



**CITY OF CHARLES TOWN**  
**BOARD OF ZONING APPEALS**  
**AGENDA • FEBRUARY 19, 2025**

**BZA Meeting**

**COUNCIL CHAMBERS**  
**101 E Washington Street, Charles Town, WV 25414**

**7:00 PM**

**I. CALL TO ORDER**

**II. DETERMINATION OF QUORUM**

**III. APPROVAL OF MINUTES**

III.1 : DRAFT December 17, 2024 minutes  
[DRAFT minutes.pdf](#)

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

IV.1 : **BA2024-08**: George St. Lots - Variance Request  
[BZA-2024-08.pdf](#)

IV.2 : **BA2024-09**: 114 Augustine Avenue - Variance Request  
[BZA-2024-09.pdf](#)

**V. PUBLIC HEARINGS**

V.1 : **BA2024-10** - 418 S. Samuel St. - Variance Request from Mark Roper  
1. [Staff Report.pdf](#)  
2. [Application.pdf](#)  
3. [Narrative.pdf](#)  
4. [Images and Aerial.pdf](#)  
5. [Public Comment.pdf](#)

**VI. CONTINUED CASES**

**VII. OTHER BUSINESS**

VII.1 : Election of Officer:  
-Chair of the Board

**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: 02/19/25  
Department: Board of Zoning  
Appeals  
Category: Report  
Initiator:

### **SCHEDULED**

### **AGENDA ITEM (ID # )**

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### **DRAFT December 17, 2024 minutes**

**ATTACHMENTS:**

- [DRAFT minutes.pdf](#)



# CITY OF CHARLES TOWN

## BOARD OF ZONING APPEALS

MINUTES • December 17, 2024

BZA Meeting

COUNCIL CHAMBERS

7:04 PM

101 East Washington Street, Charles Town, WV 25414

### 1. CALL TO ORDER

**Present:** Locke Wysong, Chair  
Christopher Cox  
Patrick Kratovil

Jim Thomas - Absent

**Staff:** James Newman, Zoning Administrator  
Stephanie Grove, Attorney  
Kim Crosson, Permit Technician

### 2. DETERMINATION OF QUORUM

### 3. APPROVAL OF MINUTES

3.1: Minutes – September 19, 2024

<b>RESULT:</b>	<b>Approved</b>
<b>MOVER:</b>	Cox
<b>SECONDER:</b>	Kratovil
<b>AYES:</b>	Cox, Kratovil, Wysong

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

BA2024-05, 06, 07 approved as a group

<b>RESULT:</b>	<b>Approved</b>
<b>MOVER:</b>	Cox
<b>SECONDER:</b>	Kratovil
<b>AYES:</b>	Cox, Kratovil, Wysong

## 5. PUBLIC HEARINGS

### 5.1: BA2024-08: Variance request for George Street Lots

Staff presentation

Applicant David Acly sworn in. Spoke about Division of Highways requirements for driveway separation require an access drive for the four proposed lots as opposed to four separate driveways. Home will be located close to the front setback line and will have basements.

Board discussion about stormwater management, driveway locations, and general access.

Chair Wysong opened the meeting to public comment.

A letter from Robin Rhoads was read into the record.

Christy Edwards was sworn in. Spoke about need for housing in the area, that there are few homes in the market that are similar to what is proposed. Smaller homes are needed.

Applicant Acly stated that the lot sizes would be similar to neighboring lots.

Chair Wysong closed the public comment.

Motion to enter deliberation at 7:24 pm

<b>RESULT:</b>	<b>Approved</b>
<b>MOVER:</b>	Kratovil
<b>SECONDER:</b>	Cox
<b>AYES:</b>	Cox, Kratovil, Wysong

Motion to resume at 7:46 pm

<b>RESULT:</b>	<b>Approved</b>
<b>MOVER:</b>	Kratovil
<b>SECONDER:</b>	Cox
<b>AYES:</b>	Cox, Kratovil, Wysong

BZA discussion about lot sizes, stormwater impact.

Motion to approve the variance request with conditions as presented:

<b>RESULT:</b>	<b>Approved</b>
<b>MOVER:</b>	Kratovil
<b>SECONDER:</b>	Cox
<b>AYES:</b>	Cox, Kratovil, Wysong

Condition: The development of the proposed lots shall be subject to the requirements of Article 1334 of the Subdivision and Land Development Ordinance, including for those lots the development of which may disturb less than 3,00 square feet of land.

## **5.2: BA2024-08: Variance request for 114 Augustine Avenue**

Staff presentation.

Applicant Paul Raco sworn in. Spoke about proposal. No new lots or dwellings created by variance.

Chair Wysong opened the meeting to public comment.

Paula Rogers sworn in. Concerned about potential encroachment onto the property of Wainwright Baptist Church.

Paul Baker sworn in. Had question about legal takings, and lot size.

Paul Raco confirmed there were to be no changes in the perimeter boundary line. Variance was for internal property lines.

Chair Wysong closed the public comment.

Motion to enter deliberation at 8:09 pm

<b>RESULT:</b>	<b>Approved</b>
<b>MOVER:</b>	Kratovil
<b>SECONDER:</b>	Cox
<b>AYES:</b>	Cox, Kratovil, Wysong

Motion to resume at 7:13 pm

<b>RESULT:</b>	<b>Approved</b>
<b>MOVER:</b>	Kratovil
<b>SECONDER:</b>	Cox
<b>AYES:</b>	Cox, Kratovil, Wysong

Motion to approve the variance as presented:

<b>RESULT:</b>	<b>Approved</b>
<b>MOVER:</b>	Kratovil
<b>SECONDER:</b>	Cox
<b>AYES:</b>	Cox, Kratovil, Wysong

## **6. CONTINUED CASES**

None.

## **7. OTHER BUSINESS**

Adoption of the 2025 meeting calendar:

<b>RESULT:</b>	<b>Approved</b>
<b>MOVER:</b>	Kratovil
<b>SECONDER:</b>	Cox
<b>AYES:</b>	Cox, Kratovil, Wysong

## **8. ADJOURNMENT**

Adjournment at 8:15 pm

<b>RESULT:</b>	<b>Approved</b>
<b>MOVER:</b>	Kratovil
<b>SECONDER:</b>	Cox
<b>AYES:</b>	Cox, Kratovil, Wysong



## **Board of Zoning Appeals**

101 East Washington Street  
Charles Town, WV 25414

Meeting: 02/19/25  
Department: Board of Zoning  
Appeals  
Category: Report  
Initiator:

### **SCHEDULED**

### **AGENDA ITEM (ID # )**

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#### **BA2024-08: George St. Lots - Variance Request**

##### **ATTACHMENTS:**

- [BZA-2024-08.pdf](#)

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

In re: Docket No. BA 2024-08 – Application for Variance by Zales Construction LLC

**FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION**

This matter came before the Board of Zoning Appeals at its general meeting held on the 17<sup>th</sup> day of December 2024, for public hearing upon the application for a Variance filed by David Acly on behalf of Zales Construction, LLC (hereinafter the “Applicant”). The subject real property is owned by Zales Construction, LLC. Board members present were Chairman C. Locke Wysong, Jr., Christopher Cox, and Patrick Kratovil, being a quorum. Also present were the City’s Zoning/Subdivision Administrator, James Newman, the City’s Permit Technician via virtual attendance, Kim Crosson and the City Attorney, Stephanie Grove

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 a Variance pursuant to **Sections 1322.12(D) and 1322.11(E) of the Zoning Ordinance** with respect to lot size. The permitted width for the proposed lots is 20 feet, with lot size ratio of 2 feet width to 3 feet depth. The **1322.12, Old Town Mixed Commercial (OT-MUS) District, and Table 1322.12, OT-MUC District Bulk and Area Regulations, of the Zoning Ordinance**. The subject real property consists of two (2) vacant parcels, located in the Old Town Mixed Use Commercial District (OT-MUC) District , Tax Parcels 4 and 147 on Tax Map 6 of the Charles Town Corporation. The Applicant proposes to subdivide two lots into four (4) for the development of housing with the following lot sizes:

Lot 1: Width of 61.75 ft, depth of 184 feet, ratio of 2:6  
Lot 2: Width of 71 ft, depth of 207.12 ft, ratio of 2:6  
Lot 3: Width of 44 ft, depth of 230.34 ft, ratio of 2: 10.5  
Lot 4: Width of 53 ft, depth of 260.58 ft, ratio of 2:10

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 the Applicant desires to adjust the property to create four vacant lots for the purpose of placing single family homes on them. The Zoning Administrator also reviewed the topography of the lot, noting that the properties plateau near George Steet and drop off in the middle and read of the lots. and advised the Board that the Applicant is requesting variances to reduce the required lot width to depth ratio. Mr. Newman stated that the requested variances will allow the applicant to provide four dwelling units in conformance with the mixed use character of the neighborhood. The Zoning Administrator recommended approval with the condition that the lots be subject to the requirements of Article 1334 of the Subdivision and Land Development Ordinance, including for those lots the development of which may disturb less than 3,000 square feet of land.

The Applicant's representative, David Acly, next was sworn and testified. Mr. Acly addressed the WV Department of Highway requirements for driveway separation that require and access drive for four proposed lots as opposed to four separated driveways. He further stated that the homes would be located close to the front setback line and would include basements.

The Board then discussed stormwater management requirements, the driveway locations, and general access to the site. .

The Board then opened up the hearing for public Comment. A letter from Robin Rhoads

was read into the record. One member of the public presented testimony. Ms. Christy Edwards was sworn in and spoke about the need for more hosing in the area, stating that there are few homes on the market that are similar to what is being proposed and that the proposed homes will address a need in the area.

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 Kratovil and seconded by Board member Cox, the Board determined, by a vote of four (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 subject to the requirements of Article 1334 of the Charles Town Subdivision and Land Development Ordinance, including those lots the development of which may disturb less than 3,000 square feet of land, 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. This variance will permit the subdivision of two lots into four. Given the proposed setbacks, it is likely that fill dirt will be required and grading will have to be carried out. The disturbance of 3,000 sq. ft or more of land necessitates stormwater management. Additionally, the access drive will require a separate waiver from the Planning Commission, as it does not meet the requirement that “No Access Drive shall be constructed closer than 100 feet to the nearest intersection.”

2. The Variance arises from special conditions or attributes which pertain to

the subject real property and which were not created by the Applicant. The Applicant has not created the special conditions that the requested Variances address. The current lots are buildable but not dividable due to the ratio requirement for minimum lot size. No hardship or special conditions have been created by the applicant; the property owner wishes to build additional housing by dividing these lots. The proposed lot sizes are similar to those that currently exist in the neighborhood.

3. The Variance will eliminate an unnecessary hardship and permit a reasonable use of the land. The properties can already be used for either a duplex or one single family home each. The applicant desires to build four dwelling units in total on these properties.

4. The Variance will allow the intent of the Zoning Ordinance to be observed and substantial justice done. As set forth in **Section 1322.11, Old Town Mixed Use Commercial (OT-MUC) District, of the Zoning Ordinance**, the OT-MUC District “fosters a greater opportunity for creative Infill Development and Redevelopment by encouraging a mix of Uses compatible with existing and neighboring properties and providing housing and business Uses in locations where City services are available. The Variance is in accordance with the intent of the Zoning Ordinance to provide infill development that is harmonious with the character of the area.

5. The written report of Staff methodically details precise reasons why the Variance 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 Applicant's requested Variance satisfies the requirements of Section 1321.11(E)(3) of the Zoning Ordinance and should be granted with conditions. 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 with conditions as contemplated in the application<sup>1</sup>, the public hearing, and herein, to alter the minimum lot size and allow a width to depth ratio of 2:6; 2:6; 2:10.5; and 2:10, respectively on each of the four proposed lots.

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.

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Entered

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C. Locke Wysong, Jr., Chairman

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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.



## **Board of Zoning Appeals**

101 East Washington Street  
Charles Town, WV 25414

Meeting: 02/19/25  
Department: Board of Zoning  
Appeals  
Category: Report  
Initiator:

### **SCHEDULED**

### **AGENDA ITEM (ID # )**

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### **BA2024-09: 114 Augustine Avenue - Variance Request**

#### **ATTACHMENTS:**

- [BZA-2024-09.pdf](#)

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

In re: Docket No. BA 2024-09 – Application for Variance by Niederhauser Limited Partnership

**FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION**

This matter came before the Board of Zoning Appeals at its general meeting held on the 17<sup>th</sup> day of December 2024, for public hearing upon the application for a Variance filed by Paul Raco on behalf of Niederhauser Limited Partnership (hereinafter the “Applicant”). The subject real property is owned by Niederhauser Limited Partnership. Board members present were Chairman C. Locke Wysong, Jr., Christopher Cox, and Patrick Kratovil, being a quorum. Also present were the City’s Zoning/Subdivision Administrator, James Newman, the City’s Permit Technician, Kim Crosson via virtual attendance and the City’s legal counsel, Stephanie F. Grove.

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 a Variance pursuant to **Sections 1321.10(D)(4) and 1321.11(E) of the Zoning Ordinance** with respect reduce the lot size requirement as it relates to the width to depth ratio from the required 2:3 to 2:5. **1322.12, Old Town Mixed Use Commercial (OT-MUC) District, and Table 1322.12, OT-MUC District Bulk and Area Regulations, of the Zoning Ordinance**. The subject real property consists of two (2) parcels with a dwelling on each, located in the Old Town Mixed Use Commercial (OT-MUC) District , Tax Parcels 15 and 16 on Tax Map 4 of the 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 the Applicant desires to adjust the property lines between two adjacent parcels to provide more equal side yards of each parcel. He advised the Board that the Applicant is requesting variances to reduce the minimum lot size, by reduced the required lot width to depth ration on one of the parcels. The requested variances will not result in any additional dwelling unites but will create a side yard for one of the lots that does not currently have a side yard.

The Applicant's representative, Paul Raco, next was sworn and testified. Mr. Raco provided additional information concerning the proposal and indicated that no new lots or dwelling units would be created.

The Board then opened up the hearing for public comment. Two members of the public presented testimony. Paula Rogers was sworn in and addressed concerns about potential encroachment on the property of Wainwright Baptist Church. Paul Baker was next sworn in and addressed the board concerning legal takings and lot size. Chairman Wysong indicated that the Board did not have any ability to address issues concerning title or boundary disputes. Mr. Raco confirmed that there were no changes to the perimeter boundary line and that the variance requested was related to the internal boundary lines.

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 Kratovil and seconded by Board member Cox, 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. This boundary line adjustment will grant additional space to the parcel at 110 Augustine Avenue while leaving a side yard setback of approximately 20 ft on the north side property line. The adjustment of a boundary line does not affect public health, safety, or welfare, and will give the adjacent property owner more land.

2. The Variance arises from special conditions or attributes which pertain to the subject real property and which were not created by the Applicant. The current lot boundaries were not created by the applicant; the applicant did not cause a hardship or special conditions

3. The Variance will eliminate an unnecessary hardship and permit a reasonable use of the land. The variances would eliminate a hardship by allowing a boundary line adjustment that will grant additional side yard space to 110 Augustine Avenue while preserving ample side yard space for 114 Augustine Avenue.

4. The Variance will allow the intent of the Zoning Ordinance to be observed and substantial justice done. This adjustment and variance will provide more living space for the 110 Augustine Avenue property.

5. The written report of Staff methodically details precise reasons why the Variance 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 Applicant's 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 and contemplated in the application, the public hearing, and herein, to reduce the minimum lot size from the required width to depth ratio of 2:3 to 2:5.<sup>1</sup>

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.

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Entered

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C. Locke Wysong, Jr., Chairman

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<sup>1</sup> 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.



## Board of Zoning Appeals

101 East Washington Street  
Charles Town, WV 25414

Meeting: 02/19/25  
Department: Board of Zoning  
Appeals  
Category: Report  
Initiator:

### SCHEDULED

### AGENDA ITEM (ID # )

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#### BA2024-10 - 418 S. Samuel St. - Variance Request from Mark Roper

##### ATTACHMENTS:

- 1. Staff Report.pdf
- 2. Application.pdf
- 3. Narrative.pdf
- 4. Images and Aerial.pdf
- 5. Public Comment.pdf



**Variance Request  
BA-2024-10**

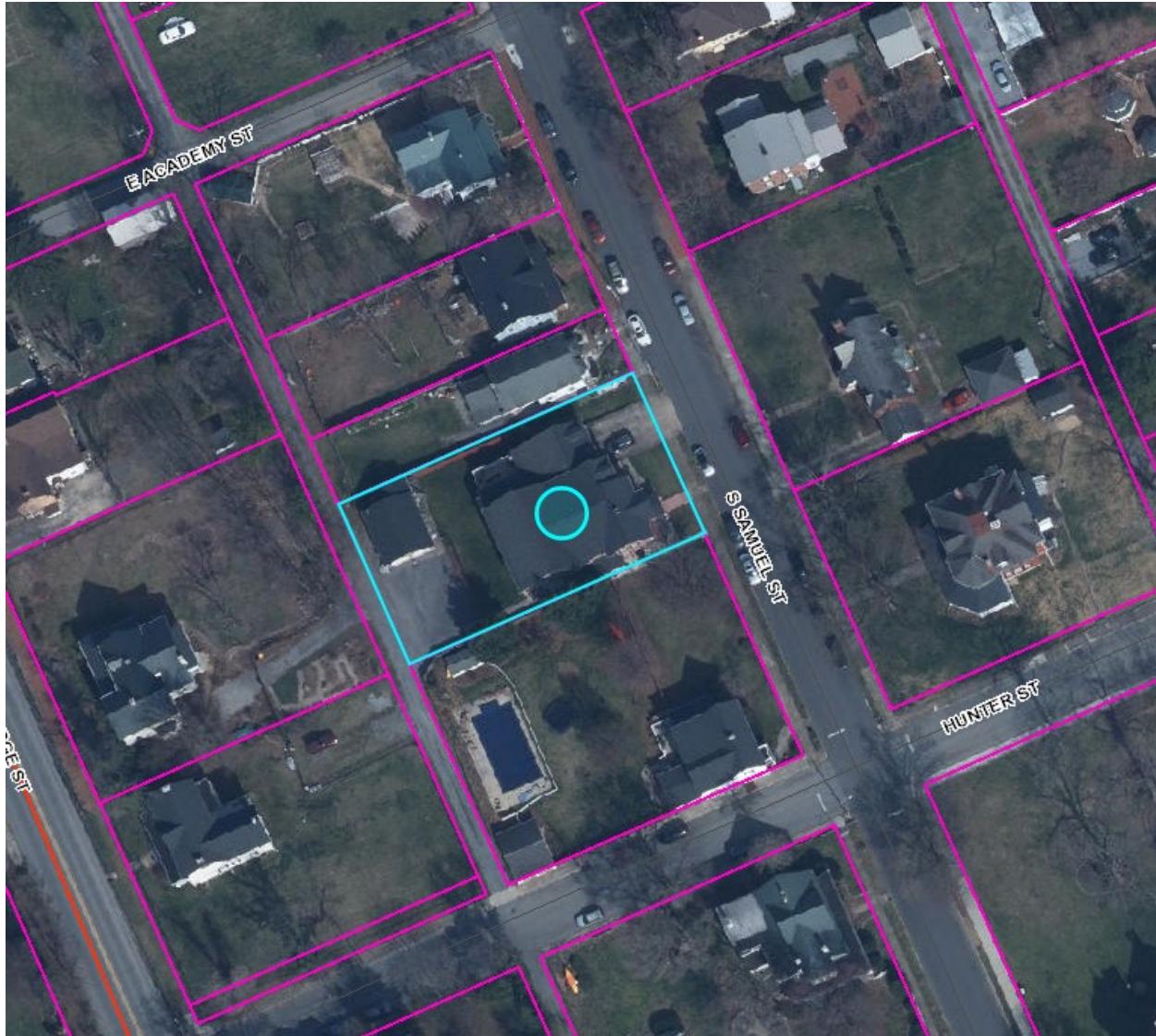
**Date:** For the February 19, 2025 Board of Zoning Appeals meeting

**Applicant:** Mark Roper

**Property Owner:** ROPER MARK E & ARTHENA L SEWELL

**Report by:** James Newman, City Planner, Zoning/Subdivision Administrator.

**Location:** 418 S. Samuel St. (Tax District 3/Map 3/ Parcel 28)



**OVERVIEW**

The applicant is requesting variances from the side yard setback and maximum lot coverage.

## **OLD TOWN RESIDENTIAL ZONING DISTRICT**

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

*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.*

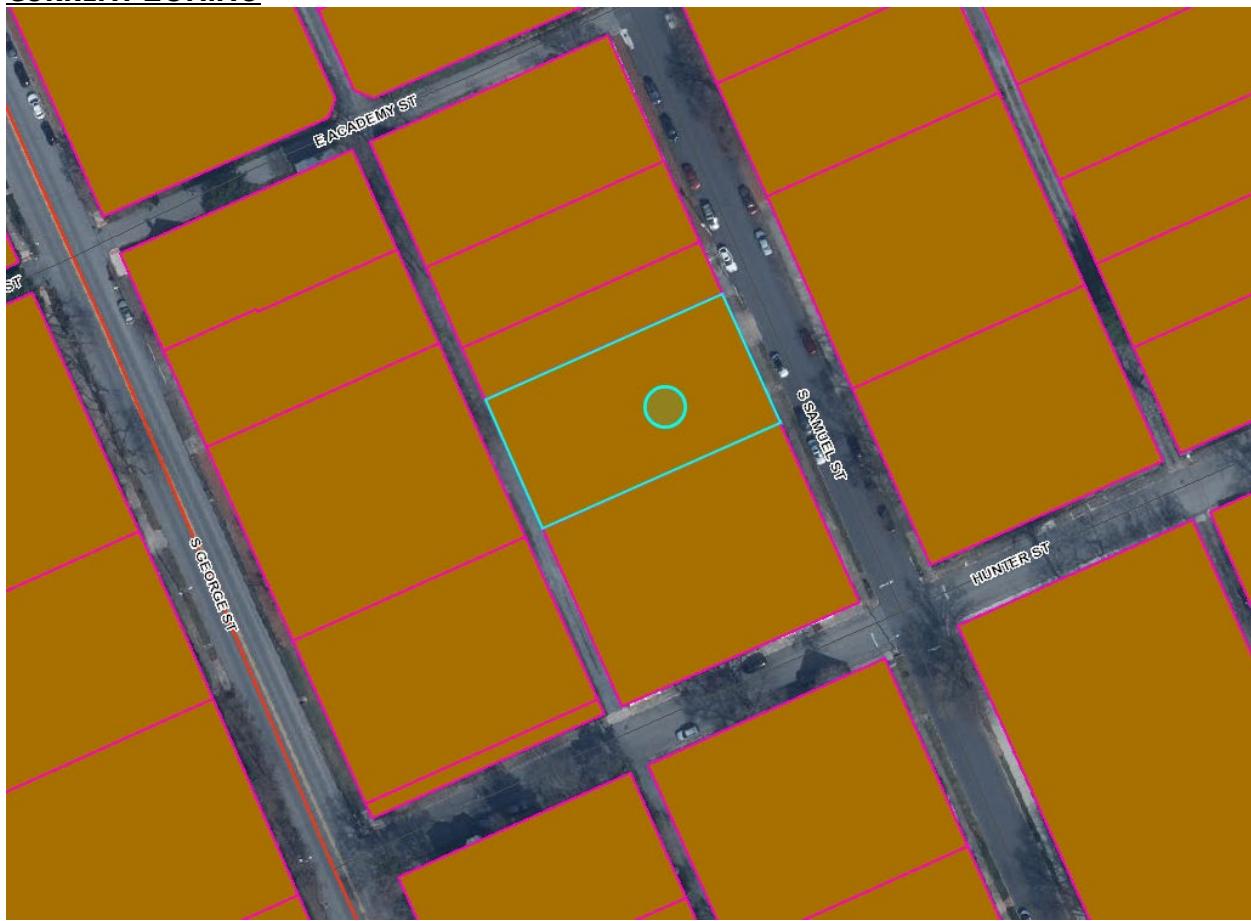
*The OT-R District also promotes interaction among activities located within the entire Old Town District area, which includes both the OT-R and Old Town Mixed Use Commercial District. The purpose of such interaction is to further enhance business vitality, reduce vehicular traffic, increase access to 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 <sup>3</sup>
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. <sup>5</sup>
Minimum Side Yard Setback	10 feet <sup>1</sup>
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) <sup>2</sup>
Maximum Stories	3 stories (4 stories for Multi-Family)

## **CURRENT ZONING**



### **Key:**

Brown – Old Town Residential

**VIEW OF THE SIDE YARD – staff photograph**

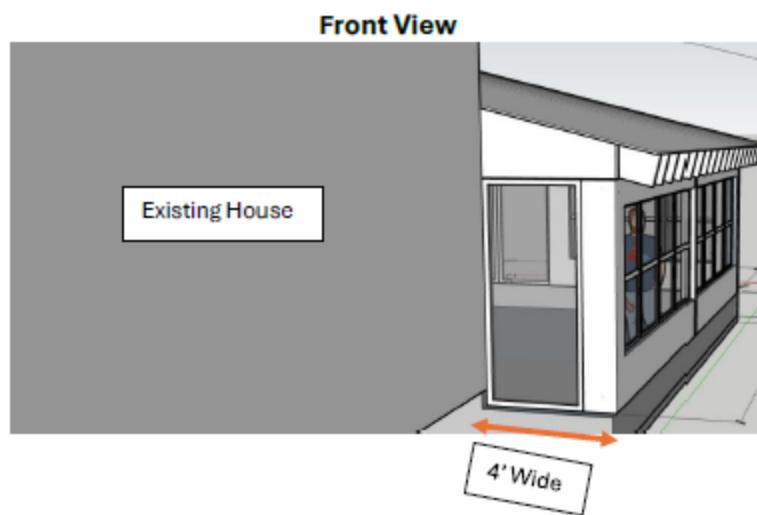
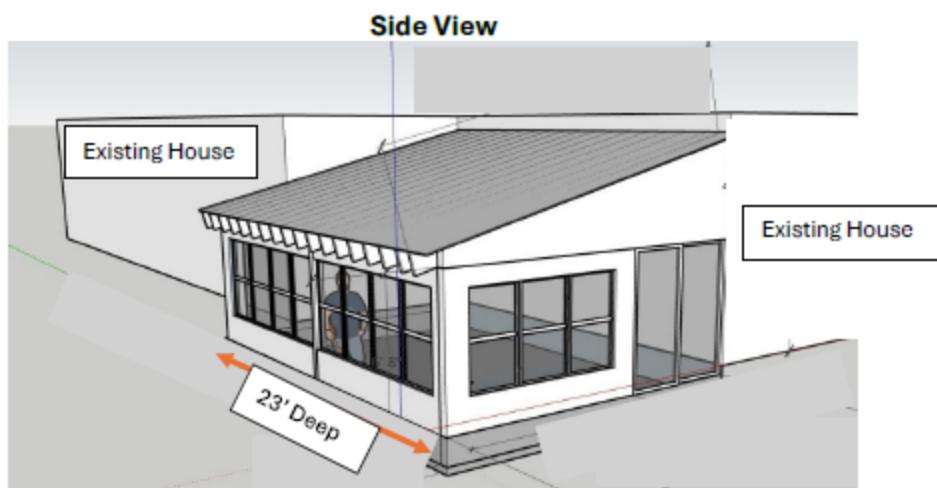
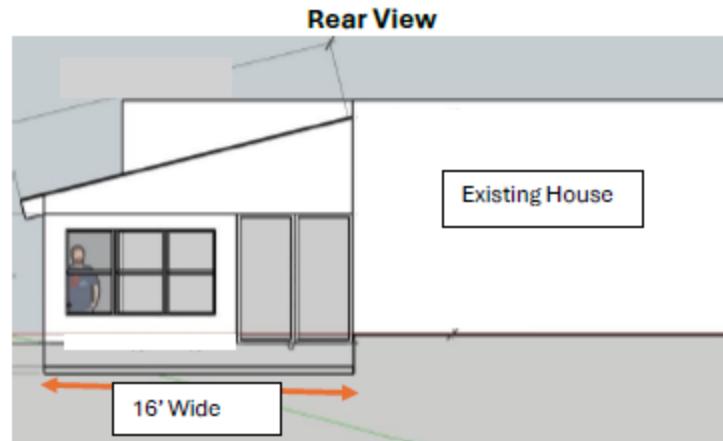


**PROPOSED ADDITION – applicant renderings**



Existing Deck to be removed and become the new sunroom.

A small bump out of 5 feet is outlined in yellow.



**REQUESTED VARIANCES:**

Side yard setback: Reduction from 10 ft. to 5 ft.

Maximum lot coverage: Increase from 70% to 72.5 %.

**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;**

The proposed variances will not adversely affect the public nor adjacent property owners; there is already an accessory structure closer than 5 ft to the property lens, which is visible in the staff photographs and aerial image. A 6ft tall wooden privacy fence separates the proposed sunroom from the adjacent property.

Currently a deck is in the location of the proposed sunroom. The deck is 30 inches above ground level, whereas the floor of the sunroom will be about a foot lower than grade.

One of the purposes of setbacks is to act as a firebreak. The sunroom will have a metal roof, glass windows, and cement-style siding, making it more fire resistant than the current deck.

**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;**

Per the applicant:

*The request for the variance arises from the layout of the existing home. With the layout of the house, the only functional location to install the sunroom is in the proposed location. There is an existing deck attached to the home. A portion of that will be removed and replaced with the proposed sunroom. To have a functionally useable space, in consideration of the existing home layout, the variance is requested. The requested setback reduction is specific and only for the proposed sunroom, not the entire home.*

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

The applicant states that their hardship is the layout of the house, necessitating the location of the sunroom in a specific area requiring variances. The lack of a sunroom is not a hardship, although it is a reasonable use of the land.

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

The purpose of the OT-R District is to

*"recognize existing and older residential neighborhoods within the City ... that are characterized as having smaller Lots, smaller Setbacks... These provisions for the OT-R District are designed to protect the character of these residential neighborhoods while permitting their maintenance and improvement... it is important the scale and design of surrounding Buildings be taken into consideration when proposing additions and new Buildings."*

The proposed variances will allow for the construction of a common home addition, which, while closer to the neighboring property, is less obtrusive and more fire resistant than the current decking, and is in keeping with the residential character of the zoning district.

## **CONCLUSION**

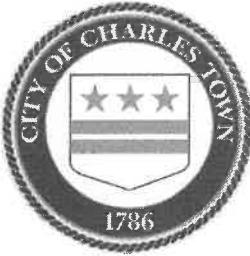
The applicant is seeking the following variances:

	<b>Required</b>	<b>Requested</b>	<b>Variance</b>
<b>Side setback</b>	10 ft.	5 ft.	5 ft.
<b>Maximum Lot Coverage</b>	70%	72.5%	2.5%

## **RECOMMENDATION**

**Approval, subject to condition:**

1. The reduced setback of 5 feet shall only apply to the sunroom. The remainder of the structure is subject to the standard OTR setback requirements.



## 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.

### **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 12-30-2024, 20\_\_\_\_\_

2. APPLICANT'S NAME\* Mark Roper

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

Telephone Number (304) 671-5262 Fax Number ( )

Email Address mrconstructionwv@gmail.com

3. PROPERTY OWNER'S NAME See above.

Address: \_\_\_\_\_

Telephone Number ( ) Fax Number ( )

Email Address \_\_\_\_\_

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

Property Address: 418 S. Samuel St. Charles Town, WV 25414

Tax Map # and Parcel(s): TD: 3 / Map: 3 / Pcl: 28

Deed Book and Page #: 810/9

Property Area in Square Feet or Acres: 14,256 sq. ft.

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

Single family residence. Zoned 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.)

Retain as single family home.

\_\_\_\_\_

\_\_\_\_\_

\*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.

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8. DESCRIPTION OF THE VARIANCE REQUEST:

See attached.

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

See attached.

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

See attached.

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

See attached.

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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.

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

See attached.

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

See attached.

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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.)

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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)

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 12-30-28

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

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**FOR CITY USE ONLY**

Application Number: \_\_\_\_\_

Date Application Received: \_\_\_\_\_

Zoning District: \_\_\_\_\_

Fee: \$ \_\_\_\_\_

Check No. \_\_\_\_\_

Receipt No. \_\_\_\_\_

BZA Hearing Date: \_\_\_\_\_

Decision: \_\_\_\_\_

Comments:

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## Roper Sunroom Variance Request

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

Proposed activity is:

- Partial removal of an existing deck and construction of a sunroom.

### 8. DESCRIPTION OF THE VARIANCE REQUEST:

- Applicant is requesting a setback variance to:
  - A 5 feet side yard setback to the north, which is a reduction of the required 10-foot side yard setback for the Old Town Residential District. Requested setback is only for the area of the sunroom, which is a 24 foot length along the property.
  - An increase in the maximum lot coverage. 70% is the maximum permitted lot coverage in the Old Town Residential District. Lot currently has a lot coverage of approximately 71.5 percent and applicant is seeking to increase that to 72.5 percent.

### 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 and the maximum lot coverage of 70%.

### 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. As proposed, the existing homes meet the 10-foot setback and only a side length of 24 feet for the sunroom would encroach into the setback. The granting of the variances will maintain and achieve the purpose and intent of the Zoning Ordinance.

Regarding the maximum lot coverage, the net increase in lot coverage is only 144 sq. ft. This de minimis increase will still be in keeping with the intent of the Zoning Ordinance's policy goal to limit overcrowding.

### 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 and the rights of adjacent property owners and residents. Only a limited length of the proposed structure will encroach into the setback. Adequate space and access is still provided between the adjoining property. Granting the waiver will have no net change or impact upon the adjacent property owners, citizens, and residents.

Similarly, the maximum lot coverage would not impact the public health, safety, welfare and the rights of adjacent property owners and residents, as the amount of newly created lot coverage is very small and insignificant.

### 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 request for the variance arises from the layout of the existing home. With the layout of the house, the only functional location to install the sunroom is in the proposed location. There is an existing deck attached to the home. A portion of that will be removed and replaced with the proposed sunroom. To have a functionally useable space, in consideration of the existing home layout, the variance is requested. As noted above, the requested setback reduction is specific and only for the proposed sunroom, not the entire home.

The very small increase in the maximum lot coverage is part of the need to create a functional and usable space for the proposed sunroom. To try and reduce the amount of maximum lot coverage area, the applicant is removing portion of a deck to reuse that existing lot coverage area of the deck towards the proposed sunroom and not further overextend the maximum lot coverage by leaving the existing deck and then adding the sunroom.

### **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, the layout of the existing home functionally only allows the proposed sunroom to be in one location. Applicant is requesting the minimum setback as necessary for one specific location.

Regarding the maximum lot coverage, as noted elsewhere, the applicant is reusing some existing area lot coverage area towards this sunroom to reduce or negate the amount of new lot coverage area. The request is only the minimum needed to provide for a functionally usable space based on the existing layout of the home.

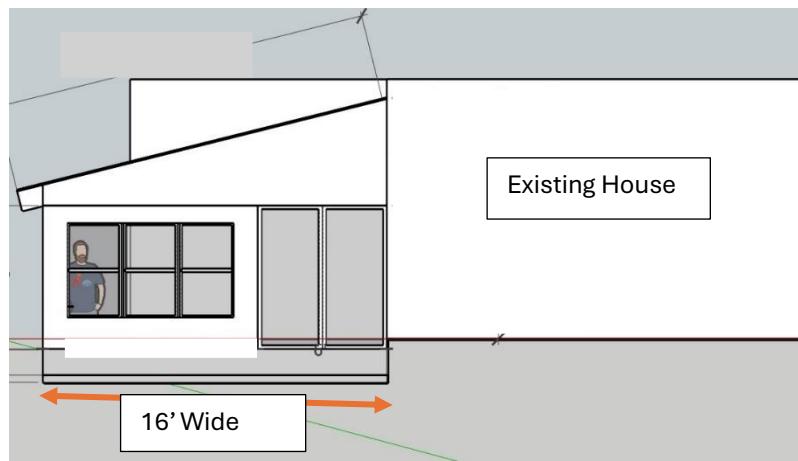
### **14. IN YOUR OPINION, WOULD THE VARIANCE ALLOW THE INTENT OF THE ZONING ORDINANCE TO BE OBSERVED AND SUBSTANTIAL JUSTICE DONE?**

Yes. Granting these variances would fulfill the 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.

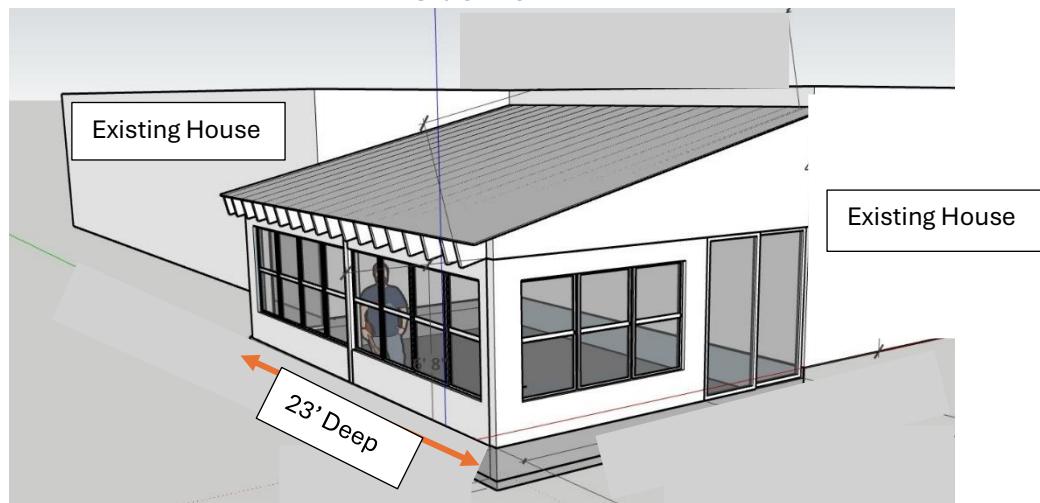
### **17. INTERESED PARTY ADDRESSES, FOR PUBLIC NOTICE**

Owner	# and Street	City, State, Zip
DERONDA ALBERT & BRIDGET R	412S SAMUEL ST	CHARLES TOWN, WV 25414
VALLE NATHAN	406S SAMUEL ST	CHARLES TOWN, WV 25414
WILSON MICHAEL B	428S SAMUEL ST	CHARLES TOWN, WV 25414
BUSHMAN JENNIFER LYNN	423S GEORGE ST	CHARLES TOWN, WV 25414
BAUER JEAN-MARTIN & VIRGINIE	421S GEORGE ST	CHARLES TOWN, WV 25414
STAFFORD MARK R & DEBORAH W	407S GEORGE ST	CHARLES TOWN, WV 25414
WILBUR WADE & ANNETTE VERA	427S SAMUEL ST	CHARLES TOWN, WV 25414
LADEMAN WILLIAM J & JEAN	417S SAMUEL ST	CHARLES TOWN, WV 25414
TINGLEY GARY R	405S SAMUEL ST	CHARLES TOWN, WV 25414

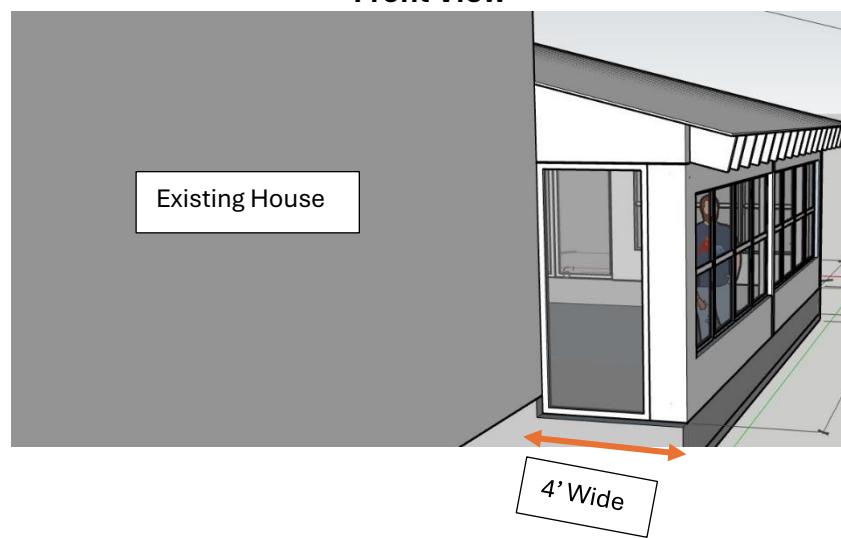
**Rear View**

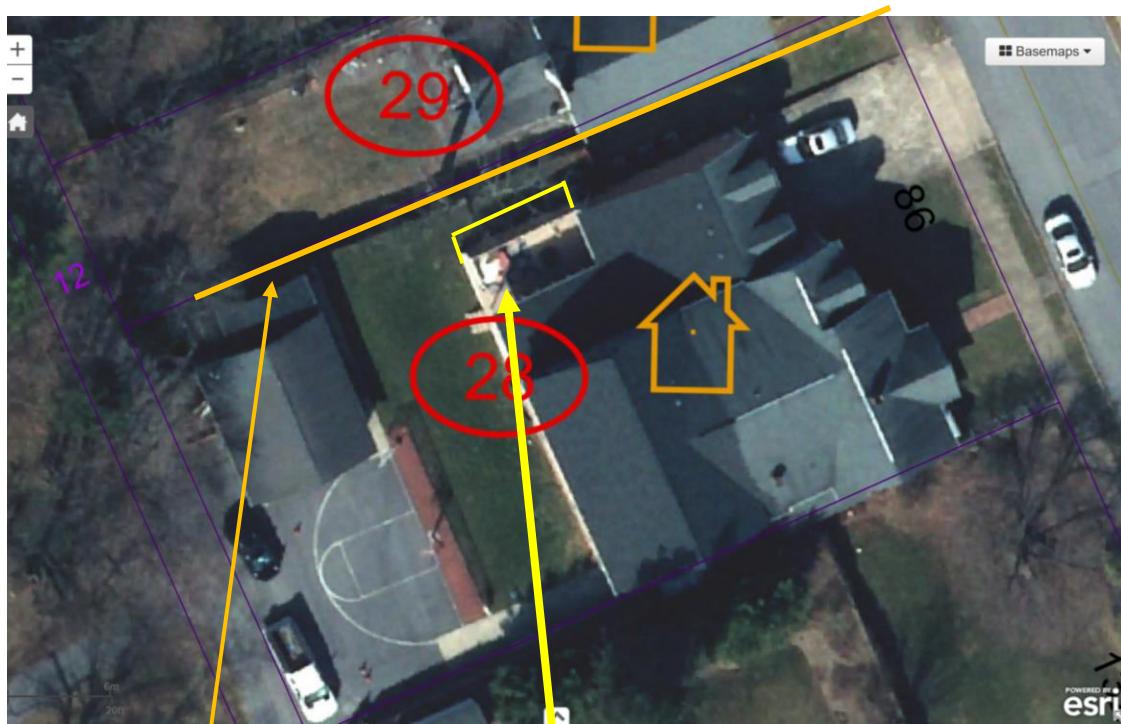


**Side View**



**Front View**





Property line.

Existing Deck to be removed and become the new sunroom.

A small bump out of 5 feet is outlined in yellow.

**From:** [REDACTED]  
**To:** [James Newman](#)  
**Subject:** Public Hearing February 19, 2025/BA-2024-10/Mark Roper  
**Date:** Thursday, February 13, 2025 4:09:48 PM

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Dear Mr. Newman,

My name is Albert DeRonda and I live with my wife, Bridget at 412 South Samuel Street.

I am the neighbor of Mark Roper who lives at 418 South Samuel Street and we are the closest and only neighbor impacted by the variance he is requesting.

He is seeking a variance from setbacks and maximum lot coverage requirements of the Old Town Residential Zoning District to replace a deck with a sunroom.

My concerns are:

All the water from his roof and guttering is being discharged to our yard. This has created flooding in our yard and cellar since he built his house. Our expenses have been obtaining a landscape contractor to divert the excessive water from his property onto our property. His plans to change the deck into a sunroom will increase his water drainage onto our property.

I am requesting the city planner and zoning commission to evaluate this issue by City & State Codes. An official needs to inspect, monitor and correct the issue occurring now and the future to alleviate the ongoing water drainage onto our property.

Respectfully,

Albert DeRonda  
412 South Samuel Street  
Charles Town WV 25414  
Cell: [REDACTED]  
Email [REDACTED]

Enclosures  
Photos

Beware - This email comes from outside the City of Charles Town.















## **Board of Zoning Appeals**

101 East Washington Street  
Charles Town, WV 25414

Meeting: 02/19/25  
Department: Board of Zoning  
Appeals  
Category: Report  
Initiator:

### **SCHEDULED**

### **AGENDA ITEM (ID # )**

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#### **Election of Officer: -Chair of the Board**

#### **ATTACHMENTS:**