CITY OF CHARLES TOWN
BOARD OF ZONING APPEALS
AGENDA • SEPTEMBER 19, 2023

BZA Meeting **COUNCIL CHAMBERS** **7:00 PM**
101 E Washington Street, Charles Town, WV 25414

I. CALL TO ORDER

II. DETERMINATION OF QUORUM

III. APPROVAL OF MINUTES

III.1 : Draft Minutes of April 18, 2023
04-18-23 Meeting Minutes.docx

III.2 : Draft Minutes of August 15, 2023
Draft 08-15-23 Meeting Minutes.pdf

IV. APPROVAL OF FINDINGS OF FACTS AND CONCLUSIONS OF LAW

IV.1 : Draft Record of Decision -BA 2023-01
BA2023-01_Draft_Record.pdf

IV.2 : Draft Record of Decision - BA2023-02
BA2023-02_Draft_Record.pdf

IV.3 : Draft Record of Decision - BA2023-03
BA2023-03_Draft_Record.pdf

V. PUBLIC HEARINGS

V.1 : BA2023-04 Eagle Avenue - Variance Request
1. Staff Report.pdf
2. View of Lot.pdf
3. Application.pdf

VI. CONTINUED CASES

VII. OTHER BUSINESS

VIII. ADJOURNMENT

IX. NOTICE: The Public May View the Meeting Live by Clicking on the Event Link at:

https://www.charlestownwv.us/government/agendas-and-minutes/

Board of Zoning Appeals
101 East Washington Street
Charles Town, WV 25414

Meeting: 09/19/23
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

Draft Minutes of April 18, 2023

ATTACHMENTS:

- 04-18-23 Meeting Minutes.docx

CITY OF CHARLES TOWN

Board of Zoning Appeals

MINUTES • April 18, 2023

BZA Meeting	**SMALL CONFERENCE ROOM**	**7:00 PM**

101 East Washington Street, Charles Town, WV 25414

1. **CALL TO ORDER**

Present: Locke Wysong, Chair
Patrick Kratovil
Jim Thomas

Absent: Christopher Cox

Attorney Mike Funk and Zoning Administrator James Newman are also present.

2. **DETERMINATION OF QUORUM**

3. **APPROVAL OF MINUTES**

- 2.1: Minutes – February 22, 2023

Motion to approve minutes.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Kratovil
SECONDER:	Thomas
AYES:	Kratovil, Thomas, Wysong

4. **APPROVAL OF FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

5. **PUBLIC HEARINGS**

4.1: BA2023-01: Alla Willa Drive – Request for a Special Exception for a Casino

Staff gave a presentation.

- Property zoned commercial, keeps with primary commercial zoning in the area.
- Adjacent property is zoned residential.

Staff recommends two conditions for the approval of application:

- Staff proposes that the site be developed under the terms of the application.
- If site use is discontinued for two years, the use is revoked.

Mr. Kratovil asked if a bar would be a by-right use. Answer is yes.

Public Comment: One member of the public spoke, concerned about noise impact.

Motion to close the public hearing:

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Thomas
SECONDER:	Kratovil
AYES:	Thomas, Kratovil, Wysong

Members went into private discussion.

Motion back into public hearing:

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Thomas
SECONDER:	Kratovil
AYES:	Thomas, Kratovil, Wysong

Returned to public session at 7:33pm.

Motion to approve the subject, pursuant to the aforementioned conditions:

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Kratovil
SECONDER:	Thomas
AYES:	Thomas, Kratovil, Wysong

4.2: BA2023-02 – 110 219 N. Mildred Street – Request for a Special Exception Permit for Apartments

Staff gave a presentation.

Mr. Kratovil questioned if the basis for staff proposed condition of no more than three units. Staff responded that the applicant is only requesting 3 units.

Applicant spoke.

Public comment: One member of the public spoke, concerned about parking impact.

Motion to close the public hearing.

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Kratovil
SECONDER:	Thomas
AYES:	Thomas, Kratovil, Wysong

Members went into private discussion.

Motion back into public hearing:

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Thomas
SECONDER:	Kratovil
AYES:	Thomas, Kratovil, Wysong

Three conditions were decided on for approval:

1. The site must be developed in accordance with the application, subject to the requirements of the City's Ordinances and to modification by the requirements of the Planning Commission.
2. In the event the use is discontinued for a period of one year, the use is revoked. Use is considered abandoned if all 3 units are uninhabited.
3. There shall be no more than 3 apartment units.

Motion to approve, subject to 3 conditions:

RESULT:	**APPROVED [UNANIMOUS]**

MOVER:	Kratovil
SECONDER:	Thomas
AYES:	Thomas, Kratovil, Wysong

6. **CONTINUED CASES**
   None.
7. **OTHER BUSINESS**
   None.
8. **ADJOURNMENT**

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Thomas
SECONDER:	Kratovil
AYES:	Thomas, Kratovil, Wysong

   Meeting was adjourned at 8:14pm.

9. **NOTICE: The public may view the meeting LIVE by clicking the event link at: https://www.charlestownwv.us/government/agendas-and-minutes/**

Board of Zoning Appeals
101 East Washington Street
Charles Town, WV 25414

Meeting: 09/19/23
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

Draft Minutes of August 15, 2023

ATTACHMENTS:

- Draft 08-15-23 Meeting Minutes.pdf

CITY OF CHARLES TOWN

Board of Zoning Appeals

MINUTES • August 15, 2023

BZA Meeting **COUNCIL CHAMBERS** **7:00 PM**

101 East Washington Street, Charles Town, WV 25414

DRAFT

1. **CALL TO ORDER**

Present: Locke Wysong, Chair
Patrick Kratovil
Christopher Cox

Absent: Jim Thomas

Attorney Mike Funk, Zoning Administrator James Newman, and Permit Technician Kim Cosson are also present. Crosson attended virtually.

2. **DETERMINATION OF QUORUM**

3. **APPROVAL OF MINUTES**

- 3.1: Minutes – April 18, 2023

Minutes incorrectly labeled 'Historic Landmarks Committee'. Mr. Thomas was at the April meeting but was not present to review and take action on this item. No action taken.

4. **APPROVAL OF FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

Mr. Thomas was at the April meeting but was not present to review and take action on this item. No action taken.

5. **PUBLIC HEARINGS**

5.1: BA2023-01: 122 Revere Drive – Request for a Variance

Staff gave a presentation.

Mr. Cox asked if the pool would be fended. Applicant Kevin Shipley answered that the property is already fenced.

Mr. Wysong asked if there had been any public comment received on this item. Staff affirmed that no written comment was received, and that there was one telephone inquiry, and the inquirer was not opposed to the request.

Motion to go into Executive Session at 7:10pm:

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Cox
SECONDER:	Kratovil
AYES:	Cox, Kratovil, Wysong

Motion to end Executive Discussion at 7:13 pm:

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Cox
SECONDER:	Kratovil
AYES:	Cox, Kratovil, Wysong

Motion to approve the variance as presented by Staff:

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Kratovil
SECONDER:	Cox
AYES:	Kratovil, Cox, Wysong

6. **CONTINUED CASES**
   None.
7. **OTHER BUSINESS**
   None.
8. **ADJOURNMENT**

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Kratovil
SECONDER:	Cox
AYES:	Kratovil, Cox, Wysong

Meeting was adjourned at 7:15 pm.

Board of Zoning Appeals
101 East Washington Street
Charles Town, WV 25414

Meeting: 09/19/23
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

Draft Record of Decision -BA 2023-01

ATTACHMENTS:

- BA2023-01_Draft_Record.pdf

BEFORE THE BOARD OF ZONING APPEALS
OF THE CITY OF CHARLES TOWN, WEST VIRGINIA

In re: Docket No. BA 2023-01 – Application for Special Exception by IRIS Property LLC

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

This matter came before the Board of Zoning Appeals at its general meeting held on the 18th day of April, 2023, for public hearing upon the Application for Special Exception filed by IRIS Property LLC (the "Applicant"). The subject real property is owned by Shirley Rockwell. Board members present were Chairman C. Locke Wysong, Jr., James Thomas, Jr., and Patrick Kratovil, being a quorum. Also present were the City's Zoning/Subdivision Administrator, James Newman, and the City's legal counsel, Michael Funk.

From a review of the record and confirmation by staff upon request, the Board found that proper notice was given of this hearing by publication and posting of the subject real property in accord with the Charles Town Zoning Ordinance.

The Applicant came before the Board requesting issuance of a Special Use Permit pursuant to **Sections 1321.10(D)(3) and 1321.11(A)-(D) of the Zoning Ordinance** with respect to the proposed use of the subject real property as a casino/video lottery establishment. The subject real property consists of two (2) vacant lots located on Alla Willa Drive in the General Commercial (GC) District to which street addresses are not currently assigned, but which lie between 49 and 79 Alla Willa Drive. The subject real property is designated as the single Tax Parcel 12 on Tax Map 7 in Charles Town Corporation. **Table 1322.04, Zoning District Use Table** of the Zoning Ordinance specifies that casinos/video lottery establishments are conditionally permitted as Special Exception Uses in the General Commercial District.

The Board first heard the presentation of the City's Zoning/Subdivision Administrator, James Newman, who reviewed the contents of the written report of the City's staff, a copy of which is contained in the Agenda Packet for the meeting and made part of the record in this matter, and explained the basis of staff's determination that the Special Exception Use proposed by the Applicant satisfies the requirements of Section 1322.11(D)(3) of the Zoning Ordinance and is recommended. Mr. Newman noted that: (i) the Applicant seeks to construct and operate a casino/video lottery establishment upon the subject real property; (ii) the Applicant is in the process of seeking Planning Commission review and approval of a development plan for the subject real property, as well as merger of the two (2) lots; (iii) the issuance of a Special Use Permit requires satisfaction of the three (3) criteria set forth in Section 1321.11(D)(3) of the Zoning Ordinance, as found by the Board; (iv) the subject real property and adjacent parcels are zoned for commercial use, the adjacent E. Washington Street is a major commercial thoroughfare, and nearby commercial uses include a motel and fast-food establishments; (v) the proposed structure will be one story, parking will be between the structure and the street, exterior lighting will be limited, and a six-foot fence will be constructed on the property's perimeter; (vi) while casinos/video lottery establishments might generally negatively impact values of adjacent properties, impact should not be major in a commercial area; (vii) the character of the proposed use is in keeping with the purpose of the General Commercial District, the City's Comprehensive Plan, and the commercial character of the neighborhood; (viii) the proposed use will require issuance by the Planning Commission of a waiver of off-street parking requirements; and (ix) one external light above the building's entrance is proposed, which must be downcast and shielded.

The Board next presented questions to Mr. Newman. Board member Kratovil asked whether the use of the subject real property could be converted into a bar or honky-tonk with a

greater impact. Mr. Newman responded that the Zoning Ordinance does not separately categorize "bars" or similar terms as uses, but that restaurants, including those types that would be expected to serve alcohol, are permitted in the General Commercial District and that uses serving alcohol appear to be permitted by right in the General Commercial District. The Board had no further questions for Mr. Newman.

The Applicant's representative, Ali Hadavand, next was sworn and testified. Mr. Hadavand stated that: (i) "casino" is probably not the right term to describe the propose use, which is to be a much smaller and low-impact; (ii) the proposed establishment will have seven to ten (7-10) video lottery machines and thus few patrons at any given time; (iii) the Applicant has eight (8) other establishments engaged in the same business; (iv) the establishments are low key and generate little noise and have minimal impact on neighboring properties; (v) the establishments serve a maximum of two (2) beers per customer and the patrons are generally middle-aged or seniors; and (vi) as to the possibility of conversion of use to a bar or honky-tonk, the subject real property has room for only a small parking lot that would not be practical for such uses. Mr. Hadavand submitted to the Board a revised site plan for the project.

The Board had no questions for Mr. Hadavand.

The Board confirmed with Staff that no members of the public or aggrieved parties submitted comments. One member of the public, Jonathan Ruckman, appeared and stated that he was not opposed to the proposed use as long as noise would not be a problem.

Mr. Hadavand next gave a summation and stated that a visit to the Applicant's establishment on Wall Street would reflect the low-key nature of the business and that the subject real property is zoned General Commercial and he suspects the proposed use will have as low of an impact as any general commercial use.

Mr. Newman then stated that the proposed project was scheduled to be before the

Planning Commission for consideration of the site details in the coming week.

Upon completion of the taking of testimony and argument, the Board adjourned into executive session for deliberation.

After completing its deliberation and returning to open session, by motion duly made by Board member Kratovil and seconded by Board member Thomas, the Board determined, by a unanimous vote of three (3) in favor and zero (0) opposed, that the application for Special Exception satisfies the requirements of Section 1321.11(D)(3) of the Zoning Ordinance and that a Special Use Permit should be issued permitting use of the subject real property as a casino/video lottery establishment in compliance with the plans and information submitted by the Applicant.

FINDINGS OF FACT

The Board hereby finds as follows:

1. The proposed use as a casino/video lottery establishment will not materially endanger the public health or safety or constitute a public nuisance if located where proposed and developed according to the plans and information submitted and approved. No evidence to the contrary was presented. The subject real property and adjacent parcels are zoned for commercial use, the adjacent E. Washington Street is a major commercial thoroughfare, and nearby commercial uses include a motel and fast-food establishments. The proposed structure will be one story, parking will be between the structure and the street, exterior lighting will be limited, and a six-foot fence will be constructed on the property's perimeter. The proposed establishment will serve a maximum of two (2) beers per customer and is expected to have a low-key atmosphere, generate little noise, have a generally older clientele, and have minimal impact on neighboring properties.

2. The proposed use as a casino/video lottery establishment will not substantially diminish the value of adjacent properties. No evidence to the contrary was presented. While casinos/video lottery establishments might generally negatively impact values of adjacent properties, impact upon values should not be significant in a commercial area. Other uses that would seem to have similar impacts on property values, such as liquor stores, 24-hour convenience markets, and gasoline/service stations, are permitted by right in the General Commercial District.

3. The location and character of the proposed use as a casino/video lottery establishment, if developed according to the plans and information approved, will be in harmony with proximate land uses, and consistent with the purposes of the General Commercial District. No evidence to the contrary was presented. The subject real property and adjacent parcels are zoned for general commercial use, the adjacent E. Washington Street is a major commercial thoroughfare, and nearby commercial uses include a motel and fast-food establishments. The character of the proposed use is in keeping with the purpose of the General Commercial District, the City's Comprehensive Plan, and the commercial character of the neighborhood.

4. The written report of Staff methodically details precise reasons why the Special Use Permit should be issued in accord with the requirements of 1321.11(D)(3) of the Zoning Ordinance, which written report has been carefully reviewed and considered by the Board, and the Board hereby adopts such reasons in their entirety and incorporates the same herein.

CONCLUSIONS OF LAW

Based upon the foregoing findings and for the reasons stated herein and based upon staff's recommendations, testimony presented, information contained in the Agenda Packet, and

the discussion on the record, the Board, by a unanimous vote of three (3) in favor and zero (0) opposed, determines that Applicant's requested Special Exception Use satisfies the requirements of Section 1321.11(D)(3) of the Zoning Ordinance and that a Special Use Permit should be issued to permit the requested Special Exception Use as a casino/video lottery establishment.

WHEREFORE, the Board directs that staff ISSUE a Special Use Permit permitting, as a Special Exception Use, use of the subject real property as a casino/video lottery establishment in all manner compliant with the plans and information submitted by Applicant in connection with its Application for Special Exception, but SUBJECT TO THE EXPRESS CONDITIONS that (i) the subject real property be developed in compliance with the Charles Town Subdivision and Land Development Ordinance and any and all requirements of the Planning Commission related thereto, including without limitation, those related to off-street parking, and (ii) the Special Use Permit shall be revoked without further action in the event use of the subject real property as a casino/video lottery establishment is discontinued for a continuous period in excess of one (1) year.

This Decision is entered as of the date set forth below. Any person adversely affected by this Order may appeal same by Petition to the Circuit Court of Jefferson County within thirty (30) days of the filing hereof.

Entered

C. Locke Wysong, Jr., Chairman

Board of Zoning Appeals
101 East Washington Street
Charles Town, WV 25414

Meeting: 09/19/23
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

Draft Record of Decision - BA2023-02

ATTACHMENTS:

- BA2023-02_Draft_Record.pdf

BEFORE THE BOARD OF ZONING APPEALS
OF THE CITY OF CHARLES TOWN, WEST VIRGINIA

In re: Docket No. BA 2023-02 – Application for Special Exception by Alexander Salgado

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

This matter came before the Board of Zoning Appeals at its general meeting held on the 18th day of April, 2023, for public hearing upon the Application for Special Exception filed by Alexander Salgado (the "Applicant"). The subject real property is owned by Zales Construction, LLC. Board members present were Chairman C. Locke Wysong, Jr., James Thomas, Jr., and Patrick Kratovil, being a quorum. Also present were the City's Zoning/Subdivision Administrator, James Newman, and the City's legal counsel, Michael Funk.

From a review of the record and confirmation by staff upon request, the Board found that proper notice was given of this hearing by publication and posting of the subject real property in accord with the Charles Town Zoning Ordinance.

The Applicant came before the Board requesting issuance of a Special Use Permit pursuant to **Sections 1321.10(D)(3) and 1321.11(A)-(D) of the Zoning Ordinance** with respect to the proposed use of the subject real property as a residential apartment building/multi-family dwelling with three (3) units. The subject real property consists of a lot with an existing structure located in the Old Town Residential (OT-R) District at the intersection of East North Street and North Mildred Street and with an address of 219 N. Mildred Street. The subject real property is designated as Tax Parcel 138 on Tax Map 2 in Charles Town Corporation. **Table 1322.04, Zoning District Use Table** of the Zoning Ordinance specifies that residential apartments are conditionally permitted as Special Exception Uses in the Old Town Residential

District.

The Board first heard the presentation of the City's Zoning/Subdivision Administrator, James Newman, who reviewed the contents of the written report of the City's staff, a copy of which is contained in the Agenda Packet for the meeting and made part of the record in this matter, and explained the basis of staff's determination that the Special Exception Use proposed by the Applicant satisfies the requirements of Section 1322.11(D)(3) of the Zoning Ordinance and is recommended. Mr. Newman noted that: (i) the Applicant seeks to alter and improve the existing structure and construct three (3) two-bedroom apartment units therein to be leased to tenants; (ii) the proposed use is best classified as apartments in Table 1322.04, Zoning District Use Table, of the Zoning Ordinance and as a multi-family dwelling elsewhere in the Zoning Ordinance; (iii) the Charles Town Historic Landmarks Commission previously approved the Applicant's request to clad the exterior of the structure with fibrous cement board subject to certain conditions and the proposed use is compatible with those conditions; (iv) the issuance of a Special Use Permit requires satisfaction of the three (3) criteria set forth in Section 1321.11(D)(3) of the Zoning Ordinance, as found by the Board; (v) the subject real property is located in a residential zoning district, which allows apartments as Special Exception Uses; (vi) adjacent uses include residences, an auto parts store, and other commercial and non-residential establishments; (vii) the impact upon property values in the area due to the proposed use and its addition of three (3) two-bedroom apartments should be minimal given the existing mix of residential and non-residential uses; (viii) the character of the proposed use is in keeping with the purpose of the Old Town Residential District, the City's Comprehensive Plan, and the existing character of the neighborhood; and (ix) the existing structure upon the subject real property does not allow for off-street parking (absent demolition of part of the structure) and the proposed use will require issuance by the Planning Commission of a waiver of off-street parking requirements.

The Board had no questions for Mr. Newman.

The Applicant, Mr. Salgado, next was sworn and testified. Mr. Salgado stated that: (i) the structure on the subject real property has been vacant for a long time; (ii) he sees the proposed use of the subject real property for apartments as a good opportunity to bring the property back to life and make it useful; and (iii) he intends to convert the property to three (3) two-bedroom apartments that will add to the stock of available housing in the City.

The Board next presented questions to Mr. Salgado. Board member Thomas asked for clarification on the arrangement of the apartments and Mr. Salgado explained that two (2) apartments would be on the first floor and one (1) apartment on the second floor. Mr. Funk asked if both the two-story and one-story portions of the structure would be used for apartments and Mr. Salgado confirmed that both portions would be used with one (1) apartment in the one-story portion, one (1) apartment on the first floor of the two-story portion, and one (1) apartment on the second floor of the two-story portion. The Board had no further questions for Mr. Salgado.

One member of the public, Gary Roger Tingley, appeared and was sworn. Mr. Tingley stated that he owns properties adjacent to the subject real property and that the existing structure upon the subject real property takes the entire parcel and leaves no room for off-street parking. Mr. Tingley stated that available parking would not be sufficient if three (3) apartment units are added to the area. No other members of the public appeared.

Mr. Salgado next gave a summation and stated that he was aware of the parking situation and was considering limiting his tenants to those with no more than one (1) vehicle.

Upon completion of the taking of testimony and argument, the Board adjourned into executive session for deliberation.

After completing its deliberation and returning to open session, by motion duly made by

Board member Kratovil and seconded by Board member Thomas, the Board determined, by a unanimous vote of three (3) in favor and zero (0) opposed, that the application for Special Exception satisfies the requirements of Section 1321.11(D)(3) of the Zoning Ordinance and that a Special Use Permit should be issued permitting use of the subject real property as a residential apartment building/multi-family dwelling with three (3) units in compliance with the plans and information submitted by the Applicant.

FINDINGS OF FACT

The Board hereby finds as follows:

1. The proposed use as a residential apartment building/multi-family dwelling with three (3) units will not materially endanger the public health or safety or constitute a public nuisance if located where proposed and developed according to the plans and information submitted and approved. No evidence to the contrary was presented. The subject real property is located in a residential zoning district, which allows apartments as Special Exception Uses. Adjacent uses include residences, an auto parts store, and other commercial and non-residential establishments.

2. The proposed use as a residential apartment building/multi-family dwelling with three (3) units will not substantially diminish the value of adjacent properties. No evidence to the contrary was presented. The impact upon property values in the area due to the proposed use and its addition of three (3) two-bedroom apartments should be minimal given the existing mix of residential and non-residential uses.

3. The location and character of the proposed use as a residential apartment building/multi-family dwelling with three (3) units, if developed according to the plans and information approved, will be in harmony with proximate land uses, and consistent with the

purposes of the Old Town Residential District. No evidence to the contrary was presented. The subject real property and some adjacent parcels are zoned for residential use (OT-R District) and other adjacent parcels are zoned for mixed commercial use (Old Town Mixed Use Commercial District).

4. The written report of Staff methodically details precise reasons why the Special Use Permit should be issued in accord with the requirements of 1321.11(D)(3) of the Zoning Ordinance, which written report has been carefully reviewed and considered by the Board, and the Board hereby adopts such reasons in their entirety and incorporates the same herein.

CONCLUSIONS OF LAW

Based upon the foregoing findings and for the reasons stated herein and based upon staff's recommendations, testimony presented, information contained in the Agenda Packet, and the discussion on the record, the Board, by a unanimous vote of three (3) in favor and zero (0) opposed, determines that Applicant's requested Special Exception Use satisfies the requirements of Section 1321.11(D)(3) of the Zoning Ordinance and that a Special Use Permit should be issued to permit the requested Special Exception Use as a residential apartment building/multi-family dwelling with three (3) units.

WHEREFORE, the Board directs that staff ISSUE a Special Use Permit permitting, as a Special Exception Use, use of the subject real property as a residential apartment building/multi-family dwelling with three (3) units in all manner compliant with the plans and information submitted by Applicant in connection with its Application for Special Exception, but SUBJECT TO THE EXPRESS CONDITIONS that (i) no more than three (3) apartment units be constructed, placed, used, or occupied upon the subject real property, (ii) the subject real

property be developed in compliance with the Charles Town Subdivision and Land Development Ordinance and any and all requirements of the Planning Commission related thereto, including without limitation, those related to off-street parking, and (iii) the Special Use Permit shall be revoked without further action in the event use of the subject real property as a residential apartment building/multi-family dwelling with three (3) units is discontinued for a continuous period in excess of one (1) year (provided that such use will be considered discontinued only if all three (3) units are uninhabited for the same continuous period of one (1) year).

This Decision is entered as of the date set forth below. Any person adversely affected by this Order may appeal same by Petition to the Circuit Court of Jefferson County within thirty (30) days of the filing hereof.

Entered	C. Locke Wysong, Jr., Chairman

Board of Zoning Appeals
101 East Washington Street
Charles Town, WV 25414

Meeting: 09/19/23
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

Draft Record of Decision - BA2023-03

ATTACHMENTS:

- BA2023-03_Draft_Record.pdf

BEFORE THE BOARD OF ZONING APPEALS
OF THE CITY OF CHARLES TOWN, WEST VIRGINIA

In re: Docket No. BA 2023-03 – Application for Variance by Kevin Shipley

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

This matter came before the Board of Zoning Appeals at its general meeting held on the 15th day of August, 2023, for public hearing upon the application for a Variance filed by Kevin Shipley (the "Applicant"). The subject real property is owned by the Applicant. Board members present were Chairman C. Locke Wysong, Jr., Christopher Cox, and Patrick Kratovil. Also present were the City's Zoning/Subdivision Administrator, James Newman, the City's Permit Technician, Kim Crosson, and the City's legal counsel, Michael Funk.

From a review of the record and confirmation by staff upon request, the Board found that proper notice was given of this hearing by publication and posting of the subject real property in accord with the Charles Town Zoning Ordinance.

The Applicant, Kevin Shipley, came before the Board requesting a Variance pursuant to **Sections 1321.10(D)(4) and 1321.11(E) of the Zoning Ordinance** with respect to the Minimum Rear Yard Setback of twenty feet (20') specified in **Section 1322.08, Neighborhood Residential (NR) District**, and **Table 1322.08, NR District Bulk and Area Regulations, of the Zoning Ordinance**, as applicable to a swimming pool pursuant to **Section 1323(T), Swimming Pools, of the Zoning Ordinance**. The subject real property is a lot with an existing single-family residence located in the Neighborhood Residential (NR) District at 122 Revere Drive and is designated as Tax Parcel 30 on Tax Map 12A in Charles Town Corporation.

The Board first heard the presentation of the City's Zoning/Subdivision Administrator,

James Newman, who reviewed the contents of the written report of the City's staff, a copy of which is contained in the Agenda Packet for the meeting and made part of the record in this matter, and explained the basis of staff's determination that the Variance sought by the Applicant satisfies the requirements of Section 1322.11(E)(3) of the Zoning Ordinance. Mr. Newman noted that: (i) the Applicant proposes to construct an inground swimming pool in the rear yard of the subject real property, as reflected in plans contained in the Agenda Packet; (ii) the Applicant's application requests a reduction in the Minimum Rear Yard Setback from twenty feet (20') to sixteen feet (16') for construction of the proposed swimming pool; (iii) the subject real property is adjoined by a residence to the west, by an empty field to the rear (north), and by a wooded area to the east; (iv) the second lot to the west of the subject real property has a pool that is less than twenty feet (20') from the rear property line; and (v) relocating the proposed swimming pool to allow a twenty-foot (20') setback would bring the swimming pool closer to neighboring properties and require changes to the Applicant's patio and deck designs.

The Board had no questions for Mr. Newman.

The Applicant, Mr. Shipley, next was sworn and testified. Mr. Shipley stated that: (i) he was seeking a reduction of four feet (4') in the Minimum Rear Yard Setback; (ii) he had reached out to his sole next-door neighbor, who had no concerns with the proposed pool and Variance; and (iii) his subdivision's homeowners' association is willing to approve the swimming pool.

The Board next presented questions to Mr. Shipley. Board member Cox asked whether a fence currently existed around the entire rear boundaries and Mr. Shipley confirmed such a fence is in place. The Board had no further questions for the Applicant.

No members of the public or aggrieved parties appeared to make public comment.

Upon completion of the taking of testimony and argument, the Board closed the public hearing and adjourned into executive session for deliberation.

After completing its deliberation and returning to open session, by motion duly made by Board member Cox and seconded by Board member Kratovil, the Board determined, by a vote of three (3) in favor and zero (0) opposed, that, in accordance with Section 1321.11(E)(3) of the Zoning Ordinance, the requested Variance should be granted, as presented, for the reasons set forth below.

FINDINGS OF FACT

The Board hereby finds as follows:

1. The Variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents. The requested Variance is for reduction of the Minimum Rear Yard Setback by only four feet (4'). A swimming pool is a common accessory structure and the proposed swimming pool will be screened by a fence. A nearby property has a swimming pool that is less than twenty feet (20') from the rear boundary line of that lot.

2. The Variance arises from special conditions or attributes which pertain to the subject real property and which were not created by the Applicant.

3. The Variance will eliminate an unnecessary hardship and permit a reasonable use of the land. The Variance will permit a reasonable use of the land by allowing the property owner to have a swimming pool in the rear yard.

4. The Variance will allow the intent of the Zoning Ordinance to be observed and substantial justice done. The intent of the Zoning Ordinance is to guide future growth and development by regulating land uses for the improvement of the health, safety, comfort, morals, and general public welfare of Charles Town citizens. The Variance will not result in harm to or otherwise negatively impact the public and will provide for comfort of the property owner's

family.

5. The Variance will allow for a swimming pool in a residential district. No negative impacts to adjacent property owners or the public are anticipated. The requested Variance is modest and reasonable.

6. The written report of Staff methodically details precise reasons why the Variances should be granted in accord with the requirements of 1321.11(E)(3) of the Zoning Ordinance, which written report has been carefully reviewed and considered by the Board, and the Board hereby adopts such reasons in their entirety and incorporates the same herein.

CONCLUSIONS OF LAW

Based upon the foregoing findings and for the reasons stated herein and based upon staff's recommendations, testimony presented, information contained in the Agenda Packet, and the discussion on the record, the Board, by a vote of three (3) in favor and zero (0) opposed, determines that Applicants' requested Variance satisfies the requirements of Section 1321.11(E)(3) of the Zoning Ordinance and should be granted. The Board hereby certifies that the Variance granted is the minimum variance that will make possible the reasonable use of the subject real property.

WHEREFORE, the Board hereby GRANTS the requested Variance, as presented for construction of a swimming pool at the subject real property, to reduce the Minimum Rear Yard Setback from twenty feet (20') to sixteen feet (16') on the subject real property.[1]

1 In reviewing an application, the Board considers as true and accurate the representations of factual circumstances contained in the application and supporting documentation (the "Application Packet"). No action or decision of the Board shall be deemed its verification of any such representation or its approval of any conditions that actually exist but are not accurately represented in the Application Packet.

Except as expressly provided otherwise herein, the Board's actions and decision are (i) premised and conditioned upon the truth and accuracy of the representations contained in the Application Packet and (ii) strictly limited to the uses, structures, and undertakings proposed for the subject real property in the Application Packet.

This Decision is entered as of the date set forth below. Any person adversely affected by this Order may appeal same by Petition to the Circuit Court of Jefferson County within thirty (30) days of receipt hereof.

Entered

C. Locke Wysong, Jr., Chairman

The Applicant/Owner is responsible for ascertaining all relevant facts prior to undertaking activities upon the subject real property. In the event of uncertainty, the Applicant/Owner is advised to obtain an accurate survey of the subject real property, seek legal advice, or take other action, as appropriate, to resolve the uncertainty before undertaking activities upon the subject real property. Failure to do so is at the risk of the Applicant/Owner.

Board of Zoning Appeals
101 East Washington Street
Charles Town, WV 25414

Meeting: 09/19/23
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

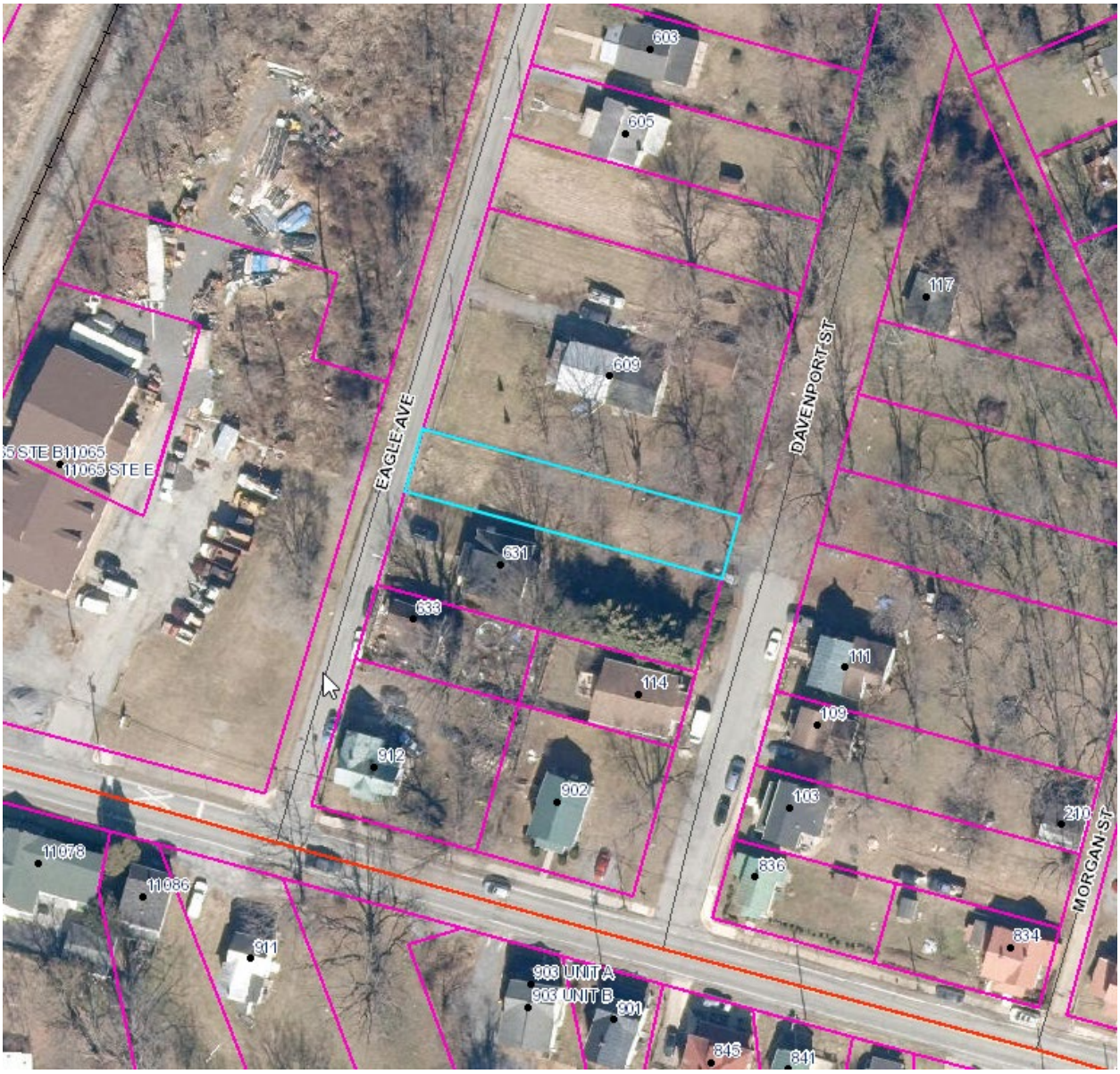
BA2023-04 Eagle Avenue - Variance Request

ATTACHMENTS:

- 1. Staff Report.pdf
- 2. View of Lot.pdf
- 3. Application.pdf

Public Hearing – Variance Request
BA-2023-04

Date: For the September 19, 2023 Board of Zoning Appeals meeting
Applicant: Mark Roper
Property Owner: David Lutman
Report by: James Newman, City Planner, Zoning/Subdivision Administrator.
Proposal: Variance from setback and lot size requirements
Property Location: TD 03 / Map: 1 / Pcl: 33.
Current Zoning: Old Town Residential (OTR)



OWNERSHIP:
The owner listed on Jefferson County Geographic Information Systems (GIS) is BATTLE DEBRA R. However, on March 7, 2023 she sold the property to David Lutman.

OVERVIEW

The applicant is seeking to divide this parcel into two separate parcels. The existing parcel fronts on Eagle Avenue, the new parcel would front on Davenport Street. Per the applicant the current lot size is approximately 34 ft. wide x 175 ft. long. The proposal is to divide the property into two parcels of 34 ft. width x 87.5 ft. long.

Three variances are required:

1. From minimum lot size standards.
2. From minimum lot width standards.
3. From minimum setback standards.

PROPOSED LAYOUT



OLD TOWN RESIDENTIAL ZONING DISTRICT

The Zoning Ordinance describes the Old Town Residential (OT-R) District as:

Purpose. The purpose of the OT-R District is to recognize existing and older residential neighborhoods within the City of Charles Town that are characterized as having smaller Lots, smaller Setbacks, traditional grid Street pattern and access by Street or alley. These provisions for the OT-R District are designed to protect the character of these residential neighborhoods while permitting their maintenance and improvement. These standards also seek to encourage sensitively designed infill in keeping with the existing character of the OT-R District.

To maintain the scale and design of Buildings currently existing in OT- R District, it is important the scale and design of surrounding Buildings be taken into consideration when proposing additions and new Buildings. The OT-R District also promotes interaction among activities located within the entire Old Town District area, which includes both the OT-R and Old Town Mixed Use Commercial District.

The purpose of such interaction is to further enhance business vitality, reduce vehicular traffic, increase access to and the use of transit services, provide employment opportunities for residents close to home, ensure the compatibility among and between residential and downtown Commercial Uses, and ensure the appearance and effects of Buildings and Uses are harmonious with the character of the area in which they are located by:

1. Preserving and restoring the overall character of the Zoning District;

2. Promoting a balance of land Uses;

3. Promoting the opportunity for people to work, interact, shop, dine, and utilize business and public services in the vicinity of their residences;

4. Promoting a positive pedestrian environment in the Zoning District;

5. Facilitating integrated physical design;

6. Promoting a high level of design quality; and

7. Facilitating development proposals responsive to current and future market conditions

Table 1322.11, OT-R District Bulk and Area Regulations

Maximum Density	
Minimum Lot Size	
Existing Lot of Record	No Minimum Lot Size
For Newly Created Lots the Following Standards Shall Apply:	
Single-Family Detached Dwelling	10,000 square feet
Duplex Dwelling	6,000 square feet
Multi-Family Dwelling	20,000 square feet
Townhouse Dwelling	2,000 square feet
Group Home	10,000 square feet
All Other	20,000 square feet
Minimum Lot Width	
Existing Lot of Record	No Minimum Lot Width[3]
Single-Family Detached Dwelling	70 feet
Two-Family Dwelling	80 feet
Duplex Dwelling	40 feet
Multi-Family Dwelling	100 feet
Townhouse Dwelling	18 feet
Group Home	70 feet
All Other	100 feet
Minimum Front Yard Setback	20 feet or Front Setbacks shall vary no more than 10% from the average Setbacks of the three Adjacent Properties to each side.[5]
Minimum Side Yard Setback	10 feet[1]
Minimum Rear Yard Setback	20 feet
Maximum Lot Coverage	70 percent
Minimum Building Height	Minimum = 24 feet or 1.5 stories
Maximum Building Height	35 feet (55 feet for Multi-Family)[2]
Maximum Stories	3 stories (4 stories for Multi-Family)

VARIANCE OVERVIEW

A variance is a relaxation of the terms of the Zoning Ordinance where the Board of Zoning Appeals makes the findings specified in Zoning Ordinance Section 1321.11; 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 District classification of a parcel of land. W.Va. Code Chapter 8A-7-11.

REVIEW CRITERIA

In order to issue a Variance, the Board must make the following written findings regarding the following:

A. *Will not adversely affect the public health, safety or welfare, or the rights of Adjacent Property Owners or residents;*

1. **Minimum lot size**
   The minimum lot size for a new lot to be developed with a single-family home is 10,000 sq. ft. The existing lot itself is only 5,950 sq. ft. The applicant is seeking to create two lots of 2,975 sq. ft. This is not unprecedented for this neighborhood. There are four other lots in this neighborhood which are similar in size to what is proposed:

   1. 633 Eagle Ave. (3,600 sq. ft. area)
   2. 114 Davenport St. (3,400 sq. ft. area)
   3. 834 MLK Jr. Blvd. (3,500 sq. ft. area)
   4. 836 MLK Jr. Blvd. (3,500 sq. ft. area)

   There is no adverse effect to public health, safety, or welfare created by this variance, nor will it affect the rights of adjacent property owners or residents.

2. **Minimum frontage width**
   Minimum lot frontage for single-family detached-dwelling use lots is 70 feet. The existing lot is 34 feet wide. The applicant will be maintaining that width on the new lot. Based on GIS, the proposed frontage is similar to the existing pattern of development in the neighborhood. There is no adverse effect to public health, safety, or welfare created by this variance, nor will it affect the rights of adjacent property owners or residents.

3. **Setback requirements**
   Required side yard setbacks are 10 ft. For a lot with a width of 34 ft., that would result in a buildable area only 14 ft wide. The applicant is requesting setbacks of 7 ft. This would permit a buildable width of 20 ft. Average side setbacks in this neighborhood appear to be between 5 – 10 ft, per GIS.

   Most structure in this neighborhood have rear setbacks of 40 ft. or more, as the properties are narrow, thin lots, where the homes are located very close to adjacent roads. The applicant is requesting a reduced rear yard setback of 15 ft., down from the required 20 ft. This will permit additional building space for a dwelling and may grant additional room in the front yard for a driveway or garage access to the road by allowing the structure to be pushed back further.

   There is no adverse effect to public health, safety, or welfare created by this variance, nor will it affect 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;*

1. **Minimum lot size, Minimum frontage width, Setback requirements – joint response**

   The applicant has created neither a hardship nor special conditions. Per the applicant:

The uniqueness of this request is based on the narrowness and through lot characteristics of the lot that are preexisting and not the result of the applicant.

The existing lot is very narrow and with setbacks of 10 feet on each side of the lot, in which only a 14- foot-wide home could be built on the site. That is not very practical or functional. As such, a change of the setbacks from the required 10 feet to 7 feet on each side would provide reasonable relief to the applicant. The existing lot width is 34 feet and the minimum lot width required is 70 feet. The existing lot width exists and was not a condition which was created by the applicant.

The existing lot is a through lot that extends from Eagle Avenue to Davenport Street. Neither of these streets are an alley, leading one to believe that there is the possibility that a home could front on each street. These through lots were not designed to be exclusively rear loaded alley lots. In the neighborhood, there are three (3) examples of where this has happened, as provided in the image above. The division of this lot would allow relief to maintain a development pattern that exists in the neighborhood already and provides equity to the applicant. To allow the division of this lot into two (2) lots requires a reduction of the minimum lot size. Additionally, the rear setback would need to be reduced to 15 feet.

C. *Would eliminate an Unnecessary Hardship and permit a reasonable Use of the land;*

Per the applicant:

The variance(s) would eliminate an unnecessary hardship and allow for reasonable use of the land. This is based on the uniqueness of the lot due to its narrowness and through lot characteristics of the lot that are preexisting. As noted, the side yard setbacks, as required in the Zoning Ordinance creates a significant impact on the construction of a home on the proposed lots. The division of this long lot into two (2) separate lots would provide reasonable use of the land and is equitable with other lot divisions that have occurred in the neighborhood. As such, a variance for a reduction of both side yards and rear setbacks and the minimum lot size would eliminate an unnecessary hardship and allow for reasonable use of the land.

1. Minimum lot size

It is fairly debatable as to whether a hardship exists for this. The existing lot could be developed for single a dwelling unit. There are over 20 lots in the immediate vicinity which do not adhere to the 10,000 sq. ft. minimum lot size but which have dwellings on them. Unlike other narrow lots which front a paved road and an unpaved 'paper road/alley' on their other frontage, this lot fronts on two paved roads and could reasonably be developed for housing as two separate lots.

The proposed variance, if granted, would be in keeping with an established pattern of development.

2. Minimum frontage width

It is fairly debatable as to whether a hardship exists for this. Average lot widths in this neighborhood are around 34 ft. The proposed frontage is similar to the existing pattern of development in the neighborhood, and the proposed new lot would have the same width as the existing lot.

3. Setback requirements

It is fairly debatable as to whether a hardship exists for this. Average side yard setbacks in this neighborhood are less than the required 10 ft., and average rear yard setbacks exceed 40 ft. The applicant is seeking side yard setbacks of 7 ft., and a rear yard setback of 15 ft.

D. *Will allow the intent of the Zoning Ordinance to be observed and substantial justice done.*

Per the OT-R *Purpose* statement:

"The purpose of the OT-R District is to recognize existing and older residential neighborhoods within the City of Charles Town that are characterized as having smaller Lots, smaller Setbacks, traditional grid Street pattern and access by Street or alley.

These provisions for the OT-R District are designed to protect the character of these residential neighborhoods while permitting their maintenance and improvement. These standards also seek to encourage sensitively designed infill in keeping with the existing character…"

1. Minimum lot size

Minimum lot size, in conjunction with setback requirements, is intended to ensure that new residences have adequate room for both decent living quarters and outdoor enjoyment of fresh air and natural light. There are four other lots in this neighborhood which have the same lot size the applicant is requesting. Granting the variance will allow for sensitively designed infill on a small lot within a zoning district characterized by small lot sizes.

2. Minimum frontage width

Minimum frontage width ensure that there is adequate room for decent living quarters, as well as ensuring that parcels have adequate area for ingress/egress. The requested variance would result in road frontage the exact same as exists now, while allowing for sensitively designed infill.

3. Setback requirements

Like minimum lot size, setbacks are intended to ensure adequate area for passage of fresh air and natural light, as well as serving as a fire-break, and to allow for privacy.

CONCLUSION

The applicant is seeking the following variances:

	Required	Proposed	Variance
Lot Size	10,000 sq. ft.	2,975 sq. ft.	7,025 sq. ft.
Lot Frontage	70 ft.	34 ft.	36 ft.
Setbacks (Side yard)	10 ft.	7 ft.	3 ft.
Setbacks (Rear Yard)	20 ft.	15 ft.	5 ft.

RECOMMENDATION

1. Variance from minimum lot size requirements.
   Approval.

2. Variance from minimum lot frontage requirements.
   Approval

3. Variance from minimum setback requirements.
   Approval.


2023/08/27 21:08:48
39

BZA Variance No. _____

RECEIVED
AUG 1 2023
BY: _____

Board of Zoning Appeals

Application for Variance

To assist staff in the review of a variance application to the Board of Zoning Appeals (BZA), the applicant must supply all of the information contained in this application form. This application must be signed by **all owners** of the real estate which is the subject of the application. The owners may designate one or more professional agents to represent them in the application process using the spaces provided on this form.

Incomplete applications will be subject to scheduling delay. Applicants are encouraged to meet with staff prior to filing. A public hearing will be scheduled within 45 days of the receipt of a completed application.

Approval of a variance by the BZA does not relieve the applicant from other requirements including, but not limited to, signs, building, zoning and use permits or site plans.

As part of this application, the following must be provided:

1. $150.00 Application Fee.
2. A plat or building location survey of the subject property drawn to scale (see requirements below on Page 3).
3. As applicable, Building Permit, Zoning Permit, and Sign Permit Applications. Site plans (where applicable) may be submitted after the BZA application has been approved at the public hearing.

It is the **applicant's responsibility** to make a good-faith effort to provide the Zoning Administrator, as applicable, with a current list containing the accurate names and mailing addresses of all interested parties. For purposes of this provision, "interested parties" shall mean Landowners of Adjacent Property. The applicant shall provide the addresses in order to comply with Section 1321.10.G of the Zoning Ordinance.

BZA Variance No. _____

Legal Notices

The following shall occur at least 15 days prior to the Public Hearing: notice of the hearing shall be advertised by the Board of Zoning Appeals as a Class I legal advertisement in the local newspaper, posting of a sign upon the property, and letters to adjacent and confronting land owners within 100 feet of the subject property.

Definition of a Variance

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.

The Charles Town Zoning Ordinance

A relaxation of the terms of the Zoning Ordinance where the Board of Zoning Appeals makes the findings specified in Section 1321.11(E)(3); 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 District classification of a parcel of land. W.Va. Code Chapter 8A-7-11.

The West Virginia State Code

Section 8A-7-11 of the Code of West Virginia further provides that:

The Board of Zoning Appeals shall grant a variance to the Zoning Ordinance if it finds that **all** of the following can be met and 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.

BZA Variance No. _____

Plat Requirements

A plat or building location survey must contain the following information in order for the property to be thoroughly evaluated for conformance with all City Ordinances:

1. Plat must be drawn to scale.
2. Name of Engineer, Surveyor, or Architect who prepared plat.
3. Signature and Seal of Engineer, Surveyor, or Architect.
4. Date of plat and dates of any revisions.
5. Legend/Table on plat listing the following:
   a. Zoning of Subject Parcel
   b. Zoning of Subject Parcel
   c. Tax Map and Parcel Number
   d. Parcel Address
   e. Owner/Applicant's name and address
   f. Scale
6. North Arrow.
7. Parcel boundaries showing bearings and distances.
8. Size of parcel.
9. Location and dimensions of all existing and/or proposed buildings including accessory structures and additions.
10. Height and number of stories for all structures, if applicable.
11. Location of existing and/or proposed easements and well and septic where applicable.
12. Location of Floodplain where applicable.
13. Parking spaces/parking lots with calculations showing what is required and proposed, if applicable.
14. All setbacks in table format and drawn on the plat including what is required versus what is existing/proposed.
15. Landscaping as required in the Zoning Ordinance, if applicable.
16. Names of adjacent streets.
17. Tax Map/Parcel numbers and uses for all adjacent parcels, including those across the street/road.
18. List with any documentation of any previously approved variances, special exceptions, appeals, court decisions, conditions, proffers, or waivers granted for the subject property.
19. Any additional items deemed necessary by the Zoning Administrator.

BZA Variance No. _____

1. DATE August 1, , 2023

2. APPLICANT'S NAME* Mark Roper

   Address: 418 S. Samuel Street

   Telephone Number (304) 724-8877 Fax Number ( )

   Email Address mrconstructionwv@gmail.com

3. PROPERTY OWNER'S NAME Lutman Properties, LLC.

   Address: 12860 Leetown Road Kearneysville, WV 25430

   Telephone Number ( ) Fax Number ( )

   Email Address

4. LEGAL DESCRIPTION OF THE SUBJECT PROPERTY (List all parcels that apply)

   Property Address: Vacant - no address - Through lot between Eagle Ave. and Davenport St.

   Tax Map # and Parcel(s): Map 1 Parcel 33

   Deed Book and Page #: 1298/254

   Property Area in Square Feet or Acres: 5,780 sq. ft.

5. DESCRIPTION OF THE EXISTING (OR FORMER) USE(S) OF THE PROPERTY AND CURRENT ZONING:

   Existing property is vacant. Zoning is Old Town Residential.

6. DESCRIPTION OF THE PROPOSED USE(S) OF THE PROPERTY: (Include the hours of operation and the activities to be conducted on the site. Be as specific about your proposed use as possible.)

   Single-family detached home on each lot.

*Applicants include: Property owner(s), Engineer(s), Surveyor(s), or Consultant(s)

BZA Variance No. _____

7. DESCRIPTION OF ANY PROPOSED WORK TO BE DONE TO THE PROPERTY: (i.e. – building additions, ADA compliance, etc.)

   See attached.

8. DESCRIPTION OF THE VARIANCE REQUEST:

   See attached.

9. LIST THE APPLICABLE SECTION(S) OF THE ZONING ORDINANCE FROM WHICH THE VARIANCE IS REQUESTED:

   See attached.

10. IS THIS REQUEST CONSISTENT WITH THE PURPOSE AND INTENT OF THE CITY OF CHARLES TOWN ZONING ORDINANCE? Why or why not?

    See attached.

11. IN YOUR OPINION, WOULD THE VARIANCE ADVERSELY AFFECT THE PULIC HEALTH, SAFETY OR WELFARE, OR THE RIGHTS OF ADJACENT PROPERTY OWNERS OR RESIDENTS?

    See attached.

BZA Variance No. _____

12. IN YOUR OPINION, EXPLAIN HOW THE VARIANCE REQUEST ARISES FROM SPECIAL CONDITIONS OR ATTRIBUTES WHICH PERTAIN TO THE PROPERTY FOR WHICH A VARIANCE IS SOUGHT AND WHICH WERE NOT CREATED BY THE PERSON SEEKING THE VARIANCE:

See attached.

13. IN YOUR OPINION, HOW WOULD GRANTING THE VARIANCE ELIMINATE AN UNNECESSARY HARDSHIP AND PERMIT A REASONABLE USE OF THE LAND?

See attached.

14. IN YOUR OPINION, WOULD THE VARIANCE ALLOW THE INTENT OF THE ZONING ORDINANCE TO BE OBSERVED AND SUBSTANTIAL JUSTICE DONE?

See attached.

15. HAS THE PROPERTY BEEN THE SUBJECT OF ANY COURT ACTION?

☐ Yes (Please specify nature of all proceedings and current status and attach any documents showing court decisions, etc.)

☒ No

BZA Variance No. _____

16. PARCEL HISTORY (List all pending or previously approved applications on the subject parcels inventoried above, including previous site plan applications if this application is a site plan amendment)
Con

Application No.	Project Name and Phase	Status	Approval Date
N/A			

17. INTERESTED PARTY ADDRESSES, FOR PUBLIC NOTICE (including across street) (Interested parties are defined as adjacent properties within 100 feet).

Owner	# and Street	City, State, Zip
See attached.		

BZA Variance No. _____

APPLICANT CERTIFICATION

I certify that, to the best of my knowledge, the submitted information and statements are true and correct. I also certify that I have received and read Article 1321 and relevant provisions of the Charles Town Zoning Ordinance outlining the City's Board of Zoning Appeals application and approval procedures.

Signature of Applicant _____ Date 8-1-23

Signature of Owner(s) (If different than Applicant)

_____ Date 8-1-23

D. Lutman

Please submit an original completed petition to the following:

Zoning Administrator
City of Charles Town
101 E. Washington Street
Charles Town, WV 25414

FOR CITY USE ONLY

Application Number:_____ Date Application Received:_____

Zoning District: _____

Fee: $_____ Check No._____ Receipt No._____

BZA Hearing Date:_____ Decision:_____

Comments:_____

Eagle Ave. and Davenport St. Variance Request

7. DESCRIPTION OF ANY PROPOSED WORK TO BE DONE TO THE PROPERTY:

See image of the proposed project below.



Proposed activity is:

- Division of the existing single lot into two (2) lots and construction of a single-family detached home on each of the new lots.
- As shown in the image, within 100 feet of this lot, is an example where existing lots have been subdivided in half in the past.
- The existing lot is approximately 34 feet wide and 175 feet deep.
- The new lot size for each new lot would be approximately 34 feet wide and 87.5 feet deep.

8. DESCRIPTION OF THE VARIANCE REQUEST:

- Applicant is requesting a setback variance to:
    - 7 feet side yard setback on both sides of the lot for both lots, which is a reduction of the required 10-foot side yard setback for the Old Town Residential District.
    - 15-foot rear yard setback for each new lot, which is a reduction of the required 20-foot rear yard setback for the Old Town Residential District.

- Applicant is requesting a reduction of the minimum lot size to:
    - 2,890 sq. ft., which is a reduction of the required 10,000 sq. ft. minimum lot size for the Old Town Residential District.

- Applicant is requesting a reduction of the minimum lot width to:
    - 34 feet width from the required 70-foot minimum width for a single-family detached dwelling in the Old Town Residential District.

- **Each new lot is proposed to be:**
    - 34 feet wide by 87.5 feet deep.
    - Have side yard setbacks of 7 feet on both sides, 20-foot front setback, and a 15-foot rear setback.

- **The variance would be conditioned on first getting setbacks approved before division of the lot can occur.**

9. LIST THE APPLICABLE SECTION(S) OF THE ZONING ORDINANCE FROM WHICH THE VARIANCE IS REQUESTED:

Standards found in Table 1322.11, OT-R District Bulk and Area Regulations, variance of the minimum side yard setback of 10 feet, the minimum rear yard setback of 20 feet, and the minimum lot size of 10,000 square feet.

10. IS THIS REQUEST CONSISTENT WITH THE PURPOSE AND INTENT OF THE CITY OF CHARLES TOWN ZONING ORDINANCE? Why or why not?

The purpose and intent of the zoning ordinance is to have reasonable separation of uses and activity. The granting of the variances will maintain and achieve that purpose and intent. As previously noted, the development pattern proposed exists in the neighborhood with no adverse impacts.

11. IN YOUR OPINION, WOULD THE VARIANCE ADVERSELY AFFECT THE PULIC HEALTH, SAFETY OR WELFARE, OR THE RIGHTS OF ADJACENT PROPERTY OWNERS OR RESIDENTS?

The variance will not impact the public health, safety, welfare and the rights of adjacent property owners and residents. The variance will allow for the construction of two (2) single-family detached homes. It will result in the elimination of a vacant lot and add to the value and housing stock within the neighborhood. Granting the waiver will have no net change or impact upon the adjacent property owners, citizens, and residents.

12. IN YOUR OPINION, EXPLAIN HOW THE VARIANCE REQUEST ARISES FROM SPECIAL CONDITIONS OR ATTRIBUTES WHICH PERTAIN TO THE PROPERTY FOR WHICH A VARIANCE IS SOUGHT AND WHICH WERE NOT CREATED BY THE PERSON SEEKING THE VARIANCE:

The uniqueness of this request is based on the narrowness and through lot characteristics of the lot that are preexisting and not the result of the applicant.

The existing lot is very narrow and with setbacks of 10 feet on each side of the lot, in which only a 14-foot-wide home could be built on the site. That is not very practical or functional. As such, a change of the setbacks from the required 10 feet to 7 feet on each side would provide reasonable relief to the applicant. The existing lot width is 34 feet and the minimum lot width required is 70 feet. The existing lot width exists and was not a condition which was created by the applicant.

The existing lot is a through lot that extends from Eagle Avenue to Davenport Street. Neither of these streets are an alley, leading one to believe that there is the possibility that a home could front on each street. These through lots were not designed to be exclusively rear loaded alley lots. In the neighborhood, there are three (3) examples of where this has happened, as provided in the image above. The division of this lot would allow relief to maintain a development pattern that exists in the neighborhood already and provides equity to the applicant. To allow the division of this lot into two (2) lots requires a reduction of the minimum lot size. Additionally, the the rear setback would need to be reduced to 15 feet.

13. IN YOUR OPINION, HOW WOULD GRANTING THE VARIANCE ELIMINATE AN UNNECESSARY HARDSHIP AND PERMIT A REASONABLE USE OF THE LAND?

The variance would eliminate an unnecessary hardship and allow for reasonable use of the land. As noted above, this is based on the uniqueness of the lot due to is narrowness and through lot characteristics of the lot that are preexisting.

As noted above, the side yard setbacks, as required in the Zoning Ordinance creates a significant impact on the construction of a home on the proposed lots. The division of this long lot into two (2) separate lots would provide reasonable use of the land and is equitable with other lot divisions that have occurred in the neighborhood. As such, a variance for a reduction of both side yards and rear setbacks and the minimum lot size would eliminate an unnecessary hardship and allow for reasonable use of the land.

14. IN YOUR OPINION, WOULD THE VARIANCE ALLOW THE INTENT OF THE ZONING ORDINANCE TO BE OBSERVED AND SUBSTANTIAL JUSTICE DONE?

Yes. The intent of the ordinance is to allow reasonable separation of uses and activity and the ability to build on an existing lot of record. Granting this variance would fulfill that intent of the Zoning Ordinance. Substantial justice would be achieved since the applicant's requested variances are the minimum possible to make use of the lot. Further, the goals detailed in the Comprehensive Plan is to support infill development in the existing residential neighborhood districts. Also, the goal of the city is to reduce vacant structures and vacant lots and put those uses into productive use. This request addresses multiple public policy goals.

17. **INTERESED PARTY ADDRESSES, FOR PUBLIC NOTICE**

Owner	# and Street	City, State, Zip
R & D INVESTMENTS LLC	605 BALTIMORE ST	MARTINSBURG, WV, 25401
RANDALL GEORGE E	114 DAVENPORT ST	CHARLES TOWN, WV 25414
MERCADO LEONARDO M	902 MARTIN LUTHER KING JR. BLVD	CHARLES TOWN, WV 25414
MAO SHUK FAN	PO BOX 812	CHARLES TOWN, WV 25414
SMITH HENRY	486 ELK RUN ESTATES DR	HARPERS FERRY, WV 25425
PEREZ CARLOS JJ	609 EAGLE AVE	CHARLES TOWN, WV 25414
TOLBERT SHIRLEY P	PO BOX 651	CHARLES TOWN, WV 25414
TOLBERT MICHAEL E	858 W WASHINGTON ST	CHARLES TOWN, WV 25414
MAO JOHN S	PO BOX 812	CHARLES TOWN, WV 25414
JEFFERSON GROUP LLC	212 N GEORGE ST	CHARLES TOWN, WV 25414