



Jefferson County
Board of Zoning Appeals
Thursday, November 12, 2015, 2:00 p.m.

Members
Tyler Quynn, Chair
Jeffrey Bannon, Vice Chair
Christy Huddle
Matt Knott
Ted Schiltz
Jeff Bresee, Alternate
Craig Foster, 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 September 24, 2015 meeting.
2. Approval of the 2016 Board of Zoning Appeals Meeting Schedule.
3. Swearing in of members of the public intending to provide testimony.
4. Variance request from Section 9.7 and Appendix A to reduce the side setback from 15' to 10' for an addition to a single family residence. Owner: Brett and Anne Basham. Location: 1792 Terrapin Neck Rd, Shepherdstown WV. District: 09; Map: 1 Parcel: 4.3; Size: 2.13 ac; Zone: R; File: ZV15-26.
5. Variance request from Section 4.11A, 5.6D.1, and 5.8C.2 and Appendix B to eliminate the required landscape buffer and the parking and drive aisle setbacks for the internal lot lines proposed on the Jefferson Business Park Associates, LLC Minor Subdivision PC File #15-18 (formerly known as the Alex Chevrolet site). Owner: John Good, Manager, Jefferson Business Park Associates. Consultant: Paul J. Raco, P. J. Raco, Consulting, LLC and Mike Shepp, Allegheny Surveys, PLLC LLC. Location: 1 Chevrolet Drive, Charles Town WV. District: 09; Map: 1 Parcel: 4.3; Size: 2.13 ac; Zone: RLIC; File: ZV15-27.
6. Director's Report.
 - a) Monthly Zoning Certificate Activity Report
7. Legal Update.
 - a) William Neufeld Pending Litigation CA #14-C-394
 - b) Shenandoah Air Conditioning & Heating Inc. Pending Litigation CA #15-P-73
 - c) Whistling Farms Bed & Breakfast Litigation CA # 15-C-209 (possible executive session)
8. Discussion with possible deliberative session and signing of draft findings/decisions.

Meeting Date: September 24, 2015 (*see agenda for full item description*)

 - a) 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.
 - b) Variance from Section 9.5B to permit a fence taller than 6' to remain 6" from the property line. Owner: Loretta Holdaway.
 - c) Variance request from Sections 4.11.A.2 & 4.11E, and Appendix B to remove the side and rear landscaping requirements.
 - d) Variance request from Section 5B.1 to reduce rear setback from 20' to 15' for a 10' x 18' deck.. Owner: Adam Sperry.
 - e) The Middleway Volunteer Fire Company, Developer, is requesting the following: (a) Request for a Special Exception for an outdoor advertising sign per Section 10.5. The sign will be located on a parcel adjacent to the Middleway Volunteer Fire Company (File: SE15-01); and, (b) A variance from Section 10.4G & Appendix A to reduce the front setback from 40' to 25' for an outdoor advertising sign for the Middleway Volunteer Fire Company (File ZV15-25) and, (c) A variance from Section 9.6C to allow the sign in the required front yard (File ZV15-25). Property owner: Marshall Edwards, Sr.

Draft Minutes
Jefferson County Zoning Board of Appeals

1 Meeting Date: October 22, 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 Ted Schiltz, Matt Knott, Jeff Bresee, Alternate, and Craig Foster,
7 Alternate

8 Board members absent: None

9 Staff members present: Jennifer M. Brockman, Acting Zoning Administrator/Director of
10 Planning and Zoning; David Simon, County Planner; Lydia Lehman,
11 Assistant Prosecuting Attorney; Alex Beaulieu, Office/Project Manger

12

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

14

15 As the Alternate Board Member, Mr. Bresee filled Mr. Bannon's vacancy.

16

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

19

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

21

22 1) Approval of the minutes from the September 24, 2015 meeting.

23

24 Mr. Quynn moved to approve the September 24, 2015 meeting minutes with no correction.
25 Mr. Quynn called for a vote, which carried four in support and one abstention (Mr. Bannon
26 did not attend the September meeting).

27

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

29

30 Ms. Beaulieu swore in members of the public who indicated they would be providing
31 testimony.

32

33 Mr. Quynn introduced and welcomed Mr. Foster and the newest Alternate Member for the Board.

34

35 3) Variance request from Sections 4.11.A.2 & 4.11E, and Appendix B to remove the side and
36 rear landscaping requirements. Owner: Jefferson County Economic Development
37 Authority. Developer: Mark Cerasi. Location: Burr Industrial Park, Lot 41, 81 Steeley
38 Way, Kearneysville, WV. District: 02; Map: 1; Parcel: 141; Zone: IC; File: ZV15-23.

39

40 Ms. Kristin Stolipher, Consultant with Gordon, was present to address the Board. Mr. Simon
41 briefly presented his staff report to the Board. Ms. Stolipher noted for the record that Mr.
42 Mark Cerasi was now the property owner. Ms. Stolipher explained that historically
43 landscape buffers were not required between two commercial uses and that due to a recent
44 text amendment and interpretation the buffer was now being applied to the noted land use.
45 Ms. Stolipher stated that her firm had also been contracted to design a project immediately
46 adjacent to the subject parcel and has submitted a letter of support the purpose of the request.
47 Ms. Huddle stated that during her 9 year term as a Board member that she recalled numerous

1 variance requests from the required landscape buffer and that if buffers were not noted in the
2 field it was most likely due to the fact that the parcel in question had received a variance and
3 not that a landscape buffer was not required. Discussion regarding the evolution of the text
4 amendment for the current landscaping requirements ensued. Mr. Quynn opened the public
5 hearing. There was no public comment. Mr. Quynn closed the public hearing.
6

- 7 4) Variance request from Section 5B.1 to reduce rear setback from 20' to 15' for a 10' x 18'
8 deck. Owner: Adam Sperry. Location: Crosswinds Subdivision, 120 Wind Shear Dr.,
9 Charles Town, WV. District: 02; Map: 18A; Parcel: 50; Zone: RG; File: ZV15-24.
10

11 Mr. Adam Sperry, property owner, was present to address the Board. Mr. Simon briefly
12 presented his staff report to the Board. Mr. Sperry explained the nature of the request to the
13 Board. Mr. Quynn opened the public hearing. There was no public comment. Mr. Quynn
14 closed the public hearing.
15

16 The Board agreed a deliberative session was unnecessary. Ms. Huddle moved to approve
17 Item #4 conditioned upon the fact that the variance was limited only to the construction of
18 the requested deck. Mr. Quynn called for a vote, which carried unanimously.
19

- 20 5) The Middleway Volunteer Fire Company (MVFC), Developer, is requesting the following:

- 21 a) Request for a Special Exception for an outdoor advertising sign per Section 10.5.
22 The sign will be located on a parcel adjacent to the MVFC (File: SE15-01); and,
23 b) A variance from Section 10.4G & Appendix A to reduce the front setback from
24 40' to 25' for an outdoor advertising sign for the MVFC (File ZV15-25) and,
25 c) A variance from Section 9.6C to allow the sign in the required front yard (File ZV15-25).
26

27 Property owner: Marshall Edwards, Sr. Location: Southwest corner of the intersection of
28 Leetown Road and Dark Hill Road, Kearneysville, WV. District: 07; Map: 24; Parcel: 2;
29 Zone: R; Size: 81.42 ac.
30

31 Mr. Edward Marshall and Mrs. Nancy Marshall, property owners, were present to address the
32 Board. Mr. Simon briefly presented his staff report to the Board. The Board discussed the
33 proposed conditions listed in the staff report with Staff. Mr. and Mrs. Marshall spoke to the
34 nature of the request. Mrs. Marshall noted that the MVFC may be acquiring the portion of land,
35 which is the subject of the variance. If the MVFC owned the property the Special Exception
36 and the requested zoning variance would be unnecessary. Mr. Quynn stated for the record that
37 he did not open a public hearing as there were no members of the public in attendance.
38

39 The Board agreed a deliberative session was unnecessary. Mr. Knott moved to approve the
40 above referenced requests with the following conditions:

- 41 a) Approval of this Special Exception and Variance permits only one sign for the sole
42 purpose of advertising the location of the Middleway Volunteer Fire Company and its
43 related activities, in the approximate location discussed in this application.

1 b) Any proposed sign shall conform to all other requirements of the Building Code, Flood
2 Plain Ordinance and shall not be placed in a manner that impacts the sight triangle for
3 either Dark Hill or Cedar Hollow Lane or the traveling public.

4 c) The applicant are bound by testimony.

5 Mr. Quynn called for a vote which carried unanimously.

6
7 Ms. Huddle moved to go into executive session at 3:00 p.m.. Mr. Knott moved to come out of
8 deliberative session at 3:20 pm.

9
10 3) Variance request from Sections 4.11.A.2 & 4.11E, and Appendix B to remove the side and
11 rear landscaping requirements. Owner: Jefferson County Economic Development
12 Authority. Developer: Mark Cerasi. Location: Burr Industrial Park, Lot 41, 81 Steeley
13 Way, Kearneysville, WV. District: 02; Map: 1; Parcel: 141; Zone: IC; File: ZV15-23.

14
15 Ms. Huddle moved to approved the aforementioned request with the following conditions:

16 a) The variance applies only to the subject parcel (Lot 41);

17 b) The applicant will retain the existing 10' vegetative buffer along the southern portion of
18 the subject parcel and retain the existing vegetation depicted as undisturbed area on the
19 sketch submitted with the application in the southwest corn of the subject parcel.

20 Mr. Quynn clarified that the parcel was currently unaddressed and that 81 Steeley way was
21 the address of the adjacent parcel [owned by the applicant].

22 c) The applicant is bound by their testimony.

23 Mr. Quynn called for a vote, which carried unanimously.

24
25 5) Director's Report.

26 a) Monthly Zoning Certificate Activity Report. No action.

27 b) Ms. Brockman updated the Board on the following items
28 (*see Director's Report in BZA Packet for detailed information*):

29 1. Pending Zoning Ordinance and Subdivision Regulation Amendments for
30 Campground, Major and Minor Subdivision and Site Plan Process, Mass Events,
31 Article 12 (Rezoning), Historic Resource Demolition and Adaptive Reuse, and
32 LESA/Conditional Use Permit and Cluster Subdivision Provision Modifications.

33 2. Other necessary text amendments proposed by staff: Parking, Landscaping and
34 Signage Standards.

35 3. Upcoming Board meeting is November 12, 2015.

36 Mr. Knott asked Ms. Brockman about the issuance of the new Whistling Wind
37 Farm zoning certificate listed in the Activity Report. Ms. Brockman stated the
38 new zoning certificate replaced the previously issued zoning certificate for the
39 bed and breakfast, which had received a conditional use permit. Ms. Lehmen
40 added that the pending lawsuit had not been dropped.

1 6) Legal Update.

2 a) William Neufeld Pending Litigation CA #14-C-394. No update.

3 b) Shenandoah Air Conditioning & Heating Inc. Pending Litigation CA #15-P-73.
4 No update.

5 c) Review and Disposition of Citizens Complaints in relation to the All Good Festival
6 (possible executive session).

7
8 Ms. Huddle moved to go into executive session to discuss Item C at 3:35 p.m.. Mr. Bannon moved
9 to come out of deliberative session at 3:45 pm.

10

11 Mr. Knott moved that the Board had reviewed all comments received and determined that none of
12 the comments warranted further action on the part of the Board. Mr. Bannon seconded the motion,
13 which carried three (3) in support, two (2) abstentions.(Ms. Huddle) unanimously.

14 d) Whistling Farms Bed & Breakfast Litigation CA # 15-C-209 (possible executive session).
15 No action.

16

17 7) Discussion with possible deliberative session and signing of draft findings/decisions. No action.
18 Meeting Date: September 24, 2015 (*see agenda for full item description*)

19 a) Variance request from Section 9.6C to allow an accessory structure in the required
20 front yard; and, Section 9.7 to reduce the front setback from 25' to 10' to construct
21 a 25' x 28' two car garage. Owner: Jeffrey Schneider.

22 b) Variance from Section 9.5B to permit a fence taller than 6' to remain 6" from the
23 property line. Owner: Loretta Holdaway.

24

25 Mr. Bannon moved to adjourn the meeting at 3:47 p.m. Mr. Quynn called for a vote, which carried
26 unanimously.



JEFFERSON COUNTY, WEST VIRGINIA

Department of Planning and 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

2016 MEETING SCHEDULE OF THE JEFFERSON COUNTY BOARD OF ZONING APPEALS

Board of Zoning Appeals meetings are held in the Old Charles Town Library Meeting Room located at 200 East Washington Street, at the side entrance on Samuel Street at 2:00 p.m.

Scheduled Meetings

Thursday, January 28, 2016

Thursday, February 25, 2016

Thursday, March 24, 2016

Thursday, April 28, 2016

Thursday, May 26, 2016

Thursday, June 23, 2016

Thursday, July 28, 2016

Thursday, August 25, 2016

Thursday, September 22, 2016

Thursday, October 27, 2016

Thursday, November 10, 2016**

Thursday, December 8, 2016**

Submission Deadlines*

Thursday, December 31, 2015
Application must be submitted by noon

Friday, January 29, 2016

Friday, February 26, 2016

Friday, April 1, 2016

Friday, April 29, 2016

Friday, May 27, 2016

Friday, July 1, 2016

Friday, July 29, 2016

Friday, August 26, 2016

Friday, September 30, 2016

Friday, October 14, 2016

Thursday, November 10, 2016

*The required zoning variance request form signed by the legal property owner, supporting documentation and applicable fees must be submitted to the office by close of business on the Submission Deadline date in order for the request to be sufficiently reviewed and noticed in the Spirit of Jefferson. For all other applications please contact the office for the Submission Deadline date.

**This is a rescheduled meeting date. County Offices are closed in observance of the Thanksgiving and Christmas Holidays, which coincides with the Board's original meeting dates of November 24 and December 22, 2016.


Changes in the time or location of the meeting shall be noticed on the County's website at www.jeffersoncountywv.org. Note: If the President of the County Commission or Chair of the Board of Zoning Appeals has determined weather conditions make travel unsafe for the public, County offices may close and/or the Board of Zoning Appeals meeting may be cancelled. Please check the County's website for possible meeting updates during inclement weather.

Agenda items that have been deferred due to a cancellation will be rescheduled. Per the Board's Rules of Procedure, no additional newspaper notice shall be given. Please keep signs posted on the respective properties until the reschedule meeting date. Please call the office or check the County's webpage for the rescheduled meeting date.

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 November 12, 2015

Basham Variance Request (#ZV15-26)

Item #4 Variance request from Section 9.7 and Appendix A to reduce the side setback from 15' to 10' for an addition to a single family residence.

APPLICANT:	Brett and Anne Basham				
OWNER:	Same as above				
DEVELOPER:	Same as above				
CONSULTANT:	Same as above				
PROPERTY LOCATION:	1792 Terrapin Neck Road, Shepherdstown WV				
LEGAL DESCRIPTION & ZONING DISTRICT:	<p style="text-align: center;">District: 09; Map: 1 Parcel: 4.3; Zone: Rural; Size: 2.13 ac</p>  <p style="text-align: center;"><i>*Property is located outside of the Floodplain</i></p>				
SURROUNDING PROPERTIES:	<p>Zoning Map Designation:</p> <table style="margin-left: auto; margin-right: auto;"> <tr> <td><i>North:</i> R</td> <td><i>South:</i> R</td> </tr> <tr> <td><i>East:</i> R</td> <td><i>West:</i> R</td> </tr> </table>	<i>North:</i> R	<i>South:</i> R	<i>East:</i> R	<i>West:</i> R
<i>North:</i> R	<i>South:</i> R				
<i>East:</i> R	<i>West:</i> R				
PRIOR CASES:	None				
VARIANCE(S):	None				
APPROVED ACTIVITY:	Single Family Residential				

Staff Report
Jefferson County Board of Zoning Appeals Meeting
November 12, 2015

Basham Variance Request (#ZV15-26)

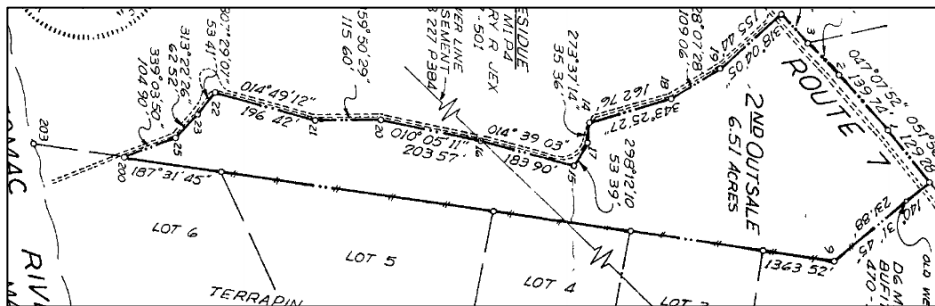
RELEVANT INFORMATION:

1. Overview of Request

The applicant is proposing a large addition to their house, at a point at which the property narrows and tapers towards the rear property boundary at the utility easement (indicated on the images below). Due to the location of the existing structure, the proposed addition requires this request for a side setback variance. The variance request from Section 9.7 and Appendix A is to reduce the side setback from 15' to 10' for an addition to a single family residence.

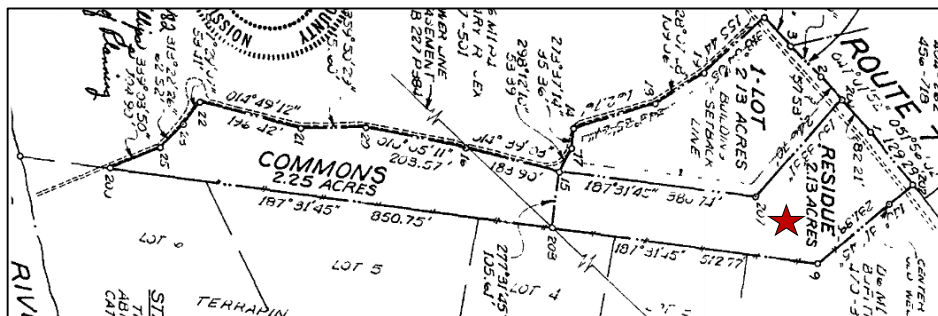
2. Previous Case History

On May 20, 1982 an outsale subdivision per Section 2.1C of the 1979 Jefferson County Subdivision Ordinance was approved by the Planning Department to create a 6.51 acre parcel.



Approved 05/20/1982

Following the creation of this outsale lot, a minor subdivision consisting of two (2) 2.13 acres lots and a 2.25 acre Common Area, this was approved on September 14, 1982. The Residue (lot 2) of the Harrison/Osborn One Lot Subdivision (PC File # 82-06), is the subject of this request.



Approved 09/14/1982

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
Jefferson County Board of Zoning Appeals Meeting
November 12, 2015

Basham Variance Request (#ZV15-26)

4. Staff Evaluation of Request

a. Purpose of ordinance requirements

The purpose of side and rear yard setback requirements is to reduce the impact that a land use might have on an adjacent property; 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.

b. Unique characteristics of property

The applicant's property is located in the northern-most section of the county, off of the aptly named Terrapin Neck Road, as the land formation of this part of the county could be viewed as the shape of a turtle's head poking out of its shell. The property is located in a rural area with a number of large rural residential lots in the vicinity. The home is located in a clearing set back from Terrapin Neck Road with abundant tree canopy surrounding the dwelling. The property boundary lines of the applicant's lot have an irregular shape, as a result of previous subdivisions of the land, in the



Applicant's property outlined in red; note the irregular lot shape

shape form of what could be best described as a hockey stick. The property has a wide street frontage, but as you enter deeper into the property, the property boundaries skew to the right and begin to narrow as you go farther back towards the rear boundary lines. The existing dwelling sits near the area where the lot narrows and bends.

c. Character of area

This remote area in Jefferson County is one of the outer boundaries on the edge of the county's land mass. This area, bisected by Terrapin Neck Road, juts out away from the contiguous land mass of Jefferson County and into a bend on the Potomac River, close to the West Virginia/Maryland border. The secluded area is heavily wooded and the applicant's property itself has a fairly dense wooded boundary around much of the property. Residents of this part of the county value their privacy. There are only a few developed properties in this part of the county, as most of the land is divided into large lots that occupy the "terrapin neck" land mass at this northern-most edge of Jefferson County. Most properties tend to be set back deeper into their lots from the street. The area in which the applicant has proposed to construct the addition to their house abuts a densely wooded area with extensive natural vegetation. This creates a natural buffer between the applicant's parcel and the adjacent property closest to the proposed site of the addition.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
November 12, 2015

Basham Variance Request (#ZV15-26)

d. Impact on adjacent properties

The construction of an addition to the applicant's house will have a negligible impact on their adjoining neighbors. As depicted on the applicant's sketch, only a small portion of the proposed addition actually projects into the building restriction line. Because of the dense natural vegetation on the applicant's property and the neighboring properties acts as a buffer between adjoining lots; therefore, the addition to the applicant's house should not cause any undue burden on the neighbors or significantly impair their neighbor's peaceful enjoyment. Worth noting, the neighboring home most affected by the proposed addition, sits approximately 60 feet closer to Terrapin Neck Road than that of the applicant's, further lessening the impact of the proposed.



Aerials depicting changing seasonal visibility between the subject parcel and the adjacent property.

- Applicant's Property
- Neighboring Property

e. Feasibility of complying with the ordinance by other means

Compliance may be feasible if modifications to the proposed addition were to be designed to ensure the addition was constructed within the applicant's lot's building restriction line. The proposed addition will occupy space currently used a parking pad for the house, but would allow the applicant to retain some existing parking in front of the proposed garage doors. If the applicant were to reposition the location of the addition within the required setback, it may reduce the applicant's ability to park their cars in a manner which they see fit, but would allow the applicant to construct their proposed addition without seeking a variance before the Board.

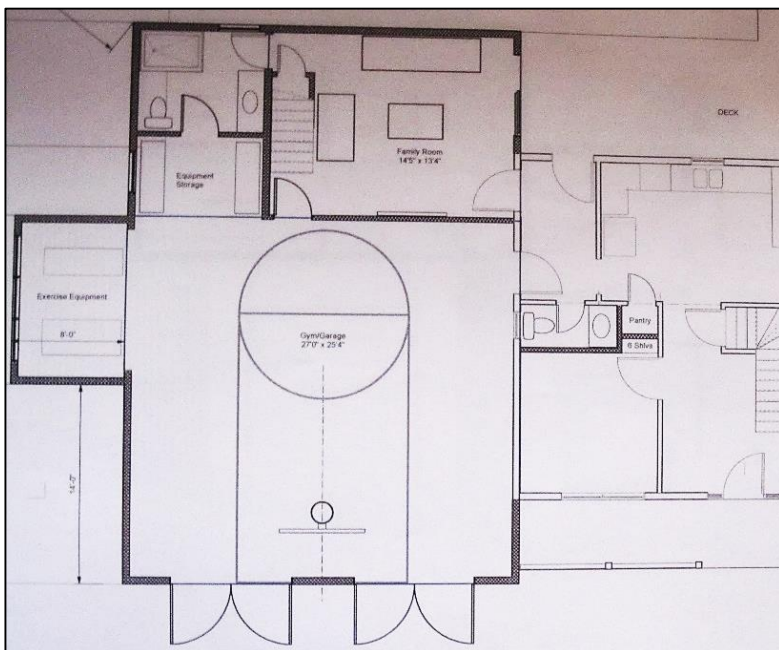
Staff Report
Jefferson County Board of Zoning Appeals Meeting
November 12, 2015

Basham Variance Request (#ZV15-26)

The applicant could alter the proposed dimensions of their addition or adjust the proposed location of the addition to conform to the building restriction lines on their property, which can be accomplished without significantly altering the dimensions of their proposed addition while maintaining their ability to construct their addition by right. The average depth of a two car garage is approximately 20 feet; however, this is the standard depth of a parking space, which would not afford a homeowner the space one routinely uses in a garage. Multiple parking standards resources state a suggested a garage depth of 22 – 24 feet to allow for an individual to walk and carry items safely around parked vehicles. Note, the applicant is requesting that the proposed garage have a depth of 25'4", as the addition will also consist of an indoor recreation area when not used as a garage. This dual-purpose (recreation and parking) indoor use may prove beneficial as they will not need to pave an alternative site on the property for recreational purposes, thus alleviating additional impervious area, and as noted, the use will be primarily contained indoors, which may reduce any noise typically associated with recreational activities.

While the applicant appears to have enough buildable area in front of the home to potentially shift the addition's location so that the rear corner is no longer encroaching into the setback, it appears that the option of shifting the proposed location would negatively alter the spatial layout of the construction by relocating the two entry points from the existing home into the garage and living area of the addition. Retaining multiple points of clear ingress and egress serves as a potential life safety solution, which is promoted and encouraged.

The applicant needs to address the necessity of the proposed location and design in order for the Board to determine if the variance is warranted.



Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 November 12, 2015

Basham Variance Request (#ZV15-26)

5. Conditions of Approval

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

- a) If approved, this variance only allows for the reduction in rear setback from 15' to 10' to accommodate the construction of an addition to the applicant's home.

SECTION OF ORDINANCE TO BE CONSIDERED:

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

Appendix A: Residential Site Development Standards Table

Zoning District	Land use	Land Use Subtype	Min Lot Area (MLA) sq. ft.***	Area per Dwelling Unit (ADU) sq. ft.	Min Lot Width	Max Building Height*	Setbacks				Parking / Drive Aisle Setbacks	Screened Buffers Sec. 4.11
							Front	Side	Street Side	Rear		
Rural Sec. 5.7	Single-Family Dwelling with setbacks not previously stipulated by Planning Commission	Over 2 acres	N/A	N/A	N/A	35	40	15	†	50	N/A	N/A



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, P.O. Box 338

Charles Town, WV 25414

File Number: # ZV15-26

Staff Initials: CLC

Fees Paid (\$100 or \$150): \$100.00

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

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

zoning@jeffersoncountywv.org

Fax: (304) 728-8126

Zoning Variance Request

Variences 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: Brett & Anne Basham
Mailing Address: 1792 Terrapin Neck Rd. Shepherdstown, WV 25483
Phone Number: 304 876-0708 Email: basham14@hotmail.com

Applicant Contact Information

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

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

Name:
Mailing Address:
Phone Number: Email:

Physical Property Details

Physical Address: 1792 Terrapin Neck Rd
City: Shepherdstown State: WV Zip Code: 25483
Tax District: 09 / Shepherdstown Dist Map No: 1 Parcel No: 004 00 03 0000
Parcel Size: 2.13 AC Deed Book: 999 Page No: 16

Zoning District (please check one)

Residential Growth (RG) Industrial Commercial (IC) Rural (R) Residential-Light Industrial-Commercial (R-LI-C) Village (V) Neighborhood Commercial (NC) General Commercial (GC)

RECEIVED

OCT 14 2015

JEFFERSON COUNTY PLANNING ZONING & ENGINEERING

Place Received Date Stamp Here

Highway Commercial (HC) Light Industrial (LI) Major Industrial (MI) Planned Neighborhood Development (PND) Office/Commercial Mixed-Use (OC)

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: 9.7 + AppA

Briefly describe the nature of the variance request:

We would like to reduce our setback line from 15 feet to 10 feet at the back side of our lot to allow room for an addition to our house

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

Front Setback Side Setback Rear Setback Reduction From 15 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:

There are no residences or roads within at least 100 feet of our property line.

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?

We were not the home builders and did not choose the house location on our lot. As our family has grown so has our need for more room.

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

It will prevent an unnecessary hardship on us by keeping us from having to look for another house. It will contribute to permit us to reasonably use our house to live in.

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

As can be seen by the attached sketch only a small triangle of land approximately 10 feet x 8 feet x 8 feet will be outside of the 15 foot Setback line.

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.

[Signature]
Signature of Property Owner
10-12-15
Date

[Signature]
Signature of Property Owner
10-12-15
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, NOVEMBER 12, 2015
Date of Public Hearing

WEDNESDAY, OCTOBER 29, 2015
Advertising Date

WEDNESDAY, OCTOBER 29, 2015
Placard Posting Date

JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning & 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

File Number:

#ZV15-26

I authorize the staff of Department of Planning and Zoning to make necessary revisions to the enclosed submission, if required for processing. I understand that said revisions will be discussed with me prior to content modification.

Applicant PRINTED Name:

Bretty Basham

Applicant Signature:

[Signature]

Contact Number:

304 876 0708 home

304 886 5637 ce 11

Date:

10-12-15

RECEIVED

OCT 14 2015

JEFFERSON COUNTY PLANNING,
ZONING & ENGINEERING

#ZV15-26

§8A-7-11. Variance.

(a) 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.

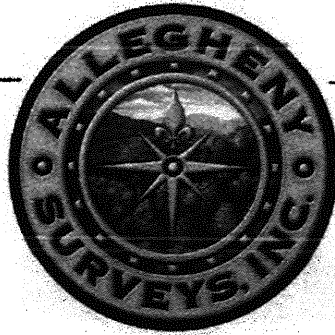
(b) The board of zoning appeals shall grant a variance to the zoning ordinance if it finds that the variance:

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

Note: WV Code updated with legislation passed through the 2015 Regular Session

The WV Code Online is an unofficial copy of the annotated WV Code, provided as a convenience. It has NOT been edited for publication, and is not in any way official or authoritative.

ZV15-26



October 12, 2015

Brett Basham
1792 Terrapin Neck Road
Shepherdstown, WV 25443
basham_14@hotmail.com

Dear Mr. Basham:

The purpose of this letter is to provide written documentation to you that Allegheny Surveys, Inc. has staked out and marked the 15-foot side setback limit from the eastern boundary line in the vicinity of the structure on your property located in Shepherdstown District, Jefferson County, West Virginia shown on the Assessor's Tax Map 1, as Parcel 4.3.

Sincerely,

Allegheny Surveys, Inc.
Karen K. Brill, PS
401 S. Fairfax Blvd.
Suite 3
Ranson, WV 25438

BIRCH RIVER OFFICE

237 Birch River Road
Birch River, WV 26610
phone: 304-649-8606
fax: 304-649-8608

BRIDGEPORT OFFICE

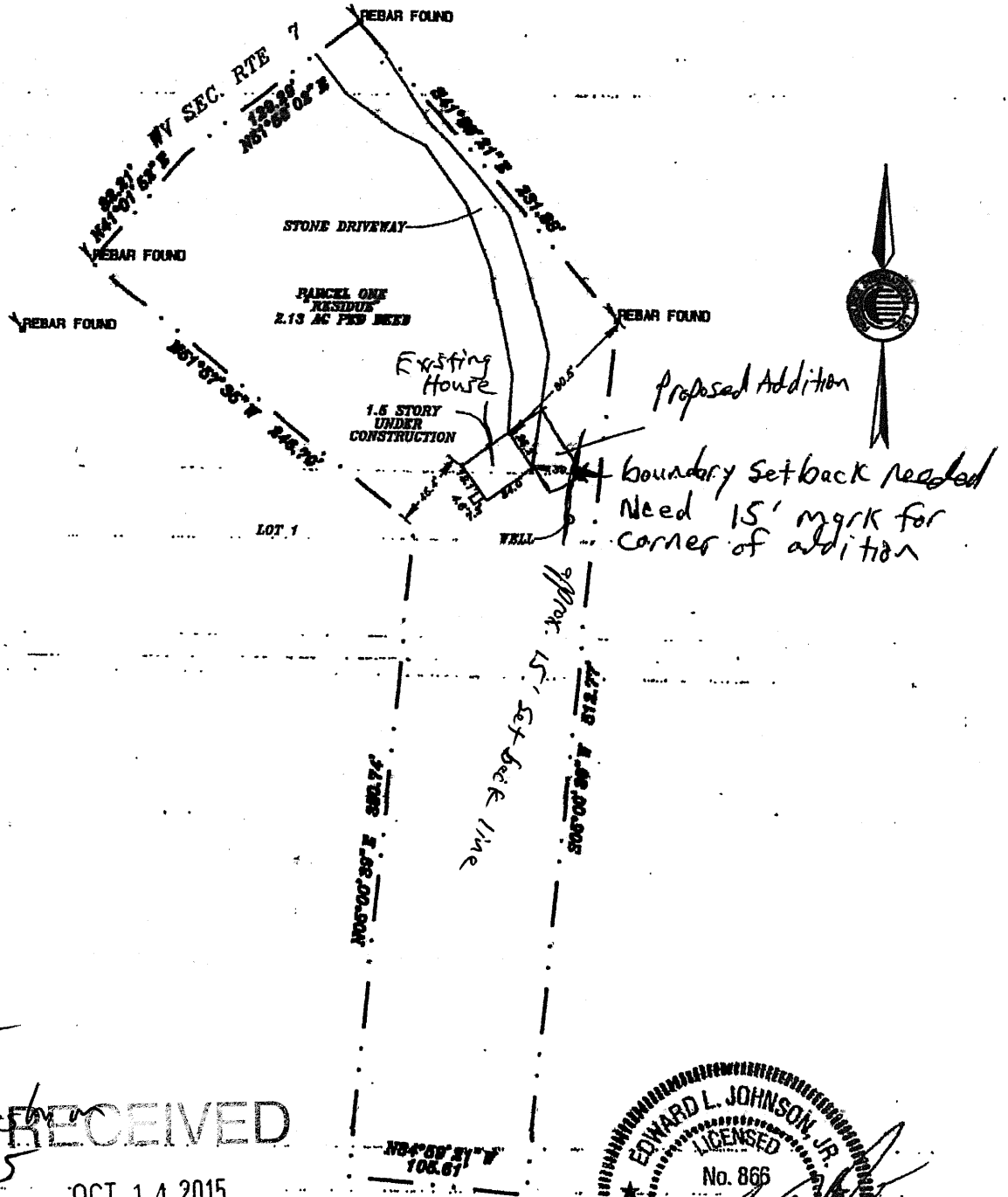
172 Thompson Drive
Bridgeport, WV 26330
phone: 304-848-5035
fax: 304-848-5037

ALUM CREEK OFFICE

P.O. Box 108 • 1413 Childress Rd
Alum Creek, WV 25003
phone: 304-756-2949
fax: 304-756-2948

RANSON OFFICE

401 South Fairfax Blvd, Suite 3
Ranson, WV 25438
phone: 304-724-5008
fax: 304-724-5010

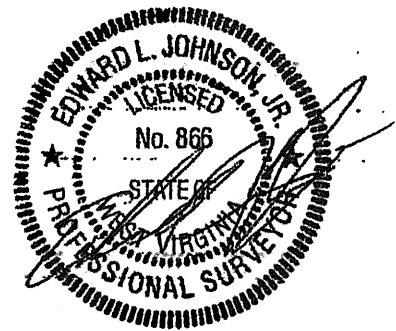


[Signature]
 Beth Baber
 10-14-15

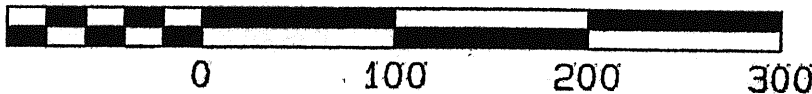
RECEIVED

OCT 14 2015

JEFFERSON COUNTY PLANNING,
 ZONING & ENGINEERING

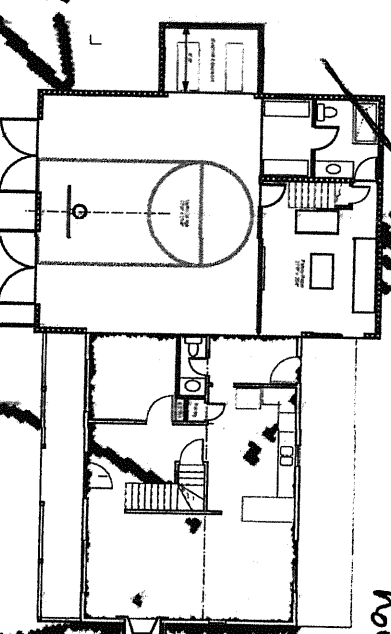


GRAPHIC SCALE 1"=100'



NOTE:
 THIS IS NOT A BOUNDARY SURVEY. PROPERTY CORNER MARKERS ARE NOT GUARANTEED.
 THIS MORTGAGE INSPECTION HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE

Proposed addition



approx. 15' setback line

existing house

1.5 STORY UNDER CONSTRUCTION

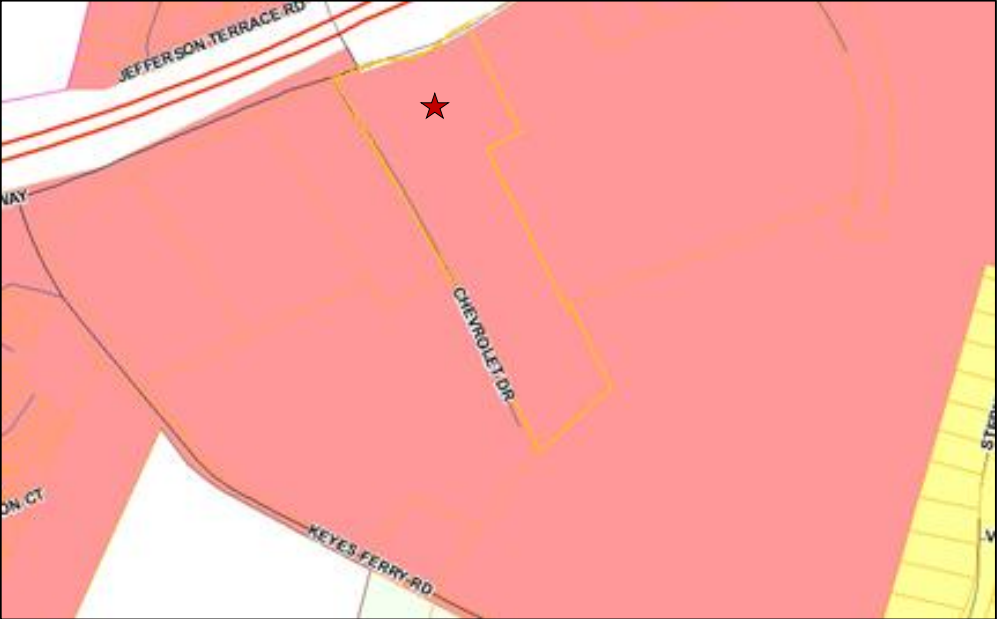
Brett Bohan
10-14-15

#Z115-26

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 November 12, 2015

Chevrolet Variance Request (#ZV15-27)

Item #5 Variance request from Section 4.11A, 5.6D.1, and 5.8C.2 and Appendix B to eliminate the required landscape buffer and the parking and drive aisle setbacks for the internal lot lines proposed on the Jefferson Business Park Associates, LLC Minor Subdivision (PC File #15-18) (formerly known as the Alex Chevrolet site).

APPLICANT:	Paul J. Raco, P. J. Raco, Consulting, LLC
OWNER:	John Good, Manager, Jefferson Business Park Associates, LLC
DEVELOPER:	Same as above
CONSULTANT:	Mike Shepp, Allegheny Surveys, PLLC
PROPERTY LOCATION:	1 Chevrolet Drive, Charles Town WV
LEGAL DESCRIPTION & ZONING DISTRICT:	<p style="text-align: center;">District: 02; Map: 9 Parcel: 8.5; Size: 6.95 ac; Zone: RLIC</p> 
SURROUNDING PROPERTIES:	<p>Zoning Map Designation:</p> <p><i>North:</i> RLIC <i>South:</i> RLIC</p> <p><i>East:</i> RLIC <i>West:</i> RLIC</p>
PRIOR CASES:	<p>85-15: Alex Chevrolet Lot 1 (and residue)</p> <p>86-09: Alex Chevrolet Addition PUD (Universal Enterprises)</p> <p>15-18: Jefferson Business Park Associates, LLC MSD (pending)</p>
VARIANCE(S):	<p>10/19/89: BZA approved a setback reduction for an existing building from 50' to 35' (#ZV89-14).</p> <p>02/09/93: PC approved multiple uses on a single parcel (with conditions). *<u>ZV</u>93-10 This request went to the PC despite the <u>ZV</u> naming convention.</p>
APPROVED ACTIVITY:	Commercial

Staff Report
Jefferson County Board of Zoning Appeals Meeting
November 12, 2015

Chevrolet Variance Request (#ZV15-27)

RELEVANT INFORMATION:

1. Overview of Request

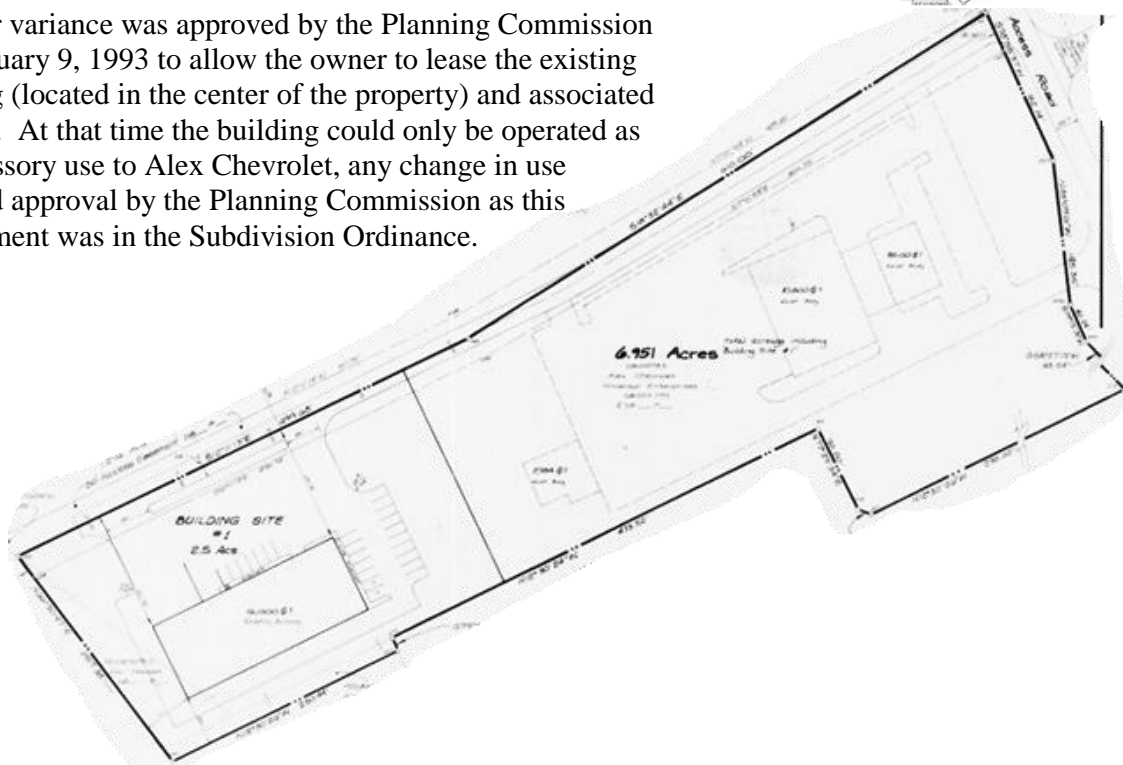
The applicant is proposing to divide the existing Planned Unit Development, currently consisting of the former Alex Chevrolet, a former garage associated with Alex Chevrolet, and the former Rock and Tile, into three separate lots. As a result of the proposed subdivision, the newly created internal property lines would necessitate various design standards which would be burdensome for the applicant to achieve. The applicant is therefore seeking a variance from Section 4.11.A to reduce the required (side) landscape buffer between two commercial uses from 10' to 0'; **and**, a variance from Sections: 5.6.D.1; 5.8.C.2; and, Appendix B to eliminate the required parking and access drive setbacks on the interior lots lines of the proposed Jefferson Business Park Association, LLC Minor Subdivision.

2. Previous Case History

On May 29, 1986 the Alex Chevrolet, Lot 1 plat was recorded in the Jefferson County Courthouse. On September 30, 1998, a Minor Plat Change was recorded to amend the previously recorded (09/11/98) Alex Chevrolet Final Plat. While this plat clearly delineates a line between Building Sites #1 and #2, a plat note restricts the sites from being sold independently without additional processing through the Planning Department.

On October 19, 1989 the Board approved a variance to reduce the rear setback for the existing building located toward the rear of the property. The request was approved to reduce the setback from 50' to 35'. As part of this variance request the applicant had requested a setback reduction for the same structure, unaware of the previously approved variance. Staff determined that as the zoning district, building, lot line and ordinance requirement had not changed since processing the request in 1989 that the Board's previous action remained in effect. Thus the current setback reduction request is unnecessary.

Another variance was approved by the Planning Commission on February 9, 1993 to allow the owner to lease the existing building (located in the center of the property) and associated parking. At that time the building could only be operated as an accessory use to Alex Chevrolet, any change in use required approval by the Planning Commission as this requirement was in the Subdivision Ordinance.



Staff Report
Jefferson County Board of Zoning Appeals Meeting
November 12, 2015

Chevrolet Variance Request (#ZV15-27)

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. Purpose of ordinance requirements

There are two separate variance requests included in this application and each needs to be examined separately and on their own merits:

- a) The purpose of the first request is to reduce the ten (10) foot landscaping buffer between commercial uses from ten (10) feet to zero (0) feet along the internal lot lines of the three parcels that are proposed to be a part of the Jefferson Business Park Associates, LLC Minor Subdivision (Alex Chevrolet site);
- b) The second request is to reduce the ten (10) foot side setback for driveways, parking areas, and internal access drives from ten (10) feet to zero (0) feet along the internal lot lines of the three parcels that are proposed to be a part of the Jefferson Business Park Associates, LLC Minor Subdivision (Alex Chevrolet site);

Section 4.11A establishes landscape buffers between commercial uses. Section 5.8C.2 and Appendix B establishes setbacks for parking areas and drive aisles associated with commercial developments in the Residential-Light Industrial-Commercial Zoning District. These sections are cited below. The purpose of these requirements is to provide for a separation of different uses, their parking areas and drive aisles so that they do not have a negative effect of the adjoining structures or land uses. Typically in a business or industrial park each lot is developed independently. In this case, the applicant is proposing the subdivision of an existing planned unit development occupied by three buildings. As the lots are intending to be sold or leased by the owner of this property, the relief from the aforementioned Zoning Ordinance standards would allow the future owners or lessors to make use of the existing structures and parking areas without significant construction alterations.

The Board approved similar variances to waive items such as building setbacks, parking and drive aisle setbacks, and landscape buffers for internal lot lines for the Twin Oaks Subdivision (#ZV12-35); Route 340 Business Center (#ZV12-34); Burr Industrial Park, Phase I: Lots 40 & 41 (#ZV13-37); and River Riders, Inc. Family Resort (#ZV14-19). Prior approvals by the Board do not necessarily indicate precedent because of the unique circumstances of each case which should be judged on their own individual merits.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
November 12, 2015

Chevrolet Variance Request (#ZV15-27)

b. Unique characteristics of property

The former Alex Chevrolet site is a 6.95 acre lot located south of Route 340, adjacent to the Somerset Village Shopping Center, east of Charles Town in the Residential-Light Industrial-Commercial Zoning District. The property is the former site of an automobile dealership and associated auto repair center, along with shuttered Rock and Tile warehouse, all of which occupy a single lot which was designed and built as a single Planned Unit Development, with a common access, parking and stormwater management. The Rock and Tile building is set back between the front and the rear of the subject parcel by a grassy area that seemingly was once paved, but nature has overcome the impervious surface over time. The subject parcel is narrow and deep, with ample impervious-paved surface for vehicle parking. Chevrolet Drive, a private non-residential subdivision road built to County standards, runs on the Western side of the property along the site, accessing each of the three structures, as well as the BB&T Bank on the western side of the applicant's property.

c. Character of area

The area surrounding the applicant's property is primarily commercial in its nature. To the immediate West of the site, a branch of a regional bank is located with a large parking lot and several drive-through banking aisles. To the East of the applicant's property, lies a large shopping plaza with numerous businesses ranging from retail stores to a gym to multiple restaurants. The existing Zoning classification of the applicant's site and the adjoining commercial land uses in the immediate vicinity of the Somerset Village Shopping Center are Residential-Light Industrial-Commercial(R-LI-C) which creates a commercial hub on both sides of Route 340 that provide general commercial services to the residents of Jefferson County. The commercial nature of the surrounding properties to the applicant's property allowed for the applicant's Planned Unit Development to be developed in this location which was congruent with the existing commercial character of the area. The proposed request to divide the property into three lots, each occupied by one of the existing structures, is also consistent with the area in which it is located. In order to process such a division, however, the requested variances are required.



d. Impact on adjacent properties

As the applicant is seeking a reduction in the required landscape buffer between existing commercial uses, as well as a reduction in the required parking and access drive setbacks along proposed internal lot lines, the impact on adjacent properties will be minimal. While the property currently exists as a Planned Unit Development, there are plans to subdivide the parcel into three parcels thus allowing the owners to market the individual parcels which would ultimately bring the vacant structures back into use as businesses that will contribute to the tax base and provide jobs to the local community.

Staff Report
Jefferson County Board of Zoning Appeals Meeting
November 12, 2015

Chevrolet Variance Request (#ZV15-27)

The applicant's request for variances from the standards does not present a scenario that will have a negative impact on adjacent properties as the focus of their request is on internal lot lines between proposed lots. As the existing R-LI-C Zoning designation allows for a diverse mix of land use activities, the proposed reductions in parking and drive aisle setbacks, landscaping, and setback standards will allow the existing development pattern to continue after the properties are subdivided between the buildings. Generally, having existing commercial structures occupied, as opposed to vacant and in a state of disrepair, add value to surrounding properties and assist in generating additional customer traffic to the area. This may considered a beneficial impact to the adjacent properties.



Staff Report
Jefferson County Board of Zoning Appeals Meeting
November 12, 2015

Chevrolet Variance Request (#ZV15-27)

e. Feasibility of complying with the ordinance by other means

As the applicant is intending to subdivide their existing Planned Unit Development into three separate lots to be sold or leased to prospective businesses, the feasibility of complying with the required ordinances is limited. The ordinances that the applicant is requesting relief from are the parking and drive aisle setbacks as well as the landscape buffers that most contiguous land uses would deem necessary to act as buffers between them to reduce glare, noise, and other unintended intrusions. Due to the existing layout of the buildings, parking and drive aisles, reconstruction of these sites would be complex to meet these standards. It does appear that it may be possible to provide some landscaping between the rear two properties; however, it may not completely meet County standards.



5. Conditions of Approval

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

- a. The variances shall only apply to the landscape buffer and the parking and drive aisle setbacks for the internal lot lines between the proposed lots.

Staff Report
 Jefferson County Board of Zoning Appeals Meeting
 November 12, 2015

Chevrolet Variance Request (#ZV15-27)

SECTIONS OF ZONING ORDINANCE TO BE CONSIDERED:

Section 4.11 Landscaping, Screening and Buffer Yard Requirements

Buffer yard requirements are as shown in Appendix A and B of this Ordinance, and are summarized in this section.²⁷

A. Commercial Development²⁷

1. All commercial development adjacent to any Residential district, or any lot with a residence, school, church, or institution of human care shall have a fifty (50) foot or greater unscreened green space buffer or a fifteen (15) foot screened green space buffer along common property lines. The screening may be either vegetative or opaque fencing and may be placed anywhere within the buffer. No structures, materials, or vehicular parking shall be permitted within the side and rear yard buffers.
2. All commercial development adjacent to all other uses must maintain ten (10) foot side and rear yard landscape buffers.⁵

Section 5.8 Residential-Light Industrial-Commercial (R-LI-C) District¹

The purpose of this district is to guide high intensity growth into the designated growth area. Light industrial uses are defined in Section 2.2. All other perceived light industrial uses shall be referred to the Jefferson County Development Authority for a recommendation on whether a use is a light industrial or heavy industrial use. The final decision on use classification shall be made by the Zoning Administrator.²³

C. Site Development Standards^{23, 27}

2. Setbacks, height, and other site development standards shall be as indicated in Appendix A, Residential Site Development Standards, and Appendix B, Non-Residential Site Development Standards, except as provided elsewhere in this Ordinance. All commercial or industrial uses must be in compliance the requirements for such use in Article 8. In addition, a site plan, if required, must demonstrate that traffic patterns created by Commercial or Light Industrial uses (1) will not use adjacent residential roads for through traffic and (2) will connect to principal and major arterial highways as directly as feasible considering access restrictions.^{5, 7, 23, 27}

APPENDIX B: → NON-RESIDENTIAL SITE DEVELOPMENT STANDARDS TABLE²⁷

Zoning District	Development Type ⁹	Min Lot Area (MLA)	Min Lot Width	Max Building Height ⁸	ImperVIOUS Surface Limit	Building Setbacks			Parking/Drive Aisle Setbacks ⁸			Distance if Sec. 4.6 applies	Buffers (Sec. 4.11) (Screened / Unscreened)									
						Front	Side	Rear	Front	Side	Rear		Front, Side, Rear	a Residential district, or any lot with a residence, school, church, or institution of human care			Commercial Use			Industrial Use		
														Front	Side	Rear	Front	Side	Rear	Front	Side	Rear
Industrial - Commercial ^{10,11}	Commercial sites 1.5 acres and smaller	N/A	N/A	75	80%	25			15	4	4	75	Narrow Buffer Detail No. M-54			N/A	10(S)	10(S)	N/A	10(S)	10(S)	
	Commercial sites greater than 1.5 acres	N/A	N/A	75	80%	25	50 (or 25 if adjacent to industrial use)		15	10	10	75	Medium Buffer Detail No. M-53			N/A	10(S)	10(S)	N/A	10(S)	10(S)	
	Industrial	3 acres ¹²	N/A	75	90%	50 (or 25 if adjacent to industrial use)			25 (or 20 if adjacent to industrial use)			200	Wide Buffer Detail No. M-52			25(S)	20(S)	20(S)	N/A	20(S)	20(S)	
Residential-Light Industrial-Commercial	Commercial or Industrial	N/A	N/A	60	80%	See Industrial - Commercial District																



JEFFERSON COUNTY, WEST VIRGINIA

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

File Number: #ZV15-27
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: Jefferson Business Park Associates, LLC: John Good, Manager
Mailing Address: P.O. Box 2530, Winchester, VA 22604
Phone Number: 540/662-2688 Email: jgood@shockeycompanies.com

Applicant Contact Information

Name: P.J. Raco Consulting, LLC: Paul J. Raco
Mailing Address: P.O. Box 548, Charles Town, WV 25414
Phone Number: 304/676-8256 Email: pjraco.consulting@gmail.com

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

Name: Allegheny Surveys, PLLC: Mike Shepp
Mailing Address: 401 Fairfax Blvd. Suite 3, Ranson, WV 25438
Phone Number: 304/724-5008 Email: mshepp@alleghenysurveys.com

Physical Property Details

Physical Address: 1 Chevrolet Drive
City: Charles Town State: WV Zip Code: 25414
Tax District: Charles Town Map No: 9 Parcel No: 8.5
Parcel Size: 6.95+- Acres Deed Book: 1156 Page No: 708

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). R-LI-C is checked.

RECEIVED

OCT 16 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: Append B & Sections 4.11(A): 5.6(D)1. and 5.8(C)2
Correct

Briefly describe the nature of the variance request:
See Attached

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

Front Setback Side Setback Rear Setback Reduction From 50 to 37

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:

See Attached

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?

See Attached

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

See Attached

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

See Attached

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.

* Original Submitted 10/16/15
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)).

11/12/15
Date of Public Hearing

10/28/15
Advertising Date

10/28/15
Placard Posting Date

* Replaces original submitted 10/16/15 - SH 10/21/15

Jefferson Business Park Associates, LLC
(Former Alex Chevrolet Business Park)
Request for Variances
Article 4, Section 4.11.A
Article 5, Sections 5.6.D.1. and 5.8.C.2, Which Also Refers to Appendix B
Appendix B (Setbacks for Buildings, Access Drives and Parking Areas)
Jefferson County Zoning Ordinance
October 14, 2015

Brief Description of Request:

Due to the unique circumstances with the former Alex Chevrolet Dealership, Alex Parts Retail and Warehouse (Former Rock and Tile Retail and Warehouse) and Alex Collision Center/Warehouse, Jefferson Business Park Associates, LLC (the new owner) is seeking variances from the Jefferson County Zoning Ordinance. The commercial setback table is found in Appendix B. The specific sections that this request deals with are Section 4.11(A) that requires a 10 foot landscape buffer between commercial uses (reduced from 10 feet to 0 feet) and Sections 5.6(D)1. and 5.8(C)2., which require a 50 foot building setback between commercial lots (reduced to a minimum of 37 feet); and, a 10 foot setback for driveways, parking areas and internal access drives (reduced from 10 feet to 0 feet). The only one that impacts an external line is the setback variance needed for the existing corner of the rear building that abuts the Somerset Plaza commercial property. However, the Applicant has not changed anything. This encroachment into the setback has existed since the building was initially built over 20 years ago.

As the Board is aware, the former Alex Chevrolet buildings including the dealership, the Parts Center (which occupied the Rock and Tile Building) and the Collision Repair and Warehouse Center in the rear are located along Route 340 East of Charles Town next to the Somerset Village Shopping Center. This Center is approved to contain three commercial, office, retail and/or warehouse buildings. The Planning Commission approval process for these facilities began in 1987. These uses were permitted as a Planned Unit Development and went through all of the available processes in effect at the time through the last approval in 1998. Of course, the once active businesses and buildings remain vacant, even though the site remains approved and built for the three separate uses.

This project was processed under the old subdivision ordinance that defined a subdivision as more than one lot or more than one principal building on a single parcel of land. Since this development had multiple buildings and uses, the owner was required to process the project through the PUD (conventional subdivision) process. Essentially, everything was completed, except for the final platting of the three separate lots. The applicant has the Staff approval to move forward with the subdivision of the lots, but needs similar variances that were granted by the Board at the 340 Business Center (Sears) and at several parcels in the Industrial Park.

As with the other projects, two of the three different structures do share common elements such as the access, SWM, roads and the parking. Accordingly, the parking area and the interior access points don't meet the setback and buffer requirements between the parcels. The exterior entrance points to Chevrolet Drive still exist and will continue to exist, but it is vital to keep the internal access and parking connected as an option to remain a cohesive business park. As a matter of fact two of the buildings (on proposed lots 2 and 3) will most likely be initially be sold or leased to the same entity which would require the connection points. Even if the three buildings are sold separately and don't need the common access points, the exterior entrances will still serve the existing lots and will leave none as

landlocked. The WVDOH is in the process of approving the lots and the existing access points. Lot 1 (the large building in the rear) does not currently share a parking lot and may be sold separately without an easement, but the Applicant would still like the variances to apply to Lot 1 in case the buyers or lessees of the parcels would like to connect Lot 1 in the future.

The Staff is processing this subdivision as a Minor Subdivision in order to create the lots, since the property essentially developed through the ordinances in place at the time of construction. These variances will change nothing on the property that hasn't already been approved. In fact, the SWM, the access, the parking, the external landscaping and all other approved elements of the plan will remain the same. All the Applicant is requesting is a way to draw lines in between the buildings, so that they can be sold to separate entities. However, the new lines will create these setback issues that can be resolved by the BZA.

The three specific variances that are requested include the elimination of the 10 feet required buffer required between commercial lots in Section 4.11(A); the reduction of one building setback from 50 feet to 37' (where the one corner of the building encroaches on the external setback next to the plaza); and, the elimination of the parking lot, driveway and access drive setback. Typically, the setback for the parking and access drive is 10 feet. However, since this center is already designed to work together, the parking and access drive will be shared by users if necessary. As with the other cases that the BZA approved, if the parcels do share any of these the common use elements such as SWM, parking and access roads, the owner will deed the appropriate easements and agreements to each of the potential buyers. This agreement will eliminate the need for a parking and access drive setback. Regarding the one encroachment into the setback it has pre-existed since the original building was built many years ago.

The Board's approval of these variances will simply allow the Applicant to sell what is already approved for these three separate buildings. Any purchaser will know what they are buying in advance and will also enter into the common interest ownership and maintenance agreement if needed. There is a shared parking lot and internal access between lots 2 and 3 and an easement will be conveyed if they remain connected. However, Lot 1 does not share an entrance or a parking area and has two existing approved entrances on Chevrolet Drive and will not need an easement unless a future purchaser or lessee needs it.

Currently, these buildings are empty and have been for quite a while. They have been subject to vandalism including the recent fire in the rear building which was set by the vandals. The Applicant already has a sale pending for one or two of the buildings which will allow the buildings to again be a productive part of the business community in Jefferson County. The approval of the variances and the subdivision will allow three businesses the opportunity to employ people and pay taxes. Additionally, it will take three abandoned buildings and allow them to receive the care and maintenance that goes along with an active business.

As mentioned, Jefferson Business Park Associates has several Letters of Intent and/or contingency contracts for the purchase several of the individual parcels if the Board of Appeals grants the variances and the Planning Commission approves the Final Plat. Accordingly, Jefferson Business Park Associates is anxious to move forward with the sale of these parcels in order to turn these three vacant buildings into active businesses again. This will allow this vacant property to become a viable business center in Jefferson County.

Thank you for your consideration of this matter.

Jefferson Business Park Associates, LLC
(Former Alex Chevrolet Business Park)
Request for Variances
Article 4, Section 4.11.A
Article 5, Sections 5.6.D.1. and 5.8.C.2, Which Also Refers to Appendix B
Appendix B (Setbacks for Buildings, Access Drives and Parking Areas)
Jefferson County Zoning Ordinance
October 14, 2015

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

The three buildings were previously used for retail, supply and warehousing, service businesses and a collision repair facility. This development was already approved by the County between 1989 and 1998. Nothing will be changed except that the three buildings will now be sold or leased to separate viable businesses, as opposed to sitting empty.

Currently, the vacant structures do have a negative impact on the surrounding area because of the loitering and vandalism that goes along with abandoned buildings. If the variances are granted, then the Applicant will lease or sell the properties, so that they will once again become a valuable asset to the Jefferson County business community. These three lots will again function as businesses and pay increased taxes, while providing additional employment in the area. The recent fire in one of the buildings was set by vandals that were hanging out in the vacant structures. Once businesses are re-established in these buildings, the possibility of such vandalism will be greatly diminished.

Furthermore, the variances will have no effect on the perimeter of the property. The property will look exactly as it does now. It will only have property lines added between the buildings on all three lots and through the shared parking areas on lots 2 and 3. These variances will also apply if shared parking is needed between lots 1 and 2 in the future. Even the one setback variance needed, which is adjacent to the Somerset Plaza, has existed for over 20 years. There are no other setback issues. Also, if necessary, easements will be deeded to the new owners so that the parking and access roads can be used to mutually benefit all three parcels.

Finally, the project already has agency approvals for the development as designed. The Highway Department is in the process of approving the entrances as they exist. Therefore, the granting of the variances will only have a positive effect on the public's health, safety or welfare; and, the adjacent property owners' rights. Also, once the variances are granted, the Applicant will still need to meet the balance of the subdivision standards of a Minor Subdivision.

2. 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?

When the development was built, the market and economy was such that allowed one owner to have multiple large structures for various businesses. Now, lenders and business clients are more willing to purchase and lend on individual buildings and properties. That is why the buildings have sat vacant for so long. It took the bank and real estate company many years to sell the abandoned project; and, only with the intent for the Applicant to divide the property into three businesses. As three separate parcels, the Applicant has interest and/or contracts on all three of the separate parcels. The market has shifted from when the original development was processed. Also, now, the County actually encourages the connection of commercial developments and building pads on separate parcels. The current Staff understands that the best way to develop commercially is with shared infrastructure that may be available to multiple lots and businesses.

Because of the decline in the real estate market and the reluctance of banks to provide lending for large commercial projects, previously approved projects that had more than one building on the lot, became more difficult to market and sell. As the BZA and Staff is aware, some of these projects have already come before the BZA to get the same variances to be able to subdivide the multiple buildings into separate lots in order to feasibly market them. In this case, the special conditions are that the three buildings will allow three separate businesses to open in otherwise wasted, vacant space. This is an opportunity to allow redevelopment of vacant commercial space instead of building new commercial space while this parcel remains vacant. The possibility of shared amenities such as parking and access and pedestrian areas will ensure that this property will remain a nice business park.

The fact that this project, like other business park developments that the BZA has seen lately, is approved with the buildings, parking and access drives and landscaping already located on the property makes this a unique situation. The new property lines will just split the property into three lots, without any changes in appearance or function.

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

If the parking and access drive variances and the building setback variance are not granted, then the business park will remain empty for a much longer time period. There is now a potential buyer of one of the buildings that intends to fully occupy the space. These commercial buildings will again become a reasonable use of the land if can be sold to separate owners. Chevrolet Drive will continue to be used to access the new lots, as well as, the internal access will remain if necessary. This type of development is a tenet of good planning which recognizes that commercial properties should be connected from private access points.

If the variances aren't granted, the three buildings will not be able to be sold separately. That will create a hardship, because the property will continue to remain vacant. During the past several years, no one has had any luck selling the project as a whole, but the Applicant now has interest from several buyers in buying the buildings on separate parcels. The granting of these variances will allow that to happen by eliminating the hardship of selling the project as a whole. Separate commercial uses, with separate owners, are a much more reasonable use of the land then the property remaining vacant and useless.

The County has already determined that these three buildings, as designed and approved, are a reasonable use of the land. Since nothing will change on the property, the same types of uses will continue to be a good and reasonable use of the land. The granting of the variances, however, will allow the buildings to be sold like commercial and office buildings in other jurisdictions. It just makes good business sense to allow commercial and office development to share infrastructure and site amenities if necessary and feasible. The approval of these variances will allow the project to be re-established as a viable business commodity during these trying economic times

4. *The spirit of this Ordinance will be observed and substantial justice done.*

The purpose of a buffer between lots is to protect property owners from uses that don't complement each other. In this case, the new buyers will see exactly what they are purchasing. Since the project is already built, any potential purchaser will buy buildings exactly as they have been developed and built. Not only would the buffer look out of place between the buildings, it would also create a security issue. This type of buffer is more appropriate between two different types of use categories, such as commercial and industrial. The Applicant does not believe that it was intended to buffer two similar commercial uses from each other. Regarding the parking and drive aisle setbacks, based on the size of the development, it only makes sense to keep the parking lot connected if that is what the purchasers want. The shared access along Chevrolet Drive and parking lot will ensure that the businesses will make efficient use of the land.

The variances requested are for items that typically would protect one property owner from building something that would negatively affect a neighboring property. In this instance the buildings, access drives and parking areas already exist. Therefore, the new owners and/or tenants will also understand that there may be shared easements for the parking, access drives and pedestrian areas if that is how they are sold individually. As such, they will have advance knowledge of what they are purchasing.

If the variances are granted, the intent of the ordinances remains unaffected since the project already went through the appropriate development process and the buildings and improvements were built as designed. Once the variances are approved, the project will continue to process through the subdivision ordinance. This will ensure that the three proposed lots will continue to meet the ordinance standards. Since the variances only affect the interior portions of the lot (and a pre-existing setback encroachment), the granting of the variances will have no effect on any other adjacent property owner.

Substantial justice would be to approve the requested variances, so that Jefferson Business Park Associates can sale the property in a feasible way based on the current real estate market. This would allow the project to be sold separately to two or three entities that can more easily obtain bank financing based on the individual sizes of the new parcels. This should help the project to be fully occupied in the near future. The spirit of the development ordinances, as well as Envision Jefferson 2035, certainly endorse the redevelopment of vacant commercial and industrial structures to again make them productive businesses in Jefferson County.

The Board's approval of the variances would be greatly appreciated.



Jefferson County, West Virginia

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Director's Report Board of Zoning Appeals Meeting November 12, 2015

1) Pending Zoning Ordinance and Subdivision Regulation Amendments:

a) Campgrounds:

- i. Public Hearing held September 8, 2015 – PC discussion and action scheduled for November 10, 2015 PC meeting

b) Major and Minor Subdivision and Site Plan Process:

- i. Public Hearing held October 13, 2015 – PC recommended approval of the language to the County Commission; CC PH scheduled for November 19, 2015 at 1:30 pm

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

- i. Work Session/discussion held at October 27, 2015 PC meeting -- PC discussion and action scheduled for November 10, 2015 PC meeting

d) 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 – awaiting final language from legal for November 10, 2015 PC meeting

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 met with Engineering and Building staff for recommendations; memo to be prepared TBD

f) 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

g) Other Text amendments needed:

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

iii. Signage – tentative timeframe?

2) **Upcoming BZA meeting**

a) **REMINDER of DATE CHANGE:**

Next Regular Meeting: **December 10, 2015**