CITY OF CHARLES TOWN
BOARD OF ZONING APPEALS
AGENDA • JULY 16, 2024

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 June 18, 2024
6.18.24 Minutes_DRAFT.pdf

IV. APPROVAL OF FINDINGS OF FACTS AND CONCLUSIONS OF LAW

IV.1 : BA2024-04 - 854 W. Washington Street - Findings of Fact
BZA Findings Conclusions 2024-04.pdf

V. PUBLIC HEARINGS

V.1 : **BA2024-05:** *Special Exception Use* at 210 W. North Street
1. Staff Report.pdf
2. Application.pdf

V.2 : **BA2024-06**: *Variances* at Weirick Row
1. Staff Report.pdf
2. 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

SCHEDULED

AGENDA ITEM (ID #)

Meeting: 07/16/24
Department: Board of Zoning Appeals
Category: Report
Initiator:

DRAFT Minutes of June 18, 2024

ATTACHMENTS:

- 6.18.24 Minutes_DRAFT.pdf

CITY OF CHARLES TOWN

BOARD OF ZONING APPEALS

MINUTES • JUNE 18, 2024

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

101 East Washington Street, Charles Town, WV 25414

DRAFT

1. CALL TO ORDER

Present: Locke Wysong, Chair
Christopher Cox
Patrick Kratovil
Jim Thomas

Staff: James Newman, Zoning Administrator
Mike Funk, Attorney - Virtual

2. DETERMINATION OF QUORUM

3. APPROVAL OF MINUTES

3.1: Minutes – March 19, 2024

RESULT:	**Approved**
MOVER:	Cox
SECONDER:	Thomas
AYES:	Wysong, Kratovil, Cox, Thomas

4. APPROVAL OF FINDINGS OF FACTS AND CONCLUSIONS OF LAW

4.1: BA2024-01 – Wall Street Variances – Findings of Facts

4.2: BA2024-02 – Opera House Variance – Findings of Facts

4.3: BA2024-03 – Baylor Street Variances – Findings of Facts

Motion to approve all findings of fact, BA2024-01, BA2024-02, and BA2024-03

RESULT:	**Approved**
MOVER:	Cox
SECONDER:	Kratovil
AYES:	Wysong, Kratovil, Cox, Thomas

5. PUBLIC HEARINGS

5.1: BA2024-04 – Variance Request for 854 W Washington Street

Staff gave presentation.

Alex Salgado, Applicant - sworn in.

Applicant – We owned 856 W. Washington previously and currently own 854 W. Washington. The current owner asked if we could provide a boundary line adjustment in order for them to keep their fence and the deck on their property.

Thomas – asked who owned the lots in question.

Applicant – Indicated Tumbleweed, LLC owns parcel 44.

Discussion between applicant and board members regarding the status and development of the lots .

Cox – made inquiry regarding the deed.

Applicant – the variance will permit a boundary line adjustment and the deed will be handled by the closing attorney.

Locke opened the Public Hearing.

Elizabeth McDonald – sworn in.

Elizabeth McDonald – spoke in favor of the variance. The owning parties of both lots are in agreement.

Michael Tolbert – sworn in.

Michael Tolbert – speaking on behalf of mother, Shirley, who owns an adjacent property. Provided an email to City Staff earlier with a statement regarding the variance request.

Wysong – spoke about the nature of the BZA and previous actions taken in 2019.

Michael Tolbert – provided a handout with surveys. Siad he has no objection to the variance and is working with the new owner of 856 to clarify the effects of a previous variance granted in 2019.

DRAFT

Locke closed the public hearing.

Motion to enter deliberation at 7:20 pm

RESULT:	**Approved**
MOVER:	Cox
SECONDER:	Thomas
AYES:	Wysong, Kratovil, Cox, Thomas

Motion to resume at 7:42 pm

RESULT:	**Approved**
MOVER:	Kratovil
SECONDER:	Thomas
AYES:	Wysong, Kratovil, Cox, Thomas

Motion to approve Variance Request for 854 W Washington Street with:

1. An allowance to extend line L3 to the rear of the property line without requiring a separate variance.

RESULT:	**Approved**
MOVER:	Cox
SECONDER:	Kratovil
AYES:	Wysong, Kratovil, Cox, Thomas

6. CONTINUED CASES

None.

7. OTHER BUSINESS

None.

8. ADJOURNMENT

RESULT:	**Approved**
MOVER:	Kratovil
SECONDER:	Thomas
AYES:	Wysong, Thomas, Kratovil, Cox

Meeting adjourned at 7:46 pm.

DRAFT

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

Meeting: 07/16/24
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

BA2024-04 - 854 W. Washington Street - Findings of Fact

ATTACHMENTS:

- BZA Findings Conclusions 2024-04.pdf

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

In re: Docket No. BA 2024-04 – Application for Variances by Alexander Salgado Mendoza & Christina M. 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 June, 2024, for public hearing upon the application for two (2) Variances filed by Alexander Salgado Mendoza and Christina M. Salgado (collectively, the "Applicant"). The subject real property is owned by the Applicant. Board members present were Chairman C. Locke Wysong, Jr., James Thomas, Jr., Christopher Cox, 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 two (2) Variances pursuant to **Sections 1321.10(D)(4) and 1321.11(E) of the Zoning Ordinance** with respect to: (i) the Minimum Side Yard Setback of 10 feet; and (ii) the Minimum Lot Size of 10,000 square feet, both specified in **Section 1322.11, Old Town Residential (OT-R) District**, and **Table 1322.11, OT-R District Bulk and Area Regulations, of the Zoning Ordinance**. The subject real property consists of a parcel with existing improvements thereon as discussed further below, located in the Old Town Residential (OT-R) District, designated as Tax Parcel 44.1 on Tax Map 1 in Charles Town

Corporation, and (together with an adjacent parcel designated as Tax Parcel 43 on Tax Map 1 in Charles Town Corporation) having a street address of 854 West Washington Street.

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 two (2) Variances sought by the Applicant satisfy the requirements of Section 1322.11(E)(3) of the Zoning Ordinance. Mr. Newman noted that: (i) the existing residential structure at 854 West Washington Street is upon two (2) parcels designated as Tax Parcels 43 and 44.1 on Tax Map 1; (ii) the adjacent residential structure at 856 West Washington Street is primarily upon the parcel designated as Tax Parcel 44 on Tax Map 1, but portions of the structure encroaches upon Tax Parcel 44.1; (iii) the Applicant desires to adjust the boundary line between the subject real property (Tax Parcel 44.1) and the adjoining Tax Parcel 44 to the east and merge a 813 square-foot portion of the current Tax Parcel 44.1 to Tax Parcel 44 so that the structure at 856 West Washington Street is entirely upon the reconfigured Tax Parcel 44, thereby eliminating the existing encroachment; (iv) the desired boundary line adjustment will reduce the subject real property's side yard setback on the western side from an existing 8.2 feet to 3.9 feet and reduce its lot size from an existing 3,125 square feet to 2,312 square feet; (v) the Applicant's application requests a reduction in the Minimum Side Yard Setback of 10 feet to 3.9 feet on the western side of the subject real property; and (iv) the application requests a reduction in the Minimum Lot Size from 10,000 square feet to 2,312 square feet.

The Board had no questions for Mr. Newman.

The Applicant's representative, Alexander Salgado Mendoza, next was sworn and testified. Mr. Salgado stated that: (i) he previously owned both the property at 856 West

Washington Street and the property at 854 West Washington Street; and (ii) the current owner of the property of 856 West Washington Street requested the boundary line adjustment, the Applicant has no issue with accommodating that request to benefit 856 West Washington Street, and the boundary line adjustment is necessary.

The Board next presented questions to Mr. Salgado. Board member Thomas asked whether Mr. Salgado previously owned Tax Parcel 44.1, the lot in question, and Mr. Salgado responded that he owned it about five years ago. Board member Cox next asked who currently owns that property and Mr. Salgado stated that he believes it to be Tumbleweed LLC. Mr. Salgado then realized that his answers had concerned Tax Parcel 44. Board member Thomas then asked for confirmation that Mr. Salgado currently owns both Tax Parcel 44.1 and Tax Parcel 43, which Mr. Salgado confirmed. Board member Cox then asked whether Mr. Salgado intends to deed the merger property because the Board has no authority to convey those rights. Mr. Salgado responded that the attorneys would take care of the conveyance. The Board had no further questions.

The Board next opened the hearing for public comment.

Elizabeth McDonald appeared and was sworn. Ms. McDonald stated that: (i) the existing residential structures are too close to allow movement of the boundary line without requiring the two (2) Variances; and (ii) the owners of both properties are in agreement with the actions proposed.

Michael Tolbert next appeared and was sworn. Mr. Tolbert stated that: (i) he also speaks on behalf of his mother, Shirley Tolbert; (ii) he and his wife live in adjacent property; and (iii) he had sent an e-mail that Mr. Newman had circulated to the Board. Chairman Wysong then explained that Mr. Tolbert's e-mail had been received, reviewed, and discussed with legal counsel, and that the relevant records had been reviewed, and that Mr. Tobert's comments should

be limited to the requested two (2) Variances. Mr. Tolbert then stated that he, his mother, and his family have no objection to the requested Variances and they are necessary.

No other members of the public appeared or submitted comment to staff.

Mr. Salgado was next given the opportunity to give a summation. Mr. Salgado reiterated that the Applicant has no objection to the actions proposed.

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 four (4) in favor and zero (0) opposed, that, in accordance with Section 1321.11(E)(3) of the Zoning Ordinance, the requested two (2) Variances should be granted, as presented, for the reasons set forth below.

FINDINGS OF FACT

The Board hereby finds as follows:

1. The two (2) Variances will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents. The two (2) Variances will allow for adjustment of the boundary line to eliminate existing encroachments and ensure that each residential structure and its accessory uses will be located only on a parcel owned by the appropriate owner without adverse effects upon the public or adjacent properties.

2. The two (2) Variances arise from special conditions or attributes which pertain to the subject real property and which were not created by the Applicant. The encroachments of the 856 West Washington Street property upon Tax Parcel 44.1 were constructed in years past by other than the current owner of 856 West Washington Street and

were not identified until a survey was recently completed. The owner of 854 West Washington Street is agreeable to the proposed boundary line adjustment.

3. The two (2) Variances will eliminate an unnecessary hardship and permit a reasonable use of the land. The two (2) Variances will eliminate the existing encroachments.

4. The two (2) Variances will allow the intent of the Zoning Ordinance to be observed and substantial justice done. As set forth in **Section 1322.11, Old Town Residential (OT-R) District, of the Zoning Ordinance**, 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." The two (2) Variances are in accordance with the intent of the Zoning Ordinance to provide for smaller lot sizes with a residential character.

5. The written report of Staff methodically details precise reasons why the two (2) 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 four (4) in favor and zero (0) opposed,

determines that each of Applicant's requested two (2) Variances satisfy the requirements of Section 1321.11(E)(3) of the Zoning Ordinance and should be granted. The Board hereby certifies that the two (2) Variances granted are the minimum variances that will make possible the reasonable use of the subject real property. The Board hereby clarifies that it only grants the requested two (2) Variances herein and that it does not – and has no authority to – approve the desired boundary line adjustment.

WHEREFORE, the Board hereby GRANTS the requested two (2) Variances, as presented and contemplated in the application, the public hearing, and herein, to: (i) reduce the Minimum Side Yard Setback of 10 feet to 3.9 feet on the western side of the subject real property; and (ii) Minimum Lot Size of the subject real property from 10,000 square feet to 2,312 square feet;[1] and

WHEREFORE, the Board does hereby further determine that, in the event either the Applicant or the Planning Commission or its delegate, with respect to approval of the desired boundary line adjustment, determines that such boundary line adjustment should be made on Line L3 (as reflected on the plan at page 37 of the Agenda Packet) extended to the rear lines of the subject parcels, as opposed to sequentially along each of Lines L1, L2, and L3, that the Variance necessary and appropriate to permit the reduced Minimum Lot Size thereby resulting is deemed hereby GRANTED without the need to return to the Board for further approval.

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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.

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.

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

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

Meeting: 07/16/24
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

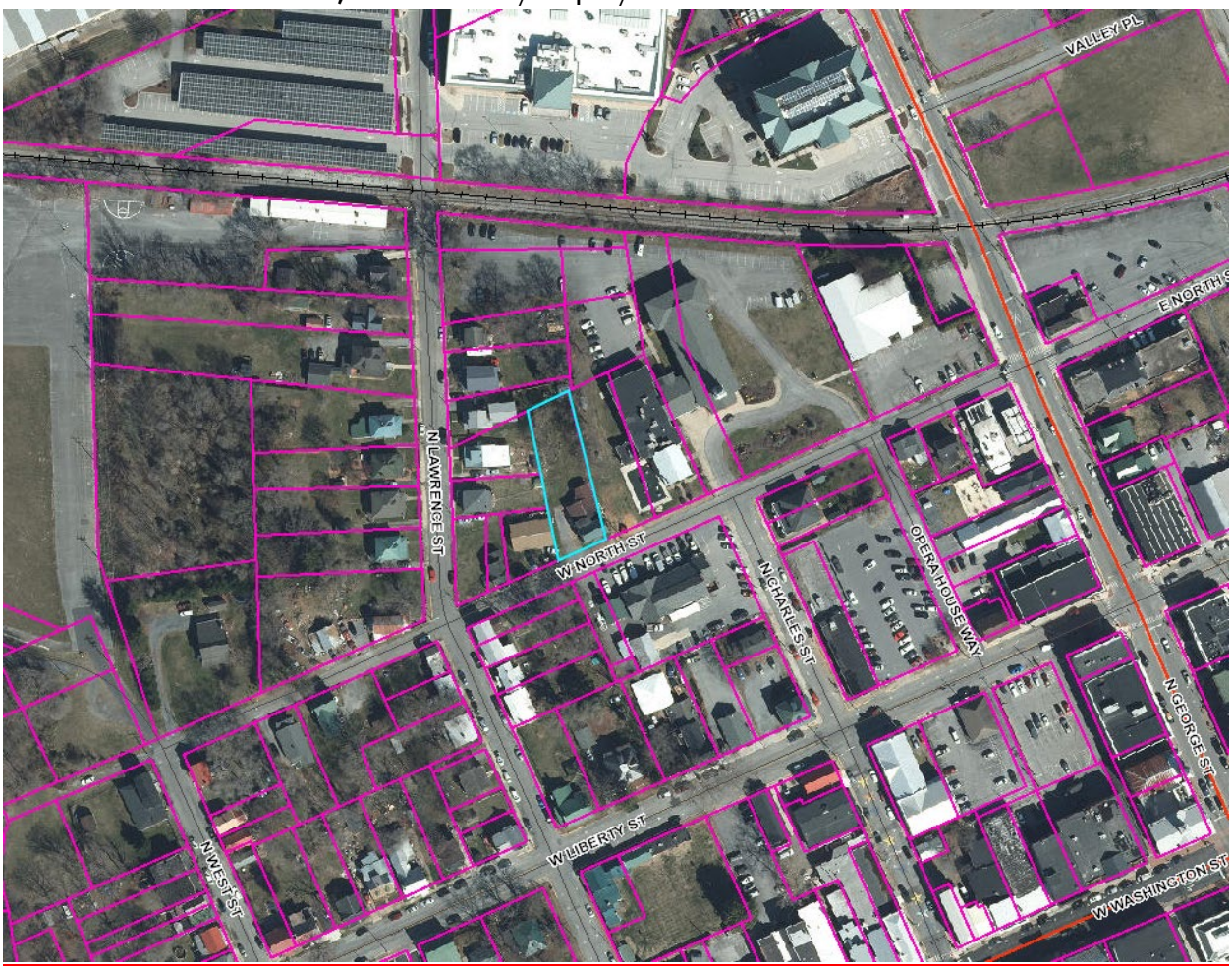
BA2024-05: *Special Exception Use* at 210 W. North Street

ATTACHMENTS:

- 1. Staff Report.pdf
- 2. Application.pdf

Public Hearing – Special Exception Use Request
BA-2024-05

Date: For the July 16, 2024 Board of Zoning Appeals meeting
Applicant: Mark Roper
Property Owner: Mark Roper
Report by: James Newman, City Planner, Zoning/Subdivision Administrator.
Location: 210 W. North St, Tax District 3/Map 2/Parcel 11



OVERVIEW

The applicant is seeking a Special Exception Use Permit for a multifamily use at 210 W. North Street. The property is 0.2 acres in size and id zoned Old-Town Residential.

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*

The table on the next page shows the regulations for development in the OTR zoning district.

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)

SPECIAL EXCEPTION

Special Exception Uses are Uses that are conditionally permitted in a particular Zoning District. A Special Exception Use be may be commenced and carried on only after review by the Board of Zoning Appeals and its issuance of a Special Use Permit. The Board of Zoning Appeals shall consider a request for a Special Use Permit if the requested Use is expressly designated as a Special Exception Use in this Ordinance, or interpreted and classified as such by the Zoning Administrator, for the Zoning District in which the subject property is located.

The Board of Zoning Appeals shall issue a Special Use Permit (granting the special exception) if the required findings specified in Section 1321.11(D)(3) are made or deny issuance of a permit if all required findings cannot be made. The Board of Zoning Appeals may attach reasonable conditions to the issuance of a Special Use Permit to ensure the Special Exception Use's compatibility with other Uses permitted in the Zoning District. If any conditions required or imposed as part of a Special Use Permit are not maintained or carried out or cease to exist, the Board shall revoke the Special Use Permit and the Use shall thereafter be in violation of this Ordinance.

USE DEFINITION – Zoning Ordinance Article 1325

DWELLING, MULTI-FAMILY – *A Building containing three or more Dwelling Units.*

DWELLING – *A Building or portion thereof that is arranged, designed, used or intended for use and occupancy by one or more persons living together and maintaining a common household, and which includes lawful cooking space and lawful sanitary facilities reserved for the occupants, and is affixed to a permanent foundation.*

This definition does not include Vehicles, portable Structures such as Travel Trailers, Motor Homes, Mobile Homes, buses, or tents, or temporary or transient facilities such as hotels, inns, motels, Hospitals, or cabins.

REVIEW CRITERIA

In order to issue a Special Use Permit, the Board must make certain findings. If the Board cannot make all of the required findings, no Special Use Permit shall be issued. If circumstances change sufficiently that the necessary findings might be met in the future, the Board may rehear a similar application.

A. *The Use 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;*

   Per the applicant, the structure is a legally non-conforming use containing three dwelling units. The applicant seeks this Permit as a means to bring the units to legal conformity and to allow for the expansion of existing units and the addition of new units if desired.

   Applicant states that the existing and proposed use is residential, so there will be no negative impact to adjacent properties. Applicant seeks to expand the building footprint by expanding the size of the 3rd unit.

B. *The Use will not substantially diminish the value of Adjacent Property unless the Use is a public necessity;*

The proposed use is a residential use permitted with a Special Exception Use permit, located within a zoning district designated for residential use. The proposed use will not diminish the value of adjacent property.

C. *The location and character of the Use, if developed according to the plans and information approved, will be in harmony with proximate land Uses, and consistent with the purposes of the Zoning District.*

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…*"

The applicant's requested Permit is in accordance with the intent of the Zoning Ordinance to provide for development of residential character.

CONCLUSION

The applicant seeks a Special Exception Use Permit to allow multi-family housing on the lot. The lot already has 3 legally non-conforming units, and the Permit would allow for additional units. There is no cap on density; off-street parking must be provided for all units going forward.

RECOMMENDATION

Approval subject to condition(s):

1. Prior to the issuance of any building permits for additional units, the applicant shall provide enough on-site parking to meet the requirements of the Subdivision and Land Development Ordinance.

North St

BZA Special Exception No. _____

RECEIVED
JUN 03 2024
BY: VR

Board of Zoning Appeals

Application for Special Exception

To assist staff in the review of a special exception 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 special exception by the BZA does not relieve the applicant from other requirements including, but not limited to, sign(s), 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 or Page 4).
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.

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 Special Exception Use

A Use conditionally permitted in a particular Zoning District under this Ordinance that may be undertaken only following the issuance of a Special Use Permit by the Board of Zoning Appeals pursuant to standards and criteria established in this Ordinance.

The Charles Town Zoning Ordinance

To grant a Special Exception Use as permitted in the Zoning Ordinance, the Board of Zoning Appeals makes findings as specified in Section 1321.11(D)(3).

In order to issue a Special Use Permit, the Board must make the following written findings regarding the Special Exception Use sought and **all** of the following can be met:

1. The Use 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;
2. The Use will not substantially diminish the value of Adjacent Property unless the Use is a public necessity; **and**
3. The location and character of the Use, if developed according to the plans and information approved, will be in harmony with proximate land Uses, and consistent with the purposes of the Zoning District.

BZA Special Exception No. _____

Site/Plat Requirements

As Detailed in 1332.04(D) of the Subdivision Ordinance

A plat or building location survey must contain the following information in order for the property to be thoroughly evaluated for a Special Exception:

1. Plat must be drawn to scale (Can be hand drawn).
   a. Existing conditions/structures on the site
   b. Location/arrangement of proposed uses, *as applicable*.
2. Name of Engineer, Surveyor, or Architect who prepared plat, *if applicable*.
3. Signature and Seal of Engineer, Surveyor, or Architect, *if applicable*.
4. Date of plat and dates of any revisions.
5. Legend/Table on plat listing the following:
   a. Name of Proposed Project.
   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. Size of parcel.
8. Names of adjacent streets.
9. Site/Development layout, *as applicable*:
   a. Maximum and proposed density.
   b. Location of proposed Street layout, including connections to adjoining streets or vacant lots.
   c. The location of sidewalks, trails and crosswalks.
   d. General layout of any proposed number of Lots, average Lot sizes and any proposed commercial uses, including any associated parking. Include proposed height of structures.
   e. Proposed open space and/or recreation areas, including notes on the plan describing the proposed use, activity area and/or improvement.
   f. Parking spaces/parking lots with calculations showing what is required and proposed.
   g. Landscaping as required in the Zoning Ordinance.
10. Site/Development utilities, *as applicable*:
    a. Available utilities.
    b. All existing sanitary sewer facilities and combined sewer facilities.
    c. Depict location or statement of proposed water and sewer supply and other utility improvements.
11. Existing covenants, *if applicable*.
12. List with any documentation of any previously approved variances, special exceptions, appeals, court decisions, conditions, proffers, or waivers granted for the subject property.
13. Any other information requested by the Subdivision Administrator in order for the Subdivision Administrator to make an accurate determination.

BZA Special Exception No. _____

1. DATE May 31, , 2024

2. APPLICANT'S NAME* Mark Roper

   Address: 418 S. Samuel Street Charles Town, WV 25414

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

   Email Address mrconstructionwv@gmail.com

3. PROPERTY OWNER'S NAME Mark Roper

   Address: 418 S. Samuel Street Charles Town, WV 25414

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

   Email Address mrconstructionwv@gmail.com

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

   Property Address: 210 A, B, and C

   Tax Map # and Parcel(s): TM 2 Parcel 11

   Deed Book and Page #: DB 552 PG 435

   Property Area in Square Feet or Acres: 10,730 sq. ft.

What is this request for?

[ ] Home Occupation, Major
[ ] Bed and Breakfast
[ ] Child Care Center
[X] Apartments/Condominiums/Townhouses
[ ] Adult Day Care Center/Assisted Living/Attached Senior Housing/Congregate Care Facility/ Continuing Care Retirement Community/Group Home
[ ] Liquor Store
[ ] Casino/Video Lottery
[ ] Other;_____

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

   Property consists of 3 units and is zoned Old Town Residential

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

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.)

Property currently has 3 units and the proposal is to expand the third unit, which is an efficency room in the back of the structure, to a two bedroom unit. Three units will remain. The request of the special exception is to bring the site into conformity with the current use and eliminate the nonconformity.

7. LIST THE APPLICABLE SECTION(S) OF THE CITY OF CHARLES TOWN ZONING ORDINANCE FOR WHICH THE SPECIAL EXCEPTION USE IS BEING REQUESTED:

Section 1323(L) Nonconforming Uses and Table 1322.04, Zoning District Use Table (apartment as a special exception).

The site is currently nonconforming in that a special exception is required for a 3 unit building or more units. This structure predates that requirement. Applicant is proposing to expand an existing unit and come into compliance with the Zoning Ordinanc

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

The purpose of the zoning ordinance is to allow adequate space and use on a lot. This property has sufficent space and parking to allow the expansion of an existing use.

9. PLEASE DESCRIBE HOW THE PROPOSED USE WOULD AFFECT TRAFFIC CONDITIONS SURROUNDING THE SUBJECT PROPERTY:

The proposed expansion of an existing unit will have no impact upon the traffic around the subject property.

10. PLEASE DESCRIBE HOW THIS PROPOSED USE WOULD CHANGE THE EXISTING LAND USE CHARACTERISTICS: (i.e. – from residential to incidental home occupation.)

The existing property is residential and remain residential. There will be no net impact of the land use characteristics.

11. JUSTIFICATION FOR THE REQUEST:

A) The Use 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;

Since this is an existing condition and only a modest expansion, there will be no impact to the public health, safety, welfare, or constitue a public nuisance in this location.

B) The Use will not substantially diminish the value of Adjacent Property unless the Use is a public necessity; and

As noted above, the propose expansion will not impact the adjacent properties, as the unit and use currently exists.

C) The location and character of the Use, if developed according to the plans and information approved, will be in harmony with proximate land Uses, and consistent with the purposes of the Zoning District.

In the Old Town Residential zoining, a single family home and duplex are permitted by right. Townhome and multi-units are permitted as a special exception. As noted above, the propose of this applicaiton is to bring a non-conforming use into conformance with the zoning ordinance. The expansion of one existing unit will have no impact upon adjacent properties and will bring a property into compliance with the zoning ordinance.

12. PLEASE DESCRIBE ANY PROPOSED WORK TO BE DONE TO THE PROPERTY: (i.e. – new structures, building additions, ADA compliance, etc.)

As noted above, the proposed work will be an expansion of an existing unit.

13. HOW WOULD GRANTING THE SPECIAL EXCEPTION AFFECT THE FOLLOWING?

a. The number of people residing or working in the immediate area and the orderly growth of the community?

The number of people residing on the property will only be an addtional person. The efficency already has sleeping space for one person or a couple. Expansion to a two bedroom will result in only one additional person in the new bedroom.

b. The most appropriate use of land and structure?

The existing use will remain.

c. The peaceful enjoyment of people in their homes and the conservation of property values?

Since the existing use will retain, there will be no impact to the peaceful enjoyment of adjacent property owners and no change will occur to their property values.

d. The use of surrounding property and property values caused by the existence of odors, dust, gas, smoke, fumes, vibrations, glare, and noise?

No such manifestations will occur with the expansion of the existing unit.

14. 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

15. 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)

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

16. 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
METHODIST CHUCH - TRUSTEES	110 W. NORTH ST.	Charles Town, WV 25414
MAO CHRISTOPHER J	216 W. NORTH ST	Charles Town, WV 25414
CORBETT DEBRA R	128 EASTLAND DR	Charles Town, WV 25414
FOUNTAIN HEAD STRATEGIES LLC	11800 VALLEY RD	FAIRFAX, VA 22033
KR MANAGEMENT LLC	710 GODFREY CT	Leesburg, VA 20175
KRISTEN SCHAEFER	307 WALNUT ST	BERRYVILLE, VA 22611
MCDONALD SANDRA AND MARK	317 N. LAWRENCE ST	Charles Town, WV 25414
ASHLAND VILLAGE HOMES LLC	412 W. BURR BLVD	Kearneysville, WV 25430
BOARD OF EDUCATION	110 MORDINGTON AVE	Charles Town, WV 25414
WALLINGTON KETARUH J	219 N. LAWRENCE ST	Charles Town, WV 25414

BZA Special Exception 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 May 31, 2024

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

_____ Date _____

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:_____

_____

_____

_____

_____

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

Meeting: 07/16/24
Department: Board of Zoning Appeals
Category: Report
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

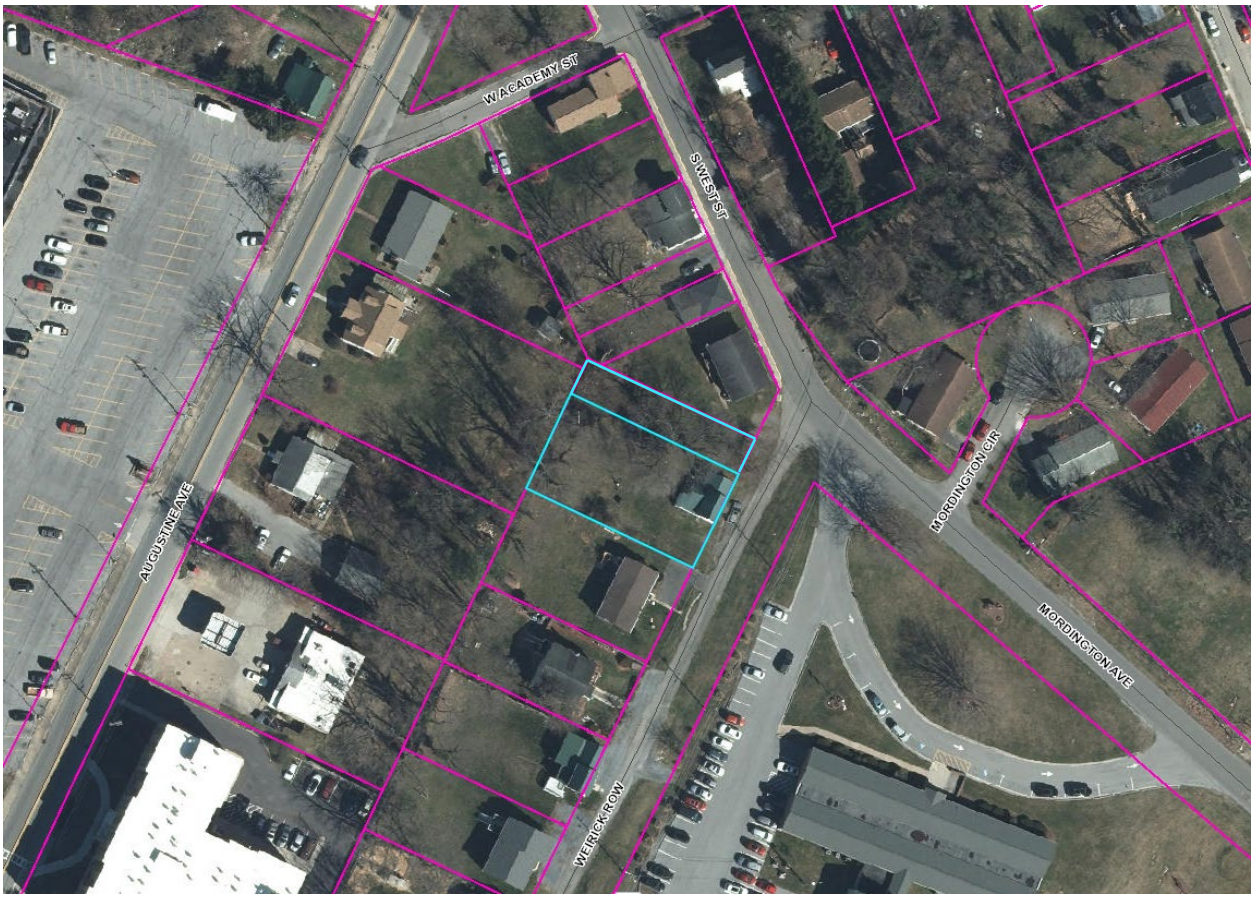
BA2024-06: *Variances* at Weirick Row

ATTACHMENTS:

- 1. Staff Report.pdf
- 2. Application.pdf

Public Hearing – Variance Request
BA-2024-06

Date: For the July 16, 2024 Board of Zoning Appeals meeting
Applicant: Mark Roper
Property Owner: Mark Roper
Report by: James Newman, City Planner, Zoning/Subdivision Administrator.
Location: 106 Weirick Row (Tax District 3/Map 4/ Parcel 70) and Tax District 3/Map 4/ Parcel 71



OVERVIEW

The applicant is seeking to adjust the property lines between these two adjacent properties to allow the development of the parcels with Single-Family Detached Homes; the existing house will be demolished.

Applicant request variances to:

1. Reduce the minimum lot size from the required 10,000 sq. ft. to 6,392 sq. ft.
2. Reduce the minimum lot width from 70 ft. to 49.75 feet.
3. Reduce the minimum building height from 24 ft/1.5 stories to 14 ft.

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*

The table on the next page shows the regulations for development in the OTR zoning district.

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)

VARIANCES

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.

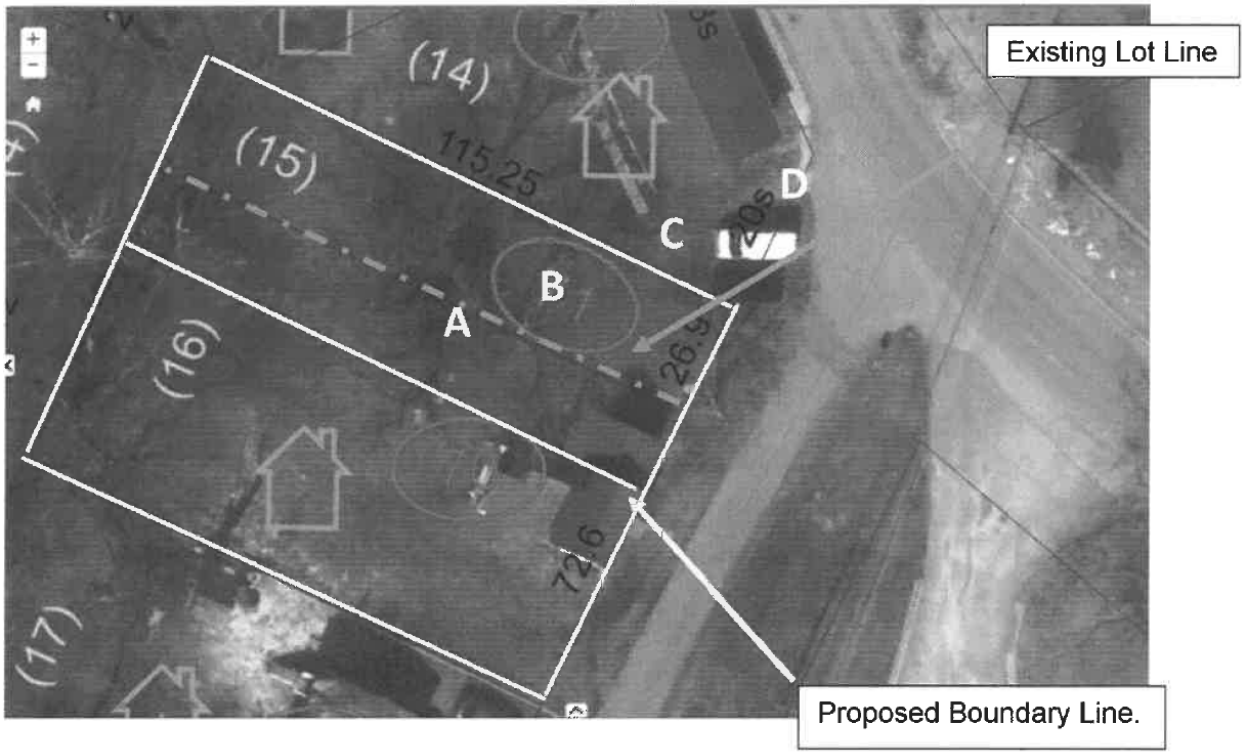
REVIEW CRITERIA

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;*

Joint response

The applicant proposes to demolish the existing building and adjust the boundary lines so that both lots are buildable. No setback is requested from side yard setbacks, which are 10 ft. Variances are requested for minimum lot size of 6,392 sq. ft. and reduced minimum building height of 14 ft. The existing home will be demolished and the new homes built within the required setbacks.



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;*

Lot Size and Width

Per the applicant:

"One of the parcels is so small that if required side yard setbacks were applied to it, there would be a 6 ft. wide buildable area. [That lot] is preexisting and not a condition created by the applicant, which creates a hardship. Providing a boundary line adjustment will create two reasonable sized building lots which will alleviate that hardship."

Building Height

Per the applicant:

"There are only three homes out of 12 or more tat have a second story. The neighborhood pattern is mainly one-story homes…it benefits the neighborhood to grant the variance to provide a reduction in the house height in this variance. The layout and the existing patterns in this neighborhood is the uniqueness that provides justification of this variance request."

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

Joint response.

The variances would eliminate a hardship by allowing for two buildable residential lots rather than just one buildable lot and a parcel which is functionally undevelopable. The proposed development use of single-family detached housing is allowed by-right in this zoning district and is a reasonable use of the land.

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

Joint response.

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…"*

The applicant's requested variance is in accordance with the intent of the Zoning Ordinance to provide for small lot sizes with a residential character.

CONCLUSION

The applicant is seeking the following variances:

	Required	Proposed	Variance
Minimum lot size	10,000	6,392	3,608 sq. ft
Minimum lot width	70 ft.	49.75 ft.	20.25 ft.
Minimum building size	24 ft. / 1.5 stories	14 ft.	10 ft.

RECOMMENDATION

Approval.

Weirick Row

BZA Variance No. _____

RECEIVED
JUN 03 2024
BY: VB

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.

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.

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 May 31, , 2024

2. APPLICANT'S NAME* Mark Roper

   Address: 418 S. Samuel Street Charles Town, WV 25414

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

   Email Address mrconstructionwv@gmail.com

3. PROPERTY OWNER'S NAME Mark Roper and Rosa Brown (Ownership is Roper)

   Address: 418 S. Samuel Street Charles Town, WV 25414

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

   Email Address mrconstructionwv@gmail.com

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

   Property Address: 106 Werick Row and a vacaent Parcel 71

   Tax Map # and Parcel(s): Map 4 Parcels 70 and 71

   Deed Book and Page #: 1286/142 and None Listed for Parcel 71 (Old tax sale)

   Property Area in Square Feet or Acres: Parcel 70 - 9,329 sq. ft. Parcel 71 - 3,456 sq. ft.

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

   Parcel 70 has a single family home. Parcel 71 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.)

   Proposal is to do a boundary line adjustment and create two (2) buildable lots with a single-family detached home on each lot.

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

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.

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.)

N/A

☒ 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

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 6-3-24

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

_____ Date _____

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:_____

_____

_____

_____

_____

Weiricks Row – Variance Request

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

Boundary line adjustment to create two buildable lots.



8. DESCRIPTION OF THE VARIANCE REQUEST:

- A requestion a reduction of the minimum lot size to:
  - While neither of the lots meet the minimum lot size, the new proposed lots will be approximately 6,392 sq. ft.
  - This is a reduction from the required 10,000 sq. ft. minimum lot size for the Old Town Residential District.
- A reduction of the minimum lot width to:
  - Approximately 49.75 foot wide.
  - This is a reduction from the required 70 ft minimum lot width for the Old Town Residential District for single family detached homes.
- A reduction of the minimum house height to:
  - The minimum house height as required by the zoning ordinance is 24 feet or 1.5 stories. The applicant is requesting that to be reduced to 14 feet for a reduction of 10 feet.
- If the variance is granted, applicant will submit a plat depicting the boundary line adjustment.

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 lot size of 10,000 square feet, the minimum lot width of 70 feet, and minimum house height of 24 or 1.5 stories.

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. The adjacent parcels and others in the neighborhood have a similar lot development pattern, that is, the lot size, lot width, and house height as is proposed and exists in the neighborhood with no adverse impacts.

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

The variance will not impact the public health, safety, welfare or the rights of adjacent property owners and residents. Granting the variances 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:

One of the variances is technical in nature, in so much as that neither of the lot sizes meet the current minimum lot sizes and is an existing condition, a condition not created by the applicant. Only one of the two lots meets the minimum lot width. One of the lots, Parcel 71 is so small that if required side yard setbacks were applied to it, there would be a 6-foot-wide buildable area. The existing lot is preexisting and was not a condition created by the applicant which creates a hardship. Providing for a boundary line adjustment will create two reasonable sized building lots that will alleviate the hardship. The proposed lots are going to be nearly 50 wide by 128.5 feet deep, which is fairly common size for a lot in a urban environment.

In the vicinity of this neighborhood, going down Weiricks Row, Mordington Ave., or Mordington Circle, there are only three homes out of 12 or more that have a second story. The neighborhood pattern is mainly one-story homes. To ensure that the proposed structures maintain the character that predominates in this location, it benefits the neighborhood to grant the variance to provide a reduction in the house height in this variance. The layout and existing patterns in this neighborhood is the uniqueness that provides the justification of this variance request. The applicant is seeking to maintain this harmony with the neighborhood.

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, neither lot meets the minimum lot size as they exist today. Only one of

the lots currently meet minimum lot size, but to eliminate a functionally unbuildable lot, the boundary line adjustment would create two functionally buildable lots. As discussed above in detail, allowing the one-story homes eliminates hardship upon both the neighbors and the applicant. It provides consistency for the neighbors and the applicant. This is due to the uniqueness being based on the nature of the one-story homes that are characteristic of the neighborhood.

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 use and activity on an existing lot of record. Granting this variance would fulfill the intent of the Zoning Ordinance. A reduction in the minimum lot size, the minimum lot width, and the height, in this particular location, will have no impact upon the intent of the Zoning Ordinance. Substantial justice would be achieved since the applicant's requested variance is the minimum possible. Further, the goals detailed in the Comprehensive Plan are 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 facilitate productive use. This request addresses multiple public policy goals.

17. INTERESED PARTY ADDRESSES, FOR PUBLIC NOTICE

Owner	# and Street	City, State, Zip
BOARD OF EDUCATION	110 MORDINGTON AVE	CHARLES TOWN, WV 25414
UPSON JILL S	336 PEBBLE BEACH DR	CHARLES TOWN, WV 25414
CARR ROBERT & CORNELIA T	313W ACADEMY ST	CHARLES TOWN, WV 25414
STOLIPHER WEST LLC	1599 ROPER NORTH FORK	CHARLES TOWN, WV 25414
CLAY MELVIN M & THELMA M	123 AUGUSTINE AVE	CHARLES TOWN, WV 25414
JACKSON DANENE A	125 AUGUSTINE AVE	CHARLES TOWN, WV 25414
COMBS WILLIAM & DENISE A	127 AUGUSTINE AVE	CHARLES TOWN, WV 25414
WILSON KEITH E	112 WEIRICK ST	CHARLES TOWN, WV 25414
WALKER FORD S & LUCY M EST	118 WEIRICK ST	CHARLES TOWN, WV 25414