



Jefferson County
Board of Zoning Appeals
Thursday, September 24, 2015, 2:00 p.m.

Members
Tyler Quynn, Chair
Jeffrey Bannon, Vice Chair
Christy Huddle
Matt Knott
Ted Schiltz
Jeff Bresee, Alternate

The Jefferson County Board of Zoning Appeals will meet in the Charles Town Library Conference Room located at 200 East Washington Street, at the side entrance on Samuel Street, in Charles Town, West Virginia.

Unless otherwise noted, all requests are pursuant to the Zoning & Land Development Ordinance.

1. Approval of the minutes from the August 27, 2015 meeting.
2. Swearing in of members of the public intending to provide testimony.
3. Variance request from Section 9.6C to allow an accessory structure in the required front yard; and, Section 9.7 to reduce the front setback from 25' to 10' to construct a 25' x 28' two car garage. Owner: Jeffrey Schneider. Location: Riverview Subdivision, 277 Country Rd., Harpers Ferry, WV. District: 04; Map: 26; Parcel: 8; Zone: R; Size: 1.732 ac; File: ZV15-21.
4. Variance from Section 9.5B to permit a fence taller than 6' to remain 6' from the property line. Location: Shannondale, Section 14J, Lot 36, 294 Red Bird Ln, Harpers Ferry, WV. District: 04; Map: 23F; Parcel: 36; Zone: R; Size: 0.5011 ac; File: ZV15-22.
5. Director's Report.
 - a) Monthly Zoning Certificate Activity Report
6. Legal Update.
 - a) William Neufeld Pending Litigation CA #14-C-394
 - b) Shenandoah Air Conditioning & Heating Inc. Pending Litigation CA #15-P-73
 - c) Review and Disposition of Citizens Complaints in relation to the All Good Festival (possible executive session)
 - d) Whistling Farms Bed & Breakfast Litigation CA # 15-C-209 (possible executive session)
7. Discussion with possible deliberative session and signing of draft findings/decisions.

Meeting Date: July 16, 2015 (*see agenda for full item description*)

 - a) Variance from Section 5.7B.1 to reduce the front setback from 40' to 14' for a constructed 24' x 32' garage and from Section 9.6C to allow an accessory structure in the required front yard. Owner: Karen Valentine.
 - b) Variance from Section 4.10A to waive the site plan requirement; and from Appendix B to reduce the front parking setback from 15' to 0', to allow the construction of a 25' x 120' parking pad to be used as a drop off/pick up area for families awaiting the school bus. Owner: Locust Hill HOA Inc.
 - c) Discussion & action regarding the Surety Bond Agreement for the All Good Music Festival.

Draft Minutes
Jefferson County Zoning Board of Appeals

1 Meeting Date: August 27, 2015

2 Meeting Location: Charles Town Library Conference Room

3 200 East Washington Street, West Virginia

4

5 Board members present: Tyler Quynn, Chair; Jeffrey Bannon, Vice Chair, Christy Huddle,
6 Matt Knott and Jeff Bresee, Alternate

7 Board members absent: Ted Schiltz (with notification)

8 Staff members present: Jennifer M. Brockman, Director of Planning and Zoning/Acting
9 Zoning Administrator; David Simon, County Planner; Lydia Lehman,
10 Assistant Prosecuting Attorney; Jennilee Hartman, Zoning Clerk

11

12 All requests are pursuant to the Jefferson County Zoning and Land Development Ordinance.

13

14 Mr. Bresee filled Mr. Schiltz's vacancy as the Alternate Board Member.

15

16 Mr. Bannon moved to begin the meeting at 2:00 p.m. Mr. Quynn called for a vote, which carried
17 unanimously.

18

19 Mr. Quynn explained how the meeting would be conducted to the public.

20

21 1) Approval of the minutes from the July 16, 2015 meeting.

22

23 Mr. Quynn moved to approve the minutes with corrections. The board members requested the
24 following corrections:

25

26 a) Page 1, line 45, change *recued* to *recused*.

27 b) Page 2, line 41, remove first comma; and, after *at* add *the*.

28 c) Page 3, line 28, after *agreed* add *to*.

29 d) Page 4, line 34, change *resident's* to *residents'*.

30 e) Page 5, line 42, add the sentence *Mr. Quynn called for a vote, which carried unanimously.*

31 f) Page 6, line 4, after *at* add *the*.

32 g) Page 5, line 6, change *plat* to *plant*.

33 h) Page 5, line 7, after *compatible* add *with the neighborhood*.

34

35 Mr. Quynn called for a vote, which carried four (4) in support and one (1) abstention (Ms. Huddle,
36 as she was not in attendance).

37

38 2) Swearing in of members of the public intending to provide testimony.

39

40 Ms. Hartman swore in members of the public who indicated they would be providing testimony.

41

42 3) Variance from Section 4.10A to waive the requirement of a site plan for a 40' x 35' (1,400
43 sq. ft.) addition to an existing church to be used for children's ministries. Owner: CrossPoint
44 Church of God. Location: 3066 South Childs Rd, Kearneysville, WV. District: 07; Map: 21;
45 Parcel: 5.14; Zone: Rural; Size: 2.64 ac; File: ZV15-18.

46

1 Michael Shepp with Alleghany Surveys was present to address the Board. Mr. Simon briefly
2 presented his staff report to the Board. Mr. Shepp explained the purpose of the request.
3 Mr. Quynn opened the public hearing. There was no public comment. Mr. Quynn closed the
4 public hearing. The Board determined a deliberative session was not necessary. Ms. Huddle
5 moved to approve the variance, with the following conditions:

- 6 1. The variance to waive the requirement of a site plan for a 40' x 35' (1,400 sq. ft.)
7 addition to an existing church is limited to the proposed 1,400 square foot addition;
- 8 2. The applicant shall continue to retain as much of the existing treed buffer as possible
9 and replace as much of the impacted screened buffer as possible.
- 10 3. Should the applicant wish to retain the existing shed currently located in the proposed
11 building area, a building permit must be obtained to relocate the accessory structure
12 prior to its removal.

13 Mr. Quynn called for a vote, which carried unanimously.
14

- 15 4) Variance from Section 5.7B.1 to reduce the front setback from 40' to 14' for a constructed
16 24' x 32' garage; and, from Section 9.6C to allow an accessory structure in the required
17 front yard. Owner: Karen Valentine. Location: 384 Potomac Ridge Ln, Shepherdstown WV.
18 District: 09; Map: 10; Parcel: 9.17; Zone: Rural. Size: 3 ac; File: ZV15-19.
19

20 Karen Valentine, owner, was present to address the Board. Mr. Simon briefly presented his
21 staff report to the Board. Ms. Valentine explained the purpose of the request stating she had
22 hired Trees 101, an independent tree consulting service, in order to preserve as many trees as
23 possible. Mr. Quynn opened the public hearing. There was no public comment. Mr. Quynn
24 closed the public hearing. The Board determined a deliberative session was not necessary.
25 Mr. Bannon moved to approve the variance, with the following conditions:

- 26 1. The variance is limited to the proposed 24' x 32' garage.
- 27 2. Per the conditions of approval for the Potomac Ridge Subdivision, the applicant
28 shall retain as much of the existing tree buffer as possible.
- 29 3. The applicant is bound by her testimony.

30 Mr. Quynn called for a vote, which carried unanimously.
31

- 32 5) Variance from Section 4.10A to waive the site plan requirement; and, from Appendix B to reduce
33 the front parking setback from 15' to 0', to allow the construction of a 25' x 120' parking pad to
34 be used as a drop off/pick up area for families awaiting the school bus. Owner: Locust Hill HOA
35 Inc. Location: Locust Hill Subdivision Common Area (Parcel A), Oakmont Dr., Charles Town
36 WV. District: 02; Map: 13A-4; Parcel: 182; Zone: Rural; Size: .423 ac; File: ZV15-20.
37

38 Michael Boyle, President of the HOA, and Renee Hall, Community Manager from Clagett
39 Management, were present to address the Board. Mr. Simon briefly presented his staff report to
40 the Board. Ms. Hall and Mr. Boyle explained to the Board the purpose of the request stating that
41 the proposed pad site had been used as a parking area for the neighborhood families for a number
42 of years and that over time the area had begun to degrade. The HOA was proposing to pave the
43 parking pad to prevent further damage to the common area.

1 The Board determined a deliberative session was not necessary. Mr. Bresee moved to approve
2 the variance, with the following conditions:

- 3 a) Install a Children Crossing sign.
- 4 b) Require vehicles parking in these spaces to back into the spaces to provide better
5 visibility to the bus shelter and the traveling traffic on the road.
- 6 c) Require striping of the proposed spaces that meet current parking standards (9' x 20').
- 7 d) Implement a community landscaping plan to reduce the environmental impact.

8 Mr. Quynn called for a vote, which carried unanimously. Mr. Bresee noted for the record that there
9 were no members of the public in attendance to require opening the public hearing on this item.

- 10
- 11 6) Discussion and action regarding the Surety Bond Agreement for the recent All Good Music
12 Festival and Camp Out. Documentation from the Principal shall be provided to the Department
13 of Zoning prior to September 1, 2015 for presentation to the County Commission on September
14 3, 2015 to determine whether the County has incurred any unexpected costs pursuant to the Bond
15 Agreement. The Board of Zoning Appeals may take action to conditionally terminate this Bond
16 only upon confirmation from the County Commission that the Principal has well and truly
17 performed and fulfilled the obligations required under the approved plans and permits.

18

19 The Board discussed this item with Ms. Brockman and Ms. Lehman and expressed that they
20 had intended the purpose of the bond to be for unexpected costs that were not known at the
21 time the Seasonal Use Permit was approved. Ms. Lehman stated she would meet with the
22 Health Department to review the invoices that had been submitted. Mr. Knott moved to
23 inform the County Commission that the All Good Music Festival [and Camp Out] has met
24 the conditions of the bonding agreement and that there are no outstanding unexpected costs
25 that the Board is aware of related to the conditions of the approval for the Seasonal Use
26 Permit (ZV14-15). Mr. Bannon seconded the motion, which carried four (4) in support and
27 one (1) recusal (Mr. Bresee had not participated in discussions related to the Festival).

28

29 7) Director's Report.

- 30 a) Monthly Zoning Certificate Activity Report. No action taken.
- 31 b) Ms. Brockman updated the Board on the following items:
 - 32 i) A public hearing for the Campground text amendments was scheduled for 09/08/15.
 - 33 ii) The Planning Commission will hear a presentation and review proposed redlined
34 edits to the Subdivision Regulations regarding the Major and Minor Subdivision
35 and Site Plan Processes and hold a work session on the draft Mass Events text
36 amendment at their 09/22/15 meeting.
 - 37 iii) The County Commission requested Staff follow up with the Comprehensive Plan's
38 recommendation to modify the LESA/Conditional Use and Cluster Subdivision
39 Provisions. Staff to coordinate with Legal to determine the notice requirements in
40 state law and work with the County Commission to determine the next steps.
 - 41 iv) Potential for a proposed text amendment regarding Historic Resource Demolition
42 and Adaptive Reuse
 - 43 v) A text amendment to Article 12 Zoning Ordinance will be heard at the 09/22/15
44 Planning Commission meeting.

1 8) Legal Update.

- 2 a) William Neufeld Pending Litigation CA #14-C-394. Ms. Lehman stated they were
3 awaiting Judge Sander's decision.
- 4 b) Shenandoah Air Conditioning & Heating, Inc. Pending Litigation CA #15-P-73.
5 Ms. Lehman stated they were awaiting the Judge's response.
- 6 c) Review and Disposition of Citizens Complaints in relation to the All Good Festival
7 (possible executive session). Mr. Quynn moved to postpone this item until the next
8 meeting. Mr. Quynn called for a vote, which carried unanimously.
9

10 9) Signing of Findings of Fact and Conclusions of Law/written decisions from prior Board of
11 Zoning Appeals meetings.

12 Meeting Date: July 16, 2015 (*see agenda for full item description*).

- 13 a) Acceptance of the Compatibility Assessment Meeting Staff Report for the Whistling
14 Wind Farm Bed & Breakfast Conditional Use Permit Application. Owner: Laura &
15 David Humphreys. File: (CP15-02).
- 16 b) Discussion and action on the Whistling Wind Farm Bed & Breakfast Conditional Use
17 Permit, a proposed 3-unit bed & breakfast with no changes to the existing structure.
18 File: CP15-02
- 19 c) Variance from Sec. 4.11A.1 and App. B to waive the all landscaping/buffers that are
20 required for an addition and associated parking. Owner: Uvilla United Methodist Church.
21 File: ZV15-15.
- 22 d) Variance from Sec. 5.4B to reduce the side setback from 12' to 3' and the rear setback
23 from 20' to 10' for a 12' x 20' accessory structure. Owner: Bryan & Kelli LaBombard.
24 File: ZV15-16.
- 25 e) Request by The Middleway Conservancy Association Inc. for a Seasonal Use Permit for
26 'The Battle of Smithfield Anniversary Re-enactment' to operate from 08/28-30/2015.
27 File: ZV15-17.

28 The Board agreed to review the Findings Ms. Lehman provided to them and would contact
29 her by August 31, 2015 should they have any proposed edits. Ms. Huddle stated she would
30 not be offering any comments on the Findings as she was not present at the July meeting.
31

32 Ms. Huddle moved to adjourn the meeting at 3:24 p.m. Mr. Quynn called for a vote, which carried
33 unanimously.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 24, 2015

Jeffrey Schneider Variance Request (#ZV15-21)

RELEVANT INFORMATION:

1. Overview of Request

Variance request from Section 9.7 to reduce the front setback from 25' to 10' to construct a 25' x 28' garage and from Section 9.6C to allow an accessory structure in the required front yard. This request is to reduce the front setbacks to allow a garage to be constructed closer to the street than existing setback requirements allow, while also allowing for an accessory structure to be sited in the required front yard, which is not permitted under the Jefferson County Zoning Ordinance.

2. Previous Case History

The Riverside Subdivision, Section 3, predates the County's Subdivision Regulations and Zoning Ordinance.

3. Applicant's Justification of Request

In the attached application submitted for the variance request the applicant provided a response to the following four criteria for a variance:

- a) *Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents.*
- 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.*
- d) *Will allow the intent of the Zoning and Land Development Ordinance to be observed and substantial justice done.*

4. Staff Evaluation of Request

a. Source and purpose of ordinance requirements

The purpose of setback requirements is to reduce the impact that a land use might have on adjacent properties, to allow adequate space between a structure and a property line so that maintenance of the structure is feasible, to maintain adequate separation between structures for fire prevention purposes, and to allow room for utility easements. Shorter setbacks are typically permitted for small accessory structures, particularly along the side and rear property lines, because their reduced size equates to less of a visual impact on neighboring properties; however, such reductions are not typically permitted in required front yard setbacks.

A key purpose of front yard setback requirements is to ensure that any future right-of-way expansion or future utility placement will not be obstructed by structures built too close to a road, as well as to ensure that sight visibility is not impaired for drivers along the right-of-way. Right-of-way expansion is not an applicable concern in this subdivision because of where the houses are situated between a hill and the floodplain, as the development abuts the Shenandoah River.

The purpose of Section 9.6C that prohibits accessory structures in front yards is to ensure a harmonious appearance amongst the residential communities in the County, as the front yard is often smaller than the backyard and accessory structures could potentially occupy too much of the front yard while creating an eyesore for adjoining property owners.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
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Jeffrey Schneider Variance Request (#ZV15-21)

b. Unique characteristics of property

The applicant's property is located in a very remote part of the county, south of Shannondale off Mission Road. Its location is among the southernmost in Jefferson County, within proximity to the West Virginia-Virginia State line. The property contains a compact residential structure on an unimproved gravel road, near where its Country Road address leads to a street stub. The property line extends from the street down the hill to the edge of the Shenandoah River. Out of the way and secluded, this property is sited on a concrete block foundation built into a sloping hillside. There is currently an improved dirt and gravel pad on which the applicants park their vehicles. Behind the parking pad, the land slopes down to a rudimentary retaining wall constructed of railroad ties.



Due to the subdivision's close proximity to the Shenandoah River, the development necessitates the observance of floodplain building restrictions to ensure that any development or land use is outside the floodplain and/or is constructed in accordance with Jefferson County Floodplain Ordinance. The property is in close proximity to the river's floodplain, which must be noted and recognized when reviewing any development requests.



Staff Report
Jefferson County Board of Zoning Appeals Meeting
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Jeffrey Schneider Variance Request (#ZV15-21)

c. Character of area

The property is located at the far southern end of Mission Road and shares similarities with the other residential areas of Shannondale and “The Mountain” on the Eastern banks of the Shenandoah River. With this recognition, the area is one of the more secluded communities in Jefferson County. Residents live in this area seeking seclusion, verdant nature, and proximity to the Shenandoah River. The area is wooded and the applicant’s property itself has a fairly dense wooded boundary around the area of the property in the rear, closer to the river. There are a few developed properties in this subdivision and many of the properties on the applicant’s side of Country Road have river frontage access.



d. Impact on adjacent properties

The applicant’s requested variance to allow for a garage in the required front yard and to reduce the front setback, and should have a minimal impact on neighboring properties. All other setbacks are being met by the applicant’s property. The location of the garage and the reduced setback should have little if any impact on property adjoiners.



Dead end road
Serves two
additional parcels

Staff Report
Jefferson County Board of Zoning Appeals Meeting
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Jeffrey Schneider Variance Request (#ZV15-21)

e. Feasibility of complying with the ordinance by other means

To comply with the ordinance by other means would create hardship upon the applicant because the rear yard has limited buildable capacity, as it is on a sloping hill that leads to the floodplain of the Shenandoah River. The applicant would therefore be unable to construct a garage to house the applicant's vehicle if required to meet the setbacks. The applicant would be able to construct a garage, if the site of construction was closer to Country Road, which is why the variance request includes a request to approve a reduction in the front setback.

5. Conditions of Approval

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

1. The front yard setback variance is limited to the proposed 25' x 28' garage.
2. The variance to allow construction in the required front yard is limited to the approved location of the proposed garage.

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 9.6 Accessory Structures

Accessory structures, defined by Section 2.2, shall be permitted in all districts where single-family and two-family dwelling units are permitted. The provisions for accessory structures are as follows.

- c) No accessory building shall be erected within the required front yard.

Section 9.7 Other Exceptions³

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

Setbacks are as follows in subdivisions for which no setback was stipulated previously by the Jefferson County Planning Commission as a part of the subdivision process:²³

Rural Agricultural and Industrial Commercial

Single Family Residences

Over 2 acres --	40' front,	15' side	and	50' rear
40,000 sq. ft. to 2 acres --	25' front,	12' side	and	12' rear



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, P.O. Box 338

Charles Town, WV 25414

File Number: #ZV15-21
Staff Initials: CFC
Fees Paid (\$100 or \$150): \$100.00

www.jeffersoncountywv.org/government/departments/planning-and-zoning-department.html

Email: planningdepartment@jeffersoncountywv.org
zoning@jeffersoncountywv.org

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

Zoning Variance Request

Variances from the Zoning and Land Development Ordinance must comply with Article 8A-7-11 of the WV State Code. A variance is a deviation from the minimum standards of the ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district, nor shall it involve changing the zoning classification of a parcel of land.

Property Owner Information

Name: Jeffrey R. Schneider
Mailing Address: 277 Country Road Harpers Ferry WV 25425
Phone Number: (571) 247-1762
Email: JeffreyR.Schneider@yahoo.com

Applicant Contact Information

Name: Same as above
Mailing Address:
Phone Number:
Email:

Applicant Registered Engineer(s), Surveyor(s), or Consultant(s)

Name: Alicia McCormick
Mailing Address: Entler Hotel Shepardstown WV 25443
Phone Number: (304) 876-1661
Email: AliciaFMccormick@gmail.com

Physical Property Details

Physical Address: 277 Country Road
City: Harpers Ferry State: WV Zip Code: 25425
Tax District: Kable town Map No: Riverside 2600 Parcel No: Lot 307 8001
Parcel Size: 1.732 acres Deed Book: 275 Page No: 412

Zoning District (please check one)

Grid of zoning districts with checkboxes: Residential Growth (RG), Industrial Commercial (IC), Rural (R), Residential-Light Industrial-Commercial (R-LI-C), Village (V), Neighborhood Commercial (NC), General Commercial (GC), Highway Commercial (HC), Light Industrial (LI), Major Industrial (MI), Planned Neighborhood Development (PND), Office/Commercial Mixed-Use (OC). Rural (R) is checked.

RECEIVED

AUG 11 2015

JEFFERSON COUNTY PLANNING, ZONING & ENGINEERING

Place Received Date Stamp Here

On a separate sheet of paper, provide a sketch showing the shape and location of the lot indicating all roads, rights of way, and easements. Show the location of the intended construction or land use indicating building setbacks (i.e. the distance of the structure from all property lines), size, and height. Identify all existing buildings, structures, or land uses on the property. The sketch should show the full extent of the property. Sign and date the sketch.

Is there a Code Enforcement action pending in relation to this property? Yes No

Reference the section of the Zoning Ordinance pertaining to this request: 9.6C + 9.7

Briefly describe the nature of the variance request:

Due to the lay of the land and existing septic system location, the garage will need to be built approximately 15 feet from the gravel road. I plan on building 10 feet from gravel Road but not sure where the Road esement starts, I'm asking for a varience to 10' just to be safe. Thanks Jeff

If this request is for a setback variance, please check one of the following:

Front Setback Side Setback Rear Setback Reduction From 25' to 10' feet

Please explain why granting the variance will NOT adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents:

The variance does not have any affect toward any of the above. I have spoken with the neighbors on either side of my property and they have provided approval for my new garage to exceed both front and side setbacks.

In what way does this request arise 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?

Lay of the land All homes on Country Road are close to the road due to flood plain code. With only being able to build closer to the road because as to not impede on the septic tank.

How will granting this variance eliminate an unnecessary hardship and permit a reasonable use of the land?

It will allow for me to place the garage on the only logical location on my property

How will granting this variance allow the intent of the Zoning Ordinance to be observed and substantial justice to be done?

Based on my extremely rural location building the garage where requested does not impact in any way the intent of the zoning ordinance.

Original signature is required. If additional signatures are necessary, please attach a separate piece of paper.

By signing this application, I give permission for the Departments of Planning and Zoning staff to walk onto the subject property, if necessary, in order to take photos for the Board of Zoning Appeals staff reports. The information given is correct to the best of my knowledge.

Jeffrey R. Schneider 7 AUG 2015
Signature of Property Owner Date

Signature of Property Owner Date

Notification Requirements (to be completed by staff)

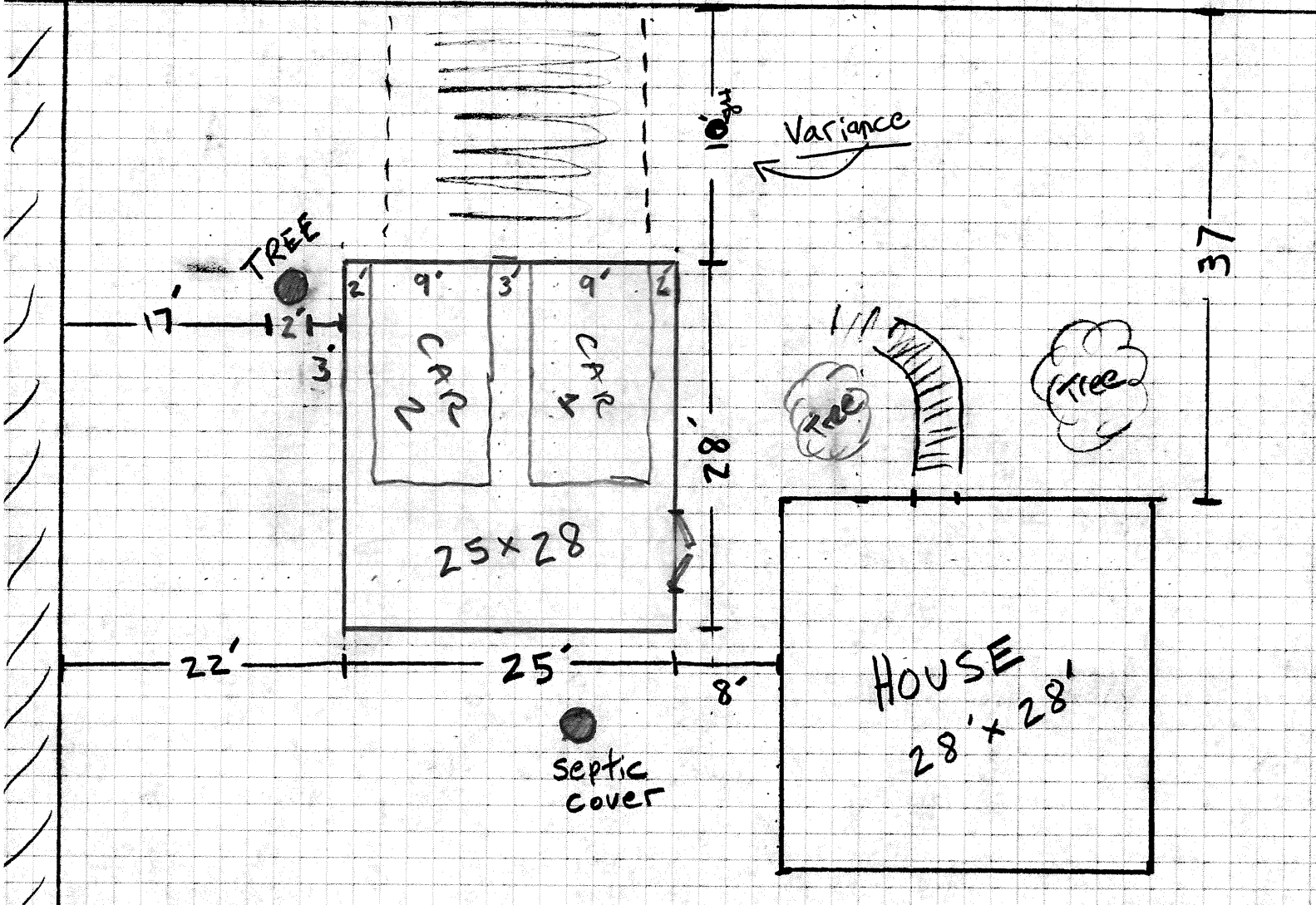
Notice of a public hearing for an appeal shall be advertised in a newspaper having general circulation in the County at least 15 days before the hearing. The subject property shall be posted conspicuously by a zoning notice no less than 28" x 22" in size, at least 15 days before the hearing (pursuant to the Zoning and Land Development Ordinance Section 3.4A(3)(b).

THURSDAY
SEPTEMBER 24 2015 @ 2:00PM
Date of Public Hearing

WEDNESDAY
SEPTEMBER 9, 2015
Advertising Date

WEDNESDAY, SEPTEMBER 9, 2015
Placard Posting Date

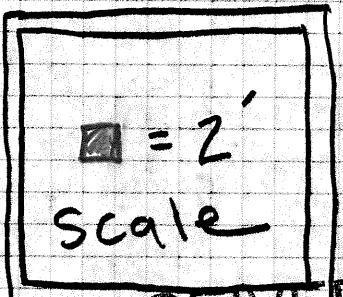
County Road - gravel



LOT 306

LOT 307

277 country Rd
Riverside



RECEIVED

AUG 11 2015

Jeffrey R. Schmeck

7 August 2015

#ZV15-21

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 24, 2015

Loretta Holdaway Variance Request (#ZV15-22)

RELEVANT INFORMATION:

1. Overview of Request

Variance request from Section 9.5B to permit a fence taller than 6' to remain 6" from the property line. The applicant erected a fence along the southwestern property line. The front portion of the fence measures 6' in height; however, the parcel's topography begins to slope downward away from the street and therefore the fence stair steps along the property line. The applicant constructed the fence in such a way that the top-most portion of the fence remains level, but as the fence stair steps down the gentle slope, the height of the fence post begins to exceed the "by right" limit of six feet for a fence.



2. Previous Case History

This property has no previous case history.

3. Applicant's Justification of Request

In the attached application submitted for the variance request the applicant provided a response to the following four criteria for a variance:

- a) *Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents.*
- 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.*
- d) *Will allow the intent of the Zoning and Land Development Ordinance to be observed and substantial justice done.*

Staff Report
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Loretta Holdaway Variance Request (#ZV15-22)

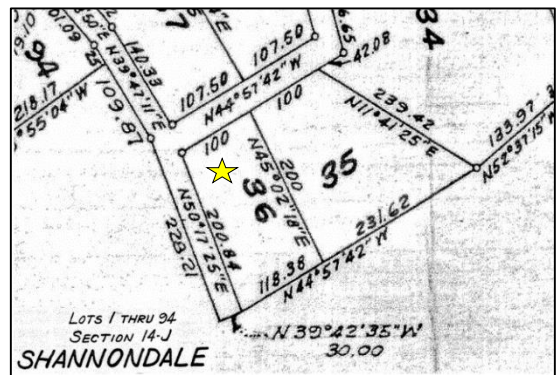
4. Staff Evaluation of Request

a. Source and purpose of ordinance requirements

The purpose of yard/setback requirements is to reduce the impact that a land use might have on adjacent properties, to allow adequate space between a structure and a property line so that maintenance of the structure is feasible, to maintain adequate separation between structures for fire prevention purposes, and to allow room for utility easements. Shorter setbacks are typically permitted for small accessory structures, particularly along the side and rear property lines, because their reduced size equates to less of a visual impact on neighboring properties; however, such reductions are not typically permitted in required front yard setbacks. Fences which are 6 feet and shorter in height are permitted to occur without meeting setbacks.

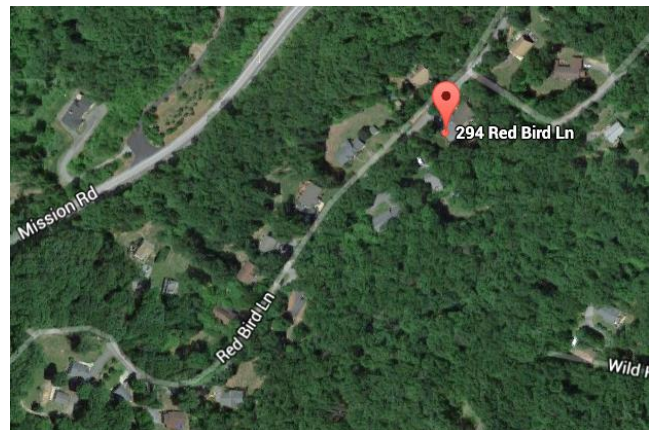
b. Unique characteristics of property

The subject property is located in an established subdivision that predates both the zoning and subdivision ordinances and is therefore considered nonconforming. The lot is platted as approximately 200 feet wide and ranging from 100 to 118 feet in depth on its sides. The dwelling unit is built into a gentle sloping hillside, in which there is a garage in the lower level of the structure. The property is landscaped with an eye for detail and harmonious interplay of a diverse quantity of residential shrubs and plantings. The rear of the property has native vegetation and slopes away from the property further down the hillside, away from the street.



c. Character of area

The property is located in a rural area of the County in the Shannondale community in the Kabletown district. The residents of Shannondale take pride in being on the secluded side of the Blue Ridge Mountains. The historic residential development patterns that arose as “The Mountain,” as locals call it, developed in a piecemeal fashion as individuals purchased lots and developed them at their own pace. As a result, there is limited uniformity in regards to the design, pattern, and construction of residences, with a fair number of suburban-style home aesthetic designs mixed amongst homes that have a more rustic design constructed with exposed timbers with a number of rural residential lots in the vicinity. The residential community has been established within the verdant tree stands of Shannondale and the applicant’s property itself has a fairly dense wooded boundary around the rear of the property. The applicant’s road has numerous developed properties on both sides of the street.



Staff Report
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Loretta Holdaway Variance Request (#ZV15-22)

d. Impact on adjacent properties

There would be potential for impact on the adjacent property if the fence if it were to would fall onto the neighbor's property, but as the neighbor's property is not cleared or in immediate use, this impact would be negligible as long as the applicant resurrected the fence expeditiously. The other potential impact on the adjacent property, as potential maintenance of the fence would require entering the neighbor's property.



Approximate location of the beginning of the “stair stepping”

e. Feasibility of complying with the ordinance by other means

To comply with the ordinance by other means would create hardship upon the applicant because they have already constructed a fence that meets the ordinance until the rear of the fence stair steps and begins to exceed the six foot limit. As the topography of the applicant's property gently slopes away from the street, the need to stair step the fence's construction to ensure that the applicant's privacy is maintained, while also following the topography of the site is what would potentially cause the applicant undue hardship. This stair stepping of the fence is the cause of the applicant to apply for a variance. Each section of fence has one corner which meets the 6 foot height requirement while the other corner exceeds 6 feet due to the topography of the hillside in the rear of the property.

5. **Conditions of Approval**

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

1. The variance is limited to the existing fence, as it is currently constructed.
2. The variance applies only to the property line indicated.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
September 24, 2015

Loretta Holdaway Variance Request (#ZV15-22)

SECTION OF ORDINANCE TO BE CONSIDERED:

Section 9.5 Projections Into Yards⁸

- B. Fences and walls over six (6) feet in height shall meet building lines and yard requirements. A building permit is required before construction. Fences and walls six (6) feet and under in height shall be exempt from building lines and yard requirements unless obstructions to vision at an intersection as referenced in Section 4.9.²³



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning
116 East Washington Street, P.O. Box 338
Charles Town, WV 25414

File Number: ZV15-22
Staff Initials: JH
Fees Paid (\$100 or \$150): 100.00

www.jeffersoncountywv.org/government/departments/planning-and-zoning-department.html

Email: planningdepartment@jeffersoncountywv.org
zoning@jeffersoncountywv.org

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

Zoning Variance Request

Variances from the Zoning and Land Development Ordinance must comply with Article 8A-7-11 of the WV State Code. A variance is a deviation from the minimum standards of the ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district, nor shall it involve changing the zoning classification of a parcel of land.

Property Owner Information

Name: LORETIA HODDARNA
Mailing Address: 294 RED BIRDLA, HARPERS FERRY, WV 25425
Phone Number: 304 728-0365 Email:

Applicant Contact Information

Name: SAME AS ABOVE
Mailing Address:
Phone Number: Email:

Applicant Registered Engineer(s), Surveyor(s), or Consultant(s)

Name: ED JOHNSON & ASSOC, INC
Mailing Address: Rt 3 Box 710 HARPERS FERRY, WV 25425
Phone Number: 304 876 9472 Email:

Physical Property Details

Physical Address: 294 RED BIRDLA
City: HARPERS FERRY State: WVA Zip Code: 25425
Tax District: CHARLES TOWN Map No: 23F Parcel No: 0036
Parcel Size: 0.5012 Deed Book: 975 Page No: 718

Zoning District (please check one)

Grid of zoning districts with checkboxes: Residential Growth (RG), Industrial Commercial (IC), Rural (R), Residential-Light Industrial-Commercial (R-LI-C), Village (V), Neighborhood Commercial (NC), General Commercial (GC), Highway Commercial (HC), Light Industrial (LI), Major Industrial (MI), Planned Neighborhood Development (PND), Office/Commercial Mixed-Use (OC). Rural (R) is checked.

RECEIVED

SEP 03 2015

JEFFERSON COUNTY PLANNING, ZONING & ENGINEERING

Place Received Date Stamp Here

On a separate sheet of paper, provide a sketch showing the shape and location of the lot indicating all roads, rights of way, and easements. Show the location of the intended construction or land use indicating building setbacks (i.e. the distance of the structure from all property lines), size, and height. Identify all existing buildings, structures, or land uses on the property. The sketch should show the full extent of the property. Sign and date the sketch.

Is there a Code Enforcement action pending in relation to this property? Yes No

Reference the section of the Zoning Ordinance pertaining to this request: _____

Briefly describe the nature of the variance request:

To approve a fence that has been constructed.
Allow a fence taller than 6' to remain
6" from property line. 8ft

If this request is for a setback variance, please check one of the following:

Front Setback Side Setback Rear Setback Reduction From _____ to _____

Please explain why granting the variance will NOT adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents:

THE FENCE WAS INSTALLED TO KEEP THE ADJACENT PROPERTY OWNERS DOG OUT OF MY YARD AFTER HE WAS ASKED NUMEROUS TIMES. NOT ABIDING BY THE LAWS PER ANIMAL WARDEN

In what way does this request arise 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?

HAS HARASSED ME AND MY SON CONSTANTLY. THE ADJACENT PROP. OWNER SAID HE DID NOT HAVE TO ABIDE BY THE ANIMAL WARDEN. PROP. OWNER STATED HE WOULDN'T PUT UP A FENCE OR KEEP DOG ON A LEASH. HE ALSO STATED HE DIDN'T HAVE TO ABIDE BY MY NO TRES. SIGNS.

How will granting this variance eliminate an unnecessary hardship and permit a reasonable use of the land?

IT WILL ALLOW US TO WORK IN THE YARD AND NOT LISTEN TO THE MRS SCREAMING SHE IS BEING STALKED. WE WILL NOT HAVE TO STEP AROUND DOG WASTE AND CONTINUE TO REPLACE BUSHES FROM URINE+WASTE, THERE HOPEFULLY WILL KNOW LONGER THE STRESS ON US; OF BEING FLIPPED OFF AND SCREAMING OUT THERE WOULD NEVER BE

How will granting this variance allow the intent of the Zoning Ordinance to be observed and substantial justice to be done?

WILL ALLOW ME TO TRY AND FOLLOW YOUR RULES, BUT ALSO GIVE ME PEACE OF MIND AND STOP ALL THE CONSTANT STRESS MY SON AND I HAVE BEEN UNDER. THE SLANDER AND THEIR ACTIONS AGAINST US, INVASION OF PRIVACY, ETC.

Original signature is required. If additional signatures are necessary, please attach a separate piece of paper.

MR STEVENS TEARING DOWN NO TRESPASSING SIGNS AND POLICE SHAMING PUT THEM BACK UP. POLICE ADVISED US TO PUT UP CAMERAS - WHICH WAS DONE.
By signing this application, I give permission for the Departments of Planning and Zoning staff to walk onto the subject property, if necessary, in order to take photos for the Board of Zoning Appeals staff reports. The information given is correct to the best of my knowledge.

[Signature] 8/05/15
Signature of Property Owner Date

Signature of Property Owner Date

Notification Requirements (to be completed by staff)

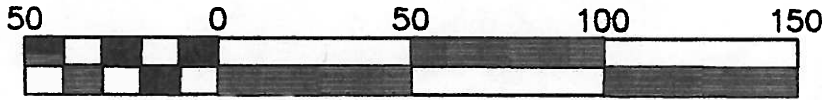
Notice of a public hearing for an appeal shall be advertised in a newspaper having general circulation in the County at least 15 days before the hearing. The subject property shall be posted conspicuously by a zoning notice no less than 28" x 22" in size, at least 15 days before the hearing (pursuant to the Zoning and Land Development Ordinance Section 3.4A(3)(b)).

NO SIGNS ARE TO BE POSTED ON MY PROPERTY UNDER ANY CIRCUMSTANCES. THIS IS PRIVATE PROPERTY. I'M HAVING ENOUGH PROBLEMS WITH MY NEIGHBORS. NO!!!

Date of Public Hearing
09/24/15

Advertising Date
09/09/15

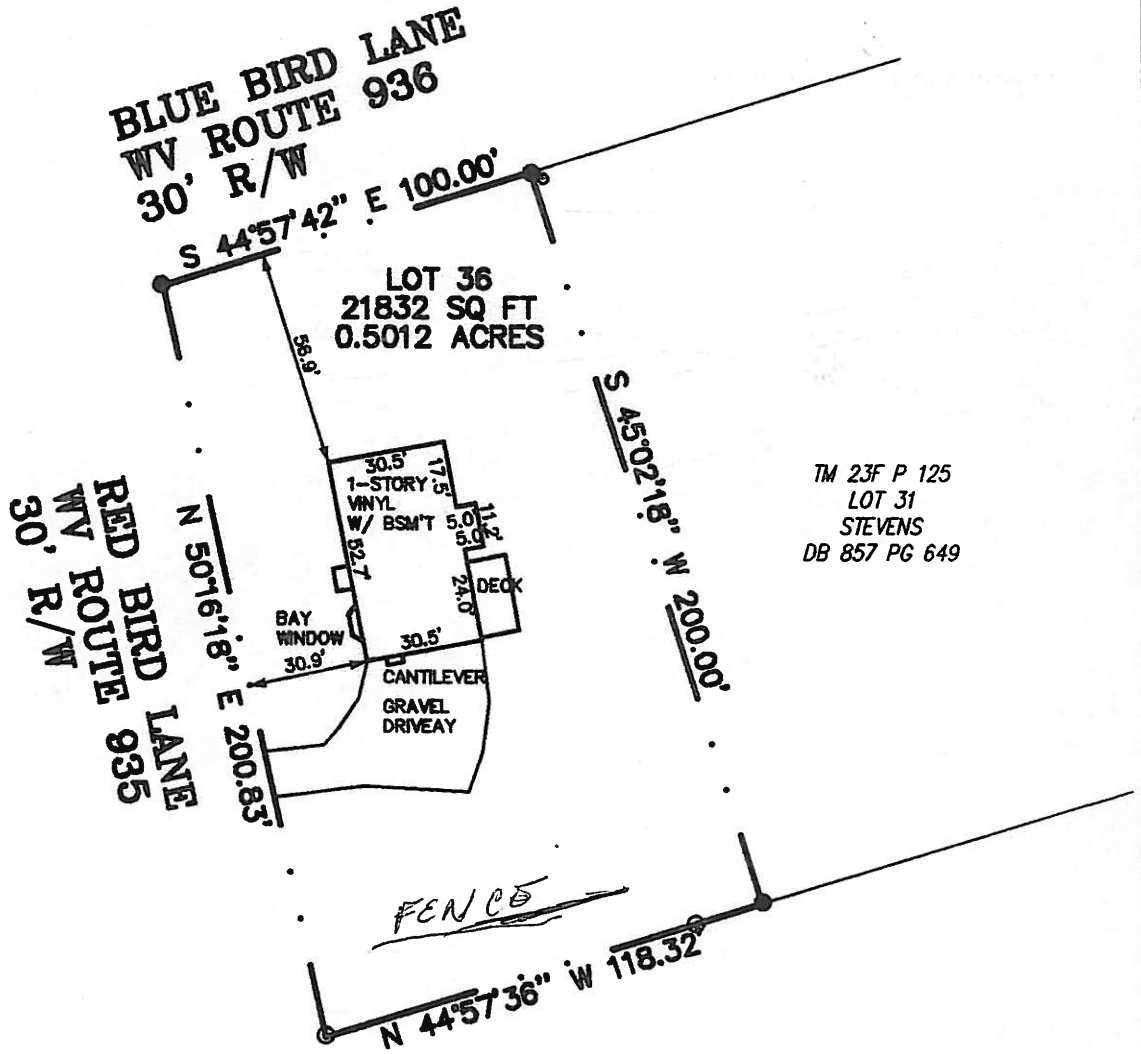
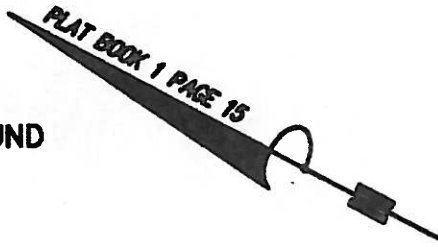
Placard Posting Date
09/09/15



Scale 1" = 50'

LEGEND:

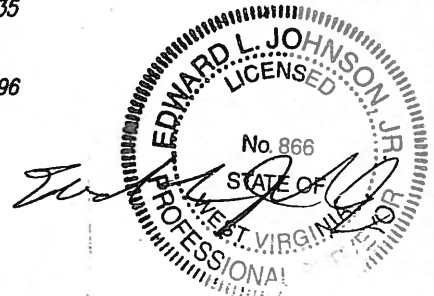
- IRON PIPE FOUND
- REBAR & CAP FOUND
- SET #5 REBAR



TM 23F P 125
LOT 31
STEVENS
DB 857 PG 649

TM 23 F P 35
LOT 35
BOUND
DB 446 PG 96

PROPERTY DOES NOT LIE IN A 100-YEAR FLOOD PLAIN AND LIES IN ZONE C OF FIRM COMMUNITY PANEL NUMBER 540065 0054 BEFFECTIVE OCTOBER 15,1980



PLAT SHOWING
LOT 36, SECTION 14-J, SHANNONDALE
TAX MAP 23-F PARCEL 36
THE PROPERTY OF
ROBERT A. SMITH
DEED BOOK 975 PAGE 718
 CHARLES TOWN DISTRICT
 JEFFERSON COUNTY, WEST VIRGINIA
 SCALE: 1" = 50' JULY 8,2005

ED JOHNSON AND ASSOCIATES, INC.
 LAND SURVEYORS
 P.O. BOX 1277
 331 NORTH GEORGE STREET
 CHARLES TOWN, WEST VIRGINIA 25414
 (304)725-6060

Surveyor's Report

This is to report that on July 13, 2005, I made an accurate physical inspection of the premises standing in name of Robert A. Smith situated in the Charles Town District, Jefferson , West Virginia.

Known as street number(s): No number posted and shown on the accompanying mortgage inspection entitled Lot 36, Section 14-J, Shannondale.

I have made a careful physical inspection of said premises and of the buildings located thereon. At the time of making such inspection, I found the owner (premises vacant) to be in possession of said premises. I further report as to the existence or non-existence of the following at the time of my last physical inspection:

1. Right-of-way, old highways or abandoned roads, lanes, driveways, drains, sewer or water pipes over and across said premises: None seen
2. Springs, streams, rivers, ponds, or lakes located on said premises: None seen.
3. Cemeteries or family burying grounds located on said premises: None Seen
4. Telephone, telegraph or electric power poles, wires or lines located on or crossing said premises: Service is underground
5. Disputed boundaries or encroachments: None Seen.
6. Are there any indications of building construction, alterations, or repairs in recent months?
Yes, new construction near completion.
7. Building or possession lines (party walls or independent fences, etc.): None seen.
8. Any changes in street lines either completed or officially proposed? None Seen
 - a.) Recent street or sidewalk construction or repairs? None Seen.
 - b.) Do the improvements comply with zoning or municipal regulations? Appears to comply.
9. Do the inspected premises and improvements comply with restrictive covenants? Appears to comply.

Dated: July 13, 2005



Edward L. Johnson, PS
Ed Johnson & Associates, Inc.
Route 3, Box 710
Harpers Ferry, West Virginia 25425
304-876-9472



Jefferson County, West Virginia

Departments of Planning and Zoning

116 East Washington Street, 2nd Floor

Charles Town, WV 25414

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

Email: zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Director's Report Board of Zoning Appeals Meeting September 24, 2015

1) Pending Zoning Ordinance and Subdivision Regulation Amendments:

a) Campgrounds:

- i. Public Hearing held September 8, 2015 – scheduled for discussion at 10/13/15 Planning Commission meeting

b) Major and Minor Subdivision and Site Plan Process:

- i. Committee presentation and Commission discussion scheduled for 9/22/15 work session

c) Mass Events Ordinance (#ZTA 14-02):

- i. Work Session/discussion scheduled for 9/22/15 work session

d) LESA/Conditional Use and Cluster Subdivision Provision Modifications

- i. Staff to coordinate with Legal to draft amendments to Zoning Ordinance regarding recommendations of the *Envision Jefferson 2035 Comprehensive Plan* regarding modifications to the LESA/Conditional Use and Cluster Subdivision provisions of the Rural Zoning District (pages 38-40 of the *2035 Plan*) – date TBD

e) Historic Resource Demolition and Adaptive Reuse

- i. Proposed amendment to the sections of the Ordinance relative to the demolition of and adaptive reuse of historic resource sites – P&Z staff to coordinate with Engineering and Building staff for recommendations

f) Article 12 Zoning Ordinance

- i. Discussion of proposed amendments required to Article 12 to bring it into conformance with the requirements of WV Code 8A -- for 9/22/15 work session

g) Other Text amendments needed:

- i. Parking Standards – tentative timeframe?
- ii. Landscape Standards – tentative timeframe?
- iii. Signage – tentative timeframe?

2) Upcoming BZA meeting

- a) Next Regular Meeting: **October 22, 2015**

JEFFERSON COUNTY, WEST VIRGINIA

Department of Zoning

116 East Washington Street

P.O. Box 338

Charles Town, West Virginia 25414

Phone: (304) 728-3228

Fax: (304) 728-8126

Email: zoning@jeffersoncountywv.org

MEMORANDUM

TO: Board of Zoning Appeals Members
CC: Engineering & Building Permits Departments
FROM: Jennifer M. Brockman, Acting Zoning Administrator,
DATE: September 18, 2015
SUBJECT: September Monthly Report of Zoning Certificate Activities

ISSUED ZONING CERTIFICATES

#ZC15-44 MIDDLEWAY CONSERVANCY ASSOCIATES, INC – APPLICANT
CONTACT: PETER FRICKE
RE-ENACTMENT ACTIVITIES: CARMEN QUINONES; WILLIAM & LINDA CHAPPELL; JEFFREY & DOROTHEA
PUBLIC PARKING: DAN & ANNE BOWERS; GRACE CHURCH PARISH HALL; MIDDLEWAY UNITED METHODIST CHURCH
Issuance Date: August 27, 2015
Approved Use: The Battle of Smithfield Anniversary Re-enactment. A three-day (72 hour) of civil war camp life, drills and other educational activities. Seasonal Use Permit (#ZV15-17) was approved by the BZA on 07/16/15 (with conditions). Valid August 28 – 30, 2015.
Location: Multiple Properties - Middleway Area
Zone: Rural & Village

#ZC15-43 HOT SPOT CT REAL ESTATE, LLC – OWNER
1012 EAST WASHINGTON STREET, LLC / MICHAEL SHIELDS- APPLICANT
Issuance Date: September 01, 2015
Approved Use: Pawn Shop Services
Location: 314 Prospect Avenue; Charles Town, WV 25414
Zone: Residential-Light Industrial-Commercial

#ZC15-45 PERMELYNN of WESTCHESTER, INC. c/o KIMCO REALTY CORP. – OWNER
TIMOTHY KUCHAR- APPLICANT
Issuance Date: September 02, 2015
Approved Use: Temporary sale of rugs and blankets from a 24' long covered trailer with an attached 10' x 20' shade canopy, from Sept. 11 - Oct 12, 2015 from 8:00 a.m. – 8:00 p.m. daily.
Location: 96 Patrick Henry Way; Charles Town, WV 25402
Zone: Residential-Light Industrial-Commercial

ISSUED ZONING CERTIFICATES

#ZC15-46 GEORGE W. & MARY L. RUSHIZKY – OWNERS
VERIZON WIRELESS / CONTACT: BEN PELLETIER - APPLICANT

Issuance Date: September 10, 2015
Approved Use: Install six (6) new Antennas, two (2) per sector at 128.0'; six (6) new RRHs; six (6) new RET
Cables; three (3) Distribution Boxes; and one (1) 1-5/8" Hybrid Cable to an existing 200.1'
self-support Wireless Telecommunications Facility (tower). No height increase or ground
disturbance proposed.

Location: 8422 Shepherdstown Pike; Shepherdstown, WV 25443
Zone: Rural

#ZC15-07 CHARLES J. BROWN – OWNER
SHERYL GRAY - APPLICANT

Issuance Date: September 14, 2015
Approved Use: Change in Tenant for existing Charlie Brown's Store. Retail sales of clothing, groceries,
sporting goods, tobacco/tobacco products smoking accessories, guns/ammunition and beer.

Location: 15949 Charles Town Road; Charles Town, WV 25414
Zone: Rural

PENDING ZONING CERTIFICATES

#ZC15-47 DAVID & LAURA HUMPHREYS – OWNERS / APPLICANTS

Issuance Date: TBD
Proposed Use: Farm Vacation Enterprise
Location: 290 Falling Springs Road; Shepherdstown, WV 25443
Zone: Rural

#ZC15-48 MARK ODELL– OWNER
RIVER VIEW DEFENSE, LLC / CONTACT: STEVEN SHEARD, CEO – APPLICANT
340 DEFENSE GUN SHOP / CONTACT: MARK PANTALONE - APPLICANT

Issuance Date: TBD
Proposed Use: Operate as a Federal Firearm Licensed Dealer at existing site. No modification to
property.

Location: 459 Berryville Pike; Summit Point, WV 25446
Zone: Industrial-Commercial
