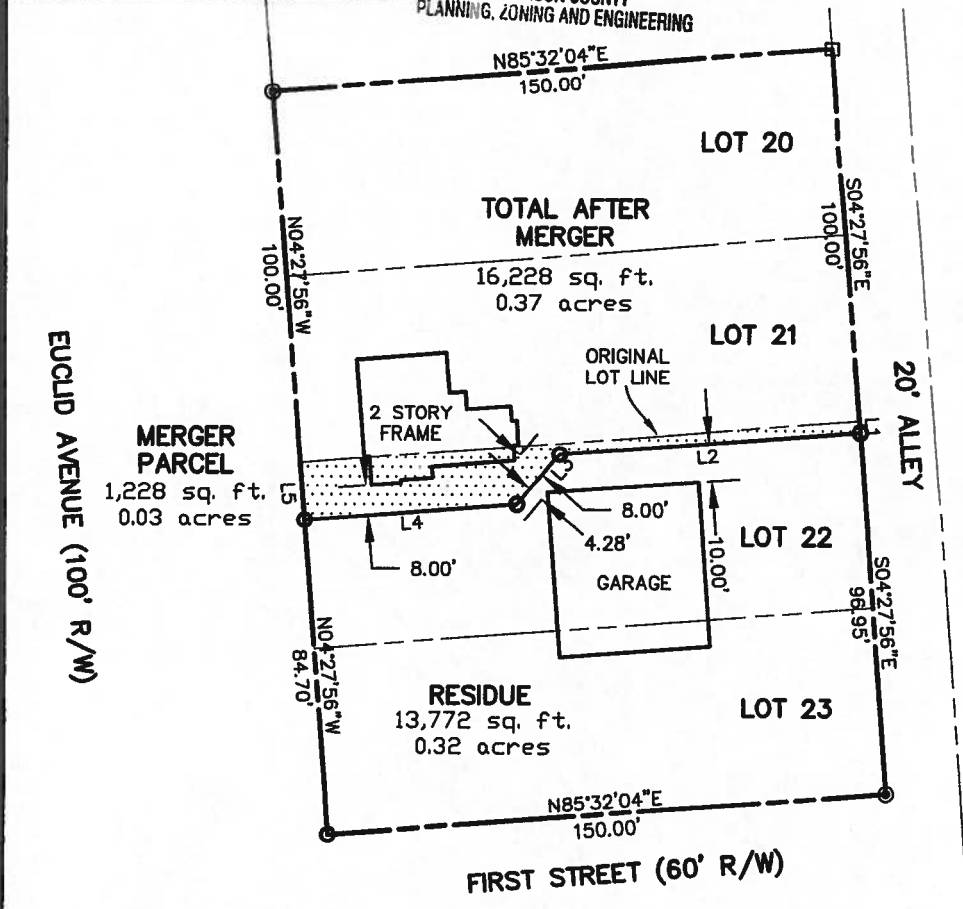
<u>CHECK #8270</u>	<b>FOR OFFICAL USE ONLY</b>
Fees Paid: <u>\$100.00</u>	Date Application / Fees Received: <u>June 9, 2011</u>
Date of meeting / Public Hearing: <u>THURSDAY 7-21-11 @ 3:00pm</u>	
Official Administrative Body: <u>Jefferson County Board of Zoning Appeals</u>	
Posting Requirements: <u>30</u> Number of Days Prior to Scheduled Hearing	
Advertising Dates: <u>WEDNESDAYS, JUNE 15 and JUNE 22, 2011</u>	
Official Action of Board: _____	
Official Signature and Seal: _____	

LINE TABLE		
LINE	LENGTH	BEARING
L1	3.05	S04°27'56"E
L2	80.53	N85°38'27"E
L3	17.61	N40°32'04"E
L4	57.02	N85°35'19"E
L5	15.30	S04°27'56"E

**RECEIVED**  
 JUN 9 2011  
 JEFFERSON COUNTY  
 PLANNING, ZONING AND ENGINEERING

**AREA TABULATION**

MERGER PARCEL	0.03 acres
RESIDUE	0.32 acres
<b>TOTAL AFER MERGER</b>	<b>0.37 acres</b>



JEFFERSON COUNTY PLANNING DIRECTOR  
 APPROVED MERGER PLAT

KEITH E. CRANFORD  
 OWNER

LISA CRANFORD  
 OWNER

THE LANDS(S) HEREBY CONVEYED IS (ARE) ADJACENT TO AND CONTIGUOUS WITH THAT CERTAIN PARCEL OF LAND WHICH IS OWNED BY THE GRANTEEES HEREIN, HAVING BEEN CONVEYED TO THEM BY DEED OF RECORD IN THE CLERKS OFFICE OF SAID COUNTY IN DEED BOOK \_\_\_\_\_ PAGE \_\_\_\_\_ AND THIS CONVEYANCE IS MADE FOR THE PURPOSE OF ADJUSTING THE BOUNDARY LINE(S) OF SAID PRESENTLY OWNED LANDS OF THE GRANTEEES.

**PLAT OF MERGER**

PLAT SHOWING MERGER OF A PORTION OF LOT 22 TO LOT 21, BLOCK 1, EUCLID AVE. STANDING IN THE NAME OF KEITH E. & LISA CRANFORD, AS RECORDED IN THE OFFICE OF THE COUNTY CLERK OF JEFFERSON COUNTY IN DEED BOOK 1041/385 LOCATED IN CHARLES TOWN DISTRICT, JEFFERSON COUNTY, WEST VIRGINIA. NO SETBACK VIOLATIONS WOULD OCCUR AS A RESULT OF THIS MERGER.

DWG # CRANFORD DATE-5/15/11

**GRAPHIC SCALE**



( IN FEET )  
 1 inch = 40 ft.

SURVEYED BY:

*(Handwritten Signature)*

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

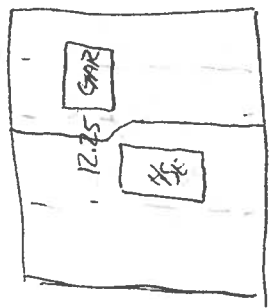


#211-17 BZA: 7-21-11

PETE  
728-6093

KETHE + LISA  
CRANFORD  
TM 10A/102  
DB 104/385  
SETBACKS

1891

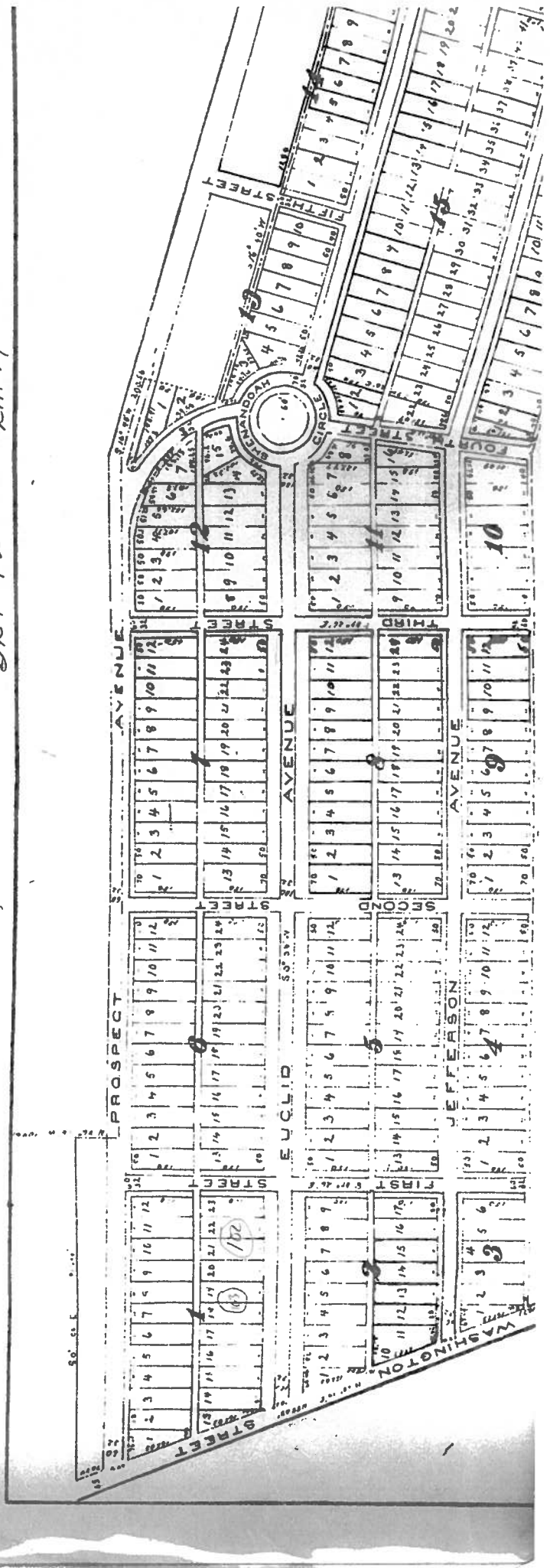


RECEIVED  
JUN 09 2011  
JEFFERSON COUNTY  
PLANNING AND ENGINEERING

R.I.C

GRAF 10A/103 1073/71

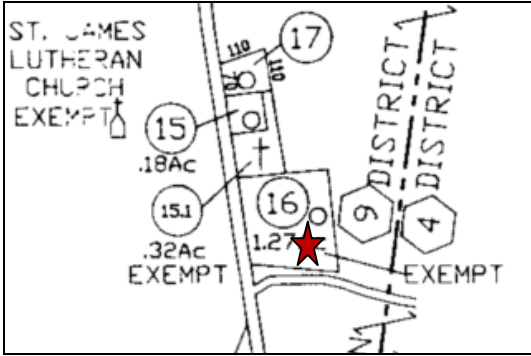
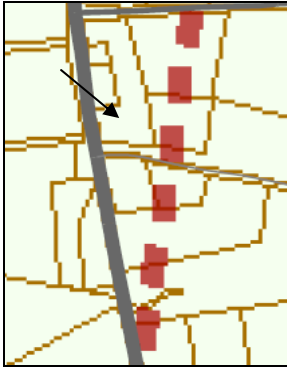
BFA-7-21-11 #ZM1-17



Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 July 21, 2011

**St. James Lutheran Church (#ZV11-18)**

Item #4 Variance request by Adam Link, III, on behalf of the St. James Lutheran Church (Congregation) at Uvilla, from the Section 4.10 to waive the requirement of a site plan and Section 5.7(b) for a reduction of the 50' side setback distance requirement for a church to 5' to allow for the construction of a 640 sq. ft. addition.

APPLICANT:	Adam Link, III
OWNER :	St. James Lutheran Church
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	4328 Shepherdstown Pike, Shepherdstown, West Virginia
LEGAL DESCRIPTION:	District: Shepherdstown; Map: 20; Parcel: 16  <div style="text-align: center;">  </div>
ZONING DISTRICT:	Zoning Map Designation: Rural (R)  <div style="text-align: center;">  </div>
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> R <i>South:</i> R <i>East:</i> R <i>West:</i> R
LOT AREA:	3.7 acres (per applicant)
PRIOR CASES:	None
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential

**Staff Report**  
Jefferson County Board of Zoning Appeals Meeting  
July 21, 2011

**St. James Lutheran Church (#ZV11-18)**

**RELEVANT INFORMATION:**

1. **Overview of Request**

St. James Lutheran Church seeks a variance from two sections of the Jefferson County Zoning and Land Development Ordinance for the purpose of constructing a 640 square foot addition to its Fellowship Hall;

- a) Sections 4.10, to construct a non-residential addition without submittal of a site plan; and
- b) Section 5.7(b), to construct an addition within 5' of a property line, inside the 50' setback that is required for a church

2. **Applicant's Justification of Request**

Regarding the request for a variance from Section 4.10, the Applicant provides the following information:

“St. James does not have the monetary resources to hire an engineer to produce a site plan. The Church believes that a variance is justified because there is not an existing drainage problem now and don't anticipate one where the addition will be located. This addition will not create a need for new parking because of the existing well compacted gravel parking lot.”

The application also notes that the number of existing parking spaces on the site exceed the required number of parking spaces required by the Zoning and Land Development Ordinance.

Regarding the request for a variance from Section 5.7(b), the Applicant provides the following information:

“[T]he reduction to 5 feet will not have any effect on the adjacent property owners or residents, St. James owns the impacted adjacent parcel.”

“The reduction of the setback is due to limitations on the site which only allows the addition to go on the north side of the building . . . these limitations include the location of the picnic pavilion and the enormous mature oak trees on the east side (rear) and the south side of the fellowship hall.”

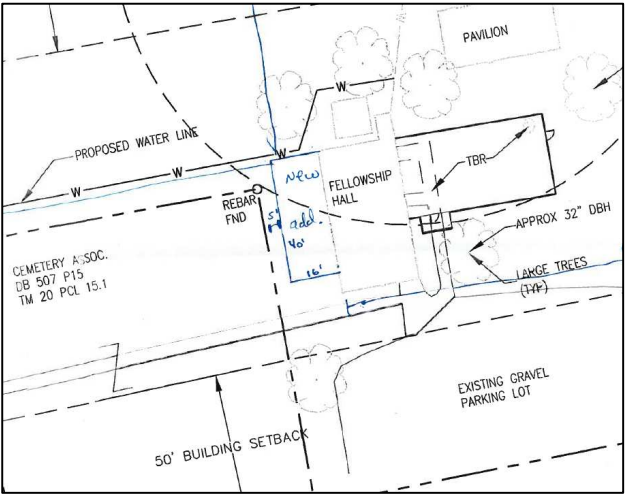
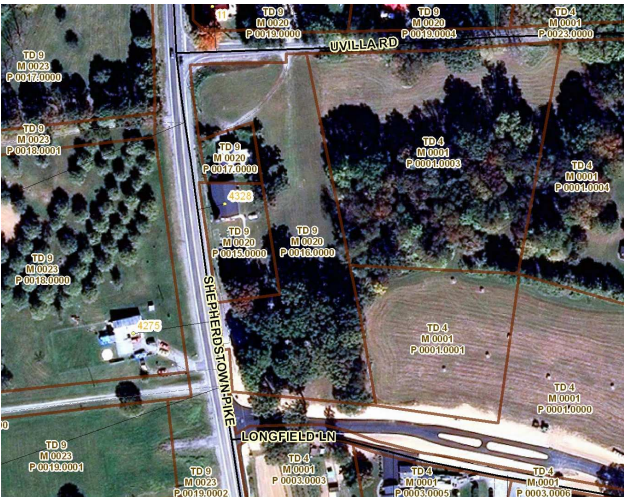
“[T]he unnecessary hardship would be to require the properties to merge<sup>1</sup> when in the future they may need to be separate in order to maintain the cemetery. In the alternative, they would probably have to destroy the oak trees and build a structure that would limit the use of the picnic pavilion.”

---

<sup>1</sup> During an April 20, 2011 Pre-Proposal Conference meeting with the applicant, staff noted that the setback requirements from the adjacent lot containing the cemetery may trigger the need to merge the two properties.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
July 21, 2011

St. James Lutheran Church (#ZV11-18)



Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 July 21, 2011

**St. James Lutheran Church (#ZV11-18)**

3. Staff Evaluation of Request

The applicants' lot is oddly shaped and is also narrow. When the required 50' setbacks are applied on all sides, the potential building envelope is limited. Based on a visit to the site, staff confirms the applicant's observation that there are mature oak trees in proximity to the Fellowship Hall.

While shortening the 50' setback to 5' would not meet a technical requirement of the ordinance, it should be noted that the intent of this provision is to protect the rights of adjacent property owners. Because the only affected property is owned by the church (and, because it is a cemetery, is less likely to be sold than if it were occupied by another land use), it does not appear likely that the granting of the variance would affect any current or future neighboring property owners.

4. Possible Conditions of Approval

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

- a. A handicapped-accessible parking space, meeting ADA standards, shall be installed prior to issuance of a Certificate of Occupancy for the proposed addition.

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.

Section 5.7(b), 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
<b>Churches</b>	<b>2 acres</b>	<b>200</b>	<b>25</b>	<b>50</b>	<b>50</b>
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

Jefferson County, West Virginia  
Department of Planning & Zoning  
116 East Washington Street; 2<sup>nd</sup> Floor  
P.O. Box 338  
Charles Town, West Virginia 25414

 COPY

Email: [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org)

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

April 22, 2011

**PRE-PROPOSAL CONFERENCE MEMORANDUM**

MEETING DATE: Wednesday, April 20, 2011 @ 10:00 a.m.

APPLICANT / CONTACT NAME: Paul Raco  
Company Name: P. J. Raco Consulting, LLC  
Address: P.O. Box 548; Charles Town, West Virginia 25414  
Phone Number: (304) 676-8256

Property Owner: St. James Lutheran Church / Reverend Dr. Fred Soltow, Jr.  
Address: P.O. Box 2008; Shepherdstown, West Virginia 25443  
Phone Number: (304) 876-6771

Physical Address: Uvilla – East side of Rte. 230 / just south of Rte. 33

PROPOSED PROJECT: NON-RESIDENTIAL MINOR SITE DEVELOPMENT

DISTRICT: Shepherdstown – 09 / MAP: 20 / PARCEL: 16  
DEED BOOK: 109 / PAGE NUMBER: 44  
ZONING DISTRICT: Rural  
TOTAL PARCEL SIZE: 3.7 Acres

**MEETING DESCRIPTION:**

- The meeting attendees included Zoning Administrator, Steve Barney; County Planner, Seth Rivard; County Engineer, Jonathan Saunders; County Inspector, Mike Monaghan; Consultant, Paul Raco; and Church Representatives, Fred Soltow, Jr., Adam Link and Ed Fitzpatrick.
- Overview: The proposed project consists of constructing a 16' x 40' addition to the Fellowship Hall.
- Potential environmental constraints and mitigation measures as required by Zoning Ordinance.
- Anticipated Time-Frame and Deadlines.
- Additional relevant information to consider includes: Another Pre-Proposal Conference was held on May 15, 2009 regarding a larger project which has not started yet.
- FEES: Upon submission, all applicable Site Plan and Building Permit fees, as required by the Engineering Department.
- Payment(s): **None Received**

**COMMENTS:**

- Van accessible parking space needed, adjacent to accessible route to buildings.
- Health Department approval of well and septic required.
- West Virginia Division of Highways entrance permit required.

- Site plan must demonstrate adequate parking for existing uses. Per Applicant, the sanctuary currently seats 100 persons and the fellowship hall area is 1248 square feet.
- Stormwater management must be provided for additional impervious surface. Alternatives such as rain barrels and trench drains may be used.
- Applicant may use Rural site plan standards if desired.
- Curb and gutter must be provided unless low-impact development (LID) stormwater management techniques are used.
- Bonding for improvements required.
- If parking and/or stormwater management are located on a different parcel than the principal use, a property merger may be required.
- Setback requirements, from the adjacent lot containing the Cemetery, for the proposed addition may also trigger need for merger or setback variance.
- Applicant may seek waiver of site plan standards from Board of Zoning Appeals (section 4.10 of the Zoning and Land Development Ordinance); a setback variance, if needed, may be sought simultaneously.

FINDING:

Per Section 4.10 of the Zoning Ordinance, the ILP Ordinance, and current Subdivision Regulations, the proposed plan concept will require a Limited Site Plan submission, and may comply with the processing conditions for Minor Site Development.

EFFECT OF FINDING:

The processing of a Site Plan is required. Building Permits must also be obtained, prior to the start of construction, and appropriate approvals from all Local, State and Federal Agencies, are necessary for the issuance of a Zoning Certificate. Contact the Jefferson County Addressing Department for additional processing information.

Sincerely,



Steve Barney  
Zoning Administrator

#ZV11-18

**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): St. James Lutheran Church (Congregation) at Uvilla

Address: PO Box 2008  
Shepherdstown, WV 25443

Phone Number: 304/876-6771

Location of Property: 4328 Shepherdstown Pike. East side of Route 230 just south of  
Uvilla Road.

Lot Size: 3.7 Total Lots' Acreage

Deed Book Reference: Deed Book Number 109/938 Page Number 44/388

Tax Map Reference: District Shepherdstown Map 20 Parcel 16

Zoning District: Rural

Section of Ordinance: 4.10 and 5.7(b)(Side Yard)

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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**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

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

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

SEE ATTACHED

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

See ATTACHED

Adam Blank III President

Signature of Property Owner

Adam Blank III

Print Name

6-9-11

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: \_\_\_\_\_

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St. James Lutheran Church at Uvilla  
Request for a Variance from Article 4, Section 4.10  
And Article 5, Section 5.7(b) Side Yard  
Jefferson County Zoning Ordinance  
June 10, 2011

**BRIEF DESCRIPTION OF THE REQUEST:**

St. James Lutheran Church at Uvilla (St. James) is seeking two variances from the Jefferson County Zoning Ordinance. The first request is for a variance from Article 4, Section 4.10, which requires a site plan for all new construction or expansion of commercial, institutional, industrial and multi-family land uses. St. James is asking for permission to build an addition without providing an engineered site plan, because of the small size of the addition in relationship to the larger parcel of land.

The second request is for a variance from Article 5, Section 5.7(b), which requires a 50 feet side setback for churches and other related uses in the Rural Zone. St. James is asking for a reduction down to 5 feet, because the church currently owns the adjacent parcel. This adjacent parcel contains the St. James' Cemetery.

St. James is a rural parish that has existed on this site since 1850 when the Congregation was established. The land housed a Chapel until the existing Church structure was built in 1865. It is a small parish with a vibrant ministry, but with minimal resources. St. James includes 55 families with only 145 members. The average worship attendance is 44. It is important and relevant to note that some of these members' ancestors were founding members of the congregation in 1850.

St. James also has a cemetery and a fellowship hall. The fellowship hall is currently approximately 1248 square feet. There are many ministries that take place in this fellowship hall including: religious education for youth and adults; Church and community gatherings; Church Council meetings; potluck meals; and other celebrations to name a few. It currently consists of a kitchen, a large fellowship room and bathrooms. The fellowship hall along with a parking lot and a picnic pavilion sit on an approximate 2.4 acre parcel adjacent to the Church and the Cemetery. St. James would like to slightly expand those ministries by either relocating their kitchen into the new space and convert the existing kitchen into separate meeting areas, or by keeping their kitchen intact and making the new space into the new meeting areas.

St. James would like to add a 640 square feet addition onto the northern side of the fellowship hall. St. James does not have the monetary resources to hire an engineer to produce a site plan. The Church believes that a variance is justified because there is not an existing drainage problem now and don't anticipate one where the addition will be located. This addition will not create a need for new parking because of the existing well compacted gravel parking lot. The ordinance parking requirement for a 'Community Center' is one (1) space for every 400 square feet of floor space. Accordingly, the parking requirement for a total completed space of 1888 square feet is five (5) spaces (with at least one space being designated a Handicap Space). Currently there is room for at least eleven (11) cars. This parking lot already has a dedicated space for handicap users, but St. James is prepared to make it ADA compliant if the variance is granted.

The second request is for a reduction of the side yard setback from 50 feet to 5 feet for this addition. This addition will be located on the north side of the fellowship hall adjacent to the cemetery. Originally, as shown on the attached plat, a larger addition was proposed on the south side of the structure, but had several limitations at this location. These problems included the cost of the addition, the location of the picnic pavilion and the massive mature oak trees that are located on that side of the building. As such, the addition proposal was reduced in size and moved to the now proposed location. Although the Church could merge the properties, which would eliminate the need for this variance, that could create a potential problem in the future. Since the adjacent property is a cemetery, it is wise to keep it separate in case the property has to be transferred to a separate church entity, such as a cemetery maintenance association, a foundation or a trust to ensure the preservation of the cemetery in perpetuity.

Based on the above, St. James would respectfully ask for the Board to grant our variance requests.

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St. James Lutheran Church at Uvilla  
Request for a Variance from Article 4, Section 4.1  
And Article 5, Section 5.7(b) Side Yard  
Jefferson County Zoning Ordinance  
June 10, 2011

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

**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 addition will have little effect on the neighborhood, because most of the use of the fellowship hall takes place during Church events already. So, there shouldn't be any additional use impact to the surrounding area. Public health and safety will be addressed, because Health Department approval and County Building Code approval will be necessary at the building permit stage. Regarding public welfare, St. James believes that any expansion of its ministries will benefit the community as a whole.

Regarding the setback variance, the reduction to 5 feet will not have any effect on the adjacent property owners or residents, since St. James owns the impacted adjacent parcel.

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:

St. James does not believe that the very limited impact on the site justifies the large cost of an engineered site plan. The existing property already has more than adequate parking for the fellowship hall and the addition. The little additional drainage from the roof should not create a problem, since the site does not currently have a run-off problem. St. James simply lacks the funds to spend on an engineered site plan in an attempt to expand their ministries. They would much prefer to expend any of those funds into the ministries themselves.

Regarding the setback variance, the reduction of the setback is due to the limitations on the site which only allows the addition to go on the north side of the building. As previously mentioned, these limitations include the location of the picnic pavilion and the enormous mature oak trees on the east side (rear) and the south side of the fellowship hall.

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

The site plan variance would eliminate the need for an engineered site plan. The engineered site plan is such a hardship, that it would stop the project in its tracks. This Congregation is called to minister to the people and to the community. This small addition would allow them to do that without impacting the pastoral setting on the land and in the neighborhood.

Regarding the setback variance, the unnecessary hardship would be to require the properties to merge when in the future they may need to be separate in order to maintain the cemetery. In the alternative, they would probably have to destroy the oak trees and build a structure that would limit the use of the picnic pavilion. So, the most reasonable use of the land would be for the addition to go in the location requested.

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

The intent of the Zoning Ordinance regarding site plans is to make sure that properties aren't impacted in a negative way because of inadequate parking and poor drainage. In this case, no drainage problems exist and adequate parking is already provided. There should be no adverse impact with such a small addition. The site plan provision in the Zoning Ordinance mentions that in addition to new uses, it is intent on regulating 'major additions'. Major Additions are defined in the ordinance as additions that: affect the function of the site and the areas surrounding the site (this addition does not); changes the use classification (this addition does not); alters the on-site parking requirements (existing parking already exceeds the requirement); adversely impacts the off-site storm water drainage (we believe that it will not); increases a demand for public water and sewer (this addition does not); or, causes the rerouting of traffic circulation (this addition does not). As such, St. James believes that it is entirely within the intent of the Zoning Ordinance.

Regarding the setback variance, the intent of the Ordinance is to make sure that neighbors aren't impacted in a negative way and other potential hazards, such as fire risks, are avoided. In this case, the adjacent land is owned by the same entity; and, the land is almost guaranteed to remain open for an eternity.

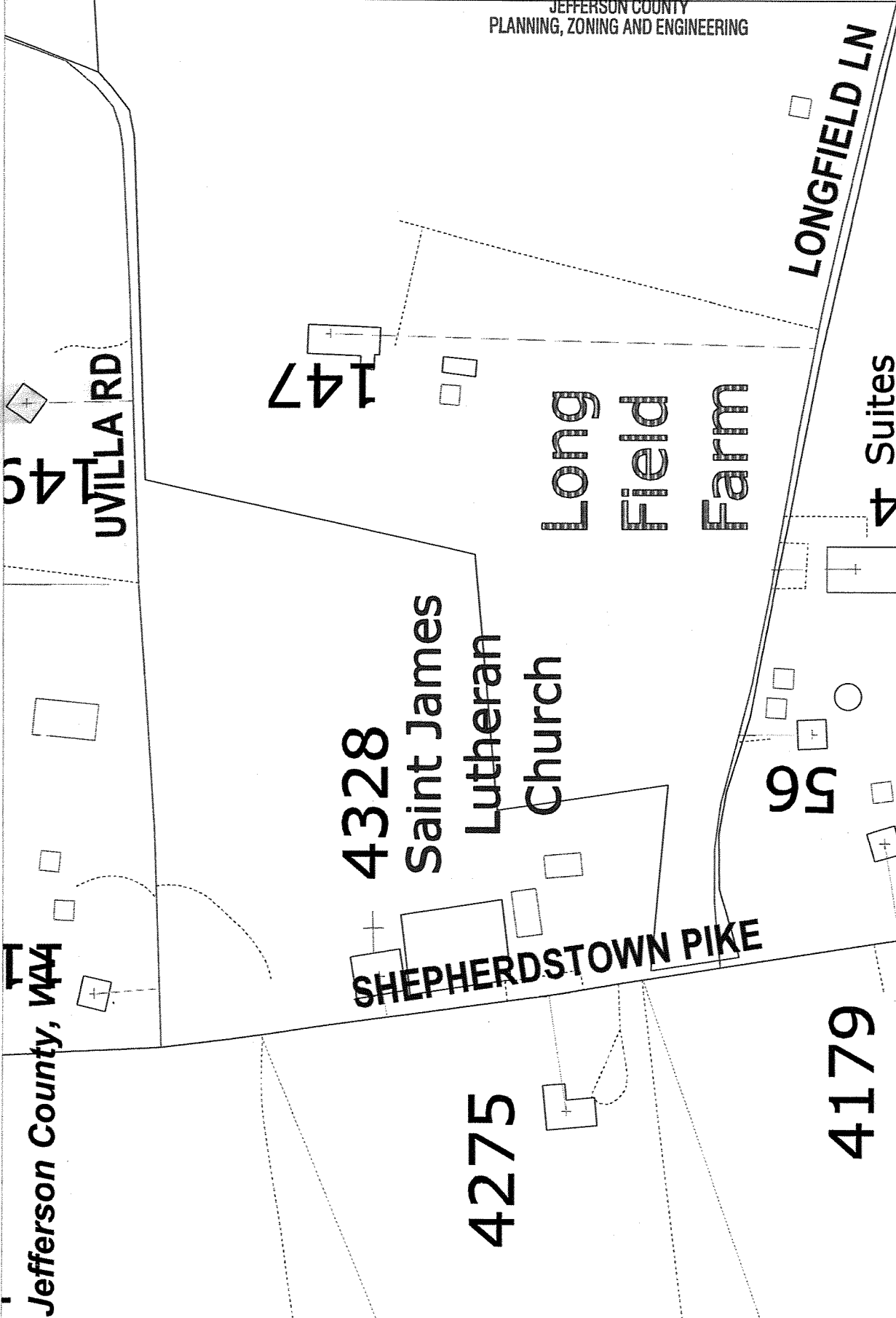
Based on the above and the brief description, St. James believes that substantial justice would be to grant the variance to allow the addition without a site plan and to grant the variance to allow the addition to be built with a 5 feet side setback on the north side. Accordingly, St. James respectfully asks the Board to grant the relief that we are seeking. Thank you.

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Jefferson County, WA

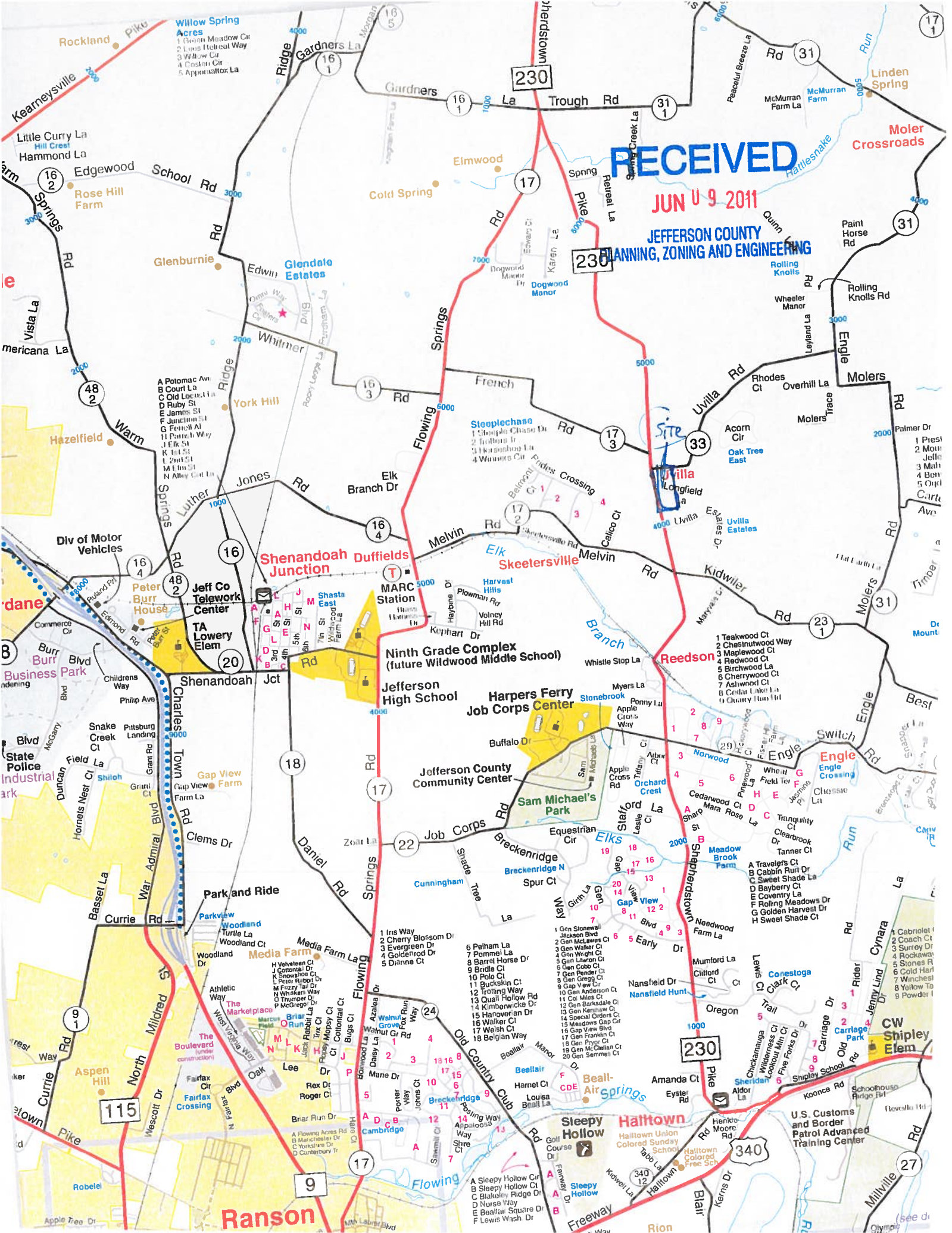
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Site 33

Uvilla  
Longfield



Ranson

230

340

27

see d









## **RULES OF PROCEDURE OF THE JEFFERSON COUNTY BOARD OF ZONING APPEALS**

**WHEREAS**, W.Va. Code § 8A-8-1, et seq., provides for the establishment and powers of a Board of Zoning Appeals, and

**WHEREAS**, the Jefferson County Board of Zoning Appeals is duly authorized, pursuant to W.Va. Code § 8A-8-9, to adopt rules of procedure to carry out its obligations pursuant to the Jefferson County Zoning and Development Review Ordinance and West Virginia law, and

**WHEREAS**, the Jefferson County Board of Zoning Appeals wishes to establish certain rules and regulations to effectuate its purpose and provide consistency for its proceedings,

**NOW, THEREFORE**, the Jefferson County Board of Zoning Appeals hereby adopts these Rules of Procedure which shall be applicable to all proceedings of the Board.

### **Article I – General**

#### **Section 1.1 – Definitions**

As used throughout these Rules of Procedure, the following terms shall be defined as follows:

*Administrative official* – refers to any member of staff, including but not limited to the zoning administrator, who has made a decision or determination of an issue relating to the zoning ordinance.

*Appellant* – refers to any party which has filed a timely appeal with the Board.

*Board* – refers to the Jefferson County Board of Zoning Appeals.

*County Commission* – refers to the County Commission of Jefferson County.

*Intervenor* – refers to any party who does not have a direct interest in an appeal but has clearly ascertainable interests essential to a determination and whose standing has been granted by the Board.

*Item* – refers to any matter before the Board for consideration or discussion, and shall be construed broadly.

Member – refers to a member of the Board.

Ordinance – refers to the Jefferson County Zoning and Land Development Ordinance.

Respondent – refers to any party who replies to and contends against an appeal, or a party against whom an appeal is taken.

Staff – refers to the Department of Zoning and its employees.

### Section 1.2 – Authority

These Rules of Procedure and its provisions are authorized by W.Va. Code § 8A-8-9, which empowers the Board, among other things, to adopt rules and regulations concerning the filing of appeals, applications for variances and conditional uses, the giving of notice, and the conduct of hearings.

### Section 1.3 – Severability

The invalidation of any provision or section of these Rules of Procedure shall not invalidate any other provision of section of these Rules of Procedure.

### Section 1.4 – Amendments

These Rules of Procedure may be amended at any regular meeting of the Board by a majority vote of the Board, and shall take effect immediately or at a date certain determined by the Board.

## **Article II – Organization**

### Section 2.1 – Membership

Pursuant to W.Va. Code § 8A-8-4, the Board shall be comprised of five (5) members appointed by the County Commission. Membership on the Board shall be in compliance with all the requirements of W.Va. Code § 8A-8-4.

### Section 2.2 – Term of Office

Upon appointment to the Board, a member shall serve a term of three (3) years pursuant to W.Va. Code § 8A-8-4(d). If a vacancy occurs, the County Commission shall appoint a member for the unexpired term.

### Section 2.3 – Powers and Duties

In addition to the powers and duties provided in these Rules of Procedure, the Board and its members shall have such other powers and duties as provided by ordinance and/or law, including but not limited to W.Va. Code § 8A-8-9.

## **Article III – Officers**

### Section 3.1 – Elections

At its first regular meeting each year, the Board shall elect from its members a Chairperson and Vice Chairperson.

### Section 3.2 – Chairperson

The Chairperson shall serve a term of one (1) year, and shall preside at all public hearings held by the Board. The Chairperson may call special meetings of the Board as necessary, and is empowered to certify by signature or otherwise any official and valid action of the Board. The Chairperson shall also perform such duties and functions as may from time to time be required by the Board.

### Section 3.3 – Vice Chairperson

During any absence of the Chairperson, the Vice Chairperson shall assume the duties and functions of Chairperson. The Vice Chairperson shall also perform such duties and functions as may from time to time be required by the Board.

### Section 3.4 – Absence of Chairperson and Vice Chairperson

In the absence of both the Chairperson and Vice Chairperson, any present member may call to order a regular or special meeting of the Board, which shall thereupon immediately empower one or more of its present members to fulfill the duties and functions of Chairperson and/or Vice Chairperson during said absence.

### Section 3.5 – Replacing Officers

In the event of the death, resignation, or removal of an officer of the Board, the Board shall thereupon elect one of its members to complete the unexpired term. A four-fifths majority of the total membership of the Board may, at any regular meeting, remove the Chairperson and/or the Vice Chairperson from office, provided that a new election to fill the remaining term(s) of office is immediately held.

### Section 3.6 – Alternate Members

Pursuant to W.Va. § Code 8A-8-4(e), the County Commission may appoint up to three (3) additional members to serve as alternate members of the Board. The term for an alternate

member is three (3) years. An alternate member shall serve on the Board when one of its regular members is unable to serve, and in such instance shall have all powers and duties of a regular member. The alternate member shall serve until a final determination is made in the matter to which the alternate member was initially called on to serve. Alternate members shall be entitled to be present at all Board meetings and deliberations.

#### Article IV – Meetings

##### Section 4.1 – Regular Meetings

The Board shall hold regular meetings on the third (3<sup>rd</sup>) Thursday of each month at 3:00 p.m. in the ground floor meeting room of the Old Charles Town Library, at 200 East Washington Street, Charles Town, West Virginia. Prior notice shall be provided in the event that any regular meeting is held at a different location or at a different time. A regular meeting may be postponed or cancelled for appropriate reasons, and in such case prior notice of said postponement or cancellation shall be provided if possible.

##### Section 4.2 – Special Meetings

A special meeting may be called by the Chairperson or by two or more members of the Board, with said meeting to be held on a different day and/or a different time than regular meetings. Pursuant to W.Va. Code § 8A-8-5, notice for all special meetings shall be in writing, include the date, time and place of the special meeting, and be sent to all members at least two days before the special meeting. Written notice of a special meeting is not required if the date, time and place of the special meeting were set in a regular meeting. A special meeting may be postponed or cancelled for appropriate reasons, and in such case prior notice of said postponement or cancellation shall be provided to the public and members if possible.

##### Section 4.3 – Recording of Meetings

All meetings of the Board shall be recorded, and such recordings shall be maintained and made available, upon request and in accordance with the procedures of the Board and/or its staff, to the public. Recordings shall be maintained by staff for a minimum of five years.

##### Section 4.4 – Quorum and Majority Vote

In order to conduct a regular or special meeting, a quorum of members must be present. A majority of members of the Board shall constitute a quorum. Once the requirement for a quorum has been met, no action of the Board shall be official or valid unless authorized by a majority of members making up said quorum at a regular or special meeting.

##### Section 4.5 – Agendas

An agenda shall be made available prior to the start of all regular and special meetings. Items shall be listed on the agenda in such a manner as to sufficiently identify the substance of

the item and allow for a vote on the item by the Board if necessary. The Board may deviate from the order of an agenda if necessary.

#### Section 4.6 – Executive Sessions

The Board may hold an executive session, closed to the public, during any meeting to consider matters permissible in executive sessions pursuant to W.Va. Code § 6-9A-4, including, but not limited to, deliberations toward a decision on an appeal or other item, privileged discussions with legal counsel, and personnel matters.

#### Section 4.7 – Procedures for Conducting Meetings

In the absence of state law or of other procedures of the Board, Roberts Rules of Order, current edition, shall be the parliamentary authority of meetings of the Board.

#### Section 4.8 – Open Governmental Proceedings

All meetings and actions of the Board shall comply with the requirements of West Virginia’s open meetings laws, codified at W.Va. Code § 6-9A-1, et seq.

### **Article V – Consideration of Items**

#### Section 5.1 – Voting

A member must be physically present at a meeting to vote on any item considered at said meeting. Voting via telephone or proxy is not permitted. Abstention and recusal shall be permitted only for reasons set forth in these Rules. Any member who abstains, recuses himself/herself, or otherwise chooses not to participate in a vote shall thereupon publicly state the reason.

#### Section 5.2 – Recusal

A member may recuse himself/herself in relation to an item for the reasons set forth herein, in which case such member shall not participate in discussion, consideration or vote on said item. Valid reasons for recusal include (1) having a personal interest in an item, (2) having a contractual, employment, or other relationship with a party involved with an item, (3) being unable to impartially consider an item, or (4) having been absent from part or all of the discussion or consideration of an item. A member recusing himself or herself shall thereupon state the reason for such recusal and leave the meeting, remaining absent for the duration of consideration and/or discussion of the item.

At all times, a member shall recuse himself or herself when his or her participation in the consideration, discussion, or vote regarding an item would give rise to the appearance of impropriety.

At all times, a member shall make full public disclosure of any and all issues which may tend toward an appearance of impropriety, and such disclosure shall be made prior the Board’s consideration of the relevant item.

### Section 5.3 – Ex Parte Communications

For purposes of these Rules of Procedure, ex parte communications consist of communications regarding the substance of an item that is or will be before the Board for consideration and/or discussion, when such communications are between one or more members of the Board and one or more individuals involved with the item. No member of the Board shall voluntarily and knowingly engage in ex parte communications without the authority of the Board. In the event that a member of the Board has engaged in or receives any ex parte communication, said member shall bring the same to the attention of the Board and shall publicly disclose the same. Communications with third parties regarding procedural aspects of items do not constitute ex parte communications.

### Section 5.4 – Continuance

The Board may continue, reschedule, or re-open proceedings on an item for any good cause.

### Section 5.5 – Notice

All items shall be noticed in accordance with the Ordinance, these Rules of Procedure, and staff procedures. If an item is continued, rescheduled, or postponed, and the new time and date are announced at the same meeting, then no additional notice is required for that item. If an item is continued, rescheduled, or postponed, and the new time and date are not announced at the same meeting, all parties of record shall be provided not less than seven (7) calendar days notice of the new time and date.

### Section 5.6 – Submissions to the Board

Submissions regarding all items for Board consideration shall be made in accordance with the Ordinance, these Rules, and relevant staff procedures. Staff may establish deadlines for submittal of applications and supplemental material. Late submissions, including submissions made the day before or the day of any meeting of this Board, may not receive full consideration by the Board due to the lack of time for proper Board and staff review.

### Section 5.7 – Procedure for Hearings

Prior to hearings on all items, the Board will require all persons present who wish to give comments on any item to place their name on a written list of anticipated speakers.

Hearings on items shall be conducted in the following manner:

- (1) Chairperson opens public hearing;
- (2) Staff presents summary of application and staff report;
- (3) Applicant/Appellant comments;
- (4) Intervenors and/or Appellees comment, if applicable;
- (5) Public comment;

- (6) Rebuttals of staff, applicant/appellee, intervenor(s), appellee(s), and public;
- (7) Chairperson closes or recesses public hearing;
- (8) After consideration, Board renders a decision.

The Chairperson shall preside at the hearing and shall make such rulings as may be necessary to conduct a hearing in an efficient and orderly manner including, but not limited to, the imposition of time limitations and the exclusion of irrelevant, repetitive, or cumulative evidence or testimony. A member may question the rulings of the Chairperson, and such questions may be decided by a motion and subsequent majority vote of the Board.

#### Section 5.8 – Reopening Hearing

At any time prior to the rendering and/or filing of a decision, the Board may, upon the request of a party or upon its own motion, reopen proceedings on an item for the receipt of further evidence or information. All parties of record shall be given proper notice of the reopening and granted an opportunity to review additional evidence and information and file any rebuttal or additional comments.

### *Article VI – Appeals*

#### Section 6.1 – Scope of Appeals to the Board

Pursuant to W.Va. Code § 8A-8-9, the Board shall hear, review and determine appeals from an order, requirement, decision or determination made by an administrative official or party charged with the enforcement of a zoning ordinance or rule and regulation adopted pursuant thereto.

#### Section 6.2 – Time

All appeals to the Board shall be filed within thirty (30) days of the entry of the order, requirement, decision or determination which is the subject of the appeal. Within ten (10) days of receipt of a complete appeal form and associated fee(s), the Board shall set a date for a public hearing of the appeal.

#### Section 6.3 – Posting of Property

If an appeal hearing involves the use of land, including requests for exceptions, variances, and conditional use permits, the property owner shall post signs on the property showing the date, time, and place of the hearing. The signs shall be posted at least ~~thirty (30)~~ fifteen (15) days in advance of the hearing ~~(twenty (20) days for Development Review System hearings)~~. All signs shall be prepared by the Board's staff and the Appellant shall bear reasonable costs associated therewith.

The property owner is responsible for compliance with the posting requirements set out herein, and said property owner shall bear the burden of proof of compliance in the event that a question regarding compliance arises. In the event that a property owner is unable to properly

post signs as required herein, it shall be sufficient that a property owner has made a good faith effort to comply with the requirements of this section.

Section 6.4 – Publication of Notice

At least ~~thirty (30)~~fifteen (15) days prior to an appeal hearing (~~fifteen (15) days for Development Review System hearings~~), the Board, through its staff, shall publish a notice of public hearing in a local newspaper. The notice shall include the date, time, and place of the hearing and shall be a class I legal advertisement in compliance with W.Va. Code § 59-3-1, *et seq.* The Board may require the Appellant to pay for the cost of the advertisement.

Section 6.5 – Supplementation of Record for an Appeal Hearing

Appellants may provide supplemental materials in advance of a hearing on an appeal hearing of an administrative decision, but the same must be submitted no later than eighteen (18) days prior to the hearing date. The Appellant shall also deliver complete copies of the supplemental materials to any applicable Respondent(s) and Intervenor(s) no later than eighteen (18) days prior to the hearing date.

No later than eight (8) days prior to an appeal hearing, any applicable Respondent(s) and Intervenor(s) may file with the Board documentation for consideration and must deliver complete copies of the same to all other parties.

All submissions shall be made in accordance with the rules and procedures promulgated by the staff.

Section 6.6 – Appeals of Board Decisions

Pursuant to W.Va. Code § 8A-9-1, every decision of the Board is subject to review by petition for writ of certiorari in circuit court.

These rules become effective on the \_\_\_\_ day of \_\_\_\_\_, 2008.

JEFFERSON COUNTY BOARD  
OF ZONING APPEALS,

By: \_\_\_\_\_  
Chairperson