

Jefferson County  
Board of  
Zoning Appeals

Thursday,  
May 19, 2011

**JEFFERSON COUNTY, WEST VIRGINIA  
DEPARTMENT OF ZONING  
P.O. Box 338  
116 East Washington Street; 2<sup>nd</sup> Floor  
Charles Town, West Virginia 25414  
Phone: 304-728-3228  
Fax: 304-728-8126**

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**MEMORANDUM**

TO: JEFFERSON COUNTY BOARD OF ZONING APPEALS

FROM: JENNILEE HARTMAN, ZONING CLERK

DATE: May 13, 2011

SUBJECT: May 19, 2011 BOARD of ZONING APPEALS MEETING

Please find enclosed a copy of the Agenda for the upcoming Board of Zoning Appeals meeting to be held on Thursday, April 21, 2011. Also for your review, you will find corresponding information regarding said Meeting. When applicable, I will include copies submitted to this office that pertain to items of new business. Please note, the Applicants of Items #5 and #10 have withdrawn their requests and therefore their information has not been included in your packet. They are still listed as items on the agenda however due to the fact that ads were run for their requests prior to their withdrawal. If you have any questions, or will not be able to attend an upcoming meeting, please do not hesitate to contact me.

# JEFFERSON COUNTY, WEST VIRGINIA

## Department of Zoning

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

Email: [zoning@jeffersoncountywv.org](mailto: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: May 13, 2011

SUBJECT: May Monthly Report of Department Activities

#### Issued Zoning Certificates

#ZC11-12 RICHARD BURACKER

*Issue Date:* April 18, 2011  
*Proposed Use:* Lawn & Garden Equipment Repair Business  
*Physical Location:* 967 Gardners Lane; Shepherdstown, West Virginia  
Zone: Rural

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#ZC11-15 TWIN OAKS SUBDIVISION, LLC dba MORGAN GROVE MARKET /  
PETER CORUM

*Issue Date:* May 4, 2011  
*Proposed Use:* Market for sale of farm products and incidental products,  
including arts and crafts per Sec. 5.7(a)(11). Live music and  
performances are permitted if accessory to market. Events may  
not be a primary attraction or conducted on non-market days.  
*Physical Location:* 3988 Kearneysville Pike; Shepherdstown, West Virginia  
Zone: Rural

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#ZC11-16 PAUL RIDLEY

*Issue Date:* May 11, 2011  
*Proposed Use:* Open a "JUST A DOLLAR" store in existing vacant building.  
*Physical Location:* Jefferson Crossing Shopping Center – next to Martins Grocery.  
Zone: Residential-Light Industrial-Commercial

## **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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#ZC11-13 KNR INVESTMENTS, LLC /  
KAY SMOKER, MANAGWER

*Issue Date:* TBD  
*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

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#ZC11-14 DOVE, LLC  
CHRISTINA LANTZ

*Issue Date:* TBD  
*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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## **Approved Conditional Use Permit**

#Z11-01 RIPPON BREWING, LLC / RUSTY MORGAN

*Physical Location:* Rippon, West Virginia  
District: Kabletown; Map 104; Parcel: 24  
*Zone:* Village  
*Proposed Use:* Micro-Brewery w/ Tasting Room. Future Pub/Restaurant, Store, Country Inn and Office.  
BZA MEETING DATE: April 21, 2011

**AGENDA**  
**Jefferson County Board of Zoning Appeals**  
**Thursday, May 19, 2011, 3:00 p.m.**

1. Approval of the Minutes from the April 21, 2011 meeting.
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
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 - 09; Map: 8; Parcels: 5 & 6.20; Size: 50 (+/-) acres; Zoned: R-G) File: ZV11-10
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
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
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
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

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). 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

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

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

11. Monthly Address by Director Jennifer M. Brockman.

12. Legal Update.

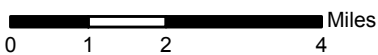
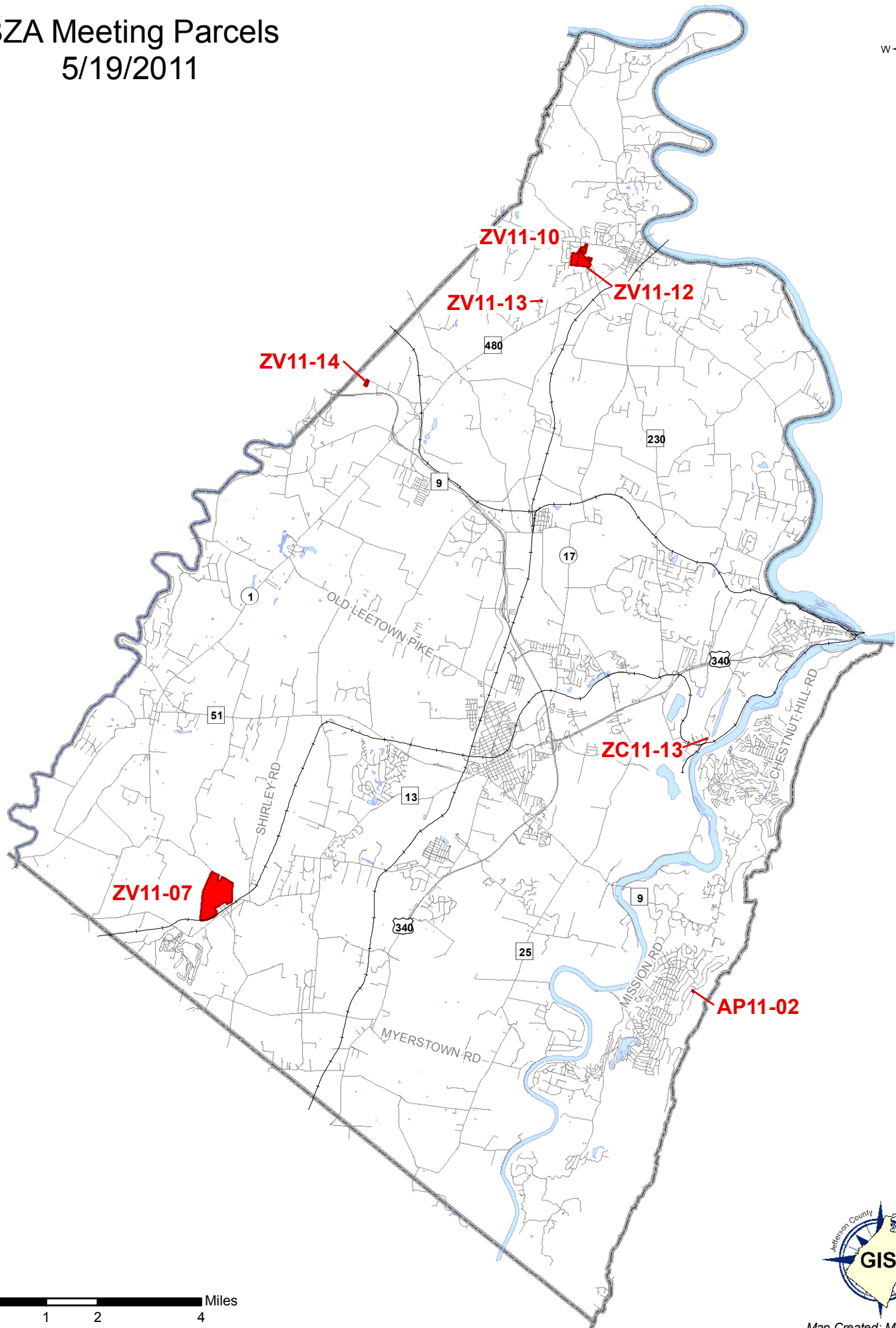
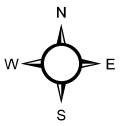
13. Vote on written decisions from prior Board of Zoning Appeals meetings.

- 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.
- 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.
- 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.

14. Correspondence.

# BZA Meeting Parcels

5/19/2011



## Minutes

Jefferson County Board of Zoning Appeals  
Thursday, April 21, 2011

The Jefferson County Board of Zoning Appeals met on Thursday, April 21, 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, Ed Kelly, 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.

Ms. Huddle motioned to commence the meeting. Mr. Brusco seconded the motion, which carried unanimously. Mr. Bresee called the meeting to order at 3:06 p.m.

1. Approval of Minutes from the March 17, 2011 meeting.

Ms. Hine abstained from voting on the minutes because she was absent from the March meeting.

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

- a. Page 2, Item #4 second paragraph, change the word “*until*” to “*for*.”

Mr. Kelly seconded the motion, which carried unanimously with one abstention.

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

Mr. Harry Byrd requested a postponement until May 19, 2011, on behalf of Item #6, ZV11-07. Ms. Huddle motioned to postpone Item #6 until May 19, 2011. Mr. Kelly seconded the motion, which carried unanimously.

2. Public hearing and action on the Conditional Use Permit application submitted by A.M.S. Morgan III on behalf of Rippon Brewery, LLC as a result of the Compatibility Assessment meeting held on February 25, 2011. This project is to consist of a micro-brewery with a tasting room, a future pub/restaurant, a store, a country inn and an office to be situated on 2 acres. The property is located at the intersection of Route 340 and Withers Larue Road in Rippon, West Virginia. (District: Kabletown; Map: 10A; Parcel 24; Size: 2 acres; Zoned: Village; File: Z11-01)

Mr. Barney briefly explained the conditional use permit application and process to the Board. Mr. Barney reviewed the staff report and discussed both the resolved and unresolved issues from the Compatibility Assessment Meeting.

Mr. Morgan gave a presentation to the Board, providing a detailed overview of the project. Ms. Huddle asked questions regarding lighting, the speed limit along US 340 and the visibility at the intersection of US 340 and Withers Larue Road in Rippon.

Mr. Bresee called for public comment.

R. M. Anders, nearby property owner, expressed his concern regarding noise, pollution, odor, traffic, excessive water usage and the potential for his well to dry up as a result of the operation of the proposed brewery.

Mr. Jesse Morgan addressed the Board's concerns regarding water usage, stating that most of the water would be used for cleaning the brewery equipment. This water would be collected, neutralized and spread over the owner's adjacent agricultural fields. Any solid wastes produced during the brewing process would be safe and would be fed to livestock. Any odor from the brewing process would be a light yeast smell similar to bread baking. Mr. Jesse Morgan also explained that well water would slowly be collected in tanks in order to avoid a sudden, heavy draw on the groundwater source.

Mr. Kelly asked whether Mr. Rusty Morgan were satisfied with the proposed conditions set forth in the staff report. Discussion ensued regarding the number of seats in the restaurant that would trigger a requirement for a second entrance onto US 340.

The public hearing was closed.

3. 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. The property is located at the intersection of Route 340 and Withers Larue Road in Rippon, West Virginia. (District: Kabletown; Map: 12; Parcel: 17; Size: 194.39; Zoned: Rural; File:ZV11-06)

Mr. Morgan was present to address the Board. The Board had no questions for Mr. Morgan. Mr. Bresee called for public comment. There was no public comment.

Ms. Chalmers swore in additional members of the public that arrived late and who had indicated they wished to give testimony.

4. Variance request by property owner, Victory Freewill Baptist Church, from Section 10.2(i) to allow for an animated sign. The property is located at 76 Amanda Court in Halltown, West Virginia, 25423. (District: Harpers Ferry; Map: 10; Parcel: 11.18; Size: 5 acres; Zoned: Residential-Light Industrial-Commercial; File: ZV11-05)

Pastor Richard Nethercutt was present to address the Board. Pastor Nethercutt apologized for unknowingly building the sign without a permit. Pastor Nethercutt stated the previous sign had been repeatedly vandalized so the church decided to replace it with an electronic sign that they could control. Ms. Huddle requested that the Applicant provide direct contact information, such as a telephone number, for a representative that staff would be able to get in touch with if concerns regarding the sign were to arise. Mr. Barney explained to Pastor Nethercutt the brightness of the sign intensifies in the evenings and that the settings will need to be adjusted to the lowest possible setting. Pastor Nethercutt agreed. Mr. Bresee called for public comment. There was no public comment.

5. Appeal of an Administrative Decision of Zoning Certificate (ZC11-04) by Michelle Krassowski on behalf of Miss. Booger's Pet Services & Supplies. The Zoning Certificate, approved on February 16, 2011, restricts the pet sitting/doggie daycare to a total of 8 dogs. The appeal is to request that the applicant be permitted to increase the number of dogs. The property is located at 31 Black Bear Trail in Harpers Ferry, West Virginia. (District: Charles Town; Map: 23G; Parcel: 7; Size: 20,000<sup>+</sup> sq. ft.; Zoned: Rural; File: AP11-01)

The Appellant, Ms. Krassowski, presented her case to the Board. Ms. Krassowski argued that the restriction of eight (8) dogs does not allow for the occasional overlap between her boarding clients and her day care clients and therefore has had to turn away client. In addition, said restriction severely limits her income potential. Ms. Krassowski clarified that an increased number of dogs would not be an everyday occurrence. Ms. Krassowski explained that her boarding clients are present during less than 50% of the year, and that the day care clients are present only during the work week, with the latest pick up time having been 8:00 p.m. She further explained that clients would be primarily boarded during peak vacation times and holidays. Ms. Krassowski offered a compromise in the event that the number of dogs could be increased. This compromise would allow for an overlap in boarding clients and day care clients with a restriction including the proposed language, "...is allowed no more than X number of dogs on the property for no more than X amount of consecutive hours per day between the house of X and Y." Ms. Krassowski asked the Board to read Exhibit C, page 4 of the agenda packet for this meeting, and she addressed each of the five points Mr. Barney referenced in his staff report.

1. The size of the property. Ms. Krassowski argued that the backyard is approximately 11,000 square feet and that it is of ample size for the dogs to run and play fetch yet still allow her to maintain control over them.
2. The property's location in a residential neighborhood. Ms. Krassowski stated that she has an organized method of play in which she plays between each dog alternately so as to keep the barking to a minimum. The dogs tend to bark more when people are walking in the neighborhood or if someone is at the door; however Ms. Krassowski contested that this barking should be a welcome alert to the neighborhood of the presence of strangers, considering the recent number of daytime break ins.
3. Section 4A.2(b) of the Ordinance states that a Home Occupation Level II shall not exceed one third (1/3) of the floor area of the dwelling unit. Ms. Krassowski stated that all of her dogs can fit in her master bedroom which is only 1/12<sup>th</sup> of her existing floor space.
4. Section 4A.2(e) of the Ordinance states that for a Home Occupation Level II, no more than three business-related vehicle trips per day nor more than fifteen per week are permitted at the premises. Ms. Krassowski stated that the vehicle trip limitation is a non-issue, as she picks up and drops off most of her day care dogs. As for the boarder dogs, vehicular trips can be controlled by arranging for pickups and drop offs based on the trip limitations.
5. Section 4A.2(f) of the Ordinance states that a Home Occupation Level II shall be "clearly incidental and subordinate to the use of the swelling unit as a residence." Ms. Krassowski argued that a specific number of dogs does not indicate a business any more than a number of children would indicate a day care.

Ms. Krassowski read aloud a letter from Mr. Ronald Moyer in support of her business.

Attorney Stephen Groh asked the appellant how many dogs she would like her zoning certificate to be increased to allow. Ms. Krassowski stated that a number in the range of 12 to 14 dogs would be sufficient. Of this number, 6 would be day-care dogs who would go home each evening.

Mr. Bresee called for public comment.

Ronald Moyer, Charles Keon, Sarah Brantley, Jim Creswell, John Sigmon and Sue Bubel spoke in support of Ms. Krassowski's appeal, detailing her professionalism and noting her control over the dogs. Joe Hoffman spoke in opposition to Ms. Krassowski's appeal, arguing that her business meets the State's definition of a kennel and that the business does not meet the standards of a Home Occupation Level II.

Mr. Barney presented his staff report to the Board. Mr. Barney explained that the Ordinance does not have a definition of a kennel; however, staff would not interpret a kennel as a home based business, and therefore does not find Ms. Krassowski's business to be considered a kennel. Mr. Barney reviewed the restrictions on the zoning certificate with the Board.

Ms. Krassowski provided a short rebuttal.

The public hearing was closed.

6. 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. The property is located at 9 Hawthorn Avenue in Summit Point, West Virginia. (District: Kabletown; Map: 16; Parcel: 13; Size: 230.7 acres; Zoned: Rural; File: ZV11-07)

This item was postponed until May 19, 2011.

Mr. Kelly motioned to break for a 5 minute recess. Mr. Brusco seconded the motion, which carried unanimously.

Following the resumption of the meeting, Mr. Hoffman requested to address the Board again regarding agenda item #5, for the purpose of clarifying that he did not trespass on Ms. Krassowski's property.

7. Variance request by property owner, Brian and Ashlee Muniz, from Section 5.4(b) to reduce the rear setback from 20' to 14' for a proposed deck and stairs. The property is located in the Windmill Crossing Subdivision at 53 Don Quixote Drive in Charles Town, West Virginia. (District: Charles Town; Map: 9C; Parcel: 139; Size: .0459 acres; Zoned: Residential-Light Industrial-Commercial; File: ZV11-08)

Mr. Muniz was present to address the Board. There were no questions from the Board. Mr. Bresee called for public comment. There was no public comment.

8. Variance request by property owner, Grace Baptist Church, from Section 4.16 to reduce the front parking setback from 15' to 0' from the alley Parrish Way. The property is located at 321 Potomac Street in Shenandoah Junction, West Virginia. (District: Charles Town; Map:1A; Parcel: 66; Size: .289 acres; Zoned: Village; File: ZV11-09)

Janice Myers was present on behalf of Grace Baptist Church to address the Board. Ms. Myers explained that the septic field is located on the other side of the property and therefore the additional parking spaces cannot be located there. Ms. Myers presented the Board with a copy of an approved Department of Highways permit. Mr. Barney explained that Jonathon Saunders, County Engineer, would require a sketch of the parking area as part of the permitting process. Mr. Bresee called for public comment. There was no public comment.

Mr. Brusco motioned to go into deliberative session. Ms. Hine seconded the motion, which carried unanimously.

Mr. Kelly motioned to come out of deliberative session. Ms. Hine seconded the motion, which carried unanimously.

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

2. Public hearing and action on the Conditional Use Permit application submitted by A.M.S. Morgan III on behalf of Rippon Brewery, LLC as a result of the Compatibility Assessment meeting held on February 25, 2011. This project is to consist of a micro-brewery with a tasting room, a future pub/restaurant, a store, a country inn and an office to be situated on 2 acres.

Ms. Huddle motioned to approve the above referenced request with the following conditions:

- a. All conditions for "resolved" issues agreed upon during the Neighborhood Compatibility Meeting:
  1. No customer or employee parking (excluding delivery vehicles) will be located adjacent to Withers Larue Road.
  2. Any entrances from Withers Larue Road will be located west of the brewery building.
  3. At the time when seating capacity for the restaurant exceeds 100 seats staff will review to determine if an additional entrance from US 340 (to be located to the north of the property for which the Conditional Use Permit application was submitted), is required.
  4. Prior to site plan approval, the Applicant will submit documentation from the applicable state agency or agencies certifying that the proposed brewery wastewater discharge is permitted.
  5. The hours of operation are limited to 8:00 AM to 12:00 midnight.
- b. Conditions to address "unresolved" issues discussed at the Neighborhood Compatibility Meeting:
  1. The number of restaurant seats is limited to 200.

2. All employee and customer parking for all land uses shall be located on the interior of the property.
  3. All lights shall be of a full cut off (downward facing) design and there shall be no light spillover onto adjacent properties.
- c. Condition to address consistency with application:
- i. The land uses shall be developed and operated in a manner consistent with the limitations described in the application submitted to the Board, as amended.

Mr. Kelly seconded the motion, which carried unanimously.

3. 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.

Mr. Brusco motioned to approve the above referenced request with the condition that the new structure shall not be built closer to the property line than the existing mill building. Ms. Hine seconded the motion, which carried unanimously.

4. Variance request by property owner, Victory Freewill Baptist Church, from Section 10.2(i) to allow for an animated sign.

Ms. Hine motioned to approve the above referenced request with the following conditions:

- a. No more than eight (8) messages per day.
- b. Each message to be contained on one screen only, meaning no overlapping into next frame.
- c. Each message to be held a minimum of five (5) seconds between intervals.
- d. Messages to be comprised of text content only—no animated figures, flashing actions, color changes, etc.
- e. Standard signage color will be restricted to a dark background with contrasting light lettering and color change application limited to seasonal background imagery only.
- f. No motion during message change.
- g. Hours of animated signage display to be designated between the hours of 6:00 a.m. and 10:00 p.m.
- h. Signage Light Level to be adjusted to the lowest visibility, legible from the street. Applicant to demonstrate said Level Intensity Number to the Planning and Zoning Departments for approval prior to the issuance of the zoning certificate.
- i. Applicant to provide contact information, such as a telephone number, for operator of sign to the Planning and Zoning Departments.

Mr. Brusco seconded the motion and requested an amendment to the motion to allow the sign to remain in operation after 10:00 PM during special events such as Midnight Mass (Christmas), during hours of church operation. Ms. Huddle seconded the motion to amend the original motion. The vote to amend the motion passed four in favor and 1 opposed (Mr. Kelly). The vote on the original motion, including the amendment, four in favor and 1 opposed (Mr. Kelly).

5. Appeal of an Administrative Decision of Zoning Certificate (ZC11-04) by Michelle Krassowski on behalf of Miss. Booger's Pet Services & Supplies. The Zoning Certificate, approved on February 16, 2011, restricts the pet sitting/doggie daycare to a total of 8 dogs. The appeal is to request that the applicant be permitted to increase the number of dogs.

Mr. Brusco motioned to deny the above referenced request because the applicant did not meet the burden of proof. Ms. Hine seconded the motion, which carried unanimously.

6. 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.

This item was postponed until May 19, 2011.

7. Variance request by property owner, Brian and Ashlee Muniz, from Section 5.4(b) to reduce the rear setback from 20' to 14' for a proposed deck and stairs.

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

8. Variance request by property owner, Grace Baptist Church, from Section 4.16 to reduce the front parking setback from 15' to 0' from the alley Parrish Way.

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

9. Monthly Address by Director Jennifer M. Brockman. Mr. Barney provided the Board with copies of the proposed text amendments to Section 3.4 of the Zoning Ordinance.

10. Legal Update. None.

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

12. Correspondence. None.

Ms. Huddle motioned to adjourn the meeting at 6:30 p.m. Mr. Brusco seconded the motion, which carried unanimously.

An audio transcript of this meeting can be found at the Department of Zoning and on our website at [www.jeffersoncountywv.org](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:


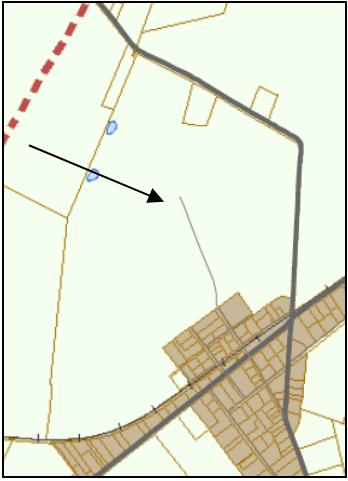
- a. Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;
- b. Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance;
- 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  
 May 19, 2011

**Hawthorn Associates, LLC Request (#ZV11-07)**

Item #2      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.

APPLICANT:	Hawthorn Associates, LLC, c/o Harry F. Byrd III
OWNER :	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	9 Hawthorn Avenue, Summit Point, WV 25446
LEGAL DESCRIPTION:	<p style="text-align: center;">District: Kabletown; Map: 16; Parcel: 13</p> 
ZONING DISTRICT:	<p style="text-align: center;">Zoning Map Designation: Rural</p> 

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 May 19, 2011

**Hawthorn Associates, LLC Request (#ZV11-07)**

SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> Rural <i>South:</i> Village <i>East:</i> Rural <i>West:</i> Rural
LOT AREA:	230.7 acres
PRIOR CASES:	01/12/99: PC approved minor subdivision (#98-29). 09/11/01: Office approved lot line adjustment of 1.303 acres.
VARIANCE(S):	10/06/04: BZA approved request to increase the number of bedrooms permitted for a Bed and Breakfast from two to seven (ZV04-14). 10/06/04: BZA granted an exception for a Bed and Breakfast pursuant to Section 9.8 (ZV04-15). 12/16/04: BZA denied request to allow 28 invitation only special events on the property (ZV04-37).
APPROVED ACTIVITY:	Bed and Breakfast consisting of seven bedrooms with 4 receptions per year with no more than 1 tent per reception.

RELEVANT INFORMATION:

1. Overview of Request

Hawthorn Associates seeks a variance from the Bed and Breakfast standards of Section 5.7(a)(17), to increase the number of permitted receptions from 4 per year to 30 per year, and to increase the number of tents permitted from 1 tent to 3 tents.

2. Previous Case History

On October 6, 2004, the Board of Zoning Appeals approved the use of the Hawthorn property as a 7-bedroom Bed and Breakfast. In its approval, the BZA noted, "the use is strictly for a bed and breakfast and is not for a restaurant, a bar or weddings or special event, simply a bed and breakfast with up to seven bedrooms." Because a variance does not expire, the property continues to be approved for use as a 7-bedroom Bed and Breakfast.

Subsequently, representatives of Hawthorn sought a variance from Sec. 5.7 to allow special events on the property, such as weddings and private parties, by invitation only, with a maximum of 28 events (one per weekend during the April to October wedding season) and a maximum of 300 persons. The Board of Zoning Appeals denied the variance on December 16, 2004.

3. Applicant's Justification of Request

The application notes that the subject property is of substantial size (230 acres) and contains a large historic home, capable of supporting many large-scale events. Per the Applicant, four receptions per year would not generate sufficient revenue to support the proposed Bed and Breakfast use. The application notes that increasing the number of receptions to 30 would not be inconsistent with the intent of the Ordinance, due to the size and capacity of the property.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
May 19, 2011

**Hawthorn Associates, LLC Request (#ZV11-07)**

4. Staff Evaluation of Request

In its 12/16/04 denial of the variance request to allow special events on the property, the Board concluded that the use described in the request was a “banquet hall” as defined by the American Planning Association, i.e. a facility or hall available for lease to accommodate private functions including but not limited to banquets, weddings, anniversaries and other similar celebrations. As such, the use was not a permitted principal use in the Rural district, and the Board of Zoning Appeals determined that it could not grant a variance from a permitted principal use.

However, circumstances have changed since the BZA’s decision. At the time of the denial, receptions were not identified in the Zoning and Land Development Ordinance as a permitted accessory use to a Bed and Breakfast use. However, in 2005, the ordinance was amended to allow, as an accessory use to a Bed and Breakfast, 4 receptions per year with no more than 1 tent per reception.

Because receptions and tents are now identified in the Ordinance as an accessory use to a Bed and Breakfast, staff has determined that a request to increase the number of receptions and tents constitutes a variance request from a standard of the Ordinance, rather than a variance request from a principal permitted use.

5. Possible Conditions of Approval

No conditions are identified.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 5.7 Rural District

(a) Principal Permitted Uses

17. Bed and Breakfasts (no more than 7 bedrooms) 4 receptions per year with no more than 1 tent per reception. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION ON JULY 15, 1993 AND OCTOBER 3, 2005]

**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): HANTHORN ASSOCIATES, LLC % HARRY F. BYRD III

Address: PO. BOX 472  
BEARBYVILLE, VA 22611

Phone Number: 540 955-1384

Location of Property: 9 HANTHORN AVE  
SUMMIT POINT, WV 25446

Lot Size: 230.7 ACRES

Deed Book Reference: Deed Book Number 534 Page Number 698

Tax Map Reference: District KABETT-06 Map 16 Parcel 13

Zoning District: RURAL

Section of Ordinance: 5.7A.17

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

*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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**MAR 11 2011**

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: **SEE ATTACHMENT**

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.):

\_\_\_\_\_  
\_\_\_\_\_

  
\_\_\_\_\_  
Signature of Property Owner

H.F. Byrd III  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

2/16/11  
\_\_\_\_\_  
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: \_\_\_\_\_

Attachment to the  
Jefferson County Board of Zoning Appeals Variance Request Form  
For Hawthorn in Summit Point, WV

Page 1, Nature of Request

The Owners request a variance from the Jefferson County Zoning Ordinance, Article 5, Section 5.7.A.17, that the maximum number of outdoor events be increased from four to thirty and that the number of tents be increased from one to three because The Hawthorn is appropriately outfitted to accommodate large groups on a regular basis and is remote enough from other neighbors not to disturb them. The site is particularly suited to large outdoor events with its beautiful gardens, lawn space, adjacent farm fields, out buildings and the historic mansion. While the three well appointed second floor bedrooms should be in high demand, the size and scale of The Hawthorn grounds would be only lightly utilized if the present limitation were maintained. The proposed variance would do well for the local economy without compromising the integrity of Summit Point's village environment.

Page 2, Items

1. Ingress and egress of attendees to events at Hawthorn shall use tree lined Hawthorn Street which has about a eight nice homes. The street is of ample width for two way traffic and access to Summit Point's main thoroughfare. Railroad tracks provide a discreet speed bump which sets the tone for the shady residential block leading to The Hawthorn's property line.
2. The special condition in this case was cast long ago. Today there is an historic home on large farm acreage that is ideal for the proposed function of Bed & Breakfast Inn with land capable of supporting large scale receptions and ceremonies. These conditions were in place many years ago as this farm has been in production since the beginnings of Hawthorn in 1711.
3. Four events per year would not generate enough revenue to support the proposed B&B use. Spreadsheets could be provided to confirm this point. The site is picturesque and the owner intends to keep it that way provided the revenue stream can support it. More events accommodating more people from out of state, will bring more dollars into West Virginia.
4. Allowing up to 30 events per year on this 230+ acre site will not counter the intent of the zoning ordinance because of its sheer size and ability to handle the increased numbers of people on those event days. People attending these events will have disposable income that may substantiate plans for other small businesses in the heart of Summit Point.



Image USDA Farm Service Agency  
© 2011 Google  
© 2011 Europa Technologies



©2009 Google

39°15'27.09" N 77°57'45.51" W elev 189 m

Eye alt 602 m

# Hawthorn Associates LLC

0 100 150 200 250 300 FT  
Grove & Dall'Olio Architects pllc 030811



Board of Zoning Appeals  
P.O. Box 338  
Charles Town, WV 25414

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MAY 13 2011

JEFFERSON COUNTY PLANNING,  
ZONING & ENGINEERING

May 12, 2011

Members of the BZA,

The Jefferson County Historic Landmarks Commission supports the owners of Hawthorn in their request to host additional events with additional tents at the historic property. Hawthorn is a designated Jefferson County Historic Landmark with a long and rich history. The current owners have saved the house and grounds from years of disuse and put a great deal of capital into the project. The JCHLC believes that adaptive reuse of historic properties ensures the survival of those resources we treasure the most. Therefore, this commission hopes that you will allow the variance that the owners of Hawthorn are requesting.

Thank you for the opportunity to comment.

Sincerely,


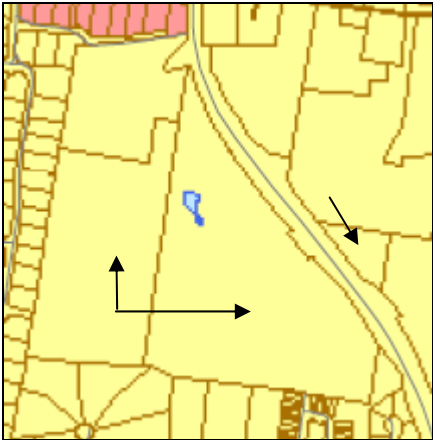
A handwritten signature in black ink, appearing to read 'John C. Allen, Jr.', written in a cursive style.

John C. Allen, Jr.  
Chairman JCHLC

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 May 19, 2011

**John D. Lowe, III et al (#ZV11-10)**

Item #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.

APPLICANT:	Lowe Products, Inc.
OWNER :	John D. Lowe, III et al
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	77 Potomac Farms Drive, Shepherdstown, West Virginia
LEGAL DESCRIPTION:	District: Shepherdstown; Map: 8; Parcels: 5 & 6.20 
ZONING DISTRICT:	Zoning Map Designation: Residential-Growth (R-G) 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> R-G <i>South:</i> R-G <i>East:</i> R-G <i>West:</i> R-G
LOT AREA:	50 acres

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 May 19, 2011

**John D. Lowe, III et al (#ZV11-10)**

PRIOR CASES:	S93-08 S97-20 S00-19 05-07
VARIANCE(S):	Planning Commission Variances approved 7/27/93, 11/25/97, 10/3/04
APPROVED ACTIVITY:	Potomac Farms Nursery

RELEVANT INFORMATION:

1. Overview of Request

Lowe Products, Inc. is seeking variances from the following sections of the Zoning and Land Development Ordinance:

- 4.6(a) – to reduce the distance requirements for an industrial use from any lot in a residential district to 50 feet (from 200’)
- 4.11(b) – to reduce the buffer yard requirements for an industrial use to 50 feet (from 200’)
- 9.5(b) – to locate a fence taller than 6’ within a required yard, within 5 feet of the property line (from 200’)

This variance request was initiated as a result of the County’s code compliance process, as outlined below:

November 10, 2010 – At the request of residents adjacent to the mulch plant, Staff met with residents to hear concerns regarding proximity of mulch storage, noise, and other issues.

November 19, 2010 – Staff conducted a site visit to view the perimeter of Lowe Products.

December 16, 2010 – The Code Compliance Officer issued a notice of violation.

January 13, 2011 – Staff met with the property owner.

January 19, 2011 – Staff issued a letter to the property owner, noting that approved site plans for the property establish a 200’ buffer on all sides of the property, in which no materials may be stored. The letter also outlined the variance necessary if the applicant sought to store materials closer than 200’ or to erect a fence taller than 6’ within a required yard.

March 7, 2011 – Staff conducted a follow-up meeting with the owner to confirm staff’s previous determination and to discuss next steps. At this meeting, a representative of the owner requested that staff consider the land use to be an industrial use and that the 200’ buffer shown on the 1993 and 1997 site plans be considered to be the required distance setback for an industrial use.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
May 19, 2011

**John D. Lowe, III et al (#ZV11-10)**

March 11, 2011 – The owner submitted a variance application for Sections 4.6(a), 4.11(b), and 9.5(b).

2. Previous Case History

Lowe Products is an existing nonconforming use established prior to the 1988 adoption of the Zoning and Land Development Ordinance. A letter submitted with a 1986 application for an Improvement Location Permit, for the expansion of facilities onsite, notes the following land uses:

- Grinding wood bark for mulch
- Bagging mulch
- Selling mulch to the public
- Selling products associated with lawns and lawn care
- Landscaping services

Following the adoption of the 1988 Zoning and Land Development Ordinance, three site plans were submitted and approved for this property. Additionally, the property was subdivided into two lots in 2005. The following table summarizes these cases:

Date	Type	Case #	Proposed development
9/9/1993	site plan	S93-08	6880 square feet warehouse addition
12/2/1997	site plan	S97-20	Addition to plant (7000 square feet)
11/21/2000	site plan	S00-19	1560 square foot shed
5/10/2005	Final plat	05-07	Subdivision into two lots, separating the mulch plant from the nursery

3. Applicant's Justification of Request

In the application submitted for the variance requests, the Applicant has stated the following:

- “The mulch stockpiles actually provide a visual, dust and sound barrier between the adjacent property owners and the processing portion of the operation.”
- “In order to comply with the current interpretation of the Ordinance, the applicant would have to remove stockpiles that are vital to the business. Lowe Products, Inc. employs many local people who would be in jeopardy of losing their jobs if the production level of this operation has to be scaled back due to limited storage area.”

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
May 19, 2011

**John D. Lowe, III et al (#ZV11-10)**

4. Supplemental Information Submitted by Applicant

Michael Scales, attorney, has submitted a memo outlining the history of the Lowe Products Company, as well as aerial photos showing the configuration of the site in 1985, 1988, and 1999.

Regarding the applicability of the Jefferson County Zoning and Land Development Ordinance, the memo quotes Section 8A-7-10(c) of the West Virginia Code, adopted in 2004:

*Effect of enacted zoning ordinance*

*(c) Land, buildings or structures in use when a zoning ordinance is enacted can continue the same use and such use cannot be prohibited by the zoning ordinance so long as the use of the land, buildings or structures is maintained, and no zoning ordinance may prohibit alterations or additions to or replacement of buildings or structures owned by any farm, industry or manufacturer, or the use of land presently owned by any farm, industry or manufacturer but not used for agricultural, industrial or manufacturing purposes, or the use or acquisition of additional land which may be required for the protection, continuing development or expansion of any agricultural, industrial or manufacturing operation of any present or future satellite agricultural, industrial or manufacturing use...*

The memo states that “the 2004 amendments to the West Virginia Code do not permit in any fashion the Jefferson County Planning and Zoning Department Ordinance from controlling the non-conforming industrial use by Respondents for their non-conforming use as an industrial mulching operation . . .”

The memo concludes, “The Notice of Violation . . . must be dismissed as the Jefferson County Board of Zoning Appeals has not statutory jurisdiction to regulate or restrict the use of Lowe Products Company, Inc.’s industrial mulching operations.”

5. Staff Evaluation of Request

a. Site plan requirements

Site plans approved in 1993 and 1997 establish a 200’ setback for this property. As the Applicant has requested that this land use be considered an industrial use, it follows that the 200’ setback should be interpreted as fulfilling the following distance requirements of Section 4.6(a) (which is applicable to “any uses or building”) and 4.11(b) (which states, “No structures, stored materials, or vehicular parking shall be permitted within the buffer yard.”)

As noted above, Lowe Products is an existing, nonconforming use established prior to the adoption of the Zoning and Land Development Ordinance. As such, staff’s interpretation is that any buildings, legally developed under the ordinances in effect at the time of their construction, are existing, nonconforming features and not subject to the 200’ buffer.

The Applicant has noted that Section 4.3(g) of the Zoning and Land Development Ordinance allows an industrial use that existed at the time of the adoption of the ordinance to expand without meeting the limits of the Section 4.3. However, Section 4.3(g) also notes that any such

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
May 19, 2011

**John D. Lowe, III et al (#ZV11-10)**

expansion must “meet site plan requirements.” Setbacks, buffers, and distance requirements are a standard site plan requirement of the Zoning and Land Development Ordinance. As such, the 200’ distance setback and buffer area established by the approval of the site plan is indeed applicable to the site, in addition to the yard requirements for a fence taller than 6’.

b. West Virginia Code

Michael Scales, an attorney representing the Applicant, cites Section 8A-7-10 of the West Virginia Code in contending that the Jefferson County Zoning and Land Development Ordinance cannot control or regulate a nonconforming industrial use.

Staff respectfully differs. It is noted that Section 8A-7-10 states that a Zoning Ordinance may not prohibit the continuance of an existing nonconforming use established prior to the the enactment of the ordinance, or prohibit the expansion of an agricultural, industrial, or manufacturing use. However, application of a 200’ setback (shown on site plans approved following the adoption of the Zoning and Land Development Ordinance) does not constitute prohibiting a land use or prohibiting the expansion of a land use. As such, this section of the West Virginia Code is not relevant to the applicant’s variance request.

6. Information submitted by other interested parties

Judith Moore, an adjacent property owner, has submitted supplemental information regarding the variance requests. This information is included in the Board of Zoning Appeals packet.

7. Possible Conditions of Approval

Should the Board of Zoning Appeals choose to approve the variance requests with conditions, possible conditions of approval include:

- a. Fence height shall be limited to the height noted in the variance application (12’)
- b. A fence constructed within a required yard shall be opaque and shall not be topped with barbed wire or razor wire
- c. Certain industrial use standards of Section 5.8(b) [as specified or modified by the Board] shall apply to the use.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
May 19, 2011

**John D. Lowe, III et al (#ZV11-10)**

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 4.6 Distance Requirements

- (a) Any uses or building subject to compliance with this section shall be located at least 200 feet from:
- (1) any lot in a residential district;
  - (1) a dwelling, school, church or institution for human care not located on the same lot as the said use or buildings [AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 4, 1989]
  - (2) any lot which is part of a recorded subdivision, and
  - (3) any parcel or historic structure or designated historic district which has been listed on the West Virginia or National Register of Historic Places.

Section 4.11 Landscaping, Screening and Buffer Yard Requirements

- (b) All industrial development adjacent to any Residential district, or a residence, school, church, or institution for human care shall have a buffer yard of no less than two hundred (200) feet. No structures, stored materials, or vehicular parking shall be permitted within the buffer yard. All industrial development shall have front yard buffers of no less than one-half (½) the front yard building setback. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990 AND JULY 15, 1993]

Section 9.5 Projections Into Yards

[AMENDED BY ACT OF THE COUNTY COMMISSION ON MAY 18, 1996]

- (b) Fences and walls over six (6) feet in height shall meet building lines and yard requirements. An Improvement Location 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.

ZV11-10

**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

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

Phone Number: (304) 876-2546

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

Lot Size: 50 +- Acres

Deed Book Reference: Deed Book Number 933/1021 Page Number 643/626

Tax Map Reference: District Shepherdstown Map 8 Parcel 6.20 & 5

Zoning District: Residential Growth District

Section of Ordinance: 4.6 (a), 4.11 (b) and 9.5 (b) per application filed 4/13/11

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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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 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

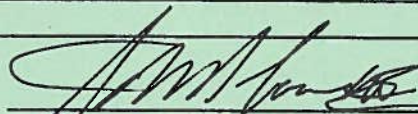
See Attached

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



Signature of Property Owner



Print name

3/11/11  
Date

**FOR OFFICIAL USE ONLY**

Fees paid: \_\_\_\_\_

Date Application / Fees received: \_\_\_\_\_

Date of meeting/pubic 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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JEFFERSON COUNTY  
PLANNING, ZONING AND COMMUNITY DEVELOPMENT

John D Lowe, III, ET AL  
Lowe Products Inc.  
Request for a Variance from Article 4, Section 4.6 (a),  
Section 4.11 (b) and Article 9, Section 9.5  
Jefferson County Zoning Ordinance  
March 11, 2011

**BRIEF DESCRIPTION OF THE REQUEST:**

Lowe Products, Inc is being required to request several variances in order to keep their inventory of mulch in its current location. Presently, portions of Lowe Products mulch inventory are within 200 feet of the exterior property lines. Lowe Products has been in operation at this location since at least the early 1970s. The operation has grown over the years and the appropriate permits and approvals were obtained during each phase of expansion.

There is confusion associated with this request in that an earlier site plan for one of these expansions shows a 200 foot setback for future construction. Over the years, the mulch inventory was located both inside and outside of this 200 foot area. It is important to note, that the original warehouse, equipment and some mulch were already located within this area when this note was placed on the original site plan. The attached sketch plat/aerial shows the perimeter of the site and depicts inventory, operations and buildings within this 200 foot area. This aerial was taken in August 2007 and can be found on Google Earth.

Nevertheless, the Staff's current interpretation is that the equipment and mulch inventory associated with the industrial operation must stay out of this 200 foot area. Accordingly, the Applicant is requesting up to three variances. However, there is at least one jurisdictional question that needs to be answered.

Specifically, the Applicant believes that Article 4, Sections 4.3 (f) and (g) in combination with the West Virginia State Code, as amended, permits the use of this property as it is currently being used. A copy of these two sections is attached to this application. A presentation on this position will be made at the Zoning Hearing.

In the event that the Board of Zoning Appeals requires the variances after this discussion, there are possibly three variances that would be necessary according to Staff. The first two variances would be needed in order to keep the mulch inventory in its current location.

First, Article 4, Section 4.6 (a) requires a 200 foot distance between this development and the neighboring residential uses. Regarding this provision, the Applicant is requesting that that distance be reduced to 50 feet. This would be consistent with what has been occurring on the site for many years.

Second, Article 4, Section 4.11(b) requires a buffer yard of 200 feet between this operation and the neighboring residential uses. Regarding this provision, the Applicant is requesting that the buffer be reduced to 50 feet. Again, this would be consistent with what has been occurring for many years.

Finally, the Applicant MAY want to erect a 12 ft. high security fence. A 6 ft. high fence is permitted anywhere, but Article 9, Section 9.5 (b) requires taller fences to meet the appropriate setback. The fence particulars will be based on what is determined at the Zoning Hearing regarding the other variances. However, to be safe, this request is for a variance to build the fence as close as 5 feet to the property line.

FILED

MAR 11 2011

John D Lowe, III, ET AL  
Lowe Products Inc.  
Request for a Variance from Article 4, Section 4.6 (a),  
Section 4.11 (b) and Article 9, Section 9.5  
Jefferson County Zoning Ordinance  
March 11, 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:

Lowe Products, Inc. has been in business for decades and is a tremendous asset to the community. It has coexisted with residences, residents and businesses in the neighborhood for all of these years. Any and all additions and expansions to this operation have been consistent with the rules and regulations in place at the time of each expansion.

The West Virginia Department of Environmental Protection (WVDEP) also routinely monitors and regulates this site through their NPDES program. According to the WVDEP, the site remains in compliance with those high standards.

The mulch stockpiles actually provide a visual, dust and sound buffer between the adjacent property owners and the processing portion of the operation.

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:

When a previous site plan (1997) was approved on this property, a 200 foot setback was included on the plat that noted it as a building restriction line for future construction. There is confusion over the purpose, applicability and intent of this setback. This is especially true since components of the industry (including warehousing, equipment and stockpiles) were already located within the 200 feet. The site is used as it was prior to the 1988 adoption of the Zoning Ordinance. What may be seen as additional or rotating stockpiles, are just a result of fluctuations in the inventory at any given time.

Article 4, Section 4.3 (f) and Section 4.3 (g) clearly allow the industrial operation on this property. Section 4.3 (f) refers to the West Virginia State Code, as amended, with particular respect to the nonconforming use section of the State Code. Section 4.3 (g) states that the nonconforming use section of the Zoning Ordinance does not apply to preexisting industrial uses.

The applicant has been under the impression that the property was in compliance with the Zoning Ordinance because of Sections 4.3 (f) and (g).

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

In order to comply with the current interpretation of the Ordinance, the applicant would have to remove stockpiles that are vital to the business. Lowe Products, Inc. employs many local people who would be in jeopardy of losing their jobs if the production level of this operation has to be scaled back due to limited storage area.

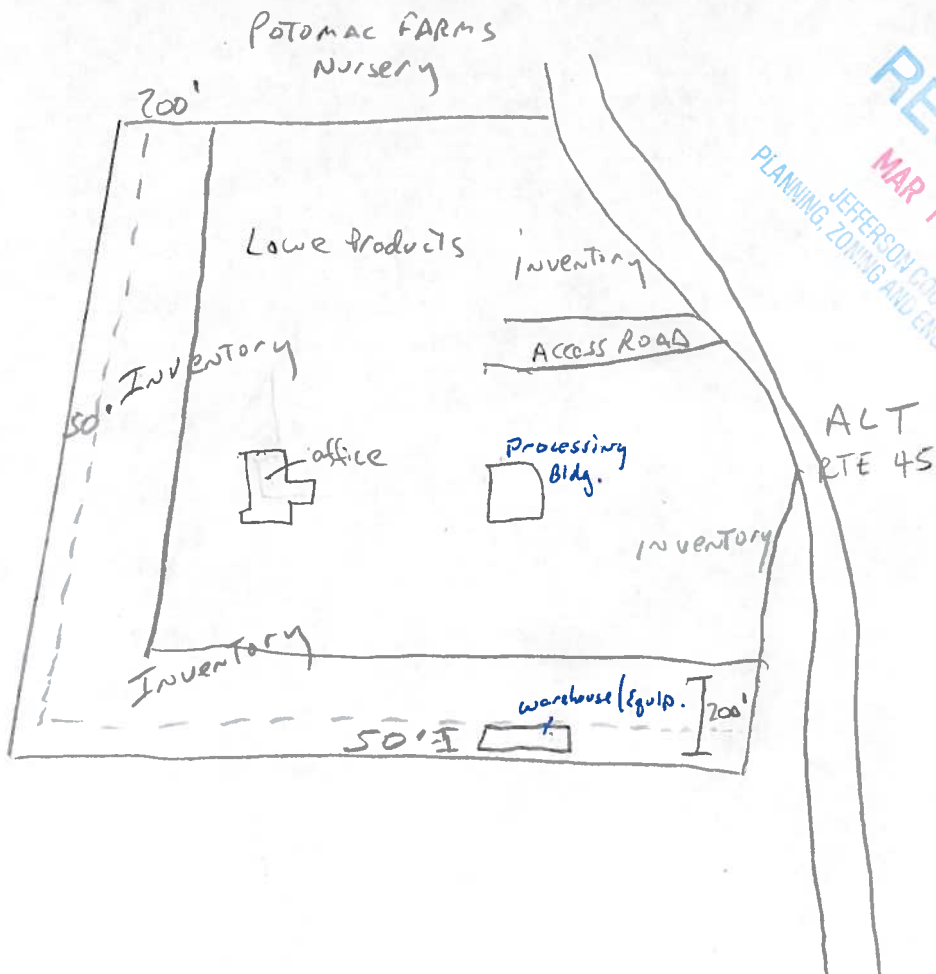
The West Virginia State Code, as amended, protects existing industries, manufacturers and farmers for the sustainability of a healthy economy that includes the creation of products and the employment of citizens. As it relates to zoning, the State Code also allows the unlimited expansion of those industries, manufacturers and farms to ensure a vibrant expanding economy.

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

A simple reading of Sections 4.3 (f) and (g) explains that the intent of the Zoning Ordinance is to allow pre-existing industrial uses to expand. This goal is required and supported by the West Virginia State Code, as amended. Furthermore, the WVDEP ensures compliance with any and all environmental standards.

The purpose of a buffer/setback is to provide sound, visual and other protections for the neighborhood. In this case, these protections are provided by the mulch stockpiles.

Substantial justice would be to grant the variances to allow Lowe Products, Inc. to continue to efficiently utilize the property, so that it can serve the community for many years.



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 PLANNING, ZONING AND ENGINEERING



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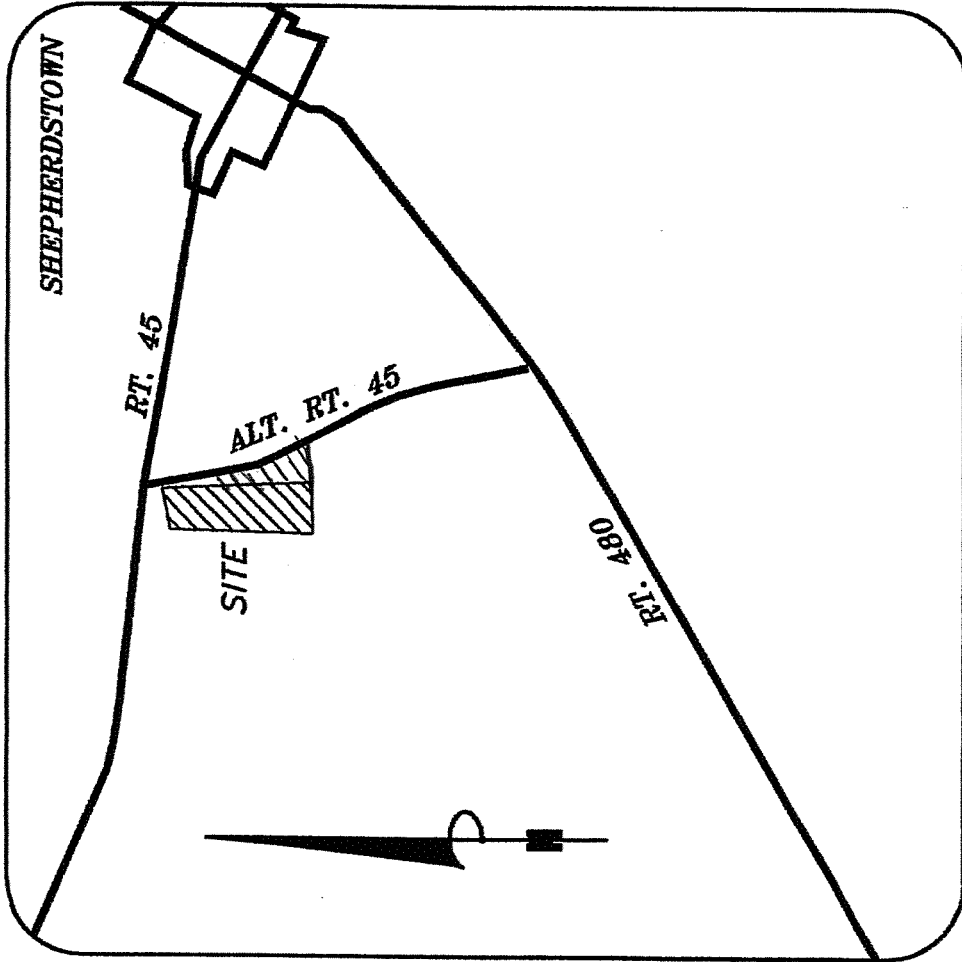
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MAR 1 1 2011  
JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

# JOHN LOWE PK

JEFFE

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MAR 11 2011  
PLANNING AND ZONING DEPARTMENT

*[Signature]*  
3/11/11



## VICINITY MAP

SCALE: 1"=2000'

use shall not be reestablished and any future use shall be in conformance with the provisions of this Ordinance.

[AMENDED TWICE TIMES BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990 AND JULY 15, 1993]

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

- (c) A nonconforming use may not be substituted for any other nonconforming use without the Board of Appeals review and public hearing, provided, however, to the following: upon notice to the Zoning Administrator with an application for and approval of a Zoning Certificate a nonconforming retail, service, or wholesale operation may be substituted with another retail, service or wholesale operation without such public hearing; provided again, however, the intended use does not include an adult use.  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]

- (d) Effective October 14, 1999, whenever a nonconforming use expands over 35% of the existing square footage of its operation said use shall meet all the applicable requirements of this Ordinance unless otherwise allowed by the Board of Appeals. Any nonconforming use that expanded between October 5, 1988 and October 14, 1999 may expand under this provision as if they have never utilized this provision in the past.  
[AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993 AND OCTOBER 14, 1999]

- (1) When a nonconforming use can be computed by units such as apartment units, motel/hotel units, mobile home parks, and similar uses, the 35% expansion shall be limited to 35% of the number of existing units.  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 18, 1996]

- (e) A nonconforming shopping center (including spaces that were not leased in the existing building at the time of the adoption of this ordinance) may substitute uses according to Section 4.3(c).  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]

- (f) Section 4.3 is subject to §8A-1-1 et seq of the West Virginia Code, as amended.  
[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

- (g) This Section (4.3) does not apply to industrial uses that existed at the adoption of the ordinance. Such industries may expand provided that they meet site plan standards.  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 18, 1996]

- (h) Nonconforming commercial wireless telecommunications antenna, commercial wireless telecommunications equipment shelter(s), commercial wireless telecommunications facility(s) and commercial wireless telecommunications tower(s) cannot expand under this provision while Article 1, Section 1.6 is in effect.  
[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE FEBRUARY 11, 1998]

PLANNING DEPARTMENT  
MAR 1 2011

**MICHAEL L. SCALES, P.L.L.C.**

**Attorney-at-Law  
314 West John Street  
Post Office Box 6097  
Martinsburg, WV 25402**

**Telephone (304) 263-0000  
Facsimile (304) 263-0739**

Michael L. Scales (CPA, LL.M.)\*  
\*Also Admitted in Maryland

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**MAY 17 2011**

**JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING**

May 5, 2011

Mr. Steve Barney, Zoning Administrator  
Jefferson County Board of Zoning Appeals  
P.O. Box 338  
Charles Town, WV 25414

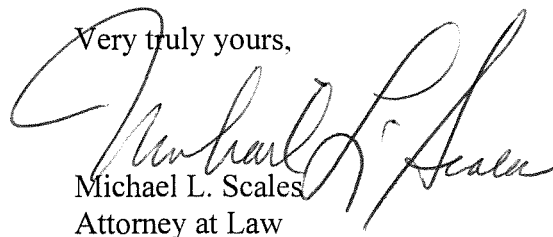
Re: John D. Lowe, III and Lowe Products Company, Inc.,  
et als.  
No. J.C.P.C. S93-8, 997-2  
Shepherdstown District, Tax Map 8, Parcels 5 and 6  
Deed Book 400, at page 704

Dear Mr. Barney:

Enclosed please find an original plus two copies of Respondents' Supplemental Memorandum which I respectfully request be filed and a copy provided to Assistant Prosecuting Attorney, Mr. Stephen Groh.

If you have any questions concerning this matter, feel free to contact me.

Very truly yours,



Michael L. Scales  
Attorney at Law

MLS:aro  
Enclosures  
Cc: Mr. John D. Lowe, III (w/ encl.)  
Cc: Mr. Paul J. Raco (w/ encl.)

**BEFORE THE JEFFERSON COUNTY BOARD OF ZONING APPEALS**

IN RE: JOHN D. LOWE, III AND  
LOWE PRODUCTS COMPANY, INC., et als., Respondents

Owners of Record: John D. Lowe, III; Matthew Lowe;  
Scott Lowe; and, Phillip Lowe

No. J.C.P.C. S93-8, 997-20

Shepherdstown District, Tax Map No. 8, Parcels 5 and 6  
Deed Book 400, at page 704

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**MAY 17 2011**

**JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING**

**RESPONDENTS' SUPPLEMENTAL MEMORANDUM**

**I. ISSUE:**

Whether §4.11(b) Landscaping, Screening and Buffer Yard Requirements, applies to the real estate which is owned by the Respondent Lowes in which Lowe Products Company, Inc. owns and operates a mulching operation.

**II. FACTS:**

1. In 1970, John D. Lowe, Jr., father of the four present owners, John D. Lowe, III, Matthew Lowe, Scott Lowe and Phillip Lowe, doing business as Lowe Products Company, began a mulching, industrial processing plant on the subject real estate that converts wood products into mulch, and stores and packs those mulch products for shipment, and wholesale sale elsewhere.

2. That the industrial mulching operations were incorporated in 1972, into Lowe Products Company, Inc., a West Virginia corporation, which continues and has continuously maintained the industrial mulching operation at the present site since the 1972 incorporation.

3. That continuously and without interruption since 1970, the subject property has been utilized and continues to be maintained as an industrial wood processing plant converting wood

products into mulch for storage, packing and sale to be transported to other locations for wholesale sales.

4. That attached hereto are Air Photographics, Inc.'s aerial photograph numbers: V852-116, 11-31, dated 2-28-85; V8811-261, 11-31, dated 11-18-88; and, V991-228, 11-31, dated 1-30-99, respectively, which shows the industrial mulching operation at those times.

### III. RESPONSE:

No.

### IV. RATIONALE:

1. The Jefferson County Planning and Zoning Ordinance took effect in October, 1988, eighteen years after Lowe Products Company, Inc. began its industrial mulching operation on the subject site.

2. At that time, West Virginia Code §8-24-50 of the West Virginia Code of 1931<sup>1</sup>, as amended [1959], stated in salient portion as follows:

Such a zoning ordinance or ordinances shall not prohibit continuance of the use of any land, building or structure for the purpose for which such land, building or structure is used at the time that such ordinance or ordinances take effect, but any alteration or addition to any land or any alteration, addition or replacement of or to any existing building or structure for the purpose of carrying on any prohibited use under the zoning rules and regulations applicable to the district may be prohibited: Provided, That **no such prohibition shall apply to** alterations or additions to or the replacement of buildings or structures by any farm, **industry or manufacturer, or to the use of any land presently owned by any farm, industry or manufacturer**, but not used for agricultural, industrial or manufacturing purposes, or to the use or acquisition of additional land which may be required for the protection, **continuing development or expansion of any agricultural, industrial or manufacturing operation** or any present or future satellite agricultural, industrial and manufacturing use... [Emphasis added].

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<sup>1</sup> These portions of the land planning chapter of the West Virginia Code are sometimes referred to as the "grandfather" provisions from non-conforming uses. See generally as to the expansion of a *residential* non-conforming use, *McFillan v. Berkeley County Planning Com.*, 190 W.Va. 458, 438 S.E.2d 801, 806-808 (1993).

In 2004, the Legislature abrogated Chapter 8, and replaced it with Chapter 8A of the West Virginia Code. Section 8A-7-10(c) of the West Virginia Code [2004]<sup>2</sup>, is even more restrictive in what a zoning ordinance may regulate as to prior non-conforming industrial use:

**Effect of enacted zoning ordinance**

(c) Land, buildings or structures in use when a zoning ordinance is enacted can continue the same use and such use cannot be prohibited by the zoning ordinance so long as the use of the land, buildings or structures is maintained, and no zoning ordinance may prohibit alterations or additions to or replacement of buildings or structures owned by any farm, industry or manufacturer, or the use of land presently owned by any farm, industry or manufacturer but not used for agricultural, industrial or manufacturing purposes, or the use or acquisition of additional land which may be required for the protection, continuing development or expansion of any agricultural, industrial or manufacturing operation of any present or future satellite agricultural, industrial or manufacturing use... [Emphasis added].

Hence, the 2004 amendments to the West Virginia Code do not permit in any fashion the Jefferson County Planning and Zoning Ordinance from controlling the non-conforming industrial use by Respondents for their non-conforming use as an industrial mulching operation, and the Lowe brothers may use any portion of their land in Shepherdstown District, Jefferson County, West Virginia, as a continuing mulching operation and use it for its expansion and any attempt to regulate the use of that land is void *ab initio*, as the enabling act [§8A-7-1, *et seq.* of the *Code*] prohibits the Jefferson County Planning and Zoning Ordinance from any such regulation.

It appears that the Jefferson County Planning and Zoning Commission did not attempt to restrict in any fashion the operations of Lowe Products Company, Inc. at the above site for its industrial mulching operations since after 1993 as the result of that Commission and its staff's understanding and interpretation of §8-24-50 of the West Virginia Code and §8A-7-10(c) of the *Code* [2004], that the Respondents' use of the property as an industrial mulching operation grandfathers the property's industrial use from the application of the Jefferson County Planning

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<sup>2</sup> See Footnote 1.

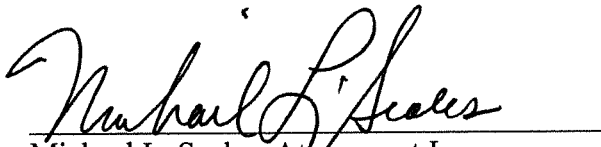
and Zoning Ordinance, other than the site plan requirement. The aerial photographs in 1999 and thereafter reflect that the site utilized by the Respondents as the industrial mulching operation were not regulated after the 1993 site plan.

**V. CONCLUSION:**

The Notice of Violation, dated September 16, 2010, must be dismissed as the Jefferson County Board of Zoning Appeals has no statutory jurisdiction to regulate or restrict the use of Lowe Products Company, Inc.'s industrial mulching operations on the Lowe property at Tax Map No. 8, Parcels 5 and 6 in Shepherdstown District, Jefferson County, West Virginia, operating continuously since 1970, pursuant to §8A-7-10(c) of the West Virginia *Code*.

Respectfully submitted this 5<sup>th</sup> day of May, 2010.

John D. Lowe, III, et als., Owners of Record  
By Counsel



Michael L. Scales, Attorney at Law  
Counsel for John D. Lowe, III and Lowe  
Products Company, Inc.  
Michael L. Scales, PLLC  
314 W. John Street; P.O. Box 6097  
Martinsburg, WV 25402-6097  
(304) 263-0000  
WV Bar No. 3277

11-18-88

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11-18-88

ZV11-10

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JEFFERSON COUNTY PLANNING,  
ZONING & ENGINEERING

2-28-85

852-116

11-31



ZV11-10

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MAY 06 2011

JEFFERSON COUNTY PLANNING,  
ZONING & ENGINEERING



01-30-99

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MAY 11 2011

JEFFERSON COUNTY PLANNING,  
ZONING & ENGINEERING

To: Jefferson County Board of Appeals  
From: Judith Moore  
Date: May 7, 2011  
Subject: Objection to a Request for Variances by Lowe Products Mulch Plant

I have prepared this packet together with a group of my neighbors from several residential areas which abut the mulch plant in Shepherdstown. After conferring with the staff of Planning and Zoning over the course of the past 6 months, we have been advised that the only tools available to us to get some relief from the noise, air pollution, odors and potential fire hazards, are for the county to enforce the required setbacks for storage and processing of the mulch. We also understood that the plant could apply for a variance allowing them to keep the mulch closer to their property lines, which they have been doing for some time, in some cases within 5 feet of the line.

Enclosed in your packet are:

A copy of the column which we submitted to the Observer Newspaper which appeared in the May issue detailing the history of the negative effects we are constantly exposed to, how they have greatly increased in the past several years, and the likelihood that if the variance is granted our health, welfare and right to "quiet enjoyment of our properties" will be further eroded.

A copy of a letter from my husband Carl and myself requesting a meeting with the Lowes at our home to determine if there is a way to coexist as we did in the past. Our request was declined.

Photos taken over the past 6 months of equipment, mulch storage, non-conforming fencing, and of some of the people living along the perimeters of the plant. (see website for add'l photos)

Sound readings from a decibel meter we purchased

Aerial photos from Airgraphics taken in 1988 and in 2004 showing the growth from a small family operated business in 1988 when the plant was grandfathered into a residential growth zone. These and a more recent color photo from Googleearth.com are on your website.

A copy of the noise ordinance which applies to residential areas, but which offers us no relief.

An unsolicited letter from a concern citizen.

Plat submitted to P&Z in 1997 showing the setback lines and the adjoining residential lots. A portion of this land was shortly thereafter sold to the State for the Route 45 by-pass.

We strongly urge an unscheduled visit to tour the entire site. Be advised that noise levels vary based on what machines are operating. Adjoining property owners are happy to offer a tour as well since it is from their land that the real story is told. Also check our Facebook page for additional photos and feedback from the community. [facebook.com/mulchplant](https://www.facebook.com/mulchplant)

We expect to have 3-4 presenters and will stay on point. We anticipate a large audience of supporters. They are not being asked to make statements so that we can best use our allotted time to present the facts and describe the impacts on our lives.

Judy Moore

304-876-6176 cell 304-671-0617 [mjlmoore@frontiernet.net](mailto:mjlmoore@frontiernet.net)

## Deny A Variance for Mulch Plant

*The commentary below was submitted by the undersigned, and does not necessarily reflect the views of The Observer.*

We are your neighbors asking for your support. The Board of Zoning Appeals of Jefferson County will meet May 19 to consider requests for several zoning variances by Lowe Products. The Ordinance states that “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.” The variances are sought because of citations from the County for violations. We need the BZA to deny these variances.

Lowe Products is the mulch manufacturing plant on the Route 45/480 Connector near Shepherdstown which along with Potomac Farms Nursery is owned and operated by Betty Lowe of Shepherdstown and her sons John III, Scott, Philip and Matthew. The mulch plant grinds lumber and post-construction waste. It stores the ground material in piles to decay into mulch, bags it, and trucks it away for distribution.

The plant directly abuts three sizable Shepherdstown communities: Mecklenburg Heights, Ledge Lowe Estates, and Colonial Hills. Chapline’s Choice sits just across Route 45. The land where the plant is located is zoned, amazingly, as *residential*. The 1988 zoning ordinance designated the area as residential growth, and grandfathered nonresidential uses into the status of “non-conforming use” to protect small businesses that were located in residential areas.

In 1988, Lowe Products was, indeed, a small business nestled in the woods, coexisting reasonably well with the surrounding residential developments. Since then, the company has enjoyed steady and significant growth. Today the plant utilizes nearly every available foot of its 50+ acres and generates over \$10 million a year in revenue. Lowe Products is arguably a good business that benefits many of the company’s stakeholders: owners, employees, suppliers, customers, and the Jefferson County tax base.

But Shepherdstown residents are also key stakeholders, and many of us believe that this business is no longer a good neighbor. “One of the leading mulch and soil producers on the East Coast” (quote from the company website) now flourishes at the considerable expense of the safety and quality of life of the surrounding neighborhoods. Because of Lowe Products’ residential zoning, it is not subject to the same restrictions on noise, light, air, or water pollution that govern other manufacturers in the county. This has consequences for all of us.

**Sound.** If the plant were operating in an industrial zone, its hours of operation would be limited and its noise output restricted. But zoned as it is, the plant is free to (and does) operate whenever it pleases. Especially in peak production months, one can hear earth movers, semis, truck back-up signals, or grinders operating at any time of the day or night. It’s frayed a lot of nerves and caused an incalculable loss of sleep.

The noise isn’t just relentless; it’s loud. The Jefferson County residential noise ordinance states that “noise levels of 65 decibels, which . . . are either intermittent or continuous for a duration of at least 30 minutes, [are a] hazard to public health and safety.” Unfortunately, this ordinance, the intent of which is to protect residents from loud disturbances at night, applies only between 10pm and 6am. So when the plant runs its grinders from 6:05am to 10pm at up to 85 decibels at the property line, the ordinance provides us no protection. For 16 hours a day, Lowe Products is

free to generate noise that far exceeds what the county itself has deemed safe. This practice may comply with the noise ordinance, but we can't believe it complies with its intent—or with common sense.

**Air quality.** Whenever raw materials are ground up or mulch piles are moved, shreds of mulch and dust travel by wind onto our properties and into the air we breathe. This airborne debris is classified by the EPA as “particulate matter.” People living near the plant will tell you that their decks, pools, cars, and yards are covered with the stuff. That's an inconvenience we can see.

But many of us are far more concerned with the invisible hazards of what we're inhaling. Many neighbors report that family members suffer from severe asthma, migraines, and upper respiratory issues that they didn't have before moving to the area. The EPA has set limits for safe amounts of airborne particulate matter allowed, and cautions that “particle pollution—especially fine particles—contains microscopic solids or liquid droplets that are so small that they can get deep into the lungs and cause serious health problems.” While we know that it's nearly impossible to prove that the mulch plant is causing health problems, many of those suffering from headaches and respiratory issues believe that the plant is a major contributor.

We're also concerned about the *composition* of the particulate that we're breathing. The mulch plant doesn't grind up just tree trunks and limbs. It also grinds post-construction waste: pressure-treated lumber, particle-board, doors, and painted wood, which could contain elements such as copper and formaldehyde. If you drive by the mulch plant, you will see mountains of mulch and piles of waste ready for the grinder, your garden, and your lungs.

**Risks to personal safety and property.** These risks are lower in probability, but very serious nonetheless. The first is the risk of fire. Mulch piles generate significant heat, and several years ago some of the mulch piles caught fire. The smoldering piles cast a pall over the town for days. Since then, Lowe Products has responsibly stepped up their fire-prevention measures. But the mulch is being stored much closer to homes now than it was when the fires occurred, so the slightest risk of fire is cause for concern.

There's also a risk of potentially dangerous industrial “shrapnel.” Several years ago, one of our Ledge Lowe neighbors reported that she and her two sons were in their home when a hammer head crashed through a skylight into their kitchen. It had been thrown through the air from the mulch plant's grinder. We have other reports of metal, rocks, plastic, and hard rubber debris falling into backyard pools and play areas, particularly in Mechlenburg Heights.

In seeking the variances, Lowe Products wants permission to store their mulch as close as 50 feet from the property line. If the variance is granted, surrounding residents will be subjected to continued and increased noise, particulate matter in the air we breathe, and chances of industrial accidents bringing harm to residents and property.

Lowe Products also is requesting a variance to construct a 12-foot “security” fence along its borders to within five feet of the property line.

We hope you will attend the public hearing May 19 at 3pm in the lower level of the Charles Town Library on Samuel Street. We urge the county to deny these variances, so that an already difficult situation does not become even worse.

For questions or information, contact us at [shepherdstown786@gmail.com](mailto:shepherdstown786@gmail.com); by phone: Judy Moore, 304-876-6176 or Ryan Hagerty, 304-582-5967; or contact one of your friends listed below.

Submitted by the following concerned residents of Chapline's Choice, Colonial Hills, Ledge  
Lowe Estates, Mechlenburg Heights:

Ryan and Christy Hagerty, Bradley and Nannette Jenkins, Carl and Judy Moore, Bill and Linda  
O'Brien, Al and Maureen Small, Ray and Jane Vanderhook, Leslie Williams and David Schoof

See additional photos and supporting documents on [www.facebook.com/mulchplant](http://www.facebook.com/mulchplant)

October 11, 2010

Dear Scott,

I am writing on behalf of my neighbors and ourselves to request some relief from the extreme noise emanating from Lowe Products known familiarly to those of us who have been around for a while, as the Mulch Plant. For each of the past several years the din has become louder and closer to the residents of the surrounding subdivisions. Sometime over the past couple of years a machine which I am given to understand actually grinds and manufactures mulch, has been added which has made our lives almost unbearable.

For some reason this machine, beginning on the Friday of Labor Day weekend and on subsequent Fridays was operating from about 4:00 pm until dark. This is the time when people come home from work and want to sit on their porches and decks and relax. We had guests on the evening of September 3, and had to go indoors simply to have a conversation. Our guests were shocked at the noise level. In fact the noise is so loud it can be heard inside.

Now this machine is operating on an almost daily basis, frequently from dawn until dark. I assume this has something to do with cooler temperatures.

We have co-existed for over 30 years as good neighbors, from before the plant was grandfathered under the zoning ordinance as a small bagging operation.

Carl and I would like to invite you to come to our home and hear for yourself the noise which has deprived us of the right to quiet enjoyment of our property. As you know we live farther away from the source than many of our aggrieved neighbors.

I have known you and your brothers for many years and know you to be successful and reasonable businessmen who grew up in the community and who, as second generation operators of the plant, will want to work toward resolutions to these issues.

Please call us at your earliest convenience at 304-876-6176 or Carl's cell 304-671-5177 so that we can set up a time to meet.

Sincerely,

Judy Moore

A handwritten signature in black ink, appearing to be 'Judy Moore', with a large, stylized initial 'J' and a long, sweeping horizontal stroke extending to the right.

Date/time	Location	reading
4/22/11 11:00	403 Woodcock Ave yard	62 trucks
4/23/11 21:30	403 Woodcock Ave yard	72 grinder/trucks
4/23/11 21:45	215 Woodcock Ave	88 grinder/trucks
4/26/11 03:00	403 Woodcock Ave backporch	63 trucks
4/26/11 06:30	403 Woodcock Ave backporch	71 grinder
4/27/11 11:15	215 Woodcock Ave	96 grinder/trucks
4/27/11 11:30	403 Woodcock Ave inside house	60 trucks
4/28/11 12:00	215 Woodcock Ave	72 trucks
4/29/11 04:00	403 Woodcock Ave backporch	62 trucks
5/4/11 09:30	215 Woodcock Ave fenceline	76 with trucks, 90 with grinder
5/9/11 11:00	403 Woodcock Ave backporch	63 trucks/grinder

These are readings from my yard and from along Woodcock Ave.

Nannette Jenkins

Note that two of these readings were taken during the hours from 10:00 pm to 6:00 am when the noise ordinance applies to residential areas. Others were taken well after dark. Readings during the day time hours range up to 96 decibels. According to the county ordinance, any reading above 65 at any time is considered harmful. While most of these readings were taken outdoors, it means that homeowners are curtailing most outdoor activities, especially where children are involved.

***Two views from back yards in Mechenburg Heights***

**View One**



**View Two**



**Fencing on property line**



**Steaming mulch piles**





Airgraphics Photo 1988 Lowe Products -- Before By Pass Built



Airgraphics Photo 2004 Lowe Products

**AN ORDINANCE TO ABATE EXCESSIVE RESIDENTIAL NOISE  
WHERE SUCH NOISE IS DEEMED A PUBLIC NUISANCE**

WHEREAS, the County Commission of Jefferson County, West Virginia has received public comment and expert opinion testimony that certain levels of noise may constitute a threat to the public health and safety of the community; and

WHEREAS, in some circumstances such levels of noise may also constitute a public nuisance; and

WHEREAS, Chapter 7, Article 1, Section three-k-k of the West Virginia Code of 1931, (W.Va.Code § 7-1-3kk) as amended, authorizes county commissions to enact ordinances and issue orders for the elimination of hazards to public health and safety of the community and to abate or cause to be abated anything which the county commission determines to be a public nuisance, and further authorizes that such ordinances may provide for a misdemeanor penalty for violation thereof.

BE IT THEREFORE ENACTED AS FOLLOWS:

**Section 1.** Excessive Noise Levels.

The County Commission of Jefferson County, West Virginia does hereby declare noise levels in excess of 65 decibels (dB), which levels are either intermittent or continuous for a duration of at least thirty minutes, to be a hazard to public health and safety in Jefferson County, West Virginia, exclusive of any municipality therein, and where such noise levels rise to the level of a public nuisance, the same are subject to abatement by the procedures set forth herein.

**Section 2.** Definitions.

For purposes of this ordinance only the following terms are defined:

- (a) "Complaint" shall mean a written statement of the essential facts constituting the offense charged. It shall be made upon the oath of a law enforcement officer before a magistrate. The complaint shall set forth the facts of the allegation of excessive noise; name the complainant or complainants with complete address and telephone number; name the alleged perpetrator or perpetrators of the excessive noise and his, her or its complete address and telephone number; set forth the names, addresses and telephone numbers of all persons who are impacted by the alleged excessive noise and the approximate area of impact of the excessive noise.
- (b) "Excessive Noise" shall mean:
  - (i) ***Radios, television sets, musical instruments, phonographs, compact disc players, and similar devices.*** It shall be unlawful to operate or permit the use of any radios, television sets, musical instruments, phonographs, compact disc players, and similar devices as to be audible at or above the level of 65 dB through the walls of apartment units within the range of the same building, from another property line, or from the street between the hours of 10:00 p.m. to 6:00 a.m.

(ii) **Parties and other social events.** It shall be unlawful for any person in charge of a party or other social event to allow that party or event to produce noise in a manner such that the noise is audible at or above the level of 65 dB through the walls of apartment units within the range of the same building, from another property line, or from the street between the hours of 10:00 p.m. to 6:00 a.m. A person shall be deemed to be in charge of a party or social event when that event occurs on private property and the person is present at that event and resides on the premises involved or is a person who lives in or on the premises involved and has authorized the use of the premises for such event. For parties or other social events on public property with no permit, or on private property with no owner or resident present and no clearly identified person in charge, all attendees shall be issued a violation.

(iii) **Domestic use of power tools and equipment.** It shall be unlawful to operate or permit the use of non-commercial or non-industrial power tools and landscaping and yard maintenance equipment that produces an audible sound at or above the level of 65 dB through the walls of apartment units within the range of the same building, from another property line, or the street between the hours of 10:00 p.m. to 6:00 a.m.

(iv) **All terrain vehicles, motorcycles, snowmobiles, scooters and other motorized vehicles.** It shall be unlawful to operate or permit the use of all terrain vehicles (ATVs), motorcycles, snowmobiles, scooters or other motorized vehicles that produce an audible sound at or above the level of 65 dB from the property line of the complainant or the street at any time, day or night.

- (c) "Public Nuisance" shall mean excessive noise that affects no fewer than three households that live within a residential area of Jefferson County.
- (d) "Residential area" shall mean any subdivision, development or other similar area used primarily for residential purposes located in Jefferson County but which is not within the boundaries of any municipality therein.
- (e) "Household" shall mean any apartment, townhouse, unit, or freestanding home which serves as a residence of persons who live in that same dwelling, sharing its furnishings, facilities, accommodations, and expenses. A building with multiple apartments, townhouses or units may, accordingly, contain multiple households.

**Section 3. Procedures.**

- (a) Any person complaining of excessive noise that rises to the level of a public nuisance as defined herein, may contact local law enforcement officers who may then investigate the complainant's report and, if appropriate, such officers may file a complaint with the Jefferson County Magistrate Court. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a summons shall issue to any officer authorized by law to execute it. The summons shall issue in the same form as a warrant, except that it shall summon the defendant to appear before a magistrate at a stated time and

place. An authorized person shall cause a copy of the complaint and summons to be served upon the alleged perpetrator or upon each of the alleged perpetrators.

- (b) The Clerk of the Jefferson County Magistrate Court shall notify the assigned Jefferson County Magistrate when any complaint has been filed and when service thereof has been made. The assigned Magistrate shall schedule a hearing on the complaint and notify the complainant or complainants and alleged perpetrator or perpetrators of the hearing date and time.
- (c) Upon request by the defendant, a hearing on the complaint shall be heard by the assigned Jefferson County Magistrate according to the West Virginia Rules of Criminal Procedure for Magistrate Courts.

**Section 4.** Nuisance Abatement and Penalties.

- (a) The Jefferson County Magistrate, having found that a perpetrator or perpetrators during any twelve month period has caused or have allowed the production of excessive noise which constitutes a public nuisance may order the perpetrator or perpetrators to abate the public nuisance and may order the perpetrator or perpetrators to pay to the State of West Virginia a civil penalty not less than \$50 nor more than \$300.
- (b) A second or subsequent knowing and willful violation of this ordinance during a twelve month period shall subject the perpetrator or perpetrators to pay to the State of West Virginia a civil penalty not less than \$150 nor more than \$500.
- (c) Repeated similar violations of this ordinance which occur on separate, subsequent days shall be separate offenses under this ordinance.

**Section 5.** Exempted Activities.

- (a) All activities within the bounds of any municipalities are exempt from application of this ordinance.
- (b) The following activities are also exempted from application of this ordinance:
  - (1) Emergency or public safety vehicles;
  - (2) Emergency repair activity directed at vital services;
  - (3) Any public or private emergency or alarm device;
  - (4) Sounds emanating from any place of worship;
  - (5) Licensed motor vehicles on any roads, highways or private roadways;
  - (6) Airports;
  - (7) Railroads;
  - (8) Sporting events;
  - (9) Authorized public activities for which a permit has been granted by an appropriate agency of the federal, state or local governments;
  - (10) Authorized construction activities or demolition activities;
  - (11) Farm equipment and farm activities;
  - (12) Legal use of firearms including hunting and shooting activities; and
  - (13) Activities by the federal, state or local governments.
- (c) Hardship Waiver. The County Commission may grant a waiver from the provisions hereof upon application by a citizen for a waiver of the

Dear Members of the Board of Zoning Appeals:

This statement regards the Lowe Products request for zoning variances for their Mulch Plant in the Shepherdstown area. I strongly urge the Board of Zoning Appeals to deny the request of Lowe Products for these zoning variances.

This is because granting these requested zoning variances for the Mulch Plant will mean an increasingly negative impact on the many neighbors and their properties abutting the Mulch Plant, as well as those who live nearby.

To ensure that we are on the same page, it is my understanding that the 1988 Zoning Ordinance grandfathered in the Lowe Products Mulch Plant, giving it the status of a nonresidential, non-conforming use in the residential growth area in which it is located. I assume that Lowe Products is thereby entitled to do only whatever existing laws permit.

It is to be hoped that the BZA takes into consideration the general doctrine of law which apparently exists concerning non-conforming businesses like the Lowe Products Mulch Plant. This is referred to on a website for information for businesses to protect themselves against certain regulations ([www.sheehan.com](http://www.sheehan.com)). The website states that two things must be present to allow a non-conforming business to CHANGE or EXPAND its operations. The one pertinent to this variance request is that the change must not "significantly alter . . . the impact of the operations on the surrounding neighborhood."

I assume that BZA is familiar with this. If not, I ask that BZA look into this further to determine its applicability to any changes or expansion of the Lowe Products Mulch Plant.

I am writing in support of neighbors in the sizable number of communities negatively impacted by the Mulch Plant. These communities include Mecklenburg Heights, Ledge Lowe Estates, and Colonial Hills. Some residents of Chapline's Choice and Heatherfield are sufficiently close to be negatively impacted. Negative impacts from the possible changes and expansion of activities of the Mulch Plant are considered by many of them as an outrage.

In 1988, Lowe Products was apparently a good neighbor. In the following years, that appears to have subtly and gradually changed. Lowe Products has grown significantly to become a multimillion dollar business, and the Mulch Plant is now operated in a way that negatively impacts in a major way the many neighbors abutting or relatively near the Mulch Plant.

Note also that Lowe Products has not been respectful of all regulations, for it is my understanding that their violations of some regulations are a matter of record.

NOV 19 1993

COMMENTS OR CA  
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TA & PLOT 5

W VA RTE 45

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AND EXTEND EXIST.  
8" DEP. REEF (DETAIL)  
STATE HIGHWAY  
ENTRANCE PERMIT  
# 8-19-009  
DATED APRIL 6 1993

NE LHM PRK  
D.B. 434 PG 577  
TA & PLOT 7

N 11°15'15" W  
143.2'  
N 74°53'55" W  
57.1'

KACB BANKS  
D.B. 459  
PG. 583  
MAP 8  
PLOT 5-4

ROY DICK  
D.B. 458  
PG. 591  
MAP 8  
PLOT 5-2

POTOMAC EDISON  
D.B. 633 PG. 483  
MAP 8 PLOT 10-9

JESSE VANEVERA  
D.B. 345 PG. 104  
MAP 8 PLOT 10-8

POTOMAC  
FARMS  
NURSERY

NURSERY  
AREA

JOHN LOVE  
D.B. 878 PG. 406  
90.50 AC.  
MAP 8 PLOT 6

JOHN LOVE  
D.B. 459 PG. 670  
48.31 AC.  
MAP 8 PLOT 5

RAW  
MATERIAL  
STORAGE  
AREA

SEE SITE PLAN

MECKLENBURG HEIGHTS  
PLAT BOOK 1 PAGE 33

CREON WAS PLOTTED FROM  
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EXIST. FIRE  
HYDRANT

EXIST. TALK LNK

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PROPOSED  
ADDITION

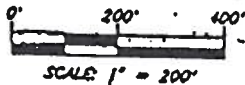
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LEDGE LOWE ESTATES

# BOUNDARY DESCRIPTION



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LOT 1 (LOT 2)



©2010 Google

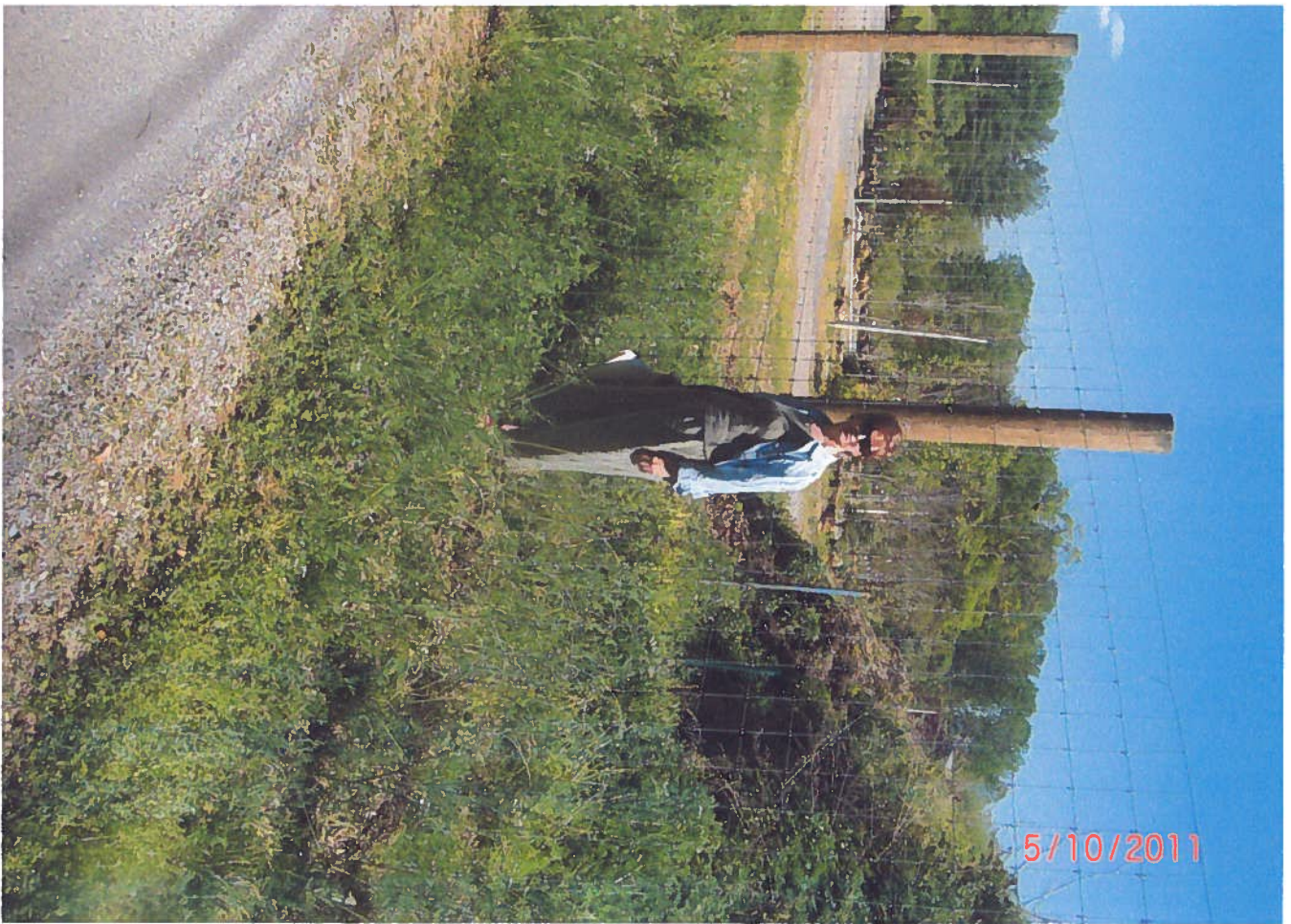
© 2011 Google  
Image USDA Farm Service Agency

Imagery Date: 8/24/2007

39°25'53.49" N 77°49'31.66" W elev. 497 ft

Eye alt 3160 ft







May 9, 2011

Jeff Bresee, chairman  
Members of the Zoning Board of Appeals: Christy Huddle, Ed Kelly,  
Jon Brusco, Tyler Quynn; Jennilee Hartman, zoning clerk  
P.O. Box 338  
Charles Town, WV 25414

Dear Chairman Bresee and BZA members,

I write in reference to your consideration of several zoning variances by Lowe Products near Shepherdstown at your May 19 meeting.

The existence of a mulch plant in a residential area is inconceivable; it's rampant expansion over the past 20 years deplorable. Further expansion not only would unfairly impact the neighborhood, posing certain health problems among many other issues, but it would impede our government's responsibility to safeguard the environment for all, specifically in the areas of air, water, and noise pollution.

It is ludicrous that such a proposal should even be considered so close to any residential area, let alone one that serves a great many other residents because of the mulch plant's proximity to a popular walking and bike trail and Morgan Grove Park. I urge you to deny all variances sought by Lowe Products.

Thank you for your consideration.

Sincerely,

  
Judith Jenner and David Startzell

1957 River Road  
P.O. Box 128  
Shepherdstown, WV  
304-876-6918  
jjfido@aol.com

**RECEIVED**

MAY 17 2011

JEFFERSON COUNTY  
PLANNING, ZONING AND ENGINEERING

#AP11-02

Appeal of  
Administrative  
Decision dated  
February 16, 2011  
regarding the  
conditions of Zoning  
Certificate #ZC11-04

## List of Exhibits

Exhibit A – Appeal Application #AP11-02

Exhibit B – Supplemental information submitted by Appellant

Exhibit C – Staff Report

Exhibit D – Zoning Certificate #ZC11-04, dated February 16, 2011

Exhibit E – Zoning Certificate application, dated February 7, 2011

Exhibit F – Zoning Certificate #ZC10-08, dated May 7, 2010

Exhibit G – Zoning Certificate application, dated April 29, 2010

Exhibit H – Email correspondence from Appellant and Ms. Krassowski's rebuttal

Exhibit I – Map and aerial photo showing property location

Exhibit J – Photos of interior and exterior of property

Exhibit A  
Appeal Application  
#AP11-02

AP 11-02

**APPEAL FORM**  
**JEFFERSON COUNTY BOARD OF ZONING APPEALS**

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

Name of Project: Miss Boggers Daggie Daycare

Project File Number: ZC 11-04

Appeal Number: AP11-02

Date Received: 03/18/11 By: SH Fees Paid: 100.00 Date: 3/18/11

Hearing / Meeting Date: 05/19/11

Advertising Dates: 04/13/11 + 04/20/11

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

Name of Appellant(s): Joseph + Nancy Hoffman

Address: 26 Black Bear Trail  
Harpers Ferry, WV 25425

Telephone: 617 501 7955 Cell: 757 303 2350

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

Name of Property Owner(s): Michelle Krassowski

Address: 31 Black Bear Trail  
Harpers Ferry, WV 25425

Telephone: 304 551-7315 Cell: 540-686-6808

Name of Developer(s): Same as above

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_ Cell: \_\_\_\_\_

MAR 16 2011

Property Description: District CT (2) Tax Map# 236 Parcel 7  
 Deed Book# 1030 Page# 106

Physical/Location of Property: 31 Black Bear Trail  
Harpers Ferry, WV 25425

**Please complete the following if appealing LESA :**

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

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

For items checked No above please explain by separate attachment(s) reasons/justifications for appeal and desired action by Board. Be sure to keep your reasons/justifications in numerical order.

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

**Support Data:**

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

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

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

Please provide description / grounds for the appeal sought:

\_\_\_\_\_  
\_\_\_\_\_

**FOR OFFICIAL USE ONLY**

Fees Paid: 100.<sup>00</sup> Date Application / Fees Received: 03/18/11

Date of meeting / Public Hearing: 05/19/11

Official Administrative Body: Jefferson County Board of Zoning Appeals

Posting Requirements: 15 Number of Days Prior to Scheduled Hearing

Advertising Dates: 04/13/11 + 04/20/11

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

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

Exhibit B  
Supplemental  
information submitted  
by appellant

Joseph & Nancy Hoffman  
26 Black Bear Trail  
Harpers Ferry, WV 25425  
March 13, 2011

Board of Zoning Appeals  
Jefferson County, WV

APR 07 2011

To Whom it May Concern,

We are writing to you in order to appeal a decision by the Jefferson County Zoning Administrator. We live in the Shannondale subdivision, and on February 16th, a zoning decision was made which adversely affects our lives, our livelihoods, and our property value. We believe further that this zoning decision was an over reaching by the Administrator, and so undermines the power of the County zoning ordinance.

Zoning Certificate #ZC11-04 was issued to Michelle Krassowski (the Owner), in response to her request for Home Occupation Permit [Level II] as Permitted in our Zone, and seeks to grant her power to run a "Pet Sitting/Doggie Daycare and Internet Pet Supply Business" from the premises of 31 Black Bear Trail. This permits overnight boarding of up to eight (8) dogs including her own, but imposes the restrictions of no outdoor kennels, no pickup or delivery before 9:00 am, and no dogs outside before 11:00 am except for visits of necessity.

The first point of objection is that as a boarding establishment for dogs, this business is ostensibly a kennel. Jefferson County Zoning ordinance does not provide an adequate definition, but the state (§ 19-20-3) defines it as a place wherein dogs are bred, kept, boarded or sold as a commercial venture for profit. As this definition becomes the County's, existing County zoning ordinance should preempt this operation as per Section 8.4 [Dog Kennels]: All portions of a Dog Kennel land use must be buffered pursuant to Article 4 and set back at least 500 feet from any property that contains a residence. The property in question is within 500 feet of at least nine (9) residences, and is clearly in commercial operation for profit. That it exists co-located with the Owner's residence is moot.

Should it happen that the land use passes the above objection, per section 4A.2 of the County zoning ordinance Home Occupation, Level 2 is allowed only provided certain points are in compliance. Enumerated below are the points in which we believe #ZC11-04 is in violation.

1) Per 4A.2b) The use shall be conducted wholly within the dwelling unit and shall not exceed one third (1/3) of the floor area of the dwelling unit.

The permit states explicitly that no dogs will be allowed outside before 11:00 am, implicitly granting the use of the land outside the premises after that time. This is a clear over reach by the administrator, granting use of the land clearly exceptional to that provided for in the ordinance.

2) Per 4A.2c) The use shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding one (1) square foot in area, non-illuminated.

The delivery, and presence of up to eight (8) various dogs outside the premises is a clear indication of the existence of a business at the address, in contradiction to the purported intention of the above point, beyond even the awareness that a simple sign would provide.

3) Per 4A.2d) There shall be no sales other than items crafted on the premises, in connection with

such home occupation.

The permit states explicitly that an Internet Pet Supply business is part of the intended, and thus allowed, use of the premises. This is a second over reach by the administrator in granting a use clearly exceptional to that provided for in the ordinance.

4) Per 4A.2e) No more than three (3) business-related vehicle visits per day nor more than fifteen (15) visits per week at the premises, including delivery vehicles, but excluding employee commuting, shall be permitted.

With two dogs belonging to the Owner, the permit allows six (6) more dogs, implying that number of visits at a minimum. Further, the Owner offers, through her business, dog pickups and conveyance to the property. This has been witnessed and clearly falls outside of employee commuting.

5) Per 4A.2g) No equipment or process shall be used in such a home business which creates offensive manifestations by sight, sound, or smell, detectable to the normal senses,...., outside the dwelling unit.

The permission to maintain a "Doggie Daycare" on the premises, accedes to the creation of both the sounds and smells of the allotted dogs as fundamental to the process. The sound of eight (8) barking dogs outside the premises is detectable within our dwelling, a fact that was made known to the Administrator prior to the permit's approval, prompting the time restrictions. While the restrictions have been placed in good faith, they yield to the Owner a clear exception to this clause outside of the stated times.

I, and recently my wife Nancy, have lived at our current address for six (6) years, almost two (2) years longer than the business Owner in question. It is a dead end street, which I chose for its quiet and seclusion. We both work second shift at safety-critical jobs, and do not come home until nearly 2:00 am most nights. In order to remain rested and alert at our jobs, and to promote general health, we try to sleep until 10:00 am.

Last summer, the Owner, erected a fence around her property, to contain her dog after it attacked another neighbor's chickens. She then began offering dog sitting for hire to interested parties. The noise from the dogs prompted several calls by me to animal control and the County Sheriff. When we complained that she was running a business and that the sound was incessant, the Owner filed for and received her first permit. This allowed for no more than six (6) dogs and no kennels. From that point forward we have had to deal with barking dogs at all hours of the day and night within 54' of our bedroom window.

Within months of the original permit approval, the Owner began hosting dogs in excess of the allowed number. We reported on several occasions numbers averaging nine (9) dogs, and on one occasion in January, thirteen (13) dogs on the property at once. With the increase in dogs came an increase in the noise level. Complaints about the noise to the Owner were frequently met with her incorrect insistence that they never barked for more than a few seconds before she quieted them. In response to the increase in number beyond that allowed, We contacted Mr. Carter, the Zoning Compliance officer. I sent Mr. Carter several emails to that effect, as well as pictures of as many dogs as would fit in the frame. Sometime on or around the 18th of January, 2011, Mr. Carter ordered the Owner into compliance. It was not until after this order that the Owner filed for an expansion of her permit, a fact which belied her intent to comply with the original provisions.

Before the time of the original permit, it was not unusual for my wife and I to be awakened before 7:00

am by barking dogs. This would continue for up to seventeen (17) minutes at a time, throughout the day. The Owner would also frequently not be present except to allow for pick-ups and drop-offs from clients, providing a clear lack of will to maintain habitable noise levels. By the time of the compliance order, it was rare for us to be allowed even four hours of rest, leading to suffering job performance and illness.

The presence of a kennel across the street also creates a clear depreciation in property values. Any prospective buyers will have to overlook the appeal that the location had and factor in the negatives incurred when living next door to a kennel.

In the paragraphs above we have covered the legal and personal objections to the operation allowed under #ZC11-04, and the history of offenses by the Owner. The course of action we seek from the Board is the revocation of the permit. Should it revert to the prior permit, we ask that the prior permit be revoked for the same improper uses of the land as stated above.

Sincerely,



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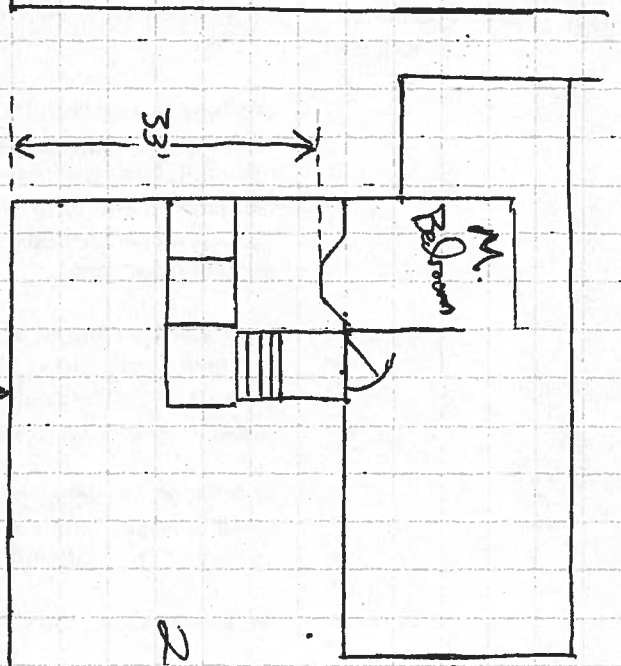
Joseph E Hoffman



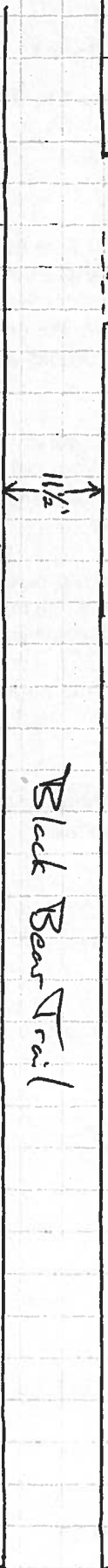
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Nancy E Hoffman

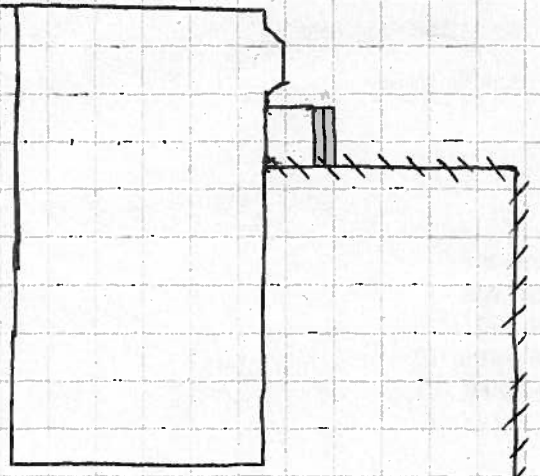
Legend  
□ = 5' Square



26 Black Bear Trail



Black Bear Trail



31 Black Bear Trail

Fence line

9 1/2'

11 1/2'

Skyline Trail

## Miss Booger's Pet Sitting

Views

**54**

Date Posted

**Mon October 18, 2010**

Position  
Description:

We have a wonderful 1/2 acre fenced-in yard with access into the house 24 hrs./day. We offer full days, part days or overnights and can pick up and drop off. We can also come to your home for potty breaks and/or walks and play sessions.

I am an experienced Veterinary Assistant and can give medication to your pet if needed. We can also offer basic training and obedience for your dog.

In addition to dogs, we can care for cats, small animals, birds, and fish in your home, as well as mail pick-up, plant watering, etc.

We'll even drive you to the airport!

Please contact us via phone or email for pricing and a free consultation!

304-551-7315

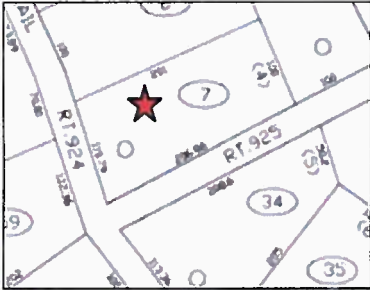

missboogers@comcast.net

Exhibit C  
Staff Report

**Staff Report**  
**Jefferson County Board of Zoning Appeals Meeting**  
**May 19, 2011**

**Joseph and Nancy Hoffman Appeal (#AP11-02)**

Item #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.

APPLICANT:	Joseph and Nancy Hoffman
OWNER :	Michelle Krassowski (property owner and owner of Miss Booger's Pet Services & Supplies)
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	31 Black Bear Trail, Harpers Ferry, WV 25425
LEGAL DESCRIPTION:	District: Charles Town; Map: 23G; Parcel: 7 
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:	.459 acres
PRIOR CASES:	ZC10-08: Issued 05/07/10 ZC11-04: Issued 02/16/11 AP11-01: Denied 04/21/11
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 May 19, 2011

**Joseph and Nancy Hoffman Appeal (#AP11-02)**

**RELEVANT INFORMATION:**

1. Overview

The Applicant has submitted an appeal to the issuance of Zoning Certificate ZC11-04, issued on February 16, 2011. This Zoning Certificate is for a Home Occupation Level II located at the Applicant's residence, with the land use designation, "Pet Sitting / Doggie Daycare and Internet Pet Supply Business."

A separate appeal of the conditions of Zoning Certificate ZC11-04 was submitted by Michelle Krassowski, the owner of the property for which ZC11-04 was issued. This appeal was denied by the Board of Zoning Appeals at its April 21, 2011 meeting.

2. Chronology of Relevant Events

The chronology of events culminating in the issuance of Zoning Certificate ZC11-04 and the Appellant's subsequent appeal is as follows:

<b>Date</b>	<b>Event</b>	<b>Comment</b>
April 29, 2010	Michelle Krassowski submits Zoning Certificate application	<p><i>Applicant's description of proposal:</i></p> <p>"I would like to offer a pet sitting / doggy daycare at my home. I will not use kennels. The dogs would have full access to my home + yard which is fenced (1/2 acre)."</p> <p>"I will limit the number of dogs here to 4 guests + my own two (2) dogs for a total of never more than 6 dogs here at one time."</p> <p><i>[A supplemental letter submitted with the application provides additional detail regarding the business.]</i></p>
May 7, 2010	Zoning Administrator issues Zoning Certificate (ZC10-08) for a "Home Occupation Level II. Pet Sitting/Doggie Daycare and Internet Pet Supply Business."	<p><i>Restrictions:</i></p> <p>"Including owner's dogs, pet sitting is limited to a (6) dog total. No Kennels permitted. Conformance to all State and Federal Regulations and appropriate State Licenses must be issued, prior to establishing use."</p>
January, 2011	Joseph Hoffman, neighbor of applicant, submits complaint.	A neighbor of Ms. Krassowski's property contacted the Jefferson County Code Compliance Officer to report that more than 6 dogs are regularly present at 31 Black Bear Trail.
February 4, 2011	Zoning Administrator and Code Compliance Officer visit applicant's home	It is observed that the land use appears in compliance with the issued zoning certificate.
February 7, 2011	Michelle Krassowski submits Zoning Certificate application	<p><i>Applicant's description of proposal:</i></p> <p>"I would like to be able to increase the number of dogs/clients that I have at my home for Doggy Daycare + Boarding."</p>

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 May 19, 2011

**Joseph and Nancy Hoffman Appeal (#AP11-02)**

Date	Event	Comment
February 16, 2011	Zoning Administrator issues Zoning Certificate (ZC11-04) for a "Home Occupation Level II. Pet Sitting/Doggie Daycare and Internet Pet Supply Business"	<i>Restrictions:</i> "Counting Owner's dogs, Pet Sitting/Daycare Service (including overnight boarding) is limited to an eight (8) dog total. No outdoor kennels permitted. No delivery or pick-up of dogs may occur before 9:00 a.m. Except for brief "visits of necessity", dogs are not allowed outside before 11:00 a.m. Dogs must remain confined inside residence during those times that Daycare Operator is not on the premises. Conformance to all State and Federal Regulations and any appropriate State Licenses must be issued, prior to establishing use."
March 8, 2011	Michelle Krassowski appeals Zoning Administrator's decision to limit number of dogs to 8 (AP11-01)	<i>Letter attached to appeal application includes the following:</i> "I would like to file this appeal in response to the Zoning Administrator's decision to only increase the number of dogs permitted at my home/business to eight (8), including my own two dogs, which is only two (2) more than previous allowed."
March 18, 2011	Neighbor Joseph Hoffman files appeal of the issuance of Zoning Certificate ZC11-04 (AP11-02)	Because this appeal was filed after the submittal deadline for the April 21 BZA agenda, the case will be heard at the May 19 BZA meeting.
April 21, 2011	Board of Zoning Appeals hears appeal AP11-01	Board of Zoning Appeals denies appeal.
May 19, 2011	Board of Zoning Appeals hears appeal AP11-02	Outcome pending.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
May 19, 2011

**Joseph and Nancy Hoffman Appeal (#AP11-02)**

3. Rationale for Issuance of Zoning Certificate

The Zoning Certificate for a Home Occupation Level II land use for this property was initially approved on May 7, 2010. The owner submitted a Zoning Certificate application to increase the number of dogs on February 7, 2011.

The decision to approve the application was narrowly confined to the question as to whether or not the land use could be expanded (i.e. additional dogs), rather than to whether or not the previously approved land use fit the category of a Home Occupation. The land use determination had been established by the issuance of the previous Zoning Certificate, and Staff upheld the determination by the previous Zoning Administrator.

In determining whether to issue a new Zoning Certificate for the land use, staff considered the following factors:

- a. The intent of the Zoning and Land Development Ordinance regarding the Home Occupation land use.
- b. The intent of the previous Zoning Certificate (ZC10-08)
- c. Analysis of the operation based on a site visit to the property.
- d. The applicant's willingness to abide by additional restrictions such as hours of operation.

It was staff's judgment that the land use could reasonably accommodate more than 6 dogs (but no more than 8), based on these three factors, as described below.

a. Intent of the previous Zoning Certificate (ZC10-08)

The previous Zoning Certificate (ZC10-08) allows a "Pet sitting / doggie daycare and internet pet supply business." The conditions of the certificate were:

- Including owner's dogs, pet sitting is limited to a six (6) dog total  
*Comment:* The term "pet sitting" implies that dogs may stay overnight at the premises. The Zoning Certificate does not restrict overnight stays.
- No kennels permitted  
*Comment:* The term "kennel" was employed to prohibit outdoor caged areas, dog runs, pens, or other structures. This intent is clear from language on a letter accompanying Ms. Krassowski's application, which states, "They do not stay in kennels or crates." It is clear that the Zoning Administrator did not use the phrase "no kennels" to imply that dog boarding could not occur.
- Conformance to all State and Federal regulations and appropriate state licenses must be issued, prior to establishing use.  
*Comment:* This is a standard requirement that appears on all Zoning Certificates.

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 May 19, 2011

**Joseph and Nancy Hoffman Appeal (#AP11-02)**

Regarding the “internet pet supply business” permitted by the Zoning Certificate, this approval was based on the description provided by the Applicant:

“Miss Booger’s, LLC is also a pet treat and supply business. However, I do not do any sales from my home nor do any customers come to my home to purchase my products. I sell my handmade products at farmer’s markets, away from home and on my website. In addition to my handmade products, I also carry other products on my website which I drop-ship<sup>1</sup> to my customers, meaning I do NOT carry any inventory of those products in my home at all.”

Based on the land use description and the conditions of Zoning Certificate ZC10-08, staff determined that the issuance of Zoning Certificate ZC11-04 was consistent with the intent of the previous Zoning Certificate.

**b. Intent of the Zoning and Land Development Ordinance regarding the Home Occupation land use**

Article 4A of the Zoning and Land Development Ordinance establishes the requirements for the Home Occupation Level II land use. These requirements are listed in the table below, with comments regarding the consistency of the proposed 2-dog expansion with the ordinance.

Code Section	Requirement	Analysis	Consistency with Ordinance
4A.2.a	The occupation must be conducted by a full-time resident of the property. Up to two (2) nonresident employees also may be permitted to work on the premises.	No additional employees	Consistent
4A.2.b	The use shall be conducted wholly within the dwelling unit and shall not exceed one third (1/3) of floor area of the dwelling unit.	To determine how much square footage would be needed per dog, staff consulted the ASPCA recommended standards for a dog daycare. The ASPCA states, "The daycare's play area should ideally provide 75 to 100 square feet per dog." The application for ZC10-08 noted the square footage of the home as 2,288 square feet. One third of this square footage (763 square feet) may be used for the home occupation. 763 square feet divided by 8 dogs yields 95 square feet per dog, which is within the range identified by the ASPCA.	Consistent
4A.2.c	There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding one (1) square foot in area, non-illuminated.	No change proposed	Consistent
4A.2.d	There shall be no sales, other than items crafted on the premises, in connection with such home occupation.	No change in sales proposed	Consistent

<sup>1</sup> Wikipedia provides the following definition (emphasis added): “Drop shipping is a supply chain management technique in which *the retailer does not keep goods in stock*, but instead transfers customer orders and shipment details to either the manufacturer or a wholesaler, who then ships the goods directly to the customer.”

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 May 19, 2011

**Joseph and Nancy Hoffman Appeal (#AP11-02)**

Code Section	Requirement	Analysis	Consistency with Ordinance
4A.2.e	No more than three (3) business-related vehicle visits per day nor more than fifteen (15) visits per week at the premises, including delivery vehicles, but excluding employee commuting, shall be permitted. Any need for parking generated by the conducted use of such home business shall be met off street and other than in a required front yard.	Applicant stated in writing that pick-up and drop-off service is provided for clients, and that she would abide by 3 trips-per-day limit.	Consistent
4A.2.f	It is clearly incidental and subordinate to the use of the dwelling unit as a residence.	No change proposed to the residence. Staff's determination was that the land use would continue to remain incidental and subordinate to the principal residential use if two additional dogs were added.	Consistent
4A.2.g	No equipment or process shall be used in such a home business which creates offensive manifestations by sight, sound or smell detectable to the normal senses, or electrical interference or vibrations perceptible, outside the dwelling unit.	No change proposed. Staff upheld the determination of the previous Zoning Administrator that the outdoor presence of dogs does not constitute a "process." It should also be noted that the outdoor presence of dogs is a permitted residential accessory use.	Consistent
4A.2.h	No business which includes the storage of weapons such as firearms (other than the residents hunting, protection and leisure weapons) shall be permitted. Home businesses do not include; boarding or rooming homes or bed and breakfast establishments or adult uses.	No change proposed	Consistent
4A.2.i	Is not permitted in existing subdivisions established since 1979.	Subdivision established before 1979	Consistent

c. Analysis of the operation based on a site visit to the property.

Staff conducted a site visit to the property on February 4, 2011. Staff found the home and premises to be well-maintained. The property includes a rear deck and a fenced back yard. Bark-control technology such as anti-bark collars and an anti-bark birdhouse was visible.

d. The applicant's willingness to abide by additional restrictions such as hours of operation.

The Applicant indicated that she would accept additional conditions in order to accommodate the concerns of an adjacent neighbor. These conditions included restrictions on when dogs could be delivered or picked up, when dogs could be allowed outside, and the presence of the daycare operator at the premises during times when dogs are outside.

Based on the four factors described above, staff determined that two additional dogs could be permitted at the site, with the following additional restrictions:

- No delivery or pick-up of dogs may occur before 9:00 a.m.
- Except for brief "visits of necessity", dogs are not allowed outside before 11:00 a.m.
- Dogs must remain confined inside residence during those times that Daycare Operator is not on the premises.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
May 19, 2011

**Joseph and Nancy Hoffman Appeal (#AP11-02)**

4. Validity of Previously Issued Zoning Certificate (ZC10-08)

Some question remains regarding the validity of the previously issued Zoning Certificate (ZC10-08) should the Board of Zoning Appeals rule in the Appellant's favor, thereby invalidating Zoning Certificate ZC11-04.

It is recommended that if the Board rules in the Appellant's favor, that the motion include a definitive statement as to the validity of Zoning Certificate ZC10-08.

SECTIONS OF ORDINANCE TO BE CONSIDERED:

Section 4A.2 Home Occupation, Level 2

An occupation conducted in a dwelling unit for gain, provided that:

- a. The occupation must be conducted by a full-time resident of the property. Up to two (2) nonresident employees also may be permitted to work on the premises.
- b. The use shall be conducted wholly within the dwelling unit and shall not exceed one third (1/3) of floor area of the dwelling unit.
- c. The use shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding one (1) square foot in area, non-illuminated.
- d. There shall be no sales, other than items crafted on the premises, in connection with such home occupation.
- e. No more than three (3) business-related vehicle visits per day nor more than fifteen (15) visits per week at the premises, including delivery vehicles, but excluding employee commuting, shall be permitted. Any need for parking generated by the conducted use of such home business shall be met off street and other than in a required front yard.
- f. It is clearly incidental and subordinate to the use of the dwelling unit as a residence.
- g. No equipment or process shall be used in such a home business which creates offensive manifestations by sight, sound or smell detectable to the normal senses, or electrical interference or vibrations perceptible, outside the dwelling unit.
- h. No business which includes the storage of weapons such as firearms (other than the residents hunting, protection and leisure weapons) shall be permitted. Home businesses do not include; boarding or rooming homes or bed and breakfast establishments or adult uses.

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
May 19, 2011

**Joseph and Nancy Hoffman Appeal (#AP11-02)**

- i. Is not permitted in existing subdivisions established since 1979.

**ARTICLE 8. APPEAL PROCESS UNLESS SUPERCEDED BY THE BOARD OF ZONING  
APPEALS RULES OF PROCEDURE**

**Section 8.1 Filing an Appeal**

- (a) An appeal to the Board may be taken by any person, board, associate, corporation or official allegedly aggrieved by any administrative decision based or claimed to be based, in whole or in part, upon the provisions of this Ordinance. The property owner of the subject appeal shall sign the application or an affidavit allowing an agent for the property owner to file the application which shall be submitted.
- (b) Such appeal shall be filed with the Board within thirty (30) days from the decision appealed.
- (c) Appeal applications shall be made on the forms designated by the Planning and Zoning Commission and shall be accompanied by three (3) copies of the application and an accurate drawing of the property showing distance of all structures from property lines and any pertinent data deemed necessary for the request. Submittal of the application shall be made to the Planning and Zoning Office.
- (d) All zoning fees, in accordance with the approved County fee structure, shall be paid upon application.
- (e) No application shall be accepted in the Planning and Zoning Office unless it contains all pertinent information and is accompanied by the required fees.

**Section 8.2 Processing Procedures**

- (a) Appeal applications filed in the proper form shall be numbered serially, docketed, and placed upon the calendar of the Board of Appeals.
- (b) The Board shall hold a hearing within forty-five days (45) from the date the appeal is received in the Department of planning, Zoning, and Engineering Office. [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON SEPTEMBER 13, 1990 AND MAY 18, 1996 AND PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]
- (c) Notice of the hearing shall be advertised in two issues of a newspaper having general circulation in the County at least 15 days before the hearing. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE ON SEPTEMBER 13, 1990 AND [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
May 19, 2011

**Joseph and Nancy Hoffman Appeal (#AP11-02)**

- (d) Property upon which the application is concerned shall be posted conspicuously by a zoning notice no less than twenty-eight (28) inches by twenty-two (22) inches, in size, at least 15 days before the hearing. The sign will be prepared by the Planning Office but is the responsibility of the applicant for the posting of the property. The Board, in its discretion, may otherwise visit the specific property prior to or after the hearing.

**Section 8.3    Public Hearing**

- (a) The Board following action in Section 8.2, shall hold such hearing. At the hearing, any party may appear and be heard in person or by agent or attorney.
- (b) The Board shall render its determination on the application no more than thirty (30) days following the public hearing by registered mail. Any party aggrieved by a decision of the Board may appeal to the circuit court of Jefferson County within thirty (30) days of the Board's decision. The Court may affirm, reverse, vacate, or modify the decision subject to the appeal.

**Section 8.4    Continuance of Hearing**

- (a) The Board may continue a hearing at another time and/or date once such hearing has been started; however, the Board shall announce the date and hour of continuance of such hearing while in session. Any hearing continued shall be held within thirty (30) days from the initial hearing.

# Exhibit D

Zoning Certificate

#ZC11-04, dated

February 16, 2011

#ZC11-04

**JEFFERSON COUNTY  
DEPARTMENT of ZONING  
ZONING CERTIFICATE**

This is to certify that the use cited on this form is a Permitted Use in the Zone where it is proposed, by virtue of the following justification. This use is subject to the conditions imposed below and any requirements of the Jefferson County Land Use Ordinances. This may include a site plan.

- \*Principal Permitted Use in Zone stated below.
- \*Nonconforming Grand-fathered Use in Zone stated below.
- \*Change in Nonconforming Use approved by Public Hearing in Zone stated below.
- \*Change in Nonconforming Use approved by Zoning Administrator in Zone stated below.
- \*OTHER: \_\_\_\_\_

**PROPERTY DESCRIPTION**

PROPERTY/BUSINESS OWNER: MICHELLE KRASSOWSKI (304) 551-7315 / Home  
(540) 686-6808 / Cell

PHYSICAL/MAILING ADDRESS: 31 BLACK BEAR TRAIL  
HARPERS FERRY, WEST VIRGINIA 25425

TAX DISTRICT: CT (2) / MAP NUMBER: 23G / PARCEL: 7  
DEED BOOK NUMBER: 1030 / PAGE NUMBER: 106

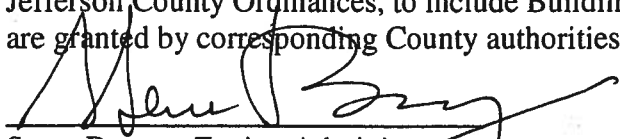
ZONING DISTRICT: RURAL


PROPOSED USE: HOME OCCUPATION – LEVEL II  
Pet Sitting/Doggie Daycare and Internet Pet Supply Business.

RESTRICTIONS: Counting Owner’s dogs, Pet Sitting/Daycare Service (including overnight boarding) is limited to an eight (8) dog total. No outdoor kennels permitted. No delivery or pick-up of dogs may occur before 9:00 a.m. Except for brief “visits of necessity”, dogs are not allowed outside before 11:00 a.m. Dogs must remain confined inside residence during those times that Daycare Operator is not on the premises. Conformance to all State and Federal Regulations and any appropriate State Licenses must be issued, prior to establishing use.

CONDITIONS: Any future change in use or expansion, will require processing through the Jefferson County Departments of Planning, Zoning and Engineering to update this Certificate, and ensure compliance with all applicable County Regulations. This Zoning Certificate shall be rendered null and void should any required License or Permit be revoked.

This certification in no way relieves the Owner, Applicant or User from the documented requirements of the Jefferson County Ordinances, to include Building and Sign Permit processing, unless the appropriate variances are granted by corresponding County authorities.

  
Steve Barney, Zoning Administrator

February 16, 2010 2011   
Date of Issuance



# Exhibit E

Zoning Certificate  
application, dated  
February 7, 2011

JEFFERSON COUNTY, WEST VIRGINIA

Department of Planning and Zoning

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

P.O. Box 338

Charles Town, West Virginia 25414

File #: \_\_\_\_\_

Rec'd By: \_\_\_\_\_

Total Fee: \$ \_\_\_\_\_

Phone: (304) 728-3228

Fax: (304) 728-8126

Email: zoning@jeffersoncountywv.org

Zoning Certificate Application

Contact/Co. Name: Michelle Krassowski / Miss Boogers

Mailing Address: 31 Black Bear Trail

City: Harpers Ferry State: WV Zip Code: 25425

Phone Number: 1-304-551-7315 E-mail: missboogers@comcast.net  
(optional)

List the information for the proposed property you are inquiring about.

Property Owner: Michelle Krassowski

Mailing Address: 31 Black Bear Trail, Harpers Ferry, WV 25425

Physical Address: " " " " " " " "

Tax District: \_\_\_\_\_ Map No: \_\_\_\_\_ Parcel No: \_\_\_\_\_ Parcel Size: \_\_\_\_\_

Deed Book: \_\_\_\_\_ Page: \_\_\_\_\_

Zoning District: (circle one)

R-A R-G I-C R-L-C V

Type of Certificate:

Animated Sign: \_\_\_\_\_ Cottage Industry: \_\_\_\_\_  
Non-Animated Sign: \_\_\_\_\_ Home Occupation, Level 1: \_\_\_\_\_  
Change in Use: \_\_\_\_\_ Home Occupation, Level 2: X  
Change in Non-conforming Use: \_\_\_\_\_ Other: \_\_\_\_\_

*\*Any future change in use or expansion will require processing through the Jefferson County Departments of Planning, Zoning and Engineering to update this Certificate, and ensure compliance with all applicable County regulations.*

(Turn Over)

Please provide any information or known history regarding this property (ex: previously subdivided, etc.).

None that I am aware of.

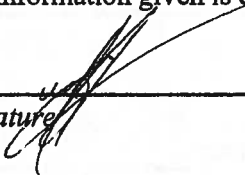
Give a brief description of your proposal.

I would like to be able to increase the number of dogs/clients that I have at my home for Doggy Daycare & Boarding.

On a separate sheet of paper, sketch the shape and location of the lot. Show the location of the intended construction or land use indicating building setbacks, size and height. Identify existing buildings, structures or land uses on the property. If proposing a business, please specify the number and location of the intended parking spaces.

See Previous application

The information given is correct to the best of my knowledge.

 \_\_\_\_\_  
Signature Date

2/7/11  
Date

**For Official Use Only**

Restrictions/Conditions:

Action Taken:

\_\_\_\_\_  
Zoning Administrator

\_\_\_\_\_  
Date

Exhibit F  
Zoning Certificate  
#ZC10-08, dated  
May 7, 2010

**JEFFERSON COUNTY  
DEPARTMENT of ZONING  
ZONING CERTIFICATE**

#ZC10-08

This is to certify that the use cited on this form is a Permitted Use in the Zone where it is proposed, by virtue of the following justification. This use is subject to the conditions imposed below and any requirements of the Jefferson County Land Use Ordinances. This may include a site plan.

- \*Principal Permitted Use in Zone stated below:  
 \*Nonconforming Grand-fathered Use in Zone stated below:  
 \*Change in Nonconforming Use approved by Public Hearing in Zone stated below:  
 \*Change in Nonconforming Use approved by Zoning Administrator in Zone stated below:  
 \*OTHER: \_\_\_\_\_

**PROPERTY DESCRIPTION**

BUSINESS OWNER'S NAME: MICHELLE KRASSOWSKI (304) 551-7315 / Home  
(304) 540-686-6808 / Cell

PHYSICAL/MAILING ADDRESS: 31 BLACK BEAR TRAIL  
HARPERS FERRY, WEST VIRGINIA 25425

PROPERTY OWNER'S NAME: SAME  
MAILING ADDRESS: SAME

TAX DISTRICT: CT (2) / MAP NUMBER: 23G / PARCEL: 7  
DEED BOOK NUMBER: 1030 / PAGE NUMBER: 106

ZONING DISTRICT: RURAL

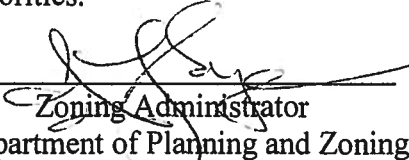
PROPOSED USE: HOME OCCUPATION – LEVEL II

RESTRICTIONS: Pet Sitting/Doggie Daycare and Internet Pet Supply Business  
Including owner's dogs, pet sitting is limited to a six (6) dog total.  
No Kennels permitted. Conformance to all State and Federal Regulations  
and appropriate State Licenses must be issued, prior to establishing use.

CONDITIONS: Any future change in use or expansion, will require processing through the  
Jefferson County Departments of Planning, Zoning and Engineering to  
update this Certificate, and ensure compliance with all applicable County  
Regulations. This Zoning Certificate shall be rendered null and void  
should any required License or Permit be revoked.

This certification in no way relieves the Owner, Applicant or User from the documented requirements of the  
Jefferson County Ordinances, to include Building and Sign Permit processing, unless the appropriate variances  
are granted by the corresponding County authorities.



  
\_\_\_\_\_  
Zoning Administrator  
Department of Planning and Zoning Seal

May 7, 2010  
Date of Issuance

Exhibit G  
Zoning Certificate  
application, dated  
April 29, 2010

JEFFERSON COUNTY, WEST VIRGINIA

Department of Planning and Zoning

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

P.O. Box 338

Charles Town, West Virginia 25414

2010-00

File #: \_\_\_\_\_

Rec'd By: \_\_\_\_\_

Total Fee: \$ \_\_\_\_\_

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

Phone: (304) 728-3228

Fax: (304) 728-8126

Zoning Certificate Application

Contact/Co. Name: Michelle Krassowski / Miss Boogers, LLC

Mailing Address: 31 Black Bear Trail

City: Harpers Ferry State: WV Zip Code: 25425

Phone Number: 1-304-551-7315 E-mail: missboogers@comcast.net  
(optional)

List the information for the proposed property you are inquiring about.

Property Owner: Michelle Krassowski

Mailing Address: 31 Black Bear Trail, Harpers Ferry, WV 25425

Physical Address: Same

Tax District: 02-0T Map No: 23G Parcel No: 7 Parcel Size: \_\_\_\_\_

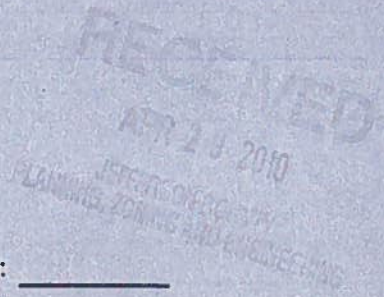
Deed Book: 1030 Page: 106

Zoning District: (circle one) SHANNONDALE  
(APPROX 1/2 ACRE LOT)

R-A R-G I-C R-L-C V

Type of Certificate:

Animated Sign: \_\_\_\_\_ Cottage Industry: \_\_\_\_\_  
Non-animated Sign: \_\_\_\_\_ Home Occupation, Level 1: \_\_\_\_\_  
Change in Use: \_\_\_\_\_ Home Occupation, Level 2: ✓ \_\_\_\_\_  
Change in Non-conforming Use: \_\_\_\_\_ Other: \_\_\_\_\_



*\*Any future change in use or expansion will require processing through the Jefferson County Departments of Planning, Zoning and Engineering to update this Certificate, and ensure compliance with all applicable County regulations.*

(Turn Over)

Please provide any information or known history regarding this property (ex: previously subdivided, etc.).

No known addities.

Give a brief description of your proposal.

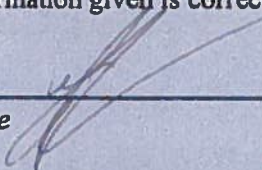
I would like to offer a pet sitting/doggy daycare at my home. I will not use kennels. The dogs would have full access to my home + yard which is fenced (1/2 acre).

I will limit the number of dogs here to 4 guests + my own two (2) dogs for a total of never more than 6 dogs here at one time.

On a separate sheet of paper, sketch the shape and location of the lot. Show the location of the intended construction or land use indicating building setbacks, size and height. Identify existing buildings, structures or land uses on the property. If proposing a business, please specify the number and location of the intended parking spaces.

The information given is correct to the best of my knowledge.

Signature



4/29/10  
Date

**For Official Use Only**

Restrictions/Conditions:

Limited to 6 total dogs + no kennels

Action Taken:

*None*



Zoning Administrator

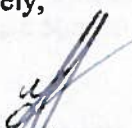
Date

To whom it may concern;

My name is Michelle Krassowski and I own Miss Booger's, LLC. Miss Booger's is an internet pet supply business. I also make homemade dog and cat treats and other handmade pet products that I sell at farmers markets away from home. I would like to apply for a Zoning Certificate so that I may offer pet sitting and doggy daycare in my home. It will not be a typical 'kennel' facility as I do/will not have any kennels. I will limit the amount of guest dogs to only four at a time and they will reside in my home and yard as if they were my own pets.

I have included Section 4A.2 Home Occupation, Level 2 of the Zoning Ordinance below. You will find my responses to each lettered item below each item in bold print. If you need any further information from me or have any questions, please feel free to contact me at 1-304-551-7315 (home) or 1-540-686-6808 (cell). Thank you for your consideration and your time.

Sincerely,

  
Michelle Krassowski  
Miss Booger's, LLC  
31 Black Bear Trail  
Harpers Ferry, WV 25425

**Section 4A.2 Home Occupation, Level 2**

An occupation conducted in a dwelling unit for gain, provided that:

a. The occupation must be conducted by a full-time resident of the property. Up to two (2) nonresident employees also may be permitted to work on the premises.

**It just me and my boyfriend living here full time. Miss Booger's, LLC is registered in my name and I am the owner of the property. He does help me at times but he is not an employee.**

b. The use shall be conducted wholly within the dwelling unit and shall not exceed one third (1/3) of floor area of the dwelling unit.

**I limit the amount of dogs that stay here to no more than four (4) at a time. They do not stay in kennels or crates, they have full access to the house and fenced 1/2 acre yard. My home is 1144 square feet upstairs and 1144 square feet downstairs. The space they occupy could never exceed one third of floor area because of the four (4) dog limit I have chosen.** *I have 2 dogs of my own so it would actually be a total of 6 dogs here at a time + that will not be all of the time.*

c. The use shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding one (1) square foot in area, non-illuminated.

**I have not made any changes to the outside appearance of my home or yard. I do not display any signage at all.**

d. There shall be no sales, other than items crafted on the premises, in connection with such home occupation.

**Miss Booger's, LLC is also a pet treat and supply business. However, I do not do any sales from my home nor do any customers come to my home to purchase my products. I sell my handmade products at farmer's markets, away from home and on my website. In addition to my handmade products, I also carry other products on my website which I drop-ship to my customers, meaning I do NOT carry any inventory of those products in my home at all.**

e. No more than three (3) business-related vehicle visits per day nor more than fifteen (15) visits per week at the premises, including delivery vehicles, but excluding employee commuting, shall be permitted. Any need for parking generated by the conducted use of such home business shall be met off street and other than in a required front yard.

**Because of the four (4) dog limit in place, the pick ups and drop offs of clients is also very limited. The 'dog' limit also allows me to schedule pick up and drop off times to stay within the permitted visit allowance. I would not want a bunch of visits at one time because that would be too stressful for the dogs and everyone else.**

f. It is clearly incidental and subordinate to the use of the dwelling unit as a residence.

**It is my home first and a business second. I will not allow it to be any other way. As mentioned earlier, there are no signs, limited traffic and no kennels.**

g. No equipment or process shall be used in such a home business which creates offensive manifestations by sight, sound or smell detectable to the normal senses, or electrical interference or vibrations perceptible, outside the dwelling unit.

**There is no equipment or process used, but with dogs there is occasional barking. I limit the time(s) that they are outside. For instance, I do not allow them out in the yard for more than a potty break in the morning to respect any neighbors who may be sleeping. I let the dogs in the yard after the noon hour to exercise and bring them in at night. In addition, I also have four (4) spray citronella anti-bark collars. I use those to limit the barking as well. They are safe and humane for the dogs. I also keep a 'bark book' to the best of my ability. I use it to keep a record of when and who barks for how long.**

h. No business which includes the storage of weapons such as firearms (other than the residents hunting, protection and leisure weapons) shall be permitted. Home businesses do not include; boarding or rooming homes or bed and breakfast establishments or adult uses.

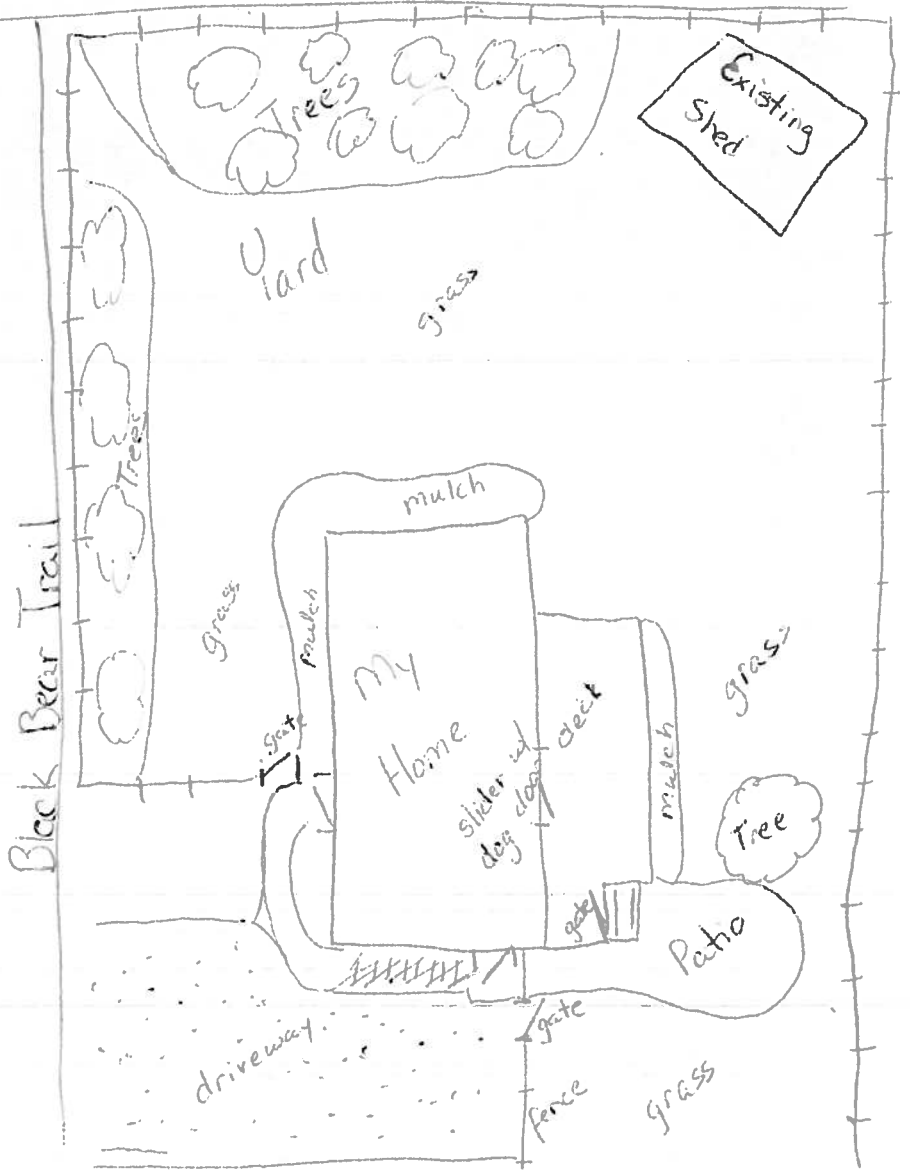
**There are no weapons on the premises. I do not board people, run a bed and breakfast or any adult business.**

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

i. Is not permitted in existing subdivisions established since 1979.

**I am sure that Shannondale was established before 1979.**

Skyline Trail



# Exhibit H

Email correspondence  
from Appellant and  
Ms. Krassowski's  
rebuttal

From: Joseph Hoffman  
To: Zoning Dept  
Date: Thursday, February 17, 2011 8:53:31 PM  
Subject: Re: Kennel

Mr. Barney,

I understand from the wording that this is a matter of fact now, and that the permit has been issued. If that is the case my wife and I both feel we must formally object and appeal the permit. I understand the restrictions that you added to the new permit, and their proposed impact in making the operation more neighborhood friendly, and for that I thank you. But Mr. Barney, Ms. Krasowski has a history of willful permit violations. What is the remedy when she violates the new limits?

This would be a different matter if she showed any past adherence to the law, but I have given documented proof to her of flagrant and repeated violations. Given the new restrictions, there will almost certainly be immediate violations. Case in point, nearly all of her clientele arrive before 9am. As to the dogs remaining in the premises when she is not present, I appreciate the intent of keeping them inside if she cannot be there to control them. I would like to point out though that even the most lenient of home occupation levels for Cottage Industry requires the whole of the business to be conducted within the dwelling unit (or subordinate structures). This permit is now tacitly authorizing what it cannot under the county zoning ordinance. And if I do not oppose this now, a precedent will be set which undermines the intent of the base regulations.

My concern remains constant Mr. Barney. A neighbor is operating outside of the provisions of the law, with no respect shown to the law or the surrounding residents, and doing so with no repercussions. On numerous and documented occasions she violated the law and this result, which my wife and I have fought, rewards her. What is the zoning board prepared to do when I show that she violates the new permit? This is nothing I want Mr. Barney, but I am prepared to log all of the violations of her permit, lodge a formal complaint, and to appeal the county permitted operation by an irresponsible business owner.

Sincerely,

Joe and Nancy Hoffman

On Thu, Feb 17, 2011 at 5:11 PM, Zoning Dept <[zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org)> wrote:  
Mr. Hoffman,

I wanted to let you know that I have issued a new Zoning Certificate that allows for two additional dogs, but establishes additional restrictions:

- No pickup or delivery of dogs before 9:00 AM
- Except for brief "visit of necessity", dogs are not allowed outside before 11:00 AM
- Dogs must remain confined inside residence during those times that Daycare Operator is not on the premises

Please let me know if you have any questions.

Sincerely,

Steve Barney

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

From: "Joseph Hoffman" <[joseph.e.hoffman@gmail.com](mailto:joseph.e.hoffman@gmail.com)>  
Sent 2/8/2011 10:37:58 PM  
To: "Zoning Dept" <[zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org)>  
Subject: Re: Kennel

Hi Steve,

With the evidence against her as far as blatant violations of her existing permit, I would be expecting that a decision would be made to strip the existing permit or at the very least to exact fines. Barring that, is there a decision to not extend the permit, something more definitive than not issuing it now.

Thanks,  
Joe

On Feb 8, 2011 9:57 PM, "Zoning Dept" <[zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org)> wrote:

Joe,

Sorry I have been difficult to get ahold of this week; the last couple days have been a little crazy.

I have not issued a new zoning certificate for Ms. Krassowski's land use, but will keep you posted.

Thanks,

Steve Barney

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

From: "Joseph Hoffman" <[joseph.e.hoffman@gmail.com](mailto:joseph.e.hoffman@gmail.com)>

Sent 2/1/2011 7:24:14 PM

To: "Zoning Dept" <[zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org)>

Subject: Re: Kennel

Thank you Steve. I'll look forward to hearing your decision.  
Stay safe in the freezing rain,

Joe Hoffman

On Feb 1, 2011 5:23 PM, "Zoning Dept" <[zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org)> wrote:

Joseph,

Sorry I have been difficult to get ahold of; today has been a day of meetings. I discussed the case with the director today and hope to have a decision on this soon.

Thanks,  
Steve Barney

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

From: "Joseph Hoffman" <[joseph.e.hoffman@gmail.com](mailto:joseph.e.hoffman@gmail.com)>

Sent 1/31/2011 3:42...

## Steve Barney

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**From:** Zoning Dept [zoning@jeffersoncountywv.org]  
**Sent:** Friday, January 28, 2011 12:09 PM  
**To:** sbarney@jeffersoncountywv.org; jhartman@jeffersoncountywv.org  
**Cc:** jbrockman@jeffersoncountywv.org  
**Subject:** Fw: Kennel

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

**From:** "Joseph Hoffman" <joseph.e.hoffman@gmail.com>  
**Sent:** 1/26/2011 2:46:24 AM  
**To:** "Zoning Dept" <zoning@jeffersoncountywv.org>  
**Subject:** Re: Kennel

Mr. Barney,

I appreciated being able to speak with you today but am disappointed that we couldn't meet. I will be here before noon every day and then all day Friday if you are looking to reschedule your visit.

We spoke today about her business being run in absentia. She was gone for over two and a half hours after we spoke, which reflects on the care she purports to provide. Since the dogs cannot be separated into cages without it being a full blown kennel, she cannot be said to provide pet sitting services or expect to maintain a reasonable level of care or safety for her charges while she is away. One of her own dogs there has been known to get into fights and has killed another neighbor's chickens. So while they may get along well moment to moment, if a fight starts while she is away she has effectively abandoned the animals.

I understand the position you are in, but this business has from the first been against the provisions she swore to maintain. She has by acting directly against the provisions rendered her own permit void. These are willful acts in all counts. Kennels by either definition exist there, and the number of animals permitted has been more than doubled. Looking into the zoning ordinance she is exceeding the number of visits allowed at the occupation level, and given that the dogs have access to at least the majority of the furnished house, I'd say the business is using more than 1/3rd of the floor area. At what point in violation of a contractual and legal provision is one found to be undeserving of the provisions afforded by the law or by that contract?

Sincerely,

Joe Hoffman

On Mon, Jan 24, 2011 at 1:18 PM, Zoning Dept <zoning@jeffersoncountywv.org> wrote:  
Joe,  
Thanks for your message. We will take this into consideration in evaluating the land use.

Sincerely,  
Steve Barney

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

**From:** "Joseph Hoffman" <joseph.e.hoffman@gmail.com>  
**Sent:** 1/23/2011 2:46:04 PM

To: "Steve Barney" <[zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org)>  
Subject: Kennel

Hello Mr. Barney,

I've been thinking about the operation next door and a couple of thoughts occurred to me. Ms. Krasowski knew the limits of her permit, so her exceedence is beyond negligence and falls under willful disregard. A 300% exceedence at 13 dogs, is flagrant.

If the power of permit issuance lies with you, so does the power of revocation. With no clear precedent from your predecessor, it seems this is a decent way to reinforce that permits are issued for legitimate businesses who operate within them and, stripped from those with no regard for their legal foundations.

Ms. Krasowski only filed for the permit when informed that I was going to act against her illegal business, and now only when faced with punitive measures having been caught again. A responsible operator uses due diligence to maintain operation within the law.

Just two days ago, one of her client's dogs got free at home and found it's way to the kennel. When I let Ms. Krasowski know I was calling animal control to see whose it was, I was cursed at. That was followed the next morning by howling dogs.

Regardless, there should be some narrowing of kennels. Either containing dogs in cages or boarding them overnight. Either way, she does both, in violation of the permit.

I personally won't be content until it is quiet or their operation ceases.

Sincerely,

Joe Hoffman

## Steve Barney

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**From:** Zoning Dept [zoning@jeffersoncountywv.org]  
**Sent:** Tuesday, January 18, 2011 4:24 PM  
**To:** sbarney@jeffersoncountywv.org; jhartman@jeffersoncountywv.org;  
mcarter@jeffersoncountywv.org; jbrockman@jeffersoncountywv.org  
**Cc:** zoning@jeffersoncountywv.org  
**Subject:** Fw: Objection to kennel at 31 Black Bear Trail

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

**From:** "Joseph Hoffman" <joseph.e.hoffman@gmail.com>  
**Sent:** 1/18/2011 1:30:25 PM  
**To:** "Steve Barney" <zoning@jeffersoncountywv.org>  
**Subject:** Objection to kennel at 31 Black Bear Trail

Mr. Barney,

My name is Joseph Hoffman. My wife and I stopped in to see you today regarding the operation next door to us. I understand that Ms. Krasowski is seeking to change the provisions of her permit, and I must object, and counter that her permit be revoked.

Legally, Ms. Krasowski has been in violation of her permit since it was issued. A point of the permit is that kennels are not allowed, just pet sitting. Ms. Krasowski has been keeping dogs overnight and actually advertises such. As for physical kennels, she does have at least one very large animal cage requiring two men to unload. Speaking to the maximum number of dogs allowed, I have seen as many as thirteen (13) dogs boarded at once, and just last Thursday when she was ordered into compliance, there were nine (9) dogs on the property.

Speaking to the condition the dogs are kept in and the attentiveness provided, my wife and I will attest that she is frequently not present when dogs are boarded, and again, last week a boarder waited ten minutes outside the residence to pick up an animal, and ten to fifteen minutes after she left, Ms. Krasowski returned. It is also not rare to see her drive up just before a customer drops off a dog and then leave soon after. When there are so many animals on the property, some of them very small such as a Terrier we have seen in the snow, what level of care can she claim to provide if she is absent?

Mr. Barney, one point that concerns me the most is the noise level that even the six dogs allowed force my wife and I to deal with on a daily basis. We both work second shift, she in a microbiology lab running samples for hospitals, and me working in airport security. We routinely get home at 1 to 2am and with many of her charges getting dropped off early in the morning and all of them barking at the next that shows up and every car that drives by, we are lucky to get even a few hours of good sleep. I have complained to Ms. Krasowski about this, and her claim is that they only bark for a few seconds before she stops them. I've timed them as long as seventeen minutes and have made two calls to the county Sheriff's office about the noise and duration.

Mr. Barney, if she has been in violation since the beginning doesn't it stand to reason that she does not respect the provisions of the permit? And if the operation so negatively affects the livelihood of those around, should it be allowed to exist at all, much less be allowed to expand? I know we are zoned rural, but please come by and see how residential this really is.

Sincerely,

Joseph and Nancy Hoffman

Attached is her ad:

We have a wonderful 1/2 acre fenced-in yard with access into the house 24 hrs./ day. We offer full days, part days or overnights and can pick up and drop off. We can also come to your home for potty breaks and/or walks and play sessions. I am an experienced Veterinary Assistant and can give medication to your pet if needed. We can also offer basic training and obedience for your dog. In addition to dogs, we can care for cats, small animals, birds, and fish in your home, as well as mail pick-up, plant watering, etc We'll even drive you to the airport Please contact us via phone or email for pricing and a free consultation 304-551-7315

Subject: Letter of Rebuttal from Miss Booger's, LLC

February 14, 2011

Dear Mr. Carter and Mr. Barney;

After reviewing the complaints that my neighbor, Joseph Hoffman, has filed against my business, Miss Booger's, LLC, I would like to submit this rebuttal to your office to keep on record. First I'd like to point out that I take my business very seriously. I've always had a great love for animals and because of this I took a job at an animal hospital. While I was there I was a veterinary assistant with the added responsibility of educating the clients on proper training techniques. I really enjoyed working with the animals and I am blessed to now be able to make a career of caring for animals. Mr. Hoffman has made several accusations against me which are plainly false and I will provide information and names of people who can verify this to be the case.

In the interest of keeping this rebuttal simple to follow, I will use a format in which I will first quote statements from his emails in italics. I will follow immediately below each quote with my statements and references.

So that there is no question as to the accuracy of the quotes taken from his emails, let it be known that I did not even correct Mr. Hoffman's misspelling of my name. If any one reading this rebuttal would like to read the original emails, they will be provided upon request.

**Excerpts from an email dated Tuesday, January 18, 2011 1:30 PM**

**From: Joseph Hoffman**

**To: Mr. Steve Barney**

*...Legally, Ms. Krassowski has been in violation of her permit since it was issued. A point of the permit is that kennels are not allowed, just pet sitting. Ms. Krassowski has been keeping dogs overnight and actually advertises such. As for physical kennels, she does have at least one very large animal cage requiring two men to unload...*

When I first applied for my permit I met with Jennifer Snyder and Seth Rivard of the zoning administration. I first met Mr. Rivard at our neighborhood community center and asked him how one gets the proper permits. I was completely honest with both of them and told them that I had placed some flyers on our mailboxes and later an ad on the Shannondale forum to see what kind of response I got. I didn't get anything at first except a neighbor down the road for boarding and some pet sitting visits. A couple of months later I got a couple of more clients, and that is when I scheduled a meeting with them.

I explained the nature of my business to them from the beginning as offering overnight boarding without the use of kennels. Kennels were defined as permanent structures and were not to be used. I explained that I do have several collapsible crates that I use when necessary, for instance, if a dog is in training to be house broken or is known to be destructive at night or when left alone. The very large crate that Mr. Hoffman is referring to here actually belongs to some friends of mine. I watched their dogs for them, for free,

FEB 15 2011

while they went on their honeymoon. They brought it with them as one of their dogs is a young St. Bernard.

It clearly states on my original application for permit what my intentions were with regards to the type of services I provide. I also explained to Ms. Snyder and Mr. Rivard that I would like to also offer daycare services for dogs as well, meaning dogs could stay and play at my home while their owners were at work and go home in the evening. I mentioned this to them because while I didn't have any daycare customers at the time it was something I would like to offer. I did not get my first regular daycare client until October of 2010.

*...Speaking to the maximum number of dogs allowed, I have seen as many as thirteen (13) dogs boarded at once, and just last Thursday when she was ordered into compliance, there were nine (9) dogs on the property....*

I admit it was my error when I went over the limit expressed on my permit, but that is exactly what it was, an error. When I met with Ms. Snyder and Mr. Rivard, I told them that I couldn't imagine needing to board more than 4 – 6 dogs at a time. I had no idea that my services would become as popular as they have. I simply did not realize or had forgotten that they had put that in writing on my permit. Once it was brought to my attention by Mr. Hoffman at approximately 12:15 p.m. on January 13, 2011, I immediately called to find out about applying to get the limit increased. It was later that afternoon that I received a call from Mr. Carter Mason, the Ordinance Compliance Officer concerning Mr. Hoffman's complaint.

I would like to add that when I began looking into this as a serious business, I called every authority I could think of to make sure I did it the right way. I called the Assessor's office, the Sheriff's office, the Zoning Administration, the Secretary of State and Animal Control to name a few. I talked with each authority and took the necessary steps to make sure I was in compliance with all of them. I hope this shows that if I had realized sooner that there was a limit on my permit I would have taken the steps to change it immediately.

*...Speaking to the condition the dogs are kept in and the attentiveness provided, my wife and I will attest that she is frequently not present when dogs are boarded, and again, last week a boarder waited ten minutes outside the residence to pick up an animal, and ten to fifteen minutes after she left, Ms. Krasowski returned....*

This is completely untrue. The week that Mr. Hoffman is referring to would have been that of January 10, 2011. Of the customers I had that week, three of them were picked up by their owners and they will attest to the fact that they have never waited on my property to pick up their dogs. Their names and phone numbers are provided here:

Sue Bubel – 315-790-0132, Sarah Brantley – 304-820-4124 & Penny & Chuck Keon – 304-551-7030. Please feel free to contact them with questions on this matter or any matter concerning the care I provide.

*...It is also not rare to see her drive up just before a customer drops off a dog and then leave soon after. When there are so many animals on the property, some of them very*

*small such as a Terrier we have seen in the snow, what level of care can she claim to provide if she is absent?...*

I tell all of my customers up front what my schedule is. I have occasionally in the past taken on temporary side jobs to help make ends meet and I also have errands to run or pets to care for in their homes. Those pet sitting visits are varied in their length and frequency depending on what the customer requests. If what Mr. Hoffman describes here has taken place that is what is happening. Rest assured that (a), my customers and I are in constant contact with each other as to my schedule and they are always aware of it, and (b), if I have to leave for any reason I make sure I am not gone for an unreasonable amount of time or that my boyfriend will be returning home in my stead.

The 'Terrier' that Mr. Hoffman is referring to is actually a Corgi that recently started daycare with me two or three days per week. It just so happens that he loves to play in the snow and enjoys staying out for periods of time. I have a dog door which he is fully capable of using and can come in whenever he wants but he chooses to play in the snow. As for his size, it is only physical and not mental. He is perfectly capable of hanging out with the big dogs and actually they all get along really well and look forward to playing together. This dog's owner is Sarah Brantley, whose number is listed earlier. You may contact her on these matters as well.

*...We routinely get home at 1 to 2am and with many of her charges getting dropped off early in the morning and all of them barking at the next that shows up and every car that drives by, we are lucky to get even a few hours of good sleep...*

From the beginning I have scheduled drop offs or pick ups after 9 a.m. Because of the Hoffmans' sleep schedule, I have even tried to keep it after 10 a.m. I have always had my customers come after either 9 or 10 a.m. or drop off the evening before. To avoid listing dozens of names and phone numbers because all of my customers, 47 in all, can attest to this, please ask for this information if you would like to verify this and I will gladly provide it. You can certainly ask the customers whose names and numbers I have already provided as well.

*...I have complained to Ms. Krasowski about this, and her claim is that they only bark for a few seconds before she stops them. I've timed them as long as seventeen minutes and have made two calls to the county Sheriff's office about the noise and duration.*

Mr. Hoffman and his wife came to me about the barking only one time in the winter/spring of 2010 after she moved in with him. I apologized and said I would do something about it. I immediately purchased four anti-bark spray collars and an anti-bark 'birdhouse' that hangs from a tree in my yard. I admit that it is ironically my own sheltie who is the instigator of barking when someone passes by the property. (Please note that even Mr. Hoffman has said that they bark when people pass by or when someone shows up at my home, as stated in the previous quote above. I have never even had to correct my dogs or my clients for barking incessantly). It has taken some effort but I have recently purchased two more e-collars that are much more effective on my sheltie.

The instance Mr. Hoffman is referring to in which he claims to have complained to me about it was actually on January 13, 2011, when I caught him trespassing on my property and taking photos. I would also like to note that the dogs were all quiet until he came onto my property. That is when they began barking at him. He stated that 'the barking was insane' and I then replied that they only bark for a few seconds until I stop them. That day, I could not get them to stop until he left my property. I think it is understandable dog behavior to bark when there is a man dressed in black standing among the trees and right along side my fence which is at least 20 -25 feet into my property.

As for his timing them at seventeen minutes, I have kept a 'bark book' in the past and have resumed doing so due to these complaints. I have never had them continue barking for more than the time it takes for someone to walk or drive passed my property. This is usually mere seconds. Incidentally, I have seen the sheriff parked down the road on two separate occasions and have never been notified by them that they heard any excessive barking.

**Excerpts from an email dated Sunday, January 23, 2011 2:46 PM**

**From: Joseph Hoffman**

**To: Mr. Steve Barney**

*...Just two days ago, one of her client's dogs got free at home and found it's way to the kennel. When I let Ms. Krasowski know I was calling animal control to see whose it was, I was cursed at. That was followed the next morning by howling dogs...*

Friday night at about 10:30 pm I was in my bedroom watching television with my two dogs. My boyfriend was asleep on the couch in the living room. I heard an engine running outside and looked out the window. I could barely make out a truck in the road out front and someone in my driveway. When I went to go out side and see who it was my dogs woke up and ran out into the yard. (Please note: they only got up when I got up to check it out.) It was not a customer but my neighbor from up the road, Bill Little, and a mutual friend or ours, Roger Shelton. Bill's dog had gotten loose and made his way down to my house as he has done a couple of times before. They followed him to my house and were about to ask me to help catch him since I seem to be the only one who can. My dogs began barking at his dog and vice-versa until only moments later my boyfriend went into the yard and got our dogs into the house. Once that happened, I was able to catch Bill's dog and he put him into Roger's truck. Roger, Bill and I were chit-chatting with the truck running for a few minutes in the driveway before they headed back. While standing there, Mr. Hoffman came out of his front door and starting yelling something at us but we couldn't hear him over the engine of the truck. Bill began yelling something back at him and I told Bill to "knock it off." Bill stopped, we said good night and they left.

It is obvious that Mr. Hoffman is either unaware of the facts or is only telling half truths to serve his purpose. He is clearly trying to imply that I cursed at him when in fact I was the one who put a stop to it. Below are the signatures and phone numbers of Mr. Little and Mr. Shelton, who have read this statement and find it to be true and accurate.

Mr. Bill Little  
301-712-1222

Signed William V. Little

Mr. Roger Shelton  
703-932-8250

Signed

R. Shelton 2-14-11

As for the howling dogs the next morning, I did not have any clients here that weekend. I do not recall my dogs barking at anyone passing by that morning.

**Excerpts from an email dated Wednesday, January 26, 2011 2:46 PM**

**From: Joseph Hoffman**

**To: Mr. Steve Barney**

*...We spoke today about her business being run in absentia. She was gone for over two and a half hours after we spoke, which reflects on the care she purports to provide. Since the dogs cannot be separated into cages without it being a full blown kennel, she cannot be said to provide pet sitting services or expect to maintain a reasonable level of care or safety for her charges while she is away...*

As I explained in an earlier response to an excerpt, I do have to leave from time to time. Before any customer boards their dog(s) at my home, I have them bring their dog(s) over for an introduction to meet my dogs and get familiar with the place and my rules. I evaluate each dog based on their temperament and how they interact with other dogs. I have only had to refuse three (3) customers because their dogs either attacked one of my dogs or my cats. All three of those customers call me to care for their pets in their home while they are away. Those clients' names are Chris Lucarelli, Lee Chew and Kathy Newton.

I have never and would never leave dogs in my home unattended for any amount of time unless I was absolutely sure were accustomed to each other and to the rules of my home. My canine clients become a part of my family when they are here which means they receive love just as they would at home but they also abide by my rules. I work diligently with each new customer and make those rules clear right from the beginning. At this point, most of my customers that board here have all met each other and are familiar with each other. I have even heard from some of my customers that their dogs are better behaved when they get them home.

When I have a new client I plan my schedule so that I don't have to leave while they are here until they are well adjusted. If an emergency arises and I need to leave, I have the crates that I mentioned earlier that I can set up in my living room. Any dog that needs to be crated if I am away is protected but still in nose, eye and ear shot of the other dogs. This provides a safe environment for the interaction and learning to continue.

I would like to note that I have training tools and methods that I use that are completely disclosed to and approved by the dogs' owners. You may contact three of my regular customers, Danielle Sigmon at 202-550-1288 and Meg Geisler at 703-328-2544 or Penny and Chuck Keon at 304-551-7030 for verification of these statements.

*...One of her own dogs there has been known to get into fights and has killed a neighbor's chickens. So while they may get along well moment to moment, if a fights starts while she is away she has effectively abandoned the animals...*

My dog, Munster, was abused and neglected as a puppy. We found him when he was eight months old and I spent ten (10) months working with him and walking him two and a half hours a day to train and rehabilitate him. While he is still a little fearful of new people, I inform all of my clients on how to act when around him and it has never been an issue. He has made great progress and boarding dogs here has played a huge part in that. He has NEVER attacked another dog; in fact, he is quite submissive and was pinned down by one of the canine clients mentioned earlier and also was attacked by another dog in the neighborhood. It should be noted that when my dog, Booger, passed away and I spent an entire weekend in bed, Mr. Hoffman and his then fiancé came and invited me on a hike with them. I brought Munster with me and we had to climb a rocky portion on the mountain and Munster was having trouble. Mr. Hoffman carried this 'dangerous' dog in his arms to higher ground. As for the chickens that he supposedly killed, Munster did used to roam and he made some neighbors nervous which is why we installed the fence. It was made well known who he belonged to and no neighbor has ever come to me about him killing their chickens. There are two facts that I would like to note. One is that there was a bear roaming the area at the time of said chicken killing and two is that since Munster's roaming days, we have walked him to each of the neighbors that we knew he frightened and introduced ourselves and him to them and we are all friendly now. Many of them are able to pet Munster now without any fear. Many of my clients are actually impressed because Munster has become the role model to the other dogs for obeying the rules.

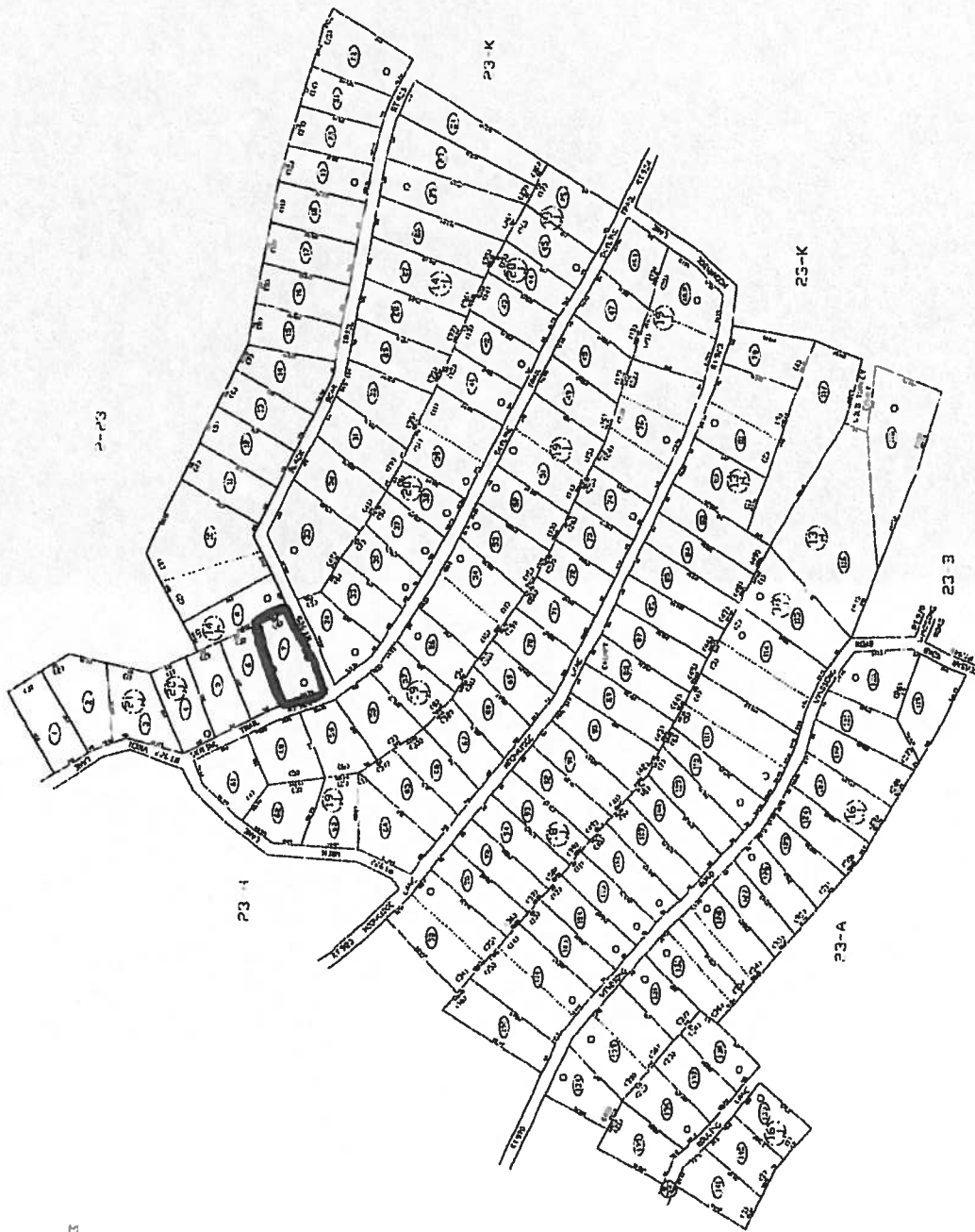
In conclusion, I have been completely honest from the beginning and I am very saddened that I have to defend myself and my business from such libelous allegations. I hope that the statements included herein provide enough information to demonstrate that Mr. Hoffman is either omitting or twisting the facts to serve his own purpose. I will again say that if any one reading this document would like further details, please contact me and I will be glad to provide them. Please feel free to contact any of the people whose names are provided above. I will also be glad to provide additional contact information for others as well. Thank you for your time on this matter.

Sincerely,

Michelle Krassowski  
Miss Booger's, LLC  
31 Black Bear Trail  
Harpers Ferry, WV 25425  
1-304-551-7315

# Exhibit I

Map and aerial photo  
showing property  
location



FOR TAX PURPOSES ONLY  
 PREPARED BY  
 JEFFERSON COUNTY ASSESSORS OFFICE

LEGEND

REVISIONS  
 Revisions appear in this space  
 and are now maintained in a

KEY MAP  
 23-11  
 23-12  
 23-13

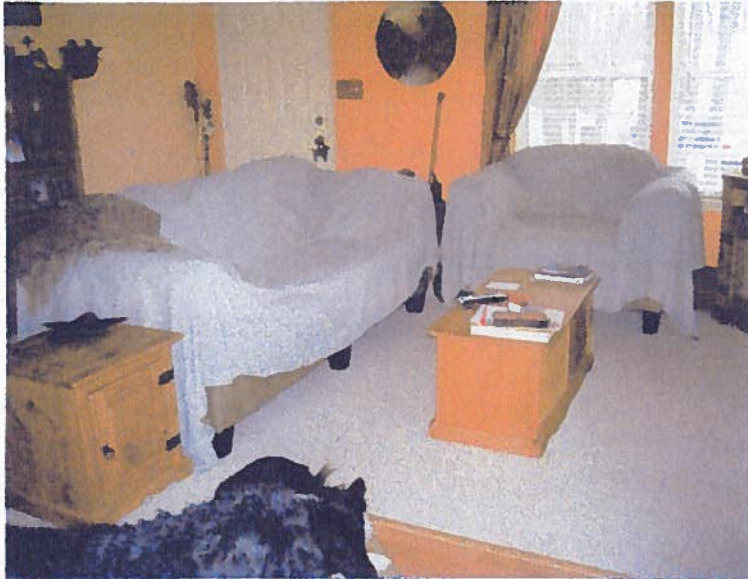
COUNTY OF JEFFERSON  
 OFFICE OF ASSESSOR

CHARLES TOWN DISTRICT  
 DISTRICT 2

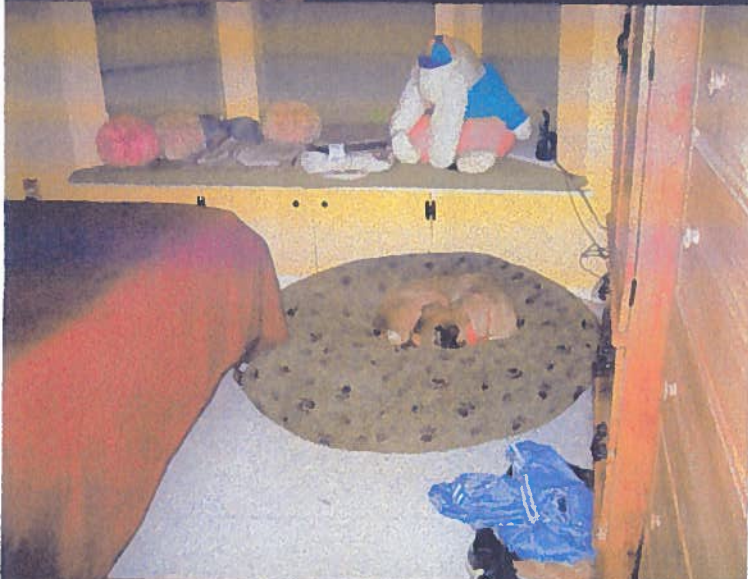


# Exhibit J

Photos of interior and  
exterior of property



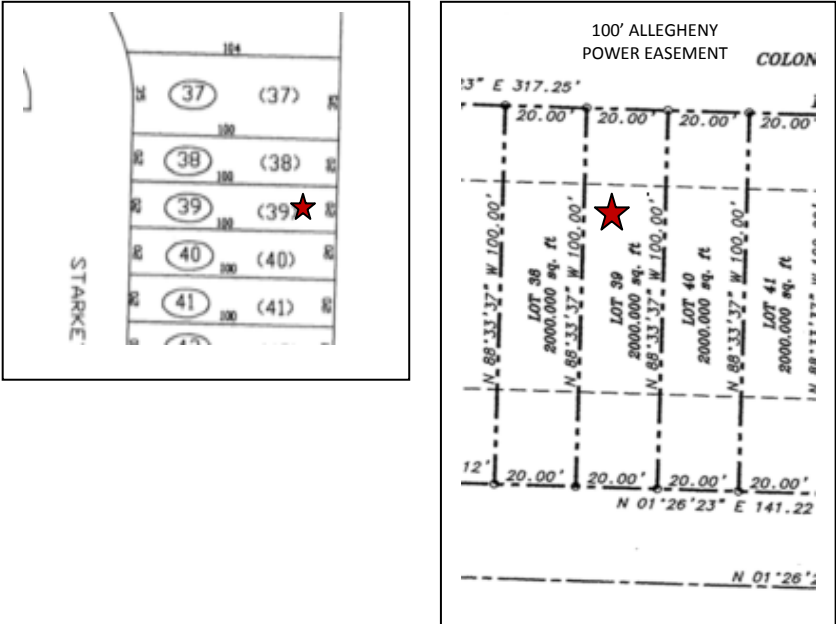





Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 May 19, 2011

**Daniel Anders (#ZV11-12)**

Item #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' x 16' deck.

APPLICANT:	Daniel Anders
OWNER :	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	380 Starkeys Landing, Shepherdstown, West Virginia
LEGAL DESCRIPTION:	District: Shepherdstown; Map: 8E; Parcel: 39 
ZONING DISTRICT:	Zoning Map Designation: Residential-Growth (R-G) 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> R-G <i>South:</i> R-G <i>East:</i> R-G <i>West:</i> R-G

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
May 19, 2011

**Daniel Anders (#ZV11-12)**

LOT AREA:	2,000 sq. ft.
PRIOR CASES:	04-33: PC approved the Colonial Hills final plat 03/08/05
VARIANCE(S):	None
APPROVED ACTIVITY:	Residential

RELEVANT INFORMATION:

1. Overview of Request

The Applicant seeks a rear yard setback variance of 6' in order to construct a deck within 14' of the property line.

Per the material submitted with the variance request, the proposed deck is 16' wide and extends 10' from the townhome towards the rear property line, and would be located approximately 6 feet within the rear setback. The property is bordered by a fence.

Section 5.4 of the Zoning Ordinance provides the setback requirements of the Residential Growth District. For a townhouse, 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 6-foot encroachment for a projection of 16 feet in length.

2. Applicant's Justification of Request

The application states that the addition to the deck will not impact the adjacent residents because of a fence that is situated along the northern and southern shared property lines. Per the Applicant, there is not sufficient space between the house and the rear setback line to construct a deck of adequate width to accommodate an outdoor living space.

3. Staff Evaluation of Request

The Colonial Hills, Phase II community was approved by subdivision plat on March 3, 2005. This phase consisted of 60 townhouse lots. A review of the approved final plat indicates a 100' Allegheny Power easement.

The Board of Zoning Appeals reviewed a similar variance request in the Colonial Hills Subdivision on November 20, 2008 (Wolf ZV08-27).

4. Possible Conditions of Approval

No conditions of approval are identified for this variance request.

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 May 19, 2011

**Daniel Anders (#ZV11-12)**

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 5.4b Residential Growth District - Height And Yard Requirements  
 [AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990 AND SEPTEMBER 1, 2006]

<b>Development Type</b>	<b>Minimum Lot Area (MLA) Area per Dwelling Unit (ADU)</b>	<b>Required Yards</b>	<b>Maximum Building Height*</b>
3. Townhouse Public/Central water and sewer	1,400 sq. ft. MLA 3,500 sq. ft. ADU	25 ft. front 12 ft. side 20 ft. rear	40 ft.
		(exterior only)	

ZV11-12

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): Daniel Anders

Address: 380 Starkeys Landing  
Shepherdstown WV 25443

Phone Number: 304-820-6235

Location of Property: Shepherdstown, Colonial Hills development

Lot Size: 2000 square feet

Deed Book Reference: Deed Book Number 1064 Page Number 42

Tax Map Reference: District Shepherdstown Map RE Parcel 0039

Zoning District: RESIDENTIAL-GROWTH

Section of Ordinance: 5.4(B)

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

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

I would like to build a 10' by 16' deck.  
A 6ft infringement. The deck will be 8ft tall  
and add 3ft for handrail. I would like to go  
from a 20 ft setback to a 14.

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  
APR 05 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:

Asking for the setback will not affect anyone because it is not near their property and is contained within my fence.

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:

I was unaware of restrictions when I purchased the home.

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

A four foot deck is not helpful. This would allow me to have a grill and table and chairs on my deck.

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

The deck will not encroach on other homeowners property and we will still be abiding by building code. I will get a permit.

Daniel Anders  
Signature of Property Owner

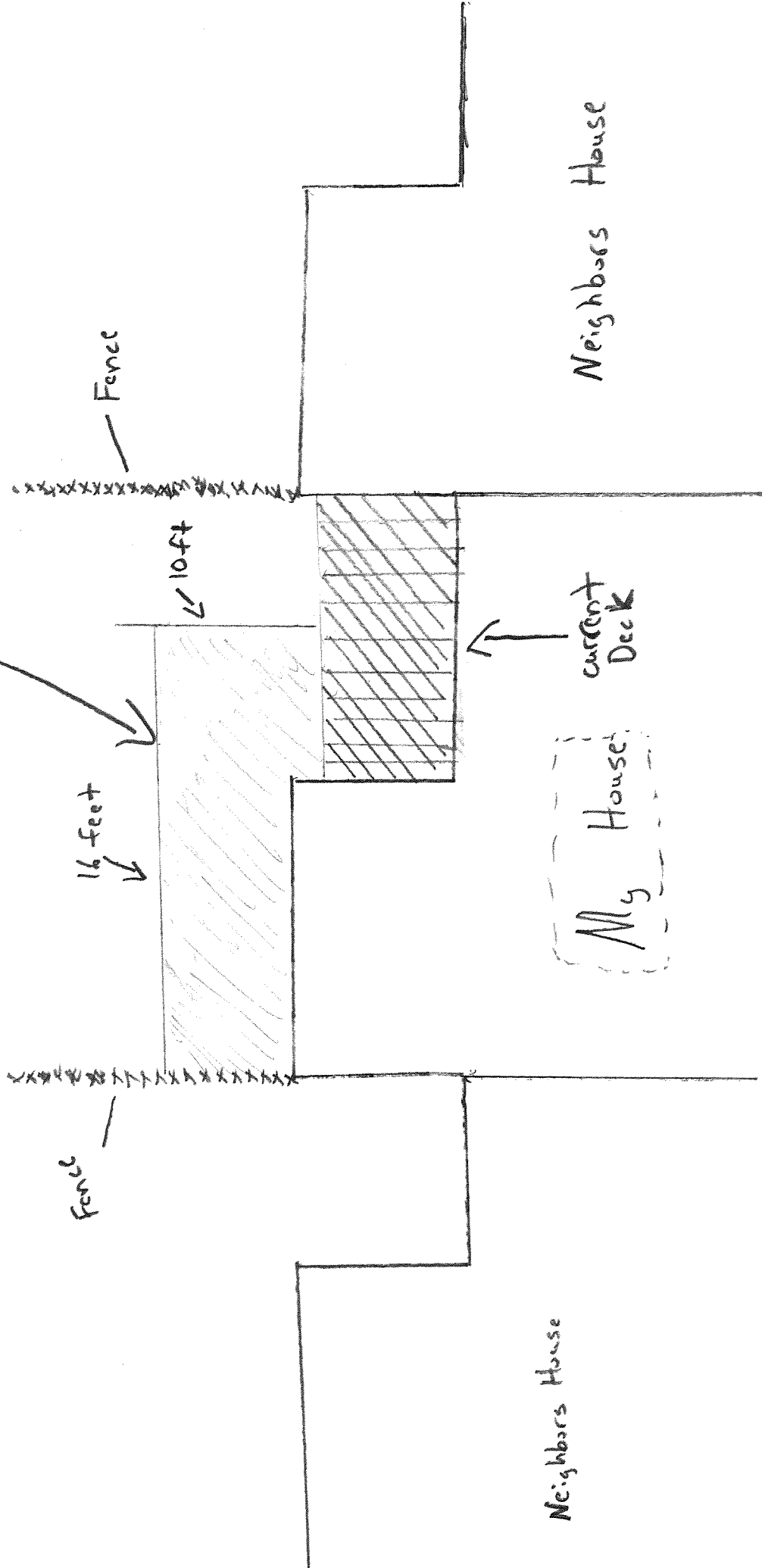
Daniel Anders  
Print Name

4/03/11  
Date

<b>FOR OFFICAL USE ONLY</b>	
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: _____	

Daniel Anders

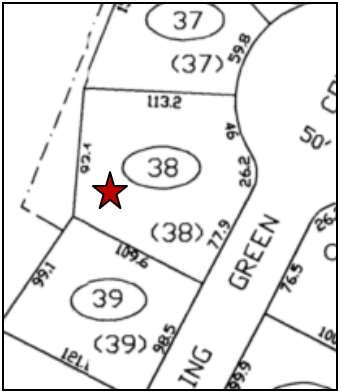
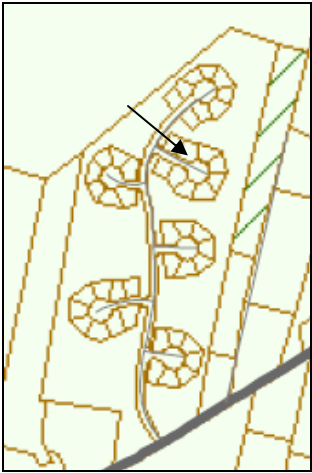
Proposed addition to Deck



Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 May 19, 2011

**Jane Mc Swain (#ZV11-13)**

Item #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.

APPLICANT:	Jane Mc Swain
OWNER :	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	49 Rolling Green Court; Shepherdstown, West Virginia
LEGAL DESCRIPTION:	District: Shepherdstown; Map: 14B; Parcel: 38 
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:	.329 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 Subdivision

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
May 19, 2011

**Jane Mc Swain (#ZV11-13)**

RELEVANT INFORMATION:

1. Overview of Request

The Applicant seeks a rear yard setback variance of 6' in order to construct a deck within 14' of the property line.

Per the material submitted with the variance request, the proposed deck is 23' wide and extends a varying width of 4 - 6' from an existing deck towards the rear property line, and would be located approximately 6 feet 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 6-foot encroachment for a projection of 23 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 an existing orchard located in the rear of the property. Per the Applicant, the home was constructed further back onto the property for the purpose of providing handicapped access for the previous property owners. The Applicant also states the existing deck is not wide enough to accommodate an outdoor living space.

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.

The Applicant has submitted letters of support from two adjacent property owners.

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

4. Possible Conditions of Approval

No conditions of approval are identified for this variance request.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
May 19, 2011

**Jane Mc Swain (#ZV11-13)**

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 5.7 Rural District

(b) Minimum Lot Area, Lot Width and Yard Requirements

Minimum lot sizes, lot width, and yard requirements are as follows for principal permitted uses. For any residential use that complies with the Development Review System, the setbacks and lot shall be as outlined in Article 5.4(b).

Section 5.4b Residential Growth District - Height And Yard Requirements

[AMENDED TWICE BY ACT OF THE COUNTY COMMISSION, EFFECTIVE SEPTEMBER 13, 1990 AND SEPTEMBER 1, 2006]

<u>Development Type</u>	<u>Minimum Lot Area (MLA) Area per Dwelling Unit (ADU)</u>	<u>Required Yards</u>
Single family detached dwelling	6,000 sq. ft. MLA**	25 ft. front
Public/Central water & sewer	10,000 sq. ft. ADU	12 ft. side
Public/Central Water or Sewer	20,000 sq. ft. MLA	20 ft. rear
No Public/Central water or sewer	40,000 sq. ft. MLA	

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): JANE C. McSWAIN

Address: P.O. Box 1524

49 ROLLING GREEN COURT, SHEPHERDSTOWN, WV  
25443

Phone Number: 304-876-7021

Location of Property: DEERFIELD VILLAGE

Lot Size: .329 AC.

Deed Book Reference: Deed Book Number PB 21 Page Number 1

Tax Map Reference: District 09-SHEP Map 14B Parcel 38

Zoning District: SHEPHERDSTOWN RURAL

Section of Ordinance: 5.7(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.

EXTENSION OF EXISTING DECK-THEREFORE AM  
REQUESTING A REDUCTION OF THE REAR SETBACK  
FROM 20' TO 14'

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:

IT WILL NOT ADVERSELY AFFECT NEIGHBORS AS THERE ARE NONE BEHIND HOUSE DUE TO EXISTING ORCHARD.

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 NO SPECIAL CONDITIONS OR ATTRIBUTES - HOUSE WAS ALREADY BUILT AT PURCHASE. CONSTRUCTION HAD TO PERMIT HANDICAP ACCESS.

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

~~THE~~ DECK IS TOO SMALL TO ALLOW FOR TABLE CHAIRS & GRILL.

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

~~FEES~~ DUE TO NO NEIGHBORS BEHIND, LARGER DECK WILL NOT ADVERSELY IMPACT ANYONE.

Jane C McSwain  
Signature of Property Owner

JANE C. MCSWAIN  
Print Name

3/25/11  
Date

**FOR OFFICAL 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

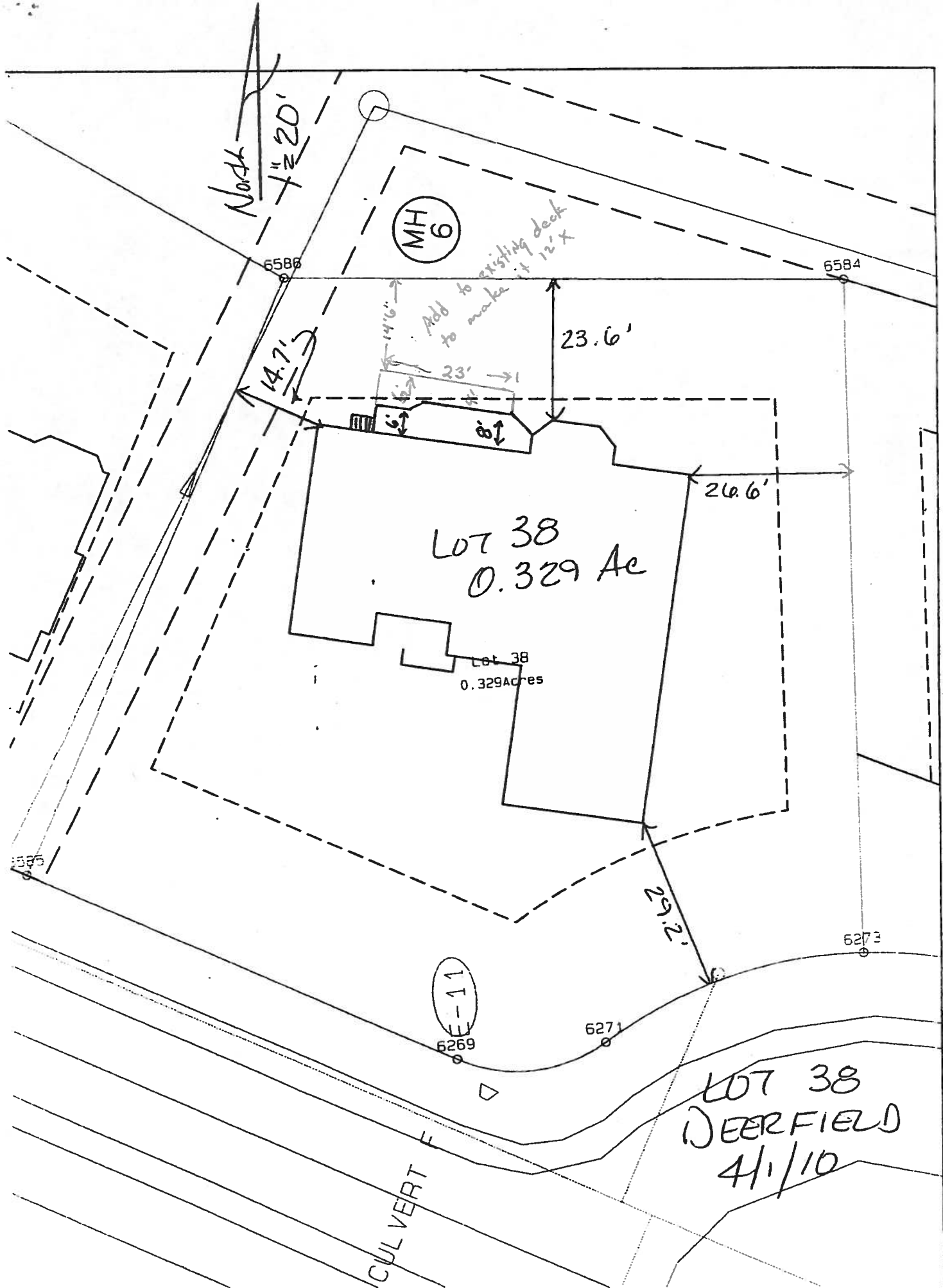
Advertising Dates: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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



North  
1" = 20'

MH 6

LOT 38  
0.329 Ae

Lot 38  
0.329 Acres

LOT 38  
DEERFIELD  
4/1/10

CULVERT F

E-11

6269

6271

6273

6588

6584

6585

14.7'

14.6'

23'

23.6'

26.6'

29.2'

Add to existing deck  
to make it 12' x

6'

6'

**Deerfield Village  
Property Improvement/Landscaping Approval Form**

*This form must be completed and submitted to the Architectural Review Committee prior to making changes to the exterior of your house or property.*

Lot # 38

Date submitted 3/24/11

Submitted by:

Name JANE C. McSWAIN  
Address P.O. BOX 1524  
49 ROLLING GREEN COURT  
Phone 304 876-7021

Contracting company (if no company, please enter "self"):

Contact name D.L. Lewis Construction Co. Inc. Paul  
Company's name \_\_\_\_\_  
Address 21 South Paw Lane  
Shepherdstown WV 25443  
Phone 304-671-9742

General description of plan or change:

Increase the size of the existing deck from 6'x8' to 12'  
deep and 23' long. Deck will use similar construction  
to the existing deck - may use trex material.

\*\*\*Attach a copy of your plat with all changes/additions clearly marked and the appropriate additional documentation for your project. Additional documentation includes but is not limited to architect drawings, deck or patio plans and landscaper drawings. Forms submitted without a plat attached will be returned, delaying the approval process. Questions? Please call Clint Chiplinski @ 843-283-4953

Return form to Clint Chiplinski, 25 Rolling Green Court, Shepherdstown, WV 25443

Received by Clint Chiplinski on 3/28/11 (date).  
Committee review date 4/5/11

Approved as submitted \_\_\_\_\_

\_\_\_\_ Additional information needed as listed: \_\_\_\_\_

\_\_\_\_ Approved with restrictions \_\_\_\_\_

\_\_\_\_ Not approved because \_\_\_\_\_

Signatures of reviewing members: 1. Clint Chiplinski  
2. Jim Craven  
3. Clare Williamson

Wilmoth Construction Company, Inc.  
P. O. Box 279  
Shepherdstown, WV 25443  
April 1, 2011

Jefferson County Planning Commission  
P. O. Box 338  
Charles Town, WV 25414

Dear Commissioners:

Jane McSwain is seeking a variance to enlarge her deck at 49 Rolling Green Court, Deerfield Village Subdivision, Shepherdstown, West Virginia. Wilmoth Construction Company, Inc. is the owner of the property to the north side of her home. At this time we are in the process of constructing a house that has recently been listed on the real estate market. We have **no objection** to the enlargement of Ms. McSwain's deck and support her request to receive a variance.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Wilmoth". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Paul Wilmoth, President  
Wilmoth Construction Co., Inc.

Jefferson County  
Department of Planning and Zoning  
116 East Washington Street, 2nd floor  
P.O. Box 338  
Charles Town, WV 25414

To whom it may concern:

I am writing to you in support of the request for home improvements by Jane C. McSwain at 49 Rolling Green Court, Shepherdstown, WV. I have seen Mrs. McSwain's drawings and plans for her intended project, an extension of her back porch, and have no problem with these plans. I am familiar with the contractor building the extension and have no doubt that it will be a project of high quality.

Please feel free to contact me with any further questions. Thank you.

Sincerely,


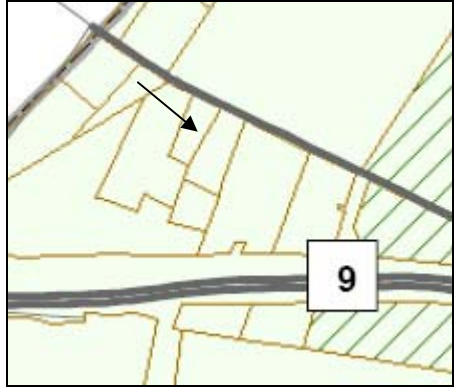


Amber N. Chiplinski  
25 Rolling Green Court  
Shepherdstown, WV 25443  
843.283.4953

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 May 19, 2011

**Suzanne Walls (#ZV11-14)**

Item #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).

APPLICANT:	Suzanne Walls
OWNER :	Same as above
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	4274 Charles Town Road, Kearneysville, West Virginia
LEGAL DESCRIPTION:	District: Middleway; Map: 2; Parcel: 2.6  
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:	3.91 acres
PRIOR CASES:	S04-16: Approved 12/14/04
VARIANCE(S):	02/09/10: PC approved variance to decrease the length of the deceleration lane.
APPROVED ACTIVITY:	An office building and three greenhouses.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
May 19, 2011

**Suzanne Walls (#ZV11-14)**

RELEVANT INFORMATION:

1. Overview of Request

Suzanne Walls, owner of Walls Nursery, seeks a variance from Sections 4.11(a) and 4.16 of the Zoning and Land Development Ordinance to allow for the removal of a vegetative buffer (including 159 shrubs) shown on site plan S04-16. The shrubs were required to provide visual screening between the commercial nursery and the adjacent lot, which is zoned Rural.

2. Applicant's Justification of Request

The Applicant states the adjacent parcel is currently vacant and therefore a variance from the requirement to plant the landscaping would not impact the welfare of the property owner. The application also notes the existence of a utility easement, which may be compromised by the growth of the required landscaping, in that the plants could obstruct maintenance of the utility equipment. It is pointed out that the installment of permanent plants as opposed to selling them would greatly impact the livelihood of the Applicant, and that the presence of a constant inventory of plants on the subject property would achieve some of the same benefits as the required vegetative buffer.

3. Staff Evaluation of Request

The Walls Nursery site plan was approved by staff on December 9, 2004 with Planning Commission approval on December 14, 2004. The Planning Commission approved a variance on February 9, 2010, to decrease the length of the deceleration lane due to the location of an existing utility pole.



Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
May 19, 2011

**Suzanne Walls (#ZV11-14)**

4. Possible Conditions of Approval

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

- a. Any future expansion of the use, or change in permitted use, shall initiate a review by the Planning and Zoning Departments' staff to determine if additional screening is necessary.

Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 May 19, 2011

**Suzanne Walls (#ZV11-14)**

**SECTION OF ORDINANCE TO BE CONSIDERED:**

**Section 4.11 Landscaping, Screening and Buffer Yard Requirements**

- (a) All commercial development adjacent to any Residential district, or any lot with a residence, school, church, or institution of human care shall have a fifty (50) foot or greater unscreened green space buffer or a fifteen (15) foot screened green space buffer along common property lines. The screening may be either vegetative or opaque fencing and may be placed anywhere within the buffer. No structures, materials, or vehicular parking shall be permitted within the side and rear yard buffers. All commercial development adjacent to all other uses must maintain ten (10) foot side and rear yard landscape buffers. [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

**Section 4.16 Setback Chart**

<b>SECTION 4.16</b>		When this section is in conflict with another section of the Zoning & Development Review Ordinance, this section shall prevail.																	
<b>ADJACENT USE</b>		<b>BUILDING</b>		<b>PARKING &amp; ACCESS</b>					<b>BUFFERS</b>					<b>DISTANCE</b>					
		Any Use Except Industrial	Industrial Use	Residential Zone	Lot with a Residential	Church/School/Institution for Human Care	Commercial	Industrial	Residential Zone	Lot with a Residential	Church/School/Institution for Human Care	Commercial	Industrial	Residential Zone	Lot with a Residential	Church/School/Institution for Human Care	Commercial	Industrial	Structure or Lot on Historic Registry
<b>PROPOSED USE</b>																			
<b>SIDE</b>	Barn/Feeding Pen	See District Requirements	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	75	75	75	N/A	N/A	75
	Comm'l Lot <= 1.5	25	25	4	4	4	4	4	50/15	50/15	50/15	10	10	75	75	75	N/A	N/A	75
	Comm'l Lot > 1.5 ac.	50	25	10	10	10	10	10	50/15	50/15	50/15	10	10	75	75	75	N/A	N/A	75
	Industrial	50	25	25	25	25	25	20	200	200	200	20	20	200	200	200	N/A	N/A	200
	Church	50	50	10	10	10	10	10	50/15	50/15	50/15	10	10	N/A	N/A	N/A	N/A	N/A	N/A
	Multi-family	12	12	12	12	12	12	12	N/A	N/A/12	N/A/12	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

ZVII-14

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): SUZANNE L. WALLS

Address: 16333 HAMILTON STATION RD  
WATERFORD VA 20197

Phone Number: 703-850-3393

Location of Property: 4274 CHARLES TOWN RD  
KEARNEYSVILLE WV 25430

Lot Size: 3.91

Deed Book Reference: Deed Book Number 990 Page Number 336

Tax Map Reference: District MIDDLEWAY Map 2 Parcel 2.6

Zoning District: RURAL

Section of Ordinance: 4.11 and 4.16

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.

REMOVE REQUIREMENT FOR 159 SHRUBS (#4,293.00)  
FOR SCREENING

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  
APR 04 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:

---

---

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.):

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*S. Walls*

Signature of Property Owner

SUZANNE L. WALLS

Print Name

4-4-2011

Date

**FOR OFFICAL 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: \_\_\_\_\_

Steve,

Thank you for working with me to bring this whole zoning thing to a close. I really appreciate your patience and guidance. Below are answers to the 4 questions on the back of the Variance Request form:

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

The current use of this property is as a local nursery, which sells plants. Trees, bushes, flowers, etc. are abundant. Not permanently planting along the designated area will not adversely impact anyone. The quantity of growing stock should be a plus to the community and does not impact the welfare or rights of the adjacent property owner. Along that property line is an open, undeveloped field.

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.

Running the full distance of this property line is a power company right-of-way. The plantings specified originally would obstruct access over time to servicing of these power lines.

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

Planting of additional growing stock is an unnecessary expense that would hit the current business there. All their money needs to be focused on income-producing trees, bushes and plants. The recession has had a very negative impact on this business. Cash-flow is being jeopardized by asking a nursery to permanently install plants rather than offering them for sale.

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

It is my understanding that the intent of zoning ordinance is to protect the public from hazards and promote effective use of land within Jefferson County. If this is the case, having a small, locally-owned business like Walls Nursery thrive on this plot of land is exactly what they want to support and promote. I am hopeful you agree.

Please check over what I have responded and let me know if it is what they want to see. At this point, I'm insecure in my own judgement. Thanks in advance for your continued help and support.

Sincerely,

Sue Walls

\*\*\*\*\*

Suzanne (Sue) Walls



<http://www.a-childs-book.com>



Staff Report  
 Jefferson County Board of Zoning Appeals Meeting  
 May 19, 2011

**KNR Investments, LLC (#ZC11-13)**

Item #9      On behalf of KNR Investments, LLC, request for a Change in Nonconforming Use by Manager, Kay Smoker, of the former Millville Post Office from a post office / one-unit residential rental use to a two-unit residential rental use.

APPLICANT:	Kay Smoker
OWNER :	KNR Investments, LLC
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	481 Millville Road, Millville, West Virginia
LEGAL DESCRIPTION:	District: Harpers Ferry; Map: 11A; Parcel: 34 
ZONING DISTRICT:	Zoning Map Designation: Industrial-Commercial (I-C) 
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> I-C <i>South:</i> Rural/ I-C <i>East:</i> Rural/ I-C <i>West:</i> I-C
LOT AREA:	0.1 acres
PRIOR CASES:	None
VARIANCE(S):	None
APPROVED ACTIVITY:	Industrial and commercial uses

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
May 19, 2011

**KNR Investments, LLC (#ZC11-13)**

RELEVANT INFORMATION:

1. Overview of Request

The Applicant seeks to change the nonconforming use of the lower floor of a property as a post office to a residential use. The upper floor of the structure is currently used as a residence.

2. Applicant's Justification of Request

The application states that the population of the surrounding area is too small for a business to be viable in this space.

3. Staff Evaluation of Request

The property is located in the Industrial - Commercial (IC) District and is adjacent to the Rural District. The IC District is the sole zoning district in which residential uses are not permitted. The entire area located between Millville Road and Blair Road, south of US 340, has this zoning designation.

However, the property is surrounded by residential uses. The subject property, with a lot area of 1/10<sup>th</sup> of an acre, is not of sufficient size to establish an industrial use (the Zoning and Land Development Ordinance requires a minimum lot size of 3 acres for an industrial use).

4. Possible Conditions of Approval

No conditions of approval are identified for this variance request.

Staff Report  
Jefferson County Board of Zoning Appeals Meeting  
May 19, 2011

**KNR Investments, LLC (#ZC11-13)**

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:

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]

- (c) A nonconforming use may not be substituted for any other nonconforming use without the Board of Appeals review and public hearing, provided, however, to the following: upon notice to the Zoning Administrator with an application for and approval of a Zoning Certificate a nonconforming retail, service, or wholesale operation may be substituted with another retail, service or wholesale operation without such public hearing; provided again, however, the intended use does not include an adult use. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 15, 1993]

Section 5.6 Industrial - Commercial District

The purpose of this district is to provide locations for manufacturing, processing, and commercial uses which may require extensive transportation and central or public water and sewer services. It is not the purpose of this district to encourage the use of land within the district for retail services; however, it is anticipated that there may be areas or locations where retail services can be reasonably and logically considered due to their relationship with other uses existing within the district, as well as their relationship with the district boundary line or the configuration of the property and the relative scale of the project.

2011-13

JEFFERSON COUNTY, WEST VIRGINIA  
Department of Planning and Zoning

116 East Washington Street, 2<sup>nd</sup> Floor  
P.O. Box 338  
Charles Town, West Virginia 25414

File #: \_\_\_\_\_  
Rec'd By: \_\_\_\_\_  
Total Fee: \$ \_\_\_\_\_

Phone: (304) 728-3228

Fax: (304) 728-8126

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

Zoning Certificate Application

Contact/Co. Name: KNR INVESTMENTS LLC.

Mailing Address: 9413 THORNDIKE DRIVE

City: FAITHERSBURG State: MARYLAND Zip Code: 20885

Phone Number: 240-683-5812 E-mail: K.Smoker47@gmail.com  
(optional)

List the information for the proposed property you are inquiring about.

Property Owner: KNR INVESTMENTS LLC / Manager Kay Smoker

Mailing Address: 9413 Thorndike Drive Faithersburg, MD. 20882

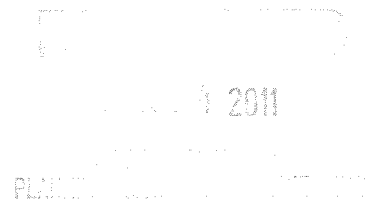
Physical Address: 481 Millville WV 25432

Tax District: 04 Map No: 11A Parcel No: 34 Parcel Size: 60.08' x 76' = 0.10467/-

Deed Book: 90 Page: 493

Zoning District: (circle one)

R-A R-G I-C R-L-C V



Type of Certificate:

Animated Sign: \_\_\_\_\_ Cottage Industry: \_\_\_\_\_  
Non-animated Sign: \_\_\_\_\_ Home Occupation, Level 1: \_\_\_\_\_  
Change in Use: \_\_\_\_\_ Home Occupation, Level 2: \_\_\_\_\_  
Change in Non-conforming Use: X Other: \_\_\_\_\_

*\*Any future change in use or expansion will require processing through the Jefferson County Departments of Planning, Zoning and Engineering to update this Certificate, and ensure compliance with all applicable County regulations.*

(Turn Over)

Please provide any information or known history regarding this property (ex: previously subdivided, etc.).

PREVIOUSLY Millville POST OFFICE

Give a brief description of your proposal.

Since post office is closed, surrounding area population is too small to operate any business, therefore, making an apartment is ideal than vacant space  
Thank you.

On a separate sheet of paper, sketch the shape and location of the lot. Show the location of the intended construction or land use indicating building setbacks, size and height. Identify existing buildings, structures or land uses on the property. If proposing a business, please specify the number and location of the intended parking spaces.

The information given is correct to the best of my knowledge.

*Kyngfaun Smoak* 4-7-2011  
Signature Date

**For Official Use Only**

Restrictions/Conditions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Action Taken:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Zoning Administrator

\_\_\_\_\_  
Date



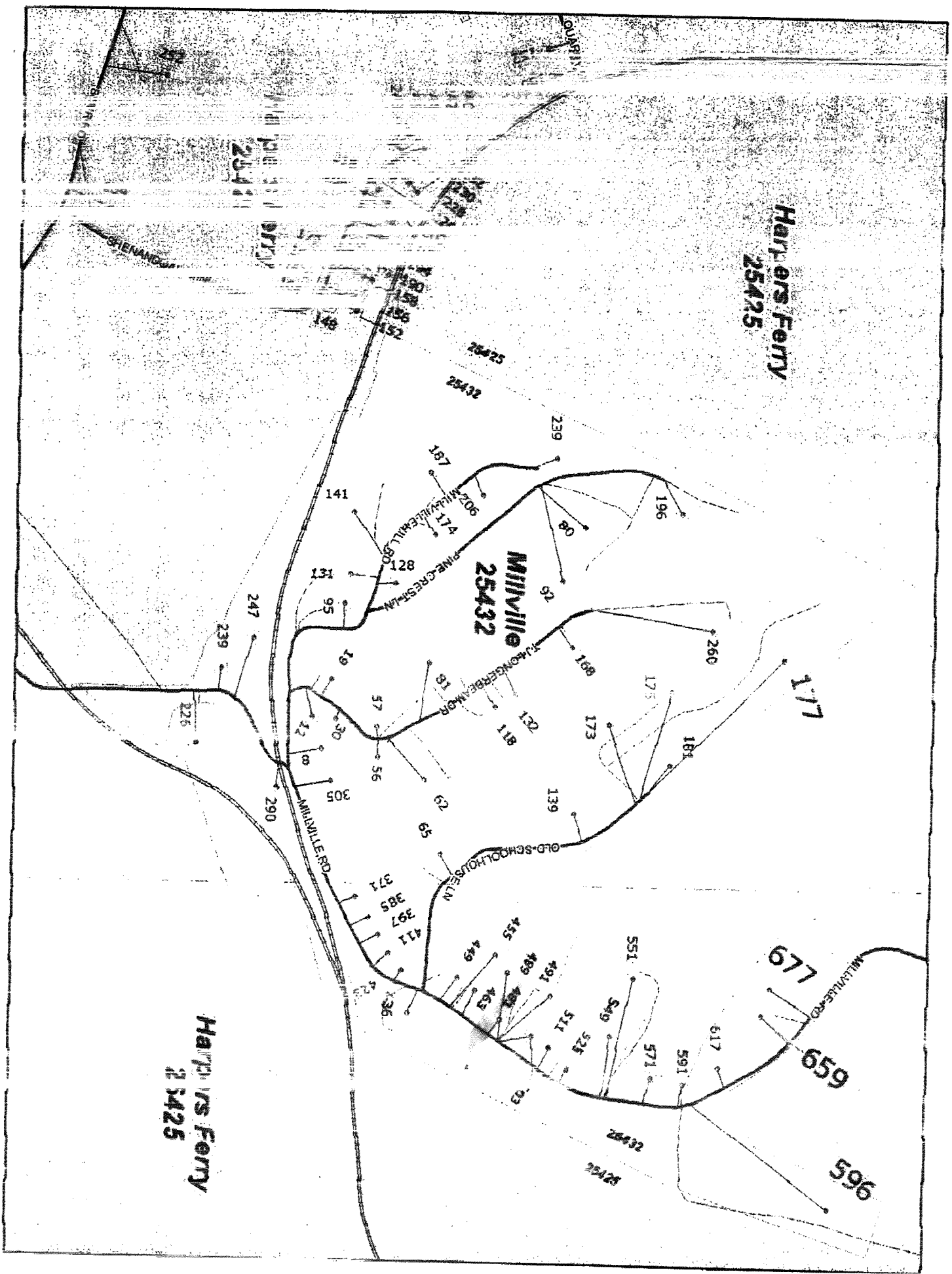
*an Apartment for  
main floor*



**Harpers Ferry**  
25425

**Milville**  
25432

**Harpers Ferry**  
25425



THIS DEED, made this 28th day of December, 2007, by and between B & R INVESTMENTS, LLC, a Limited Liability Company, party of the first part and hereinafter referred to as Grantor and KNR Investments, LLC, a Limited Liability County, party of the second part and hereinafter referred to as Grantee.

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

All that certain tract or parcel of land with improvements thereon situated in the Lucas Extension in Millville, Harpers Ferry District, Jefferson County, West Virginia, and more particularly described as follows:

Beginning at the intersection of the northwest line of the Public Road leading from Millville to Old Tollgate on the Charles Town - Harpers Ferry Pike and the division line between Lots 3 and 4 as the same are designated on the plat of Dan B. Lucas dated September 25, 1901, and made by James K. Hendricks, Surveyor of Jefferson County, and recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia in Deed Book 90, at Page 493, thence along the northwest line of said Public road in a southwesterly direction a distance of 60.08 feet to a point in the line of Thomas W. Dillow, Sr.; thence with said Dillow and paralleling the division line between Lots 2 and 3 as shown on said plat in a northwesterly direction 75 feet to a point in the said line of Dillow; thence again with Dillow and parallel with the said County Road in a northeasterly direction 60.08 feet to the division line between Lots 3 and 4; thence with the division line of Lots 3 and 4 southeasterly a distance of 75 feet to the said Public Road and point of beginning.

Property/911 Address: 481 Millville Road, Millville, WV. 25432

AND BEING the same real estate conveyed to the Grantor herein by a deed from Roger C. Mattei, dated October 21, 2005 and recorded in the aforesaid Clerk's Office in Deed Book 1015, at Page 540.

THIS CONVEYANCE IS MADE SUBJECT, HOWEVER, to all those reservations, restrictions, easements and other matters of record.