

Jefferson County

Board of

Zoning Appeals

Thursday,

December 16, 2010

JEFFERSON COUNTY, WEST VIRGINIA

Department of Zoning

116 East Washington Street, 2nd Floor

P.O. Box 338

Charles Town, West Virginia 25414

Phone: (304) 728-3228

Fax: (304) 728-8126

Email: zoning@jeffersoncountywv.org

MEMORANDUM

TO: JEFFERSON COUNTY BOARD OF ZONING APPEALS

FROM: JENNILEE HARTMAN, ZONING CLERK

DATE: DECEMBER 10, 2010

SUBJECT: DECEMBER 16, 2010 BOARD of ZONING APPEALS MEETING

Please find enclosed a copy of the Advanced Agenda for the upcoming Board of Zoning Appeals meeting to be held on Thursday, December 16, 2010. Also for your review, you will find corresponding information regarding said Meeting. When applicable, I will include copies submitted to this office that pertain to items of new business. If you have any questions, or will not be able to attend an upcoming meeting, please do not hesitate to contact me.

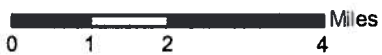
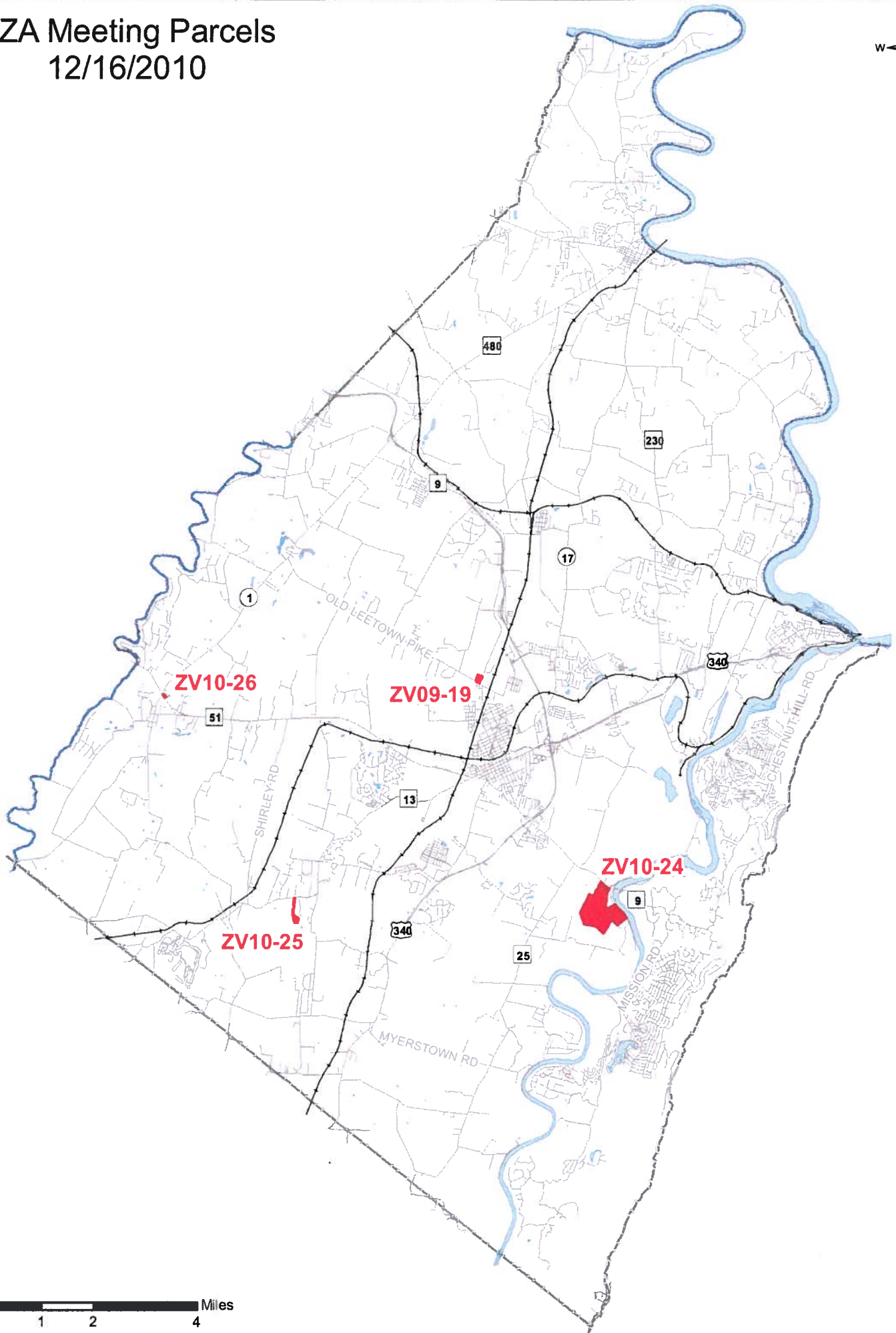
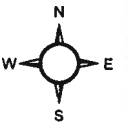
AGENDA
JEFFERSON COUNTY BOARD OF ZONING APPEALS
THURSDAY, DECEMBER 16, 2010, 3:00 p.m.

NOTICE

***CHANGE IN LOCATION:** Please be advised, the December 16, 2010 meeting has been relocated to the Charles Town Library meeting room at 200 East Washington Street, at the side entrance on Samuel Street in Charles Town, West Virginia.

1. Approval of Minutes from the November 18, 2010 meeting.
2. Variance Request by property owner, Herb Jonkers, Highland Farm, LLC from Section 5.7(d)2.b.7 to modify the maximum lot size for two lots: #19 and #21. The property is located on Charles Town Road approximately 300' west of John Rissler Road in Charles Town, West Virginia. (District: Charles Town; Map: 19; Parcels: 33, 38, 39 & 41; Size: 270 acres; Zoned: Rural, File: #ZV10-24)
3. Variance Request by owner, Christopher Zanella, Hillbrook Inn from Section 4.3(d) to permit additional expansion (over 35%) of the existing nonconforming use to allow for the construction of a 3,600 sq. ft. deck and from Section 4.10 to waive the requirement for a Site Plan. The property is located at 4490 Summit Point Road in Charles Town, West Virginia. (District: Kabletown; Map: 14; Parcel: 10; Size: 17.010 acres; Zoned: Rural; File: #ZV10-25)
4. Variance Request by property owner, Antonio Colandrea, Jefferson Reality, LLC from Section 4.3(i) to re-establish/continue the operation of a previously existing nonconforming use that was destroyed by fire and Sections 4.16 and 5.6(d) to allow existing 0' front setbacks for a parking area. The subject property is located at 4843 Middleway Pike in Kearneysville, West Virginia. (District: Middleway, Map: 19A, Parcel: 14; Size: 1.1 acres; Zoned: Rural, File: #ZV10-26)
5. Request by Southern States Cooperative to extend the time frame to temporarily occupy the building located at 1453 North Mildred Street in Ranson, West Virginia as conditioned by the Board of Zoning Appeals at the February 18, 2010 meeting. (District: Charles Town, Map: 7, Parcel: 9.2; Size: 8.61 acres; Zoned: Residential-Light Industrial-Commercial, File: #ZV09-19)
6. Monthly Address by Director Jennifer Brockman.
7. Legal Update
8. Vote on written decisions from prior Board of Zoning Appeal meetings.
9. Correspondence.

BZA Meeting Parcels 12/16/2010



DRAFT MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
NOVEMBER 18, 2010

The Jefferson County Board of Zoning Appeals met on Thursday, November 18, 2010 at 3:00 p.m., in the upper level Conference Room of the Departments of Planning & Zoning. Members Jeff Bresee, Chairman; Christy Huddle, Vice Chairman; Tiffany Hine, Jon Brusco, Ed Kelly and Alternate, Tyler Quynn were present. Staff members present were Director of Zoning, Jennifer Brockman; Zoning Administrator, Steve Barney; Assistant Prosecuting Attorney, Stephen Groh and Zoning Clerk, Jennilee Hartman.

Ms. Huddle motioned to commence the meeting. Ms. Hine seconded the motion. Chairman Bresee called the meeting to order at 3:00 p.m.

1. Approval of Minutes from the September 16, 2010 meeting.

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

- a. Page 2, Item #7, eighth paragraph, move the apostrophe to after the "s" in *Homeowners'*.

Ms. Hine seconded the motion, which carried unanimously.

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

2. Variance Request by property owner, Sheryl White from Article 9, Section 9.7 to reduce the front setback distance from 25' to 0' to allow for the construction of a garage. Property location: 15939 Charles Town Road, Charles Town, West Virginia. (District: Charles Town, Map: 19A-1, Parcel: 2, Zoned: Rural, File: #ZV10-21)

Applicant, Sheryl White, informed the Board that her name was spelled incorrectly on the agenda. Ms. White presented the request. Mr. Barney directed the Board's attention to a memorandum that was included in their packets regarding draft policies regarding clarification of setbacks for corner lots and lots adjacent to alleys. Mr. Barney briefly explained that if the policies were in effect that Ms. White's variance request would change from a front yard setback to a side yard setback. Charles Brown and Scott Gray addressed the Board on behalf of the applicant. Mr. Bresee called for public comment. There was no public comment.

3. Variance Request by Fred Gates on behalf of property owner, Roderick Planes, LLC from Article 3, Section 3.2(g) to allow for a second extension request for the Aspen Greens Subdivision Conditional Use Permit (Z02-06). The applicant is requesting an extension from December 20, 2010, until July 1, 2012. The property is located northeasterly of the intersection of Old Country Club Road with Flowing Springs Road.(District: Charles Town, Map: 4, Parcel: 19, Zoned: Rural, File: #ZV10-22)

Fred Gates, consultant, gave a presentation on behalf of the property owner. Patrick Henry, the applicant's attorney, and Maurice Gladhill, property owner, also addressed the Board. Sue Lawton, General Manager for the Public Service District, spoke in favor of the request. Mr. Bresee called for public comment. There was no public comment.

4. Variance Request by property owners, Barbara Feldman and Barry Whitebook, from the following:

- a. Article 4, Sections 4.A3(e); to allow parking in the required front yard setback for a proposed cottage industry.
- b. Article 4, Sections 4.A3(k); to allow a proposed cottage industry within an existing residential subdivision.
- c. Article 4, Sections 4.A3(j); to allow the existing structure for a proposed cottage industry to be closer than 25' to the property line.
- d. Article 5, Sections 5.7(b); to reduce the front setback for an existing structure from 40' to 15' due to a building permit that was issued in error.
- e. Article 9, Sections 9.6(c); to allow an accessory structure to be located within the required front yard due to a building permit that was issued in error.

The subject property is located at 448 Southerly Lane in Charles Town, West Virginia.
(District: Charles Town, Map: 9, Parcel: 4.17, Zoned: Rural, File: #ZV10-23)

Barbara Feldman, applicant, presented the request. Mr. Barney explained again that if the draft policies were in effect that requests (a), (d) and (e) would be unnecessary. Ms. Huddle referenced an email dated October 28, 2010, from the applicant's neighbor Tena Mills. Ms. Feldman explained how she was going to address Ms. Mills' concerns regarding the traffic flow on the shared access easement. Barry Whitebook, applicant, also addressed the Board. John Swift, Ms. Feldman's attorney, stated that while there are alternatives that would solve the parking dilemma that the alternatives would create more impervious area which would diminish the rural character of the property. Ms. Huddle stated that the applicant should encourage the students to be mindful of potential bottlenecks as a result of their patronage. Mr. Bresee called for public comment. Ms. Feldman's students Elizabeth Blake, Erika Weshinsky, Christine Starkey, Justin Starkey, Steffanie Simpson, Linda Lotze and Fred Ethan Fischer spoke in favor of the request. Each student highlighted the benefits they have received from attending Ms. Feldman's classes. In addition they explained how Ms. Feldman's current teaching location allowed for her to maintain reasonable prices.

Mr. Brusco motioned to have a short recess and then to go into deliberative session. Ms. Huddle seconded the motion, which carried unanimously. The Board went into deliberative session at 4:08 p.m.

Ms. Huddle motioned to come out of deliberative session. Ms. Hine seconded the motion, which carried unanimously. The Board resumed the regular meeting at 4:30 p.m.

Board of Zoning Appeals Rulings

Mr. Barney stated the Department has adopted the aforementioned draft policies regarding clarification of setbacks for corner lots and lots adjacent to alleys.

2. Variance Request by property owner, Sheryl White from Article 9, Section 9.7 to reduce the front setback distance from 25' to 0' to allow for the construction of a garage.

Due to the Department's new policy regarding corner lots, Mr. Brusco motioned to approve a variance to reduce the newly determined side setback of 12' to 0'. Ms. Huddle seconded the motion, which carried unanimously.

3. Variance Request by Fred Gates on behalf of property owner, Roderick Planes, LLC from Article 3, Section 3.2(g) to allow for a second extension request for the Aspen Greens Subdivision Conditional Use Permit (Z02-06). The applicant is requesting an extension from December 20, 2010, until July 1, 2012.

Mr. Kelly motioned to approve the above referenced variance request. Ms. Hine seconded the motion, which carried unanimously. Ms. Huddle stated for the record that she was happy the applicant was going to adhere to the new Flood Plain Ordinance requirements.

4. Variance Request by property owners, Barbara Feldman and Barry Whitebook, from the following:
 - a. Article 4, Sections 4.A3(e); to allow parking in the required front yard setback for a proposed cottage industry.
 - b. Article 4, Sections 4.A3(k); to allow a proposed cottage industry within an existing residential subdivision.
 - c. Article 4, Sections 4.A3(j); to allow the existing structure for a proposed cottage industry to be closer than 25' to the property line.
 - d. Article 5, Sections 5.7(b); to reduce the front setback for an existing structure from 40' to 15' due to a building permit that was issued in error.
 - e. Article 9, Sections 9.6(c); to allow an accessory structure to be located within the required front yard due to a building permit that was issued in error.

Ms. Huddle motioned to approve variance requests (b) and (c); finding that requests (a), (d) and (e) are no longer required due to the Department's new policy regarding corner lots. Ms. Huddle also stated that the motion to approve was made with the understanding that the applicant's business will not impede traffic flow along the shared access easement. Mr. Kelly seconded the motion, which carried unanimously.

5. Discussion of Seasonal Uses. Mr. Barney read the definition of Seasonal Use from the current Zoning Ordinance and discussed various revisions to the text. The Board discussed the possibility of administrative approval of seasonal uses of an incidental nature, while continuing to require Board approval of seasonal uses of more significant impact, such as those uses with high traffic generation. Ms. Huddle was in support of such changes.

6. Monthly Address by Director Jennifer Brockman. Ms. Brockman informed the Board of the following:

- Discussed the proposed amendments to the Zoning Ordinance which included clean up of the document related to formatting and text errors, revising definitions that may be considered 'policy neutral' and shifting the reference to the powers and duties of the Board of Zoning appeals to a more appropriate location.
- Staff will begin to scan the BZA packet for posting to Jefferson County's webpage.
- Discussion regarding notification and posting deadlines for variances.

Minutes

Board of Zoning Appeals

November 18, 2010

Page 4 of 4

- Informed the Board of correspondence pertaining to a Community Impact Statement extension request to be heard by the Planning Commission on December 14, 2010. The applicant for this extension may also seek a Conditional Use Permit extension from the Board at a future meeting.

7. Legal Update. None.

8. Vote on written decisions from prior Board of Zoning Appeal meetings. The Board requested Mr. Groh have the draft Findings of Fact and Conclusions of Law for Barbara Feldman's variance requests prepared by the next regular meeting.

9. Correspondence.

Ms. Huddle motioned to adjourn the meeting 5:10 p.m. Mr. Brusco seconded the motion, which carried unanimously.

An audio transcript of this meeting can be found on CD #__ & __. 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]”

#2V10-24

JEFFERSON COUNTY BOARD OF ZONING APPEALS
VARIANCE REQUEST

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

Property Owner(s): MR. HERB JONKERS, Mgr.

Address: HIGHLAND FARM LLC.
P.O. BOX 341 MILWOOD VA 22646

Phone Number: (703) 627 0935

Location of Property: ON CHARLES TOWN RD. 300' west of JOHN RISSIER RD.
CHARLES TOWN DISTRICT, JEFFERSON COUNTY WV.

Lot Size: 270 acres +/- (Includes parcels 33, 38, ~~39~~ & ~~44~~) ⁴¹ ₁₉₄₁

Deed Book Reference: Deed Book Number 1017 Page Number 626

Tax Map Reference: District CHARLES TOWN Map 19 Parcel 33, 38, ~~39~~ & ~~44~~ ⁴¹

Zoning District: RURAL

Section of Ordinance: ~~30-13A-26~~ 5.7(d)2.b.7

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

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

VARIANCE REQUEST TO MODIFY THE MAXIMUM LOT SIZE
FOR TWO LOTS (LOT 19 & LOT 21), PER JEFFERSON COUNTY
ZONING & LAND DEVELOPMENT ORDINANCE SECTION 5.7(d)1. *AL*

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

OCT 26 2010

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

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

(SEE ATTACHED ZONING ORDINANCE VARIANCE JUSTIFICATION)

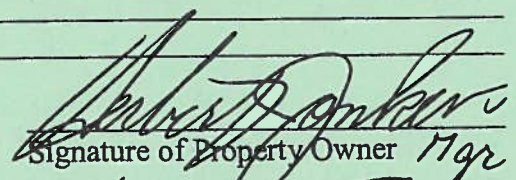
The board of zoning appeals shall grant a variance to the zoning ordinance if it finds that the variance:

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.):


Signature of Property Owner Mgr

HERBERT JONKERS
Print Name 1782

10/26/10
Date

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

Official Signature and Seal: _____	

Highland Farm
Zoning Ordinance Variance Justification

Introduction

Highland Farm is a proposed residential subdivision with only 34% of total tract area used for lots while 64% of the property will remain as open space (the remaining land used for the residential road right-of-way). The open space area includes approximately 65 acres of woodland preserve and 60 acres as agricultural use. The proposed subdivision implements the purpose and the intent of the Rural Zoning District by a cluster configuration that provides for the best obtainable siting, access and location of the lots, thus encouraging conservation of agricultural uses and woodland.

Zoning Ordinance Variance Justification

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 the adjacent property owners or residents:*

Variance for exceeding the typical maximum lot size allowed would have no impact on the public health, safety, welfare or the rights of the adjacent property owners and residents. On the contrary, it would maintain the existing open space and the woodland preserve area. The cluster subdivision allows the lots to be located around the access drive and in the middle of the 270 acre tract. It maintains the surrounding open space and woodland preserve area as a buffer between the proposed lots and the adjacent properties. These uses along with the manor house would be retained.

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

The applicant is requesting variance for proposed Lots 19 & 21 which are part of the proposed 'Highland Farm' subdivision. Lot 21 is the site for an existing manor house, bank barn and the associated ancillary buildings supporting the existing agricultural/equestrian uses. The rear section of this 19.9 acre lot has very steep slopes and a forest. These features act as a natural buffer between the existing uses and the adjacent properties. The variance would allow retaining and maintaining these existing woodland characteristics. Lot 19, by the virtue of its shape and size, has its rear property line extend up to the edge of the woodland buffer and along an existing fence line. Following the existing fence line with a proposed property line will help maintain existing land use patterns.

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

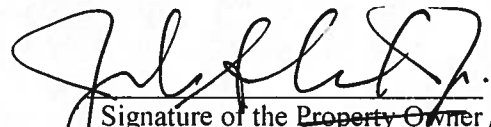
The variance request for both Lot 19 and Lot 21 is to maintain a reasonable use of the land and ultimately preserving the natural characteristics with minimal or no impact to the surrounding areas. Constricting these lots to 3 acres would not result in any additional agricultural or environmental benefit but would reduce the equestrian accommodations to an area that would be insufficient to practically support that use.

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

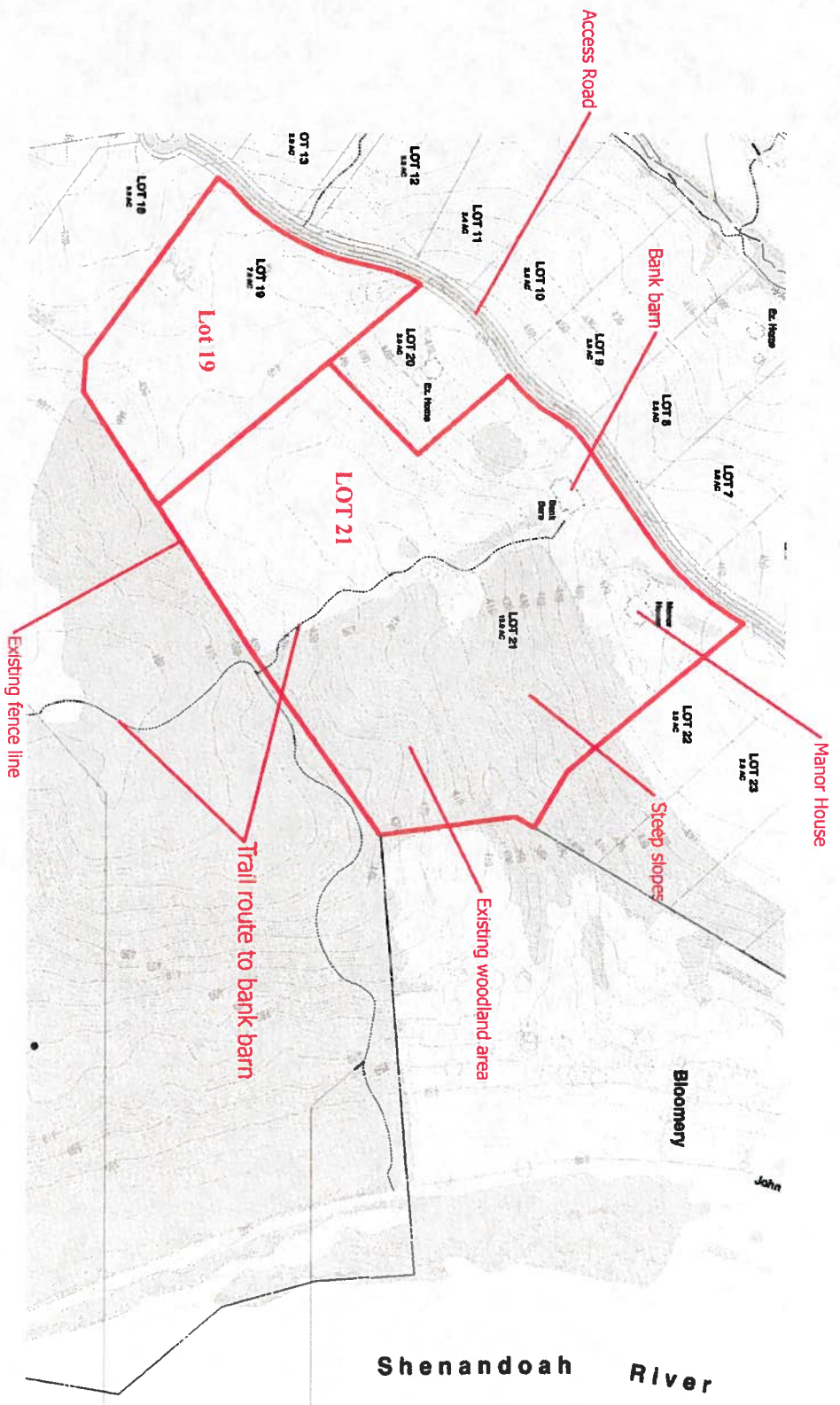
The applicable intent of the zoning ordinance is to insure that growth is economically sound, agriculture remains viable, and encourages the conservation of natural features. The proposed 27 lot cluster subdivision and the variance request permitting larger sizes for the above mentioned lots furthers that intent for the reasons stated above.

Summary

The proposed lot sizes, in the context of the overall proposed subdivision, are consistent with the purposes of the Rural Zoning District and clustering provisions of the Jefferson County Zoning and Land Development Ordinance.


Signature of the Property Owner AGENT
JOHN SEKERAK, Jr.
Print Name

10/25/10
Date



Detailed Plan Sketch
for Lot 19 & Lot 21

Proposed for:
Highland Farm, LLC
P.O. Box 14
Greenhorn, VA 22630
Contact: Lee Webb, President

Lee Webb
10/24/10

GREENHORNE & O'MARA
CONSULTING ENGINEERS
2040 CENTRAL EXPLORADO, SUITE 200 GREENHORN, VIRGINIA 22631
PHONE: (703) 888-2222 FAX: (703) 888-2222

CONCEPT PLAN
Highland Farm
#1818252-0001-001-100000

DATE: 10/24/10
SCALE: 1"=100'
DRAWN BY: [blank]
CHECKED BY: [blank]



GREENHORNE & O'MARA
CONSULTING ENGINEERS

2110-24

RECEIVED

OCT 26 2010

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

October 25, 2010

Zoning Secretary
Jefferson County, West Virginia Department of Planning and Zoning
116 East Washington Street
Second Floor, P. O. Box 338
Charles Town, WV 25414

Re: Highland Farm
Zoning Ordinance Variance Request

Dear Zoning Secretary:

On behalf of our client, Highland Farm LLC, we are preparing plans for a proposed 27 lot subdivision located in the Charles Town District of Jefferson County. The subject site, which is approximately 270+/- acres, includes parcels P33, P38, P39 and P41. The tax map reference for the subject site is Map 19 of the Charles Town District. The layout of the 27 lot cluster subdivision and the access road is in concert with the existing natural features, topography and the current uses on site. The layout retains most of the woodland preserve areas, protects the 100-year floodplain and sustains the existing equestrian use of the property (*see the attached 'Overall Concept Plan Sketch' for the subdivision layout and its immediate context*).

In support of the proposed subdivision, we request a modest variance from the typical provisions of the Zoning and Development Review Ordinance to allow a larger lot size for two of the proposed lots (Lot 19 & Lot 21). All of the proposed lots except Lot 19 & Lot 21 conform to the development standards, including minimum lot size, defined in the Rural Zoning District of the Jefferson County Zoning and Land Development Ordinance (*see the 'Detailed Plan Sketch' for Lot 19 & Lot 21*). The maximum allowed size for a lot in the Rural Zoning District is typically 3 acres. With this variance request, the applicant is requesting that the size of Lots 19 and 21 be approximately 7.0 acres and 19.9 acres respectively.

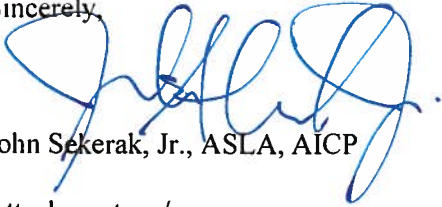
Please see attached to this cover letter the following listed items in support to the variance request:

- (1) Original Variance Request form (*dated and signed*)
- (2) Zoning Ordinance Variance Justification sheet (*dated and signed*)
- (3) Overall Concept Plan Sketch (*dated and signed*)
- (4) Detailed Plan Sketch (*dated and signed*)
- (5) Copies of items listed in (1), (2), (3) and (4) (*eleven copies each*)
- (6) Check in the amount of \$100.00 payable to the "Jefferson County Commission"

Zoning Secretary, Jefferson County, WV
October 25, 2010
Page 2 of 2

Thank you for your consideration of this request. Please feel free to contact me if you have any questions or if you need any additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Sekerak, Jr.", written in a cursive style.

John Sekerak, Jr., ASLA, AICP


Attachments: a/s

cc: Steve Barney, w/ attachments
Jennifer M. Brockman, AICP, w/ attachments
Seth A. Rivard, w/ attachments
Herb Jonkers, w/ attachments

Staff Report
 Jefferson County Board of Zoning Appeals Meeting, December 16, 2010

Highland Farm, LLC Variance Request (#ZV10-24)

Item #2 Variance Request by property owner, Herb Jonkers, Highland Farm, LLC from Section 5.7(d)2.b.7 to modify the maximum lot size for two proposed lots: #19 and #21.

APPLICANT:	Herb Jonkers, Highland Farm, LLC
OWNER :	same
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	The property is located on Charles Town Road approximately 300' west of John Rissler Road in Charles Town, West Virginia.
LEGAL DESCRIPTION:	District: Charles Town; Map: 19; Parcels: 33, 38 & 41 
ZONING DISTRICT:	Zoning Map Designation: Rural
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North: R South: R</i> <i>East: R West: R</i>
LOT AREA:	270 acres
PRIOR CASES:	Z00-02 AP00-01 Z01-04 AP00-02 Z03-01 AP01-05 Z03-05 AP04-02 AP05-01
APPROVED ACTIVITY:	Residential CUP (proposed)

Staff Report
Jefferson County Board of Zoning Appeals Meeting, December 16, 2010

Highland Farm, LLC Variance Request (#ZV10-24)

RELEVANT INFORMATION:

The Applicant is proposing to process a 27-lot Cluster Development on the ±270 acres known as Highland Farms. The Concept Plan for this proposed development has not yet been processed by the Planning Commission.

The Applicant has requested a variance to modify the maximum lot size for two of the lots in the proposed 27-lot Cluster Development.

1. Cluster Subdivision Standards

Section 5.7(d)2.b.7 of the Zoning Ordinance establishes a three-acre maximum lot size for a subdivision utilizing the Cluster Development standards. The two lots for which the variance is sought have a proposed size of 7.0 acres (Lot 19) and 19.9 acres (Lot 21). The Applicant's rationale for the variance is as follows:

- *“Lot 19, by virtue of its shape and size, has its rear property line extend up to the edge of the woodland buffer and along an existing fence line. Following the existing fence line with a proposed property line will help to maintain existing land use patterns.”*
- *“Lot 21 is the site for an existing manor house, bank barn and the associated ancillary buildings supporting the existing agricultural/equestrian uses. The rear section of this 19.9 acre lot has very steep slopes and a forest. These features act as a natural buffer between the existing uses and the adjacent properties. The variance would allow retaining and maintaining these existing woodland characteristics.”*

Per the Applicant, all lots will conform to all other required standards of the Zoning Ordinance. The 27 lots will be served by well and septic.

The purpose and intent of clustering, as described in Section 5.7(d)2, are as follows:

- To encourage the conservation of farmland in the Rural Zoning District by planning the residential development allowed in the zone to provide for the best obtainable siting, access and location of lots on a tract.
- To provide for a well planned development while minimizing the use of prime agricultural land.

Because the proposed design of the development would retain 64% of the land as open space, the subdivision appears to meet the intent of the Cluster Subdivision standards.

2. Recent Cases

Staff Report
Jefferson County Board of Zoning Appeals Meeting, December 16, 2010

Highland Farm, LLC Variance Request (#ZV10-24)

The proposed subdivision is located on a section of property for which several Conditional Use Permit applications related to the Thorn Hill development have been previously submitted. This property has also been the subject of several BZA appeals and court actions.

The Applicant intends to separate the Highland Farms development from the Thorn Hill development and proceed with a Cluster Subdivision, which will entail Planning Commission review but will not require a Conditional Use Permit. As the proposed Cluster Subdivision represents a new development application, a detailed history of prior cases is not appropriate for this report. A brief chronology of applications filed for the Thorn Hill development is as follows:

- 3/02/00 – A Conditional Use Permit application was submitted for Thorn Hill, a 44-lot residential subdivision (Z00-02). The LESA point score for this application did not allow the project to advance.
- 9/26/01 – A Conditional Use Permit application was submitted for Thorn Hill, a 181-lot residential subdivision (Z01-04). On 3/22/02, the Board of Zoning Appeals approved the CUP, which was signed on 10/22/04.
- 3/28/03 – A Conditional Use Permit application was submitted for Jones Farm, a 416-lot residential subdivision. The application was withdrawn.
- 8/06/03 – A Conditional Use Permit application was submitted for Thorn Hill (Z03-05), including the property shown in the Z01-04 and the Z03-01 applications. The new application increased the size of the proposed development to 595 single-family lots on 552 acres. A Conditional Use Permit has not been approved for this application.
- 9/09/05 – The Planning, Zoning and Engineering Department approved a final plat for Thorn Hill, a 179-lot residential subdivision, for the land area shown in the approved Conditional Use Permit Z01-04.

A lawsuit regarding application Z03-05 was recently heard by the West Virginia Supreme Court, which remanded several issues related to this development to the BZA. A BZA public hearing will be scheduled, pending resolution of certain legal issues.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 5.7 Rural District

(d) Maximum Number of Lots Allowed

(2) Clustering

(b) Requirements

- (7) Maximum lot size shall be 3 acres. [PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON DECEMBER 3, 2009]

2V10-25

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): CAZ & ASSOCIATE, Inc.

Address: 4490 Summit Point Road
Charles Town, WV 25414

Phone Number: 304-725-4223

Location of Property: 4490 Summit Point Road
Charles Town, WV 25414

Lot Size: 17.010 Acres

Deed Book Reference: Deed Book Number 585 Page Number 346

Tax Map Reference: District Kabletown Map 14 Parcel 10

Zoning District: RURAL

Section of Ordinance: 4.3 D: 4.10

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

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

We would like to add a large deck on
the back of the main house. The deck
would allow us to hold some of our
outdoor events on it instead of holding them
in the yard. Finished deck size would be 3,600 #'

AND FROM SECTION 4.10 TO WAIVE THE REQUIREMENT FOR A SITE PLAN.

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
NOV 05 2010
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:

We have used this area for events since 1985.
We have never had a problem that has affected the above items.

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:

1. The previous owner made a 1801^{sq} expansion. This now ~~limits~~ ^{limits} my expansion abilities.

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

The current zoning ordinance only allows us 35% expansion.
Without this deck it makes it difficult to meet our guest needs for their events
Currently when it rains during an event it make things very difficult.

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

We will take all necessary steps to follow zoning and permit requirements.
Including meeting with flood plain manager.

Christopher Zarella

Signature of Property Owner

Christopher Zarella

Print Name

11/5/10

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: _____

Existing Square Footage of Hillbrook Inn

Prepared By Chris Zanella on 11.5.10

Guest Rooms

Bamford	671
Locke's Nest	516
The Point	339
The Lookout	257
The Snuggery	787
Spring	450
Fall Cottage	450
Summer Cottage	450
Winter Cottage	450
Sub Total	4,370

Public Rooms

Living Room	417
Dining Room	348
Dinning Porch	261
Library	257
Tavern	526
Restrooms	195
Sub Total	2,004

Work Areas

Kitchen	339
Alcove	32
Office	51
Boiler Room	267
Hovel	267
Walk-in Room	85
Sub Total	1,041

Other

Barn	720
Storage Shed	72
Spring House	252
Bridge	485
Terraces	1,812
Sub Total	3,341


Total Existing Square Footage **10,756**

Proposed Expansion **3,600**

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 December 16, 2010

Hillbrook Inn Bed & Breakfast Variance Request (#ZV10-25)

Item #3 Variance Request by Owner, Christopher Zanella – Hillbrook Inn from Section 4.3(d) to permit additional expansion (over 35%) of the existing nonconforming use to allow for the construction of a 3,600 sq. ft. deck and from Section 4.10 to waive the requirement for a Site Plan.

APPLICANT:	Christopher Zanella, CAZ Associates, Inc.
OWNER :	same
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	4490 Summit Point Road in Charles Town, West Virginia
LEGAL DESCRIPTION:	District: Kabletown; Map: 14; Parcel: 10 
ZONING DISTRICT:	Zoning Map Designation: Rural
SURROUNDING PROPERTIES:	Zoning Map Designation: North: R South: R East: R West: R
LOT AREA:	17.01 acres
PRIOR CASES:	Site plan case S96-08, approved 07/09/96
VARIANCE(S)	07/09/96- PC approved variance paved parking requirements (Section 11.2.j.1)
APPROVED ACTIVITY:	Inn (existing non-conforming use)

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 16, 2010

Hillbrook Inn Bed & Breakfast Variance Request (#ZV10-25)

RELEVANT INFORMATION:

The Applicant seeks to build an uncovered 3,600 square feet deck attached to the rear of the Hillbrook Inn main house. Per the Applicant, the deck would accommodate outdoor events that are currently conducted in the grass area.

To construct the deck, the Applicant is seeking the following two variances:

- To expand a nonconforming use by more than 35% of existing square feet (Section 4.3(d)); and
- To waive the requirement for a site plan (Section 4.10)

1. Expansion of the Nonconforming Use

The Hillbrook Inn is an existing nonconforming use that was established prior the adoption of the 1988 Zoning Ordinance. Per Section 4.3 of the Zoning Ordinance, the Planning and Zoning Department may administratively approve an expansion of a nonconforming use of up to 35% of the existing square footage of the use. For site plan S96-8, an expansion of 1,801 square feet was approved on 7/9/96, representing a 20.11% increase over the square footage existing at the time of the site plan.

The itemized building square footage, as shown on the approved site plan, is as follows:

Guest rooms	2,570 square feet
Public rooms	2,004 square feet
Work areas	1,041 square feet
<u>Other</u>	<u>3,341 square feet</u>
Total	8,956 square feet

The allowable expansion, prior to site plan approval, was 35% of 8,956 square feet, or 3,135 square feet. Following the 1,801 square foot expansion (a 20.11% increase), an allocation of 1,334 additional square feet (14.89%) remains.

The request for a 3,600 square foot deck would represent a 40% expansion of building area above the existing square footage indicated in the site plan. This would amount to an additional 25.11% expansion beyond the allocation currently permitted.

2. Waiver of Site Plan Standards

In addition, the Applicant has request a waiver of the requirement to submit a site plan for this development.

This development would be classified as requiring a Major Site Plan pursuant to the 2010 amendments to the Subdivision and Land Development Regulations. This process requires multiple Planning Commission public hearings and has a duration of approximately 8-9 months.

Staff has discussed with the Applicant concerns regarding the deck potentially generating additional parking needs for the facility, if the deck were to be used for additional table space for meals at the Inn. In response, the Applicant has stated that the deck will not be used for regularly-scheduled meals.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 16, 2010

Hillbrook Inn Bed & Breakfast Variance Request (#ZV10-25)

3. Recent Cases

Recently, the Board of Zoning Appeals approved the Applicant's request to establish a Bed and Breakfast use pursuant to Sec. 5.7(a) and Section 9.8 in the "Gatehouse" building located near the front of the Hillbrook Inn property. It should be noted that this request pertained to a different structure located on a separate lot.

4. Possible Conditions

If the Board chooses to approve this variance with conditions, a possible condition would be that no additional tables may be located on the deck during regularly-scheduled meals, other than those meals served as part of a special event.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 4.3 Nonconforming Uses

- (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]

Section 4.10 Site Plan Requirements

A site plan shall be submitted for review by the Planning and Zoning Commission for all new commercial, townhouse and multi-family residential, industrial, and institutional land uses in any district and for all major additions or expansions of existing uses as defined in Article 2. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 1, 1998. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BYCOURT ORDER ON DECEMBER 3, 2009]

Section 2.1 Definitions

Addition, Major A major addition shall include those additions which will directly affect the function of the site or those areas surrounding the site. Any substantial change of use classification, alteration of on-site parking requirements, potential adverse impacts of off-site storm water drainage, increased demand for public water and sewerage or additions which will cause the rerouting of traffic circulation shall be considered "major additions".

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): Jefferson Reality LLC

Address: 4843 middleway Pike, Kearneysville, WV 25430 / 62 Orchard Dr. Ranson, WV 25438

Phone Number: _____

Location of Property: 4843 middleway Pike
Kearneysville, WV 25430

Lot Size: 1.70 Acres

Deed Book Reference: Deed Book Number 1086 Page Number 28

Tax Map Reference: District Middleway Map 19A Parcel 0014

Zoning District: Rural

Section of Ordinance: 4.3(i), 4.16, 5.6(d)

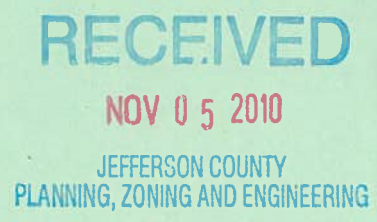
Sketch on a separate 8 1/2" X 11" sheet of paper the shape and location of the lot indicating all roads, rights of ways, and easements. Show the location of the intended construction or land use indicating building setbacks (distance structure is from all boundary lines) size and height. Identify all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

The reason for my request is to reestablish the continued nonconforming use destroyed by fire, pursuant to section 4.3(i). Also, variance for parking setbacks of sections 4.16 and 5.6(d), from required 15' to proposed existing 0'.

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

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



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

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

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

No, the request is to continue the use of a convenience store for the residence/property owners.

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

The property was operating as a convenience store for many years.

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

Any unnecessary hardship will not be self-created and will not alter the essential character of the neighborhood.

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

My intent is to have a better improved convenience store and I believe that there have been ideas of zoning the area commercial due to so many other properties are being used for commercial use.

[Signature]
Signature of Property Owner

Antonio Colandrea
Print Name

11/5/10
Date

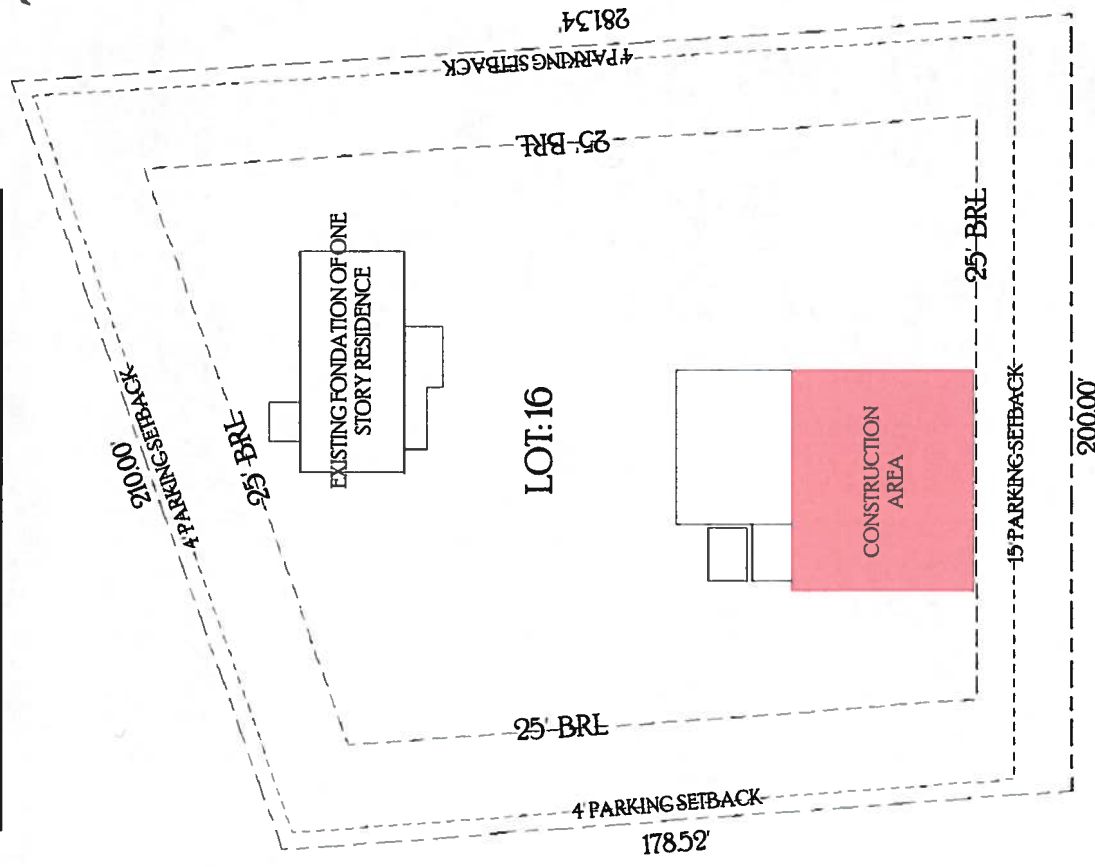
FOR OFFICIAL USE ONLY	
Fees Paid: _____	Date Application / Fees Received: _____
Date of meeting / Public Hearing: _____	
Official Administrative Body: <u>Jefferson County Board of Zoning Appeals</u>	
Posting Requirements: _____	Number of Days Prior to Scheduled Hearing
Advertising Dates: _____	
Official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

Official Signature and Seal: _____	



COUNTRY ROADS STORE

JEFFERSON REALTY LLC
4843 Middleway Pike
Kearneysville, WV 25430



WV PRIMARY ROUTE 51

PLAN VIEW

scale: 1"=50'-0"

ZV10-26

RECEIVED

NOV 05 2010

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

COORDINATION	
<input type="checkbox"/> Structural	<input type="checkbox"/> Plumbing
<input type="checkbox"/> Mechanical	<input checked="" type="checkbox"/> Data
<input type="checkbox"/> Electrical	<input type="checkbox"/> Other

John Kattwinkel - November 5, 2010

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 December 16, 2010

Jefferson Reality, LLC Variance Request (#ZV10-26)

Item #4 Variance Request by property owner, Antonio Colandrea, Jefferson Reality, LLC from Section 4.3(i) to reestablish/continue the operation of a previously existing nonconforming use that was destroyed by fire, and from Sections 4.16 and 5.6(d) to allow a 0' front setback for an existing parking area.

APPLICANT:	Antonio Colandrea, Jefferson Reality, LLC
OWNER :	same
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	4843 Middleway Pike in Kearneysville, West Virginia
LEGAL DESCRIPTION:	District: Middleway; Map: 19A; Parcel: 14
ZONING DISTRICT:	Zoning Map Designation: Rural
SURROUNDING PROPERTIES:	Zoning Map Designation: North: R South: R East: R West: R
LOT AREA:	1.1 acre
PRIOR CASES:	S03-06 ZC99-05 (required BZA approval, 1/20/00) ZC01-02 (required BZA approval, 1/21/01) ZC06-05, approved 7/3/06
VARIANCES:	ZV96-42 (approved 12/19/96) ZV96-43 (approved 12/19/96)
APPROVED ACTIVITY:	Nonconforming commercial use

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 16, 2010

Jefferson Reality, LLC Variance Request (#ZV10-26)

RELEVANT INFORMATION:

The Applicant is seeking the following two variances:

- To reestablish a nonconforming land use destroyed by “a natural or unnatural calamity”, per Section 4.3(i); and
- To allow 0’ setbacks for an existing parking area per Sections 4.16 and 5.6(d).

1. Reestablishment of a Destroyed Nonconforming Use

Country Roads Market was a lawfully created nonconforming use established prior to the 1988 Zoning Ordinance. In recent years, the Planning, Zoning and Engineering Department approved a site plan for a building addition (which was completed), and the Board of Zoning Appeals granted several approvals, including changes to the nonconforming use.

On May 5, 2010, Country Roads Market was destroyed by fire. A new owner is seeking to restore the prior nonconforming use of the property. The land uses taking place at the site at the time of the fire, and which the Applicant seeks to reestablish, are listed as follows:

- a. Convenience store including incidental propane service, and with ABC Off Premises packaged alcohol sales
- b. Restaurant (food served at counter, no table service)
- c. Video lottery machine area with ABC On Premises alcohol service
- d. Office / storage area

Anecdotal evidence suggests that the second floor of the building addition (the building remaining on the site) may have been utilized as a residential use. This use was not approved, and the Applicant is not currently seeking to establish this use.

It should be noted that under normal circumstances (i.e. situations where a nonconforming use has ceased but has not been destroyed), the Zoning Ordinance allows 12 months for the reestablishment of a land use before the use is considered “abandoned.” The Applicant’s request does demonstrate an intent to reestablish a nonconforming land use within this 12-month window. However, the Zoning Ordinance makes a distinction for uses that have been destroyed by fire or other calamity; such uses cannot be reestablished without BZA approval.

2. Setback Reduction for Existing Parking Area

The existing parking area is located adjacent to Rte. 51 and currently has a 0’ front setback from the right-of-way. The applicant seeks to reuse this existing parking area. The proposed variance is not intended to apply to future parking developed for the site.

As a commercial lot of less than 1.5 acres, a 15’ front setback is required for the parking, driveways, and internal access drives, per Sections 4.16 and 5.6(d).

The configuration of the existing parking area is shown in Figure 1 and Figure 2, below:

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 December 16, 2010

Jefferson Reality, LLC Variance Request (#ZV10-26)

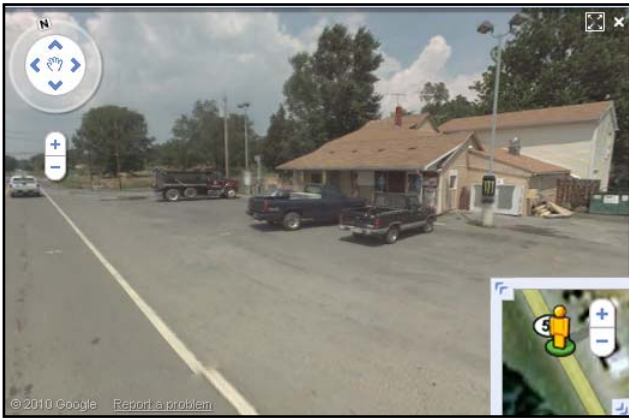


Figure 1 (Above): Photo showing the parking area for Country Roads Market prior to the May, 2010 fire. (Street View Image © 2010 Google)

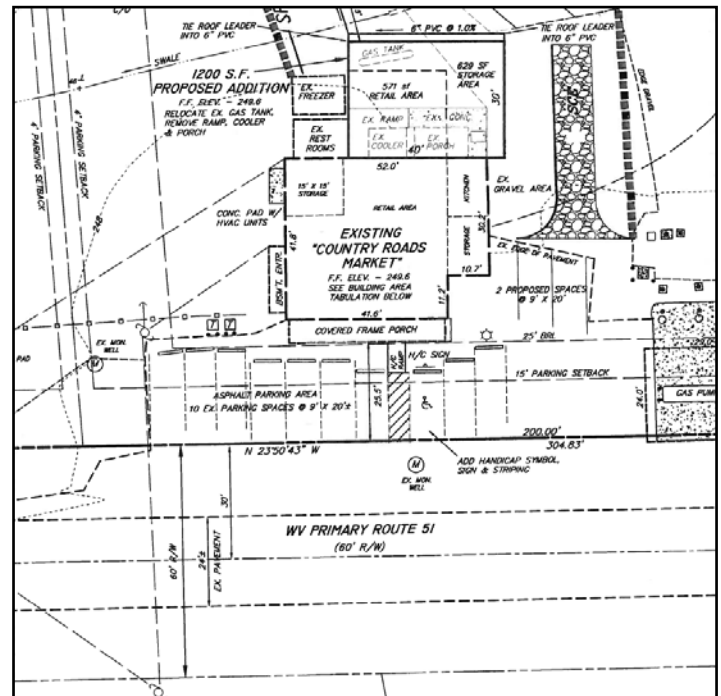


Figure 2 (Right): Section of the approved site plan S03-06, showing the location of existing parking adjacent to the right-of-way.

3. Recent Case History

- 12/19/96 The Board of Zoning Appeals approved a variance for front and side setbacks for a sign.
- 1/20/00 The Board of Zoning Appeals approved a request for a change in nonconforming use for the store to obtain a Class A on premises West Virginia ABC license, allowing the sale of KENO game tickets (ZC99-05). The Board noted that the approval was “contingent upon the area of the store designated for the sale of beer and wine being restricted to the dining/game room area as shown on the sketch . . . submitted by Mr. Virts as part of his request.”
- 1/21/01 The Board of Zoning Appeals approved a change in nonconforming use to separate the convenience store from the dining area in order to comply with a change in State regulations regarding video poker machines. The request included the proposed construction of a room to serve food in conjunction with the site’s WVABC On Premises license (ZC01-02).
- 6/04/02 The Planning, Zoning and Engineering Department issued a letter to the property owner establishing a total buildable square footage amount of 4,841 square feet, based on a calculation of 35% of the existing building area, per Section 4.3 of the Zoning Ordinance.
- 3/23/04 The Planning Commission approved Site plan S03-06, for a 2400 square foot, two story addition to the existing store. The addition was approved for retail and storage uses.
- 7/03/06 The Planning, Zoning and Engineering Department issued a Zoning Certificate permitting the operation of video lottery machines. The certificate references the restrictions imposed by the Board of Zoning Appeals on January 20, 2000 (ZC06-05).
- 5/05/10 The Country Roads Market was destroyed by fire.

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 December 16, 2010

Jefferson Reality, LLC Variance Request (#ZV10-26)

4. Possible Conditions

Should the Board choose to approve these variance requests, possible conditions of approval include:

- Restricting the area in which alcohol could be served to the game room. The BZA imposed a similar condition when it approved alcohol sales at this location in 2000.
- Restricting the buildable area to the square footage approved by the Planning, Zoning and Engineering Department on June 4, 2002 (4,841.75 square feet).
- Clarification that a front setback variance applies only to the existing parking area, and does not apply to any future parking developed for the site

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 4.3 Nonconforming Uses

- (i) A nonconforming use destroyed by a natural or unnatural calamity cannot be rebuilt without approval of the Zoning Board of Appeals upon application by the owner and pursuant to the variance and appeal procedures outlined in Article 8. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE OCTOBER 14, 1999]

Section 4.16 (Setback Chart)

ADJACENT USE \ PROPOSED USE		BUILDING SETBACKS		PARKING & ACCESS DRIVE SETBACKS				
		Any Use Except Industrial	Industrial Use	Residential Zone	Lot with a Residential	Church/School/Institution for Human Care	Commercial	Industrial
FRONT	Barn/Feeding Pen	See District Requirements		N/A	N/A	N/A	N/A	N/A
	Comm'l Lot <= 1.5 ac.	25	25	15	15	15	15	15
	Comm'l Lot > 1.5 ac.	25	25	15	15	15	15	15
	Industrial	50	25	25	25	25	25	25
	Church	25	25	15	15	15	15	15
	Multi-family	25	25	15	15	15	15	15

Section 5.6 Industrial - Commercial District

- (d) Yard Requirements as follows: (These yard requirements are also for an approved commercial or industrial use proposed for any other zone.) [AMENDED BY ACT OF THE COUNTY COMMISSION ON SEPTEMBER 13, 1990]

4. Parking, Driveway and Internal Access Drive Front Setbacks
 - Commercial sites greater than 1.5 acres - 15 feet
 - Commercial sites 1.5 acres and smaller - 15 feet
 - Industrial sites - 25 feet

Staff Report
Jefferson County Board of Zoning Appeals Meeting
December 16, 2010

Jefferson Reality, LLC Variance Request (#ZV10-26)



December 2, 2010



Jefferson County Board of Zoning Appeals
116 East Washington Street
Charles Town, WV 25414

To Whom It May Concern:

Southern States Cooperative, Inc requests that the Jefferson County Board of Zoning Appeals extend the time frame for occupying the building located at 1453 North Mildred Street, Ranson, WV (designated as Charles Town District, Map 7, Parcel 9.2, 8.61 acres located on the west side of Route 115) according to their action taken on February 18, 2010. Reference Minutes, Jefferson County Board of Zoning Appeals, dated February 18, 2010 item noted number (2).

Sincerely,

Ken Tate
Manager
Real Estate & Construction

*Request scheduled for the 12/16/10 mtg. Copies mailed to BZA in 12/10/10 packet -GAA

Jennilee Hartman

From: Zoning Dept [zoning@jeffersoncountywv.org]
Sent: Friday, December 03, 2010 12:43 PM
To: jbrockman; sbarney; jhartman@jeffersoncountywv.org
Subject: Fw: Letter to Board of Appeals - Occupancy Extension
Attachments: Jefferson County Board of Zoning Appeals Extension on Bldg Occupation - Ranson WV 12-2-2010.doc

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

From: "Dawn Ellis" <Dawn.Ellis@SSCOOP.COM>
Sent: 12/3/2010 9:38:43 AM
To: Zoning@jeffersoncountywv.org
Cc: "Ken Tate" <Ken.Tate@SSCOOP.COM>
Subject: Letter to Board of Appeals - Occupancy Extension

*Thank You,
Dawn Ellis
Southern States Coop.
Store Development
Ph: 804-281-1693
Fax: 804-287-1088*

MINUTES
JEFFERSON COUNTY BOARD OF ZONING APPEALS
FEBRUARY 18, 2010

Due to the County Commission's use of the Charles Town Library Conference Room, the Jefferson County Board of Zoning Appeals met on Thursday, February 18, 2010 at 3:00 p.m., in the upper level Conference Room of the Departments of Planning & Zoning. Members present were as follows: Chairman, Jeff Bresee; Vice Chairman, Christy Huddle; Ed Kelly and Jon Brusco. Member, Tiffany Hine; Alternate, Tyler Quynn; and Assistant Prosecuting Attorney, Stephen Groh were absent with notification. Staff members present were Director, Jennifer Brockman; Zoning Administrator, Jennifer Snyder; and Zoning Secretary, Christine Chalmers

Chairman, Jeff Bresee, called the Meeting to order at 3:00 p.m.

1. Approval of Minutes from the January 21, 2010 Meeting.

Chairman Bresee requested a motion for approval of the January Minutes. Christy Huddle motioned to approve the Minutes from the January 21, 2010 meeting, with the following corrections:

Page One, Item #1 - Christy Huddle was nominated for a third term as Vice Chairperson / not a second term.

Page One, last paragraph, first line - name change from William Shiley to William Shirley.

Page Two, Item #5, ninth line up from page bottom – change the word respectably to respectfully.

Page Four, Item #7, ninth line up from page bottom – complete sentence with “is greatly appreciated.”

Ed Kelly also advised that he was the person who nominated Christy Huddle for another term as Vice Chair, not Tiffany Hine, as stated on Page One, Item #1.

Jon Brusco seconded the motion with duly noted corrections, which carried with a unanimous vote.

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

2. Variance Request by DDS, LLP from Section 4.10 – Site Plan Requirements. Project Name: Southern States. Property Location: West of State Route 2 / North of State Route 15; Ranson, West Virginia.
(Charles Town District / Map 7 / Parcel 9.2 / 8.61 acres) **#ZV09-19**

Representing Mr. D.L. Morgan (Southern States), Larry Barkdoll advised that, due to damage caused by a fire in the building that previously housed Southern States in Ranson, Mr. Morgan is renting the current property from Mr. Robert Shawley until remodeling efforts are complete and Southern States can reopen at the original site. The projected time-frame for completion of said renovation is December, 2010.

Ms. Snyder referenced (in part) two email correspondences she received, regarding this matter, as follows:

1. City of Ranson Manager, Paul D. Mills, ICMA-CM

“To date, Southern States has requested and received a demolition permit for their fire damaged building and their consultant has been in contact with Sarah regarding preparation of a site plan for reconstruction in place. Please let me know if I can be of any further help in this matter. I appreciate your efforts here - Dave.”

2. Chief County Engineer, Roger Goodwin, who recommended the following:

“If the Zoning Board waives the site plan requirement because the current site is only a temporary location, then I recommend that the waiver be on the condition that the owner/developer post a bond to ensure that the site is restored to its pre-development condition (i.e., all gravel/impervious areas be removed and the disturbed area be

**JEFFERSON COUNTY BOARD OF ZONING APPEALS
FEBRUARY 18, 2010
PAGE TWO**

stabilized by seeding and mulching. The bond should not be less than \$25,000 and be secured by cash-in-escrow or an irrevocable letter-of-credit, in accordance with the County Commission's bonding policy. If the site plan is waived, a building permit is still required."

In response, Mr. Barkdoll further advised that although significant changes have been made to the site they currently occupy, it is the intent of Mr. Morgan to return the property to its former condition when Southern States relocates to Ranson. There was no public comment.

The following Agenda Items will be addressed upon return from Deliberations:

- 3. Monthly Address presented by Director, Jennifer Brockman, and Status Report by Zoning Administrator, Jennifer Snyder.**
- 4. Legal Update.**
- 5. Vote on written decisions from prior Board of Zoning Appeal Meetings.**
- 6. Correspondence.**

Christy Huddle motioned to go into Deliberative Session at 3:10 p.m. Ed Kelly seconded the motion, which carried with a unanimous vote. Christy Huddle motioned to return from Deliberative Session; Ed Kelly seconded the motion. The meeting commenced again at 3:16 p.m.

- 2. Variance Request by DDS, LLP from Section 4.10 – Site Plan Requirements. Project Name: Southern States. #ZV09-19**

Because Southern State's current location is temporary, Jon Brusco motioned to grant the above-referenced Variance from Site Plan Requirements. He further stated that the approval be conditioned upon the owner/developer posting a \$25,000 Bond to ensure that the site is restored to its pre-development condition - i.e., all gravel/impervious areas be removed and the disturbed area be stabilized by seeding and mulching. Said Bond, to be posted no later than the last business day of March 2010, must be secured in accordance with the County Commission's bonding policy, by either cash-in-escrow or an irrevocable letter-of-credit. As an additional requirement, Mr. Brusco stipulated that the Lease commitment, for use of the current property as a temporary location, shall not exceed an expiration date of December 31, 2010. Christy Huddle seconded the motion which carried with a unanimous vote.

- 3. Monthly Address presented by Director, Jennifer Brockman, and Status Report by Zoning Administrator, Jennifer Snyder.**

Director, Jennifer Brockman advised that she, the County Planner, Seth Rivard; and Zoning Administrator, Jennifer Snyder, continue to direct their attention to Amendments to the Subdivision Regulations, and also Fee Schedule revisions, which are based on project time estimates. Said revisions will be submitted to the Planning Commission for review at their next meeting. Additionally, per County Commission prerequisite, the upcoming Annual Budget must reflect a 5% reduction, which Ms. Brockman is currently addressing, as well.

Further discussion relating to the idea of a Countywide Storm Water Management Plan (with expressed concerns regarding the protection of the Elks Run watershed) transpired among the group, during which time Ms. Brockman offered that there is not yet a coordinated effort within the County to institute such a Plan.

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 December 16, 2010

Southern States Request (#ZV09-19)

Item #5 Variance Request by Southern States Cooperative to extend the time frame to temporarily occupy the building located at 1453 North Mildred Street in Ranson, West Virginia as conditioned by the Board of Zoning Appeals at the February 18, 2010 meeting.

APPLICANT:	Southern States Cooperative, Inc.
OWNER :	DDS, LLP
DEVELOPER:	n/a
SURVEYOR/ENGINEER:	n/a
PROPERTY LOCATION:	1453 North Mildred Street in Ranson, West Virginia
LEGAL DESCRIPTION:	District: Charles Town; Map: 7; Parcel: 9.2
ZONING DISTRICT:	Zoning Map Designation: Residential-Light Industrial-Commercial
SURROUNDING PROPERTIES:	Zoning Map Designation: <i>North:</i> City of Ranson <i>East:</i> Industrial-Commercial <i>South:</i> Res-Light Industrial-Comm <i>West:</i> R and City of Ranson
LOT AREA:	8.61 acres
PRIOR CASES:	n/a
VARIANCE(S):	ZV09-19
APPROVED ACTIVITY:	Commercial

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December 16, 2010

Southern States Request (#ZV09-19)

RELEVANT INFORMATION:

The Applicant seeks to extend the period of time for which Southern States is permitted to occupy the property located at 1453 N. Mildred Street.

In August, 2008, a fire damaged the Southern States Cooperative agricultural supply store at 222 N. Mildred St., located in the City of Ranson. As a result of the fire, Southern States began to occupy the building located at 1453 N. Mildred St., within Jefferson County jurisdiction.

1. Recent Cases

On February 18, 2010, Applicants for Southern States sought a Board of Zoning Appeals variance from Section 4.10 of the Zoning Ordinance (site plan requirements), in order to occupy 1453 N. Mildred St. temporarily until repairs to the original site were completed.

The Board of Zoning Appeals approved the variance request, with conditions, as described in the minutes from the February 18, 2010 meeting:

Jon Brusco motioned to grant the above-referenced Variance from Site Plan Requirements. He further stated that the approval be conditioned upon the owner/ developer posting a \$25,000 Bond to ensure that the site is restored to its pre-development condition - i.e., all gravel/impervious areas be removed and the disturbed area be stabilized by seeding and mulching. Said Bond, to be posted no later than the last business day of March 2010, must be secured in accordance with the County Commission's bonding policy, by either cash-in-escrow or an irrevocable letter-of-credit. As an additional requirement, Mr. Brusco stipulated that the Lease commitment, for use of the current property as a temporary location, shall not exceed an expiration date of December 31, 2010. Christy Huddle seconded the motion which carried with a unanimous vote.

Per the Applicant, it now appears that the construction to the facility at 222 N. Mildred St. will not be complete in sufficient time to meet the December 31st deadline established by the Board's action. For this reason, the Applicant is seeking to extend the permitted time period for occupancy of the property located at 1453 N. Mildred Street in the absence of a site plan.

2. Engineering Department Response to Extension Request

The Engineering Department has evaluated the extension request based on the two conditions established by the Board of Zoning Appeals in its February 18, 2010 approval:

- A \$25,000 site restoration bond be posted in accordance with the County's Bond Policy
- The lease commitment for the use of the property as a temporary location not exceed an expiration date past December 31, 2010.

In a December 8, 2010 email to Planning and Zoning Department staff (attached), the Engineering Department has confirmed that "the site restoration bond is in place and will remain in place until the site is restored to its pre-development condition. This includes, but is not limited to the removal of all

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gravel/impervious areas and that said areas be stabilized by seeding and mulching. The Engineering Department will not recommend a release of the construction bond to the County Commission until the site is stabilized.”

Further, the Engineering Department recommends that Southern States Cooperative “be allowed to remain in the temporary location until they can take occupancy of the new location in Ranson. This is subject to the site being returned to the pre-development condition. The Board may want to consider a date to have all of the above accomplished by June 30, 2011 to avoid them having to come back to ask for additional time due to weather conditions or any other unforeseen circumstance.”

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 4.10 Site Plan Requirements

A site plan shall be submitted for review by the Planning and Zoning Commission for all new commercial, townhouse and multi-family residential, industrial, and institutional land uses in any district and for all major additions or expansions of existing uses as defined in Article 2. [AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE JULY 1, 1998. PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BYCOURT ORDER ON DECEMBER 3, 2009]

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Temporary Site (1453 N. Mildred St.)



Permanent Site (222 N. Mildred St.)



Steve Barney

From: Rebecca Burns [bburns@jeffersoncountywv.org]
Sent: Wednesday, December 08, 2010 1:25 PM
To: 'Steve Barney'; 'Hartman, Jennilee'; 'Jennifer Brockman'
Cc: 'Engineering Department'; 'Roger Goodwin'; 'Stephen Groh'
Subject: Southern States Cooperative

Follow Up Flag: Follow up
Flag Status: Flagged

Steve and Jennilee,

This is a follow-up to our meeting regarding Southern States Cooperative located at 1453 North Mildred Street designated as Charles Town District, Map 7, Parcel 9.2 formerly Shawley's True Value. As you know the Board of Zoning Appeals at their meeting on February 18, 2010 granted a waiver from site plan requirements contingent upon the following:

1. A \$25,000.00 site restoration bond be posted in accordance with the County's Bond Policy.
2. The lease commitment for the use of the property as a temporary location not exceed an expiration date past December 31, 2010.

The site restoration bond is in place and will remain in place until the site is restored to its pre-development condition. This includes, but is not limited to the removal of all gravel/impervious areas and that said areas be stabilized by seeding and mulching. The Engineering Department will not recommend a release of the construction bond to the County Commission until the site is stabilized, therefore, we recommend Southern States Cooperative be allowed to remain in the temporary location until they can take occupancy of the new location in Ranson. This is subject to the site being returned to the pre-development condition. The Board may want to consider a date to have all of the above accomplished by June 30, 2011 to avoid them having to come back to ask for additional time due to weather conditions or any other unforeseen circumstance.

If you or the Board have any additional questions please do not hesitate to let us know.

Becky

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